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HOUSE JUDICIARY COMMITTEE

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CONFIRMA-TION HEARINGS

February 13, 1975

TO: Representative Mike Bradner
Speaker of the House

FROM: Representative Terry Gardiner
Chairman, House Judiciary Committee

SUBJECT: CONFIRMATION - RICHARD L. BURTON

We have considered the nomination of Richard L. Burton and feel that he is well qualified to be the Commissioner of the Department of Public Safety, State of Alaska.

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

RICHARD L. BURTON

Permanent Address

Route 5, Box 5920
Juneau, Alaska 99801

OBJECTIVE

Administration or management position in law enforcement, security, public safety or related field.

HIGHLIGHTS OF EXPERIENCE

Nineteen and one-half years total experience in public safety and law enforcement. Seventeen years experience with U. S. law enforcement agencies in positions ranging from patrolman through captain. Five years were with municipal police agencies and twelve years with the Alaska State Troopers. Currently Chief of the City and Borough of Juneau Police Department.

As sergeant, lieutenant and captain with the State Troopers, held progressively advancing positions, requiring management and administrative skills necessary to planning, personnel, training, budgeting and all related phases of security operations. Last assignment was as Commander of the Southeast Region.

Past president and vice-president of the Alaska Chiefs of Police Association where served during a period of seminars and meetings with state and local agencies to start a state-wide Criminal Justice Information System and authored and successfully served as "Lobbyist" for several bills to correct some criminal laws and to benefit the law enforcement profession.

In 1967, researched and worked on restructuring the organization and operational guides of the Alaska State Troopers and worked on job standards, descriptions and qualifications.

Worked for two years with State Division of Personnel in recruiting and interviewing police and wildlife enforcement candidates.

First man chosen as Chief of Security to the Office of the Governor and was responsible for security of his and his family's safety and the security of the Office and Mansion. Traveled nation-wide as his Aide.

Most currently have just completed a two year assignment with the U. S. Agency for International Development, Department of State, Office of Public Safety, as an advisor to the National Police of South Vietnam. Advised Provincial Police Command of 1,800 men in all phases of law enforcement, as known in the U. S., in addition to the internal security problem of providing protection to the civil populace. The assignment required teaching of management and administrative skills and use of modern programs including personal skills and computerized programs as management tools. Advisor to seven district detention centers and provincial correction centers with total inmate population in excess of 1,000 inmates.

EMPLOYMENT CHRONOLOGY

September 1973 - Present: Chief of Police, City and Borough Police Department, Juneau, Alaska.

CIA

July 1971 - June 1973:	Area Public Safety Advisor, Agency for International Development, Vietnam.
October 1959 - 1971:	Trooper, sergeant, lieutenant, captain, Department of Public Safety, Alaska State Troopers, Juneau, Alaska.
August 1954 - 1959:	Patrolman, City Police Departments, Ketchikan and Fairbanks, Alaska.
1952 - 1954:	Instrument Man and Party Chief of Survey for Bureau of Public Roads.

EDUCATION

University of Louisville - Southern Police Institute - 1968.

Numerous city, state and federally sponsored schools on technical and management subjects - 1955 - 1970.

ACTIVITIES

Alaska Chiefs of Police Association, Vice President 1967-1968, President 1968-1969.

Southern Police Institute Alumni.

Member - International Chiefs of Police.

PERSONAL

Born:	Moberly, Missouri, March 4, 1933.
Married.	Four children.
Health:	Excellent.

Alaska resident since March 1952.

REFERENCES AVAILABLE UPON REQUEST

RICHARD L. BURTON — OTHER SCHOOLS ATTENDED

DATE	PLACE ATTENDED	SUBJECT AGENCY CONDUCTING SCHOOL AND TIME ATTENDED
1955	Ketchikan	Alaska Territorial Police Harger Drunk-O-Meter 40 hours
1955	Ketchikan	Ketchikan Police and FBI Basic Police subjects 80 hours
1958	Ketchikan	FBI Instructors Three five-day sessions on Investigations and Police Techniques 120 hours
1958	Ketchikan Community College	University of Alaska Vital Math (1 semester) non-credit course
Nov., 1959	Anchorage	Alaska State Police Recruit School 44 hours
Nov. 9-13, 59	Fairbanks	University of California Police subjects by John Pepers 40 hours
June, 1962	Anchorage	Alaska Peace Officers Assn. State Crime Conference
May, 1963	Juneau	Alaska State Police Supervisory Techniques 40 hours
July, 1964	Juneau	Alaska State Police Supervision of Police Personnel 48 hours
May, 1965	Ketchikan	FBI Instructors Crowd Control - 40 hours
December, 1965	Ketchikan Community	Modern Math for Adults 20 hours
November, 1966	Ketchikan	Alaska Disaster Office Radiological Monitoring 40 hours

Microfilmed 1/22/75

FINANCIAL STATEMENT OF PUBLIC OFFICIAL OR CANDIDATE

REPORTING OFFICIAL

NAME: Richard L. Burton ADDRESS: 2472 Scott Drive Juneau, Alaska

HOME TELEPHONE: 789-4637 BUSINESS TELEPHONE: 465-4300

EXECUTIVE OR APPOINTIVE OFFICE: Commissioner, Dept of Public Safety

TERM: 4 years / Pleasure of the Governor

MEMBERS OF HOUSEHOLD OF REPORTING OFFICIAL-

(Name)	(Relationship to Official)
Dixie R. Burton	wife
Karla L. Burton	Daughter
Leah L. Burton	Daughter
Hugh B. Burton	Son
John D. Burton	Son

REPORTING PERIOD
(12 months)

From: Jan , 1974 To: Jan , 1975

(FORM CO1-1)

INCOME AND CAPITAL GAINS OVER $100
RECEIVED BY REPORTING OFFICIAL

Source of Income:

State of Alaska - Dec. 10, 1974 to date
City and Borough of Juneau - Jan. 1 1974 - Dec. 14, 1974

INCOME AND CAPITAL GAINS OVER $100
RECEIVED BY MEMBER OF OFFICIAL'S HOUSEHOLD

Name of Recipient	Source of Income
Diane R. Burton	State of Alaska
Keele L. Burton	State of Alaska
Leah L. Burton	State of Alaska

OFFICIAL'S
OWNERSHIP INTERESTS IN BUSINESS
(Stock or other proprietary interest)

Nature of Ownership Interest	Name and Address of Business
NONE	

OWNERSHIP INTERESTS IN BUSINESS
OF MEMBERS OF OFFICIAL'S HOUSEHOLD

Name	Nature of Interest	Name and Address of Business
NONE		

BUSINESS INVOLVEMENTS OF OFFICIAL
(Officer, director or employee)

Nature of Involvement	Name and Address of Business
NONE	

BUSINESS INVOLVEMENT OF MEMBERS
OF OFFICIAL'S HOUSEHOLD

Name	Nature of Involvement	Name and Address of Business
NONE		

REAL PROPERTY INTERESTS OWNED BY OFFICIAL
(Including options to buy)

Identity of Property	Nature of Interest
Lot 6 Block F	Lot, House
Meadowgrove Subdivision	
Jerome -	

REAL PROPERTY INTERESTS OWNED BY MEMBERS
OF OFFICIAL'S HOUSEHOLD
(Including options to buy)

Name	Identity of Property	Nature of Interest
Dian R. Beard	lot 6 Block F	Co-owner of
	Meadowgrove Subdivision	Residential Property

OFFICIAL'S BENEFICI[illegible]INTEREST IN TRUSTS
OR OTHER FID[illegible]RY RELATION

Trustor	Property	Extent of Interest
NONE		

BENEFICIAL INTEREST IN TRUST OR OTHER
FIDUCIARY RELATION BY MEMBERS OF
OFFICIAL' HOUSEHOLD

Name	Trustor	Property	Extent of Interest
NONE			

LOAN AND LOAN GUARANTEES
OBTAINED BY OFFICIAL

Lender or Guarantor:

$52,500 Mortgage Loan on Residence
from First National Bank of Anchorage

LOAN AND LOAN GUARANTEES OBTAINED BY
MEMBER OF OFFICIAL'S HOUSEHOLD

Name	Lender or Guarantor
NONE	

OFFICIAL'S OTHER FINANCIAL OBLIGATIONS
OF $500 OR MORE

Creditor: B.M. Berbends Bank - $5,200 Balance
Lyles Hardware - $ 800 Balance
Sims Realty & Co. - $ 600 Leveling Asst.

OTHER FINANCIAL OBLIGATIONS OF $500 OR
MORE OF MEMBER OF OFFICIAL'S HOUSEHOLD

Name	Creditor
NONE	

OFFICIAL'S CONTRACTS AND OFFERS TO CONTRACT WITH THE STATE OR AN INSTRUMENTALITY OF THE STATE

Other Contracting Party	Identity of Contract
None	

CONTRACTS AND OFFERS TO CONTRACT WITH STATE OR INSTRUMENTALITY OF THE STATE OF MEMBER OF OFFICIAL'S HOUSEHOLD

Name	Other Party	Identity of Contract
None		

LEASES OR OFFERS TO LEASE MINERAL, TIMBER, OIL, OR OTHER NATURAL RESOURCES HELD BY OFFICIAL

Identity of Lease

NONE

LEASES OR OFFERS TO LEASE MINERAL, TIMBER, OIL OR OTHER NATURAL RESOURCES HELD BY MEMBER OF OFFICIAL'S HOUSEHOLD

Name	Identity of Lease
NONE	

OTHER ASSETS OF $500 OR MORE HELD BY OFFICIAL
(Exclude household goods and personal effects)

Identity	Nature
NONE	

OTHER ASSETS OF $500 OR MORE HELD
BY MEMBER OF OFFICIAL'S HOUSEHOLD
(Exclude household goods and personal effects)

Name	Identity	Nature
NONE		

(Additional sheets in any category
may be inserted if required.)

DECLARATION OF OFFICIAL

I, the undersigned, declare under oath and on penalty of perjury that the statements contained in the foregoing report are to the best of my knowledge, true and accurate.

SIGNED: L. Paul L. Burton

DATED: January 6, 1975.

SUBSCRIBED and SWORN to before me this 6th day of January, 1975.

Florence L. Florida
Notary public
My commission expires:

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

February 13, 1975

TO: Representative Mike Bradner
Speaker of the House

FROM: Representative Terry Gardiner TG
Chairman, House Judiciary Committee

SUBJECT: CONFIRMATION - AVRUM M. GROSS

We have considered the nomination of Avrum M. Gross and feel that he is well qualified to be the Attorney General of the State of Alaska.

Avrum M. Gross, born in New York City, New York, February 25, 1936.

Married to Shari Robinson Gross; daughter, Jody, 14; son, Alan, 12.

B.A., 1957; Amherst College; J.D., 1960; University of Michigan Law School.

Private practice with firm Faulkner, Banfield, Boochever & Doogan, Juneau, Alaska, 1963-64; partner, Faulkner, Banfield, Doogan, Gross & Holmes, Juneau, Alaska, 1965-74.

Public offices include: Staff Counsel, Alaska Legislative Affairs Agency, 1960-61; Assistant Attorney General, Chief, Appellate Section, Alaska Department of Law, 1961-63.

Member, Board of Governors, Alaska Bar Association, May 1968 - May 1971; Vice President, Alaska Bar Association, May 1970 - May 1971; Chairman, Criminal Rules Revision Committee, Alaska Supreme Court, 1973-74; Member, 1974-75.

STATEMENT OF ATTORNEY GENERAL AVRUM M. GROSS
TO JUDICIARY COMMITTEE, HOUSE OF REPRESENTATIVES

The Committee has asked me for a statement of my personal philosophy and program relevant to the Department of Law. Specifically they have asked what attitudes I will exemplify in the position and what changes can be expected in the Department's operation.

If I have one significant feature which I bring to the Department of Law, it is the fact that I have rather extensive experience in the private practice of law. I was originally employed by the Legislative Council, then as an Assistant Attorney General, and eleven and a half years ago I entered private practice, where I eventually became a partner in my own firm. I have represented varying types of clients in varying types of legal activities, ranging from criminal defense work to corporate and constitutional litigation of sizeable magnitude. I have represented members of the oil industry, plaintiffs and defendants in personal injury suits, litigants in civil rights matters. I have on occasion represented the State of Alaska in a contractual capacity.

The relevance of this background is that I perhaps bring to the Department a greater understanding of the day to day operations of a law office than has been possessed by some of my predecessors. Each attorney general, of course, brings something to the office, be it by way of intellect, philosophy or political sense. I hope I have something to contribute in all those fields, but what I hope will be my major contribution is in the enhancement of this office as legal representatives of state agencies and the public interest.

The Department of Law has always attracted bright, capable people who are high on talent and low on experience. As a result, in spite of the great abilities of the persons in the Department, much major litigation has been farmed out to private law firms since no one in the Department was versed in the niceties of handling, say, a complicated contract claims suit or a major environmental lawsuit. I hope to change that. I would like to develop within the Department a staff of trained, capable attorneys who can try lawsuits of major proportions and who are capable of advising the departments of government on legal matters with full knowledge of the practical impact of their advice.

I am particularly interested in the activities of the District Attorney's offices. This interest stems from two sources. First, I have been personally involved in the administration of criminal justice for my entire legal career, initially as a prosecutor, then as a defense attorney and always as an interested observer. Second, as a public official I am very aware of the fact that the public has very little confidence in the criminal justice system and all the statistics in the world will not convince them otherwise. The public is concerned and upset, and they have a right to expect that public officials will respond to their concerns. Accordingly I intend to spend a significant part of my time in this office increasing the efficiency and the abilities of the District Attorney's offices and in establishing clear communications between those offices and the other law enforcement agencies of the state. I have recently participated in a panel on

criminal justice in which the glaring lack of such communication was clearly brought forward. I have become aware of the fact, for instance, that in the plea bargaining process in this state total information about the case is not always communicated to the court, and little information, if any, is ever communicated from corrections facilities to courts or prosecutors as to the ultimate disposition of an offender. Each part of the criminal justice system seems to work independently, and that must change.

In the prosecution of the criminal law, I know that I have been traditionally identified with a strong position on civil rights. Many people equate that kind of position with a "soft" attitude toward crime, an attitude which in my view is erroneous. I believe very strongly in the rule of law, but my belief goes to all laws, including the Constitution. I believe that officers of the State, be they policemen, prosecutors or anyone else, must follow the law and that if they do not they demean the process in which they are involved. Accordingly, I will insist that members of my office at all times adhere to constitutional requirements of due process in prosecutions, and I will expect those with whom we deal in joint efforts to do no less. That, to me, says nothing about how I feel about criminal activity. Civil rights are not inconsistent with strong, effective administration of the criminal law and I intend to take every step to see that the law is not only enforced but that it is enforced effectively. That type of enforcement will include, in appropriate cases, strong and hopefully deterrent sentences.

In the administrative realm, one change I hope to make is to reorganize the Department so as to establish a position of Deputy Attorney General in Charge of Criminal Affairs. Right now there is one Deputy handling both civil and criminal matters and the vast majority of his time is spent on the civil side. I want to establish a position directly under the Attorney General whose function is to supervise the activities of the numerous District Attorney's offices in the state, coordinating their resources, their policies and their programs. As Attorney General I presently serve as the chairman of the Governor's Commission on Criminal Justice and I would hope that the proposed Deputy would become intimately involved in LEAA WORK.

It is, of course, difficult to discuss in any detail how the general comments I have made here apply to particular situations which may interest the Committee. I welcome the opportunity to discuss this statement and any other matters affecting the Department of Law with the Committee on a direct basis.

Avrum M. Gross

FINANCIAL STATEMENT OF PUBLIC OFFICIAL OR CANDIDATE

REPORTING OFFICIAL: A Horney General

NAME: Avrum M. Gross ADDRESS: 328 Coleman Dr. Juneau, Ak. 99801

HOME TELEPHONE: 586-3126 BUSINESS TELEPHONE: 465-3600

EXECUTIVE OR APPOINTIVE OFFICE: A. Horney General

TERM:

MEMBERS OF HOUSEHOLD OF REPORTING OFFICIAL

(Name)	(Relationship to Official)
Shari Gross	wife
Jody Gross	daughter
Alan Gross	son

REPORTING PERIOD
(12 months)

From: Jan 1 , 1974 To: Feb. 28 , 1975

(FORM CO1-1)

INCOME AND CAPITAL GAINS OVER $100
RECEIVED BY REPORTING OFFICIAL

Source of income:

Clients of Faulkner, Banfield, Doogan, Gross, & Holmes
(see attached listing)
TBM Dividends
Alaska Federal Sole Interest (with spouse)
State of Alaska Salary

INCOME AND CAPITAL GAINS OVER $100
RECEIVED BY MEMBER OF OFFICIAL'S HOUSEHOLD

Name of Recipient	Source of Income
B. Shari Gross	Boeing Dividends
	F-Stop Salary
	State of Alaska Salary
Jody Gross	Henri Hovey Salary

OFFICIAL'S
OWNERSHIP INTERESTS IN BUSINESS
(Stock or other proprietary interest)

Nature of Ownership Interest	Name and Address of Business
Partnership interest (now sold)	Faulkner, Banfield, Doogan, Gross & Holmes, 311 No. Franklin St. Juneau, Alaska
Stock	DBM Port Chilkoot Corporation
Custodian of stock for minor children (Jody, Alan)	Precognition Equip. Inc. Nat. Cash Register Alaska Airlines Boeing Corp.

OWNERSHIP INTERESTS IN BUSINESS
OF MEMBERS OF OFFICIAL'S HOUSEHOLD

Name	Nature of Interest	Name and Address of Business
Shari	Stock	Boeing Corp.
Jody	Stock	Alaska Airlines
Alan	Stock	Std. Oil of Cal.

BUSINESS INVOLVEMENTS OF OFFICIAL
(Officer, director or employee)

Nature of Involvement	Name and Address of Business
Partner	Faulkner, Banfield, Doyen, Gross + Holmes
Secretary	Goldstein Improvement Corp.

BUSINESS INVOLVEMENT OF MEMBERS
OF OFFICIAL'S HOUSEHOLD

Name	Nature of Involvement	Name and Address of Business
Shari	Director	River Oaks Cleaner, Inc. (Mich)

REAL PROPERTY INTEPESTS OWNED BY OFFICIAL
(Including options to buy)

Identity of Property	Nature of Interest
329 Coleman Dr. (Juneau) (approx 1 acre)	Fee (home)
40 acres - Gustavus, Alaska	Fee

REAL PROPERTY INTERESTS OWNED BY MEMBERS
OF OFFICIAL'S HOUSEHOLD
(Including options to buy)

Name	Identity of Property	Nature of Interest
Shari	Same as above -	Joint ownership

OFFICIAL'S BENEFICIAL INTEREST IN TRUSTS OR OTHER FIDUCIARY RELATION

Trustor	Property	Extent of Interest
	NONE	

BENEFICIAL INTEREST IN TRUST OR OTHER FIDUCIARY RELATION BY MEMBERS OF OFFICIAL' HOUSEHOLD

Name	Trustor	Property	Extent of Interest
		NONE	

LOAN AND LOAN GUARANTEES OBTAINED BY OFFICIAL

Lender or Guarantor:

B.A.I. Bahamas Bank (boat loan)

(jt. with spouse) Alaska Federal S+L (home loan)

LOAN AND LOAN GUARANTEES OBTAINED BY MEMBER OF OFFICIAL'S HOUSEHOLD

Name	Lender or Guarantor

NONE

OFFICIAL'S OTHER FINANCIAL OBLIGATIONS OF $500 OR MORE

Creditor: _____

OTHER FINANCIAL OBLIGATIONS OF $500 OR MORE OF MEMBER OF OFFICIAL'S HOUSEHOLD

Name	Creditor

OFFICIAL'S CONTRACTS AND OFFERS TO CONTRACT WITH THE STATE OR AN INSTRUMENTALITY OF THE STATE

Other Contracting Party	Identity of Contract
NONE	

CONTRACTS AND OFFERS TO CONTRACT WITH STATE OR INSTRUMENTALITY OF THE STATE OF MEMBER OF OFFICIAL'S HOUSEHOLD

Name	Other Party	Identity of Contract
	NONE	

LEASES OR OFFERS TO LEASE MINERAL, TIMBER, OIL, OR OTHER NATURAL RESOURCES HELD BY OFFICIAL

Identity of Lease

NONE

LEASES OR OFFERS TO LEASE MINERAL, TIMBER, OIL OR OTHER NATURAL RESOURCES HELD BY MEMBER OF OFFICIAL'S HOUSEHOLD

Name	Identity of Lease
NONE	

OTHER ASSETS OF $500 OR MORE HELD BY OFFICIAL
(Exclude household goods and personal effects)

Identity	Nature

OTHER ASSETS OF $500 OR MORE HELD
BY MEMBER OF OFFICIAL'S HOUSEHOLD
(Exclude household goods and personal effects)

Name	Identity	Nature

(Additional sheets in any category
may be inserted if required.)

DECLARATION OF OFFICIAL

I, the undersigned, declare under oath and on penalty of perjury that the statements contained in the foregoing report are to the best of my knowledge, true and accurate.

SIGNED: _____

DATED: Feb. 7, 1975

SUBSCRIBED and SWORN to before me this 7th day of February, 1975.



Ann Stansbury
Notary public
My commission expires: 1-21-79

SOURCES OF INCOME OF FAULKNER, BANFIELD, DOOGAN, GROSS & HOLMES AND FAULKNER, BANFIELD, DOOGAN & HOLMES DURING CALENDAR YEAR 1974

Aetna Casualty Insurance Co.

Alaska Airlines, Inc.

AID Insurance

Alaska Electric Light & Power Co.

Alaska Federal Savings & Loan Association of Juneau

Alaska Indian Arts

Alaska League Insurance Savings & Loan

Alaska Pacific Assurance Company

Alaska Packers Association

Alaska Public Employees Association

Alaska Rent-a-Car, Inc.

Ackley & Associates

Alyeska Pipeline

Ambassador Insurance Co.

American Mutuals Insurance Company

American National Enterprises

Akiyama, Henry

Amoco Production Co.

Anderson, Estate of Anna Mae, deceased

Anglin, Tom

Association of Pacific Fisheries

Atlantic Richfield

B. M. Behrends Bank, The

BabyBilly Corporation

Baldwin, Burt

Baranof Hotel

Barclay, Robert

Bardwell, W. B.

Bell, Raymond

Bergander, Fred

Birchard, Chris

Bowman, Mrs. Vera

Box, Roy

Bertholl, Phillip

Branson, Guy

Brena, David

Brockway, Sharon

Brogan, Neil

Bellings, Estate of Alta, deceased

Brown, William

Brouillette, Fred

Bullwinkles, Inc.

Burgess Willamette

C & R Builders

Caldwell,David

Cameron, Dave

Canadian National Railways

Campbell, John

Capital Builders

Channel Construction

Christensen, Bethena

Chubb/Pacific

Cheek, Dale W.

Channel Investors

Capital Air Taxi

City of Craig

City of Haines

City & Borough of Juneau School District

City of Ketchikan

City of Pelican

City & Borough of Sitka

Cochran, Donald

Coastal Glacier Seafoods, Inc.

Cole, James

Cook Inlet Pipe Line Company

Coyne, Cyril

Citizens Utilities

Commercial Union Insurance

Corporation of the Catholic Bishop of Juneau

Craig City School District

Cropley, Leigh

Crum & Forster

Curgus, Joe

Cyr, Alice

Culp, Dwyer, Guterson

DeAlexandro, Pat

DeBoer, Estate of Peter

Dees, Mr. & Mrs. Aubra

DeGarmo, Gerald

Darnell, Rod

DiConstanzo, Doris, Conservator

Douglas Trucking Co.

Dunlap, Robert

Eagle, Bruce

Eccles, Dallas

Edmondson, Ruth

Edwards, Oscar

Egelkrout, Robert

Edmondson, A. Cameron

Elphie, Lance & King, Harry

Employers Insurance of Wausau

Endicott, Warren

Engle, Emil

Erwin, Estate of Marshall, deceased

Erwin, Vivian

Erhart, Richard

Exxon Pipeline

Fairbanks, Ed.

Fenderson, William F.

Fernandez, Frank

Fireman's Fund-American Insurance Companies

First National Bank of Anchorage, The

Foodland, Inc.

Forrest, Linn, Sr.

Forsyth, Betty

Foss Alaska Lines

Freedman, Don & Elinor

Fuller, M.C.

Furbeck, Louis

Gallant, Harold

George, Joseph L.

George Brothers Properties

George, Tom & Thelma

General Electric Credit Corporation

Gilbert, Arch

Gillespie, Ray

Globe Universal Services

Glover, Al

Godkin, Gerald

Goldstein & Hellenthal

Goldstein Improvement Company

Glacier Village Supermarket

Goodwin, Daniel

Grasle, W.R. Co.

Gray, Jerry

Great American Insurance Company

Green Construction Co.

Greenaugh, Joe

Gregg, Fraties, Petersen & Page

H & A Logging

Haines Light & Power

Haines Terminal & Highway Company

Haines Transfer

Hanlon, John

Hargraves, Ricardo

Harper, Vern T.

Hartzell, John

Hartford Insurance Company

Harden, Curtis

Harri Plumbing & Heating

Heim, Jack

Heiner, Mr. & Mrs. Larry

Helin, Horn & Shanks

Hellen, Marian

Hendricks, Sig

Henning, Robert

Herrity, Mike

Hildre Sand & Gravel

Hobbs, Marion & Browne, Roger

Home Liquor Store

Horn, Thomas

Hoonah Seafoods

Horton, David

Horton's Auke Bay Hardware, Inc.

Horton Properties

Horton Properties

Household Finance Corporation

Howard, Richard

Hurley, Minnie

Hurlock, Lawrence

Hurlock, Roger

Industrial Indemnity Insurance

Insurance Company of North America

International Harvester

International Business Machines Corporation

Jacobsen, Estate of Christina, deceased

Jacobsen, Estate of Dennis, deceased

Johnson, Estate of Gail, deceased

Johnson, Estate of Ralph

Johnson, Robert & McCormick, James

Juneau Dairies

Juneau Drug

Juneau and Douglas Telephone Co.

Juneau Building Materials

Juneau Ready Mix

Juneau Cold Storage Company

Kake School District

Kake School Board

Kaiser, Richard

Ketchikan Pulp Co.

Kassner, Dan

Kincaid, Thomas

Klukwan Iron Ore Corp

Knightlinger, Harold

Kodzoff, Mr. and Mrs. George

Kodzoff Acres

Kohlhase, Robert

Kuchta, Alagzy

Lafavour, William

Larson, Gerald

Lanberg, Lay

Lewis, Ivan

Lindegaard, Eric

Lindstrom, Estate of Rebecca, deceased

Liddell, Josephine

Lindstrom, David

Larsen, Fredrick

Lawton, Joseph

Lindquest, Guardian of Phyllis

Liquor Mart

Livingston Copters

London, Chuck

Longenbaugh, Dee

Long, David

Ludwig, Peter

Lupro, Charles, Administrator, Estate of Edward Lupro, deceased

Lutak Trading & Stevedoring Company

Lynch, Jess W.

Lyle's

Lyons, Janice

Maas Real Estate
Madden & Poliak
Madsen, James

Madsen Supply

Madsen Construction

Maneval, Bonnie

Martin, Jack

Martin, Jerome

Martinez, Joseph

Masterson, Donald

MacKinnon, J. S. Sr.

McCormick, James

McNabb, E. L., Jr.

McNabb Construction Company

McKay, William O.

Merrill, Charles, Jr.

Mendenhall Village Mall

Mielke, Davida

Mill, Ken

Mobile Haven

Morgan, Ken

Morgan, Sid

Motion Picture Association of America, Inc.

Mullen, Conservatorship of Bernhard

Murray, Michael

N. L. Industries

N.T. Enterprises

Nance, W. L.

National Auto & Casualty Insurance Co.

National Utilities, Inc.

Nelson, Dr. & Mrs. James

Nelson, Melvin

Ness, Margaret

New England Fish Company

Norheim, Roald

North Pacific Vessel Owners Association

Northern Commercial Company

North Slope Borough

Notar, Rudolph

O. T. Corp.

Ocean Cape Seafoods, Inc.

Odom Company

Orme, Jessie

Paddock, T. O. Co.

Paddock, Tom

Patterson, Joseph

Pelican Cold Storage Company

Peloza, Guardianship of Joseph

Pennington, Herman

Pelican Utility Company

Peters, Willis

Petersburg Fisheries, Inc.

Peters, James & Myrna

Petty Blaine Co.

Pineda, Frank

Pfirter, Ed

Phillips Petroleum Company

Pioneer Brokerage & Sales Inc.

Porter, Hannah

Prescott, John F.

Prince, Earl

Port Chilkoot Co.

Point Adams Packing Co.

Prospector Hotel

Public Defender

Pusich, Estate of Anna, deceased

Race Druggists, Inc., Harry

Rea, Estate of Jackelin, deceased

Reid, Robert

Reddekopp, Dwain

Reliable Transfer Corp.

Reyes, Donald

Rhode, Estate of Gazil, deceased

Richards, Lee

Riech, Katharina

Roed, Karsten

Rosemurgy, R. J.,Inc.

Russo, Guy

Russo, Lewis

S & S Development

Sands, Edward E.

Schoenman, Jack

Schlosser, Agnes

Scott, Robert

Scott & Schneider
Schnabel Lumber Co.

Search, Ronald

Seattle Stevedoring

Shakespeare, Harold

Shell Oil Co.

Sheppard, Les

Sierra Club

Simon, Seymour

Sickles, Stephen

Simpson Building

Sievenpiper, Harley

Simmons, Shelby L.

Shattuck & Grummett, Inc.

Sloper, Lorene

Sonnenburg, Wallace

Southeastern Newspapers Corp.

Southeast Alaska Empire

Southgate Ford

Spietz, John

Spellman, Russell

Stewart, Smith, Haidinger

Stone, Dale E.

Strode, Don

Stromberg Carlson

Swanke, Amy Lou

Standard Oil Company of California

Swanson, Edna

Swartz, Ruth

Scott & Schneider

Tallman, James

Taylor, Brent

Taylor, Benson

Taylor, Neil

Terrel, Paula

Thomsen, Thomsen, Leif

Thomas, Don

Torres, Al

Tonsgard, William R., Sr.

Transamerica Title Insurance Co.

Trimble, Geo. S., Jr.

Triplette Construction Company

Triplette, James

Tromblee, Dewey

Tyndall, Lawrence

Underwriting Adjustment Co.

Union of Canton

United Pacific/Reliance Insurance

United States Fidelity & Guaranty Company

Valley Center Development

Valley Investment

VanBuskirk, Tom

Waid, Gene

Wallace, Deborah

Ward, Robert W.

Ward, Thomas

Warrack, J. B. Co.

Washington Mechanical Contractors

Wessels, Lianne

Western Bridge Co.

Wheeler, Floyd

White, U. V.

White Pass & Yukon Route

Wick Construction Co.

Williams, Wayne and Tolbert, Fred

Williamson, Geo. R.

White, Mike

Winniford, Dianna Dixon

Woodbury, James

Wrangell Public Schools

Wyller, Fred

Wyller, Estate of Hayes, Livingston Copters Inc.

Xerox Corporation

Yakutat Power, Inc.

Young, Robert

Zinn, Dorothea

JUDICIARY Comm. misc.

69 House Bills
40 Senate bills

PASSED BY JUDICIARY 1975

HB 27 School bus permits

HB 31 Abandoned vessels

HB 45 Ombudsman

HB 48 Realty interest

HB 52 Public Adjustor

HB 59 Teacher Tenure

HB 62 Transportation of hunters

HB 81 Supplemental

HB 90 Adultery

HB 94 Conflict of Interest

HB 96 Corporators

HB 99 Guide board

HB 105 Hold harmless

HB 114 Violent Crimes

HB 118 Transporters

HB 129 Smoking

HB 138 Income tax

HB 139 Rental adjustment

HB 140 Official maps

HB 151 Log Brands

HB 154 Assault

HB 156 Obstruction of officer

HB 157 Unauthorized entry

HB 159 Edible meat

HB 170 Subdivision judicial payments

HB 175 Department of Labor

HB 176 Comparative negligency

HB 177 Prepaid rent

HB 178 Third party beneficiaries

HB 191 Transportation tariff

HB 192 Utility tariff

HB 197 Military residency

HB 202 Regents terms

HB 209 Income tax

HB 211 Tax and revenue

HB 213 U of A

HB 237 Divorce

HB 238 Child's rights

HB 241 Fishing gear

HB 242 Rights/state employees

HB 246 Liquor license

HB 248 Public Administrators

HB 256 Dentistry

HB 265 Legal Assistance

HB 266 Legal Assistance $

HB 282 Public Administrators

HB 283 Judicial qualifications

HB 295 Teacher retirement

HB 298 Security

HB 312 Crab marketing

HB 314 Outdoor advertising

HB 318 Imposed sex

HB 321 Rent control

HB 356 Pari mutuel

HB 370 Fish and Game prosecutor

HB 371 Fish and Game $

HB 384 Evaluate judges

HB 385 Judicial appointments

HB 390 Conflict of interest

HB 391 Contractor names

HB 401 Public funds

HB 402 Disabilities of minor

HB 416 Abuse of power

HB 417 Intelligence information

HB 418 Conflict of interest

HB 422 Public assistance

HB 432 Child protection

HB 459 Fathers leave

HB 488 Campaign disclosure

HJR 1 Unicameral

HJR 4 Governor's term

HJR 10 Inherent rights

HJR 11 vetoed bills

HJR 15 U of A

HJR 35 Child support

HCR 2 Election districts

HCR 5 Drivers regulations

HCR 28 Fishing rights

HCR 39 Criminal code

HCR 53 Retention elections

HCR 57 Uncontested divorce

HR 3 Department of Justice

SB 5 Anti trust

SB 11 Artificial insemination

SB 28 Marriage

SB 44 Smoking

SB 53 Bond/suit

SB 59 Juveniles

SB 60 Discrimination

SB 62 Conflict of interest

SB 80 Case against state

SB 89 Conflict of interest

SB 96 Salmon roe

SB 99 Public records

SB 113 Health care information

SB 132 Nursing home administrators

SB 138 Zoning state parks

SB 140 Administration of Justice

SB 153 Sound recordings

SB 167 False reports
SB 168 Larceny
SB 180 Hatcheries

SB 182 Arrest/no warrant

SB 202 Malicious mischief

SB 230 Antlerless moose

SB 257 Fire departments

SB 261 Rape

SB 266 Motor vehicles

SB 269 Punch card voting

SB 290 Rent control

SB 300 Stolen property

SB 301 Insufficient funds

SB 302 Convicts/weapons

SB 350 Pot

SB 357 Minor on premises

SB 358 Trust lands

SB 384 Revise statutes

SB 399 Imitation gold

SB 407 Motor vehicle safety

SB 411 Dr. guide

SCR 5 Criminal code

SCR 15 Rape

SCR 17 "

SCR 19 "

SJR 30 ammunition

SJR 37 Outboard motors

PASSED BY JUDICIARY 1976

HB 199	Open/close polls
HB 214	Absentee voting
HB 243	Public Utility Rates
HB 261	Property Tax exemption
HB 366	Deed of trust sales
HB 442	Game Refuges and Sanctuaries
HB 510	ASHA land sales
HB 522	Lobbying
CSSSHB 531	Freedom of Information
HB 541	Visitation of Prisoners
HB 546	Surcharges
HB 554	Insurance holding companies
HB 558	Insurance practices
HB 559	Insurance filing review periods
HB 574	Medical Malpractice
HB 581	Watercraft
HB 584	Substitution of generic drugs
HB 588	OSHA
HB 600	Determinate Sentencing
HB 604	Uniform Land Sales
HB 606	Vacancies U.S. Senators
HB 631	Public utilities
HB 632	Exempt small telephone companies
HB 633	Public utilities
HB 634	Employment of minors
HB 639	Collection of wages
HB 655	Foreclosure
HB 677	Anti-Trust
HB 679	Public Utility Indebtedness
HB 694	Criminal Code Revision Commission
HB 705	Alaska Pipeline Commission
HB 713	Student Regent
HB 722	Consumer Pretection
HB 723	Residential Homestead exemption

HB 735	Defrauding Hotels
HB 738	Misc. Court Awards
HB 756	Survivor Benefits
HB 774	COLA Magistrates
HB 775	Criminal escapes
HB 784	Cook Inlet Land Trade
HB 785	Electric Dart guns
HB 786	Faculty smoking
HB 795	Women in Alaska
HB 801	Capital Site Sel. Commission
HB 808	Hippie Homestead
HB 809	Money game proceeds
HB 823	Credit Unions
HB 831	Public meetings
HB 833	Abatement of nuisances
HB 839	Fish and Game Data
HB 851	Quasi Judicial Regulatory Agnecies
HB 856	Security Guards
HB 857	Campaign Disclosure
HB 861	Educational incentive grant
HB 871	Number of judges
HB 873	Dissolution of marriage
HB 881	Laetrile
HB 885	Student collective bargaining
HB 890	Coop res. management
HB 898	Toilet Facilities
HB 908	Religious property exemption

SB 157	Consciencious clause
HCS 2dCSSB 215	Navigable Waters
SB 296 am	Integrated Bar Act
SB 336	Treatment of Drunks
SB 345	Drunks on Highway
SB 346	Uniform Alcoholism Act
SB 354	Limited Liability Companies
SB 365	Hairdressers
SB 371	Child Protection
SB 406	Tankers
SB 438	Dealer's day in court
CSSB 440	Security interests
CSSB 443	Takeover Bids
SB 484	Abandoned Vehicles
SB 489	Physical exams non-residents
SB 490	Corporate statute amendments
SB 494	Civil liabilities National Guard
SB 499	Salary Commission
SB 509	Notaries
SB 511	Revenue Laws
SB 515	Referendum Procedures
SB 544	Municipal parking
SB 546	Eminent Domain
S. 570	Municipal officers
SB 575	Injunctive relief
SB 588	Motor vehicle purchase motion
SB 592	Theft of telecommunications services
SB 594	Unavailable Insurance
SB 596	Larceny and embezzlement
SB 597	Bingo, Raffles
SB 611	Adoption
SB 627	Larceny by trick
SB 628	Implied Consent
SB 629	Interstate compact: children

SB 630	Apprenticeship
SB 641	Wage rates
SB 653	Philosophy of child treatment
SB 659	Child support agency
SB 661	Political activities
SB 666	Motorcycle helmets
SB 670	Superior judges
SB 673	Judicial appointments
SB 677	Capital Site
SB 691	Public broadcasting
SB 696	Appropriation for telecommunications
SB 717	Probate Code
SB 718	Statehood act
SB 720	Kachemak Bay
SB 724	Revisor
SB 740	Real Estate Conveyance
SB 741	Teachers certificates

SS HJR 39	Permanent Fund
HJR 43	Traps
HJR 44	Kantishna mining
HJR 45	Gun Control
HJR 73	State aid to private education
HCR 88	Capital Site
HCR 109	Atty, Fee Review
SJR 45	Disposal Stateland
SCR 48	Glacier Bay Monument
SCR 62	Motor vehicle inspection

LEAGUE OF WOMEN VOTERS
OF THE FAIRBANKS NORTH STAR BOROUGH
P.O. BOX 1974
FAIRBANKS, AK 99707

Superior Court
State of Alaska
FIRST JUDICIAL DISTRICT
STATE CAPITOL BUILDING
POUCH U
JUNEAU, ALASKA
99801

THOMAS B. STEWART
PRESIDING JUDGE

February 14, 1975

Honorable Charles Parr
Alaska House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Parr:

In 1973 the Alaska Supreme Court established a standing committee composed of the four presiding judges of the Superior Court and the Administrative Director of Courts to advise and assist in improving the administration of all courts. A recent function of the committee has been to consider and report on a Judicial Council proposal for a change in the judicial districting plan for the state.

The committee is pleased to transmit for your review a copy of its report issued in November 1974 which details its recommendations for modification of judicial district boundaries. With the exception of the Honorable William H. Sanders, Presiding Judge of the Second Judicial District, all members of the committee recommended that there be three judicial districts, or in the alternative, the existing four districts with boundary changes. The justification for these alternatives and the proposed boundaries are stated in the report. The minority view of Judge Sanders is also included.

The report of the committee and that of the Judicial Council were distributed to all judges in the state. Summaries of these proposals were presented orally to the Conference of Alaska Judges at Anchorage on January 17, 1975, and the subject was then discussed by the assembled judges. Subsequently the members of the Conference (excepting the Justices of the Supreme Court) were polled as to their views, and the results are stated in the attached communication dated February 6, 1975, from Judge Victor D. Carlson, Secretary-Treasurer of the Conference, to Chief Justice Jay A. Rabinowitz. In summary, the 28 members voting

favored a modification of the existing four districts or the alternative of three districts by better than five to one over the seven district plan. The Supreme Court acted independently on the proposals and has unanimously recommended retention of the existing four districts, but with modification of boundaries to adjust to existing transportation and communication patterns.

In a dual capacity as chairman of the Presiding Judges' Committee and as President of the Conference of Alaska Judges, it is a privilege to provide you with these informational materials on judicial districting. If any legislator or legislative committee desires further comment on the subject, we would be pleased to provide it upon request.

Very truly yours,

Thomas B. Stewart

Thomas B. Stewart
Chairman, Presiding Judges'
Committee and
President, Alaska Conference
of Judges

:lw

Members of the Committee:

Presiding Judge Thomas B. Stewart, First District
Presiding Judge William H. Sanders, Second District
Presiding Judge C. J. Occhipinti, Third District
Presiding Judge Gerald J. Van Hoomissen, Fourth District
Arthur H. Snowden, II, Administrative Director

Supreme Court
State of Alaska

941 Fourth Avenue
JAY A. RABINOWITZ, Chief Justice Anchorage, Alaska 99501 907-279-0664

February 13, 1975

Honorable Mike Bradner
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Bradner:

The Supreme Court of Alaska met last week to consider the matter of judicial district reform. Because the design of judicial districts will affect the administration of the Alaska Court System for which the Supreme Court has constitutional responsibility, we would like to take this opportunity to express our views concerning judicial district reform and to present our recommendations for modification of the existing judicial districts.

The Supreme Court unanimously recommends retention of four judicial districts, but with the district boundaries realigned to conform to existing transportation and communication patterns. It is our belief that this proposal will enable the Alaska Court System to continue to provide more readily available and quality judicial services to all areas of the state. Enclosed is a draft bill that defined the judicial district boundaries as proposed by the Supreme Court. In this bill, the First Judicial District is unchanged; the Second District is redrawn to encompass those communities having direct transportation and communication links with Nome; the Third District is extended westward to include the Kuskokwim and Lower Yukon regions; and the Fourth District is extended to include the North Slope. Also enclosed is a map illustrating these proposed districts.

In reaching its decision, the Supreme Court considered the recommendations of the Judicial Council for seven judicial districts as well as the Presiding Judges' Committee proposal for three districts together with Judge Sanders' dissent. The

reports prepared by the Judicial Council and the Presiding Judges' Committee in support of their recommendations agreed that the two primary functions served by judicial districts are (1) their operation as election units for retention elections of superior and district court judges and (2) their function as regional units for judicial administration. Where the Judicial Council's report emphasized the retention election unit function, the Presiding Judges' Committee stressed the administrative function. Seven districts have been recommended by the Council for the sole purpose of providing certain regions of the state with concentrated voting power in judicial retention elections. No claim has been made that increased judicial services will result from an increase in the number of districts. The Presiding Judges' Committee recommends three districts on the assumption that a decrease in the number of districts will simplify the administration of the court system and will result in improved administrative and judicial services throughout the state. By tending to stress one function over the other, however, each recommendation falls short of reaching accomodation between two equally important functions of judicial districts.

The Court is of the view that in fashioning judicial districts for purposes of judicial retention elections there comes a point where the population of a proposed district may become too small and too homogeneous to provide the kind of atmosphere that promotes judicial independence. The judicial retention election is a vital element of Alaska's merit system for judicial selection and tenure, for it is through this device that the judiciary remains responsive to the people it serves. At the same time, however, the judiciary must remain free from partisan political pressures that may affect decisions in particular cases. An election unit having a larger population with diverse political interests is much more likely to strike the proper balance between judicial independence and responsiveness to the public.

The Judicial Council's recommended districts are, for the most part, too small and too homogeneous to provide the kind of diversity that best insures judicial independence. The proposed seven districts were, of course, drawn specifically to recognize distinctive regional interests. However, if the goal of judicial district reform is to give retention election power to recognizable regional interests, then it becomes difficult to distinguish between the regions identified by the Council as requiring judicial district status (that is,

retention election power) and other regions of the state such as the Kenai Peninsula, Kodiak Island, or portions of Southeast Alaska. Certainly there are many points at which the interests of these regions diverge markedly from the interests of the urban areas of Anchorage, Fairbanks, and Juneau. If additional districts are necessary to serve distinctive regional interests in judicial retention elections, then more retention units than proposed by the Council would seem to be required.

Three districts have been urged by the Presiding Judges' Committee to provide a simpler administrative structure. Single judge districts have been recognized as inherently inefficient by experts in the field of judicial administration, and it is on this basis that the merger of the Second and Fourth Districts has been urged. The Court agrees that three judicial districts would be simpler to administer than four, and certainly simpler to administer than seven. Little would seem to be gained, however, by altering the present structure of four judicial districts.

Lack of transportation routes linking the communities contained within existing judicial districts provided the initial impetus for judicial district reform. The Court believes that this continues to be the major flaw in the existing judicial district design. The problems encountered in providing judicial services throughout the state with present district boundaries have been exhaustively catalogued in both the Judicial Council and Presiding Judges' Committee reports. Existing transportation patterns make it impossible to provide judicial services to certain communities in the state by utilizing judges from within the same judicial district. But serving these communities with judges from neighboring judicial districts has an adverse effect both on the administration of courts and on the retention election process. The overlap of administrative responsibilities in the two judicial service areas, as discussed in the Presiding Judges' Committee Report, has caused some administrative confusion. The problems have been far from insurmountable, but they have diverted attention and energy away from more substantial concerns. If judicial services are to be provided to rural communities effectively, they must be provided by judges traveling from other judicial districts. This, in turn, results in a disenfranchisement of voters in the Kuskokwim and North Slope regions who cannot vote on the superior court judges who actually serve their communities.

The four districts proposed by the Supreme Court will solve the major problems with judicial district design with the least disruption in both the judicial retention election process and the administration of the court system. Those communities that are linked by common charter and scheduled transportation routes and that will be served by the same judge or judges have been included within a single judicial district. The Court believes that this proposal will best accommodate the needs of the public that it is charged to serve and the needs of the judiciary in terms of both administrative ease and judicial independence.

The Supreme Court wishes to thank you for this opportunity to express its views to the legislature and to assure you that regardless of the outcome of the various proposals before the legislature, we reaffirm our commitment to bring judicial services to all citizens of Alaska.

Very truly yours,

Jay A. Rabinowitz

Jay A. Rabinowitz
Chief Justice

:lw

cc: All Members House of Representatives

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

02-001B (Rev. 10/77)

STATE
of ALASKA

MEMORANDUM

Copy opinion SAVE

Kastiger v. US - Sup Court Law Reporter
US Reports

TO: Avrum M. Gross
Attorney General

DATE: April 20, 1977

FILE NO: 1974/75

TELEPHONE NO.

FROM: Daniel W. Hickey
Chief Prosecutor

SUBJECT: Federal Prosecution of Witnesses Compelled to Testify Pursuant to a State Grant of Immunity from Prosecution

A question has recently arisen regarding the provisions of CSHB 143, relating to immunity of witnesses. The question is whether testimony compelled in a state prosecution, under a grant of immunity from the use of such testimony, may nevertheless be directly or indirectly used in a federal prosecution.

This issue has been researched extensively and it is unequivocally clear that the landmark opinion of the United States Supreme Court in Murphy v. Waterfront Commission, 378 U.S. 52, 12 L.Ed. 2d 678, 84 S.Ct. 1594 (1964), answers the question in the negative. Additionally, it should be emphasized that the decision in Murphy remains controlling under the Constitution of the United States.

In that case, Mr. Justice Goldberg, in a majority opinion pursuant to a unaminous decision for a Court that included Justices Douglas, Brennan and Black, stated:

> [W]e hold the constitutional rule to be that a state witness may not be compelled to give testimony which may be incriminating under federal law unless the compelled testimony and its fruits cannot be used in any manner by federal officials in connection with a criminal prosecution against him. We conclude, moreover, that in order to implement this constitutional rule and accommodate the interests of the State and Federal Governments in investigating and prosecuting crime, the Federal Government must be prohibited from making such use of compelled testimony and its fruits. This exclusionary rule, while permitting the States to secure information necessary for effective law enforcement, leaves the witness and the Federal Government in substantially the same position as if the witness had claimed his privilege in the absence of a state grant of immunity. (emphasis added)

In conclusion, it is clear that federal prosecutors can no more utilize testimony compelled under CS HB 143, which is with minor technical variations identical to the bill introduced by request of the Governor as HB 393, than their counterparts in Alaska.

DWH:qm

[406 US 441]

CHARLES JOSEPH KASTIGAR and Michael Gorean Stewart, Petitioners,

v

UNITED STATES

406 US 441, 32 L Ed 2d 212, 92 S Ct 1653, reh den 408 US 931, 33 L Ed 2d 345, 92 S Ct 2478

[No. 70–117]

Argued January 11, 1972. Decided May 22, 1972.

SUMMARY

The United States District Court for the Central District of California ordered the petitioners to appear before a grand jury and to answer its questions under a grant of immunity. The immunity was based upon a provision of the Organized Crime Control Act of 1970 stating that neither the compelled testimony nor any information directly or indirectly derived from such testimony could be used against the witness. Notwithstanding the grant of immunity, the petitioners refused to answer the grand jury's questions and were found in contempt. The United States Court of Appeals for the Ninth Circuit affirmed (440 F2d 954), rejecting the petitioners' contention that it violated their constitutional privilege against self-incrimination to compel them to testify without granting them transactional immunity from prosecution for any offense to which the compelled testimony might relate.

On certiorari, the United States Supreme Court affirmed. In an opinion by POWELL, J., expressing the view of five members of the court, it was held that immunity from use and derivative use was coextensive with the scope of the constitutional privilege against self-incrimination, and therefore, despite the lack of a grant of transactional immunity, was sufficient to compel testimony over a claim of the privilege.

DOUGLAS and MARSHALL, JJ., each dissented in a separate opinion on the grounds that in the absence of transactional immunity, the grant of immunity was not constitutionally sufficient to compel a witness' testimony.

BRENNAN and REHNQUIST, JJ., did not participate.

SUBJECT OF ANNOTATION

Beginning on page 869, infra

Adequacy, under Federal Constitution, of immunity granted in lieu of privilege against self-incrimination

Briefs of Counsel, p 867, infra.

HEADNOTES

Classified to U. S. Supreme Court Digest, Annotated

Witnesses §§ 79, 84 — self-incrimination — statutory immunity

1. A federal statute (18 USCS § 6002) permitting the government to compel a witness to give testimony, but granting the witness immunity from the use in any criminal case of the compelled testimony or any evidence derived therefrom, does not violate the Fifth Amendment privilege against self-incrimination; transactional immunity, which accords full immunity from prosecution for any offense to which the compelled testimony relates, affords the witness considerably broader protection than does the Fifth Amendment privilege; and a statutory grant of immunity from use and derivative use is coextensive with the scope of the privilege, and therefore is constitutionally sufficient to compel testimony over a claim of the privilege, despite the lack of a grant of transactional immunity.

[*See Annotation p 869, infra*]

Witnesses § 72 — compulsion of testimony — self-incrimination

2. The power of government to compel persons to testify in court or before grand juries and other governmental agencies is firmly established, but is not absolute, being subject to a number of exemptions, the most important of which is the Fifth Amendment privilege against self-incrimination.

Witnesses 73 — self-incrimination

3. The Fifth Amendment privilege against self-incrimination may be asserted in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory.

Witnesses § 79 — self-incrimination

4. The Fifth Amendment privilege against self-incrimination protects against any disclosures which the witness reasonably believes could be used in a criminal prosecution or could lead to other evidence that might be so used.

Witnesses § 84 — self-incrimination — statutory immunity

5. The Fifth Amendment privilege against self-incrimination does not invalidate statutes which compel self-incriminating testimony, but which

TOTAL CLIENT-SERVICE LIBRARY® REFERENCES

AM JUR 2d, Witnesses (1st ed § 38)
US L ED DIGEST, Witnesses §§ 79, 84
ALR DIGESTS, Witnesses §§ 80, 83
L ED INDEX TO ANNO, Witnesses
ALR QUICK INDEX, Self-Incrimination
FEDERAL QUICK INDEX, Self-Incrimination

ANNOTATION REFERENCES

Adequacy, under Federal Constitution, of immunity granted in lieu of privilege against self-incrimination. 32 L Ed 2d 869.

Privilege against self-incrimination as to testimony before grand jury. 38 ALR2d 225.

Right of witness to claim privilege against self-incrimination on subsequent criminal trial after testifying to same matter before grand jury. 36 ALR2d 1403.

grant complete immunity from prosecution prior to the compulsion of the incriminatory testimony.

[*See Annotation p 869, infra*]

Contempt § 12 — witness' refusal to testify

6. If an immunity granted under a statute is coextensive with the scope of the constitutional privilege against self-incrimination, a witness who has been offered the immunity is not justified in refusing to answer questions on the basis of the privilege against self-incrimination, and a judgment of contempt for refusal to answer is proper, but if the immunity granted is not as comprehensive as the protection afforded by the privilege, the witness is justified in refusing to answer, and a judgment of contempt must be vacated.

Witnesses § 79 — self-incrimination

7. While a grant of immunity must afford a witness protection commensurate with that afforded by the privilege against self-incrimination, it need not be broader.

[*See Annotation p 869, infra*]

Witnesses § 79 — self-incrimination

8. The sole concern of the Fifth Amendment privilege against self-incrimination is to afford protection against being forced to give testimony leading to the infliction of penalties affixed to criminal acts.

Witnesses § 72 — self-incrimination

9. The scope of the privilege against self-incrimination is the same whether invoked in a state or in a federal jurisdiction.

Witnesses § 79 — self-incrimination

10. An appropriately broad grant of immunity to a witness is compatible with the constitutional privilege against self-incrimination.

[*See Annotation p 869, infra*]

Evidence § 419 — burden of proof — self-incrimination — immunity

11. Once a defendant demonstrates that he has testified, under a state grant of immunity, to matters related to his federal prosecution, the Federal Government has the burden of showing that its evidence is not tainted, by establishing that it had an independent, legitimate source for the disputed evidence.

Evidence § 419 — burden of proof — self-incrimination — immunity

12. If a person is compelled to give testimony under a grant of immunity from the use in any criminal case of such testimony or any evidence derived therefrom, and if the person is subsequently prosecuted for an offense to which his compelled testimony relates, the prosecution's burden of proof is not limited to a negation of taint; rather, the prosecution has the affirmative duty to prove that all of the evidence it proposes to use is derived from a legitimate source wholly independent of the compelled testimony; and the person prosecuted need only show that he testified under a grant of immunity in order to shift to the government this burden of proof.

Evidence § 682 — voluntariness of confession

13. A defendant raising a coerced confession claim under the Fifth Amendment must first prevail in a voluntariness hearing before his confession and evidence derived from it become inadmissible.

SYLLABUS BY REPORTER OF DECISIONS

The United States can compel testimony from an unwilling witness who invokes the Fifth Amendment privilege against compulsory self-incrimination by conferring immunity, as provided by 18 USC § 6002, from use of the compelled testimony and evidence derived therefrom in subsequent criminal proceedings, as such immunity from use and derivative use is coextensive with the scope of the privilege and is sufficient to compel testimony over a claim of the privilege. Transactional immunity would afford

broader protection than the Fifth Amendment privilege, and is not constitutionally required. In a subsequent criminal prosecution, the prosecution has the burden of proving affirmatively that evidence proposed to be used is derived from a legitimate source wholly independent of the compelled testimony.

440 F2d 954, affirmed.

Powell, J., delivered the opinion of the Court, in which Burger, C. J., and Stewart, White, and Blackmun, JJ., joined. Douglas, J., post, p 462, 32 L Ed 2d p 227, and Marshall, J., post, p 467, 32 L Ed 2d p 230, filed dissenting opinions. Brennan and Rehnquist, JJ., took no part in the consideration or decision of the case.

APPEARANCES OF COUNSEL

Hugh R. Manes argued the cause for petitioners.

Solicitor General Erwin N. Griswold argued the cause for respondent.

Briefs of Counsel, p 867, infra.

OPINION OF THE COURT

[406 US 442]

Mr. Justice Powell delivered the opinion of the Court.

[1] This case presents the question whether the United States Government may compel testimony from an unwilling witness, who invokes the Fifth Amendment privilege against compulsory self-incrimination, by conferring on the witness immunity from use of the compelled testimony in subsequent criminal proceedings, as well as immunity from use of evidence derived from the testimony.

Petitioners were subpoenaed to appear before a United States grand jury in the Central District of California on February 4, 1971. The Government believed that petitioners were likely to assert their Fifth Amendment privilege. Prior to the scheduled appearances, the Government applied to the District Court for an order directing petitioners to answer questions and produce evidence before the grand jury under a grant of immunity conferred pursuant to 18 USC §§ 6002-6003. Petitioners opposed issuance of the order, contending primarily that the scope of the immunity provided by the statute was not coextensive with the scope of the privilege against self-incrimination, and therefore not sufficient to supplant the privilege and compel their testimony.

The District Court rejected this contention, and ordered petitioners to appear before the grand jury and answer its questions under the grant of immunity.

Petitioners appeared but refused to answer questions, asserting their privilege against compulsory self-incrimination. They were brought before the District Court, and each persisted in his refusal to answer the grand jury's questions, notwithstanding the grant of immunity. The court found both in contempt, and committed them to the custody of the Attorney General until either they answered the grand jury's questions or the term of the grand jury expired.[1] The Court of

[406 US 443]

Appeals for the Ninth Circuit affirmed. Stewart v United States, 440 F2d 954 (CA9 1971). This Court granted certiorari to resolve the important question whether testimony may be

1. The contempt order was issued pursuant to 28 USC § 1826.

compelled by granting immunity from the use of compelled testimony and evidence derived therefrom ("use and derivative use" immunity), or whether it is necessary to grant immunity from prosecution for offenses to which compelled testimony relates ("transactional" immunity). 402 US 971, 29 L Ed 2d 135, 91 S Ct 1668 (1971).

I

[2] The power of government to compel persons to testify in court or before grand juries and other governmental agencies is firmly established in Anglo-American jurisprudence.[2] The power with respect to courts was established by statute in England as early as 1562,[3] and Lord Bacon observed in 1612 that all subjects owed the King their "knowledge and discovery."[4] While it is not clear when grand juries first resorted to compulsory process to secure the attendance and testimony of witnesses, the general common-law principle that "the public has a right to every man's evidence" was considered an "indubitable certainty" that "cannot be denied" by 1742.[5] The power to compel testimony, and the corresponding duty to testify, are recognized in the Sixth Amendment

[406 US 444]

requirements that an accused be confronted with the witnesses against him, and have compulsory process for obtaining witnesses in his favor. The first Congress recognized the testimonial duty in the Judiciary Act of 1789, which provided for compulsory attendance of witnesses in the federal courts.[6] Mr. Justice White noted the importance of this essential power of government in his concurring opinion in Murphy v Waterfront Comm'n, 378 US 52, 93–94, 12 L Ed 2d 678, 704, 84 S Ct 1594 (1964):

"Among the necessary and most important of the powers of the States as well as the Federal Government to assure the effective functioning of government in an ordered society is the broad power to compel residents to testify in court or before grand juries or agencies. See Blair v United States, 250 US 273 [63 L Ed 979, 39 S Ct 468]. Such testimony constitutes one of the Government's primary sources of information."

[3, 4] But the power to compel testimony is not absolute. There are a number of exemptions from the testimonial duty,[7] the most important of which is the Fifth Amendment privilege against compulsory self-incrimination. The privilege reflects a complex of our fundamental values and aspirations,[8] and marks

2. For a concise history of testimonial compulsion prior to the adoption of our Constitution, see 8 J. Wigmore, Evidence § 2190 (J. McNaughton rev 1961). See Ullmann v United States, 350 US 422, 439 n. 15, 100 L Ed 511, 525, 76 S Ct 497, 53 ALR 2d 1008 (1956); Blair v United States, 250 US 273, 63 L Ed 979, 39 S Ct 468 (1919).

3. Statute of Elizabeth, 5 Eliz 1, c 9, § 12 (1562).

4. Countess of Shrewsbury's Case, 2 How St Tr 769, 778 (1612).

5. See the parliamentary debate on the Bill to Indemnify Evidence, particularly the remarks of the Duke of Argyle and Lord Chancellor Hardwicke, reported in 12 T. Hansard, Parliamentary History of England, 675, 693 (1812). See also Piemonte v United States, 367 US 556, 559 n. 2, 6 L Ed 2d 1028, 1031, 81 S Ct 1720 (1961); Ullmann v United States, supra, at 439 n. 15, 100 L Ed at 525, 53 ALR2d 1008; Brown v Walker, 161 US 591, 600, 40 L Ed 819, 822, 16 S Ct 644 (1896).

6. 1 Stat 73, 88–89.

7. See Blair v United States, supra, at 281, 63 L Ed at 982; 8 Wigmore, supra, n 2, §§ 2192, 2197.

8. See Murphy v Waterfront Comm'n, 378 US 52, 55, 12 L Ed 2d 678, 681, 84 S Ct 1594 (1964).

an important advance in the development of our liberty.[9] It can be asserted in any proceeding, civil or criminal, administrative or judical, investigatory or adjudicatory;[10] and it

[406 US 445]

protects against any disclosures that the witness reasonably believes could be used in a criminal prosecution or could lead to other evidence that might be so used.[11] This Court has been zealous to safeguard the values that underlie the privilege.[12]

Immunity statutes, which have historical roots deep in Anglo-American jurisprudence,[13] are not incom-

9. See Ullmann v United States, 350 US, at 426; 100 L Ed at 518, 53 ALR2d 1008; E. Griswold, The Fifth Amendment Today 7 (1955).

10. Murphy v Waterfront Comm'n, supra, at 94, 12 L Ed 2d at 704 (White, J., concurring); McCarthy v Arndstein, 266 US 34, 40, 69 L Ed 158, 160, 45 S Ct 16 (1924); United States v Saline Bank, 1 Pet 100, 7 L Ed 69 (1828); cf. Gardner v Broderick, 392 US 273, 20 L Ed 2d 1082, 88 S Ct 1913 (1968).

11. Hoffman v United States, 341 US 479, 486, 95 L Ed 1118, 1123, 71 S Ct 814 (1951); Blau v United States, 340 US 159, 95 L Ed 170, 71 S Ct 223 (1950); Mason v United States, 244 US 362, 365, 61 L Ed 1198, 1199, 37 S Ct 621 (1917).

12. See, e. g., Miranda v Arizona, 384 US 436, 443–444, 16 L Ed 2d 694, 705, 706, 86 S Ct 1602, 10 ALR3d 974 (1966); Boyd v United States, 116 US 616, 635, 29 L Ed 746, 752, 6 S Ct 524 (1886).

13. Soon after the privilege against compulsory self-incrimination became firmly established in law, it was recognized that the privilege did not apply when immunity, or "indemnity," in the English usage, had been granted. See L. Levy, Origins of the Fifth Amendment 328, 495 (1968). Parliament enacted an immunity statute in 1710 directed against illegal gambling, 9 Anne, c 14, §§ 3–4, which became the model for an identical immunity statute enacted in 1774 by the Colonial Legislature of New York. Law of Mar 9, 1774, c 1651, 5 Colonial Laws of New York 621, 623 (1894). These statutes provided that the loser could sue the winner, who was compelled to answer the loser's charges. After the winner responded and returned his ill-gotten gains, he was "acquitted, indemnified [immunized] and discharged from any further or other Punishment, Forfeiture or Penalty, which he . . . may have incurred by the playing for, and winning such Money . . . ." 9 Anne, c 14, § 4 (1710); Law of Mar 9, 1774, c 1651, 5 Colonial Laws of New York, at 623.

Another notable instance of the early use of immunity legislation is the 1725 impeachment trial of Lord Chancellor Macclesfield. The Lord Chancellor was accused by the House of Commons of the sale of public offices and appointments. In order to compel the testimony of Masters in Chancery who had allegedly purchased their offices from the Lord Chancellor, and who could incriminate themselves by so testifying, Parliament enacted a statute granting immunity to persons then holding office as Masters in Chancery. Lord Chancellor Macclesfield's Trial, 16 How St Tr 767, 1147 (1725). See 8 Wigmore, supra, n 2, § 2281, at 492. See also Bishop Atterbury's Trial, 16 How St Tr 323, 604–605 (1723). The legislatures in colonial Pennsylvania and New York enacted immunity legislation in the 18th century. See, e. g., Resolution of Jan 6, 1758, in Votes and Proceedings of the House of Representatives of the Province of Pennsylvania 1682–1776), 6 Pennsylvania Archives (8th series) 4679 (C. Hoban ed 1935); Law of Mar 24, 1772, c 1542, 5 Colonial Laws of New York 351, 353–354; Law of Mar 9, 1774, c 1651, id., at 621, 623; Law of Mar 9, 1774, c 1655, id., at 639, 641–642. See generally L. Levy, Origins of the Fifth Amendment 359, 384–385, 389, 402–403 (1968). Federal immunity statutes have existed since 1857. Act of Jan. 24, 1857, 11 Stat 155. For a history of the various federal immunity statutes, see Comment, The Federal Witness Immunity Acts in Theory and Practice: Treading the Constitutional Tightrope, 72 Yale LJ 1568 (1963); Wendel, Compulsory Immunity Legislation and the Fifth Amendment Privilege: New Developments and New Confusion, 10 St. Louis U L Rev 327 (1966); and National Commission on

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[406 US 446]

with these values. Rather, they seek a rational accommodation between the imperatives of the privilege and the legitimate demands of government to compel citizens to testify. The existence of these statutes reflects the importance of testimony, and the fact that many offenses are of such a character that the only persons capable of giving useful testimony are those implicated in the crime. Indeed, their origins were in the context of such offenses,[14]

[406 US 447]

and their primary use has been to investigate such offenses.[15] Congress included immunity statutes in many of the regulatory measures adopted in the first half of this century.[16] Indeed, prior to the enactment of the statute under consideration in this case, there were in force over 50 federal immunity statutes.[17] In addition, every State in the Union, as well as the District of Columbia and Puerto Rico, has one or more such statutes.[18] The commentators,[19] and this Court on several occasions,[20] have characterized immunity statutes as essential to the effective enforcement of various criminal statutes. As Mr. Justice Frankfurter observed, speaking for the Court in Ullmann v United States, 350 US 422, 100 L Ed 511, 76 S Ct 497, 53 ALR2d 1008 (1956), such statutes have "become part of our constitutional fabric."[21] Id., at 438, 100 L Ed at 524.

Reform of Federal Criminal Laws, Working Papers, 1406-1411 (1970).

14. See, e. g., Resolution of Jan 6, 1758, n. 13, supra, 6 Pennsylvania Archives (8th series) 4679 (C. Hoban ed 1935); Law of Mar 24, 1772, c 1542, 5 Colonial Laws of New York 351, 354; Law of Mar 9, 1774, c 1655, id., at 639, 642. Bishop Atterbury's Trial, 16 Howell's State Trials 323 (1723), for which the House of Commons passed immunity legislation, was a prosecution for treasonable conspiracy. See id., at 604-605; 8 Wigmore, supra, n 2, § 2281, at 492 n. 2 (McNaughton rev 1961). Lord Chancellor Macclesfield's Trial, supra, for which Parliament passed immunity legislation, was a prosecution for political bribery involving the sale of public offices and appointments. See id., at 1147. The first federal immunity statute was enacted to facilitate an investigation of charges of corruption and vote buying in the House of Representatives. See Comment, n. 13, supra, 72 Yale LJ, at 1571.

15. See 8 Wigmore, supra, n. 2, § 2281, at 492. Mr. Justice White noted in his concurring opinion in Murphy v Waterfront Comm'n, 378 US, at 92, 12 L Ed 2d at 702, that immunity statutes "have for more than a century been resorted to for the investigation of many offenses, chiefly those whose proof and punishment were otherwise impracticable, such as political bribery, extortion, gambling, consumer frauds, liquor violations, commercial larceny, and various forms of racketeering." Id., at 94-95, 12 L Ed 2d at 704. See n, 14, supra.

16. See Comment, n. 13, supra, 72 Yale L J, at 1576.

17. For a listing of these statutes, see National Commission on Reform of Federal Criminal Laws, Working Papers, 1444-1445 (1970).

18. For a listing of these statutes, see 8 Wigmore, supra, n 2, § 2281, at 495 n. 11.

19. See, e. g., 8 J. Wigmore, Evidence § 2281, at 501 (3d ed 1940); 8 Wigmore, supra, n 2, § 2281, at 496.

20. See Hale v Henkel, 201 US 43, 70, 50 L Ed 652, 663, 26 S Ct 370 (1906); Brown v Walker, 161 US, at 610, 40 L Ed at 825.

21. This statement was made with specific reference to the Compulsory Testimony Act of 1893, 27 Stat 443, the model for almost all federal immunity statutes prior to the enactment of the statute under consideration in this case. See Murphy v Waterfront Comm'n, 378 US, at 95, 12 L Ed 2d, at 704 (White, J., concurring).

II

[406 US 448]

[5] Petitioners contend, first, that the Fifth Amendment's privilege against compulsory self-incrimination, which is that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself," deprives Congress of power to enact laws that compel self-incrimination, even if complete immunity from prosecution is granted prior to the compulsion of the incriminatory testimony. In other words, petitioners assert that no immunity statute, however drawn, can afford a lawful basis for compelling incriminatory testimony. They ask us to reconsider and overrule Brown v Walker, 161 US 591, 40 L Ed 819, 16 S Ct 644 (1896), and Ullmann v United States, supra, decisions that uphold the constitutionality of immunity statutes.[22] We find no merit to this contention and reaffirm the decisions in Brown and Ullmann.

III

Petitioners' second contention is that the scope of immunity provided by the federal witness immunity statute, 18 USC § 6002, is not coextensive with the scope of the Fifth Amendment privilege against compulsory self-incrimination, and therefore is not sufficient to supplant the privilege and compel testimony over a claim of the privilege. The statute provides that when a witness is compelled by district court order to testify over a claim of the privilege: "the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; but no testimony or other information compelled under the order (or any information

[406 US 449]

directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order."[23] 18 USC § 6002.

[6] The constitutional inquiry, rooted in logic and history, as well as in the decisions of this Court, is whether the immunity granted under this statute is coextensive with the scope of the privilege.[24] If so, petitioners' refusals to answer based on the privilege were unjustified, and the judgments of contempt were proper, for the grant of immunity has removed the dangers against which the privilege protects. Brown v Walker, supra. If, on the other hand, the immunity granted is not as comprehensive as the protection afforded by the privilege, petitioners were justified in refusing to answer, and the judgments of contempt must be vacated. McCarthy v Arndstein, 266 US 34, 42, 69 L Ed 158, 161, 45 S Ct 16 (1924).

Petitioners draw a distinction between statutes that provide trans-

22. Accord, Gardner v Broderick, 392 US, at 276, 20 L Ed 2d at 1085; Murphy v Waterfront Comm'n, supra; McCarthy v Arndstein, 266 US, at 42, 69 L Ed at 161 (Brandeis, J.); Heike v United States, 227 US 131, 142, 57 L Ed 405, 454, 33 S Ct 226 (1913) (Holmes, J.).

23. For other provisions of the 1970 Act relative to immunity of witnesses, see 18 USC §§ 6001–6005.

24. See, e. g., Murphy v Waterfront Comm'n, supra, at 54, 78, 12 L Ed 2d at 681, 694; Counselman v Hitchcock, 142 US 547, 585, 35 L Ed 1110, 1121, 12 S Ct 195 (1892).

actional immunity and those that provide, as does the statute before us, immunity from use and derivative use.[25] They contend that a statute must at a minimum grant full transactional immunity in order to be coextensive with the scope of the privilege. In support of this contention, they rely on Counselman v Hitchcock, 142 US 547, 35 L Ed 1110, 12 S Ct 195 (1892), the first case in which this Court considered a constitutional challenge to an immunity statute. The statute, a reenactment of the Immunity Act of 1868,[26] provided that no "evidence obtained from a party or witness by means of a judicial

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proceeding . . . shall be given in evidence, or in any manner used against him . . . in any court of the United States . . . ."[27] Notwithstanding a grant of immunity and order to testify under the revised 1868 Act, the witness, asserting his privilege against compulsory self-incrimination, refused to testify before a federal grand jury. He was consequently adjudged in contempt of court.[28] On appeal, this Court construed the statute as affording a witness protection only against the use of the specific testimony compelled from him under the grant of immunity. This construction meant that the statute "could not, and would not, prevent the use of his testimony to search out other testimony to be used in evidence against him."[29] Since the revised 1868 Act, as construed by the Court, would permit the use against the immunized witness of evidence derived from his compelled testimony, it did not protect the witness to the same extent that a claim of the privilege would protect him. Accordingly, under the principle that a grant of immunity cannot supplant the privilege, and is not sufficient to compel testimony over a claim of the privilege, unless the scope of the grant of immunity is coextensive with the scope of the privilege,[30] the witness' refusal to testify was held proper. In the course of its opinion, the Court made the following statement, on which petitioners heavily rely:

"We are clearly of opinion that no statute which leaves the party or witness subject to prosecution

[406 US 451]

after he answers the criminating question put to him, can have the effect of supplanting the privilege conferred by the Constitution of the United States. [The immunity statute under consideration] does not supply a complete protection from all the perils against which the constitutional prohibition was designed to guard, and is not a full substitute for that prohibition. In view of the constitutional provision, a statutory enactment, to be valid, must afford absolute immunity against future prosecution for the offence to which the question relates." 142 US, at 585–586, 35 L Ed at 1122.

Sixteen days after the Counselman decision, a new immunity bill

25. See Piccirillo v New York, 400 US 548, 27 L Ed 2d 596, 91 S Ct 520 (1971).

26. 15 Stat 37.

27. See Counselman v Hitchcock, supra, at 560, 35 L Ed at 1113.

28. In re Counselman, 44 F 268 (CC ND Ill 1890).

29. Counselman v Hitchcock, supra, at 564, 35 L Ed at 1114.

30. Precisely, the Court held "that legislation cannot abridge a constitutional privilege, and that it cannot replace or supply [sic] one, at least unless it is so broad as to have the same extent in scope and effect." Id., at 585, 35 L Ed at 1121. See Murphy v Waterfront Comm'n, supra, at 54, 78, 12 L Ed 2d at 681, 694.

was introduced by Senator Cullom,[31] who urged that enforcement of the Interstate Commerce Act would be impossible in the absence of an effective immunity statute.[32] The bill, which became the Compulsory Testimony Act of 1893,[33] was drafted specifically to meet the broad language in Counselman set forth above.[34] The new Act removed the privilege against self-incrimination in hearings before the Interstate Commerce Commission and provided that:

"no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing, concerning which he may testify, or produce evidence, documentary or otherwise . . . ." Act of Feb. 11, 1893, 27 Stat 444.

[406 US 452]

This transactional immunity statute became the basic form for the numerous federal immunity statutes[35] until 1970, when, after re-examining applicable constitutional principles and the adequacy of existing law, Congress enacted the statute here under consideration.[36] The new statute, which does not "afford [the] absolute immunity against future prosecution" referred to in Counselman, was drafted to meet what Congress judged to be the conceptual basis of Counselman, as elaborated in subsequent decisions of the Court, namely, that immunity from the

[406 US 453]

use of compelled testimony and evidence derived therefrom is coextensive with the scope of the privilege.[37]

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31. Counselman was decided Jan. 11, 1892. Senator Cullom introduced the new bill on Jan. 27, 1892. 23 Cong Rec 573.

32. 23 Cong Rec 6333.

33. Act of Feb 11, 1893, 27 Stat 443, repealed by the Organized Crime Control Act of 1970, Pub L No 91-452, § 245, 84 Stat 931.

34. See the remarks of Senator Cullom, 23 Cong Rec 573, 6333, and Congressman Wise, who introduced the bill in the House. 24 Cong Rec 503. See Shapiro v United States, 335 US 1, 28-29 and n. 36, 92 L Ed 1787, 1804, 1805, 68 S Ct 1375 (1948).

35. Ullmann v United States, 350 US, at 438, 100 L Ed, at 524, 53 ALR2d 1008; Shapiro v United States, supra, at 6, 92 L Ed, at 1792. There was one minor exception. See Piccirillo v New York, 400 US, at 571 and n. 11, 27 L Ed 2d, at 610, 611 (Brennan, J., dissenting); Arnstein v McCarthy, 254 US 71, 73, 65 L Ed 138, 142, 41 S Ct 26 (1920).

36. The statute is a product of careful study and consideration by the National Commission on Reform of Federal Criminal Laws, as well as by Congress. The Commission recommended legislation to reform the federal immunity laws. The recommendation served as the model for this statute. In commenting on its proposal in a special report to the President, the Commission said:

"We are satisfied that our substitution of immunity from use for immunity from prosecution meets constitutional requirements for overcoming the claim of privilege. Immunity from use is the only consequence flowing from a violation of the individual's constitutional right to be protected from unreasonable searches and seizures, his constitutional right to counsel, and his constitutional right not to be coerced into confessing. The proposed immunity is thus of the same scope as that frequently, even though unintentionally, conferred as the result of constitutional violations by law enforcement officers." Second Interim Report of the National Commission on Reform of Federal Criminal Laws, Mar 17, 1969, Working Papers of the Commission, 1446 (1970).

The Commission's recommendation was based in large part on a comprehensive study of immunity and the relevant decisions of this Court prepared for the Commission by Prof. Robert G. Dixon, Jr., of the George Washington University Law Center, and transmitted to the President with the recommendations of the Commission. See National Commission on Reform of Federal Criminal Laws, Working Papers, 1405-1444 (1970).

37. See S Rep No 91-617, pp 51-56, 145 (1969); HR Rep No 91-1549, p 42 (1970).

[1, 7, 8] The statute's explicit proscription of the use in any criminal case of "testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information)" is consonant with Fifth Amendment standards. We hold that such immunity from use and derivative use is coextensive with the scope of the privilege against self-incrimination, and therefore is sufficient to compel testimony over a claim of the privilege. While a grant of immunity must afford protection commensurate with that afforded by the privilege, it need not be broader. Transactional immunity, which accords full immunity from prosecution for the offense to which the compelled testimony relates, affords the witness considerably broader protection than does the Fifth Amendment privilege. The privilege has never been construed to mean that one who invokes it cannot subsequently be prosecuted. Its sole concern is to afford protection against being "forced to give testimony leading to the infliction of 'penalties affixed to . . . criminal acts.'"[38] Immunity from the use of compelled testimony, as well as evidence derived directly and indirectly therefrom, affords this protection. It prohibits the prosecutorial authorities from using the compelled testimony in *any* respect, and it therefore insures that the testimony cannot lead to the infliction of criminal penalties on the witness.

Our holding is consistent with the conceptual basis of Counselman. The Counselman statute, as construed by the Court, was plainly deficient in its failure to

[406 US 454]

prohibit the use against the immunized witness of evidence derived from his compelled testimony. The Court repeatedly emphasized this deficiency, noting that the statute:

"could not, and would not, prevent the use of his testimony to search out other testimony to be used in evidence against him or his property, in a criminal proceeding . . . ." 142 US, at 564, 35 L Ed at 1114;

that it:

"could not prevent the obtaining and the use of witnesses and evidence which should be attributable directly to the testimony he might give under compulsion, and on which he might be convicted, when otherwise, and if he had refused to answer, he could not possibly have been convicted," ibid.;

and that it:

"affords no protection against that use of compelled testimony which consists in gaining therefrom a knowledge of the details of a crime, and of sources of information which may supply other means of convicting the witness or party." 142 US, at 586, 35 L Ed at 1122.

The basis of the Court's decision was recognized in Ullmann v United States, 350 US 422, 100 L Ed 511, 76 S Ct 497 (1956), in which the Court reiterated that the Counselman statute was insufficient:

"because the immunity granted was incomplete, in that it merely forbade the use of the testimony given and failed to protect a witness from future prosecution *based on knowledge and sources of information obtained*

38. Ullmann v United States, 350 US, at 438-439, 100 L Ed, at 524, 525, quoting Boyd v United States, 116 US at 634, 29 L Ed at 752. See Knapp v Schweitzer, 357 US 371, 380, 2 L Ed 2d 1393, 1401, 78 S Ct 1302 (1958).

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See also Arndstein v McCarthy, 254 US 71, 73, 65 L Ed 138, 142, 41 S Ct 26 (1920). The broad language in Counselman relied upon by petitioners

[406 US 455]

was unnecessary to the Court's decision, and cannot be considered binding authority.[39]

In Murphy v Waterfront Comm'n, 378 US 52, 12 L Ed 2d 678, 84 S Ct 1594 (1964), the Court carefully considered immunity from use of compelled testimony and evidence derived therefrom. The Murphy petitioners were subpoenaed to testify at a hearing conducted by the Waterfront Commission of New York Harbor. After refusing to answer certain questions on the ground that the answers might tend to incriminate them, petitioners were granted immunity

[406 US 456]

from prosecution under the laws of New Jersey and New York.[40] They continued to refuse to testify, however, on the ground that their answers might tend to incriminate them under federal law, to which the immunity did not purport to extend. They were adjudged in civil contempt, and that judgment was affirmed by the New Jersey Supreme Court.[41]

The issue before the Court in Murphy was whether New Jersey and New York could compel the witnesses, whom the States had immunized from prosecution under their laws, to give testimony that might then be used to convict them of a federal crime. Since New Jersey and New York had not purported to confer immunity from federal prosecution, the Court was

39. Cf. The Supreme Court, 1963 Term, 78 Harv L Rev 179, 230 (1964). Language similar to the Counselman dictum can be found in Brown v Walker, 161 US, at 594-595, 40 L Ed, at 820, and Hale v Henkel, 201 US, at 67, 50 L Ed, at 662. Brown and Hale, however, involved statutes that were clearly sufficient to supplant the privilege against self-incrimination, as they provided full immunity from prosecution "for or on account of any transaction, matter or thing, concerning which he may testify, or produce evidence . . . ." 161 US, at 594, 40 L Ed at 820; 201 US, at 66, 50 L Ed at 662. The same is true of Smith v United States, 337 US 137, 141, 146, 93 L Ed 1264, 1268, 1271, 69 S Ct 1000 (1949), and United States v Monia, 317 US 424, 425, 428, 87 L Ed 376, 379, 380, 63 S Ct 409 (1943). In Albertson v Subversive Activities Control Board, 382 US 70, 15 L Ed 2d 165, 86 S Ct 194 (1965), some of the Counselman language urged upon us by petitioners was again quoted. But Albertson, like Counselman, involved an immunity statute that was held insufficient for failure to prohibit the use of evidence derived from compelled admissions and the use of compelled admissions as an "investigatory lead." Id., at 80, 15 L Ed 2d at 172.

In Adams v Maryland, 347 US 179, 182, 98 L Ed 608, 612, 74 S Ct 442 (1954), and in United States v Murdock, 284 US 141, 149, 76 L Ed 210, 213, 52 S Ct 63, 82 ALR 1376 (1931), the Counselman dictum was referred to as the principle of Counselman. The references were in the context of ancillary points not essential to the decisions of the Court. The Adams Court did note, however, that the Fifth Amendment privilege prohibits the "use" of compelled self-incriminatory testimony. 347 US, at 181, 98 L Ed at 612. In any event, the Court in Ullmann v United States, 350 US, at 436-437, 100 L Ed, at 523, 524, 53 ALR2d 1008, recognized that the rationale of Counselman was that the Counselman statute was insufficient for failure to prohibit the use of evidence derived from compelled testimony. See also Arndstein v McCarthy, 254 US, at 73, 65 L Ed, at 142.

40. The Waterfront Commission of New York Harbor is a bistate body established under an interstate compact approved by Congress. 67 Stat 541.

41. In re Waterfront Comm'n of N. Y. Harbor, 39 NJ 436, 189 A2d 36 (1963).

faced with the question what limitations the Fifth Amendment privilege imposed on the prosecutorial powers of the Federal Government, a nonimmunizing sovereign. After undertaking an examination of the policies and purposes of the privilege, the Court overturned the rule that one jurisdiction within our federal structure may compel a witness to give testimony which could be used to convict him of a crime in another jurisdiction.[42] The Court held that the privilege protects state witnesses against incrimination under federal as well as state law, and federal witnesses against incrimination

[406 US 457]

under state as well as federal law. Applying this principle to the state immunity legislation before it, the Court held the constitutional rule to be that:

"[A] state witness may not be compelled to give testimony which may be incriminating under federal law unless the compelled testimony and its fruits cannot be used in any manner by federal officials in connection with a criminal prosecution against him. We conclude, moreover, that in order to implement this constitutional rule and accommodate the interests of the State and Federal Government in investigating and prosecuting crime, the Federal Government must be prohibited from making any such use of compelled testimony and its fruits."[43] 378 US, at 79, 12 L Ed 2d at 695.

The Court emphasized that this rule left the state witness and the Federal Government, against which the witness had immunity only from the *use* of the compelled testimony and evidence derived therefrom, "in substantially the same position as if the witness had claimed his privilege in the absence of a state grant of immunity." Ibid.

[1, 2] It is true that in Murphy the Court was not presented with the precise question presented by this case, whether a jurisdiction seeking to compel testimony may do so by granting only use and derivative-use immunity, for New Jersey and New York had granted petitioners transactional immunity. The Court heretofore has not

[406 US 458]

squarely confronted this question,[44] because post-Counselman immunity statutes reaching the Court either have followed the pattern of the 1893 Act in providing transactional immunity,[45] or have been found de-

42. Reconsideration of the rule that the Fifth Amendment privilege does not protect a witness in one jurisdiction against being compelled to give testimony that could be used to convict him in another jurisdiction was made necessary by the decision in Malloy v Hogan, 378 US 1, 12 L Ed 2d 653, 84 S Ct 1489 (1964), in which the Court held the Fifth Amendment privilege applicable to the States through the Fourteenth Amendment. Murphy v Waterfront Comm'n, 378 US, at 57, 12 L Ed 2d, at 682.

43. At this point the Court added the following note: "Once a defendant demonstrates that he has testified, under a state grant of immunity, to matters related to the federal prosecution, the federal authorities have the burden of showing that their evidence is not tainted by establishing that they had an independent, legitimate source for the disputed evidence." Id., at 79 n. 18, 12 L Ed 2d at 695. If transactional immunity had been deemed to be the "constitutional rule" there could be no federal prosecution.

44. See, e. g., California v Byers, 402 US 424, 442 n. 3, 29 L Ed 2d 9, 25, 91 S Ct 1535 (1971) (Harlan, J., concurring in judgment); United States v Freed, 401 US 601, 606 n. 11, 28 L Ed 2d 356, 361, 91 S Ct 1112 (1971); Piccirillo v New York, 400 US 548, 27 L Ed 2d 596, 91 S Ct 496 (1971); Stevens v Marks, 383 US 234, 244-245, 15 L Ed 2d 724, 731, 732, 86 S Ct 788 (1966).

45. E. g., Murphy v Waterfront Comm'n, supra; Ullmann v United States, supra;

ficient for failure to prohibit the use of all evidence derived from compelled testimony.[46] But both the reasoning of the Court in Murphy and the result reached compel the conclusion that use and derivative-use immunity is constitutionally sufficient to compel testimony over a claim of the privilege. Since the privilege is fully applicable and its scope is the same whether invoked in a state or in a federal jurisdiction,[47] the Murphy conclusion that a prohibition on use and derivative use secures a witness' Fifth Amendment privilege against infringement by the Federal Government demonstrates that immunity from use and derivative use is coextensive with the scope of the privilege. As the Murphy Court noted, immunity from use and derivative use "leaves the witness and the Federal Government in substantially the same position
[406 US 459]
as if the witness had claimed his privilege"[48] in the absence of a grant of immunity. The Murphy Court was concerned solely with the danger of incrimination under federal law, and held that immunity from use and derivative use was sufficient to displace the danger. This protection coextensive with the privilege is the degree of protection that the Constitution requires, and is all that the Constitution requires even against the jurisdiction compelling testimony by granting immunity.[49]

IV

[1, 10] Although an analysis of prior decisions and the purpose of the Fifth Amendment privilege indicates that use and derivative-use immunity is coextensive with the privilege, we must consider additional arguments advanced by petitioners against the sufficiency of such immunity. We start from the premise, repeatedly affirmed by this Court, that an appropriately broad immunity grant is compatible with the Constitution.

Petitioners argue that use and derivative-use immunity will not adequately protect a witness from various possible incriminating uses of the compelled testimony: for example, the prosecutor or other law enforcement officials may obtain leads, names of witnesses, or other information not otherwise available

Smith v United States, 337 US 137, 93 L Ed 1264, 69 S Ct 1000 (1949); United States v Monia, 317 US 424, 87 L Ed 376, 63 S Ct 409 (1943); Hale v Henkel, 201 US 43, 50 L Ed 652, 26 S Ct 370 (1906); Jack v Kansas, 199 US 372, 50 L Ed 234, 26 S Ct 73 (1905); Brown v Walker, 161 US 591, 40 L Ed 819, 16 S Ct 644 (1896). See also n. 35, supra.

46. E. g., Albertson v Subversive Activities Control Board, 382 US, at 80, 15 L Ed 2d, at 172; Arndstein v McCarthy, 254 US, at 73, 65 L Ed, at 142.

47. In Malloy v Hogan, 378 US, at 10–11, 12 L Ed 2d, at 660, 661, the Court held that the same standards would determine the extent or scope of the privilege in state and in federal proceedings, because the same substantive guarantee of the Bill of Rights is involved. The Murphy Court emphasized that the scope of the privilege is the same in state and in federal proceedings. Murphy v Waterfront Comm'n, 378 US, at 79, 12 L Ed 2d, at 695.

48. Ibid.

49. As the Court noted in Gardner v Broderick, 392 US, at 276, 20 L Ed 2d, at 1085, "[a]nswers may be compelled regardless of the privilege if there is immunity from federal and state use of the compelled testimony or its fruits in connection with a criminal prosecution against the person testifying."

that might result in a prosecution. It will be difficult and perhaps impossible, the argument goes, to identify, by testimony or cross-examination, the subtle ways in which the compelled testimony may disadvantage a witness, especially in the jurisdiction granting the immunity.

This argument presupposes that the statute's prohibition

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will prove impossible to enforce. The statute provides a sweeping proscription of any use, direct or indirect, of the compelled testimony and any information derived therefrom:

"[N]o testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case . . . ." 18 USC § 6002.

This total prohibition on use provides a comprehensive safeguard, barring the use of compelled testimony as an "investigatory lead,"[50] and also barring the use of any evidence obtained by focusing investigation on a witness as a result of his compelled disclosures.

[11, 12] A person accorded this immunity under 18 USC § 6002, and subsequently prosecuted, is not dependent for the preservation of his rights upon the integrity and good faith of the prosecuting authorities. As stated in Murphy:

"Once a defendant demonstrates that he has testified, under a state grant of immunity, to matters related to the federal prosecution, the federal authorities have the burden of showing that their evidence is not tainted by establishing that they had an independent, legitimate source for the disputed evidence." 378 US, at 79 n. 18, 12 L Ed 2d at 695.

This burden of proof, which we reaffirm as appropriate, is not limited to a negation of taint; rather, it imposes on the prosecution the affirmative duty to prove that the evidence it proposes to use is derived from a legitimate source wholly independent of the compelled testimony.

[406 US 461]

This is very substantial protection,[51] commensurate with that resulting from invoking the privilege itself. The privilege assures that a citizen is not compelled to incriminate himself by his own testimony. It usually operates to allow a citizen to remain silent when asked a question requiring an incriminatory answer. This statute, which operates after a witness has given incriminatory testimony, affords the same protection by assuring that the compelled testimony can in no way lead to the infliction of criminal penalties. The statute, like the Fifth Amendment, grants neither pardon nor amnesty. Both the statute and the Fifth Amendment allow the government to prosecute using evidence from legitimate independent sources.

[13] The statutory proscription is analogous to the Fifth Amendment requirement in cases of coerced confessions.[52] A coerced confession, as

50. See, e. g., Albertson v Subversive Activities Control Board, 382 US, at 80, 15 L Ed 2d, at 172.

51. See Murphy v Waterfront Comm'n, 378 US, at 102-104, 12 L Ed 2d, at 708-710 (White, J., concurring).

52. Adams v Maryland, 347 US, at 181, 98 L Ed, at 612; Bram v United States, 168 US 532, 542, 42 L Ed 568, 573, 18 S Ct 183 (1897).

revealing of leads as testimony given in exchange for immunity,[53] is inadmissible in a criminal trial, but it does not bar prosecution.[54] Moreover, a defendant against whom incriminating evidence has been obtained through a grant of immunity may be in a stronger position at trial than a defendant who asserts a Fifth Amendment coerced-confession claim. One raising a claim under this statute need only show that he testified under a grant of immunity in order to shift to the government the heavy burden of proving that all of the evidence it proposes to use was derived from

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legitimate independent sources.[55] On the other hand, a defendant raising a coerced-confession claim under the Fifth Amendment must first prevail in a voluntariness hearing before his confession and evidence derived from it become inadmissible.[56]

There can be no justification in reason or policy for holding that the Constitution requires an amnesty grant where, acting pursuant to statute and accompanying safeguards, testimony is compelled in exchange for immunity from use and derivative use when no such amnesty is required where the government, acting without colorable right, coerces a defendant into incriminating himself.

[11] We conclude that the immunity provided by 18 USC § 6002 leaves the witness and the prosecutorial authorities in substantially the same position as if the witness had claimed the Fifth Amendment privilege. The immunity therefore is coextensive with the privilege and suffices to supplant it. The judgment of the Court of Appeals for the Ninth Circuit accordingly is

Affirmed.

Mr. Justice Brennan and Mr. Justice Rehnquist took no part in the consideration or decision of this case.

SEPARATE OPINIONS

Mr. Justice Douglas, dissenting.

The Self-Incrimination Clause says: "No person . . . shall be compelled in any criminal case to be a witness against himself." I see no answer to the proposition that he is such a witness when only "use" immunity is granted.

My views on the question of the scope of immunity that is necessary to force a witness to give up his guarantee

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against self-incrimination contained in the Fifth Amendment are so well known, see Ullmann v United States, 350 US 422, 440, 100

53. As Mr. Justice White, concurring in Murphy, pointed out:
"A coerced confession is as revealing of leads as testimony given in exchange for immunity and indeed is excluded in part because it is compelled incrimination in violation of the privilege. Malloy v Hogan [378 US 1, 7–8, 12 L Ed 2d 653, 658–660, 84 S Ct 1489]; Spano v New York, 360 US 315, 3 L Ed 2d 1265, 79 S Ct 1202; Bram v United States, 168 US 532, 42 L Ed 568, 18 S Ct 183." 378 US, at 103, 12 L Ed 2d at 709.

54. Jackson v Denno, 378 US 368, 12 L Ed 2d 908, 84 S Ct 1774, 1 ALR3d 1205 (1964).

55. See supra, at 460, 32 L Ed 2d, at 226; Brief for the United States 37; Cf. Chapman v California, 386 US 18, 17 L Ed 2d 705, 87 S Ct 824, 24 ALR3d 1065 (1967).

56. Jackson v Denno, supra.

L Ed 511, 525, 76 S Ct 497, 53 ALR 2d 1008 (dissenting), and Piccirillo v New York, 400 US 548, 549, 27 L Ed 2d 596, 598, 91 S Ct 520 (dissenting), that I need not write at length.

In Counselman v Hitchcock, 142 US 547, 586, 35 L Ed 1110, 1122, 12 S Ct 195, the Court adopted the transactional immunity test: "In view of the constitutional provision, a statutory enactment, to be valid, must afford absolute immunity against future prosecution for the offense to which the question relates." Id., at 586, 35 L Ed at 1122. In Brown v Walker, 161 US 591, 40 L Ed 819, 16 S Ct 644, a case involving another federal prosecution, the immunity statute provided that the witness would be protected "on account of any transaction . . . concerning which he may testify." Id., at 594, 40 L Ed at 820. The Court held that the immunity offered was coterminous with the privilege and that the witness could therefore be compelled to testify, a ruling that made "transactional immunity" part of the fabric of our constitutional law. Ullmann v United States, supra, at 438, 100 L Ed at 524.

This Court, however, apparently believes that Counselman and its progeny were overruled sub silentio in Murphy v Waterfront Comm'n, 378 US 52, 12 L Ed 2d 678, 84 S Ct 1594. Murphy involved state witnesses, granted transactional immunity under state law, who refused to testify for fear of subsequent federal prosecution. We held that the testimony in question could be compelled, but that the Federal Government would be barred from using any of the testimony, or its fruits, in a subsequent federal prosecution. Murphy overruled, not Counselman, but Feldman v United States, 322 US 487, 88 L Ed 1408, 64 S Ct 1082, 154 ALR 982, which had held "that one jurisdiction within our federal structure may compel a witness to give testimony which could be used to convict him of a crime in another jurisdiction." Murphy v Waterfront Comm'n, supra, at 77, 12 L Ed 2d at 694. But Counselman,

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as the Murphy Court recognized, "said nothing about the problem of incrimination under the law of another sovereign." Id., at 72, 12 L Ed 2d at 691. That problem is one of federalism, as to require transactional immunity between jurisdictions might "deprive a state of the right to prosecute a violation of its criminal law on the basis of another state's grant of immunity [a result which] would be gravely in derogation of its sovereignty and obstructive of its administration of justice." United States ex rel. Catena v Elias, 449 F2d 40, 44 (CA3 1971). Moreover, as Mr. Justice Brennan has pointed out, the threat of future prosecution "substantial when a single jurisdiction both compels incriminating testimony and brings a later prosecution, may fade when the jurisdiction bringing the prosecution differs from the jurisdiction that compelled the testimony. Concern over informal and undetected exchange of information is also correspondingly less when two different jurisdictions are involved." Piccirillo v New York, 400 US, at 568, 27 L Ed 2d at 609 (dissenting).

None of these factors apply when the threat of prosecution is from the jurisdiction seeking to compel the testimony, which is the situation we faced in Counselman, and which we face today. The irrelevance of Murphy to such a situation was made clear in Albertson v Subversive Ac-

tivities Control Board, 382 US 70, 15 L Ed 2d 165, 86 S Ct 194, in which the Court struck down an immunity statute because it failed to measure up to the standards set forth in Counselman. Inasmuch as no interjurisdictional problems presented themselves, Murphy was not even cited. That is further proof that Murphy was not thought significantly to

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undercut Counselman.[1] See Stevens v Marks, 383 US 234, 244–245; id., at 249–250, 15 L Ed 2d 724, 731, 732, at 734, 735, 86 S Ct 788 (Harlan, J., concurring and dissenting); Mansfield, The Albertson Case: Conflict Between the Privilege Against Self-Incrimination and the Government's Need for Information, 1966 Sup Ct Rev 103, 164.

If, as some have thought, the Bill of Rights contained only "counsels of moderation" from which courts and legislatures could deviate according to their conscience or discretion, then today's contraction of the Self-Incrimination Clause of the Fifth Amendment would be understandable. But that has not been true, starting with Chief Justice Marshall's opinion in United States v Burr,

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25 F Cas 38 (No. 14692e) (CC Va), where he ruled that the reach of the Fifth Amendment was so broad as to make the privilege applicable when there was a mere possibility of a criminal charge being made.

The Court said in Hale v Henkel, 201 US 43, 67, 50 L Ed 652, 662, 26 S Ct 370, that "if the criminality has already been taken away, the Amendment ceases to apply." In other words, the immunity granted is adequate if it operates as a complete pardon for the offense. Brown v Walker, 161 US, at 595, 40 L Ed at 820. That is the true measure of the Self-Incrimination Clause. As Mr. Justice Brennan has stated: "[U]se immunity literally misses half the point of the privilege, for it permits the compulsion without removing the criminality." Piccirillo v New York, supra, at 567, 27 L Ed 2d at 609 (dissenting).

As Mr. Justice Brennan has also said:

"Transactional immunity . . . provides the individual with an assurance that he is not testifying

1. In Albertson v Subversive Activities Control Board, 382 US 70, 15 L Ed 2d 165, 86 S Ct 194, the Court was faced with a Fifth Amendment challenge to the Communist registration provision of the Subversive Activities Control Act of 1950, 64 Stat 987. We held that the provision violated the prospective registrant's privilege against self-incrimination, and that the registration provision was not saved by a so-called "immunity statute" (§ 4(f)) which prohibited the introduction into evidence in any criminal prosecution of the fact of registration under the Act. The Court's analysis of this immunity provision rested solely on Counselman:

"In Counselman v Hitchcock, 142 US 547, [35 L Ed 1110, 12 S Ct 195,] decided in 1892, the Court held 'that no [immunity] statute which leaves the party or witness subject to prosecution after he answers the criminating question put to him, can have the effect of supplanting the privilege . . . ,' and that such a statute is valid only if it supplies 'a complete protection from all the perils against which the constitutional prohibition was designed to guard . . .' by affording 'absolute immunity against future prosecution for the offence to which the question relates.' Id., at 585–586, [35 L Ed at 1122.]. *Measured by these standards*, the immunity granted by § 4(f) is not complete." 382 US, at 80, 15 L Ed 2d at 172. (Emphasis added.)

Thus, the Albertson Court, which could have struck the statute by employing the test approved today, went well beyond, and measured the statute solely against the more restrictive standards of Counselman.

about matters for which he may later be prosecuted. No question arises of tracing the use or non-use of information gleaned from the witness' compelled testimony. The sole question presented to a court is whether the subsequent prosecution is related to the substance of the compelled testimony. Both witness and government know precisely where they stand. Respect for law is furthered when the individual knows his position and is not left suspicious that a later prosecution was actually the fruit of his compelled testimony." 400 US, at 568–569, 27 L Ed 2d at 609 (dissenting).

When we allow the prosecution to offer only "use" immunity we allow it to grant far less than it h s taken away. For while the precise testimony that is compelled may not be used, leads from that testimony may

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be pursued and used to convict the witness.[2] My view is that the framers put it beyond the power of Congress to *compel* anyone to confess his crimes. The Self-Incrimination Clause creates, as I have said before, "the federally protected right of silence," making it unconstitutional to use a law "to pry open one's lips and make him a witness against himself." Ullmann v United States, 350 US, at 446, 100 L Ed at 528 (dissenting). That is indeed one of the chief procedural guarantees in our accusatorial system. Government acts in an ignoble way when it stoops to the end which we authorize today.

I would adhere to Counselman v Hitchcock and hold that this attempt to dilute the Self-Incrimination Clause is unconstitutional.

Mr. Justice Marshall, dissenting.

Today the Court holds that the United States may compel a witness to give incriminating testimony, and subsequently prosecute him for crimes to which that testimony relates. I cannot believe the Fifth Amendment permits that result. See Piccirillo v New York, 400 US 548, 552, 27 L Ed 2d 596, 599, 91 S Ct 520 (1971) (Brennan, J., dissenting from dismissal of certiorari).

The Fifth Amendment gives a witness an absolute right to resist interrogation, if the testimony sought would tend to incriminate him. A grant of immunity

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may strip the witness of the right to refuse to testify, but only if it is broad enough to eliminate all possibility that the testimony will in fact operate to incriminate him. It must put him in precisely the same position, vis-à-vis the government that has compelled his testimony,* as he would have been in had he remained silent in reliance on the privilege. Ullmann v United States, 350 US 422, 100 L Ed 511, 76 S Ct 497, 53 ALR2d 1008 (1956); McCarthy v Arndstein, 266 US 34, 69

2. As Mr. Justice Marshall points out, post at 469, 32 L Ed 2d at 231, it is futile to expect that a ban on use or derivative use compelled testimony can be enforced.

It is also possible that use immunity might actually have an adverse impact on the administration of justice rather than promote law enforcement. A witness might believe, with good reason, that his "immunized" testimony will inevitably lead to a felony conviction. Under such circumstances, rather than testify and aid the investigation, the witness might decide he would be better off remaining silent even if he is jailed for contempt.

* This case does not, of course, involve the special considerations that come into play when the prosecuting government is different from the government that has compelled the testimony. See Murphy v Waterfront Comm'n, 378 US 52, 12 L Ed 2d 678, 84 S Ct 1594 (1964).

L Ed 158, 45 S Ct 16 (1924); Hale v Henkel, 201 US 43, 50 L Ed 652, 26 S Ct 370 (1906); Brown v Walker, 161 US 591, 40 L Ed 819, 16 S Ct 644 (1896); Counselman v Hitchcock, 142 US 547, 35 L Ed 1110, 12 S Ct 195 (1892).

The Court recognizes that an immunity statute must be tested by that standard, that the relevant inquiry is whether it "leaves the witness and the prosecutorial authorities in substantially the same position as if the witness had claimed the Fifth Amendment privilege." Ante, at 462, 32 L Ed 2d at 227. I assume, moreover, that in theory that test would be met by a complete ban on the use of the compelled testimony, including all derivative use, however remote and indirect. But I cannot agree that a ban on use will in practice be total, if it remains open for the government to convict the witness on the basis of evidence derived from a legitimate independent source. The Court asserts that the witness is adequately protected by a rule imposing on the government a heavy burden of proof if it would establish the independent character of evidence to be used against the witness. But in light of the inevitable uncertainties of the fact-finding process, see Speiser v Randall, 357 US 513, 525, 2 L Ed 2d 1460, 1472, 78 S Ct 1332 (1958), a greater margin of protection is required in order to provide a reliable guarantee that the witness

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is in exactly the same position as if he had not testified. That margin can be provided only by immunity from prosecution for the offenses to which the testimony relates, i. e., transactional immunity.

I do not see how it can suffice merely to put the burden of proof on the government. First, contrary to the Court's assertion, the Court's rule does leave the witness "dependent for the preservation of his rights upon the integrity and good faith of the prosecuting authorities." Ante, at 460, 32 L Ed 2d at 226. For the information relevant to the question of taint is uniquely within the knowledge of the prosecuting authorities. They alone are in a position to trace the chains of information and investigation that lead to the evidence to be used in a criminal prosecution. A witness who suspects that his compelled testimony was used to develop a lead will be hard pressed indeed to ferret out the evidence necessary to prove it. And of course it is no answer to say he need not prove it, for though the Court puts the burden of proof on the government, the government will have no difficulty in meeting its burden by mere assertion if the witness produces no contrary evidence. The good faith of the prosecuting authorities is thus the sole safeguard of the witness' rights. Second, even their good faith is not a sufficient safeguard. For the paths of information through the investigative bureaucracy may well be long and winding, and even a prosecutor acting in the best of faith cannot be certain that somewhere in the depths of his investigative apparatus, often including hundreds of employees, there was not some prohibited use of the compelled testimony. Cf. Giglio v United States, 405 US 150, 31 L Ed 2d 104, 92 S Ct 763 (1972); Santobello v New York, 404 US 257, 30 L Ed 2d 427, 92 S Ct 495 (1971). The Court today sets out a loose net to trap tainted evidence and prevent its use against the witness, but it accepts an intolerably great risk that tainted evidence will in fact slip through that net.

[406 US 470]

In my view the Court turns reason on its head when it compares a stat-

utory grant of immunity to the "immunity" that is inadvertently conferred by an unconstitutional interrogation. The exclusionary rule of evidence that applies in that situation has nothing whatever to do with this case. Evidence obtained through a coercive interrogation, like evidence obtained through an illegal search, is excluded at trial because the Constitution prohibits such methods of gathering evidence. The exclusionary rules provide a partial and inadequate remedy to some victims of illegal police conduct, and a similarly partial and inadequate deterrent to police officers. An immunity statute, on the other hand, is much more ambitious than any exclusionary rule. It does not merely attempt to provide a remedy for past police misconduct, which never should have occurred. An immunity statute operates in advance of the event, and it authorizes—even encourages—interrogation that would otherwise be prohibited by the Fifth Amendment. An immunity statute thus differs from an exclusionary rule of evidence in at least two critical respects.

First, because an immunity statute gives constitutional approval to the resulting interrogation, the government is under an obligation here to remove the danger of incrimination completely and absolutely, whereas in the case of the exclusionary rules it may be sufficient to shield the witness from the fruits of the illegal search or interrogation in a partial and reasonably adequate manner. For when illegal police conduct has occurred, the exclusion of evidence does not purport to purge the conduct of its unconstitutional character. The constitutional violation remains, and may provide the basis for other relief, such as a civil action for damages (see 42 USC § 1983 and Bivens v Six Agents, 403 US 388, 29 L Ed 2d 619, 91 S Ct 1999 (1971)), or a criminal prosecution of the responsible

[406 US 471]

officers (see 18 USC §§ 241–242). The Constitution does not authorize police officers to coerce confessions or to invade privacy without cause, so long as no use is made of the evidence they obtain. But this Court has held that the Constitution does authorize the government to compel a witness to give potentially incriminating testimony, so long as no incriminating use is made of the resulting evidence. Before the government puts its seal of approval on such an interrogation, it must provide an absolutely reliable guarantee that it will not use the testimony in any way at all in aid of prosecution of the witness. The only way to provide that guarantee is to give the witness immunity from prosecution for crimes to which his testimony relates.

Second, because an immunity statute operates in advance of the interrogation, there is room to require a broad grant of transactional immunity without imperiling large numbers of otherwise valid convictions. An exclusionary rule comes into play after the interrogation or search has occurred; and the decision to question or to search is often made in haste, under pressure, by an officer who is not a lawyer. If an unconstitutional interrogation or search were held to create transactional immunity, that might well be regarded as an excessively high price to pay for the "constable's blunder." An immunity statute, on the other hand, creates a framework in which the prosecuting attorney can make a calm and reasoned decision whether to compel testimony and suffer the resulting ban

on prosecution, or to forgo the testimony.

For both these reasons it is clear to me that an immunity statute must be tested by a standard far more demanding than that appropriate for an exclusionary rule fashioned to deal with past constitutional violations. Measured by that standard, the statute approved today by the Court fails miserably. I respectfully dissent.

EDITOR'S NOTE

An annotation on "Adequacy, under Federal Constitution, of immunity granted in lieu of privilege against self-incrimination," appears p 869, infra.

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

PARK

Judiciary

*[378 US 52]

*WILLIAM MURPHY and John Moody, Sr., Petitioners,

v

WATERFRONT COMMISSION OF NEW YORK HARBOR

378 US 52, 12 L ed 2d 678, 84 S Ct 1594

[No. 138]

Argued March 5, 1964. Decided June 15, 1964.

SUMMARY

Notwithstanding the grant of immunity under the laws of New Jersey and New York, petitioners, as witnesses before the Waterfront Commission of New York Harbor, refused to answer questions on the ground that the answers might tend to incriminate them under federal law, to which the grant of immunity did not purport to extend. Petitioners were thereupon held in civil and criminal contempt of court. The New Jersey Supreme Court affirmed the civil contempt judgments, holding that a state may constitutionally compel a witness to give testimony which might be used in a federal prosecution against him. (39 NJ 436, 189 A2d 36.)

On certiorari, the United States Supreme Court vacated the judgment of contempt and remanded the cause to the New Jersey Supreme Court. In an opinion by GOLDBERG, J., expressing the views of five of the justices, the Court, overruling its earlier decisions to the contrary, held that (1) the constitutional privilege against self-incrimination protects a state witness against incrimination under federal as well as state law; and (2) the federal government is prohibited from making any use of testimony which the petitioners were compelled to give after grant of immunity under the state laws. It was also held that in the light of this development, the petitioners should be afforded an opportunity to answer the questions.

BLACK, J., concurred in the Court's opinion for the reasons stated therein and for the reasons stated in various separate opinions written by him.

HARLAN, J., joined by CLARK, J., concurred on the basis that the rule that testimony compelled in a state proceeding over a witness' claim of the privilege against self-incrimination may not be used against the witness in federal prosecution rests on the Court's supervisory power over the administration of federal criminal justice, rather than on constitutional grounds.

WHITE, J., joined by STEWART, J., also concurred, elaborating the view that the privilege against self-incrimination does not require absolute immunity from prosecution in other jurisdictions.

378 US 52, 12 L ed 2d 678, 84 S Ct 1594

HEADNOTES

Classified to U. S. Supreme Court Digest, Annotated

Witnesses § 81 — self-incrimination — waiver of privilege

1. A witness before an administrative agency does not waive his privilege against self-incrimination by expressly declining to assert it at the first hearing or by asserting in contempt proceedings that the agency's investigation constituted an unlawful interference with innocent conduct, where at later hearings the agency and the trial court recognized the witness' right to assert the privilege and moreover the agency never raised the question of waiver in the trial court.

[*See annotation reference* 1]

Witnesses § 79 — self-incrimination — validity of grant of immunity

2. A grant of immunity from prosecution is valid only if it is coextensive with the scope of the privilege against self-incrimination.

[*See annotation references* 2, 3]

Witnesses §§ 72, 94 — self-incrimination — facets of privilege

3. The constitutional privilege against self-incrimination has two primary interrelated facets: the government may not use compulsion to elicit self-incriminating statements and may not permit the use in a criminal trial of self-incriminating statements elicited by compulsion.

Witnesses § 72 — self-incrimination — danger of prosecution in another jurisdiction

4. The constitutional privilege against self-incrimination protects a state witness against incrimination under federal as well as state law and a federal witness against incrimination under state as well as federal law.

[*See annotation reference* 4]

Courts § 781; Witnesses § 72 — self-incrimination — federal standards as controlling

5. The availability of the federal privilege against self-incrimination to a witness in a state inquiry is to be determined according to the same standard that is applicable in a federal proceeding.

Witnesses § 79 — self-incrimination — state witness — federal prosecution

6. As a matter of constitutional law, a state witness may not be compelled to give testimony which may be incriminating under federal law unless the compelled testimony and its fruits cannot be used in any manner by federal officials in connection with a criminal prosecution against him.

[*See annotation references* 5–8]

ANNOTATION REFERENCES

1. Waiver or loss of privilege against self-incrimination, as regards person other than accused. 95 L ed 354.

2. Adequacy of immunity offered as condition of denial of privilege against self-incrimination. 53 ALR2d 1030. See also 48 L ed 860, 65 L ed 138.

3. Validity and adequacy, as a matter of constitutional law, of federal statute granting immunity in lieu of privilege against self-incrimination. 100 L ed 533, 5 L ed 2d 950.

4. As to the pre-existing law, see annotations in 59 ALR 895 and 82 ALR 1380, dealing with "Privilege against self-incrimination as extending to danger of prosecution in another jurisdiction."

5. Waiver of privilege against self-incrimination in exchange for immunity from prosecution as barring reassertion of privilege on account of prosecution in another jurisdiction. 2 ALR2d 631.

6. Privilege against self-incrimination as applicable to testimony that one has been compelled to give in another jurisdiction. 154 ALR 994.

7. Use in subsequent prosecution of self-incriminating testimony given without invoking privilege. 5 ALR2d 1404.

8. Testimony of incriminating character which witness was compelled to give, by virtue of immunity statute or otherwise, as admissible in a prosecution of the witness for an offense subsequently committed. 157 ALR 428.

Witnesses § 94 — federal use of state witness' testimony

7. Neither the testimony of a state witness compelled under state immunity law and incriminating under federal law nor the fruits of such testimony can be used by the federal government in investigating and prosecuting crime.

[*See annotation references* 5–8]

Evidence § 419 — self-incrimination — state immunity — federal use of testimony — burden of proof

8. Once a defendant demonstrates that he has testified, under a state grant of immunity, to matters related to his federal prosecution, the federal government has the burden of showing that its evidence is not tainted by establishing that it had an independent, legitimate source for the disputed evidence.

Witnesses § 84 — statutory immunity — effect

9. A witness in a state investigation of crime who, under state law, is granted immunity from prosecution may be compelled to answer questions incriminating under federal law, the federal government being prohibited from making any use of such testimony or its fruit in a federal prosecution.

[*See annotation references* 5–8]

Contempt § 21 — purging — change of relevant law

10. A witness held in contempt of court for his refusal to answer questions in a state inquiry into crime will be afforded an opportunity to answer these questions where at the time he refused to answer he had a reasonable fear, based on a decision of the United States Supreme Court, that the federal authorities might use his answers in connection with a federal prosecution and thereafter the United States Supreme Court, overruling its earlier decision, held that the federal government may make no such use of the answers.

APPEARANCES OF COUNSEL

Harold Krieger argued the cause for petitioners.

William P. Sirignano argued the cause for respondent.

Briefs of Counsel, p 1317, infra.

OPINION OF THE COURT

*[378 US 53]

*Mr. Justice Goldberg delivered the opinion of the Court.

We have held today that the Fifth Amendment privilege against self-incrimination must be deemed fully applicable to the States through the Fourteenth Amendment. Malloy v Hogan, 378 US 1, 12 L ed 2d 653, 84 S Ct 1489. This case presents a related issue: whether one jurisdiction within our federal structure may compel a witness, whom it has immunized from prosecution under its laws, to give testimony which might then be used to convict him of a crime against another such jurisdiction.[1]

Petitioners were subpoenaed to testify at a hearing conducted by the Waterfront Commission of New York Harbor concerning a work stoppage at the Hoboken, New Jersey, piers. After refusing to respond to certain questions about the stoppage on the ground that the answers might tend to incriminate them, petitioners were granted immunity from prosecution under the laws of New Jersey and New York.[2] Notwithstanding this grant of immu-

1. Since the privilege is now fully applicable to the State and to the Federal Government, the basic issue is the same whether the testimony is compelled by the Federal Government and used by a State, or compelled by a State and used by the Federal Government.

2. The Waterfront Commission of New York Harbor is a bistate body established under an interstate compact approved by Congress. 67 Stat 541.

nity, they still refused to respond
*[378 US 54]
to the questions on the *ground that the answers might tend to incriminate them under *federal* law, to which the grant of immunity did not purport to extend. Petitioners were thereupon held in civil and criminal contempt of court. The New Jersey Supreme Court reversed the criminal contempt conviction on procedural grounds but, relying on this Court's decisions in Knapp v Schweitzer, 357 US 371, 2 L ed 2d 1393, 78 S Ct 1302; Feldman v United States, 322 US 487, 88 L ed 1408, 64 S Ct 1082, 154 ALR 982; and United States v Murdock, 284 US 141, 76 L ed 210, 52 S Ct 63, 82 ALR 1376, affirmed the civil contempt judgments on the merits. The court held that a State may constitutionally compel a witness to give testimony which might be used in a federal prosecution against him.[3] 39 NJ 436, 452–458, 189 A2d 36, 46–49.

Since a grant of immunity is valid only if it is coextensive with the scope of the privilege against self-incrimination, Counselman v Hitchcock, 142 US 547, 35 L ed 1110, 12 S Ct 195, we must now decide the fundamental constitutional question of whether, absent an immunity provision, one jurisdiction in our federal structure may compel a witness to give testimony which might incriminate him under the laws of another jurisdiction. The answer to this question must depend, of course, on whether such an application of the privilege promotes or defeats its policies and purposes.

Headnote 2

*[378 US 55]
*I. The Policies of the Privilege.

The privilege against self-incrimination "registers an important advance in the develop ent of our liberty—'one of the gr at landmarks in man's struggle to make himself civilized.'" Ullmann v United States, 350 US 422, 426, 100 L ed 511, 518, 76 S Ct 497, 53 ALR2d 1008.[4] It reflects many of our fundamental values and most noble aspirations: our unwillingness to subject those suspected of crime to the cruel trilemma of self-accusation, perjury or contempt; our preference for an accusatorial rather than an inquisitorial system of criminal justice; our fear that self-incriminating statements will be elicited by inhumane treatment and abuses; our sense of fair play which dictates "a fair state-individual balance by requiring the government to leave the individual alone until good cause is shown for disturbing him and by requiring the government in its contest with the individual to shoulder the entire load," 8 Wigmore, Evidence (McNaughton rev, 1961), 317; our respect for the inviolability of the human personality and of the right of each individual "to a private enclave where he may lead a private life," United States v Grunewald, 233 F2d 556, 581–582 (Frank, J.,

3. At a prior hearing, petitioners had refused to answer the questions, not on the ground of self-incrimination, but on the ground that the Commission had no statutory authority to investigate the work stoppage because it involved a labor dispute over which the National Labor Relations Board had exclusive jurisdiction. This claim was litigated through the state courts and rejected, 35 NJ 62, and this courts and rejected, 35 NJ 62, 171 A2d 295, and this Court denied review, 368 US 32, 7 L ed 2d 91, 82 S Ct 146. Petitioners thereupon purged themselves of contempt but again refused to answer the questions, this time on the ground of self-incrimination. In reviewing the contempt judgments which form the bases of this case, the New Jersey Supreme Court correctly held that petitioners did not, at the prior hearing, waive their privilege against self-incrimination. 39 NJ 436, 449, 189 A2d 36, 44.

Headnote 1

4. The quotation is from Griswold, The Fifth Amendment Today (1955), 7.

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*[378 US 54]
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Headnote 1

4. The quotation is Fifth Amendment Toda

dissenting), revd 353 US 391, 1 L ed 2d 931, 77 S Ct 963; our distrust of self-deprecatory statements; and our realization that the privilege, while sometimes "a shelter to the guilty," is often "a protection to the innocent." Quinn v United States, 349 US 155, 162, 99 L ed 964, 972, 75 S Ct 668, 51 ALR2d 1157.

Most, if not all, of these policies and purposes are defeated when a witness "can be whipsawed into incriminating himself under both state and federal law even though" the constitutional privilege against self-incrimination is applicable to each. Cf. Knapp v Schweitzer, 357 US 371, 385, 2 L ed 2d 1393, 1404, 78 S Ct 1302 (dissenting opinion of Mr. Justice Black). This has become espe-

*[378 US 56]

cially true in our age of *"cooperative federalism," where the Federal and State Governments are waging a united front against many types of criminal activity.[5]

*[378 US 57]

*Respondent contends, however, that we should adhere to the "established rule" that the constitutional privilege against self-incrimination does not protect a witness in one jurisdiction against being compelled to give testimony which could be used to convict him in another jurisdiction. This "rule" has three decisional facets: United States v Murdock, 284 US 141, 76 L ed 210, 52 S Ct 63, 82 ALR 1376, held that the Federal Government could compel a witness to give testimony which might incriminate him under state law; Knapp v Schweitzer, 357 US 371, 2 L ed 2d 1393, 78 S Ct 1302, held that a State could compel a witness to give testimony which might incriminate him under federal law; and Feldman v United States, 322 US

5. It has been argued that permitting a witness in one jurisdiction within our federal structure to invoke the privilege on the ground that he fears prosecution in another jurisdiction: "is rational only if the policy of the privilege is assumed to be to excuse the witness from the unpleasantness, the indignity, the 'unnatural' conduct of denouncing himself. [But] the policy of the privilege is not this. The policy of the privilege is to regulate a particular government-governed relation—first, to help prevent inhumane treatment of persons from whom information is desired and, second, to satisfy popular sentiment that, when powerful and impersonal government arrays its forces against solitary governed, it would be a violation of the individual's 'sovereignty' and less than fair for the government to be permitted to conscript the knowledge of the governed to its aid. Where the crime is a foreign crime, any motive to inflict brutality upon a person because of the incriminating nature of the disclosure—any 'conviction hunger' as such—is absent. And the sentiments relating to the rules of war between government and governed do not apply where the two are not at war. . . .

"Thus, reasoning from its rationales, the privilege should not apply no matter how incriminating is the disclosure under foreign law and no matter how probable is prosecution by the foreign sovereignty. This is so whether the relevant two sovereignties are different nations, different states, or different sovereignties (such as federal and state) with jurisdiction over the same geographical area." 8 Wigmore, Evidence (McNaughton rev, 1961), 345.

As noted in the text, however, the privilege against self-incrimination represents many fundamental values and aspirations. It is "an expression of the moral striving of the community. . . . a reflection of our common conscience . . . ." Malloy v Hogan, 378 US 9, n. 7, 12 L ed 2d 660, quoting Griswold, The Fifth Amendment Today (1955), 73. That is why it is regarded as so fundamental a part of our constitutional fabric, despite the fact that "the law and the lawyers . . . have never made up their minds just what it is supposed to do or just whom it is intended to protect." Kalven, Invoking the Fifth Amendment—Some Legal and Impractical Considerations, 9 Bull Atomic Sci 181, 182. It will not do, therefore, to assign one isolated policy to the privilege, and then to argue that since "the" policy may not be furthered measurably by applying the privilege across state-federal lines, it follows that the privilege should not be so applied.

487, 88 L ed 1408, 64 S Ct 1082, 154 ALR 982, held that testimony thus compelled by a State could be introduced into evidence in the federal courts.

Our decision today in Malloy v Hogan, supra, necessitates a reconsideration of this rule.[6] Our review of the pertinent cases in this Court and of their English antecedents reveals that Murdock did not adequately consider the relevant authorities and has been significantly weakened by subsequent decisions of this Court, and, further, that the legal premises underlying Feldman and Knapp have since been rejected.

*[378 US 58]

*II. The Early English and American Cases.

A. *The English Cases Before the Adoption of the Constitution.*

In 1749 the Court of Exchequer decided East India Co. v Campbell, 1 Ves sen 246, 27 Eng Rep 1010. The defendant in that case refused to "discover" certain information in a proceeding in an English court on the ground that it might subject him to punishment in the courts of India. The court unanimously held that the privilege against self-incrimination protected a witness in an English court from being compelled to give testimony which could be used to convict him in the courts of another jurisdiction. The court stated the rule to be: "that this court shall not oblige one to discover that, which, if he answers in the affirmative, will subject him to the punishment of a crime . . . and that he is punishable appears from the case of Omichund v Barker, [1 Atk 21.] as a jurisdiction is erected in Calcutta for criminal facts: where he may be sent to government and tried, though not punishable here; like the case of one who was concerned in a rape in Ireland, and sent over there by the government to be tried, although the court of B. R. here refused to do it . . . for the government may send persons to answer for a crime wherever committed, that he may not involve his country; and to prevent reprisals." 1 Ves sen, at 247, 27 Eng Rep, at 1011.

In the following year, this rule was applied in a case involving separate systems of courts and law located within the same geographic area. The defendant in Brownsword v Edwards, 2 Ves sen 243, 28 Eng Rep 157, refused to "discover, whether she was lawfully married" to a certain individual, on the ground that if she admitted to the marriage she would be confessing to an act which, although legal under the com-

*[378 US 59]

mon law, would render her *"liable to prosecution in ecclesiastical court." The Lord Chancellor said:

"This appears a very plain case, in which defendant may protect herself from making a discovery of her marriage; and I am afraid, if the court should over-rule such a plea, it would

6. The constitutional privilege against self-incrimination has two primary interrelated facets: The Government may not use compulsion to elicit self-incriminating statements, see, e. g., Counselman v Hitchcock, 142 US 547, 35 L ed 1110, 12 S Ct 195; and the Government may not permit the use in a criminal trial of self-incriminating statements elicited by compulsion. See, e. g., Haynes v Washington, 373 US 503, 10 L ed 2d 513, 83 S Ct 1336. In every "whipsaw" case, either the "compelling" government or the "using" government is a State, and, until today, the States were not deemed fully bound by the privilege against self-incrimination. Now that both governments are fully bound by the privilege, the conceptual difficulty of pinpointing the alleged violation of the privilege on "compulsion" or "use" need no longer concern us.

Headnote 3

be setting up the oath ex officio; which then the parliament in the time of Charles I. would in vain have taken away, if the party might come into this court for it. The general rule is, that no one is bound to answer so as to subject himself to punishment, whether that punishment arises by the ecclesiastical law of the land." 2 Ves sen, at 244–245, 28 Eng Rep, at 158.

B. *The Saline Bank Case.*

It was against this background of English case law that this Court in 1828 decided United States v Saline Bank of Virginia, 1 Pet 100, 7 L ed 69. The Government, seeking to recover certain bank deposits, brought suit in the District Court against the bank and a number of its stockholders. The defendants resisted discovery of "any matters, whereby they may impeach or accuse themselves of any offence or crime, or be liable by the laws of the commonwealth of Virginia, to penalties and grievous fines . . . ." Id., at 102, 7 L ed at 70. The unanimous opinion of the Court, delivered by Chief Justice Marshall, reads as follows:

"This is a bill in equity for a discovery and relief. The defendants set up a plea in bar, alleging that the discovery would subject them to penalties under the statute of Virginia.

"The Court below decided in favour of the validity of the plea, and dismissed the bill.

"It is apparent that in every step of the suit, the facts required to be discovered in support of this suit would expose the parties to danger.

*[378 US 60]

The rule *clearly is, that a party is not bound to make any discovery which would expose him to penalties, and this case falls within it.

"The decree of the Court below is therefore affirmed." Id., at 104, 7 L ed at 71.

This case squarely holds that the privilege against self-incrimination protects a witness in a federal court from being compelled to give testimony which could be used against him in a state court.

C. *Subsequent Development of the English Rule.*

In 1851, the English Court of Chancery decided King of the Two Sicilies v Willcox, 1 Sim (NS) 301, 61 Eng Rep 116, a case in which this Court in United States v Murdock, 284 US 141, 76 L ed 210, 52 S Ct 63, 82 ALR 1376, erroneously cited as representing the settled "English rule" that a witness is not protected "against disclosing offenses in violation of the laws of another country." Id., at 149, 76 L ed at 213. Defendants in that case resisted discovery of information, which, they asserted, might subject them to prosecution under the laws of Sicily. In denying their claim, the Vice Chancellor said:

"The rule relied on by the defendants, is one which exists merely by virtue of our own municipal law and must, I think, have reference, exclusively, to matters penal by that law: to matters as to which, if disclosed, the judge would be able to say, as matter of law, whether it could or could not entail penal consequences." 1 Sim (NS), at 329, 61 Eng Rep, at 128.

Two reasons were given in support of this statement: (1) "The impossibility of knowing, as matter of law, to what cases the objection, when resting on the danger of incurring penal consequences in a foreign country, may extend . . .," id., at 331, 61 Eng Rep, at 128; and (2) the

fact that "in such a case, in order to make the disclosure dangerous to
*[378 US 61]
the *party who objects, it is essential that he should first quit the protection of our laws, and wilfully go within the jurisdiction of the laws he has violated,"[7] ibid, 61 Eng Rep, at 128.

Within a few years, the pertinent part of King of the Two Sicilies was specifically overruled by the Court of Chancery Appeal in United States of America v McRae, LR, 3 Ch App 79 (1867), a case not mentioned by this Court in United States v Murdock, supra. In McRae, the United States sued in an English court for an accounting and payment of moneys allegedly received by the defendant as agent for the Confederate States during the Civil War. The defendant refused to answer questions on the ground that to do so would subject him to penalties under the laws of the United States. The United States argued that the "protection from answering applies only where a person might expose himself to the peril of a penal proceeding in this country [England], and not to the case where the liability to penalty or forfeiture is incurred by the breach of the laws of
*[378 US 62]
*a foreign country [the United States]." LR, 3 Ch App, at 83–84. The United States relied on King of the Two Sicilies v Willcox, supra. The Lord Chancellor sustained the claim of privilege and limited King of the Two Sicilies to its facts. He said:

"I quite agree in the general principles stated by Lord Cranworth, and in their application to the particular case before him. . . . [The defendants there] did not furnish the least information what the foreign law was upon the subject, though it was necessary for the Judge to know this with certainty before he could say whether the acts done by the persons who objected to answer had rendered them amenable to punishment by that law or not. . . . [Moreover,] it was doubtful whether the Defendants would ever be within the reach of a prosecution, and their being so depended on their voluntary return to [Sicily]." LR, 3 Ch App, at 84–87.

In refusing to follow King of the Two Sicilies beyond its particular facts, the court said:

"But in giving judgment Lord Cranworth went beyond the particular case, and expressed his opinion that the rule upon which the Defendants relied to protect them from answering was one which existed merely by virtue of our own municipal law, and which must have reference exclusively to matters penal by that law. It was unnecessary to lay down so broad a proposition to support the judgment which he pronounced . . . . What would have

7. In The Queen v Boyes, 1 B & S 311, decided by the Queen's Bench in 1861, a witness had declined to answer a question on the ground that it might tend to incriminate him, whereupon the "*Solicitor General* then produced a pardon of the witness." Id., at 313. The witness nevertheless refused to answer the question on the ground that he could still be impeached by the Parliament. The court held: "that the danger to be apprehended must be real and appreciable, with reference to the ordinary operation of law in the ordinary course of things—not a danger of an imaginary and unsubstantial character, having reference to some extraordinary and barely possible contingency, so improbable that no reasonable man would suffer it to influence his conduct. . . .

Now, in the present case, no one seriously supposes that the witness runs the slightest risk of an impeachment . . . . No instance of such a proceeding in the unhappily too numerous cases of bribery which have engaged the attention of the House of Commons has ever occurred, or, so far as we are aware, has ever been thought of." Id., at 330–331.

been Lord Cranworth's opinion upon [the present] state of circumstances it is impossible for me to conjecture; but it is very different from that which was before his mind in that case, and I cannot feel that there is any judgment of his which ought to influence my decision upon the present occasion." Id., at 85.

*[378 US 63]

*The court then concluded that under the circumstances it could not "distinguish the case in principle from one where a witness is protected from answering any question which has a tendency to expose him to forfeiture for a breach of our own municipal law." Id., at 87. This decision, not King of the Two Sicilies, represents the settled "English rule" regarding self-incrimination under foreign law. See Heriz v Riera, 11 Sim 318, 59 Eng Rep 896.

III. The Recent Supreme Court Cases.

In 1896, in Brown v Walker, 161 US 591, 40 L ed 819, 16 S Ct 644, this Court, for the first time, sustained the constitutionality of a federal immunity statute. Appellant in that case argued, inter alia, that: "while the witness is granted immunity from prosecution by the Federal government, he does not obtain such immunity against prosecution in the state courts." Id., at 606, 40 L ed at 824.

The Court construed the applicable statute, however, to prevent prosecutions either in state or federal courts.[8]

8. The Court in Brown v Walker, 161 US 591, 40 L ed 819, 16 S Ct 644, signified approval of the English rule announced in The Queen v Boyes, supra, as follows:

"But even granting that there were still a bare possibility that by his disclosure he might be subjected to the criminal laws of some other sovereignty, that, as Chief Justice Cockburn said in The Queen v Boyes, 1 B & S 311, in reply to the argument that the witness was not protected by his pardon against an impeachment by the House of Commons, is not a real and probable danger, with reference to the ordinary operations of the law in the ordinary courts, but 'a danger of an imaginary and unsubstantial character, having reference to some extraordinary and barely possible contingency, so improbable that no reasonable man would suffer it to influence his conduct.' Such dangers it was never the object of the provision to obviate." 161 US, at 608, 40 L ed at 825. See note 7, supra.

The lower federal courts were also following the English rule that a refusal to answer questions could legitimately be based on the danger of incrimination in another jurisdiction. In the case of In re Graham, 10 Fed Cas 913 (No. 5,659), for example, the witness refused to answer questions asked by a federal official on the ground that answers to such questions might expose "him to a criminal prosecution under the laws of the state of New York." Id., at 914. Judge Blatchford held that the witness was "privileged from answering the questions." Ibid. In the case of In re Hess, 134 F 109, decided in 1905, where a bankrupt refused to answer certain questions on the ground that they might tend to incriminate him under state law, the court said:

"Section 860 of the Revised Statutes only prohibits the use of evidence that may be obtained from the bankrupt's books in prosecutions in the federal courts. There is nothing in this section which extends that immunity to the use of such evidence in the state courts, and there is nothing to prevent the trustee from making use of the bankrupt's books in a criminal prosecution against him instituted in the state courts. Obviously, therefore, if section 7, cl 9, of the bankrupt act, does not protect him agninst the use of the evidence which he alleges is contained in his books, of an incriminating nature, in either the state or federal courts, and section 860 of the Revised Statutes extends the immunity only to federal courts, and not to state courts, it is plain that whatever incriminating evidence the books may contain could be used without restriction in the state courts for the purpose of convicting him of any crime for which he might be indicted there, and, in consequence of this danger to him, the plea of

*[378 US 64]

*Shortly thereafter, the Court decided Jack v Kansas, 199 US 372, 50 L ed 234, 26 S Ct 73, in which the state court had held plaintiff in error in contempt for his refusal to answer certain questions on the ground that they would subject him to possible incrimination under federal law. In rejecting plaintiff's claim, this Court said that the Fifth Amendment "has no application in a proceeding like this," and hence "the sole question in the case" is whether "the denial of his claim of right to refuse to answer the questions was in violation of the Fourteenth

*[378 US 65]

*Amendment to the Constitution. . . ." Id., at 380, 50 L ed at 236. The Court stated that it did "not believe that in such case there is any real danger of a Federal prosecution, or that such evidence would be availed of by the Government for such purpose." Id., at 382, 50 L ed at 237. Then, without citing any authority, the Court added the following cryptic dictum: "We think the legal immunity is in regard to a prosecution in the same jurisdiction, and when that is fully given it is enough." Ibid.

That this dictum related solely to the "legal immunity" under the Due Process Clause of the Fourteenth Amendment is apparent from the fact that it was regarded, five weeks later in Ballmann v Fagin, 200 US 186, 50 L ed 433, 26 S Ct 212, as wholly inapplicable to cases decided under the Self-Incrimination Clause of the Fifth Amendment.[9] Ballmann had been held in contempt of a federal court for refusing to answer certain questions before a federal grand jury. He claimed that his answers might expose him "to the criminal law of the State in which the grand jury was sitting." Id., at 195, 50 L ed at 437. Justice Holmes, writing for a Court which included the author of Jack v Kansas, supra, squarely held that "[a]ccording to United States v Saline Bank, 1 Pet 100 [7 L ed 69], he was exonerated from disclosures which would have exposed him to the penalties of the state law. See Jack v Kansas, 199 US 372 [50 L ed 234, 26 S Ct 73], decided this term." 200 US, at 195, 50 L ed at 437.

A few months after Ballmann, the Court decided Hale v Henkel, 201 US 43, 50 L ed 652, 26 S Ct 370. Appellant had been held in contempt of a federal court for refusing to answer certain questions and produce certain documents. His refusal was based in part on the argument that the federal immunity statute did not protect him from state prosecution. The Government argued, on the authority of Brown v Walker, supra, that the statute did protect

*[378 US 66]

him *from state prosecution. The Government assumed that it was settled that a valid federal immunity statute would have to protect against state prosecution. It never suggested, therefore, that immunity from federal prosecution was all that was required. Appellant similarly assumed, without argument, that the Constitution required immunity from state conviction as a condition of requiring incriminating testimony in a federal court. Thus the critical constitutional issue—whether the Fifth Amendment protects a federal witness from incrim-

his constitutional privilege must prevail." Id., at 112.

Also see, e. g., In re Koch, 14 Fed Cas 832 (No. 7,916); In re Feldstein, 103 F 269; Re Henschel, 7 Am Bankr R 207; In re Kanter, 117 F 356; In re Hooks Smelting Co. 158 F 954, 146 F 336.

9. At this time, the privilege against self-incrimination had not yet been held applicable to the States through the Fourteenth Amendment.

inating himself under state law—was not briefed or argued in Hale v Henkel. Nor was its resolution necessary to the decision of the case, for the Court could have decided the relevant point on the authority of Brown v Walker, supra, which had held that a similar federal immunity statute protected against state prosecution. Nevertheless, the Court went on to say:

"The question has been fully considered in England, and the conclusion reached by the courts of that country that the only danger to be considered is one arising within the same jurisdiction and under the same sovereignty. Queen v Boyes, 1 B & S 311; King of the Two Sicilies v Willcox, 7 State Trials (NS), 1049, 1068; State v March, 1 Jones (N Car), 526; State v Thomas, 98 N Car 599.

"The case of United States v Saline Bank, 1 Pet 100 [7 L ed 69], is not in conflict with this. That was a bill for discovery, filed by the United States against the cashier of the Saline Bank, in the District Court of the Virginia District, who pleaded that the emission of certain unlawful bills took place, within the State of Virginia, by the law whereof penalties were inflicted for such emissions. It was held that defendants were not bound to answer and subject themselves to those penalties. It is sufficient to say that the prosecution was under a state law

*[378 US 67]

which imposed *the penalty, and that the Federal court was simply administering the state law, and no question arose as to a prosecution under another jurisdiction." 201 US, at 69, 50 L ed at 663.

This dictum, subsequently relied on in United States v Murdock, supra, was not well founded.

The settled English rule was exactly the opposite of that stated by the Court. The most recent authoritative announcement of the English rule had been that made in 1867 in United States of America v McRae, supra, where the Court of Chancery Appeals held that where there is a real danger of prosecution in a foreign country, the case could not be distinguished "in principle from one where a witness is protected from answering any question which has a tendency to expose him to forfeiture for a breach of our own municipal law." Supra, at 686. The dictum from King of the Two Sicilies cited by the Court in Hale v Henkel had been rejected in McRae. Moreover, the two factors relied on by the English court in King of the Two Sicilies were wholly inapplicable to federal-state problems in this country. The first—"The impossibility of knowing, as matter of law, to what cases the [danger of incrimination] may extend . . . ," supra, at 684—has no force in our country where the federal and state courts take judicial notice of each other's law. The second—that "in order to make the disclosure dangerous to the party who objects, it is essential that he should first quit the protection of our laws, and wilfully go within the jurisdiction of the laws he has violated," supra, at 684, 685—is equally inapplicable in our country where the witness is generally within "the jurisdiction" of the State under whose law he claims danger of incrimination, and where, if he is not, the State may demand his extradition. The second case relied on in Hale v Henkel, supra—The Queen v Boyes, supra—was irrelevant to the issue there presented. The Queen v

*[378 US 68]

Boyes did not involve *different jurisdictions or systems of law. It merely held that the danger of prosecution "must be real and appreciable . . . not a danger of an imaginary and unsubstantial character

. . . ." It in no way suggested that the danger of prosecution under foreign law could be ignored if it was "real and appreciable."[10]

Thus, the authorities relied on by the Court in Hale v Henkel provided no support for the conclusion that under the Fifth Amendment "the only danger to be considered is one arising within the same jurisdiction and under the same sovereignty." Nor was its attempt to distinguish Chief Justice Marshall's opinion in United States v Saline Bank of Virginia, supra, more successful. The Court's reading of Saline Bank suggests that the state, rather than the federal, privilege against self-incrimination applies to federal courts when they are administering state substantive law. The most

*[378 US 69]

reasonable *reading of that case, however, and the one which was plainly accepted by Justice Holmes in Ballmann v Fagin, supra, is that the privilege against self-incrimination precludes a federal court from requiring an answer to a question which might incriminate the witness under state law.[11] This reading is especially compelling in light of the English antecedents of the Saline Bank case. See East India Co. v Campbell, discussed, supra, at 683; and Brownsword v Edwards, discussed supra, at 683, 684.

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10. See note 7, supra. Nor were the North Carolina cases relied on in Hale v Henkel settled authority in favor of the proposition that the Fifth Amendment did not protect a federal witness from incriminating himself under state law. In State v March, 1 Jones (NC) 526, the North Carolina Supreme Court in 1853 did say that the North Carolina "[c]ourts, in administering justice among their suitors, will not notice the criminal laws of another State or country, so far as to protect a witness from being asked whether he had not violated them." That court, of course, was not applying either the Fifth Amendment or the Fourteenth Amendment (which was not yet enacted), and the North Carolina rule against self-incrimination apparently was narrower in scope than the federal rule. See State v Thomas, 98 NC 599, 603, 4 SE 518, 520 (citing cases). In any event, the authority of the March case had been significantly diminished, if not discredited, by the second of the North Carolina cases relied upon in Hale v Henkel. In State v Thomas, supra, the North Carolina Supreme Court conceded that the March "case is not distinguishable in principle from that before us." It continued: "We prefer, however, to put our decision upon other ground—*more satisfactory to our own minds* and well sustained by adjudications in other Courts." 98 NC, at 604, 4 SE, at 520-521. (Emphasis added.) The court then held that the witness had waived his privilege against self-incrimination.

11. It has been argued that "[i]t is abundantly clear . . . that Saline Bank stands for no constitutional principle whatever. It was merely a reassertion of the ancient *equity rule* that a court of equity will not order discovery that may subject a party to criminal prosecution. In fact, the decision was cited in support of that proposition by an esteemed member of the very Court that decided the case. 2 Story, Commentaries on Equity, § 1494, n. 1 (1836)." Hutcheson v United States, 369 US 599, 608, note 13, 8 L ed 2d 137, 147, 82 S Ct 1005 (opinion of Mr. Justice Harlan).

The cited authority does not, however, support the argument "that Saline Bank stands for no constitutional principle whatever." That case was cited by Story, intermingled with more than a dozen other cases, in a footnote to the following statement: "Courts of Equity . . . will not compel a discovery in aid of a criminal prosecution . . . for *it is against the genius of the Common Law to compel a party to accuse himself; and* it is against the general principles of Equity to aid in the enforcement of penalties or forfeitures." (Emphasis added.) This statement suggests that the common-law privilege and the equitable rule are so intermeshed that it serves no useful purpose to attempt to ascertain whether a given application by a Court of Equity rested on the former or the latter.

The weakness of the Hale v Henkel dictum was immediately recognized both by lower federal courts[12] and by this Court itself. In Vajtauer v Commissioner of Immigration, 273 US 103, 71 L ed 560, 47 S Ct 302, decided in 1927 by a unanimous

*[378 US 70]

*Court, appellant refused to answer certain questions put to him in a deportation proceeding on the ground that they "might have tended to incriminate him under the Illinois Syndicalism Law . . . ." Id., at 112, 71 L ed at 565. Instead of deciding the issue on the authority of the Hale v Henkel dictum, the Court held that the privilege had been waived. The Court then said:

"This conclusion makes it unnecessary for us to consider the extent to which the Fifth Amendment guarantees immunity from self-incrimination under state statutes or whether this case is to be controlled by Hale v. Henkel, 201 US 43 [50 L ed 652, 26 S Ct 370]; Brown v. Walker, 161 US 591, 608 [40 L ed 819, 825, 16 S Ct 644]; compare United States v. Saline Bank, 1 Pet 100 [7 L ed 69]; Ballmann v. Fagin, 200 US 186, 195 [50 L ed 433, 437, 26 S Ct 212]." 273 US, at 113, 71 L ed at 566.

In a subsequent case, decided in 1933, this Court said that the question—whether "one under examination in a federal tribunal could not refuse to answer on account of probable incrimination under state law"—was "specifically reserved in Vajtauer v Comm'r of Immigration," and was not "definitely settled" until 1931. United States v Murdock, 290 US 389, 396, 73 L ed 381, 386, 54 S Ct 223.

In 1931, the Court decided United States v Murdock, 284 US 141, 76 L ed 210, 52 S Ct 63, 82 ALR 1376, the case principally relied on by respondent here. Appellee had been indicted for failing to supply certain information to federal revenue agents. He claimed that his refusal had been justified because it rested on the fear of federal and state incrimination. The Government argued that the record supported only a claim of state, not federal, incrimination, and that the Fifth Amendment does not protect against a claim of state incrimination. Appellee did not respond to the latter argument, but instead rested his entire case on the claim that his refusals had in each instance been based on federal as well as state in-

*[378 US 71]

crimination. In support of *its constitutional argument, the Government cited the same two English cases erroneously relied on in the Hale v Henkel dictum—King of the Two Sicilies v Willcox, supra, which had been overruled, and The Queen v Boyes, supra, which was wholly inapposite. An examination of the briefs and summary of argument indicates that neither the Government nor the appellee informed the Court that King of the Two Sicilies had been overruled by United States of America v McRae, supra.[13]

This Court decided that appellee's refusal to answer rested solely on a fear of state prosecution, and then concluded, in one brief paragraph,

12. See, e. g., United States v Lombardo, 228 F 980, aff'd on other grounds, 241 US 73, 60 L ed 897, 36 S Ct 503, where the court accepted defendant's contention that if she answered certain questions, she might "incriminate herself under the criminal laws of Washington." See also, e. g., Buckeye Powder Co. v Hazard Powder Co. 205 F 827; In re Doyle, 42 F2d 686, revd without opinion, 47 F2d 1086.

13. The Government also relied on the North Carolina case of State v March, supra, which, as previously noted, see note 10, supra, had been discredited by the subsequent case of State v Thomas, supra.

that such a fear did not justify a refusal to answer questions put by federal officers.

The Court gave three reasons for this conclusion. The first was that:

"Investigations for federal purposes may not be prevented by matters depending upon state law. Constitution, Art. VI, § 2." 284 US, at 149, 76 L ed at 213.

This argument, however, begs the critical question. No one would suggest that state law could prevent a proper federal investigation; the Court had already held that the Federal Government could, under the Supremacy Clause, grant immunity from state prosecution, and that, accordingly, state law could not prevent a proper federal investigation. The critical issue was whether the Federal Government, *without granting immunity from state prosecution*, could compel testimony which would incriminate under state law. The Court's first "reason" was not responsive to this issue.

The second reason given by the Court was that:

"The English rule of evidence against compulsory self-incrimination, on which historically that con-

*[378 US 72]

tained* in the Fifth Amendment rests, does not protect witnesses against disclosing offenses in violation of the laws of another country. King of the Two Sicilies v Willcox, 7 State Trials (N.S.) 1050, 1068. Queen v Boyes, 1 B. & S. 311, 330." 284 US, at 149, 76 L ed at 213.

As has been demonstrated, the cases cited were in one instance overruled and in the other inapposite, and the English rule was the opposite from that stated in this Court's opinion: The rule did "protect witnesses against disclosing offenses in violation of the laws of another country." United States of America v McRae, supra.

The third reason given by the Court in Murdock was that:

"This court has held that immunity against state prosecution is not essential to the validity of federal statutes declaring that a witness shall not be excused from giving evidence on the ground that it will incriminate him, and also that the lack of state power to give witnesses protection against federal prosecution does not defeat a state immunity statute. The principle established is that full and complete immunity against prosecution by the government compelling the witness to answer is equivalent to the protection furnished by the rule against compulsory self-incrimination. Counselman v. Hitchcock, 142 U.S. 547 [35 L ed 1110, 12 S Ct 195]. Brown v. Walker, 161 U.S. 591, 606 [40 L ed 819, 824, 16 S Ct 644]. Jack v. Kansas, 199 U.S. 372, 381 [50 L ed 234, 236, 26 S Ct 73]. Hale v. Henkel, 201 U.S. 43, 68 [50 L ed 652, 663, 26 S Ct 370]." 284 US, at 149, 76 L ed at 213.

This argument—that the rule in question had already been "established" by the past decisions of the Court—is not accurate. The first case cited by the Court—Counselman v Hitchcock—said nothing about the problem of incrimination under the law of another sovereign. The second case—Brown v Walker—merely

*[378 US 73]

held that the *federal immunity statute there involved did protect against state prosecution. The third case—Jack v Kansas—held that the Due Process Clause of the Fourteenth Amendment did not prevent a State from compelling an answer to a question which presented no "real danger of a Federal prosecution." 199 US, at 382, 50 L ed at 237. The

final case—Hale v Henkel—contained dictum in support of the rule announced which was without real authority and which had been questioned by a unanimous Court in Vajtauer v Commissioner of Immigration, supra. Moreover, the Court subsequently said, in no uncertain terms, that the rule announced in Murdock had not been previously "established" by the decisions of the Court. When Murdock appealed his subsequent conviction on the ground, inter alia, that an instruction on willfulness should have been given, the Court affirmed the Court of Appeals' reversal of his conviction and said that:

"Not until this court pronounced judgment in United States v. Murdock, 284 U.S. 141 [76 L ed 210, 52 S Ct 63, 82 ALR 1376], had it been definitely settled that one under examination in a federal tribunal could not refuse to answer on account of probable incrimination under state law. The question was involved, but not decided, in Ballmann v. Fagin, 200 U. S. 186, 195 [50 L ed 433, 437, 26 S Ct 212], and specifically reserved in Vajtauer v. Comm'r of Immigration, 273 U.S. 103, 113 [71 L ed 560, 566, 47 S Ct 302]." United States v Murdock, 290 US 389, 396, 78 L ed 381, 386, 54 S Ct 223.

Thus, neither the reasoning nor the authority relied on by the Court in United States v Murdock, 284 US 141, 76 L ed 210, 52 S Ct 63, 82 ALR 1376, supports its conclusion that the Fifth Amendment permits the Federal Government to compel answers to questions which might incriminate under state law.

In 1944 the Court, in Feldman v United States, 322 US 487, 88 L ed 1408, 64 S Ct 1082, 154 ALR 982, was confronted with the situation where evidence compelled by a State under a grant of state immunity was "availed of by the [Federal] Govern-
*[378 US 74]
ment" and *introduced in a federal prosecution. Jack v Kansas, 199 US, at 382, 50 L ed at 237. This was the situation which the Court had earlier said it did "not believe" would occur. Ibid. Nevertheless, the Court, in a 4-to-3 decision, upheld this practice, but did so on the authority of a principle which is no longer accepted by this Court. The Feldman reasoning was essentially as follows:

"[T]he Fourth and Fifth Amendments, intertwined as they are, [express] supplementing phases of the same constitutional purpose . . . ." 322 US 489–490, 88 L ed 1412.

"[O]ne of the settled principles of our Constitution has been that these Amendments protect only against invasion of civil liberties by the [Federal] Government whose conduct they alone limit." Id., at 490, 88 L ed 1413.

"And so, while evidence secured through unreasonable search and seizure by federal officials is inadmissible in a federal prosecution, Weeks v United States, supra; . . . incriminating documents so secured by state officials without participation by federal officials but turned over for their use are admissible in a federal prosecution. Burdeau v. McDowell, 256 U.S. 465 [65 L ed 1048, 41 S Ct 574, 13 ALR 1159]." 322 US, at 492, 88 L ed at 1414.

The Court concluded, therefore, by analogy to the then extant search and seizure rule, that evidence compelled by a state grant of immunity could be used by the Federal Government. But the legal foundation upon which that 4-to-3 decision rested no longer stands. Evidence illegally seized by state officials may not now be received in federal courts.

In Elkins v United States, 364 US 206, 4 L ed 2d 1669, 80 S Ct 1437, the Court held, over the dissent of the writer of the Feldman decision, that "evidence obtained by state officers during a search which, if conducted by federal officers, would have violated the defendant's immunity from unreasonable searches and seizures under the Fourth Amendment is inadmissible over the defendant's

*[378 US 75]

*timely objection in a federal criminal trial." 364 US, at 223, 4 L ed 2d at 1681. Thus, since the fundamental assumption underlying Feldman is no longer valid, the constitutional question there decided must now be regarded as an open one.

The relevant cases decided by this Court since Feldman fall into two categories. Those involving a federal immunity statute—exemplified by Adams v Maryland, 347 US 179, 98 L ed 608, 74 S Ct 442—in which the Court suggested that the Fifth Amendment bars use by the States of evidence obtained by the Federal Government under the threat of contempt. And those involving a state immunity statute—exemplified by Knapp v Schweitzer, 357 US 371, 2 L ed 2d 1393, 78 S Ct 1302—where the Court, applying a rule today rejected, held the Fifth Amendment inapplicable to the States.[14]

In Adams v Maryland, supra, petitioner had testified before a United States Senate Committee investigating crime, and his testimony had later been used to convict him of a state crime. A federal statute at that time provided that no testimony given by a witness in congressional inquiries "shall be used as evidence in any criminal proceeding against him in any court . . . ." 62 Stat 833. The State questioned the application of the statute to petitioner's testimony and the constitutionality of the statute if construed to apply to state courts. The Court, in an opinion joined by seven members, made the following significant statement: "a witness does not need any statute to protect him from the use of self-incriminating testimony he is compelled to give over his objection. The Fifth Amendment takes care of that without a statute." 347 US, at 181, 98 L ed at 612.[15] This state-

*[378 US 76]

ment suggests *that any testimony elicited under threat of contempt by a government to whom the constitutional privilege against self-incrimination is applicable (at the time of that decision it was deemed applicable only to the Federal Government) may not constitutionally be admitted into evidence against him in any criminal trial conducted by a government to whom the privilege is also applicable. This statement, read in light of today's decision in Malloy v Hogan, 378 US at 1, 12 L ed 2d at 663, 84 S Ct 1489, draws into question the continuing authority of the statements to the contrary in United States v Murdock, 284 US 141, 76 L ed 210, 52 S Ct 63,

14. In Mills v Louisiana, 360 US 230, 3 L ed 2d 1193, 79 S Ct 980, the Court, without opinion, simply applied the rule announced in Knapp v Schweitzer, 357 US 371, 2 L ed 2d 1393, 78 S Ct 1302. In Hutcheson v United States, 369 US 599, 8 L ed 2d 137, 82 S Ct 1005, there was no opinion of the Court.

15. The Court in Adams v Maryland, 347 US 179, 98 L ed 608, 74 S Ct 442, went on to construe the statute as affording more protection than would be provided by the Fifth Amendment alone. It held that the statute applied even where, as there, the witness had not claimed his privilege against self-incrimination before being required to testify. It held, as well, that the statute did, and constitutionally could, prevent use of the testimony in state as well as federal courts.

82 ALR 1376, and Feldman v United States, supra.[16]

Knapp v Schweitzer, 357 US 371, 2 L ed 2d 1393, 78 S Ct 1302, involved a state contempt conviction for a witness' refusal to answer questions, under a grant of state immunity, on the ground that his answers might subject him to prosecution under federal law. Petitioner claimed that "the Fifth Amendment gives him the privilege, which he can assert against either a State or the National Government, against giving testimony that might tend to implicate him in a violation" of federal law. Id., at 374, 2 L ed 2d at

*[378 US 77]

1397. The Court, applying *the rule then in existence, denied petitioner's claim and declared that:

"It is plain that the [Fifth Amendment] can no more be thought of as restricting action by the States than as restricting the conduct of private citizens. The sole—although deeply valuable—purpose of the Fifth Amendment privilege against self-incrimination is the security of the individual against the exertion of the power of the Federal Government to compel incriminating testimony with a view to enabling that same Government to convict a man out of his own mouth." Id., at 380, 2 L ed 2d at 1401.

The Court has today rejected that rule, and with it, all the earlier cases resting on that rule.

The foregoing makes it clear that there is no continuing legal vitality to, or historical justification for, the rule that one jurisdiction within our federal structure may compel a witness to give testimony which could be used to convict him of a crime in another jurisdiction.

IV. Conclusions.

In light of the history, policies and purposes of the privilege against self-incrimination, we now accept as correct the construction given the privilege by the English courts[17] and by Chief Justice Marshall and Justice Holmes. See United States v Saline Bank of Virginia, supra; Ballmann v Fagin, supra. We reject—as unsupported by history or policy—the deviation from that construction only recently adopted by this Court in United States v Murdock, supra, and Feldman v United States, supra. We hold that the constitutional privilege

*[378 US 78]

Headnote 4 *against self-incrimination protects a state witness against incrimination under federal as well as state law and a federal witness against incrimination under state as well as federal law.

We must now decide what effect this holding has on existing state immunity legislation. In Counselman v Hitchcock, 142 US 547, 35 L ed 1110, 12 S Ct 195, this Court considered a federal statute which provided that no "evidence obtained from a party or witness by means

16. In Ullmann v United States, 350 US 422, 100 L ed 511, 76 S Ct 497, 53 ALR2d 1008, decided two years after Adams, the Court did not reach the constitutional question of whether a State could prosecute a person on the basis of evidence obtained by the Federal Government under a federal immunity statute. The Court again construed the applicable statute, which related to testimony involving national security, to apply to the States and held that the paramount federal "authority in safeguarding national security" justifies "the restriction it has placed on the exercise of state power . . . ." Id., at 436, 100 L ed at 523.

17. The English rule apparently prevails also in Canada, Australia and India. See Grant, Federalism and Self-Incrimination: Common Law and British Empire Comparisons, 5 UCLA L Rev 1 (1958).

of a judicial proceeding . . . shall be given in evidence, or in any manner used against him . . . in any court of the United States . . . ." Id., at 560, 35 L ed at 1113. Notwithstanding this statute, appellant, claiming his privilege against self-incrimination, refused to answer certain questions before a federal grand jury. The Court said "that legislation cannot abridge a constitutional privilege, and that it cannot replace or supply one, at least unless it is so broad as to have the same extent in scope and effect." Id., at 585, 35 L ed at 1122. Applying this principle to the facts of that case, the Court upheld appellant's refusal to answer on the ground that the statute: "could not, and would not, prevent the use of his testimony to search out other testimony to be used in evidence against him or his property, in a criminal proceeding in such court . . . ," id., at 564, 35 L ed at 1114, that it: "could not prevent the obtaining and the use of witnesses and evidence which should be attributable directly to the testimony he might give under compulsion, and on which he might be convicted, when otherwise, and if he had refused to answer, he could not possibly have been convicted . . . ," ibid., and that: "affords no protection against that use of compelled testimony which consists in gaining

*[378 US 79]

therefrom a *knowledge of the details of a crime, and of sources of information which may supply other means of convicting the witness or party." Id., at 586, 35 L ed at 1122.

Applying the holding of that case to our holdings today that the privilege against self-incrimination protects a state witness against federal prosecution, supra, at 694, and that "the same standards must determine whether [a witness'] silence in either a federal or state proceeding is justified," Malloy v Hogan, 378 US at 11, 12 L ed 2d at 661, we hold the constitutional rule to be that a state witness may not be compelled to give testimony which may be incriminating under federal law unless the compelled testimony and its fruits cannot be used in any manner by federal officials in connection with a criminal prosecution against him. We conclude, moreover, that in order to implement this constitutional rule and accommodate the interests of the State and Federal Governments in investigating and prosecuting crime, the Federal Government must be prohibited from making any such use of compelled testimony and its fruits.[18] This exclusionary rule, while permitting the States to secure information necessary for effective law enforcement, leaves the witness and the Federal Government in substantially the same position as if the witness had claimed his privilege in the absence of a state grant of immunity.

Headnote 5
Headnote 6
Headnote 7

It follows that petitioners here may now be compelled to answer the questions propounded to them. At the time they refused to answer, however, petitioners had a reasonable fear, based on this Court's decision in Feldman v United States, supra, that the federal authorities might use the answers against them in connection

Headnote 9
Headnote 10

*[378 US 80]

with a federal *prosecution. We

18. Once a defendant demonstrates that he has testified, under a state grant of immunity, to matters related to the federal prosecution, the federal authorities have the burden of showing that their evidence is not tainted by establishing that they had an independent, legitimate source for the disputed evidence.

Headnote 8

have now overruled Feldman and held that the Federal Government may make no such use of the answers. Fairness dictates that petitioners should now be afforded an opportunity, in light of this development, to answer the questions. Cf. Raley v Ohio, 360 US 423, 3 L ed 2d 1344, 79 S Ct 1257. Accordingly, the judgment of the New Jersey courts ordering petitioners to answer the questions may remain undisturbed. But the judgment of contempt is vacated and the cause remanded to the New Jersey Supreme Court for proceedings not inconsistent with this opinion.

It is so ordered.

Mr. Justice Black concurs in the judgment and opinion of the Court for the reasons stated in that opinion and for the reasons stated in Feldman v United States, 322 US 487, 494, 88 L ed 1408, 1415, 64 S Ct 1082, 154 ALR 982 (dissenting opinion), as well as Adamson v California, 332 US 46, 68, 91 L ed 1903, 1917, 67 S Ct 1672, 171 ALR 1223 (dissenting opinion); Speiser v Randall, 357 US 513, 529, 2 L ed 2d 1460, 1475, 78 S Ct 1332 (concurring opinion); Bartkus v Illinois, 359 US 121, 150, 3 L ed 2d 684, 705, 79 S Ct 676 (dissenting opinion); and Abbate v United States, 359 US 187, 201, 3 L ed 2d 729, 738, 79 S Ct 666 (dissenting opinion).

SEPARATE OPINIONS

Mr. Justice Harlan, whom Mr. Justice Clark joins, concurring in the judgment.

Unless I wholly misapprehend the Court's opinion, its holding that testimony compelled in a state proceeding over a witness' claim that such testimony will incriminate him may not be used against the witness in a federal criminal prosecution rests on *constitutional* grounds. On that basis, the contrary conclusion of Feldman v United States, 322 US 487, 88 L ed 1408, 64 S Ct 1082, 154 ALR 982, is overruled.

I believe that the constitutional holding of Feldman was correct, and would not overrule it. To the extent, however, that the decision in that

*[378 US 81]

case may have rested *also on a refusal to exercise this Court's "supervisory power" over the administration of justice in federal courts, I think that it can no longer be considered good law, in light of this Court's subsequent decision in Elkins v United States, 364 US 206, 4 L ed 2d 1669, 80 S Ct 1437. In Elkins, this Court, exercising its supervisory power, did away with the "silver platter" doctrine and prohibited the use of evidence unconstitutionally seized by state authorities in a federal criminal trial involving the person suffering such a seizure. I believe that a similar supervisory rule of exclusion should follow in a case of the kind now before us, and solely on that basis concur in this judgment.

I

The Court's constitutional conclusions are thought by it to follow from what it terms the "policies" of the privilege against self-incrimination and a re-examination of various cases in this Court, particularly in the context of early English law. Almost entirely absent from the statement of "policies" is any reference to the particular problem of this case; at best, the statement suggests the set of values which are on one side of the issue. The discussion of precedent is scarcely more helpful. It intertwines decisions of this Court with decisions in English courts, which *perhaps* follow a dif-

*[378 US 82]

ferent rule,[1] and casts *doubt for one reason or another on every American case which does not accord with the result now reached. When the skein is untangled, however, and the line of cases is spread out, two facts clearly emerge:

(1) With two early and somewhat doubtful exceptions, this Court has consistently rejected the propo-

*[378 US 83]

sition that *the danger of incrimination in the court of another jurisdiction is a sufficient basis for invoking a privilege against self-incrimination;

(2) Without any exception, in every case involving an immunity statute in which the Court has treated the question now before us, it has rejected the present majority's views.

The first of the two exceptional cases is United States v Saline Bank of Virginia, 1 Pet 100, 7 L ed 69, decided in 1828; the entire opinion in that case is quoted in the majority opinion, ante, p. 684. It is not clear whether that case has any bearing on the privilege against self-incrimination at all.[2] The second case is

1. The English rule is not clear. In United States of America v McRae, LR 3 Ch App 79 (1867), the case on which the majority primarily relies, the United States came into court as a party and sought to elicit from the defendant answers which would have subjected him to a forfeiture of property under the laws of the United States. Upholding the defendant's refusal to answer, the Lord Chancellor pointed out that the ". . . Plaintiffs calling for an answer are the sovereign power by whose authority and in whose name the proceedings for the forfeiture are instituted, and who have the property to be forfeited within their reach." Id., at 85. That case, in which one sovereign, as a party in a civil proceeding, attempted to use the judicial process of another sovereign to obtain answers which would subject the witness to a forfeiture under the laws of the former is clearly distinguishable from the present case.

In King of the Two Sicilies v Willcox, 1 Sim (NS) 301, 61 Eng Rep 116 (1851), the Vice-Chancellor had said that "the rule of protection [against self-incrimination] is confined to what may tend to subject a party to penalties *by our own laws* . . . ." 1 Sim (NS), at 331, 61 Eng Rep, at 128 (emphasis added). The Lord Chancellor said in McRae, supra, that King of the Two Sicilies had been "most correctly decided," LR, 3 Ch App, at 85, but that the general rule there laid down was unnecessarily broad. He declined to apply the rule in McRae on the ground that "the presumed ignorance of the Judge as to foreign law . . . [had been] completely removed by the admitted statements upon the pleadings, in which the exact nature of the penalty or forfeiture incurred by the party objecting to answer is precisely stated . . . ," LR, 3 Ch App, at 85, and the further ground, noted above, that the property subject to a forfeiture was "within the power of the United States," id., at 87.

The other two English cases which the majority cities in this connection were decided more than 100 years earlier than King of the Two Sicilies. Moreover, both cases involved disclosures which would have been incriminating under a separate system of laws operating within the same legislative sovereignty. East India Co. v Campbell, 1 Ves sen 246, 27 Eng Rep 1010 (Ex 1749); Brownsword v Edwards, 2 Ves sen 243, 28 Eng Rep 157 (Ch 1750). In King of the Two Sicilies, which involved the laws of another sovereign, the Vice-Chancellor observed that there was an "absence of all authority on the point" raised before him. 1 Sim (NS), at 331, 61 Eng Rep, at 128.

There is little agreement among the authorities on the effect of these cases. See Grant, Federalism and Self Incrimination: Common Law and British Empire Comparisons, 5 UCLA L Rev 1–8; 8 Wigmore, Evidence (3d ed 1940), § 2258, n. 3; Kroner, Self Incrimination: The External Reach of the Privilege, 60 Col L Rev 816, 820, n. 26; McNaughton, Self-Incrimination Under Foreign Law, 45 Va L Rev 1299, 1302.

2. Compare McNaughton, supra, note 1, at 1305–1306, with Kroner, supra, note 1, at 818. See Hutcheson v United States, 369 US 599, 608, note 13, 8 L ed 2d 137, 147, 82 S Ct 1005; Feldman v United States, supra, 322 US at 494, 88 L ed at 1415.

That this case has meant different things to different people is evidenced by the

Ballmann v Fagin, 200 US 186, 50 L ed 433, 26 S Ct 212, decided in 1906. The statement that the appellant "was exonerated from disclosures which would have exposed him to the penalties of the state law," id., at 195, 50 L ed at 437, was at best an *alternative* holding and probably not even that.[3] Ballmann had based his refusal to testify before the Grand Jury solely on the possibility of incrimination under state law, id., at 193–194, 50 L ed at 436. Nevertheless, before considering the effect of state incrimination at all, the Court pointed out that the facts showed a likelihood

*[378 US 81]

*of incrimination under *federal* law. Id., at 195, 50 L ed at 437. The Court then proceeded to say:

"Not impossibly Ballmann took this aspect of the matter for granted, as one which would be perceived by the court without his disagreeably emphasizing his own fears. But he did call attention to another less likely to be known. As we have said, he set forth that there were many proceedings on foot against him as party to a 'bucket shop,' and so subject to the criminal law of the State in which the grand jury was sitting. According to United States v Saline Bank, 1 Peters, 100 [7 L ed 69], he was exonerated from disclosures which would have exposed him to the penalties of the state law. See Jack v Kansas, 199 US 372 [50 L ed 234, 26 S Ct 73], decided this term. One way or the other we are of opinion that Ballmann could not be required to produce his cash book if he set up that it would tend to criminate him." Id., at 200 US 195–196, 50 L ed at 437.

Since the Jack case which the Court cited immediately after referring to Saline Bank had been decided just a few weeks before Ballmann and was contrary to Saline Bank, it is plain that the Court was *not* approving and applying the latter case. The explanation for the Court's inclusion of this ambiguous and inconclusive discussion of state incrimination is surely the fact that Ballmann had failed to set up the claim of federal incrimination on which the Court relied.

Neither of these two cases, therefore, "squarely holds," ante, p 684; see ante, p 687, that a danger of incrimination under state law relieves a witness from testifying before federal authorities. More to the point, whatever force these two cases provide for the majority's position is wholly vitiated by subsequent cases, which are flatly contradictory to that position.

*[378 US 85]

*In Jack v Kansas, 199 US 372, 50 L ed 234, 26 S Ct 73, decided in 1905, the Court considered a Kansas immunity statute. The witness had refused to testify on the ground that his testimony might incriminate him under federal law. The Court upheld his commitment for contempt over his claim that the immunity granted by the state statute was not "broad enough," id., at 380, 50 L ed at 236, and that his imprisonment therefore violated the Fourteenth Amendment. The Court said:

"We think the legal immunity is

opinion in Hale v Henkel, 201 US 43, 50 L ed 652, 26 S Ct 370, in which the Court distinguished Saline Bank, presumably inadequately, on the ground that in it "the Federal court was simply administering the state law, and no question arose as to a prosecution under another jurisdiction." 201 US, at 69, 50 L ed at 663.

3. In United States v Murdock, 290 US 389, 396, 78 L ed 381, 386, 54 S Ct 223, the Court said that the question whether "one under examination in a federal tribunal could . . . refuse to answer on account of probable incrimination under state law" had been "involved, but not decided" in Ballmann.

in regard to a prosecution in the same jurisdiction, and when that is fully given it is enough. Id., at 382, 50 L ed at 237.

The present majority characterizes this statement as "cryptic dictum," ante, p. 687. But, I submit, there is nothing cryptic about it. Nor is it dictum. The Court assumed for purposes of that case that the Fourteenth Amendment required that a state statute "give sufficient immunity from prosecution or punishment," id., at 380, 50 L ed at 236, and it is evident from the opinion that the Court regarded the remoteness of a danger of prosecution in the courts of another jurisdiction, including the federal courts, as a basis for holding *generally*, and not merely on the facts of the case before it, that a state immunity statute need not protect against such danger. See id., at 381–382, 50 L ed at 236, 237.

The next case is Hale v Henkel, 201 US 43, 50 L ed 652, 26 S Ct 370, decided one year later, shortly after Ballmann. The Court there rejected the appellant's argument that the federal immunity statute to be valid had to confer immunity from punishment under state law. It said:

"The further suggestion that the statute offers no immunity from prosecution in the state courts was also fully considered in Brown v Walker and held to be no answer. The converse of this was also decided in Jack v Kansas, 199 US 372 [50 L ed 234, 26 S Ct 73], namely,

*[378 US 86]

that the fact *that an immunity granted to a witness under a state statute would not prevent a prosecution of such witness for a violation of a Federal statute, did not invalidate such statute under the Fourteenth Amendment. It was held both by this court and by the Supreme Court of Kansas that the possibility that information given by the witness might be used under the Federal act did not operate as a reason for permitting the witness to refuse to answer, and that a danger so unsubstantial and remote did not impair the legal immunity. Indeed, if the argument were a sound one it might be carried still further and held to apply not only to state prosecutions within the same jurisdiction, but to prosecutions under the criminal laws of other States to which the witness might have subjected himself. The question has been fully considered in England, and the conclusion reached by the courts of that country that the only danger to be considered is one arising within the same jurisdiction and under the same sovereignty. . . ." 201 US, at 68–69, 50 L ed at 663.[4]

4. In Brown v Walker, 161 US 591, 40 L ed 819, 16 S Ct 644, on which the Court relied in Hale, the Court intimated that a federal immunity statute need not protect a witness from "a bare possibility that by his disclosure he might be subjected to the criminal laws of some other sovereignty." 161 US, at 608, 40 L ed at 825.

In Jack, supra, the Court described Brown as follows:

"In the subsequent case of Brown v Walker, 161 US 591, [40 L ed 819, 16 S Ct 644], the statute there involved was held to afford complete immunity to the witness, and he was therefore obliged to answer the questions that were put to him, although they might tend to incriminate him. In that case it was contended, on the part of the witness, that the statute did not grant him immunity against prosecutions in the state courts, although it granted him full immunity from prosecution by the Federal Government. This contention was held to be without merit. While it was asserted that the law of Congress was supreme, and that judges and courts in every State were bound thereby, and that therefore the statute granting immunity would *probably* operate in the state as well as in the Federal

In Vajtauer v Commissioner of Immigration, 273 US 103, 71 L ed 560, 47 S Ct 302, which did not involve an immunity statute, the
*[378 US 87]
Court *found it unnecessary to consider the question, extensively argued by the parties, whether "the Fifth Amendment guarantees immunity from self-incrimination under state statutes . . . ," id., at 113, 71 L ed at 566; the Court indicated that it did not necessarily regard Hale and Brown, supra, as conclusive of that question, ibid. Cf. United States v Murdock, 290 US 389, 396, 78 L ed 381, 385, 54 S Ct 223. Any doubts on this score, however, were settled in 1931, in United States v Murdock, 284 US 141, 76 L ed 210, 52 S Ct 63, 82 ALR 1376. The Court there held unmistakably that an individual could not avoid testifying in federal proceedings on the ground that his testimony might incriminate him under state law.

"This court has held that immunity against state prosecution is not essential to the validity of federal statutes declaring that a witness shall not be excused from giving evidence on the ground that it will incriminate him, and also that the lack of state power to give witnesses protection against federal prosecution does not defeat a state immu-
*[378 US 88]
nity statute. *The principle established is that full and complete immunity against prosecution by the government compelling the witness to answer is equivalent to the protection furnished by the rule against compulsory self-incrimination." Id., at 149, 76 L ed at 213.

The Court has not until now deviated from that definitive ruling. In later proceedings in the Murdock case, the Court said it was "definitely settled that one under examination in a federal tribunal could not refuse to answer on account of probable incrimination under state law." 290 US 389, 396, 78 L ed 381, 386, 54 S Ct 223. The Court adhered to this view in Feldman, supra, where it established an equivalent rule allowing the use in a federal court of testimony given in a state court. The general principle was said to be one of "separateness in the operation of state and federal criminal laws and state and federal immunity provisions." 322 US, at 493–494, 88 L ed at 1415.[5]

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courts, yet still, and *aside from that view*, it was said that while there might be a bare possibility that a witness might be subjected to the criminal laws of some other sovereignty, it was not a real and probable danger, but was so improbable that it needed not to be taken into account." 199 US, at 381, 50 L ed at 236. (Emphasis added.)

Brown is cited for the proposition that "full and complete immunity agninst prosecution by the government compelling the witness to answer is equivalent to the protection furnished by the rule against compulsory self-incrimination," in United States v Murdock, 284 US 141, 149, 76 L ed 210, 213, 52 S Ct 63, 82 ALR 1376. And see Vajtauer v Commissioner of Immigration, 273 US 103, 113, 71 L ed 560, 566, 47 S Ct 302.

The majority is incorrect when it states, ante, p. 688, that the Court in Hale, relying on King of the Two Sicilies, supra, disregarded a "settled English rule" contrary to its own conclusion. See note 1, supra.

5. This was the principle underlying the decision in Feldman rather than the so-called "Feldman reasoning," ante, p. 692, which, as described by the majority, consists of phrases plucked from separate paragraphs appearing on four different pages of the reported opinion, see Feldman, supra, at 489–492, 88 L ed at 1412–1414. The Court referred to the "silver platter" doctrine only to illustrate a related principle then applicable in the area of search-and-seizure. See id., at 492, 88 L ed at 1414.

The majority is, however, correct in stating that the decision in Elkins v United States, 364 US 206, 4 L ed 2d 1669, 80

In Adams v Maryland, 347 US 179, 98 L ed 608, 74 S Ct 442, the Court held that a federal immunity statute,[6] the language of which "could be no plainer," id., at 181, 98 L ed at 612, prohibited the use in a state criminal trial of testimony given before a Senate Committee. Quite obviously, the remark in Adams that the Fifth Amendment protects a witness "from the use of self-incriminating testimony he is compelled to give over his objection," ibid., does not even remotely suggest "that any testimony elicited

*[378 US 89]

under threat of contempt by *a government to whom the constitutional privilege against self-incrimination is applicable . . . may not constitutionally be admitted into evidence against him in any criminal trial conducted by a government to whom the privilege is also applicable," ante, p. 693.

In Knapp v Schweitzer, 357 US 371, 2 L ed 2d 1393, 78 S Ct 1302, the Court again upheld the validity of state immunity statutes against the charge that they did not, as they could not, confer immunity from federal prosecution. The Court adhered to its position in Knapp, supra, in 1959, in Mills v Louisiana, 360 US 230, 3 L ed 2d 1193, 79 S Ct 980.

This, then, is the "history" mustered by the Court in support of overruling the sound constitutional doctrine lying at the core of Feldman.

II

Part I of this opinion shows, I believe, that the Court's analysis of prior cases hardly furnishes an adequate basis for a new departure in constitutional law. Even if the Court's analysis were sound, however, it would not support reversal of the Feldman rule on *constitutional* grounds.

If the Court were correct in asserting that the "separate sovereignty" theory of self-incrimination should be discarded, that would, as the Court says, lead to the conclusion that "a state witness [is protected] against incrimination under federal as well as state law and a federal witness against incrimination under state as well as federal law." Ante, p 694. However, dealing strictly with the situation presented by this case, that conclusion does *not* in turn lead to a constitutional rule that the testimony of a state witness (or evidence to which his testimony leads) who is compelled to testify in state proceedings may not be used against him in a federal prosecution. Protection which the Due Process Clause affords agaist the *States* is quite obviously not any basis for a consti-

*[378 US 90]

tutional *rule regulating the conduct of *federal* authorities in *federal* proceedings.

The Court avoids this problem by mixing together the Fifth Amendment and the Fourteenth and talking about "the constitutional privilege against self-incrimination," ante, p. 694. Such an approach, which deals with "constitutional" rights at large, unrelated either to particular provisions of the Constitution or to relevant differences between the States and the Federal Government warns of the dangers for our federalism to which the "incorporation" theory of the Fourteenth Amendment leads. See my dissenting opinion in Malloy v Hogan, 378 US 14, 12 L ed 2d p 663.

S Ct 1437, discarding the "silver platter" doctrine has an important bearing on this case. See infra, p. 702.

6. See Adams, supra, at 180, note 1, 98 L ed at 611.

The Court's reasons for overruling Feldman thus rest on an entirely new conception of the *Fifth Amendment*, namely that it applies to federal use of state-compelled incriminating testimony. The opinion, however, contains nothing at all to contradict the traditional, well-understood conception of the Fifth Amendment, to which, therefore, I continue to adhere:

"The sole—although deeply valuable—purpose of the Fifth Amendment privilege against self-incrimination is the security of the individual against the exertion of the power of the Federal Government to compel incriminating testimony with a view to enabling that same Government to convict a man out of his own mouth." Knapp v Schweitzer, supra, 357 US at 380, 2 L ed 2d at 1401.

It is no service to our constitutional liberties to encumber the particular provisions which safeguard them with a gloss for which neither the text nor history provides any support.

Accordingly, I cannot accept the majority's conclusion that a rule prohibiting federal authorities from using in aid of a federal prosecution incriminating testimony compelled in state proceedings is constitutionally required.

*[378 US 91]
*III

I would, however, adopt such a rule in the exercise of our supervisory power over the administration of federal criminal justice. See McNabb v United States, 318 US 332, 340-341, 87 L ed 819, 823, 824, 63 S Ct 608. The rule seems to me to follow from the Court's rejection, in the exercise of its supervisory power, of the "silver platter" doctrine as applied to the use in federal courts of evidence unconstitutionally seized by state officers. Elkins v United States, 364 US 206, 4 L ed 2d 1669, 80 S Ct 1437.

Since I reject the majority's argument that the "separate sovereignty" theory of self-incrimination is historically unfounded, I do not base my conclusion on the holding in Malloy, 378 US 1, 12 L ed 2d 653, 84 S Ct 1489, that due process prohibits a State from compelling a witness to testify. My conclusion is based rather on the ground that such a rule is protective of the values which the federal privilege against self-incrimination expresses, without in any way interfering with the independent action of the States and the Federal Government in their respective spheres. Increasing interaction between the State and Federal Governments speaks strongly against permitting federal officials to make prosecutorial use of testimony which a State has compelled when that same testimony could not constitutionally have been compelled by the Federal Government and then used against the witness. Prohibiting such use in no way limits federal power to investigate and prosecute for federal crime, which power will be as full after a State has completed an investigation as before.[7] This adjustment between state investigations

*[378 US 92]
of local crime *and federal prosecutions for federal crime seems par-

7. Speculation that federal agents may first have "gotten wind" of a federal crime by a witness' testimony in state proceedings would not be a basis for barring federal *prosecution*, unaided by the state testimony. As I understand the rule announced today, albeit resting on premises which I think are unsound, it is a prohibition against *the use of state-compelled incriminating evidence or the "fruits" directly attributable thereto* in a federal prosecution.

ticularly desirable in view of the increasing, productive cooperation between federal and state authorities in the prevention of crime. By insulating intergovernmental cooperation from the danger of any encroachment on the federal privilege against self-incrimination, such a rule in the long run will probably make joint programs for crime prevention more effective.[8]

On this basis, I concur in the judgment of the Court.

Mr. Justice White, with whom Mr. Justice Stewart joins, concurring.

The Court holds that the constitutional privilege against self-incrimination is nullified "when a witness 'can be whipsawed into incriminating himself under both state and federal law even though' the constitutional privilege against self-incrimination is applicable to each." Ante, p 682. Whether viewed as an exercise of this Court's supervisory power over the conduct of federal law enforcement officials or a constitutional rule necessary for meaningful enforcement of the privilege, this holding requires that compelled incriminating testimony given in a state proceeding not be used in any manner by federal officials in connection with a federal criminal prosecution. Since these petitioners declined to answer in the belief that their very testimony as well as evidence derived from it could be used by federal authorities in a criminal prosecution against them, they should be afforded an opportunity to purge themselves of the civil contempt convictions by answering the questions. Cf. Raley v Ohio, 360 US 423, 3 L ed 2d 1344, 79 S Ct 1257.

In reaching its result the Court does not accept the far-reaching and in my view wholly unnecessary con-
*[378 US 93]
stitutional *principle that the privilege requires not only complete protection against any use of compelled testimony in any manner in other jurisdictions but also absolute immunity in these jurisdictions from any prosecution pertaining to any of the testimony given. The rule which the Court does not adopt finds only illusory support in a dictum of this Court and, as I shall show, affords no more protection against compelled incrimination than does the rule forbidding federal officials access to statements made in exchange for a grant of state immunity. But such a rule would invalidate the immunity statutes of the 50 States since the States are without authority to confer immunity from federal prosecutions, and would thereby cut deeply and significantly into traditional and important areas of state authority and responsibility in our federal system. It would not only require widespread federal immunization from prosecution in federal investigatory proceedings of persons who violate state criminal laws, regardless of the wishes or needs of local law enforcement officials, but would also deny the States the power to obtain information necessary for state law enforcement and state legislation. That rule, read in conjunction with the holding in Malloy v Hogan, 378 US 1, 12 L ed 2d 658, 84 S Ct 1489, that an assertion of the privilege is all but conclusive, would mean that testimony in state investigatory proceedings, and in trials also, is on a voluntary basis only. The Federal Government would become the only

8. The question whether *federally* compelled incriminating testimony could be used in a state prosecution is not involved in this case and would, of course, present wholly different considerations.

law enforcement agency with effective power to compel testimony in exchange for immunity from prosecution under federal and state law. These considerations warrant some elaboration.

I

Among the necessary and most important of the powers of the States as well as the Federal Government to assure the effective functioning of government in an ordered society is the broad power to compel

*[378 US 94]

residents to *testify in court or before grand juries or agencies. See Blair v United States, 250 US 273, 63 L ed 979, 39 S Ct 468.[1] Such testimony constitutes one of the Government's primary sources of information. The privilege against self-incrimination, safeguarding a complex of significant values, represents a broad exception to governmental power to compel the testimony of the citizenry. The privilege can be claimed in any proceeding, be it criminal or civil, administrative or judicial, investigatory or adjudicatory, McCarthy v Arndstein, 266 US 34, 40, 69 L ed 158, 160, 45 S Ct 16; United States v Saline Bank, 1 Pet 100, 7 L ed 69, and it protects any disclosures which the witness may reasonably apprehend could be used in a criminal prosecution or which could lead to other evidence that might be so used. Mason v United States, 244 US 362, 61 L ed 1198, 37 S Ct 621; Hoffman v United States, 341 US 479, 95 L ed 1118, 71 S Ct 814. Because of the importance of testimony, especially in the discovery of certain crimes for which evidence would not otherwise be available and the breath of the privilege, Congress has enacted over 40 immunity statutes and every State, without exception, has one or more immunity acts pertaining to certain offenses or legislative investigations.[2] Such statutes have for more than a century been resorted to for the investigation of many offenses, chiefly those whose proof and punishment were otherwise impracticable, such as political bribery, extortion,

*[379 US 95]

*gambling, consumer frauds, liquor violations, commercial larceny, and various forms of racketeering. This Court, in dealing with federal immunity acts, has on numerous occasions characterized such statutes as absolutely essential to the enforcement of various federal regulatory acts. In Brown v Walker, 161 US 591, 40 L ed 819, 16 S Ct 644, the case in which the Court first upheld a congressional immunity act over objection that the witness' right to remain silent was inviolate, the Court said: "[If] witnesses standing in Brown's position were at liberty to set up an immunity from testifying, the enforcement of the Interstate Commerce law or other analogous acts, wherein it is for the interest of both parties to conceal their misdoings, would become impossible." 161 US 591, at 610, 40 L ed 819, at 825. Again in Hale v Henkel, 201 US 43, 50 L ed

1. The power and corresponding duty are recognized in the Sixth Amendment's commands that defendants be confronted with witnesses and that they have the right to subpoena witnesses on their own behalf. The duty was recognized by the first Congress in the Judiciary Act of 1789, which made provision for the compulsion of attendance of witnesses in the federal courts. 1 Stat 73, 88 (1789). See also Lilienthal, The Power of Governmental Agencies to Compel Testimony, 39 Harv L Rev 694–695 (1926); 8 Wigmore, Evidence, §§ 2190–2193 (McNaughton rev. 1961).

2. For a listing of Federal Witness Immunity Acts see Comment, 72 Yale LJ 1568, 1611–1612; the state acts may be found in 8 Wigmore, Evidence, § 2281, n. 11 (McNaughton ed 1961).

652, 26 S Ct 370, the Court noted the highly significant role played by immunity acts in the enforcement of federal legislation:

"As the combination or conspiracies provided against by the Sherman Anti Trust Act can ordinarily be proved only by the testimony of the parties thereto, in the person of their agents or employés, the privilege claimed would practically nullify the whole act of Congress. Of what use would it be for the legislature to declare these combinations unlawful if the judicial power may close the door of access to every available source of information upon the subject?" Id., at 70, 50 L ed at 663.

And only recently the Court declared that immunity statutes have "become part of our constitutional fabric . . . included '. . . in virtually all of the major regulatory enactments of the Federal Government,' " and "the States . . . have passed numerous statutes compelling testimony in exchange for immunity in the form either of complete amnesty or of prohibition of the use of the compelled testimony." Ullmann v United States, 350 US 422, 438, 100 L ed 511, 524, 76 S Ct 497, 53 ALR2d 1008.

*[378 US 96]

*These state statutes play at least an equally important role in compelling testimony necessary for enforcement of state criminal laws. After all, the States still bear primary responsibility in this country for the administration of the criminal law, most crimes, particularly those for which immunity acts have proved most useful and necessary, are matters of local concern; federal preemption of areas of crime control traditionally reserved to the States has been relatively unknown and this area has been said to be at the core of the continuing viability of the States in our federal system. See Abbate v United States, 359 US 187, 195, 3 L ed 2d 729, 734, 79 S Ct 666; Screws v United States, 325 US 91, 109, 89 L ed 1495, 1506, 65 S Ct 1031, 162 ALR 1330; United States v Cruikshank, 92 US 542, 553–554, 23 L ed 588, 591, 592; United States v Ah Hung, 243 F 762 (DCED NY). Cf 18 USC § 5001, 18 USC § 659.[3]

*[378 US 97]

*Whenever access to important testimony is barred by possible state prosecution, the State can, at its option, remove the impediment by a grant of immunity; but if the witness is faced with prosecution by the Federal Government, th

3. See also Rutkin v United States, 343 US 130, 139–147, 96 L ed 833, 840–844, 72 S Ct 571 (Black, J., dissenting).

The Senate Crime Committee stated in its third interim report:

"Any program for controlling organized crime must take into account the fundamental nature of our governmental system. The enforcement of the criminal law is primarily a State and local responsibility." S Rep No. 307, 82d Cong, 1st Sess, 5 (1951).

Attorney General Mitchell commented: "Experience has shown that when Congress enacts criminal legislation of this type [dealing with local crime] the tendency is for the State authorities to cease their efforts toward punishing the offenders and to leave it to the Federal authorities and the Federal Courts. That has been the experience under the Dyer Act." 72 Cong Rec 6214 (1930).

National enactments which touch upon these areas are not designed directly to suppress activities illegal under state law but to assist state enforcement agencies in the administration of their own statutes. See Int Rev Code of 1954, §§ 4701–4707, 4711–4716 (narcotics tax); Int Rev Code of 1954, §§ 4401–4404, 4411–4413, 4421–4423 (wagering tax). See generally, Schwartz, Federal Criminal Jurisdiction and Prosecutors' Discretion, 13 Law and Contemp Prob 64, 83–86 (1948); Comment, 72 Yale LJ 108, 140–142.

State is wholly powerless to extend immunity from prosecution under federal law in order to compel the testimony. Almost invariably answers incriminating under state law can be claimed to be incriminating under federal law. Given the extensive sweep of a host of federal statutes, such as the income tax laws, securities regulation, laws regulating use of the mails and other communication media for an illegal purpose, and regulating fraudulent trade practices, and given the very limited discretion, if any, in the trial judge to scrutinize the witness' claim of privilege, Malloy v Hogan, 378 US 1, 12 L ed 2d 653, 84 S Ct 1489, investigations conducted by the State into matters of corruption and misconduct will obviously be thwarted if immunity from prosecution under federal law was a constitutionally required condition to testimonial compulsion in state proceedings. Wherever the witness, for reasons known only to him, wished not to respond to orderly inquiry, the flow of information to the State would be wholly impeded. Every witness would be free to block vitally important state proceedings.

It is not without significance that there were two ostensibly inconsistent lines of cases in this Court regarding the external reach of the privileges in respect to the laws of another jurisdiction. In the cases involving refusals to answer questions in a federal grand jury or discovery proceedings on the ground of incrimination under state law, absent any immunity statute, the Court suggested that the Fifth Amendment privilege protected such answers, United States v Saline Bank, 1 Pet 100, 7 L ed 69; Ballmann v Fagin, 200 US 186, 50 L ed 433, 26 S Ct 212, while in the cases involving refusals to answer after immunity was conferred, the Court indicated that immunity in

*[378 US 98]

regard to a prosecution *in the jurisdiction conducting the inquiry satisfied the privilege. Brown v Walker, 161 US 591, 40 L ed 819, 16 S Ct 644; Jack v Kansas, 199 US 372, 50 L ed 234, 26 S Ct 73; Hale v Henkel, 201 US 43, 50 L ed 652, 26 S Ct 370. Cf. United States v Murdock, 284 US 141, 76 L ed 210, 52 S Ct 63, 82 ALR 1376. The decision in Ballmann that a witness in a federal grand jury proceeding could not be compelled to make disclosures incriminating under very similar federal and state criminal statutes was announced by members of the same Court and within a very short time of the decisions in Jack and Hale, holding that immunity under the laws of one sovereign was sufficient. The basis for these latter holdings, as well as Knapp v Schweitzer, 357 US 371, 2 L ed 2d 1393, 78 S Ct 1302, upholding a state contempt conviction for a refusal to answer after a grant of state immunity, was not a niggardly view of the privilege against self-incrimination but "the historic distribution of power as between Nation and States in our federal system." 357 US 371, at 375, 2 L ed 2d 1393, at 1398, 78 S Ct 1302. As the concurring and dissenting members of the Court in Knapp pointed out, the dilemma posed to our federal system by federally incriminating testimony compelled in a state proceeding was not really necessary but for the prior decision in Feldman v United States, 322 US 487, 88 L ed 1408, 64 S Ct 1082, 154 ALR 982, which upheld the Federal Government's use of incriminatory testimony compelled in a state proceeding. Although Feldman was questioned, no one suggested in

Knapp that the solution to the problem lay in forbidding the State to ask questions incriminating under federal law.

To answer that the underlying policy of the privilege subordinates the law enforcement function to the privilege of an individual will not do. For where there is only one government involved, be it state or federal, not only is the danger of prosecution more imminent and indeed the likely purpose of the investigation to facilitate prosecution and conviction, but that authority has the choice of exchanging immunity for the needed testimony. To transform possible federal prosecution

*[378 US 99]

into a source of *absolute protected silence on the part of a state witness would leave no such choice to the States. Only the Federal Government would retain such an option.

Nor will it do to say that the Congress could reinstate state power by authorizing state officials to confer absolute immunity from federal prosecutions. Congress has established highly complicated procedures, requiring the approval of the Attorney General, before a limited group of federal officials may grant immunity from federal prosecutions. E. g., 18 USC § 3486,[4] 18 USC § 1406. The decision to grant immunity is based upon the importance of the testimony to federal law enforcement interest, a matter within the competence of federal officials to assay. These procedures would create insurmountable obstacles if the requests for approval were to come from innumerable local officials of the 50 States. Obviously federal officials could not properly evaluate the extent of the State's need for the testimony on a case-by-case basis. Further, the scope of the immunity conferred wholly depends on the testimony

*[378 US 100]

given, a matter of considerable *difficulty to determine after, no less than before, the question is answered, the time when federal approval would be necessary, Heike v United States, 227 US 131, 57 L ed 450, 33 S Ct 226; Lumber Products Assn v United States, 144 F2d 546 (CA 9th Cir), and a matter whose determination requires intimate familiarity with both the nature and details of the investigation and the background of the witness. Finally, it is very doubtful that Congress would, if it had the power to, authorize one State to confer immunity on persons subject to prosecution under the criminal laws of another State.

II

Neither the conflict between state and federal interests nor the consequent enthronement of federal agencies as the only law enforcement authorities with effective

4. The debates on the bill leading to the statute which granted a congressional committee the power to confer immunity well reveal the concern over immunization from federal prosecution without the express approval of the Attorney General in each case. 99 Cong Rec 4737–4740, 8342–8343; HR Rep No. 2606, 83d Cong, 2d Sess (1954). See Brownell, Immunity From Prosecution Versus Privilege Against Self-Incrimination, 28 Tul L Rev 1 (1953):

"[I]f any measure is to be enacted permitting the granting of immunity to witnesses before either House of Congress, or its committees, it should vest the Attorney General, or the Attorney General acting with the concurrence of appropriate members of Congress, with the authority to grant such immunity, and if the testimony is sought for a court or grand jury that the Attorney General alone be authorized to grant the immunity." (Remarks of Attorney General Brownell.) Id., at 19.

Congress adopted this view in recent immunity statutes. 18 USC § 3486; 18 USC § 1406. See also Comment, 72 Yale LJ 1568, 1598–1610 (1963).

power to compel testimony is necessary to give full effect to a privilege against self-incrimination whose external reach embraces federal as well as state law. The approach need not and, in light of the above considerations, should not be in terms of the State's power to compel the testimony rather than the use to which such testimony can be put. It is unquestioned that an immunity statute, to be valid, must be coextensive with the privilege which it displaces, but it need not be broader. Counselman v Hitchcock, 142 US 547, 35 L ed 1110, 12 S Ct 195; Brown v Walker, 161 US 591, 40 L ed 819, 16 S Ct 644; Hale v Henkel, 201 US 43, 50 L ed 652, 26 S Ct 370. If the compelled incriminating testimony in a state proceeding cannot be put to any use whatsoever by federal officials, quite obviously the witness' privilege against self-incrimination is not infringed. For the privilege does not convey an absolute right to remain silent. It protects a witness from being compelled to furnish evidence that could result in his being subjected to a criminal sanction, Hoffman v United States, 341 US 479, 95 L ed 1118, 71 S Ct 814; Mason v United States, 244 US 362, 61 L ed 1198, 37 S Ct 621, if, but only if, after the disclosure the witness will be in greater danger of prosecution

*[378 US 101]

and conviction. *Rogers v United States, 340 US 367, 95 L ed 344, 71 S Ct 438, 19 ALR2d 378; United States v Gernie, 252 F2d 664 (CA2d Cir). When federal officials are barred not only from introducing the testimony into evidence in a federal prosecution but also from introducing any evidence derived from such testimony, the disclosure has in no way contributed to the danger or likelihood of a federal prosecution. This approach secures the protections of the privilege against self-incrimination for all defendants without impairing local law-enforcement and investigatory activities. It, of course, forecloses the use of state-compelled testimony in any manner by federal prosecutors, but the privilege in my view commands that the Federal Government should not have the benefit of compelled incriminatory testimony. Both the Federal Government and the witness are in exactly the same position as if the witness had remained silent.[5] And state immunity statutes remain constitutional and state law enforcement agencies viable.

It is argued that a rule only forbidding use of compelled testimony does not afford absolute protection against the possibility of a federal prosecution based in part on the compelled testimony. It is said that absent any deliberate attempt by federal officers to utilize the testimony the very identification and testimony of the witness in the state proceedings, perhaps in the news-

*[378 US 102]

papers, may *increase the possibility of a federal prosecution and alter-

5. Feldman v United States, 322 US 487, 88 L ed 1408, 64 S Ct 1082, 154 ALR 982, allowed the use of testimony compelled in exchange for a grant of state immunity to secure a conviction for a federal offense. I think the Court in Feldman erred in its assumption that an effective exclusionary rule would allow the States to determine on the basis of local policy which offenders should be immune from federal prosecution. The Federal Government can prosecute and convict persons who have received immunity for testimony in a state investigation. But it must do so without the assistance of the compelled incriminatory testimony.

That case also relied on the doctrine since repudiated in Elkins v United States, 364 US 206, 4 L ed 2d 1669, 80 S Ct 1437, that evidence illegally seized by state officials is admissible in federal courts.

natively that the defendant may not be able to prove that evidence was intentionally and unlawfully derived from his compelled testimony. These are fanciful considerations, hardly sufficient as a basis for a constitutional adjudication working a substantial reallocation of power between state and national governments.

In the absence of any misconduct or collusion by federal officers, whatever increase there is, if any, in the likelihood of federal prosecution following the witness' appearance before a state grand jury or agency results from the inferences drawn from the invocation of the privilege to specific questions on the ground that they are incriminating under federal law and not from the fact the witness has testified in what is frequently an in camera proceeding under a grant of immunity. Whether in camera or not, the testimony itself is hardly reported in newspapers and the transcripts and records of the state proceedings are not part of the files of the Federal Government. Access and use require misconduct and collusion, a matter quite susceptible of proof. But this is quibbling, since the very fact that a witness is called in a state crime investigation is likely to be based upon knowledge, or at least a suspicion based on some information, that the witness is implicated in illegal activities, which knowledge and information are probably available to federal authorities.

The danger that a defendant may not be able to establish that other evidence was obtained through the unlawful use by federal officials of inadmissible compelled testimony is insubstantial. The privilege protects against real dangers, not remote and speculative possibilities. Brown v Walker, 161 US 591, 599–600, 40 L ed 819, 821, 822, 16 S Ct 644; Heike v United States, 227 US 131, 57 L ed 450, 33 S Ct 226; Mason v United States, 244 US 362, 61 L ed 1198, 37 S Ct 621. First, one might just as well argue that the Constitution requires absolute immunity from prosecution

*[378 US 103]

wherever *the Government has obtained an inadmissible confession or other evidence through an illegal search and seizure, an illegal wiretap, illegal detention, and coercion. A coerced confession is as revealing of leads as testimony given in exchange for immunity and indeed is excluded in part because it is compelled incrimination in violation of the privilege. Malloy v Hogan, 378 US pp 7–8, 12 L ed 2d pp 659, 660, 84 S Ct 1489; Spano v New York, 360 US 315, 3 L ed 2d 1265, 79 S Ct 1202; Bram v United States, 168 US 532, 42 L ed 568, 18 S Ct 183. In all these situations a defendant must establish that testimony or other evidence is a fruit of the unlawfully obtained evidence, Nardone v United States, 308 US 338, 84 L ed 307, 60 S Ct 266; Wilson v United States, 218 F2d 754 (CA 10th Cir); Lotto v United States, 157 F2d 623 (CA 8th Cir), which proposition would seem a fortiori true where the Government has not engaged in illegal or unconstitutional conduct and where the inadmissible testimony is obtained by a government other than the one bringing the prosecution and for a purpose unrelated to the prosecution. Second, there are no real proof problems in this situation. As in the analogous search and seizure and wiretap cases—where the burden of proof is on the Government once the defendant establishes the unlawful search or wiretap, United States v Coplon, 185 F2d 629 (CA2d Cir); United States v Goldstein, 120 F2d 485, 488 (CA2d Cir),

aff'd, 316 US 114, 86 L ed 1312, 62 S Ct 1000—once a defendant demonstrates that he has testified in a state proceeding in exchange for immunity to matters related to the federal prosecution, the Government can be put to show that its evidence is not tainted by establishing that it had an independent, legitimate source for the disputed evidence. Since the Government has the relevant information within its control, valid prosecutions need not be sacrificed and infringement of the privilege through use of compelled testimony, direct or indirect, need not be tolerated. It is carrying a premise of perjury and judicial incompetence

*[378 US 104]

*to excess to believe that this procedure poses any hazards to the rights of an accused. Third, greater requirements or difficulties of proof by a defendant inhere in the rule of absolute immunity. When a witness testifies under the auspices of an immunity act, the immunity he gets does not secure him from indictment or conviction. Heike v United States, 217 US 423, 54 L ed 821, 30 S Ct 539. The witness must plead and prove, as an affirmative defense, that he has received immunity and that the instant prosecution is on account of a matter testified to in exchange for immunity, Heike v United States, 227 US 131, 57 L ed 450, 33 S Ct 226, which may pose considerable difficulties where the relationship between the testimony and the prosecution is not obvious or where the immunity is acquired as a result of testimony before a grand jury or in an in camera administrative proceeding. See Edwards v United States, 312 US 473, 85 L ed 957, 61 S Ct 669; 131 F2d 198 (CA 10th Cir) (retrial), certiorari denied, 317 US 689, 87 L ed 552, 63 S Ct 262, United States v Lumber Products Assn., 42 F Supp 910 (DCND Cal) rev'd, sub nom Ryan v United States, 128 F2d 551 (CA 9th Cir); Lumber Products Assn. v United States (plea of immunity finally upheld after trial), 144 F2d 546 (CA 9th Cir). Cf. Pandolfo v Biddle, 8 F2d 142 (CA 8th Cir).

Counselman v Hitchcock, 142 US 547, 35 L ed 1110, 12 S Ct 195, does not require that absolute immunity from state prosecution be conferred on a federal witness and the Court has declined on many occasions to so read it, the limitation of the privilege to one sovereign rationale aside, Brown v Walker, 161 US 591, 40 L ed 819, 16 S Ct 644; Adams v Maryland, 347 US 179, 98 L ed 608, 74 S Ct 442; Ullmann v United States, 350 US 422, 100 L ed 511, 76 S Ct 497, 53 ALR2d 1008; Reina v United States, 364 US 507, 5 L ed 2d 249, 81 S Ct 260.[6]

6. As Mr. Justice Black stated for the Court in Adams v Maryland, a case dealing with the use of federally compelled testimony in a state proceeding "[A] witness does not need any statute to protect him from the use of self-incriminating testimony he is compelled to give over his objection. The Fifth Amendment takes care of that without a statute." 347 US, at 181, 98 L ed at 612.

Neither Congress nor the States have read Counselman to mean that the Constitution requires absolutely immunity from prosecution. There are numerous statutes providing for immunity from use, not prosecution, in exchange for incriminatory testimony. E. g., 30 Stat 548 (1898), 11 USC § 25; 18 USC § 1406; 49 USC § 9; 18 USC § 3486. Ala Code, Tit 9, § 39; Ala Code, Tit 29, § 171; Ariz Rev Stat Ann § 13-384; Ark Const, Art III, § 9; Cal Const, Art 4, § 35; Colo Rev Stat § 40-8-8; id., § 49-17-8; Conn Gen Stat (1958 rev), § 12-2 and § 12-53; Fla Stat Ann, § 55.59 and § 350.60; Idaho Code Ann § 48-308 (Supp 1963); Ill Ann Stat c. 100½, § 1; Ky Rev Stat § 124.330; Mich Stat Ann § 7.411(17); NJ Rev Stat, § 2A:93-9.

The effect of the rule petitioners urge would be to hold the above and numerous

*[378 US 105]

It does not therefore require *that absolute immunity from federal prosecution be conferred on a state witness. Counselman, an officer of an interstate railroad, refused to reveal whether he engaged in discriminatory rate practices, a criminal offense, under the Interstate Commerce Act, before a federal grand jury investigating specific violations of that Act. The Court established for the first time that the coverage of the privilege extended to not only a confession of the offense but also disclosures leading to discovery of incriminating evidence, a matter of considerable doubt at the time. See United States v Brown, 1 Saw 531, 536, Fed Cas No. 14,671, United States v McCarthy, 18 F 87, 89 (CCSD NY); Re Counselman, 44 F 268 (CCND Ill). It then invalidated the first immunity statute to come before it because "[the statute] could not, and would not, prevent the use of his testimony to search out other testimony to be used in evidence against him or his property, in a criminal proceeding . . . . It could not prevent the obtaining and the use of witnesses and evidence which should be attributable directly to the testimony he might give under compulsion, and on

*[378 US 106]

*which he might be convicted, when otherwise, and if he had refused to answer, he could not possibly have been convicted." 142 US 547, at 564, 35 L ed 1110, at 1114, 12 S Ct 195. In a dictum indicating that some immunity statutes are valid, the Court added that "a statutory enactment, to be valid, must afford absolute immunity against future prosecution *for the offence to which the question relates.*" Id., at 586, 35 L ed at 1122. Whatever may be the validity of this dictum where the witness is being investigated by a grand jury for the purpose of indictment for a particular offense and where the grand jury proceedings are conducted by the same government attempting to obtain a conviction for the offense—the facts of Counselman—it clearly has no validity, and by its own terms, no applicability, where the inquiry does not concern any federal offense, no less a particular one, and the government seeking the testimony has no purpose or authority to prosecute for federal crimes.

The Constitution does not require that immunity go so far as to protect against all prosecutions to which the testimony relates, including prosecutions of another government, whether or not there is any causal connection between the disclosure and the prosecution or evidence offered at trial. In my view it is possible for a federal prosecution to be based on untainted evidence after a grant of federal immunity in exchange for testimony in a federal criminal investigation. Likewise it is possible that information gathered by a state government which has an important but wholly separate purpose in conducting the investigation and no interest in any federal prosecution will not in any manner be used in subsequent federal proceedings, at least "while this Court sits" to review invalid convictions. Panhandle Oil Co. v Knox, 277 US 218, at 223, 72 L ed 857, at 859, 48 S Ct 451, 56 ALR 583 (Holmes, J., dissenting). It is precisely this possibility of a prosecution based on untainted evidence that we must recognize. For if it

*[378 US 107]

is meaningful *to say that the Federal Government may not use compelled testimony to convict a witness

other statutes barring use but not prosecution unconstitutional.

of a federal crime, then, of course, the Constitution permits the State to compel such testimony.

"The real evil aimed at by the Fifth Amendment's fiat prohibition against the compulsion of self-incriminatory testimony was that thought to inhere in using a man's compelled testimony to punish him." Feldman v United States, 322 US 487, 500, 88 L ed 1408, 1418, 64 S Ct 1082, 154 ALR 982 (Black, J., dissenting). I believe the State may compel testimony incriminating under federal law, but the Federal Government may not use such testimony or its fruits in a federal criminal proceeding. Immunity must be as broad as, but not harmfully and wastefully broader than, the privilege against self-incrimination.

2A:81-17.2a3 Removal for commission of misdemeanor

Any public employee who admits the commission of a misdemeanor or high misdemeanor relating to his employment or touching the administration of his office or position before any court, grand jury or the State Commission of Investigation shall be subject to removal from such office, position or employment.

L.1970, c. 72, § 4, eff. May 21, 1970.

2A:81-17.2a4 Removal proceedings

If any public employee has subjected himself to removal as provided in section 2 or section 4 of this act,[1] a proceeding may be instituted to effect such removal in the Superior Court by the Attorney General or a county prosecutor of this State by proceeding in lieu of prerogative writ.

L.1970, c. 72, § 5, eff. May 21, 1970.

[1] Sections 2A:81-17.2a1, 2A:81-17.2a3.

2A:81-17.2a5 Other laws relating to removal of public employees

Nothing in this act shall be construed to annul or modify any other law of this State or any rule or regulation promulgated pursuant to any other law of this State relating to the removal of public employees from office, position or employment.

L.1970, c. 72, § 6, eff. May 21, 1970.

ARTICLE 5B. COMPELLING WITNESSES IN CRIMINAL PROCEEDING TO TESTIFY; IMMUNITY [NEW]

2A:81-17.3 Order compelling person to testify or produce evidence; immunity from use of such evidence; contempt

In any criminal proceeding before a court or grand jury, if a person refuses to answer a question or produce evidence of any other kind on the ground that he may be incriminated thereby and if the Attorney General or the county prosecutor with the approval of the Attorney General, in writing, requests the court to order that person to answer the question or produce the evidence, the court shall so order and that person shall comply with the order. After complying and if but for this section, he would have been privileged to withhold the answer given or the evidence produced by him, such testimony or evidence, or any information directly or indirectly derived from such testimony or evidence, may not be used against the person in any proceeding or prosecution for a crime or offense concerning which he gave answer or produced evidence under court order. However, he may nevertheless be prosecuted or subjected to penalty or forfeiture for any perjury, false swearing or contempt committed in answering, or failing to answer, or in producing, or failing to produce, evidence in accordance with the order. If a person refuses to testify after being granted immunity from prosecution and after being ordered to testify as aforesaid, he may be adjudged in contempt and committed to the county jail until such time as he purges himself of contempt by testifying as ordered without regard to the expiration of the grand jury; provided, however, that if the grand jury before which he was ordered to testify has been dissolved, he may then purge himself by testifying before the court.

L.1968, c. 195, § 1, eff. July 19, 1968. Amended by L.1973, c. 112, § 1, eff. May 7, 1973.

Cross References

Self-incrimination, see § 2A:84A-17 et seq.

Title of Act:

An Act providing for the compelling of evidence from certain persons in criminal proceedings and for the granting of immunity to such persons from the use of such evidence against them in certain cases. L.1968, c. 195.

Law Review Commentaries

Fifth amendment's proxy—Transactional or use immunity? (1971) 3 Seton Hall L.Rev. 199.

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Purpose 1.5

1. In general

Nothing in this section even suggests that a witness who has been granted immunity and ordered to testify, but refuses, may continue to refuse if he is willing to accept the penalty of incarceration for a fixed term for criminal contempt of court. State v. Sotteriou, 123 N.J.Super. 434, 303 A.2d 585 (1973).

Only if court had ruled that there was basis for claim of privilege against self-incrimination would prosecutor have been put to choice of granting immunity or abandoning inquiry. State v. Craig, 107 N.J.Super. 196, 257 A.2d 737 (1969).

Provision of Model State Witness Immunity Act that makes immunity from prosecution dependent ultimately on whether privilege against self-incrimination was in truth available when it was claimed is intended to prevent spurious claim of privilege and does not make claim available without any inquiry by court. In re Addonizio, 53 N.J. 107, 248 A.2d 531 (1968).

This section requires an inquiry by court as to validity of claim before claim will be upheld, and will come into play only if court finds basis for claim of self-incrimination. Id.

Once it was established that witness called by prosecution intended to claim his privilege of immunity to self-incrimination under the Fifth Amendment, trial court committed prejudicial error in permitting prosecutor to continue line of questioning which placed before jury innuendo evidence or inferences of evidence, which implicated defendant in robberies, and which the prosecution could not get before the jury by direct testimony of the witness. State v. Cullen, 103 N.J.Super. 360, 247 A.2d 346 (1968).

Practice of prosecution in calling a co-defendant as a witness where prosecution has knowledge that co-defendant will claim his privilege against self-incrimination is improper because it operates to prejudice defendant in eyes of jurors. Id.

1.5 Purpose

Legislative intent in enacting this section was to broaden the power of courts and grand juries to ascertain relevant facts by providing an additional remedy more effective than the preexisting power to punish a recalcitrant witness for criminal contempt. State v. Sotteriou, 123 N.J.Super. 434, 303 A.2d 585 (1973).

2. Immunity

Remedy enunciated in this section extends to proceedings before a court as well as to proceedings before a grand jury. State v. Sotteriou, 123 N.J.Super. 434, 303 A.2d 585 (1973).

Witness who had already been convicted for his participation in crime and had exhausted his appeal from such conviction could not refuse to answer questions at trial of alleged co-participant in crime in absence of disclosure of any criminal exposure justifying invocation of privilege against self-incrimination. State v. Craig, 107 N.J.Super. 196, 257 A.2d 737 (1969).

Grant of immunity under this section for offering evidence despite valid claim of Fifth Amendment privilege against self-incrimination operates in same way to prevent witness' reliance on Fourth Amendment. In re Addonizio, 53 N.J. 107, 248 A.2d 531 (1968).

Showing sufficient for reliance on Fifth Amendment privilege against self-incrimination in order not to produce records subpoenaed by grand jury without grant of immunity should be sufficient to support reliance on Fourth Amendment prohibition against unreasonable searches and seizures when purpose is to obtain things that incriminate subpoenaed individual. Id.

3. Contempt

Court properly discharged its duty to explain applicable law to defendant charged with contempt for failing to answer questions after his invocation of claim of self-incrimination was overruled. State v. Craig, 107 N.J.Super. 196, 257 A.2d 737 (1969).

4. Penalty or forfeiture

Employment of the term "penalty" in this section does not limit a court in its remedy, upon a refusal to testify following a grant of immunity, to incarceration for a stated term. State v. Sotteriou, 123 N.J.Super. 434, 303 A.2d 585 (1973).

Since order compelling witness to testify, following a grant of immunity, included "all matters" pertaining to coindictee and others enumerated in indictment, the commitment of the witness to jail for refusal to testify was not arbitrary and punitive on ground that the trial of the coindictee at which he was called to testify had ended, since there were still pending and awaiting trial several counts of the indictment against the coindictee and others. Id.

Where defendant, after being subpoenaed to testify at the trial of a coindictee, invoked his Fifth Amendment privilege against self-incrimination, where the state then submitted a petition to compel testimony under this section, where the trial judge then signed an order compelling defendant to testify in all matters relating to the coindictee and others as a unit count indictment, but where defendant, after the request for transactional rather than use immunity was denied, continued his refusal to testify, it was proper for the trial judge, under this section, to hold defendant in contempt and to commit him to the county jail until he should purge himself of his contumacious conduct by testifying. Id.

5. Bail

Although, with respect to the incarceration of a witness who refuses to testify despite a grant of immunity, the fixing of bail is not mandated by this section, the trial court, whose order compelling certain witness to testify included "all matters" pertaining to coindictee and others enumerated in the indictment, did not abuse its discretion in setting bail following incarceration of the witness for his continuing refusal to testify despite the grant of immunity, considering the uncertainty of trial dates on the pending counts of the indictment; nor did the court abuse its discretion in setting bail in the sum of $25,000, despite fact that the bail posted on the witness' arraignment of the original criminal charges against him was only in the amount of $20,000. State v. Sotteriou, 123 N.J.Super. 434, 303 A.2d 585 (1973).

HB

6

A M E N D M E N T

IN THE HOUSE BY THE JUDICIARY COMMITTEE

TO: HOUSE BILL NO. 6

Page 1, line 6: delete all matter and insert:

"For an Act entitled: "An Act relating to the negligent use of flammable materials."

Page 1, line 10: delete all matter and insert:

"Sec. 11.15.340. NEGLIGENT USE OF FLAMMABLE MATERIALS. A person who, negligently or recklessly causes a fire-"

Page 1, line 13: delete all matter and insert:

"to another person or in damage to the property of another, is guilty of a misdemeanor,-"

AUTION

ANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 70-27

IT IS UNLAWFUL TO SMOKE IN BED

32.05.010. SMOKING. Whoever, by reason of careless or willful conduct in smoking or in the use of lighters or matches shall set fire to any bedding, carpet, curtains, drapes, furniture, household equipment or other goods or chattels or to any building shall be guilty of a misdemeanor.

32.05.020. DEFINITION. The term "careless conduct in smoking" shall include as used herein, any of the following acts of commission or ommission.

Permitting a spark or sparks from a lighted cigar, cigarette, or pipe to fall upon or into anything flammable; placing any lighted smoking material on or about or in close proximity to any flammable article or articles; falling asleep with lighted smoking material of any kind at hand; throwing lighted smoking material out of a window or into an elevator pit or elsewhere than in a proper receptacle therefore; dropping a lighted cigarette or cigar or part thereof into a mail chute in any building; failure to extinguish the fire of a match or any kind of lighter device after use of the same; failure to destroy the lighted part of a cigar or cigarette when disposing of it; failure to destroy the burning smidgen or smidgens of tobacco from a pipe when cleaning or unloading a pipe.

32.05.030. NOTICE TO BE POSTED. A plainly printed notice of the provisions of this chapter shall be posted in a conspicious place in every sleeping room of every hotel, motel, rooming house, tourist home, tourist court, or other place renting rooms for the accomodation of the public. Such notice shall be posted by the owner, proprietor, lessee or managing agent of such establishment.

32.05.040. VIOLATIONS A MISDEMEANOR. Any person, firm, copartnership or corporation violating any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than three hundred dollars ($300.00) and imprisoned for not more than thirty (30) days, or both.

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HB 6

Amendment proposed by Rep. Parr

Line 13

in damage to the property of another,

---

language in SB 44 which has passed the Senate

Line 13

to another person is guilty

---

proposed language of letter of intent

This new criminal offense is not intended to preclude prosecutions for homicide in appropriate cases.

HB
45

WESTERN GOVERNMENTAL RESEARCH ASSOCIATION
OFFICE OF THE EXECUTIVE SECRETARY
INSTITUTE OF GOVERNMENTAL STUDIES
UNIVERSITY OF CALIFORNIA
BERKELEY 94720

State Capitol
Juneau
22 January 1975

Representative Terry Gardiner, Chairman
House Judiciary Committee
State Capitol
Juneau

Dear Terry:

Professor Stanley V. Anderson of the University of California, Santa Barbara, faculty who will be one of the principal panelists at the "Colloquium on an Alaskan Ombudsman" on Saturday, February 1, will be arriving in Juneau on Thursday, January 30th.

His schedule for Thursday evening and all day Friday is free, and he will be available to discuss the Ombudsman legislation with you, members of your staff, or with legislative committees individually or jointly, should you wish to arrange it. I would like to set up a tentative "agenda" for his stay here for these two days. If you would like to meet privately with him, or to have him meet with the committees considering these bills, this would be a good opportunity to do so. Please contact me in the Legislative Affairs Agency office (Room 101, State Capitol; 465-3800) should you wish to meet with him.

Professor Anderson is probably one of the best informed people in the United States, if not worldwide, on the Ombudsman concept and its operation. I am also enclosing an invitation to, and a program for, the Saturday, February 1st, colloquium.

Cordially yours,

STUART C. HALL
Alaska Representative, WGRA

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WESTERN GOVERNMENTAL RESEARCH ASSOCIATION
OFFICE OF THE EXECUTIVE SECRETARY
INSTITUTE OF GOVERNMENTAL STUDIES
UNIVERSITY OF CALIFORNIA
BERKELEY 94720

17 January 1975

MEMORANDUM

TO : All Alaska Members, Western Governmental Research Association

FROM : Stuart C. Hall, WGRA Alaska Representative

SUBJECT: Colloquium on an Alaska Ombudsman, 1 February 1975, Juneau

I want to extend a cordial invitation to you to attend a WGRA event jointly sponsored with the Southeast Alaska Chapter of the American Society for Public Administration (ASPA) and the University of Alaska, Juneau: A Colloquium on an Alaska Ombudsman, starting at 9:30 a.m. and continuing throughout Saturday, February 1st, in the handsome new 5th Floor Conference Room of the new State Office Building in Juneau.

We're extraordinarily fortunate in being able to secure two of the most knowledgeable men in the United States on the origin, development and operation of the Ombudsman: Professor Stanley V. Anderson of UC, Santa Barbara, a California attorney and political scientist, and a prolific writer on the subject of the Ombudsman, and Mr. Herman Doi, Ombudsman for the State of Hawaii. Their observations on the Ombudsman concept as it is working today in the U.S. are particularly relevant at this time because the First Session of the Ninth Alaska Legislature, which convenes Monday, January 20, will be considering several measures creating that position. Inasmuch as establishment of the Ombudsman enjoys active gubernatorial support for the first time, enactment of Ombudsman legislation in 1975 appears brighter than it has since the first such bill was introduced in 1966. The bills introduced in the current legislative session also will be reviewed, and the local ASPA chapter has prepared a bill for the governor's consideration.

The colloquium is open to interested members of our profession and the public. There is no registration fee; however, the luncheon with Lieut. Governor Lowell Thomas, Jr., as speaker is $5. Please feel free to circulate this memorandum among interested friends and colleagues. If you have any questions -- and for those from out of town who might require hotel accommodations -- please contact me by mail (P.O. Box 90, Juneau, AK 99802) or by telephone: 465-3800 (office), or 586-3489 (residence).

Save February 1st — I'll look forward to seeing you then!

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Brigham Young University

Washington Morton Kroll University of Washington
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COLLOQUIUM ON AN ALASKA OMBUDSMAN

Sponsored by the University of Alaska
in conjunction with
The American Society for Public Administration
and
The Western Governmental Research Association

Saturday, February 1, 1975
Fifth Floor Conference Room, New State Office Building

9:30 AM.	Program Introduction	Dr. Robert E. Newton, Associate Professor of Political Science, University of Alaska, Colloquium Chairman
9:40 AM.	The Origin and Development of the Ombudsman Movement in America	Dr. Stanley V. Anderson, Professor of Political Science, University of California, Santa Barbara
10:40 AM.	Alaska and the Ombudsman Movement	Mr. Gary E. Wilson
11:00 AM.	The Alaska Ombudsman Bill	To be coordinated with Governor Hammond's Office
11:45 AM.	Luncheon Reception for Mr. Herman Doi, Ombudsman for Hawaii (Capital Room, Hotel Baranof)	
12:30 PM.	Luncheon (Latchstring, Hotel Baranof)	Lt. Governor Lowell Thomas, Luncheon Speaker Mr. Donald P. Fisher, President, Southeast Alaska Chapter, American Society for Public Administration, Toastmaster
2:00 PM.	The Hawaiian Experience with the Ombudsman's Office	Mr. Herman Doi, Ombudsman State of Hawaii
3:00 PM.	Panel Discussion on the Applicability of the Office of Ombudsman to Alaska State Government	Mr. Ronald W. Wardle, Student Regent, University of Alaska, Moderator Mr. Herman Doi, Dr. Stanley V. Anderson, Dr. George W. Rogers, Professor of Economics, University of Alaska, Panelists

File

AMERICAN SOCIETY FOR PUBLIC ADMINISTRATION

SOUTHEAST ALASKA CHAPTER
Box 292 Juneau, Alaska 99802

March 13, 1975

Hon. Terry Gardiner
State Representative
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Gardiner:

The attached Anchorage Daily Times editorial and my reply which the paper subsequently published, provide information and insights into the ombudsman bill which you are now considering. For this reason I would like to provide you with copies of both.

The entire program in which Hawaii Ombudsman Herman S. Doi participated here in Juneau last February 1, has been recorded on both sound and audio-visual tape. Very shortly we hope to have copies of the written transcript available for all interested parties. (We are a non-profit, volunteer organization which must accomplish its work on nights and week-ends, and consequently, have not had the time yet to make the complete transcription.) But let me also provide you with the attached excerpt in which Ombudsman Doi explains the development of his budget and staff.

As I said in my letter to the Times, I think Doi's work can be duplicated here in Alaska. Let me add to that, that I think it can be duplicated here with the same proportionate costs and that the justification for this "new start" is simply the fact that the public is expecting something like this very much.

Last summer I mailed you a copy of my study, The Obudsman: Its Potential Applicability to the State of Alaska. If you did not receive it, or if it has been mislayed or lost, you may obtain a copy from either the Secretary of the Senate or the Clerk of the House. Thank you for your courtesy and attention.

Sincerely,

Gary E. Wilson
Member, Ombudsman Committee

Enclosure

Anchorage Daily Times

Editorials

Page 6 Tuesday, February 18, 1975

Monstrous Creature

THE OMBUDSMAN is the motherhood issue of the moment before the Alaska Legislature.

To speak against it is certain to infuriate those who vibrate to anything that smacks of "consumerism" and all that holy word embraces these days.

But the truth needs to be said. And the fact is that the legislature, as Sen. Robert Ziegler of Ketchikan expressed it, is creating a monster with this piece of business.

The Senate, which should know better, passed a bill last week to establish an ombudsman's office as an independent agency of the state government. The House, which loves this sort of thing, can be expected to boom the bill through by a landslide within the next week or so — and Gov. Jay Hammond will sign it into law.

BEFORE TOO many years have passed, however, we expect Alaskans will rue the day the ombudsman ever came into being, at least in the form and fashion contemplated by the existing legislation.

As proposed by the Senate, the office would begin functioning with a budget of $118,500 for the next fiscal year. That includes $40,000 for the salary of the first ombudsman, a figure which matches that of the state's Superior Court judges. Another $31,000 is tossed in for the salary of a deputy ombudsman, with the remaining $48,500 to cover additional staff and operating expenses.

But this clearly is not the end. And it probably is nowhere near the beginning, if the office is to function with all the force and power outlined in the Senate bill.

Before too many budgets have passed, that initial $118,500 is likely to escalate into a monster costing millions.

BEFORE THE END is reached, if it ever is, the ombudsman is going to wind up with a bigger staff than the district attorney and the legislature combined, doing work that should be handled by the people's elected representatives and the Department of Law — all of whom are paid on a year-round basis to do what the ombudsman is supposed to do.

Moreover, the office is going to become — by its very nature — a meddling arm of government that probably will cause more confusion and red tape than it untangles. Other agencies of the government will seek additional appropriations to hire the people and do the paperwork that will be generated by the ombudsman's eager venture into every nook and cranny of the government.

And there will be reams of paperwork and reports, endless hearings and more travel vouchers and per diem expense payments than ever dreamed of at the outset.

Lt. Gov. Lowell Thomas protests this isn't so, because the ombudsman will not be a "super cop to ride herd on all facets of government."

But that's what this behemoth will turn out to be, once the legislature has breathed life into him and he goes stalking off down the trail.

EDITORIAL PAGE
Anchorage Daily Times
ROBERT B. ATWOOD
Editor and Publisher
WILLIAM J. TOBIN
Associate Editor
And General Manager
CLINTON T. ANDREWS JR.
Managing Editor

Letters

Successful Ombudsman

Dear Editor:

It was refreshing to read your editorial, "Monstrous Creature," with regard to the ombudsman bill now being considered by the Alaska Legislature. While I am an enthusiastic supporter for the bill's passage, I see the same "motherhood issue" that you do and I am more than a little concerned about it. Essentially I think too many people are reading too much into this modest proposal and will be expecting some kind of super-human performance far beyond anything one might reasonably expect of an effective ombudsman's office.

Recently we were privileged here in Juneau to have an opportunity to explore how an ombudsman's office is supposed to work with Herman S. Doi who has served the past five years as Ombudsman for the State of Hawaii. He came over at our invitation to be the featured speaker at a University of Alaska sponsored public conference on the applicability of the office to Alaska state government.

Doi has processed 8,500 citizens' grievances in his five years of service with a small staff and a very modest budget. The office has grown with the increased caseload and the increasing public knowledge of the availability of his services during this period of time. Besides himself, Doi now has a deputy, four investigators and four secretaries and clerks. Seated by a unanimous vote of the Hawaii legislature, he has turned back surplus monies to that body each year. This past fiscal year $185,000 was appropriated to him, of which he returned $22,000.

The 8,500 figure for the caseload does not reflect the informational services which the Hawaii Ombudsman's office furnishes. Often Hawaiians think they have a grievance against a governmental agency when all they really need is some reliable information to solve their problem.

Doi is armed with the same extensive subpoena power which is included in the bill before the Alaska Legislature, but it is interesting to note that he has never had to use it and that he is a popular figure among state government agencies. This stems from the fact that he and his staff have the kind of mediatory skills which are needed most often to solve problems between citizens and government.

I am persuaded that the same kind of job which Doi and his staff have done in Hawaii can be duplicated here in Alaska. He is quite a person, I can assure you.

This state does not lack for equally qualified people who can establish and maintain a low-budget, non-bureaucratic citizens' grievance processing service. That is the essence of the ombudsman's office wherever it has been successfully implemented.

The ombudsman can be no white knight on a steed who solves all the problems. But someone like Doi, I think, can help a lot of Alaskans, both private citizens and the government employes, to reconcile differences and to raise the public's confidence that our state government really can serve us the way it is supposed to.

Gary E. Wilson
Juneau

AMERICAN SOCIETY FOR PUBLIC ADMINISTRATION

SOUTHEAST ALASKA CHAPTER
Box 292 Juneau, Alaska 99802

March 3, 1975

Excerpts from Hawaii Ombudsman Herman Doi's presentation pertaining to budget and staff development. Colloquium on an Alaka Ombudsman, Juneau, February 1, 1975--The full text of Mr. Doi's question and answer session is being prepared for publication and will be available at a recent date.

AUDIENCE QUESTION: I'm wondering, your first fiscal year, do you recall what your budget figure was, total operating budget?

OMBUDSMAN DOI: The appropriation for the first fiscal year that I received was for $103,000 of which the Ombudsman expended $90,000, 90,349.92. And then the second year the appropriation was $176,000 of which we spent $157,395. The third year the appropriation was for $233,000 of which we expended $159,760. The fourth year the appropriation was for $192,000, and we expended $157,595. The fifth year the appropriation was for $185,000, of which we expended $163,000. So we've always been below the actual amount that has been appropriated and the amounts that have been appropriated reflect the amounts of the request that we sent to the legislature and we've always gone in with the idea that look, we really cannot predict where this complaint load is going. Now we know that we are asking for perhaps a little bit more money than we actually are going to spend, but we promise you that whatever we do not spend will be lapsed back into the general fund. And on that basis we have received the appropriation as requested. So, I've had during that period of time, at least one standby position that I could fill, if the complaint load rose during that fiscal year to a level where we could not handle it with the staff we had.

AUDIENCE QUESTION: The first fiscal year you staff numbered?

OMBUDSMAN DOI: The first year I operated by myself, one secretary and toward the end of the fiscal year we hired and trained three additional secretaries and three addition staff members if my recollection is correct.

AUDIENCE QUESTION: And presently your staff includes?

OMBUDSMAN DOI: Presently my staff includes six professionals including myself and four secretaries for a total of ten.

ALLEN T. COMPTON
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TELEPHONE 907-586-2482

February 11, 1975

Honorable Frank R. Ferguson
Chairman, State Affairs Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Honorable Terry Gardiner
Chairman, Judiciary Committee
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

RE: SB 1 - Ombudsman
HB 45 - Ombudsman

Gentlemen:

At its recent meeting, the Board of Governors of the Alaska Bar Association endorsed the concept of a state Ombudsman for Alaska. This endorsement was based upon a recommendation by the Association's Administrative Law Committee.

The Board did not specifically endorse either SB 1 or HB 45, recognizing in part that the mechanics of such an office are best left to legislative scrutiny. However, the endorsement does recognize that such an office could provide a valuable service to citizens who so often find themselves confounded by a bureaucracy seemingly unresponsive to their complaints.

It would be appreciated if this endorsement could be included in your public record.

Respectfully,

Allen T. Compton
Legislative Counsel
Alaska Bar Association

ATC/bt

cc: Honorable Jay Kerttula
Frances Ulmer, Esquire

House Judiciary Committee
February 11, 1975

HB 45 Ombudsman

The meeting was called to order at 1:05 by Chairman Gardiner. All members were present.

Appointment - the committee agreed to keep nomination by the Legislative Council.

page 1, line 23, delete "majority" and add 3/4 vote of the members of each house of the legislature. Delete joint session. Approval of 0
Rep. Brown moved Amendment 1. There being no objection, the amendment passed.

Art Peterson testified regarding the stipulation that the Ombudsman could not run for political office for a given period of time after serving as Ombudsman: The legislature cannot impose additional qualifications on legislative eligibility. This was an Attorney General's opinion and a court decision in 1968 (Benish case). The committee requested that the constitutionality of such a provision be investigated.

Regarding stipulation that the Ombudsman and his staff shall refrain from partisan political activity, Stu Hall testified that the proposed language is similar to legislative employee regulations.

Rep. Fink moved the addition of amendment 2. There being no objection, the amendment passed after the language "which would tend to undermine . . ." was deleted. 7

Art Peterson suggested that the additional language be in a seperate section or that the title of the previous section be amended to include the new language stipulations.

Regarding term of office, Rep. Parr moved that six years be amended to five. There being no objection, amendment 3 passed.

Representative Brown moved that the language "but may not serve for more than three terms" be deleted. There being no objection, amendment 4 passed.

The meeting was adjourned at 1:55 p.m.

House Judiciary Committee
February 12, 1975

Ombudsman

The meeting was called to order at 1:05 p.m. by Chairman Gardiner. All members were present.

The following additional amendments to HB 45 were passed.

page 2, Line 17 and 18: change the words "shall" to may (appoint a deputy)
Amendment 5 passed

page 3, Line 7: after "salaries" add "and benefits" (other legis employees)
Amendment 6 passed

page 4, Lines 7 - 9: Mr. Fink's motion to delete was defeated.

page 3, Line 24: after "unless he" add "reasonably"
Amendment 7 passed

page 4, Line 3 and 4: delete and renumber section (complainant does not have sufficient personal interest)
Amendment 8 passed
Chairman Gardiner requested Stu Hall to draft alternate language for this deleted language.

page 3, line 19: Rep. Brown's motion that the language "and administrative acts of any public official" be inserted after "agencies" was withdrawn.

page 4, Line 16 and 17: After "reasons" insert a period and delete the remaining language in both lines. (unless mapped to state reasons)
Amendment 9 passed.

page 5, line 7: after inefficient add "or discourteous"
Amendment 10 passed.

Meeting adjourned shortly after beginning discussion on page 5, line 6 -- whether this line contained an implied requirement that reasons be given.

House Judiciary Committee
February 13, 1975

Ombudsman

The meeting was called to order at 10:45 a.m. by Chairman Gardiner. Representatives Bradley, Cotton and Brown were absent.

The following are amendments to HB 45:

Page 5, Line 6: change "unaccompanied" to "unsupported" statement of source
Amendment 11 passed.

Page 6, Lines 2 - 8: Rep. Fink moved that the language be redrafted to state that in seeking confidential information, the Ombudsman must receive the approval of the superior court or the court of appropriate jurisdiction. Check into the statutes regarding disclosure of confidential information and make sure that it is a felony. The motion passed.

Page 6, Lines 8 - 11: delete sentence beginning "however" access to info confidential under fed law.
Amendment 12 passed.

Page 6, Line 11: after "information" insert "required by law to be confidential." Delete "confidential at end of line 10 and beginning of line 11.
Amendment 13 passed.

Page 7, Line 9: after "legislature" insert "a grand jury," O present opinion to
Amendment 14 passed.

Page 7, lines 12 - 15: delete all but title of this section and insert "After a reasonable time has elapsed, the ombudsman shall notify the complainant of the actions taken by him and by the agency."
Amendment 15 passed.

Page 7, Line 21: after "to" insert "a grand jury" O refer to
Amendment 16 passed.

Page 7, Line 29, Page 8, Lines 1 and 2: After the title delete remaining language and insert "No civil action may be brought against the ombudsman or a member of his staff for anything done, said or omitted in performing his duties or responsibilities under this chapter."
Amendment 17 passed.

Page 9, Line 1: after "governor," delete the remaining language of the section and insert "and members of the legislature."
Amendment 18 passed.

exclude

Page 8, Line 24: strike "branch" and insert "or judicial branches"
Amendment 19 passed.

include

Page 8, Line 24 and 26: after "commission" insert in both places "corporation, authority, committee, council"
Amendment 20 passed.

include

Page 9, Line 5: after "legislation" insert "or substantive content of any judicial order, decision or opinion."
Amendment 21 passed.

not admin act

Page 9, Line 9: Insert a new section to read "Sec. 24.55.320. CITIES AND BOROUGHS. A city or borough may by ordinance elect to become subject to the jurisdiction of the ombudsman appointed under this chapter. If a city or borough so elects, it shall notify the ombudsman of that election and shall thereafter be considered an agency for purposes of this chapter." Change section numbering. Stu Hall will rearrange the sections in Article 6 to make the definitions come last.

Munis.

The meeting was adjourned at 11:55 a.m.

House Judiciary Committee
February 18, 1975

The meeting was called to order at 3:10 p.m. by Chairman Gardiner. Members present: Gardiner, Bradley, Fink, Cotton, Brown.

HB 45 Ombudsman

Stu Hall presented the committee substitute which incorporated the amendments requested by the committee. Rep. Fink moved that the CS be adopted after language on page 9 concerning the judicial branch be deleted. Mr. Brown amended Mr. Fink's motion to delete the language on the first two lines of page 10 also. Mr. Brown's amended motion failed. Mr. Fink's motion passed and so the CS was adopted. Mr. Brown moved that when the committee receives SB 1 that the CS HB 45 be substituted and that it do pass. There being no objection, Mr. Brown's motion passed.

HB 129 Smoking in Public

Mr. Gardiner indicated that he wished only an idea of what the committee intended to do with this bill. Mr. Fink stated that he would attempt to prove that smoking is not "dangerous" and would then add other habits that bother people to the bill. Mr. Brown recommended that the definition of public accommodation in the 1964 Civil Rights Act be checked to possibly include more public places. Other committee members mentioned other possible amendments including the substitution of approved air conditioning for separate areas.

HB 154/HB 74

Mr. Cotton moved that in 220 six months be changed to 1 year. Amendment 1 passed.

Mr. Brown moved that in 190 the language in lines 22 and 23 relating to imposition of fine be added.
Amendment 2 passed.

Mr. Brown will draft language o cover reckless actions to be another section either before or after Sect 4.

A M E N D M E N T S

IN THE HOUSE BY THE JUDICIARY COMMITTEE

TO: HOUSE BILL NO. 45

Page 1, line 23, strike out "a majority" and insert "concurrent majorities"

Page 1, line 23, after "members" insert:

"of each of the two major political parties in each house"

Page 1, line 24, after "lature" insert "voting separately but"

Page 1, line 26, strike out "one" and insert "two"

Page 2, between lines 2 and 3, insert: Amend 2

"(b) The ombudsman and members of his staff shall maintain the integrity of the ombudsman's functions and services by refraining from joining or supporting, including but not limited to the making of contributions to, any partisan political organization, faction or activity which would tend to undermine the essential nonpartisan nature of their functions and services. The ombudsman and members of his staff may not participate in nonpartisan political activity in any city or borough that is subject to the ombudsman's jurisdiction under sec. 320 of this chapter. However, this subsection does not restrict the ombudsman or members of his staff from expressing private opinion, registering as to party, or voting."

Page 4, strike out lines 6 - 9, inclusive, and insert:

"(6) because the fiscal and staff resources of the ombudsman's office are insufficient for adequate investigation, there are complaints more worthy of the ombudsman's attention."

Page 6, line 8, strike out "However, access to information does"; strike out all matter on line 9; and on line 10 strike out "regulation."

Page 6, lines 10 and 11, strike out "confidential information" and insert:

"information required by law to be confidential"

Page 7, line 12, strike out "Within a reasonable" and strike out all matter on lines 13 - 15, inclusive, and insert:

"After a reasonable time has elapsed, the ombudsman shall notify the complainant of the actions taken by him and by the agency."

Page 7, line ~~21~~ 29, strike out "The ombudsman has the"; strike out all matter on lines ~~22~~ 1 of p8 and ~~23~~ 2, inclusive, and insert:

"No civil action may be brought against the ombudsman or a member of his staff for anything done, said or omitted in performing his duties or responsibilities under this chapter."

Page 7, line 21, after "to" insert "a grand jury or to"

Page 8, line 24, strike out "branch" and insert "or judicial branches"

Page 8, line 26, after "commission," insert "corporation, authority"

Page 9, line 2, strike out "and judicial branches" and insert "branch"

Page 9, line 2, after the semicolon, insert:

"for the purpose of this paragraph, the personal staff of the lieutenant governor does not include those members of the lieutenant governor's staff engaged in the administration of elections;"

Page 9, line 5, after "legislation" insert "or the preparation or issuance of the substantive content of any judicial order, decision or opinion"

Page 9, between lines 9 and 10, insert:

"Sec. 24.55.320. CITIES AND BOROUGHS. A city or borough may by ordinance elect to become subject to the jurisdiction of the ombudsman appointed under this chapter. If a city or borough so elects, it shall notify the ombudsman of that election and shall thereafter be considered an agency for purposes of this chapter."

Page 9, line 10, strike out "320" and insert "330"

COUNSEL'S NOTE: In the preparation of a committee substitute for HB 45, the location of the definitions (sec. 300) will be shifted to the next to the last section in the proposed ch. 55 of Title 24.

"An Act creating the office of the ombudsman; amending Rule 43(h) of the Rules of Civil Procedure; and providing for an effective date."

1/22/75

COMMITTEE REPORT

FINANCE

HOUSE

Mr. Speaker: Date Feb 18 1975

The Committee on Judiciary has had HB 45 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR HB45 AND THAT CS FOR HB45 DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Judy Hadsell Chairman

AMERICAN SOCIETY FOR PUBLIC ADMINISTRATION
SOUTHEAST ALASKA CHAPTER
Box 292 Juneau, Alaska 99802

DRAFT
12/31/74

A BILL

For an Act entitled: "An Act creating the office of the ombudsman, amending AS 39.25.110, and amending Rule 43 (h) of the Rules of Civil Procedure; and providing for an effective date."

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

*Section 1. AS 24 is amended by adding a new chapter to read:

CHAPTER 55. OFFICE OF THE OMBUDSMAN.

ARTICLE I. ORGANIZATION.

Sec. 24.55.010. OFFICE OF THE OMBUDSMAN. There is created in the legislative branch of the state the office of the ombudsman.

Sec. 24.55.020. APPOINTMENT OF THE OMBUDSMAN. (a) A candidate for appointment as the ombudsman shall be nominated by the ombudsman selection committee composed of the president of the senate, the minority leader of the senate or a minority member of the senate appointed by him, the speaker of the house, the minority leader of the house or a minority member of the house appointed by him, the chairman of the senate judiciary committee, and the chairman of the house judiciary committee.

(b) The ombudsman selection committee shall examine persons to serve as the ombudsman regarding their qualifications and ability and shall place the name of the person selected in nomination before the legislature for appointment as the ombudsman. The appointment of a person nominated as the ombudsman by the committee is effective if his candidacy is approved by a majority of the members of the legislature in joint session.

Sec. 24.55.030. QUALIFICATIONS. No person may serve as ombudsman

(1) within one year following his term of office as a member of the legislature;

(2) while he is a candidate for or holds any other national or state political office; or

(3) while he is engaged in any other regular occupation for which he receives compensation.

Sec. 24.55.040. TERM OF OFFICE. The term of office of the ombudsman is six years. An ombudsman may be reappointed but may not serve for more than three terms. In the event the term of an ombudsman expires without a successor having been appointed under this chapter, the incumbent ombudsman shall continue in office until a successor is so appointed.

Sec. 24.55.050. REMOVAL. The legislature, by a two-thirds vote in each house, may remove or suspend the ombudsman from office, but only for neglect of duty, misconduct, or disability.

Sec. 24.55.060. COMPENSATION. (a) The ombudsman shall receive an annual salary equal to that of a superior court judge.

(b) This first assistant to the ombudsman shall receive an annual salary equal to that of a district court judge.

Sec. 24.55.070. STAFF AND DELEGATION. (a) The ombudsman shall appoint a first assistant and such other assistants and clerical personnel as may be necessary to carry out the provisions of this chapter.

(b) The ombudsman may delegate to his assistants any of his duties except those specified in secs. 190 and 200 of this chapter;

provided that during the ombudsman's absence from his principal business offices, the ombudsman may, at his discretion, delegate the powers and duties specified in secs. 190 and 200 of this chapter to the first assistant for the duration of the absence; and provided further, that during any temporary disability of the ombudsman to exercise and discharge the powers and duties of his office, the powers and duties specified in secs. 190 and 200 of this chapter shall devolve upon the first assistant for the duration of the disability.

(c) The ombudsman and the first assistant and other staff appointed by him are in the exempt service under AS 39.25.110.

Sec. 24.55.075. VACANCIES. If the ombudsman dies, resigns, becomes ineligible to serve, or is removed or suspended from office, the first assistant to the ombudsman becomes the acting ombudsman until a new ombudsman is appointed for a full term at a regular or special session of the legislature.

Sec. 24.55.080. OFFICE FACILITIES AND ADMINISTRATION.

(a) The Legislative Council shall provide suitable office space and equipment for the ombudsman and his staff.

(b) The salary and benefits of the ombudsman and his permanent staff shall be paid through the same procedures used for payment of the salaries of other permanent legislative employees.

(c) The ombudsman shall submit a budget for each fiscal year to the Executive Director of the Legislative Affairs Agency for submission to the Legislative Council.

Sec. 24.55.090. PROCEDURE. The ombudsman may establish procedures for receiving and processing complaints, conducting investigations, and reporting his findings. However, he may not levy fees for the submission or investigation of complaints.

ARTICLE 2. JURISDICTION AND INITIATION OF INVESTIGATIONS.

Sec. 24.55.100. JURISDICTION. (a) The ombudsman has jurisdiction to investigate the administrative acts of agencies.

(b) The ombudsman may exercise his powers without regard to the finality of any administrative act.

Sec. 24.55.110. INVESTIGATION OF COMPLAINTS. The ombudsman shall investigate any complaint indicating an appropriate subject for investigation under sec. 150 of this chapter, unless he believes that

(1) there is presently available an adequate remedy for the grievance stated in the complaint;

(2) the complaint relates to a matter that is outside the jurisdiction of the ombudsman;

(3) the complaint relates to an administrative act of which the complainant has had knowledge for too long a time before the complaint was submitted;

(4) the complainant does not have a sufficient personal interest in the subject matter of the complaint;

(5) the complaint is trivial or made in bad faith;

(6) the facilities of the ombudsman's office are insufficient for adequate investigation; or

(7) there are other complaints more worthy of the

ombudsman's attention.

Sec. 24.55.120. INVESTIGATION ON THE OMBUDSMAN'S MOTION. The ombudsman may investigate on his own motion if he reasonably believes that an appropriate subject for investigation under sec. 150 of this chapter exists.

Sec. 24.55.130. NOTICE TO COMPLAINANT. (a) If the ombudsman decides not to investigate, he shall inform the complainant of that decision and shall state his reasons except in exceptional circumstances in which he reasonably believes it is inappropriate to do so.

(b) If the ombudsman decides to investigate, he shall notify the complainant of his decision.

Sec. 24.55.140. NOTICE TO THE AGENCY. If the ombudsman decides to investigate, he shall notify the agency of his intention to investigate.

ARTICLE 3. INVESTIGATIONS

Sec. 24.55.150. APPROPRIATE SUBJECTS FOR INVESTIGATION.

(a) An appropriate subject for investigation by the ombudsman is an administrative act of an agency which the ombudsman has reason to believe might be

(1) contrary to law;

(2) unreasonable, unfair, oppressive, or unnecessarily discriminatory, even though in accordance with law;

(3) based on a mistake of fact;

(4) based on improper or irrelevant grounds;

(5) unaccompanied by an adequate statement of reasons;

(6) performed in an inefficient manner; or

(7) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

(b) The ombudsman may investigate to find an appropriate remedy.

Sec. 24.55.160. INVESTIGATION PROCEDURES. In an investigation, the ombudsman may

(1) make inquiries and obtain information as he thinks fit;

(2) enter without notice to inspect the premises of an agency but only when agency personnel are present; and

(3) hold private hearings.

Sec. 24.55.170. POWERS. (a) Subject to the privileges which witnesses have in the courts of this state, the ombudsman may

(1) compel at a specified time and place, by subpoena, the appearance and sworn testimony of any person who the ombudsman reasonably believes may be able to give information relating to a matter under investigation; and

(2) compel any person, by subpoena, to produce documents, papers, or objects which the ombudsman reasonably believes may relate to the matter under investigation.

(b) If a person refuses to comply with a subpoena issued under (a) of this section, the superior court may on application

of the ombudsman compel obedience by proceedings for contempt in the same manner as in the case of disobedience to the requirements of a subpoena issued by the court or refusal to testify in the court.

(c) Any papers, records, documents, memos, bills, receipts, photographs, letters, correspondence, invoices, work orders, working papers, agreements, notes, reports and any other manner of writing or document possessed by or in the custody of an agency may be inspected and copied by the ombudsman, notwithstanding any statutory provision of the state making any of these items or the information contained in them confidential. However, access to information does not extend to any information made confidential under federal statutes or regulations. The ombudsman shall not make or cause public disclosure of any confidential information acquired under this chapter. To the extent any papers, records, documents, memos, bills, receipts, photographs, letters, correspondence, invoices, work orders, working papers, agreements, notes, reports any any other manner of writing or document contain information in part discoverable and in part non-discoverable by the ombudsman under this subsection, the agency shall take the steps that may be necessary to segregate and release discoverable information to the ombudsman.

ARTICLE 4. PROCEDURE AND REPORTS AFTER INVESTIGATION.

Sec. 24.55.180. CONSULTATION WITH AGENCY. Before giving any opinion or recommendation that is critical of any opinion or recommendation that is critical of any agency or person, the ombudsman shall consult with that agency or person.

Sec. 24.55.190. PROCEDURE AFTER INVESTIGATION. (a) The ombudsman shall report his opinion and recommendation to an agency if he finds, after investigation, that

(1) a matter should be further considered by the agency;

(2) an administrative act should be modified or cancelled;

(3) a statute or regulation on which an administrative act is based should be altered;

(4) reasons should be given for an administrative act;

(5) any other action should be taken by the agency;

(6) there are no grounds for any action by the agency; or

(7) the agency's act was arbitrary or caprious, constituted an abuse of discretion, or was otherwise not in accordance with the law.

(b) The ombudsman may request the agency to notify him, within a specified time, of any action taken on his recommendations.

Sec. 24.55.200. PUBLICATION OF RECOMMENDATIONS. After a reasonable time has elapsed, the ombudsman may present his opinion and recommendations to the governor, the legislature, the public, or any of these. The ombudsman shall include with his opinion any reply made by the agency.

Sec. 24.55.210. NOTICE TO THE COMPLAINANT. After a reasonable time has elapsed, the ombudsman shall notify the complainant of the actions taken by him and by the agency.

ARTICLE 5. MISCELLANEOUS

Sec. 24.55.220. MISCONDUCT BY AGENCY PERSONNEL. If the ombudsman thinks there is a breach of duty or misconduct by any officer or employee of an agency in relation to his official duties,

the ombudsman shall refer the matter to the chief executive officer of the agency, or, when appropriate, to other appropriate officials and bodies.

Sec. 24.55.230. ANNUAL REPORT. The ombudsman shall submit to the legislature and the public an annual report of his activities under this chapter.

Sec. 24.55.240. JUDICIAL REVIEW. No proceeding or decision of the ombudsman may be reviewed in any court, unless it contravenes the provisions of this chapter.

Sec. 24.55.250. IMMUNITY OF THE OMBUDSMAN. The ombudsman has the same immunities from civil and criminal liability as a judge of this state.

Sec. 24.55.260. OMBUDSMAN'S PRIVILEGE NOT TO TESTIFY. The ombudsman and his staff may not testify in any court with respect to matters coming to their attention in the exercise or purported exercise of their official duties except as may be necessary to enforce the provisions of this chapter.

Sec. 24.55.265. AGENCIES MAY NOT OPEN LETTERS TO AND FROM OMBUDSMAN. A letter to the ombudsman from a person held in custody by an agency shall be forwarded immediately, unopened, to the ombudsman. A letter to a person held in custody by an agency from the ombudsman shall be forwarded immediately, unopened, to the person.

Secon 24.55.270. PENALTY. A person who wilfully hinders the lawful actions of the ombudsman or his staff, or who wilfully refuses to comply with their lawful demands, is guilty of a misdemeanor and upon convication is punishable by a fine of not more than $1,000.

ARTICLE 6. GENERAL PROVISIONS

Sec. 24.55.280. DEFINITIONS. In this chapter (a) "agency" means a permanent department, office, entity, commission, organization, institution, or board of the state government, and any officer, employee, or member thereof acting or purporting to act in the exercise of his official duties, except:

(1) The judiciary and its staff;

(2) The legislature, its committees, and its staff;

(3) The governor and his personal staff; and

(4) The lieutenant governor and his personal staff.

(b) "administrative act" means an action, omission, decision, recommendation, practice, policy, or procedure, but does not include the preparation or presentation of legislation.

Sec. 24.55.290. ADMINISTRATIVE PROCEDURE ACT. The actions, decisions, recommendations, practices, policies, and procedures of the ombudsman shall not be subject to the provisions of the Administrative Procedure Act (AS 44.62).

Sec. 24.55.300. CITIES AND BOROUGHS. After July 1, 1978, any city or borough in this state may be ordinance elect to become subject to the jurisdiction of the ombudsman appointed under this chapter. If any city or borough shall so elect, it shall send notice to the ombudsman of that election. Upon receipt of notice by the ombudsman, permanent departments, offices, entities, commissions, organizations, institutions, or boards of the city or borough, and any officer, employees, or member thereof acting or purporting to

act in the exercise of his official duties shall thereupon be considered an agency for purposes of this chapter, except:

(1) The mayor of a city or borough;

(2) The manager of a city or borough;

(3) The assembly of a borough; and

(4) The council of a city.

Sec. 24.55.310. SHORT TITLE. This chapter may be cited as the Ombudsman Act.

*Sec. 2. AS 39.25.110 is amended by adding a new paragraph to read:

(16) The ombudsman and staff appointed by him.

*Sec. 3. Sec. 24.55.260 of this Act amends Rule 43 (h) of the Rules of Civil Procedure by establishing an additional privilege not to testify in a court and must receive an affirmative vote of two-thirds of the full membership of each house in order to be effective.

*Sec. 3. This Act takes effect immediately in accordance with the provisions of AS 01.10.070 (c).

AMERICAN SOCIETY FOR PUBLIC ADMINISTRATION

SOUTHEAST ALASKA CHAPTER
P.O. Box 505
Douglas, Alaska 99824

MEMO TO ALASKA CANDIDATES FOR PUBLIC OFFICE AND ALASKA NEWS MEDIA:

The Southeast Alaska Chapter of the American Society for Public Administration has been pleased to publish and distribute the enclosed study on The Ombudsman: Its Potential Applicability to Alaska by Gary E. Wilson. This study was undertaken initially by Wilson as a governmental project report which he submitted to the University of Alaska's Southeastern Senior College in partial fulfillment of the requirements for a Master's Degree in Public Administration. He received his degree in the May, 1974 commencement held in Juneau.

We have published and circulated this study because we think Wilson's findings and recommendations are significant and meritorious. This study demonstrates that the various American experiments with the ombudsman which have been attempted in other states have enjoyed a large measure of success. Of greatest significance has been the success of ombudsmen in restoring public confidence in state governmental institutions while performing practical and immediate services to people in the process.

Noteworthy also for identifying patterns of citizens' grievances and systematic follow-through on casework, the study demonstrates that ombudsmen serve to relieve state legislators of one of their more burdensome chores, complaint processing, and free them to focus their attention toward central issues of public importance in the legislative process. Even more than legislators, however, executive branch officials and employees, the same people against whom ombudsmen are employed to lodge grievances, have welcomed them to the governmental scene.

Wilson explains this phenomenon in terms of modern management theory. "Too many complaints," he says, "are either received at or are referred up to a too high level in the administrative heirarchy. The typical citizen's complaint neither requires the attention of top management nor can it be satisfactorily resolved on that level. From their point of view the ombudsman provides both a species of consulting service affording them reliable reports on the performance of their operating personnel and a species of in-service training for their operating personnel when the job can be done better."

The study also includes feasibility data which indicate that the ombudsman would be adaptable to Alaska's geography and system of state government. Travel costs necessary to bring the ombudsman's services to the entire state would be higher than in other states where the experiment has been tried. Looking at the ombudsman from the standpoint of benefit/cost analysis, Wilson concludes, however, that the people of Alaska could enjoy this governmental

reform at a minimal and reasonable cost. "A budget figure of $100,000 would appear to be adequate for the first year of operation. This would allow $50,000 for salaries, $20,000 for travel and $30,000 for office expenses, depending upon what facilities and equipment were made available. This figure would probably double or triple during the second year of operation due to increases in staff, travel and related expenses as the services became more widely known. The budget would then level off and remain fairly static (subject to inflation) since primary advantages of the concept are small size and personal attention."

Donald R. Fisher
President
July 12, 1974

THE OMBUDSMAN:

ITS POTENTIAL APPLICABILITY FOR THE STATE OF ALASKA

By

GARY E. WILSON

Published by

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ACKNOWLEDGMENTS

As a service to the public, the Southeast Alaska Chapter of the American Society for Public Administration is pleased to publish and to distribute throughout the State of Alaska this meritorious study on the applicability of the ombudsman to the governmental system of this state. The author, Gary E. Wilson, has been an Alaska resident since 1966. He is the Division Right-of-Way Officer for Alaska with the Federal Highway Administration.

This study was commenced as a governmental project report which Mr. Wilson submitted to the University of Alaska's Southeastern Senior College in partial fulfillment of the requirements for a Master's Degree in Public Administration. He was awarded the degree in the May, 1974 commencement held in Juneau. On behalf of the Southeast Alaska Chapter of the American Society for Public Administration, I want to express our appreciation to Mr. Wilson and the members of the Southeastern Senior College faculty who assisted him in his research, for making the study available to us for public distribution.

Donald P. Fisher
Chapter President
Juneau
July, 1974

INTRODUCTION

"Governmental activities nowadays touch so many people in so many ways that bruises and scratches are inevitable."[1] How can these bruises and scratches be alleviated? The enormous growth and diversity of government functions, the size and elaborateness of the administrative mechanisms, the maze of interrelationships among national, state, and local levels are often highly bewildering. Many citizens regard government as remote and inaccessible. The aggrieved person is often thwarted and gives up when he comes up against a defensive government professional.[2] A proposed solution to these problems is to establish a centralized grievance bureau of "Ombudsman." The purpose of this paper is to explain who and what an ombudsman is, discuss the attempts to adopt the concept in this country, and explore the feasibility of establishing a statewide office of Ombudsman in the State of Alaska.

The strange-sounding name, ombudsman, is a Swedish word which means agent, representative, or deputy. The present, generally accepted concept of an ombudsman is a spokesman representing a citizen who has a grievance against a government agency. A grievance may result from ". . . for example, unreasonableness, miscalculation, mistaken application of rules, improper

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[1]Walter Gellhorn, When Americans Complain: Government Grievance Procedures, 1966, p. 1.

[2]Dalmas H. Nelson and Eugene C. Price, "Realignment, Readjustment, Reform: The Impact of the Ombudsman on American Constitutional and Political Institutions," The Annals of the American Academy of Political and Social Sciences, (May, 1968), p. 129.

discrimination, prejudice, bias, neglect of duty, inattention, delay, incompetence, perversity, turpitude, and arbitrariness."[1] These are probably overly harsh adjectives; however, even the best of bureaucracies will have flaws due to its size and human idiosyncrasies.

With the increasing complexity and growth of all levels of government, individual citizens need a place to air their grievances concerning administrative action or inaction. Today's citizen can protect himself against just about everyone except the bureaucrat. It is sometimes argued that several avenues already exist through which complaints may be expressed. For example, there are administrative appeals boards, courts, and state and federal legislators. Each of these, however, has definite limitations for serving as grievance reviewing bodies.

Administrative appeals boards many times include the person making the original decision. While a re-review by a superior or an individual's own review of his decision may be helpful, it certainly lacks impartiality. The agency is likely to try to justify its decisions and is, therefore, not inclined to admit a mistake has been made.

The courts are congested. They usually require legal counsel and are generally frightening to underprivileged or uneducated citizens who many times feel their chances of a success are nonexistent. This is graphically shown in William Stringfellow's book, My People is the Enemy.[2] Stringfellow, as a recent law school graduate, moved into Harlem's ghetto and opened a law office.

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[1]Geoffrey Marshall, "The British Parliamentary Commissioner for Administration," The Annals of the American Academy of Political and Social Sciences, (May, 1968), p. 88.

[2](New York: Holt, Rinehart and Winston, 1964).

The lack of knowledge as to personal rights and to whom to complain that Stringfellow encountered was astounding. The fear of authority and the feeling that no one would listen or care was the prevalent attitude. This study shows the need for a compassionate ombudsman by whatever name in whom the poor and uneducated would have enough faith to ask where help can be found and what they are entitled to. "Phrases like 'he is the champion of the people,' 'he is like God,' and 'he is the protector of the little guy,' appear repeatedly in interviews with persons who have witnessed the system in operation."[1]

While many legislators feel the "casework" keeps them in closer touch with their constituents, the variety of legislative temperaments cannot give complaints consistent treatment due to differences of motivation, expertise, or ability to communicate with administrators. With so many different people receiving the complaints, it is difficult to detect patterns of grievances that may be obvious if all complaints were received by one office. Handling grievances also detracts from the legislator's primary purpose, which is the formulation of legislation. Many state legislatures meet for only a few months annually, or even biennially. Thirty-five state legislatures meet annually; however, they are often limited to sixty to ninety-day sessions. The other fifteen have similar time restrictions and meet only biennially. Thus, the aggrieved citizen has nowhere to send his complaint during the major part of the year unless his particular legislator considers his office a year-round one.

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[1]John M. Capozzola, "An American Ombudsman: Problems and Prospects." Western Political Quarterly, (June, 1968), p. 300.

CHAPTER I

Historical Development of the Office of Ombudsman

The concept of an ombudsman originated in Sweden in 1809. The ombudsman was appointed by the Riksdag (Parliament) to act as a representative of the Parliament to protect individuals against unfair assertions of power by the king's administrative appointees. The ombudsman was "available to hear the complaint of any citizen against the erroneous, unfair or even impolite action by government officials, having the power to investigate a complaint, to publicize any abuse, to recommend corrective action, and to report to the legislature."[1] The intention was to provide a vehicle whereby a citizen regardless of his economic, social, or political status could challenge the actions or decisions of a public agency.

The Swedish ombudsman's jurisdiction now covers national, regional, and local levels of government. It also covers the courts as well as the bureaucracy and is somewhat unique in this regard. He may not take action affecting the king, legislature, or a private citizen.

The office of the Swedish ombudsman formerly included two individuals, a civil ombudsman and a military ombudsman. These were merged in 1965. Legal as well as administrative training are considered requirements for the office in Sweden.

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[1]U.S. Congress Joint Committee on the Organization of Congress, Hearings on the Organization of Congress, 89th Congress, First Session, Part I, 1966, p. 83.

For over 100 years the ombudsman idea remained exclusively a Swedish innovation. In 1919 the idea was exported to Finland following that country's gaining its independence from Russia. Finland actually has had a type of ombudsman, the Chancellor, dating from the days of Swedish-Russian rule. He is appointed by the President and is actually a part of the executive branch. He no longer handles complaint work, concentrating instead on cabinet work and his duties as Supreme Public Prosecutor.[1] Due to the Chancellor's ties to the executive, Parliament created the ombudsman to oversee the executive branch. As in Sweden, he has investigatory jurisdiction over the courts as well as the executive.

Despite the Swedish and Finnish institutions, the ombudsman idea did not receive much worldwide attention until 1955 when Denmark created the Parliamentary Commissioner, their version of ombudsman. The first appointee was Stephan Hurwitz, a doctor of law and a professor at the University of Copenhagen. Professor Hurwitz has done much to publicize the office through extensive writing and worldwide speaking engagements. He feels the success of the office is greatly dependent upon its prestige and the impartiality of the man in the office.[2]

Denmark gave the office a different emphasis by denying the ombudsman jurisdiction over the courts. Thus he concentrates his efforts on the executive and administration sectors. As in Sweden and Finland, he has jurisdiction

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[1]Walter Gellhorn, Ombudsman and Others: Citizen's Protectors in Nine Countries, p. 48.

[2]Harvard Journal on Legislation, "A State Ombudsman," (June, 1965), p. 218.

over local governments. In Danish system, jurisdiction extends not only to illegal actions, but also to all phases of administration, which may involve substance, procedures, delay, convenience, and even impoliteness.[1]

The idea next spread to New Zealand in 1962 where a Commissioner of Investigation was established as the result of an election promise of the National Party's platform in the 1960 general election.[2]

Although generally patterned after the Danish model, the New Zealand office is at a relatively lower level. The salary level is lower and his jurisdiction is more restricted. He has no authority over local affairs, the courts, or the military.

In 1963, Norway's ombudsman took office. Thus all four of the Scandinavian countries now have a form of ombudsman. This office was also patterned after Denmark. Norway was followed by the United Republic of Tanzania in 1965, Guyana in 1966, and the United Kingdom in 1967.

The first jurisdiction to create a version of the office in North America was Nassau County, New York, on May 31, 1966. Although the official is referred to as an ombudsman, he is not an independent agency of the legislature but is appointed by the executive.[3] Five Canadian provinces have adopted the idea--Alberta and New Brunswick in 1967, Quebec in 1969, Nova Scotia and Manitoba in 1970.

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[1]Western Political Quarterly, "An American Ombudsman: Problems and Prospects," (June, 1968), p. 291.

[2]Henry S. Reuss and Stanley V. Anderson, "The Ombudsman: Tribune of the People," The Annals of the American Academy of Political and Social Sciences, (January, 1966), p. 45.

[3]Donald C. Rowat, ed., The Ombudsman: Citizen's Defender, (1965), p. xii.

While not specifically ombudsmen, there are similar institutions in India, Japan, Nepal, the Philippines, Mauritius, Australia, Ghana, Greece, Israel, Poland, West Germany, and several other countries. Bills have been introduced in at least thirty-five state legislatures (including Alaska) to create some form of ombudsman. Bills have also been regularly introduced in the United States Congress since 1965 to create a national office of ombudsman.

The basic idea of an ombudsman has become so popular that it has been adopted in one form or another by schools, newspapers, radio stations, citizen's organizations, the military, etc. There is such a diversity of applications that the original concept is becoming somewhat blurred. There are three basic features essential to retaining the original system: (1) he must be an independent, non-partisan officer of the legislature to supervise the administration; (2) he deals with specific complaints against the administration; and (3) he has the power to investigate and to criticize, but not to reverse administrative action.

The flexibility of the ombudsman is probably what has made the office adaptable in so many countries at a national as well as lower level of government. There are common threads running through each of these adaptations. For example, high standing as a jurist is usually a prime qualification. In the Scandinavian countries legal training is required by statute.

Typically, the ombudsman is selected by the legislative bodies. In New Zealand, the Lieutenant Governor (the Queen's delegate) appoints the ombudsman but he acts on the recommendation of the legislature.[1]

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[1]State of Washington, Legislative Council, Committee on State Government, The Ombudsman in Scandinavia: Advantages and Disadvantages for State Government, Olympia: Legislative Council, n.d., p. 7.

The ombudsman is generally appointed for four to six years. In New Zealand he continues in office until a successor is named. Removal from office generally takes at least a two-thirds vote of the legislature. In Finland removal is impossible.

Salary is universally set high, usually fixed at the equivalent of the highest ranking judges. The staff is generally small and selected by the ombudsman. In most cases they are not covered by civil service and thus serve at the pleasure of the ombudsman.

The jurisdiction of the various ombudsmen is the area of largest variance. None may inquire into the work of the legislature, and of the principal countries having ombudsmen, only in Sweden and Finland may inquiry be made of the courts. In all the Scandinavian countries the acts of local officials come under the jurisdiction of the ombudsman, but this is not always true elsewhere. There is a universal tendency to limit the ombudsman to areas where either there is no reviewable avenue or where all available legal remedies have been exhausted.

Most ombudsmen have the authority to act on their own initiative. A variation found in Great Britain is that direct complaints may not be made by citizens, they must be made to the commissioner (ombudsman) via a member of Parliament. In Sweden, Finland, and Denmark the ombudsman makes periodic inspections of government establishments mainly for the purpose of gaining familiarization with the operation of the different agencies.

The Swedish and Finnish ombudsmen are prosecutors who can bring charges against officials. These powers have seldom been used. They rely instead on the power of persuasion and publicity which is generally the only powers other

ombudsmen have. The press, particularly in Sweden and Denmark, gives considerable publicity to findings that reflect adversely an official or an administrative unit.[1]

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[1]State of Washington, Advantages and Disadvantages, p. 10.

CHAPTER II

A National Ombudsman for the United States?

It is generally accepted that the idea of an ombudsman will work at a national level when the country is relatively small with a homogenous population. Ake Sandler suggests that twenty million may be the ultimate population an ombudsman can handle effectively.[1] Great Britain is the possible exception to this; however, the British concept is not actually an ombudsman in the full sense of the term since he cannot receive complaints directly. It seems fairly obvious that no one man can supervise a bureaucracy the size of the United States or be responsive to 200,000,000 people. However, even in the Scandinavian countires the work is not done by one man but by a staff. In the United States the size of the staff could be overwhelming.

John M. Capozzola of New York University questions whether a successful institution in a small country can be implemented in a vast and complex society. He states, "there is validity to the doubts of some that the plan is inapplicable except on the local level in the United States. The Danish Ombudsman, Professor Stephan Hurwitz, had questions about its successful implementation in a country the size of Britain. This is compounded by the

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[1]Ake Sandler, "An Ombudsman for the United States." The Annals of the American Academy of Political and Social Sciences, (May, 1968), p. 105.

emphatic belief of Professor Hurwitz that an organization cannot achieve the same degree of public confidence that an individual can attain."[1]

The doctrine of the separation of powers in the United States could prove to be an additional problem to the one of size when a national ombudsman is considered. Although the legislative branch has the right to investigate administrative performance when it is in the pursuit of legislative purposes, the doctrine of executive privilege can be invoked whenever national security is involved. Although this would apply at the federal level, national security would not apply at the state or local level. Clearly the separation of powers with an independent judiciary would place the courts outside the ombudsman's jurisdiction.

One of the largest problems to overcome with instituting the ombudsman concept on the national level in the United States is the legislative branch itself. Congress is the branch most accountable to the people. Legislators naturally do not want to do anything to build a wall between themselves and the voters. It is traditional for the voters to seek help from their representatives in Congress. Senator Mike Monroney stated, "I am afraid there will be boys thinking, 'Well, I elected this guy to serve me up there in Washington. The first thing I catch him doing is passing the buck over to some Ombudsman.'"[2] "Probably the most important mail received by a congressman is the 'case' mail . . . . Denied a favorable ruling by the bureaucracy on a matter of direct concern to him, puzzled or irked by delays in obtaining a decision,

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[1]Capozzola, American Ombudsman, p. 292.

[2]U.S. Congress, Joint Committee, p. 91.

confused by the administrative maze through which he is directed to proceed, or ignorant of whom to write, a constituent may turn to his congressman for help . . . . A person who has a reasonable complaint or query is regarded as providing an opportunity rather than as an extra burden to an already busy office. The party affiliation of the individual even when known to be different from that of the congressman does not normally act as a deterrent to action."[1]

Thus in a sense the United States already has 535 ombudsmen with its 100 Senators and 435 Congressmen. These lawmakers each have a staff of from ten to thirty who spend a great deal of their time handling "casework," inquiries, or complaints from constituents.

Congress also has available to it an organization to investigate the administration, the General Accounting Office. Although not actually an ombudsman since they do not receive complaints from private citizens, this organization does keep executive agencies somewhat in check since they are always susceptible to a surprise audit. The actual responsibility of the G.A.O. is to audit federal agencies to determine whether or not they are carrying out legislation the way Congress intended.[2]

Even so, Congressman Henry S. Reuss from Wisconsin has long been a proponent of a national ombudsman. In his view, a congressman's time could be better spent researching and enacting meaningful legislation instead of spending so much time on casework. "As Vice-President Hubert Humphrey said recently, 'Many members of the Senate and the House spend up to ninety percent of their

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[1]Charles L. Clapp, The Ombudsman: His Work as He Sees It, p. 84.

[2]Scot MacDonald, "Reorganizing Along Functional Lines Makes Congress' GAO More Responsive," Government Executive, (June, 1972), pp. 54-57.

time--and the time of their staff--answering mail, meeting with constituents and handling individual constituent complaints or requests.' 'I thought I was going to be Daniel Webster,' remarked another member, 'and I found that most of my work consisted of personal work for constituents.'"[1] Reuss also thinks the complaining citizens would receive more uniform treatment if they were all handled by one agency or individual. The Reuss-Pell bill (H.R. 4273 and S. 984) introduced in 1965 read in part:

> Section 2. The Congress hereby finds and declares that the increasing complexity of the Federal Government has created difficulties on the part of private citizens in dealing with the Government, that there is a clear need for the Congress to be informed of the nature of such difficulties, particularly those of a recurrent nature, in order that remedial legislative action may be taken, and that, under existing procedures, such information is only sporadically available and frequently is inadequately developed or fails entirely to reach the appropriate legislative committees. The Congress further finds that the necessary and proper efforts of its individual Members to deal with these problems have increasingly become so burdensome as to constitute a serious impediment to the discharge of their other legislative duties.[2]

Another reason for the ombudsman thus emerges from this bill, that of informing the legislature where corrective legislation is needed to raise the level of service to the public. The Reuss bill varies somewhat from the usual concept of an ombudsman. In the first place the name was to Administrative Counsel of the Congress. He was only to be given a term of two years, receive complaints through an individual Congressman or committee and report back to the same source. He would also make an annual report to Congress. He would have a staff of approximately 100 experts to replace the many staffs of

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[1]Henry S. Ruess, "We Need an American Ombudsman," The Christian Century, (March, 1965), p. 270.

[2]Reuss and Anderson, Tribune of the People, p. 49.

generalists now attached to the individual Congressmen's offices.[1] Reuss gives several reasons for having complaints go through Congressmen. There is already a tradition of citizens complaining to their representatives. Congressmen are not apt to give up a source of votes and would, therefore, be more inclined to pass the bill if the complaints and replies were funneled through them.

One flaw in Mr. Reuss' plan is the size. One of the outstanding characteristics of the ombudsman is the small staff and personal rather than bureaucratized attention. Although personal attention can also be given with a large staff, it is apt to become just another government agency. Many of the various ombudsmen so far established have substantially increased the size of their staff from its original conception. Granted, their increases have not represented very many people, but percentagewise the increase has been substantial. If Mr. Reuss' plan is to start with a staff of 100, it is highly conceivable that the agency would lose all semblance of personal attention through size in a relatively short time.

Perhaps if one central office became unmanageable due to size, regional offices could be set up, or even state offices similar to that of federal district attorneys. This, however, would be getting further and further away from the idea of a one-man public watchdog. Regional offices would also require some degree of duplication. This would further increase the size of the staff and the proliferation would just keep snowballing. Another alternative might be to establish several ombudsmen, for different functional areas, such as welfare, resources, etc.

From the above it can be seen that at the national level in the United States the problems of creating an ombudsman may be insurmountable.

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[1] Reuss and Anderson, Tribune of the People, pp. 49-50.

CHAPTER III

Ombudsman at the State Level

As stated earlier, as of 1972, bills had been introduced in thirty-five states to create some type of ombudsman. The first state to introduce such a bill was Connecticut in 1963.[1] The first state to enact a bill was Hawaii in 1967.

The Hawaiian ombudsman, Herman Doi, took office July 1, 1969. Prior to becoming Hawaii's ombudsman, Mr. Doi had extensive experience as both a private and government attorney. He had served as the director of the University of Hawaii's Legislative Reference Bureau just before assuming the ombudsman post.[2] During his first year in office 983 inquiries were received. This total includes inquiries received during the three months prior to Mr. Doi taking office. Of these, 68.7% were received by telephone, 18.1% by visits and 13.2% by letter. Of the inquiries received, 243 or 24.7% were considered outside the jurisdiction of the office. Another 129 or 13.1% were not considered as complaints but as informational inquiries. This left 611 actual complaints against governmental agencies.[3]

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[1]Jesse M. Unruh, "The Ombudsman in the States," The Annals of the American Academy of Political and Social Sciences, (May, 1968), p. 112.

[2]Jack H. Stephens, "Hawaii's Ombudsman," National Civic Review, (February, 1970), p. 83.

[3]Office of the Ombudsman, State of Hawaii, Fiscal Year 1969-1970/ Report Number 1, p. 13.

The city and county of Honolulu with three-quarters population of the state provided the source for 93% of the inquiries.

By the end of the third year of operation, the total number of complaints had risen to 1,678 (this is down from the second year when 1,758 were received). Of these, 358 or 21.3% were outside the ombudsman's jurisdiction and 513 or 30.6% were informational. This left a total of 807 actual complaints against an agency.[1]

The initial staff of Hawaii's Office of Ombudsman consisted of the ombudsman himself and an executive secretary. By January, 1970, the staff also included an associate analyst and a stenographer. The staff had increased by the end of the third year to include a first assistant, three other professional analysts and four secretaries. The educational backgrounds of the professionals included law, political science, education and guidance, and management.[2]

Oregon's governor, by executive action, created the post of ombudsman in 1969. During the fiscal year July, 1969 to June, 1970, 922 complaints were received. Two individuals have held the post in Oregon.[3]

The 1969 Nebraska Legislature enacted a bill calling for the appointment of an ombudsman who took office June 1, 1971. During his first year, 383 inquiries were received.[4]

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[1]Office of the Ombudsman, State of Hawaii, Fiscal Year 1971-1972/ Report Number 3, p. 7.

[2]State of Hawaii, Report Number 3, p. 61.

[3]American Bar Association, Section of Administrative Law, Ombudsman Committee, Development Report, April 15, 1971-June 30, 1972, p. 12.

[4]Ibid.

Iowa's governor appointed a Citizen Aide in 1970 and the 1972 Legislature passed the Citizens Aide Act. The act does not exclude local government from the jurisdiction of the Citizens Aide. During the year October 1, 1970 to September 30, 1971, 1,185 inquiries were received.[1]

The Governor of South Carolina, on May 4, 1971, created the Office of Citizens Service. During the period ending September 13, 1971, 1,338 inquiries were registered with this office.[2]

In 1971, the Lieutenant Governor of New Mexico was given the added duties of ombudsman by statute.[3]

In Minnesota, an Ombudsman for Correction was appointed by the governor on April 21, 1972. This office is funded in a large part by federal aid. In May, 1973, the legislature passed a bill creating the Office of Ombudsman for Correction.[4]

Various other proposals have been made for ombudsmen in specific areas such as mental health, welfare, and dependent children. While the need for these specific ombudsmen exists, it points out the need for a general ombudsman since it would be impossible to state that grievance problems exist in only one selected area.

Despite the widespread use of the term ombudsman, ignorance of the capabilities of an ombudsman still appears to be the greatest hindrance to its

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[1]American Bar Association, Section of Administrative Law, Ombudsman Committee, Development Report, April 15, 1971-June 30, 1972, p. 13.

[2]Ibid.

[3]Ibid.

[4]Ombudsman for Corrections, 1972-1973 Annual Report, State of Minnesota, July, 1973.

adoption. With bills having been introduced in thirty-five state legislatures over the past ten years, the instances where an ombudsman was established as cited above represent a small proportion of these attempts. Former Speaker of the California State Assembly, Jesse Unruh, points out that most state legislators have sincere doubts about the need for and the feasibility of the institution.[1] The question that is usually not answered for legislators is whether or not existing procedures are adequate.

What then are these existing procedures and how adequate are they? A study by Professor Gerald McDaniel of the complaint mail received by the California Governor's Office showed that more people bring their complaints to him than to their legislators.[2] Although to the aggrieved citizen this may seem to be a logical area of recourse, the governor is more apt to be defensive of his appointees rather than admit they have erred. To some extent this would also hold true for a legislator when he is of the same political party as the executive. On the other hand a legislator of the opposite party may be overzealous in pursuing complaints against the administration. These suppositions lead to the conclusion that perhaps all complaints are not being treated equally.

If the governor is not the most ideal recipient of complaints against the administration, is the legislature the answer? As stated earlier, legislators are reluctant to give up any opportunities to improve their public relations by assisting a constituent. This applies to the state level as well as the national. However, the arguments in favor of giving up casework at the state level are greater than at the national level. In the first place, state

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[1]Unruh, "The Ombudsman," p. 113.

[2]Cited from Unruh, "The Ombudsman," p. 116.

legislatures are in session for a short time. Committee work, research and homework on bills not before his committee should require nearly all the legislator's time while in session.

Election to public office seldom constitutes full-time employment for a state legislator. During the non-session months the legislator returns to his primary occupation. Here he must make up for the two to six months he has been away and typically lacks sufficient time for constituents' problems. Being away from the capitol, he also lacks access to heads of the administrative agencies.

Another handicap is lack of facilities provided a legislator. A state legislator is usually fortunate to have office space. A private secretary and/or research assistants are not at his disposal. At the national level such assistants handle most of the legwork on constituents' grievances.

The British concept of an ombudsman has resolved these problems to some extent by requiring complaints to be directed through a member of parliament. This has definite drawbacks, however, since the individual may feel he has too little influence to attract the attention of a senator or representative he may or may not have even voted for. He may also feel his problem is not significant enough to take the legislator's time away from his primary duties. However, if he knew there was an agency set up specifically to listen to his complaints, he would be more inclined to voice his grievance.

". . . [T]he legislator who wants to find solutions to problems and to enact the laws implementing those solutions will have less time for casework."[1] Instituting an ombudsman may have a detrimental effect on a legislator. By

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[1]Unruh, "Ombudsman in the State," p. 119.

spending most of his time on casework he can demonstrate how he is assisting his constituents. A legislator with little influence within the legislature or with no real expertise to offer the legislature may depend very heavily upon casework to get re-elected.

In addition to registering complaints with the governor and individual legislators, a third avenue for citizen complaints lies through the appeals procedures contained within the agency making the original decision. In practice, however, these procedures may be so cumbersome and difficult to initiate that they are rarely used. They are generally not understood by the affected citizen either.

Even though impartiality is attempted by these appeal procedures, the affected citizen is going to question why he could be expected to believe he would get any better treatment or the outcome would be any different when he is still being handled by the same agency.

Despite the drawbacks of an agency being its own source of appeal, how many agencies even go this far? Although most agency decisions are appealable, have provisions been set up for appeals? Mr. Unruh estimates that eighty to ninety percent of administrative action has no appeal provisions.[1]

Less than one-third of the states have adopted explicit administrative procedures governing their agencies. Attorneys for claimants regularly find themselves unable to locate the rules of state agencies, prevented from seeing the factual basis for agency determination, and thwarted by influences channeled through ex parte communications by agency administrators and hearing examiners.

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[1]Unruh, "Ombudsman in the State," p. 113.

In cases possessing little monetary value, these difficulties easily discourage citizens from retaining counsel and counsel from accepting such cases.[1]

During the last few decades, the vastly increased demand for government services has placed a real burden on government agencies. In order to be handled fairly, each individual contact with an agency should be handled individually. However, standardizing procedures is a prerequisite to handling the volume of cases. Thus, dissatisfaction with services performed is bound to occur.

" . . . [T]he citizens . . . should have rapid, inexpensive and reliable access to an impartial 'public watchdog' who is not involved in the governmental decision-making process, and who is clothed with powers of public criticism and the initiation of requests for remedial action . . . ."[2]

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[1]Ralph Nader, "Ombudsmen for State Governments," The Ombudsman, p. 243.

[2]Henry F. Abraham, "The Need for Ombudsmen in the United States," The Ombudsman, p. 240.

CHAPTER IV

Legislative History of Ombudsman Bills in Alaska

The original Alaska ombudsman bill was Senate Bill No. 276. It was introduced by Sen. Yule Kilcher (D-Homer) February 24, 1966 during the second session of the Fourth Alaska Legislature. It was referred to the Judiciary and Finance Committees. The bill was reported out of the Judiciary Committee March 31, 1966 with a do not pass recommendation. The recommendation further stated that should the bill pass, the sponsorship should be changed to the Rules Committee. The report was signed by Sen. Robert H. Ziegler (D-Ketchikan), the Chairman, Sen. John B. Hall (D-Fairbanks) and Sen. James Nolan (D-Wrangell). Two of the committee members not concurring in the report were Sen. Nick Begich (D-Anchorage) and Sen. Howard Pollock (R-Anchorage). The bill was then referred to the Finance Committee. No further action was taken.

The next ombudsman bill was House Bill No. 52, introduced by Rep. Jalmar M. Kerttula (D-Palmer) with co-sponsors Rep. Bill Ray (D-Juneau) and Rep. Gene Guess (D-Anchorage) January 25, 1967 during the first session of the Fifth Legislature. The bill was referred to the State Affairs, then the Finance and Judiciary Committees. It was never reported out of the original committee.

During the first session of the Sixth Legislature, an ombudsman bill was again introduced by Rep. Kerttula with co-sponsors Rep. Mike Bradner (D-Fairbanks) and Rep. Ray. This was House Bill No. 132, introduced February 11,

1969. It was referred to the State Affiars, Judiciary and Finance Committees, and again never reported out of the original committee.

In the Seventh Legislature during the first session, separate ombudsman bills were introduced in each house. House Bill No. 7 was introduced by Rep. Bradner January 12, 1971. Rep. Kerttula continued his support of the ombudsman measure by signing on as a co-sponsor. Rep. John Huber (D-Fairbanks), Rep. Richard Randolph (R-Fairbanks) and Rep. Helen M. Fischer (D-Anchorage) also signed on as co-sponsors. The bill was referred to the State Affairs and Finance Committees. It was never reported out of the original committee. Sen. Bob Palmer (R-Ninilchik) introduced Senate Bill No. 13 January 18, 1971. It was referred to the State Affairs and Judiciary Committees and never reported out of the original committee.

House Bill No. 15 in the Eighth Legislature was introduced January 10, 1973 by Rep. Randolph. The bill was referred to the State Affairs Committee. It was reported out January 23, 1973 with a do pass recommendation. The committee proposed a minor amendment which will be discussed later. The bill was brought up in the Judiciary Committee during the week of March 19 and tabled until the second session of the Eighth Legislature. There was no further action taken on the bill during the second session in the spring of 1974. The do pass recommendation of January 23, 1973 by the State Affairs Committee represents the furthest an ombudsman bill has ever progressed in an Alaskan legislature.

Senate Bill 276 of the Fourth Legislature, House Bill 52 of the Fifth Legislature, House Bill 132 of the Sixth Legislature, and House Bill 7 of the Seventh Legislature were all identical. The first changes to the original wording came in Senate Bill 13 of the Seventh Legislature. In the original bill

the selection committee for filling the ombudsman office was to include a member of the Senate appointed by the Senate President and a member of the House appointed by the Speaker of the House. Senate Bill 13 revised this to read a minority member of the Senate appointed by the Senate President and a minority member of the House appointed by the Speaker of the House. This insured minority representation since the remainder of the committee was to be the President of the Senate, Speaker of the House, Chairman of the Senate Judiciary Committee. Senate Bill 13 also changed the term of office. Prior bills had established the term of office at three years with reappointment of no more than four terms. This was changed to a six-year term with no reappointment restriction. The salary was also revised in Senate Bill 13 from $22,500 per year to an annual salary equal to that of a Superior Court judge. Under investigation of complaints, the statement allowing the ombudsman to decline an investigation if there are other complaints more worthy of his attention was omitted from Senate Bill 13.

The most recent bill, House Bill 15, contained the same revisions as Senate Bill 13 with the exception of changing the salary to an annual amount equal to a range 28C position in the classified service. The clause allowing the ombudsman to decline an investigation if there were more worthy complaints was also reinstated. A new statement was added under procedures after investigation; i.e., the ombudsman shall report his opinion and recommendation to an agency even when there are no grounds for any action by the agency.

An article appeared in the June, 1965 issue of the Harvard Journal on Legislation containing a draft model statute for state legislatures creating

an Office of Ombudsman.[1] This was followed by a section-by-section analysis of the draft. With only a few minor exceptions, House Bill No. 15 is identical to this model statute.

Some of the differences between the model and House Bill 15 are: The model provides for appointment by the Governor with advice and consent of the Senate. Another is that the ombudsman be limited to three six-year terms. An interesting section of the model, but not found in House Bill 15, is a section entitled, "Agencies may not open letters to Ombudsman." The section states, "A letter to the Ombudsman from a person held in custody by an agency shall be forwarded immediately, unopened, to the Ombudsman."

As stated earlier, House Bill 15 of the eighth legislature was reported out of the State Affairs Committee with one substantial amendment. Under compensation, range seventeen of the classified service was deleted and the salary of a State Supreme Court Judge was inserted.

Although no committee records are available to determine what discussion occurred on any of the previous bills, it appears that there has been very little interest in its passage. At least no apparent pressure has been exerted that would bring it out of committee. On one of the two occasions the bill was reported out of the original committee, the recommendation was do not pass; however, it was a close committee vote, three to two in favor of the recommendation.

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[1]"A State Statute to Create the Office of Ombudsman," Harvard Journal on Legislation, (June, 1965), pp. 221-238.

CHAPTER V

Conclusion

The American experience with the ombudsman idea to date indicates that there are widespread, practical and immediate benefits to be accrued by the Alaska public from this institution at a modest cost. That experience, particularly in Hawaii, demonstrates conclusively that the ombudsman idea represents much more than a nebulous, idealistic notion with little or even negative practical application. The tabulation in the appendix indicates the diversity of citizen inquiries and complaints in Hawaii. There is no reason to believe there would be any less diversity or magnitude if adopted in Alaska.

Lacking the legal authority either to prosecute wrongdoing or to compel administrative agencies to act against their will, the ombudsman can still correct inequities in government agencies dealing with individual citizens. The ombudsman's office can preserve a measure of confidence among the public that their governmental agencies have been established to serve them. The power to persuade and to conciliate can be very powerful when provided with an adequate forum.

In implementing the ombudsman idea into its complex system of federal-state-local government, the American experience also indicates that the state level of government offers the greatest potential for the ombudsman. Alaskans can benefit from the same results the people of Hawaii have enjoyed in the

recent years since the ombudsman was established in that state. As this proposal for an Alaska ombudsman is developed, questions such as the following arise: Is the concept of an ombudsman feasible in Alaska? Whom would it benefit? What would be required to implement it? The following conclusion is an attempt to answer each of these questions.

From the standpoint of feasibility, the geographic vastness of the state presents formidable obstacles to the effective functioning of a sparsely staffed ombudsman's office. There are, however, definite population centers (Anchorage, Fairbanks, Juneau, and Ketchikan) which could be visited by the ombudsman on a frequent, scheduled basis. The smaller towns and the bush areas could be visited by the ombudsman and his staff on a less frequent basis. The twelve new native regional corporations might be induced to play a liaison function between the ombudsman and the bush areas to bring a much needed improvement in state governmental services to the outlying areas of the state. Complaints from these villages might be channeled through the corporations on a scheduled basis. Hawaii, made up of islands, also has a geographical problem, although not of the magnitude of Alaska.

Lack of a homogenous population presents another feasibility obstacle. The Hawaii experience indicates, however, that a geographically and culturally disparate population can be well served by an ombudsman on the state level. From this, Alaskans have good reason to conclude that a state with a scattered and heterogenous population needs an ombudsman all the more and that the office can be successfully implemented to meet the needs of all the people in all of its regions.

If implemented successfully, the people of the state themselves would be the chief beneficiaries of the ombudsman. They would have a sympathetic intermediary who is knowledgeable of the internal workings of governmental agencies. Legislators and their staffs, the Governor and his staff, and the departmental commissioners and their line and staff agencies would also be benefitted as shown in the succeeding paragraphs. The widespread popular benefits, however, that the ombudsman could produce need to be stressed primarily. It is designed to serve the people now in a myriad of practical ways which they can understand and appreciate. Open to all who need its services, the ombudsman's office is essentially a classless type of agency. It meets, however, the needs of those less articulate and knowledgeable about governmental affairs to a greater extent than the more fortunate members of society.

The American experience with the ombudsman, and worldwide experience as well, demonstrates that the existence of the office does not affect existing political and administrative power structures or the distribution of power between legislative, executive and judicial agencies. This experience also demonstrates that the ombudsman does not challenge existing structures at the top of the power pyramid or become a meddlesome nuisance in its lower reaches. The justification for the office rests on the simple, observable facts that modern government is complex and that the public often fails to understand its processes and how to avail itself of its services.

What effect then would the ombudsman have on existing legislative and executive agencies in Alaska? (Proposals for an Alaska ombudsman do not include the state judiciary within the jurisdiction of the office.) Generally

speaking, experience indicates that the ombudsman would increase their efficiency. Individual legislators and their staffs would have an agency at their disposal to which they may refer all citizens' complaints for investigation and action. This would relieve them of a burden which hampers the primary function of the legislative process, that of formulating and deliberating upon legislation. The year-round service of the ombudsman's office would assure that all meritorious complaints would be received and processed in even fashion. As a central receiving office, the ombudsman would be situated to observe patterns of grievances and be able frequently to suggest administrative remedies which would benefit all persons similarly affected when an individual complaint is processed.

This proposed system of citizen complaint processing under the auspices of an ombudsman could serve to clarify to the public the essential nature of the legislative process and the inherent limitations under which an individual legislator attempts to serve the public who elected him or her and the state at large. Aside from those who have shouldered the burden of serving in the state legislature, there are relatively few who understand the extent of the demands which legislative service imposes upon the time and the financial resources of the individual. Even though there is little prospect that the public will ever understand this very well, the ombudsman offers to the individual legislator a realistic hope that he or she, as well as constituents, will be served by the ombudsman.

Assessing the impact of the ombudsman on the executive branch presents a more complex and elusive problem than that of assessing its effects on the

state legislature. But, again, both the American and the worldwide experience with the ombudsman experiment should serve to allay any doubts that the office is designed to effect a significant shift of either political or administrative power.

Given the broad scope of the ombudsman's investigatory powers over the executive branch, the most formidable objections to the creation of the office have usually come from this source when ombudsman proposals have been advanced. However, after overcoming the initial negative reaction to the idea, it has proved to be an even more welcome addition to the governmental scene among executive branch agencies than among legislators and their staffs wherever the experiment has been tried. How does one account for this ready acceptance of the ombudsman in practice?

The essential role of the ombudsman as a conciliation service between the public and its governmental agencies has quickly emerged when the experiment has been tried. In the evolution of the office, ombudsmen have been armed at various times with the power to prosecute and to take lessor yet stern corrective measures in resolving citizen's complaints. Such powers have not proved to be consistent with the style and the technique of the successful ombudsman. It is noteworthy that where the power to prosecute is vested in the office, as it presently is in some of the Scandanavian countries, it has seldom been exercised. One does not find any American ombudsman experiment where the power to prosecute is vested in the office. Such powers have not been included in any of the proposals for an Alaska ombudsman.

Typically, the ombudsman has had an extensive background in the governmental system in which he is appointed to serve and is aware of the policies and procedures of the system's various governmental agencies. When specific citizens' complaints do arise, the formal, legal power of the ombudsman to compel the disclosure of specific information seldom needs to be invoked. Informal and semi-formal procedures in complaint processing are characteristic of the ombudsman's practice.

There are a variety of complaint processing patterns to be found among governmental agencies. There is one characteristic problem, though, which one regularly encounters. Too many complaints are either received at or are referred up to a too high level in the administrative hierarchy. The typical citizens' complaint neither requires the attention of top management nor can it be satisfactorily resolved on that level. Its merit is difficult to assess on that level and even when such problems are resolved to the citizen's satisfaction, top management officials may have disrupted agency policies and procedures which have been soundly devised at the operating level.

The higher the complaint is lodged and accepted, the more agency officials in the chain of command hierarchy are brought into confrontation with each other, frequently in a crisis type of atmosphere. Relatively simple citizens' complaints have been known to demoralize an agency seriously from top to bottom, to substantially reduce its capacity for productive work output and to leave it in a state of tense anticipation that such an event will soon recur with similar results.

The impartiality of the ombudsman also benefits the entire administrative organization when unreasonable citizens' complaints are received or when service demands are made of an organization which either lie beyond the resources of the agency to fulfill or which would disproportionately divert agency resources to the benefit of one person. Ombudsmen are perceptive to such situations and assume the responsibility of explaining to the dissatisfied citizen why his demands cannot be met. Fair-minded citizens tend to regard an ombudsman's explanation as more objective and reliable than that of a representative of the agency and as a result they tend to accept his conclusions rather than to press their case further or to renew it at a later date. In those instances where the complaining citizen demonstrates a lack of concern for fairness and reasonableness, the ombudsman serves as a protective buffer for the agency against overly aggressive conduct.

Top management in an administrative agency are less involved in the entire citizens' complaint process when the services of an ombudsman are available. From their point of view the ombudsman provides both a species of consulting service affording them reliable reports on the performance of their operating personnel and a species of in-service training for their operating personnel when the job can be done better.

The ombudsman intervenes at the lowest level of the administrative hierarchy where citizens' complaints can be resolved. In this manner he may correct inequitable practices of which top level administrators are unaware. His very presence can stimulate first line supervisors and their personnel into re-examining problems within the framework of agency policy and to attempt to

resolve citizens' complaints without referring the issue to higher administrative officials. In modern management terminology, the ombudsman brings "positive reinforcement" to the first line supervisor and his personnel.

During the first year of operation in Hawaii, $103,000 was provided as an operating budget.[1] The first year of operation in Alaska would require only a small staff, probably the ombudsman himself and a secretary. The objective during the first year would be setting up the office and publicizing it. Some travel outside Alaska would be involved to observe other ombudsmen in action. Extensive use of long distance telephone service would be necessary in a state the size of Alaska. No matter in which city the ombudsman were to be located, extensive travel within the state would be required.

A budget figure of $100,000 would appear to be adequate for the first year of operation. This would allow $50,000 for salaries, $20,000 for travel and $30,000 for office expenses, depending upon what facilities and equipment were made available. This figure would probably double or triple during the second year of operation due to increases in staff, travel and related expenses as the services provided became more widely known. The budget would then level off and remain fairly static (subject to inflation) since primary advantages of the concept are small size and personal attention.

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[1]State of Hawaii, Report Number 1, p. 2.

APPENDIX

The actual record of the Hawaii experience with its Office of the Ombudsman presents the kind of data which concretely demonstrates the broad range of problems with which their ombudsman has been concerned and his effective disposition of a heavy caseload.[1] The following summaries of cases were taken from the Hawaiian Ombudsman's Report Number 2 for the fiscal year 1970-1971. The cases were selected to give a general idea of the types of complaints received and their resolution. They cover areas where agency corrective action was indicated, where the agency had taken appropriate action, and where legislative action was required. Following the summaries is a chart indicating complaints broken down by department and whether or not they were justified.

Selected Cases

An unsuccessful bidder on some office equipment complained about bidding irregularities. The Department of Education was contacted and a subsequent Attorney General decision called for rejection of all bids and re-advertisement.

A community schools instructor complained about being underpaid for actual number of hours taught. After interviews with students and the

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[1]See State of Hawaii, Office of the Ombudsman, Fiscal Year 1969-1970/Report Number 1, Fiscal Year 1970-1971/Report Number 2, and Fiscal Year 1971-1972/Report Number 3 (Honolulu: Office of the Ombudsman, 1971, 1972 and 1973). A Report Number 4 was not yet available when this governmental project report was finalized.

registrar it was determined that an error had been made and the Department of Education voluntarily agreed to pay the contested amount.

A State Board was accused of being prejudiced against a certain racial group in its work. The ombudsman made a study of statistics, board files and actions and then determined the charges were unfounded.

A citizen complained of unsanitary odors coming from a neighbor's hog farm. Following the ombudsman's inquiry, a sanitarian inspected the farm and found waste from the pigpen being discharged into a non-functioning cesspool. Orders were issued by the Department of Health to remove the hogs.

A complaint was received regarding the lack of school bus service to an area. The ombudsman investigated and found the reasoning for not serving the area justified, but suggested ways in which the situation might be resolved. The suggestions were followed and the situation was resolved by the complainants themselves.

A claimant for unemployment compensation complained that he was experiencing undue delay in receiving his compensation. The ombudsman investigated and found that corrective action had already been instigated by the department.

A citizen complained of rude and uncalled for treatment by the Parks Division personnel while camping in a state park. The employee did not furnish any identification at the time. Following the ombudsman's inquiry, the employee was reprimanded and all employees were provided identifying shoulder patches.

Welfare recipients claimed rental allowances were not sufficient to maintain health and comfort. The ombudsman found the rates were set by the

legislature, not the agency, and suggested the group testify before the appropriate legislative committee.

A citizen action group complained they were denied a copy of a public hearing transcript. The ombudsman informed the responsible official that a Hawaii Statute made minutes of boards and agencies public records and thus available to the general public with a fee assessed for copying. Subsequently, arrangements were worked out whereby the complainant was provided a copy.

A complaint was received that the State of Hawaii should provide parking for citizens on jury duty. The ombudsman investigated and found there was no reasonable way the State could provide parking until additional parking lots were made available.

A welfare recipient complained that despite repeated requests to the Department of Social Services, she had not been assigned a social worker. The ombudsman's investigation disclosed that the Department had tried repeatedly to contact the complainant, but she was never at the address given. The complainant was informed she must make an effort to be available.

A taxpayer complained that although he had paid a previous year's State Income Tax, he had been notified of tax delinquency. He could not locate any records and could not afford to pay the bank to search for a copy of his cancelled check. The ombudsman convinced the Department of Taxation to make a more thorough search and the return was found misfiled.

A resident living on a narrow dirt road that was nevertheless a public thoroughfare complained of lack of garbage collection. The ombudsman investigated and agreement was reached with the City and County of Honolulu that they would service the area with a smaller than normal vehicle provided the resident would allow turning around in his driveway.

TABULATION OF CASES
OFFICE OF OMBUDSMAN, STATE OF HAWAII
FISCAL YEARS, 1969-1970, 1970-1971, 1971-1972
(by department)[1]

Department	1969-1970 Received[2]	1969-1970 Investigated: Justified	1969-1970 Investigated: Unjustified	1969-1970 Information[3]	1970-1971 Received	1970-1971 Investigated: Justified	1970-1971 Investigated: Unjustified	1970-1971 Information	1971-1972 Received	1971-1972 Investigated: Justified	1971-1972 Investigated: Unjustified	1971-1972 Information
Accounting and General Services	33	19	7	5	24	12	7	11	24	12	5	6
Agriculture	10	1	7	2	6	2	4	3	3	0	2	1
Attorney General	10	4	3	3	6	2	3	7	8	2	4	7
Budget and Finance	11	5	3	1	18	7	6	3	18	7	8	6
Defense	1	0	1	0	3	0	2	2	2	0	1	0
Education	68	38	17	7	61	29	22	10	66	23	26	23
Hawaiian Home Lands	5	1	1	0	13	4	5	1	8	4	4	2
Health	60	29	18	4	45	17	15	37	40	8	19	24
Labor and Industrial Relations	56	22	20	10	81	27	36	47	98	43	43	47
Land and Natural Resources	29	9	14	3	25	9	14	0	30	12	10	13
Personnel Services	18	5	5	6	15	3	11	8	12	2	7	6
Planning and Economic Development	4	0	0	4	2	0	1	2	4	1	2	6
Regulatory Agencies	50	11	16	11	58	23	15	55	41	7	24	34
Social Services and Housing	83	22	38	14	103	27	59	56	147	32	76	62
Taxation	38	7	14	8	50	18	25	34	42	10	22	20
Transportation	52	13	27	5	46	19	14	13	43	12	14	6
University of Hawaii	41	20	9	7	50	23	10	19	57	16	19	20
Counties	229	65	82	40	209	64	72	115	155	40	71	66
Lieutenant Governor	1	1	0	0	1	0	0	7	0	0	0	2
Consumer Protection	11	3	4	3	6	2	2	37	8	0	7	14
Hawaii Office of Equal Opportunity	1	0	0	0	0	0	0	1	1	1	0	0
TOTAL	811	275	286	133	822	286	323	486	807	232	364	365

[1]Abstracted from State of Hawaii, Office of the Ombudsman, Fiscal Year Reports No. 1, 2 and 3.

[2]At the end of each fiscal year there were Received complaints which were either subsequently withdrawn or in the process of investigation and resolution. Therefore the sum of the figures in the Justified and Unjustified columns does not usually equal the figure in the Received column.

[3]As the Hawaii Ombudsman's office developed over the three years shown, it was perceived that certain inquiries should not be classified as citizens' "complaints" since the inquiring citizen needed only to be given correct information and guidance to solve his problem. For fiscal years 1970-1971 and 1971-1972 informational inquiries were not included in the total of Received complaints. For the purpose of this study the Information column has been included because it lends perspective to the broad range of public services which the Hawaii Office of Ombudsman performs.

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Francis M. Flavin
3729 Clay Products Road
Anchorage, Alaska 99503

April 21, 1975

Representative Terry Gardiner
State House
Pouch V, State Capitol
Juneau, Alaska 99811

Dear Terry:

I have submitted my application for the Ombudsman position to the selection committee. I would appreciate any support you can give me.

During the past four years I have participated extensively in legislative, administrative and judicial processes on both management and individual levels. As Director of Alaska Legal Services I am deeply involved in insuring the public accountability of governmental agencies. I am familiar with urban and bush governmental concerns through the administration of eight separate law offices consisting of thirty attorneys and ten paralegals.

While my contact with you in the legislature has been primarily on fisheries and bush justice issues, the overall ALSC program is fairly balenced between urban and rural concerns.

Under my direction Alaska Legal Services has successfully pursued an active program of legislative, judicial and administrative advocacy, all without major controversy. This is because I firmly believe that negotiation and compromise produce more benefits than rhetoric or confrontation. I would continue and expand this commitment by pursuing the Ombudsman's duties in a temperate yet vigorous manner.

The Ombudsman position will require legal, management and administrative skills. I believe that the record shows that I am competent in these areas to utilize my experience for the benefit of Alaskan citizens.

Thank you for your consideration.

Sincerely yours,

Frank

Frank Flavin

02-230

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION
DIVISION OF PERSONNEL
Pouch C
Juneau, Alaska 99801
586-3613

file

EXAM. RECORD		WT.
W		
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P		
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AV		
V.P.		
E.C.		
FINAL AV		

APPLICATION

Date Received

PERSONNEL ACTION	
ACCEPTED	
REJECTED	

PERSONNEL FILE

A		G	
B		H	
C		J	
D		EA	
E		EI	
F		SO	

DEPT. NO

Ombudsman

(Title of Position applied for. A Separate Original application must be submitted for each position. Use Typewriter or ink.)

PERSONAL DATA

1. Name Whittaker (Last) Richard (First) Lee (Middle)
2. Maiden Name N/A
3. Mailing Address P. O. Box 13 (648 Main Street) (Street and/or Box number)
REPORT CHANGE OF ADDRESS PROMPTLY
Ketchikan (City) Alaska (State) 99901 (Zip Code)
4. Telephone No. Home 225-3824 Business 225-5333
5. Date of Birth March (month) 3 (day) 1931 (year)
6. Place of Birth Princeton, Illinois
7. Social Security Number 544-32-8980
8. Sex: Male [X] Female [ ]
9. Marital Status: Single [ ] Married [X] Widowed [ ] Divorced [ ] Separated [ ]
10. Height 5'81/2" Weight
11. Physical Disabilities Yes [ ] No [X] If yes, give details:
12. Name and occupation of spouse Judy F. Whittaker, Housewife
13. Number and ages of dependents Six---17, 15, 14, 13, 9 and 4
14. Alaska State Employee Currently [ ] Formerly [X] Give job title, status, department, and dates of State or Territorial employment
District Attorney, Ketchikan, 1964 to 1967--Legislator, 1971 to 1972
(Permanent employees should use form P-122 for promotional credit)
15. Dates of Alaska residence: From July (month) 1952 (day) (year) to Present (month) (day) (year)
16. U.S.A. Citizen Yes [X] No [ ] By birth [ ] By naturalization [ ]

17. Veteran: Yes [X] No [ ] Dates of service 1952 (day) (month) (year) to 1954 (day) (month) (year)

Type of discharge honorable Branch of Service Army Serial number US56121345

18. Presently a member of any component of Armed Forces Yes [ ] No [X] If yes, list grade, organization and whether 6 months training has been completed:

19. Have you ever been arrested or convicted except for traffic parking violations? Yes [ ] No [X] If yes, give details

20. Relatives by blood or marriage employed by State of Alaska:

Name	Relationship	Department
None		

EDUCATION AND EXPERIENCE DATA

The acceptance and rejection of candidates is based upon the verified data furnished under sections 21 and 22, Educational Background and Employment History. Incomplete applications may result in rejection of candidates or reduced scores in ratings.

21. EDUCATIONAL BACKGROUND

Circle highest grade completed: Grade School 1 2 3 4 5 6 7 8 — High School 9 10 11 12 — College 13 14 15 16 — Post graduate 1 2 MA Phd (J.D)

Name and address of last High School Ophir High School, Ophir, Oregon Graduate? Yes [X] No [ ] Date of Graduation: 1949

High School Equivalency Certificate (GED): State.. Number Date

For professional jobs requiring college education, it is the responsibility of the candidate to furnish the Personnel Division with a recent copy of his college transcripts.

Type of School	Name and Address of School	Part Time	Full Time	Dates Attended From	Dates Attended To	Hrs. Completed Qtr.	Hrs. Completed Sem.	Degree Received	Major
College	University of Oregon Eugene, Oregon		X	1949	1958			B.S.	Journalism and Law
College	Northwestern College of Law, Portland, Oregon		X	1958	1963			J.D.	Law
Graduate									
Correspondence									

Type of School	Name and Address of School	Part Time	Full Time	Dates Attended From	Dates Attended To	Courses Completed
Business						
Technical						
Nursing						
Service Schools						

22. EMPLOYMENT HISTORY

Include all jobs within past ten years. Give earlier job history, if pertinent to job applied for. Include military experience as part of job history. Include any period of unemployment over three months in length. Use additional pages if needed to give complete employment history.

START with MOST RECENT JOB FIRST

Dates of Employment	Job Title: District Attorney
From August 1964	Duties:
To: January 1967	
Starting Salary	
$ Unknown per	
Final Salary	Name of Employer: State of Alaska
$ Unknown per	Address: Ketchikan, Alaska
Hrs. per week:	Reason for leaving: Opened own Office

Dates of Employment	Job Title: Attorney
From January 1967	Duties:
To: Present	
Starting Salary	
$ per	
Final Salary	Name of Employer: Self Employed as Attorney
$ 50,000 per year	Address: P. O. Box 13, Ketchikan, Alaska
Hrs. per week:	Reason for leaving:

Dates of Employment	Job Title:
From	Duties:
To:	
Starting Salary	
$ per	
Final Salary	Name of Employer:
$ per	Address:
Hrs. per week:	Reason for leaving:

Dates of Employment	Job Title:
From	Duties:
To:	
Starting Salary	
$ per	
Final Salary	Name of Employer:
$ per	Address:
Hrs. per week:	Reason for leaving:

Dates of Employment	Job Title:
From	Duties:
To:	
Starting Salary	
$ per	
Final Salary	Name of Employer:
$ per	Address:
Hrs. per week:	Reason for leaving:

SPECIAL QUALIFICATIONS

List here those special qualifications required by the job you are applying for:

3. Membership in professional associations: American Bar Association
24. Registration and/or licenses: Admitted to practice law in Oregon and Alaska.
25. Required college subjects: None
26. Languages spoken other than English: None
27. CLERICAL AND OFFICE SKILLS:
Typing.....words per minute Shorthand..... words per minute Office Machines experienced in (list).....
28. List kinds of mechanical equipment, electronic equipment, or machinery that you are qualified to:

Operate	Repair

29. Other Special Qualifications:
30. List three references (not relatives or employers) who have knowledge of your character, experience and ability.

	(Name)	(Street)	(City)	(State)
(1)	R. Collin Middleton,	500 "L" St.	Anchorage	Alaska
(2)	William Timme,	Doyon Ltd.	Fairbanks	Alaska
(3)	Edward E. Head,	Alaska Timber Corporation,	Klawock	Alaska

CONDITIONS OF EMPLOYMENT

Please read carefully the announcement for the job for which you are applying. Your name will be certified only to vacancies that meet the conditions of employment indicated in your answers below. Restrictions not common to the job may result in removal from the register or in rejection. You may alter your stated conditions of employment by notifying the Personnel Division in writing at any time during the life of the register. Failure to accept a job offered under conditions you have indicated may result in removal from eligible list.

31. Lowest entrance salary I will accept: $Statutory per month.

32. I will accept employment at the following places in Alaska. I understand I will be certified only to places I have listed below:

Anchorage Juneau Ketchikan

33. Will accept job requiring travel:

- [X] continuous
- [ ] frequent
- [ ] occasional
- [ ] remote areas
- [ ] no travel

34. Available for following types of positions:

- [ ] probationary (permanent)
- [ ] temporary (6 months or less)
- [ ] seasonal
- [ ] part-time
- [ ] School year

35. How soon would you be able to report for work after being notified that you had been hired?

Immediately. Only problem is closing my law office.

36. CERTIFICATE OF APPLICANT

I HEREBY CERTIFY that all information made on or in connection with this application is true and complete to the best of my knowledge and belief and that I have not knowingly withheld any fact or circumstance. I understand that any misrepresentation or concealment of material fact will be sufficient ground for rejection of application, removal from eligible register, or removal from employment. I authorize my present and previous employers to release to the State of Alaska any information they may have regarding my character or my employment record and release said employers from any damage or claim for furnishing said information. I hereby agree to submit to such physical and/or mental examination as the State of Alaska may require.

Date: May 5, 1975 Signature.....

CHECK YOUR APPLICATION! Be sure you have filled it in completely.

RESUME

Richard Whittaker

Born, 1931 at Princeton, Illinois

Raised on farms in rural Oregon. Graduate, 1949, Ophir High School, Ophir, Oregon.

Attended University of Oregon, majoring in Journalism, 1949 to 1952, when volunteered for the draft. Entered army from Annette, Alaska, where parents were teaching at the time. Served for two years as Military Policeman at Sandia Base, Albuquerque, New Mexico. Had AEC "Q" and "Top Secret" clearances.

Returned home after army in 1954. Parents were living at Metlakatla where they were teaching. Became managing editor of the Ketchikan Chronicle, the only daily newspaper in Southeastern Alaska to be pro-statehood and anti-fishtrap. Left Chronicle in 1955 to go to Kodiak to start own newspaper. Worked in 1955, to raise money for venture, as laborer and deep sea diver. Started Kodiak Islander and North Pacific News in spring of 1956 and went broke three months later. Worked on fish packer and edited the Mailboat Monitor published by the Mailboat Expansion, then serving the Aleution chain.

The year 1957 commenced with being employed by the late Bernie Kozinski, managing editor of the Anchorage Times, to start that newspaper's night news bureau. Met wife-to-be, Judy, on the Times where she was working as advertising salesman. Married at Kodiak, where parents were then teaching, in May. Judy, a graduate of the University of Missouri School of Journalism, became a reporter for the Times, and we worked together until leaving for law school in 1957.

Entered University of Oregon Law School in the fall of 1957 and had the first of six children February of 1958. Had a disagreement with the dean of the law school in spring (he didn't want me to come back) and transferred to Northwestern College of Law at Portland, Oregon.

Was awarded B.S. degree from Oregon in 1958.

Worked at Oregon Legislature, session of 1959 while in night law school, and then worked for rest of time in school, as Medical Practices Investigator for Oregon Board of Medical

Examiners until graduation from Law School and passing of Oregon Bar examination in late 1963.

Became law clerk to the Honorable Raymond Plummer, United States District Judge in 1964, filling out a term, and then District Attorney at Ketchikan in August of 1964.

Entered private practice of law in 1967 and have operated as a sole practitioner at the same location ever since.

Member of Alaska Legislature, 1971 to 1972, serving as Vice-Chairman of Local Government Committee and as member of Health and Social Services Committee.

Became a founding member of Southeastern Alaska Community Action Program, Inc., in 1968 and serve as president currently. Member of RuralCAP Board of Directors. Have been a member of the Portland, Oregon, City Club since 1962.

As an attorney in private practice, I have had as an avocation, the representation of many of the small cities and communities in Southeastern Alaska, including at one time or another, the cities of Saxman, Hydaburg, Klawock, Kake and Yakutat; the town of Metlakatla and the village of Klukwan. I served as Reservation Magistrate at Metlakatla in 1973.

I have been active in the battle to plan for the economic needs of Southeastern and have done legal work for the Tongass Conservation Society, the Southeastern Mountaineering Association, the Alaska Timber Corporation, where I am general counsel (the very large sawmill at Klawock), the Commercial Fishermen's Cooperative Association cooperative, and the Southeastern Consumer's Cooperative. I am a partner in the St. Francis Mining Company. I was a founding board member of the Ketchikan Day Care effort and the Ketchikan Habilitation House.

By way of further Alaskan background, my mother was born near Cordova, (her father was a stampeder prior to the days of '98) and my sister Betty Johnson Farni, is a teacher at Fairbanks.

During my travels, I have lived at Ketchikan, Annette, Metlakatla, Kodiak, Anchorage, and Fairbanks, (and Juneau for the legislative sessions of 1971 and 1972).

In Ketchikan I have been very active in the Ketchikan Community Council and its various projects, and in 1974 was president of

Camp 14, Alaska Native Brotherhood and a member of the Ketchikan School Board. Judy, having played with the Anchorage Symphony at the time we met, organized the Ketchikan Shoestring Symphony and has kept it alive since (it has near 40 members these days) and started two local film societies and helped form the local chapter of the League of Women Voters. She served on the board of the Alaska State Council of the Arts in 1967 and was very active in putting together the Ketchikan Alcoholism program.

I have served on the Comprehensive Health Planning Board for Ketchikan for three years. I am a founding trustee of the Juneau and Ketchikan branches of the Rosewater Foundation.

At this writing the six Whittaker children range in age from almost 4 to 17, with the oldest graduating from high school this year.

STATEMENT OF VIEWS ON THE

OFFICE OF OMBUDSMAN

BY Richard Whittaker

I believe the alienation of people from their several governments to be one of the cardinal issues of our time. This alienation is both abstract and real; real in the sense that we Alaskans can reach out and touch the problem, and can attack and seek to correct it.

The Alaskan Ombudsman will have perhaps the most challenging job in our government; affirming and reaffirming the faith of Alaskans in the institution of government. Anyone can build a building, but not everyone can get agreement that the building is a good idea.

The effectiveness of the office will depend upon the skill which the Ombudsman utilizes during the first years of the establishment of the office.

The Ombudsman must be sensitive to and knowledgeable of the geography and social orders of the State.

The ombudsman must have a feeling for the frustrations of people in dealing with their government. And the Ombudsman should have some sensitivity to the problems of the agency people working within a legislated problem-solving framework.

The Ombudsman should have a general involvement both with the major population centers of the State, but as well with rural Alaska and he must perceive the interrelationship of one to the other, as well as the social organization of any one given area.

The Ombudsman must have an ability to assure the image of the office in the public eye is a positive one; that the Ombudsman is known as a person to go to in order to seek redress for grievance or for an understanding of what has happened. The Ombudsman's job is to equalize the person to the government for fair resolution of problems.

The Ombudsman must never be an apoligist for government; he must seek to understand the nature of the concern beyond the simple question of the impact of an agency decision.

The Ombudsman, initially, will be concerned with developing the relationship of Alaskans to the office, and to develop

techniques providing the most expeditious access to the office for every Alaskan.

A legal education may or may not be a qualification for the office beyond training in the workings of government, but the most single important characteristic an Ombudsman must have is a strongly developed moral sense. Government has lost its common touch and its sense of humanity. And legal analysis, here, is only secondary.

An Ombudsman must, beyond concerning himself with wrongful acts of agencies, regard the very real problems people have when agency decisions have gone against them, making every effort to evaluate and explain to citizens that government, in their case, has functioned properly.

And because the job of Ombudsman is to make government work rather than to destroy government, the majority of his work will be done quietly as he functions as an objective intermediary. In a State such as ours, rarely will an agency resist recommendations to change practices.

The legislature is close to the people and responsive to their needs; every good legislator is an Ombudsman at heart.

Put in Ombudsman F.C.C. file

AMERICAN SOCIETY FOR PUBLIC ADMINISTRATION

SOUTHEAST ALASKA CHAPTER
Box 292 Juneau, Alaska 99802

March 24, 1975

Senator Jalmar M. Kerttula, Chairman
Free Conference Committee, S.B. 1 (Ombudsman Bill)
Alaska State Legislature
Pouch V
Juneau, Alaska 99801

Dear Senator Kerttula:

Last Friday afternoon I followed through on my statement that I would contact Hawaii Ombudsman Herman S. Doi by telephone to determine whether his subpoena power gave him access to documents made confidential by statutes of that state. We made connection at approximately 1:45 pm., Juneau time, 11:45 am.,Honolulu time. The conversation was brief.

Mr. Doi informed me that he has not regarded his subpoena power as empowering him to gain access to records made confidential by state statute. Hawaii, he said, did have several statutes making various records confidential. The issue of his gaining such access has never actually arisen and been tested. He explained to me that individual complainants would usually provide him with the information he needed in cases where there were issues of confidentiality when conducting investigations on their behalf. In other cases, he said, his staff has gained the cooperation of agencies during the conduct of investigations and that they have been able to work around confidentiality problems administratively. I then specifically asked him whether he had ever had a case which he could not investigate sufficiently, because of confidentiality, to resolve the complaint or grievance being processed. He responded that he could not recall a single such instance.

I sincerely hope that the foregoing information will assist the committee in their deliberations.

Very truly yours,

Robert E. Newton, Chairman
Ombudsman Committee

cc: Committee members

April 22, 1975

Doug Thompson
636 Schoenbar
Ketchikan, Ak. 99901

Dear Doug,

A special six-man committee is receiving applications for the office of the Ombudsman. Representative Mike Miller of Juneau is the head of the House delegation. Any applications should be sent to him and to the other members of the committee. These include Rep. Helen Beirne, Rep. Charles Parr, Senator Jay Kerttula, Senator Pat Roday, and Senator John Sackett.

Sincerely,

April 17, 1975

Terry,

HB 242 seems to fill a need by enabling effected employees to appeal arbitrary dress codes to the legislature and as such fills a need. The Port Steward Kliemberg has addressed a memo dated april 9, 1975 to all chief stewards asking them to support his expressed opinion that the law should exempt his department and others like his. He asked them in this memo on state stationary to write their legislators to stop passage of 242 as written. This would seem to me to be an improper use of both his position's influence and State law. A request as he phrased it would by his very position be coercing his subordinates. As a prime offender it would seem this is an especially touchy action. I believe he should be told to refrain from such future actions.

You left a letter here the last time down, it is enclosed.

What is the committee standing now that it is passed & time schedule for implementing

File with that other application

TELEGRAM

ACA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

1975 APR 12 AM 2 44

02110 POM ANCHOAGE ALASKA 15 04-11 0500PADT

PMS REP KATHRYN OSTROSKY

1101

JUN

WE SUPPORT GEORGE CURTIS FOR OMBUDSMAN

BOB AND MAE HEATHERINGTON 1526 G ANCHORAGE 99501

TELEGRAM File

ACA ALASKA COMMUNICATIONS, INC
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

1975 APR 12 PM 7 48

02056 POM ANCHORAGE ALASKA 15 04-12 0345P ADT

PMS REP KATHRYN OSTROSKY

1182

JUN

WE SUPPORT GEORGE CURTIS AS OMBUDSMAN

MR AND MRS DON LAWSON 1923 JUNEAU DR

99501

April 1, 1975

Fred Selkregg
5811 Radcliffe
Anchorage, Ak.

Dear Mr. Selkregg:

Thank you for your interest and application for the Office of the Ombudsman. The free conference committee substitute for the Ombudsman bill sets up a selection process that begins with nominations by a special committee of members of the House and the Senate appointed by the Speaker and the President. This special, six person, joint committee will receive and review any and all applications. I would expect this committee to be appointed as soon as the Governor has signed the bill into law. At that time I will certainly give your resume to the special committee.

The free conference committee substitute also requires confirmation by 2/3 vote of the legislature and the concurrence of the Governor.

Again, thank you for your interest. I look forward to meeting with you at some future date.

Sincerely,

Terry Gardiner
Representative

March 24, 1975

Representative Terry Gardiner
Pouch V
Juneau, Alaska 99801

Dear Terry,

I was elated to read in the Wednesday, March 12th Daily News that H.B. 45 to create the office of Ombudsman has finally passed. I trust that the joint conference committee will be reporting out the final bill shortly and that the state will finally have an Ombudsman. I have long supported this concept and feel it is long overdue.

I am writing to alert you of my interest in becoming Alaska's first statewide Ombudsman. Aside from my long support and enthusiasm for the concept, I feel that I am particularly well qualified to do an effective job in setting up the office and shaping the role of service to be provided. Attached is a resume of my work experience.

Most of my life I have been involved with furthering people programs and investigative work. My early experience, as a War Department Civilian with the military in Italy, was in personnel administration and research to acquire the statistical data base needed to formulate policy. This introduced me to governmental and bureaucratic procedures. My legal education allows me to knowledgeably interpret and apply statutes and regulations. My seventeen years as an insurance investigator and adjuster well qualifies me for the type of digging needed to get to the bottom of things; to find, develop, and analyze the facts. As Alaska's first chairman of the Human Rights Commission I gained valuable insight into the impact of unjust laws and procedures. My experience as a member of the Greater Anchorage Area Health Board, the Greater Anchorage Area Community Action Agency, the Alaska Training and Planning Agency, and the Greater Anchorage Area Borough Comprehensive Planning Advisory Commission, most recently, has added to my understanding of people's needs and problems. I am convinced that services and their delivery systems must be designed to respond to those needs. The system fails too many people.

I know the whole scene; from the vantage point of an administrator as well as a precinct worker. My many years as an active Democrat, with a proven social conscience and a continuing concern for more responsive government, has aptly prepared me for such a role of service to the people of the state. I believe that I have met and know on a first-name-basis most of the people involved in government in

various departments and agencies. This rapport would be a real asset in the job.

I know that the legislature will have the final say on who is hired for the position. It is unclear at this juncture just what steps will be followed or what role you personally will or can play in the final selection process but I would greatly appreciate your support and anything that you could do to further my chances of being selected for the position. Thank you.

Best regards,

Fred

Fred M. Selkregg

R E S U M E

NAME: Fred M. Selkregg, Jr.

DATE OF BIRTH: June 1, 1921

MARITAL STATUS: Married, wife, Dr. Lidia L. Selkregg; father of three children: Alicia, age 29; Sheila, age 25, Lief, age 19.

EDUCATION: B.S. in Law, 1951, University of Illinois Law School, Urbana, Illinois.

VETERAN: World War II, overseas service, North Africa, Sardinia, Corsica and Italy, 1941-1945. Honorable Discharge January 7, 1945. Disabled veteran.

EMPLOYMENT RECORD: June 21, 1970 - Present

1970 to Present Urban Environmental Inspector, City of Anchorage. Employed as Building Safety and Code Enforcement Officer under the Housing and Urban Development Program funded to the City of Anchorage. This involved code enforcement, demolition, development of low cost and low income housing and general relocation problems.

August 1, 1974 to September 15, 1974
Self-employed as Social Economic Consultant, d/b/a
1974 Applied Planning and Research Center.
Worked with local attorney Bob Goldberg. Conducted an investigation involving the tracing of missing heavy weight drill pipe embezzled from the attorney's client. Involved travel to Fairbanks and Kenai, recovery and working through corporate records of embezzler's defunct corporate files for evidence of transactions affecting the pipe that they had held under a lease contract with the attorney's client.

February, 1974
Self-employed as Social Economic Consultant, d/b/a
1974 Applied Planning and Research Center.
Attended special legislative session for appropriation of impact funding with reference to pipeline construction. Represented AHTNA Native Corporation. Attempted to get the legislative session to create a local quasi-governmental committee to be funded and staffed with proposed impact movies to implement the planning and program originally outlined in the document "A Background To Planning" on which we had worked in 1973 as one of the state's primary areas of impact.

March 1, 1973 to December 31, 1973
Self-employed as Social Economic Consultant, d/b/a
1973 Applied Planning and Research Center.
As a subcontractor of Alaska Planning and Management under contract with the Alaska Arctic Environmental Data Center of the University of Alaska, who were working under a H.U.D. funded program to prepare a data base for the AHTNA Native Corporation in preparation of land use and capital improvement planning. Made a survey of current development of existing services of both the public and private sectors. Assessed goals and needs of the area. Published a report, "Background To Planning", covering the area of land use and development planning in the Copper Valley area, which will provide a guideline to the Native Corporation for the development of programs for services under the Alaska Native Land Claims Act.

January 1, 1970 - June 21, 1970
Self-employed as Social Economic Consultant, d/b/a
1970 Applied Planning and Research Center.
Prepared a report on native housing in Alaska for M.I.T. Department of Architecture as part of the nation-wide study of Indian housing. Prepared final report for Alaska Federation of Natives Economic Development Grant ending FY-1.

February 1, 1969 - December 31, 1969
Supervisor: Emil Notti, President
1969-1970 Employed as Economic Development Coordinator under a Technical Assistance Grant from the Economic Development Administration. Worked with OEO-funded Development Boards and Native Associations representing six census districts of Western and Northern Alaska to develop two six-man Overall Economic Development Boards to initiate development planning and projects for implementation in two Overall Development Districts (the Northwest Economic Development and Planning District Census Districts 21, 22 and 23, and the Yukon Kuskokwim Economic Development and Planning District Census Districts 24, 16 and 17).

Worked with locally hired Native field planners resident in the districts (Kotzebue and Bethel); trained and coordinated their planning program and field work; developed a village survey form as a module to assess the viability of individual villages for economic development and village needs and priorities.

Worked with the field planners in organizing and preparing for Board meetings; instructed the two Native Boards in board responsibility, Robert's Rules of Order; provided technical assistance to the field planners and Boards in project development and developing planning objectives.

Worked with the field planners and Boards to develop overall area priorities and an Economic Development Plan; prepared work programs for the two districts for Phase II refunding grant based on area-wide priorities as determined by the Boards.

Worked with all Federal and State agencies providing services to Western Alaska to coordinate activities and economic development planning (BIA, FHA, HUD, ASHA, BLM, PHS, Rural CAP, CEDC, USGC, Corps of Engineers, Federal Field Commission for Development Planning, AVEC, State Departments of Education and Highways, Division of Aviation, RDA, Department of Economic Development, State Planning Office, State Office of Economic Opportunity, State VISTA).

Assisted Boards in writing Resolutionsand handled their distribution as the Board directed.

Prepared quarterly progress and activity reports to the Economic Development Administration Technical Assistance Branch.

Was responsible for overall budgetary supervision of the grant funds; wrote and prepared refunding application. The grant is on a matching 75-25 basis; developed contribution in-kind consultant assistance with two private architects and one mining engineering firm as well as with the University of Alaska, Institute of Social, Economic and

Government Research. Also obtained travel contribution from two State agencies (OEO, RDA).

Assisted field planners in negotiating with the cities of Bethel and Kotzebue for a contribution in-kind support of office space, equipment and utilities as called for in the initial grant.

Worked with Institute of Social, Economic and Government Research, the in-kind consultant to the initial grant; supervised and developed with them the area of input of their technical assistance.

Prepared three work projects and applications for a Western Inter-State Commission on Higher Education for student work-trainees, of which one was granted; shared in the supervision of his work in the village of Kotzebue.

Supervised an overall staff of five and two six-man boards. In charge of the total administration of the grant of $121,000.

Special Projects developed:

1. Salvage operation of military site at Tin City for materials to be used at the villages of Wales, Brevig Mission and Shishmaref.

2. Worked with Yukon Delta Fish Marketing Cooperative to prepare EDA application for freezer barge.

3. Worked with the villages of Selawik and Emmonak to develop application for village complex.

4. Prepared refunding application including Work Program for both districts.

1967-1968 Level 14, Acting Postmaster, Anchorage Post Office, Anchorage, Alaska 99501. I received temporary appointment, lasting 20 months. Supervised a complement of 335 employees of the Anchorage Sectional Center Facility. The Anchorage Post Office, which is a Sectional Center, has seven classified branches, six contract stations and two rural stations. The management functions include direction of a supervisory and management staff of 18 at the Airport Facility and nine in the other branches. As acting Postmaster, I had total accountability of $1,577,991.79. I directed a postal fleet of 91 vehicles, and a carrier force of 114 people.

1958-1967 Owner-Manager, Selkregg & Son Adjustment Company, 519 8th Avenue, Room 207. Founded November 15, 1958. Staff: Two secretaries, one adjuster. Independent insurance adjuster representing solely insurance companies in Alaska.

1953-1958 Employed as an insurance adjuster by various insurance companies, independent insurance adjusters and attorneys doing investigatio and handling claim settlement in all lines of insurance in Illinois.

1945-1953 Completed college education, entered Law School in 1949. Obtained B.S. in 1951. Continued additional law study in Illinois and Washington, D.C., until 1953. Wrote the Illinois Bar in 1953.

1945-1947 Employed as War Department Civilian following discharge in Italy. Clerk Fiscal and Administrative Assistant. Direct supervision of Peninsula Base Section (PBS) Italian personnel at Foggia and Leghorn. Wrote PBS employment policy manual. Prepared surveys of Italian industries, Florence, Pisa, Leghorn area, to determine prevailing wage rates paid by the different trades to the end of determining PBS wage scale and employment policy. Also in charge of preparing payrolls and administrator of both Italian and American Civil Service Personnel.

* * * * * * *

Attached is a resume of my civic activities.

RESUME OF VIC ACTIVITIES

1. 1957-1958, Chairman for the Social Action Committee of the Unitarian Universalist Church.
We cooperated with the local league of Women Voters to bring about integrated lunch counters and barber shops on the campus of the University of Illinois and Towns of Champaign and Urbana. Also organized a boycott against business establishments who practiced discrimination in hiring. Also conducted a study of housing conditions preparatory to pressing for construction of public housing in Urbana. Also started a surveillance of township board meetings and worked to bring about government reforms.

2. 1958, Chairman for the Clothing Drive for the Hungarian Refugees for the Coordinated Universalist and American Friend Service Committee.
This committee operated inside Communist Hungary at the time of the revolution. I conducted the collection of 10 tons of clothing, county-wide, which were sorted, packed and shipped by volunteer truckers to New Jersey for overseas shipment to go inside Hungary.

3. 1959-1960, Unitarian Universalist Church Social Action Committee.
This was organized as a unifying group. It has been found that many of the people active in such organizations as the Mental Health Association, League of Women Voters, Civil Liberties, NAACP, and other socially conscious associations were fragmenting their efforts in such proliferation and that one unified group could, considering the size and population of this area, do a more effective job of furthering the ends of all these areas of concern. During 1963, this group sparked the effort which culminated in the approval for construction of 150 units of low income housing. During the year I was president, we worked for the creation of a Native Community Center in conjunction with the Cook Inlet Native Association, which was promised fruition as a part of the park that is to be developed for the Alaska Centennial Exhibition this year. This program is now pending before the Greater Anchorage Community Action Agency for funding. We were also pushing for a volunteer Planned Parenthood Clinic, an issue which changing official governmental attitudes, is making somewhat unnecessary.

4. 1959-1960, and again in 1962-1963, President of the Anchorage Unitarian Church.
During my first tenure our fellowship was instrumental in sparking, through a community-wide group known as the Anchorage Youth Action Committee, the creation of the Youth Retention Camp for underprivileged and delinquents under State auspices at Kings Lake, Wasilla, Alaska. Members from our fellowship were instrumental in coordinating the Alaska Mental Health Association, the Alaska State Department of Health and Welfare, the League of Women Voters and other socially conscious groups, bringing pressure to bear creating this camp which was the first of its sort in Alaska under the Youth and Adult Authority of the Alaska Department of Health and Welfare.

5. 1962-1963, Chairman of the Joint Committee of Low Cost Housing.
Growing out of action of the Anchorage Fellowship for Social Justice, for which in the Fellowship I was Chairman for the Committee on Housing. I was instrumental in setting up a community wide group involving repre-

sentatives from the Veterans organizations, the Labor organizations, the Department of Health and Welfare, Salvation Army, as well as the various business and State Legislatures. This committee was successful in applying sufficient political action and pressure to work on change in the membership of the City Council which had once turned down this proposition. It will be recalled that in the council election of that year, one of the main issues was whether the council would support the construction of 150 low cost housing units. The newly elected council did finally pass a cooperative agreement with the Alaska State Housing Authority for the construction of 150 units. The new Loussac Manor off "C" Street is the first 50 units of development implementing this program.

6. 1962-1963, Vice Chairman of the Citizens Committee for Chester Creek Drainage Area.
Until the passage of the referendum for the local Borough Government, there existed a political limbo in the urban areas immediately outside the Home Rule City of Anchorage. In the Muldoon-DeBarr area a recurrent flooding condition had caused health and property hazards. The committee arose from a community protest meeting in the winter of 1962 at which Attorney General Hodges and the Governor met with the citizens of the area to attempt to marshall some State action to come to their assistance. The committee was formed and I was appointed Vice-Chairman. In a period of two months, a series of meetings were held at my residence. Invited to testify before the committee were the Highway Department Regional Supervisor, Director of the Greater Anchorage Health Board, Director of the Alaska State Civil Defense, School Board representatives, military representatives, District Engineer representatives and several City Councilmen. From this testimony and in cooperation with the Local Affairs Agency, we were able to pull together voluntary engineering help and conducted a survey which resulted in a report and recommendations for the creation of a service area on the State Legislature's acting as the Unorganized Borough Assembly. The service area was to establish a draining district in the Greater Anchorage area to resolve the drainage problems and alleviate the flooding conditions during the winter. This report included specific immediate engineering recommendations. The proposal was rejected at a public meeting because of the increased taxes which it would cause. This report, however, continues to be a basic document which is being used by the Borough and City in their present program of sewer expansion.

7. 1962-1965, Member of the Greater Anchorage Board of Health.
I was appointed to the Board on the resignation of one of its members in 1962 and attended meetings regularly until its dissolution with the coming of the health power as a borough function. I have since been reappointed to the Borough Board. Our role was to review the administration of the Greater Anchorage Health Department which controls the sanitation and the Anchorage milk shed. It does all the water and sewer inspections for FHA. It also inspects food, food handling and handlers, barber shop and beauty shop sanitation for the city. The members of the Board determine policy and review the budget. It reviews the basic functions as reported by the different sections of the Department at monthly meetings.

8. 1962, Chairman of the Sub-Committee on Apportionment of the Greater Anchorage Borough Steering Committee.

A citizens committee nominated as the Steering Committee for the Greater Anchorage, Kenai Peninsula and the Matanuska Valley meetings were held all through the winter of '61-'62, up into the spring of 1962, considering different proposed functions of government, tax structure, implementation of planning and zoning, take-over of the schools, method of election and representation to be included in the newly to be created borough government. I served on this committee as Chairman of the Subcommittee on Apportionment. This committee's duties were to amass information in reference to population and census with the view of determining the number of representatives there were to be in the various election or voting districts and the proportions between the City of Anchorage proper and other first class cities and the rural and urban areas outside the city. I was also invited to address all sections of the government classes at East Anchorage High School on Borough government during the fall of that year.

9. 1963-1964, Secretary; 1964-1965, President; 1965-1966, Program Chairman, Alaska Adjusters Association.
This is a trade organization made up of the independent and company adjusters working in Alaska.

10. 1962, 1964 and 1966, stood for Nomination to the Democratic Ticket for the State House of Representatives.
As part of my campaign, I advocated the development of the State's Human and Natural Resources. In this reference, I advocated a State Survey. This survey was to be separated actually into three separate surveys. This institution would be independent from the University of Alaska and the other departments of the State, but it would be located at the University campus to take advantage of the University's staff and potential graduate students. The purpose of the survey would be to mount a continuing academic study in three areas: Geological, Natural History (flora and fauna), and Economics, to the end of learning exactly what is our development potential and what market our raw materials might enjoy. In terms of human resources, I advocated, in reference to our Natives, an end to paternalism of the BIA and the integration of the BIA school system into that of the State with proper federal assistance. The economic integration of the Native population would be part of the direction of the studies I advocated for the surveys.

11. 1963, Publicity Chairman of the Borough Information Committee.
This committee grew out of the petition circulated by the Greater Anchorage Borough Steering Committee. The petition, which they circulated, presented a proposal for submission to the voters after the necessary signatures were amassed, that would place it on the ballot. This committee was formed in coordination with the Republican Club, the Greater Anchorage Democratic Club, and the League of Women Voters, to do a voter information job of getting the story of Borough government out to the people. I acted as Chairman of the publicity committee for the effort.

12. 1963-1964, Vice-Chairman of the Heart Fund Drive of the Anchorage Chapter of the Alaska Heart Association.
Acting as Vice-Chairman of the drive, I was given specific responsibility to contact and canvass all the large firms and the larger contributors.

13. 1963-1966, Chairman, Alaska Human Rights Commission.
As a result of legislation passed in the 1962 Legislature, a Human Rights Commission was created giving it exclusive authority for the implementation and enforcement of human rights legislation already on the books in the field of employment, housing, public accommodations, legislation against discrimination in the area of race, national origin, sex, or age. The Governor appointed a five man board by which I was elected Chairman as one of the five commissioners. We administer a budget which is funded through the Governor's office. We have a staff recently increased to three by the last Legislature. We have followed a policy of meeting about four times a year, in different sections of the State, reviewing cases, hearing testimony, and planning policy. During our Southeast meeting in Ketchikan, I was able to attend the Alaska Native Brotherhood Encampment at Kake, Alaska, where as Chairman of the Commission I was invited to address the encampment. We also traveled to Bethel to meet with Native chiefs on the Native housing problem. This gave me an opportunity to visit many of the Native villages. This past year also saw the commission sign cooperative agreements with several Federal agencies and the Department of Defense, greatly extending our jurisdiction. We also guided a revision of the Alaska Law in this area, putting it under its own title head in the Code Books. The revision also extended its provisions into new fields, such as banking and lending agencies.

14. 1963-1970, Charter Member, Cook Inlet Native Association.
As Chairman of the social action work of the Unitarian Universalist Church and as Chairman of the Alaska Human Rights Commission, work done with Nick Gray and Emil Notti was instrumental in creating Cook Inlet Native Association, which is one of the many forces within the Alaska Federation of Natives. Emil Notti, then President of Cook Inlet Native Association, was elected President of Alaska Federation of Natives and initiated the drive for land grant settlement.

15. 1964-1970, Anchorage Welcome Center.
The concept of a Welcome Center was born as a result of the initial efforts of the Unitarian Universalist Church's social action area. Along with Nick Gray and members of the Fellowship, we did initial exploratory work for possible funding. Finally, in 1967, culminating the joint efforts of the Fellowship and Cook Inlet Association, a Welcome Center came into being with funds coming from Rural Community Action Agency and Greater Anchorage Community Action Agency, as well as local subscription. I was a sustaining member of the Welcome Center shortly after it came into being.

16. 1965, participated as an Advisor in my capacity as Chairman of the Alaska Human Rights Commission and also as the father of one of the participants in the survey of Discrimination in Rental Housing.
This survey was conducted by Alaska Methodist University students in Dr. James Parsons' class of Social Psychology, the winter of 1965. The results of this survey revealed that some degree of discrimination existed in 93% of the rentals contacted, was presented to the CCCI. These results prompted them to recommend to the Anchorage City Council the creation of a Human Relations Committee. The recommendation was acted upon favorably by the Council and the CCCI has allotted a subcommittee on minority housing.

17. 1965-1966, Alternate Representative for the Alaska Human Rights Commission on the Civilian Military Equal Opportunities Committee.
The group arose out of the spontaneous action and threatened demonstrations by the local Negro community expressing resentment at the hiring practices of the local military establishment. In response to threatened developments, the Defense Department sent to Alaska a fact-finding team, whose efforts culminated in the creation of the Civilian Military Equal Opportunities Committee, with representatives from the NAACP, pastors of the several Negro churches in the community, Civil Service Commission, the Chairman of the Local President's Advisory Committee on Equal Opportunities and the Human Rights Commission.

18. 1964-1965, Member of the Local Manpower Training and Development Advisory Board.
With the development of the vocational school under the administration of the local Anchorage Community College, an effective Manpower Development and Retraining Program was instituted. In the winter of 1964, pursuant to national directives, the advisory committee was re-organized and I was appointed. I was instrumental in getting specific Federal legislation changes made to allow greater funding for Alaska, particularly in connection with travel and subsistence while attending courses offered here in Anchorage. This was in recognition of the particular problems related to distances in Alaska. We also have been able to convey to the director and supervisor in On-The-Job Training Program that Alaska minimum average course costs must be recognized as higher. We have also pushed for these programs to be more meaningful for the target recipient of OEO. The general duties of the committee are to set policy and review the justifications and research development of the different courses and program offerings.

19. 1965 to 1968, Greater Anchorage Inter-Agency Council.
Chairman, Nominating Committee, 1965; Second Vice President and Program Chairman, 1966. Represented Alaska Human Rights Commission. Attended meetings regularly since November, 1965.

20. 1965-1972, Greater Anchorage Borough Health Board.
The Greater Anchorage Borough Health Board was carried over from the Anchorage Health Board, a quasi-governmental agency, formed in three parts: the State, City and Spenard Utility Districts. It was reconstituted as Greater Anchorage Borough Health Board, with the acquisition of the health power in 1965. I have attended monthly meetings setting health policies and reviewing health ordinances promulgated by Greater Anchorage Area Borough.

21. Anchorage Family Counseling Agency.
During 1966 and 1967 I remained active with a group of interested people who are attempting to set up a local agency which would provide family counseling services to the community. The National Family Counseling Association recommended against federal funding. Therefore, without funds of any kind we were not able to make the organization a success. Through my activities in the Human Rights Commission, Alaska Rehabilitation Association and Inner Agency Council, I feel that the prime concern of our community centers in the family where there is juvenile delinquency, high divorce rates, poor financial management, unemployment or alcoholism. At present, we have no agency that would aid these families to create a strong family unit. I, however, am sorry to say that two years of effort in making this agency move has been met in frustration.

22. 1966-1967, Alaska Rehabilitation Association.
As a member, I felt that the Alaska Rehabilitation Association was one of the most viable self-help agencies in the area. It was a non-profit organization, and conducted two homes for disturbed children. It provided a work experience program, in terms of the Tundra Club as a restaurant at the Public Health Service Hospital. It trained the handicapped in food services. It collected tuition from the State office of Vocational Rehabilitation. Still more, it ran a bus service for OVR patrons. It also explored the possibility of a sheltered work shop in the area.

23. 1966-1971, Board member of the Greater Anchorage Community Action Agency.
At first representing the Anchorage Inter-Agency Council and more recently the Greater Anchorage Board of Health. This spring I was elected Treasurer of GACA. This agency administers all the War on Poverty programs in the Anchorage area, such as Head Start, Neighborhood Community Centers, etc. which provide social service outreach.

24. 1967-1968, Member, Federal Government Accounting Association.
This is a group made up of Comptrollers and top fiscal and accounting personnel of the various government and military agencies in the Anchorage area. They meet monthly to exchange views and information on new accounting procedures, processes, and government policies. It is a professional organization which invites speakers from various fields to bring information about problems and programs, discussing where they relate to the resources and manpower levels.

25. 1967-1968, Member, Steering Committee of the Local CAMPS Group.
(Comprehensive Agency Manpower Planning Systems)
This is a new thrust directed by the President's Budget Committee that says before training funds would be allocated to a government agency, there would have to be a local planning and coordinating group to eliminate duplication of funding. The CAMPS organized to develop a state plan among the agencies. As a result of a seminar on CAMPS conducted by the local CAP group, where a Mrs. King of the funding section of OEO in Washington addressed representatives of the local Federal agencies, this group was born.

26. 1967-1970, Board Member of F.U.T.U.R.E. (Finding Undeveloped Treasures Uniting Resources to Educate.
This group was interested in developing Day Care Centers and Child Development Programs to relieve working mothers. Presently, I am serving as Vice President of the group. We hope to have the program funded in the very near future.

27. 1967-1970, Society for Personnel Administration.
This group acts as a sub-committee on personnel matters for the Federal Executive Association. Membership is comprised of all the Federal, State and City personnel managers in the Anchorage area. Monthly meetings provided a liaison in terms of job skills, manpower needs, and training programs in both service oriented and mission oriented agencies.

28. 1968-1969, Member of the Policy Committee of the Federal Executive Association.
As Acting Postmaster I was participant in the Federal Executive Association and in the spring of this year I was elected by the membership to

the policy committee. It was the function of the committee to line out the programs and the areas of concern in which the Association would be involving itself. One area of continuing concern was the Native hire program. Also they were pushing contract compliance in Equal Employment Opportunity. I served as the Policy Committee's liaison to the OEO Subcommittee of the FEA.

29. 1968-1971, Alaska Planning and Evaluation Center (APEC).
APEC was a concept designed to provide planning and evaluation services to the Community Action Agencies in Alaska. There is an office of Economic Opportunity directive to the effect that all OEO funded agencies must allocate 3 percent of their funds for evaluation purposes. Combining these funds with $60,000 as average agencies planning grant, a most effective job can be achieved by combining the money to provide services to all the agencies. As representative of the Greater Anchorage Community Action Agency on the APEC Board, I was elected Treasurer of APEC.

30. 1970, Chairman of the Nominating Committee for Greater Anchorage Area Comprehensive Health Planning Council.
This group was named by the Borough Chairman to prepare an application for health planning coordinator to come up with an areawide health plan to be plugged in to a State plan for Alaska. My participation on the Council is as a member for the Greater Anchorage Borough Health Board.

31. 1970 to present, Member, Planning Association of Alaska (PAA).
Group of professional planners who meet periodically to exchange information on planning efforts in the various communities and governmental entities of Alaska. Instrumental in developing a curriculum of planning at the University of Alaska. Also lobby for legislation in the field of land use development and good planning law in the State.

32. 1974, Member of the Borough Mayor's Citizens Advisory Committee for Comprehensive Planning.
As the President of the College Park Improvement Association, a homeowners group in our subdivision, I was invited to sit on the Citizens Advisory Committee to work up goals and programs to meet citizen demand for development of a Comprehensive Plan for the Greater Anchorage Area Borough to plan for land use, capital improvements, growth levels and the quality of life within the urban scene. As part of the planning process, met with various groups to develop neighborhood councils to provide for continuing input into local government and planning.

33. 1974-1975, Alaska Mental Health Association.
Advocacy group for the public concerns of mental health problems. Worked for expanded state funding through the Department of Health and Welfare Division of Mental Health to establish community based Mental Health Clinics. Conducts various fund raising efforts to fund program. Provides referral service to public in need of assistance. I, as a board member, participated in various seminars of a joint program on child care concerns sponsored jointly with Family Service Agency. Elected in 1974 as President-elect of Association for 1976.

34. 1975, Governor's Task Force for the Division of Mental Health.
As one of the twelve members chosen fromthe Board of Directors of the Alaska Mental Health Association, was appointed to this Task Force to provide citizens advisory input into developing policy and legislative goals with reference to the State Division of Mental Health program so

as to meet state needs in this area. They will be meeting four times a year. I attended the initial meeting held in Juneau on February 24 and 25, 1975.

The attached comparison of the House and Senate Ombudsman bills was prepared for the FCC by the local chapter of the American Society for Public Administration.

AMERICAN SOCIETY FOR PUBLIC ADMINISTRATION

SOUTHEAST ALASKA CHAPTER
Box 292 Juneau, Alaska 99802

March 14, 1975

Hon. Mike Miller
House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99801

Dear Representative Miller:

This committee of our association has taken the respective Senate and House versions of S.B. 1, establishing the Office of Ombudsman, under study and advisement. Attached you will find our conclusions, recommendations and the reasoning behind them, with regard to the differences between the two versions.

May we ask you to note that with regard to all issues where we have concluded that one house's version is as valid as the other's we have not made a recommendation? Also where both houses have clearly manifested their disposition on particular issues we have made no further recommendations. Finally we want you to know that this report comprehends only those issues upon which this committee could agree unanimously.

Thank you for your courtesy and attention.

Sincerely,

Donald P. Fisher
Chapter President

Robert E. Newton
Ombudsman Committee Chairman

Stephen J. Pearson
Ombudsman Committee Counsel

Gary E. Wilson
Ombudsman Committee Member

Attachment

AS 24.55.020

AS 24.55.020 provides for the manner of selection of the Ombudsman. The Senate version provides for nomination by the Senate Rules Committee, and selection by a majority vote of the members in each house, the House version provides for nomination by the Legislative Council, examination by "appropriate committees," and selection by a three-fourths majority vote by the members in each house.

As an initial matter, it might be advantageous to have the house participate in the nomination as well as in the selection of an Ombudsman. Such participation will tend to expedite the selection process by causing persons to be nominated who are more likely to be acceptable to both houses. For this reason we tend to favor nomination by the Legislative Council (comprised of members of both houses) as specified in Section 020 (a) of the House version.

On the other hand, given that the Legislative Council is composed of members from each house, and given that the Legislative Council will presumably examine potential candidates for the office in some depth, it is uncertain whether further examination by "appropriate committees" of each house, as specified in Section 020(b) (1) of the House version is necessary. The principal impact of this provision in the future may simply be to delay selection of a candidate acceptable to a sizeable majority of the members of each house, and perhaps even to permit a single member or a small minority of members in the Legislature to block selection of a well-qualified and desirable person. For this reason, it may be desirable to have the Legislative Council present the nomination before both houses without prior referral to standing committees. If further examination is required the Legislature presumably may refer the matter back to the Council or perhaps an ad hoc committee established for such purpose.

It is noted that approval by a three-fourths majority is required by the House version whereas a simple majority vote is sufficient in the Senate version. Although there is much wisdom in insuring that an Ombudsman be acceptable to a broad range of persons and interests as reflected by the memberships in both houses, it is feared that requiring three-fourths majority approval may entail undesirable consequences in the future. Selection of a candidate may be blocked by a distinct minority of the members of the Legislature.

Section 5 of the ABA Model Act and Section 92-6 of the Hawaiian Ombudsman Act each provide for approval by a two-thirds majority. It is believed that such a voting requirement may provide an appropriate,

compromise between the two versions: it will guarantee selection of an Ombudsman acceptable to a diverse group of interests; yet it would not empower a small minority to veto the choice of any candidate.

Subsections 020(c) and (d) of the Senate version, permitting the Governor to veto an appointment for reasons stated, would seem to be a wise inclusion. As a practical matter, the Ombudsman's effectiveness will be enhanced to the extent that he receives the cooperation of the Governor's office. For this reason, the Governor should be given an opportunity to express any serious objections in respect to a particular person selected by the Legislature, subject of course, to the Legislature's power to override his veto. It is therefore recommended that the foregoing subsections be included.

AS 24.55.030

As 24.55.030 in each version prescribes the qualifications for an Ombudsman, and proscribes specified political activities. The proscriptions against political activities are identical in each version and should be retained to promote the non-partisan nature of the office. Differences in the prescribed qualifications in the respective version, however, may warrant further consideration.

As a preliminary matter, it may be noted that Article II, Section 2, Article III, Section 2, and Article IV, Section 4, of Alaska's Constitution specify the limitations on eligibility of persons to serve in the Legislature, as Governor, and on the Supreme and Superior Courts, respectively. To the extent that Subsection 030(a) (2) of the House version imposes additional limitations on the eligibility for holding such offices, the provision may become subject to constitutional challenge. Similarly it is questionalbe whether a State may directly impose limitations on eligibility for national office, as Subsection 020(a) (2) of the House version purposes to do, except, of course, to the extent federal legislation so permits.

In view of the foregoing reservations, it is believed that the Senate version of Subsection 020(a) (2) should be preferred insofar as it is not subject to the problems noted above. For similar reasons, the House version of Subsection 020(a) (1), prescribing a one-year period of ineligibility of former legislators to hold the office is to be preferred to the two-year period specified in the Senate version, insofar as the House version conforms more closely to the disqualification provisions of Article II, Section 5 of Alaska's Constitution. The language of the House version might better be modified so as to mirror the language contained in the Consitution and thereby preclude any potential constitutional challenge in the future.

AS 24.55.060

AS 24.55.060 prescribes the compensation to be paid the Ombudsman: a salary equal to that of the Chief Justice of the Supreme Court under the Senate version; a salary equal to that of a Superior Court judge under the House version.

It may be noted that both Section 207 of the Harvard Model Act and Section 9 of the ABA Model Act provide for a rate of pay commensurate with that of a chief judge of the highest court in the state. The Hawaiian experience, however, indicates that a rate of pay equal to that of a judge of an intermediate court is adequate to attract highly qualified candidates and to lend sufficient prestiege to the office. See e.g., Section 96-2 of the Hawaiian Act. Accordingly, it is recommended that a rate of pay equal to that of a Superior Court judge be specified initially. If found to be too low, future amendments increasing the rate of remuneration may then be considered.

AS 24.55.160

AS 24.55.160 in each version of the bill relates to investigatory procedures which may be used by the Ombudsman. The only difference between the versions is the addition of a Subsection (b) in the House version which provides that the Ombudsman shall maintain confidentiality in his investigations except insofar as disclosure is necessary to enable him to carry out his duties and support his recommendations.

Subsection 24.55.160(b) in the House version should be given particular attention. There is no such provision in either the Harvard or the ABA Model Acts, in the bill which the ASPA Ombudsman Committee drafted, in H.B. 45 which the Governor sent down to the Legislature, in the original version of S.B. 1, in S.B. 1 as it passed the Senate, or in House Judiciary Committee Substitute for S.B. 1. It first appears in House Finance Committee Substitute for S.B. 1, the measure which the House adopted.

The confidentiality provisions of AS 24.55.160(b) in the House version are found in the Hawaii Statute, Section 96-9(b) in almost exactly the same form. Our committee was aware of this when we submitted our original draft. Out thinking at the time was to the effect that it was unnecessarily restrictive of the Ombudman's authority to publicize a complaint whenever he thought that the best way to bring a complaint to a speedy resolution. We noted that the Harvard Model contained no such restriction. (We had not, as yet, received the ABA Model).

Upon consultation with Hawaii Ombudsman Herman S. Doi, we are now persuaded that AS 24.55.160(b) in the House version is very much needed, that we had previously misunderstood its relationship to the functional dynamics of the Ombudsman's office, and that without it the speedy processing of citizens' complaints could be seriously impaired by premature media inquiries. This provision establishes strict and defined legal parameters on the Ombudsman's authority to publicize. Until a complaint has been determined by his office to be meritorious, the complaint has been investigated, he submits a proposal to the agency for resolution, and the agency refuses to comply with his recommendation, the Hawaii Statute imposes on the Ombudsman and his staff strict standards of confidentiality. It should also be noted that in cases where agencies do comply with the Ombudsman's recommendations, confidentiality extends in time beyond the resolution of the case regardless of the nature of the complaint and the abuse, malpractice, etc., that has been resolved. It should also be noted that, as a matter of historical fact, the Hawaii Ombudsman has not publicized a case during the five and a half years the office has functioned. Similar to his subpoena powers, the authority to publicize would seem to draw its potentcy from its existance rather than its use.

AS 24.55.170

The House version contains a Subsection(c) which affords the Ombudsman access to confidential documents which is not contained in the Senate version.

As a preliminary matter it should be noted that the subject matter of the Ombudsman's complaint load which requires investigation coincides frequently with those sensitive areas such as health, education, social services and criminal justice administration wherein, in recent years, extensive efforts have been made to protect individual rights of privacy. More often than not, the Ombudsman could gain speedy access to confidential records through a waiver of his rights of privacy by a complainant who has sought the assistance of the Ombudsman to redress a grievance. Too often, however, this would not be the case, e.g., an adoption contest in which the disappointed party would approach the Ombudsman's office with an allegation of administrative malpractice or abuse.

The Ombudsman's function is also to ascertain patterns of administrative malpractice and to extend his investigation beyond the parameters of a particular case when he determines that not only an individual complainant, but also an entire class of complainants are being subject to some administrative abuse or malpractice. For these reasons, it is recommended that Subsection(c) in the House version would better serve the purposes of the bill. The confidentiality provisions of AS 24.55.160(b) should protect sufficiently individual rights of privacy.

In addition, AS 24.55.170(c) makes the disclosure of statutorily defined confidental information punishable under AS 11.30.240. This provision not only protects individual rights of privacy, it also protects the Ombudsman and his staff from undue public inquiry, and thus tends to strengthen the purposes of the bill.

Conversely, prior judicial approval before the Ombudsman could have access to confidential items of information might substantially impair the purposes of the bill. An ombudsman's effectiveness is measured by the number of cases he speedily resolves with a small staff. This provision imposes on the office cumbersome and time consuming judicial processes which would seriously delay the processing of cases. There may well be, however, a scrutinizing role for the courts to play under Sec. 24.55.200.

AS 24.55.200

The Senate and House versions are very similar, the House version including a grand jury among those parties to who the Ombudsman may report his opinions and recommendations in a case.

A cross reference to the provisions of AS 24.55.170(c) in the House version might better clarify the bill as to the restrictions on the Ombudsman's use of items of information defined by statute as confidental. If these restrictions are not to be absolute, prior judicial approval should be a condition to any exceptions. Whether there should be exceptions with regard to the Ombudsman's reporting his opinion to the Governor, the Legislature or grand jury, this committee has not reached any conclusion. Exceptions with regard to the divulging of confidential information to the public, we think, might seriously jeopardize the integrity of our confidentiality statutes and, in addition, would in no manner serve the purposes of this bill.

AS 24.55.320

There are two significant differences between the Senate and House versions. The Senate version extends the Ombudsman's jurisdiction to municipal government while the House version does not; the House version extends the jurisdiction to judges themselves as well as to the administrative personnel of the Alaska court system, while the Senate version does not include the judges themselves.

This committee views the municipal jurisdiction issue as a dilemma which, at this time, might just as reasonalby be resolved one way as the other. The interfacing of state and local government is such that we feel strongly that the municipal jurisdiction is essential to achieve the purposes of the bill. Conversely, the jurisdiction which the bill confers is already more broad than that conferred on any Ombudsman in the United States. Conferring the municipal jurisdiction at this time might overburden the Ombudsman in the initial years as the office is being established. Additionally, within our knowledge municipal officials and their formal associations have not been appropriately consulted during the drafting stages of this bill.

With regard to the Ombudsman's jurisdiction over the judicial branch, this committee views the Senate version as charting a more prudent course to attain the purposes of the bill. Article IV, Section 1 of Alaska's Constitution confers a broadly stated independence upon the Alaska judiciary. Ultimately the jurisdiction of the Ombudsman over judicial personnel will extend only as far as a majority of the Alaska Supreme Court is willing to allow it to extend. We think there is a lively prospect that the Alaska Supreme Court will accept the jurisdiction which the Senate version confers. If this should ensue, then the administrative acts of the courts will be open to as much scrutiny as those of the executive branch, and insofar as it lies with the Ombudsman's capacity to remedy abuses, this field will be open to him.

Professor Robert E. Newton: We have a few minutes here before we go into our panel session, and in view of the fact that this wonderful gentleman who has come over here to give us the benefit of his experiences is only going to be with us for a relatively brief moment--we have had this hour; it is five years now that he has filled this capacity in the State of Hawaii--I would certainly like to provide anyone in the audience right now the opportunity, with your permission Mr. Doi, to ask a few questions. We have a member of the state legislature over here. Would you please identify yourself, sir?

Representative Charles Parr: Yes, I am Charles Parr from Fairbanks. Mr. Doi, one thing that you said disturbed me a little bit. You repeated a number of times and you kept saying the law is a standard, in accordance with the law and regulations, etc., but wouldn't there be a rather large number of complaints which might be justified and yet, which would not be expressly legal. For example, consistent discourtesy on the part of some member of the administration or a state employee, let's say, which is unjustified and yet which may not be specifically prohibited by law and regulations.

Ombudsman Herman S. Doi: I understand the impact of your question. In fact that is a good question. That is why I added equity and justice also. There are many cases in which the law does not specifically apply. However, in cases where you are measuring actual performance against what the law requires, then certainly the ombudsman cannot be a party to forcing or persuading the administration to do something that is illegal. In the case of discourtesy and this kind of thing it is just good common sense how a public employee should react to a situation. You also have to bring in good common sense equity and justice or some other broad standards in areas where the law does not apply.

Professor Newton: We have Lieutenant Governor Lowell Thomas with a question in the back of the room.

Lieutenant Governor Lowell Thomas, Jr.: I would like to ask Mr. Doi, if he hasn't covered this already earlier in his remarks--I came a little late--if he would tell us why it was that Hawaii did not include the executive branch within its jurisdiction of the bureaucracy.

Ombudsman Doi: In the original dr ft of the bill the Governor and his personal staff were excluded from the jurisdiction of the ombudsman. I think that the rationale then was that we do not want to get the ombudsman involved in political decisions or policy making at the highest level. The incongruity in our statute was that the mayor and councilmen on the county level and also the Lieutenant Governor were included. So last session we went to our Hawaii Legislature and recommended that the Lieutenant Governor who was also an elected official and the mayors and the councilmen from the various counties be excluded for the same reason that the Governor is being excluded, the Governor and legislators are excluded from our jurisdiction. If you read the writings on the ombudsman, I think, many of the political scientists who have studied the institution say the fastest way to kill off an ombudsman is to get involved in political matters or policy making which is the proper sphere of the legislature and the Governor. I hope that answers your question.

Professor Newton: Representative Mike Miller is on the left here and has a question.

Representative Mike Miller: I understand why it is that your state office does have jurisdiction over the cities and counties just as it has jurisdiction over the state government. Would you comment on how much your office is used by local people with complaints against local government?

Ombudsman Doi: The office of the ombudsman in Hawaii is not the only complaint receipt office really. There are many. For example, in the City and County of Honolulu which holds the bulk of the entire Island of Oahu which has about 630,000 of our 750,000 people. Their office of information and complaints receives about 13,000 inquiries per year. And these are usually service requests or calls for information and this kind of thing. Without that office I'd be dead. I couldn't handle that kind of numbers and in each of our counties we also have a person designated as a complaint and information officer on the county level and therefore our office is like an appeals office. If they cannot settle it on the county level, or they feel they have not been treated right at the county level after having exhausted the complaint office there, then they certainly can come to us, or if they refuse to use that office then they come directly to us also. But thank heavens for all of the supplementary complaint offices that are presently in existence. Otherwise we would not be able to handle all of the complaints that would otherwise come to us.

Representative Miller: Would you feel then that without a municipal jurisdiction having some sort of complaint handling mechanism, it would not be desireable to have the state ombudsman's office to have jurisdiction? Do I read your remarks that way?

Ombudsman Doi: The fact is that you may have, well the argument may be made the other way too, the fact that if you do not have a municipal officer designated as a complaint or information officer or someone who can do it, perhaps the fact that the ombudsman has a look at that problem in the municipality may encourage that municipality to have someone like that. So I'm not sure how to answer your question.

Professor Newton: Senator Huber in front please.

Senator John Huber: I understand that you are using a system that is quite a bit different than anybody else by allowing telephone information contacts. Have you gone so far as to use the inexpensive toll free number? Have you considered that?

Ombudsman Doi: Yes. The neighbor islanders use it. What we have done is we try to make our office as accessible as possible to the neighbor islanders as well as to the Oahu residents. So what we have done is we send our people periodically to the neighbor islands to take complaints in person. We also allow neighbor islanders to call us collect and all we do in that case is take their name, phone number, and address and than call them back through the state WATS system or Wide Area Telephone System to really reduce the cost to the state. So each call costs us about ninety cents to come in, just to get their name, telephone number and address. The rest of the conversation in regard to the particulars of the complaint, which is the bulk of the time that would be taken by the telephone call, is done through the leased state line.

Senator Huber: So they can actually get into you free of charge to them?

Ombudsman Doi: That is correct.

Professor Newton: Mr. Acker back here had his hand up next.

Mr. Guilford D. Acker: Both of the proposed pieces of legislation for Alaska have sections entitled "Investigations on the Ombudsman's Motion." Do you have a similar procedure and if so could you give us an example of how much you use it?

Ombudsman Doi: We have exactly the same kind of language. The ombudsman can move on his own motion. However, my personal philosophy has been that my primary obligation is to take care of specific complaints by members of the public. Really I have not had the opportunity as yet to exercise that option very much. We have tried in one or two cases to look at some of the problems that were raised by the newspaper and we have not found that route very fruitful. Many of the problems that are raised on that level are usually funding problems or problems of filling a position, or problems where necessary staff has not been authorized. I really get to a dead end at that point, because we cannot authorize the filling of staff positions or the creation of new positions. We really very rarely exercise our own motion in an investigation of a complaint. We have been too busy handling specific complaints up to this point.

Mr. Acker: If investigating one matter you uncover another matter, you would follow up on that?

Ombudsman Doi: Oh, very definitely. I think the benefit of broadening out an an investigation from a specific complaint is that you have already done the ground work. You have already determined the parameters of the problem, you have done the basic homework in regard to what the law requires, what the facts in the situation are. You're familiar with the rules and regulations of the agency and the practices and procedures, and from there you can broaden out much more successfully than you could going from top to bottom.

Professor Newton: Yes, Ma'am.

Ms. Shirley Kohls: When you are dealing with what the law requires, are you usually in the area of procedural law, or are you in the area of actual substantive law?

Ombudsman Doi: I think you get involved in both. In certain cases when I mention decisional law I think I am also talking about substantive law, so there may be a time lag between let's say a Supreme Court decision. To take a recent case where the Supreme Court ruled on student discipline, where if a child is being suspended for ten or more days, he has a right to a hearing. Fortunately our state provides hearings to suspended children who have been suspended more than five days. We have no problem there. But if our rules and regulations or our procedures in our schools do not provide for the same standards called for by the Supreme Court, I would certainly call the Department of Education to task. So it does involve substantive law as well as procedural law.

Professor Newton: The lady here is next, please.

Unidentified Lady: When you get verbal complaints or telephone complaints, how do you keep track of those? Do you tape record your conversation?

Ombudsman Doi: No, we do not. What we do is each staff member, and because we accept complaints orally by phone, we rotate our staff members on assignment complaint days. Each staff member, when he receives a call, records the call and he reduces that call to a complaint sheet form. Now the safety check in the system really is that when we inquire of an agency if it is a complicated case, we put our complaint in writing to the agency. In that case a copy of the letter of inquiry to the agency is also sent to the complaintant so he can see how we've stated his complaint. In a simple case you really do not need to put it in writing, so the staff member will usually pick up the phone, call the agency and find out what the facts are. And he reduces that telephone call also to notes. Now the complaintant is kept apprised of the development of the case, as it develops until it is finally concluded. All along the process he has the right to call and say, "Hey, you guys have misquoted me, or haven't put the allegations correctly." In cases where we, and this is one of the disadvantages, where the complaintant keeps shifting his grounds for complaint, and if that occurs more than once we ask the complaintant, "Would you please put your complaint in writing"? We cannot keep investigating a case as he shifts his grounds for complaint. We have had very few cases where that occurs. A final check is that I go through each case to be sure that we have done as much for each complaintant as we could. So the complaintant does have the check to see that we have correctly stated his complaint.

Professor Newton: The gentleman here, please.

Representative Glenn Hackney: Does Hawaii have a financial disclosure law for public officials, and if so, are you subject to it?

Ombudsman Doi: Yes, I am. To answer both of your questions simultaneously.

Professor Newton: The gentleman here, please.

Mr. Alfred S. Wakefield: What is your relationship with the press and the other means of communication as far as a specific complaint while you are investigating it to keep it from becoming a major issue which may not be justified at a future time.

Ombudsman Doi: Very good. Our statute requires that we keep the complaint confidential. Therefore we cannot discuss a complaint with the press while it is being carried on, or even after it has been concluded for that matter. Unless the ombudsman, himself, decides at the conclusion that the case has to be publicized. So, really, I get calls every once in a while where the press will call me up and say, "Say, I heard you got this kind of case, what's happening"? I will tell them that the statute precludes me even discussing the case with you. The complaints are confidential. That protects both parties. There is nothing to preclude the complaintant from taking our letters to the press and showing the press our letters and publicizing the case if he wants to, nor is the administrative agency precluded from doing the same thing. But the ombudsman is precluded from revealing what is happening to a complaint.

Mr. Wakefield: As a whole, how is the office looked upon by the press in general?

Ombudsman Doi: I think we have a pretty good working relationship with the press. They understand what our constraints are in terms of what the statute requires, and I think they have respected that constraint. They have picked up our annual reports and publicized what they thought were items that readers would like to see or read about. So basically the publicity about our office comes from our annual reports at the time they are published.

Professor Newton: Could I interject? How many banner headlines have you made?

Ombudsman Doi: I haven't counted--not that many.

Professor Newton: Dr. Price.

Dr. Betty Price: I got the impression from your last response that perhaps there were times when you felt that publicity was indicated. Has that occurred and in what type of case?

Ombudsman Doi: I think I was tempted to publicize one case at one time during the five and a half year history when I really felt that we had the facts and the law on our side. Before we went to publication, the case was resolved. So, really we have not had occasion to reach that stage where we've even threatened to publicize. We put our recommendation in writing and said, "We want a response from the agency as to whether or not the recommendation will be implemented within the stipulated period of time." We cited the sections in our law that authorizes us to do so and we stated in effect, that "We want your response. Why you would not implement our recommendation," in which case we were prepared to go to publicity and the recommendations were accepted.

Professor Newton: The lady over here is next, I believe.

Unidentified Lady: Have you ever used your power of subpoena?

Ombudsman Doi: Not yet. There has been one occasion when one public official questioned whether or not we had the right to get certain kinds of records and I referred him to the power that we had to subpoena records and the records came the next day.

Professor Newton: Jim Anderegg.

Mr. James Anderegg: Mr. Doi, how much of your workload involves environmental improprietiesof department heads or adverse decisions that the citizen wants redress on? Any?

Ombudsman Doi: A few, yes. We've had some cases like that. But where the law is not really clear, where the law is not very specific, and it applies to a particular situation, it would be very difficult for the ombudsman to publicize any case like that really. You must understand that the ombudsman is under the same kind of constraint as the administrator is under, in that, if the facts and the law in the case are not really in favor of the ombudsman, the ombudsman cannot really publicize that case. Why? Because if the facts

and the law are clearly on the side of the ombudsman and the administrator doesn't follow the ombudsman's recommendation, then certainly the administrator will look like a fool in such a situation. Right? However, if the facts and law are not on the side of the ombudsman, the ombudsman can likewise look like a fool if he publicizes the case. So it has to be a pretty clear cut case before he can go to publicity. And often times the use of a weapon that you may have, the ultimate weapon that you may have, is no longer a weapon if you continually use it. The fact that it is there should be sufficient without your having to use it. That's been my philosophy, at least.

Professor Newton: Stuart Hall, please.

Mr. Stuart C. Hall: Mr. Doi, you emphasized that you are an independent, non-partisan, legislative officer. I'm more interested in the maintenance of this independence, not only from the executive and judicial branches, but the legislature as well, even though you are appointed by them. Are your offices physically separate from those of the legislative chambers in the capital building or are they part of them? What is your recommendation on that particular score?

Ombudsman Doi: I'm in a separate building. In an old building for that matter, on the Iolani Palace grounds which is really separate from the State Capital. Although I was offered an office space in the State Capital itself, I refused, primarily because I did not feel that people would come to my office barefooted or in their dirty clothes--the state building is really too imposing for people to come in and really feel at home. So I preferred to stay in the old building. That's where I am presently. I think really the location of the office itself--some ombudsmen think it to be important that they should be in a private office building or a building other than the state office building. I've not found that to be a disadvantage in being in a state building and being separate from the legislature. I don't think anybody has accused the office of being the ploys of the legislators or the legislature. Now remember, I said as free as possible from political pressures. Right? You know they can cut us off every year when we submit our annual budget request to the legislature for inclusion in the legislative expense bill. But that's one thing you can't get away from. Not in our system, anyway. Unless you're going to have a continuing appropriation for the office of ombudsman, and that would certainly be something I would not recommend. I think the actions or inaction on the part of the ombudsman should be subject to the review of the legislature also.

Professor Newton: Yes sir.

Unidentified Gentlemen: Do you advertize your office and the services that are available and your location somewhere?

Ombudsman Doi: That's where the neighoor islanders have the advantage, I think, because prior to our sending a representative out to the neighbor islands, a paid advertisement is placed in the newspaper of the pending visit. Insofar as Oahu residents are concerned, I've made the Rotary, the speech circuit, luncheon circuit, and also spoken to so many groups as a way of publicizing the office that I'm just tired of going to lunches.

Same Gentleman: But these Rotary groups and groups like that are not the ones that your office was provided primarily to take care of?

Ombudsman Doi: You'd be surprised the way it carries from word of mouth, and that's really where you get your best referrals from. We've also taken the time of hitting the low income groups. I think the way we've gone about hitting the low income groups is to talk to the people who are advising the low income groups. So we've gone to the "II" Camp, we've gone to Legal Aid, we've gone to Public Defenders, all these people who have contact with the low income groups are the areas where we've hit. The other fruitful resource, suprisingly, is the government employee himself. Referrals are made to our office by government employees, in many cases when they themselves feel that they have gone as far as they could. And perhaps contact with the ombudsman with some high official in the department may be able to resolve that particular person's problem.

Professor Newton: We have the lady back there, Rosalie.

Ms. Rosalie Walker: Yes. You're aware that Alaska does have serious communications problems. In both our bills, in the section with regard to the investigation of complaints--I raised that question this morniny and it still bothers me. The ombudsman is given the priviledge of setting the time as to whether or not he thinks the complaintant has waited too long before making his complaint for investigation. Could you shed some light on that?

Ombudsman Doi: We have no such requirement or time limitation as to how old a complaint it that you cannot investigate it, however, I think even if it is worded that way, I see no difficulty. Because if you cannot get the facts of a situation, of a complaint, or there are no background information that is attainable, then certainly that complaint would be very difficult to really investigate. So, really, leaving it up to the ombudsman, I think, should not pose too great a problem. If I were placed in that position and certainly I would want to investigate any possible complaint that I could. It would be only in cases where I would not be able to get the factual background of a case, or would not be able to really investigate, then I would say that this complaint is too old to investigate. We investigated a case that stemmed from 1942, something like that, during my first year in office.

Professor Newton: The lady back here.

Unidentified Lady: I'm wondering, your first fiscal year, do you recall what your budget was, total operating budget?

Ombudsman Doi: I have it right here.

Same Lady: That will be for 1969?

Ombudsman Doi: 1969-1970, I think I was approrpiated around $100,000. I'll get the figure. Okay. The appropriation for the first fiscal year that I received was for $103,000, of which the ombudsman spent $90,000, $90,349.92, and then the second year the appropriation was $176,000, of which we spent $157,395. The third year the appropriation was for $233,000 of which we expended $159,760. The fourth year the appropriation was for $192,000 and we expended $157,595. The fifth year the appropriation was for $185,000

of which we expended $163,000. So we've always been below the actual amount that has been appropriated, and the amount that have been appropriated reflects the amounts of the request that we sent to the legislature and we've always gone in with the idea that look, we really cannot predict where this complaint load is going. Now we know we are asking for perhaps a little bit more money than we are actually going to spend. But we promise you that whatever we do not spend will be lapsed back into the general fund. And on this basis we have received the appropriation as required. So, I've had during that period of time, at least one standby position that I could fill, if the complaint load rose during that fiscal year to a level where we could not handle it with the staff we had.

Same Lady: The first year your staff numbered . . . ?

Ombudsman Doi: The first year I operated by myself, one secretary, and toward the end of the fiscal year we hired and trained three additional secretaries--three additional staff members if my recollection is correct.

Same Lady: And presently your staff includes . . . ?

Ombudsman Doi: Presently my staff includes six professionals, including myself, and four secretaries for a total of ten.

Professor Newton: Yes sir.

Unidentified Gentleman: Mr. Doi, how often do you make referrals, for example if someone complains about a matter that could be handled by the state human rights commission, or it could be handled by some existing agency, do you normally refer or do you sometimes take it yourself anyway, or what?

Ombudsman Doi: In practically every case that we receive, I think it depends a lot on how the complainant comes to us. If he's real irritated and he's really furious at that point, then the researcher makes up his mind, well maybe it's not a good idea to refer this guy some place else, especially if his complaint is that, "I've been referred all over this damn place, you know, nobody's going to take care of me." So in those cases, I think, we accept the complaint at that point, but in the usual case, we usually ask the guy, "Have you tried to resolve this problem with the affected agency"? And if he says no, we tell him, "Will you please call this person in the agency and tell him the ombudsman referred you to him to try to work the problem out." In many cases the complainant is more than willing to do so and he will then call the administration and try to work the problem out. But we always tell the complainant, "However, if you cannot resolve it or you feel you have not be treated right, then you certainly can come back to us and we will pick it up from there." But we try to urge complainants to try to deal with their problems with the administrators before filing a complaint formally with our office. I think that is one way for them to learn government also.

Professor Newton: Jim Dennis.

Mr. James M. Dennis: Are these referrals back to agencies that you're talking about, are those reflected in your figures for cases within your jurisdiction?

Ombudsman Doi: No.

Mr. Dennis: What is the magnitude of referrals?

Ombudsman Doi: I would not be able to say, Jim, simply because we have not kept statistics, but the instruction to all my staff members are: "Please tell the guy to go back to the agency and see whether or not he can resolve the problem. But we don't keep statistics on that, unfortunately.

Unidentified Gentleman: Do you ever refer matters to an agency's legal staff, asking that agency to conduct its own investigation and report that back to you?

Ombudsman Doi: There have been some cases like that. I can think of a few where there has been some alleged wrong doing on the part of a government employee which we have contacted the agency and say, "Hey, you guys want to investigate it yourself and tell us what happens"? In which case, in many cases, the agency has picked up from there and gone. But they've kept us apprised of what was happening. In one case I can think of, we called the Attorney General's Office and said, "We've got this problem of alleged wrong doing by an employee; how do you want to handle it"? I think the investigation in that case was conducted jointly by the AG's office and our office. So we've had a pretty good working relationship with the agencies themselves. If we were to investigate each one like that, we would be tied up in the field forever.

Professor Newton: Senator Kerttula.

Senator Jalmar M. Kerttula: One thing that seems to bother the members of the Senate, is the fact that they suspect that the legislative-investigative function of the legislative committees perhaps the Error-Oversight of the budget, the EOB Committee would decline, their contact would decline if we get an ombudsman. You haven't answered that. What's happened in your state.

Ombudsman Doi: You mean the legislative-constituency contact? Is that what you are talking about?

Senator Kerttula: This responsibility for investigating problems, errors and oversights, whether they're legislative or administrative or even judicial, if they feel that their responsibility somehow is infringed upon or it declines, they just don't have that responsibility hence don't perform the function. For instance, our audit acts a little like error and oversight, what's your experience?

Ombudsman Doi: I think I get the thrust of your question. Let me state. . . . In Hawaii, in the executive agency itself they have a post-audit, an agency within the executive branch that does both audits. On the legislative side, we have a legislative post-auditor who is a constitutional officer and is appointed by the legislature and he does both post-audits as well as management audits. We have not found the time when there was a lack of business for him or I in the handling of complaints. In fact we work very closely together. In some cases where the problems . . . , take for example, in one case, we were running across, we still are for that matter, delay in payment to vendors. We asked the legislators to ask the legislative auditor to study the problem and come up with recommendations as to how this problem can be resolved through a speeded-up payment process. And we both work in the same area. Except that we know what each other can do and we work cooperatively in the resolution of problems. But there has not been any situation where he has had a lack of business or lack of studies of post-audits to be done. His review of matters is as much on the financial side, on the management side on a much broader scope. The ombudsman's is

individual complaints that persons have against this agency. So you really are not running in the same. . , running on the same track, so to speak, you're running on the same field, but not on the same track.

Professor Newton: Ron Wendte, please.

Student Regent Ronald W. Wendte: Mr. Doi, have you ever had a case that you were not able to conclude because to pursue it would have led to the governor's office?

Ombudsman Doi: We've had cases where the decision was made by the Governor, in which case we have had to tell the complainant, "Look, we've gone as far as we could; this decision is the Governor's decision not ours," where an executive order may have governed the situation because the executive is excluded from our jurisdiction. "Therefore, if you want to correct the problem, you go talk to the Governor." But not if an administrator is involved, where he makes the decision; he may have been ordered by the Governor to make the decision. That administrator is still within our jurisdiction and is still subject to criticism by us. And the fact that the administrator tells us, "Look I can't do anything because the Governor told me that," then I will tell him "That's your tough luck. You tell the Governor to reverse that decision. You're still the guy that has the authority to make that decision."

Professor Newton: And the lady here again, please.

Unidentified Lady: Do you become involved in disputes between the state and its own employees as far as hiring and firing is concerned?

Ombudsman Doi: Very good question. Hawaii has collective bargaining laws as some of you may have heard. Our collective bargaining law says, in effect, that some of our contract provisions may override some of the provisions in our laws, which are the terms of the collective bargaining agreement. So after the law became operative, I sought an opinion from the Attorney General as to whether or not we were still able to handle employee grievances, basically feeling that I did not have jurisdiction, and the response that we got from the AG was that if a collective bargaining agreement is in operation, the collective bargaining agreement provides an exclusive method by which grievances are to be resolved, then the ombudsman does not have jurisdiction in that area. However, we still investigate cases where exempt employees are involved--where there are no collective bargaining agreements. Does that answer your question?

Professor Newton: Mr. Doi, we thank you very much for this extra questioning period.

INTERNATIONAL BAR ASSOCIATION
OMBUDSMAN COMMITTEE

AMERICAN BAR ASSOCIATION
SECTION OF ADMINISTRATIVE LAW
OMBUDSMAN COMMITTEE

DEVELOPMENT REPORT
JULY 1, 1973 -- JUNE 30, 1974

This report represents an effort to compile information concerning non-judicial complaint-handling mechanisms with major emphasis on Ombudsman and Ombudsman-like systems. This report makes no effort to evaluate the performance of the institutions described.

On the international level, the information contained in this report was obtained from correspondence with scholars, government officials, lawyers, Ombudsmen, and Ombudsman proponents in 134 countries and 80 subdivisions. In the United States, correspondence was maintained with Ombudsmen, lawyers, officials, legislators, legislative reference bureaus, political scientists, and Ombudsman proponents in 50 states, Puerto Rico, Virgin Islands, Micronesia Trust Territory, District of Columbia, Guam, and American Samoa, and 269 cities.

It is quite obvious that the word "Ombudsman" has been used throughout the world to mean any complaint-handling mechanism. Whether Ombudsman should and can be reserved for the independent and non-partisan officer of the legislature who deals in specific complaints from the public against administrative injustice and maladministration is a problem not resolved in this report. It should be noted if an official terms himself an Ombudsman, that name is used in this report.

The international section of this report is issued in the name of the Ombudsman Committee, International Bar Association, and the United States section in the name of the Ombudsman Committee, Section of Administrative Law, American Bar Association.

Bernard Frank, Chairman
832 Hamilton Mall
Allentown, Pennsylvania 18105

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A. INTERNATIONAL

The summary which follows deals with the varied non-judicial institutions throughout the world (not including the United States) which are concerned with the receipt and handling of complaints against government for abuses of authority. Its major stress is on the Ombudsman concept but other systems which have ombudsman-like characteristics (although not classified as Ombudsmen) are included where known to Committee.

1. AUSTRALIA--FEDERAL. Legislation is being drafted to establish an Ombudsman to investigate complaints of unjust treatment by Federal government departments and agencies. (See A-122)

2. AUSTRALIA--STATE OF QUEENSLAND. The Parliamentary Commission Act 1974 was introduced by the Government on March 22. Jurisdiction will apply to all government departments and authorities including local authorities. The Act was passed in April. (See A-127)

3. AUSTRALIA--STATE OF NEW SOUTH WALES. The Cabinet has approved the preparation of legislation to provide for an Ombudsman. Legislation now being drafted by Parliamentary Counsel should be introduced at the next session of Parliament which begins in August.

4. AUSTRALIA--NORTHERN TERRITORY. An Ombudsman bill passed by the Legislative Council two years ago is still awaiting assent. The Federal Government has indicated sympathy with the proposal but sees difficulty in conferring power over federal public servants to a territory Ombudsman. The National Times, April 8-13, reports that the legislation being drafted by the Federal Government (See A-1) includes a deputy Ombudsman for the Territory as well as one for the Capital Territory.

5. AUSTRALIA--STATE OF SOUTH AUSTRALIA. The Ombudsman Act was assented to on December 14, 1972 and on the same day Gordon D. Combe, M.C., was appointed as the first Ombudsman. 308 complaints were received in the six and one-half month-period to June 30, 1973. Seventy were fully investigated of which 16 were considered to be justified in full or in part. 731 complaints were received for the ten-month period to April 30, 1974. By Governor's proclamation and effective from April 1, 1974, all local government bodies in the State were added to the jurisdiction of the Ombudsman which also includes state government departments and state statutory authorities.

6. AUSTRALIA--STATE OF TASMANIA. A Select Committee of the Legislative Council appointed to inquire into and report on complaints of administrative action by various agencies is in operation and receiving complaints: 1972, 19; and to 7/31/73, 9.

7. AUSTRALIA--VICTORIA. The Ombudsman Act 1973 was proclaimed on October 30, 1973 and on the same date John V. Dillon assumed office. He had been retired as UnderSecretary of the Department of Chief Secretary. His first report will be presented to Parliament in September and official statistics will not be available until that time. The National Times article (See A-4)

stated that he had received 762 complaints and out of 135 fully investigated 25 were found to be justified.

8. AUSTRALIA--WESTERN AUSTRALIA. O. F. Dixon, Parliamentary Commissioner for Administrative Investigations, issued his report for the year ended June 30, 1973, which showed that he had received 806 complaints. 480 had been fully investigated and of these 93 considered justified. The report for the year ended June 30, 1974 will be available at a later date.

9. AUSTRIA. The National Assembly still has under consideration the 1971 Government proposal for a "People's Advocate," a collegial body, consisting of one member from each political party represented in the Main Committee of the lower legislative chamber. The opposition Austrian People's Party has proposed a Standing Committee on Complaints composed of members of the lower chamber.

10. BANGLADESH. Article 77 of the Constitution adopted in 1972 provides that Parliament may by law provide for the establishment of the office of Ombudsman. No legislation has been passed.

11. BELGIUM. It has been reported that the Parliament is currently considering legislation similar to the French Mediateur Law but this has not been confirmed.

12. BERMUDA. The subject of the Ombudsman has been discussed at high governmental levels but no decision has been reached.

13. BOTSWANA. Attorney General M. D. Mokama is making a study of the Ombudsman institution.

14. BULGARIA. The Procurator General exercises control in matters relating to the observance of the law by government organizations, officials, and the people.

15. CANADA--FEDERAL. Bills C 106 and C 151 for the establishment of a Canadian Ombudsman were introduced on March 12, 1974 in the House of Commons. The Government in December, 1973, proposed the establishment of a five-man Commission on Human Rights and Interests to handle human rights violations and citizen grievances against government, large businesses and unions and characterized the Commission as a combination of ombudsman and anti-discrimination tribunal. The House of Commons was dissolved in May before a bill could be introduced.

16. CANADA--FEDERAL--COMMISSIONER OF OFFICIAL LANGUAGES. The third annual report of the Commissioner, Keith Spicer, for the year ending March 31, 1973 shows that he received 943 complaints. The 1974 statistics will be available after presentation to Parliament. On June 6, 1973, Parliament passed a resolution reaffirming the principles of the Official Languages Act of 1969.

17. CANADA--FEDERAL--PRISONS. Miss Inger Hansen was appointed by the Solicitor General on the authority of the Privy Council

on June 1, 1973 to serve as a Commissioner under the Inquiries Act with the title of Correctional Investigator. She will handle inmate complaints, on her own initiative, and problems that come within the responsibility of the Solicitor General. During the period from June 1, 1973 to May 9, 1974, she received 676 complaints. Approximately 10% were rectified. It should be noted that the inmate population is 9,000.

18. CANADA--ALBERTA. George B. McClellan retired as Ombudsman on April 30, 1974. A former Commissioner of the Royal Canadian Mounted Police, he had served as Ombudsman since September 1, 1967. His annual report for the period November 1, 1972 to October 31, 1973 shows that 776 complaints were received. 255 were investigated with 56 of these justified. Dr. Randall Ivany, Dean of Edmonton and Rector of All Saints Cathedral, assumed office as Ombudsman on May 1, 1974. 1973 Bill 212 introduced by Albert Ludwig, Q.C., would have extended the jurisdiction of the Ombudsman to municipalities. Professor Karl A. Friedmann of the University of Calgary delivered a paper on "Complaining--Comparative Aspects of Complaint Behavior and Attitudes towards Complaining in Canada (Alberta) and Britain" at the Canadian Political Science Association Annual Meeting in August, 1973.

19. CANADA--BRITISH COLUMBIA. The new Labour Code of British Columbia Act provides in Part VIII for a Labour Ombudsman with power to investigate actions of the Department of Labour, trade unions, and employees' organizations. It has not as yet been proclaimed. (May 14, 1974)

20. CANADA--MANITOBA. G. W. Maltby, Ombudsman, issued his report for the year 1973, showing that he received 441 complaints, of which 64 are recorded as rectified.

21. CANADA--NEW BRUNSWICK. Charles Edouard Leger died on September 29, 1973. He had served as Ombudsman since June 1, 1971. He was succeeded by G. A. McAllister, who issued the seventh report for the year, 1973. 192 complaints were received and of these 14 were rectified.

22. CANADA--NEWFOUNDLAND. The Parliamentary Commissioner (Ombudsman) Act, 1970 has not been proclaimed as yet. The Government intends to proclaim the Act as soon as it has found a suitable candidate for the position of Ombudsman.

23. CANADA--NORTHWEST TERRITORIES. At the request of the legislature a paper discussing the advisability of an Ombudsman was presented to the legislature in June by the Department of Public Services.

24. CANADA--NOVA SCOTIA. The Ombudsman, Dr. Harry D. Smith, received 335 complaints in 1973, according to his third report just received.

25. CANADA--PRINCE EDWARD ISLAND. The Ombudsman office has been discussed from time to time at Cabinet level but no other steps have been taken.

26. CANADA--QUEBEC. Louis Marceau, Public Protector, has issued his fifth annual report. It shows he received 5,320 complaints and investigated 2,872. 850 were justified of those fully investigated.

27. CANADA--SASKATCHEWAN. E. C. Boychuk, who took office on May 1, 1973 as the first Ombudsman, issued his first annual report for the period from May 1, 1973 to November 30, 1973. He received 316 complaints during that period, of which 112 were investigated and 44 rectified.

28. CANADA--YUKON TERRITORY. The Legislative Council passed a motion recommending that the Government of the Territory introduce legislation establishing an Ombudsman.

29. CANADA--CONFERENCE. A conference of Canadian Province Ombudsmen sponsored by the Ministry of the Solicitor General was held on May 2-4, 1974 at Ottawa. The six provincial Ombudsmen attended with their assistants. A representative of the Commissioner of Official Languages, Miss Inger Hansen, the Canadian Correctional Investigator, and Professor Donald C. Rowat were also present.

30. CANADA--PROFESSOR DONALD C. ROWAT. We again call your attention to his new book, "The Ombudsman Plan Essays on the Worldwide Spread of an Idea." The Canadian publishers are: McClelland and Stewart, 25 Hollinger Road, Toronto, Ontario, Canada.

31. CANADA--T.V. OMBUDSMAN. The Canadian Broadcasting Corporation appointed Robert Cooper as T.V. Ombudsman. He runs a show bi-weekly and receives complaints against government administration.

32. CHILE. The Comptroller General, in addition to fiscal duties, investigates complaints relating to the functioning of public services and to the correct application of laws and regulations. He can raise objections to decrees and regulations that he considers illegal.

33. CHINA--REPUBLIC OF CHINA (TAIWAN). Control Yuan (Inspectorate--Censorate) exercises the powers of consent, impeachment, censure, and auditing. It may propose corrective measures on the basis of investigation and divide the country into control zones and establish regional control offices to exercise circuit supervision power and receive the people's complaints. When a public functionary violates the law or neglects duty, the Control Yuan may impeach or censure him. The Chinese control system has a long history dating back to 221 B.C.

34. CHINA--PEOPLE'S REPUBLIC. The Supreme People's Procuratorate exercises procuratorial authority over all departments of the State Council, local organs of state, persons working in organs of state and citizens, to ensure observance of the law. Local organs of the people's procuratorate and special people's procuratorates exercise procuratorial authority within the limits prescribed by law.

35. COUNCIL OF EUROPE. Resolution 549 adopted by the Standing Committee, acting on behalf of the Consultative Assembly of the Council of Europe, on July 4, 1973 proposed that the Legal Affairs Committee convene a meeting of Ombudsmen and Parliamentary Commissioners of the member states to exchange information and experiences on their various systems and to advise on the desirability of extending the system to the European level. Pursuant to the resolution, the Legal Affairs Committee organized a meeting which was held in Paris on April 18 and 19, 1974. Present were Ombudsmen and Parliamentary Commissioners from member states, representatives from the European Court of Human Rights, the European Council of Human Rights, the Committee on Experts on Human Rights and several experts and observers, as well as members of the Legal Affairs Committee. A report will be presented by the Legal Affairs Committee to the Consultative Assembly in September.

36. COUNCIL OF EUROPE--EUROPEAN COMMISSION ON HUMAN RIGHTS. Applications by individuals, groups of individuals, or non-governmental bodies claiming denial of rights under the Convention for the Protection of Human Rights and Fundamental Freedoms are brought to the Commission. The Commission investigates complaints and endeavors to bring about a settlement. If no settlement is reached, the Commission files a report with the Committee of Ministers of the Council of Europe and gives its opinion whether there has been any breach of the convention. At that stage, cases may be referred by the Commission or the government concerned to the European Court of Human Rights for binding judicial decision; otherwise the Committee of Ministers must decide whether there has been a violation.

37. CYPRUS. By law 107/72, a Commissioner for Administration has been established whose functions are to enquire into the activities of any administrative service especially on representations and complaints made to him and to report to the President of the Republic by whom he is appointed. No appointment has been made as yet.

38. DENMARK. Ombudsman, Lars Nordskov Nielsen, reports that he registered 1,461 cases in 1973, of which 68 were taken on his own initiative. A bill was introduced in Parliament on April 3 concerning marketing which contained provisions for an Ombudsman for Consumers. It is expected to pass. The Danish Medical Association in September 1973 discussed an Ombudsman office to receive complaints against improper medical treatment. Ombudsman Nielsen has pointed out that his office in its present form could not function as a medical Ombudsman. There is available a book in English entitled, "The Danish Ombudsman 1955-1969" covering 75 cases taken from then Ombudsman Hurwitz's annual reports edited by Mogens Lerhard and published by Schultz, Copenhagen, 1972.

39. ETHIOPIA. A Commission is working on a revision of the Constitution. The Ethiopian Bar Association is campaigning for the establishment of the Ombudsman.

40. FIJI. Justice Moti Tikaram submitted his first annual Ombudsman report for the period from March 1, 1972 to February 28, 1973. He had received 239 complaints (although 226 cases were registered) and out of 181 disposed of, 23 were justified or rectified.

41. FINLAND. Dr. Jorma S. Aalto was elected as Ombudsman to serve for the four year term, 1974-1977. Aapo Lehtovirta is Assistant Ombudsman serving 1972-1975. Both are elected by Parliament. In 1973, the Ombudsman received 997 complaints, of which 44 complaints were referred from the Chancellor of Justice and 14 were self initiated cases. The powers of the Ombudsman and the Chancellor of Justice in the investigation of complaints are very similar. The Chancellor of Justice is Risto Leskinen, who had served as Ombudsman. The Chancellor who is appointed by the President received 988 complaints in 1973 of which 214 were self initiated cases. Mikael Hiden's "The Ombudsman in Finland: The First Fifty Years" has been published by The Institute of Governmental Studies, University of California, 109 Moses Hall, Berkeley, California, 97420.

42. FRANCE. In June, 1974, Aimé Paquet succeeded M. Antoine Pinay as Mediateur. Under French law No. 73 - 6 of January 3, 1973, complaints must be processed through members of Parliament. The Mediateur's first annual report for the year 1973 shows that he received 1,773 dossiers. 564 cases were rejected as being non-applicable and 469 cases were processed, of which 70 were justified and 112 partly satisfied. Dr. Henri Desfeuilles, Chairman of the Advisory Council to the Mediateur, has written the book, "Le Pouvoir de Controlles des Parlements Nordique," published by R. Richon et R. Durand Auxeas, 20 rue Soufflot, Paris, France.

43. GERMANY--FEDERAL REPUBLIC OF GERMANY--MILITARY OMBUDSMAN. The Parliamentary Commissioner for Military Affairs, Fritz-Rudolph Schultz, issued his annual report for the year 1973. He received 6,673 applications but fully processed 7,412. 1,966 applications were successful and 658 partly successful.

44. GERMANY--FEDERAL REPUBLIC OF GERMANY--PETITIONS COMMITTEE. Legislation is pending to extend the powers of the Petitions Committee of the Bundestag in dealing with complaints relative to administrative measures for which the Federal Government is responsible. Several states have in the past several years enacted laws which extend the powers of their Petitions Committees to handle complaints: North Rhine-Westphalia, Schleswig-Holstein, Rhineland Palatinate, Berlin, and Bremen.

45. GERMANY--FEDERAL REPUBLIC OF GERMANY--STATE OF RHINELAND-PALATINATE. In May, the Assembly passed the Citizen's Representative Law and Dr. Johannes Baptist Rösler, Assembly Member, became the first Citizen's Representative on May 16. He had served as Petitions Committee Chairman and in his new capacity is also the Commissioner of the Petitions Committee.

46. GHANA. Constitutional provisions for an Ombudsman contained in the 1969 Constitution lapsed with the suspension of the 1969 Constitution in 1972. The National Redemption Council

by decree No. 80 established the Special Actions Unit with a wing known as the Expediting Committee (thus reviving the 1966 Expediting Committee) which has Ombudsman-like duties. Its functions are performed through the Investigations and Complaints Division which receives and investigates complaints.

47. GREAT BRITAIN. The 1973 annual report of Sir Alan Marre, Parliamentary Commissioner for Administration, shows the receipt of 571 complaints through Members of the House of Commons. 133 uncompleted cases were brought forward from 1972. Out of the total of 704, 536 were completed during 1973. Investigation was completed and results reported to Members in 239 cases, and in 88 of these, the Parliamentary Commissioner found elements of maladministration which led to some measure of injustice. In addition to the annual report, reports are issued quarterly containing the full but anonymised texts of completed investigations.

Following the enactment of the National Health Service (Scotland) Act 1972 and the National Health Service Reorganization Act 1973, Sir Alan Marre was appointed Health Service Commissioner for England, Scotland and Wales. Complaints against the National Health Service are received directly from aggrieved persons. His first report covering the first six months has been issued. Sir Alan Marre has integrated the staffs working for him in his several capacities.

The Local Government Act 1974, Part III, provides for local commissioners to investigate complaints of maladministration against local authorities in England and Wales. Complaints will be received through local counsellors or directly if counsellors refuse to pass them on. Ultimately, there are expected to be nine commissioners for local administration for England and one or two for Wales. Lady Serota, D. B. Harrison and J. P. Cooks were appointed on June 12, 1974 as the first three of the local government commissioners. (See A-128)

The handling of complaints against the police is still not resolved. The report of the Working Group for England and Wales on the handling of complaints against the police stated that investigations of complaints should in the first instance remain with the police. The general view was expressed in the report that the scope of an independent ex-post factor review should be limited to scrutiny of the handling of the complaint. The Home Secretary is now expected to decide what form the new procedures should take.

48. GUYANA. G. A. S. van Sertima, Ombudsman, reported that he had received 179 complaints in 1970, 447 in 1971, 284 in 1972, and 307 in 1973. In 1971, his jurisdiction was extended to local councils and local authorities.

49. HONG KONG. The Unofficial Members of the Executive and Legislative Councils operate an office (known as the UMELCO Office) to which a member of the public may report a grievance at any time. Although the Office has no statutory powers, the Government undertakes to ensure that the Unofficial Members have access to official information including policy papers and departmental files. The Unofficial Members also have

ready access to senior Government officers and are able to raise questions by personal discussion, by letter, or by question or debate in the Executive and Legislative Councils. In addition, there are throughout the territory district offices, staffed by Government officers, which receive and investigate complaints from citizens. In the urban areas, there is also a ward system through which the urban councillors deal with complaints from members of the public. In view of all these channels being available, the Government has concluded that there seems to be no real need for an Ombudsman in Hong Kong. Robert Primrose is Administrative Secretary, Office of Unofficial Members of Executive and Legislative Councils. The third annual report of the UMELCO Office for the period, 7/1/72-6/30/73, shows 268 cases were brought forward from the previous year and 1,689 new cases were received. 1,611 cases were completed. In 359 cases, the complaint was rectified or the client's difficulty fully overcome. In 524 cases some degree of help, advice, information or explanation was given to the person concerned even though his problem could not be fully solved.

50. ICELAND. At the request of the Prime Minister, Attorney Sigurdur Gizurarson drafted an Ombudsman bill in 1973. It was submitted to Parliament last fall but no action has been taken to date.

51. INDIA--CENTRAL GOVERNMENT. Ombudsman legislation, the Lokpal and Lokayuktas Bill, was introduced in 1971 and is awaiting further action. It is somewhat identical to the bill which was passed by the Lok Sabha (House of the People) in 1969 but which lapsed on dissolution of the Lok Sabha.

A Central Vigilance Commission has been functioning since 1974. It can inquire into any transaction where a public servant is suspected or alleged to have acted for an improper purpose or in a corrupt manner or into any complaint that a public servant had exercised or refrained from exercising his powers with an improper or corrupt motive or into any complaints of misconduct or lack of integrity or any malpractice or misdemeanor on the part of a public servant. Shri B. K. Acharya is Central Vigilance Commissioner. The Commission's annual report covering the period from April 1, 1972 to March 31, 1973 shows that the Commission received 1,059 complaints.

The Petitions Committee of the Lok Sabha receives petitions regarding public grievances. The Petitions Committee of the Rajya Sabha (Council of States) receives petitions from organizations (not individuals) with respect to grievances.

52. INDIA--STATE OF BIHAR. The Bihar Lokayukta Act 1973 (Bihar Act VI of 1974) was enacted in 1973. Dr. S. V. Sohoni took office as Lokayukta on May 28, 1973.

53. INDIA--STATE OF GUYARAT. The Chief Minister had in 1973 stated that the Government intended to introduce Lok Pal legislation. The Cabinet on February 1, 1974 was reported to have decided to appoint a Lok Pal. However, before any further action could be taken, the President's Rule intervened in the State on February 9, 1974.

54. INDIA--STATE OF JAMMU AND KASHMIR. Information has been received that two institutions, the Anti-Corruption Organization and the Grievance Commissioner, receive complaints from citizens for abuses of authority by government officials.

55. INDIA--STATE OF KARNATAKA. The Lokayukta and Upa-Lokayukta Bill was introduced on September 12, 1973. Action is still pending.

56. INDIA--STATE OF KERALA. Under the 1969 Interim Probe Machinery Executive Order, petitions may be addressed to the Chief Secretary requesting an inquiry into an allegation of misconduct against any public man specified in the petition. The Government will then appoint a Commissioner to report if a prima facie case has been made out justifying reference of the case to a Commission of Inquiry and upon consideration of the report take such action as may be necessary.

57. INDIA--STATE OF MADHYA PRADESH. A Lokayukta Bill was introduced on April 24, 1974 and was referred to a Select Committee.

58. INDIA--MAHARASHTRA. Shri S. P. Kotval took office as Lokayukta on October 25, 1972, the first to be appointed in India, under the Lokayukta and Upa-Lokayuktas Act 1971. Shri Kotval has given the information that "Lok" means "the people," "Ayukta" means "care taker" or "Commissioner" and the prefix "Upa" means "deputy." He received 288 complaints from October 25, 1972 to December 31, 1972 and 767 during the year, 1973. His first report for the period from October 25, 1972 to October 24, 1973 was submitted to the Governor on November 17, 1973.

59. INDIA--MANIPUR. The Director of Vigilance acts also as the Director of Public Grievances.

60. INDIA--STATE OF ORISSA. The Assembly passed the Lokpal and Lokayukta Bill on October 28, 1970 but no Lokayukta has been appointed as yet.

61. INDIA--STATE OF RAJASTHAN. Under the Lokayukta and Upa-Lokayukta Act of 1973, Shri I. D. Dua, a retired Judge of the Supreme Court, has been serving as Lokayukta. Shri L. M. Nadkarni became Upa-Lokayukta on October 1, 1973.

62. INDIA--STATE OF TAMIL-NADU. The Public Men (Criminal Misconduct) Act, 1973, enables a citizen to set into motion machinery for investigations into charges of misconduct against ministers and legislators.

63. INDIA--STATES--GENERAL. Vigilance Committees are functioning in the States of Andhra Pradesh, Assam, Gujarat, Karnataka, Madhya Pradesh, Tamil Nadu and West Bengal. Petitions Committees in the state legislatures also receive petitions from the public against the administration.

64. INDONESIA. The Pengabdi Hukum (Law Upholder) is a private institution sponsored by non-governmental organizations (5 legal associations and the Indonesia League of Human Rights).

It receives complaints from individuals against public agencies and has many of the characteristics of the Ombudsman system, operating through a joint secretariat of six from its member organizations.

65. INTER-AMERICAN. The Inter-American Commission on Human Rights was created in 1959. The Second Special Inter-American Conference at Rio de Janeiro in 1965 adopted a resolution extending the powers of the Commission to consider individual complaints of violations of certain basic rights. On receipt of such complaints, the Commission has the right to request information, and make recommendations to governments. The organ responsible for hearing individual petitions is the Inter-American Commission on Human Rights whose competence in the matter is automatically recognized by states parties to the Convention. The Convention set up a second organ, the Inter-American Court of Human Rights, with optional jurisdiction. Before the merits of the case can be studied by the Commission and perhaps eventually by the Inter-American Court, a petition must be declared admissible by the Commission. The Commission will, having notified the parties, look into the facts alleged in the petition. A friendly settlement may be reached and if not reached the Commission will publish the report. If the case is not finally settled, it can be taken to the Inter-American Court by the Commission or by the state or states concerned. If the case is neither settled nor submitted to the Court, the Commission may by a vote of the majority of its members set forth its opinion and conclusions on the case and make any appropriate recommendations and prescribe a period within which the state concerned is to take the measures necessary to remedy the situation. At the end of the period, the Commission will decide whether such measures have been taken and whether or not to publish its report.

66. INTERNATIONAL BAR ASSOCIATION. Sir Denys Hicks, President, is expected to make appointments in the near future to the Ombudsman Committee, which is headed by Bernard Frank. Two supplemental components have been established: the I.B.A. Member Organizations Liaison to which 28 national bar associations have made appointments and the I.B.A. Ombudsman Advisory Board on which 22 Ombudsmen throughout the world have accepted membership. A newsletter was issued in May and July to a mailing list of about 350, including the Member Organizations Liaison and Advisory Board.

67. IRAN. Lieutenant General Yazdan Panah who headed the Imperial Inspection Organization died in 1973 and has been succeeded by Lieutenant General Fardoost. Under the 1969 Law for the Establishment of the Imperial Inspection Organization, the organization under the supervision of the Shahanshah (who appoints its head) deals with grievances of the people against government agencies, police, local government, public utility institutions and affiliated government institutions. Complaints against ministries and governmental organizations can also be made under the Constitution to Petitions Committees of the two Houses of Parliament.

68. IRELAND. There has been some discussion on the Ombudsman but no definitive move has been made as yet. The Irish Times

(1/10/74) states that a report on the implications of appointing an Ombudsman is being prepared by the Department of Public Service.

69. ISRAEL--COMMISSIONER FOR COMPLAINTS FROM THE PUBLIC. The State Comptroller, Dr. I. E. Nebenzahl, by law has jurisdiction as Commissioner for Complaints from the Public to handle complaints against acts including delay in performance or omissions contrary to law or without lawful authority or contrary to sound administration or unduly harsh or manifestly unjust. The Commissioner is assisted by a special unit called the Office of the Commissioner for Complaints from the Public. Gershon Avner resigned the post of Director of the office to become Secretary to the Cabinet. Yehuda Salant is Director, an appointment made by the Knesset House Committee. From September 1972 to September 1973, the Office of the Commissioner received 6,762 original complaints.

70. ISRAEL--SOLDIERS COMPLAINTS COMMISSIONER. Major General Haim Laskov, former Chief of Staff, who became Soldiers Complaints Commissioner on November 1, 1972 under the Military Justice (Sixth Amendment) Law 5732-1972 received from that date until March 31, 1973, 2,258 complaints. 1,626 complaints were dealt with, of which 539 were justified.

71. ISRAEL--POLICE. The Police Commissioner of the Israel Police by order created the Office of Public Complaints to receive complaints against police officers headed by Deputy Commander Zeev Margalit.

72. ISRAEL--JERUSALEM. Shelomo Kaddar, who has been serving as Jerusalem Ombudsman since 1967, reports that he received 759 cases in 1973 and carried over 42 from 1972. He completed 771 cases, of which 307 were found justified.

73. ISRAEL--HAIFA. Sources report that the Mayor of Haifa has appointed an Ombudsman, Jacob Lvav.

74. ISRAEL--TEL-AVIV. Yehuda Greener, City Ombudsman, reports that he received 8,368 complaints in 1973.

75. ITALY. Dr. G. Treves of the University of Turin had been appointed by the Italian National Research Council to collect materials and prepare proposals for the institution of the Ombudsman in Italy. The volume "L' Ombudsman (Il Difensore Civico)" has been published by UTET in Turin. Sources report that the Liberal Party has again proposed Civil Defender legislation in Parliament.

76. ITALY--REGION OF TUSCANY. Regional Law no. 8 of January 21, 1974, establishing the Civic Defender, was passed, the first region (out of 20) to do so. No appointment has been made yet.

77. ITALY--REGION OF LIGURIA. Legislation similar to the Tuscany Civic Defender Law has been passed in June in Liguria. No appointment has been made yet.

78. ITALY--REGIONS--GENERAL. Sources report that Civil Defender bills have been introduced in four regions--Emilia, Lombardia, Trentino, Alto Adige and Umbria.

79. JAMAICA. The report of the Ombudsman Working Party was issued on August 27, 1973 recommending the establishment of the Ombudsman. The report is being examined by a subcommittee of the House of Representatives.

80. JAPAN. The Civil Liberties Bureau, a part of the Ministry of Justice, handles various matters relating to the protection of human rights. Civil Liberties Commissioners, not to exceed 20,000 in number, are appointed by the Ministry of Justice to serve in cities, towns and villages. The Administrative Inspection Bureau of the Administrative Management Agency, inter alia, receives, investigates and seeks to redress grievances. Local administrative counselors in localities receive grievances and forward to the Bureau those deserving of attention. The Ministry of Justice has published a 1973 16-page booklet on "The Governmental and Non-Governmental Machinery for the Protection of Human Rights and Legal Aid in Japan" which discusses in Part I the Civil Liberties Bureau and the Civil Liberties Commissioners.

81. MALAYSIA. The Government did not implement the 196[illegible] report by Sir Guy Powles, New Zealand Ombudsman, but considers the reorganized Anti-Corruption Agency as working satisfactorily. The Agency deals, among other functions, with individual cases of inefficiency, delay, and nepotism. The Public Complaints Bureau became operational on August 1, 1971. It is an administrative division of the General Planning Unit of the Prime Minister's Department under the portfolio of the Minister with Special Functions. An essential feature of the organization setup is the appointment of Bureau representatives in local areas to receive public complaints and refer them to the Bureau. The Bureau receives complaints against administrative acts done or omitted relating to a matter of public administration by a Federal department (includes all Federal statutory bodies).

82. MALAYSIA--STATE OF PENANG. A special committee known as the Efficiency, Good Relationship and Complaints Committee has been appointed by the state Government. Its terms of reference include investigation of complaints received from the public, the taking of appropriate action, and when necessary the making of recommendations to the proper authorities.

83. MALAYSIA--STATE OF PERAK. There has been a proposal for the Ombudsman but nothing further has developed pending the outcome of a special study initiated by the Federal authorities.

84. MALTA. The Labour Party Programme, on which platform the present Government won the last elections in June, 1971, proposed the institution of the post of Ombudsman. No legislation has as yet been presented in the House of Representatives.

85. MAURITIUS. The Ombudsman, S. Mootoosamy, who took office on January 23, 1973, issued a report covering the period from March 2, 1970 (when his predecessor, Judge Gunnar Lindh assumed

office) until December 31, 1973. 315 complaints were received during this period, of which 91 were considered justified. In 1973, 89 complaints had been received, 29 investigated, and 5 considered to be justified.

86. MEXICO. The Mexican Constitution provides for the writ of amparo--special and extraordinary in nature--which protects individual rights and properties. It can be brought against acts of administrative tribunals, ordinary bureaucrats, police officers, judges, legislatures, and even against the President. In administrative matters, amparo may be invoked against decisions which cause an injury that cannot be remedied through any legal resource, trial, or defense.

87. NAURU. Some thought had been given to Ombudsman in the Republic of Nauru. However, in view of the size of the Island with a population of approximately 6,000 persons, the need for the Ombudsman does not exist at present.

88. NETHERLANDS. This year the Government requested G. E. Langemeyer, former Attorney General, to draft a plan for an Ombudsman. In 1971, Government proposals for an Ombudsman receiving complaints from Parliament only was discussed and rejected. The Second Chamber instead voted for an independent Ombudsman who would receive complaints from the public directly. Dr. H. H. Kirchheiner's "Ombudsman En Democratie" published in 1971 contains a nineteen-page English summary.

89. NETHERLANDS--TV OMBUDSMAN. The Vara broadcasting company has established an Ombudsman program on TV and radio. In addition, an Ombudsman Foundation was established in 1972 in connection with the Vara Ombudsman TV and radio program but at the same time independent. The media Ombudsman is Hans Ouwerkerk. The Foundation with a staff of 30 is headed by Guido M. Zuur.

90. NEW ZEALAND. The report of the Ombudsman, Sir Guy Powles, for the year ended March 31, 1974 shows he had received 865 complaints in that year, making the total since the inception of the office on October 1, 1962, 9,610. In the year, 373 complaints were fully investigated, and of these 114 were found to be justified. The Government has in preparation legislation to extend the jurisdiction to all local government authorities and ad hoc local bodies. The Bill is expected to be introduced into Parliament towards the end of the year, and, if passed, will require major changes in the structure and operation of the Ombudsman's office.

91. NIGERIA. Complaints against officials and department may be made to the appropriate Permanent Secretary. If the complaint is against the Permanent Secretary of a Ministry or the Head of an Extra-Ministerial Department, it is made to the Secretary to the Military Government in the case of a state or to the Secretary to the Federal Military Government in the case of the Federal Government. Complaints against the Government, ministries and departments may also be made to the Attorney General of the Federation and Commissioner for Justice and occasionally complaints are sent

to the Head of State Commissioners, or other Government officials.

92. NORTHERN IRELAND. Stephen McGonagle succeeded J. M. Benn who retired as Parliamentary Commissioner for Administration and Commissioner for Complaints on January 1, 1974. As Parliamentary Commissioner for Administration he receives complaints against central government through members of the Northern Ireland Assembly. In 1973 he received 43 complaints. As Commissioner for Complaints, he receives complaints against local government and public authorities from the public directly. In 1973 he received 659. The effect of the recall of the Assembly in May and direct rule by British Parliament will be to require reports to the Parliament at Westminster.

93. NORWAY--PARLIAMENTARY OMBUDSMAN. The Parliamentary Ombudsman, Andreas Schei, retired on July 1, 1974, and was succeeded by Judge (of the Supreme Court) Erling Sandine. During 1973, the Ombudsman received 1,395 complaints, 52 informational inquiries, and took up 21 cases on his own initiative. 1,373 cases were handled during the year, of which 562 were investigated and 178 were considered justified.

94. NORWAY--MILITARY OMBUDSMAN. Edg Andreassen, Military Ombudsman, received 248 complaints in 1972 and 230 in 1973.

95. NORWAY--CONSUMER OMBUDSMAN. The Law on the Control of Marketing came into effect on January 1, 1973. The function of the Consumer Ombudsman is to see that advertising and other marketing measures are in accordance with the law and that advertising is not untrue or misleading. Mrs. Inger Louise Valle, the Consumer Ombudsman, is on leave to serve as Attorney General and Judge Charles Philipson serves as acting Consumer Ombudsman. In 1973, 1,191 cases were registered, of which 300 were on the Consumer Ombudsman's own initiative.

96. PAKISTAN. The Permanent Constitution adopted in 1973 contains a Fourth Schedule which includes the subject of the Ombudsman as being under the competence of the Federal Legislature. A bill is in the process of preparation. The office of the Prime Minister's Representative on Administrative Inspection handles complaints against central government officials on corruption, delay, inefficiency, unfair treatment and discourteous behavior.

97. PAPUA--NEW GUINEA. The motion by Mr. Anton Paroa, an opposition member of the House of Assembly, to appoint an Ombudsman was debated on September 20, 1973 and March 7, 1974 with negative results. The Constitutional Planning Committee proposed an Ombudsman Commissioner consisting of a chief Ombudsman and two Ombudsmen. It is currently being debated in the House of Assembly.

98. PHILIPPINES. On January 17, 1973, the President proclaimed that the Constitution proposed by the 1971 Constitutional Convention had been ratified and had then become effective. Section 6 of Article XIII provides for an Ombudsman to be

established by the National Assembly and to be known as the Tanodbayan. The Secretary of Justice has submitted to the President the draft of a presidential decree creating the office of the Philippine Ombudsman to be called the Tanodbayan. Pending the President's action on the draft decree creating the Philippine Ombudsman, he issued Letters of Instructions No. 137 dated October 15, 1973, constituting a Special Cabinet Committee to deter "backsliding" of government officials and employees. In addition to the Letters of Instruction, the President, late in 1973, directed all cabinet members to set up Public Assistance offices to receive citizen complaints. The Special Action Unit in the office of the President receives complaints which are brought to the attention of the department head concerned.

99. POLAND. Under the Code of Administrative Procedure, complaints may be filed by individuals pertaining to "negligence or an irregularity on the part of organs or their staff members in performing their duties, to violations of law or disregard of legitimate interest, and to undue delay or bureaucratic attitude in disposing of matters." The Council of Ministers has provided for an Office of Complaints. The Procurator General, among other duties, supervises the strict fulfillment of the law by all institutions, authorities and departments, on district, regional and village levels, as well as by the various components of the public economy, public institutions and by individual citizens; supervising the conformity to the law of the acts and activities of the institutions and the organizations mentioned above; and supervising the safeguarding of citizens' rights. The supervision does not extend to the acts and activities of central institutions. The Code of Administrative Procedure also permits a citizen to submit a complaint or suggestion to the press, radio and television networks, producers of news films, and the institutions concerned must act as if complaint had been filed directly by the citizen. They must submit their reply both to the citizen and the media.

100. ROMANIA. The Procurator General is elected by the Grand National Assembly for the duration of the legislative term. The Procurator General appoints the procurators in the regions, districts and towns. The Procuratura keeps watch over compliance with the law by the ministries and other central organs of state administration, the local organs of state administration, the penal prosecuting authorities, the courts, the civil servants and other citizens.

101. RUSSIA. The Soviet Procuratura is the supreme national institution fulfilling the constitutional function of control over the exact observance of the law by government departments and bodies and institutions subordinate to them, by various officials of all grades and by the public. The Procurator General is appointed by the Supreme Soviet of the U.S.S.R. for a period of seven years. He appoints the procurators of the union republics and of the autonomous republics, the territories, the regions and the autonomous regions. The lower grades of procurators are appointed by

the procurators of the Union Republics subject to the confirmation of the Procuratura General. The General Military Procurator is appointed by the Procuratura General of the U.S.S.R. on the recommendation of the Ministry of Defense. Carrying out the general supervision of Procurator over legality or administrative orders and administrative activity, among other methods, the Procurator receives written and oral communications from members of the public and also observes cases reported in the press. In addition, a 1968 law regarding "Procedure for Handling of Suggestions, Requests and Complaints from the Public," deals with the procedure for handling complaints from the public.

102. SINGAPORE. The Corruption Practices Investigation Bureau deals with allegations involving corruption by government employees. The Central Complaints Bureau under the Ministry of Social Affairs handles complaints not involving corruption such as discourtesy, misconduct, unnecessary delay, and discrimination. From 1962-1973, about 10,000 cases were handled. The Government has never accepted the recommendation of the 1966 Constitutional Commission recommending the establishment of the Ombudsman system.

103. SOUTH AFRICA. Several years ago, the House of Assembly debated a motion proposed by Mr. D. D. Baxter to consider the appointment of a judicial commission to report on the establishment of an Ombudsman. The motion was withdrawn, but members of the Government termed it a "very interesting motion." The Association of Law Societies reports that it is arranging a law conference in March 1975 on Administrative Law and has invited one of the Swedish Ombudsmen to speak.

104. SRI LANKA. The Government has formed Janatha Committees (People's Committees) in each district to receive grievances but with no power of investigation. The People's Committee Act was passed in 1971.

105. SUDAN. The Central Bureau for Public Control Act 1970 consists of the Public Commissioner, a Deputy Public Commissioner and other members. The Bureau, among other functions, is to conduct the necessary investigation and inquiry for the detection of the administrative and financial contraventions committed by government employees, which include negligence in carrying out the duties of the office, misuse of discretion and abuse of power.

106. SWEDEN. Sweden has three Parliamentary Ombudsmen who all have the same rank but are responsible for different spheres of supervision. Mr. Bertil Wennergren supervises the field of social welfare and is also in charge of matters relating to social insurance and education as well as those concerning the access of the general public to official documents. Ulf Lundvik handles cases on taxation and execution of judgments and all other matters concerning civil administration not supervised by Mr. Wennergren. Gunnar Thyresson supervises the courts of justice, the public prosecutors, the police and the armed forces including authorities responsible to the latter. The Ombudsmen are elected by the Swedish Riksdag for a term of four years and it also elects two

Deputy Ombudsmen, the latter being Mr. Anders Wigelius and Mr. Tor Sverne. In 1973, 3,699 new cases were registered with the Ombudsman, of which 445 were cases initiated by the Ombudsmen themselves. Seven proposals were submitted to Parliament. Prosecution or disciplinary proceedings were instituted in 9 cases. There were 551 admonitions.

107. SWEDEN--ANTI-TRUST OMBUDSMAN. The Ombudsman for Protection of the Freedom of Trade is Judge Torsten Lowbeer appointed by the King in Council. His activities are based on the Restrictive Trade Practice Act. Judge Lowbeer handled 473 cases in 1973 of which 351 arose during this year.

108. SWEDEN--CONSUMER OMBUDSMAN. The Consumer Ombudsman, Judge Sven Heurgren, is appointed by the King in Council and he ensures that laws for the protection of consumers are observed--the Marketing Practices Act and the Act Prohibiting Improper Contract Terms. Professor Donald B. King has written a book entitled "Consumer Protection Experiments in Sweden," published by Fred B. Rothman & Co., 1974. (See A-123)

109. SWEDEN--PRESS OMBUDSMAN. The Press Ombudsman, appointed by a special committee, is a voluntary institution of the Swedish press. Judge Lennart Groll, Press Ombudsman, reports 391 complaints in 1972 and 392 in 1973.

110. SWITZERLAND--FEDERAL. The Federal Justice and Police Department is considering the introduction of Ombudsman legislation and will prepare a report. The National Council is considering proposals for a Military Ombudsman.

111. SWITZERLAND--CANTONS. Basel, Zurich and Solothurn are considering cantonal Ombudsmen.

112. SWITZERLAND--CITY OF ZURICH. Dr. Jacques Vontobel has been serving as Zurich Ombudsman or Complaints Commissioner since 1971. In 1972, he received 396 complaints and in 1973, 344 complaints.

113. TANZANIA. The Permanent Commission of Enquiry consists of three members. Chief Erasto A. M. Mang'enya, Chairman of the Commission, was elected Speaker of the National Assembly on November 20, 1973. Information has not been received as to the name of his successor as Chairman. An article on the Permanent Commission of Enquiry by Bernard Frank was published in the Denver Journal of International Law and Policy, Volume 2, No. 2, Fall 1972.

114. THAILAND. On May 21, a seven man committee was appointed by the Prime Minister to investigate allegations of corruption on the part of Government officials. The status of the committee following the Prime Minister's resignation and then return to office is unknown. Judge Sansorn Kraichitti, International Bar Association Council Member, was one of the members of the committee.

115. TRINIDAD AND TOBAGO. The Constitution Commission submitted its report to the Governor-General on January 22. It

recommended the creation of the office of Ombudsman and proposed that the Government redraft its draft Ombudsman Bill in accordance with the Commission's recommendations. Dr. Selwyn Ryan, disagreeing with a single Ombudsman system, recommended a plural Ombudsman of at least three persons with a rotating chairmanship.

116. UNITED NATIONS. The Commission on Human Rights in 1967 adopted Resolution 14 proposing the creation of the office of a United Nations High Commissioner for Human Rights which, among other functions, would seek communications concerning human rights addressed to the United Nations which it may draw to the attention of the government concerned. (See A-125)

117. VENEZUELA. An English summary of an article in the International Review of Administrative Science (Vol. 38, No. 3, 1972), Summaries xiv and xv discuss the office of the Commissioner of the President of the Republic appointed under the Decree of July 16, 1969. The Presidential Commission receives complaints of citizens against officials with regard to inefficiency of the public services, the mismanagement of public funds, trading on influence, and generally, any maladministration.

118. VIETNAM (REPUBLIC OF). It has an institution known as the Inspectorate (Censorate) with power of audit, inspections, control and investigation of all public and private agencies, engaged as accessory or accomplice in corruption, speculations, influence--peddling, or acts harmful to the national interests; may propose disciplinary measures or request prosecution. A 1974 law broadened the powers of the Censorate over Government agencies, state owned industral and commercial corporations, public agencies with financial autonomy status, and semi-public corporations.

119. WORLD PEACE THROUGH LAW. The Geneva World Conference on World Peace Through Law in 1967 recommended in its future work program that, "The Center disseminate widely information about the role which an ombudsman can perform in protecting citizens against violation of their rights by administrative authorities; and seek to assist financially or otherwise projects designed to encourage research on the establishment of ombudsmen."

The Belgrade World Conference on World Peace Through Law (1971) adopted Resolution No. 19 which called upon states "to make every effort towards the establishment of effective national machinery for the protection of human rights including, where appropriate, the institution of ombudsman or similar institutions."

120. YUGOSLAVIA. The Public Prosecutor is authorized to carry out general supervision over the legality of administrative acts and the protection of citizens' rights. There is a Bureau for Complaints within the Cabinet of the President of Yugoslavia. In addition, citizens can lodge requests and proposals to Petition Committees. There was some discussion in 1973 of the Ombudsman system.

121. ZAMBIA. The 1973 Constitution provides in Part IX, Articles 117-119 for a Commission of Investigations consisting of an Investigator General as the Chairman and three Commissioners, all appointed by the President. The Constitution became effective on August 25, 1973. On December 11, 1973, Justice Frederick Chomba was appointed Investigator General. He had been Puisne Judge of the High Court of Zambia, which is a qualification requirement. Removal of the Investigator General by the President requires a vote of 2/3 of the members of the National Assembly passing a resolution that the question of removal be investigated, appointment of a tribunal of three persons by the Chief Justice, and a finding by the tribunal that the Investigator General be removed for disability or misbehavior. The Commission has jurisdiction to investigate cases of alleged misconduct or abuse of office or authority by government, party and local officials, by members and employees of parastatal bodies, institutions of higher learning and commissions. Legislation is being drafted to supplement the Constitutional provisions.

122. AUSTRALIA--FEDERAL. (See A-1) The draft of a federal Ombudsman bill is in its final stage and is expected to be introduced in the near future. At the same time a bill to introduce a separate Defense Forces Ombudsman will be introduced.

123. SWEDEN--CONSUMER OMBUDSMAN. (See A-108) Judge Heurgren, the Consumer Ombudsman, reports receiving 4,286 cases and taking up 541 on his own initiative in 1973.

124. GREECE. The 1968 Constitution provides for a Parliamentary Commissioner. This provision has not as yet been implemented. A Government Administrative Ombudsman has been in operation since 1968 by the Legislative Decree No. 2/1968. The Government Administrative Ombudsman is Efstathios Latsoudis who has been in office since 1972 succeeding Spyridon Velianitis. He acts on his own initiative, or on receiving complaints from the public, or on requests from the Prime Minister.

125. UNITED NATIONS. (See A-116) The Commission on Human Rights now reviews cases of gross violations of human rights referred to it by the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The creation of the post of UN High Commissioner for Human Rights has been incorporated by UN Resolution #3136 into an item entitled "Alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms." This was adopted on December 14, 1973. This item will be considered by the 30th Session of the General Assembly in 1975.

126. AUSTRALASIAN AND PACIFIC OMBUDSMAN CONFERENCE. A Conference of Australasian and Pacific Ombudsmen from New Zealand, Western Australia, South Australia, Victoria, Queensland, Fiji, and Hawaii will be held in New Zealand in November. Sir Guy Powles, New Zealand Ombudsman, is chairman of the conference.

127. AUSTRALIA--STATE OF QUEENSLAND. (See A-2) The Parliamentary Commissioner Act 1974 was proclaimed by the Governor on June 27, 1974 with an operative date of July 1, 1974. The position of Commissioner has been advertised.

128. GREAT BRITAIN. (See A-47) Mr. Dafydd Jones-Williams has been appointed Local Commissioner for Wales.

AA. OMBUDSMEN AND OMBUDSMAN PROPOSALS. The strong trend toward the Ombudsman system throughout the world continues. The following Ombudsman officials (using the word Ombudsman in its restricted meaning) are in office throughout the world: Australia (State of South Australia, State of Queensland, State of Victoria, and State of Western Australia), Canada (Commissioner of Official Languages, Provinces of Alberta, Manitoba, New Brunswick, Nova Scotia, Quebec, and Saskatchewan), Denmark, Fiji, Finland, France, Federal Republic of Germany (Federal Military and State of Rhineland-Palatinate), Great Britain (Parliamentary Commissioner for Administration, National Health Service Commissioners, and Local Government Commissioners), Guyana, India (States of Bihar, Maharashtra, and Rajasthan), Israel (Commissioner for Complaints From the Public, Soldiers Complaints Commissioner, City of Jerusalem, and City of Tel Aviv), Mauritius, New Zealand, Northern Ireland (Parliamentary Commissioner for Administration and Commissioner for Complaints), Norway (Parliamentary Commissioner and Military Ombudsman), Sweden, Switzerland (City of Zurich), Tanzania, and Zambia. In the United States there are Ombudsman officials in the states of Hawaii, Nebraska, and Iowa, and in the cities of Atlanta (Georgia), Seattle-King County (Washington), Detroit (Michigan), Jamestown (New York), Lexington-Fayette County (Kentucky), Wichita (Kansas), Dayton City and School District and Montgomery County (Ohio), and Jackson County (Missouri).

Legislation has passed and awaiting assent in Australia (Northern Territories), Canada (Newfoundland and British Columbia Labor Ombudsman). Constitutional provisions have been enacted but there has been no implementing legislation as yet in Bangladesh, the Philippines and Greece. Legislation has been passed but no appointment of an Ombudsman made in Cyprus, India (State of Orissa), and Italy (Regions of Tuscany and Liguria). Proposals are under consideration in Australia (Federal, both civil and military, and the State of New South Wales), Austria, Belgium, Canada (Northwest Territory and Yukon Territory), Ethiopia, Iceland, India (Federal as well as states of Gujarat, Karnataka, and Madhya Pradesh), Ireland, Italy, Jamaica, Malaysia (State of Perak), Malta, Netherlands, Pakistan, Papua-New Guinea, Switzerland, and Trinidad and Tobago. In the United States, Ombudsman proposals are under consideration on the Federal, state and local government levels.

B. UNITED STATES--FEDERAL

Federal legislative proposals continue to be introduced without success. However, the affection that government agencies have for the term "ombudsman" still exists.

1. ADMINISTRATIVE CONFERENCE OF THE UNITED STATES. The Administrative Conference does not contemplate altering its position taken in the past--that the Conference is not suited to serving as an Ombudsman for citizen complaints. Its role will be to suggest improvements in the agencies themselves. It issued a study by Professor Victor G. Rosenblum of federal agency procedures and procedures in handling citizen-initiated complaints and a report by Professor Howard Lesnick on grievance procedures for federal prisoners. The latter did not consider the institution of an Ombudsman feasible in the special circumstances of prison life. The Committee on Informal Action did not propose any action to be taken on Professor Lesnick's report by the Administrative Conference Assembly, principally because it felt that the members of the Conference do not have the required expertise to speak authoritatively in the field. The Conference announced in May a major study of certain administrative procedures of the Internal Revenue Service including the handling of citizen complaints.

2. DEPARTMENT OF AGRICULTURE. The Office of the Inspector General has been dissolved and in its place an Office of Investigation reporting to the Secretary of Agriculture and the Office of Audit reporting to the Assistant Secretary for Administration were established. The two offices will independently inquire into allegations of irregularity on the part of personnel or in the operations of the Department's programs. Congressman Whitten stated in Congress on June 21, 1974 in the consideration of HR 15472 that the committee had seen fit to restore the Office of Inspector General to its former status. No further information has been received.

3. HR 11257. Congressman Les Aspin of Wisconsin introduced on November 6, 1973, HR 11257 which would permit each Congressman to appoint an Ombudsman for his or her district. In addition, the bill provides for an Ombudsman Center to train, assist, and certify the Ombudsmen. The bill is pending in the House Committee on House Administration, Subcommittee on Accounts. In March 1971, the Congressman appointed Tim Cullen to serve full time as his Ombudsman in his Wisconsin district. Mr. Cullen handles 200-300 complaints and requests monthly.

4. DEPARTMENT OF COMMERCE. The Department of Commerce established on March 26, 1971 the Office of Ombudsman for Business. John P. Kearney has been appointed to succeed Thomas E. Drumm, Jr., who resigned in August, 1973. Mr. Kearney will serve as Director of the Office of Business Relations and also as Ombudsman for Business. About 9,600 inquiries were received in 1973, of which about 5-10% were complaints involving improper operation of government programs relating to business or action by government

officials managing such programs or other abuses or capricious acts of public officials.

5. OFFICE OF CONSTITUENT ASSISTANCE. Senator Vance Hartke, for himself and Senator M. Gravel, introduced S.2500 on September 28, 1973 to establish an Office of Constituent Assistance, similar to his S.2134 introduced in 1971. The Office of Constituent Assistance would be headed by a Director who would receive complaints through members of Congress. Hearings may be held on the bill by the Committee on Government Operations.

6. DEPARTMENT OF HEALTH, EDUCATION AND WELFARE. HEW had established in 1972 the position of Ombudsman in the Office of Civil Rights to monitor alleged abuses in affirmative action programs in the higher education community. The position was disbanded recently.

7. CORRECTIONAL OMBUDSMAN. Congressman William J. Keating introduced on October 19, 1973, HR 11146 which provides for an Office of the United States Correctional Ombudsman to handle complaints with respect to any administrative act of the Bureau of Prisons or of the Board of Parole pertaining to the treatment of a Federal prisoner or parolee or conditions in any Federal penal institution. It also would amend the Omnibus Crime Control and Safe Street Act of 1968 to provide for states seeking correctional improvement funds to set up a state Correctional Ombudsman program. The bill was referred to the Judiciary Committee.

8. CORRECTIONAL OMBUDSMAN. On June 20, 1973, Congressman Ralph Metcalfe introduced HR 8848 which would establish the Office of Correctional Ombudsman to investigate any administrative act of the Bureau of Prisons or the Board or Parole pertaining to the treatment of a Federal prisoner or parolee or conditions in any Federal penal institution. The bill was referred to the Judiciary Committee. The bill was re-introduced on July 12, 1973 as HR 9270 with six additional co-sponsors, on July 24, 1973 as HR 9543 with 17 additional co-sponsors, and on September 12, 1973 as HR 10216 with two additional co-sponsors.

9. NAVY. Rear Admiral C. F. Rauch, Assistant Chief of Staff of Navy Personnel to Human Goals, also holds the official title of "Navy Ombudsman." In addition, the Navy has a Navy Wives Ombudsman program. Anyone who feels that she has been unfairly dealt with by a government agency, local command, or service member may complain to a Navy Wives Ombudsman.

10. FEDERAL CITIZENS APPEAL BOARD. Senator Gaylord Nelson introduced on February 21, 1974, S.3043 which sets up Federal Citizens Appeal Boards in each of ten Federal districts. Each board is to consist of five members and will review complaints against agency action after agency appeal procedures have been exhausted. Decisions would be

appealable to a federal district court. An advisory council would be established which, among other functions, would be responsible for distributing grants to local and state governments for establishing local citizen appeal boards.

Senator Nelson has appointed a member of his staff to act as an Ombudsman in his Milwaukee office.

11. CONGRESSIONAL OMBUDSMAN. Congressman Wayne Owens and eleven other members introduced HR 7680 on May 9, 1973, a Bill to establish an Office of Congressional Ombudsman. The Congressional Ombudsman would be responsible only to Congress and would principally do case work referred to him by members of Congress with the help of a staff trained in the different case work areas. Information would be released only to the member or Senator who referred the case originally who could then communicate directly with his constituent. There would be no access to the Ombudsman except by specific referral from the member or Senator. The Ombudsman would be chosen by a twelve-man board which would consist of six Senators and six Representatives. The Chairmanship of the Board would alternate between members of the two Houses of Congress each session. The bill was referred to the House Administration Committee.

12. FEDERAL CRIMINAL JUSTICE SYSTEM. Senator Charles H. Percy introduced S.2160 on July 12, 1973, which contains provisions for the Office of Ombudsman of the Federal Criminal Justice System. The Office would handle complaints and disputes of confinement or other related matters and would also consider petitions for collateral review filed by any state or federal prisoner with a federal court and endeavor to resolve the matter out of court within 90 days.

13. WATERGATE. The Senate Watergate Committee in its report made public on July 13, 1974 recommended the establishment of the Office of Public Attorney to be chosen by members of the judiciary subject to Senate confirmation. The Public Attorney would have power to investigate and prosecute where conflicts of interest in the executive branch exist and also to inquire into (with power to gain access to executive records) the status and progress of complaints and criminal charges concerning matters pending in or involving the conduct of federal departments and regulatory agencies. The report terms the Public Attorney as not only a "special prosecutor" but also as an "ombudsman" having power to inquire into the administration of justice in the executive branch.

14. HEALTH OMBUDSMAN. The federal phase of this aspect is covered in Section E - United States - Health of this report.

C. UNITED STATES--STATES

Ombudsman bills were introduced in 1973 in 28 states, Puerto Rico and the Virgin Islands, and in 1974 in 21 states and in Puerto Rico.

Complaint-handling mechanisms, legislative Ombudsman proposals and other Ombudsman or complaint-handling developments in the states, territories, and districts are summarized as follows:

1. ALABAMA. 1973 - S. 280 - died in committee; and 1974 - no session.

2. ALASKA. 1973 - H.B. 15 - continued over to 1974; and 1974 - H.B. 15 - died in committee.

3. ARIZONA. 1973 - H.B. 2235 - provided for Ombudsman appointed by and responsible to Governor - Legislature adjourned without passage; and 1974 - no legislation.

4. ARKANSAS. 1973 - H.B. 274 (Public Protector) - Legislature adjourned without passage; and 1974 - no information.

5. CALIFORNIA. 1973 - S.B. 130 - died in committee; S.B. 1105 (Ombudsman for Corrections) - died in committee; and 1974 - no information.

6. COLORADO. 1973 - H.B. 1277 - died in committee; and 1974 - no legislation.

7. CONNECTICUT. 1973 - no bills; and 1974 - no bills. The Governor, Thomas J. Meskill, established on June 29, 1973, the Governor's State Information Bureau, which permits persons to call toll-free from any area of the State to the Bureau. The Bureau personnel will answer inquiries, supply information, and provide, if required, "in depth" follow-up service. Calls from the deaf are handled by special telephone facilities. An interpreter is available for the Spanish-speaking populations. Twenty case workers are employed to handle the approximately 500 daily inquiries.

8. DELAWARE. 1973 - no bills; and 1974 - H.B. 869 - Legislature adjourned without passage.

9. DISTRICT OF COLUMBIA. The City Hall Complaint Center originated in 1964. It handles problems that citizens may encounter with city agencies. Volunteers and one paid staff member handle about 200 calls per week. During the second half of 1973, 3,7[illegible]5 complaints were received. It is reported that one of the Senators is considering introducing a District Ombudsman bill. Senators Edward Long, Philip Hart, and Robert Kennedy introduced a District of Columbia bill in 1967 without success.

10. FLORIDA. 1973 - H.B. 1715 and S.B. 852 - Legislature adjourned without passage; and 1974 - H.B. 3665 (Nursing Home Ombudsman). On May 23, 1973, the Senate President announced that the Senate Governmental Operations Committee would offer commencing June 4, 1973, a service allowing any Senator or his staff to phone or write the Committee for the central processing of constituent inquiries or complaints dealing with services

rendered by state government. The service was opened to the general public on January 16, 1974. A report (referring to it as an Ombudsman service) for the period June 4, 1973 to February 28, 1974 issued by Committee Chairman J. H. Williams shows 800 inquiries were received. An Ombudsman was appointed by the Department of Health and Rehabilitation Services in October, 1973. The title of the position was subsequently changed to Co-ordinator of Client Relations since the position was not in line with the true concept of the Ombudsman.

11. GEORGIA. 1973 - H.B. 85 (City of Atlanta Ombudsman); and 1974 - H.B. 85 - carried over from 1973 - passed - approved by Governor on March 22, 1974 as Act 1047.

12. HAWAII. Herman Doi has been serving as the Ombudsman since July 1, 1969, the first to serve under the Ombudsman Act of 1967. His Report No. 4 for the period July 1, 1972 to June 30, 1973 shows a total of 2,041 inquiries, of which 509 were outside of his jurisdiction, 573 were requests for information, and 959 were complaints. 6% of the inquiries were by mail, 12.6% by visits, and 81.4% by telephone. Complaints against specifically named persons must be reduced to writing. 34% of the complaints were justified or partly justified. The Ombudsman's jurisdiction extends over local and state government. During the period from July 1, 1973 to December 31, 1973, the Ombudsman received 968 inquiries. H.B. 1711 (1973-1974 sessions) providing for the establishment of a consumer arbitrator in the Office of the Ombudsman died in committee. H.B. 2431 (1974 session) amending the Ombudsman Act of 1967 in several particulars passed and was signed into law by the Governor as Act 46, Session Laws of Hawaii, 1974.

13. ILLINOIS. 1973 - H.B. 530 and H.B. 2053 (the latter providing for an Office of Citizen Information and Assistance in the Office of the Lieutenant Governor) were both tabled; and 1974 - no legislation introduced. Governor Dan Walker established a Mail Control Center to receive inquiries, complaints and problems by mail or telephone and to respond by mail. In addition, he established a Citizen Affairs Office to deal with emergency referral, telephone inquiries, complaints, problems and letters of an emergency nature. The Mail Control Center receives approximately 700 grievance letters per month. The Citizen Affairs Office receives an average of 360 grievances per month, 90% of which are by telephone.

14. IOWA. Thomas Mayer was appointed as Citizens' Aide under the Citizens' Aide Act 1972 to succeed Lawrence D. Carstensen who resigned effective May 21, 1973. Mr. Mayer, a lawyer, had served as Deputy Citizens' Aide and Acting Citizens' Aide. Files were opened in 1,200 cases, according to the report issued by the Citizens' Aide for 1973. The Iowa Crime Commission funded the appointment of a Deputy for Corrections, Raymond Cornell, in September, 1973 to handle

complaints of inmates from correctional institutions. The office became permanent under S.F. 73 passed in 1974 and effective July 1. H.F. 284 introduced in 1973 gave the Citizens' Aide the power to investigate complaints against companies who have nearly exclusive control over an area of business. It carried over to 1974 but did not pass.

15. KANSAS. 1973 - S.B. 98 - stricken from the calendar; S.B. 72 (providing for an Ombudsman of Correctional Institutions) was enacted into law and became effective July 1, 1974; and 1974 - S.B. 703 (amending the 1973 Correctional Ombudsman Act) was enacted into law. The 1974 Legislature also approved Senate Concurrent Resolution 96 which provided for a special committee to make a legislative study of the feasibility of establishing offices of Ombudsman at the state and local levels.

16. KENTUCKY. No legislative session was held in 1973. The Governor by executive order in 1973 established the Office of the Ombudsman in the Department for Human Resources to handle complaints with respect to services rendered by the Department. J. E. Reeves was appointed to serve as the Ombudsman. In 1974, the legislature enacted S.B. 112 into law, making the office a statutory office.

17. MAINE. 1973 - L.D. 1515 and L.D. 576 (Office of Constituent Services) - both failed to pass; and 1974 - no legislation.

18. MASSACHUSETTS. 1973 - Senate No. 1209 (Office of Ombudsman appointed by the Secretary of State and an Information and Referral Agency in the Ombudsman Office), House Bill No. 1129 (the Office of Ombudsman elected by the Legislature and an Information and Referral Agency under the direction of the Ombudsman), House No. 2371 (Ombudsman for direct case personnel working in the schools for retarded of the Department of Mental Health), House No. 4024 (a Division of Citizen Inquiry and Complaint headed by an Ombudsman within the Department of the State Auditor), and House No. 5188 (Office of Ombudsman within the Executive Office of Elder Affairs) - all killed; and 1974 - Senate No. 1287 (Office of Ombudsman for Corrections), Senate No. 1316 (Ombudsman and Information and Referral Agency in the Office of the Secretary of State), House No. 912 (Ombudsman and Division of State Inquiry and Complaint within the Department of the State Auditor), House No. 1113 (Ombudsman and Information and Referral Agency in the Department of the State Secretary), House No. 2033 (residential care Ombudsman), and House No. 3040 (Ombudsman and Division of Citizen Inquiry and Complaint within the Department of the State Auditor) - all killed except House No. 3040, which was substituted by House No. 5520. House No. 5520 directed the Legislative Research Council to investigate and study the matter of establishing a State Ombudsman Office. No further information concerning House No. 5520.

19. MICHIGAN. 1973 - H.B. No. 4359 and S.B. No. 377 (State Education Ombudsman within the Department of Education) carried over to 1974; and 1974 - H.B. No. 4359 and S.B. No. 377 still in committee - no further bills introduced. Joint house resolution for a constitutional amendment to provide for an Ombudsman introduced in April, 1974 still in committee.

20. MINNESOTA. 1973 - S.F. 1048, H.F 182, H.F. 1220, H.F. 691 (Lieutenant Governor to hold office of Ombudsman) - did not pass; S.F. 672 creating the office of Ombudsman for the State Department of Corrections did pass and was enacted in law; and 1974 - S.F. 2652 (Ombudsman of State Forms within the Department of Commerce) and H.F. 3500 (fixing salaries of Ombudsman and Deputy Ombudsman) died in committee.

21. MISSOURI. 1973 - S.B. 130 (Commissioner of Administrative Investigations to be known as Ombudsman) and S.B. 323 (Lieutenant Governor as Ombudsman) - both died; and 1974 - S.B. 465 (Commissioner of Administrative Investigations to be known as Ombudsman) - died. Lieutenant Governor William C. Phelps announced on July 11, 1973, he would voluntarily assume Ombudsman duties. He has been receiving 100-150 complaints per month but lacks an adequate staff. A first year summary of activity is in the process of preparation.

22. MONTANA. 1973 - S.B. 89 (Office of Ombudsman with Lieutenant Governor as Ombudsman) - did not pass; H.B. 597 (appropriations for Office of Ombudsman) - held over to 1974; and H.B. 439 passed on March 16, 1973, but the Senate, on the request of the Governor, voted to reconsider and referred the bill to the Rules Committee; and 1974 - H.B. 597 and H.B. 439 held over from 1973 were killed in committee. In return for the actions of the Senate on H.B. 439, the Governor appointed in 1973 a Citizen's Advocate as part of his office. For the period from July 1, 1973--December 31, 1973, the Citizen's Advocate, Kent Kleinkopf, received between 4,000-5,000 phone calls, responded to approximately 1,200 pieces of correspondence and had almost 500 visitors.

23. NEBRASKA. Murrell B. McNeil has been serving as Public Counsel (Ombudsman) since June, 1971. The Public Counsel Law was enacted in 1969. Mr. McNeil's third annual report shows that he received 579 documented contacts, of which 383 were complaints. 77 of the complaints were justified and 34 were partially justified. Alan J. Wyner, Ombudsman Activities Project, Department of Political Science, Santa Barbara, has issued a report to the Office of Economic Opportunity entitled, "The Nebraska Ombudsman: Innovation in State Government." Bernard Frank's article on "The Nebraska Public Counsel--the Ombudsman" will be published in the Cumberland-Samford Law Review shortly. Persons desiring reprints should write to Bernard Frank.

24. NEW JERSEY. 1973 - S.34 and A. 495 filed in 1972 and carried over to 1973 - did not pass; 1974 - A. 1409 (Department of the Public Advocate) - passed and enacted into law on May 13, 1974. Under the Department of the Public

Advocate Act of 1974, the Department is headed by a Commissioner who is the Public Advocate. Included in the Office of the Public Advocate is the Office of Inmate Advocacy to represent the interests of inmates, a Division of Rate Counsel, a Division of Mental Health Advocacy, a Division of Public Interest Advocacy, and a Division of Citizen Complaints and Dispute Settlement. Included in the Division of Citizen Complaints and Dispute Settlement are the Office of Citizen Complaints and the Office of Disputes Settlement. The Office of Citizen Complaints handles complaints from any citizen relating to administrative action or inaction of agencies and its findings and recommendations are reported to the Public Advocate. Stanley C. Van Ness became Public Advocate on May 21. John Gleeson heads the Division of Citizen Complaints and Dispute Settlements. The New Jersey Ombudsman Committee has concluded that despite reservations the new legislation is a worthwhile experiment.

25. NEW MEXICO. 1971 legislation (Chapter 138 of the Laws of New Mexico) gave to the Lieutenant Governor, in addition to his other duties, the power to (1) facilitate and promote the cooperation and understanding between the people of this state and the agencies of state government, by assisting them in their dealings with such agencies, and by assisting the agencies to explain their functions, duties and administrative procedures insofar as they affect the people of this state; and (2) refer any complaints or special problems of the citizens of this state to the proper agency. The third annual report for the year 1973 issued by Robert A. Mondragon, Lieutenant Governor, contains a section entitled "Ombudsman." He reports having had 8,000 contacts by individuals and groups during the reporting year.

26. NEW YORK. 1973 - A. 413, A. 1050 and S. 2185 (both Office of Public Redress), A. 1052, S. 2184, S. 2227, S. 2603 (Office of Correction Ombudsman), A. 3840 (Office of Public Redress), S. 4823 (Office of Correction Ombudsman), S. 5013 (Office of Correction Ombudsman), A. 5355 (Inmate Counsels with authority to appoint Facility Ombudsmen), A. 6117 (Office of Correction Ombudsman), A. 6805 (Correction Facility Ombudsman), A. 6438 (Office of Correction Ombudsman) - no bill passed; and 1974, S. 7009, S. 8829 and A. 10647 (both Office of Public Redress headed by Ombudsmen within Banking Department), S. 7645 (Correctional Facility Ombudsman), A. 9369 (Correctional Facility Ombudsman) - no bill passed.

27. NORTH CAROLINA. In March, 1973, Governor J. Holshouser created the office of "People's Man" to receive and investigate complaints from the public about illegal, unreasonable, unfair, or discriminatory actions by officials or employees and to recommend suitable action. Fred M. Gallagher, who serves as "People's Man," uses the term "Governor's Ombudsman."

28. NORTH DAKOTA. 1973 - S.B. 2367 - an Ombudsman bill amended in its entirety to provide for a special interim committee of legislators appointed by the Legislative Council to

investigate complaints submitted by legislators for citizens - passed the Senate but was defeated in the House; and 1974 - no session.

29. OHIO. 1973 - H.B. 457 (co-operation and financial assistance to nonprofit Ombudsman corporations) - passed and enacted into law; and 1974 - no legislation introduced. The State has several self-termed Ombudsman type of services, each located within an administrative agency: Businessman's Ombudsman Bureau, Department of Economic and Community Development; Insurance Ombudsman, Department of Insurance; Environmental Protection Agency Ombudsman; Consumer Protection Ombudsman, Department of Commerce; and Local Government Ombudsman, Department of Community and Economic Development.

30. OKLAHOMA. 1973 - no legislation; and 1974 - H.B. 1789 - died in committee.

31. OREGON. 1973 - S.B. 244 (sponsored by the Committee on Judiciary at the request of the Administrative Law Committee of the Oregon State Bar), S.B. 189, and H.B. 2280 - none passed; and 1974 - no legislation introduced. Governor Tom McCall created the office of Ombudsman by executive action on July 1, 1969. The New York Times, July 21, carried an article stating that Marc Ted Winters, an ex-convict, was serving as Ombudsman.

32. PENNSYLVANIA. 1973 - H.B. No. 239 (Office of Grievance Commissioner) - carried over to 1974, and S.B. 170 (a revision of the Mental Health Act providing, inter alia, for a Mental Health Ombudsman Service); and 1974 - H.B. No. 239 (1973) - still under committee consideration. The Office of Business Ombudsman was established in the Department of Commerce in 1971 by executive order. The Governor's Action Line established in June, 1973 for the 814 exchange area was extended to the 412 area in October, the 717 area in January, and the final area, the 215, in June. The Action Line is a toll-free line for complaints or inquiries about state government. In 1971 the Insurance Commissioner appointed an Insurance Department Commissioner. The Auditor General in reviewing the Insurance Department considered the position ineffective because the Ombudsman viewed his position in a broader perspective than did the Department. The Auditor General recommended a definition of the duties and a re-examination of the performance of the Ombudsman.

33. PUERTO RICO. 1973 - H.B. No. 11 - carries over to 1974-1975-1976; and 1974 - H.B. No. 11 (1973) - pending.

34. RHODE ISLAND. 1973 - no legislation introduced; and 1974 - 74-S 2566 and 74-S 2579 - neither passed. 74-S 2579 introduced by Senator Julius C. Michaelson was the first bill based on the American Bar Association Model Ombudsman Statute for State Governments. The Little State House program established by S. 473 enacted in 1969 was eliminated in 1973.

35. SAMOA (AMERICAN). 1973 - H.B. 113 - did not pass.

36. SOUTH CAROLINA. 1973 - no legislation; and 1974 - S. 860 (authorizing the Nursing Home Ombudsman of the State Commission on Aging to investigate complaints) - enacted into law. Governor John C. West created within the Office of the Governor the Office of Citizen Services to receive complaints. Its activities are reviewed by a Citizens Service Review Board. Judy S. Hodgens serves as Coordinator of the Office of Citizen Services.

37. TEXAS. 1973 - H.B. 12 and H.B. 1973 - both died in committee; and 1974 - no session.

38. UTAH. 1973 and 1974 - no legislation. The Governor, Calvin L. Rampton, appointed Daniel L. Cope as Black Ombudsman and Gilbert Rameriz as Chicano Ombudsman to serve in liaison positions between their respective communities and the Governor.

39. VIRGIN ISLANDS. 1973 - Bill 5852 - did not pass; and 1974 - no legislation. Information has been received that the President of the Senate has appointed an Ombudsman for the Legislature but no details are known concerning the office.

40. VIRGINIA. 1973 and 1974 - no legislation. Pursuant to House Joint Resolution No. 8, 1972, the Virginia Advisory Legislative Council issued a report in 1973 recommending that the Governor's Secretaries establish a complaint resolving procedure but at the same time incorporating without recommendation the report of a special committee which favored Ombudsman legislation. The Governor then established the State Citizens' Service Assistance Office headed by Roy L. Farmer, Director of Consumer Affairs in the Department of Agriculture and Commerce, with each agency designating an agency's Citizens' Service Assistance Officer.

41. WASHINGTON. 1973 - H.B. 954 (Ombudsman for nursing home patients within the Department of Social and Health Services - did not pass, H.B. 1326 and S.B. 3054 (both Office of Ombudsman for Corrections), and H.B. 1331 - did not pass.

42. WEST VIRGINIA. 1973 - H.B. 712 (Legislative Ombudsman) - died in committee; and 1974 - H.B. 788 (Legislative Ombudsman) and H.B. 1058 (Juvenile Ombudsman) - died in committee.

43. The American Bar Association Ombudsman Committee has issued a Model Ombudsman Statute for State Governments, a joint product of the Committee and the Yale Legislative Services. Copies may be obtained by writing to Bernard Frank.

D. UNITED STATES--LOCAL GOVERNMENT--CITIES AND COUNTIES

Although many cities have some form of complaint-handling mechanisms, those described following are limited to those having true legislative Ombudsmen or to those offices although under the control of the executive which bear the Ombudsman title or to mixed types of offices under the supervision of the executive but created by the legislative body.

1. ATLANTA, GEORGIA. H.B. 85 amending the City Charter to provide for an Ombudsman was passed and enacted into law in 1974. However, the City Attorney rendered an opinion that the state law was illegal and City Council then passed an ordinance on May 20, 1974 establishing the Office of Ombudsman. Calvin O. Carter was appointed by the Mayor, Maynard Jackson, as Ombudsman and confirmed by City Council.

2. BUFFALO, NEW YORK. The Buffalo Citizens Administrative Service was an ombudsman-like demonstration project sponsored by the Law School of the State University of New York at Buffalo and funded by a grant from the OEO. The Service was in operation for 71 weeks in 1967 to 1969 and received a total of 1,244 complaints and inquiries. A report on this project has been published by the Institute of Governmental Studies, University of California, Berkeley, California 04720, entitled "Buffalo Citizens Administrative Service: An Ombudsman Demonstration Project."

3. CHARLESTON, SOUTH CAROLINA. The Charleston Ombudsman program was established by City Council ordinance and provided for a Chief Ombudsman and 16 Ward Ombudsmen. It was reorganized in 1974 and consists of an Ombudsman who heads the Office of Citizens' Complaints and a Board of Directors of ten members who act as advisors. It is not clear how the Board members are designated and whether the reorganization was pursuant to ordinance. Approximately 961 complaints were received in 1973. The Ombudsman is elected by the Board of Directors. James B. Moore serves as Ombudsman.

4. CHESAPEAKE, VIRGINIA. M. Reid MacCallum, Administrative Assistant to the City Manager, holds the title of Ombudsman. He handles about 500-600 complaints per year.

5. COLUMBUS, OHIO. Nodine Henniger-Miller serves as Ombudsman under the general direction of the Mayor. From December 18, 1972 to November 15, 1973, the office acted on 3,308 cases. Nineteen volunteers assist the program.

6. DAYTON, OHIO. Bonnie Z. Macaulay succeeded Theodore C. Bingham, who died on July 3, 1973, as director of the Joint Office of Citizen Complaints. The Congressional Record of July 12, 1973 contains a tribute to Ted Bingham. The Joint Office of Citizen Complaints opened on March 1, 1971, funded by the Charles F. Kettering Foundation and the OEO. It was established as an independent agency reporting to a community-based Board functioning within the corporate limits of Dayton but dealing with municipal public, educational, and county problems. The office receives complaints of acts done or omitted by any department (where the board or agency is responsible to the Dayton City School Board, the City of Dayton, or the Montgomery County Board of Commissioners), which act or omitted act causes any citizen in Montgomery County to be aggrieved. A Board of Trustees of the Joint Office of Citizen Complaints was created with the approval

of the School Board, the City and the County Commissioners. The Joint Office of Citizen Complaints was incorporated in 1972. Any political subdivision in the Dayton, Ohio metropolitan area is eligible to become a member of the corporation upon the affirmative vote of not less than a majority of the Board of Trustees. The initial members of the corporation are the City of Dayton, Ohio, the Dayton School District, and Montgomery County. Each member of the corporation elects three Trustees. The Board of Trustees elects an Ombudsman to be the Chief Executive Officer of the corporation. Complaints are received in person, by telephone, or in writing. The duty of the Ombudsman is to investigate complaints and also includes the ability to review upon reasonable notice all of the documents of the agency, departments, and boards, subject to her jurisdiction. The office has seven full-time staff and 19 students and volunteers. Its present sources of funds are the City, School Board, County, and the United Fund. The 1973 annual report shows 2,368 cases were received. A report evaluating the Dayton Ombudsman was submitted to the Charles F. Kettering Foundation in 1972. The Foundation has commissioned Anthony Wolff to write a book-length report on the Dayton Ombudsman Office and its role in the community.

7. DETROIT, MICHIGAN. The Detroit new Charter which provided in Chapter 3 for an Ombudsman was passed on November 6, 1973. The Ombudsman to be appointed by two-thirds vote of City Council will serve a single term of ten years. He may investigate any official act of any agency which aggrieves any person but excluded from jurisdiction are elective offices. Reports are to be made periodically to the City Council. At the end of ten years, the question of retention of the Office of Ombudsman will be submitted to the electorate. A seminar on the Ombudsman was held on May 4, 1974, sponsored by the Michigan Assembly for the Ombudsman. Retired Swedish Ombudsman, Alfred Bexelius, was among the speakers.

8. ERIE, PENNSYLVANIA. Louis A. Colussi serves as Ombudsman. The office, funded by H.U.D., originally was a Model City project and now is a Planned Variation City project. A staff of approximately 20 operates the main office, a field office, and two mobile vans, receiving about 800 cases per month, most of which concern city services. The office is not provided for by ordinance and is dependent on the Mayor.

9. FAIRBANKS, ALASKA. The Fairbanks area charter containing an optional Ombudsman clause was not approved by the voters.

10. FORT WAYNE, INDIANA. Betty Elliot heads the Department of Citizens' Assistance, as Ombudsman. Mayor Ivan Lebanoff created the position to fulfill a campaign promise that if he were elected he would establish such a post to handle complaints. The Department handles about 1,000 calls per month, most of them requests for services.

11. GRAND RAPIDS, MICHIGAN. The City Council has endorsed the Ombudsman concept and an ordinance is in the process of preparation.

12. HONOLULU, HAWAII. The 1959 City and County Charter provides for an Office of Information and Complaint in the Mayor's office to receive complaints and inquiries. James L. Loomis, Director, reports that in fiscal year 1973 he received 5,622 complaints, mainly requests for services.

13. JACKSON COUNTY, MISSOURI. The Constitutional Home Rule Charter of Jackson County, approved on November 3, 1970, established an Office of Human Relations and Citizen Complaints. Within the office there is a Commission on Human Relations and Citizen Complaints consisting of eight members appointed by the County Executive. The Commission selects the Director of Human Relations and Citizen Complaints. The Director may be removed by the vote of a majority of the members of the Commission. The Director has the power to receive and investigate complaints and to make findings and recommendations. The Commission may hold hearings with respect to any complaint which the Director is authorized to investigate and has the right to subpoena witnesses, compel their attendance, administer oaths, take the testimony of persons under oath, and require the production for examination of books and papers relating to any matter under consideration by the Commission. Jurisdiction is limited to offices that by ordinance are under the control of the Jackson County legislature. Agencies not covered are the courts, municipal police departments, and state and Federal governments. The County Charter became effective January 1, 1973. Lawrence B. Guillot became the first Director on June 11, 1973. In the first year, from about July 1, 1973 to June 30, 1974, the Office received over 1,300 contacts from the public and worked on nearly 800 cases.

14. JAMESTOWN, NEW YORK. In 1970, City Council passed Local Law No. 3 establishing the Office of Ombudsman. Appointment of the Ombudsman is made by the Mayor subject to the approval of a majority of all the members of City Council. The Ombudsman has the power to receive complaints, suggestions and requests for information from any person concerning administrative matters of government and to assist citizens with problems in dealing with city government. The Ombudsman is also authorized to perform such other duties as may be assigned to him by the Mayor. Sam J. Nalbone was appointed Ombudsman on February 1, 1970. In 1973, he received 2,149 complaints, many of which related to service. From January to April, 1974, he received 648 complaints.

15. LEXINGTON AND FAYETTE COUNTY, KENTUCKY. The Charter of the Lexington-Fayette Urban County Government adopted in November, 1972, merges the county and city governments. The Charter provides for an Office of Citizens' Advocate to investigate complaints, disclose any abuses or irregularities on the part of the Government, officers, agents or employees, and to recommend substantive or procedural policies required to reduce or eliminate problems of citizen access to the Government. The Citizens' Advocate is to be appointed by the

Urban County Council. Information has not been received as to the appointee.

16. LITTLE ROCK, ARKANSAS. The city has funded a one-man office with the title of "Ombudsman" to receive complaints from residents of the Model Cities Neighborhood.

17. MAUI COUNTY, HAWAII. The County Board of Appeals was established by Charter adopted in 1968. It is a three-man citizen board, which handled only one complaint to June 3, 1974.

18. MILWAUKEE, WISCONSIN. The Milwaukee Urban Observatory in 1973 submitted a feasibility study on the Ombudsman concept to Common Council. A committee was appointed to review the study and make recommendations. No further action has been made as of June 13, 1974.

19. NASSAU COUNTY, NEW YORK. The Commissioner of Accounts, under the Nassau County Charter, is assigned investigative duties on behalf of the County Executive. By executive order, the Commissioner assumed the additional duties of County Public Protector to receive complaints against the various departments of the county, town governments and special districts. Commissioner Benedict P. Ciaraviano handled 1,002 matters in 1972 and 1,295 in 1973.

20. NEWARK, NEW JERSEY. An Ombudsman ordinance was passed by City Council in 1972 but was never established. The Mayor, Kenneth A. Gibson, returned funds granted by the OEO for the office.

21. NEW YORK CITY. City Council President, Paul O'Dwyer, introduced Bill #333 on February 26, 1974 providing for the Office of Citizen Redress. Its director would be appointed for a six-year term by City Council from names selected by a Citizen's Selection Board. The director has power to receive complaints from any person in regard to the conduct of any agency, officer, or employee, and to investigate the conduct and affairs of any agency and the official conduct of any officer or employee. Hearings are scheduled to be held on the bill in September.

22. OMAHA, NEBRASKA. City Charter provides for a Taxpayer Complaint Office, in the office of the Mayor, to receive complaints and inquiries. The office is known as the City Services Office.

23. OXNARD, CALIFORNIA. City Council by resolution in 1969 created the position of Community Relations Representative under the general direction of the City Manager. Catarino Soria, Community Relations Representative, handles complaints and inquiries about city government, among other duties.

24. PEORIA, ILLINOIS. The Field Representative, an Administrative Assistant to the City Manager, has been given the title

of Ombudsman by the press. The position is held by Ron Ulmer.

25. PHILADELPHIA, PENNSYLVANIA. The Home Rule Charter of 1952 established the Mayor's Office for Information and Complaints which had 197,691 contacts with the public in 1972 and 179,141 from January 1, 1973 to December 27, 1973. The Charter Revision Commission issued its report in July, 1973, recommending the Mayor's Office for Information and Complaints be continued as part of a new Department of Consumer Affairs. In addition, the seven councilmen-at-large (out of a council of 17 members) would constitute a Committee for Public Hearings meeting at least four times a year. The Commission rejected the proposal of the Citizen's Council on Charter Revision, recommending an Ombudsman Commission of three full-time members to receive and resolve complaints against any administrative agency or agent.

26. PITTSBURGH, PENNSYLVANIA. The discussion draft of the Government Study Commission provided for the Office of Controller-Ombudsman setting forth, in addition to Controller duties, Ombudsman powers and duties. The Home Rule Charter to be voted on in November omits the Ombudsman portions but the commentary states that, "Traditionally, the controller has recognized and responded to citizen complaints and nothing in this charter prevents a controller from continuing this practice."

27. PORTLAND, OREGON. The Metropolitan Human Relations Commission proposed to City Council that an office of Ombudsman be created. A report by Management Services assisted by a committee of administrative review members recommended instead that an Information Co-ordinator to receive complaints be appointed by and make reports directly to City Council.

28. SACRAMENTO, CALIFORNIA. The Charter Commission has under consideration in its preliminary draft provisions for an Ombudsman.

29. SAGINAW, MICHIGAN. The Charter provides for a Bureau of Public Information and Complaint to furnish information and receive complaints of citizens relative to the public service for investigation and report. The Bureau is under the direction and supervision of the City Clerk. In addition, there is a Community Information Officer, a position held by Gerald O. Werle, who is a member of the City Manager's staff.

30. ST. PETERSBURG, FLORIDA. A position with the title of Ombudsman was instituted in 1970 in the City Manager's Office. Don Donley receives citizen requests sent to the City Manager's Office.

31. SALT LAKE COUNTY, UTAH. The County Commission appointed a Senior Citizens Ombudsman in 1973, to, among other duties, investigate complaints. Mrs. V. Lucile Hutchings holds the position.

32. SAN JOSE, CALIFORNIA. The Office of the Ombudsman was established by City Council in 1971 as part of the City Manager's Office and funded by Model Cities monies. Sam Sanchez was appointed to the position. He can only be removed by a two-thirds vote of City Council and the Board of Directors of Model Cities. Mr. Sanchez has issued an annual report covering the period from October 15, 1971 to October 15, 1973, showing 337 complaints received. The office is now fully funded by the City.

33. SAN LEANDRO, CALIFORNIA. The position of Community Relations Representative was created by City Council in 1968 to receive and investigate complaints, among other duties. City Council elected C. H. Gustafson to serve under the supervision of the City Manager. He can be discharged only by City Council.

34. SEATTLE AND KING COUNTY, WASHINGTON. The Office of Citizen Complaints was established by the Home Rule Charter of King County in 1968. In 1971, King County and the City of Seattle agreed upon a Joint Office of Citizen Complaints and also upon an ordinance. The Director of the Office of Citizen Complaints was selected by the City and County Councils for a five-year term, subject to removal only by two-thirds vote of both Councils. The Ombudsman appoints a deputy for Seattle and a deputy for the County together with the necessary supporting staff. The Director is authorized to investigate complaints filed by the citizens against city and county administrative agencies but is prohibited from investigating the Councils, the Courts, the Chief Executive, and the County Prosecutor. Mr. Fred L. Maxie serves as Acting Ombudsman. The City of Seattle also has a Citizens Service Bureau within the Office of the Mayor.

35. TROY, NEW YORK. The new City Charter provides for an assistant to the Manager appointed by the Manager to provide a Citizen's Information and Complaint Service.

36. WHITEHALL TOWNSHIP, LEHIGH COUNTY, PENNSYLVANIA. The proposed Home Rule Charter to be voted on in November provides that the Board of Commissioners may by ordinance establish an Office of Information and Complaints headed by an Information and Complaint Officer appointed by the Board. The ordinance must include a number of powers based on the Ombudsman concept.

37. WICHITA, KANSAS. In 1972, the Wichita City Commission established a Community Grievance Office. The Grievance Officer is appointed by, reports to, and is accountable to a five-member Citizens Advisory Board appointed by the Board of City Commissioners. He is independent of city government control and by ordinance is empowered to investigate complaints involving any aspect of city government, of policy or practices. The Advisory Board is also responsible for evaluating the performance of the Community Grievance Officer and must review, at least quarterly, the statistical reports and narrative summaries

of the activities of the Community Grievance Officer and submit a report on the same to the Board of City Commissioners and the City Manager. Operations began on July 10, 1972. Frederick Linde who serves as Grievance Officer reports that a total number of 2,300 grievances have been received from July 10, 1972 to May 24, 1974.

E. UNITED STATES--LOCAL GOVERNMENT--SCHOOL DISTRICTS.

Information concerning school districts is rather limited. The following school districts have some type of Ombudsman mechanism to handle complaints.

1. ANN ARBOR PUBLIC SCHOOLS, MICHIGAN. Robert L. Potts heads the Office of Human Relations Ombudsman which handles grievances from students, parents, and staff, among other duties.

2. DALLAS, TEXAS. Jack Koten serves as Ombudsman. His services relate to teachers.

3. DAYTON, OHIO. The jurisdiction of the Joint Office of Citizen Complaints includes the Dayton School District. The 1973 annual report shows 54 cases involving the school district.

4. MONTGOMERY COUNTY PUBLIC SCHOOLS, MARYLAND. Thomas S. Foss serves as Ombudsman and staff assistant to the Board of Education. He was appointed by the Board on the advice of the Superintendent and reports both to the Board and the Superintendent. Mr. Foss handles complaints from employees, students, and citizens, among other duties.

5. NIAGARA FALLS, NEW YORK. Lt. Alfred Bakula of the Police Department serves as Ombudsman for the secondary school students.

6. PHILADELPHIA, PENNSYLVANIA. The Student Bill of Rights and Responsibilities of the School District provides for discretionary appointment by each high school student government of Ombudsmen. Training sessions are held for newly elected Ombudsmen.

7. SEATTLE, WASHINGTON. In 1973, the Office of Ombudsman was established for the Public Schools. The Ombudsman is appointed by the Superintendent of Schools and reports to him. He handles complaints from citizens, students, and employees. Carroll Hanson, who heads the office, reported 121 grievances and more than 700 routine inquiries in his first six months in office. Funding is shared by the district and the U. S. Office of Education.

8. WICHITA, KANSAS. The League of Women Voters in 1973 received grants from H.E.W. to fund a School Ombudsman project. The Board of Education voted to co-operate and adopted a policy proposed by the League. Robert D. Wright was selected by the League and an Advisory Committee in August, 1973. He resigned and Rex Krieg was appointed in July as School Ombudsman. From September, 1973 to April, 1974, 429 cases were received.

F. UNITED STATES--BUSINESS OMBUDSMAN. The trend toward governmental business complaint-handling offices frequently bearing the term "Ombudsman" instituted by the United States Department of Commerce in 1971 with its Ombudsman for Business continued (see B-4). The list on the state level includes Pennsylvania with the Office of Business Ombudsman (see C-32), Ohio with the Businessman's Ombudsman Bureau (see C-29), Tennessee's Ombudsman co Industry, Maryland's Office of Business Liaison, and Michigan's Pro-Businessman's Program.

G. UNITED STATES--HEALTH. The use of patient advocates, patient representatives, and Ombudsmen continued to increase.

1. NURSING HOME OMBUDSMAN DEMONSTRATION PROJECT. The U. S. Department of Health, Education and Welfare funded projects in Idaho (Arlene D. Warner, State Ombudsman for Nursing Homes, under the general supervision of the Department of Special Services); Massachusetts (John J. Donovan, Nursing Home Ombudsman, under the direction of the Executive Office of Elder Affairs); Michigan (Marilyn A. Schiff, National Director, Nursing Home Ombudsman Program under contract with the National Council of Senior Citizens, Inc.); Oregon (Ruth Hocks, Assistant Ombudsman for Nursing Homes); Pennsylvania (Carol Delany, Director, Nursing Home Ombudsman Project); South Carolina (William V. Bradley, State Nursing Home Ombudsman; see C-36 for legislation authorizing the Nursing Home Ombudsman to investigate complaints); and Wisconsin (Lieutenant Governor, Martin J. Schreiber, is the head of the Nursing Home Ombudsman program).

2. STATE LEGISLATION. Bills for Health Ombudsmen were introduced in Florida (C-10), Massachusetts (C-18), Pennsylvania (C-32), South Carolina (C-36), and Washington (C-41). The only bill to be enacted into law was the South Carolina legislation.

H. UNITED STATES--CORRECTIONAL INSTITUTIONS. The Ombudsman concept has attracted a great deal of attention in the correctional institution area.

1. FEDERAL PROPOSALS. The Administrative Conference of the United States issued a study on grievance procedure for prisoners (see B-1). Legislative correctional Ombudsman proposals introduced into Congress were H.R. 11146--(see B-7), H.R. 8849--(See B-8), and S. 2160--(see B-12). The House of Representatives Select Committee on Crime recommended an office of National Correctional Ombudsman and state Correctional Ombudsman in its report, No. 93-329.

2. STATE PROPOSALS. California (see C-5), Massachusetts (see C-18), New York (see C-26), and Washington (see C-41).

3. CONNECTICUT. James R. Bookwalter serves as Connecticut Correctional Ombudsman under an agreement between the Hartford Institute of Criminal and Social Justice and the Department of Correction. From September 18, 1973 to December 18, 1973,

he received 105 complaints and from December 18, 1973 to March 18, 1974, he received 68 complaints.

4. HAWAII. The Hawaii Ombudsman's powers include jurisdiction over state and local prisons (see C-12).

5. IOWA. The Citizens' Aide Office has a Deputy Citizens' Aide for Correction, an office now made permanent by S.F. 73 which passed in 1974 (see C-14). The 1973 annual report of the Citizens' Aide states that 105 complaints were received against the Bureau of Adult Correction and its institutions.

6. KANSAS. S.B. 72 providing for an Ombudsman of Correctional Institutions became effective July 1 (see C-15).

7. MICHIGAN. The Office of Legislative Corrections Ombudsman was established by 1973 legislation. The Ombudsman, James Spivey, was appointed on March 11, 1974 by the Legislative Council (under whose authority the office functions).

8. MINNESOTA. S.F. 672 creating the Office of Ombudsman for the State Department of Corrections was enacted in 1973. Ombudsman Theatrice Williams who held office since 1972 under executive order of Governor Wendell R. Anderson reported 927 complaints received in his July 1, 1972--June 30, 1973 annual report. From July 1, 1973--June 30, 1974, he received 1,008 complaints.

9. NEBRASKA. Murrell B. McNeil, State Ombudsman, states in his 1973 annual report that he is receiving an increase in complaints from prisoners. (See C-23)

10. NEW YORK. The State Department of Correctional Services has established the Office of the Inspector General to, among other duties, receive complaints. Federal Judge Morris E. Lasker ordered the city to establish an Ombudsman to handle grievances of children held in New York City detention centers. It is expected that the office will be established shortly. The New York State Division for Youth has an Ombudsman program in its facilities.

11. OHIO. The Department of Rehabilitation has established the in-house position of Chief Ombudsman held by George E. Miller.

12. OREGON. L. L. Oliver serves as Ombudsman at the Oregon State Penitentiary, an office established in 1971.

13. SOUTH CAROLINA. The Department of Corrections has appointed an Ombudsman under the supervision of its director.

14. WISCONSIN. Alan Lee, Assistant Attorney General, serves as Corrections Complaint Examiner, receiving appeals from the Inmate Complaint Review System. From November 20, 1972 to March 19, 1974, he received 396 complaints on appeal from the Inmate Complaint Review System which had received 2,891 complaints in the same period.

HB

48

"An Act relating to contractual restrictions on the transferability of interests in realty."

COMMITTEE REPORT

2/2[illegible]75

HOUSE

Mr. Speaker: Date _____

The Committee on JUDICIARY has had HB 48 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(X) recommends it BE REPLACED WITH CS FOR HB48 AND THAT CS FOR HB 48 DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Jerry Hardin

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Jerry Hardin Chairman

file on HB48
for the floor

Alaska Association of Realtors
2223 Spenard Road
Anchorage, Alaska 99503

April 2, 1975

The Honorable Terry Gardiner
Pouch V, State Capitol
Juneau, Alaska 99811

Dear Representative:

We solicit your support for CSHB 48 "An Act relating to contractual restrictions on transferability of interests in realty", which is now under consideration in Rules Committee.

While the majority of Alaskan Financial Institutions do not unreasonably withhold approval and acceptance of a new owner wishing to assume an existing security agreement covering the property he is purchasing, certain of these institutions ordinarily refuse to approve such assumptions unless the purchaser agrees to an increase in the interest rate. We believe this unfair.

When a security agreement (mortgage or deed of trust) is assumed by a new purchaser of property, it does not relieve the original owner of responsibility to pay the debt. Indeed, it adds one additional guarantor of payments and further insures the security of the mortgagee.

A favorable interest rate on a mortgage is a definite plus to an owner and increases the value of his property. Those home owners who purchase their property and arrange to finance the purchase by amortization of the loan over a definite period of time at a definite rate, have every reason to believe that they can sell their interest in the property to someone who can continue to make the payments as agreed between the original owner and the mortgagee as long as he, the original owner, is still responsible for payment to the mortgagee.

In times of increasing interest rates and scarce mortgage financing, the ability of property owners to freely dispose of their equity becomes very important. The enactment of HB 48 would insure that they would not be deprived of this one possibility of sale and would provide prospective purchasers with a purchase method that meets their capabilities.

Thank you,

Audie L. Moore

Audie L. Moore, Co-Chairman
Legislative Committee
Alaska Association of Realtors

ALM/pd

"March 5, 1975

House Judiciary Committee
Statement of Intent
CS HB 48 "An Act relating to contractual restrictions on the transferability of interests in realty."

Some commercial lending institutions in the state have not been allowing assumptions of existing secured loans on real estate. Most lending institutions do allow assumptions of the old loan where the lender's interest in the property is not impaired and the original buyer is not released from his obligation to pay. But some lenders have recently been demanding that the property be refinanced instead of merely assumed. The refinancing is at a considerably higher rate of interest in most cases. These lenders point out to the borrower, who now wants to sell his equity, that the trust deed or other security instrument contains a clause that provides for default if the borrower sells or attempts to sell his equity without the consent of the lender.

Most banks or other lending institutions involved with transfers of interest in real property do not include such "default upon transfer" provisions, or if provided for, the clause is not invoked where the real property is the security and the sale of the equity presents no threat or impairment of that security. In some cases, the transfer actually strengthens the position of the lender, as it will have two people from whom it can collect instead of only the original borrower. The only reason for refusing to permit the transfer of the beneficial interest to a buyer is to enable the lender to call in the original loan and force the buyer to pay a higher interest rate on a new loan.

The scope of the bill does not extend to natural persons because such a lender is more likely to be relying on the credit of the person he deals with rather than simply the value of the collateral. "Default upon transfer" language in contracts between natural persons would seem appropriate in cases where the credit and character of the parties may be fundamental to the transaction. Therefore, the bill would permit reasonable restrictions on transfers found in contracts between natural persons.

Such "default upon transfer" provisions would probably be held to constitute invalid restraints on alienation if challenged in court. A court challenge is not likely, however, as the lending institutions generally permit an assignment if the other parties in the transaction appear to want to take the matter into the courts. Legislative action is proper therefore, to eliminate this unconscionable use of the fine print in the lender's adhesion contracts.

An exemption is available for federal agencies at the discretion of the Commissioner of Commerce in order that the Federal National Mortgage Administration and the Federal Home Loan Bank Board may continue to use their standard deeds of trust which do contain transfer restrictions. It is not intended that the FHA and VA loans be effected by this measure.

HB

52

"An Act creating an office of the public adjuster; effective date."

COMMITTEE REPORT

3/5/75

HOUSE

Mr. Speaker: Date 4/21/75

The Committee on JUDICIARY has had HB 52 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(✓) recommends it BE REPLACED WITH CS FOR HB 52 AND THAT CS FOR HB 52 DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Terry Gardiner

[illegible]

[illegible]

Members NOT concurring in the Majority report:

[illegible] recommends: No REC.

[illegible] recommends: No rec

_____ recommends:

_____ recommends:

_____ recommends:

Terry Gardiner Chairman

Here is the report I told you I had done - the back page includes some additional information gained from testimony in Commerce & other States — Judy

Terry -

HOUSE BILL 52

House Bill 52, an act entitled: "An act creating an office of the public adjustor; and providing for an effective date."

The purpose of HB 52 is to protect and assist the insurance claimant within the state of Alaska by providing for a Public Adjustor within the Division of Insurance, Department of Commerce.

A Public Adjustor as proposed in HB 52 acts as an ombudsman for members of the public needing help in the determination of the amount of claims or in the settlement of claims with insurers. The Public Adjustor would be of most benefit to the insurance claimant with a small claim.

Currently there is no public assistance for a person filing an insurance claim. If the claim is a large one, it is economically feasible to hire an attorney to negotiate with the insurance compnay or contest the settlement in court. In the case of the claimant with a small claim, in most cases it is not feasible to hire an attorney or take the company to court. The only recourse left to the claimant is to accept the settlement offered by the insurance company which is, in some cases, an amount far less than a fair settlement for the claim. The Director of the Division of Insurance stated that in some states insurance adjustors are brought in to assist the public in such matters.

An adjustor is one who investigates and reports to his employer concerning claims arising under insurance contracts. Their investigations are made on behalf of either the insurer or the insured, whichever employs them. There are three types of claims adjustors to help one when filing a claim. A company adjustor is an employee of the insurance company. An independent adjustor is employed by the insurance company as a private contractor, and is usually used when the company does not have its own company adjuster available. A public adjustor in some states is hired by the claimant and is paid by the claimant. Brokers and agents assist in claims also.

The Public Adjustor would be of assistance to the public not only in the settlement of claims but also in the determination of claims. Currently the only recourse a claimant has if there are problems with claims determination or settlement is to file a complaint with the Governor's office. A complaint received by the Governor's office is forwarded to the Commis-

sioner of Commerce who forwards it to the Director of the Division of Insurance. John O'Shea, the Director of the Division of Insurance stated that he and his staff handle one half of the complaints for the State while his Deputy in Anchorage handles the rest. I would question this system in that most people are unfamiliar with government and would not know where assistance was available to aid them in an insurance problem. I would also question the time involved in this procedure.

The Public Adjustor in accordance with HB 52 would be appointed by the Director fo the Division of Insurance. Once appointed this person would serve independently of the Division of Insurance. As it states in this bill the Public Adjustor can be removed for cause as determined by the Legislature by concurrence of a 2/3 vote. There may be problems here with the appointment by the Director of the Division and the removal of this person by the Legislature. As the Legislature's role is not to act as an administrator and this person must be in cooperation with the State administration, a better solution might be to have the Public Adjustor appointed by the Governor with confirmation by the Legislature. The Governor would then also be able to remove this appointee with concurrence of the Legislature. The term of the Public Adjustor as stated in the bill is four years. If the procedure of hiring and terminating is changed the term of service might also be investigated.

bill has been amended concerning appointment/removal

The Public Adjustor although independent of the Division of Insurance will be included under the Prohibited Interests Rewards section 21.06.040. This insures that the Public Adjustor has no conflict of interest in dealing with the public or insurers, as is easily understood in this amendment to the current law.

The direct responsibilities of this position, as stated before, are to assist the public in the determination of the amount of claims and aid in the settlement of claims. Through this assistance, the Public Adjustor will become familiar with the settlement practices of insurers and shall review their records on both settlement practices and claim payment records. During this process if it is discovered that an insurer is habitually uncooperative in settling claims, slow in making payments on claims, or engages in practices inconsistent with the purposes of this title, the Public Adjustor shall request the Director of Insurance to hold a hearing and if warranted suspend the license of an insurer not complying with the requirements of this title. This process reinforces the position of public ombudsman which the Adjustor will have in dealing with the insurance company.

House Bill 51 requests a special appropriation to the Department of Commerce, Division of Insurance to fund the office of the Public Adjustor. This act will take effect July 1, 1975

and requests the sum of $75,000, appropriated from the general fund, for this purpose. In talking with Mr. Fink, prime sponsor of this bill, he stated that he felt a good insurance adjustor could be hired for $25,000 yearly. This appropriation would allow for a small staff and funding for an information brochure.

The location of the office is not stated in the bill. The logical assumption would be that the office be located in Juneau. During the first year of business, while the public is becoming aware of this service, it seems more logical to place the office in Anchorage where the most people are and therefore the most claims. Although this is not an important facet of this legislation, there is currently a state insurance office located in Anchorage so the office of the Public Adjustor could be located in either Anchorage or Juneau.

Opinions of this bill are forthcoming from Mr. Roger Grummett, Legislative Representative for the State Association of Independent Agents. Mr. Grummett is attending a board meeting of this organization in Sitka this weekend and will report their opinions to us on Monday. Attached is an opinion from John George, the Risk Manager for the State. I spoke with John O'Shea present Director of the Division of Insurance. He spoke against HB 52 and cited reasons for his opposition. He was opposed to this bill because the office of the Public Adjustor was not in keeping with the administrative process of his office and it would only compound administrative problems. He felt the ombudsman as proposed by the Governor and Senator Kerttula could handle these problems. He did emphasize the special expertise needed for such a position and felt that the costs to provide this would be tremendously high. He felt that the funds expended for this position could be better utilized within his own department and that there would be better claim settlements if there was more funding in his department. He objected to the Public Adjustor being appointed by the Director and then only removed by the Legislature. Mr. O'Shea was basically very concerned over his position and the administration of his division.

Mr. O'Shea stated that he knew of no state that had a public adjustor. He stated some states hire adjustors on public license, who work similarly to our concept of a Public Adjustor, for a small fee. I learned that Pennsylvania has a system similiar to this and am awaiting aresponse from them on how their system functions.

I have received information from the State of Washington concerning questions on who handles these responsiblities (meaning those delegated to the Public Adjustor in HB 52) within their state structure. The Washington Insurance Department has established a Comprehensive Consumer Division within the office of the Commissioner of Insurance. The Supervisor of

the Consumer Division is not independent of the Commissioner, but this system seems to be working. Attached are explanatory brochures on this system. The last page of the brochure explains to the reader how to file a complaint with the Commissioner. The State of Alaska Division of Insurance has no such literature on insurance and no way to inform the public on how and where to file a complaint. The State Consumer Protection Office refers insurance complaints to the Division of Insurance as do individual insurance agents.

As further information is gained in respect to this bill, it will be forwarded to your office.

02-001B

STATE
of ALASKA

MEMORANDUM

TO: Honorable Bob Bradley
Chairman, House Commerce Committee
Alaska State Legislature

THRU: Andrew S. Warwick, Commissioner

THRU: A.M. Saylors, Director

FROM: John George
Risk Manager
Division of General Services & Supply
Department of Administration

DATE : February 19, 1975

SUBJECT: HB 51 and HB 52
Committee Hearing

At the request of Ms. Judy Whitney, comments on House Bills 51 and 52 for review by the House Commerce Committee are respectfully submitted.

The establishment of a public adjuster within the Department of Commerce will not have an effect on the State's Risk Management program. It is designed to protect the individual policyholder and claimant who lacks specific insurance expertise.

It is our opinion that the Department of Commerce, Division of Insurance, already provides a valuable service to the individual purchaser of insurance by investigating and regulating insurance companies and claims adjusters. Appointment of a public adjuster would unnecessarily overlap with work already carried out by the Division of Insurance. If there is a need for additional investigation and arbitration of claims settlement, it seems logical that the Division of Insurance should be expanded by one or more classified persons to handle this additional workload along with other regulatory duties.

To our knowledge, all persons requesting assistance from the Division of Insurance have received help. The number of these requests is relatively small and, in our opinion, does not justify either a full time, exempt position or an appropriation of $75,000 at this time.

Alaska Independent
Insurance Agents & Brokers, Inc.

SEND REPLY TO:

CHATTUCK & GRUMMETT, INC.
301 SEWARD STREET
JUNEAU, ALASKA 99801

February 24, 1975

The Ninth State Legislature

To Whom it May Concern:

Re: HB 52 & HB 51

On behalf of the Board of Directors of the Alaska Independent Insurance Agents and Brokers, Inc., I would like to make the following statement regarding the Public Adjuster.

We are against your idea of a Public Adjuster. We feel that someone within the Department of Insurance should be designated to handle the consumer complaints. We also feel that the independence of this individual as proposed in HB 52 is far too strong for the position.

We, on the other hand, would like to see the Legislature pass on the $75,000 which was earmarked for HB 51 to go to the Division of Insurance to fund the additional personnel needed to run that department.

Sincerely,

Roger Grummett

Roger Grummett
Director and
Chairman of Legislative Committee

RG: eh

House Bill 52- Public Adjustor

House Bill 52 was amended in the Commerce Committee so that the Governor would appoint the Public Adjustor for a term of four years. He remains independent of the Director and Commissioner but may be removed for cause or by the Governor's request with concurrence of the Legislature. When removal is requested by the Governor the Public Adjustor remains in office until the legislature removes him.

Our Consumer Protection Agency is not equipped to handle insurance complaints currently and therefore refers them to the Division of Insurance. As I stated before the Director of the Division of Insurance and his secretary handle one half of the complaints for the state of Alaska, while his deputy in Anchorage handles the remainder. John ~~George~~ O'Shea testified in the Commerce Committee that the Division of Insurance dealt with 125 complaints involving claims last year, recovering $350,000 for the claimants. He of course wants more money to be invested in his division instead of the new position of Public Adjustor. John O'shea stated that if more money was invested in his operating budget he could advertise the services of the department. He felt the Public Adjustor created a duplication of services within his division.

This information below is merely to show how two other states aside from Washington have dealt with consumer problems concerning insurance.

Pennsylvania

In December of 1971, the Insurance Commissioner appointed an ombudsman in the State Insurance Department. There was confusion over the responsibilities of this office and the position has not been filled since December of 1974.
In the 1975 session under House Bill 175, Printers No. 853, a consumer advocate would be created with reference to regulatory agencies including the Insurance Department. This bill passed the House March 20, 1975. Attached is a copy of a press release of the appointment of the ombudsman and a report on this position.

California

California does not have a position similar to the Public Adjustor, but they do have a Policy Services Bureau, Division of Consumer Affairs in the Department of Insurance. This bureau consists of 22 Insurance Officers who receive complaints from the public and assist the complainants in the adjustment of their claims. If the evidence indicates that a company is as a matter of practice, violating certain of the Unfair Trade Practices set forth in the statutes, this information is used in the event it is determined that a hearing on the insurers's license is warranted.

House Judiciary Committee
April 14, 1975

HB 52 Public Adjustor

Mr. Bradner, sponsor of the bill, testified that the public presently does not complain about insurance problems because they do not know where to go. The bill would create an insurance ombudsman who would function within the Division of Insurance. He would remain independent and would have authority to pursue routine complaints and identify abusive companies. The Division does not favor an independent Adjustor but would like additional monies so that the Division could handle compalints. Mr. Bradner felt that because of the very existence of the Adjustor, many problems would never develop. A pamphlet advertising that the Adjustor will handle complaints is being provided for in another bill.

page 2, line 4, delete the word "ombudsman" and replace with "will assist" Mr. Parr moved the amendment which passed.

Mr. Brown moved on page 1, line 10 that "director" be changed to "governor". There being no objection, it was so ordered.

Ted Smith explained that an appointee of the governor working independently within a Division would have a difficult time. He suggested that the Adjustor be explicitly made a member of the partially exempt service. Mr. Brown moved that an addition to the bill to this effect be added. There being no objection, it was so ordered.

Mr. Brown moved that a CS be drawn up incorporating the above amendments. It was so ordered.

HB 385 Early Judicial appointment

The Judicial Council, which suggested the bill, submitted proposed language to take care of the problem of possible lame duck appointments. Mr. Brown moved that on page 1, line 22 and page 2, line 9 add "no more than sixty days early" be added. The amendment passed and Mr. Brown moved HB 385 am out of committee do pass. There being no objection, it was so ordered.

HB

81

"An Act making a supplemental appropriation to the Department of Law; and providing for an effective date."

1/27/75

COMMITTEE REPORT

FINANCE

HOUSE

Mr. Speaker: Date Feb 3, 1975

The Committee on Judiciary has had HB 81 under consideration. A Majority of the members of the Committee

(✓) recommends it DO PASS

( ) recommends it DO NOT PASS

(✓) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Terry Dardeen

[illegible]

[illegible]

[illegible]

Members NOT concurring in the Majority report:

[illegible] recommends: Do Not Pass

[illegible] recommends: [illegible]

_____ recommends:

_____ recommends:

_____ recommends:

Terry Dardeen Chairman

AMENDMENT

OFFERED IN THE HOUSE: BY: Judiciary Committee

To: _____ HOUSE BILL No. 81

SENATE BILL No. _____

PAGE: 1 LINE: 11 - 12

Line 11

after "funding for:" ADD: specialized legal servic s in

Line 12

change "in which" to: to which

after "party" ADD: a period

delete: "and for specialized legal services."

February 4, 1975

Rep. Hugh Malone
Chairman
House Finance

Dear Rep. Malone:

Although the House Judiciary Committee passed HB 81 as amended on February 3, 1975, the Committee stipulated that the following be submitted to the Finance Committee for their consideration:

Testimony of Mr. Bob Shroedor, Department of Law, indicated that part of the request, $107,900, is for continued funding of the Cook Inlet Oil Pricing case. It would cover expenses necessary to bring this case to an end and would cover funding that extended past FY 75 into FY 76. It would appear improper for a supplemental request to extend past the current fiscal year.

In addition, the catch all phrase, "and for specialized legal services" was removed and language changed (see amendment) to limit the appropriation to the Cook Inlet Oil Pricing case and the late billing charge of $12,400. Mr. Shroedor stated that HB 81 was to cover these cases specifically.

Sincerely,

Terry Gardiner
Chairman, House Judiciary Committee

Introduced: 1/27/75
Referred: Judiciary and Finance

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

HOUSE BILL NO. 81

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act making a supplemental appropriation to the Department of Law; and providing for an effective date."

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

* Section 1. The sum of $120,300 is appropriated from the general fund to the Department of Law to provide funding for specialized legal services in two major pending law suits to which the state is a party. ~~and for specialized legal services.~~

* Sec. 2. The appropriation made by this Act is to provide continuing funding for more than one year and is not subject to the lapse provisions of AS 37.25.010.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.10.070(c).

February 4, 1975

Rep. Hugh Malone
Chairman
House Finance

Dear Rep. Malone:

Although the House Judiciary Committee passed HB 81 as amended on February 3, 1975, the Committee stipulated that the following be submitted to the Finance Committee for their consideration:

Testimony of Mr. Bob Shroedor, Department of Law, indicated that part of the request, $107,900, is for continued funding of the Cook Inlet Oil Pricing case. It would cover expenses necessary to bring this case to an end and would cover funding that extended past FY 75 into FY 76. It would appear improper for a supplemental request to extend past the current fiscal year.

In addition, the catch all phrase, "and for specialized legal services" was removed and language changed (see amendment) to limit the appropriation to the Cook Inlet Oil Pricing case and the late billing charge of $12,400. Mr. Shroedor stated that HB 81 was to cover these cases specifically.

Sincerely,

Terry Gardiner
Chairman, House Judiciary Committee

House Judiciary Committee
February 3, 1975

The meeting was called to order at 1:38 by Vice Chairman Bradley. Members present: Bradley, Parr, Fink, Specking, Cotton, Brown.

HB 81 - Supplemental appropriation to Department of Law

Bob Shroeder of the Department of Law explained why the $120,300 was needed. $12,400 would go to pay off private attorney fees on work done in FY 74. FY 74 funding to meet this obligation lapsed before a billing was submitted. $107,900 would cover the amount necessary to bring the lower Cook Inlet case to a close -- FY 75 and FY 76. He explained that there was no liquidity in the FY 75 budget to meet these obligations without taking from something else. Rep. Fink stated that these were old cases of which the department has been aware for several years. He felt that supplemental appropriations should be for unforeseen expenses.

Rep. Specking moved that in line 12 a period be inserted after "party" and that the rest of the sentence be deleted.

Rep. Brown suggested that the language "specialized legal services in" be inserted after "funding for" in line 11 and be deleted from line 12.

Rep. Bradley moved and asked unanimous consent that Mr. Brown's version of the amendment be adopted. There was no objection.

Rep. Brown moved that HB 81 be passed out favorably as amended with a report to the Finance Committee requesting that they thoroughly explore the fiscal ramifications. There being no objection, HB 81 was signed out.

SB 89 Conflict of Interest

The redrafted CS of SB 89 was accepted by the committee and passed out.

HB 55 - Requirement to post bond

. Cowper, sponsor of the legislation, gave the following testimony:
This is a special requirement of the State of Alaska. The federal government does not require posting of bond. The requirement is discriminatory and its constitutionality questionable. The State's insurance company requested the bill - Alaska Pacific Insurance. Indigents don't have to post bond.

HB

94

"An Act relating to conflicts of interest; and providing for an effective date."

1/28/75

COMMITTEE REPORT

HOUSE

Mr. Speaker: Date Jan. 30 1975

The Committee on Judiciary has had HB 94 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR HB 94 AND THAT CS FOR HB 94 DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 94

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to conflicts of interest; and providing for an effective date."

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

* Section 1. AS 39.50.150 is amended to read:

Sec. 39.50.150. INITIAL FILING DATE FOR INCUMBENT PUBLIC OFFICALS. Every person who is a public official, as defined in this chapter, or a public official-elect, on December 11, 1974 [THE EFFECTIVE DATE OF THIS CHAPTER] shall file the [REQUIRED] statements required by this [THE] chapter before March 11, 1975 [WITHIN 60 DAYS OF THE EFFECTIVE DATE OF THIS CHAPTER]. However, a public official who resigned his office or whose term of office expired on or after December 11, 1974, but before the due date of the first reports of incumbent public officials and public officials-elect, need not file a financial statement.

* Sec. 2. This Act is retroactive to December 11, 1974.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.10.070(c).

ALASKA
STATE LEGISLATURE

Proposed but not used

MEMORANDUM

AMENDMENT

IN THE HOUSE BY THE JUDICIARY COMMITTEE

TO: HOUSE BILL NO. 94

On page 1, between lines 15 and 16, insert:

* Sec. 2. The extension of the initial filing date for statements required under AS 39.50 by incumbent public officials, provided for in sec. 1 of this Act, is applicable to public officials who had been elected but who had not taken the oath of office on December 11, 1974.

Renumber bill sections accordingly.

HB

114

STATE OF ALASKA

Inter-Department Route Slip

TO:
MAIL STATION NUMBER 3100

DEPARTMENT House of Representatives
Rep. T. Gardiner, Chairman

ATTENTION House Judiciary Committee

☐ Approval	☐ Note & Return
☐ Signature	☐ Initial & Return
☐ Comment	☐ Return As Requested
☐ Contact Me	☐ Return For Approval
☐ Prepare Reply	☐ Necessary Action
☐ For Your File	☒ Your Information

Remarks: The question of Board per diem rates was raised at the Violent Crimes Comp. hearing and Mr. Iverson gave you the latest revised rates. The attached is the memorandum received from the Dept. of Administration with regard to the change of rates for employee as well as board members. We hope this will of use to you. Thank you.

FROM:
MAIL STATION NUMBER 0600

DEPARTMENT H & SS / Violent Crimes Comp. Bd.

BY D. Benson DATE 3/4/75

02-002 (REV.10/73)

MEMORANDUM State of Alaska

DEPARTMENT OF ADMINISTRATION

TO: ALL COMMISSIONERS

DATE: February 10, 1975

FILE NO:

TELEPHONE NO:

FROM: Andrew S. Warwick
Commissioner

SUBJECT: Increased Per Diem

FEB 1975
RECEIVED
Office of the
Commissioner

It has been demonstrated that the cost of food and lodging have risen to the extent that the existing per diem allowance and meal allowance for State employees is no longer adequate to cover reasonable expenses. I am therefore increasing per diem and other expenses effective February 16, 1975, for those employees not covered by a collective bargaining agreement. This authority is granted under AS 39.20.110 and AS 39.20.130.

The schedule of per diem shall be as follows:

Per Diem Allowances
For Employees Not Obtain Overnight Lodging

House Election District#	Steps Above Basic Per Diem	Percent Factor	Short-Term** Per Diem Rate	Long-Term Rate (60% of Short-Term)
0 *	0	100.00	$40.00	$24.00
1	0	100.00	40.00	24.00
4	0	100.00	40.00	24.00
8	0	100.00	40.00	24.00
2	1	103.75	41.00	24.60
3	1	103.75	41.00	24.60
7	1	103.75	41.00	24.60
5	2	107.50	43.00	25.80
9	2	107.50	43.00	25.80
10	2	107.50	43.00	25.80
11	2	107.50	43.00	25.80
16-S	3	111.25	44.00	26.40
6	4	115.00	45.00	27.00
12	7	126.25	49.00	29.40
13	7	126.25	49.00	29.40
18	7	126.25	49.00	29.40
14	8	130.00	51.00	30.60
19	8	130.00	51.00	30.60
15	9	133.75	52.00	31.20
16-N	9	133.75	52.00	31.20
17	9	133.75	52.00	31.20

The Election Districts used are those designated by the Proclamation of Reapportionment Redistricting of December 7, 1961, and retained for the House of Representatives by proclamation of the Governor September 3, 1965.

* House Election District "0" denotes any place not in Alaska.
** "Short-term" rate is rounded to nearest whole dollar.

For those employees who do not obtain overnight lodging but are on travel status, a meal allowance is provided as follows:

A meal allowance will be allowed an employee who is on travel status for at least three (3) hours:

Time	Meal	Allowance
Midnight to 10:00 a.m.	Breakfast	$3.50
10:00 a.m. to 3:00 p.m.	Lunch	4:00
3:00 p.m. to midnight	Dinner	8.50

The mileage allowance as provided in AS 39.40.130 shall be twenty cents (20¢) per mile.

The basic per diem for members of boards and commissions as provided in AS 39.20.180 shall be fifty dollars ($50) per day.

Employees of the General Government, Labor Trades and Crafts, and Confidential bargaining units shall be paid in accordance with the attached letters of agreement effective February 16, 1975.

Employees of the Supervisory bargaining unit shall be paid in accordance with Article XXIV of their collective bargaining agreement retroactive to its effective date which is November 16, 1975.

If you have questions on this matter, please contact the Division of Personnel.

Attachments: Letters of Understanding (three)

RECEIVED
FEB 26 1975
ADMINISTRATIVE SERVICES
OFFICE OF THE DIRECTOR

STATE OF ALASKA

Inter-Department Route Slip

TO:
MAIL STATION NUMBER 3100

DEPARTMENT House of Representatives
Rep. T. Gardiner, Chairman
ATTENTION House Judiciary Committee

☐ Approval	☐ Note & Return
☐ Signature	☐ Initial & Return
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3	1	103.75	41.00	24.60
7	1	103.75	41.00	24.60
5	2	107.50	43.00	25.80
9	2	107.50	43.00	25.80
10	2	107.50	43.00	25.80
11	2	107.50	43.00	25.80
16-S	3	111.25	44.00	26.40
6	4	115.00	45.00	27.00
12	7	126.25	49.00	29.40
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Attachments: Letters of Understanding (three)

RECEIVED
FEB 26 1975
ADMINISTRATIVE SERVICES
OFFICE OF THE DIRECTOR

PROVIDENCE
HOSPITAL



3200 Providence Drive
Anchorage, Alaska 99504

277-6671

February 27, 1975

Representative Terry Gardiner
Chairman, House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Dear Representative Gardiner:

Recently I reviewed the proposed House Bill 114 relating to Violent Crimes Compensation and generally agree and support the intent of the bill as it has been presented with your amendments, however, the following changes additionally should also be considered before pressing the bill for passage.

Section 050 - Attorney Fees: I am in agreement with HB 114, however feel strongly that a CEILING BE PLACED ON ATTORNEY FEES - NOT TO EXCEED $6,000 regardless of the size of settlement over $25,000. or PLACE A CEILING ON THE TOTAL MAXIMUM AWARD (NOT TO EXCEED $40,000) regardless of the number of dependents.

Section 090 - Recovery from Collateral Source - your section is good.

Section 120 - Emergency Compensation - Advocate adoption as amended in HB 114.

Section 130 - Limitations on awarding compensation. Max. award of $25,000 per incident (adopt). However, in the case of a deceased victim - I would prefer to see the first dependent receive the $25,000 - and $3,000 for each additional ~~victim~~ dependent not to exceed a total award of $40,000.

Payment of above awards should be in a lump sum or in periodic payments depending on the claimants circumstances and/or at the discretion of the board.

Section 175 - Duty to Display Information - I support the adoption of this section with the following additions. 1. Display of information should also include the main entrance and business office of the hospital. 2 Brochures, giving general information on the provisions of this chapter and on where the family can get application forms, should be available and in the offices of Social Service workers and the Patient Care Coordinator if the hospital has one.

Section 020 - add - at least one member of the board should be a licensed attorney - licensed to practice in Alaska.

Thank you for your consideration.

Sincerely yours,

Chris Beardsley

Mr. Chris Beardsley
Director of Public Relations

PROVIDENCE
HOSPITAL



3200 Providence Drive
Anchorage, Alaska 99504

277-6671

February 26, 1975

Representative Terry Gardiner, Chairman
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Dear Representative Gardiner:

As director of Social Service at Providence Hospital I occasionally have an opportunity to inform patients about the provision of the Violent Crimes Compensation law. In its present state the law has so many flaws, that it is frequently ineffective. The liberalization of this law as proposed in the up-coming House Bill #114 would serve to render it more useful and effective.

While I have no personal or pecuniary interest in the law, I have observed its effect on a number of patients here at Providence Hospital who had occasion to apply and am convinced the law needs revamping and liberalization. I could cite case after case in which patients were found ineligible, because they had third party coverage (insurance) or their medical bills exceeded the prescribed maximum. In reading the provisions of Bill #114 these shortcomings would be eliminated, and as a disinterested party I urge you to vote for its enactment.

Sincerely yours,

Irene Avera

(Mrs.) Irene Avera ACSW
Director, Social Service

IA/mcc

Recommendation for change in Section AS 18.67.130 (c)

No compensation may be awarded under this chapter in an amount in excess of $25,000 per victim per incident. However, in the case of the death of a victim who has more than one dependent applying for compensation, the total compensation which may be awarded as a result of that death may not exceed the sum of the maximum award of $25,000 for one dependert plus $2,500 [$5,000] for each additonal dependent to $10,000 maximum for additional dependents and the board shall prorate the total awarded among those dependents according to relative need. In no circumstances shall the total to the dependents of a deceased victim exceed $35,000. All [$10,000 AND ALL] payments shall be made in a lump sum.

LAW OFFICES OF
ALASKA LEGAL SERVICES CORPORATION
510 2nd AVENUE, SUITE 230
FAIRBANKS, ALASKA 99701
TELEPHONE 456-5401

February 26, 1975

Don Clocksin
Deputy Director
Alaska Legal Services Corporation
315 Fifth, #8
Juneau, Alaska 99801

Re: Violent Crimes Compensation Board bills
SB 23 and HB 114

Dear Don:

Both SB 23 and HB 114 seem pretty good to me. But of the two I definitely favor SB 23. This is primarily because SB 23 in Section 90 prohibits the Board from deducting from an award any compensation received from a collateral source (except for a prior emergency award made by the Board). Unless collateral sources are eliminated from consideration, a person who must receive welfare as a result of a crime is denied the award to which he or she would otherwise be entitled from the Board. This point was dramatically illustrated in one of my cases: A mother with a minor child was murdered. There was no husband. The child's grandparents took the child in and applied for and received AFDC for the child. When the Violent Crimes Compensation Board claim was processed, the Board reasoned that the child was being benefitted by the AFDC payments and hence these payments had to be considered an award of compensation from a collateral source. The Board therefore felt constrained to deduct the AFDC payments from any award it made. I think the unfairness of this practice with regard to poor persons is readily apparent: If the crime causes a person to go on welfare, then the amount of welfare received is deducted from any award that is made. But if a person is financially well enough off not to go on welfare, then he or she may receive the full award. I believe that this practice is in conflict with the purpose of the Violent Crimes Compensation Board Act, which is to compensate

innocent persons for injuries they receive as the result of a crime. Being forced to receive welfare hardly seems to be the sort of "benefit" intended by the Act. Therefore, it should not be included as a collateral source.

Very sincerely,

E. John Athens, Jr.
Attorney at Law

EJA/jg

cc: Senator Robert H. Ziegler, Chairman
Senate Judiciary Committee

Representative Terry Gardiner, Chairman
House Judiciary Committee

Recommendation for change in Section AS 18.67.130 (c)

No compensation may be awarded under this chapter in an amount in excess of ~~$25,000~~ 10,000 per victim per incident. However, in the case of the death of a victim who has more than one dependent applying for compensation, the total compensation which may be awarded as a result of that death may not exceed the sum of the maximum award of ~~$25,000~~ 10,000 for one dependent plus $2,500 [$5,000] for each additonal dependent to $10,000 maximum for additional dependents and the board shall prorate the total awarded among those dependents according to relative need. In no circumstances shall the total to the dependents of a deceased victim exceed ~~$35,000~~. 20,000 All [$10,000 AND ALL] payments shall be made in a lump sum.

HB 114

March 17, 1975

Paul J. Nangle
Baer, Barker and Nangle
Attorneys at Law
700 H Street, Suite 7
Anchorage, Ak. 99501

Dear Mr. Nangle:

Thank you for your letter of March 12 regarding violent crimes compensation. HB 114 was introduced this session on the same subject by Representative Clark Gruening, in recognition of some of the problems you mention.

HB 114 was referred to the House Judiciary Committee where we conducted two hearings on the subject. The committee's action is in the form of a committee substitute for the bill (attached). Briefly, due chiefly to fiscal constraints, the committee determined that the maximum award for one dependent should be $10,000. In recognition of the difficulties of large families, the committee determined that an amount of $2,500 should be awarded to each additional dependent up to a maximum additional award of $10,000, making the total maximum award to a family $20,000. This money could be awarded, or any portion of it awarded, in the amount that exceeds what is covered by insurance.

The House Judiciary Committee moved CS HB 114 out of committee on March 4, 1975. The bill had a further referral to Finance, where it now is.

I hope I've answered your concerns. If you wish to have further input into this matter I suggest that you write to Representative Hugh Malone, Chairman, House Finance Committee.

Sincerely,

Terry Gardiner
Representative

BAER, BARKER & NANGLE
ATTORNEYS AT LAW
700 "H" STREET, SUITE 7
ANCHORAGE, ALASKA 99501

(907) 279-7564

March 12, 1975

Senator Robert H. Ziegler
Senate Judiciary Committee
Pouch V
Juneau, Alaska 99811

Rep. Terry Gardiner
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Senator Mike Colletta
Pouch V
Juneau, Alaska 99811

Dear Sir:

I am writing you on behalf of the family of victims of violent crimes. This firm has represented one such family, a mother and six children whose husband-father was killed by a mentally unbalanced person while the victim was delivering the mail in Glennallen. We were able to obtain $10,000.00 for the family, but we argued unsuccessfully that each child, plus the mother, was entitled to compensation. Secondly, the victim had a $15,000.00 insurance policy that could have excluded any recovery. I believe that this area needs to get some clarity.

If I can be of any help in this matter, please do not hesitate contacting me.

Very truly yours,

BAER, BARKER & NANGLE

By Paul J. Nangle
PAUL J. NANGLE

PJN/jpm

HB114

Diplomate of the American Board of Surgery

Fellow of the American College of Surgeons

PAUL SAYER, M.D.
A Professional Corporation
GENERAL SURGERY

2211 EAST NORTHERN LIGHTS
ANCHORAGE, ALASKA 99504

Telephone 279-2578
24 HOUR CALL

March 20, 1975

Representative Terry Gardiner
Chairman, House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Dear Representative Gardiner:

I would like to encourage your support in passing House Bill 114 related to voilent crimes compensation. I believe the Bill reads fairly well and I would encourage that if it is passed that it have the clause it does regarding attorney's fees limitation as well as limiting the total amount of payment that may be made for each individual case in order to limit total payments by the state per case.

Yours truly,

Paul Sayer, M.D.

PS:jsh

HB
118

House Judiciary Committee
April 30, 1975

The meeting was called to order at 1:25 by Chairman Gardiner. All members were present.

CS HB 350 Municipal Tax

Mr. Cotton moved that the Community and Regional Affairs CS for HB 350 be moved out of committee do pass. There being no objection, it was so ordered.

HB 396 non prescription drugs

Ron Sedgwick, member of the Alaska Pharmaceutical Association and the Board of Pharmacy, stated that the bill was unnecessary. The Board should be allowed to formulate regulations on the subject under the present statute. He stated that the proposed regulations would not prohibit products from being sold if they contained a small concentration of the prohibited substance. He stated that the Board now has no regulations, and that those proposed would give them something to work with. He stated that the Board can make special exceptions for rural shopkeepers and that the listing of certain drugs does not necessarily exclude all others.

Jan Van Dort, representating the Proprietary Association, stated that it was merely a question of economics and that the regulations would create the power for the pharmacists to regulate their own competition. He stated that the federal law is enough of a restriction. The proposed regulations do not specify concentrations which would be allowable, and the language "such as" might impliedly exclude all others. He stated that passing the bill without Section I would be useless.

The committee determined to check the Health and Social Services regulations on the subject.

HB 118 Transporters

Mr. Specking stated that this bill would put a control on the last unregulated type of hunting. It would require a license of those persons who transport hunters and meat, and a report on the amount of game and who was carried. He stated that the penalty was equal to those contained in the guide regulations.

Problems: page 1, line 11: Guidelines (typo)
page 2, line 1 add: unless he is also licensed for that activity under this chapter -- Passed
page 1, line 24 delete (5) Passed
draft language to require an air taxi service to file a report when they were acting as a transporter as defined (scheduled?)
page 2, line 26 after guide add or a transporter -- Passed
page 2, line 27 under this chapter -- Passed

The committee determined to hold this bill for work later in the week.

HCR 57 Do it yourself divorces

Mr. Clocksin proposed that laymen in lines 15, 19, and 21 be changed to laypersons. There being no objection, the amendment carried.

Delete regarding on line 21 and replace with on how to complete a.

House Judiciary Committee
May 3, 1975

The meeting was called to order at 10:45 a.m. by Chairman Gardiner. All members were present.

HB 62

Rick Urion, sponsor of the bill, testified in its favor. The committee agreed to adopt the resources proposed amendment and voted Judiciary CS HB 62 out of committee, do pass.

HB 118 Transporters

The previously proposed amendments were adopted.
The proposed new Sec. 9 was adopted as follows:
Sec. 9. AS 02.05.170 is amended by adding a new paragraph to read:
(f) The commission shall require air taxi operators who act as transporters under AS 08 54 240 and who transport persons between airports, landing strips or other landing areas officially listed in the United States government Flight Information Publication, Alaska Supplement, as revised, or the United States government Sectional Aeronautical Charts, as revised, to comply with the provisions of AS 08.54.146 relating to the filing of game transporter reports with the Department of Fish and Game. Air taxi operators maintaining regularly scheduled service between designated points are exempt from the reporting requirement of this subsection when operating such regularly scheduled service.
Air taxi operators who "transport" need two licenses.

The bill was seen as a policy tool and an aid to enforcement.

page 2, line 11: omit "and"
page 2, line 12: transported; (4) the date of transporting; and
(5) if known to the transporter, the locality where the game was taken.
This amendment passed.

page 2, line 13: omit "annually" and add "within 30 days after transporting"
The amendment passed

page 1, line 18: delete (1) and renumber. This amendment passed.

Mr. Brown moved that Judiciary CS HB 118 be moved out of committee do pass. There being no objection, it was so ordered.

HB 396 Non prescription drugs

The committee decided to hold this bill until next year.

HB 383 Medical Examiner

Mike Bierne stated that the court could order an autopsy in questionable cases. He stated that it would be nice to have a centralized office of Medical Examiner but questioned whether the state could provide the same laboratory services at the same cost as they now spend in purchasing the services. He estimated the need for a $1/2 million lab per year)

HB 118 Licensing of Transporters

Under the provisions of the air commerce act, the authority charged with promulgating regulations and enforcing the provisions of the law already has statutory authority to require air carrier lecensees to file various reports and records - see AS 02.05.170(a). Compliance with all laws, rules, regulations, etc. is a condition to remaining licensed, see AS 02.05.100.

With the above in mind, it might be possible to accomplish the desired result by simply informing the Alaska Transportation Commission that the legislature wants "game transportation reports" from air taxi operators, at least the ones operating unscheduled flights. The commission could then provide by regulation or whatever, the guidelines for requiring such reports.

If specific statutory requirement is desired, suggest the following:

Or move

* Sec. 9. AS 02.05.170 is amended by adding a new paragraph to read:

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HB

129

Original sponsor: Miller, Anderson, Beirne, et al . SENATE Offered: 5/1/75

IN THE HOUSE BY THE RULES COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 129 (Rules)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act limiting smoking in public places and vehicles."

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

* Section 1. AS 18.35 is amended by adding new sections to read:

ARTICLE 4. HEALTH NUISANCES.

Sec. 18.35.300. SMOKING IN PUBLIC PLACES, VEHICLES PROHIBITED. Smoking in any form in any one of the following places or vehicles used by or open to the public creates a public nuisance dangerous to the public health and is prohibited:

(1) a train, plane, bus, or elevator;

(2) a library, indoor theater, museum, lecture or concert hall, gymnasium, or swimming pool;

(3) a publicly operated school;

(4) the public waiting room of a physician, dentist, physiotherapist, podiatrist, chiropractor, or any other practitioner of the healing arts;

Original sponsor: Miller, Anderson, Beirne, et al HOUSE Offered: 3/10/75 Referred: Rules.

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 129 am

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act limiting smoking in public places and vehicles."

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

* Section 1. AS 18.35 is amended by adding new sections to read:

ARTICLE 4. HEALTH NUISANCES.

Sec. 18.35.300. SMOKING IN PUBLIC PLACES, VEHICLES PROHIBITED. Smoking in any form may constitute a nuisance and be dangerous to the public health, and is prohibited in the following areas, unless otherwise exempted by this chapter:

(1) a motor vehicle, train, watercraft or other transportation mechanism, which carries passengers for hire;

(2) a publicly owned and operated library, indoor theater, museum, lecture or concert hall, gymnasium, swimming pool, or other indoor publicly owned and operated place of entertainment or recreation;

(3) a state or municipal office building, a public school, or in a room, chamber, place of meeting or public assembly under the contro of the state, or a municipality, or department or agency of either, while a public meeting is in progress;

(4) the public waiting room of laboratories associated with health care or the healing arts;

SENATE

(5) the public waiting room of laboratories associated with health care or the healing arts; or

(6) the waiting room, rest room, lobby or hallway of a hospital, nursing home, rest home or other health care institution or facility.

Sec. 18.35.310. EXEMPTIONS. Smoking in the places or vehicles set out in sec. 300 of this chapter is permitted if

(1) the smoking is confined to areas which are specifically designated as smoking areas;

(2) the place, vehicle or passenger-carrying common carrier is being used for a private gathering or affair which is privately sponsored and is not open to the general public; or

(3) the smoking is done by performers upon the stage as part of a theatrical production.

HOUSE

(5) the waiting room, rest room, lobby or hallway of a hospital, nursing home, rest home or other health care institution or facility; or, in a room of a hospital, nursing home, rest home or other health care institution or facility in which more than one patient is accommodated, unless all patients residing or hospitalized in that room are in agreement that smoking is permitted; or

(6) a place of business in which the owner, manager, proprietor, or other person who has control of the premises posts a sign conveying the message that smoking is prohibited by law; the format of the sign shall be approved by the department.

Sec. 18.35.310. EXEMPTIONS. Smoking in the places or vehicles set out in sec. 300 of this chaptor is permitted if

(1) the smoking is confined to areas which are specifically designated as smoking areas;

(2) the place, vehicle, or passenger carrier is being used for a private gathering or affair which is privately sponsored and is not open to the general public;

(3) the smoking is done by performers upon the stage as part of a theatrical production;

(4) the passenger carriers found in sec. 300(1) when all passengers consent; or

(5) the department has exempted the building or room on the basis that it is sufficiently well-ventilated by natural or mechanical means; or

(6) a municipality by ordinance exempts municipally owned buildings from the provisions of secs 300 - 360 of this chapter.

SENATE

Sec. 18.35.320. DISPLAY OF SMOKING PROHIBITED SIGNS. Every owner, manager, proprietor or other person who has control of a place or vehicle set out in sec. 300 of this chapter shall conspicuously display in the place or vehicle a sign reading "Smoking Prohibited by Law".

Sec. 18.35.330. PENALTIES. A person who violates a provision of sec. 300 or 320 of this chapter is punishable by a civil fine of not more than $100 for each offense. Punishment under this section shall be initiated only by civil complaint or citation. The court may establish procedures for payment of fines by mail. Criminal records shall not be maintained for penalties imposed under this section.

HOUSE

Sec. 18.35.320. SMOKING AREAS PROVIDED. (a) In any building covered by sec. 300(2), (3) or (5), reasonable smoking areas must be provided, unless prohibited for the protection and preservation of the building or its contents.

(b) To the extent practicable, the state shall require any of its lessees or sublessees to provide separate smoking areas.

Sec. 18.35.330. DISPLAY OF SMOKING PROHIBITED SIGNS. Every owner, manager, proprietor or other person who has control of a place or vehicle set out in sec. 300(1) - (5) of this chapter shall conspicuously display a sign conveying the message that smoking is prohibited by law except in designated areas. The format of such signs shall be approved by the department.

Sec. 18.35.340. REGULATIONS. The department may promulgate regulations implementing secs. 300 - 330 of this chapter.

Sec. 18.35.350. PENALTIES. (a) A person who wilfully violates the provisions of sec. 300 of this chapter is punishable by a civil fine of not less than $5 nor more than $25 for each offense.

(b) A person who wilfully violates sec. 330 of this chapter is punishable by a civil fine of not less than $10 nor more than $100 for each offense.

(c) A person charged with a violation under secs. 300 - 320 of this chapter is entitled to a trial by jury notwithstanding any other provisions of law or judicial procedure.

SENATE

Sec. 18.35.340. DEFINITIONS. In secs. 300 - 340 of this chapter "smoke" or "smoking" means the carrying, possession, or smoking of a lighted pipe, lighted cigar, or lighted cigarette of any kind, or other lighted smoking material, or the lighting of it.

HOUSE

Sec. 18.35.360. DEFINITIONS. In secs. 300 - 350 of this chapter

(1) "smoke" or "smoking" means the carrying or possession of a lighted pipe, lighted cigar, or lighted cigarette of any kind, or other lighted smoking material, or the lighting of it;

(2) "department" means the Department of Health and Social Services;

(3) "publicly owned and operated" includes properties held, used, or controlled by the state without reference to ownership, but excludes facilities leased by the state to a private enterprise.

House Judiciary Committee
February 18, 1975

The meeting was called to order at 3:10 p.m. by Chairman Gardiner. Members present: Gardiner, Bradley, Fink, Cotton, Brown.

HB 45 Ombudsman

Stu Hall presented the committee substitute which incorporated the amendments requested by the committee. Rep. Fink moved that the CS be adopted after language on page 9 concerning the judicial branch be deleted. Mr. Brown amended Mr. Fink's motion to delete the language on the first two lines of page 10 also. Mr. Brown's amended motion failed. Mr. Fink's motion passed and so the CS was adopted. Mr. Brown moved that when the committee receives SB 1 that the CS HB 45 be substituted and that it do pass. There being no objection, Mr. Brown's motion passed.

HB 129 Smoking in Public

Mr. Gardiner indicated that he wished only an idea of what the committee intended to do with this bill. Mr. Fink stated that he would attempt to prove that smoking is not "dangerous" and would then add other habits that bother people to the bill. Mr. Brown recommended that the definition of public accommodation in the 1964 Civil Rights Act be checked to possibly include more public places. Other committee members mentioned other possible amendments including the substitution of approved air conditioning for separate areas.

HB 154/HB 74

Mr. Cotton moved that in 220 six months be changed to 1 year. Amendment 1 passed.

Mr. Brown moved that in 190 the language in lines 22 and 23 relating to imposition of fine be added.
Amendment 2 passed.

Mr. Brown will draft language to cover reckless actions to be another section either before or after Sect 4.

House Judiciary Committee
February 20, 1975

HB 129/ SB 148 Smoking in Public

The joint public hearing was called to order by Representative Gardiner. All members of House Judiciary were present except Mr. Bradley.

Leo Kay of the Alaska Lung Association testified that the bill would be a protection of the rights of the majority.

Dr. George Stewart, lung specialist, testified that cigarettes are the highest source of carbon dioxide. There is legislation to protect the external environment but nothing for inside. The Anchorage Medical Society endorses HB 129.

Floyd Strain, P.E. teacher and ex-smoker favors HB 129.

Harry Lupro stated that anything that keeps people from public meetings is not to be favored. He is for ventilated rooms. The proposed bill is not enforcable -- the courts are already too full. The bill does not encourage public transportation. He suggested designated spaces for non-smokers.

Dove Kull, Alaska Home Aid Service, urged the committee to protect the rights of all citizens.

Bernie Brakel, state worker, stated that the proposed bill would be administratively difficult and costly.

Glen Gregery of the 7th Day Adventist Church favors the bill.

Max Lewis, high school teacher, favors the bill. He needs a lounge where he can work without smoke.

House Judiciary Committee
February 26, 1975

The meeting was called to order at 11 a.m. by Chairman Gardiner. Mr. Bradley was not present.

HB 129 Smoking in Public

Proposed amendments:

page 1, line 17 - 19 to read (2) a publicly owned and operated library, indoor theater, museum, lecture or concert hall, gymnasium, swimming pool, or other indoor publicly owned and operated place of entertainment or recreation;
Mr. Brown moved AM 1 which passed with no objections.

definition section - exclude state leased buildir from the definition of publicly owned and operated. When the state makes a lease they should recommend seperate smoking areas be included. AM 2 - Mr. Walker was requested to draft language.

page 1, line 15: Mr. Brown moved that "plane" be changed to "aircraft" but withdrew his motion.

page 1, line 16: after carrier, add except that if no seperate area is provided for in 310 (1) of this chapter, smoking may be permitted if all passengers are in agreement.
Mr. Brown moved AM 3 which passed with no objections.

page 2, lines 8 and 9: Delete "kept seperate and are"
Mr. Specking moved AM 4 which passed with no objections.

new section - In publicly owned and operated places in 300 there shall be designated areas for smoking. AM 5 - Mr. Walker was requested to draw up language.

After a noon recess, the committee came to order at 1:40 p.m.

Mr. Walker was asked to research and prepare the following:
- a legal definition of "wherever practicable"
- a purpose clause - to guarantee pure air not segregate
  - possible exceptions for good ventilation
- change penalty from misdemeanor
- that no smoking signs be in other languages or symbols
- possible exemptions for Pioneers Homes, municipal buildings, hospital waiting rooms
- possibility that the legislature approve H & SS regulations and whether any regulations would be necessary

House Judiciary Committee
March 6, 1975

The meeting was called to order by Chairman Gardiner at 7:05 p.m. All members were present except Reps. Fink and Specking.

HB 129 Smoking

Am 1: page 1, line 17: "a publicly owned and operated library, indoor theatre, museum, lecture or concert hall, gymnasium, swimming pool, or other indoor publicly owned and operated place of entertainment or recreation"
AM 1 was previously adopted.

Am 2: define "publicly owned and operated" to exclude any facilities leased by the state of a private enterprise, but include properties held, used, or controlled by the state without reference to ownership. Whenever practicable, the state shall require lessees and sublessees to provide seperate smoking areas.
Am 2 was previously adopted.

Am 3: another exception: the passenger carriers found in sec. 300 (1) when all passengers consent
Am 3 was previously adopted

Am 4: page 2, line 8: delete "kept seperate and are"
Amendment 4 was previously adopted.

Am 5: Mr. Cotton moved and asked unanimous consent that a new section be added to "provide that in any building covered by 300 (2) or (3) or (6) reasonable smoking areas must be provided. Mr. Brown objected. Mr. Brown moved to amend Am 5 to add "unless prohibited for the protection and preservation of the building or its contents." Am 5 am passed.

Am 6: page 1, lir 12: delete present language and insert "Smoking tobacco any form may constitute a nuisance and be dangerous t the public health, and is prohibited in the following areas, unless otherwise exempted by this chapter:" Am 6 passed.

Am 7: change section title and page 1, line 15: delete present language and insert: "in any motor vehicle, aircraft, train, watercraft or other transportation mechanism, which carries passengers for hire;" Am 7 passed.

Am 8: line 4, page 2 "all patients residing or hospitalized in that room are in . . ." Amendment 8 passed.

Mr. Parr moved page 1, line 20 and 22, delete reference to municipal buildings. This proposed amendment failed on vote.

Am 9: page 2, line 18: delete all line 18 and insert: "a sign conveying the message that smoking is prohibited by law except in -designated areas. The format of such signs shall be approved by the department." Am 9 passed.

Am 10: page 2, line 20: change "shall" to "may" Am 10 passed.

Am 11: page 2, line 23: after "chapter" delete the rest of the line and insert the word "civil" before the word "fine" in line 24. Page 2, sec 340(b) same. Am 11 passed

Am 12: page 2 line 28: delete sentence beginning "Each day. . ." Page 2, line 27 change fine to $10 to $300. Am 12 passed

Am 13: page 3: define "department to mean Department of Health and Social Services. Am 13 passed

Am 14: add to exceptions section "the department has exempted the building or room on the basis that it is sufficiently well-ventilated by natural or mechanical means." Am 14 passed

The committee requested that a clean CS be drafted for their further consideration. The meeting was adjourned at 9:10 p.m.

House Judiciary Committee
March 10, 1975

The meeting was called to order at 1:20 p.m. by Chairman Gardiner. All members were present except Mr. Cotton and Mr. Brown.

HB 129 Smoking

The following amendments were acted on:

In Section 300 (1) delete "aircraft"
Transfer language in definition Section to section 320.
In Section 350 (b) delete the language that makes each day in violation an additional violation.

Mr. Parr moved the rough CS HB 129 with the above amendments out of committee with individual recommendations. There being no objection, it was so ordered.

HB 148 Conscience Clause

Elder Lickey of the Seventh Day Adventist Church stated that there are approximately 1,000 Adventists in Alaska, including children. .5% of all public employees in the state (maximum) are Adventists.

He stated that the AFL CIO in the state of Washington supports this bill and that the APEA will not oppose it.

wage increase: An Adventist would not receive the increase because it had been negotiated by the union but because the employer wanted to give it to him.

strike: An Adventist would stay out of the issue as much as possible. If the majority of workers were on strike, he too would strike. He would do whatever necessary to create the least controversy.

freeloader: He would pay the same amount as a union member.

unconstitutional: This has not yet been determined by the courts.

The meeting broke at 2:10 and was resumed after the session at 2:50 p.m.

Mr. Lickey answered committee questions. Belief in not belonging to a union is not a requirement for membership in the church -- it is not a fundamental principle.

Janet Bradley of the Human Rights Commission testified that as yet, the Commission has no official position. However, the Equal Employment Opportunity Commission guidelines support the position in the bill.

Pastor Gingery testified in favor of the bill.

The committee is waiting for an opinion from the AG's office on the constitutionality of the bill.

file on no-smoking

ALASKA STATE
MEDICAL ASSOCIATION
1135 W. Eighth Avenue • Anchorage, Alaska 99501 • (907) 277-6891

March 10, 1975

Representative Terry Gardiner
Chairman, Judiciary Committee
House of Representatives
Juneau, Alaska 99801

Dear Representative Gardiner:

We understand that House Bill 129 - "An Act limiting tobacco smoking in public places, vehiles, or other passenger-carring common carriers" has been referred to the Judiciary Committee for consideration.

We are also aware that CS 4 SB 148 has passed the Senate.

As indicated in our "Health and Legislative Action - 1975" packet, the Legislative Committee of the ASMA strongly supports legislation which would provide non-smoking and smoking areas in those areas related to public conveyance and work. We have been extremely pleased and gratified by the number of co-sponsors of HB 129.

Attached is some information which your committee may wish to use in its deliberations about this bill. We certainly strongly support passage of legislation like HB 129 and/or CS 4 SB 148.

If we can answer questions about this important health issue or porvide additonal information, please let us know.

Thank you very much for this consideration.

Sincerely,

Carolyn Brown

Carolyn V. Brown, M. D.
Chairperson, Legislative Committee

cVB:mlm
Attachment

ANCHORAGE MEDICAL SOCIETY
1135 W. EIGHTH AVENUE
SUITE 6
ANCHORAGE, ALASKA 99501

MAR 6 1975

February 19, 1975

The Honorable Terry Gardner
The House of Representatives
Pouch V
Juneau, Alaska 99801

SUBJECT: HOUSE BILL 129 - PROHIBITING SMOKING IN PUBLIC PLACES

Dear Mr. Gardner:

Whereas it is documented that smoking tobacco products in enclosed spaces such as those listed in House Bill #129, does cause accumulation of toxic levels of recognized air pollutants such as carbon monoxide, hydrocarbons, oxides of sulfur and nitrogen,

Therefore, the Anchorage Medical Society at its meeting on February 18, 1975 voted overwhelmingly to endorse and support House Bill #129. We urge the Legislature to accept and enact this bill.

Sincerely yours,

John J. Smith, M.D.,
President,
Anchorage Medical Society

JJS/nr

Dr Jim Patterson

12/74

PROPOSED PRESENTATION

I have been asked to speak on proposed legistation governing smoking in public places. I feel it is most important to remove as much as possible the emotional bias which exists in both the smokers and the nonsmokers. and to bring into effect realistic, practical and enforceable ordinances.

It is probably an infringement on a smokers civil rights as well as unrealistic to attempt to control his behavior through legislation in the name of reducing the hazard to his health. It is much more important to view the problem in another manner and to assure that the nonsmoker is not involuntarily exposed to the smokers increased health risks.

Certain evidence presently exists which clearly demonstrate that cigarette smoking is associated with an increased rate of disability and death due to coronary artery disease, malignant neoplasia of the bronchus, trachea and lung; chronic bronchitis and emphysema. Pregnant women who smoke produce infants of a lower birth weights which also have an increased mortality rate. Children who live in homes where the parents are heavy smokers have an increased number of upper respiratory infections and an increased school absentee rate.

Specific studies have demonstrated that in a relatively closed environment such as may exist in an elevator, a small room or in a vehicle that the toxic biproducts of cigarette combustion, namely dry particulate matter, tar, nicotine, carbon monoxide, benzpyrene and the oxides of nitrogen attain significant leveles in both the smoker and nonsmoker. Certain of the biproducts, namely carbon monoxide has been shown to exceed the occupation threshold limit value as specified in the USPHS air quality criteria.

Smoke from an ideling cigarette has been shown to release much more toxic biproducts into the environment than exhaled smoke from it human filter.

With the above facts in mind the ~~Anchorage~~ Mat-Su Valley Medical ~~Society~~ Association earnestly solicits your help and support in the passage of legislation to limit tobacco smoking in public places.

ASAtA

ASH SPECIAL REPORT

NONSMOKING LEGISLATION GROWS

Over the past several years more than a dozen states have passed legislation aimed at protecting the rights of nonsmokers. In several states — particularly Arizona, California, Nebraska, South Dakota, and Utah — the legislation is rather far reaching. Below is a state-by-state listing (the first ever compiled) of active state legislation protecting the rights of nonsmokers. What's happening in your state?

STATE	*NUMBER/SPONSOR/DATE*	*BANNED/RESTRICTED SMOKING IN:*
ARIZONA	1313 — Holsclaw — May 1973	Elevators, indoor theaters, libraries, art museums, concert halls, buses.
	1213 — Turley, Holsclaw, et. al., April 1974 Approved by the Governor May 2, 1974; Filed in Office of Secretary of State May 3, 1974. (Misdemeanor — not less than $10 nor more than $100 fine)	Expanded 1313 to include LECTURE OR concert hall, or bus which is used by or open to public, WAITING ROOM, REST ROOM, LOBBY OR HALLWAY OF A HEALTH CARE INSTITUTION, AS DEFINED IN CHAPTER 4 OF THIS TITLE: PUBLIC WAITING ROOM OF HEALTH ASSOCIATED LABORATORIES OR FACILITIES; PUBLIC WAITING ROOM OF ANY PHYSICIAN, DENTIST, PSYCHOLOGIST, PHYSIOTHERAPIST, PODIATRIST, CHIROPRACTOR, NATUROPATH, OPTOMETRIST OR OPTICIAN; SCHOOL BUILDING. Does not prohibit smoking in areas listed in subsection A if confined to areas designated AND POSTED as smoking areas.
CALIFORNIA	S.206 — Mills — March 1971	Railroad, stage, air carrier, street railway originating in State of California — provides separate sections.
	S.1112 — Mills — October 1973	Requires railroad, stage, air carrier, street railway corporations to display notices to specify locations of nonsmoking sections required by law.
CONNECTICUT	Public Act 74-126 (Substitute House Bill 5518 — April 1974)	"No person shall smoke in any room in a public building while a meeting open to the general public is in progress in such room" Fine $5.
	Public Act 73-90 (S.B. 8074 April 1973)	All common carriers (motor bus, passenger railroad car, school bus). Not applicable to special buses or compartments or parts of regular carriers set apart for smoking. Maximum fine $25.
FLORIDA	HB 1537—Operative April 1974	Department stores
	HB 318—Effective October 1974	Elevators--violators guilty second degree misdemeanor —maximum 60 days, $500.
ILLINOIS	GUIDELINES — Rep. Bruce Douglas—July 1974 FOR STATE EMPLOYEES—in State buildings.	Guidelines restricting or banning smoking in elevators, conference rooms, hallways; banning in all areas where ventilation is poor; future office space to be planned in such a way that nonsmoking employees can be accommodated.
MAINE	April 1974 FOR STATE EMPLOYEES	No-smoking areas established in STATE BUILDINGS by Governor, acting on report showing nearly 60% state employees nonsmokers. Department heads to set aside work areas for nonsmokers, wherever possible. Includes state cafeterias, public waiting rooms, employee lounges, and conference rooms.

PREPARED AS A PUBLIC SERVICE FOR THE INFORMATION OF PERSONS AND ORGANIZATIONS CONCERNED WITH THE PROBLEM OF SMOKING AND THE RIGHTS OF NONSMOKERS, BY ACTION ON SMOKING AND HEALTH, 2000 H ST. N.W. WASHINGTON, D.C. 20006.

YOUR SUPPORT OF OUR WORK ON BEHALF OF ALL NONSMOKERS IS VITALLY NEEDED!

Con't from overleaf

MASSACHUSETTS	ON/ABOUT September 1973	School buses when used for transporting school children.
MICHIGAN	December 1973	Smoking banned at Air Pollution Control Commission meetings.
MINNESOTA	As of June 1974	No smoking in designated areas of tuberculosis sanitoriums.
NEBRASKA	LB 600 — Shirley Marsh, signed by Governor in July 1974	Elevators, indoor theaters, libraries, art museums, concert halls, buses, open to and used by public except areas designated smoking areas. $10 to $100 fine.
NEW JERSEY	Act amending NJS 2A: 17—July 1972	Buses or railroad passenger cars (if posted with no-smoking signs) First offense $25.
OREGON	SB 508—Stevenson—June 1973	Any public meeting of a public body. Defines "meeting" and "public body." $10 fine.
PENNSYLVANIA	June 1974	Directive of Pennsylvania Public Utility Commission requires smokers to sit in rear 20% of INTRASTATE buses.
SOUTH DAKOTA	SB 52 — Austad, et. al. — March 1974, eff. July 1974 (By amendment, SB 199 was added as Section 2)	Elevators, indoor theaters, libraries, art museums, concert halls and public buses, plus elementary and secondary schools. $10 to $100 fine.
UTAH	1973 Penal code updating	Any enclosed public place, defined to mean hotel dining rooms, restaurants and other eating places, public transit, state, county, or city buildings. Owners of eating places may post signs designating their establishments as public smoking rooms
	As of June 1974	Buses
WASHINGTON	SHB 1979 — May 1974	Public meetings or state-owned buildings. (Legislation applies only to state-owned or controlled public buildings during meetings or hearings open to public).

ASH CHAPTER ACTIVITY EXPANDS

Below is a list of active ASH chapters. If a chapter already exists in your area, you and all other non-smokers are invited to join by writing directly to the address given below.

Arizona ASH
Mrs. Betty Carnes
11801 N. Sundown Drive
Scottsdale, Arizona 85254

San Diego ASH
Mrs. Angela Shefcik
P.O. Box 11392
San Diego, California 92111

Sebastopol ASH
Mr. Anthony McCormick
P.O. Box 935
Sebastopol, California 95472

Denver ASH
Mr. Milnor H. Senior
Suite 2013, 1700 Broadway
Denver, Colorado 80202

Connecticut ASH
Dr. Doris E. Nason
29 Agnes Drive
Manchester, Connecticut 06040

Chicago ASH
Ms. Eleanor H. Siegel
P.O. Box 2400
Chicago, Illinois 60690

Baltimore ASH
Mrs. Leslie Olsher
6668B Reider Court
Edgewood, Maryland 21040

New England ASH
Dr. David Wilson
15 Kennedy Road
Cambridge, Massachusetts 02138

New Hampshire ASH
Mr. Rick Lee, Program Director
New Hampshire Lung Association
456 Beech Street
Manchester, New Hampshire 03105

If there hasn't been a chapter established in your area, and you believe that there is sufficient interest, write to ASH and learn how to start and operate a chapter in your area.

Long Island ASH
Mrs. Rhoda Nichter
7 Maxine Avenue
Plainview, New York 11803

North Carolina ASH
Mr. Harry G. Gordon
1203 Onslow Drive
Greensboro, North Carolina 27408

ASH of Ohio
Mr. Marion E. Hoar
P.O. Box 242
Dayton, Ohio 45459

Delaware Valley ASH
Mr. Alan R. Goldstein
1801 Blackberry Lane
Gladwyne, Pennsylvania 19035

Pennsylvania ASH
Mr. Vincent Romito
P.O. Box 4983
Pittsburgh, Pennsylvania 15206

ASH of Dallas
Mrs. E. Earl Moore
7022 South Jan Mar
Dallas, Texas 75230

Logan ASH
Dr. Gordon H. Flammer
P.O. Box 1350
Logan, Utah 84322

Provo ASH
Mr. Curt A. Bench
755 N. 100 E, #109
Provo, Utah 84601

Assn. for Non-Smokers' Rights won a major victory in quest for legislation that would require all public buildings to have designated no-smoking areas when the Minnesota Hospital Assn. endorsed a three-point policy recommendation urging all hospitals to: prohibit visitors and staff from smoking except in designated areas; allow patients to smoke only with the approval of their physicians and, when in multi-bed rooms, with the approval of the other patient's doctor; and ban the sale of all tobacco products in the hospital. The association's recommendations have since been adopted by the Minnesota State Medical Assn.

CAPSULE COMMENTS

r than European men, according to the World Health rrowing. The rise in female mortality is probably ing and entrance into the job market..... A bill lf of their yearly expenses for installation and main- ling equipment has been introduced by Representative

ACROSS THE COUNTRY

carbon monoxide levels in the Eisenhower Tunnel, across icated that the ventilation system does not meet health nent of Health Study showed that the tunnel standard of 100 parts of CO per million parts of air per hour was exceeded 165 times between mid-November 1973 and March 1974. Motorists passing through the tunnel at the usual five-minute rate should not be adversely affected by the high CO concentrations. AMA

Connecticut: The Connecticut legislature has approved a bill that prohibits smoking at public meetings. The bill states "no person shall smoke in any room in a public building while a meeting open to the general public is in process in such room." A five dollar fine will be imposed for violation.

California: The Daisy Toy Lending Library, a service project of the Daisy Guild Community Volunteer Organization provides toys to families of developmentally handicapped children. The library lends toys free, conducts clinics to teach parents how to select appropriate toys in an orderly developmental sequence and teaches techniques of positive interaction during play.

New York: High school students from the Brooke County Youth Council on Smoking and Health are participating in a smoking education program. The student representatives from all the county's high schools meet for training sessions and then give programs to the area 4th grade classes. The programs include the use of a film and smoking mannequin and a discussion period.

Illinois: A Southern Illinois dairy firm is printing the Illinois State Department of Health's recommended schedule for immunizations on the sides of its milk cartons. The message is being printed as a public service to make parents and others responsible for children's health care aware of the importance of complete protection against childhood diseases.

CONFERENCES...MEETINGS

The National Environmental Health Association's National Environmental Conference will be held June 21-27 at the Netherland-Hilton Hotel in Cincinnati Ohio. Workshops on individual sewage disposal systems, food service establishment sanitation, solid waste management, penal institutions, consumer product safety and many others will be held. There will also be panel discussions, addresses by Congressmen and an awards banquet. Write: 1974 Annual Conference, National Environmental Health Association, 1600 Pennsylvania, Denver, Colorado 80203.

An international symposium on "Recent Advances in the Assessment of the Health Effects of Environmental Pollution" will be held by the Commission of the European Communities, the U.S. EPA and the World Health Organization. It will take place June 24-28, 1974, in Paris, France. Write: The Secretariate of the Symposium, "Environment and Health," Health Protection Directorate, Commission of European Communities, 29 rue Aldringen, Luxemburg (Grand Duchy).

A four-week Summer Institute on Air Pollution will be held by the Harvard School of Public Health: July 1-26, 1974. Registration will be limited to 30 members of faculties. Write: Dr. Bade Moeller, Harvard School of Public Health, 655 Huntington Ave., Boston, Massachusetts 02115.

Macrophage Activity Impaired in Smoke Inhaling Rats

Continued from page 1

following challenge, mice were exposed to puffed non-filtered cigarette smoke. They breathed in smoke for as long as four hours after challenge.

The number of *S. aureus* organisms that could be cultured from the trachea of these smoke-exposed mice fell markedly. The counts were two- to threefold below those that had been obtained from the mice in smoke-free air. This decline in tracheal clearance implied that greater than normal numbers of bacteria may remain trapped in the lungs. And this indeed was so. Termination of the cigarette smoke brought excellent results. Three hours later, clearance was back to normal.

Apparently, puffed smoke in these experiments led to an increase in the number of basal or unmobilized macrophages and did not interfere with the mobilization by mice of macrophages in response to the inhalation of *Staphylococci*.

"What happens to the alveolar macrophages when the smoke exposure is repeated?" Dr. Guarneri was asked.

"We have completed studies in which mice were exposed to cigarette smoke for one hour daily for 15 to 30 days. We got exactly the same results as those reported today. There was impairment which was reversible and no change in cell viability.

"In my opinion, all these studies point to the extraordinary ability of the normal respiratory tract to adapt and repair. It can apparently respond to an insult, such as bacteria, even respond to a hostile environment—especially if the hostile environment is removed," he declared.

"As out next step, we hope to study the structure and functional integrity of macrophages in normal animals," Dr. Guarneri told this publication, "and in animals exposed to cigarette smoke. Then we will analyze their continued ability to kill bacteria." ID

Macrophage Activity Impaired in Smoke Inhaling Rats

SAN FRANCISCO—Cigarette smoke reduces the ability of the respiratory system of animals to defend itself against bacteria, but the impairment can be reversed within hours by stopping the smoke inhalation. This assessment, which seems only commonsensical, was made by Joseph J. Guarneri, Ph.D., attending microbiologist at Long Island Jewish-Hillside Medical Center, New York.

The experiment was set up to see how cigarette smoke affects the ability of the respiratory tract to fight off bacteria. The normal lungs, after all, are free of viable bacteria, he commented, although the lower respiratory tract is constantly bombarded by airborne bacteria. It is normally cleansed by means of the cilia and by alveolar macrophage activity. These macrophages, found in the air sacs of the lungs, are mobilized when foreign matter is inhaled.

Their ability to ingest and destroy bacteria makes them essential to the defense of the lungs. Anything that impairs their mobilization or reduces the number of viable cells may predispose the individual to pulmonary infection.

As a first step, Dr. Guarneri established the norm—the ability of mice to rid their lungs and tracheas of bacteria following challenge. These first experiments took place in a smoke-free atmosphere. Mice received *Staphylococcus aureus* by means of an aerosol. Afterwards, the animals were sacrificed at intervals, and the trachea and lungs were removed in a separate block from each. These were washed out and bacterial counts were made.

Tracheal and lung clearance were effective and rapid—90 percent of the *S. aureus* deposited were cleared within four hours. Dr. Guarneri emphasized that these were the results of his first series of experiments and many more remain to be done.

Bacterial provocation mobilized the alveolar macrophages. Dr. Guarneri observed that the pulmonary deposition of *S. aureus* was accompanied by a 2.5-fold increase in the number of macrophages mobilized.

What influence would cigarette smoke have on the numbers of *Staphylococci* retained in trachea and lungs and on the numbers of viable macrophages mobilized? At various intervals

Continued on page 15

ADDITIONAL AWARDS GIVEN BY THE NATIONAL INTERAGNECY COUNCIL ON SMOKING AND HEALTH

On October 1,1974 at its fall Board of Directors meeting in New York City, the NIC presented Mr. John F. Banzhaf III, Executive Director of Action on Smoking and Health, with an award. Mr. Emerson Foote, NIC member-at-large, made the presentation on behalf of the Council citing Mr. Banzhaf's outstanding achievement invoking the Fairness Doctrine with respect to cigarette commercials.

Congressman John E. Moss of California was also honored with an award from the NIC for his invaluable leadership in the House of Representatives. The California Interagency Council, acting on behalf of the NIC, made the presentation at a special ceremony held in Old Sacramento, California, October 24,1974.

Senator Frank E. Moss of Utah is the third legislator chosen to be honored by the Council.Presentation of this award is scheduled for December 16 in Salt Lake City.

Three other awards announced by the Council and awarded in January 1974 went to the American Cancer Society, Dr. Luther L. Terry and the National Clearinghouse for Smoking and Health.

STUDY INPLICATES CARBON MONOXIDE

A recent study conducted by the Environmental Protection Agency has found that carbon monoxide has so saturated American's blood that nearly half of non-smokers have more of it in their systems than federal safety standards would allow.However smokers were found to have two to four times more. The study sponsored a survey of 29,000 persons in 18 areas including the nation's largest cities.

Carbon monoxide binds the red blood cells to displace oxygen. At high levels it is fatal but at lower levels it causes no known results. It is a special risk for heart patients, infants and the elderly. All vehicle related workers such as taxi drivers were found to have high levels of carbon monoxide.Other high groups were workers where carbon monoxide is coupled with industrial pollution, people who live where there are faulty furnaces and those exposed to heavy cigarette smoking indoors.

DEPARTMENT OF LABOR PROPOSES STANDARDS

The Department of Labor, Office of Standards Development announced in August its intention to prepare an environmental statement assessing the impact of a proposed standard for occupational exposure to carbon monoxide. They are currently collecting data on possible environmental impacts of the proposed standard. The issues of particular interest are.

/a/ Any medical or toxicological evidence which indicates exposure to carbon monoxide is harmful. /b/ Information on decrease in health hazard to workers if proposed standard is implemented. /c/ Current levels of occupational exposure. /d/ The extent to which carbon monoxide pollutes the ambient air and the decrease in pollution that will result from implementation of proposed standard.

THE NIC RESPONDS.

When the NIC learned of the proposed standard a letter was sent to the U.S. Dept. of Labor urgently requesting that the proposed standard include specific protection from carbon monoxide generated by cigarette smoking and other tobacco products. The Council's position cited our concern for smokers and non-smokers exposed to excessive carbon monoxide. It noted that non-smokers are not only exposed to high levels of carbon monoxide from transportation and industrial sources but are further endangered by being forced to breathe air contaminated by tobacco smoke. This latter hazard is certainly the most preventable source of carbon monoxide pollution.

Carolyn Brown

The Health Consequences of SMOKING 1974

124 pages

available from Atlanta Health Sci Library

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

Center for Disease Control

NEWSLETTER



ACTION on SMOKING & HEALTH

THE LEGAL ACTION ARM OF THE ANTI-SMOKING COMMUNITY

VOLUME IV, NUMBER 6 ©1974 ASH NOVEMBER-DECEMBER, 1974

ASH FILES ON AIRLINE SMOKING COMPLAINTS

Since announcing its new get-tough policy to enforce C.A.B. "no-smoking" section regulations aboard airplanes, Action on Smoking and Health has launched a three-pronged attack aimed at cleaner air for passengers.

As a first step, ASH has just filed a number of formal complaints with the Civil Aeronautics Board on behalf of supporters who have suffered from an airline's failure to comply with the C.A.B. rules. The most common complaints seem to be a failure to enforce the "no-smoking" rules in designated sections, or a failure to permit a nonsmoking passenger to sit in a "no-smoking" section.

The C.A.B. rules clearly state that airline personnel must vigorously enforce the "no-smoking" rule, and require smoking passengers to either move or refrain from smoking. The rules also provide that any nonsmoker who wishes must be seated in the "no-smoking" section, and do not excuse compliance in cases where an unexpectedly large number of nonsmokers appear, or in cases of multi-stop flights.

Unlike informal letters of complaint which hundreds of persons have already filed with the C.A.B., the ASH complaints seek penalties of as much as $1000 for each violation, and may also result in direct orders to the airlines to modify their policies. C.A.B. attorneys are now investigating the charges in these complaints.

As a second step, we are including as a special insert in the NEWSLETTER a letter signed by ASH's attorneys setting forth the text of the C.A.B. rules and explaining to airline personnel why they must be enforced. On the other side is room to record the information necessary to file a formal complaint. Many supporters have suggested that airline personnel are not familiar with the rules, and that showing them such a letter would substantially increase compliance. The letter replaces the idea of a small wallet-sized card suggested in the last issue of the NEWSLETTER which proved too small to contain all of the necessary information.

Finally, letters are being sent out to top airline personnel advising them of our new get-tough policy, and suggesting that they redouble their efforts to comply with the rules.

If you fly, it is suggested that you carry the enclosed letter with you and follow the instructions on the back of it carefully. If you do not fly, why not give it to a friend who does? Additional copies of the letter may be obtained upon request.

ASH depends solely on your contributions to support its fight against smoking. Please give generously to help yourself and others.

SMOKING BANNED IN D.C. STORES

January "white sale" bargain hunters in Washington, D.C. will be able to see the merchandise more clearly than they have in the past, beginning on New Year's Day.

On January 1, smoking will be banned in all District of Columbia retail stores and elevators. The regulation, introduced by Councilwoman Marguerite Selden, was passed by the D.C. Council November 19 and signed by Mayor Walter Washington on December 1.

It prohibits smoking in all retail stores in the nation's capital that employ more than 20 persons or have a capacity for 200 or more customers, and bans smoking in all elevators except those in single family dwellings.

ACTION ON SMOKING AND HEALTH EXTENDS SEASON'S GREETINGS
AND BEST WISHES FOR A YEAR OF GOOD HEALTH AND HAPPINESS IN 1975

TIME FOR A TAX INCREASE?

Washington observers note that increased cigarette taxes could become a major focus of interest in the upcoming 94th Congress, for a number of significant reasons.

For many years, the tax-writing House Ways and Means Committee has been dominated by Southerners and chaired by Rep. Wilbur Mills of Arkansas. With Mills' departure as chairman and expansion of the committee from 25 to 37 members, this situation will be altered considerably.

At the same time, many more citizens are becoming aware that, although Federal excise taxes or other items such as alcoholic beverages, airplane travel, and telephone service have often been revised or increased in recent years, the Federal tax on cigarettes has remained static at only 8¢ a pack since late 1951, more than 23 years ago.

Furthermore, they have noted that during this same period, every state in the Union has either enacted a cigarette tax (including North Carolina and Kentucky) or raised a pre-existing tax, some of them several times. Today, both Florida and Connecticut, for example, now levy more than 20 cents per package on this "luxury".

Also of significance is the fact that the new Chairman of the House Ways and Means Committee, Rep. Al Ullman of Oregon, through his press spokesman, has expressed an interest in hearing from concerned Americans about the cigarette tax situation. Interested readers may write to Congressman Ullman at the House Office Building, Washington, D.C. 20515.

FORD URGED TO PUSH FOR LOW-TAR CIGARETTES

The National Cancer Advisory Board has urged President Ford to personally and publicly appeal to the tobacco industry to market more low-tar and nicotine cigarettes.

In a resolution adopted Nov. 20, the Board said "the President of the United States might consider making a public personal appeal to the tobacco and cigarette industry for voluntary and rapid effort towards preferential marketing of low-tar and low nicotine cigarettes, and towards reduction of other smoke components that may be recognized as hazardous."

The board said the relationship between cigaret smoking and lung cancer had been established beyo doubt; that smoking has had severe impact on diseas of the heart, circulatory and respiratory systems, a that the public must be informed that there is known formula for a safe cigarette.

The resolution, a partial response to Mr. Ford's c reception to similar recommendations made by t board in its recent annual report to the Preside urged that a Federal agency be empowered by law set maximum levels of tar and nicotine for cigaret

BROOM HILDA — By Russell Myers



RENEWED YOUR CONTRIBUTION TO ASH, PLEASE DO SO NO
OUR NEWSLETTER.

NEWS YOU SHOULD KNOW

A heavy cigarette smoker burns 1,155 pounds of tobacco in his lifetime. By comparison, a cigar smoker consumes 935 pounds of the weed and a pipe smoker 468 pounds. According to Dr. John W. Turner of Wesson Memorial Hospital in Springfield, Mass., these figures might be a reason cigarette smokers are more prone to lung cancer than smokers of cigars or pipes. "For every additional 100,000 cigarettes smoked, the chance of a heavy smoker getting lung cancer is increased by 7 percent," he said.

★★★

In another recent finding, Dr. Bernard Roswit, chief of radiology therapy at the VA Hospital in the Bronx, said cigarette smoking is almost entirely responsible for lung cancer. Of a study of 8,000 patients with lung cancer, 98 percent were smokers, he reported. "The only way to stop this disease is to prevent it. And that means stop smoking," he said. Dr. Roswit said "a man who smokes two packs of cigarettes a day has about as much chance of surviving as a bull in Spain."

★★★

Scientists in England have warned that children's chances of getting pneumonia or bronchitis in the first year of life are nearly double when both parents smoke. If only one parent smokes, the chances of the child becoming ill are half as great again as for the child of nonsmoking parents. The scientists said they found a "serious risk to infants in the first year of life from exposure to their parents' cigarette smoke."

Glenn A. Goldberg has joined the staff of Action on Smoking and Health as General Counsel, working with Executive Director John F. Banzhaf III on the organization's legal action program. The small, devoted ASH staff, now completing another hard-working year, also includes Development Director Alfreda Winnings, Executive Secretary Faith Randall, Joy Peterson, Sandy Perrin and Terry Leonino. A special salute at the holiday season goes to these dedicated people.

When a smoker lights up in Dr. Jazz Old Fashioned Ice Cream Parlor in Chicago, smoke sensors automatically detect the burning tobacco, a loud siren sounds, and red lights begin flashing. Co-owner Mrs. Mary Ann Bortz, who has never smoked, said "people are often offended by someone coming over personally and asking them to put out their cigarettes. This form of group censorship appears very effective."

Bleak future for cigarette smoking? So predicts "The Futurist," a journal of forecasts, trends and ideas about tomorrow. In a recent issue, the magazine sees a sharp trend against smoking. It said some 41 million smokers have tried to quit and at least 10 million have succeeded since the Surgeon General's antismoking report of 1964. Although 52 million Americans puffed a record 583 billion cigarettes last year, the magazine said per capita consumption is 53 percent less than 20 years ago. The future will bring further declines, "The Futurist" said.

★★★

One of the nation's leading allergists says eight million Americans are allergic to tobacco smoke. "Tobacco sensitivity is now a major health hazard that involves some 16 percent of the allergic people in the nation," Dr. Bernard Zussman of Memphis, Tenn. recently told the International Congress on Allergies in Tokyo. "Sufferers must endure running noses and watering eyes. And breathing difficulties suffered by allergic persons when exposed to tobacco smoke can range from slight coughing, wheezing and shortness of breath all the way to violent asthma attacks and severe coughing spells," he said.

★★★

ASH supporter Joy Lattman Wouk of New York City reports that The Puffing Billy Restaurant at Madison Avenue and 86th Street in Manhattan has a "no puffing" section. "The old fashioned railroad decor may put 'puffing' in the name," Mrs. Wouk said, "but Lawrence Lowenstein, the proprietor, has set aside a section for nonsmokers which unfortunately is usually full so that some of us have to suffer." Lowenstein says he'll enlarge the nosmoking section as necessary.

★★★

For the first time in 126 years, members of the world's largest commodity futures exchange banned smoking on the floor of the Chicago Board of Trade. Board members voted 530 to 348 for the ban during trading hours from 9:15 am to 1:30 pm. Officials said there had been increasing complaints about indiscriminate smoking in the pits. Smoking had always been banned but the rule wasn't enforced. Some members found that holes were being burned in their clothing during wild flurries of trading in the pits.

EXECUTIVE DIRECTOR'S REPORT



Dear Friends of ASH,

The holiday season we are now enjoying will not be very merry for millions of people around the world because they will be dead, or dying of starvation or starvation-caused diseases. Tens of millions more, a substantial portion of the total world's population, will be going to bed hungry as we enjoy our holiday feasts. Although the causes of this crisis, and the problems of meeting it, are undeniably complex, one aspect is particularly ironic.

While millions of people are starving, and tens of millions are going to bed hungry, the world is producing and consuming almost TEN BILLION pounds of tobacco each year, TWO BILLION pounds of which are grown in the United States alone. Tobacco is a unique crop: It satisfies no nutritional needs whatsoever; it serves no socially essential purpose; its use is actually detrimental to the health of the user and to those around him; and the entire crop literally goes up in smoke. Yet, each year more and more is produced, and land and other valuable resources which could go towards feeding the starving is wasted. Moreover, at least in this country, this misuse is encouraged by massive government subsidies and other promotions, while our anti-smoking efforts are cut to the bone to save money.

Our country is now in the midst of a raging inflation, coupled with a decrease in production and rising unemployment. Thus, virtually every American family is looking for ways to cut corners and make each dollar go further. Yet, cigarettes cost the American public over FIFTEEN BILLION dollars a year from premature deaths, increased medical care, disability and other payments, tens of millions of days lost from work, forest and urban fires, fabric damage, additional cleanup costs, etc., over and above their cost of production and sale. Since the federal tax on cigarettes of only 8¢ a pack has not been raised since 1951(!), much of this burden is borne by nonsmokers through higher taxes, increased costs of products, services, insurance, etc. The cost is over $50 for every nonsmoking man, woman and child! Thus, we nonsmoking Americans pay through our taxes to subsidize smoking; we share in the substantially increased costs smoking inflicts on our society; and we suffer as a result from the befouling of the air we breathe.

Are you upset? Angry? Determined to do more about it? Then let us resolve together that in the year 1975 more MUST be done with regard to the problems of smoking. Let us resolve together that in the year 1975 we will speak up more for the rights of nonsmokers, and try to persuade at least one person each month to join the fight for life and clean air by joining ASH. With your continued help and support, ASH can continue to win for you, and for all Americans.

In closing, let me wish you, on behalf of everybody at Action on Smoking and Health, a very happy holiday season and the very best and healthiest New Year!

Yours for good health,

John F. Banzhaf III

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A.S.H.



Dr. Carolyn V. Brown
3140 Wesleyan Drive
Anchorage, Alaska 99504

IMPORTANT MESSAGE

FOR

DATE

TIME A.M. P.M.

Keep in file
will want to read
on floor when bill
is up for a
vote

February 23, 1979

Dear Mr. Gardiner,
We are the third and fourth grade class at Inlet View School, 1219 N street, Anchorage, Alaska. We are writing to you in regards to House Bill 129, sponsored by M. Miller. We want to support the bill and in addition we feel that smoking should be banned altogether in public places. We appreciate all the support you can give to this bill. Thank you very much for your help.

Sincerely,

Room 2

T. Gardiner - Judiciary

THIS PETITION IS ASKING ALL PEOPLE IN FAVOR OF THE HOUSE BILL 129, TO SIGN IT. HOUSE BILL 129 IS IN FAVOR OF BANNING ALL SMOKING IN PUBLIC AREAS WITH ACCEPTIONS TO SPECIAL PLACES DESIGNATED FOR SMOKERS.

"exceptions for"?

Marjorie A. Mock
Dennis C. Downs
Carol James
Mrs. Jacqueline Mitchell
Jane Kerns
Richard Kerns
Susan Miller
Daphne M. Stegman
Jean Wax
Dianne Dietrich
John T. Wise

Rep. * Terry Gardiner

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1 Timothy J. Campbell	1022 W 11th
2 Mrs Forrest L. Webb	1213 "I" St
3 George B Jenks	1134 H St
4 Fr. Dazin	1132 H St
5 John Maher	230 [illegible] Franklin Juno
6 Emil Chance	1101 "H" ST.
7 LaVerne C. Hill	1237 "H" St.
8 Jeanette Diamond	1245 G St
9 Elaine Hammes	1229 G St
10 Louise Wood	1047 G St
11 Sally Beerne	936 W 10th Ave
12 [redacted]	[redacted]
13 Feru Kawakami	1222 W. 10th Ave.
14	
15	
16	
17	
18	
19	

F. Gardner

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Alan T. Jones
Mrs. Frank Therrell
Diane B. Bedford
Mrs. Jack Griffin
Mrs. J. Snyder
Mrs John C. Flanagan
Pamela Page
[illegible]
Cynthia Wentworth
Pamela Root
Barbara Dickerson
Paul Colbert
Willie Edwards
Mike Brunet
Carol Brunet
[illegible]
Lance Fleischer
Carol Goldberg-Dickerson
Randy Dahn
Harold Wagner
Edith Wagner
Ester Lowenberg Nugent
William J. Nugent
Barbara Hodges

Al Waddell Jr.
Lorraine Harrison
Billy McCann
Barbara Conover
Eleanor Mulliken
[illegible] Mulliken
Lillian [illegible]

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Mrs. Forrest Doret
Holly Noret
Jodi Cameron

Mark Demmert
Eddie Still

Eric Logan
W. Benjamin Young
Domeinal Le frars
Mr. & Mrs. Bruce Walden

Terry Gardiner

THIS PETITION IS ASKING ALL PEOPLE IN FAVOR OF THE HOUSE BILL 129, TO SIGN IT. HOUSE BILL 129 IS IN FAVOR OF BANNING ALL SMOKING IN PUBLIC AREAS WITH ACCEPTIONS TO SPECIAL PLACES DESIGNATED FOR SMOKERS.

William N Davis	1010 W 10.
Virginia Beirne	1020 W 10th
William Y. Kimura	1025 W. 11th
Mabel M. Spencer	961 W 11th Ave
Gretchen Reeve	945 W. 11th Ave
Linda Hornberger	3501 E 42nd Apt 308
Julie Ann Shaw	830 W 12th
Joan S. Restigian	816 W. 12th.
Don Tuli	1124 H street
Kathy Reekie	1116 H St
Robert Reekie	1116 H St.
Steve McKinnon	1207 H St
Sue Linford	745 W. 13th
Don Kirby	1239 G. St
Catherine Heimer	1207 G. St
Muriel D. Carver	1135 G St.
Corinne A. Beirne	936 W. 10th Ave, Anchorage

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

TERRY GARDINER
P. O. Box 1092
KETCHIKAN, ALASKA 99901

Phone 225-3551

Alaska State Legislature

House

POUCH V
JUNEAU, ALASKA 99801

February 18, 1975

Ms. Betty McCormick
1506 Patterson
Anchorage, Ak. 99504

Dear Ms. McCormick:

Thank you for your letter in support of the effort to restrict smoking. Your point about a half a loaf is well taken and I think many legislators share your point of view. We are holding a public hearing on Thursday and will be working on the bill in committee, taking the edges off the rough spots. Hopefully then we will have a bill which will receive the necessary votes for final passage on the floors of the House and Senate.

Sincerely,

Terry Gardiner
Representative



February 15,1975

Rep. Terry Gardiner, D., Ketchikan
House Judiciary Committee Chairman
Pouch V, Juneau, Alaska, 99811

Dear Mr. Gardiner

This is written to let you know that I support your efforts to ban smoking in public places. As a non-smoker I resent being forced to breath tobacco polluted air. All to often I"ve had to sit in smoke filled meeting rooms only to go home with a severe headache and reeking with the odor of smoke.

I also resent shopping for food and garments where the goods have been contaminated by tobacco smoke. I do respect the right of a smoker to pollute his own lungs with tobacco smoke. At the same time I believe I have a right not to have the air I breath polluted with their smoke. In short, their freedom stops just short of my nose!

However, I believe it is only realistic to understand that smokers are addicts, (Many times, unwilling addicts) and if pushed to extremes will become vehement in their opposition. Therefore I think it is prudent to see this legistation from their point of view and not push them to the brink.

Banning smoking in enclosed public areas must be carefully spelled out and allowances for say Bar owners to ban or not ban smoking at their discretion. As a non smoker I would be willing to compromise. "A half a loaf is better than none."

Sincerely,

Betty McCormick

Ms. Betty McCormick
1506 Patterson
Anchorage, Alaska, 99504



DESIGNED FOR THE ALASKA CRIPPLED CHILDREN AND ADULTS. ALL PROFITS SUPPORT THEIR SERVICE PROGRAM.

Put in files on Smoking

Smoking poses health hazard

By Col. (Dr.) Joseph J. Pollock
Pulmonary Specialist, Elmendorf Hospital

The extent and importance of cigarette smoking in America and, in general, the Western Hemisphere, is astounding. Each year, 300,000 Americans die prematurely of the effects of smoking.

Millions more live with lung or heart disease which is all or in part related to smoking. Careful studies have documented that smoking is a mjaor cause of emphysema, chronic bronchitis, lung cancer and heart disease.

In Great Britain, 39 per cent of all deaths due to cancer in men are from lung cancer. Chronic bronchitis in large U.S. metropolitan areas has an incidence of about 20 per cent of the male population, while the incidence in women is not as high.

This, at least in part, is because women have not been smoking as long or as heavily as men. However, at the present time, about a million teenagers take up smoking each year and the percentage of teenage girls who smoke is almost as high as boys.

The cost per year of purchasing cigarettes, time lost from work and medical bills is incalculable — not to mention the human suffering involved.

Dr. Gareth Green, noted authority in pulmonary diseases, has said, "A future medical historian may describe as the health (mystery) of the 20th century, the phenomenon of an industry permitted to distribute so toxic a product to millions of the population in the face of full knowledge . . . of the social and economic costs to the culture."

Cigarette smoke contains at least 750 different chemicals in solid, liquid and gaseous state, of which carbon monoxide, formaldehyde, acetaldehyde, nitrogen dioxide and cyanide are just some of these substances.

The concentration of particulate matter in cigarette smoke is roughly 100 million times that of the worst air pollution disaster known. Smokers are sick in bed an estimated 88 million more days each year than nonsmokers.

Smoking speeds up your heartbeat, increases your blood pressure, upsets the flow of blood and air in your lungs and causes a drop in the skin temperature of your toes and fingers.

It also impairs, and over long periods, paralyzes the cilia of the lungs. Cilia work like brooms to clean your lungs of germs and dirt. Cigarette smoking also replaces some of the oxygen in your red blood cells with carbon monoxide.

Thus far this article has been designed to get the smoker to stop. Perhaps, all I have accomplished is making you so nervous that you have a cigarette to calm your nerves.

But how about the nonsmoker? Cigarette smoke affects the nonsmoker, too.

Inhaled second-hand smoke makes the heartbeat faster, increases the blood pressure and increases the blood carbon monoxide. There is more tar and nicotine from an idling cigarette than an inhaled one.

There is more cadmium in the smoke that drifts off the burning end of a cigarette than in the drag the smokers takes. The amount of carbon monoxide in the blood of a nonsmoker doubles in a poorly-ventilated room filled with cigarette smoke.

Researchers have found that lung illnesses are twice as common in young children whose parents smoke at home, compared to those with non-smoking parents. An estimated two million Americans are sensitive to tobacco smoke and suffer smoke-caused asthma attacks.

The U.S. Surgeon General has said, "Nonsmokers have as much right to clean air and wholesome air as smokers have to their so-called right to smoke, which I would redefine as a so-called right to pollute."

The American Lung Association has adopted this idea. Individuals wishing a copy of the Nonsmokers Bill of Rights can obtain a free copy from the American Lung Association of Alaska, 406 E Street, Anchorage, Alaska 99501.

for Terry Gardner, House Judiciary Committee
I just found out the bill is in your hands.
I found out,also, that there is some sentiment that simply having segregated sections on air craft is sufficient. That doesn't work. The only answer is no smoking period.

Juneau
February 15, 1975

Susan Sullivan
Chairman, HESS Committee
House of Rpresentatives

Dear Rep Sullivan:

HB #129 is very important and quite a constructive piece of proposed legislation.

I'm hoping that in addition to what is proposed in this bill, that smoking will no longer be practiced in offices. I have discovered that I am made ill by smoke present in an enclosed space and have found out that there are lots of people similarly situated. Smoke is a very serious health hazard not just to the smoker.

Tragically, a certain percentage of people seem to be born with the propensity to develop an adverse reaction to tobacco. This adverse reaction becomes apparent after repeated exposure to the offending substance. After the person becomes sensitized, he or she shows symptoms of allergy which sometimes are quite severe. It could mean that the person can't fly in a commercial airplane, for example. Here in Alaska, that's one awful fix to be in.

A local columnist mentioned the smoking legislation in what I think was not a very constructive light. I'm enclosing a copy of my letter I sent him. It helpes further explain why I agree that there is a need for legislation on this subject.

Sincerely,

Lynn D. Jamison
156 Behrends Ave.
Juneau, Alaska 99801

Juneau, Alaska
February 13, 1975

Mr. Vern Metcalf
Juneau, Alaska

Dear Vern,

I caught your story on spitoons and smoking in the Empire today. I take it that your offering was a lighthearted spoof on the subject of smoking in public places. I don't think your offering was too helpful or entertaining. Maybe you don't know about the serious quality of the issue. I'll tell you some of it.

The AMA estimates that 34 million Americans have respiratory illnesses which are aggravated in a serious way when these people encounter smoke in public buildings. There are several other conditions that are worsened by smoke in the air and tobacco smoke is harmful to <u>everybody</u>. If you would like some data on what tobacco smoke does to smokers and non-smokers alike, check with Grace Akiyama, a local representative of the National Lung Society.

As for the need for legislation, that's the way it is in America these days. People just don't seem to be able to be considerate. I've tried friendly slogans like, "If you don't put smoke in my air, I won't spit in your beer". This approach does not work. Actually, smoking in the presence of another is an ego-centric, childish act in which one person indulges his perceived need oblivious of the needs of others. We have too much of doing your own thing in this country, it seems. There may be times and places where doing your own thing in the form of tobacco smoking would be appropriate. Certainly, if you want to smoke at home (and your family doesn't object), that's your business. In public buildings, however, the smoker should realize that the moment his smoke that he looses into the air enters the nostrils of another, the smoker has created a problem. If he persists in smoking, he is carrying "doing your own thing" too far. I, for example, have a respiratory illness that is aggravted by smoke. I have not licensed anyone to dispose of the products of tobacco combustion into my share of the air.

I feel very strongly that the so-called rights you refered to in your article do not exist as such. Smokers have been enjoying a privilege, not a right. What ever happened to consideration in our country?

I realize that you smokers are very much attached to your habits. But, the practice is archaic; the rights of the others who would like to breath in public places without being injured in the process must also be considered. As for spitoons, I suppose someone may feel that they are a bit unsightly, but they don't cause near as much misery as does smoke.

Yours,

Lynn D. Jamison
156 Behrends Ave
Juneau, AK 99801

February 7, 1975

TO: Senator Robert Ziegler

FROM: Terry Gardiner

SUBJECT: HB 129

HB 129, relating to smoking in public places, has been introduced in the House and sent to HESS and Judiciary. It is planned that the bill will be moving out of HESS the first part of next week.

Senator Miller has suggested that House Judiciary and Senate Judiciary hold some sort of joint public hearing on HB 129 and Senator Miller's bill. He has suggested that the hearing be scheduled for a couple weeks from now to allow time for any interested citizens to come to Juneau.

Introduced: 2/7/75
Referred: Health,Education &
Social Services and Judiciary

BY MILLER,ANDERSON,BEIRNE,BRADNER,
BROWN,BUCHHOLDT,COTTEN,DAVIS,DUNCAN,
ELIASON,GARDINER,GRUENING,HACKNEY,
HERSHBERGER,ITTA,MCKINNON,NAUGHTON,
OSTERBACK,OSTROSKY,RHODE,SMITH,
SPECKING,SULLIVAN AND SWANSON

IN THE HOUSE

HOUSE BILL NO. 129

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act limiting tobacco smoking in public places, vehicles or other passenger-carrying common carriers."

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

* Section 1. AS 18.35 is amended by adding new sections to read:

ARTICLE 4. HEALTH NUISANCES.

Sec. 18.35.300. TOBACCO SMOKING IN PUBLIC PLACES, VEHICLES PROHIBITED. Smoking tobacco in any form in any one of the following places or vehicles used by or open to the public creates a public nuisance dangerous to the public health and is prohibited:

(1) a train, plane, ferry, bus, taxi, courtesy car or any other passenger-carrying common carrier;

(2) a library, indoor theater, museum, lecture or concert hall, gymnasium, swimming pool, bowling alley, or other place of ~~public~~ entertainment or recreation;

(3) a state or municipal office building, a public school, or in a room, chamber, place of meeting or public assembly under the control of the state, or a municipality, or department or agency of either, while a public meeting is in progress;

(4) the public waiting room of a physician, dentist, psychologist, physiotherapist, podiatrist, chiropractor, optometrist, optician, or any other practitioner of the healing arts;

(5) the public waiting room of laboratories associated with health care or the healing arts; or

(6) the waiting room, rest room, lobby or hallway of a

Sec. 18.35.350. DEFINITIONS. In secs. 300 - 340 of this chapter "smoke" or "smoking" tobacco means the carrying or possession of a lighted pipe, lighted cigar, or lighted cigarette of any kind, or other lighted smoking material, or the lighting of it.

The Seattle Times

AN INDEPENDENT NEWSPAPER

Founded August 10, 1896

Alden J. Blethen, 1896-1915 *C. B. Blethen, 1915-1941*
Elmer E. Todd, 1942-1949 *W. K. Blethen, 1949-1967*

John A. Blethen, Publisher
W. J. Pennington, President

SUNDAY, MARCH 16, 1975

The Times' opinion and comment:

Smoking ban in tune with the times

ACTING on the theory that the one third of the people who smoke ought not to have the right to pollute the breathing space of the two thirds who abstain, the State Board of Health has prohibited smoking, effective May 1, in most public places.

To our mind, the board's action was a forward step and in tune with a nationwide trend as evidenced by separate sections for smokers and nonsmokers on airplanes and other public conveyances.

The new rules require the posting of "no smoking" signs in most enclosed public areas; not, however, in bars and restaurants.

True, the board has no enforcement authority; violators cannot be fined or otherwise penalized by the state. The question of whether the board should ask the Legislature for enforcement authority is an open one at present, and perhaps that is just as well.

Smoking mores are changing, and it could be that social pressures, together with the Health Board's ban, will prove increasingly effective in providing relief for nonsmokers.

SB 180 The Resources Committee has had SENATE BILL NO. 180 (relating to salmon hatcheries) under consideration and the committee recommends it do pass. The report was signed by Senator Poland, Chairman, and concurred in by Senators Meland, Butrovich, Orsini and Rodey.

SENATE BILL NO. 180 was referred to the Rules Committee.

SB 181 The Resources Committee has had SENATE BILL NO. 181 (loans for construction of hatchery facilities) under consideration and the committee recommends it do pass. The report was signed by Senator Poland, Chairman, and concurred in by Senators Meland, Butrovich, Orsini and Rodey.

SENATE BILL NO. 181 was referred to the Finance Committee.

SB 148 The Judiciary Committee has had SENATE BILL NO. 148 (smoking in public places) under consideration and the majority of the committee recommends it be replaced with COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 148 and that the committee substitute do pass. The report was signed by Senator Ziegler, Chairman, and concurred in by Senators Miller, Tillion and Meland. Senator Poland signed "no recommendation."

SENATE BILL NO. 148 was referred to the Rules Committee.

The following letter accompanied the Judiciary Committee report on SENATE BILL NO. 148:

COMMITTEE REPORT ON CSSB 148

The Senate Judiciary Committee's substitute for SB 148 represents a satisfactory compromise between two competing elements within the general public: first, the legitimate desire of many nonsmoking Alaskans not to be subjected to the smoking habits of others; and, second, the long-standing practice of Alaskan smokers to freely smoke where they please.

After receiving written and oral testimony, the committee has opted for legislation which restricts smoking in certain public places: public places where a ban on smoking, or at least a requirement for separate smoking and nonsmoking areas, is both reasonable and in the public interest.

The committee notes that local government may wish to consider more stringent controls on smoking. Within the local government context, each community may, by ordinance, place greater restrictions on smoking

in public facilities as deemed proper by the prevailing community sentiment. SB 148

Similarly, each department of state government should review its policy in this regard towards the possible goal of establishing separate smoking and nonsmoking areas within state owned or leased buildings. Utilizing this individual approach, carefully considering the separate circumstances involved, better determinations can be made. This case by case approach is clearly superior to legislating one set of smoking rules for all public facilities.

Concerning the penalty provisions in this measure, it is recommended the Court System use its rule-making power to establish a "mail-in" bail system similar to the one recently instituted for minor traffic offenses whereby an individual may pay a fine by mail and waive a Court appearance. Establishment of such a system would do much to relieve the Court of potential congestion resulting from enforcement of this bill.

The committee feels that more restrictive legislation, at this time, would be inappropriate. No doubt future legislatures will review this policy question and as greater scientific evidence becomes available involving the effects of smoking on nonsmokers, more restrictive legislation may become necessary. However, as of this date, it is felt that CSSB 148 represents a careful balancing of competing interests and accordingly, should be enacted into law.

Robert H. Ziegler, Chairman
Senate Judiciary Committee

Terry Miller, Member
Senate Judiciary Committee
And Sponsor of SB 149

The State Affairs Committee has had SENATE BILL NO. 173 (Alaska industrial incentive taxes and tax credits) under consideration and the committee recommends it do pass. The report was signed by Senator Ferguson, Chairman, and concurred in by Senators Huber, Miller, Meland and Colletta. SB 173

SENATE BILL NO. 173 was referred to the Finance Committee.

INTRODUCTION AND REFERENCE OF SENATE RESOLUTIONS

SENATE JOINT RESOLUTION NO. 18 by Senator Ray, SJR 18

Relating to the closure of the USARAL Military Affiliate Radio System (MARS) command radio station, AB7USA,

was read the first time and referred to the State Affairs Committee.

February 26, 1975

Ms. Helen L. Eldredge
Box 1557
Ketchikan, Ak. 99901

Dear Ms. Eldredge:

Thank you for your letter in support of HB 129. You can be certain of my support, as I am one of the chief sponsors. HB 129 has passed out of the House HESS Committee and is now in the House Judiciary Committee, which I chair.

We have conducted a joint public hearing between the House Judiciary Committee and the Senate Judiciary Committee, which is chaired by Senator Ziegler. It appears that we will be able to get the bill through the House easily enough. Senator Ziegler has expressed some opposition to the House version but might be amenable to a weaker version of the bill. House Judiciary is currently in the process of amending HB 129 in an effort to make it more acceptable to all and, hopefully, encourage its passage.

Sincerely,

Terry Gardiner
Representative

February 23, 1975

Terry Gardiner
State Representative
Pouch V, State Capitol
Juneau, Alaska 99801

Dear Terry:

As a non-smoker I urge you to support the passage of House Bill No. 129.

Being a member of the Board of Directors for the Alaska Lung Association, I know the harm smoking can do and does do to both smokers and non-smokers.

Thank you for your support and for sending me your Legislative Reports.

Sincerely yours,
Helen L. Eldredge
Box 1557
Ketchikan, Alaska
99901

Helen I Eldredg
P.O. Box 1557
Ketchikan, Alaska 99901

KETCHIKAN, AK
FEB 24



February 25, 1975

Mrs. Jennings Graham
P.O. Box 544
Ketchikan, Ak. 99901

Dear Mrs. Graham:

Thank you for your excellent letter in support of HB 129. You can be certain of my support, as I am one of the chief sponsors. HB 129 has passed out of the House Health, Education and Social Services Committee and is now in the House Judiciary Committee, which I chair.

We have conducted a joint public hearing between the House Judiciary Committee and the Senate Judiciary Committee, which is chaired by Senator Ziegler. It appears that we will be able to get the bill through the House easily enough. Senator Ziegler has expressed some opposition to the House version but might be amenable to a weaker version of the bill. I am sending him a copy of your letter in case you have already not done so.

I am entering your letter as part of the written record on HB 129.

Sincerely,

Terry Gardiner
Representative

P. O. Box 544
Ketchikan, Alaska 99901
February 22, 1975

Representative Terry Gardiner
Chairman, Judiciary Committee
Pouch V
State Capitol
Juneau, Alaska 99801

Dear Terry:

I am writing in support of HB 129.

I have suffered through hundreds of meetings in smoke-filled rooms, but let me tell you about a recent occasion. In November I sat with the Grand Jury for three days, during which time the District Attorney and about half of the jurors smoked. I was ill with inflamed sinus and sore throat for a week afterwards, and then developed strep throat and was ill for another two weeks with doctor bills of over $70.00, plus medications, etc. (I know, of course, the strep was caused by a germ, but I am not sure it would have affected me in my normal state of health.) Dr. Art Wilson Jr. has offered to write a letter for me enabling me to be excused from future jury duty, etc. but I feel I have as much right to participate in public meetings and civic duties as the smoker, and I don't want to give up such things if I can help it.

Another juror who served at the same time, Betty Constable, went home every evening with terrible headaches from the smoke.

Sharon Wilson, who had just recovered from virus pneumonia, had to be excused from the jury because the smoking aggravated her coughing so severely.

To a person who is sensitive to cigarette smoke, this is a problem we must continually contend with. Ironically enough, if K.P.C., or any other industry, produced pollution sufficient to cause those physical symptoms in people, imagine the consequences they would face.

As an ex-smoker myself I can sympathize with the smokers too, but in most cases a smoker can leave the room to have a cigarette when necessary. It is not always possible for the non-smoker to leave the room to breathe when necessary.

I hope you will give your favorable support to HB 129.

Sincerely,

Anne Graham

Mrs. Jennings Graham

cc: Rep. Oral Freeman

"An Act limiting tobacco smoking in public places, vehicles or other passenter-carrying common carriers."

COMMITTEE REPORT

2/11/75

HOUSE

Mr. Speaker: Date _____

The Committee on JUDICIARY has had HB 129

under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR HB129 AND THAT CS FOR HB-1 DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

For an Act entitled: "An Act limiting tobacco smoking in public places and vehicles."

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

* Section 1. AS 18.35 is amended by adding new sections to read:

ARTICLE 4. HEALTH NUISANCES.

Sec. 18.35.300. TOBACCO SMOKING IN PUBLIC PLACES, VEHICLES PROHIBITED. Smoking tobacco in any form may constitute a nuisance and be dangerous to the public health, and is prohibited in the following areas, unless otherwise exempted by this chapter:

(1) in any motor vehicle, ~~aircraft,~~ train, watercraft or other transportation mechanism, which carries passengers for hire;

(2) in a publicly owned and operated library, indoor theater, museum, lecture or concert hall, gymnasium, swimming pool, or other indoor publicly owned and operated place of entertainment or recreation;

(3) a state or municipal office building, a public school, or in a room, chamber, place of meeting or public assembly under the control of the state, or a municipality, or department or agency of either, while a public meeting is in progress;

(4) the public waiting room of a physician, dentist, phychologist, physiotherapist, podiatrist, chiropractor, optometrist, optician, or any other practitioner of the healing arts;

(5) the public waiting room of laboratories associated with health care or the healing arts; or

(6) the waiting room, rest room, lobby or hallway of a

hospital, nursing home, rest home or other health care institution or facility; or, in a room of a hospital, nursing home, rest home or other health care institution or facility in which more than one patient is accommodated, unless all patients residing or hospitalized in that room are in agreement that smoking is permitted.

Sec. 18.35.310. EXEMPTIONS. Smoking in the places or vehicles set our in sec. 300 of this chapter is permitted if

(1) the smoking is confined to areas which are specifically designated as smoking areas;

(2) The place, vehicle or passenger carrier is being used for a private gathering or affair which is privately sponsored and is not open to the general public;

(3) the smoking is done by performers upon the stage as part of a theatrical production;

(4) the passenger carriers found in sec. 300(1) when all passengers consent; or

(5) the department has exempted the building or room on the basis that it is sufficiently well-ventilated by natural or mechanical means.

Sec. 18.35.320. SMOKING AREAS PROVIDED. (a) In any building covered by sec. 300(2), (3) or (6), reasonable smoking areas must be provided, unless prohibited for the protection and preservation of the building or its contents. ~~Wherever practicable, the state shall require [illegible] and sublessors to provide separate smoking areas.~~ (b) To the extent practicable, the state shall require any of its lessees + sub " to provide separate smoking areas

Sec. 18.35.330. DISPLAY OF SMOKING PROHIBITED SIGNS. Every owner, manager, proprietor or other person who has control of a place or vehicle set out in sec. 300 of this chapter shall conspicuously display a sign conveying the message that smoking is prohibited by law except in designated areas. The format of such signs shall be approved by the department.

Sec. 18.35.340. REGULATIONS. The department may promulgate regulations implementing secs. 300 - 330 of this chapter.

Sec. 18.35.350. PENALTIES. (a) A person who violates the provisions of sec. 300 of this chapter is punishable by a civil fine of not less than $10 nor more than $100 for each offense.

(b) A person who violates sec. 330 of this chapter is punishable by a civil fine of not less than $10 nor more than $300 for each offense. ~~Each day a violation continues~~ constitutes ~~a separate~~ offense.

Sec. 18.35.360. DEFINITIONS. In secs. 300 - 350 of this chapter

(1) "smoke" or "smoking" means the carrying or possession of a lighted pipe, lighted cigar, or lighted cigarette of any kind, or other lighted smoking material, or the lighting of it;

(2) "department" means the Department of Health and Social Services;

(3) "publicly owned and operated" includes properties held, used, or controlled by the state without reference to ownership, but excludes facilities leased by the state to a private enterprise. ~~Whereever practicable, the state shall require lessees and sublessees to provide separate smoking areas.~~

HB

138

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER / POUCH S—JUNEAU 99801

February 14, 1975

The Honorable Terry Gardiner
Chairman, House Judiciary Committee
Alaska State Legislature
State Capitol Building
Juneau, AK 99801

Dear Mr. Gardiner:

re House Bill No. 138

House Bill No. 138, an Act relating to the collection of civil penalty under the Alaska Net Income Tax Act was introduced in the Alaska State House of Representatives on February 11, 1975 by Representative Richard Eliason by request and was referred to the House Judiciary Committee.

Since the proposed legislation will assist the State through the Department of Revenue in the collection of the Alaska Net Income Tax withheld from employees by corporations but not paid to the State, I have requested Mr. Ralph Kimlinger, Director, Collection Division of the Department of Revenue to prepare a memorandum outlining the problem of the Collection Division and the effect of the remedial legislation as contained in House Bill No. 138.

The Federal Internal Revenue Code provides similar language for use as an effective collection tool in securing payments of delinquent Federal Income Tax withheld from employees but not paid by corporations to the Internal Revenue Service.

Basically there have been numerous cases in which corporations which have unsound financial structures have withheld state income tax from employees and then diverted the proceeds to pay operating bills with these "trust" funds and not pay over to the state the tax withheld from employees wages.

The civil penalty referred to amounts to an assessment of 100% or an amount equal to the state income tax withheld from employees but not paid over to the state. The civil penalty is assessed against the officer responsible for the collection of and payment of the income tax withheld from employees of the corporation.

The State presently has the authority to make the civil penalty assessment but does not have the statutory authority to effect collection by use of a Warrant for Distraint to levy upon the individual bank account or file liens upon the assets of the individual corporate officer responsible for the failure to collect or pay the income tax withheld.

Should you or members of the House Judiciary Committee have any questions concerning Mr. Kimlinger's memo dated February 14, 1975, copy of which is attached, kindly advise the writer by telephone at 465-2397 so that I can arrange for Committee testimony by Mr. Ralph Kimlinger, Director, Collection Division of the Department of Revenue and members of his staff.

Respectfully yours,

R. D. Stevenson
Special Assistant

RDS:sp

Enclosures

cc The Honorable Richard Eliason
Member, House Labor & Management Committee
Alaska State Legislature
State Capitol Building
Juneau, AK 99801

Ralph Kimlinger
Director, Collection Division
Department of Revenue
State Office Building
Juneau, AK 99801

MEMORANDUM State of Alaska

TO: R. D. Stevenson
Special Assistant
Department of Revenue

DATE: February 14, 1975

FILE NO:

THRU: Ralph Kimlinger, Director
Collection Division

TELEPHONE NO: 465-2318

FROM: Marilla Gemmer
Enforcement Officer
Supervisor
Collection Division

SUBJECT: House Bill No. 138
Collection of Civil Penalty
under the Alaska Net Income
Tax Act

House Bill No. 138 amends Alaska Statute 43.20.335(g) by adding the following language:

> The civil penalty shall be paid upon demand by the commissioner or his designee, and shall be assessed and collected in the same manner as taxes are assessed and collected under this chapter. Any reference in (a) - (f) of this section to "tax" imposed refers also to the civil penalty provided under this subsection.

In effect, what this amendment does is to enable the department to proceed with the collection of 100 percent penalty assessments against officers of corporations for withholding taxes which have not been paid to the state.

Title 43.20.335(g) gives the department the authority to levy a civil penalty equal to the total amount of the tax evaded, not collected, not accounted for, or not paid over. The procedure for levying this penalty is through the use of a Warrant for Distraint. Under the present language we have no authority to enforce this Warrant for Distraint. In other words, we cannot levy on the bank accounts of the responsible officers or file enforceable liens against his property. The amendment we have requested will authorize the department to collect these 100 percent penalties in the same manner as other taxes and provides for the fair and equitable treatment of this class of taxpayer with all others.

MG:go

HB

140

May 5, 1975

TO: Senator Roday

FROM: Terry Gardiner

SUBJECT: HB 140

I would like to suggest the following changes to be made to the Judiciary CS for HB 140:

change "borough" to "municipality" (page 2, line 8 and 15 and other places in the bill)

after "assembly" add "or council" page 2, line 17, and other places in the bill.

BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 140

Sec. 29.33.100. OFFICIAL MAP. (a) The assembyl of a first or second class borough or the council of a first calss city located in the unorganized borough may adopt and modify by ordinance an official map based upon the recommendations of the planning commission and consistent with the comprehensive plan. The map shall show existing and proposed future streets, shcools, park aand and trails and the area needed to acquire, widen and enlarge them. It shall be prepared in sufficient detail to permit the establishment of the future acquisition lines on the ground and shall be attested to by a registered land surveyor. After adoption, a certified copy of the map shall be recorded in each recording district in which any of the land shown on the map is located. The adoption of the official map shall establish a reservation of the areas shown for future acquisition for the purpose indicated on the official map. The recorded official map is notice of the planned future location of major streets, schools, parks, and trails, but does not relieve the borough or city of the obligation to acquire these areas in the manner prescribed by law.

(b) For the purpose of preserving the integrity of an official map, no plat may be recorded and no permit may be issued for a building, or other structure located within a street, school site, park land or trail, or other area identified for public purposes shown or laid out on the map except as provided in this section. However, the reservation of particular property for public use under the map lapses and becomes void 18 months after an owner of the property reserved makes application for a preliminary plat, special exception, or building permit for the location or construction of a building or structure within the area reserved, unless during that time the municipality acquires the property or files eminent domamn proceedings to acquire the property. Property reserved on the map but not acquired within five years after the reservation is

recorded in the district recorder's office shall automatically be released from the restrictions of the map, unless affirmative action is taken by ordinance to hold or reserve the property on the map for another five-year period.

(c) The adoption of an official map does not of itself give the municipality a right, title, or interest in areas identified for public purposes but authorizes the ~~borough~~ municipality to acquire an interest without paying compensation for buildings or structures which are created in those areas without a permit or in violation of the conditions of a permit.

(d) At the request of the state, the assembly or council shall reserve land for the state in the same manner and on the same terms that it reserves land for the municipality.

(e) At the time the owner files a preliminary plat or requests a building permit, the municipality shall offer to purchase an option on the owner's property reserved on the official map. The option price shall be equal to the amount of taxes paid by the owner on the property reserved on the official map accruing during the 18-month reserve period.

(f)

(g)

HB

151

Kathy Jackobsen
3416

REGISTRATION FEE — LOG BRANDS

YEAR	No. OF BRANDS	COST*	@ $5 ACTUAL REV. REC'D	REVENUE THAT WOULD BE REC'D @ $10	@ $15
1971	49	$735	$245	490	735
1972	39	585	195	390	585
1973	67	1005	335	670	1005

* Estimated that three hours are expended to register a brand.

Average cost per hour $5

for 1971 49 brands times 3 hours
times $5/hour cost $735
For the year - revenue received
at $5 registration fee
equaled $245.

HB-151

Statute as it will read following amendment:

Sec. 45.50.300. REGISTRATION AS CONSTRUCTIVE NOTICE. Registration by the department and filing for record in the department's files of a true copy of the certificate of registration or the transfer instrument (RECORDS OF THE RECORDING DISTRICT) is (ARE) constructive notice of the ownership of the brand (AND OF TRANSFERS OF IT).

Statute presently reads:

Sec. 45.50.325. DEFINITIONS. In secs. 210 - 325 of this chapter

(1) "brand" includes mark or other designation which has been registered with the department;

(2) "department" means the Department of Natural Resources;

(3) "timber property" means logs, pilings, poles, other timbers, boom sticks and boom chains.

Statute as it will read following amendment:

Sec. 45.50.325. DEFINITIONS. In secs. 210 - 325 of this chapter

(1) "brand" includes mark or other designation which has been registered with the department;

(2) "commissioner" means the commissioner of the Department of Natural Resources;

(3) "department" means the Department of Natural Resources;

(4) "timber property" means logs, pilings, poles, other timbers, boom sticks, and boom chains.

Justification for amendments:

The two principal reasons for the proposed amendments are: (1) the fee for registration is no longer practical and (2) the requirement to record the certificate of registration in a recording district is unreasonable, burdensome on the brand owner, and serves no worthwhile purpose.

this writing, there are 234 registered brands of record. In 1971, 4[illegible] brands were registered, in 1972, 39 brands were registered. It is estimated that preparation of registration certificates, records maintenance, correspondence, publication of the biennial list of brands, and general administra[illegible] of the program requires an average of three man hours for each brand registered each year. Using a conservative rate of $5 per man hour, the cost of the program in 1971 would be $735 and in 1972, $585. Revenue for registration fees for the same years is $245 and $195 respectively.

We do not necessarily believe that log brand registration should be a money making program, however, the fees charged for registration should at least offset a reasonable amount of the costs incurred by the state. The proposed amendment to sec. 45.50.210(b) provides for a registration fee of $10. Although this is twice the present fee, which has been in effect since 1955, we believe the increase is both reasonable and justifiable.

No increase is proposed in the fees for registering a transfer of a brand or for furnishing certified copies of registration certificates or transfer instruments. In the two years that this department has been administering log brand registration, we have not received a single request for a transfer or certified copy.

AS 45.50.250 provides that each person holding a registered log brand shall file the certificate of registration or a certified copy of the certificate for record with the recorder of the recording district where the brand will be used. AS 45.50.260 provides for recording in a recording district of the instrument for transfer of brand ownership. AS 45.50.300 provides that filing for record in a recording district is constructive notice of ownership.

In the case of livestock brands, also administered by this Department, it is noted that the law does not require that such brands be recorded in a recording district. AS 03.40.030 provides that livestock brands be recorded by the Commissioner of Natural resources. In the case of motor vehicle registration, AS 28.05.010 requires the Department of Revenue to "observe, administer, and enforce this chapter." There is no requirement in the statute for recording other than by the Department of Revenue. This implies that the only recording is in the offices of the respective departments.

therefore, it appears that an inconsistency exists between the requirements for recording timber property brands and those for recording livestock brands or automobile ownership. Also, it seems unlikely that very many log brands are recorded as the statutes presently require. The only complete official records of log brand registration and ownership are maintained by this department. Since this department is required by law to register log brands, issue certificates of the registration, and publish a biennial list of all registered brands; such registration and resultant record keeping should constitute ample recording. The only purpose served by recording a brand in a recording district is to record ownership of the brand and therefore, only serves to duplicate the work of this department.

The proposed amendments to AS 45.50 eliminate the requirement for recording in a recording district and instead provide that registration and filing by the Commissioner in the department's files is sufficient recording.

Sec. 45.50.210(c) following amendment would have the words <u>of registration</u> added following certificate in the first line and change previously registered to <u>presently registered</u> in order to clarify the intent of the section. A "previously" registered brand could mean any brand that was ever registered. There is no practical reason for not registering a "previously" registered brand in the name of any person so long as the brand is not now "presently" registered in the name of another person.

The proposed amendment to Sec. 45.50.250 eliminates the requirement to record in a recording district and instead provides for <u>recording in the department's files by the commissioner</u>.

The proposed amendment to Sec. 45.50.260 clarifies transfer of a brand and eliminates the requirement to record transfers in a recording district.

The proposed amendments to Sec. 45.50.270, 280, and 290 contain minor word changes to make the wording consistent between these sections and with other sections.

The proposed amendment to Sec. 45.50.300 eliminates recording in a recording district as constructive notice of ownership of a brand and instead provides that <u>registration by the department is constructive notice of ownership</u>.

HB

154

"An Act relating to criminal assault."

2/12/75

COMMITTEE REPORT

HOUSE

Mr. Speaker: Date _____

The Committee on Judiciary has had HB 154 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(✓) recommends it BE REPLACED WITH CS FOR HB 154 AND THAT CS FOR HB 154 DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Jerry Gardiner	[illegible]	
[illegible]	[illegible]	
[illegible]		
[illegible]		

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Jerry Gardiner Chairman

February 20, 1975

House Judiciary Committee
Statement of Intent on CS HB 154

It is the intent of the committee to: first, delete archaic language found in the existing assault statutes; second, to include uniform provisions for fine and imprisonment for any type of assault; and third, because assault is a serious offense, to raise the maximum sentence for simple assault and assault and battery.

A section on aggravated assault has been added in order to cover the situation where great bodily injury results from an assault. The penalty for such an attack should be much more severe than it currently is (being only a simple assault misdemeanor with a maximum sentence of six months). An example of an aggravated assault might be the professional beating situation where the victim is seriously injured.

Section 11.15.228 is intended to reach those who cause injuries under circumstances which would justify a negligent homicide prosecution under AS 11.15.080, had death resulted. An archtypical example would be the operator of a motor vehicle who, while under the influence of intoxicating beverages, is involved in an accident which injures another as a direct and proximate result of his intoxicated condition. If the person dies, he can be prosecuted under AS 11.15.080, but if the victim lives, no matter how serious his injury, the driver under the present law can only be prosecuted for reckless driving or operating a motor vehicle under the influence of alcohol, both of which [illegible] misdemeanors.

House Judiciary Committee
February 14, 1975

HB 74/ HB 154 Assault

The meeting was called to order at 1:35 p.m. by Chairman Gardiner. All members were present except Mr. Cotton.

Dan Hickey, DA, testified that HB 154 cleans up technical problems and archaic language in the existing statutes and creates the new offense of aggravated assault.

The discussion centered primarily around language proposed by Mr. Brown including the word purposely. Mr. Hickey stated that this word might be interpreted by the courts to introduce an element of wilfulness or specific intent.

Rep. Parr objected to the proposed use of the word reckless since assault presupposes general intent.

Sec. 11.15.190, Assault while armed, imposes a minimum penalty of one year while Sec. 11.15.220 imposes a minimum sentence of six months. Also, 190 contains no fine provision. Mr. Hickey indicated no objection to making both one year minimums and the addition of a fine provision. Minimum sentences are unnecessary unless mandatory.

The committee discussed the possibility of forming a seperate section to cover Mr. Brown's proposed amendment. It was decided that the committee would meet again to vote on the original bill.

House Judiciary Committee
February 18, 1975

The meeting was called to order at 3:10 p.m. by Chairman Gardiner. Members present: Gardiner, Bradley, Fink, Cotton, Brown.

HB 45 Ombudsman

Stu Hall presented the committee substitute which incorporated the amendments requested by the committee. Rep. Fink moved that the CS be adopted after language on page 9 concerning the judicial branch be deleted. Mr. Brown amended Mr. Fink's motion to delete the language on the first two lines of page 10 also. Mr. Brown's amended motion failed. Mr. Fink's motion passed and so the CS was adopted. Mr. Brown moved that when the committee receives SB 1 that the CS HB 45 be substituted and that it do pass. There being no objection, Mr. Brown's motion passed.

HB 129 Smoking in Public

Mr. Gardiner indicated that he wished only an idea of what the committee intended to do with this bill. Mr. Fink stated that he would attempt to prove that smoking is not "dangerous" and would then add other habits that bother people to the bill. Mr. Brown recommended that the definition of public accommodation in the 1964 Civil Rights Act be checked to possibly include more public places. Other committee members mentioned other possible amendments including the substitution of approved air conditioning for separate areas.

HB 154/HB 74

Mr. Cotton moved that in 220 six months be changed to 1 year. Amendment 1 passed.

Mr. Brown moved that in 190 the language in lines 22 and 23 relating to imposition of fine be added.
Amendment 2 passed.

Mr. Brown will draft language to cover reckless actions to be another section either before or after Sect 4.

House Judiciary Committee
February 20, 1975

The meeting was called to order at 11:15 a.m. by Chairman Gardiner. All members were present except Mr. Bradley.

Rep. Brown explained his proposed language for a new section on reckless battery. He moved that this language be incorporated into the CS. There being no objection, Amendment 3 passed.

Rep. Brown moved HB 154 out with a do pass as the CS for HB 154. He also asked that a letter of intent be drafted to accompany the bill. There being no objection, CS HB 154 was passed out of committee.

PROPOSED AMENDMENT TO HOUSE BILL 154

After the end of section 3, line 6, page 2, add the following:

Sec. 4 AS 11.15 is amended by adding a new section to read:

Sec. 11.15.228. RECKLESS BATTERY. A person who recklessly causes great bodily injury to another under circumstances manifesting extreme indifference to the value of human life, is guilty of reckless battery. Upon conviction, a person guilty of reckless battery is punishable by imprisonment for not less than six months nor more than five years, or by a fine of not less than $ 100 nor more than $ 1,000, or by both.

Suggested letter of intent:

Section 11.15.228 is intended to reach those who cause injuries under circumstances which would justify a negligent homocide prosecution under AS 11.15.080, had death resulted. An archtypical example would be the operator of a motor vehicle who, while under the influence of intoxicating beverages, is involved in an accident which injures another as a direct and proximate result of his intoxicated condition. If the person dies, he can be prosecuted under AS 11.15.080, but the victim lives, no matter how serious his injury, the driver under present law can only be prosecuted for reckless driving or operating a motor vehicle under the influence of alcohol, both of which are misdemeanors.

now for other sections

summary

range of non-homicide injuries

by legal intent

225

February 14, 1975

TO: House Judiciary Committee

FROM: Fred Brown

SUBJECT: PROPOSED AMENDMENT TO HB 154
by the Rules Committee by Request of the Governor

I have suggested a change in the Governor's bill in Section 3 beginning at line 24. As it stands right now, the Governor's bill does not take into account the problem of reckless or negligent causing of extreme bodily harm, which is covered by our HB 74.

The rest of the Governor's bill cleans up some problems relating to the existing assault statutes. One problem that Tom Turnbull pointed out is in the existing law (carried through in the Governor's bill) under which the minimum sentence for assault with a dangerous weapon is less than the minimum sentence for assault while armed. This is strange, since assault with a dangerous weapon is considered to be a more serious felony. Tom and I would suggest that the minimum sentence for each of the two crimes be made the same, either six months or one year.

What follows is the suggested substitute language for Section 3, line 25 of HB 154. It includes the situation covered by our bill, and not covered by the Governor's bill, under which serious bodily injury is caused recklessly by someone, but not intentionally or as part of an intentional assault. The language inserted is in the style of modern penal codes, and follows in part some of the language of Section 211.1 (2) of the proposed official draft of the model penal code. The sentence structure is left in the style of the present law and the Governor's bill but inserts language covering the omitted offenses.

Section 3 AS 11.15 is amended by adding a new section to read:

Sec. 11.15.225 AGGRAVATED ASSAULT (a) A person who unlawfully attempts to cause great bodily injury to another, or who causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life, is guilty of aggravated assault. Upon conviction, a person guilty of aggravated assault is punishable by imprisonment for not less than six months nor more than five years, or by a fine of not less than $100 or more than $1,000, or by both.

I would urge that the Governor's bill be changed in the manner described in this memo and then be submitted with a "do pass" by this committee as a CS for HB 74.

Turning in false aborm (fine)

max 1 year

Disinterring corpse from a grave

max 1 year

Pimping

max 1 year

February 14, 1975

TO: House Judiciary Committee

FROM: Fred Brown

SUBJECT: PROPOSED AMENDMENT TO HB 154
by the Rules Committee by Request of the Governor

I have suggested a change in the Governor's bill in Section 3 beginning at line 24. As it stands right now, the Governor's bill does not take into account the problem of reckless or negligent causing of extreme bodily harm, which is covered by our HB 74.

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I would urge that the Governor's bill be changed in the manner described in this memo and then be submitted with a "do pass" by this committee as a CS for HB 74.

HB

157

STATE OF ALASKA

WILLIAM A. EGAN, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GEKERAL

POUCH K — STATE CAPITOL
JUNEAU 99801

March 4, 1975

Honorable Terry Gardiner
House Judiciary Committee
Room 100
State Capitol Building
Juneau, Alaska 99811

Dear Representative Gardiner:

It has come to my attention through Thomas Turnbull, that your committee is considering the Administration's proposed amendment to the unauthorized entry prohibition--HB-157.

The reasons for the amendment are fairly narrow and restrictive in nature, but are ones the Administration feels are important. The present state of the law in Alaska provides for no prohibition against anyone entering a motor vehicle of another person or otherwise tampering with the motor vehicle. This gives rise, on occasion, to cases where someone is caught rifling through another person's motor vehicle at a stage before anything is stolen from the vehicle, thus providing no opportunity to charge the person with larceny. In addition, the same situation arises when someone is caught before the motor vehicle is taken thus providing no opportunity to charge that person with joy-riding.

It is felt that private property as valuable as motor vehicles, should be protected from situations such as those mentioned above. It is further felt that the best way to address the problem is to amend the unauthorized entry statute, AS 11.20.135.

If the Department of Law can be of any further service to you please do not hesitate to call.

Sincerely yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Michael Stark
Michael J. Stark
Assistant Attorney General

AMG:jeh

STATE OF ALASKA

WILLIAM A. EGAN, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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Sincerely yours,

AVRUM M. CROSS
ATTORNEY GENERAL

By: Michael Stark
Michael J. Stark
Assistant Attorney General

HB
159

"An Act relating to salvaging the edible meat of wild food animals."

COMMITTEE REPORT

3/28/75

HOUSE

Mr. Speaker: Date 4/10/75

The Committee on JUDICIARY has had HB 159 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S) (Judiciary)

(✓) recommends it BE REPLACED WITH CS FOR HB 159 AND THAT CS FOR HB 159 DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

[illegible]	[illegible]	
[illegible]		
[illegible]		

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Jerry Gardiner Chairman

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K — STATE CAPITOL
JUNEAU 99801

March 19, 1975

The Honorable Nels Anderson
Chairman
Committee on Resources
House of Representatives
State of Alaska
Juneau, Alaska 99811

Re: Opinion on CSHB 159

Dear Mr. Chairman:

This is in response to your request for an opinion from this department regarding certain provisions in the Committee Substitute for House Bill No. 159, dealing with waste of wild food animals. Specifically, your Committee has asked for a constitutional evaluation of proposed AS 16.30.012 (Section 2 of the bill), which would append to the existing waste control measure a presumption of unlawful waste where raw horns or antlers were not accompanied by most of the edible meat. Section 2 of the bill reads in part:

> Sec. 16.30.012. POSSESSION OF RAW HORNS OR ANTLERS. The possession of the raw horns or antlers of a wild food animal without its being accompanied by most of its edible meat creates a presumption of failure to salvage most of the edible meat under secs. 10 - 30 of this chapter. The burden of proof is on the possessor to overcome the presumption of failure to salvage most of the edible meat and it is not overcome until substantial proof is offered other than a personal statement, establishing the fact that it was not salvaged due to circumstances beyond control as set out in (a) of this section, or that the horns or antlers were otherwise obtained lawfully. * * *

Rebuttable presumptions, such as that contained in proposed sec. 12, are not uncommon. During the 1974 session, the Alaska Legislature approved at least two of them. See AS 11.20.350(b) (concerning receipt of stolen property) and AS 16.05.810 (pertaining to illegal possession of fish or game). However, not all presumptions are valid as a matter

example mailing letter - presumption disappears when evidence to the contrary is presented

conclusive presumption - paternity - (strong social policy)

of course. The Supreme Court of the United States has reviewed a number of statutory presumptions in criminal cases, usually in light of 14th Amendment due process claims, and has established some relatively firm guidelines on what is allowable and what i not.

The first and most often cited rule laid down by the Court was in Tot v. United States, 319 U.S. 463 (1942):

> Under our decisions, a statutory presumption cannot be sustained if there be no rational connection between the fact proved and the ultimate fact presumed, if the inference of the one from proof of the other is arbitrary because of lack of connection between the two in common experience. This is not to say that a valid presumption may not be created upon a view of relation broader than that a jury might take in a specific case. But where the inference is so strained as not to have a reasonable relation to the circumstances of life as we know them, it is not competent for the legislature to create it as a rule governing the procedure of courts. [319 U.S. at 467-468.]

The Supreme Court later reaffirmed the "rational connection" test in United States v. Gainey, 380 U.S. 63 (1965), sustaining a jury instruction tracking a statute authorizing corviction for operating an illegal still based on mere presence at the still site. See also United States v. Romano, 382 U.S. 136 (1965). The Court, however, apparently recognized that "rational connection" might not be sufficiently explicit in determining the permissibility of statutory provisions which necessarily involved a considerable amount of subjective judgment by the legislative body. Subsequent to Gainey and Romano, the Supreme Court decided Leary v. United States, 395 U.S. 6 (1969), in which the defendant was subjected to a presumption of illegal importation of marijuana when all that was proved was possession. The Court pointed out that a substantial volume of illegally possessed marijuana is in fact grown in the United States, and that a presumption of illegal importation from simple possession was unjustified. An inference, the Court said, is "'irrational' or 'arbitrary', and hence unconstitutional, unless it can at least be said with substantial assurance that the presumed fact is more likely than not to flow from the proved fact on which it is made to depend." 395 U.S. at 36. From this opinion originated the "more likely than not test". A similar evaluation appeared in Turner v. United States, 396 U.S. 398 (1970).

Paralleling the Court's consideration of the contents of a valid presumption was the effect of the presumption as it operates in criminal proceedings. At the hearing on CSHB 159, Representative Eliason raised the question of whether a statutory presumption changes the fundamental principle that a person is presumed innocent until proven guilty. The Supreme Court has pointed out clearly that a statutory inference is not a rule of substantive law, but rather a rule of evidence which may serve as a guideline for the court and the jury. This same line of cases shows that the presence of a presumption does not mean that the defendant is automatically convicted. Two very substantial hurdles must be passed before a presumption can operate to contribute to a conviction. First, as was stated in United States v. Gainey, supra, at 69:

> Our Constitution places in the hands of the trial judge the responsibility for safeguarding the integrity of the jury trial, including the right to have a case withheld from the jury when the evidence is insufficient as a matter of law to support a conviction.

Second, even if the judge decides that the existence of the facts supporting a presumption constitutes sufficient evidence to send the case to the jury, there is no requirement that the jury accept the presumption and render a guilty verdict. In United States v. Turner, supra, the Court emphasized that the presumption in that case (possession of heroin allowed a presumption that it was illegally imported since no heroin is manufactured in the United States) was merely one fact among many that the jury was to consider in rendering its verdict; that the jury was in no way obligated to rely upon the presumption; and that the jury was still required to find the defendant guilty beyond a reasonable doubt regardless of the existence or nonexistence of the presumption. Of course, verdicts based upon presumptions are subject to further review in the form of motions for judgment notwithstanding the verdict, and appeals to a higher court. Up through the 1970 Turner decision, however, the Supreme Court had not satisfactorily explained the relationship between the "more likely than not" test and the "reasonable doubt" standard applied to all criminal trials. In 1972, the Court handed down an opinion in Barnes v. United States, 412 U.S. 837, which re-evaluated and reaffirmed the earlier decisions and attempted to explain their import. In conducting its review, the Court stated as follows:

> What has been established by the cases, however, is at least this: that if a statutory inference

> submitted to the jury as sufficient to support conviction satisfies the reasonable-doubt standard (that is, the evidence necessary to invoke the inference is sufficient for a rational juror to find the inferred fact beyond a reasonable doubt) as well as the more-likely-than-not standard, then it clearly accords with due process.

The segment of the opinion containing the holding is also instructive with respect to CSHB 159:

> In the present case the challenged instruction only permitted the inference of guilt from the unexplained possession of recently stolen property. The evidence established that petitioner possessed recently stolen Treasury checks payable to persons he did not know, and it provided no plausible explanation for such possession consistent with innocence. On the basis of this evidence alone common sense and experience tell us that the petitioner must have known or been aware of the high probability that the checks were stolen. [Citations omitted.] Such evidence was clearly sufficient to enable the jury to find beyond a reasonable doubt that petitioner knew the checks were stolen. Since the inference thus satisfies the reasonable doubt standard * * * we conclude that it satisfies the requirements of due process. [412 U.S. at 845-846.]

CSHB 159 appears to operate similarly to the presumption approved in Barnes. If a person possesses horns or antlers which are "raw" in appearance (a term defined in the bill), and they are not accompanied by most of the edible meat (which, by definition, includes actual or constructive possession), then it is incumbent upon him to deliver a plausible explanation for the absence of the meat. As in Barnes, it is reasonable to expect the defendant to perform this duty since the facts surrounding the absence of meat are best available to the defendant. If he has no explanation "consistent with innocence", then it would seem reasonable for a jury to rely upon the inference contained in the statute as the basis for a guilty verdict, and that such a finding could be beyond a reasonable doubt. Under such circumstances, a conviction under proposed sec. 12 would appear to satisfy the due process prerequisites set forth by the Supreme Court.

We notice, however, one element of sec. 12 which may be objectionable. On page 2, line 4, of CSHB 159, the "explanation" which the defendant must come up with cannot include a personal declaration. This provision may operate to prohibit the defendant from offering into evidence information which could prove his innocence. It is possible that such a presumption could be used in limited situations, but since the Committee has drafted this bill so that the presumption appies to the general public, it is probable that this requirement would violate due process. Consequently, it would be advisable to drop the phrase "other than a personal statement". A recent Supreme Court decision, Vladis v. Kline, 412 U.S. 441 (1972), strongly supports this interpretation. As a result, it would be well to delete similar language appearing in line 13 on page 1 of the bill.

Finally, in lines 5- 6 on page 2 of the bill, there appears the language "due to circumstances beyond control as set out in (a) of this section". Since there is no subsection (a) in sec. 12, we would presume this is intended to refer to subsection (a) of sec. 10, where the situations constituting circumstances beyond control are set out.

We hope that this opinion will be of assistance to you in your consideration of CSHB 159.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Geoffrey Haynes
Geoffrey Haynes
Assistant Attorney General

GH:md

Original sponsor: Anderson, Bradley, Duncan, et al

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 159 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to salvaging the edible meat of wild food animals."

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

* Section 1. AS 16.30.010(a) and (b) are repealed and re-enacted to read:

(a) It is unlawful for a person who kills a wild food animal to intentionally, knowingly, recklessly or negligently fail to salvage for human consumption most of the edible meat of a wild food animal, unless he shows that failure to salvage the meat was due to circumstances beyond his control, including but not limited to

(1) loss in the field to another animal;

(2) weather or other acts of God;

(3) theft.

(b) If the edible meat is not lawfully salvaged for human consumption under (a) of this section, the person who killed the animal is guilty of a misdemeanor and upon conviction

(1) is punishable by a fine of not more than $5,000, or by imprisonment for not more than six months, or by both; and

(2) shall surrender to the Department of Fish and Game all portions of the animal that have been salvaged.

* Sec. 2. AS 16.30 is amended by adding a new section to read:

Sec. 16.30.012. POSSESSION OF RAW HORNS OR ANTLERS. The possession of the raw horns or antlers of a wild food animal without its being accompanied by most of its edible meat creates a presumption of failure to salvage most of the edible meat under secs. 10 - 30 of this chapter.

presumption of guilt

is rebuttable — some evidence to contrary

then state must prove

it guy says nothing then guilty; if he rebuts then it's up to the jury state must offer more proof to win case

plausible explanation - could be testimony

The burden of proof is on the possessor to overcome the presumption of failure to salvage most of the edible meat and it is not overcome until substantial proof is offered establishing the fact that it was not salvaged due to circumstances beyond control as set out in sec. 10(a) of this chapter, or that the horns or antlers were otherwise obtained lawfully. In this section,

(1) "being accompanied" means having most of the meat in actual possession with the horns or antlers unless the person is engaging in the act of transporting most of the meat from the same animal in portions at different times but in a continuous manner without unnecessary interruption, from the place of taking to its destination for human consumption;

(2) "raw" means an appearance, by reasonable observation, that indicates its having been taken from a wild food animal during the current or most recent lawful hunting season for that animal.

* Sec. 3. AS 16.30.020 is amended to read:

Sec. 16.30.020. ANIMALS EXCEPTED. The provisions of secs. 10 - 12 [SEC. 10] of this chapter do not apply to animals which the department exempts by regulation.

deleted sec 4 move to front page

HB

170

"An Act relating to payments for judicial services by political subdivisions; and providing for an effective date."

COMMITTEE REPORT

2/18/75 FINANCE

HOUSE

Mr. Speaker: Date 3/2-/75

The Committee on JUDICIARY has had HB 170 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

(✓) "other" Individual recommendations

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends: No Rec.

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

House Judiciary Committee
March 24, 1975

The meeting was called to order at 1:30 p.m. by Chairman Gardiner. All members were present except Mr. Brown, Mr. Bradley and Mr. Specking.

HB 170 Judicial Payments

Clark Gruening, sponsor of the bill stated that the State now provides most judicial services but that they charge back cities for employee salaries.

Art Snowden testified that minicipalities are supposed to reimburse the state for judicial services provided by the state but this not now being enforced. The selective enforcement (big cities only) is not fair. The Supreme Court has mandated that the state will take over providing all judicial services and that the minicipal employees now providing some of the services will become state employees. The state is presently charging back the municipalities for services but they do not charge corporations, regional corporations or individuals, etc. If the state were forced to enforce the present statute it would result is loss of judicial services in the bush.

John Spencer stated that the provision of judicial services is free to everyone but cities. The fines should be reimbursed to municipalities also since city police arrest state not merely city people who commit crimes.

Mr. Fink moved HB 170 out of committee with individual recommendations. There being no objection, it was so ordered.

FISCAL NOTE - HB 170

House Bill 170 repeals the requirement that political subdivisions pay the State for judicial services provided to them by the Alaska Court System. Under the provisions of HB 170, therefore, the Alaska Court System would process municipal ordinance violations, local traffic tickets and other municipal criminal cases at no expense to the political subdivisions. Since the Court System is already processing these cases, no additional expenditures would be incurred. However, the State would lose the revenue that it presently is receiving as payment for services from the political subdivisions.

The estimated revenue loss for the next five years would be as follows:

	FY 76	FY 77	FY 78	FY 79	FY 80
Revenue Loss:	$440,000	$480,000	$530,000	$580,000	$640,000

Note Prepared By:

Richard P. Barrier
Alaska Court System

March 6, 1975

Anuch v State

demands that muni pay back for the judicial services supplied to them by state.

Total collected revenues ± $140,000. The state must collect if statute isn't revised.

Have taken over former muni employees and are charging back for their salaries.

F.N #2 covers:

a. lost fines + fees

b. the loss of charging back for salaries.

Why should a city have to pay costs for judicial services - nobody else does.

Why should cities keep revenues? Cities pay for police protection + revenues don't come near paying for

March 10, 1975

John R. Spencer
City Attorney
City of Anchorage
P.O. Box 400
Anchorage, Ak. 99510

Dear Mr. Spencer:

Our meeting on HB 170 will last until at least 3 p.m. We would certainly like to obtain your testimony and will hold time open for you.

Sincerely,

Terry Gardiner
Representative

CITY OF ANCHORAGE ALASKA

International
Polar air crossroads of the world

POST OFFICE BOX 400
ANCHORAGE, ALASKA
99510

March 5, 1975

Hon. Terry Gardiner,
Chairman, House Judiciary Committee,
Capitol Building,
JUNEAU, Alaska

Re: House Judiciary Committee meeting -
H.B. 170 March 24, 1975

Dear Terry:

I understand that a hearing is going to be held by the House Judiciary Committee on House Bill 170, which concerns the State absorbing the cost of operating the court system for activities which are generated by municipalities.

I further understand that this hearing is going to be on March 24 at 1:15 P.M. I would hope that you could delay this a few minutes so that I can testify at the hearing, both for the City of Anchorage and the Alaska Municipal League. I will be arriving on the flight from Anchorage which gets into Juneau (barring unforeseen circumstances) at 1:15 P.M. that day. It would be practically impossible for me to get to the hill until approximately 1:45 P.M. at the earliest.

Please advise if this is satisfactory so far as you are concerned.

Sincerely,

John R. Spencer,
City Attorney

cc: Don Berry, Alaska Municipal League

FISCAL NOTE - HB 170

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Note Prepared By:

Richard P. Barrier
Alaska Court System

March 6, 1975

HB
176
023

Alaska has had a comparative neg statute since 1949 AS 23.25.010

7 1/2 states have adopted C.N. Florida by court rule, Colo too

Modified forms of C.N.

(a) equal division - admiralty law rule. Damages divided equally among negligent parties, regardless of relative contributions the negligent parties made to accident.

(b) slight-gross system - Nebraska + South Dakota et al use it. If P's negligence is slight + D's gross, P recovers but reduced by % of fault attributable to him.

(c) 49% system - most popular plan. Wisconsin started it. P recovers where his % is less than that of any given D, reduced by P's %. Where P's negligence is equal to or greater than that of D, contrib bars recovery.

* 50% New Hampshire variant very popular. P recovers even if 50% responsible, but gets only 50% of his damages.

Liability Joint Tortfeasors

state statutes p. 40 apportioned where gross differences
See Minnesota's Nevada's all apportioned
see p 256 for 50% results. Texas Nevada statute

Contribution

a) Idaho, Maine et al - each D liable for whole amt P's damages
b) N.H. + Vermont - each D liable only for his part.
c) where D_2's neg < P's, D_2 liable for only his share

Comparative negligence, even modified, should have no effect on doctrine of contribution Bielske v. Schultz 16 W 2d 1 114 N.W 2d 105. Follow pure C.N. rules here.

Reckless + Gross Negligence

Bielski says it is apportioned except to degrees despite common law where contrib was no defense where D's act was "reckless" Not intentional torts

Example 1.

P, motorcyclist is 90% cause of accident $100,000 damages
D, truck driver is 10% " " " —0— damages

(a) pure form – P recovers 10% of his damages $10,000.
(b) 50% form – P does not recover
(c) contrib – nobody recovers anything

1. Present law in negligence cases

Law of contributory negligence. Contributory negligence is a defense that the defendant can assert against plaintiff's lawsuit

It is the old English common law rule, and the rule in fewer than 13 states, of which AK is one

It has been a very unfair and disfavored system which the courts and juries have worked with, sometimes inventing exceptions to avoid harsh results in difficult cases. There are now so many "exceptions" and "modifications" to the defense of contributory negligence, that the exceptions have become the rule.

Example: Plaintiff is 1% at fault, has $100,000 damages. D is 99% at fault, has 1,000 damages.

P recovers nothing from D, D recovers nothing from P. Court simply leaves the parties as it found them, because each was partially at fault for the harm each suffered.

2. Comparative negligence

Has been the law in admiralty (maritime) cases for hundreds of years.

Has been adopted by the majority of states in the U.S. as the law in negligence cases. Florida, and last week, California, have adopted it judicially. Many others in the last few years have accepted it legislatively.

Alaska may adopt it judicially; there are 3 cases urging judicial adoption currently before the

Supreme Court of Alaska. One case, LINDLEY and KAATZ vs STATE OF ALASKA was just argued several weeks ago. Because the Court might adopt comparative negligence judicially is no reason for not acting in the Legislature Because: 1. the Court may not actually reach the issue, and find some other way to decide the lawsuit 2. the Court is not able to resolve other problems created by the adoption of the rule unless those problems are raised in the particular case before it. 3. legislatures traditionally have the responsibility for making laws.

3. Forms of Comparative Negligence

Three basic forms are: (1) "pure" (2) "49%" (3) 50%.

"Pure" you recover a certain percentage of your damages, regardless of the degree of fault in the case.

In the "49%" and "50%" systems, you recover only if your negligence was not more than 49% (or 50%) in the case, else you are barred.

Scholars and other professors etc urge that a "pure" form be adopted. California and Washington have "pure". But most states have some sort of "modified" form. Of the "modified" plans, the "50%" type seems the most popular.

Why is a 50% system more equitable? See examples

In the examples #2 and #5, each party collects half his damages, which seems only fair when both were equally to blame.

A 49% system leaves each to bear his own damages when both equally to blame. But when one is more to blame than the other, he should bear the burden of paying (see example 6)

You avoid cases like example #1 with the results in the "pure" form - highly negligent, highly damaged plaintiff recovering big money from slightly negligent, slightly injured defendant.

EXAMPLES

Example #1 Auto wreck. P is 90% at fault, has $100,000 in damages. D is 10% at fault, has $1,000 in damages.

Results

a. "Pure" system
P will recover 10% of his damages, here $10,000
D will recover 90% of his damages, here $900
Offsetting the claims, P collects $9,100

b. "49%" system
P, being more than 49% at fault, is barred from recovering against D. Note, that D would be able to collect $900 if D sued P.

c. "50%" system
Same results as in b. above, for same reasons.

Example #2 Auto wreck. P is 50% at fault, has $100,000 in damages. D is 50% at fault, has $1,000 in damages

Results

a. "Pure" system
P will recover 50% of his damages, here $50,000
D will recover 50% of his damages, here $500.
Offsetting claims, P collects $49,500

b. "49%" system
P, being more than 49% at fault, is barred from recovery. D would be also if he sued P.

c. "50%" system
P recovers 50% of his damages, here $50,000
D recovers 50% of his damages, here $500
Offsetting claims, P collects $49,500

Example #3 Auto wreck. P is 49% at fault, has $100,000 damages. D is 51% at fault, has $1,000 damages.

Results

a. "Pure" system

P will recover 51% of his damages, here $51,000
D will recover 49% of his damages, here $490.
Offsetting claims, P recovers $50,510.

b. "49%" system

P, being not more than 49% responsible, recovers 51% of his damages, here $51,000. D would be barred from recovering anything, as his negligence was greater than 49%.

c. "50%" system

Same results as in b, for same reasons.

Example #4 Auto wreck. P is 90% at fault, has 1,000 in damages. D is 10% at fault with $100,000 damages.

a. "Pure"

P recovers 10% of his damages, here $100
D recovers 90% of his damages, here $90,000
Offsetting claims, D recovers $89,900

b. "49%"

P, being more than 49% negligent, recovers -0-
D recovers 90% of his damages, here $90,000.

c 50%

Same results as in b above.

Example # 5 Auto wreck P is 50% at fault, has 1,000 damages
D is 50% at fault, has $100,000 damages.

Results

a. "Pure"

P recovers 50% of his damages, here $500
D " " " " " " $50,000
Offsetting claims, D recovers $49,500

b. "49%"

P, being more than 49% at fault, is barred
D would be also

c. "50%"

P recovers 50% of his damages, here 500
D recovers 50% of his damages here 50,000
D recovers net of 49,500.

Example #6 Auto wreck. P is 49% at fault, has $1,000 damages D is 51%, with $100,000

a. "Pure"

P recovers 51%, or 51,000
D recovers 49%, or 490
Offset, P recovers 50,510

b. 49%

P recovers 51% of his damages, $510
D is barred, gets —0—

c. 50%

P recovers 510
D is barred —0-

The bill

is a "50%" type, modified comparative negligence.

types of cases it will apply to:

a) typical negligence cases (slip + fall - auto wreck - product liab)
b) wrongful death
c) strict liability in tort (products liability)

Does not apply to:

a) cases where D's conduct was "reckless"
b) cases where D's conduct was "intentional"

Jury instructions
no problem

Multiple Parties

joint and several liability is retained. Example:
P is injured in amount of $100,000 by D_1 and D_2, who each cause 30% of the accident and have no damages. P is 40% responsible for his harm. Results: P collects 60% of his damages, $60,000 and if D_2 is insolvent, D_1 must pay it all under principles of joint and several liability.

California case

judicially adopting comparative negligence - "pure"

April 8, 1975

Alaska Supreme Court
Pouch U
Juneau, Alaska 99801

Re: Lindley and Kaatz v. State of Alaska,
Supreme Court No. 2259
State of Alaska v. Lindley and Kaatz,
Supreme Court No. 2291

Dear Chief Justice Rabinowitz and Members of the Supreme Court:

This letter is in response to the Court's invitation to reply in writing to opposing counsel's citation at oral argument of the case of Syroid v. Albuquerque Gravel Products Company, 522 P.2d 570 (N.M. 1974). In addition, I am taking this opportunity to bring to the attention of the Court the case of Nga Li v. Yellow Cab Company, L.A. 30277, decided by the Supreme Court of California on March 31st. A copy of that opinion, obtained from the Clerk of the California Supreme Court is appended hereto. A copy has already been furnished counsel for the State.

In Syroid v. Albuquerque Gravel Products Company, supra, the Supreme Court of New Mexico confirmed an interlocutory order of the trial court denying plaintiff's motion to strike the defense of contributory negligence. The New Mexico Court alluded to five reasons that it was reluctant to repudiate the contributory negligence doctrine:

> (1) The Court reviewed the American and United Kingdom jurisdictions which had overthrown the contributory negligence doctrine (then including twenty-one states) and inferred that the reluctance of other jurisdictions to adopt comparative negligence, particularly in its pure form, belied the asserted "greater capacity of comparative negligence to work justice in tort cases . . ." 522 P.2d at 571.

(2) The Court cited its own long adherence to the contributory negligence rule, and indicated that it would not abandon such an entrenched rule of law without a showing by the proponents of comparative negligence of "a clear superiority of their system over ours." 522 P.2d at 572, 573.

(3) The Court asserted that the contributory negligence doctrine was not harsh in application in New Mexico, citing the Workmen's Compensation statute and the doctrines of last clear chance, sudden emergency, and degrees of culpability which had been developed in that jurisdiction as ameliorative devices. 522 P.2d at 572, 573.

(4) The Court implied that in practice, courts have avoided the application of contributory negligence in extreme cases by interpretations of the doctrines of negligence or proximate case. 522 P.2d at 573.

(5) Finally, the Court speculated that contributory negligence was more workable under the jury system, citing the difficulty of exact apportionment of fault. 522 P.2d at 573.

The purported reasons for judicial abstention will be dealt with in the order above listed.

First, it was becoming clear even as the New Mexico court wrote that comparative negligence was and is a strong trend, which will soon isolate a handful of states refusing to acknowledge the need for reform. At least twenty-seven states now have some form of comparative negligence, and two of Alaska's closest sister states, Washington and California, have now adopted pure comparative negligence.

The doctrines of last clear chance and sudden emergency, and the concept of degrees of culpability, alluded to by the New Mexico Supreme Court as ameliorative devices, are in fact half measures which operate as deftly as meat axes. As pointed out in earlier briefs, they shift the entire burden of the loss back on the opposing party, without any necessary relation to the relative degree of that party's causally connected negligence. There is no reason to expect, for instance, that one who has had "the last clear chance" to avoid an accident, will necessarily be the person whose negligence was the greatest part of that contributing to the

accident. All that can really be said, is that, given a multiplicity of doctrines, a court or a jury can bend the facts in order to completely bar the party guilty of the greater part of the negligence.

It is understandable that courts wish to recognize and act upon their obligation to do justice to the parties before the court. A willingness to suspend the application of recognized doctrines of law in order to do justice in individual cases, without overthrowing those doctrines, however, is to undercut the predictability and respectability of the law. This is the dangerous ground upon which the New Mexico court treads in the following statement:

> "Further, we do not feel that the extreme examples often posed by critics of contributory negligence are consistent with reality. For instance, inconsistent with actualities in the application of the principles of negligence, contributory negligence and proximate causation to factual situations in litigated tort cases, are the often-cited examples of a plaintiff being precluded from recovering any of his excessively great damages sustained in an accident to which his negligence contributed only 10% or less of the cause, while the defendant, whose negligence constituted 90% or more of the cause, escapes without damage." 522 P.2d at 573.

The Court seems to be suggesting that the trier of fact could, would, and should apply doctrines of negligence, contributory negligence and proximate cause to ensure that a plaintiff in the described situation would recover, whether or not those doctrines, taken literally, would lead to that result. This position, while not judicial statemanship, is the necessary result of a refusal to overthrow the unjust doctrine of contributory negligence. It is the difficulty to which this Court in Young v State, 491 P.2d 122 (Alaska 1971), had reference when the Court warned against the excessive use of the "disfavored defense" of contributory negligence.

The last argument suggested by the Supreme Court of New Mexico, is that contributory negligence is thought by that court to be more workable under the jury system, because of the difficulty of an exact or scientific apportionment of fault. There are several answers to this unsupported assertion,

and all of them are treated exhaustively in the materials to which this Court has been cited by both parties. Briefly, it is hard to see how the apportionment of culpability is any more difficult an exercise in substantial justice for a jury, than a decision under the almost metaphysical instructions which they receive on various issues, which are regularly put to them to resolve. Examples begin with the concept of proximate cause in negligence cases, but reach much more abstruse levels in economic regulation litigation and other technical fields. In fact, juries are making such determinations in a majority of American jurisdictions, and they do not seem to be having as much difficulty as the New Mexico Supreme Court would have expected. If the results are not exact, they are certainly closer to a just division of fault and damages than are determinations under the doctrine of contributory negligence, which are "all or nothing" in their nature. Courts are certainly capable of assisting the juries in identifying relevant factors. See Schwartz, Comparative Negligence, (1974) §§17.1 and 21.1. Courts have the ability, and legal authority, to clarify the issues and streamline the overall litigation, through such devices as compulsory joinder under Alaska Civil Rule 19(a). In short, there is simply no showing that juries are any less capable of handling determinations under a comparative negligence rule, than they are of handling other matters, and the evidence would appear to be to the contrary.

The opinion in Syroid v. Albuquerque Gravel Products Company was joined in by only three of the five sitting members of the New Mexico Supreme Court. The Chief Justice and Justice Stephenson dissented. The decision is an example of judicial intransigence, based on speculation about the hardships of change, and a belief that Courts can do justice in spite of the law they proclaim. That approach is to be distinctly contrasted with the approach of the California Supreme Court in Nga Li v. Yellow Cab Company, supra. In Nga Li, the California Supreme Court has echoed its sister court in Florida by accepting the responsibility for the operation of the common law in modern society. Tracking almost exactly with the Florida Supreme Court in Hoffman v. Jones, 280 S.2d 431 (Fla. 1973) and with the conclusions urged upon this Court by plaintiff-appellants, California has adopted pure comparative negligence. That opinion speaks for itself.

The Alaska Supreme Court has always looked to the best reasoned and most progressive judicial thinking in

determining the common law of the State of Alaska, It has looked particularly to the law of Oregon, Washington, and California. Those three states have now all adopted comparative negligence, two adopting a pure comparative negligence system. The California Supreme Court, which is one of the most respected judicial bodies in the country, has been compelled by the force of logic and the weight of judicial duty to join twenty-six other states in abandoning the legal gargoyle called contributory negligence. This Court should do no less.

Very truly yours,

ROBERTSON, MONAGLE, EASTAUGH & BRADLEY

W. G. Ruddy

M. T. Thomas

Of Attorneys for Appellants
Kaatz and Lindley

WGR:MTT:pc
Enclosure
cc: Allen Compton, Esquire

RECEIVED
APR 7 1975
ROBERTSON, MONAGLE EASTAUGH & BRADLEY

SUPREME COURT
FILED
MAR 31 1975
C. E. Murdy, Clerk

COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

NGA LI, Plaintiff and Appellant, v. YELLOW CAB COMPANY OF CALIFORNIA et al., Defendants and Respondents.	L.A. 30277 Super. Ct. No. 947 992

In this case we address the grave and recurrent question whether we should judicially declare no longer applicable in California courts the doctrine of contributory negligence, which bars all recovery when the plaintiff's negligent conduct has contributed as a legal cause in any degree to the harm suffered by him, and hold that it must give way to a system of comparative negligence, which assesses liability in direct proportion to fault. As we explain in detail infra, we conclude that we should. In the course of reaching our ultimate decision we conclude that: (1) The doctrine of comparative negligence is preferable to the "all-or-nothing" doctrine of contributory negligence from the point of view of logic, practical experience, and

SEE CONCURRING AND DISSENTING OPINIONS

fundamental justice; (2) judicial action in this area is not precluded by the presence of section 1714 of the Civil Code, which has been said to "codify" the "all-or-nothing" rule and to render it immune from attack in the courts except on constitutional grounds; (3) given the possibility of judicial action, certain practical difficulties attendant upon the adoption of comparative negligence should not dissuade us from charting a new course -- leaving the resolution of some of these problems to future judicial or legislative action; (4) the doctrine of comparative negligence should be applied in this state in its so-called "pure" form under which the assessment of liability in proportion to fault proceeds in spite of the fact that the plaintiff is equally at fault as or more at fault than the defendant; and finally (5) this new rule should be given a limited retrospective application.

The accident here in question occurred near the intersection of Alvarado Boulevard and Third Street in Los Angeles. At this intersection Third Street runs in a generally east-west direction along the crest of a hill, and Alvarado Boulevard, running generally north and south, rises gently to the crest from either direction. At approximately 9 p.m. on November 21,

1968, plaintiff Nga Li was proceeding northbound on Alvarado in her 1967 Oldsmobile. She was in the inside lane, and about 70 feet before she reached the Third Street intersection she stopped and then began a left turn across the three southbound lanes of Alvarado, intending to enter the driveway of a service station. At this time defendant Robert Phillips, an employee of defendant Yellow Cab Company, was driving a company-owned taxicab southbound in the middle lane on Alvarado. He came over the crest of the hill, passed through the intersection, and collided with the right rear portion of plaintiff's automobile, resulting in personal injuries to plaintiff as well as considerable damage to the automobile.

The court, sitting without a jury, found as facts that defendant Phillips was traveling at approximately 30 miles per hour when he entered the intersection, that such speed was unsafe at that time and place, and that the traffic light controlling southbound traffic at the intersection was yellow when defendant Phillips drove into the intersection. It also found, however, that plaintiff's left turn across the southbound lanes of Alvarado "was made at a time when a vehicle was approaching from the opposite direction

so close as to constitute an immediate hazard." The dispositive conclusion of law was as follows: "That the driving of NGA LI was negligent, that such negligence was a proximate cause of the collision, and that she is barred from recovery by reason of such contributory negligence." Judgment for defendants was entered accordingly.

I

"Contributory negligence is conduct on the part of the plaintiff which falls below the standard to which he should conform for his own protection, and which is a legally contributing cause cooperating with the negligence of the defendant in bringing about the plaintiff's harm." (Rest. 2d Torts, § 463.) Thus the American Law Institute, in its second restatement of the law, describes the kind of conduct on the part of one seeking recovery for damage caused by negligence which renders him subject to the doctrine of contributory negligence. What the effect of such conduct will be is left to a further section, which states the doctrine in its clearest essence: "Except where the defendant has the last clear chance, the plaintiff's contributory negligence bars recovery against a defendant whose negligent conduct would otherwise make him liable to the plaintiff for the harm sustained by him." (Rest. 2d Torts, § 467.) (Italics added.)

This rule, rooted in the long-standing principle that one should not recover from another for damages brought upon oneself (see Baltimore & P.R. Co. v. Jones (1877) 95 U.S. 439, 442; Buckley v. Chadwick (1955) 45 Cal.2d 183, 192), has been the law of this state from its beginning. (See Innis v. The Steamer Senator (1851) 1 Cal. 459, 460-461; Griswold v. Sharpe (1852) 2 Cal. 17, 23-24; Richmond v. Sacramento Valley Railroad Company (1861) 18 Cal. 351, 356-358; Gay v. Winter (1867) 34 Cal. 153, 162-163; Needham v. S.F. & S.J. R. Co. (1869) 37 Cal. 409, 417-423.) Although criticized almost from the outset for the harshness of its operation, it has weathered numerous attacks,[1] in both the legislative and the judicial[2] arenas, seeking its amelioration or repudiation. We have undertaken a thorough reexamination of the matter, giving particular attention to the common law and statutory sources of the subject doctrine in this state. As we have indicated, this reexamination leads us

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1. (See, for example, Sen. Bill No. 43 (1971 Reg. Sess.); Assem. Bill No. 694 (1971 Reg. Sess.); Sen. Bill No. 132 (1972 Reg. Sess.); Assem. Bill No. 102 (1972 Reg. Sess.); Sen. Bill No. 10 (1973 Reg. Sess.); Sen. Bill No. 557 (1973 Reg. Sess.); Assem. Bill No. 50 (1973 Reg. Sess.); Assem. Bill No. 801 (1973 Reg. Sess.); Assem. Bill No. 1666 (1973 Reg. Sess.); Sen. Bill No. 2021 (1974 Reg. Sess.).)

2. See Tucker v. United Railroads (1916) 171 Cal. 702, 704-705; Sego v. Southern Pacific Co. (1902) 137 Cal. 405, 407; Summers v. Burdick (1961) 191 Cal.App.2d 464, 471; Haerdter v. Johnson (1949) 92 Cal.App.2d 547, 553.

to the conclusion that the "all-or-nothing" rule of contributory negligence can be and ought to be superseded by a rule which assesses liability in proportion to fault.

It is unnecessary for us to catalogue the enormous amount of critical comment that has been directed over the years against the "all-or-nothing" approach of the doctrine of contributory negligence. The essence of that criticism has been constant and clear: the doctrine is inequitable in its operation because it fails to distribute responsibility in proportion to fault.[3] Against this have been raised several arguments in justification, but none have proved even remotely adequate to the task.[4] The basic

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3. Dean Prosser states the kernel of critical comment in these terms: "It [the rule] places upon one party the entire burden of a loss for which two are, by hypothesis, responsible." (Prosser, Torts (4th ed. 1971) § 67, p. 433.) Harper and James express the same basic idea: "[T]here is no justification -- in either policy or doctrine -- for the rule of contributory negligence, except for the feeling that if one man is to be held liable because of his fault, then the fault of him who seeks to enforce that liability should also be considered. But this notion does not require the all-or-nothing rule, which would exonerate a very negligent defendant for even the slight fault of his victim. The logical corollary of the fault principle would be a rule of comparative or proportional negligence, not the present rule." (2 Harper & James, The Law of Torts (1956) § 22.3, p. 1207.)

4. Dean Prosser, in a 1953 law review article on the subject which still enjoys considerable influence, addressed himself to the commonly advanced justificatory arguments in the following terms: "There has been much speculation as to why the rule thus declared found such ready acceptance in later decisions, both in England and in the United States. The explanations given by the courts themselves never have carried much conviction. Most of the decisions have talked about 'proximate cause,'

(Fn. continued)

objection to the doctrine -- grounded in the primal concept that in a system in which liability is based on fault, the extent of fault should govern the extent of liability -- remains irresistible to reason and all intelligent notions of fairness.

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saying that the plaintiff's negligence is an intervening, insulating cause between the defendant's negligence and the injury. But this cannot be supported unless a meaning is assigned to proximate cause which is found nowhere else. If two automobiles collide and injure a bystander, the negligence of one driver is not held to be a superseding cause which relieves the other of liability; and there is no visible reason for any different conclusion when the action is by one driver against the other. It has been said that the defense has a penal basis, and is intended to punish the plaintiff for his own misconduct; or that the court will not aid one who is himself at fault, and he must come into court with clean hands. But this is no explanation of the many cases, particularly those of the last clear chance, in which a plaintiff clearly at fault is permitted to recover. It has been said that the rule is intended to discourage accidents, by denying recovery to those who fail to use proper care for their own safety; but the assumption that the speeding motorist is, or should be, meditating on the possible failure of a lawsuit for his possible injuries lacks all reality, and it is quite as reasonable to say that the rule promotes accidents by encouraging the negligent defendant. Probably the true explanation lies merely in the highly individualistic attitude of the common law of the early nineteenth century. The period of development of contributory negligence was that of the industrial revolution, and there is reason to think that the courts found in this defense, along with the concepts of duty and proximate cause, a convenient instrument of control over the jury, by which the liabilities of rapidly growing industry were curbed and kept within bounds." (Prosser, Comparative Negligence (1953) 41 Cal.L.Rev. 1, 3-4; fns. omitted. For a more extensive consideration of the same subject, see 2 Harper & James, supra, § 22.2, pp. 1199-1207.)

To be distinguished from arguments raised in justification of the "all or nothing" rule are practical considerations which have been said to counsel against the adoption of a fairer and more logical alternative. The latter considerations will be discussed in a subsequent portion of this opinion.

Furthermore, practical experience with the application by juries of the doctrine of contributory negligence has added its weight to analyses of its inherent shortcomings: "Every trial lawyer is well aware that juries often do in fact allow recovery in cases of contributory negligence, and that the compromise in the jury room does result in some diminution of the damages because of the plaintiff's fault. But the process is at best a haphazard and most unsatisfactory one." (Prosser, Comparative Negligence, supra, p. 4; fn. omitted.) (See also Prosser, Torts, supra, § 67, pp. 436-437; Comments of Malone and Wade in Comments on Maki v. Frelk - Comparative v. Contributory Negligence: Should the Court or Legislature Decide? (1968) 21 Vand.L.Rev. 889, at pp. 934, 943; Ulman, A Judge Takes the Stand (1933) pp. 30-34; cf. Comment of Kalven, 21 Vand.L.Rev. 889, 901-904.) It is manifest that this state of affairs, viewed from the standpoint of the health and vitality of the legal process, can only detract from public confidence in the ability of law and legal institutions to assign liability on a just and consistent basis. (See Keeton, Creative Continuity in the Law of Torts (1962) 75 Harv.L.Rev. 463, 505; Comment of Keeton in Comments on Maki v. Frelk, supra, 21 Vand.L.Rev.

889, at p. 916[5]; Note (1974) 21 U.C.L.A.L.Rev. 1566, 1596-1597.)

It is in view of these theoretical and practical considerations that to this date 25 states,[6]

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5. Professor Keeton states the matter as follows in his Vanderbilt Law Review comment: "In relation to contributory negligence, as elsewhere in the law, uncertainty and lack of evenhandedness are produced by casuistic distinctions. This has happened, for example, in doctrines of last clear chance and in distinctions between what is enough to sustain a finding of primary negligence and what more is required to sustain a finding of contributory negligence. Perhaps even more significant, however, is the casuistry of tolerating blatant jury departure from evenhanded application of the legal rules of negligence and contributory negligence, with the consequence that a kind of rough apportionment of damages occurs, but in unpoliced, irregular, and unreasonably discriminatory fashion. Moreover, the existence of this practice sharply reduces the true scope of the substantive change effected by openly adopting comparative negligence. [¶] Thus, stability, predictability, and evenhandedness are better served by the change to comparative negligence than by adhering in theory to a law that contributory fault bars when this rule has ceased to be the law in practice." (21 Vand.L.Rev. at p. 916.)

A contrary conclusion is drawn in an article by Lewis F. Powell, Jr., now an Associate Justice of the United States Supreme Court. Because a loose form of comparative negligence is already applied in practice by independent American juries, Justice Powell argues, the "all-or-nothing" rule of contributory negligence ought to be retained as a check on the jury's tendency to favor the plaintiff. (Powell, Contributory Negligence: A Necessary Check on the American Jury (1957) 43 A.B.A. J. 1005.)

6. Arkansas, Colorado, Connecticut, Georgia, Hawaii, Idaho, Maine, Massachusetts, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Jersey, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Texas, Utah, Vermont, Washington, Wisconsin, Wyoming. (Schwartz, Comparative Negligence (1974), Appendix A, pp. 367-369.)

In the federal sphere, comparative negligence of the "pure" type (see infra) has been the rule since 1908 in cases arising under the Federal Employers' Liability Act (see 45 U.S.C. § 53) and since 1920 in cases arising under the Jones Act (see 46 U.S.C. § 688) and the Death on the High Seas Act (see 46 U.S.C. § 765).

have abrogated the "all or nothing" rule of contributory negligence and have enacted in its place general apportionment statutes calculated in one manner or another to assess liability in proportion to fault. In 1973 these states were joined by Florida, which effected the same result by judicial decision. (Hoffman v. Jones (1973) 280 So.2d 431.) We are likewise persuaded that logic, practical experience, and fundamental justice counsel against the retention of the doctrine rendering contributory negligence a complete bar to recovery -- and that it should be replaced in this state by a system under which liability for damage will be borne by those whose negligence caused it in direct proportion to the extent of their causal responsibility.

The foregoing conclusion, however, clearly takes us only part of the way. It is strenuously and ably urged by defendants and two of the amici curiae that whatever our views on the relative merits of contributory and comparative negligence, we are precluded from making those views the law of the state by judicial decision. Moreover, it is contended, even if we are not so precluded, there exist considerations of a practical nature which should dissuade us from embarking upon the course which we have indicated. We proceed to take up these two objections in order.

II

It is urged that any change in the law of contributory negligence must be made by the Legislature, not by this court. Although the doctrine of contributory negligence is of judicial origin -- its genesis being traditionally attributed to the opinion of Lord Ellenborough in Butterfield v. Forrester (K.B. 1809) 103 Eng. Rep. 926 -- the enactment of section 1714 of the Civil Code[7] in 1872 codified the doctrine as it stood at that date and, the argument continues, rendered it invulnerable to attack in the courts except on constitutional grounds. Subsequent cases of this court, it is pointed out, have unanimously affirmed that -- barring the appearance of some constitutional infirmity -- the "all-or-nothing" rule is the law of this state and shall remain so until the Legislature directs otherwise. The fundamental constitutional doctrine of separation of powers, the argument concludes, requires judicial abstention.

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7. Section 1714 of the Civil Code has never been amended. It provides as follows: "Everyone is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself. The extent of liability in such cases is defined by the Title on Compensatory Relief." (Italics added.)

We are further urged to observe that a basic distinction exists between the situation obtaining in Florida prior to the decision of that state's Supreme Court abrogating the doctrine (Hoffman v. Jones, supra, 280 So.2d 431), and the situation now confronting this court. There, to be sure, the Florida court was also faced with a statute, and the dissenting justice considered that fact sufficient to bar judicial change of the rule. The statute there in question, however, merely declared that the general English common and statute law in effect on July 4, 1776, was to be in force in Florida except to the extent it was inconsistent with federal constitutional and statutory law and acts of the state Legislature. (Fla. Stat., § 2.01, F.S.A.) The majority simply concluded that there was no clear-cut common law rule of contributory negligence prior to the 1809 Butterfield decision (Butterfield v. Forrester, supra, 103 Eng. Rep. 926), and that therefore that rule was not made a part of Florida law by the statute.[8] (280 So.2d at

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8. It should be observed that the Florida court held alternatively that even if contributory negligence was recognized by the common law prior to the day of American independence, and therefore was made a part of Florida law by the statute, it remained subject to judicial overruling because of its common law origin. (280 So.2d at pp. 435-436.)

pp. 434-435.) In the instant case, defendants and the amici curiae who support them point out, the situation is quite different: here the Legislature has specifically enacted the rule of contributory negligence as the law of this state. In these circumstances, it is urged, the doctrine of separation of powers requires that any change must come from the Legislature.

We have concluded that the foregoing argument, in spite of its superficial appeal, is fundamentally misguided. As we proceed to point out and elaborate below, it was not the intention of the Legislature in enacting section 1714 of the Civil Code, as well as other sections of that code declarative of the common law, to insulate the matters therein expressed from further judicial development; rather it was the intention of the Legislature to announce and formulate existing common law principles and definitions for purposes of orderly and concise presentation and with a distinct view toward continuing judicial evolution.

Before turning our attention to section 1714 itself we make some observations concerning the 1872 Civil Code as a whole. Professor Arvo Van Alstyne, in

an excellent and instructive article entitled The California Civil Code which appears as the introductory commentary to West's Annotated Civil Code (1954), has carefully and authoritatively traced the history and examined the development of this, the first code of substantive law to be adopted in this state. Based upon the ill-fated draft Civil Code prepared under the direction and through the effort of David Dudley Field for adoption in the state of New York, the California code found acceptance for reasons largely related to the temperament and needs of an emerging frontier society. "In the young and growing commonwealth of California, the basically practical views of Field commanded wider acceptance than the more theoretic and philosophic arguments of the jurists of the historic school. In 1872, the advantages of codification of the unwritten law, as well as of a systematic revision of statute law, loomed large, since that law, drawing heavily upon the judicial traditions of the older states of the Union, was still in a formative stage. The possibility of widely dispersed popular knowledge of basic legal concepts comported well with the individualistic attitudes of the early West." (Van Alstyne, supra, p. 6.)

However, the extreme conciseness and brevity of expression which was characteristic of the 1872 code, although salutary from the point of view of popular access to basic legal concepts, early led to uncertainty and dispute as to whether it should be regarded as the exclusive or primary source of the law of private rights. Due largely to the influence of a series of articles on the subject by Professor John Norton Pomeroy, this problem of interpretation was soon resolved, and by 1920 this court was able to state with confidence: "The Civil Code was not designed to embody the whole law of private and civil relations, rights, and duties; it is incomplete and partial; and except in those instances where its language clearly and unequivocally discloses an intention to depart from, alter, or abrogate the common-law rule concerning a particular subject matter, a section of the code purporting to embody such doctrine or rule will be construed in light of common-law decisions on the same subject." (Estate of Elizalde (1920) 182 Cal. 427, 433; see also Van Alstyne, supra, pp. 29-35.)

In addition, the code itself provides explicit guidance as to how such construction shall proceed. "The rule of the common law, that statutes in derogation thereof

are to be strictly construed, has no application to this Code. The Code establishes the law of this State respecting the subjects to which it relates, and its provisions are to be liberally construed with a view to effect its objects and to promote justice." (Civ. Code (1872) § 4.) Also, "[t]he provisions of this Code, so far as they are substantially the same as existing statutes or the common law, must be construed as continuations thereof, and not as new enactments." (Civ. Code (1872) § 5; italics added.) The effect of these sections was early expressed by us in In re Jessup (1889) 81 Cal. 408, 419, in the following terms: "[E]ven as to the code, 'liberal construction' does not mean enlargement or restriction of a plain provision of a written law. If a provision of the code is plain and unambiguous, it is the duty of the court to enforce it as it is written. If it is ambiguous or doubtful, or susceptible of different constructions or interpretations, then such liberality of construction is to be indulged in as, within the fair interpretation of its language, will effect its apparent object and promote justice." (See also Baxter v. Shanley-Furness Co. (1924) 193 Cal. 558, 560; see generally 45 Cal. Jur.2d, Statutes, § 162, pp. 663-667.)

The foregoing view of the character, function, and proper mode of interpretation of the Civil Code has imbued it with admirable flexibility from the standpoint of adaptation to changing circumstances and conditions. As Professor Van Alstyne states the matter: "[The code's] incompleteness, both in scope and in detail[,] have provided ample room for judicial development of important new systems of rules, frequently built upon Code foundations. In the field of torts, in particular, which the Civil Code touches upon only briefly and sporadically, the courts have been free from Code restraint in evolving the details of such currently vital rules as those pertaining to last clear chance, the right of privacy, res ipsa loquitur, unfair competition, and the 'impact rule' in personal injury cases . . . . [¶] In short, the Civil Code has not, as its critics had predicted, restricted the orderly development of the law in its most rapidly changing areas along traditional patterns. That this is true is undoubtedly due in large measure to the generality of Code treatment of its subject matter, stress being placed upon basic principles rather than a large array of narrowly drawn rules. In addition, the acceptance of Professor Pomeroy's

concept of the Civil Code as a continuation of the common law created an atmosphere in which Code interpretation could more easily partake of common law elasticity." (Van Alstyne, supra, pp. 36-37.)

It is with these general precepts in mind that we turn to a specific consideration of section 1714. That section, which we have already quoted in full (fn. 7, ante), provides in relevant part as follows: "Everyone is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself." (Italics added.)

The present-day reader of the foregoing language is immediately struck by the fact that it seems to provide in specific terms for a rule of comparative rather than contributory negligence -- i.e., for a rule whereby plaintiff's recovery is to be diminished to the extent that his own actions have been responsible for his injuries. The use of the compound conjunction "except so far as" -- rather than some other conjunction setting up a wholly

disqualifying condition -- clearly seems to indicate an intention on the part of the Legislature to adopt a system other than one wherein contributory fault on the part of the plaintiff would operate to bar recovery.[9] Thus it could be argued -- as indeed it has been argued with great vigor by plaintiff and the amici curiae who support her position -- that no change in the law is necessary in this case at all. Rather, it is asserted, all that is here required is a recognition by this court that section 1714 announced a rule of comparative negligence in this state in 1872 and a determination to brush aside all of the misguided decisions which have concluded otherwise up to the present day. (See also Bodwell, It's Been Comparative Negligence For Seventy-Nine Years (1952) 27 L.A. Bar Bull. 247.)

Our consideration of this arresting contention -- and indeed of the whole question of the true meaning and intent of sec 1714 -- cannot proceed without reference

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9. This impression is strengthened by a comparison of the language of section 1714 with the section of the Field draft on which it was modeled. Section 853 of the 1865 draft of the New York Civil Code, whose manifest intention was to state the strict rule of contributory negligence, uses the word "unless" in the position wherein its successor section 1714 substitutes "except so far as." (See fn. 12, infra.) As we shall explain, however, wisdom does not lie in drawing hasty conclusions from this change in language.

to the Code Commissioners' Note which appeared immediately following section 1714 in the 1872 code.[10] That note provided in full as follows: "Code La., § 2295; Code Napoleon, § 1383; Austin vs. Hudson River R.R. Co., 25 N.Y., p. 334; Jones vs. Bird, 5 B. & Ald., p. 837; Dodd vs. Holmes, 1 Ad. & El., p. 493. This section modifies the law heretofore existing. -- See 20 N.Y., p. 67; 10 M. & W., p. 546; 5 C.B. (N.S.), p. 573. This class of obligations imposed by law seems to be laid down in the case of Baxter vs. Roberts, July Term, 1872, Sup. Ct. Cal. Roberts employed Baxter to perform a service which he (Roberts) knew to be perilous, without giving Baxter any notice of its perilous character; Baxter was injured. Held: that Roberts was responsible in damages for the injury which Baxter sustained. (See facts of case.)" (1 Annot. Civ. Code (Haymond & Burch 1874 Ed.) p. 519; italics added.)

Each of the parties and amici in this case has applied himself to the task of legal cryptography which the interpretation of this note involves. The

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10. In determining whether a specific code section was intended to depart from or merely restate the common law, weight is to be accorded the notes and comments of the Code Commissioners. (See O'Hara v. Wattson (1916) 172 Cal. 525, 534 535.)

variety of answers which has resulted is not surprising. We first address ourselves to the interpretation advanced by plaintiff and the amici curiae in support of her contention set forth above, that section 1714 in fact announced a rule of comparative rather than contributory negligence.

The portion of the note which is relevant to our inquiry extends from its beginning up to the series of three cases cited following the italicized sentence: "This section modifies the law heretofore existing." Plaintiff and her allies point out that the first authorities cited are two statutes from civil law jurisdictions, Louisiana and France; then comes the italicized sentence; finally there are cited three cases which state the common law of contributory negligence modified by the doctrine of last clear chance. The proper interpretation, they urge, is this: Civil law jurisdictions, they assert, uniformly apportion damages according to fault. The citation to statutes of such jurisdictions, followed by a sentence indicating that a change is intended, followed in turn by the citation of cases expressing the common law doctrine -- these taken together, it is urged, support the clear language of section 1714 by

indicating the rejection of the common law "all-or-nothing" rule and the adoption in its place of civil law principles of apportionment.

This argument fails to withstand close scrutiny. The civil law statutes cited in the note, like the common law cases cited immediately following them, deal not with "defenses" to negligence but with the basic concept of negligence itself.[11] In fact the Code Commissioners' Note to the parallel section of the Field draft cites the very same statutes and the very same cases in direct support of its statement of the basic rule.[12] Moreover, in

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11. Section 1383 of the Code Napoleon (1804) provided: "Chacun est responsable du dommage qu'il a causé non seulement par son fait, mais encore par sa négligence ou par son imprudence." [Every person is responsible for the damage that he has caused not only by his act, but also by his negligence or by his imprudence.]
In 1872, article 2295 of the Louisiana Civil Code (now art. 2316) provided: "Every person is responsible for the damage he occasions not merely by his act, but by his negligence, his imprudence, or his want of skill."

12. Section 853 of the 1865 Field draft of the New York Civil Code, along with its Code Commissioners' Note, provided: "Every one is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person;[1] unless the latter has, willfully, or by want or ordinary care, incurred the risk of such injury.[2] The extent of liability in such cases is defined by the Title on COMPENSATORY RELIEF.

 (footnote continued)

1872, when section 1714 was enacted and the Code Commissioners' Note was written, neither France nor Louisiana applied concepts of comparative negligence. The notion of "faute commune" did not become firmly rooted in French law until 1879 and was not codified until 1915. (See Turk, Comparative Negligence on the March (1950) 28 Chi.Kent L.Rev. 189, 239-240.) Louisiana, in spite of an 1825 statute which appeared to establish comparative negligence,[13] firmly adhered to the "all-or-nothing" common law rule in 1872 and has done so ever since. (See Schwartz, supra, § 1.3, p. 10, fn. 76; Turk, supra, at pp. 318-326.) In fact, in 1872 there was no American jurisdiction applying concepts of true comparative negligence for general purposes,[14]

"1. Code La., 2295; Code Napoleon, 1383; Austin v. Hudson River R. R. Co., 25 N.Y., 334; Jones v. Bird, 5 B. & Ald., 837; Dodd v. Holmes, 1 Ad. & El., 493.

"2. Johnson v. Hudson River R. R. Co., 20 N.Y., 69."

13. The statute here in question (La. Code 1825, art. 2303) was not that cited by the Code Commissioners. (See fn. 11, ante, and accompanying text.)

14. In 1872 two American jurisdictions, Illinois and Kansas, applied concepts of slight versus gross negligence -- which was not really comparative negligence but another form of "all-or-nothing" rule according to which a slightly negligent plaintiff could recover 100 percent of his damages against a grossly negligent defendant. One jurisdiction, Georgia, had a true comparative negligence statute, but it was limited in application to railroad accidents. (Turk, supra, at pp. 304-318, 326-333.)

and the only European jurisdictions doing so were Austria and Portugal. (Turk, supra, at p. 241.) Among those jurisdictions applying such concepts in the limited area in which they have traditionally been applied, to wit, admiralty, was California itself: in section 973 of the very Civil Code which we are now considering (now Harb. & Nav. Code, § 292) apportionment was provided for when the negligence of the plaintiff was slight. Yet the Code Commissioners' Note did not advert to this section.

In view of all of the foregoing we think that it would indeed be surprising if the 1872 Legislature, intending to accomplish the marked departure from common law which the adoption of comparative negligence would represent, should have chosen to do so in language which differed only slightly from that used in the Field draft to describe the common law rule. (See fn. 12, ante; see also Buckley v. Chadwick, supra, 45 Cal.2d 183, 192-193.) It would be even more surprising if the Code Commissioners, in stating the substance of the intended change, should fail to mention the law of any jurisdiction, American or foreign, which then espoused the

new doctrine in any form, and should choose to cite in their note the very statutes and decisions which the New York Code Commissioners had cited in support of their statement of the common law rule. (See fn. 12, ante, and accompanying text.) It is in our view manifest that neither the Legislature nor the Code Commissioners harbored any such intention -- and that the use of the words "except so far as" in section 1714 manifests an intention other than that of declaring comparative negligence the law of California in 1872.[15]

That intention, we have concluded, was simply to insure that the rule of contributory negligence, as applied in this state, would not be the harsh rule then applied in New York but would be mitigated by the doctrine of last clear chance. The New York rule, which did not incorporate the latter doctrine, had been given judicial expression several years before in the case of Johnson v. The Hudson

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15. The statement in some cases to the effect that section 1714 states a civil law rather than a common law principle (see Rowland v. Christian (1968) 69 Cal.2d 108, 112; Fernandez v. Consolidated Fisheries, Inc. (1950) 98 Cal.App.2d 91, 95-96) is correct insofar as it indicates that the duty to refrain from injuring others through negligence has its roots in civil law concepts. (See Turk, supra, at p. 209.) It is incorrect, however, insofar as it might be read

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River Railroad Company (1859) 20 N.Y. 65. It is apparent from Code Commissioners' Note that this rule was considered too harsh for adoption in California, and that the Legislature therefore determined to adopt a provision which would not have the effect of barring a negligent plaintiff from recovery without regard to the quantity or quality of his negligence.[16]

Turning to the text of the note, we observe that, as indicated above (fn. 11, ante, and accompanying text), the first group of citations, both statutory and decisional, deal with defining the basic concept of negligence and announcing a rule of recovery therefor. Then appears the sentence "This section

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to indicate that defenses affecting recovery for breach of that basic duty are also rooted in the civil law. As we have shown, the defense of contributory negligence and its mitigative corollary, the doctrine of last clear chance, as they are stated in the statute, are clearly of common law origin.

16. "Although . . . the bulk of the Code was based on the New York draft code, it nevertheless cannot be classified as a mere duplication thereof. On the contrary, the original California Civil Code bears the unmistakable imprint of a thoroughgoing critical reconsideration and evaluation of the New York provisions, and their recasting where necessary in the light of California statutory and decision law, with a view to the improvement of the whole structure." (Van Alstyne, supra, at p. 11.)

modifies the law heretofore existing," followed immediately by the citation of three cases. The first of these, as we have indicated, is Johnson v. The Hudson River Railroad Company (1859) 20 N.Y. 65; that case represented the strict New York rule of contributory negligence, derived directly from the 1809 Butterfield case, under which any negligence on the part of the plaintiff barred recovery; and it had been specifically cited for that proposition in the Field draft section 853. (See fn. 12, ante.) The second and third cases cited by the California commissioners were Davies v. Mann (1842) 10 M & W 546, and Tuff v. Warman (1858) 5 C.B. (N.S.) 573; these cases stated the emerging doctrine of last clear chance, which the English courts had begun to apply in order to ameliorate the harsh Butterfield rule. Interestingly, the last cited of these cases contains language which might well have been the source of the term "except so far as" which the California Legislature used to indicate its parting of the ways with the New York rule: "It appears to us that the proper question for the jury in this case, and indeed in all others of the like kind, is, whether the damage was occasioned entirely by the negligence or improper

conduct of the defendant, or whether the plaintiff himself so far contributed to the misfortune by his own negligence or want of ordinary and common care and caution, that, but for such negligence or want of ordinary care and caution on his part, the misfortune would not have happened." (Tuff v. Warman, [17] supra, 5 C.B. (N.S.) 573, 585; italics added.)

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17. It is difficult to understand why the Code Commissioners did not incorporate in their note citations to California cases dealing with the plaintiff's duty of care and the doctrine of last clear chance. Perhaps it was felt that a citation of the seminal English cases was sufficient to recognize the emerging principles. In any event, it is worthy of note that this court, in the 1869 decision of Needham v. S. F. & S.J. R.Co. (1869) 37 Cal. 409, had carefully examined the New York rule and had firmly rejected it in favor of the more humane English view. Of more than passing interest in the present premises is the following language from our opinion: "To this doctrine [the strict New York rule], however, notwithstanding the very respectable authority by which it is sustained, we are unable to assent. About the general rule upon which it is founded -- that a plaintiff cannot recover for the negligence of the defendant, if his own want of care or negligence has in any degree contributed to the result complained of -- there can be no dispute. (Gay v. Winter, 34 Cal. 153.) The reason of this rule is, that both parties being at fault, there can be no apportionment of the damages, and not that the negligence of the plaintiff justifies or excuses the negligence of the defendant, which would seem to be the true reason in the estimation of the New York Courts. The law does not justify or excuse the negligence of the defendant. It would, notwithstanding the negligence of the plaintiff, hold the defendant responsible, if it could. It merely allows him to escape judgment because, from the nature of the case, it is unable to

 (footnote continued)

We think that the foregoing establishes conclusively that the intention of the Legislature in enacting section 1714 of the Civil Code was to state the basic rule of negligence together with the defense of contributory negligence modified by the emerging doctrine of last clear chance. It remains to determine whether by so doing the Legislature intended to restrict the courts from further development of these concepts according to evolving standards of duty, causation, and liability.

This question must be answered in the negative. As we have explained above, the peculiar nature of the 1872 Civil Code as an avowed continuation of the common law has rendered it particularly flexible and

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ascertain what share of the damages is due to his negligence. He is both legally and morally to blame, but there is no standard by which the law can measure the consequences of his fault, and therefore, and therefore only, he is allowed to go free of judgment. The impossibility of ascertaining in what degree his negligence contributed to the injury being then the sole ground of his exemption from liability, it follows that such exemption cannot be allowed where such impossibility does not exist; or, in other words, the general rule that a plaintiff who is himself at fault cannot recover, is limited by the reason upon which it is founded." (37 Cal. 409, 419; italics added.) This language clearly contains the germ of a comparative approach, if not the outright statement that such an approach would be adopted if apportionment of damages were technically possible.

adaptable in its response to changing circumstances and conditions. To reiterate the words of Professor Van Alstyne, "[the code's] incompleteness, both in scope and detail[,] have provided ample room for judicial development of important new systems of rules, frequently built upon Code foundations." (Van Alstyne, supra, at p. 36.) Section 1714 in particular has shown great adaptability in this respect. For example, the statute by its express language speaks of causation only in terms of actual cause or cause in fact ("Every one is responsible . . . for an injury occasioned to another by his want of ordinary care."), but this has not prevented active judicial development of the twin concepts of proximate causation and duty of care. (See, e.g., Vesely v. Sager (1971) 5 Cal.3d 153, 158-167; Connor v. Great Western Sav. & Loan Assn. (1968) 69 Cal.2d 850, 865-868; Dillon v. Legg (1968) 68 Cal.2d 728, 739-748; Stewart v. Cox (1961) 55 Cal.2d 857, 861-863; Biakanja v. Irving (1958) 49 Cal.2d 647; Richards v. Stanley (1954) 43 Cal.2d 60, 63-66.) Conversely, the presence of this statutory language has not hindered the development of rules which, in certain limited circumstances, permit a finding of liability in the absence of direct

evidence establishing the defendant's negligence as the actual cause of damage. (See Summers v. Tice (1948) 33 Cal.2d 80; Ybarra v. Spangard (1944) 25 Cal.2d 486.) By the same token we do not believe that the general language of section 1714 dealing with defensive considerations should be construed so as to stifle the orderly evolution of such considerations in light of emerging techniques and concepts. On the contrary we conclude that the rule of liberal construction made applicable to the code by its own terms (Civ. Code, § 4, discussed ante) together with the code's peculiar character as a continuation of the common law (see Civ. Code, § 5, also discussed ante) permit if not require that section 1714 be interpreted so as to give dynamic expression to the fundamental precepts which it summarizes.

The aforementioned precepts are basically two. The first is that one whose negligence has caused damage to another should be liable therefor. The second is that one whose negligence has contributed to his own injury should not be permitted to cast the burden of liability upon another. The problem facing the Legislature in 1872 was how to accommodate these twin precepts in a manner consonant with the then progress

of the common law and yet allow for the incorporation of future developments. The manner chosen sought to insure that the harsh accommodation wrought by the New York rule -- i.e., barring recovery to one guilty of any negligence -- would not take root in this state. Rather the Legislature wished to encourage a more humane rule -- one holding out the hope of recovery to the negligent plaintiff in some circumstances.

The resources of the common law at that time (in 1872) did not include techniques for the apportionment of damages strictly according to fault -- a fact which this court had lamented three years earlier (see fn. 17, ante). They did, however, include the nascent doctrine of last clear chance which, while it too was burdened by an "all-or-nothing" approach, at least to some extent avoided the often unconscionable results which could and did occur under the old rule precluding recovery when any negligence on the part of the plaintiff contributed in any degree to the harm suffered by him. Accordingly the Legislature sought to include the concept of last clear chance in its formulation of a rule of responsibility. We are convinced, however, as we have indicated, that in so doing the Legislature in no way intended to thwart future judicial progress

toward the humane goal which it had embraced. Therefore, and for all of the foregoing reasons, we hold that section 1714 of the Civil Code was not intended to and does not preclude present judicial action in furtherance of the purposes underlying it.

III

We are thus brought to the second group of arguments which have been advanced by defendants and the amici curiae supporting their position. Generally speaking, such arguments expose considerations of a practical nature which, it is urged, counsel against the adoption of a rule of comparative negligence in this state even if such adoption is possible by judicial means.

The most serious of these considerations are those attendant upon the administration of a rule of comparative negligence in cases involving multiple parties. One such problem may arise when all responsible parties are not brought before the court: it may be difficult for the jury to evaluate relative fault in such circumstances, and to compound this difficulty such an evaluation would not be res judicata in a subsequent suit against the absent wrongdoer. Problems

of contribution and indemnity among joint tortfeasors lurk in the background. (See generally Prosser, Comparative Negligence, supra, 41 Cal.L.Rev. 1, 33-37; Schwartz, Comparative Negligence, supra, §§ 16.1 - 16.9, pp. 247-274.)

A second and related major area of concern involves the administration of the actual process of fact-finding in a comparative negligence system. The assigning of a specific percentage factor to the degree of fault attributable to a particular party, while in theory a matter of little difficulty, can become a matter of perplexity in the face of hard facts. It is to be remembered that fault and culpability are the quantities to be measured, not mere physical causation, and such an assessment can involve the personal attitudes and prejudices of individual jurors to a great extent. The temptation for the jury to resort to a quotient verdict in such circumstances can be great. (See Schwartz, supra, § 17.1, pp. 275-279.) These inherent difficulties are not, however, insurmountable. Guidelines might be provided the jury which will assist it in keeping focussed upon the true inquiry (see, e.g., Schwartz, supra, § 17.1, pp. 278-279),

and the utilization of special verdicts[18] or jury interrogatories can be of invaluable assistance in assuring that the jury has approached its sensitive and often complex task with proper standards and appropriate reverence. (See Schwartz, supra, § 17.4, pp. 282-291; Prosser, Comparative Negligence, supra, 41 Cal.L.Rev., pp. 28-33.)

The third area of concern, the status of the doctrines of last clear chance and assumption of risk, involves less the practical problems of administering a particular form of comparative negligence than it does a definition of the theoretical outline of the specific form to be adopted. Although several states which apply comparative negligence concepts retain the last clear chance doctrine (see Schwartz, supra, § 7.2, p. 134), the better reasoned position seems to be that when true comparative negligence is adopted, the need for last clear chance as a

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18. It has been argued by one of the amici curiae that the use of special verdicts in negligence cases would require amendment of section 625 of the Code of Civil Procedure, which reposes the matter of special findings within the sound discretion of the trial court. (See Cembrook v. Sterling Drug Inc. (1964) 231 Cal.App.2d 52, 62-65.) The argument is frivolous. The delineation by this court of factors which should guide the exercise of section 625 discretion in negligence cases surely need not operate to remove that discretion altogether.

palliative of the hardships of the "all-or-nothing" rule disappears and its retention results only in a windfall to the plaintiff in direct contravention of the principle of liability in proportion to fault. (See Schwartz, supra, § 7.2, pp. 137-139; Prosser, Comparative Negligence, supra, 41 Cal.L.Rev., p. 27.) As for assumption of risk, we have recognized in this state that this defense overlaps that of contributory negligence to some extent and in fact is made up of at least two distinct defenses. "To simplify greatly, it has been observed . . . that in one kind of situation, to wit, where a plaintiff unreasonably undertakes to encounter a specific known risk imposed by a defendant's negligence, plaintiff's conduct, although he may encounter that risk in a prudent manner, is in reality a form of contributory negligence . . . . Other kinds of situations within the doctrine of assumption of risk are those, for example, where plaintiff is held to agree to relieve defendant of an obligation of reasonable conduct toward him. Such a situation would not involve contributory negligence, but rather a reduction of defendant's duty of care." (Grey v. Fibreboard Paper Products Co. (1966) 65 Cal.2d 240, 245-246; see also Fonseca v. County of Orange (1972) 28 Cal.App.3d 361, 368-369; see generally,

4 Witkin, Summary of Cal. Law, Torts, § 723, pp. 3013-3014; 2 Harper & James, The Law of Torts, supra, § 21.1, pp. 1162-1168; cf. Prosser, Torts, supra, § 68, pp. 439-441.) We think it clear that the adoption of a system of comparative negligence should entail the merger of the defense of assumption of risk into the general scheme of assessment of liability in proportion to fault in those particular cases in which the form of assumption of risk involved is no more than a variant of contributory negligence. (See generally, Schwartz, supra, ch. 9, pp. 153-175.)

Finally there is the problem of the treatment of willful misconduct under a system of comparative negligence. In jurisdictions following the "all-or-nothing" rule, contributory negligence is no defense to an action based upon a claim of willful misconduct. (see Rest.2d Torts, § 503; Prosser, Torts, supra, § 65, p. 426), and this is the present rule in California. (Williams v. Carr (1968) 68 Cal.2d 579, 583.)[19] As Dean

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19. BAJI No. 3.52 (1971 re-revision) currently provides: "Contributory negligence of a plaintiff is not a bar to his recovery for an injury caused by the wilful or wanton misconduct of a defendant. [¶] Wilful or wanton misconduct is intentional wrongful conduct,

(footnote continued)

Prosser has observed, "[this] is in reality a rule of comparative fault which is being applied, and the court is refusing to set up the lesser fault against the greater." (Prosser, Torts, supra, § 65, p. 426.) The thought is that the difference between willful and wanton misconduct and ordinary negligence is one of kind rather than degree in that the former involves culpability of an entirely different order,[20] and under this conception it might well be urged that comparative negligence concepts should have no application when one of the parties has been guilty of willful and wanton misconduct. It has been persuasively argued, however, that the loss of deterrent effect that would occur upon

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done either with knowledge, express or implied, that serious injury to another will probably result, or with a wanton and reckless disregard of the possible results. An intent to injure is not a necessary element of wilful or wanton misconduct. [¶] To prove such misconduct it is not necessary to establish that defendant himself recognized his conduct as dangerous. It is sufficient if it be established that a reasonable man under the same or similar circumstances would be aware of the dangerous character of such conduct."

20. "Disallowing the contributory negligence defense in this context is different from last clear chance; the defense is denied not because defendant had the last opportunity to avoid the accident but rather because defendant's conduct was so culpable it was different in 'kind' from the plaintiff's. The basis is culpability rather than causation." (Schwartz, supra, § 5.1, p. 100; fn. omitted.)

application of comparative fault concepts to willful and wanton misconduct as well as ordinary negligence would be slight, and that a comprehensive system of comparative negligence should allow for the apportionment of damages in all cases involving misconduct which falls short of being intentional. (Schwartz, supra, § 5.3, p. 108.) The law of punitive damages remains a separate consideration. (See Schwartz, supra, § 5.4, pp. 109-111.)

The existence of the foregoing areas of difficulty and uncertainty (as well as others which we have not here mentioned -- see generally Schwartz, supra, § 21.1, pp. 335-339) has not diminished our conviction that the time for a revision of the means for dealing with contributory fault in this state is long past due and that it lies within the province of this court to initiate the needed change by our decision in this case. Two of the indicated areas (i.e., multiple parties and willful misconduct) are not involved in the case before us, and we consider it neither necessary nor wise to address ourselves to specific problems of this nature which might be expected to arise. As the Florida court stated with respect to the same subject, "it is not the proper function of this Court to decide unripe issues, without the benefit of adequate briefing, not involving an actual controversy,

and unrelated to a specific factual situation." (Hoffman v. Jones, supra, 280 So.2d 431, 439.)

Our previous comments relating to the remaining two areas of concern (i.e., the status of the doctrines of last clear chance and assumption of risk, and the matter of judicial supervision of the finder of fact) have provided sufficient guidance to enable the trial courts of this state to meet and resolve particular problems in this area as they arise. As we have indicated, last clear chance and assumption of risk (insofar as the latter doctrine is but a variant of contributory negligence) are to be subsumed under the general process of assessing liability in proportion to fault, and the matter of jury supervision we leave for the moment within the broad discretion of the trial courts.

Our decision in this case is to be viewed as a first step in what we deem to be a proper and just direction, not as a compendium containing the answers to all questions that may be expected to arise. Pending future judicial or legislative developments, we are content for the present to assume the position taken by the Florida court in this matter: "We feel the trial judges of this State are capable of applying [a] comparative negligence rule without our setting guidelines

in anticipation of expected problems. The problems are more appropriately resolved at the trial level in a practical manner instead of a theoretical solution at the appellate level. The trial judges are granted broad discretion in adopting such procedures as may accomplish the objectives and purposes expressed in this opinion." (280 So.2d at pp. 439-440.)

It remains to identify the precise form of comparative negligence which we now adopt for application in this state. Although there are many variants, only the two basic forms need be considered here. The first of these, the so-called "pure" form of comparative negligence, apportions liability in direct proportion to fault in all cases. This was the form adopted by the Supreme Court of Florida in Hoffman v. Jones, supra, and it applies by statute in Mississippi, Rhode Island, and Washington. Moreover it is the form favored by most scholars and commentators. (See, e.g., Prosser, Comparative Negligence, supra, 41 Cal.L.Rev. 1, 21-25; Prosser, Torts, supra, § 67, pp. 437-438; Schwartz, supra, § 21.3, pp. 341-348; Comments on Maki v. Frelk - Comparative v. Contributory Negligence: Should the Court or Legislature Decide?, supra, 21 Vand. L.Rev. 889 (Comment by Keeton at p. 906, Comment by Leflar at p. 918).) The second basic form of comparative

negligence, of which there are several variants, applies apportionment based on fault up to the point at which the plaintiff's culpability is equal to or greater than that of the defendant -- when that point is reached, plaintiff is barred from recovery. Nineteen states have adopted this form or one of its variants by statute. The principal argument advanced in its favor is moral in nature: that it is not morally right to permit one more at fault in an accident to recover from one less culpable. Other arguments assert the probability of increased insurance, administrative, and judicial costs if a "pure" rather than a "50 percent" system is adopted, but this has been seriously questioned. (See authorities cited in Schwartz, supra, § 21.3, pp. 344-346; see also Vincent v. Pabst Brewing Co. (1970) 47 Wis.2d 120, 138 (dissenting opinion).)

We have concluded that the "pure" form of comparative negligence is that which should be adopted in this state. In our view the "50 percent" system simply shifts the lottery aspect of the contributory negligence rule[21] to a different ground. As Dean Prosser

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21. "The rule that contributory fault bars completely is a curious departure from the central principle of nineteenth century Anglo-American tort law -- that wrongdoers should bear the losses they cause. Comparative negligence more faithfully serves that central

 (footnote continued)

has noted, under such a system "[i]t is obvious that a slight difference in the proportionate fault may permit a recovery; and there has been much justified criticism of a rule under which a plaintiff who is charged with 49 percent of the total negligence recovers 51 percent of his damages, while one who is charged with 50 percent recovers nothing at all."[22] (Prosser, Comparative Negligence, supra, 41 Cal.L.Rev. 1, 25; fns. omitted.) In effect "such a rule distorts the very principle it recognizes, i.e., that persons are responsible for their acts to the extent their fault contributes to an injurious result. The partial rule simply lowers, but does not eliminate, the bar of contributory negligence." (Juenger, Brief for Negligence Law Section of the State Bar of Michigan in Support of Comparative Negligence as Amicus Curiae,

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principle by causing the wrongdoers to share the burden of resulting losses in reasonable relation to their wrongdoing, rather than allocating the heavier burden to the one who, as luck would have it, happened to be more seriously injured." (Comments on Maki v. Frelk, supra, 21 Vand.L.Rev. 889, Comment by Keeton, pp. 91[illegible]-913.)

22. This problem is compounded when the injurious result is produced by the combined negligence of several parties. For example in a three-car collision a plaintiff whose negligence amounts to one-third or more recovers nothing; in a four-car collision the plaintiff is barred if his negligence is only one-quarter of the total. (See Juenger, Brief for Negligence Law Section of the State Bar of Michigan in Support of Comparative Negligence as Amicus Curiae, Parsonson v. Construction Equipment Company (1972) 18 Wayne L.Rev. 3, 50-51.)

Parsonson v. Construction Equipment Company, supra, 18 Wayne L.Rev. 3, 50; see also Schwartz, supra, § 21.3, p. 347.)

We also consider significant the experience of the State of Wisconsin, which until recently was considered the leading exponent of the "50 percent" system. There that system led to numerous appeals on the narrow but crucial issue whether plaintiff's negligence was equal to defendant's. (See Prosser, Comparative Negligence, supra, 41 Cal.L.Rev. 1, 23-25.) Numerous reversals have resulted on this point, leading to the development of arcane classifications of negligence according to quality and category. (See cases cited in Vincent v. Pabst Brewing Co., supra, 47 Wis.2d 120, at p. 137 (dissenting opinion).) This finally led to a frontal attack on the system in the Vincent case, cited above, wherein the state supreme court was urged to replace the statutory "50 percent" rule by a judicially declared "pure" comparative negligence rule. The majority of the court rejected this invitation, concluding that the Legislature had occupied the field, but three concurring justices and one dissenter indicated their willingness to accept it if the Legislature failed to act with reasonable dispatch. The dissenting opinion

of Chief Justice Hallows, which has been cited above, stands as a persuasive testimonial in favor of the "pure" system. We wholeheartedly embrace its reasoning. (See also, Hoffman v. Jones, supra, 280 So.2d 431, 438-439.)

For all of the foregoing reasons we conclude that the "all-or-nothing" rule of contributory negligence as it presently exists in this state should be and is herewith superseded by a system of "pure" comparative negligence, the fundamental purpose of which shall be to assign responsibility and liability for damage in direct proportion to the fault of the persons whose negligence has brought such damage about. Therefore, in all actions for negligence resulting in injury to person or property, the contributory negligence of the person injured in person or property shall not bar recovery, but the damages awarded shall be diminished in proportion to the amount of fault attributable to that person. The doctrine of last clear chance is abolished, and the defense of assumption of risk is also abolished to the extent that it is merely a variant of the former doctrine of contributory negligence; both of these are to be subsumed under the general process of assessing liability in proportion to fault. Pending future judicial or legislative developments, the trial courts of this state are to use broad

discretion in seeking to assure that the principle stated is applied in the interest of justice and in furtherance of the purposes and objectives set forth in this opinion.

It remains for us to determine the extent to which the rule here announced shall have application to cases other than those which are commenced in the future. It is the rule in this state that determinations of this nature turn upon considerations of fairness and public policy. (Westbrook v. Mihaly (1970) 2 Cal.3d 765, 800; Connor v. Great Western Sav. & Loan Assn. (1968) 69 Cal.2d 850, 868; Forster Shipbldg. Co. v. County of L.A. (1960) 54 Cal.2d 450, 459; County of Los Angeles v. Faus (1957) 48 Cal.2d 672, 680-681.) Upon mature reflection, in view of the very substantial number of cases involving the matter here at issue which are now pending in the trial and appellate courts of this state, and with particular attention to considerations of reliance applicable to individual cases according to the stage of litigation which they have reached, we have concluded that a rule of limited retroactivity should obtain here. Accordingly we hold that the present opinion shall be applicable to all cases in which trial has not begun before the date this decision becomes final in this court, but that it shall not be applicable to any case in which

trial began before that date (other than the instant case) -- except that if any judgment be reversed on appeal for other reasons, this opinion shall be applicable to any retrial.

As suggested above, we have concluded that this is a case in which the litigant before the court should be given the benefit of the new rule announced. Here, unlike in Westbrook v. Mihaly, supra, 2 Cal.3d 765, considerations of fairness and public policy do not dictate that a purely prospective operation be given to our decision.[23] To the contrary, sound principles of decision-making compel us to conclude that, in the light of the particular circumstances of the instant case,[24] the new rule here announced should be applied additionally to the case at bench so as to provide incentive in future cases for parties who may

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23. Indeed, as we have indicated in the preceding paragraph, such considerations have led us to permit application of the new rule to actions which have been commenced but have not yet been brought to trial.

24. Nothing we say here today on this point is intended to overrule, in whole or in part, expressly or by implication, the case of Westbrook v. Mihaly, supra, 2 Cal.3d 765, or any other case involving the prospective or retrospective operation of our decisions.

have occasion to raise "issues involving renovation of unsound or outmoded legal doctrines." (See Mishkin, Foreword, The Supreme Court 1964 Term (1965) 79 Harv.L.Rev. 56, 60-62.) We fully appreciate that there may be other litigants now in various stages of trial or appellate process who have also raised the issue here before us but who will nevertheless be foreclosed from benefitting from the new standard by the rule of limited retroactivity we have announced in the preceding paragraph. This consideration, however, does not lead us to alter that rule. "Inequity arguably results from according the benefit of a new rule to the parties in the case in which it is announced but not to other litigants similarly situated in the trial or appellate process who have raised the same issue. But we regard the fact that the parties involved are chance beneficiaries as an insignificant cost for adherence to sound principles of decision-making." (Stovall v. Denno (1967) 388 U.S. 293, 301; fn. omitted.)

In view of the foregoing disposition of this case we have not found it necessary to discuss plaintiff's additional contention that the rule of contributory

negligence is in violation of state and federal constitutional provisions guaranteeing equal protection of the laws.

The judgment is reversed.

SULLIVAN, J.

WE CONCUR:

WRIGHT, C.J.
TOBRINER, J.
BURKE, J.**

** Retired Associate Justice of the Supreme Court sitting under assignment by the Chairman of the Judicial Council.

C O P Y

NGA LI v. YELLOW CAB CO. OF CALIFORNIA

L.A. 30277

CONCURRING AND DISSENTING OPINION BY MOSK, J.

Although I concur in the judgment and agree with the substance of the majority opinion, I dissent from its cavalier treatment of the recurring problem of the manner of applying a new court-made rule.

In footnote 24 the opinion denies that the court now "is intending to overrule" the case of Westbrook v. Mihaly (1970) 2 Cal.3d 765. Whether or not the majority subjectively intend to overrule Westbrook, the result and the text of the opinion indicate beyond any doubt that they have actually done so. Precedent is established not merely by what a court says; it is created primarily by what a court does. (Norris v. Moody (1890) 84 Cal. 143, 149; Childers v. Childers (1946) 74 Cal.App.2d 56, 61.)

Unfortunately the forthrightness of the majority opinion as a whole is sadly diminished by a curious reluctance to face up to reality by recognizing that this court is finally overruling Westbrook and several other cases on the subject of applying a new court-made rule to the parties at hand.

As recently as People v. Hitch (1974) 12 Cal.3d 641, 654, the majority of this court, while upholding the appellant's contentions, denied him relief on a theory that prospectivity should prevail over retroactive application of a new rule. I pointed out in my dissent (id. at p. 655) that "there is a third, and preferable, alternative: applying the new rule to the aggrieved party responsible for bringing the issue to judicial attention, and thereafter prospectively."

Up to now the majority never deigned to consider the third alternative, but persisted in their erroneous notion that the only choice was between total retroactivity and absolute prospectivity. This occurred in two other cases last year: see my concurring opinion in In re Stewart (1974) 10 Cal.3d 902, 907, and my dissenting opinion in In re Yurko (1974) 10 Cal.3d 857, 867.

In retrospect it is clear that Westbrook v. Mihaly, supra, was the point of departure in which the majority first strayed from the accepted doctrine that a prevailing party is to be awarded the fruits of his victory. In my concurring and dissenting opinion in that case (2 Cal.3d at p. 802) and in Hitch (12 Cal.3d at p. 656) I quoted from Stovall v. Denno (1967) 388 U.S. 293, to the effect that the benefits of a new

rule should apply to the parties to the proceeding which results in the new rule. In the instant case, the majority now quote that same portion of Stovall, this time with approval (ante, p. ___*).

Also, in Westbrook v. Mihaly (2 Cal.3d at p. 804) I noted that if a new rule is to apply prospectively only, "it will tend to deter counsel from presenting 'issues involving renovation of unsound or outmoded legal doctrines,'" citing Mishkin's foreword to the article on the 1964 term of the Supreme Court in 79 Harvard Law Review 56. The majority now adopt the same point based upon the same quotation (ante, p. ___**).

The majority paint their conclusion herein with such broad-brush and standardless terms as "considerations of fairness and public policy" and "sound principles of decision-making," without giving any clue why application of a new rule is fair to Nga Li, but somehow was unfair as applied over the past several years to Westbrook and to the several other litigants who helped us develop new rules of law only to be deprived of the benefits thereof. The most inexplicable previous result was Larez v. Shannon (1970) 2 Cal.3d 813, in which, it will be remembered, the plaintiffs prevailed completely on principle, but the majority went so far as to reverse a judgment in their favor.

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*Multilith opinion, page 48.
**Multilith opinion, pages 47-48.

Nevertheless it is comforting that the majority of the court have finally settled on the third of the three available alternatives in applying a new court-made rule. Despite the majority's gratuitous disclaimer, the bench and bar will understand that this court is now overruling, insofar as they are inconsistent, the following opinions: Westbrook v. Mihaly, supra, 2 Cal.3d 765; Alhambra City Sch. Dist. v. Mize (1970) 2 Cal.3d 806; Larez v. Shannon, supra, 2 Cal.3d 813, Foytik v. Aronson (1970) 2 Cal.3d 818; In re Yurko, supra, 10 Cal.3d 857; People v. Hitch, supra, 12 Cal.3d 641.

MOSK, J.

C O P Y

LI v. YELLOW CAB CO.

L.A. 30277

DISSENTING OPINION BY CLARK, J.

I dissent.

For over a century this court has consistently and unanimously held that Civil Code section 1714 codifies the defense of contributory negligence. Suddenly--after 103 years--the court declares section 1714 shall provide for comparative negligence instead. In my view, this action constitutes a gross departure from established judicial rules and role.

First, the majority's decision deviates from settled rules of statutory construction. A cardinal rule of construction is to effect the intent of the Legislature.[1/] The majority concedes

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1/ Tyrone v. Kelley (1973) 9 Cal.3d 1, 10-11 [106 Cal.Rptr. 761, 507 P.2d 65]; Friends of Mammoth v. Board of Supervisors (1972) 8 Cal.3d 247, 256 [104 Cal.Rptr. 761, 502 P.2d 1049]; Mannheim v. Superior Court (1970) 3 Cal.3d 678, 686 [91 Cal.Rptr. 585, 478 P.2d 17]; Scala v. Jerry Witt & Sons, Inc. (1970) 3 Cal.3d 359, 366 [90 Cal.Rptr. 592, 475 P.2d 864]; Merrill v. Department of Motor Vehicles (1969) 71 Cal.2d 907, 918 [80 Cal.Rptr. 89, 458 P.2d 33].

"the intention of the Legislature in enacting section 1714 of the Civil Code was to state the basic rule of negligence together with the defense of contributory negligence modified by the emerging doctrine of last clear chance." (Ante, p. ___.*) Yet the majority refuses to honor this acknowledged intention --violating established principle.

The majority decision also departs significantly from the recognized limitation upon judicial action --encroaching on the powers constitutionally entrusted to the Legislature. The power to enact and amend our statutes is vested exclusively in the Legislature. (Cal.Const., art. III, § 3; art. IV, § 1.) "This court may not usurp the legislative function to change the statutory law which has been uniformly construed by a long line of judicial decisions." (Estate of Calhoun (1955) 44 Cal.2d 378, 387 [282 P.2d 880].) The majority's altering the meaning of section 1714, notwithstanding the original intent of the framers and the century-old judicial interpretation of the statute, represents no less than amendment by judicial fiat. Although the Legislature intended the courts to develop the working details of the defense of contributory

*Majority opinion page 29.

negligence enacted in section 1714 (see generally, Commentary, Arvo Van Alstyne, The California Civil Code, 6 West Civ. Code (1954) pp. 1-43), no basis exists--either in history or in logic--to conclude the Legislature intended to authorize judicial repudiation of the basic defense itself at any point we might decide the doctrine no longer serves us.

I dispute the need for judicial--instead of legislative--action in this area. The majority is clearly correct in its observation that our society has changed significantly during the 103-year existence of section 1714. But this social change has been neither recent nor traumatic, and the criticisms leveled by the majority at the present operation of contributory negligence are not new. I cannot conclude our society's evolution has now rendered the normal legislative process inadequate.

Further, the Legislature is the branch best able to effect transition from contributory to comparative or some other doctrine of negligence. Numerous and differing negligence systems have been urged over the years, yet there remains widespread disagreement among both the commentators and the states as to which one is

best. (See Schwartz, Comparative Negligence (1974) Appendix A, pp. 367-369 and § 21.3, fn. 40, pp. 341-342, and authorities cited therein.) This court is not an investigatory body, and we lack the means of fairly appraising the merits of these competing systems. Constrained by settled rules of judicial review, we must consider only matters within the record or susceptible to judicial notice. That this court is inadequate to the task of carefully selecting the best replacement system is reflected in the majority's summary manner of eliminating from consideration all but two of the many competing proposals --including models adopted by some of our sister states.[2/]

Contrary to the majority's assertions of judicial adequacy, the courts of other states--with near unanimity--have conceded their inability to determine the best system for replacing contributory negligence, concluding instead that the legislative

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2/ "It remains to identify the precise form of comparative negligence which we now adopt for application in this state. Although there are many variants, only the two basic forms need be considered here." (Ante, p. ___.*)

*Majority opinion page 41.

branch is best able to resolve the issue.[3/]

By abolishing this century old doctrine today, the majority seriously erodes our constitutional function. We are again guilty of judicial chauvinism.

CLARK, J.

I CONCUR:

McCOMB, J.

3/ See, e.g., Codling v. Paglia (1973) 32 N.Y.2d 330, 344-345 [298 N.E.2d 622, 345 N.Y.S.2d 461]; McGraw v. Corrin (Del. 1973) 303 A.2d 641, 644; Bridges v. Union Railroad Company (1971) 26 Utah 2d 281 [488 P.2d 738]; Parsonson v. Constr. Equipment Co. (1970) 386 Mich. 61 [191 N.W.2d 465] (concurring opinion); Krise v. Gillund (N.Dak. 1971) 184 N.W.2d 405; Peterson v. Culp (1970) 255 Ore. 269 [465 P.2d 876]; Vincent v. Pabst Brewing Co. (1970) 47 Wis.2d 120 [177 N.W.2d 513]; Maki v. Frelk (1968) 40 Ill.2d 193 [239 N.E.2d 445]; compare Hoffman v. Jones (Fla. 1973) 280 So.2d 431.

joint tort-feasors by injured party will release all other tort-feasors who contributed to wrong. Id.

An innocent party is to be fully compensated by a joint tort-feasor for his loss. Allstate Ins. Co. v. Clarke (Civ.App.1971) 471 S.W.2d 901, ref. n. r. e.

7. —— Common liability, joint tort-feasors

Where bidder was under no obligation to indemnify owner, pursuant to indemnity provision of contract calling for bidder to undertake certain work on owner's utility lines and poles, for settlement made for injury to bidder's employee in course of job as result of separate acts of negligence of both owner and bidder, whether employee was contributorily negligent was immaterial and submission of special issues relating to contributory negligence of employee, although error, was harmless. Bluebonnet Elec. Co-op., Inc. v. Universal Elec. Const. Co. (Civ.App.1971) 467 S.W.2d 567, ref. n. r. e.

15. Indemnity agreements

McCann Const. Co. v. Joe Adams and Son (Civ.App.1970) 458 S.W.2d 477 [main volume] reversed on other grounds 475 S.W.2d 721.

Generally, indemnity agreement will not protect indemnitee against consequences of his own negligence unless the obligation is expressed in unequivocal terms. Joe Adams and Son v. McCann Const. Co. (Sup. 1971) 475 S.W.2d 721.

Under oil well drilling contract providing that contractor would assume full liability for, and hold oil field leaseholder harmless, against all claims arising as result of accidents incident to drilling operation conducted by contractor, leaseholder was not indemnified for accidents arising out of its own negligence. Coastal States Crude Gathering Co. v. Williams (Civ.App.1972) 476 S.W.2d 339, ref. n. r. e.

General rule is that a contract of indemnity will not afford protection to the indemnitee against the consequences of his own negligence unless the contract clearly expresses such an obligation in unequivocal terms. Ref-Chem Corp. v. El Paso Products Co. (Civ.App.1974) 506 S.W.2d 701.

Contract providing indemnification for owner against claims asserted by contractor, its officers, agents, employees, or any member of the public, arising out of or in connection with the work, except for claims by a member of the public caused by the negligence of the owner without contributory negligence on the part of the contractor, provided indemnification for owner's own negligence, but only with respect to claims of the contractor, its agents and employees or where the claim arose out of the work being done by the contractor. Id.

16. Products liability

Manufacturer of defective intracath needle which was found liable to patient injured thereby was not entitled to contribution from either the packager and distributor if intracath unit of which needle was part or hospital in which patient was staying at time of injury, because both packager and hospital would be entitled to indemnification at common law against manufacturer which was solely liable for judgment and which had breached duty owed to packager and hospital. Vergott v. Deseret Pharmaceutical Co. (C.A.1972) 463 F.2d 12.

Where manufacturer sold dealer a truck with defectively designed cooling system and dealer materially and knowingly aggravated and contributed to condition by installing air conditioner which severely enhanced danger, both operating concurrently to cause accident, dealer could not recover indemnity from manufacturer but could recover contribution. Ford Motor Co. v. Russell & Smith Ford Co. (Civ.App.1971) 474 S.W.2d 549.

17. Landlord and tenant

Where pipeline owner which held easement over oil field for its pipeline created potentially dangerous condition in not marking location of underground pipeline but no injury would have resulted therefrom in absence of active negligence of oil field leaseholder in having water pit dug in preparation for well drilling at place over pipeline whose location leaseholder either knew or should have known, resulting in rupturing of pipeline and resulting fire in which plaintiffs' decedent, as operator of bulldozer digging water pit, died, pipeline owner was entitled to common law indemnity from leaseholder. Coastal States Crude Gathering Co. v. Williams (Civ.App. 1972) 476 S.W.2d 339, ref. n. r. e.

18. Contract provisions for contributions

Where indemnity contract between railroad and LP gas supplier provided that railroad was entitled to full indemnity if damages were caused by negligent acts or omissions of producer and that producer would share equally with the railroad in payment of loss if damages were caused by their joint or concurring negligence, and where neither was guilty of active negligence but they both, due to failure of each to act, were guilty of passive negligence which was joint and concurrent with sole cause not being attributable to either, railroad was entitled to contribution from producer for one-half of recovery by railroad employee against railroad in employee's action under Federal Employers' Liability Act (45 U.S.C.A. § 51 et seq.) against railroad for injuries sustained when he inhaled LP gas. Atchison, T. & S. F. Ry. Co. v. Denton (Civ.App.1971) 475 S.W.2d 821, ref. n. r. e.

19. Contractors and subcontractors

McCann Const. Co. v. Joe Adams and Son (Civ.App.1970) 458 S.W.2d 477 [main volume] reversed 475 S.W.2d 721.

Provision in contract between general contractor and subcontractor whereby subcontractor would indemnify general contractor for any injuries sustained by parties through or on account of any act or in connection with the work of the subcontractor did not entitle general contractor to indemnification from subcontractor for judgment entered against general contractor for injuries sustained by subcontractor's employees when concrete forms erected by general contractor before subcontractor began doing its work of pouring concrete collapsed solely by the fault of the general contractor. Joe Adams & Son v. McCann Const. Co. (Sup.1971) 475 S.W.2d 721.

30. Release

Where it did not appear that owner or operator of automobile which ran over infant plaintiff, or hospital where plaintiff was treated by physician, were joint tort-feasors with physician, settlement with and release of parties other than physician did not require reduction of damages recoverable from physician. Leong v. Wright (Civ.App.1972) 478 S.W.2d 839, ref. n. r. e.

38. Summary judgment

Evidence generated genuine issue of material fact whether trust agreement, which had been entered into between uninsured motorist carrier and its insured following automobile accident, which made insured trustee as to any recovery insured might make against uninsured motorist but which was silent as to insured being trustee as to any recovery he might make against joint tort-feasor, superseded trust agreement, which was contained in policy and which gave insurer right of reimbursement from any recovery against joint tort-feasor, precluding summary judgment for insurer, which had intervened in insured's suit against joint tort-feasor. Allstate Ins. Co. v. Clarke (Civ.App.1971) 471 S.W.2d 901, ref. n. r. e.

40. Evidence

In action against leaseholder and drilling contractor for wrongful death of operator of bulldozer whose blade struck and ruptured subterranean crude oil pipeline while digging water pit preparatory to well drilling operation for leaseholder, master drilling contract executed after date of accident by leaseholder and well drilling contractor which sought indemnity against leaseholder was properly excluded. Coastal States Crude Gathering Co. v. Williams (Civ.App. 1972) 476 S.W.2d 339, ref. n. r. e.

40.5 Jury questions

Where there was no showing that field personnel of general contractor were authorized to agree to indemnity obligation or that indemnity clause printed on work orders prepared by equipment supplier had been subject of negotiations between general contractor and equipment supplier, and executive of general contractor testified that he had no knowledge of indemnity clause printed on face of work order signed by general contractor's field superintendent after job for which cranes had been hired and during which damage to bridge tee occurred and that general contractor considered work orders as nothing more than receipts given in field after accomplishment of work, determination of whether contract of indemnity existed should have been left to jury as trier of fact. Hawa & Garrett General Contractors, Inc. v. Gorbett Bros. Welding Co. (Sup.1972) 480 S.W.2d 607.

45. Judgment, in general

Where under "trust agreement" insured agreed to hold any recovery he made against uninsured motorist for benefit of uninsured motorist insurer, insurer was not, on theory of contribution, entitled to recover its payments out of judgment insured had obtained against joint tort-feasor. Allstate Ins. Co. v. Clarke (Civ.App. 1971) 471 S.W.2d 901, ref. n. r. e.

Art. 2212a. Comparative negligence; contribution among joint tort-feasors

Texas 50%

Modified comparative negligence

Section 1. Contributory negligence shall not bar recovery in an action by any person or party or the legal representative of any person or party to recover damages for negligence resulting in death or injury to persons or property if such negligence is not greater than the negligence of the person or party or persons or parties against whom recovery is sought, but any damages allowed shall be diminished in proportion to the amount of negligence attributed to the person or party recovering.

Contribution among joint tort-feasors

Sec. 2. (a) In this section:

(1) "Claimant" means any party seeking relief, whether he is a plaintiff, counterclaimant, or cross-claimant.

(2) "Defendant" includes any party from whom a claimant seeks relief.

(b) In a case in which there is more than one defendant, and the claimant's negligence does not exceed the total negligence of all defendants, contribution to the damages awarded to the claimant shall be in proportion to the percentage of negligence attributable to each defendant.

(c) Each defendant is jointly and severally liable for the entire amount of the judgment awarded the claimant, except that a defendant whose negligence is less than that of the claimant is liable to the claimant only for that portion of the judgment which represents the percentage of negligence attributable to him.

(d) If an alleged joint tort-feasor pays an amount to a claimant in settlement, but is never joined as a party defendant, or having been joined, is dismissed or nonsuited after settlement with the claimant (for which reason the existence and amount of his negligence are not submitted to the jury), each defendant is entitled to deduct from the amount for which he is liable to the claimant a percentage of the amount of the settlement based on the relationship the defendant's own negligence bears to the total negligence of all defendants.

(e) If an alleged joint tort-feasor makes a settlement with a claimant but nevertheless is joined as a party defendant at the time of the submission of the case to the jury (so that the existence and amount of his negligence are submitted to the jury) and his percentage of negligence is found by the jury, the settlement is a complete release of the portion of the judgment attributable to the percentage of negligence found on the part of that joint tort-feasor.

(f) If the application of the rules contained in Subsections (a) through (e) of this section results in two claimants being liable to each other in damages, the claimant who is liable for the greater amount is entitled to a credit toward his liability in the amount of damages owed him by the other claimant.

(g) All claims for contribution between named defendants in the primary suit shall be determined in the primary suit, except that a named defendant may proceed against a person not a party to the primary suit who has not effected a settlement with the claimant.

(h) This section prevails over Article 2212, Revised Civil Statutes of Texas, 1925, and all other laws to the extent of any conflict.

Acts 1973, 63rd Leg., p. 41, ch. 28, §§ 1, 2, eff. Sept. 1, 1973.

Section 3 of the 1973 Act amended section 1 of article 6701b; §§ 4, 5 thereof provided:

"Sec. 4. Saving clause. This Act does not apply to any cause of action arising before its effective date.

"Sec. 5. Severability clause. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Comparative Laws:

STATE	CITATION
Arkansas	Ark.Stats. § 27-1730.2
Connecticut	Laws 1973, c. 622
Maine	14 M.R.S.A. § 156
Massachusetts	M.G.L.A. c. 231, § 85
Minnesota	M.S.A. § 604.01
Mississippi	Code 1942 § 1454
Nebraska	R.R.S. § 25-1151
New Hampshire	R.S.A. 507:7-a
New Jersey	N.J.S.A. 2A:15-5.1 to 2A:15-5.3
Oklahoma	23 Okl.St.Ann. §§ 11, 12
Rhode Island	Gen.Laws 1956, § 9-20-4

Comparative Laws:

STATE	CITATION
South Dakota	SDCL § 20-9-2
Vermont	12 V.S.A. § 1036
Washington	Laws 1973, c. 138(X)
Wisconsin	W.S.A. § 895.045

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Automobile insurance rate changes under comparative negligence. Jerry D. Todd, 36 Texas Bar J. 1153 (1973).

Automobile reparations reform bills. John M. Lawrence III, 36 Texas Bar J. 1117 (1972).

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Proposed modified comparative negligence statute. Frank T. Abraham, 36 Texas Bar J. 1114 (1972).

Library references

Contribution ⇐5(2).
Negligence ⇐92.
C.J.S. Contribution § 11.
C.J.S. Negligence § 168(2).

Art. 2212b. Indemnity provisions in mineral agreements where negligence attributable to indemnitee

Section 1. The legislature finds that an inequity is fostered on certain contractors by the indemnity provisions contained in some agreements pertaining to wells for oil, gas, or water, or mines for other minerals. It is the intent of the legislature and the purpose of this Act to declare provisions for indemnity in certain agreements where there is negligence attributable to the indemnitee to be against the public policy of the State of Texas.

Sec. 2. Except as specified in Section 4 of this Act, a covenant, promise, agreement, or understanding contained in, collateral to, or affecting an agreement pertaining to a well for oil, gas, or water, or mine for any mineral, is void and unenforceable if it purports to indemnify the indemnitee against loss or liability for damages arising from either death or bodily injury to persons, or injury to property, or any other loss, damage, or expense arising from either death or bodily injury, injury to property, or loss, damage, or expense, which is caused by or results from the sole or concurrent negligence of the indemnitee, or an agent or employee of the indemnitee, or an independent contractor who is directly responsible to the indemnitee.

Sec. 3. The term "agreement pertaining to a well for oil, gas, or water, or mine for any mineral" as used in Section 2 of this Act, means any agreement or understanding, written or oral, concerning any operations related to drilling, deepening, reworking, repairing, improving, testing, treating, perforating, acidizing, logging, conditioning, altering, plugging, or otherwise rendering services in or in connection with any well drilled for the purpose of producing or disposing of oil, gas, or other minerals, or water, or designing, excavating, constructing, improving, or otherwise rendering services in or in connection with any mine shaft, drift, or other structure intended for use in the exploration for or production of any mineral, or an agreement to perform any portion of any such work or services or any act collateral thereto, including the furnishing or rental of equipment, incidental transportation, and other goods and services furnished in connection with any such service or operation.

Sec. 4. (a) The provisions of this Act do not apply to loss or liability for damages, or any other expenses, arising from

(1) death or bodily injury to persons or injury to property resulting from radioactivity;

(2) injury to property resulting from pollution; or

(3) injury to property resulting from reservoir or underground damage.

(b) The provisions of this Act do not affect the validity of any insurance contract or any benefit conferred by the Workmen's Compensation Law of this state and do not deprive an owner of the surface estate of the right to secure an indemnity from any lessee, operator, contractor, or other person conducting operations for the exploration or production of minerals of the owner's land.

(c) The provisions of Section 2 of this Act shall not apply to any agreement providing for indemnity with respect to claims for personal injury or death to indemnitor's employees or agents, or the employees or agents of indemnitor's sub-contractors if the parties agree in writing that such indemnity obligation will be supported by available liability insurance coverage to be furnished by indemnitor: provided, however, that such indemnity obligation shall be only to the extent of the coverages and dollar limits of insurance agreed to be furnished; but in no event shall said insurance be required in an amount in excess of twelve times state basic limits for bodily injury, approved by the Board of Insurance Commissioners

and Washington State University during the 1973-75 biennium under the provisions of RCW 66.08.180. If this section is not deleted, the University of Washington will receive $300,000 less than anticipated, Washington State University will receive $200,000 less than anticipated, and the Divison of Health-Department of Social and Health Services will receive $500,000 more than anticipated for alcoholism programs authorized by RCW 70.96.040. Veto Message

Although the language of this section does not contain the word "appropriation," in the absence of any specific language to the contrary, the effect is an appropriation of $500,000 for additional expenditures by the Division of Health. The Alcoholism Program of the Division of Health was funded at the level recommended in my proposed budget for the 1973-75 biennium, and I do not believe the Legislature intended to provide additional funds for that program.

With the exception of the items described above, the remainder of the bill is approved."

CHAPTER 138

[Engrossed Senate Bill No. 2045]

COMPARATIVE NEGLIGENCE--IMPUTED NEGLIGENCE

WASHINGTON "PURE" FORM

AN ACT Relating to civil procedure; creating a new chapter in Title 4 RCW; and declaring an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Section 1. Contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages caused by negligence resulting in death or in injury to person or property, but any damages allowed shall be diminished in proportion to the percentage of negligence attributable to the party recovering.

NEW SECTION. Sec. 2. The negligence of one marital spouse shall not be imputed to the other spouse to the marriage so as to bar recovery in an action by the other spouse to the marriage, or his or her legal representative, to recover damages from a third party caused by negligence resulting in death or in injury to the person.

NEW SECTION. Sec. 3. This act takes effect as of 12:01 a.m. on April 1, 1974.

NEW SECTION. Sec. 4. If any provision of this act or the application thereof to any person or circumstance is held

unconstitutional, the remainder of this act and the application of such provisions to other persons or circumstances shall not be affected thereby, and it shall be conclusively presumed that the legislature would have enacted the remainder of this act without such invalid or unconstitutional provision.

NEW SECTION. Sec. 5. Sections 1 through 4 of this act shall constitute a new chapter in Title 4 RCW.

Passed the Senate March 31, 1973.
Passed the House April 14, 1973.
Approved by the Governor April 23, 1973.
Filed in Office of Secretary of State April 24, 1973.

CHAPTER 139
[Engrossed Substitute Senate Bill No. 2800]
DEPARTMENT OF SOCIAL AND HEALTH
SERVICES BUDGET

AN ACT Adopting the budget for the department of social and health services and allied agencies; making appropriations and authorizing expenditures for the operations of the department and allied agencies for the fiscal biennium beginning July 1, 1973, and ending June 30, 1975; designating effective dates for certain appropriations; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Section 1. That a budget is hereby adopted for the department of social and health services and its allied agencies and subject to the provisions set forth in the following sections, the several amounts specified in the following sections, or so much thereof as shall be sufficient to accomplish the purposes designated, are hereby appropriated and authorized to be disbursed for salaries, wages and other expenses and for other specified purposes for the fiscal biennium beginning July 1, 1973, and ending June 30, 1975, except as otherwise provided, out of the several funds of the state hereinafter named.

NEW SECTION. Sec. 2. FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES

General Fund Appropriation: PROVIDED, That
$594,866,929 is from state funds and
$6,541,168 is from private and local funds and
$417,713,198 is from federal funds: PROVIDED,
That any proposal to expend moneys or man years from an appropriated fund or account in excess of appropriations provided by law, based

CHAPTER 507

ACTIONS

[*New Sections*]
507: 7-a Comparative Negligence.
507: 7-b Release or Covenant Not to Sue; Joint Tortfeasors.
507: 7-c Inadmissible Evidence; Post Verdict Procedure.
507: 8 Contributory Negligence as Defense [Repealed.]
507: 8-b Strict Liability and Implied Warranties Limited.
Venue
507: 14 Minors Contracts; Motor Vehicles [Repealed.]

507: 1 Partners.

[Repealed 1973, 378: 2, eff. Aug. 29, 1973, superseded by RSA 304-A: 18 et seq. (supp).]

507: 2 Coteñants.

ANNOTATIONS

Library references

Larceny: cotenant taking cotenancy property. 17 ALR3d 1394.

507: 7 False Checks, etc. Any person who makes, draws, utters or delivers any check, draft or order for the payment of money upon any bank or other depository, knowing that the maker or drawer has not sufficient funds in or credit with such bank or other depository for the payment thereof, and which is not paid in full upon presentation, shall be liable to the person injured thereby.

Source. 1917, 55: 1. PL 328: 12. RL 384: 12. RSA 507: 7. 1971, 227: 5, eff. Aug. 17, 1971.

Amendments—1971. Omitted provisions relating to arrest.

507: 7-a [New] Comparative Negligence. Contributory negligence shall not bar recovery in an action by any plaintiff, or his legal representative, to recover damages for negligence resulting in death, personal injury, or property damage, if such negligence was not greater than the causal negligence of the defendant, but the damages awarded shall be diminished, by general verdict, in proportion to the amount of negligence attributed to the plaintiff; provided that where recovery is allowed against more than one defendant, each such defendant shall be liable for that proportion of the total dollar amount awarded as damages in the ratio of the amount of his causal negligence to the amount of causal negligence attributed to all defendants against whom recovery is allowed. The burden of proof as to the existence or amount of causal negligence alleged to be attributable to a party shall rest upon the party making such allegation. This section shall govern all actions arising out of injuries and other damages sustained on and after August 12, 1969, and none other.

Source. 1969, 225: 1, eff. Aug. 12, 1969. 1970, 35: 1, eff. May 4, 1970.

Amendments—1970. Added at the end thereof the provision concerning the burden of proof as to comparative negligence.

HAWAII
49%

HAWAII
Regular Session

Act 227, Laws 1969

House Bill No. 857

AN ACT

RELATING TO TORT ACTIONS BASED ON NEGLIGENCE AND AMENDING CHAPTER 663 - HAWAII REVISED STATUTES.

BE IT ENACTEDBY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 663 of the Hawaii Revised Statutes is amended by adding a new Part to be appropriately designated and to read as follows:

Part-------Comparative Negligence

"Section 663 - Contributory negligence no bar; comparative negligence; findings of fact and special verdicts.

"(a) Contributory negligence shall not bar recovery in any action by any person or his legal representative to recover damages for negligence resulting in death or in injury to person or property, if such negligence was not as great as the negligence of the person against whom recovery is sought, but any damages allowed shall be diminished in proportion to the amount of negligence attributable to the person for whose injury, damage or death recovery is made.

"(b) In any action to which subsection (a) of this section applies, the court, in a nonjury trial, shall make findings of fact or, in a jury trial, the jury shall return a special verdict which shall state:

"(1) The amount of the damages which would

have been recoverable if there had been no contributory negligence; and

"(2) The degree of negligence of each party, expressed as a percentage.

"(c) Upon the making of the finding of fact or the return of a special verdict, as is contemplated by subsection (b) above, the court shall reduce the amount of the verdict in proportion to the amount of negligence attributable to the person for whose injury, damage or death recovery is made, provided, however, that if the said proportion is equal to or greater than the negligence of the person against whom recovery is sought, then, in such event, the court will enter a judgment for the defendant."

SECTION 2. The provisions of this Act shall not be retroactive and shall affect only those claims accruing after its effective date.

SECTION 3. This Act shall take effect upon its approval.

Approved, July 14, 1969

AMERICAN INSURANCE ASSOCIATION
85 JOHN STREET
NEW YORK, N. Y. 10038

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LAW MEMO 1272

THIS IS NOW LAW

HAWAII REGULAR SESSION 1969 H.B. 857

COMPARATIVE NEGLIGENCE -

Newly provides that contributory negligence shall not bar recovery in any action by any person or legal representative to recover damages for negligence resulting in death or in injury to person or property, if such negligence was not as great as the negligence of the person against whom recovery is sought, but any damages allowed shall be diminished in proportion to the amount of negligence attributable to the person for whose injury, damage or death recovery is made.

Further provides that in any action to which the above applies, the court, in a non-jury trial, shall make findings of fact or, in a jury trial, the jury shall return a special verdict which shall state: (1) the amount of damages which would have been recoverable if there had been no contributory negligence; and (2) the degree of negligence of each party, expressed as a percentage.

Further provides that upon the making of the finding of fact or the return of a special verdict, as contemplated above, the court shall reduce the amount of the verdict in proportion to the amount of negligence attributable to the person for whose injury, damage or death recovery is made, provided however that if the said portion is equal to or greater than the negligence of the person against whom recovery is sought, then, in such event, the court will enter a judgment for the defendant.

Provides that the provisions hereof shall affect only those claims accruing the effective date hereof.

ACT 227 Effective July 14, 1969

AG:sgt
9(8)

TEXT OF LAW ATTACHED

 50%

Senate Bill No. 524—Committee on Judiciary

CHAPTER 787

AN ACT relating to tort actions; providing for a system of comparative negligence in lieu of the defenses of contributory negligence; providing that multiple defendants shall be severally liable and damages shall be apportioned in accordance with negligence of each defendant; and providing other matters properly relating thereto.

[Approved May 3, 1973]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. Chapter 41 of NRS is hereby amended by adding thereto a new section which shall read as follows:

1. In any action to recover damages for injury to persons or property in which contributory negligence may be asserted as a defense, the contributory negligence of the plaintiff shall not bar a recovery if the negligence of the person seeking recovery was not greater than the negligence or gross negligence of the person or persons against whom recovery is sought, but any damages allowed shall be diminished in proportion to the amount of negligence attributable to the person seeking recovery.

2. In such cases, the judge may, and when requested by any party shall instruct the jury that:

(a) The plaintiff may not recover if his contributory negligence has contributed more to the injury than the negligence of the defendant or the combined negligence of multiple defendants.

(b) If the jury determines the plaintiff is entitled to recover, it shall return by general verdict the total amount of damages the plaintiff would be entitled to recover except for his contributory negligence.

(c) If the jury determines that a party is entitled to recover, it shall return a special verdict indicating the percentage of negligence attributable to each party.

(d) The percentage of negligence attributable to the person seeking recovery shall reduce the amount of such recovery by the proportionate amount of such negligence.

3. Where recovery is allowed against more than one defendant in such an action:

note *(a) The defendants are severally liable to the plaintiff.*

(b) Each defendants' liability shall be in proportion to his negligence as determined by the jury, or judge if there is no jury. The jury or judge shall apportion the recoverable damages among the defendants in accordance with the negligence determined.

AS 09.16 Uniform Joint Liability Tortfeasors

Assembly Bill No.

CH

AN ACT relating to justices of the townships; and providing

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The People of the State of Nev do e

SECTION 1. NRS 4.020 is

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2. There shall be one just state having a population of 1 preceding national census of t States Department of Comm shall be elected by the qualif state election to be held in N election held every 4 years the

3.] *There shall be one ju state, for which there shall be ship at a general state electio thereafter, the following numb population of the township as census of the Bureau of the C Commerce:*

(a) If the population is less

(b) If the population is 60,6

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[5] 4. The clerk of the b after the election or a peace, certify under se appointment and qualification shall be filed in the office of t character of such officer.

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CS for HB 176

Sec. 09.65. CONTRIBUTORY NEGLIGENCE NO BAR TO ACTION: MODIFIED COMPARATIVE NEGLIGENCE. (a) In any action to recover damages for death or for injury to persons or property in which contributory negligence may be asserted as a defense, ~~the~~ contributory negligence ~~of the plaintiff~~ shall not bar a recovery if the negligence of the person seeking recovery was not greater than the negligence or gross negligence of the person or persons against whom recovery is sought, but any damages allowed shall be diminished in proportion to the amount of negligence attributable to the person seeking recovery.

(b)

Sec. 09.65.140. JURY INSTRUCTIONS. In such cases, the judge may, and when requested by any party shall instruct the jury that:

(1) The ~~plaintiff~~ claimant may not recover if his contributory negligence has contributed more to the injury than the negligence of the defendant or the combined negligence of multiple defendants.

(2) If the jury determines the plaintiff is entitled to recover, it shall return by general verdict the total amount of damages the ~~plaintiff~~ claimant would be entitled to recover except for his contributory negligence.

(3) If the jury determines that a ~~party~~ person is entitled to recover, it shall return a special verdict indicating the percentage of negligence attributable to each ~~party~~ person.

(4) The percentage of negligence attributable to the person seeking recovery shall reduce the amount of such recovery by the proportionate amount of such negligence.

Sec. 09.65. MULTIPLE PARTIES. (a) Each defendant is jointly and severally liable for the entire amount of the judgment awarded the caaimant.

(b) Contribution among jointly liable defendants shall be as provided in AS 09.16.

* Section 2. AS 09.16 is amended to read:

Sec. 09.16.020. PRO RATA SHARES. In determining the pro rata shares of tortfeasors in the entire liability

(1) their relative degrees of fault shall [NOT] be considered;

(2) if equity requires, the collective liability of some as a group constitutes a single share; and

(3) principles of equity applicable to contribution generally shall apply./

MODEL STATUTE COMPARATIVE NEGLIGENCE

Section 1. GENERAL RULES. (a) In all actions based on strict liability, negligence or recklessness, the fact the party bringing the action was at fault because that person was negligent or reckless or unreasonably and impliedly assumed the risk, shall not necessarily bar recovery; rather, the person's damages shall be diminished by the trier of fact in proportion to the amount of fault attributable to that person.

(b) The principles set forth in Subsection A shall also apply in actions for wrongful death with respect to the negligence of the plaintiff and his or her decedent.

(c) The principles set forth in Subsection A shall apply regardless of whether either party violated a criminal safety statute or had the last clear change to prevent the injury.

Section 2. PROCEDURAL RULES. (a) In any action to which this Act applies, the court in a non-jury trial shall make findings of fact, or in a jury trial, the jury shall answer special questions indicating:

(1) The amount of damages which the party bringing the action would be entitled to recover had that person not been at fault;

(2) The amount of the party's fault that had a bearing on that person's damages, expressed as a percentage.

The court shall then reduce the amount of such damages in proportion to the amount of fault attributable to the person recovering. The jury may, however, upon request of a party, be informed of the legal effect of their answers to the special questions.

(b) A court may make a limited reversal of a jury's verdict on the ground that its answer under (1) or (2) of subsection (a) was wholly unreasonable. The court may then determine a proper amount of damage or percentage of fault, utilizing the principles of additur and remittitur properly used in this state.

Section 3. MULTIPLE PARTIES. (a) This act in no way modifies the common-law principle that joint tortfeasors are jointly and severally liable for their torts.

(b) In all actions subject to this act, the trier of fact shall allocate fault on the basis of parties who are represented in court.

(c) In actions for contribution, damages shall be allocated on the basis of the relative fault of the parties to the contribution action.

Section 4 EFFECTIVE DATE. This act shall take effect_____,____, and shall apply only to actions arising out of events which occur on or after that date.

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U. S. District Court
JUNEAU, ALASKA

MICHIGAN LAW REVIEW

Vol. 51 FEBRUARY, 1953 No. 4

COMPARATIVE NEGLIGENCE*

William L. Prosser† MAR 6 - 1953

IN these days the ordinary legislature[1] is likely to find on its calendar a bill, sometimes approved and sponsored by the state bar association, which does away with contributory negligence as a complete defense in any negligence action, and substitutes instead something commonly miscalled "comparative negligence,"[2] which involves some method of dividing the damages between the parties. Such a bill is of course no novelty, as the ample literature on the subject indicates.[3]

* This article is one of the Thomas M. Cooley lectures delivered by Dean Prosser at the University of Michigan Law School, February 2-6, 1953. The series, "Selected Topics on the Law of Torts," will eventually be published in book form by the University of Michigan Law School.—Ed.

† Boalt Professor of Law and Dean of the Law School, University of California, Berkeley.—Ed.

1 "We understand that legislation of this type was introduced this year [1951] in the following 16 states: Arizona, Arkansas, California, Colorado, Kansas, Massachusetts, Michigan, Missouri, New York, North Dakota, Ohio, Oregon, Pennsylvania, Tennessee, Utah and Washington." Lipscomb, "Comparative Negligence," INS. L.J. No. 344, 667 at 674 (Sept. 1951).

2 "Comparative negligence" properly refers only to a comparison of the fault of the plaintiff with that of the defendant. It does not necessarily result in any division of the damages, but may permit full recovery by the plaintiff notwithstanding his contributory negligence. Traditionally, because of the origin of the term and its early history in Illinois (infra, text at notes 110-119), it has been associated with the idea of degrees of negligence, and a comparison of "slight," "ordinary," and "gross." In the interest of clarity the term should be avoided, and the statutes here in question should be called "damage apportionment" or "comparative damages" acts. See note, 12 CORN. L.Q. 113 (1926). "Comparative negligence" is, however, in much too general use to permit much hope of its elimination.

3 The classic article on the subject is Mole and Wilson, "A Study of Comparative Negligence," 17 CORN. L.Q. 333, 604 (1932). Two recent discussions, both excellent and exhaustive, are Turk, "Comparative Negligence on the March," 28 CHI-KENT L. REV. 189, 304 (1950), and Philbrick, "Loss Apportionment in Negligence Cases," 99 UNIV. PA. L. REV. 572, 766 (1951). A very thorough study, going into all the complications, especially of the multiple-party problem, is the book by Gregory, LEGISLATIVE LOSS DISTRIBUTION IN NEGLIGENCE ACTIONS (1936). See also Gregory, "Loss Distribution by Comparative Negligence," 21 MINN. L. REV. 1 (1936); Berg, "Comparative Negligence—A Substitute for the Rule of Contributory Negligence," 9 S. D. B. J. 200 (1941); comment, 22 So. CAL. L. REV. 276 (1949). Numerous other articles bearing on particular statutes are cited in the succeeding notes.

Similar bills[4] began to multiply in the legislatures during the decade before the last war, when the pressure of the increasing automobile accident rate compelled consideration of the problem of the uncompensated victim. It led even to proposals for an automobile accident compensation plan, analogous to the workmen's compensation acts and to be administered by some board or commission.[5] In at least one instance a "comparative negligence" act was adopted under threat of such a compensation plan, and after a bill establishing it had passed one house of the legislature at the preceding session.[6] During the war, when gasoline rationing reduced the accident rate, the agitation fell off; but with the slaughter on the highways resumed and accelerated, it has been revived in full vigor. A conservative prophet would have no difficulty in predicting the adoption of damage apportionment acts in several additional states within the next few years.

The United States is virtually the last stronghold of contributory negligence. The last vestige of the complete defense disappeared long since from all of continental Europe, which divides the damages.[7]

[4] In addition to the statutes adopted, the following unsuccessful bills have received mention in print:

New York, 1930. See Mole and Wilson, "A Study of Comparative Negligence," 17 CORN. L.Q. 333, 604 at 643 (1932); GREGORY, LEGISLATIVE LOSS DISTRIBUTION IN NEGLIGENCE ACTIONS 59 (1936).

Minnesota, 1940. See PROCEEDINGS OF MINNESOTA STATE BAR ASSN., 12-17 (1940).

Pennsylvania, 1943. See note, 17 TEMPLE L.Q. 276 (1943).

New York, 1947. See note, 22 N.Y. UNIV. L.Q. REV. 458 (1947).

Michigan, 1947. See Neef, "Comparative Negligence," 27 Mich. S. B. J. 34 (May, 1948).

Illinois, 1949. See 30 CHICAGO BAR REC. 391, 394 (1949).

[5] Such a compensation plan is now in effect in Saskatchewan. Sask. Stats. (1947) c. 15.

[6] "Yet that very theory prevailed in Wisconsin when the legislature passed our comparative negligence law in 1931, which followed the introduction into our 1929 legislature of a bill placing the entire field of compensation for accidents under the jurisdiction of a commission, which bill passed the Wisconsin senate but did not reach the house for action before the termination of the legislature. It has been fairly stated, I believe, that were it not for the comparative negligence doctrine, adopted by the Wisconsin legislature in 1931, there is little question but that serious effort would have been made in the succeeding legislature of 1933 to put the entire field of damages, arising as the result of an accident, under the jurisdiction of a commission, and it was aptly said by the author of Wisconsin's comparative negligence law that: 'With comparative negligence as the rule applicable to automobile litigation in Wisconsin, there was no immediate need, if any, for the adoption of any commission form of administration of automobile legislation.'" Hayes, "Rule of Comparative Negligence and Its Operation in Wisconsin," 23 Or. STATE BAR ASSN. REP. 233 at 234 (1950).

[7] The European history is well reviewed in Turk, "Comparative Negligence on the March," 28 CHI-KENT L. REV. 189 at 238-244 (1950).

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[8] Law Reform Act of 19
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[9] Most of the Canadian
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(1936) c. 52, amended by Re
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(1937) c. 115; Prince Edwar
Quebec, with its civil law h
Chemical Co. v. Lefebvre, 42
23 Que. K.B. 459 (1915).

[10] New Zealand Stat. (1

[11] Western Australia Sta
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[13] 11 East 60, 103 Eng.

Great Britain,[8] all of the Canadian provinces,[9] New Zealand[10] and Western Australia[11] now have come to the same result, so that very little of the British Empire is left with the common law rule. Even in the United States there is far more in the way of division of damages than is generally realized. There are some forty statutes[12] on the books, and apparently in successful operation; and it is a fair estimate that there are about twelve hundred cases in which they have been applied. Almost nothing has been written about these decisions; but they represent a body of law of considerable importance, in which a procedure over which there has been much theoretical dispute has been put into practice. It is the purpose of this article to inquire, so far as possible, into the actual operation of the damage apportionment statutes, and to offer some conclusions as to the most desirable form of act for any legislature about to set forth upon these relatively uncharted seas.

The State of the Common Law

The defense of contributory negligence originated in 1809 with the case of *Butterfield v. Forrester*.[13] The defendant, who was repairing his house, had left a pole projecting across part of the highway; and the plaintiff, riding home from a public house in the dusk, did not see the pole, rode into it, and was thrown from his horse and injured. Lord Ellenborough disposed of the matter very briefly with the statement that "A party is not to cast himself upon an obstruction which has been made by the fault of another, and avail himself of it,

[8] Law Reform Act of 1945, 8 & 9 Geo. 6, c. 28. See WILLIAMS, JOINT TORTS AND CONTRIBUTORY NEGLIGENCE 533-535, and c. 13 (1951); Williams, "The Law Reform (Contributory Negligence) Act, 1945," 9 MOD. L. REV. 105 (1945).

[9] Most of the Canadian statutes have been amended since their original enactment. Their latest form is found in Alberta Rev. Stat. (1942) c. 116; British Columbia Rev. Stat. (1936) c. 52, amended by Rev. Stat. (1948) c. 68; Manitoba R.S.M. (1940) c. 215; New Brunswick Rev. Stat. (1927) c. 143; Nova Scotia Stat. (1926) c. 3; Ontario Rev. Stat. (1937) c. 212; Prince Edward Island Stat. (1938) c. 5; Saskatchewan Stat. (1944) c. 23. Quebec, with its civil law heritage, divides the damages without a statute. See Nichols Chemical Co. v. Lefebvre, 42 Can. S.C. Rep. 402 (1909); Canadian Pac. Ry. v. Frechette, 23 Que. K.B. 459 (1915).

[10] New Zealand Stat. (1947) No. 3, p. 29. See 23 N.Z. L.J. 215 at 229 (1947).

[11] Western Australia Stat. (1947) No. 23. See Shatwell, "Contributory Negligence and Apportionment Statutes," 1 W. AUST. ANN. L. REV. 145 (1949).

[12] The Report of the Casualty Committee in 18 INSURANCE COUNSEL J. 374 (1951), which contains a useful review of the law of the various states on contributory negligence and contribution, omits any reference to a number of these statutes.

[13] 11 East 60, 103 Eng. Rep. 926 (1809).

if he did not himself use common and ordinary caution to be in the right."[14]

There has been much speculation as to why the rule thus declared found such ready acceptance in later decisions, both in England and in the United States.[15] The explanations given by the courts themselves never have carried much conviction. Most of the decisions have talked about "proximate cause," saying that the plaintiff's negligence is an intervening, insulating cause between the defendant's negligence and the injury.[16] But this cannot be supported unless a meaning is assigned to proximate cause which is found nowhere else. If two automobiles collide and injure a bystander, the negligence of one driver is not held to be a superseding cause which relieves the other of liability; and there is no visible reason for any different conclusion when the action is by one driver against the other. It has been said that the defense has a penal basis, and is intended to punish the plaintiff for his own misconduct;[17] or that the court will not aid one who is himself at fault, and he must come into court with clean hands.[18] But this is no explanation of the many cases, particularly these of the last clear chance, in which a plaintiff clearly at fault is permitted to recover. It has been said that the rule is intended to discourage accidents, by denying recovery to those who fail to use proper care for their own safety; but the assumption that the speeding motorist is, or should be, meditating on the possible failure of a lawsuit for his possible injuries lacks all reality, and it is quite as reasonable to say that the rule promotes accidents by encouraging the negligent defendant. Probably the true explanation lies merely in the highly individualistic attitude of the common law of the early nineteenth century. The period of development of contributory negligence was that of the industrial revolution, and there is reason to think that the courts found in this

[14] Continuing: "In cases of persons riding upon what is considered to be the wrong side of the road, that would not authorise another purposely to ride up against them. One person being in fault will not dispense with another's using ordinary care for himself. 'Two things must concur to support this action, an obstruction in the road by the fault of the defendant, and no want of ordinary care to avoid it on the part of the plaintiff.'" 11 East 60, 61, 103 Eng. Rep. 926, 927 (1809).

[15] See Bohlen, "Contributory Negligence," 21 HARV. L. REV. 233 (1908); Lowndes, "Contributory Negligence," 22 GEORGETOWN L.J. 674 (1934); Green, "Contributory Negligence and Proximate Cause," 6 N.C. L. Rev. 3 (1927).

[16] Bowen, L.J., in Thomas v. Quartermaine, 18 Q.B.D. 685 at 697 (1897); Gilman v. Central Vermont R. Co., 93 Vt. 340, 107 A. 122 (1919); Ware v. Saufley, 194 Ky. 53, 237 S.W. 1060 (1922); Exum v. Atlantic Coast Line R. Co., 154 N.C. 408, 70 S.E. 845 (1911); Chesapeake & Ohio R. Co. v. Wills, 111 Va. 32, 68 S.E. 395 (1910).

[17] Lord Halsbury, L.C., in Wakelin v. London & S.W. R. Co., 12 A.C. 41, 45 (1886).

[18] Owen, C.J., in Davis v. Guarnieri, 45 Ohio St. 470, 15 N.E. 350 (1887).

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[19] Malone, "The Formative
(1946); Malone, "Comparative
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[20] One of the best statemen
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[21] "We but blind our eyes t
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defense, along with the concepts of duty and proximate cause, a convenient instrument of control over the jury, by which the liabilities of rapidly growing industry were curbed and kept within bounds.[19]

Criticism of the denial of all recovery was not slow in coming, and it has been with us for more than a century.[20] The attack upon contributory negligence has been founded upon the obvious injustice of a rule which visits the entire loss caused by the fault of two parties on one of them alone, and that one the injured plaintiff, least able to bear it, and quite possibly much less at fault than the defendant who goes scot free. No one ever has succeeded in justifying that as a policy, and no one ever will. Its outrageousness became especially apparent in the cases of injuries to employees, where a momentary lapse of caution after a lifetime of care in the face of the employer's negligence might wreck a man's life and leave him uncompensated as a charge upon society; and the demand for some modification of the rule became an integral part of the movement which finally led to the workmen's compensation acts.

To some limited extent the remedy has been in the hands of the jury. Every trial lawyer is well aware that juries often do in fact allow recovery in cases of contributory negligence, and that the compromise in the jury room does result in some diminution of the damages because of the plaintiff's fault.[21] But the process is at best a haphazard and most unsatisfactory one. There are still juries which understand and respect the court's instructions on contributory negligence, just as there are other juries which throw them out of the window and refuse even to reduce the recovery by so much as a dime. Above all there are many directed verdict cases where the plaintiff's negligence, however slight it may be in comparison with that of the defendant, is still clear beyond dispute, and the court has no choice but to declare it as a matter of law. A striking illustration is the Minnesota case in which a motorist entering an intersection failed to yield the right of way on the mistaken assumption that the speeding defendant would slow down for him, and the supreme court uttered an almost pathetic appeal to a legislature,

[19] Malone, "The Formative Era of Comparative Negligence," 41 ILL. L. REV. 151 (1946); Malone, "Comparative Negligence—Louisiana's Forgotten Heritage," 6 LA. L. REV. 125 (1945).

[20] One of the best statements of the attack on contributory negligence is found in Green, "Illinois Negligence Law," 39 ILL. L. REV. 36, 116, 197 (1944).

[21] "We but blind our eyes to obvious reality to the extent that we ignore the fact that in many cases juries apply it [apportionment] in spite of us." Holt, J., in Haeg v. Sprague, Warner & Co., 202 Minn. 425 at 430, 281 N.W. 261 (1938). See also ULMAN, A JUDGE TAKES THE STAND 30-34 (1933).

which still remains indifferent, to relieve it of the necessity of such decisions by adopting a "comparative negligence" act.[22]

Although the courts almost from the beginning have displayed an uneasy consciousness that something is wrong, they have been slow to move. In only three respects have the rigors of the ordinary rule of contributory negligence been modified at common law. The defense was one to a negligence action only, and it never applied to intentional torts such as assault and battery;[23] and from this there developed the first exception, that mere contributory negligence is no defense where the defendant's conduct is so aggravated that it approaches intent, and can be characterized as "wilful," "wanton," or "reckless."[24] In such a case the plaintiff is barred from recovery only when his own conduct is similarly aggravated, and can be described in the same terms.[25] There is here, of course, a rough balancing of one fault against the other, but the difference is declared to be one of kind rather than of degree. Except in two or three states such as Minnesota,[26] which have misdefined "wilful negligence" to include any negligence whatever after discovery of the peril of another, the exception has applied to relatively few cases, and has had only limited importance.

A second exception, of comparatively recent origin, eliminates the defense of contributory negligence where the action is founded upon the defendant's violation of a statute, such as a child labor act,[27] which

[22] "No one can appreciate more than we the hardship of depriving plaintiff of his verdict and of all right to collect damages from defendant; but the rule of contributory negligence, through no fault of ours, remains in our law and gives us no alternative other than to hold that defendant is entitled to judgment notwithstanding the verdict. It would be hard to imagine a case more illustrative of the truth that in operation the rule of comparative negligence would serve justice more faithfully than that of contributory negligence. . . . But as long as the legislature refuses to substitute the rule of comparative for that of contributory negligence we have no option but to enforce the law in a proper case." Haeg v. Sprague, Warner & Co., 202 Minn. 425 at 430, 281 N.W. 261 (1938).

[23] Ruter v. Foy, 46 Iowa 132 (1877); Steinmetz v. Kelly, 72 Ind. 442, 37 Am. Rep. 170 (1880); Brendle v. Spencer, 125 N.C. 474, 34 S.E. 634 (1899); Birmingham Railway, L. & P. Co. v. Jones, 146 Ala. 277, 41 S. 146 (1906).

[24] Atchison, T. & S.F. R. Co. v. Baker, 79 Kan. 183, 98 P. 804 (1908) ("wanton misconduct"); Ziman v. Whitley, 110 Conn. 108, 147 A. 370 (1929) ("reckless indifference"); Mihelich v. Butte Electric R. Co., 85 Mont. 604, 281 P. 540 (1929) ("wilful or wanton act"); Walldren Express & Van Co. v. Krug, 291 Ill. 472, 126 N.E. 97 (1928) ("conscious indifference to consequences").

[25] Hinkle v. Minneapolis, A. & C. R. Co., 162 Minn. 112, 202 N.W. 340 (1925); Moore v. Lindell R. Co., 176 Mo. 528, 75 S.W. 672 (1903); Osteen v. Atlantic Coast Line R. Co., 119 S.C. 438, 112 S.E. 352 (1923); Elliott v. Philadelphia Transp. Co., 356 Pa. 643, 53 A. (2d) 81 (1947).

[26] See notes, 8 MINN. L. REV. 329 (1924); 24 MINN. L. REV. 81 (1939).

[27] Lenahan v. Pittston Coal Mining Co., 218 Pa. 311, 67 A. 642 (1907); Karpeles v. Heine, 227 N.Y. 74, 124 N.E. 101 (1919); Pinoza v. Northern Chair Co., 152 Wis. 473, 140 N.W. 84 (1913); Dasha v. Virginia & Rainy Lake Co., 145 Minn. 171, 176 N.W. 482 (1920); Louisville, N. & St. L. R. Co. v. Lyons, 155 Ky. 396, 159 S.W. 971 (1913);

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[29] Dart v. Pure Oil Co., 223
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[30] See Schofield, "Davies v. Ma
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[31] 10 M. & W. 546, 152 Eng. R

[32] "The groans, ineffably and
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is construed as intended to place the entire responsibility on the defendant, and to protect the plaintiff even against the consequences of his own fault.[28] The reason given is the obvious one, that otherwise the intent of the legislature would be defeated. Such acts are, however, few in number and clearly of a special character; and as to the violation of all other statutes, contributory negligence remains effective as a complete defense.[29]

The most important common law modification is that which bears the name of the last clear chance.[30] It originated in 1842 in the case of *Davies v. Mann*,[31] where the plaintiff left his ass fettered in the highway and the defendant drove into it. The doctrine found ready acceptance in the United States;[32] but from its origin it has acquired

Terry Dairy Co. v. Nalley, 146 Ark. 448, 225 S.W. 887 (1920); American Car & Foundry Co. v. Armentraut, 214 Ill. 509, 73 N.E. 766 (1905).

[28] Prohibiting the sale of dangerous articles to minors: Pizzo v. Wiemann, 149 Wis. 235, 134 N.W. 899 (1912); McMillen v. Steele, 275 Pa. 584, 119 A. 721 (1923).

Protection of intoxicated persons: Davies v. McKnight, 146 Pa. 610, 23 A. 320 (1892); Hauth v. Sambo, 100 Neb. 160, 158 N.W. 1036 (1916). Cf. Mayes v. Byers, 214 Minn. 54, 7 N.W. (2d) 403 (1943) (requiring stairways in "on sale" liquor establishments to be well lighted); Bennett Drug Stores v. Mosely, 67 Ga. App. 347, 20 S.E. (2d) 208 (1942) (sale of poison to person who does not know its character).

Factory acts and other statutes for the protection of workmen: Osborne v. Salvation Army, (2d Cir. 1939) 107 F. (2d) 929; Carterville Coal Co. v. Abbott, 181 Ill. 495, 55 N.E. 131 (1899); Caspar v. Lewin, 82 Kan. 604, 109 P. 657 (1910); Chicago-Coulterville Coal Co. v. Fidelity & Cas. Co., (D.C. Mo. 1904) 130 F. 957.

Railway fencing acts: Flint & Pere Marquette R. Co. v. Lull, 28 Mich. 510 (1874); Congdon v. Central Vermont R. Co., 56 Vt. 390, 48 Am. Rep. 793 (1883); Welty v. Indianapolis & V. R. Co., 105 Ind. 55, 4 N.E. 410 (1885); Atchison, T. & S.F. R. Co. v. Paxton, 75 Kan. 197, 88 P. 1082 (1907); Quackenbush v. Wisconsin & M. R. Co., 71 Wis. 472, 37 N.W. 834 (1888).

Statutes making railways liable for fires: West v. Chicago & N. W. R. Co., 77 Iowa 654, 35 N.W. 479 (1887); Bowen v. Boston & A. R. Co., 179 Mass. 524, 61 N.E. 141 (1901); Matthews v. Missouri Pac. R. Co., 142 Mo. 645, 44 S.W. 802 (1897); Peter v. Chicago & N.W. R. Co., 121 Mich. 324, 80 N.W. 295 (1899).

[29] Dart v. Pure Oil Co., 223 Minn. 526, 27 N.W. (2d) 555 (1947); Browne v. Siegel, Cooper & Co., 191 Ill. 226, 60 N.E. 815 (1901); Keenan v. Edison Electric Ill. Co., 159 Mass. 379, 34 N.E. 366 (1893); Narramore v. Cleveland, C.C. & St. L. R. Co., (6th Cir. 1899) 96 F. 298; Payne v. Vance, 103 Ohio St. 59, 133 N.E. 85 (1921); Smith v. Central of Ga. R. Co., 165 Ala. 407, 51 S. 792 (1910); Gartin v. Meredith, 153 Ind. 16, 53 N.E. 936 (1899); Gipson v. Southern R. Co., (C.C. Ala. 1905) 140 F. 410; Brown v. Chicago & N.W. R. Co., 109 Wis. 384, 85 N.W. 271 (1901). See Prosser, "Contributory Negligence as Defense to Violation of Statute," 32 MINN. L. REV. 105 (1948).

[30] See Schofield, "Davies v. Mann: Theory of Contributory Negligence," 3 HARV. L. REV. 263 (1890); Bohlen, "Contributory Negligence," 21 HARV. L. REV. 233 (1908); Smith, "Last Clear Chance," 82 CENT. L.J. 425, 55 AM. L. REV. 897 (1916); Lowndes, "Contributory Negligence," 22 GEORGETOWN L.J. 674 (1934); James, "Last Clear Chance: A Transitional Doctrine," 47 YALE L.J. 704 (1938); MacIntyre, "The Rationale of Last Clear Chance," 53 HARV. L. REV. 1225 (1940).

[31] 10 M. & W. 546, 152 Eng. Rep. 588 (1842).

[32] "The groans, ineffably and mournfully sad, of Davies' dying donkey, have resounded around the earth. The last lingering gaze from the soft, mild eyes of this docile animal, like the last parting sunbeams of the softest day in spring, has appealed to and

forever the name of the "jackass doctrine," with whatever implications that may carry. In its original form, it was stated to be that where the defendant had the last, and therefore the better, opportunity to avoid the accident, his negligence superseded that of the plaintiff, and contributory negligence was no defense. As in the case of contributory negligence itself, the explanations given are not at all convincing. It is sometimes said[33] that the later negligence of the defendant must necessarily be the greater negligence, and that it is a rule of comparative fault which is being applied. This may be true in some instances where the defendant discovers the plaintiff's helpless situation and his conduct displays reckless disregard of it; but it can scarcely account for many others in which the negligence consists merely of failure to discover the situation at all,[34] or of slowness, clumsiness, inadvertence or an error in judgment in dealing with it.[35] Most of the courts have talked of proximate cause, which makes no sense at all. If the negligence of the two parties injures a third, as where a collision injures a bystander, it never has been held that the party whose fault is prior in point of time is relieved of responsibility by the mere fact that the negligence of the other is later;[36] and no one ever has offered any reason for a different result where the action is between the negligent parties.

The real explanation would appear to be nothing more than a dislike for the defense of contributory negligence, and a rebellion against its application in a group of cases where its hardship is most apparent. The last clear chance has been called a "transitional doctrine,"[37] a way

touched the hearts of men. There has girdled the globe a band of sympathy for Davies' immortal 'critter.' Its ghost, like Banquo's ghost, will not down at the behests of the people who are charged with inflicting injuries, nor can its groanings be silenced by the rantings and excoriations of carping critics. The law as enunciated in that case has come to stay." McLain, J., in Fuller v. Illinois Central R. Co., 100 Miss. 705 at 717, 56 S. 783 (1911).

[33] Wilson v. Southern Traction Co., 111 Tex. 361, 234 S.W. 663 (1921); Rawitzer v. St. Paul City R. Co., 93 Minn. 84, 100 N.W. 664 (1904); Moreno v. Los Angeles Transfer Co., 44 Cal. App. 551, 186 P. 800 (1920); Dildine v. Flynn, 116 Kan. 563, 227 P. 340 (1924).

[34] Nicol v. Oregon-Washington R. & N. Co., 71 Wash. 409, 128 P. 628 (1912); Pickett v. Wilmington & W. R. Co., 117 N.C. 616, 23 S.E. 264 (1895); Leinbach v. Pickwick Greyhound Lines, 138 Kan. 50, 23 P. (2d) 449 (1933); Independent Lumber Co. v. Leatherwood, 102 Colo. 460, 79 P. (2d) 1052 (1938); Teakle v. San Pedro, L.A. & S.L. R. Co., 32 Utah 276, 90 P. 402 (1907).

[35] As for example in Smith v. Connecticut R. & L. Co., 80 Conn. 268, 67 A. 888 (1907); Clark v. Wilmington & W.R. Co., 109 N.C. 430, 14 S.E. 43 (1891).

[36] Cordiner v. Los Angeles Traction Co., 5 Cal. App. 400, 91 P. 436 (1907); Tetreault v. Gould, 83 N.H. 99, 138 A. 544 (1927); Austin Electric R. Co. v. Faust, 63 Tex. Civ. App. 91, 133 S.W. 449 (1910).

[37] James, "Last Clear Chance: A Transitional Doctrine," 47 Yale L.J. 704 (1938).

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[38] Storr v. New York Centra
R. Co. v. Masterson, 126 Ohio
Watts, 110 Tex. 106, 216 S.W.

[39] Nicol v. Oregon-Washing
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[40] Indianapolis Traction &
(1911); Darling v. Pacific Electr
Webster City, 222 Iowa 849, 27
N.H. 320, 91 A. 179 (1914); Y
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[41] British Columbia Elec. R
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Morrison, 69 Ark. 289, 62 S.W.
Vt. 523, 116 A. 83 (1922).

[42] See DeMuth, "Derogation
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[43] See Gaines, "The Human
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station on the road to apportionment of damages; but its effect has been to freeze the transition rather than to speed it. Actually the last clear chance cases present one of the worst tangles known to the law. In some jurisdictions the application of the rule has been limited to cases where the plaintiff is helpless and the defendant has in fact discovered the situation;[38] in others it is extended to cases where the defendant might have discovered it by the exercise of reasonable care.[39] In still others it is applied to situations where the plaintiff is not helpless at all and continues to be negligent, but is unaware of his danger, while the defendant has discovered it.[40] In still others it is applied to cases where the defendant's antecedent negligence, as in driving a car with defective brakes, has rendered him unable to take advantage of the "last clear chance" he would otherwise have had.[41]

Intermingled with these rules there is so much in the way of disagreement over the effect to be given to circumstantial evidence, and whether "ought to have seen" is equivalent to "saw," that there are almost literally forty-eight sets of rules in as many states. There is often the greatest confusion in a single state;[42] and in many jurisdictions, as the defendant's negligence increases the less his liability will be—the man who looks and discovers the danger but is slow in applying his brakes may be liable, where the man who never looks at all or who has no brakes to apply is not. Missouri has developed a fearful and wonderful "humanitarian doctrine," which seems to be comprehensible only in Missouri, if there;[43] and three or four states, such as Illinois,

[38] Storr v. New York Central R. Co., 261 N.Y. 348, 185 N.E. 407 (1933); Cleveland R. Co. v. Masterson, 126 Ohio St. 42, 183 N.E. 873 (1932); St. Louis S.W. R. Co. v. Watts, 110 Tex. 106, 216 S.W. 391 (1919).

[39] Nicol v. Oregon-Washington R. & N. Co., 71 Wash. 409, 128 P. 628 (1912); Pickett v. Wilmington & W. R. Co., 117 N.C. 616, 23 S.E. 264 (1895); Teakle v. San Pedro, L.A. & S.L. R. Co., 32 Utah 276, 90 P. 402 (1907); Independent Lumber Co. v. Leatherwood, 102 Colo. 460, 79 P. (2d) 1052 (1938); Leinbach v. Pickwick Greyhound Lines, 138 Kan. 50, 23 P. (2d) 449 (1933).

[40] Indianapolis Traction & Term. Co. v. Croly, 54 Ind. App. 566, 96 N.E. 973 (1911); Darling v. Pacific Electric R. Co., 197 Cal. 702, 242 P. 703 (1925); Groves v. Webster City, 222 Iowa 849, 270 N.W. 329 (1936); Tyrrell v. Boston & Me. R. Co., 77 N.H. 320, 91 A. 179 (1914); Yazoo & M.V. R. Co. v. Lee, 148 Miss. 809, 114 S. 866 (1927).

[41] British Columbia Elec. R. Co. v. Loach, [1916] 1 A.C. 719; Lloyd v. Albemarle & R. R. Co., 118 N.C. 1010, 24 S.E. 805 (1898); Little Rock Traction & Elec. Co. v. Morrison, 69 Ark. 289, 62 S.W. 1045 (1901); Dent v. Bellows Falls & S.R. St. R. Co., 95 Vt. 523, 116 A. 83 (1922).

[42] See DeMuth, "Derogation of the Common Law Rule of Contributory Negligence," 7 ROCKY MT. L. REV. 161 (1935).

[43] See Gaines, "The Humanitarian Doctrine in Missouri," 20 ST. LOUIS L. REV. 113 (1935); Becker, "The Humanitarian Doctrine," 3 Mo. L. REV. 392 (1938).

Minnesota and South Carolina,[44] repudiate the whole "last clear chance" by name, and then proceed to apply it in cases of discovered peril by miscalling it "wilful negligence," or "proximate cause." It is really a most amazing picture, which could be the work of no one but lawyers.

Quite apart from all this confusion, the real objection to the last clear chance is that it seeks to alleviate the hardships of contributory negligence by shifting the entire loss due to the fault of both parties from the plaintiff to the defendant. It is still no more reasonable to charge the defendant with the plaintiff's share of the consequences of his fault than to charge the plaintiff with the defendant's; and it is no better policy to relieve the negligent plaintiff of all responsibility for his injury than it is to relieve the negligent defendant. The whole floundering, haphazard, makeshift device operates in favor of some plaintiffs by inflicting obvious injustice upon some defendants; but it leaves untouched the greater number of contributory negligence cases in which the necessary time interval or element of discovery does not appear and the last clear chance cannot apply.

When actuaries sit down to calculate liability insurance rates for automobile drivers and other defendants, they must, under the existing state of the law, take into account the certainty that in many cases the insured who negligently injures another will escape all liability; that in others, juries, in partial defiance of the court's instructions, will diminish the damages by some uncertain amount and to that extent divide the loss between the parties; and that in still others, where the last clear chance applies or the instructions are jettisoned completely, the entire loss resulting from the fault of both parties will fall upon the insured. From an actuarial point of view these possibilities undoubtedly, in some unknown degree, balance one another; but as a pattern for the operation of courts and the administration of justice they leave much to be desired.

Apart from the inevitable self-interest of defendants who find an advantage in the present state of the law, proposals for division of the damages meet with two objections. One is that it is impossible to compare fault with fault, and that any apportionment of the loss on the basis of such a comparison can be nothing more than the wildest guess. Obviously any estimate that 40 per cent of the total fault rests with the pedestrian who walks out into the street in the path of an

[44] Walldren Express & Van Co. v. Krug, 291 Ill. 472, 126 N.E. 97 (1928); Anderson v. Minneapolis, St. P. & S.S.M. R. Co., 103 Minn. 224, 114 N.W. 1123 (1908); Clyde v. Southern Public Utilities Co., 109 S.C. 290, 96 S.E. 116 (1918).

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8th ed., 135 (1923).

[46] Buckham v. Chapman, Ad. C
File 128, No. 350, Ass. Book (June
OF COLLISIONS AT SEA, 8th ed., 19

automobile, and 60 per cent with the driver who is not looking and runs him down, represents nothing resembling accuracy based on demonstrable fact. The estimate might quite as well be anywhere between 25-75 and 75-25. Yet it is equally clear that a division of the plaintiff's damages on any such basis is at least more accurate than one based on the arbitrary conclusion that 100 per cent of the responsibility rests with the plaintiff and none whatever with the defendant, or, if the last clear chance is applicable, 100 per cent with the defendant and none with the plaintiff—both of which are demonstrably wrong. Nor is such an estimate in itself any more foolish, or more difficult, than the one which assigns $2,000 as fair value and compensation for the pain of a broken leg, or the humiliation of a disfigured nose, to say nothing of estimates based on a prognosis of speed of recovery, future earnings or permanent disability. At least the host of cases show that the estimate is being made in practice every day.

The other objection has more substance. It is that juries cannot be trusted to follow an instruction to divide the damages according to fault; that their well-known sympathy for the man on crutches in the courtroom and their proverbial bias against corporations and insurance companies lead them now to ignore convincing evidence of contributory negligence and return a full verdict for the plaintiff, and they will continue to do the same under any apportionment law; and that the proposed change merely robs the defendant of all possibility of a directed verdict without any guarantee that the apportionment will in fact be made. This uneasy distrust of the twelve men, and now women, in the box has bulked large in American negligence law; and it is significant that damage apportionment developed first, and has succeeded best, in courts where there is no jury to contend with. What validity the objection has, and what may be done to meet it, remains to be considered.

Apportionment by the Jury

The simplest possible method of apportionment, and the oldest,[45] is to divide the damages equally between the negligent parties. This is the method developed, around 1700, by the English admiralty courts,[46] which of course had no jury, and were strongly influenced

[45] Early admiralty cases, around 1614, divided the loss evenly where only the defendant's ship was at fault. MARSDEN, A TREATISE ON THE LAW OF COLLISIONS AT SEA, 8th ed., 135 (1923).

[46] Backham v. Chapman, Ad. Ct. Ass. Book (Jan. 20, 1695); Noden v. Ashton, Libels, File 128, No. 350, Ass. Book (June 20, 1706). See MARSDEN, A TREATISE ON THE LAW OF COLLISIONS AT SEA, 8th ed., 195 (1923).

by international rules derived from the civil law. It is still followed by the American courts of admiralty in collision cases.[47] Crude as it is, it probably results, in most instances, in a closer approximation of substantial justice than a denial of all recovery. England continued to adhere to the same rule[48] until 1911, when it conformed to the Brussels Maritime Convention[49] of 1909 by adopting a statute providing for a division of the damages "in proportion to the degree in which each vessel was at fault."[50]

There has been an undercurrent of dissatisfaction with the arbitrary American rule, and several of the lower federal courts have uttered complaints about it where the fault of the two parties was out of all proportion.[51] It has been proposed from time to time[52] that the United

[47] The Schooner Catherine, 17 How. (58 U.S.) 170 (1855); The Atlas, 93 U.S. 302, 23 L. Ed. 963 (1876); The North Star, 106 U.S. 17, 1 S.Ct. 41 (1882); Belden v. Chase, 150 U.S. 674, 14 S.Ct. 264 (1893); Ralli v. Troop, 157 U.S. 386, 15 S.Ct. 647 (1895); The Chattahoochie, 173 U.S. 540, 19 S.Ct. 491 (1899); The New York, 175 U.S. 187, 20 S.Ct. 67 (1899); The Albert Dumois, 177 U.S. 240, 20 S.Ct. 595 (1900); Erie R. Co. v. Erie & W. Transp. Co., 204 U.S. 220, 27 S.Ct. 246 (1906); The Eugene F. Moran, 212 U.S. 466, 29 S.Ct. 339 (1909); White Oak Transp. Co. v. Boston, Cape Cod & N.Y.C. Co., 258 U.S. 341, 42 S.Ct. 338 (1922); United States v. Norwegian Bark Thekla, 266 U.S. 328, 45 S.Ct. 112 (1924); Aktieselskabet Cuzco v. The Sucarseco, 294 U.S. 394, 55 S.Ct. 467 (1935). See Huger, "Proportional Damage Rule in Collisions at Sea," 13 CONN. L.Q. 531 (1927); Sprague, "Divided Damages," 6 N.Y. UNIV. L.Q. 15 (1928); Mole and Wilson, "A Study of Comparative Negligence," 17 CONN. L.Q. 333 at 339-359 (1932); Derby, "Divided Damages in Maritime Cases," 33 VA. L. REV. 389 (1947); Dickinson and Andrews, "A Decade of Admiralty," 36 CALIF. L. REV. 169 (1948); Turk, "Comparative Negligence on the March," 28 CHI-KENT L. REV. 189, 218-238 (1950).

[48] Hay v. La Neve, 2 Shaw Sc. App. Cas. 395 (1824); Cayzer v. Carron, 9 App. Cas. 873 (1884).

[49] See 6 BENEDICT, AMERICAN ADMIRALTY, 6th ed., 4 (1941).

[50] The English Maritime Conventions Act of 1911, 1 & 2 Geo. V, c. 57, §1 provides that: "(1) Where, by the fault of two or more vessels, damage or loss is caused to one or more of those vessels, to their cargoes or freight, or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each vessel was in fault: Provided that (a) if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally; and (b) nothing in this section shall operate so as to render any vessel liable for any loss or damage to which her fault has not contributed. . . ."

[51] "We reach this conclusion with regret. The [libellant's] fault was far more egregious. This is a case where the Continental rule of comparative negligence would produce a more just result." Luckenbach S.S. Co. v. United States, (2d Cir. 1946) 157 F. (2d) 250 at 252. See also The City of Chattanooga, (2d Cir. 1935) 79 F. (2d) 23 at 23; The Margaret, (3d Cir. 1929) 30 F. (2d) 923 at 928; Postal S.S. Corp. v. Southern Pac. Co., (2d Cir. 1940) 112 F. (2d) 297 at 298.

[52] The American delegation to the Convention signed the final draft. The President and the Secretary of State proposed legislation, but discontinued their efforts when many protests were raised. In 1922 the Maritime Law Association of the United States apparently favored adoption of the English statute, but reversed its stand in 1927. In 1925 the Committee on Admiralty of the American Bar Association approved the change; but in 1929 the Executive Committee of the Association reported that, as the existing law had operated satisfactorily for so many years, no change should be made. The history is well reviewed

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[53] Executive Report No. 4, S
[54] 4 BENEDICT, AMERICAN A
[55] The apportionment rule
Morris, 137 U.S. 1, 11 S.Ct. 29
[56] The Explorer, (D.C. La. 1
477; The Mystic, (D.C. N.Y. 189
263 F. 523.
[57] See text infra at notes 1
[58] See text infra at notes 120
[59] See text infra at notes 124
[60] See text infra at notes 14
[61] Fla. Stat. Ann. (1944) §7
[62] Md. Acts 1902, c. 412.
[63] Now La. Civ. Code (Dart
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[64] Fleytas v. Pontchartrain R.
(1846); Belle Alliance Co. v. Tex
lano v. Morgan's L. & T. R. & S.
126 La. 787, 52 S. 1025 (1910);

States should adopt the English rule, and in 1937 the proposal received a favorable report from the Senate Committee on Foreign Relations,[53] but World War II prevented any action.[54] One important development in the admiralty courts, however, was that when the question arose in cases which did not involve collisions,[55] but negligent injuries to maritime employees, the rule of equal division was not applied, and the libellant's recovery was reduced in proportion to his estimated fault.[56] These admiralty decisions played a significant part in the labor agitation which finally led to legislation.

Apart from admiralty there was little change in the common law rule before 1908. Illinois[57] and Kansas[58] tried, and abandoned, experiments with "degrees" of negligence. Tennessee[59] and Georgia[60] worked out the general idea of apportionment of damages, subject to restrictions later to be considered, and Florida[61] copied the railroad liability section of the Georgia code. Maryland[62] made the apportionment rule applicable to cases of miners and clay workers employed in two counties in the state. Louisiana had a provision in its code,[63] enacted in 1825 by lawyers at least familiar with the civil law, which appeared clearly to call for apportionment in cases of property damage, and might well have led to a general apportionment rule; but the Louisiana courts, under the pressure of expanding industry, as well as the persuasive authority of cases from adjoining jurisdictions and a desire for uniformity, ignored the provision or construed it away,[64] and it has remained a dead letter on the books.

in short space in Turk, "Comparative Negligence on the March," 28 CHI-KENT L. REV. 189, 234-236 (1950).

[53] Executive Report No. 4, Senate, 76th Cong., 1st sess. (1939).

[54] 4 BENEDICT, AMERICAN ADMIRALTY, 6th ed., 4, 49, 262 (1941).

[55] The apportionment rule was not limited to collision cases. The Steamer Max Morris, 137 U.S. 1, 11 S.Ct. 29 (1890); The Scandanavia, (D.C. Me. 1907) 156 F. 403.

[56] The Explorer, (D.C. La. 1884) 20 F. 135; Olson v. Flavel, (D.C. Ore. 1888) 34 F. 477; The Mystic, (D.C. N.Y. 1890) 44 F. 398; Cricket S.S. Co. v. Parry, (2d Cir. 1920) 263 F. 523.

[57] See text infra at notes 110-119.

[58] See text infra at notes 120-121.

[59] See text infra at notes 124, 189-190.

[60] See text infra at notes 146-151, 191-192.

[61] Fla. Stat. Ann. (1944) §768.06, enacted in 1887.

[62] Md. Acts 1902, c. 412.

[63] Now La. Civ. Code (Dart. 1945), art. 2323: "The damage caused is not always estimated at the exact value of the thing destroyed or injured; it may be reduced according to circumstances, if the owner of the thing has exposed it imprudently."

[64] Fleytas v. Pontchartrain R. Co., 18 La. 339 (1841); Myers v. Perry, 1 La. Ann. 372 (1846); Belle Alliance Co. v. Texas & Pac. R. Co., 125 La. 777, 51 S. 846 (1910); Ortolano v. Morgan's L. & T. R. & S. Co., 109 La. 902, 33 S. 914 (1903); Burvant v. Wolfe, 126 La. 787, 52 S. 1025 (1910); Legendre v. Consumers' Seltzer & M.W. Co., 147 La.

The apportionment of damages was first brought home to most of the country in 1908 by the Federal Employers' Liability Act,[66] which applied to all negligence actions, in the federal or state courts, for injuries to railroad employees engaged in interstate commerce.[66] It was, of course, an outcome of the prolonged labor agitation, and it preceded by only a few years the wave of workmen's compensation acts. It contained the following provision:[67]

> "In all actions hereafter brought against any such common carrier by railroad under or by virtue of any of the provisions of this chapter to recover damages for personal injuries to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee; Provided, That no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee."

The example of the Federal Employers' Liability Act set off a flood of labor legislation of the same general kind. The apportionment provision was incorporated by reference[68] into the Jones Act and the Merchant Marine Act, enacted in 1915 and 1920,[69] and applicable to injuries to maritime employees. The provision was repeated in substance in a series of state "employers' liability acts," covering rail-

120, 84 S. 517 (1920); Inman v. Silver Fleet of Memphis, (La. App. 1937) 176 S. 435; Mason v. Price, (La. App. 1947) 32 S. (2d) 853. See Malone, "Comparative Negligence—Louisiana's Forgotten Heritage," 6 LA. L. REV. 125 (1945); Hillyer, "Comparative Negligence in Louisiana," 11 TULANE L. REV. 112 (1936).

[65] 35 Stat. L. 66 (1908), now 45 U.S.C. (1946) §§51-60.

[66] The first statute passed, in 1906, was held unconstitutional because it included railroad employees engaged in intrastate commerce. Employers' Liability Cases, 207 U.S. 463, 28 S.Ct. 141 (1908). With the change made, the second statute was held constitutional in the Second Employers' Liability Cases, 223 U.S. 1, 32 S.Ct. 169 (1912).

[67] 35 Stat. L. 66 (1908), 45 U.S.C. (1946) §53.

[68] The history of the act is reviewed in The Arizona v. Anelich, 298 U.S. 110, 56 S.Ct. 707 (1936).

[69] March 4, 1915, c. 153, §20. 38 Stat. L. 1185; June 5, 1920, c. 250, §33, 41 Stat. L. 1007; now 46 U.S.C. (1946) §688. Applied in Stewart v. United States Shipping Board E.F. Corp., (D.C. N.Y. 1925) 7 F. (2d) 676; Johnson v. United States, (D.C. N.Y. 1934) 7 F. Supp. 133; Socony-Vacuum Oil Co. v. Smith, 305 U.S. 424, 59 S.Ct. 262 (1939); Beadle v. Spencer, 298 U.S. 124, 56 S.Ct. 712 (1936); Cleveland-Cliffs Iron Co. v. Martini, (6th Cir. 1938) 96 F. (2d) 632; Desrochers v. United States, (2d Cir. 1939) 105 F. (2d) 919; McCauley v. Pacific Atlantic S.S. Co., 167 Ore. 80, 115 P. (2d) 307 (1941); Brown v. Interconatal Fisheries, 34 Wash. (2d) 48, 207 P. (2d) 1205 (1949); Alexander v. Philadelphia Ceiling & Stevedoring Co., (D.C. Pa. 1951) 99 F. Supp. 178.

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[70] Colo. Stat. Ann. (1935) c.

[71] Iowa Code Ann. (1949)
(1950).

[72] Kan. Gen. Stat. Ann. (193

[73] Ky. Rev. Stat. (1950) §27
300 Ky. 835, 190 S.W. (2d) 542

[74] Minn. Stat. Ann. (1949)

[75] Mont. Rev. Laws (1947) §
(9th Cir. 1940) 112 F. (2d) 609;
68, 170 P. (2d) 768 (1946). The
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[76] N.C. Gen. Stat. (1943) c.
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Lean v. Andrews Hardwood Co., 2
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Co., 204 N.C. 525, 168 S.E. 833

[77] N.D. Rev. Laws (1943) §

[78] S.C. Code (1942) §8367.
44 S.E. (2d) 537 (1947).

[79] S.D. Code (1939) §52.094

[80] Tex. Civ. Stat. Ann. (Vern
S.F.&T. R. Co. v. Jenkins, (Tex. C
T. R. Co. v. Bright, (Tex. Civ. App
(Tex. Civ. App. 1914) 166 S.W. 9
Civ. App. 1916) 185 S.W. 901; Lar

[81] Va. Code Ann. (1942) §57

[82] Wyo. Comp. Stat. Ann. (1

[83] Ariz. Code Ann. (1933) §
Chambers, 20 Ariz. 54, 176 P. 83
199, 196 P. 167 (1920).

[84] Fla. Stat. (1941) §769.03.
91 S. 559 (1922); Tampa Electric
Key West Electric Co. v. Higgs, 11

[85] Iowa Code Ann. (1949) §§
Coal Co., 192 Iowa 1280, 184 N.W.
N.W. 229 (1931); Lang v. Hedri
McNeill, 237 Iowa 1120, 24 N.W.

[86] Ore. Comp. Laws Ann. (194
Co., 71 Ore. 249, 142 P. 578 (191
Kuntz v. Emerson Hardwood Co., 9
Washington R. & N. Co., 141 Ore.

[87] Ark. Stat. Ann. (1947) §81
492, 60 S.W. (2d) 572 (1933); L.
83 (1922); Hartman-Clark Bros. C
(1935); Goodin v. Boyd-Sicard Co.
Dierks Lumber & Coal Co. v. Noles,

The legislation soon spread beyond the labor field. The apportionment provision was repeated in a 1920 federal statute[88] covering any death on the high seas. In Florida[89] and Iowa[90] the provision was made applicable to any injury inflicted by a railroad. In Virginia[91] it has been applied to accidents at crossings arising out of the railroad's failure to give the required signals; and an old Tennessee statute[92] has been given the same effect by construction. Several other states[93] have enacted apportionment provisions which apply to labor or to railroad cases with limitations as to the extent of the plaintiff's negligence, to be considered below. Finally, Mississippi adopted in 1910 a general act[94] applying apportionment to all actions for personal injuries, and expanded it in 1920 to include damages to property.[95] Mississippi thus became the first, and is still the only, state to establish apportionment as a general rule. A similar general act is now in force in the Canal Zone.[96]

[88] March 30, 1920, c. 111, §6, 41 Stat. L. 537, now 46 U.S.C. (1946) 766.

[89] Fla. Stat. Ann. (1944) §768.06. Applied in Dina v. Seaboard Air Line R. Co., 90 Fla. 558, 106 S. 416 (1926); Florida East Coast R. Co. v. Townsend, 104 Fla. 362, 140 S. 196 (1932), on rehearing 104 Fla. 371, 142 S. 909 (1932); Atlantic Coast Line R. Co. v. Britton, 109 Fla. 212, 146 S. 842 (1933); Atlantic Coast Line R. Co. v. Pidd, (5th Cir. 1952) 197 F. (2d) 153.

[90] Iowa Code (1946) vol 2, p. 1843, Civil Proc. Rule 97.

[91] Va. Code Ann. (1942) §3959. Applied in State & City Bank & Trust Co. v. Norfolk & W. R. Co., 144 Va. 185, 131 S.E. 331 (1926); Southern R. Co. v. Johnson, 151 Va. 345, 146 S.E. 363 (1929); Norfolk & W. R. Co. v. Hardy, 152 Va. 783, 148 S.E. 839 (1929); Norfolk & W. R. Co. v. White, 158 Va. 243, 163 S.E. 530 (1931); Southern R. Co. v. Whetzel, 159 Va. 796, 167 S.E. 427 (1933); Chesapeake & O. R. Co. v. Pulliam, 185 Va. 908, 41 S.E. (2d) 54 (1947). This has no application when the signals are given. Norfolk & W. R. Co. v. Epling, 189 Va. 551, 53 S.E. (2d) 817 (1949).

[92] Tenn. Code Ann. (Williams, 1934) §2628-30, enacted in 1855. It was construed and applied to Railroad v. Walker, 11 Heisk. (58 Tenn.) 383 (1872); Nashville & C. R. Co. v. Nowlin, 1 Lea (69 Tenn.) 523 (1878); Tennessee Central R. Co. v. Page, 153 Tenn. 84, 282 S.W. 376 (1926); Tennessee Central R. Co. v. Binkley, 127 Tenn. 77, 153 S.W. 59 (1912); Illinois Central R. Co. v. Sigler, (6th Cir. 1941) 122 F. (2d) 279; Southern R. Co. v. Koger, (6th Cir. 1915) 219 F. 702.

[93] See text infra at notes 108-173.

[94] Miss. Laws (1910) c. 135. Held not applicable to property damage in Krebs v. Pascagoula St. R. & P. Co., 117 Miss. 771, 78 S. 753 (1918).

[95] Miss. Laws (1920) c. 312. The amended act is now Miss. Code Ann. (1942) §1454, reading as follows: "In all actions hereafter brought for personal injuries, or where such injuries have resulted in death, or for injury to property, the fact that the person injured, or the owner of the property, or person having control over the property may have been guilty of contributory negligence shall not bar a recovery, but damages shall be diminished by the jury in proportion to the amount of negligence attributable to the person injured, or the owner of the property, or the person having control over the property.

Applied in Natchez & S.R. Co. v. Crawford, 99 Miss. 697, 55 S. 596 (1911); Yazoo & M.V. R. Co. v. Carroll, 103 Miss. 830, 60 S. 1013 (1913); Yazoo & M.V. R. Co. v. Williams, 114 Miss. 236, 74 S. 835 (1917); Tallahala Lumber Co. v. Holliman, 126 Miss. 308, 87 S. 661 (1921); Seifferman v. Leach, 161 Miss. 853, 138 S. 563 (1932); Illinois Cent. R. Co. v. Humphries, 174 Miss. 459, 164 S. 22 (1935).

[96] Canal Zone Civ. Code (1934) §977. Applied in Panama R. Co. v. Davis, (5th Cir. 1936) 82 F. (2d) 123.

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[97] Yazoo & M.V. R. Co. v. Carroll, 1
N. R. Co. v. Wene, (7th Cir. 1913) 202
(6th Cir. 1914) 214 F. 952; Pennsylva
Templeton v. Charleston & W.C. R. Co.,
Sweeney, 28 Wyo. 57, 201 P. 165 (1921)
750, 128 S.E. 272 (1925); Humphreys
(1929); Crosby Lumber & Mfg. Co. v. Du
also Yazoo & M.V. R. Co. v. Williams, 114
of $12,000 was reduced to $5,000 by way

[98] Norfolk & Western R. Co. v. Earnes
Air Line R. Co. v. Tilghman, 237 U.S. 49
Co. v. Ballard, (5th Cir. 1940) 108 F. (2d)
Div. 439, 290 N.Y.S. 17 (1936).

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such cases." Waina v. Pennsylvania Co., 251

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[99] See for example Waterford Lumber Co.
Solomon v. Continental Baking Co., 172 Miss
188 Miss. 207, 194 S. 506 (1940); Engebre
(1933).

[100] See cases cited infra note 112.

Except where the statute itself provides some limitation, these acts are held to require apportionment of the damages even though the plaintiff's negligence is equal to or greater than that of the defendant, and even though the one is considered "gross" and the other "slight."[97] The apportionment must be made if negligence of both parties is found, and it is error not to instruct the jury to make it.[98] Although there is a great deal of rather casual and careless language to the effect that the plaintiff's recovery must be diminished to the extent that his negligence has been "causal," or has "contributed" to his injury,[99] there seems to be little doubt that, once causation is found, the apportionment must be made on the basis of comparative fault rather than comparative contribution.[100] It is generally agreed, except for two de-

[97] Yazoo & M.V. R. Co. v. Carroll, 103 Miss. 830, 60 S. 1013 (1913); Louisville & N. R. Co. v. Wene, (7th Cir. 1913) 202 F. 887; New York C. & St. L. R. Co. v. Niebel, (6th Cir. 1914) 214 F. 952; Pennsylvania Co. v. Cole, (6th Cir. 1914) 214 F. 948; Templeton v. Charleston & W.C. R. Co., 117 S.C. 44, 108 S.E. 363 (1921); Hines v. Sweeney, 28 Wyo. 57, 201 P. 165 (1921); Gregory v. Seaboard Air Line R. Co., 142 Va. 750, 128 S.E. 272 (1925); Humphreys v. East St. L. & S. R. Co., 253 Ill. App. 450 (1929); Crosby Lumber & Mfg. Co. v. Durham, 181 Miss. 559, 179 S. 285 (1938). See also Yazoo & M.V. R. Co. v. Williams, 114 Miss. 236, 74 S. 835 (1917), where a verdict of $12,000 was reduced to $5,000 by way of apportionment.

[98] Norfolk & Western R. Co. v. Earnest, 229 U.S. 114, 33 S.Ct. 654 (1913); Seaboard Air Line R. Co. v. Tilghman, 237 U.S. 499, 35 S.Ct. 653 (1915); Atchison, T. & S.F. R. Co. v. Ballard, (5th Cir. 1940) 108 F. (2d) 768; Sherry v. Pennsylvania R. Co., 248 App. Div. 439, 290 N.Y.S. 17 (1936).

"In cases of this character, where the evidence justifies a finding that both defendant and plaintiff were guilty of negligence contributing to the accident, the jury should be carefully instructed concerning the rule of comparative negligence established by the Federal Statute. It is the duty of the jury first to determine whether or not the defendant was guilty of causal negligence, for if that issue is determined against the plaintiff there can be no recovery. If the issue of the defendant's negligence is determined in favor of the plaintiff, then the jury should consider whether or not he, too, was guilty of negligence directly contributing to the happening of the accident, and, if they decide that issue against the plaintiff, then, looking at the combined negligence of the plaintiff and defendant as a whole, and using their best judgment based on the evidence before them, the next material subject for the jury to consider is in what ratio should this combined negligence be distributed between the parties to the accident; in other words, how much, or what proportion, of the whole blame, or fault, should be attributable to each. After this problem is solved, the jury must determine the amount of the damages suffered through the combined negligence, and deduct therefrom a proportion corresponding with the share of negligence charged by them against the plaintiff, . . . to be awarded as damages to the plaintiff. We do not mean to say that the method just outlined is the only way in which a jury may proceed to reach its conclusions in the trial of causes involving comparative negligence, but rather simply to indicate an orderly manner for considering and determining such cases." Waina v. Pennsylvania Co., 251 Pa. 213 at 221, 96 A. 461 (1915).

This is the best statement of the instruction to the jury the writer has found.

[99] See for example Waterford Lumber Co. v. Jacobs, 132 Miss. 638, 97 S. 187 (1923); Solomon v. Continental Baking Co., 172 Miss. 388, 160 S. 732 (1935); Avent v. Tucker, 188 Miss. 207, 194 S. 596 (1940); Engebrecht v. Bradley, 211 Wis. 1, 247 N.W. 451 (1933).

[100] See cases cited infra note 112.

cisions that obviously blundered,[101] that the recoverable damages must be reduced in the proportion which the plaintiff's fault, or the extent of his departure from the required standard of conduct, bears to the total fault of plaintiff and defendant; and not in the proportion which the one bears to the other, or to the extent of the difference between them. Thus where the plaintiff's estimated negligence is found to be 20% of the total, and the defendant's 80%, the plaintiff must recover 80% of his damages, and not 75% or 60%.[102]

When one seeks to discover from the appellate decisions some clue as to what juries actually do under the instruction to divide the damages, the information to be gleaned is disappointingly meagre. The cases are rather dismal reading. Normally there are a number of assignments of error, and the one relating to apportionment complains of some alleged vice in the instruction, which is corrected, or found not to exist, or not to be prejudicial. Where the amount of the award is challenged directly, the court often decides that contributory negligence was not so clearly established that it can say as a matter of law that the jury was wrong in failing to apportion at all;[103] or that the figure found is not so clearly the maximum justified by the evidence of damages as to indicate that the jury did not follow the instruction.[104]

[101] In Paluczak v. Jones, 209 Wis. 640 at 643, 245 N.W. 655 (1932), it was said that the plaintiff's damages must be diminished . . . "in such ratio as his negligence bears to the other's." In Cameron v. Union Automobile Ins. Co., 210 Wis. 659, 246 N.W. 420, 247 N.W. 453 (1933), this statement was withdrawn, and it was made clear that the reduction must be in proportion to the combined negligence. *Accord*, Engebrecht v. Bradley, 211 Wis. 1, 247 N.W. 451 (1933).

In Patterson v. Kerr, 127 Neb. 73, 254 N.W. 704 (1934), where the ratio was found to be 1 to 6, it was said that the damages must be reduced by ⅙. The case is out of line with Morrison v. Scotts Bluff County, 104 Neb. 254, 177 N.W. 158 (1920), and Sgroi v. Yellow Cab & Baggage Co., 124 Neb. 525, 247 N.W. 355 (1933), which make it clear that the reduction must be by ⅐.

[102] Norfolk & Western R. Co. v. Earnest, 229 U.S. 114, 33 S.Ct. 654 (1913); Waine v. Pennsylvania R. Co., 251 Pa. 215, 96 A. 461 (1915); Anest v. Columbia & P.S. R. Co., 89 Wash. 609, 154 P. 1100 (1916); Newkirk v. Pryor, (Mo. App. 1916) 183 S.W. 682; Payne v. Lind, 106 Ohio St. 14, 138 N.E. 366 (1922); Louisville & N. R. Co. v. Beck, 196 Ind. 238, 145 N.E. 886, 147 N.E. 776 (1925); Cameron v. Union Automobile Ins. Co., 210 Wis. 659, 246 N.W. 420, 247 N.W. 453 (1933); Sgroi v. Yellow Cab & Baggage Co., 124 Neb. 525, 247 N.W. 355 (1933); Goodman v. Chicago, B. & Q. R. Co., 288 Ill. App. 320, 7 N.E. (2d) 393 (1937); Buchanan v. Chicago & N.W. R. Co., (7th Cir. 1947) 159 F. (2d) 576.

[103] See, for example, among many cases, Jackson v. Rutledge, 188 Ind. 415, 122 N.E. 579 (1917); Union Pac. R. Co. v. Hadley, 246 U.S. 330, 38 S.Ct. 318 (1918); Matthews v. Atchison, T. & S.F. R. Co., 54 Cal. App. (2d) 549, 129 P. (2d) 435 (1942); Missouri Pac. R. Co. v. Zolliecoffer, 209 Ark. 559, 191 S.W. (2d) 587 (1946); Ericksen v. Southern Pac. R. Co., 234 P. (2d) 279 (Cal. 1951); Price v. McNeill, 237 Iowa 1120, 24 N.W. (2d) 464 (1946); Ericksen v. Southern Pacific Co., (Cal. 1952) 246 P. (2d) 642.

[104] See for example, among many cases, Louisville & N. R. Co. v. Wene, (7th Cir. 1913) 202 F. 887; Burke v. Chicago & N.W. R. Co., 131 Minn. 209, 154 N.W. 960 (1915); Godby v. Wilson, 203 Ill. App. 612 (1916); Ruppell v. New York Central R.

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Co., 171 App. Div. 832, 157 N.
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Texas & N.O. R. Co. v. McGinni
(Tex. Civ. App. 1935) 81 S.W. (
190 S. 478 (1939); Katela v. B
842; Powell v. Proctor, 143 Fla.
(Cal. 1942) 124 P. (2d) 670.

[105] See for example New Yor
F. 351; Katela v. Baltimore & Ohi

[106] Atlantic Coast Line R. C
v. Leach, 161 Miss. 853, 138 S.
152 Va. 783, 148 S.E. 839 (1929
not apportion.

[107] See, for example, among
199 F. 211; Atlantic Coast Line
Atchison, T. & S.F. R. Co., 97 K
Williams, 114 Miss. 236, 74 S. 8
Fla. 701, 82 S. 232 (1919); Atlan
(1920); Tallahala Lumber Co. v.
& N. R. Co. v. Harrison, 84 Fla.
83 Fla. 537, 91 S. 559 (1922); Jo
140 (1923); Edward Hines Yello
(1926); Tampa Electric Co. v. Kn
Line R. Co. v. Watkins, 97 Fla.
Watson, 103 Fla. 477, 137 S. 719
136 S. 639 (1931); Tampa Elect
Florida East Coast R. Co. v. Towr
371, 142 S. 909 (1932); Atlantic
Gulf & S.I. R. Co. v. Bond, 181 M
Co. v. Bramlett, (Miss. 1939) 18
49, 189 S. 203 (1939); Fegan v. L
Missouri Pac. R. Co. v. Haigler, 2
ing Co. v. Brown, 196 Miss. 131,
dell, 209 Ark. 569, 191 S.W. (2d
250 Ala. 431, 34 S. (2d) 848 (19

In these cases it is quite clear that the court simply does not know what the jury did, and in some instances it has said so frankly.[105]

There are, however, a good many cases in which the contributory negligence has been clear as a matter of law, and the sum awarded so definitely equal to the maximum which the evidence would justify that there could be no doubt that the jury did not make the apportionment. Occasionally a new trial has been ordered;[106] more commonly a remittitur.[107] It is difficult to escape the impression that the number of these cases is disproportionately large, and greatly exceeds what is normally to be expected on the issue of damages alone. They appear to lend a great deal of support to the assertion that the jury is not always to be trusted, with an injured man before it, to follow instructions and divide the damages, even where the plaintiff is undoubtedly at fault. They suggest that there must be many more cases in which the apportionment should have been made but was not in fact made, and the

Co., 171 App. Div. 832, 157 N.Y.S. 1095 (1916); Ames v. Western Pac. R. Co., 48 Nev. 78, 227 P. 1009 (1924); Norfolk & W. R. Co. v. White, (Va. 1931) 160 S.E. 218; Texas & N.O. R. Co. v. McGinnis, 130 Tex. 338, 109 S.W. (2d) 160 (1937) affirming (Tex. Civ. App. 1935) 81 S.W. (2d) 200; Tampa Electric R. Co. v. Hardy, 139 Fla. 142, 190 S. 478 (1939); Katela v. Baltimore & Ohio R. Co., (6th Cir. 1939) 104 F. (2d) 842; Powell v. Proctor, 143 Fla. 153, 196 S. 419 (1940); Metz v. Southern Pac. Co., (Cal. 1942) 124 P. (2d) 670.

[105] See for example New York Central & H.R. R. Co. v. Banker, (2d Cir. 1915) 224 F. 351; Katela v. Baltimore & Ohio R. Co., (6th Cir. 1939) 104 F. (2d) 842.

[106] Atlantic Coast Line R. Co. v. Hobbs, 71 Fla. 109, 70 S. 939 (1916); Seifferman v. Leach, 161 Miss. 853, 138 S. 563 (1932). See also Norfolk & W. R. Co. v. Hardy, 152 Va. 783, 148 S.E. 839 (1929), where there was testimony of jurymen that they did not apportion.

[107] See, for example, among many cases, Cain v. Southern R. Co., (D.C. Tenn. 1911) 199 F. 211; Atlantic Coast Line R. Co. v. Weir, 63 Fla. 69, 58 S. 641 (1912); Pyles v. Atchison, T. & S.F. R. Co., 97 Kan. 455, 155 P. 788 (1916); Yazoo & M.V. R. Co. v. Williams, 114 Miss. 236, 74 S. 835 (1917); Florida East Coast R. Co. v. Meacham, 77 Fla. 701, 82 S. 232 (1919); Atlantic Coast Line R. Co. v. Conant, 79 Fla. 668, 84 S. 688 (1920); Tallahala Lumber Co. v. Holliman, 125 Miss. 308, 87 S. 661 (1921); Louisville & N. R. Co. v. Harrison, 84 Fla. 497, 94 S. 382 (1922); Tampa Electric Co. v. Limpus, 83 Fla. 537, 91 S. 559 (1922); Johnson v. Union Pac. R. Co., 111 Neb. 196, 196 N.W. 140 (1923); Edward Hines Yellow Pine Trustees v. Holley, 142 Miss. 241, 106 S. 822 (1926); Tampa Electric Co. v. Knowles, 91 Fla. 1032, 109 S. 219 (1926); Atlantic Coast Line R. Co. v. Watkins, 97 Fla. 350, 121 S. 95 (1929); Seaboard Air Line R. Co. v. Watson, 103 Fla. 477, 137 S. 719 (1931); Key West Electric Co. v. Higgs, 118 Fla. 11, 136 S. 639 (1931); Tampa Electric Co. v. Bryant, 101 Fla. 204, 133 S. 887 (1931); Florida East Coast R. Co. v. Townsend, 104 Fla. 362, 140 S. 196, on rehearing 104 Fla. 371, 142 S. 909 (1932); Atlantic Coast Line R. Co. v. Fogleman, (Fla. 1934) 158 S. 108; Gulf & S.I. R. Co. v. Bond, 181 Miss. 254, 179 S. 355, 181 S. 741 (1938); E. L. Bruce Co. v. Bramlett, (Miss. 1939) 188 S. 532; Louisville & N. R. Co. v. Grizzard, 238 Ala. 49, 189 S. 203 (1939); Fegan v. Lykes Bros. S.S. Co., 198 La. 312, 3 S. (2d) 632 (1941); Missouri Pac. R. Co. v. Haigler, 203 Ark. 804, 158 S.W. (2d) 703 (1944); Gulf Refining Co. v. Brown, 196 Miss. 131, 16 S. (2d) 765 (1944); Missouri Pac. R. Co. v. Yandell, 209 Ark. 569, 191 S.W. (2d) 592 (1946); Atlantic Coast Line R. Co. v. Mangum, 250 Ala. 431, 34 S. (2d) 848 (1948).

court is powerless to interfere because it does not know or cannot prove what has happened. At least the confessed ignorance, in so many cases, of what the jury has done gives a great deal of color to that claim.

The fear of such misbehavior of the jury has played a considerable part in the limitations which a number of the states have placed upon the application of their apportionment acts. They are all more or less obvious compromises between contesting groups in the legislature, which go part of the way along the road to apportionment, but endeavor to stop short at some point where the distrust of the jury becomes acute, or where agreement can be reached. They are, in other words, political in character; and like most political compromises, they are remarkable neither for soundness in principle nor success in operation.

"Slight" and "Gross" Negligence

The oldest of these restrictions is that the damages shall be divided only where the negligence of the plaintiff is found to be "slight," and that of the defendant greater in comparison. The limitation traces back to the old idea that there are "degrees" of negligence, which developed in England in the law of bailments,[108] and still is applied in bailment cases by a number of American courts.[109] Shortly after the middle of the nineteenth century the Supreme Court of Illinois extended this idea to a case of personal injury at the hands of a railroad,[110] and from that decision developed the doctrine that the negligence of the plaintiff would not bar his recovery if it was "slight," in the sense of "a degree of negligence less than a failure to exercise ordinary care,"[111] while the negligence of the defendant was "gross" in comparison.[112] No attempt was made to divide the damages under this "comparative negligence" rule, and where it was applied the effect was full recovery by the plaintiff.

[108] Coggs v. Bernard, 2 Ld. Raym. 909, 92 Eng. Rep. 107 (1704); JONES, ESSAY ON THE LAW OF BAILMENTS, 3d ed., 1-36 (1828). See Elliott, "Degrees of Negligence," 6 So. CAL. L. REV. 91 at 107-122 (1932).

[109] See, for example, Altman v. Aronson, 231 Mass. 588, 121 N.E. 506 (1919); Lyons First Nat. Bank v. Ocean Nat. Bank, 60 N.Y. 278, 19 Am. Rep. 181 (1875); Dudley v. Camden & P.F. R. Co., 42 N.J.L. 25, 36 Am. Rep. 501 (1880); Cadwell v. Peninsular State Bank, 195 Mich. 407, 162 N.W. 89 (1917).

[110] Galena & Chicago Union R. Co. v. Jacobs, 20 Ill. 478 (1858).

[111] Wabash, St. L. & P. R. Co. v. Moran, 13 Ill. App. 72 at 76 (1883). Recovery was denied if the plaintiff had failed to exercise "ordinary care." City of Chicago v. Stearns, 105 Ill. 554 (1883); Schmidt v. Chicago & N.W. R. Co., 83 Ill. 405 (1876); Hund v. Geier, 72 Ill. 393 (1874); Grand Tower M. & T. Co. v. Hawkins, 72 Ill. 386 (1874); St. Louis & S.E. R. Co. v. Britz, 72 Ill. 256 (1874).

[112] Recovery was also denied if the plaintiff's negligence was found to equal that of the defendant. Indianapolis & St. L. R. Co. v. Evans, 88 Ill. 63 (1878).

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R. Co., 83 Ill. 405 (1876); Illino
R. Co. v. Henks, 91 Ill. 406 (187

[114] Described in Chicago, B.
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[115] Green, "Illinois Negligenc
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[116] An extended, but incomp
Steel Co. v. Martin, 115 Ill. 358,

[117] Calumet Iron & Steel Co.
E.I. R. Co. v. O'Connor, 119 Ill.
Warner, 123 Ill. 38, 14 N.E. 206
16 N.E. 246 (1888).

[118] Lake Shore & M.S. R. Co.

[119] City of Lanark v. Dough
Co. v. Meixner, 160 Ill. 320, 43 N
643, 69 N.E. 79 (1903); Chicago,
(1905); Krieger v. Aurora, E. & C.

[120] Sawyer v. Sauer, 10 Kan.
(1873); Union Pac. R. Co. v. He
Co. v. Davis, 37 Kan. 743, 16 P. 7

[121] Atchison, T. & S.F. R. C
Missouri Pac. R. Co. v. Walters, 7
Co. v. Henry, 57 Kan. 154, 45 P.
156 Kan. 65, 131 P. (2d) 648 (1

[122] Bequette v. People's Trans
R. Co., 8 Ore. 163 (1879). But
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[123] In Stucke v. Milwaukee &

The result was that for some thirty years the courts of Illinois were filled with cases which fought out the issue of "slight" and "gross,"[113] in the midst of a turmoil of confusion.[114] As a mere matter of definition the distinction proved to be unworkable, and it broke down under the sheer weight of the difficulty of applying the bailment rule to the complications of other negligence cases,[115] the multitudinous appeals, and the high proportion of reversals because of some error of the trial court.[116] Finally the Illinois court lost all patience, and proceeded to whittle away the doctrine,[117] and at last to do away with it entirely.[118] No trace of it remains in that state.[119] Kansas, in the eighties, followed exactly the same path, attempting the same experiment with "slight" and "gross" negligence,[120] and repudiating it in the same way.[121] Early ventures in the same direction in Oregon,[122] Wisconsin,[123] and Tennessee[124] died more or less by default.

[113] See, among many other cases, St. Louis A. & T.H. R. Co. v. Todd, 36 Ill. 409 (1865); Chicago, B. & Q. R. Co. v. Payne, 59 Ill. 534 (1871); Illinois Cent. R. Co. v. Cragin, 71 Ill. 177 (1873); Illinois Cent. R. Co. v. Hall, 72 Ill. 222 (1874); Chicago & A. R. Co. v. Mock, 72 Ill. 141 (1874); Illinois Cent. R. Co. v. Hammer, 72 Ill. 347 (1874); Illinois Cent. R. Co. v. Goddard, 72 Ill. 567 (1874); Schmidt v. Chicago & N.W. R. Co., 83 Ill. 405 (1876); Illinois Cent. R. Co. v. Hammer, 85 Ill. 526 (1877); Wabash R. Co. v. Henks, 91 Ill. 406 (1879).

[114] Described in Chicago, B. & Q. R. Co. v. Johnson, 103 Ill. 512 (1882); Chicago, R.I. & P. R. Co. v. Hamler, 215 Ill. 525, 74 N.E. 705 (1905).

[115] Green, "Illinois Negligence Law," 39 ILL. L. REV. 36 at 51 (1944), suggests the further reason that the great increase in cases of injuries to employees would have resulted in heavier liability on employers than the courts were willing to impose. Elliott, "Degrees of Negligence," 6 So. CAL. L. REV. 91 at 136 (1933), suggests also the very hostile reception of the Illinois doctrine at the hands of other courts and text writers. There is an excellent review of the whole history in Malone, "The Formative Era of Contributory Negligence," 41 ILL. L. REV. 151 (1946).

[116] An extended, but incomplete, list of such reversals is found in Calumet Iron & Steel Co. v. Martin, 115 Ill. 358, 3 N.E. 456 (1885).

[117] Calumet Iron & Steel Co. v. Martin, 115 Ill. 358, 3 N.E. 456 (1885); Chicago & E.I. R. Co. v. O'Connor, 119 Ill. 586, 9 N.E. 263 (1887); Chicago, B. & Q. R. Co. v. Warner, 123 Ill. 38, 14 N.E. 206 (1887); Village of Mansfield v. Moore, 124 Ill. 133, 16 N.E. 246 (1888).

[118] Lake Shore & M.S. R. Co. v. Hessions, 150 Ill. 546, 37 N.E. 905 (1894).

[119] City of Lanark v. Dougherty, 153 Ill. 163, 38 N.E. 892 (1894); Cicero St. R. Co. v. Meixner, 160 Ill. 320, 43 N.E. 823 (1896); City of Macomb v. Holcomb, 205 Ill. 643, 69 N.E. 79 (1903); Chicago, R.I. & P. R. Co. v. Hamler, 215 Ill. 525, 74 N.E. 705 (1905); Krieger v. Aurora, E. & C. R. Co., 242 Ill. 544, 90 N.E. 266 (1909).

[120] Sawyer v. Sauer, 10 Kan. 466 (1872); Pacific R. Co. v. Houts, 12 Kan. 328 (1873); Union Pac. R. Co. v. Henry, 36 Kan. 565, 14 P. 1 (1883); Wichita & W. R. Co. v. Davis, 37 Kan. 743, 16 P. 78 (1887).

[121] Atchison, T. & S.F. R. Co. v. Morgan, 31 Kan. 77 at 80, 1 P. 298 (1883); Missouri Pac. R. Co. v. Walters, 78 Kan. 39, 96 P. 346 (1908); Atchison, T. & S.F. R. Co. v. Henry, 57 Kan. 154, 45 P. 576 (1896); Sayeg v. Kansas City Gas & Electric Co., 156 Kan. 65, 131 P. (2d) 648 (1942).

[122] Bequette v. People's Transp. Co., 2 Ore. 200 (1867); Holstine v. Oregon & Cal. R. Co., 8 Ore. 163 (1879). But in Hamerlynck v. Banfield, 36 Ore. 436, 59 P. 712 (1900), without reference to the earlier cases, the court stated the common law contributory negligence rule, which has been followed ever since.

[123] In Stucke v. Milwaukee & Miss. R. Co., 9 Wis. 202 (1859); Dreher v. Town of

Nevertheless, when proposals for the apportionment of damages reached the legislatures, the memory of these old common law fiascoes remained to suggest a possible basis for compromise. As a result the railroad employers' liability acts of the District of Columbia,[125] Nebraska,[126] and Ohio,[127] as well as broader labor acts in Alaska,[128] California[129] and Ohio,[130] carry provisions for apportionment only if the plaintiff's negligence is found to be "slight," so that the defendant's is "gross" in comparison. The same was true of a Wisconsin statute,[131] now repealed,[132] which covered injuries inflicted by a railroad. In 1913

Fitchburg, 22 Wis. 643 (1868); Hammond v. Town of Mukwa, 40 Wis. 35 (1876); Griffin v. Town of Willow, 43 Wis. 509 (1878); and Ditberner v. Chicago, M. & St. P. R. Co., 47 Wis. 138, 2 N.W. 69 (1879), it was said that slight negligence, defined as want of extraordinary care, would not bar the plaintiff's recovery. But in Potter v. Chicago & N.W. R. Co., 21 Wis. 377, 94 Am. Dec. 548 (1867), and Cunningham v. Lyness, 22 Wis. 236 (1867), it was held that any way of ordinary care, however slight, would be a bar; and in Bolin v. Chicago, St. P. M. & O. R. Co., 108 Wis. 333, 84 N.W. 446 (1900), the court, after reviewing the cases, rejected the whole idea of comparative negligence.

[124] Whirley v. Whiteman, 1 Head (38 Tenn.) 610 at 623 (1858); East Tenn. R. Co. v. Fain, 12 Lea (80 Tenn.) 35 at 40 (1883); East Tenn. R. Co. v. Gurley, 12 Lea (80 Tenn.) 46 at 55 (1883). In East Tenn. V. & G. R. Co. v. Hull, 88 Tenn. 33, 12 S.W. 419 (1889), the court expressly repudiated the idea of comparative negligence, and explained that it had been talking about "remote" negligence and proximate cause. See text infra at notes 189-192.

[125] D.C. Code (1940) tit. 44, §402.

[126] Neb. Rev. Stat. (1943) §74-704. Applied in Missouri Pac. R. Co. v. Castle, (8th Cir. 1909) 172 F. 841, affirmed and held constitutional in 224 U.S. 541, 32 S.Ct. 606 (1912). See Jackson v. Chicago, R.I. & P. R. Co., (8th Cir. 1910) 178 F. 432; Chicago, R.I. & P. R. Co. v. Wright, 239 U.S. 548, 36 S.Ct. 185 (1915).

[127] Ohio Gen. Code Ann. (Page, 1945) §9018. Applied in Baltimore & Ohio R. Co. v. McTeer, 55 Ohio App. 217, 9 N.E. (2d) 627 (1936); Detroit & T.S.L. R. Co. v. Seigel, (Ohio App. 1926) 153 N.E. 870; Ross v. Hocking Valley R. Co., 40 Ohio App. 447, 178 N.E. 852 (1931); Norfolk & W. R. Co. v. Riggs, (6th Cir. 1938) 98 F. (2d) 612; Erie R. Co. v. White, (6th Cir. 1911) 187 F. 556.

[128] Alaska Comp. Laws Ann. (1949) §43-2-52, applicable to certain hazardous occupations.

[129] Cal. Labor Code (1937) §2801, applicable to all employees. Applied in Lassen v. Southern Pac. Co., 173 Cal. 71, 159 P. 143 (1916); Tubbs v. Stone & Webster Const. Co., 30 Cal. App. 705, 159 P. 242 (1916); Bruce v. Western Pipe & Steel Co., 177 Cal. 25, 169 P. 660 (1917); Scherer v. Danziger, 178 Cal. 253, 173 P. 85 (1918). See Mantonya v. Bratlie, (Cal. App. 1948) 190 P. (2d) 996, reversed on other grounds in 33 Cal. (2d) 120, 199 P. (2d) 677 (1948); Edwards v. Hollywood Canteen, 27 Cal. (2d) 802, 167 P. (2d) 729 (1945).

[130] Ohio Gen. Code Ann. (Page, 1945) §6245-1, applicable to all employees. Applied in Standard Steel Tube Co. v. Prusakiewicz, 33 Ohio C.C. 133 (1911), affirmed in 87 Ohio St. 472, 102 N.E. 1131 (1911); McKee v. New Idea, Inc., (Ohio App. 1942) 44 N.E. (2d) 697; Zeis v. Kaechele, 29 Ohio App. 54, 163 N.E. 42 (1927); see McMyler Mfg. Co. v. Mehnke, (6th Cir. 1913) 209 F. 5; Bartson v. Craig, 121 Ohio St. 371, 169 N.E. 291 (1929).

[131] Wis. Stat. (1949) §192.29(6). Applied in Gordon v. Illinois Cent. R. Co., 168 Wis. 244, 169 N.W. 570 (1918); Clark v. Chicago, M., St. P. & P. R. Co., 214 Wis. 295, 252 N.W. 685 (1934).

[132] In 1951, as in conflict with Wisconsin's broader apportionment act (infra, text at note 156). See Lipscomb, "Comparative Negligence," INS. L.J. No. 344, 667 at 674

Nebraska[133] extended this to divide the damages, subject to the same limitation, in all actions for personal injuries or damage to property; and in 1941 the Nebraska act was copied in South Dakota.[134]

The result of the limitation has been to a considerable extent a repetition of the Illinois experience. Appeals have multiplied, in which the court is asked to decide whether particular conduct of the plaintiff is, under the circumstances, more than "slight" negligence. "Slight" is the key word, since it is agreed that if the plaintiff's fault does not meet that qualification, the greater negligence of the defendant still will not permit any recovery.[135] The Nebraska court has refused to define the term, saying that "any one of common sense knows that slight negligence actually means small or little negligence, and gross negligence means just what it indicates, gross or great negligence";[136] and South Dakota has done little better, saying that slight negligence means merely "ordinary negligence, small in quantum."[137]

Counsel have not been slow to accept this invitation to argue the issue. The great majority of the appeals have resulted in a decision that the contributory negligence was more than "slight," and all recovery was barred even though the defendant's negligence was the greater of the two; so that the limitation has had the effect of restricting apportionment to a relatively small number of cases. Recovery

(Sept. 1951). It has been held that the railroad act was superseded by the broader statute where the negligence of the plaintiff was more than slight. Hammer v. Minneapolis, St. P. & S.S.M. R. Co., 216 Wis. 7, 255 N.W. 124 (1934).

[133] Neb. Rev. Stat. (1943) §25-1151: "In all actions brought to recover damages to a person or to his property caused by the negligence of another, the fact that the plaintiff may have been guilty of contributory negligence shall not bar a recovery when the contributory negligence of the plaintiff was slight and the negligence of the defendant was gross in comparison, but the contributory negligence of the plaintiff shall be considered by the jury in the mitigation of damages in proportion to the amount of the contributory negligence attributable to the plaintiff."

See Wiebusch, "Comparative Negligence in Nebraska," 17 NEB. L.B. 68 (1938); Baylor, "Comparative Negligence in Nebraska," 10 S.D. B.J. 146 (1942).

[134] S.D. Laws 1941, c. 160, p. 184.

[135] Morrison v. Scotts Bluff County, 104 Neb. 254, 177 N.W. 158 (1920); Mitchell v. Missouri Pac. R. Co., 114 Neb. 72, 206 N.W. 12 (1925); McDonald v. Wright, 125 Neb. 871, 252 N.W. 411 (1934); Krepcik v. Interstate Transit Lines, 152 Neb. 39, 40 N.W. (2d) 252 (1949), affirmed in 153 Neb. 98, 43 N.W. (2d) 609 (1950); Friese v. Gulbrandson, 69 S.D. 179, 8 N.W. (2d) 438 (1943); Roberts v. Brown, 72 S.D. 479, 36 N.W. (2d) 665 (1949); Will v. Marquette, (S.D. 1949) 40 N.W. (2d) 396. Once the plaintiff's negligence is found to be slight, the defendant's negligence need not be "gross" in itself, but only greater in comparison with that of the plaintiff. Roby v. Anker, 151 Neb. 421, 37 N.W. (2d) 799 (1949).

The Nebraska act has been held to apply where the defendant's negligence was "gross" within the automobile guest statute. Landrum v. Roddy, 143 Neb. 934, 12 N.W. (2d) 82 (1943), overruling Sheehy v. Abboud, 126 Neb. 554, 253 N.W. 683 (1934).

[136] Monasmith v. Cosden Oil Co., 124 Neb. 327, 246 N.W. 623 (1933).

[137] Friese v. Gulbrandson, 69 S.D. 179, 8 N.W. (2d) 438 (1943).

has been denied, for example, where the plaintiff has failed to stop, look and listen at a railroad crossing,[138] or to look or to stop or to see what was visible at an intersection,[139] or to drive at a reasonable speed,[140] or at such a speed that he could stop within his range of vision,[141] or to reduce his speed at the appearance of a visible danger,[142] or to avoid a vehicle when crossing the street,[143] as well

[138] Seiffert v. Hines, 108 Neb. 62, 187 N.W. 108 (1922); Haffke v. Missouri Pac. R. Corp., 110 Neb. 125, 193 N.W. 257 (1923); Stanley v. Chicago, R.I. & P. R. Co., 113 Neb. 280, 202 N.W. 864 (1925); Tyson v. Missouri Pac. R. Co., 113 Neb. 504, 203 N.W. 560 (1925); Allen v. Omaha & S.L R. Co., 115 Neb. 221, 212 N.W. 428 (1927); Eggeling v. Chicago, R.I. & P. R. Co., 119 Neb. 229, 228 N.W. 361, 231 N.W. 152 (1929); Rogers v. Chicago, R.I. & P. R. Co., (8th Cir. 1930) 39 F. (2d) 601; Mundt v. Chicago, R.I. & P. R. Co., 136 Neb. 478, 286 N.W. 691 (1939); Fischer v. Megan, 138 Neb. 420, 293 N.W. 287 (1940); Johnson v. Chicago & N.W. R. Co., 71 S.D. 132, 22 N.W. (2d) 725 (1946).

The issue was held to be for the jury in Traphagen v. Lincoln Traction Co., 110 Neb. 855, 195 N.W. 472 (1923); Baker v. Omaha & C.B. St. R. Co., 110 Neb. 246, 193 N.W. 341 (1923); Gordon v. Illinois Cent. R. Co., 168 Wis. 244, 109 N.W. 570 (1918); Clark v. Chicago, M. & St. P. R. Co., 214 Wis. 295, 252 N.W. 685 (1934).

[139] McDonald v. Omaha & C.B. St. R. Co., 128 Neb. 17, 257 N.W. 489 (1934); Nelson v. Plautz, 130 Neb. 641, 265 N.W. 885 (1936); Bergendahl v. Rabeler, 133 Neb. 699, 276 N.W. 673 (1937); Ritter v. Hering, 135 Neb. 1, 280 N.W. 231 (1938); Whittaker v. Hanifin, 138 Neb. 18, 291 N.W. 723 (1940); Klement v. Lindell, 139 Neb. 540, 298 N.W. 137 (1941); Kundert v. B. F. Goodrich Co., 70 S.D. 464, 18 N.W. (2d) 786 (1945); Flanagan v. Slattery, (S.D. 1951) 49 N.W. (2d) 27; Huckfeldt v. Union Pac. R. Co., 154 Neb. 873, 50 N.W. (2d) 110 (1951).

The issue was held to be for the jury in Anderbery v. Katz, 142 Neb. 872, 8 N.W. (2d) 207 (1943); Sgroi v. Yellow Cab & Baggage Co., 124 Neb. 525, 247 N.W. 355 (1933). Miscalculation of the speed of an approaching vehicle was held to be for the jury in Burton v. Lincoln Traction Co., 106 Neb. 521, 184 N.W. 73 (1921); Coburn v. Loetscher, 123 Neb. 407, 243 N.W. 127 (1932).

[140] Anderson v. Altschuler, 125 Neb. 853, 252 N.W. 310 (1934). In Patterson v. Kerr, 127 Neb. 73, 254 N.W. 704 (1934), the issue was held to be for the jury.

[141] Dickenson v. County of Cheyenne, 146 Neb. 36, 18 N.W. (2d) 559 (1945). The issue was held to be for the jury in Day v. Metropolitan Utilities District, 115 Neb. 711, 214 N.W. 647 (1927); Monasmith v. Cosden Oil Co., 124 Neb. 327, 246 N.W. 623 (1933). In Pierson v. Jensen, 148 Neb. 849, 29 N.W. (2d) 625 (1947), the court at first held this to be more than slight as a matter of law, but on rehearing, in 150 Neb. 86, 33 N.W. (2d) 462 (1948), vacated the decision and left the issue to the jury. In Giles v. Welsh, 122 Neb. 164, 239 N.W. 813 (1931), and Audiss v. Peter Kiewit Sons Co., (8th Cir. 1951) 190 F. (2d) 238, failure to see an object in the highway not too clearly visible was held to be for the jury.

[142] Stocker v. Roach, 140 Neb. 461, 300 N.W. 627 (1941); Chana v. Mannlein, 141 Neb. 312, 3 N.W. (2d) 572 (1942); Donald v. Heller, 143 Neb. 600, 10 N.W. (2d) 447 (1943); Doane v. Hoppe, 132 Neb. 641, 272 N.W. 763 (1937); Redwelski v. Omaha & C.B. St. R. Co., 137 Neb. 681, 290 N.W. 904 (1940).

[143] Dodds v. Omaha & C.B. St. R. Co., 104 Neb. 692, 178 N.W. 258 (1920); Troup v. Porter, 126 Neb. 93, 252 N.W. 611 (1934); Travinsky v. Omaha & C.B.St. R. Co., 137 Neb. 168, 288 N.W. 512 (1939); Hughes v. Omaha & C.B. St. R. Co., 143 Neb. 47, 8 N.W. (2d) 509 (1943); Halliday v. Raymond, 147 Neb. 179, 22 N.W. (2d) 614 (1946); cf. Chew v. Coffin, 144 Neb. 170, 12 N.W. (2d) 839 (1944) (pedestrian on sidewalk oblivious of car backing out of driveway).

The issue was held to be for the jury in Francis v. Lincoln Traction Co., 106 Neb. 243, 183 N.W. 293 (1921); Belville v. Bondesson, 130 Neb. 926, 266 N.W. 901 (1936); Thompson v. Buehler, 147 Neb. 811, 25 N.W. (2d) 391 (1946).

as in many other instances of rather ordinary negligence.[144] At the same time it is clear that "slight" is a matter of all the circumstances of the particular case, so that there can be no definite rules; and there are other cases[145] in which conduct of the same kind is held to present a question for the jury. It is, of course, not at all surprising that the appeals continue.

The Nebraska system does not inspire confidence in a stranger to the state. It seems quite apparent that it leads to confusion, and to excessive appeals; and that it results in apportionment in only a relatively small fraction of the cases in which it should be made.

Plaintiff's Negligence "Less" Than Defendant's

A second type of limitation is that there can be apportionment only when the plaintiff's negligence is found to be "less" than that of the defendant, and that if it is equal or greater all recovery is barred. This first appeared in Georgia. After some early language at common law looking in the direction of apportionment,[146] the Georgia Code of 1860-62 introduced a provision, applicable only to personal injuries or damage to property inflicted by a railroad,[147] which required division

[144] Wertz v. Lincoln Liberty Life Ins. Co., 152 Neb. 451, 41 N.W. (2d) 740 (1950) (window washer failing to fasten safety belt); Sodomka v. Cudahy Packing Co., 101 Neb. 448, 163 N.W. 809 (1917) (backing into elevator shaft); Kudrna v. Sarpy County, 125 Neb. 83, 249 N.W. 87 (1933) (riding with inexperienced driver); Tomjack v. Chicago & N.W. R. Co., 116 Neb. 413, 217 N.W. 944 (1928) (passenger failing to warn driver of missing culvert); Frye v. Omaha & C.B. St. R. Co., 106 Neb. 333, 183 N.W. 567 (1921) (skating with improper skates and straps); Haase v. Willers Truck Service, 72 S.D. 353, 34 N.W. (2d) 313 (1948) (obstructing highway with truck); Roger Wurmser, Inc. v. Interstate Hotel Co., 148 Neb. 660, 28 N.W. (2d) 405 (1947) (failure to inform hotel of $200,000 value of jewels); Bixby v. Ayers, 139 Neb. 652, 298 N.W. 533 (1941) (boy turning bicycle into path of car); Gardner v. Metropolitan Utilities District, 134 Neb. 163, 278 N.W. 137 (1938) (falling into open stairway); Eaton v. Merritt, 135 Neb. 363, 281 N.W. 620 (1938) (standing behind truck in excavation); Wentink v. Traphagen, 138 Neb. 41, 291 N.W. 884 (1940) (proceeding in dark basement); Groat v. Clausen, 139 Neb. 689, 298 N.W. 563 (1941) (getting too close to ensilage cutter).

The following were held to be for the jury: La Fleur v. Poesch, 126 Neb. 263, 252 N.W. 902 (1934) (standing in front of stalled truck on highway without required red light); Disher v. Chicago, R.I. & P. R. Co., 93 Neb. 224, 140 N.W. 135 (1913) (attempting to remove handcar from track in path of train); McCarthy v. Village of Ravenna, 99 Neb. 674, 157 N.W. 629 (1916) (using short handled brush around machinery in motion).

[145] See cases cited in notes 146 152.

[146] In Macon & Western R. Co. v. Winn, 26 Ga. 250 at 254 (1858); Macon & W. R. Co. v. Davis, 27 Ga. 113 at 119 (1859); Flanders v. Meath, 27 Ga. 358 at 362 (1859). The history is well traced in Turk, "Comparative Negligence on the March," 28 CHI-KENT L. REV. 189, 304, 326-333 (1950).

[147] Ga. Code Ann. (1936) §94-703: "No person shall recover damages from a railroad company for injury to himself or his property, where the same is done by his consent or is caused by his own negligence. If the complainant and the agents of the company are both at fault, the former may recover, but the damages shall be diminished by the jury in proportion to the amount of fault attributable to him."

of the damages. By a rather remarkable process of construction, not justified by anything appearing in the provision itself,[148] it was first of all extended to actions against other defendants than railroads,[149] and then limited to cases where the plaintiff's negligence was "less."[150] One looks in vain for any explanation of the limitation,[151] and it appears to have arisen from nothing more than timidity in the application of the statute.

Half a century of Georgia history suggested this compromise too to other legislatures, and it was adopted in the railroad employers' liability acts of Arkansas,[152] Michigan[153] and Wisconsin,[154] in which "slight" negligence does not even go to reduce the damages; and in an apportionment act in Arkansas[155] which covers all personal injuries inflicted by a railroad. In 1913 Wisconsin carried the limitation over into its general statute providing for apportionment in all cases of negligent personal injury or property damage.[156]

[148] When Florida copied the Georgia act, it refused to accept the limitation. Florida, C. & P. R. Co. v. Foxworth, 41 Fla. 1, 25 S. 338 (1899).

[149] Berry v. Jowers, 59 Ga. App. 24, 200 S.E. 195 (1938); Elk Cotton Mills v. Grant, 140 Ga. 727, 79 S.E. 836 (1913); Wynne v. Southern Bell Tel. Co., 159 Ga. 623, 126 S.E. 388 (1925); Moore v. Sears, Roebuck & Co., 48 Ga. App. 185, 172 S.E. 680 (1934); Lamon v. Perry, 33 Ga. App. 248, 125 S.E. 907 (1924); City of Ocilla v. Luke, 28 Ga. App. 234, 110 S.E. 757 (1922).

[150] Christian v. Macon R. Co., 120 Ga. 314, 47 S.E. 923 (1904); Brunswick R. Co. v. Wiggins, 113 Ga. 842, 39 S.E. 551 (1901); Southern Stages, Inc. v. Clements, 71 Ga. App. 169, 30 S.E. (2d) 429 (1944); Whatley v. Henry, 65 Ga. App. 668, 16 S.E. (2d) 214 (1941); Southern R. Co. v. Parkman, 61 Ga. App. 62, 5 S.E. (2d) 685 (1939); Pollard v. Heard, 53 Ga. App. 623, 186 S.E. 894 (1936); Central of Ga. R. Co. v. Larsen, 19 Ga. App. 413, 91 S.E. 517 (1917).

[151] The limitation appears to have originated in Central R. & B. Co. v. Newman, 94 Ga. 560, 21 S.E. 219 (1894), where the facts were stated, and the court reversed without an opinion. This case was relied on, and the rule first stated, in Southern R. Co. v. Watson, 104 Ga. 243, 30 S.E. 818 (1898), where the only reason given was that the rule was established. Both cases were followed, with no better explanation, in Brunswick R. Co. v. Wiggins, 113 Ga. 842, 39 S.E. 501 (1901).

[152] Ark. Stat. Ann. (1942) §73 916. Applied in Missouri Pac. R. Co. v. Brown, 195 Ark. 1060, 115 S.W. (2d) 1083 (1938); Kansas City & M. R. Co. v. Huff, 116 Ark. 461, 173 S.W. 419 (1915).

[153] Mich. Comp. Laws (1948) §419.52. Applied in Bruce v. Michigan Cent. R. Co., 172 Mich. 441, 138 N.W. 362 (1912); English v. Michigan Cent. R. Co., 188 Mich. 286, 154 N.W. 98 (1915).

[154] Wis. Stat. (1949) §192.50 (3). Applied in Zeratsky v. Chicago, M. & St. P. R. Co., 141 Wis. 423, 123 N.W. 904 (1909); Jensen v. Wisconsin Cent. R. Co., 145 Wis. 326, 128 N.W. 982 (1910); Tidmarsh v. Chicago, M. & St. P. R. Co., 149 Wis. 590, 136 N.W. 337 (1912).

[155] Ark. Stat. Ann. (1947) §73-1004. Applied in St. Louis-San Francisco R. Co. v. Kirkpatrick, 155 Ark. 632, 245 S.W. 35 (1922); St. Louis-San Francisco R. Co. v. Hovley, 199 Ark. 853, 137 S.W. (2d) 231 (1940); Phillips v. Kurn, (8th Cir. 1944) 145 F. (2d) 908. The act has no application to property damage. Baldwin v. Waters, 191 Ark. 377, 86 S.W. (2d) 172 (1935); Missouri Pac. R. Co. v. Binkley, 208 Ark. 933, 188 S.W. (2d) 291 (1945).

[156] Wis. Stat. (1949) §331.045: "Contributory negligence shall not bar a recovery in an action by any person or his legal representative to recover damages for negligence resulting in death or in injury to p... the negligence of the person aga... shall be diminished in the proport... recovering."

See Padway, "Comparative ... "Wisconsin's Comparative Negligence ... parative Negligence Statute," 20 ... ligence," [1938] Wis. L. Rev. 4... [1941] Wis. L. Rev. 289; Hayes, ... Wisconsin," 23 Ohio S.B.A. Re... Negligence," 23 Ohio S.B.A. Re...

[157] Bradley v. Missouri Pac. ... S.W. R. Co., 178 Ark. 578, 11 S... O. R. Co., 219 Wis. 124, 262 N.W. ... 830, 125 S.W. (2d) 785 (1939); ... (2d) 645 (1939); Patterson v. ... 63 (1940); Evanich v. Milwaukee ... McGlothin v. Thompson, 347 Mo... fusion in the Arkansas cases); Mis... (2d) 912 (1942); Missouri Pac. ... (1942); Missouri Pac. R. Co. v. ... souri Pac. R. Co. v. Dawson, 205 ... Louis S.W. R. Co., 207 Ark. 154... R. Co., 183 Tenn. 471, 192 S.W. ... 220 S.W. (2d) 23 (1949).

[158] Memphis, D. & G. R. Co. ... Powell v. Jonesboro, L.C. & E. ... Missouri Pac. R. Co., 170 Ark. 6... French, 181 Ark. 777, 27 S.W. ... Cir. 1933) 67 F. (2d) 424; Misso... 34 (1933); Missouri Pac. R. Co. v. ... Missouri Pac. R. Co. v. Dotson, ... Southern R. Co., (5th Cir. 1937) ... 194 Ark. 884, 110 S.W. (2d) 51...

The practical effect h... "gross" negligence. Again... is asked to determine wh... is fault at least "equal" to... pend not only upon all th... conduct of both parties, b... it is obvious that each dec... that either the losing def... couragement to raise the ... semblance of consistency ... type. In about half of the ... railroad crossing without ... or seeing a visible train, ... as a matter of law to th... warning.[157] In about as m... find that the plaintiff's neg...

The practical effect has been very similar to that of "slight" and "gross" negligence. Again appeals have multiplied, in which the court is asked to determine whether the particular conduct of the plaintiff is fault at least "equal" to that of the defendant. Since this must depend not only upon all the circumstances of the case as they affect the conduct of both parties, but upon a comparison of one with the other, it is obvious that each decision must be upon the individual facts, and that either the losing defendant or the losing plaintiff has ample encouragement to raise the issue. It is not surprising that there is no semblance of consistency to be discerned in cases of the same general type. In about half of the cases in which the plaintiff has driven onto a railroad crossing without stopping, looking, listening, reducing speed or seeing a visible train, his negligence has been held at least equal as a matter of law to that of the railroad in failing to give proper warning.[157] In about as many cases it has been held that the jury may find that the plaintiff's negligence is the lesser of the two.[158] The same

sulting in death or in injury to person or property, if such negligence was not as great as the negligence of the person against whom recovery is sought, but any damages allowed shall be diminished in the proportion to the amount of negligence attributable to the person recovering."

See Padway, "Comparative Negligence," 16 MARQ. L. REV. 3 (1931); Campbell, "Wisconsin's Comparative Negligence Law," 7 WIS. L. REV. 222 (1932); Whelan, "Comparative Negligence Statute," 20 MARQ. L. REV. 189 (1936); Whelan, "Comparative Negligence," [1938] WIS. L. REV. 465; Campbell, "Ten Years of Comparative Negligence," [1941] WIS. L. REV. 289; Hayes, "Rule of Comparative Negligence and its Operation in Wisconsin," 23 OHIO S.B.A. REP. 233 (1950); Grubb, "Observations on Comparative Negligence," 23 OHIO S.B.A. REP. 237 (1950).

[157] Bradley v. Missouri Pac. R. Co., (8th Cir. 1923) 288 F. 484; Jemell v. St. Louis S.W. R. Co., 178 Ark. 578, 11 S.W. (2d) 449 (1928); Zenner v. Chicago, St. P., M. & O. R. Co., 219 Wis. 124, 262 N.W. 581 (1935); Missouri Pac. R. Co. v. Davis, 197 Ark. 830, 125 S.W. (2d) 785 (1939); Missouri Pac. R. Co. v. Price, 199 Ark. 346, 133 S.W. (2d) 645 (1939); Patterson v. Chicago, St. P., M. & O. R. Co., 236 Wis. 205, 294 N.W. 63 (1940); Evanich v. Milwaukee Elec. R. & L. Co., 237 Wis. 111, 295 N.W. 44 (1941); McGlothin v. Thompson, 347 Mo. 708, 148 S.W. (2d) 558 (1941) (reviewing the confusion in the Arkansas cases); Missouri Pac. R. Co. v. Carruthers, 204 Ark. 419, 162 S.W. (2d) 912 (1942); Missouri Pac. R. Co. v. Howard, 204 Ark. 253, 161 S.W. (2d) 759 (1942); Missouri Pac. R. Co. v. Dennis, 205 Ark. 28, 166 S.W. (2d) 886 (1942); Missouri Pac. R. Co. v. Dawson, 205 Ark. 404, 168 S.W. (2d) 1105 (1943); Lloyd v. St. Louis S.W. R. Co., 207 Ark. 1[illegible] S.W. (2d) 651 (1944); Snyder v. Missouri Pac. R. Co., 183 Tenn. 471, 192 S[illegible] 1008 (1946); Tepel v. Thompson, 359 Mo. 1, 220 S.W. (2d) 23 (1949).

[158] Memphis, D. & G. R. Co. v. Thompson, 138 Ark. 175, 210 S.W. 346 (1919); Powell v. Jonesboro, L.C. & E. R. Co., 166 Ark. 252, 266 S.W. 78 (1924); Huff v. Missouri Pac. R. Co., 170 Ark. 665, 280 S.W. 648 (1926); Chicago, R.I. & P. Co. v. French, 181 Ark. 777, 27 S.W. (2d) 1021 (1930); Southern R. Co. v. Wilbanks, (5th Cir. 1933) 67 F. (2d) 424; Missouri Pac. R. Co. v. Brown, 187 Ark. 1163, 59 S.W. (2d) 34 (1933); Missouri Pac. R. Co. v. Westerfield, 192 Ark. 558, 92 S.W. (2d) 862 (1936); Missouri Pac. R. Co. v. Dotson, 195 Ark. 286, 101 S.W. (2d) 785 (1937); Thomas v. Southern R. Co., (5th Cir. 1937) 92 F. (2d) 445; Missouri Pac. R. Co. v. Henderson, 194 Ark. 884, 110 S.W. (2d) 516 (1937) (passenger failing to warn driver); St. Louis-

kind of variation is found in cases of a pedestrian walking into the path of a train,[159] or a vehicle whose driver has failed in his duty as to speed, warning or lookout;[160] a trespasser on the right of way struck by a train;[161] the various kinds of negligence of drivers colliding at intersections;[162] and miscellaneous other situations.[163] The Georgia courts have displayed a remarkable tendency to leave the issue to the

San Francisco R. Co. v. Hovley, 199 Ark. 853, 137 S.W. (2d) 231 (1940); St. Louis-San Francisco R. Co. v. Beasley, 205 Ark. 688, 170 S.W. (2d) 667 (1943); Missouri Pac. R. Co. v. Walden, 207 Ark. 437, 181 S.W. (2d) 24 (1944); Missouri Pac. R. Co. v. Shell, 208 Ark. 70, 185 S.W. (2d) 81 (1945); Smith v. Missouri Pac. R. Co., 208 Ark. 40, 184 S.W. (2d) 951 (1945); Webster v. Roth, 246 Wis. 535, 18 N.W. (2d) 1 (1945).

[159] Held at least equal as a matter of law in Southern R. Co. v. Parkman, 61 Ga. App. 62, 5 S.E. (2d) 685 (1939); Allnutt v. Missouri Pac. R. Co., (8th Cir. 1925) 8 F. (2d) 604. Held for the jury in Missouri Pac. R. v. Trotter, 184 Ark. 790, 43 S.W. (2d) 762 (1931); Missouri Pac. R. Co. v. Rogers, 184 Ark. 725, 43 S.W. (2d) 757 (1931).

[160] Held equal as a matter of law in Burant v. Studzinski, [illegible] Wis. 455, 282 N.W. 3 (1938); Hustad v. Evetts, 230 Wis. 292, 282 N.W. 595 (1938); Nayes v. Milwaukee Elec. R. & L. Co., 237 Wis. 141, 294 N.W. 812 (1940); Post v. Thomas, 240 Wis. 519, 3 N.W. (2d) 344 (1942); Crawley v. Hill, 253 Wis. 294, 34 N.W. (2d) 123 (1948); Ninneman v. Schwede, 258 Wis. 408, 46 N.W. (2d) 230 (1951).

Held for the jury in De Goey v. Hermsen, 233 Wis. 69, 288 N.W. 770 (1939); Wilson v. Pollard, 62 Ga. App. 781, 10 S.E. (2d) 407 (1940); Doepke v. Reimer, 217 Wis. 49, 258 N.W. 345 (1935); Schwandt v. Milwaukee Elec. R. & T. Co., 244 Wis. 251, 12 N.W. (2d) 18 (1943); Kleiner v. Johnson, 249 Wis. 148, 23 N.W. (2d) 467 (1946); Baggett v. Jackson, 79 Ga. App. 460, 54 S.E. (2d) 146 (1949).

[161] Held equal as a matter of law in St. Louis-San Francisco R. Co. v. Williams, 180 Ark. 413, 21 S.W. (2d) 611 (1929). Held for the jury in Hunt v. Western & A. R. Co., 49 Ga. App. 33, 174 S.E. 222 (1934).

[162] Held equal as a matter of law in Kilcoyne v. Trausch, 222 Wis. 528, 269 N.W. 276 (1936); Grasser v. Anderson, 224 Wis. 654, 273 N.W. 63 (1937); Langworthy v. Reisinger, 249 Wis. 24, 23 N.W. (2d) 482 (1946); Geyer v. Milwaukee Elec. R. & L. Co., 230 Wis. 347, 284 N.W. 1 (1939); Campanelli v. Milwaukee Elec. R. & T. Co., 242 Wis. 505, 8 N.W. (2d) 390 (1943); J. W. Cartage Co. v. Laufenberg, 251 Wis. 301, 28 N.W. (2d) 925 (1947); Kloss v. American Indemnity Co., 253 Wis. 476, 34 N.W. (2d) 816 (1948); Dinger v. McCoy Transp. Co., 254 Wis. 447, 37 N.W. (2d) 26 (1949).

Held for the jury in Paluczak v. Jones, 209 Wis. 640, 245 N.W. 655 (1932); Head v. Georgia Power Co., 70 Ga. App. 32, 27 S.E. (2d) 339 (1943).

[163] Held equal as a matter of law: Manitowoc Trust Co. v. Boutil, 220 Wis. 627, 265 N.W. 572 (1936) (plaintiff on running board of defendant's automobile); Schulz v. General Cas. Co., 233 Wis. 118, 288 N.W. 803 (1939) (two motorists approaching top of hill in middle of road; plaintiff reduced speed and defendant did not); Konow v. Gruenwald, 241 Wis. 453, 6 N.W. (2d) 208 (1942) (head-on collision, plaintiff on wrong side); Piesik v. Deuster, 243 Wis. 598, 11 N.W. (2d) 358 (1943) (head-on collision, both drivers over center line); Saley v. Hardware Mut. Cas. Co., 246 Wis. 647, 18 N.W. (2d) 342 (1945) (plaintiff on wrong side, defendant driving at excessive speed); McCord v. Atlantic Coast Line R. Co., (5th Cir. 1950) 185 F. (2d) 603 (riding with intoxicated driver, collision with train); Phillips v. Haring, (Wis. 1952) 54 N.W. (2d) 200 (rear end collision).

Held for the jury: Hansberry v. Dunn, 230 Wis. 626, 284 N.W. 556 (1939) (both drivers on wrong side, too fast and no lookout); Atlantic Greyhound Corp. v. Loudermilk, (5th Cir. 1940) 110 F. (2d) 596 (turning into path of speeding bus); United States v. Fleming, (5th Cir. 1940) 115 F. (2d) 314 (unable to stop within range of vision, collision with unlighted vehicle parked on highway); McDowall Transport, Inc. v. Gault, 80 Ga. App. 445, 56 S.E. (2d) 161 (1949) (same); Engebrecht v. Bradley, 211 Wis. 1, 247 N.W. 451 (1933) (same).

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[164] As, for example, in Lewis
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[165] Evanich v. Milwaukee Elec.
Langworthy v. Reisinger, 249 Wis. 2
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[166] McGuiggan v. Hiller Bros., 20
210 Wis. 345, 244 N.W. 630 (193
451 (1933); Doepke v. Reimer, 217 W
228 Wis. 53, 279 N.W. 702 (1938).
[167] Hansberry v. Dunn, 230 Wis.
Wis. 398, 291 N.W. 850, 293 N.W.
[168] Geyer v. Milwaukee Elec. R.
v. Hardware Mut. Cas. Co., 246 Wis.
Transp. Co., 254 Wis. 447, 37 N.W.
[169] Grasser v. Anderson, 224 Wis.
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Co., 240 Wis. 312, 3 N.W. (2d) 380 (
[170] Schmidt v. Leary, 213 Wis. 58
Wis. 208, 38 N.W. (2d) 514 (1949).
more respects than defendant has been
least equal. Kilcoyne v. Trausch, 222 W
zinski, 230 Wis. 455, 282 N.W. 3, 12
6 N.W. (2d) 208 (1943).
[171] In Head v. Georgia Power Co.,
Hunt v. Western & A. R. Co., 49 Ga. A
slight difference in fault would justify
Central of Georgia R. Co., 38 Ga. App.
was upheld on this basis. The Georgia
theory of allowing the plaintiff the differe

jury in all cases,[164] and in effect have nullified the limitation except as an element of the instructions.

Wisconsin at one time attempted to state some kind of rule by saying that negligence of the same kind, as where both parties failed to keep a proper lookout, would be treated as equal,[165] but that where the parties were at fault in different respects, as where failure to look out must be balanced against excessive speed, the court could not rule and the issue must be left to the jury.[166] It has been compelled to retreat from that position, and to recognize not only that juries may find that negligence of the same kind differs in degree,[167] but also that the plaintiff's negligence of a different kind may be as a matter of law at least equal to that of the defendant.[168] Likewise where the plaintiff has been negligent in one respect and the defendant in two or three, it has been held that the fault is at least equal,[169] and where the plaintiff has failed in two or three respects and the defendant in one the jury has been permitted to find that the plaintiff is still less at fault.[170]

It is obvious that a slight difference in the proportionate fault may permit a recovery;[171] and there has been much quite justified criticism

[164] As, for example, in Lewis v. Powell, 51 Ga. App. 129, 179 S.E. 865 (1935), where the plaintiff drove into the side of a train.

[165] Evanich v. Milwaukee Elec. R. & L. Co., 237 Wis. 111, 295 N.W. 44 (1941); Langworthy v. Reisinger, 249 Wis. 24, 23 N.W. (2d) 482 (1946); Piesik v. Deuster, 243 Wis. 598, 11 N.W. (2d) 358 (1943).

[166] McGuiggan v. Hiller Bros., 209 Wis. 402, 245 N.W. 97 (1932); Brown v. Haertel, 210 Wis. 345, 244 N.W. 630 (1932); Engebrecht v. Bradley, 211 Wis. 1, 247 N.W. 451 (1933); Doepke v. Reimer, 217 Wis. 49, 258 N.W. 345 (1935); Callaway v. Kryzen, 228 Wis. 53, 279 N.W. 702 (1938).

[167] Hansberry v. Dunn, 230 Wis. 626, 284 N.W. 556 (1939); Fronczek v. Sink, 235 Wis. 398, 291 N.W. 850, 293 N.W. 153 (1940).

[168] Geyer v. Milwaukee Elec. R. & L. Co., 230 Wis. 347, 284 N.W. 1 (1939); Saley v. Hardware Mut. Cas. Co., 246 Wis. 647, 18 N.W. (2d) 342 (1945); Dinger v. McCoy Transp. Co., 254 Wis. 447, 37 N.W. (2d) 26 (1949).

[169] Grasser v. Anderson, 224 Wis. 654, 273 N.W. 63 (1937); Hustad v. Evetts, 230 Wis. 292, 282 N.W. 595 (1938); Rosenow v. Schmidt, 232 Wis. 1, 285 N.W. 755 (1939). But such facts may justify a jury's conclusion that the plaintiff's fault is less in exact proportion to the number of elements of negligence. Horn v. Snow White Laundry & D.C. Co., 240 Wis. 312, 3 N.W. (2d) 380 (1942).

[170] Schmidt v. Leary, 213 Wis. 587, 252 N.W. 151 (1934); Kirchen v. Tisler, 255 Wis. 208, 38 N.W. (2d) 514 (1949). But the fact that plaintiff has been negligent in more respects than defendant has been held to require the conclusion that his fault was at least equal. Kilcoyne v. Trausch, 222 Wis. 528, 269 N.W. 276 (1936); Burant v. Studzinski, 230 Wis. 455, 282 N.W. 3, 128 (1938); Konow v. Gruenwald, 241 Wis. 453, 6 N.W. (2d) 208 (1943).

[171] In Head v. Georgia Power Co., 70 Ga. App. 32, 27 S.E. (2d) 339 (1943), and Hunt v. Western & A. R. Co., 49 Ga. App. 33, 174 S.E. 222 (1934), it was said that a slight difference in fault would justify recovery of "a small amount"; and in Evans v. Central of Georgia R. Co., 38 Ga. App. 146, 142 S.E. 909 (1928), a verdict for 12 cents was upheld on this basis. The Georgia courts evidently were following some unstated theory of allowing the plaintiff the difference between the proportions of fault.

of a rule under which a plaintiff who is charged with 49 per cent of the total negligence recovers 51 per cent of his damages, while one who is charged with 50 per cent recovers nothing at all.[172] Actually, of course, juries almost never indulge in such refined hair-splitting,[173] and the criticism really goes to the directed verdict. It has been said that the restriction is necessary to prevent the jury from giving the plaintiff something in every case, even where the defendant may not be negligent at all, or is at fault to the extent of only 1% of the total. But this ignores the fact that the court still has control over an unjustified apportionment, and that a 1% recovery will be insignificant, and less than the nuisance value of the suit. Actually the writer has found no such cases. It appears impossible to justify the rule on any basis except one of pure political compromise. It is difficult to be happy about the Wisconsin cases, or to escape the conclusion that at the cost of many appeals they have succeeded merely in denying apportionment in many cases where it should have been made.

Proximate Cause

"Proximate cause" has been something of a problem under the apportionment statutes. The Federal Employers' Liability Act, when it was first enacted, said nothing about assumption of risk,[174] and it was held that that defense remained available to the defendant as a complete bar to recovery,[175] until the act was amended in 1939 to eliminate it entirely.[176] Quite apart from this, the Supreme Court quite unexpectedly held[177] in 1916 that a railroad employee who had violated a company rule or order was charged with the "primary duty," and could not recover, on the ground that his own negligence was

[172] See in particular the articles cited in note 156.

[173] In special verdict cases the juries, with rare exceptions, have found percentages of fault in even multiples of 5 or 10, or else in simple fractions, such as ⅓ or the like.

[174] See Peterson, "The Joker in the Federal Employers' Liability Act," 80 CENT. L.J. 5 (1915); Buford, "Assumption of Risk Under the Federal Employers' Liability Act," 28 HARV. L. REV. 163 (1914); notes, 32 COL. L. REV. 1384 (1932); 6 TULANE L. REV. 315 (1932).

[175] Seaboard Air Line R. Co. v. Horton, 233 U.S. 492, 34 S.Ct. 635 (1914).

[176] "That in any action brought against any common carrier under or by virtue of any of the provisions of this act to recover damages for injuries to, or the death of, any of its employees, such employee shall not be held to have assumed the risks of his employment in any case where such injury or death resulted in whole or in part from the negligence of any of the officers, agents, or employees of such carrier; and no employee shall be held to have assumed the risks of his employment in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee." 53 Stat. L. 1404 (1939), 45 U.S.C. (1946) §54. First applied in Tiller v. Atlantic Coast Line R. Co., 318 U.S. 54, 63 S.Ct. 444 (1943).

[177] Great Northern R. Co. v. Wiles, 240 U.S. 444, 36 S.Ct. 406 (1916).

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[178] Unadilla Valley R. Co. v. C

[179] Frese v. Chicago, B. & Q. R
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(4th Cir. 1915) 230 F. 88; Unadill
239; Hayes v. Chicago, B. & Q. R.
Chicago, R.I. & P. R. Co., 178 Mi

[180] Davis v. Kennedy, 266 U.S.
blood, 286 U.S. 313, 52 S.Ct. 518
346, 52 S.Ct. 520 (1932); Bradley
(2d) 683; Van Derveer v. Delaware
Southern R. Co. v. Hylton, (6th Ci
R. Co., (6th Cir. 1937) 87 F. (2d)
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[182] Keith v. Wheeling & L.E. R
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431, 34 S. (2d) 84 (1948); Miss
1950) 229 S.W. (2d) 204; Le
(2d) 37 (1943). *Contra:* Chicago,
160 F. (2d) 1002; Walker v. Lyl
Kurn v. Reese, 192 Okla. 78, 133 P.

[183] See text supra at note 36.

the "sole proximate cause" of his injury, so that the negligence of the defendant was not to be regarded as contributing at all. The result was a series of decisions refusing to apportion the damages in the case of such violations. In one of them the plaintiff had himself ordered the negligent conduct of a fellow servant for which he was seeking to recover,[178] but in others he had merely failed to perform a specific duty of his own,[179] or to obey a specific order.[180]

In 1943 the Supreme Court, quite as unexpectedly, declared[181] that the "primary duty" rule was in reality a form of assumption of risk, which it never had been called before, and that the 1939 amendment had eliminated it. A subsequent decision of the Sixth Circuit,[182] to which certiorari was denied, has confirmed this conclusion, although there are still decisions which refuse to accept it. It is idle to comment on such intellectual gymnastics; but the whole thing is likely to prove something of a puzzle to future historians, since the rule itself would appear to be neither required nor justified by anything in the original statute, and its abolition equally uncalled for by the amendment.

The very questionable "proximate cause" explanation of the last clear chance[183] has resulted in the survival of that doctrine under the apportionment acts, on the theory that its effect is that the plaintiff's

[178] Unadilla Valley R. Co. v. Caldine, 278 U.S. 139, 49 S.Ct. 91 (1928).

[179] Frese v. Chicago, B. & Q. R. Co., 263 U.S. 1, 44 S.Ct. 1 (1923); Chicago St. P., M. & O. R. Co. v. Arnold, (8th Cir. 1947) 160 F. (2d) 1002; Virginian R. Co. v. Linkous, (4th Cir. 1915) 230 F. 88; Unadilla Valley R. Co. v. Dibble, (2d Cir. 1929) 31 F. (2d) 239; Hayes v. Chicago, B. & Q. R. Co., 131 Neb. 687, 269 N.W. 623 (1936); Feurt v. Chicago, R.I. & P. R. Co., 178 Minn. 395, 227 N.W. 212 (1929).

[180] Davis v. Kennedy, 266 U.S. 147, 45 S.Ct. 33 (1924); Southern R. Co. v. Youngblood, 286 U.S. 313, 52 S.Ct. 518 (1932); St. Louis S.W. R. Co. v. Simpson, 286 U.S. 346, 52 S.Ct. 520 (1932); Bradley v. Northwestern Pac. R. Co., (9th Cir. 1930), 44 F. (2d) 683; Van Derveer v. Delaware, L. & W. R. Co., (2d Cir. 1936) 84 F. (2d) 979; Southern R. Co. v. Hylton, (6th Cir. 1930) 37 F. (2d) 843, affd. in Hylton v. Southern R. Co., (6th Cir. 1937) 87 F. (2d) 393; Paster v. Pennsylvania R. Co., (2d Cir. 1930) 43 F. (2d) 908.

[181] "One of these [problems] was the application of the 'primary duty rule' in which contributory negligence through violation of a company rule became assumption of risk. Unadilla Valley Ry. Co. v. Caldine, 278 U.S. 139; Davis v. Kennedy, 266 U.S. 147. . . . It was this maze of law which Congress swept into discard with the adoption of the 1939 amendment to the Employers' Liability Act, releasing the employee from the burden of assumption of risk by whatever name it was called." Justice Black, in Tiller v. Atlantic Coast Line R. Co., 318 U.S. 54 at 63-64, 63 S.Ct. 444 (1943).

[182] Keith v. Wheeling & L.E. R. Co., (6th Cir. 1947) 160 F. (2d) 654, cert. den. 332 U.S. 763, 68 S.Ct. 67 (1947). *Accord:* Atlantic Coast Line R. Co. v. Mangum, 250 Ala. 431, 34 S. (2d) 848 (1948); Missouri-Kansas-Texas R. Co. v. Webb, (Tex. Civ. App. 1950) 229 S.W. (2d) 204; Leet v. Union Pac. R. Co., 60 Cal. App. (2d) 814, 142 P. (2d) 37 (1943). *Contra:* Chicago, St. P. M. & O. R. Co. v. Arnold, (8th Cir. 1947) 160 F. (2d) 1002; Walker v. Lykes Bros. S.S. Co., (2d Cir. 1952) 193 F. (2d) 772; Kurn v. Reese, 192 Okla. 78, 133 P. (2d) 880 (1943). See note, 62 Yale L.J. 111 (1952).

[183] See text supra at note 36.

negligence has not contributed "proximately" at all. This has been true under the Federal Employers' Liability Act,[184] the various state statutes where the question has been considered,[185] and most of the Canadian apportionment acts.[186] The decisions may perhaps be justified, on the ground that the statutes all are silent on the last clear chance, and the common law stands until it is clearly changed. But the very probable reason for the silence is that the question simply never occurred to the legislatures at all;[187] and the result is that the system of apportionment breaks down in an important group of cases, where a loss from the fault of two parties still is visited entirely upon one. Any necessity for the last clear chance as a palliation of the hardships of contributory negligence obviously disappears when the loss can be apportioned; and the statute becomes jug-handled in favor of the plaintiff, allowing the cases of injustice to the defendant to stand.[188] This windfall to the plaintiff must inevitably be reflected in liability insurance rates. At least, in any future statutes there should be specific provision one way or the other as to the last clear chance, and it should not be allowed, as in the past, to go by default.

Tennessee has developed, at common law, a peculiar rule under which negligence of the plaintiff which contributes concurrently, or

[184] Gray v. Southern R. Co., 167 N.C. 433, 83 S.E. 849 (1914), reversed on other grounds in 241 U.S. 333, 36 S.Ct. 558 (1916); Soles v. Atlantic Coast Line R. Co., 184 N.C. 283, 114 S.E. 305 (1922); Washington & O.D. R. Co. v. Weakley, 140 Va. 796, 125 S.E. 672 (1924); Barnes v. Red River & G. R. Co., 14 La. App. 188, 128 S. 724 (1930); Hamilton v. Chicago, B. & Q. R. Co., 211 Iowa 924, 234 N.W. 810 (1931); St. Louis & S.W. R. Co. v. Simpson, 184 Ark. 633, 43 S.W. (2d) 251 (1931), reversed on other grounds in 286 U.S. 346, 52 S.Ct. 520 (1931); Chicago, R.I. & P. R. Co. v. Adams, 187 Ark. 816, 62 S.W. (2d) 947 (1933).

[185] Seiffert v. Hines, 108 Neb. 62, 187 N.W. 108 (1922); Stanley v. Chicago, R.I. & P. R. Co., 113 Neb. 280, 202 N.W. 864 (1925); Wilfong v. Omaha & C.B. R. Co., 129 Neb. 600, 262 N.W. 537 (1935); Wilson's Admx. v. Virginia Portland R. Co., 122 Va. 160, 94 S.E. 347 (1917). An exception is Wisconsin, which did not recognize the last clear chance. Switzer v. Detroit Investment Co., 188 Wis. 330, 206 N.W. 407 (1925).

[186] Walker v. Forbes, 27 O.W.N. 459, 56 Ont. L. Rep. 532, [1925] 2 D.L.R. 725; Farber v. Toronto Transp. Co., 20 O.W.N. 464, 56 Ont. L. Rep. 537, [1925] 2 D.L.R. 729; Key v. British Columbia Elec. R. Co., 43 B.C. Rep. 288 (1930); Chambers v. Sampson, 44 B.C. Rep. 134 (1931); McLaughlin v. Long, [1927] Can. S.C. Rep. 303, [1927] 2 D.L.R. 186; Foster v. Kerr, [1940] 2 D.L.R. 47; Wilson v. Cline, [1946] 3 W.W.R. 353; Carter v. Van Camp, [1930] Can. S.C. Rep. 156; McDonald v. Thomas, 41 Man. Rep. 657 (1933).

[187] An exception is the British Act, where a Law Revision Commission reported recommending retention of the last clear chance. See Williams, "The Law Reform (Contributory Negligence) Act," 9 Mod. L. Rev. 105 at 126-130 (1946).

[188] See Weir, "Davies v. Mann and Contributory Negligence Statutes," 9 Can. B. Rev. 470 (1931); MacDonald, "The Negligence Action and the Legislature," 13 Can. B. Rev. 535 (1935); MacIntyre, "The Rationale of the Last Clear Chance," 53 Harv. L. Rev. 1225 (1940); Williams, "The Law Reform (Contributory Negligence) Act," 9 Mod. L. Rev. 105 (1946); Wright, "The Law of Torts," 26 Can. B. Rev. 46 at 70 (1948); Gregory, Legislative Loss Distribution in Negligence Actions 126-133 (1936).

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[190] Bejach v. Colby, 141 Tenn. 68
Tenn. App. 118, 118 S.W. (2d) 891 (
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[191] Dush v. Fitzhugh, 2 Lea (70 T
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(2d) 505 (1950); Bejach v. Colby, 141
Carter, 22 Tenn. App. 118, 118 S.W. (2

[192] Ga. Code Ann. (1936) §105-603

[193] Western & A. R. Co. v. Ferguso
R. Co. v. Luckie, 87 Ga. 6, 13 S.E. 105
S.E. 894 (1936); Georgia R. & B. Co. v.
Central of Ga. R. Co. v. Larsen, 19 Ga.
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"proximately" or "directly" to his injury will bar all recovery,[189] but if his negligence is "remote" the damages will be reduced in proportion to it.[190] In its practical operation this has resulted in apportionment only in cases where the defendant has the last clear chance. Georgia has a statute[191] providing that "if the plaintiff by ordinary care could have avoided the consequences to himself caused by the defendant's negligence, he is not entitled to recover"; and under the Georgia apportionment rule this has resulted in a reverse application of the last clear chance, to the plaintiff instead of the defendant.[192]

Special Verdicts

All of these limitations merely cut down the scope of apportionment, without going at all to the root of the difficulty, the unreliable and irresponsible jury. A more realistic approach to that basic problem is the procedure which requires a special verdict, or answers to special interrogatories,[193] bearing on the apportionment of damages. As this procedure is applied to the apportionment issue in Wisconsin, for example, the jury is not asked to return a general verdict for the plaintiff with assessment of the recoverable damages, or for the defendant, but is asked instead a series of specific questions, which, with their answers, might run in a typical case as follows:

> 1. In operating his automobile at the time of and immediately preceding the collision, was the defendant Smith negligent with respect to the speed of his car? Yes.

[189] Bejach v. Colby, 141 Tenn. 686, 214 S.W. 869 (1919); Anderson v. Carter, 22 Tenn. App. 118, 118 S.W. (2d) 891 (1938); Grigsby & Co. v. Bratton, 128 Tenn. 597, 163 S.W. 804 (1913); Memphis Street R. Co. v. Haynes, 112 Tenn. 712, 81 S.W. 374 (1904); Hansard v. Ferguson, 23 Tenn. App. 306, 132 S.W. (2d) 221 (1939). There is, however, a special rule apportioning the damages under the statute requiring certain precautions of railroads. See supra, note 92.

[190] Dush v. Fitzhugh, 2 Lea (70 Tenn.) 307 at 309 (1879); East Tenn. R. Co. v. Fain, 12 Lea (80 Tenn.) 35 at 40 (1883); McClard v. Reid, 190 Tenn. 337, 229 S.W. (2d) 505 (1950); Bejach v. Colby, 141 Tenn. 686, 214 S.W. 869 (1919); Anderson v. Carter, 22 Tenn. App. 118, 118 S.W. (2d) 891 (1938).

[191] Ga. Code Ann. (1936) §105-603.

[192] Western & A. R. Co. v. Ferguson, 113 Ga. 708, 39 S.E. 306 (1901); Americus R. Co. v. Luckie, 87 Ga. 6, 13 S.E. 105 (1891); Pollard v. Heard, 53 Ga. App. 623, 186 S.E. 894 (1936); Georgia R. & B. Co. v. Stanley, 38 Ga. App. 773, 145 S.E. 530 (1928); Central of Ga. R. Co. v. Larsen 9 Ga. App. 413, 91 S.E. 517 (1917); Southern R. Co. v. Wilbanks, (5th Cir. 1933) 67 F. (2d) 424; United States v. Fleming, (5th Cir. 1940) 115 F. (2d) 314.

[193] Technically a special verdict requires answers to specific questions only on the issues, without any general verdict for plaintiff or defendant. Special interrogatories are asked in addition to the instruction to return a general verdict, and as a check upon the jury's conclusions. Either may be appropriate to the apportionment of damages.

2. If you answer Question 1 "Yes," then answer this: Was the defendant Smith's negligence a cause of the collision? Yes.

3. In operating his automobile at the time of and immediately preceding the collision, was the plaintiff Jones negligent with respect to failure to stop before entering the intersection? Yes.

4. If you answer Question 3 "Yes," then answer this: Was the plaintiff Jones's negligence a cause of the collision? Yes.

5. If you answer all of Questions 1, 2, 3 and 4 "Yes," then answer this: What percentage of the total negligence was attributable to the defendant Smith? 60%. To the plaintiff Jones? 40%.

6. What is the amount of the damages plaintiff Jones has sustained? $10,000.

With the information thus given, the court is in a position to make the apportionment itself, and proceeds to enter judgment for the plaintiff Jones in the amount of 60% of the damages found, or $6,000. The jury are not told the effect of the answers, although they may well understand what it will be; and it has been held to be error to permit counsel to read the apportionment statute to the jury in order to let them know.[104]

Such is the Wisconsin procedure, which calls for a special verdict, with the court making the final entry. Obviously, however, the same questions would serve equally well as special interrogatories, put, along with full instructions as to the law, as a check upon the jury's conclusions under the ordinary general verdict. And if, as has often been the case in jurisdictions where all this is entirely unfamiliar, new and alarming, even these few and simple questions appear unduly complicated and confusing, they might be made even simpler still. For special interrogatories on the issue of division of damages, Questions 5 and 6 above are all that are really needed. Or the whole matter might be reduced to the lowest possible terms, as follows:

Q. What is the full amount of the damages sustained by the plaintiff? A. $10,000.

[104] De Groot v. Akkeren, 225 Wis. 105, 273 N.W. 725 (1937). General instructions are not given where the special verdict is used, and instructions on the special issues are limited to those necessary or appropriate to enable the jury to understand the questions. Connellee v. Nees, (Tex. Civ. App. 1924) 266 S.W. 502; Robertson & Mueller v. Holden, (Tex. Comm. App. 1928) 1 S.W. (2d) 570; Tidal Western Oil Co. v. Blair, (Tex. Civ. App. 1931) 39 S.W. (2d) 1103; Texas Pipe Line Co. v. Bridges, (Tex. Civ. App. 1931) 39 S.W. (2d) 1109; Byington v. City of Merrill, 112 Wis. 211, 88 N.W. 26 (1901); Banderob v. Wisconsin Cen. R. Co., 133 Wis. 249, 113 N.W. 738 (1907); Gendler v. Cleveland R. Co., 18 Ohio App. 48 (1924).

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Dooley, "The Use of Special
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2 F.R.D. 138 (1943); McCorm
2 F.R.D. 176 (1943); Hyde,
144 (1941); Rossman, "The J
(1944); Frank, "The Case for

[107] Barnes v. Williams, 24
49 U.S. 470, 12 L. Ed. 1160
(1855); Hodges v. Easton, 106
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132 N.W. 873 (1911); Boulg
(1918); Wilson v. Commercial
man v. Phillips, 106 Wis. 611,

[108] See Ward v. Busack,
Co. v. Anderson, (Tex. Civ. A

[109] See Hartford Fire Ins.
questions); Oriental Inv. Co. v
tions); St. Louis, B. & M. R. C
questions).

[200] As in Wis. Stat. (19
Federal Rules of Civil Procedur

Q. What is the amount of plaintiff's damages as diminished by reason of any negligence attributable to him? A. $6,000.[105]

Both special verdicts and special interrogatories have long been authorized and permissible, either by statute or under the common law, in nearly all of our jurisdictions.[106] They have been discretionary with the trial court, and actually they have been little used—seldom requested by counsel, and more seldom given when asked. One reason has been the traditional inertia of the bar toward any innovation in procedure. Another was the unfortunate holding, in a few early cases of special verdicts, that all controverted facts not found specifically must be taken to be found against the party having the burden of proof.[107] Because of this, counsel, out of an excess of caution, began to swamp the jury with detailed questions; and the special verdict became so unwieldy, confusing and unworkable that complaints were voiced by the courts.[108] There were instances[109] of appeals on a record where thirty to fifty questions had been asked in a single case. It was only when it was provided[200] or held that facts not found spe-

[105] This was done under the Wisconsin statute in Honore v. Ludwig, 211 Wis. 354, 247 N.W. 335 (1933), and was held to be proper. Padway, "Comparative Negligence," 16 MARQ. L. REV. 1 at 16-17, 23-24 (19), gives this form of verdict and objects to percentages under the Wisconsin act; but as the case cited indicates, percentage questions are used almost universally in Wisconsin.

[106] See generally, as to special verdicts and special interrogatories, Sunderland, "Verdicts, General and Special," 29 YALE L.J. 253 (1920); Morgan, "A Brief History of Special Verdicts and Special Interrogatories," 32 YALE L.J. 575 (1923); Wicker, "Special Interrogatories to Juries in Civil Cases," 35 YALE L.J. 296 (1926); Green "A New Development in Jury Trial," 13 A.B.A.J. 715 (1927); Staton, "The Special Verdict as an Aid to the Jury," 13 J. AM. JUD. SOC. 176 (1930); note, 34 ILL. L. REV. 96 (1939); Lipscomb, "Special Verdicts Under the Federal Rules," 25 WASH. UNIV. L.Q. 185 (1940); Dooley, "The Use of Special Issues Under the New State and Federal Rules," 20 TEX. L. REV. 32 (1941); Nordbye, "Use of Special Verdicts Under Rules of Civil Procedure," 2 F.R.D. 138 (1943); McCormick, "Jury Verdicts Upon Special Questions in Civil Cases," 2 F.R.D. 176 (1943); Hyde, "Fact Finding by Special Verdict," 24 J. AM. JUD. SOC. 144 (1941); Rossman, "The Judge-Jury Relationship in the State Courts," 3 F.R.D. 98 (1944); Frank, "The Case for the Special Verdict," 32 J. AM. JUD. SOC. 142 (1949).

[107] Barnes v. Williams, 24 U.S. 415, 6 L. Ed. 508 (1826); Prentice v. Zane's Admrs., 49 U.S. 470, 12 L. Ed. 1160 (1850); Graham v. Bayne, 59 U.S. 60, 15 L.Ed. 265 (1855); Hodges v. Easton, 106 U.S. 408, 1 S.Ct. 307 (1882). This remains the rule in many states, in the absence of special provision. Mulvaney v. Burroughs, 152 Iowa 439, 132 N.W. 873 (1911); Boulger v. Northern Pac. R. Co., 41 N.D. 316, 171 N.W. 632 (1918); Wilson v. Commercial Union Ins. Co., 15 S.D. 322, 89 N.W. 649 (1902); Hildman v. Phillips, 106 Wis. 611, 82 N.W. 566 (1900).

[108] See Ward v. Busack, 46 Wis. 407, 1 N.W. 107 (1879); Texas Electric Service Co. v. Anderson, (Tex. Civ. App. 1932) 55 S.W. (2d) 142.

[109] See Hartford Fire Ins. Co. v. Post, (Tex. Civ. App. 1900) 62 S.W. 140 (50 questions); Oriental Inv. Co. v. Barclay, (Tex. Civ. App. 1901) 64 S.W. 80 (32 questions); St. Louis, B. & M. R. Co. v. Jenkins, (Tex. Civ. App. 1915) 172 S.W. 984 (35 questions).

[200] As in Wis. Stat. (1949) §270.28; Tex. Rev. Stat (Vernon, 1936) art. 2190; Federal Rules of Civil Procedure, Rule 49(a).

cifically must be deemed to support the judgment if there was any evidence to sustain it, that simplicity was restored and the special verdict gave satisfaction. Statutes in a few states now provide that the court must submit special verdicts[201] or special interrogatories[202] at the request of either party. In Wisconsin, North Carolina and Texas the special issue has become standard procedure;[203] and there is a history of more than twenty years of its application to the Wisconsin general apportionment act.[204]

When the apportionment provision of the Federal Employers' Liability Act first reached the courts, some of them strongly recommended[205] that the issue of the division of damages be put specially to the jury, as a control upon the verdict and a remedy for the court's ignorance of what the jury might do. In a few instances this was done;[206] but it remained discretionary with the trial court,[207] and for

[201] Ohio Gen. Code Ann. (Page, 1926) §11460; R.I. Laws (1938) c. 534, §2; Tex. Rev. Stat. (Vernon, 1936) art. 2189; Wis. Stat. (1949) §270.27.

[202] Ill. Rev. Stat. (Smith-Hurd, 1923) c. 110, §79; Ind. Stat. Ann. (Burns, 1914) §572; Iowa Comp. Code (1919) §7253; Kan. Rev. Stat. (1923) c. 60, §2918; Mich. Comp. L. (1915) §12611; Ohio Gen. Code Ann. (Page, 1926) §11463; R.I. Gen. Laws (1923) §4983.

[203] The Texas procedure still has the reputation of creating confusion because of the tendency of Texas attorneys to put complicated questions on over-refined niceties. See Dooley, "The Use of Special Issues Under the State and Federal Rules," 20 TEX. L. REV. 32 (1941); McCormick, "Jury Verdicts Upon Special Questions in Civil Cases," 2 F. R. D. 176 at 180 (1943); Rossman, "The Judge-Jury Relationship in the State Courts," 3 F.R.D. 98 at 109 (1944). McCormick says (p. 179) that in North Carolina "simplicity and directness in the submission by questions to the jury is the key to the success of the method," and that in Wisconsin the questions, although more numerous than in North Carolina, "are apparently held within reasonable limits."

[204] See, for example, Schulz v. General Cas. Co., 233 Wis. 118, 288 N.W. 803 (1939); Tomany v. Camozzi, 238 Wis. 611, 300 N.W. 508 (1941); Horn v. Snow-White Laundry & Dry Cleaning Co., 240 Wis. 312, 3 N.W. (2d) 380 (1942); Campanelli v. Milwaukee Elec. R. & T. Co., 242 Wis. 505, 8 N.W. (2d) 390 (1943); Webster v. Roth, 246 Wis. 535, 18 N.W. (2d) 1 (1945).

[205] New York Cent. & H.R. R. Co. v. Banker, (2d Cir. 1915) 224 F. 351; McAuliffe v. New York Cent. & H.R. R. Co., 172 App. Div. 597, 158 N.Y.S. 922 (1916). In the last named case the court refers to this as "the more recently adopted method of returning verdicts under this statute in the United States District Courts." (158 N.Y.S. at 927). See also Wolf v. Baltimore & Ohio R. Co., 239 App. Div. 95, 267 N.Y.S. 199 (1933).

[206] Saar v. Atchison, T. & S.F. R. Co., 97 Kan. 441, 155 P. 954 (1916); Kalashian v. Hines, 171 Wis. 429, 177 N.W. 602 (1920); Richter v. Chicago, M. & St. P. R. Co., 176 Wis. 188, 186 N.W. 616 (1922); Hanley v. Erie R. Co., 273 App. Div. 257, 77 N.Y.S. (2d) 153 (1948); Texas & Pac. R. Co. v. Mix, (Tex. Civ. App. 1946) 193 S.W. (2d) 542; Bennett v. Denver & R.G.W. R. Co., (Utah 1950) 213 P. (2d) 325. See also Missouri, K. & T. R. Co. of Texas v. Pace, (Tex. Civ. App. 1916) 184 S.W. 1051, under the Texas state railroad employers' liability act.

[207] Refusal to put the special issue was held not to be error in Fried v. New York, N.H. & H.R. R. Co., 183 App. Div. 115, 170 N.Y.S. 697 (1918), aff'd. in 230 N.Y. 619, 130 N.E. 917 (1921); Wolf v. Baltimore & Ohio R. Co., 239 App. Div. 95, 267 N.Y.S. 199 (1933); Dallas Ry. & Term. Co. v. Sullivan, (5th Cir. 1940) 108 F. (2d) 581; Goodman v. Chicago, B. & Q. R. Co., 289 Ill. App. 320, 7 N.E. (2d) 393 (1937). In the last named case the refusal was justified on the remarkable ground that the special answer could not control the general verdict.

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[211] Skidmore v. Baltimore & O
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[212] Driver, "A More Extended

[213] See Sunderland, "Verdicts,
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more & Ohio R. Co., (2d Cir. 194

no discernible reason other than pure inertia the practice never became popular. When the Federal Rules of Civil Procedure provided for both special verdicts[208] and special interrogatories,[209] they were still left to the discretion of the judge, and they have had no apparent effect upon cases arising under the act.[210] In 1948 Judge Frank, in a characteristic opinion,[211] copiously ornamented with footnotes, urged vigorously and at length the use of the special issue in all such cases; but there is as yet no indication that he has made many converts. There has been no written opposition whatever to the procedure under the Federal Rules,[212] and the failure of the federal courts to make use of it in apportionment cases remains something of a mystery.

The advantages claimed for the special issue are many.[213] So far as they are pertinent to the apportionment of damages, the most

[208] Rule 49 (a): "Special Verdicts. The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives his right to a trial by jury of the issue so omitted unless before the jury retires he demands its submission to the jury. As to an issue omitted without such demand the court may make a finding or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict."

[209] Rule 49 (b): "General Verdict Accompanied by Answer to Interrogatories. The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the court shall direct the entry of the appropriate judgment upon the verdict and the answers. When the answers are consistent with each other but one or more is inconsistent with the general verdict, the court may direct the entry of judgment in accordance with the answers, notwithstanding the general verdict, or may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, the court shall not direct the entry of judgment but may return the jury for further consideration of its answers and verdict or may order a new trial."

[210] The special interrogatory procedure was used and upheld in Bolen v. Lehigh Valley R. Co., (2d Cir. 1948) 167 F. (2d) 934. Refusal to put the special issue was held not to be error in Skidmore v. Baltimore & Ohio R. Co., (2d Cir. 1948) 167 F. (2d) 54.

[211] Skidmore v. Baltimore & Ohio R. Co., (2d Cir. 1948) 167 F. (2d) 54. Judge Learned Hand concurred briefly, as to the desirability of putting the special issue.

[212] Driver, "A More Extended Use of the Special Verdict," 9 F.R.D. 495 (1950).

[213] See Sunderland, "Verdicts, General and Special," 29 YALE L.J. 253 (1920); Wicker, "Special Interrogatories to Juries in Civil Cases," 35 YALE L.J. 296 (1926); Staton, "The Special Verdict as an Aid to the Jury," 13 J. AM. JUD. SOC. 176 (1930); Frank, "The Case for the Special Verdict," 32 J. AM. JUD. SOC. 142 (1949); Skidmore v. Baltimore & Ohio R. Co., (2d Cir. 1948) 167 F. (2d) 54.

important is of course that the jury is no longer given a free hand in a cloak of secrecy, and the court is informed as to what it has done. If the instructions have been thrown out of the window, if they have been misunderstood, if there has been error in applying them, even in arithmetic, it may be corrected rather than allowed to stand. The court is told whether the jury has found contributory negligence at all, whether it has divided the damages, and if so, in what proportion. If the process or the result is wrong, a remittitur may save a complete new trial. Beyond this, the jury is forced to give detailed consideration to the issue, rather than to jump at a general conclusion without paying any attention to it. A jury which on general principles would return a large verdict in favor of a pretty woman and against a railroad company may well hesitate to return special findings which it knows to be against the evidence. Finally, the special verdict may, in many cases, avoid the necessity of long and complicated instructions,[214] incomprehensible to anyone but a lawyer, and in themselves a fertile source of error.

All of these advantages clearly operate in favor of the defendant in the majority of apportionment cases, and the proposal for compulsory special verdicts or special interrogatories has met with no enthusiasm at all on the part of the plaintiffs' attorneys who usually introduce the apportionment bills into the legislature. Yet the report of the Wisconsin

[214] Staton, "The Special Verdict as an Aid to the Jury," 13 J. AM. JUD. SOC. 176 at 181 (1930), gives the following horrible example, which was one of several involved instructions given in Payne v. Healey, 139 Md. 86, 114 A. 693 (1921): "The defendant prays the court to instruct the jury that it was the duty of the plaintiff to look and listen for approaching trains, as he approached the tracks of the defendant on the occasion of the injuries complained of and to continue to look and listen until the said tracks were reached and to further instruct the jury that if they shall find from the evidence that the view of plaintiff of said tracks, as he then and there approached the same, was in either direction in any way obstructed, then it was the duty of the plaintiff to stop, look and listen for the approaching train or trains before attempting to cross the said tracks; and to further instruct the jury that if they shall further find that the plaintiff did not so look and listen, or did not stop, look and listen, if they shall find that the view of the plaintiff of said tracks was in either direction obstructed and shall further find that his failure to so look and listen or to so stop, look and listen, directly contributed to the collision between the engine and the defendant and the automobile which the plaintiff was then and there driving, then the plaintiff is not entitled to recover, unless the jury shall further find from the evidence that the defendant, its agents or employees, in charge of the engine and train which collided with the automobile of the plaintiff could have by the exercise of reasonable care and caution on his or their part, after he or they or any of them became aware of the peril, the plaintiff had by his negligence, if the jury shall so find, placed himself, avoided the consequences of the plaintiff's said negligence and prevented the injuries complained of or unless they further find that the engineer in charge of said engine could by the exercise of reasonable care have discovered the position or peril of the plaintiff while the plaintiff was upon the Antietam street crossing and that the said engineer could by the exercise of reasonable care have avoided injury to the plaintiff or his property after he ought to have discovered the peril of the plaintiff if the jury so find."

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lawyers, for both plaintiffs and defendants, in response to inquiries from drafting committees,[215] has been for many years that the combination of the special issue procedure and the apportionment act has worked very well in Wisconsin, that they regard the one as indispensable to the successful operation of the other, and that they would not like to see a return to the common law. In particular, their report has been that the increase in the number of recoveries which must inevitably result from the abrogation of the complete defense has been to a considerable extent balanced and compensated by some reduction in the size of verdicts, as juries apportion the damages instead of refusing to find contributory negligence at all; and that liability insurance rates have remained within reasonable bounds. Of the various possible compromises, this seems to be the only one which is both reasonable and effectiv

Multiple Parties

Complications arise when apportionment involves multiple parties. Where, for example, the automobiles of two negligent drivers collide and injure the plaintiff, who is a bystander or a passenger in one of the cars, it is obvious that no complete and substantial justice can be done to the situation by any division of the damages between the plaintiff and one driver alone, in an action to which only those two are parties. There remain the problems of evaluation of the contributing fault of one who is not a party to the action, of the second suit against him in which the first is not res judicata and a new jury may come to a very different conclusion, and finally of contribution between the joint tortfeasors. The only completely satisfactory method of dealing

[215] The writer has seen some sixty such letters, in connection with the work of drafting committees in Minnesota in 1939, and California in 1951.

"Another difficulty in the practical operation of the statute in Mississippi is that we do not have special verdicts, but general lump-sum verdicts only. There is no way in which it can be known, for instance, that the jury found that the plaintiff had been damaged $1,000, that the plaintiff himself was guilty of 25 per cent of the negligence, and that the jury awarded $750 for this reason. Thus, the appellate court has a most difficult time in dealing with pleas of excessiveness or inadequacy.

"An automobile damage suit is usually a swearing contest. The appellate court has no way of knowing whether the jury believed or disbelieved the testimony offered to establish that the plaintiff was guilty of negligence. If the verdict seems to be unsually large the court may assume that the jury did not believe that the plaintiff was guilty of contributory negligence where that fact is in dispute when, as a matter of fact, the jury might not have considered the comparative negligence statute at all in arriving at the verdict. We have not had much experience with special verdicts, because there never has been any provision for them in this state, but in our humble opinion a provision for special verdicts should go along with a comparative negligence statute as one of the Siamese twins goes along with the other." Lipscomb, "Comparative Negligence," INS. L.J. No. 344, 667 at 673 (Sept. 1951).

with the situation is to bring all the parties into court in a single action, to determine the damages sustained by each, and to require that each bear a proportion of the total loss according to his fault.

The English[216] and some of the Canadian[217] acts have proceeded on this basis. With liberal procedure for joinder of parties at the instance of either plaintiff or defendant, as well as for counterclaims and cross-complaints, they have provided for apportionment of all damages among all parties in proportion to their respective faults, including contribution between defendants. Professor Gregory, in a very able book,[218] has argued convincingly the superiority of these statutes over any other existing acts. There can be no doubt that, from the point of view of pure theory and abstract justice, they achieve a more satisfactory result in cases of multiple parties than ever has been accomplished in the United States.

Practical operation is, however, a very different thing from pure theory; and it may well be questioned whether the very complex Canadian procedure is capable of being adapted to the American jury. The jury has virtually disappeared from tort litigation both in England and in Canada,[219] and the success of the Canadian method has been due in no small part to its administration by very intelligent judges. The cases of multiple parties can, and do, become extremely involved, as is indicated by the very condensed statements of two of them given by Professor Gregory:[220]

1. Collision between I's automobile and M's truck, the truck being parked on a highway at night with rear light on. I and I, Jr. suffer damage of $283.10 and $200, respectively, and M's damage was $35.75. I and I, Jr. sued M, who apparently counterclaimed against I. I was found 25 per cent and M 75 per cent negligent. Appeal by I and cross-appeal by M from judgment of trial court dismissed. Court said damages were added, totaling $518.85, of which I must bear 25 per cent and M 75 per cent. M pays I, Jr. $200, and the balance of his share $189.13 to I, I pay nothing to

[216] Law Reform (Married Women and Tortfeasors) Act, 1935, 25 & 26 Geo. 5, c. 30; Law Reform (Contributory Negligence) Act, 1945, 8 & 9 Geo. 6, c. 28. See WILLIAMS, JOINT TORTS AND CONTRIBUTORY NEGLIGENCE (1951).

[217] In particular the statutes of Ontario, Alberta, British Columbia, Manitoba and Saskatchewan, supra note 9.

[218] GREGORY, LEGISLATIVE LOSS DISTRIBUTION IN NEGLIGENCE ACTIONS (1935). See also Gregory, "Loss Distribution by Comparative Negligence," 21 MINN. L. REV. 1 (1936).

[219] "In 1935, of some 1400 actions tried in the King's Bench in London, it is said that about 300 were tried before juries. I have no Canadian statistics, but it is easy to believe that the percentage of jury trials is even lower in Canada." O'Halloran, "Problems in the Modern Appeal in Civil Cases," 27 CAN. B. REV. 259 at 253 (1949).

[220] GREGORY, LEGISLATIVE LOSS DISTRIBUTION IN NEGLIGENCE ACTIONS 181, 186 (1936).

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Net result:

FH against LW—$648
SH against LW—$750
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If they had requested it
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[221] The case is Steele v. Ferguson

[222] The case is Haines v. Willia

M. The court apparently figured that M's share was ¾ of $200, plus ¾ of $283.10, plus ¾ of $35.75, and I's share ¼ of this total, in proportion to their negligence, and that I, Jr.'s recovery should not be affected because he was not negligent at all.[221]

2. Collision of automobiles driven by GH and JW, belonging to HH and LW, respectively, accident occurring at a road crossing. HH and LW, as owners, were responsible vicariously under the Motor Vehicles Act for the negligence of their bailees. GH and JW alone were negligent, being 1/3 and 2/3 negligent, respectively.

FH's and SH's damages were $648 and $750 each, for which they got judgment against LW. HH suffered $300 damages, which she claimed by counterclaim against LW, she being entitled to 2/3 thereof, since the negligence of GH is attributed to her as contributory negligence and as a basis of liability for damages.

LW, under the statute, suffered $1,000 damages for loss of services of his deceased wife and, in his personal capacity, $291.80. The court held that inasmuch as the damages were for LW himself, they were to be reduced by 2/3 because of his responsibility for JW's negligence, under the Motor Vehicles Act, both as contributory negligence and as a basis of liability for damages. LW was also entitled to contribution from HH and GH of 1/3 of anything he paid to FH and SH.

It appeared that HH had added JW as a third party and filed a cross-complaint for damages to her car. On this she was entitled to judgment for 2/3 of her damages, just as she was on her contribution against LW.

GH and HH neglected to ask for contribution from JW to anything they might have to pay to LW.

Net result:

FH against LW--$648
SH against LW—$750
HH against LW and JW—$200
LW against HH and GH—$861.20
LW against HH and GH—$466 as contribution (1/3 of $648 plus $750)

If they had requested it, HH and GH might have had, as contribution from JW, $574.66, although [says Professor Gregory] this is doubtful in view of the close domestic relationship involved.[222]

[221] The case is Steele v. Ferguson, [1931] Ont. L. Rep. 427.
[222] The case is Haines v. Williams, 47 B.C. Rep. 69 (1933).

It is one thing to say that a capable Canadian judge, with ample time in chambers and a transcript of the record before him, can work all this out and do what the law requires. It is quite another to say that it can be done in a limited time, and from memory by the twelve housewives, baker's helpers and unemployed individuals who make up the kind of jury we get today in the United States. Even more terrifying is the prospect of the instructions which must be given, under pressure of time, before the jury retires, covering in detail all of the complications and replete with the possibility of reversible error. Even if special issues are to be used, they must run to a number and complexity which may well break the whole process down under its own weight. It has been the writer's experience that the mere attempt to explain to a committee of a legislature, or even a bar association, just how the Canadian method operates in cases of multiple parties, results in something approaching migraine and a general exodus for restoratives. It is not surprising that, even with enthusiastic reports of complete success in Canada for more than a quarter of a century, no American legislature has looked with favor upon such a system.[223]

An additional reason for hesitation here is the history of the Uniform Contribution Among Tortfeasors Act. Since its promulgation by the Commissioners on Uniform Laws in 1939, it has been adopted in only nine jurisdictions;[224] and so much opposition to it has developed that the Commissioners now have withdrawn it for further study and possible redrafting. The chief difficulty has been that of the release of one tortfeasor, which under the terms of the act leaves him still liable for contribution to the other, but credits him with a pro rata share of his settlement. The defendants complain, with apparent justice, that this makes it impossible ever to settle a case, take a release, and close the file.[225] Whatever the fate of the act may be, it is at least a warning that contribution among tortfeasors introduces problems of its own, and that the atrempt to combine it with "comparative negligence" may well be the kiss of death to the whole bill.

[223] The only serious attempt to persuade an American legislature to adopt the Canadian system was made in Minnesota in 1940. See PROCEEDINGS OF MINNESOTA STATE BAR ASSN. 12-17 (1940).

[224] Arkansas, Delaware, Hawaii, Maryland, Michigan, New Mexico, Pennsylvania, Rhode Island and South Dakota. Maryland and Pennsylvania modified or eliminated the procedure provided by the act for joinder of third parties. Delaware, almost immediately after adoption of the act, amended it limiting its application to joint judgment defendants.

[225] See Larson, "A Problem in Contribution—The Tortfeasor with an Individual Defense Against the Injured Party," [1940] WIS. L. REV. 467; Smith, "Auto Accidents—Contribution and Covenants Not to Sue," [1950] WIS. L. REV. 684; Barrett, "Release of One Joint Tortfeasor Under Uniform Contribution Among Tortfeasors Act," 18 INS. Counsel J. 100 (1951).

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[226] Brown v. Haertel, 210 Wis. 354, 24
Wis. 365, 251 N.W. 435 (1933); Homerdi
409 (1938); Wedel v. Klein, 229 Wis. 419,

[227] Walker v. Kroger Grocery & Baking
Quady v. Sickl, 260 Wis. 348, 51 N.W. (2d
700, 14 S.E. (2d) 187 (1941); Smith v. Amer
90 (1948).

[228] Bohlmann v. Penn Electric Corp., 232

[229] Kirchen v. Tisler, 255 Wis. 208, 38

Actually there are astonishingly few cases in which the question of multiple parties has reached the appellate courts under any "comparative negligence" act. The writer has found only ten, all of them arising in Georgia and Wisconsin, where apportionment is restricted to cases in which the negligence of the plaintiff is "less" than that of the defendant. In none of these cases has the result been very satisfactory. In four of them[226] it was held that the statute did not affect contribution between joint tortfeasors, which under the Wisconsin common law rule must be on a basis of equality rather than in proportion to fault. In four others[227] it was held that the plaintiff could recover nothing against one defendant whose fault was no greater than his own; and that his recovery against the other defendant must be reduced in the proportion that the plaintiff's negligence bore to the total of all three, rather than as between the two. In the ninth case,[228] where the plaintiff's negligence was found to be 5%, that of one defendant 20%, and that of the other defendant 75%, it was held that the plaintiff could recover 95% of his damages against both defendants, with no apportionment between the two. In the tenth,[229] where the fault of the plaintiff was found to be 50%, and that of each of two defendants 25%, the plaintiff was denied all recovery, but each defendant recovered 75% of his damages on his counterclaim.

It may be observed in passing that, however these results might be improved, they are at least no worse than the common law would have accomplished without the statute, by denying all recovery and leaving the entire loss with the plaintiff. But the real significance of these cases is not in their imperfections, but in their remarkably small number. The explanation does not lie entirely in the fact that apportionment acts covering railroads and employers usually leave only one possible defendant, since in Mississippi, Nebraska, South Dakota, Georgia and Wisconsin the apportionment applied to automobile accidents and other negligence cases. Nor does it lie in the absence of procedure for joinder of parties, which is available in all these jurisdictions. The fact appears to be that the cases of multiple parties are sufficiently few in number, or are disposed of with so little difficulty in the trial courts, that they have not been a major problem on appeal.

[226] Brown v. Haertel, 210 Wis. 354, 244 N.W. 633 (1932); Zurn v. Whatley, 213 Wis. 365, 251 N.W. 435 (1933); Homerding v. Pospychalla, 228 Wis. 606, 280 N.W. 409 (1938); Wedel v. Klein, 229 Wis. 419, 282 N.W. 606 (1938).

[227] Walker v. Kroger Grocery & Baking Co., 214 Wis. 519, 252 N.W. 721 (1934); Quady v. Sickl, 260 Wis. 348, 51 N.W. (2d) 3 (1952); Mishoe v. Davis, 64 Ga. App. 700, 14 S.E. (2d) 187 (1941); Smith v. American Oil Co., 77 Ga. App. 463, 49 S.E. (2d) 90 (1948).

[228] Bohlmann v. Penn Electric Corp., 232 Wis. 232, 286 N.W. 552 (1939).

[229] Kirchen v. Tisler, 255 Wis. 208, 38 N.W. (2d) 514 (1949).

Conclusion

No effort has been made in these pages to argue the desirability of the division of damages in contributory negligence cases. It speaks for itself, and the question always has been one of feasibility rather than of justice. It is too late, in the light of the long history, the many statutes, and the multitude of cases, to contend that the thing cannot be done at all. The chief problem is one of some protection for the defendants, and some restraint upon the irresponsible jury, which will keep it within bounds and insure that the apportionment will in fact be made.

If the writer were to attempt to draw an act for a legislature, he would avoid "slight" and "gross" negligence, and the "lesser" negligence of the plaintiff, as the pestilence. They do not strike at the root of the difficulty; they leave the damages undivided in too many cases where the division should be made; and they lead inevitably to many difficult appeals abounding in confusion. He would leave the multiple party apportionment, theoretically perfect as it may be, to the Canadians until the American jury is eliminated or at least improved, for the reason that the game is not worth the candle. He would rely upon the Wisconsin special issue procedure, or something like it, to keep the jury under control.

The following draft, which follows closely a bill approved by the California State Bar Association at its annual meeting in September, 1952, is consistent with these conclusions:

> 1. In all actions hereafter accruing for negligence resulting in personal injury or wrongful death or injury to property, including those in which the defendant has had the last clear chance to avoid the injury, the contributory negligence of the person injured, or of the deceased, or of the owner of the property, or of the person having control over the property, shall not bar a recovery, but the damages awarded shall be diminished in proportion to the amount of negligence attributable to the injured person or to the deceased or to the owner of the property or to the person having control over the property.
>
> 2. In any action to which section 1 of this act applies, the court shall make findings of fact or the jury shall return a special verdict which shall state:
>
> (a) the amount of the damages which would have been recoverable if there had been no contributory negligence; and
>
> (b) the extent to which such damages are diminished by reason of such contributory negligence.

RESTRAINTS OF INTERESTS

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* The writer is indebted to
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† Member, Michigan Bar; P

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The Role of the Courts and Legislatures in the Reform of Tort Law

That the law of torts needs continuous reform is not disputed; but debate does rage over the proper role of the courts and legislature in such law revision. In this Article, Professor Peck asserts that the judiciary should evaluate the comparative abilities of the courts and legislature to make the revision, in the context of the particular case. In setting out the criteria by which this evaluation should be made, he reveals the realities of the legislative process that hinder the reform of tort law: legislators are basically indifferent to tort law-making; legislators lack experience, time, and adequate wages; legislatures fail to hold satisfactory committee and public hearings; legislators are subject to well-organized lobbies and pressure groups. Professor Peck then examines recent catalytic court decisions that have sparked legislative enactments, to show that a creative judicial role does not conflict with the legislature; he concludes that, to overcome legislative inertia, the courts should play a more positive role in the reform of tort law.

Cornelius J. Peck*

The necessity of continuous reform in areas of the private law has long been recognized. More than 40 years ago Mr. Justice Cardozo forcefully argued for a "ministry of justice," which would recommend needed reforms in the law.[1] Following demonstrations of how law changes and the role that judges played in

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1. Cardozo, *A Ministry of Justice*, 35 HARV. L. REV. 113 (1921).

producing that change,[2] there has been an increased demand for judicial participation in the reform process. Professor Robert Keeton recently commented with approval on "candidly creative" judicial action;[3] for example, he calls on the judiciary to establish a comparative negligence scheme to supplant the more prevalent contributory negligence rule.[4] Professor Seavey, summarizing conclusions based on nearly a half-century of teaching torts, has also urged an active and creative role for the judiciary with respect to many problems of tort law, ranging from the liability of innocent converters and the rule denying contribution to the adoption of comparative negligence and changes in the law of defamation.[5] Other scholars have also urged an activist role for the judiciary[6] — in fact, Mr. Justice Traynor has publicly stated that the concern for judicial activity should focus on the continuing scarcity of creative opinions rather than on the overabundance of activity.[7]

Not all legal scholars have so enthusiastically approved of an active reform role for the judiciary. Mr. Justice Holmes, in one of his famous phrases, characterized the judicial power to legislate as interstitial — a power confined "from molar to molecular motions."[8] Even Judge Jerome Frank, a leader of the jurisprudential realists, has urged a modest role for the courts in performing their inescapable function of judicial legislation,[9] while others have more firmly opposed active judicial reform.[10]

Of course, a good part of the battle rages over the substance

2. See, *e.g.*, Cardozo, The Growth of the Law (1924); Cardozo, The Nature of the Judicial Process (1921); Frank, Law and the Modern Mind (1930); Levi, An Introduction to Legal Reasoning (1949).

3. Keeton, *Creative Continuity in the Law of Torts*, 75 Harv. L. Rev. 463 (1962).

4. *Id.* at 506–09.

5. Seavey, Cogitations on Torts 52–72 (1954).

6. *E.g.*, Cahill, Judicial Legislation 140–60 (1952); Green, *The Thrust of Tort Law: Part II Judicial Law Making*, 64 W. Va. L. Rev. 115, 121 (1962); James, *Tort Law in Midstream: Its Challenge to the Judicial Process*, 8 Buffalo L. Rev. 315, 334 (1959).

7. Traynor, *Comment on Courts and Law Making*, in Legal Institutions Today and Tomorrow 48, 52 (1959). See also Reimann v. Monmouth Consol. Water Co., 9 N.J. 134, 140, 87 A.2d 325, 328 (1952) (Vanderbilt, C.J., dissenting).

8. Southern Pac. Co. v. Jensen, 244 U.S. 205, 221 (1917) (Holmes, J., dissenting).

9. Aero Spark Plug Co. v. B. G. Corp., 130 F.2d 290, 296 (2d Cir. 1942) (Frank, J., concurring).

10. *E.g.*, Cooperrider, *A Comment on "The Law of Torts,"* 56 Mich. L. Rev. 1201 (1958).

of the proposed reforms. Scholars may easily disagree about the extent to which the law of torts should be reformulated to encompass additional mechanisms of loss distribution. They may likewise disagree, for example, on the opportunity for fraud created by a rule abrogating interspousal immunity in tort cases. But inevitably, debate over the reform of the law of torts involves the question of the proper role of the courts and the legislature in law-making and law revision. The advocate of reform by the judiciary is often informed by the court that the requested revision falls within the peculiar competence of the legislature.[11] On the other hand, the defender of the status quo has frequently been told — perhaps more frequently in recent years — that common-law traditions require the judiciary to alter and adapt its decisional law to meet the demands of our rapidly changing society.[12] The conflicting opinions on the proper role of the courts and legislatures in the reform of tort law have unfortunately yielded little, if any, careful analysis of the criteria by which the conflict should be decided. As Dean Frank Newman has said, "it seems inexcusable that we are still so ignorant on the question, 'By whom and how are laws *best* made?' "[13]

This Article will explore that question with particular reference to the law of torts and present at least a partial evalua-

11. *E.g.*, Helton v. Sisters of Mercy, 351 S.W.2d 129 (Ark. 1961); Faber v. State, 143 Colo. 240, 353 P.2d 609 (1960); Levesque v. Levesque, 99 N.H. 147, 106 A.2d 563 (1954); Reimann v. Monmouth Consol. Water Co., 9 N.J. 134, 87 A.2d 325 (1952); Landgraver v. Emanuel Lutheran Charity Bd., 203 Ore. 489, 280 P.2d 301 (1955); Knecht v. Saint Mary's Hosp., 392 Pa. 75, 140 A.2d 30 (1958); Memorial Hosp. Inc. v. Oakes, 200 Va. 878, 108 S.E.2d 388 (1959); *cf.* Buck v. McLean, 115 So. 2d 764 (Fla. Dist. Ct. App. 1959). See also Gallick v. Baltimore & O.R.R., 372 U.S. 108, 123 (1963) (Harlan, J., dissenting).

12. Muskopf v. Corning Hosp. Dist., 55 Cal. 2d 211, 359 P.2d 457, 11 Cal. Rep. 89 (1961); Hargrove v. Town of Cocoa Beach, 96 So. 2d 130 (Fla. 1957); Molitor v. Kaneland Community Unit Dist., 18 Ill. App. 2d 11, 163 N.E.2d 89 (1959); McAndrew v. Mularchuk, 33 N.J. 172, 162 A.2d 820 (1960); Collopy v. Newark Eye & Ear Infirmary, 27 N.J. 29, 141 A.2d 276 (1958); Battalla v. State, 10 N.Y.2d 237, 176 N.E.2d 729, 219 N.Y.S.2d 34 (1961); Witte v. Fullerton, 376 P.2d 244 (Okla. 1962); Pierce v. Yakima Valley Memorial Hosp. Ass'n, 43 Wash. 2d 162, 260 P.2d 765 (1953); Holytz v. City of Milwaukee, 17 Wis. 2d 26, 115 N.W.2d 618 (1962); Kojis v. Doctors Hosp., 12 Wis. 2d 367, 107 N.W.2d 131 (1961); see Reimann v. Monmouth Consol. Water Co., 9 N.J. 134, 87 A.2d 325 (1952) (Vanderbilt, C.J., dissenting); *cf.* Eick v. Perk Dog Food, 347 Ill. App. 293, 106 N.E.2d 742 (1952).

13. Newman, *A Legal Look at Congress and the State Legislatures*, in LEGAL INSTITUTIONS TODAY AND TOMORROW 67, 83–89 (1959).

tion of the comparative abilities of courts and legislatures to revise the law. In so framing the question, however, one must be cautious of searching for a single answer applicable to all phases of such a comprehensive problem. The major criticism of those who have discussed the creative role of the courts in judicial law-making is that they have failed to differentiate between the varied contexts in which the problem appears. Obviously, the creative role suggested for the courts in the area of contracts and property law or an area dominated by legislation and administrative regulation, such as taxation, is markedly different from the role it should play in the areas of procedure and torts.[14] But even within these categories a more discriminating approach should be taken to avoid label-thinking. Thus, a court may properly refuse to expand the protection given by tort law against certain trade practices because legislation and administrative regulation have established a pattern of legal control.[15] Yet the same court could properly exercise a creative role to expand the protection given by tort law against intentional infliction of emotional harm even though it occurred in a business context.[16]

I. LEGISLATIVE INDIFFERENCE

Having issued a warning against generalization, one may now be permitted to make one. It is that as a general proposition, legislatures are indifferent to the problems of reform of tort law. As Professor Cowan has articulated, "legislatures have no stomach for reform in tort law";[17] correspondingly, Professor

14. In reforming the law, a number of courts have considered that the change related to the law of torts as being a significant factor. Molitor v. Kaneland Community Unit Dist., 18 Ill. App. 2d 11, 26, 163 N.E.2d 89, 96 (1959); Bricker v. Green, 313 Mich. 218, 21 N.W.2d 105 (1946); Fussner v. Andert, 261 Minn. 347, 361, 113 N.W.2d 355, 364 (1961); Pierce v. Yakima Valley Memorial Hosp. Ass'n, 43 Wash. 2d 162, 179, 260 P.2d 765, 775 (1953); Borst v. Borst, 41 Wash. 2d 642, 657, 251 P.2d 149, 156 (1952). *But cf.* Helton v. Sisters of Mercy, 351 S.W.2d 129 (Ark. 1961). The commentators have also, of course, frequently pointed out the distinction in urging an active reform role in the area of torts. *E.g.*, SEAVEY, *op. cit. supra* note 5, at 66–68.

15. *E.g.*, Cheney Bros. v. Doris Silk Corp., 35 F.2d 279 (2d Cir. 1929); see Chafee, *Unfair Competition*, 53 HARV. L. REV. 1289 (1940).

16. *E.g.*, State Rubbish Collectors Ass'n v. Siliznoff, 38 Cal. App. 2d 330, 240 P.2d 282 (1952). For a discussion of the propriety of an active role for the courts with respect to this problem, see text accompanying notes 190–93 *infra*.

17. Cowan, *Rule or Standard in Tort Law*, 13 RUTGERS L. REV. 141, 159–60 (1958).

Pedrick has pointed out that the piecemeal legislation adopted is of equal significance to the total picture of legislative inactivity.[18] Moreover, statutorily imposed tort liabilities may be inconsistent with the principles of tort law, as where a statute imposes a limited liability on parents whose children wilfully or maliciously destroy property. The obvious purpose of such legislation is to combat juvenile delinquency rather than to fulfill the compensatory objectives of tort law.[19] Even though a statute is generally consistent with the objectives of tort law, the motivation for enactment may not have been the achievement of those objectives. For example, during the 30 years that proposals to waive the United States' immunity from tort liability were under consideration, Congress must have realized that such a waiver was consistent with both the objectives of the law of torts and valid governmental interests. But apparently the increasing burden of reviewing over 2000 private bills during each session of Congress, rather than an interest in a more symmetrical scheme of tort law, finally produced congressional action.[20]

If additional proof is needed that legislatures frequently overlook or ignore the problems of tort law, it may be convincingly

18. Pedrick, *On Civilizing the Law of Torts*, 6 J. Soc'y Pub. Teachers L. 2, 8-9 (1961).

19. See Peck, *Parental Liability for Wilful and Malicious Acts of Children*, 36 Wash. L. Rev. 327 (1961).

20. See Dalehite v. United States, 346 U.S. 15, 24-25 (1952). The Report of the House of Representatives stated in support of the legislation that became the Federal Tort Claims Act:

> For many years the present system has been subjected to criticism, both as being unduly burdensome to the Congress and as being unjust to the claimants, in that it does not accord to injured parties a recovery as a matter of right but bases any award that may be made on considerations of grace. Moreover, it does not afford a well-defined continually operating machinery for the consideration of such claims.
>
> The magnitude of the task of considering and disposing of private claims can be gathered from the following statistics:
>
> In the Sixty-eighth Congress about 2,200 private claim bills were introduced, of which 250 became law, then the largest number in the history of the Claims Committee.
>
> In the Seventieth Congress 2,268 private claim bills were introduced, asking more than $100,000,000. Of these, 336 were enacted, appropriating about $2,830,000, of which 144, in the amount of $502,000, were for tort.
>
> In each of the Seventy-fourth and Seventy-fifth Congresses over 2,500 private claim bills were introduced, seeking more than $100,000,000. In the Seventy-sixth Congress approximately 2,000 bills were introduced, of which 315 were approved for a total of $826,000.
>
> In the Seventy-seventh Congress, of the 1,829 private claim bills in-

found in the frequency with which legislatures enact criminal statutes that provide no concurrent civil remedies for one injured by the criminal conduct. In some instances the courts have supplemented the statutory language by applying the doctrine of negligence per se to unexcused violations of criminal statutes, but the difficulties encountered in the application of that doctrine warrant the assumption that a legislature concerned with the civil consequences of a violation would have stated them. Perhaps the underlying legislative rationale is that the criminal law, which sets guidelines for future conduct, is worthy of legislative consideration; whereas tort law, which is only a system for distributing fortuitous losses, does not merit the exercise of the planning function of legislation. In any event, the civil consequences of violations are frequently ignored by legislatures.

This legislative indifference to tort law might be considered a delegation knowingly made to an expert body qualified at reformulating particular rules while maintaining consistency of governing principles — much as delegations of power to administrative agencies have been viewed. Indeed, the Supreme Court has characterized the Federal Employers Liability Act as a statute by which Congress created "only a framework within which the courts were left to evolve . . . a system of principles providing compensation for injuries to employees consistent with the changing realties of employment in the railroad industry."[21] If the question could be raised, such an indefinite delegation might properly be determined constitutional by analogy to delegations of authority to administrative agencies, which have been sustained because experience and custom have made sufficiently explicit standards that otherwise would have been too vague.[22] But, tempting as this view of a conscious delegation may be, the truth lies elsewhere.

II. THE MOTIVATIONS, PERSONALITIES, AND WORKING CONDITIONS OF LEGISLATORS

If legislatures were composed of a modern day equivalent of Plato's guardians or philosopher kings — a group selected on

troduced and referred to the Claims Committee, 593 were approved for a total of $1,000,253.30. . . . So far during the present Congress about 1,279 private claim bills have been introduced. Of these, 225 have been enacted, appropriating about $905,353.06.

H.R. Rep. No. 1287, 79th Cong., 1st Sess. 2 (1945).

21. Kernan v. American Dredging Co., 355 U.S. 426, 437 (1958), 34 Wash. L. Rev. 108 (1959).

22. Fahey v. Mallonee, 332 U.S. 245, 250-53 (1947); *cf.* NLRB v. Radio Eng'rs, 364 U.S. 573, 582-83 (1961).

the basis of ability and prepared by a special education to settle affairs dispassionately for the good of the republic — they would undoubtedly undertake periodic, systematic reappraisals of the effectiveness of tort principles in serving society. Without descending to the stereotyped and frequently erroneous characterization of politicians, however, this is clearly not the case. Even at their best, members of state legislatures bear but little resemblance to Plato's guardians.

A recent study of the political socialization of state legislators[23] indicates that, while over half of the state legislators first became interested in politics in the pre-college or equivalent period, a sizeable proportion became interested after college or its equivalent period.[24] The fact that almost one-third of state legislators are lawyers by occupation[25] suggests that they are qualified to make competent reappraisals of the principles of private law; of course this generalization does not apply to the very large occupation group consisting of farmers.[26] Nor is there more than a conjectural hope that any special preparation for the role of lawmaker was included in the formal education of merchants, businessmen, bankers, real estate men, insurance brokers, and professional men who collectively compose the largest category of legislator occupations.[27]

Professor Leon Green has opined that there are not large numbers of scholarly men in state legislatures, a factor which he believes weighs in favor of judicial reform of tort rules.[28] Another writer has expressed the idea that a scholarly approach would only entangle a legislator because his function is to act, to fight, and to seize advantages rather than to meditate on

23. Eulau, Buchanan, Ferguson & Wahlke, *The Political Socialization of State Legislators*, in LEGISLATIVE BEHAVIOR 305 (Wahlke & Eulau eds, 1959).

24. *Id.* at 306.

25. During the period 1925 to 1935 lawyers held 28% of the seats in the upper and lower houses of 13 states selected for study. Hyneman, *Who Makes Our Laws*, 55 POL. SCI. Q. 556, 557 (1940), reprinted in LEGISLATIVE BEHAVIOR 254, 255 (Wahlke & Eulau eds. 1959). A more recent study indicates that the proportion of lawyers in state legislatures has declined to less than 25%. AMERICAN POLITICAL SCIENCE ASS'N, AMERICAN STATE LEGISLATURES 71 (Zeller ed. 1954) [hereinafter cited as AMERICAN STATE LEGISLATURES].

26. The study by Hyneman, *supra* note 25, at 557, revealed that in the period 1925 to 1935 farmers occupied 21.5% of the memberships in the state legislatures studied. A more recent study indicates that in 1949 the proportion was slightly less than 20%. AMERICAN STATE LEGISLATURES 71.

27. AMERICAN STATE LEGISLATURES 71. See also Hyneman, *supra* note 25, at 557.

28. Green, *supra* note 6, at 117–18.

them.[29] While it is improbable that any empirical test can be devised to measure the scholarly attributes of legislators, an abundance of evidence indicates that the legislative environment is not conducive to scholarly or detailed examination which is essential to effective reformulation of a complicated area of private law.

A notoriously inadequate compensation scale[30] requires many, if not most, legislators to supplement their incomes through outside employment — they perform their legislative work during time borrowed from their regular full-time employment. Although some legislators can limit the demands of their regular employment during the legislative session, those demands certainly cannot be slighted by all. In short, state legislators are part-time employees whose thoughts are directed substantially to other matters.

Even if legislators could devote all of their legislative time to the study of substantive proposals, the length of legislative sessions would seriously hamper scholarly work.[31] Most legislatures meet for such limited periods of time that they cannot give the prolonged, detailed, and studious attention necessary for an effective study of any area in which the existing rules are technical, complicated, and frequently stated in a legal jargon

29. Finer, *The Tasks and Functions of the Legislator*, in LEGISLATIVE BEHAVIOR 281, 282 (Wahlke & Eulau eds. 1959).

30. At the end of 1961 the range of salaries per biennium was from $200 in New Hampshire to $15,000 in New York, while the median salary of the 34 states paying salaries was $3,900 to $4,000. For the 10 states employing a daily or weekly pay plan, the pay rate varied from $5 to $50 per day, with a median daily pay of $15. All but five of the daily-pay states and all but 11 of the salary states also paid living expense allowances that sometimes exceeded the basic pay. THE COUNCIL OF STATE GOVERNMENTS, THE BOOK OF THE STATES 1962–1963, at 87 (1962) [hereinafter cited as BOOK OF THE STATES 1962–1963]. See generally BABCOCK, STATE AND LOCAL GOVERNMENT AND POLITICS 163 (2d ed. 1962).

31. Only 18 state legislatures meet annually; the remaining 32 hold biennial sessions. BOOK OF THE STATES 1962–1963, at 35. Fifteen states have regular unlimited sessions; 21 directly limit them to a specified number of days, frequently 60 legislative or calendar days; 11 indirectly limit the length of the session by stopping pay or allowances after a certain number of days; and 3 others have other methods of limitation. *Id.* at 36, 42–43. Special sessions are less restricted: 25 states have no limit; 15 are directly limited; and the remainder are indirectly limited by restrictions on pay or allowances. *Ibid.*

Longer legislative sessions do not necessarily mean more time spent on legislation. In New Jersey, for example, the legislature sits once a week over a five month period, but commuting problems distract attention from legislation. Anton, *The Legislature, Politics and Public Policy: 1959*, 14 RUTGERS L. REV. 269, 273 (1960).

unfamiliar to most non-lawyers. Moreover, a high turnover rate precludes any great accumulation of legislative experience.[32] This turnover rate even affects the chairmen of committees, with the result that the average committee head is relatively new at the procedures of law-making.[33]

Legislators are limited not only by the lack of legislative experience and the shortness of the legislative session; they must also work under physical conditions that are unsatisfactory for deliberate consideration of complex matters. The provisions for office space,[34] committee rooms,[35] and secretarial services[36] are, in most states, inadequate at best.

32. Almost 50% of the members of state legislatures have very little legislative experience. AMERICAN STATE LEGISLATURES 65, 67, 70. According to another study of ten state legislatures during the six sessions held from 1925 to 1935, an average of 35.4% of the legislators in any given session were attending their first session and another 22.6% were attending their second session; slightly more than 20% had served as many as four sessions. Hyneman, *Tenure and Turnover of Legislative Personnel*, 195 Annals 21, 23 (1956). A more recent study indicates that a high level of turnover has continued. See Beckett & Sunderland, *Washington State's Lawmakers: Some Personnel Factors in the Washington Legislature*, 10 WESTERN POL. Q. 180, 188 (1957). See also Hyneman & Ricketts, *Tenure and Turnover of the Iowa Legislature*, 24 IOWA L. REV. 673 (1939); Hyneman, *Legislative Experiences of Illinois Lawmakers*, 3 U. CHI. L. REV. 104 (1935).

33. According to the Hyneman study, 17.3% of committee chairmen were serving in their first session of the legislature while another 24.8% were attending their second sessions. Only 28.1% had attended five or more sessions. Hyneman, *supra* note 32, at 25. A similar pattern was shown in a later study of committee chairmen in 1950. AMERICAN STATE LEGISLATURES 68–70.

34. A report published in 1954 indicates that at that time no state provided all its legislators with individual offices. AMERICAN STATE LEGISLATURES 159. Thirty-six states did not provide individual office space for members of either house; three states provided individual office space for senate members; eight provided office space to be shared by varying numbers of senators; and five states provided office space to be shared by varying numbers of representatives. *Id.* at 157. A former Connecticut state senator recently described his working conditions as follows: "I had no office staff and indeed no office except for a corner in my hallway at home, where unsorted and unfiled letters, brochures, notes, and thousands of bills constantly threatened to bury my children under a paper cascade." Lockard, *The Tribulations of a State Senator*, in LEGISLATIVE BEHAVIOR 204, 206 (Wahlke & Eulau eds. 1959).

35. An earlier study of the New Jersey legislature indicates that in 1938 there were no committee rooms for committee meetings, and consequently hearings had to be held in the Assembly Chamber at times when the legislature was not using the space. MCKEAN, PRESSURE ON THE LEGISLATURE OF NEW JERSEY 47 (1938).

36. The study of American State Legislatures made in 1954 by the American Political Science Association indicated that at that time fewer than 20

In recent years, however, some legislators have been provided with the assistance of legislative reference and bill drafting services, or legislative councils and law revision commissions have been established to originate law reform. In fact, the members of all state legislatures presently have some such staff services available,[37] but these services vary greatly between states, and their significance to the problem at hand will be considered below.

Of course, men have been known to make notable achievements even under adverse conditions, especially where self-interest motivated their labors. The pragmatic nature of American politics, however, is revealed in a survey showing that only a small minority of state legislators entered politics because of political principles.[38] Many political scientists have expressed the opinion that party politics is a relatively unimportant factor in the adoption of state legislation;[39] instead, most legislators are simply striving to satisfy the organized local interests of their respective constituencies.[40] A legislator will probably avoid general legislation that has no organized support from his constituents for the double reason that his action will not bring him credit with his electors, and it may alienate other legislators whose votes are important if he is to serve his constituency loyally.[41]

In this respect lawyers probably do not differ from other legislators, which partially explains their inactivity in reforming the private law, despite their substantial numbers in state legislatures. A less flattering explanation is that their interest in legislative service is engendered by an opportunity to obtain permissible "advertising" while serving their established clients.[42]

Finally, the dilution of urban and suburban voting strength

states assumed the responsibility for providing individual legislators with stenographic assistance in adequate quantity. In only five states did legislators have individually assigned stenographic or secretarial help, and in another each legislator received $2,400 a biennium for clerical assistance. However, 29 states did provide clerical and secretarial assistance for their standing committees, and such assistance was available to major committees in seven states. AMERICAN STATE LEGISLATURES 156.

37. BOOK OF THE STATES 1962–1963, at 63.

38. Eulau, Buchanan, Ferguson & Wahlke, *supra* note 23, at 311.

39. AMERICAN STATE LEGISLATURES 192; Anton, *supra* note 31, at 274–75; *cf.* Silverman, *The Legislators' View of the Legislative Process*, in LEGISLATIVE BEHAVIOR 298, 301 (Wahlke & Eulau eds. 1959).

40. AMERICAN STATE LEGISLATURES 192–93; Anton, *supra* note 31, at 273–74. See also Green, *supra* note 6, at 117.

41. Anton, *supra* note 31, at 273–74.

42. See BABCOCK, *op. cit. supra* note 30, at 183; MCKEAN, *op. cit. supra* note 35, at 42.

in state legislatures should be considered. That the rural population enjoys a much greater representation than the urban population cannot be denied.[43] Legislators from rural areas naturally attempt to satisfy their constituents and tend to lack concern for urban problems. Yet the needed reforms in the law of torts are primarily the result of industrialization, the centralization of commercial activities, and other factors accompanying the development of a highly urbanized society. Rural populations are less claims-conscious than their urban counterparts, perhaps because the rigors of rural life induce an acceptance of hardships that urban residents would find unacceptable.[44] In short, the problem areas in the law of torts are of less concern to the rural population and its representatives than to the population as a whole, and in many state legislatures, the representatives of rural areas direct the course of legislative affairs.

III. LEGISLATIVE COMMITTEES AND COMMITTEE HEARINGS

Frequently when judges decline to accept the role of reformer or innovator they do so in deference to the superiority which the legislative process supposedly enjoys in its use of committee hearings.[45] The thought is that through committee hearings the various effects of a change in law may be thoroughly investigated, the competing policy factors critically analyzed, and after extensive consideration and evaluation, a reasoned and well-balanced solution produced. Unfortunately, this idealized view of the legislative process bears little resemblance to what political scientists tell us are the realities of the situation.

For one thing, hearings are not held on all bills, and there is a surprising lack of rules providing for advance notice and scheduling of hearings.[46] A recent study indicates that in all but 10 states whether or not the hearings will be open to the public

43. Goldberg, *The Statistics of Malapportionment*, 72 YALE L.J. 90 (1963).

44. Peck, *Comparative Negligence and Automobile Liability Insurance*, 58 MICH. L. REV. 689, 711–12 (1960).

45. International News Serv. v. Associated Press, 243 U.S. 215, 264–67 (1918) (Brandeis, J., dissenting); Aero Spark Plug Co. v. B. G. Corp., 130 F.2d 290, 296 (2d Cir. 1942) (Frank, J., concurring); Cheney Bros. v. Doris Silk Corp., 35 F.2d 279 (2d Cir. 1929); Molitor v. Kaneland Community Unit Dist., 18 Ill. 2d 11, 40, 163 N.E.2d 89, 103 (1959) (Davis, J., dissenting); Reimann v. Monmouth Consol. Water Co., 9 N.J. 134, 87 A.2d 325 (1952).

46. AMERICAN STATE LEGISLATURES 102, 117–18; MCKEAN, *op. cit. supra* note 35, at 47.

is a discretionary matter.[47] Normally, the crucial decisions are made in executive sessions, from which the press and the public are excluded.[48] The records of committee hearings are in notoriously bad shape,[49] and the committee reports to the legislature are frequently summary and uninformative.[50] As an institution for informing the entire legislative body about the content of proposed legislation and the problems with which it deals, a legislative committee leaves much to be desired.

This assumes, however, that the purpose of legislative committees is one of investigation, accumulation and evaluation of data, and exploration of alternative solutions to various problems. Political scientists indicate, however, that hearings are seldom held for this purpose, and if this result does obtain, it is usually incidental to other purposes.[51] Frequently committee hearings are held to provide an appearance of well-reasoned grounds to support action to which legislators are already committed.[52] If the matter under investigation is one about which there is a division of commitments, the result is likely to be the development of two fact pictures, each conforming to its adherents' views, rather than a complete and objective portrayal of the situation.[53]

47. BOOK OF THE STATES 1962–1963, at 49.

48. TRUMAN, THE GOVERNMENTAL PROCESS 370 (1951).

49. AMERICAN STATE LEGISLATURES 102.

50. For example, the *Report of the Committee on Judiciary — Civil* of the Washington House of Representatives on a bill, subsequently enacted, to waive the state's immunity to suits in tort stated only:

> We, a majority of your Committee on Judiciary — Civil, to whom was referred House Bill No. 338, consenting to suits against state [*sic*] in tort actions, have had the same under consideration, and we do respectfully report the same back to the House with the recommendation that it do pass.

HOUSE JOURNAL OF THE 37TH LEGISLATURE OF THE STATE OF WASHINGTON 235 (1961). The report of the Senate was equally uncommunicative, using almost identical language. SENATE JOURNAL OF THE 37TH LEGISLATURE OF THE STATE OF WASHINGTON 740 (1961). See also MCKEAN, *op. cit. supra* note 35, at 47.

51. MCKEAN, *op. cit. supra* note 35, at 48; TRUMAN, *op. cit. supra* note 48, at 379; STEINER & GOVE, LEGISLATIVE POLITICS IN ILLINOIS 83 (1960); Huit, *The Congressional Committee: A Case Study*, 48 AM. POL. SCI. REV. 340, 365 (1954). See also Cohen, *Hearing on a Bill: Legislative Folklore*, 37 MINN. L. REV. 34, 37 (1952); Cohen, *Towards Realism in Legisprudence*, 59 YALE L.J. 886, 892 (1950).

52. STEINER & GOVE, *op. cit. supra* note 51, at 83; TRUMAN, *op. cit. supra* note 48, at 379; Cohen, *Hearing on a Bill: Legislative Folklore*,, 37 MINN. L. REV. 34, 38 (1952); Cohen, *Towards Realism in Legisprudence*, 59 YALE L.J. 886, 892 (1950).

53. See, *e.g.*, Huit, *supra* note 51, at 353, 354, 365.

A very practical purpose served by the hearings is that of revealing the alignment of various interest groups on the subject, thus providing a gauge of their support or opposition to a bill.[54] The cathartic value of committee hearings is obvious and may even assist the legislators in their role as mediators between contending pressure groups. In short, while committee hearings may develop some information upon which a well-reasoned policy decision could be made, this is the exception rather than the rule.

Even if legislative committees were organized to conduct objective and scientific investigations of areas in which reform legislation is needed, they are ill-equipped to do so. As mentioned above, near to one-half of the committee chairmen are serving in either their first or second session of the legislature.[55] Committees frequently lack an adequate staff, and what they have has been chosen, not for professional competence in investigation of technical problems, but for their connections and political competence.[56] Moreover, insofar as reform in tort law is concerned, the concentration of most legislative work in a few standing committees[57] goes far to ensure that there will be no organized pool of talent to work on specialized problems. What legislative proposals are made concerning the reform of tort law will probably be referred to the already overworked judiciary committee, with its far-flung interests.

Finally, no empirical data would be available for a substantial number of tort law subjects that a legislative committee might investigate. For other subjects the empirical data is equally available to the courts as to legislative committees. For example, a field study probably could produce no valid and detailed conclusions concerning the effect of an abandonment of charitable immunity from tort liability on charitable donations or the level of charitable operations. The numerous uncontrolled variables affecting donations and charitable operations undermine the scientific approach. The same reasoning applies to the removal of charitable or governmental immunity from educational institutions. The crude fact that liability is sur-

54. TRUMAN, *op. cit. supra* note 48; Cohen, *Hearing on a Bill: Legislative Folklore*, 37 MINN. L. REV. 34, 39 (1952).

55. See note 33 *supra*.

56. AMERICAN STATE LEGISLATURES 160, 162; Cohen, *supra* note 54, at 37–38 (1952).

57. AMERICAN STATE LEGISLATURES 96. See also BABCOCK, *op. cit. supra* note 30, at 189 for a discussion of the usual standing committees, none of which has a special relationship to tort law.

ance permits the continued operation of charities and schools in nonimmunity jurisdictions can be noted by courts as well as legislatures.[58]

To take another immunity rule as an example, one of the reasons advanced in support of the inter-spousal immunity rule is that abandonment would lead to a substantial number of fraudulent claims, where liability insurance would cover the claim. According to Professor McCurdy, insurers generally have no statistics showing the number or amount of inter-spousal automobile liability claims in states allowing such suits.[59] That other comprehensive and reliable data would be available to legislative committees seems unlikely. Any legislative estimation of the effect of a change of that immunity rule would probably have to rest, as it does with courts, upon a priori assumptions.

As Judge Magruder has asked,[60] could a factual survey establish that in a particular state the rule recognizing a privilege for honest, but erroneous, statements concerning candidates for public office had the effect of driving honorable men from politics? Would a more detailed documentation of the effect of modern advertising campaigns on consumer purchasing habits and a more complete account of the dangerous potential of automobiles have provided a sounder basis for the New Jersey Supreme Court's holding that when a manufacturer puts a new automobile in the stream of trade and promotes its purchase, an implied warranty of fitness accompanies it into the hands of the ultimate purchaser?[61]

The suggestion is not that legislative committees could never uncover empirical data bearing on a choice of or change in various tort rules, nor that courts have made adequate use of the available data.[62] Important empirical data relevant to some tort problems might be available to legislative committees. Thus, a

58. See, *e.g.*, President & Directors of Georgetown College v. Hughes, 130 F.2d 810, 823 (D.C. Cir. 1942); Molitor v. Kaneland Community Unit Dist., 18 Ill. 2d 11, 163 N.E. 2d 89 (1959).

59. McCurdy, *Personal Injury Torts Between Spouses*, 4 Vill. L. Rev. 393, 534 (1959). Professor McCurdy does state, however, that there are indications that premium rates have increased in recent years in states that permit inter-spousal suits, but he does not state exactly what those indications are.

60. Magruder, *Judging in Tort Law: Intuition and Science*, 5 Colgm. L. Alum. Bull. 31, 34 (1961).

61. Henningsen v. Bloomfield Motors, Inc., 32 N.J. 358, 161 A.2d 69 (1960).

62. See James, *Tort Law in Midstream: Its Challenge to the Judicial Process*, 8 Buffalo L. Rev. 315, 325–28 (1959).

study of the causes of trichinosis, its spread, and methods of control might lead to a conclusion that a warranty of freedom from trichinae should accompany a sale of pork. But courts could make a better appraisal of the comparative abilities of the judiciary and the legislature to deal with a particular problem if consideration were given, on a selective basis, to the probabilities that relevant empirical data would be available to legislative committees but not to the judiciary.[63]

IV. LEGISLATIVE SERVICE AGENCIES

The handicaps under which state legislatures work have not gone unnoticed. At the present time all state legislatures have some kind of staff services, but the level and quality of these services vary greatly.[64] Legislative reference services are available in 47 states, although some of their functions are now being assumed by newer forms of service agencies.[65] Valuable as their research services are to state legislatures, they are library-oriented[66] and are unlikely to turn up any information not available to judges who look beyond the traditional sources of legal information.

Bill drafting and law revision services are also available in 47 states.[67] Although these services are important, they are primarily confined to matters of form and style and utilize skills certainly possessed in equal measure by the judiciary. Only a few states provide for systematic revision of the substantive law; California, Louisiana, and North Carolina having followed New York's lead in this direction.[68]

The increasing use of legislative councils has been the most significant development in the reform of substantive law. Thirty-nine states now have established legislative councils,[69] most of which are super-interim committees of the legislature, formed on a bipartisan and bicameral basis, and assisted by a research staff. Some have broad statutory duties; some have been restricted by statute; and others have imposed their own restrictions.[70] In 1962,

63. Analysis demonstrating the difficulties of using the scientific method for either judicial or legislative rule-making is contained in Cavers, *Science, Research, and the Law: Bentels' "Experimental Jurisprudence,"* 10 J. LEGAL ED. 162 (1957).

64. BOOK OF THE STATES 1962–1963, at 63.

65. *Id.* at 63–64.

66. AMERICAN STATE LEGISLATURES 142–44.

67. BOOK OF THE STATES 1962–1963, at 64.

68. *Id.* at 64–65.

69. *Id.* at 65.

70. AMERICAN STATE LEGISLATURES 129–30.

budgets for legislative councils ranged from 29,500 to 350,000 dollars, with a median budget between 84,000 and 90,000 dollars.[71] These variations suggest the fallacy of a generalized reliance on the existence of the legislative council as an adequate instrument for the reform of tort law. Not all councils have both the inclination and resources for productive work in the area. New York, with its famous law revision commission, adopted three items of what might be called tort legislation in 1956[72] and two similar items in 1958,[73] but apparently enacted no significant tort legislation in 1955,[74] 1957,[75] 1959,[76] 1960,[77] or 1961.[78] A similar situation apparently exists in Pennsylvania and Illinois.[79] In each jurisdiction the courts could and should examine the record of the legislative council, if one exists, to determine how active and how successful the council has been in a particular field. In the course of doing so a court may find, as did the New York Court of Appeals, a council report gathering dust in legislative files that persuasively supports a court-made reform of tort law.[80]

Other legislative services, such as interim legislative committees, have been provided in recent years. As a general proposition, interim committees are less effective than legislative councils and more limited in duration and scope of activity. The choice of subjects for investigation is determined by the interests of individual members; much effort is wasted in organization; and they lack the experienced staff that legislative councils may develop.[81] Again, a court considering its reform role should properly determine not merely the existence of interim committees, but whether they ever investigate and successfully suggest proposals for the reform of tort law.

Of course, with respect to all of these legislative service agencies the same question should be asked that was asked concerning

71. Book of the States 1962–1963, at 65–66.
72. Note, 28 N.Y.S.B. Bull. 183–227 (1956).
73. Note, 30 N.Y.S.B. Bull. 173–229 (1958).
74. Asch, *New York Legislative Session*, 1 N.Y.L.F. 221–34 (1955).
75. Note, 29 N.Y.S.B. Bull. 193–244 (1957).
76. Note, 31 N.Y.S.B. Bull. 150–91 (1959).
77. Note, 25 Albany L. Rev. 348–61 (1961).
78. Note, 33 N.Y.S.B. Bull. 218–28 (1961).
79. Pedrick, *On Civilizing the Law of Torts*, 6 J. Soc'y Pub. Teachers L. 2, 8 (1961).
80. Battalla v. State, 10 N.Y.2d 237, 176 N.E.2d 729, 219 N.Y.S.2d 34 (1961) (relying upon a 1956 report of the Law Revision Commission that recommended changes in the earlier rule by which there was no recovery for physical or mental injuries caused by negligently induced fright).
81. American State Legislatures 137–39.

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82. *Id.* at 133.
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legislative committees: Is it probable that empirical data bearing on a particular area in which reform may be desirable exists in a form available to the service agencies but not available to the judiciary? In this respect it might be noted that, according to political scientists, the function of a legislative research staff is not to gather primary data, but rather to collate and synthesize data already culled by administrative agencies and private organizations.[82]

V. LOBBIES AND PRESSURE GROUPS

Political scientists unanimously assert that lobbies and pressure groups play a tremendously important role in the legislative process. Professor Truman's authoritative work on the governmental process[83] consists primarily of a study of pressure groups, their problems of organization, and their tactics of influence. In his judgment, political interest groups are as clearly a part of government as the political parties or the branches established by the constitution.[84] One scholarly state legislator came to believe after two legislative sessions that outside group pressures accounted for 90 percent of what was done.[85] The authors of an Illinois study concluded that non-legislators sometimes exert more influence on legislative decisions than do members.[86] Moreover, the amateur legislators, who make up a considerable part of state legislatures, may find it difficult to identify the various pressure groups,[87] a fact that may well intensify the significance of these group activities.

The scope of pressure group and lobby activity is, of course, not confined to initiating legislation; of equal importance is their opposition to the passage of legislation deemed inimical to their interests. Since bills that have no organized support may fail to pass even though unopposed,[88] a pressure group or lobby can

82. *Id.* at 133.

83. TRUMAN, *op. cit. supra* note 48.

84. *Id.* at 502. According to Truman, the unorganized interests of society do play a role in the governmental process, setting the rules or norms of conduct by which the behavior of organized interest groups are judged. This factor, as well as the overlapping of group memberships, serves as a check against activities of organized groups. *Id.* at 512–16.

85. MCKEAN, *op. cit. supra* note 35, at 218.

86. STEINER & GOVE, *op. cit. supra* note 51, at 32–57. Included in this powerful group were the governor, the press, private lobbyists, and lobbyists for various governmental units.

87. Garceau & Sullivan, *A Pressure Group and the Pressured: A Case Report*, 48 AM. POL. SCI. REV. 672 (1954).

88. See TRUMAN, *op. cit. supra* note 48, at 362–63.

easily dispatch such legislation to oblivion. Faced with organized resistance on one side and no organized support on the other, the choice is obvious to any legislator whose approval is necessary to obtain release of the bill from committee, particularly where the local legislative rules permit secret votes.[89]

Of course, not all lobbies and pressure groups are equally effective. Groups with lobbying experience tend to be more successful than *ad hoc* groups, partly because of their familiarity with the legislative process.[90] Moreover, effective action of a lobby or pressure group requires the cooperation of other lobbies and pressure groups.[91] In short, legislative log-rolling techniques are also employed by lobby and pressure groups.

How does this knowledge of the legislative process apply to the problem of reform of tort law? It reveals the incredible naivete of much judicial language. For example, courts have frequently expressed the idea that any reform in the rule granting charitable hospitals immunity from tort liability must be made by the legislature.[92] Yet the realities of the legislative process render the suggested means of reform as unworkable as the most visionary of utopian schemes. The fortuitous victims of negligence and malpractice of employees of charitable hospitals form no natural or integrated economic, social, or political group. Moreover, legislation oriented toward the consequences of future events will not satisfy their demands for redress of past negligence, and they will not move in an organized fashion along legislative avenues. Alternatively, if an individual legislator should become interested in the matter, either through personal experience or the experience of some friend or relative, his proposals would face opposition from the organized and attentive lobbies of hospitals and insurance companies. Moreover, removal of the immunity of hospitals might initiate similar action affecting other charities, such as some churches, that might therefore intervene in behalf of the

89. In only 11 states are committees required to report on all bills. Book of the States 1962–1963, at 50–51. Crucial committee decisions are usually made in executive sessions from which the public and press are excluded. See text accompanying note 43 *supra*. See also American State Legislatures 102.

90. Stein & Gove, *op. cit. supra* note 51, at 48.

91. Truman, *op. cit. supra* note 48, at 363; Zeller, Pressure Politics in New York 230 (1937).

92. *E.g.*, Helton v. Sisters of Mercy, 351 S.W.2d 129 (Ark. 1961); Landgraver v. Emanuel Lutheran Charity Bd., 203 Ore. 489, 280 P.2d 301 (1955); Knecht v. Saint Mary's Hosp., 392 Pa. 75, 140 A.2d 30 (1958); Memorial Hosp. v. Oakes, 200 Va. 873, 108 S.E.2d 383 (1959). *But cf.* Schutte v. Missionaries of La Salette Corp., 352 S.W.2d 636 (Mo. 1961).

hospitals. It would indeed be an unusual legislator who, faced with an organized defense by a group with such immediate appeal, would persist unaided in the battle to remove the immunity. Even if he organized a group to support the proposed legislation, that group would be an *ad hoc* organization unable to engage in the long run cooperative or log-rolling techniques so essential to effective legislative action.

Certainly this is but one example of what has been commented on a number of times: There are no well organized and permanent lobbies which have a comprehensive interest in the reform of tort law.[93] Within bar associations, lawyers representing insurance companies are balanced against those representing injured plaintiffs. The National Association of Compensation Claimant Attorneys (NACCA) might be considered a natural lobby group, but a review of the recent volumes of its journal fails to disclose any involvement in legislative reform. On the contrary, the reform emphasis is on case developments, with the courts viewed as the reform agency.[94] If the NACCA should lobby vigorously for reform, it would undoubtedly suffer not only from a general distrust of lawyer-proposed legislation but also, turning a phrase that had political significance, from a profound distrust of the idea that what is good for the plaintiffs' bar is necessarily good for the law of torts.

What has been said thus far should not suggest that there are no organized pressure groups or lobbies with interests in various problems of tort law. The insurance lobby has been mentioned. Newspapers, radio, television, and other news media have an obvious interest in the law of defamation. The public lobby, consisting of representatives of state agencies, municipal and county

93. *E.g.*, Green, *The Thrust of Tort Law: Part II Judicial Law Making*, 64 W. Va. L. Rev. 115, 117–18 (1962); James, *Tort Law in Midstream: Its Challenge to the Judicial Process*, 8 Buffalo L. Rev. 315, 334 (1959). See also McKean, Pressure on the Legislature of New Jersey 52–95 (1958), for a list of 104 interest groups working in the state legislature, none of which would have a general interest, if indeed any interest, in reform of tort law.

94. See the following editorials by the Journal's Editor-in-Chief, Thomas Lambert: *Goals and Roadblocks in Torts*, 28 NACCA L.J. 27 (1962); *Views and Vistas in Torts*, 26–27 NACCA L.J. 27 (1961); *The Common Law: Steadfast and Changing*, 25 NACCA L.J. 25 (1960); *Touchstones of Tort Liability*, 24 NACCA L.J. 25 (1959); *Landmarks and New Directions*, 23 NACCA L.J. 25 (1959). See also two articles by Dean Pound opposing the establishment of an automobile accident commission and arguing in favor of judicial treatment of problems of accident loss distribution. Pound, *The Proposal of an Automobile Accident Commission*, 25 NACCA L.J. 415 (1960); Pound, *Judicial Trial or Administrative Investigation?*, 24 NACCA L.J. 289 (1959).

governments, and other public bodies, is interested in proposals to use their funds to finance a waiver of immunity. A proposal relating to punitive damages generally can be expected to produce an unusual alliance of the lobbies for organized labor, communication media, and insurance companies. Occasionally the organized interest groups or lobbies may support legislative proposals; but having accommodated themselves to the existing state of affairs, they probably will seek to preserve the status quo by resisting reform.

The record of adoptions of Model and Uniform acts confirms what has been said about the role of pressure groups and lobbies in the legislative process. For example, in 14 years the Uniform Photographic Copies as Evidence Act has been enacted in a total of 35 jurisdictions,[95] whereas in a considerably longer period the Uniform Joint Tortfeasors Act has been adopted in only eight jurisdictions.[96] Certainly this disparity cannot be explained solely in terms of draftsmanship or breadth of appeal. The explanation of the difference in reception seems to lie in the existence of organized lobbies for insurance companies, banks, and other businesses that actively sought enactment of the former act for business convenience, and the absence of any organized lobby supporting the latter act. Similar lack of interest has been demonstrated for other uniform laws touching on torts,[97] while other narrow and technical uniform acts have achieved a much higher level of adoptions.[98] Indeed, the fact that only four of the 114 uniform and model acts approved by the Commissioners on Uniform Laws are

95. 9A U.L.A. 158 (Supp. 1962).

96. 9 U.L.A. 97 (Supp. 1962). There were some objections to the adoption of § 5 of the act because it was thought to open the way to collusion by an injured plaintiff and one of several defendants. See the Commissioner's note to § 4 of the 1955 Uniform Contribution Among Tortfeasors Act, 9 U.L.A. 113 (Supp. 1962). But correction of this defect has not accelerated its adoption. See note 97 *infra*.

97. The Uniform Single Publication Act, approved in 1952, has had but eight adoptions, 9C U.L.A. 90 (Supp. 1962); the Uniform Contribution Among Tortfeasors Act, approved 1955, has had but two adoptions, 9 U.L.A. 107 (Supp. 1962); and the Model Nuclear Facilities Act, approved in 1961, has had no adoptions, 9B U.L.A. 5 (Supp. 1962).

98. The Uniform Trust Receipts Act, approved in 1933, has had 39 adoptions, 9C U.L.A. 113 (Supp. 1962); the Uniform Common Trust Fund Act, approved in 1938, has had 30 adoptions, 9 U.L.A. 95 (Supp. 1962); the Uniform Simultaneous Death Act, approved in 1940, has had 48 adoptions, 9C U.L.A. 87 (Supp. 1962); the Uniform Gifts to Minors Act, approved in 1956, has had 48 adoptions, 9B U.L.A. 39 (Supp. 1962); and the Uniform Act for Simplification of Fiduciary Security Transfers, approved in 1958, has had 36 adoptions, 9C U.L.A. 71 (Supp. 1962).

concerned with torts, is itself of some significance in evaluating the legislative and judicial avenues of reform. It also corroborates the fact that lobbies and pressure groups are effective in arrogating the attention of legislative service agencies to their particular fields of interest.[99] In short, torts more than many other areas of private law is neglected in the legislative process and therefore may more appropriately be considered an area for judicial reform.

VI. THE POSSIBLE CONFLICT WITH THE LEGISLATURE

In considering the propriety of revising or overruling some principle of tort law, should a court give any effect to the factors mentioned in this summary of legislative realities? Would doing so smack too much of the practical political considerations that should be confined to other areas of the governmental process? To put it another way, lest they overplay their creative role, should the judges of the highest court of a state feign ignorance of what any intelligent person can discover about the legislative process within their state? Or should they, summoning their courage, take note that while the Emperor does have clothes, some of which may be beautiful indeed, there are others which are tattered and full of holes?

One of the arguments that might be made against this realistic approach to problems of government is that it conflicts with our democratic faith. In a society dedicated to representative government there is legitimate concern about judicial methods of policy-making. After all, even if elected, judges are not chosen for their abilities to represent or respond to public pressures.

They are, however, men trained by their profession to exercise self restraint. They are certainly capable of distinguishing between the problems that would arise if they acted in conflict with legislative pronouncements and the problems of action in an area in which no such conflict exists. The judge who makes that distinction is as responsive to the electorate as the legislature which enacted the statute. Indeed, to argue that judicial creativity properly confined to areas where no conflict with representational determinations exists is contrary to our democratic traditions is to argue that one of those traditions is itself in conflict with the others. Quite clearly, the common law today is not what it was at

99. *Cf.* Kernochan, *A University Service to Legislation: Columbia's Legislative Drafting Research Fund*, 16 La. L. Rev. 623, 635 (1956), commenting on the fund's inability to accommodate all those requesting aid in drafting proposed legislation.

the founding of this nation, and the ability of judges to change and adapt it to different circumstances has been one of the greatest achievements of our judicial system.[100]

Where a court makes what appears to be a needed adjustment in an area in which the legislature has failed to act, that adjustment is not, of course, irreversible. If the judicial reform has provoked sufficient opposition, it is subject to legislative revision or repudiation.[101] The same is true when a court deals with an ambiguous statute, such as one waiving the sovereign immunity of a state without mentioning the derived immunity of municipalities.[102]

Of course, the forces that will produce a legislative response to judicial action will be similar to those that produce other legislation. A response is not likely if the judicial reform has not affected the interests of organized pressure groups and lobbies. In other words, it will not come because legislators spend their spare time reading advance sheets to check on how well the court is performing its work.[103] When the judicial reform is challenged the lobbies and pressure groups will, fortunately, bear a burden absent in the usual legislative situation — that of persuading legislators to overturn or modify the determination of a respected body of impartial men. Such a catalytic function of the judiciary, producing legislative consideration of society's needs on matters that no interested group would otherwise question, might well be categorized as an implementation of representative government. It certainly is not opposed to it.

The courts are not unaware of these pragmatic considerations. In *Wong Yang Sung v. McGrath*[104] the Supreme Court of the United States considered the question of whether deportation proceedings of the Immigration Service were subject to certain provisions of the Administrative Procedure Act; those provisions required separation of prosecuting functions from adjudicating functions. The Court held that the Service was subject to the provisions, saying:[105]

100. See notes 2 & 12 *supra*.

101. See Holytz v. City of Milwaukee, 17 Wis. 2d 26, 115 N.W. 2d 618 (1962), for a case in which a court specifically notes the possibility of corrective legislative action.

102. See Comment, *Abolition of Sovereign Immunity in Washington*, 36 WASH. L. REV. 312, 326-27 (1961).

103. *Cf.* Knecht v. Saint Mary's Hosp., 392 Pa. 75, 140 A.2d 30 (1958) (Musmanno, J., dissenting).

104. 339 U.S. 33 (1950).

105. *Id.* at 47.

> The agencies, unlike the aliens, have ready and persuasive access to th legislative ear and if error is made by including them, relief from Congress is a simple matter.

More directly related, in this respect, to the problem of reform of tort law is the recent decision of the Supreme Court of Wisconsin, *Holytz v. City of Milwaukee*.[106] In that case the court abrogated the doctrine of sovereign immunity as it applied to all public bodies within the state, noting that if the legislature deemed it better public policy, it was free to reinstate the immunity. Also noted by the court were the possibilities that the legislature might impose ceilings upon liability or establish administrative requirements preliminary to commencement of suit.

Of even more interest is the recent decision of the Minnesota Supreme Court in *Spanel v. Mounds View School Dist.*[107] In the *Spanel* case the court abolished sovereign immunity as a defense to the tort liability of school districts, municipal corporations, and other subdivisions of government. Utilizing the technique of prospective overruling, the court announced that it would apply the new rule after the next session of the Minnesota Legislature adjourned, subject to any statutes that might then regulate the prosecution of the claims. Not only did the Minnesota court give the legislature an opportunity to pass upon the question; it also suggested a number of procedural and substantive matters that should be dealt with in such a statute.

In response to *Spanel*, the Minnesota Legislature restored all sovereign immunity for the remainder of 1963. Thereafter the immunity of school and drainage districts is specifically retained another four years, while the immunity of municipalities is, with certain exceptions, removed. These exceptions may be waived if the municipality obtains liability insurance, but in no other case will the municipality be liable beyond the monetary limits imposed by the statute.[108]

The realistic and ingenious approach to the relationship between the judiciary and the legislature adopted in *Spanel* was, perhaps, suggested by recent experiences in other jurisdictions in which the courts have overruled immunity doctrines. In *Molitor v. Kaneland Community Unit Dist.*,[109] the Illinois Supreme Court abandoned the position that school districts enjoy an immunity from tort liability, implying that the whole doctrine of sovereign

106. 17 Wis. 2d 26, 115 N.W.2d 618 (1962).
107. 118 N.W.2d 795 (Minn. 1962), 48 MINN. L. REV. 193 (1963).
108. Minn. Sess. Laws 1963, ch. 793.
109. 18 Ill. 2d 11, 163 N.E.2d 89 (1959).

immunity had been abrogated. In the legislative session that followed this decision, four bills were enacted conferring immunity from tort liability on various governmental subdivisions[110] and one bill[111] was enacted restoring the immunity of school districts from liability in excess of 10,000 dollars on each separate cause of action.

A similar experience occurred in New Jersey following the decision in *Collopy v. Newark Eye and Ear Infirmary*.[112] In *Collopy* the New Jersey Supreme Court overruled the principle that a charitable corporation was immune from liability for the torts of its employees. The legislature responded by establishing a general charitable immunity from liability for what would otherwise be torts to beneficiaries, but permitting recovery, in tort actions involving not more than 10,000 dollars, from a nonprofit corporation organized exclusively for hospital purposes.[113]

More recently, the California Supreme Court discarded the rule of governmental immunity from tort liability.[114] The legislative response was the adoption of a statute[115] re-enacting the doctrine of sovereign immunity as it had previously existed, such im-

110. ILL. REV. STAT. ch. 105, §§ 12.1–1, 491 (1961) (park districts); ILL. REV. STAT. ch. 34, § 301.1 (1961) (counties); ILL. REV. STAT. ch. 57½ § 5a (1961) (forest preserve districts); ILL. REV. STAT. ch. 105, § 339.2a (1961) (Chicago Park District).

111. ILL. REV. STAT. ch. 122, §§ 821–31 (1961).

112. 27 N.J. 29, 141 A.2d 276 (1958).

113. N.J. STAT. ANN. §§ 2A:53A–7 to –11 (Supp. 1962).

114. Muskopf v. Corning Hosp. Dist., 55 Cal. 2d 211, 359 P.2d 457, 11 Cal. Rep. 89 (1961).

115. CAL. CIV. CODE § 22.3. For a discussion of the problems raised by this sequence of events, see Van Alstyne, *Governmental Tort Liability: A Public Policy Prospectus*, 10 U.C.L.A.L. REV. 463 (1963).

Editors Note: The California legislature recently enacted a statute that, with certain exceptions, abolishes sovereign immunity. Cal. Sess. Laws 1963, ch. 1631. Under the new statute, a public entity is liable for the injurious acts or omissions of its employees "if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative." Cal. Sess. Laws 1963, ch. 1681, § 815.2(a). A public employee is liable for his injurious acts or omissions to the same extent that he would be liable as a private person. Cal. Sess. Laws 1963, ch. 1681, § 820(a). This liability is qualified, however, by several provisions, the broadest of which exempts a public employee, and hence his employer, from liability for an injury that "was the result of the exercise of the discretion vested in him, whether or not such discretion be abused." Cal. Sess. Laws 1963, ch. 1681, § 820.2. This provision seems to encompass the subsequent, more specific exemptions. Cal. Sess. Laws 1963, ch. 1681, §§ 820.2–821.8. Two final sections grant immunity from liability for funds stolen from

munity to expire on the ninety-first day after the regular legislative session of 1963. Provision was also made for maintenance of suits on claims that otherwise would have arisen in the interim. In short, the legislature gave itself two years to study the problem and make provisions for tort suits against the state and its subordinate constituents.[116]

The experiences in Illinois, New Jersey, and California might be interpreted as rebuffs to reform-minded courts. The rules announced by the courts were not allowed to stand, and the immunities they had overruled were partially reinstated. Yet the Illinois Supreme Court certainly did not consider the legislative action as a rebuff; instead it adhered to its position in an opinion filed on rehearing after the legislature had acted, and it was on sound ground in doing so. The statement of policy of the new Illinois act,[117] relating to the tort liability of school districts and nonprofit private schools, refers to "excessive" diversion of school funds but recognizes that there "should be a reasonable distribution among the members of the public at large of the burden of individual loss from injuries incurred as a result of negligence in

a non-negligent public employee and for negligent or even intentional misrepresentations, if the employee was not guilty "of actual fraud, corruption or actual malice." Cal. Sess. Laws 1963, ch. 1681, §§ 822, 822.2.

116. The Michigan Supreme Court has experienced a period of rather spasmodic interpretation of local sovereign immunity provisions. In Williams v. City of Detroit, 364 Mich. 231, 111 N.W.2d 1 (1961), an equally divided court affirmed, on the basis of sovereign immunity, the lower court's dismissal of a tort claim against the defendant municipality. A majority agreed, however, that the doctrine as applied to municipalities should be prospectively overruled. Four justices, headed by Mr. Justice Edwards, felt that the prospective overruling should have applied to the instant case. *Id.* at 267–68, 111 N.W.2d at 28–29. Mr. Justice Black wrote a separate opinion in which he agreed that the lower court's judgment should be affirmed, but concluded that municipal corporations should not have the protection of sovereign immunity in the future. *Id.* at 287, 111 N.W.2d at 18. Three justices, headed by Mr. Justice Carr, refused to acquiesce in the overruling of the doctrine of sovereign immunity. *Id.* at 249, 111 N.W.2d at 9.

Any hopes that the court would abrogate sovereign immunity for all purposes were quashed by the decisions in McDowell v. State Highway Comm'r, 365 Mich. 268, 112 N.W.2d 491 (1961), in which the court retained the immunity of the State and its departments, and Sayers v. School Dist., 366 Mich. 217, 114 N.W.2d 191 (1962), and Stevens v. City of St. Clair Shores, 366 Mich. 341, 115 N.W.2d 69 (1962), two cases in which the court refused to remove the immunity of school districts. These last three decisions indicate a retreat from the court's position in *Williams*, where the court apparently took positive action in an area of legislative inactivity.

117. ILL. REV. STAT. ch. 122, § 8.1 (1961).

the conduct of school district affairs . . . ." During the same legislative session another bill[113] was adopted increasing the tort jurisdiction of the Illinois Court of Claims from 7,500 to 25,000 dollars. Similarly, the immunity reinstated in New Jersey was not as complete as that previously recognized. The final result in California remains to be seen. But in each of the three states the judiciary clearly succeeded in serving as a catalyst, activating the legislature with respect to problems that otherwise would have been ignored. And in none of them has the court taken a position defiant of an expressed legislative determination.

It has been argued, however, that legislative inaction constitutes a tacit approval of the status quo. According to this view, judicial creativity in an area in which the legislature has not acted would amount to defiance of the legislature. The argument is well represented in a statement of the Oregon Supreme Court on the doctrine of charitable immunity:[119]

> Over the years the legislature has taken no action to overturn the doctrine. By its silence, we may well infer its approval. But, however that may be, there was no occasion for it to act specifically if it was satisfied with the rule. The doctrine had become the firmly established law of this state; a part of the general public policy of the state relating to charitable institutions, and as established by the legislature.
>
> The legislature had the right to assume that the rule would not be changed unless it itself acted.

Obviously this statement is a fine example of what Llewellyn called the "formal style,"[120] but the most striking thing about it is the way in which it ignores the legislative realities. As the Oregon court sees it, the legislature is really an assembly of philosopher kings, gathered to consider the problems of the republic and to settle matters dispassionately, for the good of society. It does, in

118. ILL. REV. STAT. ch. 37, § 439.8(D) (1961).

119. Landgraver v. Emanuel Lutheran Charity Bd., 203 Ore. 469, 493–94, 280 P.2d 301, 303 (1955); *cf.* Memorial Hosp., Inc. v. Oakes, 200 Va. 678, 889, 108 S.E.2d 388, 396 (1959).

Editors Note: Subsequent to the completion of this Article, the Oregon Supreme Court, in Hungerford v. Portland Sanitarium & Benevolent Ass'n, 354 P.2d 1009 (Ore. 1963), rejected its previous approval of the charitable immunity doctrine, reasoning that "it is neither realistic nor consistent with the common-law tradition to wait upon the legislature to correct an outmoded rule of case law. . . . The fact that a rule has been followed for fifty years is not a convincing reason why it must be followed for another fifty years if the reasons for the rule have ceased to exist." *Id.* at 1011.

120. LLEWELLYN, THE COMMON LAW TRADITION—DECIDING APPEALS 38–40 (1960).

fact, comb through old decisions of the court to see which, if any, are getting out of adjustment with current values. Legislators will do this even though much of their time and attention in the short and hectic legislative sessions is taken by representatives of pressure groups and lobbies. Moreover, though most of them have had no legal training, they are able to understand, evaluate, and select for revision or repeal those judicially developed principles that are no longer productive of justice. And they can do this even though the rules and their various exceptions are stated, frequently without indicia of doubt, in the complicated, technical jargon of a learned profession.

In reality, there is no basis for this inference of legislative approval of the existing tort rules, and not all courts draw such an inference.[121] For example, the Michigan court refused to find in legislative inactivity following decisions under a wrongful death statute an approval of the judicial interpretations.[122] In the view of the Michigan court, "a legislature legislates by legislating, not by doing nothing, not by keeping silent."[123] Or, as Professor Hart has pointed out, the Constitution of the United States and each of the state constitutions prescribe the ways in which bills shall become law, and failing to enact a bill is not one of them.[124] Indeed, it is just as reasonable for the legislature to assume that if a judicially developed rule is unjust the courts will overrule it. And as Justice Black of the Supreme Court of Michigan demonstrated, this equally permissible inference has in fact been used by lobbyists in opposing changes in the law of torts.[125]

Where reform bills have been defeated in a legislature, there may be more reason to infer legislative approval of the status quo. Some courts have drawn this inference[126] but others have refused

121. *E.g.*, Hernandez v. County of Yuma, 91 Ariz. 35, 369 P.2d 271 (1962).

122. Wycko v. Gnodtke, 361 Mich. 331, 105 N.W.2d 118 (1960); *cf.* Girouard v. United States, 328 U.S. 61, 69–70 (1946); Park v. Employment Security Comm'n, 355 Mich. 103, 94 N.W.2d 407 (1959).

123. Wycko v. Gnodtke, 361 Mich. 331, 338, 105 N.W.2d 118, 121–22 (1960).

124. Hart, *Comment on Courts and Law Making*, in LEGAL INSTITUTIONS TODAY AND TOMORROW 40, 48 (1959).

125. Williams v. City of Detroit, 364 Mich. 231, 273, 111 N.W.2d 1, 11 (1961) (opinion of Black, J.).

126. See Martino v. Grace-New Haven Community Hosp., 146 Conn. 735, 148 A.2d 259 (1959); Schulte v. Missionaries of La Salette Corp., 362 S.W.2d 636 (Mo. 1961).

to do so.[127] Once again the legislative realities indicate that the inference may be incorrect either as to the existence of a formulated legislative judgment or as to the reasons why the legislation failed to pass. Professor Hart's observation is again in point even if the inference might correctly be drawn as a matter of fact. Likewise, one might infer from limited reforms in a particular area of tort law that the legislature had determined that no further changes should be made in the doctrine involved. Yet at least three courts have refused to draw such an inference within recent years.[128]

Of course, in some areas, legislatures may have substituted comprehensive statutory schemes for common-law tort principles. For example, the field of labor law was formerly governed by judicially developed tort principles.[129] Presently, federal statutes so dominate the area that continued judicial creativity would be inappropriate. The inappropriateness is currently stated in the doctrine of federal pre-emption,[130] although that doctrine does not apply to all torts which occur in a labor context.[131] Even without the constitutional basis for the pre-emption doctrine, courts should refuse to play a creative role. In labor matters there is no lack of pressure groups or lobbies to initiate action; nor is there indifference on the legislative scene. Legislative policy-making is preferable in such a context, and judicial policy-making by state courts is inappropriate.

Excepting these areas where legislation has established a comprehensive scheme, and the specific situations in which the legislature has in fact spoken, recognition of the judiciary's reform function with respect to the law of torts involves no actual conflict with the legislature. Arguments to the contrary are based on an artificial view of the legislative process or a rigid and doctrinaire view of the common law. Indeed, as has been pointed out,

127. Collopy v. Newark Eye & Ear Infirmary, 27 N.J. 29, 141 A.2d 276 (1958); Battalla v. State, 10 N.Y.2d 237, 176 N.E.2d 729, 219 N.Y.S.2d 34 (1961); Holytz v. City of Milwaukee, 17 Wis. 2d 26, 115 N.W.2d 618 (1962); *cf.* Wong Yang Sung v. McGrath, 339 U.S. 33, 47–48 (1950).

128. Muskopf v. Corning Hosp. Dist., 55 Cal. 2d 211, 359 P.2d 457, 11 Cal. Rep. 89 (1961); Molitor v. Kaneland Community Unit Dist., 18 Ill. 2d 11, 163 N.E.2d 89 (1959); Spanel v. Mounds View School Dist., 118 N.W.2d 795 (Minn. 1962).

129. See 4 RESTATEMENT, TORTS §§ 775–816 (1939).

130. Garner v. Teamsters Union, 346 U.S. 485 (1953).

131. UAW v. Russell, 356 U.S. 634 (1958); International Ass'n of Machinists v. Gonzales, 356 U.S. 617 (1958); United Constr. Workers v. Laburnum Constr. Corp., 347 U.S. 656 (1954).

judicial activity may well complement the representational system of government, apprising the legislature of matters that would otherwise be ignored in the turmoil of the legislative process.

VII. OTHER RESTRAINTS ON ACTIVE AND OPEN JUDICIAL REFORM

The absence of conflict with either the legislature or the concept of representative government does not of itself require an active and openly creative reform role for the judiciary. The potential gains must be weighed against the benefits to be lost and the new burdens imposed.

Probably the greatest danger of an active and openly creative reform role for the judiciary is that it might produce or even facilitate a legislative counterattack by the lobbies and pressure groups that favor the status quo. There is little reason to believe that they will not combat both judicial and legislative change with equal vigor. The same factors that lead to legislative inactivity will result in the absence of countervailing pressure groups protecting the judicial reform.

If revision is made demonstrably as a function of policy-making, it probably will be easier for lobbies and pressure groups to convince legislators that they are as competent as judges to make such decisions. And a rigid statutory solution established by the lobbyists may easily prove to be more of an inhibition to future adjustments than adherence to traditional methods of dealing with precedent. By Professor Llewellyn's count, there are 64 traditional and impeccable techniques for dealing with precedent.[132] Even if one were inclined to doubt the separate identity of some of the listed techniques, one cannot but be impressed by his account of the freedom and mobility which courts have developed within traditional limits and accordingly hold fears that this mobility might be lost under a statutory scheme.

Mr. Justice Cardozo recognized the potential of these techniques for accomplishing reform and the inhibiting influence that legislation might exert:

> Time was when the remedial agencies, though inadequate, were at least in our own hands. Fiction and equity were tools which we could apply and fashion for ourselves. The artifice was clumsy, but the clumsiness was in some measure atoned for by the skill of the artificer. Legislation, supplanting fiction and equity, has multiplied a thousand fold the power and capacity of the tool, but it has taken the use out of our own hands and put it in the hands of others.[133]

132. LLEWELLYN, *op. cit. supra* note 129, at 77–91.
133. Cardozo, *A Ministry of Justice*, 35 HARV. L. REV. 113 (1921).

His opinion in *MacPherson v. Buick Motor Co.*[134] is some measure of his ability to accomplish a major reform while insisting throughout an avowedly uncreative opinion that the result was dictated by a principle drawn from earlier cases, a good number of which were in a very practical way overruled. If Justice Cardozo had expressly stated a judicial responsibility for active and creative reform and then announced as the latest policy judgment the rule of manufacturers' liability for negligently made products, manufacturers' associations might have successfully sponsored an undesirable legislative response.

The danger of statutory intrusions depriving courts of the flexibility they possess in its absence can be overstated. As Gray pointed out several times in his classic work,[135] quoting Bishop Hoadly, judges make the final determination of the meaning of a statute. They may exercise this power more than once, by changing an earlier court's interpretation of the statutory language.[136] For present purposes, a perverse exercise of this power may be found in the treatment that a number of state courts have given constitutional and statutory provisions authorizing suits against the state.[137] A much more severe test of a court's ability to interpret a statute without invoking legislative retaliation — perhaps the most severe test — can be found in those cases in which courts issued an injunction in a labor dispute on the basis of the preamble of a statute designed to prevent the issuance of such injunctions.[138] The presence of opposing pressure groups, however, may have made the venture less risky than an equally cavalier treatment of legislation that had strong supporters and no opponents.

Certainly, the judicial tendency to construe statutes strictly rather than analogize from their provisions has been demonstrated more than adequately.[139] On the other hand, a court may

134. 217 N.Y. 382, 111 N.E. 1050 (1916).

135. GRAY, THE NATURE AND SOURCES OF THE LAW 102, 125, 171–72 (2d ed. 1921).

136. *E.g.*, Park v. Employment Security Comm., 355 Mich. 103, 94 N.W.2d 407 (1959); Windust v. Department of Labor & Indus., 52 Wash. 2d 33, 323 P.2d 241 (1958).

137. See Leflar & Kantrowitz, *Tort Liability of the States*, 29 N.Y.U.L. REV. 1063, 1065 (1954).

138. Roth v. Local 1460, Retail Clerks Union, 216 Ind. 363, 24 N.E.2d 280 (1939), *rev'd on other grounds*, 218 Ind. 275, 31 N.E.2d 986 (1941); Gazzam v. Building Serv. Employees, 20 Wash. 2d 488, 188 P.2d 97 (1947); *cf.* Lauf v. Shinner & Co., 303 U.S. 323 (1938).

139. See Landis, *Statutes and the Sources of Law*, in HARVARD LEGAL ESSAYS 213 (1934).

lize a statute as the base for a creative venture; for example the nited States Supreme Court recently announced that the Fed- al Employers Liability Act created only a framework within hich the courts were left to evolve, much in the manner of the mmon law, a system of principles to compensate injured em- oyees consistent with the changing realities of the railroad dustry.[140] In short, courts can remain creative even while work- g within a statutory scheme.

Assuming that courts can and do withstand the counterattack n their reforms, they face problems within their own walls. Having acknowledged their creative role, they should expect a re- ponse from those with an interest in producing change. The or- anized interests that function as legislative lobbies might well ndertake experimental litigation to produce changes consistent ith their objectives. If the appellate court might play its crea- ive role in any case coming before it, interest groups may well onclude that they cannot ignore pending cases involving princi- les of law important to them. At the present time such groups o participate as amici in significant cases, but only where the ignificance of the case appears from the lack of controlling prece- ent or the convergence of conflicting precedents in the context of he pending case. Unless the courts develop some signaling device, uch as setting the case for re-argument and inviting amicus riefs, they can expect an increase in the applications to partici- ate as amicus. Even with the use of such a device, as case re- orts indicate,[141] courts will receive what they might consider the ixed blessing of numerous briefs and oral arguments. While the atter rests within their control, it is unlikely that courts would ant to refuse such assistance in the new role they have openly ssumed.

If the courts undertake a creative role, they can expect pres- sure for changes in the rules of evidence. Much of the evidence that is inadmissible as irrelevant under existing rules might be relevant to the consideration of a change in the rules. The size of records might increase significantly, as those using the litigation process experimentally attempt to build the proper record, with data drawn from other disciplines and professions, for the policy

140. Kernan v. American Dredging Co., 355 U.S. 426, 437 ('958).

141. For example, in Williams v. City of Detroit, 364 Mich. 231, 111 N.W.2d 1 (1961) the court received seven amicus curiae briefs, and in Spanel v. Mounds View School Dist., 118 N.W. 2d 795 (Minn. 1962) ten amici curiae participated.

decision they will urge upon the court.[142] To a certain extent, the problem can be avoided by liberal use of the technique of judicial notice. Not all relevant information and analysis, however, appear in available printed form. Again, the problem is within the control of the court, but the pressure to receive all volunteered information relevant to the policy decision will be difficult for a non-investigatory body to withstand.

Another facet of the total problem presented by a creative judicial role is that of dealing with ex parte communications. If the function of the judiciary is to ensure the correct application of the appropriate rules of law to the facts of a case, improper communications concerning these facts may be quite easily prohibited. If the courts affirmatively assume a policy-making role, however, what is the status of non-record communications made by a nonparty and not directed to the facts of a particular case but of great importance in establishing a policy that the communicator supports? Lord Mansfield has been commended for consulting with experts in the practices of merchants, but it is far from certain that present-day judges would not be censured for private discussions with economists, psychiatrists, or sociologists. The problem has been a major one for administrative agencies which possess both adjudicatory and rule-making powers.[143]

VIII. LEGISLATIVE AND JUDICIAL STRENGTHS AND WEAKNESSES

Having surveyed some of the pros and cons of an actively creative role for the judiciary in the reform of tort law, a summary of the relative strengths and weaknesses of legislatures and courts as reform agencies is appropriate.

As the above discussion shows, there is a remarkable dearth of legislative incentive to consider or initiate reforms of tort law. A conscientious judge, on the other hand, might easily consider it one of his professional obligations. While legislatures have the power, and sometimes even the means, to investigate the relevant factors underlying a policy decision, their utilization of the existing facilities is extremely unlikely. No empirical data is available for some problems and for others the available data can be obtained without the use of legislative investigatory powers. On the other hand, courts have no investigatory powers to facilitate

142. *Cf.* Cheney Bros. v. Doris Silk Corp., 35 F.2d 279, 281 (2d Cir. 1929); FREUND, ON UNDERSTANDING THE SUPREME COURT 86–92 (1949).

143. See Peck, *Regulation and Control of Ex Parte Communications with Administrative Agencies*, 76 HARV. L. REV. 233 (1962).

the accumulation of data relating to policy decisions, except as they might provide power to litigants by relaxing the evidentiary rules of relevance. Moreover, court records unfortunately stop short at the rendition of a judgment and are barren of information on how the determination made subsequently affected the parties and society. The necessity of making occasional policy decisions without adequate supporting data often produces a judicial tendency to ignore pertinent empirical data. But frequent encounters with a general problem, presented in various contexts that an endless variety of fact patterns provides, give courts a type of experimental program in which they can formulate and test a governing rule.[144] Moreover, their experience with jury refusals to apply the rules propounded by trial judges gives them some basis for determining whether the rules are compatible with the current values of society. Thus, courts have recently commented on the unacceptability of the rule by which contributory negligence bars recovery[145] and the rule limiting a parent's recovery for the wrongful death of a child to pecuniary losses.[146]

If the comparison is made on the basis of what has in fact been done to accumulate data, as opposed to what could be done, courts compare quite favorably with legislatures. As Professor Leon Green has said,[147] courts know more of the history of the law, and thus probably more of what departure from an established rule involves, than a legislature knows or can learn.

Courts certainly equal legislatures in the ability to appraise the rationale of an existing rule. Particularly is this so in those areas where the need for reform has produced a host of irrational and unworkable distinctions, impressive and even awe-inspiring to laymen as an elaborate and complicated structure built by a learned profession, but without merit or justification to those who understand the problem. Not surprisingly, it is in these areas that

144. For an excellent example of an experimental enlargement and subsequent contraction of liability for negligent infliction of emotional harm, see the line of cases set out in GREGORY & KALVEN, CASES AND MATERIALS ON TORTS 860–88 (1959). The principal cases in order are: Victorian Ry. Comm'ns v. Coultas, [1888] 13 App. Cas. 222 (P.C.); Dulieu v. White & Sons [1901] 2 K.B. 669; Hambrook v. Stokes Bros., [1925] 1 K.B. 141 (C.A.); Owens v. Liverpool Corp., [1939] 1 K.B. 394 (C.A.); Bourhill v. Young, [1943] A.C. 92; King v. Phillips [1953] 1 Q.B. 429 (C.A.).

145. Karcesky v. Laria, 382 Pa. 227, 234, 114 A.2d 150, 154 (1955).

146. Fussner v. Andert, 261 Minn. 347, 113 N.W.2d 355 (1961), 47 MINN. L. REV. 323 (1962).

147. Green, *The Thrust of Tort Law: Part II Judicial Law Making*, 64 W. VA. L. REV. 117, 121 (1962).

courts have recently been most active in making reforms.[148] In making such appraisals they have the benefit of the extensive literature of the profession and, unlike legislators, a physical and social environment conducive to scholarly pursuits. Indeed, the extent to which judges have relied on law review commentary and scholarly treatises when undertaking a reform[149] is probably one of the greatest reassurances that can be given to those who wonder whether their literary products have a value equal to the pain of their labors.

Changes in substantive rules may affect the important relationship between the trial judge and jury.[150] In this area, courts are clearly superior to legislatures in the ability to determine the likelihood of such an effect and its desirability.

The proponents of legislation frequently are interested in maximizing only one value and may neglect others which assume

148. See, *e.g.*, Muskopf v. Corning Hosp. Dist., 55 Cal. 2d 211, 849 P.2d 457, 11 Cal. Rep. 89 (1961); Hargrove v. Town of Cocoa Beach, 96 So. 2d 130 (Fla. 1957) (municipal immunity from tort liability); Spanel v. Mounds View School Dist., 118 N.W.2d 795 (Minn. 1962); Collopy v. Newark Eye & Ear Infirmary, 27 N.J. 29, 141 A.2d 276 (1958); Battalla v. State, 10 N.Y.2d 237, 176 N.E.2d 729, 219 N.Y.S.2d 34 (1961) (liability for injury from negligently induced fright); Bing v. Thunig, 2 N.Y.2d 656, 143 N.E.2d 3, 163 N.Y.S.2d 3 (1957) (immunity of charitable hospitals); Holytz v. City of Milwaukee, 17 Wis. 2d 26, 115 N.W.2d 618 (1962); *cf.* President & Directors of Georgetown College v. Hughes, 130 F.2d 810, 822 (D.C. Cir. 1942). See also Schulte v. Missionaries of La Salette Corp., 352 S.W.2d 636, 641–42 (Mo. 1961) (noting that the jurisdictions in which charitable immunity has recently been rejected were jurisdictions in which that immunity was not complete).

149. See, *e.g.*, Self v. Self, 376 P.2d 65, 26 Cal. Rep. 97 (1962); Muskopf v. Corning Hosp. Dist., 55 Cal. 2d 211, 359 P.2d 457 (1961); Hargrove v. Town of Cocoa Beach, 96 So. 2d 130 (Fla. 1957); Molitor v. Kaneland Community Unit Dist., 18 Ill. 2d 11, 163 N.E.2d 89 (1959); Eick v. Perk Dog Food Co., 347 Ill. App. 293, 106 N.E.2d 742 (1952); Carr v. Watkins, 227 Md. 578, 177 A.2d 841 (1962); Williams v. City of Detroit, 364 Mich. 231, 111 N.W.2d 1 (1961) (opinion of Black, J.); McAndrew v. Mularchuk, 33 N.J. 172, 162 A.2d 820 (1960); Collopy v. Newark Eye & Ear Infirmary, 27 N.J. 29, 141 A.2d 276 (1958); Battalla v. State, 10 N.Y.2d 237, 176 N.E.2d 729, 219 N.Y.S.2d 34 (1961); Siragusa v. Swedish Hosp., 373 P.2d 767 (Wash. 1962); Holytz v. City of Milwaukee, 17 Wis. 2d 26, 115 N.W.2d 618 (1962). Judges have commented directly on the importance of an informed professional criticism. Cardozo, The Growth of the Law 12 (1924); Schaefer, Precedent and Policy 12 (1956). As might be expected, the critical views of the scholars are given greatest weight when the scholarly opinion is unanimous or nearly unanimous while precedents point in all directions. *Cf.* President & Directors of Georgetown College v. Hughes, 130 F.2d 810, 812 (D.C. Cir. 1942).

150. Keeton, *Creative Continuity in the Law of Torts*, 75 Harv. L. Rev. 463, 500–03 (1962).

equal importance in varying factual contexts. The protection given insurers from fraudulent claims by host-guest statutes is an apt example. Indeed, if a statute incorporates a number of values and principles, it is likely to amount to no more than a general delegation of power which does not effectively control judicial decisions. Because of this, the legislative treatment of torts carries no guarantee of a reasoned arrangement approach to the problems of compensation and loss. Courts, on the other hand, are constantly presented with cases based on comparison and analogy, and for that reason, may produce a more balanced jurisprudential approach.

On the other hand, the flexibility of the legislative technique can be put to good use. Statutory limits on the amount of recovery can be used to balance the value of compensating an injured party against the value of preventing excessive diversion of funds or crushing liabilities.[151] The legislative technique may provide the administrative machinery to carry out an established program. Thus, a compulsory automobile liability or loss insurance program can be established legislatively with the necessary administrative support in the licensing of vehicles and drivers, as well as the police supervision of their operation. Judicial expansion of the insurance principle must rely, however, on the self-executing effect of newly adopted rules which induce persons to purchase insurance to avoid liabilities.

The legislative approach to reform has the advantage of a possible statement of all the ramifications and consequences of the change made, whereas the traditional judicial approach may leave the full extent and significance of the change in doubt until another case presents the opportunity to consider another variation of the problem. But this limitation on judicial reform can be overstated. Thus, the day that the Supreme Court of California decided *Muskopf v. Corning Hosp. Dist.*,[152] abrogating the rule of governmental immunity in that state, it also decided *Lipman v. Brisbane Elementary School Dist.*,[153] establishing a rule of nonliability for certain discretionary acts of governmental officials. This court also announced on the same day, two new rules creating inter-spousal liability for both negligent[154] and intentional torts.[155]

151. See text accompanying note 117 *supra*.
152. 55 Cal. 2d 211, 359 P.2d 457, 11 Cal. Rep. 89 (1961).
153. 55 Cal. 2d 224, 359 P.2d 465, 11 Cal. Rep. 97 (1961).
154. Klein v. Klein, 376 P.2d 70, 26 Cal. Rep. 102 (1962).
155. Self v. Self, 376 P.2d 65, 26 Cal. Rep. 97 (1962).

The Supreme Courts of Florida[156] and Wisconsin[157] did not enjoy the presence of such parallel cases when they decided cases abolishing the immunity of municipal corporations, but both found it possible to discuss the limitation of their new rules with respect to legislative and judicial acts of officials. The Wisconsin court distinguished between "governmental immunity from torts and the sovereign immunity of the state from suit"[158] and concluded that its decision had no effect on "the state's sovereign right under the Constitution to be sued only upon its consent."[159]

Another advantage of the legislative technique of reform is that it can be given only future effect, thus avoiding what is generally considered undesirable: retroactive change in the law. Judicial reform is traditionally considered retroactive in effect, subjecting conduct to a rule of law that was not in existence when that conduct occurred. Of course, as has been frequently recognized,[160] the area of torts is largely an area of accidental loss where the objection of retroactivity is entitled to less consideration than in other contexts.

Perhaps the most serious objection is raised by those who claim they did not obtain liability insurance because of their reliance on a former rule that provided immunity from liability. Insurers could claim that the rates they charge for liability insurance are based on the prior rules governing liability and that

156. Hargrove v. Town of Cocoa Beach, 96 So. 2d 130 (Fla. 1957).

157. Holytz v. City of Milwaukee, 17 Wis. 2d 26, 115 N.W.2d 618 (1962).

158. *Ibid.*

159. *Id.* at 38, 115 N.W.2d at 626. If this language refers to the United States Constitution, it is much too broad; the eleventh amendment precludes actions unconsented to against states in a federal court, but it does not grant immunity from similar actions in state courts. U.S. CONST. amend. XI; see Georgia R.R. & Banking Co. v. Redwine, 342 U.S. 299 (1952); Ford Motor Co. v. Department of Treasury, 323 U.S. 459 (1945); Dunnuck v. Kansas State Highway Comm'n, 21 F. Supp. 882 (D.C. Kan. 1937); Prudential Ins. Co. v. Murphy, 207 S.C. 324, 35 S.E.2d 586 (1945), *aff'd*, 328 U.S. 408 (1946). In the context of its earlier discussion of the applicable provisions of the Wisconsin Constitution, however, a more reasonable interpretation of the court's statement would limit it to the state constitution. See Holytz v. City of Milwaukee, 17 Wis. 2d 26, 30, 115 N.W.2d 618, 625–26 (1962).

The Minnesota Supreme Court, in Spanel v. Mounds View School Dist., 118 N.W.2d 795, 802 (Minn. 1962), also left its abolition of sovereign immunity open to statutory modification. The *Spanel* court alluded to the state's constitutional right of sovereign immunity, without distinguishing between suits in state and federal courts. This is clearly an improper construction of the eleventh amendment and is contrary to the great weight of authority. See 48 MINN. L. REV. 198, 203 (1963).

160. See note 14 *supra*.

change will inflict losses on them by requiring payments over and above those for which provision was made. What studies have been made, however, indicate that details of the substantive law governing liability play but a small and frequently undetectable part in the total costs of providing liability insurance.[161]

While legislatures can give statutes only a prospective effect, they do not always do so, and when they do, the statutory language is not always clear and explicit.[162] In this respect the legislative product should be judged by what it is and not by what it might have been. On the other hand, in recent years a number of courts have put the device of prospective overruling to effective use in making reforms in the tort area.[163] The technique of applying the new rule in the case in which it is announced, as a reward for ingenuity of counsel, while giving it only prospective operation as to other cases is certainly questionable.[164] The adequacy

161. Morris, *Enterprise Liability and the Actuarial Process — The Insignificance of Foresight*, 70 YALE L.J. 554 (1961); Peck, *Comparative Negligence and Automobile Liability Insurance*, 58 MICH. L. REV. 689 (1960).

162. *E.g.*, *compare* Denning v. Quist, 160 Wash. 681, 296 Pac. 145 (1931), *and* Robinson v. McHugh, 153 Wash. 157, 291 Pac. 330 (1930) (both giving retroactive effect to a legislatively enacted immunity), *with* Hammack v. Monroe St. Lumber Co., 54 Wash. 2d 224, 339 P.2d 684 (1959), 35 WASH. L. REV. 237 (1960) (holding that a statute removing the same immunity was not retroactive in effect). See also Nogosek v. Truedner, 54 Wash. 2d 906, 344 P.2d 1028 (1959) for an example of legislative failure to state whether a change in a host-guest statute had only prospective effect.

163. City of Fairbanks v. Schaible, 375 P.2d 201 (Alaska 1962); Molitor v. Kaneland Community Unit Dist., 18 Ill. 2d 11, 163 N.E.2d 89 (1959); Williams v. City of Detroit, 364 Mich. 231, 111 N.W.2d 1 (1961); Parker v. Port Huron Hosp., 361 Mich. 1, 105 N.W.2d 1 (1960); Spanel v. Mounds View School Dist., 118 N.W.2d 795 (Minn. 1962); Witte v. Fullerton, 376 P.2d 244 (Okla. 1962); Holytz v. City of Milwaukee, 17 Wis. 2d 26, 115 N.W.2d 618 (1962); Kojis v. Doctors Hosp., 12 Wis. 2d 307, 107 N.W.2d 131, 292 (1961); *cf.* Moore v. Ready Mixed Concrete Co., 329 S.W.2d 14 (Mo. 1959) (prospective change of a procedural rule). The leading case on prospective overruling is Great Northern Ry. v. Sunburst Oil & Ref. Co., 287 U.S. 358 (1932) (Cardozo, J.), which involved administrative regulation of the rates of a common carrier rather than a problem of tort law. Pure prospective overruling differs from a more familiar judicial technique, the warning dictum, only in the firmness of the commitment expressed to apply a new rule in future cases. *E.g.*, *compare* Puhl v. Milwaukee Auto Ins. Co., 8 Wis. 2d 343, 99 N.W.2d 163 (1959), *with* Holytz v. City of Milwaukee, *supra*, *and* Kojis v. Doctors Hosp., *supra*. The leading article on prospective overruling is Levy, *Realist Jurisprudence and Prospective Overruling*, 109 U. PA. L. REV. 1 (1960). See also Note, *Prospective Overruling and Retroactive Application in the Federal Courts*, 71 YALE L.J. 907 (1962).

164. City of Fairbanks v. Schaible, 375 P.2d 201 (Alaska 1962); Molitor v. Kaneland Community Unit Dist., 18 Ill. 2d 11, 163 N.E.2d 89 (1959);

of notice of a new rule that becomes effective as of the date the opinion is filed is similarly doubtful.[165] But some courts have provided a substantial notice period by stating a future date as of which the newly announced rule will become effective.[166] Despite questions or refinement of technique in the use of the device, judicial use of prospective overruling can eliminate any supposed superiority of the legislature as an instrument of reform insofar as avoidance of retroactivity is concerned.

IX. SPECIFIC APPLICATIONS

At this point it is appropriate to attempt an appraisal of the comparative abilities of courts and legislatures to deal with some specific problems in the field of torts. Foremost among these problems is that of how society should deal with the tremendous losses occasioned by automobile accidents. The indications are that greater reliance on loss distribution through insurance is in order and that fault as a basis for recovery must be abandoned.[167] Here, as with many other tort problems, the victims of automobile accidents are poorly organized and not likely to operate effectively as lobbyists, while the opponents of revision are. The breadth of the problem and its impact in all strata of society give some hope for legislative attention, but the possibilities of compre-

Browning v. Paddock, 364 Mich. 293, 111 N.W.2d 45 (1961); Parker v. Port Huron Hosp., 361 Mich. 1, 105 N.W.2d 1 (1960); Holytz v. City of Milwaukee, 17 Wis. 2d 26, 115 N.W.2d 618 (1962); Kojis v. Doctors Hosp., 12 Wis. 2d 367, 107 N.W.2d 131, 292 (1961).

165. City of Fairbanks v. Schaible, 375 P.2d 201 (Alaska 1962); Molitor v. Kaneland Community Unit Dist., 18 Ill. 2d 11, 163 N.E.2d 89 (1959); Parker v. Port Huron Hosp., 361 Mich. 1, 105 N.W.2d 1 (1960); Kojis v. Doctors Hosp., 12 Wis. 2d 367, 107 N.W.2d 131, 292 (1961).

166. Spanel v. Mounds View School Dist., 118 N.W.2d 795 (Minn. 1962) (close of the next session of the state legislature); Holytz v. City of Milwaukee, 17 Wis. 2d 26, 115 N.W.2d 618 (1962) (40 days after filing of opinion).

167. EHRENSWEIG, "FULL AID" INSURANCE FOR THE TRAFFIC VICTIM (1954); GREEN, TRAFFIC VICTIMS: TORT LAW AND INSURANCE (1958); COMMITTEE TO STUDY COMPENSATION FOR AUTOMOBILE ACCIDENTS, REPORT TO THE COLUMBIA UNIVERSITY COUNCIL FOR RESEARCH IN THE SOCIAL SCIENCES (1932); James, *Tort Law in Midstream: Its Challenge to the Judicial Process*, 8 BUFFALO L. REV. 315, 332–40 (1959); Marx, *Compensation Insurance for Automobile Accident Victims: The Case for Compulsory Auto Compensation Insurance*, 15 OHIO ST. L.J. 184 (1954); Morris & Paul, *The Financial Impact of Automobile Accidents*, 110 U. PA. L. REV. 913 (1962).

hensive legislative action are slight. Moreover, the amount of empirical research available to courts is impressive and convincing.[168] Nevertheless, the necessity of establishing administrative machinery to carry out an insurance program and check on compliance with its requirements puts this hoped-for reform beyond the limits of judicial creativity. As Professor James has suggested,[169] courts must limit their reforms to changes of tort doctrine that give emphasis to the concepts of compensation and loss distribution.

As an illustration of how courts may do this, consideration may be given to the family car doctrine.[170] Using their understanding of the doctrine and its fictional basis, courts should not hesitate to extend the liability to corporations or other owners of vehicles that cannot be characterized as the head of a household.[171] And the extension of the doctrine to dangerous instruments such as powerboats, motor cycles, and mechanically powered "mountain goats," etc.[172] is obviously a task that the courts must perform if the extension is to be made in most jurisdictions.

Courts may function effectively as reform agents in re-evaluating the various judicially created immunities from liability, such as sovereign immunity, charitable immunity, and the various family immunities. There is little reason to expect that organized pressure groups will be formed to lobby reform legislation through to enactment of statutes affecting any of these doctrines. On the other hand, organized pressure groups are active and effective in preventing their consideration by the entire legislature. The courts, however, are as competent as the legislatures to reappraise the rationale that supports the continued existence of these doctrines. Each consists of an elaborate, technical, and complicated formulation that impresses laymen as the product of a learned

168. HUNTING & NEUWIRTH, WHO SUES IN NEW YORK CITY? (1962); Adams, *A Comparative Analysis of Costs of Insuring Against Losses Due to Automobile Accidents*, Economic and Business Bulletin (Temple University), March, 1960, p. 1; Franklin, Chanin & Mark, *Accidents, Money, and the Law: A Study of the Economics of Personal Injury Litigation*, 61 COL. L. REV. 1 (1961); Morris & Paul, *supra* note 167. A list of earlier studies is set forth in James, *supra* note 167, at 328–29.

169. James, *supra* note 167, at 334.

170. See PROSSER, TORTS 368–72 (2d ed. 1955); Lattin, *Vicarious Liability and the Family Automobile*, 26 MICH. L. REV. 846 (1928).

171. *Compare* Keller v. Federal Bob Brannon Truck Co., 151 Tenn. 427, 269 S.W. 914 (1925), *with* Durso v. A. D. Cozzolino, Inc., 128 Conn. 24, 20 A.2d 302 (1941), *and* Smart v. Bissonette, 106 Conn. 447, 138 Atl. 365 (1927).

172. *But see* Felcyn v. Gamble, 185 Minn. 357, 241 N.W. 37 (1932); Meinhardt v. Vaughn, 159 Tenn. 272, 17 S.W.2d 5 (1929).

profession — a product that should not be disturbed by the uninformed. There is, moreover, little hope that legislative investigations could produce much empirical data, beyond that available to the judiciary, on which to base a judgment as to the desirability of retaining the immunity.

Insofar as sovereign immunity is concerned the legislature can make the appropriate provisions regarding notice of claims, special periods of limitations for the filing of suits, trial without a jury, possible monetary limits on liability, negotiation of settlements and compromises, and the budgeting and appropriation procedures to be followed.[172] But these, as the California and Minnesota experiences indicate,[174] can also be produced by the legislature after the courts have played their creative role and directed legislative attention to a question that would otherwise be ignored. Finally, at least with respect to sovereign immunity and charitable immunity, the view of the scholars is that as presently recognized in most jurisdictions, they are indefensible.[175]

The doctrine of comparative negligence should replace the absolute bar imposed by the contributory negligence rule, and this substitution should be made by the judiciary. The present

173. Indeed, the Washington statute waiving sovereign immunity, WASH. REV. CODE § 4.92.090, was apparently enacted without hearings. H.R. 338, from which the statute comes, was introduced in the House on January 30, 1961, and referred to the Committee on Judiciary-Civil. JOURNAL OF THE WASHINGTON HOUSE OF REPRESENTATIVES 184 (1961). Three days later, on February 2, 1961, the Committee reported favorably on the bill. JOURNAL OF THE WASHINGTON HOUSE OF REPRESENTATIVES 235 (1961). The report was so short and cryptic as to be uninformative to the uninitiated. Note 50 *supra*. The bill was received in the Senate on February 9, 1961, and referred to the Judiciary Committee. JOURNAL OF THE WASHINGTON SENATE 313, 315 (1961). Nineteen days later it was reported favorably to the Senate in a report as cryptic and uninformative as that of the House Committee on Judiciary-Civil. JOURNAL OF THE WASHINGTON SENATE 740 (1961). The only recorded discussion of the bill occurred in the Senate, which first adopted and then, upon reconsideration, refused to adopt an amendment giving the statute retroactive effect. The proponent of the amendment stated he had no idea of how many pending claims might be affected by adoption of the amendment. JOURNAL OF THE WASHINGTON SENATE 1010–12 (1961).

As enacted, the statute contained no provision respecting the immunity of municipalities, leaving its effect in that respect a matter of conjecture. Nor were any provisions made concerning notice of claims, filing of suits, or methods of payment. A statute enacted in 1963 now provides that detail. Wash. Sess. Laws 1963, ch. 159.

174. CAL. CIV. CODE § 22.3; Minn. Sess. Laws 1963, ch. 708.

175. 2 HARPER & JAMES, THE LAW OF TORTS 1612 n.13, 1667 n.2 (1956); PROSSER, TORTS 774 n.42 (1955). See also President & Directors of Georgetown College v. Hughes, 130 F.2d 810, 812 (D.C. Cir. 1942).

comparative negligence rule followed in Georgia originated in a series of common-law decisions of the Georgia court during the 1850's, and that court's construction of subsequently enacted legislation codifying those decisions.[176] In Illinois, a limited form of comparative negligence, based on a distinction between gross and slight negligence, was judicially adopted in 1858[177] and ultimately abandoned, also by judicial decision, in 1894.[178] The significance of the abandonment is not that comparative negligence is unsound—for the abandonment was probably caused by the difficulties of working with such nebulous concepts as gross and slight negligence as well as the dissatisfaction with a rule that served only to transfer the entire loss to one party — but that such changes were made by courts, rather than legislatures, at a time when the creative role of the judiciary was not as well understood as at the present time.

It is unlikely that sufficient support for a comparative negligence rule could be organized to obtain its passage through a state legislature.[179] As in other areas appropriate for judicial reform, lobby and pressure groups are active and successful in preventing bills incorporating comparative negligence principles from obtaining full legislative consideration.[180] Judicial experience with jury verdicts provides the courts with ample proof that the contributory negligence rule is not compatible with the

176. The better discussions of this development are found in Philbrick, *Loss Apportionment in Negligence Cases*, 99 U. PA. L. REV. 766 (1951); Turk, *Comparative Negligence on the March*, 28 CHI.-KENT L. REV. 304 (1950).

177. Galena & Chicago Union R.R. v. Jacobs, 20 Ill. 478 (1858).

178. City of Lenark v. Dougherty, 153 Ill. 163, 38 N.E. 892 (1894).

179. Arkansas adopted a comparative negligence statute in 1955, Ark. Acts 1955, No. 190, amended by Ark. Acts 1957, No. 206. For its present form see ARK. STAT. §§ 27-1730.1, 27-1730.2 (1962).

180. According to a list compiled in 1951, comparative negligence legislation has been introduced in the following sixteen states: Arizona, Arkansas, California, Colorado, Kansas, Massachusetts, Michigan, Missouri, New York, North Dakota, Ohio, Oregon, Pennsylvania, Tennessee, Utah, and Washington. Lipscomb, *Comparative Negligence*, 1951 INS. L.J. 667, 674. It has failed of enactment in all but Arkansas. Note 179 *supra*. Subsequent efforts to enact such legislation have failed. S. 460, 35th Reg. Sess. (1957) (Washington); H.R. 40, 35th Reg. Sess. (1957); S. 352, 33d Reg. Sess. (1953); H.R. 28, 33d Reg. Sess. (1951); Averbach, *Comparative Negligence Legislation: A Cure for Our Congested Courts*, 19 ALBANY L. REV. 4, 13 (1955) (New York); Maloney, *From Contributory to Comparative Negligence: A Needed Law Reform*, 11 U. FLA. L. REV. 135, 136 n.5 (1958) (Florida); O'Toole, *Comparative Negligence: The Pennsylvania Proposal*, 2 VILL. L. REV. 474 (1957) (Pennsylvania); Note, 25 FORDHAM L. REV. 185 nn.5, 6 & 7 (1956) (New York); 8 ALA. L. REV. 71 (1955) (Alabama).

values of our society,[181] and it has been abandoned in most common-law jurisdictions outside the United States.[182] Moreover, scholars almost unanimously agree that a comparative negligence standard is a workable and more just scheme than the contributory negligence rule.[183] For these reasons a number of important voices have recently and quite properly urged that courts make the change to comparative negligence without waiting for legislative action.[184]

Moreover, empirical data bearing upon the subject is as available to courts as it is to legislatures and their committees. Probably the most important consideration is the effect that such a change would have upon the operations of insurance companies. Few others could justifiably claim to have made commitments and taken action in reliance upon the existence of a rule by which contributory negligence bars recovery. What evidence there is indicates that a change in the rule would have a minimal and perhaps undiscernible effect on the total operations of insurers.[185]

181. Karcesky v. Laria, 382 Pa. 227, 234, 114 A.2d 150, 154 (1955).

182. Mole & Wilson, *A Study of Comparative Negligence*, 17 CORNELL L.Q. 333, 337–38 (1932); Prosser, *Comparative Negligence*, 51 MICH. L. REV. 465, 469 (1953).

183. GREGORY, LEGISLATIVE LOSS DISTRIBUTION IN NEGLIGENCE ACTIONS 4 (1936). MORRIS, TORTS 215 (1953); WILLIAMS, JOINT TORTS AND CONTRIBUTORY NEGLIGENCE, 259 (1951); James, *Comparative Negligence*, 26 UTAH B. BULL. 109 (1956); James, *Contributory Negligence*, 62 YALE L.J. 691, 704–05 (1953); Malone, *Comparative Negligence — Louisiana's Forgotten Heritage*, 6 LA. L. REV. 125, 142–47 (1945); Maloney, *supra* note 180, at 173; Philbrick, *supra* note 176, at 572; Pound, *Comparative Negligence*, 13 NACCA L.J. 105, 107 (1954); Prosser, *supra* note 182, at 508; Turk, *supra* note 176, at 341–45.

Mr. Justice Black, speaking for the Supreme Court of the United States, said about the two rules in *Pope & Talbot, Inc. v. Hawn*, 346 U.S. 406, 408–09 (1953):

> The harsh rule of the common law under which contributory negligence wholly barred an injured person from recovery is completely incompatible with modern admiralty policy and practice. Exercising its traditional discretion, admiralty has developed and now follows its own fairer and more flexible rule which allows such consideration of contributory negligence in mitigation of damages as justice requires.

184. SEAVEY, COGITATIONS ON TORTS 55–56 (1954); Keeton, *supra* note 150, at 506–09. The same suggestion was made in the 1962 Ross Prize Essay. Gilliam, *How May the Disposition of Personal Injury Litigation Be Improved?*, 48 A.B.A.J. 834, 836 (1962).

185. Morris, *supra* note 161, at 554; Peck, *supra* note 161, at 689. Compare Rosenberg, *Comparative Negligence in Arkansas: A "Before and After" Survey*, 13 ARK. L. REV. 89, 108 (1959) concluding that adoption of a comparative negligence standard allowed plaintiffs to win a higher proportion of cases, but not to obtain larger verdicts. Indeed, directing the attention of the jury

The apparent explanation of this fact is that comparative negligence is in fact the standard by which parties negotiate settlements.[186] The proportion of cases controlled by a judgment, which may involve as little as two percent of all claims,[187] is too small to affect the overall result even if juries did conscientiously follow the instructions given them. Other concerns, such as the extent to which a contributory negligence rule deters risk-creating conduct, is something that probably cannot be tested empirically because appropriate laboratory experiments cannot be practiced on human beings and the variables affecting the accident rate are so numerous that no effect can be attributed to the presence of a comparative negligence rule.

Finally, the involved and convoluted features of the last clear chance doctrine seem to ameliorate what would otherwise appear to be the harsh consequences of a rule barring recovery on the basis of contributory negligence. They provide for the layman the appearances of a system carefully designed to work justice between the parties to accident litigation. To judges and members of the legal profession, of course, the doctrine represents nothing more than an illogical scheme, difficult to apply, and frequently impossible to justify, the existence of which is tolerated only because it permits courts to escape the harsh consequences of the contributory negligence rule. As elsewhere, such doctrinal complications not only establish the need for reform; they also establish the propriety of judicial action.

Changes in the common-law rules respecting the right to contribution as well as the effect of a release given one tort-feasor on claims against others have also been pointed out as changes that courts might appropriately make.[188] There may be some doubts on the merits of permitting one tort-feasor to enforce a right to contribution against another.[189] If changes in the rule

to the possibility of deducting some portion of the plaintiff's damages as attributable to his fault may well have the effect of reducing the amount of the verdict from what it would have been under a rule by which plaintiff's negligence should only have the effect of a complete bar.

186. A study indicated that 84% of all those who made claims arising out of accidents in New York City received some compensation, leading the authors to conclude that the present liability rules prevent recovery by a maximum of 25% of all potential claimants, and that recoveries could be achieved in cases of doubtful liability. Franklin, Chanin & Mark, *supra* note 168, at 13, 34.

187. Franklin, Chanin & Mark, *supra* note 168, at 10.

188. SEAVEY, COGITATIONS ON TORTS 54 (1954).

189. James, *Contribution Among Joint Tortfeasors: A Pragmatic Criticism*, 54 HARV. L. REV. 1156 (1941).

are to be made, once again the lack of organized legislative lobbies to support such reforms, the presence of aged doctrines with elaborate distinctions, and the equality of access to empirical data indicate that the judiciary is an appropriate agency for reform.

In recent years courts have undertaken a creative role in enlarging the scope of liability for fright and emotional shock as well as for invasion of privacy.[190] Appraisal of the comparative abilities of courts and legislatures to deal with the problems leads to the conclusion that the courts have acted properly in doing so. Again the disorganized state of the victims of conduct producing such results and the consequent lack of organized lobbies seeking remedial legislation provide one rational explanation for legislative inattention to the problem.[191] Legislative investigations might produce empirical data concerning the frequency with which such conduct occurs, but they probably could supply little information bearing upon the crucial question of whether a particular victim should be compensated. A legislative investigation could conceivably be directed toward determining the increased incidence of fraudulent claims accompanying liberalization of the right of recovery, but the techniques used to determine whether particular claims were fraudulent would necessarily parallel those used by the courts to determine the validity of claims. Moreover, courts are familiar with the trial process and are in a position to formulate subsidiary rules, relating to the burden of proof and procedure, to deal with the problem.[192] Finally, the pre-existing law was filled with technicalities, such as the requirement of some physical contact with the victim, or

190. PROSSER, TORTS 38–47, 636–44 (2d ed. 1955). For recent examples, see Carr v. Watkins, 227 Md. 578, 177 A.2d 841 (1961); Battalla v. State, 10 N.Y.2d 239, 176 N.E.2d 729, 219 N.Y.S.2d 34 (1961). *But see* Amaya v. Home Ice, Fuel & Supply Co., 379 P.2d 513, 29 Cal. Rep. 33 (1963) denying recovery to a mother for harm caused by fright and nervous shock suffered when she saw defendant's negligently operated truck run over her infant child.

191. Thus the New York Revision Commission filed a report in 1936 urging adoption of legislation that would allow the courts to impose liability for physical and mental injuries occasioned by negligently induced fright, with the courts working out the rules which would protect meritorious claimants and prevent the successful prosecution of non-meritorious or fraudulent claims. NEW YORK LAW REVISION COMM'N, REPORT 381–82 (1936). The report apparently gathered much dust but little support until utilized by the Court of Appeals in reaching its decision in Battalla v. State, 10 N.Y.2d 239, 176 N.E.2d 729, 219 N.Y.S.2d 34 (1961).

192. See NEW YORK LAW REVISION COMM'N, REPORT 381–82 (1936).

that the victim, though untouched, had been within the area of risk of harm from physical contact, or that substantial damages for such harm could be awarded as a parasitic incident of the right to recover on some other tort theory. Similar reasons might be advanced to support the creative role that courts have played in recent years in permitting recovery for prenatal injuries.[193]

Though the courts have performed well in the last two areas, they have been woefully inadequate in responding to the call for the reform of principles affecting the liability of landowners and land occupiers. Again, unorganized victims of harm that might have been avoided through the use of no more than reasonable care have no lobby to press the case for expanded rights of recovery. On the other hand, apartment house owners in particular, and business organizations in general, do have active lobbies to prevent legislative consideration of the problem. Moreover, the program of expanding liabilities is politically unpalatable for legislators, most of whom would quickly realize that its support would likely require them to defend against the charges that these organized groups would press. In politics it is frequently more advantageous to be on the offensive than the defensive, regardless of the merits of the proposition.

That the area is one in need of reform can hardly be doubted. The Supreme Court of the United States has said of the common-law rules governing land-occupiers' liabilities:[194]

> The distinctions which the common law draws between licensee and invitee were inherited from a culture deeply rooted to the land, a culture which traced many of its standards to a heritage of feudalism. In an effort to do justice in an industrialized society, with its complex economic and individual relationships, modern common-law courts have found it necessary to formulate increasingly subtle verbal refinements, to create subclassifications among traditional common-law categories, and to delineate fine gradations in the standards of care which the landowner owes to each. Yet even within a single jurisdiction the classifications and subclassifications bred by the common law have produced confusion and conflict. As new distinctions have been spawned, older ones have become obscured. Through this semantic morass the common law has moved, unevenly and with hesitation, toward imposing on owners and occupiers a single duty of reasonable care in all the circumstances.

193. PROSSER, TORTS 174–75 (2d ed. 1955); Note, *Prenatal Injury*, 38 WASH. L. REV. 390 (1963). For a recent decision with a good discussion of the problem, see Puhl v. Milwaukee Auto. Ins. Co., 8 Wis. 2d 343, 99 N.W.2d 163 (1959).

194. Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625, 630–31 (1959).

These proliferating technicalities, which the Supreme Court wisely refused to incorporate into admiralty law, are exactly the type that impress laymen and obscure from legislators the trend that the law is and should be following. On the other hand, a court may easily emulate Justice Cardozo in his famous *MacPherson* decision[195] and draw from the various exceptions to nonliability the governing principle that owners and occupiers have a single duty of reasonable care in all the circumstances.[196]

Another area in which the courts have not been as responsive to the changing conditions of society is in the law of damages. Recently, the Supreme Court of Michigan abandoned the rule by which the damages awarded parents for the wrongful death of a child are measured by the pecuniary loss to the parents — that is, the difference between his probable wages during minority less the costs of his upkeep.[197] Labeling its earlier precedents a "remote and repulsive backwash of time and civilization, untouched by the onward march of society," the court attempted to adapt the rule to what it knew juries had in fact been practicing covertly. Earlier, the Supreme Court of Mississippi had brought its law of damages into conformance with general standards by removing the established denial of recovery for mental suffering experienced either as a result of physical disfigurement, or after physical pain had ceased.[198] But on the whole, courts, and law professors, have ignored what Professor Jaffe once called the crucial controversy in personal injury torts.[199] Among the impressive features of the law of damages for personal injuries today is the extent to which the rules confer discretion on juries who often receive no instruction as to whether they may consider various factors bearing on the amount of damages.[200]

In many jurisdictions, a plaintiff may receive two allowances for taxes that he will not be required to pay.[201] If the law of torts is to be limited to the compensatory function of placing

195. MacPherson v. Buick Motor Co., 217 N.Y. 382, 111 N.E. 1050 (1916).

196. See, *e.g.*, Prosser, *Business Visitors and Invitees*, 26 MINN. L. REV. 573 (1942).

197. Wycko v. Gnodtke, 361 Mich. 331, 105 N.W.2d 118 (1960).

198. Vascoe v. Ford, 212 Miss. 870, 54 So. 2d 541 (1951).

199. Jaffe, *Damages for Personal Injury: The Impact of Insurance*, 18 LAW & CONTEMP. PROB. 219, 221–22 (1953).

200. See GREGORY & KALVEN, CASES AND MATERIALS ON TORTS, ch. 7 *passim* (1959).

201. See Nordstrom, *Income Taxes and Personal Injury Awards*, 19 OHIO ST. L.J. 212 (1958).

the victim, as far as possible, in the position in which he would have been absent the tort, the courts should reformulate the rules and instructions that require a consideration of income tax consequences in the verdict.

Other rules relating to the effect to be given collateral sources of compensation for injuries also need reworking.[202] In making such changes, the courts may act with the freedom derived from the realization that new rules would impose no new duties, nor would they discriminate against persons who had relied on the old rules. Courts, more effectively than legislatures, can determine the procedural complications that might arise from admitting evidence of, and giving effect to, collateral compensation received by a tort victim. Moreover, judges, unlike legislators, are aware of the underlying theories of liability; thus they can more effectively determine whether a punitive or deterrent effect may be achieved by visiting liability upon a wrongdoer for an item of damage for which other compensation has already been received, or when the more appropriate view is that "our legal system functions as an insurance scheme under which victims should receive full, but unduplicated, compensation for the injuries they have suffered."[203] Insurance companies might be expected to lobby for legislation limiting the damages awarded in personal injury cases by the amounts received from collateral sources, but in fact they have not done so. Instead, the cost of double and even triple compensation is passed on to the public and this inflated cost of compensating for tortious injuries is advanced as a reason for not incorporating broader principles of insurance in the law of torts.

These comparative evaluations of the abilities of courts and legislatures certainly do not exhaust the field. Detailed attention might be accorded to the predictable problems involved in compensating injuries suffered by radiation, where the complications seem too great for traditional treatment by the courts.[204] Or attention might be given to more familiar problems, such as the appropriate use of *res ipsa loquitur*, burden of proof, physical examination of plaintiffs in personal injury cases, and the selection of jurors, with respect to which courts are in a superior

202. For a recent and thorough discussion of the subject, see Maxwell, *The Collateral Source Rule in the American Law of Damages*, 46 MINN. L. REV. 669 (1962).

203. *Cf.* James, *supra* note 167, at 337.

204. *But cf.* Estep, *Radiation Injuries and Statistics*, 59 MICH. L. REV. 259 (1960).

position to deal with the problems. Other comparable problems easily come to mind.

But the purpose of this Article has not been that of making a definitive assignment of some problems to legislative treatment and other problems to judicial treatment. Instead it has been merely to suggest some of the criteria by which those assignments should be made and further to suggest that courts should attempt to evaluate the comparative abilities of the two branches of government in deciding whether they or the legislature should undertake what appears to be a needed reform in the law of torts.

COMPARATIVE NEGLIGENCE AND AUTOMOBILE LIABILITY INSURANCE

*Cornelius J. Peck**

If one were to compile a list of much-discussed subjects of tort law a high ranking would certainly have to be given to writings on comparative negligence and its relative advantages and disadvantages as compared with the traditional contributory negligence rule. There certainly is no dearth of scholarly articles, which explore in detail the origins of the contributory negligence rule, the extent to which comparative negligence has been accepted at present, and the theoretical advantages and disadvantages of the two rules.[1] Opponents of comparative negligence, frequently insurance counsel, have likewise been productive of articles which generally combine somewhat less impressive scholarly research and theoretical analysis with the observations of men of practical experience.[2] Others, some of whom appear to have an organizational interest in representing claimants, have been quick to reply with arguments which likewise purport to be based upon practical considerations.[3]

*Professor of Law, University of Washington. — Ed.

Professor Z. William Birnbaum, Director of the Statistics Research Laboratory, University of Washington, has offered helpful suggestions. The National Bureau of Casualty Underwriters and the National Safety Council have also been of great help in providing statistical data, as the source citations throughout this article indicate. The author alone, however, is responsible for the somewhat unorthodox and frequently elementary statistical analysis, as well as the conclusions expressed. — C.J.P.

[1] What has properly been called the classic article is Mole and Wilson, "A Study of Comparative Negligence," 17 CORN. L. Q. 333, 604 (1932). Other more recent and comprehensive treatments of the subject are Maloney, "From Contributory to Comparative Negligence: A Needed Law Reform," 11 UNIV. FLA. L. REV. 135 (1958); Philbrick, "Loss Apportionment in Negligence Cases," 99 UNIV. PA. L. REV. 572, 766 (1951); Prosser, "Comparative Negligence," 51 MICH. L. REV. 465 (1953); Turk, "Comparative Negligence on the March," 28 CHI-KENT L. REV. 189, 304 (1950). An extensive treatment of the subject may be found in GREGORY, LEGISLATIVE LOSS DISTRIBUTION IN NEGLIGENCE ACTIONS (1936). A study of relatively recent date devoted to the law of Great Britain, Ireland and the common law Dominions is WILLIAMS, JOINT TORTS AND CONTRIBUTORY NEGLIGENCE (1951). For a more complete bibliography, see INSTITUTE OF JUDICIAL ADMINISTRATION, COMPARATIVE NEGLIGENCE 16-21 (1955). Cf. also James, "Contributory Negligence," 62 YALE L. J. 691 (1953).

[2] E.g., Benson, "Comparative Negligence—Boon or Bane," 26 INS. COUNSEL J. 204 (1956); Gilmore, "Comparative Negligence from a Viewpoint of Casualty Insurance," 10 ARK. L. REV. 82 (1955); Harkavy, "Comparative Negligence: The Reflections of a Skeptic," 43 A.B.A.J. 1115 (1957); Lipscomb, "Comparative Negligence," 1951 INS. L. J. 667; Powell, "Contributory Negligence: A Necessary Check on the American Jury," 43 A.B.A.J. 1005 (1957); Varnum, "Comparative Negligence in Automobile Cases," 24 INS. COUNSEL J. 60 (1957).

[3] E.g., Averbach, "Comparative Negligence Legislation: A Cure for Our Congested Courts," 19 ALBANY L. REV. 4 (1955); Bress, "Comparative Negligence: Let Us Hearken to the Call of Progress," 43 A.B.A.J. 127 (1957); Eldredge, "Contributory Negligence: An

As a reference to any of the major studies of comparative negligence will quickly reveal, the doctrine that contributory negligence is a complete bar to recovery is now rejected in most of the common law world and retains its vitality only in this country.[4] Even in this country greater recognition has been given to the principle of comparative negligence, or the proportional sharing of damages, than one inclined to dismiss statutes as exceptions might at first think.[5] Moreover, either through legislation or judicial invention comparative negligence rules of general applicability, but varying form, prevail in seven states.[6]

It would appear that a comparative negligence standard is favored by the scholars as a workable and more just scheme than the contributory negligence rule which now prevails in most states.[7] The reasons which appeal to the scholars do not, however, appear to be convincing to the legislative mind—if one may judge by the frequency with which proposals for adoption of comparative negligence are made and defeated in state legislatures.[8] In

Outmoded Defense That Should Be Abolished," 43 A.B.A.J. 52 (1957); Haines, "Canadian Comparative Negligence Law," 23 INS. COUNSEL J. 201 (1956); Pound, "Comparative Negligence," 13 NACCA L. J. 195 (1954); Schroeder, "Courts and Comparative Negligence," 1950 INS. L. J. 791.

[4] Mole and Wilson, "A Study of Comparative Negligence," 17 CORN. L. Q. 333 at 337-338 (1932); Prosser, "Comparative Negligence," 51 MICH. L. REV. 465 at 466 (1953); Turk, "Comparative Negligence on the March," 28 CHI-KENT L. REV. 189 at 208-245 (1950).

[5] Prosser states that there are some forty statutes, apparently in successful operation, and that they have been applied in about 1200 cases. Prosser, "Comparative Negligence," 51 MICH. L. REV. 465 at 467 (1953).

[6] Those states are Arkansas, Georgia, Mississippi, Nebraska, South Dakota, Tennessee, and Wisconsin. The statutes and other authorities in each state are discussed briefly, infra.

[7] GREGORY, LEGISLATIVE LOSS DISTRIBUTION IN NEGLIGENCE ACTIONS 4 (1936); James, "Contributory Negligence," 62 YALE L. J. 691 at 704-705 (1953); James, "Comparative Negligence," 26 UTAH BAR 109 (1956); Malone, "Comparative Negligence—Louisiana's Forgotten Heritage," 6 LA. L. REV. 125 at 142-147 (1945); Maloney, "From Contributory to Comparative Negligence: A Needed Law Reform," 11 UNIV. FLA. L. REV. 135 at 173 (1958); MORRIS, TORTS 215 (1953); Pound, "Comparative Negligence," 13 NACCA L. J. 195 at 197 (1954); Prosser, "Comparative Negligence," 51 MICH. L. REV. 465 at 508 (1953); Philbrick, "Loss Apportionment in Negligence Cases," 99 UNIV. PA. L. REV. 572 at 572 (1951); Turk, "Comparative Negligence on the March," 28 CHI-KENT L. REV. 189 at 341-345 (1950); WILLIAMS, JOINT TORTS AND CONTRIBUTORY NEGLIGENCE 259 (1951).

Justice Black, speaking for the Supreme Court of the United States, had the following to say about the two rules in Pope & Talbot, Inc. v. Hawn, 346 U.S. 406 at 408-409 (1953): "The harsh rule of the common law under which contributory negligence wholly barred an injured person from recovery is completely incompatible with modern admiralty policy and practice. Exercising its traditional discretion, admiralty has developed and now follows its own fairer and more flexible rule which allows such consideration of contributory negligence in mitigation of damages as justice requires."

[8] According to a list compiled in 1951 comparative negligence legislation had been introduced in the following fifteen states, all of which have rejected the proposals: Arizona, California, Colorado, Kansas, Massachusetts, Michigan, Missouri, New York,

the absence of effective rebuttal of the scholarly view, the conviction grows that the persuasive arguments against comparative negligence are found, not in a supposed justice of denying recovery to one whose negligence contributed to his injuries, but in practical considerations of effect of adoption of such a rule. Such practical considerations include concern for the frequency with which claims would be made, the frequency with which juries would deal kindly with an injured party at the expense of a relatively innocent but financially responsible defendant, the effect of such verdicts upon negotiated settlements, the difficulties and expense of disposing of frivolous or nuisance claims, and the burden upon the courts resulting from litigation under a scheme making recoveries possible which would at the present time be barred by contributory negligence.[9]

The purpose of this article is not to re-plow the ground of history, case law, and statutory developments which has been so competently tilled by others. Nor is the purpose to give a detailed consideration of each of the practical matters mentioned above.[10] Instead, the focus of this article is on the relationship between comparative negligence and automobile liability insurance. Insurance rates and accident statistics, rather than rules of law and cases, are the primary materials. Such a consideration of the subject it might be hoped would give a positive and substantiated answer to the frequently debated but never documented question of whether adoption of comparative negligence would result in an increase in automobile liability insurance premium

North Dakota, Ohio, Oregon, Pennsylvania, Tennessee, Utah, and Washington. Lipscomb, "Comparative Negligence," 1951 INS. L.J. 667 at 674. Subsequent efforts to enact such legislation have failed in *Alabama*, 8 ALA. L. REV. 71 (1955); *Florida*, Maloney, "From Contributory to Comparative Negligence: A Needed Law Reform," 11 UNIV. FLA. L. REV. 135 at 136, n. 5 (1958); *New York*, Averbach, "Comparative Negligence Legislation: A Cure for Our Congested Courts," 19 ALBANY L. REV. 4 at 13 (1955); Note, 25 FORD. L. REV. 184, notes 5,6,7 (1956); *Pennsylvania*, O'Toole, "Comparative Negligence: The Pennsylvania Proposal," 2 VILL. L. REV. 474 (1957); and *Washington*, House Bill No. 28, 32d reg. sess., 1951; Senate Bill No. 352, 33d reg. sess., 1953; House Bill No. 40, Senate Bill No. 460, 35th reg. sess., 1957.

[9] See authorities cited, note 2 supra.

[10] A recently published report of a survey of Arkansas judges and lawyers on the effects of that state's adoption of comparative negligence in 1955 furnishes much valuable information with respect to many of these problems. Rosenberg, "Comparative Negligence in Arkansas: A 'Before and After' Survey," 13 ARK. L. REV. 89 (1959). Another recent study of related problems is ZEISEL, KALVEN, AND BUCHHOLZ, DELAY IN THE COURTS (1959). Of particular interest for the purposes of this article is the author's conclusion that the phenomenon of claims consciousness does exist. Their discussion of the subject appears in chapter 20 of the book.

rates.[11] As will appear, however, such precision does not seem to be possible. Nevertheless it does appear possible to draw some meaningful conclusions about the limits within or extent to which comparative negligence does affect premium rates, if indeed it has any effect. The insurance statistics also contain information with respect to the effect of comparative negligence in stimulating the filing of claims and the size of claim settlements. Further observations may be made with respect to the frequently expressed view that even in states in which the contributory negligence rule prevails comparative negligence is in fact practiced by all concerned, including adjusters, attorneys, juries, and even judges. In this way it is hoped something will be added to the information available for evaluation of the practical considerations which appear to control the decision to adopt or reject a comparative negligence standard in lieu of the contributory negligence rule.

OBSTACLES TO DETERMINING THE EFFECTS OF COMPARATIVE NEGLIGENCE ON LIABILITY INSURANCE

As with discussions about the weather, many people have talked about the possible effect of comparative negligence on liability insurance premium rates, but nobody has done anything to demonstrate that effect. To some it appears to be so obvious that comparative negligence would increase the rates that no evidentiary data is advanced to support the proposition. Others, premising their conclusion on the assumption that comparative negligence is the true test applied in almost every case, are equally certain that comparative negligence has no effect on liability insurance rates. One skeptical view finds significance in the fact that insurance counsel, who have available to them the necessary data, have failed to produce statistical support for the proposition that rates are increased.[12] Another author does state that a 10-year study indicates that automobile liability rates in Wisconsin, where a form of comparative negligence prevails, exceed the rates for comparable cities and areas in surrounding

[11] E.g., Averbach, "Comparative Negligence Legislation: A Cure for Our Congested Courts," 19 ALBANY L. REV. 4 at 11 (1955); Bress, "Comparative Negligence," 43 A.B.A.J. 127 at 129 (1957); Grubb and Roper, "Comparative Negligence," 32 NEB. L. REV. 234 at 246-247 (1952); Hayes, "New York Should Adopt a Comparative Negligence Rule," 27 N.Y.S. BUL. 288 at 289 (1955); Harkavy, "Comparative Negligence," 43 A.B.A.J. 115 at 116 (1957); Pound, "Comparative Negligence," 13 NACCA L.J. 195 at 198-199 (1954); note, 30 N.D. L. REV. 105 at 117 (1954).

[12] Maloney, "Comparative Negligence: A Needed Law Reform," 11 UNIV. FLA. L. REV. 135 at 163 (1958).

states by 17 to 64 percent.[13] The inference, however, that this variance is caused by comparative negligence alone would seem to be destroyed by the improbability that a single cause would have such diverse effects. Meanwhile, no one seems sufficiently concerned to enter upon speculation as to whether comparative negligence, which would permit insurers to maintain subrogation actions otherwise barred by the insured's negligence, would result in decreased rates for insurance against loss by collision.[14] Perhaps, despite the attempt made here, the explanation of this inactivity is that, as is the case with the weather, nothing can be done about it.

Safety Factors

Certainly the obstacles to detecting an effect of a rule of law upon insurance rates are both numerous and imposing. Obviously, one may not simply compare the rates of a state with a form of comparative negligence with the rates of a neighboring state in which the contributory negligence rule prevails, and conclude that any difference in rates is attributable to the legal effect given to negligence on the part of the injured party. There are almost certain to be differences in safety conditions in the two states, and as might be expected and can be demonstrated, safety conditions and the accident rate play a much more important part in determining the level of insurance rates than do differences in this rule of law. Safety conditions within a state in turn depend upon many variables, such as the physical condition of streets and highways, the degree to which principles of safety engineering have been incorporated in construction, the traffic

[13] Grubb and Roper, "Comparative Negligence," 32 NEB. L. REV. 234 at 246-247 (1952).

[14] As pointed out infra, one of the difficulties of comparing insurance rates in different states is that the rates become effective in different states upon different dates. While adjustment can be made with respect to liability insurance on the basis of a monthly change factor to reduce the rates to a common date, the addition of the variables of the number of automobile models, the changing automobile styles of the models, and the declining values of autos with age and obsolescence makes similar adjustments with collision insurance seem unreal.

A sample check of the rates published by National Auto Underwriters Association for $50.00 deductible collision insurance on a Chevrolet 6-cylinder 4-door Bel Air sedan, and in effect September 1959, did show that Wisconsin rates for the remainder of state territory were lower than the rates in Illinois, Michigan, and Minnesota though higher than the rates for Iowa. Mississippi's comparable rates were lower than those applicable in its neighboring states. On the other hand, the Arkansas rates for the remainder of state territory were higher than those applicable in Missouri, Oklahoma, and Mississippi, but lower than those applicable in Louisiana and Tennessee. The Georgia rates applicable were also higher than those applicable in Alabama, Florida, North Carolina, and South Carolina, but lower than those applicable in Tennessee.

volume, the distribution of the traffic between rural and urban driving, the weather conditions which prevail, the level of driver education and the degree to which safety-mindedness has been impressed upon the driving population, the traffic laws, such as speed limits, the minimum age for drivers' licenses, the tests administered upon granting and renewal of licenses, and even the liquor laws and licensing policies, as well as the effectiveness with which traffic laws are enforced.[15]

Economic Variables

Another cluster of factors affecting insurance rates may be characterized as economic. Tremendous differences may exist in the economies of neighboring states. For example, the 1956 per capita income in Mississippi, a comparative negligence state, was $964, whereas the 1956 per capita income in the neighboring state of Louisiana was $1,444.[16] Manufacturers' payrolls are almost double farm income in Wisconsin, whereas in adjoining Iowa farm income is more than triple the total of manufacturers' payrolls.[17] These differences in economic level and type of activity are reflected in the damages awarded for loss of earnings. They also affect jury estimates of the value to be assigned pain and suffering or the loss of a limb. Economic factors have a secondary effect through their direct effect on highway construction, repair, and the type and density of traffic. Finally, the effectiveness of governmental regulation of the insurance industry and the rates which it charges varies greatly from state to state. Thus, rates of a state which are higher in relation to the frequency of accidents and the economic level than those of another state may reflect an insurance commission's acceptance of lower permissible loss ratios, or higher insurance industry profits.

Legal Factors

Turning to legal considerations, it is also obvious that differences in other rules of law may be equally significant in determining the level of insurance rates. For example, in Wisconsin

[15] For a discussion of the numerous causes of traffic accidents, see DESILVA, WHY WE HAVE AUTOMOBILE ACCIDENTS (1942). The National Safety Council's annual publication, *Accident Facts*, contains much statistical information about traffic accidents. For assistance in interpretation of such statistics, see NATIONAL CONFERENCE ON UNIFORM TRAFFIC ACCIDENT STATISTICS, USES OF TRAFFIC ACCIDENT RECORDS (1947).

[16] THE WORLD ALMANAC — 1958, p. 752.

[17] Id., pp. 657, 688.

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a statute allows the joinder of the insurance company concerned as a defendant in the action brought against the alleged tortfeasor.[18] The general rule is that prejudicial error may be committed by the intentional injection of evidence showing the defendant carries liability insurance because of its tendency to induce larger verdicts.[19] If there is any factual basis for this rule, the Wisconsin joinder statute must be assigned considerable responsibility for any excess of Wisconsin rates over those of its neighbors attributable to legal rules.

Other legal factors which might affect insurance rates include the presence or absence of a "guest statute," requiring proof of gross negligence, recklessness, or intentional wrongdoing, or satisfaction of some other difficult test as a basis for imposing liability to a gratuitous passenger in an automobile.[20] It is conceivable that rates would be affected by the acceptance of the family car doctrine, or a statutory basis[21] for imposing liability on the owner of an automobile for injuries inflicted by others using the vehicle. Statutory violations, particularly violations of traffic laws, receive varying treatment in different jurisdictions, constituting negligence per se in some states and only evidence of negligence in others.[22] These differences might be expected to affect insurance rates, as would differences in the degree to which the presence of contributory negligence is determined by the same standards used

[18] Wis. Stat. (1957) §§85.93, 260.11 (1). See MacDonald, "Direct Action Against Liability Insurance Companies," 1957 WIS. L. REV. 612.

[19] 4 A.L.R. (2d) 764 at 765 (1949). The Wisconsin court appears to have little doubt that the joinder statute has increased recoveries in that state. In Bergstein v. Popkin, 202 Wis. 625 at 633, 233 N.W. 572 (1930), the court said: "Whether or not it is an indictment of our jury system, it is a fact recognized by everyone that the purpose of making the insurance company a party defendant is to increase the award of damages made against the insured. That it has that effect, no one familiar with the trial of cases can doubt."

[20] Wisconsin, for example, has no host-guest statute, which might be expected to contribute to higher rates. However, one authoritative view is that the net effect of such statutes on recoveries by guests as a class is not materially different from that which obtains under the common law rules developed in Wisconsin. Campbell, "Host-Guest Rules in Wisconsin," 1949 WIS. L. REV. 180 at 203.

Neither Georgia nor Mississippi, both states with comparative negligence rules and the subject of detailed investigation, infra, have host-guest statutes. Arkansas, another state with a comparative negligence statute, does have a statute requiring the proof of willful and wanton operation. Ark. Stat. Ann. (1947) §75.913. For a listing of state statutes and a discussion of the host-guest liability problem, see 2 HARPER AND JAMES, TORTS 950-962 (1956).

[21] See 2 HARPER AND JAMES, TORTS 1419-1428 (1956); PROSSER, TORTS, 2d ed., 369-372 (1955).

[22] 2 HARPER AND JAMES, TORTS 997 (1956); PROSSER, TORTS, 2d ed., 152-164 (1955). For an interesting attempt to compare the difficulties of recovery presented by varying treatments of contributory negligence in Wisconsin and the four states surrounding it, see comment, 1954 WIS. L. REV. 95.

to determine what constitutes negligence on the part of the defendant.[23] Varying forms of the last clear chance doctrine produce disparity of treatment of contributory negligence in different states,[24] and thus permit a range for differences in the operative effects of comparative and contributory negligence in comparisons between various states. Moreover, as will be seen, considerable variation exists in the formulation of the comparative negligence rules of the various states, again destroying any expectation that a fixed or quantitative difference exists when so-called comparative negligence state rates are compared with rates of states enforcing a contributory negligence rule. For example, recognition of assumption of the risk as a complete defense may make less distinct the differences between a contributory negligence rule and a comparative negligence rule.[25]

The Existing Data

The difficulty of sorting out and identifying the effect of any one of these many variables affecting rates is made even more difficult, or perhaps impossible, by the deficiencies and inadequacies of existing statistical and rate data. Of course, the existing data were not accumulated for the purpose of detecting an effect due to the different legal consequences of contributory negligence. Accordingly, it is necessary to mine, stamp, and refine the existing raw materials in order to extract any information on the subject.

There is, for example, no single liability rate for a particular state. The number of insurance companies engaged in the casualty insurance business in each state is an assurance of diversity within the limits established by competition. To a considerable extent this difficulty is overcome by the rate formulation services performed by associations of casualty insurance companies, such as

[23] Cf. James, "Contributory Negligence," 62 YALE L.J. 691 at 723-729 (1953).

[24] 2 HARPER AND JAMES, TORTS 1245-1255 (1956); PROSSER, TORTS, 2d ed., 290-296 (1955). A view that the version of last clear chance known as the "humanitarian doctrine," and applied in Missouri to defendants operating motor vehicles [HARPER AND JAMES, TORTS 1252-1253 (1956); PROSSER, TORTS, 2d ed., 294-295 (1955)], is productive of higher liability insurance rates than comparative negligence finds some support in comparison of the insurance rates applicable in Missouri and Arkansas. See Tables IV-A and V.

[25] Insofar as assumption of the risk is merely another way of stating that there is no liability in the absence of a duty, recognition of the defense under a comparative negligence system would seem to be of little importance. But conduct which might be more properly characterized as contributory negligence is sometimes recognized as a defense under the label of assumption of the risk. E.g., Southland Butane Gas Co. v. Blackwell, 211 Ga. 665, 88 S.E. (2d) 6 (1955). Cf. Storlie v. Hartford Accident & Indemnity Co., 251 Wis. 340, 28 N.W. (2d) (1947); Saxton v. Rose, 201 Miss. 814, 29 S. (2d) 646 (1947).

the National Bureau of Casualty Underwriters. On the basis of the losses reported to these associations actuarial determinations are made of the rates which should be charged for various categories of risks in the various states. This information is furnished to members and sold to other companies which wish to purchase the services of the associations. The National Bureau of Casualty Underwriters also serves as an agent for its members, filing new rates with the various state insurance commissions for approval. Departures from these rates for competitive purposes may be and are made by those non-member companies which merely purchase the rate determination services of the bureau. Other companies arrive at a rate structure in various independent ways.

Of course, even what uniformity is obtained through acceptance of the rate structure of a particular association does not permit free comparison of the rates of one state with rates of another state. The National Bureau of Casualty Underwriters has, for example, divided each state into a number of rate territories for the purpose of accumulating loss statistics and for fixing of rates. Several territories in a particular state may be combined in a single territorial grouping with a single rate structure for all territories within that grouping, pending accumulation of sufficient experience to permit more refined treatment of each territory. Determination of what area shall be encompassed in a territory or a territorial grouping depends upon a number of variable factors. Without uniformity in definition, territories in different states may be compared only with extreme difficulty. For most of the states the bureau has established one catch-all territory, denominated "remainder of the state," which includes all the areas which did not have sufficiently distinctive characteristics to merit treatment as a separate territory. It is this territorial rate structure which appears to offer the greatest opportunity for comparison, since it generally covers rural and small city areas, where the differences between territories in the accident rate caused by density of population, volume of traffic, and varying degrees of vigilance in municipal law enforcement are minimized. It is, however, far from an ideal unit for comparison.

In addition to the possibilities of classifying insurance by breadth of coverage in monetary terms, the risks insured may be classified in a number of other ways. One bureau classification of private automobiles, Class I-A, covers individually-owned vehicles, driven for pleasure and not used for business or for transportation to or from work, and not owned or driven by a male under the

age of 25. Another classification covers similarly-described vehicles, except that transportation to and from work not in excess of ten miles in each direction is allowed. Other classifications of privately-owned vehicles exist, of course, and commercial vehicles are subject to many classifications based upon the type of vehicle and its use. Of course, even standard policies are subject to varying constructions in different states. The effect of this diversity of classification with respect to privately-owned automobiles is, however, greatly minimized by the use of a rate for a particular classification as the base rate, with the rates for other classifications computed as fixed percentages of the base rate. For example, in most states Class I-A is the base rate for the privately-owned automobile, and the rates for other risk classifications of privately-owned vehicles are computed as fixed percentages of that rate.[26]

Comparison of the rates effective in different states is further complicated by the fact that there is no uniformity between states in the dates upon which filings of rates take place. For example, the National Bureau of Casualty Underwriters filed the Class I-A rate, now effective in Oklahoma, on October 23, 1957, whereas the rate for the same classification in Arkansas was filed on December 19, 1958. In light of the general inflationary trend, direct comparison of these rates would be misleading. Some correction for the differences in dates of filing can be made, as has been done in the computations made herein, by determining a monthly rate of increase or decrease between two filing dates, and using that monthly rate figure to reduce the rates of all states to a hypothetical common filing date.

Differences in insurance rates exist, of course, not only because of the claim consciousness of the population of a state but also because of the difference in safety conditions in various states and the frequency with which insured vehicles are involved in accidents. Before comparison of rates may be made for the purpose of determining whether comparative negligence has an effect on the rates, proper adjustment must be made for the difference in the rates caused by a higher or lower accident rate. However,

[26] The rate structure in the commercial classification of the bureau no longer follows this pattern. Within the privately-owned automobile classification, the additional premiums for categories of increased risks are determined as a fixed percentage of the Class I-A rate. A different set of percentage ratios are used for determining the increased premium applicable in large cities than is used with small cities and rural areas. Two sets of percentage ratios for these two types of territories have been established on a country-wide basis. However, there are variations in a number of states.

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[27] U.S. DEPT. OF HEALTH, EDUCATIO
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[28] TRAFFIC SAFETY, p. 34 (Decembe
[29] Letter from the National Safety
[30] DESILVA, WHY WE HAVE AUTO
COUNCIL, ACCIDENT FACTS—1957, 50, 55.

the available statistical data on non-fatal accidents and injuries which might be used to make such an adjustment is far from satisfactory. Although there exist uniform definitions of motor vehicle accidents,[27] these definitions are not used by all accident reporting authorities, and it appears that the definitions are not applied in the same manner by those authorities which do use them. For example, during the year 1957 the ratio of reported injuries to reported deaths varied from six injuries to one death in Arkansas to 241 injuries to one death in Massachusetts.[28] Such variation exists, not because of true differences in the ratios, but because of what injuries are counted.

Death, of course, has a uniformity and importance which does give reliability to death statistics. Upon appraisal of the relative reliability of the reports available, the National Safety Council has adopted a uniform ratio of thirty-five disabling injuries for each death for estimating the number of disabling injuries for each state.[29] While such an estimate is undoubtedly more reliable than the available reported information, it obviously rests upon an assumption which is incorrect. Other statistics indicate that, even after allowance for poorer reporting in rural areas, the ratio of injuries to fatalities is much higher in urban regions than in rural areas, probably because the higher rate of speed in rural accidents is more likely to produce a fatality than is the case in an urban accident.[30] Since the relative distribution of the population in urban and rural regions varies greatly in the various states, it must be acknowledged that even the best indicator of safety conditions in the various states—that found in death statistics —is inaccurate.

Finally, the available statistics are frequently presented in a form which renders extremely hazardous their manipulation by persons unskilled in statistical methods. That description is unfortunately appropriate for most members of the legal profession who are concerned with the subject. Chance and fortuitous combinations produce distortions, particularly in statistical analysis involving small samples and fields; and with the limited number

27 U.S. DEPT. OF HEALTH, EDUCATION AND WELFARE, UNIFORM DEFINITIONS OF MOTOR VEHICLE ACCIDENTS, 2d rev. (1953).

28 TRAFFIC SAFETY, p. 34 (December 1957).

29 Letter from the National Safety Council, March 26, 1958.

30 DESILVA, WHY WE HAVE AUTOMOBILE ACCIDENTS 120 (1942); NATIONAL SAFETY COUNCIL, ACCIDENT FACTS—1957, 50, 55.

of states in the country as well as the small number of states with comparative negligence the risk of distortion here is high. Statistics themselves prove nothing; a cause and effect relationship must be read into them. And one who has a priori knowledge of the cause and effect probably can find at least some statistics which demonstrate what he already knew.[31]

The lawyer unskilled in statistics may take encouragement from the statement of the National Conference on Uniform Traffic Accident Statistics that experience has shown that relatively advanced statistical techniques are not normally necessary or practical in traffic accident analysis work.[32] But, having surveyed the difficulties presented by the multitude of operative factors and the inadequacy of the data available, he will abandon hope that effect of comparative negligence can be shown with an accuracy expressible in fixed percentages or many figured decimal ratios. He may even agree with one eminent scholar that the windfall to plaintiffs caused by retention of the last clear chance doctrine in states with comparative negligence rules must be reflected in insurance rates.[33] But he will feel sure that no instrument now exists which can measure that consequence.

THE COMPARATIVE NEGLIGENCE STATES

As mentioned above, comparative negligence exists in many states in the form of statutes of limited application, and, indeed, it may be found throughout the nation in litigation under the Federal Employers' Liability Act. However, only seven states have comparative negligence rules of general applicability which

[31] E.g., Powell, "Contributory Negligence: A Necessary Check on the American Jury," 43 A.B.A.J. 1005 at 1007 (1957), cites statistics indicating that even under contributory negligence rules 85% to 90% of all claims asserted are settled, but distinguishes the comparable statistics of litigation under the comparative negligence rule of the Federal Employers Liability Act, in which 87% of the claims are reported to be settled by compromise prior to verdict, on the basis that in such cases only one claimant out of each thousand fails to obtain compensation. On the other hand, statistics reported in ZEISEL, KALVEN, AND BUCHHOLZ, DELAY IN THE COURTS 40 (1959), indicate that in New York city only 1.7% of all personal injury claims are tried to completion. Assuming even a 50% victory rate for plaintiffs, the total result in proportion of claimants receiving compensation would appear to be little different from that indicated in the statistics cited by Powell.

Or, for another example, see the suggestion, infra note 72, of a possible use of statistics to support a conclusion that comparative negligence encourages bad driving habits and accidents.

[32] NATIONAL CONFERENCE ON UNIFORM ACCIDENT STATISTICS, USES OF TRAFFIC ACCIDENT RECORDS 153 (1947).

[33] Prosser, "Comparative Negligence," 51 MICH. L. REV. 465 at 496 (1953).

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[34] Mole and Wilson, "A Study of C
635-637 (1932); Maloney, "From Contribu
Reform," 11 UNIV. FLA. L. REV. 135 at 15
Negligence Cases," 99 UNIV. PA. L. REV.
Negligence," 51 MICH. L. REV. 465 at 489-
on the March," 28 CHI-KENT L. REV. 304 a

[35] The better discussions of this deve
tionment in Negligence Cases," 99 UNIV. P
Negligence on the March," 28 CHI-KENT L.

[36] Ga. Code Ann. (1935) §94-703: "Cons
comparative negligence as affecting the a
damages from a railroad company for inju
is done by his consent or is caused by his
agents of the company are both at fault, th
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[37] Ga. Code Ann. (1935) §105-603: "If the
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recover. In other cases the defendant is not
way have contributed to the injury sustained

might be expected to affect automobile liability insurance rates. The comparative negligence rules of even these seven states are far from uniform, and a brief summary of their differences seems a necessary basis for evaluation of statistical data.

Georgia

Detailed consideration of the comparative negligence rule of Georgia may be found in any of the major articles on the subject of comparative negligence.[34] The rule appears to have originated in a series of common law decisions in actions against railroads in which the Georgia court drew on a few contemporary English decisions as authority for the proposition that fault on the part of the plaintiff should go to mitigation of the damages. The codifiers of the Georgia Code of 1860-1862 restated and incorporated the principle of these cases, as they were authorized to do, in that code.[35] Although the present code language[36] would appear to limit application of the principle to cases involving railroad defendants, this in fact has not been the case, and the principle is one of general applicability. However, one who judges comparative negligence rules with the standards of a purist will find some defects in the Georgia rule. It applies only where the fault of the plaintiff is less than that of the defendant, producing a mitigation of damages in proportion to the fault attributable to the plaintiff. The bar to recovery still exists where plaintiff's fault is equal to or greater than that of the defendant. Moreover, another statutory provision[37] has been applied in connection with

[34] Mole and Wilson, "A Study of Comparative Negligence," 17 CORN. L. Q. 604 at 635-627 (1932); Maloney, "From Contributory to Comparative Negligence: A Needed Law Reform," 11 UNIV. FLA. L. REV. 135 at 156-157 (1958); Philbrick, "Loss Apportionment in Negligence Cases," 99 UNIV. PA. L. REV. 766 at 777-780 (1951); Prosser, "Comparative Negligence," 51 MICH. L. REV. 465 at 489-490, 497 (1953); Turk, "Comparative Negligence on the March," 28 CHI-KENT L. REV. 304 at 326-333 (1950).

[35] The better discussions of this development are found in Philbrick, "Loss Apportionment in Negligence Cases," 99 UNIV. PA. L. REV. 766 (1951) and Turk, "Comparative Negligence on the March," 28 CHI-KENT L. REV. 304 (1950).

[36] Ga. Code Ann. (1935) §94-703: "Consent or negligence of person injured as defense: comparative negligence as affecting the amount of recovery—No person shall recover damages from a railroad company for injury to himself or his property, where the same is done by his consent or is caused by his own negligence. If the complainant and the agents of the company are both at fault, the former may recover, but the damages shall be diminished by the jury in proportion to the amount of fault attributable to him."

[37] Ga. Code Ann. (1935) §105-603: "If the plaintiff by ordinary care could have avoided the consequences to himself caused by the defendant's negligence, he is not entitled to recover. In other cases the defendant is not relieved, although the plaintiff may in some way have contributed to the injury sustained."

the comparative negligence rule so as to create what has appropriately been called a reverse last clear chance doctrine[38] which completely bars recovery if the plaintiff could have avoided the consequences of defendant's negligence by the exercise of ordinary care. This provision has been applied rigorously by the Georgia courts,[39] and would bar recovery even in a case in which the defendant was guilty of gross negligence.[40] It also appears that it may be utilized to give complete effect to contributory negligence as a bar in the guise of assumption of the risk.[41] Nevertheless, the consensus appears to be that the Georgia rule represents one of the more comprehensive forms of comparative negligence.

Mississippi

The first comparative negligence statute of general applicability in this country was enacted in Mississippi in 1910.[42] As might be expected the statute and case law have been the subject of extensive comment in the various writings on comparative negligence.[43] The statute creates what might be called true comparative negligence in that it rejects the requirement found in Georgia law, that the plaintiff's negligence be less than that of the defendant. Under this statute it is conceivable that one whose negligence constituted 80 or 90 percent of the fault causing his injuries could recover 10 or 20 percent of his damages from the defendant. Likewise, the statute permits recovery by one who was guilty of "gross negligence," provided that a proportional

38 Prosser, "Comparative Negligence," 51 MICH. L. REV. 465 at 497 (1959). Cf. Maloney, "From Contributory to Comparative Negligence: A Needed Law Reform," 11 UNIV. FLA. L. REV. 135 at 156 (1958); Philbrick, "Loss Apportionment in Negligence Cases," 99 UNIV. PA. L. REV. 766 at 778 (1951).

39 Central of Georgia Ry. Co. v. Roberts, 213 Ga. 135, 97 S.E. (2d) 149 (1957); Brown v. Atlanta Gas Light Co., 96 Ga. App. 771, 101 S.E. (2d) 603 (1957).

40 Oast v. Mopper, 58 Ga. App. 506, 199 S.E. 249 (1938).

41 Southland Butane Gas Co. v. Blackwell, 211 Ga. 665, 88 S.E. (2d) 6 (1955).

42 Miss. Code Ann. (1942) §1455: "In all actions hereafter brought for personal injuries, or where such injuries have resulted in death, or for injury to property, the fact that the person injured, or the owner of the property, or person having control over the property may have been guilty of contributory negligence shall not bar a recovery, but damages shall be diminished by the jury in proportion to the amount of negligence attributable to the person injured, or the owner of the property, or the person having control over the property."

§1455: "All Questions of negligence and contributory negligence shall be for the jury to determine."

43 Mole and Wilson, "Comparative Negligence," 17 CORN. L. Q. 604 at 640-643 (1932); Philbrick, "Loss Apportionment in Negligence Cases," 99 UNIV. PA. L. REV. 766 at 795 (1951); Shell and Bufkin, "Comparative Negligence in Mississippi," 27 MISS. L. J. 105 (1956); note, 17 TEMP. L. Q. 276 at 283-285 (1943); GREGORY, LEGISLATIVE LOSS DISTRIBUTION IN NEGLIGENCE ACTIONS 57-59 (1936).

reduction in the damages awarded is made.[44] Assumption of the risk constitutes a bar to recovery.[45] Nevertheless, the Mississippi rule presents comparative negligence in its purest and most comprehensive form, making that state's rule a desirable subject of investigation for present purposes.

Wisconsin

The comparative negligence law of Wisconsin is likewise based upon a statute,[46] and has been the subject of extensive comment in writings on comparative negligence.[47] The law, enacted in 1931, resembles that of Georgia in that recovery is allowed only in cases in which the plaintiff's negligence is not as great as that of the defendant. In such cases damages are reduced in the proportion which plaintiff's negligence bears to the total negligence involved in producing his injuries.[48] Assumption of the risk is recognized as a complete defense, but the statute does not require diminution of the damages where the defendant has been guilty of gross negligence.[49] Like the Georgia and Mississippi rules, the Wisconsin law appears to be a desirable subject of investigation.

Arkansas

The most recent adoption of a comparative negligence rule of general applicability occurred in Arkansas in 1955.[50] Based upon a draft prepared by Dean Prosser,[51] the 1955 act followed the

44 Mole and Wilson, "Comparative Negligence," 17 CORN. L.Q. 604 at 641 (1932); Shell and Bufkin, "Comparative Negligence in Mississippi," 27 MISS. L.J. 105 at 112-113 (1956).

45 Shell and Bufkin, "Comparative Negligence in Mississippi," 27 MISS. L. J. 105 at 108-109 (1956).

46 Wis. Stat. Ann. (1957) §331.045: "Contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in death or in injury to person or property, if such negligence was not as great as the negligence of the person against whom recovery is sought, but any damages allowed shall be diminished in the proportion to the amount of negligence attributable to the person recovering."

47 Campbell, "Wisconsin's Comparative Negligence Law," 7 WIS. L. REV. 222 (1932); Campbell, "Ten Years of Comparative Negligence," 1941 WIS. L. REV. 289; Knoeller, "Review of the Wisconsin Comparative Negligence Act," 41 MARQ. L. REV. 397 (1958); Padway, "Comparative Negligence," 16 MARQ. L. REV. 3 (1951); Prosser, "Comparative Negligence," 51 MICH. L. REV. 465 at 490-494 (1953); Whelan, "Comparative Negligence" 1933 WIS. L. REV. 465; GREGORY, LEGISLATIVE LOSS DISTRIBUTION IN NEGLIGENCE ACTIONS 63-67 (1936).

48 Campbell, "Ten Years of Comparative Negligence," 1941 WIS. L. REV. 289 at 291-292.

49 Id. at 297-301.

50 Ark. Acts 1955, No. 199.

51 Prosser, "Comparative Negligence," 51 MICH. L. REV. 465 at 508 (1953).

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[45] Shell and Bufkin, "Comparative Negligence in Mississippi," 27 MISS. L. J. 105 at 108-109 (1956).

[46] Wis. Stat. Ann. (1957) §331.045: "Contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in death or in injury to person or property, if such negligence was not as great as the negligence of the person against whom recovery is sought, but any damages allowed shall be diminished in the proportion to the amount of negligence attributable to the person recovering."

[47] Campbell, "Wisconsin's Comparative Negligence Law," 7 WIS. L. REV. 222 (1932); Campbell, "Ten Years of Comparative Negligence," 1941 WIS. L. REV. 289; Knoeller, "Review of the Wisconsin Comparative Negligence Act," 41 MARQ. L. REV. 397 (1958); Padway, "Comparative Negligence," 16 MARQ. L. REV. 3 (1931); Prosser, "Comparative Negligence," 51 MICH. L. REV. 465 at 490-494 (1953); Whelan, "Comparative Negligence" 1938 WIS. L. REV. 465; GREGORY, LEGISLATIVE LOSS DISTRIBUTION IN NEGLIGENCE ACTIONS 63-67 (1936).

[48] Campbell, "Ten Years of Comparative Negligence," 1941 WIS. L. REV. 289 at 291-292.

[49] Id. at 297-301.

[50] Ark. Acts 1955, No. 199.

[51] Prosser, "Comparative Negligence," 51 MICH. L. REV. 465 at 508 (1953).

pure comparative negligence principle of the Mississippi law and allowed recovery regardless of whether or not the plaintiff's negligence exceeded that of the defendant. Two years later, the legislature found that there was lack of understanding and uniformity in the application of the 1955 act and that with the law in its then-existing state, great confusion and unfairness occurred in the trial of negligence cases. Accordingly, the statute was repealed.[52] However, Arkansas did not return to a contributory negligence rule, for the repealing statute enacted in place of the 1955 act the more limited version of comparative negligence which prevails in Georgia and Wisconsin. And so since 1957 recovery has been allowed in Arkansas only where the plaintiff's negligence is "of less degree" than the negligence of the person causing the injuries.[53]

The short time since adoption of comparative negligence in Arkansas, as well as a possible unsettling effect from the 1957 change of the law, might be considered to render the state's insurance situation an unsuitable subject of investigation. Whatever defects as a subject might be caused by uncertainties about whether the full effect of the change has yet been experienced would seem to be more than offset by the unique opportunity afforded to analyze the changes which occur within a state which does adopt comparative negligence. One very valuable study, based on the responses to a survey of Arkansas judges and lawyers with extensive experience in personal injury litigation, has led its author to conclude that introduction of comparative negligence in Arkansas brought perceptible changes to the course of personal injury litigation, but did not drastically alter the size or quality of the courts'

[52] Ark. Acts 1957, No. 296. The reasons for the repeal are said to be dissatisfaction with a rule permitting recovery by one as much as 90% at fault as well as the confusion about the proper handling of cases involving set-off of counterclaims by insured parties. Note, 11 ARK. L. REV. 391 at 392 (1957). For a discussion of the latter problem, see Lellar and Wolfe, "Must the Insurer Reimburse the Insured for His Personal Loss Credited Against the Judgment?" 11 ARK. L. REV. 71 (1956).

[53] Ark. Stat. Ann. (Supp. 1959) §27-1730.1: "Contributory negligence shall not bar recovery of damages for any injury, property damage or death where the negligence of the person injured or killed is of less degree than the negligence of any person, firm, or corporation causing such damage."

§27-1730.2: "In all actions hereafter accruing for negligence resulting in personal injuries or wrongful death or injury to property, the contributory negligence shall not prevent a recovery where any negligence of the person so injured, damaged, or killed is of less degree than any negligence of any person, firm, or corporation causing such damage; provided that where such contributory negligence is shown on the part of the person injured, damaged or killed, the amount of the recovery shall be diminished in proportion to such contributory negligence."

burdens in processing cases.[54] Against a background of such conclusions, study of changes in automobile liability insurance in Arkansas may be particularly informative.

Tennessee

The courts of Tennessee early developed a comparative negligence rule of general applicability but limited scope.[55] In that state plaintiff's contributory negligence which is a proximate cause of his injuries bars recovery, but remote contributory negligence of the plaintiff is considered only for the purposes of mitigating damages. The supreme court of the state has expressly repudiated the doctrine of comparative negligence,[56] and, as Dean Prosser has noted, in practical operation the Tennessee rule has resulted in apportionment only in cases in which the defendant had the last clear chance.[57] Viewed in this light, there is no greater expectation that so-called comparative negligence rule of Tennessee will be reflected in automobile liability insurance statistics than would be the case for any of the other variations of the last clear chance rule. Considering the obstacles mentioned above, that expectation must be regarded as an insubstantial possibility.

Nebraska and South Dakota

The comparative negligence rules of Nebraska and South Dakota are both statutory, that of South Dakota being a 1941 copy[58] of a law adopted in Nebraska in 1913.[59] The statute pro-

54 Rosenberg, "Comparative Negligence in Arkansas: A 'Before and After' Survey," 13 ARK. L. REV. 89 at 108 (1959).

55 Mole and Wilson, "A Study of Comparative Negligence," 17 CORN. L.Q. 604 at 611-613 (1932); Prosser, "Comparative Negligence," 51 MICH. L. REV. 465 at 485-486, 496-497 (1953); Turk, "Comparative Negligence on the March," 28 CHI-KENT L. REV. 304 at 313-317 (1950).

56 East Tennessee, V. & G. Ry. Co. v. Hull, 88 Tenn. 33, 12 S.W. 419 (1889). Cf. Atlantic Coastline R. Co. v. Smith, (6th Cir. 1959) 264 F. (2d) 426 at 432.

57 Prosser, "Comparative Negligence," 51 MICH. L. REV. 465 at 497 (1953).

58 S.D. Code (Supp. 1952) §47.0304-1.

59 Neb. Rev. Stat. (1956) §25-1151. The language of both the Nebraska and South Dakota statutes is as follows:

"In all actions brought to recover damages for injuries to a person or to his property caused by the negligence of another, the fact that the plaintiff may have been guilty of contributory negligence shall not bar a recovery when the contributory negligence of the plaintiff was slight and the negligence of the defendant was gross in comparison, but the contributory negligence of the plaintiff shall be considered by the jury in the mitigation of damages in proportion to the amount of contributory negligence attributable to the plaintiff; and all questions of negligence and contributory negligence shall be for the jury."

vides that contributory negligence shall not bar recovery when the contributory negligence of the plaintiff was slight and the negligence of the defendant was gross in comparison. In such cases the jury is to consider the contributory negligence in mitigation of damages in proportion to the amount of the contributory negligence. As reference to the discussions[60] of the Nebraska and South Dakota statutes will soon reveal, incorporation of the treacherous words, "slight" and "gross" has been productive of considerable litigation which has failed to produce certainty. While statements of the Nebraska court made in contexts in which direct consideration of the problem was not required indicate that ratios of one to four[61] or one to six[62] might comply with the requirement that plaintiff's negligence be slight, the concensus of the writers,[63] which is confirmed by the cases,[64] is that essentially these states have retained the doctrine of contributory negligence. This being so, these states, like Tennessee, do not provide workable opportunities for learning whether or not comparative negligence has an effect upon automobile liability insurance.

They do, however, furnish an example of the difficulty of explaining a variation in rates in states which have the same rule governing contributory negligence and also have a comparable climate and economy. Thus, Table I presents some basic data concerning these states and their immediate neighbors to the north and south. While it comes as no surprise that the premium rate for the remainder of the state territory is not the same for the two states, South Dakota's lower rate is not what would be expected in light of the fact that that state has a considerably higher rate of deaths per registered automobile than does Nebraska. One might attempt to explain the higher premium rate in Nebraska on the basis of the higher per capita income and the higher proportion of urban dwellers in that state, pointing out that these

60 Baylor, "Comparative Negligence in Nebraska," 10 S. D. B. J. 146 (1941); Grubb and Roper, "Comparative Negligence," 32 NEB. L. REV. 234 (1952); Mole and Wilson, "A Study of Comparative Negligence," 17 CORN. L. Q. 604 at 637-639 (1932); Philbrick, "Loss Apportionment in Negligence Cases," 99 UNIV. PA. L. REV. 766 at 793-795 (1951); Prosser, "Comparative Negligence," 51 MICH. L. REV. 465 at 486-489 (1953); note, 17 NEB. L. BUL. 68 (1938); GREGORY, LEGISLATIVE LOSS DISTRIBUTION IN NEGLIGENCE ACTIONS 61-63 (1936).

61 Sgroi v. Yellow Cab and Baggage Co., 124 Neb. 525, 247 N.W. 355 (1933).

62 Patterson v. Kerr, 127 Neb. 73, 254 N.W. 704 (1934).

63 GREGORY, LEGISLATIVE LOSS DISTRIBUTION IN NEGLIGENCE ACTIONS 61 (1936); Philbrick, "Loss Apportionment in Negligence Cases," 99 UNIV. PA. L. REV. 766 at 794 (1951); Prosser, "Comparative Negligence," 51 MICH. L. REV. 465 at 487 (1953).

64 Allen v. Kavanaugh, 160 Neb. 645, 71 N.W. (2d) 119 (1955); Pleuls v. Wilson Storage and Transfer Co., 75 S.D. 397, 66 N.W. (2d) 68 (1954); Friese v. Gulbrandson, 69 S.D. 179, 8 N.W. (2d) 438 (1943).

TABLE I

NEBRASKA-SOUTH DAKOTA COMPARISON

State	Class I-A[1] Premium Rate	Policy Claim[2] Frequency	Deaths Per[3] Reg. Auto 1954-1956	Per Capita[4] Income 1956	Urban-[5] Rural Ratio 1950
Nebraska	$23.00	14	1.91	$1538.	.88
South Dakota	21.00	10	2.46	1330.	.50
North Dakota	25.00	10	2.22	1365.	.37
Kansas	29.00	15	2.38	1668.	1.09

[1] Remainder of the State Premium adjusted as of January 31, 1958, for Class I-A Bodily Injury and Property Damage Coverage within limits of $5,000 per claim and $10,000 per accident for bodily injury and $5,000 per accident for property damage—Rates of National Bureau of Casualty Underwriters.

[2] Number of personal injury claims incurred per 100 automobiles insured on a statewide basis during 1954-1956. Letter dated November 5, 1958, from the National Bureau of Casualty Underwriters.

[3] Traffic deaths during 1954-1956 divided by the number of Registered automobiles, including taxis, but excluding trucks, busses, and publicly-owned vehicles. Death statistics taken from the WORLD ALMANAC, 1958, p. 309, and the WORLD ALMANAC, 1957, p. 367. Automobile Registration statistics taken from the STATISTICAL ABSTRACT OF THE UNITED STATES, 1957, p. 554.

[4] WORLD ALMANAC, 1958, p. 752.

[5] Ratio of urban population to rural population. THE STATISTICAL ABSTRACT OF THE UNITED STATES, 1957, p. 22.

factors would also explain why Kansas' rate exceeds that of Nebraska. But the argument runs aground with respect to North Dakota, where per capita income is a near equivalent of that in South Dakota, but, despite a lower urban-rural ratio and a lower rate of deaths per registered vehicle, the premium charged exceeds that charged in South Dakota.

The mystery grows when one considers that the experience of the National Bureau of Casualty Underwriters has led it to establish a rate of $26 for Sioux Falls, South Dakota, which had a 1950 population of 52,000, for insurance costing $10 more in Fargo, North Dakota, which in 1950 had a smaller population of 38,000. And, it should be noted that the difference in the rates applicable in Nebraska and North Dakota, which have different rules of law concerning contributory negligence, is less than the difference between Nebraska and South Dakota, which have the same rule.[65]

Thus chastened by an inability to supply a ready explanation for the variations in rates, an approach may be made to the statistics and rate data concerning those states believed to be desirable subjects for the purpose of this investigation.

CLAIM FREQUENCY

The first two columns of Table II present statistics based upon the claim experience of insurance carriers reporting to the National Bureau of Casualty Underwriters in states with comparative

[65] Thus, perhaps, lending support to the decision to forego detailed consideration of the effect of the Nebraska and South Dakota statutes.

TABLE II

CLAIM FREQUENCY AND COSTS

State	1954-1956[1] Bodily Injury Claim Frequency	1954-1956[2] Property Damage Claim Frequency	1954-1956[3] Deaths Per Reg. Auto	1954-1956[4] Bodily Injury Claims Per Death	1954-1956[4] Property Damage Claims Per Death	1950[5] Urban-Rural Population Ratio	1954-1956[6] Average Bodily Injury Claim Cost	1954-1956[7] Average Property Damage Claim Cost	1954-1956[8] Total Pure Premium
Alabama	(9) 18	(10) 75	3.11	(14) 5.79	(11) 24.12	(12) .78	(10) $765.	(11) $129.	(14) $23.06
*Arkansas**	(8A) 19	(8) 78	3.29	(15) 5.78	(13) 23.71	(15) .49	(11) 755.	(6) 135.	(12) 24.74
Florida	(7A) 20	(9A) 76	2.32	(7) 8.62	(8) 32.76	(3) 1.90	(2) 906.	(7) 134.	(7) 28.47
*Georgia**	(8B) 19	(9B) 76	3.24	(13) 5.86	(14) 23.46	(10) .83	(15) 738.	(4) 138.	(13) 24.64
Illinois	(1) 39	(2) 102	2.24	(1) 17.41	(4) 45.54	(1) 3.46	(8) 803.	(2) 144.	(1) 45.87
Iowa	(11) 15	(5A) 94	1.98	(10) 7.58	(3) 47.47	(9) .91	(12) 754.	(15) 108.	(16) 21.27
Louisiana	(4) 26	(7) 86	2.95	(6) 8.81	(9) 29.15	(6) 1.21	(13) 745.	(5) 137.	(5) 31.25
Michigan	(7B) 20	(1) 108	2.04	(5) 9.80	(2) 52.94	(2) 2.41	(16) 653.	(9) 131.	(8) 26.95
Minnesota	(6) 21	(6) 90	1.67	(3) 12.57	(1) 53.89	(7) 1.20	(4) 900.	(13) 118.	(6) 29.15
*Mississippi**	(8C) 19	(13) 65	3.45	(16) 5.51	(16) 18.84	(16) .39	(1) 939.	(3) 139.	(9) 26.65
Missouri	(2) 34	(3) 100	2.70	(2) 12.59	(6) 37.04	(4) 1.60	(7) 828.	(12) 127.	(2) 40.55
North Carolina	(10) 17	(12) 68	2.86	(12) 5.94	(12) 23.78	(14) .51	(14) 744.	(10) 130.	(15) 21.59
Oklahoma	(8D) 19	(11) 71	2.45	(9) 7.76	(10) 28.98	(8) 1.04	(5) 842.	(8) 133.	(10) 25.97
South Carolina	(8E) 19	(14) 60	3.14	(11) 6.05	(15) 19.11	(13) .58	(6) 832.	(1) 162.	(11) 25.49
Tennessee	(5) 23	(5B) 94	2.84	(8) 8.10	(7) 33.10	(11) .79	(3) 901.	(9) 131.	(4) 32.71
*Wisconsin**	(3) 27	(4) 99	2.40	(4) 11.25	(5) 41.25	(5) 1.37	(9) 800.	(14) 109.	(3) 32.73

* Italicized name indicates state has a comparative negligence rule.

[1] Number of claims per 1000 automobiles insured—National Bureau of Casualty Underwriters.

[2] Number of claims per 1000 automobiles insured—National Bureau of Casualty Underwriters.

[3] Based upon deaths by place of accident—WORLD ALMANAC, 1958, p. 309; WORLD ALMANAC, 1957, p. 367; and registrations of private and commercial privately-owned automobiles including taxis, but excluding trucks, busses, and publicly-owned vehicles—STATISTICAL ABSTRACT OF THE UNITED STATES, 1957, p. 554.

[4] For an explanation of the derivation of these ratios, see pp. 709-710 infra.

[5] STATISTICAL ABSTRACT OF THE UNITED STATES, 1957, p. 22.

[6] Average amount of losses per claim incurred with losses on a basic limits basis: Portions of losses in excess of $5,000 per claim and $10,000 per accident for bodily injury excluded—National Bureau of Casualty Underwriters.

[7] Amount of losses in excess of $5,000 for property damage excluded—National Bureau of Casualty Underwriters.

[8] Average amount of losses per insured car on basic limits basis—National Bureau of Casualty Underwriters.

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negligence rules and their neighboring states. The states involved with comparative negligence rules are Arkansas, Georgia, Mississippi, and Wisconsin. Texas, though sharing a short common border with Arkansas has been omitted from the list, not in recognition of claims of sovereignty, but because its large size includes so much territory far away from and unlike Arkansas, with which it would otherwise be compared. In the first column of Table II the frequency of claims for personal injury per thousand automobiles insured is set out. In the second column, the frequency of claims for property damage per thousand automobiles insured is set out. In parentheses next to each frequency figure the relative rank of the state in claim frequency is set out.

Analysis of these statistics leads to no conclusion, unless it is that an effect of comparative negligence is not observable. Wisconsin, a comparative negligence state, does have a high bodily injury claim frequency which places it third in that list, and a high property damage claim frequency, which places it fourth in that list. However, Arkansas, Georgia, and Mississippi, other comparative negligence states, share a common frequency with Oklahoma and South Carolina, being tied for ranking of eighth in a field limited to eleven because of the number of instances in which states have the same frequency. With respect to property damage claim frequency, Arkansas, Georgia, and Mississippi rank eighth, ninth, and thirteenth, respectively, in a field enlarged to fourteen by fewer identical rates.

This great divergence in claim frequency between Wisconsin and the other comparative negligence states immediately suggests that analysis should proceed along more refined lines, with an attempt made to make adjustments for the difference in safety conditions and for what appears to be a difference between northern and southern states.

As mentioned above, the best indicator of safety conditions is that found in the reported death statistics of the various states.[66]

In the attempt to make an allowance for variation in safety conditions, the statistics of the number of deaths per thousand registered automobiles have been set out in third column of Table II. If the claim frequencies of either column one or column two are divided by the death frequency statistics of column three,

[66] Pp. 698-699 supra.

the result is a statistic indicating the frequency of that type of claim per death. Thus,

$$\frac{\text{Claims}}{\text{1,000 Insured Autos}} \div \frac{\text{Deaths}}{\text{1,000 Registered Autos}} =$$

$$\frac{\text{Claims}}{\text{~~1,000~~ ~~Insured~~ ~~Autos~~}} \times \frac{\text{~~1,000~~ ~~Registered~~ ~~Autos~~}}{\text{Deaths}} = \frac{\text{Claims}}{\text{Deaths}}$$

Taking deaths as the most satisfactory, though not the most accurate, indicator of safety conditions, this ratio of claims per death may be considered instead a ratio of claims per accident and consequently an index of the claim propensity of residents of the various states.

Of course, even this simple calculation is based upon assumptions which are not true. The ratio of accidents to deaths is not constant throughout the nation, but as has already been pointed out there are fewer accidents per death in rural areas where the higher speed of the vehicles involved results in a higher proportion of fatalities in the accidents which do occur. The calculation also assumes what undoubtedly is not true, that there is a constant proportion of insured automobiles in the total of registered automobiles in the various states. Also assumed, but undoubtedly not the fact, is that ratio of privately-owned automobiles to other vehicles is constant throughout the states, and that privately-owned automobiles are involved in the same proportion of fatal accidents in all the states. Nevertheless, this rough adjustment for the variation in safety conditions would appear to provide a more reliable and accurate index of the claim propensities of residents of various states than is found in the original data on the frequency of claims per insured vehicle. These adjusted statistics of claim frequency are set out in columns four and five of Table II, with the relative rank of the state set out in parentheses next thereto.

Upon this basis Wisconsin drops in rank to fourth in the frequency of bodily injury claims and fifth in the frequency of property damage claims in a field of sixteen states. Mississippi drops to last place with respect to both types of claims; Arkansas takes fifteenth place in bodily injury claim frequency and thirteenth in property damage claim frequency; Georgia takes thirteenth place in bodily injury claim frequency and fourteenth in property damage claim frequency. Again no conclusion can be drawn, unless it is that the effect of comparative negligence does not appear after correction for differences in safety conditions.

The divergence between northern and southern states is broadened, however, by the correction made for variations in safety conditions. Many economic and social differences exist between northern and southern states which might account for this difference in claim consciousness of their residents. For example, it is possible that southern Negroes may forego pressing claims against white persons which they would press in a northern state. Another factor may be differences in the distribution of population between urban areas and rural areas. Persons living in urbanized areas might be expected to be more claim conscious than those living in rural areas, because of the combination of the sophistication resulting from newspaper publicity given litigation in larger cities and the hardening to life that may still be the product of the less comfortably developed rural areas.

An opportunity to test the effectiveness of this factor is provided by the statistics of the ratio of urban population to rural population found in column six of Table II. And, when the relative ranking of states in urban-rural ratio is compared with the relative ranking in frequencies of claims per death (or accident) a sufficient correlation is found to support the belief that this factor does affect claim consciousness. Thus four of the sixteen states have the same ranking with respect to bodily injury claim consciousness as they have with respect to the urban-rural population ratio. Only two of the states, Florida and Minnesota, have changed their relative ranking in such a comparison by as much as four places; three states, Georgia, Michigan, and Tennessee, changed their relative ranking by three places, and the remaining eight are within one or two places in rank on both lists. Turning to the correlation between property damage claim frequency per death (or accident) and urban-rural ratio, one notes that it is not as close. Three states do have exactly the same ranking in each list, but two states, Iowa and Minnesota, have a claim frequency rank six places higher than their ranking in the urban-rural ratio list; Florida has a claim frequency rank five places below its urban-rural ratio rank; and Georgia and Tennessee have moved four places from their urban-rural ratio rank. Nevertheless, the correlation in ranking indicates the presence of an operative relationship between urban-rural distribution of population and claim consciousness.

Table III presents a regional comparison of the claim frequency statistics developed in Table II. Once again it may be noted that there appears to be no relationship between claim frequency and

TABLE III

REGIONAL COMPARISONS OF CLAIM FREQUENCY AND COSTS

State	1954-1956 Bodily Injury Claims Per Death	1954-1956 Property Damage Claims Per Death	1954-1956 Average Bodily Injury Claim Cost	1954-1956 Average Property Damage Claim Cost	1954-1956 Total Pure Premium	1950 Urban-Rural Population Ratio
Arkansas	(5) 5.78	(5) 23.71	(5) $755.	(4) $135.	(6) $24.74	(5) .62
Louisiana	(2) 8.81	(3) 29.15	(6) 745.	(2) 137.	(3) 31.25	(2) 1.21
Mississippi	(6) 5.51	(6) 18.84	(1) 939.	(1) 139.	(4) 26.65	(6) .39
Missouri	(1) 12.59	(1) 37.04	(4) 828.	(6) 127.	(1) 40.55	(1) 1.66
Oklahoma	(4) 7.76	(4) 28.98	(3) 882.	(3) 133.	(5) 25.97	(3) 1.04
Tennessee	(3) 8.10	(2) 33.10	(2) 901.	(5) 131.	(2) 32.71	(4) .59
Georgia	(5) 5.86	(5) 23.46	(6) 738.	(2) 138.	(4) 24.64	(2) .81
Alabama	(6) 5.79	(3) 24.12	(4) 765.	(6) 129.	(5) 23.06	(4) .78
Florida	(1) 8.62	(2) 32.76	(1) 906.	(3) 134.	(2) 28.47	(1) 1.66
North Carolina	(4) 5.94	(4) 23.78	(5) 744.	(5) 130.	(6) 21.59	(6) .51
South Carolina	(3) 6.05	(6) 19.11	(3) 832.	(1) 162.	(3) 25.49	(5) .62
Tennessee	(2) 8.10	(1) 33.10	(2) 901.	(4) 131.	(1) 32.71	(3) .59
Mississippi	(5) 5.51	(5) 18.84	(1) 939.	(1) 139.	(3) 26.65	(5) .62
Alabama	(3) 5.79	(3) 24.12	(3) 765.	(5) 129.	(5) 23.06	(3) .78
Arkansas	(4) 5.78	(4) 23.71	(4) 755.	(3) 135.	(4) 24.74	(4) .49
Louisiana	(1) 8.81	(2) 29.15	(5) 745.	(2) 137.	(2) 31.25	(1) 1.21
Tennessee	(2) 8.10	(1) 33.10	(2) 901.	(4) 131.	(1) 32.71	(2) .59
Wisconsin	(3) 11.25	(5) 41.25	(3) 800.	(4) 109.	(2) 32.73	(3) 1.37
Illinois	(1) 17.41	(4) 45.54	(2) 803.	(1) 144.	(1) 45.87	(1) 3.46
Iowa	(5) 7.58	(3) 47.47	(4) 754.	(5) 108.	(5) 21.27	(5) .91
Michigan	(4) 9.80	(2) 52.94	(5) 653.	(2) 131.	(4) 26.95	(2) 2.41
Minnesota	(2) 12.57	(1) 53.89	(1) 900.	(3) 118.	(3) 29.15	(4) 1.20

comparative negligence, unless it is the unlikely one that comparative negligence discourages claims. Instead, there does appear the same rather positive correlation of claim frequency and urban-rural population except in the case of the Georgia grouping of states. In that grouping it may be noted that, except for Florida, there is very little difference in the urban-rural population ratio so that slight variations in that factor might not have an observable effect.

Explanations of the difference in the correlation of bodily claim frequency and property damage claim frequency statistics and the urban-rural population ratio might be advanced.[97] But the important thing for present purposes is not whether each state has received an exactly correct rating in the list of claim frequency statistics. It is instead that, after an adjustment for the differences in safety conditions, the statistics show a relationship between the

97 The claim frequency statistics used here have been developed from the number of traffic deaths which occurred in each state during the years 1954 through 1956. Almost one half of the traffic deaths occurring in urban areas involve collisions with pedestrians, whereas only eleven percent of the rural accidents involve collisions with pedestrians. NATIONAL SAFETY COUNCIL, ACCIDENT FACTS — 1957, 48. Collisions with pedestrians are extremely unlikely to produce property damage claims, whereas other accidents, causing deaths, such as collisions of motor vehicles, collisions with fixed objects, trains, animals, and even running off the road, are likely to create property damage claims. Accordingly, the use of the death statistics in developing a claims ratio probably has a greater accuracy with respect to rural accidents than it does with urban accidents.

degree of urbanization and claim consciousness but fail to show any relationship between comparative negligence and claim consciousness.

This, of course, does not mean that there is no relationship between comparative negligence and claim consciousness. It means only that the relationship cannot be detected with the statistical techniques here used. Nor is any information obtained to answer the important question of how many claims filed with companies reach the state of litigation. The analysis does indicate, however, that the influence of comparative negligence on claims consciousness is not as great as the effect of a higher degree of urbanization, which can be detected in the statistics.

Insurance Costs

Claim frequency, with which we have thus far been concerned, depends principally upon the accident rate, the types of accidents which occur, and the claims consciousness of the community. In turn, claim frequency is only one of the factors which determines the ultimate level of liability insurance premiums. A more prosperous economy can afford expensive safety features in highway construction, thus reducing accidents. On the other hand, the economic level of the community will have an effect in terms of the amount which must be paid to compensate for the loss of wages, salaries, or other income caused by injuries. The economic level of the community will also affect the community judgment expressed in the jury verdict (or the estimate of the jury verdict reflected in a compromise settlement) of the value to be placed upon pain and suffering and physical disfigurement. The extent to which the law permits, or community sentiment accords with, the award of punitive damages in service of the admonitory function of tort law is probably a factor affecting rates. Other social factors may affect community sympathy for an injured party and the community opinion of what injuries should be considered compensable and which injuries must be accepted with resignation in the same way that beauty, brains, and wealthy ancestors, or the lack thereof, must be accepted. And, while instructions to the jury may correct some misapprehensions of jurors about what matters are compensable and which are not, their latitude in determining the value to be placed on such intangibles will produce variation with respect not only to judgments entered on verdicts but with the negotiated settlements.

Obviously many of these factors cannot be reduced to measurable quanta which can be the basis of comparison between states. For others some statistical data may exist. But the interaction of all the factors would seem to be too complicated to allow the use of a formula for accurate prediction of the rate level. To the extent that the social intangibles are a constant within a region of this country, comparisons of one state with its adjacent neighbors may be made without distortion. Tables IV-A, IV-B, IV-C, and IV-D present such comparisons of four comparative negligence states with their neighbors, with the various statistics set in columns depending upon whether they are higher, lower, or the same as that of the comparative negligence state.

TABLE IV

A. ARKANSAS

Remainder of State Comparison

Arkansas Figures: $38.08—ƒ7.5—%6.9—&1.9—*777—§25.03—@28.6—11071—D/R3.29—U/R.49.

Neighboring State	Rate Is: Higher	Lower	Same
Louisiana	$47.78—ƒ7.6—%7.5—&3.0—*798—§36.99—11344—U/R1.21	@26.9—D/R2.95	
Mississippi	$39.00—%8.1—*968—§27.20—@29.6—D/R3.45	ƒ6.3—1957—U/R.39	&1.9
Missouri	$57.80—ƒ7.7—&2.8—*1030—§40.09—@71.1—11786—U/R1.60	%6.2—D/R2.70	
Oklahoma	$38.66—*837—11499—U/R1.01	ƒ6.1—%6.2—&1.8—§24.08—@27.7—D/R2.45	
Tennessee	$39.79—ƒ8.2—%8.0—&2.0—*975—§30.90—11264—U/R.79	@23.6—D/R2.84	

B. GEORGIA

Remainder of State Comparison

Georgia Figures: $37.00—ƒ6.5—%8.2—&1.9—*766—§24.82—@23.7—11338—D/R3.24—U/R.83.

Neighboring State	Rate Is: Higher	Lower	Same
Alabama	$37.30—ƒ6.8—%8.6—*776—@25.1	&1.8—§24.05—11185—D/R3.11—U/R.78	
Florida	*860—@37.1—11666—U/R1.90	$42.63—ƒ6.4—%6.6—&1.8—§24.48—D/R2.32	
North Carolina		$30.50—ƒ6.4—%7.7—*759—§23.66—@21.5—11254—D/R2.86—U/R.51	&1.9
South Carolina	%9.4—*813—§25.34	$34.00—ƒ5.5—@17.6—11117—D/R3.14—U/R.58	&1.9
Tennessee	$39.79—ƒ8.2—&2.0—*975—§30.90	%8.0—@23.6—11264—D/R2.84—U/R.79	

C. MISSISSIPPI

Remainder of State Comparison

Mississippi Figures: $39.00—ƒ6.3—%8.1—&1.9—*968—§27.20—@29.6—1957—D/R3.45—U/R.39.

Neighboring State	Rate Is: Higher	Lower	Same
Alabama	ƒ6.8—%8.6—11185—U/R.78	$37.30—&1.8—*776—§24.05—@25.1—D/R3.11	
Arkansas	ƒ7.5—11071—U/R.49	$38.08—%6.9—*777—§25.03—@28.6—D/R3.29	&1.9
Louisiana	$47.78—ƒ7.6—&3.0—§36.99—11344—U/R1.21	%7.5—*798—@26.9—D/R2.95	
Tennessee	$39.79—ƒ8.2—&2.0—*975—§30.90—11264—U/R.79	%8.0—@23.6—D/R2.84	

D. WISCONSIN

Remainder of State Comparison

Wisconsin Figures: $40.56—ƒ7.4—%7.0—&2.3—*911—§29.93—@52.6—I1760—D/R2.40—U/R1.37.

Neighboring State Rate Is:	Higher	Lower	Same
Illinois	ƒ8.4—§30.35—@89.8—I2243—U/R3.46	$34.38—%6.8—&2.1—*869—D/R2.24	
Iowa	ƒ7.8	$28.31—%5.5—&1.4—*856—§21.55—@45.4—I1580—D/R1.98—U/R.91	
Michigan	ƒ9.8—%7.1—I2132—U/R2.41	$37.18—&2.0—*697—§27.26—@36.0—D/R2.04	
Minnesota	*972—@98.7	$37.00—ƒ7.2—%4.8—&1.8—§26.27—I1675—D/R1.67—U/R1.20	

Code:
$—Remainder of State Premium, adjusted to July 1, 1958.
ƒ—1955-1957 Property Damage Claim Frequency. Letter of National Bureau of Casualty Underwriters Sept. 10, 1959.
%—1955 Mileage Death Rate. NATIONAL SAFETY COUNCIL, ACCIDENT FACTS—1957, 56.
&—1955-1957 Bodily Injury Claim Frequency. Letter of National Bureau of Casualty Underwriters, Sept. 10, 1959.
*—1955-1957 Bodily Injury Average Claim Cost. Letter of National Bureau of Casualty Underwriters, Sept. 10, 1959.
§—1955-1957 Total Pure Premium. Letter of National Bureau of Casualty Underwriters, Sept. 10, 1959.
@—Percentage of Policies Providing Bodily Injury Liability Coverage over $10,000/$20,000. Letter of National Bureau of Casualty Underwriters, Nov. 7, 1958.
I—Annual Per Capita Income (1955). WORLD ALMANAC, 1958, p. 752.
D/R—Deaths Per Registered Auto. See Table II.
U/R—Urban-Rural Population Ratio. See Table II.

The premium rate set out in the table is the combined rate for the basic Class I-A bodily injury and property damage coverage set by the National Bureau of Casualty Underwriters.[68] The rates are for the catch-all territories denominated "remainder of state."[69] They have been adjusted to a hypothetical rate effective as of July 1, 1958, to avoid the differentials that would otherwise be present in rates which became effective upon widely separated dates. The statistics on claim frequency, average claim cost, and pure premium are, however, based upon data covering all classes of insurance for the remainder of state territories, for the simple

[68] This class consists of privately-owned automobiles, driven for pleasure, and not used for transportation to or from w[illegible]k, for which there is neither a male owner nor driver under the age of 25. The limits of coverage are, for bodily injury, not in excess of $5,000 to any individual nor more than $10,000 for any one accident, and, for property damage, not in excess of $5,000 for any accident.

[69] As mentioned above, these territories generally include rural and small city areas which do not have sufficiently distinctive characteristics to merit treatment as separate territories. They probably present the best opportunity for comparison because differences in the accident rate caused by density of population, volume of traffic, and varying degrees of municipal law enforcement, as well as the amount of claims consciousness created by particular news editorial policies, are minimized.

In the cases of Mississippi and Oklahoma the bureau now has no remainder of state territory. For those states the rates used are rates applicable in territories covering large rural areas such as those usually classified as remainder of state. Of course, a search for correlation between "remainder of state" rates and other statistics which are based upon the entire experience of the state proceeds upon the assumption that the insurance experience in these specially defined areas may properly be compared with other experience data accumulated on a statewide basis. Undoubtedly some distortion results.

reason that this is the only form in which it was available. The sources for other data are set out in the tables, which include some of the data from Table II.

The first impression produced by examination of the tables is that variations in level of liability insurance premiums are accompanied by changes in the cluster of variable factors which might be expected to influence the rates, but no fixed relationship between rates and any one of the factors can be observed. Thus, there is a correlation between higher insurance rates and a higher mileage death rate in only ten of the eighteen comparisons. The correlation between higher insurance rates and the statewide death rate per registered automobile is the same, with an affirmative relation existing in ten of the eighteen comparisons. On the other hand, there is a substantial correlation between the frequency of claims per insured vehicle and the level of rates, there being twelve instances in the eighteen comparisons in which a higher frequency for bodily injury claims is accompanied by higher premium rates, and eleven instances of such correlation with respect to property damage claim frequency. The total pure premium figures, which represent the average amount of losses per insured car, have the highest correlation with insurance premium levels, there being an affirmative relationship in fourteen of the eighteen comparisons. The correlation between per capita income and insurance premiums is weaker, there being an affirmative correlation in only ten of the eighteen comparisons, suggesting the possibility that the higher economic losses in states with high per capita income is partially offset by the improvement in safety conditions which a higher economic level is capable of creating. The same weak correlation exists with respect to the urban-rural population ratio but this is not so puzzling since the rates compared are for the territories "remainder of state," which generally are rural or less developed parts of the state and hence less affected by the overall degree of urbanization.

If a comparison of the rates alone is made, as presented in Table V, it will be noticed that there is an equal division of instances in which the rates applicable in states with one rule exceed the rates applicable in states with another rule. In eight instances the rate of a state with a comparative negligence rule is higher than the rate of a neighboring state with a contributory negligence rule and in eight instances the rate of the state with a comparative

TABLE V

PREMIUM RATES IN COMPARATIVE NEGLIGENCE STATES ARE:

State	Higher	Lower	State	Higher	Lower
Arkansas			*Mississippi*		
Louisiana	.....	$ 9.70	Alabama	$ 1.70	.....
Mississippi	.....	.92	Arkansas	.92	.....
Missouri	.....	19.72	Louisiana	.....	$8.78
Oklahoma	.....	.58	Tennessee	.....	.79
Tennessee	.....	1.71			
			Wisconsin		
Georgia			Illinois	6.18	.....
Alabama	.....	.30	Iowa	12.25	.....
Florida	$ 4.37	.....	Michigan	3.38	.....
North Carolina	6.50	.....	Minnesota	3.56	.....
South Carolina	2.40	.....			
Tennessee	.....	2.79	AVERAGE DIFFERENCE (Eliminating Arkansas-Mississippi Comparison)	5.04	5.55

negligence rule is lower.[70] The average amount of the excess in those comparisons in which the rates for comparative negligence states exceed the average rate for contributory negligence states is $5.04, which is 13.3 percent of the average rate for those twelve states with contributory negligence rules in the group compared. The average amount of the difference in those comparisons in which the rates for comparative negligence states are lower is $5.55, which is 14.6 percent of the average rate in the states with contributory negligence rules.[71] It should also be noted that four of the comparisons in which rates in comparative negligence states are higher involve Wisconsin, and that four of the comparisons in which rates of comparative negligence states are lower involve Arkansas.

This near equality of comparison of rates gives a superficial basis for a conclusion that comparative negligence has had no effect upon the insurance premium rates. However, this absolute equality of comparison in a field so small may be attributed to chance, such as peculiar and particular conditions prevailing in either Wisconsin or Arkansas, and therefore has little statistical significance. It may be noted, however, by reference to Tables IV-A,B,C, and D, that in every case in which the comparative negligence state had a higher premium rate than its neighbors, it also had a higher rate of deaths per registered vehicle, or a higher

[70] The number of possible comparisons of states on this basis is smaller than was possible for other statistical measures, because Arkansas and Mississippi, which both have comparative negligence rules, have common borders, but cannot be so compared.

[71] This average difference has been distorted by the great difference between the rate applicable in Arkansas and the rate applicable in Missouri.

accident rate.[72] And, two of the comparisons in which the comparative negligence state rates are substantially lower involve comparisons of Arkansas with its wealthier and more highly urbanized neighbors, Missouri and Louisiana. The other instance in which the comparative negligence state rate is substantially lower involves a comparison of Mississippi with the wealthier and more highly urbanized state of Louisiana.

The result of this rather tedious analysis of rates and other statistics is that nothing conclusive appears. While there is no preponderance of higher rates in states with comparative negligence rates, the field is not large enough to permit a statement that there is no effect. But if there is any effect, it certainly is not strong enough to be noted in the sixteen comparisons made.

The Arkansas Experience

As mentioned above, Arkansas adopted the principle of comparative negligence in June 1955. In 1957 the formulation of the principle was changed from the "pure" comparative negligence standard of 1955 to the more limited form in which recovery is allowed only where plaintiff's negligence is less than that of the defendant. Despite this change, the state has, for more than four years, been governed by a standard allowing recovery by one whose negligence was a contributing cause of his injuries. Accordingly, it furnishes working laboratory experiment on the effect of comparative negligence upon liability insurance premiums. If comparative negligence does produce increased premium rates for liability insurance one would expect the rate of increase of rates in Arkansas to be greater than that which has occurred in neighboring states.

Some obstacles exist to the making of such a comparison. Changes in insurance rates become effective in different states with varying frequencies and upon different dates. For example, the most recent of four increases in Class I-A rates for Arkansas since February 1955 became effective on December 10, 1958, whereas the most recent increase in the comparable rates in Oklahoma since November 1955 became effective in October 1957. Moreover, since the initial level of the rates differed in the two states, a dollar and cents increase comparison would be misleading

[72] Thus supporting the proposition that comparative negligence causes carelessness and increases accidents — and at the same time furnishing an example of how statistical support may be found for almost any preconceived notion.

as to the rate of increase. An adjustment may be made, however, for both these factors by converting the increase between the 1955 rate and the present rate into a percentage increase for the period, and then reducing that increase to a monthly rate of increase which is subject to comparison.

Another difficulty is caused by the number of rate territories and territorial groupings in the various states. Because each state has several territories, there are different and varying monthly rates of increase within each state. Moreover, during the four-year period territorial groupings have been broken up, and in 1959 several rate structures existed in some states for an area formerly covered by one rate structure. To some extent it appears that these new territorial groupings have been established for areas in which the greatest change in loss experience has occurred and that the highest monthly rate of change is associated with these new territories. Accordingly, care must be taken to avoid distortion from these figures.

Use of percentage increases by territorial groupings may be misleading as to the extent to which rates have increased in the state as a whole. For example, two states may each have four territorial groupings. In State *A*, the percentage increases in the four territories may have been 10%, 15%, 15%, and 20%, respectively. In State *B*, the rates of increase during the same period might have been 20%, 5%, 10%, and 10%, respectively. One who took an unweighted average of the percentage increases would conclude that there had been a greater increase in State *A* than in State *B*. However, if half of the insured vehicles in each state are located in the first territorial grouping and only one tenth of the insured vehicles are located in the fourth grouping, the increase has been greater in State *B* than in State *A*. In the absence of some statistical adjustment or weighting of averages (and there is none in the computations which follow) this possibility of inaccuracy inheres in the analysis.

The system used by the National Bureau of Casualty Underwriters divides Arkansas into four territories and three territorial groupings. Territory one consists of all Pulaski County, in which the city of Little Rock is located. Territory two covers the Fort Smith area on the border of Arkansas and Oklahoma. Territory three consists of all of certain northeastern counties bordering on Tennessee and hence close to Memphis. Territory four is the remainder of state territory. For purposes of rate structure at the

TABLE V:

AVERAGE MONTHLY PERCENTAGE INCREASE IN CLASS I-A COMBINED BODILY INJURY AND PROPERTY DAMAGE PREMIUM RATES IN ARKANSAS AND SURROUNDING STATES, 1955-1959

Territories

State	1	2	3	4	5	6	7	8
Arkansas	.8260%	1.9782%	.8260%	.....	.....	.....	.....	.....
Missouri	1.5227	1.4318	.0000	1.2272%	1.5909%	1.5909%	2.3409%	2.3864%
Oklahoma	1.5652	.9565	1.3913	1.3913	1.3913	1.7826	.....	.....
Louisiana	.3939	1.6363	—.0909	.2727	.7878	1.3030	.2142	2.5000
Mississippi	1.0540	.1351	.7027	1.3513	.7027	.....	.....	.....
Tennessee	.5744	.1489	.4255	.1063	.4468	.8723	.4468	.....

present time, the bureau groups territory three and territory four together. The states of Louisiana, Mississippi, Missouri, Oklahoma, and Tennessee, which surround Arkansas, now have thirty-four different territorial groupings.

A tabulation of the monthly percentage increases in the Class I-A liability insurance rates set by the bureau for each of these territorial groupings is presented in Table VI. The same data are recast in graphic form for visual presentation in Table VII. The unweighted average of the monthly percentage increase for all of the 37 territorial groupings is 1.03 percent[73] whereas the monthly percentage increase in two of the Arkansas territorial groupings was .83 percent and for the other, the Fort Smith territory, the monthly percentage increase was 1.98 percent. The median of the monthly percentage increases, which is less affected by the extremely high percentage increases applicable to certain new territorial groupings,[74] is .96 percent.

Certainly in these statistics there rests no proof that comparative negligence results in higher liability insurance premium rates. Two of the territorial groupings, which cover most of the states and most of the insured vehicles in Arkansas, have a rate of increase below both the average and the median of the rate of increase which occurred in the other territorial groupings. One, the Fort Smith territory, located on the Oklahoma boundary, is very substantially above both the average and the median. For present purposes this is illuminating, since the residents of Fort Smith probably do a substantial amount of driving in Oklahoma and accordingly have accidents where the contributory negli-

[73] If the percentage increases in the seven territorial groupings in Texas are utilized in making the comparisons the unweighted average monthly percentage increase becomes instead .91%.

[74] If the percentage increases in the seven territorial groupings in Texas are utilized in making the comparisons the median increase drops to .79%.

TABLE VII

AVERAGE MONTHLY INCREASE IN CLASS 1-A COMBINED BODILY INJURY AND PROPERTY DAMAGE PREMIUM RATES FOR ARKANSAS AND SURROUNDING STATES DURING 1955-1959

Terr. Groups	—.1%	0%	.1%	.2%	.3%	.4%	.5%	.6%	.7%	.8%	.9%	1.0%	1.1%	1.2%	1.3%	1.4%	1.5%	1.6%	1.7%	1.8%	1.9%	2.0%	2.1%	2.2%	2.3%	2.4%	2.5%
5																											
4																											
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Note. Average monthly increases for Arkansas territorial groupings are indicated by diagonal lines.

gence rule still prevails. Presence of this bar to recovery, which would be recognized in Arkansas under the usual rule applicable to such a conflict of laws situation,[75] would be expected to mitigate the increases in rates attributable to the change in Arkansas law if the legal effect given contributory negligence is a significant factor in this respect. Instead, the substantial increase in the Fort Smith rates appears to be caused by setting the dollar amount of those rates on a par with the other territorial groupings.

Of course, these statistics do not prove that comparative negligence does not affect the level of liability insurance premium rates.[76] Without enactment of the comparative negligence statutes Arkansas might have had a lower rate of increase, comparable, for example, with that of Tennessee. However, it is possible to say once again that if comparative negligence does affect insurance rates, its effect is not great enough to be observable in the complex of forces acting on the rate level. It is not, for example, anywhere near as strong as whatever peculiar local developments led to very high increase rates in new territorial groupings in Louisiana and Missouri.

Geographical Distribution of Rate Territories

Under the usual conflicts rule the law of the place of the tort determines the applicability of the defense of contributory negligence.[77] According to available statistics nonresident drivers are involved in a substantial number of accidents.[78] If the presence

[75] Powell Bros. Truck Lines v. Barnett, 194 Ark. 769, 109 S.W. (2d) 673 (1937); Missouri P. R. Co. v. Miller, 184 Ark. 61, 41 S.W. (2d) 971 (1931); St. Louis-S.F. R. Co. v. Rogers, 172 Ark. 508, 290 S.W. 74 (1927); St. Louis, I.M. and S. R. Co. v. McNamare, 91 Ark. 515, 122 S.W. 102 (1909); LEFLAR, CONFLICT OF LAWS 222 (1959).

[76] Cf. Professor Rosenberg's findings that the Arkansas statute did alter the value of personal injury claims for the purposes of settlement, and increased the proportion of verdicts won by plaintiffs, though it did not increase the size of verdicts. Rosenberg, "Comparative Negligence in Arkansas: A 'Before and After' Survey," 13 ARK. L. REV. 89 at 103-105 (1959).

[77] CONFLICT OF LAWS RESTATEMENT §385 (1934). The usual conflict rule is applied in *Arkansas*, cases cited note 75 supra. *Georgia*, Craven v. Brighton Mills, 87 Ga. App. 126, 73 S.E. (2d) 248 (1952), and *Mississippi*, Tri-State Transit Co. v. Mondy, 194 Miss. 714, 12 S. (2d) 920 (1943); and apparently would be applied in *Wisconsin*. See Haumschild v. Continental Cas. Co., 7 Wis. (2d) 130, 95 N.W. (2d) 814 (1959). But cf. Bourestom v. Bourestom, 231 Wis. 666, 285 N.W. 426 (1939) (overruled on another issue in Haumschild v. Continental Cas. Co., supra).

[78] During 1956, 16% of all fatal accidents and 9% of all accidents involved drivers who were not residents of the state in which the accident occurred. During the same year, 35% of all fatal accidents and 27% of all accidents involved drivers residing more than 25 miles from the place of the accident. NATIONAL SAFETY COUNCIL, ACCIDENT FACTS – 1957, 53.

or absence of a complete defense in contributory negligence is a substantial factor in producing higher liability insurance rates one would hypothesize that residents living near the borders of states with comparative negligence rules would have a loss experience different from those living in the center of the state. Thus, drivers in states with comparative negligence who live near the borders of those states would have lower rates than otherwise comparable drivers in the center of those states. Likewise, drivers in neighboring states with contributory negligence rules who live near the border of a state with comparative negligence would have higher rates than otherwise comparable drivers living at a distance from that border.

The rate data of the National Bureau of Casualty Underwriters unfortunately does not make it possible to make a general test of this hypothesis. There is no general delineation of rate territorial boundaries in either category of states which indicates concern on the part of insurance actuaries for the probability of travel in neighboring states. Of course, this indicates more than lack of actuarial concern with comparative negligence; it indicates lack of concern with all difference in rules of law and, indeed, a lack of concern for a state-by-state consideration of the many other variables affecting insurance rates. It is also a reminder that the actuarial process by which rates are established is not so precise and delicate as to reflect separately the influences of the many factors thought to affect rate structures. Indeed, the insurance principle, requiring a sharing of generalized risks, precludes an overly refined system which would subject small groups or individuals to paying the costs of their particular experience.

There do exist, however, a few instances in which territorial boundaries have been drawn so as to make it possible to test this hypothesis. As previously mentioned, the Fort Smith territory in Arkansas is located on the border of Oklahoma. The bureau's class I-A liability rates for that territory were raised in 1956 to the same level as those for all other territories in Arkansas. Thus, proximity to Oklahoma and resultant driving under its laws have not been reflected in reduced rates for this border city.

Certain cities in Georgia, with comparable populations[70] each of which constitutes a separate territory for the purposes of ac-

[70] In 1950 the population of the cities was as follows: Augusta — 71,508; Columbus — 79,611; Macon — 70,252. THE WORLD ALMANAC 1958, 273.

cumulation of loss experience, provide another opportunity for a test. Augusta, Georgia is located on the border of South Carolina. Columbus, Georgia is located on the border of Alabama. Macon, Georgia is located in the middle of the state. Contrary to the hypothesis all three cities have the same bureau class I-A liability rates. In neighboring Alabama, the bureau has established the same rate for Montgomery, located in the center of the state, as that applicable to somewhat larger Mobile, which is approximately 20 miles from the Mississippi border. Six counties in a territory of South Carolina are located on the border of Georgia. yet they have the same rates as the remainder of the state. One bureau territory in Mississippi consists of a long narrow string of counties running the length of the Mississippi River, and hence a territorial grouping on the boundary with Arkansas and Louisiana. It has the same rate structure as another territory which covers most of the state.

In northern Wisconsin, LaCrosse, located on the border of Minnesota, is classified with and has the same rates as the more centrally located cities of Fond Du Lac, Green Bay, Madison, Oshkosh and Sheboygan. Beloit, located on the Illinois border, is classified with the more centrally located cities of Appleton, Chippewa Falls, Eau Claire, Waukesha, and Wausau. On the other hand, the northern counties of Wisconsin which border on the Upper Peninsula of Michigan have the lowest Class I-A rates in the state, suggesting that here the contributory negligence rule of Michigan has had an effect. This conclusion is dispelled when one notes that the counties of the Upper Peninsula of Michigan bordering on Wisconsin also have the lowest rates in Michigan, suggesting that level of the rates in comparison with the other portions of both states is caused more by similar economic, climatic, and social conditions than by differences in the treatment accorded contributory negligence. However, some factor dependent upon state boundaries, whether it is the regulation of the insurance industry, the Wisconsin joinder rule[80] or some

[80] The Wisconsin courts will not permit direct action against an insurance company on a policy with a "no action" clause (i.e., no action may be maintained against the insurance company until liability of the insured has been established by judgment) valid in the state in which it was issued. Ritterbusch v. Sexmith, 256 Wis. 507, 41 N.W. (2d) 611 (1950). See MacDonald, "Direct Action Against Liability Insurance Companies," 1957 WIS. L. REV. 612 at 616-617. Accordingly, even in an action brought in Wisconsin the insurer of a Michigan resident could not be joined as a party defendant if the policy contained such a clause, which is apparently valid in Michigan, but subject to waiver. Cf. Kipkey v. Casualty Assn. of America, 255 Mich. 408, 238 N.W. 239 (1931); Barney v. Preferred Automobile Ins. Exchange, 240 Mich. 199, 215 N.W. 372 (1927). On the other

other legal factor is apparent in the difference between the $27 rate charged for the basic Class I-A coverage in the Michigan counties and the $40 rate charged in neighboring Wisconsin counties.

Once again analysis of the data does not permit an affirmative statement that comparative negligence does or does not affect liability insurance rate levels. This indefiniteness of the data might be due to the fact that the proportion of accidents involving nonresident drivers, though ranging from 9 to 16 percent on a statewide basis and undoubtedly higher near state boundaries,[81] is not sufficient to make the effect of comparative negligence apparent in loss experience. The general lack of concern of the actuaries for proximity to state borders is consistent with this conclusion. However, while the possibility remains of an undetected effect of comparative negligence on the level of rates, this analysis of geographical distribution of territories indicates that its possible force is not sufficient to be observable.

Miscellaneous Indicators

Another indication of lack of concern on the part of insurance actuaries for the differences between comparative negligence and contributory negligence rules may be found in the practice used to determine the premium rate charged for coverage in excess of the basic limits of $5,000 per person and $10,000 per accident for bodily injury coverage and $5,000 for property damage. It is sometimes argued that comparative negligence would encourage the filing of nuisance claims and would result in award of reduced damages to plaintiffs totally at fault out of sympathy for their handicapped condition.[82] Accordingly, one would expect the losses within the basic limits to be higher in states with comparative negligence rules than it is in states following the rule that contributory negligence is a complete bar to re-

hand, it is clear that the insurance company could not be sued in a direct action in Michigan, Lieberthal v. Glens Falls Indemnity Company, 316 Mich. 37, 24 N.W. (2d) 547 (1946). Accordingly, the difference in the results due to the rules relating to joinder might be apparent in the rates, despite a substantial amount of travel across the border by residents of both states.

[81] Note 78 supra.

[82] E.g., Benson, "Comparative Negligence — Boon or Bane," 26 INS. COUNSEL J. 204 at 207 (1956); Gilmore, "Comparative Negligence from a Viewpoint of Casualty Insurance," 10 ARK. L. REV. 82 at 83 (1955); Lipscomb, "Comparative Negligence," 1951 INS. L.J. 667; Powell, "Contributory Negligence: A Necessary Check on the American Jury," 43 A.B.A.J. 1005 at 1007 (1957).

covery. Since the increase in premiums for extended coverage is computed as a percentage of the basic $5,000/$10,000 coverage policy, one would expect different percentage factors to be used in states with comparative negligence rules. However, the same factors are used for all states to determine the premiums for increased limits, with the exception of Louisiana and Oklahoma where somewhat higher factors are applicable.[83]

Another indication that comparative negligence has not affected the proportionate distribution of small and large claims may be found in the statistics of average claim costs presented in Tables II and III, where no marked correlation between comparative negligence and ranking in size of average claim appears. On the other hand, reference to Table IV-A, B, C, and D will disclose that in only five comparisons between comparative negligence states and contributory negligence states did a higher proportion of the residents of states with contributory negligence rules carry insurance with higher coverage limits than the residents of comparative negligence states. Or to put in the other way, in eleven comparisons, a higher proportion of residents in comparative negligence states carried insurance with higher coverage limits than did residents in neighboring states with contributory negligence. From this one might conclude that the residents of comparative negligence states have been made more protection minded, but their concern does not appear to be with the smaller claims which comparative negligence is said to promote.

CONCLUSION

Certainly this analysis of insurance data and other statistical information has produced no definite or precise measure of the effect of comparative negligence on automobile liability insurance. The effect of some factors, such as safety conditions or the death rate and the urban-rural population ratio can be detected. Generally speaking, however, it must be said that no effect from comparative negligence appears in the data. Teachers of tort law who each year must instruct their first-year classes on the effect of contributory negligence upon recoveries—and their classes consist of college-educated students who certainly possess a sophistication much above that of the general public—may find nothing surprising in the indications that comparative negligence has no effect upon the claims consciousness of the general

[83] Letter from the National Bureau of Casualty Underwriters, November 5, 1958.

public. A total lack of effect would be consistent with the view that despite the legal bar of contributory negligence, comparative negligence is in fact practiced in all states, by insurance adjusters,[84] defense and plaintiffs' attorneys, juries,[85] and even judges.[86] If this is true, one would expect no effect on the general level of rates. Instead, in only a limited number of cases, in which juries literally applied the contributory negligence bar or dealt freely with one totally at fault in producing his injuries, would a different result occur with a different rule of law. The choice then between the two rules would not be one involving a question of

[84] One manual for casualty insurance adjusters contains the following advice:

"Since our first and most important defense is that of contributory negligence, I think that this is the proper time to warn the new claims man that although he must know the law as related to his work, he must be just as careful to avoid giving it too much weight when it comes to settling claims. Take the law seriously, but don't become wedded to it. As the new man gains in experience, he will learn much to his chagrin that some juries do not give proper consideration to theoretically valid defenses.

". . . Theoretically, the percentage of negligence with which the plaintiff can be charged is immaterial in defeating his right of action, in cases where this defense is proper. In other words, according to the law, even if his own contributory negligence was only 10 per cent of all the negligence in the accident, this would be sufficient to bar his recovery. In practice, however, the theory is rarely applied so stringently." MAGARICK, SUCCESSFUL HANDLING OF CASUALTY CLAIMS 17-18 (1955). See also id. at 271-272; GORTON, AUTOMOBILE CLAIM PRACTICE 92, 145 (1940). But cf. id. at 158-159.

[85] Benson, "Comparative Negligence — Boon or Bane," 26 INS. COUNSEL J. 204 at 205, 211 (1956); Bress, "Comparative Negligence: Let Us Hearken to the Call of Progress," 43 A.B.A.J. 127 at 128 (1957); Harkavey, "Comparative Negligence — The Reflections of a Skeptic," 43 A.B.A.J. 1115 at 1116-1117 (1957); Powell, "Contributory Negligence, A Necessary Check on the American Jury," 43 A.B.A.J. 1005 at 1006 (1957); Tooze, "Contributary vs. Comparative Negligence — A Judge Expresses His Views," 12 NACCA L.J. 211 at 212 (1953); ULMAN, A JUDGE TAKES THE STAND 31-32 (1936).

[86] For an example of judicial approval, or at least condonation, of compromise verdicts limiting the damages awarded a plaintiff whose contributory negligence was believed by the jury to be a cause of his injuries, even though the legal rule would require a complete bar, see Karcesky v. Laria, 382 Pa. 227 at 234, 114 A. (2d) 150 (1955). The court there said, "The doctrine of comparative negligence, or degrees of negligence, is not recognized by the Courts of Pennsylvania, but as a practical matter they are frequently taken into consideration by a jury. The net result, as every trial judge knows, is that in a large majority of negligence cases where the evidence of negligence is not clear, or where the question of contributory negligence is not free from doubt, the jury brings in a compromise verdict.

". . . In the instant case twelve reasonable men could have serious doubt as to whether Laria was negligent; and if Laria was negligent, whether the accident was caused by his negligence or by the contributory negligence of the plaintiffs or partly by the negligence of each of them. Under such circumstances, a jury usually does what this jury did, namely render a compromise verdict which is much smaller in amount than they would have awarded (a) if defendant's negligence was clear, and (b) if they were convinced that plaintiffs were free from contributory negligence.

"Where the evidence of negligence or contributory negligence, or both is conflicting or not free from doubt, a trial judge has the power to uphold the time-honored right of a jury to render a compromise verdict, and to sustain a verdict which is substantial — a capricious verdict or one against the weight of the evidence or against the law, can and should always be corrected by the Court."

substantially higher insurance rates for everyone, but a question of the justness of results in a limited number of cases.

It is possible that comparative negligence has an effect upon insurance rates, but that that effect cannot be detected with the data on hand and the techniques used. Even if this is true, however, some measure of its force has been obtained. Adoption of a comparative negligence rule, as shown by the Arkansas experience, would not have a catastrophic result upon the insurance rate structure of any state. Indeed, it would not have as much effect as rapid growth of population, increased urbanization, or change to a traffic program with the effective safety record of a neighboring state. Its effect, if any, would probably go undetected in the rates and statistics of the insurance industry.

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NEGLIGENCE AND LIABILITY WITHOUT FAULT IN TORT LAW

Cornelius J. Peck*

It is frequently assumed that with a few exceptions the principles of negligence comprise the field of tort law, and that fault is the most common basis for determining liability for harmful conduct. The space devoted in most law school torts casebooks suggests to students and future lawyers that negligence is the dominant principle of tort law.[1] The emphasis given the subject by teachers, stimulated by the intellectual challenges of defining proximate cause or establishing standards of care, further impresses the importance of negligence principles upon each class of law students. Moreover, most of the tort cases litigated are in fact decided pursuant to principles of negligence, largely because of the litigation-spawning capacity of automobile accidents.[2] Though these are changing times, the concept persists that what now exists has always been. However, a survey of tort law produces a somewhat different view, and discloses a surprising number of instances in which liability is imposed without fault.

The conclusion reached by most scholars is that until the 19th century a person whose actions caused harm to another was in most situations held responsible for that harm simply because he had acted.

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1. Prosser devotes in excess of 500 of 1150 pages in his casebook to negligence concepts, W. PROSSER & Y. SMITH, CASES AND MATERIALS ON TORTS (4th ed. 1967); W. SEAVEY, P. KEETON & R. KEETON, CASES ON TORTS (2d ed. 1964) devotes about 450 of its 1043 pages to negligence principles; and C. GREGORY & H. KALVEN, CASES AND MATERIALS ON TORTS (1959) likewise gave about 450 of 1299 pages to negligence concepts.

2. 2 F. HARPER & F. JAMES, THE LAW OF TORTS § 11.3, Supplement to Volume 2, Comments to 11.3 n.1, to 11.3 n.8 (1956); O'Connell, *Taming The Automobile*, 58 Nw. L. Rev. 299, at 303-04 (1963).

Holdsworth tells us that this was the case both with respect to early Anglo-Saxon law[3] and the Mediaeval Common Law.[4] Wigmore earlier summarized the primitive German doctrine that "The doer of a deed was responsible whether he acted innocently or inadvertently, because he was the doer . . . ."[5] This absolute responsibility, without regard to blame, persisted until the early 1500's, when the primitive notion was abandoned in favor of permitting a defendant to exempt himself from liability by showing that he was without blame even though he had acted voluntarily.[6] Street agreed that for several hundred years the conception of negligence was unknown to the law of trespass; a defendant was liable if it was shown that damage had been done by the direct or immediate application of force, without regard to whether or not he was negligent.[7] Justice Holmes was persuaded that policy and consistency required rejection of the rule of strict liability, but recognized that the theory enjoyed the support of some lawyers of his time, and that the common law probably followed such a rule during what he called a period of dry precedent.[8] Scholars today agree that a rule of strict liability prevailed at the early stages of development of the common law, usually rendering an actor liable if he in fact caused injury to another.[9]

Escape from the rule of strict liability evolved and developed slowly, in typical common law fashion. There are a number of detailed accounts of this development.[10] Prominent among the early decisions is *The Case of Thorns*,[11] in which an action for trespass to real property was brought against a defendant who had cut a hedge of thorns, some of which fell upon plaintiff's land. While holding for the plaintiff, one of

3. 2 W. Holdsworth, A History of English Law 51 (3d ed. 1923).
4. 3 *id.* at 375-82.
5. Wigmore, *Responsibility for Tortious Acts: Its History*, 7 Harv. L. Rev. 315, 317 (1894).
6. Wigmore, *Responsibility for Tortious Acts: Its History—III*, 7 Harv. L. Rev. 441, at 442-44 (1894).
7. T. Street, Foundations of Legal Liability 74-78 (1906).
8. O. Holmes, The Common Law 89 (1881).
9. 2 F. Harper & F. James, The Law of Torts § 12.2 (1956); W. Prosser, The Law of Torts 144 (3d ed. 1964); J. Fleming, The Law of Torts 107, 290 (3d ed. 1965).
10. Winfield, *The Myth of Absolute Liability*, 42 Law Q. Rev. 37 (1926); Winfield, *The History of Negligence in the Law of Torts*, 42 Law Q. Rev. 184 (1926); Wigmore, *Responsibility for Tortious Acts: Its History—III*, 7 Harv. L. Rev. 441 (1894); O. Holmes, The Common Law 85-88 (1881).
11. 1466 Y.B. 6 Ed. 4, f.7a pl. 18.

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decisions suggested.[16] Sever

12. Weaver v. Ward, 80 Eng. R
13. See the cases set out in th
Acts: Its History—III, 7 Harv. L
The Common Law 85-88 (1881).
14. Vincent v. Stinehour, 7 Vt
(1843); Brown v. Kendall, 60 Ma
15. 60 Mass. (6 Cush.) 292 (18
16. In Vincent v. Stinehour, 7

the judges noted that the defendant had failed to allege that he could not have acted in any other way, or that he had done all in his power to keep the thorns from falling on plaintiff's land. This observation suggests that establishing such facts might have constituted a valid defense. One hundred and fifty years later a similar suggestion was made in a case holding liable a soldier whose gun accidentally discharged and injured the plaintiff.[12] But the examples given—"as if a man by force take my hand and strike you, or if here the defendant had said that the plaintiff ran across his piece when it was discharging, or had set forth the case with the circumstances so as it had appeared to the court that it had been inevitable, and that the defendant had committed no negligence to give occasion to the hurt"—indicate that liability would have been imposed upon an actor guilty of much less than what is today required to establish negligence.

And so things continued until the 19th century, with liability in trespass being imposed upon actors who had caused harm in a series of cases suggesting that inevitability of the accident and lack of any fault upon the part of the defendant would have constituted justification and a defense against liability.[13] Finally, three American courts, relying in large part upon dicta from earlier cases, announced the proposition that liability could not be imposed unless the actor were guilty of some fault or neglect.[14] Of the three, the decision of the Supreme Court of Massachusetts in *Brown v. Kendall*[15] became the most famous, and is now considered the leading case establishing the necessity of proving negligence in order to impose liability for accidental injury. Perhaps the decision has gained that position because of the esteem enjoyed by its author, Chief Justice Lemuel Shaw; more likely, its prominence derives from the fact that it clearly imposed the burden of proving negligence upon the plaintiff rather than leaving the absence of negligence something to be proved by the defendant, as the other two decisions suggested.[16] Several years later, in England, comprehensive

12. Weaver v. Ward, 80 Eng. Rep. 284 (K.B. 1616).
13. See the cases set out in the Appendix to Wigmore, *Responsibility for Tortious Acts: Its History—III*, 7 Harv. L. Rev. 441, at 456-63 (1894). *See also*, O. Holmes, The Common Law 85-88 (1881).
14. Vincent v. Stinehour, 7 Vt. 62 (1835); Harvey v. Dunlop, 39 N.Y.C.L.R. 193 (1843); Brown v. Kendall, 60 Mass. (6 Cush.) 292 (1850).
15. 60 Mass. (6 Cush.) 292 (1850).
16. In Vincent v. Stinehour, 7 Vt. 62, 65-66 (1835) the court said: "To prevent any

reviews of precedent led to a clear statement that, where an act causing harm is neither intentional nor negligent, there will be no recovery, even though trespass would have been the right form of action if one had been maintainable.[17] But even as late as 1959 an English trial court was called upon to determine that a complaint did not state a cause of action where it alleged an injury caused by the defendant without specifying that the harm was either intentionally or negligently inflicted.[18]

As early as the 14th century, however, liability for causing harm could be established in an action of trespass on the case by showing that the conduct of the defendant was negligent. This action was devised in order to provide a remedy for harm caused by misfeasance in the performance of an obligation which had been undertaken.[19] In time, trespass on the case came to lie for the doing of any unlawful act, provided the damage sustained was "consequential" rather than "immediate."[20] At that time it was fatal error to proceed by case if the harm had been immediately caused by the defendant;[21] however, shortly before the American courts developed the modern negligence principle, an English court decided that a plaintiff might make negligence the ground of an action on the case even where the injury had been "immediately" caused by a negligent act.[22] In effect, one could waive the trespass and sue for negligence. The effect of the mid-19th century American decisions was to merge the substantive law of trespass and case, and to impose upon plaintiffs who relied upon trespass

abuse of this protection [against liability for harm involuntarily occasioned], a person is accounted negligent or careless, and blame is imputed to him, if he does not use an extraordinary degree of circumspection and prudence, greater than is commonly practiced, and if he might have prevented the accident." In Harvey v. Dunlop, 39 N.Y.C.L.R. 193, 195 (1843), the plaintiff had argued that the onus lay on the defendant to show that the injury had not been done wrongfully or carelessly. The highest New York court agreed, but concluded that the jury might have reached such a determination on the evidence.

17. Holmes v. Mather, [1875] L.R. 10 Ex. 261; Stanley v. Powell, [1891] 1 Q.B. 86.

18. Fowler v. Lanning, [1959] 1 All. E.R. 290 (Q.B.). Probably plaintiff's counsel was attempting to put on the defense the burden of showing freedom from fault.

19. 3 W. Holdsworth, A History of English Law 429-34 (3d ed. 1923).

20. Blackstone, J., in Scott v. Shepherd, 1773. 3 Wils. 403, 95 Eng. Reprint 1124; 1 J. Chitty, Pleadings 148 (16 Am. Ed. 1883).

21. Day v. Elwards, 5 I.R. 648, 101 Eng. Rep. 361 (K.B. 1794).

22. Williams v. Holland, 131 Eng. Rep. 848 (C.P. 1833).

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23. Gregory, *Trespass to Negli*
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24. *Id.* at 368.

25. Roberts, *Negligence: Black*
Tory Vein, 50 Cornell L.Q. 191, 2

theory the same burden which they formerly would have had to carry in an action on the case.[23]

Why the change took place must, of course, remain a matter of speculation. It has been suggested that Chief Justice Shaw may have been motivated by a desire to make the risk-creating enterprises of a developing industrial economy less vulnerable to liability than they had been under the earlier common law.[24] This suggestion has been countered with the observation that *Brown v. Kendall*, which Shaw used as the vehicle for changing the law, involved not industry but instead the actions of private persons engaged in separating two fighting dogs.[25] It seems unlikely that Chief Justice Shaw shrewdly selected the case in order to disguise the ends to be served by changing the law; but it seems equally unlikely that he could have written the decision without considering what the contemporary conditions of society suggested as appropriate standards for allocating responsibility for unintentionally caused harms.

Indeed, the common law trespass rule was probably well suited to the conditions which prevailed during its evolution. Most energy sources at that time were either human or familiar domestic animals; the implements used in labor and recreation were relatively uncomplicated devices operating on elementary mechanical principles. One who directly or immediately harmed another by his active conduct probably had departed from community standards of behavior much in the same way that one who is negligent today departs from the standard of the reasonably prudent man. Proof of "immediate" causation was then a satisfactory standard for allocating responsibility for harm. It did not have a disruptive effect upon society, and did not deter or misdirect otherwise desirable economic activity.

The development of industry and transportation using steam and other sources of power, and the development of new products and devices, changed the situation. One need only read a description of the operation of steam locomotives prior to adoption of the air brake to

23. Gregory, *Trespass to Negligence to Absolute Liability*, 37 VA. L. REV. 359, 366 (1951).
24. *Id.* at 368.
25. Roberts, *Negligence: Blackstone to Shaw to ? An Intellectual Escapade In A Tory Vein*, 50 CORNELL L.Q. 191, 205 (1965).

realize what costs might have been imposed upon railroads if liability for harm were to be determined by the common law trespass rule:[26]

> Down to the year 1868 the brake system remained very much as it was in 1830 when railways were first adapted to commercial operation. Even though detailed improvements covering structural items had been incorporated, the essential principles were the same. Those in charge of the locomotive had no direct control over the brake manipulation of the vehicles comprising the train. Communications between engineman on the locomotive who senses the danger and the brakeman in the cars who drew up the cables was effected by whistle signals in case of sudden emergency. The first action was to signal danger and to this signal the train crew was instructed to respond with celerity. Each operation required time and every second of time represented many feet of space.

Moreover, about the only safety measures which the railroads could use at crossings were warning signals by whistle and bell.[27] As one commentator colorfully put it some time ago:[28]

> Early railway trains, in particular, were notable neither for speed nor safety. They killed any object from a Minister of State to a wandering cow, and this naturally reacted on the law.

Predictably, the reaction of the law was not strict condemnation of this activity which offered escape from the slow, uncomfortable and jolting transport by stage over mud-filled roads,[29] and which promised development of the nation's rich resources deposited over thousands of miles of virgin territory. The negligence standard provided a legal environment in which rail transportation could grow and prosper. It aided other branches of industry and commerce as well.

The judicial response to the question of the liability of one who causes harm by handling a new and relatively unknown material suggests a similar adaptation of law. *The Nitroglycerine Case* involved an explosion which occurred soon after "a gentlemen by the name of Noble" [sic] suggested that nitroglycerine might be used for blasting

26. Silcox, Safety in Early American Railway Operations: 1853-1871 (1936), quoted in Malone, *The Formative Era of Contributory Negligence*, 41 Ill. L. Rev. 151 at 161 (1946) [hereinafter cited Malone].
27. *Id.*
28. Winfield, *The History of Negligence in the Law of Torts*, 42 L.Q. Rev. 184, 195 (1926).
29. *See* Malone, *supra* note 26, at 153-54.

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30. 82 U.S. (15 Wall.) 524, 5
31. Winterbottom v. Wright, 1
32. Malone, *supra* note 26.
33. 11 East 59, 103 Eng. Rep.
34. *See* L. Green, Traffic V

purposes.[30] Employees of the defendant express company had undertaken with hammer and chisel to open a case, from which some unidentified "sweet oil" was leaking. The explosion which followed did severe damage to the building in which the express office was located. The defendants were not held liable for the harm done, even though it resulted "immediately" from the actions of the employees. Chief Justice Shaw's opinion in *Brown v. Kendall* provided the basis for holding that the directness or remoteness of the consequences of the defendants' act related only to the proper form of action, and not to the basis of liability. Negligence was the standard by which liability was to be determined. Coupled with the then prevailing notion that a manufacturer was not liable absent privity of contract,[31] the decision significantly aided preparation of the legal environment for an economy which would be producing and using new and unfamiliar products whose composition or principles of operation were not generally known.

The restructuring of the legal environment for the industrial age was not accomplished solely through reformulation of the rule concerning liability for trespass. As Professor Malone has effectively demonstrated,[32] the concept of contributory negligence as a bar to recovery rose to prominence in response to the need for a legal system compatible with the demands of a growing industrial economy. The unimpressive opinions in *Butterfield v. Forrestor*,[33] uniformly recognized as the fountainhead of contributory negligence theory, could hardly have prompted such widespread proliferation of the doctrine had it not been the case that some additional bar to recovery was considered necessary and appropriate to the times. The entire population stood to benefit from the workings of an industrial economy, and society could not afford to burden itself with compensating those individuals who were so unfortunate as to be injured accidentally by an instrument of progress.[34]

Thus it appears that a significant change in tort law was made by abandonment of the strict liability rule of common law trespass, and substitution of the principles of negligence law in cases involving un-

30. 82 U.S. (15 Wall.) 524, 529 (1872).
31. Winterbottom v. Wright, 152 Eng. Rep. 402 (Ex. 1842).
32. Malone, *supra* note 26.
33. 11 East 59, 103 Eng. Rep. 926 (K.B. 1809).
34. *See* L. Green, Traffic Victims: Tort Law and Insurance 33-34 (1958).

intended consequences. That this change took place within the last one hundred and fifty years is in itself evidence that strict liability is not a principle alien to Anglo-American tort law. Perhaps even more persuasive evidence is the fact that strict liability is applied as the principle for determining responsibility for much harmful conduct within the area of tort law. Strong eddies and cross-currents developed in response to the changes in liability for unintended consequences, and, to extend the metaphor, it seems possible that the tide has begun to turn.

An example of strict liability derived from the early common law, but still of vitality, is the rule imposing liability upon one who intentionally enters onto land in the possession of another, even though under a reasonable mistake.[35] Of course, a distinction exists between consequences which are intended, though brought about by mistake, and consequences which are unintended. But the significant point is that liability may be imposed for trespass even though a reasonable man might have made the same mistake. Moreover, the liability of a trespasser extends to all harm which he in fact causes to the land, the possessor, or members of the possessor's household, without regard to whether the trespasser acted in a way which was intentionally wrongful, reckless, or negligent.[36] Perhaps the preservation of this rule of strict liability can be attributed to our unexamined retention of the early common law zeal for protecting interests in land; or perhaps no social purpose equivalent to that of freeing industry from judicial restraints has been advanced on behalf of trespassers to real property. The consequence is, at any rate, that one may be held liable for harm caused without fault other than entry based upon a reasonable mistake.[37]

35. 1 RESTATEMENT (SECOND) OF TORTS § 164 (1965); J. FLEMING, THE LAW OF TORTS 77-80 (3d ed. 1965); 1 F. HARPER & F. JAMES, THE LAW OF TORTS 12-13 (1956); W. PROSSER, THE LAW OF TORTS 74 (3d ed. 1964).

36. 1 RESTATEMENT (SECOND) OF TORTS § 162 (1965); J. FLEMING, THE LAW OF TORTS 38 (3d ed. 1965); 1 F. HARPER & F. JAMES, THE LAW OF TORTS 29 (1956); W. PROSSER, THE LAW OF TORTS 67 (3d ed. 1964).

37. Illustration 2 to § 162 of 1 RESTATEMENT (SECOND) OF TORTS is as follows:

> 2. A is driving his car along the highway in a neighborhood with which he is unfamiliar. He asks B to direct him to a certain town. B tells him that he can take a short cut through a private road over which the public is not accustomed to travel, which B asserts to be upon his own land but which, in fact, is on the land of C. While driving carefully along the road, A runs over D, C's three-year-old child, who suddenly dashes out from the bushes which border the road. A is

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40. 4 RESTATEMENT OF TORTS §§

41. O. HOLMES, THE COMMON
Tortious Acts: Its History, 7 HARV.

42. *See* 1 F. HARPER & F. JAMES,

Strict liability is still imposed upon one who removes the naturally necessary lateral or subjacent support of land in the possession of another thereby causing subsidence of the land, both for damages to the land and for any damage to buildings or artificial conditions thereon.[38] In fact, Tentative Draft Number 15 of the *Restatement of Torts Second* recently proposed to increase this protection for support of land by imposing strict liability for subsidence of land caused by persons otherwise privileged to withdraw subterranean water, oil, minerals, or other substances from under the land.[39] Liability for harm caused by the subsidence of land which would not have taken place but for the weight of buildings upon it is determined by principles of negligence,[40] but the total picture is one of broad exposure of land excavators to strict liability. Again, the reason for the strict liability may be an unexamined retention of the common law's zealous protection of interests in land, but the result is that one may be held liable for unintended consequences caused without fault other than that of being the actor.

The early common law also recognized a strict liability for harm done by trespassing animals, although liability apparently could be avoided by surrender of the animals.[41] In time, this liability became personal to the possessor of the animals, and thus became more nearly a rule of strict liability comparable to those discussed previously. The applicability of this strict liability rule to conditions in the United States was a matter of some doubt during the formative stages of this nation, but today, even in jurisdictions in which it was judicially rejected, it has since found legislative acceptance in various forms of fencing statutes.[42] Once again, the appropriateness of strict liability seems to have turned upon how well the particular rule has suited the needs of the community, rather than upon any philosophical conclusion as to whether the possessor of an animal, for example, was guilty of fault.

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38. 4 RESTATEMENT ORTS §§ 817, 820 (1939); 1 F. HARPER & F. JAMES, THE LAW OF TORTS § 1.27 (195

39. RESTATEMENT (OND) OF TORTS §§ 818 (Tent. Draft No. 15, 1969).

40. 4 RESTATEMEN OF TORTS §§ 819, 821 (1939).

41. O. HOLMES, THE COMMON LAW 1520-23 (1881). Wigmore, *Responsibility for Tortious Acts: Its History*, 7 HARV. L. REV. 315, 325 *et seq.* (1894).

42. *See* 1 F. HARPER & F. JAMES, THE LAW OF TORTS § 14.9 (1956).

There are other rules derived from early common law precedents which also may appropriately be considered rules of strict liability within the body of tort law. For example, a bona fide purchaser of stolen property is strictly liable to the true owner for its value, regardless of the care and prudence he may have exercised in ascertaining the title of the vendor.[43] This liability is imposed without regard for the relative fault of the owner in exposing the goods to the possibility of conversion.[44] Another rule of law holds a bailee liable for misdelivery of property, regardless of his good faith or his freedom from negligence.[45] Moreover, in order to avoid an otherwise insurmountable obstacle to recovery, the usual rule is that a bailor may establish a prima facie case simply by proving that he delivered the property, and that the bailee either failed to return it, or returned it in damaged condition.[46] The same reasoning underlay the common law rule, now embodied in the Interstate Commerce Act, making a carrier liable for damage to goods transported unless it can show that the damage was caused solely by an act of God, the public enemy, the shipper himself, a public authority, or by the inherent nature of the goods.[47] The consequence is that a carrier may be held liable even though it was guilty of no negligence. Except where modified by statute, a similar strict liability has been imposed upon hotels and innkeepers for the loss or destruction of the goods of guests.[48] It might be objected that these are rules of property law rather than tort law; but such an argument smacks too much of the fine analysis formerly applied in determining the correct form of action for obtaining redress for harmful conduct.

If instead one may avoid that perspective of the law, it seems quite certain that the strict liability effect of the *respondeat superior* doctrine is one of the most important principles of liability for tortious conduct. Early commentators described it as such,[49] and the fact that the doctrine

43. R. Brown, The Law of Personal Property 231 (2d ed. 1955) [hereinafter cited as Brown]; *See* Uniform Commercial Code § 2-403.
44. Brown, *supra* note 43, at 241-42. Restatement (Second) of Torts § 234 (1965).
45. Brown, *supra* note 43, at 351; 1 F. Harper & F. James, The Law of Torts 156 (1956); W. Prosser, The Law of Torts 88 (3d ed. 1964).
46. Brown, *supra* note 43, at 359-75; Restatement (Second) of Torts § 328A, comment *b* (1965).
47. Missouri Pac. R.R. v. Elmore & Stahl, 377 U.S. 134 (1964).
48. Brown, *supra* note 43, at 481-87. Innkeepers are afforded a greater opportunity than carriers to escape liability by showing freedom from negligence.
49. Wigmore, *Responsibility for Tortious Acts: Its History—II*, 7 Harv. L. Rev. 383 (1894); 1 W. Blackstone, Commentaries 429-32 (17th ed. 1830).

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52. 2 F. Harper & F. James, The La
53. *See* Calmar Steamship Corp. v. T
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54. 46 U.S.C. 688 (1964).

seems to fit more neatly into the law of agency is no reason for de-emphasizing its operative effects in the law of torts. The liability of an employer for the tortious conduct of his employee is a strict liability imposed without regard to the fault of the employer. It makes no difference how careful the employer is in recruiting his workers, how carefully he trains them, or how carefully he supervises their activities. If an employee commits a tort in the course of his employment, his employer is liable.

Another rule of liability without fault which is frequently considered an element of agency law, but which is also clearly a principle for determining liability for tortious conduct, is that imposing liability for harm done by carefully selected independent contractors performing non-delegable duties.[50] This liability is not simply a development of the strict liability imposed for engaging in abnormally hazardous activities, for it extends to activities which are not so classified.[51] Other principles of vicarious liability, such as the family car doctrine,[52] may likewise be considered to permit the imposition of liability for tortious conduct without proof of fault. While it is true that in many of these situations, someone has been at fault in bringing about the harm suffered, for present purposes the significant point is that liability may be imposed on one who was without fault.

The employment relationship offers other illustrations of liability without fault. For example, the obligation imposed in admiralty upon an employer of seamen, to furnish maintenance and cure for seamen who fall sick or are injured in the service of the vessel, is a strict liability imposed without regard to the fault of the employer.[53] Far from meeting disapproval in modern times, this principle has been codified by the Jones Act,[54] which broadens the rights of seamen. Moreover, the enactment of workmen's compensation acts throughout the United States reflects the conclusion that imposition of strict liabil-

50. *See* Restatement (Second) of Torts §§ 416-27B (1965).
51. *See* Restatement (Second) of Torts § 417 (1965) (Work done in a public place) § 418 (Maintenance of Public Highways) §§ 419, 421 (Repairs which a lessor is under a duty to his lessee to make) § 422 (Work on buildings and other structures on land) § 425 (Repair of a chattel supplied or land held open to the public as a place of business).
52. 2 F. Harper & F. James, The Law of Torts 1419-24 (1956).
53. *See* Calmar Steamship Corp. v. Taylor, 303 U.S. 525 (1938); The Osceola, 189 U.S. 158 (1903).
54. 46 U.S.C. 688 (1964).

ity upon employers is an appropriate way to deal with industrial accidents.[55]

Defamation is, of course, an intentional tort insofar as it requires an intention to publish the defamatory statement, but it is often illustrative of liability without fault. Except for constitutionally protected statements concerning public officials, public figures, and matters of public interest,[56] liability may be imposed because a statement, innocent on its face, was rendered defamatory by facts not known to the defendant nor discoverable by him in the exercise of reasonable care.[57] Liability may likewise be imposed even though the defendant did not intend to defame the plaintiff, and had no reason to know that his statement would be defamatory.[58] In short, one who publishes a defamatory statement will be held liable to one injured without regard to whether the publication could be said to be the product of fault.

An innocent misrepresentation made by a party to a business transaction may also give rise to liability irrespective of the good faith or reasonable belief of the defendant.[59] Prosser lists eighteen jurisdictions which have adopted this rule of strict liability, and suggests that in other jurisdictions such a rule is in fact applied, although disguised in the more traditional language of fraud through the use of presumptions or fictions concerning the defendant's state of mind.[60] The rule may also have been made effective with respect to the sale of securities by Section 17(a) of the Securities Act of 1933, and Rule 10b-5 of the

55. 2 F. Harper & F. James, The Law of Torts 730-33 (1956); W. Prosser, The Law of Torts 554-58 (3d ed. 1964).

56. New York Times Co. v. Sullivan, 376 U.S. 254 (1964); Time, Inc. v. Hill, 385 U.S. 374 (1967); Curtis Publishing Co. v. Butts, 388 U.S. 130 (1967).

57. 1 F. Harper & F. James, The Law of Torts § 5.5 (1956); W. Prosser, The Law of Torts 791-92 (3d ed. 1964). A leading example is a Scottish case, Morrison v. Ritchie & Co., 39 Scot. L.R. 432 (1902), in which the defendant published as a routine social item a false report that plaintiff had become the mother of twins. Plaintiff had been married only a few weeks, but this was unknown to defendant. Defendant was held liable. Care or the lack of it went only to affect damages.

58. F. Harper & F. James, *supra* note 57, at § 5.7 (1956); W. Prosser, The Law of Torts 791 (3d ed. 1964). A leading example is the case of Jones v. E. Hulton & Co., [1909] 2 K.B. 444, *aff'd* [1910] A.C. 20, in which defendant published what it intended to be a fictitious account of immoral behavior of one Artemus Jones on the beach at Dieppe. A real Artemus Jones was held entitled to recover despite defendant's lack of intent to defame any living person.

59. 1 F. Harper & F. James, The Law of Torts § 7.7 (1956).

60. W. Prosser, The Law of Torts 724-29 (3d ed. 1964).

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61. *See* Meisenholder, *Scient*
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62. 32 N.J. 358, 161 A.2d 69

63. *E.g.*, Greenman v. Yuba
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Dippel v. Sciano, 37 Wis. 2d 44
75 Wn. 2d 522, 452 P.2d 729
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64. Restatement (Second) o

65. Schipper v. Levitt & Sons

66. Cintrone v. Hertz Truck
(1965).

67. Delaney v. Towmotor Cor

Securities Exchange Commission's Regulations pursuant to the Securities Act of 1934.[61]

One of the more spectacular changes in tort law in recent years has been the adoption of a rule imposing strict liability upon sellers of defective products for the harm caused by the defect. Soon after the leading decision of the Supreme Court of New Jersey in *Henningsen v. Bloomfield Motors*,[62] this rule of strict liability was adopted in many other jurisdictions.[63] So swift was this change to the rule of strict liability that the reporter and council for the *Restatement (Second) of Torts* urged abandonment of a section approved in 1962 limiting such strict liability to products designed for intimate bodily use, and adoption of a broader version applicable to all products so that the *Restatement (Second) of Torts* would not be out of date when published.[64] The broader version later obtained the approval of the Institute, and now appears as Section 402A of the *Restatement (Second) of Torts*. This strict liability has been further extended to defects in housing produced by a mass developer of housing,[65] to the lessor of a rental truck,[66] and to the manufacturer of a demonstrator model for injuries received before purchase.[67] This general and rapid acceptance of strict liability reflects a judicial consensus that the rule is more appropriate to the present day economy than was the old rule, which imposed a burden upon the injured party to prove negligence on the part of the manufacturer or seller of the product.

There remains to be noted the strict liability imposed upon those who engage in extra-hazardous or abnormally dangerous activities. This is probably the type of strict liability which most readily comes to mind when the subject of strict liability is mentioned, perhaps be-

61. *See* Meisenholder, *Scienter and Reliance as Elements in Buyer's Suit Against Seller Under Rule 10b-5*, 4 CORP. PRAC. COMM. 27 (1963).
62. 32 N.J. 358, 161 A.2d 69 (1960).
63. *E.g.*, Greenman v. Yuba Power Products, Inc., 27 Cal. Rptr. 697, 377 P.2d 897 (1962); Goldberg v. Kollsman Instrument Corp., 12 N.Y.2d 432, 191 N.E.2d 81 (1963); Dippel v. Sciano, 37 Wis. 2d 443, 155 N.W.2d 55 (1967); Ulmer v. Ford Motor Co., 75 Wn. 2d 522, 452 P.2d 729 (1969). *See* PROSSER, *The Fall of the Citadel (Strict Liability to the Consumer)*, 50 MINN. L. REV. 791 (1966).
64. RESTATEMENT (SECOND) OF TORTS § 402A (Tent. Draft No. 10, 1964).
65. Schipper v. Levitt & Sons, Inc., 44 N.J. 70, 207 A.2d 314 (1965).
66. Cintrone v. Hertz Truck Leasing and Rental Service, 45 N.J. 434, 212 A.2d 769 (1965).
67. Delaney v. Towmotor Corp., 339 F.2d 4 (2d Cir., 1964).

cause several generations of lawyers have now been exposed to torts courses in which this type of liability was discussed as a contrast to basic negligence principles. Traditional discussion of the subject begins with analysis of the decision in *Rylands v. Fletcher*,[68] even though the opinions in that case reveal that the judges had no intention of changing the law or providing remedies beyond those which had existed for centuries under English law. In any event, the principle of liability without fault applied in that case had a ready adaptability to cases involving harm caused by the powerful devices and products of an industrial age. Although a number of courts have avoided specific application of *Rylands v. Fletcher* to problems of this sort, in fact a principle of strict liability for extra-hazardous activities has become accepted doctrine in American law.[69] The original *Restatement of Torts* incorporated the principle of strict liability for what were called "ultrahazardous activities."[70] With a change of terminology to "abnormally dangerous activities"[71] and recognition that the liability should attach even though the activity might be perfectly safe if the utmost care were used,[72] this principle will be carried into the *Restatement (Second) of Torts*, where it will be extended even further to cover harm caused to property or persons on the ground by the ascent, descent or flight of any aircraft.[73]

In a number of respects, even liability imposed on a negligence basis is in fact a liability without fault. The standard of the reasonably prudent man is an objective standard which ignores many considerations which would be involved in determining whether there was moral or ethical fault on the part of the actor.[74] Deviations from that standard are made at the peril of the actor, as are the deviations from community standards which take place when one engages in abnormally dangerous activities. Certainly there is no moral fault on the part of a man who for more than 30 years has driven carefully and without accident, but

68. 3 Hurl. & C (Ex. 1865); [1866] L.R. 1 Ex. 265; [1868] L.R. 3 H.L. 330.
69. 2 F. Harper & F. James, The Law of Torts § 14.4 (1956); W. Prosser, The Law of Torts 523-32 (3d ed. 1964).
70. 3 Restatement of Torts §§ 519-24 (1938).
71. Restatement (Second) of Tor s § 519 (Tent. Draft No. 10, 1964).
72. *Id.* at § 520.
73. *Compare* Restatement (Second) of Torts § 520A (Tent. Draft No. 12, 1966) *with* § 520A (Tent. Draft No. 11, 1965) and § 520A (Tent. Draft No. 10, 1964).
74. *See* Seavey, *Negligence, Subjective or Objective*, 41 Harv. L. Rev. 1 (1927).

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78. 2 F. Harper & F. James
Law of Torts, 232-39 (3d ed. 1
79. *See* authorities in note 78

who, distracted by concern for the health of his hospitalized wife, drives through a stop sign and collides with a person who had the right of way. Yet such a man would be deemed negligent because, considering only certain aspects of his conduct, he created unusual and unreasonable risks. Even insane persons are liable for negligently inflicted harm and their conduct is judged by the standard of the reasonably prudent man, although it is beyond their power to meet that standard.[75]

At times, allocation of the burden of proof in negligence cases may also impose liability upon one whose fault has not in fact been established. Thus the established principle that an unexcused violation of a criminal statute constitutes negligence per se places the burden of establishing excuse or justification on the defendant, with liability following if such is not established.[76] Even when the violation of the statute can never be excused—as with the Federal Safety Appliance Act,[77] for example—liability may be imposed although a total evaluation of the cirucumstances would lead to the conclusion that there was no fault. In some jurisdictions, the effect of *res ipsa loquitur* is to create a presumption of negligence which stands unless rebutted,[78] and hence supports liability where in fact there was no fault. Where the more usual version of the doctrine is followed, and *res ipsa loquitur* simply creates a permissible inference of negligence,[79] there is still the possibility that a jury will draw that inference where in fact there was no negligence.

CONCLUSION

This review of the field of tort law indicates that if regard is given to the various types of problems encountered, rather than the number of cases pending on court dockets, strict liability is applied more often than negligence as the principle which determines liability. It is neither a mere vestige of primitive law, as indicated by its recent judicial

75. RESTATEMENT (SECOND) OF TORTS § 283B (1965).
76. F. HARPER & F. JAMES, THE LAW OF TORTS § 17.6, at 1010-11 (1956); W. PROSSER, THE LAW OF TORTS § 35, at p. 202 (3d ed. 1964).
77. O'Donnell v. Elgin J. & E.R.R., 338 U.S. 384 (1949), *rehearing denied* 338 U.S. 945 (1950).
78. 2 F. HARPER & F. JAMES, THE LAW OF TORTS § 19.11 (1956); W. PROSSER, THE LAW OF TORTS, 232-39 (3d ed. 1964).
79. *See* authorities in note 78, *supra*.

and legislative applications, nor a new and untried development. It is a principle with adaptability to serve the needs of society in a variety of situations. Apparently no set formula can be derived as to when strict liability constitutes the appropriate principle of liability, but some observations may be made about certain common features of the situations in which strict liability is applied.

One of these common features is that the person harmed would encounter a difficult problem of proof if some other standard of liability were applied. For example, the disasters caused by those who engage in abnormally dangerous or extra-hazardous activities frequently destroy all evidence of what in fact occurred, other than that the activity was being carried on. Certainly this is true with explosions of dynamite, large quantities of gasoline, or other explosives. It frequently is the case with falling aircraft. Tracing the course followed by gases or other poisons used by exterminators may be difficult if not impossible. The explosion of an atomic reactor may leave little evidence of the circumstances which caused it. Moreover, application of such a standard of liability to activities which are not matters of common experience[80] is well-adapted to a jury's limited ability to judge whether proper precautions were observed with such activities.

Problems of proof which might otherwise have been faced by shippers, bailors, or guests at hotels and inns certainly played a significant role in shaping the strict liabilities of carriers, bailees, and innkeepers. Problems of proof in suits against manufacturers for harm done by defective products became more severe as the composition and design of products and the techniques of manufacture became less and less matters of common experience; this was certainly a factor bringing about adoption of a strict liability standard.[81] Superior knowledge and difficulties of proof are frequently mentioned as justifications for application of the *res ipsa loquitur* doctrine.

Another common feature of situations in which strict liability is imposed is that the conduct giving rise to liability is not one which it would be socially desirable to prohibit or enjoin, so that the giving of a remedy to a plaintiff threatened with harm must be delayed until

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80. *See* RESTATEMENT OF TORTS § 520 (1939).
81. *See e.g.*, Traynor, J., concurring in Escola v. Coca Cola Bottling Co., 24 Cal. 2d 453, 461, 150 P.2d 436, 440 (1944).

harm has actually occurred. This is certainly the case with abnormally dangerous activities, the keeping of domestic animals, the removal of lateral or subjacent support for land, the publication of statements or views which may be defamatory, and the flight of aircraft over land.

Another very important common feature is that strict liability serves a compensatory function in situations where the defendant is, or through the use of insurance may become, the financially more responsible person. Certainly this underlies the strict liability of the *respondeat superior* principle, the family car doctrine, and other vicarious liabilities. It is also true of a manufacturer's liability and the liability of one engaging in abnormally dangerous activities, and is generally true of common carriers and innkeepers (rather than shippers or guests), as well as those who engage in excavating activities which remove lateral or subjacent support. The consequence of imposing such liability in these situations is usually to pass the cost of the beneficial activities on to those who enjoy its benefits.

A number of the situations in which strict liability is imposed involve a type of conduct which can be defined with sufficient precision to ensure that application of a strict liability principle will not produce miscarriages of justice in a substantial number of cases. This is apparent with respect to those who engage in abnormally dangerous activities, manufacturers, persons who remove lateral or subjacent support, the keepers of domestic animals, shippers, bailees, innkeepers, bona fide purchasers of stolen property, publishers of defamatory statements, and persons violating statutes.

If the activity involved is one which can be defined with sufficient precision, that definition may serve as an accounting unit to which the costs of the activity may be allocated with some certainty and precision. Precise definition of an accounting unit makes it possible to use actuarial techniques for accumulating loss experience, thus rendering the activity appropriate for service by insurance institutions.

Of course, not all activities to which these general observations might apply are now governed by a rule imposing strict liability for harm. Automobile accident claims settlement and litigation is a prime example of an area to which the principle of strict liability might be applied with benefit, but in which negligence standards still prevail.

The problems of proof involved in automobile accident litigation

under a negligence standard are so great that it is only blind optimism in a large number of cases to hope that what in fact occurred will become known. Modern highway traffic situations may attach critical significance to such factors as lines and markers painted on a road surface, relative positions of rapidly moving vehicles, presence and color of steady or flashing lights, and very short time intervals. On-the-scene observations are ordinarily made by untrained persons, who were not prepared for the event which transpired. The event may have been so shocking that it had effects upon both their psyche and memory. Moreover, the determination is not based upon what these untrained persons in fact observed, but instead turns upon what they remember of what they observed perhaps two or three years earlier. Even these memories do not control the final judicial decision, because that depends upon what jurors can remember perhaps two or three days after having heard the poorly remembered and conflicting accounts of witnesses, who may have been neither articulate nor precise in their use of language. As with a number of other situations in which strict liability provides an appropriate rule, one may be able to say confidently only that the parties were engaged in a particular activity—*i.e.*, the use of motor vehicles.

Given the values of our society, high speed traffic is a necessity of the day. It cannot be prohibited, and those threatened by it must await harmful injury before seeking a remedy. The owner of an automobile has by its acquisition demonstrated a financial capacity making it possible for him at least to purchase insurance to absorb any loss caused by its operation. So much of our affluence is devoted to automobiles, there is little doubt that, taken as a whole, the activity can afford to bear all the costs of harm which are factually connected with it. If insurance is made compulsory its cost becomes a cost of transportation, and thus is passed on to those who benefit from the use of automobile transportation. The activity involved—the use of motor vehicles—is one which can be defined with sufficient precision to ensure that strict liability will not be imposed unjustly in any significant number of cases. Finally, it is an activity for which there is a wealth of statistical data, making it possible to use the actuarial techniques which facilitate the use of insurance.

It should be no surprise, then, that in recent years a number of proposals have been made to deal with the problem of distributing

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the costs of automobile accidents upon some basis other than fault.[82] This is not the proper occasion to review or evaluate these various plans, or to determine whether the optimal scheme would be to impose strict liability without regard to fault or to utilize some type of accident insurance. But it may be said with a certain confidence that, in the foreseeable future, some principle or principles of liability without fault will substantially replace the principles of negligence law in automobile accident claims settlement and litigation. When this occurs, the principles of negligence will have lost the dominant position they now occupy in tort law due to the frequency of automobile accidents.

82. R. KEETON & J. O'CONNELL, BASIC PROTECTION FOR THE TRAFFIC VICTIM (1965); L. GREEN, TRAFFIC VICTIMS: TORT LAW AND INSURANCE (1958); Morris and Paul, *The Financial Impact of Automobile Accidents*, 110 U. PA. L. REV. 913 (1962); A. EHRENZWEIG, FULL AID INSURANCE FOR THE TRAFFIC VICTIM (1954). For a description of these and other proposals, see R. Keeton and J. O'Connell, *supra*, at 124-219. For a contrary view, see W. BLUM & H. KALVEN, PUBLIC LAW PERSPECTIVES ON A PRIVATE LAW SUBJECT (1965), first published in 31 U. CHI. L. REV. 641 (1964).

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JUDICIAL ACTIVISM IN TORT REFORM: THE GUEST STATUTE EXEMPLAR AND A PROPOSAL FOR COMPARATIVE NEGLIGENCE

> Courts have a creative job to do when they find that a rule has lost its touch with reality and should be abandoned or reformulated to meet new conditions and new moral values.[1]

I. INTRODUCTION

The California Supreme Court in its comprehensive efforts to reform tort law has fulfilled Justice Traynor's challenge: tort law has been shaped and reshaped by the hammer blows of an activist court. The result is a system of law guided by the modern policy goal of increasing the incidence of compensation for accidental injury by placing tort liability on the party who is best able to spread the risk of loss.

Though judicial activism is generally regarded by traditional legal process scholars as undesirable, in tort law, it appears to be an appropriate fulfillment of the historical function of the common law—to meld the precedents of the past to the needs and concerns of the present. The California Supreme Court has most forcefully demonstrated the strength of its resolve to reform tort law and its willingness to employ activist judicial standards to accomplish the reform in the case of *Brown v. Merlo*[2] which found the California automobile guest statute[3] to be unconstitutional. *Brown* illustrates the vitality of the court's resolve to reform and gives evidence of the overriding importance of judicial policy goals in tort law. Given the magnitude of the resolve so strongly shown in *Brown*, this Comment proposes that the California Supreme Court pursue its course one further step by implementing comparative negligence.

One of the primary obstacles to a judicial implementation of

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[1] Justice Roger Traynor, *Law and Social Change in a Democratic Society*, U. ILL. L.F. 230, 232 (1956).

[2] 8 Cal. 3d 855, 506 P.2d 212, 106 Cal. Rptr. 388 (1973).

[3] The basic premise of a guest statute is that the driver of a vehicle owes no duty of ordinary care to one who rides with him gratuitously. 2 F. HARPER & F. JAMES, THE LAW OF TORTS § 16.15, at 950-51 n.4 (1956); *Id.* at 48-49 (Supp. 1968). W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 60, at 382-85 (4th ed. 1971).

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comparative negligence has been the doctrine of judicial restraint which would severely restrict the judicial law-making capacity. *Brown* manifests a high level of judicial activism. Judicial implementation of comparative negligence would not reach even this level in that it involves modification of a common law formulation.

Brown v. Merlo is an important exemplar of appropriate judicial activism in tort law and warrants careful analysis. The California guest statute denied recovery for unaggravated driver negligence to any person injured who "as a guest accepts a ride in any vehicle upon a highway without giving compensation for such ride."[4] The plaintiff in *Brown* challenged the statute as a denial of equal protection because a "paying" passenger would have been entitled to recover on the negligence issue alone.[5] The court agreed. In a thorough and carefully structured opinion written by Justice Tobriner, the court found the guest statute violative of the equal protection guarantees of the California Constitution[6] and the Fourteenth Amendment of the United States Constitution.

Several aspects of the decision illustrate the activist stance taken in *Brown*. First, the court applied a somewhat redefined standard of equal protection—a standard requiring a "realistic," rather than merely a "legitimate," state purpose which is *substantially*, rather than merely rationally, supported by the classifica-

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[4] The California guest statute was passed in 1929. Ch. 787, § 141.75, [1929] Cal. Stats. 1580, reenacted, ch. 3, § 17158, [1959] Cal. Stats. 1655. The aggravated negligence portions of the statute provided there would be no recovery "unless the plaintiff . . . establishes that the injury or death proximately resulted from the intoxication or willful misconduct of the driver." *Id.*

[5] In October 1967, the plaintiff, Brown, was a passenger in Merlo's jeep in Butte County. Unexpectedly the jeep left the road, crossing the center divider and crashing into an embankment. Brown, seriously injured in the mishap, attempted to recover damages from Merlo charging both simple negligence and willful misconduct. The plaintiff did not attempt to exempt himself from the provisions of the guest statute, though as the *Brown* court noted, it was a usual practice for a guest plaintiff to claim he or she was within one of the statutory exceptions. The jury heard the willful misconduct issue and decided in favor of the defendant; plaintiff did not appeal on that cause of action. The case came to the Supreme Court on an appeal from a summary judgment for the defendant on the negligence issue.

For critical and sometimes amusing histories of the applications of the California guest statute, see Lascher, *Hard Laws Make Bad Cases—Lots of Them (The California Guest Statute)*, 9 SANTA CLARA LAW. 1 (1968); Comment, *Judicial Nullification of Guest Statutes*, 41 S. Cal. L. REV. 884 (1968).

[6] The equal protection guarantees of the California Constitution appear in Article 1, sections 11 & 21: "All laws of a general nature shall have a uniform operation"; and "[no] citizen, or class of citizens [shall] be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens."

tion system set up by the legislature.[7] In contrast to its approach in earlier equal protection cases,[8] the court in *Brown* refused to attribute to the legislature a "theoretically 'conceivable,' but totally unrealistic, state purpose that might support this classification scheme . . . ."[9] Thus the California Supreme Court, perhaps following the lead of the United States Supreme Court in recent equal protection cases,[10] adopted a more activist equal protection standard of review than had been traditionally followed in cases not involving suspect categories of classification or deprivations of fundamental interests.[11]

Second, the court in Brown overtly measured the rationality of both the purpose of the statute and the effectiveness of its classification system against *common law* judgments made by the court in recent tort cases. In *Brown*, common law standards of rationality were made determinative of constitutional rationality; the guest statute fell because it was directed toward a purpose and utilized a classification scheme considered and rejected by the courts in analogous cases.[12] Thus, the court made

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[7] 8 Cal. 3d at 865 & n.7, 506 P.2d at 219 & n.7, 106 Cal. Rptr. at 395 & n.7.

[8] In previous equal protection cases the California Supreme Court has closely adhered to the "dual level test" in reviewing legislative classifications. Justice Sullivan utilized the two level analysis in Serrano v. Priest, 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971) and *In re* Antazo, 3 Cal. 3d 100, 473 P.2d 999, 89 Cal. Rptr. 255 (1970). *See also* Purdy & Fitzpatrick v. State, 71 Cal. 2d 566, 456 P.2d 645, 79 Cal. Rptr. 77 (1969). In economic arens the court has exercised restraint, "investing legislation with a presumption of constitutionality and requiring merely that distinctions drawn by a challenged statute bear *some rational relationship to a conceivable legitimate state purpose.*" Westbrook v. Mihaly, 2 Cal. 3d 765, 784, 471 P.2d 487, 500, 87 Cal. Rptr. 839, 852 (1970) (emphasis added).

Earlier cases using traditional equal protection review emphasized the wide discretion given the legislature in making classifications. *See, e.g.*, Subsequent Injuries Fund v. Industrial Accident Comm'n, 48 Cal. 2d 365, 310 P.2d 7 (1957); Sacramento Municipal Util. Dist. v. Pacific Gas & Elec. Co., 20 Cal. 2d 684, 693, 128 P.2d 529, 535 (1942). These cases were quoted approvingly in Board of Admin. v. Ames, 215 Cal. App. 2d 215, 29 Cal. Rptr. 917 (1st Dist. 1963), where a more beneficial retirement plan for legislators and judges was sustained against an equal protection attack.

For recent changes in equal protection standards compare Justice Sullivan's opinions in Serrano v. Priest, *supra* and In re Antazo, *supra* with Swoap v. Superior Ct. of Sacramento County, 10 Cal. 3d 490, 516 P.2d 840, 111 Cal. Rptr. 136 (1973).

[9] 8 Cal. 3d at 865 n.7, 506 P.2d at 219 n.7, 106 Cal. Rptr. at 395 n.7.

[10] *See generally* Gunther, *Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 HARV. L. REV. 1 (1972) [hereinafter cited as Gunther] and cases cited therein.

[11] *See generally* Note, *Developments in the Law—Equal Protection*, 82 HARV. L. REV. 1065 (1969) [hereinafter cited as *Developments*]. For recent developments see Gunther, *supra* note 10; Tribe, *Foreword: Toward a Model of Roles in the Due Process of Life and Law*, 87 HARV. L. REV. 1 (1973) [hereinafter cited as Tribe].

[12] *See* notes 63-96 & accompanying text *infra*.

a two-step attack upon the statute. First, in requiring a "substantial relationship in fact,"[13] the court opened to judicial review the legislative judgment underlying the guest-passenger classification; second, the court measured the rationality of the legislative judgment by its own judgments in analogous common law tort cases. Applying this standard of review, the court concluded there was no rational relationship under the traditional equal protection test, and therefore the guest statute was unconstitutional.

The court in *Brown* thus appears to have undertaken a sweeping redefinition of equal protection doctrine and appears to have countenanced anathema—the superiority of judicial policy judgments over those of the legislature. However, it is further apparent that those characteristics of the decision are misleading. *Brown* is *not* good constitutional law; it is, however, sound tort policy. Indeed the case is best understood as an instance of judicial activism in the service of the substantive reform of tort law.

This Comment will delineate the level of judicial activism in *Brown* through careful analysis of the court's use of equal protection. It will then explain that the activism is both well-tempered and especially appropriate as a means of reform of tort law. Finally it will discuss how the judicial implementation of comparative negligence would further the principles of tort reform implicit in *Brown* and would require even less activism than the court manifested in *Brown*.

II. Equal Protection

A. Equal Protection Standards

To appreciate fully the activism implicit in the equal protection analysis in *Brown v. Merlo*, it is useful to review the standards ordinarily employed in equal protection cases.[14] In general, the demand for equal protection has always been assumed to accommodate the need of a state to classify its citizens for various legitimate legislative and administrative purposes. It is difficult to conceive of legislation which is functional and which does not in some way classify persons differently. Thus, equal protection

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[13] This term is taken from Comment, *Fundamental Personal Rights: Another Approach to Equal Protection*, 40 U. Chi. L. Rev. 807, 817 (1973) [hereinafter cited as *Fundamental Personal Rights*], although it has been used in some lower court opinions as well. *See, e.g.*, Boraas v. Village of Belle Terre, 476 F.2d 806, 814 (2d Cir. 1973), *rev'd*, 42 U.S.L.W. 4475 (U.S. Apr. 2, 1974); Aguayo v. Richardson, 473 F.2d 1090, 1109 (2d Cir. 1973).

[14] *See generally* Tussman & tenBroek, *The Equal Protection of the Laws*, 37 Calif. L. Rev. 341 (1949); *Developments*, *supra* note 11.

traditionally has been said to demand only that a classification system encompass "all [and only those] persons who are similarly situated with respect to the [legitimate] purpose of the law."[15] Justice Tobriner stated in *Brown v. Merlo*: "The primary concern of the 'equal protection' guarantee of our state and federal Constitutions, however, is that 'persons similarly situated with respect to the legimitate purpose of the law receive like treatment' . . . ."[16] However, this apparently simple formula requires complex judgments about the legislature's purposes, the legitimacy of those purposes, and the required degree of relevance between the classification and the purposes, since virtually no classification could meet perfectly the general test of "all and only those."[17] With respect to the relationship between the challenged classification and the (assumed) legislative purpose, the classification system at a minimum must "be reasonable, not arbitrary, and . . . rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike."[18]

Two completely disparate standards of review for equal protection challenges have been delineated, one of general application and the other of special application to cases involving suspect classifications or touching fundamental interests.[19] In general, the standards differ in both the degree of relevance required between the challenged classification and the statutory purpose and the substantiality of the interest allegedly furthered by the classification.[20]

1. Rational Relationship Test[21]

This test has been described as "restrained review"[22] and as involving "minimal judicial scrutiny."[23] Equal protection re-

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15 Tussman & tenBroek, *supra* note 14, at 346.

16 8 Cal. 3d at 876, 506 P.2d at 227, 106 Cal. Rptr. at 403, *citing* Purdy & Fitzpatrick v. State, 71 Cal. 2d 566, 578, 456 P.2d 645, 653, 79 Cal. Rptr. 77, 85 (1969); Reed v. Reed, 404 U.S. 71, 75-76 (1971).

17 *Developments*, *supra* note 11, at 1076-77.

18 F.S. Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920).

19 The two level structure, particularly as it emerged in the Warren Court, is thoroughly delineated in *Developments*, *supra* note 11.

20 Although Justice Harlan, dissenting in Katzenbach v. Morgan, 384 U.S. 641, 660-61 (1966), denied the existence of a dual level test for equal protection, most equal protection scholars are in agreement that such a standard exists. *See, e.g.*, Cox, *The Supreme Court, 1965 Term, Foreword: Constitutional Adjudication and the Promotion of Human Rights*, 80 HARV. L. REV. 91, 95 (1966); Gunther, *supra* note 10, at 8-9; *Developments*, *supra* note 11, at 1120-23.

21 The textual description of the "rational relationship" test is the traditional version, pre-1969 or so.

22 *Developments*, *supra* note 11, at 1077.

23 *Fundamental Personal Rights*, *supra* note 13, at 808.

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view under this test has been in reality no review at all, as an almost irrebuttable presumption of constitutionality foils those challenges to legislative classifications.[24] This presumption of constitutionality has led many courts to defer to the legislature by hypothesizing some conceivable permissible legislative purpose which is supported by the challenged classification.[25] The effective level of judicial scrutiny under the traditional rational relationship test is so minimal and extends so much deference to the legislature that, as one commentator concluded, "[it] has therefore almost always resulted in a finding of constitutionality."[26]

2. Strict Scrutiny

This most demanding equal protection standard of review has been applied to two types of classifications—those based on

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[24] The case of *McGowan v. Maryland*, 366 U.S. 420 (1961), provides illustration. *McGowan* sustained a Sunday closing law, banning the sale of all goods, but excepting "tobacco products, confectioneries, milk, bread, fruits, gasoline, oils, greases, drugs and medicines, and newspapers and periodicals" against an equal protection attack. *Id.* at 422-23. The Court extended great leeway to the legislature: "State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." *Id.* at 425-26. In *McGowan* the Court was willing to "strain" to find a reasonable rationale, concluding the legislature might reasonably have determined that the exemption was conducive to the safety and well-being of the populace. *Id.* at 426.

Similar latitude has been extended to legislatures making very subtle distinctions in classifications. In Railway Express Agency v. New York, 336 U.S. 106 (1949), a law which prohibited all commercial advertisements on trucks except those by the owners of the trucks themselves was justified on safety grounds: "The local authorities may well have concluded that those who advertise their own wares on their trucks do not present the same traffic problem in view of the nature or extent of the advertising which they use." *Id.* at 110.

[25] Several commentators have observed that the selection of a purpose as the support for a challenged classification is often a mere tautology since the purpose is inferred from the classification itself: that is, the purpose is suggested by the plain terms of the statute. Ely, *Legislative and Administrative Motivation in Constitutional Law*, 79 YALE L.J. 1205 (1970). The student commentator in Note, *Legislative Purpose, Rationality, and Equal Protection*, 82 YALE L.J. 123 (1972) questioned why a single purpose is necessary rather than an overall legislative purpose of "partial achievement of several sub-purposes." *Id.* at 127.

For illustration of the "conceivable" purposes the Court has relied upon to sustain legislation, see Justice Frankfurter's opinions in Goesaert v. Cleary, 335 U.S. 464 (1948) (statute denying bartending licenses to women unless related to barowner upheld on the conceivable purpose of avoiding social and moral problems involved in having women in bars); Kotch v. Board of River Port Pilots Comm'rs, 330 U.S. 552 (1947) (nepotism statute involving river pilots upheld as conceivably a safety measure).

[26] *Fundamental Personal Rights, supra* note 13, at 808. Professor Gunther, considering the years prior to 1970, *e.g.*, found the correlation between the rational relationship test and a finding of constitutionality to be "virtually

suspect classifications[27] and those infringing fundamental interests.[28] This strict scrutiny standard results in a dramatic contraction of the latitude permitted legislatures in classifying their

perfect." Gunther, *supra* note 10, at 19. *See also* Tribe, *supra* note 11, at 118 n.9. Recent cases, however, have struck down legislation, purportedly using the traditional rational relationship test. *See* Gunther, *supra* note 10, at 18-20; cases cited notes 13 *supra* & 74 *infra*.

[27] The suspect classification doctrine was originally developed and applied in the area of classifications based on race. *See, e.g.*, Loving v. Virginia, 388 U.S. 1 (1967) (overturning a state antimiscegenation law); McLaughlin v. Florida, 379 U.S. 184 (1964) (striking down a law against interracial cohabitation). Classifications based on national ancestry (Korematsu v. United States, 323 U.S. 214 (1944)) and alienage (Graham v. Richardson, 403 U.S. 365 (1971)) have also been treated as resting on suspect criteria. But with respect to alienage, Sugarman v. Dougall, 413 U.S. 634 (1973) and *In re* Griffiths, 413 U.S. 717 (1973) (discussed in detail note 44 *infra*) appear to utilize the rational relationship test though referring to alienage as a suspect category. Four members of the majority in Frontiero v. Richardson, 411 U.S. 677 (1973), advocated treating sex as a suspect category. It is deemed to be so under the California Constitution. *See* Sail'er Inn, Inc. v. Kirby, 5 Cal. 3d 1, 485 P.2d 529, 95 Cal. Rptr. 329 (1971). Illegitimacy has been suggested as a suspect category. *See* Gomez v. Perez, 409 U.S. 535 (1973); Levy v. Louisiana, 391 U.S. 68 (1968). *But see* Labine v. Vincent, 401 U.S. 532 (1971). Perhaps sex and illegitimacy can be classified as "near-suspect" criteria, as suggested in Comment, *A Question of Balance: Statutory Classifications under the Equal Protection Clause*, 26 STAN. L. REV. 155, 158-60 (1973).

[28] Various interests have been designated as fundamental by the United States Supreme Court, the protection of which demands strict equal protection scrutiny comparable to that afforded to constitutionally guaranteed rights. The essential characteristic of fundamentality cannot be stated simply. On the one hand, it has been argued that only constitutionally enumerated rights should be treated as sufficiently fundamental to merit this kind of scrutiny. This is the view of the four justices who joined Justice Powell's plurality in San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 29-36 (1973). *See also* Shapiro v. Thompson, 394 U.S. 618 (1969) (Harlan, J., dissenting); Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966) (Harlan, J., dissenting). The right of interstate travel is said to be of constitutional significance. United States v. Guest, 383 U.S. 745 (1966). Legislative classifications impairing its exercise have been subjected to strict scrutiny. Shapiro v. Thompson, 394 U.S. 618 (1969).

Other interests deemed fundamental are said to derive from constitutionally protected rights or are such that their protection is deemed essential to the exercise of explicitly guaranteed rights. Thus the right to vote (in state elections) is fundamental because it is a necessary prerequisite to the continuation of all rights. Reynolds v. Sims, 377 U.S. 533, 561-62 (1964). *But see* San Antonio Independent School Dist. v. Rodriguez, *supra* at 30.

Other rights are more personal: the right to procreate which is designated as fundamental in Skinner v. Oklahoma *ex rel.* Williamson, 316 U.S. 535, 541 (1942). Justice Marshall advocates a standard which would be protective of "the literally vital interests of a powerless minority" while continuing a policy of deference in "the area of economics and social welfare" in his dissent in Dandridge v. Williams, 397 U.S. 471, 520 (1968).

Recently the Court has rejected a suggestion that housing is a fundamental interest. Lindsey v. Normet, 405 U.S. 56 (1972). The *Rodriguez* majority similarly rejected such a designation for education. The California Supreme Court apparently disagrees. *See* Brown v. Merlo, 8 Cal. 3d 855, 863 n.2, 506 P.2d 212, 216 n.2, 106 Cal. Rptr. 388, 392 n.2 (1973); Serrano v. Priest, 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971).

citizens. The presumption of constitutionality is reversed when the challenged classification utilizes a suspect criterion[29] or when it impairs interests deemed to be fundamental.[30] Strict scrutiny requires more than a simple rational connection to a legislative purpose; the classification must be "necessary to a compelling governmental interest"[31] and a less onerous alternative must not be possible.[32] Similarly, greater exactitude in the drawing of classifications, as well as a real rather than a hypothetical legislative purpose, is required when scrutiny is strict. Thus the converse effect of the traditional rational relationship test results from the application of the strict scrutiny test—that is, legislation so reviewed consistently has been found to be violative of equal protection.[33]

In this two tier system, the critical juncture in a decision is the determination of which test to apply: the traditional deferential test or the strict scrutiny test. If a court finds that a fundamental interest is involved or that the classification is based upon suspect criteria, the court will require strict scrutiny. The foreseeable result in such a case is that the challenged legislative classification will be held to be a denial of equal protection either on the ground that the classification is not "necessary" to achieve the legislative purpose[34] or that the legislative purpose, supported by the classification, is not sufficiently "compelling."[35] On the other hand, if neither a fundamental interest nor a suspect criterion is involved, the test is the traditional one of a ra-

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[29] *See, e.g.*, Sei Fujii v. State, 38 Cal. 2d 718, 242 P.2d 617 (1952): "[T]he presumption of validity is greatly narrowed in scope, if not entirely dispelled, whenever it is shown . . . that legislation actually discriminates against certain persons because of their race or nationality." *Id.* at 730, 242 P.2d at 626.

[30] *See, e.g.*, Shapiro v. Thompson, 394 U.S. 618 (1969); Reynolds v. Sims, 377 U.S. 533 (1964).

[31] *See* Kramer v. Union School Dist., 395 U.S. 621 (1969). However, in In re *Griffiths*, Justice Powell reviewed the various characterizations of a state's interest sufficient to justify the use of a suspect classification—"overriding," "compelling," "important," "substantial" and "necessary"—and noted the court attributed "no particular significance to these variations in diction." 413 U.S. 717, 722 n.9 (1973).

[32] *E.g.*, in McLaughlin v. Florida, 379 U.S. 184 (1964) the Court held that the specific ban on cohabitation by interracial couples could be enforced by "the general, neutral, and existing ban on illicit behavior." *Id.* at 196. Similarly in a fundamental interest case, Carrington v. Rash, 380 U.S. 89 (1965), the Court suggested that Texas' interest in restricting the state franchise to residents could be served by individual assessment of residency rather than by the wholesale disenfranchisement of all servicemen. *Id.* at 96.

[33] *See* Gunther, *supra* note 10, at 19; Tribe, *supra* note 11, at 118 n.9. *See also* notes 13 *supra* & 74 *infra*.

[34] *See, e.g.*, Kramer v. Union School Dist., 395 U.S. 621 (1969); Serrano v. Priest, 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971).

[35] *See, e.g.*, Shapiro v. Thompson, 394 U.S. 618 (1969).

tional relationship, and the legislation most likely will be sustained.[36] The accuracy of this observation is evidenced by Justice Powell's prodigious efforts in *San Antonio Independent School District v. Rodriguez*[37] to deny that the case involved either a suspect category (wealth)[38] or impaired a fundamental interest (education)[39] in order to sustain the Texas school financing system.

3. Transitional Test: Substantive Reasonableness

Dissatisfaction with the rigidity of the two level approach to equal protection[40] has led to overt attempts to formulate a standard of review which permits an intermediate degree of judicial scrutiny.[41] Professor Gunther saw in these efforts a higher standard of scrutiny in cases not involving suspect categories or touching fundamental interests. He concluded, "The Court is prepared to use the [equal protection] clause as an interventionist tool without resorting to strict scrutiny language . . . ."[42] The emerging standard of equal protection has been called "substantial relationship in fact,"[43] implying that it constitutes a stronger version of the rational relationship test, though no such clear enunciation has come from the Supreme Court. Indeed, there seems to be some struggle over equal protection criteria. In recent suspect classification cases, the standards of strict scrutiny seemed to undergo some dilution in strictness, resulting in a muting of the differences between the levels of the two tier rationale.[44]

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36 *But see* cases cited note 13 *supra* & 42, 74 *infra*.

37 411 U.S. 1 (1973).

38 *Id.* at 18-29.

39 *Id.* at 29-39. This was despite the fact that a line of cases beginning with Brown v. Board of Educ., 347 U.S. 483 (1954) have so classified education. See the dissenting opinions filed by Justices Brennan, White, Douglas, and Marshall in *Rodriguez*. 411 U.S. at 63-133.

40 *See, e.g.*, Justice Marshall's dissent in Dandridge v. Williams, 397 U.S. 471, 520-23 (1968).

41 Gunther, *supra* note 10; Comment, *Equal Protection in Transition: An Analysis and a Proposal*, 41 FORD L. REV. 605 (1973); *Fundamental Personal Rights*, *supra* note 13. *See* cases cited in *Brown*, 8 Cal. 3d at 865 n.7, 506 P.2d at 219 n.7, 106 Cal. Rptr. at 395 n.7.

42 Gunther, *supra* note 10, at 12. It should be noted that Professor Gunther further suggests that a weakening of the strictness of the strict scrutiny standard may be a contrapuntal element of the "newer" equal protection as well. Recent cases suggest the accuracy of the second observation, *see, e.g.*, Kahn v. Shevin, 42 U.S.L.W. 4591 (U.S. Apr. 24, 1974) (holding that a statute granting widows, but not widowers, a $500 property tax exemption not violative of equal protection); Village of Belle Terre v. Boraas, 42 U.S.L.W. 4475 (U.S. Apr. 2, 1974) (discussed in notes 52-54 & accompanying text *infra*).

The *Brown* court, however, cited Gunther's "prediction" of a "new bite" for the "traditional 'rational basis' test." 8 Cal. 3d at 865 n.7, 506 P.2d at 219 n.7, 106 Cal. Rptr. at 395 n.7.

43 *See* note 13 *supra*.

44 For example in Sugarman v. Dougall, 413 U.S. 634 (1973), the Court

The "newer" equal protection doctrine may have a much more delimited meaning, however. One of the most salient fea-

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found a New York state ban on permanent employment by aliens in "competitive job classifications" to be violative of equal protection. The Court acknowledged that classifications based on alienage are "subject to close judicial scrutiny" (*id.* at 642) but then reverted to language more akin to the rational relationship test: "We therefore, look to the substantiality of the State's interest in enforcing the statute in question, and to the narrowness of the limits within which the discrimination is confined." *Id.* The tone of the opinion leans away from the "suspect" category as a per se test for constitutionality: "A restriction on the employment of noncitizens, narrowly confined, could have particular relevance to this important state responsibility, for alienage itself is a factor that reasonably could be employed in defining 'political community'." *Id.* at 649. Similarly, *In re* Griffiths, 413 U.S. 717 (1973), a companion case of *Sugarman*, struck down a Connecticut ban on the admission of aliens to the bar because the state failed to demonstrate the rationality of its wholesale ban: "[T]he Committee has failed to show the relevance of citizenship to any likelihood that a lawyer will fail to protect faithfully the interest of his clients." *Id.* at 724.

Similarly, several of the cases cited in *Brown* for the new, stronger rational relationship test might have reached the same results through the application of the strict scrutiny standard if they had been decided by an earlier Court. Two of the cases so cited involved classifications which have been suggested as having the essential characteristics of suspect categories, that is, an immutable trait, determined at birth and bearing no relation to an individual's ability to perform or contribute to society. *Developments, supra* note 13, at 1126-27. Weber v. Aetna Cas. & Sur. Co., 406 U.S. 164 (1972) struck down a statutory exclusion of illegitimate dependent children from recovery under the Louisiana workmen's compensation statute. Illegitimacy had been suggested for suspect designation. *See* cases cited note 27 *supra*. The plurality in Frontiero v. Richardson, 411 U.S. 677 (1973) suggested the explanation of Reed v. Reed, 404 U.S. 71 (1971) was that sex was a suspect category justifying departure from the deferential traditional rational relationship in that case. 411 U.S. at 682. *See also* Justice Marshall's dissent in *Rodriguez*, 411 U.S. at 70 (1973).

None of the cases cited by the *Brown* court involved a designated fundamental interest category. However, several of the cases concern interests parallel to earlier cases discussed in the rubric of fundamental interests. James v. Strange, 407 U.S. 128 (1972) struck down a Kansas statute which was designed to recoup legal defense fees. *James* appears to have utilized stricter scrutiny than the traditional rational relationship test it purported to use. Justice Powell in fact acknowledged both the importance of the state's purpose and the rational relevance of the classification to the attainment of the purpose. This is usually sufficient to satisfy the traditional test for constitutionality. Instead Justice Powell appeared to employ the less onerous alternative requirement in striking down the statute. The key to the stricter standard appeared to be the same kind of wealth discrimination recognized in Douglas v. California, 372 U.S. 353 (1963) and Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966): not wealth per se, but a classification of wealth affecting some other important individual interest.

Stanley v. Illinois, 405 U.S. 645 (1972) did not use the specific language of fundamentality, but it certainly evoked the essence of the doctrine:

> The private interest here, that of a man in the children he has sired and raised, undeniably warrants deference and, absent *a powerful countervailing interest*, protection. It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children "come[s] to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements."

Id. at 651 (emphasis added).

tures of the new doctrine is that it appears to be applicable to situations where (1) a statutory classification scheme is (at least arguably) supportive of a state goal, (2) the classification is clearly overinclusive in individual cases, and (3) there is no appeal from the presumptive classification. In *Reed v. Reed*[45] the Supreme Court acknowledged the legitimacy of the state purpose in minimizing government expenditure by the elimination of an individual hearing. However, even though the classification scheme arguably supported the state purpose of obtaining the best estate administrators,[46] neither the state goal nor the underlying rationale was sufficiently preeminent to allow a state to make a decision by presumption between equally qualified men and women.[47] The result in *Stanley v. Illinois*[48] was the same. Despite the important interest of the state in the protection of children and the conceivable validity of the assumption underlying the classification that "most unmarried fathers are unsuitable and neglectful parents,"[49] the Court said the denial of a hearing to an individual unmarried father was not reasonable.

In *Reed* and *Stanley* the Court was unable to find a sufficient "rational" connection between the purpose of the statute and the differential status established to implement it. The cases strongly demonstrate antipathy to presumptive procedure.

> Procedure by presumption is always cheaper and easier than individualized determination. But when, as here, the procedure forecloses the determinative issues of competence and care, when it explicitly disdains present realities in deference to past formalities, it needlessly risks running roughshod over the important interests of both parent and child.[50]

Thus the redefined activist equal protection standard of substantive reasonableness seems to demand not only that the relationship between the classification and the purpose be substantial but

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[45] 404 U.S. 71 (1971). An Idaho probate statute which dictated a preference for a man over an equally qualified woman when appointing an administrator of an estate was struck down as a denial of equal protection.

[46] One rationale offered was that men generally have more business experience than women and thus would probably make better administrators.

[47] The plurality opinion in Frontiero v. Richardson, 411 U.S. 677 (1973) indicated that the Court's abandonment of the traditional rational basis test in *Reed* actually occurred because they concluded "classifications based upon sex . . . are inherently suspect . . . ." *Id.* at 688.

[48] 405 U.S. 645 (1972). Mr. Stanley's three illegitimate children were taken from him following their mother's death. This occurred under the state system which presumed an unwed father to be unfit to raise his children while all other "parents" (married, unmarried, or adoptive) (*Id.* at 650, *citing* Juvenile Court Act, ch. 37, § 14, [1966] Ill. Laws Reg. Sess. 2585) were afforded the protection of a judicial neglect hearing involving "notice, hearing and proof of such unfitness." *Id.*

[49] *Id.* at 654.

[50] *Id.* at 656-58.

also that the classification be carefully drawn so that overinclusion is avoided.[51]

If the Supreme Court recently has been inclined to blend the two tier test, a few lower courts have been more open in enunciating and applying a "newer" standard of equal protection. In *Boraas v. Village of Belle Terre*,[52] the Second Circuit Court of Appeal found a zoning ordinance unconstitutional which limited occupancy of dwellings to traditional families or to groups no larger than two unrelated persons. In the clearest expression of the new standard, the court formulated and applied what it deemed a "more flexible and equitable approach" to equal protection: "Under this approach the test for application of the Equal Protection Clause is whether the legislative classification is *in fact* substantially related to the object of the statute."[53]

Manifestly, the Supreme Court disagreed, reversing the decision and reiterating the traditional language of "rational relationship" to a permissible local goal.[54] It is not yet clear, however, whether the reversal is a complete rejection of "substantive reasonableness."[55]

B. *Activist Equal Protection in* Brown v. Merlo

In *Brown v. Merlo*, the California Supreme Court appeared to adopt a stance similar to that of the Second Circuit in *Boraas*. The court found automobile guests were not a suspect category "comparable to racial or sexual classifications" and that recovery for injuries negligently inflicted by the host-driver did not constitute a fundamental interest "analogous to voting rights or education." It therefore rejected the plaintiff's contention that the strict scrutiny standard of review should apply.[56] Although in effect adopting a standard stricter than the no-review stance of the traditional rational relationship test, the court's analysis in *Brown* was structured similarly to that in cases applying the traditional standard.

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[51] *Stanley* implies the interest of the individual father in retaining custody of his children is so "cognizable and substantial" that even a showing that 99 percent of all unwed fathers are unfit would be insufficient to sustain the statute. *Id.* at 652.

[52] 476 F.2d 806 (2d Cir. 1973), *rev'd*, 42 U.S.L.W. 4475 (U.S. Apr. 2, 1974).

[53] *Id.* at 814 (emphasis in original).

[54] 42 U.S.L.W. 4475 (U.S. Apr. 2, 1974).

[55] It is difficult to reconcile the reversal of *Boraas* with United States Dep't of Agriculture v. Moreno, 413 U.S. 528 (1973), where a virtually identical classification denying food stamps to members of unrelated households was found to have no rational relationship to a legitimate legislative purpose. It is probably most accurate to say that the law is uncertain with regard to the applicable standards of equal protection review.

[56] 8 Cal. 3d at 862 n.2, 506 P.2d at 216 n.2, 106 Cal. Rptr. at 392 n.2.

The court first ascribed to the statute two alternative purposes—each of which has been advanced in judicial opinions and commentary.[57] The first purpose was the promotion of hospitality "by insulating generous drivers from lawsuits instituted by ungrateful guests who have benefited from a free ride."[58] According to the court, this rationale contained two separate policy strands: (a) affirmation of the axiom, "you get what you pay for," and (b) legislative condemnation of an instance of inexcusable ingratitude.[59] The second purpose considered was "to eliminate the possibility of collusive lawsuits, in which a host fraudulently confesses negligence so as to permit his guest—presumably a friend or relative—to collect from the host's insurance company."[60] Neither purpose was challenged by the court as being impermissibly discriminatory or beyond the scope of legislative power.

The second step in the court's analysis was the delineation of the classification system set out in the statute. The guest statute at the time of *Brown* read as follows:

> No person riding in or occupying a vehicle owned by him and driven by another person with his permission and no person who as *a guest* accepts a ride *in any vehicle upon a highway without giving compensation* for such ride, nor any other person, has any right of action for civil damages against the driver of the vehicle or against any other person legally liable for the conduct of the driver on account of personal injury to or the death of the owner or guest *during the ride*, unless the plaintiff in any such action establishes that the injury or death proximately resulted from the intoxication or willful misconduct of the driver.[61]

Thus, as pointed out by the court, the statute established a "tripartite" classification system: (1) "paying" automobile guests and "non-paying" automobile guests; (2) automobile guests and social guests; and (3) several subclasses within the statute itself ("in a vehicle," "during a ride," and "upon a public highway").[62] The court then discussed each of the asserted purposes in light of the triple classification system to determine whether the classifications were reasonably relevant to the purposes.

1. The Hospitality Purpose

The court observed that under contemporary California law

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[57] *See, e.g.*, Stephan v. Proctor, 235 Cal. App. 2d 228, 45 Cal. Rptr. 124 (2d Dist. 1965); 2 HARPER & JAMES, *supra* note 2, § 16.15, at 961 (1956 ed.).

[58] 8 Cal. 3d at 864, 506 P.2d at 218, 106 Cal. Rptr. at 394.

[59] *Id.* at 866, 506 P.2d at 220, 106 Cal. Rptr. at 396.

[60] *Id.* at 864, 506 P.2d at 218, 106 Cal. Rptr. at 394.

[61] Ch. 3, § 17158, [1959] Cal. Stats. 1655, amended ch. 1600, § 1, [1961] Cal. Stats. 3429 (emphasis added).

[62] 8 Cal. 3d at 863, 506 P.2d at 217, 106 Cal. Rptr. at 393.

"similarly situated individuals," (*i.e.*, other guests and recipients of generosity) are permitted to recover for negligently inflicted injuries.[63] The differential treatment of automobile guests under the statute was thus contrary to the mainstream of California tort law and therefore "an arbitrary and unreasonable classification."[64] This conclusion, while sound in light of developing California tort law, amounts to the substitution of a judicial judgment of reasonableness for the presumption of constitutionality and deference to legislative judgment which underlay the traditional no-review rational relationship test.

The court in *Brown* measured the constitutional requirement of reasonableness in light of the rationales of common law decisions abandoning old limits on the duties of landowners and landoccupiers to those injured on their property and decisions eliminating the immunity from negligence liability enjoyed by charitable institutions. These decisions found the historical rules against recovery for negligence to be irrational in modern society. *Rowland v. Christian*[65] imposed upon landowners and occupiers a single duty of due care to all persons, including those characterized as "social guests" or "invitees."[66] In an earlier case, *Malloy v. Fong*,[67] the court applied the same reasoning to another category of gratuitous relationships, holding that beneficiaries of charitable institutions were entitled to the protections afforded by the requirement of due care.

The decisions in *Rowland* and *Malloy* did not have to find an equal protection violation in order to alter tort law principles since there were no statutes involved. However, in *Brown* the court's prior judgments of the irrationality of the rules limiting recovery in situations analogous to that of the guest statute were transmuted into judicial criteria for determining the *constitutionality* of legislation. This was a departure from traditional equal protection review which had merely demanded a showing of conceivable reasonableness.[68] This departure demonstrates the

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[63] The Court found no rational distinction between automobile (or airplane or motorboat) guests and "all other guests" in relation to an asserted state interest in protecting hospitality. *Id.* at 864 n.5, 506 P.2d at 218-19 n.5, 106 Cal. Rptr. at 394-95 n.5.

[64] *Id.* at 865 n.6, 506 P.2d at 219 n.6, 106 Cal. Rptr. at 395 n.6.

[65] 69 Cal. 2d 108, 443 P.2d 561, 70 Cal. Rptr. 97 (1968).

[66] The court concluded: "Whatever may have been the historical justifications for the common law distinctions [between social guests and business guests], it is clear that those distinctions are not justified in the light of our modern society . . . ." *Id.* at 117, 443 P.2d at 567, 70 Cal. Rptr. at 103.

[67] 37 Cal. 2d 356, 232 P.2d 241 (1951).

[68] *See* Railway Express Agency, Inc. v. New York, 336 U.S. 106 (1949); Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61 (1911); cases cited note 25 *supra*.

The fact that the old rules against recovery persist in the majority of

extent of the court's commitment to the reform of tort law. In *Brown*, the court clearly abandoned a posture of complete deference to legislative judgments and relied upon its own stringent evaluation of the rationality of the challenged classification:

> *Rowland, Malloy* and *Silva* teach that "however laudable" the motives of a hospitable host or generous charity, it is irrational to reward that generosity by subjecting beneficiaries to a greater risk of uncompensated injury than is faced by other individuals; under this principle, the guest statute's classification scheme is clearly unreasonable.[69]

The *Brown* court, acknowledging that it could do so, refused to ascribe a theoretically "conceivable" purpose to the classification system differentiating automobile guests.[70] The refusal to do so constitutes a further departure from traditional equal protection review. Justice Rehnquist, dissenting from the decision in *Weber v. Aetna Casualty & Surety Co.*[71] succinctly stated the traditional approach:

> [Equal protection] requires neither that State enactments be 'logical' nor does it require that they be 'just' in the common meaning of those terms. It requires only that there be some conceivable set of facts which may justify the classification involved.[72]

Brown substituted for this permissive test a requirement of rational relationship to an *actual* rather than constructive legislative purpose. Acknowledging that this was in some fashion "new,"[73] the court found precedent for its action in seven recent United States Supreme Court cases which purportedly used the

jurisdictions is evidence that the underlying rationale is at least reasonable to the point of being "conceivable" which was sufficient to satisfy the traditional test. To date a declassification of landowner immunities similar to *Rowland* has been adopted only in Hawaii and the District of Columbia. *See* Smith v. Arbaugh's Restaurant, Inc., 469 F.2d 97 (D.C. Cir. 1972); Pickard v. Honolulu, 51 Hawaii 134, 452 P.2d 445 (1969); Gibo v. Honolulu, 51 Hawaii 299, 459 P.2d 198 (1969) (imposing a duty of reasonable care to all persons reasonably anticipated to be on the premises). There are, however, suggestions that *Rowland* will be followed in the future in Colorado and Missouri. *See* Mile High Fence Co. v. Radovich, 474 P.2d 796 (Colo. Ct. App. 1970), *aff'd*, 489 P.2d 308 (Colo. 1971) and Smith v. Mill Creek Court, Inc., 457 F.2d 589 (10th Cir. 1972) (which stated that *Mile High* "did away with the distinctions." *Id.* at 591); Heald v. Cox, 480 S.W.2d 107 (Mo. Ct. App. 1972) (which termed the distinctions "vestigial remnants of the historical past." *Id.* at 109). Numerous cases in other jurisdictions since *Rowland* have maintained the landowner liability classification system. *See, e.g.*, Lemon v. Busey, 204 Kan. 119, 461 P.2d 145 (1969); Moore v. Denune & Pipic, Inc., 26 Ohio St. 2d 125, 55 Ohio Op. 2d 237, 269 N.E.2d 599 (1971); Annot., 35 A.L.R.3d 230 (1971, Supp. 1973); Annot., 32 A.L.R.3d 496 (1970, Supp. 1973).

69 8 Cal. 3d at 870-71, 506 P.2d at 223, 106 Cal. Rptr. at 399.

70 *Id.* at 865 n.7, 506 P.2d at 219 n.7, 106 Cal. Rptr. at 395 n.7.

71 406 U.S. 164 (1972).

72 *Id.* at 183 (Rehnquist, J., dissenting).

73 8 Cal. 3d at 865 n.7, 506 P.2d at 219 n.7, 106 Cal. Rptr. at 395 n.7.

traditional rational relationship standard of equal protection to strike down statutory classification schemes.[74] As pointed out above,[75] many of the cases cited involved situations which earlier might have been decided under the strict scrutiny standard, because they involved, for example, classifications based on sex[76] or infringed privacy interests.[77] Thus the more stringent application of the rational relationship test was justifiable even in traditional terms. The *Brown* court had no similar rationalization for its application of the more activist standard. So *Brown* appeared to be an expansion of the application of "activist" equal protection.

Such an expansion may be criticized as a return to a pre-1935 judicial predilection for substantive review of legislation—derogatorily referred to as "substantive equal protection" by some commentators.[78] However, the court's approach in *Brown* appears to be less of a rampaging "activism" than a retreat from the kind of unthinking deference apparently endemic to traditional equal protection review of legislative schemes.[79] The California Supreme Court simply refused to engage in what it termed "such a highly fictionalized approach."[80] This refusal restores to the judiciary a measure of credibility abdicated under the result-oriented approach of traditional equal protection analysis.

2. The Collusion Prevention Purpose

The second ostensible purpose of the guest statute fared no better under the *Brown* court's reasonableness standard. The rationale of the guest statute was said to be that there was substantial risk that guest and insured driver would falsely swear to negligence so that the guest could recover from the driver's insurance company. In order to avoid such fraudulent actions, the legislature barred non-paying passengers from recovery for sim-

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74 The cases cited were: James v. Strange, 407 U.S. 128 (1972); Jackson v. Indiana, 406 U.S. 715 (1972); Weber v. Aetna Cas. & Sur. Co., 406 U.S. 164 (1972); Stanley v. Illinois, 405 U.S. 645 (1972); Humphrey v. Cady, 405 U.S. 504 (1972); Eisenstadt v. Baird, 405 U.S. 438 (1972); Reed v. Reed, 404 U.S. 71 (1971).

75 *See* note 44 *supra*.

76 Reed v. Reed, 404 U.S. 71 (1971).

77 Eisenstadt v. Baird, 405 U.S. 438 (1972).

78 *See* Karst & Horowitz, Reitman v. Mulkey: *A Telophase of Substantive Equal Protection*, 1967 SUP. CT. REV. 39. Prior to *Brown* and perhaps the cases cited in note 74 *supra*, "substantive equal protection" appeared to be confined to cases within the suspect category-fundamental interest spectrum. *See* Karst, *Invidious Discrimination: Justice Douglas and the Return of the "Natural-Law—Due-Process Formula,"* 16 UCLA L. REV. 716 (1969).

79 See the discussion of *McGowan v. Maryland* in note 24 *supra*. *See also* cases cited note 25 *supra*.

80 8 Cal. 3d at 865 n.7, 506 P.2d at 219 n.7, 106 Cal. Rptr. at 395 n.7.

ple negligence. The court examined this underlying rationale and concluded that the goal of preventing collusive lawsuits and potential fraud upon insurance companies does not "provide a sufficient basis for the statute's wholesale elimination of all automobile guests' causes of action for negligently inflicted injury."[81] The court found irrationality in two aspects of this system: First, the elimination of all suits because of the risk that a few might be collusive and second, the differentiation between vehicle passengers on the basis of whether payment was given did not rationally relate to the problem of collusion.[82]

As it did in considering the hospitality purpose, the court observed that it had previously examined policies which eliminated all lawsuits between whole classes of individuals because of the risk of collusion. A line of cases examining common law interfamilial immunities found the rationale of collusion to be unreasonable in that it amounted to a per se rejection of recovery with no alternative for non-collusive situations.[83] In *Emery v. Emery*[84] the seminal case in the interfamilial immunity line of cases, the court concluded, "the fact that there may be greater opportunity for fraud or collusion in one class of cases than another does not warrant courts of law in closing the door to all cases of that class."[85]

Applying this reasoning to the classification scheme of the guest statute, the court said that the paying-nonpaying distinction was

> a classic case of an impermissibly overinclusive classification scheme, that is, a scheme in which a statute's classification "imposes a burden upon a wider range of individuals than are included in the class of those tainted with the mischief at which the law aims".[86]

The classification was overinclusive because it eliminated the lawsuits of honest plaintiffs as well as the lawsuits of collusive

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[81] *Id.* at 872-78, 506 P.2d at 224-28, 106 Cal. Rptr. at 400-04.

[82] *Id.* at 875, 506 P.2d at 226-27, 106 Cal. Rptr. at 402-03.

[83] Gibson v. Gibson, 3 Cal. 3d 914, 479 P.2d 648, 92 Cal. Rptr. 288 (1971); Klein v. Klein, 58 Cal. 2d 692, 376 P.2d 70, 26 Cal. Rptr. 102 (1962); Emery v. Emery, 45 Cal. 2d 421, 289 P.2d 218 (1955).

[84] 45 Cal. 2d 421, 289 P.2d 218 (1955).

[85] *Id.* at 431, 289 P.2d at 225. In *Brown*, the court found the risk of collusion to be smaller in the automobile guest situation than in the family lawsuit, terming the automobile guest status a "far grosser indicant of the likelihood of collusion" since it exempted friends or relatives who give "compensation" and who in the court's opinion "pose as great a risk of collusion as nonpaying guests." In addition, the nonpaying distinction eliminated many persons with no close relationship with the driver and who therefore presented little danger of collusion. 8 Cal. 3d at 875, 506 P.2d at 226, 106 Cal. Rptr. at 402.

[86] *Id.* at 876, 506 P.2d at 227, 106 Cal. Rptr. at 403 (utilizing Tussman & tenBroek's standard definition of an overinclusive classification). Tussman & tenBroek, *supra* note 14, at 351.

plaintiffs. Here again a *common law* determination of the reasonableness of a category was used to measure the *constitutionality* of the statute.

It should be recognized that the guest statute provisions represented the judgment of the legislature (albeit thirty years ago and under undoubted political pressure from insurance lobbies[87]) that the danger of collusion in the automobile guest situation is so great as to require elimination of all recoveries except for willful misconduct or intoxication. The provision as to compensation represented a judgment that one who paid should have been able to claim a higher degree of due care from the driver of the automobile than one who did not pay. While operating in the verbal range of the traditional equal protection test, the court was in reality passing judgment upon the soundness of these legislative policy judgments.

The court's approach seemed to be that, even given what is a very legitimate interest of the state (prevention of collusion), any per se exclusion classifications must be precisely tailored to promote that interest in order to meet the demand of equal protection. For example, in *Brown* the court concluded " 'compensation' is not a factor that assures dishonesty in its absence, or that guarantees honesty in its presence . . . ."[88] The court further noted that the statute merely changed the probable basis of collusion from fraudulent representations as to negligence to fraudulent representations as to whether compensation was given.[89] However, the traditional equal protection standard had long been tolerant of such *underinclusiveness* on the rationale that a legislature "is free to remedy parts of a mischief or to recognize degrees of evil and to strike at the harm where it thinks it most acute."[90]

Requiring greater exactitude between the challenged classification and the state interest it allegedly supports accords with the approach of the United States Supreme Court in the cases

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87 PROSSER, *supra* note 2, § 34, at 187; Tipton, *Florida's Automobile Guest Statute*, 11 U. FLA. L. REV. 287, 287-88 (1958); Note, 5 UTAH L. REV. 257, 258 & n.10 (1968).

88 8 Cal. 3d at 878, 506 P.2d at 228, 106 Cal. Rptr. at 404.

89 *Id.* at 875, 506 P.2d at 226-27, 106 Cal. Rptr. at 402-03.

90 *Developments*, *supra* note 11, at 1084, *citing* Williamson v. Lee Optical, Inc., 348 U.S. 483 (1955), where Justice Douglas wrote for the Court:

> The problem of legislative classification is a perennial one, admitting of no doctrinaire definition. Evils in the same field may be of different dimensions and proportions, requiring different remedies. Or so the legislature may think. Or the reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind.

Id. at 489 (citations omitted). *See also* Railway Express Agency, Inc. v. New York, 336 U.S. 106 (1949), *discussed in* note 24 *supra*.

cited in *Brown*.[91] It also reflects the Court's disapproval of classifications which create irrebutable presumptions. For example, in *Vlandis v. Kline*[92] the Court struck down a statute which assumed, allowing no showing to the contrary, that all married applicants to the state universities who have out-of-state mailing addresses are and remain non-residents for as long as they are students in the state. *Vlandis* relied upon due process deficiencies; and perhaps one valid reading of the "newer" equal protection cases is as an amalgam of equal protection and due process requirements.[93] Given a conceivable legislative judgment, for example, that paying passengers are less likely to be collusive, an individual passenger is still entitled to a separate evaluation as to whether or not he or she is in fact colluding. This seems to be in accord with the results in *Reed v. Reed*[94] and *Stanley v. Illinois*[95] where neither plaintiff had recourse to establish their qualifications apart from the presumptions established by the statutory classifications.[96]

The "newer" equal protection may simply be a fusing of procedural due process requirements to legislative classifications which are not precisely tailored in and of themselves. While there may be a "conceivable" relationship between the classification and the legislative purpose, it is not so unequivocally certain as to justify denial of benefits or impose burdens on the basis of such status alone.

3. The Statutory Subclasses

The final equal protection consideration in *Brown* was that the internal subclasses of the guest statute were irrational in light of the purposes of the act (collusion prevention and promotion of hospitality) and rendered the recovery or lack of recovery largely "fortuitous." The statute burdened only a "portion of all injured automobile guests."[97] The court examined the subcategories of section 17158—"during the ride," "in any vehicle," and "upon a highway" and found: (1) They were totally unre-

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91 *See* cases cited note 74 *supra*.

92 412 U.S. 441 (1973).

93 It has been suggested that many of the equal protection cases could have been decided on due process grounds. *See* Karst, *supra* note 78; Karst & Horowitz, *supra* note 78; Michelman, *Foreword: On Protecting the Poor Through the Fourteenth Amendment*, 83 HARV. L. REV. 7 (1969).

94 404 U.S. 71 (1971).

95 405 U.S. 645 (1972).

96 It is true that Stanley might have been able to regain custody of his children through adoption proceedings or as guardian. The Court rejected this solution saying it had not embraced "the general proposition that a wrong may be done if it can be undone." *Id.* at 647.

97 8 Cal. 3d at 878-82, 506 P.2d at 228-31, 106 Cal. Rptr. at 404-07.

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lated to the collusion prevention purpose of the statute, and (2) they resulted in a pattern of unequal judicial treatment of persons "similarly situated." These statutory subclassifications created a structure of illogical uncertainty which the court found similar to the pattern resulting from statutory and common law exceptions to sovereign immunity prior to *Muskopf v. Corning Hospital District*.[98]

The court specifically denied that any disparity resulting from the application of the subcategories was of judicial origin.[99] The distinctions, it argued, derived from the legislature, not the courts. Furthermore, a narrow statutory construction by the courts was appropriate since the guest statute was an exception to the general rule of recovery for negligently caused injury, and finally, the failure of the legislature to counteract such judicial interpretations indicated its approval.[100] Regardless of whether the restrictive interpretations were legislatively mandated or judicially created, it should be noted that it was the consequent disparity of results for plaintiffs "similarly situated" which constituted the violation of equal protection.

4. Summary of Equal Protection in *Brown*

The equal protection analysis in *Brown* departed in three significant respects from traditional equal protection: (1) in requiring a "real reason" for the statute rather than a hypothetical one, (2) in applying *common law* determinations of reasonableness to determine the rationality of a statutory classification system, and (3) in refusing to tolerate relative inexactness of classification in light of the alleged legislative purpose supported by the classification. But whatever the ultimate delineation of the "newer" equal protection criteria by the California Supreme

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[98] 55 Cal. 2d 211, 359 P.2d 457, 11 Cal. Rptr. 89 (1961). In *Muskopf*, the court observed that the government immunity doctrine "has become riddled with exceptions, both legislative . . . and judicial . . . , and the exceptions operate so illogically as to cause serious inequality." *Id.* at 216, 359 P.2d at 460, 11 Cal. Rptr. at 92.

Prior to *Muskopf*, scattered statutory exceptions to sovereign immunity provided at least occasional relief. *See* examples cited note 187 *infra*. Prior to *Brown*, it was the statute which barred recovery while judge-made exceptions allowed recovery for some fortunate automobile guests. But the reform thrust of both *Muskopf* and *Brown* was identical: to increase the opportunity for compensation of those injured.

For a highly satirical summary of the effect of the subcategories on actual recovery see Luscher, *supra* note 5, at 14.

[99] 8 Cal. 3d at 880 n.20, 506 P.2d at 230 n.20, 106 Cal. Rptr. at 406 n.20.

[100] *Id.* However, it may be noted that a court's responsibility to interpret legislation so as to make it constitutional, if possible, is at least matched by the requirement of strict construction of statutes in derogation of the general standard of liability.

Court, its decision in *Brown v. Merlo* primarily represents a further step in the court's modernization of tort law rather than a precedential change in equal protection doctrine.[101] The equal protection analysis in *Brown* relied heavily upon recent California tort cases. The cases provided in the first instance the evolving common law standard of tort liability toward social guests against which the ossified statutory treatment of the similarly situated automobile guest was measured and found wanting. In the second instance, common law assessments of the reasonableness of a policy which deprived whole classes of plaintiffs of a cause of action for negligence either to promote hospitality or to prevent collusion were utilized to construct a constitutional standard of rationality. The underlying rationale of *Brown* was the same as that of recent decisions reforming California tort law—a judicial policy that people should be compensated for their injuries, at least when there is a financially responsible defendant able to absorb and spread the initial risk of loss.

The real significance of the activist equal protection standard utilized in *Brown* does not lie in constitutional law. Rather it lies in the graphic demonstration of the assiduity with which the California Supreme Court is determined to pursue its goal of reform of tort law. At the same time, *Brown v. Merlo* represents a confluence of tort law and constitutional law—embodying as it does both the increasing antipathy of common law courts to liability rules which automatically exclude whole classes of plaintiffs from recovery for negligently inflicted injuries and the constitutional law standards of equal protection and due process which demand that a plaintiff have some opportunity to overcome statutory or administrative presumptions.

II. Judicial Activism in the Reform of California Tort Law

A. *Review of Tort Law Reform in California*

Although it utilized a novel approach, *Brown v. Merlo* is only the latest in a distinguished line of cases which have re-

[101] The fact that *Brown* is not a constitutional law precedent is evident in the fact that it has yet to be cited for its equal protection standard. *See, e.g.*, the recent cases of Swoap v. Superior Court, 10 Cal. 3d 490, 516 P.2d 840, 111 Cal. Rptr. 136 (1973); D'Amico v. Board of Medical Exam'rs, 11 Cal. 3d 1, 520 P.2d 10, 112 Cal. Rptr. 786 (1974). Note especially Justice Tobriner's dissent in *Swoap* where he protests against the use of the "minimal rationality" test without referring to *Brown* as precedent for another standard. 10 Cal. 3d 490, 511, 516 P.2d 840, 854, 111 Cal. Rptr. 136, 150 (1973).

An intermediate appellate court has interpreted *Brown* conservatively: "*Brown* demonstrates not all legislative classifications are rationally related to legitimate government purposes, but does not allow the court to substitute its judgment for

formed tort law in California. The thrust of tort reform, which commentators are united in characterizing as dramatic,[102] is toward increasing the incidence of recovery for injuries resulting from the inevitable clashes of flesh and machine by eliminating areas of historical immunity and by expanding the scope of liability.[103] A corollary concern has been to increase the incidence of risk-spreading so as to reduce the impact of actual loss on any single individual. Reform has been so thorough-going as to affect the entire structure of the law.[104] Judicially, the past few years represent an almost complete rejection of nineteenth century limitations on recovery. However, reform is doing more than imposing rationality upon "our senseless hodgepodge of precedents."[105] While the orientation of the nineteenth century was to create and delineate immunities and restrict liability to negligence,[106] that of the twentieth century has been to curtail and finally eliminate those immunities and to expand the range of liability beyond negligence by greatly expanding the kinds of harm for which the standard is strict liability.[107]

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that of the Legislature when a rational relationship can be shown." Hughes v. San Diego, 35 Cal. App. 3d 349, 352, 110 Cal. Rptr. 754, 756 (4th Dist. 1973).

102 *See, e.g.*, James, *Inroads on Old Tort Concepts*, 14 NACCA L.J. 226 (1954); Keeton, *Judicial Law Reform—A Perspective on the Performance of Appellate Courts*, 44 TEX. L. REV. 1254 (1966); Traynor, *Comment on Courts and Lawmaking*, LEGAL INSTITUTIONS TODAY AND TOMORROW, 48, 52 (1959) [hereinafter cited as Traynor].

103 Professor Fleming James found the expansion of tort liability proceeding in two directions: (1) "The negligence principle is being constantly expanded so as to clear out pockets of vestigial immunity;" and (2) "limitations to liability that inhere in the negligence principle are giving way to [strict liability]." James, *supra* note 102, at 226.

104 Evidence of a reorientation toward tort law policy may also be observed in the California Legislature. In recent years it has been seriously considering a no-fault insurance system, the primary motive of which is compensation and loss-spreading. *See* note 123 *infra*. However, as late as 1961 the Legislature's concern was still oriented toward restriction of recovery rather than increasing compensation. In response to Ahlgren v. Ahlgren, 152 Cal. App. 2d 723, 313 P.2d 88 (4th Dist. 1957), which had exempted an owner of a vehicle injured while a passenger in his own car from the provisions of the guest statute, the California Legislature amended the statute to specifically include owners and thereby restrict their recovery. *See* California Vehicle Code section 17158 which reads: "No person riding in or occupying a vehicle owned by him and driven by another person with his permission . . . ." Ch. 1600, § 91, [1961] Cal. Stats. 3429. The *Brown* court did not evaluate the constitutionality of this provision (8 Cal. 3d at 862 n.3, 506 P.2d at 217 n.3, 106 Cal. Rptr. at 393 n.3), though the statute earlier survived an equal protection attack based upon the statutory distinction between the paying-owner-passenger and the paying-nonowner-passenger. Patton v. LaBree, 60 Cal. 2d 606, 387 P.2d 398, 35 Cal. Rptr. 622 (1963). The ban on recovery by owner-passengers is apparently still operative. *See* 1973 amendment to the guest statute which deleted all references to guests other than owners. Ch. 803, § 4, [1973] Cal. Stats. 1611. *See also* Schwalbe v. Jones, 35 Cal. App. 3d 214, 110 Cal. Rptr. 563 (1st Dist. 1973).

105 Traynor, *supra* note 102, at 53.

106 *See* L. FRIEDMAN, A HISTORY OF AMERICAN LAW 409-27 (1973).

107 C. Gregory, *Trespass to Negligence to Absolute Liability*, 37 VA. L. REV.

In California, charitable immunities have yielded to the general principle of liability for negligently caused harm.[108] Interfamilial immunities, which formed another cluster of exceptions to liability for negligence, disappeared one after the other.[109] A hierarchy of landowner immunities from negligence was firmly rejected in *Rowland v. Christian*.[110] Broad governmental immunity under the common law disappeared in *Muskopf v. Corning Hospital District*.[111] Most notably, the California Supreme Court has significantly expanded the basis of tort liability through the development of product liability doctrines.[112]

Two themes of tort law reform are discernable in these cases. The first is a tendency to impose a uniform duty of reasonable care in all circumstances through the systematic elimination of the various *common law* exceptions to negligence liabil-

359 (1951); F. James, *Tort Law in Midstream: Its Challenge to the Judicial Process*, 8 BUFFALO L. REV. 315 (1959).

108 Malloy v. Fong, 37 Cal. 2d 356, 231 P.2d 241 (1951); Silva v. Providence Hosp., 14 Cal. 2d 762, 97 P.2d 798 (1939).

109 In Emery v. Emery, 45 Cal. 2d 421, 289 P.2d 218 (1955), two sisters were permitted to recover from their brother for simple negligence. A pair of cases in 1962, Self v. Self, 58 Cal. 2d 683, 376 P.2d 65, 26 Cal. Rptr. 97 (1962) and Klein v. Klein, 58 Cal. 2d 692, 376 P.2d 70, 26 Cal. Rptr. 102 (1962), abolished interspousal immunities for negligent as well as intentional torts. Finally in Gibson v. Gibson, 3 Cal. 3d 914, 479 P.2d 648, 92 Cal. Rptr. 288 (1971), parental immunity for negligence was similarly discarded as a "legal anachronism." *Id.* at 917, 479 P.2d at 650, 92 Cal. Rptr. at 290. In *Gibson* the supreme court was openly concerned with compensation and insurance coverage: "We feel we cannot overlook the widespread prevalence of liability insurance and its practical effect on intrafamily suits . . . it is unrealistic to ignore this factor in making an informed policy decision on whether to abolish parental negligence immunity." *Id.* at 918, 479 P.2d at 653, 92 Cal. Rptr. at 293.

110 69 Cal. 2d 108, 443 P.2d 561, 70 Cal. Rptr. 97 (1968).

111 55 Cal. 2d 211, 359 P.2d 457, 11 Cal. Rptr. 89 (1961). Immediately following *Muskopf* the legislature conditionally restored the doctrine of governmental immunity for two years but provided for recovery for causes of action occurring during the period unless barred by subsequent legislation. Ch. 1404, § 1 et seq., [1961] Cal. Stats. 3209. The moratorium was followed by a comprehensive governmental tort liability statute and the time lag presumably permitted government units to cover their liability with insurance.

112 These doctrines have brought to fruit the rationale expressed in Justice Traynor's 1944 concurrence in Escola v. Coca Cola Bottling Co., 24 Cal. 2d 453, 150 P.2d 436 (1944): "The cost of an injury and the loss of time or health may be an overwhelming misfortune to the person injured, and a needless one, for the risk of injury can be insured by the manufacturer and distributed among the public as a cost of doing business." *Id.* at 462, 150 P.2d at 441. *See* Greenman v. Yuba Power Products, Inc., 59 Cal. 2d 57, 377 P.2d 897, 27 Cal. Rptr. 697 (1963) (establishing strict liability in tort for manufacturer of defective product); Vandermark v. Ford Motor Co., 61 Cal. 2d 256, 391 P.2d 168, 37 Cal. Rptr. 896 (1964) (extending the rule of *Greenman* to retailers); Elmore v. American Motors Corp., 70 Cal. 2d 578, 451 P.2d 84, 75 Cal. Rptr. 652 (1969) (extending the principle of strict liability in tort to bystanders injured by defective products). For products liability *see generally* Rintala, *The Supreme Court of California 1968-1969, Foreword: "Status" Concepts in the Law of Torts*, 58 CAL. L. REV. 80 (1970).

ity.[113] The second is a tendency to reject "automatic" exclusions from recovery which are either based upon historical exceptions found to be irrational in modern society or abstract legal concepts such as privity which serve no important policy function. *Brown v. Merlo* falls squarely within these tendencies.[114]

Most recently, the California Supreme Court has moved from reform of common law rules to an increased use of statutes in the service of reform. Thus in *Vesely v. Sager*,[115] the court found the vendor of alcoholic beverages to be civilly liable for injuries to a third person caused by a customer when the customer had been served in violation of law. Such liability had earlier been rejected on proximate cause grounds;[116] courts declared themselves impotent to impose such liability without legislative direction.[117] The *Vesely* court denied the need for legislative action, maintaining it was merely changing a "judicially created rule now inconsistent with prevailing tort law."[118] But the action in *Vesely* did not alter the statute itself, merely its application as a standard for tort liability. Until *Brown*, the cases evidenced a respect for statutory proscriptions against recovery. Indeed, earlier tort reform cases consistently repeated the refrain that the only justification for rules of law out of line with the general standard of liability was legislative policy.[119] *Brown* represents then the point at which the compensatory impulse of modern tort reform could not be contained even by a clear statutory exception.

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113 The general standard of liability for negligence is codified in section 1714 of the California Civil Code which reads:

> Every one is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself.

CAL. CIV. CODE § 1714 (West 1971).

114 The elimination of the guest statute exception means that the duty owed by a driver to a guest passenger is now the same as the duty owed to all others who may be injured as a result of the driver's simple negligence. 8 Cal. 3d at 865 n.6, 506 P.2d at 219 n.6, 106 Cal. Rptr. at 395 n.6. Similarly, *Brown* rejects the "automatic" exclusion of the guest passenger from possible recovery through the tort system by the implicit, irrebuttable assumption of collusion. *Id.* at 877, 506 P.2d at 227-28, 106 Cal. Rptr. at 403-04.

115 5 Cal. 3d 153, 486 P.2d 151, 95 Cal. Rptr. 623 (1971).

116 Fleckner v. Dionne, 94 Cal. App. 2d 246, 210 P.2d 530 (1st Dist. 1949); Hitson v. Dwyer, 61 Cal. App. 2d 803, 143 P.2d 952 (3rd Dist. 1943).

117 Cole v. Rush, 45 Cal.2d 345, 355-56, 289 P.2d 450, 452-53 (1955).

118 5 Cal. 3d at 166, 486 P.2d at 160, 95 Cal. Rptr. at 632.

119 "[I]t is clear that *in the absence of statutory provision* declaring an exception to the fundamental principle enunciated by section 1714 of the Civil Code, no exception should be made unless clearly supported by public policy." Rowland v. Christian, 69 Cal. 2d at 112, 443 P.2d at 564, 70 Cal. Rptr. at 100 (1968) (emphasis added).

B. Appropriateness of Judicial Activism in Tort Law Reform

Brown is an expansion of judicial activism in tort law from the systematic elimination of common law rules antipathetic to modern tort policies to the elimination of a similarly offensive statutory scheme. This kind of judicial activism should not be confused with the activism attacked by traditional legal process scholars.[120] First, whatever the merit of the anti-activist posture with regard to constitutional adjudication of economic regulatory legislation under the equal protection and due process clauses, it has little relevance to tort law. Second, the anti-activist stance is based upon an unrealistic assessment of the capabilities of the legislature and the realities of the legislative process.

1. Irrelevance of Traditional Anti-Activist Standard to Tort Law Reform

Traditional attacks upon judicial activism, admittedly formulated in the milieu of constitutional law, are overbroad when applied to tort law. Tort law is, and historically has been, an area predominately developed and cultivated by the courts.[121] Statutory intervention has been minimal and largely supplementary. In addition, tort law activism simply does not present the very real dangers of rampant judicial activism dramatically manifested in the substantive due process excesses of the courts in the 1920's and 1930's. Tort law activism can be distinguished from that of the 1930's in at least two ways. First, activist tort law reform has generally been in touch with the present concerns of society and has been appropriately responsive to them. The model of judicial activism implicit in the anti-activist stance is that of a court acting in opposition to the will of a legislature, frustrating its efforts to deal with contemporary problems.[122]

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[120] Some of the more recent critics in this tradition are: A. BICKEL, THE SUPREME COURT AND THE IDEA OF PROGRESS (1970); P. KURLAND, POLITICS, THE CONSTITUTION AND THE WARREN COURT (1970); Ely, *The Wages of Crying Wolf: A Comment on* Roe v. Wade, 82 YALE L.J. 920 (1973); Hart, *The Supreme Court 1958 Term, Foreword: The Time Chart of the Justices*, 73 HARV. L. REV. 84 (1959); Linde, *Judges, Critics and the Realist Tradition*, 82 YALE L.J. 229 (1973).

[121] *See* L. FRIEDMAN, A HISTORY OF AMERICAN LAW 409-27 (1973); R. Keeton, *Creative Continuity in the Law of Torts*, 75 HARV. L. REV. 463 (1962).

[122] The present generation of legal process scholars spent its formative years under the influence of a generation of legal realists who dissected and observed the process of judicial decision making. The "realists" applied the teachings of the behavioral sciences to understand the process of judicial decision making. The conclusions were that judges were not objective and rational, rather their decisions were invidiously influenced by their own intellectual make-up. *See* Haines, *General Observations on the Effects of Personal, Political, and Economic Influences in the Decisions of Judges*, 17 ILL. L. REV. 96 (1922); Radin, *The Theory of Judicial Decision Making: Or How Judges Think*, 11 A.B.A.J. 357

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[125] 55 Cal. 2d

However, activist tort law reform, like that exemplified in *Brown v. Merlo*, is actually a model of cooperative endeavor with the legislature, in accord with the tendencies and concerns of this time period.[123] It is apparent that cooperation between the courts and the legislature in law reform can take several forms. One possibility, suggested by Professor R. E. Keeton, is that a court and a legislature may act together to achieve a joint policy goal more rapidly than either could do alone. The courts' role in this model is to strike down a statute which no longer reflects contemporary concerns and which, because of the nature of the political process, is unlikely to be legislatively eliminated.[124] *Muskopf v. Corning Hospital*, though striking down precedent rather than statute,[125] exemplifies this kind of cooperation which resolves in a short period of time a particularly difficult legisla-

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(1925). These theories were in the ascendancy in the early 1930's. *See* White, *From Sociological Jurisprudence to Realism: Jurisprudence and Social Change in Early Twentieth-Century America*, 58 VA. L. REV. 999 (1972). *See generally* E. PATTERSON, JURISPRUDENCE: MEN AND IDEAS OF THE LAW (1953); Ackerman, *Law and the Modern Mind*, 103 DAEDALEUS 119 (1974).

A second component of the formation of the legal process stance was the traumatic collision between the Presidency and the Supreme Court in the mid-1930's. The generation witnessed the efforts of the Supreme Court conservatives to nullify judicially the New Deal, providing an eminent example of an exclusively American phenomenon. In Sir Wilmot Lewis' statement is the essence: "Legislation in the United States is a digestive process by Congress with frequent regurgitations by the Supreme Court." *Quoted in* A. SCHLESINGER, THE POLITICS OF UPHEAVAL 452 (1966). *See also* Frankfurter & Fisher, *The Business of the Supreme Court at the October Terms, 1935 and 1936*, 51 HARV. L. REV. 577 (1938); ALPANGE, THE SUPREME COURT AND THE NATIONAL WILL (1937); JACKSON, THE STRUGGLE FOR JUDICIAL SUPREMACY (1941).

[123] The California Legislature has been actively considering a program of greatly increased compensation in the form of a no-fault insurance system. *See* Robinson, *No-fault and the State Bar*, 47 CAL. ST. B.J. 286 (1972). Robinson indicated the plan had the support of the Reagan Administration, the State Bar of California, and the Association of Northern and Southern Defense Counsel. In California he noted the support of automobile insurance companies, saying "a large segment in California aggressively favors a modified no-fault plan." *Id.* at 286. During the 1973-74 legislative session, no less than five proposals for no-fault automobile insurance plans were presented in the California State Senate. S.B. 410, S.B. 557, S.B. 10, S.B. 429, S.B. 1273.

Further, the reforming decisions of the California Supreme Court seem to be firmly within the Holmesian tradition of basing the law upon experience rather than logic. O.W. HOLMES, THE COMMON LAW 5 (1881).

[124] Keeton, *supra* note 121, at 354. One excellent example of this kind of interaction can be seen in the immediate reaction of the California Legislature to the decision in *Brown v. Merlo*. The Legislature amended the provisions of the automobile, boat, and airplane guest statutes, deleting all references to guests. Another example is seen in the apportionment decision which ordered the reapportionment of the Tennessee legislature in Baker v. Carr, 369 U.S. 186 (1962), based upon the substantial growth and redistribution of the population of Tennessee since 1901 and the recognized inability of its general assembly to undertake such reapportionment. The Court specifically mentioned the failure of all proposals for reapportionment for 60 years.

[125] 55 Cal. 2d 211, 359 P.2d 457, 11 Cal. Rptr. 89 (1961).

tive problem. The result in *Brown* is similarly within this framework of cooperation; it is certainly not directly contrary to the will of the legislature at a time when the legislature is itself preoccupied with perfection of the compensation delivery system for accidental automobile injuries.

A second point of distinction between judicial activism of the 1930's and tort law activism is their different intellectual origins.[126] Substantive due process activism was based largely upon an abstract "natural law-natural right" intellectual framework which purported to set forth absolute reality to which present reality must be made to conform.[127] Tort law activism has been notably loath to rely upon abstractions. Rather tort law reform is modern, practical and policy-oriented. Cases like *Brown* are firmly grounded in practical assessments of the most rational means to implement the policies of tort law—to compensate the victims of accidents and to spread the risks of loss as broadly as possible. Change in tort law has resulted directly from changed circumstances, such as the increased incidence and availability of liability insurance.

There may be some argument that judicial activism in the reform of common law tort precedents is less offensive and more appropriate than reform of statutes using activist constitutional law principles. However, statutes certainly can be as irrational, arbitrary, and outdated as common law precedents. To deny totally to the judiciary the competency to utilize its constitutional powers of judicial review to strike down obsolete and now unjustifiable statutes, solely because enacted by some legislature at another time, from another frame of reference, and in pursuit of a different policy goal, is to give statute law a superior status completely out of touch with the realities of the legislative process.

2. Unreality of the Legislative Model of Traditional Anti-Activism

Opponents of judicial activism in general insist that the legislature is the only appropriate governmental body to undertake law reform and policy formulation.[128] This argument exaggerates the practical ability of a legislature to meet all the needs of a

[126] The author is indebted to Professor E. Ursin of the UCLA School of Law for this analysis.

[127] *See* Hamilton, *The Path of Due Process of Law*, 48 ETHICS 269 (1938). The clearest judicial reflection of this natural law rationale is seen in Lochner v. New York, 198 U.S. 45 (1905).

[128] *See, e.g.*, the discussion in H.M. HART & A.M. SACKS, THE LEGAL PROCESS 386-407 (tent. ed. 1958) of the case of Norway Plains Co. v. Boston & Maine R.R., 1 Gray 263 (Mass. 1854); in general as to legislatures *see, id.* at 714-48.

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pluralistic and increasingly complex industrial society. That legislatures themselves are cognizant of the limits of their ability to legislate fully is demonstrated by the massive delegations of legislative power to executive and quasi-legislative agencies which have been characteristic of the period since 1933. The reform of specific rules of tort law is precisely the kind of action which legislatures do not ordinarily undertake.[129]

The anti-activist stance neglects the essentially political nature of legislative activity. A legislature is subjected to competing interests and acts in response to them.[130] A legislature is not a body of philosophers selecting the best, most just policies for the public welfare. In view of the staggering magnitude of problems of society, it is unrealistic to expect, much less demand, that a legislature take action to alter the somewhat technical rules of liability for negligence. There is no articulate pressure group to push for such change. The class of injured plaintiffs is not constant, organized, and articulate, as it would have to be if it is to be fully effective in the political process. Not all the important concerns of a growing, pluralistic society are—nor can they ever be—fully represented in the legislature. Given the complexities of modern life, it is foolish to place the entire burden of lawmaking as well as law-unmaking upon the legislature. Therefore, in practical terms, courts are perhaps the only unit of government in which certain kinds of reform are possible. The California Supreme Court by its judgment in *Brown* indicates that it is in a better position than the legislature to see the need for technical changes in tort law. Certainly in the last twenty years the court has written a startling number of innovative decisions on separate issues of tort law.[131] The record indicates that far from being in a disadvantaged position vis-à-vis the legislature in collecting data and considering factors necessary to draft changes, the courts are actually in a better position than the legislature to know what the problem areas are and which are the most practical tools to implement change. The California Supreme Court is the only body in the state sufficiently involved with the problems, aware of the trends and needs of tort law, and independent of political pressures to undertake this kind of reform.

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129 A legislature is more likely to respond to the pressure of great dissatisfaction with the system of accident compensation by sweeping changes in the law, such as imposing a no-fault insurance system, than to repeal the automobile guest statute. Absent pressure from a vocal interest group, a legislature is hampered by a kind of political nearsightedness which tends to obscure all but most looming problems.

130 *See* A.F. BENTLEY, THE PROCESS OF GOVERNMENT (1956); S. CHASE, DEMOCRACY UNDER PRESSURE (1945); B. GROSS, THE LEGISLATIVE STRUGGLE (1960). *See also* Schattschneider, *Pressure Groups versus Political Parties*, ANNALS, Sept. 1948, at 17.

131 *See* notes 109-112 & accompanying text *supra*.

Thus while *Brown* ignores traditional doctrines of judicial restraint, it is entirely in accord with a more realistic model of legislative realities.

III. A Proposal for California Supreme Court Implementation of Comparative Negligence

Brown v. Merlo stands firmly within the movement to reform California tort law. The next step in this reform is, in a sense, easier than the last. *Brown*, invalidating a statute, required a somewhat daring application of equal protection criteria; the judicial implementation of comparative negligence involves only a judicial reevaluation of common law tort precedent,[132] a task the court has grown comfortable with in recent years.

Contributory negligence, unlike the guest statute, does not operate as a per se exclusion from all opportunity to recover for negligently inflicted injuries, since a plaintiff is allowed to prove that he or she was not contributorily negligent; it does, however, operate as a per se exclusion once it is proved. As such, it remains the feature of modern California tort law most inconsistent with the underlying thrust of tort reform. As the various restraints upon liability and compensation are eliminated, contributory negligence stands out in dramatic contrast to the emerging consistent goal of the recovery system to promote compensation rather than provide wholesale exclusions therefrom.[133] A standard of comparative negligence is more in keeping with the general liability principle of tort law and consistent with the trend of

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[132] At first glance it appears that California contributory negligence is statutory since section 1714 of the Civil Code codifies the common law rule of contributory negligence:

> Every one is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, *except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself.*

CAL. CIV. CODE § 1714 (West 1973) (emphasis added).
However, there is nothing in the codification langauge itself which requires that contributory negligence act as a complete bar to recovery. Indeed such an interpretation is implicitly inconsistent with the language. The phrase, "except so far as," implies, "but not more than." In other words, a doctrine of comparative negligence is well within a permissible statutory interpretation of section 1714. Such an interpretation would understand the "except so far as" phrase to diminish the primary negligence responsibility, but only to the degree that another has contributed to his own injury.

Further evidence that section 1714 does not impose contributory negligence by statute is evident in the fact that courts were able to completely disregard contributory negligence in the formulation of products liability doctrines.

[133] *See* discussion in Hoffman v. Jones, 280 So. 2d 431 (Fla. 1973); Annot., 32 A.L.R.3d 463, 487-88 (1970).

reducing per se recovery-exclusions. Numerous commentators have set forth the objections to contributory negligence on both theoretical and practical grounds and the superiority of comparative negligence.[134] The defenders of contributory negligence, or more precisely the opponents of comparative negligence, have not been silent either.[135] Therefore, this Comment need not examine the pros and cons of comparative versus contributory negligence. It will instead: (1) attempt to delineate the extent to which the contributory negligence doctrine violates the principle of modern tort law reform and the way in which comparative negligence would partially remedy the evil; (2) examine the arguments against judicial implementation of the change;[136] and (3) indicate to what extent the California Supreme Court in *Brown v. Merlo* has already overcome such objections.

A. Inability of Contributory Negligence to Serve the Goals of Modern Tort Law

The major shortcoming of the doctrine of contributory negligence from the point of view of the modern rationale of tort law reform is that it places the entire burden of loss on one party. Chief Justice Traynor points to the automobile accident situation, in particular, as one in drastic need of loss-spreading:

> On the highways alone injury and slaughter are not occasional events, but the order of the day, and sooner or later there is bound to be more rational distribution of their costs than is now possible under the law of negligence. It is ironic that in the field of automobile accidents, where the need for

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134 HARPER & JAMES, *supra* note 2, §§ 22.1-.3, at 1193-1209, § 22.11, at 1236-41; Mole & Wilson, *A Study of Comparative Negligence* (pts. 1-2), 17 CORNELL L.Q. 333, 604 (1932); Peck, *Comparative Negligence and Automobile Liability Insurance*, 58 MICH. L. REV. 689 (1960); Prosser, *Comparative Negligence*, 51 MICH. L. REV. 465 (1953); Rosenberg, *Comparative Negligence in Arkansas: A "Before and After" Survey*, 13 ARK. L. REV. 89 (1959); Turk, *Comparative Negligence on the March* (pts. 1-2), 28 CHI.-KENT L. REV. 189, 304 (1950).

135 Benson, *Comparative Negligence—Boon or Bane*, 23 INS. COUNSEL J. 204 (1956); Powell, *Contributory Negligence: A Necessary Check on the American Jury*, 43 A.B.A.J. 1005 (1957).

136 Arguments both for and against judicial implementation of comparative negligence have been made largely in the context of the *Maki v. Frelk* episode. In response to a suggestion by the Illinois Supreme Court that perhaps it was time that the rule of contributory negligence be reconsidered the appellate court overruled the contributory negligence ban and instituted comparative negligence. Maki v. Frelk, 85 Ill. App. 2d 439, 229 N.E.2d 284 (2d Dist. 1967). The decision was overturned upon appeal to the Supreme Court of Illinois. 40 Ill. 2d 193, 239 N.E.2d 445 (1968). For extensive commentary on this case, see *Comments on* Maki v. Frelk—*Comparative v. Contributory Negligence: Should the Court or Legislature Decide?*, 21 VAND. L. REV. 889 (1968) (containing articles by F. James, H. Kalven, R. Keeton, R. Leflar, W. Malone, and J. Wade) [hereinafter cited as *Comments on* Maki v. Frelk].

> compensating victims regardless of fault is most urgent, we continue to let fault determine whether or not there shall be compensation.[137]

It should be noted that where insurance is common, an increase in compensation is also an increase in loss-spreading to the entire class of automobile insurance buyers. Broadening liability increases the likelihood of people buying insurance in Traynor's view,[138] and thus spreads the losses of apparently inevitable accident casualties. In *Brown*, as in other tort reform cases, the court emphasized insurance as a factor in its decision.[139]

In theory, contributory negligence bars individuals from recovering their losses if they were in any slight degree responsible for the injury-causing event. The harsh non-compensatory aspect of the rule is mitigated by certain exceptions,[140] although the exceptions do not function to spread the losses since only one party pays the whole cost in any event.[141] Moreover, as with the earlier exceptions to governmental immunity, landowner immunity, and driver immunity (to guests), a pattern of illogical and somewhat fortuitous recovery is spawned by the exceptions to the contributory negligence ban and with the uncertainty of its application by juries. The resulting unevenness is exacerbated by

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137 Traynor, *The Ways and Means of Defective Products and Strict Liability*, 32 TENN. L. REV. 363, 375-76 (1965).

138 *See* Traynor's concurrence in Escola v. Coca Cola Bottling Co., 24 Cal. 2d 453, 461, 150 P.2d 436, 440 (1944); Traynor, *supra* note 102, at 52.

139 *Brown* cites the present general availability of liability insurance (in contrast to its unavailability when the guest statute was enacted) as one factor contributing to the *present* irrationality of the statute. 8 Cal. 3d at 863-64 n.4, 868 n.9, 506 P.2d at 217-18 n.4, 221 n.9, 106 Cal. Rptr. at 393-4 n.4, 397 n.9.

140 The recognized exceptions to the contributory negligence ban are: (1) the doctrine of last clear chance; (2) the willful, wanton exception; and (3) the violation of certain kinds of statutes designed to protect a given class of plaintiffs. *See generally* PROSSER, *supra* note 2, § 66, at 427-33 (last clear chance), § 34, at 184-86 (willful wanton exception), § 68, at 453-54 (violation of statute). An interesting account of the history of the doctrine of contributory negligence and the exceptions it generated is contained in L. FRIEDMAN, A HISTORY OF AMERICAN LAW 409-27 (1973).

141 There is widely accepted doubt that contributory negligence acts as a complete bar as a practical matter. Professor Keeton contends that juries tend to reach compromise verdicts where there is persuasive evidence of contributory negligence—thus there exists an ad hoc comparative system. Keeton contends that "Hardly anyone doubts the prevalence of this doctrinally unlegitimated practice of jurors today." R. KEETON, *supra* note 121, at 503. Lawyers and judges believe it to be true. *See, e.g.*, Haeg v. Sprague, Warner & Co., 202 Minn. 425, 430, 281 N.W. 261, 264 (1938); J. ULMAN, A JUDGE TAKES THE STAND 30-34 (1933); POWELL, *supra* note 135. Professor Weinstein's analysis of voluminous empirical studies appears to substantiate these impressions. *See* Weinstein, *Routine Bifurcation of Jury Negligence Trials: An Example of the Questionable Use of Rule Making Power*, 14 VAND. L. REV. 831 (1961). Professor Keeton is severely critical of the practice; he described it as "unpoliced, irregular, and unreasonably discriminatory." *Comments on* Maki v. Frelk, *supra* note 136, at 906, 918 (Comment by R. Keeton).

casuistic distinctions made by courts encouraging compensation through mitigation of the absolute ban of contributory negligence. One example of this kind of distinction is the differential standards of proof required to show primary negligence and contributory negligence.[142] Contributory negligence is increasingly difficult to prove; in *Beard v. Atchison, Topeka, & Santa Fe Railway*,[143] for example, the court sustained a finding of no contributory negligence where a fourteen year old boy lost his leg while trying to jump on a moving train.[144]

In contrast to the rule of contributory negligence, it is clear that a rule of comparative negligence would be more in accord with current policy goals. Comparative negligence permits the plaintiff and defendant to spread the cost of the accident between them and by insurance to all drivers.[145] The incidence of

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[142] James, *Sufficiency of the Evidence and Jury-Control Devices Available Before Verdict*, 47 VA. L. REV. 218 (1961); 57 AM. JUR. 2d *Negligence* §§ 426-55 (1971).

[143] 4 Cal. App. 3d 129, 84 Cal. Rptr. 449 (2d Dist. 1970)

[144] The California Legislature responded to this decision with a statute, Civil Code section 1714.7, which denied recovery to a person injured while getting on or off a moving locomotive or railroad car, except where aggravated negligence is involved. CAL. CIV. CODE § 1714.7 (West 1973).

[145] It is interesting to note that the California Legislature has already instituted a primitive form of loss spreading where two or more joint tortfeasors share responsibility for an accident. Section 875 of the California Code of Civil Procedure provides for a right of contribution among joint tortfeasors when a judgment is rendered against them, and one has paid more than his pro rata share. CAL. CIV. PRO. CODE § 875 (West Supp. 1974). Section 876 provides that the share be divided equally among the tortfeasors. *Id.* Thus while the division of loss is not based upon a comparative negligence standard, at least the loss is spread among those at fault. In terms of compensation and loss spreading even this is preferable to the complete ban of contributory negligence which bars any division of loss between the "joint tortfeasors," plaintiff and defendant.

Such an equal division may turn out in certain cases to be even more grossly unfair than contributory negligence is to the plaintiff (in theory). In New York, the court of appeals was recently induced to abolish equal contribution between joint tortfeasors and to substitute a rule of pure comparative contribution determined upon the degree of fault of each defendant. In Dole v. Dow Chem. Co., 30 N.Y.2d 143, 282 N.E.2d 288, 331 N.Y.S.2d 382 (1972), the court was confronted with grossly disparate negligence (active v. passive) and a very large judgment. The decision may have indicated a judicial adoption of comparative negligence in that state: "The fairer rule, we believe, is to distribute the loss in proportion to the allocable concurring fault." *Id.* at 294, 282 N.E.2d at 292, 331 N.Y.S. at 386. There is apparently some confusion in New York about whether *Dole* did adopt comparative negligence. *See* Dixon v. Knickerbocker Drivurself, Inc., 72 Misc. 2d 1025, 341 N.Y.S.2d 150 (Albany City Ct. 1973); Sorrentino v. United States, 344 F. Supp. 1308 (E.D. N.Y. 1972), indicating that the rule is unsettled.

With regard to the interrelationship between contribution and comparative negligence *see* Loui v. Oakley, 50 Hawaii 260, 438 P.2d 393 (1968). There the Hawaiian Supreme Court discussed the desirability of comparative negligence in the contribution situation and suggested: "It may be time to reconsider the applicability of the doctrine of contributory negligence, a judge-made rule, in light of the mores of the day. Perhaps it should be judicially replaced by a comparative negligence standard . . . ." *Id.* at 265 n.5, 438 P.2d at 397 n.5. Ap-

compensation is increased to the extent that previously uncompensated plaintiffs, guilty of contributory negligence, are no longer denied any recovery.

The major disagreement, however, is not over *whether* comparative negligence is superior to contributory negligence in terms of policy goals. It is rather a question of *how* comparative negligence should be instituted. Professor R. E. Keeton describes the issue:

> [T]he question whether a court should change the outmoded contributory negligence rule or instead wait for the legislature of its state to act—is actively disputed. There is little doubt that ten years ago a majority of judges and perhaps academic commentators as well would have answered that this is a task for legislatures. A significant change has occurred in these ten years . . . . It is becoming an accepted principle that courts should take a more active role in reforming outmoded tort law than they had done before this past decade. Although no judicial opinions previous to those filed in *Maki v. Frelk* had brought this new spirit to bear upon the contributory negligence rule, this seems a very appropriate area for law reform by judicial decision.[146]

The major rationale for judicial implementation seems to be a kind of possessory doctrine.[147] The Illinois Appellate Court in *Maki v. Frelk* reasoned: "The doctrine of contributory negligence was created by the Courts, not by the legislature. If we have created it, and if it does not meet the needs of present day life, then we are duty bound to abolish it."[148] Prior to *Maki*, no court had acted to implement fully comparative negligence.[149]

B. Objections to Judicial Replacement of Contributory Negligence

There is certainly no agreement that it is indeed the province of the courts to modify their own doctrine. In general, three principle objections are raised to judicial implementation of comparative negligence.

One was cited by the Illinois Supreme Court in overturning *Maki*: "[S]uch a far-reaching change, if desirable, should be

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patently the Hawaiian Legislature acted first to introduce comparative negligence. *See* HAWAII REV. STAT. § 663-31 (Supp. 1973). An excellent discussion of the relationship between comparative negligence and contribution is in Annot., 32 A.L.R.3d 463 (1970).

146 *Comments on* Maki v. Frelk, *supra* note 136, at 906, 914-15 (Comment by R. Keeton).

147 *See generally* Annot., 32 A.L.R.3d 463, § 9 (1970).

148 85 Ill. App. 2d at 452, 229 N.E.2d at 291.

149 Florida recently adopted comparative negligence judicially. *See* Hoffman v. Jones, 280 So. 2d 431 (Fla. 1973). New York may have done so in *Dole v. Dow Chemical Co.*, discussed in note 145 *supra*.

made by the legislature rather than by the court."[150] The underlying idea is bifurcated; it is argued that in a democracy a legislature, responsible directly to the electorate, is the only proper forum for such a decision[151] and that a legislature is in a superior position to accumulate the necessary data to construct a complex policy. The effect of judicial nullification of contributory negligence is merely to create a void; bringing in comparative negligence to fill the void would require detailed policy decisions more characteristic of the legislative process than the judicial process. A court, it is argued, is ill-equipped to legislate.[152]

A second objection is that such a change is a gross violation of the principle of stare decisis. The supreme court in *Maki* made the point that "[w]hen a rule of law has once been settled, contravening no statute or constitutional principle, such rule ought to be followed unless it can be shown that serious detriment is thereby likely to arise prejudicial to public interests."[153] The court continued: "Rules long recognized as the law should not be departed from merely because the court is of the opinion that it might decide otherwise were the question a new one."[154]

A third objection is raised by Professor Kalven.

> There is also the fact that the difficulties and weaknesses of the common law rule as to contributory negligence had been fully disclosed and argued out for generations. There was no technological or sociological change that made the doctrine now look different than it had in prior years . . . . In brief, nothing was producing any new insight about the rule nor was there any new reason for changing it that had not been fully evident to all those courts which for all those years had refused to make the change.[155]

The foregoing represent the principle objections to a judicial implementation of comparative negligence. The purpose below is to indicate more fully the scope of these objections and to demonstrate that the California Supreme Court has answered many of these arguments itself in prior decisions, particularly in *Brown*.

The California court sees its role as updating tort law in accord with present conditions—something it is uniquely qualified to do since rules of tort law are constantly before the court. *Brown* illustrates the court's commitment to this modernizing

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150 40 Ill. 2d at 196, 239 N.E.2d at 447.

151 *See* H. M. HART & A. M. SACKS, THE LEGAL PROCESS 1413-16 (tent. ed. 1958).

152 *See generally, id.* at 1425-30; Annot., 32 A.L.R.3d 463, § 10 (1970).

153 40 Ill. 2d at 196, 239 N.E.2d at 447.

154 *Id.* at 196-97, 239 N.E.2d at 447.

155 *Comments on* Maki v. Frelk, *supra* note 136, at 897, 898-99 (Comment by Kalven).

role; there the court insisted that the constitutionality of the guest statute's classification system "be evaluated in light of *contemporary* treatment accorded similarly situated individuals,"[156] even though it acknowledged that when the statute was enacted it was consistent with prevailing policies of tort liability[157] (and thus probably did not create a classification grossly violative of equal protection).

1. Comparative Negligence can be Implemented only by the Legislature

It seems probable that one aspect of the hesitation of courts to implement comparative negligence stems from the fact that no court, until recently, had ever done so successfully.[158] The abortive attempt in *Maki*, coupled with a good deal of verbal hand-wringing upon that occasion by the traditional legal process scholars,[159] reinforced the reluctance to act. However, the Florida Supreme Court in *Hoffman v. Jones*[160] instituted pure comparative negligence[161] in order to "join what seems to be a trend toward almost universal adoption of comparative negligence."[162] The *Hoffman* court emphasized the judicial origin of the rule of contributory negligence and indicated the judiciary

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156 *Id.* (emphasis added).

157 8 Cal. 3d at 865 n.6, 506 P.2d at 219 n.6, 106 Cal. Rptr. at 395 n.6.

158 *See* recent cases cited note 145 *supra*. Georgia has a modified form of comparative negligence which came about through broad judicial interpretation of a statute on its face applicable to negligence suits against railroads, a feat Dean Prosser termed a "rather remarkable tour de force of construction . . . ." PROSSER, *supra* note 2, § 67, at 436. *See* Goodrich, *Origin of the Georgia Rule of Comparative Negligence and Apportionment of Damages*, 1940 GA. BAR. A.J. 174; Wynne v. Southern Bell Tel. & Tel. Co., 159 Ga. 623, 126 S.E. 388 (1925); Moore v. Sears, Roebuck & Co., 48 Ga. App. 185, 172 S.E. 680 (1934). The Georgia adoption was unique and does not offer precedent to other states without similar statutes.

The California Supreme Court is apparently now considering whether to adopt comparative negligence in the case of Nga Li v. Yellow Cab Co., (L.A. 2 Civ. 41888) which the court accepted for hearing after the Court of Appeal affirmed a verdict for defendant. Accepted for hearing March 18, 1974 (112 Cal. Rptr. No. 5, at I). An opinion is expected early in the fall.

159 *See, e.g., Comments on* Maki v. Frelk, *supra* note 136, at 897 & 918 (Comments by Kalven & Leflar).

160 280 So. 2d 431 (Fla. 1973).

161 Under a pure comparative negligence system a plaintiff's recovery is reduced by the degree of his negligence. Thus if the plaintiff is found to be 20 percent negligent, he will receive 80 percent of his damages. A plaintiff may recover in a pure system even if he is *more* negligent than the defendant. The court in *Hoffman* stated the policy: "The liability of the defendant . . . should not depend upon what damages he *suffered*, but upon what damages he *caused*." 280 So. 2d at 439. Modified comparative negligence diminishes the plaintiff's recovery in the same way, except that a plaintiff may only recover where he is *less* negligent than the defendant.

162 280 So. 2d at 438.

enjoys "broad discretion" to change the common law so as to take "into account the changes in our social and economic customs and present day conceptions of right and justice."[103] Comparative negligence was held to be superior to contributory negligence both in its correlation with contemporary assessments of fairness,[104] and as a more equitable means of "determining liability and a more socially desirable method of loss distribution."[105] Indeed, the superiority of comparative negligence was held to be so overwhelming that the court indicated it "would be shirking [its] duty if [it] did not adopt the better doctrine."[106]

The *Hoffman* court acted in the finest tradition of the common law. Recognizing the need for a response to the "pressing social problems" of automobile accidents, the opinion evidenced a spirit of cooperation with the legislature in responding to the problem:

> Our society must be concerned with accident prevention and compensation of victims of accidents. The Legislature of Florida has made great progress in legislation geared for accident prevention. The prevention of accidents, of course, is much more satisfying than the compensation of victims, but we must recognize the problem of determining a method of securing just and adequate compensation of accident victims who have a good cause of action.[107]

Judicial implementation of comparative negligence would not be irrevocable. Once a decision is made the legislature may step in to make policy adjustments or even completely reinstate contributory negligence. Professor R. E. Keeton maintains that one of the main functions of the overruling judicial decision may be to overcome "legislative inertia, a potent force that otherwise would have delayed or defeated attempts at reform."[108] He further sees in such an interchange (an overruling decision followed by legislative modification) the possibility that "decisional and statutory creativity" will serve "in combination to bring about reform that neither alone would have been likely to achieve."[109]

Some commentators purport to find significance in the fact that few legislatures have acted to implement comparative negli-

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103 *Id.* at 435.
104 *Id.* at 437.
105 *Id.*
106 *Id.* at 438.
107 *Id.* at 436. The court indicated Florida had just missed adopting comparative negligence judicially in 1943 by the veto of the Governor: "One man thus prevented this State from now operating under a much more equitable system of recovery for negligent personal injuries and property damage." *Id.* at 438.
108 Keeton, *supra* note 121, at 475.
109 *Id.*

gence—despite the existence of models of comparative negligence in the United States for nearly seventy years.[170] This failure only reflects the political nature of the legislative process and the relatively unpolitical nature of the contributory-comparative controversy.[171] It says little about the merits of, or degree of support for, comparative negligence in judicial and scholarly circles; nor does it indicate the extent to which comparative negligence accords with common expectations of justice. In *Brown* the supreme court demonstrated its unwillingness to defer to the legislature's judgment in passing a law; why then should it defer to the legislature in not changing a law?

A more serious argument against judicial implementation results from the effect of a judicial repudiation of contributory negligence. If contributory negligence is eliminated, something must replace it. Earlier judicial changes in tort law for the most part involved a simple change from negative to affirmative. In the case of government immunity, for example, "no, you cannot recover for negligence" simply became "yes, you can recover." As Robert Leflar noted, "The change in the law was complete within itself."[172] In contrast, judicial promulgation of comparative negligence, he argues, would be "baldly incomplete."[173] Leflar sets out eleven complex policy decisions necessary to create a full comparative negligence system.[174] His conclusion is that "a

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170 A comprehensive workmen's compensation plan based upon comparative negligence was instituted by the Federal Employer's Liability Act in 1908. 45 U.S.C. § 53 (1964).

171 Comparative negligence legislation perhaps may be described by Professor Leach's phrase, "politically sexless legislation." Leach, *Perpetuities: The Nutshell Revisited*, 78 HARV. L. REV. 973, 989 (1965).

172 *Comments on* Maki v. Frelk, *supra* note 136, at 921, 929 (Comment by Leflar).

173 *Id.* at 920.

174 Leflar's policy decisions are:

(1) Should injured persons recover only in cases in which their negligence is less than that of the other party . . . or in every case in which the negligences can be apportioned. . . .

(2) Should the comparison of negligences be in terms of percentages . . . or in terms of "slight" and "gross" . . . .

(3) If the comparison is to be in terms of percentages, should they be percentages of causal responsibility for the injury, or percentages of fault (relative badness)?

(4) If both parties be injured, should each be allowed to recover from the other, with a setoff? Or, recognizing that recoveries really are from insurance companies, should each injured party be entitled to his full comparative recovery from the other's insurer, without setoff, on the theory that a liability policy covers actual liabilities regardless of separable rights in others?

(5) What about the multi-defendant case . . . . May the plaintiff recover from any, all, or which of the others?

(6) If comparative negligence . . . is established, do not logic and equal fairness require that a rule of contribution between joint tortfeasors be established at the same time. . . .

(7) If comparative negligence is put into effect, should the last clear

comprehensive statute is [needed], with sections and subsections carefully worked out in advance by a legislative drafting committee aided by an advisory commission."[175] The argument centers around the relative incapacity of courts to create complex rules tantamount to legislation. A court, it is argued, cannot investigate, assemble data, and sift varying policy alternatives—all of which is necessary in order to "legislate." The minute precision of *Roe v. Wade*[176] a year ago, setting out a complex structure for abortion laws, demonstrates the contrary. The Court in *Roe* was able to formulate standards matched to contemporary medical realities; such an exemplar of judicial law making diminishes the force of the argument of incapacity.

Specifically, with respect to the implementation of comparative negligence, there is no necessity that all the policy decisions listed by Leflar be decided at once. Indeed, it should be noted that typical comparative negligence statutes fail to answer more than four or five of the "relevant questions."[177] Usually the remaining decisions are made by judicial interpretations or by subsequent legislation. The *Hoffman* court, for example, designated the adoption of pure comparative negligence,[178] indicated the degree to which the application of the new rule would be retroactive,[179] and authorized trial courts to impose special verdict procedures.[180] The court declined to answer other issues, de-

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chance doctrine . . . be abandoned. . . .
(8) Should the rule . . . allowing full recovery for wilful and wanton misconduct despite the injured person's contributory negligence be retained. . . .
(9) What about assumption of the risk? Should that defense be regarded as something completely embodied in contributory negligence? . . .
(10) Should special verdicts or answers to interrogatories be required to set out the total value of injury suffered and the specific percentages of negligence charged to each party, so that a court can doublecheck the jury's damage calculations. . . .
(11) If the state has a host-guest statute, does the comparative negligence system supersede it.

Id. at 920-21 (footnotes omitted).

175 *Id.* at 921.

176 410 U.S. 113 (1973).

177 The Wisconsin comparative negligence statute reads:

> Contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in death or in injury to person or property, if such negligence was not as great as the negligence of the person against whom recovery is sought, but any damages allowed shall be diminished in the proportion to the amount of negligence attributable to the person recovering.

WIS. STAT. § 331.045 (1958). *See also* the statutes collected in GREGORY & KALVEN, CASES AND MATERIALS ON TORTS 250-54 (2d ed. 1969).

178 280 So. 2d at 438.

179 *Id.* at 440.

180 *Id.* at 439. The form of the authorization was as a suggestion: "[T]he trial court is authorized to require special verdicts to be returned by the jury and to enter such judgment or judgments as may truly reflect the intent of the jury as

scribing them as "unripe."[181]

In short, there is no reason a common law, case-by-case structure cannot accomplish the desired completeness. Certainly one relevant question, the choice between pure and modified comparative negligence, must be answered at the outset. But whatever the judicial decision (especially if made as a prospective ruling), the legislature will be able to act to recapture the policy-making initiative by choosing its own alternative. In some jurisdictions, legislatures have reacted in just this way after a judicial abrogation of governmental immunity.[182]

The California Supreme Court has shown itself eminently able to deal with complex problems in tort law and has consistently maintained that courts are able to make subtle and necessary determinations, so that the wholesale elimination of complicated questions from judicial contemplation is unnecessary. Particularly in the line of cases eroding and finally ending interfamilial immunities, the court insisted that the judiciary is able to deal with the risks of collusion and yet avoid a complete ban on the cause of action.[183] Similarly the *Brown* court, quoting *Emery*, conceded:

> The courts may and should take cognizance of fraud and collusion when found to exist in a particular case. However, the fact that there may be greater opportunity for fraud or collusion in one class of cases than another does not warrant courts of law in closing the door to all cases of that class. Courts must depend upon the efficacy of the judicial processes to ferret out the meritorious from the fraudulent in particular cases.[184]

The *Hoffman* court expressed its confidence in the ability of trial courts to deal with any problems raised by comparative negli-

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expressed in any verdict or verdicts which may be returned." *Id.* at 440. In general the approach of the *Hoffman* court was to grant the trial court judges "broad discretion in adopting such procedure as may accomplish the objectives and purposes expressed in this opinion." *Id.* at 440.

181 *Id.* at 439.

182 Illinois, Molitor v. Kaneland Community Unit. Dist. No. 302, 18 Ill. 2d 11, 163 N.E.2d 89 (1959), *cert. denied*, 362 U.S. 968 (1960) overruled a precedent recognizing governmental immunity. The legislature passed a series of statutes reinstituting immunity for some institutions and partly restoring the immunities of school districts and nonprofit private schools. ILL. REV. STAT. ch. 122, § 825 (1959). *See* Comment, *Governmental Immunity in Illinois: The Molitor Decision and the Legislative Reaction*, 54 NW. U.L. REV. 588 (1959).

183 *See* the cases abolishing interfamilial immunities discussed in notes 79-80 & 103-06 *supra*. *See also* Dillon v. Legg, 68 Cal. 2d 728, 441 P.2d 912, 69 Cal. Rptr. 72 (1968): "[T]he possibility that fraudulent assertions may prompt recovery in isolated cases does not justify a wholesale rejection of the entire class of claims in which that potentiality arises." *Id.* at 735, 441 P.2d at 917, 69 Cal. Rptr. at 77.

184 8 Cal. 3d at 874, 506 P.2d at 225, 106 Cal. Rptr. at 401.

gence.[185] Certainly, the assessment of degrees of fault in a comparative negligence system is within the competency of the trial courts; comparative negligence entails no more complexity for juries than the severability of damages caused by multiple, sequential tortfeasors.

Compared to the state legislature, the California Supreme Court is in the better position to implement comparative negligence.[186] Meeting the problems of tort law on a continuing basis, the court is in a position to continually observe the inequities and hypocrisies of the contributory negligence system and can best appreciate comparative negligence from a policy point of view. Whatever the legislature "should" do, there are serious limits to what it *will* do. In some ways the contributory negligence situation is similar to the chaos of governmental immunity law prior to *Muskopf*.[187] There the legislature was incapable of dealing with the intricacies of the problem, largely because it was unable to perceive the extent of the morass. Legislative efforts to ameliorate the situation (prompted by outside pressure from interested groups)[188] were directed to isolated areas of the problem and only contributed to the overall inequities. Only the court could act to clear the muddle because only the judiciary had a perception of the whole field. Contributory negligence has not generated the same complex of inconsistent applications; nonetheless the legislature is similarly incapacitated. The legislature will not deal with a problem it does not see, and contributory negligence is not highly visible in the political landscape despite the regular introduction of bills to implement comparative negligence. The supreme court has the capacity to act, and the judiciary as a whole is capable of dealing with the complexities raised by comparative negligence. Considering the *realpolitik*, the court should act, if only because the alternative is stagnation.

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185 280 So. 2d at 439-40.

186 *See* the discussion note 132 *supra*.

187 *See* discussion in Muskopf v. Corning Hospital Dist., 55 Cal. 2d 211, 216-19, 359 P.2d 457, 460-61, 11 Cal. Rptr. 89, 92-93 (1969), of the intricate system of statutory exception to government immunity embracing, *e.g.*, the dangerous or defective condition of public property (CAL. GOV'T CODE § 53051 (West 1964)); damage by mobs or riots (CAL. GOV'T CODE § 50140 (West 1964)); and liability of school districts (CAL. EDUC. CODE § 903 (West 1964)). The piecemeal approach of the legislature to the problems created by government immunity indicated that the full extent of the problem was not manifest, especially since the legislature also had enacted statutes which expressly permitted the state to "sue or be sued." CAL. GOV'T CODE § 641 (West 1964); CAL. HEALTH & SAFETY CODE § 32121 (b) (West 1964).

188 *See* Annot., 60 A.L.R.2d 1198 (1958). For a critical comment on *Muskopf* which clings tenaciously to the argument that the legislature alone can undertake such reform, *see* Van Alstyne, *Governmental Tort Liability: Judicial Lawmaking in a Statutory Milieu*, 15 STAN. L. REV. 163 (1963).

2. Violation of stare decisis

Unquestionably contributory negligence has been the rule of law in common law courts for more than 160 years.[189] The argument is that the important functions of stare decisis (continuity, predictability, and reliance) are too important for courts to act impulsively to change such a fundamental rule of law. Chief Justice Traynor's own reservations against judicial implementation of comparative negligence centered upon the reliance of insurance carriers upon contributory negligence.[190]

In the last twenty years the California Supreme Court has often found that the need for flexibility and change in tort law outweighed the recognized values of stability and predictability,

[189] According to Dean Prosser, although courts almost from the beginning have displayed an uneasy consciousness that something is wrong with the doctrine of contributory negligence, they have been slow to move. *See* PROSSER, *supra* note 3, at 469. The United States Supreme Court expressed its dissatisfaction, calling contributory negligence a "discredited doctrine which automatically destroys all claims of the injured persons who have contributed to their injuries in any degree however slight." Pope & Talbot, Inc. v. Hawn, 346 U.S. 406, 409 (1953).

Judicial dissatisfaction with the doctrine of contributory negligence in California is manifest in one of the last cases to interpret the guest statute prior to *Brown*. Williams v. Carr, 68 Cal. 2d 579, 440 P.2d 505, 68 Cal. Rptr. 305 (1968), in considering whether to apply contributory negligence in the guest statute context, expressed more dissatisfaction with contributory negligence than with the guest statute.

Further evidence of judicial unhappiness with the rule of contributory negligence is demonstrated by the eagerness with which several lower courts in New York have been willing to believe that the ruling in Dole v. Dow Chemical Co., 30 N.Y.2d 143, 331 N.Y.S.2d 382, 282 N.E.2d 288 (1972), which instituted comparative contribution between joint tortfeasors, signalled the adoption of a general standard of comparative negligence. *See* Dixon v. Knickerbocker Drivurself, Inc., 72 Misc. 2d 1025, 341 N.Y.S.2d 150 (Albany City Ct. 1973). *See also* Sorrentino v. United States, 344 F. Supp. 1308 (E.D. N.Y. 1972), indicating that the rule in New York is unsettled but concluding in the light of *Dole*: "[A] view of contributory negligence which makes it an absolute bar to a plaintiff's recovery cannot survive." *Id.* at 1310. *But see* Kelly v. Long Island Lighting Co., 31 N.Y.2d 25, 334 N.Y.S.2d 851, 286 N.E.2d 241 (1972) where the court reiterated that *Dole* applied only to contribution among joint tortfeasors.

The question of whether contributory negligence should be replaced with the principle of comparative negligence which a Florida District Court of Appeal certified to the Florida Supreme Court indicates pressure from the lower courts for change because ordinarily only questions of law which are unsettled are certified to a higher court by a lower court. Certainly the rule with respect to contributory negligence in Florida was settled.

State legislatures are acting with increasing frequency to institute comparative negligence. Since 1969, six additional states have adopted some form of comparative negligence, bringing to 14 the total number of states in which contributory negligence as a complete bar to recovery has been abolished. *See* COMPARATIVE NEGLIGENCE MANUAL § 3 (1973).

[190] Traynor, *Statutes Revolving in Common Law Orbits*, 17 CATH. UNIV. L. REV. 401, 414-15 (1968).

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especially when the latter required the repetition of old mistakes. Certainly no more abrupt changes have been undertaken than in the abrogation of government immunity in *Muskopf* or in the sweeping elimination by *Rowland* of century-old distinctions delineating the varying liabilities of landowners. Both cases illustrate the observation of Professor Keeton that outdated doctrines have inbred tendencies to generate causistic distinctions which, coupled with a lack of candidness of courts in setting out their reasoning, may be far more dangerous to a system of law than open change.[101]

Certainly *Brown* and the cases upon which it relies have done more violence to the principle of stare decisis and reliance by insurance carriers than would a substitution of comparative for contributory negligence. Insurance carriers were able to rely on the guest statute to remove the issue of simple negligence from the jury, requiring the plaintiff to prove aggravated negligence or intoxication. Moreover, judges could be expected to intervene frequently to disallow a claim of aggravated negligence as a matter of law. In the case of familial immunities as well there was no question for a possibly sympathetic jury to decide. Insurance carriers have been unable to rely similarly upon contributory negligence as a complete bar. In contrast to earlier times,[102] contributory negligence is no longer a reliable means of securing summary judgment or a directed verdict for the defendant. Contributory negligence which as a matter of law deprives a plaintiff of his cause of action, is largely a thing of the past.[103] In California the generally recognized standard is that contributory negligence is not established as a matter of law unless the *only* reasonable hypothesis is that such negligence exists, or unless reasonable men could have drawn *only* that conclusion.[104] In this modern context, where contributory negligence

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101 *Comments on* Maki v. Frelk, *supra* note 136, at 914 (Comment by R. Keeton).

102 Professor Malone demonstrates that judges used contributory negligence as a brake upon the looseness of juries in the nineteenth century. *See* Malone, *The Formative Era of Contributory Negligence*, 41 ILL. L. REV. 151 (1946).

103 Professor Keeton emphasized the point: "Many cases are allowed to go to a jury today on evidence that twenty-five years ago would have been held insufficient to warrant reasoned inferences that the defendant was negligent and that the plaintiff was not." Keeton, *supra* note 121, at 503. Apparently the Arizona Constitution *requires* that the issue of contributory negligence be a jury question. Heimke v. Munoz, 106 Ariz. 26, 470 P.2d 107 (1970). Keeton also observed a trend of "less judicial supervision of verdicts." Keeton, *supra* note 121, at 503.

104 Schmitt v. Henderson, 1 Cal. 3d 460, 462 P.2d 30, 82 Cal. Rptr. 502 (1969); Kuhlmann v. Pascal & Ludwig, 5 Cal. App. 3d 144, 85 Cal. Rptr. 199 (2d Dist. 1970); Markewych v. Altshules, 255 Cal. App. 2d 642, 63 Cal. Rptr. 335 (2d Dist. 1967).

is almost always a jury question, the argument of insurer reliance makes more noise than sense.

Critics of judicial implementation emphasize phrases like "drastic change," but studies of the actual impact of comparative negligence found it to be much less dramatic than either its advocates or critics maintained.[105] Professor Peck, basing his conclusions on an exhaustive analysis of homogeneously matched states with and without comparative negligence, concluded that a shift to comparative negligence would have little, if any effect on liability insurance rates.[106] Professor Rosenberg's study of the effect of introducing comparative negligence in Arkansas found that lawyers evaluated their cases differently and that plaintiffs won a higher percentage of verdicts under the comparative system but that the individual recoveries were not larger.[107]

Thus, it is apparent the argument that stare decisis should bar judicial implementation does not withstand close analysis. Contributory negligence has not been a reliable force in halting recovery, even if such a policy goal could be justified.

3. No New Reasons to Make the Change.

The argument that there are no new developments which make contributory negligence more inadequate today than it has been in the past is a relativistic argument which fails to recognize the cumulative effect of a series of gradual changes. Indeed, the evolution from the nineteenth century of proof of fault to the twentieth century value of injury compensation is truly remarkable. The *Hoffman* court referred to this as a change from favoring industry over the individual to favoring the individual over industry.[108] The development has been gradual although the last twenty years have seen a good deal of acceleration. As the peripheral doctrines of tort law are changed to correspond with the compensatory-loss spreading impulse, other doctrines, once only slightly dissatisfactory, appear more invidious in comparison. *Brown* provides an apt illustration of this phenomenon. One source of the inequity of the guest statute derived from the elimination of barriers to recovery by other categories of guests. Thus the guest statute, once only somewhat unfair and disparate, by 1973 appeared to be grossly inequitable.

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105 Gregory, *Loss Distribution by Comparative Negligence*, 21 MINN. L. REV. 1 (1936); Peck, *Comparative Negligence and Automobile Liability Insurance*, 58 MICH. L. REV. 689 (1960); Rosenberg, *supra* note 134.

106 Peck, *supra* note 195.

107 Rosenberg, *supra* note 134.

108 280 So. 2d at 437, *citing* INSTITUTE OF JUDICIAL ADMINISTRATION, COMPARATIVE NEGLIGENCE 2 (Supp. 1954).

The steady advance of automobile statistics measuring the carnage wrought by the automobile and the steadily advancing cost of accidents eventually generates political forces upon the legislature that demand major change.[199] Political pressures, however, do not cause technical changes in tort law. Rather, such pressures are manifested in statutes imposing strict standards for safety apparatus and serious consideration of alternatives to the entire liability system. By default, if nothing else, reform in tort law is largely the province of the courts. In a spirit of cooperation with the legislature, reflecting the concerns of the era, the courts should continue to alter the substance of negligence law to bring it into the twentieth century.

The California Supreme Court has clearly concluded that overall developments warrant a thoroughgoing reform of tort law. Certainly no abrupt technological or social revolution was responsible for the rapid development of products liability. The dangers of defectively manufactured products are surely not greater today than in a period totally without government regulation and with only minimal protection from mass media disclosures. In fact, except for the vitality concept in prenatal injuries and wrongful death plus perhaps a greater sophistication in the concept of mental suffering,[200] none of the existing changes in tort law rests upon a fundamental change in technology or social values. California has never required such a standard before taking action. Dramatic change, it may be argued, is not even the kind of change to which courts ordinarily react; legislatures react to dramatic change. Courts ultimately react to top-heavy, over-distinguished, out-of-date precedents, with which the field of contributory negligence is certainly littered.

IV. Conclusion

The decision in *Brown v. Merlo*, utilizing activist tools of constitutional law in the service of substantive reform of tort law, gives evidence of the strength of the reform impulse in the California Supreme Court. The reforms already completed in the pursuit of greater compensation and loss-spreading suggest the

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[199] A similar political force was generated by the excessively high injury rate among railroad workers at the turn of the century. In 1892, for example, 2,660 employees were killed and 26,140 injured. The first result of pressure was a comprehensive safety statute, the Railway Safety Act of 1893, ch. 196, § 1 *et seq.*, 27 Stat. 531. The eventual result was the workman's compensation system as a complete alternative to the tort law system. *See* G. Campbell, Industrial Accidents and Their Compensation (1911). As to the problem on the railroads, see the discussion in Johnson v. Southern Pac. Co., 196 U.S. 1 (1904).

[200] Dillon v. Legg, 68 Cal. 2d 728, 441 P.2d 912, 69 Cal. Rptr. 72 (1968).

appropriateness of further modification of common law barriers to recovery,[201] the most inequitable of which is the contributory negligence rule. The court should act, therefore, to substitute a rule of comparative negligence more in line with contemporary policy objectives.

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201 If the legislature adopts a comprehensive no-fault insurance plan, the need for this action will be diminished. However, if, as seems more likely, the plan is modest (*e.g.*, with a $2,000 threshold) the implementation of comparative negligence will remain desirable as a more symmetrical adjunct to the plan than contributory negligence. In fact the most nearly successful California proposal for a no-fault insurance (the Fenton-Song Motor Vehicle Reparations Act, A.B. 801) also provided for the amendment of section 1714 of the Civil Code to abolish contributory negligence for automobile accidents. The bill would have instituted instead modified comparative negligence. A.B. 801 passed the Assembly June 14, 1973. As of June 5, 1974 the bill remained stuck in the Committee on the Judiciary in the Senate.

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COMPARATIVE NEGLIGENCE: A TIME FOR CHANGE IN ALASKA

INTRODUCTION

At the present time, throughout most of the country[1] and in Alaska,[2] an action for the recovery of damages resulting from an injury to person or property is completely barred if the injured party was in any degree causally negligent. This strict rule of law, known as the doctrine of contributory negligence,[3] is applicable even to situations in which the injured party is only slightly negligent while the party inflicting the injury is seriously at fault.[4] The result is a tort system which places the entire financial burden of an accident upon the less blameworthy of two persons who are both negligent, permitting the more negligent tortfeasor to escape all responsibility and virtually allowing him to profit from his wrong.

General adherence to the principle of contributory negligence is particularly surprising in view of the amount of criticism the doctrine has engendered. For many years, legal scholars have advocated its abrogation.[5] Members of the judiciary, charged with the duty of administering the rule, have likewise expressed serious concern over the inherent inequities embodied in this aspect of

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[1] *See* notes 26-29 & accompanying text *infra*.

[2] *See, e.g.*, Roach v. Benson, 503 P.2d 1392 (Alaska 1972). Although the Alaska Supreme Court refused to apply the contributory negligence rule to the facts of the *Roach* case, the decision made no mention of any alternative to this all-or-nothing approach. The rule that a negligent plaintiff must be denied any recovery is the applicable principle in Alaska today.

[3] The doctrine of contributory negligence has a common law history dating back to the English case of Butterfield v. Forrester, 103 Eng. Rep. 926 (K.B. 1809). In that case the plaintiff was injured when he rode his horse into a pole which the defendant had negligently left protruding across a public highway. The court denied recovery, asserting that "[A] party is not to cast himself upon an obstruction which has been made by fault of another, and avail himself of it, if he does not himself use common and ordinary caution to be in the right." *Id.* at 927.

[4] *See, e.g.*, Seaboard Coast Line R.R. v. Owen Steel Co., 348 F. Supp. 1363 (D.C.S.C. 1972); *cf.* Odgen v. State, 395 P.2d 571 (Alaska 1964), in which the plaintiff slipped on a bank of ice which had been allowed to accumulate in front of the main entrance to Fairbanks International Airport. The court found that the plaintiff had failed to exercise reasonable care for his own safety and thus contributory negligence barred his recovery. While the defendant may have been more seriously negligent in permitting the icy condition to exist, the contributory negligence rule allowed the court to ignore this possibility.

[5] *See, e.g.*, Bress, *Comparative Negligence: Let us Harken to the Call of Progress*, 43 A.B.A.J. 127 (1957); Ghiardi & Hogan, *Comparative Negligence—The Wisconsin Rule and Procedure*, 18 DEFENSE L.J. 537 (1969); Haugh, *Comparative Negligence: A Reform Long Overdue*, 49 ORE. L. REV. 38 (1969); Heft & Heft, *The Two-Layer Cake: No Fault and Comparative Negligence*, 58 A.B.A.J. 933 (1972); Maloney, *From Contributory to Comparative Negligence: A Needed Law Reform*, 11 U. FLA. L. REV. 135 (1958); Prosser, *Comparative Negligence*, 51 MICH. L. REV. 465 (1953); Turk, *Comparative Negligence on the March*, 28 CHI.-KENT L. REV. 189 (1950).

tort law.[6] Since its first application in America in 1824,[7] contributory negligence has been variously depicted in judicial opinions[8] as "unjust and inequitable,"[9] "harsh,"[10] and "highly unrealistic."[11] Nevertheless, despite the intensity of the attack, this common law rule remains a settled principle of law in most jurisdictions.[12]

Efforts to ameliorate the severe impact that contributory negligence has had on our tort system have intensified in recent years. The trend has been to replace the all-or-nothing approach with a more flexible system of "comparative negligence."[13] Nineteen states have recognized this need for change and have adopted comparative negligence rules applicable to all negligence cases.[14] It appears that similar forces are at work in Alaska, but thus far legislative inertia has served to perpetuate one of the most problematic doctrines in the common law.[15] The purpose of this Comment is to compare the

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[6] *See, e.g.*, Haeg v. Sprague, Warner & Co., 202 Minn. 425, 281 N.W. 261 (1938), in which the court reluctantly denied the injured plaintiff any recovery whatsoever. "No one can appreciate more than we the hardship of depriving plaintiff of his verdict and of all right to collect damages from defendant . . . ." *Id.* at 427, 281 N.W. at 263.

[7] Smith v. Smith, 19 Mass. (2 Pick.) 621 (1824).

[8] It should be noted that the expressions of judicial dissatisfaction referred to herein are taken from majority opinions. Despite a general recognition that the rule is unfair, the courts apparently feel compelled to follow it. This result is due mainly to the operation of the principle of stare decisis, but it may also stem from an unwillingness to tackle such a complex problem which might more easily be left to the legislature. *See* notes 85-88 & accompanying text *infra*.

[9] Louisville & N.R.R. v. Yniestra, 21 Fla. 700, 737 (1886).

[10] Sun Oil Co. v. Seamon, 349 Mich. 387, 390, 84 N.W.2d 840, 843 (1957).

[11] Frummer v. Hilton Hotels Intl., Inc., 60 Misc. 2d 840, 847, 304 N.Y.S.2d 335, 342 (Sup. Ct. 1969).

[12] Oddly enough, the United States is "virtually the last stronghold of contributory negligence," the doctrine as a complete defense having disappeared from the law in continental Europe, New Zealand, Western Australia, and the Canadian Provinces. There is also evidence of apportionment of damages in China, Japan, Russia, Poland and the Philippines. Even in England, where the rule was born, it has since been rejected by the English Reform Act of 1945. Annot., 32 A.L.R.3d 463, 469 (1970). *See also* Heft & Heft, *Comparative Negligence: Wisconsin's Answer*, 55 A.B.A.J. 127 (1969).

[13] *See* note 36 & accompanying text *infra*.

[14] ARK. STAT. ANN. §§ 27-1730.12 (1962); COLO. REV. STAT. § 41-2-14 (1971); GA. CODE ANN. §§ 105-603 (1968), 94-703 (1972); HAWAII REV. STAT. § 663-31 (Supp. 1972); IDAHO CODE §§ 6-801 to -806 (Supp. 1973); ME. REV. STAT. ANN. tit. 14, § 156 (Supp. 1972); MASS. ANN. LAWS ch. 231, § 85 (Supp. 1972); MINN. STAT. ANN. § 604.01 (Supp. 1973); MISS. CODE ANN. § 1454 (1956); NEB. REV. STAT. § 25-1151 (1964); N.H. REV. STAT. ANN. ch. 507:7a (Supp. 1972); N.J. LAWS ch. 146 (1973); N.D. CENTURY CODE ch. 9-10-07 (Supp. 1973); ORE. REV. STAT. § 18.470 (1971); S.D. COMP. LAWS § 20-9-2 (1967); UTAH CODE ANN. §§ 78-27-37 to -43 (Supp. 1973); VT. STAT. ANN. tit. 12, § 1036 (1973); WIS. STAT. ANN. § 895.045 (Supp. 1973); WYO. STAT. § 1-7.2 (Supp. 1973). These statutes apply to all types of negligence cases and must be distinguished from statutes which adopt the comparative negligence doctrine only in limited situations. *See* note 58 & accompanying text *infra*.

[15] The Alaska legislature has had a consistent history of inaction with respect to comparative negligence bills. The first such bill, House Bill 306, was introduced in 1966 but died in committee. In 1969, House Bill 336 received a strong endorsement from the Judiciary Committee. Referring to contributory negligence as a "harsh rule of law," the committee inserted the following report in the legislative journal:

> [A] number of states are moving toward a more reasonable rule which would

opportunity for reform in Alaska with the lawmaking experience of other states and to urge that the anachronistic doctrine of contributory negligence be supplanted by a more equitable system of comparative negligence. Specifically, it shall be proposed that the Alaska Legislature rather than the courts implement the reform.

I. Contributory Negligence—The Problem

A. *Definition and Rationales*

Contributory negligence has been defined by the Alaska Supreme Court as conduct on the part of a plaintiff which falls below the standard to which he should conform for his own protection and which is a legally contributing cause cooperating with the negligence of the defendant in bringing about the plaintiff's harm.[10] At least six rationales may be offered in support of the doctrine: (1) that the rule has a deterrent effect on plaintiff's carelessness; (2) that a negligent plaintiff ought to assume full responsibility for his negligent act; (3) that the plaintiff's fault is an intervening and superseding cause which acts as a fissure between the defendant's negligence and the ensuing injury; (4) that the equitable notion of unclean hands dictates that the courts should not interfere in cases where both parties are at fault; (5) that contributory negligence provides some check on plaintiff-oriented juries; and (6) that whatever injustice may derive from the doctrine, compromise jury verdicts tend to overcome this defect.

The first four arguments are little more than theoretical justifications having no basis in reality. With respect to the deterrence argument, it is unlikely that the behavior of a potential plaintiff in an accident situation is in any way affected by prior or contemporaneous consideration of legal niceties. The second rationale suggests that the plaintiff should be punished for his carelessness by bearing the responsibility for not only his own negligent act, but for that of the defendant as well. This penal basis stems from a 19th

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permit recovery by the injured person, but would diminish his recovery in proportion to the degree of negligence attributable to him. This is known as the doctrine of "comparative negligence" and has now been adopted by seven states. The comparative negligence rule, we feel, provides a greater degree of justice than is now afforded by the contributory negligence doctrine.

The bill was amended slightly and managed to pass the House, but thereafter it too died in committee.

Two more bills (Senate Bill 132 and House Bill 176) were introduced in 1971, only to meet a similar fate. Finally, on February 23, 1973, Senator John Rader introduced Senate Bill 166, relating to comparative negligence. It was referred to the Judiciary Committee, but no other action has been taken to date. The bill will be subject to further action in the Second Session of the Eighth Legislature.

[10] Bertram v. Harris, 423 P.2d 909 (Alaska 1967). The court used the definition found in Restatement (Second) of Torts § 463 (1965).

century philosophy of justice,[17] the harshness of which is no longer considered acceptable. The theory most frequently advanced in favor of the contributory negligence rule is the notion of "intervening cause"; however, the application of the principle in this context is wholly inappropriate. The issues of foreseeability and proximate causation must be dealt with before a defendant can invoke this doctrine, and merely establishing the existence of contributory negligence does not resolve these issues.[18] In a case of two negligent drivers, each of whose actions constitute a proximate cause of injury to an innocent bystander, one cannot point to the negligence of the other as an intervening cause insulating him from liability. It is irrational to pursue a different approach when the two negligent drivers are labeled "plaintiff and defendant" and the third party element is removed.[19] The fourth reason enumerated above suffers from a similar doctrinal distortion. The "unclean hands" principle operates to deny equitable relief to persons whose conduct relative to the matter in issue is unconscionable or morally reprehensible.[20] The failure to exercise reasonable care for one's own safety is not the sort of wrongdoing contemplated under the policy of the rule. Finally, the arguments based on assumptions about behavior of juries are equally fallacious. It has never been conclusively demonstrated that juries tend to be plaintiff-oriented,[21] and to argue that juries circumvent the rule of contributory negligence through compromise verdicts suggests that continued adherence to the rule fosters disrespect for the courts' instructions.

While all of the foregoing theories have been advanced as justifications for the rule, it is generally conceded that the contributory negligence doctrine is simply a crude mechanism for insuring that a negligent plaintiff does not benefit from his own misconduct.[22] The problem with this notion is that it ignores the realities of tort litigation and human experience, since fault is rarely the monopoly of a single party. The rule presupposes a negligent defendant and then causes the entire controversy to be automatically dismissed if the plaintiff is shown to have been negligent as well. Aside from the

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[17] *See* note 28 & accompanying text *infra*.

[18] An extensive analysis of the scope and application of "intervening cause" is not appropriate here. For a thorough review of the doctrine see W. PROSSER, THE LAW OF TORTS § 44 (4th ed. 1971).

[19] *Id.* § 65 at 417.

[20] *See, e.g.*, New York Football Giants v. Los Angeles Chargers Football Club Inc., 291 F.2d 471 (5th Cir. 1961).

[21] On the contrary, an empirical study of 4,000 civil jury cases by the University of Chicago Law School revealed that juries reached the same decision as the judge in 78% of the cases. H. KALVEN & H. VEISEL, THE AMERICAN JURY 63 n.4 (1966).

[22] *See, e.g.*, Haugh, *Comparative Negligence: A Reform Long Overdue*, 49 ORE. L. REV. 38 (1969).

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requirement that the plaintiff's negligence be a contributing cause of the injury,[23] there is no consideration given to the relative degree of fault on either side. Mutual negligence is treated as if it were synonymous with equal negligence, and defendants as a class are thereby accorded an unfair advantage.[24] Both the plaintiff and the defendant seek to prove causal negligence on the part of the other, but the defendant need only find a slight degree of carelessness in order to escape all liability.

A more realistic view of concurrent fault would embrace three possible situations. In cases of minor or remote fault a plaintiff's misconduct should be totally ignored. There are other times, as for example where the plaintiff is primarily responsible for causing his own injury, when his carelessness must be treated as a risk factor that should preclude recovery altogether. At still other times, in situations which fall in between the first two cases, it seems obvious that the victim's negligence should serve only to mitigate his damages.[25] Unfortunately, contributory negligence recognizes only the first two extremes.

B. *Historical Development*

Certainly no one theory can explain the doctrine of contributory negligence or the reason that it has persisted to this day. Nevertheless, an inquiry into its historical development suggests some important factors which at least encouraged the growth of the rule.[26] The expansion of the concept of contributory negligence during the nineteenth century closely paralleled the growth of the Industrial Revolution. While it has not been explicitly recognized by the courts, a major element in the early acceptance of the rule was undoubtedly the desire to protect developing industry, particularly the hazardous yet essential railroads, from unlimited liability in the tort field. In response to an uneasy fear of overly sympathetic juries, courts of the early nineteenth century came to regard the rule of contributory

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[23] Rowe v. United States, 14 Alaska 463, 116 F. Supp. 553 (D.C. Alaska 1953). The court refused to apply contributory negligence where the negligence of the plaintiff was not a proximate cause of the accident.

[24] "It is generally recognized that contributory negligence as a complete bar to recovery has denied justice to more injured persons than any other legal concept." Heft & Heft, *The Two-Layer Cake: No Fault and Comparative Negligence*, 58 A.B.A.J. 933, 936 (1972).

[25] This logical three-fold analysis was suggested by Wex S. Malone in *Comments on Maki v. Frelk*, 21 VAND. L. REV. 930, 934 (1968). He also expressed the opinion that *Butterfield v. Forrester* (*see* note 3 *supra*) is an illustration of an extravagant risk created by the plaintiff's conduct and should never have been expanded to embrace misconduct of a lesser degree.

[26] *See* Malone, *The Formative Era of Contributory Negligence*, 41 ILL. L. REV. 151 (1947).

negligence as "a convenient instrument of control over the jury by which the liabilities of rapidly growing industry were curbed and kept within bounds."[27]

The judicial system exists as an instrument of society, and although these factors may have been very persuasive in their day, societal values now reflect an increased concern for the individual and a desire to see injuries compensated. In addition, if the rule was indeed meant to provide an effective means of controlling plaintiff-oriented juries, its success in achieving that purpose is far from certain.[28] The fact that contributory negligence has endured for over 160 years may ultimately be attributed to the principle of stare decisis or to legislative neglect.[29]

Perhaps the strongest indication of the deficiencies in the contributory negligence rule and the discomfort courts have felt in applying it is the number and wide use of exceptions it has generated. England early developed the first anomaly. In *Davies v. Mann*,[30] under a fact situation very similar to that in *Butterfield*,[31] the plaintiff was allowed to recover because the defendant could have prevented the accident had he used reasonable care. This modification has come to be known as the doctrine of "last clear chance" and is still widely accepted and applied.[32] Another legal device which is designed to ease the harshness of the contributory negligence rule is the willful misconduct exception. Courts have refused to allow the defense of contributory negligence in actions for injury resulting from reckless or wanton misconduct on the part of the defendant.[33] Finally, in tort actions based on something other than ordinary negligence (for example, breach of statutory duty, intentional wrongs, nuisance, and strict liability), jurisdictions throughout the country have developed a number of lesser exceptions and modifications to the rule.[34] All these adaptations emphasize the shortcomings

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27 Prosser, *Comparative Negligence*, 51 MICH. L. REV. 465, 469 (1953). *See also* Turk, *Comparative Negligence on the March*, 28 CHI.-KENT L. REV. 189 (1950).

28 As early as 1934, Professor Charles Lowndes noted that "the tall timber in the legal jungle has been whittled down to toothpick size by the sympathetic sabotage of juries." Lowndes, *Contributory Negligence*, 22 [illegible] L.J. 674 (1934).

29 *See* notes 85-88 & accompanying text *infra*.

30 152 Eng. Rep. 588 (1842).

31 103 Eng. Rep. 926 (K.B. 1809). *See* note 3 *supra*.

32 Alaska's use of the last clear chance doctrine is set forth in Benson v. United States, 235 F. Supp. 495 (D.C. Alaska 1964). The doctrine is applicable when it appears that the plaintiff has been negligent, that as a result of his negligence he is in a position of peril from which he cannot escape by the exercise of ordinary care, and that the defendant is aware of plaintiff's helplessness, has a clear chance to avoid the injury by exercising ordinary care, and yet fails to do so.

33 *See, e.g.*, McLemore v. Harris, 374 P.2d 410 (Alaska 1962). Only if the plaintiff's own conduct is willful or wanton will it balance against similar conduct by the defendant.

34 *See, e.g.*, Mayes v. Byers, 214 Minn. 54, 7 N.W.2d 403 (1943) (statutory duty exception); Kassouf v. Lee Bros., Inc., 209 Cal. App. 2d 568, 26 Cal. Rptr. 276

of contributory negligence. Furthermore, like the doctrine itself, they operate to place the entire burden of loss on a single party, the defendant, when in reality both are to some degree at fault.

II. Comparative Negligence—The Solution

A. *History and State Statutes*

The shortcomings of the contributory negligence rule are readily apparent. In its application, the doctrine denies all right of recovery to an injured plaintiff even though his negligence was slight in comparison to that of the defendant. Obviously a more equitable and effective means of dealing with cases where there is negligence on the part of both parties must be devised. As a complete substitute, the principle of comparative negligence is a desirable and viable alternative.

The broad concept of comparative negligence dates back to the seventeenth century in English admiralty law.[35] Since that time the doctrine has taken shape in a variety of forms, so that it is impossible to refer to a single "rule" of comparative negligence. Instead, it is best to conceive of the term as a general principle of law which is roughly equivalent to the theory of apportionment of damages. The concept itself is simply the logical solution to the problem presented by the contributory negligence rule: instead of barring recovery completely in cases of concurrent negligence, "comparative negligence" would include any legal rule under which the relative degree of negligence of the parties is involved in determining whether, and the degree to which, either party should be held liable to the other.[36]

In 1910, Mississippi became the first state to enact a comprehensive comparative negligence statute applicable to all actions for personal injuries, and expanded that statute in 1920 to include actions for damages to property.[37] In the years that followed, eighteen other states adopted broad apportionment statutes.[38] All of

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(1962) (implied warranty exception); Bachner v. Pearson, 479 P.2d 319 (Alaska 1970) & Preston v. Up-Right Inc., 243 Cal. App. 2d 636, 52 Cal. Rptr. 679 (1966) (strict liability exception). When considered in addition to the last clear chance and gross misconduct anomalies, it is not unfair to say that these exceptions have virtually replaced the rule itself.

[35] *See* Turk, *Comparative Negligence on the March*, 28 Chi.-Kent L. Rev. 189 (1950), for a thorough review of the early history of comparative negligence. The general theory of apportioning damages and liability can be traced to medieval times.

[36] *See* Annot., 32 A.L.R. 3d 463 (1970). In general, comparative negligence, rather than totally barring recovery, reduces the award in a proportion equal to the plaintiff's negligence.

[37] Now Miss. Code Ann. § 1454 (1956).

[38] *See* note 14 *supra*.

these enactments are applicable to any action based on negligence, and therefore each completely supersedes the rule of contributory negligence. Beyond this, however, uniformity ends. The statutes are normally divided into three distinct groups: (1) the "pure" form, (2) the "slight v. gross" form, and (3) the "modified" form.[39]

Mississippi is the only state which has adopted the "pure" form of comparative negligence.[40] Under this approach the plaintiff is allowed to recover a portion of his damages equal to the overall percentage of negligence attributable to the defendant, whether or not the plaintiff's negligence is greater than that of the defendant. Thus, in a case where the plaintiff's negligence is determined to have caused 90 percent of the accident, he would recover only 10 percent of his damages. The major criticism of this approach is that it allows a person of greater fault to recover from one of lesser fault under a tort system founded upon individual responsibility. There seems to be little, if any, legal or social justification for such a result.[41]

The "slight v. gross" form allows for apportionment of damages only when the negligence of the plaintiff is "slight" and the defendant's "gross" in comparison. Only Nebraska adheres strictly to this approach,[42] although South Dakota's statute is generally included under the same classification.[43] A serious defect in this form of comparative negligence is that the statutes lose their effectiveness in cases where the parties' negligence is approximately equal.[44] The difficulty of determining the percentage degree of negligence above which the plaintiff's conduct becomes "gross" has engendered numerous appeals and inconsistent holdings.[45] Finally, should the court

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[39] Prosser, *Comparative Negligence*, 51 MICH. L. REV. 465, 484-489 (1953).

[40] MISS. CODE ANN. § 1454 (1956):
In all actions hereafter brought for personal injuries, or where such injuries have resulted in death, or for injury to property, the fact that the person injured . . . may have been guilty of contributory negligence shall not bar recovery, but damages shall be diminished by the jury in proportion to the amount of negligence attributable to the person injured . . . .

[41] *See* Ghiardi & Hogan, *Comparative Negligence—The Wisconsin Rule and Procedure*, 18 DEFENSE L.J. 537, 544 n.19, 560 (1969).

[42] NEB. REV. STAT. § 25-1151 (1964):
In all actions brought to recover damages for injuries to a person or to his property caused by the negligence of another, the fact that the plaintiff may have been guilty of contributory negligence shall not bar a recovery when the contributory negligence of the plaintiff was slight and the negligence of the defendant was gross in comparison but the contributory negligence of the plaintiff shall be considered by the jury in the mitigation of damages. . . .

[43] S.D. COMP. LAWS § 20-9-2 (1967). In 1964 the statute was amended to eliminate the requirement that the defendant's negligence be "gross." South Dakota now applies the rule of comparative negligence whenever a plaintiff's negligence is "slight" in comparison with that of the defendant.

[44] W. PROSSER, THE LAW OF TORTS § 67 at 437 (4th ed. 1971).

[45] *See, e.g.*, Kirchner v. Gast, 169 Neb. 404, 100 N.W.2d 65 (1959); Allen v. Kavanaugh, 160 Neb. 645, 71 N.W.2d 119 (1955); Roger v. Shepherd, 159 Neb. 292,

decide that the plaintiff's negligence was more than slight, the plaintiff is barred from all recovery even though the defendant's negligence was the greater of the two.

The "modified," approach is by far the most popular form of comparative negligence.[46] Unlike the "pure" form, statutes of this type ordinarily apportion damages only in situations where the plaintiff's negligence is less than the defendant's by comparison. Put another way, a plaintiff would not be allowed any recovery if his comparative degree of fault was 50 percent or greater.[47] If, on the other hand, the plaintiff was only 25 percent at fault and had sustained damages of $100,000, his recovery would be $75,000. This is the type of comparative negligence statute presently being considered by the Alaska Legislature.[48]

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66 N.W.2d 815 (1954); Monasmith v. Cosden Oil Co., 124 Neb. 327, 246 N.W. 623 (1933).

[46] At the present time no less than 16 states of the 19 total have adopted the "modified" form of comparative negligence: Arkansas, Colorado, Georgia, Hawaii, Idaho, Maine, Massachusetts, Minnesota, New Hampshire, New Jersey, North Dakota, Oregon, Utah, Vermont, Wisconsin, and Wyoming.

[47] This formulation of the rule is consistent with the language of the "modified" statutes presently in effect in the majority of states which have adopted comparative negligence. *See, e.g.*, HAWAII REV. STAT. § 663-31 (Supp. 1972):

> Contributory negligence shall not bar recovery in any action by any person or his legal representative to recover damages for negligence resulting in death or in injury to person or property, if such negligence was not as great as the negligence of the person against whom recovery is sought . . . .

The words "not as great as" simply mean that the plaintiff whose negligence is equal to that of the defendant is denied any recovery. This result was long an accepted aspect of the "modified" approach as exemplified by the Wisconsin comparative negligence statute.

In 1971, however, Wisconsin amended its law to permit recovery in cases where the percentage of fault attributable to each party is equal. Although this represents only a small change, since a plaintiff is still barred from recovery if his share of negligence exceeds the defendant's, it is significant that the state which provided the model for reform has since altered that model. *See* WIS. STAT. ANN. § 895.045 (Supp. 1973):

> Contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in death or in injury to person or property, if ~~such~~ negligence was not greater than the negligence of the person against whom recovery is sought, but any damages allowed shall be diminished in the proportion to the amount of negligence attributable to the person recovering.

[48] SB 166, 8th Legis., 1st Sess. (1973):

> DAMAGES IN NEGLIGENCE ACTIONS INVOLVING CONTRIBUTORY NEGLIGENCE.
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> (a) Contributory negligence does not bar a recovery in an action by a person or his legal representative to recover damages for negligence resulting in the death of or injury to the person, or injury to his property, if the contributory negligence was not as great as the negligence of the person from whom recovery is sought. Any damages awarded shall be diminished in proportion to the amount of negligence attributable to the person awarded the damages.
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> (b) In an action to which (a) of this section applies, the court, in a nonjury trial, shall make a finding of fact or, in a jury trial, the jury shall return a special verdict which states:
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> (1) the amount of damages which would have been recoverable if there had been no contributory negligence; and
>
> (2) the degree of negligence of each party, expressed as a percentage.

Of the three variants, the "modified" form is the most desirable. It does not allow a seriously negligent plaintiff to recover damages from a defendant whose share of fault was minor, and it avoids the semantic and practical difficulties associated with the use of vague labels such as "slight" and "gross." While this type of comparative negligence has been criticized as having the potential for arbitrary results,[49] it nevertheless retains more elements of a system based on fault than does the "pure" form which, by allowing a plaintiff to recover in situations where his negligence was the major cause of the accident, approaches a system of strict liability.[50] Finally, proponents of the "modified" version are quick to point out that this type of comparative negligence has proven itself in a number of states over a substantial period of time.[51]

Experience has indeed shown that the "modified" rule of comparative negligence can work.[52] Under the Wisconsin rule, the percentage of negligence attributable to each party is determined by the jury so as to total 100%. This is accomplished by means of a special verdict designed to confine the jury to a series of conclusive issue determinations: (1) defendant's negligence, (2) plaintiff's negligence, (3) causation, and (4) damages suffered. These separate findings are then compiled and mathematically computed by the court to form a general verdict.[53] The jury is therefore able objectively to arrive at its findings without knowledge or consideration of the sum the judge will ultimately award the plaintiff.[54] Apportion-

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(c) Upon the making of the finding of fact or the return of a special verdict, required under (b) of this section, the court shall reduce the amount of the verdict in proportion to the amount of negligence attributable to the person awarded the damages.

[49] The appellate court in Maki v. Frelk, 229 N.E.2d 284, 291 (Ill. App. 1967), questioned the effect of allowing the plaintiff who is 49 percent negligent to recover a large share of his damages, and yet allowing nothing to the plaintiff whose negligence is equal to the defendant's.

[50] *See* Maloney, *From Contributory to Comparative Negligence, A Needed Law Reform*, 11 U. FLA. L. REV. 135 (1958).

[51] A "modified" comparative negligence statute has been in effect in Wisconsin since 1931. See WIS. STAT. ANN. § 895.045 (Supp. 1973).

[52] *See* Knoeller, *Review of Wisconsin Comparative Negligence Act*, 41 MARQ. L. REV. 397 (1958); Heft & Heft, *Comparative Negligence: Wisconsin's Answer*, 55 A.B.A.J. 127 (1969).

The Wisconsin statute has been the prototype for legislative reform. Perhaps its single most impressive feature is the provision for a special jury verdict which not only reveals the specific findings of fact relating to the proportion of negligence attributable to each party, but also leaves the actual apportionment of damages in the hands of the court. The proposed Alaskan statute is derived from the Wisconsin example and incorporates this special verdict feature. *See* note 48 *supra*.

Wisconsin has developed a series of standardized jury instructions for use in all types of civil litigation. The three-volume set, entitled "The Wisconsin Jury Instructions—Civil," may be obtained from University of Wisconsin-Extension, L401 Law School Building, Madison, Wisconsin 53706. The set includes instructions pertaining to comparative negligence.

[53] *See* Heft & Heft, *The Two-Layer Cake: No Fault and Comparative Negligence*, 58 A.B.A.J. 933 (1972).

[54] For an excellent discussion of the operation of the Wisconsin verdict proce-

ment of fault and damage by juries presents no problems more difficult than those encountered in other types of cases as, for example, where a dollar amount must be ascertained for pain and suffering or for the loss of an arm. Judge and jury can work together to fairly and effectively apply a rule of comparative negligence.

B. *Special Applications of the Comparative Negligence Rule*

In addition to the state statutes which apply comparative negligence to all negligence cases, both the federal government and state governments have enacted numerous comparative negligence laws applicable to specific situations. The Federal Employers' Liability Act[55] utilizes the "pure" form of comparative negligence in all actions brought by railroad employees engaged in interstate commerce. Comparative negligence of the "pure" type is also provided for in the Merchant Marine Act and the Jones Act,[56] and in the statute relating to death on the high seas from wrongful conduct.[57] Not less than 30 states have adopted comparative negligence in a variety of railway and other labor acts in an apparent effort to insure recovery by injured workmen as against their employers.[58] Considered in the aggregate, therefore, these laws suggest that apportionment of damages in the United States is far from an isolated phenomenon.

C. *Criticism of the Rule*

Criticism of the doctrine of comparative negligence has centered primarily on objections regarding the feasibility of adopting such a system. While the desirability of the principle of fault apportionment is generally conceded, it has been argued that a comparative negligence rule would result in increased litigation and corresponding congestion in the courts, but experience has shown otherwise.[59] The logical explanation for this is that, although more actions may be instituted, the greater likelihood of recovery is conducive to an in-

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dure, *see* Decker, *Some Random Observations About Comparative Negligence and the Trial Process in Wisconsin*, 1 CONN. L. REV. 56 (1968).

55 35 Stat. 69 (1908), U.S.C. § 53 (1970).

56 41 Stat. 988, 1007 (1920); 46 U.S.C. § 688 (1970).

57 41 Stat. 537 (1920); 46 U.S.C. § 766 (1970).

58 W. PROSSER, THE LAW OF TORTS § 67 at 437 (4th ed. 1971); Turk, *Comparative Negligence on the March*, 28 CHI.-KENT L. REV. 189 (1950).

59 *See* Rosenberg, *Comparative Negligence in Arkansas: A "Before and After" Survey*, 13 ARK. L. REV. 89 (1959). The results of Rosenberg's survey showed that 67% of the judges responding thought the effect of the comparative negligence rule was "helpful" in terms of problems of judicial administration. This led to the conclusion that: "Legislatures facing the issue should confine themselves to the substantive pros or cons of the contending principles and should rule out arguments tied to problems of court administration." *Id.* at 108.

crease in settlements.[60] The suggestion that liability insurance rates would rise under a comparative negligence system has also been disputed.[61] The most persistent objections to the comparative negligence rule, that a fair apportionment of degrees of negligence is impossible and that it places too large a burden on the jury, have been considered and rejected as being inconsistent with actual jury practice.[62] It appears that juries are indeed capable of apportioning the negligence of mutual tortfeasors[63] and that the doctrine of comparative negligence constitutes a feasible improvement in the judicial treatment of contributory fault.

III. The Argument For Reform in Alaska

In evaluating the desirability of abandoning the contributory negligence rule entirely, it is important to consider the erosion of the rule over time. Brief mention has already been made of the various state and federal statutes which apply the principle of comparative negligence to special cases involving mutual fault.[64] Alaska too has statutes which provide for comparative negligence in specific, narrow situations.

Alaska's employer liability statute provides that contributory negligence shall not be a defense in an action brought by an employee against his employer where the contributory negligence of the employee was slight and the negligence of the employer was gross in comparison. Instead, the damages are diminished by the jury in proportion to the amount of negligence attributable to the employee.[65] The law is applicable to any person engaged in manufactur-

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[60] Heft & Heft, *Comparative Negligence: Wisconsin's Answer*, 55 A.B.A.J. 127, 130 (1969).

[61] Peck, in *Comparative Negligence and Automobile Liability Insurance*, 58 Mich. L. Rev. 689 (1960), presents a statistical analysis of the effect of a comparative negligence rule on automobile insurance rates. On the basis of this study he states:

> Adoption of a comparative negligence rule, as shown by the Arkansas experience, would not have a catastrophic result upon the insurance rate structure of any state. Indeed, it would not have as much effect as rapid growth of population, increased urbanization, or change to a traffic program with the effective safety record of a neighboring state. Its effect, if any, would probably go undetected in the rates and statistics of the insurance industry.

Id. at 728.

[62] *See* Mole & Wilson, *A Study of Comparative Negligence*, 17 Cornell L.Q. 333, 339-359 (1932). *See also* Ghiardi & Hogan, *Comparative Negligence—The Wisconsin Rule and Procedure*, 18 Defense L.J. 537 (1969), for a detailed analysis of the procedural rules used to achieve responsible jury verdicts.

[63] In Wisconsin the jury's determination is presumed to be correct and equitable, and its verdict will only be set aside when the reviewing tribunal believes it is against the great weight and clear preponderance of the evidence. Pruss v. Strube, 37 Wis. 2d 539, 155 N.W.2d 650 (1968).

[64] *See* notes 55-58 *supra*.

[65] AS 23.25.020 (1972):

> In an action against a master or employer under § 10 of this chapter the

ing, mining, constructing, building, or other like hazardous occupations carried on by means of machinery.[66] Unlike the federal statute pertaining to employers' liability,[67] Alaska's statute adopts the "slight v. gross" form of comparative negligence.[68] The usual problems of interpretation associated with the "slight v. gross" approach may be mitigated by the fact that in actions arising out of injuries incurred while engaged in a hazardous occupation employer negligence is typically of a serious nature.[69]

Another instance of the application of comparative negligence in Alaska is in actions based on admiralty law. In *Maxwell v. Olsen*[70] the plaintiff was injured while disembarking from defendant's ferry boat. The court held that in such cases the plaintiff's contributory negligence does not bar recovery because the federal rule of comparative negligence must be followed.[71] Although this decision was inspired not by a judicial recognition of the merits of the doctrine but rather by adherence to procedural rules, it does suggest that the state courts are capable of applying the notion of comparative negligence in admiralty cases. The nature of the negligence action in admiralty cases need not be unique at all. As a matter of fact, *Maxwell v. Olsen* could have been a non-admiralty negligence action. A comparative negligence rule was applied in that case only because the plaintiff happened to fall as she stepped from a ferry. Had she taken that critical step without incident and instead proceeded to stumble over a hazardously positioned coil of rope which the defendant had left on shore, the strict contributory negligence rule would be applicable. The essential factual character of the negligence action remains the same in both instances; it is simply the existence of a

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fact that the employee may have been guilty of contributory negligence does not bar a recovery where his contributory negligence was slight and the negligence of the employer was gross in comparison, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to the employee.

[66] *See* AS 23.25.010 (1972).

[67] 45 U.S.C. § 53 (1970), *supra* note 55.

[68] *See* Haman v. Allied Concrete Prods., Inc., 495 P.2d 531 (Alaska 1972), in which the court notes that Alaska's law and 45 U.S.C. § 53 (1970) adopt a comparative negligence rule in markedly similar language, although the federal statute is broader in scope.

[69] In Haman v. Allied Concrete Prods., Inc., 495 P.2d 531 (Alaska 1972), the plaintiff was injured when the drive chain on a cement mixer broke and struck him in the head. Inasmuch as the plaintiff was not negligent at all, the employer's negligence in the maintenance of machinery was easily characterized as "gross." The Alaskan courts have not yet been confronted with a case under this statute in which the line between "slight" and "gross" negligence has been difficult to draw.

[70] 468 P.2d 48 (Alaska 1970).

[71] Generally, the "saving to suitors" clause [of the Judicial Act of 1789] means that a suitor asserting an *in personam* admiralty claim may elect to sue in a "common law" state court through an ordinary civil action. In such suits, state courts are required to apply the same substantive law as would be applied had the suit been brought in admiralty in a federal court. 468 P.2d at 51 (footnotes omitted).

vessel floating on navigable water which distinguishes the two. There is no basis for perpetuating such a distinction, and yet the law requires it.

While comparative negligence has gained a foothold in Alaska, it would be misleading to suggest that the doctrine has ever seriously threatened its common law counterpart. The contributory negligence rule has been, and continues to be, the accepted principle of law in the state.[72] But even the most obstinate supporters of the rule cannot deny its propensity toward inflicting severe hardship, and the last clear chance doctrine[73] and willful misconduct exceptions[74] have been judicially recognized in Alaska. In addition, Alaska has departed from the ordinary contributory negligence rule in cases involving strict products liability.[75]

Another indication of the shortcomings of the rule in the Alaska experience is the difficulty which the Alaskan courts have encountered in its application. In the past, the Alaska Supreme Court has held that a jury question is presented as to contributory negligence when fair-minded jurors could differ as to the facts pertaining to this issue.[76] The problem has been to determine whether the trial judge properly decided to submit the question to the jury,[77] and if he did correctly do so, whether the instruction itself was correctly stated.[78]

Despite these procedural difficulties, however, the courts cling steadfastly to the theory that a plaintiff's own contributory negligence bars any right of recovery. In *Harris v. Barrett & Lesh, Inc.*[79] the Supreme Court of Alaska refused to deviate from its previous hold-

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[72] *See*, *e.g.*, Cummins v. King & Sons, 453 P.2d 465 (Alaska 1969); Bertram v. Harris, 423 P.2d 909 (Alaska 1967); Ogden v. State, 395 P.2d [illegible] (Alaska 1964).

[73] *See* Benson v. United States, 235 F. Supp. 495 (D.C. Alaska 1964), *supra* note 32.

[74] *See* McLemore v. Harris, 374 P.2d 410 (Alaska 1962), *supra* note 33.

[75] *See*, *e.g.*, Bachner v. Pearson, 479 P.2d 319 (Alaska 1970). The court limited the application of contributory negligence, as a defense to strict liability in tort, to situations where a plaintiff voluntarily and unreasonably encounters a known risk.

[76] Mallonee v. Finch, 413 P.2d 159, 162 (Alaska 1966); Otis Elevator Co. v. McLaney, 406 P.2d 7, 9-10 (Alaska 1965); Crawford v. Rogers, 406 P.2d 189, 194 (Alaska 1965); McCoy v. Alaska Brick Co., 389 P.2d 1009, 1010 (Alaska 1964).

[77] *See*, *e.g.*, Cummins v. King & Sons, 453 P.2d 465 (Alaska 1969). In *Cummins* the plaintiff brought an action for injuries sustained in a fall on icy steps. The supreme court reversed the contributory negligence verdict in the lower court, holding that the facts did not even support submission of the issue to the jury.

It is also interesting to note that the case was remanded because there was no way to know whether the jury, in addition to finding the plaintiff guilty of contributory negligence, had also found that the defendant was negligent. "If we knew that the jury had simply found appellees free from negligence, then the error would be harmless. But we have no way of ascertaining what the jury's findings were on these issues." *Id.* at 467-68. The special verdict feature of the proposed Alaskan comparative negligence statute would eliminate this perplexity.

[78] *See* Mitchell v. Knight, 394 P.2d 892 (Alaska 1964).

[79] 426 P.2d 331 (Alaska 1967).

ings to adopt a comparative negligence rule for the state.[80] But its uninspired support of the rule,[81] the exceptions which it has established and the problems in administering the doctrine suggest that the court has maintained its position more out of deference to the principle of stare decisis than to anything else.[82] Yet because the judiciary continues to apply the contributory negligence rule despite these difficulties, it may be necessary to place the responsibility for effectuating the needed reform in the hands of the legislature.

IV. The Agency of Reform—Legislature v. Courts

Once it has been determined that reform is desired, should the court or the legislature initiate the change? Experience has shown that both are capable of effectuating a comparative negligence system.[83] Those who would delegate the lawmaking responsibility to the courts argue that since the contributory negligence rule is a product of judicial fiat, the common law courts ought to be the vehicle for reform.[84] In addition, as the history of comparative negligence bills in the Alaska Legislature demonstrates, legislative inaction appears to be a certainty with respect to this kind of issue.[85] As to this last point, the advocates of legislative adoption contend that the courts suffer the same inefficacy. The courts themselves have admitted to the great influence of prior precedent as a restraining factor on judicial action in this area.[86] Furthermore, court action

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[80] *Id.* at 334-35.

[81] The court in *Harris* did not attempt to justify the contributory negligence doctrine nor did it offer any arguments against the notion of comparative negligence. Instead, it simply stated: "[W]e are not inclined to rule upon such a significant policy matter [*i.e.*, the comparative negligence question] when it has been so casually treated by appellant's counsel." Harris v. Barrett & Lesh, Inc., 426 P.2d 331, 335 (Alaska 1967). The court's statement seems to imply a willingness to face the issue were it squarely presented, but thus far there has been no further direct treatment of the matter by the Alaska Supreme Court.

[82] *See* note 86 *infra*.

[83] *See* notes 89-103 & accompanying text *infra*.

[84] *See* Keeton, *Creative Continuity in the Law of Torts*, 75 Harv. L. Rev. 463, 506-09 (1962).

[85] *See* Leflar, *Comments on Maki v. Frelk*, 21 Vand. L. Rev. 918 (1968). Legislatures, by their very nature, are not responsive in such areas:

> Comparative negligence involves a type of social progress to which no potent social action group is politically committed. The organized liability insurers are, for their own reasons, generally against it; the plaintiffs' bar is lukewarm about it; and the general public, except for the minority involved in accident lawsuits, hardly knows what the problem is. Legislatures are seldom alert to social needs that are not backed up by political pressures. Social needs with no potent lobby behind them, particularly if there is an active lobby against them, ordinarily do not receive much favorable attention in state legislatures. They are the sort of thing that courts have to take care of.

Id. at 928.

[86] *See, e.g.*, Harris v. Barrett & Lesh, Inc., 426 P.2d 331, 335 n.9 (Alaska 1967): "This court's past decisions have clearly established that a plaintiff's own contributory negligence bars any right of recovery." *Accord*, Sun Oil Co. v. Seamon, 349 Mich. 387, 391, 84 N.W.2d 840, 844 (1957).

may be less desirable than legislative enactment when dealing with sweeping social change. In *Maki v. Frelk*,[87] the Illinois Supreme Court decided that the issue ought to be resolved by the legislature. The court overturned a decision of the appellate court to replace contributory negligence with comparative negligence, holding that "such a far-reaching change, if desirable, should be made by the legislature rather than by the court."[88] The arguments on both sides of the issue are persuasive, and the determination of whether the court or the legislature should properly promulgate a comparative negligence rule may ultimately be dictated by the probability of successful adoption by either body. What has the exerperience of other states shown?

Expanded interest in the principle of comparative negligence is exemplified by the number of recent writings on the subject as well as by the increase in state legislative proposals and judicial opinions which have contemplated adoption of the rule. Nine states have within the past three years acted to incorporate a comparative negligence system into the law of their jurisdiction.[89] Two have done so judicially, while the remaining seven have enacted statutes similar to Wisconsin's.[90] An examination of the differences between these approaches and of their relative strengths and weaknesses will certainly have an instructive value for the Alaska Legislature which is now contemplating parallel reform.

Judicial adoption of a comparative negligence rule applicable to all negligence cases is somewhat of a rarity. For many years, Tennessee was the only state in which comparative negligence had been promulgated entirely by judicial decision.[91] The scope of its rule, however, is even today severely limited.[92] Recent court decisions in New York and Florida, on the other hand, have established unrestricted forms of comparative negligence. Their importance as precedent for the judicial adoption of the doctrine is therefore con-

87 40 Ill. 2d 193, 239 N.E.2d 445 (1967).

88 *Id.* at 195, 239 N.E.2d at 447.

89 The states are: Colorado (1971), Florida (1973), Idaho (1971), New Jersey (1973), New York (1972), North Dakota (1973), Oregon (1971), Utah (1973), and Wyoming (1973).

90 *See* notes 50-54 & accompanying text *supra*.

91 The Tennessee rule was delineated by the court in Bejach v. Colby, 141 Tenn. 686, 214 S.W. 869 (1919). The court decreed that if the plaintiff were guilty of negligence which directly and proximately contributed to his injury he could not recover, but if the plaintiff's negligence was only remotely connected with the cause of the injury he could recover, although the damages would be mitigated according to the extent of plaintiff's negligence.

92 *See*, e.g., Hansard v. Ferguson, 23 Tenn. App. 306, 132 S.W.2d 221 (1939). Contributory negligence remains a barrier to recovery in cases where the plaintiff's negligence, however slight, is a proximate cause of his injury. The rule may therefore be characterized as one of apportionment of damages under certain conditions rather than a true rule of comparative negligence. Annot., 32 A.L.R.3d 463, 479 (1970).

siderably greater than Tennessee's because of the extent of the change they have introduced.

The New York judicial experience has been confusing and still has not been completely resolved. The State Court of Appeals established the foundation in 1972 for a comparative negligence rule in New York when it handed down its decisions in *Dole v. Dow Chemical Co.*[93] and *Kelly v. Long Island Lighting Co.*[94] These cases introduced the concept of comparative negligence, as between joint or concurrent tortfeasors, into the law of the state. Although the decisions were limited to the issue of apportionment of negligence among defendants, their implication with respect to a plaintiff's contributory negligence was readily apparent.[95] Accordingly, lower courts within the state soon extended the doctrine to embrace a plaintiff's negligence.[96] The Court of Appeals has not yet returned to the subject, and it remains to be seen whether or not the *Dole* and *Kelly* decisions have been properly interpreted.[97] This piecemeal approach suggests a significant difficulty with judicial fiat; moreover, as the court is only deciding the case before it, the value of the rule as precedent for other fact situations is always arguable.

Florida has accomplished the conversion from contributory negligence to comparative negligence in a more direct fashion. In a single case, decided earlier this year, the District Court of Appeals of Florida rejected the contributory negligence rule in favor of a "pure" form of comparative negligence.[98] The decision has been cer-

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[93] 30 N.Y.2d 143, 331 N.Y.S.2d 382, 282 N.E.2d 288 (1972).

[94] 31 N.Y.2d 25, 335 N.Y.S.2d 851, 286 N.E.2d 241 (1972).

[95] *See* Sorrentino v. United States, 344 F. Supp. 1308 (E.D.N.Y. 1972). The court stated:

> One further point appears: the analysis of *Dole* and *Kelly* suggests that a view of contributory negligence which makes it an absolute bar to a plaintiff's recovery cannot survive.

Id. at 1310. Thus, while the strict rule of law announced in *Dole* and *Kelly* requires only that the relative degrees of negligence between joint defendants be apportioned, there is no apparent reason why this theory of apportionment cannot be extended to include a plaintiff's contributory negligence.

[96] *See* Berenger v. Gottlieb, 72 Misc. 2d 349, 338 N.Y.S.2d 319 (Civ. Ct. N.Y. 1972); Dixon v. Knickerbocker Drivurself Inc., 72 Misc. 2d 1025, 341 N.Y.S.2d 150 (City Ct. of Albany County 1973).

[97] The lower courts appear confident that the Court of Appeals will uphold their expansion of the rule. In Dixon v. Knickerbocker Drivurself Inc., 72 Misc. 2d 1025, 1026, 341 N.Y.S.2d 150, 151 (City Ct. of Albany County 1973), The court asserted: Comparative negligence is now the law in this state, although it remains for the Court of Appeals to decide what type of comparative negligence is to be applied."

[98] Jones v. Hoffman, 272 So. 2d 529 (Dist. Ct. App. Fla., 4th Dist., 1973). The court held:

> We therefore decide that contributory negligence should not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in death or injury to person or property, but any damages allowed shall be diminished in proportion (percentage) to the amount of the negligence attributable to the person bringing such action or on behalf of whom such action is maintained.

Id. at 533. It is not surprising that the language used here closely resembles that of

tified to the Florida Supreme Court for review, and thus the final disposition of the doctrine in this state, as in New York, has yet to be determined.

It is important to realize that the court method of reform has a number of shortcomings. For example, none of the judicial opinions, in either New York or Florida, mentions any of the procedural means through which a comparative negligence rule might be implemented.[99] In contrast, the legislature is likely to depart from legal formalism and establish pragmatic rules such as the special verdict procedure under which a jury actually arrives at a percentage distribution of fault. The legislative method of reform may also have the advantage of a statement of all the ramifications and consequences of the change being made, while the traditional judicial approach often leaves the full extent and significance of the change in doubt until another case presents the opportunity to determine an additional aspect of the problem.[100] Thus, the legislature can do more than merely announce a new rule of law; it can specifically establish the way in which the rule will operate and the effect of the rule on existing related concepts.[101] Another advantage associated with legislative change is that it can be given a prospective effect. Judicial reform, on the other hand, customarily has an undesirable retroactive effect which subjects conduct to a legal rule that was not in existence at the time the cause of action arose.[102] Finally, there is greater assurance of public acceptance when a new rule of law is adopted by the elected representatives of the people, rather than by the detached members of the judiciary.[103]

Perhaps in recognition of these problems, seven states have recently chosen the legislative method of adoption.[104] Each of the

many comparative negligence statutes. A distinct disadvantage of judicial reform is that unless the courts are willing to make what is in effect a legislative decree, the change to comparative negligence will have to be made on a case-by-case basis. The resulting confusion and uncertainty is exemplified by the New York experience.

[99] The courts are, of course, well-suited to prescribe the necessary functions of the judge and jury under a comparative negligence system, but judicial opinions rarely utilize this empirical advantage. Judges are prone to ignore the details of actual courtroom practice when announcing broad doctrinal changes in the substantive law.

[100] Peck, *The Role of the Courts and Legislatures in the Reform of Tort Law*, 48 MINN. L. REV. 265, 299 (1963).

[101] In this context consideration should be given to the desirability of adopting an extensive comparative negligence rule which could encompass such problems as: (1) the operation of a special verdict for determining the comparative percentages of fault; (2) the effect of the rule on contribution among joint tortfeasors; and (3) the effect of the release of one tortfeasor on liability of others. *See* IDAHO CODE §§ 6-801 to -806 (Supp. 1973); UTAH CODE ANN. §§ 78-27-37 to -43 (Supp. 1973).

[102] Peck, *The Role of the Courts and Legislatures in the Reform of Tort Law*, 48 MINN. L. REV. 265, 400 (1963).

[103] Friendly, *The Gap in Lawmaking—Judges Who Can't and Legislators Who Won't*, 63 COLUM. L. REV. 787, 791 (1963).

[104] Colorado: COLO. REV. STAT. § 41-2-14 (1971); Idaho: IDAHO CODE §§ 6-801 to -806 (Supp. 1973); New Jersey: N.J. LAWS 1973, ch. 146, effective August 22,

laws was based on the Wisconsin model and closely resembles Alaska's proposed statute.[105] But while the comparative negligence doctrine represents a distinct improvement over the old rule of contributory negligence, it is surely not a panacea. In considering the proposed Alaskan statute, a number of potential problems should be kept in mind. The doctrines of assumption of risk[106] and last clear chance[107] would have to be applied differently under a comparative negligence system. The doctrines evolved as means to ameliorate the harsh effects of the contributory negligence rule, but in their operation the entire financial burden is merely transferre from one party to the other. In a system of damage apportionment these exceptions are unnecessary and at variance with the theory of comparative fault. Also, what would happen to the rules pertaining to burden of proof? What about contribution between joint tortfeasors?[108] These are the kinds of questions which may have to be left for the courts to answer, but they certainly present no major barrier to the enactment of a comparative negligence rule. Some amount of difficulty is to be expected when dealing with so fundamental a change, and it is enough that these practical problems are both foreseeable and susceptable to resolution.

V. Conclusion

The roots of contributory negligence are deeply embedded in the processes of American jurisprudence. Whatever the reason, the

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1973; North Dakota: N.D. Century Code ch. 9-10-07 (Supp. 1973); Oregon: Ore. Rev. Stat. § 18.470 (1971); Utah: Utah Code Ann. §§ 78-27-37 to -43 (Supp. 1973); and Wyoming: Wyo. Stat. § 1-7.2 (Supp. 1973).

[105] *See* note 48 *supra*.

It is interesting to note that in both Colorado and Oregon there was some incertitude with respect to the retroactive effect of their laws. In Joseph v. Lowery, 261 Ore. 545, 495 P.2d 273 (1972), and in Heafer v. Denver-Boulder Bus Co., 489 P.2d 315 (Colo. 1971), it was held that the newly enacted comparative negligence statute was applicable only to causes of action arising subsequent to the effective date of enactment. Neither plaintiff could therefore collect for his damages under the comparative negligence rule. The current Alaskan bill does, however, contain a provision that adequately deals with this issue. It states: "This Act applies only to causes of action which arise subsequent to the effective date of this Act." SB 166, 8th Legis., 1st Sess. § 2 (1973).

[106] Fortunately, Alaska has already discarded this doctrine as a separate defense in contributory negligence cases. In Leavitt v. Gillaspie, 443 P.2d 61 (Alaska 1968) the court criticized the operation of the assumption of risk doctrine and concluded that: "[O]nly the traditional notions of negligence and contributory negligence should govern cases such as we have here and that the defense of assumption of risk should not be a defense and should not be used." *Id.* at 68.

[107] *See* W. Prosser, The Law of Torts § 67 at 439 (4th ed. 1971). Prosser has suggested that the principle of last clear chance would no longer be necessary under a comparative negligence system. There would obviously be no reason to perpetuate a rule intended to protect the plaintiff's right of recovery, since recovery (though mitigated) is guaranteed under a damage apportionment approach.

[108] A detailed analysis of these issues would serve no useful purpose here. They are tangential problems and have been adequately discussed in other writings. *See, e.g.*, Ghiardi & Hogan, *Comparative Negligence—The Wisconsin Rule and Procedure*, 18 Defense L.J. 537 (1969); Prosser, *Comparative Negligence*, 51 Mich. L. Rev. 465 (1953).

harsh inequities attributable to the doctrine have been tolerated for far too long, a particularly regrettable fact in that a fair and effective alternative rule is available. Comparative negligence offers a more rational approach to the treatment of mutual fault, and experience has shown that the administration of an apportionment doctrine is possible. For Alaska, legislative initiative would be preferable to judicial inertia and piecemeal solutions. The legislature has the opportunity, since a comparative negligence bill is currently before it, to provide a timely and comprehensive solution to the contributory negligence problem. While the importance of tradition in the law is recognized, the legislature can implement needed social changes and discard antiquated rules. Tradition without justice, tradition merely for the sake of tradition, has no place and should give way to a more rational and equitable system.

BRUCE L. DUSENBERRY

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COMPARATIVE NEGLIGENCE

As a result of action by the 1973 Legislature,[1] on April 1, 1974, the State of Washington will abandon the doctrine of contributory negligence and replace it with the increasingly popular rule of comparative negligence. Comparative negligence has been described as "a fault concept that apportions liability for damages in proportion to the contribution of each tortfeasor causing the injury or damages."[2]

This note will discuss briefly the policy considerations underlying a choice between comparative negligence and contributory negligence, and will attempt to predict the effects, both procedural and substantive, of the new Act on practice in Washington.

I. WASHINGTON'S NEW COMPARATIVE NEGLIGENCE ACT

The new Washington Act provides:

> Section 1. Contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages caused by negligence resulting in death or in injury to person or property, but any damages allowed shall be diminished in proportion to the percentage of negligence attributable to the party recovering.[3]
>
> Section 2. The negligence of one marital spouse shall not be imputed to the other spouse to the marriage so as to bar recovery in an action by the other spouse to the marriage, or his or her legal representative, to recover damages from a third party caused by negligence resulting in death or in injury to the person.[4]

Section 1 of the new Act replaces the rule of contributory negligence with the rule of comparative negligence; Section 2 abrogates a long standing community property rule. Some comparative negligence statutes permit only those plaintiffs who are themselves responsible for less than a specified percentage of the total negligence to recover; these

1. Ch. 138, [1973] Wash. Laws, 1st Ex. Sess. The Washington Comparative Negligence Act is codified in WASH. REV. CODE §§ 4.22.010-.910 (Supp. 1973).
2. C. R. HEFT & C. J. HEFT, COMPARATIVE NEGLIGENCE MANUAL § 1.10, at 1 (1971) [hereinafter cited as HEFT & HEFT].
3. WASH. REV. CODE § 4.22.010.
4. *Id.*, § 4.22.020.

statutes enact "modified" comparative negligence. Section 1 of the Washington Act contains no such qualification, placing Washington among the states adopting "pure" comparative negligence. These two forms of comparative negligence have much in common, of course, and the experiences and judicial decisions of jurisdictions which have adopted pure as well as modified comparative negligence will exert persuasive force in construing the new Act.[5]

Although subject to conflicting interpretations,[6] Section 2 of the new Act apparently abrogates the common law rule imputing the negligence of one marital spouse to the other so as to bar the latter's recovery in an action for damages caused by the negligence of a third party. Prior to the Act, the courts held that because the damage claim for personal injuries of one spouse is community property, the contributory negligence of the other spouse will bar recovery.[7]

II. HISTORY, ALTERNATIVE FORMS, AND EFFECT ON PROCEDURE OF COMPARATIVE NEGLIGENCE

Adoption of comparative negligence has been a response, by either the legislature or the courts, to the often inequitable results produced by the doctrine of contributory negligence. The judicially-created rule of contributory negligence,[8] by which a plaintiff recovers all or

5. For jurisdictions which have adopted pure comparative negligence, see note 20 *infra*. For jurisdictions which have adopted modified comparative negligence, see notes 28–30 *infra*.

6. Sections 1 and 2, read together, suggest that the Legislature intended each spouse's recovery to be diminished in proportion to the percentage of negligence attributable to the negligently acting spouse; imputed negligence lessens but does not bar recovery. This is consonant with the mandate of Section 1 that "any damages allowed shall be diminished in proportion to the percentage of negligence attributable to the party recovering." But when read alone, the absolute prohibition of Section 2 that "the negligence of one marital spouse shall not be imputed to the other spouse . . . ." appears to prohibit considering the acting spouse's fault when comparing the negligence of the other; to do so would be "impute" one spouse's negligence to the other. The first interpretation reduces Section 2 to a mere expression of an obvious inference from Section 1; the latter interpretation seems to express better the probable legislative intent.

7. *See* Ostheller v. Spokane & Inland Empire R.R., 107 Wash. 678, 182 P. 630 (1919).

8. The doctrine originated in Butterfield v. Forrester, 11 East 60, 103 Eng. Rep. 926 (K.B. 1809), wherein the plaintiff was denied recovery for injuries resulting from a horse riding accident on the ground that he was partially responsible for the accident.

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A. *The Debate*

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1036 (1969); Wisconsin, WIS. STAT.

10. *See* Note, *Tort-Comparativ*
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12. *See* Cotton, *Comparative*
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14. *Id.* at 41.

nothing, frequently frustrates the attainment of full and fair compensation for the victims of tortiously caused accidents. This "all or nothing" approach contrasts sharply with comparative negligence under which the fault of the plaintiff reduces his recoverable damages but does not act as a total bar to recovery.[9]

A. The Debate

Advocates of comparative negligence contend that its adoption reduces court congestion by promoting more settlements and shorter, simpler trials.[10] Although the change may result in an increase in litigation, they argue that the greater certainty of a plaintiff's realizing some recovery under comparative negligence promotes settlement by both sides and reduces the plaintiff's insistence upon a jury trial.[11] Those who oppose comparative negligence predict exactly opposite results.[12] Furthermore, they view the doctrine of contributory negligence as a just and equitable check on those individuals who seek to "profit" by their own wrongdoing,[13] and suggest that any harshness of the rule is ameliorated by the jury's natural sense of justice.[14] Propo-

9. *See* Schwartz, *Pure Comparative Negligence in Action*, 34 AM. TRIAL LAW. L.J. 117, 118 (1972) [hereinafter cited as Schwartz]; HEFT & HEFT, *supra* note 2.

At the date of this publication, the following states number among those which have enacted some form of comparative negligence: Arkansas, ARK. STAT. ANN. tit. 27-1730.1 (1961); Colorado, COLO. REV. STAT. ch. 41-2-14 (Supp. 1971); Georgia, GA. CODE ANN. § 105-603 (1933); Hawaii, HAWAII REV. STAT. § 663-31 (1968); Maine, ME. REV. STAT. ANN. tit. 14, § 156 (1964); Massachusetts, MASS. GEN. LAWS ANN. ch. 231, § 85 (1969); Minnesota, MINN. STAT. ANN. ch. 604.01 (1969); Mississippi, MISS. CODE ANN. § 3.1454 (1910); Nebraska, NEB. REV. STAT. § 25-1151 (1913); New Hampshire, N.H. REV. STAT. ANN. § 507:7a (1969); Oregon, ORE. REV. STAT. § 18.470 (1971); Rhode Island, R.I. GEN. LAWS ANN. § 9-20-4 (1971); South Dakota, S.D. COMPILED LAWS ANN. § 20-9.2 (1967); Utah, UTAH CODE ANN. § 12-1036 (1969); Wisconsin, WIS. STAT. ANN. § 995.045 (1931).

10. *See* Note, *Tort-Comparative Negligence Statute*, 18 VAND. L. REV. 327, 329-30 (1964).

11. *See* Haugh, *Comparative Negligence: A Reform Long Overdue*, 49 ORE. L. REV. 38, 42 (1969) [hereinafter cites as Haugh].

12. *See* Cotton, *Comparative Negligence: Not in the Public Interest*, 17 LA. B.J. 205 (1969); Burns, *Comparative Negligence: A Law Professor Dissents*, 51 ILL. B.J. 708 (1963).

13. The arguments in favor of retaining contributory negligence as a bar to actions are: (1) A negligent plaintiff gives implied consent to all the consequences of his negligent act; (2) the equitable doctrine of unclean hands demands that where both parties are at fault, the courts should leave them as they are; (3) contributory negligence provides a check on plaintiff-oriented injuries; (4) the plaintiff's negligence is the superceding, legal cause; and (5) by denying recovery, the doctrine restrains carelessness. *See* Haugh, *supra* note 11, at 39.

14. *Id.* at 41.

nents of comparative negligence have categorically contradicted these claims.[15]

Studies indicate that, in actuality, the change to comparative negligence has little practical effect.[16] A survey of the short-lived experiment of Arkansas with a pure comparative negligence statute from 1955 to 1957 resulted in the following conclusions:[17] (1) The introduction of comparative negligence brought about no drastic change in the number of cases burdening the courts; (2) it did not affect the preference for jury trials or the length of trials; (3) it increased potential litigation but promoted more pretrial settlements; (4) damages were harder to determine under comparative negligence; (5) plaintiffs won more, but not larger, verdicts under comparative negligence; and (6) cases had a higher compromise value for settlement under comparative negligence. A follow-up survey studying the experience of Arkansas under a modified form of comparative negligence from 1957 to 1967 affirmed the conclusions of the original survey.[18] In addition, an observer of Wisconsin's experience with comparative negligence indicates that it has not raised insurance rates.[19]

15. They point out that: (1) Where the entire burden of the loss falls upon the less negligent party the policy is harsh and unjustifiable; (2) there are exceptions to the rule by which the party can recover despite his negligence; (3) to say the plaintiff's negligence is the sole cause attributes a meaning to legal cause that is inaccurate; (4) it is unlikely that a negligent plaintiff has in mind his loss of recovery when he commits the negligent act; and (5) rendering the defendant immune may encourage carelessness on his part. To rebut the argument that the jury is already employing a form of comparative negligence, one writer has stated that because juries may use a comparative negligence approach in situations where the plaintiff was contributorily negligent, the retention of the contributory negligence rule leads laymen to disrespect our system of accident law and to ignore jury instructions. *See generally* HEFT & HEFT, *supra* note 2; Prosser, *Comparative Negligence*, 51 MICH. L. REV. 465, 468, 470--71 (1953) [hereinafter cited as Prosser]; Laugesen, *Colorado Comparative Negligence*, 48 DENVER L.J. 469, 470 (1972); Haugh, *supra* note 11, at 40; Maloney, *From Contributory to Comparative Negligence: A Needed Law Reform*, 11 U. FLA. L. REV. 135, 162 (1958) [hereinafter cited as Maloney].

16. *See* Rosenberg, *Comparative Negligence in Arkansas, A "Before and After" Survey*, 13 ARK. L. REV. 89 (1959) [hereinafter cited as Rosenberg]; Note, *Comparative Negligence—A Survey of the Arkansas Experience*, 22 ARK. L. REV. 692 (1969) [hereinafter cited as *Survey*]; Pfankuch, *Comparative Negligence vs. Contributory Negligence*, 1968 INS. L.J. 725, 731 (1968) [hereinafter cited as Pfankuch].

17. *See* Rosenberg, *supra* note 16, at 108.

18. *See Survey*, *supra* note 16, at 713.

19. *See* Pfankuch, *supra* note 16, at 731.

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22. *See* HEFT & HEFT, *supra* n

23. *Id.*

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fault, he would recover $1,000 less

25. *Id.*

26. Prosser, *supra* note 15, at 4

B. The Pure Form of Comparative Negligence

Under "pure" comparative negligence, apportionment of damages is an exact rendering of the fault system.[20] The tortfeasor pays only that portion of damages for which he is accountable; conversely, the claimant's damages are diminished in proportion to his negligence.[21] A plaintiff may recover even if his negligence is greater than that of the defendant, but his recovery is diminished by the amount of his own negligence. In terms of apportionment, if a plaintiff is found guilty of ninety-nine percent of the fault he still recovers one percent of his losses.[22] The defendant's only escape from liability under the rule of pure comparative negligence is a finding of no fault on his part.[23]

The most severe criticism directed at pure comparative negligence is that it permits a wrongdoer to recover damages even if he is guilty of the greater fault.[24] Some writers feel that this result is contrary to the philosophy of our fault system, a system which is premised on the principle that all persons are responsible for their negligent acts and omissions. They find that such a result diminishes the impact of standards of conduct which, because they reflect the moral law, are socially desirable.[25] Others fear that under a pure comparative negligence statute the jury would feel compelled to give the plaintiff something in every case.

But, as Dean Prosser asserts, the court still has control over an unjustified apportionment; furthermore, a small recovery often would be less than the nuisance value of a suit.[26] Prosser and other commentators agree that pure comparative negligence is the superior rule of

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20. Delaware, Mississippi and Rhode Island have adopted this form of comparative negligence by legislative enactment. *See, e.g.*, MISS. CODE ANN. § 11-7-15 (Supp. 1972); R.I. GEN. LAWS § 9-20-4 (Supp. 1972). In Hoffmand v. Jones, 280 So. 2d 431 (Fla. 1973), the Florida Supreme Court replaced the rule of contributory negligence with that of pure comparative negligence. The court reasoned that since the doctrine of contributory negligence was not clear and free from doubt at the time Florida's statute adopting the common law of England was enacted, it was not made a part of the statute law of Florida but was a judicially adopted rule subject to judicial abrogation. *Id.* at 434.

21. *See* Flynn, *Comparative Negligence: The Debate*, 8 TRIAL 49 (1972) [hereinafter cited as Flynn].

22. *See* HEFT & HEFT, *supra* note 2, § 1.50.

23. *Id.*

24. HEFT & HEFT propose an example: If *A* has been damaged to the extent of $25,000 and he is 90% negligent, this would permit a recovery of $25,000 less 90%, or $2,500. If *B* was damaged in the same accident to the extent of $1,000 and was 10% at fault, he would recover $1,000 less 10% or $900.

25. *Id.*

26. Prosser, *supra* note 15, at 494.

apportionment and that nonpure forms of comparative negligence leave damages undivided in too many cases and often lead to appeals abounding in confusion.[27]

C. *Modified Comparative Negligence*

Nevertheless, most states which have abandoned the doctrine of contributory negligence have adopted a modified, or "nonpure," form of comparative negligence. One variation of this "nonpure" rule allows recovery to plaintiffs whose negligence is "not greater than" that of the defendant.[28] The more common form, however, permits only those plaintiffs whose negligence is "not as great as" the defendant's to recover.[29] Two states vary this formula by permitting a plaintiff to recover only when his negligence is "slight" relative to the defendant's "gross" negligence.[30]

III. IMPACT OF COMPARATIVE NEGLIGENCE IN PRACTICE

A. *Retroactive Applicability*

Comparative negligence will not apply to causes of action which arise before April 1, 1974. In those states in which the issue has been litigated, the courts have unanimously and unequivocally denied retroactive application to comparative negligence unless required by statute;[31] the new Act does not require retroactive applicability on its

27. *See* Prosser, *supra* note 15, at 508; Keeton, *Comment on Maki v. Frelk*, 21 VAND L. REV. 906, 911 (1968); Schwartz, *supra* note 9.

28. Three states follow this form of comparative negligence: New Hampshire, N.H. REV. STAT. ANN. § 507:7a (1970); Vermont, VT. STAT. ANN. tit. 12, § 1036 (1937); and Wisconsin, WIS. STAT. § 895 (1971).

29. Eight states follow this rule, but with individual variations: Arkansas, ARK. STAT. ANN. § 27-1730.1 (1947); Colorado, COLO. REV. STAT. ANN. § 41-2-14 (Supp. 1971); Georgia, GA. CODE ANN. § 105-603 (1968); Hawaii, HAWAII REV. STAT. § 663-31 (Supp. 1972); Maine, ME. REV. STAT. ANN. tit. 14, § 156 (1965); Massachusetts, MASS. GEN. LAWS ANN. ch. 231, § 85 (Cum. Supp. 1972); Minnesota, MINN. STAT. ANN. § 604.01 (1945); and Oregon, ORE. REV. STAT. § 18.470 (1953).

30. Nebraska, NEB. REV. STAT. § 25.1151 (1964); and South Dakota, S.D. COMPILED LAWS ANN. § 20-9-2 (1967).

31. *See* Fuller v. Illinois Central R.R., 100 Miss. 705, 56 So. 783 (1911); Brewster v. Ludtke, 211 Wis. 344, 247 N.W. 449 (1933); Reddell v. Norton, 225 Ark. 643, 285 S.W.2d 328 (1955). In other states the legislatures have expressly stated the statute either would apply retrospectively or prospectively.

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Hallows argued in a recent di
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B. *Application of the Pure*
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33. These hypothetical situatio

34. The case law supports this
procedure of comparing the plaintif
Pearson Appliance Store, 155 Neb.
Ins. Co., 210 Wis. 659, 246 N.W. 4

35. *See* Yazoo & M.V. R.R. v.

face. While no cases to the contrary have been found, Chief Justice Hallows argued in a recent dissenting opinion that a statutory modification of Wisconsin's comparative negligence rule to allow recovery by the plaintiff so long as his negligence was "not greater than" the defendant's was remedial in character and should have been applied to pending causes of action.[32]

B. Application of the Pure Comparative Negligence Statute to Specific Factual Situations

The operation of a pure comparative negligence statute can be demonstrated by reference to certain hypothetical situations.[33]

Case 1: Plaintiff is guilty of lesser negligence in a two-party action and defendant sustains no damage. Plaintiff sustains $10,000 damage. The jury finds plaintiff twenty-five percent at fault and defendant seventy-five percent at fault. Plaintiff's recovery is determined by comparing his negligence with the total negligence involved and reducing his recovery accordingly;[34] thus, plaintiff's negligence is twenty-five percent of the total, so he recovers seventy-five percent of his damages, or $7,500.

Case 2: Plaintiff is guilty of greater negligence in a two-party action and the defendant sustains no damages. Plaintiff sustains $10,000 damage. The jury finds plaintiff sixty percent at fault, defendant forty percent. Plaintiff's negligence is sixty percent of the total, so plaintiff's damages of $10,000 are reduced by sixty percent and he recovers $4,000.[35] Plaintiff would have had no recovery in a modified comparative negligence jurisdiction.

Case 3: Plaintiff is more negligent than one of two defendants in a three party situation. Defendant number one (*D*-1) and defendant number two (*D*-2) sustain no damage and plaintiff sustains $10,000

32. Holzem v. Mueller, 54 Wis. 2d 388, 195 N.W.2d 635 (1972) (Hallows, C.J., dissenting). Hallows further points out that a defendant, "has no vested rights in a tort defense, the merits of which are not determined until trial and upon which he did not and could not very well rely in causing injury to the plaintiff." *Id.* at 641. While the argument has merit, most courts have ignored it, giving no reason for doing so.

33. These hypothetical situations are taken from Schwartz, *supra* note 9, at 122—25.

34. The case law supports this method of calculation rather than the now discredited procedure of comparing the plaintiff's negligence to that of the defendant. *See* Murray v. Pearson Appliance Store, 155 Neb. 860, 54 N.W.2d 250 (1954); Cameron v. Union Auto. Ins. Co., 210 Wis. 659, 246 N.W. 420 (1933).

35. *See* Yazoo & M.V. R.R. v. Carroll, 103 Miss. 830, 60 So. 1013 (1912).

damage. Suppose plaintiff was forty percent negligent, *D*-1 was ten percent negligent and *D*-2 fifty percent negligent. Plaintiff's damages of $10,000 are reduced by his share of the total negligence, forty percent, and he obtains a judgment against *D*-1 and *D*-2 for $6,000. *D*-1 and *D*-2 will be jointly and severally liable to plaintiff; no right of contribution exists between joint tortfeasors in Washington.[36]

Case 4: A two-party action in which both parties sustain damages. Automobiles owned and driven by *A* and *B* collide. Each sustains $10,000 damage. *A* sues *B* and *B* files a counterclaim. *A* is found forty percent negligent and *B* is found sixty percent negligent. *A*'s negligence is forty percent of the total, so his damages of $10,000 are reduced by forty percent and *A* is entitled to recover $6,000 from *B*. Likewise, *B*'s damages of $10,000 are reduced by sixty percent and *B* is entitled to recover $4,000 from *A*. The question of setoff between *A* and *B* is discussed later.[37]

Case 5: Vicarious liability. Assume that a servant negligently drives his master's truck within the scope of his employment, and it collides with a car being negligently driven by defendant. Servant is guilty of twenty-five percent of the negligence, and defendant is guilty of seventy-five percent of the negligence. The master may recover his damages from the defendant, less twenty-five percent. Similarly, defendant may recover his damages from the master, less seventy-five percent. If the master is assumed not to be negligent in entrusting the truck to the servant, the calculations simply are performed between the servant and defendant, and the master is then substituted for the servant to determine his recovery.[38] But if the master were negligent in entrusting the truck to the servant, perhaps knowing that the servant was drunk, the master's recovery would be reduced by his own personal negligence plus that of his servant imputed to him under the doctrine of respondeat superior.[39]

C. *Standard of Apportionment*

A primary question arising under a comparative negligence statute

36. *See* discussion of contribution in text accompanying notes 114-17 *infra*.
37. *See* discussion of setoff in text accompanying notes 67-71 *infra*.
38. *See* Dobbs, *Act 191 Comparative Negligence*, 9 Ark. L. Rev. 357, 379 (1955) [hereinafter cited as Dobbs].
39. *Id.*

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D. *Special Verdicts*

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and answers which might appear in
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3. In operating his automobile
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the intersection? Yes.
4. If you answer Question 3 'Ye
gence a cause of the collision? Ye
5. If you answer all of the abo
What percentage of the total negli
cent. To plaintiff Jones? 40 perce

is whether it is the relative degree of causation or of fault which should be the basis for apportionment of damages. Although some cases reduce damages in proportion to causation,[40] the preferred position among commentators is that once sufficient causation is established, apportionment should be based on the comparative fault of the parties.[41] This is the position of the Wisconsin court; it has held that negligence is compared not on the basis of the kind or character of causal negligence, or the number of respects in which the parties were negligent, but upon each party's contribution to the total negligence causing the accident.[42] Certainly the jury is not required to attribute the same percentage of negligence to each party merely because each is guilty of the same kind of negligence.[43] In any event, a refined distinction between the extent to which the defendant's fault caused the accident and the extent to which he was negligent is likely to be beyond the ken of the jury.

D. Special Verdicts

The special verdict has been called the cornerstone of the comparative negligence concept.[44] Under a special verdict, the jury is required to determine as findings of fact the total amount of damages and the percentage of negligence attributable to each party; the judge then applies the law and apportions the damages.[45] This procedure is

40. Baird v. Harrington, 202 Miss. 112, 30 So. 2d 82 (1947).

41. *See* Prosser, *supra* note 15, at 481; Schwartz, *supra* note 9, at 125; Dobbs, *supra* note 38, at 361; and Bouchard, *Apportionment of Damages Under Comparative Negligence*, 54 Mass. L.Q. 125 (1972) [hereinafter cites as Bouchard].

42. Grana v. Summerford, 12 Wis. 2d 517, 107 N.W. 2d 463 (1961).

43. Strupp v. Farmers Mutual Auto. Ins. Co., 14 Wis. 2d 158, 109 N.W.2d 660 (1961).

44. Heft & Heft, *supra* note 2, § 8.10.

45. *See* Maloney, *supra* note 15, at 171-72; Prosser poses a series of specific questions and answers which might appear in a typical case under a special verdict procedure:

1. In operating his automobile at the time of and immediately preceding the collision, was the defendant Smith negligent with respect to the operation of his car? Yes.

2. If you answer Question 1 'Yes,' then answer this: Was the defendant Smith's negligence a cause of the collision? Yes.

3. In operating his automobile at the time of and immediately preceding the collision, was the plaintiff Jones negligent with respect to failure to stop before entering the intersection? Yes.

4. If you answer Question 3 'Yes,' then answer this: Was the plaintiff Jones's negligence a cause of the collision? Yes.

5. If you answer all of the above Questions 1, 2, 3, and 4 'yes,' then answer this: What percentage of the total negligence was attributable to defendant Smith? 60 percent. To plaintiff Jones? 40 percent.

useful to assure that the jury does not apportion damages on some basis other than a comparison of fault.

Most commentators support the use of special verdicts, especially with the pure form of comparative negligence.[46] Although the Washington Act does not require special verdicts,[47] Washington courts have discretionary power to require a jury to return a special verdict.[48] In addition to the value of special verdicts as an aid to apportionment, a special verdict requires the jury to find the facts without regard to the actual outcome of the case.[49] It is claimed that this procedure provides a method for controlling the jury in order to prevent excess sympathy, prejudice, or bias from tainting the fact finding process.[50] Also, the special verdict makes it possible to localize error and save sound portions of a verdict, whereas a defect in part of a general verdict destroys the whole verdict.[51]

Although it is difficult in cases containing numerous complex issues to formulate satisfactory special verdicts either in the form of fact questions or fact findings,[52] a general verdict does not insure that the jury understood or followed instructions.[53] Nevertheless, special verdicts have been opposed as making it difficult for juries to reach agreement,[54] and as limiting tration of justice.[55]

E. *Multiple Parties*

Multiple wrongdoers are j they cause, and the injured p ants.[56] In theory, the only sa tiple party accident through parties into court in a single cate the damages based on plaintiffs will do well to avo danger of jury confusion in ants.[57]

F. *Effect on Conflict of La*

There is no uniform ru choice of law conflicts betv negligence and those apply negligence.[58] Some courts h statute is in effect where th forum court.[59] The rationa negligence, by granting a common law to persons co stantive rights of litigants;[6 traditional conflict of laws where the wrong occurred

6. What is the amount of damages plaintiff Jones has sustained? $10,000. Prosser, *supra* note 15, at 497–98.

46. Ghiardi and Hogan. *Comparative Negligence*, 18 DEFENSE L.J. 537 (1969); Kirchen, *Unfairness of "Mississippi Type" Comparative Negligence*, 2 FOR THE DEFENSE 66 (1970); HEFT & HEFT, *supra* note 2, § 8.10; Prosser, *supra* note 15, at 497; Maloney, *supra* note 15, at 171–72; Bouchard, *supra* note 41; Note, *Comparative Negligence, A Look at the South Dakota Approach*, 14 S.D. L. REV. 92 (1969).

Mississippi utilizes general verdicts rather than special verdicts in applying its pure comparative negligence statute. Such use of general verdicts in comparative negligence actions has been criticized on the ground that it is not possible to determine whether the jury does, in fact, diminish the recovery it awards in proportion to the negligence attributed to the person injured. *See* HEFT & HEFT, *supra* note 2, § 3.310.

47. *See* text accompanying note 3 *supra*.

48. (a) Special Verdicts. The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answers or may submit written forms of the several special findings which might properly be made under the pleadings and evidence . . . .

WASH. SUPER. CT. (CIV.) R. 49 (1972).

49. *See* HEFT & HEFT, *supra* note 2, § 8.10.

50. *See* Maloney, *supra* note 15, at 171–72.

51. *See* Driver, *The Special Verdict—Theory and Practice*, 26 WASH. L. REV. 21, 22 (1951) [hereinafter cited as Driver].

52. *See* Driver, *supra* note 51, at 24; HEFT & HEFT, *supra* note 2, § 1.70; Schwartz, *supra* note 9, at 134.

53. *See* HEFT & HEFT, *supra* note 2, § 1.70.

54. *See* Driver, *supra* note 51.

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56. *See* Maloney, *supra* note

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60. *See* Chisum v. Phelps, 22 national Ry., 252 N.Y. 127, 169 N

61. *See* RESTATEMENT OF CO

agreement,[54] and as limiting the historic role of juries in the administration of justice.[55]

E. Multiple Parties

Multiple wrongdoers are jointly and severally liable for the injuries they cause, and the injured party has the right to join them as defendants.[56] In theory, the only satisfactory method of dealing with a multiple party accident through comparative negligence is to bring all the parties into court in a single action, apportion the fault and then allocate the damages based on this apportionment. However, in practice plaintiffs will do well to avoid whenever possible the complexities and danger of jury confusion inherent in the joinder of multiple defendants.[57]

F. Effect on Conflict of Laws

There is no uniform rule by which forum courts have resolved choice of law conflicts between jurisdictions embracing comparative negligence and those applying the common law rule of contributory negligence.[58] Some courts have held that if a comparative negligence statute is in effect where the tort occurred, it must be applied by the forum court.[59] The rationale of these decisions is that comparative negligence, by granting a right of recovery not recognized by the common law to persons contributorily negligent, directly affects substantive rights of litigants;[60] consequently, if such a court follows the traditional conflict of laws rule that the substantive law of the place where the wrong occurred governs the action,[61] it will look to that law

54. *See* Driver, *supra* note 51, at 134.
55. 5 J. Moore, Federal Practice § 49.05 (1960).
56. *See* Maloney, *supra* note 15, at 164-65.
57. Multiple party cases are often extremely complex factually. Apportionment of fault and assessment of damages involving three or more parties is a monumental task for the typical jury, especially with only limited time available. When special verdicts are used, they may approach a complexity and number which render the jury totally ineffective in the allocation process. *See* Prosser, *supra* note 15, at 503—04.
58. *See* cases collected at 57 Am. Jur. 2d, *Negligence* § 430 (1971).
59. *See* Mississippi Power & Light Co. v. Whitescarver, 63 F.2d 928, 929 (5th Cir. 1934), classifying Mississippi's comparative negligence statute as substantive; *see also* Intagliata v. Shipowners & Merchants Towboat Co., 26 Cal. 2d 365, 159 P.2d 1, 8 (1945).
60. *See* Chisum v. Phelps, 228 Ark. 936, 311 S.W.2d 297 (1958); Fitzpatrick v. International Ry., 252 N.Y. 127, 169 N.E. 112 (1929).
61. *See* Restatement of Conflicts § 377 (1934).

in determining whether the doctrine of contributory negligence or comparative negligence will control.[62] The Washington court follows the traditional place of wrong rule,[63] but since it has not yet characterized comparative negligence as a matter of substance or procedure, it is impossible to predict how the court will apply the law in such a case.

The Mississippi court has replaced the traditional, inflexible conflict of laws rule in tort cases with what is known as the "most significant relationship rule."[64] Using this doctrine, the court will apply its own comparative negligence law where the forum state has a more significant relationship to the occurrence and parties, even though the accident causing the injuries took place in another state adhering to the common law contributory negligence doctrine.[65] Conversely, under some modern conflicts rules, the court may decide to apply a comparative negligence statute of the place of the wrong, rather than the common law rule of the forum, on the ground that the foreign jurisdiction has a stronger interest in having its law applied than does the forum.[66]

G. *Setoff*

Under Washington law, the court has discretion to allow a setoff of one judgment against another when warranted by considerations of equity.[67] Some commentators oppose the use of setoffs in conjunction with the pure form of comparative negligence,[68] and Rhode Island has responded to this criticism by incorporating in its pure comparative negligence statute a provision prohibiting setoffs.[69]

62. *See* Tri-State Transit Co. v. Monday, 194 Miss. 714, 12 So. 2d 920, 922 (1943); Mississippi Power & Light Co. v. Whitescarver, *supra* note 59; Chism v. Phelps, *supra* note 60; Fitzpatrick v. International Ry., *supra* note 60.

63. *See* Maag v. Voykovich, 46 Wn. 2d 302, 280 P.2d 680 (1955); Stone Machinery Co. v. Kessler, 1 Wn. App. 750, 460 P.2d 651 (1970).

64. *See* RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 145 (1971).

65. *See* Mitchell v. Craft, 211 So. 2d 509, 516 (Miss. 1968).

66. *See* Frummer v. Hilton Hotels Int'l, 60 Misc. 2d 840, 304 N.Y.S.2d 335, 344 (N.Y. App. 1969).

67. *See* Spokane Security Finance Co. v. Bevans, 172 Wash. 418, 20 P.2d 31, 32 (1933).

68. *See* Flynn, *supra* note 21, at 52; Schwartz, *supra* note 9, at 126. Counterclaims, and, consequently, setoff problems, do not arise in connection with the "not as great as" and "slight-gross" forms of comparative negligence, as the plaintiff is permitted to recover only if his contributory negligence is less than that of the other party, thus precluding recovery by the other party. *See* 11 ARK. L. REV. 71, 74 (1956).

69. *See* R.I. GEN. LAWS § 9-20-4.1 (1956).

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70. *See* Flynn, *supra* note 21.

71. *See* Dobbs, *Comparative*

Whether setoff is permitted or not becomes important, of course, in the context of insurance claims. If both plaintiff and defendant were found equally at fault and sustained equal damages, under pure comparative negligence each would recover one-half of his damages from the other party's insurer. If setoffs are permitted, however, the two judgments would cancel each other out. This result, although pleasing to insurance companies, would negate much of the intended advantage of the pure comparative negligence rule.[70]

Proponents of setoff, on the other hand, suggest that the defendant's insurer can not be expected to argue its client's counterclaim vigorously in the absence of setoff, because proof of its client's damages would not ultimately benefit the insurer by reducing or cancelling the plaintiff's judgment. The insurer's failure to establish a strong counterclaim on behalf of his client could be very damaging to a defendant when the plaintiff's recovery exceeded the limits of the defendant's policy and reached him personally.[71]

Encumbering the pure comparative negligence rule with setoff would result in insurance companies paying less than the total damages apportioned to their assureds; this vitiates the recovery of damages expected from the comparison of negligence and allows the liability insurer to ignore part of the risk it contracted to bear.

IV. COMPARATIVE NEGLIGENCE AND ITS EFFECT ON COMMON LAW CONCEPTS

Aside from these changes in the mechanics of negligence law, the change to comparative negligence also may arouse controversy over the application of such traditional common law doctrines and concepts as last clear chance, assumption of risk, *res ipsa loquitur* and degrees of negligence. In Washington, the application of contribution and indemnification seem well settled.

A. Last Clear Chance

Before the adoption of comparative negligence statutes, one of the tools most frequently employed to overcome the contributory negli-

70. *See* Flynn, *supra* note 21, at 52.
71. *See* Dobbs, *Comparative Negligence*, 9 Ark. L. Rev. 357, 383 (1955).

gence rule as a complete bar to recovery was the doctrine of last clear chance.[72] This doctrine has been applied to a number of recurring factual situations to prevent the plaintiff's contributory negligence from barring recovery. In the first class of cases the defendant actually perceived that the plaintiff or his property was in peril, and had the opportunity to avoid injuring him, yet made no effort to do so. Courts are unanimous in allowing recovery in this situation.[73] In the second class of cases the defendant did not actually see the plaintiff but, if he had been diligent, could have seen the plaintiff's helpless condition and avoided injuring him.[74] The rationale for recovery in both of these factual situations is that the defendant was the last wrongdoer and hence the proximate cause of the plaintiff's injury.[75]

But this "last wrongdoer" logic fails in a third major class of cases in which only the plaintiff, but for his continued inattentiveness, can realistically be said to have had the last chance to avoid the accident.[76] These decisions, which nonetheless allow the plaintiff to recover, can-

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72. The doctrine of last clear chance originated in the old English case of Davies v. Mann, 152 Eng. Rep. 588 (1842), wherein the plaintiff left his ass in the highway and the defendant struck it with his wagon. Dean Prosser, a persistent critic of the doctrine, informs us that this is the reason it later became known as the "jackass doctrine." W. PROSSER, LAW OF TORTS § 66, at 427 n.3 (4th ed. 1971) [hereinafter cited as PROSSER].

73. Cases in this category are legion. *But see* PROSSER, *supra* note 72, and cases collected in Annot., 92 A.L.R. 47, 83–86 (1934).

74. The Washington court recognized the applicability of this branch of the doctrine in Mosso v. Stanton Co., 75 Wash. 220, 134 P. 941 (1913). In that case the court stated that the doctrine of last clear chance will apply (1) where the defendant actually sees the peril but fails to exercise normal caution to avoid injuring him and (2) where the defendant does not actually see the plaintiff's peril but by the exercise of reasonable care should have seen his peril. However, in order for the plaintiff to recover in this latter case it will be necessary that the plaintiff's negligence shall have ceased by the time of the accident. For cases dealing with the second prong of last clear chance, see Leftridge v. Seattle, 130 Wash. 541, 228 P. 302 (1924); Lee v. Cotton Bros. Co., 1 Wn. App. 202, 460 P. 2d 694 (1969).

75. *See* James, *Last Clear Chance: A Transitional Doctrine*, 47 YALE L.J. 704, 710 (1937) [hereinafter cited as James]:

> The wrong of the plaintiff is past and has culminated—it has come to rest, albeit in danger. After he could no longer help himself, the plaintiff has been guilty of no fresh wrongdoing, act or omission . . . . The defendant's negligence is in the past but occurs later in point of time than plaintiff's does, and there is nothing artificial or forced in calling him the last wrongdoer.

76. This class of cases is best characterized by the old Washington case of Locke v. Puget Sound Ry., 100 Wash. 432, 171 P. 242 (1918). In *Locke* a man hard of hearing approached a street car track without looking for cars and was struck when he walked into the oncoming car's path. Had the plaintiff bothered to look, he could easily have avoided the accident by stepping from the path. The street car driver had looked and began sounding his horn, but foolishly did not attempt to apply the brakes until it was too late for him to stop. Whose negligence was "last"? Clearly the plaintiff's, for by merely stepping aside right up to the moment of impact he could have avoided the accident while an application of the brakes by the motorman at such a late time would have been useless. Nevertheless, the Washington court held the
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not be justified on the usual ground that the defendant was the proximate cause of the accident. Because of the doctrine's logical inconsistency in this third class of cases and because its application in all three classes of cases has the effect of placing the *entire* loss on the defendant despite the plaintiff's negligence, most writers have urged the doctrine be discarded with the passage of comparative negligence statutes.[77]

Nevertheless, not all states which have adopted comparative negligence statutes have done away with the doctrine. Last clear chance and comparative negligence exist side by side in Nebraska,[78] South Dakota,[79] and Georgia.[80] In Arkansas[81] and Mississippi[82] it is unclear whether the doctrine has been retained. The Wisconsin Supreme

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less, the Washington court held the doctrine applicable to such a situation and the railway was held liable. *Locke* is cited in James, *supra* note 75, at 713.

The *Locke* decision was subsequently followed in Norton v. City of Seattle, 113 Wash. 408, 194 P. 373 (1920), another street car accident case wherein a deaf and dumb child darted out in front of the streetcar and although seen, was struck anyway when all the gripman did was to sound the gong without slowing down.

77. *See, e.g.*, PROSSER, *supra* note 72, at 427; James, *supra* note 75; and MacIntyre, *The Rationale of Last Clear Chance*, 53 HARV. L. REV. 1225 (1949). In Professor MacIntyre's words, "The whole last clear chance doctrine is only a disguised escape, by way of comparative fault, from contributory negligence as an absolute bar, and serves no useful purpose in jurisdictions which have enacted apportionment statutes." *Id.* at 1251.

78. *See* Bezdek v. Patrick, 170 Neb. 522, 103 N.W.2d 318 (1960).

79. *See* Ulach v. Wyman, 78 S.D. 504, 104 N.W.2d 817 (1960).

80. Southland Butane Gas Co. v. Blackwell, 211 Ga. 665, 88 S.E. 2d 6 (1955). The Georgia result, it should be noted, is dictated by the peculiarity of that state's statute which declares:

> If the plaintiff by ordinary care could have avoided the consequences to himself caused by the defendant's negligence, he is not entitled to recover. In other cases the defendant is not relieved, although the plaintiff may in some way have contributed to the injury sustained.

GA. CODE ANN. § 105-603 (1968).

The first sentence of the quoted statute has been construed as a plaintiff's last clear chance doctrine. *See* Southern Ry. v. Wilbanks, 67 F.2d 424 (5th Cir. 1933); United States v. Fleming, 115 F.2d 314 (5th Cir. 1940). The second sentence is the basis for comparative negligence in Georgia. For an article criticizing the retention of last clear chance in Georgia, see Note, 1 GA. B.J. 500, 505 (1964), wherein the author states that the statute, by retaining the last clear chance doctrine, encroaches on and to that extent impairs the symmetry of the rule of comparative negligence.

81. *See* Ed Hopson Produce Co. v. Munoz, 230 Ark. 179, 321 S.W.2d 203 (1959) (dicta indicating that, had the factual situation been one in which the doctrine of "discovered peril" (the equivalent of last clear chance) could properly have been applied, the trial judge would have erred in refusing to instruct the jury on the doctrine). *But see* Reppeto v. Raymond, 172 F. Supp. 786 (W.D. Ark. 1959) (dicta).

82. Several federal courts construing the Mississippi statute have concluded that the doctrine, while of diminished importance, is still alive in that state. *See* Illinois Central R.R. v. Underwood, 235 F.2d 868 (5th Cir. 1956), and Brand v. Baker, 324 F.2d 213 (5th Cir. 1963), in which the court assumed the doctrine applied but found it inapplicable to the factual situations before the court.

ically dissimilar contexts.[89] Despite some apparent vacillation,[90] the Washington court has recognized the doctrine in most situations. Nevertheless, in the master-servant setting the doctrine has been explicitly abrogated[91] and there are indications it will also be held to be unavailing in others.[92] Where the doctrine does survive, the Washington court until recently had compounded the confusion by distinguishing assumption of risk from the closely analogous if not identical maxim of *volenti non fit injuria*, holding that the former applies to cases involving an express consensual acceptance of a risk known or unknown at the time of agreement, while the latter applies only to a unilateral assumption of a known risk.[93]

With the adoption of a comparative negligence statute, assumption of risk logically should be abandoned; the plaintiff's voluntary exposure to an appreciated risk merely should increase his proportion of fault for computation purposes. Nevertheless, this reasoning has not been uniformly adopted by the courts. Mississippi,[94] Georgia,[95] South

89. Dean Prosser divides assumption of risk into three main categories: (1) Where the plaintiff in advance has given his consent to relieve the defendant of a legal duty towards him; (2) where the plaintiff voluntarily enters into some relation with the defendant, with knowledge the defendant will not protect him against risk; and (3) where the plaintiff already is aware of the risk created by the defendant's negligence but nevertheless proceeds to encounter it. PROSSER, *supra* note 72, at 439.

90. It was thought at one time that the doctrine had been put to rest in Washington. In Feignbaum v. Brink, 66 Wn. 2d 125, 401 P.2d 642 (1965), the court held the doctrine of assumption of risk unavailable in a landlord-tenant situation where the lessor was under a duty to repair and maintain common areas. Language in the case indicated that the court might have been willing to abrogate the doctrine completely. A case decided soon after Feignbaum, however, makes clear that a broad reading of the decision would be incorrect and that the doctrine has survived. *See e.g.*, Perry v. Seattle School Dist., 66 Wn. 2d 800, 405 P.2d 589 (1971).

91. Siragusa v. Swedish Hosp. 60 Wn. 2d 310, 373 P.2d 767 (1962). In *Siragusa* plaintiff nurse was injured at her place of employment when a door with a hook on it was unexpectedly opened by a patient and the hook struck her on the upper portion of her back. In reversing the judgment of dismissal in favor of the defendant hospital, the court held that if an employer negligently fails in his duty to furnish his employees with a reasonably safe place to work, the employee will not be denied recovery simply because he was aware or should have known of the dangerous condition. Rather, knowledge and voluntary exposure to the risk were held properly considered as factors in determining whether the employee was contributorily negligent.

92. *See, e.g.*, Feignbaum v. Brink, *supra* note 90.

93. *See* Hogenson v. Service Armament Co., 77 Wn. 2d 209, 215 n.2, 461 P.2d 311 (1969). *See also* Walsh v. West Coast Coal Mines, 31 Wn. 2d 396, 197 P.2d 233 (1948); Bailey v. Safeway Stores, 55 Wn. 2d 730, 349 P.2d 1077 (1960). *But see* Lyons v. Redding Construction Co., 83 Wn. 2d 86, 515 P.2d 821 (1973).

94. While Mississippi retains the doctrine in most cases, the Legislature has made the doctrine inapplicable in the master-servant relationship. *See* MISS. CODE ANN. § 1456 (1917). For a recent Mississippi decision to the effect that assumption of risk will still be applied absent such a relationship, see United Roofing and Siding Co. v. Seefeld, 222 So. 2d 406 (Miss. 1969).

95. In Georgia the assumption of risk by the plaintiff or plaintiff's deceased is an-

Dakota,[96] and Arkansas[97] all apparently retain the doctrine as a complete bar to recovery. Wisconsin has abolished it. Because the opinions by the Wisconsin court provide the most lucid analysis, this note will deal only with the experience of that state.

Wisconsin's abandonment of assumption of risk had its genesis in *McConville v. State Farm Mutual Automobile Insurance Co*,[98] in which a guest in the defendant's car sued the driver for injuries sustained as a result of negligent driving. Both the plaintiff and defendant had been drinking at a tavern shortly before the accident and were on

other instance, along with last clear chance, where the comparison under the statute will not be made. When the plaintiff knowingly and voluntarily puts himself in obvious peril or exposure to injury without some reason of necessity or propriety in so doing he may not recover notwithstanding the fact the defendant negligently injured him. For statements of this general proposition, see Columbia R.R. v. Asbell, 133 Ga. 573, 66 S.E. 902 (1909); Southland Butane Gas Co. v. Blackwell, 211 Ga. 665, 88 S.E.2d 6 (1955); and, more recently, Henry Grady Hotel Corp. v. Watts, 119 Ga. App. 251, 167 S.E.2d 205 (1969).

96. Actually the authority in South Dakota is very weak. Raverty v. Goetz, 82 S.D. 192, 143 N.W. 2d 859 (1966), does make passing reference, however, to the fact that defendant's negligence, plaintiff's negligence, proximate causation and assumption of risk are all matters to be decided by the trier of fact.

97. Although there are no reported Arkansas state court cases in which the doctrine has been challenged, several federal courts in Arkansas reluctantly have held that the doctrine retains its vitality. The leading case is Harris v. Hercules, Inc., 328 F. Supp. 360 (E.D. Ark. 1971), *aff'd*, 455 F.2d 267 (8th Cir. 1972), in which an action was brought for personal injuries sustained by the plaintiff when the boom of a crane he was operating came into contact with an uninsulated high voltage power line. Plaintiff squarely presented the court with the argument that with the adoption of the comparative statute Arkansas would preclude use of the doctrine as a complete bar to recovery. While recognizing that assumption of risk was inconsistent with the philosophy of comparative negligence, Judge Eisele felt bound by the state courts' seemingly uncritical acceptance of the doctrine and held that the plaintiff was completely barred from recovery.

As Judge Eisele points out, language in two Arkansas state cases, J. Paul Smith Co. v. Tipton, 237 Ark. 486, 374 S.W.2d 176 (1964), and Hass v. Kessell, 245 Ark. 361, 432 S.W.2d 842 (1968), indicate that assumption of risk would not be applicable to a guest's suit against his host. The judge is correct in his conclusion, however, that this reading would be inconsistent with the actual disposition of the claim that arose in those cases and with language in other state cases.

The Eighth Circuit reluctantly affirmed *Harris*, noting that two federal judges in Arkansas were now in agreement that assumption of risk was still viable in Arkansas and that an appellate court should defer to a local federal judge's view of state law rather than seek to substitute its own rule. The other decision referred to is Rhoads v. Service Machines Co., 329 F. Supp. 367 (E.D. Ark. 1971) wherein Judge Henley unequivocally states:

> The Arkansas comparative negligence statute . . . did not abolish the common law defense of assumption of risk, and it now seems established in Arkansas that in most tort situations assumption of risk, if established, is a complete defense to an injured person's claim for damages.

Id. at 371 n.2.

98. 15 Wis. 2d 374, 113 N.W.2d 14 (1962).

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102. *See Harris*, 328 F. Supp

their way to a Christmas party when it occurred. The jury found the driver eighty-five percent negligent and the plaintiff guest fifteen percent negligent. However, it also found the guest to have assumed the risk and thus barred from recovery. The Wisconsin court reversed and held a guest's assumption of risk no longer to be a separate defense; if a guest's exposure of himself to a particular hazard was unreasonable, such conduct was negligent and subject to the comparative negligence statute. Although *McConville* dealt with only the host-guest situations,[99] the subsequent case of *Dippel v. Sciano*[100] extended the rule to products liability. The court observed that assumption of risk by a user of consumer products, resulting from a failure to exercise reasonable care, could be considered negligence by the plaintiff to be compared to the defendant's negligence.

Unfortunately, in neither decision was the best reason for abrogating the doctrine well articulated—the fact that retention of assumption of risk, "in all probability . . . defeats the basic intention of the statute since it continues an absolute bar in the case of one important, and very common, type of negligent conduct on the part of the plaintiff."[101] Additionally, it could have been pointed out that in those states which have retained both the doctrine and a comparative negligence statute, a good deal of confusion has reigned, confusion which at least one federal judge has described as "the natural result of permitting the utilization of the assumption of risk doctrine to be extended to areas where it should have no applicability, adding, as it does, nothing to a straightforward analysis in terms of negligence and contributory negligence—nothing, that is, except confusion and anomalous results."[102]

The Washington Supreme Court has apparently accepted this rea-

99. The court noted also that present day customs and community attitudes toward the use of the automobile are out of line with the old notion that a guest rides as a mere supplicant. 113 N.W.2d at 16.

100. 37 Wis. 2d 443, 155 N.W. 2d 55 (1967). In *Dippel* the plaintiff and others were skidding a pool table along a tavern floor to get it into a playing position. One of the legs collapsed, crushing plaintiff's foot, and he sued both the tavern owner and the manufacturer.

While the strict liability discussion in *Dippel* is dicta, a later case, Gies v. Nissen Corp., 57 Wis. 2d 371, 204 N.W. 2d 519 (1973), held products liability actions were subject to the comparative negligence rule. For the same holding, see Hagenbuck v. Snap-On-Tools Corp. 339 F. Supp. 676 (W.D. N.H. 1972).

101. *See* PROSSER, *supra* note 72, at 457.

102. *See Harris*, 328 F. Supp. at 364.

soning as well as of Wisconsin's interpretation of its statute in *McConville*, and has indicated in dicta that the doctrine will be abandoned once the new Act becomes effective.[103] Again, it should be emphasized that those elements which have constituted assumption of risk will still be considered by the jury, but in a weighing of fault rather than as an absolute bar to recovery.

C. *Res Ipsa Loquitur*

Under the doctrine of *res ipsa loquitur*, in certain circumstances the trier of fact is allowed, but not compelled, to infer that the defendant was negligent. Three conditions generally are required for the doctrine to apply: (1) The accident must be of a kind which ordinarily does not occur in the absence of someone's negligence, (2) it must be caused by an agency or instrumentality within the "exclusive control" of the defendant and (3) it must not be caused by any voluntary act or contribution on the part of the plaintiff.[104]

The Wisconsin court held in *Turk v. H. C. Prange Co.*[105] that passage of the comparative negligence statute negated the third requirement of the doctrine and that negligence by the plaintiff is considered in comparing the respective negligences rather than in applying *res ipsa loquitur*. A federal court in Mississippi,[106] on the other hand, took the position that *res ipsa loquitur* was not applicable in an action where the evidence indicated that the plaintiff's deceased had been contributorily negligent.

In Washington, where the primary effect of the doctrine is to protect the plaintiff from a nonsuit, the Wisconsin approach, retaining

103. *See* Lyons v. Redding Construction Co., 83 Wn. 2d 86, 95–96, 515 P.2d 821, 826 (1973).

104. W. PROSSER, LAW OF TORTS, § 39 (3d ed. 1964); 9 J. WIGMORE, EVIDENCE § 2509 (3d ed. 1940). The Washington court, while cognizant of the pitfalls of such a formulation, has accepted the stated requirements. *See, e.g.*, Horner v. Northern Pac. Beneficial Ass'n. Hosp., Inc., 62 Wn. 2d 351, 382 P.2d 518 (1963); Miles v. St. Regis Paper Co., 77 Wn. 2d 828, 467 P.2d 307 (1970).

105. 18 Wis. 2d 547, 119 N.W.2d 365 (1963). In *Turk* a mother was injured when she fell while attempting to release her son whose galosh had become caught in a department store escalator. *See also* Ghiardi, *Res Ipsa Loquitor in Wisconsin*, 39 MARQ. L. REV. 361 (1956). For more recent Wisconsin cases following the *Turk* decision, see Fehrman v. Smirl, 20 Wis. 2d 1, 121 N.W.2d 255 (1963) (medical malpractice); Welch v. Neisius, 35 Wis. 2d 682, 151 N.W.2d 735 (1967) (fertilizer bags fell on plaintiff).

106. Fournier v. United States, 220 F. Supp. 752 (S.D. Miss. 1963).

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110. The *Adkisson* court def
Id. at 684 n.110, 258 P.2d at 466.

111. *See, e.g.*, Hansen v. Paul

only the first two elements of the doctrine, is preferable.[107] Presumably, the reason for the third requirement was that little reason exists to permit a case to go to the jury on *res ipsa loquitur* if the plaintiff is barred from recovery because of his contributory negligence. With the passage of the new Act this rationale is no longer present.

D. *Degrees of Negligence*

It is well established in Washington that the contributory negligence of a plaintiff does not bar his recovery for "wilful or wanton" conduct by the defendant. While other jurisdictions take a contrary view,[108] in Washington the leading case of *Adkisson v. Seattle*[109] has been consistently followed. It is logical to assume, therefore, that under comparative negligence conduct which is wilful or wanton will not be subject to comparison under the Act. A defendant can scarcely seek to mitigate his own liability for striking the plaintiff by attempting to show that the plaintiff was clumsy.

On the other hand, "wilful or wanton" misconduct—which has been defined as including a mental state of intention or at least conscious awareness that injury would "*likely*" or "*probably*" result—is not the same as "gross" negligence.[110] In Washington, gross negligence has been defined as failure to exercise "slight care."[111]

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107. *See* Zukowsky v. Brown, 79 Wn. 2d 586, 488 P.2d 269 (1971). The court points out that in some instances the effect is stronger. For example, in some cases, absent exculpatory evidence presented by the defendant, the plaintiff is entitled to a directed verdict. In other cases the inference of negligence is so strong that a legal presumption arises which the defendant must overcome by a preponderance of evidence. Finally, there can be cases where the presumption is conclusive.

108. *See, e.g.*, Billingsly v. Westrac Co. 365 F.2d 619 (8th Cir. 1966), interpreting Arkansas law. Judge Blackmun, writing for the court, stated that as used in Arkansas "willful and wanton" are viewed simply as a brand of negligence and are thus subject to that state's comparative negligence law. Judge Blackmun noted in passing that "the purpose of a comparative negligence statute is thwarted whenever there is a judicial characterization of an act as something other than negligence." *Id.* at 623. *See also* the Arkansas state case of Harkrider v. Cox, 232 Ark. 165, 334 S.W.2d 875 (1966), *quoted* in *Billingsly*.

109. 42 Wn. 2d 676, 258 P.2d 461 (1953). The court distinguished wilful from wanton misconduct on the grounds that the former is characterized by an intent to do the act plus conscious awareness that it will probably cause injury while the latter is characterized by intent to do the act plus total indifference as to whether the act will cause injury.

110. The *Adkisson* court defined "wilfulness" and "wantonness" in these terms. *Id.* at 684 n.110, 258 P.2d at 466.

111. *See, e.g.*, Hansen v. Pauley, 67 Wn. 2d 345, 407 P.2d 811 (1965).

The distinction between "wilful or wanton" misconduct and "gross" negligence, seemingly slight, becomes important chiefly for purposes of the Washington host-guest statute which allows a guest to recover for either "intentional" misconduct or "gross negligence."[112] Adoption of the new Act is likely to cause some confusion, because while "intentional" misconduct seems identical to "wilful and wanton" misconduct and thus not subject to comparison, "gross" negligence is still a form of negligence and thus should be subject to comparison.[113] This distinction may require the trier of fact to specify whether the guest is allowed o recover because the host's conduct was "intentional" or because it was "grossly negligent." Only in the latter case should comparison with any negligence by the guest be made.

E. Contribution and Indemnification

Indemnification and contribution are two postjudgment methods by which a losing defendant can shift the burden of liability to another party. Indemnification shifts the entire liability imposed by a judgment onto the shoulders of the indemnifier;[114] contribution shifts only

112. WASH. REV. CODE § 46.08.080 (1863) provides:

No person transported by the owner or operator of a motor vehicle as an invited guest or licensee, without payment for such transportation, shall have cause of action for damages against such owner or operator for injuries, death or loss, in the case of accident, unless the accident was intentional on the part of the owner or operator, or the result of said owner's or operator's gross negligence or intoxication, and unless the proof of the cause of action is corroborated by competent evidence or testimony independent of, or in addition to, the testimony of the parties to the action; Provided, That this section shall not relieve any owner or operator of a motor vehicle from liability while it is being demonstrated to a prospective purchaser.

113. *See* Stevens v. Murphy, 69 Wn. 2d 939, 947-48, 421 P.2d 668, 673 (1966), where the court stated: "Gross negligence . . . differs in *kind* from 'willful misconduct'; the former, by definition, is still negligence—a lack of care—although of a degree substantially greater than that which adheres in ordinary negligence." (emphasis added) *Stevens* involved an action by a child against his parent wherein the court held that in order to recover against the parent, the child must show wilful or wanton misconduct rather than simply gross negligence. There is no reason to believe, however, that the meaning of willful and wanton will differ under the host-guest statute. *See, e.g.*, Nist v. Tudor, 67 Wn. 2d 322, 407 P.2d 798 (1965).

114. In Washington, when the tortfeasors who have caused injury to a third person are not *in pari delicto*, the negligence of one being primary or active while the negligence of the other is passive, if the party guilty of the passive negligence is held liable he is entitled to indemnity from the wrongdoer guilty of the primary negligence. *See, e.g.*, Rufener v. Scott, 46 Wn. 2d 240, 280 P.2d 240 (1955). If on the other hand the party guilty of active negligence is held liable, he is not entitled to indemnity from the tortfeasor guilty of only passive negligence. *See, e.g.*, Reefer Queen Co. v. Marine Construction, 73 Wn. 2d 783, 440 P.2d 453 (1968).

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117. *See* Note, *Comparative*
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a portion of the loss. An indemnifier simply steps into the indemnified party's shoes after the negligence between the plaintiff and the indemnified party has been apportioned. Thus, the comparative statute should have no effect on indemnification.

Contribution, in those jurisdictions which permit it, shifts only a portion of the liability for a judgment. When judgment is had against only one of two or more joint tortfeasors, the party held liable is entitled to a pro rata contribution from each of the other liable parties (for example, if three parties are liable and one is forced to pay $12,000, he is entitled to $4,000 from each of the other two parties). This rule of pro rata contribution has been criticized for its premise, false in many instances, that all the tortfeaors were equally at fault. To prevent the anomaly of having a comparative negligence statute but a rule of contribution which imposes on each defendant a pro rata liability regardless of his degree of fault, the Wisconsin court has adopted a rule that the contribution of each should be apportioned according to the percentage of negligence attributed to each.[115]

Washington courts, however, have not accepted even the traditional pro rata rule of contribution.[116] Unless the present rule is changed, therefore, it will be possible for a plaintiff who is five percent negligent and damaged to the extent of $10,000 by *D*-1 and *D*-2 to proceed against *D*-1 who is five percent negligent rather than *D*-2 who is ninety percent negligent and recover $9,500. *D*-1 will be unable to seek contribution from *D*-2. The court might mitigate this obviously unjust outcome, even without permitting contribution among tortfeasors, by comparing the plaintiff's negligence only with the negligence of that defendant he has chosen to hold responsible.[117]

115. *See* Bielski v. Schulze, 16 Wis. 2d 1, 114 N.W.2d 105 (1962).

116. *See, e.g.*, City of Tacoma v. Bonnell, 65 Wash. 505, 118 P. 642 (1911); Seattle v. Peterson & Co., 99 Wash. 533, 170 P. 140 (1918). This rule against contribution has been criticized by PROSSER, *supra* note 72, at 307, as permitting "the entire burden of a loss, for which two defendants were equally, unintentionally responsible to be shouldered onto one alone, according to the accident of a successful levy of execution, the existence of liability insurance, the plaintiff's whim or spite, or his collusion with the other wrongdoer, while the latter goes scot free."

117. *See* Note, *Comparative Negligence in Wyoming*, 8 LAND & WATER L. REV. 596 (1973) and Campbell, *Ten Years of Comparative Negligence*, 1971 WIS. L. REV. 289. As these articles point out, the common law rule of joint and several liability, not comparative negligence statutes, produces such an unjust result.

V. CONCLUSION

Washington's new Act initially will raise a number of issues not encountered in a state which adheres to the old rule of contributory negligence. While empirical research indicates that litigation reaching the actual trial stage is not likely to increase dramatically, important questions arise about the Act's future effect on what previously had been considered well established doctrine or practice. Fortunately, Washington's Bar and Bench will be able to draw upon the practical experience and judicial decisions of sister states which already possess substantial experience with the comparative negligence concept. The law of these foreign jurisdictions can not provide pat answers to all of the issues, of course; indeed, when these states have addressed the issues at all, they have come to varying conclusions. This note has attempted only to identify and discuss some of the ramifications of the new Act, and to provide counsel with authority and arguments on both sides of issues which soon will be litigated in Washington.

Joel E. Smith
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ically dissimilar contexts.[89] Despite some apparent vacillation,[90] the Washington court has recognized the doctrine in most situations. Nevertheless, in the master-servant setting the doctrine has been explicitly abrogated[91] and there are indications it will also be held to be unavailing in others.[92] Where the doctrine does survive, the Washington court until recently had compounded the confusion by distinguishing assumption of risk from the closely analogous if not identical maxim of *volenti non fit injuria*, holding that the former applies to cases involving an express consensual acceptance of a risk known or unknown at the time of agreement, while the latter applies only to a unilateral assumption of a known risk.[93]

With the adoption of a comparative negligence statute, assumption of risk logically should be abandoned; the plaintiff's voluntary exposure to an appreciated risk merely should increase his proportion of fault for computation purposes. Nevertheless, this reasoning has not been uniformly adopted by the courts. Mississippi,[94] Georgia,[95] South

89. Dean Prosser divides assumption of risk into three main categories: (1) Where the plaintiff in advance has given his consent to relieve the defendant of a legal duty towards him; (2) where the plaintiff voluntarily enters into some relation with the defendant, with knowledge the defendant will not protect him against risk; and (3) where the plaintiff already is aware of the risk created by the defendant's negligence but nevertheless proceeds to encounter it. PROSSER, *supra* note 72, at 439.

90. It was thought at one time that the doctrine had been put to rest in Washington. In Feignbaum v. Brink, 66 Wn. 2d 125, 401 P.2d 642 (1965), the court held the doctrine of assumption of risk unavailable in a landlord-tenant situation where the lessor was under a duty to repair and maintain common areas. Language in the case indicated that the court might have been willing to abrogate the doctrine completely. A case decided soon after Feignbaum, however, makes clear that a broad reading of the decision would be incorrect and that the doctrine has survived. *See e.g.*, Perry v. Seattle School Dist., 66 Wn. 2d 800, 405 P.2d 589 (1971).

91. Siragusa v. Swedish Hosp. 60 Wn. 2d 310, 373 P.2d 767 (1962). In *Siragusa* plaintiff nurse was injured at her place of employment when a door with a hook on it was unexpectedly opened by a patient and the hook struck her on the upper portion of her back. In reversing the judgment of dismissal in favor of the defendant hospital, the court held that if an employer negligently fails in his duty to furnish his employees with a reasonably safe place to work, the employee will not be denied recovery simply because he was aware or should have known of the dangerous condition. Rather, knowledge and voluntary exposure to the risk were held properly considered as factors in determining whether the employee was contributorily negligent.

92. *See, e.g.*, Feignbaum v. Brink, *supra* note 90.

93. *See* Hogenson v. Service Armament Co., 77 Wn. 2d 209, 215 n.2, 461 P.2d 311 (1969). *See also* Walsh v. West Coast Coal Mines, 31 Wn. 2d 396, 197 P.2d 233 (1948); Bailey v. Safeway Stores, 55 Wn. 2d 730, 349 P.2d 1077 (1960). *But see* Lyons v. Redding Construction Co., 83 Wn. 2d 86, 515 P.2d 821 (1973).

94. While Mississippi retains the doctrine in most cases, the Legislature has made the doctrine inapplicable in the master-servant relationship. *See* MISS. CODE ANN. § 1456 (1917). For a recent Mississippi decision to the effect that assumption of risk will still be applied absent such a relationship, see United Roofing and Siding Co. v. Seefeld, 222 So. 2d 406 (Miss. 1969).

95. In Georgia the assumption of risk by the plaintiff or plaintiff's deceased is an-

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adverse witnesses or the right to inspect documents unless the parolee has indicated previously that he will physically harm an informant if the informant's identity is disclosed. Third, pending the Board's review of the hearing record, the parolee should not be returned to prison but should be confined in the area where he normally resides. If the Board decides to revoke parole, the Board should meet with the parolee to discuss mitigating factors and disposition alternatives before making the final decision to reimprison the parolee.

GLENN R. NELSON*

Comparative Negligence Legislation: Continuing Controversy Over The Doctrine of Assumption Of the Risk in Oregon

The Oregon legislature has enacted a comparative negligence statute which, unlike similar statutes passed by other states,[1] explicitly abolishes assumption of the risk, along with contributory negligence, as a total bar to recovery:

> Contributory negligence, including assumption of the risk, shall not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in death or injury to person or property if such negligence contributing to the injury was not as great as the negligence of the person against whom recovery is sought, but any damages allowed shall be diminished in the proportion to the amount of such negligence attributable to the person recovering.[2]

The statute's reference to assumption of the risk has created a major interpretive task for Oregon courts. If viewed as a doctrine conceptually

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[1] The legislature of Wisconsin, from which Oregon borrowed its comparative negligence statute, made no mention of assumption of the risk in the language of its statute but left the initiative to the courts, which subsequently abolished assumption of the risk by judicial fiat in McConville v. State Farm Mut. Auto Ins. Co., 15 Wis. 2d 374, 113 N.W.2d 14, 19 (1962). The Wisconsin court held that "[c]onsent seems not to be a satisfactory basis for retaining the doctrine of assumption of risk. The consequences of an automobile accident to a guest may be so disastrous that it would be contrary to public policy to hold that an individual who consents by implication to a dangerous situation will go uncompensated for his injuries."

[2] ORS 18.470 (1973).

distinct from the doctrine of contributory negligence, assumption of the risk is abrogated as a bar to plaintiff's recovery. If, on the other hand, assumption of the risk as used in the statute is viewed as essentially the same as contributory negligence, it is abrogated only to the extent that it comprises contributory negligence.

The doctrine of assumption of the risk has not been defined consistently by Oregon courts. This comment examines past judicial attempts to isolate a clear concept of the assumption of the risk doctrine. The consistency of judicial interpretation of the assumption of the risk doctrine is explored, and the statute's effect upon the doctrine is examined. Such analysis suggests that Oregon's comparative negligence statute operates upon only the contributory negligence sense of assumption of the risk, not only allowing a court to compare plaintiff's unreasonable conduct with defendant's negligence to arrive at an apportionment of recovery, but also allowing a plaintiff's consent to assumption of risks inherent in an activity to bar totally his recovery for resulting damages.

I

The Restatement Implied Consent Concept

Intense debate concerning the existence and substance of assumption of the risk resulted in no uniform definition of the phrase in the *Restatement (Second) of Torts*.[3] Instead, the *Restatement* notes four separate substantial bars to recovery which frequently have been found under the rubric of assumption of the risk.[4] Two of the bars to recovery are based upon the plaintiff's implied consent to a risk.[5]

[3] For a description of the division in scholarly opinion during the proceedings, see Halepeska v. Callihan Interests, Inc., 371 S.W.2d 368, 378 n.3 (Tex. 1963); James, *Assumption of the Risk: Unhappy Reincarnation*, 78 Yale L.J. 185, 188 (1968).

[4] Restatement (Second) of Torts, § 496A, comment *c* at 561-62 (1965):

"1. In its simplest form, assumption of risk means that the plaintiff has given his express consent to relieve the defendant of an obligation to exercise due care for his protection, and agrees to take his chances as to injury from a known or possible risk. . . .

"2. A second, and closely related meaning is that the plaintiff has entered voluntarily into some relation with the defendant which he knows to involve the risk, and so is regarded as tacitly or impliedly agreeing to relieve the defendant of responsibility and to take his own chances. . . .

"3. In a third type of situation the plaintiff, aware of a risk created by the negligence of the defendant, proceeds or continues voluntarily to encounter it. . . . He may not be negligent in doing so, since his decision may be an entirely reasonable one, because the risk is relatively slight in comparison with the utility of his own conduct . . . .

"4. To be distinguished from these three situations is the fourth, in which the plaintiff's conduct in voluntarily encountering a known risk is itself unreasonable, and amounts to contributory negligence. . . ."

[5] "[The] plaintiff has entered voluntarily into some relation with the defendant

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[7] *See* note 4 *supra*.

[8] Murphy v. Steeple
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[10] ORS 18.470 (197

The *Restatement* formulation in terms of implied consent has its origins in the maxim *volenti non fit injuria*.[6] Adoption of the maxim focuses the *Restatement* formulation entirely upon the manifestations of the plaintiff. The test becomes whether the plaintiff understood the hazards and therefore could be found to have accepted the risk voluntarily.

The *Restatement* defines assumption of the risk with reference to the plaintiff's manifestations alone and does not include a weighing of the defendant's duty and fault.[7] The effect is that in a jurisdiction strictly adhering to the *Restatement* formulation a court may bar recovery as a matter of law if circumstances surrounding the hazard sufficiently warrant the implication of plaintiff's consent to the presence of the risk.

The implied consent concept has been a great aid to courts in resolving cases in which the essence of the activity requires the participants to encounter a palpable risk. Justice Cardozo offered a ready answer to plaintiffs who chose to engage in adventure with apparent risks: "the timorous may stay at home."[8] If participants did not abstain from voluntary entry into an activity inherently involving a risk, the law would deny compensation for resulting injury. Such doctrine is the corollary of the premise that tort law will allow recovery to reasonable persons who receive injury in a non-consensual situation.[9]

Arguably, Oregon's comparative negligence provision[10] removes implied consent as a total bar and allows recovery to those who have consented to unreasonable conduct so long as the other party was even more unreasonable. If implied consent no longer totally bars recovery but only reduces the plaintiff's damages to the extent of his negligence compared to the defendant's under a theory which makes implied consent part of assumption of the risk, the Oregon legislation will have made a dramatic policy choice favoring compensation for every victim.

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which he knows to involve the risk, and so is regarded as tacitly or impliedly agreeing to relieve the defendant of responsibility, and to take his own chances." RESTATEMENT (SECOND) OF TORTS, § 496A, comment *c* (2) at 561 (1965).

[6] "No wrong is done to one who consents." *Id.*, comment *b* at 560-61. Professor Eldredge stated *volenti non fit injuria* is based upon the individualistic concept that so far as tort law (as distinct from criminal law) is concerned, a person is free to do as he pleases with his own body. RESTATEMENT (SECOND) OF TORTS, Explanatory Notes § 893 at 72-73 (Tent. Draft No. 9, 1963) [hereinafter cited as Tent. Draft No. 9].

[7] *See* note 4 *supra*.

[8] Murphy v. Steeplechase Amusement Co., 250 N.Y. 479, 166 N.E. 173, 174 (1929).

[9] Professor Eldredge comments, "One of the fundamental principles of tort law is that a defendant who harmed the plaintiff's body or his property with the plaintiff's consent is not a tortfeasor at all." Tent. Draft No. 9, *supra* note 6, at 73.

[10] ORS 18.470 (1973).

II

Prior Oregon Formulations of Assumption of the Risk

A. Early Focus on Plaintiff's Conduct

Past Oregon decisions contain a variety of conceptual tools used by the court to recognize the plaintiff's implied consent. In finding that the plaintiff had accepted a hazard, the court typically focused upon the relationship between the plaintiff and the hazard. If the risk was "inherent and obvious" rather than "extraordinary,"[11] or if the plaintiff was "experienced" instead of "inexperienced,"[12] the court found adequate grounds for implying consent to confront the hazard and for relieving the defendant who failed to protect the plaintiff even though the defendant's conduct may have created the hazard.

The Supreme Court of Oregon recognized such a circumstance in *Hunt v. Portland Baseball Club*,[13] when a spectator chose to sit in an unscreened section of a baseball stadium and subsequently was struck by a foul ball. The court disallowed recovery on grounds that plaintiff was intimately familiar with baseball, had witnessed others being struck by foul balls, had anticipated being struck himself, and therefore as a matter of law had consented to remain within the area of risk. This rationale for barring plaintiff's recovery is consistent with the *Restatement* formula of implied consent. However, the court further suggested that the case could have been decided on the issue of duty, although the court carefully avoided equating the defense of plaintiff's assumption of the risk with the duty issue. In *Hunt* the court discounted the duty issue to reach the more familiar bar of implied consent by stating, "[i]f the defendant should have provided screening for the plaintiff's protection, the plaintiff was fully aware of the lack of protection, and yet stayed in the ball park."[14] The finding of implied consent made it unnecessary to decide the question of defendant's duty and fault.

Hunt adopted a standard from *C.J.S.* to be used in determining conditions under which assumption of the risk may be found. "[I]t is only when the risk exists in spite of the exercise of due care or when the risk results from negligence which is obvious that it is assumed by the person injured . . . ."[15] One may infer that the court viewed assumption of the risk as distinct from the duty issue. Under the rubric of assumption of the risk, the plaintiff may not recover either in the "no duty" situation or in a "duty" situation where the defendant's failure to discharge a duty

[11] *See, e.g.*, Vendrell v. School Dist. No. 26C, 233 Or. 1, 376 P.2d 406 (1962).
[12] *See, e.g.*, Whipple v. Salvation Army, 261 Or. 453, 495 P.2d 739 (1972).
[13] 207 Or. 337, 296 P.2d 495 (1956).
[14] *Id.* at 345, 296 P.2d at 498.
[15] *Id.* at 347, 296 P.2d at 499, *citing* 65 C.J.S. *Negligence* § 174 (1950), *now appearing as* 65A C.J.S. *Negligence* § 174 (1966).

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[17] 207 Or. at 355, 296 P
[18] 225 Or. 504, 358 P.2
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owed the plaintiff was obvious to the plaintiff.[16] Thus the plaintiff's actions, and not those of the defendant, control the assumption of the risk issue.

B. Reappraisal of the Focus on Plaintiff's Conduct

In *Hunt*, the court presented two grounds for barring recovery: the record disclosed no negligence, and plaintiff impliedly had assumed the risk of injury. The court indicated preference for the second ground, thus relying more heavily upon plaintiff's implied consent and subordinating consideration of defendant's duty and fault.[17] The court repudiated this preference in a reappraisal of *Hunt* included in *Ritter v. Beals*.[18] *Ritter* sought a definition of a "pure" assumption of the risk distinct from the mere duplication of contributory negligence. The court isolated two senses of assumption of the risk often intertwined to the detriment of conceptual clarity. The court held that a "primary" sense of assumption of the risk existed apart from the "secondary" sense which was merely a redundant reference to the plaintiff's contributory negligence.[19] Assumption of the risk, in its primary sense, denies relief to a plaintiff who consciously, and perhaps reasonably, has encountered a hazard which the defendant had a right to create, and against which the defendant had no duty to protect the plaintiff. In its primary sense, the plaintiff's assumption of the risk is only the counterpart of the defendant's lack of duty to protect the plaintiff from that risk.[20] The court referred to the facts of *Hunt* as an archetypal situation in which the primary sense acted as a bar to recovery.

The significance of the court's synthesis in *Ritter* lies in its positive

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[16] *See* RESTATEMENT (SECOND) OF TORTS, comment *e* at 564 (1965). In the *Restatement* formulation, assumption of the risk entails a subjective test of the plaintiff's conduct; *i.e.*, what the plaintiff in fact knows, understands, and is willing to accept as distinguished from the objective test of contributory negligence which asks what should have been obvious to the plaintiff.

[17] 207 Or. at 355, 296 P.2d at 502.

[18] 225 Or. 504, 358 P.2d 1080 (1961).

[19] *Id.* at 514, 520-21, 358 P.2d at 1084-85, 1087-88. Justice Goodwin's opinion in *Ritter* took its doctrinal inspiration from Harper and James, who distinguished the "primary" and "secondary" senses of assumption of the risk as a prelude to advocating the abolition of all senses of the doctrine as merely "a heritage . . . the extreme individualism of the early industrial revolution." Harper and James state that the "primary" sense of assumption of the risk is "only the counterpart of the defendant's lack of duty to protect the plaintiff from a risk" and the "secondary" sense is but a redundant reference to the plaintiff's contributory negligence. *See* 2 F. HARPER & F. JAMES, THE LAW OF TORTS § 21.8, at 1163-64 (1956) [hereinafter cited as HARPER & JAMES].

[20] *See* 2 HARPER & JAMES, *supra* note 19. Justice Denecke identified *Ritter* as illustrating a situation where assumption of the risk is "just another name for contributory negligence." Letter from Justice Denecke to Rep. Norma Paulus, Apr. 16, 1971 on file in the Archives Division of the Oregon State Library in the Records of H.B. 1343, 56th Or. Leg. Ass'y (1971).

assurance that the doctrine of assumption of the risk is distinct and independent from the doctrine of contributory negligence. When the legislature adopted the principle that "contributory negligence, including assumption of the risk, shall not bar recovery . . . ,"[21] either it did heed the separation between assumption of the risk and contributory negligence expounded in *Ritter*, or it intended to abrogate the bar of assumption of the risk in its primary sense as well as the sense included within contributory negligence. Therefore, the statute could have abrogated assumption of the risk only in its "secondary" sense as an inexact and superfluous reference to contributory negligence,[22] or the statute could have abrogated assumption of the risk in its entirety, both in its "pure" primary sense defined in *Ritter* and in its secondary sense.[23]

Determination of which interpretation of the statute is more appropriate depends in part upon detailed examination of the "primary sense" definition of assumption of the risk. *Ritter* relied more heavily upon the defendant's duty and fault, whereas *Hunt* had relied upon an implication of consent by the plaintiff as a matter of law. This revision signaled a change in analytical perspective amounting to the creation of a new definition of assumption of the risk at variance with the *Restatement* "implied consent" formula.[24] The court in *Ritter* stated that its focus

[21] ORS 18.470 (1973).

[22] This interpretation would prevent the inaccurate use of assumption of the risk to refer to situations in which the plaintiff acts unreasonably and is contributorily negligent yet also would allow the court to adhere to the *Restatement* implied consent formula.

[23] This interpretation would achieve the Harper and James objective of abolishing the phrase and concept of assumption of the risk under the rationale that assumption of the risk is purely duplicative of the other more widely understood concepts of scope of duty and contributory negligence.

As a third alternative, the court could limit *Ritter* to its facts and thus confine the Harper and James thesis to the context of an employer-employee case where assumption of the risk as a defense recently has been disfavored. This alternative is unlikely in view of Justice Goodwin's use of *Hunt*, a case which fell clearly outside the employer-employee context, as an illustration of the Harper and James thesis which he was expounding in *Ritter*.

[24] Tent. Draft No. 9, *supra* note 6, at 79. There Professor Prosser claimed such a categorization of assumption of the risk as either duty or contributory negligence "throws into the ashcan the language of thousands of cases." *But see* James, *Assumption of the Risk: Unhappy Reincarnation*, 78 YALE L.J. 185 (1968). James compares the position of the *Restatement of Torts*, which had no separate section concerning assumption of the risk, with that of the *Restatement (Second)*, which chose to give assumption of the risk a distinct existence. Professor Bohlen, the reporter for the original *Restatement*, argued that implied assumption of the risk deserved no recognition as a separate defense. Bohlen, as well as James, believed the key issue in "primary" assumption of the risk is whether the defendant had a legal right to expose the plaintiff to a risk. Both commentators point out that this is properly an issue of the scope of duty to be pleaded and proven by the plaintiff. Prosser, the prevailing theorist in *Restatement (Second)*, took the opposite position.

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[27] 225 Or. at 513, 35
§ 21.1, at 116 (1956).

[28] *See* Comment, *C*
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[29] Comment, *supra* n

[30] See note 3 *supra* a

in barring recovery under assumption of the risk was upon the duty and fault of the defendant rather than the actions of the plaintiff.[25] The *Ritter* reappraisal of *Hunt* is deceptively simple,[26] but the duty analysis places a great burden of discretion upon the courts. The judicial discretion necessary to determine the duty issue unavoidably diminishes the predictability of tort law. *Ritter*, in its reappraisal of *Hunt*, relied heavily upon the Harper and James treatise[27] but failed to elaborate the variables of any duty formula which might be applied to spectator liability cases or to other fact situations.

Ritter has raised the argument that assumption of the risk vanished in Oregon because the doctrine has become only a semantic guise for the duty issue.[28] A recent comment[29] analyzed the assumption of the risk problem under the Oregon comparative negligence statute by arguing the statute simply removed the phrase "assumption of the risk" as a false and confusing reference to the duty issue. If indeed the "pure" or "primary" sense of assumption of the risk was a mere reference to the duty issue at the time of the legislation, the statute had no further effect than to discard an empty label, subsume assumption of the risk under contributory negligence, and apportion it.

The long-standing controversy concerning whether asumption of the risk has any conceptual identity separate from the duty issue was argued vehemently by commentators such as Professors Prosser, Malone, and Eldridge at the time the *Restatement of Torts (Second)* was drafted.[30] Prosser, whose theories eventually prevailed in the *Restatement*, argued that the duty issue does not and should not encompass all the considera-

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[25] 225 Or. at 514, 358 P.2d at 1088.

[26] 225 Or. 504, 358 P.2d 1080 (1961). *See* 2 HARPER & JAMES, *supra* note 19, § 21.5, at 1184. In their treatise, Harper and James specifically analyze ballpark spectator liability and conclude that the owner owes no duty to warn the experienced spectator of the dangers of foul balls in the unscreened part of the bleachers. This conclusion rests upon the fact that such risks are "so customary, obvious, and commonly known, the defendant need give no warning of them." However, Harper and James are quick to add that by no means all the dangers which would be obvious to the attentive or experienced are thus assumed. They find that the true key to such a situation lies in the character of the relationship between the parties and their resulting duties. As a matter of law, the court should bar recovery in the situation wherein the plaintiff takes a risk voluntarily and the defendant has a right to force him with the dilemma of "take it or leave it." Under the Harper and James argument, even though a plaintiff may choose to accept a risk, the court may find when the plaintiff is young, inexperienced, or handicapped that the defendant had no legal right to confront the plaintiff with the risk.

[27] 225 Or. at 513, 358 P.2d at 1084, *citing* 2 HARPER & JAMES, *supra* note 19, § 21.1, at 116 (1956).

[28] *See* Comment, *Comparative Negligence in Oregon: A New Era in Tort Law*, 8 WILL. L.J. 37, 43 (1972); Note, *Torts—Assumption of Risk—Substantive and Procedural Problems in Oregon*, 46 OR. L. REV. 219 (1967).

[29] Comment, *supra* note 28.

[30] See note 3 *supra* and accompanying text.

tions inherent in the affirmative defense of assumption of the risk,[31] relying upon the simple distinction that while the duty issue refers to the defendant's manifestations and reasonable expectations, assumption of the risk measures the subsequent conduct of the plaintiff.[32]

Did the Oregon court indicate its intent in *Ritter* to align itself with the dissenters to the *Restatement* formulation?[33] The language of the decision forces the conclusion that the Oregon court decided assumption of the risk in its pure sense was merely a surrogate for the duty issue. However, the decisions following *Ritter* returned to the pre-*Ritter* analysis of the plaintiff's implied consent.

C. Applications of Assumption of the Risk

The court handed down *Vendrell v. School District No. 26C*[34] one year after *Ritter* identified assumption of the risk as an alter ego of the duty issue. The decision barred recovery for head injuries incurred by plaintiff during a school-sponsored football game. Although the court made passing mention of the duty issue, it based its holding on an implication of consent by plaintiff to the possibility of injury.[35] Citing the obviousness of the risk inherent in contact football and plaintiff's familiarity with the activity, the court implied consent to the risk from plaintiff's voluntary participation in the sport.

[31] Tent. Draft No. 9, *supra* note 6, at 79: "Duty is sufficiently complex when it is confined to the conduct of the defendant. If it is to be extended to include a defense arising from the subsequent conduct of the plaintiff, it becomes such an overworked word that it falls of its own weight."

[32] "Duty is a matter of what the defendant should reasonably expect, while assumption of the risk is a matter of what the plaintiff in fact knows and is willing to accept." *Id.*

[33] *See* James, *supra* note 24, at 194. *But see* Keeton, *Assumption of Risk in Products Liability Cases*, 22 LA. L. REV. 122, 154-59 (1961). James is one of the foremost dissenters. He fears that Prosser's and Keeton's retention of assumption of the risk in the *Restatement* would bar the knowing but careful plaintiff from recovering for harm caused by the defendant's negligence. Thus, even when it is found that the defendant owed a duty to the plaintiff, which the defendant breached, assumption of the risk still might bar the plaintiff's recovery if the plaintiff had manifested acceptance of the risk created by the defendant's breach. James' worry seems overwrought. Consenting to a risk created by another's breach of duty is clearly contributory negligence on the plaintiff's part; under the comparative negligence statute contributory negligence would be compared to reduce the plaintiff's recovery but not necessarily bar recovery. Arguably, the spectre which James feels haunts the *Restatement* implied consent formula in fact does not exist under the comparative negligence statute.

[34] 233 Or. 1, 376 P.2d 406 (1962).

[35] *Id.* at 19, 376 P.2d at 414. *But see* Note, *supra* note 28, at 223-24, which argues that the court decided *Vendrell* as being a matter of duty by finding the relationship of the plaintiff to the defendant was one of free association with concomitant limited duties. Although this is undeniably a plausible thesis, the court's language in *Vendrell* did not discuss "limited duty" but rather spoke in terms of risks which were "obvious and inherent" to the plaintiff. This type of analysis lays a foundation for barring recovery under the *Restatement* implied consent formula.

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[36] 251 Or. 98, 444 P

[37] 258 Or. 302, 482

[38] 263 Or. 612, 503

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Further doubt on the duty analysis of *Ritter* is cast by other later decisions. *Franks v. Smith*,[36] based squarely upon the *Restatement's* implied consent formula, denied recovery to a participant in a dangerous sport who clearly recognizes the risks involved, emphasizing plaintiff's acceptance of the game's rules as an implied consent to injury from which the rules of the game cannot or will not protect him. Although the court could have discussed the rules as defining the extent of each participant's duty, the court instead referred to the rules as indicating the measure of the participant's consent. *Thayer v. Oregon Federation of Square Dance Clubs*[37] also failed to apply the *Ritter* definition. Ten years after *Ritter* had characterized assumption of the risk as a mere alter ego of the duty issue, the court responded to an assertion of the defense entirely in terms of the *Restatement* implied consent formula and based the decision upon whether plaintiff's manifestation of consent was sufficient.

Thayer illustrates the court's ability to avoid the harshness of implied consent as a bar to recovery. Plaintiff suffered injury when she tripped upon an uneven floor while dancing. The decision turned on analysis of what plaintiff expected when she had begun dancing. Although plaintiff assumed the risks inherent in square dancing, such as being kicked by another dancer, she did not assume the risk of a faulty and uneven floor.

The court used a similar characterization of risks as "inherent" or "extraordinary" in *McDonald v. Hanneson*.[38] Plaintiff's deceased was sitting on a swimming float when defendants caused a water ski tow rope to pass over the float and choke the deceased. Defendants raised the defense of assumption of the risk premised upon the deceased's implied consent to the hazards of a moving ski rope as a normal risk of water skiing. The trial court instructed that the deceased had assumed the "normal risk of injury incident to the sport." The appellate court reversed and remanded for a new trial on the ground that there was no evidence that the risk created by such a boat maneuver was a normal risk inherent in water skiing of which plaintiff was aware.[39] Evaluating the "awareness" of the plaintiff is indicative of the subjective test found in the *Restatement* implied consent formulation of assumption of the risk. Although *Ritter* had portrayed "pure" assumption of the risk as only a matter of duty, the court in *McDonald* returned to the *Restatement* focus.

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[36] 251 Or. 98, 444 P.2d 954 (1968).

[37] 258 Or. 302, 482 P.2d 717 (1971).

[38] 263 Or. 612, 503 P.2d 674 (1972).

[39] "Since [the deceased] was completely unaware that [defendants] would cause the rope to pass over the float she could hardly assume the risk inherent in that maneuver." 263 Or. at 617, 503 P.2d at 676.

The approach to the assumption of the risk issue in *Thayer* and *McDonald* gives court and counsel great latitude because of the opportunity to characterize the alleged risks as either broad-ranging and inherent or quite particularized and extraordinary. The question as to whether conduct in engaging in an activity can be taken to imply that the risk is assumed is answered under the approach in *Thayer* and *McDonald* by the court's risk-characterization process. This approach dominates four recent assumption of the risk decisions[40] and is far afield from the announcement in *Ritter* that assumption of the risk is best decided through a duty analysis.

Whipple v. Salvation Army[41] reaffirmed the conceptual importance to defendant of finding an implied consent by the plaintiff. It held that plaintiff's implied consent excused an otherwise existing duty of defendant.

> Plaintiff correctly contends that because there is an inherent danger of injury in football, defendant did owe him a duty not to allow or encourage him to play *unless the plaintiff realized the danger involved.*[42]

This statement is hard to reconcile with the *Ritter* characterization of assumption of the risk as merely synonymous with the duty issue.[43] By indicating that whenever there is implied consent there can be no duty, *Whipple* not only did not diminish the function and potency of implied consent, but rather indicated that the presence of implied consent becomes entirely determinative of the duty issue. This relationship between implied consent and duty is not one of mere equivalence.[44] The court in effect abandoned the theoretical underpinning of *Ritter* and returned to the *Restatement* formula under which the plaintiff's manifestations may relieve defendant of a duty otherwise owed. The plaintiff's manifestations, rather than the duties of the defendant, remained dispositive of whether assumption of the risk barred recovery.

Vendrell, *McDonald*, and *Whipple* each demonstrate the same reli-

[40] Schroeder v. Blitz-Weinhard Co., 96 Or. Adv Sh. 210, 504 P.2d 719 (1972); McDonald v. Hanneson, 263 Or. 612, 503 P.2d 674 (1972); Whipple v. Salvation Army, 261 Or. 453, 495 P.2d 739 (1972); Thayer v. Oregon Fed'n of Square Dance Clubs, 258 Or. 302, 482 P.2d 717 (1971).

[41] 261 Or. 453, 495 P.2d 739 (1972).

[42] *Id.* at 460-61, 495 P.2d at 743 (emphasis added).

[43] See Tent. Draft No. 9, *supra* note 6, § 496C, comment *e* at 77. Professor Malone found no legal logic in equating knowledge by the plaintiff with the absence of duty on the defendant's part.

[44] "The boundaries of the defendant's duty to act do not . . . coincide . . . with those of the plaintiff's assumption of the risk . . . . Thus one who supplies a defective chattel for the use of another may be under a duty to make it safe, to warn the other of the defect, or otherwise to protect him, because it may be expected that he will not discover the defect. When the other does discover it and nevertheless proceeds quite voluntarily to make use of the chattel, he may assume the risk." Tent. Draft No. 9, *supra* note 6, comment *e* at 97.

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ance by the court upon the conceptual distinctions peculiar to implied consent, between "experienced" and "inexperienced" plaintiffs and between "inherent" and "extraordinary" risks. Analysis of assumption of the risk in terms of the plaintiff's implied consent in these cases after *Ritter* undercuts the court's announcement in *Ritter* that assumption of the risk is merely a matter of the defendant's duty. *Vendrell* offered this summary of the plaintiff's position vis-à-vis tort law: "[Football] draws to the game the manly; they accept its risks, blows, clashes, and injuries without whimper."[45] The echo of the Cardozo maxim "the timorous may stay at home"[46] is distinct. Clearly the court found it imperative to resuscitate the implied consent formula of assumption of the risk.

This conceptual system is adequate to insure that the plaintiff's consent is implied only in circumstances in which the plaintiff voluntarily and knowingly[47] agrees to the proximity of a hazard. Thus, properly applied an implication of consent should not work harshly against recovery by plaintiffs who could not recognize the nature and magnitude of the risk. Furthermore, barring recovery by a plaintiff who truly realizes the risk and intends to face that risk does no violence to the basic purpose of tort law—to compensate injuries resulting from a nonconsensual situation.[48]

D. A Suggested Application of Implied Consent

Implied consent as a bar to recovery has been subject to criticism as a harsh and inequitable barrier. Through F.E.L.A. legislation[49] Congress abrogated the defense in certain employer-employee relationships. In the absence of legislative action, courts have devised a judicial test which insures against the harsh application of the implied consent bar. Many jurisdictions, including Oregon, have lessened the harshness of the doctrine through the recognition of two characteristics which defeat an implication of consent: the inexperience of the plaintiff and the extraordinary nature of the risk.[50]

Implied consent as a bar to recovery has been most harsh when inappropriately applied. The implied consent formula of assumption of the risk is appropriate only to the resolution of certain well defined situations where the essence or attraction of the activity entered into by the plaintiff depends in a substantial degree upon the likelihood of

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[45] Vendrell v. School Dist. No. 26C, 233 Or. 1, 15, 376 P.2d 406, 413 (1962).

[46] Murphy v. Steeplechase Amusement Co., 250 N.Y. 479, 166 N.E. 173, 174 (1929).

[47] *See* RESTATEMENT (SECOND) OF TORTS § 496E (1965).

[48] Tent. Draft No. 9, *supra* note 6, Explanatory Notes § 893 at 73.

[49] Federal Employers Liability Act, 45 U.S.C. § 51 *et. seq.* (1970); section 54 deals with assumption of risks of employment.

[50] *See* McDonald v. Hanneson, 263 Or. 612, 503 P.2d 674 (1972); Thayer v. Oregon Fed'n of Square Dance Clubs, 258 Or. 302, 482 P.2d 717 (1971).

hazard. Purposeful encounter with hazard was the situation of *Murphy v. Steeplechase Amusement Co.*,[51] a classic illustration of implied consent, or *volenti non fit injuria* as the doctrine then was denominated. Chief Judge Cardozo characterized the jerking of an amusement machine as the very hazard which was invited and foreseen. "There would have been no point to the whole thing, no adventure about it, if the risk had not been there."[52] Regrettably, the Oregon court has applied the implied consent doctrine as a bar to recovery in cases where the hazard was merely incidental and not the "point, adventure, or meaning of the activity."[53]

The patron of a ballpark who sits in the open bleachers is not properly a "volunteer" under the doctrine of *volenti non fit injuria* because he went to the ballpark to watch rather than dodge. Consideration of the implied consent doctrine was beside the point in *Thayer* because the square dancer was not properly a "volunteer" in the situation. The significance of her dancing did not depend on treading upon an uneven floor. If, on the other hand, she had been a sabre dancer whose performance derived significance from the avoidance of upright blades, the court properly should have barred the dancer's recovery under the implied consent formula.

The occasional misapplication of a doctrine, however, is not indicative of the doctrine's invalidity. The recognition that the court could have resolved several assumption of the risk cases through the duty issue does not advise the complete abrogation of the implied consent formula. The *Restatement* implied consent formula is uniquely appropriate to situations analogous to the facts of *Murphy* and *Vendrell* where a body clash, one of the integral features of the activity, resulted in injury to the participant. In the context of football, the participant's endurance of repeated body contact in a large measure comprises the significance society attributes to participation in the sport. If the individual will seek glory and society's recognition in such a manner, the function of tort law arguably is to defer to the individual's freedom to

[51] 250 N.Y. 479, 166 N.E. 173 (1929).

[52] 166 N.E. at 174.

[53] Schroeder v. Blitz-Weinhard Co., 96 Or. Adv. Sh. 210, 504 P.2d 719 (1972), is a prime example of the court's misapplication of the implied consent formula of assumption of the risk. Plaintiff, a deliveryman, sued the premises owner for injuries when he was tipped off a hoist upon which he had caught a ride. The court held that the plaintiff was contributorily negligent in electing to ride a hoist meant only to handle materials. The court went on to hold, however, that the plaintiff "voluntarily assumed the obvious risk involved in the unorthodox maneuver." *Id.* at 215, 504 P.2d at 721. Under the *Restatement* contributory negligence alone is the bar to recovery based upon a plaintiff's unreasonable act toward himself. The court's misapplication of assumption of the risk to this fact situation ignores not only the legal learning of *Ritter* but the *Restatement* formulation as well.

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encounter risk and his self-responsibility for the resulting injury. The purposeful and intentional encountering of risk gives rise to the proper application of implied consent as a bar to recovery.

IV

The Future of Assumption of the Risk in Oregon: Three Positions for the Court

A. Total Abrogation

Implied consent as a bar to recovery in some cases has operated as harshly against the plaintiff as has the bar of contributory negligence. The interpretive problem caused by inclusion of assumption of the risk within the statute's purview is whether the statute abolished the capacity of both doctrines to operate as *absolute* bars to recovery. One interpretation would restrict the court from considering the plaintiff's implied consent in determining whether he should be barred totally from a recovery.[54] The statute may render the subjective test of the plaintiff's manifestations of implied consent irrelevant, much as the statute rendered negligence on the part of the plaintiff irrelevant, so long as the plaintiff's negligence toward himself was less than the negligence of others toward him.

In the alternative, the court may classify a plaintiff's implied consent as merely a manifestation by the plaintiff of negligence toward himself. Thus the jury would compare the plaintiff's implied consent with the defendant's negligence in reducing the plaintiff's recovery. It should be noted that such an interpretation would create a new hybrid of implied consent in view of the *Restatement's* position that a plaintiff impliedly may consent to a hazard without being negligent toward himself.[55]

A recent comment on *Ritter* has suggested, assuming a total abrogation of the implied consent formula of assumption of the risk, that the court will resolve liability problems solely through a duty analysis.[56]

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[54] *See* F. Pozzi, Comparative Negligence, September, 1971 (a paper available from the Oregon State Bar, Portland, Oregon). Pozzi maintains that the House Judiciary Committee discussions indicate legislative intent to overrule past cases where the plaintiff's recovery was barred by assumption of the risk. "I think the discussion in [The House Judiciary Committee] leaves no doubt that the legislature meant to overrule *Vendrell* and other decisions of our Supreme Court (such as *Hunt*) which have held as a matter of law in various situations that a plaintiff cannot recover because he has assumed risks in the activity upon which he is engaged."

[55] "In a third type of situation the plaintiff, aware of a risk created by the negligence of the defendant, proceeds or continues voluntarily to encounter it . . . . He may not be negligent in doing so, since his decision may be an entirely reasonable one, because the risk is relatively slight in comparison with the utility of his own conduct." Restatement (Second) of Torts, § 496A, comment *c* at 89 (1965).

[56] Comment, *supra* note 28.

The duty formula, however, by balancing the utility of the activity against the foreseeability and magnitude of the injury, may fail to resolve adequately future implied consent cases similar to *Vendrell*. Football does not have an indispensable social utility. Non-contact sports serve the purpose of physical conditioning equally as well and naturally produce less drastic injuries. The school district reasonably should foresee that through its act of sponsoring the sport and encouraging participation, participants may suffer injuries of a serious magnitude. Thus, by a strict application of the duty formula, a duty may fall upon a defendant which sponsors an activity of low social utility yet with a high likelihood of serious injury to a number of victims.

If by total abrogation of assumption of the risk the comparative negligence statute has limited the court to a duty analysis, the court must move toward a much broader approach to risk-sharing and indemnification in the context of public school sports injuries. Other fact situations as well may yield contrary results when resolved by the court as matters of duty rather than as ones of implied consent by the plaintiff. Total abrogation of assumption of the risk promises to alter the boundaries between recovery and no recovery by overturning the previous complete barrier of implied consent.

B. Non-Abrogation: Operation of the Statute Upon Both Senses of Assumption of the Risk

Under this position of non-abrogation assumption of the risk is retained, but the comparative negligence statute operates to require the comparison and apportionment of assumption of the risk. The court faces a great interpretive pitfall if under the statute it attempts to compare and apportion the "primary" sense of assumption of the risk in like manner as the plaintiff's contributory negligence. If the primary sense of assumption of the risk is equivalent to the duty issue, the court will be faced with the impossible conceptual task of apportioning duty. If, on the other hand, assumption of the risk is understood to refer to the *Restatement* implied consent formula, the court must engage in the equal folly of attempting to apportion and compare the effect of the plaintiff's implied consent.

Consent is either totally present or totally absent. The implied consent of the player in *Vendrell* to body clashes cannot be apportioned. His consent either entirely absolves the defendant or is entirely irrelevant. Courts may allow consenting persons to recover under revised tort principles, but no logic supports allowing a recovery of one-half or one-third or one-fourth the damages based upon an arbitrary fraction apportioned according to plaintiff's implied consent.

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C. Non-Abrogation: Operation of the Statute Only Upon the "Secondary" or Contributory Negligence Sense of Assumption of the Risk

This position harks back to Justice Goodwin's opinion in *Ritter* espousing the Harper and James distinction between the primary and secondary senses of assumption of the risk. The court may retain assumption of the risk in the primary sense (essentially implied consent) while bringing the secondary sense (essentially contributory negligence) under the operation of the statute.[67] Because the secondary sense refers to the plaintiff's unreasonable conduct, the court will have no difficulty in comparing it with the defendant's negligence to arrive at an apportionment of recovery.

At the same time, the operation of the statute upon the secondary sense of assumption of the risk will dispel the confusion incurred by the commingling of contributory negligence and assumption of the risk in past decisions. That conduct of the plaintiff which can be compared and apportioned is properly denominated contributory negligence. In its decisions applying the comparative negligence statute, the court may retire the notion of plaintiff's assumption of the risk in the secondary sense by recognizing only the "plaintiff's compared negligence." This correction in terminology is essential to the conceptual clarity of both doctrines.

Conclusion

The operation of the statute upon only the secondary sense of assumption of the risk avoids the problem of throwing into the ashcan the language and authority of assumption of the risk cases decided over the last fifteen years. Moreover, the court may continue to speak of the plaintiff's implied consent based upon judicial characterization of risks as "inherent and obvious." Because the statute would operate only upon the secondary sense, the court is not required to determine whether the substance of the "primary" sense is solely duty or whether the *Restatement* implied consent formula demands an independent and viable existence.

RICHARD A. WYMAN*

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[67] Recently, in Bailey v. Stevens Auto Sales, Inc., 97 Or. Adv. Sh. 974, 977, 512 P.2d 1331, 1332 (1973), the Oregon court harkened back to the Harper and James concept of the primary and secondary senses of assumption of the risk, abandoning once again the *Restatement* position. The court held that separate instructions to the jury on assumption of the risk and contributory negligence constituted reversible error, saying "if an instruction upon assumption of the risk is given when assumption of the risk is used in its secondary sense and an instruction upon contributory negligence is given as well, defendants secure a double instruction on the same issue." The improper instruction was essentially the *Restatement* formulation of implied assumption of the risk. Restatement (Second) of Torts § 496C (1965).

* Third-year student, School of Law, University of Oregon.

HB
176
3063

"An Act relating to a comparative negligence method of determining damages; effective date."

COMMITTEE REPORT

3/5/75 HOUSE

Mr. Speaker: Date 4/7/75

The Committee on JUDICIARY has had HB 176 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(X) recommends it BE REPLACED WITH CS FOR HB 176 AND THAT CS FOR HB 176 DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

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Members NOT concurring in the Majority report:

_____ recommends: NO REC

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_____ Chairman

Since 1949 Comp. negligence in Workmen's Comp AS 23.28
More states have comp. negligence now in one form or another
Admiralty law uses comp. negligence
50% or less

Original sponsor: Cowper Presently court + juries look for way out so not to bar plaintiff - Under contributory

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 176

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to a comparative negligence method of determining damages; and providing for an effective date."

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

* Section 1. AS 09.65 is amended by adding a new section to read:

Sec. 09.65.130. CONTRIBUTORY NEGLIGENCE NO BAR TO ACTION; MODIFIED COMPARATIVE NEGLIGENCE. (a) In any action to recover damages for death or for injury to persons or property in which contributory negligence may be asserted as a defense, contributory negligence shall not bar recovery if the negligence of the person seeking recovery was not greater than the negligence of the person or persons against whom recovery is sought, but any damages allowed shall be diminished in proportion to the amount of negligence attributable to the person seeking recovery. 50%

(b) In an action to which (a) of this section applies the judge may, and when requested by any party shall instruct the jury that

(1) the claimant may not recover if his contributory negligence has contributed more to the injury than the negligence of the defendant or the combined negligence of multiple defendants;

(2) if the jury determines the claimant is entitled to recover, it shall return by general verdict the total amount of damages the claimant would be entitled to recover except for his contributory negligence;

(3) if the jury determines that a claimant is entitled to recover, it shall return a special verdict indicating the percentage of

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tort - civil wrong
tort feasor - commit a civil wrong against another
1. intentional - comparative doesn't apply
2. negligence - this bill
3. strict liability - product liability - neg doesn't apply

negligence attributable to each party.

(c) The percentage of negligence attributable to the claimant shall reduce the amount of his recovery by the proportionate amount of his negligence.

Sec. 09.65.140. MULTIPLE PARTIES. (a) Each defendant is jointly and severally liable for the entire amount of the judgment awarded the claimant. all or any
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(b) Contribution among jointly liable defendants shall be as provided in AS 09.16. ~~Contribution among~~ Joint Tortfeasors

* Sec. 2. AS 09.16.020 is amended to read:

Sec. 09.16.020. PRO RATA SHARES. In determining the pro rata shares of tortfeasors in the entire liability

(1) their relative degrees of fault shall [NOT] be considered;

(2) if equity requires, the collective liability of some as a group constitutes a single share; and

(3) principles of equity applicable to contribution generally shall apply.

* Sec. 3. This Act applies to causes of action accruing after the effective date of this Act.

* Sec. 4. This Act takes effect immediately in accordance with AS 01.10.-070(c).

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House Judiciary Committee
March 20, 1965

The meeting was called to order at 1:25 p.m. by Chairman Gardiner. All members were present except Mr. Brown and Mr. Specking.

CS HB 177 Security deposits

The proposed CS was approved and moved out of committee do pass by Mr. Bradley. There being no objection, it was so ordered.

HB 176 Comparative Negligence

Fred Estaugh of the American Insurance Association testified that the AIA is against the pure form as proposed in HB 176. They prefer the 49% type similar to Hawaii's statute.

Alan Compton testified that the Board of Governors of the Alaska Bar Association has endorsed the concept of comparative negligence, but not a particular form.

Present law: if the plaintiff was negligent to any degree, recovery is prohibited

Pure form: even if the plaintiff is 90% negligent, he may recover the remaining 10%

50% form: if equal fault, each recovers from other

49% form: if equal fault, no recovery for either must be less than 50% negligent to recover (plaintiff's negligence does not exceed combined negligence of defendents)

Possible addition to bill: with multiple defendents, each pays their percentage of negligence of damages

Rep. Cowper, sponsor of HB 176, stated that he would be satisfied with the 49% form. He felt the pure form would totally discourage litigation, would encourage settling out of court, and would get the injured party his money when he needed it. He did not favor the addition of apportionment of the damages

House Judiciary Committee
April 7, 1975

The meeting was called to order at 1:22 p.m. by Chairman Gardiner. All members were present except Mr. Bradley.

Mr. Boetsch of Revenue testified that HB 211 was in effect a housekeeping bill that put all the remedies for different types of taxes into one section. The bill adds informal conference as a possible remedy but the option of a formal hearing remains. He stated that the Multi State Tax Commission can do audits on Alaska's behalf, acting as the state's agent. Mr. Parr raised the question of the Alaska citizen's right to privacy regarding his tax records and requested strict limitations on the Multi State Tax Commission. A 1972 Attorney General's opinion in the supplement (23.20.190) deals with the right to privacy. Mr. Messenger in the AG's office was requested to review the opinion and report to the committee.

Mr. Boetsch further stated that HB 211 would make the penalty for all delinquent taxes at 8%. The federal IRS is going to 9% in June. Other penalties listed in the bill are comparable to the IRS.

Regarding section 230 and the lack of control the state would have on information after it leaves Alaska, Mr. Boetsch stated that the clause "for the purpose of enforcing a tax" had been added to the bill to limit access. He stated that other states have similar procedures regarding confidentiality and that if they did not, Alaska would not have made reciprocal agreements with them. Mr. Brown stated that he would like to see a standard put in the bill to control the actions of the Commissioner of Revenue regarding confidential information.

HB 176 Comparative Negligence

Mr. Gardiner stated that the basic policy decision the committee must make concerns what form of the bill they wish -- pure, 50%, 49%. The committee considered the possiblity of putting the material on joint tort feasors into a seperate bill but it was decided that since this relates so directly to multiple defendents in a comparative negligence case, that it should be included in this bill. It was agreed that degrees of fault would be considered, thus allocating percentages of negligence to the defendents. The committee agreed to reject pure negligence was potentially just as discriminatory as contributory negligence now is and opted for the 50% form. Mr. Brown moved CS HB 176 out of committee. There being no objection, it was so ordered.

Sec. 09.65.130. CONTRIBUTORY NEGLIGENCE NO BAR TO ACTION: MODIFIED COMPARATIVE NEGLIGENCE. (a) In any action to recover damages for injury to persons or property in which contributory negligence may be asserted as a defense, the contributory negligence of the plaintiff shall not bar a recovery if the negligence of the person seeking recovery was not greater than the negligence or gross negligence of the person or persons against whom recovery is sought, but any damages allowed shall be diminished in proportion to the amount of negligence attributable to the person seeking recovery.

(b) This ~~section~~ only applies to all causes of action accruing after the effective date of this Act.

Sec. 09.65.140. JURY INSTRUCTIONS; VERDICTS. In such cases, the judge may, and when requested by any party shall instruct the jury that:

(1) The plaintiff may not recover if his contributory negligence has contributed more to the injury than the negligence of the defendant or the combined negligence of multiple defendants.

(2) If the jury determines the plaintiff is entitled to recover, it shall return by general verdict the total amount of damages the plaintiff would be entitled to recover except for his contributory negligence.

(3) If the jury determines that a party is entitled to recover, it shall return a special verdict indicating the percentage of negligence attributable to each party.

(4) The percentage of negligence attributable to the person seeking recovery shall reduce the amount of such recovery by the proportionate amount of such negligence.

Sec. 09.65.150. MULTIPLE PARTIES. (a) In a case in which there is more than one defendant, and the claimant's negligence does not exceed the total negligence of all defendants, contribution to the damages awarded to the claimant shall be in proportion to the percentage of negligence attributable to each defendant.

(b) Each defendant is jointly and severally liable for the entire amount of the judgment awarded the claimant, except that a defendant whose negligence is less than that of the claimant is liable to the

claimant only for that portion of the judgment which represents the percentage of negligence attributable to him.

Sec. 09.65.160. SETTLEMENTS; EFFECT ON REMAINING PARTIES. (a) If an alleged joint tort-feasor pays an amount to a claimaiht in settlement, but is never joined as a party defendant, or having been joined, is dismissed or nonsuited after settlement with the claimant (for which reason the existence and amount of his negligence are not submitted to the jury), each defendant is entitled to deduct from the amount for which he is liable to the claimant a percentage of the amount of the settlement based on the relationship the defendant's own negligence bears to the total negligence of all defendants.

(b) If an alleged joint tort-feasor makes a settlement with a claimant but nevertheless is joined as a party defendant at the time of the submission of the case to the jury (so that the existence and amount of his negligence are submitted to the jury) and his percentage of negligence is found by the jury, the settlement is a complete release of the portion of the judgment attributable to the percentage of negligence found on the part of that joint tort-feasor.

Sec. 09.65.170. SETOFFS. If the application of the rules contained in secs. 150 and 160 of this chapter results in two claimants being liable to each other in damages, the claimant who is liable for the greater amount is entitled to a credit toward his liability in the amount of damages owed him by the other claimant.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.10.070 c

* Sec 3. AS 09.16 is amended.

HAWAII
Regular Session

Act 227, Laws 1969

House Bill No. 857

AN ACT

RELATING TO TORT ACTIONS BASED ON NEGLIGENCE AND AMENDING CHAPTER 663 - HAWAII REVISED STATUTES.

BE IT ENACTEDBY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 663 of the Hawaii Revised Statutes is amended by adding a new Part to be appropriately designated and to read as follows:

Part-------Comparative Negligence

"Section 663 - Contributory negligence no bar; comparative negligence; findings of fact and special verdicts.

"(a) Contributory negligence shall not bar recovery in any action by any person or his legal representative to recover damages for negligence resulting in death or in injury to person or property, if such negligence was not as great as the negligence of the person against whom recovery is sought, but any damages allowed shall be diminished in proportion to the amount of negligence attributable to the person for whose injury, damage or death recovery is made.

"(b) In any action to which subsection (a) of this section applies, the court, in a nonjury trial, shall make findings of fact or, in a jury trial, the jury shall return a special verdict which shall state:

"(1) The amount of the damages which would

have been recoverable if there had been no contributory negligence; and

"(2) The degree of negligence of each party, expressed as a percentage.

"(c) Upon the making of the finding of fact or the return of a special verdict, as is contemplated by subsection (b) above, the court shall reduce the amount of the verdict in proportion to the amount of negligence attributable to the person for whose injury, damage or death recovery is made, provided, however, that if the said proportion is equal to or greater than the negligence of the person against whom recovery is sought, then, in such event, the court will enter a judgment for the defendant."

SECTION 2. The provisions of this Act shall not be retroactive and shall affect only those claims accruing after its effective date.

SECTION 3. This Act shall take effect upon its approval.

Approved, July 14, 1969

AMERICAN INSURANCE ASSOCIATION
85 JOHN STREET
NEW YORK, N. Y. 10038

RECEIVED
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Legislative Information Service

LAW MEMO 1272

THIS IS NOW LAW

HAWAII REGULAR SESSION 1969 H.B. 857

COMPARATIVE NEGLIGENCE -

Newly provides that contributory negligence shall not bar recovery in any action by any person or legal representative to recover damages for negligence resulting in death or in injury to person or property, if such negligence was not as great as the negligence of the person against whom recovery is sought, but any damages allowed shall be diminished in proportion to the amount of negligence attributable to the person for whose injury, damage or death recovery is made.

Further provides that in any action to which the above applies, the court, in a non-jury trial, shall make findings of fact or, in a jury trial, the jury shall return a special verdict which shall state: (1) the amount of damages which would have been recoverable if there had been no contributory negligence; and (2) the degree of negligence of each party, expressed as a percentage.

Further provides that upon the making of the finding of fact or the return of a special verdict, as contemplated above, the court shall reduce the amount of the verdict in proportion to the amount of negligence attributable to the person for whose injury, damage or death recovery is made, provided however that if the said portion is equal to or greater than the negligence of the person against whom recovery is sought, then, in such event, the court will enter a judgment for the defendant.

Provides that the provisions hereof shall affect only those claims accruing the effective date hereof.

ACT 227 Effective July 14, 1969

AG:sgt
9(d)

TEXT OF LAW ATTACHED

CHAPTER 507

ACTIONS

[*New Sections*]
507: 7-a Comparative Negligence.
507: 7-b Release or Covenant Not to Sue; Joint Tortfeasors.
507: 7-c Inadmissible Evidence; Post Verdict Procedure.
507: 8 Contributory Negligence as Defense [Repealed.]
507: 8-b Strict Liability and Implied Warranties Limited.
Venue
507: 14 Minors Contracts; Motor Vehicles [Repealed.]

507: 1 Partners.

[Repealed 1973, 378: 2, eff. Aug. 29, 1973, superseded by RSA 304-A: 18 et seq. (supp).]

507: 2 Coteñants.

ANNOTATIONS

Library references

Larceny: cotenant taking cotenancy property. 17 ALR3d 1394.

507: 7 False Checks, etc. Any person who makes, draws, utters or delivers any check, draft or order for the payment of money upon any bank or other depository, knowing that the maker or drawer has not sufficient funds in or credit with such bank or other depository for the payment thereof, and which is not paid in full upon presentation, shall be liable to the person injured thereby.

Source. 1917, 55: 1. PL 328: 12. RL 384: 12. RSA 507: 7. 1971, 227: 5, eff. Aug. 17, 1971.

Amendments—1971. Omitted provisions relating to arrest.

507: 7-a [New] Comparative Negligence. Contributory negligence shall not bar recovery in an action by any plaintiff, or his legal representative, to recover damages for negligence resulting in death, personal injury, or property damage, if such negligence was not greater than the causal negligence of the defendant, but the damages awarded shall be diminished, by general verdict, in proportion to the amount of negligence attributed to the plaintiff; provided that where recovery is allowed against more than one defendant, each such defendant shall be liable for that proportion of the total dollar amount awarded as damages in the ratio of the amount of his causal negligence to the amount of causal negligence attributed to all defendants against whom recovery is allowed. The burden of proof as to the existence or amount of causal negligence alleged to be attributable to a party shall rest upon the party making such allegation. This section shall govern all actions arising out of injuries and other damages sustained on and after August 12, 1969, and none other.

Source. 1969, 225: 1, eff. Aug. 12, 1969. 1970, 35: 1, eff. May 4, 1970.

Amendments—1970. Added at the end thereof the provision concerning the burden of proof as to comparative negligence.

Senate Bill No. 524—Committee on Judiciary

CHAPTER 787

AN ACT relating to tort actions; providing for a system of comparative negligence in lieu of the defenses of contributory negligence; providing that multiple defendants shall be severally liable and damages shall be apportioned in accordance with negligence of each defendant; and providing other matters properly relating thereto.

[Approved May 3, 1973]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. Chapter 41 of NRS is hereby amended by adding thereto a new section which shall read as follows:

1. In any action to recover damages for injury to persons or property in which contributory negligence may be asserted as a defense, the contributory negligence of the plaintiff shall not bar a recovery if the negligence of the person seeking recovery was not greater than the negligence or gross negligence of the person or persons against whom recovery is sought, but any damages allowed shall be diminished in proportion to the amount of negligence attributable to the person seeking recovery.

2. In such cases, the judge may, and when requested by any party shall instruct the jury that:

(a) The plaintiff may not recover if his contributory negligence has contributed more to the injury than the negligence of the defendant or the combined negligence of multiple defendants.

(b) If the jury determines the plaintiff is entitled to recover, it shall return by general verdict the total amount of damages the plaintiff would be entitled to recover except for his contributory negligence.

(c) If the jury determines that a party is entitled to recover, it shall return a special verdict indicating the percentage of negligence attributable to each party.

(d) The percentage of negligence attributable to the person seeking recovery shall reduce the amount of such recovery by the proportionate amount of such negligence.

3. Where recovery is allowed against more than one defendant in such an action:

(a) The defendants are severally liable to the plaintiff.

(b) Each defendants' liability shall be in proportion to his negligence as determined by the jury, or judge if there is no jury. The jury or judge shall apportion the recoverable damages among the defendants in accordance with the negligence determined.

Fil

Assembly Bil

AN ACT relating to justices o
townships; and provi

The People of the State of

SECTION 1. NRS 4.02
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peace shall be elected by th
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2. There shall be one j
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preceding national census
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election held every 4 years

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(b) If the population is 6

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the boards of county comm

[5.] *4.* The clerk of th
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of the peace, certify under
appointment and qualificati
shall be filed in the office of
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of January 1975.

SEC. 3. Section 2 of thi
July 1, 1973. Section 1 of th

and Washington State University during the 1973-75 biennium under the provisions of RCW 66.08.180. If this section is not deleted, the University of Washington will receive $300,000 less than anticipated, Washington State University will receive $200,000 less than anticipated, and the Divison of Health-Department of Social and Health Services will receive $500,000 more than anticipated for alcoholism programs authorized by RCW 70.96.040. Veto Message

Although the language of this section does not contain the word "appropriation," in the absence of any specific language to the contrary, the effect is an appropriation of $500,000 for additional expenditures by the Division of Health. The Alcoholism Program of the Division of Health was funded at the level recommended in my proposed budget for the 1973-75 biennium, and I do not believe the Legislature intended to provide additional funds for that program.

With the exception of the items described above, the remainder of the bill is approved."

CHAPTER 138

[Engrossed Senate Bill No. 2045]

COMPARATIVE NEGLIGENCE--IMPUTED NEGLIGENCE

AN ACT Relating to civil procedure; creating a new chapter in Title 4 RCW; and declaring an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Section 1. Contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages caused by negligence resulting in death or in injury to person or property, but any damages allowed shall be diminished in proportion to the percentage of negligence attributable to the party recovering.

NEW SECTION. Sec. 2. The negligence of one marital spouse shall not be imputed to the other spouse to the marriage so as to bar recovery in an action by the other spouse to the marriage, or his or her legal representative, to recover damages from a third party caused by negligence resulting in death or in injury to the person.

NEW SECTION. Sec. 3. This act takes effect as of 12:01 a.m. on April 1, 1974.

NEW SECTION. Sec. 4. If any provision of this act or the application thereof to any person or circumstance is held

unconstitutional, the remainder of this act and the application of such provisions to other persons or circumstances shall not be affected thereby, and it shall be conclusively presumed that the legislature would have enacted the remainder of this act without such invalid or unconstitutional provision.

NEW SECTION. Sec. 5. Sections 1 through 4 of this act shall constitute a new chapter in Title 4 RCW.

Passed the Senate March 31, 1973.
Passed the House April 14, 1973.
Approved by the Governor April 23, 1973.
Filed in Office of Secretary of State April 24, 1973.

CHAPTER 139
[Engrossed Substitute Senate Bill No. 2800]
DEPARTMENT OF SOCIAL AND HEALTH
SERVICES BUDGET

AN ACT Adopting the budget for the department of social and health services and allied agencies; making appropriations and authorizing expenditures for the operations of the department and allied agencies for the fiscal biennium beginning July 1, 1973, and ending June 30, 1975; designating effective dates for certain appropriations; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Section 1. That a budget is hereby adopted for the department of social and health services and its allied agencies and subject to the provisions set forth in the following sections, the several amounts specified in the following sections, or so much thereof as shall be sufficient to accomplish the purposes designated, are hereby appropriated and authorized to be disbursed for salaries, wages and other expenses and for other specified purposes for the fiscal biennium beginning July 1, 1973, and ending June 30, 1975, except as otherwise provided, out of the several funds of the state hereinafter named.

NEW SECTION. Sec. 2. FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES

General Fund Appropriation: PROVIDED, That
$594,866,929 is from state funds and
$6,541,168 is from private and local funds and
$417,713,198 is from federal funds: PROVIDED,
That any proposal to expend moneys or man years from an appropriated fund or account in excess of appropriations provided by law, based

HAWAII
Regular Session

Act 227, Laws 1969

House Bill No. 857

AN ACT

RELATING TO TORT ACTIONS BASED ON NEGLIGENCE AND AMENDING CHAPTER 663 - HAWAII REVISED STATUTES.

BE IT ENACTEDBY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 663 of the Hawaii Revised Statutes is amended by adding a new Part to be appropriately designated and to read as follows:

Part-------Comparative Negligence

"Section 663 - Contributory negligence no bar; comparative negligence; findings of fact and special verdicts.

"(a) Contributory negligence shall not bar recovery in any action by any person or his legal representative to recover damages for negligence resulting in death or in injury to person or property, if such negligence was not as great as the negligence of the person against whom recovery is sought, but any damages allowed shall be diminished in proportion to the amount of negligence attributable to the person for whose injury, damage or death recovery is made.

"(b) In any action to which subsection (a) of this section applies, the court, in a nonjury trial, shall make findings of fact or, in a jury trial, the jury shall return a special verdict which shall state:

"(1) The amount of the damages which would

have been recoverable if there had been no contributory negligence; and

"(2) The degree of negligence of each party, expressed as a percentage.

"(c) Upon the making of the finding of fact or the return of a special verdict, as is contemplated by subsection (b) above, the court shall reduce the amount of the verdict in proportion to the amount of negligence attributable to the person for whose injury, damage or death recovery is made, provided, however, that if the said proportion is equal to or greater than the negligence of the person against whom recovery is sought, then, in such event, the court will enter a judgment for the defendant."

SECTION 2. The provisions of this Act shall not be retroactive and shall affect only those claims accruing after its effective date.

SECTION 3. This Act shall take effect upon its approval.

Approved, July 14, 1969

AMERICAN INSURANCE ASSOCIATION
85 JOHN STREET
NEW YORK, N. Y. 10038

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EASTAUGH & ANNIS

Legislative Information Service

LAW MEMO 1272

THIS IS NOW LAW

HAWAII REGULAR SESSION 1969 H.B. 857

COMPARATIVE NEGLIGENCE -

Newly provides that contributory negligence shall not bar recovery in any action by any person or legal representative to recover damages for negligence resulting in death or in injury to person or property, if such negligence was not as great as the negligence of the person against whom recovery is sought, but any damages allowed shall be diminished in proportion to the amount of negligence attributable to the person for whose injury, damage or death recovery is made.

Further provides that in any action to which the above applies, the court, in a non-jury trial, shall make findings of fact or in a jury trial, the jury shall return a special verdict which shall state: (1) the amount of damages which would have been recoverable if there had been no contributory negligence; and (2) the degree of negligence of each party, expressed as a percentage.

Further provides that upon the making of the finding of fact or the return of a special verdict, as contemplated above, the court shall reduce the amount of the verdict in proportion to the amount of negligence attributable to the person for whose injury, damage or death recovery is made, provided however that if the said portion is equal to or greater than the negligence of the person against whom recovery is sought, then, in such event, the court will enter a judgment for the defendant.

Provides that the provisions hereof shall affect only those claims accruing the effective date hereof.

ACT 227 Effective July 14, 1969

AG:sgt
9(6)

TEXT OF LAW ATTACHED

MODEL STATUTE COMPARATIVE NEGLIGENCE

Section 1. GENERAL RULES. (a) In all actions based on strict liability, negligence or recklessness, the fact the party bringing the action was at fault because that person was negligent or reckless or unreasonably and impliedly assumed the risk, shall not necessarily bar recovery; rather, the person's damages shall be diminished by the trier of fact in proportion to the amount of fault attributable to that person.

(b) The principles set forth in Subsection A shall also apply in actions for wrongful death with respect to the negligence of the plaintiff and his or her decedent.

(c) The principles set forth in Subsection A shall apply regardless of whether either party violated a criminal safety statute or had the last clear change to prevent the injury.

Section 2. PROCEDURAL RULES. (a) In any action to which this Act applies, the court in a non-jury trial shall make findings of fact, or in a jury trial, the jury shall answer special questions indicating:

(1) The amount of damages which the party bringing the action would be entitled to recover had that person not been at fault;

(2) The amount of the party's fault that had a bearing on that person's damages, expressed as a percentage.

The court shall then reduce the amount of such damages in proportion to the amount of fault attributable to the person recovering. The jury may, however, upon request of a party, be informed of the legal effect of their answers to the special questions.

(b) A court may make a limited reversal of a jury's verdict on the ground that its answer under (1) or (2) of subsection (a) was wholly unreasonable. The court may then determine a proper amount of damage or percentage of fault, utilizing the principles of additur and remittitur properly used in this state.

Section 3. MULTIPLE PARTIES. (a) This act in no way modifies the common-law principle that joint tortfeasors are jointly and severally liable for their torts.

(b) In all actions subject to this act, the trier of fact shall allocate fault on the basis of parties who are represented in court.

(c) In actions for contribution, damages shall be allocated on the basis of the relative fault of the parties to the contribution action.

Section 4 EFFECTIVE DATE. This act shall take effect_____,____, and shall apply only to actions arising out of events which occur on or after that date.

joint tort-feasors by injured party will release all other tort-feasors who contributed to wrong. Id.

An innocent party is to be fully compensated by a joint tort-feasor for his loss. Allstate Ins. Co. v. Clarke (Civ.App.1971) 471 S.W.2d 901, ref. n. r. e.

7. —— Common liability, joint tort-feasors

Where bidder was under no obligation to indemnify owner, pursuant to indemnity provision of contract calling for bidder to undertake certain work on owner's utility lines and poles, for settlement made for injury to bidder's employee in course of job as result of separate acts of negligence of both owner and bidder, whether employee was contributorily negligent was immaterial and submission of special issues relating to contributory negligence of employee, although error, was harmless. Bluebonnet Elec. Co-op., Inc. v. Universal Elec. Const. Co. (Civ.App.1971) 467 S.W.2d 567, ref. n. r. e.

15. Indemnity agreements

McCann Const. Co. v. Joe Adams and Son (Civ.App.1970) 458 S.W.2d 477 [main volume] reversed on other grounds 475 S.W.2d 721.

Generally, indemnity agreement will not protect indemnitee against consequences of his own negligence unless the obligation is expressed in unequivocal terms. Joe Adams and Son v. McCann Const. Co. (Sup. 1971) 475 S.W.2d 721.

Under oil well drilling contract providing that contractor would assume full liability for, and hold oil field leaseholder harmless, against all claims arising as result of accidents incident to drilling operation conducted by contractor, leaseholder was not indemnified for accidents arising out of its own negligence. Coastal States Crude Gathering Co. v. Williams (Civ.App.1972) 476 S.W.2d 339, ref. n. r. e.

General rule is that a contract of indemnity will not afford protection to the indemnitee against the consequences of his own negligence unless the contract clearly expresses such an obligation in unequivocal terms. Ref-Chem Corp. v. El Paso Products Co. (Civ.App.1974) 506 S.W.2d 701.

Contract providing indemnification for owner against claims asserted by contractor, its officers, agents, employees, or any member of the public, arising out of or in connection with the work, except for claims by a member of the public caused by the negligence of the owner without contributory negligence on the part of the contractor, provided indemnification for owner's own negligence, but only with respect to claims of the contractor, its agents and employees or where the claim arose out of the work being done by the contractor. Id.

16. Products liability

Manufacturer of defective intracath needle which was found liable to patient injured thereby was not entitled to contribution from either the packager and distributor if intracath unit of which needle was part or hospital in which patient was staying at time of injury, because both packager and hospital would be entitled to indemnification at common law against manufacturer which was solely liable for judgment and which had breached duty owed to packager and hospital. Vergott v. Deseret Pharmaceutical Co. (C.A.1972) 463 F.2d 12.

Where manufacturer sold dealer a truck with defectively designed cooling system and dealer materially and knowingly aggravated and contributed to condition by installing air conditioner which severely enhanced danger, both operating concurrently to cause accident, dealer could not recover indemnity from manufacturer but could recover contribution. Ford Motor Co. v. Russell & Smith Ford Co. (Civ.App.1971) 474 S.W.2d 549.

17. Landlord and tenant

Where pipeline owner which held easement over oil field for its pipeline created potentially dangerous condition in not marking location of underground pipeline but no injury would have resulted therefrom in absence of active negligence of oil field leaseholder in having water pit dug in preparation for well drilling at place over pipeline whose location leaseholder either knew or should have known, resulting in rupturing of pipeline and resulting fire in which plaintiffs' decedent, as operator of bulldozer digging water pit, died, pipeline owner was entitled to common law indemnity from leaseholder. Coastal States Crude Gathering Co. v. Williams (Civ.App. 1972) 476 S.W.2d 339, ref. n. r. e.

18. Contract provisions for contributions

Where indemnity contract between railroad and LP gas supplier provided that railroad was entitled to full indemnity if damages were caused by negligent acts or omissions of producer and that producer would share equally with the railroad in payment of loss if damages were caused by their joint or concurring negligence, and where neither was guilty of active negligence but they both, due to failure of each to act, were guilty of passive negligence which was joint and concurrent with sole cause not being attributable to either, railroad was entitled to contribution from producer for one-half of recovery by railroad employee against railroad in employee's action under Federal Employers' Liability Act (45 U.S.C.A. § 51 et seq.) against railroad for injuries sustained when he inhaled LP gas. Atchison, T. & S. F. Ry. Co. v. Denton (Civ.App.1971) 475 S.W.2d 821, ref. n. r. e.

19. Contractors and subcontractors

McCann Const. Co. v. Joe Adams and Son (Civ.App.1970) 458 S.W.2d 477 [main volume] reversed 475 S.W.2d 721.

Provision in contract between general contractor and subcontractor whereby subcontractor would indemnify general contractor for any injuries sustained by parties through or on account of any act or in connection with the work of the subcontractor did not entitle general contractor to indemnification from subcontractor for judgment entered against general contractor for injuries sustained by subcontractor's employees when concrete forms erected by general contractor before subcontractor began doing its work of pouring concrete collapsed solely by the fault of the general contractor. Joe Adams & Son v. McCann Const. Co. (Sup.1971) 475 S.W.2d 721.

30. Release

Where it did not appear that owner or operator of automobile which ran over infant plaintiff, or hospital where plaintiff was treated by physician, were joint tort-feasors with physician, settlement with and release of parties other than physician did not require reduction of damages recoverable from physician. Leong v. Wright (Civ.App.1972) 478 S.W.2d 839, ref. n. r. e.

38. Summary judgment

Evidence generated genuine issue of material fact whether trust agreement, which had been entered into between uninsured motorist carrier and its insured following automobile accident, which made insured trustee as to any recovery insured might make against uninsured motorist but which was silent as to insured being trustee as to any recovery he might make against joint tort-feasor, superseded trust agreement, which was contained in policy and which gave insurer right of reimbursement from any recovery against joint tort-feasor, precluding summary judgment for insurer, which had intervened in insured's suit against joint tort-feasor. Allstate Ins. Co. v. Clarke (Civ.App.1971) 471 S.W.2d 901, ref. n. r. e.

40. Evidence

In action against leaseholder and drilling contractor for wrongful death of operator of bulldozer whose blade struck and ruptured subterranean crude oil pipeline while digging water pit preparatory to well drilling operation for leaseholder, master drilling contract executed after date of accident by leaseholder and well drilling contractor which sought indemnity against leaseholder was properly excluded. Coastal States Crude Gathering Co. v. Williams (Civ.App. 1972) 476 S.W.2d 339, ref. n. r. e.

40.5 Jury questions

Where there was no showing that field personnel of general contractor were authorized to agree to indemnity obligation or that indemnity clause printed on work orders prepared by equipment supplier had been subject of negotiations between general contractor and equipment supplier, and executive of general contractor testified that he had no knowledge of indemnity clause printed on face of work order signed by general contractor's field superintendent after job for which cranes had been hired and during which damage to bridge tee occurred and that general contractor considered work orders as nothing more than receipts given in field after accomplishment of work, determination of whether contract of indemnity existed should have been left to jury as trier of fact. Haws & Garrett General Contractors, Inc. v. Gorbett Bros. Welding Co. (Sup.1972) 480 S.W.2d 607.

45. Judgment, in general

Where under "trust agreement" insured agreed to hold any recovery he made against uninsured motorist for benefit of uninsured motorist insurer, insurer was not, on theory of contribution, entitled to recover its payments out of judgment insured had obtained against joint tort-feasor. Allstate Ins. Co. v. Clarke (Civ.App. 1971) 471 S.W.2d 901, ref. n. r. e.

Art. 2212a. Comparative negligence; contribution among joint tort-feasors

Modified comparative negligence

Section 1. Contributory negligence shall not bar recovery in an action by any person or party or the legal representative of any person or party to recover damages for negligence resulting in death or injury to persons or property if such negligence is not greater than the negligence of the person or party or persons or parties against whom recovery is sought, but any damages allowed shall be diminished in proportion to the amount of negligence attributed to the person or party recovering.

Contribution among joint tort-feasors

Sec. 2. (a) In this section:

(1) "Claimant" means any party seeking relief, whether he is a plaintiff, counterclaimant, or cross-claimant.

(2) "Defendant" includes any party from whom a claimant seeks relief.

(b) In a case in which there is more than one defendant, and the claimant's negligence does not exceed the total negligence of all defendants, contribution to the damages awarded to the claimant shall be in proportion to the percentage of negligence attributable to each defendant.

(c) Each defendant is jointly and severally liable for the entire amount of the judgment awarded the claimant, except that a defendant whose negligence is less than that of the claimant is liable to the claimant only for that portion of the judgment which represents the percentage of negligence attributable to him.

(d) If an alleged joint tort-feasor pays an amount to a claimant in settlement, but is never joined as a party defendant, or having been joined, is dismissed or nonsuited after settlement with the claimant (for which reason the existence and amount of his negligence are not submitted to the jury), each defendant is entitled to deduct from the amount for which he is liable to the claimant a percentage of the amount of the settlement based on the relationship the defendant's own negligence bears to the total negligence of all defendants.

(e) If an alleged joint tort-feasor makes a settlement with a claimant but nevertheless is joined as a party defendant at the time of the submission of the case to the jury (so that the existence and amount of his negligence are submitted to the jury) and his percentage of negligence is found by the jury, the settlement is a complete release of the portion of the judgment attributable to the percentage of negligence found on the part of that joint tort-feasor.

(f) If the application of the rules contained in Subsections (a) through (e) of this section results in two claimants being liable to each other in damages, the claimant who is liable for the greater amount is entitled to a credit toward his liability in the amount of damages owed him by the other claimant.

(g) All claims for contribution between named defendants in the primary suit shall be determined in the primary suit, except that a named defendant may proceed against a person not a party to the primary suit who has not effected a settlement with the claimant.

(h) This section prevails over Article 2212, Revised Civil Statutes of Texas, 1925, and all other laws to the extent of any conflict.

Acts 1973, 63rd Leg., p. 41, ch. 28, §§ 1, 2, eff. Sept. 1, 1973.

Section 3 of the 1973 Act amended section 1 of article 6701b; §§ 4, 5 thereof provided:

"Sec. 4. Saving clause. This Act does not apply to any cause of action arising before its effective date.

"Sec. 5. Severability clause. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Comparative Laws:

STATE	CITATION
Arkansas	Ark.Stats. § 27-1730.2
Connecticut	Laws 1973, c. 623
Maine	14 M.R.S.A. § 156
Massachusetts	M.G.L.A. c. 231, § 85
Minnesota	M.S.A. § 604.01
Mississippi	Code 1942 § 1454
Nebraska	R.R.S. § 25-1151
New Hampshire	R.S.A. 507:7-a
New Jersey	N.J.S.A. 2A:15-5.1 to 2A:15-5.3
Oklahoma	23 Okl.St.Ann. §§ 11, 12
Rhode Island	Gen.Laws 1956, § 9-20-4

Comparative Laws:

STATE	CITATION
South Dakota	SDCL § 20-9-2
Vermont	12 V.S.A. § 1036
Washington	Laws 1973, c. 138(X)
Wisconsin	W.S.A. § 895.045

Law Review Commentaries

Automobile insurance rate changes under comparative negligence. Jerry D. Todd, 36 Texas Bar J. 1153 (1973).

Automobile reparations reform bills. John M. Lawrence III, 35 Texas Bar J. 1117 (1972).

Comparative negligence. Frank T. Abraham and Don R. Riddle, 25 Baylor L.Rev. 411 (1973).

Comparative negligence in Texas. 11 Houston L.Rev. 101 (1973).

Negligence law, no-fault, and jury trial. Leon Green and Allen E. Smith, 5 Texas L.Rev. 825 (1973).

Proposed modified comparative negligence statute. Frank T. Abraham, 35 Texas Bar J. 1114 (1972).

Library references

Contribution ⇐5(2).
Negligence ⇐92.
C.J.S. Contribution § 11.
C.J.S. Negligence § 168(2).

Art. 2212b. Indemnity provisions in mineral agreements where negligence attributable to indemnitee

Section 1. The legislature finds that an inequity is fostered on certain contractors by the indemnity provisions contained in some agreements pertaining to wells for oil, gas, or water, or mines for other minerals. It is the intent of the legislature and the purpose of this Act to declare provisions for indemnity in certain agreements where there is negligence attributable to the indemnitee to be against the public policy of the State of Texas.

Sec. 2. Except as specified in Section 4 of this Act, a covenant, promise, agreement, or understanding contained in, collateral to, or affecting an agreement pertaining to a well for oil, gas, or water, or mine for any mineral, is void and unenforceable if it purports to indemnify the indemnitee against loss or liability for damages arising from either death or bodily injury to persons, or injury to property, or any other loss, damage, or expense arising from either death or bodily injury, injury to property, or loss, damage, or expense, which is caused by or results from the sole or concurrent negligence of the indemnitee, or an agent or employee of the indemnitee, or an independent contractor who is directly responsible to the indemnitee.

Sec. 3. The term "agreement pertaining to a well for oil, gas, or water, or mine for any mineral" as used in Section 2 of this Act, means any agreement or understanding, written or oral, concerning any operations related to drilling, deepening, reworking, repairing, improving, testing, treating, perforating, acidizing, logging, conditioning, altering, plugging, or otherwise rendering services in or in connection with any well drilled for the purpose of producing or disposing of oil, gas, or other minerals, or water, or designing, excavating, constructing, improving, or otherwise rendering services in or in connection with any mine shaft, drift, or other structure intended for use in the exploration for or production of any mineral, or an agreement to perform any portion of any such work or services or any act collateral thereto, including the furnishing or rental of equipment, incidental transportation, and other goods and services furnished in connection with any such service or operation.

Sec. 4. (a) The provisions of this Act do not apply to loss or liability for damages, or any other expenses, arising from

(1) death or bodily injury to persons or injury to property resulting from radioactivity;

(2) injury to property resulting from pollution; or

(3) injury to property resulting from reservoir or underground damage.

(b) The provisions of this Act do not affect the validity of any insurance contract or any benefit conferred by the Workmen's Compensation Law of this state and do not deprive an owner of the surface estate of the right to secure an indemnity from any lessee, operator, contractor, or other person conducting operations for the exploration or production of minerals of the owner's land.

(c) The provisions of Section 2 of this Act shall not apply to any agreement providing for indemnity with respect to claims for personal injury or death to indemnitor's employees or agents, or the employees or agents of indemnitor's sub-contractors if the parties agree in writing that such indemnity obligation will be supported by available liability insurance coverage to be furnished by indemnitor; provided, however, that such indemnity obligation shall be only to the extent of the coverages and dollar limits of insurance agreed to be furnished; but in no event shall said insurance be required in an amount in excess of twelve times state basic limits for bodily injury, approved by the Board of Insurance Commissioners

Sam - Pure; Pro-Rata Dist of
Tom - 49%
Bob - Pure
Me -

40 plaintiff 30 def
30 def

Fred Estaugh

HB176

American Insurance Co.
Casualty + Surety carriers

Past bills based Mississippi statute
Pure negligence

4 types

Nov. 1, 1973
1. Pure Miss R.I. Wash
2. 50% threshold 7 states equal negligence
3. 49% not as great as defendant 11 states
4. slight + then plaintiff must have less negligence than defendant

then found 3 of 4 type
found Hawaii type

Compton

① present system
plaintiff & defendant – negligent – if plaintiff negligent then no settlement

② Pure system —
90% negligent – can collect 10% from defendant only 10% guilty

③ 50% Wisconsin if equal no ~~recoveries~~
if plaintiff 49% contributorily then get 51% recovery of award

④ 49% system if equal then get 50% of damages
then depends on extent of damages

HB

177

Corrected Version

Original sponsors: McKinnon, Bradley and Parker

Offered: 3/21/75
Referred: Rules

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 177 am

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to security deposits and prepaid rent."

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

* Section 1. AS 34.03.070(a) is amended to read:

(a) A landlord may not demand or receive prepaid rent or a security deposit, however denominated, in an aggregate amount or value in excess of two months' periodic rent. A landlord may not demand or receive prepaid rent or a security deposit unless the tenant and the landlord take an inventory of the condition of the existing facilities and of any damage to the part of the premises that the tenant will occupy and use and a written version of this inventory is signed by the landlord and the tenant.

CORRECTION

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 177 amended

Please discard any other version .

"An Act relating to security deposits and prepaid rent."

COMMITTEE REPORT

3/7/75

HOUSE

Mr. Speaker: Date 3/20/75

The Committee on JUDICIARY has had HB 177 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(X) recommends it BE REPLACED WITH CS FOR HB 177 AND THAT CS FOR HB 177 DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

[signature]		
[signature]		
[signature]		
[signature]		

Members NOT concurring in the Majority report:

Fink recommends: [illegible]

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

[signature] Chairman

Original sponsors: McKinnon, Bradley
and Parker

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 177

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to security deposits and prepaid rent."

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* Section 1. AS 34.03.070(a) is amended to read:

(a) A landlord may not demand or receive prepaid rent or a security deposit, however denominated, in an aggregate amount or value in excess of two months' periodic rent. A landlord may not demand or receive prepaid rent or a security deposit unless the tenant and the landlord take an inventory of the condition of the existing facilities and of any damage to the part of the premises that the tenant will occupy and use and a written version of this inventory is signed by the landlord and the tenant.

* Sec. 2. AS 34.03.070(d) is amended to read:

(d) If the landlord wilfully fails to comply with (a) of this section, the tenant may recover twice the amount of the deposit or prepaid rent in excess of the amount allowed. If the landlord wilfully fails to comply with (b) of this section, the tenant may recover an amount not to exceed twice the actual amount withheld.

AMENDMENTS TO HB 177

clarify

1. On line 10, after "an", insert "aggregate"

2. On line 13, after "inventory of" strike "existing" and insert "the condition of existing facilities and any"

clarify

3. On line 16, add a new section:

*Sec. 2. AS 34.03.070 (d) is amended to read:

"(d) If the landlord fails to comply with (a) of this section, the tenant may recover twice the amount of the deposit or prepaid rent in excess of the amount allowed. If the landlord willfully fails to comply with (b) of this section, the tenant may recover an amount not to exceed twice the actual amount withheld."

no penalty now for (2)

House Judiciary Committee
March 19, 1975

SB 28 Marriage

The meeting was called to order by Chairman Gardiner at 1:25 p.m. All members were present except Rep. Specking.

The committee proposed adding a new (1) to page 2 to state : that the parents have given their consent, and to renumber (2) and (3). On page 1, line 26, delete 13 and add has reached the age of 14.

Mr. Parr moved the bill out of committee with a do pass with the above amendments.

HB 177 Security deposits

Rep. McKinnon, sponsor of the bill, testified that it arose as a result of problems in Anchorage.

Mr. Fink stated that in these days of housing shortages, the tenant will sign anything to get an apartment. If this bill passes, landlords will raise rents.

Don Clocksin suggested that on line 13 the language "or his representative" should be deleted since a landlord's representative is already covered in the definition section of the bill for landlord. He stated that many landlords already take an inventory, that security deposits are the second largest share of landlord-tenant complaints, and that the bill would eliminate litigation. He proposed three further amendments. Mr. Brown moved that a draft CS be prepared to incorporate all four suggested amendments by Mr. Clocksin, and that the CS be held for further consideration. Mr. Fink objected. The motion passed on vote.

Mr. Fink and Mr. Brown were appointed a subcommittee to study medical malpractice.

Introduced: 2/18/75
Referred: Commerce and Judiciary

IN THE HOUSE

BY MCKINNON,BRADLEY AND PARKER

HOUSE BILL NO. 177

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to security deposits and prepaid rent."

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

* Section 1. AS 34.03.070(a) is amended to read:

(a) A landlord may not demand or receive prepaid rent or a security deposit, however denominated, in an Aggregate amount or value in excess of two months' periodic rent. A landlord may not demand or receive prepaid rent or a security deposit unless the tenant and the landlord [or their representatives] take an inventory of [existing] damage to the part of the premises that the tenant will occupy and use and a written version of this inventory is signed by the landlord and the tenant.

"the condition of existing facilities and any"

HB

178

Introduced: 2/18/75
Referred: Commerce and
Judiciary

IN THE HOUSE BY PARR

HOUSE BILL NO. 178

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to third-party beneficiaries of express or implied warranties."

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

* Section 1. AS 45.05.104 is amended to read:

Sec. 45.05.104. THIRD-PARTY BENEFICIARIES OF WARRANTIES EXPRESS OR IMPLIED. A seller's warranty whether express or implied extends to any [A NATURAL] person who may reasonably be expected to [IS IN THE FAMILY OR HOUSEHOLD OF HIS BUYER OR WHO IS A GUEST IN HIS HOME IF IT IS REASONABLE TO EXPECT THAT THE PERSON MAY] use, consume, or be affected by the goods and who is injured [IN PERSON] by breach of the warranty. A seller may not exclude or limit the operation of this section.

Modeled after U.C.C.
Warranty presently applies to buyer
Allows suits only for prop — not personal damages

property

House Judiciary Committee
April 9, 1975

The meeting was called to order at 1:15 by Chairman Gardiner. All members were present.

HB 178 Third Party Beneficiaries

Mr. Parr, sponsor of the bill, testified that it broadens injury coverage and adds property coverage. The bill incorporates the language in the new Uniform Commercial Code. The bill was passed out of committee, do pass.

HB 390 Conflict of Interest

The bill was introduced to allow municipal officers to practice before boards and commissions, as long as they are not members of the commission.

The following amendments were made to the bill:

line 14, page 1: after "member of a" insert: "municipal body"
line 16, page 1: after "function of the" insert: "municipal body"
line 24, page 1: after "chairman or" insert: member of a municipal body or"
CS HB 390 was passed out of committee, do pass.

HB 175 Department of Labor

Joe McKinnon, sponsor of the bill, testified that it was a housekeeping measure. At present the Department of Labor issues cease and desist orders on the basis of an AG opinion that they have authority to do so. This bill gives them statutory authority to do so.
The three year requirement is already mandatory under other statutes so merely makes the statutes consistent.
Mr. Brown moved HB 175 out of committee, do pass. There being no objection, it was so ordered.

HB 312 King crab processing

Rep. Naughton, sponsor of the bill, testified that there currently is a problem getting processing plants closed when in violation and re-opened when the problem has been corrected. The Quality Control Board needs the ability to take immediate action. The bill puts the board on a fiscal year basis and will involve no state monies. The Board recommends passage of the bill.
Mr. Brown moved HB 312 out of committee, do pass. There being no objection, it was so ordered.

HB

191

"An Act relating to changes in transportation tariffs."

COMMITTEE REPORT

3/13/75

HOUSE

Mr. Speaker: Date 4/16/75

The Committee on JUDICIARY has had HB 191

under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

House Judiciary Committee
April 3, 1975

The meeting was called to order at 7:20 p.m. by Chairman Gardiner, and was ruled a continuance of the afternoon meeting.

HB 191 Transportation Tariff

Commissioner Motley testified that the ATC would like to give 45 days notice, but this creates problems in administration. It would be theoretically possible to have two different rates in effect at the same time. He felt that this problem could be worked out, possibly by giving the federal notice earlier than required.

Mr. Specking suggested making the language similar to that of the ICC. He questioned whether the commission or the shipper was required to notify the public.

Mr. Bradley moved HB 191 out of committee and asked unanimous consent. Mr. Parr objected. Mr. Bradley withdrew his motion. Mr. Parr requested that the ATC be notified for one final time and requested to present justification as to why they oppose the 45 days notice.

HJR 11 Veto, special session

The following amendments were adopted:

page 1, line 7: in the title -- after "bills" insert a period and delete the rest of the title.

page 2, line 2: delete the underlined language in lines 2 and 3 and insert: "than the fifth day of the next regular or special session of that legislature."

CS HJR 11 was moved out of committee.

HJR 4 Governor's term

Mr. Gardiner turned the chair over to Mr. Bradley. Mr. Gardiner, sponsor of the bill, testified that the adverse effects of an election in the middle of a governor's possible term must be weighed against the public accountability that the election provides. He said that work in an election year is just as important as any other time and should not be sacrificed to political ambition. He suggested that language be put in the bill to state that a governor having a 4 year term previous to election to a six year term would be allowed to serve the full six year term. This would hold true not only for transitional periods but could also be incorporated to cover a lt. governor who serves more than 4 years of a governor's term -- who would then not be eligible to run, but who serves less than four years -- would be eligible for a six year term of his own.

It was decided that proposed amendments would be drawn up.

House Judiciary Committee
March 25, 1975

The meeting was called to order at 1:25 p.m. by Chairman Gardiner. All members were present except Mr. Specking.

HB 2 Alaska Art

Helen Fischer, sponsor of the bill, testified that it would cover other than native Alaska artists as a companion bill to the Silver Hand. This bill specifies controls and provides penalties for misuse. She stated that the Department of Commerce does not anticipate much additional cost to administer the program. She suggested that the last paragraph of the bill be deleted.

Mr. Parr moved on page 4, line 3: after "processors" delete to end of bill. The amendment passed.

Kathy Schenker of ANAC testified that if the stickers were improperly used they might legitimize replicas of authentic native art and confuse the public. She suggested that the artists themselves apply to use the stickers, not the merchants. Mrs. Fischer concurred. She questioned the availability of funds to administer the program.

The committee considered the possibility of another bill to amend 45.66.040 to amend the Silver Hand statutes so that artists and not merchants affix the Silver Hand stickers.

Mr. Clocksin asked whether the bill was designed to protect all Alaska art -- even mass produced products -- or creative Alaska art. He stated that the public would be confused in differentiating this sticker from the Silver Hand. He stated that even with Mr. Parr's amendment, out of state work would have to be prohibited in the definition section.

HB 191 Transportation tariffs

Don Clocksin testified that the bill was a proposal of the Bush Justice conference. Presently proposed changes are submitted to the Transportation Commission, processed, and then notice given the public. He charged that the notice given was so inadequate as to allow almost no public input. The bill would require 30 days notice to the public.

Wes Coyner of the Alaska Carriers Assoc. testified that there are literally hundreds of proposed rate changes received by the Commission each week. He stated that the ATC is against the bill. The Committee requested that the commission be notified again of the next scheduled meeting.

Alan Compton testified that it presently takes two weeks to get the notice out to the public. By requiring that the public have 30 days notice the process is merely extended two weeks.

On the phone the ATC stated that they are opposed to the bill because of the many changes they receive each week. They did send a letter to the Commissioner of Commerce so stating.

last change
Free mailing list & newspaper publishing
eliminated by Reg
$20 a year journal - publication

Original sponsor: Gardiner

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 191

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to changes in transportation tariffs."

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

* Section 1. AS 42.10.290(a) is amended to read:

(a) Unless the commission otherwise orders, no change may be made by a common carrier in its rates, classifications, rules, regulations, or practices or in a contract or agreement relating to a rate, classification, rule, regulation, or practice except after 45 [30] days notice to the commission and 30 days notice to the public. Notice shall be given to the commission by filing with the commission and keeping open for public inspection the revised tariff provisions which shall plainly indicate the changes to be made in the schedules then in force and the time when the changes will go into effect. The commission shall prescribe means by regulation whereby notice is given to the public before or no later than 15 days after the filing which shall be reasonably adequate to notify customers affected by the filing [MAY PRESCRIBE ADDITIONAL MEANS OF GIVING NOTICE]. The commission, for good cause shown, may allow changes to take effect on less than 45 [30] days notice to the commission or 30 days notice to the public under such conditions as the commission may prescribe.

- if not affected no publicati

Public notice is effective notice

* Sec. 2. AS 42.15.191(a) is amended to read:

(a) Unless the commission otherwise orders, no change may be made by a common carrier in its rates, classifications, rules, regulations or practices or in a contract or agreement relating to a rate, classifica-

the commission and 30 days' notice to the public. Notice shall be given to the commission by filing with the commission and keeping open for public inspection the revised tariff provisions which shall plainly indicate the changes to be made in the schedules then in force and the time when the changes will go into effect. The commission shall prescribe means by regulation whereby notice is given to the public before or no later than 15 days after the filing which shall be reasonably adequate to notify customers affected by the filing [MAY PRESCRIBE ADDITIONAL MEANS OF GIVING NOTICE]. The commission, for good cause shown, may allow changes to take effect on less than 45 [30] days' notice to the commission or 30 days' notice to the public under conditions the commission prescribes.

* Sec. 3. AS 02.05.140(b) is amended to read: Air carriers AT Com recommendation

(b) Extent and manner of filing. Tariffs shall be filed and made available to the public as provided in (f) of this section for changed tariffs as set out there, otherwise to the extent and in the manner required by regulations of the commission. The form of every tariff shall be prescribed by the commission. The commission shall prescribe a form as nearly similar as possible to the form of tariffs required of air carriers by the Civil Aeronautics Board or other agency of the federal government under the Act of Congress entitled "Federal Aviation Act of 1958," and acts amending or supplementing it. The rates, fares and charges shown in a tariff shall be stated in terms of lawful money of the United States.

* Sec. 4. AS 02.05.140(f) is repealed and re-enacted to read:

(f) Notice of change in tariff. Unless the commission otherwise orders, no change may be made in a rate, fare, or charge, or a classification, rule, regulation, or practice affecting the rate, fare, or charge or the value of the service thereunder, specified in any effec-

tive tariff of a certificated carrier, air taxi operator or carrier exempt under sec. 50(b) of this chapter, except after 45 days notice to the commission and 30 days notice to the public. Notice shall be given to the commission by filing with the commission and keeping open for public inspection the revised tariff provisions which shall plainly indicate the changes to be made in the schedules then in force and the time when the changes will go into effect. The commission shall prescribe means by regulation whereby notice is given to the public before or no later than 15 days after the filing which shall be reasonably adequate to notify customers affected by the filing. The commission, for good cause shown, may allow changes to take effect on less than 45 days notice to the commission or 30 days notice to the public under such conditions as the commission may prescribe.

HB191

One of twice a month

MAR 27 RECD

ALASKA TRANSPORTATION COMMISSION
1000 MacKay Bldg., 338 Denali St.
Anchorage, Alaska 99501
Telephone 279-1451

RECEIVED

Volume 2, No. 6 JOURNAL March 25, 1975

Applications pending before the Commission are hereby noticed pursuant to the provisions of 3 AAC 60.180 of the Alaska Transportation Commission Rules of Practice and Procedure.

PROTEST DEADLINE: April 9, 1975, unless otherwise noted.

DOCKET NO. & DATE FILED	APPLICANT	SERVICE DESIRED
75-70-AT/A 3/13/75	C & L, INC., d/b/a Port Heiden-Chignik Air Service P. O. Box 747 Homer, Alaska 99603	Amend air taxi certificate No. 59 to include fixed wing aircraft 12,500 lbs. or less GTOW, from an additional base of operations at Brown Bear Lodge Airstrip and Regular Field (near Port Heiden).
	Attorney: Andrew E. Hoge, 601 W. 5th, #304, Anchorage	
75-71-AS/A 3/11/75	ALASKA AERONAUTICAL INDUSTRIES, INC. P. O. Box 6067 Anchorage, Alaska 99502	Amend air scheduled certificate No. 234 to include Anchorage/Seward/Anchorage service.
	Attorney: S. A. Debenham, 511 W. 4th Ave., Anchorage	
75-72-MF/X 3/14/75	Willard D. Rowley, d/b/a R & R CONST. P. O. Box 464 Chugiak, Alaska 99567	Temporary common carrier authority to transport wrecked, damaged, and/or disabled vehicles on the roads adjacent to and utilized for transportation of equipment, materials and supplies for the Trans-Alaska Pipeline construction projects on the one hand, and on the other hand, points in Zones 4 and 5. Authority limited to the use of wrecker type vehicles which weigh not less than 15,000 pounds.
	PROTEST DEADLINE: April 4, 1975.	

75-73-MF/O
3/14/75

Willard D. Rowley, d/b/a
R & R CONST.
P. O. Box 464
Chugiak, Alaska 99567

Common carrier permit to transport wrecked, damaged, and/or disabled vehicles on the roads adjacent to and utilized for transportation of equipment, materials and supplies for the Trans-Alaska Pipeline construction projects on the one hand, and on the other hand, points in Zones 4 and 5. Authority limited to the use of wrecker type vehicles which weigh not less than 15,000 pounds.

75-76-AT/O
3/17/75

Dennis R. Thomas, d/b/a
THOMAS TRADING POST
Crooked Creek, Alaska 99576

Air taxi certificate to utilize fixed wing aircraft of 12,500 lbs. or less GTOW from a base of operations at Crooked Creek, Alaska.

75-77-AT/T
3/17/75

AIRSERV, INC.
Box 807
Kodiak, Alaska 99615

Acquire by transfer of South Central Air Taxi, Inc., Air Taxi Certificate No. 266

Attorney: George L. Benesch, 608 W. 5th Ave., Anchorage

75-79-MP/T
3/18/75

MT. McKINLEY BUS LINES, INC.
731 C Street
Anchorage, Alaska 99501

Transfer stock ownership and control of Certificate of Public Convenience and Necessity No. C-15 to William S. Gilbert from Ralph H. Dickenson.

Applicant has requested temporary transfer pending final decision.

Attorney: Kenneth R. Lamb, 921 W. 6th Ave., Anchorage

74-146-MF/O
3/11/75

Lawrence J. Davis, d/b/a
SONNY CONTRACTOR
Box 148
Bethel, Alaska 99559

Amendment of application for common carrier permit to transport commodities in bulk in dump type equipment, and general commodities, including houses, buildings and mobile homes between points within a fifty (50) mile radius of Bethel, Alaska.

Application originally noticed in the June 5, 1974 Journal, Volume 1, No. 10.

Applicant has requested temporary authority pending final decision.

Attorney: Christopher R. Cooke, P. O. Box 555, Bethel

PROTESTS AND PETITIONS TO INTERVENE in any of the foregoing applications shall be filed pursuant to 3 AAC 60.100, 190, and 430(b). All filings shall be postmarked not later than APRIL 9, 1975, unless otherwise noted or served on the Commission Recorder, 10th Floor, MacKay Bldg., 338 Denali Street, Anchorage by 4:30 p.m. on said date, and shall include proof of service on applicant AND his attorney.

68-153-MP/A ALASKA HYWAY TOURS, INC. Order No. 75-104, dated March 10, 1975, granted name change to WESTOURS MOTOR COACHES, INC. and re-issuing certificate of public convenience and necessity No. 2 to conform to 3 AAC 60.380 and in compliance with previously granted authority. Order to become effective May 1, 1975.

Copy of Order No. 75-104 will be available upon request

TEMPORARY AUTHORITY

75-14-MF/X B & J TRUCKING CO. Telegram sent March 14, 1975 granting temporary extension of authority of Contract Carrier Permit No. 257 to transport commodities in bulk in dump type equipment between points in Zone 4.

Authority will expire May 1, 1975.

On March 14, 1975, a telegram was sent to the following carriers cancelling temporary emergency authority to transport bulk petroleum from Tesoro refinery in Zone 3 to points along or adjacent to the Trans-Alaska pipeline route north of Fairbanks in Zone 1, as of midnight, March 15, 1975.

SOURDOUGH FREIGHT LINES, INC., Permit No. 79, Docket 75-45-MF/X
HEATHERLY AND SONS, INC., Permit No. 100, Docket 75-46-MF/X
LYNDEN TRANSPORT, INC., Permit No. 121, Docket 75-55-MF/A
COPPER FREIGHT LINES, INC., Permit No. 65, Docket 75-56-MF/A

TEMPORARY EMERGENCY EXEMPTION granted to Roger W. Nordlum, d/b/a NORDLUM EQUIPMENT by Order No. 75-110 dated March 19, 1975, to provide authority to utilize fixed wing aircraft of less than 12,500 lbs. GTOW in air commerce for the account of Petty Ray Geophysical, Inc., with respect to the latter's geophysical operations in the area northwest of Kotzebue, Alaska. This authority will expire April 30, 1975, unless sooner amended, suspended, or revoked by order of the Commission

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ATTENTION PROCEDURE CHANGE

Effective immediately, and until further notice, requests for temporary authority will be handled by petition when filed concurrently or subsequent to filing standard application for permanent authority, when there is an existing permit or certificate involved. The petition for temporary authority must request EXACTLY the same authority as the permanent application, and be accompanied by a check for $40.00 to cover publication and clerical fees.

ALL COMMISSION FILES ARE AVAILABLE for review between the hours of 8:00 a.m. to 12:00 noon, and 1:00 p.m. to 4:00 p.m. at the main office on the 10th Floor of the MacKay Bldg., Anchorage, Alaska. The Commission office is closed between 12:00 noon and 1:00 p.m.

SPECIAL NOTICE

The ATC Journal is published twice a month and mailed approximately the 5th and 20th. Actual publication dates are the 10th and 25th of each month, with protest and petition to intervene deadline 15 days thereafter. If you are on the subscription list and have not received your copy two or three days after the established publication date, contact this office and another copy will be mailed immediately.

Misplaced or missing issues of a journal will not be legitimate grounds for late filings.

The following matters have been set for hearing by notice to the parties. Hearings before the Commission are open to the public, however, because the parties to the proceeding incur expenses, only the parties can participate. Late-breaking developments may require a postponement or outright cancellation of a hearing, causing a change in the following schedule. A current calendar is posted outside the hearing room at the Commission office.

DATE	NAME	DOCKET NO.	PLACE	TIME
March 25	Larry's Auto Service	73-93-MF/O	Anchorage	9:30 a.m.
April 7	Mt. McKinley Bus Lines, Inc.	74-6-MP/I	Anchorage	9:30 a.m.
April 8	Sidney R. Campbell	70-323-MF/O	Anchorage	9:30 a.m.
	Mel's Trucking	73-177-MF/T	Fairbanks	9:30 a.m.
	D-8 Company	C3616 & 3617	Fairbanks	9:30 a.m.
April 9	Air North	74-16-AT/A	Fairbanks	9:30 a.m.
April 10	Arctic Auto Rental	C3688 & 3690	Anchorage	9:30 a.m.
April 11	Footes Housemoving	73-173-MF/O	Anchorage	9:30 a.m.
April 14	Carlson's Modern Housemoving	73-194-MF/A	Anchorage	9:30 a.m.
April 15	Bear Lake Lodge, Inc.	73-295-AT/O	Cold Bay	2:00 p.m.
	Franz Flying Service	74-130-AT/O		
April 21	Sea Airmotive, Inc.	74-50-AT/A	Anchorage	9:30 a.m.
April 22	Tom Bertrand and Michael Yorke	74-228-AT/C	Anchorage	9:30 a.m.
	Silvertip Air Service	75-19-AT/O	Anchorage	
April 23	Airborne Freight Corp.	74-323-MF/A	Anchorage	9:30 a.m.

FORM 02-001BC
FOR BRIEF COMMUNICATIONS-
MAY BE HANDWRITTEN

MEMORANDUM

State of Alaska

DEPT.
DIV.
SEC.

TO: The Honorable Terry Gardiner
House of Representatives

DATE : 3/25/75

FROM: Chairman Johnson
ATC - Anchorage

SUBJECT: House Bill 191

Enclosed is a copy of the ATC's comments on the above referenced Bill that we discussed on the telephone this date.

TO: ATC DATE: February 25, 1975

(MMMMMM - HOUSE) BILL 191

RE: An Act relating to changes in transportation tariffs.

Check One:

1. TOP PRIORITY - in favor of. _____
2. FAVOR - in favor of, but not top priority. _____
3. OK - no definite stand. _____
4. NOT IN FAVOR - XX
5. TOP PRIORITY - "Strongly Opposed" _____
6. BILL DOES NOT PERTAIN TO DIVISION _____

COMMENTS: (Justification must be stated for the above line checked - continue on another page if needed.)

The commissioners and the staff here at ATC have reviewed this bill. While we all recognize and appreciate the intention behind it, we do not feel the language in this particular piece of legislation accomplishes that purpose. First of all, the 45 days notice rather than 30 days notice would create real problems in that a majority of these rates apply to both intra- and inter-state, and with the ICC still requiring 30 days, it could put a carrier in a position of having two different rates in effect at the same time.

Please advise Rep. Gardiner that the Commission would be happy to testify in depth on these tariff matters, how they affect the public and what our problems are in this area. Our budget now pending before the Legislature includes a position of a Rate Analyst which the Commission desperately needs and if that is approved and funded, we hope to set up some sort of docketing procedures on rate increases which would eliminate the possibility of an increase going through that has escaped our attention. As for notice to the public, the Commission presently has the ability to adopt more strict regulations in this area and we heartily concur that this should be a priority item of the Commission.

Writer's Signature: [signature]
Writer's Title: Commissioner
(DEADLINE 24 hours)

COMMENTS OF ATC

Per telephone conversation 4/10/75 with Commissioners Rocker and DeBoer of the ATC, have been informed that their concern with HB 191 falls into three main areas:

1. In the interest of uniformity, the air act AS 02.05 should probably be included in the bill.

2. They are against the idea of public notice on all applications for rate changes, classifications, etc. They say they receive approximately 255 filings a week, and of those perhaps 4 or 5 would be of general public interest. Need discretionary publication.

3. They are concerned about who should bear the cost of publication of all the notices. Ultimately, the consumer pays, but either the ATC will need an increased budget if it is directed to publish notice at its expense, or there should be provisions for the carrier to pay the publication costs. They suggest that normally the carrier pays such costs and express language be put in to indicate that the carrier applying for the change or whatever must pay for the public notice.

A M E N D M E N T S

2. Page 1 line 18 after the word "public" insert the following:

"on matters affecting the general public interest"

3. Page 1 line 20 after the word "filing" insert the following:

"The cost of said public notice to the public, when notice is deemed appropriate by the Commission, shall be borne by the carrier or carriers making the filing."

With adoption of the above amendments, or amendments doing essentially the same thing, the ATC would endorse HB 191.

AGREEMENT

UNDER SECTION 5(a) OF THE

INTERSTATE COMMERCE ACT

Including

ARTICLES OF INCORPORATION

and

BY-LAWS

of

ALASKA CARRIERS ASSOCIATION, INC.

3443 Minnesota Drive

Anchorage, Alaska 99503

(907) 272-0568

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ALASKA CARRIERS ASSOCIATION, INC.
3443 MINNESOTA DRIVE
ANCHORAGE, ALASKA 99503

OCTOBER 5, 1974

The following changes in the Association By-Laws were approved by mail ballot vote of the membership effective July 31, 1974:

1. Amend Article V, Section 3, to add the words "Except as provided in Section 4 of this Article," at the beginning of the first sentence in Section 3.

2. Amend Article V to add a new Section 4 as follows:

"Section 4: Affiliated Associations. Any conference of the Association may organize itself as an affiliated independent association under the non-profit corporate laws of the State of Alaska, AS Title 10, under the following conditions:

1. Membership in Alaska Carriers Association, Inc., shall be a prerequisite for membership in any such affiliated independent association. Membership dues shall be paid to Alaska Carriers Association, Inc., by the affiliated association for its individual members in an amount negotiated by, and agreed to, from time to time by the Board of Directors of such affiliated association and the Board of Directors of Alaska Carriers Association, Inc.

2. Any affiliated association shall be financially independent and capable of self support through the assessment of membership dues and the securing of revenues through other legitimate means and shall have the right to employ a manager to serve under the direction of its Board of Directors.

3. The President of any affiliated association shall serve as a member of the Board of Directors of Alaska Carriers Association, Inc., in the same manner as outlined in Artice VI, Section 1, Paragraph A, pertaining to conference groups of Alaska Carriers Association, Inc.

4. Alaska Carriers Association, Inc., may perform clerical, secretarial and bookkeeping services, including tariff publication, and may provide office facilities for any affiliated association and shall charge such affiliated association for said services and facilities at reasonable fees and charges as negotiated by, and agreed to, from time to time by the Board of Directors of such affiliated association and the Board of Directors of Alaska Carriers Association, Inc.

5. Alaska Carriers Association, Inc., shall not be responsible nor legally liable for the actions of any affiliated association or its employees."

AFFIDAVIT

STATE OF ALASKA

I, Edward R. Sanders, being first duly sworn, depose and state on oath: That I am the duly elected attorney-in-fact for each of the carriers listed in Exhibit 3 of this agreement, who are parties to this agreement, that I am authorized and directed by each of said carriers to make application to the Interstate Commerce Commission in their behalf for approval of said agreements; that I was duly authorized to verify and file the original application for approval of proposed agreement and to prepare and file this revised agreement which contains no new changes in the agreement; that I have knowledge of the matters contained in this agreement; that all of the statements, exhibits and matters set forth herein are true and correct to the best of my knowledge, information and belief.

/s/ Edward R. Sanders
Edward R. Sanders

Sworn and subscribed to before me this 5th day of January, 1973.

/s/ William L. Fritsch
Notary Public, State of Alaska
My Commission expires 9/24/76

(Seal)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of this agreement in this proceeding, by first-class mail, upon the Alaska Transportation Commission, to parties of record herein and to each carrier applicant shown in Exhibit 3 hereof.

Dated at Anchorage, Alaska this 5th day of January 1973.

/s/ Edward R. Sanders
Edward R. Sanders

EXHIBIT I

SECTION I

ARTICLES OF INCORPORATION

OF

ALASKA CARRIERS ASSOCIATION, INC.

Know All Men By These Presents:

That we, the undersigned, being adult persons and bonafide residents of the State of Alaska, have this day united and associated ourselves together for the purpose of forming a non-profit corporation under the laws of the State of Alaska and the laws of the United States applicable thereto, and we do hereby make, sign and acknowledge in triplicate the following articles of incorporation:

ARTICLE I

The name of this corporation shall be Alaska Carriers Association, Inc., hereinafter called the "Association".

ARTICLE II

The nature of the business, and the objects and purposes to be transacted, promoted and carried on by this Association shall be, and are, to do any things hereinafter mentioned, as fully and to the same extent and purposes as natural persons might or could do, to-wit:

(A) To create an organization of the trucking companies operating from, to or within Alaska to prosecute and accomplish all matters of interest or concern to the members thereof.

(B) To further the education of those engaged in such transportation on matters affecting the operation of motor vehicles, including safety facilities, safety devices and laws governing such operations.

(C) To affiliate with or to establish reciprocal relations with any other association or organization, commercial or industrial, and with the American Trucking Associations, Inc.

(D) To participate in the national affairs of the trucking industry through the timely election of a state vice president and directors of the American Trucking Associations, Inc., and in the activities of such association nationally.

(E) To act as the medium for the expression of views of its members on matters affecting the interests of those engaged in the transportation of property.

(F) To foster and advance safety on the public roads and highways.

(G) To do such things as may be proper to create and stimulate a fair and intelligent attitude on the part of the public with respect to the transportation business of its members and to work to accomplish fair and intelligent legislation with respect thereto.

(H) To promote and foster the business of its members and distribute to such members, and the public, accurate and reliable information on matters of transportation.

(I) To do everything possible to remove abuses from the business of transportation.

(J) To promote harmony among the members of this Association by encouraging and promoting the welfare of the truckers both internally, by persuasion and discipline, and externally by affiliation with the American Trucking Associations, Inc., thereby promulgating suggestive legislation and the pooling of ideas.

(K) To lease, buy, mortgage and sell real estate and personal property, in the manner provided by law, for the purpose of carrying on the purposes of this Association, to act as distributing agent, without profit, for the members of this Association; and to do all such acts and things as may be necessary, proper and advisable for increasing the trucking business of its members and for facilitating the same.

(L) In general, to carry on any other business in connection therewith, not forbidden by the laws of the State of Alaska or of the United States, and with all the powers conferred upon non-profit corporations by the laws of the State of Alaska.

ARTICLE III

The location of the principal place of transacting business of the Association within the State of Alaska shall be the City of Anchorage, Alaska.

ARTICLE IV

The existence of this Association shall commence with the filing of these Articles of Incorporation in the office of the Director of Finance, State of Alaska, and shall continue therefrom for a period of twenty (20) years; thereafter to be renewed according to law.

ARTICLE V

The terms of admission to membership in this organization shall be that which the membership hereof shall prescribe in its By-Laws.

ARTICLE VI

The highest amount of indebtedness or liability to which the Association shall at any time be subject shall be the sum of Two Hundred Thousand Dollars ($200,000). The private property of the members of this Association shall not be liable for corporate debts.

ARTICLE VII

The affairs of this Association shall be managed by a Board of Directors. Such Directors shall be elected at the first meeting of the membership and thereafter in accordance with the By-Laws of the Association.

ARTICLE VIII

These Articles of Incorporation may be amended at a regular or special meeting of the members of the Association called for that purpose by vote of two-thirds of the members present or represented at the meeting. However, any amendment of these Articles of Incorporation should not be made at a regular or special meeting unless a notice is mailed to each member at his last address of record, at least 30 days before the meeting, stating that it is proposed that the articles be amended at the said meeting.

IN WITNESS WHEREOF, we have hereunto subscribed our names and affixed our seals to these Articles of Incorporation, in triplicate, at Anchorage, in the State of Alaska, this 5th day of January, 1973.

/s/ James L. Playle
James L. Playle, President

/s/ Bernard Kopf
Bernard Kopf, First Vice President

/s/ Gordon S. Harang
Gordon S. Harang, Secretary-Treasurer

STATE OF ALASKA)
) ss
THIRD DIVISION)

THIS IS TO CERTIFY that on this 5th day of January 1973, before me, the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn, personally came James L. Playle, Bernard Kopf and Gordon S. Harang, each to me personally known to be the identical individuals named in and who executed the foregoing Articles of Incorporation, and each duly acknowledged to me that he signed the same as his free and voluntary act and deed for the uses and purposes therein mentioned; and each stated that he held the office designated beneath his signature; and each stated that these amended Articles of Incorporation were amended at the regular annual meeting of the Corporation at Anchorage, Alaska, on November 6, 1971 and that notice of said meeting was furnished to all members more than thirty days prior to said meeting; which notice stated that it was proposed that the Articles of Incorporation be amended at said meeting; and, that all amendments were approved by a vote of two-thirds (2/3) or more of the members present and represented at said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year above written.

/s/ William L. Fritsch
Notary Public in and for the State of Alaska
My Commission expires 9/24/76

(SEAL)

EXHIBIT I

SECTION 2

B Y - L A W S
of
ALASKA CARRIERS ASSOCIATION, INC.

ARTICLE I

IDENTITY

This Association shall be known as ALASKA CARRIERS ASSOCIATION, INC., a non-profit corporation of the State of Alaska, with its principal office in the City of Anchorage, in the State of Alaska.

ARTICLE II

PURPOSES

The objectives of this Association are:

(A) To foster and promote the trucking industry in the State of Alaska and elsewhere;

(B) To promote uniformity and certainty in customs and usages of the motor trucking industry;

(C) To promote the welfare of its members by friendly association, cooperation and education to the end that valuable aid to the trucking industry and to the community may thereby be developed;

(D) To act as the medium for the expression of views of its members on matters affecting the interests of those engaged in the trucking industry and to distribute to its members and the public accurate and reliable information on matters of transportation;

(E) To consider, compile, publish, print and file with the Interstate Commerce Commission, the Alaska Transportation Commission or any other proper regulatory body, tariffs required by law and all changes therein; and to appear for its members in all such matters before such regulatory bodies;

(F) To do such things as may be proper to create and stimulate a fair and intelligent attitude on the part of the public and to encourage the passage of wise and just laws beneficial to the motor trucking industry;

(G) To settle and adjust differences among its members where possible;

(H) To inculcate a high standard of business integrity, equity and justice in all who are either directly or indirectly connected with the motor trucking industry to the end that it may carry on its business with the confidence and respect of the public, as well as the members of the industry;

(I) To lease, buy, mortgage and sell real estate and personal property, in the manner provided by law, for the purpose of carrying on the objectives of this Association, and to act as distributing agent without profit for its members; and

(J) In general, to carry on any other business in connection therewith, not forbidden by the laws of Alaska or of the United States, and with all the powers conferred upon non-profit corporations by the laws of the State of Alaska.

ARTICLE III
MEMBERSHIP

Section 1: Any reputable person, firm, co-partnership, or corporation directly connected with or engaged in transportation of persons or property by motor vehicle from, to or between points in the State of Alaska, together with such other persons as may be engaged in allied or related industries, also connecting carriers using different modes of transportation, shall be eligible for membership in this Association. Any eligible common carrier of persons or property may only become or remain a member of the Association by executing an agreement to abide by the By-Laws of the Association, upon payment of dues and assessments as provided herein, and, if desiring to participate in the tariffs of the Association, upon executing a Rate and Tariff Agreement, a Power of Attorney in favor of the Association, and payment of dues and assessments as provided herein. The classes of membership shall be as hereinafter provided.

Section 2: Active Membership. Any individual, partnership, corporation, or other form of organization directly engaged in the transportation of persons or property by motor vehicle on the highways, roadways, streets and thoroughfares in the State of Alaska shall be eligible to Active Membership in this Association.

The Active Membership shall consist of two classes:
(a) For-Hire (those engaged in for-hire transportation).
(b) Private (those engaged only in private transportation).

Section 3: Associate Membership. Any individual, partnership, corporation or other form of business enterprise engaged in a business allied or related to, or otherwise interested in, the transportation of property by motor vehicle shall be eligible to Associate Membership in this Association.

Section 4: Application for Membership. Application for membership in the Association shall be made in such form as may be established by the Board of Directors and shall be accompanied by such initiation fees and dues as may be prescribed by these By-Laws or by regulation of the Board of Directors.

Section 5: Withdrawal or Expulsion. Any member may withdraw from the Association by giving sixty (60) days written notice of intent to do so and by making payment of all obligations due the Association to the effective date of withdrawal.

Any member may be suspended or expelled for failure to promptly pay any and all amounts due to the Association.

No member, under suspension from this Association, shall be permitted to exercise any privileges of membership until all matters entering into such suspension have been satisfactorily settled and all monies due the Association shall have been paid.

All property rights, interests and privileges in or to this Association shall cease upon termination of membership by voluntary withdrawal, expulsion, death, adjudication of bankruptcy, corporate dissolution or other cause.

Section 6: Authorized Representatives. All members shall designate in writing filed with the Association the name of the representative (and alternate representative if desired) who shall be authorized to act on behalf of such member in the affairs of this Association, and such designated representatives or alternate shall be eligible to election to the Board of Directors of this Association in the manner hereinafter provided.

ARTICLE IV

VOTING RIGHTS OF MEMBERS

Section 1: Active Members. Each Active Member shall be entitled to one vote in the election of members of the Board of Directors, and in all other matters related to the conduct of the affairs of this Association.

Section 2: Associate Members. Each Associated Member shall be entitled to one vote in the election of the Chairman, Vice Chairman and Secretary of the Associate Member Conference, provided, however, Associate Members will not be entitled to vote for Directors at Large.

Section 3: Method of Voting. The right to vote shall be limited to the representative or alternate representative of the member designated in accordance with Section 6 of Article III of these By-Laws. Voting on all matters involving the corporate affairs of this Association, or the membership generally, including the election of Directors at Large, and the amendment of these By-Laws shall be by secret ballot in convention assembled. Mail ballot may be authorized by the Board of Directors in cases of urgency for the purpose of amending these By-Laws or the Articles of Incorporation.

Section 4: Voting. All voting rights in this Association may be exercised by proxy. All proxies shall be in writing and filed with the secretary of the unit, conference or Association, at the case may be, prior to the opening of any meeting. No member may hold more than two (2) proxies at any one meeting. Proxies, once filed, shall be valid for one (1) year unless a specific time limitation is contained in the proxy or it is revoked in writing and such written revocation is filed in the same manner as the proxy being revoked.

ARTICLE V

MEMBERSHIP GROUPS

Section 1: Geographical Units. Within the membership of the Association there shall be established Geographical Units, each of which shall be composed of members of the Association located within specified areas of Alaska. Each of such Geographical Units shall be organized with a Chairman, Vice Chairman and a Secretary to be elected annually, not more than sixty (60) days and not less than thirty (30) days prior to the annual convention.

Subject to the power of the Board of Directors to change the number and revise the areas of such units, the Geographical Units of the membership are established as follows:

#1 Anchorage Unit - All areas of Alaska served by highways west and south of, but not including Glennallen.

#2 Fairbanks Unit - All areas of Alaska not included in Units #1 and #3.

#3 Southeastern Unit - All areas of Alaska known as the panhandle or Southeastern Alaska.

Section 2: Conference Groups. Within the membership of the Association there shall be authorized Conference Groups, for the several different types of operations and interests within the trucking industry. Membership in such conferences shall be open to all members of the Association whose operations and activities fall within the types of interest and operations of the respective conferences. Each such Conference Group shall be organized with a Chairman, Vice Chairman and a Secretary to be elected annually.

The following Conference Groups are authorized and the Board of Directors may authorize additional such groups at any time they deem it necessary or desirable to do so:

1. Associate Member Conference
2. Common Carrier Conference
3. Dump Truck Carrier Conference
4. Heavy & Specialized Carrier Conference
5. Household Goods Carrier Conference
6. Local Cartage Carrier Conference
7. Private Carrier Conference
8. Refuse Haulers Conference
9. Tank Truck Carrier Conference
10. Wrecker - Towing Carrier Conference

Section 3: Unit and Conference Activities. No policy, plan of action, or statement shall be made, adopted or issued by any Geographical Unit or Conference Group on any subject which would affect the Association or any other Geographical Unit or Conference Group, except with the express approval of the Board of Directors. Nor shall they take any action contrary to, or inconsistent with, policies theretofore adopted by the Board of Directors. Any Geographical Unit or Conference Group may submit recommendations to the Board of Directors for consideration and action. No Geographical Unit or Conference Group shall have any authority to incur any obligations or enter into any agreements in the name of the Association unless specifically authorized to do so by the Board of Directors.

ARTICLE VI

DIRECTORS

Section 1: Board of Directors. The corporate powers of the Association shall be exercised, and the affairs of the Association shall be managed by a Board of Directors. Such Directors shall be designated representatives or alternate representatives of member companies.

The Board of Directors may delegate its authority concerning the affairs of this Association, to such extent as it deems advisable, to an Executive Committee consisting of seven members, one of which shall be the President of the Association. The remaining members to be elected by and from the Board of Directors and to serve at the pleasure of the Board of Directors. The President shall serve as Chairman of the Executive Committee and shall appoint such other officers of the Executive Committee as he from time to time deems necessary. Three members of the Executive Committee shall constitute a quorum.

It shall be the responsibility of the Executive Committee to report to the Board of Directors, at each quarterly and/or other meeting of the Board of Directors, concerning its actions taken since the last report submitted by the Executive Committee. The Executive Committee shall furnish the Board of Directors with a copy of the minutes of its meetings as soon as it is practical for the Managing Director to reproduce and mail such minutes. The Board of Directors will, at the time of receiving such reports, approve or disapprove the actions taken by the Executive Committee. In the event the Board of Directors disapproves an action of the Executive Committee it can only take corrective action dating from the time of its vote of disapproval.

The membership of the Board of Directors shall be composed of elected members as follows:

(A) Conference Groups. The Chairman of each of the Conference Groups, as provided in Article V, shall be a member of the Board of Directors. When a Chairman of a Conference is not present at a meeting of the Board of Directors the Vice Chairman of that

Conference shall serve as a member of the Board of Directors during that meeting. When neither the Chairman nor the Vice Chairman of a Conference is present at a meeting of the Board of Directors the Secretary of that Conference shall serve as a member of the Board of Directors during that meeting.

(B) Geographical Units. The Chairman of each of the Geographical Units, as provided in Article V, shall be a member of the Board of Directors and the Vice Chairman and Secretary, in the order named, shall be alternate members of the Board of Directors.

(C) Directors at Large and Alternates. Other members of the Board of Directors shall be elected at large from the active for-hire membership of the Association. An Alternate Director at Large shall be elected for each Director at Large and may be an officer, owner or principle employee of the same carrier as the Director at Large. Elections shall be as follows:

Members of the Board of Directors and Alternate Members of the Board of Directors shall be elected from the following groups as indicated below in connection with each:

GROUP:

1 Two (2) Directors and Alternates shall be elected from companies registering with the Association one piece of payload bearing equipment.

2 Three (3) Directors and Alternates shall be elected from companies registering with the Association two to five pieces of payload bearing equipment.

3 Three (3) Directors and Alternates shall be elected from companies registering with the Association six to ten pieces of payload bearing equipment.

4 Two (2) Directors and Alternates shall be elected from companies registering with the Association 11 to 30 pieces of payload bearing equipment.

5 A maximum of four (4) Directors and Alternates shall be elected from companies registering with the Association 30 to 60 pieces of payload bearing equipment.

6 Companies registering with the Association more than 60 pieces of payload bearing equipment shall each have a Member and Alternate Member on the Board of Directors.

Nominations for Directors at Large shall be recommended by a nominating committee appointed by the President of the Association.

(D) Immediate Past President. The Immediate Past President of the Association shall be a member of the Board of Directors.

Section 2: Tenure of Office. Directors shall hold office for one year or until their successors are elected and qualified.

Section 3: Seating of Directors. All Directors shall be elected prior to the meeting of the Board of Directors at the annual convention at which time their term of office for the ensuing year will begin.

Section 4: Vacancies. Vacancies on the Board of Directors created by death, resignation, disqualification, or other cause shall be filled (1) by the Conference Group or Geographical Unit in the case of representatives of such Group or Unit, and (2) by vote of the Board of Directors in the case of Directors at Large.

Section 5: Meetings. The Board of Directors shall hold an organizational meeting at the annual convention of the Association. Other meetings shall be held upon the call of the President. At least three such meetings in addition to the annual convention shall be called at regular intervals throughout the year. Notice of such meeting shall be given in writing to each member of the Board of Directors at least three days before the day of such meeting.

Section 6: Quorum. A majority of the members of the Board of Directors shall constitute a quorum at any meeting.

Section 7: Removal. A member of the Board of Directors may be removed by the Board of Directors for failure to attend two consecutive regular meetings of the Board of Directors.

ARTICLE VII

OFFICERS

Section 1: Principal Officers. The officers of the Association shall be a President, a Vice President and a Secretary-Treasurer. Each of such officers shall be elected by the Board of Directors from its membership, at its organizational meeting at the annual convention of the Association, and shall hold office until his successor is elected and qualified.

Section 2: President. The President shall be the chief executive officer of the Association. He shall preside at the convention of members and at all meetings of the Board of Directors. He shall be an ex-officio member of all committees and have the responsibility of appointing such committees, except he shall neither appoint nor be an ex-officio member of the Executive Committee, the General Rate Committees, the Standing Rate Committees or the Quotation Committees.

Section 3: Vice Presidents. There shall be a First Vice President and a Second Vice President with duties and responsibilities as follows:

The First Vice President shall act in the office of President in the absence or disability of the President; shall inform himself as fully as possible concerning the affairs of the Association; and shall have and perform such other duties as may be assigned to him by the Board of Directors or the President.

The Second Vice President shall act in the office of President in the event of the absence or disability of both the President and First Vice President; shall act in the office of First Vice President in the event of the absence or disability of the First Vice President; shall be the permanent chairman of the Membership Committee and, as such, shall be charged with the active and continuing effort to increase the membership of the Association. He shall also perform such additional duties as may be assigned to him by the Board of Directors or the President.

Section 4: Secretary-Treasurer. The Secretary-Treasurer shall carry out the duties normally associated with the office of secretary. He shall safeguard the funds of the Association and supervise the maintenance of complete and accurate records of all receipts and disbursements. He shall direct that all funds of the Association be deposited in the name and account of the Association in a depository satisfactory to the Board of Directors. He shall make reports to the Board of Directors and to the convention of members at such times as are deemed appropriate by the Board.

ARTICLE VIII

MANAGING DIRECTOR

Section 1: A Managing Director may be employed by the Board of Directors.

Section 2: The Board of Directors may assign duties to the Managing Director, including the responsibility of employing assistants.

Section 3: The Managing Director shall serve under the direction of the Board of Directors.

ARTICLE IX

COMMITTEES

Section 1: Standing Committees. The President, with the approval of the Board of Directors, shall appoint standing committees as the Board of Directors may from time to time designate.

At least one member of the Board of Directors shall be included in the personnel of each committee, and such Director or other Director member of the committee shall act as Chairman.

Section 2: Special Committees. The President, with the approval of the Board of Directors, may appoint such other committees as he may deem advisable.

Section 3: Powers of Committees. No committee shall have any power to bind the Association in any manner except as expressly authorized by the Board of Directors.

ARTICLE X

ANNUAL CONVENTION

An annual convention of the membership as a whole shall be held each year during the month of September of October at a time and place to be established by the Board of Directors. Notice of such annual convention shall be given in writing to all members of the Association at least fifteen (15) days before the date of the convention.

ARTICLE XI

MEMBERSHIP ACTION

Any question upon which membership action is required or desired, at a time other than at the annual convention, shall be submitted to the vote of the membership by mail ballot. Proposals for membership action shall be submitted to the President for presentation to the Board of Directors or to the Executive Committee for their consideration and approval before placement on a mail ballot. Such proposals may be submitted by any Geographical Unit, or Conference Group, or by any ten (10) members (Active or Associate), except that questions involving approval or disapproval of any Board of Directors action must be submitted directly to the vote of the membership by the President and shall be considered only upon receipt of a written request signed by not less than twenty (20) members (Active or Associate). Unless otherwise required by law or by these By-Laws, a majority of those members returning ballots within ten (10) days from the date of the mailing of the ballots or within such time as may be specified beyond such ten (10) day period by appropriate Board action shall constitute membership action.

ARTICLE XII

RULES OF ORDER

(1) Roberts Rules of Order shall be the parliamentary authority of this Association.

(2) No one shall be permitted the privilege of the floor for more than five minutes at any meeting of the Association, its Board of Directors or any Unit or Conference without special permission of the chair.

ARTICLE XIII

INITIATION FEES

Initiation fees for membership shall be:

Active Membership $25.00
Associate Membership . . $25.00

ARTICLE XIV

DUES

Section 1: Active Members. The monthly dues of Active Members shall be as determined by the Board of Directors from time to time subject to the following conditions:

(A) Such dues shall be determined upon the basis of all payload bearing equipment operated from, to or between points in Alaska when fully covered by tariffs published by the Association. When the Association does not publish any of such tariffs or publishes only a partial tariff coverage for a carrier then the number of units upon which charges are based shall be an adjusted number approved by the Board of Directors. Active members shall include both "For-hire" and "Private" carriers (see Paragraph (C)).

(B) Each Active Member shall report to the Association, in writing on a form provided by the Association, on June 1st of each year, the number of pieces of payload bearing equipment being operated from, to or between points in Alaska and such report shall be the basis of dues of such member for the following year, except as provided in Paragraph (A) above, except, further, that dues may be adjusted at any time to reflect increases or decreases in the number of payload bearing units being operated.

(C) Rail and Water Carrier members shall pay dues upon a basis determined by the Board of Directors to be a fair and equitable share of the cost of operating the Association. Such dues amount shall be mitigated and assessed both with regard to the ability to pay and the value of the services of the Association to such carriers.

(D) The schedule of dues, fees and assessments established by the Board of Directors may be changed by the Board of Directors from time to time by notice to the members.

Section 2: Associate Members. The dues of Associate members shall be assessed annually as follows:

Operating one place of business in the state:
(a) - With less than five employees - - - - - - - - - - - - - - - $35.00 per year
(b) - With five or more employees - - - - - - - - - - - - - - - - 75.00 per year
Operating more than one place of business - - - - - - - - - - - 100.00 per year
Operating in more than one state - - - - - - - - - - - - - - - - 175.00 per year

Section 3: Payment of Dues. All dues shall be payable in advance, and the payment of dues may be enforced by forfeiture of membership or by legal action, or both.

Section 4: Change in Rate of Dues. The Board of Directors shall have the authority to change the rate of dues as provided in this Article, subject to the following conditions: (1) that all members of the Board of Directors shall have been notified of any such proposal at least fifteen (15) days before the day of the meeting at which such action is taken, and (2) no increase in the rate of dues shall be made effective until at least sixty (60) days following the mailing of the notice to the affected members of the Board action.

ARTICLE XV

LIABILITY OF MEMBERS

No liability of any nature shall attach to the membership of this Association other than for dues and charges made according to these By-Laws, or charges for special services rendered, or for special assessments levied with the written approval of the member.

ARTICLE XVI

AMENDMENTS TO BY-LAWS

Except as otherwise provided herein, these By-Laws may be amended by the vote of the Active and Associate members taken in accordance with Article XI hereof, or by action of the membership during annual convention.

ARTICLE XVII

FISCAL YEAR

This Association shall operate for fiscal purposes from the first day of July to and through the thirtieth (30th) day of June of each year.

ARTICLE XVIII

TARIFF BUREAU FUNCTION

Section 1: Tariff Bureau. To accomplish the purpose expressed in Article II, Paragraph E, a tariff bureau shall be a part of the Association and the following standing committees shall exist to control and direct the functioning of the tariff bureau:

(A) General Rate Committee - General Commodity - see Section 8 for membership, duties and authority of this committee.

General Rate Committee - Household Goods - see Section 8 for membership, duties and authority of this committee.

General Rate Committee - Inter Modal - see Section 8 for membership, duties and authority of this committee.

(B) Standing Rate Committee - General Commodity - see Section 9 for membership, duties and authority of this committee.

Standing Rate Committee - Household Goods - see Section 9 for membership, duties and authority of this committee.

Standing Rate Committee - Inter Modal - see Section 9 for membership, duties and authority of this committee.

Section 2: Issuing Officer. The Managing Director shall, in addition to his regularly assigned duties, be the issuing officer for the tariffs compiled, published, printed and filed by the Association and shall direct the compiling, publishing, printing, and filing of the tariffs of the Association.

Section 3: Participating Carriers. Any member common carrier of persons or property operating in interstate or foreign commerce or Alaska intrastate commerce may become a participating carrier in tariffs published by the Association upon execution of a rate and tariff agreement as provided for herein, upon execution of proper power of attorney, and upon payment of fees, dues and/or assessments as provided for in the By-Laws.

Section 4: Rate and Tariff Agreement. Each motor common carrier shall execute a rate and tariff agreement reading as follows:

The undersigned carrier, in consideration of the covenants of the Alaska Carriers Association, Inc., and of each other carrier of the same class who shall enter into like and similar agreements, hereby covenants and agrees with the said Association and with each and every said other carrier that it will initiate, change, publish or cause to be published and filed, tariffs of rates, exceptions to classification, ratings, rules, regulations or practices, governing the transportation of property, by it in interstate or foreign commerce (or intrastate) to, from or within the State of Alaska, in accordance with the provisions of the By-Laws of said Association and the Rules of Procedure established thereunder, as the same may be from time to time hereafter revised, amended or supplemented.

In consideration of which, the Alaska Carriers Association, Inc., agrees to publish, or cause to be published, tariffs and/or quotations for the account of the said undersigned carrier in accordance with its By-Laws provisions relating to the tariff bureau function; and the Rules of Procedure as provided in Articles XVIII, XIX and XX now or as they may hereafter be revised, amended or supplemented.

It is expressly stipulated that the undersigned carrier and any other carrier party to this agreement shall have the free and unrestrained right to take independent action with respect to tariffs and/or quotations published by the Alaska Carriers Association, Inc.

The undersigned carrier further hereby constitutes said Alaska Carriers Association, Inc., or the then duly elected and acting Managing Director of the Alaska Carriers Association, Inc., or either or any of them, its Agent and Attorney-in-fact, which appointments said Alaska Carriers Association, Inc., hereby accepts, to file and prosecute any and all applications to competent authority which may be required for the approval and authorization of this agreement.

In Testimony Whereof, the parties hereto have set their hands and seals on this the _____day of _____, 19___.

Carrier _____

Signed by _____ Title _____

Business Address:

_____

(number & street) (city or town & zip code)

If a corporation:
State in which organized _____ Date of Incorporation _____

If a partnership:
Date of formation of partnership _____

Name of Partners:

_____ _____
_____ _____
_____ _____

If an individual:
Date business began _____

Type of carrier:

Motor common	Rail Common	Water Common
Interstate ( )	Interstate ( )	Interstate ( )
Intrastate ( )	Intrastate ( )	Intrastate ( )

ICC Certificate No. (Docket No.) MC _____

ATC Permit No. COM _____

ATC Permit No. CONT _____

Accepted by:
ALASKA CARRIERS ASSOCIATION, INC.

_____
Edward R. Sanders

Section 5: Carriers of other Classes. Common carriers by water subject to Part III of the Interstate Commerce Act and common carriers by rail subject to Part I of the Interstate Commerce Act may be listed in tariffs of the Association as participants in joint rates or through routes with motor common carriers in such tariffs upon: (A) execution of a rate and tariff agreement; and (B) payment of such fees, dues and assessments as may be fixed by the Board of Directors. Such participation is subject to the restrictions otherwise provided herein relating to the consideration and discussion of matters affecting joint rates and through routes with motor common carriers.

Section 6: Dues, Fees and Assessments. Each member carrier participating in the tariffs published by the Association shall pay dues, fees and assessments as provided in Article XIV herein.

Section 7: Services of the Tariff Bureau. The Association will:

(1) Maintain a system for the joint consideration of publication of, or changes in, rates, charges, classifications, divisions, allowances, rules, regulations and practices pertaining thereto.

(2) Compile, publish and file, or cause to be compiled, published and filed with the Interstate Commerce Commission or the Alaska Transportation Commission, or any other regulatory body having proper jurisdiction, all necessary tariffs covering movements from, to or between points in Alaska.

(3) Investigate, procure, analyze, compile, publish and disseminate statistics, reports and information which pertain to any of the purposes for which the Tariff Bureau of the Association was created.

Section 8: General Rate Committees.

(1) There shall be three (3) General Rate Committees as follows:

(a) General Rate Committee - General Commodity
(b) General Rate Committee - Household Goods
(c) General Rate Committee - Inter Modal
(Such committees shall act as the Quotation Committees, as the case may be.)

(2) The "General Rate Committee - General Commodity" shall perform its assigned duties in connection with movement by motor vehicle of all commodities other than Household Goods, as defined by the Commission, and shall have nine (9) elected members. The members of the committee shall be elected by and from the member motor common carriers participating in the "General Commodity" tariffs of the Association. Five (5) members present shall constitute a quorum.

(3) The "General Rate Committee - Household Goods" shall perform its assigned duties only in connection with movement by motor vehicle of Household Goods, as defined by the Commission, and shall have nine (9) elected members. The members of the committee shall be elected by and from the member motor common carriers participating in the tariffs of the Association covering the movement of Household Goods, as defined by the Commission. Five (5) members shall constitute a quorum.

(4) The "General Rate Committee - Inter Modal" shall perform its assigned duties only in connection with transportation performed under joint rates or over through routes of carriers of different classes or modes with motor common carriers. The committee shall be composed of the single rail carrier member (The Alaska Railroad), three (3) water carrier members and five (5) motor carrier members of the Association. The motor and water carrier modes shall nominate and elect from their respective memberships, annually during the month of September, representatives to serve on the committee. Proposals for joint consideration shall be acted upon only by the motor carrier committee members and the member or members representing the other mode(s) forming the joint rate(s) and/or through route(s).

(5) The affairs of the participating carriers concerning rates, charges, classifications, divisions, allowances, rules, regulations and practices pertaining thereto shall be vested in the General Rate Committee having jurisdiction over the commodities being handled, as outlined in (2), (3) or (4) above. Such General Rate Committee may, and does hereby delegate to the appropriate Standing Rate Committee having jurisdiction over like commodities, its authority to perform all its duties except that it (they) retains to itself the right: (a) to overrule the decisions of the Standing Rate Committee; (b) to hear and render decisions in connection with appeals from the recommendations of the Standing Rate Committee; and (c) to take initial and final action on proposals (see (6) below).

(6) A General Rate Committee at its discretion may substitute itself for the like Standing Rate Committee to consider any proposal, in which event its recommendations thereon shall be final. In any case where a General Rate Committee substitutes itself for its like Standing Rate Committee, the procedures respecting the filing and mailing of written representations provided for in Article XIX hereof, and the procedures respecting consideration of and action on proposals by the General Rate Committee provided for in Article XIX hereof shall apply.

(7) A vacancy occurring on a General Rate Committee, whether occasioned by death, resignation or inability to act, shall be filled by appointment by the chairman or acting chairman. The member of the committee so appointed shall serve for the remainder of the term of such prior member unless, at the next meeting, the General Rate Committee shall elect another proper carrier representative instead of and in place of the member so appointed.

(8) Each General Rate Committee shall have a chairman, a vice chairman and a secretary and such officers shall be elected by and from the membership of the committee.

In the absence or inability of the chairman, the vice chairman shall perform the duties of the chairman; in the absence or inability of both the chairman and vice chairman, the secretary shall perform the duties of the chairman; as acting chairman. The officers shall be elected annually at the first meeting of the committee following the election of the members of the committee(s).

(9) Meetings of the General Rate Committees shall be held at such time and place as the committees shall decide, or in absence of action by the committees, at such times and places as the chairman of either committee shall decide. All actions of the committees shall be by majority vote of those present with a quorum present.

(10) The members of the General Commodity and Household Goods General Rate Committees shall be elected annually by the members each year at the Association's convention from among the general commodity or household goods carriers, as the case may be, qualified by participation in such tariffs published by the Association. The chairman of each such General Rate Committee shall appoint a nominating committee of three of the outgoing committee(s) before the election who will nominate proposed new members of the committee(s). Other proposed committee members may be nominated during the election by the members present or in writing if not present.

(11) Members of the General Rate Committees shall serve without compensation from the Association and shall defray their own expenses.

Section 9: Standing Rate Committees.

(1) There shall be three (3) Standing Rate Committees as follows:
(a) Standing Rate Committee - General Commodity
(b) Standing Rate Committee - Household Goods
(c) Standing Rate Committee - Inter Modal
(Such committees shall also act as Quotations Committees, as the case may be.)

(2) The "Standing Rate Committee - General Commodity" shall perform its assigned duties in connection with movement by motor vehicle of all commodities other than Household Goods, as defined by the Commission, and shall have five (5) elected members. The members of the committee shall be elected by and from the member motor common carriers participating in the "General Commodity" tariffs of the Association. Three (3) members shall constitute a quorum.

(3) The "Standing Rate Committee - Household Goods" shall perform its assigned duties only in connection with movement by motor vehicle of Household Goods, as defined by the Commission, and shall have five (5) elected members. The members of the committee shall be elected by and from the member motor common carriers participating in the tariffs of the Association covering the movement of Household Goods, as defined by the Commission. Three (3) members shall constitute a quorum.

(4) The "Standing Rate Committee - Inter Modal" shall perform its assigned duties only in connection with transportation performed under joint rates or over through routes which include carriers of different classes or modes with motor carriers. The committee shall be composed of the single rail carrier member (The Alaska Railroad), one (1) water carrier member and three (3) motor carrier members of the Association. The motor and water carrier modes shall nominate and elect from their respective memberships, annually during the month of September, representatives to serve on the committee. Proposals for joint consideration shall be acted upon only by the motor carrier committee members and the member or members representing the other mode(s) forming the joint rate(s) and/or through route(s).

(5) It shall be the duty of the Standing Rate Committees ("General Commodity", "Household Goods" or "Inter Modal" as the case may be):

(a) To initially investigate, hear, consider, study, report on, and recommend disposition of, in a fair and impartial manner, all proposals to establish or change a rate, charge, exceptions to classification, allowance, rule, regulation or practice pertaining thereto in accordance with provisions of the By-Laws of the Association and the Rules of Procedure established hereunder.

(b) To perform such other duties as may be authorized by the similar General Rate Committee, except no authority of the similar General Rate Committee in acting on appealed proposals may be delegated to the Standing Rate Committee.

(c) The Standing Rate Committees shall have the power to appoint subcommittees within any regional area for the purposes as outlined in Paragraph (a), above. The power of the appointed subcommittee shall be specifically limited to making recommendations to the applicable Standing Rate Committee.

(6) Vacancies shall be filled in the same manner as provided for in Section 8, Paragraph (7).

(7) Officers and duties shall be as provided for in Section 8, Paragraph (8).

(8) Meetings shall be held as provided for in Article XIX, Rule 1, Paragraph (2).

(9) Members of the Standing Rate Committees shall serve without compensation from the Association and shall defray their own expense.

Section 10: Independent Announcement.

Any carrier member and/or participating carrier shall have the free, unrestricted and unrestrained right to have any rate, rating, charge, classification, allowance, rule, regulation or practice pertaining thereto, or any change therein, published for its account by independent announcement under the terms and provisions set out in the Rules of Procedure established by the General Rate Committee.

ARTICLE XIX

RULES OF PROCEDURE - TARIFFS

OF

ALASKA CARRIERS ASSOCIATION, INC.

(For definitions of terms used, see Article XXI)

The following rules of procedure relate to all tariffs published by the Association.

RULE 1: PROPOSALS

(1) All proposals for initiation of or changes in rates, charges, exceptions to classification, allowances, rules, regulations and practices pertaining thereto, made by any interested person or by a member motor common carrier, participating in the tariffs published by the Association, shall be submitted in writing and shall state clearly and concisely the proposed addition to, cancellation from or change in any particular tariff published by the Association and the reasons and justification therefor. Such proposals shall be filed with the Alaska Carriers Association, Inc., 3443 Minnesota Drive, Anchorage, Alaska 99503.

(2) Proposals received in the Association office not later than twenty (20) days before a regular meeting of the proper Rate Committee will be docketed and published in

the regular "Rate Docket" announcement and placed on the agenda of the Committee. Proposals received later will either be handled at a special committee meeting, if one is held, or at the next regular committee meeting. No proposlas will be considered until published in the "Rate Docket" on at least ten (10) days' notice to interested parties with the day of mailing, Saturdays, Sundays and legal holidays excluded.

(3) Except as otherwise provided herein, all proposals for tariff changes will be publicized in the Association's "Rate Docket" announcement which will be sent by first class mail to all member carriers participating in tariffs of the Association proposed to be changed as well as to all interested parties requesting such notification, not less than ten (10) days prior to the meeting of the Standing Rate Committee.

RULE 2: STANDING RATE COMMITTEES

(1) The "Standing Rate Committee - General Commodity" shall meet on the second (2nd) Wednesday of each month and the chairman of the committee may, on his own accord or at the written request of any three members of the committee, call special meetings of the committee for any time and place. No recommendations on any proposals will be made at any meeting unless they have been duly published as provided for in Rule 1, Paragraph (3) of this Article.

(2) The "Standing Rate Committee - Household Goods" shall meet on the third (3rd) Wednesday of each month and the chairman of the committee may, on his own accord or at the written request of any three members of the committee, call special meetings of the committee for any time and place. No recommendations on any proposals will be made at any meeting unless they have been duly published as provided for in Rule 1, Paragraph (3) of this Article.

(3) The "Standing Rate Committee - Inter Modal" shall meet on the fourth (4th) Wednesday of each month, if there are matters properly before it at that time, and the chairman of the committee may, on his own accord or at the written request of any three members of the committee call special meetings of the committee for any time and place. No recommendations on any proposals will be made at any meeting unless they have been duly published as provided for in Rule 1, Paragraph (3) of this Article.

(4) At the meetings the respective committees, a quorum being present, shall consider each proposal or subject on the docket and by majority vote disposition of each. Such disposition shall be published within ten (10) days following the end of the meeting in an issue of the Association's Rate Docket Disposition Notice, which will be mailed to all interested parties by first class mail. The disposition of the committees shall be:

(a) Cleared for publication,
(b) Recommend adoption,
(c) Recommend amendment,
(d) Refer to proper General Rate Committee, or
(e) Recommend disapproval.

(5) If no appeal from the action of the Standing Rate Committees is received in the Association's offices within ten (10) days following the date of the Rate Docket Disposition Notice, excluding the date of mailing, Saturdays, Sundays and legal holidays, the recommendations of the Standing Rate Committees will stand approved and publication will be made as soon thereafter as possible.

(6) If any interested person, participating member motor common carrier or other party with valid interest appeals any recommendation of the Standing Rate Committees, the appealed matter will be placed on the agenda of the next meeting of the proper General Rate Committee. Appeals must be given to the Association in writing.

(7) Nothing provided herein shall prevent a proponent of a proposal from withdrawing or modifying such proposal. If the proposal is modified, it becomes a new proposal and is thereafter subject to the handling procedures prescribed herein for new proposals. Modification of a proposal has the effect of withdrawing it from consideration until it has been handled as a new proposal. Notice in writing shall be given all concurring carriers therein upon receipt by the Association of the withdrawal of any proposal.

(8) Any person interested in any subject on the docket for a meeting of the Standing Rate Committees may appear before such committee and be heard on such subject. Any such person may, instead, present written testimony or data relevant to the subject and such testimony or data will be taken fully into consideration by the committees. However, such written testimony or data must be received in the Association offices by no later than the day preceding the advertised date of the meeting. Such written testimony or data shall be presented in ten (10) copies except the committee may waive this requirement at its discretion.

(9) All voting by the Standing Rate Committee shall, except by unanimous consent of the members present, be in executive session.

RULE 3: GENERAL RATE COMMITTEES

(1) The appropriate General Rate Committees shall hold meetings at all times necessary to act upon appeals from recommendations of its similar Standing Rate Committee or to substitute itself for its similar Standing Rate Committee except that appeals from the recommendations of its similar Standing Rate Committee may, at the discretion of the chairman, or acting chairman, be handled by mail ballot.

(2) A notice of appeals will be included in the "Rate Docket" announcement and will be mailed to all members of the involved General Rate Committee, carriers affected and interested persons showing the matters appealed. Where a meeting on appeals is to be held by the General Rate Committee, announcement shall be made at least ten (10) days prior to the date of the meeting, excluding the date of mailing of the notice, Saturdays, Sundays and legal holidays. Any person interested in any subject on the docket for a meeting of the appropriate General Rate Committees may appear before such committee and be heard on such subject.

(3) When a mail ballot procedure is used the votes of the committee members must be received within fifteen (15) days after the date of the "Rate Docket" announcement. When no reply is received from a committee member, it will be considered a vote in favor of the Standing Rate Committee recommendation.

(4) All actions of the General Rate Committees must be by majority vote of the quorum present.

RULE 4: DOCKETING NOT NECESSARY

Changes of the character described below may be made without filing of a formal proposal, public notice, or placing on the public docket for consideration by the proper Standing Rate Committee:

(a) Rates in tariffs of the Association via one or more routes may be published via additional routes.

(b) Correction of clerical and/or typographical errors provided such errors have not been in effect more than ninety (90) days.

(c) Changes made necessary by law or action of a regulatory body.

(d) Tariff changes made necessary by reason of the revocation or modification of concurrences and/or powers of attorney, or the cancellation of rates necessitated by reason of the discontinuance of service by any carrier party to such rates due to revocation or modification of such concurrences and/or powers of attorney.

(e) Addition, elimination or correction of points in grouping tariffs where no change of rates results.

RULE 5: INDEPENDENT ACTION

(1) Every carrier shall have the free and unrestrained right to take independent action either before, during or after any determination arrived at under the procedures set forth herein.

(2) Any carrier or carriers taking independent action shall notify the Association in writing, furnishing such information as is necessary to make such publication. On receipt of such written notification, all member carriers and all interested parties subscribers to the Association's "Rate Docket" service will be notified by the Association, by first class mail, not later than one week (7 days) thereafter.

(3) Notification of independent action will be made by publication of a special notice to all persons and member carriers scheduled to receive copies of the "Rate Docket" announcements as provided in Rule 1 herein.

(4) Where the provisions on which independent action is taken involve joint rates and/or through routes, the proponent carrier will obtain and furnish to the Association the concurrences of the connecting carriers forming the complete route from origin to destination.

(5) Notification by the Association of independent action, depending on the nature of the publication involved, shall state whether the same: (a) will be published for account of all carriers which do not within ten (10) days after the date of the notification, excluding the date of mailing, Saturdays, Sundays and legal holidays, instruct otherwise; or (b) will be published only for account of carriers taking independent action unless within ten (10) days after the date of the notification, excluding the date of mailing, Saturdays, Sundays and legal holidays, other member carriers advise that they desire publication made also for their account.

(6) The Association will publish the provisions as instructed under independent action within fifteen (15) days after the expiration of the period provided for in (5) above unless all carriers for whom such independent action is to be published advise that they will make publication in tariffs otherwise issued.

(7) The Association will publish the provisions as instructed under independent action either: (a) in the existing tariffs of the Association; or (b) in separate tariff issues as they deem appropriate. The cost in connection with the compilation, publication, mailing and filing of publication instructed under independent action shall be borne by the carrier or carriers for whom made. If made for the account of more than one carrier, a prorata share of the cost shall be charged each such carrier.

EXHIBIT I

SECTION 2

ARTICLE XX

RULES OF PROCEDURE - GOVERNMENT QUOTATIONS
PURSUANT TO SECTION 22 OF THE INTERSTATE COMMERCE ACT

Governing the publication of and making additions, changes and eliminations in quotations published by Alaska Carriers Association, Inc. (For definitions, see Article XXI).

RULE 1: Proposals for the publication of, or change in, quotations may be submitted to the Association by a carrier, an agency of the United States Government, or the Association. Proposals shall contain a clear and concise statement of the publication, or changes, to be made with reasons and justification therefor. Where the quotation is to apply over joint-line carrier routes, carrier routes and junction points over which such quotation is to apply shall be shown.

RULE 2: Upon receipt of the proposal, the Managing Director shall, except when the proposed publication is one not requiring docket procedure as provided in RULE 9 hereof, assign a docket number to the proposal and record the date the proposal is received in the Association office. The proposal shall then be processed in the manner, and subject to the conditions, hereinafter set forth.

RULE 3:

(1) All quotations, and changes therein, except rules and regulations having general application, published by the Association, shall be made subject to specific carrier routing.

(2) All quotations, and changes therein, published by the Association shall be restricted in application to shipments moving on government bills of lading where the United States, or an agency thereof, is the consignor or consignee and where the United States, or an agency thereof, pays the transportation charges directly to the carrier, or carriers.

(3) Quotations which increase the amount to be paid upon any shipment shall be published on notice of not less than 30 days unless the government agency to which the quotation is tendered consents in writing to accept such quotation subject to an effective date of less than 30 days.

(4) The proponent of a proposal shall specify either that the publication shall be made subject to, or shall not be made subject to, an expiration date. When the proponent specifies a particular expiration date, that date will be used. When the proponent specifies that the publication is to be subject to an expiration date but does not specify a particular date, and when the proponent fails to specify that the publication shall be, or shall not be, subject to an expiration date, the Association shall make the publication subject to an expiration date one year from the effective date.

RULE 4:

(1) A carrier proponent may specify that the proposal be published without carrier or quotation committee consideration. When the quotation is to apply over joint-line carrier routes, it shall be the responsibility of the proponent carrier to obtain the concurrence of the other joint-line carriers involved and furnish them to the Association and the concurrence of such joint-line carriers shall be unqualified. The Association shall:

(a) Send notice of such proposed publication to the other interested parties immediately through its Quotation Bulletin Service;

(b) Make the necessary publication within fifteen (15) days following the receipt of the proposal, all necessary information and concurrences of joint-line carriers where required;

(2) When the proponent does not specify that the proposal is to be published pursuant to the provisions of Paragraph (1) above, the proposal will be processed in conformity with the provisions of RULE 5 or RULE 8 of this article.

RULE 5:

(1) The Association shall announce in its Quotation Bulletin Service that publication of proposed matter will be published: (a) for the account of all who do not advise to the contrary within ten (10) days after notification, excluding date of mailing, Saturdays, Sundays, and legal holidays; or (b) for the account of all carriers who advise, within the same length of time, that they wish the publication made for their account also. If any carrier having the ability to participate or any representative of the Government of the United States or any agency thereof objects, the proposal will be considered by the Quotation Committee. When objections are received, such objections shall be published in the Association's Quotation Bulletin Service and the proposal held for the consideration of the Committee at its next meeting. In the event no objection is received within the time limit specified, the Association shall publish the subject matter of such proposal as soon thereafter as possible.

(2) The proponent may withdraw its proposal by notice in writing to the Association at any time prior to publication pursuant to carrier approval or prior to the proposal being shown on the agenda for the Quotation Committee's next meeting.

RULE 6:

(1) The Association's appropriate Quotation Committee shall meet, discuss, consider and dispose of proposals to publish, change or cancel quotations in accordance with the rules of procedure established in this article only, but shall be constituted and otherwise subject to the provisions of Article XVIII, Section 9 (2), (3) and (4) relating to Standing Rate Committees who shall thus also function as the Quotation Committees.

(2) Any carrier, or representative of the government of the United States, or an agency thereof, interested in the subject matter to be considered may appear before the committee at the committee's meeting and express his views for, or against, docketed proposals.

RULE 7:

(1) The date for meetings of the appropriate Quotation Committee shall be determined by the chairman. Regular meetings to consider proposals shall be held only after notice thereof of not less than 10 days from the date of the notice, Saturdays, Sundays and legal holidays excluded, has been given in the Quotation Bulletin Service.

(2) When the meeting is to be held pursuant to regular notice, the Association shall show in the notice an agenda reflecting a statement of the proposals to be considered by the committee at the meeting. The Association shall include in such agenda all proposals received by the Association to and including the 15th day preceding the date of the meeting which have not been approved by the Association, which have been approved by the Association but to which objections have been duly filed, and those which have been approved by the Association where the time limit for the filing of objections will not have expired prior to the 15th day preceding the date of the meeting.

RULE 8:

(1) The Quotation Committee shall consider each proposal separately and shall, by vote, either approve or disapprove the proposal. Each member of the committee present shall have one vote and no votes by proxy shall be authorized. The result of the voting shall be determined by majority vote of the quorum and a tie vote will be considered as failing to approve the proposition voted upon.

(2) Proposals before the committee for consideration may be amended by vote of the committee subject to the consent of the proponent. If the proponent is present, the consent may be given verbally; otherwise, the consent must be in writing and must be on file prior to the vote on the amendment. The chairman may direct the amendment of a proposal to conform with the proposal as originally filed without committee action where there has been an error in copying from the proposal to the published agenda. No proposals shall be approved or disapproved by the committee unless they appear upon the published agenda. Proposals before the committee for consideration may be withdrawn upon request of the proponent.

(3) The recommendations of the appropriate Quotation Committee in approving, disapproving or deferring action upon the proposals shall be published by the Association in its Quotation Bulletin Service. If no appeal from the action of the Quotation Committee is received in the Association's offices within ten (10) days following the date of the disposition notice, excluding the date of mailing, Saturdays, Sundays and legal holidays, the recommendations of the Quotation Committee will stand approved.

(4) Following notice as provided in Paragraph (3) above, to which no objections have been received, the Association will publish the subject matter of the proposals approved by the Committees as soon thereafter as possible. If objection is received the objected to matter will be handled by the appropriate General Rate Committee as provided in Article XVIII, Section 8 and the procedures of Article XIX, Rule 3.

(5) Except as noted in the next following sentence, the Association shall publish the subject matter of the proposals approved by the committee as soon as possible following the meeting. When the committee approves an amended proposal the Association shall publish the subject matter thereof following the 10th day subsequent to the meeting.

RULE 9:

(1) The following publications will be made by the Association upon instructions of the carrier without docket procedure and without notice in the Association's Quotation Bulletin Service, subject to the following conditions:

(a) Addition of the carrier's participation in quotations which have been previously published for the account of other carriers, subject to the provisions of Note 1 below.

(b) Restrictions against the application of quotations or services via the instructing carrier's line, subject to the provisions of Notes 1 and 2 below.

(c) Elimination of the carrier's participation in routes or quotations, subject to the provisions of Note 2 below.

NOTE 1: When the participation of the carrier is in a joint-line route, the publication shall be made only when all joint-line carriers therein notify the Association of their concurrence in such addition and it shall be the responsibility of the instructing carrier to see that the Association is so notified.

NOTE 2: Publication of the restrictions and eliminations noted in (b) and (c) above will be made under the provisions of this section only when they will not result in the application of quotations, or quotations charges, reflected in the Association's quotation publications via the line of the instructing carrier which are lower than those currently effective via the other carriers participating in such quotations. When such

restrictions or eliminations will result in such lower application, the instruction shall be construed as a proposal under the other sections of these rules and shall be so processed.

(2) The Association shall publish the subject matter authorized under the provisions of this section as soon as possible following receipt of the instructions including the concurrences of joint-line carriers where required.

RULE 10: Every carrier shall have the free and unrestrained right to take independent action either before, during or after any determination arrived at under the procedures herein set forth.

When independent action is taken, the carrier announcing the same shall, in writing, furnish the Association a clear and concise statement of the publication, or changes, to be made with reasons and justification therefor. If the quotation will apply only over the single line of proponent carrier the notice of that carrier will be sufficient to require publication by the Association for that carrier's individual account. Where the publication is to apply over joint-line carrier routes, it shall be the responsibility of the proponent carrier to see that the other joint-line carriers notify the Association, in writing, of their concurrence.

Upon receipt of the notice of independent action, including the concurrence of joint-line carriers where required, the Association shall, through its Quotation Bulletin Service and within 5 days, notify the competing carriers participating in its quotations of the independent action. Such other carriers as may also desire to have the subject quotation provisions published for their own account shall so notify the Association in writing within 10 days following the date of the Association notice respecting the independent action announcement.

The Association will make the requested publication as soon as possible following the ten (10) day notice period for the account of proponent and all other carriers who have so advised their desire that the publication apply for their account.

RULE 11: Whenever there is any proposed quotation, or change therein, in order for publication, i. e., complete to a point where the Association is required to publish the provisions in its next regularly scheduled publication, any carrier interested therein may require the Association to make special publication thereof prior to the next regularly scheduled publication subject to the following conditions:

(1) The carrier shall notify the Association in writing of such request and shall include in its request a statement that it agrees to pay the Association the cost of the publication and mailing of the particular publication. The Association shall then make the publication immediately following receipt of the request, but shall be permitted not to exceed 15 days following receipt of the request in event the Association affairs require such additional time.

(2) The carrier shall have the right to require such special publication only if it agrees to pay the costs thereof and the Association may require advance cash payment of such costs as a condition precedent to the publication.

RULE 12: Each carrier participating in the Association's quotation publications shall file with the Association a power of attorney designating the Association as its agent to publish and file such quotations for its account.

ARTICLE XXI

DEFINITIONS

As used herein the following terms shall have the definitive meanings shown in connection herewith:

MEMBER MOTOR COMMON CARRIER, means a motor common carrier operating in interstate or foreign commerce and who has executed a "Rate and Tariff Agreement" to engage in a joint consideration of rates pursuant to Section 5a of the Interstate Commerce Act or a common or contract carrier operating in Alaska Intrastate Commerce, as the case may be.

WATER CARRIER, means a common carrier by water who is a member of the Alaska Carriers Association, Inc. who has executed a "Rate and Tariff Agreement" to engage in a joint consideration of inter modal joint rates or through routes with motor common carrier members pursuant to Section 5a of the Interstate Commerce Act.

RAIL CARRIER, means a common carrier by rail who is a member of the Alaska Carriers Association, Inc. who has executed a "Rate and Tariff Agreement" to engage in a joint consideration of inter modal joint rates or through routes with motor common carrier members pursuant to Section 5a of the Interstate Commerce Act.

INTER MODAL, means relating to transportation under joint rates or over through routes over the lines of member motor common carriers in conjunction with rail lines or water carriers.

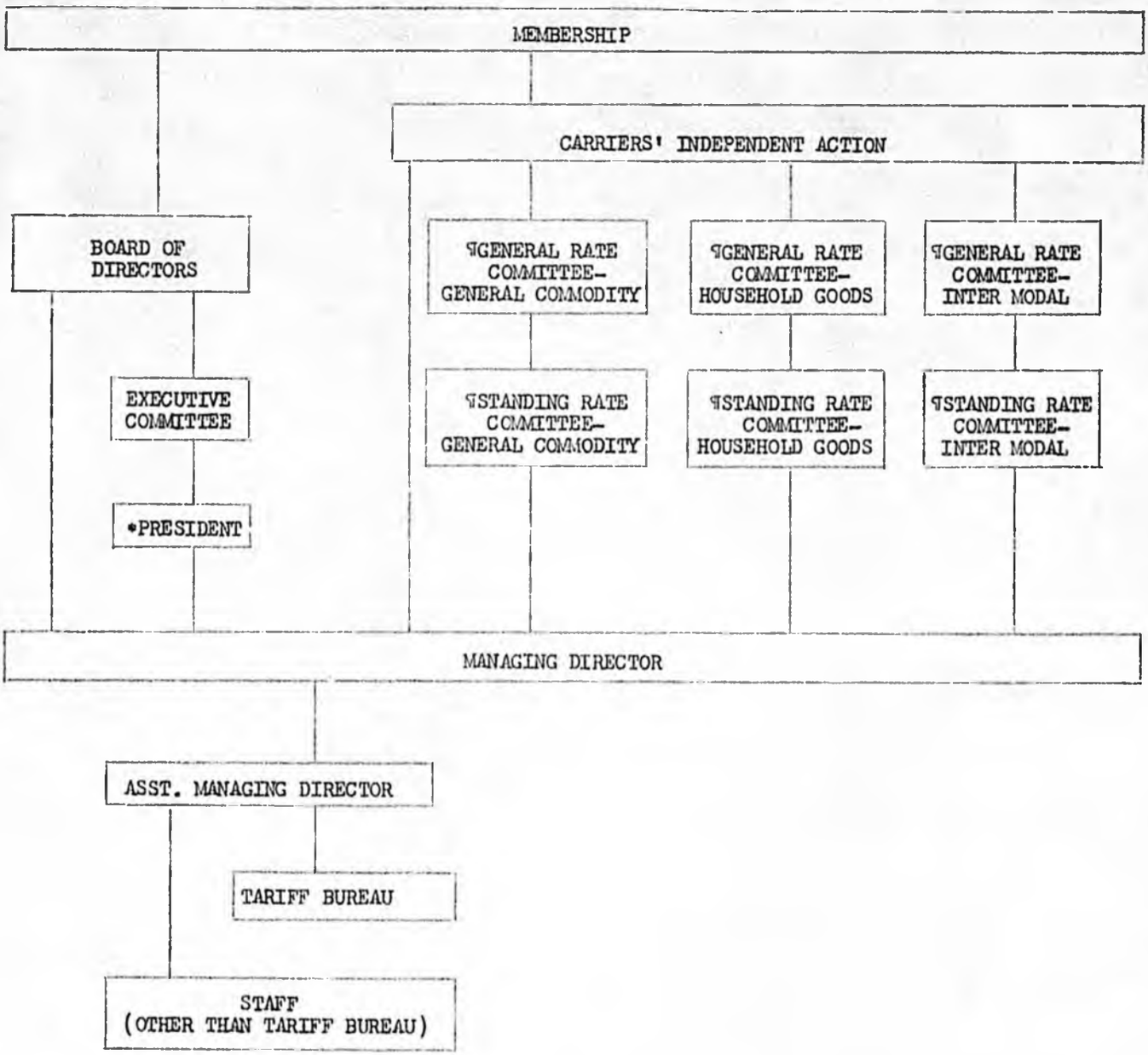
HOUSEHOLD GOODS AS DEFINED BY THE COMMISSION, means that class of commodities designated by the Interstate Commerce Commission in Ex Parte No. MC-19.

QUOTATION COMMITTEE, means the "Standing Rate Committee - General Commodity" or "Standing Rate Committee - Household Goods" or "Standing Rate Committee - Inter Modal", as the case may be. (See Article XVIII, Section 9, Paragraphs (2), (3) and (4).)

QUOTATION BULLETIN SERVICE, means a publication of similar nature to the "Rate Docket" and shall include both a notice of the proposed quotation publication and a subsequent notice of disposition of proposals. Both notices will be mailed by first class mail to all interested parties, including carriers and others who have requested copies.

EXHIBIT 2

O R G A N I Z A T I O N A L C H A R T



¶ - Such committees also function as Section 22 Quotation Committees.

* - The President appoints and is an ex officio member of all standing and special committees other than the General Rate, Standing Rate and Quotation Committees.

ALASKA CARRIERS ASSOCIATION, INC.

5(a) AGREEMENT No. 83 EXHIBIT 3

INTERSTATE MOTOR COMMON CARRIERS OF GENERAL COMMODITIES

CARRIER NAME	CITY, STATE	ICC CERTIFICATE MC-
AAA DELIVERY, INC.	Kenai, Alaska	135222
AIRBORNE FREIGHT CORPORATION	Seattle, Washington	123343
ALASKA TRANSFER, INC.	Juneau, Alaska	123323
ALASKA TRANSFER & STORAGE (Charles A. Powell, d/b/a)	Kodiak, Alaska	126136
ALASKA TRUCK TRANSPORT, INC.	Anchorage, Alaska	118520
ALASKA VAN AND STORAGE CO., INC.	Anchorage, Alaska	118490
ARCTIC MOTOR FREIGHT, INC.	Anchorage, Alaska	118452
AR-DEES ALASKA TRUCK LINES, INC.	Hardin, Montana	113573
ARROWHEAD TRANSFER (Ola Harang and Gordon S. Harang, A Partnership, d/b/a)	Sitka, Alaska	124413
AURORA DELIVERY (Ferman L. Strickland and Eileen M. Strickland, d/b/a)	Anchorage, Alaska	119402
P. J. BAKER MOBILE HOME SERVICE (Proctor J. Baker, d/b/a)	Fairbanks, Alaska	129932
BAYLESS & ROBERTS, INC.	Copper Center, Alaska	133425
BELARDI & SCHNEIDER, INC.	Juneau, Alaska	127119
BRISTOL BAY CONTRACTORS (Harry A. Shawback, d/b/a)	King Salmon, Alaska	119724
CITY EXPRESS (John W. Hoogland and Joanne C. Hoogland, A Partnership, d/b/a)	Seward, Alaska	128207
CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE	Menlo Park, California	42487
COPPER FREIGHT LINES, INC.	Valdez, Alaska	118495
DEJONG TRUCKING CO., INC.	Spenard, Alaska	118516
DENALI TRANSPORTATION CORPORATION	Fairbanks, Alaska	118494
ORVILLE J. DICKMAN	Teller, Alaska	121681
DIERINGER TRUCKING SERVICE (James F. Dieringer, d/b/a)	Valdez, Alaska	118513
DOUGLAS TRUCKING COMPANY (James S. McCormick, d/b/a)	Douglas, Alaska	123958
ED'S FUEL AND TRANSFER (E. J. Bradley, d/b/a)	Wrangell, Alaska	127156
ETOLIN TRANSFER & STORAGE CO. (Peter C. McCormack, III, d/b/a)	Wrangell, Alaska	121552
FAIRBANKS MIDWEST TRUCK LINES, INC.	Anchorage, Alaska	126526
FAIRWAY FAST FREIGHT SERVICE (Ervon E. Fairbanks and Leslie A. Fairbanks, d/b/a)	Skagway, Alaska	125778
FOSS L & T CO.	Seattle, Washington	126420
H & S WAREHOUSE, INC.	Fairbanks, Alaska	118475
HAINES TRANSFER CO. (Donald E. Krake, d/b/a)	Haines, Alaska	125271

ALASKA CARRIERS ASSOCIATION, INC.

INTERSTATE MOTOR COMMON CARRIERS OF GENERAL COMMODITIES (Continued)

CARRIER NAME	CITY, STATE	ICC CERTIFICATE MC-
HEATHERLY & SONS, INC.	Anchorage, Alaska	123328
HOMER FREIGHT LINES (Kodiak Oilfield Haulers, Inc., d/b/a)	Soldotna, Alaska	125637
HOMER TRANSFER COMPANY, INC.	Homer, Alaska	121629
HOOD AND SONS (William A. Hood, John W. Hood and Richard Hood, d/b/a)	Valdez, Alaska	119723
HOOVER'S MOVERS (Durward Glasen, d/b/a)	Cordova, Alaska	128653
HUSKY PARCEL DELIVERY, INC.	Ketchikan, Alaska	123332
IRELAND TRANSFER & STORAGE CO., A Corporation	Ketchikan, Alaska	123327
K & W TRUCKING CO., INC.	Anchorage, Alaska	125551
KODIAK TRANSFER CO. (Daniel L. Ensslin, d/b/a)	Kodiak, Alaska	126271
KOPPERUD TRANSPORTATION (Herbert N. Kopperud, d/b/a)	Palmer, Alaska	118489
LYNDEN TRANSPORT, INC.	Lynden, Washington	65802
MOBILE HOME MOVERS AND SERVICES, INC.	Anchorage, Alaska	119558
MONSEN TRANSFER (Paul E. Monsen, d/b/a)	Naknek, Alaska	123338
MORGAN DRIVE-AWAY, INC.	Elkhart, Indiana	103993
MUKLUK FREIGHT LINES, INC.	Anchorage, Alaska	118518
O. G. NESS TRUCK CO. (O. G. Ness, d/b/a)	Valdez, Alaska	118145
NORTH PACIFIC TRUCKING & CONTRACTING (Gary K. Wiggins, d/b/a)	Kodiak, Alaska	126123
OGLE'S TRANSFER SERVICE (Homer Ogle, Jr., d/b/a)	Yakutat, Alaska	133096
ORME TRANSFER, INC.	Juneau, Alaska	127031
PACIFIC WESTERN LINES (Alaska Aggregate Corporation, d/b/a)	Anchorage, Alaska	119660
PARCEL DELIVERY & TRANSFER, INC.	Anchorage, Alaska	118446
PIONEER ALASKA EXPRESS, INC.	Fairbanks, Alaska	118445
Q TRUCKING COMPANY (Charles M. Reader, d/b/a)	Nome, Alaska	128214
RELIABLE TRANSFER COMPANY OF PETERSBURG, INCORPORATED	Petersburg, Alaska	124514
RELIABLE TRANSFER CORP.	Juneau, Alaska	123297
AL RENK & SONS, INC.	Anchorage, Alaska	123298
SAFE, INC. (Seattle-Anchorage-Fairbanks Express, Inc., d/b/a)	Seattle, Washington	96615
SEA-LAND FREIGHT SERVICE, INC.	Elizabeth, New Jersey	96612
SERVICE TRANSFER, INC.	Sitka, Alaska	124128
SHULL CONSTRUCTION, INC.	Ketchikan, Alaska	127885

ALASKA CARRIERS ASSOCIATION, INC.

INTERSTATE MOTOR COMMON CARRIERS OF GENERAL COMMODITIES (Continued)

CARRIER NAME	CITY, STATE	ICC CERTIFICATE MC-
SMYTH OVERSEAS VAN LINES, INC.....	Seattle, Washington....	118482
SOURDOUGH EXPRESS, INC.....	Fairbanks, Alaska.....	118527
SOURDOUGH FREIGHT LINES (Gene Rogge, d/b/a).....	Fairbanks, Alaska.....	118514
TACHICK FREIGHT LINES, INC.....	Soldotna, Alaska.....	118449
TITUS TRUCKING CO., INC.....	Sweet Home, Oregon.....	135149
TONGASS SANITATION & A. CROWE ENTERPRISES (Wallace A. Crowe, d/b/a).....	Ketchikan, Alaska.....	126972
TOTEM TOTERS, INC.....	Anchorage, Alaska.....	118758
TRANSIT HOMES, INC.....	Greenville, South Carolina.....	94350
UNFER BROS. (Bill Unfer and Vic Unfer, A Partnership, d/b/a).....	Valdez, Alaska.....	118444
UNITED TRANSPORTATION, INC.....	Bethel, Alaska.....	123284
WEAVER BROS., INC.....	Anchorage, Alaska.....	113753
SIG WOLD STORAGE & TRANSFER, INC.....	Fairbanks, Alaska.....	118524

ALASKA CARRIERS ASSOCIATION, INC.

INTERSTATE MOTOR COMMON CARRIERS OF HOUSEHOLD GOODS

CARRIER NAME	CITY, STATE	ICC CERTIFICATE MC-
AAA DELIVERY, INC.	Kenai, Alaska	135222
AIR VAN LINES, INC.	Anchorage, Alaska	118474
ALASKA ORIENT VAN SERVICE, INC.	Seattle, Washington	118506
ALASKA TERMINALS, INC.	Seattle, Washington	118491
ALASKA TRANSFER, INC.	Juneau, Alaska	123323
ALASKA TRANSFER & STORAGE (Charles A. Powell, d/b/a)	Kodiak, Alaska	126136
ALASKA TRUCK TRANSPORT, INC.	Anchorage, Alaska	118520
ALASKA VAN AND STORAGE CO., INC.	Anchorage, Alaska	118490
ALLIED VAN LINES, INC.	Chicago, Illinois	118805
AR-DEES ALASKA TRUCK LINES, INC.	Hardin, Montana	113573
ARROWHEAD TRANSFER (Ola Harang and Gordon S. Harang, A Partnership, d/b/a)	Sitka, Alaska	124413
ATLAS VAN LINES, INC.	Evansville, Indiana	79658
BRISTOL BAY CONTRACTORS (Harry A. Shawback, d/b/a)	King Salmon, Alaska	119724
CARTWRIGHT VAN LINES, INC. (A Washington Corporation)	Seattle, Washington	88368
CITY EXPRESS (John W. Hoogland and Joanne C. Hoogland, A Partnership, d/b/a)	Seward, Alaska	128207
DENALI TRANSPORTATION CORPORATION	Fairbanks, Alaska	118494
DOUGLAS TRUCKING COMPANY (James S. McCormick, d/b/a)	Douglas, Alaska	123958
ED'S FUEL AND TRANSFER (E. J. Bradley, d/b/a)	Wrangell, Alaska	127156
ETOLIN TRANSFER & STORAGE CO. (Peter C. McCormack, III, d/b/a)	Wrangell, Alaska	121552
FAIRWAY FAST FREIGHT SERVICE (Ervon E. Fairbanks and Leslie A. Fairbanks, d/b/a)	Skagway, Alaska	125778
GLOBAL VAN LINES, INC.	Anaheim, California	41098
H & S WAREHOUSE, INC.	Fairbanks, Alaska	118475
HAINES TRANSFER CO. (Donald E. Krake, d/b/a)	Haines, Alaska	125271
HOMER TRANSFER COMPANY, INC.	Homer, Alaska	121629
HOOVER'S MOVERS (Durward Glasen, d/b/a)	Cordova, Alaska	128653
HUSKY PARCEL DELIVERY, INC.	Ketchikan, Alaska	123332
IRELAND TRANSFER & STORAGE CO., A Corporation	Ketchikan, Alaska	123327
KING VAN LINES, INC.	Wichita, Kansas	70272
KODIAK TRANSFER CO. (Daniel L. Ensslin, d/b/a)	Kodiak, Alaska	126271
O. G. NESS TRUCK CO. (O. G. Ness, d/b/a)	Valdez, Alaska	118145
NORTH AMERICAN VAN LINES, INC. (A Delaware Corporation)	Fort Wayne, Indiana	107012

ALASKA CARRIERS ASSOCIATION, INC.

INTERSTATE MOTOR COMMON CARRIERS OF HOUSEHOLD GOODS (Continued)

CARRIER NAME	CITY, STATE	ICC CERTIFICATE MC-
OGLE'S TRANSFER SERVICE (Homer Ogle, Jr., d/b/a)....	Yakutat, Alaska.....	133096
ORÆ TRANSFER, INC.....	Juneau, Alaska.....	127031
PACIFIC MOVERS (Leo E. Schlotfeldt, d/b/a).....	Tacoma, Washington.....	129850
RELIABLE TRANSFER CORP.....	Juneau, Alaska.....	123297
REPUBLIC VAN AND STORAGE CO., INC.....	Baltimore, Maryland.....	110585
SERVICE TRANSFER, INC.....	Sitka, Alaska.....	124128
SMYTH OVERSEAS VAN LINES, INC.....	Seattle, Washington.....	118482
SOURDOUGH EXPRESS, INC.....	Fairbanks, Alaska.....	118527
UNITED TRANSPORTATION, INC.....	Bethel, Alaska.....	123284
UNITED VAN LINES, INC.....	Fenton, Missouri.....	67234
VON DER AHE VAN LINES, INC.....	Fenton, Missouri.....	1931
WHEATON VAN LINES, INC.....	Indianapolis, Indiana...	87113
SIG WOLD STORAGE & TRANSFER, INC.....	Fairbanks, Alaska.....	118524

POSITION PAPER

REGARDING HB 191

(AN ACT RELATING TO CHANGES IN TRANSPORTATION TARIFFS)

SUBMITTED BY

ALASKA CARRIERS ASSOCIATION, INC.
3443 Minnesota Drive
Anchorage, Alaska 99503

William L. Fritsch
General Manager

Prepared March 11, 1975

COMES NOW, Alaska Carriers Association, Inc. by William L. Fritsch, its General Manager, for and on behalf of the regulated for-hire common motor carriers under the jurisdiction of the Alaska Transportation Commission pursuant to Title 42, Alaska Statutes and does hereby submit its opposition to the changes proposed in AS 42.10.290(a) and AS 42.15.191(a) in the subject HB 191 for reasons hereinafter set forth.

Presently the affected provisions of Title 42 prescribe a 30 day notice to the Commission and to the public of changes in motor freight tariffs. The proposal to extend this 30 day notice period to 45 days is unnecessary and burdensome in that it duplicates and further extends an already rigorous and exhaustive procedure of public notice of proposed tariff changes.

Generally, it takes 10-12 weeks to effect a change in the agency motor freight tariffs issued by Alaska Carriers Association, Inc. from the time of inception. The procedure followed in implementing changes in our agency tariffs are outlined in this Association's Agreement with the Interstate Commerce Commission under Section 5(a) of the Interstate Commerce Act which includes this Association's Articles of Incorporation and By-Laws. A copy of this agreement is attached hereto and by reference made a part hereof. Briefly, the procedure followed to implement changes in our motor freight tariffs is as follows:

1. Shippers as well as carriers may initiate changes in our motor freight tariffs. Proposals for tariff changes must be submitted in writing.

2. Upon receipt of written proposals for tariff changes, this Association publishes a monthly "Rate Docket" which is available to the general public on an annual subscription basis.

3. The monthly Rate Docket publication outlines the proposals received since the preceding monthly docket and announces a meeting of the Association's Standing Rate Committee. Notice of the meeting is given on at least ten days' notice excluding the day of mailing of the docket, Saturdays, Sundays and holidays.

4. At its scheduled meeting the Standing Rate Committee receives testimony, evidence and arguments for and/or against proposals from proponents and opponents including shippers as well as competing carriers.

5. The Standing Rate Committee approves or disapproves the proposal(s) or may modify the proposal to insure its reasonableness.

6. Following the meeting of the Standing Rate Committee, the minutes of the meeting are published in the form of a "Disposition of the Rate Docket" and are mailed to docket subscribers allowing ten working days for:

   1)-competing carriers to concur or withdraw from participation in the approved publication; and

   2)-any interested parties to appeal the Standing Rate Committee's decision to our higher General Rate Committee.

7. Should a decision of the Standing Rate Committee be appealed to the General Rate Committee, notice of a General Rate Committee meeting is published and distributed to docket subscribers announcing the meeting of the General Rate Committee on not less than ten working days' notice.

8. At its meeting, the General Rate Committee also allows the submission of testimony, evidence and arguments for or against proposals referred or appealed to it. The General Rate Committee then renders its decision approving or disapproving the proposal or modifying the proposal to insure its reasonableness.

9. Following the meeting of the General Rate Committee the minutes of its meeting are published in the form of a "Disposition Notice" again allowing at least ten working days for competing carriers to submit their concurrence or withdrawal from participation in the publication as approved for publication by the General Rate Committee.

10. Following the ten working day waiting period, actual tariff publication is made and transmitted to the Interstate Commerce Commission and/or Alaska Transportation Commission for filing on 30 days statutory notice to the Commission and to the public. Allowing for publication and mailing time this 30 day notice will normally consume 35-40 days as the formal publication must be physically received by the Commissions 30 full days prior to their scheduled effective date.

11. During the 30 day statutory notice period copies of the tariff publication are mailed to tariff subscribers and the official file copies are open for public inspection at the respective Commission offices. Interested parties may petition the Commissions for suspension and investigation of tariff changes thought to be unreasonable.

In addition to the extensive procedure outlined herein above the following points should also be observed:

1. Alaska Carriers Association, Inc., as tariff publishing agent for the motor freight carriers of Alaska, does in fact receive numerous proposals from shippers and shippers do in fact actively participate in our docketing procedure. While it is true that small or occasional shippers may lack the time and expertise to participate in these tariff publication procedures they have the benefit of larger shipper participation and resulting protection.

2. For the same reasons that small or occasional shippers may not participate in the above reference procedures they lack the ability to employ counsel to actively participate in a formal suspension and investigation proceeding before the Alaska Transportation Commission and/or the Interstate Commerce Commission.

3. The Alaska Transportation Commission already has the authority to give public notice of proposed tariff changes and has done so from time to time. Additional delay in affecting tariff changes would unnecessarily delay rate <u>reductions</u> as well as needed increases.

4. Yet another restriction is now being placed on tariff publishing agents by the Interstate Commerce Commission requiring that tariff revisions and supplements be mailed to all tariff subscribers simultaneous with their formal filing with the regulatory agency.

5. Under the procedures outlined above, all competing carriers enjoy the free and unrestrained right to independent action regarding all tariff matters.

6. Alaska Carriers Association, Inc. supports the budgetary request of Alaska Transportation Commission to include a rate analyst on the Commission staff. A rate analyst on the Commission's staff would be extremely helpful to insure reasonable and equitable transportation rates and charges.

THEREFORE, for reasons outlined above, Alaska Carriers Association, Inc. respectfully submits that existing tariff publication procedures provide more than ample opportunity for interested shippers, shipper organizations, and the general public to be made aware of proposed tariff changes, including reductions as well as increases, and therefore the amendments to AS 42 proposed in the subject HB 191 are unnecessary and burdensome for both carrier and shipper alike.

Respectfully submitted,

ALASKA CARRIERS ASSOCIATION, INC.

By William L. Fritsch
William L. Fritsch, General Manager

cc: Alaska Transportation Commission
Alaska Bar Association
ACA Board of Directors

MUKLUK
FREIGHT LINES, INC.
ONE OF THE CROWLEY COMPANIES
570 W 53rd AVE. ANCHORAGE, ALASKA 99502 PHONE (907) 274-9531 TELEX 26-457

March 13, 1975

Terry Gardiner - State Representative
Pouch V
Juneau, Alaska 99811

Attn: Thomas B. Turnbull, Assistant

Dear Mr. Turnbull:

Thank you for your response to my letter dated March 6, regarding HB 191. I, too, feel that the consumers of transportation require, and are due, sufficient notice of tariff changes.

As a representative of a motor carrier; I know what it entails to operate within a regulated industry, bound by tariff filing requirements in an environment of great economic fluctuation. In such an atmosphere, without the ability to immediately reflect these day-to-day changes, it is difficult, at best, for a motor carrier to assure an appropriate level of revenue to sustain efficient service for the shipping public.

To delay the effectiveness of a tariff change by another 15 days will have an undesirable effect on both shipper and carrier. I would suggest reliance on present rule making proceedings before the Interstate Commerce Commission requiring, among other actions, mailing of public copies of tariff changes, concurrently with filing, to the regulatory agency. This would provide 30 days notice to ~~the~~ shipping public and, where justified, allow changes to go into effect in a minimal amount of time.

Attached is a comprehensive article that appeared in the February 17, 1975, issue of TRAFFIC WORLD, outlining ICC rule m[illegible]ith regard to this matter.

I would appreciate your relaying these thoughts to Mr. Gardiner and hope they can be of some assistance toward his efforts to achieve adequate public notice and would further appreciate hearing more of his reflections on HB 191.

Very truly yours,

IRVIN P. COOK, JR.
Assistant Traffic Manager

IPC/kw

Attachment

Subscribers to Get Tariff Changes When Filed At ICC Under Rules Adopted Feb. 6

ICC Chairman George M. Stafford announced February 6 the Commission's adoption of new rules requiring carriers to notify all tariff subscribers of published rate changes at the same time the tariff is sent to the agency.

The new rules were outlined in a report and order in No. 35613, Regulations for the Transmission of Tariffs and Schedules to Subscribers and Other Interested Parties.

The report and order, which embraces No. 35959, Investigation of Charges for Furnishing Tariffs by Eastern Railroads, discontinued February 27, 1974, was served by the Commission late February 6.

Mr. Stafford said the action was "prompted by a concern that tariff users cannot presently rely on the timely receipt of tariff changes."

The new rules, which take effect in 90 days, generally provide that tariffs be mailed to subscribers not later than the time they are transmitted to the Commission, and that special expedited means for dispatching them are made.

The regulations also require that a copy of the tariff or schedule be furnished without delay to any person who makes a "reasonable" request.

All new tariff filings must contain a certificate of compliance which includes the manner in which the subscriber was notified.

"Under existing regulations, tariff changes generally must be filed with the Commission at least 30 days prior to the effective date," Mr. Stafford explained. "It has been found, however, that regular tariff subscribers often receive tariff changes only a few days before the change is to become effective—or even after it has gone into effect, and, therefore, do not always have sufficient time to anticipate changes or to file timely protest with the Commission."

In its report, the Commission said the need for the new rules was "urgent."

Subscribers and other parties will receive at least one copy of each new tariff, schedule, supplement and loose-leaf page amendment.

Nearly 100 parties had filed statements in the case.

The amendment is contained in the appendix of the report and order and reads in part as follows:

"1300.30 Transmission of Publications to Subscribers

"(a) Except as otherwise authorized in paragraphs (b) and (d) of this section, one copy of each new tariff, supplement and loose-leaf page must be transmitted to each subscriber thereto by first-class mail (or other means agreed upon in writing by subscriber and carrier or agent) not later than the time the copies for official filing are transmitted to the Commission. The letter of transmittal accompanying the copies to the Commission must contain the following certification:

"I hereby certify that I have on or before this day sent one copy of each publication listed hereon to each subscriber by first-class mail, or by other means of transmission agreed upon in writing by the subscriber.

"(signature of person transmitting publications)."

"(b) If a new tariff or supplement is filed which in its entirety is published under an and file without notice or no notice of less than 10 days, or if a new loose-leaf page is filed which contains a provision published under an authority from this Commission to publish and file without notice or on notice of less than 10 days, paragraph (a) of this section need not be complied with as to such publication if it cannot be, or compliance would cause excessive delay, but one copy of such publication must be transmitted to each subscriber thereto by first-class mail (or other means . . .) within five calendar days, starting with the calendar day following that on which the copies for official filing are transmitted to the Commission and the letter of transmittal to the Commission must contain the following certification:

"I hereby certify that I will within five days after today send one copy of each publication listed hereon to each subscriber thereto by first-class mail, or by other means of transmission agreed upon by the subscriber . . .

"Included in this exception are supplements issued for the purpose of announcing suspensions made by the Commission, publications (published in the name of the carrier only) announcing adoptions, and publications reproducing service orders . . ."

Said the Commission, in its report:

"Balancing the obligations and the benefits accruing, we have modified the rules to require each carrier and each agent to furnish one copy of each publication to the subscriber or other interested person without charge, or at a charge which, in no case, is more than one-half of the demonstrable cost of the paper and the printing or other reproduction process employed which is proportionately assignable to the copy as part of the publication of multiple copies for filing, normal distribution, and stocking.

"Carrier or publishing agent in-house cost factors related only to the material and its physical reproduction operation, such as for compiling, overhead, equipment, depreciation, handling, sorting, etc., may not be included in the base for the calculation, but the actual cost of postal service or other authorized means of transmission may be added thereto."

Earlier, the eastern railroads wanted to charge 7 cents a page for the service. No other bureau sought to charge for the service.

Canada Steam Authorized To Control Strickland

The ICC's Division 3 has upheld an administrative law judge's recommendation that Canada Steamship Lines, Ltd., be granted authority to control Strickland Transportation Co., Inc., but has imposed certain restrictions on the transaction.

The division's action came in a decision and Strickland Transportation Co., Inc.

In the initial decision served August 6, 1974, the judge had imposed financial restrictions to protect Strickland's assets and assure continued good service.

The restriction says Strickland must: "Pay rent for the use of property owned by any parent, subsidiary or affiliate in excess of that provided for in current leases in effect with respect thereto, and upon their expiration, at a rent not exceeding costs of amortization, interest and proprietary expenses for such property, or enter into any new leases . . ."

The division added the phrase "with any parent, subsidiary or affiliate" following the word "leases" for clarification purposes.

The division said the law judge sought to eliminate dormant authority held by Strickland without substantially affecting its traffic between the southwest and Canada.

However, the division said, the deletion of dormant authority would "impede" continued service. It was "preferable to leave Strickland's authority intact," said the division, which added the following restriction:

"All of the authority in MC-59680, Sub. 127, "is restricted against the transportation of traffic moving between origin or destination points in Canada and Michigan, on the one hand, and, on the other, points of destination or origin in Illinois, Indiana, Michigan, Ohio and Wisconsin."

The division said while traffic between points in Canada and points in Illinois, Indiana, Michigan, Ohio and Wisconsin had been interlined by Strickland with other carriers, the service by Strickland would be "detrimental" to other carriers.

Correction

On page 35 of the February 3 issue of *Traffic World*, in an article about control of R. C. Motor Lines by Eastern Express, it was stated erroneously that Easter was controlled by "American Export Industries, a subsidiary of Isbrandtsen Co."

Isbrandtsen Co. is a major stockholder in American Export Industries, but AEI is not a subsidiary of Isbrandtsen or any other company. *Traffic World* regrets its error.

Commission Reports

* An asterisk before the docket number means that the report will not be printed in full in the pertinent series of Commission reports. (Mimeographed copies of such reports in full may be obtained by prompt application to the Commission.

* CLASS RATES—I. and S. No. M-27345, Class Rates Between Points in Nevada and Points in California. Report and Order by Review Board No. 4 (served February 12). Proposed reduced class rates between points in the Reno, Nev., rate group and specified points in California, found not shown to be just and reasonable. Schedules ordered canceled and proceeding discontinued. By schedules filed to become effective February 21, 1974, the Rocky Mountain Motor Tariff Bureau, agent, published at the request of Applegate Drayage Co., and Reno-Loyalton-Colpine Stage Lines, Inc., reduced motor common carrier class rates for application between the Reno, Nev., group, on the one hand, and, on the other, 28 north California points. On protest of motor carrier members of the bureau, operation of the schedules was suspended until September 21, 1974, when they became effective. The parties presently maintain class rates between the Reno group and the Susanville, Calif., group (rate basis 350) which includes 12 of the named points, and between the Reno group and the Sacramento, Calif., group (rate basis 340) which includes Sacramento. The proposal, said the board, would establish a new rate basis number 297 between the Reno group and the 28 named points, resulting in reduced rates. The respondent stated that other carriers maintain lower rates than those proposed. The bureau also said its carriers have a merchandise rate which allows a shipper to consolidate shipments destined to northern California. According to the respondent, if the shipper tenders at least 100,000 pounds, he receives a rate lower than the rates proposed. Protestants said the reduction to Sacramento would have a "disruptive" effect on the existing class rate

March 3, 1975

TO: Bob Bradley

FROM: Terry Gardiner

SUBJECT: HB 191 and 192

HB 191 and 192 have been referred to your committee, and then they go to Judiciary. I introduced these bills at the request of the State Bar Association and Alaska Legal Services. Enclosed is a whole pile of back up material including a letter that you once wrote supporting such legislation when you were Director of SEACAP. I have talked to Gordon Zerbetz, the Commissioner of APUC, which would be affected by this legislation and he thinks that it is a great idea. I don't think that there will be any opposition to these bills, so speed them on their way if you can.

file 191

LAW OFFICES OF
ALASKA LEGAL SERVICES CORPORATION
315 FIFTH STREET, SUITE 8
JUNEAU, ALASKA 99801
TELEPHONE 586~~6445~~ 6425

June 6, 1975

Mr. James J. Johnson, Chairman
Alaska Transportation Commission
10th Floor, McKay Building
338 Denali Street
Anchorage, Alaska 99501

Subject: Docket Number 75-121-RR/A

Dear Mr. Johnson:

This letter is in response to your notice of proposed changes in the regulations of the ATC. I have a couple preliminary matters and then will comment on the merits of the proposed changes.

1. Please consider this letter a request for notice of all future proposed actions of the ATC, whether on this specific matter or others, as provided in AS 44.62.190(a)(2). This request is separate from others that may have been or will be submitted by other staff members of Alaska Legal Services.

2. The notice procedures here do not comply with the state Administrative Procedures Act, as they must under AS 42.07.151(b). AS 44.62.190(a)(1) requires that notice be published in the newspaper "at least 30 days before the adoption, amendment, or repeal of a regulation." The notice I saw (attached as Appendix A) was in the May 28 edition of the Tundra Times. The notice states that publication occurred May 21 and 28, 1975. Since the deadline for comments is June 10, 1975, 30 days has not elapsed. The 30 days must run from the date of the last publication to the date of the deadline for comments, or, at a minimum, the date of the public hearing. Any less notice not only does not comply with the law, but also is inadequate for public reaction to your proposals.

3. The general purpose of these proposed changes seems to be to tie notice periods to the publication of the journal and to delete from the requirement of public notice "petitions,

complaints, and other proceedings" in 3 AAC 60.180(b). However, not only is such a change unwise, but, effective September 2, 1975, entirely new notice provisions will have to be adopted, rendering this change meaningless.

On June 4, Governor Hammond signed Committee Substitute for House Bill 191 into effect (copy attached as Appendix B). The bill goes into effect 90 days after that date.

CSHB 191 alters the ATC notice statutes to require 1) at least 30 days actual notice to the public of proposed changes in rates, classifications, etc.; 2) notice "reasonably adequate to notify customers affected by the filing".

I believe that the "journal" method of notifying the public is not "reasonably adequate" and must be discontinued after September 2. First, the journal is not adequate because it is unlikely that a member of the public, however interested in the affairs of your commission, will spend $20 per year on the chance that a few items in it may apply to his or her area. Second, the journal is not adequate because, as currently distributed, it does not provide 30 days' notice. A recent journal (attached as Appendix C) was dated March 25, 1975, and gave notice of applications before the ATC which were filed March 11, 13 and 14. The protest deadlines were April 4 and 9, substantially less than the 30 days required in CSHB 191. Third, the journal is not adequate because, in some situations, bilingual notice by television and radio will be required to make the effected consumers aware of the proposals.

Therefore, I strongly recommend you withdraw the proposed amendments and redraft them to comply with the letter and spirit of CSHB 191. This can easily be done by the September deadline.

Thank you.

Sincerely,

Donald E. Clocksin
Deputy Director

cc: Tina Stonorov, Alaska Conservation Society
Jim Grandjean, Anchorage ALSC
Tony Motley, Commissioner of Commerce
Representative Terry Gardiner
Senator Jalmar Kerttula

DEC:mjb

LEGAL NOTICE

**NOTICE
OF PROPOSED CHANGES
IN THE REGULATIONS OF THE
DEPARTMENT OF COMMERCE
ALASKA
TRANSPORTATION COMMISSION**

Notice is hereby given that the Department of Commerce, Alaska Transportation Commission, under authority vested by AS 42.07.141(a) and (b), proposes to amend regulations in Title 3 of the Alaska Administrative Code to implement AS 42.07.121, AS 02.05, AS 42.15, AS 42.25 and AS 42.10 as follows:

3 AAC 60.100(c), 3 AAC 60.180(b) and 3 AAC 60.430(a) are amended to read:

3 AAC 60.100. INTERVENTION.

(c) Intervention in an application proceeding shall be within the time specified in the notice of application as published in the commission's journal.

3 AAC 60.180. NOTICE.

(b) The commission shall compile a journal of all applications, to be published regularly not less frequently than once a month. Notice to all carriers and the general public shall be accomplished by publication of the journal. Official notice is completed upon publication in the journal. Upon payment of the charge therefor, any person may subscribe to the journal which shall be mailed first class to his designated address. Copies of the journal shall be maintained for public inspection at the offices of the commission in Anchorage, Fairbanks and Juneau.

3 AAC 60.430. TEMPORARY AUTHORITY.

(a) The commission shall notice all applications for temporary authority in the manner provided in sec. 180 of this chapter.

Notice is also given that any person interested may on or before June 10, 1975 file written arguments or statements relevant to the action proposed hereinabove or may appear and offer oral or written arguments or other statements at a hearing to be held June 17, 1975, at the hour of 10:00 A.M., in the Alaska Transportation Commission's Hearing Room, 10th Floor MacKay Building, 338 Denali Street, Anchorage, Alaska, 99501.

Thereafter the Alaska Transportation Commission, upon its own motion or at the instance of any interested person, may at the hearing or thereafter adopt the above changes substantially as proposed without further notice.

DATED at ANCHORAGE, ALASKA, this 13th day of May, 1975.

JAMES J. JOHNSON, Chairman
Alaska Transportation Commission

ROBERT C. ROCKER, Commissioner
Alaska Transportation Commission

QUENTIN L. DEBOER, Commissioner
Alaska Transportation Commission

ALL CORRESPONDENCE PLEASE REFER TO: DOCKET NO. 75-121-RR/A.

Pub.: May 21, & 28, 1975.

Appendix A

Original sponsor: Gardiner

Offered: 4/16/75
Referred: Rules

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 191

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to changes in transportation tariffs."

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

* Section 1. AS 42.10.290(a) is amended to read:

(a) Unless the commission otherwise orders, no change may be made by a common carrier in its rates, classifications, rules, regulations, or practices or in a contract or agreement relating to a rate, classification, rule, regulation, or practice except after 45 [30] days notice to the commission and 30 days notice to the public. Notice shall be given to the commission by filing with the commission and keeping open for public inspection the revised tariff provisions which shall plainly indicate the changes to be made in the schedules then in force and the time when the changes will go into effect. The commission shall prescribe means by regulation whereby notice is given to the public before or no later than 15 days after the filing which shall be reasonably adequate to notify customers affected by the filing [MAY PRESCRIBE ADDITIONAL MEANS OF GIVING NOTICE]. The commission, for good cause shown, may allow changes to take effect on less than 45 [30] days notice to the commission or 30 days notice to the public under such conditions as the commission may prescribe.

* Sec. 2. AS 42.15.191(a) is amended to read:

(a) Unless the commission otherwise orders, no change may be made by a common carrier in its rates, classifications, rules, regulations or practices or in a contract or agreement relating to a rate, classification, rule, regulation or practice except after 45 [30] days' notice to

Appendix B

the commission and 30 days' notice to the public. Notice shall be given to the commission by filing with the commission and keeping open for public inspection the revised tariff provisions which shall plainly indicate the changes to be made in the schedules then in force and the time when the changes will go into effect. The commission shall prescribe means by regulation whereby notice is given to the public before or no later than 15 days after the filing which shall be reasonably adequate to notify customers affected by the filing [MAY PRESCRIBE ADDITIONAL MEANS OF GIVING NOTICE]. The commission, for good cause shown, may allow changes to take effect on less than 45 [30] days' notice to the commission or 30 days' notice to the public under conditions the commission prescribes.

* Sec. 3. AS 02.05.140(b) is amended to read:

(b) Extent and manner of filing. Tariffs shall be filed and made available to the public as provided in (f) of this section for changed tariffs as set out there, otherwise to the extent and in the manner required by regulations of the commission. The form of every tariff shall be prescribed by the commission. The commission shall prescribe a form as nearly similar as possible to the form of tariffs required of air carriers by the Civil Aeronautics Board or other agency of the federal government under the Act of Congress entitled "Federal Aviation Act of 1958," and acts amending or supplementing it. The rates, fares and charges shown in a tariff shall be stated in terms of lawful money of the United States.

* Sec. 4. AS 02.05.140(f) is repealed and re-enacted to read:

(f) Notice of change in tariff. Unless the commission otherwise orders, no change may be made in a rate, fare, or charge, or a classification, rule, regulation, or practice affecting the rate, fare, or charge or the value of the service thereunder, specified in any effec-

tive tariff of a certificated carrier, air taxi operator or carrier exempt under sec. 50(b) of this chapter, except after 45 days notice to the commission and 30 days notice to the public. Notice shall be given to the commission by filing with the commission and keeping open for public inspection the revised tariff provisions which shall plainly indicate the changes to be made in the schedules then in force and the time when the changes will go into effect. The commission shall prescribe means by regulation whereby notice is given to the public before or no later than 15 days after the filing which shall be reasonably adequate to notify customers affected by the filing. The commission, for good cause shown, may allow changes to take effect on less than 45 days notice to the commission or 30 days notice to the public under such conditions as the commission may prescribe.

ALASKA TRANSPORTATION COMMISSION
1000 MacKay Bldg., 338 Denali St.
Anchorage, Alaska 99501
Telephone 279-1451

RECEIVED

Alaska Legal Services Corporation

Volume 2, No. 6 JOURNAL March 25, 1975

Applications pending before the Commission are hereby noticed pursuant to the provisions of 3 AAC 60.180 of the Alaska Transportation Commission Rules of Practice and Procedure.

PROTEST DEADLINE: April 9, 1975, unless otherwise noted.

DOCKET NO. & DATE FILED	APPLICANT	SERVICE DESIRED
75-70-AT/A 3/13/75	C & L, INC., d/b/a Port Heiden-Chignik Air Service P. O. Box 747 Homer, Alaska 99603	Amend air taxi certificate No. 59 to include fixed wing aircraft [illegible] less GTOW, from an additional base of operations at Brown Bear Lodge Airstrip and Regular Field (near Port Heiden).
	Attorney: Andrew E. Hoge, 601 W. 5th, #304, Anchorage	
75-71-AS/A 3/11/75	ALASKA AERONAUTICAL INDUSTRIES, INC. P. O. Box 6067 Anchorage, Alaska 99502	Amend air scheduled certificate No. 234 to include Anchorage/Seward/Anchorage service.
	Attorney: S. A. Debenham, 511 W. 4th Ave., Anchorage	
75-72-MF/X 3/14/75	Willard D. Rowley, d/b/a R & R CONST. P. O. Box 464 Chugiak, Alaska 99567	Temporary common carrier authority to transport wrecked, damaged, and/or disabled vehicles on the roads adjacent to and utilized for transportation of equipment, materials and supplies for the Trans-Alaska Pipeline construction projects on the one hand, and on the other hand, points in Zones 4 and 5. Authority limited to the use of wrecker type vehicles which weigh not less than 15,000 pounds.
	PROTEST DEADLINE: April 4, 1975.	

Appendix C

HB

192

"An Act relating to changes in public utility tariffs."

COMMITTEE REPORT

3/13/75

HOUSE

Mr. Speaker: Date _____

The Committee on JUDICIARY has had HB 192

under consideration. A Majority of the members of the Committee

(X) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Jerry Gardiner _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Jerry Gardiner Chairman

SOUTHEASTERN ALASKA
COMMUNITY
ACTION PROGRAM



JUNEAU CENTER
P.O. BOX 449
JUNEAU, ALASKA 99801
PHONE: 907 586-1990

May 22, 1973

Mr. Gordon J. Zerbetz, Commissioner
Alaska Public Utilities Commission
110 MacKay Building
Anchorage, Alaska 99501

RECEIVED APUC

Dear Mr. Zerbetz:

24 MAY 73 14: 0? The Southeastern Alaska Community Action Program works with the villages in Southeastern Alaska. Through this close working relationship we are able to better understand the needs of these rural people than are many agencies. The Public Utilities Commission decisions are such that they have widespread effect on the people and villages of Southeastern. For this reason SEACAP has taken interest in the upcoming PUC public hearing. SEACAP is concerned about the type of notices the utility companies now utilized to inform their subscribers of rate changes. The predominate method is to publish written notices in the legal column of the newspaper that services the affected area. This method has several obvious shortcomings for the village people. Many people living in the village do not receive newspapers. Many older people are not able to read or read with great difficulty. Few people take the time to read the legal columns even if they are receiving a newspaper. As not to critize without suggestions for improvement SEACAP does have several recommendations. The notice of rate changes should be continued in the newspapers. In addition, notices should be posted in public buildings (i.e. post office, city hall) and on community bulletin boards. Individual notices should also be sent to subscribers with their regular utility bill, at least 30 days before the rate change is to become effective. Announcements on the radio should also be used to spread this type of information. To insure all the people understand, the announcement should be read in English and the dialect native to the affected area. The adoption of these recommendations would bring better service to the public.

Very truly yours,

R. E. Bradley

Robert E. Bradley
Executive Director/SEACAP

ROBISON, McCASKEY, STRACHAN & HOGE
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
921 WEST SIXTH AVENUE
ANCHORAGE, ALASKA 99501

TELEPHONE
AREA CODE 907
279-7431

PAUL F. ROBISON
KENNETH McCASKEY
JOHN R. STRACHAN
ANDREW E. HOGE
MARVIN B. FRANKEL
PETER A. LEKISCH
LEROY J. BARKER

April 12, 1974

Mr. Donald E. Clocksin
315 5th Street #8
Juneau, Alaska 99801

Re: Proposed amendment to AS 42.05.411(a)

Dear Mr. Clocksin:

I am writing this letter on behalf of the Administrative Law Committee. This letter does not reflect the opinion of this law firm or any of its clients.

This letter represents the official position of the Alaska Bar Association's Administrative Law Committee regarding the amendment you propose to AS 42.05.411(a), copy attached. The Administrative Law Committee absorbed the former Bar Association Public Utilities Committee, and consists of several attorneys primarily representing utilities who practice regularly before the Alaska Public Utilities Commission.

We believe that the public should be afforded adequate notice of utility tariff revisions and rate changes with sufficient time for affected customers to consider the revision or rate change and comment or protest if they choose to do so. This is especially true where the rate change may result in a higher utility bill. However, the Committee also feels that the utilities should have the assurance that their proposed revisions can go into effect within a specified time after they are filed with the Commission and reasonable notice is given to the public. We believe these two worthy objectives go hand in hand, and that the present AS 42.05.411(a) does not accomplish them.

Your amendment does. The present language of AS 42.05.411(a) obstensibly provides 30 days notice to the public of proposed

tariff revisions or rate changes, but this notice period commences on the date the proposed revision is filed with the Commission, not when the public or affected customers actually get notice. It has been our experience that it takes the Commission an average of about two weeks to promulgate public notice of a proposed revision after it is filed with the Commission, but the deadline for comment or protest is always 30 days after the date the proposed revision was filed with the Commission. So, in actual practice the public usually has about two weeks or less to consider and comment on the proposed revision which may result in a hike in their utility bills. This is considerably less than 30 days notice "to the public". The Committee believes a realistic 30 days notice to the public is imperative, and that your amendment provides it.

Your amendment also retains the desirable feature from the standpoint of the utilities that a proposed tariff revision can go into effect within a definite time after it is filed, while providing a realistic 30 days notice to the public during that period. Under the present AS 42.05.411(a), the effective date of a proposed revision is 30 days after it is filed with the Commission. Pursuant to your amendment, the effective date of a proposed tariff revision would be 30 days after notice to the public, but in any case not later than 45 days after it is filed with the Commission. Since the saving clause (the last sentence) of AS 42.05.411(a) is retained, an additional 15 days from the date of filing for the proposed revision to go into effect does not seem burdensome in the light of the public interest to be served by your amendment.

Therefore, the Committee officially endorses and supports your proposed amendment to AS 42.05.411(a). If the Committee or myself can be of any further assistance in the passage of this amendment, please feel free to contact me at any time.

Sincerely yours,

Andrew E. Hoge

Andrew E. Hoge, Chairman
Administrative Law Committee

cc: L. S. Kurtz, Jr., President
Alaska Bar Association

Mary F. LaFollette, Executive Director
Alaska Bar Association

Committee members

Date of Notice	Expiration 1973	Days notice to public
	.To	
1-3	1-22	19
1-5	1-24	19
1-5	1-22	17
1-8	1-23	15
1-15	1-29	14
1-15	1-29	14
2-14	3-1	15
3-1	3-23	22
3-5	3-31	16
3-6	3-26	20
3-13	3-27	14
3-13	3-28	15
3-14	3-29	15
3-15	3-30	15
3-24	4-9	16
-12	5-1	19
18	4-30	12
[illegible]	[illegible]	[illegible]
-27	5-14	17
-27	5-14	17
5-3	5-21	18
5-3	5-18	15
5-8	5-25	17
5-17	5-31	14
-29	6-12	14
-6	6-20	14
-8	6-20	12
7-6	7-26	20
7-13	7-27	14
-20	8-9	20
-20	8-7	18
-26	8-10	15
-30	8-24	25
[illegible]	8-17	[illegible]

16.39 avg.

Total 541

1973

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

599 33

18.15

1973

12-11	12-31	20
12-11	1-4 (74)	24
12-12	1-2	21
12-21	1-10 (74)	20

85

21.25 avg

-.70

1973 average notice to the public
17.5 days

1974 avg so far
15.5 days notice

Total 1973-4 avg (17.25 days notice)

1974

1-8-74	1-28	20
1-9	1-28	19
1-11	1-24	13
1-15	1-30	15
1-21	2-6	16
1-28	2-12	15
1-31	2-19	19
2-4	2-18	14
2-11	2-22	11
2-20	3-5	13

155

15.5 days

1974 average

1380 total = total avg. 17.25

80

STATE OF ALASKA

BEFORE THE ALASKA PUBLIC UTILITIES COMMISSION

In the Matter of the Adoption of Regulations in Chapter 48, PRACTICE AND PROCEDURE	U-72-75 ORDER NO. 2

ORDER ADOPTING REGULATIONS
(ARTICLE 2)

On April 20, 1973, the Commission issued public notice of its intention to adopt regulations in Title 3 (Commerce) of the Alaska Administrative Code, to implement AS 42.05, consisting of Part 5, Chapter 48 (Practice and Procedure), Article 2, titled "Utility Tariffs." The notice was published in the Anchorage Daily News, the Fairbanks Daily News-Miner, the Ketchikan Daily News, the Daily Sitka Sentinal, and the Southeast Alaska Empire. In addition, the notice was mailed to all known attorneys representing certificated utilities, all public accountants or certified public accountants known to be working for certificated utilities, all Senators and Representatives in the Alaska State Legislature, the Alaska Legal Services Corporation, the Alaska Bar Association and all known interested parties.

The notice provided for the filing of written arguments or statements by any interested party on or before May 21, 1973, and for the presentation of oral or written arguments or other statements at a hearing to be held in the Hearing Room of the Commission on the 11th Floor of the MacKay Building, 338 Denali Street, Anchorage, Alaska at 9:30 A.M. on May 30, 1973.

Written comments on the proposed Utility Tariff Regulations of Practice and Procedure were submitted by:

Francis M. Flavin and James Grandjean representing the Village of South Naknek

John R. Spencer representing the City of Anchorage

Steve Cowan representing the State of South Dakota, Public Utilities Commission

William H. Johnson representing Matanuska Electric Association, Inc.

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Theodore E. Fleischer representing Glacier State Telephone Company and Juneau-Douglas Telephone Company

John Shively representing Alaska Federation of Natives, Inc.

Robert E. Bradley representing Southeastern Alaska Community Action Program

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Joint Federal-State Land Use Planning Commission

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Larry Colp representing Fairbanks Municipal Utilities System

Oren F. Ryals representing Salem Electric

Lloyd M. Hodson representing the Alaska Village Electric Cooperative, Inc.

William J. Moran representing the Chugach Electric Association

It should be noted that the initial draft of the Commission's tariff rules was noticed on October 3, 1972, and considered at a hearing on November 15, 1972. As a result of numerous comments on that initial draft, the Commission extensively revised the proposed tariff rules and it was the revised draft which was noticed on April 20, 1973, and which, with certain amendments discussed below, will be adopted by this order.

Numerous suggestions were received on the proposed rules and many changes were incorporated in the rules as a result of those suggestions. The discussion herein, however, will be limited only to the changes which appear to the Commission to have the greatest significance.

48.210: The Commission adopted the suggestions to provide for a waiver on a showing of good cause and to allow the application for waiver to be made by an advice letter.

48.220: The grace period for filing copies of special contracts not previously filed with the Commission and tariff sheets covering every rate, charge, rule, regulation or condition of service being applied by a utility but not filed with the Commission will be changed from 30 days to 120 days after the effective date of the tariff rules. In addition, the sentence will be added delineating the various contracts not encompassed within the term "special contract" as used in this chapter.

48.230: This section will be amended to exclude nonutility billing forms and contracts. A utility will be allowed to incorporate the required forms in its tariff in lieu of submitting them separately by an advice letter.

48.250: The Commission will add a provision requiring each utility to submit for Commission approval a list of the locations at which the utility proposes to maintain a copy of its tariff on file for public inspection. It is hoped that this amendment will quiet the fears of those parties who voiced concern that their utilities would be burdened with substantial additional costs to make copies of their tariffs available at places not normally manned by trained tariff personnel.

48.260: Although several strenuous objections were made to the posting of a sign informing the public of the tariff inspection privilege, the Commission believes it is in the public interest to retain this requirement.

48.280: The Commission does not subscribe to the interpretation placed on the Statute by some parties to the effect that a separate 30-day's notice is required to be made to the public of any tariff change, nor does it agree that the public notices of tariff changes must be issued in a language other than English. As a matter of policy, however, the Commission will endeavor to make greater use of broadcast media whenever it appears that this procedure will carry the notice to a substantial number of a utility's customers who would not otherwise be made aware of the proposed tariff revision. Further, the Commission will request that the notices be broadcast in the dialect or language which is prevalent in the region.

48.290: The Commission does not agree with the contention that a 30-day period for response must be allowed commencing after the last date of publication. In our view, the statute is clear that the 30-day notice period to the Commission and to the public commences running on the day the tariff revision is properly filed with the Commission.

48.340: The Commission will substitute the decimal system for numbering of tariff insert pages in place of the present alphabetical system.

48.370: Certain provisions previously in sections 48.400 and 48.410 will be transferred to this section.

48.380: Toll settlement formulas and procedures will be specifically excluded from the schedules required to be filed by telecommunications utilities.

48.390: Several parties objected to the inclusion of a firm requirement that no special contract may become effective without the prior approval of the Commission and shall, at all times, be subject to any revisions which the Commission may order. They pointed out that in some instances this requirement might unreasonably complicate the contracting process to the great disadvantage of all parties. Accordingly, the Commission will make specific provisions for a waiver of this requirement when circumstances warrant.

48.420: Perhaps the most controversial rule proposed by the Commission concerns deposit practices. The Commission remains firm in its conviction that the public interest will be enhanced if utility deposit practices are regularized throughout the state to the maximum feasible extent.

Since the use of utility services and credit standings vary widely between customers, and recognizing that there often may exist extenuating circumstances which would make absolutely fixed rules extremely difficult to apply uniformly to all utility customers, the Commission provided an area of discretion in which a utility may exercise its judgment as to the proper deposit requirement after consultation with the customer. The maximum deposit for all types of utilities will be set at two-months billings.

The Commission does not agree that any type of utility, except a telephone utility (because of the toll billing delay), should hold a deposit longer than 25 days after discontinuance of service. On the other hand, the Commission finds merit in the comments of several parties to the effect that a customer who does not habitually pay his bills on time should not expect to receive service without having made a deposit.

As to the proposed provisions requiring payment of interest on deposits and waiving deposit requirement for persons who have reached or exceed 62 years of age, in consideration of the numerous strong protests to them the Commission has decided to withdraw the provisions pending further study.

THE COMMISSION FURTHER FINDS AND CONCLUDES:

1. The procedural requirements, as provided in AS 44.62.180 et seq., for public notice and affording an opportunity to each interested party to present statements, arguments and contentions relating to the proposed adoption of regulations titled "Utility Tariffs" in Title

3, Part 5, Chapter 48 (Practice and Procedure), Article 2 of the Alaska Administrative Code, have been met in this proceeding.

2. The comments which were submitted, both oral and written, have been considered by the Commission and in furtherance of the public interest the regulations titled "Utility Tariffs" in Chapter 48, Article 2, modified pursuant to the discussion above, should be adopted and duly filed as provided by statute.

ORDER

THE COMMISSION ORDERS, That, the proposed regulations, Title 3, Part 5, Chapter 48, Article 2 of the Alaska Administrative Code, attached hereto as Appendix A, are hereby adopted under the authority vested by AS 42.05. 151, and shall be duly filed with the Lieutenant Governor in accordance with the provisions of the Administrative Procedure Act (AS 44.62).

By Direction of the Commission:

DATED AND EFFECTIVE at Anchorage, Alaska, this 5th day of October, 1973.

ALASKA PUBLIC UTILITIES COMMISSION

Maurice H. Oaksmith

Maurice H. Oaksmith
Deputy Director

STATE OF ALASKA

BEFORE THE ALASKA PUBLIC UTILITIES COMMISSION

In the Matter of the Adoption of Regulations in Chapter 48, PRACTICE AND PROCEDURE	U-72-75

CERTIFICATION OF MAILING

Donna R. Gould certifies as follows:

That I am Clerk Typist III in the offices of the Alaska Public Utilities Commission, 1100 MacKay Bldg., 338 Denali Street, Anchorage, Alaska 99501.

That on the 5th day of October, 1973, I mailed true and accurate copies with postage thereon to the parties indicated on the attached service list of

ORDER NO. 2

ORDER ADOPTING REGULATIONS
(ARTICLE 2)

in the above-entitled cause.

DATED at Anchorage, Alaska, this 5th day of October, 1973.

Donna R. Gould

SERVICE LIST

U-72--75

N. C. Banfield, Esquire
311 N. Franklin Street
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Juneau, Alaska 99801

Theodore E. Fleischer, Esquire
Ely, Guess & Rudd
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Anchorage, Alaska 99501

John Spencer
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City of Anchorage
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Anchorage, Alaska 99510

Andrew E. Hoge, Esquire
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Anchorage, Alaska 99501

Francis J. Flavin, Esquire
James Grandjean, Esquire
Alaska Legal Services Corporation
524 West Sixth Avenue
Suite 204
Anchorage, Alaska 99501

COURTESY LIST

The Honorable Emmitt L. Wilson
Commissioner
Department of Commerce
Pouch D
Juneau, Alaska 99801

The Honorable John E. Havelock
Attorney General of Alaska
Pouch K
Juneau, Alaska 99801

Robert J. Mahoney
Cole, Hartig, Munley, Rhodes & Norman
717 "K" Street
Anchorage, Alaska 99501

Courtesy List (Cont'd)

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Alaska Gas & Service Company
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Anchorage, Alaska 99502

E. Ken Larsen, State Manager
Glacier State Telephone Company
500 W. International Airport Rd.
Anchorage, Alaska 99503

Alaska Electric Light and Power Company
P. O. Box 1901
Juneau, Alaska 99801

Northern Commercial Company
419 Colman Building
Seattle, Washington 98104

Alaska Power and Telephone and
National Utilities, Inc.
P. O. Box 222
Port Townsend, Washington 98368

Robert E. Sharp
City Manager
City of Anchorage
P. O. Box 400
Anchorage, Alaska 99501

Anchorage Attorney General's Office
Civil Section
360 "K" Street
Anchorage, Alaska 99501

Archie Gottschalt
Rural Alaska Community Action Program
Drawer 412 ECB
Anchorage, Alaska 99501

Telephone (907) 452-1716

Doyon, Limited

527 Third Avenue
~~530 Fifth Avenue~~
Fairbanks, Alaska 99701

May 29, 1973

Mr. Jack Stearn
Executive Director
Alaska Public Utilities Commission
1100 MacKay Building
338 Denali Street
Anchorage, Alaska 99501

Dear Mr. Stearn,

It has been brought to our attention that you are soliciting comments on Title 3 to implement AS 42.05 as it relates to notice that utility companies must provide to their customers whenever these companies set or change their rates.

RECEIVED APUC
1 MAY 73 11:

Doyon, Limited is a native Regional Corporation with a very deep interest in utilities within the 42 villages in our region. We have been aware for some time that the notice for public hearings on rate changes and service has been totally inadequate.

I would like to thank the Commission for sincerely looking into this problem and doing something about it.

We believe that future public notice should be given by radio as well as newspapers. Newspaper notice is generally in the legal section and receives very little scrutiny. Radio notices would be just an additional way to make sure that as many people as possible know about the hearings. Additionally we feel that native languages should be used where the language is used more than English.

One final method of notification we believe should be used is to require the utility to give written notice to individual customers along with utility bills.

Please enter this letter into the official transcript of hearing.

Thank you

Sam Kito, Jr.
Executive Vice President

LAW OFFICES OF
ALASKA LEGAL SERVICES CORPORATION
315 FIFTH STREET, SUITE 8
JUNEAU, ALASKA 99801
TELEPHONE 586-XXX 6425

MEMORANDUM

To: Rep. Terry Gardiner

From: Don Clocksin DLC

Subject: Floor Debate - HB 192, Public Utility Notices

Date: March 20, 1975

Since your bill, HB 192, is in Rules, you may want to refer to this summary when it appears on the House calendar,

I. Background.

This bill originated from the Bush Justice Conference in June, 1974, in Minto, Alaska. There, Alaskans living in rural areas gathered to discuss the delivery of state services to the bush and to recommend changes. One problem identified was the lack of notice and input rural residents had on decisions made by administrative agencies that affected their lives. The Administrative Law Committee of the Alaska Bar Association, made up of lawyers representing utilities and consumers developed the legislation.

II. Present Law.

Under present procedures of the Alaska Public Utility Commission, if a utility requests a rate change or other revision of its tariff from the APUC, the Commission files it, notifies the public, and, if no objections are received within 30 days, the change goes into effect automatically. The present law requires 30 days' notice to the public from the date the proposed revision is filed. Since delays occur between filing with the APUC and actual publication, substantially less than 30 days' actual notice is available to comment. Testimony indicated in 1973 that only 17.3 days actual notice to the public was given, on the average.

III. What the Bill Will Do.

The bill would require at least 30 days' actual notice to the public, and gives the APUC 15 days from the date the proposed change is filed with them to issue the public notice.

The net result is to increase by 15 days the period of time before

a revision can take effect and to assure more time for public comment. The bill will not alter the right of the APUC to adopt changes quicker than that in emergencies.

IV. Support.

The bill is supported by the Bush Justice Monitoring Committee, Alaska Legal Services Corporation, the Alaska Bar Association, and is approved by Commissioner Zerbetz of the APUC. There is no known opposition.

cc: Rep. Bob Bradley

Introduced: 2/21/75
Referred: Commerce and Judiciary

IN THE HOUSE BY GARDINER

HOUSE BILL NO. 192

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to changes in public utility tariffs."

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

* Section 1. AS 42.05.411(a) is amended to read:

(a) No public utility may establish or place in effect any new or revised rates, charges, rules, regulations, conditions of service or practices except after 45 [30] days notice to the commission and 30 days notice to the public. Notice shall be given to the commission by filing with the commission and keeping open for public inspection the revised tariff provisions which shall plainly indicate the changes to be made in the schedules then in force and the time when the changes will go into effect. The commission shall prescribe means by regulation whereby notice is given to the public before or no later than 15 days after the filing which shall be reasonably adequate to notify customers affected by the filing [MAY PRESCRIBE ADDITIONAL MEANS OF GIVING NOTICE]. The commission, for good cause shown, may allow changes to take effect on less than 45 [30] days notice to the commission or 30 days notice to the public under conditions the commission prescribes.

1974 - average 15.5 days - notice

~~[illegible]~~

STATE OF ALASKA

BEFORE THE ALASKA PUBLIC UTILITIES COMMISSION

In the Matter of the Adoption of Regulations in Chapter 48, PRACTICE AND PROCEDURE	U-72-75 ORDER NO. 2

ORDER ADOPTING REGULATIONS
(ARTICLE 2)

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1. The procedural requirements, as provided in AS 44.62.180 et seq., for public notice and affording an opportunity to each interested party to present statements, arguments and contentions relating to the proposed adoption of regulations titled "Utility Tariffs" in Title

3, Part 5, Chapter 48 (Practice and Procedure), Article 2 of the Alaska Administrative Code, have been met in this proceeding.

2. The comments which were submitted, both oral and written, have been considered by the Commission and in furtherance of the public interest the regulations titled "Utility Tariffs" in Chapter 48, Article 2, modified pursuant to the discussion above, should be adopted and duly filed as provided by statute.

ORDER

THE COMMISSION ORDERS, That, the proposed regulations, Title 3, Part 5, Chapter 48, Article 2 of the Alaska Administrative Code, attached hereto as Appendix A, are hereby adopted under the authority vested by AS 42.05. 151, and shall be duly filed with the Lieutenant Governor in accordance with the provisions of the Administrative Procedure Act (AS 44.62).

By Direction of the Commission:

DATED AND EFFECTIVE at Anchorage, Alaska, this 5th day of October, 1973.

ALASKA PUBLIC UTILITIES COMMISSION

Maurice H Oaksmith

Maurice H. Oaksmith
Deputy Director

STATE OF ALASKA

BEFORE THE ALASKA PUBLIC UTILITIES COMMISSION

In the Matter of the Adoption of Regulations in Chapter 48, PRACTICE AND PROCEDURE	U-72-75

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That on the 5th day of October, 1973, I mailed true and accurate copies with postage thereon to the parties indicated on the attached service list of

ORDER NO. 2

ORDER ADOPTING REGULATIONS
(ARTICLE 2)

in the above-entitled cause.

DATED at Anchorage, Alaska, this 5th day of October, 1973.

Donna R. Gould

SERVICE LIST

U-72-75

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311 N. Franklin Street
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Juneau, Alaska 99801

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John Spencer
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Anchorage, Alaska 99501

COURTESY LIST

The Honorable Emmitt L. Wilson
Commissioner
Department of Commerce
Pouch D
Juneau, Alaska 99801

The Honorable John E. Havelock
Attorney General of Alaska
Pouch K
Juneau, Alaska 99801

Robert J. Mahoney
Cole, Hartig, Munley, Rhodes & Norman
717 "K" Street
Anchorage, Alaska 99501

Courtesy List (Cont'd)

Mr. Dale Teel, President
Alaska Gas & Service Company
P. O. Box 6288
Anchorage, Alaska 99502

E. Ken Larsen, State Manager
Glacier State Telephone Company
500 W. International Airport Rd.
Anchorage, Alaska 99503

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Juneau, Alaska 99801

Northern Commercial Company
419 Colman Building
Seattle, Washington 98104

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Anchorage Attorney General's Office
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360 "K" Street
Anchorage, Alaska 99501

Archie Gottschalt
Rural Alaska Community Action Program
Drawer 412 ECB
Anchorage, Alaska 99501

HB

197

Members files on HB 197

Alaska State Legislature

House of Representatives

March 19, 1975

BRENDA T. ITTA
BARROW, ALASKA 99723

POUCH V
JUNEAU, ALASKA 99811

DISTRICT 21

AMBLER
ANAKTUVUK PASS
ATKASOOK
BARROW
BARTER ISLAND
BORNITE-KOBUK
BROWERVILLE
KIANA
KIVALINA
KOTZEBUE
NOATAK
NOORVIK
NUIQSUT
POINT HOPE
POINT LAY
SHUNGNAK
WAINWRIGHT

Mr. A. G. Hiebert
P.O. Box 2200
Anchorage, Alaska 99510

Dear Mr. Hiebert:

Thank you for your letter supporting the passage of HB 197. My stand on this is in opposition to HB 197 because we are entering into an era where careful utilization of fish and game possession must be preeminent. There are hundreds of people coming into our state who can become residents in just 30 days; the native people of Alaska in rural areas have carefully managed and utilized the existing fish and game and we are presently encountering a shortage of it in certian areas; and the majority of residents in Alaska take great pride in making sure that fish and game are not wasted. Additionally, all the residents are encountering inflationary costs and I believe the trend to hunt is increasing. The residents of Alaska pay normal costs for groceries, meats, etc. at the grocery stores and the military personnel have access to lower costs for groceries, meats, milk products, etc. from their military commissaries. I believe that it is unfair to allow the military personnel to be in the same line, as far as fish and game permits are concerned, with the Alaskan residents.

Sincerely,

Brenda T. Itta

Brenda T. Itta

BTI/mm

cc: Rep. Nels Anderson, Chairman, House Resources Committee
Senator Kay Poland, Chairwoman, Senate Resources Committee
✓ Rep. Terry Gardiner, Chairman, Judiciary Committee

Mandatory check points

5 AAC 81.070. BIG GAME. Provides that all nonresident hunters must obtain a permit at specified locations prior to hunting any big game animal in Game Management Unit 9 and that such hunters must report back to the specified locations subsequent to hunting.

The proposed regulation reads as follows:

5 AAC 81.070. (b)(4) no nonresident may hunt for or take any big game animal in Game Management Unit 9 until he has reported to a Game Biologist or Protection Officer at a location designated in this section, permitted inspection of all licenses and tags, received a nontransferable permit and provided the following information:

(1) the specific location or locations where each game species will be hunted

(2) a copy of the Guide/Client contract if a guide is employed

(3) the dates during which the hunt will be conducted

(4) other information requested by the issuing officer

(A) no nonresident may hunt in Game Management Unit 9 unless he has a permit in his possession. He shall allow inspection of the permit on request of any Department of Fish and Game personnel

(B) a nonresident who hunts in Game Management Unit 9 shall report prior to leaving the Game Management Unit upon completion of the hunt or at least within five days after the end of the season at the same location where he received a permit prior to hunting, and he may not ship or cause to be shipped any portion of a big game animal until he has reported

(C) at the time of reporting as required in (B) of this section, the nonresident shall present most of the edible meat or receipt for the meat of all big game wild food animals taken and all hides, horns, and antlers, for inspection and shall provide the following information:

i. name of assistant guide if one was engaged

ii. species, sex, location of kill, and date for all animals taken

iii. other information requested by the officer

(continued on page 7)

(#9 continued)

(D) the reporting required by this section shall be during the regular business hours at one of the following locations:

i. King Salmon
ii. Iliamna
iii. Port Heiden
iv. Cold Bay
v. Port Moller

FAVOR: Anchorage Area Advisory Committee (ref. public page 6)
Harley Busbey (ref. public page 16)
Denali Advisory Committee (ref. public page 24)
Homer Advisory Committee (ref. public page 52a)
Naknek Advisory Committee (ref. public page 59a)
Ottokar J. Skal (ref. public page 71)

OPPOSE: Headquarters, Alaskan Command (ref. public page 1)
David W. Henley (ref. public page 50)
George R. Pollard (ref. public page 61)

ACTION TAKEN:

#10 5 AAC 81.070. BIG GAME. Adds all big game in Unit 15(B) to the list of big game animals which may not be taken the same day the hunter is airborne.

The proposed regulation reads as follows:

5 AAC 81.070. (6) no person may take or assist in taking black or glacier bear in Unit 5, sheep or brown or grizzly bear in any unit, or any big game in Unit 15(B) until after midnight of any day in which he was airborne.

FAVOR: Anchorage Area Advisory Committee (ref. public page 7)
Denali Advisory Committee (ref. public page 24)
George R. Pollard (ref. public page 61)

OPPOSE:

ACTION TAKEN:

Cross References

American National Red Cross, see section 1 et seq. of Title 36, Patriotic Societies and Observances.
Cooperation and assistance to armed forces, see section 2682 of this title.

§ 2671. Military reservations and facilities: hunting, fishing, and trapping

(a) The Secretary of Defense shall, with respect to each military installation or facility under the jurisdiction of any military department in a State or Territory—

(1) require that all hunting, fishing, and trapping at that installation or facility be in accordance with the fish and game laws of the State or Territory in which it is located;

(2) require that an appropriate license for hunting, fishing, or trapping on that installation or facility be obtained, except that with respect to members of the Armed Forces, such a license may be required only if the State or Territory authorizes the issuance of a license to a member on active duty for a period of more than thirty days at an installation or facility within that State or Territory, without regard to residence requirements, and upon terms otherwise not less favorable than the terms upon which such a license is issued to residents of that State or Territory; and

(3) develop, subject to safety requirements and military security, and in cooperation with the Governor (or his designee) of the State or Territory in which the installation or facility is located, procedures under which designated fish and game or conservation officials of that State or Territory may, at such time and under such conditions as may be agreed upon, have full access to that installation or facility to effect measures for the management, conservation, and harvesting of fish and game resources.

(b) The Secretary of Defense shall prescribe regulations to carry out this section.

(c) Whoever is guilty of an act or omission which violates a requirement prescribed under subsection (a)(1) or (2), which act or omission would be punishable if committed or omitted within the jurisdiction of the State or Territory in which the installation or facility is located by the laws thereof in effect at the time of that act or omission, is guilty of a like offense and is subject to a like punishment.

(d) This section does not modify any rights granted by treaty or otherwise to any Indian tribe or to the members thereof.

Added Pub.L. 85–337, § 4(1), Feb. 28, 1958, 72 Stat. 29.

File on military residency bill

[illegible] Roger Drive
Anchorage, Alaska 99507
March 21, 1975

Governor, State of Alaska
Juneau, Alaska 99811

Dear Governor,

It has come to my attention that the State lawmakers are considering a change in residency requirements for military personnel with respect to hunting and fishing. I am emphatically against the proposal to reduce the requirement to zero time, as I understand the change. It would be vile injustice to perpetrate this proposal upon existing residents and non-military new-comers to the State who pay various State and local taxes which the military people are exempt from. Justice would be better served by refusing residency for military people who choose not to adopt Alaska as their State of residence during their stay.

Sincerely,
Stephen Kurth

copies: Resources & Judiciary Committees

Original sponsor: Fink and Parr

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 197

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to sport fishing license requirements."

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

* Section 1. AS 16.05.340(7) is amended to read:

(7) Nonresident sport fishing license.....$20

However, the fee is $5 for a member of the military service on active duty who is stationed in the state and the dependent of an active member of the military service who is stationed in the state.

HB

202

FOR MEMBERS OF THE ALASKA STATE SENATE

Resolution Adopted by the Board of Regents, University of Alaska at Its Meeting in Anchorage, May 9, 1975

BE IT RESOLVED that the Board of Regents of the University of Alaska express its strong opposition to the passage of HB202, for the reasons that shortening the term of Regents from 8 to 5 years will seriously weaken the Board by limiting needed experience and continuity of its membership, and by increasing the undeniable possibility of dominant influence upon the Board by a single chief executive of the State; and

BE IT FURTHER RESOLVED that a copy of this resolution be sent to each member of the Alaska State Senate.

Sue Greene HB202 Bd of Regents

Gov. Support of expansion of Board
" " change in term of office

have letter of intent that incumbents
8 year term be treated as a 5 year Term

Robert McFarland - Pres of Regents
14 years
Political implications
Hammond 4 - 1 - 2
? Isn't good to allow Governor to pick all Regents
Would you back Large Number of Regents won't solve problems
Think it took 5 years to get a handle on University
A. Maybe this a comment on the University

5A
3ANC
2FAI
1JNU
1KTN
1North
1West
Brundine

Presently 4 year limit on Pres term

What about Egan at Statehood

Bryan Brundine 6 years

HB

203

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

Office of the Attorney General
Pouch K - State Capitol
Juneau 99811

March 10, 1976

The Honorable Terry Gardiner
Representative
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Referendum on Ch. 205, SLA 1975, relating to salaries, retirement, and per diem

Dear Representative Gardiner:

You have asked our opinion on the legal consequences which will attend possible passage of the referendum on Chapter 205, SLA 1975. Specifically you have asked that we consider the effect of a repeal of the provisions of Ch. 205 that affect (1) judicial salaries, and (2) retirement plans for both the judiciary and other state officials.

It is our opinion that the referendum, if adopted, will not repeal salary increases given by Ch. 205 to presently appointed judges and justices. The referendum, if passed, will repeal the pay increase for judges appointed after the repeal of the act. Similarly, repeal will revive the old retirement provisions for all judges, that is, incumbents and those appointed either before or after the repeal.

The situation in respect to public officials and employees (other than judges) is complicated. If the referendum passes, it will repeal retirement provisions for employees who do not have vested rights in the retirement system. Those employees who have received vested rights, however, may not have those rights rescinded by the referendum's adoption. The problem is that the makeup of those two classes--those in whom rights are vested and those in whom rights have not vested--is uncertain and could only be determined by extensive litigation.

Our analysis of these issues follows. As you requested, we shall also discuss the alternatives which we believe are available to the legislature at this time concerning possible legislation which would alleviate the legal problems discussed in this opinion.

DISCUSSION

Introduction.

The 1975 Alaska Legislature enacted a law relating to the compensation and retirement of judicial officers, legislators, and public officers and employees and to legislative per diem. Ch. 205, SLA 1975. A referendum petition was duly circulated and filed within the ninety-day period prescribed by law. If a majority of votes cast on the referendum proposition favor rejection of chapter 205, that act will be void.

Id., art. XI, §6; AS 15.45.440. This has been characterized by the Alaska Supreme Court as "a procedure whereby the electorate directly votes on whether to repeal existing law." Area Dispatch, Inc. v. City of Anchorage, _____ P.2d _____ (Alaska 1976), Sup. Ct. Op. No. 1231, Jan. 16, 1976.

The filing of a referendum petition does not, in Alaska, suspend the effect or operation of the law referred. Walters v. Cease, 388 P.2d 263 (Alaska 1964); 4 Proceedings of the Alaska Constitutional Convention 2964-2965. As a result, most of the provisions relating to compensation and retirement in chapter 205, SLA 1975, have been in effect since July 1, 1975, and some of those respecting retirement, since January 1 of this year. Because the law has been in effect, a number of problems arise from provisions of the constitution that provide:

> Justices, judges, and members of the judicial council shall receive compensation as prescribed by law. Compensation of justices and judges shall not be diminished during their terms of office, unless by general law applying to all salaried officers of the State. Alaska Constitution, art. IV, §13 (emphasis added).

* * * *

> Membership in employee retirement systems of the State or its political subdivisions shall constitute a contractual relationship. Accrued benefits of these systems shall not be diminished or impaired.
>
> Id., art. XII, §7. (emphasis added).

The question raised by these constitutional provisions is whether and how the referendum, if it results in the repeal of chapter 205, SLA 1975, may be in conflict with the constitutional bar against diminution of judges' compensation and of employee retirement benefits.

The Legal Nature of the Referendum.

A referendum may be viewed in one of two ways. On the one hand, it may be equated with the gubernatorial veto. On the other, it may be equated with a legislative repeal. In those jurisdictions where the filing of a referendum petition suspends the operation of the referred law, the comparison to a veto is most apt. But in Alaska, where the referred law is not suspended pending the vote on the referendum, the comparison to the veto is inapposite, and the referendum is properly to be considered the equivalent of a repeal. The referendum in Alaska has in fact been characterized as a "repeal" by our Supreme Court. Area Dispatch, Inc. v. City of Anchorage, supra.

There are two principal reasons for viewing the referendum in Alaska as a repeal rather than as a veto. The first is that in Alaska a referred law goes into effect and remains in effect until thirty days after the certification by the Lieutenant Governor of the election results rejecting it. Alaska Constitution, art. XI, §6; AS 15.45.440. A vetoed law never goes into effect. Thus, the effect of rejecting a law by referendum is, quite literally, to repeal the law. The second is that, where the power to act by way of the initiative and referendum is reserved to the people, the legislature and the electorate are viewed as coordinate legislative bodies, and aside from constitutional restraints either may amend or repeal an enactment by the other. Klosterman v. Marsh, 143 N.W.2d 744, 748 (Neb. 1966); see, Annotation, 33 A.L.R.2d 1118, 1121. It follows that, in rejecting an act passed by the legislature, the electorate, as a coordinate legislative body, is repealing the act rather than vetoing it.

The distinction is important. The Governor could clearly veto an act setting judicial compensation and employee retirement pay without breaching the constitutional prohibitions quoted above. In case of a veto, the act would never have gone into effect and no diminution of judicial compensation or of accrued employee retirement benefits would occur. On the other hand if a law goes into effect and sets judicial compensation and employee retirement pay at a particular level, the legislature may not subsequently repeal the law and thereby diminish that

compensation and accrued retirement benefits, at least for incumbents, for to do so would violate the constitutional prohibitions. The electorate in using the referendum has no greater power under the Constitution than does the legislature. Both are subject to the same constitutional restraints, and indeed, those imposed on the exercise of direct legislation are somewhat greater. Star v. Hagglund, 374 P.2d 316 (Alaska 1962); compare Alaska Constitution, art., XI, §7, with art., IV, §15 (legislative amendment of rules of court) and art., II, §19 (local and special acts sole restriction on legislature's power).

In reporting to the Constitutional Convention on the prohibition against diminution of judicial salaries, the Committee on the Judicial Branch said:

> While compensation for justices and judges should be prescribed by law, it should not be susceptible of arbitrary diminution during office. It . . . should be subjected to decrease only when a general reduction applying to all State officers becomes imperative. 6 Proceedings Alaska Constitutional Convention. App. V, p. 15.

We need not inquire as to the extent of the meaning of the term "all State officers." It obviously includes the Governor and the Lieutenant Governor, and since the repeal of chapter 205, SLA 1975, will not diminish their salaries, that repeal cannot under the constitution diminish the salaries set by chapter 205 for incumbent justices and judges.

In addition to setting new judicial salaries, chapter 205 also provided a new method for setting judicial salaries by tying those salaries to the salary schedule for state employees. Under this new method, when the salary for Step E, Range 28 is increased, the salaries for justices and judges is similarly increased. Sections 1-3, chapter 205, SLA 1975. It may well be that this new method of setting judicial salaries is subject to repeal by the legislature or by referendum. Repeal would not, per se, diminish the salaries, but it would raise a separate question. That question is what would happen if the salary for Step E, Range 28 were subsequently increased, but judicial salaries were not increased by an amount equal to the increase that would have occurred if chapter 205 had not been repealed. The answer is uncertain.

In Campbell v. Michigan Retirement Bd., 143 N.W.2d 755 (Mich. 1966), certain judges had retired and were benefitted by a law which contained an escalator clause tying their retirement pay to a percentage of the salary paid to sitting judges. Subsequently, the legislature repealed the escalator clause and set the retirement at one-half the amount being paid the retired judges immediately preceding their retirement. The retired judges retirement pay was not immediately affected.

Thereafter, the legislature increased the salaries of sitting judges. The retired judges at that time received less than they would have if the escalator clause had still been in effect. Their retirement pay had not been cut, it simply had not been increased to keep pace with the salary paid sitting judges. They thereupon brought suit, arguing that they had a contract, that the repeal of the escalator clause impaired the contract, and that it was, therefore, void as to them. The court agreed.

The court ruled that the State's agreement to pay certain benefits vested the judges with rights upon retirement and that those rights could not be impaired. 143 N.W. 2d 757, 758. In effect, the court said that the judges who retired under the act which contained the escalator clause were entitled to receive benefits as provided by that clause and that the repeal of the clause was ineffective as to them.

The significance of the ruling is that the court viewed the escalator clause as creating a right and not as a mere expectancy The legislature had not expressly reduced the retirement pay. But the court did not even refer to that fact, apparently considering it irrelevant. What it looked at was the actual increase in the salary of sitting judges and the failure to increase the retirement pay for retired judges because of the repeal of the escalator clause. It found the failure to increase retirement pay as an impairment of the <u>right</u> to such an increase.

Campbell involves contractual rights to retirement pay, not judicial salaries, and it is not necessarily applicable to the instant situation. However the Campbell court's analysis could be applied to a repeal of the escalator clause for judicial salaries. It is conceded that repeal of chapter 205, SLA 1975, cannot reduce the salaries set in that act for judges in office at the time of the repeal. Repeal will be effective with respect to the salary escalator clause if it is viewed as an expectancy. But it may be viewed otherwise. Paraphasing the Campbell court:

> Judges who are in office when a statute is in effect providing that their salary shall be a certain percentage above that of Step E, Range 28, are entitled to that salary despite the repeal of the statute containing the escalator clause.

The reason for that conclusion is that, despite the absence of any express reduction in salary, there would be a reduction in fact if the salary paid the judges is less than the amount set for them by the 1975 act.

Put another way, any act--including a repeal by referendum--which results in judges receiving a lesser salary than that provided for under chapter 205 could constitute a constitutionally barred reduction in salary and would be without effect as to judges in office at this time. Incumbent judges are entitled to the salary provided for by chapter 205, and the entitlement may not be reduced indirectly any more than it may be reduced directly.

See also, Abbott v. City of Los Angeles, 326 P.2d 484 (Cal. 1958) (retirement pay, same result as Campbell).

Of course, a repeal which provides for another mechanism for setting salaries for the judiciary may not result in such a reduction, since all judges may in fact receive a salary which is equal to or greater than the one to which they would be entitled under chapter 205. If that occurred, repeal of chapter 205 would be of no moment. It is also possible that the members of the judiciary would accede to a new mechanism for setting salaries and not dispute a salary less than the one to which chapter 205 entitled them. It must be recognized, however, that a dispute may arise and that the outcome is uncertain.

Finally, chapter 205, SLA 1975 provided for the first time that justices and judges contribute to their retirement program. Because contribution would constitute a diminution in the salary paid incumbents, the requirement was applied solely to judges appointed after the law's effective date. See, Sylvestre v. State, 214 N.W. 2d 658, 666 (Minn. 1973); but see, Cook v. Chilton, 390 S.W.2d 656 (Ky. 1965). If chapter 205 is repealed by the referendum, the repeal will be effective as to this requirement, and new judicial appointees will qualify under the old system which required no contribution.

We turn next to the other provisions of chapter 205, SLA 1975, relating to retirement. These provisions affect two distinct classes of persons: elected public officials, and public employees. We discuss them separately.

Elected Public Officials.

The constitution provides that "[m]embership in employee retirement systems of the State or its political subdivisions shall constitute a contractual relationship. Accrued benefits of these systems shall not be diminished or impaired." art. XII, §7. This provision was placed in the constitution to "assure state and municipal employees who are now tied into various retirement plans that their benefits under these plans will not be diminished or impaired when the Territory becomes a state." 6 Proceedings Alaska Constitutional Convention, App. V, p. 140.

By statutory definition, "elected public officials" are not "employees." They are the Governor, Lieutenant Governor, and members of the legislature. AS 39.37.150. Each is an officer expressly provided for by the constitution, and they hold the only elective state offices provided for by the constitution.

Begich v. Jefferson, 441 P.2d 27 (Alaska 1968), held that the constitutional prohibition against holding any other office or position of profit extended to any salaried employment with the State. But Begich did not rule that the terms "employee" and "officer" are interchangeable or that the term "employee" as used to modify the term "retirement systems" in article XII, section 7, includes the Governor, Lieutenant Governor, and members of the legislature. Indeed, in analyzing the constitution's use of the terms "employment" and "employee," the Begich court appeared to accept the conclusion that elected officials were

not covered by those terms. 441 P.2d 33. And in fact, the words "employees" and "officials" are distinguished by the constitution, art. VI, §8, and this too was recognized by the Begich court. Id. n. 14.

Given that the constitution distinguishes between "employees" and "officials," that it expressly applies the protections of section 7 of article XII only to the former, and that it was expressly intended that the constitutional protection would apply to "state and municipal employees," 6 Proceedings Alaska Constitutional Convention, App. V, p. 140, it is our opinion that elected public officials are not covered by the protections of article XII, section 7.

The specific constitutional protection aside, persons enrolled in any retirement system may have contractual rights, and those rights may not be impaired under the state and federal constitutions. With respect to "elected public officials", the existence, nature, and extent of those rights are uncertain. Arguably, any "elected public official" who enrolled in the system has vested rights which may not be impaired. See, e.g., Yeazell v. Copins, 402 P.2d 541 (Ariz. 1965); Baker v. Retirement Bd. of Allegheny County, 97 A.2d 231 (Pa. 1953); Abbott v. City of Los Angeles, 326 P.2d 484 (Cal. 1975); Bakenhaus v. City of Seattle, 296 P.2d 536 (Wash. 1956); Annotation, 52, A.L.R.2d 437. This would almost certainly be so for any "elected

public official" who retired or died prior to the repeal of chapter 205. See, King County Employees Ass'n. v. State Emp. Retire. Bd, 336 P.2d 387 (Wash. 1959).

On the other hand, it may well be that the legislature, and the electorate by referendum, may effectively repeal the retirement provisions as they apply to elected public officials. The theory would be that, as a matter of public policy, and because the constitutional protection for public employee retirement systems does not apply to them, the terms of their employment rest in legislative policy rather than contractual obligation. See, Spina v. Consolidated Police, Etc. Pension Fund Com., 197 A.2d 169 (N.J. 1964). Under this view, the repeal or alteration of the law would be effective as to elected public officials if they are not (and we believe they are not) covered by article XII, section 7, of the Alaska Constitution. This would also be so if the electorate repeals chapter 205. 1/

In Spina v. Consolidated Police, etc. Pension Fund Com., 197 A.2d 169 (N.J. 1964), amendments to a retirement law were applied to persons who were employed prior to adoption of the amendments. The retirement programs prior to amendment were actuarially unsound. (at 170). The plaintiffs in Spina had lost the specific benefits complained of some 18 years before the suit was brought. And the Spina plaintiffs, through continuing contributions, indicated "in an affirmative way that they accepted or at least yielded to" the alterations. (at 172)

1/ This would not be the rule as to public employees. The people, in article XII, section 7, of the Alaska Constitution, have made a contract with them which could be revoked, if at all, only by constitutional amendment.

Spina did not rule against the plaintiffs on those grounds, however. Its ruling was as follows:

> [I]n our State the terms and conditions of public service in office or employment rest in legislative policy rather then contractual obligation, and hence may be changed except of course insofar as the State Constitution specifically provides otherwise. 197 A.2d 173 (emphasis added, citations omitted).

While rejecting the contract theory, the Spina court nonetheless recognized that in some jurisdictions, constitutional language defines the rights of employees as "contractual." (at 175) One of those jurisdictions is Alaska.

Alaska's Constitution expressly provides that "[m]embership in employee retirement systems of the State or its political subdivisions shall constitute a contractual relationship." art. XII, §7. This provision does not, however, appear to apply to "officers." Accordingly, while the Spina rule may not be applied to the public employees retirement system, which by the constitution is made contractual, it could, perhaps, be applied to the elected public officials retirement system, which is not. See, Yeazell v. Copins, 402 P.2d 541 (Ariz. 1965) dissent of Udall, J. at 547, for an examination of the distinctions. See also, Cohn, "Public Employees Retirement Plans -- The Nature of Employees' Rights," 1968 U.Ill. L.F. 32, for a general review of the contract-no contract dispute.

An additional problem is raised with respect to repealing the retirement benefits of the Governor and Lieutenant Governor. Section 15, article III, of the Alaska Constitution provides as follows:

> The compensation of the governor and the lieutenant governor shall be prescribed by law and shall not be diminished during their term of office, unless by general law applying to all salaried officers of the State. (emphasis added)

While the Spina rule would avoid contractual problems, it does not afford a shelter from this constitutional bar. Arguably, retirement is a form of compensation, more particularly, deferred compensation. See, Annotation 52 A.L.R.2d 437. If the benefits bestowed on the Governor and the Lieutenant Governor by chapter 205 were characterized by the state Supreme Court as compensation, repeal of chapter 205 would be ineffective as to the incumbents.

Arguably, since a repeal could have no real effect on their retirement benefits until after they have completed their terms of office, a repeal is not within the scope of the prohibition. But that might not be so if either left office prior to the end of his term. It would appear, however, that there would be no conflict if, in fact, compensation is not diminished during their term. See, Abbott v. City of Los Angeles, 326 P.2d 484 (Cal. 1958).

Spina suggests that it would be erroneous to characterize retirement benefits as "deferred compensation" and thereby compel an unintended but then inevitable result. See also, the dissent of Justice Udall in Yeazell v. Copins, 402 P.2d 541, 547 (1965). This better view, according to these sources, would be to look at the facts and rule in accordance with them. If, in fact, the compensation is not diminished, or if, in fact, the purpose of the prohibition is not frustrated, then the dictates of the Constitution are not offended. See, Cook v. Chilton, 390 S.W.2d 656 (Ky. 1965). Since the purpose of the prohibition (as is the purpose of the prohibition discussed above relating to justices and judges) is to prevent the legislature from reducing incumbents' compensation, 6 Proceedings of the Alaska Constitutional Convention App. V at 123, and since that purpose is "to secure the independence" of the incumbents, Evans v. Gore, 253 U.S. 245, 264 (1920) (Holmes, J. dissenting), repeal of chapter 205 could be viewed by the state Supreme Court as not within the terms of the prohibition.

There is no certainty as to the effect of a repeal of chapter 205 on the retirement benefits of "elected public officials," i.e., the Governor, Lieutenant Governor, and legislators. However, unlike the thousands who would be affected by repeal of chapter 205 as it relates to state and municipal employees, and the multitude of law suits which could arise from that situation, we are dealing here with a handful of people. If arbitrary distinctions arise, they will be short lived. If litigation

ensues, it will involve only a few people and a few cases. Accordingly, repeal of chapter 205 with respect to "elected public officials," while creating some uncertainties, does not pose a major problem.

Public Employees.

Chapter 205, SLA 1975, bestowed certain retirement benefits not only on elected public officials but also on public employees. Public employees have contractual rights, and their accrued benefits may not be impaired under our constitution. Art XII, §7. What is uncertain is whether the Alaska Supreme Court will rule that the benefits of Chapter 205 are vested in all employees, or in those with five years service, or in those now eligible to retire, or in those who have retired or died since the law went into effect. The prevailing view in those jurisdictions which treat employee retirement as contractual in nature is that the rights vest in everyone who is employed or becomes employed while the law is in effect. See, e.g., Mt. Clemens Fire Fighters Union, Local 838, I.A.F.F. v. City of Mt. Clemens, 228 N.W. 2d 500 (Mich. App. 1975); Birnbaum v. New York State Teachers Retirement System, 152 N.E. 2d 241 (N.Y. 1958); Yeazell v. Copins, 402 P.2d 541 (Ariz. 1965); Abbott v. City of Los Angeles, 326 P.2d 484 (Cal. 1958).

In some "contractual" jurisdictions, law governing retirement may be amended and the amendments will apply to persons employed prior to the amendment if the amendment is materially related to the principles of a retirement system and its successful operation, i.e., actuarial in nature, and the detriments imposed by the amendment are accompanied by comparable new advantages. See Abbott v. City of Los Angeles, 326 P.2d 484, 489 (Cal. 1958). Some jurisdictions do not require off-setting advantages, if the amendments are actuarially proper. See, King County Employees Ass'n. v. State Emp. Retire. Bd., 336 P.2d 387 (Wash. 1959). But these are not jurisdictions with express constitutional protection for public employee retirement systems. The leading case from such a jurisdiction stands for the proposition that detrimental changes, even actuarially necessary ones, may be imposed only on employees who enter service after the effective date of the change. Birnbaum v. New York State Teachers Retirement System, 152 N.E. 2d 241 (N.Y. 1958).

The Alaska Supreme Court might well conclude that the repeal of Chapter 205 would not change the rights of those public employees who where in service while chapter 205 was in effect. The reason for this is that the repeal is not actuarially required and that it does not provide any off-setting benefits. Thus, even under the more flexible California and Washington rules, the repeal of the law would not be applicable to anyone employed while the law was in effect.

Of course, the law on this subject has yet to be announced definitively in Alaska. Suffice to say that, even with a constitution which provides that employee retirement benefits are contractual, the Alaska Supreme Court has more than one path to follow. See, Annotation, 52 A.L.R. 2d 437 (1957).

There is a case which holds that a contract made under an ordinance which was subject to initiative and referendum was conditional to the extent that either might be used to repeal the ordinance. Duncan Parking Meter Corp. v. City of Gurdon, 147 F. Supp. 280 (D. Ark. 1956). But the holding depends on the peculiar facts of the transaction and the law of Arkansas, and it is not likely to be followed in Alaska. A constitution which vests employees with a right to accrued benefits without diminution or impairment is not likely to be interpreted as allowing their impairment by referendum. If the legislature may not repeal (without conferring off-setting benefits) neither may the people.

General Effect of Repeal by Referendum

In sum, the referendum on chapter 205, SLA 1975, will unquestionably create some difficulties if it results in the repeal of chapter 205. With respect to some matters covered by chapter 205, the repeal will be effective. As to them the pre-existing law will be revived. Dawson v. Tobin, 24 N.W.2d 737 (N.D. 1946). But with respect to others, constitutionally protected rights will have vested, and the repeal cannot impair them. The result would be, for example, that commissioners' salaries

will be restored to what they were prior to the effective date of chapter 205 but incumbent judges' salaries will not. The retirement benefits for some public employees will be governed by the revived, pre-existing law, but those for others (those in whom rights vested) will be governed by the provisions adopted by chapter 205, SLA 1975. It is fair to say that, if chapter 205 is repealed by referendum, there will be a confused legal situation at the least.

Alternatives Available to the Legislature.

Chapter 205, SLA 1975, was referred because of objections to several of its provisions. Specifically, these were (1) the amount of the legislative pay raise and, perhaps, the amount of the increase in legislative per diem; (2) the escalator effect of tying salaries of high ranking officials to the merit system salary scale; (3) the period for vesting of retirement benefits for elected public officials, and, perhaps, the increase in the amount of their retirement pay. It is possible, but doubtful, that the amount of the salary increase for justices, judges, and commissioners was also objectionable. Objections to the increases for incumbent judges are irrelevant, since nothing can be done. That the increase for commissioners triggered the referendum seems questionable, as the increase largely retained the status quo ante in relative salaries. There does not appear to have been serious objection to the other features of chapter 205.

The question is what, if anything, the legislature may do to alleviate this situation by eliminating the need for a referendum election and the legal problems that will result if the electorate repeals chapter 205, SLA 1975. Two things are immediately clear. First, if legislative action were taken in bad faith to evade the referendum, the action would be invalid. State v. Becker, 240 S.W. 229 (Mo. 1922); In re Opinion of the Justices, 174 A. 853 (Me. 1933); Leach v. State, 188 Pac. 118 (Okla. 1920) (dicta). 2/ Second, if the referred law is simply amended and not repealed, then the referred law, as amended, will go on the ballot. Klosterman v. Marsh, 143 N.W.2d 744 (Neb. 1966); Utah Power & Light Co. v. Ogden City, 79 P.2d 61 (Utah 1938).

Because the problem created by the referendum is the likely creation of different classes of judges and public employees based on arbitrary distinctions and because the referred law as amended might also be repealed by the referendum and lead to the same result, we would advise against amendment.

If the legislature wishes to take curative action, the case law on the subject indicates that the following steps are required:

2/ While the decisions in these cases are stated to be on other grounds, analysis indicates that they are predicated on an awareness that in those jurisdictions, unless it were held that the legislature may not repeal a referred act and enact a new one on the same subject, the legislature could totally frustrate the use of the referendum. The same is not true in Alaska. Unless the subject matter is not referrable, Alaska Constitution, art. XI, §7, any act of the legislature may be referred. Id. art. XI, §1.

First, a bill should be passed to repeal chapter 205, SLA 1975, specifying that in doing so the laws repealed or amended by chapter 205 are revived. The bill may then address the subject matter of those features of chapter 205 which were considered not objectionable, i.e., public employee retirement, judicial salaries, and perhaps, commissioners' salaries, and the legislature would be free to enact new legislation on those subjects identical to the provisions of chapter 205.

Second, if desired, a separate bill could be passed enacting legislation with substantial differences from those features of chapter 205, SLA 1975, which were obviously objectionable. These would not include the salary increases for the judiciary because--whether objectionable or not--they are not repealable with respect to incumbents absent a general reduction in salaries of all state officers. Alaska Constitution, art. IV, §13. The method for setting future judicial salaries could, however, be included, but that repeal may not be effective with respect to incumbent judges.

Both bills should act on the revived law, i.e., refer to the provisions of the Alaska Statutes as they existed prior to the enactment of chapter 205, SLA 1975.

The repeal of chapter 205, SLA 1975, would cause the referendum on it not to be held. Keigley v. Bench, 63 P.2d 262 (Utah 1936). Since the repeal and the revival of the old law would void chapter 205, there would be nothing more the referendum

could do. There would be nothing left to repeal. The legislature may then enact new legislation on the same subject which is substantially altered in a good faith effort to meet the objections made to the referred law. 3/

According to most courts, good faith is crucial to the legislature's acting on the subject matter of a referred act. Anderson v. City of Duluth, 155 N.W.2d 281 (Minn. 1967); Trumbull v. Ehrasam, 166 A.2d 844 (Conn. 1961); Gilbert v. Ashley, 209 P.2d 50 (Cal. App. 1949); Ex parte Statham, 187 Pac. 986 (Cal. App. 1920); Ginsberg v. Kentucky Utilities Co., 83 S.W.2d 497 (Ky. App. 1935). That "good faith" is basically to be determined by the words of the new law itself. Gilbert v. Ashley, 209 P.2d 50 (Cal. App. 1949). If substantial changes in the essential features to which objections arose have been made, and there is no attempt to evade the people's use of the referendum, good faith will be implied. Cf., Ginsberg v. Kentucky Utilities Co., 83 S.W.2d 497 (Ky. App. 1935).

None of the cases from other jurisdictions involved a finding that the legislature had acted in bad faith. But the implication is that an act taken in bad faith to evade a referendum would be held to be invalid. Anderson v. Duluth, supra; Trumbull v. Ehrasam, supra; Gilbert v. Ashley, supra;

3/ By placing those subjects which were objectionable in one bill and those which were not in another, the legislature will divide the subjects, and each can be considered separately by the public. Since, it is the repeal of the legislation on the unobjectionable subjects which would create the arbitrary distinctions and legal problems, separate treatment affords the best means of avoiding those problems.

Ex parte Statham, supra; Ginsberg v. Kentucky Utilities, supra. And in State v. Becker, 240 S.W.229 (Mo. 1922), where the court was confronted with an obvious bad faith effort to evade a referendum, the rule was adopted that the legislature was without authority to act on a referred law until after the referendum election. Since the legislature's good faith is to be determined from the words of its new enactment, truly substantial changes in the features which triggered the referendum would appear to be essential. See, Ginsberg v. Kentucky Utilities Co., supra; Anderson v. City of Duluth, supra.

Conclusion

In sum, it is our view that the legislature may avoid the legal problems which will result from an outright repeal by referendum of chapter 205, SLA 1975, by itself repealing chapter 205 and simultaneously enacting new legislation, in separate bills, one which will amend the pre-existing provisions of the law identically to the unobjectionable amendments made by chapter 205 and one which will amend the pre-existing law in a manner substantially different from the objectionable amendments made by chapter 205.

If chapter 205 stays on the referendum ballot and is repealed, the result will be, on the one hand, tremendously complex and nearly endless litigation of very uncertain result and, on the other, arbitrary distinctions among public employees with respect to their retirement. The procedure we have described will avoid that result and at the same time allow the public an opportunity to refer the new enactments if their essential features remain objectionable.

Yours very truly,

Avrum M. Gross
Attorney General

AMG:jeh

Add retirement

Introduced: 2/25/75
Referred: State Affairs and Finance

IN THE HOUSE BY GARDINER AND MILLER

HOUSE BILL NO. 203

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act creating the Alaska Salary Commission; prescribing its organization, powers and duties; and providing for an effective date."

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

* Section 1. AS 39 is amended by adding a new chapter to read:

CHAPTER 23. ALASKA SALARY COMMISSION.

Sec. 39.23.010. CREATION OF COMMISSION; COMPOSITION. (a) There is created the Alaska Salary Commission consisting of five members, none of whom may be public officers or employees except for the Com. of Admin. Appointees to the commission are not subject to legislative confirmation.

(b) ~~two~~ member of the commission shall be appointed each by the governor, one of which will be the Com of Admin. the chief justice of the supreme court, ~~the president of the University of Alaska,~~ one by the the president of the senate and the speaker of the house ~~of representatives~~. will each appoint One

(c) An appointee of the chief justice and the president of the university shall be registered to vote either as an "independent," "nonpartisan," or shall have "declined to state" his party affiliation when registering to vote.

Sec. 39.23.020. TERM OF OFFICE; VACANCIES. (a) Commission members serve at the pleasure of the appointing authority for four-year, staggered terms. However, three of the first members appointed to the commission shall serve two-year terms to be determined by lot at the first meeting of the commission.

(b) Vacancies shall be filled in the same manner as original ap-

pointment, and a person appointed shall serve the balance of an unexpired term.

Sec. 39.23.030. OFFICERS; STAFF. The commission shall select a chairman from among its members annually. The ~~director of the legislative finance division of the Legislative Budget and Audit Committee~~ Director of Division of Personnel shall serve as ex-officio secretary to the commission and shall provide all research, technical and administrative services. He shall record and transcribe the minutes of commission meetings and prepare all correspondence, meeting notices, reports and recommendations as directed by the commission chairman.

Sec. 39.23.040. MEETINGS; QUORUM. (a) A majority of the commission members present is sufficient to transact business to come before the commission. However, a majority of the commission members is necessary to approve the commission's recommendations to the legislature.

(b) The commission shall meet at the call of the chairman. Notice of meeting dates shall be mailed to each commission member at least 20 days before the date scheduled for a meeting.

(c) The commission shall meet to discuss its findings and recommendations at least twice before submitting its final report to the legislature under sec. 80 of this chapter.

Sec. 39.23.050. COMPENSATION. Members of the commission serve without compensation but are entitled to per diem and travel expenses authorized by law for boards and commissions.

Sec. 39.23.060. DUTIES. The commission shall conduct an on-going review of compensation for members of the legislature, the governor and lieutenant governor, (com, deputy com + division directors) and the judiciary to determine its appropriateness and report its findings and recommendations to the governor, the legislature and the judiciary. ~~include other states~~

Sec. 39.23.070. STUDIES; REPORTS. The commission may request

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reports or studies from any state department or agency concerning compensation of the governor, lieutenant governor, the members of the legislature or of the judiciary. A state department or agency from which that report or study is requested shall furnish it within a period of time prescribed by the commission.

Sec. 39.23.080. RECOMMENDATIONS. (a) Before December 1, 1976, and every two years thereafter, the commission shall submit its proposed findings and recommendations to the governor, the members of the legislature and of the judiciary and make them public.

(b) The commission shall adequately notify the public of its proposed findings and recommendations and receive & consider public comment before submitting a final report of its findings and recommendations to the legislature under (c) of this section.

(c) The commission shall make a final report of its findings and recommendations as to the rate and form of compensation for the governor, lieutenant governor, members of the legislature and of the judiciary during the first 10 days of the first regular session of a legislature. The recommendations shall become effective 45 days after presentation to the legislature or at the end of a session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house.

(d) A commission member who does not concur in the proposed or final recommendations may attach written objections to the commission's report of its findings and recommendations.

Sec. 39.23.090. DEFINITIONS. In this chapter, "members of the judiciary" includes the justices of the supreme court and judges of the superior and district courts.

* Sec. 2. AS 22.05.140(a) is amended to read:

(a) The chief justice and each associate justice shall receive

annual [$44,000 ANNUALLY AS] compensation prescribed in accordance with AS 39.23. The compensation is payable monthly in 12 equal installments. Compensation of the chief justice or of an associate justice shall not be diminished during his term of office, unless by general law applying to all salaried officers of the state.

* Sec. 3. AS 22.10.190(a) is amended to read:

(a) Each superior court judge shall receive annual [$40,000 ANNUALLY, AS] compensation prescribed in accordance with AS 39.23, payable monthly in 12 equal installments. The compensation of a judge shall not be diminished during his term of office, unless by general law applying to all salaried officers of the state.

* Sec. 4. AS 22.15.220(a) is amended to read:

(a) Each district judge shall receive annual [$33,500 ANNUALLY AS] compensation prescribed in accordance with AS 39.23, payable monthly in 12 equal installments. The compensation of a judge shall not be diminished during his term of office, unless by general law applying to all salaried officers of the state.

* Sec. 5. AS 24.15.010 is amended to read:

Sec. 24.15.010. LEGISLATIVE PER DIEM. The rate of per diem instead of subsistence for each member of the legislature is a rate prescribed in accordance with AS 39.23 [$35.00] for each day of a legislative session. The per diem is also payable for those days of necessary travel to and from sessions.

* Sec. 6. AS 24.15.020 is amended to read:

Sec. 24.15.020. ANNUAL LEGISLATIVE SALARIES. The annual salary for each member of the legislature is prescribed in accordance with AS 39.23 [$9,000] to be paid in approximately equal monthly installments [PAYMENTS]. The president of the senate and speaker of the house of representatives are each entitled to an additional sum prescribed in accor-

dance with AS 39.23 [$500] a year during tenure of office.

* Sec. 7. AS 24.15.030 is amended to read:

Sec. 24.15.030. ADDITIONAL ALLOWANCES. In addition, each member of the legislature is entitled to an annual allowance prescribed in accordance with AS 39.23 [OF $4,000] for postage, stationery, stenographic services and other expenses.

* Sec. 8. AS 39.20.010 is amended to read:

Sec. 39.20.010. ANNUAL SALARY OF GOVERNOR. The annual salary of the governor is prescribed in accordance with AS 39.23 [$50,000]. The salary shall be paid in equal monthly installments.

* Sec. 9. AS 39.20.030 is amended to read:

Sec. 39.20.030. ANNUAL SALARY OF LIEUTENANT GOVERNOR. The annual salary of the lieutenant governor is prescribed in accordance with AS 39.23 [$44,000]. The salary shall be paid in equal monthly installments.

* Sec. 10. The first appointments to the commission shall be made within 30 days after the effective date of sec. 1 of this Act.

* Sec. 11. Sections 1 and 10 of this Act take effect immediately in accordance with AS 01.10.070(c). Sections 2 - 9 of this Act take effect on the effective date of the first recommendations submitted to the legislature under AS 39.23.080(c).

02-0018 (REV. 08-73)

MEMORANDUM State of Alaska

TO: Avrum M. Gross
Attorney General

DATE: September 26, 1975

FILE NO:

TELEPHONE NO:

FROM: Robert M. Johnson
Assistant Attorney General

SUBJECT: Impact of Compensation-Retirement Referendum on 1976 Legislation

Chapter 205, SLA 1975 amended and enacted a number of statutes concerning compensation and retirement of state officers and employees. This bill is now subject to referendum vote on an election date following the 1976 legislative session. What impact would a successful referendum rejection of Ch 205, SLA 1975 have on legislation passed during the 1976 legislative session? Further, what impact would a successful referendum rejection have upon wages and benefits due state officers and employees covered by Ch 205, SLA 1975? This memorandum addresses these questions.

I. THE 1976 REFERENDUM ELECTION WILL NOT AFFECT 1976 LEGISLATIVE-SESSION ALTERATIONS TO SUBJECT MATTER COVERED BY CH 205, SLA 1975.

A referendum may be used to approve or reject acts of the legislature. Alaska Constitution Art. XI, §1. Rejection of a referred act voids all sections of the act. 1963 Op. Atty. Gen. No. 18. Would alterations to sections of the referred act also be voided by rejection through referendum? Alterations to a referred act could include simple amendment of sections of the act; repeal of certain sections of the act; or a repeal of certain sections and identical re-enactment of those sections. The Alaska Supreme Court has never addressed the impact of a referendum on these alterations. However, the court has held that referral of an ant does not suspend its effectiveness. An act is not voided until 30 days after its rejection in an election. Walters v. Cease, 388 P.2d 263 (Alaska 1964). This finding clearly implies, as will be demonstrated, that good faith alterations to a referred act are not subject to the referendum.

The Walters case clearly excludes judicial interpretations which prevent any legislative action on an act once it has been referred. These interpretations are based on the premise that an act's effectiveness is suspended by referral.

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See, for example, Ex Parte Haley, 210 P.2d 653 (Okla, 1949); State ex rel. Drain v. Becker, 240 SW 229 (Mo, 1927). Walters, of course, renders the suspension-of-effect theory inapplicable.

Some jurisdictions except amendments or repeal-reenactments of "emergency" measures from a general prohibition against legislative alteration of a referendum. Ex Parte Stratham, 187 P 986 (Cal App, 1920); First Continental S & L Ass'n v.D Directors, etc., 183 A.2d 347 (Mld, 1962). Frequently, courts have held that permissible alterations must be referred as part and parcel of the originally referred act. McBride v. Kerby, 260 P 435 (Ariz, 1927); Farris ex rel. Dorsky v. Goss, 60 A.2d 908 (Me, 1948). A limitation on the type of permissible alterations and a requirement that alterations, when permitted, must be referred concurrently with the original act suffer defects in the Alaskan context.

First, a restricting permissible alterations of an act, which in Alaska is effective even though referred, flies in the face of the legislature's inherent powers to enact, repeal, and amend all legislation. Constitution Art. II, §1; State ex rel. O'Connell v. Meyers, 319 P.2d 828 (Wash, 1957): legislative amendment of an initiative. In any case the "emergency" exception noted above has been flexibly interpreted to give the legislature broad deference. Ex Parte Stratham, supra; Gilbert v. Ashley, 209 P.2d 50 (Cal App, 1949).

Second, requiring alterations to be referred concurrently with the original act reduces the Alaska Legislature's flexibility in removing objectionable legislation. Since a referendum can reject all or none of an act, the good as well as the bad portions would be rejected. Further, the Alaska Constitution and statutes (AS 15.45.250 et seq) speak of referring specific acts of the legislature, not all acts dealing with the same subject matter. Here only Ch 205, SLA 1975 is being referred, not all legislative acts concerning retirement and compensation.

The effectiveness of a referred act under Walters and the legislature's inherent power to amend, repeal, and enact legislation give the Alaska legislature the tools to avoid popular rejection of all of the subject matter of Ch 205. owever, these tools are restricted to good-faith efforts intended to remove objectionable sections of a referred act. The tools must not be employed in a bad-faith effort to evade the referendum. Amendment and repeal with or without re-enactment of the same subject matter has been permitted, when in good faith, in jurisdictions with more restricted referendum pro-

visions than Alaska. Re Stratham, supra; First Continental S & L, supra; 42 Am Jur 2d 706-7; and 33 ALR 2d 1118, 1132-3 (and as supplemented). Since alterations are subject to the judiciary's inquiry into good faith — an inquiry giving broad deference to the legislature — the interests of the public are protected. In fact, the legislature's ultimate responsibility to the electorate was intended as the real check on the extent of the legislature's unrestricted amendment of initiatives. Ak Const. Conv. Minutes at 1084-7. The same check implicitly restricts legislative alteration of referred acts.

As presented above, a referendum election would consider only the original act referred. Subsequent amendments and repeals to the act would not be considered. Identical re-enactment of repealed sections would similarly not be subject to the referendum. Rejection of Ch 205, SLA 1975 would therefore have the effect of voiding only those sections of the act which remained unaltered by good-faith legislative modifications.

II. EFFECTS OF THE REFERENDUM AND/OR 1976 LEGISLATIVE AMENDMENTS ON WAGES AND BENEFITS.

Ch 205, SLA 1975 has specified effective dates for different classes of people. As noted in Walters v. Cease, supra, filing a referendum petition does not suspend an effective statute. As a legislative act currently in effect, Ch 205, SLA 1975 grants wages and benefits, some of which cannot be modified or abolished by a subsequent amendment or referendum.

A. WAGES AND BENEFITS CONFERRED ON CURRENT JUDGES CANNOT BE DIMINISHED BY REFERENDUM OR AMENDMENT.

Ch 205, SLA 1975 altered the compensation and retirement scheme for judges and justices. Wages and benefits may be raised for judges currently in office, but diminution of wages and benefits is unconstitutional. Art. IV, §13 provides:

> Justices, judges, and members of the judicial council and the commission on judicial qualifications shall receive compensation as prescribed by law. Compensation of justices and judges shall not be diminished during their terms of office, unless by general law applying to all salaried officers of the State.

Diminished compensation includes both wages and expected retirement benefits. Sylvestre v. State, 214 NW.2d 658, 666 (Minn, 1973). Any increases in benefits under Ch 205, SLA 1975 may not be reduced for office-holding judges by a later referendum or amendment. The referendum, like the initiative, is an injection of the public into the legislative branch such that the public

and the legislature are co-equal partners. Prohibiting diminution of compensation would therefore preclude a diminution by referendum as well as by legislation. Art IV, §13 prohibits diminution generally, without specifying the source of diminution. Thus, rejection of Ch 205, SLA 1975 by referendum (or modification by amendment) cannot effect those judges receiving the benefits of that act after its effective date. Only judges taking office after the referendum (or amendment) would be bound by a modification in their compensation.

B. MAY NON-JUDICIAL RETIREMENT BENEFITS CONFERRED BY Ch 205, SLA 1975 BE ALTERED.

Ch 205, SLA 1975 modifies existing terms for retirement benefits due state officers and employees. Rejection of Ch 205 by referendum would void the modification. The effect of the referendum, however, is subject to two constitutional guarantees. First, Alaska Constitution Art. XII, §7 provides: "Membership in employee retirement systems of the State or its political subdivisions shall constitute a contractual relationship. Accrued benefits of these systems shall not be diminished or impaired." Second, the U.S. Constitution, Art. I, §10 precludes a state from passing any "law impairing the obligation of contracts." These restrictions require a distinction between three classes of people affected by a referendum voiding an increase in expected benefits.

First. Those persons who have in fact retired after the effective date of Ch 205, SLA 1975 have a presently vested right which may not be cut off by a change in the law. The contract clause of the U.S. Constitution would prohibit such a change in expectation after the final act necessary to receive benefits. Even if the benefits so received are unfair or impose a heavy burden on the state, the U.S. Supreme Court has upheld a right which has ripened into a full contractual obligation. Lynch v. U.S., 292 U.S. 571 (1934). Sections 7 and 8 (Elected Public Officers Retirement Plan) of Ch 205, SLA 1975 take effect January 1, 1976; the remainder take effect on July 1, 1975. Thus, any person retiring after the applicable date and prior to the enactment of a modification cannot have his benefits reduced.

Second. Those persons who have more than five years of creditable service applicable to a state retirement plan have a "vested right" to defined benefits upon retirement. See, AS 39.37.020 (§8, Ch 205, SLA 1975); AS 39.35.380(a) (§11, Ibid.); AS 39.35.680(11) (§15, Ibid.), and other sections in effect prior to Ch 205, SLA 1975. A vested right to retirement

benefits assures the participant of an annuity-type of expectation. Chapter 205, SLA 1975 increases the amount and availability of these vested rights. A rejection of that act would return the holder of the vested right to the status he enjoyed when he entered into state employment. The readoption of the rights existing prior to Ch 205, SLA 1975 would not constitute an unconstitutional impairment of contract. Several theories support this argument:

(a) The employee entered into his employment with certain expectations. A subsequent increase in these expectations may be revoked. The employee did not bargain for these advantages when he entered into state service. Robinson v. Police Pension Bd. for City of Tucson, 339 P.2d 739 (Ariz, 1959).

(b) Even if an employee achieves a vested right in the additional benefits immediately upon the statute's effective date, the California courts have upheld the right of the state to make reasonable alterations in the amounts, terms, and conditions of benefits. Abbott v. City of Los Angeles, 326 P.2d 484 (Cal, 1958); Kern v. City of Long Beach, 179 P.2d 799 (Cal, 1947).

(c) Assuming rejection by referendum or legislative modification, no person will achieve five years of creditable service during the effective period of Ch 205, SLA 1975. Thus a vested right would not accrue in any situation. No person's expectation in achieving benefits under Ch 205, SLA 1975 would have ripened into a contractual right.

(d) Eliminating Ch 205, SLA 1975 would not diminish "accrued benefits" noted in Constitution Art. XII, §7. Employees in all cases could get the benefits earned under prior statutes, and would certainly not diminish a return on the employee's contribution. Art. XII, §7 guarantees that retirement pension schemes will be treated contractually rather than as a gratuity. However, under contract interpretation, no violation occurs in the rejection of Ch 205, SLA 1975 as it applies to non-retired employees with a "vested right" to defined benefits.

Third. Those persons who have not achieved five years of creditable service have no vested interest in retirement benefits. They do have, of course, a right to an undiminished return on their contributions. However, until they have achieved the final step which entitles them to retirement benefits —

that is, five years of service — their benefits are inchoate. Employees with an inchoate might have no cause of action whatsoever against a change in conditions, terms, and amounts of their benefits. McBride v. Retirement Brd., 199 A 130, 133 (Pa, 1938); Kern v. City of Long Beach, supra.

A rejection of Ch 205, SLA 1975 would have the effect of returning effected parties to the status quo ante. There would be no diminution in the contractual expectations and rights granted under the law pre-existing Ch 205. Only those persons who, in fact, retire during the existence of Ch 205, SLA 1975 would be free from a diminution of an increase.

§ 1.2.110

RMJ:jf

HB 203 - Warwick; Petersen

8 Judges will be reduced if initiative passed.

1. across the board

Judges (1) Art will give letter on this subject
Andy list

Federal National Labor Relations Board
(2) list on employees

(1)

(3.) 205 sections for re-enactment
Sec 9 - 135 of SLA 205

ROUGH DRAFT

For an Act entitled: "An Act creating the Public Officers Compensation Board and relating to compensation and collective bargaining of public officers; and providing for an effective date."

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

* Section 1. AS 16.43.060 is amended to read:

Sec. 16.43.060. COMPENSATION OF MEMBERS OF THE ALASKA COMMERCIAL FISHERIES ENTRY COMMISSION. Members of the commission are in the exempt service and shall receive an annual salary as established under AS 39.27.150 [EQUAL TO THAT OF A DISTRICT COURT JUDGE, PAYABLE IN EQUAL MONTHLY INSTALLMENTS].

* Sec. 2. AS 39.20.010 is amended to read:

Sec. 39.20.010. ANNUAL SALARY OF GOVERNOR. The annual salary of the governor shall be established under AS 39.27.150. [IS $50,000. THE SALARY SHALL BE PAID IN EQUAL MONTHLY INSTALLMENTS.]

* Sec. 3. AS 39.20.030 is amended to read:

Sec. 39.20.030. ANNUAL SALARY OF LIEUTENANT GOVERNOR. The annual salary of the lieutenant governor shall be established under AS 39.27.150. [IS $44,000. THE SALARY SHALL BE PAID IN EQUAL MONTHLY INSTALLMENTS.]

* Sec. 4. AS 39.20.080 is amended to read:

(a) The annual salary of the head of each principal executive department of the state upon appointment and confirmation shall be set out in [IS 10 PER CENT ABOVE STEP E, RANGE 28 OF] the salary

schedule established under AS 39.27.150 [IN AS 39.27.010 FOR ANCHORAGE, ALASKA. THIS SALARY SHALL BE PAID IN EQUAL MONTHLY INSTALLMENTS].

(b) The [MONTHLY] salary of the deputy head of each principal executive department of the state shall be set out in [, UPON HIS APPOINTMENT IS NOT LESS THAN STEP A, RANGE 28, NOR SHALL IT EXCEED STEP E, RANGE 28, OF] the salary schedule established under AS 39.27.150 [SET OUT IN AS 39.27.010, DURING THE TERM OF HIS APPOINTMENT.

* Sec. 5. AS 39.27 is amended by adding new sections to read:

ARTICLE 2. PUBLIC OFFICERS' COMPENSATION BOARD.

Sec. 39.27.100. BOARD ESTABLISHED. There is established within the Department of Administration a public officers' compensation board.

Sec. 39.27.110. MEMBERSHIP OF THE BOARD. (a) The board is composed of the commissioner of administration and four public members appointed by the governor and confirmed by the legislature in joint session. Initial appointments of two of the public members shall be made for terms of three years and two for six years to assure staggered terms. Subsequent appointments are for six-year terms. A vacancy shall be filled by appointment by the governor for the remainder of the term. The appointment is subject to confirmation in the same manner as a full term appointment.

(b) Public members of the board must be qualified electors of the state who are not employees or officers of the state. Not more than two public members may be of the same political party.

(c) A public member holds office at the pleasure of the governor notwithstanding the member's term.

(d) A member of the board is entitled to the per diem allowance established under AS 39.20.180 and transportation expenses incurred in carrying out official duties.

(e) The commissioner of administration and two public members constitute a quorum for the transaction of business. A majority consisting of any three members is necessary in order to adopt a board determination to be transmitted to the legislature.

Sec. 39.27.120. POLICY OF THE LEGISLATURE. It is the policy of the legislature that the board determine the salary schedule for public officers based upon the following principles:

(1) equitable relationships shall be maintained among state positions;

(2) the classified, partially exempt, and exempt services shall be maintained as viable systems where collective bargaining is not employed; and

(3) the public shall be encouraged to provide input into the establishment of salaries for public officials.

Sec. 39.27.130. REPORT BY DIRECTOR OF PERSONNEL. (a) In order to carry out the policy established in sec. 120 of this chapter, the director of personnel shall prepare and submit to the board a report on the status and condition of the salary schedule used in compensating public officers of the state.

(b) In preparation of the report, the director shall consider:

(1) the effect of cost-of-living factors on the fairness of compensation paid public officers; and

(2) the competitive position of the state relative to salary levels, including fringe benefits, of comparable classes in private enterprise, in other government agencies throughout the state, and in other states constituting prime recruitment areas.

(c) The director shall use United States Department of Labor statistics or other reliable statistical data in carrying out his responsibilities under this section. If reliable statistics are not

available, the director shall gather acceptable data by the use of field studies in carrying out those responsibilities.

(d) The director shall make a report required by (a) of this section within 60 days after the effective date of this Act; subsequent reports shall be made each October 1.

Sec. 39.27.140. PUBLIC COMMENT. Public officers and members of the public may offer written or oral testimony to the board regarding proposed determinations.

Sec. 39.27.150. DETERMINATIONS BY THE BOARD. (a) After consideration of the report of the director of personnel, including the fiscal implications of the report, and other presentations as may be made to the board at public hearings or in writing, the board shall:

(1) make determinations as to appropriate adjustments in salary schedules for public officers;

(2) make determinations as to appropriate adjustments in benefits granted public officers.

(b) The board shall transmit its determination under this section to the legislature no later than the 10th day of each regular session of the legislature.

(c) The board may modify or reverse its determinations. Determinations become effective, retroactive to January 1, 45 days after transmittal to the legislature or at the end of a session, whichever is earlier, unless disapproved by concurrent resolution.

Sec. 39.27.160. "PUBLIC OFFICER" DEFINED. As used in secs. 100--160 of this chapter, "public officer" means all officers and employees in the executive branch of the state government who are not covered by a collective bargaining agreement negotiated under AS 23.40.

* Sec. 6. AS 42.05.091 is amended to read:

Sec. 42.05.091. COMPENSATION OF MEMBERS OF THE ALASKA PUBLIC UTILITIES COMMISSION. Members of the commission are in the exempt service and shall receive an annual salary as established under AS 39.27.150 [EQUAL TO THAT OF A DISTRICT COURT JUDGE TO BE PAID IN EQUAL MONTHLY INSTALLMENTS].

* Sec. 7. AS 42.06.090 is amended to read:

Sec. 42.06.090. COMPENSATION OF MEMBERS OF THE ALASKA PIPELINE COMMISSION. Members of the commission are in the exempt service deecribed in AS 39.25 and receive an annual salary as established under AS 39.27.150 [EQUAL TO THAT OF A DISTRICT COURT JUDGE TO BE PAID IN EQUAL MONTHLY INSTALLMENTS].

* Sec. 8. AS 42.07.071 is amended to read:

Sec. 42.07.071. COMPENSATION OF MEMBERS OF THE ALASKA TRANSPORTATION COMMISSION. The commissioners are in the exempt service under AS 39.25 and shall receive an annual salary as established under AS 39.27.150 [EQUAL TO THAT OF A DISTRICT COURT JUDGE PAYABLE IN EQUAL MONTHLY INSTALLMENTS].

* Sec. 9. AS 23.40.250 is repealed and re-enacted to read:

Sec. 23.40.250. DEFINITIONS. In secs. 70--260 of this chapter, unless the context otherwise requires,

(1) "collective bargaining" means the performance of the mutual obligation of the public employer or his designated representatives and the representative of the employees tc meet at reasonable times, including meetings in advance of the budget-making process, and negotiate in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement, or negotiation of a question arising under an agreement, and the execution of a written contract incorporating an agreement reached if requested by either party, but these obligations do not compel either party to

agree to a proposal or to make a concession;

(2) "confidential employee" means an employee who assista and acts in a confidential capacity to a person who formulates, determines or effectuates management policies in the area of collective bargaining;

(3) "election" means a proceeding conducted by the labor relations agency in which the employees in a collective bargaining unit cast a secret ballot for collective bargaining representatives, or for any other purpose specified in secs. 70--260 of this chapter;

(4) "labor relations agency" means the state personnel board with regard to the state and employees of the state, and means the Department of Labor with regard to all other public employees and all other public employees;

(5) "managerial employee" means a person who exercises significant responsibilities for the public employer in the area of policy formulation and who is not a confidential employee;

(6) "organization" means a labor or employee organization of any kind in which employees participate and which exist for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment and conditions of employment;

(7) "public employee" means any classified employee of a public employer, except confidential employees, managerial employees, supervisory employees, and teachers and noncertificated employees of school districts;

(8) "public employer" means the state or a political subdivision of the state, including without limitation, a village, city, borough, district, board of regents, public or quasi-public corporations, housing authority or other authority established by law, and a person designated by the public employer to act in its interest in dealing with public employees;

(9) "supervisory employee" means an individual having substantial responsibility on behalf of the public employer regularly to participate in the performance of all or most of the following functions appoint, promote, transfer, suspend, discharge, evaluate or adjudicate grievances of subordinate employees, except supervisors aboard vessels of the Marine Transportation System;

(10) "terms and conditions of employment" means the hours of employment, the compensation and fringe benefits, and the employer's personnel policies affecting the working conditions of the employees; but it does not mean the general policies describing the functions and purposes of the public employer.

* Sec. 10. AS 23.40.215 is repealed.

* Sec. 11. AS 39.27.010, 39.27.012, 39.27.015, 39.27.020, 39.27.022(c), 39.27.030, 39.27.035, 39.27.040, 39.27.045, and 39.25.150(2) are repealed.

* Sec. 12. Secs. 1--~~7~~ 4, 6-8, and 11 of this Act take effect on the effective date of the first salary schedule established under AS 39.27.150.

* Sec. 13. Sec. ~~8~~ 5 of this Act takes effect 30 days after certification of the results of the balloting for the referendum proposing the rejection of ch. 205 SLA 1975.

* Sec. 14. Secs. 9 and 10 of this Act take effect July 1, 1976.

HB

209

File for 209

STATE OF ALASKA

WILLIAM A. EGAN, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER / POUCH S — JUNEAU 99801

March 6, 1975

The Honorable Terry Gardiner
Chairman
House Judiciary Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99811

Dear Mr. Gardiner:

re House Bill No. 209

House Bill No. 209, an Act relating to penalties under the Alaska income tax was introduced on February 26, 1975 and referred to the House Commerce and Judiciary Committees.

For the consideration of the Judiciary Committee, I am enclosing a copy of a memorandum dated March 5, 1975 from Frederick P. Boetsch, Deputy Commissioner, Department of Revenue outlining present violation problems of the withholding tax laws by non-resident workers employed in the construction of the Trans-Alaska pipeline and setting forth the necessity of the proposed legislation for protection of the State Treasury.

If you or any members of your Committee have any questions on the material submitted, kindly advise the writer by telephone at 465-2397 and I will contact Mr. Boetsch for further material or testimony.

Very truly yours,

R. D. Stevenson

R. D. Stevenson
Special Assistant

RDS:lw

Enclosure

cc Frederick P. Boetsch
Deputy Commissioner
Department of Revenue

MEMORANDUM State of Alaska

TO: R. D. Stevenson, Special Asst.
Office of the Commissioner
Department of Revenue

DATE: March 5, 1975

FILE NO:

TELEPHONE NO:

FROM: Frederick P. Boetsch FPB
Deputy Commissioner
Department of Revenue

SUBJECT: House Bill 209

A recent survey by auditors and enforcement officers of the Department of Revenue indicated that there was a substantial violation of the withholding tax laws by non-resident workers connected with the Trans-Alaska Pipeline. The violation consisted of submitting a Form W-4 (the withholding tax declaration) with an unreasonable number of exemptions claimed which led to a zero withholding tax. In some cases we found as many as 50 or 60 exemptions had been claimed. The obvious objective of claiming so many exemptions would be to insure that there would be no state income taxes withheld from their pay checks. Without withholding it is unlikely that we would ever receive any tax from these individuals.

Although it would be possible to prosecute these individuals under our existing fraud statutes, the standard of proof is quite complicated and the time reqired to conduct an investigation would be such that many of these individuals may have left the state by the time any action could be brought. In reviewing the federal Internal Revenue Code with respect to this problem we find that they have a specific statute which addresses itself to the question of persons supplying false information to an employer for withholding purposes. The proposed bill is consistant with that provision of the Internal Revenue Code. Basically it allows us to prosecute for fraud, an individual who supplies false information or willfully fails to supply information to his employer for purposes of withholding the Alaska Income Tax. With this kind of provision it is merely necessary for us to establish that such false information was provided to the employer or that such information was withheld. It is not necessary to address ourselves to the more complex question of income tax evasion as such.

Although the punishment is a misdemeanor, and the jail term is for one year, we felt that a $5000 maximum fine was necessary in order to encourage compliance since in most cases that would be more than the tax itself. A person then would run the risk of having to pay the tax and a fine as well as possibly serving some time in jail.

We feel that a statute providing for a direct penalty for submitting false information to an employer for withholding purposes will allow us to proceed more swiftly against violators and thereby curtail the problem before it gets out of hand.

©A63072

It is difficult to measure the effects on Treasury of this bill since we do not have a total grasp of the extent of the problem or how much money might come in as a result of withholding on these individuals. However, obviously the effect will be positive since it will bring many more people under the withholding provisions.

We anticipate no additional administrative costs administering this bill since Witholding Tax Audits, in connection with the pipeline project, are a part of the Pipeline Impact Budget.

FPB:lw

A M E N D M E N T

TO: HOUSE BILL NO. 209 BY ELIASON

Page 1, line 7: before the period add: "; and providing for an effective date"

Page 2, line 18: add the following:

* Sec. 2. AS 43.20.335(g) is amended to read:

(g) A person required to collect or truthfully account for a tax imposed by this chapter who wilfully fails to collect the tax or to truthfully account for and pay over the tax, or wilfully attempts in any manner to evade the tax or the payment of it is, in addition to other penalties provided by law, liable to a civil penalty equal to the total amount of the tax evaded, not collected, not accounted for, or not paid over. This penalty is in place of the tax not otherwise paid to the state. <u>The civil penalty shall be paid upon demand by the commissioner or his designee, and shall be assessed and collected in the same manner as taxes are assessed and collected under this chapter. Any reference in (a) - (f) of this section to "tax" imposed refers also to the civil penalty provided under this subsection.</u>

* Sec. 3. This Act takes effect immediately in accordance with AS 01.10.-070(c).

HB

211

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER / POUCH S — JUNEAU 99801

April 14, 1975

The Honorable Terry Gardiner
Chairman
House Judiciary Committee
Alaska State Legislature
State Capitol
Juneau, AK 99811

Dear Mr. Gardiner:

re House Bill No. 211

House Bill No. 211, an Act relating to the administration of state tax and revenue laws was introduced on February 26, 1975 and was referred to the House Commerce, Judiciary and Finance Committees.

For the consideration of the House Judiciary Committee, I am enclosing a copy of a memorandum dated March 12, 1975 from Frederick P. Boetsch, Deputy Commissioner of the Department of Revenue outlining the administrative need for the proposed legislation which is housekeeping in nature and advising of no administrative costs.

If you or any members of your Committee have any questions on the material submitted, kindly advise the writer by telephone at 465-2397 and I will contact Mr. Boetsch who will return to Juneau by mid-week for further material or testimony.

Very truly yours,

R. D. Stevenson
Special Assistant

RDS:sp
Enclosure

cc Frederick P. Boetsch
Deputy Commissioner
Department of Revenue

STATE
of ALASKA

MEMORANDUM

TO: R. D. Stevenson
Special Assistant
Department of Revenue

DATE : March 12, 1975

FROM: Frederick P. Boetsch
Deputy Commissioner for Taxation
Department of Revenue

SUBJECT: HB 211

House Bill 211 is an administrative housekeeping measure designed to provide uniformity in the administration of our various tax laws. It also provides for the hiring of out-of-state agents to audit the books and records of out-of-state taxpayers, in addition to our present power to enforce collection of taxes by this means.

Presently, each of our tax laws have separate administrative procedures with repect to civil penalty, interest, disclosure of tax returns and reports, taxpayer remedies, and payment of taxes. This frequently creates confusion in the mind of the taxpayer and his representatives. It also causes administrative difficulties since a different procedures apply to each tax type. Finally the lack of uniformity is probably unfair to the taxpayer since it unnecessarily complicates his compliance with our various tax laws.

This bill, then, would eliminate the various administrative procedures mentioned from the different specific tax chapters and place these provisions under the general administrative chapter, of Title 43.

Since the propose of this bill is to provide for administrative uniformity in procedures and ease of compliance with our tax laws by taxpayers, we see no direct effect on Treasury, However, anything which eases compliance and provides for fair and more uniform standards in general has a postive effect on taxpayer compliance and, hence, on the Treasury.

We anticipate no administrative costs in connection with this bill.

FPB: sp

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER / *POUCH S—JUNEAU 99801*

March 13, 1975

The Honorable Bob Bradley
Chairman
House Commerce Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99811

Dear Mr. Bradley:

re House Bill No. 211

House Bill No. 211, an Act relating to the administration of state tax and revenue laws was introduced on February 26, 1975 and was referred to the House Commerce, Judiciary and Finance Committees.

For the consideration of the Commerce Committee, I am enclosing a copy of a memorandum dated March 12, 1975 from Frederick P. Boetsch, Deputy Commissioner of the Department of Revenue outlining the administrative need for the proposed legislation which is housekeeping in nature.

If you or any members of your Committee have any questions on the material submitted, kindly advise the writer by telephone at 465-2397 and I will contact Mr. Boetsch for further material or testimony.

Very truly yours,

R. D. Stevenson
Special Assistant

RDS:sp
Enclosure

cc The Honorable Terry Gardiner
Chairman
House Judiciary Committee
The Honorable Hugh Malone
Chairman
House Finance Committee
Frederick P. Boetsch
Deputy Commissioner for Taxation
Department of Revenue

02-001B

STATE
of ALASKA

MEMORANDUM

TO: R. D. Stevenson
Special Assistant
Department of Revenue

DATE : March 12, 1975

FROM: Frederick P. Boetsch FPB
Deputy Commissioner for Taxation
Department of Revenue

SUBJECT: HB 211

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Since the propose of this bill is to provide for administrative uniformity in procedures and ease of compliance with our tax laws by taxpayers, we see no direct effect on Treasury. However, anything which eases compliance and provides for fair and more uniform standards in general has a postive effect on taxpayer compliance and, hence, on the Treasury.

We anticipate no administrative costs in connection with this bill.

FPB:sp

02-001B

STATE
of ALASKA

MEMORANDUM

TO: R. D. Stevenson
Special Assistant
Department of Revenue

DATE : March 12, 1975

FROM: Frederick P. Boetsch FPB
Deputy Commissioner for Taxation
Department of Revenue

SUBJECT: HB 211

House Bill 211 is an administrative housekeeping measure designed to provide uniformity in the administration of our various tax laws. It also provides for the hiring of out-of-state agents to audit the books and records of out-of-state taxpayers, in addition to our present power to enforce collection of taxes by this means.

Presently, each of our tax laws have separate administrative procedures with repect to civil penalty, interest, disclosure of tax returns and reports, taxpayer remedies, and payment of taxes. This frequently creates confusion in the mind of the taxpayer and his representatives. It also causes administrative difficulties since a different procedures apply to each tax type. Finally the lack of uniformity is probably unfair to the taxpayer since it unnecessarily complicates his compliance with our various tax laws.

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Since the propose of this bill is to provide for administrative uniformity in procedures and ease of compliance with our tax laws by taxpayers, we see no direct effect on Treasury. However, anything which eases compliance and provides for fair and more uniform standards in general has a postive effect on taxpayer compliance and, hence, on the Treasury.

We anticipate no administrative costs in connection with this bill.

FPB:sp

March 23, 1972

The Honorable Bill Ray
Senator
Alaska State Senate
Juneau, Alaska 99801

Dear Senator Ray:

Pursuant to your request, we have reviewed the federal tax statutes and our statute on publicity of returns and disclosure of information contained in individual returns.

The inspection of federal returns by states is clearly prohibited by § § 6103 of the Internal Revenue Code, unless the purpose of such inspection is for the administration of state tax laws. If for this purpose, then inspection will only be permitted upon the written request of the governor. Section 6103 (b)(2) provides in part as follows:

> All income returns filed with respect to the taxes imposed by chapters 1, 2, 3, and 6 . . . ., shall be open to inspection by any official, body, or commission, lawfully charged with the administration of any State tax law, if the inspection is for the purpose of such administration or for the purpose of obtaining information to be furnished to local taxing authorities as provided in this paragraph. The inspection shall be permitted only upon written request of the governor of such State. . . . Any information thus secured by any official, body, or commission of any State may be used only for the administration of the tax laws of such State . . . (emphasis added)

It appears from the language of this section that any inspection request not within the meaning of the phrase "administration of state tax laws" would be denied.

As this exchange is administered, these returns are not made available on any basis outside the Department of Revenue including internal State law enforcement agencies. Section 7213(a)(2)

would make it unlawful for any state officer or employee to disclose any information contained in a federal return.

The Alaska Statute on this subject is not as explicit as the federal statute, but the same purpose and intent can be assumed from the existing language. AS 43.20.190(a) provides in part:

> Except when required in official investigation. . . it is unlawful for an officer or employee of the state to divulge or make known the amount of income or the particulars set out as disclosed in a report or return under this chapter.

Under this language, it is unlawful for any state employee or officer to reveal any information unless the purpose of such disclosure is within the meaning of the phrase "except when required in official investigation." It has been held that the intent and purpose of state and federal statutes imposing secrecy in respect to income tax returns is to prevent disclosure of confidential information to those who do not have a legitimate interest in it.

As this law has been administratively interpreted by the State, tax information is not shared by the Department of Revenue with other agencies of the State including internal law enforcement agencies except where a possible violation of the State's tax laws is indicated.

A great deal of tax information is computerized in the interest of efficiency. There has never been any proposal to connect the Department of Revenue data processing activity with the Justice Information System data processing activity. Under the circumstances it serves no purpose and only a potential for mischief and confusion would occur from such an endeavor.

We trust this discussion will be helpful.

Sincerely,

John E. Havelock
Attorney General

JEH:ss
jcr

cc: Revenue
Governor's Office
Public Safety

November 21, 1972

The Honorable Mike Bradner, Chairman
Legislative Audit Committee
915 Kellum Street
Fairbanks, Alaska 99701

Dear Mr. Bradner:

At the request of the Budget and Audit Committee of the Legislature, the Division of Legislative Audit is examining Department of Health and Social Services records relating to the Adult Public Assistance and Aid to Families with Dependent Children programs to determine whether recipients are in fact eligible and for what amount of payment.

As one method of verifying income information submitted to the Department of Health and Social Services by individuals receiving services from the Department, the Committee would like the Legislative Audit Division to examine State income tax returns on file with the Department of Revenue, and wage information submitted by employees and employers to the Department of Labor in connection with administration of the State Employment Security Act.

Information collected under each of these Acts is protected by specific statutory provisions guaranteeing confidentiality to the records in the Departments of Labor 1/ and Revenue 2/ respectively and establishing criminal penalties. On the other hand, under a third provision of statute, the Division of Legislative Audit is entitled to have access to the records of every State agency whether confidential or not. 3/

You have asked whether the Legislative Auditor has the authority to examine such records and you have advanced cogent reasons for his being allowed to do so. You have

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1/ AS 23.20.110(a)

2/ AS 43.20.190(a)

3/ AS 24.20.271(b)

stated that there is no reason to believe that the Legislative Auditor is any more likely to divulge information obtained than Department personnel would in the performance of their duties. You have further stated that in any published reports, specific names and raw data would not be made public. You have also expressed the view that Article IX, Section 14 of the Constitution of Alaska requires the Departments of Revenue and Labor to open their records to review, regardless of confidentiality. This provision states that there shall be a legislative auditor who "shall conduct post-audits as prescribed by law and shall report to the legislature and to the governor." Finally, you have indicated that such access is inherent in the general investigative authority of legislative bodies and is even required by the separation of powers doctrine and that, as a practical matter, any curtailment of the Legislative Auditor's access to any State agency records will drastically reduce the ability of the Legislature to review operations of the executive branch.

Initially, it should be noted that the confidentiality of the records in question is not for the benefit or convenience of the executive branch of government nor for the convenience of the legislative branch, but constitutes a recognition by the Legislature, through the enactment of law, of a right of privacy adhering to the individual submitting the data.

This right of privacy was recently given constitutional standing by the people of Alaska through the adoption of an amendment affirming that, "The right of the people to privacy is recognized and shall not be infringed." 4/ The Legislature is directed to implement this section, but to the extent that it has not done so, under Article XII, Section 9 of the Constitution of Alaska, the provisions of the Constitution "shall be construed to be self-executing whenever possible." In proposing this provision to the people we deem that the Legislature must have been aware not only of the likely effect of Article XII, Section 9, but of the body of legal authorities and literature which have historically given meaning to the concept of the right of privacy. 5/ Ratification and

4/ Article I, Section 22, adopted August 22, 1972 (actual effective date: October 14, 1972)

5/ The literature on the legal basis of the right of privacy is voluminous. A recent introduction may be found in 77 Yale, L.J. 475, 481 (1963) or 67 Michigan L. Rev. 1091, 1223 (1969). The original definition of the right in America may be found in the work of Samuel D. Warren and Louis D. Brandeis 4 Harv. L. Rev. 193 (1890).

adoption of the amendment by the people does not freeze into constitutional doctrine every aspect of this literature but sets the main trends which compel the conclusions set out in this opinion.

While readily acknowledging the supremacy of the judicial branch in the expounding of the Constitution of Alaska, this opinion should be considered as a definitive interpretation of the laws of Alaska for officers of the executive branch until an order of a court of competent jurisdiction rules otherwise. 6/

In my opinion, the data collected by the Department of Labor and the Department of Revenue is within the ambit of the protection intended to be afforded by the Right of Privacy recognized by Article I, Section 22 of the Constitution of Alaska. Each of these departments 7/ holds private information in trust to the individual submitting it to the extent of the obligation of the right of privacy.

The Supreme Court of the United States has recognized the right as constituting a zone of fundamental concern for personal rights and liberties which predates the Bill of Rights of the Constitution of our country in origin. Many of the guarantees of the Bill of Rights describe specific areas of this zone. Griswold v. Connecticut, 381 U.S. 479 (1965).

The right of freedom of speech declared in Article I, Section 5 of the Constitution of Alaska and the corresponding right to remain silent found in Section 9 of Article I have been enriched by the adoption of this amendment establishing a right of privacy binding on judicial, legislative and executive branches alike.

Section 14 of Article I relating to search and seizure must be interpreted with due regard to the right of privacy as must Section 20 relating to the quartering of soldiers. The list of potential applications of the constitutional right of privacy is not here exhausted.

The right of association, for instance, which has been expounded by the Supreme Court largely within the

6/ In the absence of judicial enforcement, executive interpretation is a necessity. c.f. Laird v. Tatum, 40 U.S. L.W., 4850 (June 27, 1972).

7/ In the interest of brevity, this opinion will discuss the application of the Right of Privacy to income tax records. A parallel analysis leads us to our identical conclusion regarding Employment Security Records.

context of the First Amendment to the Constitution of the United States, is yet one more aspect of the right of privacy. This right has already been construed as prohibiting under certain circumstances the gathering or distribution of information by government about individuals. Hentoff v. Ichord, 318 F.Supp. 1175 (D.C. 1970). In NAACP v. Alabama, 357 U.S. 449 (1957), the Court noted that even though the intent of the governmental action challenged may appear to be totally unrelated to protected liberties, if the natural effect is to inhibit the exercise of a right, then it is constitutionally suspect. The Court thereupon concluded that the membership lists of the association "were so related to the right of the members to pursue their lawful private interests privately" that they were immune from state scrutiny.

The right of privacy is not absolute but lies in fine balance with the right of government and of the public to gather and use information for the purpose of assuring the common good. The particular private and public interests involved must be weighed and a balance struck between the impact on the individual and on society of a particular practice in information treatment. American Communications Association v. Douds, 339 U.S. 382 (1950); Barber v. Time, Inc., 159 S.W.2d 291 (Mo.)

Though the right of privacy may be a "passive" right, it nonetheless enjoys the shelter of that penumbra of vigilance which requires that governmental action having an adverse impact on it must be supported by compelling reasons 8/ to be sustained.

In assaying the propriety of a particular government information practice in the light of the Constitution, a number of questions should be asked, the answers to which will determine the balance between the proper use of information by government and the right of privacy.

> First, what is the expectation of the individual to whom the information relates? Is the information more or less personal? Is it the kind of information which the average citizen of ordinary sensibility would view as close to or remote from sensitive areas of personality? Nader v. General Motors Corp., 255 N.E.2d 765 (N.Y.)

8/ By use of the term "compelling" we do not intend to join the semantic debate on the degree of specific gravity to be accorded particular principles in the balancing process. c.f. Dunn v. Blumstein, 31 L.ed. 274 (1972). In my view a rigorous policy analysis provides its own balancing rationale.

If the information was given voluntarily with full expectation that it would be used in any manner which the government chose, then privacy as a legal right is not applicable. A voluntary surrender of privacy is involved. See also Brents v. Morgan, 299 S.W. 965 (Ky.). On the other hand, if information is obtained from the individual under duress or totally involuntarily, it is subjected to a more restricted trust in its storage and use by the government.

Income tax returns do not constitute a truly voluntary source of information. As an involuntary source, the returns are specially entitled to the cautious judgment of the administrator in interpreting laws protecting the privacy of the individual. It is undoubtedly within the reasonable contemplation of the individual submitting income tax returns that an auditing function will be performed on the data he furnishes for the purpose of assuring its accuracy and for the purpose of assuring the efficiency and honesty of those administering the tax laws. It is unlikely that the individual contemplates the use of financial revelations in his return to cross-check other filings he may have made at other times for other purposes.

> Second, is the inquiry essential to a government function and the scope of inquiry limited to the necessities of the case? Not every end of government justifies the means. The information gathering or distribution process should not pick up information irrelevant to the public governmental purpose nor distribute private information beyond the dictates of necessity. 9/

The State is prohibited by statute from invading the right of privacy of the individual through the use of wire tapping or eavesdropping techniques for the purpose of checking welfare fraud; nor can the home of the welfare recipient be subject to search without a warrant showing probable cause supported by oath or affirmation. Similar protection is afforded the citizen's income tax returns though they may already be in the hands of a government agency.

Income tax returns contain a broad range of information of varying intimacy constituting a self-portrait of the individual taxpayer. A person who has access to the tax returns, though he may wish only to obtain net income figures, is exposed to a wide range of additional confidential information.

9/ United States v. Robel, 389 U.S. 258 (1967).

The inherent general investigative authority of legislative bodies, which you specify as establishing authority for this access, is subject to constitutional limitations designed to protect the rights of the individual. The constitutional fathers of Alaska were particularly concerned that the claim of legislative or executive prerogative should not be used to override rights retained by the people. To the extent that recognition of the right of privacy reduces the ability of the Legislature to review operations of the executive branch or limits the ability of the executive branch to operate with optimum efficiency, this is a price which the people have placed upon their liberty. Section 7 of Article I of the Constitution of Alaska proclaims:

> "No person shall be deprived of life, liberty or property without due process of law. The right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed."

In my opinion the right of privacy is a "liberty" within the meaning of this provision of the Constitution. Limitations on this liberty may not be imposed without procedural due process, the investigative power of the Legislature notwithstanding.

The prevalence of welfare fraud is undoubtedly a proper area for legislative inquiry by a legislative committee of competent jurisdiction. Nevertheless, if the Committee prepares rules of procedure and practice for the Legislative Audit Division as later suggested in this opinion, the Committee may wish to reconsider whether the broader purpose for which the information is being sought constitutes a proper exercise of the post-audit function under the relevant statutes,10/ since the inquiry seems to be not so much whether the executive branch is faithfully and efficiently executing its duties under the statute but whether the public is. We do not here express an opinion on this question which is primarily one for legislative consideration.

> Third, assuming the underlying purposes of the government are legitimate and pressing, are there alternative ways in which the government can accomplish its business without passing through the penumbra of the right of privacy?

10/ see Kent v. Dulles, 357 U.S. 116 (1958); Schniedes v. Smith, 390 U.S. 17 (1968).

While the purpose of tracking and defeating welfare fraud is laudible, there are many ways in which this purpose can be accomplished without invading the privacy of income tax records. 11/

You have indicated that the information sought would be used to support findings expressed ultimately in numbers or percentages. I would recommend that you discuss with the agencies involved the use of coding procedures and appropriate executive agency personnel to determine whether the ultimate purpose can be accomplished without expanding the number of personnel having access to records which identify persons or in any manner intrude upon the right of privacy retained by the people in accordance with the principles described in this opinion.

> Fourth, what kind of security is afforded the information? The right of privacy includes a right to adequate data protection so that information obtained and used legitimately is not incidentally subject to use in some other manner that lies beyond the legitimate need of the government to know.

Under the practices and procedures of the Department of Revenue, the information contained in income tax returns is held confidential even from other officers of State government. Access within the Department of Revenue itself is based upon a "need to know."

The Committee's request on behalf of the Legislative Auditor is not for the purpose of determining whether the Department of Revenue is effective and efficient in managing the tax laws but is intended to serve the purpose of cross-checking the performance of a program administered by the Department of Health and Social Services. It is significant that the internal auditors of the Department of Health and Social Services, and of the whole executive branch, housed in the Budget and Audit Division of the Department of Administration, are themselves denied the access now sought for the Legislative Auditor.

Any individual member legislator or member of the Committee staff may peruse the files of the Division, examining the raw data contained therein. No matter how improbable

11/ The effect of widening circulation of private records in impairing the candor of individuals later reporting should be noted as a public interest incidentally protected by the right of privacy.

it may be that an individual legislator or staff member might examine these files and copies of income tax returns or data contained therein, the fact is that no prohibition, safely restricting access to described individuals having a need to know, exists. 12/

The right to privacy does not extend only to privacy against publication to the general public. It applies to lesser audiences also, including audiences of government officers not engaged directly or indirectly in business pertinent to that for which the private information is collected. While there is no reason to suppose that the Legislative Auditor, as a person, is more likely to divulge information to unauthorized persons than members of the Income Tax section of the Department of Revenue, the lack of well-articulated rules regarding storage of information and restricting access to the files of the Division, means that the situation of any income tax records in the Division is in fact precarious considering the sensitivity of the rights involved.

> Fifth, to what extent is due process afforded the individual whose right of privacy is at hazard? The procedures and safeguards by which information is collected, stored and distributed should be articulated in rules available to the public. In some instances the individual may have a right to be notified of a proposed use of information about himself and to be afforded an opportunity to voice objection, with provision for appellate review.

Critical, in my opinion, to the determination of the rights and obligations of the parties in the present situation is the doubt as to the subsequent security of the information to be obtained and the absence of guarantees of procedural due process to the individual whose privacy may be in the process of being surrendered or impaired. Greene v. McElroy, 360 U.S. 474 (1959). Compare Hannah v. Larche, 363 U.S. 420 (1960).

AS 24.20.271(6) provides that the Legislative Audit Division shall

> "have access at all times to the books, accounts, reports or other records, whether confidential or not, of every state agency;"

12/ For historical and survey background see S. Wheeler, On Record: Files and Dossiers in American Life (1969).

Under AS 24.20.201(a)(1) the Legislative Budget and Audit Committee is empowered to

> ". . . adopt rules for the conduct of its business and prescribe procedures for the comprehensive fiscal analysis, budget review and post-audit functions;"

To the best of my knowledge this section has never been implemented. No rules have ever been proposed or formally adopted. 13/ There has been no opportunity for the public to have access to proposed rules or comment on them. There is no procedure which limits in a satisfactory manner access to the files of the agency on a need to know basis. Nor, to initiate a search of records pertaining to an individual citizen is a statement required which sets out with specificity the purpose for which the search is made. c.f. Watkins v. United States, 354 U.S. 178 (1957); Barenblatt v. United States, 360 U.S. 109 (1959).

Applying this outline of principles to the practice proposed by the Committee, it is my opinion that an infringement of the Constitution would be involved in implementation of this application for record review in the manner suggested. Accordingly, the Departments of Labor and Revenue are instructed to deny access to the records involved under the circumstances presented in this instance.

By this opinion we do not deny that in a proper case, for the performance of the audit function, under appropriate procedural guarantees, the Legislative Auditor may have access to income tax returns or other confidential personal data in the files of every department of government. For proper purposes relating to the efficiency and honesty of the administration of the Department of Re nue, and under appropriate procedural safeguards, he may do . However, at the present time the regulations and safeg ards to be provided by the Committee are nonexistent or inadequate. They afford neither procedural protection to the individual whose privacy may be jeopardized nor adequate regard for the larger concerns of the society in the right of privacy.

Respectfully submitted,

John E. Havelock
Attorney General

cc: Commissioner Benson
Commissioner of Revenue

13/ c.f. U.S. Smelting, Refining and Mining Co. v. Local Boundary Commission, 489 P.2d 140 (Alaska 1971).

HB 211

1. housekeeping - Admin procedures
2. Makes uniform - different procedures for remedies
3. allows to employ tax agents

240 - informal hearing on taxpayer remedies

Problem - tax payers confused about remedies available on different types of taxes

~~Add~~ 025 - authority for outside auditors
1. large Corp. - income tax - Multi-state tax
~~Corp~~ will do if request

1972 - 2 opinions 43.20.190
tax returns inspected by Legis Audit

(1) Test - What does Aud anticipate who will have access to his info (tax return)
(2) Does Agency have leg purpose - Alternative sources of info
(3) Security for info - what procedures set out for due process

Opinions
No access for Leg Audit
" " for Aegis

HB
213

UNIVERSITY OF ALASKA
Fairbanks, Alaska

Office of the President

Juneau, Alaska
April 2, 1975

Memorandum to: Honorable Terry Gardiner, Chairman
House Judiciary Committee

From: Don M. DeHoe, Executive Vice-President

Subject: Comments on HB 213 and HJR 15

We were informed at 1:00 p.m. today that hearings scheduled on the above bill and Resolution had to be deferred. Your Aide suggested that we might submit a written statement.

Under date of March 14, Vice-President Rae, responding to a request from Representative Naughton, noted general concurrence with the provisions of the bill. However, Dr. Rae had not conferred with our Legal Counsel relative to the implications of the amendments proposed to AS 14.40.290.

Note attached is a copy of an opinion from our University Counsel, Dr. Tom Gruening. He concurs, as do we in the Office of the President, with the amendments to 14.40.190 and 14.40.250 which specifically provide for reporting to the legislature on the administration and disposition of restricted as well as appropriated funds. We believe that this provision is entirely reasonable. We do not see, however, why a constitutional amendment as provided for in HJR 15 would be necessary.

We concur with the opinion of our Counsel that the amendments proposed to Sec. AS 14.40.290 would raise serious constitutional questions in view of the constitutional mandate to the Regents to "govern" the University. We believe that application of all requirements of AS 37.07 to the University, particularly AS 37.07.030(4) and 37.07.080(a)(c)(d) and (e), would infringe upon and perhaps usurp the constitutional responsibility and the policy perogatives of the Board of Regents.

We would emphasize the desire of the University to respond meaningfully, and hopefully in a timely manner, to legislative needs for information in general and particularly to needs related to the budget process. We believe our controls are adequate but do acknowledge some difficulty with timely response.

In this regard, we believe that the Legislative Budget and Audit Committee might well want to convene some Interim Sessions involving legislative finance Chairmen and analysts, Department of Administration representatives, Office of the Governor representatives, and University administrators with a view toward clarifying and simplifying reporting and budget policy and processes.

UNIVERSITY OF ALASKA

MEMORANDUM

TO: Dr. Don M. Dafoe, Executive Vice President

FROM: Tom Gruening, University Counsel

SUBJECT: House Bill #213

DATE: March 27, 1975

This is in response to your request for an analysis of the implications of House Bill #213. The bill would amend four sections of the Alaska Statutes.

It would amend 14.40.190 to include language expressly encompassing appropriated and restricted funds as being included in the written report to the Legislature. In my opinion this amendment simply clarifies existing law and has no implications.

A.S. 14.40.250 is amended to conform with the proposed amendment to Section 190 clarifying the scope of the written report to the Legislature. This section also simply clarifies existing law and has no implications.

A.S. 14.40.290 is amended by adding a new subsection subjecting the University to the Executive Budget Act, and A.S. 37.07.120 (1) is correspondingly amended to include the University of Alaska within the definition of agency contained in the Executive Budget Act.

Inclusion of the University within the terms of the Executive Budget Act raises serious constitutional questions. The relationship between the constitutional autonomy of the Board of Regents in relation to similar attempts by other branches of state government has been considered at length in a Memorandum of Opinion from Grace Schaible, the University's retained counsel, to William R. Wood, then President of the University of Alaska, dated January 9, 1973. I have excerpted the pertinent portions of that opinion rather than repeat them here. The excerpt is set out in Exhibit A which is attached hereto. The basic thrust of the constitutional argument is that under Alaska Constitution Art. VII. Sec. 3, the Board of Regents shall govern the University and any attempt by the Legislature to intervene in University management decisions respecting planning or expenditure of funds would effectively emasculate the constitutional duty of the Board of Regents to govern.

A second constitutional ground is that under Alaska Constitution, Article VII, Section 2, real and personal property is subjected to the requirement that it shall be administered and disposed of according to law. Since money is not mentioned it is not subject to regulation by the Legislature as to its administration and disposition. (Thus A.S. 14.40.280 is unconstitutional on its face as it purports to regulate the expenditure or management of money of the University of Alaska. This probably explains why no attempt has ever been made to enforce it.)

The two sections of the Alaska Constitution mentioned above would, in my opinion, render unconstitutional the portions of the Executive Budget Act listed below insofar as they purport to authorize the management or control of the Univeristy's expenditures, policies, planning or operations or otherwise interfere with or restrict the governance of the University by the Board of Regents:

A.S. 37.07.010 (2), (3)	
A.S. 37.07.030 (4)	
A.S. 37.07.040 (5)	
A.S. 37.07.050 (a) (2)	except insofar as needed to determine the University's budget.
A.S. 37.07.050 (d)	except insofar as the division purports to describe rather than set policy, priorities, etc.
A.S. 37.07.070	
A.S. 37.07.080 (a), (c), (d), and (e).	

It should be noted that there is no constitutional or statutory objection to the requiring that information be provided for purposes of budget planning, priority setting, etc., by the Legislature so long as such requirements do not interfere with the Board of Regents' governance of the University.

mh

Exhibit A

Memorandum of Opinion from Grace Schaible to Willima R. Wood, dated January 9, 1973.

It may be well at this point to review the broader aspects of the problem in view of the Constitutional provisions relating to the University of Alaska and Board of Regents. There are two provisions involved as follows:

> "Section 2, Article VII. State University. The University of Alaska is hereby established as the State University and constituted a body corporate. It shall have title to all real and personal property now or hereafter set aside for or conveyed to it. This property shall be administered and disposed of according to law."

and Section 3 of Article VII as follows:

> "Section 3, Board of Regents of University. The University of Alaska shall be governed by a Board of Regents. The Regents shall be appointed by the Governor, subject to confirmation by a majority of the members of the legislature in joint session. The Board shall, in accordance with law, formulate policy and appoint the President of the University. He shall be the executive officer of the Board."

These two sections of the Constitution are unique in that it is the only place that a division of State government is singled out and provided a special corporate status. As we are all aware, both secondary educational groups and the Fish and Wildlife people tried to obtain like status at the constitutional convention, but were unsuccessful. Alaska is not unique in having a constitutionally established University and Board of Regents; however, only a few institutions of public higher education in the entire United States enjoy this very privileged legal status. As one treatise writer has indicated:

> "These fortunate few possess a sphere of authority within which neither the legislative nor the executive division of State government may interfere. They are, in substance,

coordinate with the legislative, executive, and judicial branches and thus represent a fourth arm of State government". (Blackwell, College Law, page 242).

As has been pointed in Alexander and Solomon's College and University Law 1972 edition, there are nine states which guarantee Constitutional autonomy for universities. Although Alaska is not expressly included among these nine which are Michigan, Minnesota, California, Colorado, Georgia, Idaho, Oklahoma, Nevada and Arizona, it is recommended the University contact the authors and advise of the omission. In three of these states there has developed a considerable body of law regarding the autonomous status of the university, namely Michigan, Minnesota and California. We believe that when the Alaska Constitutional provisions relating to the University and Board of Regents are judicially interpreted it is very probable that Alaska's constitutional provisions will be considered as establishing an "autonomous" university. The Michigan Constitution provides:

> "The Board of Regents shall have the general supervision of the University, and the direction and control of all expenditures of funds."

Although Alaska's constitutional provision is drafted less explicitly, Article VII, Sec. 2 and 3, supra, establishes the University as a "body corporate" and directs that "the University of Alaska shall be governed" by the Board. This specific power to govern the University stongly implies and indeed mandates the "control of all expenditures of funds" must be in the governing board, with the legislative control being the overal sum and not the specific direction of where and how said funds are to be spent.

The broad grant of powers above quoted has given the Board of Regents of Michigan complete control of all university income regardless of source. The Michigan Supreme Court in 1895 resolved the issue of a legislative enactment requiring the Board of Regents to discontinue a homeopathic school in Ann Arbor and establish a new school in Detroit and spelled out the legislature-university relationship in an unmistakable fashion:

> "The Board of Regents and the legislature derive their power from the same Supreme authority, namely the Constitution...they are separate and distinct Constitutional bodies, with the power of the regents defined. By no rule of construction can it be held that either can encroach upon or exercise the powers conferred upon the other."

This interpretation was based on the broad constitutional powers given to the Board of Regents under the Michigan Constitution. We believe the Alaska Supreme Court, in light of these precedents combined with the intent of the delegates to our 1956 constitutional convention expressed in the minutes of those proceedings will likewise find similar powers in the Board of Regents of the University of Alaska.

The citizens of Michigan in the Constitution of 1908 granted privileges similar to that granted to Michigan State College (now Michigan State University) and provided that State Board of Agriculture was given "general supervision of the college, and the direction and control of all agricultural college funds".

The Constitutional status of the University of Minnesota is likewise closely aligned to that of Alaska. The Board of Regents of the University of Minnesota was incorporated by the Territorial Assembly in 1851 with a mandate "to govern" the university and the 1858 Constitution of the State of Minnesota expressly "perpetuated unto said university" "all the rights, immunities, franchises and endowments heretofor granted or conferred". It was not until 1925, however, that the first legislative test was made of the autonomous powers of the University of Minnesota. In that year the legislature enacted the laws regarding the organization of the State government which centralized the State Administrative functions under the Governor. The Commission on Administration and Finance operating under the Governor's office pursuant to this act claimed the authority to supervise and control the expenditure of moneys for the University of Minnesota. Suit brought on behalf of the University against the Commission resulted in a decision of the Supreme Court which stated in part:

> "...the right to control university finances is the power to dictate university policy and direct every legislative activity....The legislature cannot transfer any of these constitutionally confirmed powers from the regents to any other board, commission or officer whatever....The purpose of the constitution remains clear. It was to put the management of the greatest state educational institution beyond the danger of vacillating policy, ill-informed or careless meddling and partisan ambition that would be possible in the case of management by either legislature or executive, chosen at frequent intervals and for functions and because of qualities and activities vastly different from those which qualify for the management of an institution of higher learning." See State v. Chase, 175 Minn. 259 220 N.W. 951 (1928).

In subsequent suits involving an enactment of the legislature who changed the method of selection of regents, the Supreme Court of

Minnesota in describing the university's relationship to the executive, legislative and judicial branches of government commented:

> "The people by their Constitution chose to perpetuate the university which had been created by their Territorial Legislature in a Board of Regents, and the powers they gave are not subject to legislative or executive control; nor can the courts at the suit of a taxpayer interfere with the board while governing the university in the exercise of its granted powers. This does not mean that the people created a corporation or institution which is above the law. The board must keep within the limits of its grant."

The California Constitution of 1879 provided for the independence of the Board of Regents as follows:

> "The University of California shall constitute a public trust, and its organization and government shall be perpetually continued in the form and character prescribed by the Organic Act creating the same..., subject only to such legislative control as may be necessary to insure compliance with the terms of this endowment and the proper investment and security of its funds."

This constitutional language has been uniformly interpreted by the Supreme Court in California to provide immunity from any legislative act changing the form of government of the college. In 1913, the Supreme Court of California made a clear statement of the University's independence in a case involving a conflict between vaccination requirements of the legislature and those of the University of California. (Williams v. Wheeler, 23 Cal. App. 619, 138 P. 937) The Board of Regents of the University of California had required all enrolling students to be vaccinated whereas the legislature provided for exceptions for those conscientiously opposed or for those for whom vaccination would be harmful to their health. A student not having been vaccinated and conscientiously opposed to vaccination was denied entrance to the university and sued for admission. The question of legislative versus university predominance in making of admission and health policies was placed squarely before the court. The court held that the exceptions provided for in the vaccination law were not founded upon consideration of the general health and did not constitute an exercise of the general police protection of the legislature. More specifically with regard to the Constitutional powers of the university, the Court said:

> "...it was the intention of the framers of the Constitution to invest the Board of Regents with a larger degree of independence and discretion in respect to these matters than is usually held to exist in such inferior boards and commissions as are solely subjects of legislative creation and control. This would seem to be a necessary conclusion from the fact of the evaluation of the university to the place and dignity of a constitutional department of the body politic...."

In Idaho the Constitution adopted in 1889 provided with reference to the administration of the University of Idaho:

> "The Regents shall have the general supervision of the university and control and direction of all funds of and appropriations to, the university, under such regulations as may be prescribed by law."

In its 1921 decision in State v. State Board of Education, 33 Idaho 415 196 P. 201, Supreme Court of Idaho officially placed the University of Idaho in the magic circle of autonomous universities. The Supreme Court held that the Constitutional provision meant that while functioning within the scope of its authority, the Board of Regents is not subject to the control or supervision of any other branch, board, or department of the State government. The portion of the Constitution limiting the Board of Regents' authority ('under such regulations as may be prescribed by law") refers to methods and rules for the conduct of business and accounting functions and does not interfere with the Constitutional discretion of the Board. When an appropriation of public funds is made to the university and the university Board of Regents accepts the funds, the legislature may impose such conditions and limitations on the use of the funds as it deems necessary. However, the court stated, where the Board sells university property there is no obligation on the part of the Regents to pay the proceeds from the sale of the property into the State treasury.

The Colorado Constitution vested in the Board of Regents "the general supervision of the State university" and "the exclusive control and direction of all funds of, and appropriations, to the university". This broad grant of power is quite similar to that given to the governing boards of other constitutionally independent universities. However, the courts of Colorado have not, as yet, conceded that it was the intention of the people to grant full autonomy to their State university. Furthermore, in another section of the State Constitution, the management of the university is declared to be "subject to the control of the State, under the provisions of the Constitution, and such laws and regulations as the general assembly may provide."

Two States, Missouri and Utah, have failed to achieve autonomy even though the Constitutional grants of powers to the governing boards were rather broad. In Utah, for example, the State Supreme Court held in 1956:

> "It is inconceivable that the framers of the Constitution ...intended to place the university above any controls available to the people of this State as to the property, management and government of the university.... The university is a public corporation, not above the powers of the legislature to control, and is subject to the laws of the State from time to time enacted relating to its purposes in government."

Although all the constitutional provisions establishing university autonomy in the foregoing States are not uniform where autonomy has been found to exist by the courts, it has been of constitutional origin such as is contained in the Alaska Constitution. It has also been observed in establishing constitutional autonomy,

> "a great deal depends on the attitude of the court and how it, within the context of either implied or explicit constitutional provisions, is willing to view the relationship between the State and the university. The lack of autonomy of some State universities may be attributed to the attitudes of the courts or even to inaction on the part of university officials." (Alexander and Solomon College and University Law, 1972).

Summary and Conclusion

In light of the detailed research outlined above and with knowledge of the debate and circumstances at the constitutional convention in singling out the University as the only division of State government afforded special status, besides the traditional three branches, we are of the opinion that serious constitutional questions have been raised by the method of legislative appropriation proposed by the Governor for fiscal year 1974 and actually used by the legislature for 1973, which constitutes effective internal control of the University. If the constitutional language that the University as a body corporate "shall be governed" by a Board of Regents is to be given the meaning intended by the constitutional convention, the University should not be subordinated to the Executive, Legislative and Judicial branches of government or relegated to the status of the legislatively-created department or agency.

We cannot see how the Board of Regents can legally consent to administration of University affairs, either directly or indirectly, by any branch of the State government without an express constitutional change. The precedents established in other jurisdictions such as Michigan, Minnesota, California and Idaho are clearly in point and we believe the Supreme Court of Alaska in a proper case would be strongly inclined to follow such precedents and hold that the Alaska Constitution created an autonomous University to be governed in all respects by a Board of Regents without the spectre of any type of partisan, geographical or political influence.

HB

214

P.O. Box 652
Douglas, Alaska 99824
March 3, 1976

Representative Thelma Buchholdt
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Representative Buchholdt:

Enclosed please find a Position Paper for House Bill 214, of which you are the prime sponsor. We realize the bill has not been heard this Session, but wanted to be on record supporting the concept in case hearings are anticipated in the near future.

Please feel free to call on the League if we can be of assistance in this matter.

Sincerely,

Janice Gates

Janice Gates
LWV Lobbyist,
Election Laws & Procedures

Attachment

3/14 Milton

Introduced: 2/26/75
Referred: State Affairs and Judiciary

IN THE HOUSE BY BUCHHOLDT, MALONE AND PARKER

HOUSE BILL NO. 214

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to absentee voting."

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

* Section 1. AS 15.20.150 is amended to read:

Sec. 15.20.150. CASTING VOTE BY PERSONAL REPRESENTATIVE OR BY MAIL. Upon receipt of an absentee ballot through a personal representative or by mail, the voter, whether in or outside the state, [in the presence of two attesting witnesses, both of whom are at least 18 years of age, or] before an election judge, notary public, commissioned officer of the armed forces including the National Guard, district judge or magistrate, United States postmaster, United States assistant postmaster, or other person qualified to administer oaths or, if none of the above-listed options is reasonably available, in the presence of a single attesting witness who is at least 18 years of age, may proceed to mark the ballot in secret, to place the ballot in the small blank envelope, to place the small envelope in the larger envelope, and to sign the voter's certificate on the back of the larger envelope in the presence of the above-listed official or described persons who shall sign as attesting witnesses. The voter may then return the ballot properly enclosed in the envelopes, by personal representative to the election official who provided the ballot or by the most expeditious mail service, postmarked not later than the day of the election, to the election supervisor in his district.

delete in (5)

P.O. Box 652
Douglas, Alaska 99824
March 3, 1976

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Pouch V
State Capitol
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Sincerely,

Janice Gates

Janice Gates
LWV Lobbyist,
Election Laws & Procedures

Attachment

LEAGUE OF WOMEN VOTERS OF ALASKA
Election Laws and Procedures
March 3, 1976

POSITION PAPER

ON

HOUSE BILL 214

"An Act relating to absentee voting." By Buchholdt, Malone and Parker.

POSITION: Support.

JUSTIFICATION: The League of Women Voters has long supported an electoral system which maximizes citizen participation. House Bill 214 liberalizes the absentee voting requirements, thus offering a realistic response to voting problems frequently encountered because of Alaska's inclement weather conditions and communications difficulties. The option of allowing a single witness of at least 18 years of age to verify an absentee ballot would appear to be a reasonable alternative to offer the Alaskan resident who is voting absentee, whether in or outside the State.

Janice Gates

Janice Gates, LWV Lobbyist
465-3050 or 364-3441

put on list for next week

File HB 214

Alaska State Legislature
House of Representatives

THELMA BUCHHOLDT

STATE CAPITOL
JUNEAU 99811

2607 KONA LANE
ANCHORAGE 99503

(907) 274-2414

March 10, 1976

Terry Gardiner:

Hello there! When will your committee consider my HB 214, An Act relating to absentee voting"?

Enclosed is a support paper from the League of Women Voters.

Please let me know when you plan to schedule the bill.

Thanks.

Thelma

Thelma Buchholdt

STATE REPRESENTATIVE, DISTRICT 9 (SPENARD)
VICE-CHAIRMAN, FINANCE COMMITTEE
MEMBER, LEGISLATIVE COUNCIL SUBCOMMITTEES ON TELECOMMUNICATIONS AND HEALTH PLANNING

P.O. Box 652
Douglas, Alaska 99824
March 3, 1976

Representative Thelma Buchholdt
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Representative Buchholdt:

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Sincerely,

Janice Gates

Janice Gates
LWV Lobbyist,
Election Laws & Procedures

Attachment

HB

237

"An Act relating to mediation in divorce actions."

COMMITTEE REPORT

2/28/75

HOUSE

Mr. Speaker: Date 2/28/75

The Committee on Judiciary has had HB 237 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(X) recommends it BE REPLACED WITH CS FOR HB237 AND THAT CS FOR HB 237 DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Jerry Hudnall

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Jerry Hudnall Chairman

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, Governor

Pouch H01, Juneau 99811

April 7, 1975

The Honorable Terry Gardiner
Chairman, House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Gardiner:

In reply to your letter of March 7 we are pleased to submit the following information concerning total number of divorces over the past five years involving children and the number filed by men as compared to women.

Year	Number Filed by Men	Number Filed by Women	Total
1970	306	679	985
1971	317	698	1,015
1972	377	862	1,239
1973	394	773	1,167
1974	446	876	1,322

We keep no records relating to disputed cases as this is a function of the Alaska Court System and the information does not appear on th divorce document.

Our information is gleaned from the divorce document and only basic statistical information is kept. This also holds true for information concerning custody.

May we suggest that these same questions be asked of the Court System, they may be able to give you more assistance in areas of dispute and custody.

If there is any other way we might be of assistance, do not hesitate to ask.

Sincerely yours,

Francis S. Williamson

Francis S.L. Williamson
Commissioner

Original sponsor: Bradner, Beirne, Brown, et al

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 237

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to mediation in divorce actions."

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

* Section 1. It is the intent of this Act to provide a means of mediation between parties in divorce actions, in order to achieve a mutually agreeable settlement in termination of the marriage, and to thereby minimize disruption of the household, adverse effects on minor children, and litigation between the parties.

* Sec. 2. AS 09.55 is amended by adding a new section to read:

Sec. 09.55.115. MEDIATION. (a) At any time within 30 days after a complaint or cross-complaint in a divorce action is filed, a party to the action may submit a request to the court for mediation, for the purpose of achieving a mutually agreeable settlement in termination of the marriage. When a party requests settlement mediation, the other party shall answer the request on the record, and the judge may order mediation. When no request for mediation is made, the court may at any time order the parties to submit to mediation if there is reason to believe that mediation may result in a more satisfactory settlement between the parties.

(b) The court appoints the mediator. The court may appoint another judge, himself - deleted, a standing master, or any other person the court finds suitable to act as mediator.

(c) Mediation shall be conducted informally as a conference or series of conferences. The parties to the action and a representative of any minor children of the marriage shall attend. Counsel for the

parties may attend.

(d) After the first conference, either party may withdraw, or the mediator may terminate mediation if he determines that mediation efforts are unsuccessful. Upon withdrawal by either party on termination by the mediator, the mediator shall notify the court that mediation efforts have failed, and the divorce action shall proceed in the usual manner.

(e) Upon submission of the parties to mediation under this section, divorce proceedings then pending shall be stayed for a period of 30 days or until the court is notified that mediation efforts have failed. All court orders made under sec. 200 of this chapter remain in effect during the period of mediation.

House Judiciary Committee
March 20, 1975

The meeting was called to order at 7:20 p.m. by Chairman Gardiner. All members were present except Mr. Fink and Mr. Specking.

HB 265/266 Community Legal Assistance

Mr. Brown moved out both bills with a do pass recommendation. Mr. Bradley objected and withdrew his objection. There being no further objection, HB 265 and HB 266 were passed out of committee do pass.

HCR 39 Criminal Code Revision

Mr. Parr moved the bill out do pass. The group objected. Mr. Brown moved that on page 1, line 29, law enforcement officers and members of the lay public be included and "and the like" deleted. There was an objection and Mr. Brown withdrew his amendment.

Mr. Gardiner moved that on page 1, line 25, insert "broadly" after should be and on line 27 put a period after laws and delete the rest of the sentence to line 29 "and be it" The amendment passed.

Mr. Parr moved that on page 2, line 3 "the work of the commission" should be deleted and replaced with "the commission's work." The amendment passed.

Mr. Brown moved HCR 39 am out do pass. There being no objection, the bill was passed out of committee.

HB 237 Divorce/mediation

Mr. Brown moved the following amendments:
page 1, line 14, 15 delete all and insert "Sec. 09.55.115. MEDIATION. (a) At any time within 30 days after a complaint or cross complaint is filed, a party to the action may submit a request to the court"
page 1, line 20, delete all and insert: "the court may at any time order the parties to submit to mediation if there is"
page 1, line 28, delete all and insert: "of any minor children of the marriage, shall attend. Counsel for the parties may attend."
page 2, line 5, delete all of sec (e).
page 1, line 23, delete "himself"
Mr. Brown's amendments passed.
Mr. Brown moved CS HB 237 out of committee do pass. There being no objection, the bill was passed out of committee.

House Judiciary Committee
March 6, 1975

The meeting was called to order at 11:30 a.m. by Chairman Gardiner. All members were present except Reps. Brown and Parr.

CS CS SB 28 Marriage

The committee reviewed the proposed Judiciary CS. Mr. Fink moved and asked unanimous consent that H CS for CS for SB 28 pass out of committee with a do pass recommendation. There being no objections, it was so ordered.

HB 237/238 Divorce

Speaker Bradner, sponsor of the legislation testified that HB 237 was intended to provide for an informal forum outside the Rules of Court Procedure. He suggested the following amendments:

p 1, line 14 - within 30 days after
p 1, line 23 - delete "himself"
p 2 - delete section (e)
add a section stating that counsel may be present

He explained the purposes of HB 238 as follows: if custody is at issue, the court will be notified and will consider the possibility of appointing a lawyer for the child. It specifies the method of payment for the lawyer. Mr. Fink raised the question of why legal services would have a special exception.

The meeting adjourned at 12:10 p.m. and was reconvened at 1:20 p.m. All members were present except Mr. Parr and Mr. Brown.

Art Snowden testified that the Court system had no objections to the bills.

Don Clocksin of Alaska Legal Services stated that they supported HB 237 with the following amendments:
- p 1, line 14 - within 30 days after all necessary papers (cross complaints) had been filed
- p 1, line 20 - may, at any time,
- p 1, line 23 - delete "himself"
- p 2 - delete section (e)

Mr. Fink stated that if (e) were deleted, "himself could be retained for those circumstances where only the judge would be qualified to do the mediation. There was no objection from anyone present.
Mr. Clocksin continued that he thought that the right to counsel in attendance at mediation was implied, but if there was a question to add language to that effect. "Parties to the action and their counsel, if they choose . . "

February 7, 1975

Rudy Johnson
3710 Alaska Ave.
Ketchikan, Ak. 99901

Dear Rudy,

Thank you for your letter of January 28 concerning the possibility of proposing legislation on the issue of domestic relations.

I have been in touch with Representative Mike Bradner regarding this subject and plan to work with him in drafting proposed legislation. I understand that Rep. Bradner has been collecting information and working with other persons interested in this type of legislation. I'm sure that whatever input you might wish to make would also be appreciated.

Thank you for your concern.

Sincerely,

Terry Gardiner
Representative

Rudy Johnson
3710 Alaska Ave.
Ketchikan, Alaska

January 28, 1975

Rep. Terry Gardiner
Alaska House of Representatives
Juneau, Alaska 99881

Dear Terry:

Enclosed is a letter I received from Senator Zeigler. It might be good if you got together with Mike Bradner and discussed this issue of domestic relations. I would certainly like to see meaningful legislation introduced and passed this year.

As of yet I haven't gotten a reply from the Department of Vital Statistics concerning divorce cases in the state. I would sure appreciate that information.

I will be more than happy to assist you or Mike to see this kind of legislation passed.

Thank you very much.

Sincerely yours,

Rudy Johnson

RJ/sm

Alaska State Legislature

Senate

JUNEAU, ALASKA

January 23, 1974

Mr. Rudy Johnson
3710 Alaska Avenue
Ketchikan, Alaska 99901

Dear Rudy:

Since arriving in Juneau, I have had occasion to chat with the Speaker of the House, Mike Bradner of Fairbanks, who is very much interested in our domestic relations statutes. He currently contemplates introducing legislation which would doubtless prove of help to the innocent victims of a divorce proceedings, the children.

I rather have a hunch you told me you have been accumulating material on this subject, and I think it might be of help to him. If his legislation gets through the House, whatever information you send Mr. Bradner will be transmitted to me, and your work may be of great value to the two of us, the legislature and the state.

Regards,

Robert L. Ziegler, Sr.

RHZ/plz

cc - Representative Mike Bradner
House of Representatives
Pouch V
Juneau, Alaska 99811

File with other marriage/divorce letters

March 10, 1975

Mr. Mike Bradner
House of Representatives
Pouch V
Juneau, Alaska

Dear Mr. Bradner:

Thank you very much for your letter of March 4th. The statistics and information you sent will be very useful to me.

I would like to commend you on what appears to me to be two excellent pieces of legislation. If these pass, I believe they will certainly contribute to more equity and fairness in divorce proceedings. As for the House Bill 237, all I can say is, this is excellent and long overdue. I am sure if this becomes law, many men and women will be thankful for it, if they ever find themselves in divorce proceedings. It should effectively take a lot of the profit out of divorce proceedings for some uncouth attorneys, as well as make the whole experience much more bearable and less painfull for the adults and children involved.

I am very impressed with House Bill 238. It's hard to believe it's 1975, and we are just now seeing this kind of legislation being intorduced. This bill is essential to the well being of the hundreds of children affected by divorce in our state every year.

I would like to share the following thoughts with you and make a couple of suggestions on this bill:

I had a telephone conversation with Dr. Paul Hansen, who is President of Fathers United of Baltimore, Maryland, last week. His organization's goals are to see that men are treated fairly and equally in divorce proceedings. They are also currently involved with their local legislatures trying to get legislation passed that will serve this purpose. They are trying to persue a class action suite, that will seek to end biased and unfair decisions in our courts all over the United States. He was telling me that the biggest problem they are having with our judicial system is with the individual judges. Many of these judges are awarding children to mothers rather than fathers for no other reason than they are women. They have recently managed to require a judge to give a written decision to spouses involved in disputed child custody cases, stating his specific reasons for awarding custody as he has. They have had tremendous success with this and in the last year, 18 men in his organization were awarded custody of thier minor children without having to prove the mother to be unfit, but merely showing the court thier being awarded custody will be in the best interest of the children. This seems to substantiate Judge Shultz's remarks about this in our February meeting. He felt a clause in our statutes requiring a judge to give a written decision explaining his reasons for that decision would be very beneficial in guaranteeing all parties involved equality and fairness. After speaking to Dr. Hansen, I am convinced that a clause like this is essential to guarantee the children

of a divorce proceeding a decision that will truly be in their best interest. This would cause the part of our statutes to say,"In determining custody of minor children, the court shall be guided by whats in the best interest of the children, and that should be of paramount concern", to become reality rather than theoretical.

With these thoughts in mind, I would like to ask you to consider ammending your original bill to include a paragraph that would simply read:

"In making a decision on the custody of minor children, in a disputed custody case, the court will state clearly and in detail its reasons for assigning custody to a paticular spouse".

When I spoke to Judge Shultz, he told me he knew of judges that felt no child should have the right to state his desires in a court room, as they weren't old enough to know what they wanted, or what was in their best interest. I seriously doubt there are many judges that feel that way, but to protect the children from the few there are, I would like to suggest changing the word "may" to "will" in paragraph 1, on the courts guidelines that say, "By what appears to be for the best interest of the child and if the child is of sufficient age and intelligence to form a preference, the court 'May' consider that preference." Since this paragraph is only instructing the court to consider the child's feelings, this change would not have the effect of tying the courts hands, so to speak. I think it is necessary to allow the court to be flexable, but at the same time the courts should be obligated to consider a child's feelings since it is the children whose lives are being effected.

I would like to mention that a lot of organizations around the country that are involved in obtaining more just divorce laws are looking eagerly towards the out come of your legislation in the hope it will help their cause in their own state. What you are doing will benefit other states as well as our own, I am sure. Your efforts are most appreciated.

I am wondering if you feel some publicity would be helpful in getting your bills through the House and Senate? Maybe letters to the editor in a few papers etc. If you think you will need more support for these bills, I would be glad to work on that.

Sincerely yours,

Rudy Johnson

Rudy Johnson

cc: Rep. Terry Gardiner

Rudy Johnson
3710 Alaska Ave.
Ketchikan, Alaska 99901

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

45-485-3430

Maria Iverson

Call support instead of alimony

allow negotiable up to 3 years

alimony doesn't exist in other countries

provision that says you can't go back in divorce for alimony - this forces lawyers to go for alimony at divorce time
Man bargains away on divorce issue

Alimony doesn't survive death

Alimony isn't received after re-marriage - common law practice

the fact that people live together means alimony continues

Florida - court rulings and statutes have provision on alimony time restriction
limit alimony to women who don't have skill or education by past experience to support themselves

File re divorce

DON YOUNG
CONGRESSMAN FOR ALL ALASKA

COMMITTEES:
INTERIOR AND INSULAR AFFAIRS
MERCHANT MARINE AND FISHERIES

Congress of the United States
House of Representatives
Washington, D.C. 20515

WASHINGTON OFFICE
1210 LONGWORTH BUILDING
TELEPHONE 202/225-5765

DISTRICT OFFICES
115 U.S. FEDERAL BUILDING
ANCHORAGE, ALASKA 99501
TELEPHONE 907/279-1587

202 U.S. FEDERAL BUILDING
FAIRBANKS, ALASKA 99701
TELEPHONE 907/456-6949

September 10, 1974

Ms. Maria Iverson
RR 4, Box 4430
Juneau, Alaska 99801

Dear Ms. Iverson:

Thank you for your letter and enclosed declaration.

Laws that govern domestic relations are always a matter of the State Legislature, not one of Federal Government. It is not within the power of the Federal Government, nor should it be, to dictate divorce and settlement laws to the states. More and more power has been taken away from the states and it seems to me that the country would be a stronger one if it were more self-governed in terms of state authority.

I am very sympathetic to your declaration and agree that in most states, divorce laws are out-dated and inequitable in terms of settlement costs, property division, etc. You do have to keep in mind that at the times these laws were made, they were done so in order to protect women who had no means of supporting themselves and their children. Fortunately, our society has changed and women's rights have provided them with the ability and right to equal employment and a state of self-sufficiency. Unfortunately, the laws have not changed that much and it is up to us all to see that they do.

I wish you much luck in your endeavors, Ms. Iverson and hope that we will see changes in our own state. You should write to your State legislators, and, since you live in Juneau, it would be much easier to visit them and actively support your case.

Sincerely,

Don Young

DON YOUNG
Congressman for all Alaska

DY:dvc

THIS STATIONERY PRINTED ON PAPER MADE WITH RECYCLED FIBERS

IN THE HOUSE BY: BRADNER

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to marriage and divorce status."

* Section 1. AS 25.15.070. Property acquired during coverture by her own labor is repealed and re-enacted to read:

Sec. 25.15.070 PROPERTY ACQUIRED DURING COVERTURE BY HER OR HIS OWN LABOR. No real or personal property acquired by a married man or woman during coverture by his or her own labor is liable for the spouses debts incurred separately, on contracts, or liabilities of spouse [of her husband], but in all respects is subject to the same exemptions and liabilities as property owned at the time of his or her marriage or afterwards acquired by gift, devise, or inheritance.

* Section 2. AS 09.55.170. Separate domicile or residence, is repealed and re-enacted to read:

Sec. 09.55.170 Separate domicile or residence. In actions for divorce, husbands or wives may acquire a separate residence or domicile from that of the other party without reference among other factors to misconduct or consent of the other party.

* Section 3. AS 09.55.200 Orders during action is repealed.

* Section 4. AS 09.55.200 (1) (3) is repealed and re-enacted to read

Sec. 09.55.200 (3) for the freedom of the husband or wife as the case may be, from the control of the other party during the pendency of the action.

* Section 5. AS 09.55.210 (3) is repealed and re-enacted to read:

Sec. 09.55.210 (3) for the recovery by one party from the other of an amount of money for maintenance, in gross or installments, as may be just and necessary without regard to

which of the parties is in fault, is to be construed for children only.

Section 6. AS 09.55.210 (5) to be repealed and re-enacted to read:

Sec. 09.55.210 (5) for the appointment of one or more trustees to collect, receive, expend, manage, or invest, in the manner the court directs, any sum of money adjudged for the maintenance [OF WIFE], the nurture and education of minor children committed to either party's care and custody;

Section 7. AS 09.55.210 (6) repealed and re-enacted to read:

Sec. 09.55.210 (6) for the division between the parties of their joint property or separate, acquired only during coverture, in the manner as may be reasonable, and without regard to which of the parties is in fault, however the court, in making the division may invade the property of either spouse acquired before marriage when the balancing of the equities between the parties requires it, and to accomplish this end the judgment may require that one or both of the parties assign, deliver, or convey any of his or her real or peraonal property to the other party, the wife is not entitled to all properties the husband owned, it shall be not more then half of the property acquired during coverture to be considered reasonable.

Section 8. AS 11.35.010 Desertion or nonsupport of wife or child. is repealed and re-enacted to read:

Sec. 11.35.010 A person who is the parent or guardian of a child under the age of 16 years dependent upon him or her for care, education or support, and who deserts or abandons the child, or ward, or wilfully fails without lawful excuse, to furnish necessary food, care, clothing, shelter, medical attendance, education or support for the child or ward, guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $500.00 or by imprisonment in a jail for not more

Cont'd

than 12 months, or by both. However, before the trial, with the consent of the defendant, or after conviction, instead of imposing the penalties prescribed, or in addition to those penalties, the court, having regard to the circumstances and the financial ability and earning capacity of the defendant, may make an order, subject to change by it from time to time as circumstances require, directing the defendant to pay a definite sum or a certain weekly sum during such time as the court may direct, into the court for the benefit of the guardian or custodian or place him or her on probation during such time as the court directs, upon his or her entering into an undertaking with one or more sufficient sureties who shall qualify as bail upon arrest in a sum the court directs. The undertaking shall be conditioned so that the defendant shall personally appear before the court whenever ordered to do so and shall at all times comply with the terms of the order or any modification which the court may make, and shall provide that, should the conditions of the bond be broken, the defendant and his or her sureties consent to entry of judgment against them by the court in the amount specified in the undertaking.

Section 9. AS 11.35.040 Application of money recovered.

is repealed and re-enacted to read:

Sec. 11.35.040. In case of a judgment against the defendant and his <u>or her</u> sureties as set out in $ 20 of this chapter and its enforcement by execution, the sum recovered may be paid, in whole or in part, and at the times and in the amounts the court orders, to the guardian or custodian of the minor child for support, <u>or whoever receives custody of the child or children,</u> this is to be construed to mean for children only.

Section 10. AS 11.35.070. Evidence of abandonment or non-support, is repealed and re-enacted to read:

Sec. 11.35.070. Proof of the abandonment or nonsupport of

Cont'd

[A WIFE]or the desertion of a child or ward, or the ommission to furnish necessary food, clothing, shelter or medical attendance for the child or ward is prima facie evidence that the abandonment or nonsupport or ommission to furnish necessary food, clothing, shelter or medical attendance is wilful. No other evidence is required to prove marriage or parenthood than is required in a civil case.

Section 11. AS 11.35.090. is repealed and re-enacted to read.

Sec. 11.35.090. Effect of divorce [AND ALIMONY] and child support. Section 10 of this chapter is applicable to the maintenance and support of a child whether the parents of the child are married or divorced and regardless of a decree made in a divorce action regarding [ALIMONY OR THE SUPPORT OF THE WIFE] support of the child or children.

Section 12. AS. 11.35.--- Effective date of the enactment of these amendments are to be as follows:

Any decree issued within the State of Alaska, whether date of issue is in the future or was prior to the passing of this amendment, will have the right to modification as specified therein, and or any resident of this State, will have the right to ask for modification of his or her decree, regardless of where the decree was issued.

'OPPRESSED' MAN SEEKS ALIMONY LIB

BY RICHARD DOYLE

"I don't care if you prove I'm a whore, I'll still get the kids," my wife taunted, back in 1956.

"We'll see about that," I retorted, giving her a black eye. I'd just returned from overseas duty in the Korean War, defending an allegedly constitutional form of government, to find her shacked up with a guy she'd picked up at the North St. Paul VFW Club.

As it turned out, the black eye was the only personal satisfaction I ever got. My wife was able to make good her promise in spades. She not only won custody of our three children, but succeeded in bringing down on me the entire weight of the righteous, mother-loving legal establishment in the process.

The ensuing litigation was bitter, lengthy and financially devastating. The complaint summarizes how this bounder was jailed for allegedly not supporting a son (who was living with me during the entire period of supposed non-support), how I was driven from a lucrative job and how my children were destroyed by the alley-cat morals of their mother.

As a result of the experiences I had while going through my own divorce, I became cognizant of the viciously anti-male prejudice of the courts, from the lowest municipal bench to the U.S. Supreme Court. The effects of this on my children and those of other men, hundreds of thousands of them, not only destroyed any illusions I had about justice in our courts, but also catapulted me into a lifelong dedication to right these wrongs. I'd been an air traffic control specialist for fourteen years, with an option to become a commercial pilot, but I sacrificed both to embark on my obsessive mission. In 1971, some kindred spirits and I founded a counseling service in Chicago for divorced and separated men.

In a little over a year, our organization compiled voluminous files on over 1,000 men who'd been destroyed and pauperized by divorce. Incorporated into a forthcoming book, which I wrote, they provide examples of incredible, but proven, horror stories.

ENDLESS ATROCITIES

We've seen case after case of children routinely awarded to unfit mothers and of alimony given to women whose assets were already considerably greater than those of their husbands. In one incident, a $9,000,000 award was made to a woman already worth $14,000,000. In another case, the alimony amounted to 105% of the man's income. One judge demanded $1,000 a month in alimony from a man who earned $15,000 a year.

The atrocities are endless. A forty-six day marriage cost one man $167,750 while, in another case, an $11,550,000 settlement was made for "verbal abuse."

Alimony is not an ordinary debt. Marriage is the only civil contract wherein unpaid debts, despite legal prohibition, result in jail. The rationalization through which the courts can order this is tortuous enough to make "Catch-22" seem

Maria Iverson
Make a copy of 1st part of article for me - Bill

logical in comparison. One man spent five years in jail for incurred debts, and another was sentenced for life. The New York debtor's prison, a disgrace for the world to see, is popularly referred to as "alimony jail."

Because the word alimony is falling into disfavor, the courts are now calling the husband's payments "child support," even though the amounts demanded are two to four times the realistic cost of each child. Child support is actually worse than alimony, because child support does not terminate upon the wife's remarriage. And it's not unusual for a man to be jailed for inability to meet child support payments.

The varieties of injustice perpetrated during divorce proceedings are endless. Our Chicago counseling service found many cases of men who were evicted from their inherited or personally constructed homes and torn from their children on the mere whim of a woman, without opportunity to oppose the action in court. There is no way in which this kind of judicial custom and practice can be construed as Due Process or even-handed law.

As we compiled facts, it became clear that, while women are admittedly discriminated against in some areas, so are men. Male oppression is not restricted to domestic relations, but runs the gamut from eligibility for retirement benefits to liability for criminal offenses.

Male criminals are shafted, from conditions of arrest to conditions of confinement. For example, if a man looks into a home while a woman is undressing, he's arrested for window peeping. Reverse the situation, with the woman looking into a man's home, and the man will still be arrested, this time for indecent exposure. In Texas, a man and woman went swimming in the nude. The man was arrested, the woman was not. A woman's prison is sometimes like a campus, complete with T.V.-equipped, furnished cottages. Men's prisons are often like dungeons, with the prisoners caged like animals behind steel and concrete.

As a result of our investigations, our cause widened and deepened into a true men's liberation movement. Men don't need to be liberated *from being* men, but liberated *to be* men.

Our Chicago men's rights movement became strong. However, other cities were still behind the times in the important area of men's li ration. For this reason, still devoting all our time and energy to the crusade, we incorporated the Men's Rights Association in St. Paul, Minnesota in 1973. We did so by begging and borrowing funds. Since then, sometimes we draw salaries, sometimes we can't. The Association now boasts 1,400 members.

The stated purpose of the Men's Rights Association is to obtain equal rights for men under all areas of the law. We lobby for sensible legislation, educate the judiciary and the public and counsel individual members in legal matters. We've filed complaints with the Human Rights Commission and are planning class-action lawsuits on behalf of men.

Men's Rights Association functions as a collective bargaining agency for its members. We're able to divert money from divorce racketeer lawyers to attorneys around the country who will work diligently for us for reasonable fees. This saves our members an average of thousands of dollars each. Equally important, it often saves the mens' rights to their children.

ONLY ONE WEAPON

A woman has many weapons in a divorce battle: her looks, her favors, her tears, a carte-blance access to government-subsidized lawyers and the prejudicial orientation of the establishment. Conversely, a man has only one weapon, his money. He must know how or how not to use it and only competent counseling can provide this knowledge. The $40 Men's Rights Association membership donation may be the best investment a potential victim can make.

Men's Rights Association already has created powerful enemies. Divorce has

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

file with divorce info



Superior Court

State of Alaska

FIRST JUDICIAL DISTRICT
STATE CAPITOL BUILDING
POUCH U
JUNEAU, ALASKA
99801

THOMAS B. STEWART
PRESIDING JUDGE

March 24, 1975

Mr. Rudy Johnson
3710 Alaska Avenue
Ketchikan, Alaska 99901

Dear Mr. Johnson:

This is in response to your letter of March 2, 1975, concerning legislation on divorce, alimony, and child custody. I regret the unavoidable delay that has occurred in making response to your letter.

With respect to your question no. 1, I feel that it is possible to obtain a fair and equitable settlement for both parties involved as our present statutes read. Those statutes must be read together with the decisions of our Supreme Court interpreting them, and one feature to note is that fault is not to be considered in the division of property interest between the parties. The standard for determining child custody is the best interest of the child, and the case of King v. King which you cited, reported at 477 P.2d 356, stands for that proposition and not for a so-called "tender years doctrine". In fact, in the King case the decision which I made awarding the custody to the father was affirmed by the Supreme Court.

With regard to your question no. 2 on men and women being treated with equality in child custody matters, I am inclined to think that this is so. The King case cited above would confirm this view.

With respect to your question no. 3 on giving weight to the opinion of children as to where they would rather live, I can't comment about the decisions of other judges since I am not aware of them. In my own experience, the child's opinion is given substantial weight, of course depending upon tne age and capacity of the child to form an intelligent opinion. Again, the ultimate decision is based on a standard of what is in the best interest of the child. Any judge is always entitled to take into consideration the child's own desires in reaching an ultimate conclusion.

With respect to your item no. 4 on the stringency of the grounds for divorce, I see no particular need for change in this respect. Our "incompatibility of temperament" ground amounts to a no-fault basis for divorce, and I am inclined to the view that this is appropriate in the modern society.

With respect to the alimony laws, I find nothing unjust about them when construed together with court decisions. Recent decisions make it clear that alimony be awarded from a wife to a husband if the relative earning capacity of the parties and their needs would so indicate. That rather seldom happens, but it's one of the possibilities under our existing law where the facts might justify it.

As indicated above, I have already commented on the guidelines generally followed in determining the custody of minor children, i.e., what is in the best interest of the child. In this connection, you should be aware of the recent publication entitled "Beyond the Best Interest of the Child" by Goldstein, Freud and Solnit. This volume provides some interesting new insights and suggests a standard involving the concept of the least detrimental alternative to the child. In a sense this is consistent with the "best interest" concept although it involves some aspects that depart from more traditional views of the latter standard. I commend the volume to you for your reading in the course of the studies you are making.

Please do not hesitate to write further if you have additional questions of me on this subject.

Very truly yours,

Thomas B. Stewart

Thomas B. Stewart
Presiding Judge

TBS:pw

Superior Court
State of Alaska
FIRST JUDICIAL DISTRICT
STATE CAPITOL BUILDING
POUCH U
JUNEAU, ALASKA
99801

CHAMBERS OF
VICTOR D. CARLSON, JUDGE

March 18, 1975

Mr. Rudy Johnson
3710 Alaska Avenue
Ketchikan, Alaska 99901

Re: Statutes concerning divorce, alimony, and child custody

Dear Mr. Johnson:

This is in reply to your letter of March 2, 1975. In contested divorce cases both parties are able to receive fair and equitable settlements within the perimeters of emotions, assets, and the parties and court's ability to foresee what problems may arise in the future. The statutes are not a hindrance to fair and equitable settlements. I believe men and women are being treated, as much as possible, equally with regard to child custody questions. Our society generally recognizes that a mother has greater ability to raise a young child than does a father.

The question concerning a child's right to decide with which parent he will reside is difficult to answer, since each judge has his own ideas of what is best for a youngster in a particular situation. Personally, I listen to youngsters of less than 14 years of age and take into account their feelings when awarding custody, however, it cannot always be the youngsters choice, and sometimes just by giving the youngster an opportunity to voice his opinion is putting undue pressure on the youngster.

The grounds for divorce should be amended to include

the fact that a marriage has ceased to exist; that is, that the relationship between the parties is not a viable marital relationship. Presently, our statutes provide that incompatibility of temperament is a grounds for divorce and this reason should be retained and my suggestion would be an addition which would not require proof that the parties cannot get along, but merely the fact that they are not getting along and working together for common goals.

The present alimony laws are flexible and give the judge the necessary discretion to provide for the support of the needy party, if such an order appears justified under all of the circumstances.

You asked for further explanation concerning the writer's feelings about the treatment of men and women in child custody cases. I believe the Alaska Supreme Court has taken an enlightened approach concerning the custody of children by emphasizing the best interest of the child. I suggest that you read King v King, 477 P.2nd 356 (Alaska 1970). The question is not the unfitness of a particular parent, but what is the best interest of the child.

My record of being reversed on child custody questions is poor, however, the criteria I use are those enunciated by the Alaska Supreme Court, which include keeping siblings together, placing children in a two adult home in order that both parental figures can be observed and the child can model his life in relation to both a man and a women, evaluation of each parent's abilities to exercise parental responsibilities as evidenced by how well they have exhibited parental responsibilities in the past, and an overall analysis of which parent's home will provide the better environment for the youngster to grow into a viable adult.

You comment that many women would not seek a divorce if they felt they might lose their children. Stated as I have done that may well be true, however, I think that the main reason why many women are seeking divorces today, who would not have done so in the past, was the lack of opportunity for earning a living and maintaining themselves as individual economic units. In the past, women did not give up the opportunity for divorce because of family reasons in whole, but simply were in no position to support a family on their own. I believe that the transition from viewing women as dependent individuals to viewing a women as a people fully competent in their own right to exercise all personal rights, which men have

have exercised historically, is better for our society. The transition period is difficult, especially for males. In summary I am saying that many bad marriages were continued because of the woman's feeling that she had no other alternative. I believe that marriages should not be continued under coercion and that it does not make for the best environment to raise a family when the marriage is maintained because there is no alternative.

Thank you for giving me this opportunity to comment and if I may be of further assistance please do not hesitate to ask.

Very truly yours,

Victor D. Carlson

VICTOR D. CARLSON
Superior Court Judge

VDC/jm

Superior Court

State of Alaska

March 17, 1975

CHAMBERS OF
JAMES A. HANSON, JUDGE

BOX 3891
KENAI, ALASKA
99611

941 FOURTH AVENUE
ANCHORAGE, ALASKA
99501

Mr. Rudy Johnson
3710 Alaska Avenue
Ketchikan, Alaska 99901

Dear Mr. Johnson;

In brief answer to your letter of March 2, 1975. I would answer questions 1,2,3 and 5 in the affirmative. With the power a judge now has to require marriage counseling in appropriate cases, no change in existing law appears necessary.

Very truly yours,

James A Hanson

JAMES A. HANSON
Superior Court Judge

JAH/bls

Terry Gardiner
State Representative
Pouch V
Juneau, Alaska 99901

Dear Terry,

Enclosed is a letter to Mike Bradner and some other information I thought you may be interested in. I would appreciate your comments on there contents.

Thank you very much for the statistics you recently sent me. I believe these figures definitely reveal some very serious problems within the scope of domestic relations in our state. By this time next year, I hope to have enough information on this to be able to form some conclusions on how to best approach these problems and in fact find out just what the problems are.

I've certainly enjoyed working on this and have really appreciated your interest and help. We will be looking forward to seeing you home pretty soon.

Sincerely,

Rudy Johnson

Rudy Johnson
3710 Alaska Ave.
Ketchikan, Alaska
99901

Mike Bradner
Speaker of the House
House of Representatives
Pouch V
Juneau, Alaska 99801

Dear Mike:

First of all, let me say it was a real pleasure to meet you recently while you were in Ketchikan. Our conversation was very stimulating. It's nice to know there are people like yourself in seats of the government who are as concerned as you seem to be with issues as important as domestic relations, even though it's an unpopular and controversial subject. I admire your willingness to persue it even though there doesn't seem to be any political advantage in doing so.

I've received several letters from Superior Court Judges, along with some more statistics from Terry Gardiner, that I would like to share with you. I also would like to offer my thoughts on the results of some studies I have been making.

When I first became interested in studying this issue, I was of the opinion that our state statutues were very biased and unjust concerning domestic relations. I felt our courts were not treating men fairly when they were involved in a domestic relation dispute. Since then I have found that we have equal rights amendments to our state constitution that guarantees men equallity as well as women. This amendment has the same effect as changing the wording in our statutes to apply in all cases to both sexes. If you remember that was one of my suggestions, but according to these letters from some of our judges, and many court rulings recently made, this really isn't necessary. I am also inclined to believe that our courts are generally doing a good job in seeing that peoples rights and responsibilities are being protected in these kind of disputes. I believe several very serious problems will be eliminated if your two bills pass, mainly H.B. 237 and 238. However, I have talked to around 100 recently divorced men and women in the past eight months about these things and it seems there is very definitely a real problem in our state concerning divorce, alimoney and child custody issues. It appears that most of these disputes are settled before the courts ever hear the case. I have been absolutely amazed to learn that most people who have been through a divorce are very ignorant as to what our state laws are concerning their own situation, even though they have paid dearly for professional legal advice. I am convinced that many men as well as women are agreeing to out of court settlements that are very unacceptable to them on the advice of there attorneys, believing they have no other alternative. If my suspicions are substatiated, I believe it is imperitive this be put to a stop. Although I believe our courts are generally doing a good job, I suspect not all courts in the state are. I want very much to persue my studies and find out just what the facts really are. I have every intention of doing this.

You mentioned while you were here that there was consideration of forming an AD HOC committee to investigate this issue. I believe that it is a very good idea and in fact very necessary when you consider the magnitude of the effect divorce has on the children involved as well as the adults and our society as a whole.

According to the statistics you and Terry have provided for me, at least where children are involved, women are filing for a divorce two and a half times as often as men. I believe it's very important to find out why this is so. I hope to find out how many of these cases involve child custody disputes, and find out what the results were of those disputes. I plan on checking the records in each judicial district and see how the individual judges are ruling. This should reveal any biased courts, should they exist. I have plans of talking with many more individuals about their personal experiences with divorce and to find if in fact they are or have been mislead by their attorneys. I hope to find out if this is a common occurance and find out which attorneys are causing the problems.

In the last 5 years, in Alaska there were 5728 divorces that involved children. This represents 11501 children. According to these figures, there will be over 2300 children involved in a broken home in our state this year and the figures are getting larger every year.

The Alaska Supreme Court has ruled that in custody disputes, the best interest of the children is to be the deciding factor in awarding custody, without regard to sex of the parent. I am very certain that the best interest of these many thousands of childre is in fact not being protected because of problems that exist. Most of these problems are probably never made known to the courts because the case is so often settled before it ever gets to them.

With these thoughts in mind, I believe it is very much in the interest of the state to persue this and follow an investigation where ever it may lead, and take appropriate action to correct any problems that are found to exist. I am not sure if you said you were personally considering forming an AD HOC committee or not, but at any rate I hope that it gets done and I would like to participate myself if this happens. If there are any plans that you are aware of to do this, I would appreciate knowing about it and would like to help if I could. Although it would make an investigation much easier and quicker with a state wide effort, I plan on persuing this myself, even if it is not organized. I would like to say, though, that its extremely difficult to get the information needed to come up with any factual results without some authority. For instance, I still haven't personally heard from the department of vital statistics in Juneau about information I've requested, other than they wrote to say they had no idea how long it would take to get the information. On the other hand, you and Terry got the same information long ago. So if there are no plans for a state wide AD HOC committee to be formed, I'm wondering if you could officially ask me to provide the information I've mentioned here along with anything else you may feel pertinent to revealing the facts of this matter. This would certainly help me to get results I am sure. If I had such a request in the form of a letter, it should provide the authority I think I am going to need to get some degree of cooperation with the different agencies I plan on contacting. These are my thoughts at this time, and I am certainly open to any suggestions you may have as to how this matter should best be approached.

With that, I'll be looking forward to hearing from you, and want to thank you for all the time you have given me. Could you please let me know what the status of HB 237 and HB 238 is.

Sincerely,

Rudy Johnson

Rudy Johnson
3710 Alaska Ave.
Ketchikan, Alaska

Superior Court
State of Alaska
FIRST JUDICIAL DISTRICT
STATE CAPITOL BUILDING
POUCH U
JUNEAU, ALASKA
99801

CHAMBERS OF
VICTOR D. CARLSON, JUDGE

March 18, 1975

Mr. Rudy Johnson
3710 Alaska Avenue
Ketchikan, Alaska 99901

Re: Statutes concerning divorce, alimony, and child custody

Dear Mr. Johnson:

This is in reply to your letter of March 2, 1975. In contested divorce cases both parties are able to receive fair and equitable settlements within the perimeters of emotions, assets, and the parties and court's ability to foresee what problems may arise in the future. The statutes are not a hindrance o fair and equitable settlements. I believe men and women are being treated, as much as possible, equally with regard to child custody questions. Our society generally recognizes that a mother has greater ability to raise a young child than does a father.

The question concerning a child's right to decide with which parent he will reside is difficult to answer, since each judge has his own ideas of what is best for a youngster in a particular situation. Personally, I listen to youngsters of less than 14 years of age and take into account their feelings when awarding custody, however, it cannot always be the youngsters choice, and sometimes just by giving the youngster an opportunity to voice his opinion is putting undue pressure on the youngster.

The grounds for divorce should be amended to include

the fact that a marriage has ceased to exist; that is, that the relationship between the parties is not a viable marital relationship. Presently, our statutes provide that incompatibility of temperament is a grounds for divorce and this reason should be retained and my suggestion would be an addition which would not require proof that the parties cannot get along, but merely the fact that they are not getting along and working together for common goals.

The present alimony laws are flexible and give the judge the necessary discretion to provide for the support of the needy party, if such an order appears justified under all of the circumstances.

You asked for further explanation concerning the writer's feelings about the treatment of men and women in child custody cases. I believe the Alaska Supreme Court has taken an enlightened approach concerning the custody of children by emphasizing the best interest of the child. I suggest that you read King v King, 477 P.2nd 356 (Alaska 1970). The question is not the unfitness of a particular parent, but what is the best interest of the child.

My record of being reversed on child custody questions is poor, however, the criteria I use are those enunciated by the Alaska Supreme Court, which include keeping siblings together, placing children in a two adult home in order that both parental figures can be observed and the child can model his life in relation to both a man and a women, evaluation of each parent's abilities to exercise parental responsibilities as evidenced by how well they have exhibited parental responsibilities in the past, and an overall analysis of which parent's home will provide the better environment for the youngster to grow into a viable adult.

You comment that many women would not seek a divorce if they felt they might lose their children. Stated as I have done that may well be true, however, I think that the main reason why many women are seeking divorces today, who would not have done so in the past, was the lack of opportunity for earning a living and maintaining themselves as individual economic units. In the past, women did not give up the opportunity for divorce because of family reasons in whole, but simply were in no position to support a family on their own. I believe that the transition from viewing women as dependent individuals to viewing a women as a people fully competent in their own right to exercise all personal rights, which men have

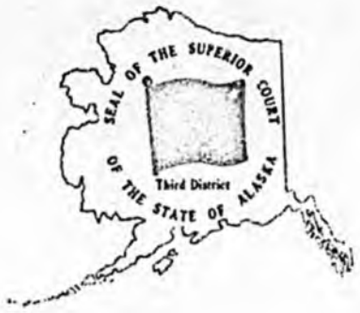
have exercised historically, is better for our society. The transition period is difficult, especially for males. In summary I am saying that many bad marriages were continued because of the woman's feeling that she had no other alternative. I believe that marriages should not be continued under coercion and that it does not make for the best environment to raise a family when the marriage is maintained because there is no alternative.

Thank you for giving me this opportunity to comment and if I may be of further assistance please do not hesitate to ask.

Very truly yours,

VICTOR D. CARLSON
Superior Court Judge

VDC/jm



Superior Court

State of Alaska

March 17, 1975

CHAMBERS OF
JAMES A. HANSON, JUDGE

BOX 3691
KENAI, ALASKA
99611

941 FOURTH AVENUE
ANCHORAGE, ALASKA
99501

Mr. Rudy Johnson
3710 Alaska Avenue
Ketchikan, Alaska 99901

Dear Mr. Johnson;

In brief answer to your letter of March 2, 1975. I would answer questions 1,2,3 and 5 in the affirmative. With the power a judge now has to require marriage counseling in appropriate cases, no change in existing law appears necessary.

Very truly yours,

James A. Hanson

JAMES A. HANSON
Superior Court Judge

JAH/bls

CHAMBERS OF
RALPH E. MOODY, JUDGE

Superior Court
State of Alaska
THIRD JUDICIAL DISTRICT
303 K STREET
ANCHORAGE, ALASKA
99501

March 21, 1975

Mr. Rudy Johnson
3710 Alaska Avenue
Ketchikan, Alaska 99901

Dear Mr. Johnson:

In reply to your questions of March 2, 1975, regarding divorce, I believe existing state laws provide an adequate framework within which the courts can equitably adjudicate the rights of all the parties concerned.

The following are your questions with my answers thereafter.

(1) In contested divorce cases do you feel it is possible to obtain a fair and equitable settlement for both parties involved as our present statutes read?

Yes.

(2) Do you feel men and women are being treated equally in child custody cases?

The law so provides. I have no basis for believing the law is not followed.

(3) Do you feel children are given enough authority in deciding which parent they would rather live with?

Yes.

(4) Do you feel grounds for a divorce should be made more stringent or more relaxed?

Present laws appear to be satisfactory.

Sincerely,

Ralph E. Moody
Superior Court Judge

REM:dpd

Supreme Court

State of Alaska

941 Fourth Avenue
Anchorage, Alaska 99501

April 14, 1975

Mr. Rudy Johnson
3710 Alaska Avenue
Ketchikan, AK 99901

Dear Mr. Johnson:

This is in reply to your letter of March 2, 1975, concerning the handling of divorce cases in Alaska particularly those involving custody of minor children. At the outset I would like to apologize for the delay in my reply. This is attributable to the extreme press of business of late as well as a recent two-week illness which kept me out of the office.

In your letter you asked five questions, I will try to answer those questions in order and as requested by you I will attempt to expound particularly on question number 2. Those questions and my reply to them are as follows:

1. In contested divorce cases do you feel it is possible to obtain a fair and equitable settlement for both parties involved as our present statutes read?

Answer: In my opinion a fair and equitable decision as to both parties is not only possible but is generally the case.

2. Do you feel men and women are being treated equally in child custody cases?

Answer: Generally, yes. I would disagree with those who say that it is "almost impossible for a man to gain custody of his children in Alaska, unless he can prove his wife is unfit". I have on a number of occasions awarded

custody to the husband despite the fact that the mother was found to also be a fit parent. The decision in a particular case of course turns upon the facts of that case but in all instances the primary concern of the court should be the best interest of the children. What their interest requires depends upon the surrounding circumstances with particular regard to the age of the children, the feelings of the children toward one parent or another, the ability of one parent or the other to provide a suitable home, and very often the work requirements of the two parents. In those cases involving children of tender years, it is probably true that the wife usually prevails. In my experience, however, that result is by no means automatic. It is, rather, a recognition that generally speaking a mother is probably better able to care for an infant as more often than not she is able to spend more time with the child fulfilling the needs that he has.

3. Do you feel children are given enough authority in deciding which parent they would rather live with?

Answer: Generally, yes. There may of course be exceptions, however it is very difficult to generalize when talking about a subject as complex as the custody of children.

4. Do you feel that the grounds for a divorce should be more stringent or more relaxed?

Answer: My personal belief is that the present state of affairs is perhaps about as it should be. Having practiced in a jurisdiction where the requirements were far more stringent than they are in Alaska, I eventually came to the conclusion that that strong requirement had a tendency simply to encourage fraud and perjury on the part of the litigants and did very little to hold a marriage together. The stronger laws also seem to have a disadvantage where minor children were involved in that it simply added fuel to an already hot fire and in many cases those suffering most were the children involved in the dispute between the parents.

5. Do you feel our present alimony laws are just?

Answer: Yes. Again, there may be abuses and injustice in certain cases. However, I feel that those represent misapplications of the law rather than fault with the law itself.

You have also expressed an interest in knowing what guidelines I have followed in determining custody of minor children in divorce cases. The fundamental rule that I have tried to follow is to do in all cases what in my belief was in the best interest of the children. As between parent and child, the feelings and interest of the parents must yield. The various factors that I generally tried to consider are: the wishes of the parents; the wishes of the child; the apparent strength of the bond between the respective parents and the child; the ability of the respective parents to fulfill both the material and emotional needs of the child; and, in many cases, whether or not the parent's desire for custody was based upon his or her love for the child rather than from a mere desire to hurt the other parent.

In summary, I would have to say that I could not agree more fully with your observation that divorce is very tragic and particularly so when it involves minor children. I hope that these few comments can be of some assistance to you.

Very truly yours,

Edmond W. Burke
Supreme Court Justice

Superior Court
State of Alaska
FIRST JUDICIAL DISTRICT
STATE CAPITOL BUILDING
POUCH U
JUNEAU, ALASKA
99801

THOMAS B. STEWART
PRESIDING JUDGE

March 24, 1975

Mr. Rudy Johnson
3710 Alaska Avenue
Ketchikan, Alaska 99901

Dear Mr. Johnson:

This is in response to your letter of March 2, 1975, concerning legislation on divorce, alimony, and child custody. I regret the unavoidable delay that has occurred in making response to your letter.

With respect to your question no. 1, I feel that it is possible to obtain a fair and equitable settlement for both parties involved as our present statutes read. Those statutes must be read together with the decisions of our Supreme Court interpreting them, and one feature to note is that fault is not to be considered in the division of property interest between the parties. The standard for determining child custody is the best interest of the child, and the case of King v. King which you cited, reported at 477 P.2d 356, stands for that proposition and not for a so-called "tender years doctrine". In fact, in the King case the decision which I made awarding the custody to the father was affirmed by the Supreme Court.

With regard to your question no. 2 on men and women being treated with equality in child custody matters, I am inclined to think that this is so. The King case cited above would confirm this view.

With respect to your question no. 3 on giving weight to the opinion of children as to where they would rather live, I can't comment about the decisions of other judges since I am not aware of them. In my own experience, the child's opinion is given substantial weight, of course deperding upon the age and capacity of the child to form an intelligent opinion. Again, the ultimate decision is based on a standard of what is in the best interest of the child. Any judge is always entitled to take into consideration the child's own desires in reaching an ultimate conclusion.

With respect to your item no. 4 on the stringency of the grounds for divorce, I see no particular need for change in this respect. Our "incompatibility of temperament" ground amounts to a no-fault basis for divorce, and I am inclined to the view that this is appropriate in the modern society.

With respect to the alimony laws, I find nothing unjust about them when construed together with court decisions. Recent decisions make it clear that alimony be awarded from a wife to a husband if the relative earning capacity of the parties and their needs would so indicate. That rather seldom happens, but it's one of the possibilities under our existing law where the facts might justify it.

As indicated above, I have already commented on the guidelines generally followed in determining the custody of minor children, i.e., what is in the best interest of the child. In this connection, you should be aware of the recent publication entitled "Beyond the Best Interest of the Child" by Goldstein, Freud and Solnit. This volume provides some interesting new insights and suggests a standard involving the concept of the least detrimental alternative to the child. In a sense this is consistent with the "best interest" concept although it involves some aspects that depart from more traditional views of the latter standard. I commend the volume to you for your reading in the course of the studies you are making.

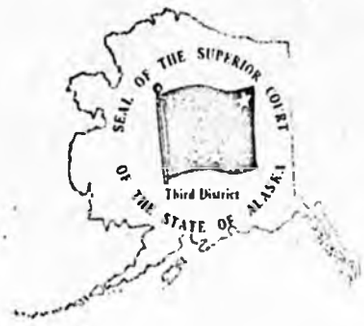
Please do not hesitate to write further if you have additional questions of me on this subject.

Very truly yours,

Thomas B. Stewart

Thomas B. Stewart
Presiding Judge

TBS:pw



Superior Court

State of Alaska

THIRD JUDICIAL DISTRICT

303 K STREET

ANCHORAGE, ALASKA

99501

CHAMBERS OF

JAMES K. SINGLETON, Jr., JUDGE

March 24, 1975

Mr. Rudy Johnson
3710 Alaska Avenue
Ketchikan, Alaska 99901

Re: Child Custody and Support in Alaska

Dear Mr. Johnson:

Thank you for your letter of March 2, 1975, in which you ask my opinion of existing law regarding marital property settlements, alimony, child support and custody. I believe two decisions I wrote in a case called Markley vs Markley, Superior Court No. 72-1910 fully set forth my opinion in these issues. I am enclosing them for your consideration.

I hope these will be of assistance to you.

Very truly yours,

James K. Singleton

JAMES K. SINGLETON
Superior Court Judge

JKS/jm

enclosures

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

AMY ANNE McMILLAN,)
)
Plaintiff,)
)
vs.)
)
THOMAS ROBERT McMILLAN,)
)
Defendant.)
)

No. 71-1876

ORDER DENYING MOTION FOR ATTORNEY'S FEES AND COSTS, PROVIDNG FOR CHILD SUPPORT THROUGH COURT TRUSTEE, AND ADOPTING PARTY'S AGREEMENT REGARDING VISITATION

This court entered its Findings of Fact and Conclusions of Law on August 3, 1973, in which I denied defendant's motion to amend the decree of divorce dated July 30, 1971, to reduce child support.

On August 17, 1973, plaintiff filed a motion asking for the following: (1) an award of $3,610.18, or some other reasonable amount, as attorney's fees since she was the prevailing party; (2) that future child support, as well as any arrearage, be paid through the Court Trustee; (3) that this court fix visitation consistent with a letter agreement between the parties; (4) for an award of costs; and (5) for a court determination whether child support should continue during any period when when the children were visiting Mr. McMillan.

I will deal with these issues in order.

The Supreme Court in Houger v. Houger, 449 P.2d 766 (Alaska 1966) held that costs and attorney's fees in domestic relations matters were support, not costs; and, consequently, should be distributed between the parties on the basis of their support rights and duties rather than on the basis of the "prevailing party" test mandated by Civil Rules 54 and 82. Support is traditionally determined on the basis of the spouse's relative

need and ability to pay.[1/]

In the instant case, I have found Mr. McMillan's earning capacity to be $3,000 per month, and Mrs. Springer, nee McMillan, to have an earning capacity of $800 per month as a secretary or officer manager. In addition, Mrs. Springer is married to a man whom she testified has an earning capacity of approximately $80,000 per year, or $6,600 + per month (approximately twice Mr. McMillan's!). Further, Mr. McMillan is paying Mrs. Springer $300 per month per child as support, and Mrs. Springer testified that this amount was not segregated for use by the children but was paid into a joint account into which Mr. Springer paid an equal amount and out of which all of the monthly expenses of the Springer household were paid. Thus, while Mr. McMillan has a greater earning capacity than Mrs. Springer, both are in the upper quadrant of earnings in Alaska, and Mr. McMillan is paying Mrs. Springer $900 per month as child support.

Based upon these facts, I have exercised my discretion and determined not to award Mrs. Springer her attorney's fees.

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1. I have dealt with similar issues in Bishop v. Bishop, Superior Court No 70-2497 (2-6-73); and Markley v. Markley, Superior Court No. 72-1910 (8-8-73).

Generally I distribute costs and attorney's fees between the parties to a divorce in the following manner. First, I calculate each party's net earning capacity (generally on the basis of present earnings disclosed in their financial declarations, but present earnings are not conclusive any more than they are in workmen's compensation; cf. AS 23.30.210). Then I determine the total attorney's fees necessarily and reasonably incurred by both parties, i.e. the marital community in obtaining a divorce. (In determining necessity and reasonableness, I look to Canon 12 of The Canon of Ethics.) I then distribute the total fees between the parties on the basis of their respective net earning capacity, e.g. suppose husband's after-tax earnings (i.e. take-home pay) accurately reflects his net earning capacity and amounts to $600 per month, while wife's after-tax earnings reflect her earning capacity and amounts to $400 per month. Suppose, further, that each party has incurred $600 of attorney's fees (the average for a contested divorce). The parties' total net earnings are $1000 per month. The total fees are $1200. Husband's share is 60% or $720, and wife's share is 40% or $480. Thus, husband would pay his $600 fee plus contribute $120 toward the wife's $600 fee.

I did not follow this approach in those cases where special circumstances make such a procedure unfair. I believe this to be such a case.

I realize that Houger, supra, has been interpreted by some superior courts as standing for the proposition that AS 09.55.200(a)(1) requires an award of costs and attorney's fees to the wife in every domestic relations matter regardless of the economic position of the parties, the nature of the litigation, and its outcome. Cf. Miklautsch v. Dominick, 452 P.2d 438, 440, n. 9 (Alaska 1969). I believe that this interpretation of Houger, supra, is erroneous and that the error is clear from an examination of the Houger decision. The Supreme Court relied upon AS 09.55.200(a)(1) [2/] and 3 Nelson, Divorce and Annulment, sec. 29.03, Cost Items at 214 (1945), for the proposition that attorney's fees and costs in domestic relations matters were "support", not "costs". It should be noted, however, that a husband under Alaska law has no greater obligation to support his wife (AS 47.25.230) or child (AS 25.20.030) than his wife has to support him or her child (ibid.). The duty to support in Alaska is not a function of sex, but of need and ability to pay. Reference should also be made to AS 11.35.010 as amended which governs imposition of criminal penalties for failure to support without regard to sex.

There is nothing in AS 09.55.200 inconsistent with this approach. The language is permissive, not mandatory:

> " . . . (M)ay provide by order (1) that the husband pay an amount of money to enable the wife to prosecute or defend the action." (emphasis supplied)

The statute applies to orders pendente lite and not to final orders; and the order involved is only to "enable the wife to prosecute or defend" presupposing that absent an award, the wife could not effectively participate in the action. It should be noted that the predecessors to AS 09.55.200 were enacted at a time when the average married woman was totally economically dependent upon her husband for support. It would be wrong to suppose that all of the economic disadvantages women as a sex suffer have been removed by the greater employment opportunities now available to women. But in this

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2. AS 09.55.200 provides:

> Orders during action. (a) During the pendency of the action, the court may provide by order
>
> (1) That the husband pay an amount of money as may be necessary to enable the wife to prosecute or defend the action; . . .

age of women's liberation where in the state of Alaska almost every woman who has sought a divorce in my court has been steadily employed, or readily employable, a specific person's economic needs should be a question of fact, not presumption of law predicated on social and cultural considerations that in the present might properly be termed a matter of historical accident.

In saying this, I do not mean to substitute one inaccurate stereotype or generalization about married women involved in domestic litigation, i.e. an independent, self-supporting liberated woman, for another, i.e. the classic dependent, unskilled and uneducated household drudge. I realize that some married women are not trained for today's labor market, and that others who have the education and experience to prosper nevertheless have been out of the labor market and have been conditioned to lack confidence in themselves; and thus, will have greater difficulty getting back into that market. I also realize that women generally make less money than men. All I am saying is that each case should be decided on its own facts.

Any other view of this problem is, in my opinion, constitutionally suspect.[3/] While the proposed Federal Equal Rights Amendment to the United States Constitution (H.R.J. Res. 208, 92nd Cong. 1st Sess. (1971) and S J. Res. 92nd Cong. 1st Sess. (1971)) has been ratified in Alaska, it will not be effective untill three-fourths of the United States have ratified it which has not occurred. Nevertheless, Alaska has independently adopted a constitutional amendment which precludes, in my opinion, a classification based solely on sex. (Cf. Alaska Constitution, art. I, sec. 3, which prevents denial of a civil or political right on the basis of sex, with art. I, sec. I, which makes equal protection a civil right.) Read together, these provisions, in my opinion, preclude any statute from making a classification based solely on sex. Thus, a party's right to costs and attorney's fees must turn on that party's economic position, not his or her sex. See Brown, et al., The Equal Rights Amendment, 80 Yale L.J. 871, 944-46 (1971); and cf.

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3. If the husband must pay the wife's fees in every case, many husbands will, because of poverty, be precluded from litigating child custody even though they could provide a better home for the children than their wives. This, too, is a constitutionally questionable procedure. Cf. Boddie v. Conn., 401 U.S. 371, 28 L. Ed.2d 113, 120 (1971).

Reed v. Reed, 404 U.S. 71, 75, 92 S. Ct. 251, 30 L. Ed.2d 225 (1972) and Alexander v. Louisiana, 405 U.S. 625, 633-44, 31 L. Ed.2d 536, 92 S. Ct. 1221 (1972) (concurring opinion, Douglas, J.).

The foregoing analysis also finds support in the legislative history of AS 09.55.200. Congress in legislating a code of laws for the then Territory of Alaska in 1900 drew primarily from the existing laws of Oregon. See City of Fairbanks v. Schaible, 375 P.2d 201, 207 (Alaska 1962). The laws governing divorce were included in the Alaska Code of Civil Procedure which was derived from the Oregon Code of Civil Procedure. AS 09.55.200 as originally enacted was Sec. 47(1) of Carter's Annotated Code which was based on Hill's Annotated Laws of Oregon, Sec. 500, enacted on October 11, 1862. The present Oregon statutes are Secs. 107.095 and 107.090, Oregon Revised Statutes. (For a discussion of the source of the Alaska Code, see Frederick E. Brown, The Sources of the Alaska and Oregon Codes, Part I: New York and Oregon, 2 U.C.L.A.-Alaska L. Rev. 15 (1972) and Part 2: The Codes in Alaska, 1867-1901, id. at 87 (1973).) The Oregon Code was in turn derived from Field's New York Code of Civil Procedure. See Brown, supra, and Harris, The History of the Oregon Code, Part I, 1 Ore. L. Rev. 129 (April 1922); Part 2, 1 Ore. L. Rev. 184, 210-15, esp. p. 215 (June 1922). Variations of the Field Code of Civil Procedure were adopted in all of the western states. See Albertsworth, Theory of Code Pleading, 10 Cal. L. Rev. 202, 205-06, esp. n. 8 at p. 205 (March 1922). Thus, all of the western states have code provisions comparable to AS 09.55.200 (though some have amended them to substitute a "party" for "wife" in their counterpart to AS 09.55.200(a)(1) (see, e.g. O.R.S. Sec. 107.095; cf. RCW 26.08.090; Cal. Civil Code, Sec. 4370 (former CC Sec. 137).

The cases interpreting these statutes establish that in determining whether a wife is entitled to an award of attorney's fees, the court should consider three things: first, the financial resources of the parties; second, the property division allowed; and, third, the fault of the parties. Since fault is not a consideration in most Alaska incompatibility divorces, and was not a consideration here (the motion to modify was not

frivolous and I find that it was brought in good faith), [4/] I have based my decision exclusively on the financial resources of the parties as I understand them based, in part, on their testimony and the financial declaration submitted in response to the pretrial order previously issued.

Cases supporting this approach in interpreting the foregoing statutes are: Turner v. Turner, 390 P.2d 360, 361 (Ore. 1964); Blake v. Blake, 31 P.2d 768, 772 (Ore. 1934); Jolley v. Jolley, 363 P.2d 1020 (Idaho 1961); Bell v. Bell, 328 P.2d 115 (Mont. 1958); Schmidt v. Schmidt, 321 P.2d 895 (Wash. 1958); Coons v. Coons, 491 P.2d 1333 (Wash. App. 1972); Smith v. Smith, 474 P.2d 619 (Colo. 1970).

For a consistent interpretation of California Civil Code, Sec. 137, at about the time the United States Congress was adopting the Oregon Code as the law of Alaska, see Stewart v. Stewart, 156 Cal. 651, 105 Pac. 955 (1909).

In making these observations, I do not mean to imply disagreement with the Supreme Court of Nevada's decision in Sargeant v. Sargeant, 495 P.2d 618 (Nev. 1972), that where one spouse has valuable property which is not income-producing and does not have the ability to earn income, he or she may nevertheless be entitled to an award of attorney's fees (or other support) against a spouse having a substantial income-earning capacity. A party should have his or her day in court without destroying his financial position by the sale of non-income-producing property. Here, however, Mrs. Springer has, in my opinion, an earning capacity sufficient to meet her needs and pay her attorney and, therefore, will not be deprived of her day in court by my denial of her motion for attorney's fees.

Plaintiff suggests that the foregoing is not relevant because the fees incurred here

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4. See Malvo v. J.C. Penney Co., ___ P.2d __ (Alaska July 13, 1973, Supreme Court Op. No. 901); and see Philips Mause, Winner Take All: A Re-examination of the Indemnity System, 55 Ia. L. Rev. 26 (1969).

were for the benefit of the children and, thus, should be characterized as child support.[5] She argues further that her contracting to pay them was in the nature of a furnishing of necessaries[6] to the children for which she is entitled to reimbursement. Finally, she contends that this court by its findings of fact and conclusions of law determined that the children "needed" $300 per month per child for their support and would, therefore, be injured if any part of that money was used to defray her legal expenses.

I believe plaintiff misconceives both the law and my prior decision. First, there are cases which characterize a divorced wife's resisting her former husband's efforts to have child support lowered as a trusteeship for the children in her custody[7] and the fees incurred by her as child support,[8] but I do not believe that this case can be so characterized.

Under Alaska law each parent, regardless of his or her sex, has an equal obligation to support his or her children (AS 25.20.030) and this obligation exists independent of any contractual allocation of the obligation inter se in a divorce decree (see AS 11.35.090).[9] Thus, the child to be supported and his creditors may sue a parent for support and the matter may not defend on the basis of the decree.[10] Consequently, I have con-

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5. See In Re H., 468 P.2d 204 (Calif. 1970).

6. See Rees v. Archibald, 6 Utah 2d 264, 311 P.2d 788, 789-90 (1957).

7. See, e.g. Price v. Perking, 219 A.2d 557 (Md. 1966).

8. A wife's rights under AS 09.55.200 to have her attorney paid by her husband derives from her right to support, a right which terminates with divorce (absent an award of alimony). In post-divorce litigation, a wife's right to have her attorney paid depends upon her husband's child support obligation.

9. See State v. Langford, 176 Pac. 197 (Ore. 1918) (criminal liability exists without regard to divorce decree).

10. See Rees v. Archibald, supra, n. 6 (civil liability exists regardless of divorce decree).

sistently held [11] that litigation pursuant to AS 09.55.200, et. seq., is not, in the ordinary case, intended primarily to determine the child's right to support, but rather given that right to support (which, of course, must be established), to distribute it, i.e. the support obligation between the parents. Thus, the primary issue in this case as I conceive it has never been what support was necessary for the children, but rather how should the support obligation be divided between Mrs. Springer and Mr. McMillan. Consequently, in this case Mrs. Springer was acting for her self and not her children. [12]

Mrs. Springer has also misconceived this court's holding. Specifically, I found that the questions (1) what was a fair child support and (2) how should it be divided between the parties were so inextricably intertwined with the parties' property settlement agreement that they could not be separately considered; and that when considered together, I could not find on the basis of the evidence submitted that the entire agreement, including its determination of the amount of child support [13] and its allocation of child support between

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11. These concepts are developed in Paige v. Paige, Superior Court No. 71-1357, Decision filed May 16, 1972, reprinted in 1 Alaska Bar Brief, Issue No. 1, 1a - 3a (October 1972).

12. This conclusion might be different as a matter of fact if Mrs. Springer could not contribute to her children's support in which case all support would have to come from Mr. McMillan; but I found Mrs. Springer to have an $800 per month earning capacity.

It would also be different as a matter of law if I followed the treatise written, i.e. Clark and Nelson, in holding that the wife's obligation for child support was secondary and regardless of her economic situation only arose if and to the extent that her husband could not support the children. But I specifically rejected this legal theory on constitutional grounds (see McMillan v. McMillan, No. 711876, Findings of Fact and Conclusions of Law dated August 3, 1973, pp. 67. Those cases which adopt the trusteeship theory which I have found can all be distinguished on the basis of the factual or legal conclusions rejected in this footnote (and in my findings and conclusions mentioned, supra).

13. While I relied on other evidence in making my decision and did not receive the attached chart (here denominated Exhibit A) until after the decision was made, it is useful to illustrate the precise issue which I resolved. The chart is one adopted by the Superior Court in Denver, Colorado (and also I am told Milwaukee, Wisconsin and through the Middle West) as a guide to the bar as to an appropriate award of child support. While the chart ends at net earnings per week of $296-$300, it is a simple problem in arithmetic series to carry it out since for a family of three children, the weekly child support (Column 4) increases at the rate of approximately $2.50 for each $5.00 increase in net weekly income (Column 1), i.e. Column 4 increases at 1/2 the rate that Column 1 increases. (Since Column 1 is a $5.00 range, e.g. $296-$300, inclusive, while Column 4 is a single figure, e.g. $123.50, this is not a completely accurate statement but is sufficiently accurate for

the parties was unconscionable either in the present or at the time of its execution.[14] Or, alternatively, that changed circumstances since the divorce justified modifying the child support provisions of the agreement while leaving the remainder of the agreement intact.

Proceeding to the other issues, the parties have no strong objection to future collection through the court trustee (though the trustee as a matter of policy will not attempt collection from non-residents).

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13. (Cont'd)

illustrative purposes). We determine the necessary net income to justify a $300 per month per child payment for three children as follows: if we assume 4.2 weeks in a month, then $900 per month is $214.25 per week. $214.25 per week is $91 more than $123, the highest payment on the chart, and, therefore, would require a net income per week of $478-$482 (calculated as follows: $91 x 2 = $182 + $296 = $478; $182 + $300 = $482; $478 per week x 4.2 = $2007.60 per month ; $482 per week x 4.2 = $2024.40 per month). Thus, while we know Mr. McMillan's gross earning capacity (found to be $3000 per month), we don't know his net income per month (or net earning capacity); but it isn't inconceivable that a businessman who was sole owner of his own corporation could translate $3000 of gross earnings per month into $2000 per month net, i.e. after tax, earnings. The practical problem is that the chart assumes that only one parent (the non-cutstodial parent) can contribute money for child support while the custodial parent will contribute only services to the child(ren), but may work for his (her?) own subsistence. Where the custodial parent is able to earn more than his (her) own subsistence and contribute financially to the child's support, then the figures on the chart are reduced to reflect the custodial parent's fair contribution. Thus, the real issue is this case from the beginning has been how much Mrs. Springer should contribute financially to the children's support; or, more properly, how much should be deducted from Mr. McMillan's child support obligation (and assumed by Mr. Springer) to reflect what Mrs. Springer would have been able to contribute had she and Mr. Springer not jointly decided that she would not work.

14. The court held for purposes of determining unconscionability that it could not limit its consideration to child support but would have to consider the property settlement agreement as a whole, since any payment of child support in excess of what was a reasonable child support allocation might have been intended by the parties as in lieu of alimony or a payment in installments of Mrs. Springer's additional property rights. While alimony and child support have different tax consequences, installment payments on a property settlement agreement and child support have the same tax consequences. Determination of what a reasonable property settlement would be would require a comparison of what Mrs. Springer got with what Mr. McMillan got which would require a valuation of Mr. McMillan's business, an issue upon which there was no evidence save the "book value" of his stock, which I consider insufficient. (For reasons why one should not use book value to calculate the value of a close corporation, see Charles M. Williams & Pearson Hunt, Some Concepts of Valuation, pp. 177-203 (inclusive) in Helfert (ed.), Techniques of Financial Analysis (Homewood, Ill., Richard D. Irwin, Inc. 1963). Thus, my holding was essentially that Mr. McMillan had failed to sustain his burden of proof

The parties have amicably resolved their dispute regarding visitation.

I have reviewed Mrs. Springer's cost bill and have concluded that she should pay her own costs for the same reason I feel she should pay her own attorney's fees.

Finally, considering all of the evidence and those factors peculiar to this case which lead me to deny the motion to modify, I am unable to determine that Mr. McMillan has proved facts which would justify this court in modifying the decree, and the parties' underlying agreement, to excuse child support during those periods when the children are with him; nor am I able to say (without understanding the basis for the property settlement agreement) that failure to excuse payments during visitation is unreasonable.

IT IS, THEREFORE, ORDERED:

1. Each party shall bear his or her own costs and attorney's fees.

2. Any money paid by Mr. McMillan into the registry of the court shall be released to Mr. Jensen for transmittal to Mrs. Springer.

3. The parties' letter agreement regarding visitation is approved.

4. Mr. Jensen shall obtain from the court trustee and prepare, serve and file the court's standard form "Minute Order of Support", all blanks properly filled in, providing that future support and any arrearage be paid through the court trustee.

DATED at Anchorage, Alaska, this 26 day of October, 1973.

JAMES K. SINGLETON, JR.
JUDGE OF THE SUPERIOR COURT

cc: Jensen
Eastaugh

Mr. Rudy Johnson
3710 Alaska Avenue
Ketchikan, Alaska 99901

March 2, 1975

Mr. Terry Gardner
State Representative
Pouch V
Juneau, Alaska 99801

Dear Terry:

I met with Superior Court Judge Thomas Schultz Tuesday, February 18, 1975, to discuss our Domestic Relations Statutes and get his thoughts on the subject. I believe the results of the meeting could be beneficial to future legislation. I would like to make his thoughts known to you and add a few of my own.

I explained to Judge Schultz that three local attorneys have told me it is literally impossible for a man to obtain child custody in this state, unless he can prove his wife to be unfit. I told him the attorneys all said the Courts refer to the Tender Years Doctrine (King vs. King, Superior Court, 1970) in deterning custody. (That ruling basically says that if everything is equal as far as the parents fitness is concerned, the children are better off with the mother.)

The Court often calls upon the Department of Health and Welfare to make investigations and recommendations in child custody suits. Marian Swain is in charge of this in Ketchikan. I met with her December 4, 1974, to discuss this issue. Before our meeting had ended she agreed that they begin their investigations with the biased attititudes of the Tender Years Doctrine and make their final recommendations accordingly. All this was also discussed with Judge Schultz.

Judge Schultz said he certainly was not aware of the Welfare Department's attitude concerning this. He also said that as far as he is concerned the Tender Years Doctrine is no longer legitimate because of many Court decisions made since that ruling. He did say, thought, that is is quite possible that the doctrine still sways other judges decisions. He made no mention of the fact that we all have certain prejudice ideas that unintentially sway our decisions at times.

He agreed that our present statutes give the Court almost unlimited authority in divorce proceedings and agreed that this authority could very easily be abused by unintentional, preconceived thoughts. As a whole, he thought our domestic relations statutes were pretty good compared to other states. When I asked if he thought any problems that may exist now, concerning divorce proceedings, could be alleviated through legislation, he had these suggestions to make:

1. Set specific guidelines that the Court must follow in determining custody of minor children. These guidelines would include taking the children's desires into consideration. He felt by doing this we would see more continuity in different Courts decisions.

2. Set specific guidelines for anyone doing an investigation to determine who the children's best interest would be with. (My thought: as it is now, much is left up to the investigator's discretion and too many of these people just are not qualified to make the decisions they are making. Guidelines they would have to follow, should preety much take care of this problem.)

3. Investigator's reports should be made available to spouses involved.

4. The Judge should have to give the spouses involved, the reasons for his or her decision based on the guidelines that the legislature would provide. (My thought: I believe these two suggestions are excellent and believe it would provide everyone involved with a fair and impartial decision. It would also put the responsibility on the legislatures rather than individual judges. It would seem as if this is where the respondibility belongs since our legislatures are expressing the peoples wishes as a whole, in their legislation.

5. No fault divorce that could be obtained by simply filling out the required form, which would be provided, if there were no children involved. Judge Schultz said he felt this would save a lot of the Court's valuable time, not to mention the money it would save those people involved. Thus, effectively taking the profit out of divorce for attorneys.

I was very impressed with Judge Schultz and believe that anyone coming before his Court, would surely be treated equally and fairly. After thinking about the things he said and re-examining our statutes, I am inclined to agree with him that we have a pretty good set of laws concerning our Domestic Relations. I think the problems are coming more from the individual judges, investigators, and attorneys than from the statutes themselves. Rather than completely overhauling these statutes, I would like to offer these thoughts:

1. Write Judge Schultz's suggestions on guidelines into our statutes- which would include guidelines for awarding alimony and child support payments.

2. Adopt a no fault clause.

3. Change any and all wording that makes any reference to sex. Where husband or wife is used, change to spouse. This would effectively give both spouses equal responsibilities, privileges and risk in marriage and divorce.

4. Specific guidelines for any Court orders pending a divorce proceeding. For example, removing either spouse from home, temporary restraining orders, and temporary child support and custody.

I have written the rest of the Superior Court Judges in the state, hoping to get some more input and facts.

I believe with what Judge Schultz has told me, it is imperative that a very close look be taken at the statistics I have requested from Juneau.

I have requested:

1. The number of divorces granted in the last five years involving children.

2. Of that number, how many were filed for by the men as compared to women?

3. Of the total that involved children, how many child custody cases were disputed?

4. Of that number, how many men won custody as compared to women?

I believe these figures could reveal the possiblity of certain biased and unfair practices in our judicial system. Among other things I am wondering if men are getting the advice and representation they are paying for from their attorneys. I can not see what an attorney would have to gain by such a practice, but it certainly would be a very serious thing, and should be looked into if the possibility is supported by the state's cases already processed.

I would appreciate knowing where this possible legislation stands at present. I also would very much appreciate seeing any proposals that may be introduced.

I hope this material may be of some use to you.

Sincerely,

RJ:sm

Rudy Johnson

P.S. Judge Schultz said to say hello.

cc: Mr. Mike Bradner
State Representative
Pouch V
Juneau, Alaska, 99801

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, Governor

Pouch H01, Juneau 99811

~~POUCH H-JUNEAU 99801~~

Child Rep File

February 25, 1975

The Honorable Mike Bradner
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Speaker:

In reply to your letter of February 4, 1975, information from the divorce statistical sheet is punched onto cards and kept on file with the Statistical Services Unit of the Department of Health and Social Services. Data is not available on the number of contested divorces involving children or to whom the children were awarded. We do have information on the total number of divorces involving minor children and the number of minor children involved. Attached is a table showing this data.

Information is also available on age and race characteristics of the husband and wife, the duration of the marriage, the number of previous marriages, and the education of the husband and wife. If you desire any breakdowns by these categories, additional time will be needed to compile the figures.

If there is any other way we may be of assistance, do not hesitate to call.

We might suggest the Alaska Court System as a source for the remainder of your questions.

Sincerely,

Francis S.L. Williamson

Francis S.L. Williamson
Commissioner

Attachment

Alaska Divorces Showing Number of Minor Children Involved 1970 - 1974

Number of Children Involved	1974		1973		1972		1971		1970	
Total Divorces	2,224		2,051		2,139		1,746		1,694	
0	1,004		877		883		718		670	
1	501		473		511		433		376	
2	402	804	399	798	403	806	318	636	309	618
3	169	507	174	522	168	504	166	498	137	411
4	74	296	75	300	91	364	48	192	94	376
5	38	190	22	110	25	125	27	135	44	220
6	15	90	7	42	24	144	14	84	11	66
7	5	35	7	119	10	110	8	56	7	49
8	2	16	2	16	2	16	1	8	5	40
9+	3	27	3	27	1	9	0		2	18
NS	11		12		21		13		39	
Total Children involved	2466		~~2220~~ 2210		2549		2042		2174	

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES
DIVISION OF ADMINISTRATIVE SERVICES
STATISTICS SECTION

Jay S. Hammond, Governor

POUCH H 02E
JUNEAU, ALASKA 99811

January 9, 1975

Rudy Johnson
3710 Alaska Avenue
Ketchikan, Alaska 99901

Dear Mr. Johnson:

The information you requested is not readily available. Due to a shortage of manpower and available computer time we can only answer requests on a time available basis. There is an extensive backlog of requests and I can give no commitment to when yours might be completed.

Sincerely,

Thaddeus J. Miller
Research Analyst

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, Governor

Pouch H01, Juneau 99811

April 7, 1975

The Honorable Terry Gardiner
Chairman, House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Gardiner:

In reply to your letter of March 7 we are pleased to submit the following information concerning total number of divorces over the past five years involving children and the number filed by men as compared to women.

Year	Number Filed by Men	Number Filed by Women	Total
1970	306	679	985
1971	317	698	1,015
1972	377	862	1,239
1973	394	773	1,167
1974	446	876	1,322

We keep no records relating to disputed cases as this is a function of the Alaska Court System and the information does not appear on the divorce document.

Our information is gleaned from the divorce document and only basic statistical information is kept. This also holds true for information concerning custody.

May we suggest that these same questions be asked of the Court System, they may be able to give you more assistance in areas of dispute and custody.

If there is any other way we might be of assistance, do not hesitate to ask.

Sincerely yours,

Francis S. Williamson

Francis S.L. Williamson
Commissioner

HB

238

"An Act relating to the custody and representation of a child in court proceedings; and adding to the court's authority under Rule 17(b), Rules of Civil Procedure, and Rules 11(a) and 15, Rules of Children's Procedure.

COMMITTEE REPORT

2/28/75 HOUSE FINANCE

Mr. Speaker: Date 3/20/75

The Committee on Judiciary has had HB 238 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(V) recommends it BE REPLACED WITH CS FOR HB 238 AND THAT CS FOR HB 238 DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Jerry Harding

L. S. Bradley Sr.

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Jerry Harding Chairman

Original sponsor: Bradner, Beirne, Bowman, et al

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 238

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the custody and representation of a child in court proceedings; and adding to the court's authority under Rule 17(b), Rules of Civil Procedure, and Rules 11(a) and 15, Rules of Children's Procedure."

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

* Section 1. AS 09.55.205 is amended to read:

Sec. 09.55.205. JUDGMENTS FOR CUSTODY. In an action for divorce or for legal separation the court may, during the pendency of the action, or at the final hearing or at any time thereafter during the minority of any child of the marriage, make an order for the custody of or visitation with the minor child which may seem necessary or proper and may at any time modify or vacate the order. Appointment of any guardian ad litem or attorney for the child shall be made under the terms of AS 09.65.130. In awarding custody the court is to be guided by the following considerations:

(1) by what appears to be for the best interests of the child and if the child is of a sufficient age and intelligence to form a preference, the court may consider that preference in determining the question;

(2) as between parents adversely claiming the custody neither parent is entitled to it as of right.

* Sec. 2. AS 09.65 is amended by adding a new section to read:

Sec. 09.65.130. REPRESENTATION OF CHILD. (a) The court may, upon the motion of either party or upon its own motion, appoint an

add the shall

attorney or guardian ad litem to represent the interests of a minor or dependent child with respect to his custody, support, and visitation or in any other legal proceeding involving his welfare. When custody, support, or visitation are at issue in a divorce, it is the responsibility of the parties or their counsel to notify the court that those matters are at issue. Upon notification, the court shall determine whether the child should have legal assistance or other services and shall make a finding on the record before trial. The court shall enter an order for costs, fees, and disbursements in favor of the child's attorney or guardian ad litem and may further order that other services be provided for the protection of the child.

(b) If custody, support, or visitation is an issue, the order for costs, fees, and disbursements shall be made against either or both parents, except that, if the responsible party is indigent, the costs, fees, and disbursements shall be borne by the state. If either or both parents are only temporarily without funds, as determined by the court, the court may advance payment for legal representation or other services rendered to the child. The attorney general is responsible for enforcing collections owed the court, and repayment shall be made directly to the court under the provisions of rules governing the administration of the courts. The court shall, if possible, avoid assigning costs to only one party by ordering that costs of the child's legal representation or other services be paid from proceeds derived from a sale of property belonging to both parties, before a division of property is made. No repayment may be required for those who are receiving legal services for the indigent.

* Sec. 3. AS 18.85.100(b) is amended to read:

(b) The attorney services and facilities and the court costs shall be provided at public expense to the extent that the person, at

the time the court determines indigency, is unable to provide for payment without undue hardship. Appointment of any guardian ad litem or attorney shall be made under the terms of AS 09.65.130, to the extent that that section is not inconsistent with the requirements of this chapter.

* Sec. 4. AS 20.15.100 is amended by adding a new subsection to read:

(j) Appointment of any guardian ad litem or attorney for a person to be adopted who is a minor shall be made under the terms of AS 09.65.-130.

* Sec. 5. AS 47.10.050 is amended to read:

Sec. 47.10.050. APPOINTMENT OF GUARDIAN AD LITEM OR ATTORNEY. Whenever in the course of proceedings instituted under this chapter it appears to the court that the welfare of a minor will be promoted by the appointment of a guardian ad litem or attorney, the court may make the appointment. Appointment of any guardian ad litem or attorney shall be made under the terms of AS 09.65.130.

* Sec. 6. Section 1 of this Act has the effect of adding to the discretionary authority of the court to appoint a guardian ad litem or attorney to represent the interests of a minor child in legal proceedings under Rule 17(b), Alaska Rules of Civil Procedure, and Rules 11(a) and 15, Alaska Rules of Children's Procedure, by allowing the court to appoint an attorney to represent the interests of a child in a legal proceeding either on the court's own motion or on the motion of either party, and by providing for advances for legal representation and payment of costs from the sale of joint property before property settlement.

House Judiciary Committee
March 6, 1975

The meeting was called to order at 11:30 a.m. by Chairman Gardiner. All members were present except Reps. Brown and Parr.

CS CS SB 28 Marriage

The committee reviewed the proposed Judiciary CS. Mr. Fink moved and asked unanimous consent that H CS for CS for SB 28 pass out of committee with a do pass recommendation. There being no objections, it was so ordered.

HB 237/238 Divorce

Speaker Bradner, sponsor of the legislation testified that HB 237 was intended to provide for an informal forum outside the Rules of Court Procedure. He suggested the following amendments:

p 1, line 14 - within 30 days after
p 1, line 23 - delete "himself"
p 2 - delete section (e)
add a section stating that counsel may be present

He explained the purposes of HB 238 as follows: if custody is at issue, the court will be notified and will consider the possibility of appointing a lawyer for the child. It specifies the method of payment for the lawyer. Mr. Fink raised the question of why legal services would have a special exception.

The meeting adjourned at 12:10 p.m. and was reconvened at 1:20 p.m. All members were present except Mr. Parr and Mr. Brown.

Art Snowden testified that the Court system had no objections to the bills.

Don Clocksin of Alaska Legal Services stated that they supported HB 237 with the following amendments:
- p 1, line 14 - within 30 days after all necessary papers (cross complaints) had been filed
- p 1, line 20 - may, at any time,
- p 1, line 23 - delete "himself"
- p 2 - delete section (e)

Mr. Fink stated that if (e) were deleted, "himself could be retained for those circumstances where only the judge would be qualified to do the mediation. There was no objection from anyone present.
Mr. Clocksin continued that he thought that the right to counsel in attendance at mediation was implied, but if there was a question to add language to that effect. "Parties to the action and their counsel, if they choose . . "

Mr. Clockson stated that they favor HB 238.
Mr. Fink again raised the issue of why legal services was exempted. Possible language suggested instead of "legal services" in lines 8 and 18, page 2 - "except as prohibited by federal requirement."

Alan Compton testified that the guardian ad litem in HB 238 should be an attorney. He suggested that the language on page 2, lines 2 and 3 be changed from "or in any other legal proceding involving his welfare" to "or those matters directly affecting the child's welfare."

Mr. Fink asked if this bill would make more juvenile hearings formal. The reply from Compton and Clocksin was no even though it would probably result in more juveniles being represented by counsel.

Mr. Fink suggested that "shall" in p 1, line 28 be changed to "may"

HB 238 Child's representation in divorce

Mr. Brown moved on page 2, line 22: correct the spe_ ng of administration. The amendment passed.

Mr. Brown moved on page 1, line 17; page 3, line 2, 7, 15 change a guardian to any guardian. The amendment passed.

Mr. Parr moved that on page 1, line 28: delete all and insert: "Sec. 09.65.130. REPRESENTATION OF CHILD. (a) The court may" The amendment passed.

Mr. Brown moved on page 2, line 18: put a period after child, delete however, and change no to No. Mr. Cotton objected. Mr. Gardiner moved that the sentence beginning No repayment on line 18 should be moved to line 26. The amendment was adopted.

CS HB 238 was moved out of committee with a do pass.

The meeting was adjourned at 9 p.m.

4 237

March 7, 1975

Francis Williamson
Commissioner
Department of Health and Social Services
Pouch H
Juneau, Ak. 99811

Dear Commissioner Williamson:

The House Judiciary Committee is now considering HB 237, concerning mandatory mediation in divorce cases, and HB 238, concerning representation for children. On this same subject, I would appreciate receiving information on the following:

1. Of the total number of divorces granted in the last five years involving children (I have these figures broken down by year), how many were filed for by men as compared to women?

2. Of the total that involved children, how many child custody cases were disputed?

3. Of the number of disputed cases, how many men won custody as compared to women?

If your department does not have these figures, do you know who does or why they are not kept?

Thank you very much for your assistance.

Sincerely,

Terry Gardiner
Representative

Alaska Divorces Showing Number of Minor Children Involved 1970 - 1974

Number of Children Involved	1974	1973	1972	1971	1970
Total Divorces	2,224	2,051	2,139	1,746	1,694
0	1,004	877	883	718	670
1	501	473	511	433	376
2	402	399	403	318	309
3	169	174	168	166	137
4	74	75	91	48	94
5	38	22	25	27	44
6	15	7	24	14	11
7	5	7	10	8	7
8	2	2	2	1	5
9+	3	3	1	0	2
NS	11	12	21	13	39

March 7, 1975

Rudy Johnson
3710 Alaska Avenue
Ketchikan, Ak. 99901

Dear Rudy,

Thank you for your letter of March 2 on our domestic relations statutes. Your recommendations and those of Judge Schultz seem to make a lot of sense to me as a layman. I would like an opportunity to talk these over with some of the people involved in the judicial and legal systems. As you know, Representative Mike Bradner has put a lot of time and effort into the entire area of divorce and child custody.

Representative Bradner has introduced HB 237 and HB 238 which our House Judiciary Committee is presently working on. While these bills are not direct answers to the specific problems that you are concerned about, I do think that they have a general effect on these problem areas. HB 237, which provides for a mediation procedure between husband and wife, could possibly alleviate some of the tough battles that go on in divorce procedings over child custody. HB 238, which provides for childrens' attorneys, would help the problem you bring up of taking the childrens' desires and interests into consideration. Too many times the children become the objects of the parents conflicts in a divorce proceding. I would be interested in your comments on these bills. I have requested the information that you originally requested from the Department of Health and Social Services. I will send you this information as soon as I receive it. I would be interested in any further recommendations or research that you come up.

Sincerely,

Terry Gardiner
Representative

Mr. Rudy Johnson
3710 Alaska Avenue
Ketchikan, Alaska 99901

March 2, 1975

Mr. Terry Gardner
State Representative
Pouch V
Juneau, Alaska 99801

Dear Terry:

I met with Superior Court Judge Thomas Schultz Tuesday, February 18, 1975, to discuss our Domestic Relations Statutes and get his thoughts on the subject. I believe the results of the meeting could be beneficial to future legislation. I would like to make his thoughts known to you and add a few of my own.

I explained to Judge Schultz that three local attorneys have told me it is literally impossible for a man to obtain child custody in this state, unless he can prove his wife to be unfit. I told him the attorneys all said the Courts refer to the Tender Years Doctrine (King vs. King, Superior Court, 1970) in deterning custody. (That ruling basically says that if everything is equal as far as the parents fitness is concerned, the children are better off with the mother.)

The Court often calls upon the Department of Health and Welfare to make investigations and recommendations in child custody suits. Marian Swain is in charge of this in Ketchikan. I met with her December 4, 1974, to discuss this issue. Before our meeting had ended she agreed that they begin their investigations with the biased attititudes of the Tender Years Doctrine and make their final recommendations accordingly. All this was also discussed with Judge Schultz.

Judge Schultz said he certainly was not aware of the Welfare Department's attitude concerning this. He also said that as far as he is concerned the Tender Years Doctrine is no longer legitimate because of many Court decisions made since that ruling. He did say, though , that is is quite possible that the doctrine still sways other judges decisions. He made mention of the fact that we all have certain prejudice ideas that unintentially sway our decisions at times.

He agreed that our present statutes give the Court almost unlimited authority in divorce proceedings and agreed that this authority could very easily be abused by unintentional, preconceived thoughts. As a whole, he thought our domestic relations statutes were pretty good compared to other states. When I asked if he thought any problems that may exist now, concerning divorce proceedings, could be alleviated through legislation, he had these suggestions to make:

1. Set specific guidelines that the Court must follow in determining custody of minor children. These guidelines would include taking the children's desires into consideration. He felt by doing this we would see more continuity in different Courts decisions.

2. Set specific guidelines for anyone doing an investigation to determine who the children's best interest would be with. (My thought: as it is now, much is left up to the investigator's discretion and too many of these people just are not qualified to make the decisions they are making. Guidelines they would have to follow, should preety much take care of this problem.)

3. Investigator's reports should be made available to spouses involved.

4. The Judge should have to give the spouses involved, the reasons for his or her decision based on the guidelines that the legislature would provide. (My thought: I believe these two suggestions are excellent and believe it would provide everyone involved with a fair and impartial decision. It would also put the responsibility on the legislatures rather than individual judges. It would seem as if this is where the respondibility belongs since our legislatures are expressing the peoples wishes as a whole, in their legislation.

5. No fault divorce that could be obtained by simply filling out the required form, which would be provided, if there were no children involved. Judge Schultz said he felt this would save a lot of the Court's valuable time, not to mention the money it would save those people involved. Thus, effectively taking the profit out of divorce for attorneys.

I was very impressed with Judge Schultz and believe that anyone coming before his Court, would surely be treated equally and fairly. After thinking about the things he said and re-examining our statutes, I am inclined to agree with him that we have a pretty good set of laws concerning our Domestic Relations. I think the problems are coming more from the individual judges, investigators, and attorneys than from the statutes themselves. Rather than completely overhauling these statutes, I would like to offer these thoughts:

1. Write Judge Schultz's suggestions on guidelines into our statutes- which would include guidelines for awarding alimony and child support payments.

2. Adopt a no fault clause.

3. Change any and all wording that makes any reference to sex. Where husband or wife is used, change to spouse. This would effectively give both spouses equal responsibilities, privileges and risk in marriage and divorce.

4. Specific guidelines for any Court orders pending a divorce proceeding. For example, removing either spouse from home, temporary restraining orders, and temporary child support and custody.

I have written the rest of the Superior Court Judges in the state, hoping to get some more input and facts.

I believe with what Judge Schultz has told me, it is imperative that a very close look be taken at the statistics I have requested from Juneau.

I have requested:

1. The number of divorces granted in the last five years involving children.

2. Of that number, how many were filed for by the men as compared to women?

3. Of the total that involved children, how many child custody cases were disputed?

4. Of that number, how many men won custody as compared to women?

I believe these figures could reveal the possibility of certain biased and unfair practices in our judicial system. Among other things I am wondering if men are getting the advice and representation they are paying for from their attorneys. I can not see what an attorney would have to gain by such a practice, but it certainly would be a very serious thing, and should be looked into if the possibility is supported by the state's cases already processed.

I would appreciate knowing where this possible legislation stands at present. I also would very much appreciate seeing any proposals that may be introduced.

I hope this material may be of some use to you.

Sincerely,

Rudy Johnson

RJ:sm

Rudy Johnson

P.S. Judge Schultz said to say hello.

cc: Mr. Mike Bradner
State Representative
Pouch V
Juneau, Alaska, 99801

Rudy Johnson
3710 Alaska Ave.
KTN

1. No of divorces filed Sept.
2. Who filed them
3. contested child custody & decisions

Man sacrifices by having women at home because of financial loss is penalized in divorce because then man is not good housekeeper but woman is

Men don't file because lawyers ~~don't~~ say they can't win custody

based on old laws New York 172 yrs.

Court forced to make decision on fact of what parents are not their sex

What percentages of cases are referred to family + children Services

N

Mandatory Marriage Counselors

8 states requires

guarantee quality of counselors

Attorneys for Kids

would help pick parent best able to raise kids

boys into statistically

Resolution to courts

most effective

initially 2

Rudy Johnson
3710 Alaska Ave.
Ketchikan, Alaska
99901
January 11, 1975

Terry Gardiner
Bob Ziegler
Oral Freeman

Dear Mr. Gardiner, Mr. Ziegler, and Mr. Freeman,

In the last thirty years the number of divorces involving children has increased astronomically. Since 1962 the divorce rate in this country has risen 80%. In 1953 45.5% of divorces involved children, and by 1974 this rate increased to 68%. One of the few things that psychiatrists and sociologists seem to agree upon is that a broken home greatly affects the chances of a child being successful and being able to cope with adult life in later years. This theory is heavily supported by many different studies made in the last few decades. One such study concluded that a child affected by a broken home has about the same frequency of mental health problems as children that have lost one parent through death. The number of divorces for 1972 was about 900,000 and affected over 1,000,000 children nationally. These figures are not just numbers but they represent people who may not ever really have a chance to be successful because of an environment forced upon them by a selfish parent or parents.

The reasons for the increase in divorces vary from theory to theory. It seems that one of the main reasons lie in the social acceptance of divorce today and the permissive attitudes reflected in most state laws concerning divorce, Alaska being one of the most permissive. (Please refer to enclosed articles.) As an example to this are the figures mentioned above on the increase of divorces over the last 21 years. Unfortunately, children are always the victims of a divorce and that is why something needs to be done about it. No child ever asked to be born and they deserve more than they are getting out of our courts today.

Under the present Alaska statutes a person can get a divorce for virtually any reason. If all else fails, they can claim incompatibility. There are defenses for any grounds a person may claim, but several local attorneys that are very experienced in divorce cases have told me that it is literally impossible to stop a divorce in this state if one spouse or the other desires it.

I feel very certain that no state legislature could pass laws that would force parents to stay together and make their marriages work. However, the Alaska State Legislature could pass legislation that would make our laws much more just and fair and that would encourage marriage rather than divorce, as it presently does.

The most unjust aspect of our present laws on divorce and child custody are that they greatly discriminate against men and actually encourage women to seek a divorce. Most people do not realize how severe this problem is in our state. For instance, I found that under the present state statutes a man could be obligated to pay for the woman's legal fees, no matter who the plantiff. It does not stop here, but he could also be ordered to pay his wife's expenses to his location so that she can prosecute him. A man can be extradited for desertion or nonsupport, but there is absolutely no mention of a wife deserting a family in our statutes. A woman is almost certain of obtaining custody of the minor children in a divorce action in this state no matter who is at fault in the disolving of the marriage. A woman can be sure of obtaining 25% of her husband's lifetime earnings whether or not she remarries. It makes no difference if she has been a dedicated wife or not and that she may want a divorce simply out of boredom. In conclusion, a woman in the state of Alaska has everything to gain and nothing to lose, except a husband, by divorce.

Besides the things mentioned, a woman is certain to end up with at least half and probably more of the husband's estate although she may be the only one wanting to terminate the marriage and may be guilty of the things that make reconciliation impossible.

Although the main concern of the courts is theoretically the children's welfare, we have the Tender Years Doctrine in Alaska (King vs King Sup CT Op No. 650 1970) that often sways the courts decisions, as can be seen by the fact that in the majority of divorce cases in this state the children are awarded to the mother. The effect of these attitudes seem to be reflected by the fact that women filing divorce actions against their husbands exceeds men doing the same thing by a great extent. Again women have nothing to loose by their divorce action. I am sure many women would work much harder at making their marriage successful if they knew that they stood a chance of loosing their children as well as their financial security in a divorce action. Theoretically, the present laws were passed as they are so as to insure the children of these homes would be properly taken care of. Instead it encourages divorce action when all that may be needed to make the marriage work would be a little more work and compromise on both spouses' parts. Children need a family life with both a mother and father and all the financial security in the world will not replace that. Some dedicated fathers realize this but are literally blackmailed by their wives because these women know how important a man's children are to him and that if he does not adhere to her wishes she can take everything he has, including his children. This is a very real problem in our state and any state that has biased divorce laws. It seems to be that the legislatures that caused these laws to be passed have defeated their original purpose as the results of their legislation testify.

A civil contract with a bank or company of one kind or another cannot be broken just because one party has had second thoughts and now desires to be free from it. If a party should default from a comtract he or she is ordered by the courts to make restitution. This is not so with a divorce, but what could be more important than the family unit and the children within that unit?

Is a used car more important? I think not, but a used car salesman is much better off in our courts, trying to collect from a defaulting customer than a man is in trying to save his children from the heartaches of a broken home and the loss of a father in a divorce action.

Many people realize how important an issue this is and how unjust these laws are. They have gone to their state legislatures and helped to get legislation passed that has greatly affected these laws. One very important thing that has been happening concerning divorce is that now nine states require mandantory divorce conseling aimed at reconciliation before they will grant a divorce. There are many organizations such as the Committee for Fair Divorce and Alimony Laws, New York; American Divorce Association for Men, Chicago; and the U.S. Divorce Reform, California; that are causing much concern amoung the public for these things and are responsible for a lot I needed legislation to rectify some very unjust laws. I believe that laws that would put the responsibility of divorce equally upon both spouses would certainly deter many broken homes. Many people feel that their next marriage will be what they want but studies indicate that the second marriage usually is not as successful as the first.

There are many men that are very dedicated husbands and fathers but after dedicating years of their lives to their families they can have it all taken away by a bored wife in thirty days.

I would like very much to see legislation passed that would rectify this situation and give every man in the state of Alaska the legal right to raise their children in the family unit they worked so hard to provide if they are found to be responsible. This should also apply to women. The spouse that shows irresponsibility by terminating the marriage in one way or another without just cause, is the one who should stand to loose the most, including their God given right to raise their children. I am no legal authority, but it seems that a lot of our present state statutes are unconstitutional, concerning divorce and child custody, with the new constitutional amendment on equal rights.

My main concern is the children involved in so many divorces and I believe proper legislation would certaintly deter many would be divorces. We all have a moral responsibility to our children to offer them the most meaningful life possible. To do this I believe we will have to get rid of the predent inequeties in our courts and state statutes concerning divorce, child custody and alimony.

If any of you would be interested in persueing this matter I would be more than willing to offer any assistance I could. I am sure there is a lot of ground work to be done to create this kind of legislation and I would be most willing to assist you.

References for this material include:
Alaska Statutes 09.55.090-- 09.55.230 and 25.05.010 to 25.25.270
American Law Reports
Alaska Law Journal
Alaska Reporter
Marriage and Family Interaction Bell 1967
Contemporary Social Problems 1972
Let's Stop Destroying Our Children 1974

Respectfully Yours,

Judy Johnson

Unjust And Biased Alaska Statutes

Sec.09:55:150 Use of husbands residence where wife is plaintiff:

If husband meets residency requirements and wife doesnt she can use his residency to file for a divorce, but it doesnt give the man the same right.

Sec. 09:55:170 Seperate residence during action:

Wife may aquire seperate residence during action without consent of husband and without being charged with misconduct, but this doesnt apply to men as well.

Sec.09:55:200 Temporary alimony and wifes legal fees:

The courts may order a husband to provide a amount of money as may be necessary to prosecute him. This goes so far that the husband can be ordered to pay for a appeal the wife may make. (Leak vs Leak 156 f. 474)
Even though the courts have ruled a wife also can be ordered to pay alimony (Olsen vs Olsen 5 Alaska 459) most cout rulings on alimony specify men such as: Goggans vs Goggans 15 Alaska 451 237F 2d 186
Also in American Law Reports 2nd, page 309 it is stated, "If it is proved a wife is guilty of marital misconduct the court can denie her temporary alimony and attorneys fees but as a praatical matter the husband does not prevail very frequently."

Tender Years Doctrine: King vs King Sup CT. Op No. 650 1970

Although this is not a law but a court ruling it has greatly affected many court decisions as can be seen by examining the records for the last five years. This decision says that young children are better off with their mothers and should be placed there whenever possible. This certaintly does not take other statutes into consideration and makes child custody almost impossable for a man. The following laws seem to indicate this decision but the courts go right on awarding children to the mothers as a matter of fact.

09.55.205: Niether parent is entitled to custody as a right.
Superior Court Ruling Op No. 847 1972 Custody has to be made without regard to sex. Also new constitutional ammendment on equal rights.

Sec 09.55.201 Paragraph I say child custody should be given to the party not at fault and the guilty party should help support the children.

Suggestion: It should be absolutly mandatory that the children go with the inocent party if they want them. and if both parents are equally fit.
It is a parents God given responsibility and right to raise their children and not even the courts have a right to take that away so long as they are doing their job in a responsible way. After all if a man was not being sued for divorce the court would not be involved and he would be allowed to raise his children. Here is a perfect example where a bored wife has everthing to gain and nothing to loose. Sec. 25.20.030 says it is the duty of children to care for parents when they become unable to do so. The courts have ruled this is a moral issue. How much more so in a child custody situation?

HB

241

"An Act relating to the operation of fishing gear."

COMMITTEE REPORT

HOUSE

4/1/75

Mr. Speaker: Date 4/1/75

The Committee on JUDICIARY has had HB 241 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR HB 241 AND THAT CS FOR 241 DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Jerry Hamilton Chairman

Original sponsor: Malone

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 241

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the operation of fishing gear."

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

* Section 1. AS 16.05.540 is amended to read:

Sec. 16.05.540. LIMITATION ON ISSUANCE OF FISHING GEAR LICENSES. The fishing gear licenses mentioned in secs. 550 - 650 of this chapter shall be issued one to the applicant. Each applicant shall personally operate or assist in the operation of the licensed fishing gear. "Operating or assisting in the operation of licensed fishing gear" means being present at the gear site and operating, assisting, or supervising the immediate fishing operation. Each applicant for the fishing gear licenses mentioned in secs. 570 and 580 of this chapter shall also personally own or lease the licensed fishing gear. The license is transferable as provided under sec. 670 of this chapter.

* Sec. 2. AS 16.05.670(e) is amended to read:

(e) It is unlawful for gear which is licensed as provided in this chapter to be operated or caused to be operated by a person other than the licensee or his assistant under the supervision of the licensee while the licensee is present at the gear site, or the person to whom the license was transferred or his assistant under the transferee's supervision while the transferee is present at the gear site, upon notice to the department.

HB 384 Evaluation of Judges

Since the committee had previously heard testimony on this bill from the Judicial Council, HB 384 was passed out of committee, do pass.

HB 241 Fishing gear

Rep. Malone, sponsor of the bill, testified that this bill would correct the situation where the owner of a license was determined to be required to have his hand on the nets at all times when they were being used. A court interpretation of the bill required the licensee to personally participate in all work. This was not the legislative intent in passing the original bill, so HB 241 would give clear legislative intent.

Mr. Brown moved CS HB 241 (incorporating the Resources amendment) out of committee do pass. There being no objection, it was so ordered.

Introduced: 3/3/75
Referred: Resources and Judiciary

IN THE HOUSE BY MALONE

HOUSE BILL NO. 241

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

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#



Alaska House of Representatives

POUCH V
JUNEAU
99801

—

P. O. BOX 9
KENAI
99611

HUGH MALONE

M E M O R A N D U M

TO: Mr. John Elliott
Executive Director
Legislative Affairs Agency

February 24, 1975

FROM: Hugh Malone
Chairman
House Finance Committee

SUBJECT: Corrective Amendment AS 16.05.540 and AS 16.05.670(e)

Attached is a recent District Court Decision providing for a narrow interpretation of the Statutes regulating the operation of fishing gear. In my opinion the Court interpretation of the Statutes is too narrowly drawn, however, a strict interpretation of the Statutes might also be the same result on appeal. It is my belief that the Legislature intended that the gear license holder be present at the operation of fishing and that it take place under his direct charge and supervision. I am sure that the Legislature did not intend that the gear license operator had to have his hand on the net every time his helper did. Therefore I would request that you prepare corrective Amendments to the above Statutes, which would make very clear that the legislative intent is that the gear license holder must be present at the fishing site or on the boat during the operation of fishing and the gear operation take place under his supervision and control. I would appreciate having this bill as soon as possible. Thank you.

Attachment

HM:kfs

LAW OFFICES OF
HAHN, JEWELL & STANFILL

A. ROBERT HAHN, JR.
ALLEN L. JEWELL
STAN B. STANFILL

542 WEST SECOND AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE 279-1544

HOMER, ALASKA
TELEPHONE 235-8709

KENAI, ALASKA
TELEPHONE 283-7759

October 1, 1974

Mr. Marvin Eppes
2751 N. Crosby Road
Oak Harbor, Washington 98277

Dear Marvin:

I today received and enclose for your examination the memorandum opinion of Judge Nicholas in your set net cases. As you can see, the court has taken the position that all persons holding licenses must be present at and physically assist in all operations of the fishery from the time the net is put into the water until its taken out. I believe that the position he has taken is an extremely strict interpretation of the statutes and might very well be open to amendment either by the legislature here in Alaska or in a higher court proceeding.

I talked with Judge Nicholas today and he indicated to me that he would really like to see the case appealed to a higher court and I got the impression that his initial opinion took a very narrow position as to "assistance" under the statutes in hopes that the matter would be appealed to a higher court. The Judge was extremely friendly in his conversation and indicated that he was grateful to the parties for proceeding as they had and getting all of the evidence on the record. All of which is, of course, small comfort in view of the fact that we felt that our position was correct and it is disappointing to have the court adopt such a restrictive definition of assistance.

The Judge told me that he would continue the matter for whatever period of time I needed to confer with you and possibly any other set net fishermen who might wish to combine their resources and challenge the decision. Thus, as you can see, the court is not treating the proceeding in any way as a criminal action, and is in fact eager to have the matter resolved at a higher level. The Judge indicated that he would ask only a very nominal fine

If you did not decide to press your appeal, such fine amounting to $50 each for you, Jim, and Dick. The case as to Tom Anderson was, as you know, dismissed so there would be no fine in that regard. I have enclosed a copy of the Order of Dismissal as to Tom so that you can provide him with a copy of same.

Obviously the cheapest and easiest way for you to go would be to pay the fine and let the matter drop. An appeal to a higher court would run at a minimum around $5,000 I'm sure before we got through. This would only be feasible if you could get up a joint effort with a number of other fishermen in the area. I would suggest that if you would consider an appeal, that you write to any of your friends who do fish the beach and ask them if they would be willing to contribute a certain amount to take the question of assistance up on appeal to a higher court. It would certainly appear to me that under the definition of assistance as rendered by the Kenai Judge, that it will be very difficult for other set net fishermen to remain strictly legal at all times. I would be delighted to handle the appeal as you well know, however, if it is the consensus of you and your fellow fishermen that some other attorney might do a better job, I will understand completely and will be only too happy to assist whoever is chosen for the task in his preparation with any information that I have as a result of handling the initial hearing.

It has been a real pleasure getting to know you and your fine family and we will definitely be looking forward to seeing you next spring. Please let me know as to your thinking with regard to the question of an appeal as soon as possible.

With warmest personal regards to you,

HAHN, JEWELL & STANFILL

A. Robert Hahn, Jr.

ARH/da
enclosure

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

AT KENAI

STATE OF ALASKA,

Plaintiff,

vs.

MARVIN E. EPPES,

Defendant.

No. 74-10538 & 74-10636

MEMORANDUM OPINION

The statutes that the court is called upon to interpret are A.S. 16.05.540 and 16.05.670(e). The thrust of the two statutes as they pertain to the complaint at bar is two-pronged: (1) In order to operate a gill net one must have a license issued by the State; and (2) Such nets as are permitted by law may not be utilized unless the person to whom the nets are licensed operates or assists in the operation. It is the construction to be placed on the underlined language that will be taken up in this opinion.

Counsel for Defendant would have the Court rule that almost any single act required for gill net fishing would be a sufficient act for a person to be "assisting" in the operation of his set gill net. Using this rational if a person assisted in loading his nets into a boat, he need never be present while his nets were being fished by other persor It is this Courts opinion that the Legislature put the words "or assists' for the simple reason of allowing the licensee the opportunity of having some other person assist him in the legal operation of his fish nets should this become necessary.

First, the Court is called upon to define the word operation as it pertains to the use of gill nets. Or, more specifically, what activities are encompassed by the term and what activities are not to

be considered as part of the operation of the nets. The Court has been unable to find any cases that specifically define "operation" as it applies to fishing with nets. The word has been defined in general and non-specific terms: "operation" is doing some act or performance of some type of service, work, deed, production, creation or product of work". Alterman S.S. Corp. V. Snow, 222 F. Supp 892, 897 (Dist. Ct. Ore. 1963). It is quickly apparent that this definition does little to help us here. In Dale V. Saunders Bros., 157 N.Y.S. 1062, 171 App. Div. (1916) the Court dealt with the question of what was encompassed by the phrase "operation of a horse-drawn vehicle." The Court stated, at p. 1063, "the 'operation' of a vehicle drawn by horses, referred to in Workmen's Compensation Law.....as a hazardous employment is not confined merely to moving the vehicle, but relates to everthing incident to the employment, and includes the loading of a wagon with sand in the course of employment. (emphasis added). The rational of this holding may be readily applied to the statutes at issue here. The legislature obviously intended to restrict the use of the gill nets, to some degree, to those persons to whom the nets were licensed. For if this were not their purpose there would be no justification for either the statute or the language requiring the licensee to personally participate in the utilization of the nets. With this conclusion in hand and mindful of the language in Dale V. Saunder supra, the operation of a gill net should include all activities involved in (1) placing the nets in the water; (2) the periodic checking of the nets and all activities necessary to such checking, including but not necessarily limited to pulling up the nets for this purpose, removing any fish from the nets, and returning the nets to the water after such checking; and (3) removing the nets from the water after the period for gill-net fishing has ended. All of these activities should be performed by the person to whom the nets are licensed, or at least partly performed by him in the event that assistance is required. Conversely, none of these activities should be permitted without the participation of the licensee. Similarly, it should not be sufficient under the statute for

a licensee to direct from the shore any of the above mentioned activities when they are being undertaken by others in a boat; nor from a boat when the activities are being performed on shore.

By passage of the statute the legislature intended to restrict the use of gill nets to those in possession of a valid license. And the application for and acceptance of the license signifies an agreement by the licensee to abide by the statutes. For all of these reasons, and mindful of the general rule that criminal statutes are to be narrowly construed, the Court will consider a somewhat narrow construction of the word 'operation' to those activities directly related to gill net fishing.

In the same vein the Court will require, under the language of the statutes permitting a licensee to assist in the operation of the gear, the same type of affirmative conduct in furtherance of successful gill net fishing. In 1960 OP. Atty Gen No. 12, the attorney general stated that the licensee must assist in the operation of the licensed gear (nets). The presumption leaps out that active and affirmative participation in the utilization of the gill nets in accordance with the guidlines suggested above is required by the statute. The legislation was aimed at prohibiting one person from operating gill nets licensed to another and that is precisely the conduct engaged in by the defendant in this case.

In view of the above, it is the Courts opinion that a licensee must be present at, and physically assist, in all operations of gill net fishing, from the time the net is placed in the water, until it is removed from the water at the close of the fishing period; however, he may be assisted by any other person who is licensed as a commercial fisherman, should the need arise.

DATED this 24 day of September, 1974 at Kenai, Alaska.

MAGISTRATE

Feburuary 14, 1975

Governor Jay Hammond
Capitol Hill
Juneau, Alaska

Honorable Sir,

Cook Inlet Fishermen's Fund members present at a Februrary 9 1975 meeting strongly recommend that we start Cook Inlet on a minimum of a three (3) day (18 hour periods) a week fishery, as even a three day per week fishery is a test fishery.

This recommendation is made on the basis that there has never been adequate evidence that the type of closures that we have had helps build the salmon runs. For example, the King Salmon and early Red Salmon closure for the past 13 years. (The Department of Fish & Game still doesn't know the strength of these runs.)

If on a three day per week fishery we find that any given stream still is lacking an adequate escapement, let us enhance this stream with the use of gravel incubators.

Another matter that we are all concerned with is the decision made by Magistrate Jess Nicholas last fall in regards to the case of State of Alaska vs. Marvin E. Eppes (Case No. 74-10636 & 74-10538 defining what the word "assist" means in Section 16:05.540 'Limitation of Fishing' Gear Licenses in the Commercial Fishing Regulation book page 7.) Enclosed is a copy of the above case. Having fished before, you no doubt realize that legal gill net fishing will be virtually impossible under the above ruling.

We feel the Legislature should amend or change the wording to read: (Section 16:05.540 Limitations of Fishery - on issuance of Fishing gear licenses.) "Assist" shall be defined as being present on the location and helping with any portion of the operation. Any other licensed crew member may also operate or assist in the operation of the above said gear.

This is protection a family set Gill Net Unit must have; and can see where problems might also arise aboard a drift Gill netter.

Floyd Blossom
Floyd A Blossom
Cook Inlet Fishermen's Fund Representative

Enc. 2
copies to: W.I. Palmer - Executive Secretary
Clem Tillion - Senator
Representative - Hugh Malone
Representative - Leo Rhodes
Jim Reardon - Board of Fish & Game
James Brooks - Comm. of Fish & Game

AMENDMENT

OFFERED IN THE HOUSE: BY: House Resources COMMITTEE

TO: Amend HOUSE BILL No. HB 241

SENATE BILL No. _____

PAGE: 1 LINE: 15

Delete the words

"Some portion of"

[

HOUSE RESOURCES COMMITTEE REPORT

HB # ~~[illegible]~~ HB ~~[illegible]~~
241

A recent court case has interpreted AS 16.05.540. so restrictively as to require a gear licensee to actually have his hands on each net each time the net is placed, checked, and removed, during rather than just being present at the site of the immediate fishing operation while a crew member acted at his instruction. The original legislative intent was only to keep licenses from being operated by "remote control" from a town on shore or even from Seattle.

The current bill, including a minor amendment suggested by the sponsor, would instead require that the licensee be present "at the gear site and operating, assisting, or supervising the immediate fishing operation," which would more closely fit the original legislative intent and still take into account practical realities of commercial fishing.

HB

242

02-001B (REV. 08-73)

MEMORANDUM

State of Alaska

DEPARTMENT OF MILITARY AFFAIRS

TO: Honorable Bill Parker
Chairman
House State Affairs

DATE: 3 April 1975

FILE NO:

TELEPHONE NO:

FROM: Major General C.F. Necrason
The Adjutant General

SUBJECT: House Bill 242

I received your memo dated 21 March requesting my comments on House Bill 242.

After reviewing the bill, I feel that it appears to be sound and sensible. I have no basic objections.

Thank you for providing me the opportunity to comment on this matter.

MEMORANDUM

State of Alaska

DEPARTMENT OF MILITARY AFFAIRS

TO: Honorable Bill Parker
Chairman
House State Affairs

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STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER / *P. O. BOX 1149—JUNEAU 99801*

March 28, 1975

Representative Bill Parker
Chairman, House State Affairs
Committee
Pouch V
Juneau, Alaska 99811

Dear Representative Parker:

Your memorandum, as well as a copy of House Bill 242, was received today. Thank you for sharing this information with us.

The Department of Labor has no "dress code" per se; however, it is written on page 21 of our "Employee Handbook" that "because we serve the public and there are frequent visitors, it is expected that personal appearance be appropriate, neat and clean."

I have no intention of adopting standards of dress in this Department. To the best of our knowledge, we have not had any complaints on the attire of our employees.

I feel that the Department of Labor can better spend its time on more important matter of government than establishing a dress code.

Sincerely,

Ed Orbeck

Edmund N. Orbeck
Commissioner

Enclosure: "Employee Handbook"

STATE OF ALASKA

WILLIAM A. EGAN, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER / POUCH B–JUNEAU 99801

March 26, 1975

The Honorable Bill Parker
Alaska House
of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Parker:

Re: HB 242

Legislative review of any dress codes and appearance standards adopted should apply to all not just those State employees classified and partially exempt.

Such a difficult thing to determine in this age --- appropriate dress.

Sincerely,

Lee

Lee McAnerney
Commissioner

LMcA:lb

HB

246

SB 99 Public records

The committee felt that (b) should be in title 11.
line 12: change hinder to withhold or deny or obstructs of to a phrase using several other words.
line 11: change to the person responsible for the custody of the records -- also in line 17

HB 246 Liquor license

Don Clocksin stated that the first section concerns notice. Section 2 provides that if one person objects to any license filed, the ABC Board has the option of accepting his protest. If 35% of the adults object, an election is required in which they can vote to go dry. This must cover all establishments in the area and not be selective. Outside a village, if a majority of the people object at a public hearing, the Board may refuse to grant the license. Section 4 makes a violation of the law a misdemeanor so that Troopers could be called in to enforce.

Mr. Bradley moved the C & RA CS out of committee do pass. There being no objection, it was so ordered.

SB 180 Salmon Hatcheries

Phil Daniels stated that the bill will require Fish and Game to cooperate with private hatchery groups. This was the legislative intent in allowing private hatchery groups in the past but this apparently was not clear to the Department because some problems developed.

Mr. Brown moved SB 180 out of committee do pass.

The committee agreed that the four bills discussed earlier should go to legislative affairs to make sure that they were in the correct titles.

File HB246

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER / *POUCH S—JUNEAU 99801*

March 26, 1975

The Honorable Samuel Cotten
Chairman
House Community Regional Affairs Committee
Alaska State Legislature
State Capitol
Juneau, Alaska

Re: House Bill No. 246

Dear Mr. Cotten:

House Bill No. 246, an Act relating to liquor licenses and municipal regulation of the sale of intoxicating liquor was introduced in the House on March 3, 1975 and was referred to the House Community and Regional Affairs and Judiciary Committees.

Under the date of March 4, 1975 I requested by memorandum dated March 4, 1975 addressed to Linda Brown, Director, Alcoholic Beverage Control Board, Anchorage, Alaska a review of the proposed legislation for comments on costs or problems of administration.

Attached is a copy of a memorandum from Linda Brown, Director, Alcoholic Beverage Control Board, Anchorage, Alaska concerning the subject bill.

If you or any members of your Committee have any questions on the material submitted, please contact the writer by telephone at 465-2397 and I will contact Linda Brown for further material for submission to the Committee.

Very truly yours,

R. D. Stevenson
Special Assistant

cc: The Honorable Terry Gardiner
Chairman
House Judiciary Committee

STATE
of ALASKA

MEMORANDUM

TO: Linda Brown
Director
Alcoholic Beverage Control Board
Anchorage, Alaska

DATE: March 4, 1975

FILE NO:

FROM: R. D. Stevenson
Special Assistant
Department of Revenue

SUBJECT: House Bill No. 246

Attached is a copy of House Bill No. 246, an Act relating to liquor licenses and municipal regulation of the sale of intoxicating liquor.

Please review the proposed legislation and prepare a memorandum to the writer advising of costs or problems of administration.

02-001

02-001B

STATE
of ALASKA

MEMORANDUM

TO: R. D. Stevenson
Special Assistant
Department of Revenue
Juneau

DATE : March 12, 1975

FROM: Linda E. Brown, Director
ABC Board
Anchorage

SUBJECT: HB No. 246

In response to your memo on the above, I would like to make the following comments:

The amendment to AS 04.10.200 is very difficult. We could require posting affidavits as in a new application, but it greatly increases paperwork. In all fairness to the industry, it is an added burden. If the purpose of this is to increase public knowledge of their right to protest a reissuance, it is an awkward and expensive method.

Regarding the amendment to AS 04.10.300, reference is made to line 27, and the words "or otherwise." I am in doubt just what it means, and suspect that nobody else will either, leaving it very open to interpretation. It doesn't make sense to discuss hearings and make a vague reference to other possibilities at the same time. The purpose of the hearing is to determine whether a license may be issued by giving everyone a chance to speak. It should lead to a final resolution of the issues. The "or otherwise" could keep an issue going indefinitely with all the accompanying headaches these situations produce.

The rest of the amendments appear to be helpful.

Thanks for your interest.

LEB:vk

LAW OFFICES OF
ALASKA LEGAL SERVICES CORPORATION
315 FIFTH STREET, SUITE 8
JUNEAU, ALASKA 99801
TELEPHONE 586-6425

MEMORANDUM

TO: House Judiciary Committee

FROM: Donald E. Clocksin

RE: CSHB 246 - Liquor Licensing

DATE: April 23, 1975

- -

I. Background.

At the Bush Justice Conference at Minto in June, 1974, the problems of alcohol in rural Alaska were discussed extensively. It was felt by people at the Minto Conference that abuse of alcohol was one of the most pressing problems facing the bush. While urban areas had ways of controlling liquor, the bush areas had little to say about the presence of liquor.

The Conference adopted the following recommendations relating to this issue:

THAT PARTICIPATION OF VILLAGE PEOPLE IN VIRTUALLY ALL AGENCIES OF THE JUSTICE SYSTEM IS SEVERELY LACKING

1. Recommendation: that all State regulatory agencies guarantee village input into agency decisions by visiting the villages, and making the villages' [illegible] and wishes known to the decision body.

2. Recommendation: that liquor licenses issued to unincorporated areas be revokable upon request by a majority of the residents of the area without those residents having to first organize a municipal government.

3. Recommendation: that legislation be enacted to enable a Native village to vote dry and enforce such legislation against residents of the village, visitors and any carrier who knowingly transports liquor into the village in violation of this legislation.

4. Recommendation: that legal and other public notices to bush villages be simple, clear, and bilingual so that they can be understood.

5. Recommendation: that all notices be given so that they reach the people, and that radio and tv be used more often to give these notices.

II. Present Law.

The present procedure is for an applicant to file an application, which must be posted for 10 days on the proposed licensed premises, at the nearest post office, and at one other place. No new license may be issued if there is already more than one license for each 1500 population in the city (1500 within 5 miles in unincorporated areas). Once issued the license is renewed automatically unless the licensee is convicted of a crime or the Board has revoked it. In an incorporated city a local option election is allowed. In unincorporated areas a protest is allowed which is not binding on the Board. If a license is for an unincorporated area more than 50 miles from a municipality, 2/3 of the residents must approve of the issuance of a license.

In smaller incorporated communities there is not sufficient law enforcement to enforce a dry ordinance; state assistance is needed. In unincorporated villages there is no power to go dry; the village residents can only object at the initial issuance of a license, often without sufficient notice.

III. What the Bill Would Do.

CSHB 246 does three things:

1. Notice. Section 1 modifies the notice requirements to require public notice of reissuance, renewal, and transfer of licenses, as well as initial issuance. The notice shall be bilingual where necessary, and shall utilize the most effective means of notice, e.g. radio, tv, etc.

2. Local Protests. Section 2 provides for three situations in which local protest is allowed in unincorporated areas. The section extends the right to protest to reissuances, renewals and transfers.

   a. A single resident outside a municipality may protest licenses within two miles of where he lives. A public hearing in the areas may be held by the ABC Board.

b. If 35% of adult residents in and around an unincorporated "established village", as defined by the Department of Community and Regional Affairs, protest, an election conducted by DCRA must be held. The results are binding on the Board.

c. If the Board schedules a hearing to hear protests in an unincorporated area outside an established village, and a majority of the residents within two miles object, the Board may refuse to issue, reissue, renew, or transfer the license.

Section 3 of CSHB 246 limits the automatic renewal of a license to take into account the Section 2 protests.

3. Local Option Election. Section 4 provides that, once a local option election has been held in an incorporated area, violation of any ordinance adopted is a misdemeanor. This allows the State Troopers to assist in enforcement.

IV. Support.

Phillip Wall, ex-director of the ABC Board, assisted in drafting the Committee Substitute. He is in support of the principle of the bill. Linda Brown, the present ABC Board director, should support the bill. The Department of Community and Regional Affairs has no objection that I am aware of. Ben Marsh, representing the Cabaret, Hotel, and Restaurant Owners Association, did not oppose the bill, once it was altered so that the protest procedure did not apply in municipalities.

DEC:mjb

Present Law

Sec. 04.10.200. Posting of application. Before a new license is issued the applicant shall post a true copy of the application for license at the location of the premises, at the nearest post office and at one other conspicuous location in the area, for a period of 10 days before the filing of the application. The applicant shall submit with the application proof of posting on a form to be provided by the board. (§ 35-4-22(B) ACLA 1949; am § 1 ch 181 SLA 1953; am § 2 ch 181 SLA 1957; am § 2 ch 197 SLA 1959; am § 7 ch 183 SLA 1960)

Sec. 04.10.300. Protest of issuance. A resident of an area outside an incorporated city who desires to protest the issuance of a license in the voting area in which he resides, shall serve upon the applicant and the board a written statement of the reasons for his protest. Upon the receipt of the protest, the board may give notice and hold a hearing, in the voting precinct in which the protestant resides, at which all persons interested may be heard. If at the hearing it appears that the majority of the citizens over the age of 19 years, residing within two miles of the place for which a license is sought, object to the issuance of the license, the board shall refuse to issue the license. (§ 35-4-22(E) ACLA 1949; am § 1 ch 181 SLA 1953; am § 2 ch 181 SLA 1957; am § 2 ch 197 SLA 1959; am § 4 ch 53 SLA 1973)

Effect of amendment.—The 1973 amendment substituted "city" for "town" in the first sentence and "19" for "21" in the third sentence.

Legislative committee report.—For report on ch. 53, SLA 1973 (CSHB 382), see 1973 House Journal, pp. 793, 885.

A M E N D M E N T

TO: CSHB 246 BY ELIASON

On page 1, line 6, after "licenses", insert: "fees,"

On page 1, between lines 8 and 9, insert, and renumber bill sections accordingly:

* Section 1. AS 04.10.110 is amended to read:

Sec. 04.10.110. WHOLESALE LICENSE. (a) The holder of a general wholesale license may sell intoxicating liquors in the original package, and wine in bulk, in quantities of not less than five wine gallons to holders of licenses. The holder of a general wholesale license may not sell to a consumer. Liquor requiring internal revenue strip stamps shall have the stamps intact on the package. A general wholesale license shall be required for each distributing point. The general wholesale license fee schedule is based upon the total amount of business transacted during any year and is $500 as a minimum license fee, to accompany the application, and in payment of the fee for the first $50,000 of business transacted, and, in addition thereto, a sum equal to one per cent of the business transacted during the year for which the license is issued. [ON THE BUSINESS TRANSACTED DURING ANY YEAR,

ABOVE $50,000 AND NOT OVER $75,000 ..... A FEE OF $ 250
ABOVE $75,000 AND NOT OVER $100,000 ..... A FEE OF $ 500
ABOVE $100,000 AND NOT OVER $125,000 ..... A FEE OF $ 750
ABOVE $125,000 AND NOT OVER $150,000 ..... A FEE OF $1000
ABOVE $150,000 AND NOT OVER $175,000 ..... A FEE OF $1250
ABOVE $175,000 AND NOT OVER $200,000 ..... A FEE OF $1500
ABOVE $200,000 AND NOT OVER $250,000 ..... A FEE OF $2000

House Judiciary Committee
Statement of Intent
CS HB 246

The present procedure is for an applicant to file an application, which must be posted for 10 days on the proposed licensed premises, at the nearest post office, and at one other place. No new license may be issued if there is already more than one license for each 1500 population in the city (1500 within 5 miles in unincorporated areas). Once issued the license is renewed automatically unless the licensee is convicted of a crime or the Board has revoked it. In an incorporated city a local option election is allowed. In unincorporated areas a protest is allowed which is not binding on the Board. If a license is for an unincorporated area more than 50 miles from a municipality, 2/3 of the residents must approve of the issuance of a license.

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   c. If the Board schedules a hearing to hear protests in an unincorporated area outside an established village, and a majority of the residents within two miles object, the Board may refuse to issue, reissue, renew, or transfer the license.

   Section 3 of CSHB 246 limits the automatic renewal of a license to take into account the Section 2 protests.

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House Judiciary Committee
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HB
256

ALASKA STATE LEGISLATURE - HOUSE OF REPRESENTATIVES

REPRESENTATIVE MIKE BEIRNE
P. O. BOX 4-1539
ANCHORAGE, ALASKA 99509

POUCH V
JUNEAU, ALASKA 99811

13 May 1975

Representative Tim Wallis
Pouch V
Juneau, Alaska 99811

Dear Rep. Wallis:

You were interested in having some of my comments on House Bill 256, with particular reference as to how physicians were licensed in our state as contrasted to dentists.

Really, the issue as I see it, is the ease with which a licensure takes place for physicians, and the difficulties incountered in getting a dentist licensed.

Lets take a physician first and I will explain to you how it works. A physician comes from any medical school in the United States, and he can also come from Canada and England and some other foreign countries. All he has to have is a license in another state and have good references so that we know he is not a kook, and we can license him on the same day he arrives in the state. I have done it many times. We license physicians by endorsement. We don't use reciprocity, obviously, since we don't have any medical schools or dental schools to reciprocate with.

But any physician, or all physicians in the United States, can be licensed in Alaska simply, quickly, and easily. It is extremely rare for one to be turned down. Probably 95% of the applicants are licensed without difficulty. This encourages physicians to come into the state. We don't care who they work for, whether they work for themselves, for non-profit corporations, for the Teamsters, for the Sisters, for the local governments, or for the state. It's all the same.

The Medical Examining Board has a member in the big cities around the state and the applicant has to have an interview with the board member who grants him a temporary license and then the paper work is finished up in the routine manner by the Department of Commerce.

The Dental Board of course does not work the same way. Dentists are not licensed by endorsement. They are licensed only by examination. When a physician takes an examination, he has to go outside to a University and take the exam there, or take a National Exam, because it is much better than the local doctors trying to come up with a written exam for him.

The dentists only give their examination once each year. Quite a few of the applicants are screened out before they are permitted to take the exam. Of those who are permitted to take the exam, my understanding is that about half of them pass it. There is no way possible for a dentist to take the written exam, or the practical exam that they give him, at an outside University, or to take it from a disinterested third party.

What I would recommend, is any changes that are going to be made, be that dentists that are licensed in Washington, Oregon, and California now be permitted to practise in Alaska by licensing them on endorsement. For example if 100 dentists graduate from the University of California in June, everyone of them should be qualified to practise dentistry in Alaska, and should be able to get a license up here by endorsement, simply by presenting their graduation certificate from the dental school, letters of reference regarding character and professional ability, and their California license.

The dentists have testified at the HESS meeting that East Coast dentistry is inferior. Of course I don't believe this. I came from Pennsylvania and I think the University of Pennsylvania has as good a dental school as exists in the United States. The same with New York. The same with all the states back there. The schools are good. The dentists have said that the West Coast schools are good. Okay lets license them all by endorsement. I don't see any need to go through this far-out examination they chose. Also the bill should provide that examination of dentists for licensure in our state can be conducted by outside Universities or dental schools. There are also those exams, written and practical, theoretical and technical, could be made available to the Board of Examiners.

The Board of Examiners of the Dental Board, just like the Board of Examiners of any professional board, should include at least one non-professional person so that the public has some more to say about licensure of the professional peoples. I think that Senator Croft has a bill in the Senate which would put a lay person on the Board of the Bar Examiners.

The only reason that Nome has three doctors now at the Norton Sound Health Corporation, which I visited last winter, is because it is easy to get physicians to come to Alaska. They can get licensed here easily. But you can't get a dentist licensed easily, and that means you can't get them to go to Nome, or Kotzebue, or Barrow, or any place else in the state, without planning ahead for a long time and then having the Dental Board decide how many dentists are going to practise in the state. I will be the first to admit that bringing in more dentists may make it harder on the private practitioners who are here. But I think the duty is to the consumers, and not to the providers.

If the Natives were operating a Health Center they should be able to hire the dentist, and put him on the Health Center payroll as an employee, just like everbody else. For three years I've operated a Health Clinic in Anchorage, called the Anchorage Neighborhood Health Center. It was under a Federal grant. We had five physicians working in that clinic over the years, and there are two working there now. I am no longer associated with the Center. But we had no trouble getting physicians because we could get them licensed so quickly and easily. But we could never get a dentist. We wanted a dental program, and our consumers needed it, but there was no way we could give it to them. We were able to hire physicians for $35,000 a year who were good physicians and competent to do the job that needed to be done. It was easy to get physicians from the Public Health Service and from the military, because they knew it only took a day to get licensed if they wanted to enter private practise here. But the dentists had to plan ahead at least a year, and the young guys in the service just don't plan ahead that far.

I certainly think dentistry is important. And I think that the quality of dentistry is very important. But certainly no more important than medicine. Quality is true because physicians are generally controlled through hospital staffs, so that they can not do certain procedures in the hopitals unless they are fully qualified, none the less a physician who just operates an office practise and doesn't utilize the hospital still takes care of peoples lives everyday. He takes care of the whole person. We want the quality of both medicine and dentistry to be high, but I can not see how it would be lowered by licensing everyone who graduated this year from the University of California Dental School.

One should also remember that the army and the Public Health Service send dentists and physicians all over the state, and they don't meet any state licensing laws. They don't have to. But the Public Health Service Dentist who is practising in Kotzebue is discharged from the service and the next day he can not practise on those same people because he can not get a license in this state. That just doesn't make any sense to me.

The Board of Examinors of any profession is given their special position for the purposes of protecting the public from poor quality practisioners. They are not given the power to regulate the numbers who practise in the profession. Everybody who is qualified to practise in the profession, and who applies for a license, must be licensed. I am sure the Legislature did not intend the professions to control the number of practitioners who practise in the state arbitrarily. I know the Bar Association

does this, but we don't seem to have much control over them. But putting lay people on the Bar or Board I'm sure would help alot too.

If I can be of any further assistance to you in providing other ideas let me know.

Sincerely yours,

Mike Beirne

Mike Beirne

STATEMENT BY THE ALASKA DENTAL SOCIETY

HB #256

There are several pre-existing facts that must be considered in contemplating a bill that so vitally affects the dental care available to Alaskans. They are as follows:

1) The dental act and examining board exists to determine and maintain a good quality of professional competency.

2) Reciprocity is by definition a two-way agreement. In 1956 the dental board offered reciprocal rights to every state and only New Hampshire accepted. The states most likely to feel positive toward such an agreement, Washington and Oregon declined because they felt it would allow an exodus from Alaska. . . not enough to be noticeable below, but a significant loss to Alaska. Much work is being done with reciprocity, but it can not be considered "safe" at this time until the level of dental education is more standardized, and all state dental boards cease giving favored treatment or, worse, rubber stamping licenses to graduates of the school(s) of their respective states.

3) The permit system was included in the dental act many years ago to answer a unique need for outlying areas in aquiring dentists. It allows for a community to aquire a dentist without delay, and yet maintains the quality control. The board can issue a permit upon being satisfied the applicant meets certain requirements as set forth and then requires the granted permittee to take the next board exam.

Anything that will open holes in this basic quality control system would be disastrous to the unsuspecting public. This bill will gut the exi ing dental act to the detriment of the public, not the dentist.

Now enters HB #256 during Health & Social Services committee hearings, the author states that the natives are setting up health care organizations and require this legislation in order to proceed with setting up clinics and negotiating with potential dentist employees. He also states they have had no problem with the existing statutes to date!

The author also vividly describes the tragic type of care received by some of the villagers where teeth are extracted on a wholesale basis and no follow-up care provided! Yet this type of "service" is performed by that single group of dentists that are not subject to board control--the public health service dentist.

The Alaska Dental Society has been working hard and effectively in trying to do away with just this type of thing. It has brought about more comprehensive care being offered, more care to adults, preventive care, and a significant amount of contract care by private Alaska dentists. A top level American Dental Association Committee was brought to Alaska at the Alaska Dental Society's request to review the level and type of care received by Alaska natives and they made recommendations to the Indian Health Service in 1974.

There has been a vast improvement in a short time. There is much more to be done and yet progress to date is significant considering the wheels that must be turned and bureaucratic changes required.

This bill will allow more dentists to come in without consideration for quality and do it within the natives own organization! This would be an increase in the problem and a condition I'm sure they would not want to occur. The natives can least afford to perpetuate the double level dental care. They have suffered enough!

If, in fact, other people or groups such as the Teamsters or chain dental groups desire this legislation to enable them to serve their personal needs, the same question must be raised. Do you want to take this high risk approach in order to satisfy their immediate needs? A significant percent of those taking the Alaska Board Exam failed, thereby protecting the public. With a mandatory open door for permits, or open reciprocity this same percent of Board failures would be practicing on your friends and maybe family!

The Alaska dentists are truly dedicated to providing good care for all Alaskans and remain willing to work with any group toward solving their dental care problems. They are equally dedicated to their responsibility in maintaining a good level of care. They feel this bill would undermine and destroy the very principle that established the Dental Act and Board. As new needs require changes, Alaska dentists want to work to allow these changes to come to pass in the manner that will maintain the maximum public benefit.

HB

265

file on 265

LAW OFFICES OF
ALASKA LEGAL SERVICES CORPORATION
315 FIFTH STREET, SUITE 8
JUNEAU, ALASKA 99801
TELEPHONE 586-XXXX 6425

April 11, 1975

MEMORANDUM

TO: Representatives Cotton, Guy, Gardiner, Itta

FROM: Donald E. Clocksin

DATE: April 11, 1975

RE: HB265-66, Community Legal Assistance Grant Program

- -

I have an additional example of where the funds made available under these bills could be used. A Bethel area village, Akolmiut, wants to purchase its own boarding home in Bethel for the students from that village when they go to the Bethel Regional school. They need legal assistance to negotiate the purchase of the building, the transfer of title to the building, the acquiring of insurance appropriate for a boarding home, and the completion of foster home licensing applications. Much of the work that needs to be done for this village can only be done by an attorney. The project is beneficial because of the lack of boarding home facilities in Bethel - by purchasing the home the village will assure that its students have adequate living facilities while attending high school.

DEC:mjb

Put in file for the floor HB 265

xxx6425

MEMORANDUM

TO : Reps. Cotton, Gardiner, Guy and Itta

FROM : Don Clocksin DC

SUBJECT: HB 265-66, Community Legal Assistance Grant Program - Floor Debate

DATE : April 3, 1975

- -

When these bills come up on the House floor you may want to refer to this material.

1. Background. In June, 1974, a Conference on Justice in the Bush was held at Minto, Alaska. At that Conference residents of rural Alaska met with state officials to determine the needs of bush Alaska. To assure that the needs and desires expressed at Minto were carried out, a Monitoring Committee was established. Out of the work of that committee came the recognition that many small villages and towns were being faced with increased responsibilities. One tool they often needed to help run their own affairs was legal assistance. The Local Government Specialists (LGS's) provided through the Department of Community and Regional Affairs were very helpful in the bush, but the fact they were not lawyers meant that some times there were problems they couldn't solve. A supplement to those LGS's was needed.

2. The bills. HB 265 would create the Community Legal Assistance Grant Fund in the Department of Community and Regional Affairs. Grants could be made to villages or groups of villages that needed legal help not available through the LGS's and which they could otherwise not afford. Grants cannot be made to regional or village corporations created under the Alaska Native Claims Settlement Act, and could only be made for special, one-time projects. Grants may not exceed $20,000 each, and will, of course, usually be much less.

HB 266 appropriates $50,000 for the fund. The amount is not enough, but since this is a new idea, it was felt the amount appropriated should be kept to a minimum.

The Department of Community and Regional Affairs would adopt regulations to implement these bills. According to testimony, applications would be reviewed carefully to assure other funds were not available and to see that the money is used effectively.

Since only first and second class municipalities and unincorporated villages and groups of villages are eligible, this money could not go to the larger cities or to boroughs, for example, Eagle River, Anchorage, etc. (See attached list of eligible first and second class municipalities).

3. Support. The bill is an Executive Request and is supported by the Department of Community and Regional Affairs, the Attorney General's office, and the Bush Justice Monitoring Committee.

DEC:bg
Enclosure

CLASSIFICATION	POPULATION	INCORP. DATE
Home Rule Cities		
Anchorage	78,929	1920
Cordova	2,114	1909
Fairbanks	32,975	1903
Kenai	4,020	1960
Ketchikan	7,468	1900
Kodiak	3,923	1940
North Pole	265	1953
Palmer	1,409	1951
Petersburg	2,386	1910
Seward	1,823	1912
Valdez	2,271	1901
Wrangell	2,787	1903
First Class Cities		
Barrow	2,307	1959
Craig	467	1922
Dillingham	1,025	[illegible]
Galena	442	[illegible]
Girdwood	210	1961
Haines	1,980	1910
Homer	1,243	1964
Hoonah	748	1946
Hydaburg	260	1927
Kake	551	1952
King Cove	338	1947
Klawock	290	1929
Nenana	469	1921
Nome	2,488	1901
Pelican	169	1943
Saint Mary's	384	1967
Selawik	429	1963
Seldovia	612	1945
Skagway	710	1900
Soldotna	1,202	1967
Unalaska	510	1942
Yakutat	227	1948
Second Class Cities		
Akhiok	102	1972
Akiachak	330	1974
Akiak	186	1970
Akolmiut	608	1969
Alakanuk	495	1969
Aleknagik	208	1973
Ambler	217	1971
Anaktuvuk Pass	125	1957

CLASSIFICATION	POPULATION	DATE
Second Class Cities		
Anderson	463	1962
Angoon	400	1963
Aniak	273	1972
Anvik	100	1969
Bethel	2,921	1957
Brevig Mission	130	1969
Buckland	125	1966
Chefornak	182	1974
Chevak	447	1967
Clark's Point	62	1971
Deering	78	1970
Delta Junction	703	1960
Diomede	90	1970
Eagle	105	1901
Eek	195	1970
Ekwok	103	1974
Elim	174	1970
Emmonak	502	1964
Fort Yukon	637	1959
Fortuna Ledge	200	1970
Gambell	380	1963
Glen Alps	75	1961
Golovin	118	1971
Goodnews Bay	228	1970
Grayling	167	1969
Holy Cross	212	1968
Hooper Bay	556	1966
Houston	69	1966
Hughes	85	1973
Huslia	199	1969
Kachemak	151	1961
Kaktovik	141	1971
Kaltag	240	1969
Kiana	300	1964
Kivalina	200	1969
Kobuk	61	1973
Kotlik	284	1970
Kotzebue	2,125	1958
Koyuk	122	1970
Koyukuk	124	1973
Larsen Bay	109	1974
Lower Kalskag	195	1969
Manokotak	230	1970
Mekoryuk	254	1969
Mountain Village	491	1967
Napakiak	279	1970
Napaskiak	200	1971
New Stuyahok	229	1972
Newhalen	68	1971

CLASSIFICATION	POPULATION	INCORP. DATE
Second Class Cities		
Nightmute	123	1974
Nikolai	82	1970
Nondalton	216	1971
Noorvik	483	1964
Nulato	311	1963
Old Harbor	327	1966
Ouzinkie	173	1967
Pilot Station	301	1969
Point Hope	404	1966
Port Alexander	36	1974
Port Heiden	66	1972
Port Lions	227	1966
Ruby	148	1973
Russian Mission	132	1970
Saint Michael	222	1969
The Aleut Community of St. Paul Island	488	1971
Sand Point	474	1966
Savoonga	380	1969
Saxman	272	1930
Scammon Bay	221	1967
Shageluk	172	1970
Shaktoolik	160	1969
Sheldon Point	127	1974
Shishmaref	309	1969
Shungnak	165	1967
Stebbins	272	1969
Tanana	406	1961
Teller	213	1963
Tenakee Springs	101	1971
Togiak	383	1969
Toksook Bay	304	1972
Tuluksak	202	1970
Unalakleet	550	1974
Wainwright	357	1962
Wales	111	1964
Wasilla	300	1974
White Mountain	87	1969
Whittier	186	1969
Organized Under Federal Law		
Metlakatla	1,050	1944
Dissolution Recommended		
Long Island	7	1965

Pertinent members files

#

1975 MAR 19 PM 4 03

Ø2Ø28 ANCHORAGE AK 44 Ø3-19 1110A ADT

PMS REP TERRY GARDNER

1861

JUN

WE STRONGLY ENDORSE HB265 QUOTE CREATING THE COMMUNITY

LEGAL ASSISTANCE GRANT PROGRAM UNQUOTE AND

HB266 ACCOMPANYING APPROPRIATION FOR THIS PROGRAM.

YOUR FAVORABLE REACTION TO THESE BILLS WOULD BE GREATLY

APPRECIATED. THANK YOU FOR YOUR CONSIDERATION OF OUR REQUESTS.

GORDON JACKSON EXECUTIVE VICE PRESIDENT

HUMAN RESOURCES ADMINISTRATION AFN INC

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 9980[illegible]

1975 MAR 19 PM 2 22

02016 ANCHORAGE AK 92 03-19 1040A ADT

PMS HON TERRY GARDINER CHM JUDICIARY COMMITTEE

HOUSE OF REPRESENTATIVES

1831

JUN

ACCEPT THIS AS RURAL ALASKA COMMUNITY ACTION PROGRAM'S FULL ENDORSEMENT OF HB 265, PROVIDING FOR A LEGAL ASSISTANCE GRANT FUND. LEGAL ASSISTANCE IS A CRITICAL NEED THROUGHOUT THE UNORGANIZED BOROUGH, ESPECIALLY IN LIGHT OF MOVEMENT TOWARD LOCAL CONTROL OF SCHOOLS AND THE DEVELOPMENT OF LOCAL GOVERNMENTS. HB 266 PROVIDING DLRS 50,000 FOR THE PROGRAM IS A GOOD STEP; HOWEVER, IF MORE FUNDING IS AVAILABLE IT WOULD BE NEEDED. GRANT FUND CONCEPT APPROVED BY BUSH JUSTICE CONFERENCES, WASILLA MEETING, ETC. STRONG SUPPORT FOR THIS BILL EXISTS STATEWIDE. THANK YOU FOR YOUR HELP.

PHIL SMITH EXECUTIVE DIRECTOR RURAL CAP

HB

283

House Judiciary Committee
March 13, 1975

The meeting was called to order at 7:15 p.m. by Chairman Gardiner. All members were present except Mr. Fink.

HB 248 Public Administrator

Art Snowden testified that a Supreme Court change in procedure abolished presiding judges of district courts. There is now only one presiding judge in each district located in the superior court. This is merely a housekeeping bill.

HB 248 was moved out of committee do pass.

HB 282 Public Administrator

Art Snowden testified that this bill contains the same deletion of presiding judges of districts courts. He stated that there is a bill presently being drawn up by the Governor to create a medical examiner to replace the coroner/public administrator. This bill would be effective only if the medical examiner bill passes.

Susan Burke of the Court System stated that a drafting error in line 14 should be corrected by the deletion of the words "and as coroner"

The committee discussed the possibility of holding HB 282 until the medical examiner bill is referred to committee.

Mr. Snowden explained the change in line 17: The bill makes it possible for the court to appoint several different attorneys on a case by case basis. There will be no annual salary for one person.

Mr. Specking asked for a definition of "reasonable" in line 17 and suggested that the word should be removed. Mr. Snowden explained that "reasonable" salary would be determined by the court, not the attorney.

Mr. Brown moved HB 282 out of committee with the amendment to line 14 suggested by Ms. Burke: delete: "and as coroner" There being no objection, HB 282 was moved out of committee.

HB 283 Acting district court judges

Mr. Snowden testified that the Supreme Court had requested this bill to assure the highest qualifications possible for acting district court judges.

Mr. Specking and Mr. Brown pointed out that the presiding judge of the superior court already has the authority to determine qualifications when he makes an appointment. Mr. Specking asked what would be done in an emergency situation and stated that he felt the judge should have the option of determining qualifications in each case.

Mr. Snowden stated that he felt it was bad state policy to leave this possible loophole. He assured the committee that there was no shortage of qualified people.

Mr. Brown moved HB 283 out of committee. Mr. Specking objected. On vote, the committee passed HB 283 out of committee with individual recommendations.

CS HB 48 Transfer interests in realty

The CS was explained by Chairman Gardiner to those committee members who were not at the last meeting on the subject. He stated that the bill had been signed out of committee with the stipulation that the new language would be considered by Commissioner Motley. Commissioner Motley has apparently declined to comment since he has not returned the committee's phone calls or written a reply in two weeks. CS HB 48 left the committee

HB 31 Abandoned Vessels

Mr. Specking gave the committee a brief overview of the bill's subject. The committee will research the matter and will schedule HB 31 for a future hearing.

HB 191 Transportation Tariffs

The committee determined to hold this bill for future action after research as there seems to be some controversy.

HB 192 Public Utilities Tariffs

Since all the material received was in favor of this bill and the committee could see no controversy, Mr. Brown moved HB 192 out of committee do pass. There being no objection, it was so ordered.

The meeting was adjourned at 8:35 p.m.

ALLEN T. COMPTON
ATTORNEY AT LAW
201 FRANKLIN STREET
JUNEAU, ALASKA 99801
TELEPHONE 907-586-2482

March 13, 1975

The Honorable Terry Gardiner
Chairman, House Judiciary Committee
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

RE: HB 283

Dear Mr. Chairman:

During a conference call with the Board of Governors of the Alaska Bar Association this date, the above bill was discussed. After due consideration, the Board of Governors directed me to inform you that it supported this measure.

I will not be able to attend the hearing scheduled for this evening, but would appreciate this advisement of support being made of record.

Thank you for your consideration.

Respectfully,

Allen T. Compton
Legislative Counsel
Alaska Bar Association

ATC/bt

cc: Mr. Arthur H. Snowden II
Administrative Director of Courts

HB
314

"An Act relating to outdoor advertising control; effective date."

COMMITTEE REPORT

FINANCE

4/21/75 HOUSE

Mr. Speaker: Date 4/30/75

The Committee on E JUDICIARY has had HB 314 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(X) recommends it BE REPLACED WITH CS FOR HB 314 (Cardiac) AND THAT CS FOR HB 314 DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

(X) "other" [illegible]

Members signing the Majority report:

[illegible] DO Pass

[illegible]

[illegible] DO Pass as amended

Members NOT concurring in the Majority report:

Jerry Gardiner recommends: Do Not Pass unless amended

[illegible] recommends: " " "

[illegible] recommends: do not pass

Dan Cottrell recommends: NO. Rec

_____ recommends:

Jerry Gardiner Chairman

House Judiciary Committee
April 22, 1975

The meeting was called to order at 7:13 p.m. by Chairman Gardiner. All members were present.

HB 314 Outdoor Advertising

Walt Parker, Commissioner of the Department of Highways, testified that the present statute bans signs within 660 feet -- the bill would ban signs visible within 660 feet. The bill is needed to conform to federal statutes. Without it Alaska will lose 10% of federal highway monies - $10-12 million.

page 1, line 19: delete "secondary"
page 2, line 14: insert "primary delete "secondary"
This amendment was to permit advertising on secondary roads which are not funded by federal money.

Mr. Williams of the Department of Highways stated that non-complying signs would be allowed to stand until July 1, 1976. After that date there would be condemnation and compensation paid to the sign owner.

Mr. Bradley moved to adopt the Commerce amendments and move the bill out. Mr. Specking objected.

Mr. Parr moved to amend the motion to delete "or secondary" from the existing laws. Mr. Gardiner objected. The amendment carried.

The bill was moved out as CS with individual recommendations.

SB 96 Salmon eggs

Commissioner Brooks stated that last year this bill died in committee. During the summer regulations were adopted permitting the sale of eggs. The Attorney General recommends that this sale be allowed in the statute. Roe are worth from $1 to $1.50 a pound. This is wasted if the eggs are not sold. This was why emergency regulations were adopted affecting a limited area. Roe used to be used for dog food, but now there are fewer dogs in the area. 2.4 million subsistance fish were taken last year. This was due to a large chum run.

Jimmy Huntington stated that illegal traffic in roe was minimal in the AYK area, heavier in the Nenana area. Statistics showed illegal sales accounted for 10-15% of the total in areas where Japanese had processing. He favored trying the bill.

02-001B

STATE of ALASKA

MEMORANDUM

TO: Hon. Terry Gardiner, Chairman
House Judiciary Committee
Alaska State Legislature

DATE: April 28, 1975

00-3077

FROM: Walter B. Parker
Commissioner
Department of Highways

WB Parker

SUBJECT: HB 314

This is to clarify testimony offered your committee on HB 314 concerning outdoor advertising.

We have no strong feelings on the inclusion of secondary system roads under the terms of this bill. Federal law does not speak to the secondary system; it requires outdoor advertising control only on interstate and primary highways. Removing the secondary system from present law and HB 314 will not jeopardize receipt of any federal aid to highway construction. If the secondary system is included in HB 314 and left in existing statutes, funds expended for control of outdoor advertising along the secondary system will be State funds. Outdoor advertising control along the secondary system is ineligible for federal aid at this time.

I have enclosed for your distribution copies of the letter with which the Alaska Department of Highways described its sign policy last summer. I must emphasize that the sign policy described above is a stringent requirement of the Federal-Aid Highway Program and is now being rigorously enforced by the federal government.

If I may be of any further assistance, please feel free to call my office.

Enclosures

WBP/DMD/mth

July 15, 1974

RE: Political Signs
23-2900

TO: All individuals who have filed for State or Statewide office with the Lieutenant Governor.

(List Attached)

Political signs placed within highway rights of way or within 600 feet of the right of way line and visible from a primary State Highway are prohibited under State law. The law is stringent in this regard and has made us responsible for enforcement. Alaska's entire Federal-aid Highway program would be jeopardized if we shirked our responsibility.

We earnestly solicit your help by instructing your campaign managers not to place signs in the prohibited areas; if such signs are presently in existence, please remove them immediately.

Political signs remaining in the prohibited areas will be removed by us and stored in our nearest maintenance yard for ninety days and then destroyed. They may be recovered any time prior to the ninety days by paying for removal and storage costs.

If you are in doubt concerning the width of the right of way in a given location, please contact the nearest district highway office for information.

Anchorage
5700 Tudor Rd.
Phone: 337-1511

Fairbanks
2301 Peger Rd.
Phone: 452-1911

Juneau
Switzer Creek
Box 3-1000
Phone: 789-0841

Valdez
Box 507
Phone: 835-4322

Nome
Box 220
Phone: 443-5266

We need your help in this job and ask that you report to our nearest District Office any other known political signs within the prohibited area.

All candidates are being notified of our responsibility by this letter, and all prohibited policical signs will be treated in the same manner.

Very truly yours,

B. A. Campbell
Commissioner of Highways

Jack T. Bodine
Acting Right of Way Director

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF HIGHWAYS

OFFICE OF THE COMMISSIONER | *P. O. BOX 1467 — JUNEAU 99801*
(907) 364-2121

April 17, 1975

Re: 00-3077
House Bill 314

Honorable Terry Gardiner
Alaska State Representative
State Capitol Building
Juneau, Alaska 99811

Dear Mr. Gardiner:

In support of our request for your favorable consideration of the captioned legislation, we are attaching a copy of the Federal Highway Amendments of 1974 and a copy of a letter from the Assistant Chief Counsel for Right-of-Way and Environmental Law, Federal Highway Administration, Department of Transportation.

The purpose of the proposed amendment is to bring Alaska into compliance with federal law. Failure to do so will subject the state to loss of ten percent of the entire federal participation in Alaska's highway program (approximately $10-$12 million). It should be noted that the off-system roads program, by which the State has the most opportunity to meet local requirements, would be affected by over $1 million in lost funds. The State can ill afford any further cut back of transportation facilities.

Since the federal law provides that each state must be in compliance by July 1, 1975 or the end of the present legislative session, it is crucial that action be taken at this time.

Therefore, we again respectfully request your assistance in passing this much needed legislation.

Sincerely yours,

W. B. Parker by HNW

Walter B. Parker
Commissioner

Attachment

WBP/HNW:jo

Form FHWA 1-1 (Rev. 7-72)

Regional Counsel
CO-001

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

DATE: JAN 20 1975

SUBJECT: Model Legislation to Meet the Outdoor Advertising and Junkyard Control Provision in the Federal-Aid Highway Amendments of 1974

In reply refer to: HCC-40

FROM : Assistant Chief Counsel for Right-of-Way and Environmental Law

TO : All Regional Counsels

JAN 27 1975

We have drafted model legislation which it is believed will enable States to comply with the outdoor advertising and junkyard provisions of the Federal-Aid Highway Amendments of 1974. It is noted that a State must adopt these controls by July 1, 1975, or the end of its next legislative session, whichever is later, or be subject to the penalties in 23 U.S.C. 131(b). Our draft legislation takes the form of subjecting signs beyond 660 feet of the right-of-way to the same controls as signs within 660 feet by reference. We did not feel it practical to draft model legislation to amend various sections of existing State law to cover the signs beyond 660 feet, because of the wide variations in such existing legislation. Of course, any State could adopt specific amendments to their law to remove the 660-foot limitations. However, the States should be cautioned that the control is different within and without 660 feet in three important respects. First, signs beyond 660 feet are controlled whether or not in zoned or unzoned commercial or industrial areas. Second, signs beyond 660 feet are only controlled if outside of urban areas. Third, signs beyond 660 feet are only controlled if they were erected for the purpose of their message being read from the main traveled way of an Interstate or primary system highway. For the first reason, just a repeal of the 660-foot limitation on control in existing law would not effectuate compliance with the Federal statute.

The model legislation we have drafted reads:

1. Outdoor Advertising Control Extended Beyond 660 Feet.

Control of outdoor advertising signs, displays and devices is extended to signs, displays and devices located beyond 660 feet of the edge of the right-of-way of the Federal-aid Interstate or primary systems outside of urban areas erected with the purpose of their message being read from the main traveled ways of such systems. Such signs, displays or devices are prohibited, whether or not in commercial or industrial areas, unless they are of a class or type allowed [illegible] of the right-of-way of such system outside of commercial or industrial areas.

Regional Counsel
(10-08)

Form FHWA 1-1 (Rev. 7-72)

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

DATE: JAN 20 1975

In reply refer to: HCC-40

SUBJECT: Model Legislation to Meet the Outdoor Advertising and Junkyard Control Provision in the Federal-Aid Highway Amendments of 1974

FROM: Assistant Chief Counsel for Right-of-Way and Environmental Law

TO: All Regional Counsels

[illegible] of Law
JAN 27 1975
[illegible]

We have drafted model legislation which it is believed will enable States to comply with the outdoor advertising and junkyard provisions of the Federal-Aid Highway Amendments of 1974. It is noted that a State must adopt these controls by July 1, 1975, or the end of its next legislative session, whichever is later, or be subject to the penalties in 23 U.S.C. 131(b). Our draft legislation takes the form of subjecting signs beyond 660 feet of the right-of-way to the same controls as signs within 660 feet by reference. We did not feel it practical to draft model legislation to amend various sections of existing State law to cover the signs beyond 660 feet, because of the wide variations in such existing legislation. Of course, any State could adopt specific amendments to their law to remove the 660-foot limitations. However, the States should be cautioned that the control is different within and without 660 feet in three important respects. First, signs beyond 660 feet are controlled whether or not in zoned or unzoned commercial or industrial areas. Second, signs beyond 660 feet are only controlled if outside of urban areas. Third, signs beyond 660 . . . feet are only controlled if they were erected for the purpose of their message being read from the main traveled way of an Interstate or primary system highway. For the first reason, just a repeal of the 660-foot limitation on control in existing law would not effectuate compliance with the Federal statute.

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2. Just Compensation Payable for Signs Beyond 660 Feet.

Legal outdoor advertising signs, displays or devices prohibited by section 1 shall be removed upon the payment of just compensation in the same manner and subject to the same limitations as signs lawfully erected within 660 feet of the edge of the right-of-way of the Federal-aid Interstate and primary systems outside of commercial and industrial areas.

3. Landmark Signs.

Signs lawfully in existence on October 22, 1965, determined by the State, subject to the concurrence of the United States Secretary of Transportation, to be landmark signs, including signs on farm structures or natural surfaces, of historic or artistic significance, the preservation of which would be consistent with the purposes of this section, are not required to be removed.

NOTE: (1) This model act follows the control language of the Federal-Aid Highway Amendments of 1974, but a State may adopt language effecting stricter limitations with respect to signs, displays and devices, in accordance with 23 U.S.C. 131(k). These stricter controls might limit signs beyond 660 feet in urban areas, or prohibit any sign visible from the highway.

NOTE: (2) This model act does not cover sections 109(c) or 110 of the 1974 Amendments which require just compensation upon the removal of outdoor advertising or the relocation, removal or disposal of junkyards. We view these provisions as ending the hiatus period of October 22, 1965, to January 1, 1968, in Federal law during which there was no requirement for just compensation. However, if the State in its law does not require the payment of just compensation for signs or junkyards in existence prior to the adoption of State-wide outdoor advertising or junkyard control, additional State amendments to its control laws should be adopted providing;

(a) Just compensation shall be paid upon the removal of any outdoor advertising sign display or device lawfully erected under the laws of this State which is caused to be removed under this [Chapter] [Article].

(b) Just Compensation shall be paid the owner for the relocation removal, or disposal of a junkyard lawfully established under the laws of this State which is caused to be relocated, removed or disposed of under this [Chapter] [Article].

(Signed)

Edwin J. Reis

Alaska, no part of such a ferry operation shall be in any foreign or international waters.[126]

(6) No such ferry shall be sold, leased, or otherwise disposed of without the approval of the Secretary. The Federal share of any proceeds from such a disposition shall be credited to the unprogramed balance of Federal-aid highway funds of the same class last apportioned to such State. Any amount so credited shall be in addition to all other funds then apportioned to such State and available for expenditure in accordance with the provisions of this title.[127]

(h) Notwithstanding the provisions of section 301 of this title, in the case of each State which, before January 1, 1975, shall have constructed or acquired any interstate toll bridge (including approaches thereto), which before January 1, 1975, caused such toll bridge to be made free, which bridge is owned and maintained by such State or by a political subdivision thereof, and which bridge is on the Federal-aid primary system (other than the Interstate System), sums apportioned to such State in accordance with paragraphs (1) and (3) of subsection (b) of section 104 of this title shall be available to pay the Federal share of a project under this subsection of (1) such amount as the Secretary determines to be the reasonable value of such bridge after deducting therefrom that portion of such value attributable to any grant or contribution previously paid by the United States in connection with the construction or acquisition of such bridge, and exclusive of rights-of-way, or (2) the amount by which the principal amount of the outstanding unpaid bonds or other obligations created and issued for the construction or acquisition of such bridge exceeds the amount of any funds accumulated or provided for their amortization, on the date such bridge is made free, whichever is the lesser amount.[128]

Sec. 130. Railway-highway crossings.

(a) Except as provided in subsection (d) of section 120 of this title and subsection (b) of this section, the entire cost of construction of projects for the elimination of hazards of railway-highway crossings, including the separation or protection of grades at crossings, the reconstruction of existing railroad grade crossing structures, and the relocation of highways to eliminate grade crossings, may be paid from sums apportioned in accordance with section 104 of this title. In any case when the elimination of the hazards of a railway-highway crossing can be effected by the relocation of a portion of a railway at a cost estimated by the Secretary to be less than the cost of such elimination by one of the methods mentioned in the first sentence of this section, then the entire cost of such relocation project, except as provided in subsection (d) of section 120 of this title and subsection (b) of this section, may be paid from sums apportioned in accordance with section 104 of this title.

(b) The Secretary may classify the various types of projects involved in the elimination of hazards of railway-highway crossings, and may set for each such classification a percentage of the costs of construction which shall be deemed to represent the net benefit to the railroad or railroads for the purpose of determining the railroad's share of the cost of construction. The percentage so determined shall in no case exceed 10 per centum. The Secretary shall determine the appropriate classification of each project.

(c) Any railroad involved in a project for the elimination of hazards of railway-highway crossings paid for in whole or in part from sums made available for expenditure under this title, or prior Acts, shall be liable to the United States for the net benefit to the railroad determined under the classification of such project made pursuant to subsection (b) of this section. Such liability to the United States may be discharged by direct payment to the State highway department of the State in which the project is located, in which case such payment shall be credited to the cost of the project. Such payment may consist in whole or in part of materials and labor furnished by the railroad in connection with the construction of such project. If any such railroad fails to discharge such liability within a six-month period after completion of the project, it shall be liable to the United States for its share of the cost, and the Secretary shall request the Attorney General to institute proceedings against such railroad for the recovery of the amount for which it is liable under this subsection. The Attorney General is authorized to bring such proceedings on behalf of the United States, in the appropriate district court of the United States, and the United States shall be entitled in such proceedings to recover such sums as it is considered and adjudged by the court that such railroad is liable for in the premises. Any amounts recovered by the United States under this subsection shall be credited to miscellaneous receipts.

Sec. 131. Control of outdoor advertising.[129]

(a) The Congress hereby finds and declares that the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

(b) Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of outdoor advertising signs, displays, and devices which are within six hundred and sixty feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, shall be

[126] Amended by sec. 139(b) of Public Law 93-87, Aug. 13, 1973 (87 Stat. 271).
[127] New subsection added by sec. 139 of Public Law 91-605, Dec. 31, 1970 (84 Stat. 1713).
[128] New subsection added by sec. 132 of Public Law 93-87, Aug. 13, 1973 (87 Stat. 267).
[129] This section was revised by the Highway Beautification Act of 1965, Title I, Public Law 89-285, Oct. 22, 1965 (79 Stat. 1028).

reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such State under section 104 of this title, until such time as such State shall provide for such effective control. Any amount which is withheld from apportionment to any State hereunder shall be reapportioned to the other States. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of this subsection to a State.

(c) Effective control means that after January 1, 1968, such signs, displays, and devices shall, pursuant to this section, be limited to (1) directional and other official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, which are required or authorized by law, which shall conform to national standards hereby authorized to be promulgated by the Secretary hereunder, which standards shall contain provisions concerning the lighting, size, number, and spacing of signs, and such other requirements as may be appropriate to implement this section, (2) signs, displays, and devices advertising the sale or lease of property upon which they are located, and (3) signs, displays, and devices advertising activities conducted on the property on which they are located.

(d) In order to promote the reasonable, orderly and effective display of outdoor advertising while remaining consistent with the purposes of this section, signs, displays, and devices whose size, lighting and spacing, consistent with customary use is to be determined by agreement between the several States and the Secretary, may be erected and maintained within six hundred and sixty feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and primary systems which are zoned industrial or commercial under authority of State law, or in unzoned commercial or industrial areas as may be determined by agreement between the several States and the Secretary. The States shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes, and the actions of the States in this regard will be accepted for the purposes of this Act. Whenever a bona fide State, county, or local zoning authority has made a determination of customary use, such determination will be accepted in lieu of controls by agreement in the zoned commercial and industrial areas within the geographic jurisdiction of such authority. Nothing in this subsection shall apply to signs, displays, and devices referred to in clauses (2) and (3) of subsection (c) of this section.[130]

(e) Any sign, display, or device lawfully in existence along the Interstate System or the Federal-aid primary system on September 1, 1965, which does not conform to this section shall not be required to be removed until July 1, 1970. Any other sign, display, or device lawfully erected which does not conform to this section shall not be required to be removed until the end of of the fifth year after it becomes nonconforming.

[130] Amended by sec. 6(a) of Public Law 90-495, Aug. 23, 1968 (82 Stat. 815).

(f) The Secretary shall, in consultation with the States, provide within the rights-of-way for areas at appropriate distances from interchanges on the Interstate System, on which signs, displays, and devices giving specific information in the interest of the traveling public may be erected and maintained. Such signs shall conform to national standards to be promulgated by the Secretary.

(g) Just compensation shall be paid upon the removal of the following outdoor advertising signs, displays, and devices—

(1) those lawfully in existence on the date of enactment of this subsection,

(2) those lawfully on any highway made a part of the interstate or primary system on or after the date of enactment of this subsection and before January 1, 1968, and

(3) those lawfully erected on or after January 1, 1968.

The Federal share of such compensation shall be 75 per centum. Such compensation shall be paid for the following:

(A) The taking from the owner of such sign, display, or device of all right, title, leasehold, and interest in such sign, display, or device; and

(B) The taking from the owner of the real property on which the sign, display, or device is located, of the right to erect and maintain such signs, displays, and devices thereon.

(h) All public lands or reservations of the United States which are adjacent to any portion of the Interstate System and the primary system shall be controlled in accordance with the provisions of this section and the national standards promulgated by the Secretary.

(i) In order to provide information in the specific interest of the traveling public, the State highway departments are authorized to maintain maps and to permit informational directories and advertising pamphlets to be made available at safety rest areas. Subject to the approval of the Secretary, a State may also establish information centers at safety rest areas for the purpose of informing the public of places of interest within the State and providing such other information as a State may consider desirable.

(j) Any State highway department which has, under this section as in effect on June 30, 1965, entered into an agreement with the Secretary to control the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System shall be entitled to receive the bonus payments as set forth in the agreement, but no such State highway department shall be entitled to such payments unless the State maintains the control required under such agreement. Such payments shall be paid only from appropriations made to carry out this section. The provisions of this subsection shall not be construed to exempt any State from controlling outdoor advertising as otherwise provided in this section.[131]

[131] Amended by sec. 6(b) of Public Law 90-495, Aug. 23, 1968 (82 Stat. 815).

93D CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 93-1622

AMERICAN ASSOCIATION OF STATE HIGHWAY
AND TRANSPORTATION OFFICIALS
341 NATIONAL PRESS BLDG.
WASHINGTON, D. C. 20004

FEDERAL-AID HIGHWAY AMENDMENTS OF 1974

DECEMBER 17, 1974.—Ordered to be printed

Mr. WRIGHT, from the committee of conference submitted the following

CONFERENCE REPORT

[To accompany S. 3934]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 3934) to authorize appropriations for the construction of certain highways in accordance with title 23 of the United States Code, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

That this Act may be cited as the "Federal-Aid Highway Amendments of 1974".

HIGHWAY AUTHORIZATIONS

SEC. 101. For the purpose of carrying out the provisions of title 23, United States Code, the following sums are hereby authorized to be appropriated:

(1) For the Federal-aid primary system in rural areas, out of the Highway Trust Fund, an additional $100,000,000 for the fiscal year 1976. For the Federal-aid secondary system in rural areas, out of the Highway Trust Fund, an additional $50,000,000 for the fiscal year 1976. Sums authorized by this paragraph are in addition to the authorizations for fiscal year 1976 for these systems in section 104(a)(1) of the Federal-aid Highway Act of 1973.

(2) For control of outdoor advertising under section 131 of title 23, United States Code, $50,000,000 for the fiscal year 1975.

(3) For control of junkyards under section 136 of title 23, United States Code, $15,000,000 for the fiscal year 1975.

(4) For landscaping the scenic enhancement under section 319(b) of title 23, United States Code, $10,000,000 for the fiscal year 1975.

(5) Nothing in paragraph (1) or (b) of this section shall be construed to authorize the appropriation of any sums to carry out section 131, 136, 319(b), or chapter 4 of title 23, United States Code.

(6) For off-system roads under section 219, title 23, United States Code, $200,000,000 for the fiscal year 1976."

INDIAN RESERVATION ROADS AND BRIDGES

SEC. 102. (a) Paragraph (9) of subsection (a) of section 104 of the Federal-Aid Highway Act of 1973 is amended to read as follows:

"(9) For Indian reservation roads and bridges, $83,000,000 for the fiscal year ending June 30, 1974, $81,000,000 for the fiscal year ending June 30, 1975, and $83,000,000 for the fiscal year ending June 30, 1976.".

(b) The definition of the term "Indian reservation roads and bridges" in subsection (a) of section 101 of title 23, United States Code, is amended to read as follows:

"The term 'Indian reservation roads and bridges' means roads and bridges, including roads and bridges on the Federal-aid systems, that are located within or provide access to an Indian reservation or Indian trust land or restricted Indian land which is not subject to fee title alienation without the approval of the Federal Government, or Indian and Alaska Native villages, groups, or communities in which Indians and Alaskan Natives reside, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians.".

(c) Section 208 of title 23, United States Code, is amended by relettering subsections (c) and (d) as (d) and (e), respectively, and adding a new subsection (c) as follows:

"(c) Before approving as a project on an Indian reservation road or bridge any project on a Federal-aid system in a State, the Secretary must determine that obligation of funds for such project is supplementary to and not in lieu of the obligation, for projects on Indian reservation roads and bridges, of a fair and equitable share of funds apportioned to such State under section 104 of this title."

(d) No funds appropriated under the expanded definition of this section shall be expended without the formal consent of the governing body of the tribe band or group of Indians or Alaska Natives for whose use the Indian reservation roads and bridges are intended.

RURAL HIGHWAY PUBLIC TRANSPORTATION DEMONSTRATION PROGRAM

SEC. 103. Section 147 of the Federal-Aid Highway Act of 1973 is amended to read as follows:

"(a) To encourage the development, improvement, and use of public mass transportation systems operating vehicles on highways for transportation of passengers within rural areas and small urban areas, and between such areas and urbanized areas, in order to enhance access of rural populations to employment, health care, retail centers, education, and public services, there are authorized to be appropriated $15,000,000 for the fiscal year ending June 30, 1975, and $60,000,000 for the fiscal year ending June 30, 1976, of which $50,000,000 shall be out of the Highway Trust Fund, to the Secretary of Transportation to carry out demonstration projects for public mass transportation

highways in rural areas and small urban areas. Projects eligible for Federal funds under this section shall include highway traffic control devices, the construction of passenger loading areas and facilities, including shelters, fringe and transportation corridor parking facilities to serve bus and other public mass transportation passengers, the purchase of passenger equipment other than rolling stock for fixed rail, and the payment from the General Fund for operating expenses incurred as a result of providing such service. To the extent intercity bus service is provided under the program, preference shall be given to private bus operators who lawfully have provided rural highway passenger transportation over the routes or within the general area of the demonstration project.

"(b) Prior to the obligation of any funds for a demonstration project under this section, the Secretary shall provide for public notice of any application for funds under this section which notice shall include the name of the applicant and the area to be served. Within sixty days thereafter, a public hearing on the project shall be held within the proposed service area."

DEMONSTRATION PROJECT—RAILROAD-HIGHWAY CROSSING

SEC. 104. Section 163 of the Federal-Aid Highway Act of 1973 is amended by relettering subsection (a) as paragraph (a)(1) and adding the following new paragraph:

"(2) The Secretary of Transportation shall enter into such arrangements as may be necessary to carry out an engineering and feasibility study for a demonstration project in Lafayette, Indiana, for relocation of railroad lines from the central area of the city. There are authorized to be appropriated to carry out this paragraph $360,000 for the fiscal year ending June 30, 1975."

TRANSPORTATION FOR ELDERLY AND HANDICAPPED PERSONS

SEC. 105. (a) It is hereby declared to be the national policy that elderly and handicapped persons have the same right as other persons to utilize mass transportation facilities and services; that special efforts shall be made in the planning, design, construction, and operation of mass transportation facilities and services so that the availability to elderly and handicapped persons of mass transportation which they can effectively utilize will be assured; and that all Federal programs offering assistance for mass transportation (including the programs under title 23, United States Code, the Federal Aid Highway Act of 1973, and this Act) effectively implement this policy.

(b) Subsection (b) of section 165 of the Federal Aid Highway Act of 1973 (87 Stat. 282) is amended to read as follows:

"(b) The Secretary of Transportation shall require that projects receiving Federal financial assistance under (1) subsection (a) or (c) of section 142 of title 23, United States Code, (2) paragraph (4) of subsection (e) of section 103, title 23, United States Code, or (3) section 147 of the Federal-Aid Highway Act of 1973 shall be planned, designed, constructed, and operated to allow effective utilization by elderly or handicapped persons who, by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability [illegible]

and and those with semiambulatory capabilities, are unable without pecial facilities or special planning or design to utilize such facilities nd services effectively. The Secretary shall not approve any program r project to which this section applies which does not comply with he provisions of this subsection requiring access to public mass transportation facilities, equipment, and services for elderly or handicapped ersons."

VEHICLE SIZES AND WEIGHTS

SEC. 106. (a) Section 127 of title 23, United States Code, is amended y striking out "eighteen thousand pounds carried on any one axle, r with a tandem-axle weight in excess of thirty-two thousand pounds, r with an overall gross weight in excess of seventy-three thousand two undred and eighty pounds," and inserting in lieu thereof the following: "twenty thousand pounds carried on any one axle, including all nforcement tolerances; or with a tandem axle weight in excess of irty-four thousand pounds, including all enforcement tolerances; or ith an overall gross weight on a group of two or more consecutive xles produced by application of the following formula:

$$W = 500\left(\frac{LN}{N-1} + 12N + 36\right)$$

here W = overall gross weight on any group of two or more conecutive axles to the nearest 500 pounds, L = distance in feet between he extreme of any group of two or more consecutive axles, and N = umber of axles in group under consideration, except that two consecutive sets of tandem axles may carry a gross load of 34,000 pounds ch providing the overall distance between the first and last axles f such consecutive sets of tandem axles is thirty-six feet or more: *rovided*, That such overall gross weight may not exceed eighty thouand pounds, including all enforcement tolerances.".

(b) The first sentence of section 127 of title 23, United States Code, s amended by inserting immediately after "July 1, 1956," the following: "except in the case of the overall gross weight of any group f two or more consecutive axles, on the date of enactment of the Fedral-Aid Highway Amendments of 1974.". The third sentence of ch section is amended by striking out the period at the end thereof nd inserting in lieu thereof a comma and the following: "except in e case of the overall gross weight of any group of two or more conecutive axles, on the date of enactment of the Federal-Aid Highway mendments of 1974."

ENFORCEMENT

SEC. 107. (a) Chapter 1 of title 23 of the United States Code is amended by inserting after section 140 the following new section:

§ 141. Enforcement of requirements

"Each State shall certify to the Secretary before January 1 of ch year that it is enforcing all State laws respecting maximum ehicle size and weights permitted on the Federal-aid primary, the ederal-aid urban system and the Federal-aid secondary system, inluding the Interstate System in accordance with section 127 of this

title, and all speed limits on public highways in accordance with section 154 of this title. The Secretary shall not approve any project under section 106 of this title in any State which has failed to certify in accordance with this section.".

(b) The analysis of chapter 1 of title 23 of the United States Code is amended by striking out

"141. Real property acquisition policies."

and inserting in lieu thereof the following:

"141. Enforcement of requirements.".

ALASKA FERRY OPERATIONS

SEC. 108. Paragraph (5) of subsection (g) of section 129 of title 23, United States Code, is amended to read as follows:

"(5) Such ferry may be operated only within the State (including the islands which comprise the State of Hawaii) or between adjoining States. Except with respect to operations between the islands which comprise the State of Hawaii and operations between any two points in Alaska and between Alaska and Washington, including stops at appropriate points in the Dominion of Canada, no part of such ferry operation shall be in any foreign or international waters.".

CONTROL OF OUTDOOR ADVERTISING

SEC. 109. (a) The first sentence of subsection (b) of section 131 of title 23, United States Code, is amended by inserting after "main traveled way of the system," the following: "and Federal-aid highway funds apportioned on or after January 1, 1975, or after the expiration of the next regular session of the State legislature, whichever is later, to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of those additional outdoor advertising signs, displays, and devices which are more than six hundred and sixty feet off the nearest edge of the right-of-way, located outside of urban areas, visible from the main traveled way of the system, and erected with the purpose of their message being read from such main traveled way,".

(b) Subsection (c) of section 131 of title 23, United States Code, is amended to read as follows:

"(c) Effective control means that such signs, displays, or devices after January 1, 1968, if located within six hundred and sixty feet of the right-of-way and, on or after July 1, 1975, or after the expiration of the next regular session of the State legislature, whichever is later, if located beyond six hundred and sixty feet of the right-of-way, located outside of urban areas, visible from the main traveled way of the system, and erected with the purpose of their message being read from such main traveled way, shall, pursuant to this section, be limited to (1) directional and official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, which are required or authorized by law, which shall conform to national standards hereby authorized to be promulgated by the Secretary hereunder, which standards shall contain provisions concerning lighting, size,

appropriate to implement this section. (2) signs, displays, and devices advertising the sale or lease of property upon which they are located, (3) signs, displays, and devices advertising activities conducted on the property on which they are located, and (4) signs lawfully in existence on October 22, 1965, determined by the State, subject to the approval of the Secretary, to be landmark signs, including signs on farm structures or natural surfaces, of historic or artistic significance the preservation of which would be consistent with the purposes of this section."

(c) Subsection (9) of section 131 of title 23, United States Code, is amended by striking out the first sentence and inserting the following in lieu thereof:

"Just compensation shall be paid upon the removal of any outdoor advertising sign, display, or device lawfully erected under State law."

CONTROL OF JUNKYARDS

SEC. 110. Subsection (j) of section 136 of title 23, United States Code, is amended by striking out the first sentence and inserting in lieu thereof the following:

"(j) Just compensation shall be paid the owner for the relocation, removal, or disposal of junkyards lawfully established under State law.".

ADVANCE CONSTRUCTION

SEC. 111. (a) Subsection (a) of section 115 of title 23, United States Code, is amended by striking out "including the Interstate System." each of the two places it appears and inserting in lieu thereof at each such place the following: "other than the Interstate System.".

(b) Section 115 of title 23, United States Code, is amended by redesignating subsection (b) as subsection (c) and by adding immediately after subsection (a) the following new subsection:

"(b) When a State proceeds to construct any project on the Interstate System without the aid of Federal funds, as that System may be designated at that time, in accordance with all procedures and all requirements applicable to projects on such System, except insofar as such procedures and requirements limit a State to the construction of projects with the aid of Federal funds previously apportioned to it, the Secretary, upon application by such State and his approval of such application, is authorized to pay to such State the Federal share of the cost of construction of such project when additional funds are apportioned to such State under section 104 of this title if—

"(1) prior to the construction of the project the Secretary approves the plans and specifications therefor in the same manner as other projects on the Interstate System, and

"(2) the project conforms to the applicable standards under section 109 of this title.".

DONATIONS

SEC. 112. Section 323 of title 23, United States Code, is amended by striking out "after he has been tendered the full amount of the estimated just compensation as established by an approved appraisal of the fair market value of the subject real property," and by inserting in lieu thereof the following: "after he has been fully informed

of his right to receive just compensation for the acquisition of his property,".

SPECIAL BRIDGE REPLACEMENT PROGRAM

SEC. 113. Subsection (c) of section 144 of title 23, United States Code, is amended to read as follows:

"(c) For the purpose of carrying out the provisions of this section, there are hereby authorized to be appropriated out of the Highway Trust Fund $100,000,000 for the fiscal year ending June 30, 1972, $150,000,000 for the fiscal year ending June 30, 1973, $25,000,000 for the fiscal year ending June 30, 1974, $75,000,000 for the fiscal year ending June 30, 1975, and $125,000,000 for the fiscal year ending June 30, 1976, to be available until expended. Such funds shall be available for obligation at the beginning of the fiscal year for which authorized in the same manner and to the same extent as if such funds were apportioned under this chapter.".

UNIFORM NATIONAL SPEED LIMIT

SEC. 114. (a) Chapter 1 of title 23 of the United States Code, relating to highways, is amended by inserting at the end thereof a new section as follows:

"§ 151. National Maximum Speed Limit

"(a) The Secretary of Transportation shall not approve any project under section 106 in any State which has (1) a maximum speed limit on any public highway within its jurisdiction in excess of fifty-five miles per hour, or (2) a speed limit on any other portion of a public highway within its jurisdiction which is not uniformly applicable to all types of motor vehicles using such portion of highway, if on November 1, 1973, such portion of highway had a speed limit which was uniformly applicable to all types of motor vehicles using it. A lower speed limit may be established for any vehicle operating under a special permit because of any weight or dimension of such vehicle, including any load thereon. Clause (2) of this subsection shall not apply to any portion of a highway during such time that the condition of the highway, weather, an accident, or other condition creates a temporary hazard to the safety of traffic on such portion of a highway.

"(b) As used in this section the term 'motor vehicle' means any vehicle driven or drawn by mechanical power manufactured primarily for use on public highways, except any vehicle operated exclusively on a rail or rails.

"(c) Notwithstanding the provisions of section 120 sums apportioned to any State under section 101 shall be available to pay the entire cost of any modification of the signing of the Federal-aid highways for which such sums are apportioned within such State due to a reduction in speed limits to conserve fuel if such change in signing occurs or has occurred after November 1, 1973.

"(d) The requirements of this section shall be deemed complied with by administrative action lawfully taken by the Governor or other appropriate State official that complies with this section."

(b) The analysis of such chapter 1 is amended by inserting at the end thereof the following:

"151. National maximum speed limit."

(c) Section 2 of the Emergency Highway Energy Conservation Act is repealed.

ACCESS HIGHWAYS TO PUBLIC RECREATION AREAS ON CERTAIN LAKES

SEC. 115. (a) Chapter 1 of title 23, United States Code, is further amended by adding at the end thereof the following new section:

§ 155. Access highways to public recreation areas on certain lakes

"(a) The Secretary is authorized to construct or reconstruct access highways to public recreation areas on lakes in order to accommodate present and projected traffic density. The Secretary shall develop guidelines and standards for the designation of routes and the allocation of funds for the purpose of this section which shall include the following criteria:

"(1) No portion of any access highway constructed or reconstructed under this section shall exceed thirty-five miles in length nor shall any portion of such highway be located more than thirty-five miles from the nearest part of such recreation area.

"(2) Routes shall be designated by the Secretary on the recommendation of the State and responsible local officials, after consultation with the head of the Federal agency (if any) having jurisdiction over the public recreation area involved.

"(b) The Federal share payable on account of any project authorized pursuant to this section shall not exceed 70 per centum of the cost of construction or reconstruction of such project.

"(c) All of the provisions of this title applicable to highways on the Federal-aid system (other than the Interstate System) determined appropriate by the Secretary, except those provisions which the Secretary determines are inconsistent with this section, shall apply to any highway designated under this section which is not a part of the Federal-aid system when so designed.

"(d) For the purpose of this section the term 'lake' means any lake, reservoir, pool, or other body of water resulting from the construction of any lock, dam, or similar structure by the Corps of Engineers, Department of the Army, or the Bureau of Reclamation, Department of the Interior, or the Tennessee Valley Authority, and any multipurpose lake resulting from construction assistance of the Soil Conservation Service, Department of Agriculture. This section shall apply to lakes heretofore or hereafter constructed or authorized for construction.

"(e) There is authorized to be appropriated not to exceed $25,000,000 for the fiscal year 1976 to carry out this section. Amounts authorized by this subsection for a fiscal year shall be available for that fiscal year and for the two succeeding fiscal years.".

(b) The analysis of chapter 1 of title 23 of the United States Code is amended by adding at the end thereof the following:

"155. Access highways to public recreation areas on certain lakes."

AUBURN BRIDGE

SEC. 116. (a) In order to provide access between the historical portion of the city of Auburn, California, Auburn District Fairgrounds, city park and parking lots, and the Auburn Dam Overlook area, for motor vehicles and for passage of pedestrians, equestrians, and cyclists under a highway relocation, the Secretary of the Interior is authorized to construct, in lieu of a drainage culvert, an intermediate size bridge across a shallow ravine. The bridge, at approximate stations 154+26 to 155+30 (84 feet), shall be part of the State Highway Number 49 relocation through the city of Auburn, California.

(b) Upon completion such bridge shall be transferred to the State of California for operation and maintenance as a part of the highway relocation. The cost of the bridge, less the original planned drainage culvert, shall be considered as nonreimbursable.

(c) There is authorized to be appropriated to carry out this section the sum of $250,000 (October 1975 price levels) plus or minus such amounts as may be justified by changes in price indexes applicable to the type of development involved herein.

NORTHEAST CORRIDOR DEMONSTRATION-RAIL CROSSINGS

SEC. 117. Subsection (a) of section 322 of title 23, United States Code, is amended by inserting at the end thereof the following:

"The Secretary may permit selected individual public crossings of unusually low-potential hazard to remain at ground level, if they are provided with the best available protection."

OVERSEAS HIGHWAY

SEC. 118. (a) The Secretary is authorized to undertake projects for the reconstruction or replacement of bridge structures of a two-lane nature on the Overseas Highway, to Key West, Florida. The Federal share payable on account of such projects shall not exceed 70 per centum of the costs of such reconstruction or replacement.

(b) There are authorized to be appropriated, out of the Highway Trust Fund, not to exceed $109,200,000, to carry out such projects. Such sums shall be available until expended except that of the funds authorized under this section only $10,000,000 for the fiscal year ending June 30, 1975, and $15,000,000 for the fiscal year ending June 30, 1976, can be obligated.

SEC. 119. (a) For the purpose of this section the term—

BIKEWAY DEMONSTRATION PROGRAM

SEC. 119. (a) For the purpose of this section the term—

(1) "bikeway" means a bicycle lane or path, or support facility, a bicycle traffic control device, a shelter, or a parking facility to serve bicycles and persons using bicycles;

(2) "State" means any one of the fifty States, the District of Columbia, or Puerto Rico.

(b) (1) The Secretary is authorized to make grants to States for demonstration projects for the construction of bikeways. Such bikeways shall be for commuting and for recreational purposes and shall be located in urbanized areas and such other urban areas as are designated by the State highway department under subsection 103(d) of title 23, United States Code.

(2) The Federal share of any demonstration project for the construction of a bikeway shall be 80 per centum of the total cost of such

project. The remaining 20 per centum of such cost shall be paid by the grantee.

"(3) No grant shall be made under authority of this Act unless such bikeway project is in accordance with continuing comprehensive transportation planning process carried on cooperatively by States and local communities in accordance with section 134 of title 23, United States Code.

(4) The Secretary shall establish, by regulation, construction standards for bikeway projects for which grants are authorized by this Act, and shall establish, by regulation, such other requirements as may be necessary to carry out this Act.

(c) Grants made under this Act shall be in addition to, and not in lieu of, any sums available for bicycle projects under section 217 of title 23, United States Code.

(d) There are authorized to be appropriated to the Secretary to carry out this section $10,000,000 for the fiscal year 1976.

EXTENSION OF CARPOOLS

SEC. 120. (a) The last sentence of section 3(d) of the Emergency Highway Energy Conservation Act (Public Law 93-239) is amended by striking out "December 31, 1975" and inserting in lieu thereof "December 31, 1975".

(b) The Secretary of Transportation is authorized to make grants for demonstration projects designed to encourage the use of carpools in urban areas. Such a project may include, but not be limited to, such measures as systems for locating potential riders and informing them of convenient carpool opportunities, designating existing highway lanes as preferential carpool highway lanes or shared bus and carpool lanes, providing related traffic control devices, and designating existing publicly owned facilities for use as preferential parking for carpools. There is authorized to be appropriated not to exceed $7,500,000 to carry out this subsection.

SAFER ROADS PROGRAM

SEC. 121. The first sentence of sub-section (c) of section 405 of title 23, United States Code, is amended by striking the word "and" after "cross-sings," and inserting in lieu thereof the following: "the correction of high-hazard locations, and".

OFF SYSTEM ROADS

SEC. 122. (a) Chapter 2 of title 23, United States Code, is amended by adding at the end thereof the following new section:

"§ 219. Off-system roads

"(a) The Secretary is authorized to make grants to States for projects for the construction, reconstruction, and improvement of any off-system road (including, but not limited to, the replacement of bridges, the elimination of high-hazard locations, and roadside obstacles).

"(b) On or before January 1 next preceding the commencement of each fiscal year the Secretary shall apportion the sums authorized

to be appropriated to carry out this section among the several States as follows:

"(1) one-third in the ratio which the area of each State bears to the total area of all States;

"(2) one-third in the ratio which the population of rural areas of each State bears to the total population of rural areas of all the States; and

"(3) one-third in the ratio in which the off-system road mileage of each State bears to the total off-system road mileage of all the States. Off-system road mileage as used in this subsection shall be determined as of the end of the calendar year preceding the year in which the funds are apportioned and shall be certified to by the Governor of the State and subject to approval by the Secretary.

"(c) Sums apportioned to a State under this section shall be made available for expenditures in the counties of such State on a fair and equitable basis.

"(d) Sums apportioned under this section and programs and projects under this section shall be subject to all of the provisions of chapter 1 of this title applicable to highways on the Federal-aid secondary system except the formula for apportionment, the requirement that these roads be on the Federal-aid system, and those other provisions determined by the Secretary to be inconsistent with this section. The Secretary is not authorized to determine as inconsistent with this section any provision relating to the obligation and availability of funds.

"(e) As used in this section the term 'off-system road' means any toll-free road (including bridges) in a rural area, which road is not on any Federal-aid system and which is under the jurisdiction of and maintained by a public authority and open to public travel.".

(b) The analysis of chapter 2, title 23, United States Code, is amended by adding at the end thereof the following:

"219. Off-system roads.".

BRIDGES ON FEDERAL DAMS

SEC. 123. (a) Section 320(d) of title 23 of the United States Code (as amended) is amended by striking out "$25,261,000" and inserting in lieu thereof "$37,761,000".

(b) All sums appropriated under authority of the increased authorization established by the amendment made by subsection (a) of this section shall be available for expenditure in the same manner and for the same purpose as provided for in subsection (b) of section 116 of the Federal-Aid Highway Act of 1970 (Public Law 91-605).

DEMONSTRATION PROJECTS

SEC. 124. The Secretary of Transportation shall carry out a demonstration project for construction of a high-density urban highway intermodal transportation connection between Franklin Avenue and Fifty-ninth Street, South, in Minneapolis, Minnesota. The Federal share of such project shall be 90 per centum of the cost thereof. Such highway shall be placed on a Federal-aid system before any funds are expended under this section. There is authorized to be ap-

propriated, out of the Highway Trust Fund, not to exceed $53,000,000 to carry out this section, except that not to exceed $10,000,000 for the fiscal year 1975, and $15,000,000 for the fiscal year 1976, shall be expended to carry out this section.

ROUTE WITHDRAWALS

SEC. 125. (a) Section 103(c)(2) of title 23 of the United States Code is amended by striking out the period following "House Report Numbered 92-1445" and inserting in lieu thereof a comma and the following: "increased or decreased, as the case may be, as determined by the Secretary, based on changes in construction costs of such route or portion thereof as the date of withdrawal of approval under this paragraph and in accordance with that design of such route or portion hereof which is the basis of such 1972 cost estimate."

(b) Section 103(c)(4) of title 23 of the United States Code is amended by striking out the period following "House Report Numbered 92-1445" and inserting in lieu thereof a comma and the following: "increased or decreased, as the case may be, as determined by the Secretary, based on changes in construction costs of such route or portion thereof as of the date of withdrawal of approval under this paragraph and in accordance with that design of such route or portion hereof which is the basis of such 1972 cost estimate."

SCHOOL BUS DRIVER TRAINING

SEC. 126. (a) Chapter 4 of title 23, United States Code, is amended by adding at the end thereof the following new section:

"§ 406. School bus driver training

"(a) The Secretary is authorized to make grants to the States for the purpose of carrying out State programs approved by him of driver education and training for persons driving school buses.

"(b) A State program under this section shall be approved by the Secretary if such program—

"(1) provides for the establishment and enforcement of qualifications for persons driving school buses;

"(2) provides for initial education and training and for refresher courses;

"(3) provides for periodic reports to the Secretary on the results of such program; and

"(4) includes persons driving publicly operated, and persons driving privately operated, school buses.

"(c) Not less than $7,500,000 of the sums authorized to carry out section 402 of this title for fiscal year 1976 shall be obligated to carry out this section. Such sums shall be apportioned among the States in accordance with the formula established under subsection (c) of section 402 of this title. The Federal share payable on account of any project to carry out a program under this title shall not exceed 70 per centum of the cost of the project."

(b) The analysis of chapter 4, title 23, United States Code, is amended by adding at the end thereof the following:

"406. School bus driver training.".

And the House agree to the same.

JIM WRIGHT,
JOHN C. KLUCZYNSKI,
HAROLD T. JOHNSON,
WM. HARSHA,
JAMES C. CLEVELAND,
Managers on the Part of the House.

JENNINGS RANDOLPH,
MIKE GRAVEL,
QUENTIN BURDICK,
HOWARD BAKER,
ROBERT T. STAFFORD,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 3934) to authorize appropriations for the construction of certain highways in accordance with title 23 of the United States Code, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

SHORT TITLE

Senate bill

Provides that this Act may be cited as the "Federal-Aid Highway Amendments of 1974".

House amendment

Provides that this Act may be cited as the "Federal-Aid Highway Act of 1974".

Conference substitute

The conference substitute is identical to the Senate bill.

PARKWAYS

Senate bill

Section 101 amends section 101(a)(8) of the Federal-Aid Highway Act of 1973 to provide the following authorizations for appropriations out of the Highway Trust Fund for parkways:

(1) $60,000,000 for the fiscal year ending June 30, 1974.

(2) $75,000,000 for each of the fiscal years ending June 30, 1975, and 1976.

House amendment

No comparable provision.

Conference substitute

No comparable provision.

HIGHWAY AUTHORIZATIONS

Senate bill

The Senate bill contains no comparable provision for primary or secondary systems authorizations, and off-system roads.

The Senate bill contains an authorization for $65,000,000 for each of the fiscal years 1975 and 1976 for outdoor advertising.

In addition, the Senate bill contains an authorization of $15,000,000 for each of the fiscal years 1975 and 1976 for control of junkyards.

The Senate bill also contains an authorization of $15,000,000 for each of the fiscal years 1975 and 1976 for landscaping and scenic enhancement.

House amendment

Section 102 of the House amendment authorizes the following sums to be appropriated:

(1) For the Federal-aid primary system in rural areas, out of the Highway Trust Fund, $900,000,000 for the fiscal year 1976. For the Federal-aid secondary system in rural areas, out of the Highway Trust Fund, $500,000,000 for the fiscal year 1976.

(2) For control of outdoor advertising under section 131 of title 23, United States Code, $50,000,000 per fiscal year for the fiscal years 1975 and 1976.

(3) For control of junkyards under section 136 of title 23, United States Code, $15,000,000 per fiscal year for the fiscal years 1975 and 1976.

(4) For landscaping the scenic enhancement under section 319 (b) of title 23, United States Code, $10,000,000 per fiscal year for the fiscal years 1975 and 1976.

(5) Nothing in paragraph (1) or (6) of this section shall be construed to authorize the appropriation of any sums to carry out section 131, 136, 319(b), or chapter 1 of title 23, United States Code.

(6) For off-system roads under section 219, title 23, United States Code, $200,000,000 for the fiscal year 1976.

Conference substitute

The conference substitute authorizes the following sums for purposes of carrying out the provisions of title 23, United States Code:

(1) For the Federal-aid primary system in rural areas, out of the Highway Trust Fund, $100,000,000 for the fiscal year 1976. For the Federal-aid secondary system in rural areas, out of the Highway Trust Fund, $50,000,000 for the fiscal year 1976.

(2) For control of outdoor advertising under section 131 of title 23, United States Code, $50,000,000 per fiscal year for the fiscal year 1975.

(3) For control of junkyards under section 136 of title 23, United States Code, $15,000,000 per fiscal year for the fiscal year 1975.

(4) For landscaping the scenic enhancement under section 319 (b) of title 23, United States Code, $10,000,000 per fiscal year for the fiscal year 1975.

(5) For off-system roads under section 219, title 23, United States Code, $200,000,000 for the fiscal year 1976.

INDIAN RESERVATION ROADS AND BRIDGES

Senate bill

Section 102(a) amends section 104(a)(9) of the Federal-Aid Highway Act of 1973 to provide the following authorizations for appropriations for Indian reservation roads and bridges:

(1) $83,000,000 for the fiscal year ending June 30, 1974.
(2) $84,000,000 for the fiscal year ending June 30, 1975.
(3) $83,000,000 for the fiscal year ending June 30, 1976.

Section 102(b) amends the term "Indian reservation roads and bridges" in section 101(a) of title 23, United States Code, by inserting ", including roads and bridges of the Federal-aid systems," immediately after "bridges".

Section 102(c) adds a new section 208(c) to title 23, United States Code, which reads as follows:

"(c) Before approving as a project on an Indian reservation road or bridge any project on a Federal-aid system in a State, the Secretary must determine that obligation of funds for such project is supplementary to and not in lieu of the obligation, for projects on Indian reservation roads and bridges, of a fair and equitable share of funds apportioned to such State under section 104 of this title."

Section 102(d) requires the consent of the governing body of the tribe, band, or group of Indians or Alaska Natives before any funds appropriated under the expanded definition by this section are expended.

House amendment

No comparable provision.

Conference substitute

The conference substitute is the same as the Senate bill.

RURAL HIGHWAY PUBLIC TRANSPORTATION DEMONSTRATION PROGRAM

Senate bill

Section 103 authorizes an additional $45,000,000 for the Rural Highway Public Transportation Demonstration Program, raising the total to $75,000,000 for fiscal years 1975 and 1976. Of this amount, one-third is to be provided by general fund appropriations and two-thirds from the Highway Trust Fund. The payment of operating expenses is authorized from the general fund appropriations for the demonstration program. The Senate bill also provides that, when intercity bus service is provided as part of the demonstration program, preference is to be given to private operators who are providing or have provided service in the area of a project. The bill further provides that public notice, including the name of the applicant, must be given in each proposed project area and that a public hearing must be held within 60 days.

House amendment

No comparable provision.

Conference substitute

The conference substitute is identical to the Senate bill.

DEMONSTRATION PROJECT—RAILROAD-HIGHWAY CROSSING

Senate bill

Section 101 of the Senate bill amends section 163 of the Federal-Aid Highway Act of 1973 by directing the Secretary of Transportation to carry out an engineering and feasibility study for a demonstration project in Lafayette, Indiana, for relocation of railroad lines. The section authorizes the appropriation of $360,000 to carry out this amendment.

House amendment

No comparable provision.

Conference substitute

The conference substitute is the same as the Senate bill.

TRANSPORTATION FOR ELDERLY AND HANDICAPPED PERSONS

Senate bill

Section 105(a) of the Senate bill contains a statement of national policy which is similar to that found in section 16(a) of the Urban Mass Transportation Act of 1964, as amended, and which declares that elderly and handicapped persons have the same right to utilize mass transportation systems as other persons.

The section amends section 165(b) to insure that any project receiving Federal financial assistance under the Federal-aid urban system, Interstate transfer, or rural bus demonstration sections of the Federal-Aid Highway Act of 1973 shall be "planned, designed, constructed and operated so as to allow effective utilization by elderly or handicapped persons", including those in wheelchairs.

House amendment

No comparable provision.

Conference substitute

The conference substitute is identical to the Senate bill.

VEHICLE SIZES AND WEIGHTS

Senate bill

Section 106 of the Senate bill amends section 127 of title 23, United States Code, by striking out "eighteen thousand pounds carried on any one axle, with a tandem-axle weight in excess of thirty-two thousand pounds, or with an overall gross weight in excess of seventy-three thousand two hundred and eighty pounds." and inserting in lieu thereof the following: "twenty thousand pounds carried on any one axle, including all enforcement tolerances; ten thousand pounds on the steering axle of any truck tractor, including all enforcement tolerances; or with a tandem axle weight in excess of thirty-four thousand pounds, including all enforcement tolerances; or with an overall gross weight on a group of two or more consecutive axles produced by application of the following formula:

$$W = 500\left(\frac{LN}{N-1} + 12N + 36\right)$$

where W = overall gross weight on any group of two or more consecutive axles to the nearest 500 pounds, L = distance in feet between the extreme of any group of two or more consecutive axles, and N = number of axles in group under consideration, except that two consecutive sets of tandem axles may carry a gross load of 34,000 pounds each providing the overall distance between the first and last axles of such consecutive sets of tandem axles is thirty-six feet or more: *Provided*, That such overall gross weight may not exceed eighty thousand pounds, including all enforcement tolerances,".

House amendment

No comparable provision.

Conference substitute

The conference substitute is identical to the Senate bill except as follows:

(1) The phrase "10,000 pounds on the steering axle of any truck tractor, including all enforcement tolerances;" is deleted.

(2) Because of inclusion in the Senate passed bill of a new and additional weight limitation on any group of two or more consecutive axles of vehicles operating on the Interstate System, clarifying language was added by the Conference Committee to express the intent of the Senate as stated by the floor manager when this provision was debated on the Senate floor. The added language makes it clear that any vehicle or combination of vehicles that could lawfully operate in a State on the date of enactment of the Federal-Aid Highway Amendments of 1974 may be permitted to continue to operate on the Interstate System in such State even though the overall gross weight of any group of consecutive axles may exceed that permitted by the formula in this section.

STATE ENFORCEMENT

Senate bill

Section 107 of the Senate bill amends section 127 of title 23, United States Code, by adding a new subsection (b) which requires each State to certify annually that State size and weight laws are being enforced on Federal-aid primary, secondary, and urban systems within the State.

The section provides that, whenever State certification fails to satisfy the Secretary that State vehicle size and weight limitations are being adequately and uniformly enforced on any non-Interstate Federal-aid system, the Secretary must refuse to approve programs or projects for such system until he receives assurances satisfactory to him that the requirements of this subsection are being met.

House amendment

Section 107 of the House amendment provides that each State must certify to the Secretary before January 1 of each year that it is enforcing all State laws respecting maximum vehicle size and weights permitted on the Interstate System in accordance with section 127 of this title, and all speed limits on public highways in accordance with section 2 of the Emergency Highway Energy Conservation Act (Public Law 93-239). The Secretary shall not approve any project under section 106 of this title in any State which has failed to certify in accordance with this section.

Conference substitute

The conference substitute is a combination of the Senate bill and the House amendment and requires each State to certify to the Secretary annually that it is enforcing all State laws respecting maximum vehicle size and weights on all Federal-aid systems. In addition, this section enforces all maximum speed limits on public highways.

ALASKA FERRY OPERATIONS

Senate bill

Section 108 of the Senate bill amends section 129(g)(5) of title 23, United States Code, by augmenting the operating authority of the Alaska ferry system in international waters to include stops at appropriate points in the Dominion of Canada.

House amendment

No comparable provision.

Conference substitute

The conference substitute is the same as the Senate bill.

CONTROL OF OUTDOOR ADVERTISING

Senate bill

Section 109 amends section 131(b) of title 23, United States Code, to require that "effective control" of outdoor advertising include measures for regulating signs erected more than 660 feet from the nearest edge of the right-of-way if they are legible from the main traveled way of the highway. The test of legibility is whether the message on a sign, either pictorial or written, can be communicated to a motorist with normal vision traveling at the posted speed on the main traveled way. This amendment would not prevent States from imposing more stringent controls, including restrictions on all signs visible from the controlled highway. This section also authorizes the Secretary to impose a penalty of 10 percent of the highway funds apportioned to any State which did not provide after January 1, 1975, or the end of the next session of the State Legislature, whichever is later, for the control of signs beyond 660 feet which are legible from the main traveled way.

In addition, this section guarantees just compensation for the removal only of those signs lawfully erected under State law prior to enactment of the Federal-Aid Highway Act of 1974.

Section 109(e) amends section 131(f) of title 23, United States Code, by expanding the use of official "logo" signs to the Primary System, as well as the Interstate.

Section 109(g) of the Senate bill amends section 131(i) of title 23, United States Code, to provide for Federal financial assistance to the States in establishing information centers at safety rest areas and other travel information systems within the rights-of-way of Interstate and primary highways. The Federal share of the cost of establishing the information centers and other alternate information systems is 75 percent, and up to 20 percent of the funds provided for section 131 may be used for these purposes.

Section 109(h) amends section 131(m) of title 23, United States Code, to provide for an increase in authorizations for highway beautification to $65 million for each of the two fiscal years 1975 and 1976.

House amendment

Section 103(a) of the House amends section 131(b), title 23, United States Code, by extending outdoor advertising controls beyond the present 660 feet from the edge of the highway right-of-way to cover signs which are visible from the main traveled way and which were erected for the purpose of being read from the main traveled way of the Interstate or Federal-aid primary system, and States would be given until January 1, 1975, or after the expiration of the next regular session of the State legislature, whichever is later, to conform to such extended control requirements.

Section 103(b) amends the definition of "effective control" in section 131 of title 23, United States Code.

Section 103(c) amends subsection (d) of section 131, title 23, United States Code, to assure that outdoor advertising in areas zoned industrial or commercial will be permitted in the extended control zone.

Section 103(d) amends section 131(e) of title 23, United States Code, to indicate that any nonconforming sign under State law enacted to comply with such section shall be removed no later than the end of the fifth year which becomes nonconforming, except as determined by the Secretary.

Section 103(e) amends section 131(f) of title 23, United States Code, to authorize the Secretary to permit the States to allow certain directional signs within the right-of-way of Federal-aid primary highways. Section 103(f) of the House amendment amends section 131(g) of title 23, United States Code, to insure the payment of just compensation in the case of signs which were lawfully erected under State law but which are required to be removed. In addition, section 103(g) of the House amendment adds three new subsections to provide as follows:

(1) Subsection (o) provides that no sign lawfully in existence on June 1, 1972, giving directional information in the specific interest of the traveling public need be removed until December 31, 1975, or until the State where the sign is located certifies that directional information is reasonably available from other sources, whichever first occurs.

(2) Subsection (p) is designed to prevent inequities from arising where a second removal of a sign is required by virtue of the provisions contained in this bill, a new amendment authorizing 100 percent Federal funding for removing such signs is added.

(3) Subsection (q)(1) directs the Secretary to assist States in assuring the motorist adequate directional information concerning available goods and services. He is further directed to consider functional and esthetic factors in developing the national standards for highway signs authorized by section 131 (c) and (f). Paragraph (2) of subsection (q) lists those signs which could be considered to provide directional information about available goods and services. Paragraph (3) directs the Secretary to encourage the States to defer removing necessary directional information signs of this type which were in place on June 1, 1972, until all other non-conforming signs were removed. Paragraph (4) permits any facility providing the motorist with goods and services in the interest of the traveling public to continue using one nonconforming sign in each direction on any highway subject to a State statute implementing section 131, if the

sign renders directional information about the facility, it had been in place on June 1, 1972, and it is within 75 miles of the facility or such distance as the State shall establish. A qualifying sign is to remain until the Secretary is satisfied that the information is being provided by one of the enumerated alternatives, or such other alternative as the State deems adequate.

Conference substitute

The conference substitute adopts section 103(a) of the House amendment, section 109(b) of the Senate bill with an amendment which deletes the words "and legible from the main traveled way of the system" and inserts in lieu thereof "located outside of urban areas, visible from the main traveled way of the system, and erected with the purpose of their message being read from such main traveled way.", and accepts section 103(f) of the House amendment.

CONTROL OF JUNKYARDS

Senate bill

Section 110(a) of the Senate bill amends the first sentence of section 136(j) of title 23, United States Code, to provide compensation to the owner for the relocation, removal, or disposal of junkyards lawfully in existence on the effective date of State legislation enacted to comply with section 136(j).

Section 110(b) authorizes $15,000,000 for each of the fiscal years ending June 30, 1975, and June 30, 1976.

House amendment

Section 101 of the House amendment is essentially the same as section 110(a) of the Senate bill.

Section 103(3) of the House amendment is the same as section 110 (b) of the Senate amendment.

Conference substitute

The conference substitute is the same as section 101 of the House amendment.

RESEARCH AND PLANNING

Senate bill

Section 111 of the Senate bill amends section 307(a) of title 23, United States Code, to authorize the Secretary in his discretion to engage in research with respect to beautification, roadside development, and scenic enhancement.

House amendment

No comparable provision.

Conference substitute

No comparable provision.

LANDSCAPING AND SCENIC ENHANCEMENT

Senate bill

Section 112 of the Senate bill authorizes the appropriation of $15,000,000 for each of the fiscal years 1975 and 1976 for the purpose of carrying out section 319(b) of title 23, United States Code.

House amendment

Section 102(4) of the House amendment authorizes the appropriation of $10,000,000 per fiscal year for the fiscal years 1975 and 1976 for the purpose of carrying out section 319(b) of title 23, United States Code.

Conference substitute

Section 101(4) of the conference substitute is the same as the House amendment, except that such section authorizes an appropriation of $10,000,000 for fiscal year 1975.

SPECIAL BRIDGE REPLACEMENT PROGRAM

Senate bill

Section 113 of the Senate bill amends section 144(e) of title 23, United States Code, to provide increased authorizations for the special bridge replacement program of $50,000,000 for each of the fiscal years 1975 and 1976.

House amendment

No provision.

Conference substitute

The conference substitute is the same as the Senate bill, except that the increased authorization is only for fiscal year 1976.

UNIFORM NATIONAL SPEED LIMIT

Senate bill

Section 114 of the Senate bill adds a new section to chapter 1 of title 23, United States Code, to provide that the Secretary of Transportation shall not approve any project under section 106 in any State which has (1) a maximum speed limit on any public highway within its jurisdiction in excess of fifty-five miles per hour, or (2) a speed limit on any other portion of a public highway within its jurisdiction which is not uniformly applicable to all types of motor vehicles using such portion of highway, if on November 1, 1973, such portion of highway had a speed limit which was uniformly applicable to all types of motor vehicles using it.

The Senate bill does not prohibit States from setting a speed limit lower than 55 miles per hour on any road.

The Senate bill also provides that sums apportioned to any State under section 104 shall be available to pay the entire cost of any modification of the signing of the Federal-aid highways for which such sums are apportioned within such State due to a reduction in speed limits to conserve fuel if such change in signing occurs or has occurred after November 1, 1973.

House amendment

Section 112 of the House amendment amends section 2 of the Emergency Highway Energy Conservation Act to provide that such section shall cease to be in effect on and after the date on which Congress by concurrent resolution declares there is no need requiring the application of such section.

Conference substitute

The conference substitute is identical to the Senate bill.

ACCESS ROADS TO FEDERAL LAKES

nate bill

Section 115 of the Senate bill adds a new section to chapter 1 of tle 23, United States Code, authorizing $10,000,000 annually out of e general fund during fiscal years 1975 and 1976 for constructing cess highways to public recreation areas at lakes developed under ograms of the Army Corps of Engineers, the Bureau of Reclamation, e Soil Conservation Service, and the Tennessee Valley Authority. ch highways are to be no more than 20 miles in length, and they st be recommended by both State and responsible local officials. In ldition, the Federal share payable on account of any project author-ed pursuant to this section shall not exceed 50 per centum of the st of construction or reconstruction of such project.

louse amendment

Section 108 of the House amendment adds a new section to chapter of title 23, United States Code, which authorizes the Secretary of ansportation to construct or reconstruct access highways to public creation areas on lakes in order to accommodate present and pro-ted traffic density. This section provides that the Secretary shall velop guidelines and standards, including as criteria the following: 1) such highway constructed or reconstructed shall not exceed 35 iles in length nor shall be located more than 35 miles from the nearest art of the recreation area; and (2) such routes shall be designated the Secretary on the recommendation of the State and responsible al officials, after consultation with the head of the Federal agency (if any) having jurisdiction over the public recreation area involved. The Federal share payable for such project shall not exceed 70 per entum of the cost of construction or reconstruction of the project; nd all the provisions of Title 23 which are applicable to non-Interstate ghways on the Federal-aid system, and which are determined appro-riate and not inconsistent with this section by the Secretary, shall pply to any highway designated under this section which is not a art of the Federal-aid system when so designated.

onference substitute

The conference substitute is the same as the House amendment. It s the intent and expectation of the conferees that projects initia ly pproved under this section will include the following: County R ad 25 designated by the Corps of Engineers connecting farm to mar ket oad 982 to Tickey Creek Park east of Dallas, Texas; a route from awrence, Kansas, to Clinton Lake; Rapid Forge Road, between U.S. 2 and State Road 28 providing access to Paint Creek Reservoir near reenfield, Ohio; access roads to Lake Raystown, located in Hunting-on County, Pennsylvania; Hemlock Road, located in Glade Town-hip, Warren County, Pennsylvania, beginning at the end of Pennsyl-ania Avenue and running along the north side of the Allegheny iver to the dam; and various access roads to lakes in Indiana.

PARKWAYS AND ASSOCIATED LANDS AND RIGHTS-OF-WAY

enate bill

Section 116 of the Senate bill amends section 207 of title 23 of the United States Code by adding a new subsection which indicates that

parkways and all associated lands and rights-of-way funded in whole or in part from the Highway Trust Fund shall be managed solely for scenic and recreational use and passenger car travel.

House amendment

No comparable provision.

Conference substitute

No comparable provision.

NORTHEAST CORRIDOR DEMONSTRATION-RAIL CROSSINGS

Senate bill

Section 117 of the Senate bill amends section 322 of title 23, United States Code, to permit under certain circumstances selected public rail-road-highway crossings to remain at ground level and to be provided with appropriate warning and protection devices.

This section also provides a uniform cost-sharing formula for cross-ings on Federal-aid and non-Federal-aid routes, 90 percent Federal and 10 percent State funds.

This section authorizes to be appropriated from the general fund not to exceed $22,000,000 and out of the Highway Trust Fund such additional sums as are necessary to carry out the provisions of this section (exclusive of subsection (f)).

House amendment

No comparable provision.

Conference substitute

The conference substitute is the same as section 117(a) of the Senate bill.

OVERSEAS HIGHWAY

Senate bill

Section 118 authorizes the Secretary to undertake projects for the reconstruction or replacement of bridge structures of a 2 lane nature on the Overseas Highway to Key West, Florida. The Federal share of this project shall not exceed 75 per centum of total cost. In addition, this section authorizes to be appropriated out of the Highway Trust Fund not to exceed $116,250,000 to carry out such projects. Such sums shall be available until expended except that of the funds authorized under this section only $10,000,000 for the fiscal year ending June 30, 1975, and $15,000,000 for the fiscal year ending June 30, 1976, can be obligated.

House amendment

Section 114 of the House amendment authorizes from the Highway Trust Fund $10,000,000 for fiscal year 1975 and $15,000,000 for fiscal year 1976 for the reconstruction of Federal-aid primary routes in the State of Florida. This would be at the regular 70 percent Federal matching ratio.

Conference substitute

The conference substitute is the same as the Senate bill, except that total authorizations are reduced to $109,200,000 and the Federal matching ratio is reduced to 70 percent.

BIKEWAY DEMONSTRATION PROGRAM

Senate bill

Section 119 of the Senate bill authorizes $20 million—$10 million from the Highway Trust Fund and $10 million in general funds—for expenditure, upon application by a State, in urban areas currently eligible to receive urban system highway funds. These funds are available for expenditure only for bikeway projects and are intended to be supplementary to bikeway funds available under the ongoing Federal-aid highway program. The Federal share of any demonstration project for the construction of bikeways shall be 80 per centum of the total cost of such project.

House amendment

No comparable provision.

Conference substitute

The conference substitute is the same as the Senate bill, except that only $10 million is authorized from the General Fund for fiscal year 976.

Termination of Federal Highway Construction Contracts.

Senate bill

Section 120 of the Senate bill creates an administrative procedure which defines grounds upon which a highway contractor may seek to terminate a Federal contract, and, in effect, recognizes certain acts on the part of the Federal Government as constituting force majeure.

House amendment

No comparable provision.

Conference substitute

No comparable provision.

CARPOOLING

Senate bill

Section 121 of the Senate bill modifies provisions of the Emergency Highway Conservation Act (P. L. 93-239) relating to incentives for carpooling by extending the date for application for carpool demonstration programs by one year to December 31, 1975, and authorizes $5,000,000 out of the Highway Trust Fund specifically for carpooling projects. The Federal share of any such project shall be 90 per centum and shall not exceed $1,000,000.

House amendment

Section 115 of the House amendment amends section 3(d) of the Emergency Highway Conservation Act (P. L. 93-239) by extending the date on which application must be submitted to December 31, 1975.

Conference substitute

The conference substitute is the same as the House amendment, except that an additional $7,500,000 from the General Fund is authorized for distribution at the discretion of the Secretary.

FEDERAL-AID SAFER ROADS DEMONSTRATION PROGRAM

Senate bill

Section 122 of the Senate bill amends section 405(c) of title 23, United States Code, to permit appropriated funds to be used for projects to correct high hazard locations on public roads not on the Federal-aid system.

House amendment

No comparable provision.

Conference substitute

The conference substitute is identical to the Senate bill.

ADVANCE CONSTRUCTION

Senate bill

No comparable provision.

House amendment

Section 105 of the House amendment amends section 115 of title 23, United States Code, to provide that when a State has obligated all funds for any Federal-aid system, including the Interstate System, apportioned to it, and proceeds to construct any project on that Federal-aid system without the aid of Federal funds, the Secretary is authorized to pay to such State the Federal share of the costs of construction of such project when additional funds are apportioned to the State. The Secretary is not authorized to approve an application under this section unless an authorization is in effect for the fiscal year for which the application is sought.

Conference substitute

The conference substitute is the same as the House amendment.

BUS WIDTHS

Senate bill

No comparable provision.

House amendment

Section 106 amends chapter 1 of title 23 of the United States Code by providing that any bus having a width of 102 inches or less may operate on any lane of 12 feet or more in width on the Interstate System.

Conference substitute

No comparable provision.

BRIDGES OVER FEDERAL DAMS

Senate bill

No comparable provision.

House amendment

Section 109 of the House amendment amends subsection 320(d) of title 23, United States Code, by increasing the authorization for the emergency fund from $25,261,000 to $27,761,000, which shall be avail-

able for expenditure by the Secretary of Transportation in accordance with section 320.

Conference substitute

The conference substitute is the same as the House amendment.

OFF-SYSTEMS ROAD

Senate bill

No comparable provision.

House amendment

Section 110 amends chapter 2 of title 23, United States Code, by adding a new section authorizing the Secretary to make grants to States for projects for the construction, reconstruction, and improvement of any off-system road. Such grants may include, but not be limited to, the replacement of bridges and the elimination of high-hazard locations and roadside obstacles.

The sums authorized to be appropriated shall be apportioned by the Secretary, on or before January 1 next preceding the commencement of each fiscal year as follows: (1) ⅓ in the ratio in which the area of each State bears to the total area of all States; (2) ⅓ in the ratio in which the population of rural areas of each State bears to the total population of rural areas of all States; and (3) ⅓ in the ratio in which the off-system road mileage of each State bears to the total off-system road mileage of all the States.

The off-system road mileage shall be determined as of the end of the calendar year preceding the year in which the funds are apportioned and shall be certified to by the Governor of the State and subject to approval by the Secretary.

The counties in each State shall receive any sums apportioned to the State, on a fair and equitable basis.

The provisions of Chapter 1 of title 23 applicable to the Federal-aid secondary system will govern all sums apportioned under this section with the exception of the provisions relating to the formula for apportionment, the requirement that these roads be on the Federal-aid system, and such other provisions determined by the Secretary to be consistent with this section. The Secretary does not have the authority to determine as inconsistent with this section any provision relating to the obligation and availability of funds.

The term "off-system road" means any toll-free road, including bridges, in a rural area, which road is not on any Federal-aid system and which is under the jurisdiction of and maintained by a public authority and open to public travel.

State and local officials in selecting roads under this section shall consider, among other matters, improvement and construction of access highways to rural areas substantially impacted by accelerated mining and power generation activities to meet national energy demands.

Section 102(6) authorizes the appropriation of $200,000,000 for off-system roads for the fiscal year 1976.

Conference substitute

The conference substitute is the same as the House amendment.

It is the intention of the conferees that funds authorized by this section be used solely for reconstruction and improvement on existing routes. Such authorizations shall be for only one year.

DONATIONS

Senate bill

No comparable provision.

House amendment

Section 111 amends section 323 of title 23, United States Code, so as to no longer require either an appraisal or a tender of the full amount of the estimated just compensation where a party has indicated a desire to donate property.

Conference substitute

The conference substitute is the same as the House amendment.

DEMONSTRATION PROJECTS

Senate bill

No comparable provision.

House amendment

Section 115 directs the Secretary of Transportation to carry out a demonstration project for construction of a high-density urban highway intermodal transportation connection between Franklin Avenue and Fifty-ninth Street, South, in Minneapolis, Minnesota. The Federal share of such project shall be 90 per centum of the cost thereof. There is authorized to be appropriated, out of the Highway Trust Fund, not to exceed $53,000,000 to carry out this section

Conference substitute

The conference substitute is the same as the House amendment, except that no more than $10,000,000 may be obligated for fiscal year 1975 and $15,000,000 for fiscal year 1976.

AUBURN BRIDGE

Senate bill

No comparable provision.

House amendment

Section 116 authorizes the Secretary of the Interior to construct, in lieu of a drainage culvert, an intermediate size bridge across a shallow ravine in order to provide access between the historical portion of the city of Auburn, California, Auburn District Fairgrounds, city park and parking lots, and the Auburn Dam Overlook area. This section authorizes $250,000 to carry out such bridge project.

Conference substitute

The conference substitute is the same as the House amendment.

ROUTE WITHDRAWALS

Senate bill

No comparable provision.

House amendment

Section 117 of the House amendment amends section 103(e)(4) of title 23, United States Code, to permit a State, from which an Interstate route in an urbanized area is withdrawn, to receive an amount out of general funds of the Treasury equal to the Federal share of the

cost of the removed route for use on non-highway public mass transportation projects in such urbanized area involving the construction of rail facilities or the purchase of passenger equipment for any mode of public mass transportation. Funding available for transfer is limited to the cost of the withdrawn route as reflected in the 1972 Interstate Cost Estimate. In addition, section 103(e)(2) is amended to permit Interstate funds to be transferred from a withdrawn route to a substitute route, also limited to the dollar amounts in the 1972 cost estimate.

Conference substitute

The conference substitute is the same as the House amendment.

SCHOOL BUS DRIVER TRAINING

Senate bill

No comparable provision.

House amendment

Section 118 of the House amendment authorizes $7,500,000 out of the Highway Trust Fund for fiscal 1976 for the purpose of carrying out State programs for driver education and training for persons driving school buses.

Conference substitute

The conference substitute is revised to provide that no less than the authorized funds shall be derived from funds apportioned pursuant to section 402 of title 23, United States.

JIM WRIGHT,
JOHN C. KLUCZYNSKI,
HAROLD T. JOHNSON,
WM. HARSHA,
JAMES C. CLEVELAND,
Managers on the Part of the House.

JENNINGS RANDOLPH,
MIKE GRAVEL,
QUENTIN BURDICK,
HOWARD BAKER,
ROBERT T. STAFFORD,
Managers of the Part of the Senate.

○

~~Keith~~
~~Sam~~
Fred
Charlie

HB314 - Com. Parker Williams

Area 660 ft from center
Primary + secondary roads
Now have prohibited out to 660 ft.

Signs which are visible from highway

penalty 10% of highway funds

Could delete "Secondary" highways and still be in conformance

Signs on own premise is legal

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF HIGHWAYS

OFFICE OF THE COMMISSIONER

P. O. BOX 1467 — JUNEAU 99801
(907) 364-2121

April 17, 1975

Re: 00-3077
House Bill 314

Honorable Terry Gardiner
Alaska State Representative
State Capitol Building
Juneau, Alaska 99811

Dear Mr. Gardiner:

In support of our request for your favorable consideration of the captioned legislation, we are attaching a copy of the Federal Highway Amendments of 1974 and a copy of a letter from the Assistant Chief Counsel for Right-of-Way and Environmental Law, Federal Highway Administration, Department of Transportation.

The purpose of the proposed amendment is to bring Alaska into compliance with federal law. Failure to do so will subject the state to loss of ten percent of the entire federal participation in Alaska's highway program (approximately $10-$12 million). It should be noted that the off-system roads program, by which the State has the most opportunity to meet local requirements, would be affected by over $1 million in lost funds. The State can ill afford any further cut back of transportation facilities.

Since the federal law provides that each state must be in compliance by July 1, 1975 or the end of the present legislative session, it is crucial that action be taken at this time.

Therefore, we again respectfully request your assistance in passing this much needed legislation.

Sincerely yours,

W. B. Parker

Walter B. Parker
Commissioner

Attachment

WBP/HNW:jo

HB
356

"An Act creating the Alaska Horse Racing Commission and authorizing pari-mutuel wagering at sanctioned events."

COMMITTEE REPORT

HOUSE

4/21/75

Mr. Speaker: Date 5/7/75

The Committee on JUDICIARY has had HB 356 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(X) recommends it BE REPLACED WITH CS FOR HB 356 AND THAT CS FOR HB 356 DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

The Legislature of the State of Alaska
FISCAL NOTE

First Session - Ninth Legislature

I. REQUEST

Bill No. House Bill 356 wagering at sanctioned events.

Title: An Act creating the Alaska Horce Racing Commission and authorizing peri-mutuel

Requested by: House Judiciary Committee Date:

Return Date Requested: ASAP

Agency: Program:

II. FISCAL DETAIL

Budget Request Unit(s) Affected:

A. EXPENDITURES: (Thousands of dollars)

	OBJECT	FY 75	FY 76	FY 77	FY 78	FY 79	FY 80
100	PERSONAL SERVICES	1,000	5,000	9,000	12,000	22,000	31,800
200	TRAVEL	300	1,000	2,500	2,500	3,250	5,600
300	CONTRACTUAL	500	1,000	1,500	2,000	2,500	2,800
400	COMMODITIES	75	300	1,000	1,200	1,450	2,500
500	EQUIPMENT	800	200	800	3,600	4,500	3,000
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.			14,800			
	TOTAL	2,675	7,500	29,600	21,300	33,700	45,700

B. FUNDING: (Thousands of dollars)

	GENERAL FUND	2,675					
	FEDERAL FUNDS						
	OTHER	0	10,500	36,500	70,000	105,000	140,000

C. POSITIONS:

	PERMANENT/TEMPORARY	/	/	/	/	/	/
	MAN MONTHS (P./T.)	/	/	/	/	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Preparation of fiscal impact of HB 365 prepared by the Alaska State Fair, Inc., Palmer, Alaska (Mr. John Hale, Mgr.) in conjunction with the local Horseman's Assoc. See 3 page narrative for clear explanation for need of general funds (only for FY-75). Anticipated receipts after the start of peri-mutual should carry expences as projections are stated in attachment.

IV. ATTACHMENTS

Analyses (3 pages)

V. DATE: May 7, 1975 PREPARED BY: F. S. Honsinger

F.S. Honsinger
Acting Director, Division of Agric.

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

III ANALYSIS

A recent consultation with the State of Montana regarding funding required for the establishment of a Pari-Mutuel Department in the State Racing Commission revealed that in the initial stages of development a great deal of the personal services travel, contractual, commodities and equipment expenses were done on a volunteer or semi-volunteer basis.

The fiscal detail as listed in the attached fiscal note were read to the the Director of Racing in the State of Montana and he felt that the expenses were excessive. However, in order to paint the darkest picture, we have let the expenditures stand as originally developed.

During fiscal 1975 there is no opportunity for the Racing Commission to derive any revenues. However, starting in 1976 revenues will be available from the Pari-Mutuel handle and licensing fees.

The key person in the establishing of the Racing Commission will be the State Steward. He must be knowledgeable in the field of horse breeding and horse racing. He must serve as his own secretary-clerk until funds become available through Pari-Mutuel revenues
In 1975 his main task is to prepare the Racing Commission Rules and Regulations, which the Racing Commission should review and approve.

The Racing Commission itself should not have a great deal of actual work to perform. Its role is that of an advisory board to guide the State Steward who is the professional employee of the State.

Therefore, in fiscal 1975 we have assumed that the State Steward will function for a period of one month, that the Racing Commission will meet for a two day period and that an Electric Typewriter will be purchased to put the "office" in operation.

In 1976 we assume that the State Steward will be working for a period of five months. The Commissioners will meet for a total of 4 days and a Thousand Dollars ($1,000.00) is placed in the travel budget to cover Commission travel and permit the State Steward one trip to the Outside.

In fiscal 1977, as the racing program grows in the State, we have projected a 9 month employment period for the State Steward. We have allowed for 6 days of Commission meetings and increased the travel budget to allow the Steward to make two outside trips and provide for travel expenses for experts from the lower 48 to visit Alaska.

In 1978, we have placed a State Steward in a full time job, kept the same travel budget as 1977 increased Commission expenses in the 300 catagory to allow for extensive evaluation of the Pari-Mutuel Program and provided $3,600.00 for office equipment which we feel will be required at this time.

In fiscal 1979, the State Steward has a salary increase which would cost the State $14,500.00 a year and he has assigned to him a part

III Cont'd
time clerk, budgeted at $7,500.00. Travel has been increased to $3,250.00, Commission increased to $2,500.00 and equipment expenses to $4,500.00 to allow for aquisition of electronic office equipment and filing system.

In fiscal 1980, the State Steward is budgeted at $17,800.00 with an Assistant at $14,000.00. Travel has been increased to $5,600.00 as it is felt at this stage in Alaskas Pari-Mutuel program more complex and exotic machinery and tecniques must be examined and studied by the Commission. Equipment expenses have been lowered as the Race Tracks themselves by this time will have developed much of the machinery for the operation of the accounting of the State Pari-Mutuel Program.

. . . . . .

B FUNDING

Regarding the funding of the Pari-Mutuel System, it has been pointed out that there is no income from the State racing Program in 1975, since the Program does not start until fiscal 1976. This would indicate that $2,675.00 might be required from State Funds to get the Racing Commission started. If there is any objection to this, the Alaska State Fair, Inc. located at mile 40 on the Glenn Highway , has indicated that it would underwrite the initial expenses of the Commission with the understanding that advance monies would be credited to them on future licensing fees.

In fiscal, 1976, if Pari-Mutuel wagering is authorized and a Racing Commission is established before June 30th, it is estimated that 5 days of racing can be held at the Alaska State FAir Track located at Mile 40 on the Glenn Highway. An extremely modest projection of 500 customers per day would give a total attendence of 2,500 people. Based on the formula generally accepted by experts in the Pari-Mutuel field it can be expected that these 2,500 people will create a total handle of $150,000.00. Based on the 5% that is payable to the State, it is apparent that $7,500.00 will go into State funds. An additional $3,000.00 can be anticipated from license fees and other minor sources of Commission revenue.

In fiscal 1977, the second year of racing, it is practical to assume that a 14 day program can be provided at the Alaska State FAir, Inc. racetrack located at mile 40 on the Glenn Highway. It could be further be assumed that another racetrack in the State could provide a three (3) day week-end program. However, in order to paint the worst picture the revenues have not been counted. During a 14 day program, it can be assumed that the average attendence a day will be 750 persons for a total of 10,500 bettors. Again assuming the formula of $60.00 per person it is apparent that the Pari-Mutuel handle will be $630,000.00. The State share of 5% will total $31,500.00 and miscellaneious license fees of $5000.00 will make the total revenue derived from the 1977 season be equal to $36,500.00.

FUNDING cont'd

In fiscal 1978, again assuming that only one track will be in operation in the state, it is anticipated that a 20 day program will be in operation at Alaska State Fair, Inc. Racetrack at Mile 40 on the Glenn Highway. Due to population increase in the metropolitian Anchorage area and the increased need for recreational outlets at this time, it is felt that the average daily attendence with a 20 day race meet can be logically set at 1000 people. Total attendence for the season would be 20,000 and the total handle would be $1,200,000.00. The 5% payable to the State would be $60,000.00 and miscellaneous license fees should increase this by $10,000.00 for a grand total of $70,000.00.

In fiscal 1979, it is assumed that atleast one other racetrack will be in operation in the State of Alaska, probably in the Southeast. If this is so the annual attendence at these racetracks can easily be assumed to be 30,000 people. The pari-mutuel lhandle would be $1,800,000.00 and the States share of these revenues would be $90,000.00. Miscellaneous license fees and other sources of revenue would increase this by $15,000.00 making the total revenues to the State $105,000.00.

In fiscal 1980, it is anticipated that a full 30 day program will be instituted at the Alaska State Fair, Inc. racetrack at Mile 40 on the Glenn Highway and that 10 additional days of racing will be available elsewhere in the state. The total attendence at these events is estimated at 40,000 people for a pari-mutuel handle of $2,400,000.00. The revenues available to the State would be $120,000.00 with additional revenues of $20,000.00 for a total of $140,000.00.

Again referring to the situation in Montana, the creation of a Racing Commission requires the participation and dedication of men and women committed to the improvement and development of the breed. Without this type of person there will never be a successful Racing program in the State of Alaska. In the particular case of our State we are most fortunate in having a race track equipped with modern electric starting gates and electronic photo-finish equipment. The horse people in the State of Alaska have indicated their willingness to donate time and money in the development of a first class horse racing program for the State of Alaska. If there is any reluctance of the State of Alaska to provide initial seed money to establish a Racing Program in the State of Alaska it is almost certain that the various Horse groups in the State would supply private funding in the initial stages.

Without a racing program in the State of Alaska, there will never be a serious Horse Breeding industry.

SB 59 Juvenile names

Pat Wellington stated that the Department of Public Safety can support the bill but would like it to go further. He stated that the courts and probation felt that the bill would hinder treatment.

Mr. Brown moved CS SB 59 out of committee. There being no objection, it was so ordered.

HB 356 Pari mutuel betting

Mr. Specking stated that he wanted the penalty section tightened.

The committee discussed the possibility of whether "Alaska bred" definition on page 5 was too restrictive. The suggestion was made to leave out "conceived in Alaska." Mr. Parr stated that he was not opposed to legalizing betting but did not think that the bill's main purpose was to promote horse breeding. Mr. Cotton said that he favored the bill because it would promote agriculture.

Mr. Gardiner moved on page 4, line 24: to delete (8) and renumber (9) to (8) and in (6) to change 1% to 2%. The amendment passed.

page 3, line 5: (7) the committee considered whether or not they wanted a commission with police powers. If the commission is weak, who will police the industry? Mr. Specking requested an AG and Public Safety opinion on how strong they felt the commission should be. Other considerations: stronger penalties, intent section (expect commission to promote?), composition of board. These would be researched and the bill would be considered again.

HB 356 Pari-mutuel betting

In response to a request from Mr. Specking for stiffer penalties, Mr. Walker stated that the penalty should fit the crime and relate to those penalties for other crimes. Mr. Specking responded by stating that Mr. Solerno had suggested a strong approach to any illegal activities outside the area of those to be legalized. Mr. Gardiner suggested that the Commission should be strong rather than setting penalties at the felony level.

Rob Johnson of the Attorney General's Office stated that the language in the proposed CS was overly broad. Mr. Specking stated that he felt that this was a protection against organized crime and since it was current law in the State of Virginia there probably was a good reason for the broad scope. Mr. Johnson stated that page 3, lines 1 and 2 were inconsistent with page 7, lines 12 and 13.

The committee discussed the possibility of legal off track betting. It would require a communications network and might keep people from attending the fair.

Mr. Brown suggested that standards for the committee be defined in statute.

Mr. Bradley requested that the AG study the bill and comment and that he would like the opinion of the Department of Public Safety on the bill.

The committee discused the possibility of adding to the proposed purpose clause (encourage agriculture) language to the effect that it legalized gambling. They also considered a statement of intent that the operation would be self supporting. They questioned the formula of allocation, and requested a fiscal note. They also requested that the Department of Revenue consider the possibility of taxation. Mr. Brown suggested that Mr. Walker consider stronger penalties for second and subsequent violations.

House Judiciary Committee
May 2, 1975

The meeting was called to order by Chairman Gardiner at 1:30 p.m. Mr. Parr, Eliason, and Brown were absent.

HJR 10 Inherent Rights

Clark Gruening, sponsor of the bill, testified that he favored the House State Affairs CS since the intent of the bill was not changed. He stated that 14 other states have added similar language to their constitutions. The language "consistent with the public interest" allows for economic development as does the language "to the maximum degree possible." The committee asked if "maximum degree possible" could be used as a judicial standard. Mr. Gruening replied that it was less than"humanly possible."

Mr. Cotton moved the State Affairs CS for HJR 10 out of committee. There being no objection, it was so ordered.

HB 356 Pari mutuel betting

The following changes were explained in the proposed Judiciary CS:

Commissioners shall only be residents and registered voters.
Commission shall be made up of representatives of the fair, breeders, and the public

page 3, line 9 and 10: delete (10) and renumber)

page 3, line 19 and 20: delete all

page 3, line 25: change state treasurer to Commissioner of Revenue

page 5, line 1: change to sec. 140 add (a)
page 5, line 5: add: the breach of which does not affect or could not reasonably be expected to affect the outcome of the race.
page 5, line 12: add (b) non compliance with any regulation which does affect the outcome of the contest is a felony and punishable by a fine of not more than $5,000 or by imprisonment for not more than five years, or both.

page 5, line 14 change to sec. 150

page 5, line 17: delete "after being conceived in Alaska"

page 6, line 5: change to Sec 160

add section including commission under conflict of interest.

Mr. Bradley moved Judiciary CS for HB 356 out of committee.

W O R K D R A F T

Original sponsor: Ose, Buchholdt,
Cotten, et al

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 356

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act creating the Alaska Horse Racing Commission and authorizing pari-mutuel wagering at sanctioned events."

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

* Section 1. AS 05 is amended by adding a new chapter to read:

CHAPTER 40. HORSE RACING.

ARTICLE 1. ALASKA HORSE RACING COMMISSION.

Sec. 05.40.010. ALASKA HORSE RACING COMMISSION. The Alaska Horse Racing Commission is created. The commission shall be composed of five members appointed by the governor. Each commissioner shall at the time of his appointment have resided in the state for the preceeding five years and be a registered voter. Initially, one member shall be a member of the board of directors of a state agricultural or industrial fair, two shall be breeders or owners of race horses, and two shall be representatives of the public. The successor to the initial member who was a member of the board of directors of a state fair shall be a member of the board of directors of a state agricultural or industrial fair with a pari-mutuel system. The commission shall elect a chairman from its membership.

Sec. 05.40.020. TERM OF OFFICE. The governor shall make the initial appointments to the commission within 30 days after the effective date of this Act; two for a term to expire on January 1, 1976, two to expire on January 1, 1977, and one for a term to expire January 1, 1978. Thereafter appointments shall be for a term of three years. Vacancies shall be filled by appointments for the unexpired term. Com-

missioners shall hold their offices until their successors are appointed and qualified.

Sec. 05.40.030. REMOVAL FROM OFFICE. The governor may remove a board member for cause, after first giving him notice of the charges against him and an opportunity to be heard.

Sec. 05.40.040. COMPENSATION AND PER DIEM. Members of the commission receive no salary for their service on the commission but are entitled to per diem and travel expenses authorized by law for boards and commissions.

Sec. 05.40.050. QUORUM. Three members of the commission constitute a quorum for the transaction of business.

Sec. 05.40.060. JURISDICTION. Jurisdiction of the commission extends to any person conducting, or participating in the conduct of, a meeting where horse racing is permitted for any stake, purse, or reward.

Sec. 05.40.070. POWERS OF THE COMMISSION. The commission is empowered to:

(1) grant, refuse and revoke licenses;

(2) make regulations for the holding, conducting and operating of all race meets and races held in the state and to fix and set racing dates;

(3) make an annual report to the governor of its administration of the racing laws;

(4) require of each applicant for a license, the full name of the person, association or corporation applying, and if the applicant is a corporation or an association, the name of the state in which incorporated, the nationality, and residence of the members of the association and the names of the stockholders and directors of the corporation;

(5) require on each application a statement under oath that the information contained in the application is true;

(6) personally, or by agents and representatives, supervise and check the making of pari-mutuel pools and the distribution from them;

(7) cause the various places where race meets are held to be visited and inspected at reasonable intervals;

(8) regulate rates charged by the licensee for admission to races, or for the performance of any service, or for the sale of any article on the premises of the licensee;

(9) approve all proposed extensions, additions or improvements to the buildings, stables or tracks upon property owned or leased by a licensee and require the removal of an employee or official employed by the licensee;

(10) completely supervise and control the pari-mutuel machines and equipment at all races held or operated by the state or a state agency or commission;

(11) approve all contracts and agreements for the payment of money and all salaries, fees and compensations by any licensee;

(12) regulate the size of the purse, stake or reward to be offered for the conducting of a race;

(13) exclude, or compel the exclusion, from any and all race courses, any person whom the commission considers detrimental to the best interests of racing or a person who wilfully violates the racing laws or a regulation or order of the commission or a law of the United States or of this state;

(14) compel the production of all documents showing the receipts and disbursements of a licensee and to determine the manner in which these financial records shall be kept;

(15) investigate the operations of any licensee and to place attendants and other persons that may be necessary in the offices, on the tracks or in places of business of a licensee; and

(16) summon witnesses, books, papers, documents or tangible things and to administer oaths for the effectual discharge of the commission's duties.

(17) appoint a hearing officer to conduct any hearing required by this chapter or a regulation promulgated under this chapter.

Sec. 05.40.080. REGULATIONS OF THE COMMISSION. (a) The regulations adopted by the commission have the force of law. The attorney general shall enforce the regulations.

(b) The commission shall make reasonable regulations for the control, supervision, identification, and direction of applicants and licensees, including regulations providing for the supervising, disciplining, suspending, fining, and barring from racing of all persons required to be licensed by this chapter and for the holding, conducting, and operating of all races, race meets, and race tracks conducted under this chapter. It shall announce the place, time, number of races per day, and duration of race meets, for which license fees shall be exacted.

(c) Every person holding a license under this chapter and every owner or trainer of any horse or other animal licensed to enter any racing contest under this chapter shall comply with all regulations and all orders issued by the commission. No person may work on the premises of a racetrack without first obtaining from the commission a license for the activity. This licensing requirement does not apply to the members of the commission or its employees or to persons whose only participation is individually as spectator or bettor. The fees for the license shall be fixed by the commission. No person may hold any race meet with parimutuel wagering without obtaining a license.

(d) The commission may deny, suspend, or revoke any license issued under this chapter after a hearing. The commission may delegate authority for these hearings, with right of appeal to the commission and may

appoint a hearing officer to conduct hearings. The commission shall have the authority to summarily suspend a license for fourteen days pending a hearing if the continuation of the license may be detrimental to the best interests of racing. Grounds for the denial, suspension, or revocation shall include, but not be limited to, moral turpitude, any violation of this chapter or regulations promulgated under this chapter, false or fraudulent statement in application for such license, or conduct detrimental to racing. The laws of this state and the regulations promulgated under this chapter shall be enforced by all licensees conducting race meets, their officials, and their employees in accordance with this chapter and shall also be enforced by the commission, its officials, and its employees.

(e) In carring out the provisions of this chapter, the commission, or hearing officer may subpoena witnesses and compel their attendance and may also require the production of books, papers, memoranda, or other things relevant to the subject matter of the hearing in any case involving the revocation or suspension of license or involving disciplinary action. Any member of the commission, or the hearing officer may administer oaths or affirmations to witnesses appearing before the commission, board of stewards or judges, or hearing officer.

(f) If any person refuses to obey a subpoena issued under (e) of this section or refuses to testify or produce books, papers, or documents the commission may apply to the superior court, setting forth the facts, and the court shall, in a proper case, issue its subpoena to the person, requiring his attendance before the court to testify or to produce books, papers, or documents as may be considered pertinent or necessary by the commission. Any person failing or refusing to obey the subpoena or order of the court may be proceeded against in the same manner as for refusal to obey any other order or subpoena of the court.

Sec. 05.40.090. RECORDS OF THE COMMISSION. The commission shall keep detailed records of all meetings and of the business transacted and of all collections and disbursements, reports of which shall be embodied in an annual report which the commission shall prepare and submit to the state treasurer before January 1. All records of the commission shall be public records and as such subject to the public inspection.

ARTICLE 2. LICENSING.

Sec. 05.40.100. ELIGIBILITY FOR A LICENSE. The commission shall license only nonprofit race meets held on commission sanctioned race courses, located on recognized state fair grounds. No meet may be licensed unless the applicants qualify for state funding under AS 03.20.-020. No person shall be qualified to be licensed under this section if he:

(1) has been convicted in any jurisdiction of an offense which would be a felony under the laws of this state, unless sufficient evidence of rehabilitation has been presented to the racing commission;

(2) has been guilty of or attempted any fraud or misrepresentation in connection with racing, breeding or otherwise, unless sufficient proof of rehabilitation has been presented to the racing commission;

(3) has violated or attempted to violate any law or regulation with respect to racing in any jurisdiction, unless sufficient proof of rehabilitation has been presented to the racing commission;

(4) has consorted or associated with bookmakers, touts or persons of similar pursuits, unless sufficient proof of rehabilitation has been presented to the racing commission;

(5) is consorting or associating with bookmakers, touts or persons of similar pursuits;

(6) is financially irresponsible; or

(7) is a past or present member of or participant in organized

crime as such membership or participation may be found or determined by the racing commission.

Sec. 05.40.120. DISTRIBUTION OF GROSS RECEIPTS. The mutuel pool shall be distributed as follows:

(1) five per cent shall be retained by the licensee;

(2) breakage shall be retained by the licensee;

(3) in the event a governmental agency imposes a special tax on a licensee by levying on the money deposited in the pari-mutuel system the licensee may withhold the amount of the tax;

(4) five per cent shall be allocated as purse money;

(A) the formula for distribution of purse money shall be determined by agreement between an organization representing the horsemen and the licensee;

(B) the agreement shall be subject to the approval of the commission;

(5) one per cent shall be paid to the incorporated city nearest the meet;

(6) two per cent shall be paid to the owners of Alaska bred horses finishing first, second, third and fourth in accordance with a formula promulgated by the commission before commencement of each meet;

(7) five per cent shall be paid to the commission;

(8) the remainder shall be paid to the holders of tickets on the winning horses.

ARTICLE 4. PROHIBITED ACTS AND PENALTIES.

Sec. 05.40.130. PROHIBITED ACTS AND PENALTIES. It is a misdemeanor punishable by a fine of not more than $1,000, or by imprisonment for not more than one year, or by both to

(1) breech or fail to comply with a regulation of the commission or term of this chapter;

(2) record, report or register a wager on a horse in a horse race unless under the terms of this chapter;

(3) place a bet upon the results of a horse race except by a pari-mutuel method of wagering conducted by a person licensed under this chapter, and upon the grounds or inclosure of the licensee;

(4) permit a person under the age of 18 to use the pari-mutuel system.

ARTICLE 5. ADMINISTRATIVE PROCEDURE ACT.

Sec. 05.40.140. APPLICABILITY OF THE ADMINISTRATIVE PROCEDURE ACT. The commission shall comply with the Administrative Procedure Act (AS 44.62).

ARTICLE 6. DEFINITIONS.

Sec. 05.40.150. DEFINITIONS. In this chapter, unless the context otherwise requires,

(1) "Alaska-bred horse" means a foal dropped by a mare in Alaska after being conceived in Alaska and remaining in Alaska until the foal is weaned;

(2) "breakage" means the odd cents by which the amount payable on each dollar wagered exceeds a multiple of 10 cents; breakage may not exceed 20 per cent of the total amount deposited in the pool;

(3) "commission" means the Alaska Horse Racing Commission;

(4) "meeting" means an exhibition of thoroghbred, quarter horse, appaloosa, arabian, standardbred, purebred, or registered horse racing where the pari-mutuel system is used;

(5) "pari-mutuel" means a form of wagering on the outcome of horse races in which those who wager purchase tickets of various denominations on a horse and all wagers for each race are pooled and held by the commission for distribution; when the outcome of the race has been decided, the commission distributes the percentage of the total wagers

determined by sec. 120 of this chapter to holders of tickets on the winning horses.

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

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PMS REP TERRY GARDENER
JUN 2875

WE URGE YOUR SUPPORT ON HB356 TO ESTABLISH AN ALASKA HORSERACING COMMISSION.

PREMUS, ED AND THERESA PREMUS, PHIL PHINGSTAD, BOB AND GLADYS SWIFT, JIM AND LORRAINE MCPHERSON, HAROLD AND BONITA STRONG, MARVIN SLOUGHTER, BOB AND BARBARA ROSS, BOB AND PAM SWIFT, MILES AND DONNA FRANCE, PALMER CHAMBER OF COMMERCE--PALMER -- JOHN HALE, RAY AND ROSALIE WHITE,--WILLOW-- RICK AND LOLA ELLIS, JIME AND DANA RICHMAN,--CHUGIAK-- DENNIS AND EVELYN CLARK--TALKEETNA-- JINX AND MARILYN COSTER, ROCKY KEENE, JIM SOUBY, AL AND TINA MATNEY, BONNIE FRANCE --ANCHORAGE-- CLIFF AND WANDA MARCUS, CURT AND CAROLYN ANDERSON, LEN AND MARSHA MELTON, LEO AND JYD KAMMERMAYER, BOB AND LOIS MUMFORD, VERN AND KAREN FRANCE, JIM AND MARYANN HERMON, CECIL AND MARION

Gambling: A New Plan

By TOM SEPPY
AP Sports Writer

BOSTON (AP) — Legalized sports wagering never could compete with its illicit counterpart unless income tax laws are changed to exempt winnings, the National Gambling Commission has been told.

Charles Rogovin, a private consultant on the problems of organized crime and former head of the federal government's Law Enforcement Assistance Administration, told the commission Thursday he favored legalization of all gambling, including betting on sports such as baseball, basketball and football.

Rogovin said, however, "The government cannot complete with illegal gambling on the tax issue alone."

He told the commission, which ends three days of hearings in Boston today, that state governments would have to delay gaining new revenues until its illegal competitors are knocked out of business, which could only happen if they offered equal services.

"Today, wagers can be made upon any sporting contest so long as the illegal operators have definitive odds available," he said. "The government would have to offer the same range of services.

"While government operations would not be inexpensive, I do not doubt that it can compete with illegal enterprise in terms of offering equal or higher rates or returns to betters; especially since that portion of illegal operators' overhead which currently must be expended for for the corruption of law enforcement would not be a necessary cost to government."

Commission chairman Charles Morin and Rogovin disagreed at one point when Morin said he believed that Americans would prefer to bet with a legal bookmaker over an illegal one, without the tax break.

"I think it could be we're selling the American people short," said Morin, a Washington attorney who has raised the issue previously in the hearings.

Rogovin said the bettor might prefer to bet legally if the parlor was next door to his home, but he most likely would place a bet with the illegal bookie if he believed that the federal government would not learn that he had won and force him to pay tax on the winnings.

The Commission on the Review of National Policy Toward Gambling, the panel's formal name, heard testimony Thursday from police representatives urging legalization of all forms of gambling, Massachusetts state officials who said legalize all but sports gambling.

Boston police commissioner Robert J. diGrazia and the International Brotherhood of Police Officers urged legalization of gambling because, they said, current laws are unenforceable.

Citing he hypocrisy of law enforcement efforts, diGrazia said gambling was made criminal because some people wanted to impose their standards of morality on everybody else.

Sports Gambling Cited In Boston

By TOM SEPPY

BOSTON (AP) — Illegal wagering, particularly on sports events, provides a major source of income for organized crime in the Northeastern part of the country, federal officials have told the National Gambling Commission.

James Newpher, head of the FBI's Boston office, estimated that at least $2 billion is generated annually by illegal betting on sports events, horses and numbers in Massachusetts alone. He said organized crime makes a minimum of $166.6 million in profit each year from its Massachusetts operation, with the largest dollar volume coming from sports gambling.

Witnesses before the Gambling Commission Wednesday generally opposed the legalization of sports betting but one, Massachusetts Treasurer Robert Q. Crane, advocated it vociferously because, he said, it could provide new, needed revenues for the state.

Crane called on the federal government "to take every action in its power, including a thorough review of federal taxes now imposed on legal gambling, to facilitate the operation of gambling by those states which wish to do so."

Massachusetts Attorney General Francis X. Bellotti said he could support legislation for offtrack betting in the state to gain increased revenues but not wagering on sports events such as baseball, basketball, hockey and football.

"Some people have argued that people gamble illegally anyway, so why not legalize sports betting, regulate the betting," said Bellotti.

"It could be regulated and tax revenue would be increased.

"I would feel very frustrated if we had to legalize any form of gambling because we had given up on the attempt to enforce the laws," said Bellotti.

Gallery

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HORSE RACING IN THE UNITED STATES

1973



Prepared by

THE NATIONAL ASSOCIATION OF STATE RACING COMMISSIONERS

P.O. Box 4216 Lexington, Kentucky 40504

Price Per Copy $5.00

RACING REVENUE TO STATES BY YEARS (for the U.S.)

1973 533,500,015	1963 316,570,791	1953 167,426,465	1943 38,194,727
1972 505,904,550	1962 287,930,030	1952 142,489,696	1942 22,005,278
1971 508,338,417	1961 264,853,077	1951 117,250,564	1941 21,128,173
1970 486,403,097	1960 258,039,385	1950 98,366,167	1940 16,145,182
1969 461,498,886	1959 243,388,655	1949 95,327,053	1939 10,369,807
1968 426,856,448	1958 222,049,651	1948 95,803,364	1938 9,576,335
1967 394,381,913	1957 216,747,621	1947 97,926,984	1937 8,434,792
1966 388,452,125	1956 207,456,272	1946 94,035,859	1936 8,611,538
1965 369,892,036	1955 186,989,588	1945 65,265,405	1935 8,386,255
1964 350,095,928	1954 178,015,828	1944 55,971,233	1934 6,024,193

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TOTAL RACING DAYS AND TOTAL RACES

State	RACING DAYS					NUMBER OF RACES				
	Total	Thoroughbred	Harness	Qtr. Horse	Mixed	Total	Thoroughbred	Harness	Qtr. Horse	Mixed
Arizona	200	✓		✓	200	2,002	843		225	934
Arkansas	50	50				454	454			
California	885	380	212	190	103	8,257	4,319	1,916	2,022	
Colorado	145	62		83		1,445	607		838	
Delaware	367	119	248			3,518	1,079	2,439		
Florida	606	326	205	75		5,995	3,189	2,050	756	
Idaho	107	✓		✓	107	1,118	582		507	29
Illinois	836	372	452	12		8,451	3,306	5,030	115	
Kentucky	550	246	304			5,159	2,185	2,974		
Louisiana	337	207			130	3,796	2,430		287	1,079
Maryland	368	241	127			3,327	2,161	1,166		
Massachusetts	399	229	170			3,844	2,118	1,726		
Michigan	604	239	365			5,834	2,184	3,650		
Montana	82	✓		✓	82	738	✓		✓	738
Nebraska	177	177				1,527	1,527			
Nevada	10	✓		✓	10	102	70		32	
New Hampshire	371	80	291			3,650	741	2,909		
New Jersey	380	180	200			3,804	1,620	2,184		
New Mexico	283	✓		✓	283	3,323	2,208		1,115	
New York	1,643	427	1,216			15,596	3,845	11,751		
Ohio	975	349	612	14		9,421	3,395	5,897	129	
Oregon	117	✓		✓	117	1,155	922		233	
Pennsylvania	937	504	433			8,869	4,631	4,238		
Rhode Island	237	237				2,158	2,158			
South Dakota	50(E)	✓		✓	50	500(E)	✓		✓	500
Vermont	189	119	70			1,813	1,099	714		
Washington	223	150		24	49	2,217	1,845		372	
West Virginia	643	578	65			5,444	4,851	593		
Wyoming	8	✓		✓	8	80	67		13	
Total	11,779	5,272	4,970	398	1,139	113,597	54,436	49,237	6,644	3,280

E-Estimated

ATTENDENCE AND DAILY AVERAGE ATTENDENCE

States	ATTENDANCE					DAILY AVERAGE ATTENDANCE				
	Total	Thoroughbred	Harness	Qrt. Horse	Mixed	Total	Thoroughbred	Harness	Qrt. Horse	Mixed
Arizona	526,100	✓		✓	526,100	2,631	✓		✓	2,631
Arkansas	686,565	686,565				13,731	13,731			
California	10,097,931	6,582,296	1,580,663	1,164,079	770,893 †	11,410	17,321	7,455	6,126	7,484
Colorado	454,981	324,596		130,385		3,138	5,236		1,571	
Delaware	1,938,935	663,378	1,275,557			5,283	5,575	5,143		
Florida	3,636,959	2,892,964	564,235	179,760		6,002	8,875	2,753	2,397	
Idaho	224,382	✓		✓	224,382	2,097	✓		✓	2,097
Illinois	6,402,515	2,488,439	3,387,744	26,332		7,659	8,033	7,495	2,194	
Kentucky	2,494,255	1,787,167	707,088			4,535	7,265	2,326		
Louisiana	1,926,972	1,448,419			478,553 ‡	5,718	6,997			3,681
Maryland	2,809,525	2,268,368	541,157			7,635	9,412	4,261		
Massachusetts	2,771,486	1,804,753	966,733			6,946	7,881	5,687		
Michigan	3,663,574	1,819,843	1,843,731			6,066	7,614	5,051		
Montana	No Record									
Nebraska	1,273,374	1,273,374				7,194	7,194			
Nevada	15,400	✓		✓	15,400	1,540	✓		✓	1,540
New Hampshire	1,798,529	671,681	1,126,848			4,848	8,396	3,872		
New Jersey	3,651,272	2,574,473	1,076,819			9,609	14,303	5,384		
New Mexico	1,007,167	✓		✓	1,007,167	3,559	✓		✓	3,559
New York	14,890,041	6,116,567	8,773,474			9,036	14,325	7,215		
Ohio	3,528,369	1,583,700	1,919,499	25,170		3,619	4,538	3,137	1,798	
Oregon	432,126	✓		✓	432,126	3,694	✓		✓	3,694
Pennsylvania	5,175,578	2,804,617	2,370,961			5,524	5,565	5,476		
Rhode Island	1,091,958	1,091,958				4,607	4,607			
South Dakota	80,000(E)	✓		✓	80,000	1,600	✓		✓	1,600
Vermont	615,971	455,074	160,897			3,259	3,824	2,299		
Washington	1,080,552	938,855		12,645	129,052	4,846	6,259		703	2,346
West Virginia	2,402,248	2,274,522	127,726			3,736	3,935	1,965		
Wyoming	5,931	✓		✓	5,931	741	✓		✓	741
Total	74,682,716	43,051,609	26,423,132	1,538,371	3,669,604	6,340	8,166	5,317	5,068	2,802

E - Estimated

† Fairs – Thoroughbred and quarter horse

‡ Quarter horse and Thoroughbred

PARI-MUTUEL AND DAILY AVERAGE TURNOVER

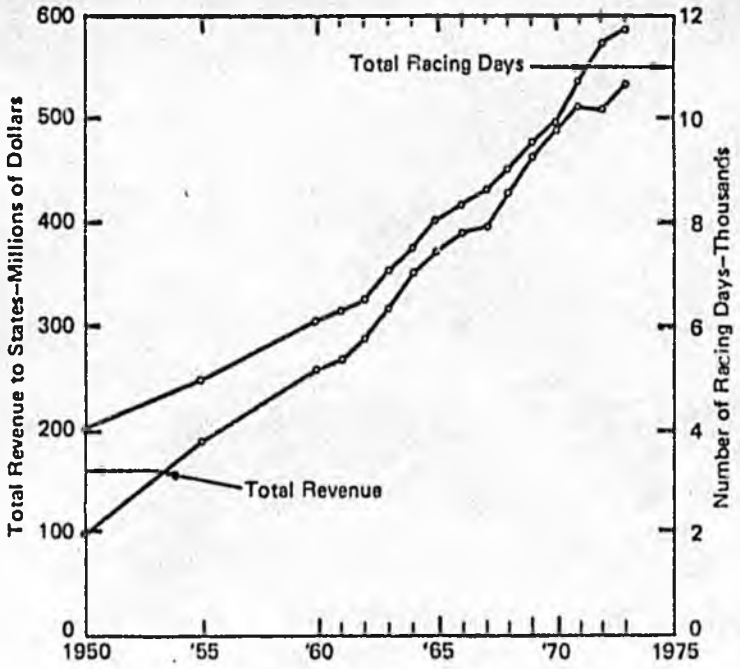
(To Closest Dollar)

States	PARI-MUTUEL TURNOVER					DAILY AVERAGE TURNOVER				
	Total	Thoroughbred	Harness	Qtr. Horse	Mixed	Total	Thoroughbred	Harness	Qtr. Horse	Mixed
Arizona	32,799,254	✓		✓	32,799,254	163,996	✓		✓	163,996
Arkansas	68,504,109	68,504,109				1,370,082	1,370,082			
California	1,033,475,892	789,141,840	139,844,079	104,489,973		1,167,769	1,923,310	659,642	513,721	632,593 †
Colorado	27,175,824	20,935,824		6,240,000		187,420	337,675		75,181	
Delaware	160,243,692	68,279,797	91,963,895			436,632	573,780	370,823		
Florida	327,189,130	290,565,836	28,320,674	8,302,620		539,916	891,307	138,150	110,702	
Idaho	5,875,279	4,092,928		1,617,234	165,117	54,909	✓		✓	54,909
Illinois	649,834,741	305,322,755	343,481,998	1,029,988		777,314	820,760	759,916	858,323	
Kentucky	184,761,467	146,509,717	38,251,750			335,930	595,568	125,828		
Louisiana	136,957,219	126,399,284		10,557,935		406,401	513,440			235,963 ‡
Maryland	279,025,178	243,035,777	35,989,401			758,221	1,008,447	283,381		
Massachusetts	206,425,366	146,106,115	60,319,251			517,357	638,013	354,820		
Michigan	347,284,654	186,401,868	160,882,786			574,975	779,924	440,775		
Montana	3,295,673	✓		✓	3,295,673	40,191	✓		✓	40,191
Nebraska	83,988,554	83,988,554				474,512	474,512			
Nevada	330,274	8,277		14,250	307,747	33,027	✓		✓	33,027
New Hampshire	127,527,416	56,465,848	71,061,568			343,740	705,823	244,198		
New Jersey	397,029,980	288,080,171	108,949,809			1,044,816	1,600,445	544,749		
New Mexico	64,514,326	44,583,132		19,931,194		227,966	✓		✓	227,966
New York	1,654,110,434	774,577,663	879,532,771			1,006,762	1,813,999	723,300		
Ohio	258,376,567	147,894,034	108,857,115	1,625,418		265,002	423,766	177,872	116,102	
Oregon	32,172,391	27,552,926		4,619,465		274,978	✓		✓	274,978
Pennsylvania	466,105,459	272,619,498	193,485,961			497,444	540,912	446,850		
Rhode Island	113,614,298	113,614,298				479,385	479,385			
South Dakota	3,500,000(E)	✓		✓	3,500,000	70,000	✓		✓	70,000
Vermont	43,612,016	31,263,593	12,348,423			230,751	262,719	176,406		
Washington	77,849,569	75,696,813		2,071,360	81,396	349,101	466,861		25,719	147,002
West Virginia	204,998,211	196,648,477	8,349,734			318,815	340,222	128,457		
Wyoming	255,041	✓		✓	255,041	31,880	✓		✓	31,880
Total	6,990,832,014	4,508,289,134	2,281,639,215	160,499,437	40,404,228	593,500	855,138	459,082	403,265	35,473

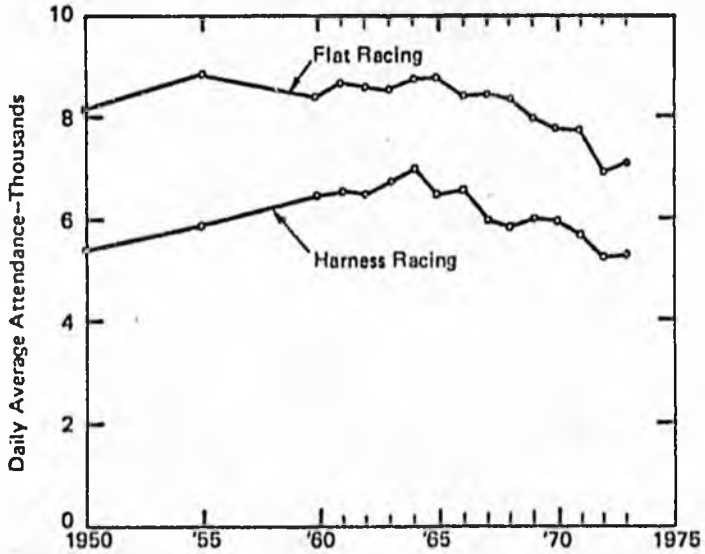
E-Estimated

† Fairs -- Thoroughbred and quarter horse

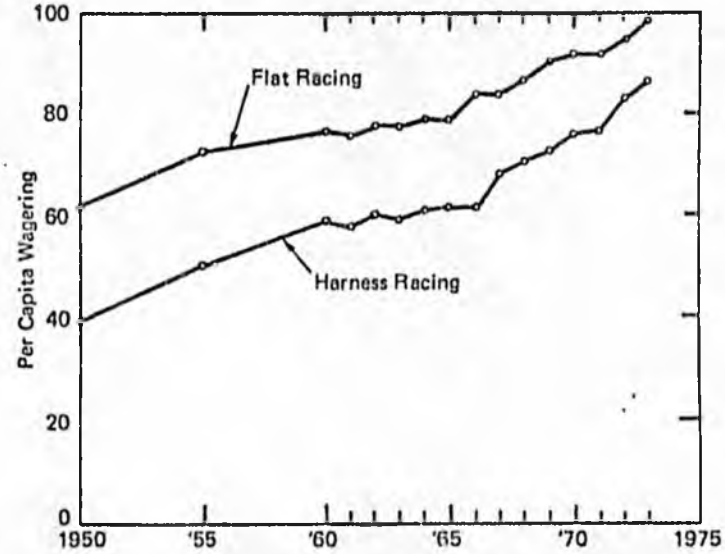
‡ Thoroughbred and quarter horse



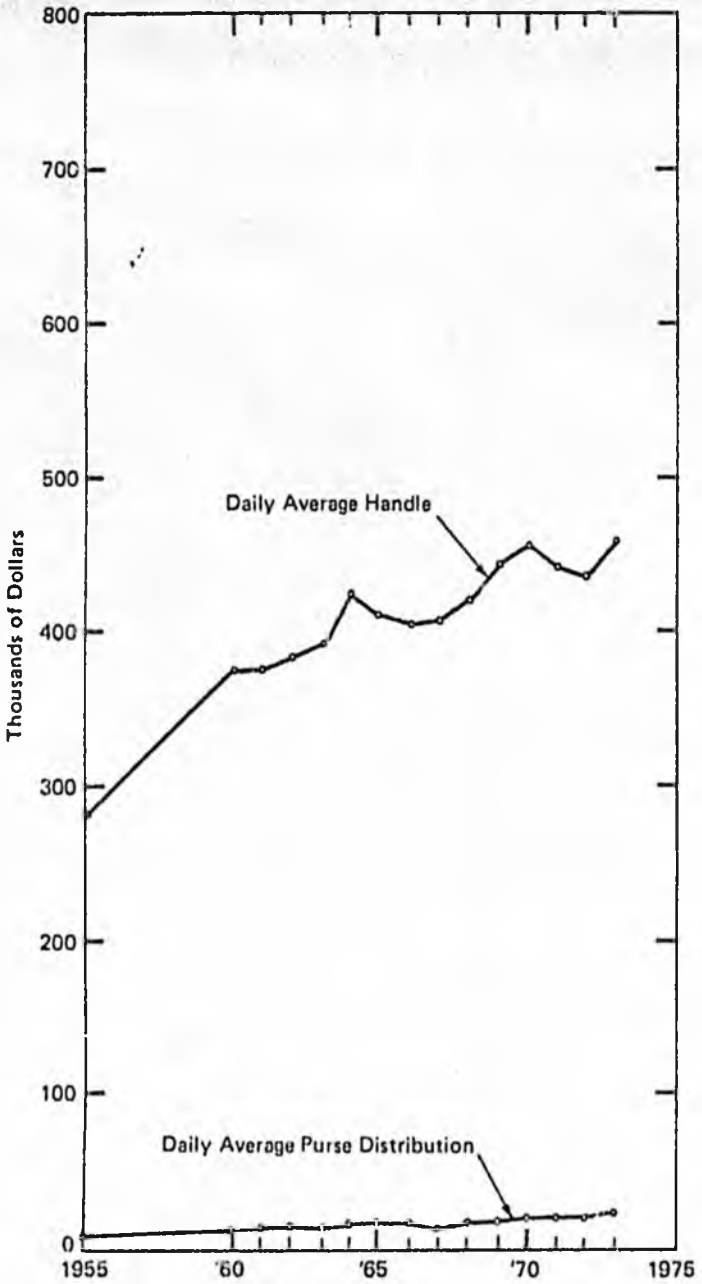
Total Revenue to the States and Total Number of Racing Days



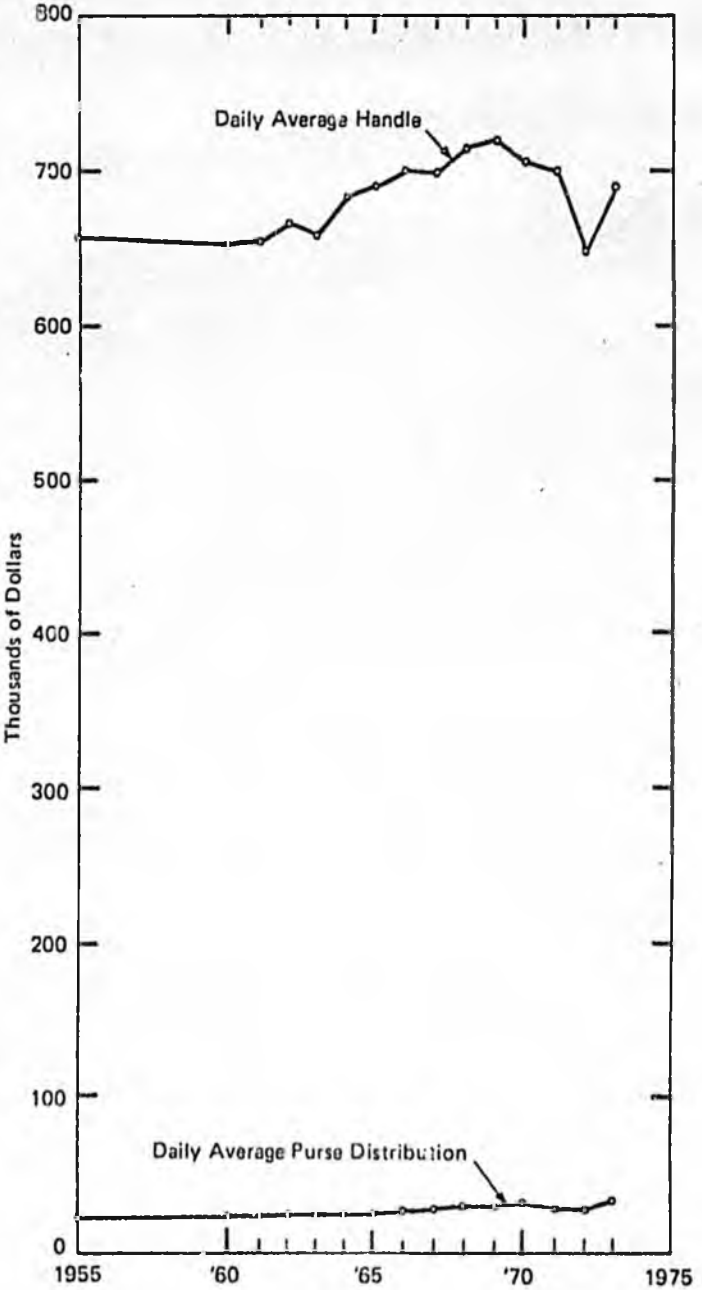
Daily Average Attendance--Harness Racing and Flat Racing



Per Capita Wagering--Harness Racing and Flat Racing



Daily Average Handle and Daily Average Purse Distribution for Harness Racing



Daily Average Handle and Daily Average Purse Distribution for Flat Racing

TOTAL REVENUE TO STATE

States	TOTAL REVENUE TO STATE					PERCENT INCREASE OR DECREASE				
	Total	Thoroughbred	Harness	Qrt. Horse	Mixed	Total	Thoroughbred	Harness	Qrt. Horse	Mixed
Arizona	1,721,839	✓		✓	1,721,839	+13%	✓		✓	+13%
Arkansas	4,469,437	4,469,437				+14%	+14%			
California	75,270,723	59,487,168	9,164,264	6,521,306	97,985	+ 8%	+ 6%	+ 2%	+47%	+ 5%
Colorado	1,237,591	975,331		260,506	1,754	+ 9%	+ 9%		+ 7%	
Delaware	9,414,360	3,823,318	5,591,042			+ 9%	+ 9%	+ 8%		
Florida	23,205,133	20,831,546	2,061,651	311,464	472	+18%	+17%	+27%	+1.03%	
Idaho	156,747	✓		✓	156,757	+25%	✓		✓	+25%
Illinois	53,100,575	26,118,059	26,622,329	70,002	290,185	+10%	+ 8%	+12%		
Kentucky	8,776,688	7,157,963	1,618,725			+10%	+ 9%	+25%		
Louisiana	7,146,325	5,729,515			1,416,810	+12%	✓		✓	
Maryland	17,344,550	14,911,211	2,433,339			+ 3%	+ 2%	+12%		
Massachusetts	17,593,943	13,544,843	4,049,100			+19%	✓	✓		
Michigan	26,639,623	16,848,227	9,791,396			+ 9%	+ 8%	+ 9%		
Montana	No tax paid to state									
Nebraska	4,176,200	4,176,200				+25%	+25%			
Nevada	8,304	83	143	8,078		No record from 1972				
New Hampshire	9,228,280	4,833,566	4,394,714			- 9%	- 9%	-10%		
New Jersey	34,529,604	27,426,478	7,103,126			- 4%	- 4%	- 7%		
New Mexico	1,723,734	✓		✓	1,723,734	+12%				+12%
New York	162,730,734	75,491,604	87,239,130			+ 2%	+ 2%	+ 3%		
Ohio	18,407,968	11,582,866	6,709,489	11,613		+ 9%	+ 5%	+17%	+ 4%	
Oregon	1,545,663	✓		✓	1,545,663	7%	✓	✓		+ 7%
Pennsylvania	27,795,185	15,561,807	12,233,378			+26%	+18%	+36%		
Rhode Island	8,021,938	8,021,938				-23%	-23%			
South Dakota	150,000(E)				150,000					
Vermont	2,588,139	2,030,092	558,047			- 5%	-12%	+39%		
Washington	4,443,136	4,342,087		87,620	13,429	+35%	✓		✓	
West Virginia	12,062,922	11,756,594	306,328			+13%	+13%	+ 5%		
Wyoming	10,674	✓		✓	10,674	No record from 1972				
Total	533,500,015	339,119,933	179,876,058	7,366,654	7,137,370	+ 5%	+ 5%	+ 5%		

E-Estimated

REVENUE TO STATE

State	TRACK LICENSES					OCCUPATIONAL LICENSES				
	Total	Thoroughbred	Harness	Qtr. Horse	Mixed	Total	Thoroughbred	Harness	Qtr. Horse	Mixed
Arizona						22,315	✓		✓	22,315
Arkansas	25,000	25,000				18,812	18,812			
California						309,765	179,440	54,880	50,300	25,145 †
Colorado						24,455	9,557		13,144	1,754
Delaware	8,000	5,750	2,250							
Florida						147,647	103,695	28,427	15,053	472
Idaho	625				625	18,165	✓		✓	18,165
Illinois	103,200	43,500	57,500	2,200		110,595	✓	50,165	✓	60,430 ‡
Kentucky	338,500	338,500				40,691	✓	40,691	✓	
Louisiana						48,837				48,837 ‡
Maryland	217,075	216,000	1,075			96,035	81,146	14,889		
Massachusetts	155,250	121,250	34,000			43,209	24,039	19,170		
Michigan	27,020	1,000	26,020			60,511	21,528	38,983		
Montana										
Nebraska						30,243	30,243			
Nevada	No Record					5,032	✓		✓	5,032 ‡
New Hampshire						33,423	13,096	20,327		
New Jersey	100,000	100,000				110,312	83,272	27,040		
New Mexico	80,840	✓		✓	80,840	46,173	✓		✓	46,173
New York	138,600	16,900	121,700			118,340	56,458	61,882		
Ohio	9,872	5,020	4,842	10		89,549	36,176	50,384	2,989	
Oregon						4,160	✓		✓	4,160
Pennsylvania	4,000	4,000				126,393	91,369	35,024		
Rhode Island						16,262	16,262			
South Dakota	No Record					No Record				
Vermont	820	540	280			17,388	7,539	9,849		
Washington	11,510	6,000		1,260	4,250	11,495	✓		✓	11,495 †
West Virginia	154,250	144,500	9,750			91,566	77,144	14,422		
Wyoming										
Total	1,374,562	1,027,960	257,417	3,470	85,715	1,641,373	849,776	466,133	81,486	243,978

† Fairs – Thoroughbred and quarter horses

‡ Total includes all flat racing

REVENUE TO STATE (continued)

(To Closest Dollar)

States	PARI-MUTUEL TAXES					BREAKAGE†				
	Total	Thoroughbred	Harness	Qtr. Horse	Mixed	Total	Thoroughbred	Harness	Qtr. Horse	Mixed
Arizona	1,689,329	✓		✓	1,689,329					
Arkansas	4,110,247	4,110,247				252,186	252,186			
California	69,065,655	53,944,084	8,762,546	6,359,025		5,117,736	4,829,[illegible]13	248,624	39,819	
Colorado	1,209,996	963,979		246,017						
Delaware	8,484,806	3,413,990	5,070,816			610,678	242,390	368,288		
Florida	19,853,831	17,951,672	1,706,159	196,000		1,984,586	1,721,951	199,933	62,702	
Idaho	133,068	✓		✓	133,068					
Illinois	47,075,803	23,640,721	23,378,433	56,649		3,136,464	1,399,279	1,730,722	6,463	
Kentucky	8,008,139	6,478,071	1,530,067							
Louisiana	6,782,274	5,719,592		132,281	930,401					
Maryland	14,974,470	12,998,478	1,975,992			1,438,760	1,108,435	330,325		
Massachusetts	16,371,863	12,645,615	3,726,248			914,085	673,523	240,562		
Michigan	24,692,777	15,844,214	8,848,563			1,561,380	818,392	742,988		
Montana										
Nebraska	3,949,418	3,949,418								
Nevada	3,271	83		143	3,046					
New Hampshire	8,590,335	4,517,268	3,983,067			576,067	246,545	329,522		
New Jersey	33,185,822	26,359,335	6,826,487			559,593	436,560	123,033		
New Mexico	1,400,939	✓		✓	1,400,939					
New York	150,046,484	68,472,894	81,573,590			9,105,657	5,287,010	3,818,647		
Ohio	17,620,808	11,174,918	6,337,540	108,350		621,482	344,021	273,391	4,070	
Oregon	1,485,858	1,285,151		200,707						
Pennsylvania	24,913,849	13,630,975	11,2[illegible]874			1,859,743	1,062,193	797,550		
Rhode Island	7,256,999	7,256,999				492,760	492,760			
South Dakota	150,000(E)				150,000	No Record				
Vermont	2,331,153	1,847,907	483,246			192,042	134,235	57,807		
Washington	4,418,633	4,331,857		85,962	814					
West Virginia	11,579,090	11,307,287	271,802							
Wyoming	10,202	✓		✓	10,202					
Total	489,305,118	311,844,755	165,757,430	7,385,134	4,317,799	28,423,219	19,048,773	9,261,392	113,054	

E-Estimated

† All breakage to $0.10 except in Delaware and Washington, see Summary of Tax Methods.

4-13-70

Rettig Files Minority Report On Monetary Committee's Package

Anchorage banker Ron Rettig submitted the following minority report after the House Special Monetary Committee, of which he is a member, produced a package of fiscal legislation late last week. The report has been edited.

This committee was formed Feb. 2, 1970, with the following House members: Gene Guess, D-Anchorage, chairman; Bill Ray, D-Juneau; Tom Fink, R-Anchorage; Dick Borer, R-Cordova; Gene Miller, D-Fairbnaks; Wendell Kay, D-Anchorage; Ron Rettig, R-Anchorage.

The committee met about four times each week, and all members attended regularly except Mr. Ray, who declined to attend after the first three or four sessions. It is not clear whether he withdrew from membership on the committee or just became frustrated and gave up.

It was not until the eighth or ninth week that we got down to the consideration of actual legislation. Until the meetings were merely mini-seminars on philosophy. Under pressure originating in Republican caucuses, the committee finally undertook a crash program of action on measures.

The 28-bill package introduced in the House this afternoon is largely the product of two or three cram sessions. The General Obligation bond package involving in excess of $140 million received only brief mention in committee.

During the 10 weeks of more than 40 meetings, testimony was heard from only about a dozen persons; no public hearings were held on any subject.

The committee has held no meetings since the 28 bills were drafted. None of the bills have been available for examination by committee members.

With the exception of the housing mortgage investment bill, HB 821, and the feeble, halting approach to fisheries improvement program, (HB 828 and HB 829), the committee did little more than suggest some me-too additions to the governor's program, with even deeper incursions into the $800 million.

Except as to interest rates, the mortgage investment measure is similar to the Little Fannie Mae program I suggested last fall and which was reported in detail in the Anchorage

(Continued on page 8)

. . . Rettig Report

(Continued from Page 4)

Times at that time.

The measure introduced by the committee provides for the purchase of residential mortgage loans bearing rates not exceeding 6½ per cent . . .

With current prevailing mortgage rates of 9½ per cent it appears that a rate of 7½ per cent would be far more appropriate for state funds.

Further, I believe such a program should be limited to loans on owner-occupied one to four-family dwellings. As written, the rates are so low and the permitted loan classifications so broad (commercial loans, etc.) that funds would soon be exhausted.

The committee rejected my suggestion for a broadly based permanent fund for fisheries research, rehabilitation and development.

HB 777 and HB 778 which I prepared and had introduced through the House Resources Committee would ensure, through the establishment of a $100 million permanent fund, the continuing expansion of this job-oriented industry . . .

It is well within the capability of the state through these two bills to make certain that, by the time oil is gone, fishing and the fishing industry can mean more for the well being of Alaskans than even the great oil industry.

The committee gave no attention whatever to the inflationary influences of the vast spending programs recommended, nor did the committee bother to consider the consequences that may result if the pipeline should not be built.

I deeply regret the committee's rejection of the establishment of permanent funds for the conservation of the state's capital funds such as the governor's permanent fund measure (SB 404).

The committee departed sharply from its consistent position of rejection of permanent funds when it adopted . . . a permanent or single purpose fund to assume bonded debt of school districts.

These measure would provide a fund of $72,121,157 to pay interest and principal installments on previously issued school district bonds. If these should become law an immediate windfall of at least $15 million would accrue to bond holders.

We are advised by bond authorities this could do nothing to improve future bond ratings of the districts and would hurt the state's bond rating.

I am afraid it would make the state appear rather silly in the eyes of bond investors. A far better approach would be to appropriate annually for the debt service.

Thankfully, all bills now go to the House Finance Committee for in-depth study and correlation with the state's overall budget and financial considerations.

Monetary Committee Of House Winding Up Its Deliberations

JUNEAU (AP)—Rep Tom Fink said today the House Special Monetary Committee has "substantially finished its deliberations," and will introduce about 20 bills, including one which would have the state invest up to $300 million in mortgages on property within Alaska.

Fink, an Anchorage Republican who serves on the committee, said the group made "two or three basic decisions."

First, he said, it determined that the $900 million from last year's oil lease sale "should be used to meet the needs of the state." And he said the committee decided that the money should not be locked up in a permanent fund, as proposed by Republican Gov. Keith Miller.

He said the committee "determined that we should get maximum use out of the fund" and said it also decided that "any monies the state had available for investment should be invested in Alaska."

Fink issued a lengthy news release, and the items he listed totaled about $470 million.

Rep. Gene Guess, the Anchorage Democrat who chairs the committee, called Fink's statement "a bit premature." But he said it was a "pretty good summary of what the committee did."

Guess said, "The bills are being costed out and related to projected revenues and cash flow."

He said he hoped to get a committee report of his own ready by tomorrow.

Fink said that "probably the most important bill" was the one to allow the state to invest in mortgages, with a 6.5 per cent limit on the interest on home loans and a 7.5 per cent ceiling on non-home loans.

He said that within a year the state could be expected to invest $100 million in mortgages.

Fink said the committee approved the governor's proposals for a new cabinet-level Department of Treasury and the formation of a Planning and Budget Division.

The lawmaker said the group recommended an appropriation of some $33 million to build projects previously approved for the Alaska State Housing Authority to construct. Fink said a direct appropriation "will result in a considerably lower cost for state office space."

However he said the group also passed out "with mixed recommendations" the governor's $147 million bond package. Fink said he was against such, "since we have a large amount of money and could directly appropriate for whatever capital improvements are necessary at this time."

Fink said the committee recommended the removal of any requirements of collateral for state deposits in Alaska banks.

He said the group "substantially increased" the revenue sharing program started last year, and endorsed proposals for the state to pick up a large chunk of school construction costs. This would include the assumption by the state of local districts' bonded debt.

Fink said the committee approved the "general concept" of the state paying 90 per cent of the cost of basic education.

He said a $20 million hospital loan fund was approved, and also a $5 million revolving fund for ASHA, to be used while the agency awaits federal approval for projects.

Other legislation which he said was approved included increases in the maximums on veterans' loans, the administration's $10 million water and sewer assistance proposal and a $5 million housing package.

Although he disagreed with the decision, Fink said, the committee approved a one-year extension of the existing interest law, which now places a 10 per cent ceiling on mortgages and business loans. Fink said the limit should not be that high.

The House Special Monetary Committee is expected to bring out its package of bills this week after long, arduous work.

The Senate Monetary Committee has sent its bills on to the Senate Finance Committee as they were ready, and it has operated within a more limited scope than its House counterpart.

Introduction of the House monetary package into the legislative mill turns loose a group of measures that still require consideration by both houses and their respective finance committees.

1970 - 1980 Estimated Hospital Bed Need

No attempt was made to project the communities in which hospital construction would take place due to lack of adequate statistics.

The population figure was adjusted to exclude the native and military populations. The Hill-Burton minimum factor of 4.5 beds per 1,000 population was used to estimate the number of beds needed each year. Using current figures plus known construction 713 beds were determined to be available in 1969. A median figure of $50,000.00, per bed was used to compute the costs.

Under current Hill-Burton guidelines and assuming that the Hill-Burton Act will still be in existence in the years 1970 to 1980 without change the total cost of $58,290,000.00 would be broken down as follows:

Federal	1 million per year	11,000,000.00
State matching ratio at 30 %		17,487,000.00
Project Sponsors Share		29,803,000.00
Total Bed Cost		58,290,000.00

YEAR	POPULATION	BED NEED-ADDITIONAL	BED COST
1970	262,700*	471	23,550,000
1971	275,300	54	2,700,000
1972	288,400	58	2,900,000
1973	302,000	63	3,150,000
1974	316,200	63	3,150,000
1975	331,000	78	3,940,000
1976	350,000	85	4,250,000
1977	362,400	54	2,700,000
1978	378,100	72	3,600,000
1979	400,400	99	4,950,000
1980	414,500	68	3,400,000

* Population projections from Stanford Research Institute.

In accordance with Federal Law the State has been divided into (7) Catchment Areas for the purpose of determining need and priorities for Construction of Community Mental Health Centers and Construction of Facilities for the Mentally Retarded. These areas are:

Area 1 - Ketchikan Catchment Area -
Election Districts 1 and 2

Area 2 - Juneau Catchment Area -
Election Districts 3, 4 and 5

Area 3 - Anchorage Catchment Area -
Election Districts 6, 7, 8, 9, 10 and 13

Area 4 - Kodiak Catchment Area -
Election Districts 11 and 12

Area 5 - Bethel Catchment Area -
Election Districts 14 and 19

Area 6 - Fairbanks Catchment Area -
Election Districts 15 and 16

Area 7 - Nome Catchment Area -
Election Districts 17 and 18

Under P.L. 88-164, Title I, Alaska receives $100,000 per year for Construction of Facilities for the Mentally Retarded and $100,000 per year for Construction of Community Mental Health Centers. The matching ratio is (40%) Federal and (60%) Sponsor.

Estimated cost of a center is $500,000 in northern part of the State and about $300,000 in southeast. In general these are non-income producing centers.

5 Centers at $500,000	$2,500,000
2 Centers at $300,000	600,000
Cost of 7 Centers	$3,100,000
Federal Share at 40%	1,240,000
Community Share at 60%	1,860,000

We recommend that consideration be given to the proposal that a sufficient and reasonable fund be set aside and made available to local communities at a reasonable rate of interest for use in construction of capital improvements, including hospital and health facilities.

Respectfully submitted,

/S/ Joseph M. Ribar, MD

Joseph M. Ribar, MD, Acting Chairman

Recommedation of the Health and Welfare Facilities Committee of the State Comprehensive Health Advisory Council accepted by the council as a whole at its meetin January 23, 1970.

Please write the names
of each guest for me & also yours

Robert Ogden - Exec Secty. Alaska Medical Assoc.

Lowell Swanty - Health fanatic

Larry Sullivan - Coordinator Comp Health Planner

Jack Scollard - Admin Juneau Hosp.
Vice Pres - A. H. A.

Merton Chaney - Jr. Borough Chair

SUGGESTED HEALTH FACILITIES LOAN FUND

Supported By:
Alaska Hospital Association
Alaska Medical Association

"An Act relating to providing loan funds to public and non-profit agencies at low interest for the purpose of assisting in the Construction, Acqusition, Modernization, Equiping and other Capital Improvements of Hospitals, Health Centers, Mental Health Centers, Nursing Homes and other Health related facilities."

Requirements for construction, modernization, equiping and other Capital Improvements shall comply with regulations as they are now established or will be established by the State of Alaska, Department of Health and Welfare and/or appropriate federally sponsored construction programs such as, Hill-Burton, Mental Health Centers and Facilities for Mentally Retarded.

In view of anticipated needs of the State according to current studies of the Department of Health and Welfare, projected to 1980 and in consideration of other anticipated health needs, it is suggested that a 20 million dollar revolving loan fund be established and that this fund be increased of decreased annually by the Legislature on a need basis.

It is requested that this bill, if submitted include retroactive provisions to provide relief for communities with hospitals now under construction.

REVENUE TO STATE (continued)

States	ADMISSION TAX					MISCELLANEOUS				
	Total	Thoroughbred	Harness	Qrt. Horse	Mixed	Total	Thoroughbred	Harness	Qrt. Horse	Mixed
Arizona	9,660	✓		✓	9,660	535	✓		✓	535
Arkansas	38,525	38,525				24,668	24,668			
California						777,566	534,350	98,214	72,162	72,840 †
Colorado						3,140	1,795		1,345	
Delaware	169,002	96,348	72,654			141,876	64,841	77,035		
Florida	647,547	548,879	77,447	21,221		571,522	505,349	49,685	16,488	
Idaho	3,004	✓		✓	3,004	1,885	✓		✓	1,885
Illinois	2,232,530	1,029,690	1,198,150	4,690		441,984	4,869	207,360		229,755
Kentucky	251,708	228,741	22,967			137,652	112,652	25,000		
Louisiana	180,108	146,452		✓	33,656	135,106	5,450		✓	129,656
Maryland	387,711	314,173	73,538			230,498	192,978	37,520		
Massachusetts						109,535	80,415	29,120		
Michigan						297,935	163,093	134,842		
Montana										
Nebraska	162,794	162,794				33,745	33,745			
Nevada										
New Hampshire						118,454	56,656	61,798		
New Jersey	226,113	197,527	28,586			347,764	249,784	97,980		
New Mexico	71,933	✓		✓	71,933	123,850	✓		✓	123,850
New York	1,966,484	888,308	1,078,176			1,355,169	770,034	585,135		
Ohio						66,256	22,730	43,332	194	
Oregon						55,644	✓		✓	55,644
Pennsylvania	602,154	492,194	109,960			289,046	281,076	7,970		
Rhode Island	183,308	183,308				72,610	72,610			
South Dakota	No Record					No Record				
Vermont						46,735	39,870	6,865		
Washington	398			241	157	1,100	✓		✓	1,100
West Virginia	24,243	21,962	2,281			213,774	205,702	8,072		
Wyoming	197	✓		✓	197	275	✓		✓	275
Total	7,157,419	4,348,901	2,663,759	26,152	118,607	5,598,324	3,422,667	1,469,928	90,189	615,540

† Fairs – Thoroughbred and quarter horse

STAKES AND PURSE DISTRIBUTION

States	TOTAL MONEY DISTRUBUTED					CONTRIBUTION BY HORSEMEN				
	Total	Thoroughbred	Harness	Qrt. Horse	Mixed	Total	Thoroughbred	Harness	Qtr. Horse	Mixed
Arizona	2,447,969	✓		✓	2,447,969	120,485	✓		✓	120,485
Arkansas	3,452,049	3,452,049				60,600	60,600			
California	45,566,896	33,690,343	6,520,152	5,356,401		1,774,743	1,043,152	156,788	574,803	
Colorado	2,088,291	1,384,437		703,854		462,115	147,380		314,735	
Delaware	9,719,589	4,219,020	5,500,569			193,720	95,120	98,600		
Florida	18,013,698	15,345,169	1,907,830	760,699		738,491	431,945	35,297	271,249	
Idaho	412,241	218,761		168,807	24,673	67,114	6,458		53,516	7,140
Illinois	28,704,419	13,823,739	14,802,680	78,000		544,542	424,932	119,610		
Kentucky	11,487,371	8,678,638	2,808,733			795,968	344,760	451,208		
Louisiana	9,403,841	8,150,290		1,253,551		729,392	236,000		493,392	
Maryland	15,535,068	13,730,758	1,804,310			383,520	292,365	91,155		
Massachusetts	7,975,120	5,898,320	2,076,800			76,125	37,675	38,450		
Michigan	16,186,600	7,742,090	8,444,510			73,840	51,390	22,450		
Montana	No Record									
Nebraska	4,677,020	4,677,020				126,800	126,800			
Nevada	No Record									
New Hampshire	6,376,453	2,701,712	3,674,741			13,125	9,750	3,375		
New Jersey	17,315,839	11,966,185	5,349,654			264,986	264,986			
New Mexico	9,049,899	4,117,699		4,932,200		3,784,931	650,972		3,133,959	
New York	66,358,726	29,600,377	36,758,349			3,675,710	829,025	2,846,685		
Ohio	16,156,507	8,559,485	7,468,201	128,821		424,894	163,900	207,573	53,421	
Oregon	1,663,714	1,414,287		249,427		13,395			13,395	
Pennsylvania	25,030,883	15,240,929	9,789,954			701,667	243,725	457,942		
Rhode Island	5,769,231	5,769,231								
South Dakota	300,000(E)	✓		300,000		No Record				
Vermont	2,468,705	1,758,700	710,005							
Washington	4,593,608	4,257,910		323,463	12,235	315,701	111,683		202,123	1,895
West Virginia	10,797,982	10,339,532	458,450			17,430	17,430			
Wyoming	51,742	4,100		47,642		23,228			23,228	
Total	341,603,461	216,740,781	108,074,938	14,002,865	2,784,877	15,382,522	5,590,048	4,529,133	5,133,821	129,520

E - Estimated

STAKES AND PURSE DISTRIBUTION (continued)

States	CONTRIBUTION BY ASSOCIATIONS					CONTRIBUTION FROM SPECIAL FUNDS				
	Total	Thoroughbred	Harness	Qtr. Horse	Mixed	Total	Throughbred	Harness	Qtr. Horse	Mixed
Arizona	2,072,256	✓		✓	2,072,256	255,228	✓		✓	255,228
Arkansas	3,322,449	3,322,449				69,000	69,000			
California	43,792,153	32,654,847	6,363,364	4,773,942						
Colorado	1,470,043	1,103,057		366,986		156,133	134,000		22,133	
Delaware	9,136,250	4,123,900	5,012,350			389,619		389,619		
Florida	16,971,103	14,827,744	1,653,909	489,450		304,103	85,480	218,623		
Idaho	345,127	212,303		115,291	17,533					
Illinois	26,598,553	12,640,783	13,879,770	78,000		1,561,325	758,025	803,300		
Kentucky	10,691,404	8,333,878	2,357,526							
Louisiana	7,801,410	7,206,960		594,450		873,039	707,330		165,709	
Maryland	15,013,120	13,362,959	1,650,161			138,428	75,433	62,995		
Massachusetts	7,888,195	5,860,645	2,027,550			10,800		10,800		
Michigan	15,503,560	7,264,500	8,239,060			609,200	426,200	183,000		
Montana	No Record									
Nebraska	4,550,220	4,550,220								
Nevada	No Record									
New Hampshire	6,363,328	2,691,962	3,671,366							
New Jersey	15,217,600	10,786,379	4,431,221			1,833,253	914,820	918,433		
New Mexico	5,264,968	3,466,727		1,798,241						
New York	61,094,446	28,512,517	32,581,929			1,588,570	258,835	1,329,735		
Ohio	14,595,528	7,259,500	7,260,628	75,400		1,136,085	1,136,085			
Oregon	1,625,515	1,391,584		233,931		24,803	22,702		2,101	
Pennsylvania	23,293,923	14,997,204	8,296,719			1,035,293		1,035,293		
Rhode Island	5,769,231	5,769,231								
South Dakota	300,000	✓		✓	300,000	No Record				
Vermont	2,468,705	1,758,700	710,005							
Washington	3,602,495	3,470,815		121,340	10,340	675,412	675,412			
West Virginia	8,814,067	8,355,617	458,450			1,966,485	1,966,485			
Wyoming	28,514	4,100		24,414						
Total	313,594,163	203,928,581	98,594,008	8,671,445	2,400,129	12,626,776	7,229,807	4,951,798	189,943	255,228

E - Estimated

BRIEF SUMMARY OF TAX METHODS BY STATES

Arizona	Total take-out 18%. State receives 4% of first $100,000 and 7% all over $100,000; under $100,000 state 2%, track 15% and 1% to supplement General Purse Structure. Breakage 10 cents, 50% to track, 25% General Purse Structure, 25% Arizona Bred Purse Structure. FAIRS: County in which fair is located receives pari-mutuel tax revenue, instead of state.
Arkansas	Total take-out 16%. Pari-mutuel tax to state 6%, $500 daily license, 10 cents tax on admissions. Breakage 10 cents, divided 33 1/3% to city where track is located, 33 1/3% to association, 33 1/3% to state.
California	Total take-out 15.75%. Only two rates applied to total handle, a base rate on handle up to $20 million, and the appropriate rate for the estimated handle in excess of $20 million. THOROUGHBRED: With a handle of $0-$20 million, state 6.10%, track 5.29%, purses 4.16%; $20-$40 million, state 5.70%, track 5.52%, purses 4.33%; $40-$75 million, state 6.55%, track 5.04%, purses 3.96%; $75-$120 million, state 6.85%, track 4.87%, purses 3.83%; $120-$180 million, state 7.15%, track 4.70%, purses 3.70%; $180 million and above, state 7.45%, track 4.54%, purses 3.56%. Breeder and Stallion Awards, .2%. HARNESS AND QUARTER HORSE: With a handle of $0-$20 million, state 6.10%, track 5.74%, purses 3.91%; $20-$40 million, state 5.70%, track 5.98%, purses 4.07%; $40-$75 million, state 6.55%, track 5.48%, purses 3.72%; $75-$120 million, state 6.85%, track 5.30%, purses 3.60%; $120-$180 million, state 7.15%, track 5.12%, purses 3.48%; $180 million and above, state 7.45%, track 4.94%, purses 3.36%. Breeders Awards paid by track out of amount deducted from handle. When any racing association handles less than $20 million, state receives 5.50% of total handle, 10.25% deducted from pari-mutuel pools to be distributed to tracks and purses.
Colorado	Total take-out 16%. Of daily pari-mutuel wagering receipts state receives 4% of first $200,000; 5% of excess over $200,000 which does not exceed $300,000; 6% of all in excess of $300,000. Breakage 10 cents, all to association. At Colorado State Fair, state receives 2% of take-out.
Delaware	THOROUGHBRED: Delaware Park take-out 17%. State receives 5%. Per season license $5,000. Admissions 20 cents. Breakage 10 cents, 5 cents on minus pools, divided equally between state and association. Dover Downs take-out 17 1/2%. State receives 5%. Per season license $750. Admissions 10 cents. Breakage 5 cents, all to association. HARNESS: Total take-out 17 1/2%. State receives 5 1/2%. Admissions 10 cents. Breakage 10 cents, 5 cents on minus pools, divided equally between state and association. THOROUGHBRED and HARNESS: Uncashed pari-mutuel tickets revert to state after one year.
Florida	THOROUGHBRED: Total take-out 17%. South Florida Winter—state receives 7 1/2%. Breakage 10 cents, 5 cents on minus pools. One hundred per cent to state. South Florida Summer—state 5% on first $400,000 daily average, 3% on excess of $400,000. Breakage 50% to state, 50% to track. Florida Downs—state receives daily fee ranging from $4,000 to $21,000, based on preceding season's daily pari-mutuel average. Breakage 100% to track for purses and breeders awards. HARNESS: Seminole—Harness 19%, Quarter Horse 17%, Thoroughbred 17%. State receives daily fee ranging from $1,000 to $4,000 based on daily pari-mutuel handle. Harness and Quarter Horse, state receives 50% of breakage; Thoroughbred, state receives 100%. Bayard—Total take-out 17%. When daily average more than $25,000 state receives 7% less $170 per race "initial expense of operation." Less than $25,000 state receives daily fee ranging from $150 to $400 based on daily pari-mutuel handle. Pompano—Total take-out 19%. State receives 7%. Breakage 50% to state, 50% to track for purses and breeders awards. Admissions all tracks 15%.
Idaho	Total take-out 15%. Commission receives 1% of take-out and occupational license fees for operational expenses. The remainder of take-out based on a sliding scale percentage as follows: Of gross receipts to $20,000, track 14%; $20,000 to $30,000, track 13%, public school endowment fund, 1%; $30,000 to $40,000, track 12%, public school fund 2%; $40,000 to %50,000, track 11%, public school fund 3%; $50,000 and over, track 10%, public school fund 4%. Breakage 10 cents, all to association. Track daily license $25; fairs exempt. Association accrues all monies in unclaimed tickets at termination of time allowed by rule of the commission.
Illinois	Total take-out 16%. THOROUGHBRED—state receives: At race tracks within county of 500,000 or more or within county of less than 500,000 but within 100 miles corporate limits any city in state of 1 million or more tax rates, except charity: First $5,000,000 of annual handle—5 3/4%; $5,000,001 to $10,000,000—6 3/4%; $10,000,001 to $30,000,000—7 3/4%; $30,000,001 to $40,000,000—8 1/4%; $40,000,001 to $60,000,000—8 3/4%; over $60,000,000—9 1/4%. At race tracks within county of less than 500,000 and more than 100 miles of any city in state of 1 million or more tax rate, except charity: First $10,000,000 of annual handle—5 3/4%; $10,000,001 to $20,000,000—6 3/4%; $20,000,001 to $30,000,000—7 3/4%; $30,000,001 to $40,000,000—8 1/4%; $40,000,001 to $60,000,000—8 3/4%; over $60,000,000—9 1/4%. Breakage 10 cents, half to state. Charity meets, tax 8% plus half of breaks. HARNESS: Total take-out 16%. State receives: First $30,000,000 of annual handle—6 1/4%; $30,000,001 to $35,000,000—7 1/4%; $35,000,001 to $40,000,000—8 1/4%; $40,000,001 to $60,000,000—8 3/4%; over $60,000,000—9 1/4%. Breakage 10 cents, half to state. Charity meets tax 8%. Breakage, both Thoroughbred and Harness, 5 cents instead of 10 cents in case of minus pools.

BRIEF SUMMARY OF TAX METHODS BY STATES (continued)

Kentucky	THOROUGHBRED: Total take-out 15%. State receives 4 3/4%. Daily license $500 if average daily handle at track during year does not exceed $450,000; $1,000 at tracks with average daily handle $450,000 to $600,000; $2,500 at tracks where sum exceeds $600,000. HARNESS: Total take-out 17%. State receives 4%. Daily license $125 if average daily handle during previous year does not exceed $75,000, $175 thereafter. QUARTER HORSE: Total take-out 18%. State receives 4%. At all tracks breakage 10 cents, all to association; 15 cents on admissions. At all tracks in state unclaimed tickets revert to state after 2 years. Minus pools: Breakage 5 cents instead of 10 cents.
Louisiana	Total take-out 16%. In a parish with population of 450,000 and over state receives: On total daily pools from 1 cent to $201,000—5%; $201,000 to $401,000, $10,050 plus 6% of that amount exceeding $201,000 up to $401,000; $401,000 and over, $22,050 plus 7% of any amount exceeding $401,000. Minimum daily license fee $1,000. In a parish with population less than 450,000 state receives: On total daily pools up to $200,000—5% of that portion exceeding $30,000; $201,000 to $300,000, $8,500 plus 6% of that portion exceeding $200,000; over $300,000, $14,500 plus 7% of pool exceeding $300,000. (Subject to minimum $1,000 daily.) Admissions 10 cents. Breakage 10 cents, 2/3 to association and 1/3 to Louisiana Breeders Fund to supplement purses.
Maryland	THOROUGHBRED (MILE TRACKS): Total take-out 15%. State receives 5.34%, association 3.66% of which .25 of 1% is allocated for pension fund for race track employees; 5% of money wagered allocated to purses; .50% of wagers to Maryland Bred Fund races; .50% to Racing Fund for plant improvements. Daily license fee $1,000. Breakage 10 cents, 1/2 to state, 1/2 to association. COUNTY FAIRS (Thoroughbred): Total take-out 16%. Of money wagered 5.50% to state; 5% to association, 5% allocated to purses, .50% to Maryland Bred Fund races. Breakage 10 cents, 1/2 to state and 1/2 to association. Daily license fee $50. HARNESS: Total take-out 17%-18%—3 1/2% to state of all money wagered not in excess of $125,000 daily, 7% to state in excess of $125,000 daily. Daily license fee $25. Breakage 10 cents. Association retains all breakage if daily average is below $166,666.67; all above this figure state receives all breakage. Ocean Downs take-out 18%. One-half of 1% allocated for breeders fund. STEEPLECHASE AND QUARTER HORSE: Total take-out 14%. Of money wagered 5% to state, 9% to association. Breakage 10 cents, all to association.
Massachusetts	THOROUGHBRED (MAJOR TRACKS ONLY): Total take-out 19%. On weekdays and Saturdays State receives 9 1/2%, Association receives 9 1/2%. Sundays the State receives 8 1/2%, Association receives 10 1/2%. License fee $600. per day for major tracks. THOROUGHBRED RACING AT FAIRS: Total take-out 18%. State receives 9 1/2%. Association receives 8 1/2%. License fee $50. per day. HARNESS: (MAJOR TRACKS AND FAIRS): Total take-out 18%. From daily handle, the state receives 6 1/2% to $400,000; 7 3/4% $400,000 to $450,000; 8 1/4% $450,000 to $500,000; 8 3/4% $500,000 to $550,000; 9 1/4% $550,000 to $600,000; 9 3/4% $600,000 to $650,000; 10 1/4% $650,000 and over. Daily license fee at major tracks $200; at Fairs $50. At all tracks breakage 10 cents, divided equally between state and association.
Michigan	THOROUGHBRED: Total take-out 16 1/2%, State receives 8 1/2%, association 8%. HARNESS: Total take-out 16 1/2%. State receives 5 1/2%, association 11%. Per season licenses in city area 100,000 or more $500, any other $100. At all tracks breakage 10 cents, divided equally between state and association.
Montana	Total take-out 20% plus breakage. The licensee shall pay to the Board of Horse Racing 1% of all gross receipts on each days pari-mutuel betting at each race meet, which sum shall be paid to Board within five days after the end of race meet. If underpayments exceed overpayments at the end of each race meet, the balance shall be paid to the Board. Breakage 10 cents, all to licensee. All unclaimed winning tickets 30 days after the end of a race meet are paid to the Board. (No tax paid to State of Montana.)
Nebraska	Total take-out 15%. No tax first million; thereafter, state receives 6%. Tax on admissions 15 cents which, along with monies received in license fees, is distributed among counties of state for county fair premiums. Breakage 10 cents, all to association.
Nevada	Total take-out 18% with 1% to state and 1% to racing commission for administrative work. Any amount over $10,000 is to be distributed to agricultural districts conducting horse racing proportionately to the amount contributed by each district. Breakage 10 cents, all to association.
New Hampshire	THOROUGHBRED: Total take-out 18%. State receives 8%, association 10%, No license fee, but bond not exceeding $50,000 required. Breakage 10 cents, divided equally between state and association. HARNESS: Total take-out 19%, divided as follows: Of total mutuel pool for any one day, state receives 5 1/2% up to $400,000; 6 3/4%—$400,001 to $450,000; 7 1/2%—$450,001 to $500,000; 7 3/4%—$500,001 to $550,000; 8 1/4%—$550,001 to $600,000; 8 3/4%—$600,001 to $650,000; 9 1/2%—$650,001 and over. One quarter of 1% of total pari-mutuel pools allocated to agricultural fairs of state; however, total amount allocated is limited to $150,000 in any one year. Track licenses paid to township where track is located. Breakage 10 cents, divided equally between state and association.
New Jersey	THROUGHBRED: Total take-out 17%. State receives 9.15%, association 7.85%. Breakage 10 cents, all to state. HARNESS: Total take-out 17%. Of first $40 million of handle, state receives 6%, thereafter 7%. All breakage to purses for Jersey bred races and breeder and owner awards.
New Mexico	Total take-out 18%. State receives 2% to $250,000; 3 1/2% over $250,000 to $350,000; 4 1/2% over $350,000 to $400,000; 7% over $400,000; except State Fair which pays a maximum 2% on total handle. Tax on admissions, 10 cents. Daily license fee $300, half to state and half to county in which track is located, except State Fair charge $10 per race day. Breakage 10 cents, all to association.

BRIEF SUMMARY OF TAX METHODS BY STATES (continued)

Naw York	THOROUGHBRED: Total take-out 17% (Except 25% on Trifecta of which state receives 14%). State receives from Saratoga 9%, from Aqueduct and Belmont 10% of total mutuel handle. From Finger Lakes, the state receives 5% of first $400,000, 11% of more than $400,000. Breakage 10 cents, with state receiving 70% from Aqueduct and Belmont, 65% from Saratoga and Finger Lakes, and with 10% to Breeders Fund. Franchise fee $1,000 per racing day paid by non-profit association. Finger Lakes track license $100 per day. HARNESS: Total take-out 17%. Of total daily pool, state receives 5% first $250,000; 7 1/2%, $250,001-$300,000; 8 1/2%, $300,001-$400,000; 10 1/2%, $400,001-$500,000; 11 1/4%, $500,001-$600,000; 11 1/2%, $600,001-$700,000; 11 3/4%, $700,001-$800,000; 12%, $800,001-$900,000; 12 1/4%, $900,001-$1,000,000; 12 1/2%, $1,000,001 and over. Breakage 10 cents, with state receiving 50%, Horse Breeders Fund 25%, association 25%.
Ohio	THOROUGHBRED and QUARTER HORSE: Total take-out 17 1/2%. State receives 4 1/4% first $10,000 wagered; 5 1/4% next $40,000; 6 1/4% next $50,000; 7 1/4% next $300,000; 8 1/4% all over $400,000. HARNESS and FAIRS: Total take-out 17 1/2%. State receives 3% first $10,000; 4% next $40,000; 5% next $50,000; 6% next $300,000; 7% all over $400,000. Breakage 10 cents. Breakage taxed at 25% after first $2,000, 40% of breaks retained by track for increase in next purse distribution. Thirty-five per cent track share. Ohio Fair Fund—1/2 of 1% of total wagered at Throughbred, Harness, Quarter Horse, and Fair meetings is appropriated for Ohio Fair Fund Tax (tax collected from take-out). Thoroughbred Fund—1/2 of 1% of total wagered at Thoroughbred, Harness and Quarter Horse meetings (not collected from Fairs) is appropriated for Ohio Thoroughbred Race Fund. General Revenue tax collected from Fairs refunded to agricultural societies.
Oregon	Total take-out 15%, state receives 5.2% from commercial race meets and 1 1/2% from fair and non-profit race meets. Daily license fee $250 with Fairs and non-profit meets $1.00 per race meet. State receives unclaimed winning mutuel tickets. Breakage 10 cents, track retaining 1/2 added to purses for Oregon-bred races, 4.8% of handle paid for purses and .2% for backstretch improvements.
Pennsylvania	THOROUGHBRED: Total take-out 17%. State receives 5%, association 10%. Breakage 10 cents, 5 cents on minus pools, divided equally between state and association. For track license $3,000 deposit. HARNESS: Total take-out 17%. State receives 5%, association 10%. Breakage 10 cents, 5 cents on minus pools, divided equally between state and association. Monies from breakage deposited in Sire Stakes Fund. (THOROUGHBRED AND HARNESS: In addition to state's 5% there is a 2% tax at tracks located in cities of first class, paid directly to school district. In all other areas 2% tax paid to Department of Commerce for projects in accordance with law.)
Rhode Island	Total take-out 18%. State receives 6% on daily wagers to $425,000, 7% to $500,000, 8% to $600,000, and 9% over $600,000. Breakage 10 cents, divided equally between state and association
South Dakota	Total take-out 16%. State 4%, association 11%, 1% for local school district. Law also provides that 5% of winning purse will go to South Dakota breeder of winning horse. Breakage 10 cents, all to association.
Vermont	THOROUGHBRED: Total take-out 18% (Sunday 19%). State receives 5 1/2% (Sunday 6 1/2%). Breakage 10 cents, divided equally between state and association. HARNESS: Total take-out 18%, with state receiving on first $150,000 plus 3%; $150,000 to $200,000 plus 4%; $200,000 to $250,000 plus 5%; $250,000 to $300,000 plus 6%; $300,000 to $350,000 plus 7%; $350,000 and over 8%. Sunday 19%, with state receiving on first $150,000 plus 4%; $150,000 to $200,000, plus 5%; $200,000 to $250,000 plus 6%; $250,000 to $300,000 plus 7%; $300,000 and over 8%. Breakage 10 cents, divided equally between state and association.
Washington	MAJOR TRACKS: Total take-out 16%. State receives 5%, association 10%. One per cent held by commission until end of each race meet, then distributed to owners of Washington-bred horses placing first, second, third and fourth. FAIR TRACKS—NON-PROFIT: Total take-out 15%, with 1% to state, 14% to association. Daily license fee at major tracks $100; at Fairs $10. Breakage 5 cents, all to association.
West Virginia	THOROUGHBRED: Total take-out 16%. State receives 5 3/4%, association 9 1/4%. One percent of take-out allocated for purses. Daily license tax $250. Unredeemed pari-mutuel ticket money deposited to special account to support Breeders' Awards. Breakage 10 cents, all to association. HARNESS: Total take-out 17%. Of the daily pari-mutuel pool, 3% first $100,000; 4% next $150,000; 5 3/4% all over. Breakage 10 cents, all to association. Daily license tax $150.
Wyoming	Total take-out 20%, with 2% to Pari-mutuel Board for operating expenses (none to state), 2% to city where track is located, 16% to racing association. Breakage 10 cents, all to association.

31 states have parimutuel betting

bet against each other

20% removed for track

Win, place, show – difference?

People will board horses out in Palmer
Finance Fair ground instead of coming to Kegis.
help establish Horse breeding industry

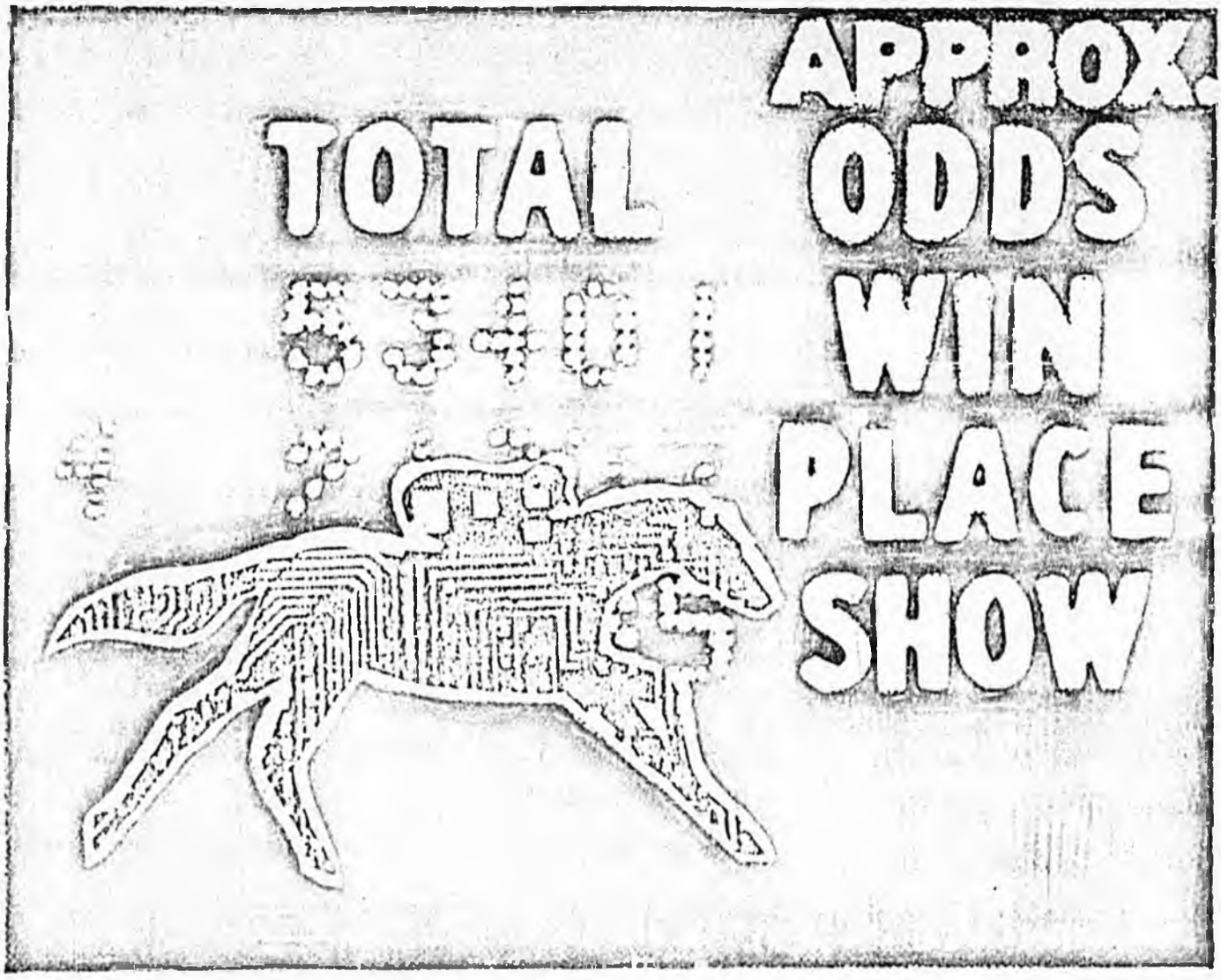
Want to encourage local breeding of horses

Average betting per day is $60 per man

Commission should have power to revoke
licensis of trainers; jockies etc

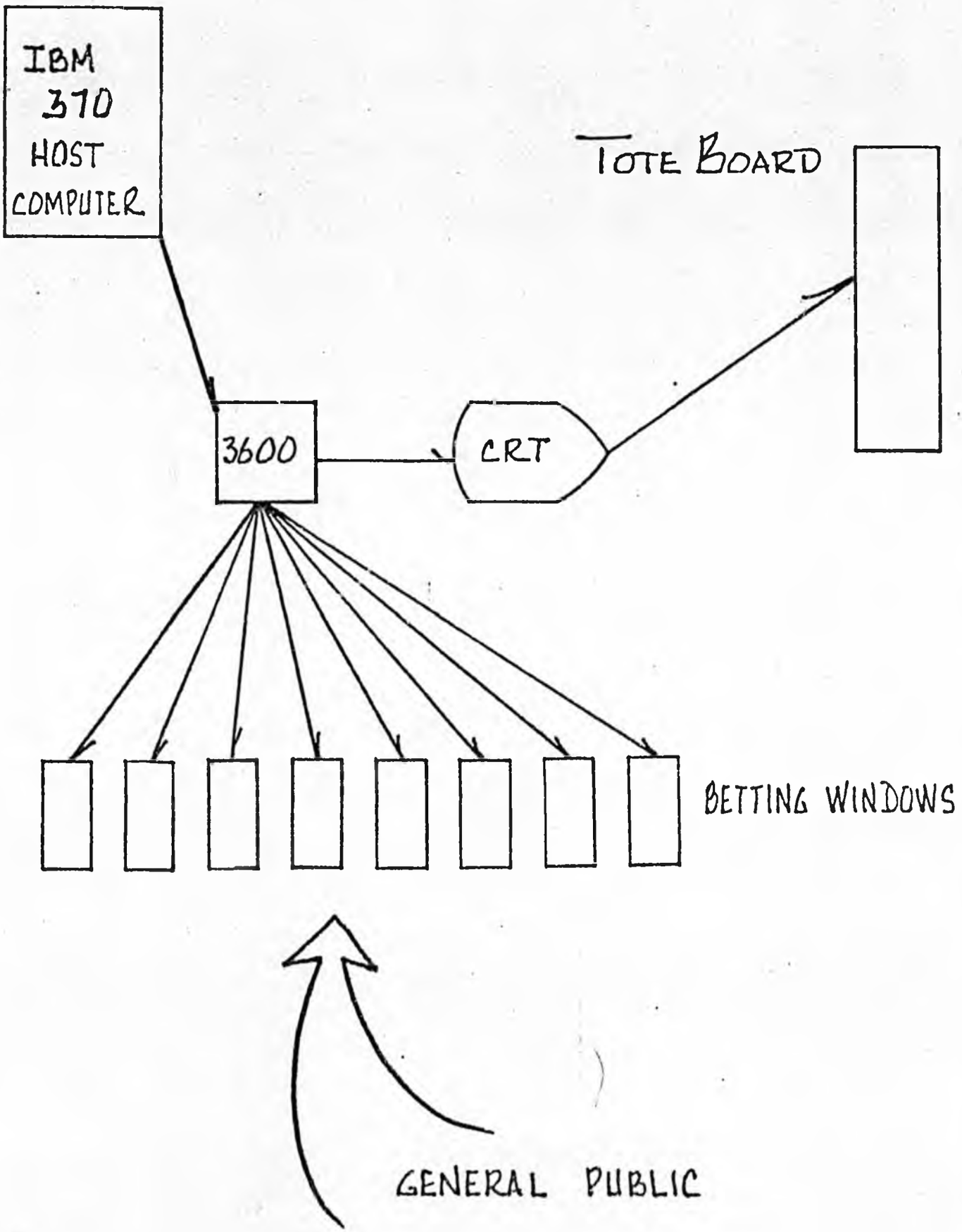
THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

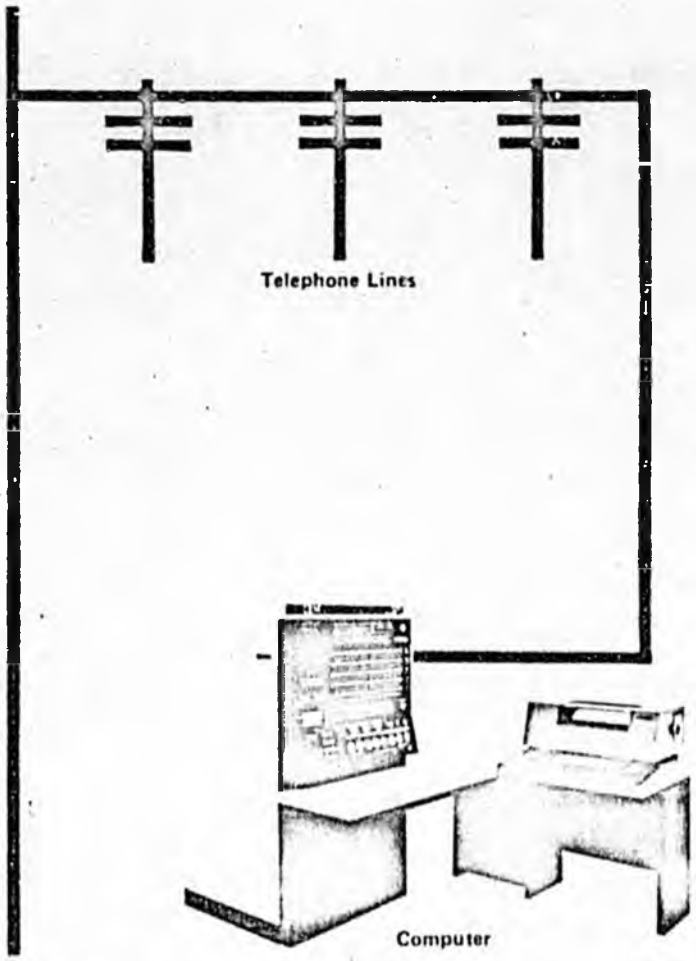
Altec
SRB 360 PALMER, ALASKA 99645
745-3072

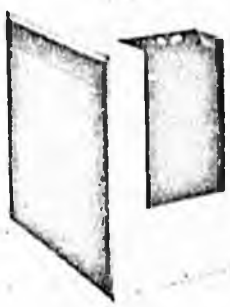


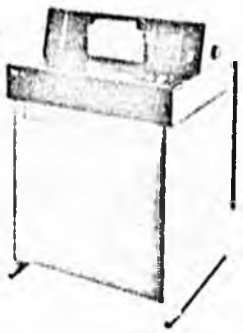
* * C O N T E N T S * *

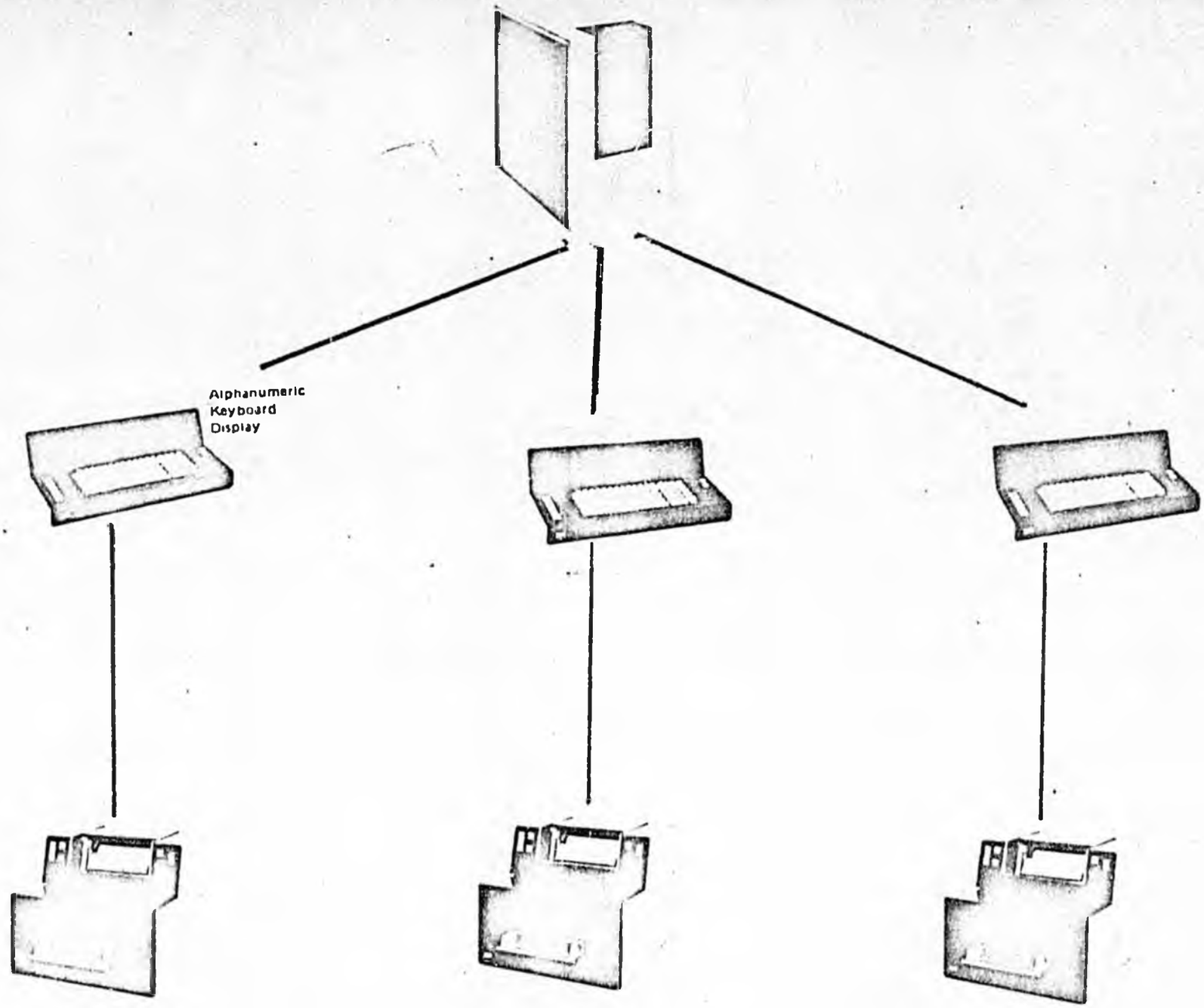
1. System Overview
2. Central Configuration
3. Track/Cashier Configuration
4. Keyboard Display
5. Sample Display
6. Control and Security
7. 3600 System Costs
8. OTB Computer Applications


IBM
370
HOST
COMPUTER
TOTE BOARD
3600
CRT
BETTING WINDOWS
GENERAL PUBLIC




Controller

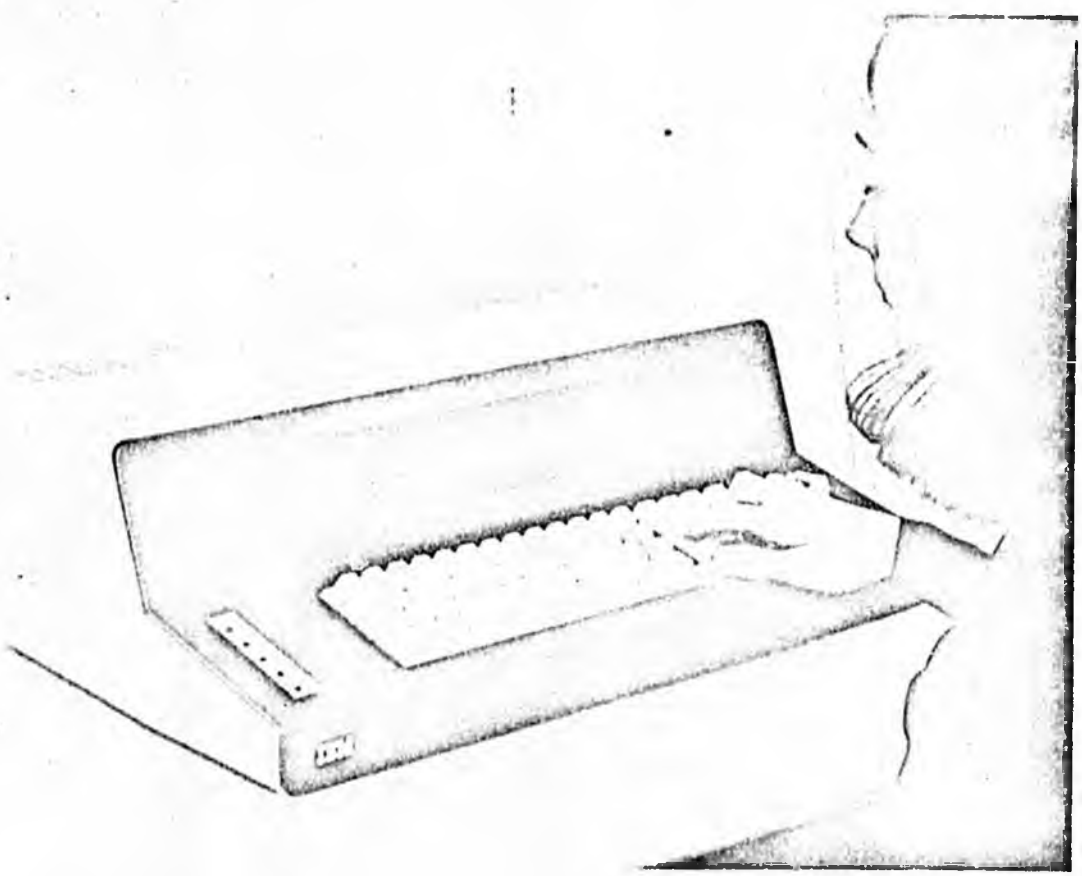

Administrative
Line Printer


Alphanumeric
Keyboard
Display

IBM 3604
Keyboard Display

The Keyboard Display (Figures 3 and 4) is an interactive terminal for use by tellers, loan officers, auditors, and others. It contains a viewing area for up to 240 characters of information. The displayed information may be customer data or operator instructions, presented under control of the IBM 3601, or it may be the information entered from the keyboard.

Several keyboard options are offered with the IBM 3604. Keyboards with special "function keys" are available as well as the standard numeric or alphanumeric keyboards. The use and nomenclature of function keys are specified as desired by the individual financial institution.



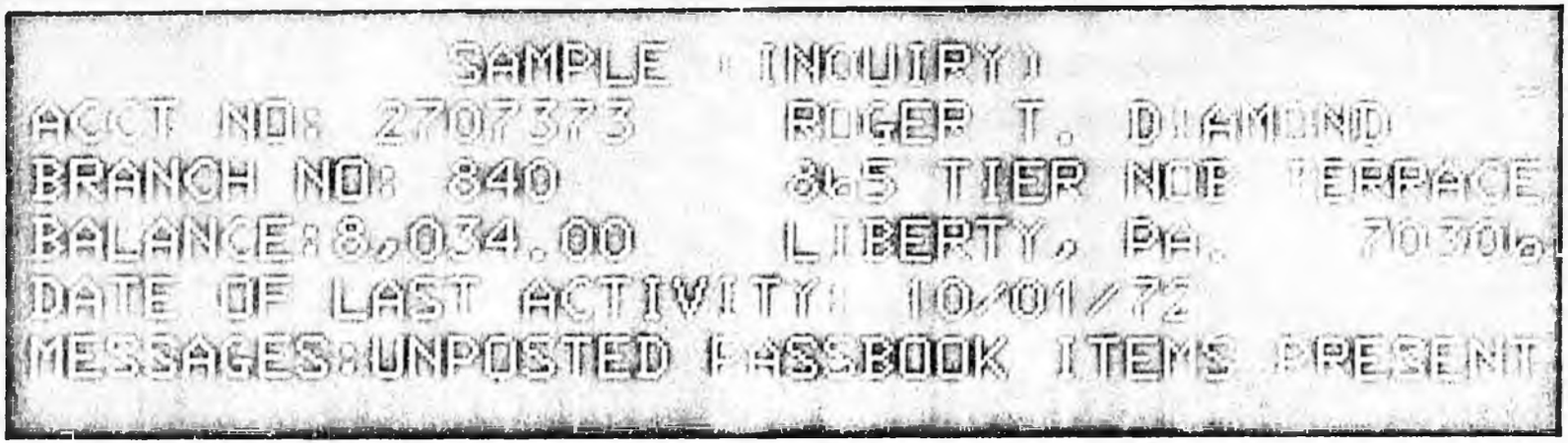
IBM 3604 Keyboard Display with Alphanumeric Keyboard Feature

Display

The display shows 240 characters (6 lines of 40 characters) sharply and steadily. It may be used to do two important things for you:

1. Display the information that you enter at your keyboard. You can thus check your message for errors before you send it to the computer or before you have it printed. If there are any errors, you can change the message and see the change on the display.
2. Display information or guidance messages for you from the computer. Examples are: (1) an answer to your inquiry (the present balance, let's say), (2) the result of a transaction (for example, the new balance after a deposit), (3) a message to help you through an unusual situation or a less frequently used transaction. Note that even though you may have only a numeric keyboard, alphanumeric messages from the controller to you can be displayed.

A sample display is shown in Figure 7.



Sample Display

Audit and Control

The use of an IBM 3600 in a branch office introduces a new way to process information. Terminals become key operational devices. T[illegible] actions are guided by terminal prompting, data is gathered by ter[illegible] keying, and system information is accessible by terminal action.

Controls and audit procedures are very important. The institution can incorporate a variety of security and control measures, audit trails, and error-detection schemes into its application programs. As an illustration, consider operator identification.

If desired, application programs can be written so that operators must identify themselves with a log-on code before they are permitted to use the system. The procedure might be simply to enter a confidential identification name or number. Each terminal user would be assigned a unique code, and code changes could be made periodically or as needed. The system could be programmed to permit only certain codes at certain terminals, and to allow no more than one log-on code at a time per terminal. A log-off procedure (such as keying the term "Off") would prevent subsequent use of the terminal until another valid log-on was entered.

When two operators use the same terminal unit or units, special keyboard keys can be used to identify the operator who is processing a transaction. In this way, the system can keep track of individual activity and maintain separate records and accountings.

As an additional security measure, the system could be programmed to provide an authorization mechanism which allows operators to perform certain specific transactions but not others. This technique is valuable for restricting access to information that only certain users need; supervisors or managers, for example. It can give extra protection to particularly sensitive information.

Problem Determination and Fault Isolation

The IBM 3600 system minimizes the effect of fault conditions. Checking circuits and controls are built in to identify problems and to isolate their cause so that quick corrective action can be taken.

For example, suppose a Keyboard Display has a failure in the circuitry that exchanges data with the IBM 3601 control unit. On the terminal a CONTROL READY light (usually lit) begins to flash, or is extinguished altogether. Turning the unit off (or throwing the DSBL UNIT switch) disables the terminal and permits the remainder of the system to function normally. Therefore, the problem can be corrected with minimum effect on the system.

If a failure occurs elsewhere in the system, it may be flagged by a CONTROL READY light indication, by a special message from the IBM 3601 control unit, or by other system means.

Furthermore, IBM-designed tests are incorporated into the IBM 3601 and may be activated at any time. They exercise and test the terminals, and provide assurance that each device is performing properly.

* * 3600 Hardware Costs * *

	Monthly	Extended Monthly	Purchase
Central Processor	$523.00	$445.00	$20,140.00
Display Consoles (8)	496.00	424.00	2,120.00
Document Printers (4)	300.00	256.00	2,545.00
Central Site Prtr	125.00	108.00	2,350.00
	$1,444.00	$1,233.00	$27,155.00

These hardware costs reflect only the mainframe and peripheral devices. Additional costs will be incurred in the event of a need to configure additional mainframe modules, e.g., multiplexor, also cable considerations, and site preparation are not included.

Large Scale Off-Track Betting Systems

Stephen L. Dunik
IBM Canada Limited

Introduction

While legal off-track betting in North America has only been active since April 1970 (in New York), it has been available to Australians since 1960, following the installation of telephone betting in the state of Victoria.

An off-track betting system is one that allows individuals not within the confines of a racetrack to place wagers either in person at a branch office facility, or via telephone if an account has been established. The law usually requires that all bets placed off-track be consolidated with the on-track parimutuel system of any race within a given state.

In 1971-72 the Australian public invested an average of $147 (Australian) per person in racing bets. This represents a total investment of some $1.9 billion spread over off- and on-track. The average yearly growth rate over the past eight years has been 15 percent and the current rate of increase in off-track betting is about 20 percent. The largest, New South Wales Totalizer Agency Board (N.S.W. TAB), which installed its on-line system in 1971 with an expected life of 10 years, passed its 1980 forecast bet levels in 1973.

The TAB of N.S.W. is set up under a state government act to provide legalized off-track betting facilities on horse and dog races within the state. Similar legislation and operations exist within other states in Australia, Tasmania being the last to set up such an operation. The N.S.W. Board was set up in 1964 and went on-line in 1971. Turnover in N.S.W. off-track betting for the year ended

8

expected to exceed $3[illegible] million.

Of the total monies invested in the TAB, 13 percent is deducted and the remaining 87 percent is paid in dividends. Of the amount deducted, 5.5 percent goes to the state government and 7.5 percent is used to cover TAB operating costs and a distribution to the race clubs. The TAB operating cost last year was 4.5 percent of turnover.

In the U.S., OTB legislation exists in three states and is being considered in 14 others.

Racetrack Betting Betting procedures at racetracks result in fast ticket selling over a short period of time for each race. The ticket windows open about one-half hour before post time and each window generally handles only one bet type for a single amount (for example, $2 Win, $5, Show, $10 Place) and for the upcoming race only. Once at the desired window, the bettor need only give the teller the number of the horse, pay his money, and receive his ticket. The teller presses the appropriate button; the ticket is issued; and the wager recorded. To place a different type of bet, the bettor must go to another line. Under this procedure, tellers can sell tickets at a rate of about 20 per minute.

Off-Track Betting The nature of off-track betting dictates a totally different procedure from on-track betting. Betting opens for all operating tracks and races at the beginning of the working day. The variety of types of bets that may be placed at an off-track betting office precludes the use of specialized windows. One teller handles all bet types such as Win, Place, Show, Daily Double, Exacta, and Quinella, in all denominations, for up to 10 races, at each of several tracks. The bettor must specify his choice of track, race, horse, bet type, and amount for each bet he wishes to place. The teller must place the bet, validate the bet information, issue a ticket, and calculate and receive the total money due.

The ticket-issuing machine must be able to enter a bet, consisting of the above information and number of tickets, and in a short response time (approximately 3-6 seconds) issue a wallet-sized ticket, with the printed data describing the bet. This is a perfect duplication of the betting procedures a bettor would have had to perform at an on-track site, with one exception as mentioned the amount of data communicated at an off-track site is greater than that communicated on-track.

These steps can slow the off-track operation to about two bets per minute, thus creating long, slow-moving lines and discouraging the bettors. At this rate, the amount of money a teller can take in is limited, thus severely restricting the profit to the state as an off-track betting operator. Since a significant percentage of the gross must be spent on the teller operation, an increase in the number of tellers raises costs almost in proportion to the revenue generated.

This article describes the general requirements for an off-track betting system. A major system currently installed in New South Wales in Australia and a second system to be installed in Western Australia next year are also described.

Typically off-track betting is carried out in two forms. Remote branch office betting where the bettor must present himself to place bets or collect winnings and telephone betting where bets given over the telephone are placed by an operator against the bettor's account.

Central Control Function At the beginning of each day, the system is initialized from the central office using data forwarded from the previous day in addition to the track profile for the day. Branch offices are opened for business, after which branch supervisors and tellers may sign on to the system. As the system functions throughout the day, information is made available to authorized personnel concerning the status of individual tellers and branch offices as well as the system as a whole. Supervisors may also effect security changes within their area of responsibility, such as inserting, modifying, or deleting teller information. At the end of the day, the system is shut down in an orderly fashion. Terminals and branch offices are closed for business, and any data such as track profiles or winnings needed for the following day is recorded.

During system initialization, the day's racing information is gathered and entered in the track profile table. These records include (for each track) identification, races, race close times, horses, bet types, pool summaries, initial odds, allowances, and provisions for scratches, cancellations, and payout amounts. A directory of table entries is kept in main storage during betting.

When the supervisor is satisfied that the system has been correctly initialized, he may proceed to the established data verification and test procedures and, finally, to the opening of branch offices and the day's betting.

Whether a branch office opens automatically at system initialization time or by a specific command at a later time, the system must inform each branch that the off-track betting system is ready to accept transactions and initialize a cash-on-hand counter for each branch opened. The branch responds with a confirming message and terminals then may sign on when they are ready to accept transactions.

The central office also handles the information that is exchanged between the track and the off-track betting system. From the track to the off-track system comes information about scheduled races and horses, horses scratched, race cancellations, and race results; to the track from the off-track system comes the data from the bet pools—that is, the total amounts of money bet on each race and horse.

To scratch a horse, the system administrator enters the track, race, and horse identification. When the transaction is confirmed, the system flags the horse in the track profile table and the horse record in the track profile record as scratched. The system prevents further betting on the horse. The bets on the bet files remain unchanged until payout. At that time, the horse is treated as a winner, with the payout equaling the original bet. If a customer wishes to redeem a bet placed on a horse he knows is scratched, he should cancel his bet. Thus, if the horse is reinstated, previously uncanceled bets go as placed.

To shut down a track for conditions such as inclement weather, the off-track betting system administrator inputs the track name and date. Once the entry is validated, the system locates the track profile table and determines the

first race not yet run for the track. The race record is marked "canceled" and the payout routine procedure is performed, making the payouts equal to the original bets.

At a given time before the race, usually a half hour, the race close-transaction is issued and the system ceases to accept bets for that race. The race close-transaction can be issued either from the system timing function or from an off-track betting system administrator at the central system.

When the system receives a race close-transaction, the track profile race record is located and flagged to discontinue betting. The transaction then waits for a fixed period, allowing any bet transactions in process to complete their updating of the pool data. The accumulated pool data is then transmitted to the system administrator. For in-state tracks, he passes the information on to the track, where it is integrated with the on-track pools. For out-of-state races, the pool data is retained until the results entry transaction is completed.

After a race has been run, the system administrator enters the results into the system, thus activating the payout of winning bets. He enters the track, date, race, finishes (up to five in the case of some perfectas) and, in the case of in-state races, the track-calculated payouts.

Payout tables are built in computer memory, either from the track-provided payouts for in-state tracks, or from parimutuel calculations based on the pool data records for out-of-state tracks.

The system displays the input data for verification of content and, once correct, locates and updates the necessary track profile information. A printed report is then available on demand to the branch office supervisor.

Betting Office Operations A teller signs on using a special entry procedure which normally includes his employee number and cash drawer balance on hand. When all input has been validated, the betting terminal may process transactions.

A teller signs off by a sign-off procedure using his employee number. The system typically responds with the closing cash drawer balance and the number of tickets sold, cashed, and canceled. Date and time of sign-off and hours worked are also recorded. No further transactions may be processed at that terminal position until a teller has signed on again.

The design of the betting and payout system incorporates fast response time with accuracy. The high volume of bets demands the ability to process bets and payouts quickly.

The primary input data consists of the track, day, race, bet type, horse(s), and amount.

The bet is placed using key operated or optical-mark-read terminals, and the data is transmitted to the computer. Typically, the length of a bet message is 13 digits plus terminal and branch identification. Using the track profile table for reference, the selection is edited for consistency, such as (1) the bettor must select two horses if the bet is a daily double, (2) betting for the selected race must be open, (3) a valid horse number must be selected, and (4) the horse must not have been scratched. For errors, the computer generates an explanatory message to be returned to the originating terminal, where the message is displayed or printed, and the transaction is terminated.

If all criteria for a valid bet are satisfied, the bet is recorded. The system logs the transaction, assigns a serial number to the bet, and creates a bet record containing the bet serial number, bet origin (teller, branch office), date and time, race date, track, race, horse, bet type, amount, payout amount, payout location, and cancellation and scratch information. Each bet entered also updates the cash-drawer balance maintained in the system for each teller terminal.

Along with the cash-on-hand maintenance for each teller are statistics such as hr sign-on and sign-off times as well as value and number of tickets sold, paid out, and canceled. These are all recorded in the teller statistics file.

The betting ticket is given to the bettor. The ticket usually contains betting information, the serial number, and date. In the event of an error, the ticket may be printed with an error message.

After the race results have been processed, all the winning bets or scratching refunds (or in the case of canceled races, every bet on that race) have their payouts calculated and written onto the winning bets file.

Normally Win, Place, and Show bet processing is handled differently from other bet types. After the race is completed and before the results are official, a list of the probable winners is entered into the system. This is used to extract all of the probable winning bets from the bet file. When the final winners are known, the small work file is scanned first and the payouts calculated. This scan of the bet file is also used to prepare statistics on each branch and number of tickets sold. This makes use of the time between race completed and official results, which gives faster turnaround on payout.

On doubles, after the first race has been run and the results have been declared, the bet file is scanned for all bets corresponding to the first winner. These bets are placed in a file for processing after the second race of the double is completed. Usually all other bet types such as quinella and triella are handled by a single pass through the bet file once the results have become official.

Statistics prepared during these passes of the bet file include the total number of winners, the payout amounts, and the number of tickets and amounts for each pool. These statistics are normally broken down by branch.

To pay out a winning bet, the cashier either keys in the ticket serial number or passes the ticket through a special reader. In any event, the serial number is transmitted to the computer for verification. The system retrieves the bet record and verifies that it is, in fact, a winning (or scratched) ticket that has not been previously paid or canceled. Winning bets that have been paid off by a branch are marked on the winning bets file so that any subsequent attempts to pay off this bet will be flagged. The payout amount is then transmitted to the terminal for printing or displaying. The teller's cash-drawer total is decremented by the amount of the payout.

If the ticket is not a winner, a descriptive message is returned to the terminal and the worthless ticket is returned to the bettor for his review. In the case of a scratched horse or canceled race, the bettor is refunded an amount equal to the original wager.

To cancel a bet, the serial number of the bet encoded on the betting ticket must be entered. Upon receiving the serial number of the bet to be canceled, the system locates the

bet record, marks the [illegible] cancelled, credits the amount from the pool(s), and updates the cash-drawer balance (for a branch office bet).

The betting authority determines how long a bet record remains payable on-line. After this period, bets are carried only off-line and winning tickets can be redeemed only by mail or at a central location.

Telephone Betting Operations The telephone accounting subsystem performs the administrative functions required for telephone betting. It is similar to a "banking operation" in that accounts are opened or closed on written authority only.

Telephone account-opening processing includes checking the completeness and reasonableness of data, providing a unique account number, establishing a password, building and adding a new account record to the telephone record file, and flagging the record to permit betting once the deposit is firm. The telephone betting account file contains all the details of the accounts that are needed during on-line operations (that is to say, the account code and number, the date and time of last transaction, and the current balance), and it contains links to the day's transactions and dividends. This file contains one record for each of the accounts, so it can be accessed either sequentially by scanning the whole file or directly by using a simple algorithm to convert the account number into a disk address. This file is updated continuously during the day's operations with all transactions—bets, dividends, deposits, and withdrawals—which can affect the balance or status of the account at any time.

Telephone account deposit requires retrieval of the telephone account record based on the account number and password. The deposit amount is added to the current balance in the record and the updated record returned to the data file.

For telephone account withdrawal, the telephone account record is retrieved on the basis of the account number and password. The current balance is checked to see if the withdrawal request can be met. The current balance must remain above the withdrawal. Once the withdrawal is approved, the current balance is reduced by the withdrawal amount and the updated record is returned to the data file.

Statements are prepared as requested by the bettors. They show opening balance, transactions occurring in the period, and closing balance.

Telephone account closing requires positively identifying the record as defined by the user, logging all details of the closing, deleting the account from the files, and preparing a closing statement and a check for the amount remaining in the account.

To place a telephone bet, the operator at the telephone betting station enters the customer account number into the system via the keyboard and, for a valid account number, the system displays a password, account status, date and time of last transaction, and account balance.

Once enabled, the account is blocked to all other accesses. The operator then requests the password from the customer. When the password is accepted, the operator requests betting information from the bettor and enters the bet as a transaction to the designated account. The system validates it as for a branch office transaction with an additional check to ensure that the bets do not exceed the customer account balance. If the updated account balance is negative, the last transaction is rejected.

Once the bet is accepted, the bet entry is basically the same as for branch office bets but with three additional considerations:

- The account balance is debited with each bet amount instead of updating the teller cash-drawer balance.
- The bet record created is keyed to the account number to enable later crediting of winnings.
- No ticket is generated, however, data is retained to generate an account statement, if required.

As each bet is entered, the telephone betting file logs the details of each bet. It also contains details of deposits, withdrawals, and account changes originated either from a branch or from a Telephone Betting Terminal, or by the system by race result processing. All the transactions for any one account are linked together to allow easy retrieval of any transaction.

After the last bet is entered, the system displays the new account balance, the total value of the bets, and the time. At this time, the processors update their telephone betting status table in memory is now updated to reflect the removal of active accounts.

Telephone bet payout differs from branch office bet payout mainly in its manner of initiation. When race results become known, the entire telephone betting bet file is scanned for any winning bets on the results just obtained. As they are found, the bet details are used to calculate the payout, and they are placed on the telephone betting payout file. This file contains details of all the winning telephone bets. After the race result processing is complete, this file is scanned, and the payout value is extracted and credited to the appropriate account. While this is being done, the file is linked in the same fashion as the bet file so that all the dividends for any one account can be easily found.

To assist with telephone betting inquiries, a display format file is used which contains the various formats displayed on the screen in response to format number entry. The functions that are normally entered include race result, scratching, inquiries as to race status, or system status.

Remote Off-Line Betting Operation A third form of bet entry is made from very remote branches using dial-up, teletypewriter-like terminals. The difference is that the bets are collated manually at the remote branch and only the collated data is transmitted. The incoming data is accepted and checked in the same way as normal bets. These bets are logged on the bet file with special identifying codes.

System Shutdown In advance of anticipated system shutdown, each branch supervisor is notified of the scheduled shutdown so that he may terminate his own operation in an orderly fashion. At shutdown time, any terminals and/or branches still open are closed automatically at the finish of the bettor transaction in process.

system shutdown, the system sends summary accounting data to the branch office supervisor's terminal and prevents further processing from that branch.

When the network activity ceases, housekeeping activities begin:

1. Bet and pool information to be forwarded to the next day is recorded.
2. Bet records for the day's races are reorganized to include only those requiring payout.
3. Payout records that have passed the system retention date (typically one month) are purged to the unpaid archives file.
4. A message is written to the master system terminal indicating the completion of system shutdown.

During the day's operation, a transmission file is used which contains output messages for the teletypewriter located at the branches. These messages may either be specific messages dealing with a branch's operation, statistics, or liabilities, or may be general broadcast messages such as race results, changes, scratches, closed tracks, and system shutdown schedule.

Additional report information is made available as required and on demand at shutdown. Examples are as follows:

- tickets sold by type/amount, by teller/branch/system;
- cash on hand by teller/branch/system;
- branch liability, when race results are known;
- selected pool data;
- telephone account status.

At the end of the operating day before system shutdown, information items are selected, grouped, and sorted into a new sequence for reports of varying detail, such as:

- system liability report;
- accounting reports by location;
- average bet amount;
- race activity;
- telephone account statement;
- average number and frequency of bets per bettor (telephone);
- bets by track;
- bets by type and location;
- bet cancellation by location;
- payouts by locations;
- purged pay tickets;
- branch office activity comparisons;
- hourly branch office activity.

Fallback, Error Recovery, and Restart The system attempts to preserve data integrity and minimize inconvenience caused by some failures. High priority is given to recovering pool data since the off-track operation is liable, for practical purposes, for the track payout amounts on races where pools are combined. In addition, current bets, track profiles, and statistics must be recovered.

The central system is usually duplexed, allowing considerable equipment failure before any general effect is noted. As more and more units in the central processing system fail, less important functions are successively dropped until the system is just collecting bets, logging them, and pooling them.

One CPU, designated the master, outputs messages to the terminals. The communication controllers attached to the system detect system failures by ensuring that they are polled on a regular basis by both CPUs. Should the master fail, the subordinate immediately becomes the master, while if the subordinate fails, the master merely takes note of the fact and commences to update the subordinate disk files as well as its own.

To minimize the effect of a disk drive failure, each set of disk drives (one per CPU) has two copies of the control program and application programs. Also, if any disk drive fails on the master CPU, it begins to use the corresponding drive on the subordinate. In the event of total failure of both sets of disks, the system is reduced to the input and pooling of bets and logging them on magnetic tape. This tape can be used at the end of the day for the reconstruction of the disk files that should have been created during the day. There are a number of tape drives on each CPU, and if one should fail, the CPU automatically uses another.

If the line printer being used for the output of collations should fail, the computer operator can manually switch the other printer onto the master in place of the defective one.

In the extreme case where both sets of disk drives have failed, or if the same disk drive has failed on both systems, the off-line recovery procedures are executed at day end. The magnetic tape containing a time-sequenced log of the day's betting input is read into the CPU, and the bet messages are written to the various disk files. Once these bet files have been regenerated, it is possible to perform the race result processing. Thus it is possible, via off-line recovery, to achieve the same day-end processing completion as would have been achieved without the equipment failure.

Terminal failures at a branch are recovered through plug-for-plug replacement of a defective terminal with a known good terminal from a central pool.

Current New South Wales System

The system currently installed in New South Wales (N.S.W.) uses specialized hardware to handle the high transaction rates. The system is handling 8000 transactions per minute now and the 1978 projection is 15,000 bets per minute.

The N.S.W. ticket terminal was designed and built by Amalgamated Wire of Australia (AWA). The terminal is key-driven on a numeric keyboard from paper betting slips filled out by the bettor before he reaches the window. A gas discharge display of up to 12 digits displays the bet to the operator during keying. Bets are transmitted bet-at-a-time at 150 bps DC signalling to a remote multiplexer. The printer used is an adapted adding machine print unit. Bet information printed on the ticket is taken directly from keyed data. Throughput is directly dependent on the skill of the operator in getting the data correctly from the customer and keying it correctly.

[illegible] consists of duplexed 256K [illegible] CPUs driving IBM 3970 Data Set Adapter Units through four IBM 3967 Communications Controllers (with a fifth as standby) on the AWA, Teletype,* and Telex† terminals (Figure 1).

Telephone betting is handled by 96 terminals also supplied by AWA which are a modification of the cash betting terminal.

Each of the four IBM 3967's performs identical functions and handles a maximum of 400 communications lines. Their main functions are as follows:

- Line control procedures for the various terminal types.
- Message buffering between the terminals and the CPU's.
- Code conversion. All CPU outputs to the 3967 are in EBCDIC while the IBM 3967 inputs to the CPU are either EBCDIC or unsigned packed decimal.

All incoming messages are blocked in each IBM 3967, and at frequent intervals the CPU's ask for any completed blocks. On receipt of a block of messages, both central processors first validate each bet, then add it to the appropriate pools, and then generate the bet ticket number, which is sent back to the communications controller for transmission to the terminal. Thus, while the branch is printing the bet ticket, the bet details are being placed into a disk buffer area in the CPU for logging on the appropriate bet file.

Although fully hardware duplexed, on "quiet" race days the system is run in simplex while the second system is used for program development. In case of failure, the second system can be made ready within seconds.

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*Trademark of the Teletype Corporation.
†Trademark.

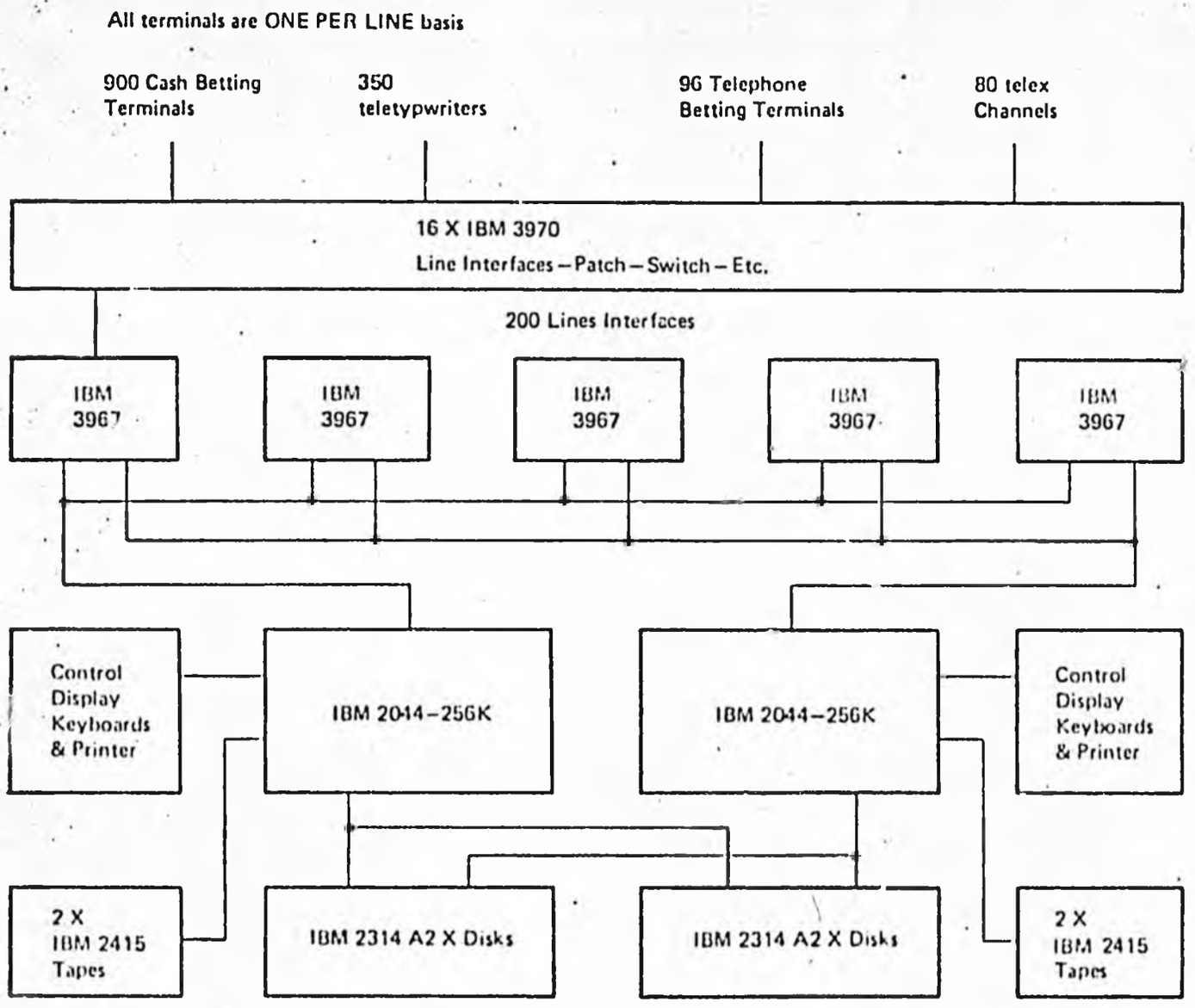


Figure 1. New South Wales TAB System

five drives giving a total capacity of 145 million bytes. Of this, 260 cylinders are allocated for bet files, 20 cylinders for telephone betting, and 140 cylinders for winning bets and paid tickets. In addition, parts of two disk drives are used for control program systems residence, applications program residence, and work files.

There are two 30 kb tape drives on each CPU. Their primary purpose is the dumping of disk files at day-end for historical purposes and the reconstruction of a day's betting activities as may be required for audit purposes. During periods of on-line operation, one tape drive on each CPU is used for the logging of all system inputs, to guard against the loss of data in the unlikely event of failure of both disk control units.

The line printer is used to list horse total investments at the same time as they are transmitted to the control center. The card reader is used only for the input of meeting and race initialization data at the commencement of each day.

Future Western Australia System

The Western Australia (W.A.) system is scheduled for installation in late 1975. To increase flexibility and throughput, they are taking a different tack entirely—himself by using optical mark reading and standard system hardware (Figure 2).

The bettors place bets by marking their selections on IBM System/3-size paper cards (Figure 4, or longer card stock for complex bets) and inserting them directly into the terminal. The terminal, an IBM 5934-102 Ticket Terminal (Figure 3), reads the pencil marks and transmits them at 1200 bps to a remote multiplexer. After verification and editing, print information is returned over the teleprocessing line to the terminal to print the bettor's selections on the same card (Figure 5). Besides the entry method, a second major difference is that the system also prints a unique machine-readable bar code on the betting ticket, which identifies this particular bet. Invalid bet tickets are returned with an error message across the top, describing the error. Reasons for rejecting tickets include incomplete information (such as only one horse marked for a daily double, scratched horses, invalid bet amounts and types, race already closed).

After the race has been run, the bettor inserts his bet card back into the same terminal (or any terminal in the system), and this time the previously printed bar code is read in conjunction with the marked information. This bar coded serial number is used to look up the bet in the win

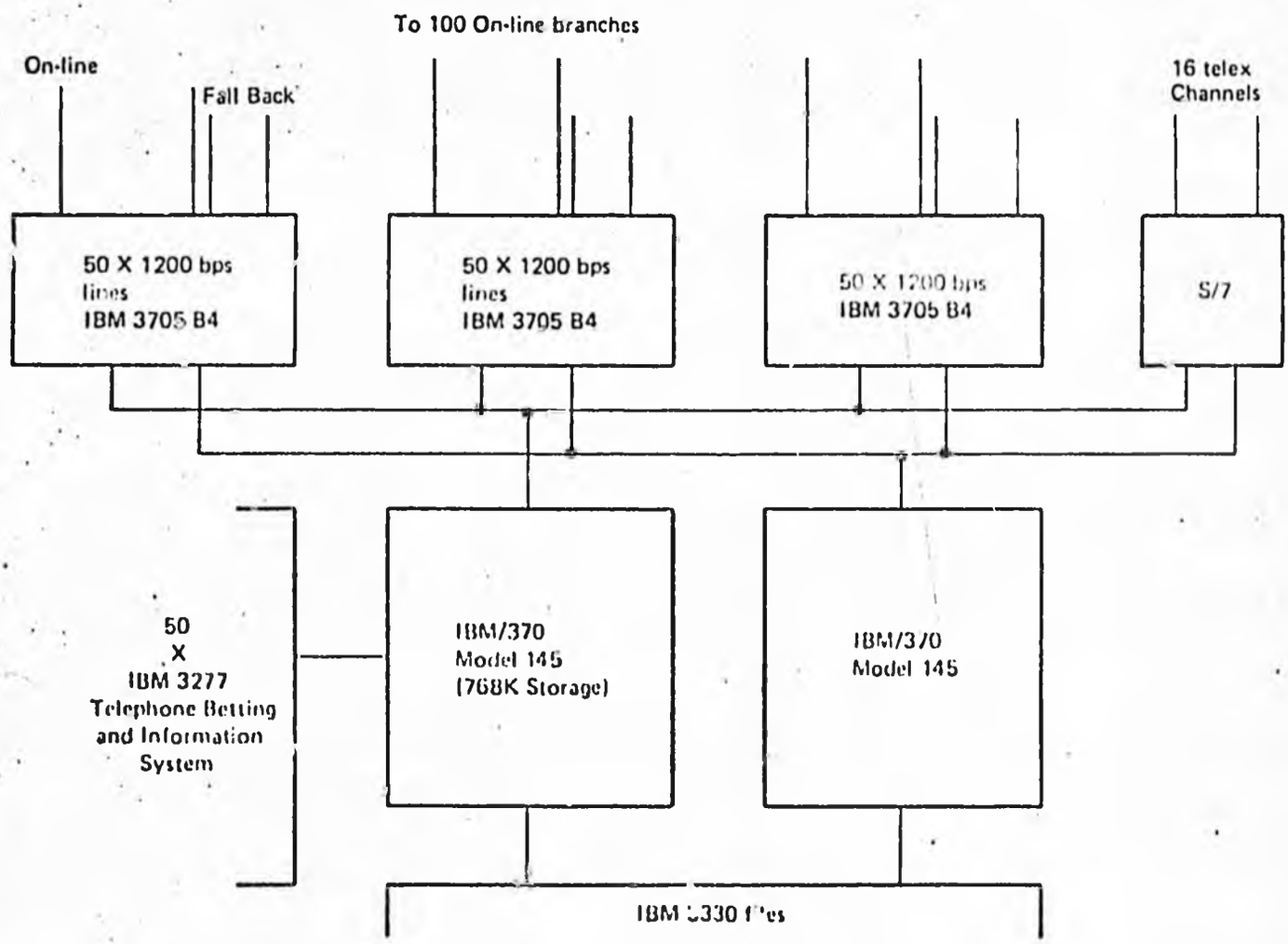


Figure 2. Western Australia TAB System

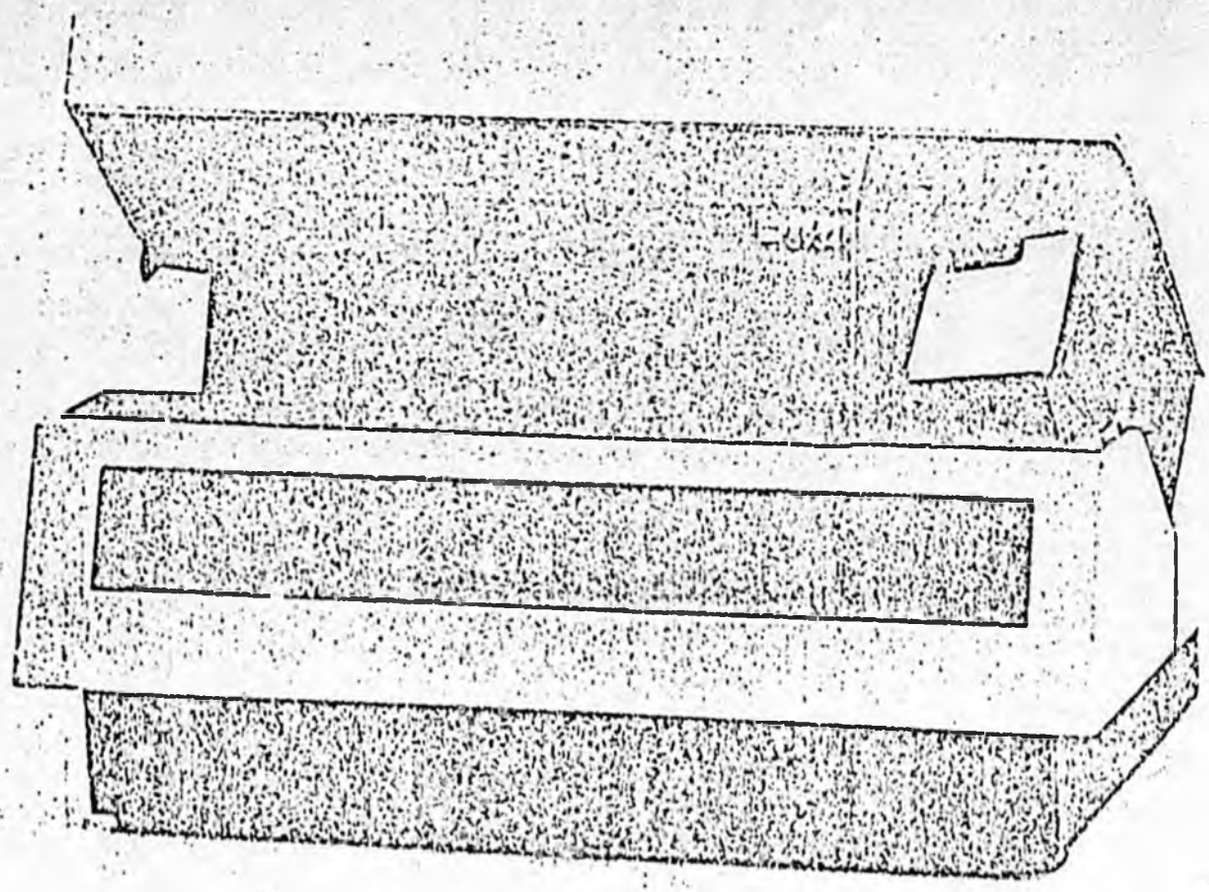
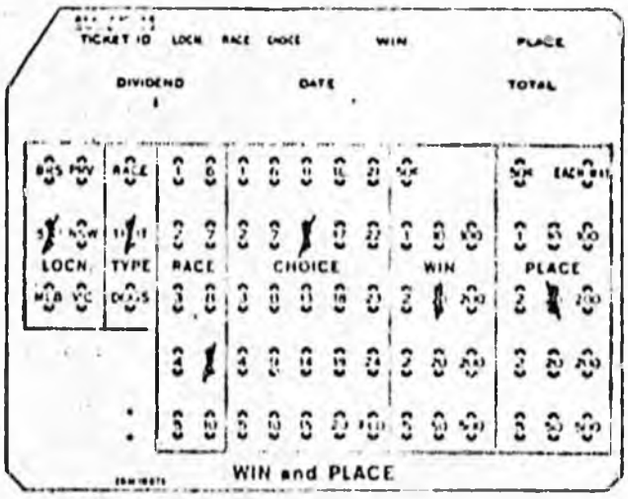
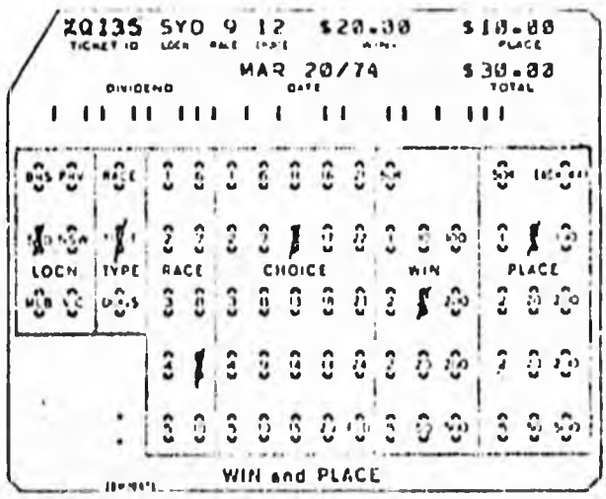


Figure 3. IBM 5934-TO2 Ticket Terminal



Card 1 shows the marking for a trotting race at Sydney for a horse #12 in the ninth race. A 20 dollar bet to win and a 20 dollar bet to place. This card has not been entered into the reader/printer.

Figure 4. Marked Card



Card 2 shows the marking and printing with the bar code on the third line. The presence of the printing indicates this bet has been entered and accepted as a valid bet.

Figure 5. Validated Card

file. The returned information printed on the card indicates "not a winner," or the amount the bettor won, or (in the case of fraud) it prints "already paid" (Figure 6).

The bettor can place a number of bets on one card (for example, bet horses 4, 5, and 9 each to win for $2), and he can place a number of bet cards together into the 5934 hopper. In fact, he can mix previous winning bet cards from previous races with bets on future races and the self-totalizing ability of the system will tell the operator the net amount to pay out or collect.

At the branch office end, the only change for new bet types is new card stock; no modification is required to installed hardware. In addition, the key-driven terminal requires one operator per terminal, whereas two 5934's can be driven by one operator making change at one machine while the other machine is processing a different bettor's cards.

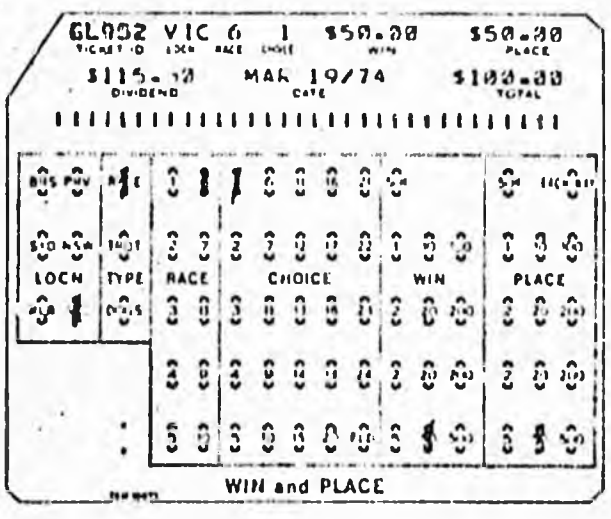
Besides these obvious features, the Optical Mark Read (OMR) approach offers a reduction in operator errors, increases customer confidentiality, reduces the total number of betting tickets through the use of multiple bets, provides the operator with totals, and provides horse names on betting tickets as an aid for bettors.

One hundred metropolitan branches equipped with IBM 5934 Terminals will connect to three IBM 3705 Communications Controllers. In standard operation, each 3705 will support one-third of the on-line agencies. However, in case of a 3705 failure, each of the other two provides fall-back for half the load of the failing unit.

A System/7 provides an interface to 16 Telex lines. Remote betting offices will transmit their collated holdings via Telex to the control center at event close time.

IBM 3277 Display Stations are used to service telephone betting customers and for the control function.

The system will eventually be required to process 6000 bets per minute. This represents 100 transactions per second.



Card 3 shows the marking and included in the printing is the dividend paid for this bet. The bar code has been voided.

Figure 6. Voided Card

In the IBM System 370/145 CPUs, a high-priority partition is required to process transactions from the terminals in the agencies. This partition processes bets, updates collation tables, controls the logging and retrieval of bets, and communicates to the Management Information System CICS partition.

As many as four IBM 3340 Direct Access Storage Facility disk drives will hold the ticket file to minimize contention during critical payout periods. Other files may be resident on the drives provided low access requirements are specified for them. Transactions are logged on the IBM 3420 Magnetic Tape Units for audit and reconstruction purposes.

The IBM 3705 Communications Controllers are attached to the System/370 processor channels and provide the teleprocessing line control and processing function. Each controller can control 50 1200-bps leased lines. Should one unit become unserviceable, then lines from this unit can be switched to other serviceable units.

The controller executes a network control program, which provides a wide range of functions and relieves the processing unit of the teleprocessing workload. The network control program also provides such standard functions as control character recognition, line-timeout control, error checking, code translation, and dynamic buffering.

Conclusion

To handle the widely fluctuating high volume of bets from the general public, an OTB system must have the three characteristics provided by the Australian systems described in this paper:

- Unique application-oriented devices to eliminate expanded teller requirements (and human errors).
- A data processing and telecommunications capability to handle peak loads.
- A completely reliable backup and recovery system to protect both bettors and OTB management. ◻



Stephen I. Dunk is Manager of Custom Products and an Advisory Engineer at the IBM Canada Ltd. Laboratory in Toronto, where he is responsible primarily for planning and developing unique product solutions for the gaming industry. Since joining IBM he has held various key positions in the manufacturing and laboratory functions. His major contributions include development of a corporate Process Control and Automated Test Language and a family of standardized controllers used in computerized test applications. He has been with IBM since his graduation from the University of British Columbia in 1963. Currently he is completing an advanced degree in the Computer Science faculty at the University of Toronto.

Dunk is a member of ACM and the IEEE Computer Society. He has received an IBM Outstanding Contribution Award and has been responsible for a number of invention disclosures published in the IBM Technical Disclosure Bulletin. His current interests include artificial intelligence, particularly with respect to automatic program proving and voice recognition.

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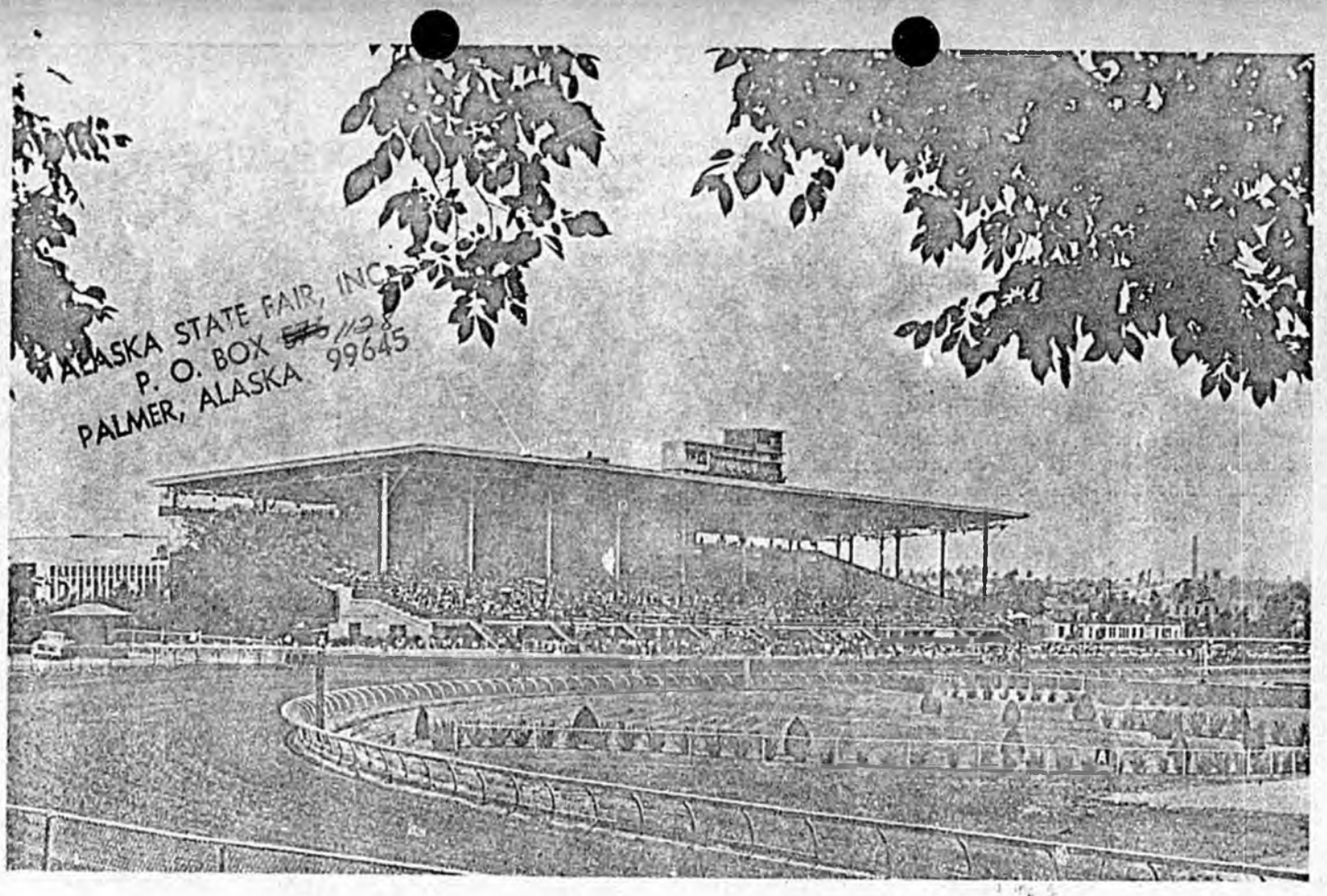

ALASKA STATE FAIR, INC.
P. O. BOX ~~550~~ 1128
PALMER, ALASKA 99645

Charity and business in Nebraska

AK-SAR-BEN

Omaha's non-profit track is able to disperse more than $400,000 in support of education, hospitals, youth groups, and agriculture, and still treat the racegoer and horseman well.

By Edward L. Bowen

NEBRASKA, in the main, was settled by distinct little groups of Europeans. Germans, Bohemians, Irish, and Swiss, many imported to work the railroads, established separate settlements; although by 1972, five years after the state's centennial, the presence of various dialects is as strong as the presence of divergent topography.

The Platte River Valley, broad and level, runs through the state, hence its image of miles upon miles of golden wheat. In the north country, the sand hills nourish a major cattle industry, and along the Nebraska bank of the Missouri River the land alternates between plateau and rolling hillside.

Nebraska's is a farm life, although Omaha, its largest city, is modern and industrialized and the creep of industry also is evident in other cities. Situated along the Missouri, Omaha has a metropolitan-area population of about 500,000, small compared to an eastern megalopolis, but the race meeting at Ak-Sar-Ben draws larger crowds than do those in many larger cities. Last year, Ak-Sar-Ben averaged 14,144 customers a day for its 48 programs, an average larger than that at summer meetings in Philadelphia, Detroit, or Toronto. The handle was nearly a million dollars a day—$932,457—and by the end of the year, while many tracks' executives winced to see their annual reports, Ak-Sar-Ben had dispersed $425,972 in charities. It appeared something out there was being done right, something worth checking.

AK-SAR-BEN had its beginnings in response to depression and to a sense of competition and civic pride. The depression was an economic one, which gripped the nation in the 1890s, the competition was between Omaha and a nearby city, Lincoln. The State Fair Board, which moved the fair every five years, threatened to cut short Omaha's tenure as host after the 1894 event was poorly organized.

"Provide entertainment other than saloons, gambling houses and honky-tonks for the 1895 fair or lose it to a competitively alert Lincoln," the board told Omaha. A group of Omaha businesses set about organizing a spectacular, partially in response to the threat and partially in the hope of helping turn around the economic trend. Money was raised, parade floats were secured from New Orleans, and the organization became a permanent one, the Knights of Ak-Sar-Ben.

In the early years, the Knights of Ak-Sar-Ben primarily was concerned with fairs, festivals, and parades, as well as their organizational rituals. Regular harness racing was introduced at the Ak-Sar-Ben grounds' track in 1919, the race track previously having had only scattered activity since its construction in 1889. Thoroughbred racing followed the next year, and the spring race meeting quickly became the biggest revenue producer among the Ak-Sar-Ben activities.

Pari-mutuel gambling was proclaimed unconstitutional in the state in 1929, and although a rodeo was added to the organization's schedule, the loss of racing proved a financial disaster. George Brandeis, president of the Knights in 1934, helped organize efforts to have the state constitution changed, and racing was popular enough that 66,759 signatures were obtained on a petition to revive it. The amendment was ratified later that year, and racing returned to Ak-Sar-Ben in 1935.

The shutdown of racing in a sense became one of the strongest elements of the foundation on which Omaha racing has prospered. Sensitive to the moral issue, the Knights of Ak-Sar-Ben conceived of a return of racing on a non-profit basis and promoted a charitable aspect. Racing revenue would be used by Ak-Sar-Ben to expand its activities in promoting livestock breeding and 4-H projects. The Nebraska farmer, struggling through the depression of the 1930s, was receptive to that line of thought.

Thus, Ak-Sar-Ben neatly and honestly side-stepped the threat of accusations of greed among wealthy, exclusive cliques in pushing for the return of pari-mutuel gambling. Racing in Omaha was tied into an organization already a city institution, one which had—and promised to continue—promoted the taproots of the state's economy.

Another major asset to Nebraska's racing is that the state takes only four per cent of the mutuel handle in taxes. The total takeout is 14 per cent, leaving 10 per cent for the track (of which 47½ per cent goes to horsemen in purse money). The low takeout is by no means assured for all time, it taking some effort on the part of racing representatives to maintain the level each time Nebraska's unicameral legislature considers the matter. Nevertheless, the legislators and county agents—important men in an agricultural state—apparently have been able to grasp that taking more from the track in taxes would reduce the amount available for the track to disperse in charities.

ALL of Nebraska's 93 counties have county fairs, and Ak-Sar-Ben distributes $500 annually to each fair. Also, the state racing commission collects an admissions tax of 15 cents on the dollar, applies monies from fees and fines, deducts operating expenses, and turns over the remainder to the state, which distributes that revenue among fairs. Last year, the subsidy thus provided amounted to some $2,000 to each fair, in addition to Ak-Sar-Ben's grant.

Ak-Sar-Ben in 1971 distributed a total of $139,252 to projects under the heading of agriculture. A total of $143,297 was turned over to community charitable projects, hospital programs, schools, and fire and safety programs, and $143,423 was contributed to education, mostly in the form of college scholarships. The total of $425,972 distributed was slightly more than the $408,286 that the track earmarked for plant improvements.

"It would not be quite fair to say that other tracks could, or should, operate the way we do," said the general manager, Dick Becker, a former sports editor in Lincoln who joined Ak-Sar-Ben 10 years ago. "We are a non-profit organization, so we are not concerned with having to satisfy stockholders or having to distribute dividends. We are able to keep our prices down: The admission is only $1, parking is free except for a small preferred lot at $1, and our concessions are reasonable. The only way we have of increasing revenue available to charity is to increase business, because while our share of the takeout, 10 per cent, has been constant since 1935, the percentage of that which goes for purses has continually increased.

"Actually, the racing season is not our busiest time in some respects. We have shows scheduled as soon as the meeting ends."

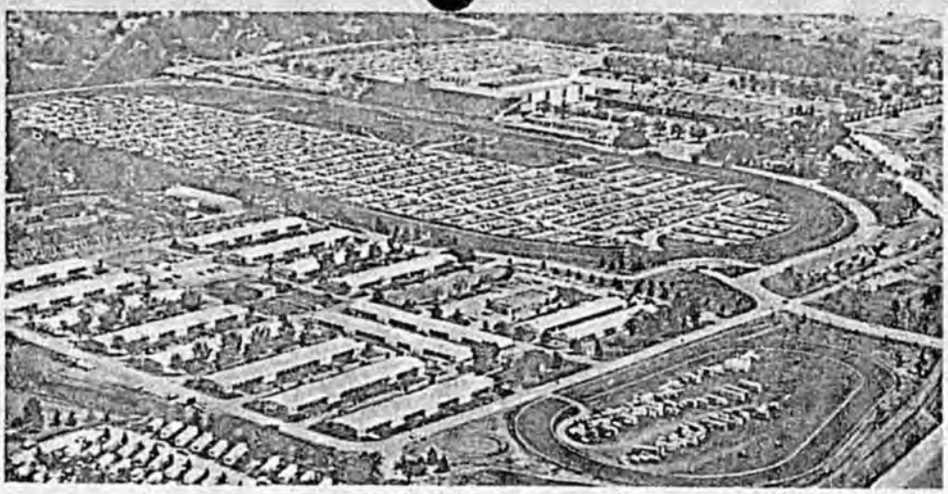
The Ak-Sar-Ben organization has 58,000 member couples, at $12 annual dues per couple, and many of the shows put on at Ak-Sar-Ben Field are for members only. The tickets for entertainment are sent automatically, free, to members, and members also can apply for a reduction in admission to the races. Emphasis is on only family entertainment, and there are some shows for which tickets are sold to the general public. Singing, dancing, ice skating, and ice hockey are part of the Ak-Sar-Ben program. In addition to the annual ball and coronation, one of the major events scheduled for this year is a performance by Debbie Reynolds.

Agricultural events at Ak-Sar-Ben include the world's largest 4-H livestock show, other 4-H and Future Farmers of America shows, and rodeos.

Ak-Sar-Ben Field occupies 280 acres west of the center of Omaha. Facilities include stabling for 1,500 horses, many in white wooden barns spotted through a tree-lined backstretch. Each of the barns has an indoor sprinkler system for fire safety. A large brick barn, which also is used for livestock shows during the non-racing months, is on the front side of the track and is adjacent to a row of automatic hot-walking machines which have proven popular.

The race track grandstand has no clubhouse division, although there are rows of reserved seats ($1 on weekdays, $1.50 on Saturdays) and private boxes. The stand seats 8,100 and is connected to the Ak-

(*Continued on next page*)



Aerial view of Ak-Sar-Ben. The track is located in Omaha, and the Triple Crown winner of that name is buried there.

NEBRASKA

(*Continued from page* 2285)

Sar-Ben Coliseum, which seats some 7,000. With the temperatures often in the 90s during the May-to-July race meetings, many take advantage of the air-conditioned coliseum, where the races are shown live on a screen 30 feet wide.

Ak-Sar-Ben's is a casual crowd, a shirt-sleeve crowd, and card games and fried chicken compete with unfolded *Racing Forms* on the card tables set up on the floor of the Coliseum.

Connecting the Coliseum to the grandstand is a light, clean, high-ceiling area called Ak-Sar-Ben Hall. Inside, the western flavor of Nebraska and its people is reflected in the Nebraska Racing Hall of Fame and the Western Hall of Fame displays which decorate opposite walls. The racing wall honors lifetime Nebraskans, such as Marion H. Van Berg and Michael Ford, as well as natives that have become prominent out of state, such as John Nerud, Steve Brooks, Bob Wheeler, and Dave Erb.

The Ak-Sar-Ben Western Hall of Fame plaques honor pioneers and Indian scouts, Nebraska authors, business giants, rodeo cowboys, western singers, and John G. Neihardt, the state's first poet laureate.

Ak-Sar-Ben has heavy community support, coming in part from the prestige of being an officer. Well established as a part of the Midwest, the organization attracts the leading businessmen in Omaha. At the top of the organization is the Board of Governors, which numbers 16. Corresponding to each Governor is a member of His Majesty's Council (a King is crowned each year at the coronation ball, a holdover from the earlier days of Ak-Sar-Ben), which by and large is made up of younger members of the business community. For each of the major divisions of activity, a committee is appointed; for instance, the racing committee currently is comprised of four men, with Charles W. Durham the chairman.

The Governors and Council members are unpaid. The paid, full-time executive staff is headed by Tom Brock, who also is current president of the Thoroughbred Racing Associations. Brock, the executive director, in recent months has been recuperating from surgery for a brain tumor. Brock left Columbus, Neb., after high school to play football for Notre Dame, and later coached the University of Omaha football team to an unbeaten season. He joined Ak-Sar-Ben in 1958.

Although there is no pessimism evident in the Ak-Sar-Ben offices, Brock expects the averages to be down this year from last year.

"When the track at Madison was closed, the racing commission gave us more days than we usually have, more than we asked for. With nine more days, the comparison of certain days to last year's dates is thrown off. Of course, with more days the gross handle will be up, but I expect the averages to be down. I think people tend to wait a little longer about coming out when they realize the season is longer. Also, we used to close on the Fourth of July holiday, while this year we go on to the middle of the month (after several climactic races)."

Stan Bowker, information director, said that traffic surveys indicate that only about 50 per cent of the track's patrons come from Douglas County, where the track is located.

"Kansas City, Des Moines, Iowa, and South Sioux City, Neb., are within a 200-mile radius, and we get a number of customers from those cities," he said.

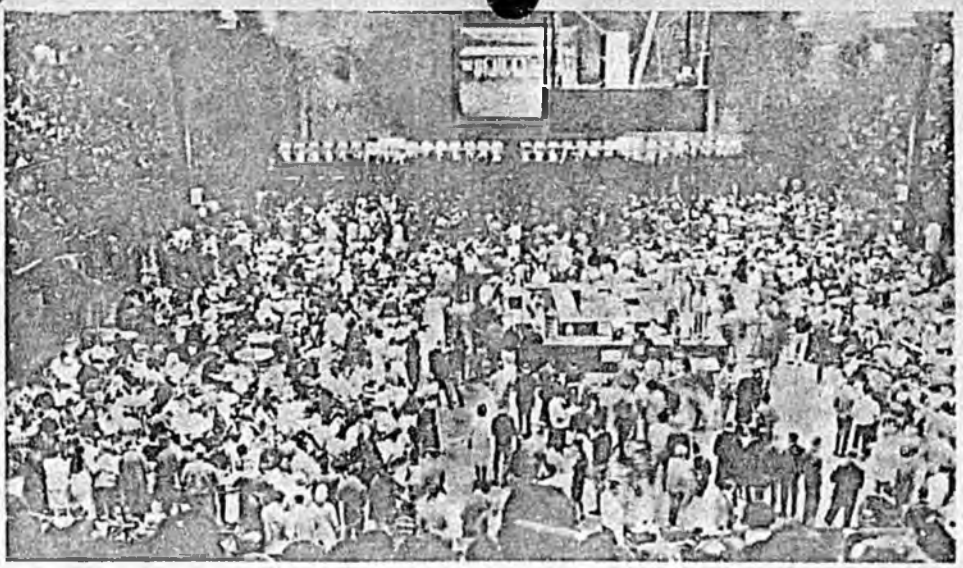
Twilight racing was tried at Ak-Sar-Ben for the first time in 1945, with the first post at 3 p.m. After daylight savings was instituted for summer months, Ak-Sar-Ben moved its twilight programs to 4 p.m. For many years, there was only one twilight program a week. In 1969, there were two, and last year the track began staging three twilight programs a week.

"I would not be surprised if next year we have the four o'clock first post for all days except weekends (2 p.m. on Saturday)," said general manager Becker. "Starting the races at four gives a lot of people a chance to come to the races after they get off from work."

Bowker said that a preliminary attendance count is taken after the second race, and often the attendance has increased by 2,500 customers by the end of the day. From the press box, a steady stream of cars entering the infield is noticeable at least through the first half of the nine-race programs. Ak-Sar-Ben has facilities for parking 10,000 cars, about 3,500 of which can be accommodated in the infield.

LOW prices, late starting time, easy accessibility from the city, community awareness of its activity, charitable and agricultural: All apparently are reasons for a track in a medium-sized city having higher attendance than some cities many times as large. There are more reasons. Ak-Sar-Ben is a pleasant track. It is clean, surprisingly clean in comparison to many tracks. Not even the betting ring tucked deepest into the entrails of the stands is a somber, smoke-filled cavern littered with discarded cups and past performances, as is the case in many tracks. There is no winter racing, so no need for a choking, glass enclosure to punish the nostrils and blur the vision of the stretch turn.

A local concessionaire mans the various dining rooms, lounges, and snack bars, and prices are moderate, the food attractive. Only in one dining room is it necessary to pay more than $2 for a meal,



In the Coliseum, races are televised on a 30-foot screen.

and outside its door a notice is posted of a $3 minimum during the week and a $4 minimum on Saturdays.

There is something else that attracts the crowd, something having to do with the nature of the environment. It is agricultural country, and people—average people—still have contact with animals. They know about horses. Their children, or their children's friends, show their jumpers or cutting horses, or try for a ribbon in the halter class with a family pet.

Too, there is no overwhelming competition. Thoroughbred racing does not have to buck harness tracks, or dog racing, or jai alai emporiums, and even with a late post time the overlap with local minor league baseball is no more than an hour's worth.

"The biggest competition we have," said Stan Bowker, "is the television set. So many sports are televised now, especially on Saturday, that a lot of people stay at home and watch instead of going out."

IF a sense of belonging to the homeland is in part the explanation of racegoers, it is no less important in the psyche of the Nebraska horseman. Men with cowboy hats and boots, men with creased brown faces and open smiles, raise horses on their own farms, and train them to the races. There appear to be few strictly market breeders, and the leader of those, Leo Cooksley, sells privately. There is no established marketplace for the Nebraska Thoroughbred, for many breeders also are owners.

Felix Beda of Omaha is president of the Nebraska Thoroughbred Breeders' Association, an organization of some 200. He is in sympathy with the little breeder, but hopeful of what the larger breeder can do for the state. A cattleman himself, he is not resentful, but glad, to see the increasing number of local doctors and other businessmen buying race horses and breeding stock.

By state law, when a Nebraska-bred wins any race in Nebraska, three per cent of the winning purse is withheld and awarded to the breeder. In addition, the track adds an amount equal to seven per cent, so the breeder is assured of receiving an amount equal to 10 per cent of the purse. Further, if the winner was conceived in Nebraska, as well as foaled there, an additional amount equal to 10 per cent goes to the breeder. Thus, it is possible for the breeder to receive an amount matching 20 per cent of the purse. Also, there are a number of races restricted to Nebraska-breds.

Race tracks and horsemen traditionally have different views, and while Ak-Sar-Ben and the local breeders and owners get on together rather well, they are not in complete accord. The breeders tend to want more Nebraska-bred races; the track is not overly anxious to card more, claiming that at times the Nebraska-bred races are difficult to fill (Also, wagering on Nebraska-bred races in 1971 averaged $5,937, as compared with the open-race average of $6,646 in the state.)

There are seven Nebraska-bred stakes carded at Ak-Sar-Ben, with total added money of $110,000, and Beda said he is well satisfied with that program: "A $20,000 race is enough for the quality of 2-year-olds we now are raising."

Beda said he is confident an additional edge for Nebraskans will go into effect next year, that the track will agree officially to give state-breds a three-pound allowance in open races.

"I am concerned with the medium breeder, and I consider myself in that category," he said. "The rich man always will be in good shape. Money can buy most anything. What I want to do is help the smaller breeder get some of this money into his pocket. At our breeders' meetings, I get onto the members that if they aren't going to keep upgrading stock, they might as well get out of the business."

Beda had just won a race with a Groton colt from one of the mares he sent to Kentucky. The colt defeated a Nebraska-bred Swaps colt, which was bred by one of the state's largest breeders, Barton Ford.

"I have a lot of speed in my stable," Beda said. "What I am doing now is trying to get more distance, breeding to some foreign blood."

He said local breeders are serious about improving, that they do utilize the state-bred benefits to upgrade their stock, and that they respond well when someone brings in a stallion from outside if he has worthwhile credentials.

Perhaps because yearling auctions are not a major part of the Nebraska scene—negating the importance of fashion as opposed to proven ability—and perhaps because many are farmers to whom soundness in a horse is a way of life, there seems, at cursory glance, less tendency to import well-bred but broken-down horses than is observable in some other locales. A good Nebraska stakes campaigner that goes to stud will get his chance, even if he is not much in the way of a fashionable pedigree. Sonny Fleet, a Son of Alpen colt which earned $135,385 for Marion H. Van Berg, is stood in Nebraska by the latter's son, perennial national training champion Jack Van Berg. In addition to Sonny Fleet's outside patronage, the Van Berg stable bred Estacion, one of its best mares, to him and got British Fleet, winner of the $50,000-added Omaha Gold Cup on July 1.

Nevertheless, there are no syndicated stallions in the state, and many breeders send at least a few of their mares out of state to be bred. ◇

(To be continued)

Crime expert urges tough conspiracy law

From Our Juneau Bureau

JUNEAU — Alaska is ripe for an invasion by organized crime and police are handcuffed in dealing with it without conspiracy and immunity statutes, Ralph Salerno, a former New York City detective, said last week.

Salerno, who served on three presidential crime commissions and has written a book on organized crime, told the House Judiciary Committee crime was certain to increase with pipeline construction.

AMONG THE PEOPLE coming to Alaska would be those who would "see how they can skim a great deal of money from the pipeline boom and leave shortly thereafter with pockets full," he said.

Salerno said the crime rate increase would be greater than the population rate increase and there would be "a more sophisticated type of criminal attracted.

The former New York policeman indicated Alaska laws were inadequate to cope with organized crime. He said many criminals were convicted on conspiracy statutes and that laws allowing immunity were successful in getting person to testify.

A CONSPIRACY law, he said, allowed police to "move against crime at an earlier stage." He said almost all organized crime was conspiratorial in nature and that a conspiracy law would allow police to prevent crime rather than move in after a crime was committed.

Salerno said an immunity statute would allow prosecutors to use testimony of persons relatively low on the crime ladder to convict persons higher up. He noted that evidence convicted former Vice President Agnew was supplied by three persons who were granted immunity for testifying they delivered money to him.

Salerno said the Fifth Amendment of the Constitution allowed persons not to testify when they might incriminate themselves. "But nobody has the privilege under the Constitution to protect his fellow co-conspirators," he said.

SALERNO SAID persons who were provided immunity and refused to testify could be held in contempt of court.

Salerno indicated he opposed legalization of prostitution and most forms of gambling but said he had no objections to parimutuel betting.

"You can bring a lot more crime into a jursidiction by putting in a state highway than by putting in a race track," he said.

Salerno, who helped organize the off-track betting program in New York, said a similar system should be used in conjunction with other race tracks for persons who could not get out to the track.

SPORTS ILLUSTRATED MAR 1975

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unoccupied driver's seat. Joe's wife Vicki meanwhile had played her shot. She returned to the cart and sat down—on the lighted cigarette.

Somewhat startled, to say the least, she put on about five quick moves, one of which started the cart. It surged forward over Joe, breaking his arm. That hurt, but the real pain came when his brother John, who was playing in the same threesome, bent over him. "Joe," he said, "that will be a two-stroke penalty for delaying play."

TOP HAT

The seven-foot high jump is now so old hat that when Alphonso Irving of William and Mary cleared 7′ 1″ in the NCAA indoor championships, he didn't take his off.

STEADY AS SHE GOES

During the Great Depression sport suffered less, financially, than most businesses. Except for college basketball, which was off 5%—possibly because games were televised regularly on weekends for the first time—sport was not doing badly in 1974, either.

Horse racing, aided by 400 additional racing days, drew 1.5 million more fans and continued to lead all sports in attendance with 48,823,814 spectators. Directly behind and 1.5 million healthier, too, was auto racing, followed by college football and major league baseball, both off by a few thousands. The only real casualties were pro football which, beset by strikes, extensive televising and no-shows, was down by half a million, and baseball's 18 minor leagues, down 216,000. These were more than offset by the steady increase in the number of pro and college hockey fans, quantum leaps for boxing, wrestling, soccer and tennis and ("Here Comes Rusty!") greyhound racing, which attracted 16.3 million. That meant 1.2 million more people went to the dogs last year than in '73, 6.2 million more than a decade ago. Rusty, the mechanical rabbit, has developed quite a following.

YER OUT!

After several questionable calls in the second game of a doubleheader last week, Pan American baseball Coach Al Ogletree could stand the embarrassment no longer. The visiting University of Nebraska at Omaha team clearly had been victimized. Ogletree called time, walked onto the field and fired one of two infield umpires on the spot. All right, let's hear it for Al Ogletree!

EXOTIC BETTORS

In the two decades she has served as the Florence Nightingale of the railbirds at Pimlico, Nurse Imogene Hicks has seen a little of everything. There was, for example, the patron with a heart condition who used to take up his station outside the first-aid room and down liberal doses of medicine between races. "I'd rather die here than at home," he told Miss Hicks, "because I'd die happy."

But her alltime favorite is a horseplayer who arrived on a stretcher showing no signs of life—no blood pressure, no pulse. The staff was about to pull a cover over his head when the results of the latest race began to come over the PA system. The cadaver sat bolt upright on the stretcher and asked, "Who won?" "We told him," says Nurse Hicks, "and he got up and walked straight out." They never knew where he went but they were fairly sure it wasn't to the Great Cashier's Window in the sky.

SURVIVAL COURSE

Jack Christiansen, the old pro who now coaches football at Stanford University and considers himself a harsh realist, had bad news last week for the minor college sports and even major ones like swimming, track and baseball. "Don't get me wrong," he said. "I'm not advocating the dropping of the minor sports. But when the time comes to start checking the spiraling costs of college athletics—and that time is really now—then you can look for the nonrevenue-producing sports to suffer most. . . . Those who can pay their way will survive. That's the way it has always been, hasn't it?"

Well, no. There are still a lot of schools in the country that consider athletics an integral part of the college experience and accept it as a fact of academic life that they will lose money. MIT, for one, fields, boats and courts 32 different teams—not including football—with no hope of realizing a profit from any of them.

But this is a vast subject that the NCAA will come to grips with in a special meeting set for April 24-25. And the American Council on Education, which represents 1,565 colleges and universities, is trying to put together a blue-ribbon commission to investigate "the whole series of questions relating to intercolle-

continued

Penalty Provision

Alaska

Strength of Commission — does our form of state govt allow for a strong police type Commission

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Intent & Section

Composition of Board

Policeman on Commission

Want Public Safety's comments on tampering bill

" Dept of Law "

operations to insure a fair, legal outlet for those who wish to participate. The law should insure that the bettor is afforded a true representation of his chances and that he is not unwarily enticed into a bet beyond his ability to pay. Regulation of gambling should be treated as with any legitimate business in which the remote possibility for exploitation or corruption exists. It should be legal, but only to the extent that it can be strictly and equitably regulated.

It is with this view that the committee believes horse racing to be a preferable legal outlet for gambling. With adequate safeguards, racing provides the maximum in entertainment and excitement with the least likelihood of over-indulgence, unfair odds or cheating. It is unquestionably more desirable than the prevalent, free-wheeling system of illegal bookie betting where credit is easy and convenience an irresistable enticement. Racing probably holds the least potential of all forms of legal gambling for causing negative consequences to the participant.

It is unfair to cast blame on the legitimate sport of horse racing for the plight of a relatively small number of individuals who cannot temper their impulses. Just as with the issue of organized crime, the committee feels that the social problem of gambling should be treated directly, not by a futile effort at removing all temptations. Such a prohibition carried to other businesses which pose a possible temptation to gullible persons would have a disastrous effect on our entire economic structure. The responsible public would be unfairly denied the use and enjoyment of many goods and services just as Texans are presently denied the right to legally wager on a horse race.

A Matter of Personal Liberty

Inevitably the question of the morality of gambling and, in particular, horse race betting is reduced to a matter of personal choice and the freedom to make that choice. Certainly, many people oppose any form of gambling as a violation of their own code of ethics, but they are not compelled to compromise this belief with or without its legalization.

A report of the Virginia Pari-mutuel Betting Study Commission published in 1972 perhaps best defines this attitude and places a clear perspective on the entire moral issue of legalized horse race betting:

> "Pari-mutuel betting is not an activity in which all people will wish to participate, but the choice should be allowed to each individual in a free society. The State's role is to insure the integrity of the sport, once established, not to deny forever horse racing and wagering to the majority in accordance with the views of a minority. Such denial cannot rightfully be seen as being in the public interest; it violates the principles of liberty for all which are the cornerstone of the democratic system of government."

The Senate Interim Study Committee on Horse Racing embraces this position as reflecting its own view of the moral implications of pari-mutuel betting.

Senate Interim Study Horse Racing Committee meeting.

file

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER / *POUCH S—JUNEAU 99801*

May 7, 1975

The Honorable Terry Gardiner
Chairman
House Judiciary Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99811

Dear Terry:

Enclosed is a memorandum from my research staff on the Pari-mutual Betting Bill.

We would like to see any Pari-mutual Betting Racing Bill that the profits would go to the State in the form of a business license tax.

If you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

Sterling Gallagher
Commissioner

SG: gd

Enclosure

STATE
of ALASKA

MEMORANDUM

TO: Sterling Gallagher
Commissioner
Department of Revenue

DATE : May 1, 1975

FROM: Charles Schroth CAS
Research Analyst
Department of Revenue

SUBJECT: Pari-mutual Betting

In response to your request concerning pari-mutual taxes and bill CSHB 356; I have made a brief study of these items.

Section 05.40.120 is vague in that it does not mention any special tax rates imposed by governmental agencies. This portion of the law should be rewritten to include specific state tax rates and license fees. Attached is a table of pari-mutual taxes and license fees imposed by other states.

Using 1973 statistics complied by the National Association of State Racing Commissioners, I have calculated that the average per person per racing day contribution is $94. However, in the study performed by Josiah Henson Associates for the Board of Directors for the Alaska State Fair, a statement was made that the average per person contribution was $67. In the revenue estimates presented below I decided to use $75.

The 1973 statistics also showed that the average state share of the total pari-mutual pool was approximately 7%, the average admission tax was 10¢ per person, and the average breakage per dollar in the pari-mutual pool was 0.4¢.

In the Josiah Henson Associates Study, reference was made to an Anchorage newspaper article which indicated that the attendance at the Palmer horse races was approximately 1000 persons. Using the above factors, I have assembled some revenue estimates net to the State per racing day.

Attendance	1000	
Average per person per day contribution	$75	
Total pari-mutual pool	$75,000	
State pari-mutual tax @ 7%	$5,250	
Admission tax @ 10¢	100	
1/2 of breakage	150	
Daily license fee	200	
Total State share	$5,700	per racing day

Using the percentages in the proposed legislation, along with the above assumptions for the State share, the distribution of gross receipts would be:

State share	$ 5,700	7.6%
Licensee share	3,750	5%
License breakage (1/2)	150	0.2%
Purse money	3,750	5%
Nearest incorporated city	750	1%
Owners of bred horses	1,500	2%
Share to Commission	3,750	5%
Subtotal	$19,350	25.8%
Ticket holders	55,650	74.2%
Total pari-mutual pool	$75,000	100%

The total take-out is 25.8%. Referring to the attached table of state tax rates, the total take-out ranges between 15 to 20 percent.

Many states have a sliding-scale tax percentage depending upon the size of the pari-mutual pool. For the State of Alaska, a sliding-scale may look like:

Tax Rate	Pari-Mutual Pool
5%	0 - $100,000
7.5%	$100,001 - $250,000
10%	excess of $250,000

A few states have special tax rates on horse races held on fair grounds, but a majority of states do not have these special provisions.

In summary, pari-mutual horse racing in Alaska appears to be a marginal operation. Even with the somewhat higher rates suggested above, this operation provides only a minor revenue source. Twenty racing days would be required to yield the state an excess of $100,000.

CS:rl

Attachment

BRIEF SUMMARY OF TAX METHODS BY STATES

Arizona	Total take-out 18%. State receives 4% of first $100,000 and 7% all over $100,000; under $100,000 state 2%, track 15% and 1% to supplement General Purse Structure. Breakage 10 cents, 50% to track, 25% General Purse Structure, 25% Arizona Bred Purse Structure. FAIRS: County in which fair is located receives pari-mutuel tax revenue, instead of state.
Arkansas	Total take-out 16%. Pari-mutuel tax to state 6%, $500 daily license, 10 cents tax on admissions. Breakage 10 cents, divided 33 1/3% to city where track is located, 33 1/3% to association, 33 1/3% to state.
California	Total take-out 15.75%. Only two rates applied to total handle, a base rate on handle up to $20 million, and the appropriate rate for the estimated handle in excess of $20 million. THOROUGHBRED: With a handle of $0-$20 million, state 6.10%, track 5.29%, purses 4.16%; $20-$40 million, state 5.70%, track 5.52%, purses 4.33%; $40-$75 million, state 6.55%, track 5.04%, purses 3.50%; $75-$120 million, state 6.85%, track 4.87%, purses 3.83%; $120-$180 million, state 7.15%, track 4.70%, purses 3.70%; $180 million and above, state 7.45%, track 4.54%, purses 3.56%. Breeder and Stallion Awards, .2%. HARNESS AND QUARTER HORSE: With a handle of $0-$20 million, state 6.10%, track 5.74%, purses 3.91%; $20-$40 million, state 5.70%, track 5.98%, purses 4.07%; $40-$75 million, state 6.55%, track 5.48%, purses 3.72%; $75-$120 million, state 6.85%, track 5.30%, purses 3.60%; $120-$180 million, state 7.15%, track 5.12%, purses 3.48%; $180 million and above, state 7.45%, track 4.94%, purses 3.36%. Breeders Awards paid by track out of amount deducted from handle. When any racing association handles less than $20 million, state receives 5.50% of total handle, 10.25% deducted from pari-mutuel pools to be distributed to tracks and purses.
Colorado	Total take-out 16%. Of daily pari-mutuel wagering receipts state receives 4% of first $200,000; 5% of excess over $200,000 which does not exceed $300,000; 6% of all in excess of $300,000. Breakage 10 cents, all to association. At Colorado State Fair, state receives 2% of take-out.
Delaware	THOROUGHBRED: Delaware Park take-out 17%. State receives 6%. Per season license $5,000. Admissions 20 cents. Breakage 10 cents, 5 cents on minus pools, divided equally between state and association. Dover Downs take-out 17 1/2%. State receives 5%. Per season license $750. Admissions 10 cents. Breakage 5 cents, all to association. HARNESS: Total take-out 17 1/2%. State receives 5 1/2%. Admissions 10 cents. Breakage 10 cents, 5 cents on minus pools, divided equally between state and association. THOROUGHBRED and HARNESS: Unclashed pari-mutuel tickets revert to state after one year.
Florida	THOROUGHBRED: Total take-out 17%. South Florida Winter—state receives 7 1/2%. Breakage 10 cents, 5 cents on minus pools. One hundred per cent to state. South Florida Summer—state 5% on first $400,000 daily average, 3% on excess of $400,000. Breakage 50% to state, 50% to track. Florida Downs—state receives daily fee ranging from $4,000 to $21,000, based on preceding season's daily pari-mutuel average. Breakage 100% to track for purses and breeders awards. HARNESS: Seminole—Harness 19%, Quarter Horse 17%, Thoroughbred 17%. State receives daily fee ranging from $1,000 to $4,000 based on daily pari-mutuel handle. Harness and Quarter Horse, state receives 50% of breakage; Thoroughbred, state receives 100%. Bayard—Total take-out 17%. When daily average more than $25,000 state receives 7% less $170 per race "initial expense of operation." Less than $25,000 state receives daily fee ranging from $150 to $400 based on daily pari-mutuel handle. Pompano—Total take-out 19%. State receives 7%. Breakage 50% to state, 50% to track for purses and breeders awards. Admissions all tracks 15%.
Idaho	Total take-out 15%. Commission receives 1% of take-out and occupational license fees for operational expenses. The remainder of take-out based on a sliding scale percentage as follows: Of gross receipts to $20,000, track 14%; $20,000 to $30,000, track 13%, public school endowment fund, 1%; $30,000 to $40,000, track 12%, public school fund 2%; $40,000 to %50,000, track 11%, public school fund 3%; $50,000 and over, track 10%, public school fund 4%. Breakage 10 cents, all to association. Track daily license $25; fairs exempt. Association accrues all monies in unclaimed tickets at termination of time allowed by rule of the commission.
Illinois	Total take-out 16%. THOROUGHBRED—state receives: At race tracks within county of 500,000 or more or within county of less than 500,000 but within 100 miles corporate limits any city in state of 1 million or more tax rates, except charity: First $5,000,000 of annual handle—5 3/4%; $5,000,001 to $10,000,000—6 3/4%; $10,000,001 to $30,000,000—7 3/4%; $30,000,001 to $40,000,000—8 1/4%; $40,000,001 to $60,000,000—8 3/4%; over $60,000,000—9 1/4%. At race tracks within county of less than 500,000 and more than 100 miles of any city in state of 1 million or more tax rate, except charity: First $10,000,000 of annual handle—5 3/4%; $10,000,001 to $20,000,000—6 3/4%; $20,000,001 to $30,000,000—7 3/4%; $30,000,001 to $40,000,000—8 1/4%; $40,000,001 to $60,000,000—8 3/4%; over $60,000,000—9 1/4%. Breakage 10 cents, half to state. Charity meets, tax 8% plus half of breaks. HARNESS: Total take-out 16%. State receives: First $30,000,000 of annual handle—6 1/4%; $30,000,001 to $35,000,000—7 1/4%; $35,000,001 to $40,000,000—8 1/4%; $40,000,001 to $60,000,000—8 3/4%; over $60,000,000—9 1/4%. Breakage 10 cents, half to state. Charity meets tax 8%. Breakage, both Thoroughbred and Harness, 5 cents instead of 10 cents in case of minus pools.

BRIEF SUMMARY OF TAX METHODS BY STATES (continued)

Kentucky	THOROUGHBRED: Total take-out 15%. State receives 4 3/4%. Daily license $500 if average daily handle at track during year does not exceed $450,000; $1,000 at tracks with average daily handle $450,000 to $600,000; $2,500 at tracks where sum exceeds $600,000. HARNESS: Total take-out 17%. State receives 4%. Daily license $125 if average daily handle during previous year does not exceed $75,000, $175 thereafter. QUARTER HORSE: Total take-out 18%. State receives 4%. At all tracks breakage 10 cents, all to association; 15 cents on admissions. At all tracks in state unclaimed tickets revert to state after 2 years. Minus pools: Breakage 5 cents instead of 10 cents.
Louisiana	Total take-out 16%. In a parish with population of 450,000 and over state receives: On total daily pools from 1 cent to $201,000–5%; $201,000 to $401,000, $10,050 plus 6% of that amount exceeding $201,000 up to $401,000; $401,000 and over, $22,050 plus 7% of any amount exceeding $401,000. Minimum daily license fee $1,000. In a parish with population less than 450,000 state receives: On total daily pools up to $200,000–5% of that portion exceeding $30,000; $201,000 to $300,000, $8,500 plus 6% of that portion exceeding $200,000; over $300,000, $14,500 plus 7% of pool exceeding $300,000. (Subject to minimum $1,000 daily.) Admissions 10 cents. Breakage 10 cents, 2/3 to association and 1/3 to Louisiana Breeders Fund to supplement purses.
Maryland	THOROUGHBRED (MILE TRACKS): Total take-out 15%. State receives 5.34%, association 3.66% of which .25 of 1% is allocated for pension fund for race track employees; 5% of money wagered allocated to purses; .50% of wagers to Maryland Bred Fund races; .50% to Racing Fund for plant improvements. Daily license fee $1,000. Breakage 10 cents, 1/2 to state, 1/2 to association. COUNTY FAIRS (Thoroughbred): Total take-out 16%. Of money wagered 5.50% to state; 5% to association, 5% allocated to purses, .50% to Maryland Bred Fund races. Breakage 10 cents, 1/2 to state and 1/2 to association. Daily licence fee $50. HARNESS: Total take-out 17%-18%–3 1/2% to state of all money wagered not in excess of $125,000 daily, 7% to state in excess of $125,000 daily. Daily license fee $25. Breakage 10 cents. Association retains all breakage if daily average is below $166,666.67; all above this figure state receives all breakage. Ocean Downs take-out 18%. One-half of 1% allocated for breeders fund. STEEPLECHASE AND QUARTER HORSE: Total take-out 14%. Of money wagered 5% to state, 9% to association. Breakage 10 cents, all to association.
Massachusetts	THOROUGHBRED (MAJOR TRACKS ONLY): Total take-out 19%. On weekdays and Saturdays State receives 9 1/2%, Association receives 9 1/2%. Sundays the State receives 8 1/2%, Association receives 10 1/2%. License fee $600. per day for major tracks. THOROUGHBRED RACING AT FAIRS: Total take-out 18%. State receives 9 1/2%. Association receives 8 1/2%. License fee $50. per day. HARNESS: (MAJOR TRACKS AND FAIRS): Total take-out 18%. From daily handle, the state receives 6 1/2% to $400,000; 7 3/4% $400,000 to $450,000; 8 1/4% $450,000 to $500,000; 8 3/4% $500,000 to $550,000; 9 1/4% $550,000 to $600,000; 9 3/4% $600,000 to $650,000; 10 1/4% $650,000 and over. Daily license fee at major tracks $200; at Fairs $50. At all tracks breakage 10 cents, divided equally between state and association.
Michigan	THOROUGHBRED: Total take-out 16 1/2%, State receives 8 1/2%, association 8%. HARNESS: Total take-out 16 1/2%. State receives 5 1/2%, association 11%. Per season licenses in city area 100,000 or more $500, any other $100. At all tracks breakage 10 cents, divided equally between state and association.
Montana	Total take-out 20% plus breakage. The licensee shall pay to the Board of Horse Racing 1% of all gross receipts on each days pari-mutuel betting at each race meet, which sum shall be paid to Board within five days after the end of race meet. If underpayments exceed overpayments at the end of each race meet, the balance shall be paid to the Board. Breakage 10 cents, all to licensee. All unclaimed winning tickets 30 days after the end of a race meet are paid to the Board. (No tax paid to State of Montana.)
Nebraska	Total take-out 15%. No tax first million; thereafter, state receives 5%. Tax on admissions 15 cents which, along with monies received in license fees, is distributed among counties of state for county fair premiums. Breakage 10 cents, all to association.
Nevada	Total take-out 13% with 1% to state and 1% to racing commission for administrative work. Any amount over $10,000 is to be distributed to agricultural districts conducting horse racing proportionately to the amount contributed by each district. Breakage 10 cents, all to association.
New Hampshire	THOROUGHBRED: Total take-out 18%. State receives 8%, association 10%, No license fee, but bond not exceeding $50,000 required. Breakage 10 cents, divided equally between state and association. HARNESS: Total take-out 19%, divided as follows: Of total mutuel pool for any one day, state receives 5 1/2% up to $400,000; 6 3/4%–$400,001 to $450,000; 7 1/2%–$450,001 to $500,000; 7 3/4%–$500,001 to $550,000; 8 1/4%–$550,001 to $600,000; 8 3/4%–$600,001 to $650,000; 9 1/2%–$650,001 and over. One quarter of 1% of total pari-mutuel pools allocated to agricultural fairs of state. However, total amount allocated is limited to $150,000 in any one year. Track licenses paid to township where track is located. Breakage 10 cents, divided equally between state and association.
New Jersey	THROUGHBRED: Total take-out 17%. State receives 9.15%, association 7.85%. Breakage 10 cents, all to state. HARNESS: Total take-out 17%. Of first $40 million of handle, state receives 6%, thereafter 7%. All breakage to purses for Jersey bred races and breeder and owner awards.
New Mexico	Total take-out 18%. State receives 2% to $250,000; 3 1/2% over $250,000 to $350,000; 4 1/2% over $350,000 to $400,000; 7% over $400,000; except State Fair which pays a maximum 2% on total handle. Tax on admissions, 10 cents. Daily license fee $300, half to state and half to county in which track is located, except State Fair charge $10 per race day. Breakage 10 cents, all to association.

BRIEF SUMMARY OF TAX METHODS BY STATES (continued)

New York	THOROUGHBRED: Total take-out 17% (Except 25% on Trifecta of which state receives 14%). State receives from Saratoga 9%, from Aqueduct and Belmont 10% of total mutuel handle. From Finger Lakes, the state receives 5% of first $400,000, 11% of more than $400,000. Breakage 10 cents, with state receiving 70% from Aqueduct and Belmont, 65% from Saratoga and Finger Lakes, and with 10% to Breeders Fund. Franchise fee $1,000 per racing day paid by non-profit association. Finger Lakes track license $100 per day. HARNESS: Total take-out 17%. Of total daily pool, state receives 5% first $250,000; 7 1/2%, $250,001-$300,000; 8 1/2%, $300,001-$400,000; 10 1/2%, $400,001-$500,000; 11 1/4%, $500,001-$600,000; 11 1/2%, $600,001-$700,000; 11 3/4%, $700,001-$800,000; 12%, $800,001-$900,000; 12 1/4%, $900,001-$1,000,000; 12 1/2%, $1,000,001 and over. Breakage 10 cents, with state receiving 50%, Horse Breeders Fund 25%, association 25%.
Ohio	THOROUGHBRED and QUARTER HORSE: Total take-out 17 1/2%. State receives 4 1/4% first $10,000 wagered; 5 1/4% next $40,000; 6 1/4% next $50,000; 7 1/4% next $300,000; 8 1/4% all over $400,000. HARNESS and FAIRS: Total take-out 17 1/2%. State receives 3% first $10,000; 4% next $40,000; 5% next $50,000; 6% next $300,000; 7% all over $400,000. Breakage 10 cents. Breakage taxed at 25% after first $2,000, 40% of breaks retained by track for increase in next purse distribution. Thirty-five per cent track share. Ohio Fair Fund—1/2 of 1% of total wagered at Thoroughbred, Harness, Quarter Horse, and Fair meetings is appropriated for Ohio Fair Fund Tax (tax collected from take-out). Thoroughbred Fund—1/2 of 1% of total wagered at Thoroughbred, Harness and Quarter Horse meetings (not collected from Fairs) is appropriated for Ohio Thoroughbred Race Fund. General Revenue tax collected from Fairs refunded to agricultural societies.
Oregon	Total take-out 15%, state receives 5.2% from commercial race meets and 1 1/2% from fair and non-profit race meets. Daily license fee $250 with Fairs and non-profit meets $1.00 per race meet. State receives unclaimed winning mutuel tickets. Breakage 10 cents, track retaining 1/2 added to purses for Oregon-bred races, 4.8% of handle paid for purses and .2% for backstretch improvements.
Pennsylvania	THOROUGHBRED: Total take-out 17%. State receives 5%, association 10%. Breakage 10 cents, 5 cents on minus pools, divided equally between state and association. For track license $3,000 deposit. HARNESS: Total take-out 17%. State receives 5%, association 10%. Breakage 10 cents, 5 cents on minus pools, divided equally between state and association. Monies from breakage deposited in Sire Stakes Fund. (THOROUGHBRED AND HARNESS: In addition to state's 5% there is a 2% tax at tracks located in cities of first class, paid directly to school district. In all other areas 2% tax paid to Department of Commerce for projects in accordance with law.)
Rhode Island	Total take-out 18%. State receives 6% on daily wagers to $425,000, 7% to $500,000, 8% to $600,000, and 9% over $600,000. Breakage 10 cents, divided equally between state and association
South Dakota	Total take-out 16%. State 4%, association 11%, 1% for local school district. Law also provides that 5% of winning purse will go to South Dakota breeder of winning horse. Breakage 10 cents, all to association.
Vermont	THOROUGHBRED: Total take-out 18% (Sunday 19%). State receives 5 1/2% (Sunday 6 1/2%). Breakage 10 cents, divided equally between state and association. HARNESS: Total take-out 18%, with state receiving on first $150,000 plus 3%; $150,000 to $200,000 plus 4%; $200,000 to $250,000 plus 5%; $250,000 to $300,000 plus 6%; $300,000 to $350,000 plus 7%; $350,000 and over 8%. Sunday 19%, with state receiving on first $150,000 plus 4%; $150,000 to $200,000, plus 5%; $200,000 to $250,000 plus 6%; $250,000 to $300,000 plus 7%; $300,000 and over 8%. Breakage 10 cents, divided equally between state and association.
Washington	MAJOR TRACKS: Total take-out 16%. State receives 5%, association 10%. One per cent held by commission until end of each race meet, then distributed to owners of Washington-bred horses placing first, second, third and fourth. FAIR TRACKS—NON-PROFIT: Total take-out 15%, with 1% to state, 14% to association. Daily license fee at major tracks $100; at Fairs $10. Breakage 5 cents, all to association.
West Virginia	THOROUGHBRED: Total take-out 16%. State receives 5 3/4%, association 9 1/4%. One percent of take-out allocated for purses. Daily license tax $250. Unredeemed pari-mutuel ticket money deposited to special account to support Breeders' Awards. Breakage 10 cents, all to association. HARNESS: Total take-out 17%. Of the daily pari-mutuel pool, 3% first $100,000; 4% next $150,000; 5 3/4% all over. Breakage 10 cents, all to association. Daily license tax $150.
Wyoming	Total take-out 20%, with 2% to Pari-mutuel Board for operating expenses (none to state), 2% to city where track is located, 16% to racing association. Breakage 10 cents, all to association.

HB

366

STATE OF ALASKA
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
DIVISION OF BANKING, SECURITIES, SMALL LOANS & CORPORATIONS
JAY S. HAMMOND, Governor
POUCH D — JUNEAU 99801

February 4, 1976

Honorable Representative Terry Gardiner
Chairman
House Judiciary Committee
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Terry:

Re: CS HB 366

Last May I had the privilege of testifying before you on the above bill. At that time I commended to the consideration of your committee comments submitted in the May 9 letter by L.S. Kurtz, Jr., an Anchorage attorney who has extensive experience representing mortgage lenders, including Alaska Bank of Commerce and Coast Mortgage Company. I am enclosing his January 21 letter to me on the same topic. I ask that your committee accord Mr. Kurtz's comments the same seriousness that I have. Mr. Kurtz informed me on January 21 that his original response to HB 366 was not at the request of any of his clients, nor did he bill them for this service. Nonetheless, his representation is predominately that of lenders.

I recall that your committee intended to make some additional substitutions in the bill as a result of the May hearing. I have not received any of your changes. What has happened?

Sincerely yours,

Miles

Miles S. Schlosberg
Director

Enclosure

cc: (With enclosure - Kurtz's letter of May 9, 1975)
Langhorne A. Motley, Commissioner
Representative Susan Sullivan
L.S. Kurtz, Jr., 825 West 8th Avenue, Anchorage, Alaska 99501

Miles

BURR, PEASE & KURTZ, INC.

825 WEST EIGHTH AVENUE

ANCHORAGE, ALASKA 99501

TELEPHONE
AREA CODE 907
279-2411

E. L. ARNELL 1913-1958
[illegible] BURR
[illegible]ODORE M. PEASE, JR.
[illegible] KURTZ, JR.
[illegible]VARD G. BURTON
[illegible] 5 P. FLYNN
[illegible]RD A. HELM
E. PAGE
W. SEDWICK
[illegible]ONALD H. BUSSEY
RUSSELLYN S. CARRUTH
R. E. DUERRE
CONNIE J. SIPE
LARRY MEYER

January 21, 1976

Miles S. Schlosberg, Director
Division of Banking, Securities,
Small Loans and Corporations
Pouch D
Juneau, AK 99811

Re: Committee Substitute for House Bill No. 366

Dear Miles:

Following our discussion of House Bill 366 on Wednesday, I dug into my files and now see clearly what has happened. Enclosed are copies of the original bill, my letter to the House Judiciary Committee of May 9, and the committee substitute dated May 16. It appears that my influence has been negligible!

I still support subparagraphs (a) and (b) of the original bill, but certainly do not agree with the last sentence of subsection (b) under the committee substitute. The comments in my letter of May 9 concerning subsection (c) are still valid, and I will be happy to discuss the impact on the poor consumer of this proposed legislation with anyone. It is really brutal to the slightly delinquent house buyer who has a foreclosure started against him--he will need to come up with a lot of money for costs!

Sincerely,

BURR, PEASE & KURTZ, INC.

L. S. Kurtz, Jr.

LSK:klt

cc: R. J. Miller, Jr.
Robert C. Ely

RECEIVED
JAN 26 1976
DEPARTMENT OF COMMERCE
DIVISION OF BANKING
SECURITIES AND SMALL LOANS

TELEGRAM

1975 MAY 1

ALASKA COMMUNICATIONS
PHONE: 586-6440
JUNEAU, ALASKA 99801

IPMAFUB AHG

1-044988C139 05/19/75

TLX BANKALASKA AHG

01 ANCHORAGE ALASKA MAY 19,1975

PMS REPRESENTATIVE TERRY GARDINER

STATE CAPITOL 2025

JUNEAU ALASKA

URGENT RE HOUSE BILL366-HEARING 5/20/75

THE ALASKA BANKERS ASSOCIATION IS OPPOSED TO HB 366, SPECIFICALLY SECTION 34.20.070 (C) PAGE 2, LINES 4 AND 5.
THIS SERVICE OF PROCESS IS A MATERIAL CHANGE AND MAY HINDER FINANCING NOT HELP

THE ALASKA BANKERS ASSOCIATION
R W BURGH
PRESIDENT

2229 EST

IPMAFUB AHG

IPMAFUB AHG

BURR, PEASE & KURTZ, INC.

825 WEST EIGHTH AVENUE

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D. A. BURR
T. M. PEASE, JR.
L. S. KURTZ, JR.
E. G. BURTON
C. P. FLYNN
R. A. HELM
A. E. PAGE
J. W. SEDWICK
P. A. WILLIAMS
R. H. BUSSEY

May 9, 1975

Alaska State Legislature
House Judiciary Committee
State Capitol
Pouch V
Juneau, Alaska 99811

Re: House Bill No. 366

Gentlemen:

Today I received a copy of House Bill No. 366 and sincerely hope that you will modify subsection (c) of that bill before it is passed. I make this request as a practicing attorney who forecloses several deeds of trust each month, and as a private person who makes payments on eight deeds of trust each month. I think I have as much practical experience in dealing with foreclosures from both sides of the fence as any other attorney in the Anchorage area.

First, I strongly support the modifications to subsections (a) and (b) which the Bill makes. They will help prevent injustices from occurring and will not hurt creditors to any substantial degree. However, the proposed change to subsection (c) will hurt both debtors and creditors. The biggest problem I see with it is the technical impossibility of complying with it. Under Civil Rule 4(d)-(e) much more than ten days is required to accomplish service of process in many cases. The period of time can extend up to several months if the individual cannot be located, and in foreclosure situations the borrower or the party assuming from the borrower frequently cannot be located. Publication under Civil Rule 4(e) would serve no purpose whatsoever because publication is already required by the foreclosure provisions in title 34. At the present time it costs from $125.00 to $200.00 to publish the notice required by title 34, and this cost would roughly double whenever any of the parties named in 34.20.070(b) could not be found. The cost of serving each party holding interest in the land also will be substantial in many cases, since normal process

serving costs at least $10.00 per service and there often are a number of judgment holders, lien holders and other parties who must be served in a foreclosure proceeding.

As a practical matter, I think you are trying to protect parties who own land from being foreclosed out without notice, which is very important. If you feel personal service as required by Civil Rule 4(d) is necessary, please consider limiting the requirement of personal service to the record owner of the property and the parties in possession of the property, excluding lien and judgment holders and similar parties. If a process server cannot find the owner of the property in the State of Alaska after diligent search, no further service should be required other than the publication now required by title 34.

From my experience, I think virtually all of the abuses of the deed of trust and summary foreclosure procedure would be eliminated if your subsection (c) merely required service of the parties in possession of the property. Most of the abuses I have seen arose in connection with foreclosure of homes owned by individuals who could not afford legal counsel. Often such people quit picking up certified mail and thus get no actual notice of a foreclosure proceeding. While I question whether people should be protected when they refuse to pick up certified mail, personal service of such owner-occupants may be warranted. That alone will add only a few dollars to the foreclosure costs, which the owner will have to pay if he brings the debt current. He should not be saddled with the extremely high costs which will result from compliance with the present proposed subsection (c).

Sincerely,

BURR, PEASE & KURTZ, INC.

L. S. Kurtz, Jr.

LSK:klt

copies of letter
enclosed

A-440

5/13/75 Miles - please take a look at this one. Jerry Kurtz

May 9, 1975

Alaska State Legislature
House Judiciary Committee
State Capitol
Pouch V
Juneau, Alaska 99811

Re: House Bill No. 366

File HB 366

Gentlemen:

Today I received a copy of House Bill No. 366 and sincerely hope that you will modify subsection (c) of that bill before it is passed. I make this request as a practicing attorney who forecloses several deeds of trust each month, and as a private person who makes payments on eight deeds of trust each month. I think I have as much practical experience in dealing with foreclosures from both sides of the fence as any other attorney in the Anchorage area.

First, I strongly support the modifications to subsections (a) and (b) which the Bill makes. They will help prevent injustices from occurring and will not hurt creditors to any substantial degree. However, the proposed change to subsection (c) will hurt both debtors and creditors. The biggest problem I see with it is the technical impossibility of complying with it. Under Civil Rule 4(d)-(e) much more than ten days is required to accomplish service of process in many cases. The period of time can extend up to several months if the individual cannot be located, and in foreclosure situations the borrower or the party assuming from the borrower frequently cannot be located. Publication under Civil Rule 4(e) would serve no purpose whatsoever because publication is already required by the foreclosure provisions in title 34. At the present time it costs from $125.00 to $200.00 to publish the notice required by title 34, and this cost would roughly double whenever any of the parties named in 34.20.070(b) could not be found. The cost of serving each party holding interest in the land also will be substantial in many cases, since normal process

serving costs at least $10.00 per service and there often are a number of judgment holders, lien holders and other parties who must be served in a foreclosure proceeding.

As a practical matter, I think you are trying to protect parties who own land from being foreclosed out without notice, which is very important. If you feel personal service as required by Civil Rule 4(d) is necessary, please consider limiting the requirement of personal service to the record owner of the property and the parties in possession of the property, excluding lien and judgment holders and similar parties. If a process server cannot find the owner of the property in the State of Alaska after diligent search, no further service should be required other than the publication now required by title 34.

From my experience, I think virtually all of the abuses of the deed of trust and summary foreclosure procedure would be eliminated if your subsection (c) merely required service of the parties in possession of the property. Most of the abuses I have seen arose in connection with foreclosure of homes owned by individuals who could not afford legal counsel. Often such people quit picking up certified mail and thus get no actual notice of a foreclosure proceeding. While I question whether people should be protected when they refuse to pick up certified mail, personal service of such owner-occupants may be warranted. That alone will add only a few dollars to the foreclosure costs, which the owner will have to pay if he brings the debt current. He should not be saddled with the extremely high costs which will result from compliance with the present proposed subsection (c).

Sincerely,

BURR, PEASE & KURTZ, INC.

L. S. Kurtz, Jr.

LSK:klt

copies of letter
enclosed

File with members

BURR, PEASE & KURTZ, INC.

825 WEST EIGHTH AVENUE

ANCHORAGE, ALASKA 99501

TELEPHONE
AREA CODE 907
279-2411

E. L. ARNELL 1913-1958

D. A. BURR
T. M. PEASE, JR.
L. S. KURTZ, JR.
E. G. BURTON
C. P. FLYNN
R. A. HELM
A. E. PAGE
J. W. SEDWICK
P. A. WILLIAMS
R. H. BUSSEY

May 9, 1975

Alaska State Legislature
House Judiciary Committee
State Capitol
Pouch V
Juneau, Alaska 99811

Re: House Bill No. 366

Gentlemen:

Today I received a copy of House Bill No. 366 and sincerely hope that you will modify subsection (c) of that bill before it is passed. I make this request as a practicing attorney who forecloses several deeds of trust each month, and as a private person who makes payments on eight deeds of trust each month. I think I have as much practical experience in dealing with foreclosures from both sides of the fence as any other attorney in the Anchorage area.

First, I strongly support the modifications to subsections (a) and (b) which the Bill makes. They will help prevent injustices from occurring and will not hurt creditors to any substantial degree. However, the proposed change to subsection (c) will hurt both debtors and creditors. The biggest problem I see with it is the technical impossibility of complying with it. Under Civil Rule 4(d)-(e) much more than ten days is required to accomplish service of process in many cases. The period of time can extend up to several months if the individual cannot be located, and in foreclosure situations the borrower or the party assuming from the borrower frequently cannot be located. Publication under Civil Rule 4(e) would serve no purpose whatsoever because publication is already required by the foreclosure provisions in title 34. At the present time it costs from $125.00 to $200.00 to publish the notice required by title 34, and this cost would roughly double whenever any of the parties named in 34.20.070(b) could not be found. The cost of serving each party holding interest in the land also will be substantial in many cases, since normal process

serving costs at least $10.00 per service and there often are a number of judgment holders, lien holders and other parties who must be served in a foreclosure proceeding.

As a practical matter, I think you are trying to protect parties who own land from being foreclosed out without notice, which is very important. If you feel personal service as required by Civil Rule 4(d) is necessary, please consider limiting the requirement of personal service to the record owner of the property and the parties in possession of the property, excluding lien and judgment holders and similar parties. If a process server cannot find the owner of the property in the State of Alaska after diligent search, no further service should be required other than the publication now required by title 34.

From my experience, I think virtually all of the abuses of the deed of trust and summary foreclosure procedure would be eliminated if your subsection (c) merely required service of the parties in possession of the property. Most of the abuses I have seen arose in connection with foreclosure of homes owned by individuals who could not afford legal counsel. Often such people quit picking up certified mail and thus get no actual notice of a foreclosure proceeding. While I question whether people should be protected when they refuse to pick up certified mail, personal service of such owner-occupants may be warranted. That alone will add only a few dollars to the foreclosure costs, which the owner will have to pay if he brings the debt current. He should not be saddled with the extremely high costs which will result from compliance with the present proposed subsection (c).

Sincerely,

BURR, PEASE & KURTZ, INC.

L. S. Kurtz, Jr.

LSK:klt

copies of letter
enclosed

HB

371

"An Act making a special appropriation to the Department of Law for the Office of the special prosecutor for fish and game matters; and providing for an effective date."

COMMITTEE REPORT

4/2/75 HOUSE FINANCE

Mr. Speaker: Date _____

The Committee on JUDICIARY has had HB 371

under consideration. A Majority of the members of the Committee

(X) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

[illegible]	Do Pass	[illegible]
[illegible]	Do Not Pass	[illegible]
[illegible]	Do Not Pass	
[illegible]	Do pass	

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

[illegible] Chairman

The Legislature of the State of Alaska
FISCAL NOTE

First Session - Ninth Legislature

I. REQUEST
Bill No. HB 370
Title: An Act Creating a Speical Fish and Game Prosecutor
Requested by: House Judiciary Committee Date: April 9, 1975
Return Date Requested:
Agency: Department of Law Program: Prosecution

II. FISCAL DETAIL
Budget Request Unit(s) Affected: Prosecution
A. EXPENDITURES: (Thousands of dollars)

	OBJECT	FY 75	FY 76	FY 77	FY 78	FY 79	FY 80
100	PERSONAL SERVICES		67.8	74.6	82.1	90.3	99.3
200	TRAVEL		20.5	22.5	24.7	27.2	29.9
300	CONTRACTUAL		23.1	25.4	27.9	30.7	33.8
400	COMMODITIES		2.8	3.1	3.4	3.7	4.1
500	EQUIPMENT		4.4				
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL		118.6	129.3	138.1	151.9	167.1

B. FUNDING: (Thousands of dollars)

GENERAL FUND		118.6	129.3	138.1	151.9	167.1
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	/	3 /	3 /	3 /	3 /	3 /
MAN MONTHS (P./T.)	/	36 /	36 /	36 /	36 /	36 /

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)
General Assumptions:

1. The prosecutor and staff will be located in Anchorage.

2. A Legal Secretary will be needed to provide clerical support. The present staff in the Anchorage District Attorney's office is inundated by the existing workload and cannot abosrb the volume of work the Prosecutor and Investigator will produce.

Fiscal Assumptions: (dollar amount on chart below)

Personal Services - Attorney V, Range 25-A, Investigator, Range 17-A. Legal Secretary I, Range 10-B.

Travel - to carry out the activities listed in HB 370 we assume 25 trips each by the Prosecutor and the Investigator instate for field travel at

V. DATE: April 11 1975 PREPARED BY: Robert F. Schroeder
Legal administrator

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

III. ANALYSIS (continued)

an average cost of $346 per trip for transportation and per diem; 2 trips out of state by the Investigator at $550 per trip; two administrative trips by the Prosecutor and one by the Investigator at $300 per trip; one trip each by the prosecutor and investigator for instate meetings at $300 per trip; and one trip out of state by the prosecutor at $600 per trip.

Contractual Services - Department of Law offices in Anchorage are fully occupied; additional space will have to be acquired for the prosecutor and staff. Witness fees are budgeted 60% above the present average per prosecutor in the Anchorage District Attorney office; we anticipate fish and game cases will involve more out of state citizens then encountered in other offenses therfore the costs of witness transportation will be higher. Other items of expenditure are averaged from the present costs of operation.

Commodities and Equipment:

Average amounts necessary to establish and effectively maintain each position:

Object of Expenditure	Attorney V Range 25-A	Investigator Range 17-A	Legal Sec. I Range 10-B	Total
Personal Services				
Salaries	30,096	16,704	10,656	57,465
Benefits at 18%	5,417	3,704	1,981	10,342
Total Pers. Servs.	35,513	19,711	12,574	67,798
Travel				
Field-instate	8,650	8,650		17,300
Field-out of state		1,100		1,100
Administrative instate	600	300		900
out of state				
Conventions and Meetings instate	300	300		600
Total Travel	10,150	10,350		20,500
Contractual Services				
Communications servs.	1,600	1,500	100	3,200
Printing & Advertising	200	200		400
Rent	600	400	200	1,200
Repair & Janitorial	400	300	200	1,200
Transportation of Things	100	100		200
Equipment Rental	400	400	2,100	2,900
Professional Fees	2,000			2,000
Other Fees	200	100		300
Witness Fees	12,000			12,000
Total Cont. Servs.	17,500	3,000	2,600	23,100
Comodities				
Professional Supplies	800	400		1,200
Office Supplies	600	600	400	1,600
Total Commodities	1,400	1,000	400	2,800
Equipment	1,400	1,400	1,600	4,400
Total	$65,693	$ 35,461	$17,174	$118,598

April 15, 1975

TO: Hugh Malone, Chairman
House Finance Committee

FROM: Terry Gardiner, Chairman
House Judiciary Committee

SUBJECT: HB 370/371

The Judiciary Committee has recommended that both HB 370 and HB 371 do pass. This recommendation is made on the basis of the amount appropriated in HB 371 as funding for HB 370 and not on the basis of the attached fiscal note. It is the understanding of the Judiciary Committee that there presently is someone in the Attorney General's Office who is handling fish and game matters exclusively. The attached fiscal note should therefore be reduced by the amount already being spent by the Office in providing fish and game protection services. Judiciary recommends that HB 370 be funded in the amount of HB 371 ($75,000) or less.

HB

384

"An Act relating to evaluations of judges before retention elections."

COMMITTEE REPORT

HOUSE

4/7/75

Mr. Speaker: Date _____

The Committee on JUDICIARY has had HB 384 under consideration. A Majority of the members of the Committee

(X) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Terry Gardiner _____ _____

[illegible] _____ _____

[illegible] _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

[illegible] recommends: [illegible]

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Terry Gardiner Chairman

AMENDMENT #3

OFFERED IN THE HOUSE: BY: ELIASON

To: _____ HOUSE BILL No. HB 384

SENATE BILL No. _____

PAGE: 2 LINE: 8

Line 8 delete [of]

Line 9 between "are" and "made"

insert TO BE

AMENDMENT #4

OFFERED IN THE HOUSE: BY: [illegible]

TO: _____ HOUSE BILL No. [illegible]

SENATE BILL No. _____

PAGE: 2 LINE: 3 + 7

DELETE "[illegible]
[illegible]
[illegible]"

AMENDMENT #1 as substituted

OFFERED IN THE HOUSE: BY: Speaker

To: _____ HOUSE BILL No. 384

SENATE BILL No. _____

PAGE: 1 LINE: 13, 23, & 24

change "may" to "shall"

P 2, lines 5 & 6

change "may" to "shall"

PROPOSED JUDICIARY

HB 384

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA

*Section 1. AS 22.05.100 is amended to read:

Sec. 22.05.100 APPROVAL OR REJECTION. Each supreme court justice is subject to approval or rejection as provided in the Alaska Election Code (AS 15.05 - 15.60). The judicial council shall conduct an evaluation of each justice before his retention election and shall provide to the public information about that justice and may provide a recommendation regarding his retention or rejection. Such information and any recommendation shall be made public at least 30 days before the retention election. The judicial council shall also provide such information and any recommendation to the office of the lieutenant governor in time for publication in the election pamphlet pursuant to AS 15.57.025. If a majority of those voting on the question rejects his candidacy, he shall not be appointed to fill any vacancy in the supreme or superior courts of the state for a period of four years thereafter.

* Sec. 2. AS 22.10.150 is amended to read:

Sec. 22.10.150. APPROVAL OR REJECTION. Each superior court judge is subject to approval or rejection as provided in the Alaska Election Code (AS 15.05 - 15.60). The judicial council shall conduct an evaluation of each judge before his retention election and shall provide to the public information about the judge and may provide a recommendation regarding his retention or rejection. Such information and any recommendation shall be made public at least 30 days before the election. The judicial council shall also provide such information and any recommendation to the office of the lieutenant governor in time for publication in the election pamphlet pursuant to AS 15.57.025.

* Sec. 4. AS 15.57.010 is amended to read:

Sec. 15.57.010. Contents of Pamphlet. The lieutenant governor shall mail to all voters of the state before each state general election a candidate pamphlet containing photographs and campaign statements of eligible nominees who desire to participate in the pamphlet, and information and any recommendations regarding the retention of judicial officers supplied by the judicial council. The pamphlet shall also contain, for each ballot proposition, (1) a neutral summary of the proposition prepared by the Legislative Affairs Agency, and (2) a statement by persons or organizations supporting the proposition, and (3) a statement by persons or organizations opposing the proposition.

* Sec. 5. AS 15.57 is amended by adding a new section to read:

Information and recommendations on judicial officers.

Sec. 15.57.025./ No later than 60 days before the applicable state election, the Judicial Council shall file with the lieutenant governor a statement including information about each Supreme Court Justice, Superior Court Judge, and District Court Judge who will be subject to a retention election, following the evaluation of each such justice or judge conducted by the judicial council according to law. Each such statement may not exceed 300 words.

* Sec. 6. AS 15.57.030 is amended to read:

Sec. 15.57.030. Publication. The statements and photographs of nominees and of judicial officers subject to retention elections, as well as statements and recommendations of the judicial council, as set out in § § 10, 20 and 25 of this chapter, shall be published by the lieutenant governor as a candidate pamphlet.

* Sec. 7. AS 15.57.040 (a) is amended by adding a new subparagraph to read:

(5) no charge for statements and recommendations submitted by the judicial council concerning judicial retention elections.

If a majority of those voting on the question rejects his candidacy, he shall not for a period of four years thereafter be appointed to fill any vacancy in the supreme or superior courts of the state.

* Sec. 3. AS 22.15 is amended by adding a new section to read:

Sec. 22.15.195. APPROVAL OR REJECTION. Each district court judge is subject to approval or rejection as provided in the Alaska Election Code (AS 15.05 - 15.60). The judicial council shall conduct an evaluation of each judge before his retention election and shall provide to the public both information about the judge and may provide a recommendation regarding his retention or rejection. Such information and the recommendation shall be made public at least 30 days before the election. The judicial council shall also provide such information and any recommendation to the office of the lieutenant governor in time for publication in the election pamphlet pursuant to AS 15.57.025. If a majority of those voting on the question rejects his candidacy, he shall not for a period of four years thereafter be appointed to fill any vacancy in the supreme, superior or district courts of the state.

A M E N D M E N T

TO: HOUSE BILL NO. 384 BY ~~BROWN~~ The Jud. Com.

Page 1, line 13: After "and" delete "may" and insert "shall"

Page 1, line 14: After "public" delete "both" and after "and" insert "may provide"

Page 1, line 15: Delete "if the information and the" and insert ". Such information and any"

Page 1, line 16: Before "made" delete "are" and insert "shall be"

Page 1, line 17: After the period insert: "The judicial council shall also provide such information and any recommendation to the office of the lieutenant governor in time for publication in the election pamphlet under AS 15.57.025."

Page 1, line 23: After "council" delete "may" and insert "shall"

Page 1, line 24: After "and" delete "may" and insert "shall"

Page 1, line 25: After "public" delete "both" and after "and" insert "may provide"

Page 1, line 26: Delete "if the information and the" and insert ". Such information and any"

Page 1, line 27: Delete "are" and insert "shall be" and after the period insert: "The judicial council shall also provide such information and any recommendation to the office of the lieutenant governor in time for publication in the election pamphlet under AS 15.57.025."

Page 2, line 5: After "council" delete "may" and insert "shall"

Page 2, line 6: After "and" delete "may" and insert "shall"

Page 2, line 7: After "public" delete "both" and after "and" insert "may provide"

Page 2, line 8: Delete "if the" and insert ". Such"

Page 2, line 9: Delete "are" and insert "shall be" and after the period insert: "The judicial council shall also provide such information and any recommendation to the office of the leiutenant governor in time for publication in the election pamphlet under AS 15.57.025."

A M E N D M E N T

TO: HOUSE BILL NO. 384 -- continued

Page 2, line 13: insert the following new matter:

" * Sec. 4. AS 15.57.010 is amended to read:

Sec. 15.57.010. CONTENTS OF PAMPHLET. The lieutenant governor shall mail to all voters of the state before each state general election a candidate pamphlet containing photographs and campaign statements of eligible nominees who desire to participate in the pamphlet, and information and any recommendations regarding the retention of judicial officers supplied by the judicial council. The pamphlet shall also contain, for each ballot proposition, (1) a neutral summary of the proposition prepared by the Legislative Affairs Agency, and (2) a statement by persons or organizations supporting the proposition, and (3) a statement by persons or organizations opposing the proposition.

* Sec. 5. AS 15.57 is amended by adding a new section to read:

Sec. 15.57.025. INFORMATION AND RECOMMENDATIONS ON JUDICIAL OFFICERS. No later than 60 days before the applicable state election, the judicial council shall file with the lieutenant governor a statement including information about each supreme court justice, superior court judge, and district court judge who will be subject to a retention election, following the evaluation of each such justice or judge conducted by the judicial council according to law. Each such statement may not exceed 300 words.

* Sec. 6. AS 15.57.030 is amended to read:

Sec. 15.57.030. PUBLICATION. The statements and photographs of nominees and of judicial officers subject to retention elections, as well as statements and recommendations of the judicial council, as set out in secs. 10, [AND] 20 and 25 of this chapter, shall be published by the lieutenant governor as a candidate pamphlet.

* Sec. 7. AS 15.57.040(a) is amended by adding a new paragraph to read:

(5) no charge for statements and recommendations submitted by the judicial council concerning judicial retention elections."

AMENDMENT #2

OFFERED IN THE HOUSE: BY: _____

TO: _____ HOUSE BILL No. _____

SENATE BILL No. _____

PAGE: _____ LINE: 16 27

"Made public": add:

after "and included in the Alaska

Election ~~Campaign~~ candidate pamphlet with

a photograph"

from the desk of . . .

Representative Hugh Malone

Terry

Compliments of Alaska Legislative Report
four fifteen "L" Street Anchorage, Alaska 99501 (907)279-4531

Introduced: 4/7/75
Referred: Judiciary

IN THE HOUSE

BY THE JUDICIARY COMMITTEE
BY REQUEST

HOUSE BILL NO. 384

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to evaluations of judges before retention elections."

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

* Section 1. AS 22.05.100 is amended to read:

Sec. 22.05.100. APPROVAL OR REJECTION. Each supreme court justice is subject to approval or rejection as provided in the Alaska Election Code (AS 15.05 - 15.60). The judicial council shall conduct an evaluation of each justice before his retention election and ~~may~~ shall provide to the public both information about that justice and a recommendation regarding his retention or rejection, if the information and the recommendation are made public at least 30 days before the retention election. If a majority of those voting on the question rejects his candidacy, he shall not be appointed to fill any vacancy in the supreme or superior courts of the state for a period of four years thereafter.

* Sec. 2. AS 22.10.150 is amended to read:

Sec. 22.10.150. APPROVAL OR REJECTION. Each superior court judge is subject to approval or rejection as provided in the Alaska Election Code (AS 15.05 - 15.60). The judicial council may conduct an evaluation of each judge before his retention election and may provide to the public both information about the judge and a recommendation regarding his retention or rejection, if the information and the recommendation are made public at least 30 days before the election. If a majority of those voting on the question rejects his candidacy, he shall not for a period of four years thereafter be appointed to fill any vacancy in the

renumber bad page and distribute to members

PROPOSED JUDICIARY CS

HB 384

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA

*Section 1. AS 22.05.100 is amended to read:

Sec. 22.05.100 APPROVAL OR REJECTION. Each supreme court justice is subject to approval or rejection as provided in the Alaska Election Code (AS 15.05 - 15.60). The judicial council shall conduct an evaluation of each justice before his retention election and shall provide to the public information about that justice and may provide a recommendation regarding his retention or rejection. Such information and any recommendation shall be made public at least 30 days before the retention election. The judicial council shall also provide such information and any recommendation to the office of the lieutenant governor in time for publication in the election pamphlet pursuant to AS 15.57.025. If a majority of those voting on the question rejects his candidacy, he shall not be appointed to fill any vacancy in the supreme or superior courts of the state for a period of four years thereafter.

* Sec. 2. AS 22.10.150 is amended to read:

Sec. 22.10.150. APPROVAL OR REJECTION. Each superior court judge is subject to approval or rejection as provided in the Alaska Election Code (AS 15.05 - 15.60). The judicial council shall conduct an evaluation of each judge before his retention election and shall provide to the public information about the judge and may provide a recommendation regarding his retention or rejection. Such information and any recommendation shall be made public at least 30 days before the election. The judicial council shall also provide such information and any recommendation to the office of the lieutenant governor in time for publication in the election pamphlet pursuant to AS 15.57.025.

If a majority of those voting on the question rejects his candidacy, he shall not for a period of four years thereafter be appointed to fill any vacancy in the supreme or superior courts of the state.

* Sec. 3. AS 22.15 is amended by adding a new section to read:

Sec. 22.15.195. APPROVAL OR REJECTION. Each district court judge is subject to approval or rejection as provided in the Alaska Election Code (AS 15.05 - 15.60). The judicial council shall conduct an evaluation of each judge before his retention election and shall provide to the public both information about the judge and may provide a recommendation regarding his retention or rejection. Such information and the recommendation shall be made public at least 30 days before the election. The judicial council shall also provide such information and any recommendation to the office of the lieutenant governor in time for publication in the election pamphlet pursuant to AS 15.57.025. If a majority of those voting on the question rejects his candidacy, he shall not for a period of four years thereafter be appointed to fill any vacancy in the supreme, superior or district courts of the state.

60 days
30 days

L
A
A

additional sections for HB 384

* Sec. 4. AS 15.57.010 is amended to read:

Sec. 15.57.010. Contents of Pamphlet. The lieutenant governor shall mail to all voters of the state before each state general election a candidate pamphlet containing photographs and campaign statements of eligible nominees who desire to participate in the pamphlet, and information and any recommendations regarding the retention of judicial officers supplied by the judicial council. The pamphlet shall also contain, for each ballot proposition, (1) a neutral summary of the proposition prepared by the Legislative Affairs Agency, and (2) a statement by persons or organizations supporting the proposition, and (3) a statement by persons or organizations opposing the proposition.

* Sec. 5. AS 15.57 is amended by adding a new section to read:

title → Information and recommendations on judicial officers.

Sec. 15.57.025. No later than 60 days before the applicable state election, the Judicial Council shall file with the lieutenant governor a statement including information about each Supreme Court Justice, Superior Court Judge, and District Court Judge who will be subject to a retention election, following the evaluation of each such justice or judge conducted by the judicial council according to law. Each such statement may not exceed 300 words.

* Sec. 6. AS 15.57.030 is amended to read:

Sec. 15.57.030. Publication. The statements and photographs of nominees and of judicial officers subject to retention elections, as well as statements and recommendations of the judicial council, as set out in § § 10, 20 and 25 of this chapter, shall be published by the lieutenant governor as a candidate pamphlet.

* Sec. 7. AS 15.57.040 (a) is amended by adding a new subparagraph to read:

(5) no charge for statements and recommendations submitted by the judicial council concerning judicial retention elections.

HB 384 Evaluation of Judges

Since the committee had previously heard testimony on this bill from the Judicial Council, HB 384 was passed out of committee, do pass.

HB 241 Fishing gear

Rep. Malone, sponsor of the bill, testified that this bill would correct the situation where the owner of a license was determined to be required to have his hand on the nets at all times when they were being used. A court interpretation of the bill required the licensee to personally participate in all work. This was not the legislative intent in passing the original bill, so HB 241 would give clear legislative intent.

Mr. Brown moved CS HB 241 (incorporating the Resources amendment) out of committee do pass. There being no objection, it was so ordered.

Art 4 - Sect 8 Const.
Sect 9

House Judiciary Committee
April 2, 1975

At 2 p.m. the committee met with the members of the Judicial Council for an exchange of information and suggestions. The Council has completed reports on Bail in Anchorage, Sentencing, Grand Jury and is working on reports on The District Court System, Plea Bargaining, Bush Justice, Evaluation of Judges.

The Council recommended the following:
The present time frame in which the Council must screen and nominate applicants sometimes does not leave enough time to the person selected to clean up his affairs before assuming the position. The Council would like to be able to send names to the Governor earlier so that the appointment could be made by the Governor earlier.

The Council does not have specific statutory authority to evaluate judges' qualifications and convey this information and recommendation to the public. They feel it is a legitimate function of the Council and would like specific authorization.

The Council, after public hearings, has recommended the proposal for seven judicial districts.

HB

385

"An Act relating to judicial appointments."

COMMITTEE REPORT

4/7/75

HOUSE

Mr. Speaker: Date _____

The Committee on JUDICIARY has had HB 385 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

[illegible]	_____	_____
[illegible]	_____	_____
[illegible]	_____	_____
[illegible]	_____	_____

Members NOT concurring in the Majority report:

_____ _____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Jerry Gardner Chairman

AMENDMENT

OFFERED IN THE HOUSE: BY: House Judiciary

To: _____ HOUSE BILL No. 385

SENATE BILL No. _____

PAGE: 1 and 2 LINE: _____

page 1, line 22: after "governor" ADD: no more than sixty days

page 2, line 9: after "governor" ADD: no more than sixty days

House Judiciary Committee
April 14, 1975

HB 52 Public Adjustor

Mr. Bradner, sponsor of the bill, testified that the public presently does not complain about insurance problems because they do not know where to go. The bill would create an insurance ombudsman who would function within the Division of Insurance. He would remain independent and would have authority to pursue routine complaints and identify abusive companies. The Division does not favor an independent Adjustor but would like additional monies so that the Division could handle compalints. Mr. Bradner felt that because of the very existence of the Adjustor, many problems would never develop. A pamphlet advertising that the Adjustor will handle complaints is being provided for in another bill.

page 2, line 4, delete the word "ombudsman" and replace with "will assist" Mr. Parr moved the amendment which passed.

Mr. Brown moved on page 1, line 10 that "director" be changed to "governor". There being no objection, it was so ordered.

Ted Smith explained that an appointee of the governor working independently within a division would have a difficult time. He suggested that the Adjustor be explicitly made a member of the partially exempt service. Mr. Brown moved that an addition to the bill to this effect be added. There being no objection, it was so ordered.

Mr. Brown moved that a CS be drawn up incorporating the above amendments. It was so ordered.

HB 385 Early Judicial appointment

The Judicial Council, which suggested the bill, submitted proposed language to take care of the problem of possible lame duck appointments. Mr. Brown moved that on page 1, line 22 and page 2, line 9 add "no more than sixty days early" be added. The amendment passed and Mr. Brown moved HB 385 am out of committee do pass. There being no objection, it was so ordered.

Introduced: 4/7/75
Referred: Judiciary

IN THE HOUSE BY THE JUDICIARY COMMITTEE

HOUSE BILL NO. 385

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to judicial appointments."

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

* Section 1. AS 22.05.080(b) is amended to read:

(b) The office of a supreme court justice, including the office of chief justice, becomes vacant 90 days after the election at which he is rejected by a majority of those voting on the question, or for which he failed to file his declaration of candidacy to succeed himself. [A SUCCESSOR TO THE OFFICE OF JUSTICE MAY BE APPOINTED, AND A SUCCESSOR TO THE OFFICE OF CHIEF JUSTICE MAY BE SELECTED BY THE OTHER JUSTICES, DURING THIS 90-DAY PERIOD AND THE APPOINTMENT OR SELECTION BECOMES EFFECTIVE UPON THE VACANCY OCCURRING.] A vacancy in the office also occurs by reason of the death, retirement, resignation, forfeiture, or removal from office of a justice. If a vacancy occurs the judicial council shall meet no more than [WITHIN] 30 days thereafter and submit to the governor the names of two or more persons nominated to fill each vacancy. A successor to the office of supreme court justice may be appointed by the governor no more than 60 days before the vacancy occurs, and the appointment becomes effective upon the vacancy occurring.

* Sec. 2. AS 22.10.100(b) is amended to read:

(b) The office of a superior court judge becomes vacant 90 days after the election at which he is rejected by a majority of those voting on the question, or for which he failed to file his declaration of candidacy to succeed himself. [HIS SUCCESSOR MAY BE APPOINTED DURING THIS PERIOD AND THE APPOINTMENT BECOMES EFFECTIVE UPON THE VACANCY

LAY MEMBERS
KENNETH L. BRADY
LEW M. WILLIAMS, JR.
ROBERT MOSS, SR.
LAW MEMBERS
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EUGENE F. WILES
MICHAEL M. HOLMES
CHAIRMAN, EX OFFICIO
JAY A. RABINOWITZ
CHIEF JUSTICE
SUPREME COURT

Alaska Judicial Council
303 K STREET
ANCHORAGE, ALASKA
99501

EXECUTIVE DIRECTOR
R. ELDRIDGE HICKS

April 8, 1975

Representative Terry Gardiner
Alaska House of Representatives
Pouch V
Juneau, Alaska 99801

Dear Terry:

Attached please find a revised draft of the legislation proposed by the Judicial Council for improving the permissible timeframe for appointing judges. Pursuant to your observation of the need to insure that a "lame duck" administration could not appoint persons to fill judicial vacancies arising at some unreasonable future time, I have revised the originally proposed legislation to provide that a successor for a judicial vacancy may be appointed by the governor "no more than 60 days" before the vacancy occurs. A 60-day lead time would be sufficient for a private attorney to dispose of pending business and prepare for his move to the new judgeship, while also limiting the power of any governor to make appointments far beyond the tenure of his office. (Of course, the likelihood of such "lame duck" appointments is highly remote even without the present 60-day safeguard. It would require collaboration by a majority of the Judicial Council and the governor--which is itself an unlikely possibility because of the staggered 6-year terms of the Judicial Council members.)

Senator Ziegler has informed me that he will defer action by the Senate Judiciary Committee on this bill relating to the timeframe for judicial appointments, and on the Judicial

Council's proposed bill for evaluating judges prior to retention elections, until action is taken by your committee. I am presuming at this time that you are favorable to introducing these recommendations under the sponsorship of the judiciary committee, by request. If you feel differently, or if I can be of any assistance, please do not hesitate to contact me.

Thank you in advance for your time and consideration.

Sincerely,

R. Eldridge Hicks
Executive Director

REH/jsh
cc: Senator Ziegler
Council members

IN THE _____

_____ BILL NO. _____

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the timeframe for judicial appointments."

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

Section 1. AS 22.05.080(b) is amended to read:

(b) The office of a supreme court justice, including the office of chief justice, becomes vacant 90 days after the election at which he is rejected by a majority of those voting on the question, or for which he failed to file his declaration of candidacy to succeed himself. [A successor to the office of justice may be appointed, and a successor to the office of chief justice may be selected by the other justices, during this 90-day period and the appointment or selection becomes effective upon the vacancy occurring.] A vacancy in the office also occurs by reason of the death, retirement, resignation, forfeiture, or removal from office of a justice. If a vacancy occurs the Judicial Council shall meet [within] no more than 30 days thereafter and submit to the governor the names of two or more persons nominated to fill each vacancy. A successor to the office of supreme court justice may be appointed by the governor no more than 60 days before the vacancy occurs, and such an appointment becomes effective upon the vacancy occurring.

Section 2. AS 22.10.100(c) is amended to read:

(d) The office of a superior court judge becomes vacant 90 days after the election at which he is rejected by a majority of those voting on the question, or for which he fails to file his declaration of candidacy to succeed himself. [His successor may be appointed during this period and the appointment becomes effective upon the vacancy occurring.] A vacancy in the office also occurs by reason of the death, retirement, resignation, forfeiture or removal from office of a judge. In the event of any vacancy other than an initial vacancy, or

immediately upon clarification of rejection following an election, or immediately upon failure of a judge to file declaration of candidacy, the judicial council shall meet [within] no more than 30 days thereafter and submit to the governor the names of two or more persons nominated to fill each vacancy. A successor to the office of superior court judge may be appointed by the governor no more than 60 days before the vacancy occurs, and such an appointment becomes effective upon the vacancy occurring.

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CHIEF JUSTICE
SUPREME COURT

Alaska Judicial Council

303 K STREET
ANCHORAGE, ALASKA
99501

EXECUTIVE DIRECTOR
R. ELDRIDGE HICKS

March 25, 1975

Hon. Terry Gardiner
Chairman, House Judiciary Committee
Alaska House of Representatives
Pouch V
Juneau, Alaska 99801

Dear Representative Gardiner:

Enclosed please find a report of the Judicial Council with recommendations for changes in the timeframe for nominating and appointing judges to fill vacancies.

The present statutes guard against undue delay by requiring that the Judicial Council meet at least 30 days after the vacancy, and that the Governor make an appointment within 45 days after receiving nominations from the Council. However, the language of these provisions implicitly prevents the Council and the Governor from acting more expeditiously, effecting a smooth transition between the retiring judge and the new judge.

If you have any further questions, the members of the Council will be happy to answer them during the scheduled meeting with legislators in the Governor's Conference Room on Wednesday, April 2nd at 2:00 p.m.

Sincerely,

R. Eldridge Hicks
Executive Director

REH/jsh
Enclosure

LAY MEMBERS
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EXECUTIVE DIRECTOR
R. ELDRIDGE HICKS

RECOMMENDATIONS FOR CHANGES IN THE TIMEFRAME FOR JUDICIAL APPOINTMENTS

AS 22.10.100(a) provides, "The governor shall fill a vacancy in the office of superior court judge within 45 days after receiving nominations from the judicial council by appointing one of two or more persons nominated by the council for each vacant position."* AS 22.10.100(b) provides in part, "In the event of any vacancy other than an initial vacancy, or immediately upon certification of rejection following an election, or immediately upon failure of a judge to file declaration of candidacy, the judicial council shall meet within 30 days thereafter and submit to the governor the names of two or more persons nominated to fill each vacancy."

This language indicates quite specifically that the Judicial Council must meet within 30 days after a vacancy occurs to consider applicants for nomination to the governor. However, the language of the statute does not address specifically the question of what constitutes a "vacancy," and the question of whether the Judicial Council may meet to consider applicants prior to the vacancy occurring. This ambiguity in turn leaves unclear whether the governor may appoint a new judge to fill a "vacancy" prior to that vacancy actually occurring.

One sentence in AS 22.10.100(b) provides that "A vacancy in the office also occurs by reason of . . . [the] resignation . . . of a judge," but that sentence does not indicate whether the "vacancy" for screening and appointing purposes

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* The full texts of the relevant statutes are set forth in Appendix I, below. AS 22.05.080 is essentially similar with regard to supreme court justices as the above statutory reference for superior court judges. All of the following discussion applicable to the appointment of superior court judges is also applicable to the appointment of supreme court justices.

occurs at the time that the resignation is submitted, or, on the effective date of the resignation. However, another sentence in the above-referenced subsection of the statute does shed some light on the question, in the context of a judge's rejection by a majority of the voters. It provides, "The office of a superior court judge becomes vacant 90 days after the election at which he is rejected by a majority of those voting on the question . . . ." Here the word "vacant" specifically refers to the date when the judge leaves his official duties, and specifically does not mean the date when the State is placed on notice that an opening soon will occur.

The next sentence of subsection AS 22.10.100(b) provides, "His successor may be appointed during this period and the appointment becomes effective upon the vacancy occurring." This sentence further indicates that a "vacancy" is the date when the judge actually leaves the office, insofar as it makes special provision for an appointment "during this period" between notice of an opening and the actual occurrence of that opening.

Hence, given the fact that under AS 22.10.100(a) the governor has the power only to fill a "vacancy" in the judiciary, he presently does not have the power to appoint a new judge until the resigning or retiring judge actually leaves his official duties, unless that judge is departing after losing a retention election. Because the governor is not empowered to fill an impending vacancy prior to its actual occurrence, a time lag is created in which the judiciary is

understaffed and the opportunity for a smooth transition of work to the successor judge is lost.

AS 22.10.100(b) also provides that, "In the event of any vacancy . . . the judicial council shall meet within 30 days thereafter and submit to the governor the names of two or more persons nominated to fill each vacancy." [Emphasis added.] The use of the word "shall" in this sentence indicates quite specifically that the Judicial Council must meet within 30 days after a vacancy occurs, to consider applicants for nomination to the governor. However, the language leaves unanswered the question of whether the Judicial Council may meet to consider applicants prior to the vacancy occurring. The language is stated in terms of limiting the possibilities of delay in filling a superior court vacancy, and does not specifically provide for how expeditiously an impending vacancy can be filled. This ambiguity should be clarified.

Even if one assumes that the Judicial Council can receive applications and make nominations for an impending vacancy prior to the effective date of the judge's resignation, that effort is futile if it proceeds before a timeframe which places the 45th day some time after the effective date of the resignation, because the governor does not have the power to make an appointment before the effective date of the resignation and the governor must exercise his power within 45 days after receiving nominations from the Judicial Council.

The result of this confusing, ambiguous and limiting statutory language is that the screening, nominating and

appointing process for new judges is needlessly delayed even when a retiring judge gives 90-120 days notice of his impending departure. Although it would be desirable to have a new judge appointed and ready to assume responsibilities at the time that the retiring judge leaves his position, it is futile for the Judicial Council to begin advertising a vacancy until the time-frame is such that some period of the 45-day timeframe for gubernatorial appointment falls subsequent to the actual departure of the retiring judge.

The language of the present statute indicates that the probable intent of the drafters was to guard against unnecessary delay in filling a judicial vacancy. The law provides that "The governor shall fill a vacancy . . . within 45 days after receiving nominations . . . ." It also provides that "The judicial council shall meet within 30 days thereafter . . . ." That policy of preventing delay is commendable, however there is no public policy served by delaying (probably inadvertently) the timeframe for nominations and appointments until such time as the vacancy actually occurs.

Appendix II contains the recommendations of the Judicial Council for amending AS 22.05.080(b) and AS 22.10.100(b) in a manner which continues to prevent unnecessary delays in filling judicial vacancies, while also permitting these vacancies to be filled quickly and efficiently. The special provision in the present statute for the appointment of a judge before the vacancy actually occurs when a judge is rejected in his retention election is deleted in favor of a more general reference empowering

the governor to appoint a successor to a judgeship before the vacancy actually occurs, no matter how the vacancy occurred. The amendments would also clarify the fact that the Judicial Council must meet "no more than" 30 days after a vacancy occurs, without implying any constraint on the possibility that the Judicial Council may meet earlier than during the 30 days subsequent to the vacancy.

Sec. 22.05.080. Vacancies. (a) The governor shall fill a vacancy in the office of supreme court justice within 45 days after receiving nominations from the Judicial Council, by appointing one of two or more persons nominated by the Judicial Council for each vacant position.

(b) The office of a supreme court justice, including the office of chief justice, becomes vacant 90 days after the election at which he is rejected by a majority of those voting on the question, or for which he failed to file his declaration of candidacy to succeed himself. A successor to the office of justice may be appointed, and a successor to the office of chief justice may be selected by the other justices, during this 90-day period and the appointment or selection becomes effective upon the vacancy occurring. A vacancy in the office also occurs by reason of the death, retirement, resignation, forfeiture, or removal from office of a justice. If a vacancy occurs the Judicial Council shall meet within 30 days thereafter and submit to the governor the names of two or more persons nominated to fill each vacancy. (§ 8(2) ch 50 SLA 1959; am § 30 ch 32 SLA 1971)

Sec. 22.10.100. Vacancies. (a) The governor shall fill a vacancy in the office of superior court judge within 45 days after receiving nominations from the judicial council by appointing one of two or more persons nominated by the council for each vacant position.

(b) The office of a superior court judge becomes vacant 90 days after the election at which he is rejected by a majority of those voting on the question, or for which he failed to file his declaration of candidacy to succeed himself. His successor may be appointed during this period and the appointment becomes effective upon the vacancy occurring. A vacancy in the office also occurs by reason of the death, retirement, resignation, forfeiture or removal from office of a judge. In the event of any vacancy other than an initial vacancy, or immediately upon certification of rejection following an election, or immediately upon failure of a judge to file declaration of candidacy, the judicial council shall meet within 30 days thereafter and submit to the governor the names of two or more persons nominated to fill each vacancy. (§ 23 ch 50 SLA 1959)

APPENDIX I

LAY MEMBERS
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LEW M. WILLIAMS, JR.
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99501

EXECUTIVE DIRECTOR
R. ELDRIDGE HICKS

April 8, 1975

Representative Terry Gardiner
Alaska House of Representatives
Pouch V
Juneau, Alaska 99801

Dear Terry:

Attached please find a revised draft of the legislation proposed by the Judicial Council for improving the permissible timeframe for appointing judges. Pursuant to your observation of the need to insure that a "lame duck" administration could not appoint persons to fill judicial vacancies arising at some unreasonable future time, I have revised the originally proposed legislation to provide that a successor for a judicial vacancy may be appointed by the governor "no more than 60 days" before the vacancy occurs. A 60-day lead time would be sufficient for a private attorney to dispose of pending business and prepare for his move to the new judgeship, while also limiting the power of any governor to make appointments far beyond the tenure of his office. (Of course, the likelihood of such "lame duck" appointments is highly remote even without the present 60-day safeguard. It would require collaboration by a majority of the Judicial Council and the governor--which is itself an unlikely possibility because of the staggered 6-year terms of the Judicial Council members.)

Senator Ziegler has informed me that he will defer action by the Senate Judiciary Committee on this bill relating to the timeframe for judicial appointments, and on the Judicial

Council's proposed bill for evaluating judges prior to retention elections, until action is taken by your committee. I am presuming at this time that you are favorable to introducing these recommendations under the sponsorship of the judiciary committee, by request. If you feel differently, or if I can be of any assistance, please do not hesitate to contact me.

Thank you in advance for your time and consideration.

Sincerely,

R. Eldridge Hicks
Executive Director

REH/jsh
cc: Senator Ziegler
Council members

IN THE _____

_____ BILL NO. _____

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the timeframe for judicial appointments."

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

Section 1. AS 22.05.080(b) is amended to read:

(b) The office of a supreme court justice, including the office of chief justice, becomes vacant 90 days after the election at which he is rejected by a majority of those voting on the question, or for which he failed to file his declaration of candidacy to succeed himself. [A successor to the office of justice may be appointed, and a successor to the office of chief justice may be selected by the other justices, during this 90-day period and the appointment or selection becomes effective upon the vacancy occurring.] A vacancy in the office also occurs by reason of the death, retirement, resignation, forfeiture, or removal from office of a justice. If a vacancy occurs the Judicial Council shall meet [within] no more than 30 days thereafter and submit to the governor the names of two or more persons nominated to fill each vacancy. A successor to the office of supreme court justice may be appointed by the governor no more than 60 days before the vacancy occurs, and such an appointment becomes effective upon the vacancy occurring.

Section 2. AS 22.10.100(c) is amended to read:

(d) The office of a superior court judge becomes vacant 90 days after the election at which he is rejected by a majority of those voting on the question, or for which he fails to file his declaration of candidacy to succeed himself. [His successor may be appointed during this period and the appointment becomes effective upon the vacancy occurring.] A vacancy in the office also occurs by reason of the death, retirement, resignation, forfeiture or removal from office of a judge. In the event of any vacancy other than an initial vacancy, or

immediately upon clarification of rejection following an election, or immediately upon failure of a judge to file declaration of candidacy, the judicial council shall meet [within] no more than 30 days thereafter and submit to the governor the names of two or more persons nominated to fill each vacancy. A successor to the office of superior court judge may be appointed by the governor no more than 60 days before the vacancy occurs, and such an appointment becomes effective upon the vacancy occurring.

Superior
Gilbert bond
25% cotton

HB

391

"An Act providing for disclosure of the names of contractors and the terms of certain public contracts; e.d."

COMMITTEE REPORT

4/10/75

HOUSE

Mr. Speaker: Date 5/15/75

The Committee on JUDICIARY has had HB 391 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(✓) recommends it BE REPLACED WITH CS FOR HB 391 AND THAT CS FOR HB 391 DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Jerry Vardiman

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Jerry Vardiman Chairman

May 19, 1975

House Judiciary Committee
Statement of Intent
HB 391 Disclosure of contractors names and terms

The Judiciary Committee substituted the Legislative Budget and Audit Committee for the Department of Administration as the agency responsible for preparing the survey of public contracts, as the Budget and Audit Committee is better equipped to perform what is essentially an audit function. The report should be generally available to members of the public. It is anticipated that the summary will be distributed to members of the Legislature and several copies will be available in library reference files. Personal copies for private citizens should be sold at cost to the state.

Terry Gardiner
Chairman
House Judiciary

MEMORANDUM

State of Alaska

DIVISION OF LEGISLATIVE AUDIT

TO: The Honorable Thelma Bucholdt
Alaska State Representative

DATE: May 7, 1975

FILE NO:

TELEPHONE NO:

FROM: James Walker

SUBJECT: House Bill 391

Attached to this memo is a computer generated report that lists all of the contractors who have received payments of $1,000 or more from the State of Alaska during the period July 1, 1974 to December 31, 1974. This report includes the number of payments, the total amount of the payments, and the vendor name and address. This information is available by specific agency as well as for the entire state. The source of this information is the monthly PBA transaction files and a vendor master file. These are computerized files maintained by the Department of Administration.

With respect to implementing House Bill 391, the following information is readily available in computerized form;

1. The names of contractors receiving or contracting to receive $1,000 or more in State funds during a given period.

2. The principal places of business of the contractors.

3. The contracting State agency.

4. The amount of funds disbursed or encumbered to specific contractors.

Information as to the terms of the various contracts is not in a computerized form nor, as far as I know, are these documents maintained in a centralized location. Information regarding major stockholders would be very difficult to obtain given the large number of contractors.

I feel that the annual report proposed by House Bill 391 could be prepared at a reasonable cost utilizing available information and the State's computer system. There are, however, several procedures that would have to be established.

First, information as to the terms of each contract would have to be extracted and reported in a concise standardized format. This function would probably be performed by the contracting agency.

Second, this information would be transmitted to a central location where it would be converted to punched cards or any other machine readable medium.

Finally, utilizing document numbers, the computer could match information regarding the content of contracts with vendor data, encumbrance data, and expenditure data and print the desired report. The computer printed report could then be reproduced for distribution.

The one time cost to program the computer to prepare this report should not exceed $10,000. Other associated costs would be difficult to estimate without knowing the specific number of contracts and contractors. A reasonable "guesstimate", however, is $15,000 to $20,000 per year including clerical time, Keypunching, and computer time. This does not include, however, obtaining information as to major shareholders of contractors.

If I can be of further assistance, please feel free to contact me.

HB 391 Contractor Names

Representative Buchholdt, sponsor of the bill, stated that it was designed to learn how the state contracts with private, profit making corporations. She deemed it a "sunshine" bill, and stated that the date the report is requested by in the bill may be too early.

The administration testified that this bill asks for information that the Department of Administration does not have (per vendor per year, subcontractors). He estimated that the state signs approximately 7,000 contracts per year that are not purchase orders. The Department would require lead time of at least a year to prepare to comply with the requests in the bill.

The committee discussed whether the terms of the contract required in the report were too much to ask and whether the contract number would be sufficient. Rep. Buchholdt stated that she wanted to know the nature of the services or goods to be provided. The committee decided that the bill needed more work.

House Judiciary Committee
May 16, 1975

The meeting was called to order at 3:30 by Chairman Gardiner. All members were present.

HB 105 Hold Harmless

This bill eliminates a present abuse whereby large companies hold their subcontractors responsible for the larger company's negligence in contractual agreements. The Commerce CS eliminated the retroactive date.

page 1, line 26: add the language any agreement that is not principally or primarily a contract of indemnity or insurance.
page 2, line 7: change mortgage to mortgages
page 2, line 8: and financing statements. delete and insurance.
delete page 1, lines 23 and 24 (b)
delete page 2, lines 9 and 10.

The above amendments passed and the Judiciary CS for HB 105 was moved out of committee.

SB 113 Health Care information

The prepared Judiciary CS was reviewed and reported out of committee.

SB 158 Larceny

This bill reflects an increase in the dollar amount between misdemeanors and felonies to keep up with inflation. The bill was passed out of committee.

HB 391 Contractor's names

The committee agreed to ask for a summary of terms of the contract instead of "terms". On line 12 "at least annually" was deleted and replaced with "before October 1" and that the reports would commence in 1975.
Page 1, line 25 add "vendors"
The committee requested a letter of intent stating that the cost of printing and distribution should be kept to a minimum with copies available for public inspection, possibly in public libraries.

The bill was passed out of committee as a Judiciary CS.

HB 459 Fathers leave

Susan Sullivan, sponsor of the bill, stated that she intended that new fathers should have the same rights as new mothers. She expected that most people would take about two weeks only. The proposed Judiciary CS stated that this leave could be charged to medical only. She objected first because some offices might interpret this to disallow even annual leave. She suggested that medical leave be used first. She also raised the question of adoptive parents.

HB

402

"An Act relating to removal of disabilities of a minor; and amending Rules 3 and 17 of the Rules of Civil Procedure."

COMMITTEE REPORT

4/9/75 HOUSE HESS

Mr. Speaker: Date 5/14/75

The Committee on JUDICIARY has had HB 402 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(X) recommends it BE REPLACED WITH CS FOR HB 402 AND THAT CS FOR HB 402 DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

House Judiciary Committee
May 5, 1975

HB 402 Disabilities of a Minor

Connie Hansen of Family and Children Services stated that the Department favors the bill as is.

Susan Gordon and Melissa Middleton of Alaska Youth Advocates proposed three amendments: page 2, line 11: insert "only" between "to" and "by', page 2, line 5 change "this requirement of consent" to "the requirement of this subsection" page 2, line 12, add "Except for the specific statutory and constitutional requirements of voting and drinking."

They explained that emancipation is now left up to the judge under common law. This bill would regulate an existing practice and would provide a definition of emancipation.

Don Clocksin of Alaska Legal Services stated that in (d) a guardian for a specific purpose should not be able to consent to emancipation without the consent of the parents. The requirement that the person must be self supporting raises the question of how a person could become trapped -- couldn't get welfare because he was a minor, and couldn't be emancipated because he is not self supporting. Mr. Clocksin objected to the requirement that the person be presently self supporting, and suggested that it would be sufficient if he was capable of self support and able to manage his own financial affairs. Mr. Specking stated that this would remove the whole thrust of responsibility. Mr. Clocksin favored deletion of (e) mandatory guardian ad litem and suggested that a permissive guardian ad litem or an attorney be appointed by the court.

Since there were several suggested amendments, the committee requested that a CS be drawn up for their further consideration.

HB 432 Child Protection

Susan Sullivan, sponsor of the bill, stated that it was required to get state statutes in compliance with federal law in order to be eligible for funding. There is a companion bill making a $100,000 appropriation to provide child counseling, etc. (lines 20 - 23).

The committee questioned the mandatory requirement in line 27, page 1. Mrs. Hansen stated that she would like to prepare a position paper. Mr. Brown stated that he would like to change the penalty provision. The committee determined to hold the bill one day for further work.

House Judiciary Committee
May 9, 1975

The meeting was called to order at 4 p.m. by Chairman Gardiner. All members were present.

SB 350 Marijuana

The amendments proposed by the AG in response to Commissioner Burton's objections (search, confiscate, id) were adopted. The Attorney General stated that under the bill it would be more difficult to initiate a case, but easier to prove one. Mr. Parr moved Judiciary CS SS SB 350 am out of committee. There being no objection, it was so ordered.

HB 432 Child Protection

Mr. Brown moved that Section 2 (e) be deleted. The amendment passed.

Mr. Brown moved on page 2, lines 7 and 8: add imprisonment for not more than one year or . . . $5,000, or by both. The amendment passed.

Page 2, line 6: add willfully. The amendment passed.

Federal statutes require mandatory compliance. The definition in the bill is parallel to the federal definition.

CS HB 432 (Judiciary) was moved out of committee.

HB 402 Disabilities of a minor

Mr. Parr raised the question of specific exemptions for voting and drinking. Mr. Brown moved on line 29 language to the effect that: constitutional age requirements, except for those pertaining to alcohol. The amendment passed.

Mr. Brown moved on page 1, line 20: change the parent to a parent. The amendment passed.

Mr. Brown moved on page 1, line 21: subsection, as to that parent or guardian. The amendment passed.

Mr. Brown moved on page 2, line 1: included but not limited to. The amendment passed.

Judiciary CS HB 402 was passed out of committee.

SB 132 Nursing Home administrators

Research showed that a board was necessary in order to get federal funding. The committee recommended a letter of intent to the effect that it is the desire of the legislature to see a uniform act -- which would eliminate the need for a bunch of boards.

Page 1, delete (b) after consult
line 14: 1 administrator, 2 public representatives
lines 19 - 21 governor. delete rest
page 2, line 1 delete "at least"
page 2, line 17: delete (5) and renumber
page 3, line 4 add not applicable to Pioneers Homes
page 3 delete 100 and renumber, delete "qualified"
page 2, line 5 delete are of good character, with
page 4 delete (2) investigation

The above amendments were adopted and Judiciary CS SB 132 was moved out of committee.

SB 60 Arbitrary Discrimination

The amendments suggested by Mr. Bowman and Mr. Thomas were adopted and the bill reported out of committee as a CS.

H 402

Alaska Youth Advocates, Inc.

1200 EAST 27TH AVENUE PHONE 274-6541
ANCHORAGE, ALASKA 99504

BOARD OF DIRECTORS
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SUSAN ROGUSZKA
KEVIN SANDERS

PROGRAM DIRECTORS
SUSAN C. GORDON
MELISSA MIDDLETON

21 April 1975

Representative Terry Gardiner
Chairman, House Judiciary Committee
Pouch V
Juneau, Alaska 99801

Dear Terry,

Enclosed please find our recommended amendments to HB 402. It is important that these be included in the bill, particularly the third one, because otherwise one could interpret "constitutional and statutory age requirements" to include all those disabilities of minority that the bill wishes to remove -- for instance, ability to sign a contract.

Please pass this position paper on to the other members of your committee.

Thank you very much.

Best wishes,

Melissa Middleton

Melissa Middleton
Co-director

Alaska Youth Advocates, Inc.

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POSITION PAPER ON HB 402

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2. Page 2, line 5 (Section 1, subsection d): For clarity, change the phrase "this requirement of consent" to "the requirement of this subsection."

3. Page 2, line 12 (Section 1, subsection g): To clarify the exceptions of this act, change this subsection to read: "Except for the specific statutory and constitutional requrements of voting and drinking, a minor whose disabilities are removed for general purposes has the power and capacity of an adult, including the right to control himself or herself, the right to be domiciled where he or she desires, the right to receive and control his or her earnings, to sue or be sued, and the capacity to contract."

con't

Alaska has no statutory provisions for either complete or partial removal of the disabilities of a minor. Common law prevails. Emancipation, both general and limited, have been petitioned for and granted in Alaska. However, no guidelines exist, no one knows what the removal of disabilities of minority means in Alaska. It is left solely to the court's discretion, on a case by case basis, to determine the requrements for, procedures of, and effect of such removal. This leaves not only the courts, police, and community, but the young people with a legal situation which is basically undefined, and often times misunderstood.

We have seen relatively few young people that are mature and stable enough to live completely on their own. Putting into statute form what is now common law will not open the floodgate -- the requirements are stringent in HB 402, only those youth who really are capable of living on their own will even petition the court. However, the question of how underage people become emancipated and what emancipation means is definitely one of the most asked by both young people and adults. It is a confusing area of juvenile law that should become clearer.

The Act will regulate and standardize the common law practice of removing the disabilities of minority. Alaska Youth Advocates, Inc. supports the passage of HB 402.

File on 402
with members

Alaska Court System
State of Alaska
303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274-8611

April 18, 1975

Representative Clark Gruening
Pouch V - State Capitol
Juneau, Alaska 99801

Dear Representative Gruening:

I am writing you with regard to HB 402 which was introduced under your sponsorship. This Bill was introduced on 4/9/75 but only came to my attention on 4/17/75.

The Administrative Office of the Courts would like to see some minor changes in this legislation so as to lessen its unnecessary fiscal impact on the Judiciary. Specifically, we would like to see Section 1(e) of the Bill deleted. The reasons for this request are contained in the enclosed memorandum sent to me by the Staff Counsel of the Administrative Office. If you should wish any testimony or further comment from the Administrative Office on our request, we would certainly be glad to comply at your convenience.

Thank you for your consideration in this matter.

Sincerely,

Arthur H. Snowden, II
Administrative Director

AHS/bd
encl.

cc: Hon. Terry Gardiner
Chairman, House Judiciary Committee

Hon. Susan Sullivan
Chairman, House Health, Educa. &
Social Services Committee

Memorandum

Alaska Court System

TO: Arthur H. Snowden, II
Administrative Director

DATE : April 17, 1975

FROM: Susan Burke
Staff Counsel

SUBJECT: House Bill 402 -- Removal of disabilities of a minor.

At your request I have reviewed the above Bill. I have no problems with most of the sections. In fact, legislation to provide procedures and standards for emancipation of minors in Alaska is long overdue. I fail to see the necessity, however, for appointment of a guardian ad litem for the minor petitioning for emancipation, particularly cast as it is in mandatory terms. If the purpose of the proceeding is to demonstrate that the minor should be treated legally as an adult for most purposes, it seems anomalous to require the appointment of a person to represent the "best interests" of the minor. A minor who is self supporting and managing his own financial affairs should be able to advance his own best interests in a court proceeding, either alone or represented by private counsel of his choice. In fact, if a guardian ad litem is necessary it would seem to follow that the minor is not ready to be treated legally as an adult.

Further, this is a proceeding instituted at the behest of the child unlike proceedings under the Children's Rules and divorce actions in which the child's interests may be overlooked or inadequately represented because of his inability to understand the nature of the proceedings. While removal of minority disabilities may ease the ability with which an emancipated minor may handle his affairs, in most instances it is hardly a matter of emergency or dire consequences. I would expect also that the largest proportion of these petitions will be uncontested (i.e., consented to by the parents) and the presence of a guardian ad litem will be superfluous.

At the very least the Bill should make appointment of guardian ad litem discretionary with the court. Preferably section (e) should be deleted altogether, as I believe appointment of a guardian ad litem in these proceedings is unnecessary in light of the fact that a minor must be at least 16 and must be living alone, self-supporting, and managing his own financial affairs as a prerequisite to instituting the proceeding.

Finally, as a matter of pleading practice, if the minor must meet the above requirements before being eligible to petition the court, these matters should be pleaded in the petition and proved at a hearing.

SB

:lw

Adm. F-1
Rev. 2-73

FISCAL NOTE

First Session - Ninth Legislature

file with members

I. REQUEST

Bill No. House Bill 402

Title: Removal Disabilities of a minor

Requested by: Helen Beirne Date:

Return Date Requested:

Agency: H&SS. Div. Family&Children Program:

II. FISCAL DETAIL

Budget Request Unit(s) Affected:

A. EXPENDITURES: (Thousands of dollars)

	OBJECT	FY 75	FY 76	FY 77	FY 78	FY 79	FY 80
100	PERSONAL SERVICES		0				
200	TRAVEL		0				
300	CONTRACTUAL		0				
400	COMMODITIES		0				
500	EQUIPMENT		0				
600	LAND & STRUCTURES		0				
700	GRANTS, CLAIMS, ETC.		0				
	TOTAL		0				

B. FUNDING: (Thousands of dollars)

GENERAL FUND		0				
FEDERAL FUNDS		0				
OTHER		0				

C. POSITIONS:

PERMANENT/TEMPORARY	/	0 /	/	/	/	/
MAN MONTHS (P./T.)	/	0 /	/	/	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

It is usual practice for the petitioner to pay court fees and other related costs. In the case of House Bill No 402, the petitioner is a minor who is self supporting and managing his own financial affairs. The Dept. of Health and Social Services would not be responsible for payment in actions of this type.

IV. ATTACHMENTS

V. DATE: 4-15-75 PREPARED BY: Ada Gleason

Ada Gleason
Assist. Prog. Admin.

Original: Legislative Finance

Memorandum

Alaska Court System

TO: Arthur H. Snowden, II
Administrative Director

DATE : April 17, 1975

FROM: Susan Burke
Staff Counsel

SUBJECT: House Bill 402 -- Removal of disabilities of a minor.

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SB

:lw

Alaska Court System

State of Alaska

303 "K" STREET

ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274-8611

April 18, 1975

Representative Helen D. Beirne
Pouch V - State Capitol
Juneau, Alaska 99801

Dear Representative Beirne:

I am writing you with regard to HB 402 which was introduced under your sponsorship. This Bill was introduced on 4/9/75 but only came to my attention on 4/17/75.

The Administrative Office of the Courts would like to see some minor changes in this legislation so as to lessen its unnecessary fiscal impact on the Judiciary. Specifically, we would like to see Section 1(e) of the Bill deleted. The reasons for this request are contained in the enclosed memorandum sent to me by Staff Counsel of the Administrative Office. If you should wish any testimony or further comment from the Administrative Office on our request, we would certainly be glad to comply at your convenience.

Thank you for your consideration in this matter.

Sincerely,

Arthur H. Snowden, II
Administrative Director

AHS/bd
encl.

cc: Hon. Terry Gardiner
Chairman, House Judiciary Committee

Hon. Susan Sullivan
Chairman, House Health, Edu. & Social
Services Committee

Alaska Youth Advocates, Inc.

1200 EAST 27TH AVENUE PHONE 274-6541
ANCHORAGE, ALASKA 99504

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con't

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The Act will regulate and standardize the common law practice of removing the disabilities of minority. Alaska Youth Advocates, Inc. supports the passage of HB 402.

HB

416

"An Act relating to abuse of power by certain public officers and employees; and providing for an effective date."

COMMITTEE REPORT

4/14/75

HOUSE

Mr. Speaker: Date 4/28/75

The Committee on JUDICIARY has had HB 416 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

(✓) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Terry Gardiner	[illegible]	
[illegible]	[illegible]	
[illegible]		
[illegible]		

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Terry Gardiner Chairman

AMENDMENT

OFFERED IN THE HOUSE: BY: House Judiciary Committee

To: _____ HOUSE BILL No. HB 416

SENATE BILL No. _____

PAGE: 1 LINE: 20

after "duties" delete the comma and insert: other than giving sworn testimony or evidence in a legal proceeding,

Introduced: 4/14/75
Referred: Judiciary

IN THE HOUSE BY THE JUDICIARY COMMITTEE

HOUSE BILL NO.416

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to abuse of power by certain public officers and employees; and providing for an effective date."

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

* Section 1. AS 39 is amended by adding a new chapter to read:

CHAPTER 51. ABUSE OF POWER BY PUBLIC OFFICERS AND EMPLOYEES.

Sec. 39.51.010. MISUSE OF CONFIDENTIAL INFORMATION. A person who is or has been an employee of the Department of Law, the Department of Public Safety, a municipal police force, or any other state or local agency which keeps or has access to confidential information pertaining to citizens of the state, and through his employment learns confidential information about a citizen of the state and who, while in office or after leaving office, uses the information for personal gain or in a manner not connected with the performance of his official duties, other than giving sworn testimony or evidence in a legal proceeding, is guilty of a misdemeanor and upon conviction is punishable by imprisonment for not more than one year, or by a fine of not more than $5,000, or by both. As used in this section "confidential information" means information which is not available to citizens of the state through open inquiry to the agency possessing the information.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.10.-070(c).

#

ABUSE OF POWER EXAMPLES

1. Watergate
2. Social worker sees files of juvenile, makes notes, later uses them against the adult for blackmail.
3. Police misusing investigation files.
4. Dick Bradley deal

House Judiciary Committee
April 24, 1975

HB 384 Evaluation of Judges

This bill was being held one legislative day for further consideration on the floor. Mr. Brown prepared amendments and submitted them to the committee in the form of a CS. It was agreed that the amendments would be submitted on the floor as by the Judiciary Committee.

SB 290 Rent Control

The committee reviewed the prepared CS and approved it.

HB 416 Abuse of Power

Pat Wellington of Public Safety testified that the Department was in favor of the concept but that the bill was open to possible abuse in that the officers and police departments might be subject to harassment. He suggested adding the language that if a false report is knowingly made, there is a penalty. The committee mentioned that CS SB 167, also in Judiciary, would cover this problem. Mr. Wellington agreed and said that CS SB 167 was approved by the Department.

Mr. Brown moved on line 20: after duties add: other than giving sworn testimony or evidence in a legal proceding. The amendment passed.

Mr. Hanley of the Attorney General's Office testified that they supported HB 416.

HB 417 Intelligence Information

Mr. Wellington stated that it has been a historical function of the police to gather intelligence information. It is diseminated on a need to know basis. He knows of no abuse of this in Alaska. He felt that the bill would give the commission an almost impossible task in drawing up the regs. He agreed that there was a need to protect the public and that perhaps the Department should be required to provide further justification before gathering information on a person. He felt that in general the bill would hinder the police. There is a legitimate need to keep files on some people to protect the public in general.

Mr. Hanley stated that the Attorney General supports the bill. He felt it would provide guidelines within which the Department could collect information. He stated that the commission is very representative and that they have already adopted the AJIS regulations.

House Judiciary Committee
April 28, 1975

The meeting was called to order at 1:25 p.m. by Chairman Gardiner. All members were present except Mr. Eliason.

SB 99 Public Records

The committee reviewed the proposed CS by the Judiciary Committee which put section 2 in title 11 and incorporated material relating to the Ombudsman. Mr. Brown moved the Judiciary CS CS SB 99 do pass. There being no objection, it was so ordered.

SB 167 False reports

Mr. Brown moved SB 167 out do pass since it had been determined that it was in the correct title.

HB 418 Conflict of Interest

The committee reviewed the proposed CS by the Judiciary Committee which cleans up the problem of "members of municipal bodies" and "special" elections.

Mr. Parr raised the question on page 1, line 26 as to whether "legislative" only applied to state level or whether it could be interpreted to include municipal level. Mr. Walker stated that it could be open to interpretation. The committee requested Mr. Walker to draw up additional language to the effect that legislative related to matters before the state government.

HB 416 Abuse of power

Since the bill was determined to be in the correct title, Mr. Brown moved HB 416 out of committee as amended. There being no objection, it was so ordered.

HB 417 Intelligence Information

Mr. Brown moved HB 417 out of committee. There being no objection, it was so ordered.

CS SCR 5 Criminal Code

Mr. Brown moved this bill out of committee as it was the same as a bill already acted on by the committee. Mr. Gardiner mentioned the possibility of getting a LEAA grant for the study to be matched by state funds.

HB

417

"An Act relating to law enforcement intelligence information."

COMMITTEE REPORT

HOUSE

4/15/75

Mr. Speaker: Date 4/22/75

The Committee on JUDICIARY has had HB 417 under consideration. A Majority of the members of the Committee

(X) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends: _____

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends.

_____ Chairman

file
HB 417

Terry Gardiner

Box 1092, Ketchikan, Alaska 99901 Pouch V, Juneau, Alaska 99811

May 19, 1976

Avrum Gross, Attorney General
Pouch K
Juneau, Alaska

Dear Av,

This letter relates to the implementation of HB 417 which has now become law. The responsibility of developing standards and regulations to implement HB 417 rests with the Governor's Commission on Criminal Justice. Hence as chairman of the Governor's Commission, I am sending you the following suggestions.

I have been contacted by Mr. Craig Cornish who works with the law firm of Wagstaff and Middleton. Evidently Mr. Cornish has had a long standing interest in the subject area of criminal intelligence information. I am enclosing a copy of an outline that he suggests might be utilized by the Governor's Commission in implementing HB 417. If the Governor's Commission finds it necessary to hire or contract with someone to do research and draw up regulations for this criminal intelligence project, Mr. Cornish might be an ideal candidate here in Alaska.

Mr. Michael Rubenstein, Executive Director of the Alaska Judicial Council has also expressed interest to me in the possibility of his office being involved in the implementation of HB 417. As a member of the Legislature I have been very pleased with some of the recent studies and efforts of the Alaska Judicial Council in the criminal justice area. If the Governor's Commission should decide that some amount of study needs to be done before regulations are drawn up concerning criminal intelligence information in Alaska the Judicial Council might be a good source to conduct such a study.

These are merely some suggestions that I wanted to pass on to you now that the legislation has passed and is turned over to the administration for implementation. I would appreciate it if you would have the staff of the Governor's Commission on Criminal Justice keep me informed as to the progress made in the next year on the implementation of HB 417.

Sincerely,

_____

Terry Gardiner

Wagstaff & Middleton
Lawyers

May 4, 1976

Terry Gardiner
House Judiciary Committee
Alaska Legislature
Pouch V
Juneau, Alaska 99801

Dear Terry,

Enclosed is my suggested outline for the Governor's Commission's study directed by HB 417.

It is also my suggestion that due to the seriousness of the subject matter and the divergent interests in law enforcement and privacy, that an agency or person independant of the law enforcement field conduct the study. I am very much interested in doing the study. Another possibility is the Judicial Council.

Very truly yours,

Craig M. Cornish

Enclosure

CMC/n

Robert H. Wagstaff R. Collin Middleton
500 L Street, Anchorage, Alaska 99501 907 277-0282/272-9811

ISSUES

I. Choosing Methods For Analyzing Privacy Issues.

Virtually every privacy problem involves resolution of conflicting values:* the interests of the state in obtaining and using certain kinds of information about individuals versus the interests of individuals in preserving the confidentiality of such information.

A. Balancing Test: Weigh competing interests.

B. Fundamental Rights: Some privacy interests are fundamental and should require a substantial law enforcement interest to override the citizens' interest in retaining control over information about themselves.

C. Other Tests:

II. Issues Facing The Commission

A. What Kinds of Intelligence Information Should Law Enforcement Agencies Gather? This focuses upon genre of information. In order to answer the question, research in the following matters should be presented to the Commission:

1. What kinds of information are law enforcement agencies in Alaska now gathering and will be gathering in the forseeable future?

2. Case and statutory law on kinds of intelligence information law enforcement agencies are permitted to

* But the legislature has an unqualified constitutional duty to implement privacy protections, see Article I, Sec. 22 of Alaska Constitution.

gather. What is the present generic scope on the federal level? In other states?

3. What does the public believe to be the proper kind of information which may be gathered by Alaskan law enforcement agencies? (To be achieved through a public opinion poll of Alaska residents*)

4. Recommendation.

5. Implementation.

   a) Regulation

   b) Statute

B. For What Purposes Should Law Enforcement Agencies Be Allowed To Collect Intelligence Information? This issue focuses upon the reasons underlying intelligence gathering.

1. Why are Alaskan law enforcement agencies currently collecting intelligence information?

2. What case and statutory law presently exist on the legitimate purpose of law enforcement collection of intelligence?

3. For what purposes is the public willing to permit the collection of law enforcement intelligence?

* I have received an estimate from an opinion research group on the cost of conducting a public opinion poll on the question relative to this study. For $7,500.00 we would receive a 60 - 70 question survey f 300 - 350 households encompassing 20 communities which would be accurate with a 3% margin of error.

4. Recommendation.

5. Implementation.

a) Legislation.

b) Regulation.

C. What Methods May Law Enforcement Agencies Properly Use To Collect Intelligence Information? Wiretapping, aerial surveillance, etc.

1. What methods are currently used by Alaskan law enforcement agencies to collect intelligence information?

2. What case and statutory law presently exist on the permissible methods which law enforcement agencies may use to collect intelligence?

3. What methods for collection of law enforcement intelligence are supported by Alaskan public opinion.

4. Recommendation.

5. Implementation.

a) Legislation.

b) Regulation.

D. How Should Intelligence Information Be Properly Safeguarded? This involves structural checks to insure compliance with the regulations governing the flow of intelligence data.

1. What are current procedures Alaskan law enforcement agencies use to safeguard intelligence information?

2. What standard of care should be imposed on law enforcement agencies in the safeguarding of intelligence information?

3. Recommendation.

4. Implementation.

   a) Legislation.

   b) Regulation.

E. Who Should Have Access to Law Enforcement Intelligence Information? This focuses upon both the right of the citizen to have access to information about himself, and, to whom it may be disseminated.

1. What rights do citizens presently have to inspect their own intelligence files.

2. To whom is intelligence data presently disseminated?

3. What case and statutory law presently exist to govern both citizen access to their own files and to whom such information may be released?

4. What kind of access to law enforcement intelligence does the public desire?

5. Recommendation.

6. Implementation.

   a) Legislation.

   b) Regulation.

F. How Should Law Enforcement Intelligence Information Be Kept Accurate? This focuses upon ensuring the accuracy of the information maintained, as opposed to guarding against leaks as in subsection D above.

1. What current methods are used by Alaskan law enforcement agencies to keep law enforcement intelligence accurate?
2. What present case and statutory law exist on the duty of law enforcement to maintain accurate intelligence data?
3. What methods for maintaining accuracy of law enforcement intelligence does the Alaskan public support?
4. Recommendation.
5. Implementation.
   a) Legislation.
   b) Regulation.

Introduced: 4/15/75
Referred: Judiciary

IN THE HOUSE BY GARDINER

HOUSE BILL NO. 417

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to law enforcement intelligence information."

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

* Section 1. AS 12.62.010 is amended by adding a new subsection to read:

(b) In addition to regulations adopted under (a) of this section, the commission shall, after appropriate consultation with representatives of state and local law enforcement agencies, adopt regulations and procedures governing the gathering of intelligence information and the storage, security, and privacy of the intelligence information collected and maintained by law enforcement agencies in the state. The notice and hearing requirements of the Administrative Procedure Act (AS 44.62), relating to the adoption of regulations, apply to regulations adopted under this subsection. In adopting these regulations, the commission shall take into account both the interest of law enforcement agencies in maintaining the ability to conduct intelligence operations and each individual's right to privacy.

* Sec. 2. AS 12.62 is amended by adding new sections to read:

Sec. 12.62.015. COLLECTION AND SECURITY OF INTELLIGENCE INFORMATION. (a) Regulations of the commission, adopted under sec. 10(b) of this chapter, shall include requirements and guidelines concerning the categories of intelligence information which may be gathered by law enforcement agencies in the state, the purposes for which intelligence information may be collected, and the methods and procedures which may be used in collecting intelligence information.

(b) The commission's regulations adopted under sec. 10(b) of this chapter shall establish standards for the confidentiality and security of intelligence information and provide for controls, access to and dissemination of intelligence information, and methods for updating, correcting and purging intelligence information while maintaining the security and confidentiality of the information.

Sec. 12.62.017. ANNUAL REPORT TO COMMISSION. The chief officer of each State or Municipal law enforcement agency shall submit an annual report to the commission, in the form required by the commission, certifying compliance by the agency with the regulations adopted by the commission under sec. 10(b) of this chapter.

* Sec. 3. AS 12.62.060 is amended to read:

Sec. 12.62.060. CIVIL AND CRIMINAL REMEDIES. (a) A person with respect to whom criminal justice information has been wilfully maintained, disseminated, or used, or intelligence information has been collected, obtained or used, in violation of this chapter has a civil cause of action against the person responsible for the violation and shall be entitled to recover actual damages and reasonable attorney fees and other reasonable litigation costs.

(b) A person who wilfully disseminates or uses criminal justice information knowing such dissemination or use to be in violation of this chapter, or who knowingly collects, obtains or uses intelligence information in violation of this chapter, upon conviction, is punishable by a fine of not more than $1,000 or by imprisonment for not more than one year, or by both.

(c) A good faith reliance upon the provisions of this chapter or of applicable law governing maintenance, dissemination, or use of criminal justice information, or upon rules, regulations, or procedures prescribed under this chapter is a complete defense to a civil or

criminal action brought under this chapter.

* Sec. 4. AS 12.62.070 is amended by adding a new paragraph to read:

(7) "intelligence information" means information concerning the background, activities or associations of an individual or group collected or obtained by a law enforcement agency for preventative, precautionary or general investigative purposes not directly connected with the investigation of a specific crime which has been committed or with the apprehension of a specific person in connection with the commission of a particular crime.

HB 417 extends the authority of the Governor's Commission on the Administration of Justice to make regulations for "intelligence activities" by law enforcement personnel, similar to what was already done with the AJIS System. The proposed bill would regulate local law enforcement agencies as well as state agencies.

Standards do exist for the Commission to work with. An LEAA funded project, "the National Commission on Standards and Goals" has developed standards for all phases of the criminal justice system, including police work. In their publication, POLICE, exist several standards relating to intelligence. In addition, various regulations adopted by the Governor's Commission for the AJIS system will be applicable to the new regulations for intelligence activities.

The proposed bill sets up a useable definition of intelligence activities. It sets out specific goals for the Commission to accomplish. To regulate and establish:

1. categories of intelligence information which may be gathered by law enforcement agencies in the state;

2. those purposes for which intelligence information may be collected;

3. the methods and procedures which may be used in collecting intelligence information;

4. standards for the confidentiality and security of intelligence information;

5. standards for controls; access to and dissemination of intelligence information;

6. methods for updating, correcting and purging intelligence information.

The Governor's Commission is a good, well-balanced body to accomplish this task. Among its members are: the Attorney General, the Chief Justice of the Supreme Court, the Commissioner of Public Safety, two legislators, and other members of the criminal justice system. The legislature will have an opportunity to review any regulations that the Commission comes up with; and in addition, public hearings will be held. The law specifically states that the interests of law enforcement agencies in maintaining the ability to conduct intelligence operations will be taken into account.

The law is needed in order to define limits to this type of activity, to establish clear guidelines for the activities of law enforcement authorities, and to raise the standards of law enforcement efforts statewide.

Background:

(1) The collection of intelligence information by law enforcement agencies has been an ongoing activity for many years. This activity does not specifically relate to any information gained through the investigation of specific crimes, but is general background activity or association information of groups or individuals collected for the general information of the law enforcement agencies. This general information is used to keep law enforcement agencies informed on alleged potential criminal activities by these individuals or groups. Unfortunately, this information is not ever reviewed by the other agency except the law enforcement agency collecting the information. It is subject to abuse.

(2) In this day and age of computer retrieval of information, the efficiency with which this information can now be collected and retained through the use of modern computerized storage and retrieval methods makes it more easily subject to unlawful or unauthorized use by individuals through the dissemination of this readily retrievable information to individuals outside the law enforcement community.

(3) The voters of this State adopted a Right to Privacy amendment. This indicates a strong belief on the part of the people of this State that their right to privacy be protected and not infringed through activities, however well meaning, that may tend to reduce the level of privacy enjoyed by the citizens of this State. HB 417 is another step in the process of the legislative implementation of this amendment.

The bill itself designates the Governor's Commission on the Administration of Justice as the agency to promulgate the regulations and procedures governing the gathering storage, security and privacy of the intelligence information collected. The Governor's Commission is a broadly based representative group of all agencies involved in law enforcement such as the police, prosecution, judiciary, defense attorneys, corrections and rehabilitative personnel and members of the public at large. Such a broadly based group has already successfully implemented the regulations governing the collection and dissemination of justice information for use by all ofthe criminal justice agencies. They already have experience in balancing the various interests involved in such an undertaking. Such a broadly based group is imminently qualified to promulgate regulations which would duly reflect the concern for security by the law enforcement agencies collecting this information and the protection of the rights of the individuals not specifically being investigated for the commission of crimes, but for one reason or another may be considered subject to the collection of intelligence information on their background activities or associations.

Governor's Commission on Administratio
of Justice

1. Av Gross - AG
2. Dick Burton - P.S.
3. Francis L. Williamson - HESS
4. Jay Rabinowitz - S.C.
5. Herb Soll - D.A.
6. Glenn Hackney - 2 legis. 1
7. John Rader
8. Capt Charles Anderson - Police officer
9. Nora Guinn - citizen

1

House Judiciary Committee
April 24, 1975

HB 384 Evaluation of Judges

This bill was being held one legislative day for further consideration on the floor. Mr. Brown prepared amendments and submitted them to the committee in the form of a CS. It was agreed that the amendments would be submitted on the floor as by the Judiciary Committee.

SB 290 Rent Control

The committee reviewed the prepared CS and approved it.

HB 416 Abuse of Power

Pat Wellington of Public Safety testified that the Department was in favor of the concept but that the bill was open to possible abuse in that the officers and police departments might be subject to harassment. He suggested adding the language that if a false report is knowingly made, there is a penalty. The committee mentioned that CS SB 167, also in Judiciary, would cover this problem. Mr. Wellington agreed and said that CS SB 167 was approved by the Department.

Mr. Brown moved on line 20: after duties add: other than giving sworn testimony or evidence in a legal proceding. The amendment passed.

Mr. Hanley of the Attorney General's Office testified that they supported HB 416.

HB 417 Intelligence Information

Mr. Wellington stated that it has been a historical function of the police to gather intelligence information. It is diseminated on a need to know basis. He knows of no abuse of this in Alaska. He felt that the bill would give the commission an almost impossible task in drawing up the regs. He agreed that there was a need to protect the public and that perhaps the Department should be required to provide further justification before gathering information on a person. He felt that in general the bill would hinder the police. There is a legitimate need to keep files on some people to protect the public in general.

Mr. Hanley stated that the Attorney General supports the bill. He felt it would provide guidelines within which the Department could collect information. He stated that the commission is very representative and that they have already adopted the AJIS regulations.

House Judiciary Committee
April 28, 1975

The meeting was called to order at 1:25 p.m. by Chairman Gardiner. All members were present except Mr. Eliason.

SB 99 Public Records

The committee reviewed the proposed CS by the Judiciary Committee which put section 2 in title 11 and incorporated material relating to the Ombudsman. Mr. Brown moved the Judiciary CS CS SB 99 do pass. There being no objection, it was so ordered.

SB 167 False reports

Mr. Brown moved SB 167 out do pass since it had been determined that it was in the correct title.

HB 418 Conflict of Interest

The committee reviewed the proposed CS by the Judiciary Committee which cleans up the problem of "members of municipal bodies" and "special" elections.

Mr. Parr raised the question on page 1, line 26 as to whether "legislative" only applied to state level or whether it could be interpreted to include municipal level. Mr. Walker stated that it could be open to interpretation. The committee requested Mr. Walker to draw up additional language to the effect that legislative related to matters before the state government.

HB 416 Abuse of power

Since the bill was determined to be in the correct title, Mr. Brown moved HB 416 out of committee as amended. There being no objection, it was so ordered.

HB 417 Intelligence Information

Mr. Brown moved HB 417 out of committee. There being no objection, it was so ordered.

CS SCR 5 Criminal Code

Mr. Brown moved this bill out of committee as it was the same as a bill already acted on by the committee. Mr. Gardiner mentioned the possibility of getting a LEAA grant for the study to be matched by state funds.

HB 417 extends the authority of the Governor's Commission on the Administration of Justice to make regulations for "intelligence activities" by law enforcement personnel, similar to what was already done with the AJIS System. The proposed bill would regulate local law enforcement agencies as well as state agencies.

Standards do exist for the Commission to work with. An LEAA funded project, "the National Commission on Standards and Goals" has developed standards for all phases of the criminal justice system, including police work. In their publication, POLICE, exist several standards relating to intelligence. In addition, various regulations adopted by the Governor's Commission for the AJIS system will be applicable to the new regulations for intelligence activities.

The proposed bill sets up a useable definition of intelligence activities. It sets out specific goals for the Commission to accomplish. To regulate and establish:

1. categories of intelligence information which may be gathered by law enforcement agencies in the state;

2. those purposes for which intelligence information may be collected;

3. the methods and procedures which may be used in collecting intelligence information;

4. standards for the confidentiality and security of intelligence information;

5. standards for controls; access to and dissemination of intelligence information;

6. methods for updating, correcting and purging intelligence information.

The Governor's Commission is a good, well-balanced body to accomplish this task. Among its members are: the Attorney General, the Chief Justice of the Supreme Court, the Commissioner of Public Safety, two legislators, and other members of the criminal justice system. The legislature will have an opportunity to review any regulations that the Commission comes up with; and in addition, public hearings will be held. The law specifically states that the interests of law enforcement agencies in maintaining the ability to conduct intelligence operations will be taken into account.

The law is needed in order to define limits to this type of activity, to establish clear guidelines for the activities of law enforcement authorities, and to raise the standards of law enforcement efforts statewide.

Background:

(1) The collection of intelligence information by law enforcement agencies has been an ongoing activity for many years. This activity does not specifically relate to any information gained through the investigation of specific crimes, but is general background activity or association information of groups or individuals collected for the general information of the law enforcement agencies. This general information is used to keep law enforcement agencies informed on alleged potential criminal activities by these individuals or groups. Unfortunately, this information is not ever reviewed by the other agency except the law enforcement agency collecting the information. It is subject to abuse.

(2) In this day and age of computer retrieval of information, the efficiency with which this information can now be collected and retained through the use of modern computerized storage and retrieval methods makes it more easily subject to unlawful or unauthorized use by individuals through the dissemination of this readily retrievable information to individuals outside the law enforcement community.

(3) The voters of this State adopted a Right to Privacy amendment. This indicates a strong belief on the part of the people of this State that their right to privacy be protected and not infringed through activities, however well meaning, that may tend to reduce the level of privacy enjoyed by the citizens of this State. HB 417 is another step in the process of the legislative implementation of this amendment.

The bill itself designates the Governor's Commission on the Administration of Justice as the agency to promulgate the regulations and procedures governing the gathering storage, security and privacy of the intelligence information collected. The Governor's Commission is a broadly based representative group of all agencies involved in law enforcement such as the police, prosecution, judiciary, defense attorneys, corrections and rehabilitative personnel and members of the public at large. Such a broadly based group has already successfully implemented the regulations governing the collection and dissemination of justice information for use by all ofthe criminal justice agencies. They already have experience in balancing the various interests involved in such an undertaking. Such a broadly based group is imminently qualified to promulgate regulations which would duly reflect the concern for security by the law enforcement agencies collecting this information and the protection of the rights of the individuals not specifically being investigated for the commission of crimes, but for one reason or another may be considered subject to the collection of intelligence information on their background activities or associations.

M E M O R A N D U M

To: Terry Gardiner

From: Jamie Love

Date: May 4, 1975

RE: HB 417; Law enforcement intelligence information

HB 417 extends the authority of the Governor's Commission on the Administration of Justice to make regulations for "intelligence activities" by law enforcement personel, similar to what was already done with the AJIS System. The proposed bill would regulate local law enforcement agencies as well as state agencies. It would probably be the first attempt at regulation of this type in the country. To my knowledge, no other state has attempted to define and regulate activities defined as "intelligence information" in this bill. It is quite possible that Alaska will become a model for other states. It is a rather new concept; original as far as I know.

Standards do exist for the Commission to work with. An LEAA funded project, "the National Commission on Standards and Goals" has developed standards for all phases of the criminal justice system, including police work. In their publication, POLICE, exist several standards relating to intelligence. In addition, various regulations adopted by the Governor's Commission for the AJIS System will be applicable to the new regulations for intelligence activities.

The proposed bill sets up a useable definition of intelligence activities. It sets out specific goals for the Commission to accomplish. To regulate and establish:

1) categories of intelligence information which may be gathered by law enforcement agencies in the state

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4) standards for the confidentiality and security of intelligence information

5) standards for controls: access to and dissemination of intelligence information

6) methods for updating, correcting and purging intelligence information

The Governor's Commission is a good, well-balanced body to accomplish this task. Among its members are: the Attorney General, the Chief Justice of the Supreme Court, the Commissioner of Public Safety, two legislators, and other members of the criminal justice system. The legislature will have an opportunity to review any regulations that the Commission comes up with; and in addition, public hearings will be held. The law specifically states that the interests of law enforcement agencies in maintaining the ability to conduct intelligence operations will be taken into account.

The law is needed in order to define limits to this type of activity, to establish clear guidelines for the activities of law enforcement authorities, and to raise the standards of law enforcement efforts statewide.

HB

418

House Judiciary Committee
April 23, 1975

The meeting was called to order at 1:25 by Chairman Gardiner. All members were present.

SB 266 Motor Vehicles

Charlie Smith of the Department of Public Safety testified that at present various agencies serve intra related motor vehicle functions. SB 266 would consolidate these functions under the Department of Public Safety and is expected to produce a fiscal savings of $30,000 in FY 77. Initially the transfer will cost $10,000 to reclassify employees and relocate some facilities. Employees of other departments will become employees of Public Safety.

Mr. Specking moved SB 266 out of committee do pass. There being no objection, it was so ordered.

HB 276 Real Estate Appraisers

The committee discussed the need to protect the public vs. the profession's need to protect themselves. Since there had been no public input regarding a problem, Mr. Specking moved to hold the bill until next year. Mr. Brown objected. On vote, the committee decided to hold the bill but to prepare all the latest suggestions into another proposed CS to be ready to consider at that time.

HB 418 Conflict of Interest

Mr. Walker stated that the language "general election" is defined in statute to mean only the November election. This bill would include "regular" elections (annual municipal elections) or special elections.

Mr. Eliason moved in line 14 to delete "called for that purpose" since it was possible that a special election would be called for another purpose but the subject of conflict of interest could be considered. The amendment passed.

Mr. Walker brought up a problem with HB 390 which is now on the Governor's desk. "Members of municipal bodies" was the language used to provide a further exemption. These people (this language) was not in the original bill so Mr. Walker felt that by exempting them the bill impliedly included them in the rest of the bill. There is no definition for who a member of a municipal body is. The committee requested that Mr. Walker draw up a CS for HB 148 which would include Mr. Eliason's amendment and would correct the problem in HB 390. The committee would consider the CS when prepared.

House Judiciary Committee
April 28, 1975

The meeting was called to order at 1 [illegible] p.m. by Chairman Gardiner. All members were present except Mr. Ellason.

SB 99 Public Records

The committee reviewed the proposed CS by the Judiciary Committee which put section 2 in title 11 and incorporated material relating to the Ombudsman. Mr. Brown moved the Judiciary CS CS SB 99 do pass. There being no objection, it was so ordered.

SB 167 False reports

Mr. Brown moved SB 167 out do pass since it had been determined that it was in the correct title.

HB 418 Conflict of Interest

The committee reviewed the proposed CS by the Judiciary Committee which cleans up the problem of "members of municipal bodies" and "special" elections.

Mr. Parr raised the question on page 1, line 26 as to whether "legislative" only applied to state level or whether it could be interpreted to include municipal level. Mr. Walker stated that it could be open to interpretation. The committee requested Mr. Walker to draw up additional language to the effect that legislative related to matters before the state government.

HB 416 Abuse of power

Since the bill was determined to be in the correct title, Mr. Brown moved HB 416 out of committee as amended. There being no objection, it was so ordered.

HB 417 Intelligence Information

Mr. Brown moved HB 417 out of committee. There being no objection, it was so ordered.

CS SCR 5 Criminal Code

Mr. Brown moved this bill out of committee as it was the same as a bill already acted on by the committee. Mr. Gardiner mentioned the possibility of getting a LEAA grant for the study to be matched by state funds.

House Judiciary Committee
May 12, 1975

The meeting was called to order at 1:20 p.m. by Chairman Gardiner. All members were present.

CS HB 418 Conflict of Interest

Mr. Walker explained the new CS stating that it takes care of the committee's concerns about members of a municipal body. Mr. Hanley of the Attorney General's Office agreed that the proposed CS solves the problem created by the earlier legislation. Mr. Bradley moved the Judiciary CS HB 418 out of committee. There being no objection, it was so ordered.

SB 302 Convicts/weapons

Mr. Turnbull explained that the proposed language from the Attorney General's office clears up the vague problem in lines 10 and 11 and the committee's problem with section (c). The Judiciary CS was moved out of committee.

SB 113 Health Care Information

This bill fulfills a federal requirement which will enable the state to receive medicade money -- that of a professional staff review. The bill stipulates those situations under which the person affected cannot sue and which records must be kept confidential.

Senator Ziegler testified that 030 provides adequate safeguards for someone who feels that he didn't receive a fair hearing. Only the actual minutes of the hearing are to be kept confidential.

Mr. Brown moved on page 2, line 4: change punctuation and add except as provided in this section, all
line 8: except as provided in this section, all
line 11: organization and the proceeding
line 23: hearings, except as provided in this section Testimony, doucments, proceedings, records and other evidence adduced before a review organization that are otherwise inaccessible under this section, may be obtained under subpoena for discovery proceedings brought by a plaintif who claims that information provided to a review organization was false and that the person providing the information knew or had reason to believe that the information was false.
These amendments passed in substance. The committee requested that a CS be prepared for their review.

SB 202 Malicious mischief

The repealers are covered under the bill's definition of real or personal property. They included mostly misdemeanor penalties which, according to the bill, will be dependent upon the value of the property.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

April 5, 1975

M E M O R A N D U M

TO: Representative Terry Gardiner

FROM: David T. Walker, Legislative Counsel

SUBJECT: Bill relating to conflicts of interest

Mr. Mike Miller requested this bill. It would allow municipal officers to give legislative advice and legislative assistance for fees. It would also allow municipal officers to represent clients before state agencies. If it is the legislature's wish to authorize this practice for municipal officers (as it has for members of state commissions and boards), then the bill should be enacted as soon as possible.

NOTE:

Sec. 39.50.145 enacted by HCS CSSB 62 am H (conflicts of interest) allows municipalities to exempt its officers from the requirement of the Act if a majority of the voters at a "general election" vote to exempt them. This language may cause difficulties in that the only definition I can find of general election is found in AS 15.60.010(10):

> (10) "general election" means the election held on the Tuesday after the first Monday in November of even-numbered years;

Local elections are defined by (2):

> (2) "local election" means any election held by a borough, city, or other local unit of government;

Special elections are defined by (22):

> (22) "special election" means any election held at a time other than when the general or party primary election is held and any election called to be held with, and at the time of, the general or party primary election;

Within the municipal code, AS 29.78.010 defines municipal elections and regular elections:

> (7) "municipal election" includes but is not limited to elections to choose city councilmen, borough assemblymen, school board members, and utility board members;
>
> (14) "regular election" means the municipal election held on the first Tuesday of October annually, or on an election date or at an interval of years provided by ordinance;

Whatever term is used, I recommend that the section be amended to include a statutory cross-reference (i.e., local election as defined by AS 15.60.010(2)). You may wish to consider this problem in the bill attached to this memo -- but you have more time to consider the problem addressed by this note than the one addressed by the bill.

DTW/sm

SSHB

432

" An Act relating to child protection; and providing for an effective date."

COMMITTEE REPORT

4/30/75

HOUSE

FINANCE

Mr. Speaker: Date 5/15/75

The Committee on JUDICIARY has had SSHB 432

under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(✓) recommends it BE REPLACED WITH CS FOR SS HB 432 AND THAT CS FOR SS HB 432 DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

Thurs Dec 19, 1974 vol 39 Number 245 page 43940
Subsection (7)

funding ceiling Tues Feb 18, 1975 vol 40 Number 33
page 7000

From the Desk of .....

REPRESENTATIVE TERRY GARDINER

May 15, 1975

TO: Finance Committee

The attached was received from the Department after the Judiciary Committee had acted on this bill. Perhaps you would like to consider it in your deliberations on HB 432.

POSITION PAPER
ON
HOUSE BILL 432
(Sponsor Substitute for)

An act relating to child protection.

The Department of Health and Social Services recommends that Section 47.17.065 Counseling and Information Grants be rewritten to read as follows: (a) The department may provide funds to private or public non-profit community service agencies and hospitals in the state for professional counseling services to parents. The funds may also be used by the agencies to provide information to the community concerning the problems of child abuse and the help available in the state for abused children and their families. Funds appropriated under this section may be used as the state or local contribution for obtaining federal funds under the Child Abuse Treatment and Prevention Act (P.L. 93-247).

House Bill 432 presumes that funds will be allocated to the Department of Health and Social Services for grants. It appears to be an unnecessary step to involve the Office of Child Advocacy when House Bill 432 mandates the Department of Health and Social Services to take specific action.

There is no additional cost to the State of Alaska.

The Department supports the Bill with changes recommended above.

Recommended By: Freda M. Borchick — 5-8-75
Freda M. Borchick
Acting Director
Date

Approved By: Francis S.L. Williamson — 5/8/75
Francis S.L. Williamson
Commissioner
Date

Comments by Governor's Office:

By: _____ Date

HB
459

House Judiciary Committee
May 16, 1975

The meeting was called to order at 3:30 by Chairman Gardiner. All members were present.

HB 105 Hold Harmless

This bill eliminates a present abuse whereby large companies hold their subcontractors responsible for the larger company's negligence in contractual agreements. The Commerce CS eliminated the retroactive date.

page 1, line 26: add the language any agreement that is not principally or primarily a contract of indemnity or insurance.
page 2, line 7: change mortgage to mortgages
page 2, line 8: and financing statements. delete and insurance.
delete page 1, lines 23 and 24 (b)
delete page 2, lines 9 and 10.

The above amendments passed and the Judiciary CS for HB 105 was moved out of committee.

SB 113 Health Care information

The prepared Judiciary CS was reviewed and reported out of committee.

SB 158 Larceny

This bill reflects an increase in the dollar amount between misdemeanors and felonies to keep up with inflation. The bill was passed out of committee.

HB 391 Contractor's names

The committee agreed to ask for a summary of terms of the contract instead of "terms". On line 12 "at least annually" was deleted and replaced with "before October 1" and that the reports would commence in 1975.
Page 1, line 25 add "vendors"
The committee requested a letter of intent stating that the cost of printing and distribution should be kept to a minimum with copies available for public inspection, possibly in public libraries.

The bill was passed out of committee as a Judiciary CS.

HB 459 Fathers leave

Susan Sullivan, sponsor of the bill, stated that she intended that new fathers should have the same rights as new mothers. She expected that most people would take about two weeks only. The proposed Judiciary CS stated that this leave could be charged to medical only. She objected first because some offices might interpret this to disallow even annual leave. She suggested that medical leave be used first. She also raised the question of adoptive parents.

The committee agreed that after two weeks were taken, a man should be able to extend his leave for medical reasons. Line 13 in the old bill stating which leave could be used would be put into the CS and lines 11 and 12 of the proposed CS deleted.

The Judiciary CS was passed out of committee.

HB 298 Security

Miles Scholsberg, Director, Division of Banking, stated that this bill would expand the definition of securities in order to close loopholes in enforcement of securities law - to prevent fraud by providing a deterrant. Included under the definitions of securities are pyramid sales (chain letters), commodities option contracts, health clubs (charter members). Lines 21 - 25 leave the option for possible exemptions for such companies as Avon and Fuller Brush. Mr. Brown moved on page 1, line 22: add: after consultation with the Attorney General. This amendment passed. The Commerce committee amendments were adopted except in line 4 delete /.

The Judiciary CS was passed out of committee.

SB 153 Sound Recordings

Senator Chance, sponsor of the bill, stated that the language "federally copyrighted" was inserted on the floor last session and made the bill worthless. SB 153 deletes this language and defines "owner." The copyright law for recordings became effective in 1972 but was not retroactive. This bill is designed to prevent pirates and sound alike recordings. The committee passed SB 153.

P.S. We eliminated "(e)" in HB 459 as unnecessary in view of the CS.

MEMORANDUM

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

POUCH Y — STATE CAPITOL
JUNEAU, ALASKA 99811

TO: Rep. Gardiner

DATE: 5/8

FROM: Joel Bennett

SUBJECT: CS HB459

You should be alerted that the CS may conflict with the sex discrimination provisions of Title VII of the Civil Rights Act of 1964. Does the discrimination here have a rational basis? Do you feel that such a disability is a temporary disability unique to the female sex or that the father may need the same amount of time under certain circumstances? Perhaps the justification for 2 weeks time off would justify nine weeks. Additionally, shouldn't the male be able to use ~~accrued~~ annual leave + LWOP. What is the basis for not allowing this? If you wish we will do an in-depth analysis of this.

311 NORTH FRANKLIN ST. • JUNEAU, ALASKA 99801 • PHONE 907-586-2334

May 9, 1975

The Honorable Susan Sullivan
Alaska State Legislature
Pouch V, State Capitol
Juneau, Alaska 99811

Dear Representative Sullivan:

House Bill 459 was brought to my attention just recently in a grievance I am handling. The issue I am involved in however, covers an adoptive mother who was apparently not entitled to maternity leave since she did not give birth.

It is my belief that any parent, natural or adoptive, should be entitled to medical leave since the adjustments required in the care of a newborn infant are an emotional and physical drain on all parents. I would like to see your bill amended to include adoptive parents and their newborn infants. An adoptive parent should also be entitled to a medical leave to use in readjusting themselves, their family and the infant to a schedule which would allow the parents to return to full-time employment with a minimum of difficulty.

Your bill fulfills the need in our society to recognize the father's rights and responsibilities in his parental role in raising children. Adoptive parents also need to have their rights defined. At the least, an adoptive mother should be given the right to maternity leave now granted to natural mothers under Alaska law. It does not seem to be in the State's or the state employees' best interests to cause an adoptive mother to resign simply because there is no provision to entitle the right to leave for what can be a very taxing readjustment period for any parent.

I am enclosing a copy of your bill with my proposed amendments to specifically include adoptive parents. Please contact me if you have any questions or need further information.

Sincerely,

Jernie Day Peterson

Jernie Day Peterson
Director of Field Services

JP/rn

1515 E. TUDOR ANCHORAGE, ALASKA 99507 PHONE 907-274-1668 /
1514 CUSHMAN, NO. 304 FAIRBANKS, ALASKA 99701 PHONE 907-456-5412

HB
488

"An Act relating to election campaigns; effective date."

COMMITTEE REPORT

HOUSE

5/13/75

Mr. Speaker: Date 5-17-75

The Committee on JUDICIARY has had HB 488

under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR HB 488 (Same Title) AND THAT CS FOR HB 488 DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

changes in this bill as written in

Introduced: 5/7/75
Referred: State Affairs and Judiciary

IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE

HOUSE BILL NO. 488

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to election campaigns; and providing for an effective date."

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

* Section 1. AS 15.13.010 is amended to read:

Sec. 15.13.010. APPLICABILITY. (a) This chapter applies in every election for governor, lieutenant governor, a member of the state legislature, a delegate to a constitutional convention, or judge seeking electoral confirmation [OR FOR A MUNICIPAL OFFICE]. It also applies to every candidate for election to a municipal office in a city or borough with a population of more than 1,000 inhabitants according to the latest United States census figures or estimates of population certified as correct for administrative purposes by the Department of Community and Regional Affairs. A municipality may exempt its elected municipal officers [ITSELF] from the requirements of this chapter if a majority of the voters voting on the question at any regular election, as defined by AS 29.78.010(14), or a special municipality-wide election called for that purpose, [A GENERAL ELECTION] vote to exempt its elected municipal officers [THE MUNICIPALITY] from the requirements of this chapter. The question of exemption from the requirements of this chapter may be submitted by the city council or borough assembly by ordinance or by initiative ordinance. Nothing in this chapter prohibits a municipality from regulating by ordinance campaign contributions and expenditures.

* Sec. 2. AS 15.13.010 is amended by adding a new subsection to read:

(b) Except as otherwise provided, this hapter applies to contri-

butions, expenditures and communications made by a candidate, group, municipality or individual for the purpose of influencing the outcome of a ballot proposition or question as well as those made to influence the nomination or election of a candidate.

* Sec. 3. AS 15.13.020(a) is amended to read:

(a) There is created in the office of the lieutenant governor the Alaska Public Offices [ELECTION CAMPAIGN] Commission consisting of five members.

* Sec. 4. AS 15.13.020(c) is amended to read:

(c) The four members selected under (b) of this section shall, by a majority vote, appoint the remaining fifth member of the commission. That fifth member, after the expiration of the term of office of the person who is the incumbent fifth member on the effective date of this Act, may not have been registered to vote as a member of either of the political parties represented by the other four members for two years before his appointment.

* Sec. 5. AS 15.13.020(d) is repealed and re-enacted to read:

(d) Upon selection of the commission's fifth member, the commission's four members selected under (b) of this section shall draw lots to determine the length of their terms of office so that one commission member serves one year, one serves two years, one serves three years and one serves four years. However, the terms of no two commission members who are members of the same political party may expire in consecutive years. The term of office of the fifth member, appointed under (c) of this section, expires in the fifth year. Terms of office of the initial appointees to the commission, including the fifth member, shall date from February 1 before their appointment. After the terms of office of the initial appointees to the commission expire, the term of office of a member of the commission is five years, or until his successor is

appointed and qualifies. No commission member may serve more than one term. However, initial appointees to the commission who do not serve a full five-year term and a person appointed to fill the unexpired term of his predecessor may be appointed to a successive full five-year term.

* Sec. 6. AS 15.13.020(e) is amended to read:

(e) No member of the commission, during tenure, may

(1) hold or campaign for elective office;

(2) be an officer of a political party, [OR] political committee or group;

(3) permit his name to be used, or make any contributions whatsoever, in support of or in opposition to a candidate or proposition or question that appears on any ballot in the state including but not limited to that of a municipality; however, contributions may be made to a candidate for the office of President of the United States;

(4) participate in any way in an election campaign or participate in or contribute to any political party; or

(5) lobby, employ or assist a lobbyist.

* Sec. 7. AS 15.13.020(f) is amended to read:

(f) Members of the commission shall receive compensation of $100 a day while attending commission meetings or participating in authorized commission business and shall be entitled to necessary travel expenses and per diem.

* Sec. 8. AS 15.13.020(h) is amended to read:

(h) A vacancy [VACANCY] on the commission shall be filled by the appropriate appointing authority [OFFICER] within 30 days of the occurrence of the vacancy. The appointee shall serve for the remaining term of his predecessor.

* Sec. 9. AS 15.13.020(j) is amended to read:

(j) The commission shall establish an office, which may be called

a regional office, in each senate district in the state to keep on file for public inspection copies of all reports filed with the commission by candidates for statewide office and by candidates for legislative office in that district [AN OFFICE TO RECEIVE REPORTS AND STATEMENTS REQUIRED TO BE FILED WITH IT]; however, where one municipality contains more than one election district, only one commission office shall be established in that municipality. The ~~district or~~ regional office shall make all forms and pertinent material available to candidates. All reports shall be filed by candidates, groups and individuals directly with the commission's central, ~~regional or district~~ office. The commission shall insure that copies of all reports by statewide and legislative candidates in each senate district are forwarded promptly to that ~~district or~~ regional office. [THE COMMISSION SHALL MAKE EVERY EFFORT TO INSURE THAT ALL REPORTS ARE FORWARDED TO THE CENTRAL OFFICE PROMPTLY.]

* Sec. 10. AS 15.13.020 is amended by adding a new subsection to read:

(k) The commission shall ensure that copies of reports filed by candidates for municipal office are made available for public inspection in the appropriate municipality.

* Sec. 11. AS 15.13.030(2) is amended to read:

(2) prepare and publish a manual setting out uniform methods of bookkeeping and reporting for use by persons required to make reports and statements under this chapter and otherwise assist candidates, [AND] groups, and individuals in complying with the requirements of this chapter;

* Sec. 12. AS 15.13.030(5) is amended to read:

(5) prepare [AND PUBLISH] a summary of each report filed under sec. 110 of this chapter and make copies of this summary available to interested persons at cost;

* Sec. 13. AS 15.13.040 is repealed and re-enacted to read:

Sec. 15.13.040. CONTRIBUTIONS, EXPENDITURES AND SUPPLYING OF

SERVICES TO BE REPORTED. (a) Each candidate shall make a full report, upon a form prescribed by the commission, listing the date and amount of all expenditures made by the candidate, the total amount of all contributions, including all funds contributed by the candidate himself, and for all contributions in excess of $100 in the aggregate per year, the name, address, principal occupation, and employer of the contributor and the date and amount contributed by each contributor. The report shall be filed in accordance with sec. 110 of this chapter and shall be certified correct by the candidate or campaign treasurer.

(b) Each group shall make a full report upon a form prescribed by the commission, listing

(1) the name and address of each officer and director;

(2) all contributions made to it; and, for all contributions in excess of $100 in the aggregate per year, the name, address, principal occupation, and employer of the contributor, and the date and amount contributed by each contributor; and

(3) the date and amount of all contributions made by it and all expenditures made, incurred or authorized by it.

(c) The report required under (b) of this section shall be filed in accordance with sec. 110 of this chapter and shall be certified as correct by the group's treasurer.

(d) Every individual, person or group shall make a full report, upon a form prescribed by the commission, of the following contributions or expenditures:

(1) a contribution ~~of~~ $100 ~~or more~~ to any group or to any candidate; ~~including all groups that support only one candidate;~~

(2) a contribution of goods or services valued at $100 ~~or more~~ to any group or candidate, including all groups that support only that candidate; or

(3) any expenditure whatsoever for advertising in newspapers, on radio or on television; or, for the publication, distribution or circulation of brochures, flyers, or other campaign material for any candidate or ballot proposition or question.

(e) The report required under (d) of this section shall contain the name, address, principal occupation and employer of the individual filing the report, and an itemized list of expenditures. The report shall be filed with the commission by the contributor no later than 10 days after the contribution or expenditure is made. A copy of the report shall be furnished to the candidate, campaign treasurer or deputy campaign treasurer at the time the contribution is made.

(f) During each year in which an election occurs, all businesses, persons, or groups which furnish any of the following services, facilities, or supplies to a candidate or group shall maintain a record of each transaction: newspapers, radio, television, advertising, advertising agency services, accounting, billboards, printing, secretarial, public opinion polls, or research and professional campaign consultation or management, media production or preparation, or computer services. The records shall be maintained on the forms provided and in the manner required by the commission. The supplier shall file a report of the complete record of each transaction with all candidates or groups to whom he provides services, facilities or supplies in accordance with sec. 110 of this chapter. All records shall be available for public inspection.

* Sec. 14. AS 15.13 is amended by adding a new section to read:

Sec. 15.13.045. INVESTIGATIONS, HEARINGS. (a) The commission may issue subpoenas, administer oaths, hold hearings and conduct investigations.

(b) In conjunction with (a) of this section, the commission may

compel the attendance of witnesses and production of papers, books, records, accounts, documents, and testimony, and may have the deposition of witnesses taken in a manner prescribed by court rule or law for the taking of depositions in civil actions when consistent with the powers and duties assigned to the commission by this chapter.

(c) The commission may examine the papers, books, records, accounts and documents of any person subject to this chapter to ascertain the correctness of a report filed with the commission, or in conjunction with an investigation or inspection conducted under (a) of this section.

(d) Subpoenas may be issued and shall be served in the manner prescribed by AS 44.62.430 and court rule. The failure, refusal or neglect to obey a subpoena is punishable as contempt in the manner prescribed by law or court rule. The superior court may compel obedience to the commission's subpoena in the same manner as prescribed for obedience to a subpoena issued by the court.

* Sec. 15. AS 15.13.050 is amended to read:

Sec. 15.13.050. GROUPS. Each group, before making an expenditure on behalf of, or in opposition to, a candidate or a contribution to a candidate, shall register, on forms provided by the commission, with the commission. If the group intends to support only one candidate, or to contribute to or expend on behalf of one candidate 60 per cent of its funds, the name of the candidate shall be a part of the name of the group. If the group receives over 60 per cent of its contributions from a single source, the name of that source must be a part of the name of the group. Promptly upon receiving the registration, the commission shall notify the candidate of the group's organization and intent.

* Sec. 16. AS 15.13.060(b) is amended to read:

(b) Each group shall file the name and address of its [THE] campaign treasurer with the commission at the time it registers with the

commission under sec. 50 of [THE FIRST CONTRIBUTION OR EXPENDITURE REPORT IS REQUIRED TO BE FILED BY THE GROUP UNDER] this chapter.

* Sec. 17. AS 15.13.060(c) is amended to read:

(c) Each candidate shall file the name and address of the campaign treasurer with the commission no later than ~~48 hours after~~ the date of filing his declaration of candidacy or his nominating petition. The name of the candidate may be placed on the ballot by the lieutenant governor or municipal clerk only if the candidate has complied with this subsection.

* Sec. 18. AS 15.13.060(d) is amended to read:

(d) In the case of the death, resignation or removal of a campaign treasurer, the candidate shall appoint a successor as soon as practicable and file his name and address with the commission within 48 hours of the appointment. The candidate shall be [IS] disqualified ~~by the lieutenant governor or municipal clerk~~ if he fails to comply with this subsection.

* Sec. 19. AS 15.13.060 is amended by adding a new subsection to read:

(f) The candidate is responsible for the performance of his campaign treasurer, and any default or violation by the treasurer also shall be considered a default or violation by the candidate.

* Sec. 20. AS 15.13.070(a) is repealed and re-enacted to read:

(a) No person or group, including but not limited to all political committees, businesses, corporations, and labor unions, may contribute to or expend on behalf of any candidate, ~~or any group, more than $1,000 a year.~~ For purposes of this section, an expenditure against a candidate shall be considered an expenditure on behalf of his opponent. Political parties and their subdivisions are not subject to the limitation prescribed in this subsection, but they are subject to the reporting requirements prescribed by secs. 40(b) and 110 of this chapter. Nothing in this chapter prohibits

(1) a candidate from contributing more than $1,000 of his own

money to his own campaign; or

(2) individuals or groups, including but not limited to all political committees, businesses, corporations, and labor unions, from contributing to or expending on behalf of a ballot proposition or question more than $1,000 a year; however, these contributions and expenditures shall be reported in accordance with secs. 40 and 110 of this chapter.

* Sec. 21. AS 15.13.070(f) is amended to read:

(f) The total amount of expenditures made by a candidate and by all groups operating under his control may not exceed (1) 40 cents times the total population of the state according to the latest United States census figures, or estimates of population certified as correct for administrative purposes by the Department of Community and Regional Affairs, if the candidacy is for governor or lieutenant governor, of which amount no more than 50 [40] per cent may be spent in a primary election campaign and no more than 50 [60] per cent in the general election campaign [, IF THE CANDIDACY IS FOR GOVERNOR AND NO MORE THAN 50 PER CENT IN THE PRIMARY ELECTION CAMPAIGN AND NO MORE THAN 50 PER CENT IN THE GENERAL ELECTION IF THE CANDIDACY IS FOR LIEUTENANT GOVERNOR]; (2) 40 times the total population of the geographical area of the constituency according to the latest United States census figures, or estimates of population certified as correct for administrative purposes by the Department of Community and Regional Affairs, divided by the number of seats in the senate district if the candidacy is for the state senate; (3) $1 times the total population of the geographical area of the constituency according to the latest United States census figures, or estimates of population certified as correct for administrative purposes by the Department of Community and Regional Affairs, divided by the number of seats in the house district if the candidacy is for the

state house of representatives. The expenditure limitations in this section include expenditures for both a primary and a general election campaign, or for a special election.

* Sec. 22. AS 15.13.080 is repealed.

* Sec. 23. AS 15.13.090 is amended to read:

Sec. 15.13.090. IDENTIFICATION OF COMMUNICATION. All advertisements, billboards, handbills, paid-for television and radio announcements and other communications intended to influence the election of a candidate or outcome of a ballot proposition or question shall be clearly [SIGNED OR] identified by the words "paid for by" followed by the name and address of the candidate, group or individual paying for the advertising. In addition, candidates and groups must identify the name of their campaign treasurer [OR CAMPAIGN TREASURER OF THE CANDIDATE OR GROUP ON WHOSE BEHALF THE COMMUNICATION APPEARS].

* Sec. 24. AS 15.13.100 is repealed and re-enacted to read:

Sec. 15.13.100. EXPENDITURES BEFORE FILING. If a person makes an expenditure or receives a contribution for the purpose of influencing his nomi... filed, he m... ion befo... all expen... in accordance with sec. 110 of this chapter, and his expenditures shall accrue against the spending limitation that applies to the office for which he subsequently files.

Sec. 15.13.100. Expenditures before filing. No political campaign expenditure may be made or incurred by a person in an election or by a person or group with his knowledge and on his behalf before the date upon which he or she files for nomination for the office which the person seeks, except for personal travel expenses or for opinion surveys or polls. (§ 1 ch 76 SLA 1974)

* Sec. 25. AS 15.13.110 is repealed and re-enacted to read:

Sec. 15.13.110. FILING OF REPORTS. (a) Each candidate and group shall make a full report in accordance with sec. 40 of this chapter during the period ending three days before the due date of the report and beginning on the last day covered by the most recent previous report, or

if a first report, all contributions received and expenditures made before three days before the due date of the report. The report shall be filed at the following times:

(1) 30 days before the election; however, this report is not required if the deadline for filing a nominating petition or declaration of candidacy is within 30 days of the election;

(2) one week before the election;

(3) ten days after the election; and

(4) December 31 of each year for expenditures and contributions received which were not reported that year.

(b) Each contribution or expenditure which exceeds $250 and which is made within one week of the election shall be reported to the commission by date, amount, and contributor or recipient within 24 hours of receipt or expenditure by the candidate or campaign treasurer.

(c) The reports of candidates shall be filed with the commission's central, ~~regional or district office~~. All reports required by this chapter shall be kept open to public inspection. Within 30 days after each election, the commission shall prepare a summary of each report which shall be made available to the public at cost upon request. Each summary shall use uniform categories of reporting.

(d) Within 30 days after each election, each supplier shall make a full report to the commission in accordance with sec. 40 of this chapter. Within 60 days after each election, the commission shall prepare a summary by candidate or group of the transactions and make the summaries public.

* Sec. 26. AS 15.13.120(d) is amended to read:

(d) A person who believes a violation of this chapter has occurred may file a complaint with the commission. If the commission determines there is substantial reason to believe that a violation has occurred, it

shall expeditiously make an investigation, which may [SHALL] also include an investigation of reports and statements filed by the complainant if he is a candidate, of the matter complained of. When, in the judgment of the commission, after affording due notice and an opportunity for a hearing, a person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of a provision of this chapter, or a regulation or order issued under it, it shall promptly report the information to the attorney general for appropriate action. The commission shall report its determination and recommendation to the person who filed the complaint with the commission within 60 days of receiving the complaint unless circumstances require additional time to make an adequate investigation. The finding of the commission may be appealed to the superior [SUPREME] court [BY THE PERSON WHO FILED THE COMPLAINT WITH THE COMMISSION].

* Sec. 27. AS 15.13 is amended by adding a new section to read:

Sec. 15.13.122. LEGAL COUNSEL. (a) The attorney general is legal counsel for the commission. He shall advise the commission in legal matters arising in the discharge of its duties and represent the commission in actions to which it is a party. If, in the opinion of the commission, the public interest warrants, the commission may request the chief justice of the supreme court to appoint a special prosecutor to represent the commission in a proceeding involving an alleged violation of this chapter and to prosecute that violation.

(b) When the public interest warrants, the commission may employ temporary legal counsel from time to time in matters in which the commission is involved.

* Sec. 28. AS 15.13.125 is repealed.

* Sec. 29. AS 15.13.130 is amended to read:

Sec. 15.13.130. DEFINITIONS. In this chapter,

(1) "candidate" means a person who files for election to the state legislature, for governor, for lieutenant governor, [OR] for municipal office, for retention in judicial office, or for constitutional convention delegate, or who campaigns as a write-in candidate for any of these offices;

(2) "contribution" means purchase, payment, promise or obligation to pay, loan or loan guarantee, deposit or gift of money, goods or services for which charge is ordinarily made and which is made for the purpose of influencing the nomination or election of a candidate, and in sec. 010 ~~325~~ of this chapter for the purpose of influencing a ballot proposition or question, including the payment [,] by a person other than a candidate or political party, or compensation of the personal services of another person which are rendered to the candidate or political party; however, "contribution" does not include

(A) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or ballot proposition or question;

(B) services provided by an accountant or other person to prepare reports and statements required by this chapter;

(C) ordinary hospitality in a home;

(3) "group" means every state and regional executive committee of a political party and, in addition, means any combination of two or more persons or individuals acting jointly who take action the major purpose of which is to influence the outcome of an election; a group that makes expenditures or receives contributions [WHOSE MAJOR PURPOSE IS TO INFLUENCE THE NOMINATION OR ELECTION OF A CANDIDATE OR WHOSE EXPENDITURES OR CONTRIBUTIONS ARE MADE] with the authorization or consent, express or implied, or under the control, direct or indirect, of a candidate shall be considered to be controlled by that candidate [OR HIS AGENT]; a group

whose major [SOLE] purpose is to further the nomination, election, or candidacy of only one person, or intends to expend more than 60 per cent of its money on a single candidate, shall be considered to be controlled by that candidate [PERSON] and its actions done with his knowledge and consent unless, within 10 days from the date the candidate [PERSON] learns of the existence of the group he files with the commission, on a form provided by the commission, an affidavit that the group is operating without his control; a group that contributes more than 60 per cent of its money to or on behalf of one candidate, shall be considered to support only one candidate for purposes of sec. 70 of this chapter, whether or not control of the group has been disclaimed by the candidate [A GROUP ORGANIZED FOR MORE THAN ONE YEAR PRECEDING AN ELECTION AND ENDORSING CANDIDATES FOR MORE THAN ONE OFFICE OR MORE THAN ONE POLITICAL PARTY IS PRESUMED NOT TO BE CONTROLLED BY A CANDIDATE];

(4) "expenditure" means a purchase or a transfer of money or anything of value, or promise or agreement to purchase or transfer money or anything of value, incurred or made for purpose of (A) influencing the nomination or election of a candidate or of any individual who files for nomination at a later date and becomes a candidate; or (B) use by a political party; or (C) the payment by a person other than a candidate or political party of compensation for the personal services of another person which are rendered to a candidate or political party; (D) influencing the outcome of a ballot proposition or question; however, "expenditure" does not include a candidate's filing fee or the cost of preparing reports and statements required by this chapter;

(5) "individual" means a natural person;

(6) "municipality" means a home rule or general law borough or city including but not limited to a unified municipality organized under AS 29.68;

(7) "person", in addition to the terms set cut in AS 01.10.-060(7), includes a labor union.

* Sec. 30. This Act takes effect immediately in accordance with AS 01.10.-070(c).

ALASKA PUBLIC INTEREST RESEARCH GROUP

P. O. BOX 1093
ANCHORAGE, ALASKA 99510

PHONE 274-6765

May 14, 1975

Terry Gardiner
Chairman
House Judiciary
Juneau, Alaska

Dear Terry:

This letter concerns HB 488 which amends the Campaign Disclosure Act passed last year. I have no major objections to any of the proposed changes, and feel that most of the bill is directed at closing loopholes not addressed in the original legislation. My concern is that the legislature not hold this bill over to next session, if at all possible. Most of the confusion during the last election stemmed from the fact that the law was new, the elections commission was operating without regulations and depended heavily on arbitrary decisions made in response to problems which developed while campaigns were progressing. If the legislature waits until next year to act on many of the changes proposed by HB 488, the administration of the act during the 1976 campaigns will suffer. I have discussed this with Mr. Jeff Haitt whom I understand has been in contact with you and your committee. I am sure that he can address these concerns in more detail than I.

In addition to the above concerns, our organization has been reviewing the penalties section of the act (which is largely untouched by HB 488). We have not completed our study, but it appears that serious problems exist with this section of the law. I have already discussed, in general terms, what some of these concerns are and will not detail them at length now. What strikes me about this, is that the elections commission and staff are similarly aware of problems with the penalties section of the law, but have not addressed these problems yet. It appears that legislative tampering with the penalties section (other than those changes proposed in HB 488) is unlikely this year. This being the case, I suggest that your committee give some direction for the elections commission to study this section and report back next year with proposed amendments. In addition, you might consider asking for an Attorney General opinion on several questions which I am attaching. Your interest in this matter is appreciated. Thank you for your help on the land leasing bills. I hope you can travel to Anchorage this year.

Sincerely,

James Love, Director
Alaska Public Interest Research Group

Draft copy of questions for the Attornye General regarding the Campaign Disclosure Law:

1) Is a conviction under AS 15.13.120(a)necessary for an action to be taken under AS 15.13.120 (b)?

2) What recommendations or sanctions can the commission take other than an initial administrative ruling that a violation has occurred.

3) If a citizen files a complaint under AS 15.13.120 (d), and the commission rules that a violation has occurred, does this require prosecution by the Attorney General?

4) Is the original jurisdiction by the Supreme Court on appeals of commission decisions constitutional? How does the Supreme Court appeal on a commission decision affect the role of an appellate court in a criminal trial under AS 15.13.120 (a)?

5) Can a citizen require that a candidate's election is voided, under AS 15.13.120 (b)?

6) Who decides, in every conceivable case, whether or not a candidate is denied office or removed from office. How is this section enforced?

7) Over 40 legislators and the governor and the lieutenant governor all violated the law last year. Is removal from office discretionary and who makes those determinations.

LEAGUE OF WOMEN VOTERS
POSITION PAPER

HOUSE BILL 488

TO: House Judiciary Committee

FROM: Marjorie Gorsuch and Janice Gates, Lobbyists, LWV.

RE: Alaska Public Offices Commission, HB 488

DATE: May 15, 1975

The duties of the Public Offices Commission have been expanded to include the responsibility for administering the provisions of the Conflict of Interest law as well as that of the Campaign Spending Act. Accordingly, a clear presentation of the Commission's role vis a vis these Acts calls for a bill which separates the composition of the Commission from its delineated functions.

The League of Women Voters of Alaska has recommendations concerning both the composition of the Commission and its functions as addressed in HB 488.

(1) COMPOSITION OF THE COMMISSION:

The League is concerned about the lack of assurances that the Commission membership will adequately represent the primary geographical areas within Alaska. To accomplish this objective and to make the Commission membership less dependent on political partisanship, the LWV suggests the following language for Section 15.13.020 (this recommendation was submitted to the House State Affairs Committee on 2/20/75):

> The Commission shall consist of five members, four of whom shall be appointed by the Governor in the following manner: The Judicial Council and the Legislative Council shall each submit to the Governor a list of five nominees to serve on the Commission. The Governor shall select two representatives from each list, neither of whom shall be members of the same political party. The four appointees shall select and appoint one nonpartisan member of the Commission. Out of the five appointees, four Judicial Districts shall be represented. All appointees must be confirmed by the Legislature in joint session by a majority of its members. No member of the Commission may be a member of the Legislature.

> The term of each member is three years except that for the initial term a Democrat and a Republican will be replaced each year and the nonpartisan member replaced the third year. (i.e., in apportioning the terms of the initial appointees, the Governor shall respect the conditions of membership as specified above). No individual may serve more than two consecutive terms unless there is an intervening term.

In respect to the above proposed language and to the language contained in HB 488 (15.13.020 (c)), the LWV raises the question of the Constitutionality of permitting four Commission members to appoint a fifth member. Article 3, Section 26 of the Alaska State Constitution states:

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

In view of the altered responsibilities of the Commission since originally formed, the LWV suggests that the Legislature may wish to reconsider the method of compensating members of the Commission (Sec. 15.13.020 (f), 11.20-22, p. 3).

(2) FUNCTIONS OF THE COMMISSION:

(a) HB 488, although spelling out the responsibilities of the Public Offices Commission, neglects to address those duties relating to the Conflict of Interest Law (39.50.020-39.50.200) as delegated in CSSB 62 am. Sections such as 15.13.020 and 15.13.030 should refer not only to "candidates" but to the appropriate appointed officials, State Board members, and others covered by the Conflict of Interest law.

(b) Section 15.13.020 (j): The glaring absence of campaign spending information during the previous election must be corrected. The location of the Commission's regional offices must be well publicized to assure public accessibility. In the opinion of the LWV, adequate public notice must be mandated in the law.

(c) Section 15.13.030 (5): Copies of campaign spending information and of public disclosure information should be available to interested persons for the cost of printing. The LWV has received reports that some State departments charge as high as $1.00 per page for copying public documents. Such practices refute the accessibility provisions intended in the law.

(d) Section 15.13.070 (a): The LWV questions how line 23 (p. 8) within this section coincides with Section 15.13.130 (3), lines 5-8 (p.14) regarding expenditures on behalf of a candidate.

14 May, 1975
4:15

Terry:

Attached is a copy of HB 488 that I have made a few changes on. Please consider these changes in your session.

p. 2 This language has obvious merit, on the face of it, but I do not think it is a good change. The fifth member of the Commission should be selected from as large a pool as possible. Despite Abramczyk's rantings and ravings, the Commission is not partisan and it seems inconceivable to me that it ever will become partisan. Therefore, the fifth member should be a member of either party, or no party.

p. 4 There is no "district office"; only regional and central offices. Therefore, the noted deletions and addition should be made.

p. 5, line 5. Is "a year" clearly understood to mean "per year"? If so, no change is necessary.

p. 5, lines 26-29. Add "per year" (or, "a year") under (1) and (2). It may be that the language ". . . including all groups that support only that candidate" should be stricken. It seems to me that it is not sufficiantly clear. The idea is that "candidate" should mean the person and those groups that support only him. Thus, a person who contributed $100 to a candidate and $1 to a group that supported only that candidate would have to make a report directly to the Commission. Perhaps the Commission can deal with this problem in regulations, and this awkward language removed from the bill.

p. 6. Delete. I am not sure what this was intended to mean, but since it doesn't make sense to me now, it should be removed. FLASH. It makes sense if the word "report" is changed to "form". Thus, the candidate has a statutory obligation to provide the form to the contributor when he receives the contribution. ~~Thusx~~ <u>With this change, the section makes sense and should remain.</u>

p. 8. Insert the word "individual". We have used individual occasionally in place of person to distinguish between a natural and legal (corporate) person. Use of "individual" here would make the language of the entire set of changes more consistent (although the Commission will interpret person to mean natural person when necessary).

Gordon Harrison

HB

522

"An Act relating to the regulation of lobbying; and providing for an effective date."

COMMITTEE REPORT

1/30/76

HOUSE

Mr. Speaker: Date Feb 16 1977

The Committee on JUDICIARY has had HB 522

under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y, STATE CAPITOL
JUNEAU, ALASKA 99811
465-3800

M E M O R A N D U M 20 May 1976

SUBJECT: Senate Version of Lobbying Bill
(SCS CSHB 522 am S)

TO : Rep. Bill Parker, Chairman
House Rules Committee

FROM : Stuart C. Hall, Senior Legislative Counsel

This is a revision of the Memorandum on the same subject I submitted to you under date of 18 May.

I am troubled by some of the amendments to the lobbying bill made by the Senate; it occurs to me some of them may have been inadvertent, and I wanted to call your attention to them.

OK. 1. The Senate deleted the requirement of present law that the lobbyist submit a written authorization to represent his employer or principal. That language contained in the version of the bill that emerged from the Senate Commerce Committee should be restored. Compare AS 24.45.010 and 24.45.040 with proposed AS 24.45.041(b).

partial 2. The commission's authority to supsend or revoke a lobbyist's credentials should be restored. Other than the criminal penalties, the only authority the commission has under the Senate version of the bill is to withhold credentials to a lobbyist who has failed to file required reports for the previous reporting period(s). That seems inadequate to me.

3. The Senate deleted the civil penalties proposed by the Attorney General's Office; they are comparable to those proposed for the conflict of interest and election campaign disclosure laws (HB 855 and HB 857). The Department of Law believes that these sanctions, based on its experience in enforcing virtually identical civil sanctions with respect to the pollution control laws (AS 46.03), may be more effective than the prospect of criminal penalties, except perhaps in the most aggravated cases of violation of the statute.

C.K. 4. Under present law, the lobbyist's employer must submit a report of his payments to the lobbyist. The Senate deleted any requirement that the lobbyist's employer report expenditures. See AS 24.45.090, and compare it with proposed AS 24.45.061 that appeared in the SCS that emerged from the Senate Commerce Committee. I recommend that reporting requirement be restored, or at the very least that the employer be required to verify the lobbyist's report as suggested by Waco Shelley.

Definition Statement

Re: Lobbyist #HB522
from Jeff Hart
Wilda Hudson

STATUTORY BASIS:

DEFINITION & GOALS: An Estimate on the Cost of Administering HB522; prepared January 20, 1976.

The Alaska Public Offices Commission will be charged with the administration and implementation of the lobbyist registration and reporting law. This document outlines the cost to administer this law and provides the rationale for the funding request.

SPECIFIC OBJECTIVES:

1. Carry out all statutory obligations.
2. Prepare and publish a manual setting out uniform methods of bookkeeping and reporting for use by persons complying with this law.
3. Receive and hold open for public inspection reports and statements required to be made under this law and upon request furnish copies at cost.
4. Investigate all complaints, actions, and audit reports as required by this law.
5. Prepare and make available copies of all forms, instructions, regulations and copies of the law.
6. Adopt regulations necessary to effectuate and clarify the law.

BRU _____ BRU CODE _____ REVISED _____

1 DEFINITION STATEMENT

02-1001

2 Analytic Statement

Basic Assumptions Used for Preparation of a Budget Funding Lobbyist Registration and Reporting Law.

This evaluation is based on our best estimates of how much it would cost to administer the lobbyist registration and reporting law if it were styled after the Minnesota law.

For the purposes of this evaluation, the following assumptions are being made.

1. Number of Lobbyists - Through March 28, 1975, 107 lobbyists have registered with the Department of Administration. Using the assumption that a tighter definition would force more people to register, the assumption will be that there will be approximately 250 lobbyists registered with and reporting receipts and expenditures to the Commission.

2. Number of Reports - A) Initial Registration

   1) a lobbyist must file separate registration for each client - wild guess: 2,000 2-page registration forms (1 page printed on both sides)

B) Reporting forms for receipts and expenditues

   1) Reporting schedule

Report Due	Period From	Period To
1. February 15	1/1	1/31
2. March 15	2/1	2/28
3. April 15	3/1	3/31
4. June 15	4/1	5/31
5. December 31	6/1	12/31

   2) Reports filed: 250 x 5 = 1,250 reports
   6 pages each - 3-8 1/2 x 11 sheets printed on both sides.

3. The Lobbyist registration and reporting function will be maintained in Juneau.

BRU _____ BRU CODE _____ REVISED _____

2 ANALYTIC STATEMENT

02-1002

Explanation

SUMMARY OF REQUESTED FUNDING

Personal Services	$23,203
Travel	1,730
Contractual Services	7,730
Commodities	1,200
Equipment	890
TOTAL	$34,753

BRU _____ BRU CODE _____ REVISED _____

EXPLANATION

13 Request for New Positio

POSITION TITLE	Accountant III		RANGE 16	LOCATION Juneau
TYPE OF POSITION (PFT, PPT, SEAS)	PFT	NEW ESTABLISHED FY76	M/C:	PRIORITY _____ PAGE/LINE _____

TYPE OF EXPENDITURE	BUDGET YEAR (BY) AMOUNT	FUNDING SOURCE	DETAIL OF RELATED EXPENSES
[illegible]			
[illegible]			Range 16A Using 1/1/76 Salary Schedule
[illegible] Salary	19,176		
[illegible]			
[illegible] 21% p/r charges	4,027		
OTHER			
TOTAL	23,203		

7/1/76 - 12/31/76 form design, instructions, etc.

EXPLANATION:

The person who is actually receiving and verifying the lobbyist reports will be required to assign each lobbyist a reporting I.D. number; verify all reports for mathematical accuracy; prepare summaries of report; initiate follow-up correspondence; monitor an internal procedure to make copies of reports available; prepare an annual summary of all financial activity by lobbyists for inclusion in an annual report, and; prepare recommendations for changes in forms and regulations for review by the Commission. The position will be under the general supervision of the Executive Director; however, the incumbent will work with considerable independence within established procedures. Other general duties will include: maintenance of a list showing delinquent reports; initiating correspondence to bring reporting officials into compliance; preparing lists of violations for submission to the Attorney General; preparing a directory of lobbyists and required supplements; and maintaining the records and files.

Register: Publish and maintain in a 3-ring binder in office with all registrations enclosed. Copies available at cost.

GOVERNOR	APPROVED ☐ DISAPPROVED ☐	LEGISLATURE	APPROVED ☐ DISAPPROVED ☐	CERTIFICATION BY AGENCY HEAD	DATE

APPROVED CLASSIFICATION	
CLASS CODE	
RANGE	
APPROVED BY:	
EFFECTIVE DATE	
LOCATION	
PCN	

BRU _____ BRU CODE _____ REVISED _____

13 PERSONAL SERVICES REQUEST FOR NEW POSITION

02-1013

14 Travel

CODE	TRAVEL CLASSIFICATION	PRIOR YEAR (PY) ACTUAL	CURRENT YEAR (CY) AUTHORIZED	BUDGET YEAR (BY) AGENCY Maintenance	AGENCY Change	AGENCY Request	GOVERNOR'S BUDGET
200	TOTAL TRAVEL				1,730	1,730	
210/220	FIELD/ADMINISTRATIVE TRAVEL						
	IN-STATE TRANSPORTATION				355	355	
	IN-STATE PER DIEM						
	OUT-OF-STATE TRANSPORTATION						
	OUT-OF-STATE PER DIEM				1,375	1,375	
230	CONVENTIONS AND MEETINGS						
	IN-STATE TRANSPORTATION						
	IN-STATE PER DIEM						
	OUT-OF-STATE TRANSPORTATION						
	OUT-OF-STATE PER DIEM						
520	INTER-AGENCY TRANSFERS (Non-Add)						

EXPLANATION:

210 Field Travel

Accountant
1 trip to Anchorage @ $155 for orientation, 5 days @ $40 per day $355

220 Administrative Travel

Executive Director
3 trips to Juneau @ $155 ea., 4 days per diem each trip @ $40 per day $945

BRU _____ BRU CODE _____ REVISED _____

14 TRAVEL

02-1014 (Rev)

14-A

Explanation

Members to Juneau for public hearing on regulations

Five members @ $175 ea. for travel and ten days per diem @ $50 a day	$1,375

BRU _____ BRU CODE _____ REVISED _____

15 Contractual Services

CODE	CONTRACTUAL SERVICES CLASSIFICATION	PRIOR YEAR (PY) ACTUAL	CURRENT YEAR (CY) AUTHORIZED	BUDGET YEAR (BY) AGENCY Maintenance	AGENCY Change	AGENCY Request	GOVERNOR'S BUDGET
300	TOTAL CONTRACTUAL				7,730	7,730	
310	COMMUNICATION SERVICES				960	960	
320	PRINTING AND ADVERTISING				4,830	4,830	
330	RENTS AND UTILITIES				1,440	1,440	
340	REPAIRS, SERVICES AND ALTERATIONS						
350	TRANSPORTATION OF THINGS						
360A	EQUIPMENT RENTAL–HIGHWAY WORKING CAPITAL FUND						
360B	EQUIPMENT RENTAL–WORD PROCESSING						
360C	EQUIPMENT RENTAL–OTHER						
370	INSURANCE AND BONDING						
380	PROFESSIONAL FEES AND SERVICES						
390	OTHER Members compensation				500	500	
930	INTER–AGENCY TRANSFERS (Non–Add)						

EXPLANATION:

BRU _____ BRU CODE _____ REVISED _____

15 CONTRACTUAL SERVICES

02–1015 (Rev)

15-A **Explanation**

Communication Services: Long distance charges in the amount of $50 per month are anticipated plus $30 a month base rate	$960
Printing and Advertising:	
Registration Forms - 3,000 2-page forms 8-1/2" x 11" $30/page per 1,000 Annual Cost	180
Reporting Forms - 4,000 3 pages each 8-1/2" x 11" $30/page per 1,000 Annual Cost	300
Instructions - 4 pages 1,000 copies 8-1/2" x 11" $30/page per 1,000 Annual Cost	120
Regulations - 4 pages 1,000 copies 8-1/2" x 11" $30/page per 1,000 Annual Cost	120
Copies of Law - 15 pages 1,000 copies 8-1/2" x 11" $30/page per 1,000 Annual Cost	450
Total Printing	$1,230

BRU _____ BRU CODE _____ REVISED _____

15-A EXPLANATION

02-1023

15-B

Explanation

Advertising - The Commission will publish notices of proposed regulations. These will be approximately one third of a page in size and will run four separate times in each of the following publications:

Juneau Southeast Alaska Empire	$150 each x 4 =	$600
Ketchikan Daily News	150 each x 4 =	600
Anchorage Daily News	150 each x 4 =	600
Fairbanks Daily News-Miner	150 each x 4 =	600
Anchorage Daily Times	150 each x 4 =	600
Nome Nugget	150 each x 4 =	600
Annual cost of advertising		$3,600
Total printing and advertising		$4,830

BRU _____ BRU CODE _____ REVISED _____

EXPLANATION

02-1023

15-C

Explanation

Rent - 150 square feet of office space in Juneau at an estimated cost of $.80 per square foot, a monthly cost of $120 for an annual cost of $1,440.

Other - The members of the Commission will hold public hearings in Juneau and Anchorage on the proposed regulations. Members are entitled to $50 a day while meeting and the cost for these hearings would be approximately $500. (The drafts will be reviewed during regular meetings of the Commission)

BRU _____ BRU CODE _____ REVISED _____

EXPLANATION

02-1023

16 Commodities

CODE	COMMODITIES CLASSIFICATION	PRIOR YEAR (PY) ACTUAL	CURRENT YEAR (CY) AUTHORIZED	BUDGET YEAR (BY) AGENCY Maintenance	AGENCY Change	AGENCY Request	GOVERNOR'S BUDGET
400	TOTAL COMMODITIES						
410	CLOTHING						
430	FOOD FOR HUMAN CONSUMPTION						
440	FUEL (OTHER THAN FOR MOTOR VEHICLES)						
450	MAINTENANCE & CONSTRUCTION MATERIALS						
460	MOTOR VEHICLE,PARTS,SUPPLIES & ACCESSORIES						
470	PROFESSIONAL & SCIENTIFIC SUPPLIES						
480	STATIONERY AND OFFICE SUPPLIES				$1,200	$1,200	
490	OTHER SUPPLIES,MATERIALS AND PARTS						
940	INTER--AGENCY TRANSFERS (Non-Add)						

EXPLANATION:

The $1,200 request will cover the cost of stationery, supplies and other office supplies such as accounting pads, pencils, file folders, hanging files, other miscellaneous supplies, and the cost of sharing a photo copier maintained by another agency (est. $30 monthly)

BRU _____ BRU CODE _____ REVISED _____

16 COMMODITIES

17 Equipment

CODE	EQUIPMENT CLASSIFICATION	PRIOR YEAR (PY) ACTUAL	CURRENT YEAR (CY) AUTHORIZED	BUDGET YEAR (BY) AGENCY Maintenance	AGENCY Change	AGENCY Request	GOVERNOR'S BUDGET
500	TOTAL EQUIPMENT						
510	VEHICLES,BOATS,AIRPLANES						
520	OFFICE FURNITURE AND EQUIPMENT				$890	$890	
530	EQUIPMENT PECULIAR TO THE PROGRAM						
560	SHOP AND MAINTENANCE EQUIPMENT						
590	OTHER EQUIPMENT						
950	INTER-AGENCY TRANSFERS (Non-Add)						

EXPLANATION:

ITEM NO.	DESCRIPTION OF ITEMS REQUESTED	EQUIP. CODE	NO. OF UNITS	UNIT COST	REPLACEMENT	NEW
	Victor - Model 19-4461 10-key calculator		1	$500		$500
	Desk		1	$250		$250
	Chair		1	$140		$140

BRU _____ BRU CODE _____ REVISED _____

17 EQUIPMENT

HOUSE VERSION

nal sponsors: Parker, Bradley
Gardiner, et al

Offered: 3/2/76
Referred: Rules

HOUSE

BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 522 (Judiciary) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

Act entitled: "An Act relating to the regulation of lobbying; and providing for an effective date."

ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

ection 1. AS 24.45.010 - 24.45.150 are repealed.

ec. 2. AS 24.45 is amended by adding new sections to read:

CHAPTER 45. REGULATION OF LOBBYING

[LEGISLATIVE REPRESENTATION].

ARTICLE 1. LEGISLATIVE DECLARATION OF PURPOSE.

Sec. 24.45.011. PURPOSE. The legislature finds and declares that he operation of responsible representative democracy requires that the fullest opportunity be afforded to the people to petition their government for the redress of grievances and to express freely to individual members of the legislature, to its committees, and to officials of the executive branch, their opinions on pending legislation or administrative actions; and that the people are entitled to know the identity, income, expenditures and activities of those persons who pay or are paid to engage in efforts to persuade members of the legislature or

SENATE VERSION

Original sponsors: Parker, Bradley,
Gardiner, et al

Offered: 5/7/76
Referred: Rules

IN THE HOUSE

BY THE COMMERCE COMMI

SENATE CS FOR CS FOR HOUSE BILL NO. 522 am S

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the regulation of lobbying; a providing for an effective date."

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

* Section 1. AS 24.45.010 - 24.45.150 are repealed.

* Sec. 2. AS 24.45 is amended by adding new sections to read:

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HOUSE

ARTICLE 2. ADMINISTRATION.

Sec. 24.45.021. ADMINISTRATION. (a) This chapter shall be administered by the Alaska Public Offices Commission created under AS 15.13.020(a).

(b) The commission shall promulgate regulations under the Administrative Procedure Act (AS 44.62) to implement the provisions of this chapter.

Sec. 24.45.031. POWERS AND DUTIES. (a) In addition to its other duties under this chapter, the commission shall

(1) prescribe the forms for registration, reports, statements, notices and other documents required by this chapter;

(2) prepare and publish instructions setting out the methods of accounting, bookkeeping and preservation of records required to facilitate compliance with and enforcement of this chapter and explaining the duties of persons subject to the provisions of this chapter; the instructions shall be updated periodically;

(3) provide assistance to persons in complying with the provisions of this chapter;

(4) prepare and publish an annual report of its activities, findings and recommendations under this chapter, which shall be made available to the governor, legislature and to the public by February 1 of each calendar year;

(5) report suspected violations of this chapter to the attorney general;

SENATE

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(5) report suspected violations of this chapter to the attorney general.

HOUSE

(b) The commission may

(1) hold hearings and conduct investigations into compliance with the provisions of this chapter;

(2) in conjunction with (1) of this subsection, issue subpoenas, compel the attendance and testimony of witnesses, administer oaths and affirmations, and require the production of books, papers, records, documents or other items material to the commission's duties or powers under this chapter;

(3) prepare and publish periodic, but at least quarterly and annually, summaries of the statements and reports received; these summaries shall list separately individual lobbyists and employers of lobbyists.

ARTICLE 3. DISCLOSURE: REGISTRATION AND REPORTS.

Sec. 24.45.041. REGISTRATION. (a) Before engaging in lobbying or within 10 days after being employed as a lobbyist, whichever occurs first, a lobbyist shall file a registration statement on a form prescribed by the commission.

(b) The registration form prescribed by the commission shall be accompanied by four 2 1/2 inch by 2 1/2 inch black and white photographs of himself which are not more than five years old and a written authorization to act as a lobbyist from each person by whom he is employed or with whom he contracts for lobbying services and shall include

SENATE

(b) The commission may

(1) hold hearings and conduct investigations into compliance with the provisions of this chapter;

(2) in conjunction with (1) of this subsection, issue subpoenas, compel the attendance and testimony of witnesses, administer oaths and affirmations, and require the production of books, papers, records, documents or other items material to the commission's duties or powers under this chapter;

(3) prepare, publish, and make available to the public, periodic, but at least quarterly and annually, summaries of the statements and reports received; these summaries shall list separately individual lobbyists and employers of lobbyists.

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Sec. 24.45.041. REGISTRATION. (a) Before engaging in lobbying a lobbyist shall file a registration statement on a form prescribed by the commission.

(b) The registration form prescribed by the commission shall include

(1) the lobbyist's full name and complete permanent residence and business address and telephone number, as well as any temporary residential and business address and telephone number in the state capital during a legislative session;

(2) the full name and complete address of each person, as prescribed in (1) of this subsection, by whom the lobbyist is retained or employed;

(3) whether the person from whom the lobbyist receives compensation employs him solely as a lobbyist or whether he is a regular employee performing other services for his employer which include but are not limited to the influencing of legislative or administrative action;

(4) the duration of his employment and the date on which the lobbyist expects his lobbying to end;

(5) the lobbyist's compensation for engaging in lobbying, including salary, fees or reimbursement for expenses received in consideration for, or directly in support of or in connection with, the influencing of legislative or administrative action;

(6) a general description of the subjects or matters on which the registrant expects to lobby or to engage in the influencing of legislative or administrative action;

SENATE

(1) the lobbyist's full name and complete permanent resid and business address and telephone number, as well as any temporary residential and business address and telephone number in the state capital during a legislative session;

(2) the full name and complete address of each person by the lobbyist is retained or employed;

(3) whether the person from whom the lobbyist receives compensation employs him solely as a lobbyist or whether he is a reg employee performing other services for his employer which include bu are not limited to the influencing of legislative or administrative action,

} Senate deleted this provision.

(4) the nature or form of the lobbyist's compensation for engaging in lobbying, including salary, fees or reimbursement for expenses received in consideration for, or directly in support of or connection with, the influencing of legislative or administrative action;

(5) a general description of the subjects or matters on w the registrant expects to lobby or to engage in the influencing of legislative or administrative action;

HOUSE

(7) the full name and complete address of the person who has custody of the accounts, books, papers, bills, receipts and other documents required to be maintained under this chapter.

(c) If a change occurs in any of the information contained in a registration statement filed under (a) of this section, or in any accompanying document, an appropriate amendment shall be filed with the commission within 10 days after the change.

(d) Within 45 days after the convening of each regular session of the legislature, the commission shall publish a directory of registered lobbyists, containing the photograph and the information prescribed in (b) of this section for each lobbyist. From time to time thereafter the commission shall publish those supplements to the directlry that in the commission's judgment may be necessary. The directory shall be made available to public officials and to the public at the following locations: a public place adjacent to the legislative chambers in the state capitol building, the office of the lieutenant governor, the legislative reference library of the Legislative Affairs Agency and the commission's central office.

(e) Each lobbyist shall renew his registration annually by filing a new registration statement together with a new authorization to act as a lobbyist within 10 days after the convening of each regular session of the legislature. The lobbyist also shall file any reports or statements he has failed to file for a previous reporting period. The commission may not renew lobbying credentials until this provision is complied with.

SENATE

(6) the full name and complete address of the person, other than the registrant, who has custody of the accounts, books papers, bills, receipts and other documents required to be maintai under this chapter.

(c) If a change occurs in any of the information contained registration statement filed under (a) of this section, or in any accompanying document, an appropriate amendment shall be filed wi commission within 10 days after the change.

(d) Within 45 days after the convening of each regular sess the legislature, the commission shall publish a directory of regi lobbyists, containing the information prescribed in (b) of this section for each lobbyist. From time to time thereafter the commission shall publish those supplements to the directory that commission's judgment may be necessary. The directory shall be m available to public officials and to the public at the following tions: a public place adjacent to the legislative chambers in th capitol building, the office of the lieutenant governor, the legi reference library of the Legislative Affairs Agency and the commi central office.

(e) Each lobbyist shall renew his registration annually by a new registration statement together with a new authorization to a lobbyist before engaging in lobbying. The lobbyist also shall any reports or statements he has failed to file for a previous re period. The commission may not renew lobbying credentials until provision is complied with.

HOUSE

Sec. 24.45.051. REPORTS. Each lobbyist registered under sec. 41 this chapter shall file with the commission a report concerning his ctivities during each reporting period prescribed in sec. 101 of this apter, so long as the lobbyist continues to engage in lobbying activi- ies. The report shall be made on a form prescribed by the commission nd filed in accordance with secs. 91 and 101 of this chapter. The eport also shall include any changes in the information required to be pplied under sec. 41(b) of this chapter and the following information or the reporting period, as applicable:

(1) the source of income, as defined in AS 39.50.200(8) and he monetary value of all payments, including but not limited to alary, fees, and reimbursement of expenses, received in consideration or or directly or indirectly in support of or in connection with nfluencing legislative or administrative action, and the full name and omplete address of each person from whom amounts or things of value ave been received and the total monetary value received from each erson;

SENATE

Sec. 24.45.051. REPORTS. Each lobbyist registered under sec. of this chapter shall file with the commission a report concerning l activities during each reporting period prescribed in sec. 71 of thi chapter, so long as the lobbyist continues to engage in lobbying act ties. The report shall be made on a form prescribed by the commiss and filed in accordance with secs. 61 and 71 of this chapter. The report also shall include any changes in the information required t supplied under sec. 41(b) of this chapter and the following informat for the reporting period, as applicable:

(1) the source of income, as defined in AS 39.50.200(8) an the monetary value of all payments, including but not limited to sal fees, and reimbursement of expenses, received in consideration for c directly or indirectly in support of or in connection with influenci legislative or administrative action, and the full name and complete address of each person from whom amounts or things of value have bee received and the total monetary value received from each person;

HOUSE

(2) the aggregate amount of disbursements or expenditures
ade or incurred during the period in support of or in connection with
fluencing legislative or administrative action by the lobbyist, or on
half of the lobbyist by his employer in the following categories:

(A) food and beverages; in this category of disbursements or expenditures, if more than $100 a month in the aggregate is disbursed or expended on behalf of any one public official or candidate, the full name of the person and his official position, if any, who received the food or beverages and the amount paid for each person shall be stated;

(B) living accommodations;

(C) travel;

(3) the date and nature of any gift exceeding $10 in value
de to a public official or candidate and the full name and official
sition of that person;

(4) the name and official position of each public official,
candidate and the name of each member of the immediate family of any
these officials or candidates with whom the lobbyist has engaged in
exchange of money, goods, services or anything of more than $50 in
lue and the nature and date of each of these exchanges and the mone-
ry values exchanged;

SENATE

(2) the aggregate amount of disbursements or expenditures
made or incurred during the period in support of or in connection wi
influencing legislative or administrative action by the lobbyist, o
behalf of the lobbyist by his employer in the following categories:

(A) food and beverages;

(B) living accommodations;

(C) travel;

(3) the date and nature of any gift exceeding $100 in val
made to a public official and the full name and official position of
that person;

(4) the name and official position of each public official
and the name of each member of the immediate family of any of these
officials, with whom the lobbyist has engaged in an exchange of money
goods, services or anything of more than $100 in value and the natur
date of each of these exchanges and the monetary values exchanged;

HOUSE

(5) the name and address of any business entity in which the lobbyist knows or has reason to know that a public official or candidate is a proprietor, partner, director, officer or manager, or has more than 50 per cent ownership interest, with whom the lobbyist has engaged in an exchange of money, goods, services, or anything of value and the nature and date of each exchange and the monetary value exchanged if the total value of these exchanges is $500 or more in a calendar year;

(6) the date and amount of each contribution, as defined in AS 15.13.130(2), made to a public official or candidate by the lobbyist and the name and official position of the person to whom the contribution was made; and

(7) a notice of termination if the lobbyist has ceased the lobbying activity which required his registration under this chapter and if this report constitutes the final report of his activities.

SENATE

(5) the name and address of any business entity in which the lobbyist knows or has reason to know that a public official is a proprietor, partner, director, officer or manager, or has a control interest, with whom the lobbyist has engaged in an exchange of money, goods, services, or anything of value and the nature and date of each exchange and the monetary value exchanged if the total value of these exchanges is $100 or more in a calendar year; and

Senate deleted all requirement that lobbyists report contributions to public officials.

(6) a notice of termination if the lobbyist has ceased the lobbying activity which required his registration under this chapter if this report constitutes the final report of his activities.

HOUSE

Sec. 24.45.061. REPORTS BY EMPLOYERS OF LOBBYISTS. A person who employs, retains or who contracts for the services of one or more lobbyists whether independently or jointly with other persons and a person who directly or indirectly makes payments to influence legislative or administrative action of $100 or more in value in a calendar month when the legislature is in session or $300 or more in value in a calendar quarter when the legislature is not in session, shall file a quarterly report containing

(1) the full name, complete business address and telephone number of the person making the report;

(2) information sufficient to identify the nature and interests of the person making the report, including

(A) if the maker is an individual, the name and address of his employer, if any, or his principal place of business if he is self-employed, and a description of the business or professional activity in which he or his employer is engaged;

(B) if the maker is a business entity, a description of the business activity in which it is engaged;

(C) if the maker is an industry, trade or professional association, a description of the industry, trade or profession including a specific description of any portion or faction of the industry, trade or profession which the association exclusively or primarily represents and, if the association has less than 50 members, the names of the members; or

SENATE

Senate deleted requirement that lobbyists' employers, or anyone even tho not registered but who makes expenditures for influencing legislative or administrative action report.

HOUSE

SENATE

(D) if the maker is none of those listed in (A) - (C) of this paragraph, a statement of the person's nature and purposes including a description of any industry, trade, profession or other group with a common economic interest which the person principally represents or from which its membership or financial support is principally derived; however, the information required by (A) - (D) of this paragraph need be stated only in the first report filed during a calendar year, except that subsequent reports must reflect changes in this information previously reported;

(3) the total amount of payments made to influence legislative or administrative action during the period, and the name and address of each person to whom these payments in an aggregate amount or value of $100 or more have been made during the period by the maker of the report, together with the date, amount and a description of the consideration received for each expenditure, and the full name of the beneficiary of each expenditure if other than the maker or the payee;

(4) the name and official position of each public official or candidate and the name of each member of the immediate family of any official or candidate with whom the maker of the report has engaged in an exchange of money, goods, services or anything of value, the nature and date of each such exchange and the monetary value exchanged, if the fair market value of either side of the exchange was $500 or more;

HOUSE

SENATE

(5) the name and address of any business entity in which the erson making the report knows or has reason to know that a public fficial or candidate is a proprietor, partner, director, officer, anager or has more than a 50 per cent ownership interest, with whom the erson making the report has engaged in an exchange or exchanges of oney, goods, services or anything of value and the nature and date of ch exchange and the monetary value exchanged, if the total value of e exchange or exchanges is $500 or more in a calendar year;

(6) the date and amount of each contribution as defined in 15.13.130(2), made to a public official or candidate by the person king the report and the name and official position of the recipient of ch contribution;

(7) the date and nature of any gift exceeding $10 in value ade to any public official or candidate and the full name and official sition of the recipient of each gift;

(8) a specific description of legislative or administrative tion which the person making the report has attempted to influence;

(9) the name of each lobbyist employed or retained by the rson making the report, together with the total amount paid to each bbyist and the portion of that amount, if any, which was paid for ecific purposes, including salary, fees, and reimbursement for ex- nses, in the categories set out in sec. 51(2) of this chapter;

(10) a notice of termination if the person filing a report s ceased employing or retaining a lobbyist registered under this apter and if this report constitutes the final report of the lobby- t's activities on behalf of the maker of the report; and

(11) any other information required by the commission consis- nt with the purposes and provisions of this chapter.

(1)

HOUSE

Sec. 24.45.081. DISCLOSURE OF CERTAIN-RELATIONSHIPS REQUIRED. If person registered, or required to be registered, as a lobbyist under his chapter, or a person who employs or retains a lobbyist, employs or tains a public official or candidate, and if that offici al or candi- te remains in the partial or full-time employ of the state or an ency of it, the lobbyist, or employer of a lobbyist, shall file a tatement with the commission setting out the name, address and offi- al position of the person employed, retained or paid, the nature of c employment and the amount of pay or consideration to be paid. The tatement shall be filed within 10 days after the beginning of that ployment or the assumption of public office or employment.

SENATE

Senate deleted provision requiring disclosure of public officials employment or retention by lobbyist or the lobbyist's employer

Sec. 24.45.091. CERTIFICATION OF REPORTS. Every statement or port required to be filed under this chapter shall identify the full me of the person preparing it, his complete address and telephone mber, and shall be certified as complete and correct, both by the rson preparing it and by the person on whose behalf it is filed.

Sec. 24.45.061. CERTIFICATION OF REPORTS. Every statement or report required to be filed under this chapter shall identify the full name of the person preparing it, his complete address and telephone number, and shall be certified as complete and correct, both by the person preparing it and by the person on whose behalf it is filed.

HOUSE

Sec. 24.45.101. REPORTING PERIODS. Reports required under this chapter shall be filed by the 10th day of the calendar month following each calendar month during any part of which the legislature was in session and by the 10th day of the month following each calendar quarter when the legislature was not in session. However, if a lobbyist registered under this chapter has declared that he seeks only to influence [illegible] strative action and not legislative action he need only file a [illegible]t required under this chapter for each calendar quarter. If a public official or candidate for elective public office who is subject to the provisions of sec. 71 of this chapter is an officer or employee of an agency in the executive branch, or a candidate for elective public office in that branch, he need only file a report required under that section for each calendar quarter. The period covered shall be the calendar month or the calendar quarter, as applicable, and shall in any event cover the period from the date of the last report filed under this chapter to the date of the end of the calendar month or quarter, as applicable, for which the report is being filed. The period covered shall not include any months covered in previous reports filed by the same person. When total amounts are required to be reported, totals shall be stated both for the period covered by the statement and for the entire calendar year to date.

SENATE

Sec. 24.45.071. REPORTING PERIODS. Reports required under th chapter shall be filed during the calendar month following each cal month during any part of which the legislature was in session and d the month following each calendar quarter when the legislature was in session. However, if a lobbyist registered under this chapter ha declared that he seeks only to influence administrative action and legislative action he need only file a report required under this chapter for each calendar quarter. The period covered shall be the calendar month or the calendar quarter, as applicable, and shall in event cover the period from the date of the last report filed under chapter to the date of the end of the calendar month or quarter, as applicable, for which the report is being filed. The period covered shall not include any months covered in previous reports filed by th same person. When total amounts are required to be reported, totals shall be stated both for the period covered by the statement and for entire calendar year to date.

HOUSE

Sec. 24.45.111. PUBLICATION OF REPORTS. Copies of the statements
d reports filed under this chapter shall be made available to the
blic at the commission's central office, the office of the lieutenant
vernor, the legislative reference library of the Legislative Affairs
ency, and at the commission's district offices prescribed in AS 15.-
.020(j) as soon as practicable after each reporting period.

Sec. 24.45.121. PUBLIC RECORDS. Statements and reports filed
der this chapter are public records and shall be available for public
spection and copying during normal business hours at the expense of
e person requesting copies; however, the charge for copying may not
ceed actual cost to the commission.

Sec. 24.45.131. PRESERVATION OF RECORDS. (a) A person required
register or report as a lobbyist or as an employer of a lobbyist
all preserve all accounts, bills, receipts, books, papers and docu-
nts necessary to substantiate the reports required to be made and
led under this chapter for a period of at least six years from the
te of the filing of the report containing these items. These ac-
unts, bills, receipts, books, papers and other documents shall be
de available for inspection by the commission, or members of its
aff, at any time. If a lobbyist is required under the terms of his
ployment contract to turn any records over to his employer, responsi-
lity for the preservation of these records under this section rests
th the employer.

SENATE

Sec. 24.45.081. PUBLICATION OF REPORTS. Copies of the statem
and reports filed under this chapter shall be made available to the
public at the commission's central office, the office of the lieute
governor, the legislative reference library of the Legislative Affa
Agency, and at the commission's district offices prescribed in AS 1
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documents shall be made available for inspection by the commission,
members of its staff, at any time. If a lobbyist is required under
terms of his employment contract to turn any records over to his emp
er, responsibility for the preservation of these records under this
section rests with the employer.

HOUSE

(b) The commission shall preserve the statements and reports
quired to be filed under this chapter for a period of six years from
e date of filing. If the commission's central office is not in the
ate capital, copies of all statements and reports filed under this
apter shall be maintained in an office established by the commission
the state capital or in the office of the lieutenant governor.

SENATE

(b) The commission shall preserve the statements and reports required to be filed under this chapter for a period of six years from the date of filing. If the commission's central office is not in the state capital, copies of all statements and reports filed under this chapter shall be maintained in an office established by the commission in the state capital or in the office of the lieutena governor.

HOUSE

ARTICLE 4. ENFORCEMENT.

Sec. 24.45.141. PROHIBITIONS. (a) No lobbyist may

(1) engage in any activity as a lobbyist before registering under sec. 41 of this chapter;

(2) do anything with the intent of placing a public official or candidate under personal obligation to him or to his employer;

(3) intentionally deceive or attempt to deceive any public official or candidate, with regard to any material fact pertinent to pending or proposed legislative or administrative action;

(4) cause or influence the introduction of a legislative measure for the purpose of thereafter being employed to secure its defeat;

(5) cause a communication to be sent to a public official or candidate, in the name of any fictitious person or in the name of any real person, except with the consent of that person;

(6) represent falsely either directly or indirectly that he can control the official action of a public official or candidate;

(7) accept or agree to accept any payment in any way contingent upon the defeat, enactment or outcome of any proposed legislative or administrative action.

(b) No person may knowingly receive or accept a contribution or gift made unlawful under (a)(2) of this section.

(c) No person may employ for pay or any consideration, or pay or agree to pay consideration to, a person to lobby who is not registered under of this chapter except upon condition that the person register and that person does in fact so register as soon as practicable after being employed to lobby.

SENATE

ARTICLE 4. ENFORCEMENT.

Sec. 24.45.111. PROHIBITIONS. (a) No lobbyist may

(1) engage in any activity as a lobbyist before regist under sec. 41 of this chapter;

(2) do anything with the intent of placing a public of under personal obligation to him or to his employer;

(3) intentionally deceive or attempt to deceive any pu official with regard to any material fact pertinent to pending or proposed legislative or administrative action;

(4) cause or influence the introduction of a legislati measure for the purpose of thereafter being employed to secure it defeat;

(5) cause a communication to be sent to a public offic in the name of any fictitious person or in the name of any real except with the consent of that person;

→ Senate deleted this provision.

(6) accept or agree to accept any payment in any way c tingent upon the defeat, enactment or outcome of any proposed leg lative or administrative action.

→ Senate deleted this provision.

(b) No person may employ for pay or any consideration, or pay or agree to pay consideration to, a person to lobby who is not registered under sec. 41 of this chapter unless that person regist and that person does in fact so register before engaging in lobby

HOUSE

Sec. 24.45.151. EXAMINATION OF STATEMENTS, REPORTS. (a) The commission or its staff shall examine each statement or report filed under this chapter within 10 days after the date it is filed. A person required to file a statement or report under this chapter shall be notified immediately if

(1) it appears that the person has failed to file a statement or report as required by law or that the statement or report filed does not conform to the requirements of this chapter; or

(2) a written complaint is filed with the commission by any qualified voter alleging that a statement or report filed with the commission does not conform to the requirements of this chapter, or to the truth, or that a person subject to the provisions of this chapter has failed to file a statement or report in the manner prescribed by this chapter.

(b) The commission shall conduct an investigation, and may thereafter conduct a hearing, into an allegation under (a)(2) of this section.

(c) The commission shall report any suspected violations of this chapter to the attorney general, to a district attorney in the judicial district where the alleged violation occurred, or to a grand jury.

SENATE

Sec. 24.45.121. EXAMINATION OF STATEMENTS, REPORTS. (a) The commission or its staff shall examine each statement or report filed under this chapter within 10 days after the date it is filed. A person required to file a statement or report under this chapter shall be notified immediately if

(1) it appears that the person has failed to file a statement or report as required by law or that the statement or report filed does not conform to the requirements of this chapter; or

(2) a written complaint is filed with the commission by any qualified voter alleging that a statement or report filed with the commission does not conform to the requirements of this chapter, or to the truth, or that a person subject to the provisions of this chapter has failed to file a statement or report in the manner prescribed by this chapter.

(b) The commission shall conduct an investigation, and may thereafter conduct a hearing, into an allegation under (a)(2) of this section.

(c) The commission shall report any suspected violations of this chapter to the attorney general, to a district attorney in the judicial district where the alleged violation occurred, or to a grand jury.

HOUSE

Sec. 24.45.161. CIVIL PENALTIES. (a) If a lobbyist violates any f the applicable provisions of this chapter, his registration credenials may be suspended or revoked by the commission after a hearing, nd he may be enjoined by the superior court from receiving compensation r making disbursements or expenditures for lobbying activities. owever, the imposition of sanctions or penalties under this section or ec. 171 or 181 of this chapter does not excuse the lobbyist, employer f a lobbyist, or sponsor from filing statements or reports required by his chapter.

(b) A person who pays compensation to a lobbyist, reimburses a obbyist for all or part of his expenses, or makes disbursements or xpenditures to solicit others to lobby, and who fails to make and file report of this compensation, reimbursement, disbursement or expendiure under sec. 61 of this chapter, is, in addition to any other penalty rovided by law, subject to a civil penalty of up to three times that ompensation, reimbursement, disbursement or expenditure.

(c) A person who receives any payment, compensation, or reimburseent for expenses for activity as a lobbyist and who fails to register r to make and file a report under of this chapter is, in addition to ny other penalty prescribed by law, subject to a civil penalty of up to hree times that payment, compensation or reimbursement.

(d) A person who fails to report payments, compensation, gifts, ontributions, or expenditures required to be reported under this hapter is subject to a civil penalty of up to three times the amount he ailed to report. A person who pays, receives or accepts the prohibited ompensation or who makes, receives or accepts a prohibited gift, conribution or expenditure is subject to a civil penalty of up to three imes the prohibited or unlawful amount.

SENATE

Senate deleted civil penalties section.

HOUSE

(e) A person who fails to file a properly completed and certified report or statement within the time required by this chapter is subject to a civil penalty of $10 a day for each day the delinquency continues.

Sec. 24.45.171. INJUNCTIVE RELIEF. The superior court may enjoin a person to prevent the doing of any act prohibited by this chapter or to compel the performance of any act required by this chapter.

Sec. 24.45.181. CRIMINAL PENALTIES. (a) An individual who knowingly violates any provisions of this chapter, whether acting for himself, on behalf of an employer or in concert with other persons, or who knowingly causes, participates in, aids, abets, ratifies or confirms any violation of a provision of this chapter is, upon conviction, punishable by a fine of not more than $1,000, or by imprisonment for not more than one year, or by both.

(b) A person, other than an individual, who knowingly violates any provision of this chapter, whether acting for himself, on behalf of an employer or in concert with other persons, or who knowingly causes, participates in, aids, abets, ratifies or confirms any violation of a provision of this chapter is, upon conviction, punishable by a fine of not more than $10,000 for each offense.

SENATE

Sec. 24.45.131. CRIMINAL PENALTIES. (a) An individual who knowingly violates any provisions of this chapter, whether acting fo himself, on behalf of an employer or in concert with other persons, upon conviction, punishable by a fine of not more than $1,000, or by imprisonment for not more than one year, or by both.

(b) An individual who knowingly causes, participates in, aids, abets, ratifies or confirms any violation of a provision of this cha is, upon conviction, punishable by a fine of not more than $1,000, o imprisonment for not more than one year, or by both.

(c) A person, other than an individual, who knowingly violates provision of this chapter, whether acting for himself, on behalf of a employer or in concert with other persons, or who knowingly causes, participates in, aids, abets, ratifies or confirms any violation of a provision of this chapter is, upon conviction, punishable by a fine o not more than $10,000 for each offense.

HOUSE

ARTICLE 5. GENERAL PROVISIONS.

Sec. 24.45.191. EXEMPTIONS. (a) This chapter does not apply to

(1) an individual

(A) who lobbies without payment of compensation or other consideration; or

(B) who limits his lobbying activities to appearances before public sessions of the legislature, or its committees or subcommittees, or to public hearings or other public proceedings of state agencies;

(2) an elected state or municipal public officer or an em-
e of the state or a municipality acting in his official capacity
within the scope of his employment, except as provided in sec. 71 of
chapter;

SENATE

ARTICLE 5. GENERAL PROVISIONS.

Sec. 24.45.141. EXEMPTIONS. (a) This chapter does not apply to

(1) an individual

(A) who lobbies without payment of compensation or oth consideration and makes no disbursement or expenditure for or on behalf of a public official to influence legislative or administra tive action other than to pay his reasonable personal travel and living expenses; and

(B) who limits his lobbying activities to appearances before public sessions of the legislature, or its committees or subcommittees, or to public hearings or other public proceedings o state agencies;

(2) an elected or appointed state or municipal public office or an employee of the state or a municipality acting in his official capacity or within the scope of his employment; however, a state or municipal officer or employee who makes direct or indirect payments, or who is reimbursed for expenses, to influence legislative or administrative action in the categories set out in sec. 51(2) of this chapter shall register and report as a lobbyist under secs. 41 and 51 of this chapter;

HOUSE

(3) any newspaper or other periodical of general circulation, book publisher, radio or television station (including an individual who owns, publishes or is employed by that newspaper or periodical, radio or television station) which publishes news items, editorials or other comments, or paid advertisements, which directly or indirectly urge legislative or administrative action if the newspaper, periodical, book publisher, radio or television station or individual engages in no further or other activities in connection with urging or advocating legislative or administrative action other than to appear before public sessions of the legislature, or its committees or subcommittees, or public hearings or other public proceedings of state agencies;

(4) a person who appears before the legislature or either house, or standing, special or interim committee, in response to an invitation issued under (c) of this section.

(b) Nothing in this chapter may be construed as prohibiting or affecting the rendering of professional services in drafting legislative measures or in advising clients and in rendering opinions as to the construction or effect of proposed or pending legislative or administrative action where these professional services are not otherwise connected with infuencing or attempting to influence legislative or administrative action. Nor does anything in this chapter prevent members of the legislature from discussing with constituents the advisability of passing legislation then pending before, or proposed to be presented to, the legislature.

SENATE

(3) any newspaper or other periodical of general circula book publisher, radio or television station (including an individua owns, publishes or is employed by that newspaper or periodical, radi television station) which publishes news items editorials or other comments, or paid advertisements, which directly or indirectly urge legislative or administrative action if the newspaper, periodical, b publisher, radio or television station or individual engages in no further or other activities in connection with urging or advocating legislative or administrative action other than to appear before pub sessions of the legislature, or its committees or subcommittees, or public hearings or other public proceedings of state agencies;

(4) a person who appears before the legislature or either house, or standing, special or interim committee, in response to an vitation issued under (c) of this section.

(b) Nothing in this chapter may be construed as prohibiting or affecting the rendering of professional services in drafting legisla measures or in advising clients and in rendering opinions as to the construction or effect of proposed or pending legislative or adminis trative action when these professional services are not otherwise connected with infuencing or attempting to influence legislative or administrative action. Nor does anything in this chapter prevent members of the legislature from discussing with constituents the advisability of passing legislation then pending before, or proposed to presented to, the legislature.

HOUSE

(c) Either house of the legislature by resolution, or both houses the legislature by concurrent resolution may invite a person to ear to speak before the legislature or either house with reference any pending matter. A standing, special or interim committee of her house of the legislature may, upon the concurrence of a majority its members, extend a written invitation to any person to appear ore the committee to give information in regard to, or explain, any ter pending before the committee.

Senate added this provision.

SENATE

(c) Either house of the legislature by resolution, or both hous of the legislature by concurrent resolution, may invite a person to appear to speak before the legislature or either house with reference any pending matter. A standing, special or interim committee of eith house of the legislature may, upon the concurrence of a majority of i members, extend an invitation to any person to appear before the committee to give information in regard to, or explain, any matter pendi before the committee.

(d) An individual exempt from this chapter under (a)(1) of this section may, at his option, register and report under this chapter.

Sec. 24.45.201. DEFINITIONS. In this chapter

(1) "administrative action" means the proposal, drafting, elopment, consideration, amendment, adoption, approval, promulgation, uance, modification, rejection or postponement by any state agency of rule, regulation, order, decision, determination, or any other si-legislative or quasi-judicial action or proceeding whether or not erned by the Administrative Procedure Act (AS 44.62);

(2) "agency" means a state department, division, commission, rd, office, bureau, institution, corporation, authority, organization, mittee, council or board in the executive branch, or independent of executive branch, of state government;

Sec. 24.45.151. DEFINITIONS. In this chapter

(1) "administrative action" means the proposal, drafting, development, consideration, amendment, adoption, approval, promulgatio issuance, modification, rejection or postponement by any state agency any rule, regulation, order, decision, determination, or any other quasi-legislative or quasi-judicial action or proceeding whether or no governed by the Administrative Procedure Act (AS 44.62);

(2) "agency" means a state department, division, commission board, office, bureau, institution, corporation, authority, organiza- tion, committee, council or board in the executive branch, or indepen dent of the executive branch, of state government;

(3) "candidate" means an individual who is listed on the ballot or who is a write-in candidate at any election for nomination for or election to an elective public office, or who receives a contribution or makes an expenditure or gives his consent for any other person to receive a contribution or make an expenditure with a view to bringing about his nomination or election to elective public office, whether or not the specific elective public office for which he will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not he has announced his candidacy or filed a declaration of candidacy at the time the contribution is made or offered; "candidate" also includes an elective public official who is the subject of a recall election;

Leads deleted application to candidates for elective public offices covered by this act.

HOUSE

(4) "gift"

(A) means any payment to the extent that consideration of equal or greater value is not received;

(B) includes but is not limited to:

(i) a loan, loan guarantee, forgiveness of a loan, payment of a loan by a third party, or an enforceable promise to make a payment except when full and adequate consideration is received;

(ii) the purchase of tickets for travel or for entertainment events; and

(iii) the granting of discounts or rebates for goods or services not extended to the public generally;

(C) does not include:

(i) informational or promotional materials, including but not limited to books, reports, pamphlets, calendars or periodicals; however, payments for travel or reimbursement for expenses may not be considered "informational material";

(ii) food and beverages consumed in places of public accommodation.

(5) "immediate family" means the spouse and dependent children of an individual;

(6) "individual" means a natural person;

(7) "influencing legislative or administrative action" means promoting, advocating, supporting, modifying, opposing or delaying or seeking to do the same with respect to any legislative or administrative action by means including but not limited to the provision or use of information, statistics, studies, analyses in written or oral form or format;

SENATE

(3) "gift"

(A) means any payment to the extent that considerati of equal or greater value is not received;

(B) includes but is not limited to:

(i) a loan, loan guarantee, forgiveness of a lo payment of a loan by a third party, or an enforceable prom to make a payment except when full and adequate considerat is received;

(ii) the purchase of tickets for travel or for e tertainment events; and

(iii) the granting of discounts or rebates for go or services not extended to the public generally;

(C) does not include:

(i) informational or promotional materials, inc ing but not limited to books, reports, pamphlets, calendar periodicals; however, payments for travel or reimbursement expenses may not be considered "informational material";

(ii) food and beverages consumed in places of pu accommodation;

(4) "immediate family" means the spouse and dependent chi dren of an individual;

(5) "individual" means a natural person;

(6) "influencing legislative or administrative action" me promoting, advocating, supporting, modifying, opposing or delaying o seeking to do the same with respect to any legislative or administra action by means including but not limited to the provision or use of information, statistics, studies, analyses in written or oral form o format;

HOUSE

(8) "legislative action" means the preparation, research, rafting, introduction, consideration, modification, amendment, approv-l, passage, enactment, defeat or rejection of any bill, resolution, mendment, motion, report, nomination, appointment or other matter by he legislature, or by a standing, interim or special committee of the egislature, or by a member or employee of the legislature acting in his fficial capacity; it includes, but is not limited to, the action of he governor in approving or vetoing a bill or the action of the legis-ature in considering, overriding or sustaining that veto and the ction of the legislature in considering, confirming or rejecting an xecutive appointment of the governor;

(9) "lobbyist" means a person who is employed and receives ayments, or who contracts for economic consideration, other than eimbursement for reasonable travel and his living expenses, to communi-ate directly or through his agents with any public official or candidat or the purpose of influencing legislative or administrative action if a ubstantial or regular portion of the activities for which he receives onsideration is for the purpose of influencing legislative or adminis-rative action or a person who represents himself as engaging in that ommunication as a business, occupation or profession;

(10) "payment" means the disbursement, distribution, transfer, oan, advance, deposit, gift or other rendering or tendering of money, roperty, goods or services or anything else of value, whether tangible r intangible;

SENATE

(7) "legislative action" means the preparation, research drafting, introduction, consideration, modification, amendment, appr al, passage, enactment, defeat or rejection of any bill, resolution amendment, motion, report, nomination, appointment or other matter b the legislature, or by a standing, interim or special committee of t legislature, or by a member or employee of the legislature acting in official capacity; it includes, but is not limited to, the action of governor in approving or vetoing a bill or the action of the legis-lature in considering, overriding or sustaining that veto and the action of the legislature in considering, confirming or rejecting an executive appointment of the governor;

(8) "lobbyist" means

(A) a person who is employed and receives payments, who contracts for economic consideration, including reimburseme for reasonable travel and living expenses, to communicate direc or through his agents with any public official for the purpose influencing legislative or administrative action if a substanti or regular portion of the activities for which he receives con-sideration is for the purpose of influencing legislative or ad-ministrative action; or

(B) a person who represents himself as engaging in t influencing of legislative or administrative action as a busine occupation or profession;

(9) "payment" means isbursement, distribution, trans loan, advance, deposit, gift or other rendering or tendering of mone property, goods or services or anything else of value;

HOUSE

(11) "payment to influence legislative or administrative
:tion" means any of the following:

(A) a direct or indirect payment to a lobbyist whether for salary, fee, compensation for expenses, or any other purpose, by a person employing, retaining or contracting for the services of the lobbyist separately or jointly with other persons;

(B) a payment in support of or assistance to a lobbyist or his activities, including but not limited to the direct payment of expenses incurred at the request or suggestion of the lobbyist;

(C) a payment which directly benefits a public official or candidate, or a member of the immediate family of that official or candidate;

(D) a payment, including compensation, payment or reimbursement for the services, time or expenses of an employee for or in connection with direct communication with a public official or candidate;

(E) a payment for or in connection with soliciting or urging other persons to enter into direct communication with a public official or candidate;

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(12) "person", in addition to the terms set out in AS 01.10.-(7), includes a labor union; and

(13) "public official" means the governor, lieutenant gover-, governor-elect or lieutenant governor-elect, or a member or member-ct of the legislature; or, an officer, employee, or member of an ncy or an employee of the legislature acting in the exercise of his icial duties or responsibilities, other than in a purely clerical or ial capacity.

SENATE

(10) "payment to influence legislative or administrative action" means any of the following:

(A) a direct or indirect payment to a lobbyist wheth for salary, fee, compensation for expenses, or any other purpos by a person employing, retaining or contracting for the service the lobbyist separately or jointly with other persons;

(B) a payment in support of or assistance to a lobby or his activities, including but not limited to the direct payme of expenses incurred at the request or suggestion of the lobbyi

(C) a payment which directly benefits a public offic or a member of the immediate family of that official;

(D) a payment, including compensation, payment or re-imbursement for the services, time or expenses of an employee f or in connection with direct communication with a public offici

(E) a payment for or in connection with soliciting o urging other persons to enter into direct communication with a public official;

(F) a payment or reimbursement for expenses in the categories set out in sec. 51(2) of this chapter;

(11) "person", in addition to the terms set out in AS 01.10 060(7), includes a labor union; and

(12) "public official" or "public office" means a public official or public office as defined in AS 39.50.200(1); however, it does not include a judicial officer or an elected or appointed munici officer except as provided in sec. 141(2) of this chapter.

HOUSE

Sec. 24.45.211. SHORT TITLE. This chapter may be cited as the
gulation of Lobbying Act.

c. 3. AS 15.13.030(8) is amended to read:

(8) examine, investigate and compare all reports, statements
d actions required by this chapter, AS 24.45 and AS 39.50 and to
port to the attorney general the names of all persons or groups which
e commission has substantial reason to believe have violated this
apter;

c. 4. AS 15.13.030(10) is amended to read:

(10) adopt regulations necessary to implement and clarify the
visions of AS 24.45, AS 39.50 and this chapter, subject to the pro-
sions of the Administrative Procedure Act (AS 44.62).

c. 5. AS 39.50.030 is amended by adding a new subsection to read:

(d) Each statement filed by a public official, or a candidate for
ective public office, as defined in AS 24.45.191(13), who (1) is
bject to this chapter, (2) is employed or retained by a lobbyist or
ployer of a lobbyist subject to AS 24.45 (Regulation of Lobbying),
d (3) is in the partial or full-time employ of the state or an agency
it, shall include in the statement filed under this chapter the
me, address and official position of the lobbyist or employer of the
bbyist who has employed, retained or paid that public official or
ndidate, the nature of the employment and the amount of pay or con-
deration to be paid.

SENATE

Sec. 24.45.~~201~~ 101. SHORT TITLE. This chapter may be cited as th
Regulation of Lobbying Act.

* Sec. 3. AS 15.13.030(8) is amended to read:

(8) examine, investigate and compare all reports, statem
and actions required by this chapter, AS 24.45 and AS 39.50 and to
report to the attorney general the names of all persons or groups wh
the commission has substantial reason to believe have violated this
chapter;

* Sec. 4. AS 15.13.030(10) is amended to read:

(10) adopt regulations necessary to implement and clarify
provisions of AS 24.45, AS 39.50 and this chapter, subject to the pr
visions of the Administrative Procedure Act (AS 44.62).

Senate deleted this provision when it deleted provision for disclosure of employment relationships with lobbyists.

HOUSE

House version includes no comparable provision.

SENATE

* Sec. 5. AS 39.50.050 is amended by adding a new subsection to read:

(d) To facilitate the filing of reports under AS 24.25 (Regula of Lobbying) and the information required to be provided under AS 24 051(4) and (5), the commission shall publish copies of the reports required under this chapter not later than the convening of each regu session of the legislature. Copies of this publication shall be provided on request; however, the commission may make a charge for the publication which may not exceed the actual cost of printing, postage and handling.

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ec. 6. Records, papers, documents or other materials relating to the stration of AS 24.45 before July 1, 1976 shall be transferred from the ment of Administration to the Alaska Public Offices Commission on , 1976.

ec. 7. This Act takes effect July 1, 1976. However, the initial re- required under AS 24.45.051 - 24.45.091 are due for the reporting beginning January 1, 1977, and shall be filed not later than Febru- , 1977.

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* Sec. 6. Records, papers, documents or other materials relating to administration of AS 24.45 before July 1, 1976 shall be transferred fro Department of Administration to the Alaska Public Offices Commission on 1, 1976.

* Sec. 7. This Act takes effect July 1, 1976. However, the initial ports required under AS 24.45.051 - 24.45.091 are due for the reporting period beginning January 1, 1977, and shall be filed not later than Feb ary 10, 1977.

1. Retain existing Provisions of law
   (A.) Report by employers
2. Add disclosure & conflict
   Common ~~stop~~ penalty provision

Original sponsors: Parker, Bradley, Gardiner, et al

Offered: 5/7/82
Referred: Rules

FREE CONFERENCE

IN THE HOUSE BY THE ~~COMMERCE~~ COMMITTEE

FREE CONFERENCE CS FOR SENATE CS FOR CS FOR HOUSE BILL NO. 522 ~~am S~~

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the Alaska Public Offices Commission ~~regulation of lobbying~~; and providing for an effective date."

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

* Section 1. AS 24.45.010 - 24.45.150 are repealed.

* Sec. 2. AS 24.45 is amended by adding new sections to read:

CHAPTER 45. REGULATION OF LOBBYING

[LEGISLATIVE REPRESENTATION].

ARTICLE 1. LEGISLATIVE DECLARATION OF PURPOSE.

Sec. 24.45.011. PURPOSE. The legislature finds and declares that the operation of responsible representative democracy requires that the fullest opportunity be afforded to the people to petition their government for the redress of grievances and to express freely to individual members of the legislature, to its committees, and to officials of the executive branch, their opinions on pending legislation or administrative actions; and that the people are entitled to know the identity, income, expenditures and activities of those persons who pay, are paid or reimbursed for expenses, or who make expenditures or other payments in an effort to influence legislative or administrative action.

ARTICLE 2. ADMINISTRATION.

Sec. 24.45.021. ADMINISTRATION. (a) This chapter shall be administered by the Alaska Public Offices Commission created under AS 15.13.020(a).

(b) The commission shall promulgate regulations under the Administrative Procedure Act (AS 44.62) to implement the provisions of this

chapter.

Sec. 24.45.031. POWERS AND DUTIES. (a) In addition to its other duties under this chapter, the commission shall

(1) prescribe the forms for registration, reports, statements, notices and other documents required by this chapter;

(2) prepare and publish instructions setting out the methods of accounting, bookkeeping and preservation of records required to facilitate compliance with and enforcement of this chapter and explaining the duties of persons subject to the provisions of this chapter; the instructions shall be updated periodically;

(3) provide assistance to persons in complying with the provisions of this chapter;

(4) prepare and publish an annual report of its activities, findings and recommendations under this chapter, which shall be made available to the governor, legislature and to the public by February 1 of each calendar year;

(5) report suspected violations of this chapter to the attorney general.

(b) The commission may

(1) hold hearings and conduct investigations into compliance with the provisions of this chapter;

(2) in conjunction with (1) of this subsection, issue subpoenas, compel the attendance and testimony of witnesses, administer oaths and affirmations, and require the production of books, papers, records, documents or other items material to the commission's duties or powers under this chapter;

(3) prepare, publish, and make available to the public, periodic, but at least quarterly and annually, summaries of the statements and reports received; these summaries shall list separately

individual lobbyists and employers of lobbyists.

ARTICLE 3. DISCLOSURE: REGISTRATION AND REPORTS.

Sec. 24.45.041. REGISTRATION. (a) Before engaging in lobbying, a lobbyist shall file a registration statement on a form prescribed by the commission.

(b) The registration form prescribed by the commission shall be accompanied by a written authorization to act as a lobbyist from each person by whom he is employed or with whom he contracts for lobbying services and shall include

(1) the lobbyist's full name and complete permanent residence and business address and telephone number, as well as any temporary residential and business address and telephone number in the state capital during a legislative session;

(2) the full name and complete address of each person by whom the lobbyist is retained or employed;

(3) whether the person from whom the lobbyist receives compensation employs him solely as a lobbyist or whether he is a regular employee performing other services for his employer which include but are not limited to the influencing of legislative or administrative action;

(4) the nature or form of the lobbyist's compensation for engaging in lobbying, including salary, fees or reimbursement for expenses received in consideration for, or directly in support of or in connection with, the influencing of legislative or administrative action;

(5) a general description of the subjects or matters on which the registrant expects to lobby or to engage in the influencing of legislative or administrative action;

(6) the full name and complete address of the person, if other than the registrant, who has custody of the accounts, books, papers, bills, receipts and other documents required to be maintained

under this chapter.

(c) At the option of the registrant under this ~~section~~ chapter, the registration form may be accopanied by four 2-1/2 inch by 2-1/2 inch black and white photographs of the lobbyist. The photographs may not be more than five years old. These photographs shall be included in the directory published under (e) of this section.

(d) If a change occurs in any of the information contained in a registration statement filed under (a) of this section, or in any accompanying document, an appropriate amendment shall be filed with the commission within 10 days after the change.

(e) Within 45 days after the convening of each regular session of the legislature, the commission shall publish a directory of registered lobbyists, containing the information prescribed in (b) of this section for each lobbyist and the photographs, if any, furnished by a lobbyist under (c) of this section. From time to time thereafter the commission shall publish those supplements to the directory that in the commission's judgment may be necessary. The directory shall be made available to public officials and to the public at the following locations: a public place adjacent to the legislative chambers in the state capitol building, the office of the lieutenant governor, the legislative reference library of the Legislative Affairs Agency and the commission's central office.

(f) Each lobbyist shall renew his registration annually by filing a new registration statement together with a new authorization to act as a lobbyist before engaging in lobbying. The lobbyist also shall file any reports or statements he has failed to file for a previous reporting period. The commission may not renew lobbying credentials until this provision is complied with.

Sec. 24.45.051. REPORTS. Each lobbyist registered under sec. 41 of this chapter shall file with the commission a report concerning his activities during each reporting period prescribed in sec. 71 of this chapter, so long as the lobbyist continues to engage in lobbying activities. The report shall be made on a form prescribed by the commission and filed in accordance with secs. 61 and 71 of this chapter. The report also shall include any changes in the information required to be

supplied under sec. 41(b) of this chapter and the following information for the reporting period, as applicable:

(1) the source of income, as defined in AS 39.50.200(8) and the monetary value of all payments, including but not limited to salary, fees, and reimbursement of expenses, received in consideration for or directly or indirectly in support of or in connection with influencing legislative or administrative action, and the full name and complete address of each person from whom amounts or things of value have been received and the total monetary value received from each person;

(2) the aggregate amount of disbursements or expenditures made or incurred during the period in support of or in connection with influencing legislative or administrative action by the lobbyist, or on behalf of the lobbyist by his employer in the following categories:

(A) food and beverages;

(B) living accommodations;

(C) travel;

(3) the date and nature of any gift exceeding $100 in value made to a public official and the full name and official position of that person;

(4) the name and official position of each public official and the name of each member of the immediate family of any of these officials, with whom the lobbyist has engaged in an exchange of money, goods, services or anything of more than $100 in value and the nature and date of each of these exchanges and the monetary values exchanged;

(5) the name and address of any business entity in which the lobbyist knows or has reason to know that a public official is a proprietor, partner, director, officer or manager, or has a controlling interest, with whom the lobbyist has engaged in an exchange of money, goods, services, or anything of value and the nature and date of each

exchange and the monetary value exchanged if the total value of these exchanges is $100 or more in a calendar year; and

(6) a notice of termination if the lobbyist has ceased the lobbying activity which required his registration under this chapter and if this report constitutes the final report of his activities.

Sec. 24.45.061. REPORTS BY EMPLOYERS OF LOBBYISTS ~~[OTHER PERSONS]~~. A person who employs, retains or who contracts for the services of one or more lobbyists, whether independently or jointly with other persons, ~~or any other person who is not registered as a lobbyist under this chapter~~ and but who ~~[illegible]~~ directly or indirectly makes ~~[illegible]~~ payments to influence legislative or administrative action, shall file a quarterly report containing

(1) the full name, complete business address and telephone number of the person making the report;

(2) information sufficient to identify the nature and interests of the person making the report, including

(A) if the maker is an individual, the name and address of his employer, if any, or his principal place of business if he is self-employed, and a description of the business or professional activity in which he or his employer is engaged;

(B) if the maker is a business entity, a description of the business activity in which it is engaged;

(C) if the maker is an industry, trade or professional

association, a description of the industry, trade or profession including a specific description of any portion or faction of the industry, trade or profession which the association exclusively or primarily represents ~~and, if the association has less than 50 members, the names of the members~~; or

(D) if the maker is none of those listed in (A) - (C) of this paragraph, a statement of the person's nature and purposes including a description of any industry, trade, profession or other group with a common interest which the person principally represents or from which its membership or financial support is principally derived; however, the information required by (A) - (D) of this paragraph need be stated only in the first report filed during a calendar year, except that subsequent reports must reflect changes in this information previously reported;

(3) the total amount of payments made to influence legislative or administrative action during the period, and the name and address of each person to whom these payments have been made during the period by the maker of the report, together with the date and amount;

~~(4) a verification of the information contained in a report filed under sec. 51 of this chapter by a lobbyist employed or retained by the person making the report;~~

~~(5) the date and nature of any gift exceeding $50 in value made to any public official and the full name and official position of the recipient of each gift;~~

(4) a general description of legislative or administrative action which the person making the report has attempted to influence;

(5) the name of each lobbyist employed or retained by the

person making the report, together with the total amount paid to each lobbyist and the portion of that amount, if any, which was paid for specific purposes, including salary, fees, and reimbursement for expenses in the categories set out in sec. 51(2) of this chapter; ~~a person, other than the registered lobbyist or employer of a lobbyist, who makes direct or indirect payments to influence legislative or administrative action shall list the amount paid for expenses in the categories set out in sec. 51(2) of this chapter;~~

(6) (8) a notice of termination if the person filing a report has ceased employing or retaining a lobbyist registered under this chapter and if this report constitutes the final report of the lobbyist's activities on behalf of the maker of the report; and

(7) (b) any other information required by the commission consistent with the purposes and provisions of this chapter.

Sec. 24.45.~~061~~ 071. CERTIFICATION OF REPORTS. Every statement or report required to be filed under this chapter shall identify the full name of the person preparing it, his complete address and telephone number, and shall be certified as complete and correct, both by the person preparing it and by the person on whose behalf it is filed.

Sec. 24.45.~~071~~ 081. REPORTING PERIODS. Reports required under this chapter shall be filed during the calendar month following each calendar month during any part of which the legislature was in session and during the month following each calendar quarter when the legislature was not in session. However, if a lobbyist registered under this chapter has declared that he seeks only to influence administrative action and not legislative action he need only file a report required under this chapter for each calendar quarter. The period covered shall be the calendar month or the calendar quarter, as applicable, and shall in any event cover the period from the date of the last report filed under this chapter to the date of the end of the calendar month or quarter, as applicable, for which the report is being filed. The period covered shall not include any months covered in previous reports filed by the same person. When total amounts are required to be reported, totals shall be stated both for the period covered by the statement and for the entire calendar year to date.

Sec. 24.45.~~081~~ 091. PUBLICATION OF REPORTS. Copies of the statements and reports filed under this chapter shall be made available to the

public at the commission's central office, the office of the lieutenant governor, the legislative reference library of the Legislative Affairs Agency, and at the commission's district offices prescribed in AS 15.-13.020(j) as soon as practicable after each reporting period.

Sec. 24.45.~~091~~ 101. PUBLIC RECORDS. Statements and reports filed under this chapter are public records and shall be available for public inspection and copying during normal business hours at the expense of the person requesting copies; however, the charge for copying may not exceed actual cost to the commission.

Sec. 24.45.~~101~~ 111. PRESERVATION OF RECORDS. (a) A person required to register or report as a lobbyist shall preserve all accounts, bills, receipts, books, papers and documents necessary to substantiate the reports required to be made and filed under this chapter for a period of at least one year from the date of the filing of the report containing these items. These accounts, bills, receipts, books, papers and other documents shall be made available for inspection by the commission, or members of its staff, at any time. If a lobbyist is required under the terms of his employment contract to turn any records over to his employer, responsibility for the preservation of these records under this section rests with the employer.

(b) The commission shall preserve the statements and reports required to be filed under this chapter for a period of six years from the date of filing. If the commission's central office is not in the state capital, copies of all statements and reports filed under this chapter shall be maintained in an office established by the commission in the state capital or in the office of the lieutenant governor.

ARTICLE 4. ENFORCEMENT.

Sec. 24.45.~~111~~ 121. PROHIBITIONS. (a) No lobbyist may

(1) engage in any activity as a lobbyist before registering under sec. 41 of this chapter;

(2) do anything with the intent of placing a public official under personal obligation to him or to his employer;

(3) intentionally deceive or attempt to deceive any public official with regard to any material fact pertinent to pending or proposed legislative or administrative action;

(4) cause or influence the introduction of a legislative measure for the purpose of thereafter being employed to secure its defeat;

(5) cause a communication to be sent to a public official in the name of any fictitious person or in the name of any real person, except with the consent of that person;

(6) accept or agree to accept any payment in any way contingent upon the defeat, enactment or outcome of any proposed legislative or administrative action.

(b) No person may employ for pay or any consideration, or pay or agree to pay consideration to, a person to lobby who is not registered under sec. 41 of this chapter unless that person registers and that person does in fact so register before engaging in lobbying.

Sec. 24.45.~~121~~ 131. EXAMINATION OF STATEMENTS, REPORTS. (a) The commission or its staff shall examine each statement or report filed under this chapter within 10 days after the date it is filed. A person required to file a statement or report under this chapter shall be notified immediately if

(1) it appears that the person has failed to file a statement or report as required by law or that the statement or report filed does not conform to the requirements of this chapter; or

(2) a written complaint is filed with the commission by any

qualified voter alleging that a statement or report filed with the commission does not conform to the requirements of this chapter, or to the truth, or that a person subject to the provisions of this chapter has failed to file a statement or report in the manner prescribed by this chapter.

(b) The commission shall conduct an investigation, and may thereafter conduct a hearing, into an allegation under (a)(2) of this section.

(c) The commission shall report any suspected violations of this chapter to the attorney general, to a district attorney in the judicial district where the alleged violation occurred, or to a grand jury.

Sec. 24.45.141. CIVIL PENALTIES.

A person who fails to file a properly completed and certified report or statement as applied to (c) within the time required by this chapter is subject to a civil penalty of $10 a day for each day the delinquency continues.

However, the imposition of the penalties prescribed in this section or sec. 151 of this chapter does not excuse the lobbyist or employer of a lobbyist from filing statements or reports required by this chapter.

Sec. 24.45.157. CRIMINAL PENALTIES. (a) An individual who knowingly violates any provisions of this chapter, whether acting for himself, on behalf of an employer or in concert with other persons, is, upon conviction, punishable by a fine of not more than $1,000, or by imprisonment for not more than one year, or by both.

(b) An individual who knowingly causes, participates in, aids, abets, ratifies or confirms any violation of a provision of this chapter is, upon conviction, punishable by a fine of not more than $1,000, or by imprisonment for not more than one year, or by both.

(c) A person, other than an individual, who knowingly violates any provision of this chapter, whether acting for himself, on behalf of an employer or in concert with other persons, or who knowingly causes, participates in, aids, abets, ratifies or confirms any violation of a provision of this chapter is, upon conviction, punishable by a fine of not more than $10,000 for each offense.

ARTICLE 5. GENERAL PROVISIONS.

Sec. 24.45.~~141~~ 161 EXEMPTIONS. (a) This chapter does not apply to

(1) an individual

(A) who lobbies without payment of compensation or other consideration and makes no disbursement or expenditure for or on behalf of a public official to influence legislative or administrative action other than to pay his reasonable personal travel and living expenses; and

(B) who limits his lobbying activities to appearances before public sessions of the legislature, or its committees or subcommittees, or to public hearings or other public proceedings of state agencies;

(2) an elected or appointed state or municipal public officer or an employee of the state or a municipality acting in his official capacity or within the scope of his employment; ~~however, a state or municipal officer or employee who makes direct or indirect payments, or who is reimbursed for expenses, to influence legislative or administrative action in the categories set out in sec. 51(2) of this chapter shall register and report as a lobbyist under secs. 41 and 51 of this chapter;~~

(3) any newspaper or other periodical of general circulation, book publisher, radio or television station (including an individual who owns, publishes or is employed by that newspaper or periodical, radio or television station) which publishes news items, editorials or other comments, or paid advertisements, which directly or indirectly urge legislative or administrative action if the newspaper, periodical, book publisher, radio or television station or individual engages in no further or other activities in connection with urging or advocating legislative or administrative action other than to appear before public sessions of the legislature, or its committees or subcommittees, or public hearings or other public proceedings of state agencies;

(4) a person who appears before the legislature or either house, or standing, special or interim committee, in response to an in-

vitation issued under (c) of this section.

(b) Nothing in this chapter may be construed as prohibiting or affecting the rendering of professional services in drafting legislative measures or in advising clients and in rendering opinions as to the construction or effect of proposed or pending legislative or administrative action when these professional services are not otherwise connected with infuencing or attempting to influence legislative or administrative action. Nor does anything in this chapter prevent members of the legislature from discussing with constituents the advisability of passing legislation then pending before, or proposed to be presented to, the legislature.

(c) Either house of the legislature by resolution, or both houses of the legislature by concurrent resolution, may invite a person to appear to speak before the legislature or either house with reference to any pending matter. A standing, special or interim committee of either house of the legislature may, upon the concurrence of a majority of its members, extend an invitation to any person to appear before the committee to give information in regard to, or explain, any matter pending before the committee.

(d) An individual exempt from this chapter under (a)(1) of this section may, at his option, register and report under this chapter.

Sec. 24.45.~~150~~171. DEFINITIONS. In this chapter

(1) "administrative action" means the proposal, drafting, development, consideration, amendment, adoption, approval, promulgation, issuance, modification, rejection or postponement by any state agency of any rule, regulation, order, decision, determination, or any other quasi-legislative or quasi-judicial action or proceeding whether or not governed by the Administrative Procedure Act (AS 44.62);

(2) "agency" means a state department, division, commission,

board, office, bureau, institution, corporation, authority, organization, committee, council or board in the executive branch, or independent of the executive branch, of state government;

(3) "gift"

(A) means any payment to the extent that consideration of equal or greater value is not received;

(B) includes but is not limited to:

(i) a loan, loan guarantee, forgiveness of a loan, payment of a loan by a third party, or an enforceable promise to make a payment except when full and adequate consideration is received;

(ii) the purchase of tickets for travel or for entertainment events; and

(iii) the granting of discounts or rebates for goods or services not extended to the public generally;

(C) does not include:

(i) informational or promotional materials, including but not limited to books, reports, pamphlets, calendars or periodicals; however, payments for travel or reimbursement for expenses may not be considered "informational material";

(ii) food and beverages consumed in places of public accommodation;

(4) "immediate family" means the spouse and dependent children of an individual;

(5) "individual" means a natural person;

(6) "influencing legislative or administrative action" means promoting, advocating, supporting, modifying, opposing or delaying or seeking to do the same with respect to any legislative or administrative action by means including but not limited to the provision or use of

information, statistics, studies, analyses in written or oral form or format;

(7) "legislative action" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, defeat or rejection of any bill, resolution, amendment, motion, report, nomination, appointment or other matter by the legislature, or by a standing, interim or special committee of the legislature, or by a member or employee of the legislature acting in his official capacity; it includes, but is not limited to, the action of the governor in approving or vetoing a bill or the action of the legislature in considering, overriding or sustaining that veto and the action of the legislature in considering, confirming or rejecting an executive appointment of the governor;

(8) "lobbyist" means

(A) a person who is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses, to communicate directly or through his agents with any public official for the purpose of influencing legislative or administrative action if a substantial or regular portion of the activities for which he receives consideration is for the purpose of influencing legislative or administrative action; or

(B) a person who represents himself as engaging in the influencing of legislative or administrative action as a business, occupation or profession;

(9) "payment" means the disbursement, distribution, transfer, loan, advance, deposit, gift or other rendering or tendering of money, property, goods or services or anything else of value;

(10) "payment to influence legislative or administrative

action" means any of the following:

(A) a direct or indirect payment to a lobbyist whether for salary, fee, compensation for expenses, or any other purpose, by a person employing, retaining or contracting for the services of the lobbyist separately or jointly with other persons;

(B) a payment in support of or assistance to a lobbyist or his activities, including but not limited to the direct payment of expenses incurred at the request or suggestion of the lobbyist;

(C) a payment which directly benefits a public official or a member of the immediate family of that official;

(D) a payment, including compensation, payment or reimbursement for the services, time or expenses of an employee for or in connection with direct communication with a public official;

(E) a payment for or in connection with soliciting or urging other persons to enter into direct communication with a public official;

(F) a payment or reimbursement for expenses in the categories set out in sec. 51(2) of this chapter;

(11) "person", in addition to the terms set out in AS 01.10.-060(7), includes a labor union; and

(12) "public official" or "public office" means a public official or public office as defined in AS 39.50.200(1); however, it does not include a judicial officer or an elected or appointed municipal officer ~~(except as provided in sec. 24(12) of this chapter)~~.

Sec. 24.45.~~201~~ 181. SHORT TITLE. This chapter may be cited as the Regulation of Lobbying Act.

* Sec. 3. AS 15.13.030(8) is amended to read:

(8) examine, investigate and compare all reports, statements and actions required by this chapter, AS 24.45 and AS 39.50 and to

fees

report to the attorney general the names of all persons or groups which the commission has substantial reason to believe have violated this chapter;

* Sec. 4. AS 15.13.030(10) is amended to read:

(10) adopt regulations necessary to implement and clarify the provisions of AS 24.45, AS 39.50 and this chapter, subject to the provisions of the Administrative Procedure Act (AS 44.62).

* Sec. 5. AS 15.13 is amended by adding a new section to read:

Sec. 15.13.125. CIVIL PENALTY: LATE FILING OF REQUIRED REPORTS. A person who fails to file a properly completed and certified report within the time required by sec. 110(a)(1), (3), (4), (b) and (d) of this chapter is subject to a civil penalty of $10 a day for each day the delinquency continues. A person who fails to file a properly completed and certified report within the time required by sec. 110(a)(2) of this chapter is subject to a civil penalty of $50 a day for each day the delinquency continues.

* Sec. 6. AS 39.50.050 is amended by adding a new subsection to read:

(d) To facilitate the filing of reports under AS 24.25 (Regulation of Lobbying) and the information required to be provided under AS 24.45.051(4) and (5), the commission shall publish copies of the reports required under this chapter not later than the convening of each regular session of the legislature. Copies of this publication shall be provided on request; however, the commission may make a charge for the publication which may not exceed the actual cost of printing, postage and handling.

* Sec. 7. AS 39.50 is amended by adding a new section to read:

Sec. 39.50.065. CIVIL PENALTY: LATE FILING OF REQUIRED REPORTS. A person who fails to file a properly completed and certified report within the time required by this chapter is subject to a civil penalty of $10 a day for each day the delinquency continues.

* Sec. 8. Records, papers, documents or other materials relating to the administration of AS 24.45 before July 1, 1976 shall be transferred from the Department of Administration to the Alaska Public Offices Commission on July 1, 1976.

Sections 5 and 7 of this Act take effect immediately in accordance with AS 01.10.070(c). Sections 1 - 4, 6 and 8 of.

* Sec. 7. This Act takes effect July 1, 1976. However, the initial reports required under AS 24.45.051 - 24.45.~~091~~ 061 are due for the reporting period beginning January 1, 1977, and shall be filed not later than February 10, 1977.

HOUSE

Sec. 24.45.211. SHORT TITLE. This chapter may be cited as the ulation of Lobbying Act.

. 3. AS 15.13.030(8) is amended to read:

(8) examine, investigate and compare all reports, statements actions required by this chapter, AS 24.45 and AS 39.50 and to ort to the attorney general the names of all persons or groups which commission has substantial reason to believe have violated this pter;

. 4. AS 15.13.030(10) is amended to read:

(10) adopt regulations necessary to implement and clarify the visions of AS 24.45, AS 39.50 and this chapter, subject to the pro- ions of the Administrative Procedure Act (AS 44.62).

. 5. AS 39.50.030 is amended by adding a new subsection to read:

(d) Each statement filed by a public official, or a candidate for ctive public office, as defined in AS 24.45.191(13), who (1) is bject to this chapter, (2) is employed or retained by a lobbyist or ployer of a lobbyist subject to AS 24.45 (Regulation of Lobbying), d (3) is in the partial or full-time employ of the state or an agency it, shall include in the statement filed under this chapter the me, address and official position of the lobbyist or employer of the bbyist who has employed, retained or paid that public official or ndidate, the nature of the employment and the amount of pay or con- deration to be paid.

SENATE

Sec. 24.45.~~201~~ 161. SHORT TITLE. This chapter may be cited as the Regulation of Lobbying Act.

* Sec. 3. AS 15.13.030(8) is amended to read:

(8) examine, investigate and compare all reports, statements and actions required by this chapter, AS 24.45 and AS 39.50 and to report to the attorney general the names of all persons or groups wh the commission has substantial reason to believe have violated this chapter;

* Sec. 4. AS 15.13.030(10) is amended to read:

(10) adopt regulations necessary to implement and clarify t provisions of AS 24.45, AS 39.50 and this chapter, subject to the pro visions of the Administrative Procedure Act (AS 44.62).

O.K.
Senate deleted this provision when it deleted provision for disclosure of employment relationships with lobbyists.

Alaska Court System

State of Alaska

303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274-8611

May 19, 1976

Honorable Bill Parker
Chairman, House Rules Committee
Pouch V
Juneau, Alaska 99811

Re: SCS CSHB 522 am S (relating to the regulation of lobbyists)

Dear Representative Parker:

This is in response to your request for comments on House Bill 522 in the form recently passed by the Senate. I am sure you are familiar with the major changes that the Senate has made in this bill, such as the deletion of the reporting requirement by employers of lobbyists, and by public officials who receive benefits or contributions from lobbyists, and the elimination of the requirement that lobbyists identify each public official for whom entertainment expenses are paid in excess of $100. The changes in the bill, however, that we are most concerned with are those that deal with exemptions.

As this bill passed the House, all state and municipal employees were exempt from registering and reporting as lobbyists. Under the Senate version, however, it appears that some public employees who engage in lobbying activities will have to register and report, while others will not. Those public employees who make

> direct or indirect payments, or who [are] reimbursed for expenses, to influence legislative or administrative action . . . shall register and report as a lobbyist . . . .

This means that a public employee from Ketchikan or Anchorage who is required to travel to Juneau in order to deal with legislative matters must register and report, while a state employee living in Juneau who engages in exactly the same activity need not register and report.

We do not believe, as a matter of policy, that it is necessary to require state or municipal employees to register and report as lobbyists. State travel and per diem are standard, and the vouchers for reimbursement are public records that can be inspected at any time. More significantly, however, we do not believe it is advisable to distinguish between employees who reside in Juneau and those who must travel to Juneau in order to deal with legislative matters. There may, in fact, be a question as to whether this provision violates the equal protection provisions of the Constitution.

Another unresolved problem in the exemption section is whether a state employee who is reimbursed for expenses may nonetheless claim exemption under (a)(4) so long as the employee appears before the legislature in response to invitation. Nor is it clear whether a person who claims exemption under (a)(4) may make payments on behalf of public officials in the categories of food, beverages, etc., without having to register and report. With heavy criminal penalties provided for failure by a covered lobbyist to register and report, questions such as these surrounding the scope and application of the exemptions should be clearly answered in the statute.

In closing, we wish to emphasize that we have no particular objection to registering and reporting as lobbyists. However, if some public employees who engage in activity to influence legislation are required to register and report, then all public employees who engage in such activity should be required to register and report.

Thank you for allowing me the opportunity to comment on this bill.

Very truly yours,

Arthur H. Snowden, II

Arthur H. Snowden, II

Supplemental
Chairman's Report for
CSHB 522 (Judiciary)

The Judiciary Committee is well aware of many individuals who appear before the standing and select committees of the Alaska State Legislature and it is not the intent of the committee to require these individuals to register as lobbyists if their sole attempts to influence legislation are in public meetings of the committees of the legislature. However, individuals who testify at the request of a Committee or on their own behest, in a public meeting are not excluded from this piece of legislation if at any time they attempt to influence legislation outside of a publicly held meeting. In other words the individual who at the request of a Committee Chairman appears before a committee to testify in regards to a specific piece of legislation is not required to register as a lobbyist unless his conduct includes other attempts to influence legislation outside of the public forum. Hence an individual may not after a public hearing contact individual members of the legislature in order to influence legislation without having first registered as a lobbyist.

Terry Gardiner

Terry Gardiner, Chairman
House Judiciary Committee

Chairman's Report for
CSHB 522 (gud)

Section 24.45.061 Reporting By Employers of Lobbyists requires the reporting of the items in (1) through (11) when an employer employes two or more lobbyists and the lobbyists make payments to influence legislative or administrative action of $100 or more in value in a calendar month when the legislature is in session, or $300 or more in value in a calendar quarter when the legislature is not in session. Even though the sums spent by individual lobbyist did not total $100 a calendar month when the legislature is in session, or $300 a quarter.

In other words, employers of lobbyists are required to aggregate the expenditures of all their lobbyists and make a reporting when such an aggregate exceeds $100 per calendar month during the legislative session and $300 per quarter when the legislature is not in session.

_____

Terry Gardiner, Chairman
House Judiciary Committee

A M E N D M E N T

IN THE HOUSE BY BROWN

TO: CSHB 522 (Judiciary)

Page 4, line 29: after "REPORTS." insert "(a)"

Page 6, between lines 22 and 23, insert:

(b) If during a reporting period prescribed in sec. 101 of this chapter the lobbyist does not have any of the financial data or other information prescribed in (a)(1) - (6) of this section to report, he need not file a report required under (a) of this section. The nonfiling of a report for the reporting period constitutes a "zero report" for that period.

Page 6, line 23: after "LOBBYISTS." insert "(a)"

Page 9, between lines 9 and 10, insert:

(b) If during a reporting period prescribed in sec. 101 of this chapter the employer of a lobbyist does not have any of the financial data or other information prescribed in (a)(1) - (11) of this section to report, he need not file a report required under (a) of this section. The nonfiling of a report for the reporting period constitutes a "zero report" for that period.

Feb. 23+24
Milton

Original sponsors: Parker, Bradley
Gardiner, Malone, Miller and Sullivan

Offered: 1/30/76
Referred: Judiciary

IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE

CS FOR HOUSE BILL NO. 522

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the regulation of lobbying; and providing for an effective date."

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

* Section 1. AS 24.45.010 - 24.45.150 are repealed.

* Sec. 2. AS 24.45 is amended by adding new sections to read:

CHAPTER 45. REGULATION OF LOBBYING

[LEGISLATIVE REPRESENTATION].

ARTICLE 1. LEGISLATIVE DECLARATION OF PURPOSE.

Sec. 24.45.011. PURPOSE. The legislature finds and declares that the operation of responsible representative democracy requires that the fullest opportunity be afforded to the people to petition their government for the redress of grievances and to express freely to individual members of the legislature, to its committees, and to officials of the executive branch, their opinions on pending legislation or administrative actions [that relate to current affairs;] and that ~~to preserve and~~ the people are entitled to know the identity maintain the integrity of the legislative and ~~administrative processes~~ it ~~is essential~~ that the identity, income, expenditures and activities of those certain persons who pay or are paid ~~engage in efforts~~ to persuade members of the legislature or officials or agencies in the executive branch to take specific actions [either by direct communications to these members or officials or by solicitation or employment of others to engage in these efforts, be publicly and regularly disclosed.]

ARTICLE 2. ADMINISTRATION.

Sec. 24.45.021. ADMINISTRATION. (a) This chapter shall be

administered by the Alaska Public Offices Commission created under AS 15.13.020(a).

(b) The commission shall promulgate regulations under the Administrative Procedure Act (AS 44.62) to implement the provisions of this chapter.

Sec. 24.45.031. POWERS AND DUTIES. (a) In addition to its other duties under this chapter, the commission shall

(1) prescribe the forms for registration, reports, statements, notices and other documents required by this chapter;

(2) prepare and publish [a manual and] instructions setting out the methods of accounting, bookkeeping and preservation of records required to facilitate compliance with and enforcement of this chapter and explaining the duties of persons subject to the provisions of this chapter; [the manual and] instructions shall be updated periodically;

(3) provide assistance to persons in complying with the provisions of this chapter;

(4) prepare and publish periodic, but at least quarterly and annually, summaries of the statements and reports received; these summaries shall list separately individual lobbyists, employers of lobbyists, or sponsors of grass roots lobbying campaigns;

(5) prepare and publish [other] reports it considers appropriate, including an annual report of its activities, findings and recommendations under this chapter, to the governor, legislature and to the public;

(6) report suspected violations of this chapter to the attorney general;

(b) The commission may

(1) hold hearings and conduct investigations into compliance with the provisions of this chapter;

(2) in conjunction with (1) of this subsection, issue subpoenas, compel the attendance and testimony of witnesses, administer oaths and affirmations, and require the production of books, papers, records, documents or other items material to the commission's duties or powers under this chapter.

(3)

ARTICLE 3. DISCLOSURE: REGISTRATION AND REPORTS.

Sec. 24.45.041. REGISTRATION. (a) Before engaging in lobbying or within 10 days after being employed as a lobbyist, whichever occurs first, a lobbyist shall file a registration statement on a form prescribed by the commission.

(b) The registration form prescribed by the commission shall be accompanied by a 3-inch by 4-inch (2 1/2 x 2 1/2) black and white photograph of himself which is not more than five years old and a written authorization to act as a lobbyist from each person by whom he is employed or with whom he contracts for lobbying services and shall include

(1) the lobbyist's full name and complete permanent residence and business address and telephone number, as well as any temporary residential and business address and telephone number in the state capital during a legislative session;

(2) the full name and complete address of each person, as prescribed in (1) of this subsection, by whom the lobbyist is retained or employed, or on whose behalf the registrant lobbies, advocates legislative or administrative action, or engages in the influencing of legislative or administrative action;

(3) whether the person from whom the lobbyist receives compensation employs him solely as a lobbyist or whether he is a regular employee performing other services for his employer which include but are not limited to the influencing of legislative or administrative action;

(4) the duration of his employment and the date on which the lobbyist expects his lobbying to end;

(5) the lobbyist's compensation for engaging in lobbying, including salary, fees or reimbursement for expenses received in consideration for, or directly in support of or in connection with, the influencing of legislative or administrative action;

(6) a general description of the subjects or matters on which the registrant expects to lobby or to engage in the influencing of legislative or administrative action;

(7) the full name and complete address of the person who has custody of the accounts, books, papers, bills, receipts and other documents required to be maintained under this chapter.

(c) If a change occurs in any of the information contained in a registration statement filed under (a) of this section, or in any accompanying document, an appropriate amendment shall be filed with the commission within 10 days after the change.

Delete & change to include Commission ~~[illegible]~~ place in legislature ~~[illegible]~~ & Public Office ~~[illegible]~~ to be passport pictures to be attached to ~~[illegible]~~ copy of information

~~(d) Within 45 days after the convening of each regular session of the legislature, the commission shall publish a directory of registered lobbyists, containing the photograph and the information prescribed in (b) of this section for each lobbyist. From time to time thereafter the commission shall publish those supplements to the directory that in the commission's judgment may be necessary. The directory shall be made available to public officials and to the public.~~

(e) Each lobbyist shall renew his registration annually by filing a new registration statement together with a new authorization to act as a lobbyist within 10 days after the convening of each regular session of the legislature. The lobbyist also shall file any reports or statements he has failed to file for a previous reporting period. The commission may not renew lobbying credentials until this provision is complied

with.

Delete → (f) ~~Each registered lobbyist shall file a notice of termination with the commission within 30 days after he ceases the lobbying activity which required his registration under this chapter.~~

Sec. 24.45.051. REPORTS. Each lobbyist registered under sec. 41 of this chapter shall file with the commission a report concerning his activities during each preceding calendar month while the legislature is in session, and during each preceding calendar quarter when the legislature is not in session, so long as the lobbyist continues to engage in lobbying activities. The report shall be made on a form prescribed by the commission and filed in accordance with secs. 101 and 111 of this chapter. The report also shall include any changes in the information required to be supplied under sec. 41(b) of this chapter and the following information for the preceding calendar month or quarter, as applicable:

(1) the source of income, as defined in AS 39.50.200(8) and the monetary value of all payments, including but not limited to salary, fees, and reimbursement of expenses, received in consideration for or directly or indirectly in support of or in connection with influencing legislative or administrative action, and the full name and complete address of each person from whom amounts or things of value have been received and the total monetary value received from each person;

(2) the aggregate amount of disbursements or expenditures made or incurred during the period, by the lobbyist, or on behalf of the lobbyist by his employer in the following categories:

(A) food and beverages; in this category of disbursements or expenditures, if more than $100 a month in the aggregate is disbursed or expended on behalf of any one public official or

candidate, the full name of the person and his official position, if any, who received the food or beverages and the amount paid for each person shall be stated;

(B) living accommodations;

(C) travel;

(3) the date and nature of any gift exceeding $10 in value made to a public official or candidate and the full name and official position of that person;

(4) the name and official position of each public official, or candidate and the name of each member of the immediate family of any of these officials or candidates with whom the lobbyist has engaged in an exchange of money, goods, services or anything of more than $50 in value and the nature and date of each of these exchanges and the monetary values exchanged;

(5) the name and address of any business entity in which the lobbyist knows or has reason to know that a public official or candidate is a proprietor, partner, director, officer or manager, or has more than a 50 per cent ownership interest, with whom the lobbyist has engaged in an exchange of money, goods, services, or anything of value and the nature and date of each exchange and the monetary value exchanged if the total value of these exchanges is $500 or more in a calendar year; and

(6) the date and amount of each contribution, as defined in AS 15.13.130(2), made to a public official or candidate by the lobbyist and the name and official position of the person to whom the contribution was made;

(7) state "final report" on final report

Sec. 24.45.061. REPORTS BY EMPLOYERS OF LOBBYISTS. (a) A person who employs, retains or who contracts for the services of one or more lobbyists whether independently or jointly with other persons and a person who directly or indirectly makes payments to influence legisla-

tive or administrative action of $100 or more in value in a calendar month when the legislature is in session or $300 or more in value in a calendar quarter when the legislature is not in session, shall file a quarterly report containing

(1) the full name, complete business address and telephone number of the person making the report;

(2) information sufficient to identify the nature and interests of the person making the report, including

(A) if the maker is an individual, the name and address of his employer, if any, or his principal place of business if he is self-employed, and a description of the business or professional activity in which he or his employer is engaged;

(B) if the maker is a business entity, a description of the business activity in which it is engaged;

(C) if the maker is an industry, trade or professional association, a description of the industry, trade or profession including a specific description of any portion or faction of the industry, trade or profession which the association exclusively or primarily represents and, if the association has less than 50 members, the names of the members; or

(D) if the maker is [neither] none of those listed in (A) - (C) of this paragraph, a statement of the person's nature and purposes including a description of any industry, trade, profession or other group with a common economic interest which the person principally represents or from which its membership or financial support is principally derived; however, the information required by (A) - (D) of this paragraph need be stated only in the first report filed during a calendar year, except that subsequent reports must reflect changes in this information previously reported;

(3) the total amount of payments made to influence legislative or administrative action during the period, and the name and address of each person to whom these payments in an aggregate amount or value of $100 or more have been made during the period by the maker of the report, together with the date, amount and a description of the consideration received for each expenditure, and the full name of the beneficiary of each expenditure if other than the maker or the payee;

(4) the name and official position of each public official or candidate and the name of each member of the immediate family of any official or candidate with whom the maker of the report has engaged in an exchange of money, goods, services or anything of value, the nature and date of each such exchange and the monetary value exchanged, if the fair market value of either side of the exchange was $500 or more;

(5) the name and address of any business entity in which the person making the report knows or has reason to know that a public official or candidate is a proprietor, partner, director, officer, manager or has more than a 50 per cent ownership interest, with whom the person making the report has engaged in an exchange or exchanges of money, goods, services or anything of value and the nature and date of each exchange and the monetary value exchanged, if the total value of the exchange or exchanges is $500 or more in a calendar year;

(6) the date and amount of each contribution as defined in AS 15.13.130(2), made to a public official or candidate by the person making the report and the name and official position of the recipient of each contribution;

(7) the date and nature of any gift exceeding $10 in value made to any public official or candidate and the full name and official position of the recipient of each gift;

(8) a specific description of legislative or administrative

action which the person making the report has attempted to influence;

(9) the name of each lobbyist employed or retained by the person making the report, together with the total amount paid to each lobbyist and the portion of that amount, if any, which was paid for specific purposes, including salary, fees, and reimbursement for expenses, in the categories set out in sec. 51(2) of this chapter;

(10) any other information required by the commission consistent with the purposes and provisions of this chapter.

(b) Each person filing a report under this section shall file a notice of termination with the commission within 30 days after he ceases employing or retaining a lobbyist registered under this chapter.

Sec. 24.45.071. REPORTS BY PUBLIC OFFICIALS, CANDIDATES. Each public official or candidate shall file with the commission or a form prescribed by it a report for the periods required under sec. 111 of this chapter disclosing the following information for the preceding calendar month or quarter, as applicable:

(1) if the official or candidate received in the aggregate more than $100 a month in food and beverages from any one lobbyist, or employer of a lobbyist, the name of that lobbyist, or employer of that lobbyist, and the amount received from each; and

(2) the date, nature and source of any gift exceeding $10 in value received by the public official or candidate from a lobbyist or employer of a lobbyist.

Sec. 24.45.081. DISCLOSURE OF CERTAIN RELATIONSHIPS REQUIRED. If a person registered, or required to be registered, as a lobbyist under this chapter, or a person who employs or retains a lobbyist, employs or retains a public official or candidate, and if that official or candidate remains in the partial or full-time employ of the state or an agency of it, the lobbyist, or employer of a lobbyist, shall file a

statement under oath with the commission setting out the name, address and official position of the person employed, retained or paid, the nature of the employment and the amount of pay or consideration to be paid. The statement shall be filed within 10 days after the beginning of that employment. Brown wants clarification

Sec. 24.45.091. GRASS ROOTS LOBBYING CAMPAIGNS. (a) A person who has made expenditures not reported under any other section of this chapter of $300 or more a calendar month in the aggregate, or $1,500 or more a calendar quarter in the aggregate, in presenting a program addressed to the public, a substantial portion of which is intended, designed, or calculated primarily to influence legislative or administrative action, shall be required to register and report under this section as a sponsor of a grass roots lobbying campaign.

(b) Within 30 days after becoming a sponsor of a grass roots lobbying campaign, the sponsor shall register by filing with the commission a registration statement on a form prescribed by the commission including the following information:

(1) the sponsor's full name, complete address and business, occupation or profession and, if the sponsor is not an individual, the full names, complete addresses and titles of the controlling persons or officers responsible for managing the sponsor's affairs;

(2) the full names, complete addresses and businesses, occupations or professions of all persons organizing, managing or advising the campaign, or employed or retained to do so, including any public relations, advertising or professional campaign management firm participating in the campaign, and the terms of compensation for each of these persons;

(3) the purpose of the campaign, including the specific legislative or administrative action which is the subject of the campaign;

(4) the full names and complete addresses of all persons contributing more than $100 to the campaign, and the amount contributed by each person;

(5) the totals of all expenditures made or incurred to date on behalf of the campaign; the totals shall be segregated according to the categories set out in sec. 51(2) of this chapter; and the report also shall include disbursements or expenditures made or incurred for the following:

(A) consultants, advisors or professional campaign management;

(B) printing and mailing expenses;

(C) advertising, identifying each form of media employed including but not limited to radio, television, newspapers, periodicals or other publications or printed matter.

(c) Every person registered under (a) of this section shall file periodic reports with the commission in the same manner and according to the same schedule prescribed for other statements and reports to be filed under this chapter. The reports shall update the information contained in the sponsor's registration statement filed under (b) of this section and shall show contributions received and totals of expenditures made during the reporting period in the same manner as provided for in the registration statement.

(d) When the grass roots lobbying campaign has been terminated, the sponsor shall file a notice of termination with the final monthly or quarterly report. The notice shall state the totals of all contributions and expenditures made on behalf of the campaign in the same manner as prescribed in (b) of this section.

Sec. 24.45.101. CERTIFICATION OF REPORTS. Every statement or report required to be filed under this chapter shall identify the full

name of the person preparing it, his complete address and telephone number, and shall be certified as complete and correct [~~under oath~~] both by the person preparing it and by the person on whose behalf it is filed.

Sec. 24.45.111. REPORTING PERIODS. Reports required under this chapter shall be filed by the 10th day of the calendar month following each calendar month during any part of which the legislature was in session and by the 10th day of the month following each calendar quarter when the legislature was not in session. The period covered shall be the calendar month or the calendar quarter, as applicable, and shall in any event cover the period from the date of the last report filed under this chapter to the date of the end of the calendar month or quarter, as applicable, for which the report is being filed. The period covered shall not include any months covered in previous reports filed by the same person. When total amounts are required to be reported, totals shall be stated both for the period covered by the statement and for the entire calendar year to date.

Sec. 24.45.121. PUBLICATION OF REPORTS. The information contained in the reports filed under this chapter shall be published in a joint supplement to the senate and house journals as soon as practicable after each reporting period.

Change to coincide w/ disclosure, available reference library.

Sec. 24.45.131. PUBLIC RECORDS. Statements and reports filed under this chapter are public records and shall be available for public inspection and copying during normal business hours at the expense of the person requesting copies; however, the charge for copying may not exceed actual cost to the commission.

Sec. 24.45.141. PRESERVATION OF RECORDS. (a) A person required to register or report as a lobbyist, as an employer of a lobbyist, or as a sponsor of a grass roots lobbying campaign shall preserve all ac-

counts, bills, receipts, books, papers and documents necessary to substantiate the reports required to be made and filed under this chapter for a period of at least five years from the date of the filing of the report containing these items. These accounts, bills, receipts, books, papers and other documents shall be made available for inspection by the commission, or members of its staff, at any time. If a lobbyist is required under the terms of his employment contract to turn any records over to his employer, responsibility for the preservation of these records under this section rests with the employer.

(b) The commission shall preserve the statements and reports required to be filed under this chapter for a period of five years from the date of filing. If the commission's central office is not in the state capital, copies of all statements and reports filed under this chapter shall be maintained in an office established by the commission in the state capital.

ARTICLE 4. ENFORCEMENT.

Sec. 24.45.151. PROHIBITIONS. (a) No lobbyist may

(1) engage in any activity as a lobbyist before registering under sec. 41 of this chapter;

(2) do anything with the intent of placing a public official or candidate under personal obligation to him or to his employer;

(3) intentionally deceive or attempt to deceive any public official or candidate, with regard to any material fact pertinent to pending or proposed legislative or administrative action;

(4) cause or influence the introduction of a legislative measure for the purpose of thereafter being employed to secure its defeat;

(5) attempt to create a fictitious appearance of public favor or disfavor of any proposed legislative or administrative action or to

cause a communication to be sent to a public official or candidate, in the name of any fictitious person or in the name of any real person, except with the consent of that person;

(6) represent falsely either directly or indirectly that he can control the official action of a public official or candidate;

(7) accept or agree to accept any payment in any way contingent upon the defeat, enactment or outcome of any proposed legislative or administrative action.

(b) No person may knowingly receive or accept a contribution or gift made unlawful under (a)(7) of this section.

(c) No person may employ for pay or any consideration, or pay or agree to pay consideration to, a person to lobby who is not registered under of this chapter except upon condition that the person register and that person does in fact so register as soon as practicable after being employed to lobby.

Sec. 24.45.161. EXAMINATION OF STATEMENTS, REPORTS. (a) The commission or its staff shall examine each statement or report filed under this chapter within 10 days after the date it is filed. A person required to file a statement or report under this chapter shall be notified immediately if

(1) it appears that the person has failed to file a statement or report as required by law or that the statement or report filed does not conform to the requirements of this chapter; or

(2) a written complaint is filed with the commission by any qualified voter alleging that a statement or report filed with the commission does not conform to the requirements of this chapter, or to the truth, or that a person subject to the provisions of this chapter has failed to file a statement or report in the manner prescribed by this chapter.

(b) The commission shall conduct an investigation, and may conduct a hearing, into an allegation under (a)(2) of this section.

(c) The commission shall report any suspected violations of this chapter to the attorney general, to a district attorney in the judicial district where the alleged violation occurred, or to a grand jury.

Sec. 24.45.171. CIVIL PENALTIES. (a) If a lobbyist or a sponsor of a grass roots lobbying campaign violates any of the applicable provisions of this chapter, his registration credentials may be suspended or revoked by the commission after a hearing, and he may be enjoined by the superior court from receiving compensation or making disbursements or expenditures for lobbying activities. However, the imposition of sanctions or penalties under this section or sec. 181 or 191 of this chapter does not excuse the lobbyist, employer of a lobbyist, or sponsor from filing statements or reports required by this chapter.

(b) A person who pays compensation to a lobbyist, reimburses a lobbyist for all or part of his expenses, or makes disbursements or expenditures to solicit others to lobby, and who fails to make and file a report of this compensation, reimbursement, disbursement or expenditure under sec. 61 of this chapter, is, in addition to any other penalty provided by law, subject to a civil penalty of up to three times that compensation, reimbursement, disbursement or expenditure.

(c) A person who receives any payment, compensation, or reimbursement for expenses for activity as a lobbyist and who fails to register or to make and file a report under of this chapter is, in addition to any other penalty prescribed by law, subject to a civil penalty of up to three times that payment, compensation or reimbursement.

(d) A person who fails to report payments, compensation, gifts, contributions, or expenditures required to be reported under this

chapter is subject to a civil penalty of up to three times the amount he failed to report. A person who pays, receives or accepts the prohibited compensation or who makes, receives or accepts a prohibited gift, contribution or expenditure is subject to a civil penalty of up to three times the prohibited or unlawful amount.

(e) A person who fails to file a properly completed and certified report or statement within the time required by this chapter is subject to a civil penalty of $10 a day for each day the delinquency continues.

Sec. 24.45.181. INJUNCTIVE RELIEF. The superior court may enjoin a person to prevent the doing of any act prohibited by this chapter or to compel the performance of any act required by this chapter.

Sec. 24.45.191. CRIMINAL PENALTIES. (a) An individual who violates any provisions of this chapter, whether acting for himself, on behalf of an employer or in concert with other persons, or who causes, participates in, aids, abets, ratifies or confirms any violation of a provision of this chapter is, upon conviction, punishable by a fine of not less than $100 nor more than $1,000, or by imprisonment for not more than one year, or by both.

(b) A person, other than an individual, who violates any provision of this chapter, whether acting for himself, on behalf of an employer or in concert with other persons, or who causes, participates in, aids, abets, ratifies or confirms any violation of a provision of this chapter is, upon conviction, punishable by a fine of not less than $1,000 nor more than $10,000 for each offense.

ARTICLE 5. GENERAL PROVISIONS.

Sec. 24.45.201. EXEMPTIONS. (a) This chapter does not apply to

(1) an individual

(A) who, without payment of compensation or other consideration, lobbies on behalf of himself; or

(B) who limits his lobbying activities to appearances before public sessions of the legislature, or its committees or subcommittees, or to public hearings or other proceedings of state agencies;

(2) an elected state or municipal public officer or an employee of the state or a municipality acting in his official capacity or within the scope of his employment; except as required in all of this chapter

(3) any newspaper or other periodical of general circulation, book publisher, radio or television station (including an individual who owns, publishes or is employed by that newspaper or periodical, radio or television station) which in the ordinary course of business publishes news items, editorials or other comments, or paid advertisements, which directly or indirectly urge legislative or administrative action if the newspaper, periodical, book publisher, radio or television station or individual engages in no further or other activities in connection with urging or advocating legislative or administrative action other than to appear before public sessions of the legislature, or its committees or subcommittees, or public hearings or other proceedings of state agencies.

(b) Nothing in this chapter may be construed as prohibiting or affecting the rendering of professional services in drafting legislative measures or in advising clients and in rendering opinions as to the construction or effect of proposed or pending legislative or administrative action where these professional services are not otherwise connected with infuencing or attempting to influence legislative or administrative action. Nor does anything in this chapter prevent members of the legislature from discussing with constituents the advisability of passing legislation then pending before, or proposed to be presented to, the legislature.

Sec. 24.45.211. DEFINITIONS. In this chapter

(1) "administrative action" means the proposal, drafting, development, consideration, amendment, adoption, approval, promulgation, issuance, modification, rejection or postponement by any state agency of any rule, regulation, order, decision, determination, or any other quasi-legislative or quasi-judicial action or proceeding whether or not governed by the Administrative Procedure Act (AS 44.62);

(2) "agency" means a state department, division, commission, board, office, bureau, institution, corporation, authority, organization committee, council or board in the executive branch, or independent of the executive branch, of state government;

(3) "candidate" means an individual who is listed on the ballot or who is a write-in candidate at any election for nomination for or election to an elective state office, or who receives a contribution or makes an expenditure or gives his consent for any other person to receive a contribution or make an expenditure with a view to bringing about his nomination or election to elective state office, whether or not the specific elective state office for which he will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not he has announced his candidacy or filed a declaration of candidacy at the time the contribution is made or offered; "candidate" also includes an elective state officer who is the subject of a recall election;

(4) "gift" means any payment to the extent that consideration of equal or greater value is not received unless it is clear from surrounding circumstances that it is not made for the purpose of influencing legislative or administrative action; it includes a loan, loan guarantee forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except that full and ade-

quate consideration is received; it also includes the purchase of tickets for travel or for entertainment events and the granting of discounts or rebates not extended to the public generally; "gift" does not include informational or promotional materials such as books, reports, pamphlets, calendars or periodicals; it also does not include food and beverages sold ready for immediate consumption in or by restaurants, drug stores, lunch counters, cafeterias, hotels or like places of public accommodation; any person other than a defendant in a criminal action who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value.

(5) "immediate family" means the spouse and dependent children of an individual;

(6) "individual" means a natural person;

(7) "influencing legislative or administrative action" means promoting, advocating, supporting, modifying, opposing or delaying or seeking to do the same with respect to any legislative or administrative action by means including but not limited to the provision or use of information, statistics, studies, analyses in written or oral form or format;

(8) "legislative action" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, defeat or rejection of any bill, resolution, amendment, motion, report, nomination, appointment or other matter by the legislature, or by a standing, interim or special committee of the legislature, or by a member or employee of the legislature acting in his official capacity; it includes, but is not limited to, the action of the governor in approving or vetoing a bill or the action of the legislature in considering, overriding or sustaining that veto and the

action of the legislature in considering, confirming or rejecting an executive appointment of the governor;

(9) "lobbyist" means a person who is employed and receives payments, or who contracts for economic consideration, other than reimbursement for reasonable travel expenses, to communicate directly or through his agents with any public official or candidate for the purpose of influencing legislative or administrative action if a substantial or regular portion of the activities for which he receives consideration is for the purpose of influencing legislative or administrative action or a person who represents himself as engaging in that communication as a business, occupation or profession;

(10) "payment" means the disbursement, distribution, transfer, loan, advance. deposit, gift or other rendering or tendering of money, property, goods or services or anything else of value, whether tangible or intangible;

(11) "payment to influence legislative or administrative action" means any of the following:

(A) a direct or indirect payment to a lobbyist whether for salary, fee, compensation for expenses, or any other purpose, by a person employing, retaining or contracting for the services of the lobbyist separately or jointly with other persons;

(B) a payment in support of or assistance to a lobbyist or his activities, including but not limited to the direct payment of expenses incurred at the request or suggestion of the lobbyist;

(C) a payment which directly benefits a public official or candidate, or a member of the immediate family of that official or candidate;

(D) a payment, including compensation, payment or reimbursement for the services, time or expenses of an employee for

or in connection with direct communication with a public official or candidate;

(E) a payment for or in connection with soliciting or urging other persons to enter into direct communication with a public official or candidate;

(12) "person", in addition to the terms set out in AS 01.10.-060(7), includes a labor union; and

(13) "public official" means the governor, lieutenant governor, governor-elect or lieutenant governor-elect, or a member or member-elect of the legislature; or, an officer, employee, or member of an agency or an employee of the legislature acting in the exercise of his official duties or responsibilities, other than in a purely clerical or manual capacity.

Sec. 24.45.221. SHORT TITLE. This chapter may be cited as the Regulation of Lobbying Act.

* Sec. 3. AS 15.13.030(10) is amended to read:

(10) adopt regulations necessary to implement and clarify the provisions of <u>AS 24.45,</u> AS 39.50 and this chapter, subject to the provisions of the Administrative Procedure Act (AS 44.62).

* Sec. 4. Records, papers, documents or other materials relating to the administration of AS 24.45 before July 1, 1976 shall be transferred from the Department of Administration to the Alaska Public Offices Commission on July 1, 1976.

* Sec. 5. This Act takes effect July 1, 1976. However, the initial reports required under AS 24.45.051 - 24.45.091 are due for the reporting period beginning January 1, 1977, and shall be filed not later than February 10, 1977.

Feb 26
Milton

Original sponsors: Parker, Bradley
Gardiner, Malone, Miller and Sullivan

~~Offered: 1/30/76~~
~~Referred: Judiciary~~

IN THE HOUSE BY THE ~~STATE AFFAIRS~~ JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 522 (JUDICIARY)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the regulation of lobbying; and providing for an effective date."

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

* Section 1. AS 24.45.010 - 24.45.150 are repealed.

* Sec. 2. AS 24.45 is amended by adding new sections to read:

CHAPTER 45. REGULATION OF LOBBYING

[LEGISLATIVE REPRESENTATION].

ARTICLE 1. LEGISLATIVE DECLARATION OF PURPOSE.

Sec. 24.45.011. PURPOSE. The legislature finds and declares that the operation of responsible representative democracy requires that the fullest opportunity be afforded to the people to petition their government for the redress of grievances and to express freely to individual members of the legislature, to its committees, and to officials of the executive branch, their opinions on pending legislation or administrative actions ~~that relate to current affairs~~; and that the people are ~~to preserve and maintain the integrity of the legislative and administrative processes, it is essential that~~ entitled to know the identity, income, expenditures and activities of ~~certain~~ those persons who engage in efforts to persuade members of the legislature or officials or agencies in the executive branch to take specific actions ~~, either by direct communications to these members or officials or by solicitation or employment of others to engage in these efforts, be publicly and regularly disclosed~~.

ARTICLE 2. ADMINISTRATION.

Sec. 24.45.021. ADMINISTRATION. (a) This chapter shall be

administered by the Alaska Public Offices Commission created under AS 15.13.020(a).

(b) The commission shall promulgate regulations under the Administrative Procedure Act (AS 44.62) to implement the provisions of this chapter.

Sec. 24.45.031. POWERS AND DUTIES. (a) In addition to its other duties under this chapter, the commission shall

(1) prescribe the forms for registration, reports, statements, notices and other documents required by this chapter;

(2) prepare and publish ~~a manual and~~ instructions setting out the methods of accounting, bookkeeping and preservation of records required to facilitate compliance with and enforcement of this chapter and explaining the duties of persons subject to the provisions of this chapter; the ~~manual and~~ instructions shall be updated periodically;

AS 15.13 Campaign Disclosure

(3) provide assistance to persons in complying with the provisions of this chapter;

~~(4) prepare and publish periodic, but at least quarterly and annually, summaries of the statements and reports received; these summaries shall list separately individual lobbyists, employers of lobbyists, or sponsors of grass roots lobbying campaigns;~~

(4) prepare and publish ~~other reports it considers appropriate, including~~ an annual report of its activities, findings and recommendations under this chapter, which shall be made available to the governor, legislature and to the public by February 1 of each calendar year

(5) report suspected violations of this chapter to the attorney general;

(b) The commission may

(1) hold hearings and conduct investigations into compliance with the provisions of this chapter;

(3) prepare and publish periodic, but at least quarterly and annually, summaries of the statements and reports received; these summaries shall list separately individual lobbyists, 2nd employers of lobbyists ~~or sponsors of grass roots lobbying campaigns~~;

(2) in conjunction with (1) of this subsection, issue subpoenas, compel the attendance and testimony of witnesses, administer oaths and affirmations, and require the production of books, papers, records, documents or other items material to the commission's duties or powers under this chapter;

ARTICLE 3. DISCLOSURE: REGISTRATION AND REPORTS.

Sec. 24.45.041. REGISTRATION. (a) Before engaging in lobbying or within 10 days after being employed as a lobbyist, whichever occurs first, a lobbyist shall file a registration statement on a form prescribed by the commission.

(b) The registration form prescribed by the commission shall be accompanied by four 2½ inch by 2½ inch black and white photographs of himself which are 2yrs not more than five years old and a written authorization to act as a lobbyist from each person by whom he is employed or with whom he contracts for lobbying services and shall include

(1) the lobbyist's full name and complete permanent residence and business address and telephone number, as well as any temporary residential and business address and telephone number in the state capital during a legislative session;

(2) the full name and complete address of each person, as prescribed in (1) of this subsection, by whom the lobbyist is retained or employed ~~or on whose behalf the registrant lobbies, advocates legislative or administrative action, or engages in the influencing of legislative or administrative action~~;

(3) whether the person from whom the lobbyist receives compensation employs him solely as a lobbyist or whether he is a regular employee performing other services for his employer which include but are not limited to the influencing of legislative or administrative action;

(4) the duration of his employment and the date on which the lobbyist expects his lobbying to end;

(5) the lobbyist's compensation for engaging in lobbying, including salary, fees or reimbursement for expenses received in consideration for, or directly in support of or in connection with, the influencing of legislative or administrative action;

(6) a general description of the subjects or matters on which the registrant expects to lobby or to engage in the influencing of legislative or administrative action;

(7) the full name and complete address of the person who has custody of the accounts, books, papers, bills, receipts and other documents required to be maintained under this chapter.

(c) If a change occurs in any of the information contained in a registration statement filed under (a) of this section, or in any accompanying document, an appropriate amendment shall be filed with the commission within 10 days after the change.

(d) Within 45 days after the convening of each regular session of the legislature, the commission shall publish a directory of registered lobbyists, containing the photograph and the information prescribed in (b) of this section for each lobbyist. From time to time thereafter the commission shall publish those supplements to the directo , that in the commission's judgment may be necessary. The directory shall be made available to public officials and to the public.

at the following locations: a public place adjacent to the legislative chambers in the state capitol building, the office of the lieutenant governor, the legislative reference library of the Legislative Affairs Agency and the commission's central office.

(e) Each lobbyist shall renew his registration annually by filing a new registration statement together with a new authorization to act as a lobbyist within 10 days after the convening of each regular session of the legislature. The lobbyist also shall file any reports or statements he has failed to file for a previous reporting period. The commission may not renew lobbying credentials until this provision is complied

with.

~~(f) Each registered lobbyist shall file a notice of termination with the commission within 30 days after he ceases the lobbying activity which required his registration under this chapter.~~

Sec. 24.45.051. REPORTS. Each lobbyist registered under sec. 41 of this chapter shall file with the commission a report concerning his activities during each ~~preceding calendar month while the legislature is in session, and during each preceding calendar quarter when the legislature is not in session~~ reporting period prescribed in sec. 101 of this chapter, so long as the lobbyist continues to engage in lobbying activities. The report shall be made on a form prescribed by the commission and filed in accordance with secs. ~~[illegible]~~ 91 and ~~[illegible]~~ 101 of this chapter. The report also shall include any changes in the information required to be supplied under sec. 41(b) of this chapter and the following information for the ~~preceding calendar month or quarter~~ reporting period, as applicable:

(1) the source of income, as defined in AS 39.50.200(8) and the monetary value of all payments, including but not limited to salary, fees, and reimbursement of expenses, received in consideration for or directly or indirectly in support of or in connection with influencing legislative or administrative action, and the full name and complete address of each person from whom amounts or things of value have been received and the total monetary value received from each person;

(2) the aggregate amount of disbursements or expenditures ~~directly or indirectly~~ in support of or in connection with influencing legislative or administrative action made or incurred during the period by the lobbyist, or on behalf of the lobbyist by his employer in the following categories:

(A) food and beverages; in this category of disbursements or expenditures, if more than $100 a month in the aggregate is disbursed or expended on behalf of any one public official or

candidate, the full name of the person and his official position, if any, who received the food or beverages and the amount paid for each person shall be stated;

(B) living accommodations;

(C) travel;

(3) the date and nature of any gift exceeding $10 in value made to a public official or candidate and the full name and official position of that person;

(4) the name and official position of each public official, or candidate and the name of each member of the immediate family of any of these officials or candidates with whom the lobbyist has engaged in an exchange of money, goods, services or anything of more than $50 in value and the nature and date of each of these exchanges and the monetary values exchanged;

(5) the name and address of any business entity in which the lobbyist knows or has reason to know that a public official or candidate is a proprietor, partner, director, officer or manager, or has more than a 50 per cent ownership interest, with whom the lobbyist has engaged in an exchange of money, goods, services, or anything of value and the nature and date of each exchange and the monetary value exchanged if the total value of these exchanges is $500 or more in a calendar year; ~~and~~

(6) the date and amount of each contribution, as defined in AS 15.13.130(2), made to a public official or candidate by the lobbyist and the name and official position of the person to whom the contribution was made; and

(7) a notice of termination if the lobbyist has ceased the lobbying activity which required his registration under this chapter and if this report constitutes the final report of his activities.

Sec. 24.45.061. REPORTS BY EMPLOYERS OF LOBBYISTS. (a) A person who employs, retains or who contracts for the services of one or more lobbyists whether independently or jointly with other persons and a person who directly or indirectly makes payments to influence legisla-

tive or administrative action of $100 or more in value in a calendar month when the legislature is in session or $300 or more in value in a calendar quarter when the legislature is not in session, shall file a quarterly report containing

(1) the full name, complete business address and telephone number of the person making the report;

(2) information sufficient to identify the nature and interests of the person making the report, including

(A) if the maker is an individual, the name and address of his employer, if any, or his principal place of business if he is self-employed, and a description of the business or professional activity in which he or his employer is engaged;

(B) if the maker is a business entity, a description of the business activity in which it is engaged;

(C) if the maker is an industry, trade or professional association, a description of the industry, trade or profession including a specific description of any portion or faction of the industry, trade or profession which the association exclusively or primarily represents and, if the association has less than 50 members, the names of the members; or

(D) if the maker is ~~nothing~~ none of those listed in (A) - (C) of this paragraph, a statement of the person's nature and purposes including a description of any industry, trade, profession or other group with a common economic interest which the person principally represents or from which its membership or financial support is principally derived; however, the information required by (A) - (D) of this paragraph need be stated only in the first report filed during a calendar year, except that subsequent reports must reflect changes in this information previously reported;

(3) the total amount of payments made to influence legislative or administrative action during the period, and the name and address of each person to whom these payments in an aggregate amount or value of $100 or more have been made during the period by the maker of the report, together with the date, amount and a description of the consideration received for each expenditure, and the full name of the beneficiary of each expenditure if other than the maker or the payee;

(4) the name and official position of each public official or candidate and the name of each member of the immediate family of any official or candidate with whom the maker of the report has engaged in an exchange of money, goods, services or anything of value, the nature and date of each such exchange and the monetary value exchanged, if the fair market value of either side of the exchange was $500 or more;

(5) the name and address of any business entity in which the person making the report knows or has reason to know that a public official or candidate is a proprietor, partner, director, officer, manager or has more than a 50 per cent ownership interest, with whom the person making the report has engaged in an exchange or exchanges of money, goods, services or anything of value and the nature and date of each exchange and the monetary value exchanged, if the total value of the exchange or exchanges is $500 or more in a calendar year;

(6) the date and amount of each contribution as defined in AS 15.13.130(2), made to a public official or candidate by the person making the report and the name and official position of the recipient of each contribution;

(7) the date and nature of any gift exceeding $10 in value made to any public official or candidate and the full name and official position of the recipient of each gift;

(8) a specific description of legislative or administrative

action which the person making the report has attempted to influence;

(9) the name of each lobbyist employed or retained by the person making the report, together with the total amount paid to each lobbyist and the portion of that amount, if any, which was paid for specific purposes, including salary, fees, and reimbursement for expenses, in the categories set out in sec. 51(2) of this chapter;

(10) a notice of termination if the person filing a report has ceased employing or retaining a lobbyist registered under this chapter and if this report constitutes the final report of the lobbyist's ~~or the employer's~~ activities on behalf of the ~~employer~~ maker ~~making~~ the report;

~~action which the person making the report has attempted to influence;~~

~~(9)~~ the name of each lobbyist employed or ~~retained~~ by the person making the report, ~~together with the total amount paid to each~~ lobbyist and the portion of ~~that amount, if any,~~ which was paid for specific ~~purposes~~, including salary, fees, and reimbursement for ~~expenses, in the categories set out in sec. 51(2) of this chapter;~~

(~~10~~ 11) any other information required by the commission consistent with the purposes and provisions of this chapter.

~~(b) Each person filing a report under this section shall file a~~ notice of termination with the ~~Commission~~ within 30 days after he ceases ~~employing or retaining a lobbyist registered under this chapter.~~

Sec. 24.45.071. REPORTS BY PUBLIC OFFICIALS, CANDIDATES. (a) Each public official or candidate shall file with the commission on a form prescribed by it a report for the periods required under sec. ~~11~~ of this chapter disclosing the following information for the preceding calendar month or quarter, as applicable:

(1) if the official or candidate received in the aggregate more than $100 a month in food and beverages from any one lobbyist, or employer of a lobbyist, the name of that lobbyist, or employer of that lobbyist, and the amount received from each; and

(2) the date, nature and source of any gift exceeding $10 in value received by the public official or candidate from a lobbyist or employer of a lobbyist.

(b) If during a reporting period prescribed in sec. 01 of this chapter, the public official or candidate has not received any of the ~~emoluments or benefits~~ items described in (a)(1) - (2) of this section, he need not file a report required under (a) of this section. The non-filing of a report for the reporting period constitutes a "zero report" for that period.

Sec. 24.45.081. DISCLOSURE OF CERTAIN RELATIONSHIPS REQUIRED. If a person registered, or required to be registered, as a lobbyist under this chapter, or a person who employs or retains a lobbyist, employs or retains a public official or candidate, and if that official or candidate remains in the partial or full-time employ of the state or an agency of it, the lobbyist, or employer of a lobbyist, shall file a

statement ~~under oath~~ with the commission setting out the name, address and official position of the person employed, retained or paid, the nature of the employment and the amount of pay or consideration to be paid. The statement shall be filed within 10 days after the beginning the assumption of public office or employment, ~~or~~ of that employment ~~the filing of candidacy, whichever is earlier.~~

~~Sec. 24.145.091. GRASS ROOTS LOBBYING CAMPAIGNS. (a) A person who~~ has made expenditures not reported under any other section of this chapter of $300 or more a calendar month in the aggregate, or $1,500 or more a calendar quarter in the aggregate, in presenting a program addressed to the public, a substantial portion of which is intended, designed, or calculated primarily to influence legislative or administrative action, sha[illegible]equired to register and report under this section as a sponsor of a grass roots lobbying campaign.

(b) Within 30 days after becoming a sponsor of a grass roots lobbying campaign, the sponsor shall register by filing with the commission a registration statement on a form prescribed by the commission including the following information:

(1) the sponsor's full name, complete address and business, occupation or profession and, if the sponsor is not an individual, the full names, complete addresses and titles of the controlling persons or officers responsible for managing the sponsor's affairs;

(2) the full names, complete addresses and businesses, occupations or professions of all persons organizing, managing or advising the campaign, or employed or retained to do so, including any public relations, advertising or professional campaign management firm participating in the campaign, and the terms of compensation for each of these persons;

(3) the purpose of the campaign, including the specific ~~legislative or administrative action which is the subject of the campaign~~;

~~(4) the full names and complete addresses of all persons~~ contributing more than $100 to the campaign, and the amount contributed by each person;

(5) the totals of all expenditures made or incurred to date on behalf of the campaign; the totals shall be segregated according to the categories set out in sec. 51(2) of this chapter; and the report also shall include disbursements or expenditures made or incurred for the following:

(A) consultants, advisors or professional campaign management;

(B) printing and mailing expenses;

(C) advertising, identifying each form of media employed including but not limited to radio, television, newspapers, periodicals or other publications or printed matter.

(c) Every person registered under (a) of this section shall file periodic reports with the commission in the same manner and according to the same schedule prescribed for other statements and reports to be filed under this chapter. The reports shall update the information contained in the sponsor's registration statement filed under (b) of this section and shall show contributions received and totals of expenditures made during the reporting period in the same manner as provided for in the registration statement.

(d) When the grass roots lobbying campaign has been terminated, the sponsor shall file a notice of termination with the final monthly or quarterly report. The notice shall state the totals of all contributions and expenditures made on behalf of the campaign in the same ~~manner as prescribed in (b) of this section.~~

Sec. 24.45.~~101~~ 091. CERTIFICATION OF REPORTS. Every statement or report required to be filed under this chapter shall identify the full

name of the person preparing it, his complete address and telephone number, and shall be certified as complete and correct ~~under oath~~, both by the person preparing it and by the person on whose behalf it is filed.

Sec. 24.45.~~112~~101. REPORTING PERIODS. Reports required under this chapter shall be filed by the 10th day of the calendar month following each calendar month during any part of which the legislature was in session and by the 10th day of the month following each calendar quarter when the legislature was not in session. The period covered shall be the calendar month or the calendar quarter, as applicable, and shall in any event cover the period from the date of the last report filed under this chapter to the date of the end of the calendar month or quarter, as applicable, for which the report is being filed. The period covered shall not include any months covered in previous reports filed by the same person. When total amounts are required to be reported, totals shall be stated both for the period covered by the statement and for the entire calendar year to date.

However, if a lobbyist registered under this chapter has declared that he seeks only to influence administrative action and not legislative action he need only file a report required under this chapter for each calendar quarter.

Sec. 24.45.~~121~~111. PUBLICATION OF REPORTS. ~~The information contained in the reports filed under this chapter shall be published in a joint supplement to the senate and house journals as soon as practicable after each reporting period.~~

Copies of the statements and reports filed under this chapter shall be made available to the public at the commission's central office, the office of the lieutenant governor, the legislative reference library in the Legislative Affairs Agency, and at the commission's ~~regional or~~ district offices prescribed in AS 15.13.020(j) as soon as practicable after each reporting period.

Sec. 24.45.~~121~~ 121. PUBLIC RECORDS. Statements and reports filed under this chapter are public records and shall be available for public inspection and copying during normal business hours at the expense of the person requesting copies; however, the charge for copying may not exceed actual cost to the commission.

Sec. 24.45.~~131~~ 131. PRESERVATION OF RECORDS. (a) A person required to register or report as a lobbyist, as an employer of a lobbyist ~~, or as a sponsor of a grass roots lobbying campaign~~ shall preserve all accounts, bills, receipts, books, papers and documents necessary to substantiate the reports required to be made and filed under this chapter for a period of at least ~~five~~ six years from the date of the filing of the report containing these items. These accounts, bills, receipts, books, papers and other documents shall be made available for inspection by the commission, or members of its staff, at any time. If a lobbyist is required under the terms of his employment contract to turn any records over to his employer, responsibility for the preservation of these records under this section rests with the employer.

(b) The commission shall preserve the statements and reports required to be filed under this chapter for a period of ~~five~~ six years from the date of filing. If the commission's central office is not in the state capital, copies of all statements and reports filed under this chapter shall be maintained in an office established by the commission in the state capital, ~~.~~ in the office of the lieutenant governor.

ARTICLE 4. ENFORCEMENT.

Sec. 24.45.~~141~~ 141. PROHIBITIONS. (a) No lobbyist may

(1) engage in any activity as a lobbyist before registering under sec. 41 of this chapter;

(2) do anything with the ~~purpose~~ intent of placing a public official or candidate under personal obligation to him or to his employer;

(3) ~~deceive~~ intentionally deceive or attempt to deceive any public official or candidate, with regard to any material fact pertinent to pending or proposed legislative or administrative action;

(4) cause or influence the introduction of a legislative measure for the purpose of thereafter being employed to secure its defeat;

(5) ~~attempt to create a fictitious appearance of public favor or disfavor of any proposed legislative or administrative action or~~ to

cause a communication to be sent to a public official or candidate, in the name of any fictitious person or in the name of any real person, except with the consent of that person;

(6) represent falsely either directly or indirectly that he can control the official action of a public official or candidate;

(7) accept or agree to accept any payment in any way contingent upon the defeat, enactment or outcome of any proposed legislative or administrative action.

(b) No person may knowingly receive or accept a contribution or gift made unlawful under (a)(~~7~~ 2) of this section.

(c) No person may employ for pay or any consideration, or pay or agree to pay consideration to, a person to lobby who is not registered under of this chapter except upon condition that the person register and that person does in fact so register as soon as practicable after being employed to lobby.

Sec. 24.45.~~151~~ 141. EXAMINATION OF STATEMENTS, REPORTS. (a) The commission or its staff shall examine each statement or report filed under this chapter within 10 days after the date it is filed. A person required to file a statement or report under this chapter shall be notified immediately if

(1) it appears that the person has failed to file a statement or report as required by law or that the statement or report filed does not conform to the requirements of this chapter; or

(2) a written complaint is filed with the commission by any qualified voter alleging that a statement or report filed with the commission does not conform to the requirements of this chapter, or to the truth, or that a person subject to the provisions of this chapter has failed to file a statement or report in the manner prescribed by this chapter.

(b) The commission shall conduct an investigation, and may thereafter conduct a hearing, into an allegatio' under (a)(2) of this section.

(c) The commission shall report any suspected violations of this chapter to the attorney general, to a district attorney in the judicial district where the alleged violation occurred, or to a grand jury.

Sec. 24.45.~~171~~ 161. CIVIL PENALTIES. (a) If a lobbyist ~~for a sponsor of a grass roots lobbying campaign~~ violates any of the applicable provisions of this chapter, his registration credentials may be suspended or revoked by the commission after a hearing, and he may be enjoined by the superior court from receiving compensation or making disbursements or expenditures for lobbying activities. However, the imposition of sanctions or penalties under this section or sec. ~~181~~ 171 or ~~191~~ 181 of this chapter does not excuse the lobbyist, employer of a lobbyist, or sponsor from filing statements or reports required by this chapter.

(b) A person who pays compensation to a lobbyist, reimburses a lobbyist for all or part of his expenses, or makes disbursements or expenditures to solicit others to lobby, and who fails to make and file a report of this compensation, reimbursement, disbursement or expenditure under sec. 61 of this chapter, is, in addition to any other penalty provided by law, subject to a civil penalty of up to three times that compensation, reimbursement, disbursement or expenditure.

(c) A person who receives any payment, compensation, or reimbursement for expenses for activity as a lobbyist and who fails to register or to make and file a report under of this chapter is, in addition to any other penalty prescribed by law, subject to a civil penalty of up to three times that payment, compensation or reimbursement.

(d) A person who fails to report payments, compensation, gifts, contributions, or expenditures required to be reported under this

chapter is subject to a civil penalty of up to three times the amount he failed to report. A person who pays, receives or accepts the prohibited compensation or who makes, receives or accepts a prohibited gift, contribution or expenditure is subject to a civil penalty of up to three times the prohibited or unlawful amount.

(c) A person who fails to file a properly completed and certified report or statement within the time required by this chapter is subject to a civil penalty of $10 a day for each day the delinquency continues.

Sec. 24.45.~~181~~ 171. INJUNCTIVE RELIEF. The superior court may enjoin a person to prevent the doing of any act prohibited by this chapter or to compel the performance of any act required by this chapter.

Sec. 24.45.~~191~~ 181. CRIMINAL PENALTIES. (a) An individual who knowingly violates any provisions of this chapter, whether acting for himself, on behalf of an employer or in concert with other persons, or who knowingly causes, participates in, aids, abets, ratifies or confirms any violation of a provision of this chapter is, upon conviction, punishable by a fine of not ~~less than $100 nor~~ more than $1,000, or by imprisonment for not more than one year, or by both.

(b) A person, other than an individual, who knowingly violates any provision of this chapter, whether acting for himself, on behalf of an employer or in concert with other persons, or who knowingly causes, participates in, aids, abets, ratifies or confirms any violation of a provision of this chapter is, upon conviction, punishable by a fine of not ~~less than $1,000 nor~~ more than $10,000 for each offense.

ARTICLE 5. GENERAL PROVISIONS.

Sec. 24.45.~~201~~ 191. EXEMPTIONS. (a) This chapter does not apply to

(1) an individual

(A) who, without payment of compensation or other consideration, lobbies ~~on behalf of himself~~; or

(B) who limits his lobbying activities to appearances before public sessions of the legislature, or its committees or subcommittees, or to public hearings or other public proceedings of state agencies;

(2) an elected state or municipal public officer or an employee of the state or a municipality acting in his official capacity or within the scope of his employment; except as provided in sec. 71 of this chapter

(3) any newspaper or other periodical of general circulation, book publisher, radio or television station (including an individual who owns, publishes or is employed by that newspaper or periodical, radio or television station) which ~~in the ordinary course of business~~ publishes news items, editorials or other comments, or paid advertisements, which directly or indirectly urge legislative or administrative action if the newspaper, periodical, book publisher, radio or television station or individual engages in no further or other activities in connection with urging or advocating legislative or administrative action other than to appear before public sessions of the legislature, or its committees or subcommittees, or public hearings or other public proceedings of state agencies.

(4) a person who appears before the legislature or either house, or standing, special or interim committte, in response to an invitation issued under (c) of this section.

(b) Nothing in this chapter may be construed as prohibiting or affecting the rendering of professional services in drafting legislative measures or in advising clients and in rendering opinions as to the construction or effect of proposed or pending legislative or administrative action where these professional services are not otherwise connected with infuencing or attempting to influence legislative or administrative action. Nor does anything in this chapter prevent members of the legislature from discussing with constituents the advisability of passing legislation then pending before, or proposed to be presented to, the legislature.

(c) Either house of the legislature by resolution, or both houses of the legislature by concurrent resolution may invite a person to appear to speak before the legislature or either house with reference to any pending matter. A (standing, special or interim) committee of either house of the legislature may, upon the concurrence of a majority of its members, extend a written invitation to any person to appear before the committee to give information in regard to, or explain, any matter pending before the committee.

Sec. 24.45 201. DEFINITIONS. In this chapter

(1) "administrative action" means the proposal, drafting, development, consideration, amendment, adoption, approval, promulgation, issuance, modification, rejection or postponement by any state agency of any rule, regulation, order, decision, determination, or any other quasi-legislative or quasi-judicial action or proceeding whether or not governed by the Administrative Procedure Act (AS 44.62);

(2) "agency" means a state department, division, commission, board, office, bureau, institution, corporation, authority, organization committee, council or board in the executive branch, or independent of the executive branch, of state government;

(3) "candidate" means an individual who is listed on the ballot or who is a write-in candidate at any election for nomination for or election to an elective ~~state~~ public office, or who receives a contribution or makes an expenditure or gives his consent for any other person to receive a contribution or make an expenditure with a view to bringing about his nomination or election to elective ~~state~~ public office, whether or not the specific elective ~~state~~ public office for which he will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not he has announced his candidacy or filed a declaration of candidacy at the time the contribution is made or offered; "candidate" also includes an elective ~~state~~ public official ~~officer~~ who is the subject of a recall election;

Proposed definition of "gift" for CSHB 522 (Judiciary):

adopted

(4) "gift"

(A) means any payment to the extent that consideration of equal or greater value is not received;

(B) includes but is not limited to:

(i) a loan, loan guarantee, forgiveness of a loan, payment of a loan by a third party, or an enforceable promise to make a payment except that full and adequate consideration is received;

(ii) the purchase of tickets for travel or for entertainment events; and

(iii) the granting of discounts or rebates for goods or services not extended to the public generally;

(C) does not include:

(i) informational or promotional materials, including but not limited to books, reports, pamphlets, calendars or periodicals; however, payments for travel or reimbursement for expenses may not be considered "informational material";

(ii) food and beverages consumed in places of public accommodation.

DEFINITION OF "GIFT" in CSHB 522 (by the State Affairs Committee)

(4) "gift" means any payment to the extent that consideration of equal or greater value is not received, unless it is clear from surrounding circumstances that it is not made for the purpose of influencing legislative or administrative action; it includes a loan, loan guarantee, forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except that full and adequate consideration is received; it also includes the purchase of tickets for travel or for entertainment events and the granting of discounts or rebates not extended to the public generally; "gift" does not include informational or promotional materials such as books, reports, pamphlets, calendars or periodicals; it also does not include food and beverages sold ready for immediate consumption in or by restaurants, drug stores, lunch counters, cafeterias, hotels or like places of public accommodation; any person other than a defendant in a criminal action who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value.

DEFINTION OF "GIFT" in HB 522 (as introduced)

(7) "gift" means any payment to the extent that consideration of equal or greater value is not received; any person other than a defendant in a criminal action who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value; "gift" does not include informational or promotional materials such as books, reports, pamphlets, calendars or periodicals; however, no payment for travel or reimbursement for any expenses may be considered "informational material"

NOTE: There is no definition of "gift" in either AS 15.13 (Election Campaign Disclosure Law) or AS 39.50 (Conflicts of Interest/Financial Disclosure Law).

(5) "immediate family" means the spouse and dependent children of an individual;

(6) "individual" means a natural person;

(7) "influencing legislative or administrative action" means promoting, advocating, supporting, modifying, opposing or delaying or seeking to do the same with respect to any legislative or administrative action by means including but not limited to the provision or use of information, statistics, studies, analyses in written or oral form or format;

(8) "legislative action" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, defeat or rejection of any bill, resolution, amendment, motion, report, nomination, appointment or other matter by the legislature, or by a standing, interim or special committee of the legislature, or by a member or employee of the legislature acting in his official capacity; it includes, but is not limited to, the action of the governor in approving or vetoing a bill or the action of the legislature in considering, overriding or sustaining that veto and the

tion of the legislature in considering, confirming or rejecting an executive appointment of the governor;

(9) "lobbyist" means a person who is employed and receives payments, or who contracts for economic consideration, other than reimbursement for reasonable travel expenses, to communicate directly or through his agents with any public official or candidate for the purpose of influencing legislative or administrative action if a substantial or regular portion of the activities for which he receives consideration is for the purpose of influencing legislative or administrative action or a person who represents himself as engaging in that communication as a business, occupation or profession;

(10) "payment" means the disbursement, distribution, transfer, loan, advance, deposit, gift or other rendering or tendering of money, property, goods or services or anything else of value, whether tangible or intangible;

(11) "payment to influence legislative or administrative action" means any of the following:

(A) a direct or indirect payment to a lobbyist whether for salary, fee, compensation for expenses, or any other purpose, by a person employing, retaining or contracting for the services of the lobbyist separately or jointly with other persons;

(B) a payment in support of or assistance to a lobbyist or his activities, including but not limited to the direct payment of expenses incurred at the request or suggestion of the lobbyist;

(C) a payment which directly benefits a public official or candidate, or a member of the immediate family of that official or candidate;

(D) a payment, including compensation, payment or reimbursement for the services, time or expenses of an employee for

or in connection with direct communication with a public official or candidate;

(E) a payment for or in connection with soliciting or urging other persons to enter into direct communication with a public official or candidate;

(12) "person", in addition to the terms set out in AS 01.10.-060(7), includes a labor union; and

(13) "public official" means the governor, lieutenant governor, governor-elect or lieutenant governor-elect, or a member or member-elect of the legislature; or, an officer, employee, or member of an agency or an employee of the legislature acting in the exercise of his official duties or responsibilities, other than in a purely clerical or manual capacity.

Sec. 24.45.321. SHORT TITLE. This chapter may be cited as the Regulation of Lobbying Act.

* Sec. 3. AS 15.13.030(8) is amended to read:

(8) examine, investigate and compare all reports, statements and actions requited by this chapter, AS 24.45 and AS 39.50 and to report to the attorney general the names of all persons or groups which the commission has substantial reason to believe have violated this chapter;

* Sec. 4. AS 15.13.030(10) is amended to read:

(10) adopt regulations necessary to implement and clarify the provisions of AS 24.45, AS 39.50 and this chapter, subject to the provisions of the Administrative Procedure Act (AS 44.62).

* Sec. 5. Records, papers, documents or other materials relating to the administration of AS 24.45 before July 1, 1976 shall be transferred from the Department of Administration to the Alaska Public Offices Commission on July 1, 1976.

* Sec. 6. This Act takes effect July 1, 1976. However, the initial reports required under AS 24.45.051 - 24.45.091 are due for the reporting period beginning January 1, 1977, and shall be filed not later than February 10, 1977.

As you can see

Wallis Page 17, line 12 - editorials

1.

Marilyn Miller - PALS

Sect of Com. Spends 25% of time on present lobbying bill

45 day publishing for directory

10 day reporting period is to short

Public agencies - YAP etc ?
Lobbyist dinners; parties

Mr. Lauber

What about accumulation ~~of~~ over $100

Credit for Legislators buying lobbyist

Object to Legislators Reporting
Social Problem - have to Ask lobbyist

$100 per lobbyist requirement - discriminates against Co that has 1 or 1 More lobbysist

Administrative lobbysists - Co have contact with Admin ? Covered by this Act ?

Instead of having booklet - put pictures + Application
in 1. lobbyist Room
2. Chief Clerk
3. Senate
4. Public Offices Com.

Get around 45 day problem of publishing

Employees lobby for jobs

Original sponsors: Parker, Bradley
Gardiner, Malone, Miller and Sullivan

Offered: 1/30/76
Referred: Judiciary

IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE

CS FOR HOUSE BILL NO. 522

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the regulation of lobbying; and providing for an effective date."

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

* Section 1. AS 24.45.010 - 24.45.150 are repealed.

* Sec. 2. AS 24.45 is amended by adding new sections to read:

CHAPTER 45. REGULATION OF LOBBYING

[LEGISLATIVE REPRESENTATION].

ARTICLE 1. LEGISLATIVE DECLARATION OF PURPOSE.

Sec. 24.45.011. PURPOSE. The legislature finds and declares that the operation of responsible representative democracy requires that the fullest opportunity be afforded to the people to petition their government for the redress of grievances and to express freely to individual members of the legislature, to its committees, and to officials of the executive branch, their opinions on pending legislation or administrative actions [that relate to current affairs]; and that to preserve and maintain the integrity of the legislative and administrative processes it is essential that the identity, income, expenditures and activities of certain persons who engage in efforts to persuade members of the legislature or officials or agencies in the executive branch to take specific actions, either by direct communications to these members or officials or by solicitation or employment of others to engage in these efforts, be publicly and regularly disclosed.

ARTICLE 2. ADMINISTRATION.

Sec. 24.45.021. ADMINISTRATION. (a) This chapter shall be

administered by the Alaska Public Offices Commission created under AS 15.13.020(a).

(b) The commission shall promulgate regulations under the Administrative Procedure Act (AS 44.62) to implement the provisions of this chapter.

Sec. 24.45.031. POWERS AND DUTIES. (a) In addition to its other duties under this chapter, the commission shall

(1) prescribe the forms for registration, reports, statements, notices and other documents required by this chapter;

(2) prepare and publish a manual and instructions setting out the methods of accounting, bookkeeping and preservation of records required to facilitate compliance with and enforcement of this chapter and explaining the duties of persons subject to the provisions of this chapter; the manual and instructions shall be updated periodically

(3) provide assistance to persons in complying with the provisions of this chapter;

(4) prepare and publish periodic, but at least quarterly and annually, summaries of the statements and reports received; these summaries shall list separately individual lobbyists, employers of lobbyists, or sponsors of grass roots lobbying campaigns;

(5) prepare and publish ~~reports it considers appropriate, including~~ an annual report of its activities, findings and recommendations under this chapter, which shall be made available to the governor, legislature and to the public on or before Feb 1 of each calendar year;

(6) report suspected violations of this chapter to the attorney general;

(b) The commission may

(1) hold hearings and conduct investigations into compliance with the provisions of this chapter;

Add power for publishing other reports

2½ x 2½ picture passport
6 pictures
Commission to distribute

Chief Clerk
Senate
1. Public place in Legis Chamber
2. Lt Gov office
3. Legis Reference Library
4. Commission

(2) in conjunction with (1) of this subsection, issue subpoenas, compel the attendance and testimony of witnesses, administer oaths and affirmations, and require the production of books, papers, records, documents or other items material to the commission's duties or powers under this chapter.

ARTICLE 3. DISCLOSURE: REGISTRATION AND REPORTS.

Sec. 24.45.041. REGISTRATION. (a) Before engaging in lobbying or within 10 days after being employed as a lobbyist, whichever occurs first, a lobbyist shall file a registration statement on a form prescribed by the commission.

Change to conform

(b) The registration form prescribed by the commission shall be accompanied by a 3-inch by 4-inch black and white photograph of himself which is not more than five years old and a written authorization to act as a lobbyist from each person by whom he is employed or with whom he contracts for lobbying services and shall include

(1) the lobbyist's full name and complete permanent residence and business address and telephone number, as well as any temporary residential and business address and telephone number in the state capital during a legislative session;

(2) the full name and complete address of each person, as prescribed in (1) of this subsection, by whom the lobbyist is retained or employed, [or on whose behalf the registrant lobbies, advocates legislative or administrative action, or engages in the influencing of legislative or administrative action;]

(3) whether the person from whom the lobbyist receives compensation employs him solely as a lobbyist or whether he is a regular employee performing other services for his employer which include but are not limited to the influencing of legislative or administrative action;

(4) the duration of his employment and the date on which the lobbyist expects his lobbying to end;

(5) the lobbyist's compensation for engaging in lobbying, including salary, fees or reimbursement for expenses received in consideration for, or directly in support of or in connection with, the influencing of legislative or administrative action;

(6) a general description of the subjects or matters on which the registrant expects to lobby or to engage in the influencing of legislative or administrative action;

(7) the full name and complete address of the person who has custody of the accounts, books, papers, bills, receipts and other documents required to be maintained under this chapter.

(c) If a change occurs in any of the information contained in a registration statement filed under (a) of this section, or in any accompanying document, an appropriate amendment shall be filed with the commission within 10 days after the change.

New section on filing

(d) Within 45 days after the convening of each regular session of the legislature, the commission shall publish a directory of registered lobbyists, containing the photograph and the information prescribed in (b) of this section for each lobbyist. From time to time thereafter the commission shall publish those supplements to the directory that in the commission's judgment may be necessary. The directory shall be made available to public officials and to the public.

(e) Each lobbyist shall renew his registration annually by filing a new registration statement together with a new authorization to act as a lobbyist within 10 days after the convening of each regular session of the legislature. The lobbyist also shall file any reports or statements he has failed to file for a previous reporting period. The commission may not renew lobbying credentials until this provision is complied

Motion by Brown
filing requirement - need not file if would be a zero filing

with.

(f) Each registered lobbyist shall file a notice of termination with the commission within 30 days after he ceases the lobbying activity which required his registration under this chapter.

Amend: Legis lobbyist report monthly all others quarters

Sec. 24.45.051. REPORTS. Each lobbyist registered under sec. 41 of this chapter shall file with the commission a report concerning his activities during each preceding calendar month while the legislature is in session, and during each preceding calendar quarter when the legislature is not in session, so long as the lobbyist continues to engage in lobbying activities. The report shall be made on a form prescribed by the commission and filed in accordance with secs. 101 and 111 of this chapter. The report also shall include any changes in the information required to be supplied under sec. 41(b) of this chapter and the following information for the preceding calendar month or quarter, as applicable:

(1) the source of income, as defined in AS 39.50.200(8) and the monetary value of all payments, including but not limited to salary, fees, and reimbursement of expenses, received in consideration for or directly or indirectly in support of or in connection with influencing legislative or administrative action, and the full name and complete address of each person from whom amounts or things of value have been received and the total monetary value received from each person;

Clarification

(2) the aggregate amount of disbursements or expenditures made or incurred during the period by the lobbyist, or on behalf of the lobbyist by his employer in the following categories:

Clarification

(A) food and beverages; in this category of disbursements or expenditures, if more than $100 a month in the aggregate is disbursed or expended on behalf of any one public official or

or caused by him to be disbursed or expended

candidate, the full name of the person and his official position, if any, who received the food or beverages and the amount paid for each person shall be stated;

(B) living accommodations;

(C) travel;

(3) the date and nature of any gift exceeding $10 in value made to a public official or candidate and the full name and official position of that person;

(4) the name and official position of each public official, or candidate and the name of each member of the immediate family of any of these officials or candidates with whom the lobbyist has engaged in an exchange of money, goods, services or anything of more than $50 in value and the nature and date of each of these exchanges and the monetary values exchanged;

(5) the name and address of any business entity in which the lobbyist knows or has reason to know that a public official or candidate is a proprietor, partner, director, officer or manager, or has more than a 50 per cent ownership interest, with whom the lobbyist has engaged in an exchange of money, goods, services, or anything of value and the nature and date of each exchange and the monetary value exchanged if the total value of these exchanges is $500 or more in a calendar year; and

(6) the date and amount of each contribution, as defined in AS 15.13.130(2), made to a public official or candidate by the lobbyist and the name and official position of the person to whom the contribution was made;

(7) no section on termination

Sec. 24.45.061. REPORTS BY EMPLOYERS OF LOBBYISTS. (a) A person who employs, retains or who contracts for the services of one or more lobbyists whether independently or jointly with other persons and a person who directly or indirectly makes payments to influence legisla-

tive or administrative action of $100 or more in value in a calendar month when the legislature is in session or $300 or more in value in a calendar quarter when the legislature is not in session, shall file a quarterly report containing

(1) the full name, complete business address and telephone number of the person making the report;

(2) information sufficient to identify the nature and interests of the person making the report, including

(A) if the maker is an individual, the name and address of his employer, if any, or his principal place of business if he is self-employed, and a description of the business or professional activity in which he or his employer is engaged;

(B) if the maker is a business entity, a description of the business activity in which it is engaged;

(C) if the maker is an industry, trade or professional association, a description of the industry, trade or profession including a specific description of any portion or faction of the industry, trade or profession which the association exclusively or primarily represents and, if the association has less than 50 members, the names of the members; or

(D) if the maker is neither of those listed in (A) - (C) of this paragraph, a statement of the person's nature and purposes including a description of any industry, trade, profession or other group with a common economic interest which the person principally represents or from which its membership or financial support is principally derived; however, the information required by (A) - (D) of this paragraph need be stated only in the first report filed during a calendar year, except that subsequent reports must reflect changes in this information previously reported;

(3) the total amount of payments made to influence legislative or administrative action during the period, and the name and address of each person to whom these payments in an aggregate amount or value of $100 or more have been made during the period by the maker of the report, together with the date, amount and a description of the consideration received for each expenditure, and the full name of the beneficiary of each expenditure if other than the maker or the payee;

(4) the name and official position of each public official or candidate and the name of each member of the immediate family of any official or candidate with whom the maker of the report has engaged in an exchange of money, goods, services or anything of value, the nature and date of each such exchange and the monetary value exchanged, if the fair market value of either side of the exchange was $500 or more;

(5) the name and address of any business entity in which the person making the report knows or has reason to know that a public official or candidate is a proprietor, partner, director, officer, manager or has more than a 50 per cent ownership interest, with whom the person making the report has engaged in an exchange or exchanges of money, goods, services or anything of value and the nature and date of each exchange and the monetary value exchanged, if the total value of the exchange or exchanges is $500 or more in a calendar year;

(6) the date and amount of each contribution as defined in AS 15.13.130(2), made to a public official or candidate by the person making the report and the name and official position of the recipient of each contribution;

(7) the date and nature of any gift exceeding $10 in value made to any public official or candidate and the full name and official position of the recipient of each gift;

(8) a specific description of legislative or administrative

action which the person making the report has attempted to influence;

(9) the name of each lobbyist employed or retained by the person making the report, together with the total amount paid to each lobbyist and the portion of that amount, if any, which was paid for specific purposes, including salary, fees, and reimbursement for expenses, in the categories set out in sec. 51(2) of this chapter;

(10) any other information required by the commission consistent with the purposes and provisions of this chapter.

(b) Each person filing a report under this section shall file a notice of termination with the commission within 30 days after he ceases employing or retaining a lobbyist registered under this chapter.

State Affairs Added

Sec. 24.45.071. REPORTS BY PUBLIC OFFICIALS, CANDIDATES. Each public official or candidate shall file with the commission a form prescribed by it a report for the periods required under sec. 111 of this chapter disclosing the following information for the preceding calendar month or quarter, as applicable:

Amend for not filing if under $100

(1) if the official or candidate received in the aggregate more than $100 a month in food and beverages from any one lobbyist, or employer of a lobbyist, the name of that lobbyist, or employer of a lobbyist, and the amount received from each; and

(2) the date, nature and source of any gift exceeding $10 in value received by the public official or candidate from a lobbyist or employer of a lobbyist. No report if zero level

Sec. 24.45.081. DISCLOSURE OF CERTAIN RELATIONSHIPS REQUIRED. If a person registered, or required to be registered, as a lobbyist under this chapter, or a person who employs or retains a lobbyist, employs or retains a public official or candidate, and if that official or candidate remains in the partial or full-time employ of the state or an agency of it, the lobbyist, or employer of a lobbyist, shall file a

statement under oath with the commission setting out the name, address and official position of the person employed, retained or paid, the nature of the employment and the amount of pay or consideration to be paid. The statement shall be filed within 10 days after the beginning of that employment.

Sec. 24.45.091. GRASS ROOTS LOBBYING CAMPAIGNS. (a) A person who has made expenditures not reported under any other section of this chapter of $300 or more a calendar month in the aggregate, or $1,500 or more a calendar quarter in the aggregate, in presenting a program addressed to the public, a substantial portion of which is intended, designed, or calculated primarily to influence legislative or administrative action, shall be required to register and report under this section as a sponsor of a grass roots lobbying campaign.

(b) Within 30 days after becoming a sponsor of a grass roots lobbying campaign, the sponsor shall regist by filing with the commission a registration statement on a form prescribed by the commission including the following information:

(1) the sponsor's full name, complete address and business, occupation or profession and, if the sponsor is not an individual, the full names, complete addresses and titles of the controlling persons or officers responsible for managing the sponsor's affairs;

(2) the full names, complete addresses and businesses, occupations or professions of all persons organizing, managing or advising the campaign, or employed or retained to do so, including any public relations, advertising or professional campaign management firm participating in the campaign, and the terms of compensation for each of these persons;

(3) the purpose of the campaign, including the specific legislative or administrative action which is the subject of the campaign;

Means One Month over expenditure
Must report back " "

(4) the full names and complete addresses of all persons contributing more than $100 to the campaign, and the amount contributed by each person;

(5) the totals of all expenditures made or incurred to date on behalf of the campaign; the totals shall be segregated according to the categories set out in sec. 51(2) of this chapter; and the report also shall include disbursements or expenditures made or incurred for the following:

(A) consultants, advisors or professional campaign management;

(B) printing and mailing expenses;

(C) advertising, identifying each form of media employed including but not limited to radio, television, newspapers, periodicals or other publications or printed matter.

(c) Every person registered under (a) of this section shall file periodic reports with the commission in the same manner and according to the same schedule prescribed for other statements and reports to be filed under this chapter. The reports shall update the information contained in the sponsor's registration statement filed under (b) of this section and shall show contributions received and totals of expenditures made during the reporting period in the same manner as provided for in the registration statement.

(d) When the grass roots lobbying campaign has been terminated, the sponsor shall file a notice of termination with the final monthly or quarterly report. The notice shall state the totals of all contributions and expenditures made on behal of the campaign in the same manner as prescribed in (b) of this section.

Sec. 24.45.101. CERTIFICATION OF REPORTS. Every statement or report required to be filed under this chapter shall identify the full

name of the person preparing it, his complete address and telephone number, and shall be certified as complete and correct ~~under oath~~, both by the person preparing it and by the person on whose behalf it is filed.

Sec. 24.45.111. REPORTING PERIODS. Reports required under this chapter shall be filed by the 10th day of the calendar month following each calendar month during any part of which the legislature was in session and by the 10th day of the month following each calendar quarter when the legislature was not in session. The period covered shall be the calendar month or the calendar quarter, as applicable, and shall in any event cover the period from the date of the last report filed under this chapter to the date of the end of the calendar month or quarter, as applicable, for which the report is being filed. The period covered shall not include any months covered in previous reports filed by the same person. When total amounts are required to be reported, totals shall be stated both for the period covered by the statement and for the entire calendar year to date.

Sec. 24.45.121. PUBLICATION OF REPORTS. The information contained in the reports filed under this chapter shall be published in a joint supplement to the senate and house journals as soon as practicable after each reporting period.

Sec. 24.45.131. PUBLIC RECORDS. Statements and reports filed under this chapter are public records and shall be available for public inspection and copying during normal business hours at the expense of the person requesting copies; however, the charge for copying may not exceed actual cost to the commission.

Sec. 24.45.141. PRESERVATION OF RECORDS. (a) A person required to register or report as a lobbyist, as an employer of a lobbyist, or as a sponsor of a grass roots lobbying campaign shall preserve all ac-

counts, bills, receipts, books, papers and documents necessary to substantiate the reports required to be made and filed under this chapter for a period of at least five years from the date of the filing of the report containing these items. These accounts, bills, receipts, books, papers and other documents shall be made available for inspection by the commission, or members of its staff, at any time. If a lobbyist is required under the terms of his employment contract to turn any records over to his employer, responsibility for the preservation of these records under this section rests with the employer.

(b) The commission shall preserve the statements and reports required to be filed under this chapter for a period of five years from the date of filing. If the commission's central office is not in the state capital, copies of all statements and reports filed under this chapter shall be maintained in an office established by the commission in the state capital.

ARTICLE 4. ENFORCEMENT.

Sec. 24.45.151. PROHIBITIONS. (a) No lobbyist may

(1) engage in any activity as a lobbyist before registering under sec. 41 of this chapter;

loans? Read to bread

(2) do anything with the intent of placing a public official or candidate under personal obligation to him or to his employer;

(3) intentionally deceive or attempt to deceive any public official or candidate, with regard to any material fact pertinent to pending or proposed legislative or administrative action;

(4) cause or influence the introduction of a legislative measure for the purpose of thereafter being employed to secure its defeat;

(5) ~~attempt to create a fictitious appearance of public favor or disfavor of any proposed legislative or administrative action~~

cause a communication to be sent to a public official or candidate, in the name of any fictitious person or in the name of any real person, except with the consent of that person;

(6) represent falsely either directly or indirectly that he can control the official action of a public official or candidate;

(7) accept or agree to accept any payment in any way contingent upon the defeat, enactment or outcome of any proposed legislative or administrative action.

(b) No person may knowingly receive or accept a contribution or gift made unlawful under (a)(2) of this section.

(c) No person may employ for pay or any consideration, or pay or agree to pay consideration to, a person to lobby who is not registered under of this chapter except upon condition that the person register and that person does in fact so register as soon as practicable after being employed to lobby.

Sec. 24.45.161. EXAMINATION OF STATEMENTS, REPORTS. (a) The commission or its staff shall examine each statement or report filed under this chapter within 10 days after the date it is filed. A person required to file a statement or report under this chapter shall be notified immediately if

(1) it appears that the person has failed to file a statement or report as required by law or that the statement or report filed does not conform to the requirements of this chapter; or

(2) a written complaint is filed with the commission by any qualified voter alleging that a statement or report filed with the commission does not conform to the requirements of this chapter, or to the truth, or that a person subject to the provisions of this chapter has failed to file a statement or report in the manner prescribed by this chapter.

(b) The commission shall conduct an investigation, and may conduct a hearing, into an allegation under (a)(2) of this section.

(c) The commission shall report any suspected violations of this chapter to the attorney general, to a district attorney in the judicial district where the alleged violation occurred, or to a grand jury.

Sec. 24.45.171. CIVIL PENALTIES. (a) If a lobbyist or a sponsor of a grass roots lobbying campaign violates any of the applicable provisions of this chapter, his registration credentials may be suspended or revoked by the commission after a hearing, and he may be enjoined by the superior court from receiving compensation or making disbursements or expenditures for lobbying activities. However, the imposition of sanctions or penalties under this section or sec. 181 or 191 of this chapter does not excuse the lobbyist, employer of a lobbyist, or sponsor from filing statements or reports required by this chapter.

(b) A person who pays compensation to a lobbyist, reimburses a lobbyist for all or part of his expenses, or makes disbursements or expenditures to solicit others to lobby, and who fails to make and file a report of this compensation, reimbursement, disbursement or expenditure under sec. 61 of this chapter, is, in addition to any other penalty provided by law, subject to a civil penalty of up to three times that compensation, reimbursement, disbursement or expenditure.

(c) A person who receives any payment, compensation, or reimbursement for expenses for activity as a lobbyist and who fails to register or to make and file a report under of this chapter is, in addition to any other penalty prescribed by law, subject to a civil penalty of up to three times that payment, compensation or reimbursement.

(d) A person who fails to report payments, compensation, gifts, contributions, or expenditures required to be reported under this

chapter is subject to a civil penalty of up to three times the amount he failed to report. A person who pays, receives or accepts the prohibited compensation or who makes, receives or accepts a prohibited gift, contribution or expenditure is subject to a civil penalty of up to three times the prohibited or unlawful amount.

(e) A person who fails to file a properly completed and certified report or statement within the time required by this chapter is subject to a civil penalty of $10 a day for each day the delinquency continues.

Sec. 24.45.181. INJUNCTIVE RELIEF. The superior court may enjoin a person to prevent the doing of any act prohibited by this chapter or to compel the performance of any act required by this chapter.

Sec. 24.45.191. CRIMINAL PENALTIES. (a) An individual who violates any provisions of this chapter, whether acting for himself, on behalf of an employer or in concert with other persons, or who causes, participates in, aids, abets, ratifies or confirms any violation of a provision of this chapter is, upon conviction, punishable by a fine of ~~not less than $100 nor~~ more than $1,000, or by imprisonment for not more than one year, or by both.

(b) A person, other than an individual, who violates any provision of this chapter, whether acting for himself, on behalf of an employer or in concert with other persons, or who causes, participates in, aids, abets, ratifies or confirms any violation of a provision of this chapter is, upon conviction, punishable by a fine of ~~not less than $1,000 nor~~ not more than $10,000 for each offense.

ARTICLE 5. GENERAL PROVISIONS.

Sec. 24.45.201. EXEMPTIONS. (a) This chapter does not apply to

(1) an individual

(A) who, without payment of compensation, lobbies or other consideration; ~~lobbies on behalf of himself; or~~

(B) who limits his lobbying activities to appearances before public sessions of the legislature, or its committees or subcommittees, or to public hearings or other proceedings of state agencies;

(2) an elected state or municipal public officer or an employee of the state or a municipality acting in his official capacity or within the scope of his employment;

(3) any newspaper or other periodical of general circulation, book publisher, radio or television station (including an individual who owns, publishes or is employed by that newspaper or periodical, radio or television station) which in the ordinary course of business publishes news items, editorials or other comments, or paid advertisements, which directly or indirectly urge legislative or administrative action if the newspaper, periodical, book publisher, radio or television station or individual engages in no further or other activities in connection with urging or advocating legislative or administrative action other than to appear before public sessions of the legislature, or its committees or subcommittees, or public hearings or other proceedings of state agencies.

(b) Nothing in this chapter may be construed as prohibiting or affecting the rendering of professional services in drafting legislative measures or in advising clients and in rendering opinions as to the construction or effect of proposed or pending legislative or administrative action where these professional services are not otherwise connected with infuencing or attempting to influence legislative or administrative action. Nor does anything in this chapter prevent members of the legislature from discussing with constituents the advisability of passing legislation then pending before, or proposed to be presented to, the legislature.

Sec. 24.45.211. DEFINITIONS In this chapter

(1) "administrative action" means the proposal, drafting, development, consideration, amendment, adoption, approval, pr ulgation, issuance, modification, rejection or postponement by any state agency of any rule, regulation, order, decision, determination, or any other quasi-legislative or quasi-judicial action or proceeding whether or not governed by the Administrative Procedure Act (AS 44.62);

(2) "agency" means a state department, division, commission, board, office, bureau, institution, corporation, authority, organization committee, council or board in the executive branch, or independent of the executive branch, of state government;

(3) "candidate" means an individual who is listed on the ballot or who is a write-in candidate at any election for nomination for or election to an elective state office, or who receives a contribution or makes an expenditure or gives his consent for any other person to receive a contribution or make an expenditure with a view to bringing about his nomination or election to elective state office, whether or not the specific elective state office for which he will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not he has announced his candidacy or filed a declaration of candidacy at the time the contribution is made or offered; "candidate" also includes an elective state officer who is the subject of a recall election;

(4) "gift" means any payment to the extent that consideration of equal or greater value is not received unless it is clear from surrounding circumstances that it is not made for the purpose of influencing legislative or administrative action; it includes a loan, loan guarantee, forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except that full and ade-

quate consideration is received; it also includes the purchase of tickets for travel or for entertainment events and the granting of discounts or rebates not extended to the public generally; "gift" does not include informational or promotional materials such as books, reports, pamphlets, calendars or periodicals; it also does not include food and beverages sold ready for immediate consumption in or by restaurants, drug stores, lunch counters, cafeterias, hotels or like places of public accommodation; any person other than a defendant in a criminal action who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value.

(5) "immediate family" means the spouse and dependent children of an individual;

(6) "individual" means a natural person;

(7) "influencing legislative or administrative action" means promoting, advocating, supporting, modifying, opposing or delaying or seeking to do the same with respect to any legislative or administrative action by means including but not limited to the provision or use of information, statistics, studies, analyses in written or oral form or format;

(8) "legislative action" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, defeat or rejection of any bill, resolution, amendment, motion, report, nomination, appointment or other matter by the legislature, or by a standing, interim or special committee of the legislature, or by a member or employee of the legislature acting in his official capacity; it includes but is not limited to, the action of the governor in approving or vetoing a bill or the action of the legislature in considering, overriding or sustaining that veto and the

action of the legislature in considering, confirming or rejecting an executive appointment of the governor;

(9) "lobbyist" means a person who is employed and receives payment or who contracts for economic consideration, other than reimbursement for reasonable travel expenses, to communicate directly or through his agents with any public official or candidate for the purpose of influencing legislative or administrative action if a substantial or regular portion of the activities for which he receives consideration is for the purpose of influencing legislative or administrative action or a person who represents himself as engaging in that communication as a business, occupation or profession;

(10) "payment" means the disbursement, distribution, transfer, loan, advance, deposit, gift or other rendering or tendering of money, property, goods or services or anything else of value, whether tangible or intangible;

(11) "payment to influence legislative or administrative action" means any of the following:

(A) a direct or indirect payment to a lobbyist whether for salary, fee, compensation for expenses, or any other purpose, by a person employing, retaining or contracting for the services of the lobbyist separately or jointly with other persons;

(B) a payment in support of or assistance to a lobbyist or his activities, including but not limited to the direct payment of expenses incurred at the request or suggestion of the lobbyist;

(C) a payment which directly benefits a public official or candidate, or a member of the immediate family of that official or candidate;

(D) a payment, including compensation, payment or reimbursement for the services, time or expenses of an employee for

or in connection with direct communication with a public official or candidate;

(E) a payment for or in connection with soliciting or urging other persons to enter into direct communication with a public official or candidate;

(12) "person", in addition to the terms set out in AS 01.10.-060(7), includes a labor union; and

(13) "public official" means the governor, lieutenant governor, governor-elect or lieutenant governor-elect, or a member or member-elect of the legislature; or, an officer, employee, or member of an agency or an employee of the legislature acting in the exercise of his official duties or responsibilities, other than in a purely clerical or manual capacity.

Sec. 24.45.221. SHORT TITLE. This chapter may be cited as the Regulation of Lobbying Act.

* Sec. 3. AS 15.13.030(10) is amended to read:

(10) adopt regulations necessary to implement and clarify the provisions of AS 24.45, AS 39.50 and this chapter, subject to the provisions of the Administrative Procedure Act (AS 44.62)

* Sec. 4. Records, papers, documents or other materials relating to the administration of AS 24.45 before July 1, 1976 shall be transferred from the Department of Administration to the Alaska Public Offices Commission on July 1, 1976.

* Sec. 5. This Act takes effect July 1, 1976. However, the initial reports required under AS 24.45.051 - 24.45.091 are due for the reporting period beginning January 1, 1977, and shall be filed not later than February 10, 1977.

Clocksin HB522

Page 3 line 7-10 def. of lobbyist

Page 4 - line 3-6 source of info

Page 5 - section (f) - needed?

Page 5 line 16 Months for legis. quarters for Non-legis. } inconsistent

Page 7, line 21 change neither to "None

Pag 9, line 13 a to "on"

Page 9, line 17 legis reporting inconsistent
put in "Conflict of Interest"
"what about family"

Page 14, line 10 A(2)

Page 16 line 2 - conflict because it exempts "legislators"

Pag 17 (B) "other proceedings"

Page 17 line 16-17

HB

541

"An Act relating to the visitation privileges of prisoners; and providing for an effective date."

COMMITTEE REPORT

1/20/75

HOUSE

Mr. Speaker: Date _____

The Committee on JUDICIARY has had HB 541

under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends: DO NOT PASS

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

House Judiciary Committee
January 26, 1976

The meeting was called to order by Chairman Gardiner at 1:22 p.m. Members present were Eliason, Bradley, Parr, Gardiner, Cotten and Brown.

First item of discussion was HB 541 regarding visitation rights of prisoners. Mr. Charles Adams, Director of the Division of Corrections explained that one of the reasons the bill was requested was because many natives in the state grow up with other than their immediate family. Therefore if and when they find themselves in prison, they are not allowed to visit with what they consider their family. He said that their was a problem with allowing visitation with "anyone" but that it is all right as long as department regulations can cover investigation and refusal of certain situations. There were only seven requests this past Christmas, and no problems resulting from any of them. HB 541

Mr. Cotten moved the bill out as CS with the HESS amendment incorporated.

Mr. Eliason objected and withdrew his objection.

Mr. Bradley requested that Mr. Adams furnish Mr. Eliason, Mr. Gardiner and Mr. Parker with a list of how many crimes have been committed by persons on visitation furlough. And further requested that Mr. Parker not place HB 541 on the calendar until such list has been acquired.

Second item of discussion was HB 598 regarding Tort claims against the state involving motor vehicles. John Messenger of the A.G.s office was first to testify. He said that because of the large number of claims and sizeable awards, there is a huge potential liability which causes insurance companies to charge inhibitive premiums; thereby making it nearly impossible to insure the state against such claims. He stated that the State is not responsible for situations arising out of negligent design, including signs, curves etc. because they are "discretionary functions" and therefore exempt. In order for negligent maintenance to be a factor of responsibility, it is necessary to meet the four items under (B) of this bill. HB 598

Mr. Brown pointed out that the State should be as responsible as any individual and without limitations.

Also testifying was John George of the Office of Risk Management. He stated that between 1967-1974 there were 2 to 6 suits a year against the state. In 1975 there were 4 suits each awarded $500,000.00. The insurance company paid out but will not do so again. There have been 32 suits instigated since last February, most of which happened four years ago. The state fears the courts may award larger amounts in the future. Also contributing to the costs are the legal expenses involved in defending the state. If an insurance company cannot be found to insure the state, it will have to come out of the general fund. This bill is trying to discourage people from suing the state.

Mr. Brown stated that one problem he has was that an effective date should affect accidents and occurances after the effective date; not action brought after the effective date.

The meeting was adjourned at 3:00 p.m.

file

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF CORRECTIONS / POUCH H-03 – JUNEAU 99811

January 28, 1976

Document# HJC 1

The Honorable Terry Gardiner
Alaska State House of Representatives
Pouch "V" State Capitol Building
Juneau, Alaska 99811

Dear Mr. Gardiner:

Re: Family Visitations

The following is a response to a request of the House Judiciary Committee:

Family Visitations By Institution for 1975

Anchorage Annex	16
Eagle River	14
Anchorage-Third Avenue	4
Ketchikan	0
Juneau	0
Fairbanks	0
Palmer	17*

*Two Failures
(1) 40 minutes late due to car trouble
(1) 16 hours late due to alcohol, person was picked up by Palmer Staff

Sincerely,

Charles G. Adams, Jr.
Director

CGA:cc

cc: Office of the Commissioner
Department of Health & Social Services

ALASKA
STATE LEGISLATURE

January 28, 1976

MEMORANDUM

TO: Bill Parker, Chairman House Rules Committee

The House Judiciary Committee requests that you hold HB 541 in Rules Committee until a memo arrives to you from Mr. Charles Adams, Director of the Division of Corrections indicating how many crimes have been committed by persons out on visitation furlough.



Eleason Bradley Pare,
Gardiner, Cotten Crown

Jan 26
1 22

HB 541

① Charles Adams Corrections

expand visitation rights of prisoners to visit anyone, not just family

requested by Kelley

Some [illegible] don't go up with immediate family cannot visit

Problems with anyone requires checking up on person to be visited [illegible] long as dept regulations [illegible] [illegible]

[illegible]

X Check [illegible] [illegible] HSS adopted

Cotten moved [illegible] out as CS with HSS and Eleason obj. [illegible]

Bradley requested that C. Adams research how many [illegible] committed while on visitation furlough and report to Eleason Gardiner & Parker

Parker wait for [illegible] from Adams before placing on calendar.

HB
546

"An Act relating to public utility rates."

COMMITTEE REPORT

2/17/75

HOUSE

Mr. Speaker: Date

The Committee on JUDICIARY has had HB 546

under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

Wants to require public hearing before surcharge can be approved

1. Require Permanent filing within 3 yrs. to use 42.05.411 Temp
2. Require Temp filing to use surcharge within 1 year

Require hearing for authority to have sur-

IN THE HOUSE BY SWANSON

HOUSE BILL NO. 546

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to public utility rates."

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

* Section 1. AS 42.05.381(a) is amended to read:

(a) All rates demanded or received by a public utility, or by any two or more public utilities jointly, for a service furnished or to be furnished shall be just and reasonable. A rate may not allow a surcharge or other additional charge not certain in amount whether the surcharge or other additional charge is for compensation to the utility for increased costs or for other purposes. Mandatory hearings on any rate increases

* Sec. 2. AS 42.05.441(b) is amended to read:

(b) In determining the value for rate-making purposes of public utility property used and useful in rendering service to the public, the commission shall be guided by acquisition cost or, if lower, the original cost of the property to the person first devoting it to public service, less accrued depreciation, plus materials and supplies and a reasonable allowance for cash working capital when required. The value of construction work in progress may not be included in the determination of value for rate-making purposes.

ALASKA ELECTRIC LIGHT AND POWER CO.

134 N. FRANKLIN STREET JUNEAU, ALASKA 99801

(907) 586-2222

February 24, 1976

The Honorable Terry Gardiner
Chairman
House Judiciary
House of Representatives
Pouch V
Juneau, Alaska 99811

Re: House Bill No. 546 entitled "An Act Relating to Public Utility Rates"

Dear Chairman Gardiner:

I am writing this letter in regard to the portion of House Bill No. 546 which would eliminate surcharges on utility bills. The Alaska Public Utilities Commission may allow the use of a surcharge for two reasons: (1) To allow a utility to recover the difference in cost between the current price of fuel and that cost of fuel which was used in establishing that utility's basic rate structure. This type of surcharge, often called a fuel adjustment charge, normally varies from month to month depending upon the cost of fuel. Such a surcharge is billed on the basis of cents per kwh. Enclosed for example are the fuel charges, by month, for the Alaska Electric Light and Power Company for the years 1974 and 1975. (2) The surcharge is also used as a temporary rate increase to cover a period when rate relief is urgently required and yet the time lag between the filing of a permanent rate increase and the time the Public Utility Commission rules on this application is too long for the utility to continue operating without suffering a complete financial collapse. The Commission would normally grant such an increase if failure to do so would prevent a utility from paying its employees or fuel suppliers thereby seriously threatening its continued capability of providing service.

The alternative to the surcharge, whether it be for rapidly changing fuel costs, or for interim rate relief purposes, is for the utility to develop a set of rates and the Alaska Public Utilities Commission to approve such rates on a greatly accelerated basis. The development of such rates by a public utility normally requires a cost of service study and is a very expensive and complex task. Likewise, analyzing a rate structure and determining that the rates are fair and in the public interest is time consuming and expensive. Ultimately the rate payer pays for these costs. The surcharge is a method of preventing the necessity of frequent development of rate structures and giving the Commission sufficient time to analyze permanent rates.

Often interim rates are granted under the condition that the concerned utility may have to refund a portion of the surcharge if the Commissions subsequent investigation concludes that all of the charge was not justified. It is much more practical and less expensive to compute the amount of the refund using a surcharge as opposed to computing the difference using differing rate structures.

The importance of keeping a public utility in a healthy financial posture cannot be over emphasized. You have heard about the generating capacity shortage in various areas of our state. In particular remember Fairbanks and some of the smaller towns to the westward. Sufficient generating capacity during the cold winter months is absolutely essential for their survival. If a utility is not in a healthy financial condition it cannot accumulate nor borrow the necessary funds to install the generating capacity and other equipment that is necessary to meet the needs of its customers. The surcharge is the only practical method of passing on the utility's cost of service to its customers during periods of rapid inflationary change.

I would like to conclude my comments by noting that the surcharge is a common phenomenon throughout the "Lower 48". It is used in numerous states and by the Federal Power Commission and their respective regulatory jurisdictions. It is an accepted practice elsewhere in the utility industry.

Again, I recommend that the proposed amendment to the public utility law outlawing the surcharge not be adopted.

Very truly yours,

William A. Corbus

William A. Corbus
Assistant Manager

enclosure
WAC:akd

Revenue Per KWH - 1974 and 1975

Month	Year	Overall Average Revenue/Kwh (Excluding Fuel Adjustrent) ¢	Fuel Surcharge Per Kwh ¢
January	1974	3.8716	-
February		3.7573	-
March		3.9558	-
April		4.0408	-
May		4.0581	-
June		4.0846	-
July		4.0849	-
August		4.1297	.44
September		4.0765	.31
October		4.1066	.28
November		4.1520	.00
December		4.1716	.00
January	1975	3.9850	.12
February		3.9452	.22
March		4.1441	.78
April		3.9418	.56
May		4.1398	.40
June		4.2095	.31
July		4.1533	.49
August		4.0837	.29
September		4.2168	.48
October		4.5708	.34
November		4.5469	.33
December		4.4210	.02

YAKUTAT POWER, INC.
P. O. BOX 257 YAKUTAT, ALASKA 99689
FRED O. MILLER

Phone 784-3248 — Area 907

February 23, 1976

Representative Bob Bradley
Chairman, House Commerce Committee
Pouch V
Juneau, Alaska 99811

Dear Sir:

Reference is made to House Bill No. 546.

We are a privately owned electric utility company operating at Yakutat, Alaska, serving 180 customers. Our plant of four diesel electric generating sets is 100% diesel fuel driven, twenty-four hours per day, with no choice of any other fuel.

House Bill No. 546 would place our company in a very disastrous financial position. Our current rate schedule, adopted in 1972, was based on a diesel fuel price of .207¢ per gallon of fuel. Current price of fuel is .405¢ per gallon. Computations below show how the fuel price increase has affected our operating cost.

Fuel costs for a Year at Rates Paid February 1, 1972, Compared to Rates Payable February 1, 1976.

307,403 gal. at .405¢ ----------	$124,498
307,403 ga. at .207¢ ----------	63,632
	$ 60,866

As this computation shows, an operating capital of over $5,000 more per month is necessary just to pay the increased fuel bill if the company is to continue operating with a return sufficient to pay the monthly bills.

The time element alone would be staggering while waiting for a cost adjustment due to fuel increase. In 1973, we had 8 price increases; 1974, 6 increases; 1975, 3 increases; an in 1976, 1 increase. Each increase could be expected to cost a minimum of $1,000 in legal fees, and up to six months for approval by the Alaska Public Utilities Commission. In the meantime, where does the money come from to pay the bills?

We urge you to please eliminate House Bill No. 546.

Yours truly,
Yakutat Power, Inc.

Fred O. Miller, President

Fred O. Miller

cc: Terry Gardiner
Red Swanson

Feb 25, 1976 HB 546

Foye Gentry Alaska Rural Co-op Assoc

Non-profit organizations

AVEC	Cordova	Kodiak
Barrow	Golden Valley	Kotzebue
Chugach	Homer	Mat Elec

74,000 Homes in Alaska

Unanimously oppose - rapid fuel increase
both sections

rate study to document cost
filing 3 to 6 Months
hearings
decision

Golden Valley Elec. - surcharge per Kilowatt hour

GVA - Bob Hutman

Zerbetz | No statutory Authority Now for surcharges

1974 - 24% coal increase
1975 - 17% " "
2 year oil 119% oil increase

Section B is existing law

Military 21 Mills 36.9 Mills - excess
coal power

Purchase Economy energy from Fai. Elec

Margin 400,000 1975

lost 2,000,000 in 1975 without surcharges

surcharge gives you time to assess till you gain some experience

fuel surcharge - files Monthy & with documentation to APUC

Tesoro

5.50 10.51 weighted average

Entitlements - Pay difference to other oil producers $4 million in Nov. to Major oil producer by Tesoro

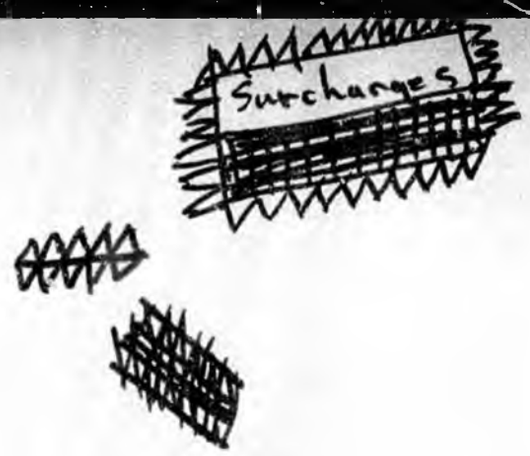
1967-1970 promoted All electric Houses

Step down rate for 1500 K W Hours
No " " " " surcharge

Ollie Johnson 2,400 customers

Gordon Zerbetz

- Surcharge - Temporary measure



IN THE HOUSE BY SWANSON

HOUSE BILL NO. 546

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to public utility rates."

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

* Section 1. AS 42.05.381(a) is amended to read:

(a) All rates demanded or received by a public utility, or by any two or more public utilities jointly, for a service furnished or to be furnished shall be just and reasonable. A rate may not allow a surcharge or other additional charge not certain in amount whether the surcharge or other additional charge is for compensation to the utility for increased costs or for other purposes.

* Sec. 2. AS 42.05.441(b) is amended to read:

(b) In determining the value for rate-making purposes of public utility property used and useful in rendering service to the public, the commission shall be guided by acquisition cost or, if lower, the original cost of the property to the person first devoting it to public service, less accrued depreciation, plus materials and supplies and a reasonable allowance for cash working capital when required. The value of construction work in progress may not be included in the determination of value for rate-making purposes.

file

Alaska Gas and Service Company

GENERAL OFFICES LOCATED AT 3000 SPENARD ROAD
P. O. BOX 6288 ANCHORAGE, ALASKA 99502 / PHONE (907) 277-5551
TELEX 25-187

March 22, 1976

The Honorable Terry Gardiner
Alaska State House of Representatives
Pouch V, State Capitol Building
Juneau, Alaska 99811

Dear Representative Gardiner:

House Bill No. 546 would amend AS 42.05.381(a) and AS 42.05.441(b) in such manner as to restrict the Alaska Public Utilitites Commission to a particular course of action in rate matters without discretion to recognize the facts and circumstances which may indicate an alternative treatment to be in the public interest. Accordingly, these amendments should not be enacted by the legislature.

Addressing the latter proposed amendment first, AS 42.05.441(b) would be amended to dictate that "The Value of construction work in progress may not be included in the determination of value for rate making purposes". As a practical matter, a review of decisions by the APUC indicates that construction work in progress is not being included in rate base for rate making purposes, therefore the amendment does not serve to correct an existing abuse. However, there could easily be circumstances where allowing inclusion of construction work might be necessary to encourage or enable a public utility to undertake needed expansion or to add environmental protective facilities. Many Commissions and courts have recognized such treatment. In these circumstances, a statutory prohibition as proposed would be of detriment to the public.

With regard to the proposed amendment of AS 42.05.381(a), which would disallow "surcharge or other additional charge", this amendment would result in chaos to the utility industry and would, in the long run, force Alaskan rate payers who use natural gas and rate payers who use electricity generated by natural gas to pay unnecessarily high prices for their utility services. The reasons are as follows:

(1) It is not presently possible to contract for substantial future quantities of gas at the present prevailing price without agreeing to some built in variable escalation features. (For example, the supply of state royalty gas we are presently trying to secure would be subject to variable price changes).

(2) Historically, it takes at least six months plus the substantial costs for filing a rate increase to start

Alaska Gas and Service Company

GENERAL OFFICES LOCATED AT 3000 SPENARD ROAD
P. O. BOX 6288 ANCHORAGE, ALASKA 99502 / PHONE (907) 277-5551
TELEX 25-187

to recover additional costs incurred as a result of fuel or other price increases if the utility company does not have a "flow through" provision in its tariff. Such flow through provisions would be prohibited by the proposed amendment.

(3) Therefore, the utility has only two courses of action it can take and still maintain its financial integrity. These are:

(a) Contract for gas at a much higher price than the current prevailing price in order to avoid escalation provisions, or

(b) Do not contract for substantial future supplies of fuel.

Either course of action set forth in (3) above will result in much higher prices to the consumer in the long run. This proposed amendment is apparently an attempt to minimize utility rate increases that have resulted from fuel price increases which have been substantial over the prior two or three years. Unfortunately, the bill does not correct the cause of the increases, but irreparably harms the utility company which has been caught in the price squeeze.

The State's position with regard to hydrocarbon fuel prices is rather nebulous. On the one hand, as a major owner of hydrocarbon fuel reserves, the State appears to promote maximum well head prices on hydrocarbons whether used in the State or used elsewhere. This of course militates toward higher utility rates. On the other hand, the legislature appears to view increasing utility rates with alarm and attempts to deal with them by ever more repressive regulation. More regulation inevitably leads to higher costs to serve and to higher rates.

We request your assistance in defeating this bill which can only serve to make a bad situation worse. We would be pleased to meet with you to suggest more positive ways to maintain reasonable prices for utility services to the citizens of the State.

Very truly yours,

Bill B. Hickman
Management Analyst

Dale Teel
President

dh

Haines Light & Power Co., Inc.

P. O. BOX 303

HAINES, ALASKA 99827

February 18, 1976

Congressman
Terry Gardner, Chairman
House Judiciary Committee
House of Representatives
State of Alaska
Pouch V
Juneau, Alaska 99811

Dear Congressman Gardner:

I am writing in regard to House Bill No. 546 which in effect disallows the use of a fuel surcharge which is now being used to pass along the high costs of fuel to the consumer. We realize that it is up to the State to protect the consumer, and being a regulated business it is also up to the State to protect the power companies so that they will receive a fair return on their investment. This Bill would in very short order put any power company out of business and thus deprive the public of power.

The year 1973 was the last year that oil prices were normal. The following is our Profit and Loss for that year.

Gross Income from Sale of Power	$386,119
Fuel Expenses	149,821
All other expenses	198,929
Net Profit	$ 37,369

The price of fuel for 1973 was $ .206/gallon. The price of fuel today is $ .367/gallon, a 78% increase. If we paid the latter price in 1973 the fuel would have cost $116,860 for a net loss for the year of $79,491 instead of a profit of $37,369.

A similar comparison can be made in 1975 as follows: (1st 9 months)

Gross Income from Sale of Power	$434,524
Fuel Expenses	234,418
All other Expenses	185,046
Net Profit	$ 15,060

Using the 1973 price for fuel we would have paid only $131,274 for the period, when in effect we paid $234,418, a difference of $103,144. In 9 months this is $11,460 per month more expense. Reducing this by the monthly profit of $1673 we would be running a cash deficit rate of $9,787. In less than two months our cash resources would be gone and the plant would stop because we could not buy fuel.

Perhaps any backers of this bill might say that these surcharges necessitated by fuel cost increases should be handled by regular rate increases. This is naive as any power company would be long out of business waiting for the rate increases to catch up to the spiraling fuel costs.

The State has appointed a Public Utilities Commission to be the watchdog of the utilities. They are hired for their competence and expertise in this field. Everyone in the utility business knew there would be problems when the Arab countries announced the sharp changes to be made in the world oil prices. The Commission made an in-depth study and decided that the "fuel surcharge" method was the only way it could be handled properly. They instigated it, it has been working and has solved the problem in a manner that is fair to the consumer and the utility company. The Commission is constantly on the alert to make sure that no utilities are passing along any rate increases in the form of fuel surcharges. The system has been working well for two years.

Thus it can be seen that House Bill No. 546 should not be enacted as it would be both a disservice to the public as well as the utilities.

Very truly yours,
HAINES LIGHT & POWER COMPANY

George A. Schnabel, Gen. Mgr.

George A. Schnabel,
General Manager

cc: Dale Rusnel
Alaska Public Utility Commission

Jan Van Dort
Attorney

YAKUTAT POWER, INC.
P. O. BOX 257 YAKUTAT, ALASKA 99689
FRED O. MILLER

Phone 784-3248 — Area 907

February 23, 1976

Representative Bob Bradley
Chairman, House Commerce Committee
Pouch V
Juneau, Alaska 99811

Dear Sir:

Reference is made to House Bill No. 546.

We are a privately owned electric utility company operating at Yakutat, Alaska, serving 180 customers. Our plant of four diesel electric generating sets is 100% diesel fuel driven, twenty-four hours per day, with no choice of any other fuel.

House Bill No. 546 would place our company in a very disastrous financial position. Our current rate schedule, adopted in 1972, was based on a diesel fuel price of .207¢ per gallon of fuel. Current price of fuel is .405¢ per gallon. Computations below show how the fuel price increase has affected our operating cost.

Fuel costs for a Year at Rates Paid February 1, 1972, Compared to Rates Payable February 1, 1976.

307,403 gal. at .405¢ ----------	$124,498
307,403 ga. at .207¢ ----------	63,632
	$ 60,866

As this computation shows, an operating capital of over $5,000 more per month is necessary just to pay the increased fuel bill if the company is to continue operating with a return sufficient to pay the monthly bills.

The time element alone would be staggering while waiting for a cost adjustment due to fuel increase. In 1973, we had 8 price increases; 1974, 6 increases; 1975, 3 increases; an in 1976, 1 increase. Each increase could be expected to cost a minimum of $1,000 in legal fees, and up to six months for approval by the Alaska Public Utilities Commission. In the meantime, where does the money come from to pay the bills?

We urge you to please eliminate House Bill No. 546.

Yours truly,
Yakutat Power, Inc.

Fred O. Miller, President

Fred O. Miller

cc: Terry Gardiner
Red Swanson

25

2/24 7:00 pm

Brown, Speaking, Barr, Gardner

Floyd Gentry - V.P. AK AREA Elec. Rural Coop
hist of many individual companies
Non-profit organizations
Unanimously oppose HB546. Financially ready to collapse if no surcharge allowed. Do I believe this?
Several months to get base rate change.

Rate study
file
public hearings ⇒ 30 day published notice
perhaps 6 months

Construction work in progress ℓ21-22 is not defined.
Paying interest on large loans to build.

surcharge is per kwh consumed

Bob Huffman - gen'l manager, Golden Valley, Fairbanks

oppose HB 546

1974 coal 1 24%
1975 17.6%

1974-75 14.7 ¢/gal ⇒ 42.4 ¢/gal

Military contract ⇒ excess coal-fired energy
1974 2 mil/kwh
1975 36.9 mil/kwh January 1 - effective immediately

Economy Energy ⇒ from Fbks municipal

12 mill/kwh ⇒ coal-fired steam — excess economy energy

18 mil/kwh ⇒ diesel — cost to produce under own power-diesel

$\frac{30}{2}$ = 15 mil

35 mil/kwh from old plant.

~~Oct 1, 1975 - Golden Valley~~

Most lower 48 states have higher base rates and regularly use surcharges. All utilities in same boat. Hit hard after oil embargo late 1973. Nat'l gas + coal escalated right along. ∴ fuel surcharge pass alongs. These All have regulatory lag. Must cover excess expenses - need money to wait out rate base adjustment. 1975 to date, 406,220 surplus. If no surcharge would have lost $2,107,350

1974 $634,967 margin

1975 $406,220 "

Return on investment: 4.04% 1974

3.34% 1975

Sept 74 - Apr 75 $400,000 in additional fuel cost not covered by surcharge. Total loss. When fuel supplier retroacts cost increase for fuel - companies may not retroactively charge customers. Must absorb loss.

Surcharge reflects only actual operating costs of company calculated on a monthly basis.

#4,400,000 from Sussano to make all company "entitlements"

Small companies could not survive another embargo without surcharges.

Capital and + net worth during 74-75
Equity has not decreased in 74. All surcharge money goes to pay increase in fuel cost and still not fully recovering. Fuel suppliers send bill after audit of year end costs.

Cannot predict surcharge in advance => must wait for fuel mix and rate. Sometimes can buy form excess energy for cheap - sometimes must generate which is more expensive / kwh. Cost reflected directly & immediately to customer.

1967-70 promoted total electric. Not since 1970.
1971 => rate reduction 2.2% Ended totally electric special consideration. 1975 - declared moratorium on electric heat. Step down in charge / kwh when use / under certain kwh / month. But surcharge is per / kwh no matter how many kwh / month.

Aug 75 applied for 25% rate increase. 45 days request suspended. Put hold on request to do complete 1975 year end audit => base new request on audit => perhaps 35%. Then no more surcharge

Sent letters to customers when surcharge imposed.
Radio, TV, newspaper, public hearings.

Olly Jonson. -20yr manager Kodiak elec. ass.
Kodiak - Port Lyons.
exchange power w/ Coast Guard

Oppox HB 546
Should regulate oil suppliers - not companies.
Must buy from certain suppliers => cannot put out competitive bids - AHEA
1974 - 7 changes in 7 months
1975 - 7 more changes

Building $4,000,000 plant paying
$300,000 annually in interest on loan.

David Ness - Ghea
700 member co-op
Since 1970 not increases in fuel, but AJ rate increases Court decisions AJ ? AELP
? labor increases
6.7% - 20.4% surcharges.

1974 surcharge increase due to fuel increases
Settlement with standby from AELP
cost of standby is in surcharge. Now have own standby => cost passed on to customer as surcharge for fuel costs.

Bill Corbus — Asst. Manager AEL&P — Serves majority of Juneau

Snettisham is now working.

During breakdowns must surcharge for fuel.

Need to have change on monthly basis ⇒ expedite rate rate changes? via one month

APUC react to rate increase in two months

APUC will not accept future increase estimates

Zerbitz - APUC

surcharge is bad rate making policy

but only solution to fuel increases

Full cost then vs. now

base rate chosen by company

20¢/gal — base then

35¢/gal — now

35 - 20 = 15¢ = surcharge to customer in ¢/kwh

¢/kwh

8:58

HB

554

"An Act relating to regulation of insurance holding companies; and providing for an effective date."

COMMITTEE REPORT

HOUSE

1/29/76

Mr. Speaker: Date March 24, 1976

The Committee on JUDICIARY has had HB NO. 554 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ _____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

3/24 Melton

Original Sponsor: Rules Committee
by request of the Governor

Offered: 1/29/76
Referred: Judiciary

IN THE HOUSE BY THE COMMERCE COMMITTEE

CS FOR HOUSE BILL NO. 554

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to regulation of insurance holding companies; and providing for an effective date."

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

* Section 1. AS 21 is amended by adding a new chapter to read:

CHAPTER 22. INSURANCE HOLDING COMPANIES.

Sec. 21.22.010. FILING REQUIREMENTS FOR ACQUISITION OF CONTROL OF OR MERGER WITH DOMESTIC INSURER. (a) Until the provisions of (b) of this section have been fulfilled, no person may:

(1) make a tender or an offer for or a request or an invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the purchase, the person would, directly or indirectly or by conversion or by exercise of any right to acquire, be in control of the insurer; or

(2) enter into an agreement to merge with or otherwise to acquire control of a domestic insurer.

(b) A statement containing the information outlined in sec. 20 of this chapter shall be filed by the person making a proposal described in (a) of this section with the director before the time copies of the proposal are first published, sent, or given to security holders of the insurer. The insurer must publish, send, or give copies of the statement to the insurer's stockholders. The proposal is subject to approval by the director as outlined in sec. 30 of this chapter.

(c) If a proposal referred to in (a) of this section is to be

made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in (b) of this section may use those documents in furnishing the information called for by that statement. However, the director may require the person making the proposal to produce other information the director considers necessary to carry out his duties under this chapter.

(d) If the person required to file the statement referred to in (b) of this section is a partnership, limited partnership, syndicate or other group, the director may require that the information be given with respect to each

(1) partner of the partnership or limited partnership;

(2) member of the syndicate or group; and

(3) person who controls a partner or member.

(e) If any person, partner or member required to file the statement referred to in (b) of this section is a corporation, the director may require that the information be given with respect to

(1) that corporation;

(2) each officer and director of that corporation; and

(3) each person who is directly or indirectly the beneficial owner of more than 10 per cent of the outstanding voting securities of that corporation.

(f) If any material change occurs in the facts set out in the statement filed with the director and sent to the insurer under this section, an amendment setting out the change, together with copies of all documents and other material relevant to the change, shall be filed with the director and sent to the insurer within two business

days after the person learns of the change. The insurer shall send the amendment to its shareholders.

(g) The provisions of this section do not apply to

(1) any offer of, request for, invitation for, agreement regarding, or acquisition of a voting security which, immediately before the consummation of the offer, request, invitation, agreement or acquisition, was not issued and outstanding; or

(2) any offer, request, invitation, agreement or acquisition which the director by order may exempt as not having been made or entered into for the purpose and not having the effect of changing or influencing the control of the domestic insurer.

(h) For the purposes of this section, "domestic insurer" includes any person controlling a domestic insurer unless that person is either directly or through its affiliates primarily engaged in business other than the business of insurance.

Sec. 21.22.020. CONTENT OF STATEMENT FOR ACQUISITION OR MERGER FILING. The statement to be filed with the director as required in sec. 10 of this chapter shall be made under oath or affirmation and shall contain the following information:

(1) the name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in sec. 10 of this chapter is to be effected, who will be called the "acquiring party", as follows:

(A) if the person is an individual, his principal occupation and all offices and positions held during the past five years, and all convictions of crimes other than minor traffic violations during the past 10 years;

(B) if the person is not an individual,

(i) a report of the nature of its business opera-

tions during the past five years or for whatever lesser period the person and any of its predecessors have been in existence;

(ii) an informative description of the business intended to be done by the person and the person's subsidiaries; and

(iii) a list of all individuals who are or who have been selected to become directors or executive officers of the person, or who perform or will perform functions appropriate to those positions; the list shall include for each such individual the information required by (A) of this paragraph;

(2) a description of the consideration used or to be used in effecting the merger or other acquisition of control, including:

(A) the source, nature and amount;

(B) a description of any transaction in which funds were or are to be obtained for any such purpose; and

(C) the identity of persons furnishing the consideration; however, if a source of the consideration is a loan made in the lender's ordinary course of business, the director shall keep the identity of the lender confidential, if the person filing the statement so requests;

(3) fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years or for whatever lesser period that an acquiring party and any predecessors of that acquiring party have been in existence, and similar unaudited information as of a date not earlier than 90 days before the filing of the statement;

(4) any plans or proposals which each acquiring party may

have to

(A) liquidate the insurer;

(B) sell its assets or merge or consolidate it with any person; or

(C) make any other material change in its business or corporate structure or management;

(5) the number of shares of any security referred to in sec. 10 of this chapter which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in this chapter, and a statement as to the method by which the fairness of the proposal was determined;

(6) the amount of each class of any security referred to in sec. 10 of this chapter which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(7) a full description of any contracts, arrangements or understandings with respect to any security referred to in sec. 10 of this chapter in which an acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies; this description shall identify the persons with whom those contracts, arrangements or understandings have been entered into;

(8) a description of the purchase of any security referred to in sec. 10 of this chapter during the 12 calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid;

(9) a description of any recommendations to purchase a security referred to in sec. 10 of this chapter made during the 12 calendar months preceding the filing of the statement, by an acquiring party, or by anyone based upon interviews or at the suggestion of the acquiring party;

(10) copies of all tender offers for, requests or invitations for tenders of exchange offers for, and agreements to acquire or exchange any securities referred to in sec. 10 of this chapter, and, if distributed, of additional soliciting material

(11) the terms of any agreement, contract or understanding made with a broker-dealer as to solicitation of securities referred to in sec. 10 of this chapter for tender, and the amount of any fees, commissions or other compensation to be paid to a broker-dealer;

(12) any additional information as the director may by order or regulation prescribe as necessary or appropriate for the protection of policyholders and securityholders of the insurer or in the public interest.

Sec. 21.22.030. APPROVAL BY DIRECTOR; HEARINGS. (a) The director shall approve a merger or other acquisition of control referred to in sec. 10 of this chapter unless, after a public hearing he finds that:

(1) after the change of control, the domestic insurer referred to in sec. 10 of this chapter would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(2) the effect of the merger or other acquisitions of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly in this state;

(3) the financial condition of an acquiring party is such

that it might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders or the interests of any remaining securityholders who are unaffiliated with the acquiring party;

(4) the terms of the offer, request, invitation, agreement or acquisition referred to in sec. 10 of this chapter are unfair and unreasonable to the securityholders of the insurer;

(5) the plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest; or

(6) the competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control.

(b) The purchase, merger or other acquisition of control referred to in sec. 10(a) of this chapter may not be made until the director either approves the transaction within 60 days after the statement required by sec. 10(b) of this chapter has been filed with him or he fails to disapprove the transaction within the 60-day period.

Sec. 21.22.040. MAILINGS TO SHAREHOLDERS; PAYMENT OF EXPENSES. All statements, amendments or other material filed under sec. 10 of this chapter, and all notices of public hearings held under sec. 30 of this chapter, shall be mailed by the insurer to its shareholders within five business days after the insurer has received those statements, amendments, other materials, or notices. The expenses of mailing shall be borne by the person making the filing. As security for the payment of those expenses, the person making the filing shall

file with the director an acceptable bond or other deposit in an amount to be determined by the director.

Sec. 21.22.050. JURISDICTION; CONSENT TO SERVICE OF PROCESS. The courts of this state are given jurisdiction over every person not resident, domiciled or authorized to do business in this state who files a statement with the director under this chapter, and over all actions involving that person arising out of violations of this chapter, and each person is considered to have performed acts equivalent to and constituting an appointment of the director to be his lawful attorney upon whom may be served all lawful process in any action or proceeding arising out of a violation of this chapter. Copies of all lawful process shall be transmitted by registered or certified mail by the director to the person at his last known address.

Sec. 21.22.060. REGISTRATION REQUIRED. (a) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the director. An insurer which is subject to registration under this section shall register within 60 days after the effective date of this chapter or 15 days after it becomes subject to registration, whichever is later, unless the director for good cause shown extends the time for registration; if the time is extended, the insurer must register within the extended time.

(b) Every insurer subject to registration shall file a registration statement on a form provided by the director, which must contain current information about:

(1) the capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer;

(2) the identity of every member of the insurance holding

company system;

(3) the following agreements in force, relationships subsisting, and transactions currently outstanding between the insurer and its affiliates:

(A) loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(B) purchases, sales, or exchanges of assets;

(C) transactions not in the ordinary course of business;

(D) guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(E) all management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principles; and

(F) reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding company;

(4) other matters concerning transactions between registered insurers and any affiliates that may be included from time to time in a registration form adopted or approved by the director.

(c) The director may permit an authorized insurer which is a member of a holding company system subject to registration under the laws or regulations of its state of domicile which are in the opinion of the director substantially similar to those contained in this chapter to satisfy the requirements of (a) of this section by filing a statement in accordance with the laws of its state of domicile except that the director may at any time require a copy of that statement be filed with the director.

(d) No information need be disclosed on the registration statement filed under (b) of this section if that information is not material for the purposes of this section. Unless the director by regulation or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments, involving one-half of one per cent of an insurer's admitted assets or, five per cent of the policyholder's surplus as of the 31st day of December of the calendar year in which the transaction took place are not considered material for purposes of this section.

(e) Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the director within 30 days after the end of the month in which it learns of each change or addition; however, subject to sec. 100 of this chapter, each registered insurer shall report all dividends and other distributions to shareholders within two business days following their declaration.

(f) The director shall terminate the registration of an insurer which demonstrates that it no longer is a member of an insurance holding company system.

(g) The director may require or allow two or more affiliated insurers subject to registration under this section to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

(h) The director may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of an affiliated insurer which is required to register under (a) of this section and to file all infor-

mation and material required to be filed under this section.

(i) This section does not apply to any insurer, information or transaction to the extent that the director by regulation or order exempts the insurer, information or transaction from this section.

(j) A person may file with the director a disclaimer of affiliation with an authorized insurer or the disclaimer may be filed by the insurer or a member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between that person and that insurer as well as the basis for disclaiming the affiliation. After a disclaimer has been filed, the insurer is relieved of any duty to register or report under this section which may arise out of the insurer's relationship with that person until the director disallows the disclaimer. The director shall disallow a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance.

Sec. 21.22.070. REVIEW BY DIRECTOR. If at any time the director determines that any material transaction entered into between an insurer and any of its affiliates does not meet the standards set out in sec. 80 of this chapter, the director may, after hearings conducted in accordance with ch. 6 of this title, require the insurer and the affiliate to terminate, set aside, or modify the transaction as considered appropriate by the director to make the transaction conform to those standards. An insurer may submit a proposed material transaction to the director for review and the director may issue an opinion that the transaction meets the standard set out in sec. 80 of this chapter. The opinion shall create a rebuttable presumption that neither the insurer, director, officer, employee, nor agent committed a wilful violation of this chapter by entering into the transaction. The opinion

does not prohibit the director from subsequently exercising his authority in this section.

Sec. 21.22.080. TRANSACTIONS WITH AFFILIATES. Material transactions by registered insurers with their affiliates are subject to the following standards:

(1) the terms shall be fair and reasonable;

(2) the books, accounts and records of each party shall be maintained so as to disclose clearly and accurately the precise nature and details of the transactions; and

(3) the insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates or performance under a material transaction with an affiliate shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

Sec. 21.22.090. ADEQUACY OF SURPLUS. For the purposes of this chapter, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

(1) the size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria;

(2) the extent to which the insurer's business is diversified among the several lines of insurance;

(3) the number and size of risks insured in each line of business;

(4) the extent of the geographical dispersion of the insurer's insured risk;

(5) the nature and extent of the insurer's reinsurance

program;

(6) the quality, diversification, and liquidity of the insurer's investment portfolio;

(7) the recent past and projected future trend in the size of the insurer's surplus as regards policyholders;

(8) the surplus as regards policyholders maintained by other comparable insurers;

(9) the adequacy of the insurer's reserves; and

(10) the quality and liquidity of investments in subsidiaries made under AS 21.21; the director may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his judgment the investment warrants it.

Sec. 21.22.100. DIVIDENDS AND OTHER DISTRIBUTIONS. (a) No domestic insurer subject to registration under sec. 60 of this chapter may pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until

(1) 30 days after the director has received notice of the declaration of the dividend or distribution and has not within that period disapproved its payment; or

(2) the director has approved its payment within the 30-day period.

(b) For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, the fair market value of which together with that of other dividends or distributions made within the preceding 12 months exceeds the greater of

(1) 10 per cent of the insurer's surplus as regards policyholders as of December 31 of the preceding year; or

(2) the net gain from operations of the insurer, if the insurer is a life insurer, or the net investment income, if the insurer is not a life insurer, for the 12-month period ending December 31 of the preceding year, but does not include pro rata distributions of any class of the insurer's own securities.

(c) Notwithstanding AS 21.69.490, an insurer may declare an extraordinary dividend or distribution which is conditional upon the director's approval. A declaration confers no rights upon shareholders until

(1) the director has approved the payment of the dividend or distribution; or

(2) the director has not disapproved the payment within the 30-day period referred to in (a) of this section.

Sec. 21.22.110. EXAMINATION. (a) Subject to the limitation in (b) of this section, the director may order an insurer registered under sec. 60 of this chapter to produce records, books, or other information or papers in the possession of the insurer or its affiliates as are necessary to ascertain the financial condition or legality of conduct of the insurer. If an insurer fails to comply with the director's order, the director may examine the insurer's affiliates to obtain the information he requires.

(b) The director shall exercise his power under (a) of this section only if the examination of the insurer under AS 21.06.120 -- 21.06.170 is inadequate or the interests of the policyholders of the insurer may be adversely affected.

(c) The director may retain, at the registered insurer's expense, attorneys, actuaries, accountants and other experts not otherwise a part of the director's staff as may be necessary to assist in the conduct of an examination under (a) of this section. Any persons so

retained are under the direction and control of the director and shall act in a purely advisory capacity.

(d) Each registered insurer producing for examination records, books, and papers under (a) of this section is liable for and shall pay the expense of an examination in accordance with AS 21.06.160.

Sec. 21.22.120. CONFIDENTIAL TREATMENT. All information, documents and copies of the information and documents obtained by or disclosed to the director or any other person in the course of an examination or investigation made under sec. 110 of this chapter and all information reported under sec. 60 of this chapter, shall be given confidential treatment and may not be made public by the director or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains. However, if the director, after giving the insurer and its affiliates who would be affected by publication of the information notice and opportunity to be heard, determines that the interests of policyholders, shareholders or the public will be served by the publication of the information, he may publish all or any part of the information in the manner he considers appropriate.

Sec. 21.22.130. REGULATIONS. The director may adopt regulations to carry out the provisions of this chapter.

Sec. 21.22.140. INJUNCTIONS. If it appears to the director that an insurer or a director, officer, employee or agent of an insurer has violated or is about to violate this chapter or a regulation adopted or an order issued by the director under this chapter, the director may apply to the superior court in the judicial district in which the principal office of the insurer is located or if the insurer has no office in this state then to the superior court in the first judicial district for an order enjoining the insurer or a director, officer,

employee or agent of the insurer from the violation, and for other relief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders or the public may require.

Sec. 21.22.150. VOTING OF SECURITIES; WHEN PROHIBITED. (a) No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of this chapter or a regulation adopted or an order issued by the director under this chapter may be voted at a shareholders' meeting or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though those securities were not issued and outstanding; but no action taken at such a meeting may be invalidated by the voting of those securities, unless the action would materially affect control of the insurer or unless the courts of this state have so ordered.

(b) If an insurer or the director has reason to believe that a security of the insurer has been or is about to be acquired in contravention of this chapter or a regulation adopted or an order issued by the director under this chapter, the insurer or the director may apply to the superior court in the first judicial district or the superior court in the judicial district in which the insurer has its principal place of business to enjoin any offer, request, invitation, agreement or acquisition made in contravention of this chapter or a regulation adopted or an order issued by the director under this chapter, to enjoin the voting of any security so acquired, to void any vote of a security already cast at a meeting of shareholders, and for other relief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders or the public may require.

Sec. 21.22.160. SEQUESTRATION OF VOTING SECURITIES. If a

person has acquired or is proposing to acquire voting securities in violation of this chapter or a regulation adopted or an order issued by the director under this chapter, the insurer or the director may make an application in the superior court in the first judicial district or the superior court in the judicial district in which the insurer has its principal place of business to seize or sequester any voting securities of the insurer owned directly or indirectly by that person, and the court may issue an order with respect to those securities as may be appropriate to effectuate this chapter. For the purposes of this chapter the situs of the ownership of the securities of domestic insurers is considered to be in this state.

PENALTIES.

Sec. 21.22.170. CRIMINAL PROCEEDINGS. If it appears to the director that an insurer or a director, officer, employee or agent of the insurer has committed a wilful violation of this chapter, the director may cause criminal proceedings to be instituted in the superior court in the judicial district in which the principal office of the insurer is located or, if the insurer has no such office in the state, then in the superior court in the first judicial district against the insurer or the responsible director, officer, employee or agent of the insurer. An insurer [which is] guilty of a wilful violation of this chapter is, upon conviction, punishable by a fine of not more than $10,000. A person who is not an insurer and who is guilty of a wilful violation of this chapter is, upon conviction, punishable by a fine of not more than $5,000 or, if the wilful violation involves the deliberate perpetration of a fraud upon the director, by imprisonment for not more than two years, or by both fine and imprisonment.

Sec. 21.22.180. RECEIVERSHIP. If it appears to the director that a person has committed a violation of this chapter which so impairs the financial condition of a domestic insurer as to threaten

insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders, or the public, then the director may proceed as provided in ch. 78 of this title to take possession of the property of that domestic insurer and to conduct its business.

Sec. 21.22.190. REVOCATION, SUSPENSION, OR NON-RENEWAL OF INSURER'S AUTHORITY. If ~~it appears to~~ the director finds that a person has committed a violation of this chapter which makes the continued operation of an insurer contrary to the interests of its policyholders or the public, the director may, [after giving notice and an opportunity to be heard,] suspend, revoke or refuse to renew the insurer's license or authority to do business in this state for a period that he finds is required for the protection of policyholders or the public. Such a determination by the director shall be accompanied by specific findings of fact and conclusions of law.

Sec. 21.22.200. DEFINITIONS. In this chapter, unless the context requires otherwise

(1) "affiliate" or "affiliated" means a person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the persons specified;

(2) "control", "controlling", "controlled by", and "under common control with" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person; "control" is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10

per cent or more of the voting securities of any other person; this presumption may be rebutted by a showing made in the manner provided by sec. 60(j) of this chapter that control does not exist in fact; the director may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support that determination, that control exists in fact, notwithstanding the absence of a presumption to that effect;

(3) "director" means Director of the Division of Insurance of the Department of Commerce and Economic Development;

(4) "domestic insurer" has the same meaning as set out in AS 21.90.070 and, in addition, for the purposes of this chapter, includes an insurer which has been authorized to do business in this state and which, during its three preceding fiscal years taken together, or during any lesser period of time if it has been licensed to transact its business in the State of Alaska only for a lesser period of time, has written an average of more gross premiums in the State of Alaska than it has written in its state of domicile during the same period, and the gross premiums written constitute 33 per cent or more of its total gross premiums written everywhere in the United States for the three-year or lesser period, as reported in its three most recent annual statements;

(5) "insurance holding company system" means a system consisting of two or more affiliated persons, one or more of which is an insurer;

(6) "insurer" has the same meaning as set out in AS 21.-90.040, except that it does not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, a state or political subdivision of a state;

(7) "person" means an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organziation, any similar entity or any combination of these entities acting in concert, but does not include a securities broker performing no more than the usual and customary broker's function;

(8) "security holder" means one who owns any security of a specified person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of them;

(9) "subsidiary" means an affiliate controlled by a specified person directly or indirectly through one or more intermediaries;

(10) "voting security" includes any security convertible into or evidencing a right to acquire the right to vote for management and the right to vote on other matters as provided in a corporation's articles of incorporation.

* Sec. 2. This Act takes effect on January 1, 1977.

File with members

STATE FARM INSURANCE

State Farm Mutual Automobile Insurance Company

JOHN S. GLASCOCK
Northwest Office
4600 25th Avenue
Salem, Oregon
97313

February 6, 1976

Representative Terry Gardiner
Room 124, Capitol
Juneau, Alaska

Dear Mr. Gardiner:

Re: H.B. 554 and
CS for H.B. 554

This Act is essentially the NAIC Model Holding Company statute. I would like to suggest that Section 21.22.060 (a) lines 14 through 16 be amended as follows:

> "Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the Director, except a foreign or alien insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section."

The NAIC model language and the language in almost every state which has adopted this holding company statute, has a "substantially similar" exception to the registration requirement. Adoption of this language should provide ample protection and at the same time make the registration requirement less onerous and simpler to administer.

I will be happy to discuss this with you in more detail if you wish. I can be reached in Salem, Oregon, at 1-503-393-0101, extension 250.

Sincerely yours,

John S. Glascock

JSG:mea

Give my love and her mother's to Rebecca Burch who is working for Rep. Vattergu Ostrosky and Rep. Lisa Rudd. I am her stepfather

JSG

(1) adopted Amendment to CSHB 554

page 3 line 26 after "all" add
the words: felony convictions and misdemeanor
convictions involving moral turpitude

strike the remainder of the clause up to the ;

Amendments to HB 558

(2) adopted Page 4 line 7 after the word "engage" add:

with such frequency as to indicate a
[redacted] pratice

(3) adopted Page 5 line 26 amend AS 21.36 by
adding a new sec.

AS 21.36.210 ENFORCEMENT. The
director of insurance shall promulgate regulations
to implement, define and enforce sec. 135

(4) adopted

21.36.320 (d) "In addition to an order issued under (c) of this section, the director may also order a penalty of not more than [$10,000.00] $1,000.00 for each act or $10,000.00 for engaging in a general business practice in violation of this chapter."

(e) "If the person charged knew or should have known he was in violation of this chapter, a penalty in addition to that prescribed in (d) of this section, of not more than [$5,000.00] $1,000.00 for each act or $25,000.00 for engaging in the general business practice in violation of this chapter, or suspension or revocation of ther person's license, or both, may also be ordered by the Director."

36 states

— Model Holding Co. Statute —

Insurance Co bought out & held by other Co.

(1.) Holding Co. could remove assets of Ins Co.
Service Contracts with affiliates

(2.) Ownership by Co. with lack of mangerial skills

(3.) Allows to approve of merger of Ins. Co.

(4.) Ins Co part of Holding Co. — file statement showing relationship to holding Co.

(5.) Have to approve (1.) extraoldinary assets 10%
(2.) Transfer of assets
5% of surplus
1% of assets

Domestics ¼. property — part of holding Co.

Necessary for solvency of Co.

Applies to all Co. doing business in state
~~Control requires~~ If other state requires
then we use them

HB

558

"An Act relating to the regulation of insurance practices."

COMMITTEE REPORT

HOUSE

1/23/76

Mr. Speaker: Date March 24, 1976

The Committee on JUDICIARY has had HB 558

under consideration. A Majority of the members of the Committee

(✓) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTFE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

(1) Amendment to CSHB 554

page 3 line 26 after "all" add the words: felony convictions and misdemeanor convictions involving moral turpitude

s/ke the remainder of the clause up to the ;

Amendments to HB 558

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AS 21.36.210 ENFORCEMENT. The director of insurance shall promulgate regulations to implement, define and enforce sec. 135

(4)

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(e) "If the person charged knew or should have known he was in violation of this chapter, a penalty in addition to that prescribed in (d) of this section, of not more than [$5,000.00] $1,000.00 for each act or $25,000.00 for engaging in the general business practice in violation of this chapter, or suspension or revocation of ther person's license, or both, may also be ordered by the Director."

file with bill

LAW OFFICES OF
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WILLIAM B. ROZELL
—
JAN VAN DORT
LAWRENCE T. FEENEY
CHARLES N. DRENNAN
PATRICK E. MURPHY
TOM BATCHELOR

March 9, 1976

The Honorable Terry Gardiner
Chairman, House Judiciary Committee
State Capitol
Pouch V
Juneau, Alaska 99811

Re: HB 558

Dear Representative Gardiner:

I am informed that this bill would amend section 18.60.055 by reducing the minimum qualification of safety inspectors in the division of occupational safety and health.

The American Mutual Insurance Alliance, which I represent, believes that it would be better to require the inspectors to have five years of experience in safety or loss prevention work.

Very truly yours,

Jan Van Dort

JVD/amz
cc: Donald J. Addis
Thomas F. Conneely

file with members

STATE FARM INSURANCE

State Farm Mutual Automobile Insurance Company

JOHN S. GLASCOCK
Northwest Office
4600 25th Avenue
Salem, Oregon
97313

February 6, 1976

Representative Terry Gardiner
Chairman, House Judiciary Committee
Room 124, Capitol
Juneau, Alaska

Dear Mr. Gardiner: Re: House Bill 558

"An Act relating to the Regulation of Insurance Practices"

This bill is an attempt to introduce the model N.A.I.C. Act relating to unfair methods of competition and unfair and deceptive acts and practices in the business of insurance. For your information, I am attaching a copy of the Model Act.

State Farm Insurance Companies have been actively serving on the industry advisory committee developing the language of the model act. In the form of the attached model act, we feel such a statute has considerable merit.

We have some question about the language in section 21.36.125, lines 6 and 7 of HB 558. The model act was clearly intended to be a regulation of insureds who are engaging in these specified acts as a matter of business practice. There was no intent to deal with these acts in the singular, i.e., refusing to pay "a" claim without a reasonable investigation. This section is not limited to automobile claims but to all claims.

We recommend that section 21.36.125 lines 6 and 7 be amended as follows:

> "No person shall commit or perform with such frequency as to indicate a business practices any of the following."

Without this language a company or an agent or a claim adjuster could be fined up to $10,000.00 for a single act or practice in violation of the chapter. The problems with this are immediately apparent since the Act would mandate perfection in every single act or practice as opposed to properly controlling acts or practices performed with such frequency as to indicate a general business practice. The ultimate price of such mandated perfection could well be to significantly increase the administrative cost of doing business and thereby increase rates for policyowners in Alaska.

I will be happy to discuss this with you in more detail if you wish. My Salem, Oregon phone number is 1-503-393-0101, ext. 250.

Very truly yours,

John S. Glascock

John S. Glascock HOME OFFICE: BLOOMINGTON, ILLINOIS 61701

Russell E. Van Hooser, Michigan; Hon. Samuel Van Pelt, Nebraska, Hon. Robert L. Clifford, New Jersey; Hon. Benjamin R. Schenck, New York; Hon. Kenneth E. DeShetler, Ohio; Hon. Herbert S. Denenberg, Pennsylvania; Hon. John W. Lindsay, South Carolina.

AN ACT
RELATING TO UNFAIR METHODS OF COMPETITION AND
UNFAIR AND DECEPTIVE ACTS AND PRACTICES IN THE
BUSINESS OF INSURANCE*

SECTION 1 - DECLARATION OF PURPOSE.

The purpose of this Act is to regulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in the Act of Congress of March 9, 1945 (Public Law 15, 79th Congress), by defining, or providing for the determination of, all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

SECTION 2 - DEFINITIONS.

When used in this Act:

(a) "Person" shall mean any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyds insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including agents, brokers and adjusters. Person shall also mean medical service plans and hospital service plans as defined in Section ___. For purposes of this Act, medical and hospital service plans shall be deemed to be engaged in the business of insurance.

Drafting Note: This definition could also include dental, optometric, and other service plans. The enabling statutes of all service plans should also be amended to make them subject to this Act.

(b) ("Commissioner") shall mean the (Commissioner) of Insurance of this state.

(c) "Insurance policy" or "insurance contract" shall mean any contract of insurance, indemnity, medical or hospital service, suretyship, or annuity issued, proposed for issuance, or intended for issuance by any person.

Drafting Note: Each state may wish to consider the advisability of defining "insurance" for purposes of this Act if its present insurance code is not satisfactory in this regard. In some cases a cross reference will be sufficient. "Service contract" is intended to cover the product issued by medical and hospital service plans and should be changed to conform to the laws of each state.

SECTION 3 - UNFAIR METHODS OF COMPETITION OR AND UNFAIR ~~AND~~ OR DECEPTIVE ACTS OR PRACTICES PROHIBITED.

No person shall engage in this state in any trade practice which is defined in this Act as, or determined pursuant to Section 7 of this Act to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

SECTION 4 - UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS OR PRACTICES DEFINED.

The following are hereby defined as unfair methods of competition and unfair ~~and~~ or deceptive acts or practices in the business of insurance:

(1) MISREPRESENTATIONS AND FALSE ADVERTISING OF ~~POLICY CONTRACTS~~ INSURANCE POLICIES. Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustrations, circular or, statement, ~~misrepresenting the terms of any policy issued or to be issued or the sales presentation~~, omission, or comparison which

*As adopted by the (B6) Subcommittee.

(a) misrepresents the benefits or, advantages promised thereby, conditions, or terms of any insurance policy; or

(b) misrepresents the dividends or share of the surplus to be received thereon, on any insurance policy; or making

(c) makes any false or misleading statements as to the dividends or share of surplus previously paid on similar policies, any insurance policy; or making any

(d) is misleading representation or any is a misrepresentation as to the financial condition of any insurer person, or as to the legal reserve system upon which any life insurer operates; or using

(e) uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof or making any

(f) is a misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to the lapse, forfeiture, exchange, conversion, or surrender his of any insurance policy; or

(g) is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy; or

(h) misrepresents any insurance policy as being shares of stock.

(2) FALSE INFORMATION AND ADVERTISING; GENERALLY. Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive or misleading.

(3) DEFAMATION. Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, dissemination or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false or maliciously critical of or derogatory to the financial condition of an insurer any person, and which is calculated to injure any such person engaged in the business of insurance.

(4) BOYCOTT, COERCION AND INTIMIDATION. Entering into any agreement to commit, or by any concerted action committing any act of boycott, coercion or intimidation resulting in or tending to result in reasonable restraint of, or monopoly in, the business of insurance.

(5) FALSE FINANCIAL STATEMENTS AND ENTRIES.

(a) Knowingly filing with any supervisory or other public official, or knowingly making, publishing, disseminating, circulating or delivering to any person, or placing before the public, or knowingly causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of an insurer a person with intent to deceive.

(b) Knowingly making any false entry of a material fact in any book, report or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom such insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully person or knowingly omitting to make a true entry of any material fact pertaining to the business of such insurer person in any book, report or statement of such insurer person.

(6) STOCK OPERATIONS AND ADVISORY BOARD CONTRACTS. Issuing or delivering or permitting agents, officers or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common law corporation, or securities or any special or advisory board contracts or other contracts of any kind

promising returns and profits as an inducement to insurance.

(7) UNFAIR DISCRIMINATION.

(a) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

(b) Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.

Drafting Note: In the event that unfair discrimination in connection with accident and health coverage is treated in other statutes ~~the above section~~, this paragraph should be omitted.

(8) REBATES.

(a) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any

contract of life insurance, life annuity or accident and health insurance, or agreement as to such contract other than as plainly expressed in the insurance contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract, or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance contract or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract.

(b) Nothing in clause (7) or paragraph (a) of clause (8) of this subsection shall be construed as including within the definition of discrimination or rebates any of the following practices:

(i) in the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the company and its policyholders.

(ii) in the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses.

(iii) reat[illegible]t of the rate of premium for a group insurance policy based on the loss or expense thereunder, a[illegible]nd of the first or any subsequent policy year of insurance thereunder, which may be made retroac[illegible]ly for such policy year.

Drafting Note: Each state may wish to examine its rating laws to assure that they contain sufficient provision against rebating. If they do not, this section might be expanded to cover all lines of insurance.

(9) UNFAIR CLAIM SETTLEMENT PRACTICES

Committing or performing with such frequency as to indicate a general business practice any of the following:

(a) misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;

(b) failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

(c) failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(d) refusing to pay claims without conducting a reasonable investigation based upon all available information;

(e) failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed.

(f) not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;

(g) compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds;

(h) attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application;

(i) attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of the insured;

(j) making claims payments to insureds or beneficiaries not accompanied by statement setting forth the coverage under which the payments are being made;

(k) making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

(l) delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

(m) failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage;

(n) failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

(10) FAILURE TO MAINTAIN COMPLAINT HANDLING PROCEDURES. Failure of any person to maintain a complete record of all the complaints which it has received since the date of its last examination under S. . This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of these complaints, and the time it took to process each complaint. For purposes of this Subsection, "complaint" shall mean any written communication primarily expressing a grievance.

Drafting Note: Each state may wish to consider exempting agents and brokers from this Subsection.

(11) MISREPRESENTATION IN INSURANCE APPLICATIONS. Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurers, agent, broker, or individual.

(9) (12) Any violation of any one of Section .

Drafting Note: Insert section numbers of any other sections of the Insurance Law which it is deemed desirable or necessary to include as an unfair trade practice

SECTION 5. FAVORED AGENT OR INSURER; COERCION OF DEBTORS.

(a) No person may (i) require, as a condition precedent to the lending of money or extension of credit, or any renewal thereof, that the person to whom such money or credit is extended or whose obligation the creditor is to acquire or finance, negotiate any policy or contract of insurance through a particular insurer or group of insurers or agent or broker or group of agents or brokers;

(ii) unreasonably disapprove the insurance policy provided by a borrower for the protection of the property securing the credit or lien; or

(iii) require directly or indirectly that any borrower, mortgagor, purchaser, insurer, broker, or agent pay a separate charge, in connection with the handling of any insurance policy required as security for a loan on real estate, or pay a separate charge to substitute the insurance policy of one insurer for that of another.

(iv) use or disclose information resulting from a requirement that a borrower, mortgagor or purchaser furnish insurance of any kind on real property being conveyed or used as collateral security to a loan, when such information is to the advantage of the mortgagee, vendor or lender, or is to the detriment of the borrower, mortgagor, purchaser, insurer, or the agent or broker complying with such a requirement.

(b) (i) Paragraph a(iii) does not include the interest which may be charged on premium loans or premium advancements in accordance with the security instrument;

(ii) For purposes of par. (a)(ii), such disapproval shall be deemed unreasonable if it is not based solely on reasonable standards uniformly applied, relating to the extent of coverage required and the financial soundness and the services of an insurer. Such standards shall not discriminate against any particular type of insurer, nor shall such standards call for the disapproval of an insurance policy because such policy contains coverage in addition to that required.

(iii) The (Commissioner) may investigate the affairs of any person to whom this subsection applies to determine whether such person has violated this subsection. If a violation of this subsection is found, the person in violation shall be subject to the same procedures and penalties as are applicable to other provisions of this Act.

(iv) For purposes of this section, "person" includes any individual, corporation, association, partnership, or other legal entity.

SECTION 5-6 - POWER OF COMMISSIONER.

The (Commissioner) shall have power to examine and investigate into the affairs of every person engaged in the business of insurance in this state in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by Section 3 of this Act.

SECTION 6-7 - DEFINED AND UNDEFINED PRACTICES HEARINGS, WITNESSES, APPEARANCES, PRODUCTION OF BOOKS AND SERVICE OF PROCESS.

(a) Whenever the (Commissioner) shall have reason to believe that any such person has been engaged or is engaging in this state in any unfair method of competition or any unfair or deceptive act or practice whether or not defined in Section 4 or 5, and that a proceeding by him in respect thereto would be to the interest of the public, he shall issue and serve upon such person a statement of the charges in that respect and a notice of a hearing thereon to be held at a time and place fixed in the notice, which shall not be less than ..... days after the date of the service thereof.

(b) At the time and place fixed for such hearing, such person shall have an opportunity to be heard and to show cause why an order should not be made by the (Commissioner) requiring such person to cease and desist from the acts, methods or practices so complained of. Upon good cause shown, the (Commissioner) shall permit any person to intervene, appear and be heard at such hearing by counsel or in person.

(c) Nothing contained in this Act shall require the observance at any such hearing of formal rules of pleading or evidence.

(d) The (Commissioner), upon such hearing, may administer oaths, examine and cross-examine witnesses, receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance, and require the production of books, papers, records, correspondence, or other documents which he deems relevant to the inquiry. The (Commissioner), upon such hearing, may, and upon the request of any party shall, cause to be made a stenographic record of all the evidence and all the proceedings had at such hearing. If no stenographic record is made and if a judicial review is sought, the (Commissioner) shall prepare a statement of the evidence and proceeding for use on review. In case of a refusal of any person to comply with any subpoena issued hereunder or to testify with respect to any matter concerning which he may be lawfully interrogated, the court of county or the county where such party resides, on application of the (Commissioner), may issue an order requiring such person to comply with such subpoena and to testify; and any failure to obey any such order of the court may be punished by the court as a contempt thereof.

(e) Statements of charges, notices, orders, and other processes of the (Commissioner) under this Act may be served by anyone duly authorized by the (Commissioner), either in the manner provided by law for service of process in civil actions, or by registering and mailing a copy thereof to the person affected by such statement, notice, order, or other process at his or its residence or principal office or place of business. The verified return by the person so serving such statement, notice, order, or other process, setting forth the manner of such service, shall be proof of the same, and the return postcard receipt for such statement, notice, order or other process, registered and mailed as aforesaid, shall be proof of the service of the same.

SECTION ~~7~~8. CEASE AND DESIST AND PENALTY ORDERS AND MODIFICATIONS THEREOF.

(a) If, after such hearing, the (Commissioner) shall determine that the person charged has engaged in an unfair method of competition ~~or the act or practice in question is defined in section 4 and that the person complained of has engaged in such method of competition; act or practice~~ in violation of this act, or an unfair or deceptive act or practice he shall reduce his findings to writing and shall issue and cause to be served upon the person charged with the violation a copy of such findings and an order requiring such person to cease and desist from engaging in such method of competition, act or practice and if the act or practice is a violation of Sections 4 or 5, the (Commissioner) may at his discretion order any one or more of the following:

(A) payment of a monetary penalty of not more than $1000 for each and every act or violation *but not to exceed an aggregate penalty of $10,000** unless the person knew or reasonably should have known he was in violation of this Act, in which case the penalty shall be not more than $5000 for each and every act or violation *but not to exceed an aggregate penalty of $50,000 in any six month period.**

(B) suspension or revocation of the person's license if he knew or reasonably should have known he was in violation of this Act, or

(C) such other relief as is reasonable and appropriate.**

(b) Until the expiration of the time allowed under section 9 of this Act for filing a petition for review (by appeal or writ of certiorari) if no such petition has been duly filed within such time or, if a petition for review has been filed within such time, then until the transcript of the record in the proceeding has been filed in the court, as hereinafter provided, the (Commissioner) may at any time, upon such notice and in such manner as he shall deem proper, modify or set aside in whole or in part any order issued by him under this section.

(c) After the expiration of the time allowed for filing such a petition for review if no such petition has been duly filed within such time, the (Commissioner) may at any time, after notice and opportunity for hearing, reopen and alter, modify or set aside, in whole or in part, any order issued by him under this section, whenever in his opinion conditions of fact or of law have so changed as to require such action or if the public interest shall so require.

SECTION ~~8~~9. JUDICIAL REVIEW OF CEASE AND DESIST ORDERS.

* Material in italics added by the Laws, Legislation and Regulation (B) Committee.

** This paragraph was deleted by the Law, Legislation and Regulation (B) Committee.

Any person required by subject to an order of the (Commissioner) under section 8 to cease and desist from engaging in any unfair method of competition or any unfair or deceptive act or practice defined in section 4 or Section 11 may obtain a review of such order by filing in the court of county, within days from the date of the service of such order, a written petition praying that the order of the (Commissioner) be set aside. A copy of such petition shall be forthwith served upon the (Commissioner), and thereupon the (Commissioner) forthwith shall certify and file in such court a transcript of the entire record in the proceeding, including all the evidence taken and the report and order of the (Commissioner). Upon such filing of the petition and transcript such court shall have jurisdiction of the proceeding and of the question determined therein, shall determine whether the filing of such petition shall operate as a stay of such order of the (Commissioner), and shall have power to make and enter upon the pleadings, evidence, and proceedings set forth in such transcript a decree modifying, affirming or reversing the order of the (Commissioner), in whole or in part. The findings of the (Commissioner) as to the facts, if supported by evidence, shall be conclusive.

Drafting Note: Insert appropriate language to accommodate to local procedure the effect given the Commissioner's determination

(b) To the extent that the order of the (Commissioner) is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of such order of the (Commissioner). If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the (Commissioner), the court may order such additional evidence to be taken before the (Commissioner) and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The (Commissioner), may modify his findings of fact, or make new findings by reason of the additional evidence so taken, and he shall file such modified or new findings which if supported by evidence shall be conclusive, and his recommendation if any, for the modification or setting aside of his original order, with the return of such additional evidence.

Drafting Note: Insert appropriate language to accommodate to local procedure the effect given the Commissioner's determination. In a state where the final judgment, order or decree would not be subject to review by an appellate court provision therefor should be here inserted.

(c) A cease and desist An order issued by the (Commissioner) under section 8 shall become final

(1) Upon the expiration of the time allowed for filing a petition for review if no such petition has been duly filed within such time, except that the (Commissioner) may thereafter modify or set aside his order to the extent provided in section 8 (b); or

(2) Upon the final decision of the court if the court directs that the order of the (Commissioner) be affirmed or the petition for review dismissed.

(d) No order of the (Commissioner) under this Act or order of a court to enforce the same shall in any way relieve or absolve any person affected by such order from any liability under any other laws of this state.

SECTION 9. PROCEDURES AS TO UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS OR PRACTICES WHICH ARE NOT DEFINED.

(a) Whenever the (Commissioner) shall have reason to believe that any person engaged in the business of insurance is engaging in this state in any method of competition or in any act or practice in the conduct of such business which is not defined in section 4, that such method of competition is unfair or that such act or practice is unfair or deceptive and that a proceeding by him in respect thereto would be to the interest of the public he may issue and serve upon such person a statement of the charges in that respect and a notice of a hearing thereon to be held at a time and place fixed in the notice, which shall not be less than days after the date of service thereof. Each such hearing shall be conducted in the same manner as the hearings provided for in section 6. The (Commissioner) shall, after such hearing, make a report in writing in which he shall state his findings as to the facts, and he shall serve a copy thereof upon such person.

(b) If such report charges a violation of this Act and if such method of competition, act or practice has not been discontinued, the (Commissioner) may, through the Attorney General of this state, at any time after days after the service of such report cause a petition to be filed in the court of this state within the district wherein the person resides or has his principal place of business, to enjoin and restrain such persons from engaging in such method, act or practice. The court shall have jurisdiction of the proceeding and shall have power to make and enter appropriate orders in

~~connection therewith and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public pending the~~

~~(c) A transcript of the proceedings before the (Commissioner) including all evidence taken and the report and findings shall be filed with such petition. If either party shall apply to the court for leave to adduce additional evidence and shall show, to the satisfaction of the court, that such additional evidence is material and there were reasonable grounds for the failure to adduce such evidence in the proceedings before the (Commissioner) the court may order such additional evidence to be taken before the (Commissioner) and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The (Commissioner) may modify his findings of fact or make new findings by reason of the additional evidence so taken, and he shall file such modified or new findings with the return of such additional evidence.~~

~~(d) If the court finds that the method of competition complained of is unfair or that the act or practice complained of is unfair or deceptive; that the proceeding by the (Commissioner) with respect thereto is to the interest of the public and that the findings of the (Commissioner) are supported by the weight of the evidence, it shall issue its order enjoining and restraining the continuance of such method of competition, act or practice.~~

SECTION 10~~-~~JUDICIAL REVIEW BY INTERVENOR.

If after any hearing under Section 7 or Section 11, the report of the (Commissioner) does not charge a violation of this Act, then any intervenor in the proceedings may within days after the service of such report, cause a petition (notice of appeal) (petition for writ of certiorari) to be filed in the court of county for a review of such report. Upon such review, the court shall have authority to issue appropriate orders and decrees in connection therewith, including, if the court finds that it is to the interest of the public, orders enjoining and restraining the continuance of any method of competition, act or practice which it finds, notwithstanding such report of the (Commissioner), constitutes a violation of this Act and containing penalties pursuant to Section 8.

Drafting Note: The type of procedure should conform to state procedure. See also note to Section 9 concerning review by appellate courts.

SECTION 11. PENALTY FOR VIOLATION OF CEASE AND DESIST ORDERS.

Any person who violates a cease and desist order of the (Commissioner) under section 8, ~~after it has become final,~~ and while such order is in effect, shall, ~~upon proof thereof to the satisfaction of the court, forfeit and pay to the State of a sum not to exceed $50, which may be recovered in a civil action, except that, if such violation is found to be willful, the amount of such penalty shall be a sum not to exceed $500.~~ may after notice and hearing and upon order of the (Commissioner) be subject at the discretion of the (Commissioner) to any one or more of the following:

(a) a monetary penalty of not more than $10,000 for each and every act or violation; or
(b) suspension or revocation of such person's license; or
(c) such other relief as is reasonable and appropriate.*

SECTION 12 - REGULATIONS.

The (Commissioner) may, after notice and hearing, promulgate reasonable rules and regulations, as are necessary or proper to identify specific methods of competition or acts or practices which are prohibited by Sections 4 or 5, but the regulations shall not enlarge upon or extend the provisions of Sections 4 and 5. Such regulations shall be subject to review in accordance with Section .

Drafting Note: Insert section number providing for review of administrative orders.

* This paragraph was deleted by the Laws, Legislation and Regulation (B) Committee.

SECTION ~~12~~ 13 - PROVISIONS OF ACT ADDITIONAL TO EXISTING LAW.

The powers vested in the (Commissioner) by this Act, shall be additional to any other powers to enforce any penalties, fines or forfeitures authorized by law with respect to the methods, acts and practices hereby declared to be unfair or deceptive.

SECTION ~~13~~ 14 - IMMUNITY FROM PROSECUTION.

If any person shall ask to be excused from attending and testifying or from producing any books, papers, records, correspondence or other documents at any hearing on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, and shall notwithstanding be directed to give such testimony or produce such evidence, he must none the less comply with such direction, but he shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence thereto, and no testimony so given or evidence produced shall be received against him upon any criminal action, investigation or proceeding, provided, however, that no such individual so testifying shall be exempt from prosecution or punishment for any perjury committed by him while so testifying and the testimony or evidence so given or produced shall be admissible against him upon any criminal action, investigation or proceeding concerning such perjury, nor shall he be exempt from the refusal, revocation or suspension of any license, permission or authority conferred, or to be conferred, pursuant to the Insurance Law of this state. Any such individual may execute, acknowledge and file in the office of the (Commissioner) a statement expressly waiving such immunity or privilege in respect to any transaction, matter or thing specified in such statement and thereupon the testimony of such person or such evidence in relation to such transaction, matter or thing may be received or produced before any judge or justice, court, tribunal, grand jury or otherwise, and if so received or produced such individual shall not be entitled to any immunity or privilege on account of any testimony he may so give or evidence so produced.

SECTION ~~14~~ 15 - SEPARABILITY PROVISION.

If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of such provision to person or circumstances other than those as to which it is held invalid, shall not be affected thereby.

REPORT OF THE INDUSTRY ADVISORY COMMITTEE TO THE NAIC B-6 SUBCOMMITTEE TO REVIEW THE MODEL UNFAIR TRADE PRACTICES ACT NOVEMBER 29, 1971

I. Report of Activities Since June NAIC Meeting.

At the June, 1971 meeting, the B-6 Subcommittee received the First Report of the Industry Advisory Committee and directed that Committee to prepare a draft of a revised Model Unfair Trade Practices Act incorporating a number of the recommendations of the Industry Advisory Committee and a number of items recommended by the B-6 Subcommittee. In addition, the report stated that a task force of the B-6 Subcommittee would be appointed "whose activities will be parallel to and in conjunction with the Industry Advisory Committee."

Pursuant to the directions it received, task forces of the Industry Advisory Committee worked through the summer months on these revisions. The first draft of a revised Model Bill was submitted to the B-6 Subcommittee under date of September 3rd. At subsequent meetings the Industry Advisory Committee made further refinements to its draft. On September 23, 1971 the Industry Advisory Committee met with the B-6 Subcommittee in Detroit. A draft bill prepared by the Task Force of the B-6 Subcommittee was submitted at that meeting. That draft went considerably beyond the directions given to the Industry Advisory Committee. Since the Industry Advisory Committee had insufficient opportunity to review and comment on that draft, the B-6 Subcommittee determined that the better course of procedure would be to meet again in November at which time the Industry Advisory Committee was to present its comments on the Task Force draft.

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE / POUCH D — JUNEAU 99801

February 27, 1976

Alaska State House of Representatives
Judiciary Committee
In Session
Juneau, Alaska

Attention: The Honorable Terry Gardner, Chairman

Dear Representatives:

Re: House Bill 558

I am in receipt of a copy of a letter from the American Mutual Insurance Alliance requesting an amendment to House Bill 558, the effect of which is to disable the Division of Insurance from acting effectively with respect to reported or detected unfair trade activities, particularly with respect to claim handling unless the Unfair Acts are "commited with such frequency as to indicate a general business pratice."

Indeed, as their attorney, Mr. Van Dort, points out, the language that he recommends is the language adopted by the N.A.I.C. after much compromising with industry representatives at the N.A.I.C. meetings at which the model bill was considered.

As a matter of fact, in the State of Alaska, I am led to believe there is wide-spread claim abuse and yet an unusually small representative sampling of these claims are reported to the Division of Insurance. The Division should have authority to act even with respect to an individual case of unfair trade practice.

It is true that the occasional mistake by a claim adjustor should not submit a carrier to unusually large penalties. I do submit that the unusually large penalties provided for in proposed section 21.36.320 were intended for deterrence of the general practice of unfair claims handling. I would therefore propose the following amendment which I believe will satisfy the problem of the carriers without disabling the the ability of the Division of Insurance from acting effectively when a single case is reported.

21.36.320 (d) "In addition to an order issued under (c) of this section, the Director may also order a penalty of not more than [$10,000.00] $1,000.00 for each act or $10,000.00 for engaging in a general business practice in violation of this chapter."

(e) "If the person charged knew or should have known he was in violation of this chapter, a penalty in addition to that prescribed in (d) of this section, of not more than [$5,000.00] $1,000.00 for each act or $25,000.00 for engaging in the general business practice in violation of this chapter, or suspension or revocation of ther person's license, or both, may also be ordered by the Director."

Yours cordially,

Richard L. Block
Director

file with members

State Farm Mutual Automobile Insurance Company

JOHN S. GLASCOCK
Northwest Office
4600 25th Avenue
Salem, Oregon
97303

February 6, 1976

Representative Terry Gardiner
Chairman, House Judiciary Committee
Room 124, Capitol
Juneau, Alaska

Dear Mr. Gardiner: Re: House Bill 558

"An Act relating to the Regulation of Insurance Practices"

This bill is an attempt to introduce the model N.A.I.C. Act relating to unfair methods of competition and unfair and deceptive acts and practices in the business of insurance. For your information, I am attaching a copy of the Model Act.

State Farm Insurance Companies have been actively serving on the industry advisory committee developing the language of the model act. In the form of the attached model act, we feel such a statute has considerable merit.

We have some question about the language in section 21.36.125, lines 6 and 7 of HB 558. The model act was clearly intended to be a regulation of insureds who are engaging in these specified acts as a matter of business practice. There was no intent to deal with these acts in the singular, i.e., refusing to pay "a" claim without a reasonable investigation. This section is not limited to automobile claims but to all claims.

We recommend that section 21.36.125 lines 6 and 7 be amended as follows:

> "No person shall commit or perform with such frequency as to indicate a business practices any of the following."

Without this language a company or an agent or a claim adjuster could be fined up to $10,000.00 for a single act or practice in violation of the chapter. The problems with this are immediately apparent since the Act would mandate perfection in every single act or practice as opposed to properly controlling acts or practices performed with such frequency as to indicate a general business practice. The ultimate price of such mandated perfection could well be to significantly increase the administrative cost of doing business and thereby increase rates for policyowners in Alaska.

I will be happy to discuss this with you in more detail if you wish. My Salem, Oregon phone number is 1-503-393-0101, ext. 250.

Very truly yours,

John S. Glascock

JSG:mea

file with Members

R. E. ROBERTSON (1885-1961)
F. O. EASTAUGH
J. B. BRADLEY
W. G. RUDDY
L. B. JACOBSON
R. B. BAKER (ANCHORAGE)
M. T. THOMAS
L. J. BARKER (ANCHORAGE)
J. F. CLARK
P. M. HOFFMAN
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PLEASE REPLY TO
☒ JUNEAU OFFICE
☐ ANCHORAGE OFFICE

January 28, 1976

Honorable Terry Gardiner
Chairman
House Judiciary Committee
Room 124, State Capitol Building
Juneau, Alaska

Re: House Bill 558

Dear Representative Gardiner:

On behalf of the American Life Insurance Association, I am writing to advise you of the Association's position regarding the above legislation. The following amended language is suggested in order to bring the appropriate sections of the bill into conformity with the 1971 Commissioners' Model Fair Trade Practices, found in the 1972 NAIC Proceedings at pages 444, 495, 498, A513 and 515.

Sec. 21.36.125, page 4, introductory language to be amended as follows:

> Sec. 21.36.125. UNFAIR CLAIM SETTLEMENT PRACTICES. No person may commit or perform with such frequency as to indicate a general business practice any of the following acts or practices:

The reasoning behind the suggested rewording being that it is felt some allowance should be made for innocent violations.

Sec. 21.36.320(d), page 7, to be amended as follows:

> Reduction of proposed penalty to $1,000 and addition of "but not to exceed an aggregate penalty of $10,000."

Sec. 21.36.320(e), page 7, to be amended as follows:

> Reduction of proposed additional penalty to $4,000 and addition of "but not to exceed an aggregate penalty of $50,000, in any six month period."

The basis for the proposed penalty changes is that a fine of an astronomical amount for one advertisement could literally put a small company out of business.

We would appreciate your careful consideration of the suggested amending language. If you should need additional information or I could be of further assistance regarding the subject legislation, please contact me.

Very truly yours,

M. T. THOMAS

MTT:kh

LAW OFFICES OF
FAULKNER, BANFIELD, DOOGAN & HOLMES
SUITE 201, 311 FRANKLIN STREET
JUNEAU, ALASKA 99801

TEL. 586-2210
AREA CODE 907

HERBERT L. FAULKNER (1882-1972)
NORMAN C. BANFIELD
FRANK M. DOOGAN
MICHAEL M. HOLMES
RANDALL J. WEDDLE
WILLIAM E. ROZELL

JAN VAN DORT
LAWRENCE T. FEENEY
CHARLES N. DRENNAN
PATRICK E. MURPHY
TOM BATCHELOR

February 23, 1976

The Honorable Terry Gardiner
Chairman, House Judiciary Committee
State Capitol
Pouch V
Juneau, Alaska 99811

Re: House Bill No. 558

Dear Chairman Gardiner:

The American Mutual Insurance Alliance has asked me to write to you to request that proposed Section 21.36.125 be amended to read as follows:

> A person shall be guilty of an unfair claims settlement practice if any of the following are committed with such frequency as to indicate a general business practice. . . .

This amendment incorporates the approach taken in the NAIC model bill.

I am taking the liberty of sending a copy of this letter to Mr. Richard Block, the Director of the Division of Insurance.

Very truly yours,

Jan Van Dort

JVD/amz
cc: Richard Block
Thomas F. Conneely
Paul A. Green

file with Members

R. E. ROBERTSON (1885-1961)
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January 28, 1976

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Chairman
House Judiciary Committee
Room 124, State Capitol Building
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We would appreciate your careful consideration of the suggested amending language. If you should need additional information or I could be of further assistance regarding the subject legislation, please contact me.

Very truly yours,

M. T. THOMAS

MTT:kh

HB
559

559

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE POUCH D -- JUNEAU 99811

January 23, 1976

The House of Representatives
Commerce Committee
In Session
Juneau, Alaska

Dear Ladies and Gentlemen:

Re: House Bill 559

I will be pleased to discuss with you, on Monday, January 26th, an act relating to insurance filing review periods and insurance deviations.

Under current law we have fifteen days to approve or disapprove a rate filing made by a carrier and we may, by writing a letter containing certain specific language, obtain an additional fifteen days in which to approve or disapprove that rate.

The amendment proposed in House Bill 559 would extend both the primary period and the extended period from fifteen days to thirty days. The amendment will also permit the Division to approve for use a rate filing without waiting for the expiration of an approval period. The amendment also eliminates the necessity of putting unnecessary language in the notice of the Division that the time for approval is being extended. 150-200 a ~~day~~ week?

Finally there is a more substantive change which will allow the Division to approve deviation and rate filings in a manner other than a uniform percentage deviation.

Under current law a carrier may deviate from a bureau filing in a flat percentage upwards or downwards. Suppose the Insurance Service Office, the rating bureau for automobile insurance rates for the majority of carriers in this state, made a rate filing for all the various locations in the state, class codes, automobile discriptions, and driver ages, and that rate filing is approved by the Division. A carrier desires to market a program in this state and charge rates other than those approved for the I.S.O.

People who don't belong to bureau can do this — this make rate bureau insurers equal

Under current law we have authority to approve only a flat percentage increase of decrease in the toal rate scale promulgated by the I.S.O.. Under the proposed amendment we would be authorized to do that but also to approve an entirely different rating scheme or a rating scheme where some rates are higher than bureau and some rates are lower than bureau.

It is believed by the Division that this will enable the carriers to market more strongly in this state and thus improve the market for insurance in a variety of lines.

Yours Cordially,

Richard L. Block
Director

The Honorable Mike Bradner
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

In accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill to accomplish two goals: (1) change the period for evaluation of insurance rate filings, and (2) modify the restrictions on deviations in insurance rate structures.

Section 1 of the bill revises the rate filing review period. Under the present Alaska insurance rate law, AS 21.39.040(d) the Division of Insurance has 15 days to review a rate filing; this period may be extended for an additional 15 days. This procedure presents a hardship when the Division is faced with a complex rate filing, especially if other equally important matters are concurrently pressing. If, for example, the rate analyst is absent from the office for more than a week, the additional 15 days must be invoked to allow analysis of the filing. We propose that this period be revised to 30 days which may be extended for an additional 30 days.

The present law also requires that if the Director of the Division extends the review time for an additional period, he must not only give notice of the extension but must also make a statement that he needs the extension. This latter is duplicative and unnecessary, and we propose its deletion.

Finally, the statute presently permits the Director of the Division of Insurance to approve a filing before expiration of the waiting period upon written application of the insurer or rating organization. A number of rate filings are simple ones, requiring little time to review and arrive at a decision as to its use in Alaska. The statute now requires that all filings be held for the full waiting period. In section 1, we also propose that the Director, upon his own initiative, be empowered to waive that period. This change will avoid the need to maintain a pending file for filings that have been reviewed and are merely awaiting expiration of the waiting period so they can be approved.

IV. ATTACHMENTS

Section 2 of the bill provides for the introduction of some flexibility into the insurance rate structure. The State of Alaska is presently operating under an insurance rate law based upon a model adopted by the National Association of Insurance Commissioners in 1946.

Our review of this rate law indicates that the primary deterrent to a competitive rate situation is the adherence provision found in AS 21.39.070(a). This provision is unduly restrictive in allowing only uniform percentage deviations from rating bureau filed rates. For example, an insurer writing automobile insurance under a bureau filing could not deviate for a particular kind of vehicle, such as a vehicle used for hauling fuel, without similarly deviating for all commercial vehicles. This restriction results in either non-acceptance of the deviation for vehicles used for hauling fuel or a rate that is disproportionate to the actual risk exposure. A competitive atmosphere is best served by allowing greater latitude in this area. By removing the portion of the adherence provision allowing only uniform percentage deviations, we can substantially modify the current situation in a way which will enable greater competition in rating.

This bill would encourage a greater divergence of rates; that should result in more and better options for the purchaser of insurance in Alaska.

Sincerely,

Jay S. Hammond
Governor

IV. ATTACHMENTS

Introduced: 1/14/76
Referred: Commerce

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

HOUSE BILL NO. 559

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to insurance filing review periods; insurance rate deviations."

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

* Section 1. AS 21.39.040(d) is amended to read:

(d) Subject to the exception specified in (e) of this section, each filing shall be on file for a waiting period of 30 [15] days before it becomes effective, which period may be extended by the director for an additional period not to exceed 30 [15] days if he gives written notice within the waiting period to the insurer or rating organization which made the filing [STATING THAT HE NEEDS ADDITIONAL TIME FOR THE CONSIDERATION OF THE FILING]. Upon written application by the insurer or rating organization, or upon his own initiative, the director may authorize a filing which he has reviewed to become effective before the expiration of the waiting period. A filing shall be considered to meet the requirements of this chapter unless disapproved by the director within the waiting period.

more time

no waiting period after approval

* Sec. 2. AS 21.39.070(a) is amended to read:

(a) Each member of or subscriber to a rating organization shall adhere to the filings made on its behalf by the organization except that an insurer may make written application to the director to file a deviation [, WHICH IN THE CASE OF CASUALTY INSURANCE MAY ONLY BE A UNIFORM PERCENTAGE DEVIATION,] from the class rates, schedules, rating plans or rules respecting a kind of insurance, or class of risk within a kind of insurance, or combination thereof. The

application shall specify the basis for the modification and a copy shall also be sent simultaneously to the rating organization. In considering the application to file the deviation the director shall give consideration to the available statistics and the principles for rate making as provided in sec. 30 of this chapter. The director shall issue an order permitting the deviation for the insurer to be filed if he finds that it is justified and it shall become effective. He shall issue an order denying the application if he finds that the deviation applied for does not meet the requirements of this chapter.

559

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE POUCH D — JUNEAU 99811

January 23, 1976

The House of Representatives
Commerce Committee
In Session
Juneau, Alaska

Dear Ladies and Gentlemen:

Re: House Bill 559

I will be pleased to discuss with you, on Monday, January 26th, an act relating to insurance filing review periods and insurance deviations.

Under current law we have fifteen days to approve or disapprove a rate filing made by a carrier and we may, by writing a letter containing certain specific language, obtain an additional fifteen days in which to approve or disapprove that rate.

The amendment proposed in House Bill 559 would extend both the primary period and the extended period from fifteen days to thirty days. The amendment will also permit the Division to approve for use a rate filing without waiting for the expiration of an approval period. The amendment also eliminates the necessity of putting unnecessary language in the notice of the Division that the time for approval is being extended.

Finally there is a more substantive change which will allow the Division to approve deviation and rate filings in a manner other than a uniform percentage deviation.

Under current law a carrier may deviate from a bureau filing in a flat percentage upwards or downwards. Suppose the Insurance Service Office, the rating bureau for automobile insurance rates for the majority of carriers in this state, made a rate filing for all the various locations in the state, class codes, automobile discriptions, and driver ages, and that rate filing is approved by the Division. A carrier desires to market a program in this state and charge rates other than those approved for the I.S.O.

Under current law we have authority to approve only a flat percentage increase of decrease in the toal rate scale promulgated by the I.S.O.. Under the proposed amendment we would be authorized to do that but also to approve an entirely different rating scheme or a rating scheme where some rates are higher than bureau and some rates are lower than bureau.

It is believed by the Division that this will enable the carriers to market more strongly in this state and thus improve the market for insurance in a variety of lines.

Yours Cordially,

Richard L. Block
Director

FCC

MAL.

PRACT.

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

Mal Practice

Summary of Medical Malpractice Insurance Bill (FCCS SCS CSHB 574)

Prepared by Representative Ted Smith

1. Authorizes Dept. of Commerce & Economic Development to provide investigative service to licensing boards.

2. Provides that for the following disciplines, upon a finding by the Director of Insurance that malpractice insurance is unavailable and the unavailability is impairing delivery of services, all licensees may be required to obtain insurance from the Medical Indemnity Corporation of Alaska. Also expands the licensing boards of these disciplines by adding two lay members, and provides additional disciplinary power to the boards:

Chiropractors
Dental Hygienists
Dentists
Nurses
Opticians
Optometrists
Pharmacists
Physical Therapists
Psychologists
Psychological Associates

3. Expands the State Medical Board of Examiners by adding lay people and deletes the requirement that members be nominated by the Alaska Medical Association. Requires each physician licensed by the state to purchase insurance from the Medical Indemnity Corporation of Alaska in the amount of $200,000 per occurance and $600,000 per year. Imposes a continuing education requirement for license renewal. Broadens disciplinary authority of the board.

4. Provides that a voluntary arbitration agreement may be entered into and, if such an agreement is in effect, sets up arbitration procedures.

5. Provides an expert advisory panel as a preliminary to court trial in any malpractice suit not covered by an arbitration agreement.

6. Revises tort law pertaining to medical malpractice as follows:

a. Changes the standard of care from that of the community to a national standard.
b. Provides for advance payments.
c. Prohibits ad damnum clause in suits.
d. Provides for periodic payments, with cost of living increases.
e. Provides that an award must be made by category of loss.
f. Provides that awards may be only for an amount exceeding awards from collateral sources unless those sources by law must seek subrogation.
g. Prohibits res ipsa loquitur.
h. Prohibits suits based on oral contracts.
i. Defines informed consent.
j. Revises "good samaritan" law to include hospital emergencies.

7. Requires hospitals as a condition of licensure to obtain insurance from the Medical Indemnity Corporation of Alaska in the amount of $200,000 per occurance, up to $1,000,000 per year, with an additional $20,000 per bed for each bed over 50. Provides for a self-insured deductible and coverage by a carrier other than the Medical Indemnity Corporation of Alaska if certain conditions are met. Requires hospitals to have a risk management program.

8. Limits liability for persons providing information to a review organization and for members of a review organization. Provides that records of a review organization are immune from discovery in a suit.

9. Establishes a medical mutual insurance corporation called Medical Indemnity Corporation of Alaska, and provides for its administration:

a. Specifies membership of its board of governors by profession.
b. Requires a plan of operation approved by the director of insurance.

c. Requires an occurance type policy and permits it to be retoractive to January 1, 1975.
d. May provide added coverage to a minimum of $ 1,000,000 for physicians and $ 5,000,000 for hospitals.
e. Requires reporting of claim information to director of insurance and licensing boards.
f. Provides that rates shall be a function of physician revenue or number of beds and may include a minimum for each category or discipline; shall consider individual risk factor disciplines and categories.
g. Permits the corporation to attempt to obtain reinsurance on the market for two years, after that time it must elect to either (1) retain all risk or (2) reinsure all risk.

10. Establishes a standby Joint Underwriting Association in the event the MICA is unable to reinsure under option (9)(g)(2) above.

11. Establishes a loan fund to loan up to $ 6,000,000 to the MICA: $ 3,000,000 for surplus and $ 3,000,000 to compensate for fluctuating loan experience. Repayment to be in annual installments at an interest rate of 4% over the discount rate.

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

M E M O R A N D U M

April 27, 1976

SUBJECT: Free Conference CS for Senate CS for CSHB 574

TO: Senator Jalmar Kerttula, Chairman
Senator Mike Colletta
Senator Pat Rodey
Rep. Terry Gardiner
Rep. Bob Bradley
Rep. Ted Smith

FROM: Anne Carpeneti, Legislative Counsel

The following is a list of the parts of the bill where there were minor differences between the Senate and House bills. I have tried to note them all, but probably missed some. Also noted are changes in drafting of a technical nature, dealing with the insurance provisions, which were suggested by Richard Block. I have not noted below the drafting changes made for the purpose of style and clarity only.

Page 16, lines 5 - 8
The court pays the costs of all experts called by the board and for three experts called by each side up to $150 per day for each witness

Page 17, lines 12 - 19
At the committee's suggestion the questions which may be presented to the expert advisory panel were redrafted

Page 20, lines 20 - 22
At the committee's direction, this sentence was added to clear up the periodic payments provision

Page 23, line 28
The committee accepted Mr. Block's proposal regarding waiver of insurance requirements for hospitals; Mr. Block found an error in his proposal which was corrected

Note: This change removes the power of waiver under this subsection and leaves only the power to permit a deductible

Page 24, lines 24 - 25
The provision requiring the regulations to be submitted to the Administrative Regulation Review Committee before adoption was deleted; prior review is beyond the present statutory power of the committee. The committee's power to review after adoption remains the same.

Page 30, line 1
The name of the corporation was changed to one less cumbersome

Page 30, lines 19 - 21
This is the House version which allows attorneys to be on the board of governors; attorneys may have something to contribute??

Page 33, lines 22 - 23
Provides that the corporation is exempt from membership in the Alaska Insurance Guaranty Corporation

Page 35, lines 3 - 4
The power to contract for management service is from the House version

Page 36, lines 11 - 12
The minimum rate provision is from the House bill; it is tied to the House provisions adopted by the committee on lines 7 - 10 of page 36

Page 37, lines 8 - 9 ("as developed....")
This is from the House bill

Page 37, lines 18 - 19
This is a House provision which provides for repayment of loans as a factor in rate making

Page 37, lines 27 - 28
Effective date of cancellation changed to 30 days from date of posting; the former provision (10 days from receipt) was not workable; e.g. in a case where the provider is out of state for an extended period

Page 38, line 12 (after "state.")
"except that any disability insurer may elect to pay any tax or assessment due without otherwise participating as a member." was deleted due to a constitutional defect (art. IX, sec. 7, DEDICATED FUNDS PROVISION).

Page 40, lines 23 - 24
Provides that the JUA is not a member of the Alaska Insurance Guaranty Association

Page 42, lines 15 - 21
These provisions were added in an attempt to avoid the dedicated funds problem

Page 44, lines 19-29 - page 45, lines 1-6
This excludes the corporation and JUA from participation in the Alaska Insurance Guaranty Association

The following are suggestions for changes by the Department of Commerce and Economic Development. As they are of a substantive nature, they are not included in the draft but are passed on for your consideration.

Page 15, lines 2 - 5
Mr. Block would prefer seeing the period changed to seven days with a provision excusing persons who are disabled from the seven-day limit.

Page 18, line 17 after "opinion" insert
"except that the nonappearance of a panel member for cross-examination may not for that reason alone render the report inadmissible

Page 18, lines 20 - 21
Mr. Block would limit considerably the discretion of the court to allow discovery before the report is complete

Page 38, line 24
Mr. Block would rather have the Director of Insurance appoint the board members of the JUA; his position is that this is the practice for other similar entities

Page 45, line 22
Mr. Block would have the bill apply retroactively to all cases which have arisen but have not gone to trial on the effective date of the Act

Alaska Court System

State of Alaska

303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274-8611

March 23, 1976

Free Conference Committee on
House Bill 574
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: SCS CS HB 574 am S (Medical Malpractice)

Gentlemen:

I would like to take this opportunity to provide written comments to the Free Conference Committee on House Bill 574 to follow up on verbal discussions that my Staff Counsel had last week with Senator Rodey and Representative Gardiner concerning the payment of expert witness expenses by the Court under the Senate's proposed arbitration provisions.

Both the mandatory and voluntary arbitration provisions (Pages 11 and 13 of the Bill as amended by the Senate) require that the Court will pay the costs of experts required by the board in addition to paying compensation to each member of the arbitration board. We do not have any objections to payment of the board members' compensation, but believe there is potential for unreasonably high costs for expert witnesses under the Bill as written. We appreciate the concern that the alternative of arbitration be made as attractive as possible to litigants. We do not, however, believe that requiring the parties to bear the costs of their medical experts will substantially undermine the use of arbitration. We would, therefore, urge that the Bill provide that expert witness costs will be borne by the parties, as is the case with all other types of personal injury litigation.

Should the Committee wish to retain the provision requiring payment of experts by the Court, however, we would urge that some limitations on costs be provided in the Statute. It is not unusual for an expert medical witness from outside Alaska to charge as much as $10,000. Without any limitations on either the maximum

fee allowable or on the number of experts that may be called, a single arbitration proceeding could result in the State's having to pay very large amounts of money in expert witness costs. We would suggest that the Bill provide for a maximum fee chargeable to the Court for each expert of $150 per day, including expenses, and a limitation of no more than three experts for each party. Any excess in costs would then be paid by the party or parties.

Finally, we have attempted to develop a meaningful estimate of the costs of the arbitration process under the present provisions of the Bill, but without being able to estimate with any degree of accuracy the number, type, or local availability of expert witnesses that might be required in an arbitration proceeding, we cannot provide hard figures. However, under the limitations on costs we have suggested, and assuming each arbitration proceeding averaged five days and four experts, the cost of the expert witnesses would be approximately $3,000.

I appreciate the opportunity to provide this Committee with these comments. If you require further information, please let me know.

Very truly yours,

Arthur H. Snowden, II
Administrative Director

SB-AHS/bd

JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 26, 1976

Honorable Jalmar Kerttula
Chairman
Free Conference Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Kerttula:

I am advised that the Free Conference Committee has made excellent progress in harmonizing the Senate and House versions of the Medical Malpractice Insurance Bill and, considering the complexities of this piece of legislation, each member of the Committee is to be commended for his dedication to this important issue.

From the outset, I have maintained that the solution to this problem required the participation of all involved segments of the medical delivery system, the health care providers, the insurers, the judicial system, the Bar and the State.

I am most disturbed, however, by the indications reaching me that your committee is seeking a solution on the insuring mechanism by requiring the State to insure the risk without any opportunity to at least try to obtain in the private market necessary reinsurance.

It was never my intention that the State be placed in the insurance business to the exclusion of the private insurance industry; only that the State provide the mechanism to make private placement more feasible. To establish a State fund which is denied statutory authority to access the private markets is placing the burden upon the State and, as such, one more step from our accepted form of government.

The compromise, I am told, includes a Joint Underwriting Association. The concept of a J.U.A. has been included in the Governor's Medical Malpractice Commission's recommendations and is basically a necessary back-up to protect the continuity of the program. I did, however, reject the concept of a J.U.A. that had no limits as to time, as to exposure, or as to coverage. The function of the J.U.A., which I understand you are now considering, is far too similar in actual economic effect to that which I vetoed last year.

I trust that the legislature will not permit an otherwise exemplary piece of meaningful legislation that they have created to be jeopardized by including an insuring mechanism which causes this Administration much concern.

It would be my pleasure to have you, as Chairman of the Free Conference Committee, call upon me to discuss my concerns and to jointly consider a mutually acceptable solution.

Sincerely,

Jay S. Hammond
Governor

STATE OF ALASKA
THE LEGISLATURE

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99801

LEGISLATIVE AFFAIRS AGENCY

MEDICAL MALPRACTICE BILLS IN FREE CONFERENCE COMMITTEE

House Version	Senate Version
Requires the Division of Occupational Licensing to provide investigative services to licensing boards of health care providers	Same provision in Senate bill
Requires chiropractors and dentists to carry medical malpractice insurance of at least $200,000/600,000 coverage; requires dental hygienists, nurses, dispensing opticians, optometrists, pharmacists, physical therapists, psychologists and psycholigical associates to carry medical malpractice insurance of at least $100,000/300,000 coverage; provides that these health care providers shall be required to purchase their insurance from the Alaska Health Care Providers Indemnity Corporation if, after a hearing, the director of insurance finds that the insurance is not available on the voluntary market and the unavailability is impairing delivery of their services	No similar provision in Senate bill
Requires physicians to purchase medical malpractice insurance from the Alaska Health Care Providers Indemnity Corporation (corporation) in amounts of at least $200,000/600,000 coverage	Same provision in Senate bill
No similar provision in House bill	Adds two public members to the licensing boards of all health care providers and staggers the terms of the public members

April 28, 1976

SUGGESTIONS AND CORRECTIONS - FCCS SCSCS HB574

p. 5 l. 9-11 Restore nominations by ASMA

Reason: The governor will need all the help he can get to find physicians who will be willing to serve on a board with vast new and often unpleasant duties. Purely political appointments by governors in the past have often not worked out well.

p. 15 l. 8 Add "," after "hospital"; strike "or"; after "clinic, add "or practitioner" so that the line reads " hospital, clinic, or practitioner."

Reason: No reason to exclude a physician not in a clinic or H.M.O.

p.16 l. 27,28 Delete "unless the court decides" and substitute "unless all parties
p.45 l. 19,20 agree"

Reason: The court has made it very clear that it is opposed to expert advisory panels. It should not have the opportunity to bypass the expert advisory panel.

p.17 l. 10,11 Strike "in the court's discretion"

Reason: Same as above.

p.17 l. 12-19 Add two new questions and re-number:
After question (1), add new question: What would have been the outcome without medical care? After question (4), add new question: What specifically caused the injury?

Reason: Question (2) describes the seriousness of the situation and is a very important part of "telling the medical story". Question (4) gets to the heart of the case and should obviously not be avoided.

p. 27 between lines 4 & 5. Reinsert quidelines section of SB 113 passed by Senate last year.

"Sec. 18.23.040 Quidelines not admissible in evidence. No guideline established by a review organization is admissible in evidence in a proceeding brought by or against a professional by a person to whom the professional has rendered professional services."

Reason: A review committee guideline standard should not be commandeered to "hang" a plaintiff.

p. 32 l. 18 & l. 20 Strike "who are physicians"

Reason: any employees of a physician or hospital should be insurable under the physician's or hospital's policy. This is current practice. For example, my office secretary and nurse were insured under my policy -- when I had one.

p. 32 l. 28 After hospital add "for any period"

Reason: Make it clear that one doesn't have to reinsure the entire period back to December 31, 1974. He may have just had 1 or 2 short gaps in coverage.

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

MEDICAL MALPRACTICE BILLS IN FREE CONFERENCE COMMITTEE

House Version	Senate Version
35. Page 2, line 2: demonstrated lack of competence, experience, or education	Page 2, line 5: demonstrated problems of competence, experience, education or health
36. Page 4, line 4: The director of insurance or his designee may waive	Page 4, line 23: The director of insurance or his designee shall waive
37. Page 13, lines 23-29 Page 14, lines 1-3 Mechanical and drafting differences in House and Senate bills	Page 16, lines 15-24
38.	Page 8, after line 29: AS 08.80.070 needs to be amended to change quorum requirements

33 Creates a revolving loan fund in the Department of Commerce and Economic Development to loan funds to the corporation when necessary for the corporation to maintain adequate reserves; loans shall be repaid by the corporation within four years at an annual interest rate of 7%; the director of insurance may sell notes of the corporation to the Department of Revenue	Creates a revolving loan fund in the Department of Economic Development to loan funds to the JUA when necessary to spread costs over time because of fluctuations in loss experience; loans shall be repaid by the JUA within five years at an annual interest rate of 6%; the director may sell notes of the JUA to the Department of Revenue
34 No similar provision in House bill	Provides for limited immunity from defamation for members of licensing boards of health care providers

Adopt Senate version 21.88.080 A(2)

29, line 15

25 Requires the corporation to insure all those health care providers about which a finding has been made that insurance is not available on the private market	~~Provides~~ that the corporation may insure health care providers other than physicians and hospitals on an individual basis
House version 26 Allows the corporation to provide risk management advice and services to hospitals	No similar provision in Senate bill
Senate 27 No similar provision in House bill	Assesses a premium tax on the corporation
House version 28 Requires that rates for physicians be set as a function of medical revenues, and rates for hospitals be set as a function of the number of beds in the hospital	No similar provision in Senate bill
Senate version 29 No similar provision in House bill	Provides that rates may not be unfairly discriminatory
30 House Version Requires that disciplines and classifications within license categories be considered in rate making	This is not addressed specifically although the Senate version does require that individual risk factors be considered
30(A) - Adopt Senate 31 Requires that repayment of loan obligations be considered in rate making	Take a look at (B) Block + ANNE No similar provision in Senate bill
32 No similar provision in House bill	Creates a JUA to provide reinsurance to the corporation for that portion of the risk that the corporation is unable to reinsure on the private market

17 Expands good samaritan rule	Same provision in Senate bill
18 Requires hospitals to purchase medical malpractice insurance from the corporation for $200,000 per occurrence and an aggregate coverage of $1,000,000 plus $20,000 for each bed over 50	Same provision in Senate bill
19 Requires hospitals to have internal risk management programs	The same provision passed the Senate in a separate bill
20 Provides limited immunity from defamation claims for members of health care review organizations and persons testifying before health care review organizations	Same provisions in Senate bill
21 Creates the Alaska Health Care Providers Indemnity Corporation	Senate bill creates similar corporation
22 Board members are appointed by the director of insurance; the physician and hospital representatives are appointed from lists submitted by their professional organizations	Board members are appointed by the governor and confirmed by the legislature, with no requirement that they be appointed from lists submitted by professional organizations
23 Board members receive $100 per day while meeting and reasonable travel expenses	Board members set their own compensation
24 No similar provision in House bill	Requires corporation to obtain reinsurance from the private market if possible

Expands the standard of care required of health care providers to that of other providers in the same field or specialty	Same provision in Senate bill
No similar provision in House bill	Provides that advance payment by a health care provider or its insurer is not an admission of liability
No similar provision in House bill	Prohibits use of an ad damnum clause in medical malpractice cases
Allows damages to be paid on a periodic or lump sum basis; provides that awards paid periodically be increased according to annual increases in the consumer price index	The Senate bill has a similar provision regarding lump sum or periodic payment but does not provide for increases according to inflation for periodic payments
Provides that awards in malpractice cases be decreased by collateral sources received by plaintiff	The Senate bill has a similar provision, but allows an amount to be added back to the award or set aside where tnere is a second injury and insurance benefits are exhausted
Redrafts provision dealing with jury instructions in malpractice cases	Same provision in Senate bill
Provides that no action may arise against a provider for breach of an oral contract to provide a specific cure or result	No similar provision in Senate bill
Provides the circumstances where an action can be brought for failure to obtain informed consent of patient, and also sets out the defenses to a claim based on failure to obtain informed consent	Same provision in Senate bill

5 No similar provision in House bill	Deletes the requirement that members of the licensing boards of health care providers be appointed by the governor from a list supplied by the professional society
6 Expands the disciplinary powers of the licensing boards of health care providers	Same provision in Senate bill
7 Requires physicians to meet continuing education standards set by the State Medical Board	No similar provision in Senate bill
8 Requires that all medical malpractice claims be submitted to an expert advisory panel to be appointed by the court; expenses of the panel shall be borne by the state, except where a party has made a patently frivolous claim or denial of liability in which case that party shall pay the expenses	Provides three options to encourage fast and fair settlement of malpractice cases: Mandatory arbitration of claims against physicians and hospitals unless all parties agree to waive arbitration; the decision of the arbitration board may be appealed to the superior court for a trial de novo unless the parties agreed to binding arbitration; findings of the arbitration board are admissible at the trial de novo if the court finds the arbitration was conducted fina the arbitration was conducted properly; Voluntary arbitration of malpractice claims against any health care provider; As an alternative to arbitration, the case shall be submitted to an expert advisory panel, unless the court determines an expert advisory panel to be unnecessary for a decision in the case; The court bears the costs of the arbitration or the expert advisory panel, except whe e a party has made a patently frivolous claim or denial of liability, in which case that party pays the expenses of either the arbitration or the expert advisory panel

good bargaining stock

The attached bar charts demonstrate the various kinds of reinsurance and a few of the combinations of them used. Many other combinations are possible. For example, facultative reinsurance can be purchased on an excess basis, stop loss aggregate basis, quota share basis, or total treaty. The percentages and limits are variable items. Retentions by the primary insurer are variable.

The charts demonstrate the following types and kinds of reinsurance:

1. No reinsurance
2. 100% treaty quota share
3. Excess of $50,000.
4. Stop loss aggregate $500,000.
5. Excess of $50,000. and stop loss aggregate $400,000.
6. 80% quota share
7. 80% quota share with $500,000. stop loss aggregate
8. 100% facultative on risk generating losses 3, 5 & 10
9. M.I.C.A. example

Shaded areas on charts 2 - 9 indicate portion of loss reinsured.

What happens to JUA under proposal on 3 year division

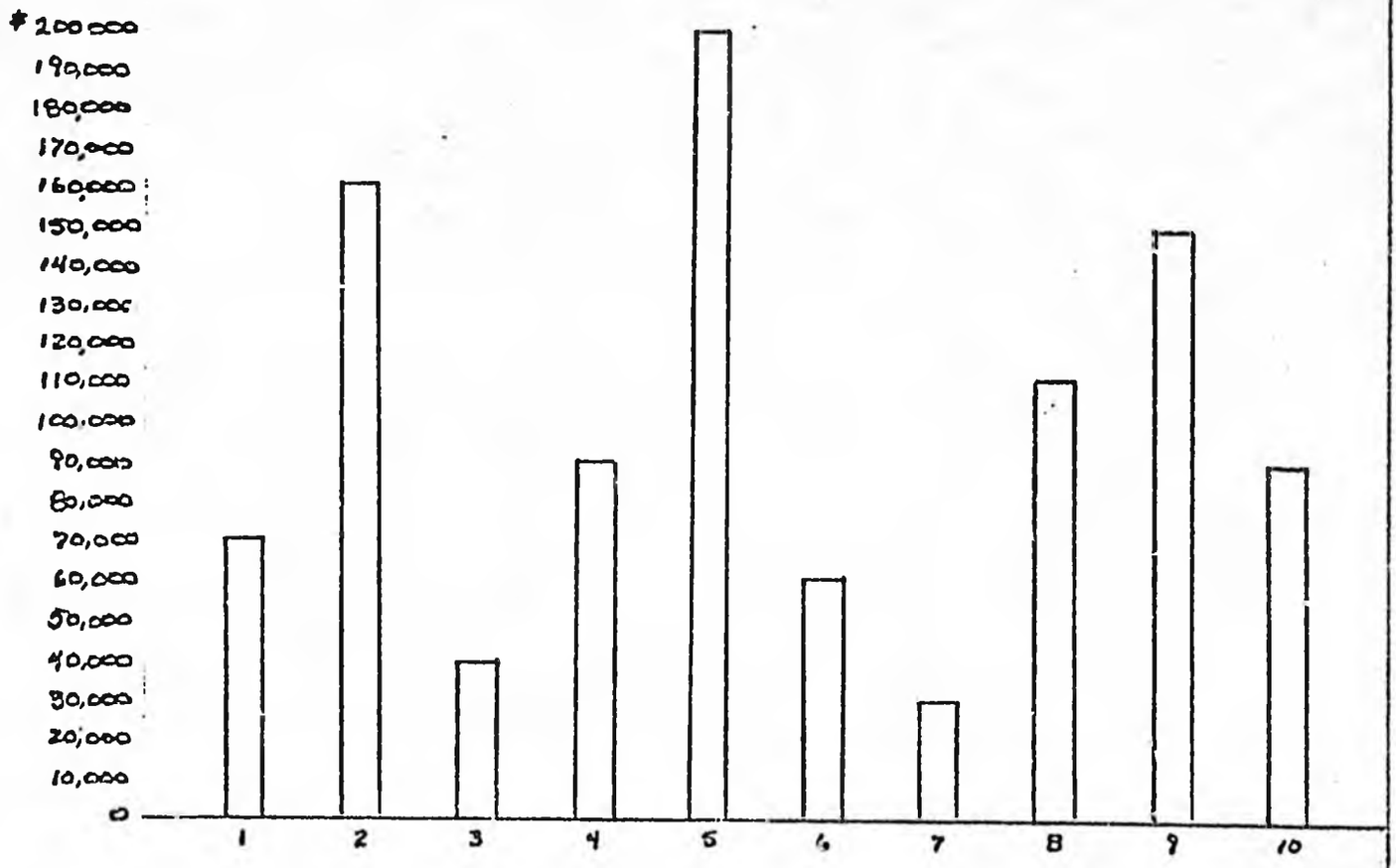
change rate of interest

THE BAR CHART BELOW REPRESENTS TEN (10) INSURANCE LOSSES WITH ONE INSURANCE COMPANY WHICH, IN THE AGGREGATE, TOTAL $1,000,000.

TYPE OF REINSURANCE: NONE

LOSS RETAINED BY INSURANCE COMPANY: $1,000,000.

LOSS ASSUMED BY REINSURANCE: $ 0.

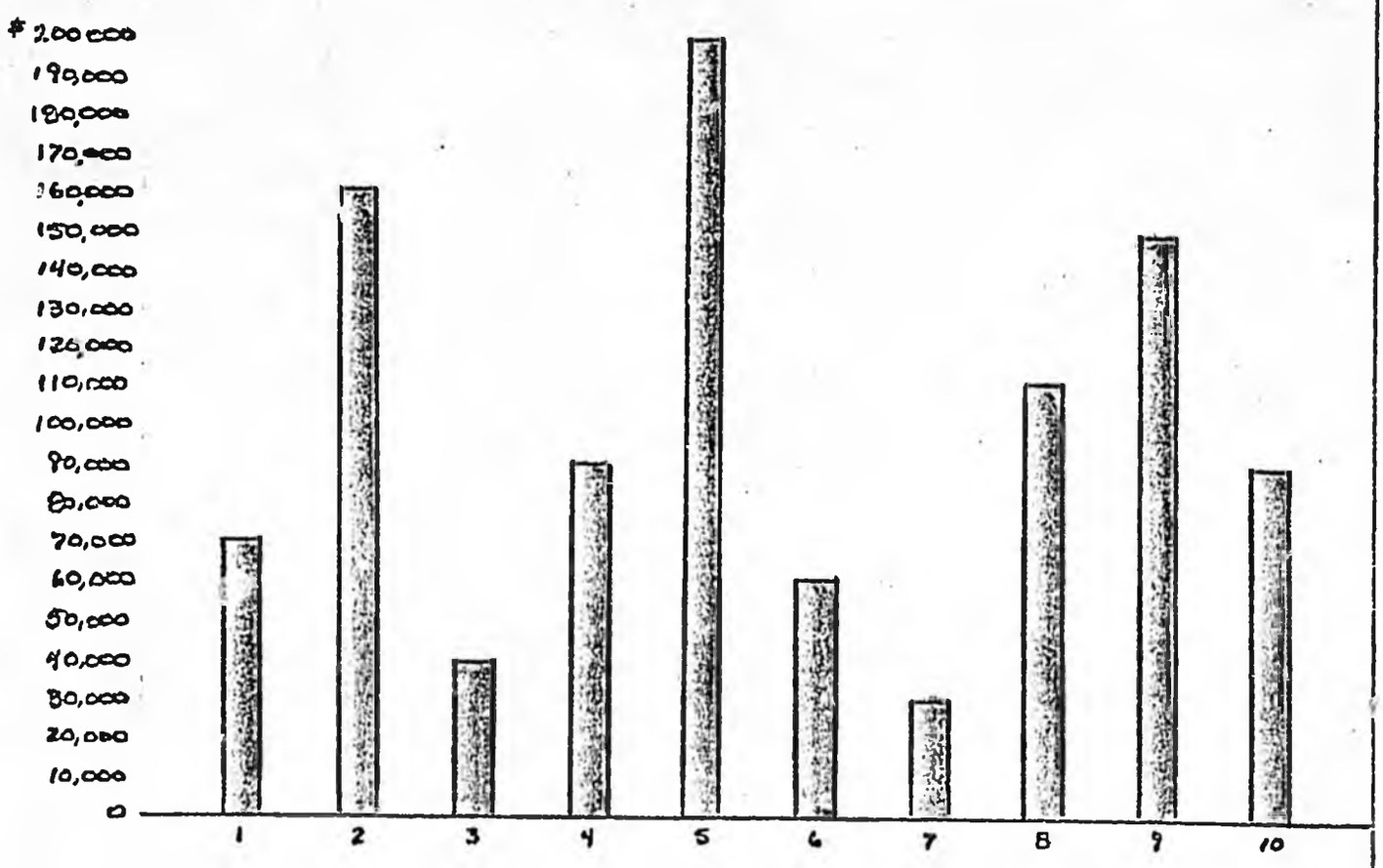


THE BAR CHART BELOW REPRESENTS TEN (10) INSURANCE LOSSES WITH ONE INSURANCE COMPANY WHICH, IN THE AGGREGATE, TOTAL $1,000,000.

TYPE OF REINSURANCE: 100% TREATY QUOTA SHARE

LOSS RETAINED BY INSURANCE COMPANY: $0

LOSS ASSUMED BY REINSURANCE: $1,000,000

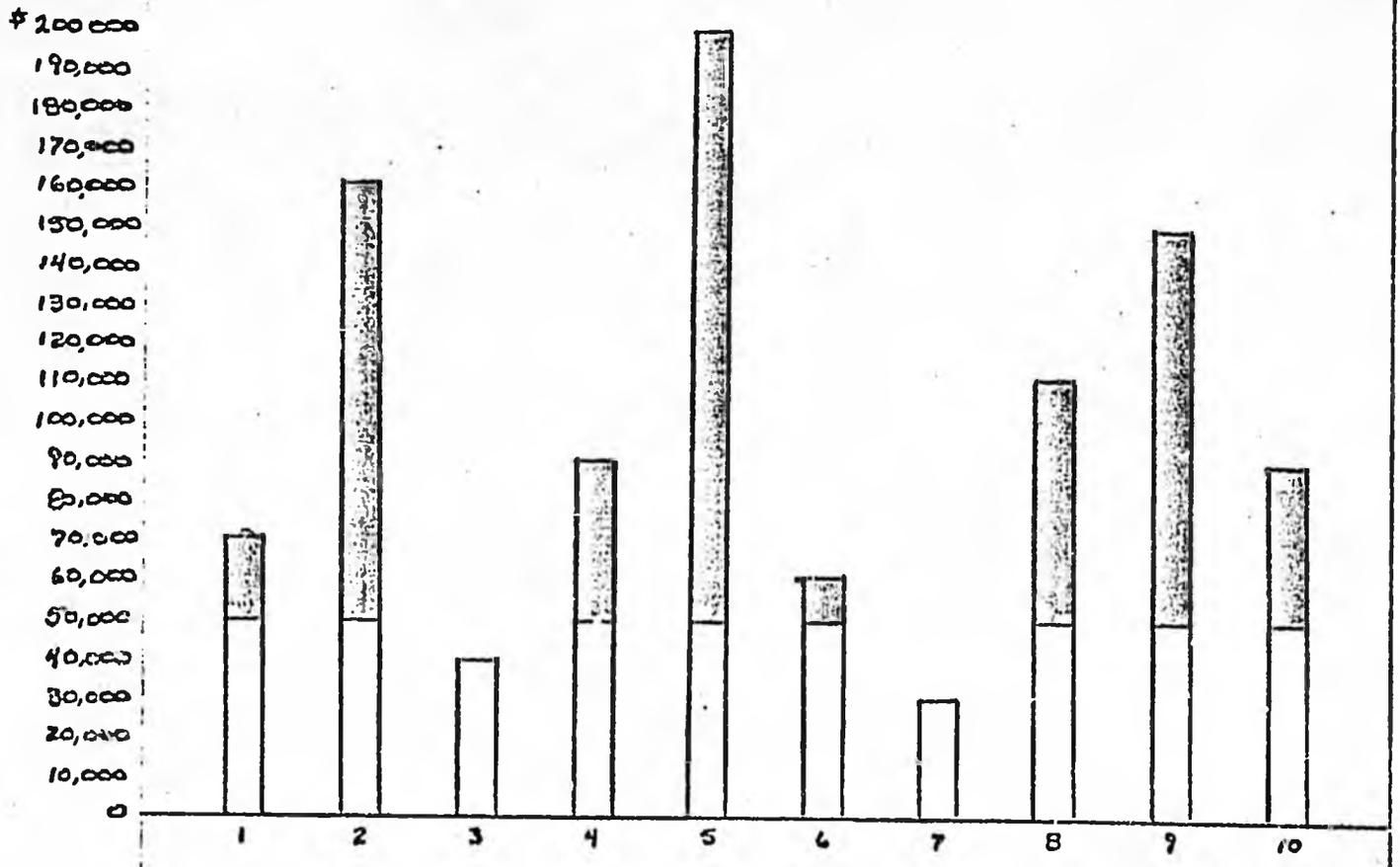


THE BAR CHART BELOW REPRESENTS TEN (10) INSURANCE LOSSES WITH ONE INSURANCE COMPANY WHICH, IN THE AGGREGATE, TOTAL $1,000,000.

TYPE OF REINSURANCE: EXCESS OF $50,000

LOSS RETAINED BY INSURANCE COMPANY: $470,000.

LOSS ASSUMED BY REINSURANCE: $530,000

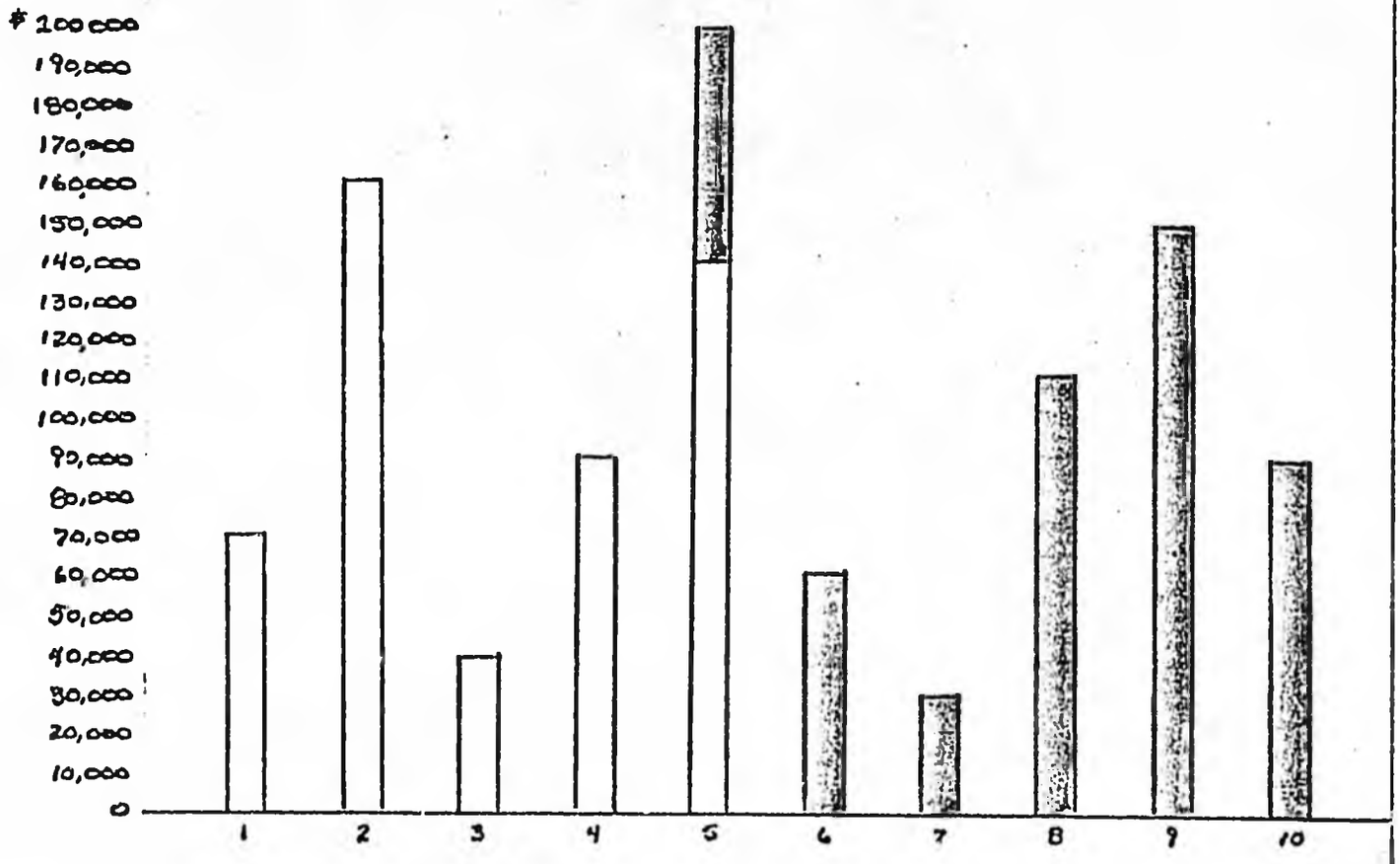


THE BAR CHART BELOW REPRESENTS TEN (10) INSURANCE LOSSES WITH ONE INSURANCE COMPANY WHICH, IN THE AGGREGATE, TOTAL $1,000,000.

TYPE OF REINSURANCE: STOP LOSS AGGREGATE $500,000.

LOSS RETAINED BY INSURANCE COMPANY: $500,000.

LOSS ASSUMED BY REINSURANCE: $500,000.

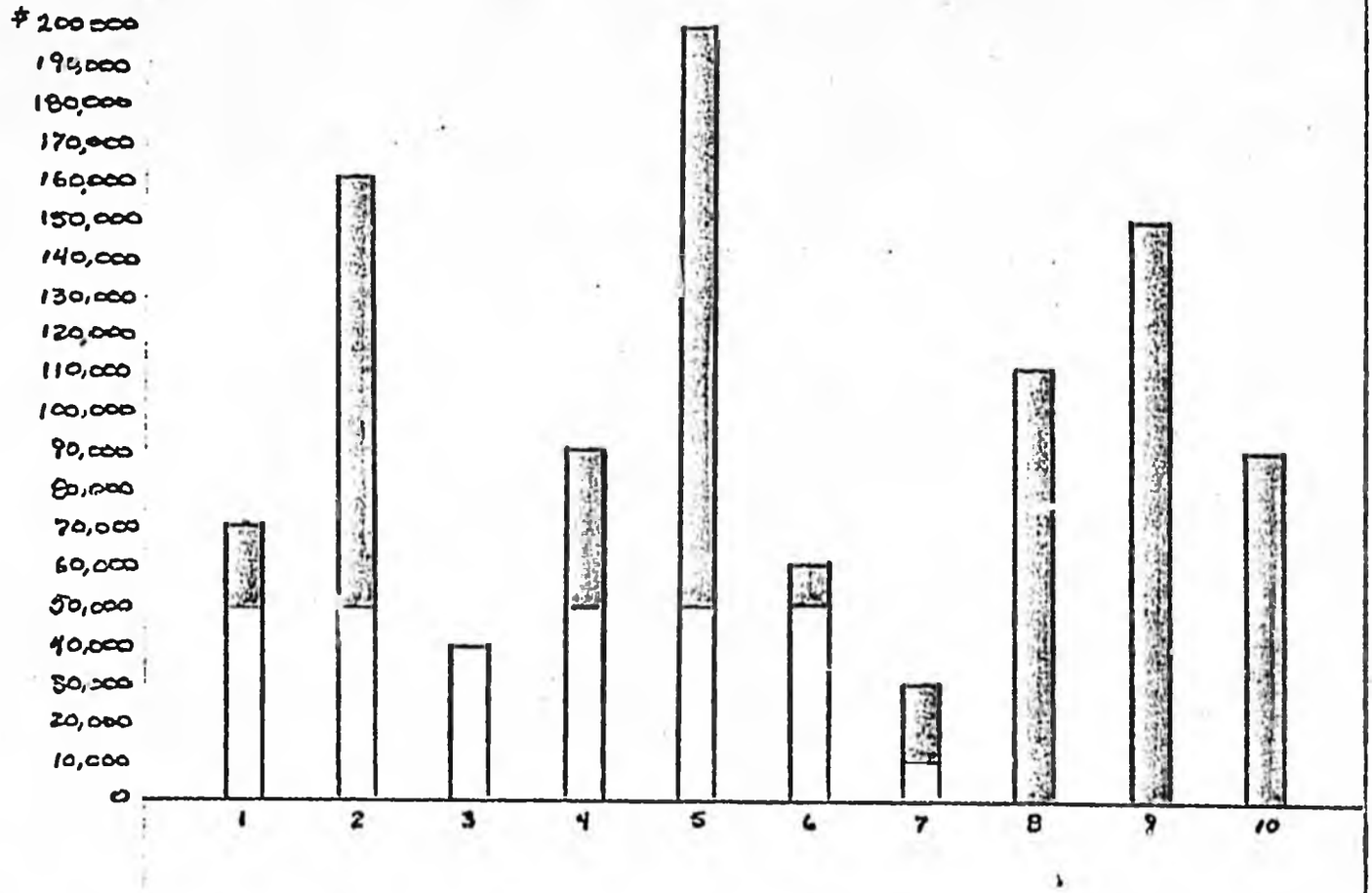


THE BAR CHART BELOW REPRESENTS TEN (10) INSURANCE LOSSES WITH ONE INSURANCE COMPANY WHICH, IN THE AGGREGATE, TOTAL $1,000,000.

TYPE OF REINSURANCE: EXCESS OF $50,000 AND STOP LOSS AGGREGATE $300,000.

LOSS RETAINED BY INSURANCE COMPANY: $300,000.

LOSS ASSUMED BY REINSURANCE: $700,000.

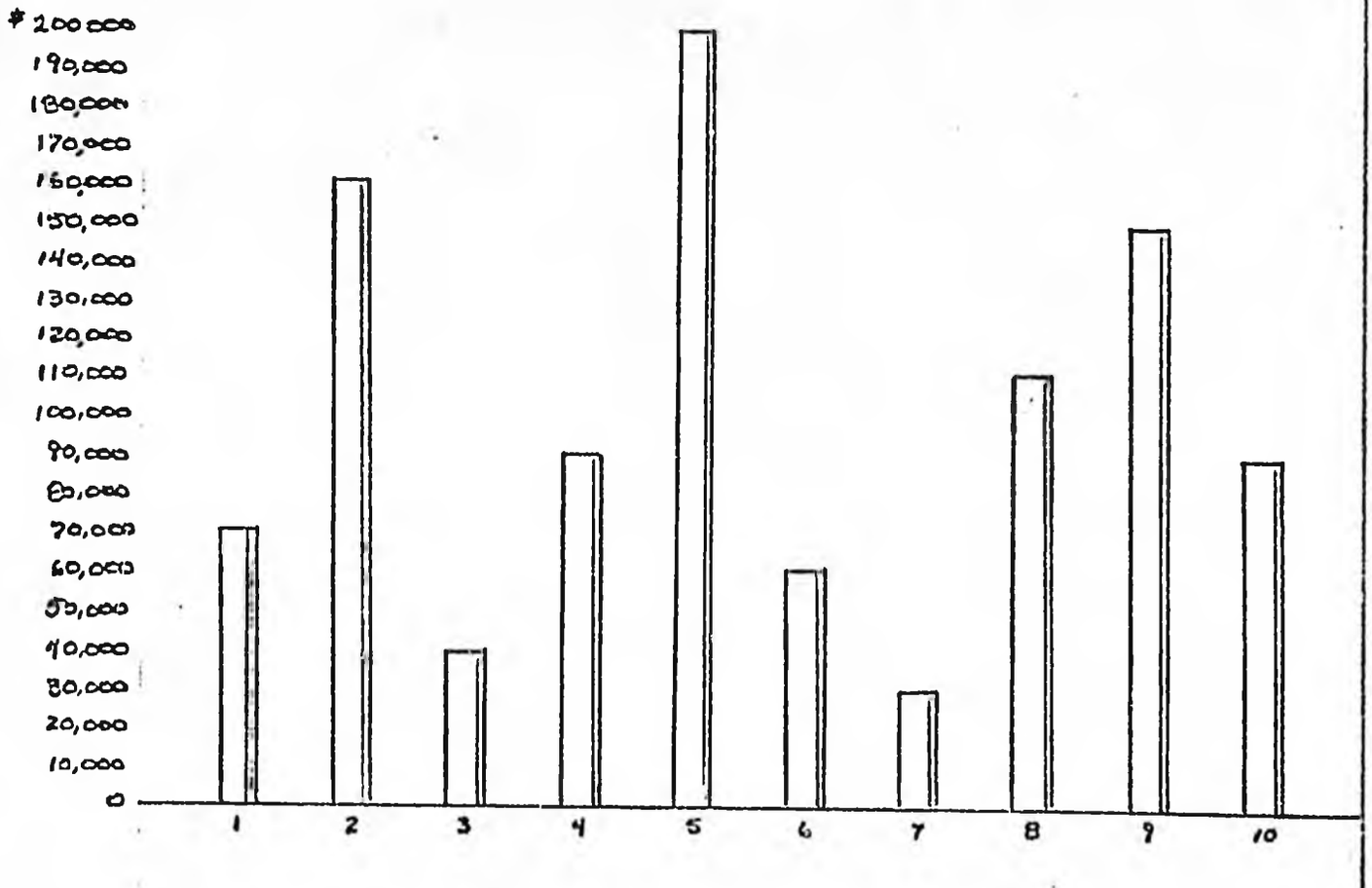


THE BAR CHART BELOW REPRESENTS TEN (10) INSURANCE LOSSES WITH ONE INSURANCE COMPANY WHICH, IN THE AGGREGATE, TOTAL $1,000,000.

TYPE OF REINSURANCE: 80% QUOTA SHARE

LOSS RETAINED BY INSURANCE COMPANY: $800,000

LOSS ASSUMED BY REINSURANCE: $200,000

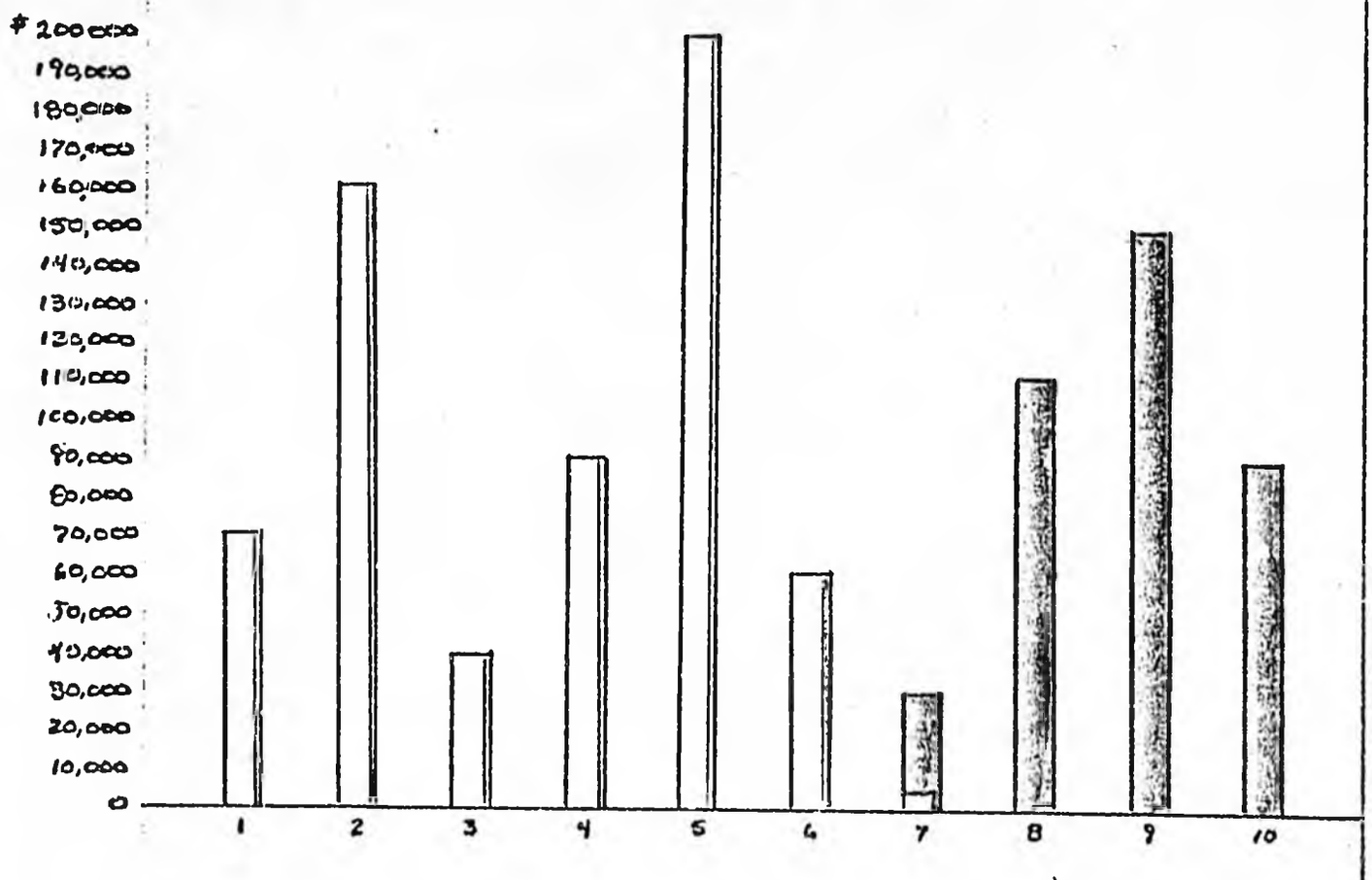


THE BAR CHART BELOW REPRESENTS TEN (10) INSURANCE LOSSES WITH ONE INSURANCE COMPANY WHICH, IN THE AGGREGATE, TOTAL $1,000,000.

TYPE OF REINSURANCE: 80% QUOTA SHARE WITH $500,000 STOP LOSS AGGREGATE

LOSS RETAINED BY INSURANCE COMPANY: $500,000

LOSS ASSUMED BY REINSURANCE: $500,000

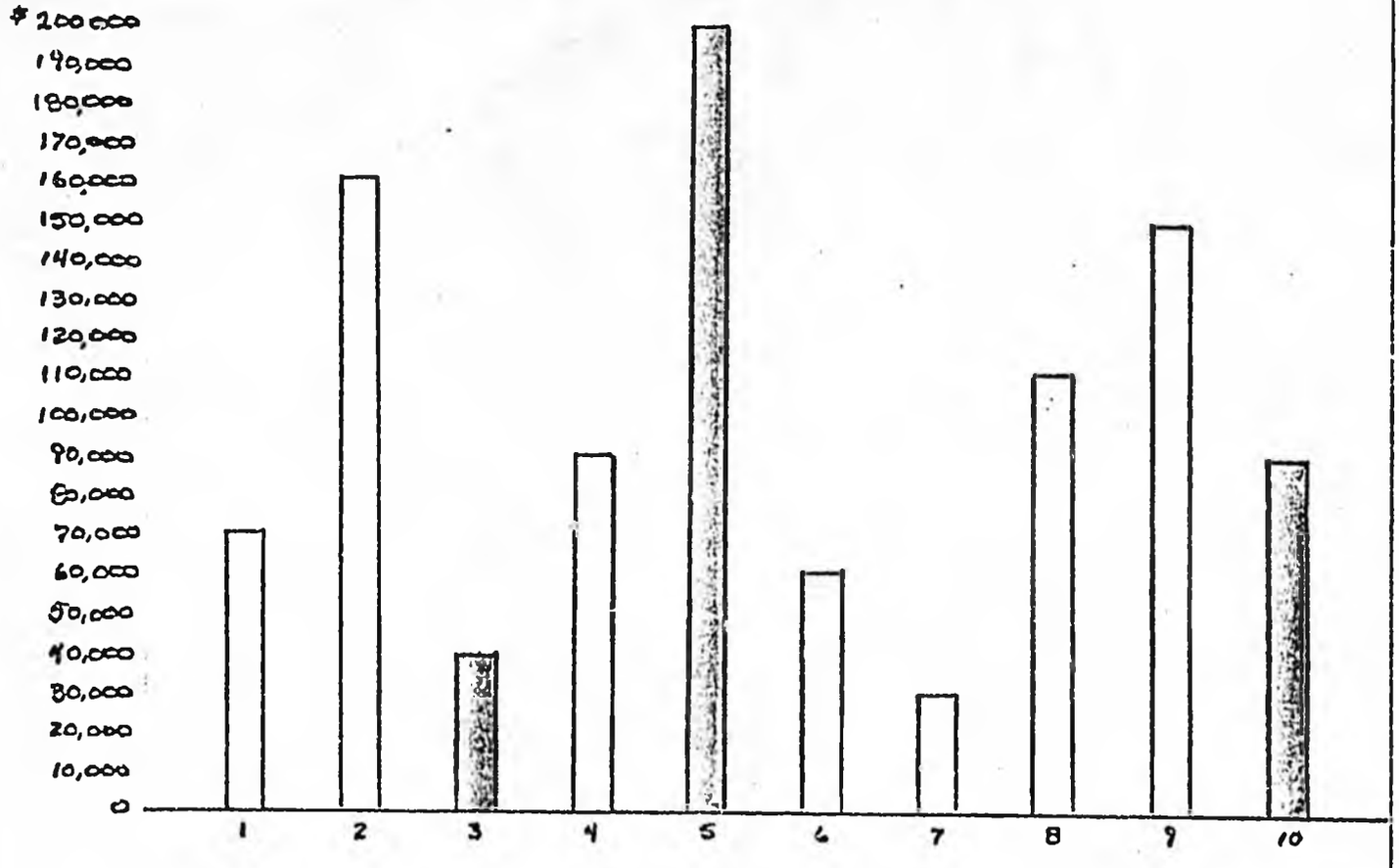


THE BAR CHART BELOW REPRESENTS TEN (10) INSURANCE LOSSES WITH ONE INSURANCE COMPANY WHICH, IN THE AGGREGATE, TOTAL $1,000,000.

TYPE OF REINSURANCE: 100% FACULTATIVE ON RISK GENERATING LOSSES 3,5+10.

LOSS RETAINED BY INSURANCE COMPANY: $670,000.

LOSS ASSUMED BY REINSURANCE: $330,000.

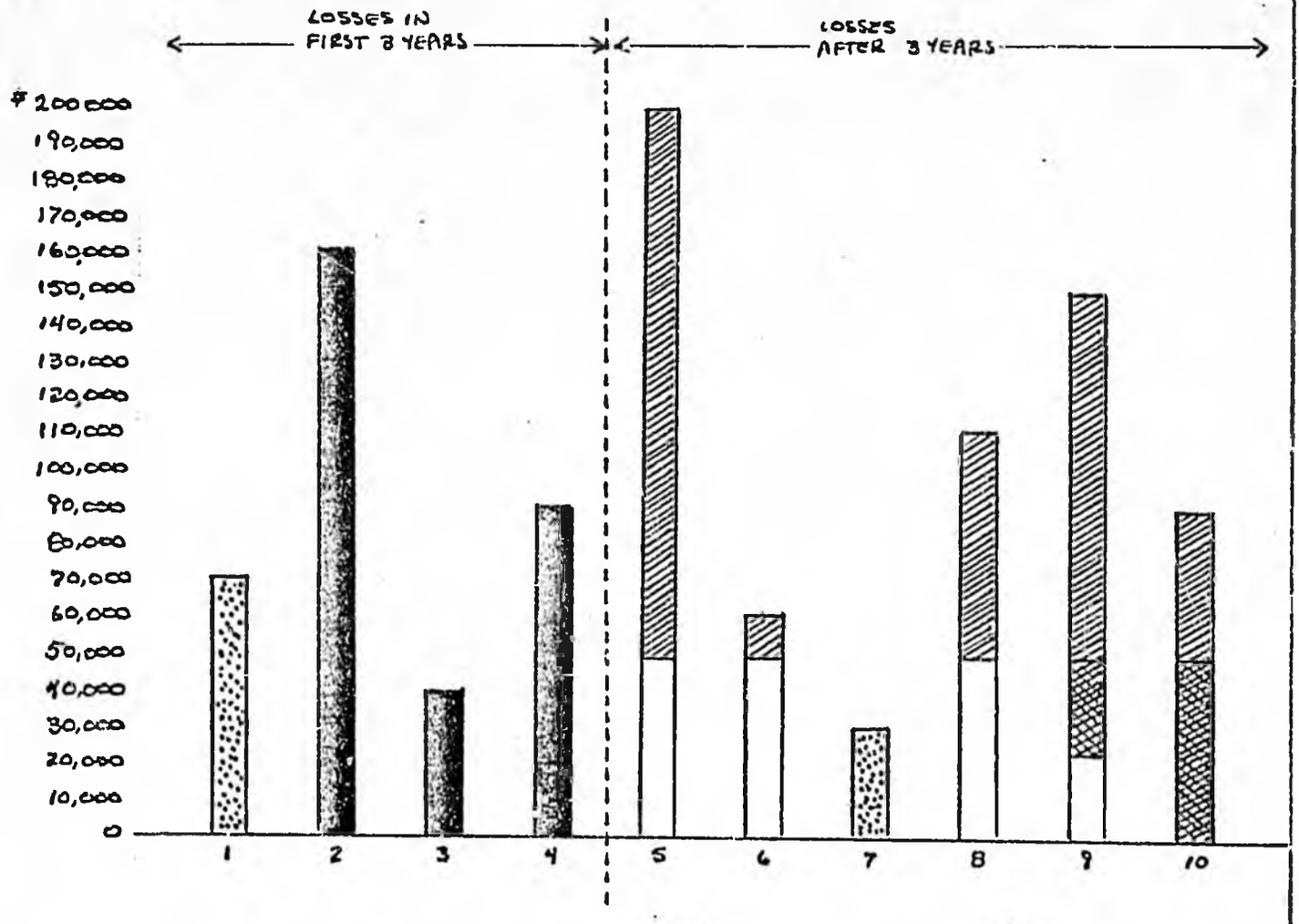


THE BAR CHART BELOW REPRESENTS TEN (10) INSURANCE LOSSES WITH THE M.I.C.A. WHICH, IN THE AGGREGATE, TOTAL $1,000,000.

TYPE OF REINSURANCE: VARIOUS · SEE BELOW

LOSS RETAINED BY M.I.C.A.: $175,000.

LOSS ASSUMED BY REINSURANCE: $825,000.



LOSS RETAINED BY MIC

HOSPITAL FACULTATIVE

100 % QUOTA SHARE (TOTALLY REINSURED)

EXCESS OF $50 000 ON LOSSES BROUGHT AFTER 3 YEARS

STOP LOSS AGGREGATE $175,000 ON LOSSES BROUGHT AFTER 3 YEARS

AMENDMENT

page 17, lines 12 - 20 substitute following language

(1) What was the disorder for which the plaintiff came to medical care?

(2) What would have been the outcome without medical care?

(3) Was the treatment selected appropriate for the case?

(4) Did an injury arise from the medical care?

(5) What is the nature and extent of the injury?

(6) What specifically caused the injury?

(7) Was the injury caused by unskilful care?

(8) If an injury had not occurred, how would the plaintiff's condition differ from his present condition?

Amendment To Free Conference CS For Senate CS For CS For House Bill 574

Page 23, line 29
Subsection (c)

...the policy for a hospital if the hospital demonstrates to the satisfaction of the director of insurance that without indemnity from any other source the hospital has the financial resources to discharge the maximum potential exposure to the hospital by reason of the deductible provision and the conditions of subsection (e) are satisfied.

Page 24, line 4

following subsection (c) insert subsections (d) and (e) with the following language:

(d) The Director of Insurance shall permit a hospital to insure directly all or any portion of its risk with a carrier, authorized to sell Malpractice Liability Insurance in this state if the Director of Insurance finds that permitting direct insurance will not jeopardize the insuring program of the Medical Indemnity Corporation of Alaska and the conditions of subsection (e) are satisfied.

(e) To qualify for authority to use a deductible provision the hospital, in addition to the requirements of subsection (c), or to insurer directly in addition to the requirements of subsection (b), the hospital and insurer, must:

(1) agree to permit the Medical Indemnity Corporation of Alaska to provide the defense to any claim brought against the hospital if any health care provider insured by the corporation is also, or may become, involved in the claim and to reimburse the corporation for a pro rata portion of the costs of defense; and

(2) agree to waive any right of cross complaint, counter claim or subrogation against a health care provider insured by the Medical Indemnity Corporation of Alaska, except that such agreement may provide for arbitration among involved health care providers to determine allocation of liability.

line 10, (c) (3) is changed to (e) (3).

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

Jud. 23

Original sponsor: Rules Committee by request of the Governor

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 574

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to liability for the provision of health care services; changing the Alaska Supreme Court's Rules of Civil Procedure; and providing for an effective date."

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

* Section 1. AS 08.01.050 is amended by adding a new paragraph to read:

(19) provide investigative services to the boards established under chs. 20, 32, 36, 64, 68, 71, 72, 80, 84, and 86 of this title, for the purpose of assisting those boards in matters of professional discipline.

* Sec. 2. AS 08.20 is amended by adding new sections to read:

Sec. 08.20.115. INSURANCE REQUIRED. (a) To be eligible for an active license under this chapter, a person must maintain insurance against liability to patients for chiropractic malpractice in limits of not less than $200,000 per occurrence and $600,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

(b) The director of insurance may require all persons licensed under this chapter to obtain the insurance required under (a) of this section from the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for chiropractors is impairing the delivery of chiropractic services to the public.

Sec. 08.20.175. LIMITS OR CONDITIONS ON LICENSE; REPRIMAND. (a)

In addition to action under sec. 170 of this chapter, upon a finding that by reason of demonstrated lack of competence, experience, or education the authority to practice chiropractic should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 3. AS 08.32 is amended by adding new sections to read:

Sec. 08.32.015. INSURANCE REQUIRED. (a) To be eligible for an active license under this chapter, a person must maintain insurance against liability to patients for malpractice in limits of not less than $100,000 per occurrence and $300,000 aggregate liability per year. This requirement is satisfied if the person's employer maintains insurance for him in the required amounts.

(b) The director of insurance may require all persons licensed under this chapter to obtain the insurance required under (a) of this section from the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for dental hygienists is impairing the delivery of dental hygienists' services to the public.

Sec. 08.32.165. LIMITS OR CONDITIONS ON LICENSE. (a) In addition to action under sec. 160 of this chapter, upon a finding that by reason of demonstrated lack of competence, experience, or education the authority to practice dental hygiene should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any

action taken by the board under this section.

* Sec. 4. AS 08.36 is amended by adding new sections to read:

Sec. 08.36.115. INSURANCE REQUIRED. (a) To be eligible for an active license under this chapter, a person must maintain insurance against liability to patients for dental malpractice in limits of not less than $200,000 per occurrence and $600,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

(b) The director of insurance may require all persons licensed under this chapter to obtain the insurance required under (a) of this section from the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for dentists is impairing the delivery of dentist services to the public.

Sec. 08.36.325. LIMITS OR CONDITIONS ON LICENSE. (a) In addition to action under sec. 320 of this chapter, upon a finding that by reason of demonstrated lack of competence, experience, or education the authority to practice dentistry should be limited or conditioned or the practitioner disciplined, the board may censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining. require counseling

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 5. AS 08.64 is amended by adding new sections to read:

Sec. 08.64.215. INSURANCE REQUIRED. (a) To be eligible for an active license under this chapter, a person must maintain insurance issued by the Health Care Providers Indemnity Corporation against liability to patients for medical malpractice in limits of not less than $200,000 per occurrence and $600,000 aggregate liability per year. This

requirement is satisfied if a person's employer maintains insurance for him from the Health Care Providers Indemnity Corporation in the required amounts.

(b) The director of insurance or his designee may waive the requirement in (a) of this section for a person if that person furnishes satisfactory evidence of his having other insurance providing coverage in amounts not less than those specified in (a) of this section. No waiver granted under this subsection may extend beyond the normal expiration date of the person's insurance policy or January 1, 1977, whichever occurs first.

Sec. 08.64.312. CONTINUING EDUCATION REQUIREMENTS. (a) The board shall promote a high degree of competence in the practice of medicine by requiring every physician licensed in the state to fulfill continuing education requirements.

(b) Before a license may be renewed the licensee shall submit evidence to the board that continuing education requirements prescribed by regulations adopted by the board have been met.

(c) The board may exempt a physician from the requirements of (b) of this section upon an application by him giving evidence satisfactory to the board that he is unable to comply with the requirements because of extenuating circumstances. However, no person may be exempted from more than 15 hours of continuing education in a five-year period.

Sec. 08.64.325. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 330 of this chapter, upon a finding that by reason of demonstrated lack of competence, experience, or education the authority to practice under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 6. AS 08.68 is amended by adding new sections to read:

Sec. 08.68.165. INSURANCE REQUIRED. (a) To be eligible for an active license as a nurse under this chapter, a person must maintain insurance against liability to patients for malpractice in limits of not less than $100,000 per occurrence and $300,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

(b) The director of insurance may require all persons licensed under this chapter to obtain the insurance required under (a) of this section from the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for nurses is impairing the delivery of nurse services to the public.

Sec. 08.68.275. LIMITS OR CONDITIONS ON LICENSE. (a) In addition to action under sec. 270 of this chapter, upon a finding that by reason of demonstrated lack of competence, experience, or education the authority to practice nursing should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section

* Sec. 7. AS 08.71 is amended by adding new sections to read:

Sec. 08.71.085. INSURANCE REQUIRED. (a) To be eligible for an active license under this chapter, a person must maintain insurance against liability to patients for malpractice in limits of not less than $100,000 per occurrence and $300,000 aggregate liability per year. This

requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

(b) The director of insurance may require that all persons licensed under this chapter obtain the insurance required under (a) of this section if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for dispensing opticians is impairing delivery of the services of dispensing opticians to the public.

Sec. 08.71.175. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 170 of this chapter, upon a finding that by reason of demonstrated lack of competence, experience, or education the authority to practice as a dispensing optician under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by procedure or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 8. AS 08.72 is amended by adding new sections to read:

Sec. 08.72.115. INSURANCE REQUIRED. (a) To be eligible for an active license under this chapter, a person must maintain insurance against liability to patients for malpractice in limits of not less than $100,000 per occurrence and $300,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

(b) The director of insurance may require all persons licensed under this chapter to obtain insurance required under (a) of this section from the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for optometrists is impairing delivery of optome-

trist services to the public.

Sec. 08.72.255. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under secs. 240 and 250 of this chapter, upon a finding that by reason of demonstrated lack of competence, experience, or education the authority to practice optometry under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 9. AS 80.80 is amended by adding new sections to read:

Sec. 08.80.135. INSURANCE REQUIRED. (a) To be eligible for active registration as a pharmacist, a person must maintain insurance against liability to patients for malpractice in limits of not less than $100,000 per occurrence and $300,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

(b) The director of insurance may require that all persons licensed under this chapter obtain the insurance required under (a) of this section from the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for pharmacists is impairing delivery of pharmacist services to the public.

Sec. 08.80.265. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 260 of this chapter, upon a finding that by reason of demonstrated lack of competence, experience, or education the authority to practice pharmacy under this chapter should be limited or conditioned or the practitioner disciplined, the board may

reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 10. AS 08.84 is amended by adding new sections to read:

Sec. 08.84.035. INSURANCE REQUIRED. (a) To be eligible for active registration as a physical therapist under this chapter, a person must maintain insurance against liability to patients for malpractice in limits of not less than $100,000 per occurrence and $300,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

(b) The director of insurance may require that all persons licensed under this chapter obtain the insurance required in (a) of this section from the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for physicial therapists is impairing delivery of physical therapist services to the public.

Sec. 08.84.185. LIMITS OR CONDITIONS ON LICENSE. (a) In addition to action under sec. 180 of this chapter, upon a finding that by reason of demonstrated lack of competence, experience, or education the authority to practice physical therapy should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 11. AS 08.86.120 is amended to read:

Sec. 08.86.120. ENTITLEMENT TO LICENSURE. A person who passes the examination given by the board <u>and possesses the insurance required by</u>

sec. 125 of this chapter is entitled to be licensed as a psychologist.

* Sec. 12. AS 08.86.160 is amended to read:

Sec. 08.86.160. ASSOCIATES: ENTITLEMENT TO LICENSURE. A person who passes the examination given by the board and who possesses insurance in accordance with sec. 125 of this chapter is entitled to be licensed as a psychological associate.

* Sec. 13. AS 08.86 is amended by adding new sections to read:

Sec. 08.86.125. INSURANCE REQUIRED. (a) To be eligible for active licensure as a psychologist under this chapter, a person must maintain insurance against liability to patients for malpractice in limits of not less than $100,000 per occurrence and $300,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

(b) The director of insurance may require all persons licensed under this chapter to obtain insurance required under (a) of this section from the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for psychologists is impairing the delivery of psychologist services to the public.

Sec. 08.86.220. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) Upon a finding that by reason of demonstrated lack of competence, experience, or education the authority to practice psychology or as a psychological associate under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure place on probation, restrict practice by time, specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 14. AS 09.55.530 is repealed and re-enacted to read:

ARTICLE 6. MALPRACTICE ACTIONS.

Sec. 09.55.530. DECLARATION OF PURPOSE. The legislature finds that the health of the people is threatened by curtailment of health care services due to the difficulty in obtaining adequate malpractice insurance at a reasonable cost. It is the purpose of secs. 530 - 560 of this chapter to protect the health and safety of the people of this state by establishing procedural aids for handling malpractice claims which will help ensure the ready availability of adequate insurance at a reasonable cost and which will be fair to all parties concerned.

* Sec. 15. AS 09.55 is amended by adding a new section to read:

Sec. 09.55.536. EXPERT ADVISORY PANEL. (a) In any action for damages due to personal injury or death based upon the provision of professional services by a health care provider, the court shall establish a three-person expert advisory panel in accordance with this section. When the action is filed the court shall, by order, determine the professions or specialties to be represented on the expert advisory panel and shall advise each party of the professions or specialties to be represented, giving the parties the opportunity to object or make suggestions. The court may in its discretion conduct other preliminary proceedings relative to the composition of the panel as it considers appropriate.

(b) The expert advisory panel may compel the attendance of witnesses, interview the parties and physically examine the injured person if alive, consult with the specialists or learned works they consider appropriate, and compel the production of and examine all relevant hospital, medical, or other records or materials relating to the health care treatment. The panel may meet in camera, but shall maintain a record of any testimony or oral statements of witnesses, and shall keep copies of all written statements and opinions it receives. Not less

Not More than 30?

than 30 days after selection of the panel, it shall make a written report to the parties and to the court, substantially answering the following questions in addition to any other question which the court puts to the panel:

(1) Was the claimant adversely affected by any act or omission in the rendering of the medical services?

(2) What was the adverse effect?

(3) How did the medical services alter the natural course of the preexisting disorder for which the services were originally rendered?

(4) How did the medical condition existing after performance of the medical services differ from the medical condition which might otherwise have been expected?

(c) In any case in which the answer to one or more of the questions under (b) of this section depends upon the resolution of factual questions which are not the proper subject of expert opinion, the report shall so state and may answer questions based upon hypothetical facts that are fully and completely set out in the opinion. The report shall include copies of all written statements, opinions, or records relied upon by the panel and either a transcription or other record of any oral statements or opinions; shall specify any medical or scientific authority relied upon by the panel; and shall include the results of any physical or mental examination performed on the plaintiff. Each member shall sign the report and his signature constitutes his adoption of all statements and opinions contained in it; however, a member may, instead of signing the report, submit a concurring or dissenting report which complies with the requirements of this subsection, and a member may not attest to any portion of the report as to which he is not qualified to give expert testimony.

(d) No discovery may be undertaken in a case until the report of the expert advisory panel is received. However, the court may relax this prohibition upon a showing of good cause by any party. If the panel has not completed its report within the 30-day period prescribed in (b) of this section, the court may, upon application, grant it an additional 30 days.

(e) The report of the panel and any dissenting or concurring opinion are admissible in evidence to the same extent as though its contents were orally testified to by the person or persons preparing it. The court shall delete any portion that would not be admissible because of lack of foundation for opinion testimony, or otherwise. Either party may submit expert testimony to support or refute the report. The jury shall be instructed in general terms that the report shall be considered and evaluated in the same manner as any other expert testimony. Any member of the panel may be called by any party and may be cross-examined as to the contents of the report or of his dissenting or concurring opinion.

(f) Members of a panel are entitled to travel expenses and per diem in accordance with state law pertaining to members of boards and commissions for all time spent in preparing its report and matters incidental to it. If a panel member is called upon as a witness at trial or upon deposition, he is entitled to payment of an expert witness fee. All expenses incurred by the panel shall be paid by the state. However, in any case in which the court determines that a party has made a patently frivolous claim or a patently frivolous denial of liability, it shall order that all costs of the expert advisory panel be borne by the party making that claim or denial.

Amending Rule 82

do we need this

(g) Parties to the case and their counsel may not initiate communication out of court with members of the panel on the subject matter

of its inquiry and report or cause or solicit others to do so, except through ordinary discovery proceedings.

* Sec. 16. AS 09.55.540 is amended to read:

Sec. 09.55.540. BURDEN OF PROOF. (a) In a malpractice action based on the negligence or wilful misconduct of a health care provider [PHYSICIAN LICENSED UNDER AS 08.64, OR A DENTIST LICENSED UNDER AS 08.-36], the plaintiff has [SHALL HAVE] the burden of proving by a preponderance of the evidence

(1) the degree of knowledge or skill possessed or the degree of care ordinarily exercised under the circumstances, at the time of the act complained of, by health care providers in the field or specialty in which the defendant is practicing [BY PHYSICIANS OR DENTISTS PRACTICING THE SAME SPECIALTY IN SIMILAR COMMUNITIES TO THAT IN WHICH THE DEFENDANT PRACTICES];

(2) that the defendant either lacked this degree of knowledge or skill or failed to exercise this degree of care; and

(3) that as a proximate result of this lack of knowledge or skill or the failure to exercise this degree of care the plaintiff suffered injuries that would not otherwise have been incurred.

(b) In malpractice actions there is [SHALL BE] no presumption of negligence on the part of the defendant.

* Sec. 17. AS 09.55 is amended by adding a new section to read:

Sec. 09.55.546. AWARDS, COLLATERAL SOURCES. (a) In a malpractice action damages shall be awarded according to the principles of the common law. The fact finder in rendering its award for damages shall specify the amount awarded for each category of loss, computing loss of future earnings on a monthly basis. The court may enter a judgment that future damages be paid in whole or in part by periodic payments rather than by a lump sum payment; however, any part of the award which is paid

on periodic basis shall be increased annually in the same proportion as annual increases in the consumer price index for the community in which the claimant resides.

(c) Except when the collateral source is a federal program which by law must seek subrogation, an award to which a claimant is entitled may only cover damages which exceed any amounts received by the claimant as compensation for his injuries from collateral sources, whether private, group, or governmental, and whether contributory or noncontributory, except the death benefit paid under life insurance. Evidence of damages compensation by a collateral source, other than a federal program which must seek subrogation and the death benefit paid under life insurance, shall be credited against the award after the fact finder has rendered its award. Notwithstanding other provisions of state law and except as provided in this subsection, a collateral source does not have a right of subrogation.

* Sec. 18. AS 09.55.550 is amended to read:

Sec. 09.55.550. JURY INSTRUCTIONS. In health care [MEDICAL] malpractice actions the jury shall be instructed that the plaintiff has the burden of proving, by a preponderance of the evidence, the health care provider's negligence or wilful misconduct in accordance with sec. 540 of this chapter [OF THE PHYSICIAN OR DENTIST]. The jury shall be further instructed that injury alone does not raise a presumption of the health care provider's [PHYSICIAN'S OR DENTIST'S] negligence or misconduct.

* Sec. 19. AS 09.55 is amended by adding new sections to read:

Sec. 09.55.554. ORAL CONTRACTS. No cause of action against a health care provider arises for breach of an oral contract to provide a cure or achieve a specific medical result.

Sec. 09.55.556. INFORMED CONSENT. (a) A health care provider is

liable for failure to obtain the informed consent of a patient if the claimant establishes by a preponderance of the evidence that the provider has failed to inform the patient of common risks and reasonable alternatives to the proposed treatment or procedure, and that, but for that failure, the claimant would not have consented to the proposed treatment or procedure.

(b) It is a defense to any action for health care malpractice based upon an alleged failure to obtain such an informed consent that

(1) the risk not disclosed is too commonly known or is too remote to require disclosure;

(2) the patient stated to the health care provider that he would undergo the treatment or procedure regardless of the risk involved, or that he did not want to be informed of the matters to which he would be entitled to be informed;

(3) under the circumstances consent by or on behalf of the patient was not possible; or

(4) the health care provider, after considering all of the attendant facts and circumstances, used reasonable discretion as to the manner and extent to which the alternatives or risks were disclosed to the patient because he reasonably believed that the manner and extent of such a disclosure would reasonably be expected to adversely and substantially affect the patient's condition.

Sec. 09.55.560. DEFINITIONS. In secs. 530 - 560 of this chapter

(1) "health care provider" means a chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under AS 08.71; an optometrist licensed under AS 08.-72; a pharmacist licensed under AS 08.80; a physical therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a

psychologist and a psychological associate licensed under AS 08.86; and a hospital as defined in AS 18.20.130, including a governmentally owned or operated hospital;

(2) "panel" means an expert advisory panel established under sec. 536 of this chapter.

* Sec. 20. AS 09.65.090 is repealed and re-enacted to read:

Sec. 09.65.090. CIVIL LIABILITY FOR EMERGENCY AID. (a) A person, at a hospital or at any other location, who renders emergency care or emergency counseling to an injured, ill, or emotionally distraught person who reasonably appears to the person rendering the aid to be in immediate need of emergency aid in order to avoid serious harm or death is not liable for civil damages as a result of an act or omission in rendering emergency aid.

(b) This section does not preclude liability for civil damages as a result of gross negligence or reckless or intentional misconduct.

* Sec. 21 AS 18.20 is amended by adding new sections to read:

Sec. 18.20.045. INSURANCE REQUIRED. Every hospital, as a condition of licensure, shall submit to the department and maintain evidence of insurance against liability to inpatients and outpatients for malpractice issued by the Health Care Providers Indemnity Corporation, in amounts of not less than $200,000 per occurrence, and an aggregate liability per year of $1,000,000 minimum, and an additional $20,000 for each bed over 50 for which the hospital is licensed.

Sec. 18.20.075. RISK MANAGEMENT. (a) To be eligible for a license each hospital shall have in operation an internal risk management program which shall

(1) investigate the frequency and causes of adverse incidents in hospitals which cause injury to patients;

(2) develop and implement measures to minimize the risk of

injury to patients from adverse incidents; in developing these measures each hospital shall take into account recommendations of the Health Care Providers Indemnity Corporation, its medical staff, private underwriters, industry standards, experience of other hospitals, and recommendations of licensing boards of other health care providers; and

(3) analyze patient grievances which relate to patient care.

(b) The department shall adopt by regulation and submit to the legislative administrative regulation review committee prior to implementation standards for risk management programs in hospitals in the state which may vary according to the size of the hospital, the type of care offered by the hospital, and other factors found relevant by the department.

* Sec. 22. AS 18 is amended by adding a new chapter to read:

CHAPTER 23. HEALTH CARE SERVICES INFORMATION.

Sec. 18.23.010. LIMITATION ON LIABILITY FOR PERSONS PROVIDING INFORMATION TO REVIEW ORGANIZATION. (a) No person providing information to a review organization is subject to action for damages or other relief by reason of having furnished that information, unless the information is false and the person providing the information knew or had reason to know the information was false.

(b) No privilege of confidentiality arising from a physician-patient relationship may be invoked to withhold pertinent information from review by a review organization.

Sec. 18.23.020. LIMITATION ON LIABILITY FOR MEMBERS OF REVIEW ORGANIZATIONS. No person who is a member or employee of, or who acts in an advisory capacity to, or who furnishes counsel or services to, a review organization is liable for damages or other relief in an action brought by a person whose activities have been or are being scrutinized or reviewed by a review organization, by reason of his performance of a

duty, function or activity of the review organization, unless the performance of the duty, function or activity was motivated by malice toward the affected person. No person is liable for damages or other relief in an action by reason of his performance of a duty, function, or activity as a member of a review organization or by reason of a recommendation or action of the review organization when the person acts in the reasonable belief that his action or recommendation is warranted by facts known to him or to the review organization after reasonable efforts to ascertain the facts upon which the review organization's action or recommendation is made.

Sec. 18.23.030. CONFIDENTIALITY OF RECORDS OF REVIEW ORGANIZATION. (a) Except as provided in (b) of this section, all data and information acquired by a review organization, in the exercise of its duties and functions, shall be held in confidence, may not be disclosed to anyone except to the extent necessary to carry out one or more of the purposes of the review organization, and is not subject to subpoena or discovery. Except as provided in (b) of this section, no person described in sec. 20 of this chapter may disclose what transpired at a meeting of a review organization except to the extent necessary to carry out one or more of the purposes of a review organization, and the proceedings and records of a review organization are not subject to discovery or introduction into evidence in a civil action against a health care provider arising out of the matter which is the subject of consideration by the review organization. Information, documents, or records otherwise available from original sources are not immune from discovery or use in a civil action merely because they were presented during proceedings of a review organization, nor may a person who testified before a review organization or who is a member of it be prevented from testifying as to matters within his knowledge, but a witness may not be asked about his testimony

before a review organization or opinions formed by him as a result of its hearings, except as provided in (b) of this section.

(b) Testimony, documents, proceedings, records, and other evidence adduced before a review organization that are otherwise inaccessible under this section may be obtained by a health care provider who claims that denial is unreasonable or may be obtained under subpoena or discovery proceedings brought by a plaintiff who claims that information provided to a review organization was false and claims that the person providing the information knew or had reason to know the information was false.

(c) Nothing in this chapter prevents a person whose conduct or competence has been reviewed under this chapter from obtaining, for the purpose of appellate review of the action of the review organization, any testimony, documents, proceedings, records and other evidence adduced before the review organization.

Sec. 18.23.040. PENALTY FOR VIOLATION. Other than as authorized by sec. 30 of this chapter, a disclosure of data and information acquired by a review committee or of what transpired at a review meeting is a misdemeanor and punishable under AS 11.05.010.

Sec. 18.23.050. PROTECTION OF PATIENT. Nothing in this chapter relieves a person of liability which he has incurred or may incur to a person as a result of furnishing health care to the patient.

Sec. 18.23.060. PARTIES BOUND BY REVIEW. When a review organization reviews matters under sec. 70(5)(H) of this chapter no party is bound by a ruling of the organization in a controversy, dispute or question unless he agrees in advance, either specifically or generally, to be bound by the ruling.

Sec. 18.23.070. DEFINITIONS. In this chapter, unless the context otherwise requires,

(1) "administrative staff" means the staff of a hospital or clinic;

(2) "health care" means professional services rendered by a health care provider or an employee of a health care provider, and services furnished by a sanatorium, rest home, nursing home, boarding home or other institution for the hospitalization or care of human beings;

(3) "health care provider" means a chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under AS 08.71; an optometrist licensed under AS 08.-77; a pharmacist licensed under AS 08.80; a physical therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a psychologist and a psychological associate licensed under AS 08.86; and a hospital as defined in AS 18.20.130, including a governmentally owned or operated hospital;

(4) "professional service" means service rendered by a health care provider of the type he is licensed to render;

(5) "review organization" means a hospital governing body or a committee whose membership is limited to health care providers and administrative staff, except where otherwise provided for by state or federal law, and which is established by a hospital, by a clinic, by one or more state or local associations of health care providers, by an organization of health care providers from a particular area or medical institution, or by a professional standards review organization established under 42 U.S.C., sec. 1320(c)(1) et seq., to gather and review information relating to the care and treatment of patients for the purposes of

(A) evaluating and improving the quality of health care

rendered in the area or medical institution;

(B) reducing morbidity or mortality;

(C) obtaining and disseminating statistics and information relative to the treatment and prevention of diseases, illness and injuries;

(D) developing and publishing guidelines showing the norms of health care in the area or medical institution;

(E) developing and publishing guidelines designed to keep the cost of health care within reasonable bounds;

(F) reviewing the quality or cost of health care services provided to enrollees of health maintenance organizations;

(G) acting as a professional standards review organization under 42 U.S.C., sec. 1320(c)(1) et seq.;

(H) reviewing, ruling on, or advising on controversies, disputes or questions between

(i) a health insurance carrier or health maintenance organization and one or more of its insured or enrollees;

(ii) a professional licensing board, acting under its powers of discipline or license revocation or suspension, and a health care provider licensed by it when the matter is referred to a review organization by the professional licensing board;

(iii) a health care provider and his patients concerning diagnosis, treatment or care, or a charge or fee;

(iv) a health care provider and a health insurance carrier or health maintenance organization concerning a charge or fee for health care services provided to an insured or enrollee; or

(v) a health care provider or his patients and the federal or a state or local government, or an agency of the federal or a state or local government;

(I) acting on the recommendation of a credential review committee or a grievance committee.

* Sec. 23. AS 21 is amended by adding a new chapter to read:

CHAPTER 88. HEALTH CARE PROVIDERS INSURANCE.

ARTICLE 1. PURPOSE.

Sec. 21.88.010. PURPOSE OF CHAPTER. It is the purpose of this chapter to provide a means of assuring all health care providers continuous, affordable and adequate insurance against liability for medical negligence by concentrating all such insurance in one entity and to distribute equitably the cost of the insurance among the health care providers insured.

ARTICLE 2. INDEMNITY CORPORATION.

Sec. 21.88.020. CORPORATION CREATED. There is created the Alaska Health Care Providers Indemnity Corporation which is a public corporation having a legal existence independent of and separate from the state. Obligations issued by the corporation do not constitute a debt liability or obligation of the state or a pledge of full faith and credit of the state.

Sec. 21.88.030. CORPORATION BOARD OF GOVERNORS. (a) The corporation shall exercise its powers through a board of governors which shall be appointed by the director as provided in (b) of this section.

(b) The appointments to the board of governors shall be Alaska residents as follows:

(1) two members of the Alaska State Medical Association appointed from a list of no less than five persons recommended by the governing board of that association; one of the members appointed shall

be engaged in group practice in a clinic of six or more physicians licensed in the state;

(2) one member of the Alaska State Hospital Association appointed from a list of no less than three persons recommended by the governing board of that association;

(3) two professionals in the insurance field;

(4) two persons who are neither health care providers nor affiliated with the insurance industry.

(c) The term of office of each governor is three years, except that the director shall designate three initially appointed governors to serve for one year and two initially appointed governors to serve for two years.

(d) Upon the expiration of the term of a governor, the director shall appoint a successor who shall be from the same class described in (b) of this section as the governor whose term has expired.

(e) Upon a governor's early resignation, death or inability to serve, the director shall appoint a successor from the same class defined in (b) of this section as the terminating governor, who shall serve for the unexpired term.

(f) The director or his designee is not a voting member of the board of governors but shall be notified by the board of and have the right to attend and participate in all meetings and proceedings of the board.

(g) Members of the board of governors receive $100 per day when the board meets, and travel expenses as allowed by law.

Sec. 21.38.040. CORPORATION PLAN OF OPERATION. (a) Within 30 days after the effective date of this chapter, the board of governors shall prepare and submit to the director for approval a plan of operation which provides for the fair, reasonable and equitable administra-

tion of the affairs of the corporation and the discharge of the purposes for which it is created. The plan and any amendments of it become effective upon the director's approval. If the board of governors has failed to submit a plan of operation, or if at any subsequent time the board of governors fails to submit suitable amendments to the plan, the director shall, after notice and hearing, adopt and promulgate a plan of operation or amendments which are necessary or advisable to effectuate the provisions of this chapter. Adoption of the plan is not subject to the Administrative Procedure Act (AS 44.62).

(b) The plan of operation shall

(1) establish the procedures by which all the powers and duties of the corporation specified in sec. 50 of this chapter shall be performed;

(2) establish procedures for handling assets and discharging liabilities of the corporation;

(3) establish regular places and times for meetings of the board of governors;

(4) establish procedures for records to be kept of all financial transactions of the corporation, its agents, and the board of governors;

(5) establish procedures for awarding contracts to carry out the provisions of this chapter;

(6) establish the procedures for issuing contracts of insurance as provided in sec. 50 of this chapter and for the determination of rates;

(7) contain additional provisions necessary or proper for the execution of the powers and duties of the corporation.

Sec. 21.88.050. POWERS AND DUTIES OF THE CORPORATION. (a) The corporation shall

(1) issue to all health care providers who pay the premiums for it a contract on an occurrence basis indemnifying the health care provider and his employees who are health care providers against loss by reason of liability and agreeing to tender on behalf of the health care provider and his employees who are health care providers a defense of the health care provider in a proceeding brought under AS 09.55.530 - 09.55.560; the limit of liability shall be no less than the minimum liability coverage required to be maintained as stated in AS 08.64.21, and AS 18.20.045; the contract shall cover the defense against but need not indemnify a claim for punitive damages; the contract shall cover claims against health care providers

(A) that arise out of professional services performed by the health care provider during the period for which the premium is paid; and

(B) at the option of the health care provider, and for an additional premium, that arise out of services performed by the health care provider after December 31, 1974 for any period in which the health care provider had no malpractice insurance, except that coverage will not be provided for a claim already filed or of which the health care provider has or reasonably should have had notice at the time retroactive insurance was purchased;

(2) charge a premium for the protection provided by the contracts issued under (1) of this subsection which shall be determined by the board of governors in accordance with sec. 70 of this chapter and subject to the approval of the director;

(3) comply with or be subject to AS 21.06.090, 21.06.120, 21.06.140, 21.06.160, 21.06.250; AS 21.09.180, 21.09.190, 21.09.200, 21.09.250, 21.09.280; AS 21.12.020(b), (c), (d), and (e); and chs. 18, 21, 24, and 36 of this title;

(4) carry out the obligations of the contracts issued under (1) of this subsection by defending all covered claims made against insured health care providers and by paying all liabilities which are finally adjudicated against the insured health care provider or which may in the opinion of the corporation reasonably be expected to be finally adjudicated against the health care provider to the extent of the contract obligation;

(5) provide coverage to health care providers for liability under AS 09.55.530 - 09.55.560 in excess of the minimum limits required for licensure as a health care provider, but limited to $1,000,000 for individual health care providers and $5,000,000 for hospitals, if there is a finding by the director that this coverage is unavailable at a reasonable cost and that this coverage can be made available at a reasonable cost through the corporation; if this paragraph is implemented, each health care provider obtaining excess coverage up to these amounts shall obtain it from the corporation, and the corporation may procure reinsurance for all the risks incurred by contracts issued under this paragraph from the private market.

(b) The corporation may

(1) employ or retain persons, individual or corporate, to discharge its obligations and shall pay, by way of salary, wage, fee, or commission, reasonable compensation for those services; employees of the corporation are not considered state employees;

(2) provide coverage to health care providers for other hazards including malpractice liability insurance for other licensed health care providers employed by the physician or hospital [if there is a finding by the director that this coverage is otherwise unavailable by reason of the operation of the corporation;]

(3) borrow funds from the revolving loan fund established

under sec. 110 of this chapter when necessary for the corporation to maintain adequate reserves; loans from the fund shall be repaid within four years after the loan is made at an annual interest rate of seven percent; ~~and~~ (~~through~~ from prospective ~~rate~~ premium increases;)

(4) negotiate and become a party to those contracts as are necessary to carry out the purposes of the corporation;

(5) sue or be sued in the name of the corporation;

(6) negotiate and become a party to contracts for management services for the corporation;

(7) provide risk management advice and services to hospitals;

(8) perform all other acts necessary and proper to effectuate the corporation.

Sec. 21.88.060. STATISTICS. The corporation shall collect, maintain and report information concerning claims against health care providers. All such information shall be on forms prescribed by the director and shall be sufficient to enable a proper determination of losses for rate making and to identify causes and sources of loss for loss control. No less often than annually the corporation shall report to the director, which report shall be kept available to the public, the number and amount of claims filed, reserved, paid, settled and adjudicated during the year, the premiums paid to, and the expenses incurred by the corporation during the year. The director may require that supplemental reports include the names of insured health care providers and the claimants; however, no reports which become publicly available may include the names of health care providers or claimants or information that will permit by inference the identity of specific health care providers or claimants. All information shall be made available to the appropriate licensing boards or agencies.

Sec. 21.88.070. RATES. Rates and rating plans used by the corpora-

tion for the policies issued shall be determined for each category of health care provider in accordance with all of the following:

(1) rates for physicians shall be set as a function of the physician's medical revenue; [in this paragraph medical revenue means the physician's revenue from the practice of medicine as reported when paying the tax levied under AS 43.70;]

(2) rates for hospitals shall be set as a function of the number of permanent beds in the hospital; Average rate of occupancy

(3) a minimum rate may be set for each category of health care provider or discipline or classification within the license category;

(4) rates may not be excessive; rates are excessive if, after a period of time and with respect to an amount of gross premium which are actuarially credible, the premiums exceed losses incurred by the corporation, including losses paid, reserves for claims reported and unpaid, reserves for claims incurred during the policy period and not reported but reasonably expected to be reported within three years after the date of the incident, and reasonable expenses for the operation of the corporation;

(5) rates may not be inadequate; rates are inadequate if, based on available actuarial data, the premiums to be paid by the health care providers are or may reasonably be expected to be insufficient to pay for losses incurred by the corporation, including claims paid, reserves for claims reported and unpaid, reserves for claims incurred during the policy year and not reported but reasonably expected to be reported within three years after the date of the incident, and reasonable expenses for the operation of the corporation;

(6) rates shall be adjusted at least as often as annually;

(7) rates for any policy year shall be calculated to include

the adjustment for actual experience of the corporation as developed for the preceding four policy years;

(8) in considering losses to be incurred, changes in the law and national, regional and local trends in medical negligence awards may be considered;

(9) income from investment of reserves shall be considered;

(10) disciplines and classifications within the license categories of health care providers shall be considered;

(11) individual risk underwriting factors shall be considered;

(12) ~~an~~ amounts necessary sufficient to repay any loan obligation shall be considered.

Sec. 21.88.080. REQUIRED INSURANCE; CANCELLATION. The corporation shall provide insurance to all health care providers otherwise eligible for licensure under AS 08.64 and AS 18.20. The corporation may provide for installment payment of premiums in which event each installment is due by the date specified. The corporation may cancel any of its policies in the event of nonpayment of any premium or installment on a premium or other charge by mailing or delivering to the insured at the address shown on the policy and to the agency of the state issuing the insured's license written notice stating when, not less than 10 days after notice is received by the insured, the cancellation is effective.

ARTICLE 3. LOAN FUND.

Sec. 21.88.110. FUND ESTABLISHED. (a) There is in the Department of Commerce and Economic Development a medical malpractice liability revolving loan fund to be administered by the director of insurance.

(b) Loans shall be made from the fund to the corporation upon certification by the director that a loan is necessary for the corporation to maintain adequate reserves or for initial costs of operation. If a loan is made to the corporation from the fund, the corporation shall issue a note to the fund pledging the premiums collected in the

future as security for the loan.

(c) Loans from the fund shall be repaid by the corporation within four years at an annual interest rate of seven per cent.

(d) The director may sell [or transfer] at par value to the Department of Revenue the notes held by the Department of Commerce and Economic Development as security for loans made under this section. The Department of Revenue shall purchase all the notes offered until the current principal amount of the notes purchased and held by the Department of Revenue equals $5,000,000.

ARTICLE 4. GENERAL PROVISIONS.

Sec. 21.88.300. DEFINITIONS. As used in this chapter,

(1) "corporation" means the Health Care Providers Indemnity Corporation;

(2) "director" means the director of the division of insurance for the State of Alaska;

(3) "fund" means the medical malpractice liability revolving loan fund;

(4) "health care provider" means a physician licensed under AS 08.64 and a hospital as defined in AS 18.20.130, including a hospital or health care facility owned or operated by the state or one or more of its political subdivisons;

(5) "occurrence basis insurance" is insurance against claims arising during the period of the policy coverage.

* Sec. 24. AS 08.64.365 is repealed.

* Sec. 25. This Act takes effect 30 days after enactment.

(1.) Ad Damnum Clause - Calif. has it
(2.) Advance Payment

Original sponsor: Rules Committee by request of the Governor

Offered: 2/24/76

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 574

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to liability for the provision of health care services; changing the Alaska Supreme Court's Rules of Civil Procedure; and providing for an effective date."

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

* Section 1. AS 08.01.050 is amended by adding a new paragraph to read:

(19) provide investigative services to the boards established under chs. 20, 32, 36, 64, 68, 71, 72, 80, 84, and 86 of this title, for the purpose of assisting those boards in matters of professional discipline.

Add public member to each Board

* Sec. 2. AS 08.20 is amended by adding new sections to read:

Sec. 08.20.115. INSURANCE REQUIRED. (a) To be eligible for an active license under this chapter, a person must maintain insurance against liability to patients for chiropractic malpractice in limits of not less than $200,000 per occurrence and $600,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

(b) The director of insurance may require all persons licensed under this chapter to obtain the insurance required under (a) of this section from the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for chiropractors is impairing the delivery of chiropractic services to the public.

Sec. 08.20.175. LIMITS OR CONDITIONS ON LICENSE; REPRIMAND. (a)

Give immunity to Boards

apply this concept to

add health

In addition to action under sec. 170 of this chapter, upon a finding that by reason of demonstrated lack of competence, experience, or education the authority to practice chiropractic should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 3. AS 08.32 is amended by adding new sections to read:

Sec. 08.32.015. INCURANCE REQUIRED. (a) To be eligible for an active licence under this chapter, a person must maintain insurance against liability to patients for malpractice in limits of not less than $100,000 per occurrence and $300,000 aggregate liability per year. This requirement is satisfied if the person's employer maintains insurance for him in the required amounts.

(b) The director of insurance may require all persons licensed under this chapter to obtain the insurance required under (a) of this section from the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for dental hygienists is impairing the delivery of dental hygienists' services to the public.

Sec. 08.32.165. LIMITS OR CONDITIONS ON LICENSE. (a) In addition to action under sec. 160 of this chapter, upon a finding that by reason of demonstrated lack of competence, experience, or education the authority to practice dental hygiene should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any

action taken by the board under this section.

* Sec. 4. AS 08.36 is amended by adding new sections to read:

Sec. 08.36.115. INSURANCE REQUIRED. (a) To be eligible for an active license under this chapter, a person must maintain insurance against liability to patients for dental malpractice in limits of not less than $200,000 per occurrence and $600,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

(b) The director of insurance may require all persons licensed under this chapter to obtain the insurance required under (a) of this section from the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for dentists is impairing the delivery of dentist services to the public.

Sec. 08.36.325. LIMITS OR CONDITIONS ON LICENSE. (a) In addition to action under sec. 320 of this chapter, upon a finding that by reason of demonstrated lack of competence, experience, or education the authority to practice dentistry should be limited or conditioned or the practitioner disciplined, the board may censure, on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 5. AS 08.64 is amended by adding new sections to read:

Sec. 08.64.215. INSURANCE REQUIRED. (a) To be eligible for an active license under this chapter, a person must maintain insurance issued by the Health Care Providers Indemnity Corporation against liability to patients for medical malpractice in limits of not less than $200,000 per occurrence and $600,000 aggregate liability per year. This

Add to all provisions

requirement is satisfied if a person's employer maintains insurance for him from the Health Care Providers Indemnity Corporation in the required amounts.

(b) The director of insurance or his designee may waive the requirement in (a) of this section for a person if that person furnishes satisfactory evidence of his having other insurance providing coverage in amounts not less than those specified in (a) of this section. No waiver granted under this subsection may extend beyond the normal expiration date of the person's insurance policy or January 1, 1977, whichever occurs first.

Sec. 08.64.312. CONTINUING EDUCATION REQUIREMENTS. (a) The board shall promote a high degree of competence in the practice of medicine by requiring every physician licensed in the state to fulfill continuing education requirements.

(b) Before a license may be renewed the licensee shall submit evidence to the board that continuing education requirements prescribed by regulations adopted by the board have been met.

(c) The board may exempt a physician from the requirements of (b) of this section upon an application by him giving evidence satisfactory to the board that he is unable to comply with the requirements because of extenuating circumstances. However, no person may be exempted from more than 15 hours of continuing education in a five-year period.

Sec. 08.64.325. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 330 of this chapter, upon a finding that by reason of demonstrated lack of competence, experience, or education the authority to practice under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 6. AS 08.68 is amended by adding new sections to read:

Sec. 08.68.165. INSURANCE REQUIRED. (a) To be eligible for an active license as a nurse under this chapter, a person must maintain insurance against liability to patients for malpractice in limits of not less than $100,000 per occurrence and $300,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

(b) The director of insurance may require all persons licensed under this chapter to obtain the insurance required under (a) of this section from the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for nurses is impairing the delivery of nurse services to the public.

Sec. 08.68.275. LIMITS OR CONDITIONS ON LICENSE. (a) In addition to action under sec. 270 of this chapter, upon a finding that by reason of demonstrated lack of competence, experience, or education the authority to practice nursing should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 7. AS 08.71 is amended by adding new sections to read:

Sec. 08.71.085. INSURANCE REQUIRED. (a) To be eligible for an active license under this chapter, a person must maintain insurance against liability to patients for malpractice in limits of not less than $100,000 per occurrence and $300,000 aggregate liability per year. This

requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

(b) The director of insurance may require that all persons licensed under this chapter obtain the insurance required under (a) of this section if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for dispensing opticians is impairing delivery of the services of dispensing opticians to the public.

Sec. 08.71.175. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 170 of this chapter, upon a finding that by reason of demonstrated lack of competence, experience, or education the authority to practice as a dispensing optician under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by procedure or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 8. AS 08.72 is amended by adding new sections to read:

Sec. 08.72.115. INSURANCE REQUIRED. (a) To be eligible for an active license under this chapter, a person must maintain insurance against liability to patients for malpractice in limits of not less than $100,000 per occurrence and $300,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

(b) The director of insurance may require all persons licensed under this chapter to obtain insurance required under (a) of this section from the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for optometrists is impairing delivery of optome-

trist services to the public.

Sec. 08.72.255. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under secs. 240 and 250 of this chapter, upon a finding that by reason of demonstrated lack of competence, experience, or education the authority to practice optometry under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 9. AS 80.80 is amended by adding new sections to read:

Sec. 08.80.115. INSURANCE REQUIRED. (a) To be eligible for active registration as a pharmacist, a person must maintain insurance against liability to patients for malpractice in limits of not less than $100,000 per occurrence and $300,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

(b) The director of insurance may require that all persons licensed under this chapter obtain the insurance required under (a) of this section from the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for pharmacists is impairing delivery of pharmacist services to the public.

Sec. 08.80.265. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 260 of this chapter, upon a finding that by reason of demonstrated lack of competence, experience, or education the authority to practice pharmacy under this chapter should be limited or conditioned or the practitioner disciplined, the board may

reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 10. AS 08.84 is amended by adding new sections to read:

Sec. 08.84.035. INSURANCE REQUIRED. (a) To be eligible for active registration as a physical therapist under this chapter, a person must maintain insurance against liability to patients for malpractice in limits of not less than $100,000 per occurrence and $300,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

(b) The director of insurance may require that all persons licensed under this chapter obtain the insurance required in (a) of this section from the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for physical therapists is impairing delivery of physical therapist services to the public.

Sec. 08.84.185. LIMITS OR CONDITIONS ON LICENSE. (a) In addition to action under sec. 180 of this chapter, upon a finding that by reason of demonstrated lack of competence, experience, or education the authority to practice physical therapy should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 11. AS 08.86.120 is amended to read:

Sec. 08.86.120. ENTITLEMENT TO LICENSURE A person who passes the examination given by the board <u>and possesses the insurance required by</u>

sec. 125 of this chapter is entitled to be licensed as a psychologist.

* Sec. 12. AS 08.86.160 is amended to read:

Sec. 08.86.160. ASSOCIATES: ENTITLEMENT TO LICENSURE. A person who passes the examination given by the board and who possesses insurance in accordance with sec. 125 of this chapter is entitled to be licensed as a psychological associate.

* Sec. 13. AS 08.86 is amended by adding new sections to read:

Sec. 08.86.125. INSURANCE REQUIRED. (a) To be eligible for active licensure as a psychologist under this chapter, a person must maintain insurance against liability to patients for malpractice in limits of not less than $100,000 per occurrence and $300,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

(b) The director of insurance may require all persons licensed under this chapter to obtain insurance required under (a) of this section from the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for psychologists is impairing the delivery of psychologist services to the public.

Sec. 08.86.220. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) Upon a finding that by reason of demonstrated lack of competence, experience, or education the authority to practice psychology or as a psychological associate under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure place on probation, restrict practice by time, specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 14. AS 09.55.530 is repealed and re-enacted to read:

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ARTICLE 6. MALPRACTICE ACTIONS.

Sec. 09.55.530. DECLARATION OF PURPOSE. The legislature finds that the health of the people is threatened by curtailment of health care services due to the difficulty in obtaining adequate malpractice insurance at a reasonable cost. It is the purpose of secs. 530 - 560 of this chapter to protect the health and safety of the people of this state by establishing procedural aids for handling malpractice claims which will help ensure the ready availability of adequate insurance at a reasonable cost and which will be fair to all parties concerned.

* Sec. 15. AS 09.55 is amended by adding a new section to read:

Sec. 09.55.536. EXPERT ADVISORY PANEL. (a) In any action for damages due to personal injury or death based upon the provision of professional services by a health care provider, the court shall establish a three-person expert advisory panel in accordance with this section. When the action is filed the court shall, by order, determine the professions or specialties to be represented on the expert advisory panel and shall advise each party of the professions or specialties to be represented, giving the parties the opportunity to object or make suggestions. The court may in its discretion conduct other preliminary proceedings relative to the composition of the panel as it considers appropriate.

(b) The expert advisory panel may compel the attendance of witnesses, interview the parties and physically examine the injured person if alive, consult with the specialists or learned works they consider appropriate, and compel the production of and examine all relevant hospital, medical, or other records or materials relating to the health care treatment. The panel may meet in camera, but shall maintain a record of any testimony or oral statements of witnesses, and shall keep copies of all written statements and opinions it receives. Not less

than 30 days after selection of the panel, it shall make a written report to the parties and to the court, substantially answering the following questions in addition to any other question which the court puts to the panel:

(1) Was the claimant adversely affected by any act or omission in the rendering of the medical services?

(2) What was the adverse effect?

(3) How did the medical services alter the natural course of the preexisting disorder for which the services were originally rendered?

(4) How did the medical condition existing after performance of the medical services differ from the medical condition which might otherwise have been expected?

(c) In any case in which the answer to one or more of the questions under (b) of this section depends upon the resolution of factual questions which are not the proper subject of expert opinion, the report shall so state and may answer questions based upon hypothetical facts that are fully and completely set out in the opinion. The report shall include copies of all written statements, opinions, or records relied upon by the panel and either a transcription or other record of any oral statements or opinions; shall specify any medical or scientific authority relied upon by the panel; and shall include the results of any physical or mental examination performed on the plaintiff. Each member shall sign the report and his signature constitutes his adoption of all statements and opinions contained in it; however, a member may, instead of signing the report, submit a concurring or dissenting report which complies with the requirements of this subsection, and a member may not attest to any portion of the report as to which he is not qualified to give expert testimony.

(d) No discovery may be undertaken in a case until the report of the expert advisory panel is received. However, the court may relax this prohibition upon a showing of good cause by any party. If the panel has not completed its report within the 30-day period prescribed in (b) of this section, the court may, upon application, grant it an additional 30 days.

(e) The report of the panel and any dissenting or concurring opinion are admissible in evidence to the same extent as though its contents were orally testified to by the person or persons preparing it. The court shall delete any portion that would not be admissible because of lack of foundation for opinion testimony, or otherwise. Either party may submit expert testimony to support or refute the report. The jury shall be instructed in general terms that the report shall be considered and evaluated in the same manner as any other expert testimony. Any member of the panel may be called by any party and may be cross-examined as to the contents of the report or of his dissenting or concurring opinion.

(f) Members of a panel are entitled to travel expenses and per diem in accordance with state law pertaining to members of boards and commissions for all time spent in preparing its report and matters incidental to it. If a panel member is called upon as a witness at trial or upon deposition, he is entitled to payment of an expert witness fee. All expenses incurred by the panel shall be paid by the state. However, in any case in which the court determines that a party has made a patently frivolous claim or a patently frivolous denial of liability, it shall order that all costs of the expert advisory panel be borne by the party making that claim or denial.

(g) Parties to the case and their counsel may not initiate communication out of court with members of the panel on the subject matter

of its inquiry and report or cause or solicit others to do so, except through ordinary discovery proceedings.

* Sec. 16. AS 09.55.540 is amended to read:

Sec. 09.55.540. BURDEN OF PROOF. (a) In a malpractice action based on the negligence or wilful misconduct of a health care provider [PHYSICIAN LICENSED UNDER AS 08.64, OR A DENTIST LICENSED UNDER AS 08.36], the plaintiff has [SHALL HAVE] the burden of proving by a preponderance of the evidence

(1) the degree of knowledge or skill possessed or the degree of care ordinarily exercised under the circumstances, at the time of the act complained of, by health care providers in the field or specialty in which the defendant is practicing [BY PHYSICIANS OR DENTISTS PRACTICING THE SAME SPECIALTY IN SIMILAR COMMUNITIES TO THAT IN WHICH THE DEFENDANT PRACTICES];

(2) that the defendant either lacked this degree of knowledge or skill or failed to exercise this degree of care; and

(3) that as a proximate result of this lack of knowledge or skill or the failure to exercise this degree of care the plaintiff suffered injuries that would not otherwise have been incurred.

(b) In malpractice actions there is [SHALL BE] no presumption of negligence on the part of the defendant.

* Sec. 17. AS 09.55 is amended by adding a new section to read:

Sec. 09.55.546. AWARDS, COLLATERAL SOURCES. (a) In a malpractice action damages shall be awarded according to the principles of the common law. The fact finder in rendering its award for damages shall specify the amount awarded for each category of loss, computing loss of future earnings on a monthly basis. The court may enter a judgment that future damages be paid in whole or in part by periodic payments rather than by a lump sum payment; however, any part of the award which is paid

exhaustion of benefits problem

on periodic basis shall be increased annually in the same proportion as annual increases in the consumer price index for the community in which the claimant resides.

(c) Except when the collateral source is a federal program which by law must seek subrogation, an award to which a claimant is entitled may only cover damages which exceed any amounts received by the claimant as compensation for his injuries from collateral sources, whether private, group, or governmental, and whether contributory or noncontributory, except the death benefit paid under life insurance. Evidence of damages compensation by a collateral source, other than a federal program which must seek subrogation and the death benefit paid under life insurance, shall be credited against the award after the fact finder has rendered its award. Notwithstanding other provisions of state law and except as provided in this subsection, a collateral source does not have a right of subrogation.

* Sec. 18. AS 09.55.550 is amended to read:

Sec. 09.55.550. JURY INSTRUCTIONS. In health care [MEDICAL] malpractice actions the jury shall be instructed that the plaintiff has the burden of proving, by a preponderance of the evidence, the health care provider's negligence or wilful misconduct in accordance with sec. 540 of this chapter [OF THE PHYSICIAN OR DENTIST]. The jury shall be further instructed that injury alone does not raise a presumption of the health care provider's [PHYSICIAN'S OR DENTIST'S] negligence or misconduct.

* Sec. 19. AS 09.55 is amended by adding new sections to read:

Sec. 09.55.554. ORAL CONTRACTS. No cause of action against a health care provider arises for breach of an oral contract to provide a cure or achieve a specific medical result.

Sec. 09.55.556. INFORMED CONSENT. (a) A health care provider is

liable for failure to obtain the informed consent of a patient if the claimant establishes by a preponderance of the evidence that the provider has failed to inform the patient of common risks and reasonable alternatives to the proposed treatment or procedure, and that, but for that failure, the claimant would not have consented to the proposed treatment or procedure.

(b) It is a defense to any action for health care malpractice based upon an alleged failure to obtain such an informed consent that

(1) the risk not disclosed is too commonly known or is too remote to require disclosure;

(2) the patient stated to the health care provider that he would undergo the treatment or procedure regardless of the risk involved, or that he did not want to be informed of the matters to which he would be entitled to be informed;

(3) under the circumstances consent by or on behalf of the patient was not possible; or

(4) the health care provider, after considering all of the attendant facts and circumstances, used reasonable discretion as to the manner and extent to which the alternatives or risks were disclosed to the patient because he reasonably believed that the manner and extent of such a disclosure would reasonably be expected to adversely and substantially affect the patient's condition.

Sec. 09.55.560. DEFINITIONS. In secs. 530 - 560 of this chapter

(1) "health care provider" means a chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under AS 08.71; an optometrist licensed under AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a

Not a real problem

psychologist and a psychological associate licensed under AS 08.86; and a hospital as defined in AS 18.20.130, including a governmentally owned or operated hospital;

(2) "panel" means an expert advisory panel established under sec. 536 of this chapter.

* Sec. 20. AS 09.65.090 is repealed and re-enacted to read:

Sec. 09.65.090. CIVIL LIABILITY FOR EMERGENCY AID. (a) A person, at a hospital or at any other location, who renders emergency care or emergency counseling to an injured, ill, or emotionally distraught person who reasonably appears to the person rendering the aid to be in immediate need of emergency aid in order to avoid serious harm or death is not liable for civil damages as a result of an act or omission in rendering emergency aid.

(b) This section does not preclude liability for civil damages as a result of gross negligence or reckless or intentional misconduct.

* Sec. 21. AS 18.20 is amended by adding new sections to read:

Sec. 18.20.045. INSURANCE REQUIRED. Every hospital, as a condition of licensure, shall submit to the department and maintain evidence of insurance against liability to inpatients and outpatients for malpractice issued by the Health Care Providers Indemnity Corporation, in amounts of not less than $200,000 per occurrence, and an aggregate liability per year of $1,000,000 minimum, and an additional $20,000 for each bed over 50 ~~for which the hospital is licensed~~.

Sec. 18.20.075. RISK MANAGEMENT. (a) To be eligible for a license each hospital shall have in operation an internal risk management program which shall

(1) investigate the frequency and causes of adverse incidents in hospitals which cause injury to patients;

(2) develop and implement measures to minimize the risk of

Add waiver for existing policy

injury to patients from adverse incidents; in developing these measures each hospital shall take into account recommendations of the Health Care Providers Indemnity Corporation, its medical staff, private underwriters, industry standards, experience of other hospitals, and recommendations of licensing boards of other health care providers; and

(3) analyze patient grievances which relate to patient care.

(b) The department shall adopt by regulation and submit to the legislative administrative regulation review committee prior to implementation standards for risk management programs in hospitals in the state which may vary according to the size of the hospital, the type of care offered by the hospital, and other factors found relevant by the department.

* Sec. 22. AS 18 is amended by adding a new chapter to read:

CHAPTER 23. HEALTH CARE SERVICES INFORMATION.

Sec. 18.23.010. LIMITATION ON LIABILITY FOR PERSONS PROVIDING INFORMATION TO REVIEW ORGANIZATION. (a) No person providing information to a review organization is subject to action for damages or other relief by reason of having furnished that information, unless the information is false and the person providing the information knew or had reason to know the information was false.

(b) No privilege of confidentiality arising from a physician-patient relationship may be invoked to withhold pertinent information from review by a review organization.

Sec. 18.23.020. LIMITATION ON LIABILITY FOR MEMBERS OF REVIEW ORGANIZATIONS. No person who is a member or employee of, or who acts in an advisory capacity to, or who furnishes counsel or services to, a review organization is liable for damages or other relief in an action brought by a person whose activities have been or are being scrutinized or reviewed by a review organization, by reason of his performance of a

duty, function or activity of the review organization, unless the performance of the duty, function or activity was motivated by malice toward the affected person. No person is liable for damages or other relief in an action by reason of his performance of a duty, function, or activity as a member of a review organization or by reason of a recommendation or action of the review organization when the person acts in the reasonable belief that his action or recommendation is warranted by facts known to him or to the review organization after reasonable efforts to ascertain the facts upon which the review organization's action or recommendation is made.

Sec. 18.23.030. CONFIDENTIALITY OF RECORDS OF REVIEW ORGANIZATION. (a) Except as provided in (b) of this section, all data and information acquired by a review organization, in the exercise of its duties and functions, shall be held in confidence, may not be disclosed to anyone except to the extent necessary to carry out one or more of the purposes of the review organization, and is not subject to subpoena or discovery. Except as provided in (b) of this section, no person described in sec. 20 of this chapter may disclose what transpired at a meeting of a review organization except to the extent necessary to carry out one or more of the purposes of a review organization, and the proceedings and records of a review organization are not subject to discovery or introduction into evidence in a civil action against a health care provider arising out of the matter which is the subject of consideration by the review organization. Information, documents, or records otherwise available from original sources are not immune from discovery or use in a civil action merely because they were presented during proceedings of a review organization, nor may a person who testified before a review organization or who is a member of it be prevented from testifying as to matters within his knowledge, but a witness may not be asked about his testimony

before a review organization or opinions formed by him as a result of its hearings, except as provided in (b) of this section.

(b) Testimony, documents, proceedings, records, and other evidence adduced before a review organization that are otherwise inaccessible under this section may be obtained by a health care provider who claims that denial is unreasonable or may be obtained under subpoena or discovery proceedings brought by a plaintiff who claims that information provided to a review organization was false and claims that the person providing the information knew or had reason to know the information was false.

(c) Nothing in this chapter prevents a person whose conduct or competence has been reviewed under this chapter from obtaining, for the purpose of appellate review of the action of the review organization, any testimony, documents, proceedings, records and other evidence adduced before the review organization.

Sec. 18.23.040. PENALTY FOR VIOLATION. Other than as authorized by sec. 30 of this chapter, a disclosure of data and information acquired by a review committee or of what transpired at a review meeting is a misdemeanor and punishable under AS 11.05.010.

Sec. 18.23.050. PROTECTION OF PATIENT. Nothing in this chapter relieves a person of liability which he has incurred or may incur to a person as a result of furnishing health care to the patient.

Sec. 18.23.060. PARTIES BOUND BY REVIEW. When a review organization reviews matters under sec. 70(5)(H) of this chapter no party is bound by a ruling of the organization in a controversy, dispute or question unless he agrees in advance, either specifically or generally, to be bound by the ruling.

Sec. 18.23.070. DEFINITIONS. In this chapter, unless the context otherwise requires,

(1) "administrative staff" means the staff of a hospital or clinic;

(2) "health care" means professional services rendered by a health care provider or an employee of a health care provider, and services furnished by a sanatorium, rest home, nursing home, boarding home or other institution for the hospitalization or care of human beings;

(3) "health care provider" means a chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under AS 08.71; an optometrist licensed under AS 08.-72; a pharmacist licensed under AS 08.80; a physical therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a psychologist and a psychological associate licensed under AS 08.86; and a hospital as defined in AS 18.20.130, including a governmentally owned or operated hospital;

(4) "professional service" means service rendered by a health care provider of the type he is licensed to render;

(5) "review organization" means a hospital governing body or a committee whose membership is limited to health care providers and administrative staff, except where otherwise provided for by state or federal law, and which is established by a hospital, by a clinic, by one or more state or local associations of health care providers, by an organization of health care providers from a particular area or medical institution, or by a professional standards review organization established under 42 U.S.C., sec. 1320(c)(1) et seq., to gather and review information relating to the care and treatment of patients for the purposes of

(A) evaluating and improving the quality of health care

rendered in the area or medical institution;

(B) reducing morbidity or mortality;

(C) obtaining and disseminating statistics and information relative to the treatment and prevention of diseases, illness and injuries;

(D) developing and publishing guidelines showing the norms of health care in the area or medical institution;

(E) developing and publishing guidelines designed to keep the cost of health care within reasonable bounds;

(F) reviewing the quality or cost of health care services provided to enrollees of health maintenance organizations;

(G) acting as a professional standards review organization under 42 U.S.C., sec. 1320(c)(1) et seq.;

(H) reviewing, ruling on, or advising on controversies, disputes or questions between

(i) a health insurance carrier or health maintenance organization and one or more of its insured or enrollees;

(ii) a professional licensing board, acting under its powers of discipline or license revocation or suspension, and a health care provider licensed by it when the matter is referred to a review organization by the professional licensing board;

(iii) a health care provider and his patients concerning diagnosis, treatment or care, or a charge or fee;

(iv) a hea[illegible]re provider and a health insurance carrier or health m[illegible]ance organization concerning a charge or fee for health [illegible] services provided to an insured or enrollee; or

(v) a health care provider or his patients and the federal or a state or local government, or an agency of the federal or a state or local government;

(I) acting on the recommendation of a credential review committee or a grievance committee.

* Sec. 23. AS 21 is amended by adding a new chapter to read:

CHAPTER 88. HEALTH CARE PROVIDERS INSURANCE.

ARTICLE 1. PURPOSE.

Sec. 21.88.010. PURPOSE OF CHAPTER. It is the purpose of this chapter to provide a means of assuring all health care providers continuous, affordable and adequate insurance against liability for medical negligence by concentrating all such insurance in one entity and to distribute equitably the cost of the insurance among the health care providers insured.

ARTICLE 2. INDEMNITY CORPORATION.

Sec. 21.88.020. CORPORATION CREATED. There is created the Alaska Health Care Providers Indemnity Corporation which is a public corporation having a legal existence independent of and separate from the state. Obligations issued by the corporation do not constitute a debt liability or obligation of the state or a pledge of full faith and credit of the state.

Sec. 21.88.030. CORPORATION BOARD OF GOVERNORS. (a) The corporation shall exercise its powers through a board of governors which shall be appointed by the director as provided in (b) of this section.

Appointed by Gov confirmed by Legis.

(b) The appointments to the board of governors shall be Alaska residents as follows:

(1) two members of the Alaska State Medical Association appointed from a list of no less than five persons recommended by the governing board of that association; one of the members appointed shall

say physician

be engaged in group practice in a clinic of six or more physicians licensed in the state;

(2) one member of the Alaska State Hospital Association appointed from a list of no less than three persons recommended by the governing board of that association;

(3) two professionals in the insurance field;

(4) two persons who are neither health care providers nor affiliated with the insurance industry.

(c) The term of office of each governor is three years, except that the director shall designate three initially appointed governors to serve for one year and two initially appointed governors to serve for two years.

(d) Upon the expiration of the term of a governor, the director shall appoint a successor who shall be from the same class described in (b) of this section as the governor whose term has expired.

(e) Upon a governor's early resignation, death or inability to serve, the director shall appoint a successor from the same class defined in (b) of this section as the terminating governor, who shall serve for the unexpired term.

(f) The director or his designee is not a voting member of the board of governors but shall be notified by the board of and have the right to attend and participate in all meetings and proceedings of the board.

(g) Members of the board of governors receive compensation from the corporation of $100 per day when the board meets and necessary travel expenses.

Sec. 21.88.040. CORPORATION PLAN OF OPERATION. (a) Within 30 days after the effective date of this chapter, the board of governors shall prepare and submit to the director for approval a plan of opera-

tion which provides for the fair, reasonable and equitable administration of the affairs of the corporation and the discharge of the purposes for which it is created. The plan and any amendments of it become effective upon the director's approval. If the board of governors has failed to submit a plan of operation, or if at any subsequent time the board of governors fails to submit suitable amendments to the plan, the director shall, after notice and hearing, adopt and promulgate a plan of operation or amendments which are necessary or advisable to effectuate the provisions of this chapter. Adoption of the plan is not subject to the Administrative Procedure Act (AS 44.62).

(b) The plan of operation shall

(1) establish the procedures by which all the powers and duties of the corporation specified in sec. 50 of this chapter shall be performed;

(2) establish procedures for handling assets and discharging liabilities of the corporation;

(3) establish regular places and times for meetings of the board of governors;

(4) establish procedures for records to be kept of all financial transactions of the corporation, its agents, and the board of governors;

(5) establish procedures for awarding contracts to carry out the provisions of this chapter;

(6) establish the procedures for issuing contracts of insurance as provided in sec. 50 of this chapter and for the determination of rates;

(7) contain additional provisions necessary or proper for the execution of the powers and duties of the corporation.

Sec. 21.88.050. POWERS AND DUTIES OF THE CORPORATION. (a) The

corporation shall

(1) issue to all health care providers who pay the premiums for it a contract on an occurrence basis indemnifying the health care provider and his employees who are health care providers against loss by reason of liability and agreeing to tender on behalf of the health care provider and his employees who are health care providers a defense of the health care provider in a proceeding brought under AS 09.55.530 - 09.55.560; the limit of liability shall be no less than the minimum liability coverage required to be maintained as stated in AS 08.64.215 and AS 18.20.045; the contract shall cover the defense against but need not indemnify a claim for punitive damages; the contract shall cover claims against health care providers

(A) that arise out of professional services performed by the health care provider during the period for which the premium is paid; and

(B) at the option of the health care provider and for an additional premium, that arise out of services performed by the health care provider after December 31, 1974 for any period in which the health care provider had no malpractice insurance, except that coverage will not be provided for a claim already filed or of which the health care provider has or reasonably should have had notice at the time retroactive insurance was purchased;

(2) charge a premium for the protection provided by the contracts issued under (1) of this subsection which shall be determined by the board of governors in accordance with sec. 70 of this chapter and subject to the approval of the director;

(3) comply with or be subject to AS 21.06.090, 21.06.120, 21.06.140, 21.06.160, 21.06.250; AS 21.09.180, 21.09.190, 21.09.200, 21.09.250, 21.09.280; AS 21.12.020(b), (c), (d), and (e); and chs. 18,

21, 24, and 36 of this title;

(4) carry out the obligations of the contracts issued under (1) of this subsection by defending all covered claims made against insured health care providers and by paying all liabilities which are finally adjudicated against the insured health care provider or which may in the opinion of the corporation reasonably be expected to be finally adjudicated against the health care provider to the extent of the contract obligation;

(5) provide coverage to health care providers for liability under AS 09.55.530 - 09.55.560 in excess of the minimum limits required for licensure as a health care provider, but limited to $1,000,000 for individual health care providers and $5,000,000 for hospitals, if there is a finding by the director that this coverage is unavailable at a reasonable cost and that this coverage can be made available at a reasonable cost through the corporation: if this paragraph is implemented, each health care provider obtaining excess coverage up to these amounts shall obtain it from the corporation, and the corporation may procure reinsurance for all the risks incurred by contracts issued under this paragraph from the private market.

(b) The corporation may

(1) employ or retain persons, individual or corporate, to discharge its obligations and shall pay, by way of salary, wage, fee, or commission, reasonable compensation for those services; employees of the corporation are not considered state employees;

(2) provide coverage to health care providers for other hazards including malpractice liability insurance for other licensed health care providers employed by the physician or hospital;

(3) borrow funds from the revolving loan fund established under sec. 110 of this chapter when necessary for the corporation to

maintain adequate reserves; loans from the fund shall be repaid from prospective premium increases within four years after the loan is made at an annual interest rate of seven per cent;

(4) negotiate and become a party to those contracts as are necessary to carry out the purposes of the corporation;

(5) sue or be sued in the name of the corporation;

(6) negotiate and become a party to contracts for management services for the corporation;

(7) provide risk management advice and services to hospitals;

(8) perform all other acts necessary and proper to effectuate the corporation.

Sec. 21.88.060. STATISTICS. The corporation shall collect, maintain and report information concerning claims against health care providers. All such information shall be on forms prescribed by the director and shall be sufficient to enable a proper determination of losses for rate making and to identify causes and sources of loss for loss control. No less often than annually the corporation shall report to the director, which report shall be kept available to the public, the number and amount of claims filed, reserved, paid, settled and adjudicated during the year, the premiums paid to, and the expenses incurred by the corporation during the year. The director may require that supplemental reports include the names of insured health care providers and the claimants; however, no reports which become publicly available may include the names of health care providers or claimants or information that will permit by inference the identity of specific health care providers or claimants. All information shall be made available to the appropriate licensing boards or agencies.

Sec. 21.88.070. RATES. Rates and rating plans used by the corporation for the policies issued shall be determined for each category of

Add can't be discriminatory

slant rates for rural areas

health care provider in accordance with all of the following:

(1) rates for physicians shall be set as a function of the physician's medical revenue;

(2) rates for hospitals shall be set as a function of the number of permanent beds in the hospital;

(3) a minimum rate may be set for each category of health care provider or discipline or classification within the license category; (A)

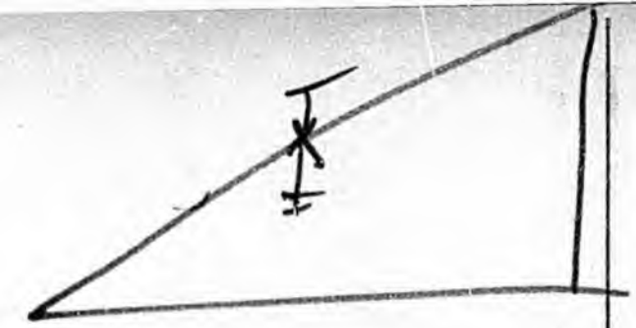
(4) rates may not be excessive; rates are excessive if, after a period of time and with respect to an amount of gross premium which are actuarially credible, the premiums exceed losses incurred by the corporation, including losses paid, reserves for claims reported and unpaid, reserves for claims incurred during the policy period and not reported but reasonably expected to be reported within three years after the date of the incident, and reasonable expenses for the operation of the corporation;

(5) rates may not be inadequate; rates are inadequate if, based on available actuarial data, the premiums to be paid by the health care providers are or may reasonably be expected to be insufficient to pay for losses incurred by the corporation, including claims paid, reserves for claims reported and unpaid, reserves for claims incurred during the policy year and not reported but reasonably expected to be reported within three years after the date of the incident, and reasonable expenses for the operation of the corporation;

(6) rates shall be adjusted at least as often as annually;

(7) rates for any policy year shall be calculated to include the adjustment for actual experience of the corporation as developed for the preceding four policy years;

(8) in considering losses to be incurred, changes in the law



and national, regional and local trends in medical negligence awards may be considered;

(9) income from investment of reserves shall be considered;

(10) disciplines and classifications within the license categories of health care providers shall be considered;

(11) individual risk underwriting factors shall be considered;

(12) amounts sufficient to repay loan obligations shall be considered.

Sec. 21.88.080. REQUIRED INSURANCE; CANCELLATION. The corporation shall provide insurance to all health care providers otherwise eligible for licensure under AS 08.64 and AS 18.20. The corporation may provide for installment payment of premiums in which event each installment is due by the date specified. The corporation may cancel any of its policies in the event of nonpayment of any premium or installment on a premium or other charge by mailing or delivering to the insured at the address shown on the policy and to the agency of the state issuing the insured's license written notice stating when, not less than 10 days after notice is received by the insured, the cancellation is effective.

ARTICLE 3. LOAN FUND.

Sec. 21.88.110. FUND ESTABLISHED. (a) There is in the Department of Commerce and Economic Development a medical malpractice liability revolving loan fund to be administered by the director of insurance.

(b) Loans shall be made from the fund to the corporation upon certification by the director that a loan is necessary for the corporation to maintain adequate reserves or for initial costs of operation. If a loan is made to the corporation from the fund, the corporation shall issue a note to the fund pledging the premiums collected in the future as security for the loan.

(c) Loans from the fund shall be repaid by the corporation within

four years at an annual interest rate of seven per cent.

(d) The director may sell at par value to the Department of Revenue the notes, security instruments and pledge agreements held by the Department of Commerce and Economic Development as security for loans made under this section. The Department of Revenue shall purchase all the notes offered until the current principal amount of the notes purchased and held by the Department of Revenue equals $5,000,000.

ARTICLE 4. GENERAL PROVISIONS.

Sec. 21.88.300. DEFINITIONS. As used in this chapter,

(1) "corporation" means the Health Care Providers Indemnity Corporation;

(2) "director" means the director of the division of insurance for the State of Alaska;

(3) "fund" means the medical malpractice liability revolving loan fund;

(4) "health care provider" means a physician licensed under AS 08.64 and a hospital as defined in AS 18.20.130, including a hospital or health care facility owned or operated by the state or one or more of its political subdivisions; if at any time the director of insurance mandates chiropractors under AS 08.20.115(b), dental hygienists under AS 08.32.015(b), dentists under AS 08.36.115(b), nurses under AS 08.68.-165(b), dispensing opticians under AS 08.71.085(b), optometrists under AS 08.72.115(b), pharmacists under AS 08.80.115(b), physical therapists under AS 08.84.035(b), or psychologists and psychological associates under AS 08.86.125(b) into participation in the corporation, they shall then be considered health care providers for the purposes of this chapter;

Claims Made? (5) "occurrence basis insurance" is insurance against claims arising during the period of the policy coverage.

* Sec. 24. AS 21.18.090 is amended by adding a new paragraph to read:

(5) reserves for the Health Care Providers Indemnity Corporation are to include only reserves for claims reported and unpaid and reserves for claims incurred but not reported but which may reasonably be expected to be reported within three years after the date of occurrence.

* Sec. 25. AS 09.55.536 enacted in sec. 15 of this Act, has the effect of changing the Alaska Supreme Court's Rules of Civil Procedure, by requiring the submission of each health care malpractice action to a panel of experts.

* Sec. 26. AS 08.64.365 is repealed.

* Sec. 27. This Act takes effect 30 days after enactment.

5/1/76

Original Sponsor: Rules Committee by request of the Governor

IN THE HOUSE BY THE FREE CONFERENCE COMMITTEE

FREE CONFERENCE CS FOR SENATE CS FOR CS FOR HOUSE BILL NO. 574

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to health care; changing the Alaska Supreme Court's Rules of Civil Procedure; and providing for an effective date."

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

* Section 1. AS 08.01.050 is amended by adding a new paragraph to read:

(19) provide investigative services to the boards established under chs. 20, 32, 36, 64, 68, 71, 72, 80, 84, and 86 of this title, for the purpose of assisting those boards in matters of professional discipline.

* Sec. 2. AS 08.20.010 is amended to read:

Sec. 08.20.010. CREATION AND MEMBERSHIP OF BOARD OF CHIROPRACTIC EXAMINERS. There is created the Board of Chiropractic Examiners consisting of <u>five</u> [THREE] members appointed by the governor.

* Sec. 3. AS 08.20.020 is amended to read:

Sec. 08.20.020. MEMBERS OF BOARD. <u>Three members</u> [EACH MEMBER] of the board shall be [A] licensed chiropractic <u>physicians who</u> [PHYSICIAN AND SHALL] have practiced chiropractic in this state not less than two years. <u>Two members of the board shall be persons with no direct financial interest in the health care industry.</u> Each member serves without pay but is entitled to per diem and travel expenses allowed by law.

* Sec. 4. AS 08.20.030 is repealed and re-enacted to read:

Sec. 08.20.030. MEMBERS TERMS, VACANCIES. Members serve for staggered terms of three years. The terms of the public members of the board may not expire at the same time. Vacancies on the board shall be

filled for the unexpired term.

* Sec. 5. AS 08.20 is amended by adding a new section to read:

Sec. 08.20.115. MALPRACTIC INSURANCE. If medical malpractice insurance for chiropractors becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of chiropractic services to the public, the director of insurance may require all persons licensed under this chapter to carry malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. If a finding of unavailability of insurance on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of licensure under this chapter. The provisions of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska.

* Sec. 6. AS 08.20 is amended by adding a new section to read:

Sec. 08.20.175. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 170 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education or health the authority to practice chiropractic should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure or facility, or require ~~continuing~~ additional education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 7. AS 08.32 is amended by adding new sections to read:

Sec. 08.32.015. MALPRACTICE INSURANCE. If medical malpractice insurance for dental hygienists becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of dental hygiene services

to the public, the director of insurance may require all persons licensed under this chapter to carry malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. If a finding of unavailability of insurance on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of licensure under this chapter. The provisions of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska.

Sec. 08.32.165. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 160 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education or health the authority to practice dental hygiene should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require ~~continuing~~ additional education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 8. AS 08.36.010 is amended to read:

Sec. 08.36.010. CREATION AND MEMBERSHIP OF BOARD. There is created the Board of Dental Examiners, referred to in this chapter as the board, consisting of seven [FIVE] members. Five members [EACH MEMBER] shall be [A CITIZEN OF THE UNITED STATES AND A] qualified resident dentists who have [HAS] been engaged in the practice of dentistry in the state for five years immediately preceding [HIS] appointment, one member shall be a dental hygienist licensed under AS 08.32, and one member with no direct financial interest in the health care industry.

* Sec. 9. AS 08.36.020 is amended to read:

Sec. 08.36.020. APPOINTMENT AND TERM OF SERVICE OF MEMBERS. Members of the board are appointed by the governor, subject to confirmation by the legislature in joint session [ASSEMBLED]. Each

board member serves for a term of five years, and until his successor is appointed and qualified. The term begins on February 1. An appointment to a vacancy is for the unexpired term. [APPOINTMENTS SHALL BE MADE FROM A LIST OF NAMES RECOMMENDED BY THE ALASKA DENTAL SOCIETY. THE LIST SHALL BE SUPPLIED AT LEAST 30 DAYS BEFORE THE BEGINNING OF A TERM AND NOT MORE THAN 60 DAYS AFTER THE OCCURRENCE OF A VACANCY. THE LIST SHALL CONTAIN AT LEAST TWO RECOMMENDED NAMES FOR EACH APPOINTMENT. THE GOVERNOR SHALL MAKE THE APPOINTMENT WITHIN 30 DAYS AFTER RECEIVING THE LIST.]

* Sec. 10. AS 08.36 is amended by adding new sections to read:

Sec. 08.36.315. MALPRACTICE INSURANCE. If medical malpractice insurance for dentists becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of dental services to the public, the director of insurance may require all persons licensed under this chapter to carry malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. If a finding of unavailability of insurance on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of licensure under this chapter. The provisions of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska.

Sec. 08.36.325. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 320 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health, the authority to practice dentistry should be limited or conditioned or the practitioner disciplined, the board may censure, place on probation, restrict practice by specialty, procedure, or facility, or require ~~continuing education~~ additional education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 11. AS 08.64.010 is amended to read:

Sec. 08.64.010. CREATION AND MEMBERSHIP OF STATE MEDICAL BOARD. The governor shall appoint a board of medical examiners, to be known as the State Medical Board, consisting of five licensed physicians, residing in as many separate Alaska judicial districts as possible, and two persons with no direct financial interest in the health care industry. [EACH MEMBER SHALL BE CHOSEN FROM A PANEL OF THREE, FOR EACH VACANCY, SUBMITTED TO THE GOVERNOR BY THE ALASKA STATE MEDICAL ASSOCIATION.]

* Sec. 12. AS 08.64.020 is amended to read:

Sec. 08.64.020. STATE MEDICAL BOARD TERM OF OFFICE. Members shall be appointed for a term of four years, subject to confirmation by a majority of the members of the legislature in joint session, and shall hold office until their successors are appointed and qualified. The terms of the public members of the board shall be staggered so that they do not expire at the same time.

* Sec. 13. AS 08.64.090 is amended to read:

Sec. 08.64.090. QUORUM. Four [THREE] members of the board constitute a quorum for the transaction of all business properly before the board.

* Sec. 14. AS 08.64 is amended by adding new sections to read:

Sec. 08.64.215. INSURANCE REQUIRED. (a) To be eligible for an active license under this chapter, a person shall maintain insurance issued by the Medical Indemnity Corporation of Alaska against liability to patients for medical malpractice in limits of not less than $200,000 per occurrence and $600,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him

from the Medical Indemnity Corporation of Alaska in the required amounts.

(b) The director of insurance or his designee shall waive the requirement in (a) of this section for a person if that person furnishes satisfactory evidence of his having other insurance providing coverage in amounts not less than those specified in (a) of this section. No waiver granted under this subsection may extend beyond the normal expiration date of the person's insurance policy or January 1, 1977, whichever occurs first.

Sec. 08.64.312. CONTINUING EDUCATION REQUIREMENTS. (a) The board shall promote a high degree of competence in the practice of medicine by requiring every physician licensed in the state to fulfill continuing education requirements.

(b) Before a license may be renewed the licensee shall submit evidence to the board that continuing education requirements prescribed by regulations adopted by the board have been met.

(c) The board may exempt a physician from the requirements of (b) of this section upon an application by him giving evidence satisfactory to the board that he is unable to comply with the requirements because of extenuating circumstances. However, no person may be exempted from more than 15 hours of continuing education in a five-year period.

Sec. 08.64.325. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 330 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require ~~continuing~~ additional education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 15. AS 08.68.010 is amended to read:

Sec. 08.68.010. CREATION AND MEMBERSHIP OF BOARD OF NURSING. There is created a Board of Nursing, consisting of seven [FIVE] members appointed by the governor. One member shall be currently involved in institutional nursing service, one member in community or public health nursing and two members in basic or continuing nursing education, [AND] one nurse at large, and two persons who have no direct financial interest in the health care industry.

* Sec. 16. AS 08.68.020 is repealed and re-enacted to read:

Sec. 08.68.020. TERM OF OFFICE. Members serve staggered terms of five years and until their successors are appointed. The terms of the public members on the board shall be set so that they do not expire at the same time. Vacancies on the board shall be filled for the unexpired term.

* Sec. 17. AS 08.68.060 is amended to read:

Sec. 08.68.060. QUALIFICATIONS OF BOARD MEMBERS. The five members [EACH MEMBER] of the board who are nurses shall be [A CITIZEN OF THE UNITED STATES, A RESIDENT OF THE STATE, AND A] licensed professional nurses [NURSE] in the state, and [MEMBERS] shall have been actively engaged in nursing for not less than four years before appointment, two years of which were within the five years preceding appointment.

* Sec. 18. AS 08.68 is amended by adding new sections to read:

Sec. 08.68.165. MALPRACTICE INSURANCE. If medical malpractice insurance for nurses becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of nursing services to the public, the director of insurance may require all persons licensed under this chapter to carry malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88.

If a finding of unavailability of insurance on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of licensure under this chapter. The provisions of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska.

Sec. 08.68.275. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 270 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice nursing should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require ~~continuing~~ additional education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 19. AS 08.71.020 is amended to read:

Sec. 08.71.020. MEMBERSHIP OF BOARD; SOURCE OF APPOINTMENTS; TERM OF OFFICE. The board consists of seven [FIVE] persons appointed by the governor. ~~Members serve staggered terms~~ of three years. The terms of the public members of the board shall be set so that they do not expire at the same time. [THE GOVERNOR SHALL APPOINT BOARD MEMBERS FROM A LIST OF QUALIFIED OPTICIANS PREPARED BY THE ASSOCIATION OF OPTICIANS IN THE STATE AND SUBMITTED AT LEAST 30 DAYS BEFORE JULY 1, 1973, AT LEAST 30 DAYS BEFORE THE EXPIRATION OF A TERM AND NOT MORE THAN 60 DAYS AFTER A VACANCY OCCURS IN AN UNEXPIRED TERM. THE LIST SHALL CONTAIN NOT LESS THAN TWO RECOMMENDED CANDIDATES FOR EACH APPOINTMENT. THE GOVERNOR SHALL MAKE APPOINTMENTS WITHIN 30 DAYS AFTER RECEIVING THE LIST. THE TERM OF OFFICE OF EACH MEMBER IS THREE YEARS. HOWEVER, OF THE FIRST MEMBERS OF THE BOARD, ONE SHALL BE APPOINTED FOR A ONE-YEAR TERM, TWO FOR TWO-YEAR TERMS, AND TWO FOR THREE-YEAR TERMS.] Vacancies on the board shall be filled for the unexpired term [IN THE SAME MANNER AS

ORIGINAL APPOINTMENT].

* Sec. 20. AS 08.71.030 is amended to read:

Sec. 08.71.030. QUALIFICATIONS OF BOARD MEMBERS. Five [A] board members [MEMBER] shall be [A] licensed, practicing dispensing opticians [OPTICIAN] residing in the state. Two shall be persons with no direct financial interest in the health care industry.

* Sec. 21. AS 08.71 is amended by adding new sections to read:

Sec. 08.71.085. MALPRACTICE INSURANCE. If medical malpractice insurance for opticians becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of optician services to the public, the director of insurance may require all persons licensed under this chapter to carry malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. If a finding of unavailability of insurance on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of licensure under this chapter. The provisions of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska.

Sec. 08.71.175. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 170 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice as a dispensing optician under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by procedure, or facility, or require ~~continuing~~ education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 22. AS 08.72.020 is amended to read:

Sec. 08.72.020. MEMBERSHIP OF BOARD AND TERMS OF OFFICE. The board consists of five [THREE] persons, appointed by the governor. Members serve staggered terms of three years. The terms of the public members of the board shall be set so that they do not expire at the same time. [THE TERM OF EACH MEMBER IS THREE YEARS. ONE MEMBER ONLY IS APPOINTED EACH YEAR, EXCEPT WHEN VACANCIES FOR UNEXPIRED TERMS ARE FILLED.]

* Sec. 23. AS 08.72.040 is repealed and re-enacted to read:

Sec. 08.72.040. QUALIFICATIONS. Three board members shall be licensed, practicing optometrists who have been residents for at least three years. Two shall be persons who have no direct financial interest in the health care industry.

* Sec. 24. AS 08.72 is amended by adding new sections to read:

Sec. 08.72.115. MALPRACTICE INSURANCE. If medical malpractice insurance for optometrists becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of optometrist services to the public, the director of insurance may require all persons licensed under this chapter to carry malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. If a finding of unavailability of insurance on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of licensure under this chapter. The provisions of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska.

Sec. 08.72.255. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under secs. 240 and 250 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice optometry under this chapter should be limited or conditioned or the practitioner

disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require ~~continuing~~ additional education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 25. AS 08.80.010 is amended to read:

Sec. 08.80.010. CREATION AND MEMBERSHIP OF BOARD OF PHARMACY. There is created the Board of Pharmacy, composed of seven [FIVE] members five [EACH] of whom shall be pharmacists [A PHARMACIST] licensed in the state who have [HAS] been actively engaged in the practice of pharmacy in the state for a period of three years immediately preceding their [HIS] appointment. Two shall be persons with no direct financial interest in the health care industry. Whenever possible, the board shall include at least one member from each judicial district.

* Sec. 26. AS 08.80.020 is amended to read:

Sec. 08.80.020. TERM OF OFFICE. Members of the board are appointed by the governor, and confirmed by the legislature in joint session, for overlapping terms of five years, or until their successors are appointed and qualified. The terms of the public members shall be staggered so that they do not expire at the same time. An appointment to fill a vacancy is for the unexpired term. The term of office begins on April 1 of each year.

* Sec. 27. AS 08.80.070 is amended to read:

Sec. 08.80.070. QUORUM. Four [THREE] members constitute a quorum for the transaction of business. However, when the board meets for the purpose of examining applications for registration, three [TWO] members of the board constitute a quorum.

* Sec. 28. AS 08.80 is amended by adding new sections to read:

Sec. 08.80.115. MALPRACTICE INSURANCE. If medical malpractice

insurance for pharmacists becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of pharmacist services to the public, the director of insurance may require all persons licensed under this chapter to carry malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88 If a finding of unavailability of insurance on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of licensure under this chapter. The provisions of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska.

Sec. 08.80.265. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 260 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice pharmacy under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require ~~continuing~~ education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 29. AS 08.84 is amended by adding new sections to read:

Sec. 08.84.035. MALPRACTICE INSURANCE. If medical malpractice insurance for physical therapists becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of physical therapist services to the public, the director of insurance may require all persons licensed under this chapter to carry malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88.

If a finding of unavailability of insurance on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of licensure under this chapter. The provisions of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska.

Sec. 08.84.185. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 180 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education or health the authority to practice physical therapy should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require ~~continuing~~ additional education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 30. AS 08.86.010 is amended to read:

Sec. 08.86.010. CREATION AND MEMBERSHIP OF BOARD. There is created a Board of Psychologist and Psychological Associate Examiners. It consists of three licensed psychologists, and two persons who have no direct financial interest in the health care industry.

* Sec. 31. AS 08.86.020 is amended to read:

Sec. 08.86.020. APPOINTMENT AND TERM OF OFFICE. Members of the board are appointed by the governor and confirmed by the legislature for staggered terms of three years. The terms of the public members shall be set so that they do not expire at the same time. A member serves at the pleasure of the governor.

* Sec. 32. AS 08.86 is amended by adding new sections to read:

Sec. 08.86.125. MALPRACTICE INSURANCE. If medical malpractice insurance for psychologists or psychological associates becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of

psychologist or psychological associate services to the public, the director of insurance may require all persons licensed under this chapter to carry malpractice insurance and to purch e their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. If a finding of unavailability of insurance on the voluntary market and impairment of services has been made under this section, purchase of medical malpractice insurance from the Medical Indemnity Corporation of Alaska is a condition of licensure under this chapter. The provisions of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska.

Sec. 08.86.220. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) Upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice psychology or as a phsychological associate under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by time, specialty, procedure, or facility, or require ~~continuing~~ additional education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 33. AS 09.55 is amended by adding new sections to read:

Sec. 09.55.535. VOLUNTARY ARBITRATION. (a) A patient and any health care provider may execute an agreement to submit to arbitration any dispute, controversy, or issue arising out of care or treatment by the health care provider during the period that the agreement is in force or that has already arisen between the parties.

(b) An agreement to arbitrate executed before care or treatment is provided shall clearly provide in bold print on the face of the agreement that execution of the agreement by the patient is not a prerequisite to receiving care or treatment. If this subsection is not complied with by the health care provider, the agreement to arbitrate is void. The form to be used shall be approved in advance by the attorney general of the state to assure it fairly informs both parties to the agreement

and properly protects their interests.

(c) The agreement shall provide that the person receiving health care may revoke the agreement within 30 ~~calendar~~ days after execution by notifying the health care provider in writing. A health care provider may not revoke the agreement after its execution. The period for revocation shall be tolled during any period that the person receiving health care is physically unable to execute a revocation.(d)An arbitration agreement entered into by the parents or legal guardian of a minor person receiving health care is binding upon the minor person.

(~~d~~e) Each admission to a hospital shall be treated as separate and distinct for the purposes of an agreement to arbitrate, but a person receiving outpatient care from a hospital or clinic or a member of a health maintenance organization may execute an agreement with the hospital which provides for continuation of the agreement for a continuing program of treatment or during continued membership.

(~~e~~f) Upon the filing of a malpractice claim which is subject to an agreement to arbitrate, the claim shall be submitted to an arbitration board. The arbitration board shall consist of three arbitrators: one arbitrator designated by the claimant or claimants, one arbitrator designated by the health care provider or providers against whom the claim is made, and a third arbitrator designated by mutual agreement who shall serve as chairperson of the board. If the parties cannot agree on the third person, the court will provide a choice of three or more persons who might serve as chairperson of the arbitration board, which shall be from a list of qualified arbitrators furnished by the attorney general. Claimant or claimants together and health care provider or providers together may each strike one or more names, so after each side has done so at least one name remains, providing a basis for the final selection by the court.

(~~f~~g) The attorney general shall prepare a list of persons consisting of lawyers or other persons qualified to serve as chairperson of an arbitration board. They shall be selected on basis of their technical expertise, judicial temperament, and capability of impartially acting on malpractice claims. The attorney general shall submit a list of at

least three names whenever requested to do so by the court along with detailed biographical information on each person listed.

(g) Each member of the arbitration board shall receive reasonable compensation to be paid by the court based on the extent and duration of services rendered. The court shall pay the costs of expert witnesses called by the board and the costs of expert witnesses called by the parties to the arbitration up to a maximum of three witnesses for each side and $150 per day for each expert witness.

(h) The arbitration board may appoint an expert advisory panel, with the powers of the expert advisory panel under sec. 536 of this chapter, to advise the board on the medical facts of the case.

(i) The court shall specify the shortest practical deadline for completion of the work of the arbitration board, taking into account all the circumstances and the nature of the case.

(j) The provisions of the Uniform Arbitration Act, AS 09.43.010 - 09.43.180, apply to arbitrations under this section if they do not conflict with the provisions of this section; arbitrations under this section shall be conducted in accordance with procedures established by any rules of court which may be adopted and according to provisions of secs. 540 - 548 and 554 - 560 of this chapter, and AS 09.65.090 - 09.65.100.

Sec. 09.55.536. EXPERT ADVISORY PANEL. (a) In any action for damages due to personal injury or death based upon the provision of professional services by a health care provider when the parties have not agreed to arbitration of the claim under sec. 535 of this chapter, the court shall appoint a three-person expert advisory panel unless the court decides that an expert advisory opinion is not necessary for a decision in the case. When the action is filed the court shall, by order, determine the professions or specialties to be represented on the expert advisory panel, giving the parties the opportunity to object or make suggestions.

(b) The expert advisory panel may compel the attendance of witnesses, interview the parties, physically examine the injured person if alive, consult with the specialists or learned works they consider appropriate, and compel the production of and examine all relevant hospital, medical, or other records or materials relating to the health care in issue. The panel may meet in camera, but shall maintain a record of any testimony or oral statements of witnesses, and shall keep copies of all written statements it receives.

(c) Not more than 30 days after selection of the panel, it shall make a written report to the parties and to the court, answering the questions ~~submitted to the panel by the court and~~, in the court's discretion, ~~any of the following questions:~~ And any additional questions

(1) Was the care which is the subject of the litigation appropriate to the complaint or condition for which the plaintiff sought or was brought to medical care?

(2) Was the care administered in accordance with appropriate medical standards?

(3) Did an injury arise from the medical care?

(4) What is the nature and the extent of the medical injury?

(5) If a medical injury had not occurred, how would the plaintiff's condition differ from the plaintiff's present condition?

(d) In any case in which the answer to one or more of the questions submitted to the panel depends upon the resolution of factual questions which are not the proper subject of expert opinion, the report shall so state and may answer questions based upon hypothetical facts that are fully set out in the opinion. The report shall include copies of all written statements, opinions, or records relied upon by the panel and either a transcription or other record of any oral statements or opinions; shall specify any medical or scientific authority relied upon by the panel; and shall include the results of any physical or mental

examination performed on the plaintiff. Each member shall sign the report and his signature constitutes his adoption of all statements and opinions contained in it; however, a member may, instead of signing the report, submit a concurring or dissenting report which complies with the requirements of this subsection. A member may not attest to any portion of the report as to which he is not qualified to give expert testimony.

(e) The report of the panel with any dissenting or concurring opinion is admissible in evidence to the same extent as though its contents were orally testified to by the person or persons preparing it. The court shall delete any portion that would not be admissible because of lack of foundation for opinion testimony, or otherwise. Either party may submit expert testimony to support or refute the report. The jury shall be instructed in general terms that the report shall be considered and evaluated in the same manner as any other expert testimony. Any member of the panel may be called by any party and may be cross-examined as to the contents of the report or of his dissenting or concurring opinion.

(f) No discovery may be undertaken in a case until the report of the expert advisory panel is received. However, the court may relax this prohibition upon a showing of good cause by any party. If the panel has not completed its report within the 30-day period prescribed in (b) of this section, the court may, upon application, grant it an additional 30 days.

(g) Members of a panel are entitled to travel expenses and per diem in accordance with state law pertaining to members of boards and commissions for all time spent in preparing its report. If a panel member is called upon as a witness at trial or upon deposition, he is entitled to payment of an expert witness fee, which may not exceed $150 per day. All expenses incurred by the panel shall be paid by the

court. However, in any case in which the court determines that a party has made a patently frivolous claim or a patently frivolous denial of liability, it shall order that all costs of the expert advisory panel be borne by the party making that claim or denial.

(h) Parties to the case and their counsel may not initiate communication out of court with members of the panel on the subject matter of its inquiry and report or cause or solicit others to do so, except through ordinary discovery proceedings.

* Sec. 34. AS 09.55.540 is amended to read:

Sec. 09.55.540. BURDEN OF PROOF. (a) In a malpractice action based on the negligence or wilful misconduct of a health care provider [PHYSICIAN LICENSED UNDER AS 08.64, OR A DENTIST LICENSED UNDER AS 08.-36], the plaintiff has [SHALL HAVE] the burden of proving by a preponderance of the evidence

(1) the degree of knowledge or skill possessed or the degree of care ordinarily exercised under the circumstances, at the time of the act complained of, by health care providers in the field or specialty in which the defendant is practicing [BY PHYSICIANS OR DENTISTS PRACTICING THE SAME SPECIALTY IN SIMILAR COMMUNITIES TO THAT IN WHICH THE DEFENDANT PRACTICES];

(2) that the defendant either lacked this degree of knowledge or skill or failed to exercise this degree of care; and

(3) that as a proximate result of this lack of knowledge or skill or the failure to exercise this degree of care the plaintiff suffered injuries that would not otherwise have been incurred.

(b) In malpractice actions there is [SHALL BE] no presumption of negligence on the part of the defendant.

* Sec. 35. AS 09.55 is amended by adding new sections to read:

Sec. 09.55.546. ADVANCE PAYMENTS. In an action to recover damages

under secs. 530 - 560 of this chapter, no advance payment made by the defendant health care provider or his professional liability insurer to or on behalf of the plaintiff is admissible as evidence or may be construed as an admission of liability for injuries or damages suffered by the plaintiff; however, a final award in favor of the plaintiff shall be reduced to the extent of any advance payment. The advance payment shall inure to the exclusive benefit of the defendant or the insurer making the payment.

Sec. 09.55.547. AD DAMNUM. In a cause of action against a health care provider for malpractice, the complaint or any other pleadings may not contain an ad damnum clause or monetary amount claimed against the defendant health care provider, except as necessary for jurisdictional purposes.

Sec. 09.55.548. AWARDS, COLLATERAL SOURCE. (a) Damages shall be awarded in accordance with principles of the common law. The fact finder in a malpractice action shall render any award for damages by category of loss. The court may enter a judgment that future damages be paid in whole or in part by periodic payments rather than by a lump-sum payment; the judgment shall include, if necessary, other provisions to assure that funds will be available as periodic payments become due. Insurance from an authorized insurer as defined in AS 21.90.080 or from the Medical Indemnity Corporation of Alaska is sufficient assurance that funds will be available. Any part of the award which is paid on a periodic basis shall be adjusted annually according to changes in the consumer price index in the community where the claimant resides. In this subsection, future damages includes damages for future medical treatment, care or custody, loss of future earnings, or loss of bodily function of the claimant.

(b) Except when the collateral source is a federal program which by law must seek subrogation and except death benefits paid under life insurance, a claimant may only recover damages from the defendant which

exceed amounts received by the claimant as compensation for his injuries from collateral sources, whether private, group or governmental, and whether contributory or noncontributory. Evidence of collateral sources, other than a federal program which must by law seek subrogation and the death benefit paid under life insurance, is admissible after the fact finder has rendered an award. The court may take into account the value of claimant's rights to coverage exhausted or depleted by payment of these collateral benefits by adding back a reasonable estimate of their probable value, or by earmarking and holding for possible periodic payment under (a) of this section that amount of the award that would otherwise have been deducted, to see if the impairment of claimant's rights actually takes place in the future.

* Sec. 36. AS 09.55.550 is amended to read:

Sec. 09.55.550. JURY INSTRUCTIONS. In health care [MEDICAL] malpractice actions the jury shall be instructed that the plaintiff has the burden of proving [, BY A PREPONDERANCE OF THE EVIDENCE,] the health care provider's negligence or wilful misconduct in accordance with the standard of proof specified in sec. 540 of this chapter [OF THE PHYSICIAN OR DENTIST]. The jury shall be further instructed that injury alone does not raise a presumption of the health care provider's [PHYSICIAN'S OR DENTIST'S] negligence or misconduct.

* Sec. 37. AS 09.55 is amended by adding new sections to read:

Sec. 09.55.554. ORAL CONTRACTS. No cause of action against a health care provider arises for breach of an oral contract to provide a cure or achieve a specific medical result.

Sec. 09.55.556. INFORMED CONSENT. (a) A health care provider is liable for failure to obtain the informed consent of a patient if the claimant establishes by a preponderance of the evidence that the provider has failed to inform the patient of the common risks and reasonable alternatives to the proposed treatment or procedure, and that but

for that failure the claimant would not have consented to the proposed treatment or procedure.

(b) It is a defense to any action for medical malpractice based upon an alleged failure to obtain informed consent that

(1) the risk not disclosed is too commonly known or is too remote to require disclosure;

(2) the patient stated to the health care provider that he would undergo the treatment or procedure regardless of the risk involved or that he did not want to be informed of the matters to which he would be entitled to be informed;

(3) under the circumstances consent by or on behalf of the patient was not possible; or

(4) the health care provider after considering all of the attendant facts and circumstances used reasonable discretion as to the manner and extent that the alternatives or risks were disclosed to the patient because he reasonably believed that a full disclosure would have a substantially adverse effect on the patient's condition.

Sec. 09.55.560. DEFINITIONS. In secs. 530 - 560 of this chapter

(1) "health care provider" means a chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under AS 08.71; an optometrist licensed under AS 08.-72; a pharmacist licensed under AS 08.80; a physical therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a psychologist and a psychological associate licensed under AS 08.86; and a hospital as defined in AS 18.20.130, including a governmentally owned or operated hospital;

(2) "board" means an arbitration board established under sec. 535 of this chapter;

(3) "panel" means an expert advisory panel established under sec. 536 of this chapter.

* Sec. 38. AS 09.65.090 is repealed and re-enacted to read:

Sec. 09.65.090. CIVIL LIABILITY FOR EMERGENCY AID. (a) A person at a hospital or any other location who renders emergency care or emergency counseling to an injured, ill, or emotionally distraught person who reasonably appears to the person rendering the aid to be in immediate need of emergency aid in order to avoid serious harm or death is not liable for civil damages as a result of an act or omission in rendering emergency aid.

(b) This section does not preclude liability for civil damages as a result of gross negligence or reckless or intentional misconduct.

* Sec. 39. AS 18.20 is amended by adding new sections to read:

Sec. 18.20.045. INSURANCE REQUIRED. (a) Every hospital, as a condition of licensure, shall maintain and submit to the department evidence of insurance against liability to inpatients and outpatients for malpractice issued by the Medical Indemnity Corporation of Alaska, in amounts of not less than $200,000 per occurrence, and an aggregate liability per year of $1,000,000 minimum, and an additional $20,000 for each bed over 50.

(b) The director of insurance or his designee shall waive the requirement in (a) of this section for a hospital if the hospital furnishes satisfactory evidence of having other insurance providing coverage in amounts not less than those specified in (a) of this section. A waiver granted under this subsection may not extend beyond the normal expiration date of the hospital's insurance policy or January 1, 1977, whichever occurs first.

(c) The director of insurance may permit a deductible provision in the policy for a hospital if the hospital

(1) demonstrates to the satisfaction of the director of insurance that without indemnity from any other source the hospital has the financial resources to discharge the maximum potential exposure to the hospital by reason of the deductible provision;

(2) agrees to permit the Medical Indemnity Corporation of Alaska to provide the defense to any claim brought against the hospital if any health care provider insured by the corporation is also involved in the claim and to reimburse the corporation for a pro rata portion of the costs of defense; and

(3) provides the Medical Indemnity Corporation of Alaska with notice of any claim brought against it.

Sec. 18.20.075. RISK MANAGEMENT. (a) To be eligible for a license each hospital shall have in operation an internal risk management program which shall

(1) investigate the frequency and causes of incidents in hospitals which cause injury to patients;

(2) develop and implement measures to minimize the risk of injury to patients; in developing these measures each hospital shall take into account recommendations of the medical staff, the Medical Indemnity Corporation of Alaska, private underwriters, industry standards, experience of other hospitals, and recommendations of licensing boards of other health care providers; and

(3) analyze patient grievances which relate to patient care.

(b) The department shall adopt by regulation standards for the risk management programs in hospitals in the state which may vary according to the size of the hospital, the type of care offered by the hospital, and other factors found relevant by the department. Regulations adopted under this subsection are subject to the Administrative Procedure Act (AS 44.62).

* Sec. 40. AS 18 is amended by adding a new chapter to read:

CHAPTER 23. HEALTH CARE SERVICES INFORMATION.

Sec. 18.23.010. LIMITATION ON LIABILITY FOR PERSONS PROVIDING INFORMATION TO REVIEW ORGANIZATION. (a) No person providing information to a review organization is subject to action for damages or other relief by reason of having furnished that information, unless the information is false and the person providing the information knew or had reason to know the information was false.

(b) No privilege of confidentiality arising from a physician-patient relationship may be invoked to withhold pertinent information from review by a review organization.

Sec. 18.23.020. LIMITATION ON LIABILITY FOR MEMBERS OF REVIEW ORGANIZATIONS. No person who is a member or employee of, or who acts in an advisory capacity to, or who furnishes counsel or services to a review organization is liable for damages or other relief in an action brought by another whose activities have been or are being scrutinized or reviewed by a review organization, by reason of the performance of a duty, function or activity of the review organization, unless the performance of the duty, function or activity was motivated by malice toward the affected person. No person is liable for damages or other relief in an action by reason of his performance of a duty, function, or activity as a member of a review organization or by reason of a recommendation or action of the review organization when the person acts in the reasonable belief that the action or recommendation is warranted by facts known to the person or to the review organization after reasonable efforts to ascertain the facts upon which the review organization's action or recommendation is made.

Sec. 18.23.030. CONFIDENTIALITY OF RECORDS OF REVIEW ORGANIZATION.

(a) Except as provided in (b) of this section, all data and information acquired by a review organization, in the exercise of its duties and functions, shall be held in confidence and may not be disclosed to anyone except to the extent necessary to carry out the purposes of the review organization, and is not subject to subpoena or discovery. Except as provided in (b) of this section, no person described in sec. 20 of this chapter may disclose what transpired at a meeting of a review organization except to the extent necessary to carry out the purposes of a review organization, and the proceedings and records of a review organization are not subject to discovery or introduction into evidence in a civil action against a health care provider arising out of the matter which is the subject of consideration by the review organization. Information, documents, or records otherwise available from original sources are not immune from discovery or use in a civil action merely because they were presented during proceedings of a review organization, nor may a person who testified before a review organization or who is a member of it be prevented from testifying as to matters within his knowledge, but a witness may not be asked about his testimony before a review organization or opinions formed by him as a result of its hearings, except as provided in (b) of this section.

(b) Testimony, documents, proceedings, records, and other evidence adduced before a review organization that are otherwise inaccessible under this section may be obtained by a health care provider who claims that denial is unreasonable, or may be obtained under subpoena or discovery proceedings brought by a plaintiff who claims that information provided to a review organization was false and claims that the person providing the information knew or had reason to know the information was false.

(c) Nothing in this chapter prevents a person whose conduct or

competence has been reviewed under this chapter from obtaining, for the purpose of appellate review of the action of the review organization, any testimony, documents, proceedings, records and other evidence adduced before the review organization.

Sec. 18.23.040. PENALTY FOR VIOLATION. Other than as authorized by sec. 30 of this chapter, a disclosure of data and information acquired by a review committee or of what transpired at a review meeting is a misdemeanor and punishable under AS 11.05.010.

Sec. 18.23.050. PROTECTION OF PATIENT. Nothing in this chapter relieves a person of liability which he has incurred or may incur to a person as a result of furnishing health care to the patient.

Sec. 18.23.060. PARTIES BOUND BY REVIEW. When a review organization reviews matters under sec. 70(5)(H) of this chapter no party is bound by a ruling of the organization in a controversy, dispute or question unless he agrees in advance, either specifically or generally, to be bound by the ruling.

Sec. 18.23.070. DEFINITIONS. In this chapter, unless the context otherwise requires,

(1) "administrative staff" means the staff of a hospital or clinic;

(2) "health care" means professional services rendered by a health care provider or an employee of a health care provider, and services furnished by a sanatorium, rest home, nursing home, boarding home or other institution for the hospitalization or care of human beings;

(3) "health care provider" means a chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under AS 08.71; an optometrist licensed under AS 08.-

72; a pharmacist licensed under AS 08.80; a physical therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a psychologist and a psychological associate licensed under AS 08.86; and a hospital as defined in AS 18.20.130, including a governmentally owned or operated hospital;

(4) "professional service" means service rendered by a health care provider of the type he is licensed to render;

(5) "review organization" means a hospital governing body or a committee whose membership is limited to health care providers and administrative staff, except where otherwise provided for by state or federal law, and which is established by a hospital, by a clinic, by one or more state or local associations of health care providers, by an organization of health care providers from a particular area or medical institution, or by a professional standards review organization established under 42 U.S.C., sec. 1320c-1 et seq., to gather and review information relating to the care and treatment of patients for the purposes of

(A) evaluating and improving the quality of health care rendered in the area or medical institution;

(B) reducing morbidity or mortality;

(C) obtaining and disseminating statistics and information relative to the treatment and prevention of diseases, illness and injuries;

(D) developing and publishing guidelines showing the norms of health care in the area or medical institution;

(E) developing and publishing guidelines designed to keep the cost of health care within reasonable bounds;

(F) reviewing the quality or cost of health care services provided to enrollees of health maintenance organizations;

(G) acting as a professional standards review organization under 42 U.S.C., sec. 1320c-1 et seq.;

(H) reviewing, ruling on, or advising on controversies, disputes or questions between

(i) a health insurance carrier or health maintenance organization and one or more of its insured or enrollees;

(ii) a professional licensing board, acting under its powers of discipline or license revocation or suspension, and a health care provider licensed by it, when the matter is referred to a review organization by the professional licensing board;

(iii) a health care provider and his patients concerning diagnosis, treatment or care, or a charge or fee;

(iv) a health care provider and a health insurance carrier or health maintenance organization concerning a charge or fee for health care services provided to an insured or enrollee; or

(v) a health care provider or his patients and the federal or a state or local government, or an agency of the federal or a state or local government;

(I) acting on the recommendation of a credential review committee or a grievance committee.

* Sec. 41. AS 21 is amended by adding a new chapter to read:

CHAPTER 88. HEALTH CARE PROVIDERS INSURANCE.

ARTICLE 1. PURPOSE.

Sec. 21.88.010. PURPOSE OF CHAPTER. It is the purpose of this chapter to provide a means of furnishing health care providers with adequate insurance against liability for medical negligence.

ARTICLE 2. MEDICAL INDEMNITY CORPORATION OF ALASKA.

Sec. 21.88.020. CORPORATION CREATED. There is created the Medical Indemnity Corporation of Alaska which is a public corporation having a legal existence independent of and separate from the state. Obligations issued by the corporation do not constitute a debt, liability or obligation of the state or a pledge of full faith and credit of the state.

Sec. 21.88.030. CORPORATION BOARD OF GOVERNORS. (a) The corporation shall exercise its powers through a board of governors which is appointed by the governor of the state and confirmed by the legislature. Members of the board of governors shall be Alaska residents as follows:

(1) two physicians licensed in the state; one of the physicians shall be engaged in group practice in a clinic of six or more physicians;

(2) an administrator or senior executive officer employed by a hospital licensed in the state;

(3) two professionals from insurance companies authorized in the state;

(4) two persons who are not health care providers or financially interested in the field of health care or representatives of the insurance industry.

(b) The term of office of each governor is three years, except that the governor of the state shall designate two initially appointed governors to serve for one year and two initially appointed governors to serve for two years. Upon the expiration of the term of a governor, the governor of the state shall appoint a successor who shall be from the same class described in (a) of this section as the governor whose term has expired.

(c) Upon a governor's early resignation, death or inability to

serve, the governor of the state shall appoint a successor from the same class defined in (a) of this section as the terminating governor, who shall serve for the unexpired term.

(d) The director or his designee is not a voting member of the board of governors but shall be notified by the board of and have the right to attend and participate in all meetings and proceedings of the board.

(e) Members of the board of governors receive compensation from the corporation of $100 per day when the board meets and necessary travel expenses.

Sec. 21.88.040. CORPORATION PLAN OF OPERATION. (a) Within 30 days after the effective date of this chapter, the board of governors shall prepare and submit to the director for approval a plan of operation which provides for the fair, reasonable and equitable administration of the affairs of the corporation and the discharge of the purposes for which it is created. The plan and any amendments to it become effective upon the director's approval. If the board of governors fails to submit a plan of operation, or if at a subsequent time the board of governors fails to submit suitable amendments to the plan, the director shall, after notice and hearing, adopt and promulgate a plan of operation or amendments which are necessary or advisable to carry out the provisions of this chapter. Adoption of the plan is not subject to the Administrative Procedure Act (AS 44.62).

(b) The plan of operation shall

(1) establish the procedures by which all the powers and duties of the corporation specified in sec. 50 of this chapter shall be performed;

(2) establish procedures for handling assets and discharging liabilities of the corporation;

(3) establish regular times and places for meetings of the board of governors;

(4) establish procedures for records to be kept of all financial transactions of the corporation, its agents, and the board of governors;

(5) establish the procedures for awarding contracts to carry out the provisions of this chapter;

(6) establish the procedures for issuing contracts of insurance as provided in sec. 50 of this chapter and for the determination of rates;

(7) contain additional provisions necessary for the execution of the powers and duties of the corporation.

Sec. 21.88.050. POWERS AND DUTIES OF THE CORPORATION. (a) The corporation shall

(1) in the form approved by the director, issue to all physicians and hospitals who pay the premiums for it a contract or contracts indemnifying the physicians and hospitals and their employees who are physicians against loss by reason of liability for professional services on an occurrence basis and agreeing to tender on behalf of the physicians and hospitals and their employees who are physicians a defense in a proceeding brought under AS 09.55.530 - 09.55.560; the limit of liability shall be no less than the minimum liability coverage requirements to be maintained under AS 08.64.215 and AS 18.20.045; the contract shall cover the defense against but need not indemnify a claim for punitive damages; at the option of the physician or hospital and for an additional premium the contract may cover claims against the physician or hospital that arise out of professional services performed by the physician or hospital after December 31, 1974 except that coverage will not be provided for a claim already filed or of which the physician or

hospital had or reasonably should have had notice at the time the retroactive insurance was purchased;

(2) in a form approved by the director and for a premium determined under sec. 80 of this chapter, issue contracts of insurance on an occurrence basis indemnifying chiropractors, dental hygienists, dentists, nurses, dispensing opticians, optometrists, pharmacists, physical therapists, or psychologists and psychological associates, if a finding of unavailability of insurance and impairment of services has been made under AS 08.20.115, AS 08.32.015, AS 08.36.115, AS 08.68.165, AS 08.71.085, AS 08.72.115, AS 08.80.115, AS 08.84.035, or AS 08.86.125; and agreeing to tender on behalf of the person insured under this paragraph a defense in a proceeding under AS 09.55.530 - 09.55.560; the contract shall cover the defense against but need not indemnify a claim for punitive damages;

(3) charge a premium for the protection provided by the contracts issued by the corporation which shall be determined by the board of governors in accordance with sec. 80 of this chapter and subject to the approval of the director;

(4) comply with or be subject to AS 21.06.090; 21.06.120; 21.06.140; 21.06.160; 21.06.250; AS 21.09.180; 21.09.190; 21.09.200; 21.09.250; 21.09.280; AS 21.12.020(b), (c), (d), and (e); and chs. 18, 21, 24, and 36 of this title; and shall be exempt from participation as a member insurer in the Alaska Insurance Guaranty Corporation;

(5) carry out the obligations of the contracts issued by the corporation by defending all covered claims made against insured health care providers and by paying all liabilities which are finally adjudicated against the insured health care provider or which may in the opinion of the corporation reasonably be expected to be finally adjudicated against the health care provider to the extent of the contract

obligation;

(6) provide coverage to physicians and hospitals for liability in excess of the minimum limits required for licensure as a physician or hospital, but limited to $1,000,000 for physicians and $5,000,000 for hospitals, if there is a finding by the director that this coverage is unavailable at a reasonable cost and that this coverage can be made available at a reasonable cost through the corporation; if this paragraph is implemented, then each physician or hospital obtaining excess coverage up to these amounts shall obtain it from the corporation, and the corporation may procure reinsurance for all risks incurred by contracts issued under this paragraph from the private market.

(b) The corporation may

(1) employ or retain persons, individual or corporate, to discharge its obligations and pay reasonable compensation for those services; employees of the corporation are not considered state employees;

(2) recommend that the director hold public hearings for the purpose of commencing operation of the joint underwriting association established under secs. 110 - 180 of this chapter; if the joint underwriting association begins operation, the corporation may purchase reinsurance from the association for any of the liability incurred by contracts issued by the corporation;

(3) provide coverage to physicians and hospitals for other hazards when there is a finding by the director that this coverage is otherwise unavailable by reason of the operation of the corporation;

(4) borrow or advance funds necessary to carry out the purposes of the corporation;

(5) negotiate and become a party to those contracts as are necessary to carry out the purposes of the corporation;

(6) sue or be sued in the name of the corporation;

(7) provide risk management advice and services to hospitals;

(8) negotiate and become a party to contracts for management services for the corporation;

(9) perform all other acts necessary and proper to carry out the duties of the corporation.

Sec. 21.88.060. PREMIUM TAX. The corporation shall pay a premium tax in the amount of one and one-half per cent of the total direct premium income received by the corporation during the year ending on the preceding December 31, after deducting the applicable cancellations, returned premium, the unabsorbed portion of any deposit premiums, all policy dividends, unabsorbed premiums refunded to policyholders, refunds, savings, savings coupons and other similar returns paid or credited to policyholders with respect to their policies. The tax shall be paid to the director annually before April 1 of each year.

Sec. 21.88.070. STATISTICS. The corporation shall collect, maintain and report information concerning claims against health care providers. The information shall be on forms prescribed by the director, and shall be sufficient to enable a proper determination of losses for rate making and to identify causes and sources of loss for loss control. At least annually the corporation shall report to the director the number and amount of claims filed, reserved, paid, settled and adjudicated during the year, the premiums paid to and the expenses incurred by the corporation during the year. This report shall be available to the public. The director may require that supplemental reports include the names of insured health care providers and the claimants; however, no reports which become available to the public may include the names of health care providers or claimants or information that will permit by inference the identity of specific health care

providers or claimants. All statistics shall be made available to the appropriate licensing board or agency.

Sec. 21.88.080. RATES. The rates and rating plans used by the corporation for the policies issued shall be determined by license category of health care providers in accordance with all of the following:

(1) rates for physicians shall be set as a function of the physician's medical revenue;

(2) rates for hospitals shall be set as a function of the number of permanent beds in the hospital;

(3) a minimum rate may be set for each category of health care provider or discipline or classification within the license category;

(4) rates may not be excessive; rates are excessive if, after a period of time and with respect to an amount of gross premium which are actuarially credible, the premiums exceed losses incurred by the corporation, including losses paid, reserves for claims reported and unpaid, reserves for claims incurred during the policy period and not reported, provided that reserves for claims incurred during the policy period and reasonably expected to be reported after three years after the incident may be included on a different basis due to the additional financial flexibility provided by the corporation, and reasonable expenses for the operation of the corporation;

(5) rates shall not be inadequate; rates are inadequate if, based on available actuarial data, the premiums to be paid by the health care providers are or may reasonably be expected to be insufficient to pay for losses incurred by the corporation, including claims paid, reserves for claims reported and unpaid, reserves for claims incurred during the policy period and not reported, provided that reserves for claims incurred during the policy period and reasonably

expected to be reported after three years after the incident may be included on a different basis due to the additional financial flexibility provided by the corporation, and reasonable expenses for the operation of the corporation;

(6) rates may not be unfairly discriminatory;

(7) rates shall be adjusted annually;

(8) rates for any policy year shall be calculated to include the adjustment for actual experience of the corporation as developed for the preceding four policy years;

(9) in considering losses to be incurred, changes in the law, national, regional or local trends in medical negligence awards, and other relevant factors may be considered;

(10) income from the investment of reserves shall be considered;

(11) individual risk underwriting factors shall be considered;

(12) disciplines and classifications within the license categories of health care providers shall be considered;

(13) amounts sufficient for repayment of loan obligations shall be considered.

Sec. 21.88.090. PAYMENT OF PREMIUMS; CANCELLATION OF INSURANCE. The corporation may provide for installment payment of premiums in which event each installment is due by the date specified. The corporation may cancel any of its policies in the event of nonpayment of any premium or installment on a premium, or other charge, by mailing or delivering to the insured at the address shown on the policy and to the agency of the state issuing the insured's license written notice of cancellation. Cancellation is not effective until 30 days after the date notice is posted by the corporation.

ARTICLE 3. JOINT UNDERWRITING ASSOCIATION.

Sec. 21.88.110. ASSOCIATION CREATED. (a) The Health Care Providers Joint Underwriting Association is created as an association having a legal existence independent of and separate from the state and consisting of all licensed (1) health care service corporations as defined in AS 21.87.330; (2) disability insurers as defined in AS 21.12.-050; (3) property insurers as defined in AS 21.12.060; and (4) casualty insurers as defined in AS 21.12.070. Obligations issued by the association do not constitute a debt, liability or obligation of the state or a pledge of full faith and credit of the state.

(b) Every insurer described in (a) of this section is a member of the association and shall remain a member as a condition of its authority to continue to transact that kind of business in the state.

(c) The association shall commence operation if the director finds, after public hearing, that a market for reinsurance for any portion of its insurance coverage is needed by the corporation. After the association has commenced operation, if the director determines, after public hearing, that a market for reinsurance is no longer needed by the corporation, the association shall cease its underwriting operations.

Sec. 21.88.120. PURPOSE. The purpose of the association is to provide a market for medical malpractice reinsurance to the corporation on a self-supporting basis without subsidy from association members.

Sec. 21.88.130. ASSOCIATION BOARD OF DIRECTORS; TERM; COMPENSATION. (a) The association shall be governed by a board of directors appointed by the governor of the state and consisting of two representatives of domestic casualty and property insurers, one representative of admitted disability insurers, one representative of health care service corporations, one representative of foreign casualty and property insurers, and two persons from the public.

(b) Members of the board of directors serve three-year terms.

(c) Members of the board of directors receive compensation from the association of $100 per day when the board meets and necessary travel expenses.

Sec. 21.88.140. ASSOCIATION PLAN OF OPERATION. (a) Within 30 days after the association commences operation the board of directors shall prepare and submit to the director for his approval a plan of operation which provides for the fair, reasonable and equitable administration of the affairs of the association and the discharge of the purposes for which it is created. The plan and any amendments to it become effective upon the director's approval. If the board of directors has failed to submit a plan of operation, or if at any subsequent time the board of directors fails to submit suitable amendments to the plan, the director shall, after notice and hearing, adopt and promulgate a plan of operation or amendments which are necessary or advisable to carry out the provisions of this chapter. Adoption of the plan is not subject to the Administrative Procedure Act (AS 44.62).

(b) The plan of operation shall

(1) establish the procedures for carrying out the powers and duties of the association specified in sec. 150 of this chapter;

(2) establish procedures for handling assets and discharging liabilities of the association;

(3) establish regular times and places for meetings of the board of directors;

(4) establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;

(5) establish the procedures for awarding contracts to indemnify or defend or to provide other services and to compensate the indemnitors or vendors;

(6) establish the procedures for issuing contracts of insurance as provided in sec. 150 of this chapter and for the determination of rates;

(7) contain additional provisions necessary for the execution of the powers and duties of the association.

Sec. 21.88.150. POWERS AND DUTIES OF THE ASSOCIATION. (a) The association shall

(1) provide reinsurance to the corporation covering contracts issued by the corporation for that portion of the liability incurred by the corporation it chooses to reinsure through the association, indemnifying physicians and hospitals, their employees who are physicians, and other persons insured by the corporation against loss by reason of liability for professional services and agreeing to tender on behalf of the insureds a defense in an action brought under AS 09.55.530 - 09.55.-560;

(2) charge a premium for the protection provided by the reinsurance issued under (a)(1) of this section which shall be determined by the board of directors in accordance with secs. 80 and 160 of this chapter and are subject to the approval of the director;

(3) comply with or be subject to AS 21.06.090; 21.06.120; 21.06.140; 21.06.160; 21.06.250; AS 21.09.180; 21.09.200; 21.09.250; 21.09.280; AS 21.12.020(b), (c), (d), and (e); and chs. 18, 21, 24, and 36 of this title; and shall be exempt from participation as a member insurer in the Alaska Insurance Guaranty Association;

(4) carry out the obligations of the contracts issued under (a)(1) of this section by defending all covered claims made against the insureds and paying all liabilities which are finally adjudicated against the insureds or which may in the opinion of the association reasonably be expected to be finally adjudicated against the insured

to the extent of the contract obligation.

(b) The association may

(1) employ or retain persons, individual or corporate, to discharge its obligations and pay reasonable compensation for those services; employees of the association are not considered state employees;

(2) borrow or advance funds necessary to carry out the purposes of the association;

(3) negotiate and become a party to those contracts which are necessary to carry out the purposes of the association;

(4) sue or be sued in the name of the association;

(5) cede or assume reinsurance;

(6) perform all other acts necessary and proper to carry out the duties of the association.

Sec. 21.88.160. RATES AND RATE ADJUSTMENT. (a) The rates and rating plans shall be determined as provided in sec. 80 of this chapter, except that allowance may not be made for income from investment of member-contributed funds; and provided that reserves for claims incurred during the policy period and reasonably expected to be reported after three years after the incident may be included on a different basis due to the additional financial flexibility provided by the association.

(b) If in any year an assessment is made under sec. 170 of this chapter, rates for the next period shall be increased from the rate determined under (a) of this section by an amount sufficient to reimburse all members the amounts assessed. No assessment may be reimbursed to members without prior approval of the director and no interest accrues in favor of members on amounts assessed.

(c) If after establishing required reserves and repaying all assessments to members there is an excess amount in reserve, the excess

premium shall be refunded to the corporation for reimbursement to the insureds.

Sec. 21.88.170. ASSESSMENT. If sufficient funds are not available for the sound financial operation of the association, all members shall contribute to the financial requirements of the association by paying to the association an assessment to be determined by the board of directors of the association, subject to the approval of the director; assessments shall be prorated among all members in proportion to their direct written premiums or revenues in the state in the insurance lines the writing of which require membership in the association, in the two years ending on the preceding December 31, after deducting the applicable cancellations, returned premium, the unabsorbed portion of any deposit premium, all policy dividends, unabsorbed premiums refunded to policyholders, refunds, savings, savings coupons and other similar returns paid or credited to policyholders with respect to their policies. If any member is prohibited by the law of its state of domicile from paying an assessment to the association, then in lieu of the assessment the member shall pay a tax to the director, in the same amount as the assessment as an obligation in addition to taxes required under AS 21.09.210 and notwithstanding the provisions of AS 21.09.210(e). An amount equal to taxes received under this section may be appropriated to the association.

Sec. 21.88.180. REPORTS. At least annually the association shall report to the director concerning its affairs. The report shall be in the form prescribed by the director.

ARTICLE 4. LOAN FUND.

Sec. 21.88.210. FUND ESTABLISHED. (a) There is in the Department of Commerce and Economic Development a medical malpractice liability revolving loan fund to be administered by the director of insurance.

(b) An initial Loan may be made from the fund to the corporation

upon certification by the director that a loan is necessary ~~for the corporation or association to spread costs out over time because of fluctuations~~ for the foregoing purposes, to capitalize the corporation in loss experience. If a loan is made to the corporation from the fund, the corporation shall issue a note to the fund as evidence of the loan.

~~(c) Loans from the fund shall be repaid within five years at an annual interest rate of six per cent.~~

(d) The director may sell at par value to the Department of Revenue the notes, security instruments and pledge agreements held by the Department of Commerce and Economic Development as security for loans made under this section. The Department of Revenue shall purchase all the notes offered until the current principal amount of the notes purchased and held by the Department of Revenue equals $5,000,000.

ARTICLE 5. GENERAL PROVISIONS.

Sec. 21.88.900. DEFINITIONS. In this chapter

(1) "association" means the Health Care Providers Joint Underwriting Association;

(2) "corporation" means the Medical Indemnity Corporation of Alaska;

(3) "governor" means a member of the board of governors of the Medical Indemnity Corporation of Alaska;

(4) "health care provider" means a person or institution insured under this chapter;

(5) "physician" means a person licensed under AS 08.64;

(6) "hospital" means an institution licensed under AS 18.20;

(7) "chiropractor" means a person licensed under AS 08.20;

(8) "dental hygienist" means a person licensed under AS 08.32;

(9) "dentist" means a person licensed under AS 08.36;

(10) "dispensing optician" means a person licensed under

AS 08.71;

(11) "optometrist" means a person licensed under AS 08.72;

(12) "physical therapist" means a person licensed under AS 08.80;

(13) "pharmacist" means a person licensed under AS 08.84;

(14) "psychologist" and "psychological associate" means a person licensed under AS 08.86.

* Sec. 42. AS 21.18.090 is amended by adding new paragraphs to read:

(5) reserves for the Medical Indemnity Corporation of Alaska are to include only reserves for claims reported and unpaid and reserves for claims incurred but not reported but which may reasonably be expected to be reported within three years after the date of occurrence;

(6) reserves for the Health Care Providers Joint Underwriting Association are to include claims reported and unpaid; reserves for claims incurred but not reported, but those which may reasonably be expected to be reported beyond three years after the date of occurrence may be included on a different basis due to the additional financial flexibility of the association.

* Sec. 43. AS 21.80.180(5) is amended to read:

(5) "insolvent insurer" means an insurer

(A) authorized to transact insurance in this state, except the Medical Indemnity Corporation of Alaska and the Health Care Providers Joint Underwriting Association established under ch. 88 of this title, either at the time the policy was issued or when the insured event occurred, and

(B) determined to be insolvent by a court of competent jurisdiction;

* Sec. 44. AS 21.80.180(6) is amended to read:

(6) "member insurer" means a person, except the Medical

Indemnity Corporation of Alaska and the Health Care Providers Joint Underwriting Association established under ch. 88 of this title, who

(A) writes any kind of insurance to which this chapter applies under sec. 20 of this chapter including the exchange of reciprocal or inter-insurance contracts, and

(B) is licensed to transact insurance in this state;

* Sec. 45. AS 08.02 is amended by adding a new section to read:

Sec. 08.02.020. LIMITATION OF LIABILITY FOR MEMBERS OF LICENSING BOARDS. No person is liable for damages or other relief in an action by reason of his performance of a duty, function, or activity as a member of a licensing board or by reason of a recommendation or action of the board when the person acts in the reasonable belief that his action or recommendation is warranted by facts known to him or to the board after reasonable efforts to ascertain the facts upon which the action or recommendation is made.

* Sec. 46. AS 09.55.536, enacted in sec. 33 of this Act, has the effect of changing the Alaska Supreme Court's Rules of Civil Procedure by requiring the submission of medical malpractice actions against health care providers to expert advisory panels before discovery unless the court decides an expert advisory opinion is not necessary in the case.

* Sec. 47. AS 08.64.365 and AS 08.68.040 are repealed.

* Sec. 48. Secs. 33 - 38 of this Act apply to all causes of action for medical malpractice which have not been filed in a court of this state ~~prior to~~ before the effective date of this Act.

* Sec. 49. Secs. 1 - 32 and secs. 39 - 47 take effect 30 days after the effective date of this Act.

* Sec. 50. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Note: the severability clause will be added

proofed
4/22
4/26

Original Sponsor: Rules Committee by request of the Governor

IN THE HOUSE BY THE FREE CONFERENCE COMMITTEE

FREE CONFERENCE CS FOR SENATE CS FOR CS FOR HOUSE BILL NO. 574

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to health care; changing the Alaska Supreme Court's Rules of Civil Procedure; and providing for an effective date."

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

* Section 1. AS 08.01.050 is amended by adding a new paragraph to read:

(19) provide investigative services to the boards established under chs. 20, 32, 36, 64, 68, 71, 72, 80, 84, and 86 of this title, for the purpose of assisting those boards in matters of professional discipline.

* Sec. 2. AS 08.20.010 is amended to read:

Sec. 08.20.010. CREATION AND MEMBERSHIP OF BOARD OF CHIROPRACTIC EXAMINERS. There is created the Board of Chiropractic Examiners consisting of <u>five</u> [THREE] members appointed by the governor.

* Sec. 3. AS 08.20.020 is amended to read:

Sec. 08.20.020. MEMBERS OF BOARD. <u>Three members</u> [EACH MEMBER] of the board shall be [A] licensed chiropractic <u>physicians who</u> [PHYSICIAN AND SHALL] have practiced chiropractic in this state not less than two years. <u>Two members of the board shall be persons with no direct financial interest in the health care industry.</u> Each member serves without pay but is entitled to per diem and travel expenses allowed by law.

* Sec. 4. AS 08.20.030 is repealed and re-enacted to read:

Sec. 08.20.030. MEMBERS TERMS, VACANCIES. Members serve for staggered terms of three years. The terms of the public members of the board may not expire at the same time. Vacancies on the board shall be

unclear

filled for the unexpired term.

* Sec. 5. AS 08.20 is amended by adding a new section to read:

Sec. 08.20.115. MALPRACTICE INSURANCE. If medical malpractice insurance for chiropractors becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of chiropractic services to the public, the director of insurance may require all persons licensed under this chapter to carry malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. Compliance with the requirements of this section is a condition of licensure under this chapter. This requirement is satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska.

* Sec. 6. AS 08.20 is amended by adding a new section to read:

Sec. 08.20.175. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 170 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education or health the authority to practice chiropractic should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 7. AS 08.32 is amended by adding new sections to read:

Sec. 08.32.015. MALPRACTICE INSURANCE. If medical malpractice insurance for dental hygienists becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of dental hygiene services

to the public, the director of insurance may require all persons licensed under this chapter to carry malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. Compliance with the requirements of this section is a condition of licensure under this chapter. The provisions of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska.

Sec. 08.32.165. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 160 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education or health the authority to practice dental hygiene should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 8. AS 08.36.010 is amended to read:

Sec. 08.36.010. CREATION AND MEMBERSHIP OF BOARD. There is created the Board of Dental Examiners, referred to in this chapter as the board, consisting of <u>seven</u> [FIVE] members. <u>Five members</u> [EACH MEMBER] shall be [A CITIZEN OF THE UNITED STATES AND A] qualified resident <u>dentists</u> who <u>have</u> [HAS] been engaged in the practice of dentistry in the state for five years immediately preceding [HIS] appointment<u>, and two members shall be persons with no direct financial interest in the health care industry</u>.

* Sec. 9. AS 08.36.020 is amended to read:

Sec. 08.36.020. APPOINTMENT AND TERM OF SERVICE OF MEMBERS. Members of the board are appointed by the governor, subject to confirmation by the legislature in joint session [ASSEMBLED]. Each

board member serves for a term of five years, and until his successor is appointed and qualified except that the terms of the public members on the board shall be staggered so that they do not expire at the same time. The term begins on February 1. An appointment to a vacancy is for the unexpired term. [APPOINTMENTS SHALL BE MADE FROM A LIST OF NAMES RECOMMENDED BY THE ALASKA DENTAL SOCIETY. THE LIST SHALL BE SUPPLIED AT LEAST 30 DAYS BEFORE THE BEGINNING OF A TERM AND NOT MORE THAN 60 DAYS AFTER THE OCCURRENCE OF A VACANCY. THE LIST SHALL CONTAIN AT LEAST TWO RECOMMENDED NAMES FOR EACH APPOINTMENT. THE GOVERNOR SHALL MAKE THE APPOINTMENT WITHIN 30 DAYS AFTER RECEIVING THE LIST.]

* Sec. 10. AS 08.36 is amended by adding new sections to read:

Sec. 08.36.115. MALPRACTICE INSURANCE. If medical malpractice insurance for dentists becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of dental services to the public, the director of insurance may require all persons licensed under this chapter to carry malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. Compliance with the requirements of this section is a condition of licensure under this chapter. The requirements of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska.

Sec. 08.36.325. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 320 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health, the authority to practice dentistry should be limited or conditioned or the practitioner disciplined, the board may censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 11. AS 08.64.010 is amended to read:

Sec. 08.64.010. CREATION AND MEMBERSHIP OF STATE MEDICAL BOARD. The governor shall appoint a board of medical examiners, to be known as the State Medical Board, consisting of five licensed physicians, residing in as many separate Alaska judicial districts as possible, and two persons with no direct financial interest in the health care industry. [EACH MEMBER SHALL BE CHOSEN FROM A PANEL OF THREE, FOR EACH VACANCY, SUBMITTED TO THE GOVERNOR BY THE ALASKA STATE MEDICAL ASSOCIATION.]

* Sec. 12. AS 08.64.020 is amended to read:

Sec. 08.64.020. STATE MEDICAL BOARD TERM OF OFFICE. Members shall be appointed for a term of four years, subject to confirmation by a majority of the members of the legislature in joint session, and shall hold office until their successors are appointed and qualified. The terms of the public members of the board shall be staggered so that they do not expire at the same time.

* Sec. 13. AS 08.64.090 is amended to read:

Sec. 08.64.090. QUORUM. Four [THREE] members of the board constitute a quorum for the transaction of all business properly before the board.

* Sec. 14. AS 08.64 is amended by adding new sections to read:

Sec. 08.64.215. INSURANCE REQUIRED. (a) To be eligible for an active license under this chapter, a person shall maintain insurance issued by the Medical Indemnity Corporation of Alaska against liability to patients for medical malpractice in limits of not less than $200,000 per occurrence and $600,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him

from the Medical Indemnity Corporation of Alaska in the required amounts.

(b) The director of insurance or his designee shall waive the requirement in (a) of this section for a person if that person furnishes satisfactory evidence of his having other insurance providing coverage in amounts not less than those specified in (a) of this section. No waiver granted under this subsection may extend beyond the normal expiration date of the person's insurance policy or January 1, 1977, whichever occurs first.

Sec. 08.64.312. CONTINUING EDUCATION REQUIREMENTS. (a) The board shall promote a high degree of competence in the practice of medicine by requiring every physician licensed in the state to fulfill continuing education requirements.

(b) Before a license may be renewed the licensee shall submit evidence to the board that continuing education requirements prescribed by regulations adopted by the board have been met.

(c) The board may exempt a physician from the requirements of (b) of this section upon an application by him giving evidence satisfactory to the board that he is unable to comply with the requirements because of extenuating circumstances. However, no person may be exempted from more than 15 hours of continuing education in a five-year period.

Sec. 08.64.325. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 330 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 15. AS 08.68.010 is amended to read:

Sec. 08.68.010. CREATION AND MEMBERSHIP OF BOARD OF NURSING. There is created a Board of Nursing, consisting of seven [FIVE] members appointed by the governor. One member shall be currently involved in institutional nursing service, one member in community or public health nursing and two members in basic or continuing nursing education, [AND] one nurse at large, and two persons who have no direct financial interest in the health care industry.

* Sec. 16. AS 08.68.020 is repealed and re-enacted to read:

Sec. 08.68.020. TERM OF OFFICE. Members serve staggered terms of five years and until their successors are appointed. The terms of the public members on the board shall be set so that they do not expire at the same time. Vacancies on the board shall be filled for the unexpired term.

* Sec. 17. AS 08.68.060 is amended to read:

Sec. 08.68.060. QUALIFICATIONS OF BOARD MEMBERS. The five members [EACH MEMBER] of the board who are nurses shall be [A CITIZEN OF THE UNITED STATES, A RESIDENT OF THE STATE, AND A] licensed professional nurses [NURSE] in the state, and [MEMBERS] shall have been actively engaged in nursing for not less than four years before appointment, two years of which were within the five years preceding appointment.

* Sec. 18. AS 08.68 is amended by adding new sections to read:

Sec. 08.68.165. MALPRACTICE INSURANCE. If medical malpractice insurance for nurses becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of nursing services to the public, the director of insurance may require all persons licensed under this chapter to carry malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88.

Compliance with the requirements of this section is a condition of licensure under this chapter. The requirements of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska.

Sec. 08.68.275. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 270 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice nursing should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 19. AS 08.71.020 is amended to read:

Sec. 08.71.020. MEMBERSHIP OF BOARD; SOURCE OF APPOINTMENTS; TERM OF OFFICE. The board consists of <u>seven</u> [FIVE] persons appointed by the governor. <u>Members serve staggered terms of three years. The terms of the public members of the board shall be set so that they do not expire at the same time.</u> [THE GOVERNOR SHALL APPOINT BOARD MEMBERS FROM A LIST OF QUALIFIED OPTICIANS PREPARED BY THE ASSOCIATION OF OPTICIANS IN THE STATE AND SUBMITTED AT LEAST 30 DAYS BEFORE JULY 1, 1973, AT LEAST 30 DAYS BEFORE THE EXPIRATION OF A TERM AND NOT MORE THAN 60 DAYS AFTER A VACANCY OCCURS IN AN UNEXPIRED TERM. THE LIST SHALL CONTAIN NOT LESS THAN TWO RECOMMENDED CANDIDATES FOR EACH APPOINTMENT. THE GOVERNOR SHALL MAKE APPOINTMENTS WITHIN 30 DAYS AFTER RECEIVING THE LIST. THE TERM OF OFFICE OF EACH MEMBER IS THREE YEARS. HOWEVER, OF THE FIRST MEMBERS OF THE BOARD, ONE SHALL BE APPOINTED FOR A ONE-YEAR TERM, TWO FOR TWO-YEAR TERMS, AND TWO FOR THREE-YEAR TERMS.] Vacancies on the board shall be filled for the unexpired term [IN THE SAME MANNER AS

ORIGINAL APPOINTMENT].

* Sec. 20. AS 08.71.030 is amended to read:

Sec. 08.71.030. QUALIFICATIONS OF BOARD MEMBERS. Five [A] board members [MEMBER] shall be [A] licensed, practicing dispensing opticians [OPTICIAN] residing in the state. Two shall be persons with no direct financial interest in the health care industry.

* Sec. 21. AS 08.71 is amended by adding new sections to read:

Sec. 08.71.085. MALPRACTICE INSURANCE. If medical malpractice insurance for opticians becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of optician services to the public, the director of insurance may require all persons licensed under this chapter to carry malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. Compliance with the requirements of this section is a condition of licensure under this chapter. The requirements of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska.

Sec. 08.71.175. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 170 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice as a dispensing optician under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 22. AS 08.72.020 is amended to read:

Sec. 08.72.020. MEMBERSHIP OF BOARD AND TERMS OF OFFICE. The board consists of five [THREE] persons, appointed by the governor. Members serve staggered terms of three years. The terms of the public members of the board shall be set so that they do not expire at the same time. [THE TERM OF EACH MEMBER IS THREE YEARS. ONE MEMBER ONLY IS APPOINTED EACH YEAR, EXCEPT WHEN VACANCIES FOR UNEXPIRED TERMS ARE FILLED.]

* Sec. 23. AS 08.72.040 is repealed and re-enacted to read:

Sec. 08.72.040. QUALIFICATIONS. Three board members shall be licensed, practicing optometrists who have been residents for at least three years. Two shall be persons who have no direct financial interest in the health care industry.

* Sec. 24. AS 08.72 is amended by adding new sections to read:

Sec. 08.72.115. MALPRACTICE INSURANCE. If medical malpractice insurance for optometrists becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of optometrist services to the public, the director of insurance may require all persons licensed under this chapter to carry malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. Compliance with this section is a condition of licensure under this chapter. The requirements of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska.

Sec. 08.72.255. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under secs. 240 and 250 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice optometry under this chapter should be limited or conditioned or the practitioner

disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 25. AS 08.80.010 is amended to read:

Sec. 08.80.010. CREATION AND MEMBERSHIP OF BOARD OF PHARMACY. There is created the Board of Pharmacy, composed of seven [FIVE] members five [EACH] of whom shall be pharmacists [A PHARMACIST] licensed in the state who have [HAS] been actively engaged in the practice of pharmacy in the state for a period of three years immediately preceding their [HIS] appointment. Two shall be persons with no direct financial interest in the health care industry. Whenever possible, the board shall include at least one member from each judicial district.

* Sec. 26. AS 08.80.020 is amended to read:

Sec. 08.80.020. TERM OF OFFICE. Members of the board are appointed by the governor, and confirmed by the legislature in joint session, for overlapping terms of five years, or until their successors are appointed and qualified. The terms of the public members shall be staggered so that they do not expire at the same time. An appointment to fill a vacancy is for the unexpired term. The term of office begins on April 1 of each year.

* Sec. 27. AS 08.80.070 is amended to read:

Sec. 08.80.070. QUORUM. Four [THREE] members constitute a quorum for the transaction of business. However, when the board meets for the purpose of examining applications for registration, three [TWO] members of the board constitute a quorum.

* Sec. 28. AS 08.80 is amended by adding new sections to read:

Sec. 08.80.115. MALPRACTICE INSURANCE. If medical malpractice

insurance for pharmacists becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of pharmacist services to the public, the director of insurance may require all persons licensed under this chapter to carry malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. Compliance with the requirements of this section is a condition of licensure under this chapter. The requirements of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska.

Sec. 08.80.265. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 260 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice pharmacy under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 29. AS 08.84 is amended by adding new sections to read:

Sec. 08.84.035. MALPRACTICE INSURANCE. If medical malpractice insurance for physical therapists becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of physical therapist services to the public, the director of insurance may require all persons licensed under this chapter to carry malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. Compliance with this section is a condition

of licensure under this chapter. The requirements of this section are satisfied if the licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska.

Sec. 08.84.185. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 180 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education or health the authority to practice physical therapy should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 30. AS 08.86.010 is amended to read:

Sec. 08.86.010. CREATION AND MEMBERSHIP OF BOARD. There is created a Board of Psychologist and Psychological Associate Examiners. It consists of three licensed psychologists, and two persons who have no direct financial interest in the health care industry.

* Sec. 31. AS 08.86.020 is amended to read:

Sec. 08.86.020. APPOINTMENT AND TERM OF OFFICE. Members of the board are appointed by the governor and confirmed by the legislature for staggered terms of three years. The terms of the public members shall be set so that they do not expire at the same time. A member serves at the pleasure of the governor.

* Sec. 32. AS 08.86 is amended by adding new sections to read:

Sec. 08.86.125. MALPRACTICE INSURANCE. If medical malpractice insurance for psychologists or psychological associates becomes unavailable on the voluntary market and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of psychologist or psychological associate services to the public, the

director of insurance may require all persons licensed under this chapte to carry malpractice insurance and to purchase their insurance from the Medical Indemnity Corporation of Alaska established under AS 21.88. Compliance with this section is a condition of licensure as a psychologi or psychological associate under this chapter. The requirements of this section are satisfied if a licensee's employer maintains insurance for him from the Medical Indemnity Corporation of Alaska.

Sec. 08.86.220. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) Upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice psychology or as a phsychological associate under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by time, specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 33. AS 09.55 is amended by adding new sections to read:

Sec. 09.55.535. VOLUNTARY ARBITRATION. (a) A patient and any health care provider may execute an agreement to submit to arbitration any dispute, controversy, or issue arising out of care or treatment by the health care provider during the period that the agreement is in force or that has already arisen between the parties.

(b) An agreement to arbitrate executed before care or treatment is provided shall clearly provide in bold print on the face of the agreement that execution of the agreement by the patient is not a prerequisite to receiving care or treatment. If this subsection is not complied with by the health care provider, the agreement to arbitrate is void. The form to be used shall be approved in advance by the attorney general of the state to assure it fairly informs both parties to the agreement

and properly protects their interests.

(c) The agreement shall provide that the person receiving health care may revoke the agreement within 60 days after execution by notifying the health care provider in writing. A health care provider may not revoke the agreement after its execution.

(d) Each admission to a hospital shall be treated as separate and distinct for the purposes of an agreement to arbitrate, but a person receiving outpatient care from a hospital or clinic or a member of a health maintenance organization may execute an agreement with the hospital which provides for continuation of the agreement for a continuing program of treatment or during continued membership.

(e) Upon the filing of a malpractice claim which is subject to an agreement to arbitrate, the claim shall be submitted to an arbitration board. The arbitration board shall consist of three arbitrators: one arbitrator designated by the claimant or claimants, one arbitrator designated by the health care provider or providers against whom the claim is made, and a third arbitrator designated by mutual agreement who shall serve as chairperson of the board. If the parties cannot agree on the third person, the court will provide a choice of three or more persons who might serve as chairperson of the arbitration board, which shall be from a list of qualified arbitrators furnished by the attorney general. Claimant or claimants together and health care provider or providers together may each strike one or more names, so after each side has done so at least one name remains, providing a basis for the final selection by the court.

(f) The attorney general shall prepare a list of persons consisting of lawyers or other persons qualified to serve as chairperson of an arbitration board. They shall be selected on basis of their technical expertise, judicial temperament, and capability of impartially acting on malpractice claims. The attorney general shall submit a list of at

Where is it binding?

least three names whenever requested to do so by the court along with detailed biographical information on each person listed.

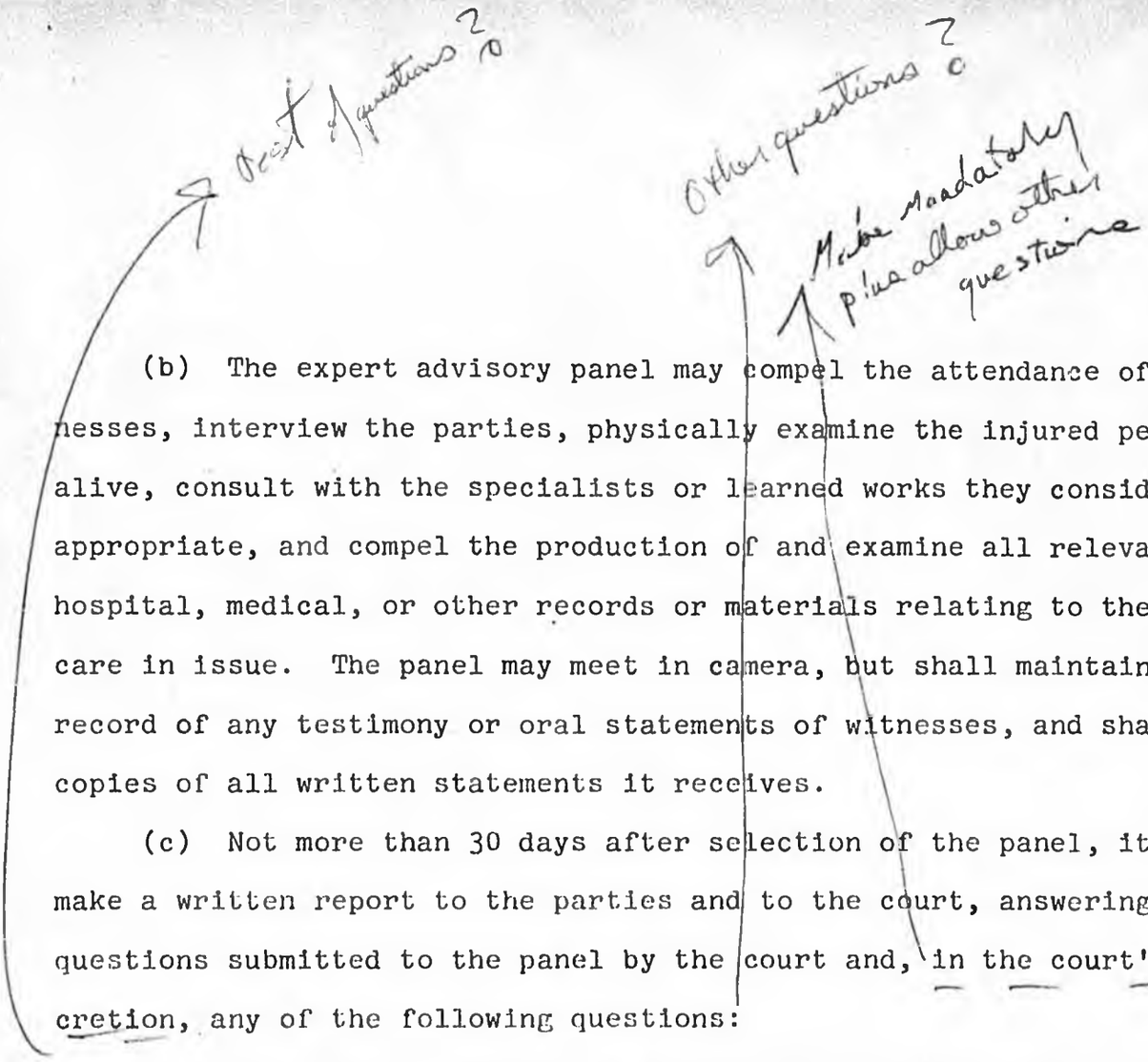
(g) Each member of the arbitration board shall receive reasonable compensation to be paid by the court based on the extent and duration of services rendered. The court shall pay the costs of expert witnesses called by the board and the costs of expert witnesses called by the parties to the arbitration up to a maximum of three witnesses for each side and $150 per day for each expert witness.

(h) The arbitration board may appoint an expert advisory panel, with the powers of the expert advisory panel under sec. 536 of this chapter, to advise the board on the medical facts of the case.

(i) The court shall specify the shortest practical deadline for completion of the work of the arbitration board, taking into account all the circumstances and the nature of the case.

(j) The provisions of the Uniform Arbitration Act, AS 09.43.010 - 09.43.180, apply to arbitrations under this section if they do not conflict with the provisions of this section; arbitrations under this section shall be conducted in accordance with procedures established by any rules of court which may be adopted and according to provisions of secs. 540 - 548 and 554 - 560 of this chapter, and AS 09.65.090 - 09.65.100.

Sec. 09.55.536. EXPERT ADVISORY PANEL. (a) In any action for damages due to personal injury or death based upon the provision of professional services by a health care provider when the parties have not ~~yet~~ agreed to arbitration of the claim under sec. 535 of this chapter, the court shall appoint a three-person expert advisory panel unless the [court decides] that an expert advisory opinion is not necessary for a decision in the case. When the action is filed the court shall, by order, determine the professions or specialties to be represented on the expert advisory panel, giving the parties the opportunity to object or make suggestions.



(b) The expert advisory panel may compel the attendance of witnesses, interview the parties, physically examine the injured person if alive, consult with the specialists or learned works they consider appropriate, and compel the production of and examine all relevant hospital, medical, or other records or materials relating to the health care in issue. The panel may meet in camera, but shall maintain a record of any testimony or oral statements of witnesses, and shall keep copies of all written statements it receives.

(c) Not more than 30 days after selection of the panel, it shall make a written report to the parties and to the court, answering the questions submitted to the panel by the court and, in the court's discretion, any of the following questions:

(1) Was the care which is the subject of the litigation appropriate to the complaint or condition for which the plaintiff sought or was brought to medical care?

(2) Was the care administered in accordance with appropriate medical standards?

(3) Did an injury arise from the medical care?

(4) What is the nature and the extent of the medical injury?

(5) If a medical injury had not occurred, how would the plaintiff's condition differ from the plaintiff's present condition?

(d) In any case in which the answer to one or more of the questions submitted to the panel depends upon the resolution of factual questions which are not the proper subject of expert opinion, the report shall so state and may answer questions based upon hypothetical facts that are fully set out in the opinion. The report shall include copies of all written statements, opinions, or records relied upon by the panel and either a transcription or other record of any oral statements or opinions; shall specify any medical or scientific authority relied upon by the panel; and shall include the results of any physical or mental

examination performed on the plaintiff. Each member shall sign the report and his signature constitutes his adoption of all statements and opinions contained in it; however, a member may, instead of signing the report, submit a concurring or dissenting report which complies with the requirements of this subsection. A member may not attest to any portion of the report as to which he is not qualified to give expert testimony.

(e) The report of the panel with any dissenting or concurring opinion is admissible in evidence to the same extent as though its contents were orally testified to by the person or persons preparing it. The court shall delete any portion that would not be admissible because of lack of foundation for opinion testimony, or otherwise. Either party may submit expert testimony to support or refute the report. The jury shall be instructed in general terms that the report shall be considered and evaluated in the same manner as any other expert testimony. Any member of the panel may be called by any party and may be cross-examined as to the contents of the report or of his dissenting or concurring opinion.

(f) No discovery may be undertaken in a case until the report of the expert advisory panel is received. However, the court may relax this prohibition upon a showing of good cause by any party. If the panel has not completed its report within the 30-day period prescribed in (b) of this section, the court may, upon application, grant it an additional 30 days.

(g) Members of a panel are entitled to travel expenses and per diem in accordance with state law pertaining to members of boards and commissions for all time spent in preparing its report. If a panel member is called upon as a witness at trial or upon deposition, he is entitled to payment of an expert witness fee, which may not exceed $150 per day. All expenses incurred by the panel shall be paid by the

court. However, in any case in which the court determines that a party has made a patently frivolous claim or a patently frivolous denial of liability, it shall order that all costs of the expert advisory panel be borne by the party making that claim or denial.

(h) Parties to the case and their counsel may not initiate communication out of court with members of the panel on the subject matter of its inquiry and report or cause or solicit others to do so, except through ordinary discovery proceedings.

* Sec. 34. AS 09.55.540 is amended to read:

Sec. 09.55.540. BURDEN OF PROOF. (a) In a malpractice action based on the negligence or wilful misconduct of a health care provider [PHYSICIAN LICENSED UNDER AS 08.64, OR A DENTIST LICENSED UNDER AS 08.-36], the plaintiff has [SHALL HAVE] the burden of proving by a preponderance of the evidence

(1) the degree of knowledge or skill possessed or the degree of care ordinarily exercised under the circumstances, at the time of the act complained of, by health care providers in the field or specialty in which the defendant is practicing [BY PHYSICIANS OR DENTISTS PRACTICING THE SAME SPECIALTY IN SIMILAR COMMUNITIES TO THAT IN WHICH THE DEFENDANT PRACTICES];

(2) that the defendant either lacked this degree of knowledge or skill or failed to exercise this degree of care; and

(3) that as a proximate result of this lack of knowledge or skill or the failure to exercise this degree of care the plaintiff suffered injuries that would not otherwise have been incurred.

(b) In malpractice actions there is [SHALL BE] no presumption of negligence on the part of the defendant.

* Sec. 35. AS 09.55 is amended by adding new sections to read:

Sec. 09.55.546. ADVANCE PAYMENTS. In an action to recover damages

under secs. 530 - 560 of this chapter, no advance payment made by the defendant health care provider or his professional liability insurer to or on behalf of the plaintiff is admissible as evidence or may be construed as an admission of liability for injuries or damages suffered by the plaintiff; however, a final award in favor of the plaintiff shall be reduced to the extent of any advance payment. The advance payment shall inure to the exclusive benefit of the defendant or the insurer making the payment.

Sec. 09.55.547. AD DAMNUM. In a cause of action against a health care provider for malpractice, the complaint or any other pleadings may not contain an ad damnum clause or monetary amount claimed against the defendant health care provider, except as necessary for jurisdictional purposes.

Sec. 09.55.548. AWARDS, COLLATERAL SOURCE. (a) Damages shall be awarded in accordance with principles of the common law. The fact finder in a malpractice action shall render any award for damages by category of loss. The court may enter a judgment that future damages be paid in whole or in part by periodic payments rather than by a lump-sum payment; the judgment shall include, if necessary, other provisions to assure that funds will be available as periodic payments become due. Insurance from an authorized insurer as defined in AS 21.90.080 or from the Medical Indemnity Corporation of Alaska is sufficient assurance that funds will be available. Any part of the award which is paid on a periodic basis shall be adjusted annually according to changes in the consumer price index in the community where the claimant resides. In this subsection, future damages includes damages for future medical treatment, care or custody, loss of future earnings, or loss of bodily function of the claimant.

(b) Except when the collateral source is a federal program which by law must seek subrogation and except death benefits paid under life insurance, a claimant may only recover damages from the defendant which

exceed amounts received by the claimant as compensation for his injuries from collateral sources, whether private, group or governmental, and whether contributory or noncontributory. Evidence of collateral sources, other than a federal program which must by law seek subrogation and the death benefit paid under life insurance, is admissible after the fact finder has rendered an award. The court [shall] May take into account the value of claimant's rights to coverage exhausted or depleted by payment of these collateral benefits by adding back a reasonable estimate of their probable value, or by earmarking and holding for possible periodic payment under (a) of this section that amount of the award that would otherwise have been deducted, to see if the impairment of claimant's rights actually takes place in the future.

* Sec. 36. AS 09.55.550 is amended to read:

Sec. 09.55.550. JURY INSTRUCTIONS. In health care [MEDICAL] malpractice actions the jury shall be instructed that the plaintiff has the burden of proving [, BY A PREPONDERANCE OF THE EVIDENCE,] the health care provider's negligence or wilful misconduct in accordance with the standard of proof specified in sec. 540 of this chapter [OF THE PHYSICIAN OR DENTIST]. The jury shall be further instructed that injury alone does not raise a presumption of the health care provider's [PHYSICIAN'S OR DENTIST'S] negligence or misconduct.

* Sec. 37. AS 09.55 is amended by adding new sections to read:

Sec. 09.55.554. ORAL CONTRACTS. No cause of action against a health care provider arises for breach of an oral contract to provide a cure or achieve a specific medical result.

Sec. 09.55.556. INFORMED CONSENT. (a) A health care provider is liable for failure to obtain the informed consent of a patient if the claimant establishes by a preponderance of the evidence that the provider has failed to inform the patient of the common risks and reasonable alternatives to the proposed treatment or procedure, and that but

for that failure the claimant would not have consented to the proposed treatment or procedure.

(b) It is a defense to any action for medical malpractice based upon an alleged failure to obtain informed consent that

(1) the risk not disclosed is too commonly known or is too remote to require disclosure;

(2) the patient stated to the health care provider that he would undergo the treatment or procedure regardless of the risk involved or that he did not want to be informed of the matters to which he would be entitled to be informed;

(3) under the circumstances consent by or on behalf of the patient was not possible; or

(4) the health care provider after considering all of the attendant facts and circumstances used reasonable discretion as to the manner and extent that the alternatives or risks were disclosed to the patient because he reasonably believed that a full disclosure would have a substantially adverse effect on the patient's condition.

Sec. 09.55.560. DEFINITIONS. In secs. 530 - 560 of this chapter

(1) "health care provider" means a chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under AS 08.71; an optometrist licensed under AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a psychologist and a psychological associate licensed under AS 08.86; and a hospital as defined in AS 18.20.130, including a governmentally owned or operated hospital;

(2) "board" means an arbitration board established under sec. 535 of this chapter;

(3) "panel" means an expert advisory panel established under sec. 536 of this chapter.

* Sec. 38. AS 09.65.090 is repealed and re-enacted to read:

Sec. 09.65.090. CIVIL LIABILITY FOR EMERGENCY AID. (a) A person at a hospital or any other location who renders emergency care or emergency counseling to an injured, ill, or emotionally distraught person who reasonably appears to the person rendering the aid to be in immediate need of emergency aid in order to avoid serious harm or death is not liable for civil damages as a result of an act or omission in rendering emergency aid.

(b) This section does not preclude liability for civil damages as a result of gross negligence or reckless or intentional misconduct.

* Sec. 39. AS 18.20 is amended by adding new sections to read:

Sec. 18.20.045. INSURANCE REQUIRED. (a) Every hospital, as a condition of licensure, shall maintain and submit to the department evidence of insurance against liability to inpatients and outpatients for malpractice issued by the Medical Indemnity Corporation of Alaska, in amounts of not less than $200,000 per occurrence, and an aggregate liability per year of $1,000,000 minimum, and an additional $20,000 for each bed over 50. 1 year exemption

(b) The director of insurance or his designee shall waive the requirement in (a) of this section for a hospital if the hospital furnishes satisfactory evidence of having other insurance providing coverage in amounts not less than those specified in (a) of this section. A waiver granted under this subsection may not extend beyond the normal expiration date of the hospital's insurance policy or January 1, 1977, whichever occurs first.

(c) The director of insurance may permit a deductible provision in the policy for a hospital if the hospital

(1) demonstrates to the satisfaction of the director of insurance that without indemnity from any other source the hospital has the financial resources to discharge the maximum potential exposure to the hospital by reason of the deductible provision;

(2) agrees to permit the Medical Indemnity Corporation of Alaska to provide the defense to any claim brought against the hospital if any health care provider insured by the corporation is also involved in the claim and to reimburse the corporation for a pro rata portion of the costs of defense; and

(3) provides the Medical Indemnity Corporation of Alaska with notice of any claim brought against it.

Sec. 18.20.075. RISK MANAGEMENT. (a) To be eligible for a license each hospital shall have in operation an internal risk management program which shall

(1) investigate the frequency and causes of incidents in hospitals which cause injury to patients;

(2) develop and implement measures to minimize the risk of injury to patients; in developing these measures each hospital shall take into account recommendations of the medical staff, the Medical Indemnity Corporation of Alaska, private underwriters, industry standards, experience of other hospitals, and recommendations of licensing boards of other health care providers; and

(3) analyze patient grievances which relate to patient care.

(b) The department shall adopt by regulation and submit to the ~~legislative Administrative Regulation Review Committee standards for~~ risk management programs in hospitals in the state which may vary according to the size of the hospital, the type of care offered by the hospital, and other factors found relevant by the department.

* Sec. 40. AS 18 is amended by adding a new chapter to read:

CHAPTER 23. HEALTH CARE SERVICES INFORMATION.

Sec. 18.23.010. LIMITATION ON LIABILITY FOR PERSONS PROVIDING INFORMATION TO REVIEW ORGANIZATION. (a) No person providing information to a review organization is subject to action for damages or other relief by reason of having furnished that information, unless the information is false and the person providing the information knew or had reason to know the information was false.

(b) No privilege of confidentiality arising from a physician-patient relationship may be invoked to withhold pertinent information from review by a review organization.

Sec. 18.23.020. LIMITATION ON LIABILITY FOR MEMBERS OF REVIEW ORGANIZATIONS. No person who is a member or employee of, or who acts in an advisory capacity to, or who furnishes counsel or services to a review organization is liable for damages or other relief in an action brought by another whose activities have been or are being scrutinized or reviewed by a review organization, by reason of the performance of a duty, function or activity of the review organization, unless the performance of the duty, function or activity was motivated by malice toward the affected person. No person is liable for damages or other relief in an action by reason of his performance of a duty, function, or activity as a member of a review organization or by reason of a recommendation or action of the review organization when the person acts in the reasonable belief that the action or recommendation is warranted by facts known to the person or to the review organization after reasonable efforts to ascertain the facts upon which the review organization's action or recommendation is made.

Sec. 18.23.030. CONFIDENTIALITY OF RECORDS OF REVIEW ORGANIZATION.

(a) Except as provided in (b) of this section, all data and information acquired by a review organization, in the exercise of its duties and functions, shall be held in confidence and may not be disclosed to anyone except to the extent necessary to carry out the purposes of the review organization, and is not subject to subpoena or discovery. Except as provided in (b) of this section, no person described in sec. 20 of this chapter may disclose what transpired at a meeting of a review organization except to the extent necessary to carry out the purposes of a review organization, and the proceedings and records of a review organization are not subject to discovery or introduction into evidence in a civil action against a health care provider arising out of the matter which is the subject of consideration by the review organization. Information, documents, or records otherwise available from original sources are not immune from discovery or use in a civil action merely because they were presented during proceedings of a review organization, nor may a person who testified before a review organization or who is a member of it be prevented from testifying as to matters within his knowledge, but a witness may not be asked about his testimony before a review organization or opinions formed by him as a result of its hearings, except as provided in (b) of this section.

(b) Testimony, documents, proceedings, records, and other evidence adduced before a review organization that are otherwise inaccessible under this section may be obtained by a health care provider who claims that denial is unreasonable, or may be obtained under subpoena or discovery proceedings brought by a plaintiff who claims that information provided to a review organization was false and claims that the person providing the information knew or had reason to know the information was false.

(c) Nothing in this chapter prevents a person whose conduct or

competence has been reviewed under this chapter from obtaining, for the purpose of appellate review of the action of the review organization, any testimony, documents, proceedings, records and other evidence adduced before the review organization.

Sec. 18.23.040. PENALTY FOR VIOLATION. Other than as authorized by sec. 30 of this chapter, a disclosure of data and information acquired by a review committee or of what transpired at a review meeting is a misdemeanor and punishable under AS 11.05.010.

Sec. 18.23.050. PROTECTION OF PATIENT. Nothing in this chapter relieves a person of liability which he has incurred or may incur to a person as a result of furnishing health care to the patient.

Sec. 18.23.060. PARTIES BOUND BY REVIEW. When a review organization reviews matters under sec. 70(5)(H) of this chapter no party is bound by a ruling of the organization in a controversy, dispute or question unless he agrees in advance, either specifically or generally, to be bound by the ruling.

Sec. 18.23.070. DEFINITIONS. In this chapter, unless the context otherwise requires,

(1) "administrative staff" means the staff of a hospital or clinic;

(2) "health care" means professional services rendered by a health care provider or an employee of a health care provider, and services furnished by a sanatorium, rest home, nursing home, boarding home or other institution for the hospitalization or care of human beings;

(3) "health care provider" means a chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under AS 08.71; an optometrist licensed under AS 08.-

72; a pharmacist licensed under AS 08.80; a physical therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a psychologist and a psychological associate licensed under AS 08.86; and a hospital as defined in AS 18.20.130, including a governmentally owned or operated hospital;

(4) "professional service" means service rendered by a health care provider of the type he is licensed to render;

(5) "review organization" means a hospital governing body or a committee whose membership is limited to health care providers and administrative staff, except where otherwise provided for by state or federal law, and which is established by a hospital, by a clinic, by one or more state or local associations of health care providers, by an organization of health care providers from a particular area or medical institution, or by a professional standards review organization established under 42 U.S.C., sec. 1320c-1 et seq., to gather and review information relating to the care and treatment of patients for the purposes of

(A) evaluating and improving the quality of health care rendered in the area or medical institution;

(B) reducing morbidity or mortality;

(C) obtaining and disseminating statistics and information relative to the treatment and prevention of diseases, illness and injuries;

(D) developing and publishing guidelines showing the norms of health care in the area or medical institution;

(E) developing and publishing guidelines designed to keep the cost of health care within reasonable bounds;

(F) reviewing the quality or cost of health care services provided to enrollees of health maintenance organizations;

(G) acting as a professional standards review organization under 42 U.S.C., sec. 1320c-1 et seq.;

(H) reviewing, ruling on, or advising on controversies, disputes or questions between

(i) a health insurance carrier or health maintenance organization and one or more of its insured or enrollees;

(ii) a professional licensing board, acting under its powers of discipline or license revocation or suspension, and a health care provider licensed by it when the matter is referred to a review organization by the professional licensing board;

(iii) a health care provider and his patients concerning diagnosis, treatment or care, or a charge or fee;

(iv) a health care provider and a health insurance carrier or health maintenance organization concerning a charge or fee for health care services provided to an insured or enrollee; or

(v) a health care provider or his patients and the federal or a state or local government, or an agency of the federal or a state or local government;

(I) acting on the recommendation of a credential review committee or a grievance committee.

* Sec. 41. AS 21 is amended by adding a new chapter to read:

CHAPTER 88. HEALTH CARE PROVIDERS INSURANCE.

ARTICLE 1. PURPOSE.

Sec. 21.88.010. PURPOSE OF CHAPTER. It is the purpose of this chapter to provide a means of furnishing health care providers with adequate insurance against liability for medical negligence.

ARTICLE 2. MEDICAL INDEMNITY CORPORATION OF ALASKA.

Sec. 21.88.020. CORPORATION CREATED. There is created the Medical Indemnity Corporation of Alaska which is a public corporation having a legal existence independent of and separate from the state. Obligations issued by the corporation do not constitute a debt, liability or obligation of the state or a pledge of full faith and credit of the state.

Sec. 21.88.030. CORPORATION BOARD OF GOVERNORS. (a) The corporation shall exercise its powers through a board of governors which is appointed by the governor of the state and confirmed by the legislature. Members of the board of governors shall be Alaska residents as follows:

(1) two physicians licensed in the state; one of the physicians shall be engaged in group practice in a clinic of six or more physicians;

(2) an administrator or senior executive officer employed by a hospital licensed in the state;

(3) two professionals from insurance companies authorized in the state;

(4) two persons who are not health care providers or financially interested in the field of health care or representatives of the insurance industry.

(b) The term of office of each governor is three years, except that the governor of the state shall designate two initially appointed governors to serve for one year and two initially appointed governors to serve for two years. Upon the expiration of the term of a governor, the governor of the state shall appoint a successor who shall be from the same class described in (a) of this section as the governor whose term has expired.

(c) Upon a governor's early resignation, death or inability to

serve, the governor of the state shall appoint a successor from the same class defined in (a) of this section as the terminating governor, who shall serve for the unexpired term.

(d) The director or his designee is not a voting member of the board of governors but shall be notified by the board of and have the right to attend and participate in all meetings and proceedings of the board.

(e) Members of the board of governors receive compensation from the corporation of $100 per day when the board meets and necessary travel expenses.

Sec. 21.88.040. CORPORATION PLAN OF OPERATION. (a) Within 30 days after the effective date of this chapter, the board of governors shall prepare and submit to the director for approval a plan of operation which provides for the fair, reasonable and equitable administration of the affairs of the corporation and the discharge of the purposes for which it is created. The plan and any amendments to it become effective upon the director's approval. If the board of governors fails to submit a plan of operation, or if at a subsequent time the board of governors fails to submit suitable amendments to the plan, the director shall, after notice and hearing, adopt and promulgate a plan of operation or amendments which are necessary or advisable to carry out the provisions of this chapter. Adoption of the plan is not subject to the Administrative Procedure Act (AS 44.62).

(b) The plan of operation shall

(1) establish the procedures by which all the powers and duties of the corporation specified in sec. 50 of this chapter shall be performed;

(2) establish procedures for handling assets and discharging liabilities of the corporation;

Powers & Duties specify capability of reinsurance

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(3) establish regular times and places for meetings of the board of governors;

(4) establish procedures for records to be kept of all financial transactions of the corporation, its agents, and the board of governors;

(5) establish the procedures for awarding contracts to carry out the provisions of this chapter;

(6) establish the procedures for issuing contracts of insurance as provided in sec. 50 of this chapter and for the determination of rates;

(7) contain additional provisions necessary for the execution of the powers and duties of the corporation.

Sec. 21.88.050. POWERS AND DUTIES OF THE CORPORATION. (a) The corporation shall

(1) in the form approved by the director, issue to all physicians and hospitals who pay the premiums for it a contract or contracts indemnifying the physicians and hospitals and their employees who are physicians against loss by reason of liability for professional services on an occurrence basis and agreeing to tender on behalf of th physicians and hospitals and their employees who are physicians a defense in a proceeding brought under AS 09.55.530 - 09.55.560; the limit of liability shall be no less than the minimum liability coverage requirements to be maintained under AS 08.64.215 and AS 18.20.045; the contract shall cover the defense against but need not indemnify a claim for punitive damages; at the option of the physician or hospital and for an additional premium the contract may cover claims against the physician or hospital that arise out of professional services performed by the physician or hospital after December 31, 1974 except that coverage will not be provided for a claim already filed or of which the physician or

hospital had or reasonably should have had notice at the time the retroactive insurance was purchased;

(2) in a form approved by the director and for a premium determined under sec. 80 of this chapter, issue contracts of insurance on an occurrence basis indemnifying chiropractors, dental hygienists, dentists, nurses, dispensing opticians, optometrists, pharmacists, physical therapists, or psychologists and psychological associates, if a finding of unavailability of insurance and impairment of services has been made under AS 08.20.115, AS 08.32.015, AS 08.36.115, AS 08.68.165, AS 08.71.085, AS 08.72.115, AS 08.80.115, AS 08.84.035, or AS 08.86.125; and agreeing to tender on behalf of the person insured under this paragraph a defense in a proceeding under AS 09.55.530 - 09.55.560; the contract shall cover the defense against but need not indemnify a claim for punitive damages;

(3) charge a premium for the protection provided by the contracts issued by the corporation which shall be determined by the board of governors in accordance with sec. 80 of this chapter and subject to the approval of the director;

(4) comply with or be subject to AS 21.06.090; 21.06.120; 21.06.140; 21.06.160; 21.06.250; AS 21.09.180; 21.09.190; 21.09.200; 21.09.250; 21.09.280; AS 21.12.020(b), (c), (d), and (e); and chs. 18, 21, 24, and 36 of this title; and shall be exempt from participation as a member insurer in the Alaska Insurance Guaranty Corporation;

(5) carry out the obligations of the contracts issued by the corporation by defending all covered claims made against insured health care providers and by paying all liabilities which are finally adjudicated against the insured health care provider or which may in the opinion of the corporation reasonably be expected to be finally adjudicated against the health care provider to the extent of the contract

obligation;

(6) provide coverage to physicians and hospitals for liability in excess of the minimum limits required for licensure as a physician or hospital, but limited to $1,000,000 for physicians and $5,000,000 for hospitals, if there is a finding by the director that this coverage is unavailable at a reasonable cost and that this coverage can be made available at a reasonable cost through the corporation; if this paragraph is implemented, then each physician or hospital obtaining excess coverage up to these amounts shall obtain it from the corporation, and the corporation may procure reinsurance for all risks incurred by contracts issued under this paragraph from the private market.

(b) The corporation may

(1) employ or retain persons, individual or corporate, to discharge its obligations and pay reasonable compensation for those services; employees of the corporation are not considered state employees;

(2) recommend that the director hold public hearings for the purpose of commencing operation of the joint underwriting association established under secs. 110 - 180 of this chapter; if the joint underwriting association begins operation, the corporation may purchase reinsurance from the association for any of the liability incurred by contracts issued by the corporation;

(3) provide coverage to physicians and hospitals for other hazards when there is a finding by the director that this coverage is otherwise unavailable by reason of the operation of the corporation;

(4) borrow or advance funds necessary to carry out the purposes of the corporation;

(5) negotiate and become a party to those contracts as are necessary to carry out the purposes of the corporation;

(6) sue or be sued in the name of the corporation;

(7) provide risk management advice and services to hospitals;

(8) negotiate and become a party to contracts for management services for the corporation;

(9) perform all other acts necessary and proper to ~~effectuate~~ carry out the duties of the corporation.

Sec. 21.88.060. PREMIUM TAX. The corporation shall pay a premium tax in the amount of one and one-half per cent of the total direct premium income received by the corporation during the year ending on the preceding December 31, after deducting the applicable cancellations, returned premium, the unabsorbed portion of any deposit premiums, all policy dividends, unabsorbed premiums refunded to policyholders, refunds, savings, savings coupons and other similar returns paid or credited to policyholders with respect to their policies. The tax shall be paid to the director annually before April 1 of each year.

Sec. 21.88.070. STATISTICS. The corporation shall collect, maintain and report information concerning claims against health care providers. The information shall be on forms prescribed by the director, and shall be sufficient to enable a proper determination of losses for rate making and to identify causes and sources of loss for loss control. At least annually the corporation shall report to the director the number and amount of claims filed, reserved, paid, settled and adjudicated during the year, the premiums paid to and the expenses incurred by the corporation during the year. This report shall be available to the public. The director may require that supplemental reports include the names of insured health care providers and the claimants; however, no reports which become available to the public may include the names of health care providers or claimants or information that will permit by inference the identity of specific health care

providers or claimants. All statistics shall be made available to the appropriate licensing board or agency.

Sec. 21.88.080. RATES. The rates and rating plans used by the corporation for the policies issued shall be determined by license category of health care providers in accordance with all of the following:

(1) rates for physicians shall be set as a function of the physician's medical revenue;

(2) rates for hospitals shall be set as a function of the number of permanent beds in the hospital;

(3) a minimum rate may be set for each category of health care provider or discipline or classification within the license category;

(4) rates may not be excessive; rates are excessive if, after a period of time and with respect to an amount of gross premium which are actuarially credible, the premiums exceed losses incurred by the corporation, including losses paid, reserves for claims reported and unpaid, reserves for claims incurred during the policy period and not reported, provided that reserves for claims incurred during the policy period and reasonably expected to be reported after three years after the incident may be included on a different basis due to the additional financial flexibility provided by the corporation, and reasonable expenses for the operation of the corporation;

(5) rates shall not be inadequate; rates are inadequate if, based on available actuarial data, the premiums to be paid by the health care providers are or may reasonably be expected to be insufficient to pay for losses incurred by the corporation, including claims paid, reserves for claims reported and unpaid, reserves for claims incurred during the policy period and not reported, provided that reserves for claims incurred during the policy period and reasonably

expected to be reported after three years after the incident may be included on a different basis due to the additional financial flexibility provided by the corporation, and reasonable expenses for the operation of the corporation;

(6) rates may not be unfairly discriminatory;

(7) rates shall be adjusted annually;

(8) rates for any policy year shall be calculated to include the adjustment for actual experience of the corporation as developed for the preceding four policy years;

(9) in considering losses to be incurred, changes in the law, national, regional or local trends in medical negligence awards, and other relevant factors may be considered;

(10) income from the investment of reserves shall be considered;

(11) individual risk underwriting factors shall be considered;

(12) disciplines and classifications within the license categories of health care providers shall be considered;

(13) amounts sufficient for repayment of loan obligations shall be considered.

Sec. 21.88.090. PAYMENT OF PREMIUMS; CANCELLATION OF INSURANCE. The corporation may provide for installment payment of premiums in which event each installment is due by the date specified. The corporation may cancel any of its policies in the event of nonpayment of any premium or installment on a premium, or other charge, by mailing or delivering to the insured at the address shown on the policy and to the agency of the state issuing the insured's license written notice of cancellation. Cancellation is not effective until 30 days after the date notice is posted by the corporation.

ARTICLE 3. JOINT UNDERWRITING ASSOCIATION.

Sec. 21.88.110. ASSOCIATION CREATED. (a) The Health Care Providers Joint Underwriting Association is created as an association having a legal existence independent of and separate from the state and consisting of all licensed (1) health care service corporations as defined in AS 21.87.330; (2) disability insurers as defined in AS 21.12.050; (3) property insurers as defined in AS 21.12.060; and (4) casualty insurers as defined in AS 21.12.070. Obligations issued by the association do not constitute a debt, liability or obligation of the state or a pledge of full faith and credit of the state.

(b) Every insurer described in (a) of this section is a member of the association and shall remain a member as a condition of its authority to continue to transact that kind of business in the state.

(c) The association shall commence operation if the director finds, after public hearing, that a market for reinsurance is needed by the corporation. After the association has commenced operation, if the director determines, after public hearing, that a market for reinsurance is no longer needed by the corporation, the association shall cease its underwriting operations.

Sec. 21.88.120. PURPOSE. The purpose of the association is to provide a market for medical malpractice reinsurance to the corporation on a self-supporting basis without subsidy from association members.

Sec. 21.88.130. ASSOCIATION BOARD OF DIRECTORS; TERM; COMPENSATION. (a) The association shall be governed by a board of directors appointed by the governor of the state and consisting of two representatives of domestic casualty and property insurers, one representative of admitted disability insurers, one representative of health care service corporations, one representative of foreign casualty and property insurers, and two persons from the public.

(b) Members of the board of directors serve three-year terms.

(c) Members of the board of directors receive compensation from the association of $100 per day when the board meets and necessary travel expenses.

Sec. 21.88.140. ASSOCIATION PLAN OF OPERATION. (a) Within 30 days after the association commences operation the board of directors shall prepare and submit to the director for his approval a plan of operation which provides for the fair, reasonable and equitable administration of the affairs of the association and the discharge of the purposes for which it is created. The plan and any amendments to it become effective upon the director's approval. If the board of directors has failed to submit a plan of operation, or if at any subsequent time the board of directors fails to submit suitable amendments to the plan, the director shall, after notice and hearing, adopt and promulgate a plan of operation or amendments which are necessary or advisable to carry out the provisions of this chapter. Adoption of the plan is not subject to the Administrative Procedure Act (AS 44.62).

(b) The plan of operation shall

(1) establish the procedures for carrying out the powers and duties of the association specified in sec. 150 of this chapter;

(2) establish procedures for handling assets and discharging liabilities of the association;

(3) establish regular times and places for meetings of the board of directors;

(4) establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;

(5) establish the procedures for awarding contracts to indemnify or defend or to provide other services and to compensate the indemnitors or vendors;

(6) establish the procedures for issuing contracts of insurance as provided in sec. 150 of this chapter and for the determination of rates;

(7) contain additional provisions necessary for the execution of the powers and duties of the association.

Sec. 21.88.150. POWERS AND DUTIES OF THE ASSOCIATION. (a) The association shall

(1) provide reinsurance to the corporation covering contracts issued by the corporation for that portion of the liability incurred by the corporation it chooses to reinsure through the association, indemnifying physicians and hospitals, their employees who are physicians, and other persons insured by the corporation against loss by reason of liability for professional services and agreeing to tender on behalf of the insureds a defense in an action brought under AS 09.55.530 - 09.55.-560;

(2) charge a premium for the protection provided by the reinsurance issued under (a)(1) of this section which shall be determined by the board of directors in accordance with secs. 80 and 160 of this chapter and are subject to the approval of the director;

(3) comply with or be subject to AS 21.06.090; 21.06.120; 21.06.140; 21.06.160; 21.06.250; AS 21.09.180; 21.09.200; 21.09.250; 21.09.280; AS 21.12.020(b), (c), (d), and (e); and chs. 18, 21, 24, and 36 of this title; and shall be exempt from participation as a member insurer in the Alaska Insurance Guaranty Association;

(4) carry out the obligations of the contracts issued under (a)(1) of this section by defending all covered claims made against the insureds and paying all liabilities which are finally adjudicated against the insureds or which may in the opinion of the association reasonably be expected to be finally adjudicated against the insured

to the extent of the contract obligation.

(b) The association may

(1) employ or retain persons, individual or corporate, to discharge its obligations and pay reasonable compensation for those services; employees of the association are not considered state employees;

(2) borrow or advance funds necessary to carry out the purposes of ~~this~~ the association;

(3) negotiate and become a party to those contracts which are necessary to carry out the purposes of the association;

(4) sue or be sued in the name of the association;

(5) cede or assume reinsurance;

(6) perform all other acts necessary and proper to carry out the duties of the association.

Sec. 21.88.160. RATES AND RATE ADJUSTMENT. (a) The rates and rating plans shall be determined as provided in sec. 80 of this chapter, except that allowance may not be made for income from investment of member-contributed funds; and provided that reserves for claims incurred during the policy period and reasonably expected to be reported after three years after the incident may be included on a different basis due to the additional financial flexibility provided by the association.

(b) If in any year an assessment is made under sec. 170 of this chapter, rates for the next period shall be increased from the rate determined under (a) of this section by an amount sufficient to reimburse all members the amounts assessed. No assessment may be reimbursed to members without prior approval of the director and no interest accrues in favors of members on amounts assessed.

(c) If after establishing required reserves and repaying all assessments to members there is an excess amount in reserve, the excess

premium shall be refunded to the ~~association for reimbursement to the insureds~~ corp.

Sec. 21.88.170. ASSESSMENT. If sufficient funds are not available for the sound financial operation of the association, all members shall contribute to the financial requirements of the association by paying to the association an assessment to be determined by the board of directors of the association, subject to the approval of the director; assessments shall be prorated among all members in proportion to their direct written premiums or revenues in the state in the insurance lines the writing of which require membership in the association, in the two years ending on the preceding December 31, after deducting the applicable cancellations, returned premium, the unabsorbed portion of any deposit premium, all policy dividends, unabsorbed premiums refunded to policyholders, refunds, savings, savings coupons and other similar returns paid or credited to policyholders with respect to their policies. If any member is prohibited by the law of its state of domicile from paying an assessment to the association, then in lieu of the assessment the member shall pay a tax to the director in a like amount as an obligation in addition to taxes required under AS 21.09.210 and notwithstanding the provisions of AS 21.09.210(e). ~~Taxes received under this section~~ An Amount equal to Taxes received under this section shall then be appropriated to the association.

Sec. 21.88.180. REPORTS. At least annually the association shall report to the director concerning its affairs. The report shall be in the form prescribed by the director.

ARTICLE 4. LOAN FUND.

Sec. 21.88.210. FUND ESTABLISHED. (a) There is in the Department of Commerce and Economic Development a medical malpractice liability revolving loan fund to be administered by the director of insurance.

(b) Loans may be made from the fund to the corporation and to the

association upon certification by the director that a loan is necessary for the corporation or association to spread costs out over time because of fluctuations in loss experience. If a loan is made to the corporation or the association from the fund, the borrower shall issue a note to the fund as evidence of the loan.

(c) Loans from the fund shall be repaid within five years at an annual interest rate of six per cent.

(d) The director may sell at par value to the Department of Revenue the notes, security instruments and pledge agreements held by the Department of Commerce and Economic Development as security for loans made under this section. The Department of Revenue shall purchase all the notes offered until the current principal amount of the notes purchased and held by the Department of Revenue equals $5,000,000.

ARTICLE 5. GENERAL PROVISIONS.

Sec. 21.88.900. DEFINITIONS. In this chapter

(1) "association" means the Health Care Providers Joint Underwriting Association;

(2) "corporation" means the Medical Indemnity Corporation of Alaska;

(3) "governor" means a member of the board of governors of the Medical Indemnity Corporation of Alaska;

(4) "health care provider" means a person or institution insured under this chapter;

(5) "physician" means a person licensed under AS 08.64;

(6) "hospital" means an institution licensed under AS 18.20;

(7) "chiropractor" means a person licensed under AS 08.20;

(8) "dental hygienist" means a person licensed under AS 08.32;

(9) "dentist" means a person licensed under AS 08.36;

(10) "dispensing optician" means a person licensed under

AS 08.71;

(11) "optometrist" means a person licensed under AS 08.72;

(12) "physical therapist" means a person licensed under AS 08.80;

(13) "pharmacist" means a person licensed under AS 08.84;

(14) "psychologist" and "psychological associate" means a person licensed under AS 08.86.

* Sec. 42. AS 21.18.090 is amended by adding new paragraphs to read:

(5) reserves for the Medical Indemnity Corporation of Alaska are to include only reserves for claims reported and unpaid and reserves for claims incurred but not reported but which may reasonably be expected to be reported within three years after the date of occurrence;

(6) reserves for the Health Care Providers Joint Underwriting Association are to include claims reported and unpaid; reserves for claims incurred but not reported, but those which may reasonably be expected to be reported beyond three years after the date of occurrence may be included on a different basis due to the additional financial flexibility of the association

* Sec. 43. AS 21.80.180(5) is amended to read:

(5) "insolvent insurer" means an insurer

(A) authorized to transact insurance in this state, except the Medical Indemnity Corporation of Alaska and the Health Care Providers Joint Underwriting Association established under ch. 88 of this title, either at the time the policy was issued or when the insured event occurred, and

(B) determined to be insolvent by a court of competent jurisdiction;

* Sec. 44. AS 21.80.180(6) is amended to read:

(6) "member insurer" means a person, except the Medical

Indemnity Corporation of Alaska and the Health Care Providers Joint Underwriting Association established under ch. 88 of this title, who

(A) writes any kind of insurance to which this chapter applies under sec. 20 of this chapter including the exchange of reciprocal or inter-insurance contracts, and

(B) is licensed to transact insurance in this state;

* Sec. 45. AS 08.02 is amended by adding a new section to read:

Sec. 08.02.020. LIMITATION OF LIABILITY FOR MEMBERS OF LICENSING BOARDS. No person is liable for damages or other relief in an action by reason of his performance of a duty, function, or activity as a member of a licensing board or by reason of a recommendation or action of the board when the person acts in the reasonable belief that his action or recommendation is warranted by facts known to him or to the board after reasonable efforts to ascertain the facts upon which the action or recommendation is made.

* Sec. 46. AS 09.55.536, enacted in sec. 33 of this Act, has the effect of changing the Alaska Supreme Court's Rules of Civil Procedure by requiring the submission of medical malpractice actions against health care providers to expert advisory panels before discovery unless the court decides an expert advisory opinion is not necessary in the case.

* Sec. 47. AS 08.64.365 and AS 08.68.040 are repealed.

* Sec. 48. This Act takes effect 30 days after enactment.

Original Sponsor: Rules Committee by request of the Governor

IN THE HOUSE BY THE FREE CONFERENCE COMMITTEE

FREE CONFERENCE CS FOR SENATE CS FOR CS FOR HOUSE BILL NO. 574

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to health care; changing the Alaska Supreme Court's Rules of Civil Procedure; and providing for an effective date."

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

* Section 1. AS 08.01.050 is amended by adding a new paragraph to read:

(19) provide investigative services to the boards established under chs. 20, 32, 36, 64, 68, 71, 72, 80, 84, and 86 of this title, for the purpose of assisting those boards in matters of professional discipline.

* Sec. 2. AS 08.20.010 is amended to read:

Sec. 08.20.010. CREATION AND MEMBERSHIP OF BOARD OF CHIROPRACTIC EXAMINERS. There is created the Board of Chiropractic Examiners consisting of <u>five</u> [THREE] members appointed by the governor.

* Sec. 3. AS 08.20.020 is amended to read:

Sec. 08.20.020. MEMBERS OF BOARD. <u>Three members</u> [EACH MEMBER] of the board shall be [A] licensed chiropractic <u>physicians who</u> [PHYSICIAN AND SHALL] have practiced chiropractic in this state not less than two years. <u>Two members of the board shall be persons with no direct financial interest in the health care industry.</u> Each member serves without pay but is entitled to per diem and travel expenses allowed by law.

* Sec. 4. AS 08.20.030 is repealed and re-enacted to read:

Sec. 08.20.030. MEMBERS TERMS, VACANCIES. Members serve for staggered terms of three years. The terms of the public members of the board may not expire at the same time. Vacancies on the board shall be

filled for the unexpired term.

The House bill requires ~~chiropractors~~ ~~dental hygienists~~ to carry malpractice insurance at least $200,000/$600,000; if this not available they are opted on to the corporation (and engagement services)

* Sec. 5. AS 08.20 is amended by adding a new section to read:

Sec. 08.20.175. LIMITS OR CONDITIONS ON LICENSE; REPRIMAND. (a) In addition to action under sec. 170 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education or health the authority to practice chiropractic should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

The House bill requires dental hygienists to carry malpractice insurance at least $150,000/300,000, if this not available (and engagement services) they are opted on to the corporation.

* Sec. 6. AS 08.32 is amended by adding a new section to read:

Sec. 08.32.165. LIMITS OR CONDITIONS ON LICENSE. (a) In addition to action under sec. 160 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education or health the authority to practice dental hygiene should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 7. AS 08.36.010 is amended to read:

Sec. 08.36.010. CREATION AND MEMBERSHIP OF BOARD. There is created the Board of Dental Examiners, referred to in this chapter as the board, consisting of <u>seven</u> [FIVE] members. <u>Five members</u> [EACH MEMBER] shall be [A CITIZEN OF THE UNITED STATES AND A] qualified resident <u>dentists</u> who <u>have</u> [HAS] been engaged in the practice of dentistry in the state for five years immediately preceding [HIS] appointment<u>, and two members shall be persons with no direct financial interest in the health care industry</u>.

* Sec. 8. AS 08.36.020 is amended to read:

Sec. 08.36.020. APPOINTMENT AND TERM OF SERVICE OF MEMBERS. Members of the board are appointed by the governor, subject to confirmation by the legislature in joint session [ASSEMBLED]. Each board member serves for a term of five years, and until his successor is appointed and qualified <u>except that the terms of the public members on the board shall be staggered so that they do not expire at the same time</u>. The term begins on February 1. An appointment to a vacancy is for the unexpired term. [APPOINTMENTS SHALL BE MADE FROM A LIST OF NAMES RECOMMENDED BY THE ALASKA DENTAL SOCIETY. THE LIST SHALL BE

SUPPLIED AT LEAST 30 DAYS BEFORE THE BEGINNING OF A TERM AND NOT MORE THAN 60 DAYS AFTER THE OCCURRENCE OF A VACANCY. THE LIST SHALL CONTAIN AT LEAST TWO RECOMMENDED NAMES FOR EACH APPOINTMENT. THE GOVERNOR SHALL MAKE THE APPOINTMENT WITHIN 30 DAYS AFTER RECEIVING THE LIST.]

The House bill requires dentists to carry malpractice insurance of at least $200,000/$600,000, if it's not available (and impairment of services) they are opted into the corporation.

* Sec. 9. AS 08.36 is amended by adding a new section to read:

Sec. 08.36.325. LIMITS OR CONDITIONS ON LICENSE. (a) In addition to action under sec. 320 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health, the authority to practice dentistry should be limited or conditioned or the practitioner disciplined, the board may censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 10. AS 08.64.010 is amended to read:

Sec. 08.64.010. CREATION AND MEMBERSHIP OF STATE MEDICAL BOARD. The governor shall appoint a board of medical examiners, to be known as the State Medical Board, consisting of five licensed physicians, residing in as many separate Alaska judicial districts as possible, and two persons with no direct financial interest in the health care industry.

[EACH MEMBER SHALL BE CHOSEN FROM A PANEL OF THREE, FOR EACH VACANCY, SUBMITTED TO THE GOVERNOR BY THE ALASKA STATE MEDICAL ASSOCIATION.]

* Sec. 11. AS 08.64.020 is amended to read:

Sec. 08.64.020. STATE MEDICAL BOARD TERM OF OFFICE. Members shall be appointed for a term of four years, subject to confirmation by a majority of the members of the legislature in joint session, and shall hold office until their successors are appointed and qualified. The terms of the public members of the board shall be staggered so that they do not expire at the same time.

* Sec. 12. AS 08.64.090 is amended to read:

Sec. 08.64.090. QUORUM. Four [THREE] members of the board constitute a quorum for the transaction of all business properly before the board.

* Sec. 13. AS 08.64 is amended by adding new sections to read:

Sec. 08.64.215. INSURANCE REQUIRED. (a) To be eligible for an active license under this chapter, a person shall maintain insurance issued by the Health Care Providers Indemnity Corporation against liability to patients for medical malpractice in limits of not less than $200,000 per occurrence and $600,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him him from the Health Care Providers Indemnity Corporation in the required amounts.

(b) The director of insurance or his designee shall waive the requirement in (a) of this section for a person if that person furnishes satisfactory evidence of his having other insurance providing coverage in amounts not less than those specified in (a) of this section. No waiver granted under this subsection may extend beyond the normal expiration date of the person's insurance policy or January 1, 1977, whichever occurs first.

Sec. 08.64.312. CONTINUING EDUCATION REQUIREMENTS. (a) The board shall promote a high degree of competence in the practice of medicine by requiring every physician licensed in the state to fulfill continuing education requirements.

(b) Before a license may be renewed the licensee shall submit evidence to the board that continuing education requirements prescribed by regulations adopted by the board have been met.

(c) The board may exempt a physician from the requirements of (b) of this section upon an application by him giving evidence satisfactory to the board that he is unable to comply with the requirements because of extenuating circumstances. However, no person may be exempted from more than 15 hours of continuing education in a five-year period.

Sec. 08.64.325. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 330 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 14. AS 08.68.010 is amended to read:

Sec. 08.68.010. CREATION AND MEMBERSHIP OF BOARD OF NURSING. There is created a Board of Nursing, consisting of <u>seven</u> [FIVE] members appointed by the governor. One member shall be currently involved in institutional nursing service, one member in community or public health nursing and two members in basic or continuing nursing education, [AND] one <u>nurse</u> at large<u>, and two persons who have no direct financial interest</u>

in the health care industry.

* Sec. 15. AS 08.68.020 is repealed and re-enacted to read:

Sec. 08.68.020. TERM OF OFFICE. Members serve staggered terms of five years and until their successors are appointed. The terms of the public members on the board shall be set so that they do not expire at the same time. Vacancies on the board shall be filled for the unexpired term.

* Sec. 16. AS 08.68.060 is amended to read:

Sec. 08.68.060. QUALIFICATIONS OF BOARD MEMBERS. The five members [EACH MEMBER] of the board who are nurses shall be [A CITIZEN OF THE UNITED STATES, A RESIDENT OF THE STATE, AND A] licensed professional nurses [NURSE] in the state, and [. MEMBERS] shall have been actively engaged in nursing for not less than four years before appointment, two years of which were within the five years preceding appointment.

The House Bill requires nurses to carry insurance of $100,000 / $300,000; if it is not available (under requirement of services) they are opted into the corporation.

* Sec. 17. AS 08.68 is amended by adding a new section to read:

Sec. 08.68.275. LIMITS OR CONDITIONS ON LICENSE. (a) In addition to action under sec. 270 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice nursing should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place

on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 18. AS 08.71.020 is amended to read:

Sec. 08.71.020. MEMBERSHIP OF BOARD; SOURCE OF APPOINTMENTS; TERM OF OFFICE. The board consists of seven [FIVE] persons appointed by the governor. Members serve staggered terms of three years. The terms of the public members of the board shall be set so that they do not expire at the same time. [THE GOVERNOR SHALL APPOINT BOARD MEMBERS FROM A LIST OF QUALIFIED OPTICIANS PREPARED BY THE ASSOCIATION OF OPTICIANS IN THE STATE AND SUBMITTED AT LEAST 30 DAYS BEFORE JULY 1, 1973, AT LEAST 30 DAYS BEFORE THE EXPIRATION OF A TERM AND NOT MORE THAN 60 DAYS AFTER A VACANCY OCCURS IN AN UNEXPIRED TERM. THE LIST SHALL CONTAIN NOT LESS THAN TWO RECOMMENDED CANDIDATES FOR EACH APPOINTMENT. THE GOVERNOR SHALL MAKE APPOINTMENTS WITHIN 30 DAYS AFTER RECEIVING THE LIST. THE TERM OF OFFICE OF EACH MEMBER IS THREE YEARS. HOWEVER, OF THE FIRST MEMBERS OF THE BOARD, ONE SHALL BE APPOINTED FOR A ONE-YEAR TERM, TWO FOR TWO-YEAR TERMS, AND TWO FOR THREE-YEAR TERMS.] Vacancies on the board shall be filled for the unexpired term [IN THE SAME MANNER AS ORIGINAL APPOINTMENT].

* Sec. 19. AS 08.71.030 is amended to read:

Sec. 08.71.030. QUALIFICATIONS OF BOARD MEMBERS. Five [A] board members [MEMBER] shall be [A] licensed, practicing dispensing opticians [OPTICIAN] residing in the state. Two shall be persons with no direct financial interest in the health care industry.

The House bill requires dispensing opticians to carry malpractice insurance of $100,000/$300,000, (and in impairment of services) if it is unavailable, they are opted into the corporation.

* Sec. 20. AS 08.71 is amended by adding a new section to read:

Sec. 08.71.175. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 170 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice as a dispensing optician under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 21. AS 08.72.020 is amended to read:

Sec. 08.72.020. MEMBERSHIP OF BOARD AND TERMS OF OFFICE. The board consists of <u>five</u> [THREE] persons, appointed by the governor. <u>Members serve staggered terms of three years. The terms of the public members of the board shall be set so that they do not expire at the same time.</u> [THE TERM OF EACH MEMBER IS THREE YEARS. ONE MEMBER ONLY IS APPOINTED EACH YEAR, EXCEPT WHEN VACANCIES FOR UNEXPIRED TERMS ARE FILLED.]

* Sec. 22. AS 08.72.040 is repealed and re-enacted to read:

Sec. 08.72.040. QUALIFICATIONS. Three board members shall be licensed, practicing optometrists who have been residents for at least three years. Two shall be persons who have no direct financial interest in the health care industry.

The House bill requires optometrists to carry medical malpractice insurance of $100,000/$300,000, if it is not available (and an impairment of services) they are opted into the corporation.

* Sec. 23. AS 08.72 is amended by adding a new section to read:

Sec. 08.72.255. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under secs. 240 and 250 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice optometry under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 24. AS 08.80.010 is amended to read:

Sec. 08.80.010. CREATION AND MEMBERSHIP OF BOARD OF PHARMACY. There is created the Board of Pharmacy, composed of seven [FIVE] members,

five [EACH] of whom shall be pharmacists [A PHARMACIST] licensed in the state who has been actively engaged in the practice of pharmacy in the state for a period of three years immediately preceding his appointment. Two shall be persons with no direct financial interest in the health care industry. Whenever possible, the board shall include at least one member from each judicial district.

* Sec. 25. AS 08.80.020 is amended to read:

Sec. 08.80.020. TERM OF OFFICE. Members of the board are appointed by the governor, and confirmed by the legislature in joint session, for overlapping terms of five years, or until their successors are appointed and qualified. The terms of the public members shall be staggered so that they do not expire at the same time. An appointment to fill a vacancy is for the unexpired term. The term of office begins on April 1 of each year.

The House bill requires pharmacists to carry malpractice insurance of $100,000/$300,000, if it's not available (and no impairment of services) they are opted into the corporation

* Sec. 26. AS 80.80 is amended by adding a new section to read:

Sec. 08.80.265. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 260 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice pharmacy under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

The House bill requires physical therapists to carry malpractice insurance of $100,000/$300,000, if it's not available (and there is an impairment of service) they are opted in to the corporation.

* Sec. 27. AS 08.84 is amended by adding a new section to read:

Sec. 08.84.185. LIMITS OR CONDITIONS ON LICENSE. (a) In addition to action under sec. 180 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education or health the authority to practice physical therapy should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 28. AS 08.86.010 is amended to read:

Sec. 08.86.010. CREATION AND MEMBERSHIP OF BOARD. There is created a Board of Psychologist and Psychological Associate Examiners. It consists of three licensed psychologists, and two persons who have no direct financial interest in the health care industry.

* Sec. 29. AS 08.86.020 is amended to read:

Sec. 08.86.020. APPOINTMENT AND TERM OF OFFICE. Members of the board are appointed by the governor and confirmed by the legislature for staggered terms of three years. The terms of the public members shall be set so that they do not expire at the same time. A member serves at the pleasure of the governor.

The House bill requires psychologists and psychological associates to carry malpractice insurance of $100,000/$300,000; (and there is no comparable provision) if it is not available, they are exempted from the requirement.

* Sec. 30. AS 08.86 is amended by adding a new section to read:

Sec. 08.86.220. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) Upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice psychology or as a phsychological associate under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by time, specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

to an expert advisory panel, to be appointed by the court. Panel expenses are paid by the State.

The Senate bill provided for either arbitration or submission to an expert advisory panel as follows:

* Sec. 31. AS 09.55 is amended by adding new sections to read:

Sec. 09.55.535. MANDATORY ARBITRATION. (a) It is the purpose of these arbitration provisions to establish a system that will provide incentives to settle malpractice disputes without prolonged litigation and that will provide a method by which parties to a medical malpractice claim can obtain a prompt determination of its merits, and the amount of damages, if any, that should be allowed.

(b) Upon the filing of any malpractice claim against a physician or hospital, the claim shall be submitted to an arbitration board; however, submission to an arbitration board may not be required if all parties object to arbitration or if the parties have agreed to follow the procedures prescribed in sec. 536 or sec. 537 of this chapter.

(c) The arbitration board shall consist of three arbitrators: one arbitrator designated by the plaintiff or plaintiffs, one arbitrator designated by the defendant or defendants, and a third arbitrator designated by mutual agreement who shall serve as chairman of the

board. If the parties cannot agree on the third person, the court will provide a list of three or more persons who might serve as chairman of the arbitration board, which shall be furnished by the attorney general. Plaintiff or plaintiffs together and defendant and defendants together may each strike one or more names from the list, so after each side has done so, at least one name remains on the list, providing a basis for the final selection by the court.

(d) The attorney general shall prepare a list of panelists consisting of lawyers or other persons qualified to serve as chairmen of arbitration boards. They shall be selected on basis of their technical expertise, judicial temperament, and capability of impartially acting on malpractice claims. The attorney general shall submit a list of at least three names of panelists whenever requested to do so by the court along with detailed biographical information on each panelist.

(e) Each member of the board shall receive reasonable compensation to be paid by the court based on the extent and duration of services rendered. The court shall also pay the costs of experts required by the board.

(f) The board may appoint an expert advisory panel, with the powers of the expert advisory panel under sec. 537 of this chapter, to advise the board on the medical facts of the case.

(g) The court shall specify the shortest practical deadline for completion of the work of the arbitration panel, taking into account all the circumstance and the nature of the case.

(h) The provisions of the Uniform Arbitration Act, AS 09.43.010 - 09.43.180, apply to arbitrations under this section insofar as they are applicable and do not conflict with the provisions of this section; arbitrations under this section shall be conducted in accordance with any rules of court which may be adopted.

(i) If the decision of the arbitration board is not accepted by all parties and the parties have not agreed to binding arbitration, any party may appeal the decision of the board to the superior court for a trial de novo. The decision of the arbitration board, including its conclusions as to the merits of the claim and appropriate damages, together with any dissenting opinions, shall be admissible in evidence at trial upon the offer of any party, if the court conducts a review of the arbitration decision and any other relevant information submitted by the parties and concludes that:

(1) the findings of fact by the arbitration board were not clearly erroneous;

(2) the decision is in accordance with applicable law;

(3) the procedures required for conducting the hearing and rendering the decision were followed fairly and properly without prejudice to any party;

(4) any party who has not offered the arbitration decision in evidence may subpoena any member of the arbitration board for purposes of cross-examination.

Sec. 09.55.536. VOLUNTARY ARBITRATION. (a) A patient and any health care provider may execute an agreement to submit to arbitration any dispute, controversy, or issue arising out of care of treatment by the health care provider during the period that the agreement is in force or that has already arisen between the parties.

(b) An agreement to arbitrate executed before care or treatment is provided between a patient and health care provider shall clearly provide in bold print on the face of the agreement that execution of the agreement by the patient is not a prerequisite to receiving care or treatment. If this subsection is not complied with by the health care provider, the agreement to arbitrate is void. The form to be used

shall be approved in advance by the director of insurance to assure it fairly informs the patient and properly protects his interests.

(c) Each admission to a hospital shall be treated as separate and distinct for the purposes of an agreement to arbitrate, but a person receiving outpatient care from a hospital or clinic or a member of a health maintenance organization may execute an agreement with the hospital which provides for continuation of the agreement for a continuing program of treatment or during continued membership.

(d) Arbitration shall take place under the same procedures prescribed for mandatory arbitration under sec. 536 of this chapter unless the parties agree otherwise in accordance with general guidelines promulgated as regulations by the director of insurance to assure fairness to the parties.

(e) Reasonable compensation based on the extent and duration of services rendered shall be paid to members of the arbitration board by the court as well as the costs of experts required by the board.

Sec. 09.55.537. ALTERNATIVE TO ARBITRATION. (a) If arbitration under sec. 535 of this chapter is waived by all the parties, and as an alternative to arbitration, the court shall appoint an expert advisory panel to advise the fact finder on the medical facts of the case unless the court decides that an expert advisory opinion is not necessary for a decision in the case. The court shall, by order, determine professions or specialties to be represented on the expert advisory panel and shall advise each party of the professions or specialties to be represented, giving the parties the opportunity to object or make suggestions.

(b) The expert advisory panel may compel the attendance of witnesses, physically or orally examine the parties, consult with specialists or learned works they consider appropriate, and compel the produc-

tion of, and examine all relevant hospital, medical, or other records relating to health care treatment. The panel may meet in camera, but shall maintain a record of any testimony or oral statements of witnesses, and shall maintain copies of any written statements or opinions that it receives.

(c) Not less than 30 days after selection of the panel, it shall make a written report to the parties and the court answering any questions put to it by the court on medical questions. The report shall include copies of all written statements, opinions, or records relied on by the panel, and either a transcription or other record of any oral statements or opinions; the report shall specify any medical or scientific authority relied upon and shall include the results of any physical or mental examination performed on the plaintiff. Each member shall sign the report and his signature constitutes his adoption of all statements and opinions contained in it; however, a member may, instead of signing the report, submit a concurring or dissenting report which complies with the requirements of this subsection. A member may not attest to any portion of the report as to which he is not qualified to give expert testimony.

(d) The report of the panel and any dissenting or concurring opinion are admissible in evidence to the same extent, and have the same force and effect, as though its contents were orally testified to by the person or persons preparing it. The court shall delete any portion that would not be admissible because of lack of foundation for opinion testimony, or otherwise. Either party may submit expert testimony to support or refute the report. The jury shall be instructed in general terms that the report shall be considered and evaluated in the same manner as any other expert testimony. Any member of the panel may be called by any party and may be cross-examined as to the contents of

the report or of his dissenting or concurring opinion.

(e) Members of a panel are entitled to travel expenses and per diem in accordance with state law pertaining to members of boards and commissions for all time spent in preparing its report and matters incidental to it, which shall be paid by the court. If a panel member is called upon as a witness at trial or upon deposition, he is entitled to payment of an expert witness fee. In any case in which the court determines that a party has made a patently frivolous claim or a patently frivolous denial of liability, it shall order that all costs of the expert advisory panel be borne by the party making that claim or denial.

(f) Parties to the case, and counsel, may not communicate out of court with members of the panel on the subject matter of its inquiry and report, or cause or solicit others to do so, except through ordinary discovery proceedings.

* Sec. 32. AS 09.55.540 is amended to read:

Sec. 09.55.540. BURDEN OF PROOF. (a) In a malpractice action based on the negligence or wilful misconduct of a health care provider [PHYSICIAN LICENSED UNDER AS 08.64, OR A DENTIST LICENSED UNDER AS 08.36], the plaintiff has [SHALL HAVE] the burden of proving by a preponderance of the evidence

(1) the degree of knowledge or skill possessed or the degree of care ordinarily exercised under the circumstances, at the time of the act complained of, by health care providers in the field or specialty in which the defendant is practicing [BY PHYSICIANS OR DENTISTS PRACTICING THE SAME SPECIALTY IN SIMILAR COMMUNITIES TO THAT IN WHICH THE DEFENDANT PRACTICES];

(2) that the defendant either lacked this degree of knowledge or skill or failed to exercise this degree of care; and

(3) that as a proximate result of this lack of knowledge or skill or the failure to exercise this degree of care the plaintiff suffered injuries that would not otherwise have been incurred.

(b) In malpractice actions there is [SHALL BE] no presumption of negligence on the part of the defendant.

* Sec. 33. AS 09.55 is amended by adding new sections to read:

Sec. 09.55.546. ADVANCE PAYMENTS. In an action to recover damages under secs. 530 - 560 of this chapter, no advance payment made by the defendant health care provider or his professional liability insurer to or on behalf of the plaintiff may be admissible as evidence or may be construed as an admission of liability for injuries or damages suffered by the plaintiff; however, a final award in favor of the plaintiff shall be reduced to the extent of any advance payment. The advance payment shall inure to the exclusive benefit of the defendant or the insurer making the payment.

Sec. 09.55.547. AD DAMNUM. In a cause of action against a health care provider for malpractice, the complaint or any other pleadings may not contain an ad damnum clause or monetary amount claimed against the defendant health care provider, except as necessary for jurisdictional purposes.

regarding awards and collateral sources
The provisions in the House and Senate bills differ in drafting and mechanics

Sec. 09.55.548. AWARDS, COLLATERAL SOURCE. (a) Damages shall be awarded in accordance with principles of the ~~com~~ common law, except that the fact finder in a malpractice action shall render an award as to damages by category of loss, stating all damages by category of loss in dollars per month and for a certain number of months or if the fact finder finds a permanent disablement, for the life of the plaintiff. The court may enter a judgment that future damages be paid in whole or in part by periodic payments rather than by a lump-sum payment; the judgment shall include, if necessary, other provisions to assure that funds will be available as periodic payments become due. In this subsection, future damages includes damages for future medical treatment, care or custody, loss of future earnings, or loss of bodily function of the claimant.

(b) Except when the collateral source is a federal program which by law must seek subrogation and except death benefits paid under life insurance, a claimant may only recover damages from the defendant which exceed amounts received by the claimant as compensation for his injuries from collateral sources, whether private, group or governmental, and whether contributory or noncontributory. The court shall offset collateral sources, other than a federal program which must by law seek subrogation and the death benefit paid under life insurance, after the fact finder has rendered an award, but the court shall also take into account the value of claimant's rights to coverage exhausted or depleted by payment of these collateral benefits. It may do so by adding back a reasonable estimate of their probable value, or by earmarking and holding for possible periodic payment under (a) of this section that amount of the award that would otherwise have been deducted, to see if the impairment of claimant's rights actually takes place in the future.

* Sec. 34. AS 09.55.550 is amended to read:

Sec. 09.55.550. JURY INSTRUCTIONS. In health care [MEDICAL]

malpractice actions the jury shall be instructed that the plaintiff has the burden of proving [, BY A PREPONDERANCE OF THE EVIDENCE,] the health care provider's negligence or wilful misconduct in accordance with the standard of proof specified in sec. 540 of this chapter [OF THE PHYSICIAN OR DENTIST]. The jury shall be further instructed that injury alone does not raise a presumption of the health care provider's [PHYSICIAN'S OR DENTIST'S] negligence or misconduct.

The House bill provides that no cause of action may arise against a health care provider for breach of a ~~[illegible]~~ an oral contract to provide a specific cure or result.

* Sec. 35. AS 09.55 is amended by adding new sections to read:

Sec. 09.55.556. INFORMED CONSENT. (a) A health care provider is liable for failure to obtain the informed consent of a patient if the claimant establishes by a preponderance of the evidence that the provider has failed to inform the patient of the common risks and reasonable alternatives to the proposed treatment or procedure, and that but for that failure the claimant would not have consented to the proposed treatment or procedure.

(b) It is a defense to any action for health care malpractice based upon an alleged failure to obtain informed consent that

(1) the risk not disclosed is too commonly known or is too remote to require disclosure;

(2) the patient stated to the health care provider that he

would undergo the treatment or procedure regardless of the risk involved or that he did not want to be informed of the matters to which he would be entitled to be informed;

(3) under the circumstances consent by or on behalf of the patient was not possible; or

(4) the health care provider after considering all of the attendant facts and circumstances used reasonable discretion as to the manner and extent to which the alternatives or risks were disclosed to the patient because he reasonably believed that a full disclosure would have a substantially adverse effect on the patient's condition.

Sec. 09.55.560. DEFINITIONS. In secs. 530 - 560 of this chapter "health care provider" means a chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under AS 08.71; an optometrist licensed under AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a psychologist and a psychological associate licensed under AS 08.86; and a hospital as defined in AS 18.20.130, including a governmentally owned or operated hospital.

* Sec. 36. AS 09.65.090 is repealed and re-enacted to read:

Sec. 09.65.090. CIVIL LIABILITY FOR EMERGENCY AID. (a) A person at a hospital or at any other location, who renders emergency care or emergency counseling to an injured, ill, or emotionally distraught person who reasonably appears to the person rendering the aid to be in immediate need of emergency aid in order to avoid serious harm or death is not liable for civil damages as a result of an act or omission in rendering emergency aid.

(b) This section does not preclude liability for civil damages as

a result of gross negligence or reckless or intentional misconduct.

the FCC held off on deciding whether to include hospitals in the corporation,

* Sec. 37. AS 18.20 is amended by adding a new section to read:

Sec. 18.20.045. INSURANCE REQUIRED. (a) Every hospital, as a condition of licensure, shall maintain and submit to the department evidence of insurance against liability to inpatients and outpatients for malpractice issued by the Health Care Providers Indemnity Corporation, in amounts of not less than $200,000 per occurrence, and an aggregate liability per year of $1,000,000 minimum, and an additional $20,000 for each bed over 50.

(b) The director of insurance or his designee shall waive the requirement in (a) of this section for a hospital if the hospital furnishes satisfactory evidence of having other insurance providing coverage in amounts not less than those specified in (a) of this section. No waiver granted under this subsection may extend beyond the normal expiration date of the hospital's insurance policy or January 1, 1977, whichever occurs first.

Sec. 18.20.075. RISK MANAGEMENT. (a) To be eligible for a license each hospital shall have in operation an internal risk management program which shall

(1) investigate the frequency and causes of adverse incidents in hospitals which cause injury to patients;

(2) develop and implement measures to minimize the risk of injury to patients from adverse incidents; in developing these measures each hospital shall take into account recommendations of its medical staff, the Health Care Providers Indemnity Corporation and private underwriters, industry standards, experience of other hospitals, and recommendations of licensing boards of other health care providers; and

(3) analyze patient grievances which relate to patient care.

(b) The department shall adopt by regulation and submit to the legislative administrative regulation review committee prior to implementation standards for risk management programs in hospitals in the state which may vary according to the size of the hospital, the type of care offered by the hospital, and other factors found relevant by the department.

* Sec. 38. AS 18 is amended by adding a new chapter to read:

CHAPTER 23. HEALTH CARE SERVICES INFORMATION.

Sec. 18.23.010. LIMITATION ON LIABILITY FOR PERSONS PROVIDING INFORMATION TO REVIEW ORGANIZATION. (a) No person providing information to a review organization is subject to action for damages or other relief by reason of having furnished that information, unless the information is false and the person providing the information knew or had reason to know the information was false.

(b) No privilege of confidentiality arising from a physician-patient relationship may be invoked to withhold pertinent information from review by a review organization.

Sec. 18.23.020. LIMITATION ON LIABILITY FOR MEMBERS OF REVIEW ORGANIZATIONS. No person who is a member or employee of, or who acts in an advisory capacity to, or who furnishes counsel or services to a review organization is liable for damages or other relief in an action brought by another whose activities have been or are being scrutinized

or reviewed by a review organization, by reason of the performance of a duty, function or activity of the review organization, unless the performance of the duty, function or activity was motivated by malice toward the affected person. No person is liable for damages or other relief in an action by reason of his performance of a duty, function, or activity as a member of a review organization or by reason of a recommendation or action of the review organization when the person acts in the reasonable belief that the action or recommendation is warranted by facts known to the person or to the review organization after reasonable efforts to ascertain the facts upon which the review organization's action or recommendation is made.

Sec. 18.23.030. CONFIDENTIALITY OF RECORDS OF REVIEW ORGANIZATION. (a) Except as provided in (b) of this section, all data and information acquired by a review organization, in the exercise of its duties and functions, shall be held in confidence and may not be disclosed to anyone except to the extent necessary to carry out one or more of the purposes of the review organization, and is not subject to subpoena or discovery. Except as provided in (b) of this section, no person described in sec. 20 of this chapter may disclose what transpired at a meeting of a review organization except to the extent necessary to carry out one or more of the purposes of a review organization, and the proceedings and records of a review organization are not subject to discovery or introduction into evidence in a civil action against a health care provider arising out of the matter which is the subject of consideration by the review organization. Information, documents, or records otherwise available from original sources are not immune from discovery or use in a civil action merely because they were presented during proceedings of a review organization, nor may a person who testified before a review organization or who is a member of it be prevented from testifying as to

matters within his knowledge, but a witness may not be asked about his testimony before a review organization or opinions formed by him as a result of its hearings, except as provided in (b) of this section.

(b) Testimony, documents, proceedings, records, and other evidence adduced before a review organization that are otherwise inaccessible under this section may be obtained by a health care provider who claims that denial is unreasonable, or may be obtained under subpoena or discovery proceedings brought by a plaintiff who claims that information provided to a review organization was false and claims that the person providing the information knew or had reason to know the information was false.

(c) Nothing in this chapter prevents a person whose conduct or competence has been reviewed under this chapter from obtaining, for the purpose of appellate review of the action of the review organization, any testimony, documents, proceedings, records and other evidence adduced before the review organization.

Sec. 18.23.040. PENALTY FOR VIOLATION. Other than as authorized by sec. 30 of this chapter, a disclosure of data and information acquired by a review committee or of what transpired at a review meeting is a misdemeanor and punishable under AS 11.05.010.

Sec. 18.23.050. PROTECTION OF PATIENT. Nothing in this chapter relieves a person of liability which he has incurred or may incur to a person as a result of furnishing health care to the patient.

Sec. 18.23.060. PARTIES BOUND BY REVIEW. When a review organization reviews matters under sec. 70(5)(H) of this chapter no party is bound by a ruling of the organization in a controversy, dispute or question unless he agrees in advance, either specifically or generally, to be bound by the ruling.

Sec. 18.23.070. DEFINITIONS. In this chapter, unless the context

otherwise requires,

(1) "administrative staf " means the staff of a hospital or clinic;

(2) "health care" means professional services rendered by a health care provider or an employee of a health care provider, and services furnished by a sanatorium, rest home, nursing home, boarding home or other institution for the hospitalization or care of human beings;

(3) "health care provider" means a chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under AS 08.71; an optometrist licensed under AS 08.-72; a pharmacist licensed under AS 08.80; a physical therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a psychologist and a psychological associate licensed under AS 08.86; and a hospital as defined in AS 18.20.130, including a governmentally owned or operated hospital;

(4) "professional service" means service rendered by a health care provider of the type he is licensed to render;

(5) "review organization" means a hospital governing body or a committee whose membership is limited to health care providers and administrative staff, except where otherwise provided for by state or federal law, and which is established by a hospital, by a clinic, by one or more state or local associations of health care providers, by an organization of health care providers from a particular area or medical institution, or by a professional standards review organization established under 42 U.S.C., sec. 1320c-1 et seq., to gather and review information relating to the care and treatment of patients for the purposes of

(A) evaluating and improving the quality of health care rendered in the area or medical institution;

(B) reducing morbidity or mortality;

(C) obtaining and disseminating statistics and information relative to the treatment and prevention of diseases, illness and injuries;

(D) developing and publishing guidelines showing the norms of health care in the area or medical institution;

(E) developing and publishing guidelines designed to keep the cost of health care within reasonable bounds;

(F) reviewing the quality or cost of health care services provided to enrollees of health maintenance organizations;

(G) acting as a professional standards review organization under 42 U.S.C., sec. 1320c-1 et seq.;

(H) reviewing, ruling on, or advising on controversies, disputes or questions between

(i) a health insurance carrier or health maintenance organization and one or more of its insured or enrollees;

(ii) a professional licensing board, acting under its powers of discipline or license revocation or suspension, and a health care provider licensed by it when the matter is referred to a review organization by the professional licensing board;

(iii) a health care provider and his patients concerning diagnosis, treatment or care, or a charge or fee;

(iv) a health care provider and a health insurance carrier or health maintenance organization concerning a charge or fee for health care services provided to an insured or

enrollee; or

(v) a health care provider or his patients and the federal or a state or local government, or an agency of the federal or a state or local government;

(I) acting on the recommendation of a credential review committee or a grievance committee.

The insurance structures in the House and Senate bills vary substantially, as the Senate version is now before the committee, as included here

* Sec. 39. AS 21 is amended by adding a new chapter to read:

CHAPTER 88. HEALTH CARE PROVIDERS INSURANCE.

ARTICLE 1. PURPOSE.

Sec. 21.88.010. PURPOSE OF CHAPTER. It is the purpose of this chapter to provide a means of furnishing health care providers with adequate insurance against liability for medical negligence by concentrating all such insurance in one entity which can negotiate more successfully for insurance from casualty insurers and to distribute equitably the true cost of the insurance among the health care providers

insured.

ARTICLE 2. INDEMNITY CORPORATION.

Sec. 21.88.020. CORPORATION CREATED. There is created the Alaska Health Care Providers Indemnity Corporation which is a public corporation having a legal existence independent of and separate from the state. Obligations issued by the corporation do not constitute a debt, liability or obligation of the state or a pledge of full faith and credit of the state.

Sec. 21.88.030. CORPORATION BOARD OF GOVERNORS. (a) The corporation shall exercise its powers through a board of governors which shall be appointed by the governor of the state and confirmed by the legislature as provided in (b) of this section.

(b) The appointments to the board of governors shall be Alaska residents as follows:

(1) two physicians licensed in the state; one of the physicians shall be engaged in group practice in a clinic of six or more physicians;

(2) one person employed by a hospital or on the board of directors of a hospital;

(3) two professionals in the insurance field;

(4) two persons who are not health care providers or financially interested in the field of health care, attorneys, or representatives of the insurance industry.

(c) The term of office of each governor is three years, except that the governor of the state shall designate two initially appointed governors to serve for one year and two initially appointed governors to serve for two years.

(d) Upon the expiration of the term of a governor, the governor of the state shall appoint a successor who shall be from the same class

described in (b) of this section as the governor whose term has expired.

(e) Upon a governor's early resignation, death or inability to serve, the governor of the state shall appoint a successor from the same class defined in (b) of this section as the terminating governor, who shall serve for the unexpired term.

(f) The director or his designee is not a voting member of the board of governors but shall be notified by the board of and have the right to attend and participate in all meetings and proceedings of the board.

(g) Members of the board of governors receive compensation from the corporation of $100 per day when the board meets and necessary travel expenses.

Sec. 21.88.040. CORPORATION PLAN OF OPERATION. (a) Within 30 days after the effective date of this chapter, the board of governors shall prepare and submit to the director for approval a plan of operation which provides for the fair, reasonable and equitable administration of the affairs of the corporation and the discharge of the purposes for which it is created. The plan and any amendments of it become effective upon the director's approval. If the board of governors fails to submit a plan of operation, or if at a subsequent time the board of governors fails to submit suitable amendments to the plan, the director shall, after notice and hearing, adopt and promulgate a plan of operation or amendments which are necessary or advisable to effectuate the provisions of this chapter. Adoption of the plan is not subject to the Administrative Procedure Act (AS 44.62).

(b) The plan of operation shall

(1) establish the procedures by which all the powers and duties of the corporation specified in sec. 50 of this chapter shall

be performed;

(2) establish procedures for handling assets and discharging liabilities of the corporation;

(3) establish regular places and times for meetings of the board of governors;

(4) establish procedures for records to be kept of all financial transactions of the corporation, its agents, and the board of governors;

(5) establish the procedures for awarding contracts to indemnify or defend or to provide other services and to compensate the indemnitors or vendors;

(6) establish the procedures for issuing contracts of insurance as provided in sec. 50 of this chapter and for the determination of rates;

(7) contain additional provisions necessary or proper for the execution of the powers and duties of the corporation.

Sec. 21.88.050. POWERS AND DUTIES OF THE CORPORATION. (a) The corporation shall

(1) in the form approved by the director, issue to all health care providers who pay the premiums for it a contract or contracts indemnifying the health care provider and his employees who are health care providers against loss by reason of liability for professional services on an occurrence basis and agreeing to tender on behalf of the health care provider and his employees who are health care providers a defense in a proceeding brought under AS 09.55.530 - 09.55.560; the limit of liability shall be no less than the minimum liability coverage requirements to be maintained under AS 08.64.215 and AS 18.20.045; the contract shall cover the defense against but need not indemnify a claim for punitive damages; at the option of the health

care provider and for an additional premium the contract may cover claims against the health care provider that arise out of professional services performed by the health care provider after December 31, 1974 except that coverage will not be provided for a claim already filed or of which the health care provider had or reasonably should have had notice at the time the retroactive insurance was purchased;

(2) charge a premium for the protection provided by the contracts issued under (1) of this subsection which shall be determined by the board of governors in accordance with sec. 80 of this chapter and subject to the approval of the director;

The House bill does not require the corporation to obtain reinsurance for the policies it writes

(3) negotiate for and procure reinsurance from a casualty insurers or reinsurers for all of its liability incurred by contracts issued under (1) of this subsection; the corporation may not incur or retain under those contracts liability which is not reinsured as provided in this paragraph; if, after the exercise of due diligence, no reinsurance for all or a portion of the risk can be procured at reasonable rates from casualty insurers or reinsurers, the corporation through the board of governors, shall so certify to the director reinsurance shall then be provided by the Health Care Joint Underwriting Association as provided in sec. 110 et seq. of this chapter for that

portion not reinsured by a private carrier;

(4) comply with or be subject to AS 21.06.090; 21.06.120; 21.06.140; 21.06.160; 21.06.250; AS 21.09.180; 21.09.190; 21.09.200; 21.09.250; 21.09.280; AS 21.12.020(b), (c), (d), and (e); and chs. 18, 21, 24, and 36 of this title;

(5) carry out the obligations of the contracts issued under (1) of this subsection by defending all covered claims made against insured health care providers and by paying all liabilities which are finally adjudicated against the insured health care provider or which may in the opinion of the corporation reasonably be expected to be finally adjudicated against the health care provider to the extent of the contract obligation;

(6) provide coverage to health care providers for liability in excess of the minimum limits required for licensure as a health care provider, but limited to $1,000,000 for individual health care providers and $5,000,000 for hospitals, if there is a finding by the director that this coverage is unavailable at a reasonable cost and that this coverage can be made available at a reasonable cost through the corporation; if this paragraph is implemented, then each health care provider obtaining excess coverage up to these amounts shall obtain it from the corporation.

(b) The corporation may

The House bill, by requiring providers other than physicians and hospitals, to buy insurance from the corporation if insurance is not available on the private market and an impairment of delivery of services results, differs here

from the Senate approach because the corporation must assure those providers about whom such a finding has been made

(1) in the form approved by the director, issue contracts of professional liability insurance to chiropractors licensed under AS 08.-20, dental hygienists licensed under AS 08.32, dentists licensed under AS 08.36, nurses licensed under AS 08.68, dispensing opticians licensed under AS 08.71, optometrists licensed under AS 08.72, pharmacists licensed under AS 08.80, physical therapists licensed under AS 08.84, and pyschologists and psychological associates licensed under AS 08.86;

(2) employ or retain persons, individual or corporate, to discharge its obligations and pay reasonable compensation for those services; employees of the corporation are not considered state employees;

(3) provide coverage to health care providers for other hazards where there is a finding by the director that this coverage is otherwise unavailable by reason of the operation of the corporation;

(4) borrow or advance funds necessary to effectuate the purposes of the corporation;

(5) negotiate and become a party to those contracts as are necessary to carry out the purposes of the corporation;

(6) sue or be sued in the name of the corporation;

(7) provide risk management advice and services to hospitals;

(8) perform all other acts necessary and proper to effectuate the corporation.

The House bill does not impose a premium tax on the corporation

Sec. 21.88.060. PREMIUM TAX. The corporation shall pay a premium tax in the amount of one and one-half per cent of the total direct premium income received by the corporation during the year ending on the preceding December 31, after deducting the applicable cancellations, returned premium, the unabsorbed portion of any deposit premiums, all policy dividends, unabsorbed premiums refunded to policyholders, refunds, savings, savings coupons and other similar returns paid or credited to policyholders with respect to their policies. The tax shall be paid to the director annually before April 1 of each year.

Sec. 21.88.070. STATISTICS. The corporation shall collect, maintain and report information concerning claims against health care providers. The information shall be on forms prescribed by the director, and shall be sufficient to enable a proper determination of losses for rate making and to identify causes and sources of loss for loss control. At least annually the corporation shall report to the director the number and amount of claims filed, reserved, paid, settled and adjudicated during the year, the premiums paid to and the expenses incurred by the corporation during the year. This report shall be available to the public. The director may require that supplemental reports include the names of insured health care providers and the claimants; however, no reports which become publicly available may include the names of health care providers or claimants or information that will permit by inference the identity of specific health care providers or claimants. All statistics shall be made available to the appropriate licensing board or agency.

Sec. 21.88.080. RATES. (a) The rates and rating plans used by the corporation for the policies issued shall be determined by license category of health care providers in accordance with all of the following:

(1) rates for physicians shall be set as a function of the physician's medical revenue;

(2) rates for hospitals shall be set as a function of the number of permanent beds in the hospital;

(3) a minimum rate may be set for each category of health care provider or discipline or classification within the license category;

(4) rates may not be excessive; rates are excessive if, after a period of time and with respect to an amount of gross premium which are actuarially credible, the premiums exceed losses incurred by the corporation, including losses paid, reserves for claims reported and unpaid, reserves for claims incurred during the policy period and not reported, provided that reserves for claims incurred during the policy period and reasonably expected to be reported after three years after the incident may be included on a different basis due to the additional financial flexibility provided by the corporation, and reasonable expenses for the operation of the corporation;

(5) rates shall not be inadequate; rates are inadequate if, based on available actuarial data, the premiums to be paid by the health care providers are or may reasonably be expected to be insufficient to pay for losses incurred by the corporation, including claims paid, reserves for claims reported and unpaid, reserves for claims incurred during the policy period and not reported provided that reserves for claims incurred during the policy period and reasonably expected to be reported after three years after the incident may be included on a different basis due to the additional financial flexibility provided by the corporation, and reasonable expenses for the operation of the corporation;

(6) rates may not be unfairly discriminatory;

(7) rates shall be adjusted annually;

(8) rates for any policy year shall be calculated to include the adjustment for actual experience of the corporation;

(9) in considering losses to be incurred, changes in the law, national, regional or local trends in medical negligence awards, and other relevant factors may be considered;

(10) income from the investment of reserves shall be considered;

(11) individual risk underwriting factors shall be considered.

The House bill requires that descriptions and classifications within license categories be considered in rate making, and that repayment of loan obligations be considered in rate making

(b) The standards in (a) of this section shall be applied to the policy terms the corporation decides to write.

Sec. 21.88.090. REQUIRED INSURANCE; CANCELLATION. The corporation shall provide insurance to all health care providers otherwise eligible for licensure under AS 08.64 and AS 18.20. The corporation may provide for installment payment of premiums in which event each installment is due by the date specified. The corporation may cancel any of its policies in the event of nonpayment of any premium or installment on a premium, or other charge, by mailing or delivering to the insured at the address shown on the policy and to the agency of the state issuing the insured's license written notice stating when, not less than 10 days

after notice is received by the insured, the cancellation is effective.

The House bill contains no JUA.

ARTICLE 3. JOINT UNDERWRITING ASSOCIATION.

Sec. 21.88.110. ASSOCIATION CREATED. (a) The Health Care Providers Joint Underwriting Association is created consisting of all licensed

(1) health care service corporations as defined in AS 21.-87.330;

(2) disability insurers as defined in AS 21.12.050;

(3) property insurers as defined in AS 21.12.060; and

(4) casualty insurers as defined in AS 21.12.070.

(b) Every insurer described in (a) of this section shall be a member of the association and shall remain a member as a condition of its authority to continue to transact that kind of business in this state; except that any disability insurer may elect to pay any tax or assessments due without otherwise participating as a member.

(c) The association shall commence operation upon a finding by the director, after public hearing, that after the exercise of due diligence no reinsurance could be procured at reasonable rates by the corporation from a casualty insurer or reinsurer. After the association has commenced operation, if the director determines, after public

hearing, that health care malpractice insurance is available through insurers licensed in this state with respect to which he has previously made the former finding, the association shall cease its underwriting operations. At any time, after notice and hearing, the director may, upon a finding that it is no longer needed, terminate the operation of the association.

Sec. 21.88.120. PURPOSE. The purpose of the association is to provide a market for medical malpractice insurance to the corporation on a self-supporting basis without subsidy from association members.

Sec. 21.88.130. ASSOCIATION BOARD OF DIRECTORS; TERM. The association shall be governed by a board of directors appointed by the governor of the state and consisting of two representatives of domestic casualty and property insurers, one representative of admitted disability insurers, one representative of health care service corporations, one representative of foreign casualty and property insurers, and two persons from the public. Members of the board of directors serve three-year terms.

Sec. 21.88.140. ASSOCIATION PLAN OF OPERATION. (a) Within 30 days after the association's creation the board of directors shall prepare and submit to the director for his approval a plan of operation which provides for the fair, reasonable and equitable administration of the affairs of the association and the discharge of the purposes for which it is created. The plan and any amendments of it become effective upon the director's approval. If the board of directors has failed to submit a plan of operation, or if at any subsequent time the board of directors fails to submit suitable amendments to the plan, the director shall, after notice and hearing, adopt and promulgate a plan of operation or amendments which are necessary or advisable to effectuate the provisions of this chapter. Adoption of the plan is not subject to the

Administrative Procedure Act (AS 44.62).

(b) The plan of operation shall

(1) establish the procedures for carrying out the powers and duties of the association specified in sec. 150 of this chapter;

(2) establish procedures for handling assets and discharging liabilities of the association;

(3) establish regular places and times for meetings of the board of directors;

(4) establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;

(5) establish the amount and method of reimbursing members of the board of directors;

(6) establish the procedures for awarding contracts to indemnify or defend or to provide other services and to compensate the indemnitors or vendors;

(7) establish the procedures for issuing contracts of insurance as provided in sec. 150 of this chapter and for the determination of rates;

(8) contain additional provisions necessary or proper for the execution of the powers and duties of the association.

Sec. 21.88.150. POWERS AND DUTIES OF THE ASSOCIATION. (a) The association shall

(1) provide reinsurance to the corporation covering contracts issued by the corporation indemnifying health care providers and their employees who are health care providers against loss by reason of liability for professional services and agreeing to tender on behalf of the health care providers and their employees who are health care providers a defense in an action brought under AS 09.55.530 - 09.55.560;

the limit of liability shall be no less than the minimum liability required to be indemnified as provided in AS 08.64.215 and AS 18.20.045, and the coverage shall be the same as that which the Health Care Providers Indemnity Corporation is required to provide under sec. 50 of this chapter;

(2) charge a premium for the protection provided by the contracts issued under sec. 50 of this chapter which shall be determined by the board of directors in accordance with sec. 80 of this chapter and subject to the approval of the director;

(3) comply with or be subject to AS 21.06.090; 21.06.120; 21.06.140; 21.06.160; 21.06.250; AS 21.09.180; 21.09.200; 21.09.250; 21.09.280; AS 21.12.020(b), (c), (d), and (e); and chs. 18, 21, 24, and 36 of this title;

(4) carry out the obligations of the contracts issued under sec. 50 of this chapter by defending all covered claims made against insured health care providers and paying all liabilities which are finally adjudicated against the insured health care provider or which may in the opinion of the association reasonably be expected to be finally adjudicated against the health care provider to the extent of the contract obligation.

(b) The association may

(1) employ or retain persons, individual or corporate, to discharge its obligations and pay reasonable compensation for those services;

(2) provide reinsurance to the corporation for coverage to health care providers for other hazards where there is a finding by the director that this coverage is otherwise unavailable by reason of the operation of the corporation;

(3) provide reinsurance to the corporation for coverage to

health care providers for liability under AS 09.55.530 - 09.55.560 in excess of the minimum limits required for licensure as a health care provider where there is a finding by the director that this coverage is unavailable at a reasonable cost and that this coverage can be made available at a reasonable cost through the corporation;

(4) provide reinsurance to the corporation for coverage for liability under AS 09.55.530 - 09.55.560 to chiropractors licensed under AS 08.20, dental hygienists licensed under AS 08.32, dentists licensed under AS 08.36, nurses licensed under AS 08.68, dispensing opticians licensed under AS 08.71, optometrists licensed under AS 08.72, pharmacists licensed under AS 08.80, physical therapists licensed under AS 08.84, and psychologists and psychological associates licensed under AS 08.86;

(5) borrow or advance funds necessary to effectuate the purposes of this association;

(6) negotiate and become a party to those contracts which are necessary to carry out the purposes of the association;

(7) sue or be sued in the name of the association;

(8) cede or assume reinsurance;

(9) perform all other acts necessary and proper to effectuate the association.

Sec. 21.88.160. RATES AND RATING PLANS. The rates and rating plans shall be determined as provided in sec. 80 of this chapter, except that allowance may not be made for profit to an indemnifying carrier or for income from investment of member-contributed funds; and provided that reserves for claims incurred during the policy period and reasonably expected to be reported after three years after the incident may be included on a different basis due to the additional financial flexibility provided by the association.

Sec. 21.88.170. ASSESSMENT. If sufficient funds are not available for the sound financial operation of the association, all members shall contribute to the financial requirements of the association by paying to the association an assessment to be determined by the board of governors of the association, these assessments to be prorated among all members in proportion to their direct written premiums or revenues in this state in the insurance lines the writing of which require membership in the association, in the two years ending on the preceding December 31, after deducting the applicable cancellations, returned premium, the unabsorbed portion of any deposit premium, all policy dividends, unabsorbed premiums refunded to policyholders, refunds, savings, savings coupons and other similar returns paid or credited to policyholders with respect to their policies. Any assessment under this section is a tax obligation in addition to taxes required under AS 21.09.210 and notwithstanding the provisions of AS 21.09.210(e).

Sec. 21.88.180. RATE ADJUSTMENT. (a) If in any year an assessment is made under sec. 170 of this chapter, rates for the next period shall be increased from the rate determined under sec. 160 of this chapter by an amount sufficient to reimburse all members the amounts assessed.

(b) No assessment may be reimbursed to members without prior approval of the director and no interest accrues in favor of members on amounts assessed.

(c) If, after establishing required reserves, there is an excess amount in reserve, the excess premium shall be refunded to the insured health care providers.

Sec. 21.88.190. REPORTS. At least annually the association shall report to the director concerning its affairs. The report shall be in the form prescribed by the director.

The House bill's loan fund differs from the loan fund in the Senate bill in that loans under the House version are made to the Corporation to maintain reserves, the interest rate is higher and the term is shorter.

ARTICLE 4. LOAN FUND.

Sec. 21.88.210. FUND ESTABLISHED. (a) There is in the Department of Commerce and Economic Development a medical malpractice liability revolving loan fund to be administered by the director of insurance.

(b) Loans shall be made from the fund to the Joint Underwriting Assoication upon certification by the director that a loan is necessary for the corporation to spread costs out over time because of fluctuations in loss experience. If a loan is made to the corporation from the fund, the Joint Underwriting Association shall issue a note to the fund pledging the premiums collected in the future as security for the loan.

(c) Loans from the fund shall be repaid by the Joint Underwriting Association within five years at an annual interest rate of six per cent.

(d) The director may sell at par value to the Department of Revenue the notes, security instruments and pledge agreements held by the Department of Commerce and Economic Development as security for loans made under this section. The Department of Revenue shall purchase all the notes offered until the current principal amount of the

notes purchased and held by the Department of Revenue equals $5,000,000.

ARTICLE 5. GENERAL PROVISIONS.

Sec. 21.88.900. DEFINITIONS. As used in this chapter,

(1) "association" means the Health Care Providers Joint Underwriting Association;

(2) "corporation" means the Health Care Providers Indemnity Corporation;

(3) "health care provider" means a physician licensed under AS 08.64 and a hospital licensed under AS 18.20.

* Sec. 40. AS 21.18.090 is amended by adding a new paragraph to read:

(5) reserves for the Joint Underwriting Association are to include claims reported and unpaid; reserves for claims incurred but not reported, but those which may reasonably be expected to be reported beyond three years after the date of occurrence may be included on a different basis due to the additional financial flexibility of the association.

* Sec. 41. AS 08.02 is amended by adding a new section to read:

Sec. 08.02.020. LIMITATION OF LIABILITY FOR MEMBERS OF LICENSING BOARDS. No person is liable for damages or other relief in an action by reason of his performance of a duty, function, or activity as a member of a licensing board or by reason of a recommendation or action of the board when the person acts in the reasonable belief that his action or recommendation is warranted by facts known to him or to the board after reasonable efforts to ascertain the facts upon which the action or recommendation is made.

* Sec. 42. AS 09.55.535, and AS 09.55.537, enacted in sec. 31 of this Act, have the effect of changing the Alaska Supreme Court's Rules of Civil Procedure by requiring the submission of medical malpractice claims against hospitals and physicians to either nonbinding arbitration or to expert

advisory panels, unless all parties to the action agree otherwise.

* Sec. 43. AS 08.64.365 and AS 08.68.040 are repealed.

* Sec. 44. This Act takes effect 30 days after enactment.

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Rough Draft

\# Sec. AS 09.55 is amended by adding new sections to read:

Sec. 09.55.535. VOLUNTARY ARBITRATION. (a) A patient and any health care provider may execute an agreement to submit to arbitration any dispute, controversy, or issue arising out of care or treatment by the health care provider during the period that the agreement is in force or that has already arisen between the parties.

(b) An agreement to arbitrate executed before care or treatment is provided ~~between a patient and health care provider~~ shall clearly provide in bold print on the face of the agreement that execution of the agreement by the patient is not a prerequisite to receiving care or treatment. If this subsection is not complied with by the health care provider, the agreement to arbitrate is void. The form to be used shall be approved in advance by the attorney general of the state to assure it fairly informs both parties to the agreement and properly protects their interests.

(c) The agreement shall provide that the person receiving health care may revoke the agreement within 60 days after execution by notifying the health care provider in writing. A health care provider may not revoke the agreement after its execution.

(d) Each admission to a hospital shall be treated as separate and distinct for the purposes of an agreement to arbitrate, but a person receiving outpatient care from a hospital or clinic or a member of a health maintenance organization may execute an agreement with the hospital which provides for continuation of the agreement for a continuing program of treatment or during continued membership.

(e) Upon the filing of a malpractice claim which is subject to an agreement to arbitrate, the claim shall be submitted to an arbitration panel. The arbitration panel shall consist of three arbitrators: one arbitrator designated by the plaintiff or plaintiffs, one arbitrator

designated by the defendant or defendants, and a third arbitrator designated by mutual agreement who shall serve as chairperson of the board. If the parties cannot agree on the third person, the court will provide a list of three or more persons who might serve as chairperson of the arbitration panel, which shall be furnished by the attorney general. Plaintiff or plaintiffs together and defendant or defendants together may each strike one or more names from the list, so after each side has done so at least one name remains on the list, providing a basis for the final selection by the court.

(f) The attorney general shall prepare a list of persons consisting of lawyers or other persons qualified to serve as chairperson of arbitration panels. They shall be selected on basis of their technical expertise, judicial temperament, and capability of impartially acting on malpractice claims. The attorney general shall submit a list of at least three names whenever requested to do so by the court along with detailed biographical information on each person listed.

(g) Each member of the panel shall receive reasonable compensation to be paid by the court based on the extent and duration of services rendered. The court shall also pay the costs of experts called by the panel.

(h) The [redacted] may appoint an expert advisory panel, with the powers of the expert advisory panel under sec. 536 of this chapter, to advise the [redacted] on the medical facts of the case.

(i) The court shall specify the shortest practical deadline for completion of the work of the arbitration panel, taking into account all the circumstance and the nature of the case.

(j) The provisions of the Uniform Arbitration Act, AS 09.43.010 - 09.43.180, apply to arbitrations under this section insofar as they are applicable and do not conflict with the provisions of this section;

arbitrations under this section shall be conducted in accordance with any rules of court which may be adopted.

Sec. 09.55.536. EXPERT ADVISORY PANEL. (a) In any action for damages due to personal injury or death based upon the provision of professional services by a health care provider, the court shall establish a three-person expert advisory panel in accordance with this section unless the court decides that an expert advisory opinion is not necessary for a decision in the case. When the action is filed the court shall, by order, determine the professions or specialties to be represented on the expert advisory panel and shall advise each party of the professions or specialties to be represented, giving the parties the opportunity to object or make suggestions.

(b) The expert advisory panel may compel the attendance of witnesses, interview the parties, physically examine the injured person if alive, consult with the specialists or learned works they consider appropriate, and compel the production of and examine all relevant hospital, medical, or other records or materials relating to the health care treatment. The panel may meet in camera, but shall maintain a record of any testimony or oral statements of witnesses, and shall keep copies of all written statements and opinions it receives.

(c) Not more than 30 days after selection of the panel, it shall make a written report to the parties and to the court, substantially answering the following questions in addition to any other question which the court puts to the panel:

(1) What was the medical complaint or condition for which the person sought or was brought to medical care?

(2) What would have been the likely course of the complaint or condition without medical care?

(3) Was the care appropriate?

(4) Did an injury arise from the medical care?

(5) What was the injury?

(6) What specifically caused the injury?

(7) Was the injury caused by negligence?

(8) Is the injury stable or will it improve or become worse?

(9) Is the outcome different than would be expected

(c) In any case in which the answer to one or more of the questions under (b) of this section depends upon the resolution of factual questions which are not the proper subject of expert opinion, the report shall so state and may answer questions based upon hypothetical facts that are fully and completely set out in the opinion. The report shall include copies of all written statements, opinions, or records relied upon by the panel and either a transcription or other record of any oral statements or opinions; shall specify any medical or scientific authority relied upon by the panel; and shall include the results of any physical or mental examination performed on the plaintiff. Each member shall sign the report and his signature constitutes his adoption of all statements and opinions contained in it; however, a member may, instead of signing the report, submit a concurring or dissenting report which complies with the requirements of this subsection, and a member may not attest to any portion of the report as to which he is not qualified to give expert testimony.

(d) The report of the panel and any dissenting or concurring opinion are admissible in evidence to the same extent as though its contents were orally testified to by the person or persons preparing it. The court shall delete any portion that would not be admissible because of lack of foundation for opinion testimony, or otherwise. Either party may submit expert testimony to support or refute the report. The jury shall be instructed in general terms that the report shall be considered and evaluated in the same manner as any other expert testimony. Any

member of the panel may be called by any party and may be cross-examined as to the contents of the report or of his dissenting or concurring opinion.

(e) No discovery may be undertaken in a case until the report of the expert advisory panel is received. However, the court may relax this prohibition upon a showing of good cause by any party. If the panel has not completed its report within the 30-day period prescribed in (b) of this section, the court may, upon application, grant it an additional 30 days.

(f) Members of a panel are entitled to travel expenses and per diem in accordance with state law pertaining to members of boards and commissions for all time spent in preparing its report and matters incidental to it. If a panel member is called upon as a witness at trial or upon deposition, he is entitled to payment of an expert witness fee. All expenses incurred by the panel shall be paid by the court. However, in any case in which the court determines that a party has made a patently frivolous claim or a patently frivolous denial of liability, it shall order that all costs of the expert advisory panel be borne by the party making that claim or denial.

(g) Parties to the case and their counsel may not initiate communication out of court with members of the panel on the subject matter of its inquiry and report or cause or solicit others to do so, except through ordinary discovery proceedings.

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Rough Draft

* Sec. 39. AS 21 is amended by adding a new chapter to read:

CHAPTER 88. HEALTH CARE PROVIDERS INSURANCE.

ARTICLE 1. PURPOSE.

Sec. 21.88.010. PURPOSE OF CHAPTER. It is the purpose of this chapter to provide a means of furnishing health care providers with adequate insurance against liability for medical negligence ~~by concentrating all such insurance in one entity which can negotiate more successfully for insurance from casualty insurers and to distribute equitably the true cost of the insurance among the health care providers insured~~.

ARTICLE 2. INDEMNITY CORPORATION.

Sec. 21.88.020. CORPORATION CREATED. There is created the Alaska Health Care Providers Indemnity Corporation which is a public corporation having a legal existence independent of and separate from the state. Obligations issued by the corporation do not constitute a debt, liability or obligation of the state or a pledge of full faith and credit of the state.

Sec. 21.88.030. CORPORATION BOARD OF GOVERNORS. (a) The corporation shall exercise its powers through a board of governors which shall be appointed by the governor of the state and confirmed by the legislature as provided in (b) of this section.

(b) The appointments to the board of governors shall be Alaska residents as follows:

(1) two physicians licensed in the state; one of the physicians shall be engaged in group practice in a clinic of six or more physicians;

(2) one person employed by a hospital or on the board of directors of a hospital;

(3) two professionals in the insurance field;

(4) two persons who are not health care providers or financially interested in the field of health care, attorneys, or representatives of the insurance industry.

(c) The term of office of each governor is three years, except that the governor of the state shall designate two initially appointed governors to serve for one year and two initially appointed governors to serve for two years.

(d) Upon the expiration of the term of a governor, the governor of the state shall appoint a successor who shall be from the same class described in (b) of this section as the governor whose term has expired.

(e) Upon a governor's early resignation, death or inability to serve, the governor of the state shall appoint a successor from the same class defined in (b) of this section as the terminating governor, who shall serve for the unexpired term.

(f) The director or his designee is not a voting member of the board of governors but shall be notified by the board of and have the right to attend and participate in all meetings and proceedings of the board.

(g) Members of the board of governors receive compensation from the corporation of $100 per day when the board meets and necessary travel expenses.

Sec. 21.88.040. CORPORATION PLAN OF OPERATION. (a) Within 30 days after the effective date of this chapter, the board of governors shall prepare and submit to the director for approval a plan of operation which provides for the fair, reasonable and equitable administration of the affairs of the corporation and the discharge of the purposes for which it is created. The plan and any amendments of it become effective upon the director's approval. If the board of governors fails to submit a plan of operation, or if at a subsequent time the board of governors

fails to submit suitable amendments to the plan, the director shall, after notice and hearing, adopt and promulgate a plan of operation or amendments which are necessary or advisable to effectuate the provisions of this chapter. Adoption of the plan is not subject to the Administrative Procedure Act (AS 44.62).

(b) The plan of operation shall

(1) establish the procedures by which all the powers and duties of the corporation specified in sec. 50 of this chapter shall be performed;

(2) establish procedures for handling assets and discharging liabilities of the corporation;

(3) establish regular places and times for meetings of the board of governors;

(4) establish procedures for records to be kept of all financial transactions of the corporation, its agents, and the board of governors;

(5) establish the procedures for awarding contracts to carry out the provisions of this chapter;

(6) establish the procedures for issuing contracts of insurance as provided in sec. 50 of this chapter and for the determination of rates;

(7) contain additional provisions necessary or proper for the execution of the powers and duties of the corporation.

Sec. 21.88.050. POWERS AND DUTIES OF THE CORPORATION. (a) The corporation shall

(1) in the form approved by the director, issue to all health care providers who pay the premiums for it a contract or contracts indemnifying the health care provider and his employees who are health care providers against loss by reason of liability for professional

services on an occurrence basis and agreeing to tender on behalf of the health care provider and his employees who are health care providers a defense in a proceeding brought under AS 09.55.530 - 09.55.560; the limit of liability shall be no less than the minimum liability coverage requirements to be maintained under AS 08.64.215 and AS 18.20.045; the contract shall cover the defense against but need not indemnify a claim for punitive damages; at the option of the health care provider and for an additional premium the contract may cover claims against the health care provider that arise out of professional services performed by the health care provider after December 31, 1974 except that coverage will not be provided for a claim already filed or of which the health care provider had or reasonably should have had notice at the time the retroactive insurance was purchased;

(2) charge a premium for the protection provided by the contracts issued under (1) of this subsection which shall be determined by the board of governors in accordance with sec. 80 of this chapter and subject to the approval of the director;

(3) comply with or be subject to AS 21.06.090; 21.06.120; 21.06.140; 21.06.160; 21.06.250; AS 21.09.130; 21.09.190; 21.09.200; 21.09.250; 21.09.280; AS 21.12.020(b), (c), (d), and (e); and chs. 18, 21, 24, and 36 of this title;

(4) carry out the obligations of the contracts issued under (1) of this subsection by defending all covered claims made against insured health care providers and by paying all liabilities which are finally adjudicated against the insured health care provider or which may in the opinion of the corporation reasonably be expected to be finally adjudicated against the health care provider to the extent of the contract obligation;

(5) provide coverage to health care providers for liability

in excess of the minimum limits required for licensure as a health care provider, but limited to $1,000,000 for individual health care providers and $5,000,000 for hospitals, if there is a finding by the director that this coverage is unavailable at a reasonable cost and that this coverage can be made available at a reasonable cost through the corporation; if this paragraph is implemented, then each health care provider obtaining excess coverage up to these amounts shall obtain it from the corporation, and the corporation may procure reinsurance for all risks incurred by contracts issued under this paragraph from the private market.

(b) The corporation may

(1) in the form approved by the director, issue contracts of professional liability insurance to chiropractors licensed under AS 08.20, dental hygienists licensed under AS 08.32, dentists licensed under AS 08.36, nurses licensed under AS 08.68, dispensing opticians licensed under AS 08.71, optometrists licensed under AS 08.72, pharmacists licensed under AS 08.80, physical therapists licensed under AS 08.84, and pyschologists and psychological associates licensed under AS 08.86;

(2) employ or retain persons, individual or corporate, to discharge its obligations and pay reasonable compensation for those services; employees of the corporation are not considered state employees;

(3) (4) recommend that the director hold public hearings for the purpose of commencing operation of the joint underwriting association established under secs. 110 - 190 of this chapter; if the joint underwriting association begins operation, the corporation may purchase reinsurance from the association for any of the liability incurred by

contracts issued by the corporation;

(4)~~(5)~~ provide coverage to health care providers for other hazards where there is a finding by the director that this coverage is otherwise unavailable by reason of the operation of the corporation;

(5)~~(6)~~ borrow or advance funds necessary to effectuate the purposes of the corporation;

(6)~~(7)~~ negotiate and become a party to those contracts as are necessary to carry out the purposes of the corporation;

(7)~~(8)~~ sue or be sued in the name of the corporation;

(8)~~(9)~~ provide risk management advice and services to hospitals;

(9)~~(10)~~ negotiate and become a party to contracts for management services for the corporation;

(10)~~(11)~~ perform all other acts necessary and proper to effectuate the corporation.

Sec. 21.88.060. PREMIUM TAX. The corporation shall pay a premium tax in the amount of one and one-half per cent of the total direct premium income received by the corporation during the year ending on the preceding December 31, after deducting the applicable cancellations, returned premium, the unabsorbed portion of any deposit premiums, all policy dividends, unabsorbed premiums refunded to policyholders, refunds, savings, savings coupons and other similar returns paid or credited to policyholders with respect to their policies. The tax shall be paid to the director annually before April 1 of each year.

Sec. 21.88.070. STATISTICS. The corporation shall collect, maintain and report information concerning claims against health care providers. The information shall be on forms prescribed by the director, and shall be sufficient to enable a proper determination of losses for rate making and to identify causes and sources of loss for loss control. At least annually the corporation shall report to the director

the number and amount of claims filed, reserved, paid, settled and adjudicated during the year, the premiums paid to and the expenses incurred by the corporation during the year. This report shall be available to the public. The director may require that supplemental reports include the names of insured health care providers and the claimants; however, no reports which become publicly available may include the names of health care providers or claimants or information that will permit by inference the identity of specific health care providers or claimants. All statistics shall be made available to the appropriate licensing board or agency.

Sec. 21.88.080. RATES. (a) The rates and rating plans used by the corporation for the policies issued shall be determined by license category of health care providers in accordance with all of the following:

(1) rates for physicians shall be set as a function of the physician's medical revenue;

(2) rates for hospitals shall be set as a function of the number of permanent beds in the hospital;

(3) rates may not be excessive; rates are excessive if, after a period of time and with respect to an amount of gross premium which are actuarially credible, the premiums exceed losses incurred by the corporation, including losses paid, reserves for claims reported and unpaid, reserves for claims incurred during the policy period and not reported, provided that reserves for claims incurred during the policy period and reasonably expected to be reported after three years after the incident may be included on a different basis due to the additional financial flexibility provided by the corporation, and reasonable expenses for the operation of the corporation;

(4) rates shall not be inadequate; rates are inadequate if,

based on available actuarial data, the premiums to be paid by the health care providers are or may reasonably be expected to be insufficient to pay for losses incurred by the corporation, including claims paid, reserves for claims reported and unpaid, reserves for claims incurred during the policy period and not reported provided that reserves for claims incurred during the policy period and reasonably expected to be reported after three years after the incident may be included on a different basis due to the additional financial flexibility provided by the corporation, and reasonable expenses for the operation of the corporation;

(5) rates may not be unfairly discriminatory;

(6) rates shall be adjusted annually;

(7) rates for any policy year shall be calculated to include the adjustment for actual experience of the corporation;

(8) in considering losses to be incurred, changes in the law, national, regional or local trends in medical negligence awards, and other relevant factors may be considered;

(9) income from the investment of reserves shall be considered;

(10) individual risk underwriting factors shall be considered;

(11) disciplines and classifications within the license categories of health care providers shall be considered.

(b) The standards in (a) of this section shall be applied to the policy terms the corporation decides to write.

Sec. 21.88.090. REQUIRED INSURANCE; CANCELLATION. The corporation shall provide insurance to all health care providers otherwise eligible for licensure under AS 08.64 and AS 18.20. The corporation may provide for installment payment of premiums in which event each installment is due by the date specified. The corporation may cancel any of its

policies in the event of nonpayment of any premium or installment on a premium, or other charge, by mailing or delivering to the insured at the address shown on the policy and to the agency of the state issuing the insured's license written notice stating when, not less than 10 days after notice is received by the insured, the cancellation is effective.

ARTICLE 3. JOINT UNDERWRITING ASSOCIATION.

Sec. 21.88.110. ASSOCIATION CREATED. (a) The Health Care Providers Joint Underwriting Association is created consisting of all licensed

(1) health care service corporations as defined in AS 21.-87.330;

(2) disability insurers as defined in AS 21.12.050;

(3) property insurers as defined in AS 21.12.060; and

(4) casualty insurers as defined in AS 21.12.070.

(b) Every insurer described in (a) of this section shall be a member of the association and shall remain a member as a condition of its authority to continue to transact that kind of business in this state, except that any disability insurer may elect to pay any tax or assessments due without otherwise participating as a member.

(c) The association shall commence operation if the director finds, after public hearing, that a market for reinsurance is needed by the corporation. After the association has commenced operation, if the director determines, after public hearing, that a market for reinsurance is no longer needed by the corporation, the association shall cease its underwriting operations.

Sec. 21.88.120. PURPOSE. The purpose of the association is to provide a market for medical malpractice reinsurance to the corporation on a self-supporting basis without subsidy from association members.

Sec. 21.88.130. ASSOCIATION BOARD OF DIRECTORS; TERM, Compensation. The association shall be governed by a board of directors appointed by the governor of the state and consisting of two representatives of domestic casualty and property insurers, one representative of admitted disability insurers, one representative of health care service corporations, one representative of foreign casualty and property insurers, and two persons from the public. (b) Members of the board of directors serve three-year terms. (c) Board members receive compensation from the association of $100 per day when it the board meets and necessary travel expenses.

Sec. 21.88.140. ASSOCIATION PLAN OF OPERATION. (a) Within 30 days after the association's creation the board of directors shall prepare and submit to the director for his approval a plan of operation which provides for the fair, reasonable and equitable administration of the affairs of the association and the discharge of the purposes for which it is created. The plan and any amendments of it become effective upon the director's approval. If the board of directors has failed to submit a plan of operation, or if at any subsequent time the board of directors fails to submit suitable amendments to the plan, the director shall, after notice and hearing, adopt and promulgate a plan of operation or amendments which are necessary or advisable to effectuate the provisions of this chapter. Adoption of the plan is not subject to the Administrative Procedure Act (AS 44.62).

(b) The plan of operation shall

(1) establish the procedures for carrying out the powers and duties of the association specified in sec. 150 of this chapter;

(2) establish procedures for handling assets and discharging

liabilities of the association;

(3) establish regular places and times for meetings of the board of directors;

(4) establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;

(5) establish the procedures for awarding contracts to indemnify or defend or to provide other services and to compensate the indemnitors or vendors;

(6) establish the procedures for issuing contracts of insurance as provided in sec. 150 of this chapter and for the determination of rates;

(7) contain additional provisions necessary or proper for the execution of the powers and duties of the association.

Sec. 21.88.150. POWERS AND DUTIES OF THE ASSOCIATION. (a) The association shall

(1) provide reinsurance to the corporation covering contracts issued by the corporation for that portion of the liability incurred by the corporation it chooses to reinsure through the association, indemnifying health care providers and their employees who are health care providers against loss by reason of liability for professional services and agreeing to tender on behalf of the health care providers and their employees who are health care providers a defense in an action brought under AS 09.55.530 - 09.55.560;

(2) charge a premium for the protection provided by the reinsurance issued under (a)(1) of this section which shall be determined by the board of directors in accordance with sec. 80 of this chapter and subject to the approval of the director;

(3) comply with or be subject to AS 21.06.090; 21.06.120;

21.06.140; 21.06.160; 21.06.250; AS 21.09.180; 21.09.200; 21.09.250; 21.09.280; AS 21.12.020(b), (c), (d), and (e); and chs. 18, 21, 24, and 36 of this title;

(4) carry out the obligations of the contracts issued under (a)(1) of this section by defending all covered claims made against insured health care providers and paying all liabilities which are finally adjudicated against the insured health care provider or which may in the opinion of the association reasonably be expected to be finally adjudicated against the health care provider to the extent of the contract obligation.

(b) The association may

(1) employ or retain persons, individual or corporate, to discharge its obligations and pay reasonable compensation for those services;

(2) ~~(5)~~ borrow or advance funds necessary to effectuate the purposes of this association;

(3) ~~(6)~~ negotiate and become a party to those contracts which are necessary to carry out the purposes of the association;

(4) ~~(7)~~ sue or be sued in the name of the association;

(5) ~~(8)~~ cede or assume reinsurance;

(6) ~~(9)~~ perform all other acts necessary and proper to effectuate the association.

Sec. 21.88.160. RATES AND RATING PLANS. The rates and rating plans shall be determined as provided in sec. 80 of this chapter, except that allowance may not be made for income from investment of member-contributed funds; and provided that reserves for claims incurred during the policy period and reasonably expected to be reported after three years after the incident may be included on a different basis due to the additional financial flexibility provided by the association.

Sec. 21.88.170. ASSESSMENT. If sufficient funds are not available for the sound financial operation of the association, all members shall contribute to the financial requirements of the association by paying to the association an assessment to be determined by the board of ~~governors~~ directors of the association, these assessments to be prorated among all members in proportion to their direct written premiums or revenues in this state in the insurance lines the writing of which require membership in the association, in the two years ending on the preceding December 31, after deducting the applicable cancellations, returned premium, the unabsorbed portion of any deposit premium, all policy dividends, unabsorbed premiums refunded to policyholders, refunds, savings, savings coupons and

other similar returns paid or credited to policyholders with respect to their policies. Any assessment under this section is a tax obligation in addition to taxes required under AS 21.09.210 and notwithstanding the provisions of AS 21.09.210(e).

Sec. 21.88.180. RATE ADJUSTMENT. (a) If in any year an assessment is made under sec. 170 of this chapter, rates for the next period shall be increased from the rate determined under sec. 160 of this chapter by an amount sufficient to reimburse all members the amounts assessed.

(b) No assessment may be reimbursed to members without prior approval of the director and no interest accrues in favor of members on amounts assessed.

(c) If, after establishing required reserves, there is an excess amount in reserve, the excess premium shall be refunded to the insured health care providers.

Sec. 21.88.190. REPORTS. At least annually the association shall report to the director concerning its affairs. The report shall be in the form prescribed by the director.

ARTICLE 4. LOAN FUND.

Sec. 21.88.210. FUND ESTABLISHED. (a) There is in the Department of Commerce and Economic Development a medical malpractice liability revolving loan fund to be administered by the director of insurance.

(b) Loans may be made from the fund to the corporation and to the association upon certification by the director that a loan is necessary for the corporation or association to spread costs out over time because of fluctuations in loss experience. If a loan is made to the corporation or the association from the fund, the borrower shall issue a note to the fund pledging the premiums collected in the future as security for the loan.

(c) Loans from the fund shall be repaid within five years at an annual interest rate of six per cent.

(d) The director may sell at par value to the Department of Revenue the notes, security instruments and pledge agreements held by the Department of Commerce and Economic Development as security for loans made under this section. The Department of Revenue shall purchase all the notes offered until the current principal amount of the notes purchased and held by the Department of Revenue equals $5,000,000.

LAL 20

EXAMPLE

AS 08.20 is amended by adding a new section to read:

Sec. 08.20.115. MALPRACTICE INSURANCE. If medical malpractice insurance for chiropractors becomes unavailable on the voluntary market, and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of chiropractic services to the public, the director of insurance may require all persons licensed under this chapter to carry malpractice insurance and to purchase their insurance from the Health Care Providers Indemnity Corporation established under AS 21.88.

AS 08.20.120 is amended by adding a new paragraph to read:

(8) complies with the provisions of sec. 115 of this chapter.

EXAMPLE

AS 08.20 is amended by adding a new section to read:

Sec. 08.20.115. MALPRACTICE INSURANCE. If medical malpractice insurance for chiropractors becomes unavailable on the voluntary market, and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of chiropractic services to the public, the director of insurance may require all persons licensed under this chapter to carry malpractice insurance and to purchase their insurance from the Health Care Providers Indemnity Corporation established under AS 21.88.

AS 08.20.120 is amended by adding a new paragraph to read:

(8) complies with the provisions of sec. 115 of this chapter.

(1)

Allow 60 day closing off period

AS 09.55.530 is repealed & re-enacted to read:

ARTICLE 6. MALPRACTICE ACTIONS.

Sec. 09.55.530. DECLARATION OF PURPOSE. The legislature finds that the health of the people is threatened by curtailment of health care services due to the difficulty in obtaining adequate malpractice insurance at a reasonable cost. It is the purpose of secs. 530 - 560 of this chapter to protect the health and safety of the people of this state by establishing procedural aids for handling malpractice claims which will help ensure the ready availability of adequate insurance at a reasonable cost and which will be fair to all parties concerned.

Sec. 09.55.535. VOLUNTARY ARBITRATION. (a) A patient and any health care provider may execute an agreement to submit to arbitration any dispute, controversy, or issue arising out of care of treatment by the health care provider during the period that the agreement is in force or that has already arisen between the parties.

(b) An agreement to arbitrate executed before care or treatment is provided between a patient and health care provider shall clearly provide in bold print on the face of the agreement that execution of the agreement by the patient is not a prerequisite to receiving care or treatment. If this subsection is not complied with by the health care provider, the agreement to arbitrate is void. The form to be used shall be approved in advance by the (Attorney General director of insurance) to assure it fairly informs the patient and properly protects his interests.

(c) Each admission to a hospital shall be treated as separate and distinct for the purposes of an agreement to arbitrate, but a person receiving outpatient care from a hospital or clinic or a member of a health maintenance organization may execute an agreement with the hospital which provides for continuation of the agreement for a continuing program of treatment or during continued membership.

(d) The arbitration board shall consist of three arbitrators: one arbitrator designated by the plaintiff or plaintiffs, one arbitrator designated by the defendant or defendants, and a third arbitrator designated by mutual agreement who shall serve as chairman of the board. If the parties cannot agree on the third person, the court will provide a list of three or more persons who might serve as chairman of the arbitration board, which shall be furnished by the attorney general. Plaintiff or plaintiffs together and defendant and defendants together may each strike one or more names from the list, so after each side has done so, at least one name remains on the list, providing a basis for the final selection by the court.

(e) The attorney general shall prepare a list of panelists consisting of lawyers or other persons qualified to serve as chairmen of arbitration boards. They shall be selected on basis of their technical expertise, judicial temperament, and capability of impartially acting on malpractice claims. The attorney general shall submit a list of at least three names of panelists whenever requested to do so by the court along with detailed biographical information on each panelist.

(f) Each member of the board shall receive reasonable compensation to be paid by the court based on the extent and duration of services rendered. The court shall also pay the costs of experts required by the board, to a maximum of $150/day for each of 3 experts for each party.

(g) The court shall specify the shortest practical deadline for completion of the work of the arbitration panel, taking into account all the circumstance and the nature of the case.

(h) The provisions of the Uniform Arbitration Act, AS 09.43.010 - 09.43.180, apply to arbitrations under this section insofar as they are applicable and do not conflict with the provisions of this section; arbitrations under this section shall be conducted in accordance with any rules of court which may be adopted.

(i) It shall be a condition of the arbitration agreement that the results are binding on both parties

* Sec. 15. AS 09.55 is amended by adding a new section to read:

Sec. 09.55.535. EXPERT ADVISORY PANEL. (a) In any action for damages due to personal injury or death based upon the provision of professional services by a health care provider, the court shall establish a three-person expert advisory panel in accordance with this section. When the action is filed the court shall, by order, determine the professions or specialties to be represented on the expert advisory panel and shall advise each party of the professions or specialties to be represented, giving the parties the opportunity to object or make suggestions. The court may in its discretion conduct other preliminary proceedings relative to the composition of the panel as it considers appropriate.

(3)

(b) The expert advisory panel may compel the attendance of witnesses, interview the parties and physically examine the injured person if alive, consult with the specialists or learned works they consider appropriate, and compel the production of and examine all relevant hospital, medical, or other records or materials relating to the health care treatment. The panel may meet in camera, but shall maintain a record of any testimony or oral statements of witnesses, and shall keep copies of all written statements and opinions it receives. Not more than 30 days after selection of the panel, it shall make a written report to the parties and to the court, substantially answering the following questions in addition to any other question which the court puts to the panel:

(1) What was the medical complaint or condition for which the person sought or was brought to medical care?

(2) What would have been the likely course of the complaint or condition without the medical care?

(3) Was the care appropriate?

(4) Did an injury arise from the medical care?

(5) What was the injury?

(6) Is the injury stable; or will it improve or become worse?

(7) What specifically caused the injury?

(8) Was the injury caused by negligence?

(9) Is the outcome different than would otherwise have been expected?

(c) In any case in which the answer to one or more of the questions under (b) of this section depends upon the resolution of factual questions which are not the proper subject of expert opinion, the report shall so state and may answer questions based upon hypothetical facts that are fully and completely set out in the opinion. The report shall include copies of all written statements, opinions, or records relied upon by the panel and either a transcription or other record of any oral statements or opinions; shall specify any medical or scientific authority relied upon by the panel; and shall include the results of any physical or mental examination performed on the plaintiff. Each member shall sign the report and his signature constitutes his adoption of all statements and opinions contained in it; however, a member may, instead of signing the report, submit a concurring or dissenting report which complies with the requirements of this subsection, and a member may not attest to any portion of the report as to which he is not qualified to give expert testimony.

(d) No discovery may be undertaken in a case until the report of the expert advisory panel is received. However, the court may relax this prohibition upon a showing of good cause by any party. If the panel has not completed its report within the 30-day period prescribed in (b) of this section, the court may, upon application, grant it an additional 30 days.

(e) The report of the panel and any dissenting or concurring opinion are admissible in evidence to the same extent as though its contents were orally testified to by the person or persons preparing it. The court shall delete any portion that would not be admissible because of lack of foundation for opinion testimony, or otherwise. Either party may submit expert testimony to support or refute the report. The jury shall be instructed in general terms that the report shall be considered and evaluated in the same manner as any other expert testimony. Any member of the panel may be called by any party and may be cross-examined as to the contents of the report or of his dissenting or concurring opinion.

(f) Members of a panel are entitled to travel expenses and per diem in accordance with state law pertaining to members of boards and commissions for all time spent in preparing its report and matters incidental to it. If a panel member is called upon as a witness at trial or upon deposition, he is entitled to payment of an expert witness fee. All expenses incurred by the panel shall be paid by the ~~state~~ court. However, in any case in which the court determines that a party has made a patently frivolous claim or a patently frivolous denial of liabilit , it shall order that all costs of the expert advisory panel be borne by the party making that claim or denial.

(g) Parties to the case and their counsel may not initiate communication out of court with members of the panel on the subject matter of its inquiry and report or cause or solicit others to do so, except through ordinary discovery proceedings.

A M E N D M . T

TO: Senate CS for CS for House Bill No. 57[illegible] am S

Page 4, after line 29: Insert the following:

Sec. 08.64.221. PERIODIC REEXAMINATION. In order to maintain a license under this chapter, a licensee shall be reexamined every five years by the board to test the licensee's fitness to continue practicing medicine or osteopathy in the state.

A M E N D M E N T

TO: Senate CS for CS for House Bill No. 574 am S

Page 4, after line 29: Insert the following:

Sec. 08.64.221. PERIODIC REEXAMINATION. In order to maintain a license under this chapter, a licensee shall be reexamined every five years by the board to test the licensee's fitness to continue practicing medicine or osteopathy in the state.

March 15, 1976

SUGGESTED CHANGES IN SCS CSHB 574AM
in addition to changes already suggested for CS HB574

p.1	l.	23-24	Would a retired practitioner be eligible to be a lay person on a board?
p.1	l.	27	New board member terms should all start at same time, like July 1.
p.4	l.	1-5	Delete "residing in as many separate judicial districts as possible".
	l.	3-5	Retain election by ASMA.
p.10	l.	20-21	Change "A physician or hospital" to "a health care provider".
p.11	l.	7	Change "panelists" to "arbitrators".
	l.	12	Change "panelists" to "arbitrators".
	l.	13	Change "panelists" to "person".
	l.	~~19~~ 22	Change "panel" to "board".
p.12	l.	8 5	After "opinions" add "and the opinion of the expert advisory panel".
l.	17	~~14~~	Add subsection (j) to read: "If an expert advisory panel was not used by the arbitration board, such a panel, with the powers of the expert advisory panel under Sec. 537 of this chapter, shall be appointed by the court prior to a trial de novo unless the court decides that an expert advisory panel is not necessary for a decision in the case."
p.12	l.	~~27~~ 29	Change "director of insurance" to "attorney general".
p 13	l.	28 1	Change "the patient" to "both parties". Change "his" to "their".
p.13	l.	~~13~~ 16	Expert advisory panel language of house bill p.10 line 10 to page 13 line 2 with suggested additions should be inserted into senate bill as senate bill does not des be the constitution or duties adequately.
p.25	l.	~~15~~ 20	Strike ", attorneys,".
p.~~27~~ 26	l.	28 4	Add after "1974" "for any period".
p.39	l.	~~24-25~~ 29	Wording incorrect since floor amendments about expert advisory panels.
p40	l.	1	

March 15, 1976

SUGGESTED CHANGES TO CSHB 574

p.2 l. 2-6 and similar sections for other boards

Change to read:
"That by reason of demonstrated deficiency of competence, experience, or education, or because of physical or mental illness, the authority to practice should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice, require further formal education approved by the board, or may suspend or revoke the license."

p.10 l. 19

After "suggestions." insert a new sentence to read:
"Ordinarily the panel will consist of physicians, but any person expert in the matter of the claim may be appointed to the panel."

p.11 l. 15-13

Strike present wording and substitute:
"(1) What was the disorder for which the person sought medical care?
(2) What would have been the outcome without medical care?
(3) Was the treatment selected appropriate for the case?
(4) Did an injury arise from the medical care?
(5) What is the injury?
(6) How extensive and how disabling is the injury?
(7) Is the injury stable; or will it improve or become worse?
(8) What specifically caused the injury?
(9) Was the injury the result of negligent medical care?
(10) Is the outcome different than would otherwise have been expected?"

p.11 l. 17-18

After "state" delete remainder of sentence.

p.14 l. 1
l. 2

Change "increase" to "adjusted"
Change "increase" to "changes"

p.16 l. 23

Add waiver for insured hospitals until 1-1-77.

p.19 l. 15

Add new section to read:
"18.23.035 guidlines not admissible in evidence. A guideline established by a review organization is not admissible in evidence in a proceeding brought by or against a health care provider by a person to whom the provider has rendered professional services."

p.23 l. 25

Delete "of $100 per day."

p.30 l. 29

After "arising" add "from acts, errors, or omissions".

Alaska State Medical Association

574

SUGGESTED RE-WORDING FOR 08.20.175 etc. p.1-10

In addition to action under Sec. 170 of this chapter, upon a finding that by reason of deficiency of competence, experience, or education, ~~and/~~or by reason of physician ~~or~~ or mental illness, the authority to practice should be limited or conditioned or the practitioner disciplined, the Board may reprimand, censure, place on probation, restrict practice, require futher formal education approved by the Board, or may suspend or revoke the license.

Alaska State Medical Association

SUGGESTED RE-WORDING OF QUESTIONS FOR EXPERT ADVISORY PANEL p.11 HB

(1) What was the medical complaint or condition for which the person sought or was brought to medical care?

(2) What would have been the likely course of the complaint or condition without the medical care?

(3) Was the care appropriate?

(4) Did an injury arise from the medical care?

(5) What was the injury?

(6) Is the injury stable; or will it improve or become worse?

(7) What specifically caused the injury?

(8) Was the injury caused by negligence?

Colletta & Rodey

Suggested Amendment for Senate Bill SCSCSHB 574 am S

Page 19 Section 18.20.045 - to replace Subsection (b)

Suggested Amendment for Section 18.20.045 - House Bill CSHB 574 am page 16

Addition to House Bill:Amendment would be added as subsection (a)

The Director of Insurance or his designee shall waive the requirement in (a) of this section for a hospital if the hospital furnishes satisfactory evidence of having other liability insurance providing coverage in amounts equal to or which exceed those specified in (a) of this section, and at a premium rate which does not exceed the premium rate offered by the Health Care Providers Indemnity Corporation for an equal amount of liability coverage. A waiver granted under this subsection may extend beyond the normal expiration date of the hospital's insurance policy or until such time as the policy's premium rate exceeds that which would be offered by the Health Care Providers Indemnity Corporation for an equal amount of coverage.

This should be added to 25.18.20.01.

(c) The Director of Insurance may waive the requirement in (a) of this section or permit a deductible provision in the policy for a hospital, if the hospital:

i) can demonstrate to the satisfaction of the Director of Insurance that without indemnity from any other source, the hospital has the financial resources to discharge the maximum potential exposure to the hospital by reason of the deductible provision.

ii) agree to permit the Health Care Providers Indemnity Corporation to provide defense of any claim brought against the hospital if any health care provider insured by the corporation is also involved in the claim and to reimburse the corporation for a prorata portion of the costs of defense.

iii) provides the Health Care Providers Indemnity Corporation with notice of any claim brought against it.

Mr. Richard Block

ALASKA
STATE LEGISLATURE

March 12, 1976

MEMORANDUM

Jerry,

Enclosed are a few radical amendments. I don't know if you'll approve of the ~~fee~~ amendment re donation of time of physicians. The approach was the way they began in California - but it's been watered down quite a bit since then. Let me know what changes you want. Have

A M E N D M E N T

TO: SENATE CS FOR CS FOR HOUSE BILL NO. 574 am S

Page 5, between lines 10 and 11: insert the following new section and renumber the remaining sections accordingly:

* Sec. 14. AS 08.04.311 is amended to read:

Sec. 08.64.311. BIENNIAL LICENSE RENEWAL. Licenses shall be renewed biennially upon a showing of proof by the licensee that he or she has dedicated 10 days each year of his or her time without compensation to the treatment and care of persons eligible for medical assistance under AS 47.07.

A M E N D M E N T

TO: SENATE CS FOR CS FOR HOUSE BILL NO. 574 am S

Page 5, between lines 10 and 11: insert the following new section and renumber the remaining sections accordingly:

* Sec. 14. AS 08.04.311 is amended to read:

Sec. 08.64.311. BIENNIAL LICENSE RENEWAL. Licenses shall be renewed biennially upon a showing of proof by the licensee that he or she has dedicated 10 days each year of his or her time without compensation to the treatment and care of persons eligible for medical assistance under AS 47.07.

A M E N D M E N T

TO: Senate CS for CS for House Bill No. 574 am S

Page 3, lines 27 through page 4, line 5: Delete all material and insert:

* Sec. 10. AS 08.64.010 is amended to read:

Sec. 08.64.010. CREATION AND MEMBERSHIP OF STATE MEDICAL BOARD. The governor shall appoint a board of medical examiners, to be known as the State Medical Board, consisting of <u>seven persons with no direct financial interest in the health care industry</u> [FIVE LICENSED PHYSICIANS], residing in as many separate Alaska judicial districts as possible. [EACH MEMBER SHALL BE CHOSEN FROM A PANEL OF THREE, FOR EACH VACANCY, SUBMITTED TO THE GOVERNOR BY THE ALASKA STATE MEDICAL ASSOCIATION.]

Page 4, lines 6 through 12: Delete all material and renumber the remaining sections accordingly.

A M E N D M E N T

TO: Senate CS for CS for House Bill No. 574 am S

Page 3, lines 27 through page 4, line 5: Delete all material and insert:

* Sec. 10. AS 08.64.010 is amended to read:

Sec. 08.64.010. CREATION AND MEMBERSHIP OF STATE MEDICAL BOARD. The governor shall appoint a board of medical examiners, to be known as the State Medical Board, consisting of <u>seven persons with no direct financial interest in the health care industry</u> [FIVE LICENSED PHYSICIANS], residing in as many separate Alaska judicial districts as possible. [EACH MEMBER SHALL BE CHOSEN FROM A PANEL OF THREE, FOR EACH VACANCY, SUBMITTED TO THE GOVERNOR BY THE ALASKA STATE MEDICAL ASSOCIATION.]

Page 4, lines 6 through 12: Delete all material and renumber the remaining sections accordingly.

Page 15, line 3 ...care may revoke the agreement within ~~seven~~ 30 calendar days after execution....

line 5 ...after its execution. The period for revocation shall be tolled during any period that the person receiving health care is physically disabled from executing such a revocation. An arbitration agreement entered into by the parents or legal guardian of a minor person receiving health care shall be binding upon such minor person.

Page 16, line 27 ...unless [the court decides] all parties shall agree that an expert advisory opinion is not...

Possible Standard for court

Page 18, line 16 ...opinion, except that the non-appearance of a member of the panel for cross-examination shall not for that reason render the report inadmissable.

line 20 ...However, the court may [relax this prohibition upon a showing of good cause by any party] permit, prior-



to receipt of the report, such discovery as the court may, after good cause showing, find must be undertaken to preserve evidence which would otherwise be unobtainable.

O.K. Page 21, line 5 ...The court [shall] may take into account...

O.K. change subject to A.B.A. Page 24, line 24 ....by regulation [and submit to the legislative Administrative Regulation Review Committee standards for] risk management programs...

No. Page 30, line 17 ...two [professionals from] executives of insurance...

* [Page 33, line 14 insert in place of (3) the following language:

(3) negotiate for and procure reinsurance from a casualty insurer or reinsurer for all of its liability

incurred by contracts issued under (1) of this subsection; the corporation may not incur or retain under those contracts liability with respect to claims reported within 3 years after date of occurrence which is not reinsured as provided in this paragraph; if, after the exercise of due diligence, no reinsurance for all or a portion of the risk can be procured at reasonable rates from casualty insurers or reinsurers, the corporation through the board of governors, shall so certify to the Director of Insurance and reinsurance shall then be provided by the Health Care Joint Underwriting Association as provided in Sec. 110 et. seq of this chapter for that portion not reinsured by a private carrier.

The original (3) shall then be numbered as (4)

The original (4) shall then be numbered as (5)

The original (5) shall then be numbered as (6)

The original (6) shall then be numbered as (7)

Page 34, line 17 (2) all language shall be deleted and its place the following language shall be inserted:

(2) cede reinsurance for all or any portion of the risk underwritten by the Corporation or reinsure any risk which the Corporation is authorized or required to insure by the issuance of a policy.

Page 37, line 19 insert the following:

(14) Provision for expectation of underwriting profit to any reinsurer except the Association shall be included

in the rate at reasonable levels except that no increase-ment for expectancy of underwriting profit shall be included in the rate making for a private insurer of the primary layer of reinsurance with respect to claims reported within three years after date of occurrence during any period that the claims reported after three years after date of occurrence are not reinsured with minimum reinsurance with a private insurer or re-insurer. If, while there shall be less than minimum reinsurance in force, premiums for claims reported within three years after date of occurrence exceed claims and reserves with respect to claims reported within three years after date of occurance and operating expenses, such excess shall be added to the portion of premiums collected to discharge claims and reserves reported after three years after date of occurrence.

Minimum reinsurance for the purpose of this section means reinsurance of all risk with respect to claims reported after three years after date of occurrence. with the exception that MICA may, if not otherwise reinsurable retain up to the first $50,000 of each and every loss and an aggregate loss of not more than $500,000 per year.

Page 38, line 24 ...appointed by the [governor of the state] Director

NO. and consisting of two.....

Page 40, line 8 delete (1) and replace it with the following language:

(1) provide reinsurance to the corporation covering contracts issued by the ~~by the~~ corporation indemnifying health care providers and their employees who are health care providers against loss by reason of liability for professional services and agreeing to tender on behalf of the health care providers and their employees who are health care providers a defense in an action brought under AS 09.55.530 - 09.55.560; the limit of liability shall be no less than the minimum liability required to be indemnified as provided in AS 08.64.215 and AS 18.20.045, and the coverage shall be the same as that which the Health Care Providers Indemnity Corporation is required to provide under sec. 50 of this chapter ~~with respect only to claims reported within three years after date of occurrence.~~ To the extent reinsurance is not provided by private [illegible] casualty insurers or reinsurers.

Page 41, line 1 ...premium shall be refunded to the [association] corporation

Plan A (i)

OK, Page 42, line 29 ...to the corporation [and to the ...

Page 43, line 1 ...association] upon certification by the director that a loan is necessary for the following purposes. insert the following language:

Subordinated note payout pro rata

i. a loan or loans not to exceed outstanding at any one time an aggregate of $3,000,000 to be used to provide surplus in respect of policyholders. These obligations shall be subordinated to all other obligations of the corporation and be repayable in annual installments of no less than ~~twenty five~~ percent of the excess, if any, to which the premiums from insureds exceed claims, reserves, expenses, ~~repayment of loans provided for in subsection (i) hereof~~ and assessments made by the Association if any. Interest shall be paid on the outstanding balance at a rate equal to the from time to time yield from the investment of such funds less a reasonable charge for investment expense.

Interest rate at existing bank rates

out

ii. A loan or loans not to exceed, when taken together with loans provided for in i) hereof, outstanding at any one time, because of fluctuations in loss experience These obligations shall have parity with all other obligations of the corporation except that they shall be subordinated to obligations to policyholders or claimants for indemnity of loss and shall be repaid within five years at an annual interest rate, ~~of~~ six per cent.

out

aggregate of $6,000,000

~~iii.~~ Loans pursuant to this subsection (i) shall not be authorized for any period that the limit is fully exhausted.

Page 43, line 1-7 Delete (b) and (c) ~~for the amended language~~.

Page 43 line 12 ...all the notes offered until the [current] principal ...

line 13 ...Department of Revenue at any one time equals $6,000,000. [$5,000,000]

Page 45, line 22 add the following language:

O K. Sections ~~34 — 39~~ 33 — 38 of this Act shall be applicable to all actions, including those arising out of incidents occurring prior to the effective date of this act, in which trial has not commenced prior to the effective date hereof. [cases where not filed] immediate effective date for this section

Page 45 Sec. 49 Severability. In the event any portion of this Act shall be held unconstitutional all other portions shall remain in full force and effect except that if any portion of Article 3, Chapter 88 of Title 21. A.S. 21.88.110 through 21.88.190 shall be held unconstitutional then the whole article shall be null and voi except that the Joint Underwriting Association shall continue to discharge and assess to pay for claims incurred prior to declaration of unconstitutionality until all such claims have been paid.and except further that if it is held unconstitutional to require that Health Care Providers procure liability insurance from the Medical Indemnity Corporation of Alaska, then all of

sections 41, 42, 43 and 44 of this act shall be null and void except that the Medical Indemnity Corporation of Alaska and Joint Underwriting Association shall continue to discharge and assess to pay claims incurred prior to declaration of unconstitutionality until all such claims have been paid.

EXAMPLE

Sec. 08.20.115. MALPRACTICE INSURANCE. If medical malpractice insurance for chiropractors becomes unavailable on the voluntary market, and the director of insurance finds, after public hearing, that the unavailability is impairing the delivery of chiropractic services to the public, the director of insurance may require all persons licensed under this chapter and carrying malpractice insurance to purchase their insurance from the Health Care Providers Indemnity Corporation established under AS 21.88.

* Sec. 5. AS 08.20 is amended by adding a new section to read:

Sec. 08.20.175. LIMITS OR CONDITIONS ON LICENSE; REPRIMAND. (a) In addition to action under sec. 170 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education or health the authority to practice chiropractic should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 6. AS 08.32 is amended by adding a new section to read:

Sec. 08.32.165. LIMITS OR CONDITIONS ON LICENSE. (a) In addition to action under sec. 160 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education or health the authority to practice dental hygiene should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 2. AS 08.20 is amended by adding new sections to read:

Sec. 08.20.115. INSURANCE REQUIRED. (a) To be eligible for an active license under this chapter, a person must maintain insurance against liability to patients for chiropractic malpractice in limits of not less than $200,000 per occurrence and $600,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

(b) The director of insurance may require all persons licensed under this chapter to obtain the insurance required under (a) of this section from the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for chiropractors is impairing the delivery of chiropractic services to the public.

Sec. 08.20.175. LIMITS OR CONDITIONS ON LICENSE; REPRIMAND. (a) In addition to action under sec. 170 of this chapter, upon a finding that by reason of demonstrated lack of competence, experience, or education the authority to practice chiropractic should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 3. AS 08.32 is amended by adding new sections to read:

Sec. 08.32.015. INSURANCE REQUIRED. (a) To be eligible for an active license under this chapter, a person must maintain insurance against liability to patients for malpractice in limits of not less than $100,000 per occurrence and $300,000 aggregate liability per year. This requirement is satisfied if the person's employer maintains insurance for him in the required amounts.

(b) The director of insurance may require all persons licensed under this chapter to obtain the insurance required under (a) of this section from the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for dental hygienists is impairing the delivery of dental hygienists' services to the public.

Sec. 08.32.165. LIMITS OR CONDITIONS ON LICENSE. (a) In addition to action under sec. 160 of this chapter, upon a finding that by reason of demonstrated lack of competence, experience, or education the authority to practice dental hygiene should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 7. AS 08.36.010 is amended to read:

Sec. 08.36.010. CREATION AND MEMBERSHIP OF BOARD. There is created the Board of Dental Examiners, referred to in this chapter as the board, consisting of seven [FIVE] members. Five members [EACH MEMBER] shall be [A CITIZEN OF THE UNITED STATES AND A] qualified resident dentists who have [HAS] been engaged in the practice of dentistry in the state for five years immediately preceding [HIS] appointment, and two members shall be persons with no direct financial interest in the health care industry.

* Sec. 8. AS 08.36.020 is amended to read:

Sec. 08.36.020. APPOINTMENT AND TERM OF SERVICE OF MEMBERS. Members of the board are appointed by the governor, subject to confirmation by the legislature in joint session [ASSEMBLED]. Each board member serves for a term of five years, and until his successor is appointed and qualified except that the terms of the public members on the board shall be staggered so that they do not expire at the same time. The term begins on February 1. An appointment to a vacancy is for the unexpired term. [APPOINTMENTS SHALL BE MADE FROM A LIST OF NAMES RECOMMENDED BY THE ALASKA DENTAL SOCIETY. THE LIST SHALL BE SUPPLIED AT LEAST 30 DAYS BEFORE THE BEGINNING OF A TERM AND NOT MORE THAN 60 DAYS AFTER THE OCCURRENCE OF A VACANCY. THE LIST SHALL CONTAIN AT LEAST TWO RECOMMENDED NAMES FOR EACH APPOINTMENT. THE GOVERNOR SHALL MAKE THE APPOINTMENT WITHIN 30 DAYS AFTER RECEIVING THE LIST.]

* Sec. 9. AS 08.36 is amended by adding a new section to read:

Sec. 08.36.325. LIMITS OR CONDITIONS ON LICENSE. (a) In addition to action under sec. 320 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health, the authority to practice dentistry should be limited or conditioned or the practitioner disciplined, the board may censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

* Sec. 4. AS 08.36 is amended by adding new sections to read:

Sec. 08.36.115. INSURANCE REQUIRED. (a) To be eligible for an active license under this chapter, a person must maintain insurance against liability to patients for dental malpractice in limits of not less than $200,000 per occurrence and $600,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

(b) The director of insurance may require all persons licensed under this chapter to obtain the insurance required under (a) of this section from the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for dentists is impairing the delivery of dentist services to the public.

Sec. 08.36.325. LIMITS OR CONDITIONS ON LICENSE. (a) In addition to action under sec. 320 of this chapter, upon a finding that by reason of demonstrated lack of competence, experience, or education the authority to practice dentistry should be limited or conditioned or the practitioner disciplined, the board may censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 10. AS 08.64.010 is amended to read:

Sec. 08.64.010. CREATION AND MEMBERSHIP OF STATE MEDICAL BOARD. The governor shall appoint a board of medical examiners, to be known as the State Medical Board, consisting of five licensed physicians, residing in as many separate Alaska judicial districts as possible, and two persons with no direct financial interest in the health care industry. [EACH MEMBER SHALL BE CHOSEN FROM A PANEL OF THREE, FOR EACH VACANCY, SUBMITTED TO THE GOVERNOR BY THE ALASKA STATE MEDICAL ASSOCIATION.]

* Sec. 11. AS 08.64.020 is amended to read:

Sec. 08.64.020. STATE MEDICAL BOARD TERM OF OFFICE. Members shall be appointed for a term of four years, subject to confirmation by a majority of the members of the legislature in joint session, and shall hold office until their successors are appointed and qualified. The terms of the public members of the board shall be staggered so that they do not expire at the same time.

* Sec. 12. AS 08.64.090 is amended to read:

Sec. 08.64.090. QUORUM. Four [THREE] members of the board constitute a quorum for the transaction of all business properly before the board.

* Sec. 13. AS 08.64 is amended by adding new sections to read:

Sec. 08.64.215. INSURANCE REQUIRED. (a) To be eligible for an active license under this chapter, a person shall maintain insurance issued by the Health Care Providers Indemnity Corporation against liability to patients for medical malpractice in limits of not less than $200,000 per occurrence and $600,000 aggregate liability per year.

(b) The director of insurance or his designee shall waive the requirement in (a) of this section for a person if that person furnishes satisfactory evidence of his having other insurance providing coverage in amounts not less than those specified in (a) of this section. No waiver granted under this subsection may extend beyond the normal expiration date of the person's insurance policy or January 1, 1977, whichever occurs first.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 5. AS 08.64 is amended by adding new sections to read:

Sec. 08.64.215. INSURANCE REQUIRED. (a) To be eligible for an active license under this chapter, a person must maintain insurance issued by the Health Care Providers Indemnity Corporation against liability to patients for medical malpractice in limits of not less than $200,000 per occurrence and $600,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him from the Health Care Providers Indemnity Corporation in the required amounts.

(b) The director of insurance or his designee may waive the requirement in (a) of this section for a person if that person furnishes satisfactory evidence of his having other insurance providing coverage in amounts not less than those specified in (a) of this section. No waiver granted under this subsection may extend beyond the normal expiration date of the person's insurance policy or January 1, 1977, whichever occurs first.

3

Sec. 08.64.325. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 330 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 14. AS 08.68.010 is amended to read:

Sec. 08.68.010. CREATION AND MEMBERSHIP OF BOARD OF NURSING. There is created a Board of Nursing, consisting of seven [FIVE] members appointed by the governor. One member shall be currently involved in institutional nursing service, one member in community or public health nursing and two members in basic or continuing nursing education, [AND] one nurse at large, and two persons who have no direct financial interest in the health care industry.

* Sec. 15. AS 08.68.020 is repealed and re-enacted to read:

Sec. 08.68.020. TERM OF OFFICE. Members serve staggered terms of five years and until their successors are appointed. The terms of the public members on the board shall be set so that they do not expire at the same time. Vacancies on the board shall be filled for the unexpired term.

* Sec. 16. AS 08.68.060 is amended to read:

Sec. 08.68.060. QUALIFICATIONS OF BOARD MEMBERS. The five members [EACH MEMBER] of the board who are nurses shall be [A CITIZEN OF THE UNITED STATES, A RESIDENT OF THE STATE, AND A] licensed professional nurses [NURSE] in the state, and [MEMBERS] shall have been actively

shall promote a high degree of competence in the practice of medicine by requiring every physician licensed in the state to fulfill continuing education requirements.

(b) Before a license may be renewed the licensee shall submit evidence to the board that continuing education requirements prescribed by regulations adopted by the board have been met.

(c) The board may exempt a physician from the requirements of (b) of this section upon an application by him giving evidence satisfactory to the board that he is unable to comply with the requirements because of extenuating circumstances. However, no person may be exempted from more than 15 hours of continuing education in a five-year period.

Sec. 08.64.325. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 330 of this chapter, upon a finding that by reason of demonstrated lack of competence, experience, or education the authority to practice under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

two years of which were within the five years preceding appointment.

* Sec. 6. AS 08.68 is amended by adding new sections to read:

Sec. 08.68.165. INSURANCE REQUIRED. (a) To be eligible for an active license as a nurse under this chapter, a person must maintain insurance against liability to patients for malpractice in limits of not less than $100,000 per occurrence and $300,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

(b) The director of insurance may require all persons licensed under this chapter to obtain the insurance required under (a) of this section from the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for nurses is impairing the delivery of nurse services to the public.

Sec. 08.68.275. LIMITS OR CONDITIONS ON LICENSE. (a) In addition to action under sec. 270 of this chapter, upon a finding that by reason of demonstrated lack of competence, experience, or education the authority to practice nursing should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 17. AS 08.68 is amended by adding a new section to read:

Sec. 08.68.275. LIMITS OR CONDITIONS ON LICENSE. (a) In addition to action under sec. 270 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice nursing should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 18. AS 08.71.020 is amended to read:

Sec. 08.71.020. MEMBERSHIP OF BOARD; SOURCE OF APPOINTMENTS; TERM OF OFFICE. The board consists of <u>seven</u> [FIVE] persons appointed by the governor. <u>Members serve staggered terms of three years. The terms of the public members of the board shall be set so that they do not expire at the same time.</u> [THE GOVERNOR SHALL APPOINT BOARD MEMBERS FROM A LIST OF QUALIFIED OPTICIANS PREPARED BY THE ASSOCIATION OF OPTICIANS IN THE STATE AND SUBMITTED AT LEAST 30 DAYS BEFORE JULY 1, 1973, AT LEAST 30 DAYS BEFORE THE EXPIRATION OF A TERM AND NOT MORE THAN 60 DAYS AFTER A VACANCY OCCURS IN AN UNEXPIRED TERM. THE LIST SHALL CONTAIN NOT LESS THAN TWO RECOMMENDED CANDIDATES FOR EACH APPOINTMENT. THE GOVERNOR SHALL MAKE APPOINTMENTS WITHIN 30 DAYS AFTER RECEIVING THE LIST. THE TERM OF OFFICE OF EACH MEMBER IS THREE YEARS. HOWEVER, OF THE FIRST MEMBERS OF THE BOARD, ONE SHALL BE APPOINTED FOR A ONE-YEAR TERM, TWO FOR TWO-YEAR TERMS, AND TWO FOR THREE-YEAR TERMS.] Vacancies on the board shall be filled for the unexpired term [IN THE SAME MANNER AS ORIGINAL APPOINTMENT].

* Sec. 19. AS 08.71.030 is amended to read:

Sec. 08.71.030. QUALIFICATIONS OF BOARD MEMBERS. Five [A] board members [MEMBER] shall be [A] licensed, practicing dispensing opticians [OPTICIAN] residing in the state. Two shall be persons with no direct financial interest in the health care industry.

* Sec. 20. AS 08.71 is amended by adding a new section to read:

Sec. 08.71.175. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 170 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice as a dispensing optician under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 21. AS 08.72.020 is amended to read:

Sec. 08.72.020. MEMBERSHIP OF BOARD AND TERMS OF OFFICE. The board consists of five [THREE] persons, appointed by the governor. Members serve staggered terms of three years. The terms of the public members of the board shall be set so that they do not expire at the same time. [THE TERM OF EACH MEMBER IS THREE YEARS. ONE MEMBER ONLY IS APPOINTED EACH YEAR, EXCEPT WHEN VACANCIES FOR UNEXPIRED TERMS ARE FILLED.]

* Sec. 22. AS 08.72.040 is repealed and re-enacted to read:

Sec. 08.72.040. QUALIFICATIONS. Three board members shall be licensed, practicing optometrists who have been residents for at least three years. Two shall be persons who have no direct financial interest in the health care industry.

Sec. 7. AS 08.71 is amended by adding new sections to read:

Sec. 08.71.085. INSURANCE REQUIRED. (a) To be eligible for an active license under this chapter, a person must maintain insurance against liability to patients for malpractice in limits of not less than $100,000 per occurrence and $300,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

(b) The director of insurance may require that all persons licensed under this chapter obtain the insurance required under (a) of this section if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for dispensing opticians is impairing delivery of the services of dispensing opticians to the public.

Sec. 08.71.175. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 170 of this chapter, upon a finding that by reason of demonstrated lack of competence, experience, or education the authority to practice as a dispensing optician under this chapter should be limited or conditioned or the practitioner disciplined the board may reprimand, censure, place on probation, restrict practice by procedure or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 8. AS 08.72 is amended by adding new sections to read:

* Sec. 23. AS 08.72 is amended by adding a new section to read:

Sec. 08.72.255. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under secs. 240 and 250 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice optometry under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 24. AS 08.80.010 is amended to read:

Sec. 08.80.010. CREATION AND MEMBERSHIP OF BOARD OF PHARMACY. There is created the Board of Pharmacy, composed of <u>seven</u> [FIVE] members, <u>five</u> [EACH] of whom shall be <u>pharmacists</u> [A PHARMACIST] licensed in the state who has been actively engaged in the practice of pharmacy in the state for a period of three years immediately preceding his appointment. <u>Two shall be persons with no direct financial interest in the health care industry.</u> Whenever possible, the board shall include at least one member from each judicial district.

* Sec. 25. AS 08.80.020 is amended to read:

Sec. 08.80.020. TERM OF OFFICE. Members of the board are appointed by the governor, and confirmed by the legislature in joint session, for overlapping terms of five years, or until their successors are appointed and qualified. <u>The terms of the public members shall be staggered so that they do not expire at the same time.</u> An appointment to fill a vacancy is for the unexpired term. The term of office begins on April 1 of each year.

* Sec. 26. AS 80.80 is amended by adding a new section to read:

CS.72.115

active license under this chapter, a person must maintain insurance against liability to patients for malpractice in limits of not less than $100,000 per occurrence and $300,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

(b) The director of insurance may require all persons licensed under this chapter to obtain insurance required under (a) of this section from the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for optometrists is impairing delivery of optometrist services to the public.

Sec. 08.72.255. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under secs. 240 and 250 of this chapter, upon a finding that by reason of demonstrated lack of competence, experience, or education the authority to practice optometry under this chapter should be limited or conditionsd or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

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Sec. 08.80.265. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 260 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice pharmacy under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 27. AS 08.84 is amended by adding a new section to read:

Sec. 08.84.185. LIMITS OR CONDITIONS ON LICENSE. (a) In addition to action under sec. 180 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education or health the authority to practice physical therapy should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

Sec. 08.80.115. INSURANCE REQUIRED. (a) To be eligible for active registration as a pharmacist, a person must maintain insurance against liability to patients for malpractice in limits of not less than $100,000 per occurrence and $300,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

(b) The director of insurance may require that all persons licensed under this chapter obtain the insurance required under (a) of this section from the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for pharmacists is impairing delivery of pharmacist services to the public.

Sec. 08.80.265. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 260 of this chapter, upon a finding that by reason of demonstrated lack of competence, experience, or education the authority to practice pharmacy under this chapter should be limited or conditioned or the practitioner disciplined, the board may

reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 10. AS 08.84 is amended by adding new sections to read:

Sec. 08.84.035. INSURANCE REQUIRED. (a) To be eligible for active registration as a physical therapist under this chapter, a person must maintain insurance against liability to patients for malpractice in limits of not less than $100,000 per occurrence and $300,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

(b) The director of insurance may require that all persons licensed under this chapter obtain the insurance required in (a) of this section from the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for physical therapists is impairing delivery of physical therapist services to the public.

Sec. 08.84.185. LIMITS OR CONDITIONS ON LICENSE. (a) In addition to action under sec. 180 of this chapter, upon a finding that by reason of demonstrated lack of competence, experience, or education the authority to practice physical therapy should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

Sec. 08.86.010. CREATION AND MEMBERSHIP OF BOARD. There is created a Board of Psychologist and Psychological Associate Examinern. It consists of three licensed psychologists, and two persons who have no direct financial interest in the health care industry.

* Sec. 29. AS 08.86.020 is amended to read:

Sec. 08.86.020. APPOINTMENT AND TERM OF OFFICE. Members of the board are appointed by the governor and confirmed by the legislature for staggered terms of three years. The terms of the public members shall be set so that they do not expire at the same time. A member serves at the pleasure of the governor.

* Sec. 30. AS 08.86 is amended by adding a new section to read:

Sec. 08.86.220. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) Upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice psychology or as a psychological associate under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by time, specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 11. AS 08.86.120 is amended to read:

Sec. 08.86.120. ENTITLEMENT TO LICENSURE. A person who passes the examination given by the board and possesses the insurance required by sec. 125 of this chapter is entitled to be licensed as a psychologist.

* Sec. 12. AS 08.86.160 is amended to read:

Sec. 08.86.160. ASSOCIATES: ENTITLEMENT TO LICENSURE. A person who passes the examination given by the board and who possesses insurance in accordance with sec. 125 of this chapter is entitled to be licensed as a psychological associate.

* Sec. 13. AS 08.86 is amended by adding new sections to read:

Sec. 08.86.125. INSURANCE REQUIRED. (a) To be eligible for active licensure as a psychologist under this chapter, a person must maintain insurance against liability to patients for malpractice in limits of not less than $100,000 per occurrence and $300,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

(b) The director of insurance may require all persons licensed under this chapter to obtain insurance required under (a) of this section from the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for psychologists is impairing the delivery of psychologist services to the public.

Sec. 08.86.220. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) Upon a finding that by reason of demonstrated lack of competence, experience, or education the authority to practice psychology or as a psychological associate under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure place on probation, restrict practice by time, specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

ARTICLE 6. MALPRACTICE ACTIONS.

Sec. 09.55.530. DECLARATION OF PURPOSE. The legislature finds that the health of the people is threatened by curtailment of health care services due to the difficulty in obtaining adequate malpractice insurance at a reasonable cost. It is the purpose of secs. 530 - 560 of this chapter to protect the health and safety of the people of this state by establishing procedural aids for handling malpractice claims which will help ensure the ready availability of adequate insurance at a reasonable cost and which will be fair to all parties concerned.

* Sec. 14. AS 09.55.530 is repealed and re-enacted to read:

* Sec. 15. AS 09.55 is amended by adding a new section to read:

* Sec. 31. AS 09.55 is amended by adding new sections to read:

Sec. 09.55.535. MANDATORY ARBITRATION. (a) It is the purpose of these arbitration provisions to establish a system that will provide incentives to settle malpractice disputes without prolonged litigation and that will provide a method by which parties to a medical malpractice claim can obtain a prompt determination of its merits, and the amount of damages, if any, that should be allowed.

(b) Upon the filing of any malpractice claim against a physician or hospital, the claim shall be submitted to an arbitration board; however, submission to an arbitration board may not be required if all parties object to arbitration or if the parties have agreed to follow the procedures prescribed in sec. 536 or sec. 537 of this chapter.

(c) The arbitration board shall consist of three arbitrators: one arbitrator designated by the plaintiff or plaintiffs, one arbitrator designated by the defendant or defendants, and a third arbitrator designated by mutual agreement who shall serve as chairman of the board. If the parties cannot agree on the third person, the court will

provide a list of three or more persons who might serve as chairman of the arbitration board, which shall be furnished by the attorney general. Plaintiff or plaintiffs together and defendant and defendants together may each strike one or more names from the list, so after each side has done so, at least one name remains on the list, providing a basis for the final selection by the court.

(d) The attorney general shall prepare a list of panelists consisting of lawyers or other persons qualified to serve as chairmen of arbitration boards. They shall be selected on basis of their technical expertise, judicial temperament, and capability of impartially acting on malpractice claims. The attorney general shall submit a list of at least three names of panelists whenever requested to do so by the court along with detailed biographical information on each panelist.

(e) Each member of the board shall receive reasonable compensation to be paid by the court based on the extent and duration of services rendered. The court shall also pay the costs of experts required by the board.

(f) The board may appoint an expert advisory panel, with the powers of the expert advisory panel under sec. 537 of this chapter, to advise the board on the medical facts of the case.

(g) The court shall specify the shortest practical deadline for completion of the work of the arbitration panel, taking into account all the circumstance and the nature of the case.

(h) The provisions of the Uniform Arbitration Act, AS 09.43.010 - 09.43.180, apply to arbitrations under this section insofar as they are applicable and do not conflict with the provisions of this section; arbitrations under this section shall be conducted in accordance with any rules of court which may be adopted.

(i) If the decision of the arbitration board is not accepted by

all parties and the parties have not agreed to binding arbitration, any party may appeal the decision of the board to the superior court for a trial de novo. The decision of the arbitration board, including its conclusions as to the merits of the claim and appropriate damages, together with any dissenting opinions, shall be admissible in evidence at trial upon the offer of any party, if the court conducts a review of the arbitration decision and any other relevant information submitted by the parties and concludes that:

(1) the findings of fact by the arbitration board were not clearly erroneous;

(2) the decision is in accordance with applicable law;

(3) the procedures required for conducting the hearing and rendering the decision were followed fairly and properly without prejudice to any party;

(4) any party who has not offered the arbitration decision in evidence may subpoena any member of the arbitration board for purposes of cross-examination.

Sec. 09.55.535. VOLUNTARY ARBITRATION. (a) A patient and any health care provider may execute an agreement to submit to arbitration any dispute, controversy, or issue arising out of care of treatment by the health care provider during the period that the agreement is in force or that has already arisen between the parties.

(b) An agreement to arbitrate executed before care or treatment is provided between a patient and health care provider shall clearly provide in bold print on the face of the agreement that execution of the agreement by the patient is not a prerequisite to receiving care or treatment. If this subsection is not complied with by the health care provider, the agreement to arbitrate is void. The form to be used shall be approved in advance by the director of insurance to assure it fairly informs the patient and properly protects his interests.

(c) Each admission to a hospital shall be treated as separate and distinct for the purposes of an agreement to arbitrate, but a person receiving outpatient care from a hospital or clinic or a member of a health maintenance organization may execute an agreement with the hospital which provides for continuation of the agreement for a continuing program of treatment or during continued membership.

(d) Arbitration shall take place under the same procedures prescribed for mandatory arbitration under sec. 536 of this chapter unless the parties agree otherwise in accordance with general guidelines promulgated as regulations by the director of insurance to assure fairness to the parties.

(e) Reasonable compensation based on the extent and duration of services rendered shall be paid to members of the arbitration board by the court as well as the costs of experts required by the board.

Sec. 09.55.537. ALTERNATIVE TO ARBITRATION. (a) If arbitration under sec. 535 of this chapter is waived by all the parties, and as an alternative to arbitration, the court shall appoint an expert advisory panel to advise the fact finder on the medical facts of the case unless the court decides that an expert advisory opinion is not necessary for a decision in the case. The court shall, by order, determine professions or specialties to be represented on the expert advisory panel and shall advise each party of the professions or specialties to be represented, giving the parties the opportunity to object or make suggestions.

Sec. 09.55.536. EXPERT ADVISORY PANEL. (a) In any action for damages due to personal injury or death based upon the provision of professional services by a health care provider, the court shall establish a three-person expert advisory panel in accordance with this section. When the action is filed the court shall, by order, determine the professions or specialties to be represented on the expert advisory panel and shall advise each party of the professions or specialties to be represented, giving the parties the opportunity to object or make suggestions. The court may in its discretion conduct other preliminary proceedings relative to the composition of the panel as it considers appropriate.

(b) The expert advisory panel may compel the attendance of witnesses, physically or orally examine the parties, consult with specialists or learned works they consider appropriate, and compel the production of, and examine all relevant hospital, medical, or other records relating to health care treatment. The panel may meet in camera, but shall maintain a record of any testimony or oral statements of witnesses, and shall maintain copies of any written statements or opinions that it receives.

(c) Not less than 30 days after selection of the panel, it shall make a written report to the parties and the court answering any questions put to it by the court on medical questions. The report shall include copies of all written statements, opinions, or records relied on by the panel, and either a transcription or other record of any oral statements or opinions; the report shall specify any medical or scientific authority relied upon and shall include the results of any physical or mental examination performed on the plaintiff. Each member shall sign the report and his signature constitutes his adontion of all statements and opinions contained in it; however, a member may, instead of signing the report, submit a concurring or dissenting report which complies with the requirements of this subsection. A member may not attest to any portion of the report as to which he is not qualified to give expert testimony.

(b) The expert advisory panel may compel the attendance of witnesses, interview the parties and physically examine the injured person if alive, consult with the specialists or learned works they consider appropriate, and compel the production of and examine all relevant hospital, medical, or other records or materials relating to the health care treatment. The panel may meet in camera, but shall maintain a record of any testimony or oral statements of witnesses, and shall keep copies of all written statements and opinions it receives. Not more than 30 days after selection of the panel, it shall make a written report to the parties and to the court, substantially answering the following questions in addition to any other question which the court puts to the panel:

(1) Was the claimant adversely affected by any act or omission in the rendering of the medical services?

(2) What was the adverse effect?

(3) How did the medical services alter the natural course of the preexisting disorder for which the services were originally rendered?

(4) How did the medical condition existing after performance of the medical services differ from the medical condition which might otherwise have been expected?

(c) In any case in which the answer to one or more of the questions under (b) of this section depends upon the resolution of factual questions which are not the proper subject of expert opinion, the report shall so state and may answer questions based upon hypothetical facts that are fully and completely set out in the opinion. The report shall include copies of all written statements, opinions, or records relied upon by the panel and either a transcription or other record of any oral statements or opinions; shall specify any medical or scientific authority relied upon by the panel; and shall include the results of any physical or mental examination performed on the plaintiff. Each member shall sign the report and his signature constitutes his adoption of all statements and opinions contained in it; however, a member may, instead of signing the report, submit a concurring or dissenting report which complies with the requirements of this subsection, and a member may not attest to any portion of the report as to which he is not qualified to give expert testimony.

(d) The report of the panel and any dissenting or concurring opinion are admissible in evidence to the same extent, and have the same force and effect, as though its contents were orally testified to by the person or persons preparing it. The court shall delete any portion that would not be admissible because of lack of foundation for opinion testimony, or otherwise. Either party may submit expert testimony to support or refute the report. The jury shall be instructed in general terms that the report shall be considered and evaluated in the same manner as any other expert testimony. Any member of the panel may be called by any party and may be cross-examined as to the contents of the report or of his dissenting or concurring opinion.

(e) Members of a panel are entitled to travel expenses and per diem in accordance with state law pertaining to members of boards and commissions for all time spent in preparing its report and matters incidental to it, which shall be paid by the court. If a panel member is called upon as a witness at trial or upon deposition, he is entitled to payment of an expert witness fee. In any case in which the court determines that a party has made a patently frivolous claim or a patently frivolous denial of liability, it shall order that all costs of the expert advisory panel be borne by the party making that claim or denial.

(f) Parties to the case, and counsel, may not communicate out of court with members of the panel on the subject matter of its inquiry and report, or cause or solicit others to do so, except through ordinary discovery proceedings.

(d) No discovery may be undertaken in a case until the report of the expert advisory panel is received. However, the court may relax this prohibition upon a showing of good cause by any party. If the panel has not completed its report within the 30-day period prescribed in (b) of this section, the court may, upon application, grant it an additional 30 days.

(e) The report of the panel and any dissenting or concurring opinion are admissible in evidence to the same extent as though its contents were orally testified to by the person or persons preparing it. The court shall delete any portion that would not be admissible because of lack of foundation for opinion testimony, or otherwise. Either party may submit expert testimony to support or refute the report. The jury shall be instructed in general terms that the report shall be considered and evaluated in the same manner as any other expert testimony. Any member of the panel may be called by any party and may be cross-examined as to the contents of the report or of his dissenting or concurring opinion.

(f) Members of a panel are entitled to travel expenses and per diem in accordance with state law pertaining to members of boards and commissions for all time spent in preparing its report and matters incidental to it. If a panel member is called upon as a witness at trial or upon deposition, he is entitled to payment of an expert witness fee. All expenses incurred by the panel shall be paid by the state. However, in any case in which the court determines that a party has made a patently frivolous claim or a patently frivolous denial of liability, it shall order that all costs of the expert advisory panel be borne by the party making that claim or denial.

(g) Parties to the case and their counsel may not initiate communication out of court with members of the panel on the subject matter of its inquiry and report or cause or solicit others to do so, except through ordinary discovery proceedings.

* Sec. 32. AS 09.55.540 is amended to read:

Sec. 09.55.540. BURDEN OF PROOF. (a) In a malpractice action based on the negligence or wilful misconduct of a health care provider [PHYSICIAN LICENSED UNDER AS 08.64, OR A DENTIST LICENSED UNDER AS 08.-36], the plaintiff has [SHALL HAVE] the burden of proving by a preponderance of the evidence

(1) the degree of knowledge or skill possessed or the degree of care ordinarily exercised under the circumstances, at the time of the act complained of, by health care providers in the field or specialty in which the defendant is practicing [BY PHYSICIANS OR DENTISTS PRACTICING THE SAME SPECIALTY IN SIMILAR COMMUNITIES TO THAT IN WHICH THE DEFENDANT PRACTICES];

(2) that the defendant either lacked this degree of knowledge or skill or failed to exercise this degree of care; and

(3) that as a proximate result of this lack of knowledge or skill or the failure to exercise this degree of care the plaintiff suffered injuries that would not otherwise have been incurred.

(b) In malpractice actions there is [SHALL BE] no presumption of negligence on the part of the defendant.

* Sec. 33. AS 09.55 is amended by adding new sections to read:

Sec. 09.55.546. ADVANCE PAYMENTS. In an action to recover damages under secs. 530 - 560 of this chapter, no advance payment made by the defendant health care provider or his professional liability insurer to or on behalf of the plaintiff may be admissible as evidence or may be construed as an admission of liability for injuries or damages suffered by the plaintiff; however, a final award in favor of the plaintiff shall be reduced to the extent of any advance payment. The advance payment shall inure to the exclusive benefit of the defendant or the insurer making the payment.

* Sec. 16. AS 09.55.540 is amended to read:

Sec. 09.55.540. BURDEN OF PROOF. (a) In a malpractice action based on the negligence or wilful misconduct of a health care provider [PHYSICIAN LICENSED UNDER AS 08.64, OR A DENTIST LICENSED UNDER AS 08.-36], the plaintiff has [SHALL HAVE] the burden of proving by a preponderance of the evidence

(1) the degree of knowledge or skill possessed or the degree of care ordinarily exercised under the circumstances, at the time of the act complained of, by health care providers in the field or specialty in which the defendant is practicing [BY PHYSICIANS OR DENTISTS PRACTICING THE SAME SPECIALTY IN SIMILAR COMMUNITIES TO THAT IN WHICH THE DEFENDANT PRACTICES];

(2) that the defendant either lacked this degree of knowledge or skill or failed to exercise this degree of care; and

(3) that as a proximate result of this lack of knowledge or skill or the failure to exercise this degree of care the plaintiff suffered injuries that would not otherwise have been incurred.

(b) In malpractice actions there is [SHALL BE] no presumption of negligence on the part of the defendant.

* Sec. 17. AS 09.55 is amended by adding a new section to read:

Sec. 09.55.547. AD DAMNUM. In a cause of action against a health care provider for malpractice, the complaint or any other pleadings may not contain an ad damnum clause or monetary amount claimed against the defendant health care provider, except as necessary for jurisdictional purposes.

Sec. 09.55.548. AWARDS, COLLATERAL SOURCE. (a) Damages shall be awarded in accordance with principles of the common law. The fact finder in a malpractice action shall render an award as to damages by category of loss. The court may enter a judgment that future damages be paid in whole or in part by periodic payments rather than by a lump-sum payment; the judgment shall include, if necessary, other provisions to assure that funds will be available as periodic payments become due. In this subsection, future damages includes damages for future medical treatment, care or custody, loss of future earnings, or loss of bodily function of the claimant.

(b) Except when the collateral source is a federal program which by law must seek subrogation and except death benefits paid under life insurance, a claimant may only recover damages from the defendant which exceed amounts received by the claimant as compensation for his injuries from collateral sources, whether private, group or governmental, and whether contributory or noncontributory. Evidence of collateral sources, other than a federal program which must by law seek subrogation and the death benefit paid under life insurance, is admissible after the fact finder has rendered an award, but the court shall also take into account the value of claimant's rights to coverage exhausted or depleted by payment of these collateral benefits. It may do so by adding back a reasonable estimate of their probable value, or by earmarking and holding for possible periodic payment under (a) of this section that amount of the award that would otherwise have been deducted, to see if the impairment of claimant's rights actually takes place in the future.

* Sec. 34. AS 09.55.550 is amended to read:

Sec. 09.55.550. JURY INSTRUCTIONS. In health care [MEDICAL] malpractice actions the jury shall be instructed that the plaintiff has the burden of proving [, BY A PREPONDERANCE OF THE EVIDENCE,] the health care provider's negligence or wilful misconduct in accordance with the standard of proof specified in sec. 540 of this chapter [OF THE PHYSICIAN OR DENTIST]. The jury shall be further instructed that injury alone does not raise a presumption of the health care provider's [PHYSICIAN'S OR DENTIST'S] negligence or misconduct.

* Sec. 35. AS 09.55 is amended by adding new sections to read:

Sec. 09.55.546. AWARDS, COLLATERAL SOURCES. (a) In a malpractice action damages shall be awarded according to the principles of the common law. The fact finder in rendering its award for damages shall specify the amount awarded for each category of loss, computing loss of future earnings on a monthly basis. The court may enter a judgment that future damages be paid in whole or in part by periodic payments rather than by a lump sum payment; however, any part of the award which is paid on periodic basis shall be increased annually in the same proportion as annual increases in the consumer price index for the community in which the claimant resides.

(c) Except when the collateral source is a federal program which by law must seek subrogation, an award to which a claimant is entitled may only cover damages which exceed any amounts received by the claimant as compensation for his injuries from collateral sources, whether private, group, or governmental, and whether contributory or noncontributory, except the death benefit paid under life insurance. Evidence of damages compensation by a collateral source, other than a federal program which must seek subrogation and the death benefit paid under life insurance, shall be credited against the award after the fact finder has rendered its award. Notwithstanding other provisions of state law and except as provided in this subsection, a collateral source does not have a right of subrogation.

* Sec. 18. AS 09.55.550 is amended to read:

Sec. 09.55.550. JURY INSTRUCTIONS. In health care [MEDICAL] malpractice actions the jury shall be instructed that the plaintiff has the burden of proving, by a preponderance of the evidence, the health care provider's negligence or wilful misconduct in accordance with sec. 540 of this chapter [OF THE PHYSICIAN OR DENTIST]. The jury shall be further instructed that injury alone does not raise a presumption of the health care provider's [PHYSICIAN'S OR DENTIST'S] negligence or misconduct.

* Sec. 19. AS 09.55 is amended by adding new sections to read:

Sec. 09.55.554. ORAL CONTRACTS. No cause of action against a health care provider arises for breach of an oral contract to provide a cure or achieve a specific medical result.

Sec. 09.55.556. INFORMED CONSENT. (a) A health care provider is liable for failure to obtain the informed consent of a patient if the claimant establishes by a preponderance of the evidence that the provider has failed to inform the patient of the common risks and reasonable alternatives to the proposed treatment or procedure, and that but for that failure the claimant would not have consented to the proposed treatment or procedure.

(b) It is a defense to any action for health care malpractice based upon an alleged failure to obtain informed consent that

(1) the risk not disclosed is too commonly known or is too remote to require disclosure;

(2) the patient stated to the health care provider that he would undergo the treatment or procedure regardless of the risk involved or that he did not want to be informed of the matters to which he would be entitled to be informed;

(3) under the circumstances consent by or on behalf of the patient was not possible; or

(4) the health care provider after considering all of the attendant facts and circumstances used reasonable discretion as to the manner and extent that the alternatives or risks were disclosed to the patient because he reasonably believed that a full disclosure would have a substantially adverse effect on the patient's condition.

Sec. 09.55.560. DEFINITIONS. In secs. 530 - 560 of this chapter "health care provider" means a chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under AS 08.71; an optometrist licensed under AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a psychologist and a psychological associate licensed under AS 08.86; and a hospital as defined in AS 18.20.130, including a governmentally owned or operated hospital.

Sec. 09.55.556. INFORMED CONSENT. (a) A health care provider is liable for failure to obtain the informed consent of a patient if the claimant establishes by a preponderance of the evidence that the provider has failed to inform the patient of common risks and reasonable alternatives to the proposed treatment or procedure, and that, but for that failure, the claimant would not have consented to the proposed treatment or procedure.

(b) It is a defense to any action for health care malpractice based upon an alleged failure to obtain such an informed consent that

(1) the risk not disclosed is too commonly known or is too remote to require disclosure;

(2) the patient stated to the health care provider that he would undergo the treatment or procedure regardless of the risk involved, or that he did not want to be informed of the matters to which he would be entitled to be informed;

(3) under the circumstances consent by or on behalf of the patient was not possible; or

(4) the health care provider, after considering all of the attendant facts and circumstances, used reasonable discretion as to the manner and extent to which the alternatives or risks were disclosed to the patient because he reasonably believed that the manner and extent of such a disclosure would reasonably be expected to adversely and substantially affect the patient condition.

Sec. 09.55.560. DEFINITIONS. In secs. 530 - 560 of this chapter

(1) "health care provider" means a chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under AS 08.71; an optometrist licensed under AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a psychologist and a psychological associate licensed under AS 08.86; and a hospital as defined in AS 18.20.130, including a governmentally owned or operated hospital;

(2) "panel" means an expert advisory panel established under sec. 536 of this chapter.

Sec. 36. AS 09.65.090 is repealed and re-enacted to read:

Sec. 09.65.090. CIVIL LIABILITY FOR EMERGENCY AID. (a) A person at a hospital or at any other location, who renders emergency care or emergency counseling to an injured, ill, or emotionally distraught person who reasonably appears to the person rendering the aid to be in immediate need of emergency aid in order to avoid serious harm or death is not liable for civil damages as a result of an act or omission in rendering emergency aid.

(b) This section does not preclude liability for civil damages as a result of gross negligence or reckless or intentional misconduct.

Sec. 37. AS 18.20 is amended by adding a new section to read:

Sec. 18.20.045. INSURANCE REQUIRED. (a) Every hospital, as a condition of licensure, shall [maintain] and submit to the department evidence of insurance against liability to inpatients and outpatients for malpractice issued by the Health Care Providers Indemnity Corporation, in amounts of not less than $200,000 per occurrence, and an aggregate liability per year of $1,000,000 minimum, and an additional $20,000 for each bed over 50.

(b) The director of insurance or his designee shall waive the requirement in (a) of this section for a hospital if the hospital furnishes satisfactory evidence of having other insurance providing coverage in amounts not less than those specified in (a) of this section. No waiver granted under this subsection may extend beyond the normal expiration date of the hospital's insurance policy or January 1, 1977, whichever occurs first.

Sec. 20. AS 09.65.090 is repealed and re-enacted to read:

Sec. 09.65.090. CIVIL LIABILITY FOR EMERGENCY AID. (a) A person, at a hospital or at any other location, who renders emergency care or emergency counseling to an injured, ill, or emotionally distraught person who reasonably appears to the person rendering the aid to be in immediate need of emergency aid in order to avoid serious harm or death is not liable for civil damages as a result of an act or omission in rendering emergency aid.

(b) This section does not preclude liability for civil damages as a result of gross negligence or reckless or intentional misconduct.

Sec. 21. AS 18.20 is amended by adding new sections to read:

Sec. 18.20.045. INSURANCE REQUIRED. Every hospital, as a condition of licensure, shall submit to the department and maintain evidence of insurance against liability to inpatients and outpatients for malpractice issued by the Health Care Providers Indemnity Corporation, in amounts of not less than $200,000 per occurrence, and an aggregate liability per year of $1,000,000 minimum, and an additional $20,000 for each bed over 50 for which the hospital is licensed.

Sec. 18.20.075. RISK MANAGEMENT. (a) To be eligible for a license each hospital shall have in operation an internal risk management program which shall

(1) investigate the frequency and causes of adverse incidents in hospitals which cause injury to patients;

(2) develop and implement measures to minimize the risk of injury to patients from adverse incidents; in developing these measures each hospital shall take into account recommendations of the Health Care Providers Indemnity Corporation, its medical staff, private underwriters, industry standards, experience of other hospitals, and recommendations of licensing boards of other health care providers; and

(3) analyze patient grievances which relate to patient care.

(b) The department shall adopt by regulation and submit to the legislative administrative regulation review committee prior to implementation standards for risk management programs in hospitals in the state which may vary according to the size of the hospital, the type of care offered by the hospital, and other factors found relevant by the department.




* Sec. 38. AS 18 is amended by adding a new chapter to read:

CHAPTER 23. HEALTH CARE SERVICES INFORMATION.

Sec. 18.23.010. LIMITATION OF LIABILITY FOR PERSONS PROVIDING INFORMATION TO REVIEW ORGANIZATION. (a) No person providing information to a review organization is subject to action for damages or other relief by reason of having furnished that information, unless the information is false and the person providing the information knew or had reason to know the information was false.

(b) No privilege of confidentiality arising from a physician-patient relationship may be invoked to withhold pertinent information from review by a review organization.

Sec. 18.23.020. LIMITATION ON LIABILITY FOR MEMBERS OF REVIEW ORGANIZATIONS. No person who is a member or employee of, or who acts in an advisory capacity to, or who furnishes counsel or services to a review organization is liable for damages or other relief in an action brought by another whose activities have been or are being scrutinized or reviewed by a review organization, by reason of the performance of a duty, function or activity of the review organization, unless the performance of the duty, function or activity was motivated by malice toward the affected person. No person is liable for damages or other relief in an action by reason of his performance of a duty, function, or activity as a member of a review organization or by reason of a recommendation or action of the review organization when the person acts in the reasonable belief that the action or recommendation is warranted by facts known to the person or to the review organization after reasonable efforts to ascertain the facts upon which the review organization's action or recommendation is made.

Sec. 18.23.030. CONFIDENTIALITY OF RECORDS OF REVIEW ORGANIZATION. (a) Except as provided in (b) of this section, all data and information acquired by a review organization, in the exercise of its duties and functions, shall be held in confidence and may not be disclosed to anyone except to the extent necessary to carry out the purposes of the review organization, and is not subject to subpoena or discovery.

Except as provided in (b) of this section, no person described in sec. 20 of this chapter may disclose what transpired at a meeting of a review organization except to the extent necessary to carry out the purposes of a review organization, and the proceedings and records of a review organization are not subject to discovery or introduction into

* Sec. 22. AS 18 is amended by adding a new chapter to read:

CHAPTER 23. HEALTH CARE SERVICES INFORMATION.

Sec. 18.23.010. LIMITATION ON LIABILITY FOR PERSONS PROVIDING INFORMATION TO REVIEW ORGANIZATION. (a) No person providing information to a review organization is subject to action for damages or other relief by reason of having furnished that information, unless the information is false and the person providing the information knew or had reason to know the information was false.

(b) No privilege of confidentiality arising from a physician-patient relationship may be invoked to withhold pertinent information from review by a review organization.

Sec. 18.23.020. LIMITATION ON LIABILITY FOR MEMBERS OF REVIEW ORGANIZATIONS. No person who is a member or employee of, or who acts in an advisory capacity to, or who furnishes counsel or services to, a review organization is liable for damages or other relief in an action brought by a person whose activities have been or are being scrutinized or reviewed by a review organization, by reason of his performance of a duty, function or activity of the review organization, unless the performance of the duty, function or activity was motivated by malice toward the affected person. No person is liable for damages or other relief in an action by reason of his performance of a duty, function, or activity as a member of a review organization or by reason of a recommendation or action of the review organization when the person acts in the reasonable belief that his action or recommendation is warranted by facts known to him or to the review organization after reasonable efforts to ascertain the facts upon which the review organization's action or recommendation is made.

Sec. 18.23.030. CONFIDENTIALITY OF RECORDS OF REVIEW ORGANIZATION. (a) Except as provided in (b) of this section, all data and information acquired by a review organization, in the exercise of its duties and functions, shall be held in confidence, may not be disclosed to anyone except to the extent necessary to carry out one or more of the purposes of the review organization, and is not subject to subpoena or discovery. Except as provided in (b) of this section, no person described in sec. 20 of this chapter may disclose what transpired at a meeting of a review organization except to the extent necessary to carry out one or more of the purposes of a review organization, and the proceedings and records of a review organization are not subject to discovery or introduction into evidence in a civil action against a health care provider arising

INFORMATION TO REVIEW ORGANIZATION. (a) No person providing information to a review organization is subject to action for damages or other relief by reason of having furnished that information, unless the information is false and the person providing the information knew or had reason to know the information was false.

(b) No privilege of confidentiality arising from a physician-patient relationship may be invoked to withhold pertinent information from review by a review organization.

Sec. 18.23.020. LIMITATION ON LIABILITY FOR MEMBERS OF REVIEW ORGANIZATIONS. No person who is a member or employee of, or who acts in an advisory capacity to, or who furnishes counsel or services to a review organization is liable for damages or other relief in an action brought by another whose activities have been or are being scrutinized or reviewed by a review organization, by reason of the performance of a duty, function or activity of the review organization, unless the performance of the duty, function or activity was motivated by malice toward the affected person. No person is liable for damages or other relief in an action by reason of his performance of a duty, function, or activity as a member of a review organization or by reason of a recommendation or action of the review organization when the person acts in the reasonable belief that the action or recommendation is warranted by facts known to the person or to the review organization after reasonable efforts to ascertain the facts upon which the review organization's action or recommendation is made.

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Except as provided in (b) of this section, no person described in sec. 20 of this chapter may disclose what transpired at a meeting of a review organization except to the extent necessary to carry out the purposes of a review organization, and the proceedings and records of a review organization are not subject to discovery or introduction into evidence in a civil action against a health care provider arising out of the matter which is the subject of consideration by the review organization. Information, documents, or records otherwise available from original sources are not immune from discovery or use in a civil action merely because they were presented during proceedings of a review organization, nor may a person who testified before a review organization or who is a member of it be prevented from testifying as to matters within his knowledge, but a witness may not be asked about his testimony before a review organization or opinions formed by him as a result of its hearings, except as provided in (b) of this section.

INFORMATION TO REVIEW ORGANIZATION. (a) No person providing information to a review organization is subject to action for damages or other relief by reason of having furnished that information, unless the information is false and the person providing the information knew or had reason to know the information was false.

(b) No privilege of confidentiality arising from a physician-patient relationship may be invoked to withhold pertinent information from review by a review organization.

Sec. 18.23.020. LIMITATION ON LIABILITY FOR MEMBERS OF REVIEW ORGANIZATIONS. No person who is a member or employee of, or who acts in an advisory capacity to, or who furnishes counsel or services to, a review organization is liable for damages or other relief in an action brought by a person whose activities have been or are being scrutinized or reviewed by a review organization, by reason of his performance of a duty, function or activity of the review organization, unless the performance of the duty, function or activity was motivated by malice toward the affected person. No person is liable for damages or other relief in an action by reason of his performance of a duty, function, or activity as a member of a review organization or by reason of a recommendation or action of the review organization when the person acts in the reasonable belief that his action or recommendation is warranted by facts known to him or to the review organization after reasonable efforts to ascertain the facts upon which the review organization's action or recommendation is made.

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Sec. 18.23.030. CONFIDENTIALITY OF RECORDS OF REVIEW ORGANIZATION. (a) Except as provided in (b) of this section, all data and information acquired by a review organization, in the exercise of its duties and functions, shall be held in confidence, may not be disclosed to anyone except to the extent necessary to carry out one or more of the purposes of the review organization, and is not subject to subpoena or discovery. Except as provided in (b) of this section, no person described in sec. 20 of this chapter may disclose what transpired at a meeting of a review organization except to the extent necessary to carry out one or more of the purposes of a review organization, and the proceedings and records of a review organization are not subject to discovery or introduction into evidence in a civil action against a health care provider arising out of the matter which is the subject of consideration by the review organization. Information, documents, or records otherwise available from original sources are not immune from discovery or use in a civil action merely because they were presented during proceedings of a review organization, nor may a person who testified before a review organization or who is a member of it be prevented from testifying as to matters within his knowledge, but a witness may not be asked about his testimony before a review organization or opinions formed by him as a result of its hearings, except as provided in (b) of this section.

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adduced before a review organization that are otherwise inaccessible under this section may be obtained by a health care provider who claims that denial is unreasonable, or may be obtained under subpoena or discovery proceedings brought by a plaintiff who claims that information provided to a review organization was false and claims that the person providing the information knew or had reason to know the information was false.

(c) Nothing in this chapter prevents a person whose conduct or competence has been reviewed under this chapter from obtaining, for the purpose of appellate review of the action of the review organization, any testimony, documents, proceedings, records and other evidence adduced before the review organization.

Sec. 18.23.040. PENALTY FOR VIOLATION. Other than as authorized by sec. 30 of this chapter, a disclosure of data and information acquired by a review committee or of what transpired at a review meeting is a misdemeanor and punishable under AS 11.05.010.

Sec. 18.23.050. PROTECTION OF PATIENT. Nothing in this chapter relieves a person of liability which he has incurred or may incur to a person as a result of furnishing health care to the patient.

Sec. 18.23.060. PARTIES BOUND BY REVIEW. When a review organization reviews matters under sec. 70(5)(H) of this chapter no party is bound by a ruling of the organization in a controversy, dispute or question unless he agrees in advance, either specifically or generally, to be bound by the ruling.

Sec. 18.23.070. DEFINITIONS. In this chapter, unless the context otherwise requires,

(1) "administrative staff" means the staff of a hospital or clinic;

(2) "health care" means professional services rendered by a health care provider or an employee of a health care provider, and services furnished by a sanatorium, rest home, nursing home, boarding home or other institution for the hospitalization or care of human beings;

(3) "health care provider" means a chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under AS 08.71; an optometrist licensed under AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a psychologist and a psychological associate licensed under AS 08.86; and a hospital as defined in AS 18.20.130, including a governmentally owned or operated hospital;

adduced before a review organization that are otherwise inaccessible under this section may be obtained by a health care provider who claims that denial is unreasonable or may be obtained under subpoena or discovery proceedings brought by a plaintiff who claims that information provided to a review organization was false and claims that the person providing the information knew or had reason to know the information was false.

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(4) "professional service" means service rendered by a health care provider of the type he is licensed to render;

(5) "review organization" means a hospital governing body or a committee whose membership is limited to health care providers and administrative staff, except where otherwise provided for by state or federal law, and which is established by a hospital, by a clinic, by one or more state or local associations of health care providers, by an organization of health care providers from a particular area or medical institution, or by a professional standards review organization established under 42 U.S.C., sec. 1320c-1 et seq., to gather and review information relating to the care and treatment of patients for the purposes of

(A) evaluating and improving the quality of health care rendered in the area or medical institution;

(B) reducing morbidity or mortality;

(C) obtaining and disseminating statistics and information relative to the treatment and prevention of diseases, illness and injuries;

(D) developing and publishing guidelines showing the norms of health care in the area or medical institution;

(E) developing and publishing guidelines designed to keep the cost of health care within reasonable bounds;

(F) reviewing the quality or cost of health care services provided to enrollees of health maintenance organizations;

(G) acting as a professional standards review organization under 42 U.S.C., sec. 1320c-1 et seq.;

(H) reviewing, ruling on, or advising on controversies, disputes or questions between

(i) a health insurance carrier or health maintenance organization and one or more of its insured or enrollees;

(ii) a professional licensing board, acting under its powers of discipline or license revocation or suspension, and a health care provider licensed by it when the matter is referred to a review organization by the professional licensing board;

(iii) a health care provider and his patients concerning diagnosis, treatment or care, or a charge or fee;

(iv) a health care provider and a health insurance carrier or health maintenance organization concerning a charge or fee for health care services provided to an insured or enrollee; or

(4) "professional service" means service rendered by a health care provider of the type he is licensed to render;

(5) "review organization" means a hospital governing body or a committee whose membership is limited to health care providers and administrative staff, except where otherwise provided for by state or federal law, and which is established by a hospital, by a clinic, by one or more state or local associations of health care providers, by an organization of health care providers from a particular area or medical institution, or by a professional standards review organization established under 42 U.S.C., sec. 1320(c)(1) et seq., to gather and review information relating to the care and treatment of patients for the purposes of

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(ii) a professional licensing board, acting under its powers of discipline or license revocation or suspension, and a health care provider licensed by it when the matter is referred to a review organization by the professional licensing board;

(iii) a health care provider and his patients concerning diagnosis, treatment or care, or a charge or fee;

(iv) a health care provider and a health insurance carrier or health maintenance organization concerning a charge or fee for health care services provided to an insured or enrollee; or

federal or a state or local government, or an agency of the federal or a state or local government;

(I) acting on the recommendation of a credential review committee or a grievance committee.

* Sec. 39. AS 21 is amended by adding a new chapter to read:

CHAPTER 88. HEALTH CARE PROVIDERS INSURANCE.

ARTICLE 1. PURPOSE.

Sec. 21.88.010. PURPOSE OF CHAPTER. It is the purpose of this chapter to provide a means of furnishing health care providers with adequate insurance against liability for medical negligence by concentrating all such insurance in one entity which can negotiate more successfully for insurance from casualty insurers and to distribute equitably the true cost of the insurance among the health care providers insured.

ARTICLE 2. INDEMNITY CORPORATION.

Sec. 21.88.020. CORPORATION CREATED. There is created the Alaska Health Care Providers Indemnity Corporation which is a public corporation having a legal existence independent of and separate from the state. Obligations issued by the corporation do not constitute a debt, liability or obligation of the state or a pledge of full faith and credit of the state.

Sec. 21.88.030. CORPORATION BOARD OF GOVERNORS. (a) The corporation shall exercise its powers through a board of governors which shall be appointed by the governor of the state and confirmed by the legislature as provided in (b) of this section.

(b) The appointments to the board of governors shall be Alaska residents as follows:

(1) two physicians licensed in the state; one of the physicians shall be engaged in group practice in a clinic of six or more physicians;

(2) one person employed by a hospital or on the board of directors of a hospital;

(3) two professionals in the insurance field;

(4) two persons who are not health care providers or financially interested in the field of health care, attorneys, or representatives of the insurance industry.

(c) The term of office of each governor is three years, except that the governor of the state shall designate two initially appointed governors to serve for one year and two initially appointed governors to serve for two years.

(d) Upon the expiration of the term of a governor, the governor of the state shall appoint a successor who shall be from the same class described in (b) of this section as the governor whose term has expired.

(e) Upon a governor's early resignation, death or inability to

federal or a state or local government, or an agency of the federal or a state or local government;

(I) acting on the recommendation of a credential review committee or a grievance committee.

* Sec. 23. AS 21 is amended by adding a new chapter to read:

CHAPTER 88. HEALTH CARE PROVIDERS INSURANCE.

ARTICLE 1. PURPOSE.

Sec. 21.88.010. PURPOSE OF CHAPTER. It is the purpose of this chapter to provide a means of assuring all health care providers continuous, affordable and adequate insurance against liability for medical negligence by concentrating all such insurance in one entity and to distribute equitably the cost of the insurance among the health care providers insured.

ARTICLE 2. INDEMNITY CORPORATION.

Sec. 21.88.020. CORPORATION CREATED. There is created the Alaska Health Care Providers Indemnity Corporation which is a public corporation having a legal existence independent of and separate from the state. Obligations issued by the corporation do not constitute a debt liability or obligation of the state or a pledge of full faith and credit of the state.

Sec. 21.88.030. CORPORATION BOARD OF GOVERNORS. (a) The corporation shall exercise its powers through a board of governors which shall be appointed by the director as provided in (b) of this section.

(b) The appointments to the board of governors shall be Alaska residents as follows:

(1) two members of the Alaska State Medical Association appointed from a list of no less than five persons recommended by the governing board of that association; one of the members appointed shall be engaged in group practice in a clinic of six or more physicians licensed in the state;

(2) one member of the Alaska State Hospital Association appointed from a list of no less than three persons recommended by the governing board of that association;

(3) two professionals in the insurance field;

(4) two persons who are neither health care providers nor affiliated with the insurance industry.

(c) The term of office of each governor is three years, except that the director shall designate three initially appointed governors to serve for one year and two initially appointed governors to serve for two years.

(d) Upon the expiration of the term of a governor, the director shall appoint a successor who shall be from the same class described in (b) of this section as the governor whose term has expired.

(e) Upon a governor's early resignation, death or inability to

serve, the governor of the state shall appoint a successor from the same class defined in (b) of this section as the terminating governor, who shall serve for the unexpired term.

(f) The director or his designee is not a voting member of the board of governors but shall be notified by the board of and have the right to attend and participate in all meetings and proceedings of the board.

(g) Each member of the board of governors shall be allowed compensation for services and reimbursement for reasonable expenses incurred in attending meetings of the board and transacting corporation business, as set out in the plan of operation.

Sec. 21.88.040. CORPORATION PLAN OF OPERATION. (a) Within 30 days after the effective date of this chapter, the board of governors shall prepare and submit to the director for approval a plan of operation which provides for the fair, reasonable and equitable administration of the affairs of the corporation and the discharge of the purposes for which it is created. The plan and any amendments of it become effective upon the director's approval. If the board of governors fails to submit a plan of operation, or if at a subsequent time the board of governors fails to submit suitable amendments to the plan, the director shall, after notice and hearing, adopt and promulgate a plan of operation or amendments which are necessary or advisable to effectuate the provisions of this chapter. Adoption of the plan is not subject to the Administrative Procedure Act (AS 44.62).

(b) The plan of operation shall

(1) establish the procedures by which all the powers and duties of the corporation specified in sec. 50 of this chapter shall be performed;

(2) establish procedures for handling assets and discharging liabilities of the corporation;

(3) establish regular places and times for meetings of the board of governors;

(4) establish procedures for records to be kept of all financial transactions of the corporation, its agents, and the board of governors;

(5) establish the amount and method of reimbursing and compensating members of the board of governors;

(6) establish the procedures for awarding contracts to indemnify or defend or to provide other services and to compensate the indemnitors or vendors;

(7) establish the procedures for issuing contracts of insurance as provided in sec. 50 of this chapter and for the determination of rates;

(8) contain additional provisions necessary or proper for

defined in (b) of this section as the terminating governor, who shall serve for the unexpired term.

(f) The director or his designee is not a voting member of the board of governors but shall be notified by the board of and have the right to attend and participate in all meetings and proceedings of the board.

(g) Members of the board of governors receive compensation from the corporation of $100 per day when the board meets and necessary travel expenses.

Sec. 21.88.040. CORPORATION PLAN OF OPERATION. (a) Within 30 days after the effective date of this chapter, the board of governors shall prepare and submit to the director for approval a plan of operation which provides for the fair, reasonable and equitable administration of the affairs of the corporation and the discharge of the purposes for which it is created. The plan and any amendments of it become effective upon the director's approval. If the board of governors has failed to submit a plan of operation, or if at any subsequent time the board of governors fails to submit suitable amendments to the plan, the director shall, after notice and hearing, adopt and promulgate a plan of operation or amendments which are necessary or advisable to effectuate the provisions of this chapter. Adoption of the plan is not subject to the Administrative Procedure Act (AS 44.62).

(b) The plan of operation shall

(1) establish the procedures by which all the powers and duties of the corporation specified in sec. 50 of this chapter shall be performed;

(2) establish procedures for handling assets and discharging liabilities of the corporation;

(3) establish regular places and times for meetings of the board of governors;

(4) establish procedures for records to be kept of all financial transactions of the corporation, its agents, and the board of governors;

(5) establish procedures for awarding contracts to carry out the provisions of this chapter;

(6) establish the procedures for issuing contracts of insurance as provided in sec. 50 of this chapter and for the determination of rates;

(7) contain additional provisions necessary or proper for the execution of the powers and duties of the corporation.

Sec. 21.88.050. POWERS AND DUTIES OF THE CORPORATION. (a) The corporation shall

(1) in the form approved by the director, issue to all health care providers who pay the premiums for it a contract or contracts indemnifying the health care provider and his employees who are health care providers against loss by reason of liability for professional services on an occurrence basis and agreeing to tender on behalf of the health care provider and his employees who are health care providers a defense in a proceeding brought under AS 09.55.530 - 09.55.560; the limit of liability shall be no less than the minimum liability coverage requirements to be maintained under AS 08.64.215 and AS 18.20.045; the contract shall cover the defense against but need not indemnify a claim for punitive damages; at the option of the health care provider and for an additional premium the contract may cover claims against the health care provider that arise out of professional services performed by the health care provider after December 31, 1974 except that coverage will not be provided for a claim already filed or of which the health care provider had or reasonably should have had notice at the time the retroactive insurance was purchased;

(2) charge a premium for the protection provided by the contracts issued under (1) of this subsection which shall be determined by the board of governors in accordance with sec. 80 of this chapter and subject to the approval of the director;

(3) negotiate for and procure reinsurance from a casualty insurers or reinsurers for all of its liability incurred by contracts issued under (1) of this subsection; the corporation may not incur or retain under those contracts liability which is not reinsured as provided in this paragraph; if, after the exercise of due diligence, no reinsurance for all or a portion of the risk can be procured at reasonable rates from casualty insurers or reinsurers, the corporation through the board of governors, shall so certify to the director reinsurance shall then be provided by the Health Care Joint Underwriting Association as provided in sec. 110 et seq. of this chapter for that portion not reinsured by a private carrier;

(4) comply with or be subject to AS 21.06.090; 21.06.120; 21.06.140; 21.06.160; 21.06.250; AS 21.09.180; 21.09.190; 21.09.200; 21.09.250; 21.09.280; AS 21.12.020(b), (c), (d), and (e); and chs. 18, 21, 24, and 36 of this title;

Sec. 21.88.050. POWERS AND DUTIES OF THE CORPORATION. (a) The corporation shall

(1) issue to all health care providers who pay the premiums for it a contract on an occurrence basis indemnifying the health care provider and his employees who are health care providers against loss by reason of liability and agreeing to tender on behalf of the health care provider and his employees who are health care providers a defense of the health care provider in a proceeding brought under AS 09.55.530 - 09.55.560; the limit of liability shall be no less than the minimum liability coverage required to be maintained as stated in AS 08.64.215 and AS 18.20.045; the contract shall cover the defense against but need not indemnify a claim for punitive damages; the contract shall cover claims against health care providers

(A) that arise out of professional services performed by the health care provider during the period for which the premium is paid; and

(B) at the option of the health care provider and for an additional premium, that arise out of services performed by the health care provider after December 31, 1974 for any period in which the health care provider had no malpractice insurance, except that coverage will not be provided for a claim already filed or of which the health care provider has or reasonably should have had notice at the time retroactive insurance was purchased;

(2) charge a premium for the protection provided by the contracts issued under (1) of this subsection which shall be determined by the board of governors in accordance with sec. 70 of this chapter and subject to the approval of the director;

(3) comply with or be subject to AS 21.06.090, 21.06.120, 21.06.140, 21.06.160, 21.06.250; AS 21.09.180, 21.09.190, 21.09.200, 21.09.250, 21.09.280; AS 21.12.020(b), (c), (d), and (e); and chs. 18, 21, 24, and 36 of this title;

(5) carry out the obligations of the contracts issued under (1) of this subsection by defending all covered claims made against insured health care providers and by paying all liabilities which are finally adjudicated against the insured health care provider or which may in the opinion of the corporation reasonably be expected to be finally adjudicated against the health care provider to the extent of the contract obligation;

(6) provide coverage to health care providers for liability in excess of the minimum limits required for licensure as a health care provider, but limited to $1,000,000 for individual health care providers and $5,000,000 for hospitals, if there is a finding by the director that this coverage is unavailable at a reasonable cost and that this coverage can be made available at a reasonable cost through the corporation; if this paragraph is implemented, then each health care provider obtaining excess coverage up to these amounts shall obtain it from the corporation.

(b) The corporation may

(1) in the form approved by the director, issue contracts of professional liability insurance to chiropractors licensed under AS 08.-20, dental hygienists licensed under AS 08.32, dentists licensed under AS 08.36, nurses licensed under AS 08.68, dispensing opticians licensed under AS 08.71, optometrists licensed under AS 08.72, pharmacists licensed under AS 08.80, physical therapists licensed under AS 08.84, and psychologists and psychological associates licensed under AS 08.86;

(2) employ or retain persons, individual or corporate, to discharge its obligations and pay reasonable compensation for those services; employees of the corporation are not considered state employees;

(3) provide coverage to health care providers for other hazards where there is a finding by the director that this coverage is otherwise unavailable by reason of the operation of the corporation;

(4) borrow or advance funds necessary to effectuate the

purposes of the corporation;

(5) negotiate and become a party to those contracts as are necessary to carry out the purposes of the corporation;

(6) sue or be sued in the name of the corporation;

(4) carry out the obligations of the contracts issued under (1) of this subsection by defending all covered claims made against insured health care providers and by paying all liabilities which are finally adjudicated against the insured health care provider or which may in the opinion of the corporation reasonably be expected to be finally adjudicated against the health care provider to the extent of the contract obligation;

(5) provide coverage to health care providers for liability under AS 09.55.530 - 09.55.560 in excess of the minimum limits required for licensure a[illegible]lth care provider, but limited to $1,000,000 for individual health [illegible] providers and $5,000,000 for hospitals, if there is a finding by the director that this coverage is unavailable at a reasonable cost and that this coverage can be made available at a reasonable cost through the corporation; if this paragraph is implemented, each health care provider obtaining excess coverage up to these amounts shall obtain it from the corporation, and the corporation may procure reinsurance for all the risks incurred by contracts issued under this paragraph from the private market.

(b) The corporation may

(1) employ or retain persons, individual or corporate, to discharge its obligations and shall pay, by way of salary, wage, fee, or commission, reasonable compensation for those services; employees of the corporation are not considered state employees;

(2) provide coverage to health care providers for other hazards including malpractice liability insurance for other licensed health care providers employed by the physician or hospital;

(3) borrow funds from the revolving loan fund established under sec. 110 of this chapter when necessary for the corporation to maintain adequate reserves; loans from the fund shall be repaid from prospective premium increases within four years after the loan is made at an annual interest rate of seven per cent;

(4) negotiate and become a party to those contracts as are necessary to carry out the purposes of the corporation;

(5) sue or be sued in the name of the corporation;

(6) negotiate and become a party to contracts for management services for the corporation;

(7) perform all other acts necessary and proper to effectuate the corporation.

Sec. 21.88.060. PREMIUM TAX. The corporation shall pay a premium tax in the amount of one and one-half per cent of the total direct premium income received by the corporation during the year ending on the preceding December 31, after deducting the applicable cancellations, returned premium, the unabsorbed portion of any deposit premiums, all policy dividends, unabsorbed premiums refunded to policyholders, refunds, savings, savings coupons and other similar returns paid or credited to policyholders with respect to their policies. The tax shall be paid to the director annually before April 1 of each year.

Sec. 21.88.070. STATISTICS. The corporation shall collect, maintain and report information concerning claims against health care providers. The information shall be on forms prescribed by the director, and shall be sufficient to enable a proper determination of losses for rate making and to identify causes and sources of loss for loss control. At least annually the corporation shall report to the director the number and amount of claims filed, reserved, paid, settled and adjudicated during the year, the premiums paid to and the expenses incurred by the corporation during the year. This report shall be available to the public. The director may require that supplemental reports include the names of insured health care providers and the claimants; however, no reports which become publicly available may include the names of health care providers or claimants or information that will permit by inference the identity of specific health care providers or claimants. All statistics shall be made available to the appropriate licensing board or agency.

Sec. 21.88.080. RATES. (a) The rates and rating plans used by the corporation for the policies issued shall be determined by license category of health care providers in accordance with all of the following:

(1) rates may not be excessive; rates are excessive if, after a period of time and with respect to an amount of gross premium which are actuarially credible, the premiums exceed losses incurred by the corporation, including losses paid, reserves for claims reported and unpaid, reserves for claims incurred during the policy period and not reported, provided that reserves for claims incurred during the policy period and reasonably expected to be reported after three years after

(7) provide risk management advice and services to hospitals;

(8) perform all other acts necessary and proper to effectuate the corporation.

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Sec. 21.88.060. STATISTICS. The corporation shall collect, maintain and report information concerning claims against health care providers. All such information shall be on forms prescribed by the director and shall be sufficient to enable a proper determination of losses for rate making and to identify causes and sources of loss for loss control. No less often than annually the corporation shall report to the director, which report shall be kept available to the public, the number and amount of claims filed, reserved, paid, settled and adjudicated during the year, the premiums paid to, and the expenses incurred by the corporation during the year. The director may require that supplemental reports include the names of insured health care providers and the claimants; however, no reports which become publicly available may include the names of health care providers or claimants or information that will permit by inference the identity of specific health care providers or claimants. All information shall be made available to the appropriate licensing boards or agencies.

Sec. 21.88.070. RATES. Rates and rating plans used by the corporation for the policies issued shall be determined for each category of health care provider in accordance with all of the following:

(1) rates for physicians shall be set as a function of the physician's medical revenue;

(2) rates for hospitals shall be set as a function of the number of permanent beds in the hospital;

(3) a minimum rate may be set for each category of health care provider or discipline or classification within the license category;

(4) rates may not be excessive; rates are excessive if, after a period of time and with respect to an amount of gross premium which are actuarially credible, the premiums exceed losses incurred by the corporation, including losses paid, reserves for claims reported and unpaid, reserves for claims incurred during the policy period and not reported but reasonably expected to be reported within three years after the date of the incident, and reasonable expenses for the operation of

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director and shall be sufficient to enable a proper determination of losses for rate making and to identify causes and sources of loss for loss control. No less often than annually the corporation shall report to the director, which report shall be kept available to the public, the number and amount of claims filed, reserved, paid, settled and adjudicated during the year, the premiums paid to, and the expenses incurred by the corporation during the year. The director may require that supplemental reports include the names of insured health care providers and the claimants; however, no reports which become publicly available may include the names of health care providers or claimants or information that will permit by inference the identity of specific health care providers or claimants. All information shall be made available to the appropriate licensing boards or agencies.

p27

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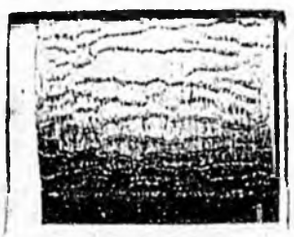

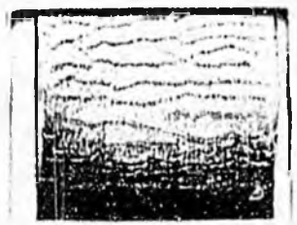

(2) rates shall not be inadequate; rates are inadequate if, based on available actuarial data, the premiums to be paid by the health care providers are or may reasonably be expected to be insufficient to pay for losses incurred by the corporation, including claims paid, reserves for claims reported and unpaid, reserves for claims incurred during the policy period and not reported provided that reserves for claims incurred during the policy period and reasonably expected to be reported after three years after the incident may be included on a different basis due to the additional financial flexibility provided by the corporation, and reasonable expenses for the operation of the corporation;

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(3) rates may not be unfairly discriminatory;

(4) rates shall be adjusted annually;

(5) rates for any policy year shall be calculated to include the adjustment for actual experience of the corporation;

(6) in considering losses to be incurred, changes in the law, national, regional or local trends in medical negligence awards, and other relevant factors may be considered;

(7) income from the investment of reserves shall be considered;

(8) individual risk underwriting factors shall be considered.

Note

(b) The standards in (a) of this section shall be applied to the policy forms the corporation decides to write.

Sec. 21.88.090. REQUIRED INSURANCE; CANCELLATION. The corporation shall provide insurance to all health care providers otherwise eligible for licensure under AS 08.64 and AS 18.20. The corporation may provide for installment payment of premiums in which event each installment is due by the date specified. The corporation may cancel any of its policies in the event of nonpayment of any premium or installment on a premium, or other charge, by mailing or delivering to the insured at the address shown on the policy and to the agency of the state issuing the insured's license written notice stating when, not less than 10 days after notice is received by the insured, the cancellation is effective.

ARTICLE 3. JOINT UNDERWRITING ASSOCIATION.

Sec. 21.88.110. ASSOCIATION CREATED. (a) The Health Care Providers Joint Underwriting Association is created consisting of all licensed

(1) health care service corporations as defined in AS 21.87.330;

(2) disability insurers as defined in AS 21.12.050;

(3) property insurers as defined in AS 21.12.060; and

(4) casualty insurers as defined in AS 21.12.070.

(5) rates may not be inadequate; rates are inadequate if, based on available actuarial data, the premiums to be paid by the health care providers are or may reasonably be expected to be insufficient to pay for losses incurred by the corporation, including claims paid, reserves for claims reported and unpaid, reserves for claims incurred during the policy year and not reported but reasonably expected to be reported within three years after the date of the incident, and reasonable expenses for the operation of the corporation;

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(6) rates shall be adjusted at least as often as annually;

(7) rates for any policy year shall be calculated to include the adjustment for actual experience of the corporation as developed for the preceding four policy years;

(8) in considering losses to be incurred, changes in the law and national, regional and local trends in medical negligence awards may be considered;

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(9) income from investment of reserves shall be considered;

(10) disciplines and classifications within the license categories of health care providers shall be considered;

(11) individual risk underwriting factors shall be considered;

(12) amounts sufficient to repay loan obligations shall be considered.

Sec. 21.88.080. REQUIRED INSURANCE; CANCELLATION. The corporation shall provide insurance to all health care providers otherwise eligible for licensure under AS 08.64 and AS 18.20. The corporation may provide for installment payment of premiums in which event each installment is due by the date specified. The corporation may cancel any of its policies in the event of nonpayment of any premium or installment on a premium or other charge by mailing or delivering to the insured at the address shown on the policy and to the agency of the state issuing the insured's license written notice stating when, not less than 10 days after notice is received by the insured, the cancellation is effective.

ARTICLE 3. LOAN FUND.

Sec. 21.88.110. FUND ESTABLISHED. (a) There is in the Department of Commerce and Economic Development a medical malpractice liability revolving loan fund to be administered by the director of insurance.

(b) Loans shall be made from the fund to the corporation upon certification by the director that a loan is necessary for the corporation to maintain adequate reserves or for initial costs of operation. If a loan is made to the corporation from the fund, the corporation shall issue a note to the fund pledging the premiums collected in the future as security for the loan.

(8) individual risk underwriting factors shall be consider[illegible]

(b) The standards in (a) of this section shall be applied to the policy terms the corporation decides to write.

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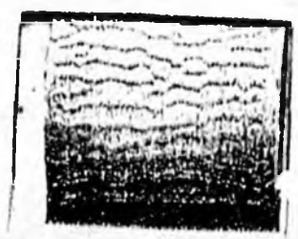
(b) Loans shall be made from the fund to the corporation upon certification by the director that a loan is necessary for the corporation to maintain adequate reserves or for initial costs of operation. If a loan is made to the corporation from the fund, the corporation shall issue a note to the fund pledging the premiums collected in the future as security for the loan.

(c) Loans from the fund shall be repaid by the corporation within





(b) Every insurer described in (a) of this section shall be a member of the association and shall remain a member as a condition of its authority to continue to transact that kind of business in this state; except that any disability insurer may elect to pay any tax or assessments due without otherwise participating as a member.

(c) The association shall commence operation upon a finding by the director, after public hearing, that after the exercise of due diligence no reinsurance could be procured at reasonable rates by the corporation from a casualty insurer or reinsurer. After the association has commenced operation, if the director determines, after public hearing, that health care malpractice insurance is available through insurers licensed in this state with respect to which he has previously made the former finding, the association shall cease its underwriting operations. At any time, after notice and hearing, the director may, upon a finding that it is no longer needed, terminate the operation of the association.

Sec. 21.88.120. PURPOSE. The purpose of the association is to provide a market for medical malpractice insurance to the corporation on a self-supporting basis without subsidy from association members.

Sec. 21.88.130. ASSOCIATION BOARD OF DIRECTORS; TERM. The association shall be governed by a board of directors appointed by the governor of the state and consisting of two representatives of domestic casualty and property insurers, one representative of admitted disability insurers, one representative of health care service corporations, one representative of foreign casualty and property insurers, and two persons from the public. Members of the board of directors serve three-year terms.

Sec. 21.88.140. ASSOCIATION PLAN OF OPERATION. (a) Within 30 days after the association's creation the board of directors shall

prepare and submit to the director for his approval a plan of operation which provides for the fair, reasonable and equitable administration of the affairs of the association and the discharge of the purposes for which it is created. The plan and any amendments of it become effective upon the director's approval. If the board of directors has failed to submit a plan of operation, or if at any subsequent time the board of directors fails to submit suitable amendments to the plan, the director shall, after notice and hearing, adopt and promulgate a plan of operation or amendments which are necessary or advisable to effectuate the provisions of this chapter. Adoption of the plan is not subject to the Administrative Procedure Act (AS 44.62).

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four years at an annual interest rate of seven per cent.

(d) The director may sell at par value to the Department of Revenue the notes, security instruments and pledge agreements held by the Department of Commerce and Economic Development as security for loans made under this section. The Department of Revenue shall purchase all the notes offered until the current principal amount of the notes purchased and held by the Department of Revenue equals $5,000,000.

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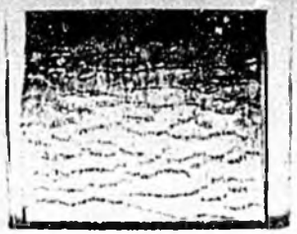

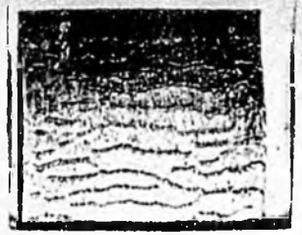

(b) Every insurer described in (a) of this section shall be a member of the association and shall remain a member as a condition of its authority to continue to transact that kind of business in this state; except that any disability insurer may elect to pay any tax or assessments due without otherwise participating as a member.

(c) The association shall commence operation upon a finding by the director, after public hearing, that after the exercise of due diligence no reinsurance could be procured at reasonable rates by the corporation from a casualty insurer or reinsurer. After the association has commenced operation, if the director determines, after public hearing, that health care malpractice insurance is available through insurers licensed in this state with respect to which he has previously made the former finding, the association shall cease its underwriting operations. At any time, after notice and hearing, the director may, upon a finding that it is no longer needed, terminate the operation of the association.

Sec. 21.88.120. PURPOSE. The purpose of the association is to provide a market for medical malpractice insurance to the corporation on a self-supporting basis without subsidy from association members.

Sec. 21.88.130. ASSOCIATION BOARD OF DIRECTORS; TERM. The association shall be governed by a board of directors appointed by the governor of the state and consisting of two representatives of domestic casualty and property insurers, one representative of admitted disability insurers, one representative of health care service corporations, one representative of foreign casualty and property insurers, and two persons from the public. Members of the board of directors serve three-year terms.

(b) the plan of operation shall

(1) establish the procedures for carrying out the powers and duties of the association specified in sec. 150 of this chapter;

(2) establish procedures for handling assets and discharging liabilities of the association;

(3) establish regular places and times for meetings of the board of directors;

(4) establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;

(5) establish the amount and method of reimbursing members of the board of directors;

(6) establish the procedures for awarding contracts to indemnify or defend or to provide other services and to compensate the indemnitors or vendors;

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(7) establish the procedures for issuing contracts of insurance as provided in sec. 150 of this chapter and for the determination of rates;

(8) contain additional provisions necessary or proper for the execution of the powers and duties of the association.

Sec. 21.88.150. POWERS AND DUTIES OF THE ASSOCIATION. (a) The association shall

(1) provide reinsurance to the corporation covering contracts issued by the corporation indemnifying health care providers and their employees who are health care providers against loss by reason of liability for professional services and agreeing to tender on behalf of the health care providers and their employees who are health care providers a defense in an action brought under AS 09.55.530 - 09.55.560; the limit of liability shall be no less than the minimum liability required to be indemnified as provided in AS 08.64.215 and AS 18.20.045, and the coverage shall be the same as that which the Health Care Providers Indemnity Corporation is required to provide under sec. 50 of this chapter;

(2) charge a premium for the protection provided by the contracts issued under sec. 50 of this chapter which shall be determined by the board of directors in accordance with sec. 80 of this chapter and subject to the approval of the director;

(3) comply with or be subject to AS 21.06.090; 21.06.120; 21.06.140; 21.06.160; 21.06.250; AS 21.09.180; 21.09.200; 21.09.250; 21.09.280; AS 21.12.020(b), (c), (d), and (e); and chs. 18, 21, 24, and 36 of this title;

(4) carry out the obligations of the contracts issued under sec. 50 of this chapter by defending all covered claims made against insured health care providers and paying all liabilities which are

finally adjudicated against the insured health care provider or which p35 may in the opinion of the association reasonably be expected to be finally adjudicated against the health care provider to the extent of the contract obligation.

(b) The association may

(1) employ or retain persons, individual or corporate, to discharge its obligations and pay reasonable compensation for those services;

(2) provide reinsurance to the corporation for coverage to health care providers for other hazards where there is a finding by the director that this coverage is otherwise unavailable by reason of the operation of the corporation;

(3) provide reinsurance to the corporation for coverage to health care providers for liability under AS 09.55.530 - 09.55.560 in excess of the minimum limits required for licensure as a health care provider where there is a finding by the director that this coverage is unavailable at a reasonable cost and that this coverage can be made available at a reasonable cost through the corporation;

(4) provide reinsurance to the corporation for coverage for liability under AS 09.55.530 - 09.55.560 to chiropractors licensed under AS 08.20, dental hygienists licensed under AS 08.32, dentists licensed under AS 08.36, nurses licensed under AS 08.68, dispensing opticians licensed under AS 08.71, optometrists licensed under AS 08.72, pharmacists licensed under AS 08.80, physical therapists licensed under AS 08.84, and psychologists and psychological associates licensed under AS 08.86;

(5) borrow or advance funds necessary to effectuate the purposes of this association;

(6) negotiate and become a party to those contracts which are necessary to carry out the purposes of the association;

(7) sue or be sued in the name of the association;

(8) cede or assume reinsurance;

(9) perform all other acts necessary and proper to effectuate the association.

Sec. 21.88.160. RATES AND RATING PLANS. The rates and rating plans shall be determined as provided in sec. 80 of this chapter, except that allowance may not be made for profit to an indemnifying carrier or for income from investment of member-contributed funds; and provided that reserves for claims incurred during the policy period and reasonably expected to be reported after three years after the incident may be included on a different basis due to the additional financial flexibility provided by the association.

able for the sound financial operation of the association, all members shall contribute to the financial requirements of the association by paying to the association an assessment to be determined by the board of governors of the association, these assessments to be prorated among all members in proportion to their direct written premiums or revenues in this state in the insurance lines the writing of which require membership in the association, in the two years ending on the preceding December 31, after deducting the applicable cancellations, returned premium, the unabsorbed portion of any deposit premium, all policy dividends, unabsorbed premiums refunded to policyholders, refunds, savings, savings coupons and other similar returns paid or credited to policyholders with respect to their policies. Any assessment under this section is a tax obligation in addition to taxes required under AS 21.09.210 and notwithstanding the provisions of AS 21.09.210(e).

Sec. 21.88.180. RATE ADJUSTMENT. (a) If in any year an assessment is made under sec. 170 of this chapter, rates for the next period shall be increased from the rate determined under sec. 160 of this chapter by an amount sufficient to reimburse all members the amounts assessed.

(b) No assessment may be reimbursed to members without prior approval of the director and no interest accrues in favor of members on amounts assessed.

(c) If, after establishing required reserves, there is an excess amount in reserve, the excess premium shall be refunded to the insured health care providers.

Sec. 21.88.190. REPORTS. At least annually the association shall report to the director concerning its affairs. The report shall be in the form prescribed by the director.

ARTICLE 4. LOAN FUND.

Sec. 21.88.210. FUND ESTABLISHED. (a) There is in the Department of Commerce and Economic Development a medical malpractice liability revolving loan fund to be administered by the director of insurance.

(b) Loans shall be made from the fund to the Joint Underwriting Association upon certification by the director that a loan is necessary for the corporation to spread costs out over time because of fluctuations in loss experience. If a loan is made to the corporation from the fund, the Joint Underwriting Association shall issue a note to the fund pledging the premiums collected in the future as security for the loan.

(c) Loans from the fund shall be repaid by the Joint Underwriting Association within five years at an annual interest rate of six per cent.

Original Sponsor: Rules Committee by request of the Governor

Offered: 3/2/76
Referred: Rules

IN THE HOUSE BY THE COMMERCE COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 574 am S

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to health care changing the Alaska Supreme Court's Rules of Civil Procedure; and providing for an effective date."

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

* Section 1. AS 08.01.050 is amended by adding a new paragraph to read:

(19) provide investigative services to the boards established under chs. 20, 32, 36, 64, 68, 71, 72, 80, 84, and 86 of this title, for the purpose of assisting those boards in matters of professional discipline.

* Sec. 2. AS 08.20.010 is amended to read:

Sec. 08.20.010. CREATION AND MEMBERSHIP OF BOARD OF CHIROPRACTIC EXAMINERS. There is created the Board of Chiropractic Examiners consisting of five [THREE] members appointed by the governor.

* Sec. 3. AS 08.20.020 is amended to read:

Sec. 08.20.020. MEMBERS OF BOARD. Three members [EACH MEMBER] of the board shall be [A] licensed chiropractic physicians who [PHYSICIAN AND SHALL] have practiced chiropractic in this state not less than two years. Two members of the board shall be persons with no direct financial interest in the health care industry. Each member serves without pay but is entitled to per diem and travel expenses allowed by law.

* Sec. 4. AS 08.20.030 is repealed and re-enacted to read:

Sec. 08.20.030. MEMBERS TERMS, VACANCIES. Members serve for staggered terms of three years. The terms of the public members of the board may not expire at the same time. Vacancies on the board shall be

filled for the unexpired term.

Original sponsor: Rules Committee by request of the Governor

Offered: 2/24/76

Keith

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 574

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to liability for the provision of health care services; changing the Alaska Supreme Court's Rules of Civil Procedure; and providing for an effective date."

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

* Section 1. AS 08.01.050 is amended by adding a new paragraph to read:

(19) provide investigative services to the boards established under chs. 20, 32, 36, 64, 68, 71, 72, 80, 84, and 86 of this title, for the purpose of assisting those boards in matters of professional discipline.

(d) The director may sell at par value to the Department of Revenue the notes, security instruments and pledge agreements held by the Department of Commerce and Economic Development as security for loans made under this section. The Department of Revenue shall purchase all the notes offered until the current principal amount of the notes purchased and held by the Department of Revenue equals $5,000,000.

ARTICLE 5. GENERAL PROVISIONS.

Sec. 21.88.900. DEFINITIONS. As used in this chapter,

(1) "association" means the Health Care Providers Joint Underwriting Association;

(2) "corporation" means the Health Care Providers Indemnity Corporation;

(3) "health care provider" means a physician licensed under AS 08.64 and a hospital licensed under AS 18.20.

* Sec. 40. AS 21.18.090 is amended by adding a new paragraph to read:

(5) reserves for the Joint Underwriting Association are to include claims reported and unpaid; reserves for claims incurred but not reported, but those which may reasonably be expected to be reported beyond three years after the date of occurrence may be included on a different basis due to the additional financial flexibility of the association.

* Sec. 41. AS 08.02 is amended by adding a new section to read:

Sec. 08.02.020. LIMITATION OF LIABILITY FOR MEMBERS OF LICENSING BOARDS. No person is liable for damages or other relief in an action by reason of his performance of a duty, function, or activity as a member of a licensing board or by reason of a recommendation or action of the board when the person acts in the reasonable belief that his action or recommendation is warranted by facts known to him or to the board after reasonable efforts to ascertain the facts upon which the

ARTICLE 4. GENERAL PROVISIONS.

Sec. 21.88.300. DEFINITIONS. As used in this chapter,

(1) "corporation" means the Health Care Providers Indemnity Corporation;

(2) "director" means the director of the division of insurance for the State of Alaska;

(3) "fund" means the medical malpractice liability revolving loan fund;

(4) "health care provider" means a physician licensed under AS 08.64 and a hospital as defined in AS 18.20.130, including a hospital or health care facility owned or operated by the state or one or more of its political subdivisions; if at any time the director of insurance mandates chiropractors under AS 08.20.115(b), dental hygienists under AS 08.32.015(b), dentists under AS 08.36.115(b), nurses under AS 08.68.165(b), dispensing opticians under AS 08.71.085(b), optometrists under AS 08.72.115(b), pharmacists under AS 08.80.115(b), physical therapists under AS 08.84.035(b), or psychologists and psychological associates under AS 08.86.125(b) into participation in the corporation, they shall then be considered health care providers for the purposes of this chapter;

(5) "occurrence basis insurance" is insurance against claims arising during the period of the policy coverage.

p30

* Sec. 24. AS 21.18.090 is amended by adding a new paragraph to read:

(5) reserves for the Health Care Providers Indemnity Corporation are to include only reserves for claims reported and unpaid and reserves for claims incurred but not reported but which may reasonably be expected to be reported within three years after the date of occurrence.

* Sec. 42. AS 09.55.535, and AS 09.55.537, enacted in sec. 31 of this Act, have the effect of changing the Alaska Supreme Court's Rules of Civil Procedure by requiring the submission of medical malpractice claims against hospitals and physicians to either nonbinding arbitration or to expert advisory panels, unless all parties to the action agree otherwise.

* Sec. 43. AS 08.64.365 and AS 08.68.040 are repealed.

* Sec. 44. This Act takes effect 30 days after enactment.

* Sec. 25. AS 09.55.536 enacted in sec. 15 of this Act, has the effect of changing the Alaska Supreme Court's Rules of Civil Procedure, by requiring the submission of each health care malpractice action to a panel of experts.

* Sec. 26. AS 08.64.365 is repealed.

* Sec. 27. This Act takes effect 30 days after enactment.

Allow Anytime before filing a suit whether previously agreed or not

1

Sec. 09.55.530 is repealed & re-enacted to read:

ARTICLE 6. MALPRACTICE ACTIONS.

Sec. 09.55.530. DECLARATION OF PURPOSE. The legislature finds that the health of the people is threatened by curtailment of health care services due to the difficulty in obtaining adequate malpractice insurance at a reasonable cost. It is the purpose of secs. 530 - 560 of this chapter to protect the health and safety of the people of this state by establishing procedural aids for handling malpractice claims which will help ensure the ready availability of adequate insurance at a reasonable cost and which will be fair to all parties concerned.

Sec. 09.55.532. VOLUNTARY ARBITRATION. (a) A patient and any health care provider may execute an agreement to submit to arbitration any dispute, controversy, or issue arising out of care of treatment by the health care provider during the period that the agreement is in force or that has already arisen between the parties.

(b) An agreement to arbitrate executed before care or treatment is provided between a patient and health care provider shall clearly provide in bold print on the face of the agreement that execution of the agreement by the patient is not a prerequisite to receiving care or treatment. If this subsection is not complied with by the health care provider, the agreement to arbitrate is void. The form to be used shall be approved in advance by the Attorney General director of insurance to assure it fairly informs the patient and properly protects his interests.

(c) Each admission to a hospital shall be treated as separate and distinct for the purposes of an agreement to arbitrate, but a person receiving outpatient care from a hospital or clinic or a member of a health maintenance organization may execute an agreement with the hospital which provides for continuation of the agreement for a continuing program of treatment or during continued membership.

(d) The arbitration board shall consist of three arbitrators: one arbitrator designated by the plaintiff or plaintiffs, one arbitrator designated by the defendant or defendants, and a third arbitrator designated by mutual agreement who shall serve as chairman of the board. If the parties cannot agree on the third person, the court will provide a list of three or more persons who might serve as chairman of the arbitration board, which shall be furnished by the attorney general. Plaintiff or plaintiffs together and defendant and defendants together may each strike one or more names from the list, so after each side has done so, at least one name remains on the list, providing a basis for the final selection by the court.

(e) The attorney general shall prepare a list of panelists consisting of lawyers or other persons qualified to serve as chairmen of arbitration boards. They shall be selected on basis of their technical expertise, judicial temperament, and capability of impartially acting on malpractice claims. The attorney general shall submit a list of at least three names of panelists whenever requested to do so by the court along with detailed biographical information on each panelist.

(f) Each member of the board shall receive reasonable compensation to be paid by the court based on the extent and duration of services rendered. The court shall also pay the costs of experts required by the board, to a maximum of $150/day for each of 3 experts for each party.

(g) The court shall specify the shortest practical deadline for completion of the work of the arbitration panel, taking into account all the circumstance and the nature of the case.

(h) The provisions of the Uniform Arbitration Act, AS 09.43.010 - 09.43.180, apply to arbitrations under this section insofar as they are applicable and do not conflict with the provisions of this section; arbitrations under this section shall be conducted in accordance with any rules of court which may be adopted.

(i) It shall be a condition of the arbitration agreement that the results are binding on both parties

* Sec. 15. AS 09.55 is amended by adding a new section to read:

Sec. 09.55.535. EXPERT ADVISORY PANEL. (a) In any action for damages due to personal injury or death based upon the provision of professional services by a health care provider, the court shall establish a three-person expert advisory panel in accordance with this section. When the action is filed the court shall, by order, determine the professions or specialties to be represented on the expert advisory panel and shall advise each party of the professions or specialties to be represented, giving the parties the opportunity to object or make suggestions. The court may in its discretion conduct other preliminary proceedings relative to the composition of the panel as it considers appropriate.

(b) The expert advisory panel may compel the attendance of witnesses, interview the parties and physically examine the injured person if alive, consult with the specialists or learned works they consider appropriate, and compel the production of and examine all relevant hospital, medical, or other records or materials relating to the health care treatment. The panel may meet in camera, but shall maintain a record of any testimony or oral statements of witnesses, and shall keep copies of all written statements and opinions it receives. Not more than 30 days after selection of the panel, it shall make a written report to the parties and to the court, substantially answering the following questions in addition to any other question which the court puts to the panel:

(1) What was the medical complaint or condition for which the person sought or was brought to medical care?

(2) What would have been the likely course of the complaint or condition without the medical care?

(3) Was the care appropriate?

(4) Did an injury arise from the medical care?

(5) What was the injury?

(6) Is the injury stable; or will it improve or become worse?

(7) What specifically caused the injury?

(8) Was the injury caused by negligence?

(9) Is the outcome different than would otherwise have been expected?

(c) In any case in which the answer to one or more of the questions under (b) of this section depends upon the resolution of factual questions which are not the proper subject of expert opinion, the report shall so state and may answer questions based upon hypothetical facts that are fully and completely set out in the opinion. The report shall include copies of all written statements, opinions, or records relied upon by the panel and either a transcription or other record of any oral statements or opinions; shall specify any medical or scientific authority relied upon by the panel; and shall include the results of any physical or mental examination performed on the plaintiff. Each member shall sign the report and his signature constitutes his adoption of all statements and opinions contained in it; however, a member may, instead of signing the report, submit a concurring or dissenting report which complies with the requirements of this subsection, and a member may not attest to any portion of the report as to which he is not qualified to give expert testimony.

(d) No discovery may be undertaken in a case until the report of the expert advisory panel is received. However, the court may relax this prohibition upon a showing of good cause by any party. If the panel has not completed its report within the 30-day period prescribed in (b) of this section, the court may, upon application, grant it an additional 30 days.

(e) The report of the panel and any dissenting or concurring opinion are admissible in evidence to the same extent as though its contents were orally testified to by the person or persons preparing it. The court shall delete any portion that would not be admissible because of lack of foundation for opinion testimony, or otherwise. Either party may submit expert testimony to support or refute the report. The jury shall be instructed in general terms that the report shall be considered and evaluated in the same manner as any other expert testimony. Any member of the panel may be called by any party and may be cross-examined as to the contents of the report or of his dissenting or concurring opinion.

(f) Members of a panel are entitled to travel expenses and per diem in accordance with state law pertaining to members of boards and commissions for all time spent in preparing its report and matters incidental to it. If a panel member is called upon as a witness at trial or upon deposition, he is entitled to payment of an expert witness fee. All expenses incurred by the panel shall be paid by the ~~state~~ court. However, in any case in which the court determines that a party has made a patently frivolous claim or a patently frivolous denial of liability, it shall order that all costs of the expert advisory panel be borne by the party making that claim or denial.

(g) Parties to the case and their counsel may not initiate communication out of court with members of the panel on the subject matter of its inquiry and report or cause or solicit others to do so, except through ordinary discovery proceedings.

AMENDMENTS TO WORK DRAFT

FCCS SCS CSHB 574

5/11/76

page 32, line 15-16

...a board of governors the first members of which are appointed...

page 33, line 3-4

Upon the expiration of the term of governor, those insured by the corporation shall elect a successor...

Page 33, line 8

...serve, the board of governors shall appoint...

line 11

strike all of subsection (d)

line 16

...the corporation at rates to be established by the board of governors in the plan of operation.

page 35, line 24
through page 36, line 8

Strike all of section (3) and insert in lieu:

(3) Use due diligence to procure reinsurance from private insurers or reinsurers or public medical malpractice reinsurance facilities for any or all of the liability insured by contracts issued by the corporation. If after the exercise of due diligence, reinsurance for claims reported within three years after date of occurrence cannot be procured at reasonable rates from private insurers or reinsurers the corporation, through the board of governors may so certify to the director and subject to the approval of the director, that portion of the risk for claims reported within three years after date of occurrence not reinsured in private insurers or public medical malpractice reinsurance facilities, shall be provided by the health care providers Joint Underwriting Association established under secs. 110-180 of this chapter.

Page 36, line 9

(4) charge a premium and special assessments for the protection...

Page 37, line 12-19

strike all of subsection (2) and insert in lieu:

(2) cede or assume reinsurance for any or all risk which the corporation is authorized to insure directly.

Page 40, line 18

strike subsection (14) and insert in lieu:

(14) rates may include special assessments of insureds to cover newly reported claims for which insufficient reserves have been established.

Page 41, line 18-20

certifies to the director that after due diligence the Board of Directors could not procure reinsurance from private reinsurers or from public medical malpractice reinsurance facilities for claims reported within three years after date of occurrence and if the director finds, after public hearing that a market for reinsurance is needed and providing it through the association is in the public interest.

Page 46, line 8, "upon" to line 22 "used"

Strike

line 23

...respect of policyholders and initial operating costs, and many not...

Page 47, line 6

...notes [security instruments and pledge agreements] held by...

line 10

...equals [$6,000,000] $3,000,000

Licensing + Discipline Provisions

Example

* Sec. 6. AS 08.20 is amended by adding a new section to read:

Sec. 08.20.175. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 170 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education or health the authority to practice chiropractic should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure or facility, require additional education or training, ~~or~~ and revoke or suspend a license.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

Colletta & Rosky

Suggested Amendment for Senate Bill SCSCSHB 574 am S

Page 19 Section 18.20.045 - to replace Subsection (b)

Suggested Amendment for Section 18.20.045 - House Bill CSHB 574 am page 16

Addition to House Bill:Amendment would be added as subsection (a)

The Director of Insurance or his designee shall waive the requirement in (a) of this section for a hospital if the hospital furnishes satisfactory evidence of having other liability insurance providing coverage in amounts equal to or which exceed those specified in (a) of this section, and at a premium rate which does not exceed the premium rate offered by the Health Care Providers Indemnity Corporation for an equal amount of liability coverage. A waiver granted under this subsection may extend beyond the normal expiration date of the hospital's insurance policy or until such time as the policy's premium rate exceeds that which would be offered by the Health Care Providers Indemnity Corporation for an equal amount of coverage.

This should be added to BS. 18, 20.005 —

750
400

(c) The Director of Insurance may waive the requirement in (a) of this section or permit a deductible provision in the policy for a hospital, if the hospital:

i) can demonstrate to the satisfaction of the Director of Insurance that without indemnity from any other source, the hospital has the financial resources to discharge the maximum potential exposure to the hospital by reason of the deductible provision.

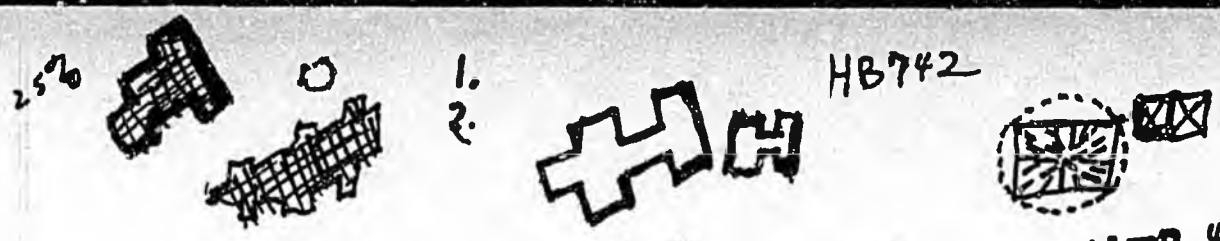
ii) agree to permit the Health Care Providers Indemnity Corporation to provide defense of any claim brought against the hospital if any health care provider insured by the corporation is also involved in the claim and to reimburse the corporation for a prorata portion of the costs of defense.

iii) provides the Health Care Providers Indemnity Corporation with notice of any claim brought against it.

Mr. Richard Block

Terry Gardiner

Is this
true?
Nils



Medical Malpractice

1. Sent of Committee Work & Commission
   Time to Move out even though not perfect
   14 Sessions Meeting 27 com hearings
   5 drafts

Commission legislation was base of Comm. Work

HB 575 & HJR 48 – opposition in Com. Agreed tentatively to work on concept of Residency Req – out next week.

Key Changes.

1. A. Mandatory Physicians & Hosp.
   B. Insurance coverage Mandatory other professions
   C. Mechanisms to cover others in crisis
   D. Continuing Educations for Physicians to improve quality of Med Care & reduce Med Mal.
   E. Risk Management Program for Hospitals

Expert Advisory – Expert + Unbiased opinion to parties of a suit; then court & jury on Medical Questions only

discretion.

Do effort cut insurance costs - Periodic payments / lump sum
Deduction of Collateral payments in injury

1. A. Informed consent to protect both patient & Physician
   B. Good Samaritan statute cleanup
2. C. Immunity for review Organizations in Hospitals encourage improvement of Medical services in Hosp.

Health Care Providers Indemnity Corporation

Amended to include 2 consumers & 1 member of Medical clinic to Rep their interests

Retained Retroactive coverage to Dec 31, 1974 ⅓ physicians have no insurance

Provide for Management services by Insurance 6 for example to run the MIC "Not adding another state ~~Rep~~ agency"

Rates will be based on Medical Revenue adding on other factors of Risk & Practice such as: ① Member of a clinic ② History of Mal Practice Claims ③ Amount of time practicing

State loan at 7¾% ↗ repaid over 4 years to reinsure fund if needed. Estimate initial loan of 250,000 for start up - Claims will not come in for several years actually $5 Million loan limit - Could raise in future if necessary

1. 2 Consumers on Boards
2. Continuing Ed for All prof.
3. Advance Payment
4. Ad Damnum
5. fix Collateral exhaustion
6. Change Gov appointment no panels

JUA Authority for All Insurance problems

Wisconsin did in 1967 - utilized when malpractice crisis came up

Dept of Commerce Report to Legis Jan 1

1. Activities + any changes of Prof licensing Boards in 57[illegible]
2. Any problems of Ins coverage + rates of hospitals and other health care providers outside physicians
3. implementation of continuing education 8.64.312
4. Use of voluntary arbitration [illegible].55.535
5. " of Expert advisory panel 9.55.536
6. Hospital exemption 18.20.045
7. implementation of risk management for hospitals 18.20.07[illegible]
8. MIC
   A. rates of insurance by classification of physician
   B. extent of physician coverage
   C. Financial condition of MIC losses reserves etc.
      A. Breakdown of premium dollar
      B. excess coverage or other ins provided
   D. Comparison of Alaska to other state ins rates
   E. Disposition of any claims against MIC
   F. Any loan received from state + payback

- profit on the overall - not specific -

1. controllable portion
2. Reserves in bill.

3	3
- Primary coverage -	Reinsurance
A & T 3	A & T 3
AAA Primary coverage	Reinsurance

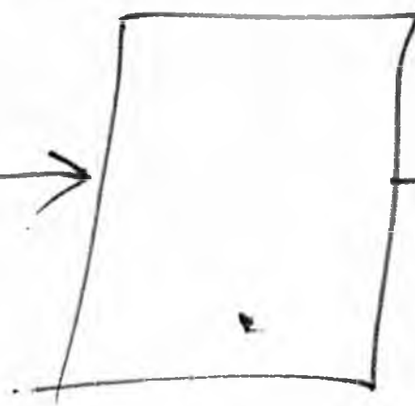
(00) Insured

Primary

Lloyds



5,000



1,000,000

FACULTATIVE

500 (INSUREDS



COLORADO



FACULTATIVE (individual)

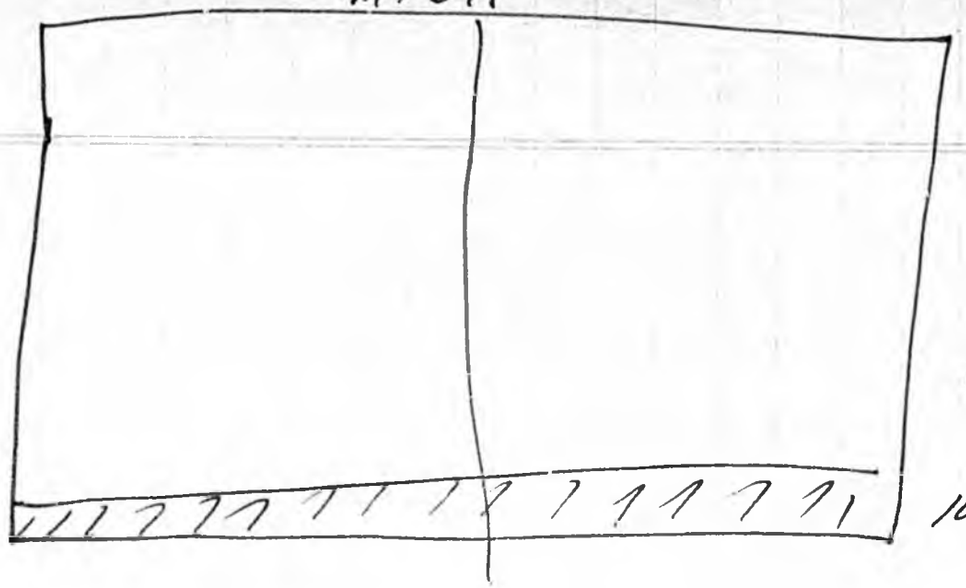
TREATY (whole book or class of business)

QUOTA SHARE 50%

EXCESS. per occurrence

STOP LOSS AGGREGATE — total loss on entire book in addition to treaty recoveries

MICA

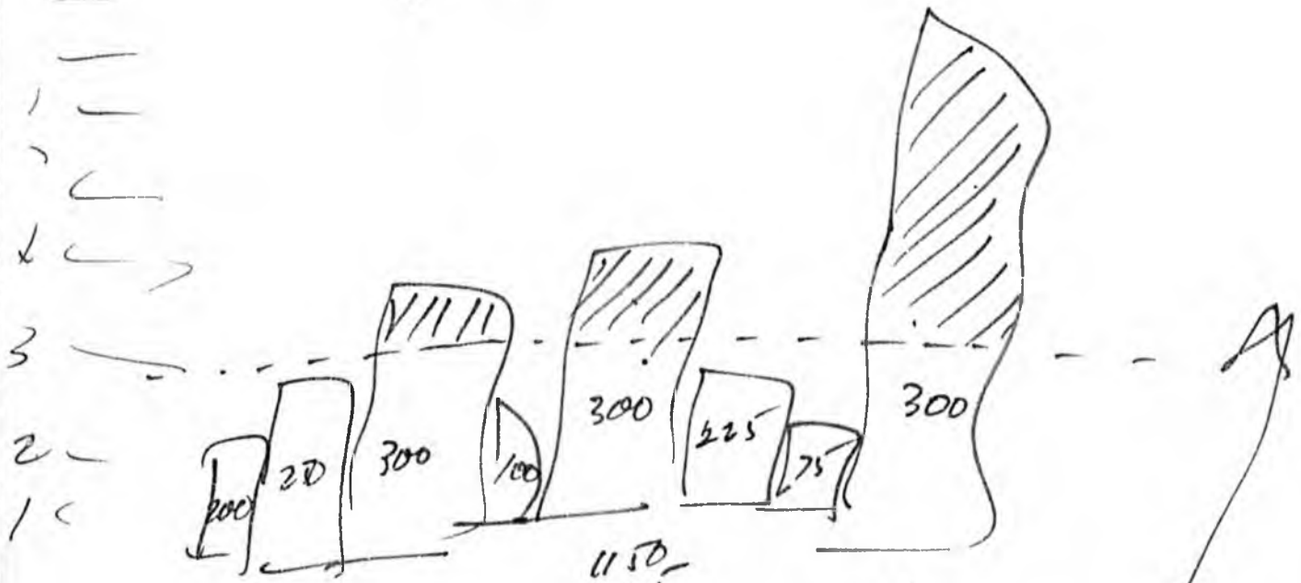


100% - Q.S. 1,000,000

100% Q.S. 100/300

1,000,000

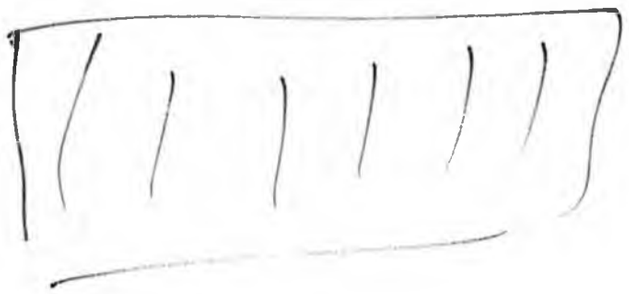


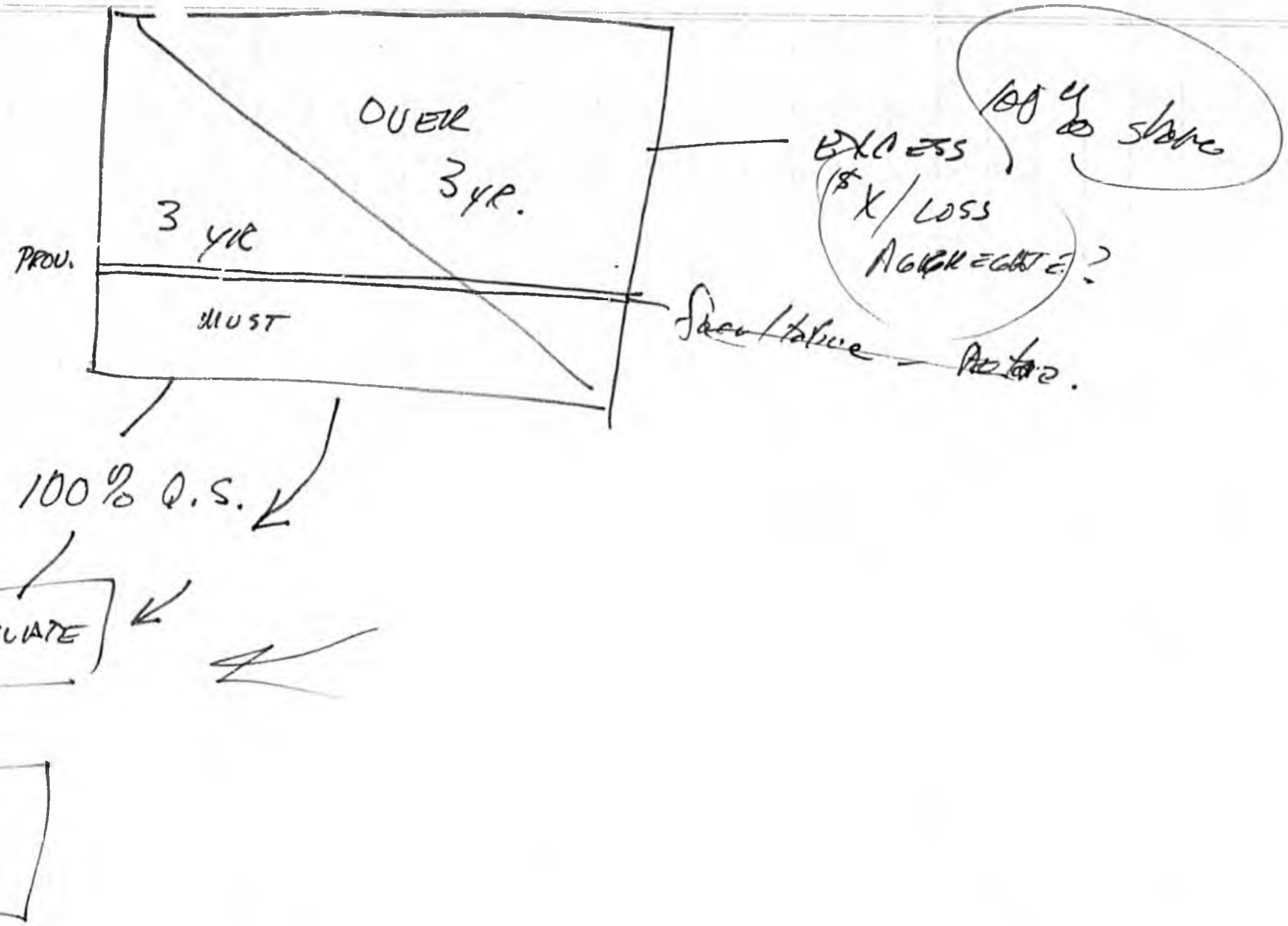


1150
225
1375
375
1750

$1,750,000

$11,000,000




OVER
3 yr.
3 yr
PROV.
MUST
EXCESS
$ X / LOSS
AGGREGATE ?
100% Q.S.
PRIVATE
1 U.A.

Alaska State Medical Association 3-8-76

574

CONCEPTS INCLUDED

	HB	SB
1. Investigative powers to licensing boards p.1; p.1	X	X
2. Adding two lay persons to boards Adopt Senate p.1-9		X
3. Broader powers for boards p.1-9; p.2-10	X	X
4. Immunity for boards p.39		X
5. Continuing education for physicians p.4	X	
6. Mandatory insurance for all providers p.1-9,16	X	
7. Mandatory insurance only for physicians & hospitals p.4,19		X
8. Waiver for insured physicians until 1-1-77 p.4; p.4	X	X
9. Waiver for insured hospitals until 1-1-77 p.19		X
10. Expert Advisory panel	X	X
a. Three person p.10	X	
b. Always used; discovery stayed p.10,12	X	
c. At option of arbitration board or court p.11,13		X
d. Specific questions to answer p.11	X	
e. Opinion admissible on appeal p.12; p.14	X	X
11. Mandatory nonbinding arbitration p.10		X
12. Voluntary binding arbitration p.12		X
13. Burden of proof p.13; p.15	X	X
14. Advance payment not prejudicial p.16		X

		HB	SB
15.	Ad damnum prohibited p.16		X
16.	Awards itemized by category of loss p.13; p.16	X	X
17.	Periodic payment allowed p.13; p.16	X	X
18.	Periodic payments increased by consumer price index p.14	X	
19.	Collateral source substracted from award p.14; p.16	X	X
20.	Collateral coverage protected from exhaustion p.17		X
21.	Jury instructions as to proof p.14; p.17	X	X
22.	Oral contracts invalid p.14	X	
23.	Informed consent p.14; p.17	X	X
24.	Emergency aid p.16; p.18	X	X
25.	Risk management in hospitals p.16	X	
26.	Immunity for review organizations p.17; p.19	X	X
27.	Indemnity Corporation created by state p.22; p.24	X	X
28.	Occurrence malpractice insurance p.25; p.27	X	X
29.	Retroactive insurance for 1975 gaps p.25; p.27	X	X
30.	Provision for excess coverage p.26; p.29	X	X
31.	Rates for physicians tied to medical revenues p.28	X	
32.	Rates for hospitals tied to number of beds p. 28	X	

		HB	SB
33.	Rates related to 3 year reserving for losses p. 28; p.31	X	X
34.	Premium tax p.30		X
35.	Installment payment of premiums p.29; p.32	X	X
36.	Reinsurance of basic insurance in private market p.38		X
37.	Reinsurance of excess insurance in private market p.26; p.28	X	X
38.	Statistic gathering and reporting p.27; p.30	X	X
39.	Revolving loan fund for Indemnity Corporation (7%) p.29	X	
	for JUA (6%) p.38		X
40.	JUA p.32		X

THE ALASKA CLINIC

A PROFESSIONAL CORPORATION

825 L STREET

ANCHORAGE, ALASKA 99501

907-279-0622

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DEPARTMENT OF ADMINISTRATION
MAX KERSBERGEN, ADMINISTRATOR
JAMES HOONCE, BUSINESS MANAGER

We, at The Alaska Clinic in Anchorage, believe that the clinics in Alaska should be considered separately from the other physicians in the matter of the malpractice insurance problem. There are a lot of different reasons why we believe this and the first of these reasons is that these groups currently do have their malpractice insurance in effect and will probably continue to be able to do so.

Other reasons probably require considerable discussion and will be as follows: We next believe that the better medical care can be and is provided by the groups in practice and the insurance companies recognize this and are better able to monitor the performances of these groups to ensure that they are better risks for malpractice coverage.

Other reasons will probably be much more related to the particular differences presented by The Alaska Clinic in Anchorage as you will see. The biggest problem of all will be the particular hardships of this mandatory exclusive and/or premium based on gross income. To begin with, The Alaska Clinic has been in practice and has had a good record since 1947. Over the years, this Clinic has attempted to meet the requirements of the community to the best of its ability and it has, particularly during the past 15 years, made considerable progress in providing extensive services to the public in this area. The Clinic, together with the rapidly growing and expanding offspring, Anchorage Community Hospital, represents a major segment of health care in the Anchorage area. Together these two organizations provide employment for over 500 individuals currently, and with the expansion program already well under development in a year or so, should anticipate almost doubling this number of employees. Certainly by this time, it should represent one of the larger private businesses and industries in the Alaska area, certainly one of the very largest that is locally directed and administered and controlled.

We believe that it is an over-simplification to try to equate the situation of the solo-practitioner, with no employees and little overhead with a member of The Alaska Clinic who shares in the economic and professional responsibilities of a multi-million dollar medical center with hundreds of employees.

It works out that the overhead per month for The Alaska Clinic member is approximately $20,000 before his own salary begins. This annually amounts to the neighborhood of $240,000 excluding his own salary. If one were using a percentage of gross income to determine the amount of insurance costs in this instance for a member of The Alaska Clinic paying 5% of gross revenue, his bill would be over $12,000 before any money is paid for his premiums for his own personal insurance. The Clinic already has its own problems to deal with that are of great concern to us. One of the biggest problems is keeping its staff of physicians and continuing to develop to meet the responsibilities it has coming. We cannot pay high enough salaries to our members to compete with the solo practitioners across town. We already have lost numbers of our members that are now practicing competitively with us in town because they are able to earn considerably more money in that capacity than they were able to earn as Clinic members. As a matter of fact, in order to obtain some types of special services in the Clinic, we are currently having to pay as much as 50% more salary per member in some categories than for the regular full-time older members of the Clinic themselves. The good record of the Clinic with its relatively lower costs of insurance in the past and presently is one of the few inducements to maintain our staff membership.

We believe that the insurance companies have provided great service in the past to the public by preventing malpractice to a great extent. Companies have recognized differences in the risk of various services as well as risks between various physicians. They have regulated and prevented a great amount of malpractice by insisting on premiums high enough to prevent work that is not up to par or procedures done in some areas where there are unnecessary risks. It really sounds like the plan now is to deny this very important regulating mechanism and perhaps even to require that many physicians support procedures that they are very much opposed to. We believe that the insurance companies have been able to do a better job in this important service to the public that the physicians have been able to do for themselves. The members of The Alaska Clinic view the proposed legislation as highly detrimental to the Clinic and a serious obstacle for its entire future development. We can even see it leading to the ultimate failure of the entire project. It is absolutely necessary for the Clinic to expand to meet the demands of its increasing responsibilities We believe that the Clinic has assumed a major responsibility in development of medical facilities that will be important to the entire State. A change of the present malpractice coverage makes it impossible for us to proceed.

We can speak only for our own group and we do not have any data on what the impact will be for the other clinics involved. We can say with assurance, however, that it will be a disaster to the future development of the new medical center under construction, if The Alaska Clinic is drawn into any mandatory or exclusive insurance program on a Statewide basis. We also object to a program of this type based on gross revenues as being unreasonable and unfair.

We advise that the Clinic be permitted to maintain their own malpractice insurance program with its built-in standards review and risk control. It is a nationwide program with over a hundred clinics participating. We believe it is in the the best interest of the people of the State to encourage group practice wherever possible.

_____,M.D.
Vernon A. Cates, M.D.

VAC/ds

Malpractice file

R. E. ROBERTSON (1885-1961)
F. O. EASTAUGH
J. B. BRADLEY
W. G. RUDDY
L. B. JACOBSON
R. B. BAKER (ANCHORAGE)
M. T. THOMAS
L. J. BARKER (ANCHORAGE)
J. F. CLARK
P. M. HOFFMAN
J. P. TANGEN
A. G. DODGE (ANCHORAGE)

OF COUNSEL
M. E. MONAGLE

ROBERTSON, MONAGLE, EASTAUGH & BRADLEY
ATTORNEYS AT LAW
200 NATIONAL BANK OF ALASKA BUILDING
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JUNEAU, ALASKA 99802

ANCHORAGE OFFICE
SUITE 310, ALASKA MUTUAL SAVINGS BANK BUILDING
P. O. BOX 679
ANCHORAGE, ALASKA 99510
PHONE (907) 277-6693
TELEX: 090-26-486

PLEASE REPLY TO
☒ JUNEAU OFFICE
☐ ANCHORAGE OFFICE

A PROFESSIONAL CORPORATION

March 8, 1976

The Honorable Terry L. Gardiner
Alaska State House
of Representatives
Pouch V
State Capitol Building
Juneau, Alaska 99811

Dear Terry:

On behalf of the American Life Insurance Association, I have tried, to no avail, to convince the members of the Senate Commerce Committee of the seriousness of the problems which will result if life insurance companies which write disability insurance are included in a JUA. I have enclosed two letters that I wrote to Senator Kerttula and the members of the Commerce Committee. I am also enclosing the policy statement of one of the associations of life underwriters and agents within the State. They are concerned, as they have every right to be, that their companies will simply be unable to write disability insurance within the State. I hope that the JUA is not found to be necessary by the Free Conference Committee on the Malpractice Bills, but if it is, I certainly hope that it will not include life insurance companies who write disability insurance.

I will be out of town until Tuesday evening, but I have asked the life agents to contact you concerning this problem.

Sincerely,

M. T. THOMAS

MTT:kh
Enclosures



FAIRBANKS MEDICAL & SURGICAL CLINIC, INC.

FOUNDED IN 1932

522 FIFTH AVENUE P.O. BOX 1330 FAIRBANKS, ALASKA 99707 907-452-1761

Representative Terry Gardiner March 10, 1976
Pouch V
Juneau, Alaska 99801 Re: Medical Malpractice

Dear Mr. Gardiner;

Just a note to express my recommendations about medical malpractice insurance.

I object to mandatory membership if it means losing the group insurance I now possess.

I object to an arbitration board — I prefer an adjudication board.

I hope the premiums will be based on a scale relative to type of practice and on a reasonable rate of premium. I am a psychiatrist; my present premium is $1,500 that would be 1% of $150,000 gross — if at all possible. Please do not exceed that level of cost. I cannot work harder than I do (65-70 hours per week) fifty weeks per year.

Thank you.

Sincerely, John C. Morris MD

General Surgery
J. K. Johnson, M.D.
G. B. Murphy, Jr., M.D.
D. O. Montgomery, M.D.

Psychiatry
John C. Morris, M.D.

Obstetrics - Gynecology
J. M. Ribar, M.D.
J. A. Worrall, M.D.
J. N. Bertelson, M.D.
Dorris K. Heilman, M.D.

Ophthalmology
G. W. Sullenger, M.D.

Internal Medicine
G. W. Straatsma, M.D.
G. L. Walkup, M.D.

Radiology
Abram Cannon, M.D.

General Practice
J. M. Ribar, M.D.
R. D. Hanek, M.D.
C. W. Townsend, M.D.
H. E. Merz, M.D.

Pediatrics
N. F. Deely, M.D.
H. J. Jordan, M.D.

Urology
R. W. Taylor, M.D.

Orthopedics
E. Lindig, M.D.
P. B. Haggland, M.D.
F. Kelly, M.D.

Administration
J. P. Colwell
J. R. Hlinka

A PROFESSIONAL CORPORATION

February 24, 1976

Honorable Jalmar M. Kerttula
Chairman
Senate Commerce Committee
Pouch "V"
State Capitol Building
Juneau, Alaska 99811

Re: CSSB 651

Dear Senator Kerttula:

Director Block was kind enough to provide me with an advance copy of the draft language that he had suggested to your committee for inclusion in Sec. 21.88.170 of the subject malpractice bill, which was found on page 22 of the bill as originally introduced. I have sent that to the American Life Insurance Association and urged them to seriously consider whether this amendment to the bill would allow life insurance companies to be members of the proposed Joint Underwriting Association, without violating the laws of their states of incorporation. The staff of the Association has carefully reviewed the proposal in the hope that we would be able to cooperate in framing language that would avoid the problems that I brought to your committee's attention in earlier letters and testimony. They have concluded that there is no apparent way in which life insurance companies can be members of a JUA such as the one proposed, consistent with the laws under which they must operate from the states in which they are incorporated. I will set out the reasons that this is so.

It is clear from the bill that the Joint Underwriting Association is intended to write malpractice insurance. The purpose of the association is stated as being "to provide a market for malpractice insurance to the corporation . . ." Of course, it is a writing of insurance slightly different than that which goes on on the open market, in that the statute would provide that no profit could be made on such insurance, and would further provide some attempted guarantees that the insurance companies would not suffer permanent loss by participating in the JUA. Nevertheless, the entire reason for being of the Joint Underwriting Association, is to provide a substitute for voluntary, open market, reinsurance contracts. The life insurance companies, which are expressly prohibited in most states of incorporation from writing any casualty insurance in any jurisdiction, cannot do indirectly what they are prohibited from doing directly.

One of the strongest underlying policy bases for statutes prohibiting life insurance companies from writing casualty insurance, is to insulate the life insurance companies and their policyholders from the less predictable fluctuations inherent in liability insurance. All states, including Alaska, set up separate, detailed, and very conservative, reserve and underwriting laws for life companies, and the integrity of that system could be seriously affected if life insurance companies were in any way involved in casualty insurance. I point this out, not to suggest that writing casualty insurance would be any less a violation of the law for those companies if they did not incur losses, because a violation of the law would still be a violation of the law, but simply to indicate where the law had its origin. Nevertheless, it is also true that the bill now before you would have the potential of affecting the reserves and surplus of life insurance companies in the way anticipated by such statutes.

We realize that every attempt has been made in Senate Bill 651 to minimize the chance that a member company will incur a permanent loss by reason of membership in the JUA. But if it were true that the bill provided absolute guarantees that there would be no long-term loss, then no one should really mind if the life insurance companies are exempted, since (a) their participation would not increase or decrease the cost burden on any company, at least not for any length of time, and (b) the life insurance companies have no experience or management expertise in casualty insurance, and would, therefore, add nothing in the way of management ability to the board of directors. In fact, the JUA would have no reason for existence, as compared with a simple mechanism to assess premiums against health care providers, except for the fact that the member companies are obligated to loan money from their surplus accounts to underwrite malpractice insurance losses. Every attempt is made to allow eventual recoupment of those losses, by authorizing increased premiums in following years and authorizing pass through of the assessments made against the companies as taxes, to the holders of the companies' contracts of insurance. But the increased premiums, being one year or more behind, may never cancel out all borrowings. And whether the assessments can be passed on to holders of contracts depends upon market conditions and is not wholly within the control of the companies. What is sought, then, is a guarantee that JUA member companies, including life companies, will ultimately subsidize malpractice insurance if that becomes necessary. That may be a sound policy for those who are legally allowed to subsidize or to write casualty insurance. Life insurance reserves and surplus have been and are insulated from swings in casualty insurance experience, for good reason, by the law of a majority of our sister states. Such companies cannot participate in this Joint Underwriting Association.

It would be erroneous to compare inclusion of life companies in this proposed JUA with insolvency assessments under the Alaska Insurance Guaranty Association Statute, AS 21.80.010 et seq. That statute, and specifically AS 21.80-.020 and 21.80.180(6), exempts life insurance companies from

participating in that association. The National Association of Insurance Commissioners has drafted two separate solvency guarantee bills, one of which will include life companies and one of which will include casualty companies. I am told by the staff of the American Life Insurance Association that no state assesses life companies for casualty company failures, or vice versa. In the case of insolvency pools, or insurance guarantee associations, then, we have another example of the insulation of the life insurance business from the quite different and more volatile casualty insurance business. This deep-seated policy of the law is the undoubted basis of Dr. Denenberg's testimony that life insurance companies should be excluded from any malpractice underwriting association.

The life companies, the American Life Insurance Association, and this firm, have always attempted to work cooperatively with Director Block, his predecessors, and the Legislature in resolving problems arising within the insurance industry. If the present problem could be resolved by charter amendments, even by companies not incorporated in Alaska, I am sure that many of those companies would be willing to consider such charter amendments in order to be able to write insurance in this state. What this proposed JUA provision would require, however, is the repeal or amendment of long-standing state insurance code provisions in New York and approximately thirty-five other states. Even if that were possible or reasonable, until it was accomplished, the life insurance companies now writing insurance in Alaska would be faced with repeated and continuing violations of the respective insurance codes under which they are incorporated. We ask that you remove them from that untenable position.

Very truly yours,

M. T. THOMAS

MTT:kh

cc: Committee Members

RECEIVED
M.
ROGER
EAST

POLICY STATEMENT

SOUTHERN ALASKA LIFE UNDERWRITERS ASSOCIATION

ALASKA GENERAL AGENTS AND MANAGERS ASSOCIATION

ALASKA SOCIETY OF CHARTERED LIFE UNDERWRITERS

Subject: HB 594, SB 651 and other similar bills on Malpractice Insurance

Legislation forming joint underwriting associations for medical malpractice insurance and including life insurance companies writing disability coverage is pending before the state legislature. Although we recognize there are many serious problems with providing adequate malpractice insurance coverage, we are opposed to life insurance companies who write disability insurance being included in the joint underwriting association. Life insurance companies do not write property and casualty insurance. In most, if not all cases, life insurance company charters prohibit the writing of property and casualty insurance. Including life insurance companies in malpractice joint underwriting associations will create a conflict of law situation between the State of Alaska and the states where various life insurance companies are domiciled.

Further we oppose the inclusion of life companies as we do not believe that it is fair to force life companies into a joint underwriting situation for property and casualty is a clear and distinct different field of insurance. It is the same as forcing an auto insurance company to enter a joint underwriting association for life insurance.

We believe that life companies are willing to take their share of the burden of an emergency nature relating to life insurance or to disability insurance.

To the best of our knowledge no state has enacted a law bringing life insurance companies into the medical malpractice joint underwriting associations. Several have introduced legislation along that line but all have exempted life companies. We do not fully know what the reaction of the life companies will be to such an inclusion. It may be they will withdraw entirely from operating in Alaska or they may withdraw from writing disability coverages. In either case the market for Alaska citizens to purchase life insurance or disability coverages will be substantially limited if the companies follow either position. We know the companies are in opposition to this type of legislation but are not certain as to the action which they will take.

file Malpractice

VALLEY HOSPITAL
BOX H
PALMER, ALASKA 99645

March 9, 1976

Al Ose
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99801

Dear Al:

Thank you for the opportunity to express our thoughts on CSHB574. By the time this letter reaches you a bill will probably have passed the Senate and the House and Senate versions will be before the free conference committee. We have not seen a copy of the Senate version yet but plan to acquire a copy and compare the two bills when a Senate version is available.

CSHB574 looks like a very good bill to us - it seems to have compromised most of the resistance but yet still maintained a legal structure that will assist greatly in reducing the malpractice problem. You asked specifically about the expert advisory panel protion of the bill. In talking with the physicians and the hospital's Board of Directors we feel the expert advisory panel is one of the major sections of the bill and as it is written in CSHB574 seems to be very reasonable to us. The expert advisory panel is very important as a screening mechanism. As you know, because of the contingency fee incentive attornies and unhappy patients often file a nuisance suit against a doctor or a hospital just to see if the insurance company will make a cash settlement out of court. The advisory panel provided for in CSHB574 would inform the indemnity corporation, the court, the plaintiff, and the defense whether or not there was merit to the case. The expert advisory panel would also provide the expert testimony always needed but often hard to get in malpractice cases. The expert advisory panel is a very important cost containment mechanism that we feel is necessary in controlling premium costs.

There are a number of other topics we would like to see covered in CSHB574 but we understand that we can't have everything so we would like to heartily endorse and support the bill as it is in its present form.

There are two physicians in Juneau presently representing the Alaska State Medical Association (Richard Witt, M.D. and Rodman Wilson, M.D.) that the physicians and hospital here respect and trust greatly as a voice for Alaskan hospitals and medicine. Both have studied the malpractice problem extensively and we feel have concern for the public as well as the health professions in their work to acquire a solution to our malpractice insurance dilemma. We hope that you will get to know these two individuals so that they may express to you our concerns in the malpractice insurance issue.

Thank you again.

Sincerely,

Robert G. Ogden
Administrator

RGO/kh

J

A PROFESSIONAL CORPORATION

February 4, 1976

Honorable Jalmar M. Kerttula
Chairman
Senate Commerce Committee
Pouch "V"
State Capitol Building
Juneau, Alaska 99811

Re: Membership of Life Insurance Companies in Joint Underwriting Associations

Dear Senator Kerttula:

When I appeared briefly before your committee last Saturday morning, I said that I would provide you more solid information concerning the nature of the legal impediments to JUA membership faced by life insurance companies, and the impact of that problem on the State of Alaska. This letter is to provide that additional information.

Commerce Department figures indicate that the five largest writers of disability insurance in the State of Alaska, among life insurance companies, were Aetna, Occidental, Travelers, New York Life, and United Benefit. Among them, they wrote premiums approximating 10 million dollars in 1972. In 1974, the five largest were Aetna, Continental, Pacific Mutual, Travelers, and New York Life, and those companies wrote approximately 11 million

dollars in disability premiums. In 1972, the last year for which the American Life Insurance Association has fairly complete figures, life insurance companies wrote a total of approximately 19 to 20 million dollars in disability premiums, compared to disability premiums by casualty companies of approximately 1.6 million dollars.

Approximately thirty-six states do not permit domestically incorporated life and health insurance companies to write casualty insurance, including malpractice insurance. Some of those statutes are very explicit in prohibiting the writing of casualty insurance by a company incorporated in their state, whether that insurance is written inside or outside the state of incorporation. Some other state statutes are not completely clear on the point, or are silent, but it is the opinion of the Association that in thirty-six states, the domestic companies are not free to write casualty insurance. To give specific examples relating to companies writing substantial insurance in Alaska, the New York Life Insurance Company is a domiciliary of New York. The New York Insurance Code, Sections 46 and 193, prohibit a life insurance company domiciled there from writing casualty insurance. The Continental Life Insurance Company is incorporated in Illinois, and Sections 616, 621, 651 and 720 of Chapter 73 of the Illinois Code, read together, likewise prohibit the transacting of casualty insurance business by life insurance companies domiciled there.

In response to your question as to what concessions have been made by life insurance companies in other states when responding to proposed legislation of this kind, I am told by the counsel for the American Life Insurance Association that Alaska is the first state to seriously consider inclusion of life insurance companies in Joint Underwriting Associations as a condition of doing business, and so the member companies and the Association have never been put in this position before.

I have spoken to Director Block concerning this problem since your hearing of last Saturday morning, and I understand that he did not believe that there was a

difference between the position that the life insurance companies find themselves in and that of Blue Cross. In the case of Blue Cross, it is apparently true that the company writing insurance in Alaska is domiciled in Washington, and apparently the company has made the determination that under Washington statutes they would be able to amend their charter or take other corrective action in order to be able to participate in a Joint Underwriting Association. That is not true of the life insurance companies, which are almost always incorporated in one state only, and simply admitted to write insurance in the remaining states. They are, of course, subject to the statutes and regulations of their domiciliary states, and as you have seen by the examples given above, that legal control of the domiciliary state extends to business written in Alaska or anywhere else.

I also understand that Director Block believed that the act of belonging to this proposed Joint Underwriting Association might not be the same as writing malpractice insurance, since he viewed membership in the Association as simply a method of exacting assessments, and not the writing of insurance as such. I cannot say whether calling the business transacted by the Joint Underwriting Association by a different name would in fact change the legal result, and I will seek further clarification from the Association on that point. It certainly is true, however, that as the bill is now drafted, the Joint Underwriting Association is set up explicitly to write re-insurance for the malpractice indemnity corporation, and I believe that Director Block agrees that as written the bill presents substantial problems, of the kind that I have been describing, to the company.

Although I was not present when Dr. Denenberg gave his recent testimony on malpractice matters, I understand that he recommended that life insurers not be included in any pooling or Joint Underwriting Association. The problems inherent in attempting to do so might, to a very large extent, offset the benefit of the proposed legislation, if it endangers the legal right and ability of life insurance companies to do business in this state. We are very sensitive to the fact that this is the same problem that was brought

to your attention last year, and that one of the entities complaining the loudest, namely Blue Cross, has now reconsidered and come to a different conclusion. We can only say that, with regard to the life insurance companies, the problem is very real, cannot be resolved by amendment of company charters, and deserves very careful consideration. I am sure that you and your Committee will give it that consideration, and I would, of course, be pleased to provide any further information that may be helpful.

Very truly yours,

M. T. THOMAS

MTT:kh

POLICY STATEMENT

SOUTHERN ALASKA LIFE UNDERWRITERS ASSOCIATION

ALASKA GENERAL AGENTS AND MANAGERS ASSOCIATION

ALASKA SOCIETY OF CHARTERED LIFE UNDERWRITERS

Subject: HB 594, SB 651 and other similar bills on Malpractice Insurance

Legislation forming joint underwriting associations for medical malpractice insurance and including life insurance companies writing disability coverage is pending before the state legislature. Although we recognize there are many serious problems with providing adequate malpractice insurance coverage, we are opposed to life insurance companies who write disability insurance being included in the joint underwriting association. Life insurance companies do not write property and casualty insurance. In most, if not all cases, life insurance company charters prohibit the writing of property and casualty insurance. Including life insurance companies in malpractice joint underwriting associations will create a conflict of law situation between the State of Alaska and the states where various life insurance companies are domiciled.

Further we oppose the inclusion of life companies as we do not believe that it is fair to force life companies into a joint underwriting situation for property and casualty is a clear and distinct different field of insurance. It is the same as forcing an auto insurance company to enter a joint underwriting association for life insurance.

We believe that life companies are willing to take their share of the burden of an emergency nature relating to life insurance or to disability insurance.

To the best of our knowledge no state has enacted a law bringing life insurance companies into the medical malpractice joint underwriting associations. Several have introduced legislation along that line but all have exempted life companies. We do not fully know what the reaction of the life companies will be to such an inclusion. It may be they will withdraw entirely from operating in Alaska or they may withdraw from writing disability coverages. In either case the market for Alaska citizens to purchase life insurance or disability coverages will be substantially limited if the companies follow either position. We know the companies are in opposition to this type of legislation but are not certain as to the action which they will take.

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JOHN E. KOLSTOE, CLU
MEMBER, MILLION DOLLAR ROUND TABLE
NATIONAL QUALITY AWARD

BOX AJ . . . . PALMER, ALASKA 99645
BUS: 745-3230 · RES: 745-3840

NEW YORK LIFE INSURANCE COMPANY

LIFE, HEALTH, GROUP INSURANCE,
ANNUITIES, PENSION PLANS

March 1, 1976

Rep. Nels Anderson Jr.
D-Dillingham, Room 118 Capitol
Juneau, Alaska 99801

Dear Rep. Anderson:

On the various proposals having to do with solving the medical mal-practice problem in Alaska there has been some suggestion of an insurance pool having all insurance companies licensed to do business with the state of Alaska sharing in the mal-practice risk specifically HB 594, SB 651.

I vigorously protest any such action and ask you to do what ever you can to impede such a move. While there may be a certain superficial appeal to such action it would not serve to the best interest of Alaska or Alaskans.

The many different fields of insurance are highly specilized. Most life insurance companies do no business what so ever in casualty or liability insurance which would include mal-practice. They do not have the facilities for this, they do not have the expertise nor the experience for such considerations.

Many large insurance companies such, as the New York Life which I represent, would be faced with a very serious diliemna should such an enactment come to be. My company and many others like it would be faced with a choice of entering into a business about which it has no interest and has no experience or knowledge, or discontining health and disability coverage, or removing itself from the state altogether. The likelihood is that several insurance companies would simply cease to do business in Alaska if the price for doing business here was also to be involved in medical mal-practice insurance. The results would be essentially as follows:

1. Thousands of Alaskans would be denied the opportunity to obtain life insurance coverage because of the sudden removal of several large insurance companies from the state.

2. The premium tax generated by these companies (which amounts to a considerable amount of revenue every year) would no longer be available to the state of Alaska.

3. The millions of dollars of investment capital which these companies invest in Alaska each year would undoubtably be curtailed.

4. Management and office personnel currently living in Alaska would find their offices closed.

5. Personally I would be faced with an unpleasant choice of either leaving my company or leaving Alaska. Neither of which appeals to me.

It is for these above captioned reasons that I would respectfully submit that you would take vigorous steps to be sure that the burden of the medical malpractice problems is not placed on the backs of life insurance companies where it does not belong.

Respectfully,

John E. Kolstoe

John E. Kolstoe, C.L.U.

JEK/lc
enclosure

P.S. I have enclosed a copy of a policy statement endorsed by three groups actively involved in the life insurance industry.

JOHN E. KOLSTOE, CLU
MEMBER MILLION DOLLAR ROUND TABLE
NATIONAL QUALITY AWARD

BOX AJ PALMER ALASKA 99645
Bus. 745-3230 · Res. 745-3840

NEW YORK LIFE INSURANCE COMPANY

LIFE, HEALTH, GROUP INSURANCE,
ANNUITIES, PENSION PLANS

March 3, 1976

Rep. Al Ose
D-Palmer
Room 203A Assembly Bldg.
Juneau, Alaska 99801

Dear Rep. Ose:

On the various proposals having to do with solving the medical mal-practice problem in Alaska there has been some suggestion of an insurance pool having all insurance companies licensed to do business with the state of Alaska sharing in the mal-practice risk specifically HB 594, SB 651.

I vigorously protest any such action and ask you to do what ever you can to impede such a move. While there may be a certain superficial appeal to such action it would not serve to the best interest of Alaska or Alaskans.

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JEK/lc
enclosure

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JOHN E. KOISTOE, CLU
MEMBER MILLION DOLLAR ROUND TABLE
NATIONAL QUALITY AWARD

BOX AJ PALMER, ALASKA 99645
BUS 745-3230 · RES 745-3840

NEW YORK LIFE INSURANCE COMPANY

LIFE, HEALTH, GROUP INSURANCE,
ANNUITIES, PENSION PLANS

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enclosure

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HB

574

file Malpractice

Alaska House of Representatives

POUCH V
JUNEAU
99811

P. O. BOX 9
KENAI
99611

HUGH MALONE

27 February 19 6

The Honorable Mike Bradner
Speaker of the House
Alaska State Legislature

Dear Mr. Speaker:

The House Finance Committee has reviewed Article 3 of CSHB 574. This article provides for the establishment of a revolving loan fund in the Department of Commerce and Economic Development, for the purpose of making loans to the medical insurance corporation established in the bill.

The loans would be made by the Department of Revenue from the General Fund. The loans under the section would be at seven percent interest for a maximum period of four years. The maximum that could be borrowed is $5 million. The loans are secured with corporation pledges.

The Committee examined the impact of Article 3 on the State's General Fund cash flow.

Testimony from the Department of Revenue indicates that whatever the amount of any loan, the effect on the General Fund is the same as an appropriation. The money is gone. The Department suggested an appropriation would be a more straightforward approach. Also, since a negative cash flow is projected for the state for a period before June 30, 1977, the amount loaned out will require increased short-term borrowing by the state ($125 million now projected).

The House Finance Committee recommends the loan fund approach. The reasons are:

1) The amount of the loan would be very small compared with existing loan programs, e.g. the V.A. loan program "runs out" of the general fund approximately $4 million per month.

2) Data from the House Judiciary Committee indicates malpractice insurance claims paid in Alaska average less than $500,000 per year, while premiums run in excess of $1 million. Thus the probability of ever using the maximum loan authorization is very small.

DATA ARE PLURAL

3) A loan is much more likely to be repaid than an appropriation and is much less of a subsidy.

I hope the information is useful to the House.

Sincerely,

Hugh Malone

HM/jb

File Malpractice

Malpractice Advisory

A year ago, the malpractice crisis was officially recognized nationwide. The St. Paul (Minn.) Fire and Marine Insurance Company was threatening to leave Maryland and Argonaut Insurance Company was getting ready to pull out of New York. Premiums were doubling and even tripling not only in states like California and Florida where the numbers of suits were multiplying and the dollar amounts of individual awards and settlements were topping $1 million, but also in states like Indiana and North Carolina where suits and high awards were relatively rare. In Michigan, two long-time carriers, Medical Protective and Shelby Mutual, were refusing to write new policies, although they still would insure old customers. It looked like a grim year ahead.

It was, and the outlook for 1976 is worse. St. Paul did, in fact, pull out of Maryland and Argonaut did withdraw from New York. Not only that, but St. Paul has in the past 12 months left 16 other states and Argonaut has pulled out or attempted to leave all states where it was the major carrier, including California, Florida, Idaho, Massachusetts, and Pennsylvania. (It may stay in Hawaii, where it makes a profit.)

MALPRACTICE: GRIM OUTLOOK FOR '76

No doctor can count any longer on finding policies at stable prices



Dr. Hedges at Juneau boat harbor

Several other major insurers, as of January 1975, such as Employers Insurance of Wausau and Lloyds of London, have either voluntarily dropped completely out of the malpractice insurance business or—like Signal Imperial of Los Angeles—have been forced out because of insolvency. About the only big companies writing new policies in more than a single state as 1976 got under way were St. Paul (only in the 33 states that will allow its controversial claims-made form), Medical Protective, Travelers, Hartford, and Aetna.

The list of states with problems either of availability or of exorbitant rates (anything under $10,000 for the highest risk categories is now viewed by many doctors as "cheap") has grown to include all but a handful—specifically Colorado, Georgia, Nebraska, and Oklahoma. Even in these states physicians are uneasy about their future.

Things have gotten so bad for Alaska's 270 physicians that about 30% of them are practicing without malpractice insurance. Doctors in Orange County in southern California are talking of going without insurance en masse if Travelers raises its premiums several hundred per cent this month, rates that would put orthopedists and neurosurgeons in the class paying $36,239. Other southern California doctors have threatened slowdowns if the situation doesn't improve.

Dr. Gary R. Hedges, a Juneau general surgeon who this year is president of the Alaska State Medical Association, says 13 of his city's 16 physicians—including himself—are practicing without professional liability insurance. The only new policies available, he says, are claims-made forms that, unlike St. Paul's, don't even guarantee "tail-end" policies for doctors who retire or switch plans.

"I'm not worse off without any insurance than I'd be with a policy like that," says Dr.

continued

MALPRACTICE LAWS IN THE 50 STATES AS OF YEAR'S END

(Entries printed in color denote proposed legislation not yet enacted)

*= proposed legislation *= Current laws

	Joint Underwriters Association	Self-insurance Plan	State Insurance Fund	Screening Committee or Arbitration (binding, unbinding)	Limit on Doctor's Liability ($'s 1,000)	MD-financed Catastrophic Fund	Tort Law Changes	Statute of Limitations (years after incident)	Limit on Lawyers' Fees (%)	Study Commission Established	Insurer Reports Claims to State Insurance Commissioner or Board of Medical Examiners	Major Insurance Carrier	Major Carrier's Rates for Orthopedists ($100,000/$300,000) (boldface denotes claims-made) 1/1/75	(1/1/76)	Legislature Meets	Comment
Alabama	★			★			★	2			★	Employers of Wausau	$1,692	($2,606)	5/4/76	Wausau withdrawing July 1977; ISO proposes rates up to $9,000.
Alaska	★		★	★		★	★	3	★[1]	★	★	Continental	$4,172	($4,172)	1/7/76	About 30% of doctors have no policies; individual premiums up to $40,000.
Arizona	★	★		★	★	★	★	2	N.J.[2]	★	★	Travelers	$3,621	($6,521)	1/13/76	Travelers withdrawing April 1976; Imperial in receivership; no other in sight.
Arkansas	★			★	500	★	★	2	N.J.			St. Paul	$1,686	($2,426)	1/12/76	Medical society hearing of more and larger malpractice suits.
California	★	★		★	★[3]		★	3	N.J.		★	Travelers	$7,200	($36,239)[4]	1/5/76	'Cataclysm' (due to price increases) expected in southern Calif. this month.
Colorado	★	★						2		★		Hartford	$3,122	($3,590)	1/7/76	Legislative thrust is strengthening board of medical examiners.
Connecticut					500		★	3	N.J.	★		Aetna	$5,258	($7,511)[5]	2/4/76	Doctors in droves joining medical society, which has state's only insurance plan.
Delaware	★			★			★	3	N.J.		★	Aetna	$6,297	($11,010)[5]	1/13/76	All of state's seven hospitals may lose coverage at end of year.
Florida	★	★		★	100	★	★	4		★	★	Self-insurance plan	$8,243	($8,243)[6]	4/6/76	Argonaut withdraws Jan. 1; self-insurance plan has 2,500 applicants.
Georgia	★			★			★	3		★		St. Paul	$1,530	($1,760)	1/12/76	Situation is stable.
Hawaii	★	★		★			★	6	N.J.	★	★	Argonaut	$5,616	($6,884)	1/21/76	Argonaut wants to remain in Hawaii, only state it makes a profit in.
Idaho	★	★			150[7]		★[7]					St. Paul	$3,748	($2,054)[8]	1/12/76	State court ruled doctor's $150,000 liability limit unconstitutional.
Illinois	★	★		★[7]	500[7]		★	5	★	★		Hartford	$3,468	($5,084)	1/14/76	State court ruled liability limits and screening panels unconstitutional.
Indiana		★	★	★	100	★	★	2	15[9]	★	★	Medical Protective	$2,903	($3,289)	1/5/76	New law hasn't appreciably changed malpractice picture in Indiana.
Iowa	★			★	100	★	★	6	★[1]	★		Medical Protective	$1,535	($3,400)	1/12/76	Medical society wants to strengthen board of medical examiners.
Kansas	★			★	100	★	★	2	N.J.	★	★	Medical Protective	$1,810	($3,07[illegible]	1/13/76	Many individual physicians paying close to or in excess of $10,000.
Kentucky	★				100	★	★	5	N.J.		★	Medical Protective	$1,823	($3,304)	1/6/76	Governor's task force will propose comprehensive package of bills.
Louisiana			★	★	100	★	★	3	50		★	Hartford	$1,568	($5,241)	5/10/76	Society agreed Hartford correct when it cancelled policies of five doctors in 1975.
Maine	★			★	100	★	★			★	★	Hartford	$1,737	($4,754)	2/2/76	New doctors must pay up to twice ISO rates; JUA not activated yet.
Maryland	★	★		★			★	3	★		★	Self-insurance plan	$2,273	($5,038)	1/14/76	Self-insurance plan has sold 2,000 policies (there are 5,000 doctors).
Massachusetts	★	★		★	★		★	3	★	★		JUA	$2,657	($4,102)[10]	1/7/75	St. Paul withdrawing coverage from some 4,000 doctors; JUA new carrier.
Michigan		★	★	★			★	2½	N.J.[11]	★	★	Medical Protective	$5,551	($7,863)	1/14/76	ISO has filed new premium rates up to $34,883 for orthopedists.
Minnesota				★[11]			★				★	St. Paul	$2,196	($2,630)	1/26/76	Medical society wants to strengthen board of medical examiners.
Mississippi	★	★		★			★	2				St. Paul	$924	($916)	1/6/76	USF&G charging up to $8,000, apparently to drive doctors to St. Paul.
Missouri	★	★		★	500		★	2	33⅓	★	★	Medical Protective	$2,200	($3,300)	1/7/76	State-sponsored program with Marine Fire

Montana		★[12]						3		★		Aetna	$7,504	($13,287)[5]	1/3/77	Coverage is available although premiums considered high.
Nebraska		★[12]		★			★			★		St. Paul	$2,586	($3,010)	1/6/76	'As of today, there's no crisis,' according to state medical society.
Nevada	★			★	★		★	4	N.J.	★		JUA	$5,136[13]	($7,675)	1/17/77	As many as 25% of Nevada doctors practicing without insurance.
New Hampshire	★			★			★	2		★		Hartford	$466	($1,693)	1/5/77	'Prognosis' a lot better here than in neighboring states.
New Jersey			★	★	500		★	2	N.J.[11]	★		Chubb & Son	$6,325	($8,165)	1/13/76	Still a voluntary insurance market in New Jersey.
New Mexico	★	★		★	100	★	★	3	N.J.			Travelers	$3,315	($5,781)[14]	1/20/76	Travelers, withdrawing March 1, insures 90% of state's doctors (850).
New York	★	★	★	★[11]	★		★	2	N.J.	★		JUA–self-insurance plan	$14,329	($17,195)[4]	1/7/76	Self-insurance company expects to lower rates; already has 15,000 members.
North Carolina	★[7]	★		★	★	★	★	★				St. Paul	$971	($1,251)	1/12/77	Self-insurance plan has 400 of state's 4,700 doctors as members.
North Dakota		★[12]		★	50[9]	★	★	2	15[16]			St. Paul	$1,819	($899)	1/4/77	Some problems insuring new doctors; companies selective.
Ohio	★			★			★	1	33⅓	★		Medical Protective	$5,148	($5,834)	1/1/76	Doctors disappointed tort reforms did not immediately lower premiums.
Oklahoma					150		★	4	N.J.			Ins. Co. of North America	$1,180	($1,594)	1/6/76	Only INA writing policies, but most doctors can buy insurance.
Oregon		★			★[17]	★	★	5	33⅓	★	★	CNA conglomerate	$3,016	($7,240)	1/10/77	Must renegotiate expiring contract with CNA by end of the year.
Pennsylvania	★			★		★	★	4[18]	N.J.	★	★	Medical Protective	$3,035	($5,957)	1/6/76	With $1-million 'umbrella' coverage, some doctors pay up to $18,000.
Rhode Island	★[11]									★		JUA	$1,209	($5,838)	1/6/76	JUA rates considered exorbitant by doctors, but no other policies available.
South Carolina	★			★	★		★	★		★		JUA	$1,010	($1,716)	1/13/76	St. Paul withdrawing; all doctors must buy policies from JUA.
South Dakota	★	★[12]		★			★	2		★	★	St. Paul	$6,428	($2,087)	1/6/76	Medical society fears exclusive JUA would be 'disaster' if imposed.
Tennessee	★	★		★			★	3	33⅓		★	JUA	$3,129	($12,509)	1/13/76	Shelby Mutual leaving, doctors must buy policies now from the JUA.
Texas	★			★	500		★	2	N.J.	★	★	Medical Protective	$4,065	($6,728)	1/11/77	Houston orthopedists buying basic policy from JUA, plus $1-million excess coverage, pays $26,900.
Utah	★				250		★	4		★		Aetna	$6,186	($10,603)[5]	1/12/76	For 1-year extension, Aetna requires medical society support of new laws.
Vermont				★			★	4	N.J.			Aetna	$4,430	($11,925)[5]	1/6/76	Aetna will pull out if new rates not approved; covers 450 MDs (50%).
Virginia	★	★	★	★	100	★	★	2	15[16]	★	★	St. Paul	$2,728	($3,432)	1/14/76	Availability not a problem, but doctors must pay double for $1 million.
Washington	★			★	300		★	2	N.J.		★	Aetna	$6,356	($10,847)[5]	1/12/76	Will try to get mandatory, binding arbitration next year.
West Virginia	★			★	100	★	★	2	N.J.	★	★	Aetna	$6,575	($10,583)[5]	1/14/76	Aetna only company writing new business in the state.
Wisconsin	★			★	200	★	★	3		★		Medical Protective	$2,433	($3,032)	1/20/76	'Over the hump but still an expensive proposition.' Orthopedists pay up to $11,000.
Wyoming	★	★[12]		★	100	★	★	2	N.J.	★	★	Aetna	$1,899	($7,865)[5]	1/27/76	St. Paul pulled out in June but Aetna picked up most of 120 doctors.

[1]Court decides fees. N.J. denotes so-called New Jersey rule, based on a sliding scale. In New Jersey, it is as follows: 40% on first $5,000, 33⅓% on next $45,000, 20% on next $50,000, 10% of anything over $100,000. [2]$250,000 limit on noneconomic damages (pain and suffering). [3]Provides $1 million/$3 million compared with same coverage by Argonaut on Jan. 1, 1975. [4]Aetna's package plan provides $1.25 million/$1.6 million coverage for orthopedists, plus several other features. [5]Provides $500,000 coverage per claim with no aggregate, compared with $100,000/$300,000 by Argonaut on Jan. 1, 1975. [6]Ruled unconstitutional by lower state court. [7]Provides $150,000/$300,000 compared with $100,000/$300,000 by Argonaut on Jan. 1, 1975. [8]On fees collected from catastrophic fund. [9]Rate hearings in late November may result in increased rates by Jan. 1, 1976. [11]Nonstatutory. [12]Five-state regional self-insurance plan proposed. Of these five states only North Dakota has passed law authorizing self-insurance. [13]Imperial's charge on Jan. 1, 1975 for $1 million/$1 million minimum policy it wrote for Nevada orthopedists before going into receivership. JUA rate is for $100,000/$300,000. [14]Provides $1 million/$1 million package compared with $1 million/$1.3 million by Travelers on Jan. 1, 1975. [15]State currently has six-year statute of limitations. [16]Of awards over $100,000. [17]Class 1 and 2: $100,000; Class 3 and 4: $300,000; Class 5 and 6: $500,000. [18] Limit on insurance company liability only.

Hedges, who decided against paying $8,000 for $300,000 maximum coverage in January of last year. A previous $900,000 suit, initiated during a period when he had coverage, has been dropped and—so far—he has had no other malpractice suits lodged against him. He says he informs his patients of his lack of coverage, telling them it's for their benefit as well as his.

"I would have been forced to raise my fees," says Dr. Hedges. And patients paying the higher fees, he maintains, would have assumed his coverage would be sufficient to help them should injury occur. "This would have been doubly misleading," he explains, "because I'm still not sure I'd have coverage" that is either adequate or perhaps even available in the event a patient sued after the coverage expired.

In California, a group of physicians' wives calling themselves Women for Malpractice Reform staged a sleep-in last month at the Sacramento offices of Gov. Edmund G. Brown Jr. to protest rising malpractice rates and demand an emergency session of the legislature to find an acceptable solution to the problem. Roberta Weintraub, wife of Encino, Calif., proctologist Lewis R. Weintraub, presented Governor Brown with 350,000 petitions signed by patients. She declared that 45% of the state's physicians would stop practice if he failed to act.

Early returns indicated that the threatened "slowdown" of southern California doctors would not be effective. Leon Hauck, director of association services of the Hospital Council of Southern California, said only "a few guys" in about ten of southern California's 230 hospitals had taken any action. The job action was predicted to become more widespread once rates increased at the beginning of the year, however.

How bad is the problem nationwide? A 50-state survey by MWN reveals deterioration in almost every state, even in some of those that passed comprehensive malpractice legislation during 1975. Among the states deserted by St. Paul, for example, are two besides Maryland where it was the major carrier with at least 50% of the business—Massachusetts and South Carolina. The firm quit another—Rhode Island—where it had close to half the market. St. Paul was the second largest carrier in Indiana and New Jersey, which have been similarly abandoned.

And premiums indeed have increased. Rates filed by the Insurance Services Organization (ISO) for its member companies have raised the malpractice insurance cost for orthopedists and other high-risk specialists buying $1-million policies (where they can get them) to as much as $10,000 and more in previously "low cost" states like Alabama, Hawaii, Kansas, and Montana. In "expensive" states like California and Michigan, many of the same high-risk specialists pay more than $30,000 for the same policies—again, when they can find them.

Physicians in a few states have experienced little trouble yet with either availability or price of medical malpractice policies. But medical society officials in these states express concern for the future. "We're not at the crisis stage," a Colorado Medical Society spokesman told MWN, "we're at the problem stage." Said an Oklahoma State Medical Association official: "We're doing well, but we're being affected by the national situation." His major concern, he added, was that only one company—Insurance Company of North America—writes malpractice policies in Oklahoma. If it ever decided to pull out, he added, Oklahoma doctors would be in the same pickle as those in dozens of other states.

Last year, some 22 states trying to seize the bull by the horns passed—among other "malpractice" bills—legislation creating Joint Underwriters Associations (JUAs) that would sell malpractice insurance to doctors as a last resort when no other market existed. In fact, JUAs are the only source of malpractice coverage currently in four states—Nevada, Rhode Island, South Carolina, and Tennessee—and compete only with doctors' self-insurance plans in two others, New York and Florida.

Yet even where they are the only game in town, JUAs have been criticized by doctors, primarily for their high rates compared with those the doctors were used to. In Rhode Island, where physicians have had to pay more than quadruple what they previously had been paying, the state's nonstatutory JUA is highly unpopular. The medical society's executive director, Timothy B. Norbeck, told MWN that physicians felt the "rates were exorbitant." He pointed out, however, that high as they were, the JUA rates in Rhode Island were really comparable to those in other northeastern states (see table, pages 72 and 73). Part of the reason for the high rates, he said, was the JUA's requirement for a "stabilization fund" that added about 25% to the first year's basic premiums.

High price, however, is not the only flaw with JUAs. Most of the ones now in operation limit coverage to between $100,000 and $200,000 per claim and from $300,000 to $600,000 aggregate per year, leaving many doctors feeling dangerously exposed. But where nothing else is available, physicians—like beggars—have little choice.

Another problem with JUAs: Where they are authorized, teetering malpractice carriers sometimes use the fact as an excuse to pull out. This apparently was the case in both South Carolina and Massachusetts when St. Paul decided to withdraw, knowing criticism of its departure would be dampened by the existence of an alternative source of malpractice insurance. St. Paul was roundly condemned in Maryland when it threatened to pull out of that state early last year, ultimately delaying its departure several times until another source could be established (the medical society's self-insurance plan). Similarly, Argonaut found itself cast as a villain when it dumped thousands of physicians in New York, California, Florida, and Pennsylvania early last year. (After court suits, it stayed on for a time in those states.)

Another fear of many state medical society officials is that few of the remaining commercial malpractice insurers will return to states that have actually established JUAs—usually for only a two-year period—as an "exclusive market" for professional liability insurance, as have Rhode Island, South Carolina, and Tennessee. This fear prompted Robert D. Johnson, executive secretary of the South Dakota State Medical Association, to oppose crea-

continued

tion of a JUA in his state. "It could be disastrous to getting private carriers back," he told MWN.

The kind of legislation that state assemblies pass is greatly influenced by what the few remaining malpractice insurers are likely to think of it, whatever its other value in affecting the over-all malpractice situation. The landmark Indiana malpractice law was put together by the state medical society with the help of the state's two major malpractice carriers, St. Paul and Medical Protective. When St. Paul pulled out of the state anyway (after the insurance commissioner turned down its request for permission to sell the claims-made form), the medical society officials were understandably bitter.

In California, assembly speaker Leo T. McCarthy pointed out that before the state's comprehensive malpractice legislation was passed insurance companies had refused to promise how much their premiums would be reduced if specific reforms that the companies had sought were approved by the legislature. This led to a comment from one insurance industry official that "this is the sort of legislator who makes it difficult for insurers to endorse specific tort reform." What the industry wanted, apparently, was less than a *quid pro quo*.

Despite the unequal relationship, medical societies still seek "advice" from insurance companies on malpractice legislation they put together. In a few cases, the insurance firms flatly give medical societies a choice: Push for specific tort reforms (with no promises on rates or availability) or look for another carrier. Aetna, which insures up to 85% of the 1,400 doctors in Utah, told the Utah State Medical Association that its extension of the firm's package plan into 1977 was "contingent on two things," according to Hoyt W. Brewster, the medical society's executive director. "First, we had to pursue programs of physician education. And, second, we had to pursue legislative relief in terms of tort reform." With only 20 days during the short 1976 session to get any legislation through, he told MWN, he is not sure how many of the tort reforms the medical society can persuade the Utah assembly to adopt.

Feeling oppressed both by insurance company dictums and by hasty legislative solutions like JUAs, medical societies in at least ten states either have set up their own self-insurance programs or have received the authority to do so. Of these, self-insurance plans in California, Florida, Maryland, Michigan, New York, and North Carolina have already started selling policies or are building up the necessary capitalization to do so. In Florida, where 2,500 applications have been received to date, rates are the same as those Argonaut charged early last year. Not only that, the plan provides $500,000 coverage per claim—with an unlimited aggregate per year—for the price that Argonaut demanded for $100,000/$300,000 coverage.

In New York, there are already between 15,000 and 16,000 members in the self-insurance plan, which began by charging 20% over Argonaut's fee, then reduced that to 15% when reserves of $26 million were accumulated. The New York self-insurance plan now promises to reduce charges to 10% if—as expected—it builds up $30 million in reserves. In Maryland, on the other hand, even though 2,000 of the state's 5,000 physicians have already signed up with the self-insurance plan, premiums are still more than double what St. Paul was charging early last year.

Perhaps it is significant that in both Florida and New York there is active competition with the medical society's plan; in Maryland, self-insurance is all that is available.



At meeting in Governor Brown's Sacramento offices, Mrs. Weintraub (left, center) of Women for Malpractice Reform presents petitions for special session to deal with soaring rates. Below, Drs. Zorel Paritzky (left) and Stanley Daniels, who has no insurance, carry in half of 350,000 petitions.



Florida's JUA charges 2½ to three times what the self-insurance plan does. In New York, there is, in addition to the self-insurance plan, both a JUA and a state-run insurance fund that seek to sell malpractice policies to doctors. When they all started up at roughly the same time last summer, the three schemes were in hot competition. Recently, New York superintendent of insurance Thomas A. Harnett turned down the JUA's request for rate increases, forcing it to stay roughly at the same premium level as the self-insurance plan.

In Michigan, a similar state insurance fund was put into effect somewhat before the medical society's self-insurance plan got under way. In that case, another group of doctors was involved—the Michigan Physicians Crisis Committee. The organization was formed several years ago to push through the state's comprehensive malpractice law package and has not yet disbanded, somewhat to the consternation of the state medical society. The crisis committee has backed the state fund over the medical society's plan as providing more insurance coverage ($200,000/$600,000 compared with $100,000/$300,000) and criticized the medical society for trying to "cherry pick" the low-risk physicians.

In two areas of the country where individual states have too few physicians to seriously consider a medical society self-insurance plan, groups of states have looked into the possibility of establishing regional self-insurance plans. Nevada sponsored a meeting in Las Vegas recently, inviting all the smaller states of the Far West to discuss one self-insurance plan for all of them. Nebraska similarly sponsored a regional self-insurance plan for five Upper Plains states: Rep. Mary Edelen of South Dakota drafted a joint resolution for presentation to the legislative sessions in Nebraska, Wyoming, Montana, and the Dakotas this year.



Patients' plight is voiced by Gerri Weiss (left) and Janice Oliver whose California OBs, they say, won't deliver without insurance.

And in New England, according to Vermont State Medical Society executive director Getty Page, a third group of smaller states has looked into a similar arrangement, possibly hooking onto the self-insurance plan Massachusetts hopes to set up independently in the next year or so. "I pleaded with Massachusetts to let us come in with them," Page said, "but we'd have to have the same malpractice laws." To that end, the Vermont State Medical Society is introducing a comprehensive package of legislation this year (see table, pages 72 and 73).

The most popular legislative proposals likely to be introduced this year are reforms in the states' tort laws, such as elimination of *res ipsa loquitur*, which puts the burden of proof concerning lack of negligence on the doctor; prohibition of *ad damnum* pleas, which publicize multimillion-dollar lawsuits; institution of a collateral source rule to require deduction of health insurance and other reimbursements from any ultimate judgment; adoption of a local-witness rule that forbids the use of itinerant "experts"; and—most popular of all—setting short (usually two-year) statutes of limitations that begin running from date of injury rather than from date of discovery.

Every state but Colorado and Montana either has already passed more than one of these reforms or will seek to do so when assemblies reconvene. In Colorado, according to a medical society spokesman, the legislative thrust this year will to strengthen the board of medical examiners and tighten up the statute of limitations. In Montana, medical society executive director G. Brian Zins said: "We're studying what other states have done."

Not very surprising is the fact that many of the states in the most trouble intend to be the most active legislatively next year. (Colorado and Montana are in relatively good shape.) One state that has been in trouble all year is Alaska, where doctors at the state's largest hospital—Providence Hospital in Anchorage—refused to perform nonemergency surgery for almost two months when their insurance policies ran out this summer, referring many of their patients to Seattle for operations. The hospital's parent corporation, the Sisters of Providence, found them temporary insurance on September 22.

In response to such situations, the Alaska medical society has sponsored a comprehensive package of laws including creation of both a JUA and a state insurance fund, a constitutional amendment to take physicians' professional liability out of the court system (substituting arbitration), a limit of three years on physicians' liability, and elimination of awards for such noneconomic damages as "loss of consortium" and "pain and suffering." Alaska has already eliminated *res ipsa loquitur*; in fact, it led other states by several years in doing so. But the medical society's efforts last year to put through additional reforms were frustrated. Governor Jay S. Hammond refused to call a special session to deal with the package of new laws that insurance companies were unenthusiastic about and vetoed the only malpractice bill the assembly did manage to pass in 1975—one creating a JUA.

continued

Physicians complain that 'tort reform' brings no relief

Another state in serious trouble—New Mexico, where the major carrier, Travelers (which writes about 99% of the state's malpractice policies), has announced it will pull out on March 1—is also seeking to get a comprehensive package of laws through the legislature this year. A medical society spokesman said in the 30 days, starting January 20, when the state legislature is in session, doctors will attempt to get laws passed both establishing a JUA and authorizing doctors' self-insurance, an Indiana-type law with screening panels, $100,000 limits on physician liability, and a doctor-funded patient catastrophic fund for awards over that amount up to $500,000. In addition, they will seek passage of various tort law changes, including a maximum nine-year statute of limitations for minors (it is currently three years for adults) and a sliding scale of lawyers' contingency fees similar to that in New Jersey.

Many physicians in states that have already passed comprehensive medical malpractice laws, however, are beginning to grumble that nothing seems to have changed—despite their legislative success. "Doctors are disappointed that tort reform didn't result in immediate premium relief," said Ohio State Medical Association executive director Hart F. Page. "I tell them it's like expecting a fever to go down five minutes after giving a patient penicillin."

Still, Page is obviously worried about the law's ultimate effect on the things that count with doctors—availability and price of malpractice insurance. Last year Ohio passed laws that made a provider liable contractually only for written promises, clarified the meaning of "informed consent," and set lawyers' contingency fees at 33⅓%. In addition, the legislature established voluntary binding arbitration, a JUA, and the requirement that malpractice suits be reviewed by the state's medical licensing board. Ohio also has a one-year statute of limitations, about the shortest in the nation.

Even in Indiana, there has been "no appreciable change" in the number or amounts of malpractice suits in the state since July 1, the day the Indiana law went into effect, according to Robert Miller, a vice president of Medical Protective in Fort Wayne, Ind., which now insures about 60% of the state's physicians and probably will pick up most of St. Paul's customers (another 28%) as that firm drops them when policies come up for renewal. The situation in "areas where there was a trend toward high claims continues to deteriorate," Miller said.

The Malpractice Study Commission established by law in Indiana has held several meetings but has not yet proposed further changes in the state's professional liability laws. A medical society spokesman said serious consideration is being given to starting up the self-insurance plan authorized under the 1975 law. And the state insurance commissioner reportedly is reconsidering his opposition to the claims-made policy. It was this opposition that St. Paul says drove it out of the Indiana malpractice insurance market.

Indiana State Medical Association officials, like those in California, Florida, Louisiana, Oregon, and Wisconsin, are anxiously awaiting court judgments on the constitutionality of their "caps" on doctors' liability, which range from maximums of $100,000 to $500,000. Lower courts in two states so far—Idaho and Illinois—have ruled such statutory limits on physician liability to be unconstitutional. In addition, an Illinois circuit court judge recently ruled that the medical review board set up by that state's new malpractice law is unconstitutional. Likewise, a North Carolina superior court judge has ruled unconstitutional his state's reinsurance exchange—a special form of JUA that requires every firm writing property and casualty insurance in North Carolina also to offer physicians' professional liability coverage.

Until the constitutional question of "caps" on doctor liability is settled one way or another, a number of medical societies will not propose liability limits for their 1976 malpractice legislation. In Michigan, for example, a "cap" on doctors' liability was noticeably absent from the medical society's comprehensive package of malpractice legislation—most of which passed the state assembly. Nor will there be such a proposal this year, a medical society spokesman said. "We're waiting to see what's going to happen in Idaho before we try for that," he said. The Idaho Medical Association will appeal to the state's supreme court in an attempt to re-establish its $50,000 limit, according to its new executive director, Don Sower.

The dearth of spectacular improvements in the malpractice situations of states like Indiana and Idaho raises the specter that nothing they can do—nothing at all—can reverse the calamitous situation spreading across the country like a disease. (A spokesman for the California Medical Association describes the prospects for southern California early this year as being "in the nature of a cataclysm.")

Waiting in the wings is the federal government—specifically Sen. Edward M. Kennedy (D-Mass.) with a pocket full of "national" solutions (MWN, May 5, '75, p. 23)—when states try and fail to solve the malpractice crisis themselves. But many physicians consider Senator Kennedy's cures—which would lock them into the PSRO system, among other things—worse than the disease itself. So far, the Ford Administration has held to its original position that the states must first be given the chance to solve their own malpractice problems. In this same spirit, a uniform medical malpractice act is now being put together for all state governments by the National Conference of Commissioners on Uniform State Laws, located in Chicago. But time is clearly running out.

The question remains: If the most comprehensive state laws ultimately fail to have an impact on the availability and price of physicians' professional liability insurance, what good will any kind of state law do, uniform or otherwise? What, then, would be the alternative to one of Senator Kennedy's proposals?

—REGINALD W. RHEIN JR.

File Malpractice

REMARKS BY
ROBERT A. BAILEY
ACTUARY FOR THE CENTRAL OFFICE STAFF
NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

RECEIVED

BEFORE THE
LEADERSHIP CONFERENCE OF THE
AMERICAN MEDICAL ASSOCIATION

Chicago, Illinois
January 24, 1976

I appear before you today as th Casualty Actuary for the National Association of Insurance Commissioners. The National Association of Insurance Commissioners (frequently called the NAIC) was organized in 1871. Its membership consists of the chief insurance regulatory authorities of the 54 states and jurisdictions of the United States. As such it is the oldest voluntary association of state officials. I am the director of its statistical program and the individual in charge of the current NAIC malpractice closed claim statistical study.

Today I will describe the statistical programs being conducted by the NAIC to obtain data concerning the medical malpractice problem, and then I will summarize some of the conclusions obtained from the data compiled so far. The views I express here are my own and do not necessarily represent those of the NAIC.

At the NAIC we are familiar with the legislative medical malpractice reforms sponsored by the AMA which were distributed to you shortly after your meeting here a year ago. We have

been keeping track of all the legislation enacted this year in the various states. It is an impressive record and includes a good number of your proposals in various forms. According to our count, 42 states have enacted legislation during 1975 dealing with medical malpractice. 32 of these states have enacted legislation dealing with the immediate problem of assuring availability of medical malpractice insurance. 33 have enacted legislation aimed at reforming the legal system both substantive and procedural. 32 have enacted legislation which focuses on the health care delivery system. And 32 have authorized further studies of the malpractice problem. This reflects unusually widespread legislative concern and activity. The NAIC and others are publishing periodic summaries of the legislation as it is enacted.

As far as we know, much of the heat generated by the medical malpractice controversy centers on medical malpractice insurance and its cost. Actually, however, such insurance - important though it may be - is really the tail end of the kite. The issue had its origin in legal and medical aspects far beyond the control of the insurance business and those of us who regulate it. Furthermore, many of the difficulties have their genesis in inflation, the magnitude of which is largely influenced by national policy. This is an unbelievably complex subject with boundless ramifications. We see no easy

solution to it. The NAIC has made a pioneering contribution to the search for a solution by making available statistics which have been heretofore lacking. But the statistics have not yet pointed the way to a simple overall solution; on the contrary, they simply emphasize how difficult it will be to find one.

The NAIC is obtaining a report on each insurance claim for medical malpractice that is closed on or after last July 1. We expect to continue this program for at least one year. This study is intended to develop data on the costs and causes of medical malpractice claims which can be used to evaluate legislation already enacted, design new remedial legislation and develop programs aimed at preventing medical injuries. This program is under the immediate direction of the NAIC Subcommittee on Professional Liability Insurance, chaired by Commissioner Rawls of Oregon. We plan to publish four summaries of this data during the year of which the first was published last month. These four summaries are available on a subscription basis. I will discuss some of the data in that summary in a moment.

The NAIC has also initiated another statistical program to obtain data on medical malpractice insurance in the annual and quarterly financial statements of insurance companies. This data will show who is writing malpractice insurance

in each state, how much they are writing and what their profits or losses are in each state. It will show trends in how many claims are occurring and trends in how much each claim costs. Much of this data will be available separately for physicians, hospitals and other miscellaneous categories. This data will begin to become available this year as the annual and quarterly financial statements are filed. It will be summarized in various NAIC publications during the year.

Now let us take a look at some of the data we already have to see what answers it has for our problems. It is evident from this first summary of some 4000 closed claims that there are no easy answers. The data shows that the problem is every bit as complex as we suspected and just as serious as we all knew it was.

We have several reports on how long it takes for a claim to be reported after the incident occurs and then, after it is reported, how long it takes to be settled. It takes an average of about one year for claims to be reported, a little longer for serious claims. This average varies some from state to state. About 86% of the claims are reported within two years, and about 98% within four years. Although shortening the statute of limitations may not have a significant effect on the number of claims reported, it may speed up the reporting in some instances. This may help the insurance companies price the insurance with less uncertainty.

After a claim is reported it takes an average of about two years to settle. This varies by state and by size of claim. Claims still unsettled five years after the date of incident involve 10% of the claims by count and 21% by amount. This long delay from incident to settlement, which averages about three years, makes this kind of insurance one of the most difficult to price accurately in advance. This is a guessing game. So many insurance companies have been burned so badly that many have abandoned the field. Recently prices have risen so rapidly there is the possibility that insurers have overreacted. But no one will know for sure until four or five years from now and by then it will be too late to do anything about it.

In response to the high prices and lack of an adequate market for malpractice insurance, many state medical and hospital associations have formed their own insurance company. Having your own insurance company will enable you to reflect your own costs more directly in the price of your own insurance for better or for worse, whichever it turns out. But it is interesting to note that many of the "Doctors Mutuals" do not want to accept all applicants. This, in effect, says to the public that the medical profession wants to allow some physicians to continue practicing that the profession's own insurers are not willing to insure. In turn, this suggests

that some type of review mechanism as to the quality of care rendered be tied into a mutual insurance program where all physicians that pass the review system would be eligible for the insurance program. Those not eligible for insurance would be barred from practicing. In any event, this is food for thought.

The data shows that 86% of the amounts paid are related to claims where the incident occurred in a hospital but only 32% of the amounts paid are paid by hospitals. This, of course, reflects the fact that most of the physicians who practice in a hospital are not employees of the hospital. As a result most of the claims are paid by the physicians. This data indicates that the Virginia proposal of making hospitals responsible for all incidents occurring in the hospital would shift a substantial portion of the cost from physicians to hospitals and at the same time would place the responsibility for a high proportion of all malpractice incidents in the hands of a third party, the hospital, who has some degree of control over who practices in the hospital and how they practice as well as some control over the safety engineering programs in the hospital, where most injuries occur. Such a proposal may create a substantial financial incentive for the hospital to perform an effective review function regarding those who practice in the hospital.

The summary of claims by specialty of physician shows that orthopedists, obstetricians, gynecologists, cardiologists, plastic surgeons and anesthesiologists generate a relatively high volume of claims. But it also shows that the two categories of physicians that generate the largest number of claims, although a relatively lower frequency per physician, are physicians who perform no surgery and physicians who perform only minor surgery. It is evident that all physicians are exposed to the risk of a collectible malpractice claim. The malpractice problem is not confined to a few small types of practice.

There are about twice as many claims against self employed physicians as against those who are members of a professional corporation or partnership. You can probably judge better than I whether this is close to the comparable proportions of physicians in solo and group practice.

The number of claims against physicians who are board certified are about 1 1/2 times the number against physicians who are not board certified. Inasmuch as the number of physicians who are board certified is only about 1 1/4 times the number who are not, it appears that board certified physicians have a slightly higher claim frequency. This probably reflects a more specialized practice and a greater

number of high risk procedures by board certified physicians. In future reports we plan to analyze board certification according to each specialty.

The summary of claims by country of professional education shows that 12% of the claims are against physicians who received their education in a foreign country. The percentage of physicians with a foreign education is considerably greater than their percentage of claims indicating that physicians with a foreign education have a considerably lower claim frequency. Physicians trained in the Philippines had 2% of the claims. Cuba and India each had 1%. Every other country was less than 1/2 of 1%, including Canada, Mexico and England.

The first report contained approximately 1000 claims for which the following items were coded, using the H-ICDA codes: (1) the diagnosis for which treatment was sought, (2) the procedure that caused the injury, and (3) the injury.

The 992 claims for which the diagnosis was coded were scattered over 461 different diagnoses. Even the most frequent diagnosis, delivery, had only about 4% of the claims. There were only 12 diagnoses that had 10 or more of the claims:

38 Delivery without complication

22 Voluntary sterilization

18 Radiologic examination

17 Fracture of upper end of femur

10 Malignant neoplasm of bronchus and lung

10 Malignant neoplasm of breast

14 Acute myocardial infarction

12 Acute appendicitis without peritonitis

13 Acute appendicitis with peritonitis

10 Fracture of tibia and fibula

13 Single, term, hospital birth

12 Family planning for contraception

The 789 claims for which the procedure causing the injury was coded were scattered over 312 different procedures. The most frequent procedure, hysterectomy, had about 4% of the claims. There were only 15 procedures which had 10 or more claims:

13 Operations on spinal cord structures

14 Appendectomy

22 Laparotomy

32 Abdominal hysterectomy, total

11 Dilation and curettage of uterus

19 Cesarean section

19 Reduction of fracture and dislocation

11 Excision of intervertebral disc

13 Inhalation therapy

26 Transfusion of blood and blood components

13 Cast immobilization

17 Administration of anesthetic gas

15 Administration of unspecified drugs

15 Injection of systemic drug

23 Emergency room visit

The 1172 claims for which the principal injury was coded were scattered over 734 different injuries, only six of which, other than nonspecific codes indicating a diagnostic error, had 10 or more claims. The most frequent injury, accidental puncture or laceration,generated about 3% of the claims.

14 Serum hepatitis

22 Cardiac arrest

25 Laceration of face

37 Accidental puncture or laceration

32 Anaphylactic shock

21 Other serum reaction

I have gone into all of this detail regarding the diagnoses, procedures and injuries involved with malpractice claims to show that the problem is widespread and is not isolated anywhere. It appears to involve the entire spectrum of medical care. This in turn suggests we cannot expect to find some panacea for the malpractice problem.

The average amount of indemnity paid per closed claim, counting each defendant separately, was $6672. If the claims closed without payment are excluded, the average per paid

claim was $17,722. If each injury is counted only once regardless of the number of defendants, the average per paid injury was about $20,000. That was for claims closed in 1975 which were incurred, on the average, about three years earlier. The cost of claims occurring now in 1976, which will be paid, on the average, several years in the future, will undoubtedly be much greater.

The cost of a claim varies, of course, according to the severity of the injury. Our summary of closed claims indicates that injuries classified as "permanent minor" had a cost about equal to the overall average. "Permanent significant" claims cost about twice the average, "permanent major" and "permanent grave" cost about seven times the average. "Death" cases cost about 60% more than the average.

Of the claims for which sufficient information was available to ascertain the type of misadventure involved, actual or alleged, 66% involved misadventures in procedures and 34% involved misadventures in diagnosis. 16% involved misadventures in procedures where the procedure was not adequately indicated, was contra indicated, or there was a better alternative. Most of the misadventures in diagnosis were delay in diagnosis or misdiagnosis of an abnormal condition.

I have attempted to summarize for you the data the NAIC is gathering to help us understand the nature of the medical malpractice problem. Data will continue to be compiled to help us measure the effects of the remedial measures that are adopted. Our current problems are serious and may get worse in the short term. But I am confident that our continued search for better solutions for this complex problem will enable us to deal with it in a manner most satisfactory to all concerned.

1975

STATE LEGISLATIVE ACTIVITY

MEDICAL MALPRACTICE

CATEGORY OF LEGISLATION	NUMBER OF STATES
ALL TYPES OF LEGISLATION	42
AVAILABILITY OF INSURANCE	30
REFORM LEGAL SYSTEM	33
REFORM HEALTH CARE DELIVERY SYSTEM	32
AUTHORIZED FURTHER STUDIES	32

CLAIMS REPORTED

WITHIN 2 YEARS	86%
WITHIN 4 YEARS	98%
AVERAGE TIME	1 YEAR

CLAIMS SETTLED

AVERAGE TIME	2 YEARS FROM REPORT 3 YEARS FROM INCIDENT

CLAIMS UNSETTLED AFTER 5 YEARS

BY COUNT	10%
BY AMOUNT	21%

AMOUNTS PAID

INCIDENT OCCURRING IN HOSPITAL	86%
PAID BY HOSPITALS	32%

COUNTRY OF PROFESSIONAL EDUCATION

U.S.A.	88%
FOREIGN	12%

PHILIPPINES	2%
CUBA	1%
INDIA	1%

DIAGNOSIS FOR WHICH
TREATMENT WAS SOUGHT

CATEGORY OF DIAGNOSIS	NUMBER OF CLAIMS
ALL (461 DIFFERENT DIAGNOSES)	992
DELIVERY WITHOUT COMPLICATION	38
VOLUNTARY STERILIZATION	22
RADIOLOGIC EXAMINATION	18
FRACTURE OF UPPER END OF FEMUR	17
MALIGNANT NEOPLASM OF BRONCHUS AND LUNG	10
MALIGNANT NEOPLASM OF BREAST	10
ACUTE MYOCARDIAL INFARCTION	14
ACUTE APPENDICITIS WITHOUT PERITONITIS	12
ACUTE APPENDICITIS WITH PERITONITIS	13
FRACTURE OF TIBIA AND FIBULA	10
SINGLE, TERM, HOSPITAL BIRTH	13
FAMILY PLANNING FOR CONTRACEPTION	12

PROCEDURE CAUSING THE INJURY

CATEGORY OF PROCEDURES	NUMBER OF CLAIMS
ALL (312 DIFFERENT PROCEDURES)	789
OPERATIONS ON SPINAL CORD STRUCTURES	13
APPENDECTOMY	14
LAPAROTOMY	22
ABDOMINAL HYSTERECTOMY, TOTAL	32
DILATION AND CURETTAGE OF UTERUS	11
CESAREAN SECTION	19
REDUCTION OF FRACTURE AND DISLOCATION	19
EXCISION OF INTERVERTEBRAL DISC	11
INHALATION THERAPY	13
TRANSFUSION OF BLOOD AND BLOOD COMPONENTS	26
CAST IMMOBILIZATION	13
ADMINISTRATION OF ANESTHETIC GAS	17
ADMINISTRATION OF UNSPECIFIED DRUGS	15
INJECTION OF SYSTEMIC DRUG	15
EMERGENCY ROOM VISIT	23

ACTUAL AND ALLEGED INJURIES CAUSED BY MALPRACTICE

CATEGORY OF INJURIES	NUMBER OF CLAIMS
ALL (734 DIFFERENT CATEGORIES)	1172
SERUM HEPATITIS	14
CARDIAC ARREST	22
LACERATION OF FACE	25
ACCIDENTAL PUNCTURE OR LACERATION	37
ANAPHYLACTIC SHOCK	32
OTHER SERUM REACTION	21

AVERAGE AMOUNT OF INDEMNITY

PER CLAIM	$ 6,672
PER PAID CLAIM	$17,722
PER PAID INJURY	$20,000. APPROXIMATELY

SEVERITY OF INJURY	PERCENT OF CLAIMS	PERCENTAGE OF AVERAGE AMOUNT
EMOTIONAL ONLY	10%	8%
TEMPORARY INSIGNIFICANT	12%	10%
TEMPORARY MINOR	29%	29%
TEMPORARY MAJOR	10%	81%
PERMANENT MINOR	10%	101%
PERMANENT SIGNIFICANT	5%	226%
PERMANENT MAJOR	3%	683%
PERMANENT GRAVE	2%	784%
DEATH	19%	163%
ALL	100%	100%

MISADVENTURES IN PROCEDURES	PERCENTAGE OF CLAIMS
NOT ADEQUATELY INDICATED	8%
CONTRA INDICATED	4%
BETTER ALTERNATIVE	4%
DELAYED	6%
IMPROPERLY PERFORMED	39%
NOT PERFORMED	5%
	66%

MISADVENTURES IN DIAGNOSIS	PERCENTAGE OF CLAIMS
DELAY	13%
MISDIAGNOSIS OF ABNORMAL CONDITION	16%
NO ABNORMAL CONDITION	5%
	34%

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

M E M O R A N D U M December 8, 1975

SUBJECT: Governor's Medical Malpractice Commission
Proposed Legislation

TO: Rep. Mike Beirne

FROM: Anne Carpeneti

Here follows a summary and critique of the bills proposed by the Governor's Commission.

SUMMARY OF BILL A

* Section 1. Requires the Division of Occupational Licensing to provide investigative staff for health care licensing boards. -Sec. 13.

* Sec. 2/ Requires that active, licensed chiropractors, dental hygienists, dentists, physicians, nurses, dispensing opticians, optometrists, pharmacists, physical therapists, and psychologists be insured by the Health Care Provider's Indemnity Corporation or another insurer for at least $200,000 per occurrence and $600,000 aggregate per year; allows the licensing board for these health care providers to limit the practice, censure, or require continuing education for licensees.

* Sec. 14. Statement of purpose.

* Sec. 15. Section 15 provides expert advisory panels for malpractice causes of action. Each panel consists of three licensed health care providers in the state. If the sole defendant is a physician, the panel consists of three physicians; other defendants have representatives in their field or specialty on the panel. The selection process for the panel is somewhat similar to the selection of a jury. The panel may compel attendance of witnesses, may compel delivery of medical records, and may examine parties orally and physically. The panel must submit a report to the court within 30 days of being appointed which answers, where possible, questions submitted to it by the parties in addition to the following questions:

(1) Was the claimant adversely affected by the medical services? If so, how?

(2) What was the adverse affect?

(3) What is the prognosis?

(4) How did the medical services alter the natural course of the pre-existing disorder for which the services were originally rendered?

(5) How did the medical condition existing after performance of the medical services differ from the medical condition which might otherwise have been expected?

If the answers to the above questions are not properly the subject of expert opinion, the panel will so state. The report shall also include a record of all evidence considered by the panel. Dissenting reports may be submitted by panel members. No discovery may be taken until the report is complete, absent special circumstances. The report is admissible in the trial of the cause of action, subject to the court's discretion in excluding evidence. The report may be refuted by additional expert testimony, and members of the panel may be cross-examined. Panel members receive travel and per diem from the state.

* Sec. 16. Changes the burden of proof in medical malpractice cases to that of due care under the circumstances in the defendant's field, instead of in the community where the defendant practices, and provides that in cases filed three or more years after the act complained of, the plaintiff must prove negligence by clear and convincing evidence. (The present burden is that of showing negligence by a preponderance of the evidence in all cases.)

* Sec. 17. Provides that damages awarded to the plaintiff in all cases filed three years or more after the cause arose be paid out of the Health Care Providers Late Claims Fund (hereafter Late Claims Fund), which has no right of subrogation against the defendant; provides that the verdict be made according to the category of loss and that future losses be paid periodically rather than in a lump sum; and that damages may not be made for expenses already paid for by collateral sources unless the source is a federal program requiring subrogation.

* Sec. 18. A housekeeping section.

* Sec. 19. Provides that no cause of action against a provider may be based on an oral promise of cure; that a health care provider is not liable for failure to obtain consent of the patient for a procedure unless the plaintiff proves that a reasonable

person would not have consented to the procedure if informed and that the case involved non-emergency or diagnostic procedures; and provides defenses to an otherwise valid claim based on informed consent, for example, if the physician believed that disclosure would adversely affect the patient's condition.

* Sec. 20. Extends the "good samaritan rule" to hospital emergency situations.

* Sec. 21. Requires every licensed hospital to be insured against malpractice by the Indemnity Corporation for at least $200,000 per occurrence and $1,000,000 per year aggregate for every 50 beds.

* Sec. 22. Establishes guidelines for treatment of information presented to review organizations in hospitals; for example, limits liability for defamation of persons furnishing information to review organizations and members and staff of the review organizations to cases involving known falsehood or malice.

* Sec. 23. Section 23 adds a new chapter to Title 21 which creates an Indemnity Corporation, a backup Joint Underwriting Association (JUA), and a Late Claims Fund.

The Indemnity Corporation acts through a board of governors appointed by the governor and consisting of representatives of professional organizations and the insurance field; board members serve three year terms. The board prepares a corporation plan of operation, subject to the approval of the director of insurance, for provision of fair and reasonable malpractice insurance for health care providers in the state. The corporation would have the power to issue policies of insurance, collect premiums, procure reinsurance, hire employees, and perform other functions necessary to operation. A premium tax of 1-1/2 per cent of the total direct premiums collected is levied on the corporation. The corporation is required to insure all licensed providers who pay premiums.

A backup JUA is provided in case the corporation is unable to obtain reasonable insurance for providers in the state. Disability, property, and casualty insurers in the state would be required to participate as a condition of doing business in the state. The JUA would be governed by the corporation's board and operate according to a plan of operation developed by the board, subject to the approval of the director of insurance.

The late claims fund is created to pay all claims based on medical malpractice filed three years or more from the date of occurrence. The director of insurance defends all claims made on the fund, pays claims won against it, sue or be sued in the name of the fund, borrow money for the fund, and other things necessary for the fund. The fund is to be built from annual assessments against health care providers. If the board of the corporation believes that the assessment is not affordable, it shall notify

the legislature, and the legislature may contribute if it chooses. If the legislature does not contribute the assessment remains final. The state is liable for claims against the fund which the fund cannot pay.

SUMMARY OF BILL B

This bill presumes the passage of a constitutional amendment of Article I, Sec. 16 of the Alaska constitution to exempt medical malpractice cases from that section's guarantee of the right to a jury trial in civil cases where the amount in controversy exceeds $250. It establishes a Medical Injury Adjudication Board with 12 members serving five year terms. Three of the members must be physicians, and the remaining may be neither health care providers, attorneys, or persons from the insurance industry. The board hears cases in committees of four members (one of which is a physician). The board is aided by an expert advisory panel, which has the same powers and duties as the advisory panel of Bill A. All medical malpractice causes of action must be filed with the board; dollar amounts for damages may not be specified in the claim. Damages are to be awarded by category of loss and in installments for future damages if the board so decides. Judgments by the board may be appealed to the Supreme Court of Alaska.

JOINT RESOLUTION

The proposed joint resolution exempts medical malpractice cases from Article 1, Section 16 of the Alaska constitution. That section guarantees the right of a jury trial in civil cases where the amount in controversy exceeds $250.

CHANGE IN RULES OF CIVIL PROCEDURE

This proposes a new rule of procedure for appointing an expert advisory panel in medical malpractice cases. It is essentially the same as the provisions in Bill A regarding the expert advisory panel.

COMMENTS ON BILL A

The first issue is whether this approach will solve the physicians' problems in regard to the cost and availability of medical malpractice insurance. One of the more disturbing facts coming to light during the past year is that somewhere between 15 - 20% of the medical malpractice premium dollar goes to injured patients. By adding an additional layer, an expert advisory panel, you may only increase the administrative cost as compared to the payout to plaintiffs recovering verdicts. The rationale, of course, is that if the panel advises that the defendant was not negligent, plaintiffs

will be encouraged to drop the suit or settle for a smaller amount than he would otherwise demand. It assumes that the panel will weed out nuisance suits and lower the legal expenses insurers incur.

The second question is of fairness. Can a panel of health care providers (mainly physicians) be truly unbiased? Physicians have been traditionally unwilling to speak out against their colleagues. Findings of a panel which is supposed to be neutral would probably have a great deal of influence over a factfinder, and the fairness to plaintiffs ought to be considered.

The rationale of requiring the same minimum levels of insurance for all providers (except hospitals) is not clear. It is reasonably certain that a surgeon has a much higher potential liability than, for example, a nurse.

It is wise to allow licensing boards more flexibility in regulating its licensees. It is not clear, however, that requiring that the Division of Occupational Licensing ~~be~~ provide investigative staff to the licensing boards gives the boards sufficient resources to thoroughly regulate its licensees.

The fairness of changing the plaintiff's burden of proof to "clear and convincing" in cases filed three years or more after the occurrence ought to be explored. This is a significantly more difficult burden to meet.

The approach to informed consent in the bill is, I believe, weak. The circumstances where a provider need not explain the risks and alternatives to the patient are very broad.

The administration of the Late Claims Fund appears to be rather awkward. If it is determined that the assessment to providers is unaffordable an appropriation from the legislature is requested; if the legislature does not respond, the "unaffordable" assessment is collected anyway. In addition, the bill provides that any excess liability over assets is chargeable to the state; thus, there are no compelling reasons for the fund to be viable anyway.

COMMENTS ON BILL B

The major issue which this bill raises is the wisdom and constitutionality of abolishing the right to a jury trial in medical malpractice cases. The fairness of this approach should be addressed as well as due process and equal protection issues.

The composition of the board also gives rise to questions. Is it reasonable to require that three members be physicians, while attorneys and insurance people are excluded?

Comments on the resolution and the change in the Rules of Court are included in the comments on Bills A and B.

AC:cb

Supplement to the Report to the Legislature of the State of Alaska on Medical Malpractice Proposals

by Dr. Herbert S. Denenberg
P. O. Box 146
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(Initial Report Dated December 4, 1975 and presented in Juneau, Alaska on December 9 and in Anchorage on December 10, 1975)

February 20, 1976

1. On December 9, 1975, I met in Juneau, Alaska with a group that included Representative Mike Miller, Vice Chairman of the Legislative Council, Senator John Huber, Representative Fred Brown, Representative Larry T. Davis and staff members.

2. The next day I had a series of meetings with various members of the legislature, including Senator Chancy Croft, Senator Jalmar M. Kertulla, Senator Patrick Rodey, Representative Fred Brown, Representative Larry Davis, Representative Samuel R. Cotten, Representative Kathryn Ostrowsky, Representative Charles Parr, and staff members. In addition I talked to members of the Judiciary Committee before their meeting on Rent Control. Those attending, in addition to members of the legislature, included some members of the Governor's Commission on Medical Malpractice and other members of the public.

3. In the course of these meetings, and other informal discussions with members of the legislature, I made a series of comments and recommendations, which do not appear in my report. Some of these additional remarks are briefly summarized here to serve as a supplement to my initial report dated December 4, 1975. I have also included my response to several questions raised by members of the legislature.

4. The law of Alaska should be clarified so any advance payments on malpractice or other claims would not be considered an admission of liability and would be deducted from any final judgment.

Indiana, Louisiana, Nebraska, Nevada and Wisconsin have passed laws relating to this matter. Nebraska (Legislative Bill 560, passed in 1975) provides any advance payment will not be an admission of liability, and further that: "In the event of a trial involving such a claim, the fact that such payments have been made shall not be admissible in evidence or brought to the attention of the jury, and the matter of any credit to be deducted from a judgment shall be determined by a court in a separate hearing or upon the stipulation of the parties."

This should encourage early payment on claims, early settlements, and attempts to minimize damages by early medical treatment. (A similar approach has been suggested in the report on no-fault as to auto liability claims.)

5. Mandatory arbitration should be considered to provide a more economical determination of cases and a sweeping out of some of the flimsy claims. This would not impair the right to trial by jury as there would be a right of appeal de novo to the courts.

6. The Governor's Commission recommended legislation (p.15, sec.9.55.540(c)) subjecting claims more than three years old to a higher standard of proof than would be otherwise imposed on civil claims. This appears to be an unfair and unreasonable requirement, and any attempt to apply such a standard would probably create more confusion and problems than it would dispel.

7. Senator Huber asked me to comment on a provision in the crime compensation act making attorney's fees an addition to any award. This is certainly a sound provision and will help assure that any damages assessed will not be diverted immediately from the purposes for which they are awarded.

Whether this kind of provision is essential depends on the kind of compensation program being considered. For example, in workmen's compensation, the law may be designed to make sure the worker can collect without the need for a lawyer. If this is the case and if the assumption is sound, paying for all attorney fees may simply bring in lawyers needlessly and increase costs.

The National Commission on State Workmen's Compensation Laws had this to say on attorney fees: "An additional question is whether the employee or the employer should pay the employee's attorney's fee. With the adoption of our recommendations for improvements in the delivery system and the adequacy of benefits, it is not unreasonable to hold the employee primarily responsible for any attorney's fees that he incurs. However, States should consider the shifting of these fees to the employer as a form of penalty in those cases in which the employer or his insurer has acted in an unjustified manner."

This view of the National Commission is not entirely logical. Even if benefits are adequate, they will be rendered inadequate by deduction of attorney's fees.

The National Commission of Malpractice also considered the question of attorney's fees. It recommended regulating the contingent legal fee by establishing a scale in which the fee decreases as the recovery amount increases (a similar recommendation appears in my earlier report on malpractice).

Here, too, recoveries, if properly determined, will be rendered inadequate by deduction of attorney's fees. However, some believe juries tend to pad awards to cover legal expenses.

Ideally, recovery should include actual damages as well as expenses of litigation. To do so would increase the cost of malpractice insurance. It would also raise the question of charging the plaintiff with the defendant's attorney's fees in cases which the defendant won. All of this would introduce further uncertainties into the litigation process, and perhaps make the right to a day in court even more difficult to obtain.

Although the addition of attorney's fees in another context may be entirely appropriate, it is not clear that in the malpractice field this would be a wise practical measure.

There would be general agreement that requiring the payment of attorney's fees in cases in which there is unreasonable failure to pay benefits (or other unjustified action) is an appropriate measure. This kind of provision can be found in workmen's compensation laws. There, it has practical value, as most cases are clear cut with no room for argument, but in malpractice cases few claims are so clear cut, so the provision would have little practical value.

8. Representative Parr asked me to comment on how the malpractice system could be changed to make it possible for a small but meritorious claim to be collected. In small malpractice claims, it may not pay an attorney to handle the matter on a contingent fee basis. The National Commission on Medical Malpractice found cases in which claimants had to abandon a case which might be worth $10,000 because even such a meritorious case did not offer adequate incentive to an attorney working on a contingent fee basis (See p. 35 of National Malpractice Commission Report).

The only remedy the National Commission could suggest is to establish "public legal assistance mechanisms" or to expand those that already exist "to assure adequate legal representation to persons with small malpractice claims."

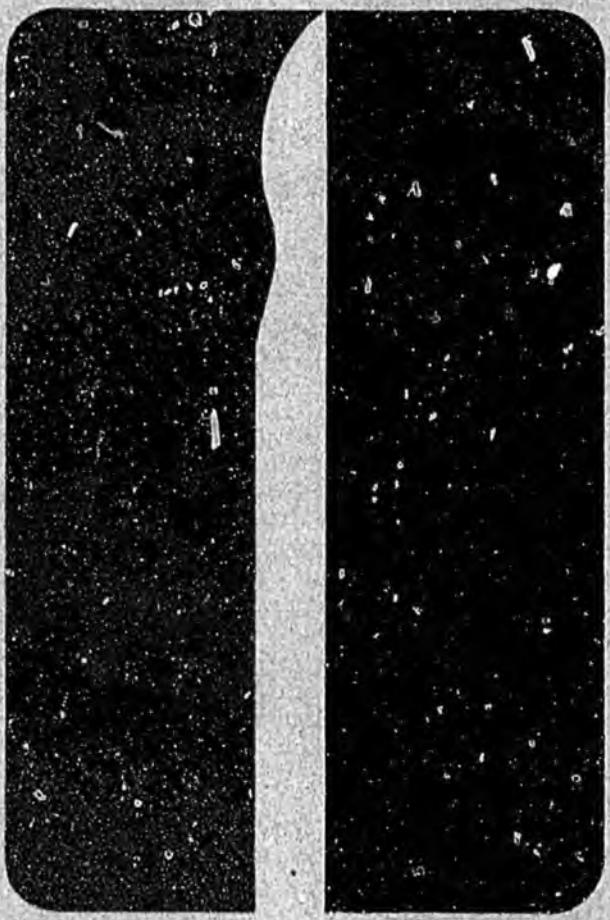
The ready availability of arbitration may somewhat ease the problem. Another suggestion is to establish small claims courts presided over by those technically proficient in the area of medical legal malpractice. In other words, this would be a special small claims court for malpractice claims.

There is probably no good answer for this problem at the present time. Perhaps at one point no-fault malpractice compensation systems will become practical, and enable small meritorious malpractice claims to be adequately compensated.

A shopper's guide to surgery

Fourteen Rules On How To Avoid Unnecessary Surgery

By
HERBERT S. DENENBERG
Pennsylvania Insurance Commissioner



FOREWARD

"Free choice of physician" is frequently invoked by medical spokesmen as the keystone of the U.S. Health System. If this privilege is used wisely, a powerful force could shape an effective, humane and responsive health care system.

"Free choice of physician" is only a hollow slogan for a public unprepared to make an informed and intelligent choice. The ability of the public to make an informed choice of a medical professional has diminished as medicine has become more complex and impersonal. Dissatisfaction and confusion accompany an individual's inability to choose wisely.

Experienced physicians understand that successful health care requires the active cooperation of the patient. The process should start when the patient selects his physician. If a patient enters the system confused, dissatisfied and passive, he often retains these attitudes throughout his treatment.

Commissioner Denenberg's suggestions are practical and easily understood. He has provided a clear Guide to high quality surgical care which encourages patients to become active participants in their treatments.

Leonard Bachman, M.D.
Governor's Health Services Director

PREFACE

Too many people (some say up to two million a year or more in the United States) are subjecting themselves to unnecessary surgery. They often do so without adequate investigation or consideration.

Dr. Paul R. Hawley, a famous medical authority and surgeon, has said: "I shall never cease to be astonished at the number of people who would not invest a penny in any enterprise without full assurance of its safety, yet who will hop on the operating table and permit anyone to cut into their bellies."

Unnecessary surgery takes a needless toll of human lives and generates suffering, disability and expense.

Many studies have documented our national scandel of unnecessary surgery. One of the most noteworthy of these studies was conducted in 1962 to 1964 by the Columbia University School of Public Health and Administrative Medicine. The group surveyed various types of surgery. It found, for example, that of 60 hysterectomies, "1/3 of the patients were operated on unnecessarily and that question could be raised on the advisability of the operation in another 10 percent." Of 13 caesarian sections (delivery of a baby by means of an abdominal operation), there were serious questions about the necessity of surgery in seven cases. There is every reason to believe that the conclusions of the Columbia study are still valid.

A Ralph Nader group in 1971 as well as other independent investigations have reached the same conclusion. Dr. Charles E. Lewis, a Harvard specialist in community health, concluded a 1969 study of the

incidence of surgery with this comment: "The results presented might be interpreted as supporting a medical variation of Parkinson's law: patient admissions for surgery expand to fill beds, operating suites and surgeon's time." And there is an abundance of professional opinion that unnecessary surgery is widespread. Dr. John Knowles, now President of the Rockefeller Foundation in 1972, warned that "incredible amounts of unnecessary surgery are going on"(Baltimore Sun, May 29, 1972, page 4).

This short "Shopper's Guide to Surgery" is intended to give the public some basic rules on how to avoid unnecessary surgery. It is also intended to give the consumer the kind of information he needs to help hold down the cost of health care and to better utilize the health delivery system.

This "Guide" is the fourth in our series; the first was the "Shopper's Guide to Hospitals in the Philadelphia Area"; the second was the "Shopper's Guide to Auto Insurance"; and the third was the "Shopper's Guide to Life Insurance." We also have other "Guides" in preparation, including a "Shopper's Guide to Health Insurance" and a "Shopper's Guide to Homeowners Insurance."

We are also enlisting the aid of others in the preparation of needed consumer Guides. In November of 1971, we ordered Blue Cross of Western Pennsylvania to publish a "Shopper's Guide to Hospitals" for the 29 county area of Pennsylvania it serves. It published such a Guide in June of 1972, entitled "Directory of Hospital Costs and Services in Western Pennsylvania."

Ralph Nader, the leading consumer advocate, has called on other Insurance Commissioners to follow our lead and prepare Guides of their own. We think that's an excellent suggestion. We also think it would be sound for consumer and industry groups to start following suit. It's about time the consumer gets the facts. It's about time we make our free enterprise system of competition work like it's supposed to. It's about time we give the public the facts. We think these "Shopper's Guides" are a step in the right direction.

We know that an informed public will be in a better position to make decisions regarding its own health and welfare. We believe that one of the tasks of government is to inform the public. An informed public will help to prevent abuses that now plague the consumer. These informational Guides, therefore, have an important place in the regulatory processes of government.

Many people contributed suggestions on various drafts of this Guide, most of whom preferred and even demanded that we keep their contributions anonymous. Special thanks are due to Dr. Leonard Bachman, The Governor's Health Services Director, an internationally recognized anesthesiologist; James Mead, Medical Economist of the Pennsylvania Insurance Department; and Rodney F. Pyfer, my Special Assistant.

As future editions of this "Guide" are contemplated, we would greatly appreciate receiving suggestions for improving it.

Herbert S. Denenberg
Pennsylvania Insurance Commissioner

July, 1972

A SHOPPER'S GUIDE TO SURGERY

Some authorities estimate there are as many as 2,000,000 unnecessary surgical operations in the United States each year. How to decide if the surgery you've been asked to undergo fits the category of the 2,000,000 unnecessary operations or the 10,000,000 necessary ones is the purpose of this "Guide."

Don't assume you can place blind trust in our system of medical care. Ralph Nader has pointed out: "Conditions of medical care are often criminally negligent especially for the poor and even at times for the relatively affluent. The endless reports of such conditions by physicians, government investigations and other reliable inquiries and testimony present macabre scenes so repeatedly that they invoke resigned or indifferent responses. The rocketing cost of health care with the advent of socialized payment of physicians' bills through Medicare has not improved the quality of care, but it has enriched the medical profession to an unprecedented degree."

You are placing undue trust in our medical care system if you assume one doctor is as good as another, or that any doctor can provide you with the quality medical care you need. Many doctors, some 15,000 nationally, are licensed but unfit to practice medicine according to conservative estimates, as reported in a 1970 book by Howard R. and Martha E. Lewis called The Medical Offenders. Many doctors may be qualified to render medical care, but may be totally unqualified to perform surgery.

This Guide should help you find a qualified surgeon when you need one. It should also enable you to take other needed steps to avoid unnecessary surgery.

You can't diagnose your own case, but there are some simple rules you can apply to make sure that you really need the surgery that might be prescribed.

Rule 1

Don't go directly to a surgeon for medical treatment. If at all possible, start out by going to a general practitioner or internist. Go to your regular family doctor – a general practitioner or internist – for any initial diagnosis or treatment. Unfortunately, there is a shortage of general practitioners and a surplus of surgeons.

You will also need a general practitioner or internist to treat you after the surgery and to work with your surgeon in providing care both before and after surgery. Everyone should have a family doctor, who is a general practitioner or internist, and you should get one before you're sick. Don't wait until you urgently need one. Select one so he'll be available the minute he's needed. Also, you want him to have time to know you and learn your medical history. Develop a good relationship with a family doctor.

He will then be able to provide you with better care and he'll be more likely to save you from unnecessary surgery.

Most surgeons are competent, conscientious, careful and conservative, as are most other physicians. Some are narrowly trained and tend to do what they are trained to do – operate. A small minority are knife-happy, incompetent and greedy. And there is a tendency for surgeon's to do their thing – which is to perform surgery.

Even in the case of a superb surgeon, a general practitioner or internist can often serve as a countervailing force on any tendency of a surgeon to place too much faith in surgery.

This tendency of medical men (such as general practitioners and internists) to be more conservative than surgeons is documented in Dr. William A. Nolen's best seller, The Making of A Surgeon:

Kevin Jonas (a surgeon) was, naturally, eager to do some heart cases. He would gladly have paid a thousand dollars apiece for potential patients even if he'd have had to steal to get the money, but of course there weren't any for sale. He had to depend on the medical men and they weren't eager to have their patients operated upon. Internists don't take kindly to new surgical procedures; they're from Missouri when it comes to surgical pioneering – as, I suppose, they should be.

Christian Barnard, the famed heart transplanter, in his autobiography, relates how eager he was to find a patient for a heart transplant. "Maybe we were too anxious," he writes. He catalogues his considerable discomfort while eagerly awaiting the first heart transplant operation:

All through the last two weeks of October I kept after Professor Schrire – plaguing him day and night.

The delay and subsequent anxiety caused an alarming flare-up in my arthritis. Both hands and feet began to swell and with such pain I feared it would prevent me from operating when Professor Schrire finally decided to release a patient.

There is some tendency for too much surgery when there are too many surgeons around. It is no mere coincidence that in proportion to population, U.S. surgeons not only are twice as numerous as Engl. surgeons, but also perform twice as many operations.

An authoritative study in 1970 by Dr. John P. Bunker concluded that there is a disproportionately large number of surgeons in the United States and this may lead to some unnecessary surgery. An editorial published in the June, 1972 issue of the Archives of Surgery, a publication of the American Medical Association, confirmed that we have a surplus of surgeons.

Rule 2

Make sure any surgeon that is to perform surgery on you is Board certified. This means his competence as a surgeon has been certified by one of the American Specialty Boards, after a vigorous oral, written and clinical examination. There are about 51,000 surgeons who are Board certified.

One authority, Dr. Robert E. Rothenberg, a well known surgeon, in his book Understanding Surgery, has concluded: "It is safe to say that an American Specialty Board diploma in a doctor's office is almost a guarantee of his efficiency." For some reason, Dr. Rothenberg said nothing of a guarantee of conscience or character. His statement may be too sweeping an endorsement, but a Board certified surgeon is still a sound minimum qualification. It is one important test of a surgeon's ability.

Osteopathic surgeons may be accredited by the American Specialty Board in some states or by their own

American Osteopathic Board of Surgery.

There are competent surgeons who are not Board certified. If you want to use them, you should be careful to check them out all the more carefully by the other rules suggested here.

In some rural areas, Board certified surgeons may not be available. Under these circumstances, the patient may have to travel to a larger city if he cannot otherwise assure himself of the competency of those surgeons available locally.

You can find out for sure if a surgeon is Board certified by calling your local county medical society or using the Directory of Medical Specialists available in most good public libraries.

It pays to look for a competent surgeon. Some reliable experts, including Dr. Paul R. Hawley, have claimed that one-half of the surgical operations in the U.S. are performed by surgeons who are inadequately trained to undertake such surgery. In June of 1972, Dr. Eric W. Fonkalsrud of the editorial board of the American Medical Association's Archives of Surgery, said that about half of the operations in the country are being performed by doctors who are not Board certified surgeons.

One expert, Dr. Harold T. Hyman, in a widely used medical reference book, suggests that the patient not only check out the surgeon but also the anesthesiologist. Others would rely on the surgeon to see that a qualified anesthesiologist is selected for the surgery.

Rule 3

Make sure the surgeon you are to use is a Fellow of the American College of Surgeons (F.A.C.S.). There are about 25,000 surgeons who are designated Fellows. The American College of Surgeons has membership qualifications that keep out the less competent sur-

geons, and the College also stresses programs of continuing education.

This is not an infallible rule, of course, but it is one that is well worth applying in selecting any surgeon.

You can check as to whether any surgeon is a Fellow of the American College of Surgeons in the same fashion as you check to see if he is Board-certified – consult the Directory of Medical Specialists or call your local county medical society. You can also write directly to the American College of Surgeons, 55 East Erie Street, Chicago, Illinois 60611.

The equivalent organization for Osteopaths is the American College of Osteopathic Surgeons located at 1550 South Dixie Highway, Suite 216, Coral Cables, Florida 33146.

Rule 4

Even if your family doctor and surgeon agree that surgery is necessary, consider getting an independent consultation or opinion before subjecting yourself to surgery.

Consultations, according to some studies, reduce operations by as much as 20 to 60 percent. You may be in that 20 to 60 percent. And you have a right to seek consultation.

As one expert, writing under the pseudonym of Dr. Lawrence P. Williams, says in a book entitled How to Avoid Unnecessary Surgery:

The old saying, two heads are better than one, is as true in medicine as anywhere else – possibly even more so, for conscientious doctors have found out that in order to present a problem case to another doctor, they must first review and organize the facts of the case. This in itself often makes the problem

clearer. A second independent surgeon, moreover, may consider certain aspects of the condition quite differently, throwing a new light on the problem. The chance that other factors pertaining to the surgery will be brought out is greater with a consultation.

The second doctor must be truly independent. He should not be part of a 'you-scratch-my-back-I'll-scratch-your-back' arrangement. The second surgeon should be told his opinion is being sought but he will not do the surgery if it is necessary. This removes any financial incentive for him to suggest surgery.

You may want to select the second surgeon on your own, or perhaps get recommendations from your family doctor or surgeon.

When a consultation is to be rendered, the first surgeon ordinarily briefs the second one on the case and his tentative diagnosis and recommendation.

Some would prefer a totally independent opinion rather than an independent consultation, with the second surgeon working on his own and being unaware of the conclusions of the first surgeon. This may remove any tendency to be too quick about going down the wrong path with the first surgeon.

One well-known surgeon suggested that the best way to avoid unnecessary surgery is to get three independent opinions without advising any of the three surgeons involved about the conclusions of the other two.

How many consultations and opinions you should have depends on the facts and circumstances of each case. The need for additional consultations and opinions is a matter which you can discuss with your own doctor and surgeon. In some clear cut cases (pardon this figure of speech), no consultation will be necessary at all. And of course, there may be need for emergency surgery – as, for example, after an auto accident or in the event of a ruptured

appendix – when there may not be sufficient time to follow the rules suggested here.

If a doctor refuses to seek consultation upon request, he is violating the ethical rules of the medical profession. For example, Section 8 of the American Medical Association Principles of Medical Ethics states:

A physician should seek consultation upon request; in doubtful or difficult cases; or whenever it appears that the quality of medical care may be enhanced thereby.

Look out for a doctor or surgeon who is afraid of consultation or becomes angry or disturbed at the prospect of consultation. Drop a doctor or surgeon who can't accept another expert's consultation graciously. As between your doctor's or surgeon's ego and your health, opt for the latter.

If a doctor improperly refuses consultation, you can report his refusal to the county medical society for possible disciplinary action, as well as to Vincent J. Fumo, Acting Commissioner of the Bureau of Professional and Occupational Affairs, 279 Boas Street, Harrisburg, Pennsylvania 17120 (Phone 717/787-2100).

Rule 5

Make sure any surgery is performed in an accredited hospital and, if possible, select a hospital that gives staff privileges (i.e., the right to practice in the hospital) to both your doctor and surgeon. The Joint Commission on Accreditation of Hospitals (J.C.A.H.) certifies that institutions it accredits meet certain minimum requirements designed to assure quality patient care. The standards of the J.C.A.H. are not notably high but they do disqualify the least adequate hospitals and the out-and-out "butcher shops."

Osteopathic hospitals may be accredited by their own

group — the American Osteopathic Association or by the J.C.A.H.

About a fourth of the nation's hospitals are not accredited by the J.C.A.H. or the American Osteopathic Association, but almost all of the better hospitals are. There are about 1,600 unaccredited institutions out of a total of about 7,000 short-term hospitals.

The address of the Joint Commission on Accreditation of Hospitals is 645 North Michigan Avenue, Chicago, Illinois 60611. The address of the American Osteopathic Association is 212 East Ohio Street, Chicago, Illinois 60611.

Another method of assuring quality hospital and surgical care is to make sure the hospital you go to is affiliated with a medical school, and your doctor and surgeon are on the staff of that hospital. Medical school hospitals and their affiliates have a reputation for excellence, and for keeping their medical staffs on the ball.

Rule 6

Don't push a doctor to perform surgery on you. If you insist on surgery, even if it is unnecessary, you are likely to find a surgeon willing to perform it.

There are "overtreaters" who are willing to perform unnecessary surgery, so don't ask for trouble.

As Howard R. and Martha E. Lewis note in their book, The Medical Offenders:

The patients whom overtreaters sell most successfully are neurotic women. A gynecologist new to this country observed: 'In Europe it is all the doctor can do to persuade a woman to have a needed operation. In America it is difficult to dissuade her from having an unnecessary one."

Some women have had six, nine, or 16 major operations in search of relief from their anxiety, malaise, and all-around misery of emotional immaturity.

One doctor has suggested that females are subjected to unnecessary surgery more often than males because of the male dominance of the medical profession. Dr. Francis S. Norris, a surgical pathologist, substantiates this point of view by citing a 1969 Surgeons' Cancer Conference at which it was agreed that surgeons think twice about orchidectomy (surgical removal of a testicle), but rarely hesitate to remove an ovary.

Occasionally a surgeon is overheard to say: "Surgery was unnecessary, but if I didn't do it, someone else would. And at least I did a good job." Don't be so eager for surgery that you prescribe your own unnecessary operation.

Rule 7

Make sure your doctor and surgeon explain both the alternatives to surgery and the possible benefits and complications of surgery.

Any doctor or surgeon should do so and you'll be able to make a more intelligent decision on surgery when you have the facts. As a matter of fact, a doctor that fails to disclose the risks of surgery may open himself up to a malpractice suit. Under the legal doctrine of informed consent, a patient who has not been fairly advised about the risks of surgery has not legally consented to it. He may, therefore, sue any doctor for malpractice who operates on him without fairly disclosing the risks incurred.

All kinds of possible complications may arise from surgery. One expert, Dr. Robert E. Rothenberg, in his book Understanding Surgery, lists five complications:

(1) Pneumonia, once feared, now largely controllable by antibiotics.
(2) Embolism (blood clot).
(3) Postoperative shock.
(4) Wound infections.
(5) Postoperative hemmorhage and wound rupture.

Another serious complication that should be mentioned is cardiac arrest.

The risks of surgery depend on many factors such as age, physical condition, and the nature of the operation to be performed. Such risks are always there and you're entitled to know precisely what they are. Despite all the advances in surgery, one out of every 650 will not come through surgery alive, according to Dr. Rothenberg. That's an average figure, so the expected mortality for any given operation may be much lower or higher.

It is true that some minor procedures involve only slight and almost negligible risk. The uncomplicated removal of a wart without the need for general anesthesia is a good example. If general anesthesia, which involves loss of consciousness, must be used, there is always significant risk. Death and complications from anesthesia are among the most serious risks arising from surgery. Any time general anesthesia is to be used, even an operation that merely involves a surface procedure without cutting into a body cavity, there is a significant risk.

As general anesthesia involves significant risk, it is preferable to have it administered by a physician anesthesiologist who is a specialist, or under his supervision by a certified, trained nurse anesthetist. It is a good idea to be sure the hospital you go to uses a physician anesthesiologist.

Perhaps the best definition of major surgery that puts the risk involved in true perspective is the one that goes like this: If it involves you, it may be minor surgery. If it involves me, it's major surgery.

You should also know what the alternatives to surgery are, such as diet in the case of a peptic ulcer. Surgery is typically a last resort, and you should be as sure as you can that you've explored all treatment short of surgery. Needless to say, you should know the benefits of the proposed surgery. You can hardly judge the risk or even the need for surgery without a clear picture of its likely benefits. Of course, if it is clear that surgery is needed, it should not be delayed to the point where further harm may result.

Rule 8

Frankly discuss the fee for surgery with your doctor. You should know what the surgery is going to cost. Furthermore, most surgeons prefer that the patient understand the cost of surgery in advance. So, forget all about the mistaken notion that it's somewhat improper to inquire about the cost of surgery.

Any surgeon worth his scalpel will gladly discuss fees. If he is not willing to do so, then he doesn't know much about his obligation to the patient and the patient's right to know. Under Phase II of the Federal Wage-Price Stabilization Program, every doctor must post a notice that a record of all his fees is available on demand.

Under Pennsylvania Blue Shield Plans A and B, if your income is under certain specified amounts, the surgeon must accept the fee scheduled in your policy as full payment. If your income is above these limits, the surgeon may charge more than the scheduled amount. (The income limits for Plan A are $2,500 for an individual and $4,000 for a family. Under Plan B, the income limits are $4,000 and $6,000 respectively.)

Be sure you know all costs involved – the surgeon's fees, any fees for his assistant, the anesthesiologist's fees, those of the hospital, special nursing care, your own physician's fees, and any other costs.

This discussion of fees will have several important incidental advantages. It gives you a better idea of the nature of the surgery.

It also may suggest improper arrangements between the surgeon and others. If the assistant's fee is much beyond 20 percent of the surgeon's fee, that may suggest fee-splitting. For example, if the assistant is also a referring doctor, a high assistant's fee may suggest "fee-splitting," a form of unethical kickback to the doctor from the surgeon. Don't put yourself in the hands of a surgeon or doctor that engages in such unethical activity. So, politely question any excessive fees to the surgeon's assistant if fee-splitting is suggested. According to the Lewis' book, The Medical Offenders, fee-splitting is especially widespread in Pennsylvania.

Rule 9

Check the surgeon out with those who know him or have used him. This includes other patients as well as associates of the surgeon.

You might want to check on his background in the Directory of Medical Specialists. What school did he go to? Where did he take his residency? How long has he practiced, etc?

One good way to find the best surgeon is to find out who doctors use when they need surgery for themselves or their families. The greatest compliment to a surgeon is when he is used by a doctor or his family.

Check the surgeon out yourself. You've got to have confidence in him. You don't have to like him, but you should have confidence in him – or find another surgeon.

Rule 10

Make sure the surgeon knows and is willing to work with your general practitioner or internist. To assure

complete, continuous and quality care, close coopera-tion between the surgeon and your doctor is vital.

If they can't work as a team, you may be the loser.

Rule 11

Consider a surgeon who is part of a group practice, and preferably a group that includes internists, surgeons and other specialists. This involves doctors who work together on all their cases, and freely consult and communicate with each other. With a group practice, you are more likely to have a doctor available at all times who is familiar with your case and you have the built-in benefits of consultation.

Some patients are critical of group practice, however, if they get a feeling that they are being passed from one doctor to another.

Group practice takes many forms. It includes partnerships of many kinds, private clinics, and groups sponsored by labor and management.

One type of group practice is the Health Maintenance Organization (HMO). In most HMO's, the surgeon's income does not depend on the number of operations he performs. Under the HMO concept, doctors, including surgeons, are paid as much for keeping you well as they are for treating you when you are sick.

A good HMO performs about 50 percent less surgery on its patients than a health insurance plan which compensates doctors on a per case basis. As a result, membership in a good HMO may help save you from unnecessary surgery.

Rule 12

Select a surgeon who is not too busy to give patients enough time and attention. Surgeons who handle too

many cases are bad news for the patient for obvious reasons.

The best surgeons are likely to be busy. But the "best" surgeon who must rush through an operation and must hurry past his patients is not likely to get good results. To say haste makes waste is a gross understatement when discussing surgery.

It may be difficult for you to decide if a surgeon is too busy. You can get some feel for this by observing how crowded his waiting room is and how much time he is willing to spend with you.

Rule 13

Be especially on guard if some of the operations that are most often unnecessarily performed are proposed for you. These include hysterectomies, hemmorhoidectomies, and tonsillectomies. These operations have been referred to as "remunerectomies" by some cynics (a fancy Greek derivative from the word "remuneration"). One doctor, Norman S. Miller of the University of Michigan, coined the term "hip-pocket hysterectomies" because the "only benefactor is the surgeon's wallet." (Evening Bulletin, June 8, 1972, page 25.)

Rule 14

The patient, not the doctor or surgeon, is supposed to, and is entitled to make the decision on whether to have surgery. Listen to the experts. But remember, it's still your decision. You're entitled to have the facts you need and you're entitled to decide whether or not to go ahead with the surgery.

As the title of the television show goes – "THIS IS YOUR LIFE."

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OPERATED BY
LUTHERAN HOSPITALS AND HOMES SOCIETY
FARGO, NORTH DAKOTA 58102

January 28, 1976

Representative Terry Gardner
Judiciary Committee
Pouch V
Juneau, Alaska 99811

Dear Mr. Gardner:

In response to a letter from Mike Bradner, I would like to submit the following comments on the Governor's basic package on malpractice legislation. I hope the legislature will be convinced of its importance to the people of the State. I believe the package as presented is a compromise and not totally acceptable to any one group. It is more than likely to create considerable debate and I would therefore like to express some feelings to the members of your committee for them to consider in the debate.

First, I believe that any system which is evolved should guarantee the people just compensation for medical injuries sustained. But justice is no longer served by placing the entire financial burden of such compensation on the accused. In the past, this risk of financial ruin has been spread out through the use of insurance. The question now is whether or not the three hundred physicians and eighteen hospitals can continue to bear the full cost of this burden through insurance. I am told that twelve to fifteen percent of the premiums paid are actually delivered to the injured party. The remainder goes for legal and court costs, insurance administrative cost, investigative and case preparation cost, etc. On this basis, if we can expect $1,500,000 in claims in the coming year, $10,000,000 would have to be generated in premiums to cover the expected claims. Can this burden be placed entirely on the physicians and hospitals who will pass these costs on to the people or must we seek alternatives? We certainly should make the system more efficient.

Secondly, I believe that in order to make the above guarantee, it will be necessary to guarantee malpractice "coverage". Does the State have a responsibility here? I believe that it does, if only inasmuch as it licenses physicians and hospitals and offers to the public that these licensees have at least met minimal qualifications.

Probably one of the most controversial aspects of the package, as presented, is the compulsory nature of contributions to the Medical Indemnity Corporation as a requirement for licensure. If it is truly necessary to have the total health care industry as contributors in order to obtain this "coverage", then this requirement should remain. We must have the coverage. No amount of limitation of awards or decrease in the statute of limitations will encourage an immediate

inrush of insurance companies to pick up the business. An interesting offshoot of the compulsory nature of this contribution might be the incentive it gives to peer review for risk identification.

On the subject of risk identification, I believe that it is necessary only to beef up the powers and immunities of the Medical Board and to provide for a natural flow of information from the medical societies, hearing committees, expert advisory panels, etc. I would recommend against establishing a branch of government concerned with risk identification as I believe such already exist in the Medical Board.

In summary, I support the recommendations of the Advisory Committee and ask the legislature to consider that this package was an effective compromise reached in the fall of 1975. If any changes are to be made, in the light of new information, please "don't throw the baby out with the bath water".

Sincerely,

Roger F Harding

ROGER F. HARDING, M. D.
Fairbanks Memorial Hospital

RFH:nw

RECOMMENDATION OF GOVERNOR'S COMMISSION ON MALPRACTICE

RECOMMENDATION #1: The liability of the health care provider should terminate three years after occurrence (two years statute of limitations and one year limit on discovery). Any reported case after the third year ought to become the responsibility of a special fund and not the liability of the health care provider.

RECOMMENDATION #2: Any award to which the injured patient is entitled should be reduced by all available collateral sources such as private, group or governmental medical or disability benefits whether contributory or noncontributory, except life insurance, by including the introduction into evidence of the items of damage compensated by collateral sources, except federal programs which by law must seek subrogation.

RECOMMENDATION #3: Medical professionals should be immune from liability to a person who is not his patient for administering emergency medical care where the giving of immediate aid appears to be the only alternative to death or serious bodily injury or harm.

RECOMMENDATION #4: The law should provide that no promise to achieve a certain medical result is valid unless that promise is in writing signed by the health care provider.

RECOMMENDATION #5: The definition of medical negligence be improved by adopting a national standard of acceptable medical care in lieu of a local community standard, limiting the standard to that at the time of the act, and imposing the standard appropriate under all circumstances under which the health care provider was acting.

RECOMMENDATION #6: Cases brought more than three years after the date of the incident alleged to cause the loss complained of must be proven by evidence that is clear and convincing.

RECOMMENDATION #7: There be enacted provision for appointment of ad hoc medical expert panels composed of at least one physician and two health care providers of the same discipline as the health care provider charged, impanelled after filing of an action and prior to any pretrial proceedings to initiate an investigation of available evidence and report to the parties its findings as to medical facts.

RECOMMENDATION #8: The findings of the expert medical panel be admissible as evidence and the panelists subject to cross-examination in any subsequent trial.

RECOMMENDATION #9: There be established a medical adjudication board consisting of nine citizens of the State who are neither health care providers nor legal professionals, nor insurers, and three physicians appointed by the Governor, and one Superior Court judge assigned by the court. This board would be the exclusive tribunal for medical negligence cases.

RECOMMENDATION #10: The legislature enact a joint resolution for the amendment of Article I, Section 16 of the Alaska State Constitution, permitting the legislature to consider an alternative system of adjudicating medical negligence claims which may be a substitution for trial by jury.

RECOMMENDATION #11: Provisions be made to authorize and administer the awards of future income and continuing medical care to be paid periodically rather than in a lump sum.

RECOMMENDATION #12: Jury and board awards shall be rendered by category of loss.

RECOMMENDATION #13: Create a Health Care Providers Indemnity Corporation, a public corporation, which would be regulated by the Director of Insurance as a domestic property and casualty insurer and which would be a mandatory and exclusive source of minimum limits of medical malpractice insurance for all health care providers for the losses reported within the first three years after occurrence.

RECOMMENDATION #14: The corporation may contract with servicing carriers for administrative and claims services and seek contracts of indemnity from admitted carriers retaining for itself no insurable risk.

RECOMMENDATIONS #15: The rates for coverages provided by the corporation should be developed based on Alaska's experience and retrospectively adjusted over a four year period such that each category of health care providers would fully pay for all losses and expenses incurred in the programs yielding an appropriate profit to the indemnity carrier.

RECOMMENDATION #16: The corporation provide coverage retroactively to January 1, 1975 with appropriate additional premiums for those health care providers which had no insurance during that period.

RECOMMENDATION #17: A joint underwriting association should be authorized to be implemented upon a finding by the Director of Insurance that indemnity at a reasonable rate is not available from a private carrier.

RECOMMENDATION #18: The joint underwriting association should be composed of all property, casualty and disability insurers and all health care service contractors.

RECOMMENDATION #19: Create a late claims fund which shall be funded by assessments against all health care providers in amounts determined by the Director of Insurance after public hearing as necessary to actuarially carry all fund liabilities and guaranteed by the State to the extent necessary to cover actuarial deficiencies. There should also he provision for the legislature to reduce the assessment of health care providers upon a finding that the assessment is unaffordable.

RECOMMENDATION #20: Legislation should be enacted which will require the maintenance of separate, specific and detailed statistical information on malpractice claims. Authority should be exercised by the Director of Insurance to more deliberately regulate policy forms and rates for this line.

RECOMMENDATION #21: The proposals of this Commission should inure to the benefit of, and be binding upon all licensed in the State as hospitals, as defined in AS 18.20.130 chiropractors, dental hygenists, dentists, physicians, osteopaths, chiropodists, nurses, opticians, pharmacists, physical therapists, psychologists and psychological assistants.

RECOMMENDATION #22: There should be a legislatively prescribed procedure for informing the patient of the consequences of a procedure and obtaining the consent to perform it and also setting forth the conditions pursuant to which consent is implied or not required.

RECOMMENDATION #23: The appropriate licensing boards should be authorized to render disciplinar sanctions against health care providers other than license suspension. The boards should be able to reprimand, censure, place on probation, restrict practice by time, specialty, procedure or facility or to require continuing education or retraining.

RECOMMENDATION #24: The appropriate licensing board should have authority to require more relevant and more frequent reports on healthcare practices by and from its licensees. Persons reporting should have immunity from defamation actions based on reports made to licensing boards to officially constituted service committees of hospitals and professional organizations.

RECOMMENDATION #25: The legislature appropriate such additional funds as are needed to properly staff the health care licensing boards with investigative and administrative personnel.

RECOMMENDATION #26: Provision should be made for more effective loss control by all health care providers but with specific attention to identified problem areas.

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

February 18, 1976

SUBJECT: Medical Malpractice Premiums by Alaskan Physicians

TO: The Honorable Terry Gardiner

FROM: Louise Crane
Research Analyst

The Division of Insurance, Department of Commerce and Economic Development has, at the request of the Legislative Affairs Agency, conducted an individual policy survey of the medical malpractice premiums of Alaskan physicians by polling each broker who markets medical malpractice insurance in Alaska. This information has been compiled as to total premiums, total premium by speciality and average premium by speciality.

The attached letter from Richard L. Block, Director of Insurance, also includes information you requested in a letter of January 30th concerning the impact of premiums if an absolute statute of limitations was adopted.

The Legislative Affairs Agency had requested the release of the information on several occassions within the past week. However, the Director of Insurance was out-of-town, and his staff was reluctant to release the compiled information without the Director's editorial review. This Agency received the attached report at 9:30 a.m., February 18, 1976.

LC:cw

ATTACHMENT

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE / POUCH D— JUNEAU 99801

February 17, 1976

Terry Gardiner, Representative
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Gardiner:

In response to your request for current statewide premium levels for Medical Malpractice Insurance I am pleased to provide you with the attached schedule.

Bear in mind that this is not entirely reflective of actual premiums paid for the following reason:

1. The figures used are for basic limits of $200-600,000.00 of liabiliaty. Most physicians who purchase insurance also purchase excess liability, probably to $1,000,000.00 for which there is an additional charge.

2. Some of the policies included in this survey are on a claims made form and in order to obtain protection for claims made during a tail period, an additional charge will have to be made at a later date. Those charges are not included in the premium figures.

The fact that some of the policies reported are on claims made form and some are on occurrence form tends to also distort the picture.

Finally, many of the physicians are insured under a very favorable program offered to the American Group Practice Association. In order to show this spread of premiums in each class, the attached chart has a column for the low and the high premiums which were reported to us.

You also asked what the difference would be in premium level should the Medical Malpractice Insurance Commission's proposals be adopted. The most frank answer I can give is, I don't know. Perhaps it would be helpful for you to consider the following points:

1. Under the Commission's recommendation there would be two charges:

   A. A charge for coverage of claims reported within three years. Since the coverage provided is similar to that provided under the Lloyd's claims made form with three years of automatic tail protection and similar to the Shand Morahan program which provides three years tail protection upon the payment of a specified additional charge,that the Lloyd's premium or the Shand Morahan premium with additional charge will provide some indication of current premium levels for the coverage provided by the M.I.C.

   B. The charges to support the late claims fund will probably key off of some of the Closed Claims Survey Information which shows that approximately 6% to 10% of the dollars which have been paid out have been with respect to claims reported after 36 months after date of occurrence.

2. The Commission's recommendation requires the rate to be based on Alaska experience which means that if a lower than average number of claims were reported, this should be reflected in the lower than average premium level. We are currently obtaining a list of currently outstanding claims and claims which have been closed. It would appear that the total cost of all claims averaged over any four year period, is currently less than the present premium level, that is to say, the Alaskan experience has been more favorable than is indicated by the cost of the increasing rates. Any new rate will have to allow for the potential for increased frequency and larger size of losses that could be anticipated as Alaskans become more aware of the malpractice situation and the propensity to file a suit is increased but as the rating mechanism is rolled forward over the four year period, past history would suggest that the factors causing substantial rate increases in other states would not be present in the State of Alaska.

3. The Insurance Service Office which promulgates rates for its member carriers, indicated at the Malpractice Insurance Commission hearings in Anchorage, and frankly in more recent discussions, maintained, that were they to make a new filing of rates for their members, based on Alaskan experience, the rates would be lower than they have been in the past because of the favorable claim experience.

4. The present rates reflect expense factors, many of which will not be present in the mechanisms proposed by the Commission. Some examples are:

   A. Taxes are reduced by 1 1/2% of the total premium.

   B. Producer costs (agency and brokerage commissions) would be substantially reduced, I would estimate by 5 to 20% of the total premiums.

   C. General and overhead expenses can conceivably be substantially reduced but it is difficult to estimate by how much at this time.

   D. If the Commission's proposals concerning tort reform is adopted, it is believed that defense costs will be materially reduced.

   E. Because the program will be reinsured as a separate entity it is expected that reinsurance costs will be higher than they would be if the program were insured by a national carrier as part of an overall program but this could be offset by the fact that on a long term basis, reinsurance costs are a function of experience and if the experience is good the cost for reinsurance will be reduced even for a small sized book of business.

You have asked by your letter of January 30th, what the impact of premiums would be if we adopted an absolute statute of limitations similar to that enacted in California, Florida, Indiana, and Oregon. Carriers will anylize the effect of that law probably taking into account three considerations.

1. The current loss development data available suggests that approximately 6% of the indemnity paid is in respect to claims which were reported over three years after date of occurrence with respect to adults and 18% with respect to minors. These figures are not large, suggesting that the concern of the carriers and the dramatically increased bulk reserves to cover these losses might be partially unwarrented.

2. At the same time those figures reflect experience on cases which were reported in prior periods and closed after July 1, 1975 and prior to the close of the reporting period for the December 1975 N.A.I.C. Closed Claims Survey Report. It is reasonable to expect that wider knowledge of the malpractice suit remedy will result in more law suits and thus a larger

share of late claims which will tend to justify higher bulk reserves thus an absolute limit on time in which to file a suit could have a substantial favorable impact on costs beyond the amount indicated in subparagraph 1 above.

3. The principle concern which carriers will continue to harbor is whether such a statute is an unconstitutional infringment of the right of due process. Until that matter is finally determined by a e U.S. Supreme Court opinion, the carriers will remain concerned notwithstanding the enactment of such a State law, and will establish reserves to cover the eventuality that valid claims could be filed after the running of the statute.

It could be concluded that the enactment of a statute of limitations law would certainly not cause an increase in rates and might in future years as experience develops cause the rates to be reduced.

Yours cordially

Richard L. Block
Director

PRESENT PRIMARY MALPRACTICE COST ESTIMATES

SPECIALTY	CLASS	HIGH PREMIUM	LOW PREMIUM	AVERAGE PREMIUM	NO. DOCTORS AVERAGE DERIVED FROM	TOTAL DOCTORS	TOTAL PREMIUM
General Surgery	4*	12,084	2,463	7,509	7	48	$360,432
Family Practice	1	3,909	625	1,446	22	155	224,130
Orthopedic Surgery	6*	14,501	2,363	12,084	11	25	302,100
Ophthalmology	3*	9,126	1,478	4,851	4	20	97,020
OB GYN	5*	3,918	2,955	9,126	6	34	310,284
Otolarngology	4*	7,509	6,219	7,509	3	12	90,108
Internal Medicine	1	4,851	484	1,111	14	60	66,660
Radiology	2	17,464	484	4,138	8	14	57,932
Pediatrics	1	1,478	484	1,050	10	40	42,000
Pathology	1	4,162	2,605	3,383	2	12	40,608
Urology	3*	2,238	1,970	4,851	2	6	29,106
Neurologist	1	550	550	550	1	8	4,400
Acupuncture	1	1,019	1,019	1,019	1	1	1,019
Anesthesiology	6*	12,084	7,500	12,084	1	14	169,176
Plastic Surgery	5*	9,126	2,955	9,126	class 5 av.	3	27,378
Psychiatry	1	1,101	484	1,035	" 1 "	29	30,015
Dermatology	1	1,101	484	1,035	" 1 "	4	4,140
						485	$1,856,508

*Average for this class not credible or available. Utilize current available premium shown as average.

Average Premium 3,830

Block

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE / POUCH D — JUNEAU 99801

February 18, 1976

Alaska State House of Representatives
Judiciary Committee
In Session
Juneau, Alaska

Attention: Terry Gardiner, Chairman

Dear Representatives:

Re: Committee substitute for HB 574

I have reviewed what I believe is the last available draft of the above referenced measure. I would suggest that the following technical changes be made:

Adopted

1. In subparagraph 8 of the several statutes requiring insurance for a health care provider it is provided that the Commissioner of Commerce and Economic Development may require all persons licensed to obtain the insurance required. This is essentially a determination involving knowledge of the markets, underwriting requirements, rates and trends in the insurance industry and falls within the special purview of the Director of Insurance. I believe that in all of those sections the Director of Insurance whould be substituted for the Commissioner of Commerce and Economic Development. This recommended change is endorsed by the Commissioner of Commerce and Economic Development.

2. On page four, line three, I recommend that there be added as follows:

   "...in the required amounts[.] issued by the Health Care Provider Indemnity Corporation."

OK

This recommendation is made to be sure that all physicians are insured in the corporation even though they are insured through an employers policy. This means that if the hospital procures insurance from the Health Care Provider Indemnity Corporation and covers its physicians, the physician has satisfied his insurance requirement. On the other hand if the physician is employed by a corporate employer, the only way that the provision could be satisfied is if the corporate employer purchased malpractice insurance for the physician through Health Care Providers Indemnity Corporation.

3. Page 10. It was intended by the Malpractice Commission that the expert advisory panel be composed of health care providers That is not specifically required in the existing section. I would suggest that lines 15, 16, and 17 be amended as follows:

OK

> "...professional services by a health care provider, the court shall establish [a three person] an advisory panel of three health care providers in accordance with this section."

4. Page 12. (g) The measure prohibits consultation among the partys counsel and the advisory panel except through ordinary discovery proceedings. This clearly defeats the purpose of having the advisory panel. As written the section would prohibit the panel from interviewing or discussing the matter with the defendant doctor and would require that depositions and interrogatories be used to extract information. It is the purpose of the advisory panel to eliminate the expense of these discovery proceedings, not to encourage it. I would suggest that nothing is served by prohibiting communications with the advisory panel and thus subsection (g) should be stricken.

NO

5. Section 09.55.550 would strike the words "BY A PREPONDERANCE OF THE EVIDENCE", and refer instead to Section 09.55.540. This latter section contains no statement as to the quantum of proof required to make a case. There seems to be lack of unanimity what quantum of proof is required, but I certainly believe that justice is better served if the Legislature will finally determine the quantum of proof and state it in a statute clearly. It could be stated either in Section 540 or Section 550.

OK

I would still commend substantively, that with respect to cases reported longer than three years after incident, the quantum of proof should be "clear and convincing" and the quantum of proof for other cases should be "by a preponderance of evidence."

OK 6. Page 13. I believe that awards for loss of future earnings should be permissive and not mandatory, thus the word "shall" in line 27 should be changed to "may".

OK 7. On page 14, line 1, there is reference to the concept of increasing the award by an interest rate factor. It is unclear whether it is intended to provide for an escalation in the value of the periodic payment to cover inflation or whether it is trying to define the discount factor in establishing

a reserve for fixed periodic payments. If the desire is to protect against inflation then I would suggest that the language be amended as follows: Insert p. 14, l 1 after "basis"

"...periodic payments rather than by a lump sum payment; however the amount of periodic payment shall be increased annually in the same proportion as annual increases in the consumer price index for the community in which the claimant resides."

Adopted

On the other hand, if the application of a discount factor is the objective, then the following language should be used:

"...periodic payments rather than by a lump sum payment: however, any part of the award which is paid on periodic basis shall be reserved as an actuarialy calculated annuity utilizing tables and rates for annuity reserves currently approved by the Division of Insurance.

8. The provision in the subrogation section is impossible of implimentation. On page 14, line 11 it provides that evidence of collateral sources are admissable after the fact finder has rendered its award. Presumably the fact finder is a jury and once a jury has rendered its award there is no opportunity to present additional evidence. I would suggest the most workable solution is to strike from line 13, the language "after the fact finder has rendered its award." See p. 14

Tested

9. Page 16, line 21 should be amended to read:

"...liability per year of not less than one million dollars plus an additional twenty thousand dollars for each bed over fifty beds for which the hospital is licensed."

Adopted

10. Page 25, line 16. retroactive insurance provision should be changed to read as follows:

at the option of the h-c -p

"...(B) that arise out of services performed by the health care provider after December 31, 1974 for any period in which the health care provider had no malpractice insurance except that coverage will not be provided for a claim already filed or of which the health care provider has or reasonably should have had notice at the time retroactive insurance is purchased."

Adopted

11. I believe that the rating provision should be amended in order to make the charges to physicians track as closely as possible with the intended controll costs intended by the Commission. That may by accomplished within the context of current insuring structures in this measure by amending the rating law as follows. Page 28, line 10:

"...unpaid, reserves for claims incurred during the policy period but not reported but reasonably expected to be reported within three years after the date of incident ~~and~~ reasonable..."

Adopted

The same change should take place in lines 16 and 17. Also change reserve requirement p25

There should be added an additional factor in establishing the rate as follows:

Adopted

"(12) an amount sufficient to repay any loan obligation".

Yours cordially,

Richard L. Block
Director

BOARD OF GOVERNORS

ALASKA BAR ASSOCIATION

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January 22, 1976

RECEIVED
JAN 23 1976
Office of Chief Justice
Supreme Court of Alaska
Juneau

Honorable Robert Boochever
Chief Justice
Alaska Supreme Court
Pouch "U"
State Court and Office Building
Juneau, Alaska 99811

Re: Expert Medical Panel Proposed For Use In Medical Malpractice Cases

Dear Mr. Chief Justice:

The court has asked for the Alaska Bar Association's comments concerning the use of expert medical panels in medical malpractice cases as proposed by the Governor's Task Force. My response is necessarily a qualified one to the extent that it must be noted that there is by no means unanimity on this subject among Alaska's lawyers. However, with the assistance of the Alaska Bar's Special Committee on Medical Malpractice, chaired by Anchorage attorney, Joe Young, we have the following comments concerning that proposal:

Perhaps the most important objection to the proposed panel is directed at the underlying premise, i.e., that a jury of lay persons is unable to understand the type of medical evidence presented in a medical malpractice case. That premise is fallacious at best. Any attorney who has ever been involved in a personal injury case requiring the use of medical testimony can attest to the ability of a jury to comprehend and evaluate such testimony. Most physicians demonstrate remarkable skill as witnesses in terms of their ability to reduce complex medical terminology to succinct explanatory remarks. To the extent that the proposed expert medical panel finds its genesis in the notion that jurors are simply not able to grasp the complexities of medical testimony, it is not well founded.

As to the suggestion that such panels are necessary because the parties are too often led down the primrose path to misguided litigation by their own biased medical experts, there is some room for discussion. While it may be true that in a few instances parties (and their attorneys) may be misled by their own overzealous experts, there is no evidence that this has occurred in Alaska. Responsible counsel will consult with independent experts in an effort to determine the validity of a potential malpractice claim.

It is possible that a voluntary screening panel plan such as that used in Arizona or Colorado might be of some utility in weeding out nonmeritorious claims. I am enclosing copies of both the Pima County (Arizona) and Colorado plans. Neither of those measures features a panel comprised solely of members of the medical profession. Those plans do perform a public service to the extent that they may tend to discourage pursuing a suit which is clearly without merit and to the extent that they provide patients with relatively small claims an economical forum for evaluation of their cases. Unfortunately, these plans have not been successful in reducing professional liability insurance rates.

There is a more technical objection to the use of an expert medical panel as proposed by the task force which must be given at least passing mention. Based on the information available to us, it appears that the panel would be free to accept evidence without regard to strict legal standards relating to admissibility. The panel would be free to incorporate such evidence into its findings and that evidence would in turn be admissible without further foundation or qualification. That prospect should prove frightening to doctor and patient alike.

The cost factor of medical malpractice litigation is likely to increase substantially if an expert medical panel plan is implemented. In order to gain an initial advantage at trial from the use of favorable medical panel findings, both parties would have to prepare for hearings before the panel in the same manner as if they were going to trial. In effect, the parties would be put to the added and unnecessary expense of trying their case twice. From the bar association's point of view, it is difficult to see how either the medical profession or the public would be well served by such an inherently expensive procedure.

There is an additional legal objection to the use of a medical expert panel which is simply that the proposal appears potentially violative of Article 1, §1 of the Alaska Constitution which provides in part that "all persons are equal and entitled to equal rights, opportunities, and protection under the law". It is my understanding that a compulsory screening panel plan was struck down on equal protection grounds in Tennessee. The possibility that this proposal may suffer from similar constitutional infirmities cannot be ignored.

A careful review of the Task Force's findings provides no empirical data from which it is possible to infer that the creation of a medical expert panel is either necessary or desirable. Indeed, there is no evidence to suggest that juries are somehow incapable of properly resolving these cases.

In its present form, the expert medical panel bears little resemblance to the voluntary screening panel proposed by the Alaska Bar nearly five years ago. That plan had the virtue of being optional and at least paid lip service to the notion that objectivity in the review of such matters should and could be maintained. The panel proposed by the task force would consist of one physician and two other health care providers of the same health care provider charged. Thus, in the instance of a malpractice claim against a physician, the expert panel would be composed entirely of physicians. While we may all be convinced of the integrity of the physicians elected for service on such a panel, the appearance of impropriety may be raised merely by the panel's composition.

I wish I could report that the Alaska Bar Association has devised a means by which the current medical liability insurance crisis could be resolved. Unhappily, that is not the case. Despite the high quality of medical care rendered to Alaskans, the sad fact is that we are simply the tip of the proverbial iceberg, controlled in this case by events of national magnitude. While I have not been shown any accurate figures relating to premium/loss ratio in Alaska, I would estimate that the premium revenue far outstrips the relatively few losses paid out for medical maloccurrences. Alaska's physicians are being asked to pay for a national loss experience and are probably paying the price of the losses of the insurance industry in the stock market.

As things presently stand, a workable joint underwriting association bill seems to have the greatest possible chance to stabilize the current insurance picture. I should add that in all likelihood the bar's own insurance problems will follow closely on the heals of those currently confronting the medical profession. Our own arrangements for a group E & O policy has given us a considerable amount of information relating to cancellations by a number of carriers previously writing E & O coverage in Alaska. Premiums are going up, and will continue to escalate; moreover, and it is almost inevitable that members of the bar will be relegated to purchasing "claim made" as opposed to the more desirable "per occurrence" coverage. With that thought in mind, I believe that the organized bar is sympathetic to the plight of the medical profession. But, I trust that when our turn comes we will not be advancing our own proposal for a "legal expert board".

It is possible that a voluntary arbitration plan similar to that now offered in Michigan might prove to be of some benefit, but a consideration of such alternatives is beyond the scope of this letter. Suffice it to say that from the bar's point of view and, I expect, from the public's, the proposed medical expert panel has nothing to commend it.

If the bar can be of any assistance to the court, please contact me.

Very truly yours,

Keith E. Brown
President

KEB:wj

Enclosures

cc: Joe Young
BOG Members
Mary LaFollette

Mandatory group ~~Opt~~ in insurance for other groups
1. Director has hearing then
Mandatorily includes a group
He uses a standard of impairment of delivery of that health care system to the public

Expert Advisory panel of 3 Mandatorily appointed by court - No list or challenge procedure - ~~Appointees from profession the case involves~~ Judge has discretion on composition only limit to health care provider
~~eliminate "Alaska" prov residency~~
~~Add language "when possible select Alaskan Health~~

Change "health care provider"
to "Medical Care provider"

Pear

John Hedland

large settlements not the problem

high cost of experts for cases

3

HEW defense att receive more legal fees

system designed to require a lot of legal work

Expert Advisory Board - Report to court

What is cheaper about Advisory Board ?
Is the problem juries don't have enough info ?
Why is a 3rd opinion better ?
What if Advisory Board is split ?
What happens to all fees if court costs in cases now ?

Cost Award would allow Adjudication Board

Expand Small Claims Court set-up

What is cheaper about Adj. Board over Jury
What really is so expensive about Jury

Mandatory arbitration is further from Jury type system - No judge present

if not Mandatory have 2 courts
What about pre-liminary hearings & Grand Jury
Penalize for loss in appealing - Test strength of case

loser pays costs

1. - Physician - Advisement - Have Grievance Committee
2. Physician

Draft 3 Wed feb 18

Original sponsor: Rules Committee by request of the Governor

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 574

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to liability for the provision of health care services; changing the Alaska Supreme Court's Rules of Civil Procedure; and providing for an effective date."

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

* Section 1. AS 08.01.050 is amended by adding a new paragraph to read:

Broader disciplinary powers

(19) provide investigative services to the boards established under chs. 20, 32, 36, 64, 68, 71, 72, 80, 84, and 86 of this title, for the purpose of assisting those boards in matters of professional discipline.

* Sec. 2. AS 08.20 is amended by adding new sections to read:

Chiropractors

Sec. 08.20.115. INSURANCE REQUIRED. (a) To be eligible for an active license under this chapter, a person must maintain insurance against liability to patients for chiropractic malpractice in limits of not less than $200,000 per occurrence and $600,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

(b) The commissioner of commerce and economic development may require all persons licensed under this chapter to obtain the insurance required under (a) of this section from the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for chiropractors is impairing the delivery of chiropractic services to the public.

Sec. 08.20.125. [illegible] REPRIMAND. (a)

In addition to action under sec. 170 of this chapter, upon a finding that by reason of demonstrated lack of competence, experience, or education the authority to practice chiropractic should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 3. AS 08.32 is amended by adding new sections to read:

Deletion to Dental Hygienist

Sec. 08.32.015. INSURANCE REQUIRED. (a) To be eligible for an active license under this chapter, a person must maintain insurance against liability to patients for malpractice in limits of not less than $200,000 per occurrence and $600,000 aggregate liability per year. This requirement is satisfied if the person's employer maintains insurance for him in the required amounts.

(b) The commissioner of commerce and economic development may require all persons licensed under this chapter to obtain the insurance required under (a) of this section from the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for dental hygienists is impairing the delivery of dental hygienists' services to the public.

Sec. 08.32.165. LIMITS OR CONDITIONS ON LICENSE. (a) In addition to action under sec. 160 of this chapter, upon a finding that by reason of demonstrated competence, experience, or education the authority to practice dental hygiene should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 4. AS 08.36 is amended by adding new sections to read:

Dentists

Sec. 08.36.115. INSURANCE REQUIRED. (a) To be eligible for an active license under this chapter, a person must maintain insurance against liability to patients for dental malpractice in limits of not less than $200,000 per occurrence and $600,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

(b) The commissioner of commerce and economic development may require all persons licensed under this chapter to obtain the insurance required under (a) of this section from the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for dentists is impairing the delivery of dentist services to the public.

Sec. 08.36.325. LIMITS OR CONDITIONS ON LICENSE. (a) In addition to action under sec. 320 of this chapter, upon a finding that by reason of demonstrated competence, experience, or education the authority to practice dentistry should be limited or conditioned or the practitioner disciplined, the board may censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 5. AS 08.64 is amended by adding new sections to read:

Physicians Laboratory

Sec. 08.64.215. INSURANCE REQUIRED. (a) To be eligible for an active license under this chapter, a person must maintain insurance issued by the Health Care Providers Indemnity Corporation against liability to patients for medical malpractice in limits of not less than

$200,000 per occurrence and $600,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

(b) The commissioner of commerce and economic development or his designee may waive the requirement in (a) of this section for a person if that person furnishes satisfactory evidence of his having other insurance providing coverage in amounts not less than those specified in (a) of this section. No waiver granted under this subsection may extend beyond the normal expiration date of the person's insurance policy or January 1, 1977, whichever occurs first.

Sec. 08.64.312. CONTINUING EDUCATION REQUIREMENTS. (a) The board shall promote a high degree of competence in the practice of medicine by requiring every physician licensed in the state to fulfill continuing education requirements. extent of continuing education determined by Board

(b) Before a license may be renewed the licensee shall submit evidence satisfactory to the board of his successful completion of 15 hours of continuing education annually in medicine as prescribed by regulations of the board. Courses approved by the board shall include, but are not limited to, review courses and instruction on new techniques and developments in medicine.

(c) The board may exempt a physician from the requirements of (b) of this section upon an application by him giving evidence satisfactory to the board that he is unable to comply with the requirements because of extenuating circumstances. However, no person may be exempted from more than 15 hours of continuing education in a five year period.

Sec. 08.64.325. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 330 of this chapter, upon a finding that by reason of demonstrated competence, experience, or education the authority to practice under this chapter should be limited or condi-

tioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 6. AS 08.68 is amended by adding new sections to read:

Nurses

Sec. 08.68.165. INSURANCE REQUIRED. (a) To be eligible for an active license as a nurse under this chapter, a person must maintain insurance against liability to patients for malpractice in limits of not less than $200,000 per occurrence and $600,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts. If employed

(b) The commissioner of commerce and economic development may require all persons licensed under this chapter to obtain the insurance required under (a) of this section from the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for nurses is impairing the delivery of nurse services to the public.

Sec. 08.68.275. LIMITS OR CONDITIONS ON LICENSE. (a) In addition to action under sec. 270 of this chapter, upon a finding that by reason of demonstrated competence, experience, or education the authority to practice nursing should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

Sec. 7. AS 08.71 is amended by adding new sections to read:

dispensing opticians

Sec. 08.71.085. INSURANCE REQUIRED. (a) To be eligible for an

active license under this chapter, a person must maintain insurance against liability to patients for malpractice in limits of not less than $200,000 per occurrence and $600,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

(b) The commissioner of commerce and economic development may require that all persons licensed under this chapter obtain the insurance required under (a) of this section if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for dispensing opticians is impairing delivery of the services of dispensing opticians to the public.

Sec. 08.71.175. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 170 of this chapter, upon a finding that by reason of demonstrated competence, experience, or education the authority to practice as a dispensing optician under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by procedure or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 8. AS 08.72 is amended by adding new sections to read:

Optometrists

Sec. 08.72.115. INSURANCE REQUIRED. (a) To be eligible for an active license under this chapter, a person must maintain insurance against liability to patients for malpractice in limits of not less than $200,000 per occurrence and $600,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

(b) The commissioner of commerce and economic development may require all persons licensed under this chapter to obtain insurance

required under (a) of this section from the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for optometrists is impairing delivery of optometrist services to the public.

Sec. 08.72.255. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under secs. 240 and 250 of this chapter, upon a finding that by reason of demonstrated competence, experience, or education the authority to practice optometry under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 9. AS 80.80 is amended by adding new sections to read:

Pharmacists

Sec. 08.80.115. INSURANCE REQUIRED. (a) To be eligible for active registration as a pharmacist, a person must maintain insurance against liability to patients for malpractice in limits of not less than $200,000 per occurrence and $600,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

(b) The commissioner of commerce and economic development may require that all persons licensed under this chapter obtain the insurance required under (a) of this section from the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for pharmacists is impairing delivery of pharmacist services to the public.

Sec. 08.80.265. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 260 of this chapter, upon a finding that by reason of demonstrated competence, experience, or education the

authority to practice pharmacy under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 10. AS 08.84 is amended by adding new sections to read:

Physical therapists

Sec. 08.84.035. INSURANCE REQUIRED. (a) To be eligible for active registration as a physical therapist under this chapter, a person must maintain insurance against liability to patients for malpractice in limits of not less than $200,000 per occurrence and $600,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

(b) The commissioner of commerce and economic development may require that all persons licensed under this chapter obtain the insurance required in (a) of this section from the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for physicial therapists is impairing delivery of physical therapist services to the public.

Sec. 08.84.185. LIMITS OR CONDITIONS ON LICENSE. (a) In addition to action under sec. 180 of this chapter, upon a finding that by reason of demonstrated competence, experience, or education the authority to practice physical therapy should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 11. AS 08.36.120 is amended to read:

Sec. 08.86.120. ENTITLEMENT TO LICENSURE. A person who passes the examination given by the board and possesses the insurance required by sec. 125 of this chapter is entitled to be licensed as a psychologist

* Sec. 12. AS 08.86.160 is amended to read:

Sec. 08.86.160. ASSOCIATES: ENTITLEMENT TO LICENSURE. A person who passes the examination given by the board and who possesses insurance in accordance with sec. 125 of this chapter is entitled to be licensed as a psychological associate.

* Sec. 13. AS 08.86 is amended by adding new sections to read:

Sec. 08.86.125. INSURANCE REQUIRED. (a) To be eligible for active licensure as a psychologist under this chapter, a person must maintain insurance against liability to patients for malpractice in limits of not less than $200,000 per occurrence and $600,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

(b) The commissioner of commerce and economic development may require all persons licensed under this chapter to obtain insurance required under (a) of this section from the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for psychologists is impairing the delivery of psychologist services to the public.

Sec. 08.86.220. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) Upon a finding that by reason of demonstrated competence, experience, or education the authority to practice psychology or as a psychological associate under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by time, specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any

action taken by the board under this section.

* Sec. 14. AS 09.55.530 is repealed and re-enacted to read:

ARTICLE 6. MALPRACTICE ACTIONS.

Sec. 09.55.530. DECLARATION OF PURPOSE. The legislature finds that the health of the people is threatened by curtailment of health care services due to the difficulty in obtaining adequate malpractice insurance at a reasonable cost. It is the purpose of secs. 530 - 560 of this chapter to protect the health and safety of the people of this state by establishing procedural aids for handling malpractice claims which will help ensure the ready availability of adequate insurance at a reasonable cost and which will be fair to all parties concerned.

* Sec. 15. AS 09.55 is amended by adding a new section to read:

Sec. 09.55.536. EXPERT ADVISORY PANEL. (a) In any action for damages due to personal injury or death based upon the provision of professional services by a health care provider, the court shall establish a three-person expert advisory panel in accordance with this section. When the action is filed the court shall, by order, determine the professions or specialties to be represented on the expert advisory panel and shall advise each party of the professions or specialties to be represented, giving the parties the opportunity to object or make suggestions. The court may in its discretion conduct other preliminary proceedings relative to the composition of the panel as it considers appropriate.

(b) The expert advisory panel may compel the attendance of witnesses, ~~physically or orally examine the parties~~ interview the parties and physically examine the injured persons if alive, consult with the specialists or learned works they consider appropriate, and compel the production of and examine all relevant hospital, medical, or other records or materials relating to the health care treatment. The panel may meet in camera, but shall maintain a record of any testimony or oral statements

of witnesses, and shall keep copies of all written statements and opinions it receives. Not less than 30 days after selection of the panel, it shall make a written report to the parties and to the court, substantially answering the following questions in addition to any other question which the court puts to the panel:

(1) Was the claimant adversely affected by any act or omission in the rendering of the medical services?

(2) What was the adverse effect?

(3) How did the medical services alter the natural course of the preexisting disorder for which the services were originally rendered?

(4) How did the medical condition existing after performance of the medical services differ from the medical condition which might otherwise have been expected?

(c) In any case in which the answer to one or more of the questions under (b) of this section depends upon the resolution of factual questions which are not the proper subject of expert opinion, the report shall so state and may answer questions based upon hypothetical facts that are fully and completely set out in the opinion. The report shall include copies of all written statements, opinions, or records relied upon by the panel and either a transcription or other record of any oral statements or opinions; shall specify any medical or scientific authority relied upon by the panel; and shall include the results of any physical or mental examination performed on the plaintiff. Each member shall sign the report and his signature constitutes his adoption of all statements and opinions contained in it; however, a member may, instead of signing the report, submit a concurring or dissenting report which complies with the requirements of this subsection, and a member may not attest to any portion of the report as to which he is not qualified to

give expert testimony.

(d) No discovery may be undertaken in a case until the report of the expert advisory panel is received. However, the court may relax this prohibition upon a showing of good cause by any party. If the panel has not completed its report within the 30-day period prescribed in (b) of this section, the court may, upon application, grant it an additional 30 days.

(e) The report of the panel and any dissenting or concurring opinion are admissible in evidence to the same extent as though its contents were orally testified to by the person or persons preparing it. The court shall delete any portion that would not be admissible because of lack of foundation for opinion testimony, or otherwise. Either party may submit expert testimony to support or refute the report. The jury shall be instructed in general terms that the report shall be considered and evaluated in the same manner as any other expert testimony. Any member of the panel may be called by any party and may be cross-examined as to the contents of the report or of his dissenting or concurring opinion.

(f) Members of a panel are entitled to travel expenses and per diem in accordance with state law pertaining to members of boards and commissions for all time spent in preparing its report and matters incidental to it. If a panel member is called upon as a witness at trial or upon deposition, he is entitled to payment of an expert witness fee. All expenses incurred by the panel shall be paid by the state. However, in any case in which the court determines that a party has made a patently frivolous claim or a patently frivolous denial of liability, it shall order that all costs of the expert advisory panel be borne by the party making that claim or denial.

(g) Parties to the case, and their counsel, may not intiate communications with

~~of court with~~ members of the panel on the subject matter of its inquiry and report or cause or solicit others to do so, except through ordinary discovery proceedings.

* Sec. 16. AS 09.55.540 is amended to read:

Sec. 09.55.540. BURDEN OF PROOF. (a) In a malpractice action based on the negligence or wilful misconduct of a health care provider [PHYSICIAN LICENSED UNDER AS 08.64, OR A DENTIST LICENSED UNDER AS 08.36], the plaintiff has [SHALL HAVE] the burden of proving #6

(1) the degree of knowledge or skill possessed or the degree of care ordinarily exercised under the circumstances, at the time of the act complained of, by health care providers in the field or specialty in which the defendant is practicing [BY PHYSICIANS OR DENTISTS PRACTICING THE SAME SPECIALTY IN SIMILAR COMMUNITIES TO THAT IN WHICH THE DEFENDANT PRACTICES];

(2) that the defendant either lacked this degree of knowledge or skill or failed to exercise this degree of care; and

(3) that as a proximate result of this lack of knowledge or skill or the failure to exercise this degree of care the plaintiff suffered injuries that would not otherwise have been incurred.

(b) In malpractice actions there is [SHALL BE] no presumption of negligence on the part of the defendant.

* Sec. 17. AS 09.55 is amended by adding a new section to read:

Sec. 09.55.546. AWARDS, COLLATERAL SOURCES. (a) In a malpractice action damages shall be awarded according to the principles of the common law. The fact finder, in rendering its award for damages, shall specify the amount awarded for each category of loss; [~~Awards for~~ computing loss of future earnings ~~shall be made~~ on a monthly basis.] The court may enter a judgment that future damages be paid in whole or in part by periodic payments rather than by a lump sum payment; however, any part

Redraft Clean

of the award which is paid on periodic basis] shall be increased by an annual interest rate of seven per cent from the date the award is made. In this subsection, future damages include damages for future medical treatment, care or custody, loss of future earnings, or loss of bodily function of the claimant.

(c) Except when the collateral source is a federal program which by law must seek subrogation, an award to which a claimant is entitled may only cover damages which exceed any amounts received by the claimant as compensation for his injuries from collateral sources, whether private, group, or governmental, and whether contributory or noncontributory, except life insurance. Evidence of ~~damages compensated~~ by a collateral source, or lack thereof, other than a federal program which must seek subrogation, is admissible after the fact finder has rendered its award. Notwithstanding other provisions of state law and except as provided in this subsection, a collateral source does not have a right of subrogation.

* Sec. 18. AS 09.55.550 is amended to read:

Sec. 09.55.550. JURY INSTRUCTIONS. In health care [MEDICAL] malpractice actions the jury shall be instructed that the plaintiff has the burden of proving [, BY A PREPONDERANCE OF THE EVIDENCE,] the health care provider's negligence or wilful misconduct in accordance with sec. 540 of this chapter [OF THE PHYSICIAN OR DENTIST]. The jury shall be further instructed that injury alone does not raise a presumption of the health care provider's [PHYSICIAN'S OR DENTIST'S] negligence or misconduct.

* Sec. 19. AS 09.55 is amended by adding new sections to read:

Sec. 09.55.556. INFORMED CONSENT. (a) A health care provider is liable for failure to obtain the informed consent of a patient if the claimant establishes by a preponderance of the evidence that the provider

has failed to inform the patient of common risks and reasonable alternatives to the proposed treatment or procedure, and that, but for that failure, the claimant would not have consented to the proposed treatment or procedure.

(b) It is a defense to any action for health care malpractice based upon an alleged failure to obtain such an informed consent that

(1) the risk not disclosed is too commonly known or is too remote to require disclosure;

(2) the patient stated to the health care provider that he would undergo the treatment or procedure regardless of the risk involved, or that he did not want to be informed of the matters to which he would be entitled to be informed;

(3) under the circumstances consent by or on behalf of the patient was not possible; or

(4) the health care provider, after considering all of the attendant facts and circumstances ~~[and consulting with no other health care providers]~~ used reasonable discretion as to the manner and extent to which the alternatives or risks were disclosed to the patient because he reasonably believed that the manner and extent of such a disclosure would reasonably be expected to adversely and substantially affect the patient's condition.

Sec. 09.55.560. DEFINITIONS. In secs. 530 - 560 of this chapter

(1) "health care provider" means a chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under AS 08.71; an optometrist licensed under AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a psychologist and a psychological associate licensed under AS 08.86; and

a hospital as defined in AS 18.20.130, including a governmentally owned or operated hospital;

(2) "panel" means an expert advisory panel established under sec. 536 of this chapter.

* Sec. 20. AS 09.65.090 is repealed and re-enacted to read:

Sec. 09.65.090. CIVIL LIABILITY FOR EMERGENCY AID. (a) A person, at a hospital or at any other location, who renders emergency care or emergency counseling to an injured, ill, or emotionally distraught person who reasonably appears to the person rendering the aid to be in immediate need of emergency aid in order to avoid serious harm or death is not liable for civil damages as a result of an act or omission in rendering emergency aid.

(b) This section does not preclude liability for civil damages as a result of gross negligence or reckless or intentional misconduct.

* Sec. 21. AS 18.20 is amended by adding new sections to read:

Sec. 18.20.045. INSURANCE REQUIRED. Every hospital, as a condition of licensure, shall submit to the department and maintain evidence of insurance against liability to inpatients and outpatients for malpractice issued by the Health Care Providers Indemnity Corporation, in amounts of not less than $200,000 per occurrence, and an aggregate liability per year of not less than $1,000,000 for every 50 beds or fraction of that number for which the hospital is licensed.

Sec. 18.20.075. RISK MANAGEMENT. (a) To be eligible for a license each hospital shall have in operation an internal risk management program which shall

(1) investigate the frequency and causes of adverse incidents in hospitals which cause injury to patients;

(2) develop and implement measures to minimize the risk of injury to patients from adverse incidents; in developing these measures

its medical staff's

each hospital shall take into account recommendations of private underwriters, industry standards, experience of other hospitals, and recommendations of licensing boards of other health care providers; and

(3) analyze patient grievances which relate to patient care.

(b) The department shall adopt by regulation and submit to the legislative administrative regulation review committee prior to implementation standards for risk management programs in hospitals in the state which may vary according to the size of the hospital, the type of care offered by the hospital, and other factors found relevant by the department.

* Sec. 22. AS 18 is amended by adding a new chapter to read:

CHAPTER 23. HEALTH CARE SERVICES INFORMATION.

Sec. 18.23.010. LIMITATION ON LIABILITY FOR PERSONS PROVIDING INFORMATION TO REVIEW ORGANIZATION. (a) No person providing information to a review organization is subject to action for damages or other relief by reason of having furnished that information, unless the information is false and the person providing the information knew or had reason to know the information was false.

(b) No privilege of confidentiality arising from a physician-patient relationship may be invoked to withhold pertinent information from review by a review organization.

Sec. 18.23.020. LIMITATION ON LIABILITY FOR MEMBERS OF REVIEW ORGANIZATIONS. No person who is a member or employee of, or who acts in an advisory capacity to, or who furnishes counsel or services to, a review organization is liable for damages or other relief in an action brought by a person whose activities have been or are being scrutinized or reviewed by a review organization, by reason of his performance of a duty, function or activity of the review organization, unless the performance of the duty, function or activity was motivated by malice

toward the affected person. No person is liable for damages or other relief in an action by reason of his performance of a duty, function, or activity as a member of a review organization or by reason of a recommendation or action of the review organization when the person acts in the reasonable belief that his action or recommendation is warranted by facts known to him or to the review organization after reasonable efforts to ascertain the facts upon which the review organization's action or recommendation is made.

Sec. 18.23.030. CONFIDENTIALITY OF RECORDS OF REVIEW ORGANIZATION. (a) Except as provided in (b) of this section, all data and information acquired by a review organization, in the exercise of its duties and functions, shall be held in confidence, may not be disclosed to anyone except to the extent necessary to carry out one or more of the purposes of the review organization, and is not subject to subpoena or discovery. Except as provided in (b) of this section, no person described in sec. 20 of this chapter may disclose what transpired at a meeting of a review organization except to the extent necessary to carry out one or more of the purposes of a review organization, and the proceedings, ~~and~~ records guidelines of standards of a review organization are not subject to discovery or introduction into evidence in a civil action against a health care provider arising out of the matter which is the subject of consideration by the review organization. Information, documents, or records otherwise available from original sources are not immune from discovery or use in a civil action merely because they were presented during proceedings of a review organization, nor may a person who testified before a review organization or who is a member of it be prevented from testifying as to matters within his knowledge, but a witness may not be asked about his testimony before a review organization or opinions formed by him as a result of its hearings, except as provided in (b) of this section.

(b) Testimony, documents, proceedings, records, and other evidence adduced before a review organization that are otherwise inaccessible under this section may be obtained by a health care provider who claims that denial is unreasonable or may be obtained under subpoena or discovery proceedings brought by a plaintiff who claims that information provided to a review organization was false and claims that the person providing the information knew or had reason to know the information was false.

(c) Nothing in this chapter prevents a person whose conduct or competence has been reviewed under this chapter from obtaining, for the purpose of appellate review of the action of the review organization, any testimony, documents, proceedings, records and other evidence adduced before the review organization.

Sec. 18.23.040. PENALTY FOR VIOLATION. Other than as authorized by sec. 30 of this chapter, a disclosure of data and information acquired by a review committee or of what transpired at a review meeting is a misdemeanor and punishable under AS 11.05.010.

Sec. 18.23.050. PROTECTION OF PATIENT. Nothing in this chapter relieves a person of liability which he has incurred or may incur to a person as a result of furnishing health care to the patient.

Sec. 18.23.060. PARTIES BOUND BY REVIEW. When a review organization reviews matters under sec. 70(5)(H) of this chapter no party is bound by a ruling of the organization in a controversy, dispute or question unless he agrees in advance, either specifically or generally, to be bound by the ruling.

Sec. 18.23.070. DEFINITIONS. In this chapter, unless the context otherwise requires,

(1) "administrative staff" means the staff of a hospital or clinic;

(2) "health care" means professional services rendered by a health care provider or an employee of a health care provider, and services furnished by a sanatorium, rest home, nursing home, boarding home or other institution for the hospitalization or care of human beings;

(3) "health care provider" means a chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under AS 08.71; an optometrist licensed under AS 08.-72; a pharmacist licensed under AS 08.80; a physical therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a psychologist and a psychological associate licensed under AS 08.86; and a hospital as defined in AS 18.20.130, including a governmentally owned or operated hospital;

(4) "professional service" means service rendered by a health care provider of the type he is licensed to render;

(5) "review organization" means a hospital governing body or a committee whose membership is limited to health care providers and administrative staff, except where otherwise provided for by state or federal law, and which is established by a hospital, by a clinic, by one or more state or local associations of health care providers, by an organization of health care providers from a particular area or medical institution, or by a professional standards review organization established under 42 U.S.C., sec. 1320(c)(1) et seq., to gather and revi information relating to the care and treatment of patients for the purposes of

(A) evaluating and improving the quality of health care rendered in the area or medical institution;

(B) reducing morbidity or mortality;

(C) obtaining and disseminating statistics and information relative to the treatment and prevention of diseases, illness and injuries;

(D) developing and publishing guidelines showing the norms of health care in the area or medical institution;

(E) developing and publishing guidelines designed to keep the cost of health care within reasonable bounds;

(F) reviewing the quality or cost of health care services provided to enrollees of health maintenance organizations;

(G) acting as a professional standards review organization under 42 U.S.C., sec. 1320(c)(1) et seq.;

(H) reviewing, ruling on, or advising on controversies, disputes or questions between

(i) a health insurance carrier or health maintenance organization and one or more of its insured or enrollees;

(ii) a professional licensing board, acting under its powers of discipline or license revocation or suspension, and a health care provider licensed by it when the matter is referred to a review organization by the professional licensing board;

(iii) a health care provider and his patients concerning diagnosis, treatment or care, or a charge or fee;

(iv) a health care provider and a health insurance carrier or health maintenance organization concerning a charge or fee for health care services provided to an insured or enrollee; or

(v) a health care provider or his patients and the federal or a state or local government, or an agency of the

federal or a state or local government;

(I) acting on the recommendation of a credential review committee or a grievance committee.

* Sec. 23. AS 21 is amended by adding a new chapter to read:

CHAPTER 88. HEALTH CARE PROVIDERS INSURANCE.

ARTICLE 1. PURPOSE.

Sec. 21.88.010. PURPOSE OF CHAPTER. It is the purpose of this chapter to provide a means of assuring all health care providers with continuous, affordable and adequate insurance against liability for medical negligence by concentrating all such insurance in one entity which can negotiate more successfully for insurance from casualty insurers licensed by this state and to distribute equitably the cost of the insurance among the health care providers insured.

ARTICLE 2. INDEMNITY CORPORATION.

Sec. 21.88.020. CORPORATION CREATED. There is created the Alaska Health Care Providers Indemnity Corporation which is a public corporation having a legal existence independent of and separate from the state. Obligations issued by the corporation do not constitute a debt liability or obligation of the state or a pledge of full faith and credit of the state.

Sec. 21.88.030. CORPORATION BOARD OF GOVERNORS. (a) The corporation shall exercise its powers through a board of governors which shall be appointed by the director as provided in (b) of this section.

(b) The appointments to the board of governors shall be Alaska residents as follows:

(1) one member of the Alaska State Medical Association appointed from a list of no less than three persons recommended by the governing board of that association;

(2) one member of the Alaska State Hospital Association

appointed from a list of no less than three persons recommended by the governing board of that association;

(3) ~~three~~ Two professionals in the insurance field;

(4) ~~two~~ Three persons who are not [attorneys,] health care providers, or [representatives] not affiliate with the insurance industry. adopted

(c) The term of office of each governor is three years, except that the director shall designate three initially appointed governors to serve for one year and two initially appointed governors to serve for two years.

(d) Upon the expiration of the term of a governor, the director shall appoint a successor who shall be from the same class described in (b) of this section as the governor whose term has expired.

(e) Upon a governor's early resignation, death or inability to serve, the director shall appoint a successor from the same class defined in (b) of this section as the terminating governor, who shall serve for the unexpired term.

(f) The director or his designee is not a voting member of the board of governors but shall be notified by the board of and have the right to attend and participate in all meetings and proceedings of the board.

(g) Each member of the board of governors shall be allowed compensation for services and reimbursement for reasonable expenses incurred in attending meetings of the board and transacting corporation business, ~~as set out in the plan of operation.~~ $100 a day & travel

Sec. 21.88.040. CORPORATION PLAN OF OPERATION. (a) Within 30 days after the effective date of this chapter, the board of governors shall prepare and submit to the director for approval a plan of operation which provides for the fair, reasonable and equitable administration of the affairs of the corporation and the discharge of the purposes

for which it is created. The plan and any amendments of it become effective upon the director's approval. If the board of governors has failed to submit a plan of operation, or if at any subsequent time the board of governors fails to submit suitable amendments to the plan, the director shall, after notice and hearing, adopt and promulgate a plan of operation or amendments which are necessary or advisable to effectuate the provisions of this chapter. Adoption of the plan is not subject to the Administrative Procedure Act (AS 44.62).

(b) The plan of operation shall

(1) establish the procedures by which all the powers and duties of the corporation specified in sec. 50 of this chapter shall be performed;

(2) establish procedures for handling assets and discharging liabilities of the corporation;

(3) establish regular places and times for meetings of the board of governors;

(4) establish procedures for records to be kept of all financial transactions of the corporation, its agents, and the board of governors;

(5) establish the amount and method of reimbursing and compensating members of the board of governors;

(6) establish procedures for awarding contracts to carry out the provisions of this chapter;

(7) establish the procedures for issuing contracts of insurance as provided in sec. 50 of this chapter and for the determination of rates;

(8) contain additional provisions necessary or proper for the execution of the powers and duties of the corporation.

Sec. 21.88.050. POWERS AND DUTIES OF THE CORPORATION. (a) The

corporation shall

(1) issue to all health care providers who pay the premiums for it a contract on an occurrence basis indemnifying the health care provider and his employees who are health care providers against loss by reason of liability and agreeing to tender on behalf of the health care provider and his employees who are health care providers a defense of the health care provider in a proceeding brought under AS 09.55.530 - 09.55.560; the limit of liability shall be no less than the minimum liability coverage required to be maintained as stated in AS 08.64.215 and AS 18.20.045; the contract shall cover the defense against but need not indemnify a claim for punitive damages; the contract shall cover claims against health care providers

(A) that arise out of professional services performed by the health care provider during the period for which the premium is paid; And at the option of the health care provider,"

Amended Blocks language

(B) that arise out of services performed by the health care provider after January 1, 1975 and are filed within three years from the date the services were performed but were not discovered by the health care provider when he chose to take this coverage;

(2) charge a premium for the protection provided by the contracts issued under (1) of this subsection which shall be determined by the board of governors in accordance with sec. 70 of this chapter and subject to the approval of the director;

(3) comply with or be subject to AS 21.06.090, 21.06.120, 21.06.140, 21.06.160, 21.06.250; AS 21.09.180, 21.09.190, 21.09.200, 21.09.250, 21.09.280; AS 21.12.020(b), (c), (d), and (e); and chs. 18, 23, 24, and 26 of this title; Except that reserves shall be made in accordance with 070 (4)(5)

(4) carry out the obligations of the contracts issued under

(1) of this subsection by defending all covered claims made against insured health care providers and by paying all liabilities which are finally adjudicated against the insured health care provider or which may in the opinion of the corporation reasonably be expected to be finally adjudicated against the health care provider to the extent of the contract obligation;

(5) provide coverage to health care providers for liability under AS 09.55.530 - 09.55.560 in excess of the minimum limits required for licensure as a health care provider, but limited to $1,000,000 for individual health care providers and $5,000,000 for hospitals, if there is a finding by the director that this coverage is unavailable at a reasonable cost and that this coverage can be made available at a reasonable cost through the corporation; if this paragraph is implemented, each health care provider obtaining excess coverage up to these amounts shall obtain it from the corporation, and the corporation ~~shall~~ May procure reinsurance for all the risks incurred by contracts issued under this paragraph from the private market.

(b) The corporation may contract for Management services for Ins Co.

(1) employ or retain persons, individual or corporate, to discharge its obligations and shall pay, by way of salary, wage, fee, or commission, reasonable compensation for those services; employees of the corporation are not considered state employees;

(2) provide coverage to health care providers for other hazards including malpractice liability insurance for other licensed health care providers employed by the physician or hospital if there is a finding by the director that this coverage is otherwise unavailable by reason of the operation of the corporation;

(3) borrow funds from the revolving loan fund established under sec. 110 of this chapter when necessary for the corporation to

maintain adequate reserves; loans from the fund shall be repaid within four years after the loan is made at an annual interest rate of seven percent and through prospective rate increases;

(4) negotiate and become a party to those contracts as are necessary to carry out the purposes of the corporation;

(5) sue or be sued in the name of the corporation;

(6) perform all other acts necessary and proper to effectuate the corporation.

Sec. 21.88.060. STATISTICS. The corporation shall collect, maintain and report information concerning claims against health care providers. All such information shall be on forms prescribed by the director and shall be sufficient to enable a proper determination of losses for rate making and to identify causes and sources of loss for loss control. No less often than annually the corporation shall report to the director, which report shall be kept available to the public, the number and amount of claims filed, reserved, paid, settled and adjudicated during the year, the premiums paid to, and the expenses incurred by the corporation during the year. The director may require that supplemental reports include the names of insured health care providers and the claimants; however, no reports which become publicly available may include the names of health care providers or claimants or information that will permit by inference the identity of specific health care providers or claimants. All information shall be made available to the appropriate licensing boards or agencies.

Sec. 21.88.070. RATES. Rates and rating plans used by the corporation for the policies issued shall be determined for each category of health care provider in accordance with all of the following:

(1) rates for physicians shall be set as a function of the physician's ~~XXXX~~ medical revenue; ~~Adjusted Business License Tax income attributable to the acts~~ as determined

Revised

(2) rates for hospitals shall be set as a function of the number of permanent beds in the hospital;

(3) a minimum rate may be set for each category of health care provider or discipline or classification within the license category;

(4) rates may not be excessive; rates are excessive if, after a period of time and with respect to an amount of gross premium which are actuarially credible, the premiums exceed losses incurred by the corporation, including losses paid, reserves for claims reported and unpaid, [reserves for claims incurred but not reported] and reasonable expenses for the operation of the corporation;

(5) rates may not be inadequate; rates are inadequate if, based on available actuarial data, the premiums to be paid by the health care providers are or may reasonably be expected to be insufficient to pay for losses incurred by the corporation, including claims paid, reserves for claims reported and unpaid, [reserves for claims incurred but not reported], and reasonable expenses for the operation of the corporation;

(6) rates shall be adjusted at least as often as annually;

(7) rates for any policy year shall be calculated to include the adjustment for actual experience of the corporation as developed for the preceding four policy years;

(8) in considering losses to be incurred, changes in the law and national, regional and local trends in medical negligence awards may be considered;

(9) income from investment of reserves shall be considered;

(10) disciplines and classifications within the license categories of health care providers shall be considered;

(11) individual risk underwriting factors shall be considered.

IN THE SENATE 2nd Draft BY THE COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 651

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to health care; and providing for an effective date."

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

* Section 1. AS 08.11.050 is amended by adding a new paragraph to read:

(19) provide investigative services to the boards established under chs. 20, 32, 36, 64, 68, 71, 72, 80, 84, and 86 of this title, for the purpose of assisting those boards in matters of professional discipline.

* Sec. 2. AS 08.20.010 is amended to read:

Sec. 08.20.010. CREATION AND MEMBERSHIP OF BOARD OF CHIROPRACTIC EXAMINERS. There is created the Board of Chiropractic Examiners consisting of <u>five</u> [THREE] members appointed by the governor.

* Sec. 3. AS 08.20.020 is amended to read:

Sec. 08.20.020. MEMBERS OF BOARD. <u>Three members</u> [EACH MEMBER] of the board shall be [A] licensed chiropractic <u>physicians who</u> [PHYSICIAN AND SHALL] have practiced chiropractic in this state not less than two years. <u>Two members of the board shall be persons with no direct financial interest in the health care industry.</u> Each member serves without pay but is entitled to per diem and travel expenses allowed by law.

* Sec. 4. AS 08.20 is amended by adding a new section to read:

Sec. 08.20.175. LIMITS OR CONDITIONS ON LICENSE; REPRIMAND. (a) In addition to action under sec. 170 of this chapter, upon a finding that [A] person of demonstrated problems of competence, experience, education or health the authority to practice chiropractic should be

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limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 5. AS 08.32 is amended by adding a new section to read:

Sec. 08.32.165. LIMITS OR CONDITIONS ON LICENSE. (a) In addition to action under sec. 160 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education or health the authority to practice dental hygiene should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 6. AS 08.36.010 is amended to read:

Sec. 08.36.010. CREATION AND MEMBERSHIP OF BOARD. There is created the Board of Dental Examiners, referred to in this chapter as the board, consisting of <u>seven</u> [FIVE] members. <u>Five members</u> [EACH MEMBER] shall be [A CITIZEN OF THE UNITED STATES AND A] qualified resident <u>dentists</u> who <u>have</u> [HAS] been engaged in the practice of dentistry in the state for five years immediately preceding [his] appointment<u>, and two members shall be persons with no direct financial interest in the health care industry</u>.

* Sec. 7. AS 08.36.020 is amended to read:

Sec. 08.36.020. APPOINTMENT AND TERM OF SERVICE OF MEMBERS. Members of the board are appointed by the governor, subject to confirmation by the legislature in joint session [ASSEMBLED]. Each board member serves for a term of five years, and until his successor is

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appointed and qualified. The term begins on February 1. An appointment to a vacancy is for the unexpired term. [APPOINTMENTS SHALL BE MADE FROM A LIST OF NAMES RECOMMENDED BY THE ALASKA DENTAL SOCIETY. THE LIST SHALL BE SUPPLIED AT LEAST 30 DAYS BEFORE THE BEGINNING OF A TERM AND NOT MORE THAN 60 DAYS AFTER THE OCCURRENCE OF A VACANCY. THE LIST SHALL CONTAIN AT LEAST TWO RECOMMENDED NAMES FOR EACH APPOINTMENT. THE GOVERNOR SHALL MAKE THE APPOINTMENT WITHIN 30 DAYS AFTER RECEIVING THE LIST.]

* Sec. 8. AS 08.36 is amended by adding a new section to read:

Sec. 08.36.325. LIMITS OR CONDITIONS ON LICENSE. (a) In addition to action under sec. 320 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health, the authority to practice dentistry should be limited or conditioned or the practitioner disciplined, the board may censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 9. AS 08.64.010 is amended to read:

Sec. 08.64.010. CREATION AND MEMBERSHIP OF STATE MEDICAL BOARD. The governor shall appoint a board of medical examiners, to be known as the State Medical Board, consisting of five licensed physicians, residing in as many separate Alaska judicial districts as possible <u>and two persons with no direct financial interest in the health care industry</u>. [EACH MEMBER SHALL BE CHOSEN FROM A PANEL OF THREE, FOR EACH VACANCY, SUBMITTED TO THE GOVERNOR BY THE ALASKA STATE MEDICAL ASSOCIATION.]

* Sec. 10. AS 08.64.090 is amended to read:

Sec. 08.64.090. QUORUM. <u>Four</u> [THREE] members of the board

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constitute a quorum for the transaction of all business properly before the board.

* Sec. 11. AS 08.64 is amended by adding new sections to read:

Sec. 08.64.215. INSURANCE REQUIRED. (a) To be eligible for an active license under this chapter, a person shall maintain insurance issued by the Health Care Providers Indemnity Corporation against liability to patients for medical malpractice in limits of not less than $200,000 per occurrence and $600,000 aggregate liability per year.

(b) The director of insurance or his designee shall waive the requirement in (a) of this section for a person if that person furnishes satisfactory evidence of his having other insurance providing coverage in amounts not less than those specified in (a) of this section. No waiver granted under this subsection may extend beyond the normal expiration date of the person's insurance policy or January 1, 1977, whichever occurs first.

Sec. 08.64.325. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 330 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 12. AS 08.68.010 is amended to read:

Sec. 08.68.010. CREATION AND MEMBERSHIP OF BOARD OF NURSING. There is created a Board of Nursing, consisting of <u>seven</u> [FIVE] members appointed by the governor. One member shall be currently involved in

institutional nursing service, one member in community or public health nursing and two members in basic or continuing nursing education, [AND] one nurse at large, and two persons who have no direct financial interest in the health care industry.

* Sec. 13. AS 08.68.060 is amended to read:

Sec. 08.68.060. QUALIFICATIONS OF BOARD MEMBERS. The five members [EACH MEMBER] of the board who are nurses shall be [A CITIZEN OF THE UNITED STATES, A RESIDENT OF THE STATE, AND A] licensed professional nurses [NURSE] in the state, and [MEMBERS] shall have been actively engaged in nursing for not less than four years before appointment, two years of which were within the five years preceding appointment.

* Sec. 14. AS 08.68 is amended by adding a new section to read:

Sec. 08.68.275. LIMITS OR CONDITIONS ON LICENSE. (a) In addition to action under sec. 270 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice nursing should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 15. AS 08.71.020 is amended to read:

Sec. 08.71.020. MEMBERSHIP OF BOARD; SOURCE OF APPOINTMENTS; TERM OF OFFICE. The board consists of seven [FIVE] persons appointed by the governor. [THE GOVERNOR SHALL APPOINT BOARD MEMBERS FROM A LIST OF QUALIFIED OPTICIANS PREPARED BY THE ASSOCIATION OF OPTICIANS IN THE STATE AND SUBMITTED AT LEAST 30 DAYS BEFORE JULY 1, 1973, AT LEAST 30 DAYS BEFORE THE EXPIRATION OF A TERM AND NOT MORE THAN 60 DAYS AFTER A VACANCY OCCURS IN AN UNEXPIRED TERM. THE LIST SHALL CONTAIN NOT LESS

THAN TWO RECOMMENDED CANDIDATES FOR EACH APPOINTMENT. THE GOVERNOR SHALL MAKE APPOINTMENTS WITHIN 30 DAYS AFTER RECEIVING THE LIST.] The term of office of each member is three years. [HOWEVER, OF THE FIRST MEMBERS OF THE BOARD, ONE SHALL BE APPOINTED FOR A ONE-YEAR TERM, TWO FOR TWO-YEAR TERMS, AND TWO FOR THREE-YEAR TERMS.] Vacancies on the board shall be filled for the unexpired term in the same manner as original appointment.

* Sec. 16. AS 08.71.030 is amended to read:

Sec. 08.71.030. QUALIFICATIONS OF BOARD MEMBERS. Five [...] board members [MEMBER] shall be [A] licensed, practicing dispensing opticians [OPTICIAN] residing in the state. Two shall be persons with no direct financial interest in the health care industry.

* Sec. 17. AS 08.71 is amended by adding a new section to read:

Sec. 08.71.175. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 170 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice as a dispensing optician under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 18. AS 08.72.020 is amended to read:

Sec. 08.72.020. MEMBERSHIP OF BOARD AND TERMS OF OFFICE. The board consists of five [THREE] persons, appointed by the governor. The term of each member is three years. [ONE MEMBER ONLY IS APPOINTED EACH YEAR, EXCEPT WHEN VACANCIES FOR UNEXPIRED TERMS ARE FILLED.]

* Sec. 19. AS 08.72.040 is repealed and re-enacted to read:

Sec. 08.72.040. QUALIFICATIONS. Three board members shall be licensed, practicing optometrists who have been residents for at least three years. Two shall be persons who have no direct financial interest in the health care industry.

* Sec. 20. AS 08.72 is amended by adding a new section to read:

Sec. 08.72.255. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under secs. 240 and 250 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice optometry under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 21. AS 08.80.010 is amended to read:

Sec. 08.80.010. CREATION AND MEMBERSHIP OF BOARD OF PHARMACY. There is created the Board of Pharmacy, composed of <u>seven</u> [FIVE] members <u>five</u> [EACH] of whom shall be <u>pharmacists</u> [A PHARMACIST] licensed in the state who has been actively engaged in the practice of pharmacy in the state for a period of three years immediately preceding his appointment <u>Two shall be persons with no direct financial interest in the health care industry.</u> Whenever possible, the board shall include at least one member from each judicial district.

* Sec. 22. AS 80.80 is amended by adding a new section to read:

Sec. 08.80.265. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 260 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice pharmacy under this

chapter should be limited or conditioned or the practitioner disciplined the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 23. AS 08.84 is amended by adding a new section to read:

Sec 08.84.185. LIMITS OR CONDITIONS ON LICENSE. (a) In addition to action under sec. 180 of this chapter, upon a finding that by reason of demonstrated problems of competence, experience, education or health the authority to practice physical therapy should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 24. AS 08.86.010 is amended to read:

Sec. 08.86.010. CREATION AND MEMBERSHIP OF BOARD. There is created a Board of Psychologist and Psychological Associate Examiners. It consists of three licensed psychologists, and two persons who have no direct financial interest in the health care industry.

* Sec. 25. AS 08.86 is amended by adding a new section to read:

Sec. 08.86.220. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) Upon a finding that by reason of demonstrated problems of competence, experience, education, or health the authority to practice psychology or as a phsychological associate under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by time, specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 26. AS 09.55 is amended by adding new sections to read:

Sec. 09.55.535. MANDATORY ARBITRATION. (a) It is the purpose of these arbitration provisions to establish a system that will provide incentives to settle malpractice disputes without prolonged litigation and that will provide a method by which parties to a medical malpractice claim can obtain a prompt determination of its merits, and the amount of damages, if any, that should be allowed.

(b) Upon the filing of any malpractice claim against a physician or hospital, the claim shall be submitted to an arbitration board; ~~provided,~~ however, ~~that~~ submission to an arbitration board may not be required if all parties object to arbitration or if the parties have agreed to follow the procedures prescribed in sec. 536 of this chapter.

(c) The arbitration board shall consist of three arbitrators; one arbitrator designated by the plaintiff [redacted], one arbitrator designated by the defendant [redacted], and a third arbitrator designated by mutual agreement who shall serve as chairman of the board. If the parties cannot agree on the third person, the court will provide a list of three or more persons who might serve as chairman of the arbitration board, which shall be furnished by the attorney general. Plaintiff or plaintiffs together and defendant and defendants together may each strike one or more names from the list, so after each side has done so, at least one name remains on the list, providing a basis for the final selection by the court.

(d) The attorney general shall prepare a list of panelists consisting of lawyers or other persons qualified to serve as chairmen of arbitration boards. They shall be selected on basis of their technical expertise, judicial temperament, and capability of impartially acting

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on malpractice claims. The attorney general shall submit a list of at least three names of panelists whenever requested to do so by the court along with detailed biographical information on each panelist.

(e) Each member of the board shall receive reasonable compensation based on the extent and duration of services rendered ~~and paid in equal proportion by the parties in interest. In a claim accompanied by an affidavit stating that a party cannot afford the cost of arbitration, that party's share of the cost of arbitration costs shall be borne by the court, and~~ by the court. The court will also pay for the costs of experts required by the BOARD. If all parties agree in advance to binding arbitration, then the cost of arbitration shall be borne by the court.

(f) The provisions of the Uniform Arbitration Act, AS 09.43.010 - 09.43.180, apply to arbitrations under this section insofar as they are applicable and in accordance with any rules of court which may be adopted.

(g) If the decision of the arbitration board is not accepted by all parties, the decision of the arbitration board, including its conclusions as to the merits of the claim and appropriate damages, together with any dissenting opinions, shall be admissible in evidence at trial upon the offer of any party, if the court conducts a review of the arbitration decision and any other relevant information submitted by the parties and concludes that:

(1) the findings of fact by the arbitration board were not clearly erroneous;

(2) the decision is in accordance with applicable law;

(3) the procedures required for conducting the hearing and rendering the decision were followed fairly and properly without prejudice to any party;

(4) any party who has not offered the arbitration decision in evidence may subpoena any member ~~or members~~ of the arbitration board

for purposes of cross-examination.

Sec. 09.55.536. VOLUNTARY ARBITRATION. (a) A patient and any health care provider may execute an agreement to submit to arbitration any dispute, controversy, or issue arising out of care of treatment by the health care provider during the period that the agreement is in force or that has already arisen between the parties.

(b) An agreement to arbitrate executed before care of treatment is provided between a patient and health care provider shall clearly provide that execution of the agreement by the patient is not a prerequisite to receiving care or treatment, and this provision shall be explained orally to the patient before he is asked to sign. If this subsection is not complied with by the health care provider, the agreement to arbitrate is void. The form to be used shall be approved in advance by the director of insurance to assure it fairly informs the patient and properly protects his interests.

(c) Each admission to a hospital shall be treated as separate and distinct for the purposes of an agreement to arbitrate, but a person receiving outpatient care from a hospital or clinic or a member of a health maintenance organization may execute an agreement with the hospital which provides for continuation of the agreement for a continuing program of treatment or during continued membership.

(d) Arbitration shall take place under the same procedures prescribed for mandatory arbitration under sec. 536 of this chapter unless the parties agree otherwise in accordance with general guidelines promulgated as regulations by the director of insurance to assure fairness to the parties.

(e) ~~The~~ Reasonable ~~costs of voluntary binding arbitration shall be borne by the parties~~ compensation based on the extent and duration of services rendered and paid will be paid to members of the arbitration board by the court as well as cost of experts required by the court.

* Sec. 27. AS 09.55.540 is amended to read:

Sec. 09.55.540. BURDEN OF PROOF. (a) In a malpractice action based on the negligence or wilful misconduct of a health care provider [PHYSICIAN LICENSED UNDER AS 08.64, OR A DENTIST LICENSED UNDER AS 08.-36], the plaintiff has [SHALL HAVE] the burden of proving by a preponderance of the evidence

(1) the degree of knowledge or skill possessed or the degree of care ordinarily exercised under the circumstances, at the time of the act complained of, by health care providers in the field or specialty in which the defendant is practicing [BY PHYSICIANS OR DENTISTS PRACTICING THE SAME SPECIALTY IN SIMILAR COMMUNITIES TO THAT IN WHICH THE DEFENDANT PRACTICES];

(2) that the defendant either lacked this degree of knowledge or skill or failed to exercise this degree of c[illegible]e; and

(3) that as a proximate result of this lack of knowledge or skill or the failure to exercise this degree of care the plaintiff suffered injuries that would not otherwise have been incurred.

(b) In malpractice actions there is [SHALL BE] no presumption of negligence on the part of the defendant.

* Sec. 28. AS 09.55 is amended by adding new sections to read:

Sec. 09.55.546. AD[illegible]NCE PAYMENTS. In an action to recover damages under secs. 530 - 540 of this chapter, no advance payment made by the defendant health care provider or his professional liability insurer to or on behalf of the plaintiff may be admissible as evidence or may be construed as an admission of liability for injuries or damages suffered by the plaintiff; however, a final award in favor of the plaintiff shall be reduced to the extent of any advance payment. The advance payment shall inure to the exclusive benefit of the defendant or the insurer making the payment.

Sec. 09.55.547. AD DAMNUM. In a cause of action against a health

care provider for malpractice, the complaint or any other pleadings may not contain an ad damnum clause or monetary amount claimed against the defendant health care provider, except as necessary for jurisdictional purposes.

Sec. 09.55.548. AWARDS, COLLATERAL SOURCE, PROVIDER'S LIABILITY. (a) Damages shall be awarded in accordance with principles of the common law. The fact finder in a malpractice action shall render an award as to damages by category of loss. The court may enter a judgment that future damages be paid in whole or in part by periodic payments rather than by a lump-sum payment; the judgment shall include, if necessary, other provisions to assure that funds will be available as periodic payments become due. In this subsection, future damages includes damages for future medical treatment, care or custody, loss of future earnings, or loss of bodily function of the claimant.

(b) Except when the collateral source is a federal program which by law must seek subrogation and except death benefits paid under life insurance, a claimant may only recover damages from the defendant which exceed amounts received by the claimant as compensation for his injuries from collateral sources, whether private, group or governmental, and whether contributory or noncontributory. Evidence of collateral sources, other than a federal program which must by law seek subrogation and the death benefit paid under life insurance, is admissible after the fact finder has rendered an award, but the court shall also take into account the value of claimant's rights to coverage exhausted or depleted by payment of these collateral benefits. It may do so by adding back a reasonable estimate of their probable value, or by earmarking and holding for possible periodic payment under (a) of this section that amount of the award that would otherwise have been deducted, to see if the impairment of claimant's rights actually takes place in the future.

* Sec. 29. AS 09.55.550 is amended to read:

Sec. 09.55.550. JURY INSTRUCTIONS. In health care [MEDICAL] malpractice actions the jury shall be instructed that the plaintiff has the burden of proving [, BY A PREPONDERANCE OF THE EVIDENCE,] the health care provider's negligence or wilful misconduct in accordance with the standard of proof specified in sec. 540 of this chapter [OF THE PHYSICIAN OR DENTIST]. The jury shall be further instructed that injury alone does not raise a presumption of the health care provider's [PHYSICIAN'S OR DENTIST'S] negligence or misconduct.

* Sec. 30. AS 09.55 is amended by adding new sections to read:

Sec. 09.55.556. INFORMED CONSENT. (a) A health care provider is liable for failure to obtain the informed consent of a patient if the claimant establishes by a preponderance of the evidence that the provider has failed to inform the patient of the common risks and reasonable alternatives to the proposed treatment or procedure, and that but for the failure the claimant would not have consented to the proposed treatment or procedure.

(b) It is a defense to any action for health care malpractice based upon an alleged failure to obtain informed consent that

(1) the risk not disclosed is too commonly known or is too remote to require disclosure;

(2) the patient stated to the health care provider that he would undergo the treatment or procedure regardless of the risk involved or that he did not want to be informed of the matters to which he would be entitled to be informed;

(3) under the circumstances consent by or on behalf of the patient was not possible; or

(4) the health care provider after considering all of the attendant facts and circumstances used reasonable discretion as to the

manner and extent that the alternatives or risks were disclosed to the patient because he reasonably believed that a full disclosure would have a substantially adverse effect on the patient's condition.

Sec. 09.55.560. DEFINITIONS. In secs. 530 - 560 of this chapter "health care provider" means a chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under AS 08.71; an optometrist licensed under AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a psychologist and a psychological associate licensed under AS 08.86; and a hospital as defined in AS 18.20.130, including a governmentally owned or operated hospital.

* Sec. 31. AS 18.20 is amended by adding a new section to read:

Sec. 18.20.045. INSURANCE REQUIRED. (a) Every hospital, as a condition of licensure, shall maintain and submit to the department evidence of insurance against liability to inpatients and outpatients for malpractice issued by the Health Care Providers Indemnity Corporation, in amounts of not less than $200,000 per occurrence, and an aggregate liability per year of $1,000,000 minimum, and an additional $20,000 for each bed over 50.

(b) The director of insurance or his designee shall waive the requirement in (a) of this section for a hospital if the hospital furnishes satisfactory evidence of having other insurance providing coverage in amounts not less than those specified in (a) of this section. No waiver granted under this subsection may extend beyond the normal expiration date of the hospital's insurance policy or January 1, 1977, whichever occurs first.

* Sec. 32. AS 18 is amended by adding a new chapter to read:

CHAPTER 23. HEALTH CARE SERVICES INFORMATION.

Sec. 18.23.010. LIMITATION ON LIABILITY FOR PERSONS PROVIDING INFORMATION TO REVIEW ORGANIZATION. (a) No person providing information to a review organization is subject to action for damages or other relief by reason of having furnished that information, unless the information is false and the person providing the information knew or had reason to know the information was false.

(b) No privilege of confidentiality arising from a physician-patient relationship may be invoked to withhold pertinent information from review by a review organization.

Sec. 18.23.020. LIMITATION ON LIABILITY FOR MEMBERS OF REVIEW ORGANIZATIONS. No person who is a member or employee of, or who acts in an advisory capacity to, or who furnishes counsel or services to a review organization is liable for damages or other relief in an action brought by another whose activities have been or are being scrutinized or reviewed by a review organization, by reason of the performance of a duty, function or activity of the review organization, unless the performance of the duty, function or activity was motivated by malice toward the affected person. No person is liable for damages or other relief in an action by reason of his performance of a duty, function, or activity as a member of a review organization or by reason of a recommendation or action of the review organization when the person acts in the reasonable belief that the action or recommendation is warranted by facts known to the person or to the review organization after reasonable efforts to ascertain the facts upon which the review organization's action or recommendation is made.

Sec. 18.23.030. CONFIDENTIALITY OF RECORDS OF REVIEW ORGANIZATION (a) Except as provided in (b) of this section, all data and information acquired by a review organization, in the exercise of its duties and

functions, shall be held in confidence and may not be disclosed to anyone except to the extent necessary to carry out the purposes of the review organization, and is not subject to subpoena or discovery. Except as provided in (b) of this section, no person described in sec. 20 of this chapter may disclose what transpired at a meeting of a review organization except to the extent necessary to carry out the purposes of a review organization, and the proceedings and records of a review organization are not subject to discovery or introduction into evidence in a civil action against a health care provider arising out of the matter which is the subject of consideration by the review organization. Information, documents, or records otherwise available from original sources are not immune from discovery or use in a civil action merely because they were presented during proceedings of a review organization, nor may a person who testified before a review organization or who is a member of it be prevented from testifying as to matters within his knowledge, but a witness may not be asked about his testimony before a review organization or opinions formed by him as a result of its hearings, except as provided in (b) of this section.

(b) Testimony, documents, proceedings, records, and other evidence adduced before a review organization that are otherwise inaccessible under this section may be obtained by a health care provider who claims that denial is unreasonable, or may be obtained under subpoena or discovery proceedings brought by a plaintiff who claims that information provided to a review organization was false and claims that the person providing the information knew or had reason to know the information was false.

(c) Nothing in this chapter prevents a person whose conduct or competence has been reviewed under this chapter from obtaining, for the purpose of appellate review of the action of the review organization,

any testimony, documents, proceedings, records and other evidence adduced before the review organization.

Sec. 18.23.040. PENALTY FOR VIOLATION. Other than as authorized by sec. 30 of this chapter, a disclosure of data and information acquired by a review committee or of what transpired at a review meeting is a misdemeanor and punishable under AS 11.05.010.

Sec. 18.23.050. PROTECTION OF PATIENT. Nothing in this chapter relieves a person of liability which he has incurred or may incur to a person as a result of furnishing health care to the patient.

Sec. 18.23.060. PARTIES BOUND BY REVIEW. When a review organization reviews matters under sec. 70(5)(H) of this chapter no party is bound by a ruling of the organization in a controversy, dispute or question unless he agrees in advance, either specifically or generally, to be bound by the ruling.

Sec. 18.23.070. DEFINITIONS. In this chapter, unless the context otherwise requires,

(1) "administrative staff" means the staff of a hospital or clinic;

(2) "health care" means professional services rendered by a health care provider or an employee of a health care provider, and services furnished by a sanatorium, rest home, nursing home, boarding home or other institution for the hospitalization or care of human beings;

(3) "health care provider" means a chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under AS 08.71; an optometrist licensed under AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a

psychologist and a psychological associate li ensed under AS 08.86; and a hospital as defined in AS 18.20.130, including a governmentally owned or operated hospital;

(4) "professional service" means service rendered by a health care provider of the type he is licensed to render;

(5) "review organization" means a hospital governing body or a committee whose membership is limited to health care providers and administrative staff, except where otherwise provided for by state or federal law, and which is established by a hospital, by a clinic, by one or more state or local associations of health care providers, by an organization of health care providers from a particular area or medical institution, or by a professional standards review organization established under 42 U.S.C., sec. 1320c-1 et seq., to gather and review information relating to the care and treatment of patients for the purposes of

(A) evaluating and improving the quality of health care rendered in the area or medical institution;

(B) reducing morbidity or mortality;

(C) obtaining and disseminating statistics and information relative to the treatment and prevention of diseases, illness and injuries;

(D) developing and publishing guidelines showing the norms of health care in the area or medical institution;

(E) developing and publishing guidelines designed to keep the cost of health care within reasonable bounds;

(F) reviewing the quality or cost of health care services provided to enrollees of health maintenance organizations;

(G) acting as a professional standards review organization under 42 U.S.C., sec. 1320c-1 et seq.;

(H) reviewing, ruling on, or advising on controversies, disputes or questions between

(i) a health insurance carrier or health maintenance organization and one or more of its insured or enrollees;

(ii) a professional licensing board, acting under its powers of discipline or license revocation or suspension, and a health care provider licensed by it when the matter is referred to a review organization by the professional licensing board;

(iii) a health care provider and his patients concerning diagnosis, treatment or care, or a charge or fee;

(iv) a health care provider and a health insurance carrier or health maintenance organization concerning a charge or fee for health care services provided to an insured or enrollee; or

(v) a health care provider or his patients and the federal or a state or local government, or an agency of the federal or a state or local government;

(I) acting on the recommendation of a credential review committee or a grievance committee.

* Sec. 33. AS 21 is amended by adding a new chapter to read:

CHAPTER 88. HEALTH CARE PROVIDERS INSURANCE.

ARTICLE 1. PURPOSE.

Sec. 21.88.010. PURPOSE OF CHAPTER. It is the purpose of this chapter to provide a means of furnishing health care providers with adequate insurance against liability for medical negligence by concentrating all such insurance in one entity which can negotiate more successfully for insurance from casualty insurers and to distribute

equitably the true cost of the insurance among the health care providers insured.

ARTICLE 2. INDEMNITY CORPORATION.

Sec. 21.88.020. CORPORATION CREATED. There is created the Alaska Health Care Providers Indemnity Corporation which is a public corporation having a legal existence independent of and separate from the state. Obligations issued by the corporation do not constitute a debt, liability or obligation of the state or a pledge of full faith and credit of the state.

Sec. 21.88.030. CORPORATION BOARD OF GOVERNORS. (a) The corporation shall exercise its powers through a board of governors which shall be appointed by the governor of the state and confirmed by the legislature as provided in (b) of this section.

(b) The appointments to the board of governors shall be Alaska residents as follows:

(1) two physicians licensed in the state; one of the physicians shall be engaged in group practice in a clinic of six or more physicians;

(2) one person employed by a hospital or on the board of directors of a hospital;

(3) two professionals in the insurance field;

(4) two persons who are not health care providers or financially interested in the field of health care, attorneys, or representatives of the insurance industry.

(c) The term of office of each governor is three years, except that the director shall designate two initially appointed governors to serve for one year and two initially appointed governors to serve for two years.

(d) Upon the expiration of the term of a governor, the director

shall appoint a successor who shall be from the same class described in (b) of this section as the governor whose term has expired.

(e) Upon a governor's early resignation, death or inability to serve, the director shall appoint a successor from the same class defined in (b) of this section as the terminating governor, who shall serve for the unexpired term.

(f) The director or his designee is not a voting member of the board of governors but shall be notified by the board of and have the right to attend and participate in all meetings and proceedings of the board.

(g) Each member of the board of governors shall be allowed compensation for services and reimbursement for reasonable expenses incurred in attending meetings of the board and transacting corporation business, as set out in the plan of operation.

Sec. 21.88.040. CORPORATION PLAN OF OPERATION. (a) Within 30 days after the effective date of this chapter, the board of governors shall prepare and submit to the director for approval a plan of operation which provides for the fair, reasonable and equitable administration of the affairs of the corporation and the discharge of the purposes for which it is created. The plan and any amendments of it become effective upon the director's approval. If the board of governors fails to submit a plan of operation, or if at a subsequent time the board of governors fails to submit suitable amendments to the plan, the director shall, after notice and hearing, adopt and promulgate a plan of operation or amendments which are necessary or advisable to effectuate the provisions of this chapter. Adoption of the plan is not subject to the Administrative Procedure Act (AS 44.62).

(b) The plan of operation shall

(1) establish the procedures by which all the powers and

duties of the corporation specified in sec. 50 of this chapter shall be performed;

(2) establish procedures for handling assets and discharging liabilities of the corporation;

(3) establish regular places and times for meetings of the board of governors;

(4) establish procedures for records to be kept of all financial transactions of the corporation, its agents, and the board of governors;

(5) establish the amount and method of reimbursing and compensating members of the board of governors;

(6) establish the procedures for awarding contracts to indemnify or defend or to provide other services and to compensate the indemnitors or vendors;

(7) establish the procedures for issuing contracts of insurance as provided in sec. 50 of this chapter and for the determination of rates;

(8) contain additional provisions necessary or proper for the execution of the powers and duties of the corporation.

Sec. 21.88.050. POWERS AND DUTIES OF THE CORPORATION. (a) The corporation shall

(1) in the form approved by the director, issue to all health care providers who pay the premiums for it a contract indemnifying the health care provider and his employees who are health care providers against loss by reason of liability for professional services and agreeing to tender on behalf of the health care provider and his employees who are health care providers a defense in a proceeding brought under AS 09.55.530 - 09.55.560; the limit of liability shall be no less than the minimum liability coverage requirements to be main-

tained under AS 08.64.215 and AS 18.20.045; the contract shall cover the defense against but need not indemnify a claim for punitive damages; at the option of the health care provider and for an additional premium the contract may cover claims against the health care provider that arise out of professional services performed by the health care provider after December 31, 1974 and are filed within three years after those services were performed, except that coverage will not be provided for a claim already filed or of which the health care provider had or reasonably should have had notice at the time the retroactive insurance was purchased;

(2) charge a premium for the protection provided by the contracts issued under (1) of this subsection which shall be determined by the board of governors in accordance with sec. 80 of this chapter and subject to the approval of the director;

(3) negotiate for and procure reinsurance from a casualty insurer or reinsurer for all of its liability incurred by contracts issued under (1) of this subsection; the corporation may not incur or retain under those contracts liability which is not reinsured as provided in this paragraph; if, after the exercise of due diligence, no reinsurance can be procured at reasonable rates from a casualty insurer or reinsurer, the corporation through the board of governors, shall so certify to the director; reinsurance shall then be provided by the Health Care Joint Underwriting Association as provided in sec. 110 et seq. of this chapter;

(4) comply with or be subject to AS 21.06.090; 21.06.120; 21.06.140; 21.06.160; 21.06.250; AS 21.09.180; 21.09.190; 21.09.200; 21.09.250; 21.09.280; AS 21.12.020(b), (c), (d), and (e); and chs. 18, 21, 24, and 36 of this title;

(5) carry out the obligations of the contracts issued under

(1) of this subsection by defending all covered claims made against insured health care providers and by paying all liabilities which are finally adjudicated against the insured health care provider or which may in the opinion of the corporation reasonably be expected to be finally adjudicated against the health care provider to the extent of the contract obligation;

(6) provide coverage to health care providers for liability in excess of the minimum limits required for licensure as a health care provider, but limited to $1,000,000 for individual health care providers and $5,000,000 for hospitals, if there is a finding by the director that this coverage is unavailable at a reasonable cost and that this coverage can be made available at a reasonable cost through the corporation; if this paragraph is implemented, then each health care provider obtaining excess coverage up to these amounts shall obtain it from the corporation.

(b) The corporation may

(1) in the form approved by the director, issue contracts of professional liability insurance to chiropractors licensed under AS 08.20, dental hygienists licensed under AS 08.32, dentists licensed under AS 08.36, nurses licensed under AS 08.68, dispensing opticians licensed under AS 08.71, optometrists licensed under AS 08.72, pharmacists licensed under AS 08.80, physical therapists licensed under AS 08.[illegible], and pyschologists and psychological associates licensed under AS 08.86;

(2) employ or retain persons, individual or corporate, to discharge its obligations and pay reasonable compensation for those services; employees of the corporation are not considered state employees;

(3) provide coverage to health care providers for other hazards where there is a finding by the director that this coverage is

otherwise unavailable by reason of the operation of the corporation;

(4) borrow or advance funds necessary to effectuate the purposes of the corporation;

(5) negotiate and become a party to those contracts as are necessary to carry out the purposes of the corporation;

(6) sue or be sued in the name of the corporation;

(7) perform all other acts necessary and proper to effectuate the corporation.

Sec. 21.88.060. PREMIUM TAX. The corporation shall pay a premium tax in the amount of one and one-half per cent of the total direct premium income received by the corporation during the year ending on the preceding December 31, after deducting the applicable cancellations, returned premium, the unabsorbed portion of any deposit premiums, all policy dividends, unabsorbed premiums refunded to policyholders, refunds, savings, savings coupons and other similar returns paid or credited to policyholders with respect to their policies. The tax shall be paid to the director annually before April 1 of each year.

Sec. 21.88.070. STATISTICS. The corporation shall collect, maintain and report information concerning claims against health care providers. The information shall be on forms prescribed by the director, and shall be sufficient to enable a proper determination of losses for rate making and to identify causes and sources of loss for loss control. At least annually the corporation shall report to the director the number and amount of claims filed, reserved, paid, settled and adjudicated during the year, the premiums paid to and the expenses incurred by the corporation during the year. This report shall be available to the public. The director may require that supplemental reports include the names of insured health care providers and the claimants; however, no reports which become publicly available may

include the names of health care providers or claimants or information that will permit by inference the identity of specific health care

providers or claimants. All statistics shall be made available to the appropriate licensing board or agency.

Sec. 21.88.080. RATES. The rates and rating plans used by the corporation for the policies issued shall be determined by license category of health care providers in accordance with all of the following:

(1) rates may not be excessive; rates are excessive if, after a period of time and with respect to an amount of gross premium which are actuarially credible, the premiums exceed losses incurred by the corporation, including losses paid, reserves for claims reported and unpaid, reserves for claims incurred during the policy period and not reported, and reasonable expenses for the operation of the corporation;

(2) rates shall not be inadequate; rates are inadequate if, based on available actuarial data, the premiums to be paid by the health care providers are or may reasonably be expected to be insufficient to pay for losses incurred by the corporation, including claims paid, reserves for claims reported and unpaid, reserves for claims incurred during the policy period and not reported; and reasonable expenses for the operation of the corporation;

(3) ~~rate shall~~ may not be unfairly discriminatory;

(4) rates shall be adjusted annually;

(5) rates for any policy year shall be calculated to include the adjustment for actual experience of the corporation [redacted];

(6) in considering losses to be incurred, changes in the law, national, regional or local trends in medical negligence awards, and other relevant factors may be considered;

(7) income from the investment of reserves shall be considered;

(8) individual risk underwriting factors shall be considered.

Sec. 21.88.090. REQUIRED INSURANCE; CANCELLATION. The corporation shall provide insurance to all health care providers otherwise eligible for licensure under AS 08.64 and AS 18.20. The corporation may provide for installment payment of premiums in which event each installment is due by the date specified. The corporation may cancel any of its policies in the event of nonpayment of any premium or installment on a premium, or other charge, by mailing or delivering to the insured at the address shown on the policy and to the agency of the state issuing the insured's license written notice stating when, not less than 10 days after notice is received by the insured, the cancellation is effective.

ARTICLE 3. JOINT UNDERWRITING ASSOCIATION.

Sec. 21.88.110. ASSOCIATION CREATED. (a) The Health Care Providers Joint Underwriting Association is created consisting of all insured

(1) ~~licensed~~ health care service corporations as defined in AS 21.87.330;

(2) disability insurers as defined in AS 21.12.050;

(3) property insurers as defined in AS 21.12.060; and

(4) casualty insurers as defined in AS 21.12.070.

(b) Every insurer described in (a) of this section shall be a member of the association and shall remain a member as a condition of its authority to continue to transact that kind of business in this state; except that any disability insurer may elect to pay any tax or assessments due without otherwise participating as a member.

(c) The association shall commence operation upon a finding by the director, after public hearing, that after the exercise of due diligence no reinsurance could be procured at reasonable rates by the corporation from a casualty insurer or reinsurer. After the association has commenced operation, if the director determines, after public hearing, that health care malpractice insurance is available through insurers licensed

in this state with respect to which he has previously made the former finding, the association shall cease its underwriting operations. At any time, after notice and hearing, the director may, upon a finding that it is no longer needed, terminate the operation of the association.

Sec. 21.88.120. PURPOSE. The purpose of the association is to provide a market for medical malpractice insurance to the corporation on a self-supporting basis without subsidy from association members.

Sec. 21.88.130. ASSOCIATION BOARD OF DIRECTORS; TERM. The association shall be governed by a board of directors appointed by the governor of the state and consisting of two representatives of domestic casualty and property insurers, one representative of admitted disability insurers, one representative of health care service corporations, one representative of foreign casualty and property insurers, and two persons from the public. Members of the board of directors serve three-year terms.

Sec. 21.88.140. ASSOCIATION PLAN OF OPERATION. (a) Within 30 days after the association's creation the board of directors shall prepare and submit to the director for his approval a plan of operation which provides for the fair, reasonable and equitable administration of the affairs of the association and the discharge of the purposes for which it is created. The plan and any amendments of it become effective upon the director's approval. If the board of directors has failed to submit a plan of operation, or if at any subsequent time the board of directors fails to submit suitable amendments to the plan, the director shall, after notice and hearing, adopt and promulgate a plan of operation or amendments which are necessary or advisable to effectuate the provisions of this chapter. Adoption of the plan is not subject to the Administrative Procedure Act (AS 44.62).

(b) The plan of operation shall

(1) establish the procedures for carrying out the powers and duties of the association specified in sec. 150 of this chapter;

(2) establish procedures for handling assets and discharging liabilities of the association;

(3) establish regular places and times for meetings of the board of directors;

(4) establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;

(5) establish the amount and method of reimbursing members of the board of directors;

(6) establish the procedures for awarding contracts to indemnify or defend or to provide other services and to compensate the indemnitors or vendors;

(7) establish the procedures for issuing contracts of insurance as provided in sec. 150 of this chapter and for the determination of rates;

(8) contain additional provisions necessary or proper for the execution of the powers and duties of the association.

Sec. 21.88.150. POWERS AND DUTIES OF THE ASSOCIATION. (a) The association shall

(1) provide reinsurance to the corporation covering contracts issued by the corporation indemnifying health care providers and their employees who are health care providers against loss by reason of liability for professional services and agreeing to tender on behalf of the health care providers and their employees who are health care providers a defense in an action brought under AS 09.55.530 - 09.55.560; the limit of liability shall be no less than the minimum liability required to be indemnified as provided in AS 08.64.315 and AS 18.20.045,

and the coverage shall be the same as that which the Health Care Providers Indemnity Corporation is required to provide under sec. 50 of this chapter;

(2) charge a premium for the protection provided by the contracts issued under sec. 50 of this chapter which shall be determined by the board of directors in accordance with sec. 80 of this chapter and subject to the approval of the director;

(3) comply with or be subject to AS 21.06.090; 21.06.120; 21.06.140; 21.06.160; 21.06.250; AS 21.09.180; 21.09.200; 21.09.250; 21.09.280; AS 21.12.020(b), (c), (d), and (e); and chs. 18, 21, 24, and 36 of this title;

(4) carry out the obligations of the contracts issued under sec. 50 of this chapter by defending all covered claims made against insured health care providers and paying all liabilities which are finally adjudicated against the insured health care provider or which may in the opinion of the association reasonably be expected to be finally adjudicated against the health care provider to the extent of the contract obligation.

(b) The association may

(1) employ or retain persons, individual or corporate, to discharge its obligations and pay reasonable compensation for those services;

(2) provide reinsurance to the corporation for coverage to health care providers for other hazards where there is a finding by the director that this coverage is otherwise unavailable by reason of the operation of the corporation;

(3) provide reinsurance to the corporation for coverage to health care providers for liability under AS 09.55.530 - 09.55.560 in excess of the minimum limits required for licensure as a health care

unavailable at a reasonable cost and that this coverage can be made available at a reasonable cost through the corporation;

(4) provide reinsurance to the corporation for coverage for liability under AS 09.55.530 - 09.55.560 to chiropractors licensed und AS 08.20, dental hygienists licensed under AS 08.32, dentists licensed under AS 08.36, nurses licensed under AS 08.68, dispensing opticians licensed under AS 08.71, optometrists licensed under AS 08.72, pharmacists licensed under AS 08.80, physical therapists licensed under AS 08.84, and psychologists and psychological associates licensed unde AS 08.86;

(5) borrow or advance funds necessary to effectuate the purposes of this association;

(6) negotiate and become a party to those contracts which a necessary to carry out the purposes of the association;

(7) sue or be sued in the name of the association;

(8) cede or assume reinsurance;

(9) perform all other acts necessary and proper to effectuat the association.

Sec. 21.88.160. RATES AND RATING PLANS. The rates and rating plans shall be determined as provided in sec. 80 of this chapter, except that allowance may not be made for profit to an indemnifying carrier or for income from investment of member-contributed funds; and provided that reserves for claims incurred during the policy period and reasonably expected to be reported after three years after the incident may be included on a different basis due to the additional financial flexibility provided by the association.

Sec. 21.88.170. ASSESSMENT. If sufficient funds are not availabl for the sound financial operation of the association, all members shall contribute to the financial requirements of the association by paying t

the association an assessment to be determined by the board of governors of the association, these assessments to be prorated among all members in proportion to their direct written premiums or revenues in this state in the insurance lines the writing of which require membership in the association, in the two years ending on the preceding December 31, after deducting the applicable cancellations, returned premium, the unabsorbed portion of any deposit premium, all policy dividends, unabsorbed premiums refunded to policyholders, refunds, savings, savings coupons and other similar returns paid or credited to policyholders with respect to their policies. Any assessment under this section is a tax obligation in addition to taxes required under AS 21.09.210 and notwithstanding the provisions of AS 21.09.210(e). ~~Insume~~

Sec. 21.88.180. RATE ADJUSTMENT. (a) If in any year an assessment is made under sec. 170 of this chapter, rates for the next period shall be increased from the rate determined under sec. 160 of this chapter by an amount sufficient to reimburse all members the amounts assessed.

(b) No assessment may be reimbursed to members without prior approval of the director and no interest accrues in favor of members on amounts assessed.

(c) If, after establishing required reserves, there is an excess amount in reserve, the excess premium shall be refunded to the insured health care providers.

Sec. 21.88.190. REPORTS. At least annually the association shall report to the director concerning its affairs. The report shall be in the form prescribed by the director.

ARTICLE 4. LOAN FUND.

Sec. 21.88.210. FUND ESTABLISHED. (a) There is in the Department of Commerce and Economic Development a medical malpractice liability revolving loan fund to be administered by the director of insurance.

(b) Loans shall be made from the fund to the Joint Underwriting Assoication upon certification by the director that a loan is necessary for the corporation to spread costs out over time because of fluctuations in loss experience. If a loan is made to the corporation from the fund, the Joint Underwriting Association shall issue a note to the fund pledging the premiums collected in the future as security for the loan.

(c) Loans from the fund shall be repaid by the Joint Underwriting Association within four years at an annual interest rate of seven per cent.

(d) The director may sell at par value to the Department of Revenue the notes, security instruments and pledge agreements held by the Department of Commerce and Economic Development as security for loans made under this section. The Department of Revenue shall purchase all the notes offered until the current principal amount of the notes purchased and held by the Department of Revenue equals $5,000,000.

ARTICLE 5. GENERAL PROVISIONS.

Sec. 21.88.900. DEFINITIONS. As used in this chapter,

(1) "association" means the Health Care Providers Joint Underwriting Association;

(2) "corporation" means the Health Care Providers Indemnity Corporation;

(3) "health care provider" means a physician licensed under AS 08.64 and a hospital licensed under AS 18.20.

* Sec. 4. AS 21.18.090 is amended by adding a new paragraph to read:

(5) reserves for the Joint Underwriting Association are to include claims reported and unpaid; reserves for claims incurred but not reported, but those which may reasonably be expected to be reported beyond three years after the date of occurrence may be included on a different basis due to the additional financial flexibility of the association.

* Sec. 3~~0~~5. AS 08.02 is amended by adding a new section to read:

Sec. 08.02.020. LIMITATION OF LIABILITY FOR MEMBERS OF LICENSING BOARDS. No person is liable for damages or other relief in an action by reason of his performance of a duty, function, or activity as a member of a licensing board or by reason of a recommendation or action of the board when the person acts in the reasonable belief that his action or recommendation is warranted by facts known to him or to the board after reasonable efforts to ascertain the facts upon which the action or recommendation is made.

* Sec. 3~~7~~6. AS 08.64.365 and AS 08.68.040 are repealed.

* Sec. 3~~8~~7. This Act takes effect 30 days after enactment.

Our intent was to tie this in with FDA guide on drug Equivalences.

1. Voluntary Binding Arbitration
2. Mandatory Arbitration - Right Trial De Novo
3. Straight to Court if both agree and don't want arbitration

Residential Community Action Group

labor agreement

Press

IN THE HOUSE BY THE JUDICIARY COMMITTEE

HOUSE BILL NO. 842

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to pay differentials between state ferry employees residing inside and outside the state."

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

* Section 1. AS 23.40.040 is amended to read:

Sec. 23.40.040. COLLECTIVE BARGAINING AGREEMENT. The commissioner of public works or his authorized representative, in accordance with secs. 10 - 30 of this chapter, may negotiate and enter into collective bargaining agreements concerning wages, hours, working conditions, and other employment benefits with the employees of the division of marine transportation engaged in operating the state ferry system as masters or members of the crews of vessels or their bargaining agent. No collective bargaining agreement is final without the concurrence of the commissioner of public works. The commissioner of public works may make provision in the collective bargaining agreement for the settlement of labor disputes by arbitration, and for area differentials in pay as between employees residing inside and outside the state, not to exceed six pay steps.

Call Compton
Call A. G.

In addition to action under sec. 170 of this chapter, upon a finding that by reason of demonstrated competence, experience, or education the authority to practice chiropractic should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 3. AS 08.32 is amended by adding new sections to read:

Sec. 08.32.015. INSURANCE REQUIRED. (a) To be eligible for an active license under this chapter, a person must maintain insurance against liability to patients for malpractice in limits of not less than $200,000 per occurrence and $600,000 aggregate liability per year. This requirement is satisfied if the person's employer maintains insurance for him in the required amounts.

(b) The commissioner of commerce and economic development may require all persons licensed under this chapter to obtain the insurance required under (a) of this section from the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for dental hygienists is impairing the delivery of dental hygienists' services to the public.

Sec. 08.32.165. LIMITS OR CONDITIONS ON LICENSE. (a) In addition to action under sec. 160 of this chapter, upon a finding that by reason of demonstrated competence, experience, or education the authority to practice dental hygiene should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

Dentists

* Sec. 4. AS 08.36 is amended by adding new sections to read:

Sec. 08.36.115. INSURANCE REQUIRED. (a) To be eligible for an active license under this chapter, a person must maintain insurance against liability to patients for dental malpractice in limits of not less than $200,000 per occurrence and $600,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

(b) The commissioner of commerce and economic development may require all persons licensed under this chapter to obtain the insurance required under (a) of this section fro. the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for dentists is impairing the delivery of dentist services to the public.

Sec. 08.36.325. LIMITS OR CONDITIONS ON LICENSE. (a) In addition to action under sec. 320 of this chapter, upon a finding that by reason of demonstrated competence, experience, or education the authority to practice dentistry should be limited or conditioned or the practitioner disciplined, the board may censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

Physicians

* Sec. 5. AS 08.64 is amended by adding new sections to read:

Sec. 08.64.215. INSURANCE REQUIRED. (a) To be eligible for an active license under this chapter, a person must maintain insurance issued by the Health Care Providers Indemnity Corporation against liability to patients for medical malpractice in limits of not less than

$200,000 per occurrence and $600,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts from MIC.

(b) The commissioner of commerce and economic development or his designee may waive the requirement in (a) of this section for a person if that person furnishes satisfactory evidence of his having other insurance providing coverage in amounts not less than those specified in (a) of this section. No waiver granted under this subsection may extend beyond the normal expiration date of the person's insurance policy or January 1, 1977, whichever occurs first.

Sec. 08.64.312. CONTINUING EDUCATION REQUIREMENTS. (a) The board shall promote a high degree of competence in the practice of medicine by requiring every physician licensed in the state to fulfill continuing education requirements.

(b) Before a license may be renewed the licensee shall submit evidence satisfactory to the board of his successful completion of 15 hours of continuing education annually in medicine as prescribed by regulations of the board. Courses approved by the board shall include, but are not limited to, review courses and instruction on new techniques and developments in medicine.

(c) The board may exempt a physician from the requirements of (b) of this section upon an application by him giving evidence satisfactory to the board that he is unable to comply with the requirements because of extenuating circumstances. However, no person may be exempted from more than 15 hours of continuing education in a five year period.

Sec. 08.64.325. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 330 of this chapter, upon a finding that by reason of demonstrated competence, experience, or education the [illegible] to practice under this chapter should be limited or condi-

tioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 6. AS 08.68 is amended by adding new sections to read:

Sec. 08.68.165. INSURANCE REQUIRED. (a) To be eligible for an active license as a nurse under this chapter, a person must maintain insurance against liability to patients for malpractice in limits of not less than $200,000 per occurrence and $600,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

(b) The commissioner of commerce and economic development may require all persons licensed under this chapter to obtain the insurance required under (a) of this section from the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for nurses is impairing the delivery of nurse services to the public.

Sec. 08.68.275. LIMITS OR CONDITIONS ON LICENSE. (a) In addition to action under sec. 270 of this chapter, upon a finding that by reason of demonstrated competence, experience, or education the authority to practice nursing should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

* Sec. 7. AS 08.71 is amended by adding new sections to read:

Sec. 08.71.165. INSURANCE REQUIRED. (a) To be eligible for an

active license under this chapter, a person must maintain insurance against liability to patients for malpractice in limits of not less than $200,000 per occurrence and $600,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

(b) The commissioner of commerce and economic development may require that all persons licensed under this chapter obtain the insurance required under (a) of this section if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for dispensing opticians is impairing delivery of the services of dispensing opticians to the public.

Sec. 08.71.175. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under sec. 170 of this chapter, upon a finding that by reason of demonstrated competence, experience, or education the authority to practice as a dispensing optician under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by procedure or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

optometrists

* Sec. 8. AS 08.72 is amended by adding new sections to read:

Sec. 08.72.115. INSURANCE REQUIRED. (a) To be eligible for an active license under this chapter, a person must maintain insurance against liability to patients for malpractice in limits of not less than $200,000 per occurrence and $600,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

(b) The commissioner of commerce and economic development may require all persons licensed under this chapter to obtain insurance

required under (a) of this section from the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for optometrists is impairing delivery of optometrist services to the public.

Sec. 08.72.255. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) In addition to action under secs. 240 and 250 of this chapter, upon a finding that by reason of demonstrated competence, experience, or education the authority to practice optometry under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

pharmacists

* Sec. 9. AS 80.80 is amended by adding new sections to read:

Sec. 08.80.115. INSURANCE REQUIRED. (a) To be eligible for active registration as a pharmacist, a person must maintain insurance against liability to patients for malpractice in limits of not less than $200,000 per occurrence and $600,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

(b) The commissioner of commerce and economic development may require that all persons licensed under this chapter obtain the insurance required under (a) of this section from the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for pharmacists is impairing delivery of pharmacist services to the public.

Sec. 08.80.265. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) [illegible] of this chapter, upon a finding that by reason of demonstrated competence, experience, or education the

authority to practice pharmacy under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any action taken by the board under this section.

Sec. 10. AS 08.84 is amended by adding new sections to read:

Sec. 08.84.035. INSURANCE REQUIRED. (a) To be eligible for active registration as a physical therapist under this chapter, a person must maintain insurance against liability to patients for malpractice in limits of not less than $200,000 per occurrence and $600,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

(b) The commissioner of commerce and economic development may require that all persons licensed under this chapter obtain the insurance required in (a) of this section from the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for physicial therapists is impairing delivery of physical therapist services to the public.

Sec. 08.84.185. LIMITS OR CONDITIONS ON LICENSE. (a) In addition to action under sec. 180 of this chapter, upon a finding that by reason of demonstrated competence, experience, or education the authority to practice physical therapy should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by specialty, procedure, or facility, or require continuing education or retraining.

(b) The Administrative Procedure Act (AS 44.62) applies to any

* Sec. 11. AS 08.36.120 is amended to read:

Sec. 08.86.120. ENTITLEMENT TO LICENSURE. A person who passes the examination given by the board and possesses the insurance required by sec. 125 of this chapter is entitled to be licensed as a psychologist

* Sec. 12. AS 08.86.160 is amended to read:

Sec. 08.86.160. ASSOCIATES: ENTITLEMLNT TO LICENSURE. A person who passes the examination given by the board and who possesses insurance in accordance with sec. 125 of this chapter is entitled to be licensed as a psychological associate.

* Sec. 13. AS 08.86 is amended by adding new sections to read:

Sec. 08.86.125. INSURANCE REQUIRED. (a) To be eligible for active licensure as a psychologist under this chapter, a person must maintain insurance against liability to patients for malpractice in limits of not less than $200,000 per occurrence and $600,000 aggregate liability per year. This requirement is satisfied if a person's employer maintains insurance for him in the required amounts.

(b) The commissioner of commerce and economic development may require all persons licensed under this chapter to obtain insurance required under (a) of this section from the Health Care Providers Indemnity Corporation if, after public hearing, he finds that unavailability of malpractice insurance on the voluntary market for psychologists is impairing the delivery of psychologist services to the public.

Sec. 08.86.220. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a) Upon a finding that by reason of demonstrated competence, experience, or education the authority to practice psychology or as a psychological associate under this chapter should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice by time, specialty, procedure, or facility,

[illegible] continuing education or retraining.

(c) The Administrative Procedure Act (AS 44.62) applies to any

action taken by the board under this section.

Legislative intent

* Sec. 14. AS 09.55.530 is repealed and re-enacted to read:

ARTICLE 6. MALPRACTICE ACTIONS.

Sec. 09.55.530. DECLARATION OF PURPOSE. The legislature finds that the health of the people is threatened by curtailment of health care services due to the difficulty in obtaining adequate malpractice insurance at a reasonable cost. It is the purpose of secs. 530 - 560 of this chapter to protect the health and safety of the people of this state by establishing procedural aids for handling malpractice claims which will help ensure the ready availability of adequate insurance at a reasonable cost and which will be fair to all parties concerned.

expert advisory panel appt-by court

* Sec. 15. AS 09.55 is amended by adding a new section to read:

Sec. 09.55.536. EXPERT ADVISORY PANEL. (a) In any action for damages due to personal injury or death based upon the provision of professional services by a health care provider, the court shall establish a three-person expert advisory panel in accordance with this section. When the action is filed the court shall, by order, determine the professions or specialties to be represented on the expert advisory panel and shall advise each party of the professions or specialties to be represented, giving the parties the opportunity to object or make suggestions. The court may in its discretion conduct other preliminary proceedings relative to the composition of the panel as it considers appropriate.

deleted provisions for challenges

(b) The expert advisory panel may compel the attendance of witnesses, [physically or orally examine the parties] am 2-Wilson consult with the specialists or learned works they consider appropriate, and compel the production of and examine all relevant hospital, medical, or other records or materials relating to the health care treatment. The panel may meet in [illegible], [illegible] shall maintain a record of any testimony or oral statements

of witnesses, and shall keep copies of all written statements and opinions it receives. Not less than 30 days after selection of the panel, it shall make a written report to the parties and to the court, substantially answering the following questions in addition to any other question which the court puts to the panel:

(1) Was the claimant adversely affected by any act or omission in the rendering of the medical services?

(2) What was the adverse effect?

(3) How did the medical services alter the natural course of the preexisting disorder for which the services were originally rendered?

(4) How did the medical condition existing after performance of the medical services differ from the medical condition which might otherwise have been expected?

(c) In any case in which the answer to one or more of the questions under (b) of this section depends upon the resolution of factual questions which are not the proper subject of expert opinion, the report shall so state and may answer questions based upon hypothetical facts that are fully and completely set out in the opinion. The report shall include copies of all written statements, opinions, or records relied upon by the panel and either a transcription or other record of any oral statements or opinions; shall specify any medical or scientific authority relied upon by the panel; and shall include the results of any physical or mental examination performed on the plaintiff. Each member shall sign the report and his signature constitutes his adoption of all statements and opinions contained in it; however, a member may, instead of signing the report, submit a concurring or dissenting report which complies with the requirements of this subsection, and a member may not attest to any portion of the report as to which he is not qualified to

give expert testimony.

(d) No discovery may be undertaken in a case until the report of the expert advisory panel is received. However, the court may relax this prohibition upon a showing of good cause by any party. If the panel has not completed its report within the 30-day period prescribed in (b) of this section, the court may, upon application, grant it an additional 30 days.

(e) The report of the panel and any dissenting or concurring opinion are admissible in evidence to the same extent as though its contents were orally testified to by the person or persons preparing it. The court shall delete any portion that would not be admissible because of lack of foundation for opinion testimony, or otherwise. Either party may submit expert testimony to support or refute the report. The jury shall be instructed in general terms that the report shall be considered and evaluated in the same manner as any other expert testimony. Any member of the panel may be called by any party and may be cross-examined as to the contents of the report or of his dissenting or concurring opinion.

(f) Members of a panel are entitled to travel expenses and per diem in accordance with state law pertaining to members of boards and commissions for all time spent in preparing its report and matters incidental to it. If a panel member is called upon as a witness at trial or upon deposition, he is entitled to payment of an expert witness fee. All expenses incurred by panel shall be paid by the state. However, in any case in which the court determines that a party has made a patently frivolous claim or a patently frivolous denial of liability, it shall order that all costs of the expert advisory panel be borne by the party making that claim or denial.

(g) Parties to the case and their counsel may not initiate communicate ~~out~~ one with

of the award which is paid on periodic basis shall be increased by an annual interest rate of seven per cent from the date the award is made. In this subsection, future damages include damages for future medical treatment, care or custody, loss of future earnings, or loss of bodily function of the claimant.

(c) Except when the collateral source is a federal program which by law must seek subrogation, an award to which a claimant is entitled may only cover damages which exceed any amounts received by the claimant as compensation for his injuries from collateral sources, whether private, group, or governmental, and whether contributory or noncontributory, except life insurance. Evidence of damages compensated by a collateral source, other than a federal program which must seek subrogation, is admissible after the fact finder has rendered its award. Notwithstanding other provisions of state law and except as provided in this subsection, a collateral source does not have a right of subrogation.

* Sec. 18. AS 09.55.550 is amended to read:

Sec. 09.55.550. JURY INSTRUCTIONS. In health care [MEDICAL] malpractice actions the jury shall be instructed that the plaintiff has the burden of proving [, BY A PREPONDERANCE OF THE EVIDENCE,] the health care provider's negligence or wilful misconduct in accordance with sec. 540 of this chapter [OF THE PHYSICIAN OR DENTIST]. The jury shall be further instructed that injury alone does not raise a presumption of the health care provider's [PHYSICIAN'S OR DENTIST'S] negligence or misconduct.

* Sec. 19. AS 09.55 is amended by adding new sections to read:

Sec. 09.55.556. INFORMED CONSENT. (a) A health care provider is liable for failure to obtain the informed consent of a patient if the claimant establishes by a preponderance of the evidence that the provider

~~of court with~~ members of the panel on the subject matter of its inquiry and report or cause or solicit others to do so, except through ordinary discovery proceedings.

Sec. 16. AS 09.55.540 is amended to read:

Sec. 09.55.540. BURDEN OF PROOF. (a) In a malpractice action based on the negligence or wilful misconduct of a health care provider [PHYSICIAN LICENSED UNDER AS 08.64, OR A DENTIST LICENSED UNDER AS 08.-36], the plaintiff has [SHALL HAVE] the burden of proving

(1) the degree of knowledge or skill possessed or the degree of care ordinarily exercised under the circumstances, at the time of the act complained of, by health care providers in the field or specialty in which the defendant is practicing [BY PHYSICIANS OR DENTISTS PRACTICING THE SAME SPECIALTY IN SIMILAR COMMUNITIES TO THAT IN WHICH THE DEFENDANT PRACTICES];

(2) that the defendant either lacked this degree of knowledge or skill or failed to exercise this degree of care; and

(3) that as a proximate result of this lack of knowledge or skill or the failure to exercise this degree of care the plaintiff suffered injuries that would not otherwise have been incurred.

(b) In malpractice actions there is [SHALL BE] no presumption of negligence on the part of the defendant.

* Sec. 17. AS 09.55 is amended by adding a new section to read:

Sec. 09.55.546. AWARDS, COLLATERAL SOURCES. (a) In a malpractice action damages shall be awarded according to the principles of the common law. The fact finder, in rendering its award for damages, shall specify the amount awarded for each category of loss. Awards for loss of future earnings shall be ~~[made]~~ paid out computed on a monthly basis. The court may

periodic payments rather than by a lump sum payment; however, any part

has failed to inform the patient of common risks and reasonable alternatives to the proposed treatment or procedure, and that, but for that failure, the claimant would not have consented to the proposed treatment or procedure.

(b) It is a defense to any action for health care malpractice based upon an alleged failure to obtain such an informed consent that

(1) the risk not disclosed is too commonly known or is too remote to require disclosure;

(2) the patient stated to the health care provider that he would undergo the treatment or procedure regardless of the risk involved, or that he did not want to be informed of the matters to which he would be entitled to be informed;

(3) under the circumstances consent by or on behalf of the patient was not possible; or

(4) the health care provider, after considering all of the attendant facts and circumstances [and consulting with two other health care providers] used reasonable discretion as to the manner and extent to which the alternatives or risks were disclosed to the patient because he reasonably believed that the manner and extent of such a disclosure would reasonably be expected to adversely and substantially affect the patient's condition.

Sec. 09.55.560. DEFINITIONS. In secs. 530 - 560 of this chapter

(1) "health care provider" means a chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under AS 08.71; an optometrist licensed under AS 08.-72; a pharmacist licensed under AS 08.80; a physical therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a psychologist and a psychological associate licensed under AS 08.86; and

a hospital as defined in AS 18.20.130, including a governmentally owned or operated hospital;

(2) "panel" means an expert advisory panel established under sec. 536 of this chapter.

* Sec. 20. AS 09.65.090 is repealed and re-enacted to read:

Sec. 09.65.090. CIVIL LIABILITY FOR EMERGENCY AID. (a) A person, at a hospital or at any other location, who renders emergency care or emergency counseling to an injured, ill, or emotionally distraught person who reasonably appears to the person rendering the aid to be in immediate need of emergency aid in order to avoid serious harm or death is not liable for civil damages as a result of an act or omission in rendering emergency aid.

(b) This section does not preclude liability for civil damages as a result of gross negligence or reckless or intentional misconduct.

* Sec. 21. AS 18.20 is amended by adding new sections to read:

Sec. 18.20.045. INSURANCE REQUIRED. Every hospital, as a condition of licensure, shall submit to the department and maintain evidence of insurance against liability to inpatients and outpatients for malpractice issued by the Health Care Providers Indemnity Corporation, in amounts of not less than $200,000 per occurrence, and an aggregate liability per year of not less than $1,000,000 for every 50 beds or fraction of that number for which the hospital is licensed.

Sec. 18.20.075. RISK MANAGEMENT. (a) To be eligible for a license each hospital shall have in operation an internal risk management program which shall

(1) investigate the frequency and causes of adverse incidents in hospitals which cause injury to patients;

(2) develop and implement measures to minimize the risk of injury to patients from adverse incidents; in developing these measures

each hospital shall take into account recommendations of private underwriters, industry standards, experience of other hospitals, and recommendations of licensing boards of other health care providers; and

(3) analyze patient grievances which relate to patient care.

(b) The department shall adopt by regulation and submit to the legislative administrative regulation review committee prior to implementation standards for risk management programs in hospitals in the state which may vary according to the size of the hospital, the type of care offered by the hospital, and other factors found relevant by the department.

* Sec. 22. AS 18 is amended by adding a new chapter to read:

CHAPTER 23. HEALTH CARE SERVICES INFORMATION.

Sec. 18.23.010. LIMITATION ON LIABILITY FOR PERSONS PROVIDING INFORMATION TO REVIEW ORGANIZATION. (a) No person providing information to a review organization is subject to action for damages or other relief by reason of having furnished that information, unless the information is false and the person providing the information knew or had reason to know the information was false.

(b) No privilege of confidentiality arising from a physician-patient relationship may be invoked to withhold pertinent information from review by a review organization.

Sec. 18.23.020. LIMITATION ON LIABILITY FOR MEMBERS OF REVIEW ORGANIZATIONS. No person who is a member or employee of, or who acts in an advisory capacity to, or who furnishes counsel or services to, a review organization is liable for damages or other relief in an action brought by a person whose activities have been or are being scrutinized or reviewed by a review organization, by reason of his performance of a duty, function or activity of the review organization, unless the performance of the duty, function or activity was motivated by malice

toward the affected person. No person is liable for damages or other relief in an action by reason of his performance of a duty, function, or activity as a member of a review organization or by reason of a recommendation or action of the review organization when the person acts in the reasonable belief that his action or recommendation is warranted by facts known to him or to the review organization after reasonable efforts to ascertain the facts upon which the review organization's action or recommendation is made.

Sec. 18.23.030. CONFIDENTIALITY OF RECCRDS OF REVIEW ORGANIZATION. (a) Except as provided in (b) of this section, all data and information acquired by a review organization, in the exercise of its duties and functions, shall be held in confidence, may not be disclosed to anyone except to the extent necessary to carry out one or more of the purposes of the review organization, and is not subject to subpoena or discovery. Except as provided in (b) of this section, no person described in sec. 20 of this chapter may disclose what transpired at a meeting of a review organization except to the extent necessary to carry out one or more of the purposes of a review organization, and the proceedings, ~~and~~ records of a review organization are not subject to discovery or introduction into evidence in a civil action against a health care provider arising out of the matter which is the subject of consideration by the review organization. Information, documents, or records otherwise available from original sources are not immune from discovery or use in a civil action merely because they were presented during proceedings of a review organization, nor may a person who testified before a review organization or who is a member of it be prevented from testifying as to matters within his knowledge, but a witness may not be asked about his testimony before a review organization or opinions formed by him as a result of its hearings, except as provided in (b) of this section.

(b) Testimony, documents, proceedings, records, and other evidence adduced before a review organization that are otherwise inaccessible under this section may be obtained by a health care provider who claims that denial is unreasonable or may be obtained under subpoena or discovery proceedings brought by a plaintiff who claims that information provided to a review organization was false and claims that the person providing the information knew or had reason to know the information was false.

(c) Nothing in this chapter prevents a person whose conduct or competence has been reviewed under this chapter from obtaining, for the purpose of appellate review of the action of the review organization, any testimony, documents, proceedings, records and other evidence adduced before the review organization.

Sec. 18.23.040. PENALTY FOR VIOLATION. Other than as authorized by sec. 30 of this chapter, a disclosure of data and information acquired by a review committee or of what transpired at a review meeting is a misdemeanor and punishable under AS 11.05.010.

Sec. 18.23.050. PROTECTION OF PATIENT. Nothing in this chapter relieves a person of liability which he has incurred or may incur to a person as a result of furnishing health care to the patient.

Sec. 18.23.060. PARTIES BOUND BY REVIEW. When a review organization reviews matters under sec. 70(5)(H) of this chapter no party is bound by a ruling of the organization in a controversy, dispute or question unless he agrees in advance, either specifically or generally, to be bound by the ruling.

Sec. 18.23.070. DEFINITIONS. In this chapter, unless the context otherwise requires,

(1) "administrative staff" means the staff of a hospital or clinic;

(2) "health care" means professional services rendered by a health care provider or an employee of a health care provider, and services furnished by a sanatorium, rest home, nursing home, boarding home or other institution for the hospitalization or care of human beings;

(3) "health care provider" means a chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under AS 08.71; an optometrist licensed under AS 08.-72; a pharmacist licensed under AS 08.80; a physical therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a psychologist and a psychological associate licensed under AS 08.86; and a hospital as defined in AS 18.20.130, including a governmentally owned or operated hospital;

(4) "professional service" means service rendered by a health care provider of the type he is licensed to render;

(5) "review organization" means a hospital governing body or a committee whose membership is limited to health care providers and administrative staff, except where otherwise provided for by state or federal law, and which is established by a hospital, by a clinic, by one or more state or local associations of health care providers, by an organization of health care providers from a particular area or medical institution, or by a professional standards review organization established under 42 U.S.C., sec. 1320(c)(1) et seq., to gather and review information relating to the care and treatment of patients for the purposes of

(A) evaluating and improving the quality of health care [illegible] area or medical institution;

(B) reducing morbidity or mortality;

(C) obtaining and disseminating statistics and information relative to the treatment and prevention of diseases, illness and injuries;

(D) developing and publishing guidelines showing the norms of health care in the area or medical institution;

(E) developing and publishing guidelines designed to keep the cost of health care within reasonable bounds;

(F) reviewing the quality or cost of health care services provided to enrollees of health maintenance organizations;

(G) acting as a professional standards review organization under 42 U.S.C., sec. 1320(c)(1) et seq.;

(H) reviewing, ruling on, or advising on controversies, disputes or questions between

(i) a health insurance carrier or health maintenance organization and one or more of its insured or enrollees;

(ii) a professional licensing board, acting under its powers of discipline or license revocation or suspension, and a health care provider licensed by it when the matter is referred to a review organization by the professional licensing board;

(iii) a health care provider and his patients concerning diagnosis, treatment or care, or a charge or fee;

(iv) a health care provider and a health insurance carrier or health maintenance organization concerning a charge or fee for health care services provided to an insured or enrollee; or

(v) a health care provider or his patients and the federal or a state or local government, or an agency of the

federal or a state or local government;

(I) acting on the recommendation of a credential review committee or a grievance committee.

* Sec. 23. AS 21 is amended by adding a new chapter to read:

CHAPTER 88. HEALTH CARE PROVIDERS INSURANCE.

ARTICLE 1. PURPOSE.

Sec. 21.88.010. PURPOSE OF CHAPTER. It is the purpose of this chapter to provide a means of assuring all health care providers with continuous, affordable and adequate insurance against liability for medical negligence by concentrating all such insurance in one entity [which can negotiate more successfully for insurance from casualty insurers licensed by this state] and to distribute equitably the cost of the insurance among the health care providers insured.

ARTICLE 2. INDEMNITY CORPORATION.

Sec. 21.88.020. CORPORATION CREATED. There is created the Alaska Health Care Providers Indemnity Corporation which is a public corporation having a legal existence independent of and separate from the state. Obligations issued by the corporation do not constitute a debt liability or obligation of the state or a pledge of full faith and credit of the state.

Sec. 21.88.030. CORPORATION BOARD OF GOVERNORS. (a) The corporation shall exercise its powers through a board of governors which shall be appointed by the director as provided in (b) of this section.

(b) The appointments to the board of governors shall be Alaska residents as follows:

(1) one member of the Alaska State Medical Association appointed from a list of no less than three persons recommended by the governing board of that association;

(2) one member of the Alaska State Hospital Association

appointed from a list of no less than three persons recommended by the governing board of that association;

(3) ~~three~~ two professionals in the insurance field;

(4) ~~three~~ two persons who are not ~~attorneys~~, health care providers, or ~~representatives of~~ affiliate Local the insurance industry.

(5) One physician from clinical group practice in Ak.

(c) The term of office of each governor is three years, except that the director shall designate three initially appointed governors to serve for one year and two initially appointed governors to serve for two years.

(d) Upon the expiration of the term of a governor, the director shall appoint a successor who shall be from the same class described in (b) of this section as the governor whose term has expired.

(e) Upon a governor's early resignation, death or inability to serve, the director shall appoint a successor from the same class defined in (b) of this section as the terminating governor, who shall serve for the unexpired term.

(f) The director or his designee is not a voting member of the board of governors but shall be notified by the board of and have the right to attend and participate in all meetings and proceedings of the board.

(g) Each member of the board of governors shall be allowed compensation for services and reimbursement for reasonable expenses incurred in attending meetings of the board and transacting corporation business, [as set out in the plan of operation.] $100/day + travel

Sec. 21.88.040. CORPORATION PLAN OF OPERATION. (a) Within 30 days after the effective date of this chapter, the board of governors shall prepare and submit to the director for approval a plan of operation which provides for the fair, reasonable and equitable administra-

for which it is created. The plan and any amendments of it become effective upon the director's approval. If the board of governors has failed to submit a plan of operation, or if at any subsequent time the board of governors fails to submit suitable amendments to the plan, the director shall, after notice and hearing, adopt and promulgate a plan of operation or amendments which are necessary or advisable to effectuate the provisions of this chapter. Adoption of the plan is not subject to the Administrative Procedure Act (AS 44.62).

(b) The plan of operation shall

(1) establish the procedures by which all the powers and duties of the corporation specified in sec. 50 of this chapter shall be performed;

(2) establish procedures for handling assets and discharging liabilities of the corporation;

(3) establish regular places and times for meetings of the board of governors;

(4) establish procedures for records to be kept of all financial transactions of the corporation, its agents, and the board of governors;

[(5) establish the amount and method of reimbursing and compensating members of the board of governors;]

(6) establish procedures for awarding contracts to carry out the provisions of this chapter;

(7) establish the procedures for issuing contracts of insurance as provided in sec. 50 of this chapter and for the determination of rates;

(8) contain additional provisions necessary or proper for the [illegible] of the corporation.

Sec. 21.88.050. POWERS AND DUTIES OF THE CORPORATION. (a) The

corporation shall

(1) issue to all health care providers who pay the premiums for it a contract on an occurrence basis indemnifying the health care provider and his employees who are health care providers against loss by reason of liability and agreeing to tender on behalf of the health care provider and his employees who are health care providers a defense of the health care provider in a proceeding brought under AS 09.55.530 - 09.55.560; the limit of liability shall be no less than the minimum liability coverage required to be maintained as stated in AS 08.64.215 and AS 18.20.045; the contract shall cover the defense against but need not indemnify a claim for punitive damages; the contract shall cover claims against health care providers

(A) that arise out of professional services performed by the health care provider during the period for which the premium is paid; and, at the option of the health care provider

Add: and for an additional premium

(B) that arise out of services performed by the health care provider after January 1, 1975 and are filed within three years from the date the services were performed but were not discovered by the health care provider when he chose to take this coverage;

(2) charge a premium for the protection provided by the contracts issued under (1) of this subsection which shall be determined by the board of governors in accordance with sec. 70 of this chapter and subject to the approval of the director;

Set Reserves as calculated by rate

(3) comply with or be subject to AS 21.06.090, 21.06.120, 21.06.140, 21.06.160, 21.06.250; AS 21.09.180, 21.09.190, 21.09.200, 21.09.250, 21.09.280; AS 21.12.020(b), (c), (d), and (e); and chs. 18, [illegible] of this title;

(4) carry out the obligations of the contracts issued under

(1) of this subsection by defending all covered claims made against insured health care providers and by paying all liabilities which are finally adjudicated against the insured health care provider or which may in the opinion of the corporation reasonably be expected to be finally adjudicated against the health care provider to the extent of the contract obligation;

(5) provide coverage to health care providers for liability under AS 09.55.530 - 09.55.560 in excess of the minimum limits required for licensure as a health care provider, but limited to $1,000,000 for individual health care providers and $5,000,000 for hospitals, if there is a finding by the director that this coverage is unavailable at a reasonable cost and that this coverage can be made available at a reasonable cost through the corporation; if this paragraph is implemented, each health care provider obtaining excess coverage up to these amounts ~~shall~~ may obtain it from the corporation, and the corporation ~~shall~~ may procure reinsurance for all the risks incurred by contracts issued under this paragraph from the private market.

(b) The corporation may

(1) employ or retain persons, individual or corporate, to discharge its obligations and shall pay, by way of salary, wage, fee, or commission, reasonable compensation for those services; employees of the corporation are not considered state employees;

(2) provide coverage to health care providers for other hazards including malpractice liability insurance for other licensed health care providers employed by the physician or hospital if there is a finding by the director that this coverage is otherwise unavailable by reason of the operation of the corporation;

(3) borrow funds from the revolving loan fund established under sec. 110 of this chapter when necessary for the corporation to

MC: Power to contract for management services.

maintain adequate reserves; loans from the fund shall be repaid within four years after the loan is made at an annual interest rate of seven percent and through prospective rate increases;

(4) negotiate and become a party to those contracts as are necessary to carry out the purposes of the corporation;

(5) sue or be sued in the name of the corporation;

(6) provide risk management + services

(7) perform all other acts necessary and proper to effectuate the corporation.

Sec. 21.88.060. STATISTICS. The corporation shall collect, maintain and report information concerning claims against health care providers. All such information shall be on forms prescribed by the director and shall be sufficient to enable a proper determination of losses for rate making and to identify causes and sources of loss for loss control. No less often than annually the corporation shall report to the director, which report shall be kept available to the public, the number and amount of claims filed, reserved, paid, settled and adjudicated during the year, the premiums paid to, and the expenses incurred by the corporation during the year. The director may require that supplemental reports include the names of insured health care providers and the claimants; however, no reports which become publicly available may include the names of health care providers or claimants or information that will permit by inference the identity of specific health care providers or claimants. All information shall be made available to the appropriate licensing boards or agencies.

Sec. 21.88.070. RATES. Rates and rating plans used by the corporation for the policies issued shall be determined for each category of health care provider in accordance with all of the following:

(1) rates for physicians ~~shall~~ may be set as a function of the physician's [gross] * medical revenue;

* changed from previous

* perhaps adjusted gross income as reflected in Fed. Tax

(2) rates for hospitals shall be set as a function of the number of permanent beds in the hospital;

(3) a minimum rate may be set for each category of health care provider or discipline or classification within the license category;

(4) rates may not be excessive; rates are excessive if, after a period of time and with respect to an amount of gross premium which are actuarially credible, the premiums exceed losses incurred by the corporation, including losses paid, reserves for claims reported and unpaid, reserves for claims incurred but not reported, and reasonable expenses for the operation of the corporation;

(5) rates may not be inadequate; rates are inadequate if, based on available actuarial data, the premiums to be paid by the health care providers are or may reasonably be expected to be insufficient to pay for losses incurred by the corporation, including claims paid, reserves for claims reported and unpaid, reserves for claims incurred but not reported, and reasonable expenses for the operation of the corporation;

(6) rates shall be adjusted at least as often as annually;

(7) rates for any policy year shall be calculated to include the adjustment for actual experience of the corporation as developed for the preceding four policy years;

(8) in considering losses to be incurred, changes in the law and national, regional and local trends in medical negligence awards may be considered;

(9) income from investment of reserves shall be considered;

(10) disciplines and classifications within the license categories of health care providers shall be considered;

(11) individual risk underwriting factors shall be considered.

(12) see Block arm

Sec. 21.88.080. REQUIRED INSURANCE; CANCELLATION. The corporation shall provide insurance to all health care providers otherwise eligible for licensure under AS 08.64 and AS 18.20. The corporation may provide for installment payment of premiums in which event each installment is due by the date specified. The corporation may cancel any of its policies in the event of nonpayment of any premium or installment on a premium or other charge by mailing or delivering to the insured at the address shown on the policy and to the agency of the state issuing the insured's license written notice stating when, not less than 10 days after notice is received by the insured, the cancellation is effective.

ARTICLE 3. LOAN FUND.

Sec. 21.88.110. FUND ESTABLISHED. (a) There is in the Department of Commerce and Economic Development a medical malpractice liability revolving loan fund to be administered by the director of insurance.

(b) Loans from the fund may be made to the corporation when necessary for the fund to maintain adequate reserves.

(c) Loans from the fund shall be repaid by the corporation within four years at an annual interest rate of seven per cent.

ARTICLE 4. GENERAL PROVISIONS.

Sec. 21.88.300. DEFINITIONS. As used in this chapter,

(1) "corporation" means the Health Care Providers Indemnity Corporation;

(2) "director" means the director of the division of insurance for the State of Alaska;

(3) "fund" means the medical malpractice liability revolving loan fund;

(4) "health care provider" means a physician licensed under AS 08.64 or a hospital as defined in AS 18.20.136, including a hospital or health care facility owned or operated by the state or one or more of

its political subdivisons;

(5) "occurrence basis insurance" is insurance against claims arising during the period of the policy coverage.

* Sec. 24. AS 08.64.365 is repealed.

* Sec. 25. This Act takes effect 30 days after enactment.

HB 574
Med - Malp.
House Judiciary

The Legislature of the State of Alaska
FISCAL NOTE
Second Session - Ninth Legislature

I. REQUEST

Bill Identification: An Act relating to liability for the provision of health care services; changing the Alaska Supreme
Title: Courts Rules of Civil Procedure; and providing for an effective da
Requested by: Fran Ulmer Date:
Return Date Requested: 1-12-76
Agency: Commerce Program: Licensing Professions

II. FISCAL DETAIL

Budget Request Unit(s) Affected: Regulating and Licensing Professions

A. EXPENDITURES: (Thousands of dollars)

	OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100	PERSONAL SERVICES	0	62.8	69.1	76.0	83.6	91.9
200	TRAVEL	0	5.1	5.6	6.2	6.8	7.5
300	CONTRACTUAL	0	12.9	14.2	15.6	17.2	18.9
400	COMMODITIES	0	1.0	1.1	1.2	1.3	1.4
500	EQUIPMENT	0	14.3	.0	.0	.0	.0
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL	0	96.1	90.0	99.0	108.9	119.7

B. FUNDING: (Thousands of dollars)

GENERAL FUND	.0	96.1	90.0	99.0	108.9	119.7
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	0/0	3/	3/	3/	3/	3/
MAN MONTHS (P./T.)	/	36/	36/	36/	36/	36/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

AS 08.01.070 (4) empowers the nine Boards subject to this bill "to request, through the Department of Commerce and Economic Development, investigation of violations of their laws and regulations." The above titled bill will make specific the Department's authority and responsibility to conduct such investigations. Additionally, the bill will widen the boards' discipline powers to include limiting or restricting licensee practice. The obvious intent is to reduce the incidence of malpractice actions by empowering the boards to take preventive action.

continued

IV. ATTACHMENTS

Budget forms 12 thru 17

V. DATE: 1-13-76 PREPARED BY: Sharon Andrew, Director

REVIEWED BY:

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

12 New Position Summary

Fiscal Note Attached - An Act relating to liability for the provision of health care services; changing the Alaska Supreme Court Rules of Civil Procedure; and providing for an effective da

CLASSIFICATION TITLE (1)	PRIORITY (2)	PCN (3)	PAY RGE. (4)	MTHLY. SALARY (5)	REVISED PROGRAM NO. (6)	TOTAL POSITION COST (7)	BUDGET YEAR (BY) NO. POS. (8)	NO. MO. (9)	ANNUAL AMOUNT AGENCY MAINTENANCE (10)	ANNUAL AMOUNT AGENCY CHANGE (11)	ANNUAL AMOUNT GOVERNOR (12)
1 Public Protection											
2 General Gov't Unit											
3											
4 Chief Investigator-HCS		new	18G	1852		40,421	1	12		22,224	
5 Benefits @ 21%										4,667	
6											
7 Sp. Investigator-HCS		new	15G	1483		34,573	1	12		17,796	
8 Benefits @ 21%										3,737	
9											
10 Clerk Typist III		new	8G	988		21,266	1	12		11,856	
11 Benefits @ 21%										2,490	
12											
13											
14											
15											
16											
17											
18											
19											
20											
21											
22											
23 SALARIES										51,876	
24 OVERTIME											
BENEFITS										10,894	
26 SUB-TOTAL										62,770	
27 VACANCY									%	5.14 %	%
TOTAL ANNUAL AMOUNT										62,770	
PERMANENT FULL TIME: POSITIONS & (months)									( )	3 (36)	( )
PERMANENT PART TIME/SEASONAL: POSITIONS and (months)									( )	( )	( )
TEMPORARY, FULL TIME EQUIVALENT: POSITIONS & (months)									( )	( )	( )
TOTAL MONTHS										36	

BRU Regulating and Licensing of Professions BRU CODE 08-53-5-07-00-00 REVISED

12 PERSONAL SERVICES NEW POSITION SUMMARY

13 Request for New Positions

POSITION TITLE	RANGE	LOCATION	GOVERNOR
Chief Investigator - HCDS	18G	Anchorage	APPROVED ☐ DISAPPROVED ☐

TYPE OF POSITION (PFT, PPT, SEAS)	NEW	MAINT.	CHANGE	PRIORITY	PAGE/LINE
PFT	RPA		XX		

TYPE OF EXPENDITURE	AMOUNT	FUNDING SOURCE GF	OTHER	RECEIPT CODE	DETAIL OF RELATED EXPENSES
PERSONAL SERVICES	26,891	X			22,224 & 4,667 benefits @ 21%
TRAVEL	2,540				6 trips @ 200 plus 30 p.d. days @ 46.66
CONTRACTUAL	4,400				
COMMODITIES	300				stationary, etc.
EQUIPMENT	6,200				office furnishings, recording equip, vehicle
OTHER					
TOTAL	40,421				BRU COMPONENT

JUSTIFICATION:

Position will establish and direct investigative support section for nine boards in health care delivery service industry. Responsibile for conducting special investigations and directing activities of subordinate staff. Will be under general supervision of licensing violations officer, but remain relatively antonomous in case preparation for administrative action to discipline licensees.

BRU: Regulating and Licensing of Professions BRU CODE 08-53-5-07-00-00 REVISED _____

13 PERSONAL SERVICES REQUEST FOR NEW POSITION

13 Request for New Positions

POSITION TITLE	Special Investigator-Health Care Delivery Service	RANGE	15G	LOCATION	Anchorage	GOVERNOR
TYPE OF POSITION (PFT, PPT, SEAS)	PFT	NEW	X	MAINT.		APPROVED / DISAPPROVED
		RPA#		CHANGE	X	PRIORITY ____ PAGE/LINE ____

TYPE OF EXPENDITURE	AMOUNT	FUNDING SOURCE GF	FUNDING SOURCE OTHER	FUNDING SOURCE RECEIPT CODE	DETAIL OF RELATED EXPENSES
PERSONAL SERVICES	21,533				17,796 plus 3737 benefits @ 21% 6 trip
TRAVEL	2,540				@ 200 plus 30 p.d. days @ 46.66 stationary
CONTRACTUAL	4,100				etc.
COMMODITIES	200				of c. furnishings, vehicle, recording equ
EQUIPMENT	6,200				
OTHER					
TOTAL	34,573				BRU COMPONENT

JUSTIFICATION: Under supervision will conduct investigations in health care delivery service industry to prepare and compile evidence necessary to sustain license discipline actions.

BRU: Regulating & Licensing of Professions BRU CODE 08-53-5-07-00-00 REVISED ____

13 PERSONAL SERVICES REQUEST FOR NEW POSITION

13 Request for New Positions

POSITION TITLE Clerk Typist III		RANGE 8G	LOCATION Anchorage	GOVERNOR
TYPE OF POSITION (PFT, PPT, SEAS) PFT	NEW X / RP#	MAINT. / CHANGE X	PRIORITY ____ PAGE/LINE ____	APPROVED ☐ DISAPPROVED ☐

TYPE OF EXPENDITURE	AMOUNT	FUNDING SOURCE GF	OTHER	RECEIPT CODE	DETAIL OF RELATED EXPENSES
PERSONAL SERVICES	14,346	X			11,856 + 2490 benefits @ 21%
TRAVEL	0				ofc space telephone and vehicle
CONTRACTUAL	4,400				100 sq. ft. ofc, phone, IBM type + maint.
COMMODITIES	500				agent stationary etc.
EQUIPMENT	2,020				ofc. furnishings & dictaphone
OTHER					
TOTAL	21,266				BRU COMPONENT

JUSTIFICATION: Position will provide general clerical support for two full time staff investigators in health care delivery service industry.

BRU: Regulating & Licensing of Professions BRU CODE 08-53-5-07-00-00 REVISED ____

13 PERSONAL SERVICES REQUEST FOR NEW POSITION

02-1012 (Rev)

14. Travel

CODE	TRAVEL CLASSIFICATION	PRIOR YEAR (PY) ACTUAL	CURRENT YEAR (CY) AUTHORIZED	BUDGET YEAR (BY) AGENCY Maintenance	AGENCY Change	AGENCY Request	GOVERNOR'S BUDGET
200	TOTAL TRAVEL				5.1		
210/220	FIELD/ADMINISTRATIVE TRAVEL						
	IN-STATE TRANSPORTATION				2.4		
	IN-STATE PER DIEM				2.7		
	OUT-OF-STATE TRANSPORTATION						
	OUT-OF-STATE PER DIEM						
230	CONVENTIONS AND MEETINGS						
	IN-STATE TRANSPORTATION						
	IN-STATE PER DIEM						
	OUT-OF-STATE TRANSPORTATION						
	OUT-OF-STATE PER DIEM						
920	INTER-AGENCY TRANSFERS (Non-Add)						

EXPLANATION:

Two investigators in health care delivery services. Case load average = 23 1/2 per man, 75% of which are in local area.

12 trips per year at average of $200.00 = $2400.00
12 trips, average 5 p.d. days @ $44.66 = $2680.00

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15 Contractual Services

CODE	CONTRACTUAL SERVICES CLASSIFICATION	PRIOR YEAR (PY) ACTUAL	CURRENT YEAR (CY) AUTHORIZED	BUDGET YEAR (BY) AGENCY Maintenance	AGENCY Change	AGENCY Request	GOVERNOR'S BUDGET
300	TOTAL CONTRACTUAL				12.9		
310	COMMUNICATION SERVICES				2.7		
320	PRINTING AND ADVERTISING				.2		
330	RENTS AND UTILITIES				4.8		
340	REPAIRS, SERVICES AND ALTERATIONS				.5		
350	TRANSPORTATION OF THINGS				.3		
360A	EQUIPMENT RENTAL-HIGHWAY WORKING CAPITAL FUND				2.4		
360B	EQUIPMENT RENTAL-WORD PROCESSING				.0		
360C	EQUIPMENT RENTAL-OTHER				2.0		
370	INSURANCE AND BONDING				.0		
380	PROFESSIONAL FEES AND SERVICES				.0		
390	OTHER				.0		
930	INTER-AGENCY TRANSFERS (Non-Add)				.0		

EXPLANATION:

310: 3 telephones, monthly phone charge and long distance
320: printing and advertising
330: rents and utilities - 400 sq. ft. @ 1.00 per foot per month
340: maintenance on equipment
350: transportation of recording equipment, records, etc.
360A: 2 vehicles at approximately $100.00 per month per car
360C: IBM memory typewriter @ 165.00 per month

	CLK/TYP III	Chief Inves.	Sp. Invest.
310:	.7	1.0	1.0
320:	.0	.2	.0
330:	1.2	1.8	1.8
340:	.5	.0	.0
350:	.0	.2	.1
360A:	.0	1.2	1.2
360C:	2.0	.0	.0

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16 Commodities

CODE	COMMODITIES CLASSIFICATION	PRIOR YEAR (PY) ACTUAL	CURRENT YEAR (CY) AUTHORIZED	BUDGET YEAR (BY) AGENCY Maintenance	AGENCY Change	AGENCY Request	GOVERNOR'S BUDGET
400	TOTAL COMMODITIES				1.0		
410	CLOTHING						
430	FOOD FOR HUMAN CONSUMPTION						
440	FUEL (OTHER THAN FOR MOTOR VEHICLES)						
450	MAINTENANCE & CONSTRUCTION MATERIALS						
460	MOTOR VEHICLE,PARTS,SUPPLIES & ACCESSORIES						
470	PROFESSIONAL & SCIENTIFIC SUPPLIES						
480	STATIONERY AND OFFICE SUPPLIES				1.0		
490	OTHER SUPPLIES,MATERIALS AND PARTS						
940	INTER-AGENCY TRANSFERS (Non-Add)						

EXPLANATION:

office supplies for three staff positions

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17 Equipment

CODE	EQUIPMENT CLASSIFICATION	PRIOR YEAR (PY) ACTUAL	CURRENT YEAR (CY) AUTHORIZED	BUDGET YEAR (BY) AGENCY Maintenance	AGENCY Change	AGENCY Request	GOVERNOR'S BUDGET
500	TOTAL EQUIPMENT				14.3		
510	VEHICLES, BOATS, AIRPLANES				9.4		
520	OFFICE FURNITURE AND EQUIPMENT				4.0		
530	EQUIPMENT PECULIAR TO THE PROGRAM				.9		
560	SHOP AND MAINTENANCE EQUIPMENT						
590	OTHER EQUIPMENT						
950	INTER-AGENCY TRANSFERS (Non-Add)						

EXPLANATION:

ITEM NO.	DESCRIPTION OF ITEMS REQUESTED	EQUIP. CODE	NO. OF UNITS	UNIT COST	REPLACEMENT	NEW
1	executive desk	520	2	240		480
2	credenza	520	3	240		720
3	bookcase	520	3	90		180
4	[illegible] chair	520	3	125		370
5	executive chair	520	2	180		360
6	secretarial desk	520	1	285		285
7	secretarial chair	520	1	80		80
8	file cabinet	520	2	175		350
9	vehicles	520	2	4700		9400
10	recording equipment	520	2	450		900
11	dictation equipment	520	1	1200		1200

BRU: Regulating and Licensing of Professions BRU CODE 08-53-5-07-00-00 REVISED

Continued -

The concept, of course, is not new, since the purpose of licensing acts is preventive public protection. Historically, however, the emphasis has been on demonstrating a minimum level of competence prior to licensure. Enforcement of standards of practice after licensure has been, for the most part, delegated to private institutions or associations.

Although the obvious intent of this bill is to reduce the incidence of malpractice actions, the real purpose is to help assure an adequate supply of health care delivery personnel, an occupational group which is threatened by soaring malpractice insurance premiums. If this package of bills is enacted, it will not last long if the state is ineffectual in its efforts to reduce malpractice.

To accomplish this, the boards will need a highly sophisticated investigative staff capable of responding quickly to complaints and monitoring the activities of in excess of 8,795 licenses. Unfortunately, there is little data available upon which to base projections of the probable work load. The Anchorage Daily Times, in two separate articles last summer, enumerated some 55 Alaska malpractice cases from 1957 through 1974. This is an average of three known cases per year and represents .034% of Alaska's total licenses in the health care delivery industry.

It should be noted that only one half or 4,398 of these are active licensees, the remainder being in an inactive or lapsed status. They are included because for the majority, reactivating the license is primarily an administrative function which does not require additional demonstration of competency.

Compiling the data necessary to sustain a disciplinary action in this industry in accordance with the Administrative Procedures Act is estimated to require an average of one half man month per case. The above statistics would indicate staffing needs of 1 1/2 man months per year. Assuming the boards responsibilities would require investigative actions on 1% of the active licensees per year raises the number to 47 cases or 23 man months. Two full-time investigators will generate clerical work expected to require the services of one full-time clerk typist III. It cannot be over-emphasized that these projections are based on assumptions which have very little basis since statistical data is almost entirely unavailable.

It has been assumed that this bill will be effective July 1, 1975. Expense projections allow for 10% inflation factor only.

I. REQUEST

Bill No. "An act relating to liability for the provision of health care
Title: services; chagning Alaska Sup. Court's Rules of Civil Procedur
Requested by: Office of the Governor Date: December 31, 1975
Return Date Requested: January 12, 1976
Agency: Commerce & Economic Dev. Program: Insurance

II. FISCAL DETAIL

Budget Request Unit(s) Affected: none

A. EXPENDITURES: (Thousands of dollars)

OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL						

B. FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	/	/	/	/	/	/
MAN MONTHS (P./T.)	/	/	/	/	/	/

III. ANALYSIS (See Fiscal Note Preparation Instruction , Section III)

No fiscal Note impact

IV. ATTACHMENTS

V. DATE: 1/[illegible] PREPARED BY: [signature]

Reviewed: [signature]

Adopted

A M E N D M E N T #1 suggested by Revisor of Statutes

TO: CS FOR HOUSE BILL NO. 574

Page 2, line 2: after "demonstrated" insert "lack of"

Page 2, line 25: after "demonstrated" insert "lack of"

Page 3, line 18: after "demonstrated" insert "lack of"

Page 4, line 28: after "demonstrated" insert "lack of"

Page 5, line 21: after "demonstrated" insert "lack of"

Page 6, line 14: after "demonstrated" insert "lack of"

Page 7, line 7: after "demonstrated" insert "lack of"

Page 7, line 29: after "demonstrated" insert "lack of"

Page 8, line 22: after "demonstrated" insert "lack of"

Page 9, line 23: after "demonstrated" insert "lack of"

A M E N D M E N T #2

Adopted

TO: CS for HOUSE BILL NO. 574

Page 4, line 3: after "him" insert "from the ~~corporation~~" Healthcare Providers Indemnity Corp.

A M E N D M E N T #3 Adopted

TO: CS for HOUSE BILL NO. 574

Page 4, lines 15 - 20: delete all material and insert:

(b) Before a license may be renewed the licensee shall submit evidence to the board that ~~the~~ continuing education requirements prescribed by regulations adopted by the board have been met.

A M E N D M E N T #4 Failed

TO: CS for HOUSE BILL NO. 574

Page 4, between lines 10 and 11: insert the following:

(c) This section does not apply to persons licensed under this chapter who are employed ~~full-time~~ by the federal, state, or local government and do not ~~practice~~ provide healthcare practice outside this employment.

A M E N D M E N T #5

TO: CS for HOUSE BILL NO. 574

Page 5, line 10: delete "$200,000" and insert "$100,000"

Page 5, line 10: delete "$600,000" and insert "$300,000"

A M E N D M E N T #6

Adopted

TO: CS for HOUSE BILL NO. 574

Page 13, line 8: after "proving" insert "by a preponderance of evidence"

A M E N D M E N T #7

Adopted

TO: CS for HOUSE BILL NO. 574

Page 14, between lines 26 and 27, insert:

Sec. 09.55.554. ORAL CONTRACTS. No cause of action against a health care provider arises for breach of an oral contract to provide a cure or achieve a specific medical result.

A M E N D M E N T #8

Adopted

TO: CS for HOUSE BILL NO. 574

Page 15, lines 16 and 17: after "circumstances" and before "used" delete all material

A M E N D M E N T #9

Adopted

TO: CS for HOUSE BILL NO. 574

Page 23, lines 21 - 24: delete all material and insert the following:

(g) Members of the board of governors receive $100 a day when the board meets, and travel ~~and per diem~~ expenses allowed by law.

Page 24, lines 20 and 21: delete all material

A M E N D M E N T #10

Adopted

TO: CS for HOUSE BILL NO. 574

Page 25, line 15: after the semi-colon insert "and, at the option of the health care provider," that... "(B)

A M E N D M E N T #11

Adopted

TO: CS for HOUSE BILL NO. 574

Page 27, between lines 6 and 7, insert the following:

(6) negotiate for and enter into contracts for management services for the corporation;

Renumber remaining paragraphs

Wilson

February 18, 1976

Suggested changes to CS HB 574
by Rodman Wilson, M.D.

Page 4, after line 10 insert:

1 OK "(c) Physicians in full-time, exclusive municipal, state, or federal employment are exempted from the requirement in (a) of this section."

#1 Adopted Page 10, line 24: Delete "physically or orally examine the parties" and replace with "interview and physically examine the injured person if alive"

2 #2 Adopted the parties

3 Page 10, line 28: After "records" add "or materials"

4 Page 13, following line 29:

OK If interest is paid on periodic payments then lump sum payments should be discounted for having the money in hand.

5 Page 15, lines 15-21: Change to read:

OK "(4) The health care provider, after considering all of the attendant facts and circumstances and consulting with the family if any, used reasonable discretion as to the matter and extent to which the alternatives or risks were disclosed to the patient because he believed that full disclosure would adversely affect the patient's condition."

6 #3 adopted Page 17, line 1: After "recommendations of" add "~~the~~ its medical staff,"

#4 adopted 7 Page 23, line 4: Delete "attorneys," change l.5 "affiliated with the insurance industry."

~~8~~ ~~Page 25,~~ line 2: At what date is insurance required?

9 Page 25, lines 16-20: Change to read:

See Block #10 "(B) that arise out of services performed by the health care provider after December 31, 1974 for any period in which the health care provider had no malpractice insurance, except that coverage will not be provided for a claim already filed at the time retroactive insurance is purchased."

10 Page 27, line 30: "gross medical revenue" better left out of statute. Can be negotiated with the profession by the director. Also the profession worries about the confidentiality of individual gross income figures.

OK

Ana

A M E N D M E N T

Adopted

TO: CS for HOUSE BILL NO. 574

ARTICLE 3. LOAN FUND.

Sec. 21.88.110. FUND ESTABLISHED. (a) There is in the Department of Commerce and Economic Development a medical malpractice liability revolving loan fund to be administered by the director of insurance.

(b) Loans from the fund ~~may~~ shall be made to the corporation ~~when~~ upon cert. by Director ... necessary for the ~~fund~~ corporation to maintain adequate ~~minimum capital and surplus~~ reserves. If a loan is made to the corporation from the fund, the corporation shall issue a note to the fund pledging the premiums collected in the future as security for the loan.

(c) Loans from the fund shall be repaid by the corporation within four years at an annual interest rate of seven per cent.

(d) The director may sell or transfer at par value to the Department of Revenue the notes held by the Department of Commerce and Economic Development as security for loans made under this section. The Department of Revenue shall purchase all the notes offered until the current principal amount of the notes purchased and held by the Department of Revenue equals $5,000,000.

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INTERPROFESSIONAL CODE

Colorado Medical Society — Colorado Bar Association

Foreword

The cause of good interprofessional relations should be well served by this code jointly developed by committees of the Colorado Medical Society and the Colorado Bar Association. The code is intended to be an instrument for better understanding of the problems existing between attorneys and physicians with reference to medical testimony. For those with years of experience in either profession, portions of the code may seem elementary. An occasional reminder, however, is never unimportant when it relates to fundamentals. More significant is the long-range purpose of the code: to prepare the new practitioner of either law or of medicine for matters in interprofessional relations of which he would be almost entirely unaware until he encountered them as problems in his practice. Forewarned, the practitioner may be able to avoid the problems altogether.

This Interprofessional Code constitutes the further recognition that with the great developments in the science and art of both medicine and law, it is inevitable that the physician and the attorney are drawn into steadily increasing association, as the law calls with increasing frequency upon medicine for its scientific knowledge and for its evaluation of facts so that the rights of individuals and of the government may be appropriately determined before various tribunals.

Each of the professions has the duty to develop an enlightened and tolerant understanding of the other. Each profession is vitally essential to the very preservation of society. The aims of the two professions are essentially parallel in their services to society, and this necessitates a full understanding at all times and full cooperation when that is called for.

It is an obligation which each profession owes to the other in the best interests of the public as well as in the best interests of the separate reputations of the two professions. Each must keep in mind the differences in the capacities and characteristics of the practitioner of both professions, and that while law and medicine may each be termed a science, each is an inexact science; and such inexactness is and always will be accented by the human limitations of its practitioners.

General Principles

Doctors of medicine and attorneys at law, as members of two professions possessing a close personal relationship with those they serve, have established principles of ethics applicable to the traditions and requirements of their respective callings.

The physician has responsibility for the care of the individual, in health as in disease. He must minister to his patient's needs to the best of his ability and in accordance with the high precepts of the Hippocratic oath.

The attorney is an officer of the court, sworn to support the Constitution of the United States and of the state or states in which he is admitted to practice. As is the physician, he also is pledged to maintain the confidence and to preserve inviolate the secrets of his client. He will not reject, from any consideration personal to himself, the cause of the defenseless or oppressed, nor delay any man's cause for lucre or malice.

Interprofessional Relations

Each profession is obligated by its own stature to respect and honor the calling of the other. Neither the fact nor the appearance of incompetence, corruption, dishonesty, or unethical conduct on the part of individual members of either profession can be tolerated. It follows then that each profession must vigorously support within its own ranks, as well as in the ranks of the other, those ethical concepts which each has found necessary in the public good. One who has chosen to be a physician or an attorney and has been found competent to be such by appropriate authorities, is vested with high responsibilities and privileges to enable him to serve the public with honor, with dignity, and with effectiveness.



1. The Attending Physician and His Patient

In situations where a patient's legal rights are at stake, the patient's physician should promptly furnish the patient's attorney with the medical facts and data pertinent to the case. The physician should accept the further responsibility of explaining such facts in such a manner that the attorney understands them and can determine their relationship to his client's cause. There should be complete cooperation between the physician and the attorney, each assuming his proper responsibility.

It is for the physician to determine the actuality or probability of fact pertaining to his patient's condition. It is for the attorney to determine how and under what circumstances such facts are to be appropriately presented.

Because of the large number of occasions when medical facts are intricate and difficult to understand, the physician should always provide the attorney with a written summary of them for his study. The physician should carefully preserve his own original records, although with express consent of his patient permitting their physical inspection by, or making a copy of relevant portions available to, his patient's attorney.

A physician should never advise on the amount of damages a patient should

seek to recover. The proper province of his professional advice is the extent, degree, or percentage of illness, injury, disability, or similar judgments based upon his professional knowledge of the case. He is not expected to understand technical rules of legal liability, of evidence, or of trial techniques. The latter are the exclusive province of the attorney.

2. The Attorney and His Client

It is part of the attorney's oath on his admission to the bar of this state that he will not counsel or maintain any suit or proceeding which shall appear to him to be unjust, or any defense, except such as he believes to be honestly debatable under the law of the land. He will employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with truth and honor and will never seek to mislead the judge or jury by any artifice or false statement of law or fact.

In discharge of that oath, it becomes the attorney's responsibility to marshal the facts and to obtain professional and other opinion which, in his judgment, are necessary for his client's case and in a manner consistent with his oath and the ethics of his profession.

It is important that the physician understand that legal proceedings in this country are conducted under what is known as the "adversary system." Under that system the attorney occupies a dual position. He is not alone an officer of the court but also the single-minded advocate for his client. He does not and cannot properly represent both sides to a dispute.

This system has developed in recognition of the truth demonstrated countless times that justice can usually be satisfactorily accomplished if the two or more contestants can present their points of view to some neutral third person who can weigh the opposing claims. Such claims are usually presented in the form of testimony which is offered in question and answer form. The judge of a court, the jury, or the officer presiding before an administrative tribunal is the referee who weighs the opposing points of view and the conflicts in testimony. In a sense the judge or administrative officer much more nearly approximates the physician in objectivity. The physician well knows, however, that in some situations it is also possible for medical men to vary honestly and sincerely in their physical findings, their treatment, and their evaluation of illness or injury.



3. Conferences

The physician and the attorney should always confer relative to the common problems presented in a particular case. Such conferences should be arranged in advance of a court or other hearing at the mutual convenience of each, in full appreciation that to each profession, time is of the utmost importance. No physician and no attorney should be required to spend unnecessary time in arranging or attending such a conference. The attorney who knows and understands the progress of his client's case, the conflict, if any, of its medical aspects, and the probability of settlement or trial should determine the necessity of a conference. The physician shall feel obligated to point out anything which he believes will be helpful in presenting the patient's case as well as the weaknesses in the opposing medical theories or testimony.

It is unfair to the patient-client, the physician, and the cause of justice to present a medical witness who has not first conferred with the attorney and who, therefore, may lack a full appreciation of the significance to the case of the particular evidence he is being asked to give. It is equally obvious that the attorney is less able to represent the full interest of his client where he has not had the advantage of full conferences with the physician in advance of presenting the case.

4. Reports to Attorneys

Physicians must appreciate that promptness in providing a patient's attorney with such information as may be available is of importance to the patient's legal rights. Many matters can be settled out of court to the mutual satisfaction of the parties involved. Undue delays in providing medical reports, bearing on a patient's legal rights, may prejudice the patient's opportunity, either as to settlement or disposal of the problem, and thus create possible further expense, worry, and even the loss of important testimony. Witnesses may die or facts become obscure as the time elapses.

As a minimum a physician's reports to his patient's attorney should include the following:

a. History as related by patient
b. Examination
c. Diagnosis
d. Treatment
e. Progress and prognosis

5. The Physician and Court Arrangements

It is the physician's obligation to be in court at the time requested. Timing is not only important for the orderly and advantageous presentation of the patient-client's case, but also for the convenience of the Court, other witnesses, the jury, the attorneys and other litigants. Courts and the attorneys must appreciate, however, that the physician has continuing and often unpredictable responsibilities to his patients. It must therefore be anticipated that at times courtroom procedure must give way to humanitarian considerations and the physician be permitted to testify "out of turn" or at another time. Courts and attorneys should undertake in every way to determine when and approximately how long the doctor of medicine will be needed in court. The doctor should be given as much advance notice as is reasonably possible, so that he can arrange his professional affairs accordingly.



When an emergency arises which calls for the services of a physician witness, judges and attorneys should promptly release such witness or postpone his appearance until the emergency has first been cared for.

6. The Attending Physician on the Witness Stand

The attending physician is a witness. As such he should never assume the role of the advocate. His patient is represented by an attorney who serves in that capacity. The counsel should not engage in examination of the physician as a hostile witness but as a provider of facts. The physician should show respect and consideration to the court and to the attorneys. Such also is the obligation of courts and attorneys to the physician.

If a physician believes that an attorney is omitting an important point in the course of presenting the case or that he is underestimating the importance of medical testimony which is being offered by the other side, he should tell the attorney so, preferably in writing.

7. The Attending Physician and His Charges for Services in Connection with Litigation

The medical profession has long accepted its responsibility to serve the health of the people without regard to race, religion, rank, or ability to pay.

But when the financial circumstances of the patient justify, the physician is entitled to reasonable compensation, as are others who provide such an individual with personal services or commodities. "Reasonable compensation" should include consideration of time spent by the physician in conferences, preparation of required or requested reports, travel costs, and court or other appearances. The attorney must do his full part in explaining that fact to his client.

It is proper and not unusual for an attorney to represent on a contingent fee basis a client who is not in a position to pay a per diem fee irrespective of the

outcome of the case and the attorney may acquire a lien upon the proceeds of the action. The medical profession neither has, nor seeks, any similar arrangement. The charges of a physician should not in any way be based upon a percentage of the patient's financial recovery. Any other practice might lead to a charge that the physician witness had an interest for being partial in his testimony.

8. The Attorney and His Direct Payment of Medical Fees

An attorney under his canons of ethics cannot stir up strife or litigation, and neither can he reward those who may persuade others to seek his service. He cannot "maintain" a suit or other proceeding. This standard presents every practicing attorney with difficult questions. Is he permitted, for example, to advance costs of litigation on behalf of his client? He may do so ethically where such advances constitute a charge to the client, and their collectibility is not contingent upon the outcome of the case. Such advances may be made by the attorney only with the understanding that he is to be reimbursed by his client.

It should be remembered that an attorney, in seeking the services of a physician in connection with a medical-legal matter, acts only as an agent for the client-patient, and incurs no legal obligation on his own behalf for the services of the physician. Nevertheless, professional courtesy on the part of the attorney requires that he exert his best efforts to insure that the client pays for such medical services with reasonable promptness. The attorney, at the time of settlement of a claim in behalf of his client, should, if possible, take steps to make certain that any unpaid medical charges due from his client are paid at that time.



9. Cooperation by Attorney to Assure Physician Payment

Misunderstandings between the two professions sometimes arise in those court cases or administrative proceedings in which it appears that the attorney protects his own fee without making any corresponding effort on behalf of the physician whose treatment in advance of the litigation and whose advice and testimony during the course of it are essential.

There are cases in which the attorney does not advance the fee for the physician's testimony, either because the amount is beyond his means or because he has no reasonable expectation of reimbursement by his client and is therefore not ethically warranted in making such advance.

Still another complication is presented when a physician takes care of a patient who asserts that his injury or illness arose out of or during the course of employment. It may ultimately be determined by an administrative body or a court that the injury did not arise out of employment. In such situation there will be no workmen's compensation award and the physician may remain unpaid. The attorney may then bring civil action and make a recovery with or without the testimony of the original treating physician. Or the physician may have prepared opinion evidence which was for some reason not acceptable to the patient or to his attorney and which, despite the time required and the careful preparation by the physician, may not have been used. In still other cases the testimony of the physician may have been ready, but the case may be settled out of court.

In any of the above situations and in others not here enumerated, the physician may have no protection for his earned professional fee, although it may have been included in the financial settlement. The attorney should, as a matter of fairness and interprofessional courtesy, do everything reasonably possible to assure payment of the services rendered by another professional man in a matter in which he is concerned. It has been held "professionally reprehensible" for an attorney to make a settlement of a case without providing for the physician's fee after he had made such an agreement with the examining physician witness with the client's approval.

10. Expert Testimony

The attorney should understand that in a very real sense, and one recognized by law, every physician is relatively "expert" in the field of medical testimony. The thoroughness and high quality of his training entitles him to this status as does his unlimited license. There is another degree of expertness recognized alike by courts and the profession which comes with specialized training and experience in a particular branch of medical science. It is in this latter sense that the term "medical expert" is more commonly understood and used.

An expert medical witness may or may not have treated the patient. He may or may not have examined the patient. The testimony of an expert must in part depend, then, on the facts of his relationship to the particular patient. His testimony, if he has not treated the patient, cannot be expected to be the same as if he had treated the patient "in the nakedness of his distress." Expert testimony will be still more limited if the physician, even though an acknowledged expert, has never examined the patient but has been limited to X-rays, observations, the reports of other physicians, or to hypothetical questions.

The attorney should take into account the difference between these situations and should not expect a medical expert to offer opinion evidence which exceeds the factual relationship of such expert to the patient, or which exceeds the facts contained within hypothetical questions put to him as the basis for his opinion.

11. Subpoenaed Expert

There are situations in which the attorney subpoenas the medical expert, either because a physician has been uncooperative or the attorney has thought

him so, or the physician has said, for example, that he does not wish to testify, or that he has no opinion. This presents complications from the standpoint of the physician. There is no question of the obligation of the physician to answer to a subpoena like any other citizen, except where grave emergency prevents his doing so. An emergency can never be a matter of mere convenience to the physician. It must always involve the genuine professional needs of a patient, and the physician takes the risk of convincing the Court that the emergency was of sufficient gravity to justify his ignoring the order of the Court.

The most obvious complications presented by a subpoena are: first, it is unlikely to take the demands of the physician's practice or his professional convenience into account; second, the physician is frequently not given enough time to prepare to respond to a subpoena; third, the compensation which accompanies a subpoena is nominal and does not reflect the reasonable value of the professional services involved in preparing or offering court testimony, or the time taken away from a physician's practice.

A physician subpoenaed as a medical expert cannot reasonably be held to special study, review of the authorities and medical literature, or to other specialized preparation in such circumstances.

No medical expert can be compelled to form an opinion, although he may be required to state the substance of his observations if he observed the patient. If he does not have a professionally adequate basis for an opinion as to a particular litigant whom he did not observe, he cannot be compelled to offer an opinion before a court or administrative body. If he has an opinion, he is obliged to state it.

If an attorney is insistent that a medical expert offer an opinion under these circumstances, the physician should be careful to state for the record that he has been subpoenaed, that he has not observed the patient, if such is the case, and that he has an insufficient basis upon which to form a professional opinion.

When a physician who has not observed a particular individual is subpoenaed as a medical expert, he will be confronted with the problem of the hypothetical question. If he can answer that question, he must do so. If he cannot answer it without special study or the question does not contain sufficient facts upon which to form an answer, he should so state.



12. Statements by Physicians to Both Sides

Attorneys are under ethical obligations first, not to handle both sides of a case, and second, not to deal with the parties to the other or adverse side except through the latter's attorney. The principle of adverse interests is not always well understood by the physician who is trained to think only in terms of patient interests. The result is that in some situations physicians may offer observations or opinions to both sides in a particular proceeding or lawsuit or may submit to interviews by attorneys for both parties, and that variations in their opinions may result which can be embarrassing and difficult to explain at a later time.

It is self-evident that a physician's integrity and judgment are among his most precious assets, and that neither should ever be "purchased." On the other hand, when a physician has been asked to offer his testimony on behalf of a patient or as an expert on behalf of a particular claimant, he should not needlessly complicate the case by making himself available to representatives of the other side or by offering apparently inconsistent viewpoints to two or more parties or their attorneys.

When a physician who has agreed to offer testimony on a case is approached by attorneys or other representatives for other parties with adverse interest, he should be frank about his prior commitment, notify the attorney for the party for whom he has agreed to testify, and thereafter be guided by the advice of the latter's attorney.

13. Ethical Limits of Medical Testimony

It is hard to set down in words the proper limits of medical testimony. If a physician has treated a patient on whose behalf he is offering testimony, he must offer the facts of his diagnosis, his treatment, and his prognosis honestly and simply. He should not indulge in speculation unless the case unavoidably requires such indulgence, and in such situation he must clearly label his own testimony as speculative or his "best estimate" or "best judgment."

Under no circumstances is a medical witness justified in suppressing medical evidence or in "taking sides" as such. First, such an attitude goes to the very credibility and usefulness of the testimony. Second, it is an unwarranted usurpation of part of the attorney's function.

If the physician is testifying as an expert, he should offer no opinion beyond the facts of the case or which is not otherwise in the court record or which goes beyond his personal knowledge or runs counter to his professional training and judgment. Violation of these fundamentals is not excusable by claiming that an attorney forced him into the making of an improper statement. His professional judgment and his own conscience must mark the limits of his testimony, including his opinions.

14. Efforts by Attorneys to Influence Medical Testimony

It is improper for an attorney to seek to color the professional opinion of the physician. He may properly point out the kind of medical evidence he needs to establish his case and the reasons for it, but this does not excuse him for trying to force or shape the physician's testimony. It must be remembered that any improperly presented medical testimony is almost always a bilateral product and one which is professionally unworthy of both the physician and the attorney.

As is well stated in Canon 15 of Legal Ethics: "The office of attorney does not permit, much less does it demand of him for any client, violation of law or any matter of fraud or chicane. He must obey his own conscience and not that of his client."



Finally, no ethical attorney is justified in abusing, badgering, or browbeating any witness, including a physician, whether it be one he called or a witness for the other side. Such actions are beneath the dignity of the attorney and are equally in violation of the dignity of the physician. Established rules of evidence give ample opportunity for testing the competence or credibility of a medical witness and make unnecessary and unjustifiable a resort to any of the above devices on the part of the cross-examining attorney. The same holds of examination of a physician who is in fact, or who is believed to be unfriendly to a particular viewpoint and is therefore examined as a "hostile witness."

No judge or other presiding official should tolerate such tactics, but where they do not act promptly, the physician should inquire of the person conducting the hearing whether he is required to submit to such treatment. Rarely will an administrator or judge fail to restore the hearing to a proper level after such a request is made.

15. The Problem of Conflicting Medical Evidence

One of the most common criticisms of medical testimony arises from conflicts between the testimony of two or more physicians with reference to the same case. Physicians are themselves critical of this situation under some circumstances. It is an extremely troublesome matter and one which may be partially solved by the observance of several principles, largely within the control of each of the professions.

The first is that an attorney can reduce the area of misunderstanding out of which conflicting testimony frequently comes by thorough preparation of his case, by a careful use of words, and by a carefully worked out purpose in having certain testimony offered. The second is that the physician can and should explain that medicine is as much an art as it is a science; that in many situations alternative treatments are available, any one of which may be appropriate; that judgment values are not exact but at best fall within rather substantial ranges; that certain risks attend a given procedure; that some cases will not have a successful outcome;

that many diagnoses are limited by the subjectivity of the symptoms and are complicated by the mental outlook of patients; and finally, that diagonsis and treatment must both be evaluated as of the time they occurred rather than in the light of a later day.

16. Choice of Language by Medical Witness

A medical witness testifying before an administrative body, such as an industrial commission, may ordinarily use technical language with relative freedom and confidence. The reason for this is that such bodies become relatively expert in the understanding of his medical vocabulary. That is true in varying measure of judges. It is not true, however, of a jury. It is possible for medical testimony to be so worded technically that its meaning is entirely lost upon a jury or is so completely misunderstood that the jury finds differently than it would if it had known the true import of the testimony.

When this situation occurs, it may be the responsibility of either or both the physician and the attorney. To make his professional testimony clear, both for the record and for physicians and attorneys on the other side, a medical witness should first express his findings and opinion in medical terms. He should then translate those terms as accurately as possible into language intelligible to the court, attorneys, and the jury. He should also put into intelligible language the effect of particular injuries. The latter is frequently easier than the technical statement of a diagnosis or of the treatment rendered.

The medical witness should remember that his testimony is not intended to impress or edify, but to explain. If it does not help explain and does not clarify the issues of a particular case, it has failed in the sense that it was not useful to the determination of the case.

17. Proper Use of Professional Associations

When an attorney is of the opinion that another attorney in the case or a medical witness has acted improperly or has offered improper testimony, he should first seek to remedy the matter during the course of the hearing or litigation itself. Failing that, and if he continues to be of the opinion that a genuine wrong has been done he should refer the case objectively, and without indulgence in personalties to the professional organization of which either the attorney or the physician is a member.

In like manner, a physician, if he is satisfied as a matter of conscience and professional judgment that an attorney has exceeded the limits of propriety in his handling of medical witnesses or in his efforts to introduce improper medical testimony, should report his opinion to the bar association to such effect. He also has the clear obligation of reporting to the appropriate medical organizations one of his own profession who has, in his opinion, acted with apparent impropriety in the course of appearing as a witness.

The making of such a report either against a member of one's own profession or against the member of another profession is one of great delicacy and seriousness. Professional reputation is the most precious and at the same time the most fragile asset of any professional man. Subjecting it to question must be done with fairness, candor, and without rancor, and in the excercise of sound judgment and conscience.

By the same token, merely because of the gravity of the step, no member of either profession should abstain from reporting what he believes a substantial misconduct. At least as much harm can be done from such abstention as from making a groundless charge.

18. A GUIDE FOR MEDICAL LEGAL CHARGES

From Colorado Bar Association Interprofessional Committee: Note/Increases in costs and fees have occurred. Attorneys and doctors are encouraged to settle the amount and manner of payment in advance. Efforts are being made to review, revise and update medical-legal charges but the Interprofessional Code was out of print and it was decided to make reprints available without further delay leaving blanks to insert fees later.

1. This schedule is intended as a guide for the charging of reasonable medical-legal fees. Where the circumstances warrant, greater or lesser charges may be justified and charged by a physician in any particular fact situation.
2. TESTIMONY. One-half day or less — $ _____ .to $ _____ .
   Factors to be considered:
   a. Specialization or not;
   b. Disruption of patient scheduling and office procedure;
   c. Time in preparation;
   d. Advance notification;
   e. Time away from office;
   f. Time actually testifying.
3. REPORTS. $ _____ to $ _____ .
   Factors to be considered:
   a. Form report versus short summary report versus detailed narrative lengthy report.
4. PRE-TRIAL CONSULTATION WITH ATTORNEY. $_____ to $ _____ per hour.
   Note: The sub-committee believes that consultations are desirable in that they work to the establishment of a better relationship between the testifying physician and the patient's attorney and that, in general, consultations result in a shorter trial time and a more lucid explanation of the medical problem involved.
5. CANCELLATIONS. For the physician who receives less than twenty-four (24) hours notice of the cancellation of his time for testifying, he may, in his discretion, charge a fee, not to exceed $ _____ to $ _____ which fee should bear a reasonable relationship to actual financial losses, if any.
6. ADVANCE PAYMENTS. Within twenty-four (24) hours prior to the actual time of testimony, the testifying physician is entitled to receive upon his request a reasonable witness fee paid in advance.
7. MEDICAL SERVICES. The amount charged for medical services is entirely discretionary with the examining physician. This charge is always the sole responsibility of the patient, subject to the guidelines set forth in paragraph 8 of the Interprofessional Code.
8. DISCOVERY DEPOSITION OF MEDICAL EXPERT. Where a medical expert is deposed by either party to an action, the party causing the taking of the deposition may be charged by such expert witness a reasonable fee for the time involved, such fee to be based upon the same hourly rate as might be reasonably charged for a pre-trial consultation as suggested in paragraph 4 hereof.
9. RESPONSIBILITY FOR PAYMENT. The attorney who has caused the incurring of any medical-legal charge shall be ethically responsible to assure the payment of such charge, where such charge does not exceed the maximum suggested by this schedule, to the physician who makes any such charge. The attorney is never responsible for the payment of any charge incurred by a patient for medical treatment but ethically should withhold, with his client's permission, such charge or medical expense from any recovery obtained through the attorney's efforts.

Joint Medico-Legal Plan

for Screening Professional Liability Cases

Colorado Medical Society
Colorado Osteopathic Association
Colorado Chiropractic Association
Colorado Dental Association
Colorado Hospital Association
Colorado Bar Association

1. PURPOSES

The fundamental purpose of this Plan is two-fold: on the one hand, to prevent where possible the filing in court of actions against physicians, chiropractors, dentists, hospitals, health care facilities or their agents or employees for alleged breach of professional duty in situations where the facts do not permit at least a reasonable inference of such breach; and, on the other hand, to make possible the fair and equitable disposition of such claims against physicians, chiropractors, dentists, hospitals, health care facilities or their agents or employees as are, or reasonably may be, well-founded.

2. REPUTATION AND LEGITIMATE GRIEVANCES

The participating groups recognize that the mere filing of an action in court, however unjustified medically it may be, causes substantial harm to the reputation and practice of the concerned physician, chiropractor, dentist, hospital, health care facility, or their agents or employees. The participating groups recognize also that persons having legitimate and meritorious grievances against physicians, chiropractors, dentists, hospitals, health care facilities, or their agents or employees have heretofore often encountered the greatest difficulty in substantiating their claims with expert testimony in court.

3. PANEL IMPARTIALITY

All members serving on the Hearing Panel provided for hereunder must realize that they are appointed for their impartiality, integrity, and judicial temperament, and must not allow personal prejudice or bias to influence their findings or determinations.

4. COMPOSITION OF PANELS

To carry out the purposes of this Plan, the Colorado Medical Society, the Colorado Osteopathic Association, the Colorado Chiropractic Association, the Colorado Dental Association, the Colorado Hospital Association and the Colorado Bar Association shall each designate from its association a member thereof to serve as its Representative. Such Representative shall be responsible for the general supervision and administration of this Plan, and each shall appoint from the membership of his respective association members to serve on each Hearing Panel. The six groups, medical, osteopathic, dental, chiropractic, hospital, and legal (hereafter referred to as the participating groups) shall have equal representation at all times on such Hearing Panels. The Chairman of each panel shall be a member of the Bar Association, and shall be designated by the Bar Association Representative. The Hearing Panel shall consist of six members, three attorneys designated by the Colorado Bar Association Representative, and three Representatives of the participating group whose member is the subject of the claim of malpractice for which the Hearing shall be convened, unless more than one participating group is involved, or unless all parties to the hearing agree to a lesser or greater number.

Where more than one participating group is involved, each such group shall have no fewer than two representatives on the Hearing Panel and the total number of bar

Association panelists shall be equal to the total number of other panelists convened for the Hearing. In such cases, Bar Association panelists shall be, by appointment prior to the hearing, specifically designated by the Bar Association representative to deal with the liability and damage questions of a specific participating group, and shall vote only on questions of such specific group, i.e., in the ultimate questions an attorney designated as an "osteopathic panelist" votes only on questions dealing with the liability of the osteopathic physician concerned.

The specific occupation or profession of Colorado Hospital Association panelists may vary from case to case based upon the particular area of hospital responsibility at issue. Thus, among others, administrators, nurses, records personnel, physicians, or therapists may be panelists. The administrative representative of the Colorado Hospital Association shall consult with the administrative representative of the Bar Association in selecting the specialization of panelists for particular cases involving hospitals.

5. SUBMISSION OF CASES

The screening procedures outlined herein shall apply only to claims of alleged breaches of professional duty commonly referred to as "malpractice" and shall not apply to claims arising out of the maintenance and use of premises or vehicles and other similar claims in negligence or contract.

An attorney may submit a case for the consideration of a Hearing Panel by addressing a request in writing to the Colorado Bar Association, signed by both himself and his client. This letter request shall contain the following:

A. A brief statement of the facts of the case as asserted by the Claimant, showing the persons involved, the dates and the circumstances, so far as they are known, of the alleged breach of professional duty.

B. A statement authorizing the Hearing Panel, through its Chairman, to obtain all medical and hospital records and information pertaining to the incident, and, for the purposes of its consideration of the matter only, waiving his client's privilege as to the contents of those records and information. Nothing in that statement shall in any way be construed as waiving such privilege for any other purpose or in any other context, in or out of court.

C. An agreement that the evidence received or offered at the hearing and the deliberations, discussions and conclusions of the Hearing Panel and of the members thereof will be confidential within the Panel and privileged as to any other person, and that no member of the Hearing Panel or any person attending the hearing will be asked in any action or proceeding to testify concerning the evidence received or offered or the deliberations, discussions, conclusions, or proceedings of such Panel.

D. A request that the Hearing Panel consider the merits of the claim and render its report to him.

E. A list of witnesses, both lay and expert, who may be called by the Claimant's attorney to testify before the Hearing Panel. The purpose for this requirement is to allow the parties in good faith to give notice to the panelists so that any prospective panelist may have an opportunity to disqualify himself if a relationship exists between him and a prospective witness which may affect such panelist's fair and impartial deliberation. Counsel for the respective parties may be free to call additional witness as justice requires, subject to approval by the Chairman of the Hearing Panel.

F. A statement that the attorney has read, understands, and subscribes to this Plan for screening claims against physicians, chiropractors, dentists, hospitals and health care facilities and has advised his client thereof, and that the Claimant and his attorney agree to the submission of the facts pursuant to the Plan. Without such agreement, no action shall be taken on the request for review.

G. At the option of the parties, the letter request may also contain a written statement

by the Claimant and his attorney that such provisions of Rule 109, Colorado Rules of Civil Procedure, as the parties may select in writing shall control disposition of the liability issues of the claim or claims. Such agreement shall not be binding unless all parties to the hearing and their attorneys elect in writing so to be bound.

6. CONSENT OF RESPONDENT

Appended to such request shall be the signed statement of the Respondent physician(s), chiropractor(s), or dentist(s) involved, or authorized representative of the respondent hospital, health care facility, or their agents or employees involved, and of the attorney or attorneys representing such physician, chiropractor, dentist, hospital, health care facility, or their agents or employees, containing the following:

A. Acknowledgement of the receipt of a copy of such request.

B. An agreement that the matter be submitted for the consideration of a Hearing Panel in accordance with this Plan. Without such agreement, no action shall be taken on the request for review.

C. A list of witnesses, both lay and expert, who may be called by the Respondent's attorney to testify before the Hearing Panel. The purpose for this requirement is to allow the parties in good faith to give notice to the panelists so that any prospective panelist may have an opportunity to disqualify himself if a relationship exists between him and a prospective witness which may affect such panelist's fair and impartial deliberation. Counsel for the respective parties may be free to call additional witnesses as justice requires, subject to approval by the Chairman of the Hearing Panel.

7. JURISDICTION

Cases which the Hearing Panel may consider may include any case involving any alleged breach of professional duty by any member of the Colorado Medical Society, Colorado Osteopathic Association, Colorado Chiropractic Association, Colorado Dental Association, Colorado Hospital Association, their agents or employees; provided, however, that nothing herein shall prohibit the Panel from also hearing a claim against any other practitioner of medicine, chiropractic, dentistry or hospital if the parties, the Bar Association, Medical Society, Osteopathic Association, Chiropractic Association, Dental Association, or Hospital Association Representatives, and the members of the Hearing Panel unanimously consent thereto.

8. SCHEDULING—QUORUM

Requests for review submitted as above shall be scheduled for hearing as promptly as possible before a panel constituted as above set forth; provided, however, in no instance shall the date assigned be more than 45 days after the receipt by the Bar Association Representative of the request for review. In any hearing a quorum of the Hearing Panel for the purpose of deciding the issues submitted to it shall consist of a majority of those members of the Hearing Panel who have attended all hearings of the issues.

9. AFFIDAVITS OF PANEL MEMBERS

Each member of the Hearing Panel selected shall be advised of the names of the parties, their addresses and occupations in the case of each claimant and respondent. There also shall be tendered to each member of the Hearing Panel an affidavit to be signed by the member of the Hearing Panel and returned to the designated Chairman of the Hearing Panel no later than five days prior to the hearing date. Such affidavit shall contain the following:

A. That the Hearing Panel member is either not acquainted with the claimant or the respondent, or that such acquaintanceship is on such a basis that it will not interfere with an objective and fair evaluation of the issues to be presented.

B. The affiant has no knowledge of the facts of this claim other than those contained in the claimant's submittal letter or that any prior knowledge will not in any way

prejudice his objective determination of the issues to be resolved herein.

C. That the affiant has no preconceived or inalterable opinion or conclusion concerning the subject matter of the Claimant's submission and knows of no impediment to his being a fair and impartial member of the Hearing Panel.

D. That the affiant endorses and supports the Joint Medico-Legal Plan as a method of resolving or attempting to resolve such claims.

E. That the affiant will not hesitate to render a true and just determination of the issues to be presented and will not be governed or influenced by sympathy or prejudice for or against any party in the case, nor will the affiant be influenced by fear of criticism by other members of his profession.

The attorneys for the parties may not orally question the members of the panel as to their qualifications at the commencement of the hearing, except for good cause shown to prevent manifest injustice. Objection to any member of the Hearing Panel must be made by the parties or their attorneys before evidence is presented at the hearing or such objections shall be deemed to be waived.

10. OPENING STATEMENTS

At the time set for hearing of the case, the Claimant's attorney shall be present and shall state his case, including a resume of the facts constituting the alleged breach of professional duty which he is prepared to prove and the legal theories on which he expects to base such proof. The Respondent and his attorney may be present and should also make a statement of his case, including the legal theories on which he expects to base his defense. No statement by the attorneys or the parties shall preclude the Hearing Panel from consideration of other areas pursuant to the provisions of Paragraph 19 of this Plan; however, if the members of the Hearing Panel do consider other areas, such members of the panel shall inform the parties and their attorneys that such areas are being considered, and an opportunity shall be provided to the parties and their attorneys to present additional testimony if the parties or their attorneys so desire.

11. WITNESSES–ISSUES

Each party may present such testimony and other evidence as may be proper under the provisions hereof relating to rules of evidence to be followed, and any witness called shall be subject to cross-examination by the opposing party and to interrogation by members of the Hearing Panel. The monetary damages, if any, shall not be the subject of inquiry or discussion. The hearing will be conducted informally, and no official record shall be kept. Rules of evidence and procedure applicable to informal administrative proceedings shall be followed. Hospital records and summaries may be reviewed and considered by the Hearing Panel. Written statements of treating physicians may also be received by the Hearing Panel; however, the Panel shall not consider any opinions as to ultimate issues of liability which may be contained in such reports. Relevant medical texts, journals, studies, or other pertinent material may be reviewed and considered by the Panel if the Panel deems such material to be appropriate.

12. RULES OF EVIDENCE–FAILURE OF PROOF

It is the purpose and intent of this Plan that the Panel informally consider all matters relevant to the issues presented, and to this extent formal rules of evidence shall not be followed. The Chairman of the Hearing Panel shall rule on all objections and procedural matters, subject to being overruled by a majority vote of the Panel members. If the parties shall fail to present sufficient evidence to enable the members of the Hearing Panel to make a decision on any issues involved, then the Hearing Panel shall have no obligation to reach any conclusion whatever and the Chairman of the Panel shall submit his written report pursuant to Paragraph 21 of this Plan, designating the issue involved and advising that the Panel has deemed the evidence presented on such issue to be insufficient to

render any decision on the merits. Subject to the provisions of Paragraph 15 of this Plan, in the event that the Hearing Panel does deem the evidence presented on such issue to be insufficient to render any decision on the merits, the parties shall be deemed to have honored their commitments to be bound under the submission agreements signed by the parties and their attorneys, and shall thereafter be fully released and discharged from all commitments contained in such submission agreements. At their option, the parties may thereafter agree to resubmit their case to a Hearing Panel. If such option is exercised, the parties to the case and their attorneys shall submit new submission agreements in writing consistent with the requirements of this Plan.

13. EXPERT WITNESSES

The Hearing Panel itself shall have the power to call such experts as it, in its discretion, may deem necessary or desirable. No expert witness who is not a party to the hearing shall be permitted to testify as to ultimate issues of liability except by consent of all parties in writing at least five days before the hearing. Any party may present testimony by a consulting or treating physician who has examined the Claimant for purposes other than to appear as a potential witness in litigation, so long as such testimony does not contain opinions as to ultimate issues of liability.

14. CLOSING STATEMENTS

At the close of the presentation of evidence by the parties, the Claimant's attorney may state his resume of the evidence and its relation to the legal theories on which such evidence is based. The Respondent's attorney may then state his resume of the evidence and its relation to the legal issues relied upon by Respondent. The Claimant's attorney may then present brief rebuttal of those facts or issues discussed by the Respondent's attorney.

15. ADVISEMENT–SUPPLEMENTAL HEARINGS

When the parties present have been heard, the Hearing Panel may take the case under advisement, or it may request that additional evidence be obtained and presented to it at a supplemental hearing, which shall be set for a date and time certain, not longer than 15 days from the date of the original hearing, unless the attorney bringing the matter for review shall in writing consent to a longer period. Any second or subsequent hearing shall be held in the same manner as the original hearing, except that the opening statements of the attorneys for the parties which were given at the commencement of the initial hearing will not be permitted at any subsequent hearing. The parties and their attorneys may be present at any second or subsequent hearing.

16. DELIBERATIONS

In each case taken under advisement, the Hearing Panel shall consider all of the evidence admitted and the statements of counsel, and may also consider expression of opinions of the medical members of the Hearing Panel relating to any medical questions involved, and the legal opinions of the lawyer members of the Panel relating to any questions of law involved.

17. QUESTIONS TO BE DETERMINED

The Panel shall make its findings on the following questions:

A. Whether there is a reasonable probability that there exists a claim for relief against the Respondent based on breach of professional duty, regardless of the legal theory on which it may be predicated, and if so,

B. Whether there is a reasonable medical probability that the Claimant was injured thereby,

C. Whether the evidence presented as to questions A and B has been sufficient to allow the Hearing Panel to render its decision on the merits.

18. DAMAGES NOT ASSESSED

The Hearing Panel shall make no findings respecting the quantum of damages in the case, if any there be, and shall make no effort to settle or compromise any claim, or express any opinion as to the monetary value of any claim.

19. ALTERNATE QUESTIONS AND THEORIES

Subject to the provisions of Paragraph 18 above, nothing herein shall be construed as prohibiting the Panel from considering other areas involved or answering questions other than those stated in A and B, in Paragraph 17 hereof, in the interest of disposing of all matters which the parties or the Panel may consider relevant to the case. If the Panel, in considering its findings on Questions A and B contained in Paragraph 17 above, determines that more than one theory should be discussed on either question, the Panel may, in its discretion, include in its findings the conclusions reached by the Panel as to each theory considered.

20. VOTING

The decisions on the above three questions, and any other matters which the Panel may decide, shall be reached by a majority vote of those members of the Panel present who have attended all hearings on the issue. The Chairman of the Panel shall be a voting member in the determination of such questions, if such Chairman has attended all hearings on the issue. The votes on such questions shall be by secret ballot, and shall be tallied and announced by the Chairman of the Panel.

21. WRITTEN REPORT OF FINDINGS

Its answers to these questions shall be submitted in writing to the parties, and copies shall be furnished to the Bar Association, Medical Society, Chiropractic Association, Osteopathic Association, Dental Association, or Hospital Association Representatives concerned with the issues presented to the Hearing Panel. A copy of each report shall be retained in the permanent files to be maintained by the Bar Association Representative. The deliberations of the Hearing Panel shall be and remain secret. The written report shall be signed for the Hearing Panel by its Chairman, and shall contain only the conclusions reached by a majority of its members, provided, however, that any member of the Panel may request that his dissent from the conclusions of the Panel be noted in the official records of the Hearing Panel. The opinion reached in any case shall be treated in every respect as confidential between the Hearing Panel and their respective members on the one hand and all persons directly concerned in the case on the other. Subsequent to the written report herein referred to, to the extent practicable, the Chairman of the Panel and one medical member thereof shall meet informally with counsel for all parties to discuss the findings and determinations of the Panel.

22. CLAIMANT'S VERDICT—DUTIES

In any case where the Hearing Panel has determined that there is a reasonable probability that there exists a claim for relief against the Respondent based on breach of professional duty, regardless of the legal theory on which it may be predicated, and further finds that there is a reasonable medical probability that the Claimant was injured thereby, then the Panel and the society of the participating group whose representative has been designated as the Respondent will cooperate fully with the Claimant's attorney in procuring an expert witness qualified in the field of health care involved. Such witness shall consult with and testify on behalf of the Claimant, upon arrangement by the Claimant with said witness for payment for his services to the same effect as if the said witness had been employed originally by the Claimant. A physician, chiropractor, or dentist who has been called before the Hearing Panel in an advisory capacity or any member of the Hearing Panel shall not be precluded thereby from serving as such witness,

provided that he shall not be asked to testify concerning the evidence received or offered, or the deliberations or proceedings of the Hearing Panel, or as to any information given or acquired by him at the hearing.

23. RESPONDENT'S VERDICT—DUTIES

In a case where the Hearing Panel has determined either that there is no reasonable probability that there exists a claim for relief against the Respondent based on breach of professional duty, regardless of the legal theory on which it may be predicated, or that there is no reasonable medical probability that the Claimant was injured thereby, the Claimant's attorney shall refrain from filing any court action based upon such claim, unless personally convinced that strong and overriding reasons compel such action to be taken in the interest of his client, and that it is not done to harrass or gain unfair advantage in negotiation for settlement.

24. TIE VOTES

In a case where the secret ballot of the Hearing Panel has resulted in a tie vote either on the ultimate issue of whether there is a reasonable probability that there exists a claim for relief against the Respondent based on breach of professional duty, regardless of the legal theory on which it may be predicated, or on the ultimate issue of whether there is a reasonable medical probability that the Claimant was injured thereby, the Chairman of the Panel shall submit a written report pursuant to the provisions of Paragraph 21 of this Plan. Such report shall designate the ultimate issue on which the tie vote resulted, and shall designate the ultimate issue, if any, on which a majority vote of the Panel resulted and the answer to such ultimate issue determined by such majority vote. Upon submission by the Chairman of the written report announcing the tie vote, to the extent practicable the Chairman of the Panel and one panelist from the participating groups shall meet informally with counsel for all parties to discuss the findings and determinations of the Panel. After submission of such report by the Chairman announcing such a tie vote on one or more ultimate issues, the parties shall be deemed to have honored their commitments to be bound under the submission agreements signed by the parties and their attorneys, and shall thereafter be fully released and discharged from all commitments contained in such submission agreements. At their option, the parties may thereafter agree to resubmit their case to a new Hearing Panel. If such option is exercised, the parties to the case and their attorneys shall submit new submission agreements in writing consistent with the requirements of this Plan.

25. RECONSIDERATION

The parties or their attorneys shall have ten days from the date that the written report signed by the Chairman of the Hearing Panel has been served upon the attorneys for the parties within which to request the Hearing Panel to reconsider any issue which has been presented to the Hearing Panel for its determination. Failure to file such a request for reconsideration, specifying with particularity the issue or issues for which reconsideration is requested, within the ten days provided or within any extension of time which may be granted by the Chairman of the Hearing Panel shall cause the findings of the Hearing Panel to become final. Upon receipt of such a request for reconsideration, the Chairman shall poll the Hearing Panel and shall determine whether the majority of the members of the Hearing Panel wish to reconsider such issue. If by majority vote the members of the Hearing Panel decide that they wish to reconsider any such issue, the Hearing Panel by majority vote may reconvene for additional testimony or for additional argument by the attorneys for the parties. If such additional testimony or argument is received by the Hearing Panel, a supplemental report shall be signed for the Hearing Panel by its Chairman pursuant to the requirements of Paragraph 21 of this Plan.

26. COURT OF ACTION

It is not intended that the submission of any case to the Hearing Panel shall be considered as a waiver by the Claimant or his attorney of their ultimate right to decide for themselves whether the case shall be filed in court, except in those cases in which the parties have agreed to be bound under the provisions of Rule 109, Colorado Rules of Civil Procedure. However, any attorney who brings a case before the Hearing Panel shall weigh its conclusions in the greatest professional good faith.

1-20-76

Suggested Rewording of Questions for
Expert Advisory Panel
HB 575 Sec 09.55.536(e)(1)-(5) p5-6

(1) What was the condition for which the person sought medical care?

(2) Was the care appropriate and skillful?

(3) Is there an injury which arose from the medical care?

(4) What is the injury?

(5) Is the injury stable, or will it improve or become worse?

Members file on Malpractice

ALASKA DENTAL SOCIETY

OFFICE OF THE PRESIDENT

January 10, 1976

Mr. Langhorne Motley
Commissioner
Pouch D.
Juneau, Alaska 99811

Dear Commissioner Motley:

The Alaska Dental Society wishes to reaffirm it's position in relation to the Malpractice Insurance Commission's proposed legislation.

We object to mandatory inclusion in a joint under-writing association and adhere closely to the points and reasoning brought out in a report to the legislature made by Dr. H.S. Denenberg.

Sincerely;

Robert R. H. Sutherlin DDS

R.H. Sutherlin
President
Alaska Dental Society

cc: All legislators
All Health Care Associations
Governor
Director of Insurance

Introduced: 1/14/76
Referred: Health, Education
and Social Services

IN THE SENATE BY CROFT, KERTTULA AND RODEY

SENATE BILL NO. 507 am

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act establishing risk management in hospitals; and providing for an effective date."

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

* Section 1. AS 18.20 is amended by adding a new section to read:

Sec. 18.20.075. RISK MANAGEMENT. (a) To be eligible for a license each hospital shall have in operation an internal risk management program which shall

(1) investigate the frequency and causes of adverse incidents in hospitals which cause injury to patients;

(2) develop and implement measures to minimize the risk of injury to patients from adverse incidents, giving due regard ...; and over

(3) analyze patient grievances which relate to patient care.

(b) The department shall adopt by regulation and submit to the legislative administrative regulation review committee prior to implementation, standards for risk management programs in hospitals in the state which may vary according to the size of the hospital, the type of care offered by the hospital, and other factors found relevant by the department.

* Sec. 2. This Act takes effect July 1, 1976.

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

Copies for Members files
574

#

02004 ANCHORAGE ALASKA 53 01-27 0740A AST

PMS TERRY GARDINER CARE HOUSE JUDICIARY COMMITTEE 1976 JAN 27 AM 10 57

JUN" 0919

AS PRESIDENT OF THE ALASKA CHIROPRACTIC SOCIETY
I HAVE BEEN DIRECTED BY ITS MEMBERS TO REQUEST
YOUR ASSISTANCE IN EXCLUDING (TOTALLY)DOCTORS
OF CHIROPRACTIC FROM SB522 MALPRACTICE CLAIMS ARE NOT
A PROBLEM WITH OUR PROFESSION AND OUR MEMBERS ARE
ADEQUATELY INSURED THROUGH OUR NATIONAL CHIROPRACTIC
AS ORGANIZATION FOR OUR PATIENTS PROTECTION

CECIL S MCLEOD DR

1. Dept of Rev be obligated to make investment

~~F~~ to Corp. - certification of fund deficiency by Director of Div of Insurance to Com of Revenue

Be able to

"private group" + "hospitals"
"private clinic"

Sec. 21.88.080. REQUIRED INSURANCE; CANCELLATION. The corporation shall provide insurance to all health care providers otherwise eligible for licensure under AS 08.64 and AS 18.20. The corporation may provide for installment payment of premiums in which event each installment is due by the date specified. The corporation may cancel any of its policies in the event of nonpayment of any premium or installment on a premium or other charge by mailing or delivering to the insured at the address shown on the policy and to the agency of the state issuing the insured's license written notice stating when, not less than 10 days after notice is received by the insured, the cancellation is effective.

ARTICLE 3. LOAN FUND.

Sec. 21.88.110. FUND ESTABLISHED. (a) There is in the Department of Commerce and Economic Development a medical malpractice liability revolving loan fund to be administered by the director of insurance.

(b) Loans from the fund shall may be made to the corporation when necessary for the ~~fund~~ Corporation to maintain adequate reserves.

(c) Loans from the fund shall be repaid by the corporation within four years at an annual interest rate of seven per cent.

ARTICLE 4. GENERAL PROVISIONS.

Sec. 21.88.300. DEFINITIONS. As used in this chapter,

(1) "corporation" means the Health Care Providers Indemnity Corporation;

(2) "director" means the director of the division of insurance for the State of Alaska;

(3) "fund" means the medical malpractice liability revolving loan fund;

(4) "health care provider" means a physician licensed under AS 08.64 and a hospital as defined in AS 18.20.130, including a hospital [illegible] state facility owned or operated by the state or one or more of

its political subdivisons;

(5) "occurrence basis insurance" is insurance against claims arising during the period of the policy coverage.

* Sec. 24. AS 08.64.365 is repealed.

* Sec. 25. This Act takes effect 30 days after enactment.

Alaska State Legislature

REPRESENTATIVE
TED SMITH
2616 SORBUS CIRCLE
ANCHORAGE, ALASKA 99504

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811

COMMITTEES
RESOURCES
BUDGET & AUDIT
LABOR & MANAGEMENT

House of Representatives

February 10, 1976

Terry Gardiner
Chairman
House Judiciary

Dear Terry,

These comments are directed to the Work Draft Copy of CSHB 574 marked 2nd Version of Draft #2.

Sec. 18.20.075 starting at line 23 on page 16 deals with risk management. I recommend that this be changed to loss management and be a function of the Health Care Provider Indemnity Corporation. Many of the functions listed are already accomplished and/or provided for under the provisions for review organizations starting on page 17. It should be a function of the HCPIC to provide professional expertise to its insureds in the area of lost prevention.

The definition of function of a review organization on page 21 under Sub. Sec.(H) includes acting as an arbitrator or mediator. Some of the immunities provided to the review organizations are not appropriate in this context. Specifically I do not believe that the privilege of confidentiality in a physician-patient relationship should be waived for this function. Accordingly I recommend that on page 17 at the end of line 21 you add the phrase "except a review organization acting under authority of Sec. 70(5)(H) of this chapter." I also do not believe that the immunity from discovery is appropriate for such organization and on page 19 after line 13 I recommend that you add the following:"(d) The immunities of this section do not apply to a review organization acting under Sec. 70(5)(H) of this chapter."

It is my understanding that the remainder of the bill starting on page 22 does not express committee intent so I will withhold comment on that portion of the bill.

Sincerely,

Ted Smith
Chairman
House Labor & Management

TS:hk

Representative Gardner,

Comment on C S - Bill 574
by the House Judiciary Committee.

Our first reading is favorably impressed by the many good features.

We would like to suggest that one very important factor it needs and which would strengthen it considerably - to make insurance companies & their cost more predictable is a strict Statute of limitations as in Indiana - see attached copy.

Such statute of limitations would make a "late Claims fund" unnecessary. In the absence of this type of statute of limitations - then a late claims fund becomes more needed.

Thanks.

R. Witt, MD.

Indiana – April 2, 1975 (Reprint)

or his insurer to or for the plaintiff, or any other person, may not be construed as an admission of liability for injuries or damages suffered by the plaintiff or anyone else in an action brought for medical malpractice.

Sec. 4. Evidence of an advance payment is not admissible until there is a final judgment in favor of the plaintiff, in which event the court shall reduce the judgment to the plaintiff to the extent of the advance payment. The advance payment shall inure to the exclusive benefit of the defendant or his insurer making the payment. In the event the advance payment exceeds the liability of the defendant or the insurer making it, the court shall order any adjustment necessary to equalize the amount which each defendant is obligated to pay, exclusive of costs. In no case shall an advance payment in excess of an award be repayable by the person receiving it.

Sec. 5. A patient's claim for compensation under this article is not assignable.

Sec. 6. Financial responsibility of a health care provider under this chapter may be established only by filing with the commissioner proof that the health care provider is insured by a policy of malpractice liability insurance in the amount of at least one hundred thousand dollars ($100,000) per occurrence.

Chapter 3. Statute of Limitations.

Sec. 1. No claim, whether in contract or tort, may be brought against a health care provider based upon professional services or health care rendered or which should have been rendered unless filed within two (2) years from the date of the alleged act, omission or neglect except that a minor under the full age of six (6) years shall have until his eighth birthday in which to file. This section applies to all persons regardless of minority or other legal disability.

Minor
In jail
In military service
Mentally incomp

Sec. 2. Notwithstanding the provisions of IC 1971, 16-9.5-1-7, any claim by a minor or other person under legal disability against a health care provider stemming from professional services or health care rendered, whether in contract or tort, based on an alleged act, omission or neglect which occurred prior to the effective date of this article, shall be brought only within the longer of

(a) Two (2) years of the effective date of this article, or

(b) The period described in section 1 of this chapter.

Chapter 4. Patient's Compensation Fund.

Sec. 1. (a) There is created a patient's compensation fund to be collected and received by the commissioner for exclusive use for the purposes stated in this article. The fund and any

Additional Coverage Made available
Excess / Coverage

States full faith & credit

~~Page 22 line 20~~

Page 23 — statistics
Provisions for Suit info to go to licensing Board

Page 24, line 25

include Retroactive portion

check required reserves requirement
Commission Recommendation said
retrospectively lower premiums in future

Page 27, line 12 - check "indemnifying"

→ allow both retrospective adjustment
+ returning premiums

2 years

Plaintiff

- Informed consent
- Continuing Education
- Risk Management SB 507
- clearing + convincing

Yes

Yes

Medical Board set standards
4 year time period
Subject to reexamination if not complied

1. additional assured by Hosp.
language Page 51, line 21

Check Court Rule change on
Discovery Clause page 19

Cause of Action for triggering mechanism

n

400,000
500,000

Chris Beardsly - Providence

10,000 for $20 million coverage increased cost under M.I.C.

Ban Assoc Endorse } Court ?
AMA Endorse } Approve

~~[illegible]~~

Require MIC to contract to Per Diem

Page 21, line Retro-active clause

Page 22, (6) umbella language - does it make sense

Pending Contingent liability

Rewrite fund for Revenue not Appropriation

Reasonable Rates for fund in Gov bill

Mechanism on Doctors Rates for New ones

Hospital Insurance Rate Determination

Page 21 line 8 ? why this

Page 21 (b) rewrite

Mandatory section on Management of MIC





Experts in Medical Mal/Practice Risk Management

allow internal Risk Managers To impose

Introduced: 1/14/76
Referred: Health, Education and Social Services

IN THE SENATE BY CROFT, KERTTULA AND RODEY

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1

1. Socialized Malpractice
2. State fund Doc's contribution
3. State trust fund - people pay
A. limit doc's liability 100,000

John Hale

		New
5% - 15%	Commission	2% - 5%
3	Boards & Bureaus	1%
	Administration	
	legal Multiple defendant	Some
	Advisory panel Michigan	Unpredictable
	Reserves for future	

(1) 1974 5,000 av. 300 doc's (1.5 million premium)

(2) Scale of doctors incomes

(3) Breakdown of premium dollar
St. Paul & [illegible]

(1.) What % of Alaskan cases go to court

(2) ~~W~~ How many cases for plaintiff in jury cases

What's trial de novo

~~B~~ 40 - defense expense of litigation
12 - plaintiff
12 - broken
17

to difficult to refute expert testimony

impartiality & credibility is strength of Advisory Board

1st./claims Made - Single fund

Premiums based on gross receipts

70% of doctors pay 1,000 or less

9% of doctors pay high risk

Only 5% of claims are ever actually are filed

Att won't take cases unless case a minimum cost of #10,000 out of pocket expenses

Why less in front of Adjudication Board

1. & Expert Advisory Board reduces costs because of their expertise & credibility

1. Selection of jury - 2 days
2. instruction of jury - ½ day
3. presenting evidence to jury - complicated

Never been jury award against doctors

W

≤8% of cases settled out of court

Justification for state Participation

1. ~~(1)~~ insurance Co. have such low surpluses they can't buy any insurance anyway

(2.) Only operates in state will be interested because they are captive and subject to JUA

(3.) Insurance co. have had bad experience with Malpractice and would be very conservative in any bid + high risk - want high profits

(4) Cheaper Cost because no profit required by state
15% for insurance co.
+ additional savings of Commission etc. in proposed MIC

(5)

1. limit contingent fees
2. eliminate ad Damnum clause - in bill?

Denneberg

1. Consumer on Boards in bill?

2. Ohio & Wisconsin continuing education
have Rick get these
give more authority to Board?

3. Florida set up internal Risk management
procedure - Com. recommendation
set aside 10% of premiums to fund this?

Working Committee
1. Block
2. Smith
3. Carpenenti
4. Rob Koshas ?
5. Rick

Malpractice

Ins. spread payments

Legal - losing att pay fees

Medical - displinary

Ask Block - about losing Att pay fees
Talk to Malpractice Att in Calif
Dennenberg
College Legal Prof

Suits are winning! therefore would anything discourage good suits?

What % of suits filed win anything?
~~" " " losing suits~~
What do ins Co. pay out in suits they ~~lose~~ win in terms of legal and defense costs

Is SB113 contained in Gov. package

Contract Co. to Manage + Write policies
to do paper work Similar to Alaska H.F. Corp.
1. policy % of income
2. premium gaged to experience + 10% (example) - Mechanism to space over years in increase - excess in reserve fund to build up - State to invest state loans etc.
State Medical education program ? + on going
put in reserve fund until education program developed or do both education - loss control

Can you write one standard policy

1. Alt to admit other groups by com.
but only if all of group joins

Premium's include (1) cost of program - go to gen fund
(2) losses
(3) reserve
(4) Education fund

state sets standards of policies as set
by advisory bd of group insured - use
~~[illegible]~~ existing licensing bd

~~So~~
Bradley Bill $5 million to set
up fund to be paid back to general
fund over ~~[illegible]~~ 10 years at 7½% - Dir of
Ins can suspend to ~~insure~~ solvency of fund

add 2 employees to Division of Ins
to Manage

1 Part
2. Cotton

deduct costs of state

1. state ins plan : Ass does by gross income
2. ~~losing~~ att pay court costs - provide exception
3. State Medical care
4. Policing of Doctors

~~att can only charge on hourly basis~~

Save Money of administering program

1. total premiums paid in Alaska now
2. average Mal practice settlement now
3. State funds paid for State Medicare
4. Cost of state administration of Ins.

III set up adjudication board to cut systems cost

breakdown of premium dollar

Medical Malpractice

Art Snowden

1. Adjudicatory Board
2. Advisory panel to superior Court

No. 7 recom.

difficult to administer Adjudicatory

Was submitted as a court rule change

Dr. Wilson - Advisory Committee

rejection of Advisory panel concept by Supreme Court will be outlined in letter

66 Malpractice suits 18 years
3.7 suits per year
2.8 million payed in settlement
500,000 settlement in 1974

Statistics

because 100 of 320 uninsured less suits?

13-$25¢ of premium dollar goes to

Roy Box Optometrist

Umbrella insurance available

SVA - disadvantage - tax on insurance companies therefore all consumers in Alaska

MIC - take advantage of re-insurance experience & expertise on Mal-practice

---

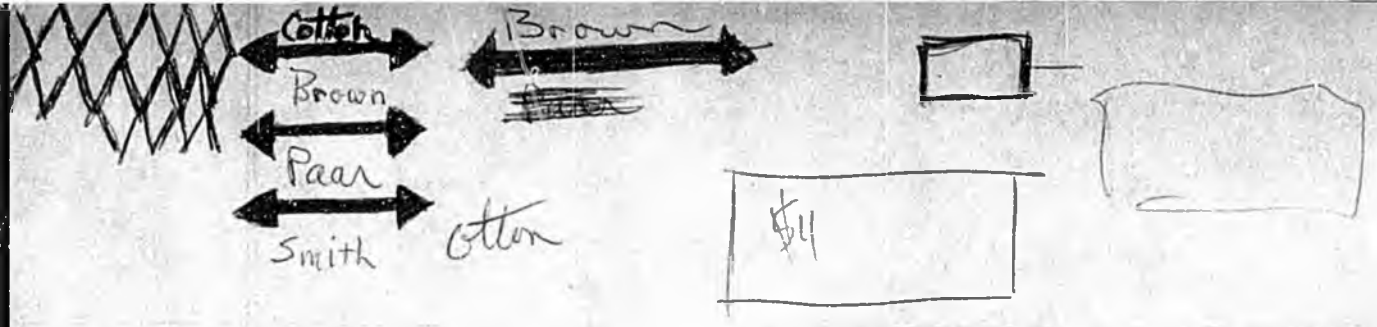
Late Claims Fund

statute of limitations (2 year) doesn't apply

no personal liability with the fund

thus allows more recovery

higher burden of proof though



Insurance Co. don't care what the experience is in Alaska

AIPAC - "Hale" $5 million capitalization

Feb 11 - Reinsurance People

(1.) No History on Alaska - Don't believe we have a problem

(2.) Patients go out of state for treatment
Who is responsible

Insolvency pickup problems - other ~~cancel~~

Dollar Volume of Claims - 90% payment in 1st 3 years.

Inclusion of other groups - Nurses etc
1. Cut cross complaints - Multiple defendants
common defense
2. different rights for different folks
3. Concern for how each other function in health care system.

" include Medical Health Care Group "

Cost (1.) Continue existing occurence rates
SUA has to be self supporting
" retrospective adjustment "

AS 8.64.107 - .366 limitation of liability

MIC - ~~Title~~ Insurance Co. don't have surpluses to write and pick up our insurance

Dick Block

1. Controllable Progam - control cost
transfer uncontrolable risk to someone else

OCCURENCE - never used to be a problem

1974 Stock Market crash
up to 1972-1973 lucrative insurance profits
Made a lot of investments in stock market
∴ lots of $ lost
At the same time high Medical care inflation
Companies didn't sell stocks instead drove
surpluses down - ∴ cut back premiums

Get NAIC Report

50% come in 1st year claims
later claims are big ones

excess costs in Alaska because 5 programs
spread over 315 doctors

Adverse selection if not Mandatory inclusion

Plan 1 1. Mandatory - exclusive; controllable program
Plan 2 2. Now ready to sell insurance through MIC
each years caculations of rates passed on to
next years rates - MIC not Mandatory

Plan 3 Back up JUA

Plan 4 Late Claims Fund - don't collect
claims Made or Cash basis

Insurance
Medical
legal

Medical Mal-practice

1. overall cost is uncontrollable (legal reduced)
2. mechanism for spreading cost is inefficient

1-13 recommendations - legal control cost

liability system 40%-60% → distribution to individual
other collateral system 85%-95% → " " "

Separation of speculative cost to control cost of insurance

Recom 12 - Pay for damages periodically

9+10+11 - Adjudication Board — small claims aren't being paid of filed

23-27 - Prevent Malpractice from occurring

13-23 - Distribution of Cost.

(1.) By including all physicians you actually include all patients

(2.) Indemnity Corp needs all members to function

One source for Ins & Private Ins can manage program better than State

Because of controllable Cost in 1-13 Indemnity Corp will be able to find ins. in private sector

Stand By facility - JUA

Late Claims fund - No obligation for 3 years

Enforcement Mechanism - doctors all belong to insurance pool



1st 3 years you can quantify/cost

94% of Claims in 1st 3 years

Robert Whaley - Alaska State Medical Assoc

1. No longer have radiation service in Alaska
2. losing some experts
3. Ultra-conservative in attitude of risk

No-fault coverage - commission didn't feel appropriate

Agree with Den. recommendation on strengthening Comm.

2/3's of cases 1. wrong choice 2. bad luck

Ask what Medical Assoc pos on all phys. being included

Blue Cross - John Hopkins
support commission proposal even though has SUA

Dr. Kim Fairbanks
240- of 300 belong to competet groups.

100 physicians without insurance today

Blocks - Calif broker for hosp Assoc.

set aside $700,000 instead of $4 million per periodic payment - this is the savings

---

Henry Pratt - opposed mandatory inclusion
Dentist insurance is National + includes all kinds of coverage

Vic Dunbar - Hosp Assoc.

two exceptions
1. #14 Mandatory inclusion
2. #22 All Health Care Providers

Assoc. split on this issue

Joe Josephson - Alaska Medical Assoc.
Use Commission bills as a base

1. discipline
2. retroactive coverage - ask Dick Block

AMERICAN MEDICAL

JANUARY 12, 1976

Physicians' liability protest widens in Southern California

With the holidays over, hospitals in Southern California began to feel the full force of a work slowdown by physicians protesting increasing professional liability insurance premiums.

A check by the Southern California Hospital Council of the 160 hospitals in Los Angeles County showed 64 had experienced some restrictions in services by Jan. 5. Elective surgery had been cut back in all 64. Effected to a lesser degree were obstetric-gynecological procedures, emergency room services, and outpatient care.

Hardest hit was the northwestern area, in Encino and the San Fernando Valley, where 20 out of 30 hospitals reported slowdown actions. Almost all orthopedic and neurosurgical services were halted there. Only eight Southern California hospitals outside Los Angeles County were affected. The job action, however, was expected to continue to build.

IN RESPONSE to the survey, the Los Angeles County Medical Assn. activated its 24-hour referral service on Jan. 6 to help patients needing medical care.

Meanwhile, a last-minute proposal by the governor's office submitted on Dec. 29, was turned down by the medical societies and other physician groups, although parts of it may be salvagable.

The plan, "California Malpractice Reform Act of 1976" would establish a physician-controlled fund to pay claims.

Florida hospitals yield on insurance rules, page 10

Average cost to physicians would be $4,000—one-third more than average 1975 rates, but considerably lower than newly proposed increase.

The catch is that physicians could no longer refuse to treat Medi-Cal patients. MDs with less than 10% Medi-Cal patients also would have to provide up to 20 days of free services annually. The plan also would require the medical profession to operate a "peace corps" in the underserviced areas of the state.

California Medical Assn. (CMA) governing council, meeting in special session Jan. 5, endorsed only those parts of the plan not dealing with the "peace corps" or Medi-Cal treatment. Those portions approved include a limit on physician liability and a check on legal merits of a suit before it can be filed.

The council also voted to support actions of physicians involved in the slowdown. It called for reforms that would establish compulsory arbitration, screening panels, and "specialty courts" for malpractice claims; allow filing of counterclaims; eliminate pain and suffering awards; provide a schedule of awards in wrongful death actions; grant absolute immunity for physicians rendering emergency care and for those on peer review panels; and set up a catastrophic health insurance plan for all Californians.

LATER THAT EVENING, the Los Angeles County Medical Assn. council

(See Liability . . . , p. 10)

Liability slowdown widens in California

(Continued from page 1)

agreed to back up the CMA recommendations on the administration's plan. Agreement between the two societies may signal a halt to the infighting that has characterized the liability dispute in recent months. Members of the various splinter groups that have criticized organized medicine also have indicated during meetings with the societies they will begin to coordinate efforts aimed at halting runaway premium costs.

The 327% increase in premiums, scheduled to go into effect in Southern California on Jan. 1, has been delayed at least for a month, although it may be made retroactive. The company plans to appeal the decision against its requested 486% increase and will put off billing physicians until next month. It has assured physicians in the plan that they will be covered during that time.

Survey shows liability law gains in '75

An *American Medical News* survey of the country's medical societies indicates that during 1975, at least 31 states approved legislation aimed at controlling the crisis in medical liability.

As a result of these activities, availability of insurance is no longer a serious problem in many areas. Some 20 states passed laws allowing for formation of a pooling mechanism, such as a joint underwriting association, or of a physician-owned insurance company. Sixteen have put those pools into operation; seven have physicians' companies.

Premiums, however, continue to escalate, with little relief in sight. Physicians in at least 13 states experienced premium increases of 100% or more and another five reported increases beyond 500% during 1975. One exception to this is Indiana, first state to approve sweeping regulations on malpractice claims. Physicians there received only a small increase during the year, and may have no increase during 1976.

A type of patients' compensation fund, similar to that passed in Indiana, was approved in four other states, and seven medical societies hope to interest their legislators in the legislation during the coming year. The system generally sets a limit on physicians liability and establishes a fund to pay costs beyond that amount.

Seven states approved a limitation on awards and 15 more will try to do this during 1976, although the constitutionality of such laws is being disputed.

Attempts to police the medical professional have led nine states to strengthen their boards of medical examiners; nine more plan to introduce similar measures during this year. Two states, Washington and Wisconsin, approved continuing medical education requirements, and Minnesota hopes to have this passed in 1976.

Details on each state's situation appear on page 13.

Survey shows gains in liability legislation, but problems remain

Alabama

The Alabama Medical Liability Act was passed in September, 1975. It provides for a statewide JUA, reduces the statute of limitations, repeals the ad damnum clause and establishes a malpractice claims reporting system. There are no plans for further legislative action in 1976.

According to the Medical Society of the State of Alabama, physicians are not having difficulty getting coverage. However, the society-sponsored carrier, Wausau, has expressed a desire to terminate its activity in July. The society says it is in the initial planning stages of a physician-owned insurance company. According to a society spokesman, the incidence of claims reported in the last year has increased 75%. Premiums have increased approximately 50%.

Alaska

Alaska physicians continue to experience a serious problem with availability of coverage. New policies are available only through the medical society plan with Mutual Fire, Marine, and Inland, which writes only claims-made policies up to $300,000 limits. A July survey by the medical society showed that 22% of physicians had no insurance and 40% had unsatisfactory coverage. Delivery of care has been seriously affected. Many patients have had to travel to other states for treatment.

The legislature has approved a joint underwriting association, but the plan was vetoed by the governor who has established a committee to investigate alternatives. The medical society favors a state-run pool to guarantee coverage. Family practitioners covered by Mutual Fire and Marine had premiums increased from $400 to $6,000; rates for orthopedic surgeons went from $2,000 to $12,000.

Arizona

The state will lose its only carrier, Travelers, on April 1, when the company terminates its program with the medical society. Before then, the society hopes to have legislators approve a temporary joint underwriting association and physicians' mutual company. It also is working with the hospital and bar association on various reforms modeled after Indiana's Patient Compensation Fund. Travelers received a 107% increase this year, putting premiums at between $1,595 and $9,119 for $1-million limited coverage. The Insurance Service Office has recommended rates in the state be raised an average 300% during 1976.

Arkansas

The Arkansas State Legislature passed during its 1975 session legislation that makes mandatory the reporting of all claims filed to the medical examining boards, sets up a JUA, and establishes a voluntary arbitration panel whose results are admissible in court as evidence. Since the legislature only meets every other year, there is no legislation on the agenda. However, according to a medical society spokesman, efforts to amend the state's constitution will begin to clear the way for legislation similar to the "Indiana package."

Liability coverage is available in Arkansas, if a physician accepts St. Paul's claims-made policy. St. Paul is the state's only carrier. Premiums have increased a total of 80% over the last year. Society officials say there has been a "marked increase" in the number of claims filed against physicians.

California

Legislation passed following a month-long job action in mid-1975 includes a limit on awards for pain and suffering, sliding scale for contingency fees, strengthening the board of medical examiners, and a reduced statute of limitations. The mechanism is available for a joint underwriting association, and mutual companies have been formed in the San Francisco area, in other parts of Northern California, and in the Los Angeles area.

None of these measures, however, promises any effect on the soaring costs of premiums that increased up to 327% in parts of Southern California on Jan. 1. Northern California MDs received increases of 341% on Nov. 1 last year. High-risk physicians pay $36,000 in the south and $22,000 in the north for coverage of up to $1 million/$3 million.

Colorado

No malpractice legislation was passed in 1975. For the coming session, however, the medical society and other groups have made it known that there will be a number of bills submitted. A society spokesman says that the society's bill will address itself to the statute of limitations and strengthening the Board of Medical Examiners. Groundwork for a JUA is expected to be laid.

Availability of insurance does not seem to be a problem. The society-sponsored carrier, Hartford, is the predominant carrier in the state, and Empire and St. Paul also are active. Premiums have, as elsewhere, been on the rise. As of last June, the premium on policies offering $100,000/$300,000 coverage has risen 15%. $1-million coverage has increased 40%, while $3/$5-million coverage has increased 39%. A medical society official said 44 claims were filed last year, 38.9% more than a year earlier.

Connecticut

With 90% of the state's physicians covered by Aetna Life and Casualty Co., Connecticut reports there is no problem in obtaining adequate coverage. However, the number of liability cases by specialty more than doubled from May 1, 1974, to May 1, 1975, prompting a 40% increase in premiums.

Although the state medical society has no plans to start a JUA or physician-owned company and although there was no remedial legislation passed in the past year, the society will pursue a broad legislative program in 1976, including sliding contingency fees, a ceiling on awards, and a study of arbitration.

Delaware

When the Delaware General Assembly convenes Jan. 13, the Medical Society of Delaware will push for tort reform, limitation on awards, and creation of a JUA. It does not intend to create a physician-owned firm. The medical society reports its agreement with Aetna, which insures about 70% of the state's physicians, has one year to run, and that, "For now, physicians who are our members can still get insurance—for a price."

During the past year, premiums in Class I increased 66.7% and the Class III premiums jumped 74.8%. The society said it could not ascertain if there had been an increase in the number of claims.

District of Columbia

The medical society plans to continue to work on several bills introduced but not passed last year, which include a $500,000 limit on awards, establishment of mandatory review panels, and a reduction in the statute of limitations. It also is working with the insurance commission on plans for a joint underwriting association, although availability is not a problem at this time.

Coverage is available through the society-sponsored plan with Hartford, now in its third year of a five year plan. St. Paul and U.S.F. & C. also write policies. Hartford received an 83% hike in premiums during 1975. Coverage on $1-million/$3 million policies costs between $200 and $1,000. The society, however, predicts a significant jump in rates this year.

Florida

The Medical Malpractice Reform Act of 1975 established in Florida a mandatory mediation panel—now being challenged for its constitutionality in a Florida court — and a statewide JUA. Further legislation concerning medical liability is expected in 1976, particularly in the area of tort reforms. The Florida Medical Society-sponsored insurance trust, which offers $500,000 basic liability coverage for the same rates Argonaut charges for $100,000 coverage, has attracted over 4,000 participants.

A society spokesman told *AMN* that during the period of 1963-74 the rate of claims filed rose from 3 per 100 physicians per year to 16 per 100 per year. Under the JUA, the premium for basic coverage for a Class I physician in Dade and Broward County, for example, is $2,930. For a Class V, it is $24,247. Under the trust (claims-made), a Class I doctor pays $1,313 and a Class V pays $8,243.

Georgia

Georgia's legislature in 1975 passed a law that permits the insurance commissioner to set up a joint underwriting association, if and when physicians are no longer able to get liability coverage.

For the time being, the state's physicians have no trouble, except in getting excess coverage over $1 million. Some 95% of the state's physicians are insured under the Medical Assn. of Georgia's program with St. Paul, on a claims-made basis, and overall premiums were actually reduced this year by 11%. Malpractice claims this year are up 40%, but many of these are nuisance claims generated by publicity, say medical association officials.

Hawaii

A feared Jan. 1 pullout by the major carrier, Argonaut, was postponed pending legislative action. The medical society is working with the administration to develop an omnibus bill containing various tort reforms. A joint underwriting association, not favored by the society is available to physicians should the need arise.

Rates increased only 11% for basic coverage and 13% for excess coverage last year. Physicians now pay between $668 and $4,343 for $25,000/$75,000 coverage and between $1,046 and $13,010 for $1 million. The incidence of claims rose sharply in 1974 and again during the first part of 1975, but dropped off the second part of last year.

Idaho

The Idaho state legislature passed in 1975 the Hospital-Medical Liability Act, which placed a limitation on liability and created a statewide JUA. The concept of limiting liability has since been tested in the courts and found to be unconstitutional and some have questioned the constitutionality of JUAs. Because the Liability Act was a non-severable bill, many of the other items that were passed along with the JUA and liability limitation clauses will be reconsidered during the 1976 legislative session.

Coverage is available. When Argonaut, which covered 500 of the state's physicians, pulled out last year, St. Paul, with its claims-made policy, stepped in. On Aug. 1, the Insurance Service Organization recommended companies in Idaho institute a 287% across-the-board premium increase. According to a spokesman for the Idaho Medical Society, a feasibility study is under way to consider the possibility of a physician-hospital-owned insurance company.

Illinois

The Illinois Supreme Court will decide this month the constitutionality of two new laws—a limit on awards and mandatory screening panels. Legislators also approved a lowered statute of limitations and provided the mechanism for a joint underwriting association during 1975. The medical society plans for 1976 include various tort and judicial reforms.

Physicians have no trouble obtaining adequate coverage through one of eight carriers in the state, including a society-sponsored program with Hartford. Premiums rose an average of 49% to 69% during the past year, putting premiums at between $368 and $5,084 in the Chicago area, and between $344 and $2,868 in the less populated areas for $100,000/$300,000 coverage. Claims rose 42% last year in the Chicago area.

Indiana

In April legislators approved a precedent-setting measure that established a $100,000 liability limit on physicians, a catastrophic fund to pay awards beyond $100,000 up to an additional $400,000, a risk manager system to guarantee coverage, mandatory screening panels, a limit on attorneys' fees, and a shortened statute of limitations. During 1976, the medical society plans to seek revision of portions of the law, such as adding a $100,000 limit on cases involving more than one physician, and possibly legislation allowing individual physicians to insure themselves.

Medical Protective of Ft. Wayne, insurers of 52% of the physicians, did not seek an increase during 1975 and likely will not do so during the first part of 1976. Rates of other firms—Aetna, Hartford, and Continental—went up 18% in September. A pull-out by major carriers has halted; only St. Paul, which insures 200 MDs, will leave. A few physicians are covered by the risk manager system, whose rates range from $1,629 to $13,250. Medical Protective charges between $508 and $3,269 for $100,000/$300,000 coverage. Other firms charge between $822 and $6,913.

Iowa

Laws enacted during 1975 to establish a joint underwriting association, define informed consent, allow the courts to rule on contingency fees, and reform other torts laws were just a beginning, according to the state medical society, which plans to press for passage of an eight-point package during the year. Included would be a possible limit on physician liability plus a state fund for excess awards, a ceiling on awards for pain and suffering, a system for arbitration, strengthening of the board of examiners, and other tort changes.

Basic coverage is available, at rates ranging from $621 to $3,825 for $200,000/$600,000, but excess protection is difficult to obtain. Coverage is available with Medical Protective; St. Paul, which writes only claims-made; and Aetna. Older physicians, however, especially those with claims against them, are often not renewed.

Kansas

Only one law on liability passed the legislature last year; it required insurance companies to report claims. The medical society plans an extensive campaign for 1976 in attempt to get approval for an Indiana-type compensation fund that would limit liability to $100,000 and establish a fund to pay excess awards up to $500,000. Plans also call for voluntary arbitration, screening panels, revising the board of medical examiners, and establishing a temporary JUA.

Insurance now is available to most physicians, but at high costs that vary greatly. Basic coverage for Class I ranges from $500 to $2,000 and for Class V from $3,000 to $6,000. Carriers include Medical Protective, which writes 55% of physicians; St. Paul, which writes 35%; and Aetna and Hartford.

Kentucky

The Kentucky legislature did not meet last year. This year, it will consider reforms recommended by a governor's task force, among them a type of JUA.

Insurance is available to physicians through Medical Protective, which writes 65% of policies, Aetna, which writes 15%, and other companies. Some new physicians have experienced difficulties obtaining coverage. Rates increased last year about 60% to between $1,823 and $3,304 for $100,000/$300,000 coverage. Incidence of claims rose 33%.

Louisiana

A package of reforms based largely on the American Medical Assn.'s model legislation won approval in 1975. These include a $500,000 limit on awards, contractual binding arbitration, informed consent definition, and a shortened statute of limitations. Also approved was a limit on physicians' liability of $100,000/$300,000, and a patients' compensation fund to pay awards for over that amount up to $500,000. The medical society has opposed either a JUA or a mutual company, although coverage may soon become a problem as Hartford, which covers 75% of physicians, continues to cancel some physicians.

Most of the remaining physicians have insurance through St. Paul, which will not write new policies. Rates increased 91% in July and went up another 75% this month. Premiums for $100,000/$300,000 coverage cost between $695 and $5,247. The medical society estimates the number of claims rose 300% last year.

Maine

Reporting its premiums increased "too much" (from $400 to $1,800 annually for some internists; from $1,600 to $4,000 for the higher-risk specialties), the Maine Medical Assn. sponsored 1975 legislation for creation of a JUA and formation of a malpractice study commission.

Both were adopted, and the society now awaits the commission's recommendations to plan its 1976 legislative program.

Coverage is difficult to obtain only for new physicians, those who are foreign-trained, and those who have suits pending. The society has no plans to start its own company, and reports it has no way of obtaining data on claims filed.

Maryland

In 1975, the legislature in Maryland passed bills which established a JUA, changed the statute of limitations to three years from discovery, and provided for the creation of the society-sponsored Mutual Liability Insurance Society, which went into existence June 1, 1975, and has been writing policies since July 1. A governor's task force is looking at other proposals which come before the legislature in 1976.

At present, Hartford Insurance Co., is the only carrier that continues to renew policies. Other companies have withdrawn and are no longer renewing policies. No company is accepting new risks. Premiums have been rising; Mutual Liability Insurance Society's have risen 200%.

Massachusetts

The legislature enacted a joint underwriting association programmed to self-destruct by the end of 1977. To date, the JUA has written policies on 900 physicians; coverage is available up to $1 million/$3 million.

Legislation supported by the medical society also established a study commission to review the tort system and recommend changes, and established a medical screening tribunal and medical disciplinary board. The medical society is studying the feasibility of establishing a captive company to insure its members.

Michigan

Last year, laws allowing binding arbitration, a shortened statute of limitations, immunity for peer review board members, extension of the Good Samaritan Act, establishing a state insurance pool, and requiring insurance companies to report claims were passed. This year, the medical society would like to see considered a limit on awards, further shortening of the statute of limitations, and provisions requiring all suits to have an affidavit of merit. The Brown-McNeely state fund has been activated with rates at about $2,000 to $12,000 plus surcharge. It covers some 1,500 MDs.

Medical Protective writes about 65% of physicians' policies and charges between $1,185 and $7,863 for $100,000/$300,000. The company received a 126% premium increase in October. Both St. Paul and Shelby Mutual are leaving the state. Excess coverage generally is not available in the state. The society hopes to have its required $3 million in capitalization collected within the next few months so it can begin issuing policies for its mutual company.

Minnesota

The state society is recommending a legislative package including: reinstatement of the collateral source rule, strengthening the policing powers of the state board of medical examiners, continuing education requirements for relicensure, and tort reforms.

St. Paul, which insures 90% of the state's physicians in a program based on an agreement with the society, switched to claims-made this year, so some of the low-risk groups experienced a decline in premiums. Any large jumps will come in subsequent years.

St. Paul projects 348 claims for 1975, based on midyear statistics; 305 claims were filed in 1974; 199 in 1973.

Mississippi

Mississippi physicians have had no liability premium increase this year—though all policies are now on a claims-made basis, since the only carrier in the state is the medical-society-sponsored plan under St. Paul.

Physicians have as yet had no trouble getting new coverage, and comparatively few malpractice suits have been filed (80 this year, compared to 60 last year). However, the Mississippi State Medical Assn. is backing a nine-part reform package to be introduced in next year's legislature, including screening panels and a joint underwriting association.

Missouri

In 1975, the legislature approved a law allowing the medical society to form a mutual insurance firm. This year legislative plans include measures to control contingency fees, establish a JUA, increase the powers of the licensing board, establish review panels, and provide numerous tort changes.

The state still has several carriers, but only one or two write new business. The medical society has formed Missouri State Medical Insurance, Inc., a for-profit insurance firm that writes about 400 policies. Rates range from $500 to $30,000 for $100,000/$300,000 coverage. Medical Protective, which insures 50% of physicians, received a 50% rate increase in October. Other carriers' rates went up 300% to 400% last year. The Insurance Service Office has recommended another 100% increase for this month.

Montana

The state legislature did not pass any liability measures in 1975 and will not meet at all this year. The medical society has established an ad hoc committee to consider future changes in tort laws.

Aetna writes 80% of policies in the state through the medical society and St. Paul covers others. Premiums increased 72% during 1975 and will go up another 76% this month. Class I physicians pay $1,560 and Class V pay $13,270 for $1 million coverage.

Nebraska

The medical society plans to introduce legislation in 1976 patterned to some degree after legislation passed this year in Indiana. It will include a medical screening panel, limit on awards, a patient reimbursement fund, medical evaluation commission, and modification of the contingency fee.

About 40% of physicians are insured under a society-sponsored program with St. Paul, which recently switched to claims-made. Rates increased 25% July 1, when the switch was made, and probably will double Jan. 1. Medical Protective, the state's other major insurer, is writing no new policies, and other companies are moving out of the

Nevada

During 1975, the legislature approved formation of a JUA, extended the Good Samaritan Act to hospitals, established mandatory screening panels, increased authority of the licensing board, and made several changes in tort law. No session will be held this year, but an interim study commission is at work on additional reforms.

The JUA has gone into effect and covers some 150 physicians. Other carriers include Argonaut, which is being selective about new business and may pull out altogether in May, and Imperial, which will take no new business. Argonaut did have an eight-year contract with the medical society. It has pulled out of this, though continues to write some new coverage. The society did not have figures on rates, which vary considerably from individual to individual. Rates for most did go up considerably.

New Hampshire

Confronted with a doubling of liability premiums, the New Hampshire Medical Society obtained the creation of a JUA and establishment of a state commission to study all facets of the medical injury reparations system. The commission's recommendations are due on or before Jan. 1, 1977.

The NHMS reports the state's physicians "generally have no trouble" obtaining adequate coverage, primarily with Hartford, which has 80% of the business. Increase in claims was described as substantial.

New Jersey

No legislation made it through the New Jersey General Assembly during 1975. A number of bills are expected to be submitted in 1976. Among the state medical society's legislative suggestions are measures dealing with the statute of limitations, res ipsa loquitur, informed consent, collateral source requirement, limiting amount of liability required, and mandatory panels for screening. New Jersey physicians are presently able to get coverage. The society-sponsored carrier, Chubb and Sons, covers almost all state society members.

Premiums are rising. For 1976, they will increase on an average of 50%. Class I physicians will note a rise of nearly 75%, while Class V physicians will see their premiums increase by 30%. According to a spokesman for the medical society, the rate of claims filed is up markedly. Figures for calendar 1974 showed a 60% increase.

New Mexico

No legislation was passed in 1975, but a study commission was formed to recommend reforms. With the announced pull-out of the only carrier, Travelers, on March 1, measures will have to be approved quickly to guarantee coverage. Plans for both a JUA and a physicians' mutual have been readied for immediate consideration. Other measures to be introduced include a state-operated patient's compensation fund, a limit on liability and on awards, mandatory screening panels, tougher laws to discipline physicians, and several tort reforms.

Rates increased 74% last May, putting premiums at between $913 and $5,781 for $1 million coverage.

New York

Last year, the legislature approved establishment of a JUA, and a physicians' mutual, passed reforms on physician discipline matters, allowed recommendations of mediation panels to be admissible in court, and granted other tort reforms. This year, the medical society plans to introduce its Patients' Indemnification System, which will take suits out of the court room into an arbitration process. Also planned to be introduced are measures limiting awards and contingency fees, and calling for numerous tort reforms. Both the JUA and physicians' mutual have been put into effect.

Some 15,500 physicians are covered by the mutual, 3,500 by the JUA. Rates increased about 20% during the year. High-risk physicians in New York City pay about $17,000 as of July 1. The society reported 2,000 claims in 1974 and 1,324 for the first part of 1975.

North Carolina

State legislators approved a reinsurance exchange that has been challenged in the courts by involved insurance carriers. All companies except the society's own mutual have received injunctions exempting them from participating. Other laws passed in 1975 strengthen the board of medical examiners and establish a study commission. The medical society is recommending the commission consider establishment of a patients' compensation fund, a limit on liability, a mechanism for easier filing of counter-claims and several tort reforms.

Coverage in the state is available only through the physicians' mutual or through the St. Paul claims-made program. A premium increase of 570% was approved in October. Physicians in the mutual pay between $967 and $7,872 for $100,000/$300,000 coverage. Claims have increased about 67%.

North Dakota

Most physicians can obtain solid coverage and with conversion to a claims-made policy, some North Dakota physicians actually experienced a slight decrease in their premiums for the first year, the state medical society reports. However, the occurrence policies doubled and umbrella coverage jumped 100-200%. Without required reporting of claims, the society notes, it is difficult to determine if claims increased.

During 1975, the NDMA was successful in having the statute of limitations amended to two years after discovery, with a maximum of six years; protecting medical society and hospital review records from discovery and making them inadmissible as evidence; and gaining authority to establish a mutual liability insurance company. Next year, the society will sponsor a comprehensive bill, including tort reform, screening panels, and arbitration.

Ohio

Through the efforts of Ohio physicians an extensive package of reform measures passed the legislature in 1975. These included a limit on awards for pain and suffering, limit on contingency fees, establishment of JUA, provisions for binding arbitration, strengthening of the medical board, and numerous tort reforms. The society hopes to modify the JUA plan this year and to introduce other reform measures. The JUA has gone into effect. The society also is investigating formation of a mutual company.

Six carriers currently write coverage, including Medical Protective, Buckeye Union, Shelby Mutual, St. Paul, Travelers, and Hartford. Aetna began pulling out of the state this month. Rates increased as much as 700% in the state. Physicians pay between $900 and $7,500 for basic coverage.

Oklahoma

Oklahoma physicians remain in a relatively good position, with comparatively low rates under two medical-society-sponsored plans—though basic coverage premiums ($100,000-$300,000) increased 35% and excess coverage increased 200% this year. Basic coverage under the sponsored Insurance Company of North America plan ranges from $273 to $1,594, and excess coverage under CNA to $1 million also ranges from $273 to $1,534.

Though there are no other active carriers in the state, physicians do not as yet have trouble getting coverage. There have been no new legislative reforms this year, but the Oklahoma State Medical Assn. plans to introduce a package of several bills, including a measure to provide for written warranty and a redefinition of the statute of limitations.

Oregon

The medical society has asked the state court to rule on the constitutionality of a new law that limits physicians' liability and sets up a state excess fund. Also passed by the legislators last year were measures to limit contingency fees, permit creation of a physicians' mutual company, strengthen the medical practice act, and reform various tort laws. The legislature will not meet this year, but a state task force will study additional reforms.

The society has a group plan with CNA that charges between $1,116 and $7,240 for $100,000/$300,000 coverage. CNA has just requested an increase for the coming year of about 20%, which will put rates for the basic coverage at between $1,340 and $8,692. Protection is available up to $5 million at a cost of between $2,540 and $15,796, under the newly requested rates.

Pennsylvania

The Pennsylvania Medical Society last year reluctantly backed a new liability law in that state, creating a joint underwriting association only for those physicians who can't get coverage elsewhere, plus mandatory pretrial screening panels —but the society hopes to win some more effective changes in this year's legislature. The physicians hope to bolster the new law by reducing the statute of limitations, improving the composition of screening panels, and banning pain and suffering awards.

Private insurance is available from Medical Protective, Argonaut, and Aetna, and from the joint underwriting association for those refused by the private companies. Meanwhile, the medical society is studying formation of a captive insurance company. Private coverage rates jumped substantially this year—from 67% to as much as 476% higher than last year—from a Class I low of $538 (Medical Protective) to a Class V high of $15,277 (Argonaut).

Rhode Island

Rhode Island adopted a joint underwriting association plan this year, so that physicians have no trouble obtaining coverage—though rates increased 200% this year. The legislature has not passed any liability reform laws, though the Rhode Island Medical Society is planning to develop and introduce a comprehensive malpractice reform package next year.

Officials estimate malpractice claims increased 50-60% this year over last.

South Carolina

The legislature created a joint underwriting association that went into effect July 1, and a study commission to propose legislation to the governor by March.

The state medical society is working for a package bill similar to the AMA model, including: reduction of statute of limitations, limit on damages, binding arbitration, limit on contingency fees, and elimination of the ad damnum clause. The society also plans to introduce a bill that would set up a new medical discipline system.

Current premium for Class I for basic $100,000/$300,000 coverage is $250 and for Class V, $1,400, a 100% increase over 1975. No claims have been filed under the JUA; earlier figures are not available.

South Dakota

In South Dakota, physicians backed measures granting peer review immunity and a reduction in the statute of limitations this year; and the state medical association will probably introduce a package of 10 bills next year, including voluntary binding arbitration and a joint underwriting association. The legislative push was prompted by a change from occurrence to claims-made coverage in the state, plus a big increase in premiums.

Premiums range from $550 to $12,356 (last year, the range was $164 to $8,650). Though St. Paul, Aetna, USF&G, Hartford, Western Casualty & Surety, and Western Fire & Casualty all write policies, state society officials report that new physicians in solo practice have difficulty finding insurance—though, so far, all have been able to find acceptable coverage. The society hopes to get a joint underwriting association approved by next year's legislature; a similar measure failed this year.

Tennessee

The Tennessee legislature passed a comprehensive package of liability reform bills last year, creating a joint underwriting association, malpractice review boards, plus major changes in tort law, including reduction of statute of limitations, limits on contingency fees, and allowance of counterclaims by physicians. Further improvements in the legislation are being planned by the Tennessee Medical Assn.

However, high premiums for coverage under the joint underwriting association remain a serious problem—rates for the highest category of coverage rose from ISO's $897 in September, 1974, to $12,509 under the JUA this fall. Class I coverage rose from $176 in September, 1974, to $1,532 as of the end of this year. The JUA was implemented when Shelby Mutual, the state's biggest insurer, announced it would withdraw coverage next April, and other firms started phasing out as soon as the JUA went into operation. The medical association approved plans to start a physician-owned company, but the firm must be capitalized for $4 million before it will be approved by the state insurance commissioner.

Texas

In 1975, bills were passed allowing formation of a JUA, establishing a study commission, regulating insurance rate increases, and lowering the statute of limitations. The medical society has put together a 22-point plan for the commission recommending such reforms as a limit on awards and on contingency fees, establishment of arbitration boards, strengthening of the board of examiners, and other tort reforms.

Excess coverage in the state is not written through the JUA and is difficult to obtain. Medical Protective writes 60% of the policies. Other carriers include Hartford, Aetna, and St. Paul. Travelers pulled out of a group plan in Harris County on Nov. 1. Increases in rates of 600% to 800% were the norm last year. Many increases were even higher.

Utah

The Utah State Legislature will meet in 1976 for a 20-day session during which a malpractice bill, sponsored by several groups including the Utah Medical Society and the Utah Bar Assn., will be introduced. The bill will likely include a $250,000 cap on awards, reform of the statute of limitations, a requirement of a 90-day notice of intent to serve, elimination of the ad damnum clause, and a requirement of disclosure of collateral sources. A companion bill is expected to be introduced that will call for strengthening of the state's Medical Practice Act. Two measures will involve strengthening licensure laws and, increasing the size of the physician's examining committee.

Coverage is available to physicians in Utah. Aetna, the primary carrier, is in the last year of a five-year contract, but has indicated it will extend coverage for at least another year. Premiums increased in 1975. For 1976, they will rise an additional 70%. Class I physicians, for $100/$300,000 coverage, have seen premiums rise from $769 to $1,260. Neurosurgeons, for $250/$500,000 coverage, have seen premiums go from $6,186 to $10,603.

Vermont

Faced with a proposed 163% increase in premiums for next year, the Vermont State Medical Society is backing a package of four bills and a resolution to be submitted in the next session of the state legislature—the first sortie into liability reform.

Physicians as yet have no difficulty obtaining coverage, either through the medical society's sponsored program with Aetna, or with Hartford or St. Paul. Society officials estimate claims against physicians were up 50% last year over 1974, and if proposed premium increases are approved, physicians will pay from $1,400 (Class I) to $11,950 (Class V) for coverage.

Virginia

The state medical society plans to introduce a comprehensive package in the 1976 session of the legislature. A physician-owned reciprocal exchange is being organized, with no connection to the society.

St. Paul insures 90% of physicians in a society-sponsored plan. Basic premiums remained the same this year, though $1-million excess coverage jumped 100%.

Claims for the first six months of 1975 were 50% higher than for the same period in 1974.

Washington

Members of the Washington State Medical Assn. who do not have an adverse malpractice litigation record have no trouble obtaining coverage—90% of the business through Aetna—and the medical society does not plan to seek either a JUA or its own company.

During the past year, WSMA obtained passage of a standard of care bill, an expanded Medical Disciplinary Act, an amendment to the Medical Practice Act to provide for continuing education, and passage of a Good Samaritan Act. In 1976, the society will pursue a broad legislative program, including limitations on awards and contingency fees, screening panels, and various reforms in tort law.

The society estimates claims increased about 12% and premiums 70%.

West Virginia

The medical society is supporting legislation for 1976 that would establish a joint underwriting association and effect a number of tort reforms.

Aetna Life and Casualty is the only company writing new policies, and only under the society-sponsored program. Aetna received a 48% premium increase for basic coverage in 1975 and is seeking a similar increase for 1976.

Wisconsin

After a full year of legislative battles, Wisconsin physicians won several reforms of liability laws, including limits on liability, joint underwriting association, patients' compensation fund, and pretrial screening panels.

Physicians no longer have trouble getting insurance, though the State Medical Society of Wisconsin is investigating a physician-run liability program. Medical Protective, St. Paul, and Wisconsin Health Care Liability Insurance Plan all continue to write new policies, though St. Paul is limited to claims-made and Medical Protective is largely restricting new coverage to low-risk specialties and rural areas. Medical Protective's rates increased 10%-30% this year, to a high of $3,411 in Class V, while ISO's rates increased about 70%, to a high of $2,274. Figures on number of malpractice claims filed this year have not been compiled.

Wyoming

Obtaining adequate coverage is not a major problem, according to state medical society executive director Robert Smith. St. Paul withdrew from the market, but a society-sponsored plan with Aetna, which covers 80% of the state's physicians, took all those who lost coverage. The remaining 20% are covered by Hartford.

The society is proposing legislation for 1976 that would include: a two-year statute of limitations; disabled physician act; state reporting law; expanded immunity for persons involved in review; informed consent legislation; joint underwriting association; and a patient compensation act.

Information is not yet available on the size of premium increases for 1976. Except for one $200,000 loss, the highest in the state's history, awards for 1975 are lower, so far, than last.

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State of California
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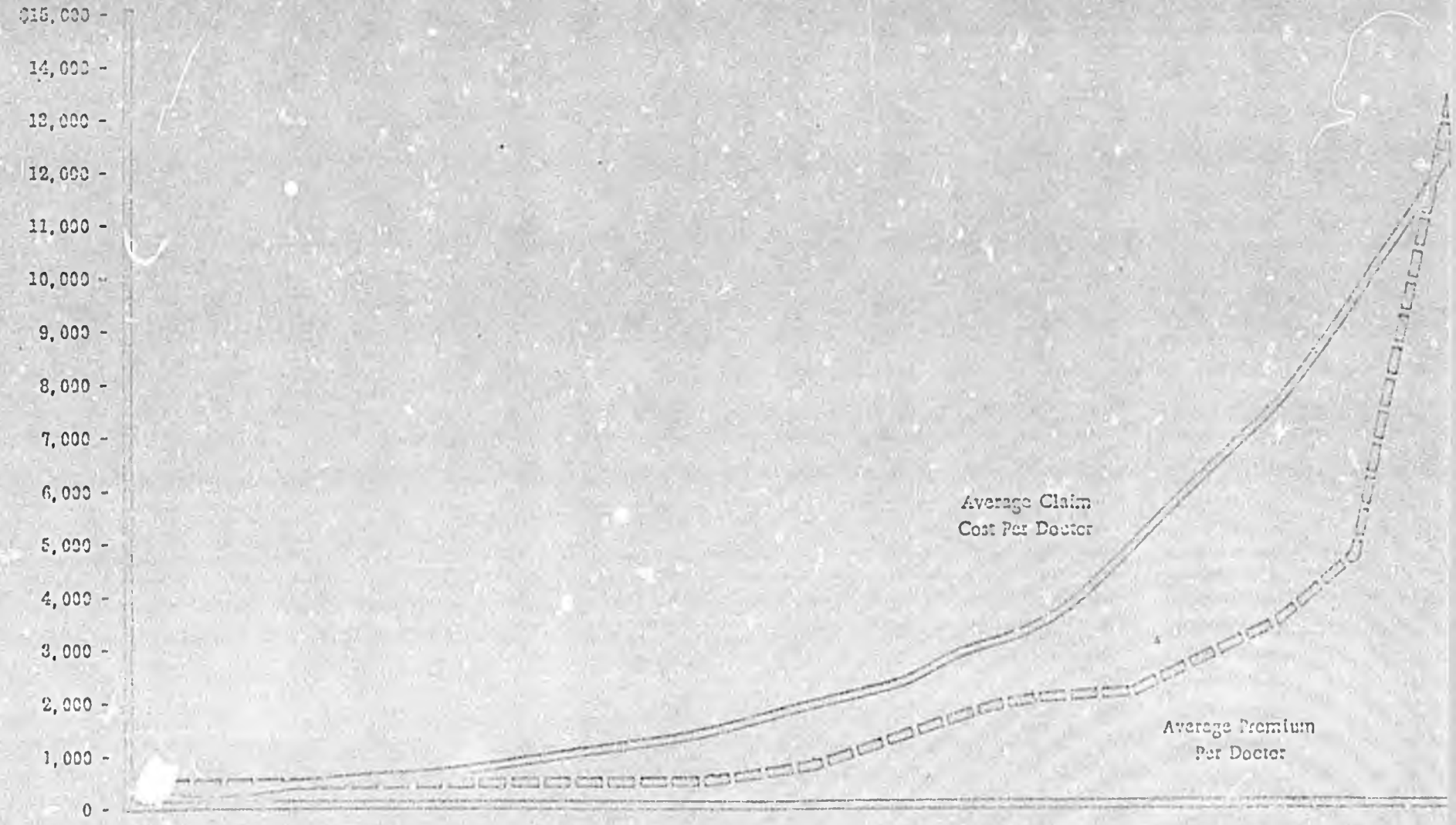
Classification	Proportion Of Doctors	Premium Relationships Indicated by ISO Study	Indicated 1973 Premium
Physicians - no surgery	52%	$ 100	$ 6,000
Physicians - minor surgery or assisting in major surgery on own patients (5% or less)	15	150	11,000
Ophthalmologists	2	200	10,000
Proctologists	*	250	16,000
Cardiologists - including catheterization, but not including cardiac surgery	9	290	10,000
Anesthesiologists	4	300	10,000
Urologists	1	3[illegible]	20,000
Otolaryngologists - plastic surgery	1	350	25,000
Otolaryngologists - no plastic surgery	1	440	25,000
Cardiac surgeons	*	450	29,000
Obstetricians - gynecologists	5	480	31,000
Plastic surgeons	*	520	33,000
Surgeons - general - specialists in general surgery	6	550	35,000
Orthopedists	3	730	45,000
Thoracic surgeons	1	840	52,000
Vascular surgeons	*	940	60,000
Neurosurgeons	1	970	62,000
Total	100%	220 (average)	$ 14,000

* Less than 1%

Source: Insurance Services Office -- Physicians and surgeons countrywide excluding Texas, policy years ending 1969 - 1972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PMS TERRY GARDINER CARE HOUSE JUDICIARY COMMITTEE 1976 JAN 27 AM 10 57

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AS PRESIDENT OF THE ALASKA CHIROPRACTIC SOCIETY
I HAVE BEEN DIRECTED BY ITS MEMBERS TO REQUEST
YOUR ASSISTANCE IN EXCLUDING (TOTALLY)DOCTORS
OF CHIROPRACTIC FROM SB522 MALPRACTICE CLAIMS ARE NOT
A PROBLEM WITH OUR PROFESSION AND OUR MEMBERS ARE
ADEQUATELY INSURED THROUGH OUR NATIONAL CHIROPRACTIC
AS ORGANIZATION FOR OUR PATIENTS PROTECTION

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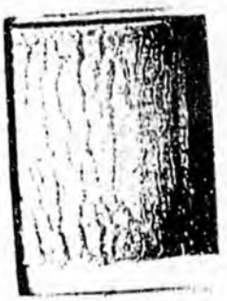


Members file on Malpractice

ALASKA DENTAL SOCIETY

OFFICE OF THE PRESIDENT

January 10, 1976

Mr. Langhorne Motley
Commissioner
Pouch D.
Juneau, Alaska 99811

Dear Commissioner Motley:

The Alaska Dental Society wishes to reaffirm it's position in relation to the Malpractice Insurance Commission's proposed legislation.

We object to mandatory inclusion in a joint under-writing association and adhere closely to the points and reasoning brought out in a report to the legislature made by Dr. H.S. Denenberg.

Sincerely;

Robert R. H. Sutherlin DDS

R.H. Sutherlin
President
Alaska Dental Society

cc: All legislators
All Health Care Associations
Governor
Director of Insurance

TERRY GARDINER
STATE REPRESENTATIVE
POUCH V
JUNEAU
99811

BOX 1092
KETCHIKAN
99901

Alaska State Legislature

January 30, 1976

Bill Henrickson
Ketchikan Medical Clinic
3612 Tongass Ave.
Ketchikan, Alaska 99901

Dear Dr. Henrickson,

Thank you for your letter in regard to SB 113. SB 113 passed through House Judiciary Committee last year and evidently got stuck in the Rules Committee. As I understand it this issue is not taken care of in the Governor's recommended legislation on medical malpractice. Before passing out the medical malpractice legislation, I will make sure that this issue is taken care of. The issue is not resolved in the Governor's proposed legislation. We will either include it or make sure that SB 113 is passed this session.

The House Judiciary Committee and the Senate Commerce Committee have both been putting in a lot of hours on the malpractice issue. I am confident that we will eventually pass legislation that will be more far-reaching than the malpractice commission's recommendations.

Sincerely,

Terry Gardiner

Ketchikan Medical Clinic

3612 TONGASS
KETCHIKAN, ALASKA 99901

J. W. Mortensen, M. D.
H. J. Henrickson, M. D.
D. E. Johnson, M. D.

Phone 225-5144
Phone 225-5145

January 14, 1976

Representative Terry Gardiner
Alaska House of Representatives
Juneau,
Alaska 99801

Dear Terry:

Senate Bill 113 which passed, seems to be stuck in committee in the house. If the number is correct, this is the bill that protects the physician from suits while carrying out normal functions on the various hospital committees and boards upon which he must serve.

All of us feel very strongly that we must police our own ranks but in order to do so, must have some freedom from fear of being sued for such actions as we must take.

Any help you can give us in getting this bill out of committee would be appreciated.

Sincerely,

Bill

H. J. Henrickson, M.D.

Settlement Delays Drive Up Costs

The malpractice problem is further aggravated by the long time required to resolve claims. According to lawyer James E. Ludlam, of Los Angeles, a specialist in hospital professional liability problems, a malpractice case generally takes 5–6 years to settle.

"In such cases," he says, "defense costs alone can total $30,000, and both sides might spend $100,000." (In addition, it is estimated that every day of trial costs the public about $1,000 just to maintain that part of the court system.)

Such delays work hardships for all parties concerned and drive up costs of eventual settlement. Ludlam calls our present system for resolving medical malpractice cases "extraordinarily expensive, inefficient, and most erratic." (Source: *Reader's Digest*, 4/75.)

The Lawyer's Contingency Fee

The U.S. is the only major nation that allows the contingency fee system, in which a lawyer obtains a fee only if he wins. In return for this risk, he receives on average ⅓ to ½ of the court award.

Lawyers say that without this system, some patients with valid suits could not afford to press them. On the other hand, many claims are rejected by lawyers because the potential return is too small.

In New Jersey, a sliding-scale contingency fee has been established: 50% of the first $1,000 in the settlement; 40% of the next $2,000; 33⅓% of the next $7,000; 20% of the next $50,000; no more than 10% of any award exceeding $100,000. Some insurance experts believe the New Jersey Rule might reduce total malpractice losses as much as 20%.

How Settlements Are Increasing in Some Troubled States

State	Year	Total Settlements	Average Paid
Cal.	1969	—	$4,500 (NoCal)
			5,600 (SoCal)
	1973-4	—	7,000 (NoCal)
			8,000 (SoCal)
	1975		12,000 (estimated statewide)
	1980		25,000 (estimated statewide)
	1985		62,000 (estimated statewide)
Fla.	1963	—	1,182
	1975		20,000 (estimated)
Ill.	1974		40,099
	1975		93,465
N.Y.	1963	$ 1,405,000	4,878
	1969	4,865,490	10,788
	1973	17,452,000	22,894

The above chart shows how average settlements are increasing in some states where the malpractice problem is particularly acute. The sharply geometric upward spiral in these settlements presents a frightening prospect to insurance companies trying to set realistic premiums to cover future claims and to physicians already heavily assessed for such coverage.

California Is Hardest Hit with $1 Million-Plus Awards

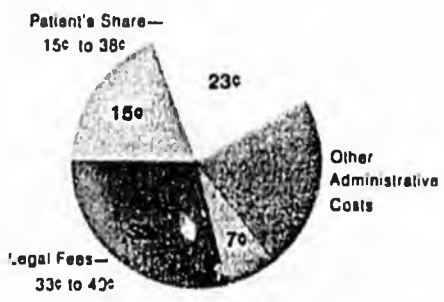
16 in California history prior to 1/74
3 prior to 1971
13 since 1971
11 in 1973-74

1 per month on average, 1975

The increasing number of $1 million-plus claims and the willingness of California juries to make 7-figure awards is one reason why claims paid in that state jumped from $15 million in 1971 to $31 million in 1974. Currently, there is even a claim pending for $1 billion!

Source: California Medical Association.

Meanwhile, the Patient's Share Gets Smaller



Patient's Share of Malpractice Premium Dollar



Patient's Share of Workmen's Compensation Premium Dollar

A 1974 study by the Physicians Crisis Committee in Michigan found that less than 25¢ of the premium dollar goes to patients—the rest goes for legal fees and other expenses. A similar study at Chicago's Presbyterian-St. Luke's Hospital recently found an even smaller portion going to injured parties—only 15¢ of every dollar. The 38¢ estimate that goes to the plaintiff is one advanced in the Library of Congress's "Overview of Medical Malpractice." In an interesting contrast, an injured party's share of an award under Workmen's Compensation varies from 70¢ to 75¢.

Section II begins on page 18

PROFESSIONAL BUILDING
529-6TH AVENUE

PHONE 451-3393
451-4206

Henry G. Storrs. M.D.
SURGEON
FAIRBANKS, ALASKA

February 16, 1976

Charles Parr
Alaska Legislature
Pouch V
Juneau, Alaska 99801

Dear Mr. Parr:

Thank you for spending your Saturday afternoon discussing the pending malpractice legislation with the doctors of Fairbanks. It is interesting to note that of the almost thirty doctors there, all but two were specialists!

Two points that should probably be considered, perhaps when the bill goes to joint conference with the senate version are; first, limiting the plaintiff's attorney fees to "usual, customary, fair and average." The attorney fees in this area are standardized at between $50 and $60 an hour. The medical profession has been well limited to "fair, reasonable, just and average," etc. fees. There is no reason why the attorneys should not likewise be regulated, at least when dealing in this field of their endeavor. Of course, if they wish to forego collection of a fee if their case is unsuccessful, that would be between them and their client. But such a reduction in fees would tend to reduce the enthusiasm with which they persue useless or "nuisance" cases.

The second point is the limitation of the entire award, taking into consideration other compensation which the citizen may be receiving. The monthly payments are certainly a step in this direction. It should be pointed out that workmen's compensation has a definite fee award limit for damages sustained. It would appropriately apply to the practice of medicine. Sometimes an injured worker is collecting for an injury under workmen's compensation, but then with the aid of some attorney decides he may collect for the disability from a doctor who obtained a less than perfect result from his attempts to correct the injury. The awards in such a case do not take into consideration either the fact that he has already been awarded damages for his injury, nor do they as yet limit his medical award to even the same range of damages.

One final point I hope will be included in the bill is the retroactive date to January 1975 to include all uninsured physicians during any period of that time for both claims made or occurred and whether or not they have been filed.

Thanks again for your interest in this matter.

Sincerely yours,

Henry G. Storrs, M. D.

HGS/ch

DISTRIBUTION OF LOSSES
MEDICAL MALPRACTICE
ONE YEAR EXPOSURE

	1976	1977	1978	1979	1980	1981	1982	1983	19 –
INCIDENTS	1000000								
REPORTED		450000	250000	150000	50000	25000	12500	12500	50000
PAID		100000	200000	300000	250000	25000	12500	12500	100000

DISTRIBUTION OF PREMIUM
MEDICAL MALPRACTICE
CAR YEAR EXPOSURE

	1976	1977	1978	1979	1980	1981	1982	1983	19—	TOTAL
OCCURRANCE										
CLMS REPORTED	0									
CLMS PAID	0									
IBNR	1000000 —									
PURE PREMIUM	1000000 —									1000000 —
CLAIMS MADE										
CLMS REPORTED		450000 —	250000	150000	50000 —	25000 —	12500 —	12500 —	50000 —	
CLMS PAID										
IBNR										
PURE PREMIUM		450000	250000	150000	50000	25000	12500	12500	50000 —	1000000
[redacted] **CLAIMS PAID**										
CLMS PAID		100000	200000	300000	250000	25000	12500 —	12500 —	100000 —	
PURE PREMIUM		100000	200000	300000	250000	25000	12500	12500	100000 —	1000000 —

DISTRIBUTION OF PREMIUM
MEDICAL MALPRACTICE
ONE YEAR EXPOSURE

	1976	1977	1978	1979	1980	1981	1982	1983	19—	TOTAL
COMMISSION										
CLMS RPTD										
CLMS PAID					150000	25000	12500	12500	100000	
IBNR	700000									
PURE PREMIUM	700000				150000	25000	12500	12500	100000	1000000

EIGHT YEARS OF EXPOSURE
MEDICAL MALPRACTICE

	1976	1977	1978	1979	1980	1981	1982	1983	19--	TOTAL
INCIDENTS	1000000	1000000 -	1000000	1000000	1000000	1000000	1000000	1000000		8000000
REPORTED	ø	450000 -	700000	850000	900000	425000	937500	950000	2287500	8000000
PAID	ø	100000 -	300000	600000	860000	875000	887500	900000	3487500 -	8000000

DISTRIBUTION OF PREMIUM
MEDICAL MAL PRACTICE
EIGHT YEARS OF EXPOSURE

	1976	1977	1978	1979	1980	1981	1982	1983	19 –	TOTAL
OCCURRANCE	1000000	1000000	1000000	1000000	1000000	1000000	1000000	1000000	0	8000000
CLMS MADE	0	450000	700000	850000	960000	925000	937500	950000	2287500	8000000
CLMS PAID	0	100000	300000	600000	850000	875000	887500	900000	3487500	8000000
COMMISSION										
OCCURRANCE	700000	700000	700000	700000	700000	700000	700000	700000	0	5600000
PAID	0	0	0	150000	175000	182500	200000	300000	1392500	2400000
PURE PREMIUM	700000	700000	700000	850000	875000	882500	900000	1000000	1392500	

DISTRICUTION OF PREMIUM
MEDICAL MALPRACTICE
EIGHT YEAR OF EXPOSURE
25% REDUNDANCY REDUCED BY DEVELOPMENT

	1976	1977	1978	1979	1980	1981	1982	1983	19—		TOTAL	CAVAE
OCCURRENCE POLICY												
LOSS DEVELOPMENT	~~1,250,000~~	450000	700000	850000	900000	925000	937500	950000	50000			
IBNR	1300000	<112500>	<62500>	<37500>	<12500>	<4250>	<3125>	<3125>				
PURE PREMIUM.	1250000	1132500	1085000	1037500	1025000	1018750	1015625	1012500			$ 8571875	
COMMISSION												
LOSS DEVELOPMENT	∅	450000	700000	700000								
IBNR CHANGE	875000	<112500>	<62500>	∅								
~~PURE PREMIUM~~												
(CF) CLAIMS PAID	∅	∅		150000	175000	182500	200000	300000	1392500			
(IC) PURE PREMIUM	875000	762500	700000	700000	700000	700000	700000	700000				
PUTRO ADJUSTMENT	∅	∅	∅	∅	<43750>	<59375>	<59375>	<59375>	<15625>			
NET PREMIUM	875000	762500	700000	850000	831250	823125	840625	940625	1376875		$ 6623125	13768

$ 8,000,000

RECOMMENDATION OF GOVERNOR'S COMMISSION ON MALPRACTICE

RECOMMENDATION #1: The liability of the health care provider should terminate three years after occurrence (two years statute of limitations and one year limit on discovery). Any reported case after the third year ought to become the responsibility of a special fund and not the liability of the health care provider.

RECOMMENDATION #2: Any award to which the injured patient is entitled should be reduced by all available collateral sources such as private, group or governmental medical or disability benefits whether contributory or noncontributory, except life insurance, by including the introduction into evidence of the items of damage compensated by collateral sources, except federal programs which by law must seek subrogation.

RECOMMENDATION #3: Medical professionals should be immune from liability to a person who is not his patient for administering emergency medical care where the giving of immediate aid appears to be the only alternative to death or serious bodily injury or harm.

RECOMMENDATION #4: The law should provide that no promise to achieve a certain medical result is valid unless that promise is in writing signed by the health care provider.

RECOMMENDATION #5: The definition of medical negligence be improved by adopting a national standard of acceptable medical care in lieu of a local community standard, limiting the standard to that at the time of the act, and imposing the standard appropriate under all circumstances under which the health care provider was acting.

RECOMMENDATION #6: Cases brought more than three years after the date of the incident alleged to cause the loss complained of must be proven by evidence that is clear and convincing.

RECOMMENDATION #7: There be enacted provision for appointment of ad hoc medical expert panels composed of at least one physician and two health care providers of the same discipline as the health care provider charged, impanelled after filing of an action and prior to any pretrial proceedings to initiate an investigation of available evidence and report to the parties its findings as to medical facts.

RECOMMENDATION #8: The findings of the expert medical panel be admissible as evidence and the panelists subject to cross-examination in any subsequent trial.

RECOMMENDATION #9: There be established a medical adjudication board consisting of nine citizens of the State who are neither health care providers nor legal professionals, nor insurers, and three physicians appointed by the Governor, and one Superior Court judge assigned by the court. This board would be the exclusive tribunal for medical negligence cases.

RECOMMENDATION #10: The legislature enact a joint resolution for the amendment of Article I, Section 16 of the Alaska State Constitution, permitting the legislature to consider an alternative system of adjudicating medical negligence claims which may be a substitution for trial by jury.

RECOMMENDATION #11: Provisions be made to authorize and administer the awards of future income and continuing medical care to be paid periodically rather than in a lump sum.

RECOMMENDATION #12: Jury and board awards shall be rendered by category of loss.

RECOMMENDATION #13: Create a Health Care Providers Indemnity Corporation, a public corporation, which would be regulated by the Director of Insurance as a domestic property and casualty insurer and which would be a mandatory and exclusive source of minimum limits of madical malpractice insurance for all health care providers for the losses reported within the first three years after occurrence.

RECOMMENDATION #14: The corporation may contract with servicing carriers for administrative and claims services and seek contracts of indemnity from admitted carriers retaining for itself no insurable risk.

RECOMMENDATIONS #15: The rates for coverages provided by the corporation should be developed based on Alaska's experience and retrospectively adjusted over a four year period such that each category of health care providers would fully pay for all losses and expenses incurred in the programs yielding an appropriate profit to the indemnity carrier.

RECOMMENDATION #16: The corporation provide coverage retroactively to January 1, 1975 with appropriate additional premiums for those health care providers which had no insurance during that period.

RECOMMENDATION #17: A joint underwriting association should be authorized to be implemented upon a finding by the Director of Insurance that indemnity at a reasonable rate is not available from a private carrier.

RECOMMENDATION #18: The joint underwriting association should be composed of all property, casualty and disability insurers and all health care service contractors.

RECOMMENDATION #19: Create a late claims fund which shall be funded by assessments against all health care providers in amounts determined by the Director of Insurance after public hearing as necessary to actuarially carry all fund liabilities and guaranteed by the State to the extent necessary to cover actuarial deficiencies. There should also be provision for the legislature to reduce the assessment of health care providers upon a finding that the assessment is unaffordable.

RECOMMENDATION #20: Legislation should be enacted which will require the maintenance of separate, specific and detailed statistical information on malpractice claims. Authority should be exercised by the Director of Insurance to more deliberately regulate policy forms and rates for this line.

RECOMMENDATION #21: The proposals of this Commission should inure to the benefit of, and be binding upon all licensed in the State as hospitals, as defined in AS 18.20.130 chiropractors, dental hygenists, dentists, physicians, osteopaths, chiropodists, nurses, opticians, pharmacists, physical therapists, psychologists and psychological assistants.

RECOMMENDATION #22: There should be a legislatively prescribed procedure for informing the patient of the consequences of a procedure and obtaining the consent to perform it and also setting forth the conditions pursuant to which consent is implied or not required.

RECOMMENDATION #23: The appropriate licensing boards should be authorized to render disciplinary sanctions against health care providers other than license suspension. The boards should be able to reprimand, censure, place on probation, restrict practice by time, specialty, procedure or facility or to require continuing education or retraining.

RECOMMENDATION #24: The appropriate licensing board should have authority to require more relevant and more frequent reports on healthcare practices by and from its licensees. Persons reporting should have immunity from defamation actions based on reports made to licensing boards to officially constituted service committees of hospitals and professional organizations.

RECOMMENDATION #25: The legislature appropriate such additional funds as are needed to properly staff the health care licensing boards with investigative and administrative personnel.

RECOMMENDATION #26: Provision should be made for more effective loss control by all health care providers but with specific attention to identified problem areas.



Dept. Administration. — 10th (Lobby Card.)

Dept Commerce — 9th.

Booklet of Legislaters

Committees

Senate - Commerce
Judiciary

House - Judiciary



January 25, 1976

MEDICAL and DENTAL MALPRACTICE in ALASKA
1957-1974
Known Claims or Suits
(after Plewett, Anchorage Daily News, July 31 & August 4, 1975)
data re-arranged

Year	Number of Claims	Annual Sum of Reported Settlements
1957	3	$ 395,000
1958	2	100,000
1959	2	130,000
1960	3	100,000
1961	2	30,000
1962	9	46,500
1963	4	60,000
1964	3	180,050
1965	3	63,545
1966	4	87,000
1967	6	335,000
1968	0	-0-
1969	4	-0-
1970	7	187,750
1971	7	565,500
1972	3	503,500
1973	1	7,500
1974	3	119,000
	66 (av 3.7/yr)	2,871,345* (av 160,000/yr)

*Includes $ 230,000 awarded against dentists

Awards or Settlements by Type of Practice

Surgery	15
General Pract	9
OB-GYN	4
Neurosurgery	3
Orthopedics	3
Dental	2
Internal Med	2
Radiology	1
	39

Claims or Suits Pending August 4, 1975

OB-GYN	7
Surgery	5
General Pract	4
Hospitals	3
Anesthesiology	1
Orthopedics	1
Pathology	1
Radiology	1
	23

Title Mal Practice

Alaska State Legislature

LEGISLATIVE AFFAIRS AGENCY

POUCH Y, STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3800

MEMORANDUM

February 7, 1976

Anchorage Medical Clinic
185,000 – 30 doctors 6,000

SUBJECT: Medical Malpractice Statistics (W.O. #1911)

TO: The Honorable Robert Bradley
The Honorable Terry Gardiner

FROM: Louise Crane
Research Analyst L.C.

The following information was compiled at your request:

1. TOTAL MEDICAID EXPENDITURES BY THE STATE:

Actual Expenditures	FY 74		$ 6,869,286
Actual Expenditures	FY 75		11,366,100
Authorization	FY 76		14,445,900
Expenditures to date		$ 4,312,400	
Balance & Restricted Funds		$10,133,500	
Budget Request	FY 77		$17,908,500

2. NUMBER OF PHYSICIANS ENROLLED IN MEDICAID PROGRAM.

FY 74	359
FY 75)	357
FY 76)	

3. TOTAL MEDICARE EXPENDITURES BY THE FEDERAL GOVERNMENT

FY 71	$434,000
FY 72	523,000
FY 73	
FY 74	987,000

(No physician enrollment is necessary in the Medicare Program.)

4. PHYSICIAN EARNINGS STATISTICS

The state (for HEW) collects physician earnings statistics from Medicaid information. No individual physicians earned more than $100,000 during FY 74 (the latest year the information is available). Three group practices received more than $100,000 in Medicaid payments during FY 74. These are as follows:

Alaska Clinic, Anchorage	$177,762
Fairbanks Medical & Surgical, Fairbanks	118,949
Tanana Med. & Surg. Clinic, Fairbanks	108,289

The Medicare Program requires an investigation of physicians receiving over $65,000 in Medicare payments in one year. The Social Security Office is not aware of any investigations.

You also requested information on the income distribution of Alaska physicians; this data is available but will require compiling the social security numbers from the Department of Commerce files, requesting a special computer run by the Department of Revenue to accumulate the information, and adjusting the information.

In the time alloted, the Research Division has been unable to allocate the more than 80 man-hours estimated as necessary to compile this information. An appropriately directed legislative request might elicit this information directly from the Department.

5. TOTAL MEDICAL MALPRACTICE PREMIUMS BY ALASKAN PHYSICIANS

The Division of Insurance, Department of Commerce & Economic Development is, at the request of the Legislative Affairs Agency, conducting an individual policy survey by polling each broker who markets medical malpractice insurance in Alaska.

The information is being compiled, but there are several crucial elements of information unavailable to date. A supplementary report will be issued as soon as the information is available and edited.

An important tie-in to the factors related to the malpractice premium distribution is that many "high exposure" physicians (class 4, 5 and 6 - i.e., speciality surgeons, etc.) are not purchasing insurance and this factor will skew the validity of the averages.

6. MEDICAL MALPRACTICE PREMIUM DOLLAR BREAKDOWN

The following table illustrates the expense categories that are taken into consideration by insurance companies in developing medical malpractice premium rates. The two columns of figures indicate the percentages of the premium allotted for each cost category according to two different sources. The Insurance Service Office (ISO) is an independent rating organization used by member insurance companies. The "range reported by insurance companies surveyed" refers to a sample survey of medical malpractice insurers by the contractor who prepared an economic analysis of the medical malpractice insurance market for the Secretary's (HEW) Commission of Medical Malpractice, 1973.

ECONOMIC ANALYSIS OF THE MEDICAL MALPRACTICE INSURANCE MARKET ON A NATIONAL LEVEL - 1972

Expense Category	Factors	
	Average Reported by ISO	"Range Reported by Insurance Companies Surveyed"
Acquisition/production	25	5 to 20
Administration/general overhead	12	5 to 12
Miscellaneous	3	3 to 5
Underwriting profit	5	5
Loss adjustment & loss	55	55 to 86

The Department of Commerce & Economic Development has indicated that the medical malpractice insurance premiums in Alaska show approximately the same distribution as the national level listed above.

7. THE NUMBER OF PRACTICING PHYSICIANS IN ALASKA IN THE LAST SEVERAL YEARS IS AS FOLLOWS:

Year	Active Status	With Alaska Address	New License Issued
1975	474	276	87
1974	No figures available		
1973	410	217	83
1972	373	169	64
1971	356	182	80
1970	276	182	86
1969	240	-	66

8. You may also be interested in the national "premium as percent of income" figures developed by Medical Economics Company, 1972 for self-employed general practitioners and self-employed general surgeons.

PHYSICIANS

Year	Dollar Cost	Index (1966=100)	Premium as Percent of Income
1960	$ 110.7	71.9	NA
1962	114.9	74.6	0.5
1964	133.0	86.4	0.5
1966	154.0	100.0	0.6
1968	249.5	162.1	0.8
1970	620.5	403.0	1.8
1971	711.5	462.1	NA
1972	767.2	498.3	NA

SURGEONS

Year	Dollar Cost	Index (1966=100)	Premium as Percent of Income
1960	229.1	52.3	NA
1962	279.1	63.7	NA
1964	378.1	86.2	1.2
1966	438.5	100.0	1.2
1968	571.0	130.2	1.4
1970	1,880.9	428.9	4.2
1971	2,094.0	477.5	NA
1972	2,307.4	526.2	NA

NA = Not Available

As mentioned earlier, the income of Alaskan physicians has not been compiled and, therefore, average premiums cannot at this time be related to average income.

LC:jm

QUESTIONS CONCERNING MALPRACTICE INSURANCE CRISIS

TO BE DIRECTED TOWARD MR. RICHARD BLOCK,

COMMISSIONER OF INSURANCE

1. The mandating of all of the hospitals and doctors in the State into an insurance "pool" is based on the premise that this will provide an attractive package for the insurance industry. Since there are fewer doctors and hospital beds in the entire State of Alaska than in even one section of a metropolitan area in the lower 48, please explain why an insurance company would find our package attractive, when large segments of the lower 48 are having acute insurance problems? They won't period.

2. Please supply specific details on which, if any, companies have committed themselves to the entire Commission package; what sort of ball park premium rates are envisioned as being "affordable"; and specifically, what efforts have been made to ascertain this information? None

3. You have been quoted as stating that a plan insuring only those currently without insurance would provide adverse experience at the outset. Many physicians whose insurance has been summarily cancelled after many years without a claim doubt the valadity of this statement and challenge you to prove that the claims experience of Alaskan doctors currently insured is significantly better than those who are not?

4. Many of the Commission points were based on the belief that the "Alaskan experience" is better than experience in the lower 48. Since Alaska is being inundated with "nonAlaskans" many physicians believe that the future Alaskan experience will be no better and possibly worse than the lower 48 experience.

5. A tax on physicians gross income is under active consideration as a basis for "premium" determination. As this would bear no relationship to risk factors and, in different garb, would be called a piece of the action, house cut, protection money, etc., how do you fit such a tax into broad insurance concepts?

6. It has been repeatedly asserted than mandatory participation of all of the States physicians and hospitals is necessary for actuarial soundness. Please provide firm statistical evidence: a) that any meaningful data can be derived in the forseeable future, considering the huge variation qualitatively within our small population of physicians and hospitals and the equally huge variation to be expected both qualtitative and quantitatively in any potential claims; b) that the chance current physician population to be mandated into the plan somehow, coincidentally, represents the minimum sample population which would be actuarily sound.

file Malpractice

Ketchikan Medical Society

3100 Tongass Avenue - Ketchikan, Alaska 99901

March 29, 1976

Representative Terry Gardiner
Pouch V
Juneau, Alaska 99801

Dear Terry:

I am writing in reference to your activities on the combined select committee on the malpractice legislation. I would like to let you know about our priorities and feelings concerning the issues yet to be decided in your committee.

Of all the issues yet to be decided, we believe the advisory panel concept is the most important. This would represent a true departure from the current situation, and offers patients the real possibility of early resolution of cases at the least expense, leaving the bulk of malpractice insurance premiums for injured patients, which is where they ought to go. Except where cases involved health care providers other than physicians, physicians should make up the panel.

Secondly, we strongly urge that language be refined to spell out very clearly the increased powers given the respective boards. Specifically, we support the changes in terminology offered by the medical association lobbyists in their March 15th releases. A copy of that paragraph is attached.

Thirdly, we favor sharpening the list of questions to be answered by the advisory panel. Again, I have attached the specific language previously offered by the medical association lobbyists.

Fourthly, we believe that basing malpractice premiums in considerable degree on medical revenues is the most realistic. A net medical income basis would avoid penalizing high overhead practices.

We support the concepts of toughening the licensing boards, clarifying informed consent and requiring participation in the insurance program. While there are further reforms we would like to see that are not included, we are pleased that the legislature is addressing this problem.

Thank you for your leadership.

Yours truly,

Dave

David E. Johnson, M.D.
President
Ketchikan Medical Society

SUGGESTED CHANGES TO CSHB 574

Firmer deliniation of responsibilities of professional board of examiners:

> That by reason of demonstrated deficiency of competence, experience, or education, or because of physical or mental illness, the authority to practice should be limited or conditioned or the practitioner disciplined, the board may reprimand, censure, place on probation, restrict practice, require further formal education approved by the board, or may suspend or revoke the license.

More specific listing of questions for advisory board:

(1) What was the disorder for which the person sought medical care?
(2) What would have been the outcome without medical care?
(3) Was the treatment selected appropriate for the case?
(4) Did an injury arise from the medical care?
(5) What is the injury?
(6) How extensive and how disabling is the injury?
(7) Is the injury stable; or will it improve or become worse?
(8) What specifically caused the injury?
(9) Was the injury the result of negligent medical care?
(10) Is the outcome different than would otherwise have been expected?

Supplement to the Report to the Legislature of the State of Alaska on Medical Malpractice Proposals

by Dr. Herbert S. Denenberg
P. O. Box 146
Wynnewood, Pa. 19096

(Initial Report Dated December 4, 1975 and presented in Juneau, Alaska on December 9 and in Anchorage on December 10, 1975)

February 20, 1976

1. On December 9, 1975, I met in Juneau, Alaska with a group that included Representative Mike Miller, Vice Chairman of the Legislative Council, Senator John Huber, Representative Fred Brown, Representative Larry T. Davis and staff members.

2. The next day I had a series of meetings with various members of the legislature, including Senator Chancy Croft, Senator Jalmar M. Kertulla, Senator Patrick Rodey, Representative Fred Brown, Representative Larry Davis, Representative Samuel R. Cotten, Representative Kathryn Ostrowsky, Representative Charles Parr, and staff members. In addition I talked to members of the Judiciary Committee before their meeting on Rent Control. Those attending, in addition to members of the legislature, included some members of the Governor's Commission on Medical Malpractice and other members of the public.

3. In the course of these meetings, and other informal discussions with members of the legislature, I made a series of comments and recommendations, which do not appear in my report. Some of these additional remarks are briefly summarized here to serve as a supplement to my initial report dated December 4, 1975. I have also included my response to several questions raised by members of the legislature.

4. The law of Alaska should be clarified so any advance payments on malpractice or other claims would not be considered an admission of liability and would be deducted from any final judgment.

Indiana, Louisiana, Nebraska, Nevada and Wisconsin have passed laws relating to this matter. Nebraska (Legislative Bill 560, passed in 1975) provides any advance payment will not be an admission of liability, and further that: "In the event of a trial involving such a claim, the fact that such payments have been made shall not be admissible in evidence or brought to the attention of the jury, and the matter of any credit to be deducted from a judgment shall be determined by a court in a separate hearing or upon the stipulation of the parties."

This should encourage early payment on claims, early settlements, and attempts to minimize damages by early medical treatment. (A similar approach has been suggested in the report on no-fault as to auto liability claims.)

5. Mandatory arbitration should be considered to provide a more economical determination of cases and a sweeping out of some of the flimsy claims. This would not impair the right to trial by jury as there would be a right of appeal de novo to the courts.

6. The Governor's Commission recommended legislation (p.15, sec.9.55.540(c)) subjecting claims more than three years old to a higher standard of proof than would be otherwise imposed on civil claims. This appears to be an unfair and unreasonable requirement, and any attempt to apply such a standard would probably create more confusion and problems than it would dispel.

7. Senator Huber asked me to comment on a provision in the crime compensation act making attorney's fees an addition to any award. This is certainly a sound provision and will help assure that any damages assessed will not be diverted immediately from the purposes for which they are awarded.

Whether this kind of provision is essential depends on the kind of compensation program being considered. For example, in workmen's compensation, the law may be designed to make sure the worker can collect without the need for a lawyer. If this is the case and if the assumption is sound, paying for all attorney fees may simply bring in lawyers needlessly and increase costs.

The National Commission on State Workmen's Compensation Laws had this to say on attorney fees: "An additional question is whether the employee or the employer should pay the employee's attorney's fee. With the adoption of our recommendations for improvements in the delivery system and the adequacy of benefits, it is not unreasonable to hold the employee primarily responsible for any attorney's fees that he incurs. However, States should consider the shifting of these fees to the employer as a form of penalty in those cases in which the employer or his insurer has acted in an unjustified manner."

This view of the National Commission is not entirely logical. Even if benefits are adequate, they will be rendered inadequate by deduction of attorney's fees.

The National Commission of Malpractice also considered the question of attorney's fees. It recommended regulating the contingent legal fee by establishing a scale in which the fee decreases as the recovery amount increases (a similar recommendation appears in my earlier report on malpractice).

Here, too, recoveries, if properly determined, will be rendered inadequate by deduction of attorney's fees. However, some believe juries tend to pad awards to cover legal expenses.

Ideally, recovery should include actual damages as well as expenses of litigation. To do so would increase the cost of malpractice insurance. It would also raise the question of charging the plaintiff with the defendant's attorney's fees in cases which the defendant won. All of this would introduce further uncertainties into the litigation process, and perhaps make the right to a day in court even more difficult to obtain.

Although the addition of attorney's fees in another context may be entirely appropriate, it is not clear that in the malpractice field this would be a wise practical measure.

There would be general agreement that requiring the payment of attorney's fees in cases in which there is unreasonable failure to pay benefits (or other unjustified action) is an appropriate measure. This kind of provision can be found in workmen's compensation laws. There, it has practical value, as most cases are clear cut with no room for argument, but in malpractice cases few claims are so clear cut, so the provision would have little practical value.

8. Representative Parr asked me to comment on how the malpractice system could be changed to make it possible for a small but meritorious claim to be collected. In small malpractice claims, it may not pay an attorney to handle the matter on a contingent fee basis. The National Commission on Medical Malpractice found cases in which claimants had to abandon a case which might be worth $10,000 because even such a meritorious case did not offer adequate incentive to an attorney working on a contingent fee basis (See p. 35 of National Malpractice Commission Report).

The only remedy the National Commission could suggest is to establish "public legal assistance mechanisms" or to expand those that already exist "to assure adequate legal representation to persons with small malpractice claims."

The ready availability of arbitration may somewhat ease the problem. Another suggestion is to establish small claims courts presided over by those technically proficient in the area of medical legal malpractice. In other words, this would be a special small claims court for malpractice claims.

There is probably no good answer for this problem at the present time. Perhaps at one point no-fault malpractice compensation systems will become practical, and enable small meritorious malpractice claims to be adequately compensated.

338

196858
FILE NUMBER

DOMESTIC

STATE OF WASHINGTON | DEPARTMENT OF STATE

I, A. LUDLOW KRAMER, Secretary of State of the State of Washington and custodian of its seal, hereby certify that

RECEIVED
APR 11 1969
Alaska Division
of Insurance

AMENDED
ARTICLES OF INCORPORATION

of WASHINGTON HOSPITAL SERVICE ASSOCIATION

a domestic corporation of Seattle, Washington,

(Amending Article II (purposes) and Article V (directors); and changing name to BLUE CROSS WASHINGTON-ALASKA, INC.)

was filed for record in this office on this date, and I further certify that such Articles remain on file in this office.

FILED FOR RECORD

Apr 11, 1969

State of Alaska
Division of Insurance
By # 31209
BH

In witness whereof I have signed and have affixed the seal of the State of Washington to this certificate at Olympia, the State Capitol,

March 24, 1969.

A. LUDLOW KRAMER
SECRETARY OF STATE

APPROVED
AS TO FORM AND MANNER
MAR 24 1961
A. LUDLOW KRAMER
SECRETARY OF STATE
BY
CORPORATION SECRETARY

AMENDED ARTICLES of INCORPORATION

of

WASHINGTON HOSPITAL SERVICE ASSOCIATION

STATE OF WASHINGTON)
) SS
COUNTY OF KING)

WE, the undersigned, the President and Secretary respectively, of WASHINGTON HOSPITAL SERVICE ASSOCIATION, hereby certify that, at a special meeting of the members of the Washington Hospital Service Association called for the purpose of amending the Articles of Incorporation, notice of which was given in the manner provided in the By-laws for the election of Trustees and more than two-thirds of all of the members voted to amend the following articles of the Articles of Incorporation to read as follows:

ARTICLE I.

"Name: The name of this corporation shall be:

BLUE CROSS WASHINGTON-ALASKA, INC.

ARTICLE I I.

Purpose: The particular business and object of the corporation shall be to establish, maintain and operate, with no individual being entitled to any of the net income thereof, a non-profit hospital service plan whereby hospital care shall be provided to persons who become subscribers to the plan of the corporation under contract entitling each subscriber to certain hospital care by and at the hospitals with which the corporation may from time to time contract, to contract with such hospitals as may be approved and selected by the

Board of Directors for the purpose of acting as their agent, to provide hospital care to the subscribers of the plan; to promote the general and social welfare of such persons as may become subscribers of the plan, and to do all things necessary, proper or convenient for the purpose of promoting, establishing and operating such non-profit hospital service plan, to furnish to individuals, on a non-profit basis, prepaid medical, surgical, dental, other therapeutic services and home nursing care by this corporation, through any means found desirable, including but not limited to this corporation, entering into contractual relations with, corporations, firms, associations or individuals who or which furnish such prepaid medical, surgical, dental, other therapeutic services and/or home nursing care on a prepayment for services or indemnity basis, or furnish insurance covering such medical, surgical, dental, other therapeutic services or home nursing care; to act as agent for such corporation, firm, association or individual, and to do all things necessary, proper or convenient, in connection therewith."

ARTICLE V.

"Directors: The number of Directors shall be not less than five nor more than twenty-five, as shall be determined from time to time by the Board of Directors and the names of the Board of Directors who shall manage the affairs of the corporation until the next annual meeting of the corporation shall be:

Don J. Robbins	Pacific Northwest Bell Company 1616 Exchange Building Seattle, Washington 98104
Robert N. Rabideau	Overlake Memorial Hospital 1035 - 116th N.E. Bellevue, Washington 98004
Walter L. Huber	Tacoma General Hospital 315 South "K" Street Tacoma, Washington 98405
Theodore E. McCaffray	National Fruit Canning Company P. O. Box 9366 Seattle, Washington 98109
Irving S. Smith	Continental, Inc. 701 Second Avenue Seattle, Washington 98104

Elmer A. Hill	Seattle General Hospital Fifth & Marion Seattle, Washington 98104
Sister Georgette Jean	St. Elizabeth Hospital 110 South Ninth Avenue Yakima, Washington 98902
William E. Murray	Valley General Hospital 4th & Shattuck Renton, Washington 98055
Sister Barbara Ellen	Providence Hospital 3200 Providence Drive Anchorage, Alaska 99504
Fred Hulcen	The Boeing Company P.O. Box 3707 Seattle, Washington 98124
C. J. Kretchmer	Blue Cross Washington-Alaska, Inc. P.O. Box 327 Seattle, Washington 98111
Willis Parr	Skagit Valley Hospital 1415 Kincaid Street Mount Vernon, Washington 98273
Sister Virginia Schwager	Providence Hospital 17th & East Jefferson Seattle, Washington 98122
Larry D. McIntyre	Prosser Memorial Hospital Prosser, Washington 99350
Sister Xavier Richardson	St. Ignatius Province East 9 Ninth Avenue Spokane, Washington 99202
George H. Stone	Children's Orthopedic Hospital 4800 Sandpoint Way Seattle, Washington 98105
John A. Dare	Virginia Mason Hospital 1111 Terry Avenue Seattle, Washington 98101
C. Grover Wilson	811 West 26th Avenue Spokane, Washington 99202
Thomas L. McQuaid	1220 Dexter-Horton Building Seattle, Washington 98104
John W. Kludt	St. Luke's General Hospital 809 East Chestnut Bellingham, Washington 98225
Eugene W. Pray	Columbia Basin Hospital Ephrata, Washington 98823
Rev. Lawrence Willenborg	St. Vincent dePaul Parish 30525 - 8th Avenue South Federal Way, Washington

Harold E. Silvernail	Edmonds School District No. 15 3800 - 196th S.W. Lynnwood, Washington
Rev. Chester Finkbeiner	Central Washington Deaconess Hospital Okanogan & Kittitas Streets Wenatchee, Washington 98801
Charles Y. McGarrigle	Puget Power P.O. Box 329 Renton, Washington 98055
Robert W. Bradley	Harrison Memorial Hospital 2520 Cherry Street Bremerton, Washington 98310

WASHINGTON HOSPITAL SERVICE ASSOCIATION

S/ _____
Don J. Robbins, President

S/ _____
Theodore E. McCaffray, Secretary

SUBSCRIBED AND SWORN TO before me this 14 day of March, 1969.

_____
Notary Public in and for the State of Washington
residing at Seattle

FILED FOR RECORD
SECRETARY OF STATE
TERRITORY OF ALASKA
NOV 28 1932
NEIL F. MOORE - Auditor

ARTICLES OF INCORPORATION

OF

WASHINGTON HOSPITAL SERVICE ASSOCIATION

Know All Men By These Presents:

That we, Walter Heath, Howard C. Ries, A. L. Holberg, Sister Mary of the Cross, Herina I. Eklind, Ethel V. Soper, Mother M. Teresa, and John A. Dare, desiring to organize a corporation not formed for profit, as provided by the laws of the State of Washington under Remington's Revised Statutes, sections 3888 to 3900, and for the promotion of social welfare, hereby associate ourselves and adopt, in triplicate, the following Articles of Incorporation:

ARTICLE I.

Name: The name of this corporation shall be:

WASHINGTON HOSPITAL SERVICE ASSOCIATION.

ARTICLE II.

Purpose: The particular business and object of the corporation shall be to establish, maintain and operate, with no individual being entitled to any of the net income thereof, a non-profit hospital service plan whereby hospital care shall be provided to persons who become subscribers to the plan of the corporation under contract entitling each subscriber to certain hospital care by and at the hospitals with which the corporation may from time to time contract, to contract with such hospitals as may be approved and selected by the Board of Trustees for the purpose of acting as their agent, to provide hospital care to the subscribers of the plan; to promote the general and social welfare of such persons as may become subscribers of the plan and to

do all things necessary, proper or convenient for the purpose of promoting, establishing and operating such non-profit hospital service plan.

ARTICLE III.

Principal Place of Business: The principal place of business of this corporation shall be in Seattle, King County, Washington.

ARTICLE IV.

Term of Existence: The term for which this corporation is to exist is fifty years.

ARTICLE V.

Trustees: The number of Trustees shall be not less than five nor more than twenty-five, as shall be determined from time to time by the Trustees, and the names of the Trustees who shall manage the affairs of the corporation until September 15, 1945 shall be:

Names	Addresses:
Dr. Herbert Coe	Summit & Madison, Seattle, Washington
Dr. C. W. Knudson	Seattle General, " "
Herina I. Eklind	Swedish Hospital, " "
Sister Brendon	Sacred Heart Hospital, Spokane,"
Sister Maria of Providence	Providence Hospital, Seattle, "
Sister Joan Marie	St. Joseph's Hospital, Bellingham, Washington
Sister Mary Jane	" " " Tacoma, Washington
Mother M. Teresa	Columbus Hospital, Seattle, Washington
Rev. Cornelius Harrington	Seattle, Washington
John A. Dare	Virginia Mason Hospital, Seattle, Washington
A. L. Howarth	Deaconess Hospital, Wenatchee, Washington
Howard C. Ries	Everett, Washington
Gordon Gilbert	St. Luke's Hospital, Spokane, Washington
Horace Turner	Deaconess Hospital, " "
Dr. H. E. Rhodehamel	Spokane, Washington
Walter Heath	Tacoma General Hospital, Tacoma, Washington
Cecile Tracy Spry	Everett General Hospital, Everett, Washington
A. L. Holberg	Maynard Hospital, Seattle, Washington
Sister Providence of the Sacred Heart	St. Elizabeth's Hospital, Yakima, Washington

IN WITNESS WHEREOF, we, the undersigned, being each of the original incorporators hereinbefore named, for the purpose of forming a

corporation to do business within the State of Washington, do make and file these Articles of Incorporation, hereby certifying and declaring that the facts herein stated are true and, accordingly, have hereunto set our hands and seals this 4th day of May, 1945.

Walter Heath

Howard C. Ries

A. L. Holberg

Sister Mary of the Cross

Herina I. Eklind

Mother M. Teresa

Ethel V. Soper

John A. Dare

State of Washington,)
: ss
County of King)

THIS IS TO CERTIFY that before me, the undersigned notary public in and for the State of Washington, duly commissioned, sworn and qualified, personally appeared the above named incorporators: Walter Heath,

Howard C. Ries, A. L. Holberg, Herina I. Eklind, Ethel V. Soper, Mother M. Teresa and John A. Dare, to me personally known to be the individuals who signed the foregoing Articles of Incorporation, and jointly and individually acknowledged to me that they signed and sealed the same as their free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and seal of office this 4th day of May, 1945.

Lewis L. Stedman
Notary Public in and for the State of Washington, residing at Seattle.

State of Washington,)
: ss
County of)

THIS IS TO CERTIFY that before me, the undersigned notary public in and for the State of Washington, duly commissioned, sworn and qualified, personally appeared Sister Mary of the Cross, one of the above named incorporators, personally known to me to be one of the individuals who signed the Articles of Incorporation and who acknowledged to me that she signed, sealed and executed the same as her free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and seal of office this 8th day of May, 1945.

Lewis L. Stedman
Notary Public in and for the State of Washington, residing at Seattle.

AMENDED ARTICLES OF INCORPORATION

of

WASHINGTON HOSPITAL SERVICE ASSOCIATION

We, Howard C. Ries and Sister Maria of Providence, president and secretary, respectively, of the Washington Hospital Service Association, do hereby certify that at a special meeting of said Association held June 30, 1947, at which meeting more than two-thirds of its members were present in person or by proxy, by resolution duly made, seconded and unanimously adopted, Article II of the Articles of Incorporation of said Association was amended to read as follows:

Article II.

Purpose: The particular business and object of the corporation shall be to establish, maintain and operate, with no individual being entitled to any of the net income thereof, a non-profit hospital service plan whereby hospital care shall be provided to persons who become subscribers to the plan of the corporation under contract entitling each subscriber to certain hospital care by and at the hospital with which the corporation may from time to time contract, to contract with such hospitals as may be approved and selected by the Board of Trustees for the purpose of acting as their agent, to provide hospital care to the subscriber of the plan; to promote the general and social welfare of such persons as may become subscribers of the plan, and to do all things necessary, proper or convenient for the purpose of promoting, establishing and operating such non-profit hospital service plan, to furnish to individuals, on a non-profit basis, prepaid medical surgical and home nursing care by this corporation, through any means found desirable, including but not limited to this corporation entering into contractual relations with, corporations, firms, associations, or individuals who or which furnish such prepaid medical, surgical and/or home nursing care on a prepayment or indemnity basis, or furnish insurance covering such medical, surgical or home nursing care; to act as agent for such corporation, firm, association or individual, and to do all things necessary, proper or convenient in connection therewith.

Dated at Seattle, Washington, this June 30, 1947.

Howard C. Ries
President

Sister Maria of Providence
Secretary

State of Washington,)
: ss
County of K i n g.)

Howard C. Ries, as president of the Washington Hospital Service Association, being first duly sworn on oath deposes and says:

That the foregoing copy of Article II of the Article of Incorporation of Washington Hospital Service Association is a full, true and correct copy of such Article II, as amended, as duly adopted by a vote of more than two-thirds of the members of said Association at a special meeting duly called for the purpose of so amending the Articles of Incorporation, notice of which meeting was given in the manner provided by the By-Laws of the Association for the giving of notices and election of trustees.

Howard C. Ries

Subscribed and sworn to before me this June 30, 1947.

G. P. Locker
Notary Public in and for the State of Washington, residing at Seattle.

State of Washington,)
: ss
County of Clark)

Sister Maria of Providence, as secretary of the Washington Hospital Service Association, being first duly sworn on oath deposes and says:

That the foregoing copy of Article II of the Articles of Incorporation of Washington Hospital Service Association is a full, true and correct copy of such Article II, as amended, as duly adopted by a vote of more than two-thirds of the members of said Association at a special meeting duly called for the purpose of so amending the Articles of Incorporation, notice of which meeting was given in the manner provided by the By-Laws of the Association for the giving of notices and election of trustees.

Sister Maria of Providence

Subscribed and sworn to before me this 7th day of July 1947.

Claire Lewis
Notary Public in and for the State of Washington, residing at Camas

I, Herina I. Eklind, Secretary of the Washington Hospital Service Association do certify that the foregoing are true copies of the By-Laws of the Washington Hospital Service Association and the amended By-Laws of the Washington Hospital Service Association.

Signed H. Herina I. Eklind

THE ALASKA CLINIC
A PROFESSIONAL CORPORATION
825 L STREET
ANCHORAGE, ALASKA 99501
907-279-0622

November 17, 1975

DEPARTMENT OF INTERNAL MEDICINE
GARY ARCHER, M.D.
DALE I. WEBB, M.D.
W.B. BEACHAM, M.D.
ANNE M. MORRIS, M.D.
GERALD G. MORRIS, M.D.
RICHARD A. ANSENHERTZ, M.D.

SECTION OF NEUROLOGY
JANICE HASTELLA, M.D.

SECTION OF PSYCHIATRY
ROBERT MC MAHON, M.D.
DONALD A. PEIGIN, M.D.
ROYAL P. RIEHL, M.D.

DEPARTMENT OF FAMILY AND INDUSTRIAL MEDICINE
VERNON A. GATES, M.D.
TRYON S. WIELAND, M.D.
JERRY LITTLE, M.D.
ROBERT SCIVELL, M.D.
GILBERT S. DICKIE, M.D.
THOMAS S. WILSON, M.D.
JANICE BARRY, M.D.
D.E. MELVILLE, M.D.

DEPARTMENT OF GENERAL THORACIC AND VASCULAR SURGERY
SAM DE PALATIS, M.D.
DAVID M. GIETZ, M.D.

DEPARTMENT OF OBSTETRICS AND GYNECOLOGY
BURNETT W. NEWTON, M.D.
WILLIAM H. IVY, M.D.
RICHARD W. CURTIS, M.D.
JERRY GREEN, M.D.
GEORGE STRANSKY, M.D.

DEPARTMENT OF ORTHOPAEDIC SURGERY
JOHN O. PROBY, M.D.

DEPARTMENT OF PATHOLOGY
DONALD R. ROGERS, M.D.
MICHAEL T. PROBY, M.D.

DEPARTMENT OF PEDIATRICS AND ADOLESCENT MEDICINE
WILLIAM M. LARSON, M.D.
ALAN HENDRICKSON, M.D.
PHYLLIS S. RIEHL, M.D.

DEPARTMENT OF UROLOGIC SURGERY
HERBERT BIAS, M.D.

DEPARTMENT OF EMERGENCY SERVICES
ALEXANDER SUDELMAN, M.D.

DEPARTMENT OF ADMINISTRATION
MAX HERSCHBERGER, ADMINISTRATOR
JAMES HOOKER, BUSINESS MANAGER

Governor Jay Hammond
Juneau,
Alaska

Dear Governor Hammond:

The Alaska Clinic has been criticized by some in the medical community for failing to take a stand regarding the recent malpractice insurance problem. The Clinic has adequate insurance from a commercial carrier and in addition, is currently negotiating with another company for even more favorable coverage. Therefore, we are not as urgently affected as are some of our colleagues. This is not to say that we are ignorant of, or insensitive to the problem which is nationwide in scope. We, too, feel that the present system of handling malpractice claims has evolved into an unworkable one and that some fundamental change is essential. We have felt that the actions of some local physicians have been ill-advised and counter-productive. We have elected to remain silent until specific proposals are available for consideration. Since the Governor's commission has now made its recommendations available, we will break our silence.

The principle of making malpractice risks more predictable is obviously valid and, therefore, we support the concept of a more reasonable statute of limitations, reduction of awards by collateral sources of compensation, requiring "clear and convincing" evidence of negligence, periodic versus lump-sum payments, establishment of professional review boards to evaluate claims out of court, strengthening of the disciplinary functions of the State Licensure Board, and limiting contingency fees by lawyers to a reasonable level. These measures alone could make Alaska more attractive to insurance companies and would greatly help to restore a measure of justice to the currently chaotic situation.

The Clinic is opposed to the creation of a "Health Care Providers Indemnity Corporation", membership in which would be mandatory. This provision might benefit solo practitioners, but at great expense to group practices. It is

conceivable that a state-created monopoly could result in very high premiums. It should be noted that group practices have a risk record that has allowed them to remain insured while those in solo practice are losing their coverage. It would be grossly unfair to require groups to give up their reasonably-priced policies to join such a corporation.

The Clinic is also opposed to the creation of a "Late Claims Fund", to be financed by a tax on gross billings. This approach would result in wide variation of actual contributions since net income is so variable among the specialties and between groups and soloists. It should be noted that The Alaska Clinic is intimately associated with a general hospital and provides laboratory and x-ray services to that hospital at cost. This greatly increases the gross billings of the Clinic, but the increase is not reflected in our net. The creation of such a fund on that basis would necessitate substantial increases in both professional fees and hospital room rates. If such a fund is deemed essential, the contribution should be assessed in a manner directly proportional to risk, as is the case with other forms of liability coverage. Again, however, mandatory membership is unfair since most groups have occurrence-type policies which give continual protection thus making participation in such a fund unnecessary. Mandatory involvement in such a scheme might even be found unconstitutional.

The Clinic is also opposed to the concept of a JUA which, even if deemed legal, does not seem reasonable from the standpoint of insurance companies which, after all, are profit making organizations operating in a supposedly free-enterprise system. They should not be forced into unprofitable business ventures by government.

The Clinic would support the development of a mechanism embodying those principles alluded to in paragraph #2, which would assure reasonable compensation to patients truly injured by genuine physician negligence, which would operate in the free-enterprise system, which would be funded by premiums based on risk, and which would incorporate procedures designed to minimize the burden on the legal system.

Sincerely yours,

Donald R. Rogers, M.D.

DRR/ds

THE ALASKA CLINIC
A PROFESSIONAL CORPORATION
825 L STREET
ANCHORAGE, ALASKA 99501
907-279-0622

January 21, 1976

DEPARTMENT OF INTERNAL MEDICINE
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DEPARTMENT OF EMERGENCY SERVICES
ALEXANDER DUBELMAN, M.D.

DEPARTMENT OF ADMINISTRATION
MAX KERSBERGEN, ADMINISTRATOR
JAMES KOONCE, BUSINESS MANAGER

Representative Terry Gardiner
Chairman, House Judiciary Committee
State Capitol
Pouch V
Juneau, Alaska 99811

Dear Mr. Gardiner:

As we discussed on the phone earlier today, the physicians who belong to the larger groups in Anchorage, Fairbanks and Soldotna are opposed to mandatory inclusion into any proposed State sponsored medical malpractice insurance plan. While I cannot document this statistic, our insurance carrier assures us that group practices have a much better record regarding incidence of lawsuits. This facts allows us to buy insurance at a reasonable rate even when some soloists cannot acquire it at any cost. We feel it unfair to us and to our patients (who ultimately pay for it) to be forced to subsidize the soloists. While this may sound insensitive, our feeling is that any plan which manipulates only the insurance rates will not solve the basic problem - that of the manner in which tort law is applied. If reform in that area were to come about, the insurance industry would probably be able to function in the traditional fashion.

I believe that two members of the ASMA have lobbied in favor of the mandatory provisions of the Commissioner's plan giving the impression that support is unanimous among Alaska physicians. I think that I speak for approximately one-third of the doctors in the State in opposition to these provisions (the third who continued to work during last summer's slow down).

I would appreciate it if you would share these thoughts with your committee members. Enclosed is a copy of a letter which I wrote to the Governor late last year which amplifies somewhat.

Sincerely yours,

Donald R. Rogers, M.D.
President, Board of Directors

DRR/ds

HB
584

"An Act relating to substitution of prescription drugs by pharmacists."

COMMITTEE REPORT

2/6/76

HOUSE

Mr. Speaker: Date _____

The Committee on JUDICIARY has had [redacted] HB 584

under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "a d" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

Original Sponsors: Bradley, Bradner
and Gardiner

IN THE HOUSE BY THE FREE CONFERENCE COMMITTEE

FREE CONFERENCE CS FOR SENATE CS FOR CS FOR HOUSE BILL NO. 584

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the Pharmacy Act."

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

* Section 1. AS 08.80.030(3) is amended to read:

(3) investigate [,] individually, [OR] collectively, or through its agent, for [ALL ALLEGED] violations of this chapter, or of any other state or federal statute relating to the practice of pharmacy;

* Sec. 2. AS 08.80.295 is repealed and re-enacted to read:

Sec. 08.80.295. SUBSTITUTION. (a) Except as limited by (b) and (c) of this section, with the consent of the purchaser, the pharmac may substitute a drug product with the same generic name in the same strength, quantity, dose and dosage form as the prescribed drug which is, in the pharmacist's professional opinion, therapeutically equivalent and meets the standards of (e) of this section. Upon substitution the pharmacist shall notify the purchaser and the person who prescribed the drug of the substitution and of the drug substituted.

(b) A person authorized to prescribe drugs shall specify in writing or by oral communication whether or not the pharmacist may substitute a drug under (a) of this section. Written specification may be accomplished by checking a box on the prescription order labeled "DISPENSE AS WRITTEN" or "SUBSTITUTION ALLOWED" if the physician personally initials the box or check mark; in the event the physician fails or neglects to initial the box or check mark, the prescription is invalid and may not be dispensed. Written specification may also be by handwriting. If the person communicating the specification does so orally,

the pharmacist shall indicate that fact in handwriting on the written copy of the prescription order.

(c) A pharmacist shall substitute a drug product under (a) of this section only when there will be a savings in cost to the purchaser.

(d) If a person authorized to prescribe drugs is temporarily unavailable, the pharmacist may, if he cannot supply the drug requested, substitute a drug or preparation of approximately equal therapeutic value so long as he notifies the author of the prescription at an early opportunity. The pharmacist in all cases of substitution, except when specifically indicated to the contrary by the prescriber, shall relate the nature of the change to the purchaser.

(e) The manufacturer of products substituted under the provisions of this section shall comply with the following minimum good manufacturing standards and practices:

(1) maintain quality control standards equal to those of the Food and Drug Administration;

(2) comply with regulations promulgated by the Food and Drug Administration;

(3) mark products with identification code or monogram;

(4) label products with expiration date;

(5) provide services to accept return goods;

(6) maintain twenty-four hour resources for product information;

(7) maintain drug recall capabilities;

(8) provide documentation of compliance with Department of Defense (DOD) standard of purchases.

(9) shall not refuse to sell to any properly licensed pharmacy.

(f) As used in this section, unless the context requires other-

wise,

(1) "brand name" means the proprietary or trade name selected by the manufacturer and placed upon a drug, its container, label or wrapping at the time of packaging;

(2) "generic name" means the official title of a drug or drug ingredients published in the latest edition of a Pharmacopoeia, Homeopathic Pharmacopoeia or Formulary;

(3) "reference or trade standard product" means the original or patented product of the original manufacturer;

(4) "substitute" means to dispense without prescriber's express authorization a different drug product in place of the drug ordered or prescribed;

(5) "therapeutically equivalent" means drugs that will provide essentially the same efficacy and toxicity when administered to an individual in the same dosage regimen.

* Sec. 3. AS 08.80 is amended by adding a new section to read:

Sec. 08.80.297. PRESCRIPTION PRICES AVAILABLE TO CONSUMER. A pharmacist shall disclose the price of filling any prescription before filling it, when requested by the consumer.

* Sec. 4. AS 08.80.460 is amended by adding a new subsection to read:

(b) A person who violates the provisions of sec. 295 of this chapter is punishable by a civil fine in an amount established by the board in a schedule or schedules establishing the amount of civil fine for a particular violation. The schedule or schedules shall be adopted by the board by regulation. Any civil fine imposed under this section may be appealed in the manner provided for appeals in the Administrative Procedure Act (AS 44.62).

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M May 17, 1976

SUBJECT: Preliminary Analysis of Constitutionality of Senate amendment to SCS for CS for HB 584

TO: David T. Walker

FROM: John Siemers, Legislative Intern

This office has been requested to examine the constitutionality of a Senate amendment to Section 2 of SCS for CS for HB 584. The amendment, which adds a subsection (e) to AS 08.80.295, provides "minimum good manufacturing standards and practices" for drug manufacturers. Because of the presence of extensive federal regulations in this area under the Food, Drug and Cosmetic Act (21 U.S.C., Section 301 et. seq.), a question has been raised as to the state's power to act on this subject matter.

It should be noted at the outset that federal legislation governing the manufacture and sale of food, drugs and cosmetics does not act to prevent the states from exercising their police powers to protect local consumers. To hold otherwise is to accept a form of federalism which would make even Hamilton blush. Thus, the Supreme Court has held that the original Food and Drug Act of 1906 did not exempt from more stringent state regulation articles of commerce which complied with federal standards (Weigle v. Curtice Bros. Co., 248 U.S. 285 (1919); Corn Products Refining Co. v. Eddy, 249 U.S. 427 (1919)).

This should not be taken to mean that the states may enjoy a jurisdictional carte blanche in regulating the manufacture and sale of food, drugs and cosmetics. For example, in McDermott v. Wisconsin, 228 U.S. 115 (1913) the court struck down a Wisconsin labeling statute for corn syrup. The statute required a label distinct from the type mandated by federal law and further required that the state imposed label be exclusively used on corn syrup sold within the state. The court took note of the fact that the exclusive labeling provisions necessitated removal of the federally required label prior to intrastate sale - thereby interfering with attempts by federal authorities to inspect corn syrup after it had been shipped into the state (id. 133-34).

More recently the court has dealt with preemption in a related area--regulation of the quality of food (Florida Lime and Avocado Growers v. Paul, 373 U.S. 132 (1963)). In Paul, California had adopted a standard for establishing the ripeness of avocados which relied upon the percentage of oil contained in the avocado. The act was contested by Florida avocado growers who were subject to the Agricultural Adjustment Act which regulated ripeness of avocados through the use of harvesting orders. Even though the effect of the California law was to exclude a substantial portion of Florida avocados from California markets because of the strictness of the California law, the court found that the California law did not stand "as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" (id. at 141). According to the court a state could adopt more stringent standards for food products which had complied with federal standards where the basis for the stricter standard was "a higher standard demanded by a state for its consumers" (id. at 145). As long as there is no conflict with the purposes of parallel federal regulations, and the state requirement is reasonable, stricter state standards existing for a purpose comparable to that of federal law is "permissable under all the authorities" (id.).

Turning to the specfic provisions of the Senate amendment, the first two paragraphs are clearly free from constitutional objection since they merely require manufacturers to adhere to federal regulations. Paragraph (3), requiring that products be marked with an identification code or monogram, may be permissable, at least if McDermott is read narrowly. In McDermott the court emphasized that the Wisconsin labeling requirement must fall, because it demanded use of the state sanctioned label only and excluded the federally sanctioned label. This constituted a clear interference with federal labeling requirements. If (3) merely requires an additional mark or code on the package, and this serves to aid in enforcement of state regulations, it would appear to be safe to conclude that such a requirement is not precluded by the federal act. The same argument would apply to paragraph (4). Currently an expiration date is required under federal law only where the Secretary of Agriculture considers it "necessary for protection of public health" (21 U.S.C. 352 (h)). Consequently, paragraph (4) would probably call for expiration labels on a number of products which are free from such a requirement under federal law. Absent an intent upon the part of Congress that the Secretary's failure to require expiration date labels on certain products acts to free manufacturers from state imposed labeling of expiration dates, this provision is probably constitutionally permissable.

Paragraph (5) (requiring manufacturers "to provide services to accept return goods") is extremely vague and should, if possible, be amended in order to clarify its meaning. If the purpose of (5) is to require manufacturers to make the return of defective products easier and more convenient for consumers, such a requirement would be a reasonable exercise of police powers. However, this provision should be redrafted to establish in clearer terms just what is expected of the manufacturers in order to achieve this purpose.

Paragraph (6) (twenty-four hour resources for product information) poses some serious problems, largely because its exact meaning is so elusive. It could be read to require manufacturers to maintain an office within the state where phone calls could be accepted at any hour of the day; or a hot line could be required to connect the manufacturers headquarters down south with Alaska consumers; or any number of other possibilities could be read into this language. If a manufacturer has gross sales in Alaska of moderate size, e.g., $20,000, (6), if construed stringently, could demand too much of the manufacturer such that a burden on commerce may be said to exist. Whatever the public policy objectives of the provision may be, this would undoubtedly be outweighed by the prohibitive costs of compliance. This provision needs to be clarified and narrowed.

Paragraph (7) (drug recall capabilities) is also somewhat vague, but if it can be read to require that manufacturers must be capable of removing unsafe products from the market as rapidly as possible, this is certainly a legitimate state objective consistent with a reasonable exercise of police power.

Paragraph (8) (provide documentation of compliance with Department of Defense standard of purchases) is extremely difficult to analyze without some understanding of what the D.O.D. standards are. Assuming that the D.O.D. standards were promulgated to assure the safety and efficacy of drugs purchased by the D.O.D., a state law tied to these same standards, even where they are stricter than those imposed by the Food, Drug and Cosmetic Act, would probably be upheld.

JS:smh

Original Sponsors: Bradley, Bradner and Gardiner

Offered: 3/2/76
Referred: Rules

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 584 (Judiciary) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to substitution of prescription drugs by pharmacists."

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

* Section 1. AS 08.80.295 is repealed and re-enacted to read:

Sec. 08.80.295. SUBSTITUTION. (a) Except as limited by (b) and (d) of this section, with the consent of the purchaser, the pharmacist may substitute a drug product with the same generic name in the same strength, quantity, dose and dosage form as the prescribed drug which is, in the pharmacist's professional opinion, therapeutically equivalent. Upon substitution the pharmacist shall notify the person who prescribed the drug of the substitution and of the drug substituted.

(b) A person authorized to prescribe drugs may specify in writing or by oral communication that there shall be no substitution for the specified brand name drug in any prescription. The phrase "no substitution" or words of like import must be in the person's handwriting or, if the prohibition was communicated orally, in the pharmacist's handwriting, and shall not be preprinted or stamped or initialed on the prescription form.

Retail

(c) Every pharmacy shall post a sign in a location easily seen by patrons at the counter where prescriptions are dispensed stating that "Alaska law provides that with your consent, unless prohibited by your doctor, this pharmacy may substitute a less expensive drug which is therapeutically equivalent to the one prescribed by your doctor." The printing on the sign shall be in block letters not less than one inch in

included on the list shall be final.

(b) The current list of the 100 most commonly prescribed drugs shall be conspicuously posted in each pharmacy registered with the board. After each prescription drug listed, the name of the manufacturer and the current selling price shall be clearly indicated for that prescription by the pharmacy. A pharmacy may change the current selling price and the posting of the price at any time.

(c) The price of all other drugs not included on the list of 100 commonly prescribed drugs shall be available and shall be quoted by the pharmacy upon request.

* Sec. 3. AS 08.80.460 is amended by adding a new subsection to read:

(b) A person who violates the provisions of sec. 295 of this chapter is punishable by a civil fine in an amount established by the board in a schedule or schedules establishing the amount of civil fine for a particular violation. The schedule or schedules shall be adopted by the board by regulation. Any civil fine imposed under this section may be appealed in the manner provided for appeals in the Administrative Procedure Act (AS 44.62).

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M May 17, 1976

SUBJECT: Preliminary Analysis of Constitutionality of Senate amendment to SCS for CS for HB 584

TO: David T. Walker

FROM: John Siemers, Legislative Intern JS

This office has been requested to examine the constitutionality of a Senate amendment to Section 2 of SCS for CS for HB 584. The amendment, which adds a subsection (e) to AS 08.80.295, provides "minimum good manufacturing standards and practices" for drug manufacturers. Because of the presence of extensive federal regulations in this area under the Food, Drug and Cosmetic Act (21 U.S.C., Section 301 et. seq.), a question has been raised as to the state's power to act on this subject matter.

It should be noted at the outset that federal legislation governing the manufacture and sale of food, drugs and cosmetics does not act to prevent the states from exercising their police powers to protect local consumers. To hold otherwise is to accept a form of federalism which would make even Hamilton blush. Thus, the Supreme Court has held that the original Food and Drug Act of 1906 did not exempt from more stringent state regulation articles of commerce which complied with federal standards (Weigle v. Curtice Bros. Co., 248 U.S. 285 (1919); Corn Products Refining Co. v. Eddy, 249 U.S. 427 (1919)).

This should not be taken to mean that the states may enjoy a jurisdictional carte blanche in regulating the manufacture and sale of food, drugs and cosmetics. For example, in McDermott v. Wisconsin, 228 U.S. 115 (1913) the court struck down a Wisconsin labeling statute for corn syrup. The statute required a label distinct from the type mandated by federal law and further required that the state imposed label be exclusively used on corn syrup sold within the state. The court took note of the fact that the exclusive labeling provisions necessitated removal of the federally required label prior to intrastate sale - thereby interfering with attempts by federal authorities to inspect corn syrup after it had been shipped into the state (id. 133-34).

More recently the court has dealt with preemption in a related area--regulation of the quality of food (Florida Lime and Avocado Growers v. Paul, 373 U.S. 132 (1963)). In Paul, California had adopted a standard for establishing the ripeness of avocados which relied upon the percentage of oil contained in the avocado. The act was contested by Florida avocado growers who were subject to the Agricultural Adjustment Act which regulated ripeness of avocados through the use of harvesting orders. Even though the effect of the California law was to exclude a substantial portion of Florida avocados from California markets because of the strictness of the California law, the court found that the California law did not stand "as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" (id. at 141). According to the court a state could adopt more stringent standards for food products which had complied with federal standards where the basis for the stricter standard was "a higher standard demanded by a state for its consumers" (id. at 145). As long as there is no conflict with the purposes of parallel federal regulations, and the state requirement is reasonable, stricter state standards existing for a purpose comparable to that of federal law is "permissable under all the authorities" (id.).

Turning to the specfic provisions of the Senate amendment, the first two paragraphs are clearly free from constitutional objection since they merely require manufacturers to adhere to federal regulations. Paragraph (3), requiring that products be marked with an identification code or monogram, may be permissable, at least if McDermott is read narrowly. In McDermott the court emphasized that the Wisconsin labeling requirement must fall, because it demanded use of the state sanctioned label only and excluded the federally sanctioned label. This constituted a clear interference with federal labeling requirements. If (3) merely requires an additional mark or code on the package, and this serves to aid in enforcement of state regulations, it would appear to be safe to conclude that such a requirement is not precluded by the federal act. The same argument would apply to paragraph (4). Currently an expiration date is required under federal law only where the Secretary of Agriculture considers it "necessary for protection of public health" (21 U.S.C. 352 (h)). Consequently, paragraph (4) would probably call for expiration labels on a number of products which are free from such a requirement under federal law. Absent an intent upon the part of Congress that the Secretary's failure to require expiration date labels on certain products acts to free manufacturers from state imposed labeling of expiration dates, this provision is probably constitutionally permissable.

Paragraph (5) (requiring manufacturers "to provide services to accept return goods") is extremely vague and should, if possible, be amended in order to clarify its meaning. If the purpose of (5) is to require manufacturers to make the return of defective products easier and more convenient for consumers, such a requirement would be a reasonable exercise of police powers. However, this provision should be redrafted to establish in clearer terms just what is expected of the manufacturers in order to achieve this purpose.

Paragraph (6) (twenty-four hour resources for product information) poses some serious problems, largely because its exact meaning is so elusive. It could be read to require manufacturers to maintain an office within the state where phone calls could be accepted at any hour of the day; or a hot line could be required to connect the manufacturers headquarters down south with Alaska consumers; or any number of other possibilities could be read into this language. If a manufacturer has gross sales in Alaska of moderate size, e.g., $20,000, (6), if construed stringently, could demand too much of the manufacturer such that a burden on commerce may be said to exist. Whatever the public policy objectives of the provision may be, this would undoubtedly be outweighed by the prohibitive costs of compliance. This provision needs to be clarified and narrowed.

Paragraph (7) (drug recall capabilities) is also somewhat vague, but if it can be read to require that manufacturers must be capable of removing unsafe products from the market as rapidly as possible, this is certainly a legitimate state objective consistent with a reasonable exercise of police power.

Paragraph (8) (provide documentation of compliance with Department of Defense standard of purchases) is extremely difficult to analyze without some understanding of what the D.O.D. standards are. Assuming that the D.O.D. standards were promulgated to assure the safety and efficacy of drugs purchased by the D.O.D., a state law tied to these same standards, even where they are stricter than those imposed by the Food, Drug and Cosmetic Act, would probably be upheld.

JS:smh

60% patent
10% generic
30% Multi-Manuf.

Original Sponsors: Bradley, Bradner and Gardiner

Offered: 4/28/76
Referred: Rules

IN THE HOUSE BY THE JUDICIARY COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 584 am S

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the Pharmacy Act."

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

* Section 1. AS 08.80.030(3) is amended to read:

(3) investigate [,] individually, [OR] collectively, or through its agent, for [ALL ALLEGED] violations of this chapter, or of any other state or federal statute relating to the practice of pharmacy;

* Sec. 2. AS 08.80.295 is repealed and re-enacted to read:

Sec. 08.80.295. SUBSTITUTION. (a) Except as limited by (b) and (c) of this section, with the consent of the purchaser, the pharmacist may substitute a drug product with the same generic name in the same strength, quantity, dose and dosage form as the prescribed drug which is, in the pharmacist's professional opinion, therapeutically equivalent and meets the standards of (e) of this section. Upon substitution the pharmacist shall notify the purchaser and the person who prescribed the drug of the substitution and of the drug substituted.

(b) A person authorized to prescribe drugs shall specify in writing or by oral communication whether or not the pharmacist may substitute a drug under (a) of this section. Written specification shall be accomplished by checking a box on the prescription order labeled "DISPENSE AS WRITTEN" or "SUBSTITUTION ALLOWED" if the physician personally initials the box or check mark; in the event the physician fails or neglects to initial the box or check mark, the prescription shall be dispensed as written. Written specification may also be by handwriting. If the person communicating the specification does so orally, the

Sign section

2 years

pharmacist shall indicate that fact in handwriting on the written copy of the prescription order.

(c) A pharmacist shall substitute a drug product under (a) of this section only when there will be a savings in cost to the purchaser.

(d) If a person authorized to prescribe drugs is temporarily unavailable, the pharmacist may, if he cannot supply the drug requested, substitute a drug or preparation of approximately equal therapeutic value so long as he notifies the author of the prescription at an early opportunity. The pharmacist in all cases of substitution, except when specifically indicated to the contrary by the prescriber, shall relate the nature of the change to the purchaser.

(e) The manufacturer of products ~~substituted~~ under the provisions of this ~~section~~ shall comply with the following minimum good manufacturing standards and practices:

(1) maintain quality control standards equal to those of the Food and Drug Administration;

(2) comply with regulations promulgated by the Food and Drug Administration;

(3) mark products with identification code or monogram;

(4) label products with expiration date;

(5) provide services to accept return goods;

(6) maintain twenty-four hour resources for product information;

(7) maintain drug recall capabilities;

(8) provide documentation of compliance with Department of Defense (DOD) standard of purchases.

(9) shall not refuse to sell to any properly licensed pharmacy.

(f) As used in this section, unless the context requires other-

wise,

(1) "brand name" means the proprietary or trade name selected by the manufacturer and placed upon a drug, its container, label or wrapping at the time of packaging;

(2) "generic name" means the official title of a drug or drug ingredients published in the latest edition of a Pharmacopoeia, Homeopathic Pharmacopoeia or Formulary;

(3) "reference or trade standard product" means the original or patented product of the original manufacturer;

(4) "substitute" means to dispense without prescriber's express authorization a different drug product in place of the drug ordered or prescribed;

(5) "therapeutically equivalent" means drugs that will provide essentially the same efficacy and toxicity when administered to an individual in the same dosage regimen.

* Sec. 3. AS 08.80 is amended by adding a new section to read:

Sec. 08.80.297. PRESCRIPTION PRICES AVAILABLE TO CONSUMER. A pharmacist shall disclose the price of filling any prescription when requested by the consumer.

* Sec. 4. AS 08.80.460 is amended by adding a new subsection to read:

(b) A person who violates the provisions of sec. 295 of this chapter is punishable by a civil fine in an amount established by the board in a schedule or schedules establishing the amount of civil fine for a particular violation. The schedule or schedules shall be adopted by the board by regulation. Any civil fine imposed under this section may be appealed in the manner provided for appeals in the Administrative Procedure Act (AS 44.62).

3/24/76
Milton

Original Sponsors: Bradley, Bradner and Gardiner

Offered: 2/5/76
Referred: Judiciary

IN THE HOUSE BY THE COMMERCE COMMITTEE

CS FOR HOUSE BILL NO. 584

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to substitution of prescription drugs by pharmacists."

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

* Section 1. AS 08.80.295 is repealed and re-enacted to read:

Sec. 08.80.295. SUBSTITUTION. (a) Except as limited by (b) and (d) of this section, with the consent of the purchaser, the pharmacist may substitute a drug product with the same generic name in the same strength, quantity, dose and dosage form as the prescribed drug which is, in the pharmacist's professional opinion, therapeutically equivalent. Upon substitution the pharmacist shall notify the person who prescribed the drug of the substitution and of the drug substituted.

(b) A person authorized to prescribe drugs may specify in writing or by oral communication that there shall be no substitution for the specified brand name drug in any prescription. The phrase "no substitution" or words of like import must be in the person's handwriting or, if the prohibition was communicated orally, in the pharmacist's handwriting, and shall not be preprinted or stamped or initialed on the prescription form.

(c) Every pharmacy shall post a sign in a location easily seen by patrons at the counter where prescriptions are dispensed stating that "Alaska law provides that with your consent, unless prohibited by your doctor, this pharmacy may substitute a less expensive drug which is therapeutically equivalent to the one prescribed by your doctor." The printing on the sign shall be in block letters not less than one inch in

height.

(d) A pharmacist shall substitute a drug product under (a) of this section only when there will be a savings in cost to the purchaser.

(e) If the physician prescribes a drug by its generic name, the pharmacist shall dispense the lowest retail cost drug product ~~brand~~ which is in stock. * complies with prescription

(f) As used in this section, unless the context requires otherwise,

(1) "brand name" means the proprietary or trade name selected by the manufacturer and placed upon a drug, its container, label or wrapping at the time of packaging;

(2) "generic name" means the official title of a drug or drug ingredients published in the latest edition of a Pharmacopoeia, Homeopathic Pharmacopoeia or Formulary;

(3) "substitute" means to dispense without prescriber's express authorization a different drug product in place of the drug ordered or prescribed;

(4) "therapeutically equivalent" means drugs that will provide essentially the same efficacy and toxicity when administered to an individual in the same dosage regimen.

* Sec. 2. AS 08.80 is amended by adding a new section to read:

Sec. 08.80.297. POSTING OF PRICES. (a) Annually ~~in the month of August,~~ the Department of Commerce and Economic Development shall prepare a list of the generic names of 100 most commonly prescribed prescription drugs, their usual strength and amount prescribed, and distribute the list along with regulations for posting to each pharmacy registered with the board of registration in pharmacy. The determination of the department as to which drugs are to be included on the list shall be final.

(b) The current list of the 100 most commonly prescribed drugs

shall be conspicuously posted in each pharmacy registered with the board. After each prescription drug listed, the name of the manufacturer and the current selling price shall be clearly indicated for that prescription by the pharmacy. A pharmacy may change the current selling price and the posting of the price at any time.

(c) The price of all other drugs not included on the list of 100 commonly prescribed drugs shall be available and shall be quoted by the pharmacy upon request.

sec. 3 Language from sec. 2 of original bill.

May 11, 1976

to: Representative Joe McKinnon
House Chairman, Free Conference Committee,
Senate CS for CS for HB 584 am S

from: Carol Larsen, Alaska Public Interest Research Group

re: Senate CS for CS for House Bill No. 584 am S

We recommend these changes in CS for CS for HB 584 am S:

A. Section 2.(a)

The last line should be deleted. It states that:

> Upon substitution the pharmacist shall notify the person who prescribed the drug of the substitution and of the drug substituted.

We believe this provision will dilute the benefit of a substitution bill to the consumer. We fear that the pharmacist will choose not to substitute if by doing so he imposes upon himself the penalty of an extra chore...having to contact the prescriber by telephone.

It would seem logical to require the pharmacist to keep on file the original prescription, on which should be noted the drug product which was substituted.

B. Section 2.(d)

This section should be changed to apply to cases in which the brand name product a physician prescribes (with no substitution allowed) is unavailable. A similar section is found in our current statute.

We agree that the physician should retain the nature of the change to purchaser unless contraindicated by the physician.

C. Section 2.(e)

This section, which deals with manufacturing standards with which manufacturersof products substituted must comply, should be removed from the bill.

We do not quarrel with the establishment of good manufacturing standards and practices with which manufacturers of drugs sold in Alaska must comply. Let us set standards which all prescription drugs must meet, and not just those substituted.

Under this section, prescription drugs manufactured under inadequate standards may still be dispensed in Alaska.

The substitution bill is not the place for this issue. This issue must be dealt with after careful study in order to establish a set of standards by which to judge all prescription drug products sold in Alaska.

D. The provision requiring posting of prescription drug prices, (as found in CS for HB 584, Sec. 08.80.297) should be included.

It is rational and reasonable that pharmacists should be required to list 100 prices on an erasable board. Consider that grocers label each of hundreds of thousands of individual items in a market with the price of products whose values change much more frequently than those of prescription drugs. Some call this harassment; we call it allowing consumers to learn the price of a product.

A bill without price posting would be a disservice to consumers.

E. The provision requiring posting a sign at the pharmacy counter which informs customers that the pharmacy may substitute, as found in CS for HB 584, should be included. Substitution is a fact about which consumers should be informed.

To summarize:

By making the above changes, we have re-invented CS for HB 584, with one change: leaving out the last sentence of Section 1.(a), which requires notification of the prescriber upon substitution. We discussed this provision in A. of this memo.

CS for HB 584, with that one change, is the legislation which we feel would best serve the consumer, while at the same time providing necessary safeguards for the pharmacist and prescriber.

FCC 584 - Generic Drug

Adopt Section 1 of Senate bill Adopt

(a) of Sen CS Adopt

(b) left open

(c) left open possibly 2 year limit

(e) (8) house objects line 12 prescribed or dispensed
(6) " "
(5) Meaning?
change line 12 "prescribed or dispensed" for substituted

intrastate Commerce Clause on section (e)

f (3) not needed anymore

Page 3, line 19 delete "before filling it"

Original Sponsors: Bradley, Bradner and Gardiner

Offered: 3/2/76
Referred: Rules

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 584 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to substitution of prescription drugs by pharmacists."

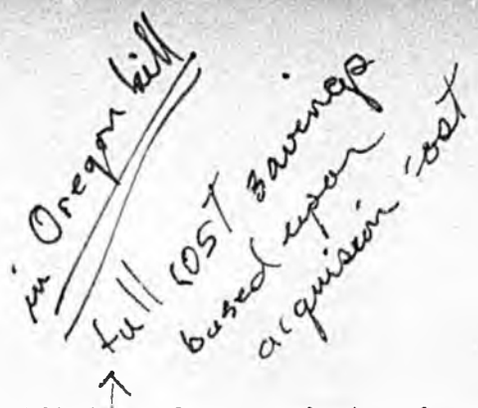
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 08.80.295 is repealed and re-enacted to read:

Sec. 08.80.295. SUBSTITUTION. (a) Except as limited by (b) and (d) of this section, with the consent of the purchaser, the pharmacist may substitute a drug product with the same generic name in the same strength, quantity, dose and dosage form as the prescribed drug which is, in the pharmacist's professional opinion, therapeutically equivalent. Upon substitution the pharmacist shall notify the person who prescribed the drug of the substitution and of the drug substituted.

(b) A person authorized to prescribe drugs may specify in writing or by oral communication that there shall be no substitution for the specified brand name drug in any prescription. The phrase "no substitution" or words of like import must be in the person's handwriting or, if the prohibition was communicated orally, in the pharmacist's handwriting, and shall not be preprinted or stamped or initialed on the prescription form.

(c) Every pharmacy shall post a sign in a location easily seen by patrons at the counter where prescriptions are dispensed stating that "Alaska law provides that with your consent, unless prohibited by your doctor, this pharmacy may substitute a less expensive drug which is therapeutically equivalent to the one prescribed by your doctor." The printing on the sign shall be in block letters not less than one inch in



height.

(d) A pharmacist shall substitute a drug product under (a) of this section only when there will be a savings in cost to the purchaser.

(e) If the physician prescribes a drug by its generic name, the pharmacist shall dispense the lowest retail cost drug product which is in stock and [which complies with the physician's prescription.] putin

(f) As used in this section, unless the context requires otherwise,

(1) "brand name" means the proprietary or trade name selected by the manufacturer and placed upon a drug, its container, label or wrapping at the time of packaging;

(2) "generic name" means the official title of a drug or drug ingredients published in the latest edition of a Pharmacopoeia, Homeopathic Pharmacopoeia or Formulary;

(3) "substitute" means to dispense without prescriber's express authorization a different drug product in place of the drug ordered or prescribed;

(4) "therapeutically equivalent" means drugs that will provide essentially the same efficacy and toxicity when administered to an individual in the same dosage regimen.

* Sec. 2. AS 08.80 is amended by adding a new section to read:

Sec. 08.80.297. POSTING OF PRICES. (a) Annually the Department of Commerce and Economic Development shall prepare a list of the generic names of the 100 most commonly prescribed prescription drugs, their usual strength and amount prescribed, and examples of each by brand name, if any, and distribute the list along with regulations for posting to each pharmacy registered with the board of registration in pharmacy. The determination of the department as to which drugs are to be included on the list shall be final.

(b) The current list of the 100 most commonly prescribed drugs shall be conspicuously posted in each pharmacy registered with the board. After each prescription drug listed, the name of the manufacturer and the current selling price shall be clearly indicated for that prescription by the pharmacy. A pharmacy may change the current selling price and the posting of the price at any time.

(c) The price of all other drugs not included on the list of 100 commonly prescribed drugs shall be available and shall be quoted by the pharmacy upon request.

* Sec. 3. AS 08.80.460 is amended by adding a new subsection to read:

(b) A person who violates the provisions of sec. 295 of this chapter is punishable by a civil fine in an amount established by the board in a schedule or schedules establishing the amount of civil fine for a particular violation. The schedule or schedules shall be adopted by the board by regulation. Any civil fine imposed under this section may be appealed in the manner provided for appeals in the Administrative Procedure Act (AS 44.62).

Mary Ellen Burnison – WHO Bioavailability

1.) New Drug Application 17 year patent

2.) Drug

What is name of your Phd expert?

upto 5 years to obtain patent

Abreviated New Drug Application after patent expires —

Requires a ~~lot~~ less documentation – only have to document therapeutically

NF – National Formulary – Means Chemically equivalent this is what checked in New Drug Application

12 steps or factors

Drug Manufacturer makes Products to different specification for Distributors – Do this comply with FDA standards for instance under New Drug App? With a patent are their requirements with FDA or the actual process?

In future Bioavailability lists will be developed By FDA for use by everybody

Require firms to submit Bioavailability info to FDA or state firm to form these lists

24 drugs have toxicity problems

file

Terry Gardiner

Box 1092, Ketchikan, Alaska 99901 Pouch V, Juneau, Alaska 99811

March 18, 1976

Bob Race
2300 Tongass Ave.
Ketchikan, Alaska 99901

Dear Bob,

Thank you for the copy of the letter concerning HB 757 and HB 584. Copies of the latest versions of both of those bills have been enclosed. HB 757 is presently in the House Rules Committee where it will probably be scheduled for floor action. HB 584 is presently in the Senate Judiciary Committee which is chaired by Senator Ziegler. The amended version of HB 584 was the result of a lot of hearings and input in both the House Commerce and Judiciary Committees. We heard extensively from pharmacists and representatives of the large drug companies.

It was felt that there were a lot of protections in the amended version of HB 584 to take care of some of the problems that you have brought up. The pharmacist is not required to substitute just the cheapest drug. On page 1, line 14, the language reads "..., in the pharmacists professional opinion, therapeutically equivalent." The pharmacists that testified for our committee felt that that gave them the necessary latitude and judgment to prevent the substitution of a poor quality drug. Sec. B also provides that the physician may specify a specific brand name drug and prescribe that there shall be no substitution in a case where he knows that a specific brand name drug must be used for the desired reaction in the patient. As you will see on page 2, substitution takes place when the physician prescribes a drug by its generic name.

I'm sure Senator Ziegler will take into consideration your comments if and when HB 584 is considered by his committee.

Sincerely,

_____
Terry Gardiner

GIFT SHOP POST OFFICE FOUNTAIN — LUNCH TOY SHOP — SOUND CENTER

HB 584

Race Avenue Drug
A Division of Race Ketchikan Pharmacies, Inc.
ROBERT S. RACE, Pres.
2300 Tongass Avenue
KETCHIKAN, ALASKA 99901

Senator Robert Zeigler
Alaska State Senate
Juneau, Alaska 99801

Robert Zeigler

Terry: Guess I am late but you know how I feel, and would like hearings xxx on any future bills. Understand Brad Bradley in Senate has a good or better bill pending or such
Thanks,

Bob Race

Hi Bob:

I wasn't aware before of the two house bills up or through the house no. 757 By Sullivan which has to do with posting prices on prescription drugs. The textof the bill from over the phone reading opens a "can of worms" and in several eastern states where they have passed legislation of this kind they have had many problems with it and it hasn't helped the public only given them substitution of inferior "cheap" unknow absorption rates etc. AND SHOULD NOT BECOME A LAW AS THAT BILL WAS WRITTEN.

The other House Bill 584 by Bradley and others(am confused on that point , about Bradley, Brad as he has another study bill SK with hearing before public etc. coming up which is fine if we get hearings but as I understand it 584 is also a poor bill and it allows the pharmacist to substitute any other "Generic" drug for any the physician orders and must be or can be the cheppest one. This puts responsibility on pharmacist and if the Physician or Dentist believes and has found that a Squibb or Lilly product is the one he gets best results with due to its compounding in their plant with a Bio Availability of the active drug reaching the blood stream, then that one should be the one dispensed unless the physician has authorized the substitution. Even the patient shouldn't have the right to ask for a "cheap" drug unless the physician o.k.'s it as he as well as the pharmacist is one that ends up with a law suit or manslaughter rap.

Sincerely,
Bob Race

Copies to
T.Gardner
O. Freeman

Meprobamate	200mg	100's	3.85
	400mg	100's	4.50
Meprospan	200mg	30's	3.30
	400mg	30's	5.10
Mesantoin	100mg	100's	3.55
Meticortelone	5mg	100's	14.30
Generic Equivalent:			
Prednisolone	5mg	100's	4.50
Metahydrin	4mg	100's	3.35
Generic Equivalent:			
Trichlormethiazide	4mg	100's	4.50
Metamine Sustained	10mg	50's	5.60
Metandren Linguets	5mg	100's	6.30
	10mg	100's	10.50
Generic Equivalent:			
Methyl-Testosterone Sublingual	5mg	Not Available	
	10mg	100's	5.25
Metatensin	2mg	100's	5.35
	4mg	100's	7.80
Methenamine Mandelate	0.5gm	100's	3.25
	1gm	100's	5.25
Methocarbamol	500mg	100's	7.65
	750mg	100's	10.50
Methyl-Testosterone Sublingual	10mg	100's	5.25
Meticorten	5mg	100's	4.50
Generic Equivalent:			
Prednisone	5mg	100's	3.50
Milpath	400mg	50's	6.85
Milprem	200mg	60's	6.00
	400mg	60's	7.15
Miltown	200mg	50's	3.25
	400mg	50's	4.00
Generic Equivalent:			
Meprobamate	200mg	100's	3.85
	400mg	100's	4.50
Motrin	300mg	100's	11.70
	400mg	100's	13.95
Mycolog (Cream or Oint.)	5gm		2.65
	15gm		4.85
Mysoline	0.25gm	100's	7.50
	50mg	100's	2.35
Mysteclin-F	250mg	16's	5.15
		100's	27.10
Naldecon		50's	6.60
Naqua	4mg	100's	8.00
Generic Equivalent:			
Trichlormethiazide	4mg	100's	4.75
Naquival		100's	10.45
Nardil	15mg	100's	7.90
Naturetin	5mg	100's	11.15
Nebralin		50's	4.70
Neg-Gram	250mg	56's	7.15
	500mg	56's	12.50
Neostigmine Bromide	15mg	100's	3.50
Neo Synalar Cream	5gm		1.80
	15gm		3.30
Nicalex		100's	8.15
Nicobid	125mg	100's	6.75
	250mg	100's	8.45
Nitrobid	2.5mg	100's	9.80
	6.5mg	100's	13.00
Generic Equivalent:			
Nitroglycerin L.A.	2.5mg	100's	4.50
	6.5mg	100's	7.95
Nitrofurantoin Tabs	50mg	100's	6.50
	100mg	100's	12.00
Capsules	50mg	100's	11.35
	100mg	100's	21.50
Nitroglycerin, Sublingual			
All strengths		100's	1.55
		2x100's	2.60
Nitroglycerin L.A.	2.5mg	100's	4.65
	6.5mg	100's	8.20
Nitroglyn 1/50		100's	10.60
Nitrospan	2.5mg	100's	9.80
Generic Equivalent:			
Nitroglycerin L.A.	2.5mg	100's	4.65
Nitrostat, All Strengths		100's	2.20
Nodular Tablets	200mg	100's	7.80
Capsules	300mg	100's	9.15
Norgesic		100's	11.55
Norinyl 1mg			
1/50 (21) or (28)		1 packet	2.65
		3 packet	7.40
		6 packet	13.45
1/80 (21) or (28)		1 packet	2.65
		3 packet	7.40
		6 packet	13.45
Norisodrine	25%	4 vials	10.50
Norlestrin 1mg			
(21) or (28)		1 packet	2.80
		3 packet	8.05
		6 packet	15.10
2.5mg (21)		1 packet	2.80
		3 packet	8.05
		6 packet	15.10
Norpramin	25mg	50's	6.60
Novahistine LP		50's	6.35
Nylidren HCl	6mg	100's	5.75
	12mg	100's	9.25
Ogen	1.25mg	100's	7.20
Oracon (21)		packet 21's	2.65
		packet 63's	7.15
		packet 126's	13.65
Orinase	0.5gm	50's	5.30
		100's	10.15
		200's	19.75
Ornade		100's	14.90
Generic Equivalent:			
Chlorade TD		100's	7.25
Ortho-Novum 2mg		packet 21's	3.15
		packet 63's	8.45
		packet 126's	15.60

*Generic Manufacturers Trade Name Stocked by Getz.
(For information about Generic Drugs, see page 58.)

Ortho-Novum 1/50 (21)			
or 1/80 (21)		packet 21's	2.90
		packet 63's	7.80
		packet 126's	14.90
Os-Cal-Mone		100's	7.50
Ovral (21)		packet 21's	2.90
		packet 63's	8.15
		packet 126's	15.30
Ovulen (21)		packet 21's	2.90
		packet 63's	8.15
		packet 126's	15.30
Ovulen (28)		packet 28's	2.90
		packet 84's	8.15
		packet 168's	15.30
Oxytetracycline	250mg	50's	7.50
Pabacyl N.S.*		100's	2.95
Pabalate S.F.		100's	4.30
Generic Equivalent:			
Pabacyl N.S.*		100's	2.95
Pamine		100's	6.55
Papaverine	1gr	100's	3.70
	1½gr	100's	3.95
Papaverine HCl TR	150mg	100's	6.75
Parest-400		100's	10.50
Pavabid		100's	13.65
Generic Equivalent:			
Papaverine HCl TR	150mg	100's	6.75
Pathibamate-400		100's	12.80
Penicillin G			
Buffered	200,000 U	100's	3.45
	250,000 U	100's	3.55
	400,000 U	100's	4.10
Penicillin VK	250mg	100's	8.50
	500mg	100's	10.95
Pen Vee K	500mg	100's	22.75
Generic Equivalent:			
Penicillin VK	500mg	100's	10.95
Pentids	200,000 U	100's	7.65
	400,000 U	100's	11.95
Generic Equivalent:			
Penicillin G. Buffered	200,000 U	100's	3.45
	400,000 U	100's	4.10
Pentritol	30mg	100's	11.05
	60mg	60's	9.80
Generic Equivalent:			
P.E.T.N. L.A.	30mg	100's	4.95
	60mg	Not Available	
Pentritol	60mg	60's	9.15
Perinetin	4mg	100's	7.80
Peritrate	10mg	100's	4.80
	20mg	100's	5.45
Generic Equivalent:			
P.E.T.N.	10mg	100's	1.95
	20mg	100's	2.95
Peritrate w/Pb	10mg	100's	4.80
	20mg	100's	6.15
Generic Equivalent:			
P.E.T.N. w/Pb	10mg	100's	2.25
	20mg	100's	3.25
Peritrate SA Tabs	80mg	100's	11.60
Generic Equivalent:			
P.E.T.N. TD Caps	80mg	100's	7.25
Peritrate SA w/Pb	80mg	100's	13.00
Permitil Chronotabs	1mg	100's	9.15
Persantine	25mg	100's	10.45
Pertofrane	25mg	100's	12.80
P.E.T.N.	10mg	100's	1.95
	20mg	100's	2.95
P.E.T.N. w/Pb	10mg	100's	2.25
	20mg	100's	3.25
P.E.T.N. LA	30mg	100's	4.95
P.E.T.N. TD Caps	80mg	100's	7.25
Phenaphen Capsules		100's	3.05
Phenergan	12.5mg	100's	5.60
	25mg	100's	9.50
Generic Equivalent:			
Promethazine	12.5mg	100's	4.00
	25mg	100's	6.20
Phenergan	50mg	100's	14.90
Phenoxene Tablets	50mg	100's	7.80
Phentermine TD Caps	15mg	100's	7.50
	30mg	100's	7.95
Placidyl	200mg	100's	5.75
	500mg	100's	10.15
Plaquenil	200mg	100's	13.00
Polaramine Repetabs	4mg	100's	6.35
	6mg	100's	9.50
Polycillin	250mg	100's	22.55
	500mg	50's	21.65
Generic Equivalent:			
Ampicillin	250mg	100's	12.95
	500mg	50's	12.95
Poly-Flor Chewables*		100's	2.50
Poly-Vi-Flor Chewables		100's	4.30
Generic Equivalent:			
Poly-Flor Chewables*		100's	2.50
Poly-Vi-Flor Drops		50cc	3.70
Ponstel		100's	12.65
Potassium Chloride E.C.	5gr	200's	2.30
	15gr	200's	3.60
Prednisolone	5mg	100's	4.50
		200's	8.00
Prednisone	5mg	100's	3.50
		200's	6.20
Preludin	25mg	100's	9.15
Endurets	75mg	50's	11.20
		100's	21.65
Premarin w/Methyl Testosterone	0.625mg	50's	6.10
	1.25mg	50's	10.30
Generic Equivalent:			
Conjugated Estrogens w/Methyl Testosterone	0.625mg	100's	6.50
	1.25mg	100's	10.50

*Generic Manufacturers Trade Name Stocked by Getz.
(For information about Generic Drugs, see page 59.)

Elavil	10mg	100's	5.60
	25mg	100's	10.60
	50mg	100's	17.90
Eldec		100's	8.70
Enarax "5"		60's	11.95
Enarax "10"		60's	13.95
Enduron	2.5mg	100's	6.85
	5mg	100's	9.15
Enduronyl		100's	12.80
Forte		100's	15.20
Envoid E 2.5 mg	packet	21's	3.05
	packet	63's	8.45
	packet	126's	15.90

Entozyme		100's	5.60
Generic Equivalent:			
Hydrozyme*		100's	3.90
Equagesic		50's	6.15
Equanil	200mg	50's	3.50
	400mg	50's	4.25
Generic Equivalent:			
Meprobamate	200mg	100's	3.85
	400mg	100's	4.50
Equanil L.A.	400mg	50's	7.50
Equanitrate "10"		50's	5.20
Equanitrate "20"		50's	6.00
Erythrityl Tetranitrate	10mg	100's	2.65
	15mg	100's	3.25

Erythrocin	250mg	100's	20.55
Generic Equivalent:			
Erythromycin	250mg	100's	11.95
Erythromycin	250mg	100's	11.95

Esidrix	25mg	100's	4.95
	50mg	100's	7.10
Generic Equivalent:			
Hydrochlorothiazide	25mg	100's	3.00
	50mg	100's	4.25
Esimil		100's	15.30
Eskatrol		50's	7.80

Estinyl	0.02mg	100's	3.85
	0.05mg	100's	6.35
Generic Equivalent:			
Ethinyl Estradiol	0.02mg	100's	2.15
	0.05mg	Not Available	
Ethinyl Estradiol	.02mg	100's	2.15

Etrafon Plain	2/25	60's	10.15
Forte	4/25	60's	10.95
"A"	4/10	60's	8.80
Euthroid-2		100's	4.70
Euthroid-3		100's	5.60
Eutonyl	25mg	100's	13.75
Eutron		100's	20.85
Fiorinal Capsules		100's	6.15

Fiorinal Tablets		100's	5.20
Generic Equivalent:			
Fiorphen*		100's	3.40
Fiorphen*		100's	3.40
Flagyl Tablets		100's	21.65
Inserts		10's	4.95
Folic Acid	1mg	100's	3.25

Folvite	1mg	100's	5.60
Generic Equivalent:			
Folic Acid	1mg	100's	3.25
Formatrix		60's	13.95

Fulvicin UF Tablets	125mg	100's	9.80
	250mg	100's	17.90
	500mg	60's	20.40
Generic Equivalent:			
Griseofulvin Microfine Capsules	250mg	100's	13.95
One Strength Only			

Furadantin Tabs	50mg	100's	13.65
	100mg	100's	26.50
Generic Equivalent:			
Nitrofurantoin Tabs	50mg	100's	6.50
	100mg	100's	12.00
Gantanol	0.5gm	50's	4.95

Gantrisin	0.5gm	100's	4.80
Generic Equivalent:			
Sulfisoxasole	0.5gm	100's	3.50
Gevrine		100's	9.50
Gitaligin	0.5mg	100's	3.85

Grifulvin V Tablets	125mg	100's	8.45
	250mg	100's	15.60
	500mg	100's	20.60
Generic Equivalent:			
Griseofulvin Microfine Capsules	250mg	100's	13.95
One Strength Only			

Grisactin Capsules	125mg	100's	9.15
	250mg	100's	16.20
	500mg	60's	18.80
Generic Equivalent:			
Griseofulvin Microfine Capsules	250mg	100's	13.95
One Strength Only			

Griseofulvin Microfine Capsules	250mg	100's	13.95
Haldol	1mg	100's	13.00
Hydrone	1mg	100's	10.95
	2mg	100's	20.40
Hexadrol	0.75mg	100's	11.65
Hiprex		100's	13.65
Hydergine		100's	11.65
Hydralazine HCl	25mg	100's	2.35
	50mg	100's	3.95
Hydrochlorothiazide	25mg	100's	3.00
	50mg	100's	4.25
Hydrocortisone Cream	½%	1oz	2.25
Ointment	1%	20gm	2.25
Tablets	20mg	100's	5.95

Hydrocortone	20mg	100's	8.15
Generic Equivalent:			
Hydrocortisone	20mg	100's	5.95

*Generic Manufacturers Trade Name Stocked by Getz.
(For information about Generic Drugs, see page 58.)

Hydrodiuril	25mg	100's	5.05
	50mg	100's	7.10
Generic Equivalent:			
Hydrochlorothiazide	25mg	100's	3.00
	50mg	100's	4.25
Hydromox	50mg	100's	9.50

Hydropres	25mg	100's	7.15
	50mg	100's	10.95
Generic Equivalent:			
Hydroserpine*	25mg	100's	4.50
	50mg	100's	6.50
Hydroserpine*	25mg	100's	4.50
	50mg	100's	6.50
Hydrozyme*		100's	3.90
Hygroton	50mg	100's	10.15
	100mg	100's	11.85
Iberol F		100's	10.50
Inderal	10mg	100's	5.20
	40mg	100's	8.45
Indocin	25mg	100's	10.45
		200's	19.75
	50mg	100's	15.60

Ionamin	15mg	100's	15.60
	30mg	100's	16.20
Generic Equivalent:			
Phentermine TD Caps	15mg	100's	7.50
	30mg	100's	7.95

Ismelin	10mg	100's	11.85
	25mg	100's	15.90
Isoniazid	50mg	200's	1.60
	100mg	100's	1.35
Isopto-Carpine	1%	15cc	2.65
		30cc	3.55
	2%	15cc	2.65
		30cc	3.55
Isorbide Dinatrate			
Oral	5mg	100's	3.70
	10mg	100's	4.05
Sublingual	2.5mg	100's	3.50
	5mg	100's	3.70
T. D. Capsules	40mg	100's	8.20

Isordil, Oral	5mg	100's	5.20
	10mg	100's	5.90
Generic Equivalent:			
Isosorbide Dinitrate	5mg	100's	3.70
	10mg	100's	4.05
Isordil Sublingual	5mg	100's	5.20
Generic Equivalent:			
Isosorbide Dinitrate Sublingual	5mg	100's	3.70
Isordil Tembids	40mg	100's	13.35
Generic Equivalent:			
Isosorbide Dinitrate TD Capsules	40mg	100's	8.20
Isuprel Mistometer		15cc	4.30

Kuridium	2.2mg	180's	3.45
Generic Equivalent:			
Sodium Fluoride	2.2mg	200's	2.45

K-Lor		30's	5.90
K-Lyte		30's	5.90
Kafocin		40's	16.20
Kaochlor Eff.		60's	9.15
Kaon		100's	5.20
Karidium	2.2mg	180's	3.95

Kenacort	4mg	30's	8.70
		100's	25.10
Generic Equivalent:			
Triamcinolone	4mg	100's	16.00

Kenalog (Cream or Oint.)	1%	5gm	1.90
		15gm	3.10
	.025%	80gm	4.40
Ketochol		100's	5.20
Klorvess		60's	8.80
L-Dopa Tablets	250mg	100's	5.10
	500mg	100's	8.45
L-Thyroxine Sodium	0.1mg	100's	1.50
	0.2mg	100's	1.95
Larodopa Tablets	500mg	100's	8.45
Lanoxin	0.25mg	100's	1.55
Lasix		100's	10.60
Letter	0.025mg	100's	1.95
	.05mg	100's	2.05
	.1mg	100's	2.35
	.2mg	100's	3.05
	.3mg	100's	4.40
	.5mg	100's	5.60
Lextron		84's	4.95
Ferrous		84's	4.95
Librax		50's	5.10
Librium	5mg	100's	6.00
	10mg	100's	8.00
	25mg	100's	11.70
Lomotil		100's	10.95
Luride Lozitabs		120's	3.15
Drops		40ml	2.90

Macrodantin Caps	50mg	100's	17.25
	100mg	100's	33.65
Generic Equivalent:			
Nitrofurantoin Caps	50mg	100's	11.35
	100mg	100's	21.50

Mandelamine	0.5gm	100's	5.90
	1gm	100's	9.15
Generic Equivalent:			
Methenamine Mandelate	0.5gm	100's	3.25
	1gm	100's	5.20

Marax		100's	8.00
Marplan	10mg	100's	9.15
Meclizine	12.5mg	100's	4.20
	25mg	100's	6.90
Mediatric Caps.		100's	11.15
Medihaler Iso w/Adapter		15cc	4.40
Refill		15cc	3.95
Medrol	4mg	30's	7.00
Medules	4mg	30's	7.00
Mellaril	10mg	100's	9.15
	25mg	100's	12.15
	50mg	100's	13.00

*Generic Manufacturers Trade Name Stocked by Getz.
(For information about Generic Drugs, see page 58.)

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

HOUSE COMMERCE COMMITTEE
February 2, 1976

House Bill 584

The meeting was called to order by Chairman Bob Bradley noting that a quorum was present.

Co-sponsor, Speaker of the House Mike Bradner was asked to begin the testimony by explaining the bill. Speaker Bradner stated that this had been recommended to him by many people. It was something which would clarify the process to the consumer. He further stated that he had discussed the bill with a number of pharmacists and some had definite concerns with this. Some pharmacists do do this now, however, their right to do it was a bit cloudy. The present bill is designed after the California statutes.

Representative Bradner further stated that he felt there were areas in the bill which needed to be amended. One area was that of the penalties as stated under the bill. He felt that no penalties should be placed on a pharmacist if he cannot comply. The bill should indicate that they do it but leave a margin for if they can't. Another area was that of the Commissioner of Health & Social Services to establish a list of generic substitutions. He was not sure they could accomplish this with the present staff.

Rep. Freeman questioned objections heard from pharmacists concerning a sign in each pharmacy. How important was the sign?

Rep. Bradner replied that it was not important either way and that it does have implications. Bradner continued stating that the section relating to the a physician must put in his own handwriting that there, could be no substitution, that he was unsure what it was designed to accomplish.

Rep. Wallis questioned whether or this bill would have implications of malpractice for pharmacists.

Chairman Bradley stated that there could be a liability.

Rep. Fischer objected to a pharmacist having the right to alter what a physician prescribes. Many people have a great deal of faith in their doctors and would not want this.

Rep. Rudd explained that the bill allowed a patient to also refuse substitution. Chairman explained further that a doctor could refuse substitution and described the section which states this.

Representative Bradley then asked to leave the Chair to testify on behalf of the bill. (see attached)

Testimony given by Representative Bob Bradley
House Bill 584
Commerce Committee meeting 2/2/76

Ampicillin is the generic name of a particular drug manfactured by Bristol Laboratories and distributed by four firms. Under the brand name "polycillin", Bristol markets the ampicillin for $18.24 wholesale, while Smith, Kline and French distributes Bristol's ampicillin for only $12.00. This same Bristol manufactured ampicillin is sold by ICN Pharmaceuticals under still another brand-name for $14.80, while ICN's generic division sells an identical amounts of ampicillin for $7.50. If the doctor happens to write "polycillin", the pharmacist is prohibited from filling the prescription with the ICN ampicillin even though they are manufactured identically by Bristol. Thus, the consumer must pay more than double what he might if anti-substitution laws weren't in effect.

Generic drugs are always less costly than brand-name drugs. Thus, anti-substitution laws function to support artificially high prices for brand-name drugs. Prices for brand-name drugs are higher because the drug industry must spend around a billion dollars annually to promote these names and then make us, the consumers, pay for the advertising. Unless the doctor prescribes by generic name, we have no choice of what price we pay and the sad fact is that brand-name drugs, with their high prices, cannot be considered superior products. In fact, in 1972 of 638 drug recalls, 291 were brand-name.

Twenty-three percent of the retail drug expenditures in this country are by those over 65. For the elderly person living on a fixed income the difference in what he pays for a brand-name drug as opposed to a generic name may mean a difference in what he is able to spend on food and housing.

It is not surprising that eleven states--Arizona, Kentucky, Arkansas, Oregon, Minnesota, Connecticut, Michigan, Maine, Massachuetts, Florida and Maryland--have already repealed their anti-substitution laws. In Canada, where several provinces have also allowed pharmacists to substitute generics, the province of Ontario has found increases in the number of prescriptions written for generic and lower price brand names.

We are not only concerned with lower prices. Our main goal in drug treatment is better health. For every prescription drug, there is an average of 30 brand names, or shall we call them aliases, which obscures the identity of the particular medication even from physicians who must prescribe them. The National Academy of Sciences supported generic substitution, recognizing that "the pharmacist may in some situations have greater knowledge of drug products than other health professionals, including knowledge of both quality and cost."

At present, because they cannot substitute, pharmacists must keep large inventories to have all brands available. This means a slow turnover of stock and is apt to mean higher prices in general. This is particularly relevant in Alaska where there are many small pharmacies and a large inventory can be extremely costly to them. If allowing the pharmacist to substitute enables him to reduce his inventory, keeping on hand those drugs that are lowest in price or those which he personally may consider superior.

One of the major arguments against substitution is drug inequivalence. Bio or clinical equivalence occurs when chemically equivalent drugs in the same amount provides the same therapeutic effect. The U.S. Department of Health, Education and Welfare Task Force on prescription drugs concluded that "the lack of clinical equivalency among chemical equivalents meeting all official standards has been grossly exaggerated as a major hazard to the public health." Only in rare instances would equivalent drugs products not produce the same therapeutic effects. Morris Aarons, a member of the Review Committee of the Task Force, who represents the National Association of Pharmaceutical Manufactures, concurred with this.

A report on this subject was completed by the office of Technological Assistance, a Congressional investigative body. D.. Robert Berliner Dean of the Yale University Medical School chaired the study and reported that 85-90% of chemically equivalent products presents no problem of therapeutic inequivalency and can be used interchangeably. In fact, Dr. Berliner stated, "Most drugs ought to be prescribed generically."

The Food and Drug Administration puts new drugs through difficult tests. Whenever manufacturers wish to place drug products chemically equivalent to existing ones on the market, they must submit for FDA approval adequate data to demonstrate the equivalency of the product. This is given a thorough review.

Equivalency studies have been done on all antibiotics, which accounts for one out of every five prescriptions. Any antibiotic offered for sale in the United States regardless of whether it is an brand-name or generic drug has met the same high FDA standards. The FDA is presently compiling lists of equivalent drugs and has conducted its studies starting with the most frequently prescribed drugs. The FDA will eliminate variations by makers of generic drugs by requiring them to match the effectiveness of standard drugs or withdraw the drugs from the market. A complete compilation will be available by 1978. Although information is presently being made available as it is compiled.

In any case, if a doctor has reason to believe a drug manufactured by a specific firm is best for his patient, he may write no substitution. It is hoped that HB 584 will also serve to make the physician think twice before writing a prescription and by allowing their patients to have pharmacists substitute products, get for them the best drug at the lowest available price.

HB584 will allow Alaskans who are already paying substantially higher prices for drug products than the lower 48 to save several million dollars annually.

HOUSE COMMERCE COMMITTEE
January 21, 1976

House Bill 584

The meeting was called to order by Chairman Bob Bradley noting that a quorum was present.

Ronald Sedgewick, owner of Ron's Apothecary and a member of the Alaska Pharmacy Association began the testimony on House Bill 584. He stated that he basically had no problems with the bill itself. He did, however, feel uncomfortable with some sections and wished to express them at this time. Section C concerning the posting of a sign was a good idea and was intended for the consumer's benefit. It does, however, offend the professional standards. If a sign was posted it indicates dishonesty in the past. Section E pertaining to the physician using the generic name and the pharmacist must then issue the drug which is the lowest priced. He felt that often the lowest priced drug is not the best and would not select such a drug for his own family. He felt it should be left up to the pharmacist to select the best drug and still give the customer the best deal.

Chairman Bradley stated that Section 1 08.80.205 might answer the objection to Section E. That section gives the pharmacist the option of using his professional judgement.

Mr. Sedgwick felt that the section should be eliminated due to the option the physician has in writing the prescription. He continued stating that in Section G pertaining to labeling was also not necessary due to how the law presently is. He did suggest that an addition be made under that section. The addition being the name and quantity of the drug for the purpose of emergency care. Hospitals often refer to him for the quantity of the drug he issued and this would make it easier on hospital personnel. The Section which states that the Department of Health and Social Services was to provide a formulary seemed unrealistic. The department does not have the resources to provide such a formulary. The Federal department has been working on a list for the last three years and the department would probably have to issue the Federal list.

Rep. Urion questioned whether or not it was typical of pharmacists to stock all brand names of one drug.

Mr. Sedgwick stated there are a number of multiple drugs. They are now able to select from major companies with price in mind. He again stated that price should not be the only criteria, the best drug at a lower price.

Mr. Jim McCorcle, owner of Harry Race Drug Store, stated he was representing the Alaska Board of Pharmacists. The Board had reviewed the bill and generally agreed with it. They did feel that it was not possible for the Board to administer the formulary. Much of the Board's feeling were the same as Mr. Sedgewick had expressed.

Dr. Rodman Wilson, member of the Alaska State Medical Association Committee on Legislation and past President, testified that the committee had alot to do with the present statutes and feel they are fairly workable. The main purpose of the bill was to save the consumer money. He stated that physicians by and large do not know much about the price of individual drugs and how they are sold. The Committee felt that some changes were needed in the bill. He referred to the section pertaining to who prescribes drugs describing them as "medical practioners". It could be defined more by using the common language as presently in the statutes; "physicians, osteopathic physicians, dentists or veternarians". Also all through the bill it describes the communication between the physician and the pharmacist as "telephonic" and he felt it should be changed to "orally" which gives a little more lead way. The Committee also objected to the sign to a point of ascetics. It implies in a subtle way that doctors were trying to give people expensive drugs on purpose. It is unnecessary because the pharmacist has to or should explain to them the substitution when it is done. He stated he could see the others objection to Section E. There are multiple drug agents selling a single substance but one or two have some different active ingredients. The bottles are not big enough to list all the ingredients. He continued stating that the Committee also had their doubts whether or not Health and Social Services could produce a formulary. They would probably just rely on the FDA's list. He surmised that it was included for the purpose of taking the pharmacists off the hook as far as liability was concerned. The pharmacists would be taking alot of responsibility. He then submitted in writing to the members some of the language changes he had discussed.

Rep. Freeman questioned whether or not there was a monetary benefit to physicians on the drugs they prescribe.

Dr. Wilson stated that it was basically unethical by all standards and he wasn't sure if physicians were allowed to own pharmacies.

Chairman Bradley questioned if physicians received free samples from drug companies.

Dr. Wilson replied not as frequently as in the past. He added one other remark concluding his testimony. If not for the drug industry we wouldn't have all the advances we now have and they should be aware of this.

David Freer, Special Assistant to Commissioner of Health and Social Services testified to the section which would apply to the department. He agreed with other witnesses that the department would not be able to carry out that section of the bill without the resources to do it. The department has one pharmacist who is at the Alaska Psychiatric Institute.

Chairman Bradley questioned the witnesses if they felt that if the section on a formulary would help lessen the liability of pharmacists.

Mr. Sedgwick answer that yes it would help the legal liability question.

Chairman Bradley asked that someone clarify what type of training a pharmacist has and whether or not they know what kind of reaction a drug

would have on patients.

Mr. Sedgwick stated that all pharmacists receive training in bio-equivalents.

Senator Meland then asked to speak to the bill. He stated that the bill was based on the California law and he felt it would help. He then asked if it was true that major hospitals use generic drugs.

Mr. Sedgwick answered that major hospitals establish a formulary and then stock only one brand.

January 21, 1976

MEMORANDUM

TO: Bob Bradley

FROM: Terry Berman

SUBJECT: HB 584, Major points on substitution of generic drugs for brand-name prescription

1) The generic drug is always cheaper than the brand-name drug even though they may be identical. Also there is no justification that a brand name drug is necessarily a better product. A good example is ampicillin manufactured by Bristol Laboratories, which is distributed by four firms. The disparities in price among the four is astonishing. Bristol, which distributes ampicillin under the name Polycillin, wholesales for $18.24. Smith, Kline, and French distributes the ampicillin manufactured by Bristol at the price of $12.00. ICN Pharmaceuticals distributes Bristol's ampicillin through its brand-name division for$14.80 and through its generic division for $7.50. Note the differential between $7.50 and $18.24.

2) In answer to the argument that chemically equivalent drugs are not necessarily bioequivalent (meaning that when administered in same amount they do not provide the same therapeutic effect), the Department of Health, Education, and Welfare's report from the Task Force on Prescription Drugs stated that only in rare instances would equivalent drug products not produce the same therapeutic effects. A U.S. Senate committee concluded the same. HB 584 (Committee Substitute) has two provisions that respond to this problem of inequivalency. First, the physician can always specify that there be no substitution. Second, the Commissioner of Health, Education and Social Services will draw up a formulary specifying which drugs are and are not bioequivalents.

3) Giving the pharmacist some discretion takes into account his extensive training and his knowledge of drug products, which in some instances may be greater than other health professionals. Physicians lack drug price comparison data which would allow them to chose the best drug at the lowest available price.

4) People over 65 account for 23 per cent of the retail drug expenditures. On prescriptions to the elderly, the average cost per prescription is $3.91. For brand names alone the average cost per prescription is $4.11 while generic name prescriptions average $2.02.

5) There are 11 states with legislation permitting substitution: Arizona, Kentucky, Arkansas, Oregon, Minnesota, Connecticut, Michigan Maine, Massachusetts, Florida, and Maryland.

6) Groups that have endorsed such legislation: American Pharmaceutical Association, American Journal of Pharmacy, National Academy of Sciences, Consumers Union and HEW Special Task Force.

7) Hospitals use generic name products.

The Last Stand of Brand-Name Drugs

Companies Protest as State Moves to Allow Use of Low-Cost Substitutes

BY RAYMOND T. BONNER

artial relief from the high cost of prescrip- drugs may be near—but the battle is by neans won.

n California and more than 40 other states, rmacists are currently prohibited from stituting a lower-cost but otherwise equiv- nt generic drug for the more expensive e brand indicated on a prescription. wever, the State Assembly has approved nd the Senate is now considering—an act t would have the effect of repealing this hibition.

ctually, there is no need for this legislation or the ban on substitution in California is art of regulations promulgated by Sta harmacy Board. Indeed, independen- t of legislative moves and faced with a suit, the board has amended its regulation llow substitution, a rule which does not ome final, however, until the board holds rings in the near future.

s a result of these actions, drug-company ists, not surprisingly, have mounted a paign to maintain the status quo, with its ecessarily high drug prices.

very drug, of course, has a generic name, may also have one or more brand names. neric names are usually chemical tongue- sters, while brand names are short, simple catchy—designed to be remembered easi- by physicians. For example, Darvon is a nd name for propoxyphene hydrochloride; rvon wholesales for $33.35 (500 capsules), eneric equivalent for $8.45.

onsider also the disparity in prices for the mon antibiotic known as ampicillin. Bris- Laboratories manufactures ampicillin for ribution by three firms besides itself. Bris- own ampicillin is marketed under the le name Polycillin, and wholesales for .24 (100 capsules); the same quantity of tol-manufactured ampicillin distributed Smith, Kline & French fetches $12.

eanwhile, ICN Pharmaceuticals rather ly charges $7.50 and $14.80 for identical unts of Bristol's ampicillin. The lower e is charged by ICN's generic division and higher price by its brand-name division. e drug, same company—but a price vari- n of 200%. It is all too apparent that ny consumer dollars go not for what is in bottle but for the name that is on it.

Why is the industry opposed to the greater of generic drugs? Primarily, to protect fits. Since 1961, the drug industry has ked as one of the two most profitable manufacturing industries in the country, and brand-name products account for a substantial portion of those profits.

Drug companies spend $1 billion annually promoting their brand-name products among American physicians. (This amounts to $5,000 per private practitioner.) By contrast, the industry spent $620 million on all research and development in 1971, and medical schools spent $884 million on all their educational activities in 1972-73.

While permitting substitution would obviously be good for consumers' financial health, the drug industry does not view it as beneficial to its own welfare. Recently, eight drug manufacturers spent more than $15,000 to publish large advertisements in newspapers throughout California declaring that consumers would not benefit from substitution, and urging them to write their senators to oppose the legislation. Same manufacturer

One of the sponsors of that campaign, Parke-Davis, sells a brand-name tetracycline, Cyclopar, for $5.15 (100 capsules). A competitor sells an identical number of tetracycline pills manufactured by the same West Virginia company. The only significant difference is the lack of a brand name on the bottle and, of course, the price: $1.50. Thus, consumers could save more than 200% if pharmacists were permitted to substitute this generic tetracycline for Cyclopar—a good reason for Parke-Davis to oppose substitution.

Raymond T. Bonner, an attorney, is director of the West Coast office of Consumers Union, based in San Francisco.

When the Pharmacy Board begins hearings on its proposed amended regulation, the drug industry will no doubt offer its well-worn panoply of arguments. In the past, this standard position has been based more on scare tactics than fact. It has used the term "generic" disparagingly, and attempted to equate it with "bad" or "inferior" pharmaceuticals. In fact, however, nearly one-half of the defective drugs recalled in 1972 bore brand names.

The industry tenaciously clings to its contention that all substitution should be forbidden because a few equivalent drugs may not perform identically in a particular patient. This argument ignores findings of the Health, Education and Welfare Department's Task Force on Prescription Drugs, which was under the direction of Dr. Philip Lee, a distinguished physician and former chancellor at UC's medical school at San Francisco.

After an exhaustive two-year study, this task force unequivocally concluded that only in "rare instances" would equivalent drug products not produce substantially the same therapeutic effects. And, the researchers noted, these rare instances have been "grossly exaggerated" as hazards to public health.

Drug-industry lobbyists, moreover, have selectively quoted from a report prepared by the congressional Office of Technology Assessment. On the one hand, they emphasize OTA's observation that, in a particular patient, some equivalent drugs may produce somewhat different effects from those carrying brand names. On the other hand, these lobbyists conveniently fail to cite a declaration on the very next page of the OTA report noting that this disparity "is not, in itself, evidence that the use of such products will produce practical problems in the treatment of patients."

The drug companies also overlook a fact central to the new law: It would only permit — not require — substitution. Thus, if a doctor believes an equivalent drug would not produce the same therapeutic response as the one prescribed, he or she simply writes "no substitution" on the prescription.

Also disregarded by the drug companies is the routine practice by nearly all major hospitals to substitute generic drug products; moreover, substitution has been required for Medi-Cal patients since 1961—all without any documented harm to recipients. Unless the industry means to suggest there is one standard of health care for the poor and another for everyone else, generic drugs should be equally available to all.

Finally, the industry has contended that substitution won't result in any cost saving to consumers. It is hard to understand why the drug companies bother to make such an argument, for it cannot be supported by facts. For example, the HEW task force discovered that the average price for brand-name drugs was $4.11, while those dispensed under a generic name cost less than half as much, or $2.02. For Californians, this means paying an extra $45 million each year for their prescription-drug needs, according to the California Department of Consumer Affairs.

It should be clear that one prescription for relieving the pain of high-priced drugs is to permit pharmacists to engage in generic substitution. We must vigilantly guard against the drug industry's desperate efforts to block the administration of this relief.

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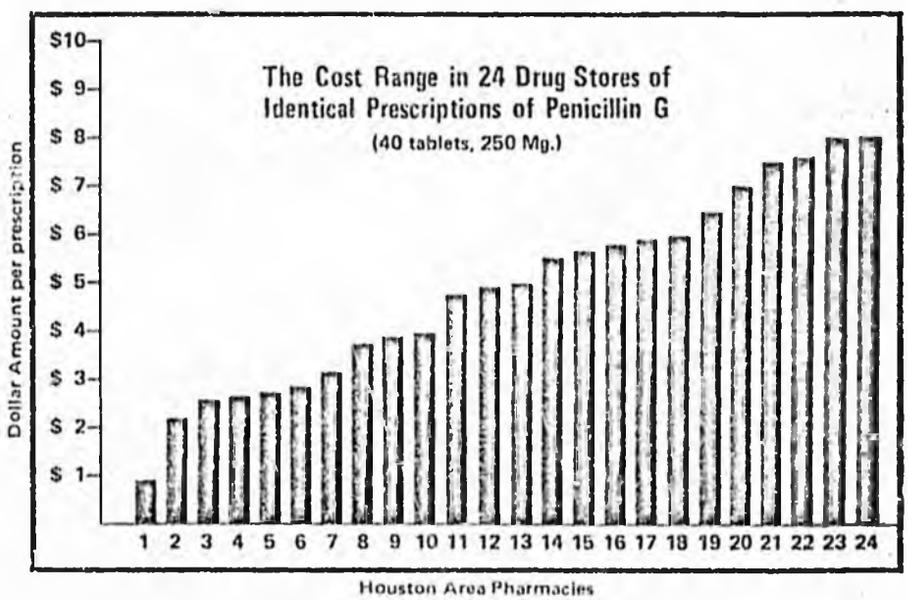
MIKE HUDSON, DIRECTOR TRACI HARTE, RESEARCH COORDINATOR

The Real Cost of Prescription Drugs

In Houston between Nov. 2 and 4, 8 prescription drugs were priced at 24 randomly-selected drug stores. In the case of Penicillin G the cost range was from 88¢ to $8.00.



Four billion dollars a year is spent on prescription drugs.[1] "This represents over one billion prescriptions . . . in other words five prescriptions for every man, woman and child in the country."[2]

In recent years, much has been said and written about prescription drugs and their cost to the consumer. Two issues have emerged as the salient aspects of the controversy. First, it is extremely difficult for the consumer to obtain information about the price of a prescription prior to the actual purchase. Advertising of prescription drugs is forbidden by statute or by regulation in thirty-four states. Current prices of common prescriptions are not posted, and price information is not freely available over the telephone. The second important issue is the question of generic versus brand-name prescriptions. Most states, including Texas, have anti-substitution laws which require that a pharmacist fill a prescription exactly as it is described by the doctor on the prescription sheet. This statute protects the welfare of the consumer by insuring that the physician's intended therapy is accurately fulfilled. However, it prevents a pharmacist from substituting a therapeutically equivalent but cheaper generic drug in the case of a brand-name prescription. This report will review some of the recent developments in these controversies and present the results of a prescription drug price survey in the city of Houston.

The Price of Secrecy and the Non-Competitive Market

There are a number of groups who are currently interested in the advertising issue. Pharmacists are officially opposed to advertising because it reduces their standing as professionals. Rivalry, especially business rivalry, has been long frowned upon by all medical professionals. However, the enforced lack of price disclosure has the side effect of protecting every pharmacist's profits, perhaps another reason for the reluctance to advertise. Doctors are generally in favor of drug price disclosure, but they are reluctant to initiate any action that would change the current policy. In fact, it was difficult to find doctors who would participate in this survey in more than an advisory capacity. Another issue which pharmacists are quick to point out is the effect of advertising on the relationship between doctor and patients. Generally, pharmacists believe that patients will urge physicians to prescribe advertised drugs and that doctors will respond accordingly.

Many pharmacy professors state that if advertising is allowed, consumers will shop around and thereby destroy the comprehensive patient profile that some pharmacists like to maintain for regular customers. While TexPIRG is in support of this clinical approach to pharmacy, each individual should have the necessary information to choose between a patient profile and a cost reduction, if both cannot be obtained. For most consumers, the difference between $.88 and $8.00 (the cost range for Penicillin G) is significant. Indeed, if this is the cost of maintaining a patient profile, it is a luxury that the large majority of consumers cannot afford. It is possible, however, to achieve price reduction as well as maintain important patient services. Prescription drugs are not a luxury, they are an immediate necessity. Consumers cannot spend large amounts of time shopping around, nor can they wait for "good buys" as they might with groceries. There are many indications that price disclosure, and the competitive pricing that would result, would eliminate excessive mark-ups and stabilize prices so that the consumer could choose a pharmacy on the basis of the services provided, not on the basis of cost differences. This issue is summarized in the case of Sav-a-lot vs. Commissioners of Pharmacy (Baltimore): "The promotion of the monitoring function (patient profiles) by a statute forbidding the advertising of prices of prescription drugs at best is a very indirect and arbitrary method to accomplish such a goal."[3]

The fight to allow advertising has been led by certain chain drug stores. Osco Drugs, Inc., with 178 stores in 17 states began posting prices of its 100 most frequently filled prescriptions in October 1971. As a consequence, Osco has become involved in litigation and other forms of harassment from state boards of pharmacy. At the present time, Osco has won favorable rulings in North Dakota and Wisconsin, and a suit challenging advertising laws is pending in Illinois. The constitutionality of advertising prohibitions has been upheld in New. Jersey (Supermarkets General Corp. vs. Sills) and denied in Florida (Stadnik vs. Shell City, Inc.). In part, the decision of the Florida Supreme Court reads as follows:

> "The effect of the rule is simply that the druggist cannot advertise the price of a prescription drug even though he is prohibited by law from selling the drug except upon the prescription of a physician. There is simply no reasonable justification

for such an administrative intrusion on private rights when the regulation is so completely lacking in public benefit."[4]

The Pennsylvania Supreme Court ruled in January 1971 that the ban on advertising was unconstitutional because the statute promoted "the dampening of price competition in the retail sale of prescription drugs." By December, the Pennsylvania Pharmacy Board enacted new regulations requiring that advertisements provide full disclosure of a drug's actions, interactions, indications, contraindications, adverse reactions, and dosage. This kind of "disclosure", most of which only a physician can understand, is obviously designed to cripple the advertising movement. Pharmacies attempting to advertise in Florida and Illinois have encountered intense harassment from state pharmacy boards. The problem ranges from threatened revocation of pharmacists' licenses to blacklisting in pharmacy schools.

Government consumer agencies have been highly vocal in support of repealing anti-advertising laws. The HEW Task Force on Prescription Drugs states "...if the patient is to maintain the right to select a pharmacy, he also has a right to know the prices it charges and to compare these with other prices."[5] The United States Department of Justice has recently issued a strong statement on the subject. Two passages from the "Research Paper and Policy Statement of the U.S. Department of Justice on the Advertising of Retail Prescription Prices" are well worth quoting here:

> "The Department of Justice believes that the major effect of legislation or regulations prohibiting price advertising of prescription drugs is to reduce retailer incentives to engage in price competition with resulting higher costs to the public."

and,

> "Accordingly, it is the Department's view that existing state legislation or regulations which prohibit or restrict price advertising of prescription drugs may well be adverse to the public interest. Since such restrictions appear to be unnecessary to protection of the public and result in unjustifiable expenditures by consumers, the Department feels they should be eliminated."

In a speech before the 1972 Pharmaceutical Conference of the National Association of Chain Drug Stores, Inc., Virginia Knauer, Special Assistant to the President for Consumer Affairs, stated her opinions on advertising:

> "It is true that there is a distinction between prescription drugs and other drug store items. The consumer does not have the choice of <u>what</u> to buy. But this does not mean that the consumer should not have the right to choose <u>where</u> to buy, taking into consideration both the price and the services he is offered by various drug stores."

and more bluntly,

> "Pharmacy laws are widely recognized as a means of protecting the independent drug store from his larger competitors. While it is true that large operations have an advantage in price competition, the economies of scale offer no superiority on such vital elements of competition as the convenience of the location or of the friendliness of the service."

Some local agencies[6] are actively pursuing solutions to this problem. The Director of the Seattle Consumer Protection Office has raised the issue of price disclosure in the state of Washington. He became interested in this aspect of consumer affairs after he encountered great reluctance on the part of Seattle pharmacists to price prescriptions over the telephone.[6]

What exactly is the cost of price secrecy and lack of competition among drug stores? Logically, one could expect that pricing would be arbitrary. Prices would vary widely from store to store, even well beyond what could be expected from variations in overhead costs. The implication is that the consumer will often have to pay more than he should.

To determine the effects of price secrecy in Houston, members of the Texas Public Interest Research Group conducted a price survey of Houston drug stores. Twenty-four pharmacies were randomly selected from those within the Houston city limits. Valid prescriptions were obtained from sympathetic physicians. The prescriptions consisted of four common brand-name prescriptions and four equivalent

generic prescriptions, as indicated below:

Pentids	250 mg.	40 tabs	antibiotic
Potassium Penicillin G	250 mg.	40 tabs	antibiotic (generic)
Equanil	400 mg.	42	tranquilizer
Meprobamate	400 mg.	42	tranquilizer (generic)
Sumycin	250 mg.	40 caps	antibiotic
Tetracycline	250 mg.	40 caps	antibiotic (generic)
Nembutal	30 mg.	14	sedative
Sodium Pentobarbital	30 mg.	14	sedative (generic)

Student volunteers were organized into twelve two-man teams, each team member having one valid prescription. A team would visit a store, present its prescriptions, and ask the prices. Each team member witnessed the price quoted to the other. With each team visiting eight stores, a total of four prescriptions, two brand name drugs and their generic equivalents, were priced in each store. Consequently, price data for each drug is drawn from a sample of twenty-four pharmacies.

The need to resort to the complicated (some would say devious) data-collecting procedure outlined above underscores the inaccessibility of information. A telephone survey was impossible. Only four of ten pharmacies contacted would price a Potassium Penicillin G prescription over the telephone. The first team to visit a given pharmacy would invariably obtain the desired information. However, the second team was not as fortunate. By this time, some druggists realized what our intentions were; this realization was occasionally accompanied by missing data. On the whole, however, data-gathering was successful using this procedure.

The results of this survey speak for themselves. Table 1 shows the average price, price range, and the number of pharmacies consenting to quote prices. Unfortunately, the Nembutal and Sodium Pentobarbital prescriptions were written for an uncommon dosage, the 50 milligram tablets being the common dosage. This explains the relatively scarce data for these prescriptions.

Table 1 Range of Prescription Drug Costs *

Pentids
Average: $6.40
Range: $4.86 - $10.49
23 pharmacies

Potassium Penicillin G
Average: $4.71
Range: $0.88 - $8.00
23 pharmacies

Equanil
Average: $4.37
Range: $3.56 - $6.20
23 pharmacies

Meprobamate
Average: $3.23
Range: $1.53 - $7.20
21 pharmacies

Sumycin
Average: $3.55
Range: $1.99 - $5.50
23 stores

Tetracycline
Average: $3.47
Range: $1.93 - $6.00
23 stores

Nembutal
Average: $1.66
Range: $0.76 - $3.00
12 stores

Sodium Pentobarbital
Average: $1.31
Range: $0.88 - $2.25
11 stores

It is fair to assume that the average Houston consumer would not pay $8.00 for 40 penicillin tablets if he were aware that the same prescription cost $0.88 elsewhere. This particular case represents a variation in price of over 900%. If the drugstores in the sample were openly competing with each other for business, this variance, as well as the large variances for the other seven prescriptions, could not possibly exist.

Attempts were made to correlate prices with three factors thought to influence drug prices: whether or not the pharmacy was located in a disadvantaged socio-economic area, whether the pharmacy was a chain member or an independent, and whether the pharmacy provided minimal, some, or most drugstore services. The evidence for the influence of these three factors was either inconclusive or insufficient. If these conditions indeed do influence price, they fall far short of justifying the price variation described.

*See Appendix for complete data

Is the Repeal of the Advertising Prohibition the Answer?

Our primary objective is to make drug price information available to the public. Ideally, every drugstore's prescription prices should be accessible to the consumer. The choice of a drugstore would then be determined by balancing the important factors: convenience, services, and price.

Advertising per se would have two important effects: advertisements would provide consumers with a general idea of what specific prescriptions should cost, and pricing would become more competitive. This situation, although far from ideal, would certainly be preferable to what exists now. The problems with advertising are worth mentioning. First, it is already practice among a few pharmacists to sell a very common prescription drug such as birth control pills at a loss. Through this practice, the pharmacist hopes to attract the regular business of a customer. We could expect the same situation with advertising. A few drugs will be advertised at very low prices, thus attracting consumers to a store which may sell all other drugs at excessive prices.

In general, advertising will not provide consumers with all the necessary data to make sound decisions. They will only know the prices in those stores which can afford to advertise, and then only for selected drugs.

There is only one truly effective means of providing the public with the information it needs. A statute must be enacted which would require each drugstore to post on the premises the prices of the 100 drugs most commonly prescribed nationwide. This formulary, which would list drugs according to generic class, would be drawn up by the state board of pharmacy and the health department. This program has already been put into effect in Vermont, and legislation has been introduced in several other states.

In addition, we recommend that the state board of pharmacy, HEW, and representatives of consumer groups establish maximum prices for all drugs. (This would be quite similar to what already exists in the Vendor Drug Program within the Welfare Department.) The Attorney General should be empowered to levy fines whenever a drug was sold for more than the maximum established price.

The Case for Substitution

The American Pharmaceutical Association defines substitution as "the substitution of one manufacturer's therapeutically effective and chemically equivalent drug product for the product of another prescribed by trade name alone."[7]

-Trade name (brand name): The name coined and usually registered by the manufacturer to describe a specific drug product made by him alone
-Established name (generic or nonproprietary name): established names include:

1) Names used in the National Formulary and the United States Pharmacopeia to describe drug entities
2) Names promulgated by the Secretary of HEW to describe drug entities
3) In the absence of a name in category (1) or (2), the common name of the drug entity if it has one

(Definitions provided by A. Ph. A.)

Very simply, generic refers to an entire class of drugs; the brand name drugs within the class as well as the non-proprietary drugs, those which are not given names by their manufacturers. All the unnamed drugs are called by the generic name.

Currently, pharmacists are not allowed to stustitute a generic drug for a brand name drug when the two drugs are chemically identical. For instance, Pentids is the Squibb brand name for penicillin G. When a pharmacists receives a prescription for penicillin G, he may fill it with Pentids or any brand name of his choice. However, if a doctor prescribes a specific brand name, such as Pentids, the pharmacist is not allowed to substitute an equivalent but cheaper brand. Simple statistical analysis indicates that generically filled prescriptions can be expected to cost less than equivalent brand names virtually 100% of the time.

Today, pharmacists, almost without exception, are in favor of generic substitution. They would like to see the anti-substitution laws repealed. This would grant them more professional responsibility in making drug therapy decisions for their patients. The American Pharmaceutical Association's Policy Committee on Public Affairs is clear on this issue:

"The pharmacist's training and expertise qualify him as an expert on drugs and permit him to make judgments about quality drug products. Thus, in the Committee's view, antisubstitution laws serve for the most part to eliminate the pharmacist as a decision-maker in providing rational drug therapy for patients. To state the proposition in other terms, a major effect of antisubstitution laws is to make the pharmacist's function more mechanical than professional..."

The APhA further argues that allowing generic substitution would increase efficiency; lower the cost of widely-used drugs, permit reduction of inventories of generic drugs manufactured by many different companies, force drug manufacturers to compete, and require physicians to obtain drug information from sources other than medical journal advertisements.[8] The Texas Pharmaceutical Association favors modification of the Texas antisubstitution law to allow generic substitution and is currently engaged in legislative activity toward that end.[9] A director of the Texas Pharmaceutical Association states "...this would allow the pharmacist the professional perogative of selecting from a wide variety of quality drugs of identical chemical composition the one which provided the most reasonable price consistent with high standards."[10]

Doctors have mixed feelings on the issue of generic substitution. Although they recognize that there is little if any clinical difference among brands of a generic drug to justify large price differences, they are reluctant to allow pharmacists to assume what has been a doctor's responsibility. There have been some instances however, where doctors have voluntarily co-operated in plans which would allow substitution. In Charlottesville, Virginia, a plan was worked out between the pharmaceutical association and the medical society whereby "physicians agreed to prescribe by nonproprietary (generic) name, and pharmacists agreed to dispense accordingly and pass on cost savings to the patient."[11]

The only serious opposition to repeal comes from the major drug manufacturers. They are the people who successfully pushed for the adoption of antisubstitution laws in 44 of the 50 states during the 1950's. These laws now serve to protect the large profits of the big drug manufacturers. "About 90-95% of all drugs sold by manufacturers are brand name products protected by patents or supported by highly promotional expenses."[12] The drug manufacturers use 'the necessity for quality control' as their central argument. Yet the stringent testing and regulation by the FDA in recent years removes the basis for these arguments; there are few generic drugs on the market today of inferior or detrimental quality.[13]

It is generally believed by consumer groups that if pharmacists were allowed to substitute generic equivalents in the case of brand name prescriptions that they would pass on cost savings from stock reduction and competition among manufacturers to their customers. There is no reason to believe that this would not be the case. There would be other benefits to the consumer as well. A customer would no longer be inconvenienced by a pharmacist not having the specific brand name drug that was prescribed.

If, however the consumer is to benefit in any <u>major</u> way, there are two critical questions which must be answered.

1) IF A PHARMACIST IS ALLOWED TO SUBSTITUTE, IS THERE ANY INDICATION THAT HE WILL SUBSTITUTE A LOW PRICED GENERIC EQUIVALENT?

The most disturbing fact revealed by the Houston survey relates directly to this. One of the drugs used in our survey was Tetracycline, the generic name for an inexpensive commonly prescribed antibiotic. Sumycin, brand name tetracycline, of slightly higher than average cost, was also used. In 8 of the 24 drug stores surveyed, the price quoted for generic tetracycline was higher than the price quoted for Sumycin. This means that 1/3 of the pharmacists were filling generic prescriptions with one of the most expensive brand names, even when cheaper brand name drugs were available. It is conceivable then that the repeal of the antisubstitution law by itself could actually serve to increase drug costs.

2) IF PHARMACISTS WERE SUBSTITUTING GENERALLY LOW PRICED GENERIC EQUIVALENTS, IF THERE ANY INDICATION THAT THEY WOULD NOT ENGAGE IN HUGE MARKUPS?

A pharmacy professor at the state university of New York conducted a survey similar to TexPIRGs. Professor Wertheimer concluded that "prices varied according to the customer's dress, his age, his race, the time of day or week he purchased

the prescription, and other irrelevant factors."[14]

There is evidence enough that repeal of the substitution laws might act only to increase the pharmacists' margin of profit and actually result in even greater financial burden for the consumer. We believe that the only means for assuring that both pharmacist and consumer benefit from repeal of the law is if it goes hand in hand with the requirement that every drug store post prices. This will not only avoid excessive markups, but a consumer can then ask the pharmacist to substitute according to the prices posted in the store.

TexPIRG will lobby extensively for passage of a posting requirement. We will urge that the antisubstitution law be repealed, but only after the posting requirement has become law. We will actively support any other legislation which provides for a more clinical orientation to the pharmacy profession.

The drug pricing survey was developed and carried out by TexPIRG members at the University of Houston and Rice University, with the help of Ms. Sandra Dement of the Citizen Action Group in Washington, D.C. The report was done by Paul Sanner, Rice University senior, and TexPIRG staff.

For further information or additional copies of the report, contact:

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713 667-1087

Austin: Traci Harte (TexPIRG State Office)
512 477-3118

NOTES

1 HEW, "Prescription Drug Data Summary," p. 6.

2 Vordenbaum, Statement to the Texas Senate Interim Committee on Rising Medical Costs, Dec. 5, p. 1.

3 Sav-a-lot vs. Commissioners of Pharmacy, p. 9.

4 "Prescription Drug Pricing," CFA, p. 4.

5 Sav-a-lot vs. Commissioners of Pharmacy, p. 16.

6 The Post-Times, Seattle, Sat. Nov.4.

7 "Pharmacist's Role in Product Selection," p. 6.

8 Ibid., p. 5.

9 Vordenbaum, Statement, Dec. 5, p. 5.

10 Ibid.

11 "Pharmacist's Role in Product Selection," p. 8.

12 "Controlling Health Care Costs in Illinois," p. 9.

13 Burack, The New Handbook of Prescription Drugs, p. 13.

14 "Prescription Drug Pricing," p. 5.

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Knauer, Virginia, Remarks before National Association of Chain Drug Stores, Inc., 1972 Pharmaceutical Conference.

"Pharmacist's Role in Product Selection," The Board of Trustees, American Pharmaceutical Association, March 1971.

Porterfield, Paul, Director, Seattle Consumer Protection Office, Statement to Washington State Board of Pharmacy on Drug Advertising and Drug Discounting.

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U.S. Dept. of Justice, "Research Paper and Policy Statement Regarding State Restrictions on the Advertising of Retail Prescription Drugs", 1971.

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Wertheimer, Albert, "Prescription Pricing: Art, Science, or Whim", California Pharmacist, March 31, 1971, p. 6.

Rodman Wilson, M.D.
Hilton Hotel, Room 710
Alaska State Medical Association

Suggested Substitute Language
for
HB 584

For Act Entitled: An Act relating to substitution and labeling of prescription drugs by pharmacists.

Section 1. AS 08.80.290 and AS 08.80.295 are repealed and re-enacted to read:

Sec. 08.80.290 SUBSTITUTION. In billing a prescription a pharmacist shall supply a patient with the least expensive product he has in stock so long as it has the same dosage form and therapeutic effect as the drug prescribed by the physician, osteopathic physician, dentist, or veterinarian; except that:

(1) A prescriber may specify orally or in writing but not by stamping or preprinting on prescription forms, that no substitution is permitted, and

(2) A patient or his surrogate may instruct the pharmacist orally or in writing that he does not want substitution.

Sec. 08.80.295 AFFIXING OF LABEL. At the time of dispensing a prescription there shall be affixed to the container of a prescription a label bearing the name, address, and telephone number of the pharmacy filling the prescription, the date, the serial number of the prescription, the name of the patient, the name and instructions of the prescriber, the initials of the registered pharmacist who prepared the prescription, and the name and strength of the drug contained in it unless a physician, osteopathic physician, dentist, or veterinarian specifies orally or in

writing, but not by stamping or preprinting on prescription forms, that the name and strength not appear on the container. When a drug name is affixed, the name shall be as follows:

(1) As prescribed if no substitution has been made under Sec.290 of this chapter.

(2) Generic name and either brand or manufacturer's name if a single drug agent is prescribed by brand name and a substitution has been made under Sec. 290 of this chapter.

(3) Brand name or generic names or common abbreviations if substitution is made under Sec. 290 of this chapter for a product containing a mixture of pharmacologically active substances.

(4) "Dr (name)'s mixture" if a mixture of drugs does not have a name.

Sec. 08.80.310 is repealed and re-enacted to read:

The Commissioner of Health and Social Services shall publish a formulary of generic drug types and drug products which the Commissioner of Health and Social Services determines demonstrates clinically significant biological or therapeutic inequivalence and which, if substituted, would pose a threat to the health and safety of patients receiving prescription medication. No pharmacist shall dispense a generically equivalent drug product if the drug product and its generic drug type is included in the formulary.

Sec. 2. AS 08.80.460 is amended by adding a new subsection to read:

(b) a person who violates the provisions of Sec. 290 or Sec. 295 of this chapter is punishable by a civil fine in an amount established by the Board in a schedule or schedules establishing

the amount of civil fine for a particular violation. The schedule or schedules shall be adopted by the Board by regulation. Any civil fine imposed under this section may be appealed in the manner provided for appeals in the Administrative Procedures Act (AS 44.62).

Sec. 08.80.480 is amended by adding:

(20) "brand name" means the proprietary or trade name of a drug product.

(21) "generic name" means the official name of a drug as listed in nationally recognized pharmacopoeias.

THE LEGISLATURE OF THE STATE OF ALASKA
FISCAL NOTE
Second Session - Ninth Legislature

I. REQUEST
Bill No. House Bill 584
Title: An Act relating to substitution of prescription drugs by pharmaci
Requested by: Date: February 4, 1976
Return Date Requested:
Agency: Commerce Program: Licensing of Professions

II. FISCAL DETAIL
Budget Request Unit(s) Affected: Regulating and Licensing of Professions

A. EXPENDITURES: (Thousands of dollars)

	OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100	PERSONAL SERVICES						
200	TRAVEL						
300	CONTRACTUAL	.3	.3	.4	.4	.5	.5
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL	.3	.3	.4	.4	.5	.5

B. FUNDING: (Thousands of dollars)

GENERAL FUND	.3	.3	.4	.4	.5	.5
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	0/0	/	/	/	/	/
MAN MONTHS (P./T.)	/	/	/	/	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Assumes printing 200 12" x 18" signs on poster board and mailing same per year. Assumes 10% inflation and an effective date before July 1, 1976.

IV. ATTACHMENTS

V. DATE: February 4, 1976 PREPARED BY: Sharon Andrew, Director

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

H/S 50

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

~~page 1 line 27 & 28~~
~~another~~

page 2 line 24 after
"of the" "generic names of the"

line 25
"and examples of each by brand
name if any" after the word
persuded.

Passed

IB584
2-25-76

page 1 line 14 other words rather than therapeutically equivalent; Bio equivalent

Bio equivalent is defined in scientific community.

Blood levels are the problem. if it is is it therapeutically equivalent.

April 28 Fed. Regulations will take effect re: bio equivalent.

page 2 line 4 drugs are to be bio equivalent.

Add quantity to label

Counsel of State governments to see if any of the 11 states have problems with the bill.

B. R Grace is holsaler in MA

Bill to Use In C S

Original Sponsors: Bradley, Bradner and Gardiner

Offered: 2/6/76
Referred: Judiciary

IN THE HOUSE BY THE COMMERCE COMMITTEE

CS FOR HOUSE BILL NO. 584

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to substitution of prescription drugs by pharmacists."

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

* Section 1. AS 08.80.295 is repealed and re-enacted to read:

Sec. 08.80.295. SUBSTITUTION. (a) Except as limited by (b) and (d) of this section, with the consent of the purchaser, the pharmacist may substitute a drug product with the same generic name in the same strength, quantity, dose and dosage form as the prescribed drug which is, in the pharmacist's professional opinion, therapeutically equivalent. Upon substitution the pharmacist shall notify the person who prescribed the drug of the substitution and of the drug substituted.

(b) A person authorized to prescribe drugs may specify in writing or by oral communication that there shall be no substitution for the specified brand name drug in any prescription. The phrase "no substitution" or words of like import must be in the person's handwriting or, if the prohibition was communicated orally, in the pharmacist's handwriting, and shall not be preprinted or stamped or initialed on the prescription form.

(c) Every pharmacy shall post a sign in a location easily seen by patrons at the counter where prescriptions are dispensed stating that "Alaska law provides that with your consent, unless prohibited by your doctor, this pharmacy may substitute a less expensive drug which is therapeutically equivalent to the one prescribed by your doctor." The printing on the sign shall be in block letters not less than one inch ir

height.

(d) A pharmacist shall substitute a drug product under (a) of this section only when there will be a savings in cost to the purchaser.

(e) If the physician prescribes a drug by its generic name, the pharmacist shall dispense the lowest retail cost ~~brand~~ drug product which is in stock. which and complies with the prescription

(f) As used in this section, unless the context requires otherwise,

(1) "brand name" means the proprietary or trade name selected by the manufacturer and placed upon a drug, its container, label or wrapping at the time of packaging;

(2) "generic name" means the official title of a drug or drug ingredients published in the latest edition of a Pharmacopoeia, Homeopathic Pharmacopoeia or Formulary;

(3) "substitute" means to dispense without prescriber's express authorization a different drug product in place of the drug ordered or prescribed;

(4) "therapeutically equivalent" means drugs that will provide essentially the same efficacy and toxicity when administered to an individual in the same dosage regimen.

* Sec. 2. AS 08.80 is amended by adding a new section to read:

Sec. 08.80.297. POSTING OF PRICES. (a) Annually ~~in the month of August~~, the Department of Commerce and Economic Development shall prepare a list of the generic or brand names of the 100 most commonly prescribed prescription drugs, their usual strength and amount prescribed, and distribute the list along with regulations for posting to each pharmacy registered with the board of registration in pharmacy. The determination of the department as to which drugs are to be included on the list shall be final.

(b) The current list of the 100 most commonly prescribed drugs

shall be conspicuously posted in each pharmacy registered with the board. After each prescription drug listed, the name of the manufacturer and the current selling price shall be clearly indicated for that prescription by the pharmacy. A pharmacy may change the current selling price and the posting of the price at any time.

(c) The price of all other drugs not included on the list of 100 commonly prescribed drugs shall be available and shall be quoted by the pharmacy upon request.

Re insert sec 2 as sec 3

Introduced: 1/15/76
Referred: Commerce and Judiciary

IN THE HOUSE BY BRADLEY, BRADNER AND GARDINER

HOUSE BILL NO. 584

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to substitution of prescription drugs by pharmacists."

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

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(b) A licensed medical practitioner may specify in writing or by a telephonic communication that there shall be no substitution for the specified brand name drug in any prescription. The phrase "no substitution" or words of like import must be in the practitioner's handwriting or, if the prohibition was communicated by telephonic communication, in the pharmacist's handwriting, and shall not be preprinted or stamped or initialed on the prescription form.

(c) Every pharmacy shall post a sign in a location easily seen by patrons at the counter where prescriptions are dispensed stating that, "This pharmacy may be able to substitute a less expensive drug which is therapeutically equivalent to the one prescribed by your doctor unless you do not approve." The printing on the sign shall be in block letters not less than one inch in height.

(d) A pharmacist shall substitute a drug product under (a) of

this section only when there will be a savings in or no increase in cost to the purchaser.

(e) If the physician prescribes a drug by its generic name, the pharmacist shall dispense the lowest retail cost brand which is in stock.

(f) Except as provided in (g) of this section, when a pharmacist dispenses a substituted drug as authorized by (a) of this section, he must label the prescription container with the name of the dispensed drug. If the dispensed drug does not have a brand name, the prescription label shall indicate the generic name of the drug dispensed along with the name of the drug manufacturer. and quantity

(g) A prescription dispensed by a pharmacist shall bear upon the label the name of the medication in the container except if the prescriber writes "do not label," or words of similar import, on the prescription or so designates in an oral transmission of the prescription.

(h) As used in this section, unless the context requires otherwise:

(1) "brand name" means the proprietary or trade name selected by the manufacturer and placed upon a drug, its container, label or wrapping at the time of packaging;

(2) "generic name" means the official title of a drug or drug ingredients published in the latest edition of a Pharmacopoeia, Homeopathic Pharmacopoeia or Formulary;

(3) "substitute" means to dispense without prescriber's express authorization a different drug product in place of the drug ordered or prescribed;

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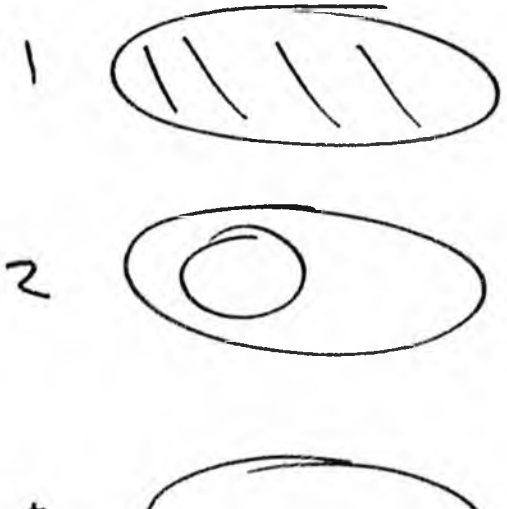
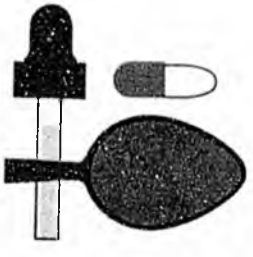
The chairman of the Medical Association's special subcommittee on the question of generic substitution ~~is the a drug~~ was the only drug wholesale business in the state. This information was given to me by AkPirg.





Keflex®
cephalexin
Lilly

HB584 - Drugs Bradley

Ron Sedwick - Alaska Pharmacy Assoc.

Support concept - better prescription quality & price

Page 1, line 14 "therapeutically equivalent"

too broad language

"bio equivalents" → same blood level in system

April 28 - Fed Regs

We should tie ourselves to Fed standards developed

Pag 1 line 15, 16 change person to "physician or agent"

Tetracycline 15^{00} for 100
Most common antibiotic 2^{cc} for 100 $3^{00} - 5^{00}$ $75\frac{1}{2}$

Section (e) have refer back to (a) as (d) does

put (f) + (g) original bill back in this is existing statute

suggestion - add quantity of container requirement to this section

---

Paul Mitchell

Grace is only wholesaler in Alaska

1967 —

Original Sponsors: Bradley, Bradner and Gardiner

Offered: 2/6/76
Referred: Judiciary

IN THE HOUSE BY THE COMMERCE COMMITTEE

CS FOR HOUSE BILL NO. 584

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to substitution of prescription drugs by pharmacists."

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

* Section 1. AS 08.80.295 is repealed and re-enacted to read:

Sec. 08.80.295. SUBSTITUTION. (a) Except as limited by (b) and (d) of this section, with the consent of the purchaser, the pharmacist may substitute a drug product with the same generic name in the same strength, quantity, dose and dosage form as the prescribed drug which is, in the pharmacist's professional opinion, therapeutically equivalent. Upon substitution the pharmacist shall notify the person who prescribed the drug of the substitution and of the drug substituted.

(b) A person authorized to prescribe drugs may specify in writing or by oral communication that there shall be no substitution for the specified brand name drug in any prescription. The phrase "no substitution" or words of like import must be in the person's handwriting or, if the prohibition was communicated orally, in the pharmacist's handwriting, and shall not be preprinted or stamped or initialed on the prescription form.

(c) Every pharmacy shall post a sign in a location easily seen by patrons at the counter where prescriptions are dispensed stating that "Alaska law provides that with your consent, unless prohibited by your doctor, this pharmacy may substitute a less expensive drug which is therapeutically equivalent to the one prescribed by your doctor." The printing on the sign shall be in block letters not less than one inch in

shall be conspicuously posted in each pharmacy registered with the board. After each prescription drug listed, the name of the manufacturer and the current selling price shall be clearly indicated for that prescription by the pharmacy. A pharmacy may change the current selling price and the posting of the price at any time.

(c) The price of all other drugs not included on the list of 100 commonly prescribed drugs shall be available and shall be quoted by the pharmacy upon request.

F Add Section #2 of HB584

REVIEW & OUTLOOK

Bureaucracy at Work

We really don't have anything personal against bureaucrats, pointy-headed or otherwise. It's not the people but the system, which is currently on display in the Food and Drug Administration's recent proposal to test the quality of generic drugs.

It's not that there ever has been a particularly serious problem with the quality of generic drugs, which are the chemical equivalents of brand-name drugs. Brand names are given to a drug by the company that develops and patents it. Naturally, the patent protection allows a company to establish its drug as standard. After the patent protection runs out, other firms are free to bring out generic versions. But doctors have tended to continue to prescribe by brand name. They knew what they were getting, and somehow the quality of generic drugs never arose as an issue.

The FDA has discovered, however, that a problem with the quality of generic drugs is now upon us. The problem is caused by the FDA's parent bureaucracy, the Department of Health, Education and Welfare, which frowns on brand-name prescriptions. The brand-name drugs typically cost more than the generic-name equivalents, and HEW is setting out to protect the consumer with something called Maximum Allowable Cost. In brief, under Medicare and Medicaid, it will reimburse for the cost of generic drugs, not for brand ones.

HEW estimated that its new rules would save $88.8 million of the $1.2 billion spent for drugs under federal programs. But it turns out that this includes savings from other proposals, such as limiting the retail markup. The substitution of generic for brand-name drugs will save, it says, $48 million. This is about 4% of the federal drug bill.

Now, lo and behold, the FDA announces that, just as brand-name manufacturers have always contended, generic drugs are not necessarily the same as brand-name ones. The active ingredients are the same, but sometimes the binders and fillers do make a difference. So the FDA will require makers of generic drugs to demonstrate that their versions are as effective as the "reference" (read "brand-name") drugs. In some cases the FDA will accept laboratory tests on dissolution rates, but for about half of the 137 drugs immediately involved it will require human tests to measure the concentration of drugs in the blood stream.

We do not recall noticing how much this new FDA program will cost, but we assume it is well under $48 million, since the entire FDA payroll is some $200 million. Of course, the generic drug manufacturers will have to pay for extra testing, thus somewhat cutting the $48 million savings. The real catch is that the FDA has yet to face the big problem, which is not fillers and binders, but quality control in the factories.

When HEW campaigns against brand-name prescriptions, it in effect takes upon itself the responsibility for quality control formerly exercised by prescribing physicians. If the source of the drug is decided not by the physician but by a pharmacist officially encouraged to use the lowest-cost source, someone has to worry about the quality of drugs made in every chemical shop in the nation capable of cooking up a recipe already spelled out in an expired patent. This implies an army of government inspectors, all devoted to solving a problem the doctors formerly handled with a stroke of a pen.

And for what? Any true saving for the consumer is highly problematical. The drug companies need to get enough return to justify their research, and if they cannot get it through market position after patents expire they will have to get it through higher prices while the patents apply. New tests for generic drugs will represent additional costs, which someone has to pay. And if the FDA gets deeply into quality control, as it almost certainly must, most of any envisioned savings would merely be shifted from the consumer's drug bill to his taxes, over which he has even less control.

The likelihood is that the drug companies will maintain their profits, and that the salaries of extra bureaucrats will represent merely an increase in the total cost to the consumer. But assume for a moment that the consumer breaks even, that the bureaucrats' salaries are offset by lower drug company profits. What have you then done? You have taken money that would go into drug research and other capital investments, and paid it instead to bureaucrats hired to solve a problem that didn't exist until the bureaucrats caused it.

Reprinted from THE WALL STREET JOURNAL—*July 10, 1975*

When Friends or Patients Ask About . . .

William H. Crosby, MD, *Coordinator*

The Cost of Drugs

Mickey C. Smith, PhD

PATIENT concern over drug prices frequently finds expression in questions asked of their physicians. What responses can be given?

It is good to recognize the pervasive role of drugs in the lives of most patients. The total sales of prescription drugs in 1974 was more than $5 billion. The average patient received eight prescriptions in that year; the patient over 65 years old may have received 15 or more prescriptions. In addition, some $3.5 billion worth of nonprescription drugs were sold.

The prescription drug has other characteristics that make it vulnerable to patient complaint. Remember that the patient first visits his physician, and then still must get his prescription filled. Also, as has been pointed out before by others, prescription drugs are unusual in being one commodity where the person who chooses is not the one who pays. To place these expenses in perspective, it is well to remember that the ratio of physician charges to drug charges is about 3:1.

Elements of Drug Costs

When your patient has a prescription filled he pays for several things. The first of these is, of course, the cost of the drug itself. This drug cost includes the active ingredient as well as the cost of putting that active ingredient into a dosage form that fits the needs of the patient and conforms to the quality control standards required—either by the Food and Drug Administration (FDA) or, more often, the higher standards that may be imposed by the manufacturer himself.

Added to the cost of the physical drug product are marketing costs. The most obvious of these is the cost of physical distribution, which includes, in many cases, 12% to 15% for the wholesaler.

Another marketing cost is promotion, which includes detail men, direct-mail and journal advertising, convention displays, and the like. Even though this expenditure has been criticized, it is true that promotion enables considerable information to reach the physician. Too, the drug manufacturers would *also* like to eliminate these costs if they believed this was possible.

Brief mention should also be made of expenditures on two types of research. The first, market research, is only a minor part of drug costs. While it is, admittedly, aimed at improving the firm's sales position, market research has also resulted in some products tailor-made to physicians' needs and, furthermore, aims to build efficiency into the promotion process. Costs of basic research on the drugs themselves, and the attendant costs associated with demonstrating the safety and effectiveness to the FDA, are probably familiar to most physicians. It is worth repeating that without such expenditures there will be no new drugs.

A final element of the cost of the drug is profit. Recent experiences with the oil industry have served to highlight the role of profit in the discovery of new resources. The same applies to new drugs. The problem of whether drug industry profits are excessive is far too complex to treat perfunctorily.

The second major component of the prescription charge is the pharmacist's fee, which normally is either a uniform charge added to the cost of the drug or a percentage "markup" on the cost of the drug, or some combination. The increasing role of third parties has resulted in a greater movement toward the first of these systems.

The pharmacy fee, it should be obvious, pays for more than simply "counting the tablets." A partial list of the reasons for this fee would include the pharmacy owner's salary and return on investment, salaries of employed pharmacists and nonprofessional personnel, inventory carrying costs (a major item), rent, utilities, insurance, delivery, credit, and other operating expenses. Some return on

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the investment in five or six years of college education is also expected.

Physicians may tend to ignore the cheaper nonprescription drugs, but they should not, since these medicines represent an important component in the patient's total health expenditure. Not nearly as much is known about the makeup of nonprescription drug costs, but it is certain that, for those that are promoted widely to the public, the major element is promotional costs. An example was provided in a recent review by *Advertising Age* of promotional costs of two analgesics, Tylenol (promoted primarily to professionals) and Anacin. According to the report, $2 million was expended in a one-year period to promote Tylenol sales through professional channels; $45 million worth of the drug was sold. During the same period, the makers of Anacin were reported to have spent about $29 million and to have had between $60 million and $70 million in sales.

Drug Price History

By any index, prescription prices can be shown to have remained reasonably steady in recent years, while dramatic increases have occurred in the price index of other health care goods and services. With 1967 as a base year, the Bureau of Labor Statistics (BLS) index for prescription drugs for 1973 was only 106.

At our institution, further indices have been prepared in the past. Even though a bit dated now, they provide further insight into the behavior of drug prices. With 1960 as a base year (index number, 100), the following index numbers appeared for 1968:

Geriatric drug prices	84.6
Pharmacy services (ie, the pharmacist's fee)	94.0
Wholesale prescription drug prices	105.3
Nonprescription drug prices	124.6

For purposes of comparison, the 1968 price indices (BLS) for certain other medical care expenses were as follows: dentists' fees, 128.5; physicians' fees, 137.1; hospital daily charges, 201.0.

Even though these figures indicate that in the aggregate, prescription drug charges may not be excessive, the individual patient may be unimpressed. What can he do about his own prescription charges?

What the Patient Can Do

The single most important tool that the patient can use to minimize his prescription drug expenditures is *communication*—with his physician and with his pharmacist. The patient should gain from his physician as complete an understanding as possible of his drug therapy, particularly with reference to the expected duration of such therapy. Savings can result from obtaining drugs for long-term use in larger quantities.

The patient should also have a frank discussion with his pharmacist about the pharmacist's fee system. He should find out what determines the fee and what services are provided in return, and indicate whether he wants such services as credit and delivery.

It is also worthwhile for the patient to discuss his nonprescription drugs with the pharmacist. As noted previously, a major portion of the cost of nonprescription proprietary drugs is attributable to promotion. The pharmacist, however, has many quality nonprescription drugs that have not gone through the "television game," in which he may possibly have greater confidence.

A final issue concerns "shopping" for prescription prices. Should the patient shop around? Yes! But not for each prescription. The patient should shop for a family pharmacist the same way he does for a physician. He should acquire a total picture of the total service/fee mix. (Does the pharmacist maintain family drug profiles?) He should choose a pharmacist in whom he can have confidence over the long haul. This trust should rest on the professional competence of the pharmacist, his personal interest in the patient and his family, and an equitable fee system. In the long run, such a procedure is certain to be more economical (and to result in better services) than "pharmacy hopping" with every prescription.

What the Physician Can Do

The physician must be an expert on the use of drugs, and that expertise should include economic factors. Some patients never get their prescriptions filled (partially or even completely) because of the money involved. Others will fail to procure needed refills. Furthermore, patient misunderstanding of, or antagonism toward, drug costs reflects on the entire health care system, including the prescribing physicians.

The physician can start by gaining some idea of the cost ranges of drugs he prescribes most often—particularly on a cost per day basis. That is particularly important for patients who will be taking medication for extended periods of time. A $5 prescription charge may seem less formidable if it is understood that the needed medication may cost less than does one's daily intake of coffee.

Where possible, the physician should attempt to know personally the pharmacists who serve most of his patients. He can discuss the pharmacists' charges frankly, and thus he will be in a better position to answer patient questions. Frequently, physicians and pharmacists working together have been able to resolve economic difficulties for patients faced with particular problems. Certainly, there is no ethical conflict when both work for the benefit of the patient.

Finally, there is prescribing itself. The physician can do a great deal in his prescribing habits to lower drug costs for his patients. Again, an understanding of pharmacists' fees can help determine whether, for example, prescribing larger quantities of medications to be taken for prolonged periods would work to the patient's advantage.

There is also the issue of whether to prescribe by generic name. Again, the physician-pharmacist relationship can come into play. There is no question that *some* savings to the patient can result from *some* generic prescribing if it is known *what* preparations the pharmacist stocks and will dispense. The physician should know the quality and bioequivalence of competing drugs. Perhaps the patient might have some input into this decision as well.

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Suggested Substitute Language
for
HB 584

For Act Entitled: An Act relating to substitution and labeling of prescription drugs by pharmacists.

Section 1. AS 08.80.290 and AS 08.80.295 are repealed and re-enacted to read:

Sec. 08.80.290 SUBSTITUTION. In billing a prescription a pharmacist shall supply a patient with the least expensive product he has in stock so long as it has the same dosage form and therapeutic effect as the drug prescribed by the physician, osteopathic physician, dentist, or veterinarian; except that:

(1) A prescriber may specify orally or in writing but not by stamping or preprinting on prescription forms, that no substitution is permitted, and

(2) A patient or his surrogate may instruct the pharmacist orally or in writing that he does not want substitution.

Sec. 08.80.295 AFFIXING OF LABEL. At the time of dispensing a prescription there shall be affixed to the container of a prescription a label bearing the name, address, and telephone number of the pharmacy filling the prescription, the date, the serial number of the prescription, the name of the patient, the name and instructions of the prescriber, the initials of the registered pharmacist who prepared the prescription, and the name and strength of the drug contained in it unless a physician, osteopathic physician, dentist, or veterinarian specifies orally or in

writing, but not by stamping or preprinting on prescription forms, that the name and strength not appear on the container. When a drug name is affixed, the name shall be as follows:

(1) As prescribed if no substitution has been made under Sec.290 of this chapter.

(2) Generic name and either brand or manufacturer's name if a single drug agent is prescribed by brand name and a substitution has been made under Sec. 290 of this chapter.

(3) Brand name or generic names or common abbreviations if substitution is made under Sec. 290 of this chapter for a product containing a mixture of pharmacologically active substances.

(4) "Dr (name)'s mixture" if a mixture of drugs does not have a name.

Sec. 08.80.310 is repealed and re-enacted to read:

The Commissioner of Health and Social Services shall publish a formulary of generic drug types and drug products which the Commissioner of Health and Social Services determines demonstrates clinically significant biological or therapeutic inequivalence and which, if substituted, would pose a threat to the health and safety of patients receiving prescription medication. No pharmacist shall dispense a generically equivalent drug product if the drug product and its generic drug type is included in the formulary.

Sec. 2. AS 08.80.460 is amended by adding a new subsection to read:

(b) a person who violates the provisions of Sec. 290 or Sec. 29. of this chapter is punishable by a civil fine in an amount established by the Board in a schedule or schedules establishing

the amount of civil fine for a particular violation. The schedule or schedules shall be adopted by the Board by regulation. Any civil fine imposed under this section may be appealed in the manner provided for appeals in the Administrative Procedures Act (AS 44.62).

Sec. 08.80.480 is amended by adding:

(20) "brand name" means the proprietary or trade name of a drug product.

(21) "generic name" means the official name of a drug as listed in nationally recognized pharmacopoeias.

The Last Stand of Brand-Name Drugs

Companies Protest as State Mc[illegible] to Allow Use of Low-Cost Substitutes

BY RAYMOND T. BONNER

tial relief from the high cost of prescrip- drugs may be near—but the battle is by eans won.

California and more than 40 other states, macists are currently prohibited from ituting a lower-cost but otherwise equiv- generic drug for the more expensive brand indicated on a prescription. ever, the State Assembly has approved d the Senate is now considering—an act would have the effect of repealing this ibition.

tually, there is no need for this legislation the ban on substitution in California is ly a part of regulations promulgated by State Pharmacy Board. Indeed, indepen- of legislative moves and faced with a it, the board has amended its regulation low substitution, a rule which does not ne final, however, until the board holds ngs in the near future.

a result of these actions, drug-company ists, not surprisingly, have mounted a paign to maintain the status quo, with its cessarily high drug prices.

ery drug, of course, has a generic name, may also have one or more brand names. nic names are usually chemical tongue- ers, while brand names are short, simple catchy—designed to be remembered easi- y physicians. For example, Darvon is a d name for propoxyphene hydrochloride; on wholesales for $33.35 (500 capsules), generic equivalent for $8.45.

nsider also the disparity in prices for the non antibiotic known as ampicillin. Bris- Laboratories manufactures ampicillin for bution by three firms besides itself. Bris- own ampicillin is marketed under the name Polycillin, and wholesales for 4 (100 capsules); the same quantity of ol-manufactured ampicillin distributed mith, Kline & French fetches $12.

anwhile, ICN Pharmaceuticals rather y charges $7.50 and $14.80 for identical nts of Bristol's ampicillin. The lower is charged by ICN's generic division and higher price by its brand-name division. e drug, same company—but a price vari- n of 200%. It is all too apparent that y consumer dollars go not for what is in ottle but for the name that is on it.

hy is the industry opposed to the greater of generic drugs? Primarily, to protect ts. Since 1961, the drug industry has ed as one of the two most profitable manufacturing industries in the country, and brand-name products account for a substantial portion of those profits.

Drug companies spend $1 billion annually promoting their brand-name products among American physicians. (This amounts to $5,000 per private practitioner.) By contrast, the industry spent $629 million on all research and development in 1971, and medical schools spent $884 million on all their educational activities in 1972-73.

While permitting substitution would obviously be good for consumers' financial health, the drug industry does not view it as beneficial to its own welfare. Recently, eight drug manufacturers spent more than $15,000 to publish large advertisements in newspapers throughout California declaring that consumers would not benefit from substitution, and urging them to write their senators to oppose the legislation. Same manufacturer

One of the sponsors of that campaign, Parke-Davis, sells a brand-name tetracycline, Cyclopar, for $5.15 (100 capsules). A competitor sells an identical number of tetracycline pills manufactured by the same West Virginia company. The only significant difference is the lack of a brand name on the bottle and, of course, the price: $1.50. Thus, consumers could save more than 200% if pharmacists were permitted to substitute this generic tetracycline for Cyclopar—a good reason for Parke-Davis to oppose substitution.

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When the Pharmacy Board begins hearings on its proposed amended regulation, the drug industry will no doubt offer its well-worn panoply of arguments. In the past, this standard position has been based more on scare tactics than fact. It has used the term "generic" disparagingly, and attempted to equate it with "bad" or "inferior" pharmaceuticals. In fact, however, nearly one-half of the defective drugs recalled in 1972 bore brand names.

The industry tenaciously clings to its contention that all substitution should be forbidden because a few equivalent drugs may not perform identically in a particular patient. This argument ignores findings of the Health, Education and Welfare Department's Task Force on Prescription Drugs, which was under the direction of Dr. Philip Lee, a distinguished physician and former chancellor at UC's medical school at San Francisco.

After an exhaustive two-year study, this task force unequivocally concluded that only in "rare instances" would equivalent drug products not produce substantially the same therapeutic effects. And, the researchers noted, these rare instances have been "grossly exaggerated" as hazards to public health.

Drug-industry lobbyists, moreover, have selectively quoted from a report prepared by the congressional Office of Technology Assessment. On the one hand, they emphasize OTA's observation that, in a particular patient, some equivalent drugs may produce somewhat different effects from those carrying brand names. On the other hand, these lobbyists conveniently fail to cite a declaration on the very next page of the OTA report noting that this disparity "is not, in itself, evidence that the use of such products will produce practical problems in the treatment of patients."

The drug companies also overlook a fact central to the new law: It would only permit—not require—substitution. Thus, if a doctor believes an equivalent drug would not produce the same therapeutic response as the one prescribed, he or she simply writes "no substitution" on the prescription.

Also disregarded by the drug companies is the routine practice by nearly all major hospitals to substitute generic drug products; moreover, substitution has been required for Medi-Cal patients since 1961—all without any documented harm to recipients. Unless the industry means to suggest there is one standard of health care for the poor and another for everyone else, generic drugs should be equally available to all.

Finally, the industry has contended that substitution won't result in any cost saving to consumers. It is hard to understand why the drug companies bother to make such an argument, for it cannot be supported by facts. For example, the HEW task force discovered that the average price for brand-name drugs was $1.11, while those dispensed under a generic name cost less than half as much, or $2.02. For Californians, this means paying an extra $45 million each year for their prescription-drug needs, according to the California Department of Consumer Affairs.

It should be clear that one prescription for relieving the pain of high-priced drugs is to permit pharmacists to engage in generic substitution. We must vigilantly guard against the drug industry's desperate efforts to block the administration of this relief.

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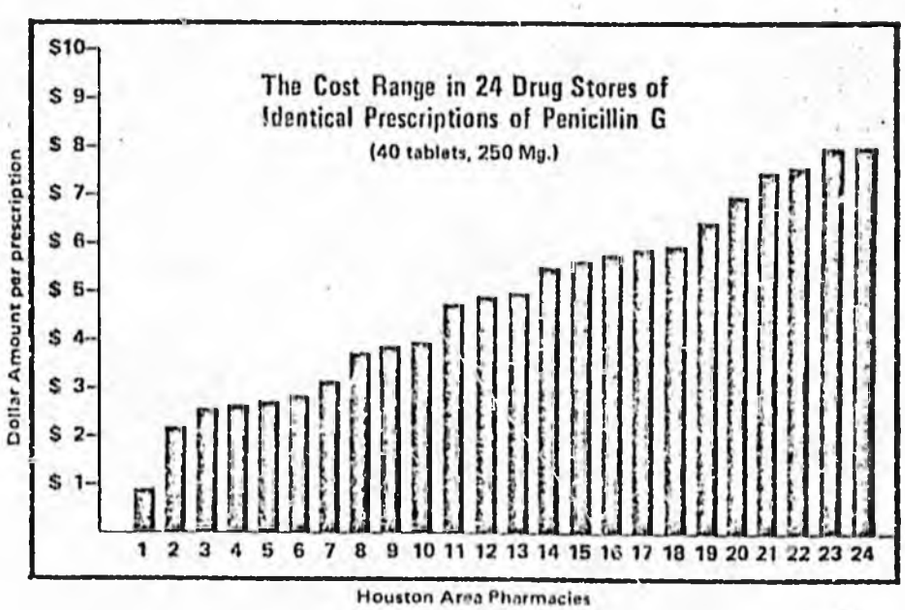
The Real Cost of Prescription Drugs

In Houston between Nov. 2 and 4, 8 prescription drugs were priced at 24 randomly-selected drug stores. In the case of Panicillin G the cost range was from 88¢ to $8.00.



Four billion dollars a year is spent on prescription drugs.[1] "This represents over one billion prescriptions . . . in other words five prescriptions for every man, woman and child in the country."[2]

In recent years, much has been said and written about prescription drugs and their cost to the consumer. Two issues have emerged as the salient aspects of the controversy. First, it is extremely difficult for the consumer to obtain information about the price of a prescription prior to the actual purchase. Advertising of prescription drugs is forbidden by statute or by regulation in thirty-four states. Current prices of common prescriptions are not posted, and price information is not freely available over the telephone. The second important issue is the question of generic versus brand-name prescriptions. Most states, including Texas, have anti-substitution laws which require that a pharmacist fill a prescription exactly as it is described by the doctor on the prescription sheet. This statute protects the welfare of the consumer by insuring that the physician's intended therapy is accurately fulfilled. However, it prevents a pharmacist from substituting a therapeutically equivalent but cheaper generic drug in the case of a brand-name prescription. This report will review some of the recent developments in these controversies and present the results of a prescription drug price survey in the city of Houston.

The Price of Secrecy and the Non-Competitive Market

There are a number of groups who are currently interested in the advertising issue. Pharmacists are officially opposed to advertising because it reduces their standing as professionals. Rivalry, especially business rivalry, has been long frowned upon by all medical professionals. However, the enforced lack of price disclosure has the side effect of protecting every pharmacist's profits, perhaps another reason for the reluctance to advertise. Doctors are generally in favor of drug price disclosure, but they are reluctant to initiate any action that would change the current policy. In fact, it was difficult to find doctors who would participate in this survey in more than an advisory capacity. Another issue which pharmacists are quick to point out is the effect of advertising on the relationship between doctor and patients. Generally, pharmacists believe that patients will urge physicians to prescribe advertised drugs and that doctors will respond accordingly.

Many pharmacy professors state that if advertising is allowed, consumers will shop around and thereby destroy the comprehensive patient profile that some pharmacists like to maintain for regular customers. While TexPIRG is in support of this clinical approach to pharmacy, each individual should have the necessary information to choose between a patient profile and a cost reduction, if both cannot be obtained. For most consumers, the difference between $.88 and $8.00 (the cost range for Penicillin G) is significant. Indeed, if this is the cost of maintaining a patient profile, it is a luxury that the large majority of consumers cannot afford. It is possible, however, to achieve price reduction as well as maintain important patient services. Prescription drugs are not a luxury, they are an immediate necessity. Consumers cannot spend large amounts of time shopping around, nor can they wait for "good buys" as they might with groceries. There are many indications that price disclosure, and the competitive pricing that would result, would eliminate excessive mark-ups and stabilize prices so that the consumer could choose a pharmacy on the basis of the services provided, not on the basis of cost differences. This issue is summarized in the case of Sav-a-lot vs. Commissioners of Pharmacy (Baltimore): "The promotion of the monitoring function (patient profiles) by a statute forbidding the advertising of prices of prescription drugs at best is a very indirect and arbitrary method to accomplish such a goal."[3]

The fight to allow advertising has been led by certain chain drug stores. Osco Drugs, Inc., with 178 stores in 17 states began posting prices of its 100 most frequently filled prescriptions in October 1971. As a consequence, Osco has become involved in litigation and other forms of harassment from state boards of pharmacy. At the present time, Osco has won favorable rulings in North Dakota and Wisconsin, and a suit challenging advertising laws is pending in Illinois. The constitutionality of advertising prohibitions has been upheld in New. Jersey (Supermarkets General Corp. vs. Sills) and denied in Florida (Stadnik vs. Shell City, Inc.). In part, the decision of the Florida Supreme Court reads as follows:

> "The effect of the rule is simply that the druggist cannot advertise the price of a prescription drug even though he is prohibited by law from selling the drug except upon the prescription of a physician. There is simply no reasonable justification

for such an administrative intrusion on private rights when the regulation is so completely lacking in public benefit."[4]

The Pennsylvania Supreme Court ruled in January 1971 that the ban on advertising was unconstitutional because the statute promoted "the dampening of price competition in the retail sale of prescription drugs." By December, the Pennsylvania Pharmacy Board enacted new regulations requiring that advertisements provide full disclosure of a drug's actions, interactions, indications, contraindications, adverse reactions, and dosage. This kind of "disclosure", most of which only a physician can understand, is obviously designed to cripple the advertising movement. Pharmacies attempting to advertise in Florida and Illinois have encourtered intense harassment from state pharmacy boards. The problem ranges from threatened revocation of pharmacists' licenses to blacklisting in pharmacy schools.

Government consumer agencies have been highly vocal in support of repealing anti-advertising laws. The HEW Task Force on Prescription Drugs states "...if the patient is to maintain the right to select a pharmacy, he also has a right to know the prices it charges and to compare these with other prices."[5] The United States Department of Justice has recently issued a strong statement on the subject. Two passages from the "Research Paper and Policy Statement of the U.S. Department of Justice on the Advertising of Retail Prescription Prices" are well worth quoting here:

> "The Department of Justice believes that the major effect of legislation or regulations prohibiting price advertising of prescription drugs is to reduce retailer incentives to engage in price competition with resulting higher costs to the public."

and,

> "Accordingly, it is the Department's view that existing state legislation or regulations which prohibit or restrict price advertising of prescription drugs may well be adverse to the public interest. Since such restrictions appear to be unnecessary to protection of the public and result in unjustifiable expenditures by consumers, the Department feels they should be eliminated."

In a speech before the 1972 Pharmaceutical Conference of the National Association of Chain Drug Stores, Inc., Virginia Knauer, Special Assistant to the President for Consumer Affairs, stated her opinions on advertising:

> "It is true that there is a distinction between prescription drugs and other drug store items. The consumer does not have the choice of <u>what</u> to buy. But this does not mean that the consumer should not have the right to choose <u>where</u> to buy, taking into consideration both the price and the services he is offered by various drug stores."

and more bluntly,

> "Pharmacy laws are widely recognized as a means of protecting the independent drug store from his larger competitors. While it is true that large operations have an advantage in price competition, the economies of scale offer no superiority on such vital elements of competition as the convenience of the location or of the friendliness of the service."

Some local agencies[6] are actively pursuing solutions to this problem. The Director of the Seattle Consumer Protection Office has raised the issue of price disclosure in the state of Washington. He became interested in this aspect of consumer affairs after he encountered great reluctance on the part of Seattle pharmacists to price prescriptions over the telephone.[6]

What exactly is the cost of price secrecy and lack of competition among drug stores? Logically, one could expect that pricing would be arbitrary. Prices would vary widely from store to store, even well beyond what could be expected from variations in overhead costs. The implication is that the consumer will often have to pay more than he should.

To determine the effects of price secrecy in Houston, members of the Texas Public Interest Research Group conducted a price survey of Houston drug stores. Twenty-four pharmacies were randomly selected from those within the Houston city limits. Valid prescriptions were obtained from sympathetic physicians. The prescriptions consisted of four common brand-name prescriptions and four equivalent

generic prescriptions, as indicated below:

Pentids	250 mg.	40 tabs	antibiotic
Potassium Penicillin G	250 mg.	40 tabs	antibiotic (generic)
Equanil	400 mg.	42	tranquilizer
Meprobamate	400 mg.	42	tranquilizer (generic)
Sumycin	250 mg.	40 caps	antibiotic
Tetracycline	250 mg.	40 caps	antibiotic (generic)
Nembutal	30 mg.	14	sedative
Sodium Pentobarbital	30 mg.	14	sedative (generic)

Student volunteers were organized into twelve two-man teams, each team member having one valid prescription. A team would visit a store, present its prescriptions, and ask the prices. Each team member witnessed the price quoted to the other. With each team visiting eight stores, a total of four prescriptions, two brand name drugs and their generic equivalents, were priced in each store. Consequently, price data for each drug is drawn from a sample of twenty-four pharmacies.

The need to resort to the complicated (some would say devious) data-collecting procedure outlined above underscores the inaccessibility of information. A telephone survey was impossible. Only four of ten pharmacies contacted would price a Potassium Penicillin G prescription over the telephone. The first team to visit a given pharmacy would invariably obtain the desired information. However, the second team was not as fortunate. By this time, some druggists realized what our intentions were; this realization was occasionally accompanied by missing data. On the whole, however, data-gathering was successful using this procedure.

The results of this survey speak for themselves. Table 1 shows the average price, price range, and the number of pharmacies consenting to quote prices. Unfortunately, the Nembutal and Sodium Pentobarbital prescriptions were written for an uncommon dosage, the 50 milligram tablets being the common dosage. This explains the relatively scarce data for these prescriptions.

Table 1 Range of Prescription Drug Costs *

Pentids Average: $6.40 Range: $4.86 - $10.49 23 pharmacies	Potassium Penicillin G Average: $4.71 Range: $0.88 - $8.00 23 pharmacies
Equanil Average: $4.37 Range: $3.56 - $6.20 23 pharmacies	Meprobamate Average: $3.23 Range: $1.53 - $7.20 21 pharmacies
Sumycin Average: $3.55 Range: $1.99 - $5.50 23 stores	Tetracycline Average: $3.47 Range: $1.93 - $6.00 23 stores
Nembutal Average: $1.66 Range: $0.76 - $3.00 12 stores	Sodium Pentobarbital Average: $1.31 Range: $0.88 - $2.25 11 stores

It is fair to assume that the average Houston consumer would not pay $8.00 for 40 penicillin tablets if he were aware that the same prescription cost $0.88 elsewhere. This particular case represents a variation in price of over 900%. If the drugstores in the sample were openly competing with each other for business, this variance, as well as the large variances for the other seven prescriptions, could not possibly exist.

Attempts were made to correlate prices with three factors thought to influence drug prices: whether or not the pharmacy was located in a disadvantaged socio-economic area, whether the pharmacy was a chain member or an independent, and whether the pharmacy provided minimal, some, or most drugstore services. The evidence for the influence of these three factors was either inconclusive or insufficient. If these conditions indeed do influence price, they fall far short of justifying the price variation described.

*See Appendix for complete data

Is the Repeal of the Advertising Prohibition the Answer?

Our primary objective is to make drug price information available to the public. Ideally, every drugstore's prescription prices should be accessible to the consumer. The choice of a drugstore would then be determined by balancing the important factors: convenience, services, and price.

Advertising per se would have two important effects: advertisements would provide consumers with a general idea of what specific prescriptions should cost, and pricing would become more competitive. This situation, although far from ideal, would certainly be preferable to what exists now. The problems with advertising are worth mentioning. First, it is already practice among a few pharmacists to sell a very common prescription drug such as birth control pills at a loss. Through this practice, the pharmacist hopes to attract the regular business of a customer. We could expect the same situation with advertising. A few drugs will be advertised at very low prices, thus attracting consumers to a store which may sell all other drugs at excessive prices.

In general, advertising will not provide consumers with all the necessary data to make sound decisions. They will only know the prices in those stores which can afford to advertise, and then only for selected drugs.

There is only one truly effective means of providing the public with the information it needs. A statute must be enact which would require each drugstore to post on the premises the prices of the 100 drugs most commonly prescribed nationwide. This formulary, which would list drugs according to generic class, would be drawn up by the state board of pharmacy and the health department. This program has already been put into effect in Vermont, and legislation has been introduced in several other states.

In addition, we recommend that the state board of pharmacy, HEW, and representatives of consumer groups establish maximum prices for all drugs. (This would be quite similar to what already exists in the Vendor Drug Program within the Welfare Department.) The Attorney General should be empowered to levy fines whenever a drug was sold for more than the maximum established price.

The Case for Substitution

The American Pharmaceutical Association defines substitution as "the substitution of one manufacturer's therapeutically effective and chemically equivalent drug product for the product of another prescribed by trade name alone."[7]

-Trade name (brand name): The name coined and usually registered by the manufacturer to describe a specific drug product made by him alone
-Established name (generic or nonproprietary name): established names include:

1) Names used in the National Formulary and the United States Pharmacopeia to describe drug entities
2) Names promulgated by the Secretary of HEW to describe drug entities
3) In the absence of a name in category (1) or (2), the common name of the drug entity if it has one

(Definitions provided by A. Ph. A.)

Very simply, generic refers to an entire class of drugs; the brand name drugs within the class as well as the non-proprietary drugs, those which are not given names by their manufacturers. All the unnamed drugs are called by the generic name.

Currently, pharmacists are not allowed to stustitute a generic drug for a brand name drug when the two drugs are chemically identical. For instance, Pentids is the Squibb brand name for penicillin G. When a pharmacists receives a prescription for penicillin G, he may fill it with Pentids or any brand name of his choice. However, if a doctor prescribes a specific brand name, such as Pentids, the pharmacist is not allowed to substitute an equivalent but cheaper brand. Simple statistical analysis indicates that generically filled prescriptions can be expected to cost less than equivalent brand names virtually 100% of the time.

Today, pharmacists, almost without exception, are in favor of generic substitution. They would like to see the anti-substitution laws repealed. This would grant them more professional responsibility in making drug therapy decisions for their patients. The American Pharmaceutical Association's Policy Committee on Public Affairs is clear on this issue:

"The pharmacist's training and expertise qualify him as an expert on drugs and permit him to make judgments about quality drug products. Thus, in the Committee's view, antisubstitution laws serve for the most part to eliminate the pharmacist as a decision-maker in providing rational drug therapy for patients. To state the proposition in other terms, a major effect of antisubstitution laws is to make the pharmacist's function more mechanical than professional..."

The APhA further argues that allowing generic substitution would increase efficiency; lower the cost of widely-used drugs, permit reduction of inventories of generic drugs manufactured by many different companies, force drug manufacturers to compete, and require physicians to obtain drug information from sources other than medical journal advertisements.[8] The Texas Pharmaceutical Association favors modification of the Texas antisubstitution law to allow generic substitution and is currently engaged in legislative activity toward that end.[9] A director of the Texas Pharmaceutical Association states "...this would allow the pharmacist the professional perogative of selecting from a wide variety of quality drugs of identical chemical composition the one which provided the most reasonable price consistent with high standards."[10]

Doctors have mixed feelings on the issue of generic substitution. Although they recognize that there is little if any clinical difference among brands of a generic drug to justify large price differences, they are reluctant to allow pharmacists to assume what has been a doctor's responsibility. There have been some instances however, where doctors have voluntarily co-operated in plans which would allow substitution. In Charlottesville, Virginia, a plan was worked out between the pharmaceutical association and the medical society whereby "physicians agreed to prescribe by nonproprietary (generic) name, and pharmacists agreed to dispense accordingly and pass on cost savings to the patient."[11]

The only serious opposition to repeal comes from the major drug manufacturers. They are the people who successfully pushed for the adoption of antisubstitution laws in 44 of the 50 states during the 1950's. These laws now serve to protect the large profits of the big drug manufacturers. "About 90-95% of all drugs sold by manufacturers are brand name products protected by patents or supported by highly promotional expenses."[12] The drug manufacturers use 'the necessity for quality control' as their central argument. Yet the stringent testing and regulation by the FDA in recent years removes the basis for these arguments; there are few generic drugs on the market today of inferior or detrimental quality.[13]

It is generally believed by consumer groups that if pharmacists were allowed to substitute generic equivalents in the case of brand name prescriptions that they could pass on cost savings from stock reduction and competition among manufacturers to their customers. There is no reason to believe that this would not be the case. There would be other benefits to the consumer as well. A customer would no longer be inconvenienced by a pharmacist not having the specific brand name drug that was prescribed.

If, however the consumer is to benefit in any <u>major</u> way, there are two critical questions which must be answered.

1) IF A PHARMACIST IS ALLOWED TO SUBSTITUTE, IS THERE ANY INDICATION THAT HE WILL SUBSTITUTE A LOW PRICED GENERIC EQUIVALENT?

The most disturbing fact revealed by the Houston survey relates directly to this. One of the drugs used in our survey was Tetracycline, the generic name for an inexpensive commonly prescribed antibiotic. Sumycin, brand name tetracycline, of slightly higher than average cost, was also used. In 8 of the 24 drug stores surveyed, the price quoted for generic tetracycline was higher than the price quoted for Sumycin. This means that 1/3 of the pharmacists were filling generic prescriptions with one of the most expensive brand names, even when cheaper brand name drugs were available. It is conceivable then that the repeal of the antisubstitution law by itself could actually serve to increase drug costs.

2) IF PHARMACISTS WERE SUBSTITUTING GENERALLY LOW PRICED GENERIC EQUIVALENTS, IS THERE ANY INDICATION THAT THEY WOULD NOT ENGAGE IN HUGE MARKUPS?

A pharmacy professor at the state university of New York conducted a survey similar to TexPIRGs. Professor Wertheimer concluded that "prices varied according to the customer's dress, his age, his race, the time of day or week he purchased

the prescription, and other irrelevant factors."[14]

There is evidence enough that repeal of the substitution laws might act only to increase the pharmacists' margin of profit and actually result in even greater financial burden for the consumer. We believe that the only means for assuring that both pharmacist and consumer benefit from repeal of the law is if it goes hand in hand with the requirement that every drug store post prices. This will not only avoid excessive markups, but a consumer can then ask the pharmacist to substitute according to the prices posted in the store.

TexPIRG will lobby extensively for passage of a posting requirement. We will urge that the antisubstitution law be repealed, but only after the posting requirement has become law. We will actively support any other legislation which provides for a more clinical orientation to the pharmacy profession.

The drug pricing survey was developed and carried out by TexPIRG members at the University of Houston and Rice University, with the help of Ms. Sandra Dement of the Citizen Action Group in Washington, D.C. The report was done by Paul Sanner, Rice University senior, and TexPIRG staff.

For further information or additional copies of the report, contact:

Houston: Paul Sanner
713 667-1087

Austin: Traci Harte (TexPIRG State Office)
512 477-3118

NOTES

1 HEW, "Prescription Drug Data Summary," p. 6.

2 Vordenbaum, Statement to the Texas Senate Interim Committee on Rising Medical Costs, Dec. 5, p. 1.

3 Sav-a-lot vs. Commissioners of Pharmacy, p. 9.

4 "Prescription Drug Pricing," CFA, p. 4.

5 Sav-a-lot vs. Commissioners of Pharmacy, p. 16.

6 The Post-Times, Seattle, Sat. Nov.4.

7 "Pharmacist's Role in Product Selection," p. 6.

8 Ibid., p. 5.

9 Vordenbaum, Statement, Dec. 5, p. 5.

10 Ibid.

11 "Pharmacist's Role in Product Selection," p. 8.

12 "Controlling Health Care Costs in Illinois," p. 9.

13 Burack, The New Handbook of Prescription Drugs, p. 13.

14 "Prescription Drug Pricing," p. 5.

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"Controlling Health Care Costs in Illinois," Report of the Advisory Committee on Medical Costs and Utilization of Services, Chicago, April, 1970.

"Daylight on Prescription Drugs", Money, Vol. 1, No. 1, October, 1972, pp. 31-34.

"Drug Pricing and the R_x Police State", Consumer Reports, Vol. 37, No. 3, March, 1972, pp. 136-140.

Knauer, Virginia, Remarks before National Association of Chain Drug Stores, Inc., 1972 Pharmaceutical Conference.

"Pharmacist's Role in Product Selection," The Board of Trustees, American Pharmaceutical Association, March 1971.

Porterfield, Paul, Director, Seattle Consumer Protection Office, Statement to Washington State Board of Pharmacy on Drug Advertising and Drug Discounting.

"Prescription Drug Pricing", Consumer Federation of America, September, 1972.

Sav-a-lot vs. Commissioners of Pharmacy, Memorandum Opinion, Baltimore, Maryland, 1972/133727/580.

U.S. Dept. of H.E.W., "Prescription Drug Data Summary," 1971.

U.S. Dept. of Justice, "Research Paper and Policy Statement Regarding State Restrictions on the Advertising of Retail Prescription Drugs", 1971.

Vordenbaum, Tim, Statement to the Texas Senate Interim Committee on Rising Medical Costs, Tuesday, Dec 5, 1972.

Wertheimer, Albert, "Prescription Pricing: Art, Science, or Whim", California Pharmacist, March 31, 1971, p. 6.

January 21, 1976

MEMORANDUM

TO: Bob Bradley

FROM: Terry Berman

SUBJECT: HB 584, Major points on substitution of generic drugs for brand-name prescription

1) The generic drug is always cheaper than the brand-name drug even though they may be identical. Also there is no justification that a brand name drug is necessarily a better product. A good example is ampicillin manufactured by Bristol Laboratories, which is distributed by four firms. The disparities in price among the four is astonishing. Bristol, which distributes ampicillin under the name Polycillin, wholesales for $18.24. Smith, Kline, and French distributes the ampicillin manufactured by Bristol at the price of $12.00. ICN Pharmaceuticals distributes Bristol's ampicillin through its brand-name division for$14.80 and through its generic division for $7.50. Note the differential between $7.50 and $18.24.

2) In answer to the argument that chemically equivalent drugs are not necessarily bioequivalent (meaning that when administered in same amount they do not provide the same therapeutic effect), the Department of Health, Education, and Welfare's report from the Task Force on Prescription Drugs stated that only in rare instances would equivalent drug products not produce the same therapeutic effects. A U.S. Senate committee concluded the same. HB 584 (Committee Substitute) has two provisions that respond to this problem of inequivalency. First, the physician can always specify that there be no substitution. Second, the Commissioner of Health, Education and Social Services will draw up a formulary specifying which drugs are and are not bioequivalents.

3) Giving the pharmacist some discretion takes into account his extensive training and his knowledge of drug products, which in some instances may be greater than other health professionals. Physicians lack drug price comparison data which would allow them to chose the best drug at the lowest available price.

4) People over 65 account for 23 per cent of the retail drug expenditures. On prescriptions to the elderly, the average cost per prescription is $3.91. For brand names alone the average cost per prescription is $4.11 while generic name prescriptions average $2.02.

5) There are 11 states with legislation permitting substitution: Arizona, Kentucky, Arkansas, Oregon, Minnesota, Connecticut, Michigan Maine, Massachusetts, Florida, and Maryland.

6) Groups that have endorsed such legislation: American Pharmaceutical Association, American Journal of Pharmacy, National Academy of Sciences, Consumers Union and HEW Special Task Force.

7) Hospitals use generic name products.

HOUSE COMMERCE COMMITTEE
January 21, 1976

House Bill 584

The meeting was called to order by Chairman Bob Bradley noting that a quorum was present.

Ronald Sedgewick, owner of Ron's Apothecary and a member of the Alaska Pharmacy Association began the testimony on House Bill 584. He stated that he basically had no problems with the bill itself. He did, however, feel uncomfortable with some sections and wished to express them at this time. Section C concerning the posting of a sign was a good idea and was intended for the consumer's benefit. It does, however, offend the professional standards. If a sign was posted it indicates dishonesty in the past. Section E pertaining to the physician using the generic name and the pharmacist must then issue the drug which is the lowest priced. He felt that often the lowest priced drug is not the best and would not select such a drug for his own family. He felt it should be left up to the pharmacist to select the best drug and still give the customer the best deal.

Chairman Bradley stated that Section 1 08.80.205 might answer the objection to Section E. That section gives the pharmacist the option of using his professional judgement.

Mr. Sedgwick felt that the section should be eliminated due to the option the physician has in writing the prescription. He continued stating that in Section G pertaining to labeling was also not necessary due to how the law presently is. He did suggest that an addition be made under that section. The addition being the name and quantity of the drug for the purpose of emergency care. Hospitals often refer to him for the quantity of the drug he issued and this would make it easier on hospital personnel. The Section which states that the Department of Health and Social Services was to provide a formulary seemed unrealistic. The department does not have the resources to provide such a formulary. The Federal department has been working on a list for the last three years and the department would probably have to issue the Federal list.

Rep. Urion questioned whether or not it was typical or pharmacists to stock all brand names of one drug.

Mr. Sedgwick stated there are a number of multiple drugs. They are now able to select from major companies with price in mind. He again stated that price should not be the only criteria, the best drug at a lower price.

Mr. Jim McCorcle, owner of Harry Race Drug Store, stated he was representing the Alaska Board of Pharmacists. The Board had reviewed the bill and generally agreed with it. They did feel that it was not possible for the Board to administer the formulary. Much of the Board's feeling were the same as Mr. Sedgewick had expressed.

Dr. Rodman Wilson, member of the Alaska State Medical Association Committee on Legislation and past President, testified that the committee had alot to do with the present statutes and feel they are fairly workable. The main purpose of the bill was to save the consumer money. He stated that physicians by and large do not know much about the price of individual drugs and how they are sold. The Committee felt that some changes were needed in the bill. He referred to the section pertaining to who prescribes drugs describing them as "medical practioners". It could be defined more by using the common language as presently in the statutes; "physicians, osteopathic physicians, dentists or veternarians". Also all through the bill it describes the communication between the physician and the pharmacist as "telephonic" and he felt it should be changed to "orally" which gives a little more lead way. The Committee also objected to the sign to a point of ascetics. It implies in a subtle way that doctors were trying to give people expensive drugs on purpose. It is unnecessary because the pharmacist has to or should explain to them the substitution when it is done. He stated he could see the others objection to Section E. There are multiple drug agents selling a single substance but one or two have some different active ingredients. The bottles are not big enough to list all the ingredients. He continued stating that the Committee also had their doubts whether or not Health and Social Services could produce a formulary. They would probably just rely on the FDA's list. He surmised that it was included for the purpose of taking the pharmacists off the hook as far as liability was concerned. The pharmacists would be taking alot of responsibility. He then submitted in writing to the members some of the language changes he had discussed.

Rep. Freeman questioned whether or not there was a monetary benefit to physicians on the drugs they prescribe.

Dr. Wilson stated that it was basically unethical by all standards and he wasn't sure if physicians were allowed to own pharmacies.

Chairman Bradley questioned if physicians received free samples from drug companies.

Dr. Wilson replied not as frequently as in the past. He added one other remark concluding his testimony. If not for the drug industry we wouldn't have all the advances we now have and they should be aware of this.

David Freer, Special Assistant to Commissioner of Health and Social Services testified to the section which would apply to the department. He agreed with other witnesses that the department would not be able to carry out that section of the bill without the resources to do it. The department has one pharmacist who is at the Alaska Psychiatric Institute.

Chairman Bradley questioned the witnesses if they felt that if the section on a formulary would help lessen the liability of pharmacists.

Mr. Sedgwick answer that yes it would help the legal liability question.

Chairman Bradley asked that someone clarify what type of training a pharmacist has and whether or not they know what kind of reaction a drug

would have on patients.

Mr. Sedgwick stated that all pharmacists receive training in bio-equivalents.

Senator Meland then asked to speak to the bill. He stated that the bill was based on the California law and he felt it would help. He then asked if it was true that major hospitals use generic drugs.

Mr. Sedgwick answered that major hospitals establish a formulary and then stock only one brand.

HOUSE COMMERCE COMMITTEE
February 2, 1976

House Bill 584

The meeting was called to order by Chairman Bob Bradley noting that a quorum was present.

Co-sponsor, Speaker of the House Mike Bradner was asked to begin the testimony by explaining the bill. Speaker Bradner stated that this had been recommended to him by many people. It was something which would clarify the process to the consumer. He further stated that he had discussed the bill with a number of pharmacists and some had definite concerns with this. Some pharmacists do do this now, however, their right to do it was a bit cloudy. The present bill is designed after the California statutes.

Representative Bradner further stated that he felt there were areas in the bill which needed to be amended. One area was that of the penalties as stated under the bill. He felt that no penalties should be placed on a pharmacist if he cannot comply. The bill should indicate that they do it but leave a margin for if they can't. Another area was that of the Commissioner of Health & Social Services to establish a list of generic substitutions. He was not sure they could accomplish this with the present staff.

Rep. Freeman questioned objections heard from pharmacists concerning a sign in each pharmacy. How important was the sign?

Rep. Bradner replied that it was not important either way and that it does have implications. Bradner continued stating that the section relating to the a physician must put in his own handwriting that there, could be no substitution, that he was unsure what it was designed to accomplish.

Rep. Wallis questioned whether or this bill would have implications of malpractice for pharmacists.

Chairman Bradley stated that there could be a liability.

Rep. Fischer objected to a pharmacist having the right to alter what a physician prescribes. Many people have a great deal of faith in their doctors and would not want this.

Rep. Rudd explained that the bill allowed a patient to also refuse substitution. Chairman explained further that a doctor could refuse substitution and described the section which states this.

Representative Bradley then asked to leave the Chair to testify on behalf of the bill. (see attached)

Testimony given by Representative Bob Bradley
House Bill 584
Commerce Committee meeting 2/2/76

Ampicillin is the generic name of a particular drug manfactured by Bristol Laboratories and distributed by four firms. Under the brand name "polycillin", Bristol markets the ampicillin for $18.24 wholesale, while Smith, Kline and French distributes Bristol's ampicillin for only $12.00. This same Bristol manufactured ampicillin is sold by ICN Pharmaceuticals under still another brand-name for $14.80, while ICN's generic division sells an identical amounts of ampicillin for $7.50. If the doctor happens to write "polycillin", the pharmacist is prohibited from filling the prescription with the ICN ampicillin even though they are manufactured identically by Bristol. Thus, the consumer must pay more than double what he might if anti-substitution laws weren't in effect.

Generic drugs are always less costly than brand-name drugs. Thus, anti-substitution laws function to support artificially high prices for brand-name drugs. Prices for brand-name drugs are higher because the drug industry must spend around a billion dollars annually to promote these names and then make us, the consumers, pay for the advertising. Unless the doctor prescribes by generic name, we have no choice of what price we pay and the sad fact is that brand-name drugs, with their high prices, cannot be considered superior products. In fact, in 1972 of 638 drug recalls, 291 were brand-name.

Twenty-three percent of the retail drug expenditures in this country are by those over 65. For the elderly person living on a fixed income the difference in what he pays for a brand-name drug as opposed to a generic name may mean a difference in what he is able to spend on food and housing.

It is not surprising that eleven states--Arizona, Kentucky, Arkansas, Oregon, Minnesota, Connecticut, Michigan, Maine, Massachuetts, Florida and Maryland--have already repealed their anti-substitution laws. In Canada, where several provinces have also allowed pharmacists to substitute generics, the province of Ontario has found increases in the number of prescriptions written for generic and lower price brand names.

We are not only concerned with lower prices. Our main goal in drug treatment is better health. For every prescription drug, there is an average of 30 brand names, or shall we call them aliases, which obscures the identity of the particular medication even from physicians who must prescribe them. The National Academy of Sciences supported generic substitution, recognizing that "the pharmacist may in some situations have greater knowledge of drug products than other health professionals, including knowledge of both quality and cost."

At present, because they cannot substitute, pharmacists must keep large inventories to have all brands available. This means a slow turnover of stock and is apt to mean higher prices in general. This is particularly relevant in Alaska where there are many small pharmacies and a large inventory can be extremely costly to them. If allowing the pharmacist to substitute enables him to reduce his inventory, keeping on hand those drugs that are lowest in price or those which he personally may consider superior.

One of the major arguments against substitution is drug inequivalence. Bio or clinical equivalence occurs when chemically equivalent drugs in the same amount provides the same therapeutic effect. The U.S. Department of Health, Education and Welfare Task Force on prescription drugs concluded that "the lack of clinical equivalency among chemical equivalents meeting all official standards has been grossly exaggerated as a major hazard to the public health." Only in rare instances would equivalent drugs products not produce the same therapeutic effects. Morris Aarons, a member of the Review Committee of the Task Force, who represents the National Association of Pharmaceutical Manufactures, concurred with this.

A report on this subject was completed by the office of Technological Assistance, a Congressional investigative body. Dr. Robert Berliner Dean of the Yale University Medical School chaired the study and reported that 85-90% of chemically equivalent products presents no problem of therapeutic inequivalency and can be used interchangeably. In fact, Dr. Berliner stated, "Most drugs ought to be prescribed generically."

The Food and Drug Administration puts new drugs through difficult tests. Whenever manufacturers wish to place drug products chemically equivalent to existing ones on the market, they must submit for FDA approval adequate data to demonstrate the equivalency of the product. This is given a thorough review.

Equivalency studies have been done on all antibiotics, which accounts for one out of every five prescriptions. Any antibiotic offered for sale in the United States regardless of whether it is an brand-name or generic drug has met the same high FDA standards. The FDA is presently compiling lists of equivalent drugs and has conducted its studies starting with the most frequently prescribed drugs. The FDA will eliminate variations by makers of generic drugs by requiring them to match the effectiveness of standard drugs or withdraw the drugs from the market. A complete compilation will be available by 1978. Although information is presently being made available as it is compiled.

In any case, if a doctor has reason to believe a drug manufactured by a specific firm is best for his patient, he may write no substitution. It is hoped that HB 584 will also serve to make the physician think twice before writing a prescription and by allowing their patients to have pharmacists substitute products, get for them the best drug at the lowest available price.

HB584 will allow Alaskans who are already paying substantially higher prices for drug products than the lower 48 to save several million dollars annually.

THE LEGISLATURE OF THE STATE OF ALASKA
FISCAL NOTE
Second Session - Ninth Legislature

I. REQUEST
Bill No. House Bill 584
Title: An Act relating to substitution of prescription drugs by pharmaci
Requested by: Date: February 4, 1976
Return Date Requested:
Agency: Commerce Program: Licensing of Professions

II. FISCAL DETAIL
Budget Request Unit(s) Affected: Regulating and Licensing of Professions

A. EXPENDITURES: (Thousands of dollars)

	OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100	PERSONAL SERVICES						
200	TRAVEL						
300	CONTRACTUAL	.3	.3	.4	.4	.5	.5
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL	.3	.3	.4	.4	.5	.5

B. FUNDING: (Thousands of dollars)

GENERAL FUND	.3	.3	.4	.4	.5	.5
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	0/0	/	/	/	/	/
MAN MONTHS (P./T.)	/	/	/	/	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Assumes printing 200 12" x 18" signs on poster board and mailing same per year. Assumes 10% inflation and an effective date before July 1, 1976.

IV. ATTACHMENTS

V. DATE: February 4, 1976 PREPARED BY: Sharon Andrew, Director

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

H/S 50

DEFINITIONS

BIOAVAILABILITY - THE EXTENT AND RATE OF ABSORPTION FROM A DOSAGE FORM AS REFLECTED BY THE TIME-CONCENTRATION CURVE OF THE ADMINISTERED DRUG IN THE SYSTEMIC CIRCULATION

BIOEQUIVALENTS - CHEMICAL EQUIVALENTS WHICH, WHEN ADMINISTERED TO THE SAME INDIVIDUALS IN THE SAME DOSAGE REGIMEN, WILL RESULT IN COMPARABLE BIOAVAILABILITY

CHEMICAL EQUIVALENTS - DRUG PRODUCTS THAT CONTAIN THE SAME AMOUNTS OF THE SAME THERAPEUTICALLY ACTIVE INGREDIENTS IN THE SAME DOSAGE FORMS AND THAT MEET PRESENT COMPENDIAL STANDARDS.

COMPENDIAL STANDARDS- THE OFFICIAL STANDARDS FOR DRUG EXCIPIENTS AND DRUG PRODUCTS LISTED IN THE LATEST REVISION OF THE UNITED STATES PHARMACOPEIA (USP) AND THE NATIONAL FORMULARY (NF).

Original Sponsors: Bradley, Bradner and Gardiner

Offered: 2/6/76
Referred: Judiciary

IN THE HOUSE BY THE COMMERCE COMMITTEE

CS FOR HOUSE BILL NO. 584

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to substitution of prescription drugs by pharmacists."

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

* Section 1. AS 08.80.295 is repealed and re-enacted to read:

Sec. 08.80.295. SUBSTITUTION. (a) Except as limited by (b) and (d) of this section, with the consent of the purchaser, the pharmacist may substitute a drug product with the same generic name in the same strength, quantity, dose and dosage form as the prescribed drug which is, in the pharmacist's professional opinion, therapeutically equivalent. Upon substitution the pharmacist shall notify the person who prescribed the drug of the substitution and of the drug substituted.

(b) A person authorized to prescribe drugs may specify in writing or by oral communication that there shall be no substitution for the specified brand name drug in any prescription. The phrase "no substitution" or words of like import must be in the person's handwriting or, if the prohibition was communicated orally, in the pharmacist's handwriting, and shall not be preprinted or stamped or initialed on the prescription form.

(c) Every pharmacy shall post a sign in a location easily seen by patrons at the counter where prescriptions are dispensed stating that "Alaska law provides that with your consent, unless prohibited by your doctor, this pharmacy may substitute a less expensive drug which is therapeutically equivalent to the one prescribed by your doctor." The printing on the sign shall be in block letters not less than one inch in

height.

(d) A pharmacist shall substitute a drug product under (a) of this section only when there will be a savings in cost to the purchaser.

(e) If the physician prescribes a drug by its generic name, the pharmacist shall dispense the lowest retail cost brand which is in stock.

(f) As used in this section, unless the context requires otherwise,

(1) "brand name" means the proprietary or trade name selected by the manufacturer and placed upon a drug, its container, label or wrapping at the time of packaging;

(2) "generic name" means the official title of a drug or drug ingredients published in the latest edition of a Pharmacopoeia, Homeopathic Pharmacopoeia or Formulary;

(3) "substitute" means to dispense without prescriber's express authorization a different drug product in place of the drug ordered or prescribed;

(4) "therapeutically equivalent" means drugs that will provide essentially the same efficacy and toxicity when administered to an individual in the same dosage regimen.

* Sec. 2. AS 08.80 is amended by adding a new section to read:

Sec. 08.80.297. POSTING OF PRICES. (a) Annually in the month of August, the Department of Commerce and Economic Development shall prepare a list of the 100 most commonly prescribed prescription drugs, their usual strength and amount prescribed, and distribute the list along with regulations for posting to each pharmacy registered with the board of registration in pharmacy. The determination of the department as to which drugs are to be included on the list shall be final.

(b) The current list of the 100 most commonly prescribed drugs

shall be conspicuously posted in each pharmacy registered with the board. After each prescription drug listed, the name of the manufacturer and the current selling price shall be clearly indicated for that prescription by the pharmacy. A pharmacy may change the current selling price and the posting of the price at any time.

(c) The price of all other drugs not included on the list of 100 commonly prescribed drugs shall be available and shall be quoted by the pharmacy upon request.

HB584

Introduced: 1/14/76
Referred: Judiciary

IN THE SENATE

BY MELAND
AND CROFT

SENATE BILL NO. 508

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to substitution of prescription drugs by pharmacists."

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

* Section 1. AS 08.80.295 is repealed and re-enacted to read:

Sec. 08.80.295. SUBSTITUTION. (a) Except as limited by (b) and (d) of this section, unless the purchaser instructs otherwise, the pharmacist may substitute a drug product with the same generic name in the same strength, quantity, dose and dosage form as the prescribed drug which is, in the pharmacist's professional opinion, therapeutically equivalent.

(b) A licensed medical practitioner may specify in writing or by a telephonic communication that there shall be no substitution for the specified brand name drug in any prescription. The phrase "no substitution" or words of like import must be in the practitioner's handwriting or, if the prohibition was communicated by telephonic communication, in the pharmacist's handwriting, and shall not be preprinted or stamped or initialed on the prescription form.

(c) Every pharmacy shall post a sign in a location easily seen by patrons at the counter where prescriptions are dispensed stating that, "This pharmacy may be able to substitute a less expensive drug which is therapeutically equivalent to the one prescribed by your doctor unless you do not approve." The printing on the sign shall be in block letters not less than one inch in height.

(d) A pharmacist shall substitute a drug product under (a) of

this section only when there will be a savings in or no increase in cost to the purchaser.

(e) If the physician prescribes a drug by its generic name, the pharmacist shall dispense the lowest retail cost brand which is in stock. (need to add - which is in pharm. opinion therapeutically equivalent

(f) Except as provided in (g) of this section, when a pharmacist dispenses a substituted drug as authorized by (a) of this section, he must label the prescription container with the name of the dispensed drug. If the dispensed drug does not have a brand name, the prescription label shall indicate the generic name of the drug dispensed along with the name of the drug manufacturer.

(g) A prescription dispensed by a pharmacist shall bear upon the label the name of the medication in the container except if the prescriber writes "do not label", or words of similar import, on the prescription or so designates in an oral transmission of the prescription.

(h) As used in this section, unless the context requires otherwise,

(1) "brand name" means the proprietary or trade name selected by the manufacturer and placed upon a drug, its container, label or wrapping at the time of packaging;

(2) "generic name" means the official title of a drug or drug ingredients published in the latest edition of a Pharmacopoeia, Homeopathic Pharmacopoeia or Formulary;

(3) "substitute" means to dispense without prescriber's express authorization a different drug product in place of the drug ordered or prescribed;

(4) "therapeutically equivalent" means drugs that will provide essentially the same efficacy and toxicity when administered to an individual in the same dosage regimen.

(i) The commissioner of health and social services shall publish a formulary of generic drug types and drug products which the commissioner of health and social services determines demonstrate clinically significant biological or therapeutic inequivalence and which, if substituted, would pose a threat to the health and safety of patients receiving prescription medication. No pharmacist shall dispense a generically equivalent drug product if the drug product and its generic drug type is included in the formulary.

* Sec. 2. AS 08.80.460 is amended by adding a new subsection to read

(b) A person who violates the provisions of sec. 295 of this chapter is punishable by a civil fine in an amount established by the board in a schedule or schedules establishing the amount of civil fine for a particular violation. The schedule or schedules shall be adopted by the board by regulation. Any civil fine imposed under this section may be appealed in the manner provided for appeals in the Administrative Procedure Act (AS 44.62).

DRUG BIOEQUIVALENCE

A REPORT OF THE

OFFICE OF TECHNOLOGY ASSESSMENT

DRUG BIOEQUIVALENCE STUDY PANEL

OFFICE OF TECHNOLOGY ASSESSMENT

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Daniel De Simone, Deputy Director

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LETTER OF TRANSMITTAL

Congress of the United States
Office of Technology Assessment
Washington, D.C., July 15, 1974

The Hon. Harrison A. Williams
Chairman, Senate Committee on
Labor & Public Welfare
United States Senate
Washington, D.C. 20510

The Hon. Harley O. Staggers
Chairman, House Committee on
Interstate & Foreign Commerce
U. S. House of Representatives
Washington, D.C. 20515

Sirs: On behalf of the Board of the Office of Technology Assessment, we are pleased to forward to you the following report of the Drug Bioequivalence Study Panel, which was assembled on April 12, 1974, under the chairmanship of Dr Robert Berliner. The Panel was asked to determine whether or not the technological capability is now available to assure that drug products with the same physical and chemical composition will produce comparable therapeutic effects.

This report is being made available to your Committees in accordance with Public Law 92-484, with appreciation and thanks to Dr. Berliner and his colleagues on the OTA Drug Bioequivalence Study Panel.

Respectfully yours,

Edward M. Kennedy
Chairman

Respectfully yours,

Charles A. Mosher
Vice-Chairman

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terminology

Definitions of key technical terms as we have used them in this report are presented below. A comprehensive glossary of these and other technical terms is also provided on page 75.

- Drug product A dosage form containing one or more active therapeutic ingredients along with other substances included during the manufacturing process.

- Present compendial standards The official standards for drug excipients and drug products listed in the latest revision of the United States Pharmacopeia (USP) and the National Formulary (NF).

- New compendial standards Standards to be established for active ingredients, excipients and drug products, including tests relecting the best available technology to be performed before, during and after formulation.

- Chemical equivalents Drug products that contain the same amounts of the same therapeutically active ingredients in the same dosage forms and that meet present compendial standards.

- Pharmaceutical equivalents Drug products that contain the same amounts of the same therapeutically active ingredients in the same dosage form and that meet standards to be established on the basis of the best available technology.

- Bioavailability The extent and rate of absorption from a dosage form as reflected by the time-concentration curve of the administered drug in the systemic circulation.

- Bioequivalents Chemical equivalents which, when administered to the same individuals in the same dosage regimen, will result in comparable bioavailability.

- Therapeutic equivalents Chemical equivalents which, when administered to the same individuals in the same dosage regimen, will provide essentially the same efficacy and/or toxicity.

- Interchangeable drug products Pharmaceutical equivalents or bioequivalents that are accepted as therapeutic equivalents.

conclusions and recommendations

1

Current standards and regulatory practices do not insure bioequivalence for drug products.

2

Variations in the bioavailability of drug product have been recognized as responsible for a few therapeutic failures. It is probable that other therapeutic failures (or toxicity) of a similar origin have escaped recognition.

3

Most of the analytical methodology and experiment procedures for the conduct of bioavailability studies in man are available. Additional work ma be required to develop means of applying them to certain drugs and to special situations of drug u

4

It is neither feasible nor desirable that studies of bioavailability be conducted for all drugs or drug products. Certain classes of drugs for whic evidence of bioequivalence is critical should be identified. Selection of these classes should be based on clinical importance, ratio of therapeuti to toxic concentration in blood, and certain pharmaceutical characteristics.

5

Present compendial standards and guidelines for Current Good Manufacturing Practice do not insure quality and uniform bioavailability for drug products. Not only may the products of different manufacturers vary, but the product of a single manufacturer may vary from batch to batch or may change during storage.

6

New compendial standards for active ingredients, excipients and finished drug products should be developed and revised on a continuing basis to reflect the best available technology to insure quality and uniform bioavailability. Appropriate statistical procedures should be specified to make certain that the purposes of the standards are objectively satisfied. The guidelines for Current Good Manufacturing Practice should be expanded to include specific descriptions of all significant aspects of manufacturing processes from the raw materials to the final product.

7

Additional research aimed at improving the assessment and prediction of bioequivalence is needed. This research should include efforts to develop *in vitro* tests or animal models that will be valid predictors of bioavailability in man.

8

Current law requiring manufacturers to maintain records and make information available to the FDA is ambiguous or inadequate and should be clarified and strengthened. In particular, manufacturers should be required to submit all information relating the tests they conduct to the bioavailability data they develop in order to help provide information on the factors that modify the bioavailability of drug products. This information should be available to aid in the establishment of compendial standards.

9

Exemptions provided in current law for some drug products based on their year of introduction in relation to amendments in the Food, Drug, and Cosmetic Act (so-called grandfather clauses) have impeded improvement in the quality of these products. Such exemptions should be eliminated.

10

A single organization capable of setting standards adequate to insure the quality and uniform bioavailability of drug products should be established to replace the present USP and NF as the official standard-setting organization of the Federal Government.

11

A system should be organized as rapidly as possible to generate an official list of interchangeable drug products. In the development of the list, distinctions should be made between two classes of drugs and drug products:

1. Those for which evidence of bioequivalence is not considered essential and that could added to the list as soon as standards of pharmaceutical equivalence have been established and satisfied.

2. Those for which evidence of bioequivalence is critical. Such products should be listed only after they have been shown to be bioequivalent or have satisfied standards of pharmaceutical equivalence that have been shown to insure bioequivalence.

charge to the panel

The basic charge made to the Drug Bioequivalence Study Panel* by the Office of Technology Assessment (OTA) was to examine the relationships between the chemical and therapeutic equivalence of drug products and to assess the capability of current technology--short of therapeutic trials in man--to determine whether drug products with the same physical and chemical composition produce comparable therapeutic effects.

As members of the Panel, we agreed that a review of the system of regulations and practices now used to insure quality and uniformity--the compendial standards, Current Good Manufacturing Practice guidelines, and the manufacturers' procedures for quality control and formulation--would have to be an inherent part of our assessment. After examining these factors, we would make recommendations, if necessary, for any modifications that we believed might be needed to improve the present system for insuring the therapeutic equivalence of drug products.

It was clear to us from the outset that certain chemically equivalent drug products have produced clinically important and measurable differences in therapeutic effect and that these differences were the result of differences in bioavailability. Conversely, we recognized that differences in bioavailability (bioinequivalence) among some drug products may not be a critical concern with regard to the equivalence of their therapeutic effects.

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* The Drug Bioequivalence Study Panel met for the first time on April 12, 1974 to clarify its charge and to formulate a plan for its study. A chronological review of the activities undertaken by the Panel is presented as the Appendix.

As our study progressed, it became clear to us that we should recommend a system that, through improved assurance of quality and rational scientific judgments, would insure the therapeutic equivalence of drug products.

Our conclusions and recommendations are based on considerations of current technology and of the technology that we believe could be developed within the next few years. Our report also includes a consideration of the need and potential for new research relevant to the development of that technology and to other aspects of the problems under consideration.*

* The Panel communicated extensively with various sources, requesting information and receiving documented replies in response to questions raised. A bibliography of the documentation received and reviewed by the Panel appears on page 61.

scope of the study

Because of the limited time available to us, it was necessary to restrict the scope of our study to solid drug products (capsules and tablets, but excluding timed-release and coated products) that are administered by mouth and produce a systemic effect. These are the products for which consideration of the relationships between chemical and therapeutic equivalence is most important. In addition, tablets and capsules constitute the great majority of all drug products used in the United States.

The therapeutic effect of a solid drug product is assumed to be a function of the concentration of the active ingredient in the systemic circulation and is thus related to its bioavailability. Accordingly, we directed our attention to the principles and methodology involved in estimating and comparing the bioavailability of drug products. This methodology involves measurement of the concentration of the active ingredient in the systemic circulation, either directly in blood or indirectly through studies of urinary excretion.

We also attempted to identify the general categories of drug products for which measurements of bioavailability may be critical to the assurance of therapeutic equivalence. The therapeutic equivalence of some categories of drug products can be insured, however, without a direct assessment of bioavailability, and we tried to identify the general characteristics of such products.

Certain drug products contain the same active moieties but do not have the same salt, ester or dosage form. These products, although similar, are not chemically equivalent but may be therapeutically equivalent. For example, tetracycline hydrochloride tablets, capsules and syrup all may be expected to produce the same therapeutic effect as tetracycline phosphate capsules, but they are different in dosag

discussion of conclusions and recommendations

or salt forms. Drug products which are not chemically equivalent but have the same therapeutic effect may be referred to as pharmaceutical alternatives but not as chemical or pharmaceutical equivalents. We believe this distinction is significant and that it requires further elaboration; however, we did not examine pharmaceutical alternatives or the extent to which they do or do not produce equivalent therapeutic effects.

It must be recognized that beyond characteristics of drug products that influence absorption of the active drug from the gastrointestinal tract, a number of other factors have an important role in determining the therapeutic effect produced in any individual. Among these factors are the following:

1. Variations from one individual to another in absorption, metabolic conversion and excretion of the drug. Some individuals have rates of intestinal absorption and metabolism that differ markedly from the average rates, and these differences may be exaggerated by the disease state. Consequently, the concentration of the drug in the blood of such individuals may be well above or below the average, even if the drug is rapidly and completely dissolved in gastrointestinal fluids.

2. Appropriateness of the prescriber's choice of drug.

3. Differences among patients in complying with instructions for taking the drug product.

4. The simultaneous use of other drugs that can affect or alter the action of the prescribed drug.

Although such factors may greatly influence the therapeutic effect obtained from drug products, our major concern was directed at factors affecting the efficacy of drug products that are within the control of the manufacturer.

1

CURRENT STANDARDS AND REGULATORY PRACTICES DO NOT INSURE BIOEQUIVALENCE FOR DRUG PRODUCTS.

Although there is a spectrum of opinion about th frequency and importance of differences in the bioavailability of chemically equivalent drug products, there can be no dispute about the fact that well-documented and significant differences in bioavailability have been demonstrated in chemically equivalent products representing a number of drug categories.

Problems of bioequivalence have received seriou investigative attention only during the past fe years. In this brief period, however, a number of studies of marketed drug products containing the same therapeutic ingredient have revealed marked differences in the rate and extent of absorption. A considerable body of literature accumulated in this period that indicates the existence of demonstrable differences in the bioavailability of products involving roughly a score of drugs. A partial list of studies demo strating bioinequivalence of chemically equival drug products might include the following: tet cycline (MacDonald et al, 1969; Barr et al, 197 chloramphenicol (Glazko et al, 1968); digoxin (Wagner, 1973; Lindenbaum et al, 1971); phenyl- butazone (VanPetten et al, 1971; Chiou, 1972); oxytetracycline (Blair et al, 1971; Brice et al 1971).

Not only has bioinequivalence been shown to exi in products of different manufacturers but ther also have been substantial variations in the bioavailability of different batches from the s company (for example, see Lindenbaum et al, 197 It is difficult to determine whether differenc

such as those cited are the exception or the rule, since positive results (in this case a demonstrable difference) are far more likely to be published than negative findings. Furthermore, in some studies in which several chemically equivalent products have been tested, some have been found to have the same bioavailability while others have not.

Nevertheless, the number of positive findings has been sufficient to establish that the problem of bioinequivalence in chemically equivalent products is a real one. Since the studies in which lack of bioequivalence was demonstrated involved marketed products that met current compendial standards, these documented instances constitute unequivocal evidence that neither the present standards for testing the finished product nor the specifications for materials, manufacturing process, and controls are adequate to insure that ostensibly equivalent drug products are, in fact, equivalent in bioavailability.

2

VARIATIONS IN THE BIOAVAILABILITY OF DRUG PRODUCTS HAVE BEEN RECOGNIZED AS RESPONSIBLE FOR A FEW THERAPEUTIC FAILURES. IT IS PROBABLE THAT OTHER THERAPEUTIC FAILURES (OR TOXICITY) OF A SIMILAR ORIGIN HAVE ESCAPED RECOGNITION.

The fact that drug products differ in bioavailabi is not, in itself, evidence that the use of such products will produce significant practical probl in the treatment of patients. However, it is als a fact that <u>therapeutic</u> inequivalence has been observed among certain chemically equivalent drug products. One example of therapeutic failure arising from variations in the bioavailability of ostensibly equivalent products involved the important and highly potent cardiotonic drug, digoxin. A number of patients were observed to require unusually large maintenance doses of digo despite the absence of any condition that might h explained a high tolerance to the drug. Upon investigation, the patients were found to have lo digoxin concentrations in their blood plasma (Lindenbaum et al, 1971). A crossover study reve striking differences in bioavailability among fou digoxin preparations available in the same hospit at the time. The peak concentration after a sing dose was found to vary among the four drug produc by a factor of as much as seven. It is noteworth that the margin of safety of this drug is sufficiently narrow that serious or even lethal toxic effects can result if the dose given and absorbed is as little as twice that needed to ach a therapeutic effect.

Another instance of therapeutic failure with a drug product meeting compendial standards was demonstrated in the case of a thyroid preparation that met those standards but was therapeutically inactive (Catz et al, 1962).

While these therapeutic failures resulting from problems of bioavailability were recognized and well documented, it is entirely possible that other therapeutic failures and/or instances of toxicity that had a similar basis have escaped attention. The variability among individuals--in the absorption, excretion and metabolic conversion of drugs; in the individual physiological or toxic response; and even in the regularity with which the prescribed dose actually taken--is such that the source of an abnormal or inadequate therapeutic effect in an individual patient is not readily identifiable. Differences owing to the bioavailability of the administered product are likely to be recognized only when information is collected in an organized manner or effects are noted in a significant number of patients under sufficiently close observation by an unusually alert and observant physician. More important, for drugs that, because of relatively narrow margins of safety, are generally administered in doses that produce plasma levels not much higher than the minimum required for efficacy, therapeutic inequivalence must certainly occur whenever there are substantial differences in bioavailability.

Therefore, although the number of instances of demonstrable therapeutic inequivalence is small, the problem is an important one and, in the case of drugs with narrow margins of safety, assurance of bioequivalence is vital.

3

MOST OF THE ANALYTICAL METHODOLOGY AND EXPERIMENTAL PROCEDURES FOR THE CONDUCT OF BIOAVAILABILITY STUDIES IN MAN ARE AVAILABLE. ADDITIONAL WORK MAY BE REQUIRED TO DEVELOP MEANS OF APPLYING THEM TO CERTAIN DRUGS AND TO SPECIAL SITUATIONS OF DRUG USE.

The conduct of bioavailability studies in man requires that a drug product be administered to a group of individuals and that the time-course of the concentration of the drug in the blood be evaluated either directly or indirectly.* It is necessary, therefore, that there be available (1) analytical methods for determining the concentration of the active ingredient in body fluids; (2) standardized procedures for administering the drug product and obtaining appropriate blood and/or urine samples; and (3) adequate methods for statistical analysis and interpretation of the results.

ANALYTICAL METHODS

It may be necessary to measure, in a small volume biological fluids, an amount of the intact drug th

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* In 1972, the Academy of Pharmaceutical Sciences of the American Pharmaceutical Association published the Guide for Biopharmaceutical Studi in Man, which presents a systematic approach to the conduct of bioavailability studies based on analytical determination of drug in blood and/o urine.

is only one millionth to one billionth of the dose administered. Fortunately, such recent advances as gas-liquid chromatography, high pressure liquid chromatography, fluorescence techniques, mass spectrometry, radioimmune assays, and microbiological assays have greatly increased our capability of measuring such minute amounts of drugs. The methods used must have not only adequate sensitivity and accuracy, but also the selectivity that will make it possible to quantify the drug in the presence of its metabolites or of endogenous compounds that may interfere with the determination of the compound in biological fluids.

In instances in which no sufficiently sensitive chemical method is available to detect the active ingredient, radioactively labeled molecules may be utilized. It must be verified, however, that the measured radioactivity is contained in the intact compound that has been separated from its metabolites. One must also be assured that the dosage form containing the radioactive drug to be administered possesses, insofar as possible, physical and chemical properties identical to those of the usual (unlabeled) dosage form.

Some of these methods are cumbersome and rather time-consuming, but they are capable of providing relatively accurate measurements at the required levels. Unfortunately, some of the early pharmacokinetic studies were based on methods subject to ambiguities. Continuing efforts, therefore, are still required to simplify and improve the existing methods and to develop new ones.

PROCEDURES FOR ADMINISTERING THE DRUG PRODUCT

The most common experimental plan for comparing the bioavailability of two drug products is a simple crossover study. In this design, each individual in a group of subjects receives both drug products (at different times) so that there is a direct comparison of the absorption of each product in the same individual. Special care must be taken to allow sufficient time to elapse between the administration of the first and second drug products so that there are no carryover effects. In order to minimize the influence of such effects on the outcome of the study, good experimental design requires that each drug product be administered initially to half of the subjects.

In some instances, more than two drug products are to be compared in a single investigation. If three products are to be studied, all three can be administered to each individual in a suitably balanced order. However, investigations involving more than three drugs may require alternative experimental designs, as it may be impractical to give more than three drug products to the same individual. A suitable way of planning such investigations is to utilize statistical experimental plans called incomplete-block designs. The statistical methodology for such experimental plans is readily available.

For some applications of some drug products, the steady-state concentration of the drug in the blood, attained after repeated administration of the drug product at regular intervals, may be a more appropriate index of bioavailability than the time-concentration curve after a single dose.

STATISTICAL METHODOLOGY FOR BIOAVAILABILITY STUDIES

The statistical methods to be used in bioavailability studies should be chosen with careful attention being given to the effect of the variations among individuals and among batches of nominally identical manufactured drug products. The planning, analysis and interpretation of these experiments are not routine problems but, rather, require considerable care, consonant with the purpose for which the data are to be used.

INDIVIDUAL VARIABILITY AND BIOEQUIVALENCE

When drug products are administered to individuals, the investigator inevitably finds differences in one or more of the variables measured. These differences are due partly to factors related to dosage form and partly to biological factors unique to each individual, since each person has hiw own characteristics for absorption, metabolism and excretion of each drug. Through appropriate use of statistical procedures, it is possible to identify the variations that result from differences among individuals and thus to isolate those that result from differences in the bioavailability of the drug products.

BATCH-TO-BATCH VARIABILITY AND BIOEQUIVALENCE

Some drug products may exhibit substantial batch-to-batch variation with respect to important bioavailability characteristics. If the batches are manufactured under adequately controlled conditions, then one could regard the different batches to be theoretically bioequivalent. However, one would expect the average levels of some of the bioavailability characteristics to vary from batch to batch. The measurement of the effects of batch-to-batch variations on bioavailability is important in assessing the effect of changes in the manufacturing process which may take place in the future.

The problem arises as to how to judge whether two chemically equivalent drug products are bioequivalent. The solution to this problem depends on the batch-to-batch variation of the bioavailability. A working rule for judging the bioequivalence of two drug products might be that the two are considered equivalent if the differences between them are similar to what one would expect from the batch-to-batch variation of the original product. Unfortunately, there is little information concerning the effects of batch-to-batch variation on bioavailability. Studies to examine this question have not often been carried out, since they require *in vivo* tests of bioavailability unless there are *in vitro* tests whose results have been shown to have a high correlation with bioavailability.

SAMPLE-SIZE CONSIDERATIONS

One of the most important and difficult problems in planning bioavailability investigations is the selection of the appropriate sample size. If conventional statistical tests of significance are used to analyze the data, then it is possible that studies involving small numbers of observations (subjects) may fail to yield differences that are statistically significant even if the drug products being compared are, in fact, different. Alternatively, if large numbers of observations are used, then one may find statistically significant differences between drug products, even if the real differences are small and of no pharmaceutical or therapeutic significance.

Therefore, in planning bioavailability investigations, one must determine the difference in mean values of the parameters of bioavialability that it is practically (pharmaceutically or therapeutically)

important to detect. The choice of sample size requires that the probability of failing to detect important differences be small, when such differences exist.

METHODS OF ANALYSIS

The experimental results of bioavailability studies can be analyzed statistically in many different ways. The statistical methods of analysis depend on (1) the statistical model of the concentration-time curve, (2) the statistical model of the various sources of variation (for example, person-to-person variations, or nonindependent measurements), and (3) the experimental plan that specified how the measurements were to be made.

Perhaps the simplest way to use concentration-time curves for comparing two drug products is not to compare the entire curves but to compare characteristics of the curves that are deemed important with regard to the drug product under study--for example, area under the curves, peak heights, or rates of absorption. If only a single characteristic is involved, an appropriate method of analysis is the method of paired comparisons, in which each individual generates a paired difference. There are also adequate statistical procedures for the comparison of two or more sets of variables, and these can be used when more than two drug products are studied.

4

IT IS NEITHER FEASIBLE NOR DESIRABLE THAT STUDIES OF BIOAVAILABILITY BE CONDUCTED FOR ALL DRUGS OR DRUG PRODUCTS. CERTAIN CLASSES OF DRUGS FOR WHICH EVIDENCE OF BIOEQUIVALENCE IS CRITICAL SHOULD BE IDENTIFIED. SELECTION OF THESE CLASSES SHOULD BE BASED ON CLINICAL IMPORTANCE, RATIO OF THERAPEUTIC TO TOXIC CONCENTRATION IN BLOOD, AND CERTAIN PHARMACEUTICAL CHARACTERISTICS.

More than 20,000 prescription drug products are presently available from drug manufacturers. For only a few of these are there adequate data documenting their bioavailability in man. Because of the large number of drug products for which studies of bioavailability might be conducted, the enormous number of human volunteers that would be needed, and the large number of clinical investigators and other scientific personnel who would be needed to do the work, it is clearly not feasible to carry out studies of bioavailability in man for all drug products.

Furthermore, even were it feasible to do so, it would not, in our opinion, be ethically justifiable. The administration of drugs to man is never without some hazard, although in some cases the risk is very small. In addition, subjects always experience some inconvenience and usually some discomfort. It is axiomatic that these hazards and inconveniences should not be incurred unless they are outweighed by the prospective benefits of the studies. When studies of bioavailability are necessary to insure

the effectiveness and safety of therapeutically important drugs, such studies are ethically justified and necessary. For any lesser purpose, they will rarely be justifiable. We do believe, however, that bioavailability studies should be required for products if the active ingredient in the product has not yet been introduced on the market.

In asserting that studies of bioavailability will not be required for all drug products, it becomes important to set forth general criteria to guide the selection of those products whose bioavailability should be documented by testing in man. A necessary, albeit not a sufficient, condition is that the drug be one that serves a clinically important purpose, especially if it is used in the treatment or the prevention of severe or life-threatening conditions. However, the clinical importance of a drug alone would not be an adequate reason for conducting an in vivo study of its bioavailability.

Beyond questions of feasibility and ethical justifiability, there are other good reasons to refrain from conducting studies of bioavailability of a number of drugs, including many that are therapeutically important. Many drugs are given in fairly standard dosage with little regard to the body size of the patient or to the titration of dosage to exactly the desired therapeutic effect. Such practice reflects the fact that for many drugs there is a wide margin between the concentration of the drug in the body fluids needed to produce the desired therapeutic effect and the concentration at which undesirable toxic effects begin to appear. Thus, the standard dose is usually one that will produce in the vast majority of patients a concentration in the blood well above the levels needed for the therapeutic effect without reaching unacceptable levels of toxicity. Clearly, under such circumstances a wide range in bioavailability could be tolerated without hazard of therapeutic failure.

For example, no one would question the clinical importance of penicillin, nor the seriousness of many of the conditions for which it is used. But the margin between its effective concentration and its toxic level is so great that the prescribed dosage can be aimed at achieving a concentration in the blood far above the minimum effective level, thus insuring a therapeutically effective level in virtually all users. Moderate differences in the concentration achieved in the blood owing to differences in the bioavailability of chemically equivalent penicillin products would be easily tolerated.

Conversely, drugs that have a relatively narrow range between the concentration needed for the desired therapeutic effect and the concentration associated with significant toxicity would be candidates for testing of bioavailability, since relatively modest changes in the concentration achieved in body fluids might well be associated with large changes in the frequency of therapeutic failure or significant toxicity. Examples of drugs that might fall into this category include a number of cardioactive drugs (digitalis glycosides, quinidine), anticonvulsant agents (diphenylhydantoin), some corticosteroids, and certain antibiotics (chloramphenicol and cephalosporins).

The pharmaceutical properties of drugs and drug products affecting solubility and dissolution characteristics in gastrointestinal fluids constitute additional factors to be considered in the selection of chemically equivalent drug products for which evidence of bioavailability may be required. The drugs themselves may differ in particle size or crystal form, and these differences can affect solubility. In addition, the method of manufacture of other ingredients, such as excipients, diluents or fillers may alter dissolution characteristics. For many drugs and drug products, however, high solubility of the drug and rapid dissolution of the product make it relatively unlikely that major differences in absorption from the gastrointestinal tract will occur. However, there are certain conditions in which even these drugs may show differences in bioavailability.

Sustained-release and enteric-coated products constitute a separate problem that we have not considered in any detail, but it is clear that there is a particular need for tests of the bioavailability of many such preparations.

In summary, measurements of bioavailability may be critical to assuring therapeutic equivalence of drugs or drug products that:

- Are used for treatment or prevention of serious illness;
- Have steep dose-response curves or unfavorable therapeutic indices; or

- Contain active ingredients that are relatively insoluble or are converted to insoluble forms in gastrointestinal fluids.

In view of (1) the demand on limited resources (particularly the time and effort of trained investigators and other scientific personnel), (2) the hazards, however minimal, of exposure of volunteers to additional drugs and the associated investigational procedures, and (3) the unnecessary addition to the cost of drug products that such studies would entail, we consider it desirable that studies of bioavailability in man be carried out only in the case of drugs with characteristics such as those described above. We believe that appropriate panels of experts would have little difficulty in distinguishing between those drugs for which bioavailability studies in man should be required and those for which they should not. (See discussion on page 59.)

5

PRESENT COMPENDIAL STANDARDS AND GUIDELINES FOR CURRENT GOOD MANUFACTURING PRACTICE DO NOT INSURE QUALITY AND UNIFORM BIOAVAILABILITY FOR DRUG PRODUCTS. NOT ONLY MAY THE PRODUCTS OF DIFFERENT MANUFACTURERS VARY, BUT THE PRODUCT OF A SINGLE MANUFACTURER MAY VARY FROM BATCH TO BATCH OR MAY CHANGE DURING STORAGE.

As we have pointed out, the fact that several marketed drug products that are chemically equivalent have been found to differ significantly in bioavailability is a clear indication that present compendial standards and guidelines for Current Good Manufacturing Practice (CGMP) do not insure bioequivalence. A consideration of these standards and guidelines may clarify the reasons for their inadequacy.

COMPENDIAL STANDARDS

HISTORY

The official drug compendia originated independently of the Federal Government and have been maintained through a convention and committee system composed of interested health professionals. The United States Pharmacopeial Convention, Inc., (USP) dates back to 1820, and the National Formulary Board (NF), subdivision of the American Pharmaceutical Association, was established in 1888. The compendia that have been published by these organizations

since their founding were developed to help insure that drug products of an acceptable level of quality would be available to physicians. They set forth standards for drugs used in dispensing and compounding prescriptions. Later, they provided pharmaceutical manufacturers with descriptions of recognized standards for products conforming to certain criteria of strength, purity and quality.

Pharmacists in early America were responsible for identifying and establishing the quality of the raw materials they used in compounding prescriptions. In the 1880s, the pharmaceutical industry became the primary supplier of drug products and accepted responsibility for standardizing the products. However, the compendial tests for strength and purity still retained their basic simplicity, requiring minimal instrumentation and analytical skill, so that a pharmacist could still perform the assays.

Reliance on simple approaches to specifications of materials and the control of quality persists to this day. These shortcomings in present-day assessment of drugs particularly pertain to the tests for identity, purity and potency that form the legal basis upon which compliance or lack of compliance is established (Federal Food, Drug, and Cosmetic Act). In some cases, physical tests and assay procedures of much greater sensitivity than those in the compendia are known; many of these tests are fully automated.

The FDA, at its National Center for Drug Analysis in St. Louis, has found it necessary to establish its own set of tests for monitoring the quality and uniformity of drug products. Many of these tests are also automated and reflect more advanced technology than do the compendial tests. Nevertheless if a given drug product fails to pass these advanced automated tests, the FDA is still required to repeat the analyses using official, and frequently less accurate, manual methods in order to establish a lack of legal compliance. In any case, it is difficult to defend the current selection of methods when it is apparent that they are, in some cases, inaccurate, insensitive and nondiscriminating, as can be seen by a comparison of several of the present compendial monographs with the data published in more recent sources.*

* One such current source is Analytical Profiles of Drugs, edited by Klaus Florey and (continued)

COMPENDIAL MONOGRAPHS

The selection of active ingredients and finished drug products for inclusion in the United States Pharmacopeia (USP) and the National Formulary (NF) is based primarily on their therapeutic importance as judged by the revision committees; the basis for selection of excipients is not clearly specified. A large number of active ingredients and a number of excipients are not included in the compendia. Certain excipients are included, but specific tests and standards applicable to their special use as components of tablets and capsules are not listed. For excipients not described in the compendia, the drug manufacturer may set his own specific requirements or accept the specifications of the firm that supplies these ingredients to him. Since these so-called inert substances can influence the stability and/or release of the active compound from the dosage form, the lack of standards for excipients may well lead to variation in important properties of the final drug product.

The dosage form monographs contained in the official compendia deal with end products. They do not describe inactive components or processes of manufacture. Thus, they do not assure exclusion of the possibility that drugs might interact with excipients, some of which can cause decomposition, and do not exclude the formation of complexes not detectable by present official tests. There are also no specifications for the granulation or precompression mixture as a preliminary means of insuring uniformity of content and dissolution properties. Nor do the monographs include adequate tests to specify characteristics of the active ingredients needed to insure quality and standardized levels of bioavailability of the finished dosage form.

Beyond the tests for weight and uniformity of content the most important tests included in the monographs for tablets or capsules are those for disintegration and dissolution. The disintegration tests currently called for in the compendia are relatively crude and require that an observer record the time necessary for the disintegration of six tablets. Since the average time for disintegration is about 30 minutes,

(Continued)
published by Academic Press. Two volumes have been published to date, the first in 1972 and the second in 1973.

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a period long enough for the manufacture of hundreds of thousands of tablets, disintegration tests are clearly unsuitable for use in the monitoring and control of the manufacturing process.

The dissolution tests, which have been specified in the compendia since 1970, are carried out in apparatus that may introduce extraneous sources of variation in the dissolution process. The test specifications for individual drug products have been established somewhat arbitrarily without sufficient consideration of the physical chemical properties of the active ingredient and of biological factors that may be critical in the dissolution process.

While uniformity in testing equipment is desirable, a single apparatus will not cover all test conditions for meaningful studies of dissolution. It should be noted that in a New Drug Application (NDA), the FDA allows the pharmaceutical industry to use all available analytical techniques and to establish unique anlytical and quality control specifications for a new drug product. Before approval of the NDA, the Washington laboratories and the district laboratories of the FDA establish their own capabilities to conduct these analytical tests, in case they should be needed for their regulatory activities. It is unfortunate that the official compendia are restricted to measurement systems with severe limitations in design.

STATISTICAL IMPLICATIONS

Irrespective of the technical soundness of the tests, the adequacy of which we have questioned above, the compendial standards for finished drug products have been established without any serious consideration of the adequacy of the statistical procedures for the detection of defective finished products. In fact, the sampling procedures are generally inadequate. No consideration is given to (1) the method of drawing the sample, (2) the rationale for specifying the number of units of the product to be tested and (3) the statistical criteria for permitting a batch or lot of a finished product to pass. Thus, current compendial standards offer insufficient protection against the possible marketing of substantial batches of defective products.

A. THE OFFICIAL TABLET DISINTEGRATION TEST

The USP and NF tablet disintegration tests require that six tablets be tested initially. If all tablets disintegrate under the conditions described, then it

is assumed that the lot or batch of tablets from which the sample of six was drawn is satisfactory. Alternatively, if one or two of the initial six tablets fail the test, then the test is repeated on 12 additional tablets. The criterion of acceptability is then that at least 16 of the total of 18 tablets disintegrate completely within the time specified. Table A summarizes the probability that the sample will meet the specified requirements as a function of the percentage of defective tablets in the batch from which the sample is drawn.

Table A. Probability of Acceptance as Function of Percentage of Defective Tablets (Disintegration Test)

Percent Defective	Probability of Acceptance
1%	.995
5%	.96
10%	.79
20%	.39
30%	.15
40%	.004

Thus, for example, batches of tablets of which 20% are defective with regard to the disintegration tests would pass the specified disintegration test 39% of the time. This test procedure offers a high order of assurance of detecting defective lots only if the lots contain at least 40% defective tablets.

B. DISSOLUTION TEST

The USP and NF dissolution tests state that six tablets initially are to be tested for dissolution properties. If all six meet the specifications, it is assumed that the batch from which the sample is drawn is acceptable. If one or two units fail to meet requirements, then the test is repeated on six additional units. If the testing reaches this point, at least 10 of the 12 units tested must meet the requirements of the dissolution test in order to comply with compendial standards. Table B summarizes the probability of acceptance in this test as a function of percentage of defective tablets or dosage units in the batch from which the sample is drawn.

Table B. Probability of Acceptance as a Function of Percentage of Defective Tablets or Dosage Units (Dissolution Tests)

Percent Defective	Probability of Acceptance
1%	.9998
5%	.98
10%	.90
20%	.58
30%	.28
40%	.10
50%	.03
60%	.006

Note that the criteria for acceptance in this test result in even poorer protection than in the disintegration test. A batch having 20% defective tablets or dosage units will be accepted 58% of the time. Only when the percentage of defective units in a batch is 60% or greater do these requirements offer high assurance of detecting defective batches.

C. CONTENT UNIFORMITY

The requirements for satisfying compendial standards for uniformity of content are somewhat more complicated than the dissolution and disintegration tests. The standards specify the following procedures:

- Ten capsules or tablets from batch are initially assayed. The requirements are satisfied if nine or 10 of these units fall within the limits of 85% to 115% of the content specified and all results fall within 75% to 125%.
- If two or three of the initial 10 units yield results that fall outside the range of 85% to 115% of the specified content and none fall outside the range of 75% to 125%, an additional 20 units are tested. The requirements are then met if all 30 results fall within the limits of 75% to 125% and if not more than three results fall outside the limits of 85% to 115%. Table C summarizes representative values of the percent defective versus the probability of accepting the batch from which the samples are drawn.

Table C. Probability of Acceptance Versus Percentage of Defective (Content Uniformity Test)

Total Percent Defective	Percent Defective in Range 75%-85% and 115%-125%	Percent Defective Outside Range 75%-125%	Probability of Acceptance
5%	5%	0%	.97
5%	4.5%	0.5%	.92
5%	4.0%	1.0%	.88
10%	10%	0%	.82
10%	9%	1%	.72
10%	5%	5%	.56
25%	25%	0%	.25
25%	15%	10%	.17
25%	10%	15%	.13
50%	50%	0%	.01
50%	40%	10%	.009
50%	25%	25%	.006

This sampling procedure for content uniformity cannot, with any assurance, be depended upon for detecting defective batches. For example, note that a batch of capsules or tablets having 25% defective units would meet compendial standards as frequently as 25% of the time.

D. SAMPLING PROCEDURES

The compendial standards are vague with regard to how the samples of tablets or dosage forms are to be chosen for testing. If the standards are to have any utility for judging the quality of a batch, then it is essential that careful attention be given to the drawing of a sample. In order to be able to draw inferences about a batch being tested, it is absolutely essential that the sample of dosage units from that batch be randomly selected. All dosage units in the batch must have an equal chance of being selected for the sample. Yet, the compendial standards make no mention that a random sample of dosage forms is necessary, nor are guidelines given as to how the sample should be drawn.

COMPENDIAL REVISION PROCESS

An examination of the USP revision process reveals the inherent weaknesses in the development of present compendial standards. As a nonprofit, independent organization, the USP draws its membership from a broad base of organizations and

institutions concerned with drugs. Its Committee on Revision, composed of 20 medical and 40 pharmaceutical scientists, is selected once each five years by the 300 USP Convention members. Each member of the Committee on Revision draws upon the expertise of other scientists, thus expanding the number of scientists contributing to the effort to about 200. The contributions of these persons, in some cases, may be very superficial, since both the USP and the NF lack the funding and the scientific staff needed to permit serious scientific prospective searches to be conducted for potential or suspected problems.

Except for out-of-pocket expenses, all work done by committee members is voluntary. The USP (and NF) are dependent on funds derived primarily from the compulsory purchase of their published compendia by pharmacies in most states and from the sale of reference standards of official compendial substances. Major committee revisions are too infrequent to stay abreast of advancing technology. One factor that delays compendial revision and the development of test methods is the shortage of personnel to accomplish these tasks; in 1973 there was a full-time-equivalent staff of only 4.2 persons involved in development of compendial standards. (In 1967, the corresponding figure was 1.7.) Thus, the USP and the NF both lack the internal and external resources required to develop rational and modern standards. Their continued reliance upon such limited resources is anachronistic and inadequate for the scientific activities necessary to insure pharmaceutical equivalence of drug products.

It should be noted, however, that the Food, Drug, and Cosmetic Act contains a section enacted by Congress in 1944 entitled The Revision of the USP; Development of Analysis and Mechanical and Physical Tests in which the Secretary of Health, Education, and Welfare is "authorized hereafter to cooperate with the associations and scientific societies in the revision of the USP and in the development of methods of analysis and mechanical and physical tests necessary to carry out the work of the FDA." It appears that very little has been done to implement this section of the Act during the last 30 years. We have been advised that the FDA allocated only $75,000 to the implementation of this section of the Food, Drug, and Cosmetic Act in 1974.

CURRENT GOOD MANUFACTURING PRACTICE

The regulatory measures of the FDA are based on the Food, Drug, and Cosmetic Act, as amended up to August 1972, and the FDA's supplementary regulations and guidelines established under the authority of the Act. In recent years, the FDA has established guidelines under the title Current Good Manufacturing Practice. Unfortunately, these guidelines are based primarily on the official compendial standards and are limited to rather general statements that may be subject to wide differences in interpretation. They correctly emphasize environmental factors, including control of air supply and organization of manufacturing plants, to minimize cross-contamination of products or errors in packaging or labeling; they also focus on the integrity of quality control and production records. These guidelines have greatly improved the handling of materials, cleanliness, and consistency in production, but they do little to minimize lot-to-lot variation in the output of manufacturers generally or bioinequivalence among the chemically equivalent products of different manufacturers.

A manufacturer of a duplicate product can request and receive approval to market his product on the basis of an Abbreviated New Drug Application (ANDA) specifying only the official compendial standards for controlling the quality of the raw materials and final drug product, including both the active ingredients and the excipients used in the product. Further, the raw materials can be included by the manufacturer on the basis of an identity test and a certification from the supplier of the raw materials that they passed the official compendial tests. Excipients not covered in an official monograph may be accepted from the supplier without any particular specifications at all. The manufacturer using these raw materials is expected only to assure himself that the raw material manufacturer maintains an acceptable level of quality assurance.

Current Good Manufacturing Practice guidelines do not mention preformulation tests or intermediate testing and refer only vaguely to in-processing tests. Although a manufacturer of duplicate products is required only to meet the compendial specifications with all their limitations, the original manufacturer of the product is required to continue meeting all specifications of production and quality control described in the approved NDA. Undoubtedly, some duplicate products undergo tests and are manufactured

according to specifications that go beyond those in the compendial standards. There are, then, two sets of standards: those in the approved NDA and those established by the official compendia. It is hardly surprising that pharmaceutical equivalence is not guaranteed by the present procedures.

A million or more individual batches of tablets and capsules are manufactured each year in approximately 800 pharmaceutical manufacturing plants in the U.S. Some of these batches include several million units. Inspection of plants is required only once every two years by the FDA, although it usually is done at least once a year. The National Center for Drug Analysis in St. Louis has the capacity to test only a few thousand batches of drug products per year. The large number of different drug products and the sizes and number of batches produced make it difficult to establish assurance of quality using the present system of inspection.

In many parts of the country having very few pharmaceutical manufacturing plants, FDA agents trained in food inspection also serve as drug inspectors. These inspectors are often trained for their ancillary assignments in short courses in pharmacy schools; most of them are not trained sufficiently to determine whether adequate testing of the final product has been performed. The very nature of the present Current Good Manufacturing Practice guidelines forces inspectors to concentrate on plant design and maintenance practices and to rely on inspection of records to insure manufacturers' compliance with compendial standards.

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NEW COMPENDIAL STANDARDS FOR ACTIVE INGREDIENTS, EXCIPIENTS AND FINISHED DRUG PRODUCTS SHOULD BE DEVELOPED AND REVISED ON A CONTINUING BASIS TO REFLECT THE BEST AVAILABLE TECHNOLOGY TO INSURE QUALITY AND UNIFORM BIOAVAILABILITY. APPROPRIATE STATISTICAL PROCEDURES SHOULD BE SPECIFIED TO MAKE CERTAIN THAT THE PURPOSES OF THE STANDARDS ARE OBJECTIVELY SATISFIED. THE GUIDELINES FOR CURRENT GOOD MANUFACTURING PRACTICE SHOULD BE EXPANDED TO INCLUDE SPECIFIC DESCRIPTIONS OF ALL SIGNIFICANT ASPECTS OF MANUFACTURING PROCESSES FROM THE RAW MATERIALS TO THE FINAL PRODUCT.

The philosophy that is applied in regulating the preparation of sterile solutions for parenteral use can serve as a model in establishing the requirements for insuring the quality of drug products. In the case of parenteral solutions, it has been determined that a zero level of microbial contamination should be the standard of quality with respect to sterility. No amount of testing applied only to the final product could insure this total freedom from microbial contamination without destroying and testing every package. Instead, a series of tests and procedures has been specified for every material used and at every stage of the process of manufacture in order to minimize the possibility of microbial contamination

at each step and thus in the final package.

Similarly, rather than aiming to insure the uniformity of oral drug products by tests applied only to the final entity, uniformity of quality and bioavailability should be promoted by making as specific as possible the requirements for the characteristics of the materials to be used, the processes by which they are to be assembled, and the tests to be applied to representative samples of the final product. Testing at all stages of the manufacturing process should reflect the best available technology and should be based on statistical procedures which will insure that the purposes of the tests are objectively satisfied.

COMPENDIAL STANDARDS

TESTS TO BE APPLIED TO RAW MATERIALS

Many of the present monographs of the USP and NF for raw materials in drug products contain outmoded or suboptimal procedures. Revision committees have adopted the policy of specifying only a single analytical method for determining the purity of an active ingredient, even though the Food, Drug, and Cosmetic Act clearly permits more than one such test. As we have noted earlier, the policy of the compendial bodies has severely limited the improvement of analytical procedures. Most modern analytical methods are sufficiently accurate and specific that results obtained with one can be compared with results obtained by other methods. Although for some active ingredients, a single analytical procedure may be desirable, for others, any one of a number of methods might be acceptable.

Beyond its chemical identity and purity, there are characteristics of the active ingredient that could be specified in order to increase the reproducibility of the properties of the final drug product. These might include such specifications as the distribution of particle size, a maximally acceptable particle size, requirements for a certain crystal form, compressibility and a requirement for a rate of dissolution. Certainly not all such properties need be specified for all drug products, but they might be critical to the quality of some.

Raw material test requirements for excipients should be expanded in the compendial monographs. The USP and NF do contain tests for some excipients. These tests, however, tend to be nonspecific, and tests for many other excipients are not included at all. The same degree of test specificity described above for the clinically active material is appropriate for those excipient materials that influence bioavailability of the drug product.

SPECIFICATIONS FOR INTERMEDIATE STAGES OF THE MANUFACTURING PROCESS

The properties of the final product will be more easily controlled if requirements are imposed at intermediate stages of manufacturing. One such stage is that of the precompression mix--the stage after the active ingredients and various excipients have been mixed but before the mixture is compressed into tablets. The qualities of the precompression mix could be defined by tests such as those for bulk density, loss of weight on drying, particle-size distribution, compressibility, and rate of dissolution. Again, it is not intended that all of these tests be required for all raw materials or at all stages of the process. However, certain specifications for the intermediate stages may be very important in establishing batch-to-batch reproducibility, especially if any changes are made in the manufacturing process.

Data from such tests might make it possible to determine whether changes in processes or starting materials have caused changes in the properties of the final product sufficient to necessitate the performance of new studies of bioavailability. We have been informed by the FDA that it has no policy at present that outlines specific requirements for bioavailability testing when changes are made in size of batches, processing equipment or raw materials used in the manufacture of drug products. Instead, these decisions are left to the various divisions within the Bureau of Drugs to be made on a more or less arbitrary basis. The proposed tests for products at intermediate stages might provide the FDA an objective basis for making these decisions. Testing at intermediate stages would be useful when applied to certain very insoluble active ingredients since it is difficult to apply meaningful dissolution tests to the final product of such drugs because of the inordinate volumes of fluid needed to dissolve all of the active ingredient.

TESTS APPLIED TO THE FINAL PRODUCT

Dissolution tests should be included in specifications for the final product. The tests specified, however, should relate to the physical and chemical properties of the drug and to possible interactions with the gastrointestinal fluids. This may require changes in the solvent to simulate the events that occur as the capsule or tablet is exposed first to gastric and then to intestinal fluids. The apparatus currently in use is not readily adaptable to such changes of solvent. The disintegration and dissolution test procedures, as well as tests of deaggregation, are in need of serious reevaluation. Automated dissolution apparatus is in use in a number of laboratories and is adaptable to the measurement of deaggregation; this apparatus should also be evaluated as a possible alternative to disintegration testing. When appropriate bioavailability data have been developed for a specific drug product, it is essential that the dissolution tests for that drug product be modified so that the results bear a high statistical correlation with bioavailability. In the absence of bioavailability data, dissolution tests should be adopted for their value in quality control.

It should be noted that the present regulations for the certification of antibiotics do not include dissolution tests. The published data indicating that some preparations of antibiotics have been subject to problems of bioavailability clearly demonstrate the need for standards of dissolution.

STATISTICAL PROCEDURES

We have indicated above some of the statistical inadequacies of present sampling and testing procedures. It should not be difficult to effect a great improvement in these. Statistical procedures have reached a high degree of development and can be used in such a way as to yield a high level of assurance that defective batches will be detected. The detection of batches containing a high proportion of defective dosage forms can be substantially improved by (1) choosing sample sizes in accordance with the average quality that is deemed necessary, (2) adopting sequential sampling and inspection procedures, and (3) recognizing that the acceptance or rejection of a batch should be determined not on the basis of the individual tests alone, but on the totality of the tests on all important characteristics.

In order to utilize the appropriate statistical procedures for judging the quality of batches, it is necessary to recognize that no sampling plan can guarantee that there will be zero defective dosage forms in every acceptable batch. Statistical sampling plans can yield an estimate of the average level of quality of accepted batches and the percentage of defective dosage forms that may be present in accepted batches. Sampling plans should not be the same for all drugs but should be designed to take account of the cost of testing and the harm that might ensue when defective dosage forms are used for therapeutic purposes. Clearly, the statistical sampling plans for a drug such as digoxin should be different from tests on many of the antibiotics. Drugs that have narrow therapeutic margins and/or are capable of producing serious side effects should be more tightly controlled than drugs without these characteristics.

GUIDELINES FOR CURRENT GOOD MANUFACTURING PRACTICE

The present guidelines are too general and nonspecific to insure the uniformity of drug products. For example, Section 133.8 of the Code of Federal Regulations states:

> To insure uniformity and integrity of products, there should be an adequate in-processing control, such as checking the weights and the disintegration times, adequacy of mixing, the homogeneity of the suspensions and the clarity of solutions. In-processing sampling shall be done at intervals with suitable equipment. Representative samples of the final dosage forms shall be tested to determine their conformity with the specifications of the product before distribution.

A considerable period of time will probably be required to complete the total revision of the individual compendial monographs and to expand them to include as many of the marketed drug products as possible. However, the FDA has the authority to modify the CGMP guidelines and should use it as rapidly as possible to establish more comprehensive standards for drugs and drug products. This could be accomplished by establishing a comprehensive list of appropriate tests for use

at three stages--raw material, intermediate, and finished product. The individual manufacturers could then be required to develop specific standards for their individual preparations, and a reasonable period of time should be allowed for the implementation of these standards.

Since different manufacturers use different equipment and processes for the manufacture of tablets and capsules and include different excipients in them, certain aspects of these specifications will have to be individualized. It will be necessary to develop specific deaggregation and/or dissolution tests for the products at intermediate steps of the manufacturing process as well as certain other unique test procedures in order to insure that the quality and uniform bioavailability of the product can be maintained.

Finally, consideration should be given to the problem of determining how batches of fabricated tablets that do not meet specifications should be reprocessed. The availability of sufficiently detailed specifications for intermediate stages should allow evaluation of whether the reworked material possesses sufficiently similar specifications to qualify for continued processing.

We recommend that the CGMP guidelines be amended to require that every manufactured drug product have its own quality assurance plan, with attention in each plan given to each major step of the manufacturing process. Suitable testing procedures should be specified at each key stage of manufacturing to insure identification of any stage that is out of control. The design of such quality assurance plans should be regarded as an important component of the preformulation investigation of each product.

Quality assurance plans should be drawn up by the manufacturer and need not follow a standardized format. The plans should take into account special features associated with the plant, its personnel, and the drug product. The plans need not be static and should be modified by the manufacturer whenever appropriate. Thus, the CGMP would shift in emphasis from a concern for a clean and safe working environment to the control of all major design factors in the manufacturing process.

We also recommend more frequent inspection of manufacturing plants by the FDA to assess the degree of compliance with new compendial standards and improved CGMP guidelines. As we recommend below on pages 46-48ff, the FDA should also be given the authority to request the submission of a company's records that demonstrate compliance with standards. To conduct the kind of inspection that we recommend, on a frequent basis, substantial increases will be required in both the number and capability of inspectors in the FDA.

The recommendations that we have made in this section all have the goal of making far more specific the requirements for the manufacture of each drug product, including coverage of all raw materials to be used, processes by which they are to be assembled, and tests to be applied at every stage to make certain that the requirements are being met.

The resulting set of new standards should not be considered to be a fixed ideal. Rather, it should be revised on a continuing basis as new information and advances in the state of the art are developed. On the other hand, we could caution against the capricous introduction of new requirements; changes should be made only when the benefit to be derived warrants the disruption of manufacture that they might impose. We believe that the kinds of changes in procedure that we have recommended will greatly increase the quality and uniform bioavailability of drug products and warrant the new designation of pharmaceutical equivalents.

7

ADDITIONAL RESEARCH AIMED AT IMPROVING THE ASSESSMENT AND PREDICTION OF BIOEQUIVALENCE IS NEEDED. THIS RESEARCH SHOULD INCLUDE EFFORTS TO DEVELOP IN VITRO TESTS OR ANIMAL MODELS THAT WILL BE VALID PREDICTORS OF BIOAVAILABILITY IN MAN.

An effective technological base is required for the provision of reasonable assurance that patients will experience adequate and predictable blood levels of orally administered drugs. Although much of the necessary methodology is already developed, additional research is needed to strengthen this technology in several areas.

REFINEMENT AND DEVELOPMENT OF ANALYTICAL METHODOLOGY

The ultimate proof of bioequivalence is achieved by demonstrating equivalent concentrations of drugs in plasma over an appropriate period of time after administration. Methods are now available for measuring the concentration of most drugs in blood and/or urine. Further, presently available analytical techniques could be applied to the analysis of some drugs for which methods are not now available. For some drugs, however, new analytical methods will have to be developed and present capabilities refined to permit reliable measurement of their concentration in plasma. For example, certain drugs used in cancer chemotherapy, some steroid drugs and reserpine cannot currently be measured adequately in studies of bioavailability. Whereas these analytical problems are potentially solvable through application of

existing technology, their solution is not likely to be easy. It will require substantial initial investment in the synthesis of drugs labeled with stable, and radioactive isotopes and development of appropriate antibodies for radioimmunoassay.

SPECIAL POPULATION GROUPS

At present, there is inadequate information regarding the prediction of bioequivalence in ill patients from bioavailability studies in normal adults. The uncertainty hinges on the importance of differences in absorption rates. It is possible that two drugs which are totally absorbed but have different absorption rates in the normal adult might differ significantly in the degree of their absorption in sick patients. Similarly, drugs that are absorped in the normal adult may be incompletely absorbed in infants since infants have immature digestive enzyme systems and differ from adults in other aspects of gastrointestinal function. Additional research is required to determine whether factors such as differences in absorption rate do, in fact, constitute a problem in the application of data derived from studies in normal adult subjects. Sensitive legal and ethical issues make research on drug absorption in young humans difficult, but we believe that, where possible, attempts should be made to obtain useful bioavailability information for populations other than healthy adults.

IN VITRO CORRELATIONS

It is not practical (or desirable) that all batches of drugs be tested in man to assure adequate and predictable bioavailability. Accordingly, in vitro methods that are predictive of bioavailability must be developed to confirm the bioequivalence of (1) different batches of the same drug product made by the same manufacturer, (2) drug products made by different manufacturers and (3) drug products held in storage for a relatively long time.

Several investigations have indicated that in vitro tests (for example, dissolution tests) may be correlated with bioavailability. However, such data are lacking for most drug products. In addition, research is needed on the development of animal models that can be used for predicting bioavailability in man.

The development of such predictive systems would greatly simplify the establishment and monitoring of standards insuring adequate and uniform levels of bioavailability.

RELATIONSHIP BETWEEN PLASMA LEVELS AND THERAPEUTIC EFFECTS

Decisions about which drugs do indeed require direct proof of bioequivalence in man will be based in part on knowledge regarding the relationship of plasma levels of the drug to its therapeutic effect. This type of pharmacologic information in man is not well developed for many drugs. Research on the relationships between plasma levels and efficacy and toxicity will facilitate rational regulatory decisions.

RESOURCES FOR ADDITIONAL RESEARCH

The foregoing discussion has described several kinds of research needed to strengthen the assurance that products will provide adequate bioavailability. The particular agency appropriate for sponsoring this research will depend upon the kind of research that is initiated. For example, research directed toward the improvement of analytical methodology for in vivo studies of drugs, or toward investigations of the relationships between plasma levels of drugs and their therapeutic effect, is already included in the program objectives of several of the National Institutes of Health, particularly the National Institute of General Medical Sciences. These efforts should be encouraged and supported with clear recognition of their importance.

Research concerned with the improvement of methodology for in vitro tests related to the establishment of new compendial standards might be sponsored by the proposed new standard-setting organization, discussed on pages 53 ff., or the FDA. These organizations might also become increasingly involved in sponsoring research concerned with the application of existing technology to the formulation, production and quality assurance for new drug products.

In order for research to be sponsored by either the new organization or the FDA, substantial new resources will be required because support for such research is almost completely lacking at the present time.

The FDA has been only minimally involved in research activities of these kinds and, of course, the new standard-setting organization has yet to be developed. Irrespective of the agency sponsoring the research, the base of scientific staff will have to be expanded in order to design proposals and monitor research activities adequately.

8

CURRENT LAW REQUIRING MANUFACTURERS TO MAINTAIN RECORDS AND MAKE INFORMATION AVAILABLE TO THE FDA IS AMBIGUOUS OR INADEQUATE AND SHOULD BE CLARIFIED AND STRENGTHENED. IN PARTICULAR, MANUFACTURERS SHOULD BE REQUIRED TO SUBMIT ALL INFORMATION RELATING THE TESTS THEY CONDUCT TO THE BIOAVAILABILITY DATA THEY DEVELOP IN ORDER TO HELP PROVIDE INFORMATION ON THE FACTORS THAT MODIFY THE BIOAVAILABILITY OF DRUG PRODUCTS. THIS INFORMATION SHOULD BE AVAILABLE TO AID IN THE ESTABLISHMENT OF COMPENDIAL STANDARDS.

Under the Food, Drug, and Cosmetic Act, authority is provided to the FDA to obtain proof of safety and efficacy (and, in some instances, bioavailability) of certain drug products. Section 505 of the Act authorizes the extensive collection of data on new drug products with respect to both the safety and efficacy of the products as labeled. There is continued surveillance by the FDA of new drug products after they enter the marketplace. Manufacturers with New Drug Applications are required to establish records and make reports concerning clinical experience and other information needed for regulation by the FDA.

However, current law is ambiguous with respect to providing the FDA with general authority to require drug manufacturers to maintain records and to make

reports demonstrating their compliance with compendial standards for drug products. Furthermore, it is not clear that the law provides authority to require manufacturers to submit information concerning quality control procedures and manufacturing processes.

It has been indicated in testimony presented before this Panel and elsewhere that manufacturers often perform tests of product quality in addition to those set forth in compendial standards. Although the FDA is informed of these tests, the frequency with which manufacturers set standards that are more stringent than official standards is unknown to us at this time, but it appears to vary among drug products and among manufacturers. Information is also lacking about the specific kinds of tests conducted beyond those required in the official standards.

In addition, there is currently no general legislative authority to require manufacturers to submit data, generated in their research and development activities, concerning formulation, bioavailability, or new procedures correlating bioavailability with in vitro tests. In its investigations of a new drug and the development of dosage forms, a pharmaceutical company may conduct studies of bioavailability on a series of formulations and carry out related in vitro tests. The FDA does not have access to the results obtained with these research formulations.

Certain kinds of information currently made available to the FDA by manufacturers are required under current law to be held confidential and cannot be used in establishing either new compendial standards or enforcement requirements. We believe this provision is too restrictive. The fact that such information may not be made public does not mean that relevant portions of it should not be used by appropriate experts to establish new standards or requirements or to revise existing ones. For example, if a company develops information that can be used to improve procedures or methods for testing drug products, relevant portions of this information should be made available to appropriate experts to aid them in establishing new or revised compendial standards or enforcement requirements. This objective can be achieved even though the confidentiality of the specific proprietary information is maintained.

We make the following recommendations:

- The ambiguity in current law regarding requirements for keeping records and reporting results of compendial tests should be removed; such requirements should be specifically mandated. Results of batch-to-batch testing or testing of single batches over time should be made available to the FDA as requested.

- The FDA should be given the authority to request (on a routine basis if it elects to do so) information describing the methodology, specifications and results of tests conducted on commercial products.

- A standardized and simple format that facilitates clear understanding should be designed for the presentation of the aforementioned data to the FDA.

- Manufacturers should, upon the request of the FDA, be required to submit any information in their files that relates manufacturing processes and in vivo and in vitro tests to the bioavailability of any drug product. This requirement should apply to technical information obtained during research related to the development of new drug products, even when such information bears only an indirect relationship to the final dosage form.

- When the FDA finds that particular in vitro or in vivo tests are useful and deserve wider application, it should be empowered to share the information with appropriate experts and to incorporate those tests into the compendial standards to be applied to all manufacturers of that drug product.

9

EXEMPTIONS PROVIDED IN CURRENT LAW FOR SOME DRUG PRODUCTS BASED ON THEIR YEAR OF INTRODUCTION IN RELATION TO AMENDMENTS IN THE FOOD, DRUG, AND COSMETIC ACT (SO-CALLED GRANDFATHER CLAUSES) HAVE IMPEDED IMPROVEMENT IN THE QUALITY OF THESE PRODUCTS. SUCH EXEMPTIONS SHOULD BE ELIMINATED.

The Food, Drug, and Cosmetic Act provides authority to establish standards and to regulate drugs and drug products under the new drug provisions (Section 505) and under the drug adulteration and misbranding provisions (Section 501 and 502). However, drug products that were marketed prior to 1938 are not covered by the "new drug" provisions of the Act, but are subject to so-called grandfather provisions. Thus, unless the product or the labeling is changed, these products are exempt from regulations to insure their quality. Similarly, for a drug product marketed after 1938, but prior to 1962, regulatory authority is limited to a qualitative description of the product's composition in which a concentration range of the adjuvants, instead of an exact formulation, may be submitted.

We believe that these limitations have interfered with the process of establishing standards to insure the quality of drugs and drug products marketed before 1962, especially those marketed before 1938. Such exemptions provide an incentive for drug manufacturers to maintain the status quo for those drug products rather than to make improvements based on more recent research or advances in technology, since any change in formulation or labeling may open the door to reclassification of

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the product as a "new drug," subject to more rigorous regulatory standards.

Drug products available before 1962, and especially those available before 1938, were formulated under conditions of relatively limited technology compared with that of today. As a result, the older products, as indicated on pages 11-12, are more likely to be subject to bioavailability problems than products that became available after 1962 when the New Drug Application and Abbreviated New Drug Application requirements were implemented. The most important example of such a problem with an older drug product arose with the therapeutically important and highly potent drug, digoxin. As we discussed on page 13, the bioavailability of a batch of this drug was found to be greatly reduced, resulting in a potentially dangerous situation for patients using the drug. However, the only legal authority which the FDA was able to use in acting to correct the situation was a provision regarding labeling and formulation. Such ambiguous legal authority may be inadequate to prevent delays brought about by court actions at a time when immediate action is required to protect the American public.

We believe there should be a clear legal mandate to establish and apply regulatory standards uniformly to all drug products, irrespective of when they were introduced on the market. We strongly recommend that the legal authority be provided to establish standards for all drugs and drug products, introduced both before and after 1938, based on the best available technology in order to insure that the drug products made available to the American public are of the highest quality possible.

10

A SINGLE ORGANIZATION CAPABLE OF SETTING STANDARDS ADEQUATE TO INSURE THE QUALITY AND UNIFORM BIOAVAILABILITY OF DRUG PRODUCTS SHOULD BE ESTABLISHED TO REPLACE THE PRESENT USP AND NF AS THE OFFICIAL STANDARD-SETTING ORGANIZATION OF THE FEDERAL GOVERNMENT.

To carry out the task of establishing drug standards adequate to insure the quality and uniform bioavailability of drug products, we strongly recommend that a single organization be established to supersede the USP and NF as the official standard-setting organization of the Federal Government. We do not believe that continuation of the current organizations with an admonishment to "do better" would be adequate to insure the level of quality of drug products that the public deserves. We believe there are too many weaknesses in the structure of the present organizations for them to be able to do the job adequately.

The basic function of the new standard-setting organization should be to establish and revise drug and drug product standards continuously on the basis of the best available technology in order to insure that drug products meeting these standards would have the highest quality and uniformity.

The establishment of improved standards for drugs and drug products will require an expanded research program as discussed on page 43 ff. This research should be conducted through both grants and contracts with outside organizations as well as by

the scientific staff of the new standard-setting body. To conduct the research, the new organization must have an adequate staff of scientists actively engaged in research. This staff must be capable of evaluating research conducted by outside groups and developing proposals for additional research.

Although the new standard-setting organization should have a sizable scientific staff, we do not believe that it would be efficient to try to encompass within this staff all the expertise necessary for setting all drug standards. Instead, a series of expert panels should be assembled to establish standards for drugs and drug products in the various classes. Individuals who serve on these panels should have expertise in pharmaceutical and analytical chemistry, statistics and other disciplines that are related to analytical methodology, materials to be used in the manufacture of drug products, techniques of testing, etc. A single panel should not be expected to have the knowledge required to deal with all drugs and drug products; nor should a single group be expected to do the extensive amount of work required to establish standards for all drugs.

In addition to making decisions regarding the establishment of standards, the expert panels should also review the results of relevant research conducted by outside groups as well as by staff scientists and should recommend additional research to be conducted where necessary. As discussed on page 47, the panels should also have access to appropriate information from industry for use in establishing standards.

Members of these panels should be objective experts who are not in a position to derive economic or political benefit from the manufacture of drug products. They should be appropriately paid for their efforts; no longer should drug standards be set by those few individuals who can afford to volunteer significant amounts of their time to perform this service for the public.

Although scientists from the pharmaceutical industry should not be allowed to exert a controlling influence on the standard-setting organization, scientific input from industry must be encouraged. One possible form of participation of industrial scientists might be as members of technical advisory committees reporting to the panels of experts. Individuals from industry who participate on these technical advisory committees should be selected for their technical capabilities rather than for the managerial positions they may hold.

Cooperation and coordination of the activities of the new standard-setting body with those of several other groups is essential to accomplish the objectives set forth in this report. The pharmaceutical industry will continue to conduct a major share of the research related to the development of new testing methods and technology. The industry will also be responsible for applying the new standards in their manufacturing processes. In addition, health professionals, scientists and others responsible for prescribing and dispensing drugs or performing the research needed to meet the requirements for improved drug standards and for data on bioavailability of drugs will also be affected by implementation of our recommendations. The functions of the new standard-setting organization must be closely coordinated with those of the FDA in order to insure a meaningful and productive interchange of information between those who establish drug standards and those who monitor for compliance with those standards. It should be the responsibility of the new standard-setting organization to insure coordination of its activities with those of the regulatory and enforcement groups.

We do not recommend a specific organizational location for the new standard-setting body, although we strongly recommend that it be organized and located in such manner as to allow reasonable freedom from inappropriate industrial or political influence. Drug standards should be concerned with assurance of the highest quality drug products for the American people rather than with economic or political considerations. We do not believe that the standard-setting organization and the compliance-monitoring organization should be the same; but there should be a healthy, cooperative relationship between these groups.

Several options are readily apparent for the location of the new organization: within the FDA but separate from the compliance-monitoring group, within HEW but separate from FDA, or outside of the Federal Government as an independent organization. The possibility that the USP and the NF could merge and make sufficient changes in their structures and functions to fulfill the criteria for an effective standard-setting organization is not precluded, but the changes necessary would be extensive.

Wherever the new organization is located administratively, it will require federal funding commensurate with its responsibilities for setting the standards that would be employed as a basis for federal regulation. If the organization is placed within the structure of HEW, direct federal funding will be straightforward. If it is established as an organization independent of the federal structure, it could still receive direct federal funding, or it could be funded through a grant or contract from HEW. In any case, we strongly recommend that sufficient federal funds be supplied to insure that the objectives are achieved.

11

A SYSTEM SHOULD BE ORGANIZED AS RAPIDLY AS POSSIBLE TO GENERATE AN OFFICIAL LIST OF INTERCHANGEABLE DRUG PRODUCTS. IN THE DEVELOPMENT OF THE LIST, DISTINCTIONS SHOULD BE MADE BETWEEN TWO CLASSES OF DRUGS AND DRUG PRODUCTS:

1. THOSE FOR WHICH EVIDENCE OF BIOEQUIVALENCE IS NOT CONSIDERED ESSENTIAL AND THAT COULD BE ADDED TO THE LIST AS SOON AS STANDARDS OF PHARMACEUTICAL EQUIVALENCE HAVE BEEN ESTABLISHED AND SATISFIED.
2. THOSE FOR WHICH EVIDENCE OF BIOEQUIVALENCE IS CRITICAL. SUCH PRODUCTS SHOULD BE LISTED ONLY AFTER THEY HAVE BEEN SHOWN TO BE BIOEQUIVALENT OR HAVE SATISFIED STANDARDS OF PHARMACEUTICAL EQUIVALENCE THAT HAVE BEEN SHOWN TO INSURE BIOEQUIVALENCE.

The question that led to the genesis of this study and report addressed the economics of drug purchase; and, although we have not given consideration to other possibly significant economic issues, our charge does relate to whether drug products are or can be made sufficiently interchangeable so that price can be a major factor in their selection.

It is clear from the conclusions we have already stated that we do not believe that all chemical equivalents are, at present, interchangeable. We do believe, however, that the goal of interchangeability is achievable within most, if not all, classes or oral drug products and that a system should be organized as rapidly as possible to establish the conditions that will permit a listing of interchangeable products.

Establishment of such a listing should begin with a series of judgments regarding classes of drugs and individual drug entities that will yield a division of drugs into two groups: those for which evidence of bioequivalence is considered essential and those for which such evidence will not be required. The general criteria for such decisions have been set forth on pages 21 ff.

Upon classification of a drug as one requiring evidence of bioequivalence, products of that drug should be included on the list of interchangeable drug products only after data supporting their bioequivalence have been provided and approved. Furthermore, beyond the question of bioequivalence among interchangeable drug products in this category, methods to insure pharmaceutical equivalence between batches of the same drug product deserve special attention.

It is apparent that many drug products are therapeutically equivalent even though they may vary somewhat in bioavailability. Included in this category, for example, are many groups of drugs that are customarily given in doses that insure concentrations in the blood well in excess of the minimum effective concentration. These drugs have a wide margin of safety between effective and toxic concentrations. Moderate variation within this wide margin can be considered to have little or no therapeutic significance.

It is our opinion, however, that even within these groups of drug products, for which evidence of bioequivalence can be waived, there is room for considerable improvement of standards for the control of manufacturing processes and the testing of products. Such improvements as we have recommended will have the effect of minimizing many important sources of variability among chemically equivalent products. When improved standards of pharmaceutical equivalence have been established, drug products meeting the standards and falling into categories for which evidence of equivalent bioavailability is not essential can be

considered to be interchangeable and listed as such for the guidance of purchasers, prescribing physicians and dispensing pharmacists.

The official list of interchangeable drug products need not be permanently limited to those for which studies of bioavailability are now available or considered unnecessary. As compendial standards are developed specifying *in vitro* tests whose results correlate with bioavailability, it should be possible, in most instances, to use the *in vitro* tests as a basis for providing ongoing evidence of bioavailability. Products meeting these conditions can and should then be added to the list of interchangeable drug products. The ultimate goal should be that virtually all marketed drug products should fulfill the criteria necessary for inclusion in this list.

It should be recognized, however, that there may remain a few drugs--those that have low therapeutic indices and, possibly, unfavorable physical properties, but that are critically important in the treatment of serious illnesses--whose products should be considered noninterchangeable even though they meet these conditions, at least until experience has shown that improved *in vitro* testing or testing in animal model systems can be relied upon for the precise prediction of their bioavailability.

Many decisions requiring well-informed judgments will be necessary in establishing a list of interchangeable drug products and in the continuing operation of the system. The essential judgments should be based upon the highest level of expertise in many specific areas of medicine, clinical pharmacology and associated scientific disciplines. The wide range of the necessary fields of specialization and the extensive experience and depth of knowledge that will be required are not to be found within the staff of any single organization. Further, we do not believe that it would be efficient for the FDA to try to encompass all the necessary expertise within its own ranks. Rather, it will be essential to call upon the most knowledgeable individuals in each field, wherever they may be found, to provide the advice needed to arrive at appropriate decisions.

To accomplish this goal, a series of groups advisory to the FDA should be established, each to deal with specific areas in which decisions must be made. It is not to be expected that a single advisory group would be able to deal effectively with the full range

of responsibilities involved. For example, those who are best equipped to deal with drugs affecting the cardiovascular system are not likely to be the same individuals best able to offer the most useful advice about anti-infective agents. It is our belief that an appropriate range of advisory groups will not only make certain that decisions are reached on the basis of the best informed judgments but that the acceptance of these decisions by all interested parties will also be immeasurably enhanced.

The major expertise required to establish a list of interchangeable drug products will be provided by advisory groups rather than staff personnel. However, capable scientific staff will be essential to support the work of the advisory groups. Current staffing and funding levels are not adequate for the FDA to meet the significant new responsibilities proposed in this recommendation. Consequently, additional financial and staffing support will be required to develop and maintain the list of interchangeable drug products and to coordinate these efforts with the agencies involved in setting standards and supporting research. Such resources should be made available as rapidly as possible.

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Bureau of Drugs, Food and Drug Administration, U.S. Department of Health, Education, and Welfare.

Health Protection Branch, Department of National Health and Welfare, Canada

Lederle Laboratories Division, American Cyanamid Company

National Association of Pharmaceutical Manufacturers

National Formulary Board

Pfizer, Inc.

Pharmaceutical Manufacturers Association

Softcon Products Division, Warner-Lambert Laboratories

Upjohn Company

U.S. Department of Defense

United States Pharmacopeial Convention, Inc.

appendix

PROCEEDINGS OF THE PANEL

To enable the Office of Technology Assessment (OTA) to provide the Subcommittee on Health (U.S. Senate Committee on Labor and Public Welfare) with recommendations regarding drug product equivalence and variation, it was necessary to select a group of representative experts who could review all pertinent technical information and report their conclusions within three months.

OTA initiated discussions with several organizations that might be able to furnish staff support and carry out other responsibilities to assist the expert panel in its deliberations. A proposal from Family Health Care, Inc., Washington, D.C., and ensuing negotiations resulted in the award of a contract to that firm to provide staff assistance to the panel. With the guidance and approval of OTA, Dr. Robert Berliner, Dean of the Yale University School of Medicine was selected as Chairman of the panel.

Under Dr. Berliner's direction and with OTA approval, eight additional members and one ex-officio member (from the OTA Advisory Council) were selected. A press release on April 11, 1974, formally announced the study and the formation of the Drug Bioequivalence Study Panel. The following is a review of the activities and proceedings of the Panel.

The first of four planned meetings of the Panel was convened in Washington, D.C., on April 12. At this meeting, the Panel discussed the scope of the study and developed wording to state its interpretation of the charge it had been given. It was agreed that information regarding bioequivalence should be obtained from a number of organizations

and institutions in order to give the fullest possible consideration to all points of view. Every possible effort was made to obtain the information needed from all appropriate groups within the time available.

A press release on April 23 announced the charge to the Panel and the Panel's desire that all relevant technical information be submitted by May 20, 1974. This announcement was released through a variety of news resources and subsequently printed in the Congressional Record.

Between the first and second meetings of the Panel, the staff was directed to initiate contact and, if appropriate, to hold meetings with selected groups to inform them of the study and its purposes and to determine what information these groups would be able to provide. Contact was made with the following organizations:

American Medical Association (AMA) Department of Drugs

American Pharmaceutical Association (APhA), including the Academy of Pharmaceutical Sciences (APS) and the National Formulary (NF)

Health Protection Branch, Department of National Health and Welfare, Canada

Ministry of Health, Ontario, Canada, PARCOST Program

National Association of Pharmaceutical Manufacturers (NAPM)

National Pharmaceutical Council (NPC)

Pharmaceutical Manufacturers Association (PMA)

U.S. Department of Health, Education, and Welfare, Food and Drug Administration (FDA)

United States Pharmacopeial Convention (USP)

Several of these organizations were asked to present statements at the second meeting of the Panel on May 1-2. Representatives from the PMA, USP, NF, FDA, NAPM and the PARCOST Program presented prepared statements and responded to questions. Because of possible legal and proprietary constraints, this information was received in confidence, with the Panel meeting privately with representatives of

each group. These groups were also asked to submit additional documentation by May 20.

Since many professional and scientific organizations government agencies, manufacturers and academic institutions were willing and anxious to present information and to provide assistance, the April 23 news release was used as a public announcement inviting interested groups and individuals to submit statements for consideration. It was made clear that their submissions would be given full consideration although time constraints made their direct testimony impossible. Many statements containing information related to the issues of the study were received, including letters from individuals and organizations and reports from pharmaceutical manufacturers.

After the May 1-2 meeting, the staff was directed to continue its collection of relevant data. Information from two programs in Canada--the PARCOST Program in Ontario and the Federal QUAD Program in the Health Protection Branch, Canadian Department of National Health and Welfare--was of particular interest since the experiences of these two programs were especially relevant to the issues under examination.

In preparation for the third panel meeting on May 21-22, members accepted individual assignments to review and report on the data that had been submitted. Most documentation, however, was submitted on or close to the May 20 deadline, leaving little time for review before the third meeting of the Panel. On May 21, published studies of bioequivalence and the additional documentation that had been received were reviewed and summarized.

Using this information and discussions based upon it as well as the knowledge and experience of its members, the Panel proceeded to formulate a series of conclusions and recommendations about present and future technological capability for assuring uniform bioavailability and quality of drug products.

By the conclusion of the third meeting, a tentative set of conclusions and recommendations had been agreed upon. Members of the group were assigned the task of writing supporting information and providing data that would go into the final report to be submitted to OTA.

The written recommendations were submitted to the Chairman for review prior to the final meeting on

June 13-14; during this meeting, the Panel members worked as individuals, in small groups, and as a whole, to prepare a draft of the final report and recommendations. During this process, Mr. Jack Cooper served as consultant to the Panel.

The draft was then edited and revised by the Chairman and the staff and sent to all members of the Panel for review prior to publication.

glossary*

- Abbreviated New Drug Application (ANDA) Shortened application for obtaining approval from the Food and Drug Administration to market a drug. The ANDA may require information on characteristics of the drug such as method of use, method of manufacture, adverse reactions, physical and chemical stability, packaging, extent of use.

- Active ingredient That portion of a drug product intended to produce a therapeutic effect.

- Bioavailability The extent and rate of absorption from a dosage form as reflected by the time-concentration curve of the administered drug in the systemic circulation.

- Bioequivalents Chemical equivalents which, when administered to the same individuals in the same dosage regimen, will result in comparable bioavailability.

- Chemical equivalents Drug products that contain the same amounts of the same therapeutically active ingredients in the same dosage forms and that meet present compendial standards.

- Crossover study An experimental plan for comparing two treatments which reduces the influence of the variation in individual responses

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* The meanings of some of the terms used in this report are subject to various interpretations. The definitions given here are those used by the Panel.

Each individual is tested on both treatments at different times. Initially half of the individuals receive each drug product; each is then "crossed over" to the other drug product at a later time.

- Deaggregation The breaking up of granules or aggregates into fine particles in aqueous fluid.
- Disintegration The breaking up of a tablet or capsule into granules or aggregates in aqueous fluid.
- Dissolution The breaking down of fine particles into molecules or ions homogeneously dispersed in aqueous fluid.
- Dosage form The form of the completed drug product (such as tablet, syrup, or suppository).
- Drug Any chemical administered to produce a pharmacologic effect.
- Drug product A dosage form containing one or more active therapeutic ingredients along with other substances included during the manufacturing process.
- Efficacy The ability to produce the purported therapeutic effect.
- Endogenous compounds Products of the chemical processes that occur in the organism.
- Excipient An inert substance used to give a preparation a suitable form or consistency.
- Formulation A complex mixture containing a selected chemical derivative of the drug compound, in proper physical form, together with excipients, diluents, stabilizers, preservatives, or a variety of other components.

- In vitro tests Tests carried out in laboratory apparatus.
- In vivo tests Tests carried out within living organisms by administering drug products to man or experimental animals.
- Investigational New Drug Application (IND) Application to begin clinical studies of the safety and efficacy of a new drug.
- Interchangeable drug products Pharmaceutical equivalents or bioequivalents that are accepted as therapeutic equivalents.
- Kinetic model An analysis of some process as a function of time.
- Margin of safety of drug The difference between a minimally effective and a toxic dose of a drug. The therapeutic index (q.v.) is frequently used as an indicator of the margin of safety.
- New compendial standards Standards to be established for active ingredients, excipients and drug products, including tests reflecting the best available technology to be performed before, during and after formulation.
- New Drug Application (NDA) Application for approval from the Food and Drug Administration to market a drug based on extensive documentation of safety and efficacy.
- Pharmaceutical equivalents Drug products that contain the same amounts of the same therapeutical active ingredients in the same dosage form and that meet standards to be established on the basis of the best available technology.
- Pharmacokinetics The discipline that treats the rates of absorption, distribution, metabolism and excretion of drugs.

- Present compendial standards The official standards for drugs, excipients, and drug products listed in the latest revision of the United States Pharmacopeia (USP) and the National Formulary (NF).

- Radioactive labeling The introduction of a radioactive atom into a molecule to allow detection of the molecule by measurement of its radioactivity.

- Therapeutic index The ratio of the toxic dose to the minimally effective dose of a drug.

- Therapeutic equivalents Chemical equivalents which, when administered to the same individuals in the same dosage regimen, will provide essentially the same efficacy and/or toxicity.

- Tolerance The state in which the quantity of drug required to produce a specific biological effect in a particular individual has increased.

○

of the Food and Drug Administration has challenged "the claim that you always have to buy a brand-named product in order to be sure that a drug is good. Poor manufacture and control will produce a bad brand-named drug just as surely as it will produce a bad generic-named drug."[12] A claim that a higher price brand-name drug insures higher quality would be hard to support in light of the fact that of the 638 drug recalls in 1972, 291 were brand-name products.[13] Faced with these facts and perhaps coupled with the sad and horrible experience which Abbott Laboratories had with its intravenous solutions in the early 1970's,[14] the drug manufacturers have quietly diminished their reliance on the "quality" argument in support of the antisubstitution laws.

The pharmaceutical manufacturers' lobby, however, still tenaciously clings to the belief that a total prohibition on all substitution is justified because a few drugs which are identical in chemical make-up, strength, quantity and dosage might produce different therapeutic responses. This is the so-called "inequivalency" argument, and to understand it, it is necessary to define some terms. Drugs are chemical equivalents when they contain "essentially identical amounts of the identical active ingredients in identical dosage forms" and meet all official standards. Biological equivalent drugs are those drugs which are chemically equivalent

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12 "Competitive Problems in the Drug Industry," 49.

13 Simmons, supra.

14 According to the Public Health Service, intravenous solutions which had been bottled by Abbott were contaminated and had resulted in some deaths. Additionally, some bottles had been mislabeled and Abbott was required to telegraph warnings to hospitals and physicians. (Silverman and Lee, Pills, Profits and Politics, 141-42 (1974).) Recently, the American Hospital Supply Corp. was forced to recall 10 million units of intravenous solutions and to halt production at one of its plants because of problems with contamination. Wall Street Journal, p. 3, Feb. 14, 1975.

and which "when administered in the same amounts, will provide essentially the same therapeutic effect, as measured by the control of a symptom or a disease."[15] (Drugs which are clinically equivalent are also referred to as being therapeutically equivalent.)

This "inequivalency" argument is premised more on fear than fact and needs to be placed in perspective. After 73 days of hearings, a United States Senate committee concluded that "the examples of clinically significant therapeutic inequivalency [among chemically equivalent drugs] are very few in number and that they are, by far, the exceptions, rather than the rule"[16] (emphasis in original). A former commissioner of the Food and Drug Administration has stated that "only in a limited number of drug categories will two products with the same active ingredients not produce clinically equivalent results."[17]

Finally, HEW's Task Force on Prescription Drugs studied the inequivalency issue for 20 months, during which time it "sought out every bit of pertinent evidence, published and unpublished, [and] received the advice and counsel of more than a hundred experts, both American and foreign." Additionally, studies were conducted throughout the United States and in eleven foreign countries.[18] The Task Force concluded that "except in rare instances[,] drugs which are chemically equivalent, and which meet all official standards, can be expected to produce essentially the same biological or clinical effects."[19] It then emphasized

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15 These are the definitions adopted by the HEW Task Force on Prescription Drugs.

16 "Competitive Problems in the Drug Industry," 51.

17 Id., at 50.

18 Pills, Profits and Politics, p. 154.

19 "Competitive Problems in the Drug Industry," 50.

that "the lack of clinical equivalency among chemical equivalents meeting all official standards has been greatly exaggerated as a major hazard to the public health."[20]

One would be reasonable in assuming that the unequivocal nature of the Task Force conclusions would have silenced the opponents of generic substitution--but in light of the financial stakes, it has not[21] and will not. The Vice President and General Counsel of the Pharmaceutical Manufacturers Association recently testified before the California Attorney General's Committee in opposition to the repeal of California's antisubstitution laws. The primary basis for his argument? Inequivalency--or in his words, the inability "to assure uniform performance among drug products made by more than one manufacturer."[22] His testimony is notable for its omissions. He conveniently omitted any discussion about those drug products manufactured by one company but distributed by several. Additionally, his testimony was conspicuously lacking in any specific examples of chemically equivalent drugs which might cause harmful therapeutic results if substituted.[23] Finally, he sought to bolster the industry's position by extracting

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20 "Task Force on Prescription Drugs," 27.

21 An article in the November 8, 1974 issue of Medical World News, "The Battle Over Bioequivalence," discussed the bioinequivalency of chemically equivalent drugs without even mentioning the Task Force study, let alone its conclusions. Medical World News received $8 million in advertising revenues in 1970, and is often referred to in the trade as a "throwaway journal," many of which would have to go out of business if drug manufacturers ceased their promotional efforts. (Pills, Profits and Politics, 52, 56)

22 Statement of Bruce J. Brennan, before the California Attorney General's Inflation Committee, Jan. 9, 1975, p. 5.

23 One of the rare exceptions he might have mentioned would have been digoxin, but the experience with that highly potent drug used for treating heart disease patients demonstrated the lack of therapeutic equivalency even when the drug was manufactured and marketed by the same firm.

Title: An Act relating to substitution of prescription drugs by pharmaci
Requested by: Date: February 4, 1976
Return Date Requested:
Agency: Commerce Program: Licensing of Professions

II. FISCAL DETAIL

Budget Request Unit(s) Affected: Regulating and Licensing of Professions

A. EXPENDITURES: (Thousands of dollars)

OBJECT		FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100	PERSONAL SERVICES						
200	TRAVEL						
300	CONTRACTUAL	.3	.3	.4	.4	.5	.5
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL	.3	.3	.4	.4	.5	.5

B. FUNDING: (Thousands of dollars)

GENERAL FUND	.3	.3	.4	.4	.5	.5
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	0/0	/	/	/	/	/
MAN MONTHS (P./T.)	/	/	/	/	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Assumes printing 200 12" x 18" signs on poster board and mailing same per year. Assumes 10% inflation and an effec ive date before July 1, 1976.

* CSH.B. 584

IV. ATTACHMENTS

V. DATE: February 4, 1976 PREPARED BY: Sharon Andrew, Director

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

THE LEGISLATURE OF THE STATE OF ALASKA
FISCAL NOTE
Second Session - Ninth Legislature

I. REQUEST
Bill No. House Bill 584
Title: An Act relating to substitution of prescription drugs by pharmacis
Requested by: _____ Date: February 4, 1976
Return Date Requested: _____
Agency: Commerce Program: Licensing of Professions

II. FISCAL DETAIL
Budget Request Unit(s) Affected: Regulating and Licensing of Professions

A. EXPENDITURES: (Thousands of dollars)

	OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100	PERSONAL SERVICES						
200	TRAVEL						
300	CONTRACTUAL	.3	.3	.4	.4	.5	.5
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL	.3	.3	.4	.4	.5	.5

B. FUNDING: (Thousands of dollars)

	GENERAL FUND	.3	.3	.4	.4	.5	.5
	FEDERAL FUNDS						
	OTHER						

C. POSITIONS:

	PERMANENT/TEMPORARY	0/0	/	/	/	/	/
	MAN MONTHS (P./T.)	/	/	/	/	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Assumes printing 200 12" x 18" signs on poster board and mailing same per year. Assumes 10% inflation and an effective date before July 1, 1976.

IV. ATTACHMENTS

V. DATE: February 4, 1976 PREPARED BY: Sharon Andrew, Director

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

H/S 50

THE LEGISLATURE OF THE STATE OF ALASKA

FISCAL NOTE

Second Session - Ninth Legislature

I. REQUEST

Bill No. House Bill 584

Title: An Act relating to substitution of prescription drugs by pharmaci

Requested by: Date: February 4, 1976

Return Date Requested:

Agency: Commerce Program: Licensing of Professions

II. FISCAL DETAIL

Budget Request Unit(s) Affected: Regulating and Licensing of Professions

A. EXPENDITURES: (Thousands of dollars)

OBJECT		FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100	PERSONAL SERVICES						
200	TRAVEL						
300	CONTRACTUAL	.3	.3	.4	.4	.5	.5
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL	.3	.3	.4	.4	.5	.5

B. FUNDING: (Thousands of dollars)

GENERAL FUND	.3	.3	.4	.4	.5	.5
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	0/0	/	/	/	/	/
MAN MONTHS (P./T.)	/	/	/	/	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Assumes printing 200 12" x 18" signs on poster board and mailing same per year. Assumes 10% inflation and an effective date before July 1, 1976.

IV. ATTACHMENTS

V. DATE: February 4, 1976 PREPARED BY: Sharon Andrew, Director

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

H/S 50

Title: An Act relating to substitution of prescription drugs by pharmaci
Requested by: _____ Date: February 4, 1976
Return Date Requested: _____
Agency: Commerce Program: Licensing of Professions

II. FISCAL DETAIL

Budget Request Unit(s) Affected: Regulating and Licensing of Professions

A. EXPENDITURES: (Thousands of dollars)

OBJECT		FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100	PERSONAL SERVICES						
200	TRAVEL						
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400	COMMODITIES						
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B. FUNDING: (Thousands of dollars)

GENERAL FUND	.3	.3	.4	.4	.5	.5
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	0/0	/	/	/	/	/
MAN MONTHS (P./T.)	/	/	/	/	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Assumes printing 200 12" x 18" signs on poster board and mailing same per year. Assumes 10% inflation and an effective date before July 1, 1976.

* CSH.B. 584

IV. ATTACHMENTS

V. DATE: February 4, 1976 PREPARED BY: Sharon Andrew, Director

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

HB
588

"An Act relating to occupational safety and health; and providing for an effective date."

COMMITTEE REPORT

3/19/76

HOUSE

Mr. Speaker: Date May 12, 1976

The Committee on JUDICIARY has had HB 588

under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(✓) recommends it BE REPLACED WITH CS FOR HB 588 AND THAT CS FOR HB 588 DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Terry Gardiner	Do Pass	
[illegible]	" "	
[illegible]	" "	

Members NOT concurring in the Majority report:

_____ recommends: _____

_____ recommends: _____

_____ recommends: _____

_____ recommends: _____

_____ recommends: _____

Terry Gardiner Chairman

AMENDMENT

OFFERED IN THE HOUSE: BY: ~~Labor & Management~~

To: _____ HOUSE BILL No. 588

SENATE BILL No. _____

PAGE: 1 LINE: 23

INSERT: new sentence: Training in safety principles, codes and standards may be substituted for such work experience up to a maximum of three years.

Naomi Smith - Director OSHA

Introduced: 1/16/76
Referred: Labor & Management
and Judiciary

IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

HOUSE BILL NO. 588

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to occupational safety and health; and providing for an effective date."

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

* Section 1. AS 18.60.020(b) is amended to read:

(b) When the commissioner promulgates any regulation or standard, [MAKES ANY RULE OR ORDER,] or grants any variance [EXEMPTION OR EXTENSION OF TIME] under this chapter, he shall include a statement of the reasons for the action, forward a copy to the OSHA Review Board and cause a copy to be published in newspapers in the state so as to receive statewide coverage.

Technical

* Sec. 2. AS 18.60.055 is amended to read:

Sec. 18.60.055. DIVISION OF OCCUPATIONAL SAFETY AND HEALTH. There is established in the department a division of occupational safety and health to be administered by a director responsible to the commissioner. Minimum qualifications shall be established for employees of the department acting as safety inspectors. These qualifications shall include, as a minimum requirement, at least five years general work experience in industry [THE FIELD THEY ARE ASSIGNED TO INSPECT].

better definition of qualifications

* Sec. 3. AS 18.60.075(a) is amended to read:

(a) An employer shall do everything necessary to protect the life, health and safety of employees including, but not limited to:

to be limited pre-employ

(1) complying with all occupational safety and health standards and regulations promulgated by the department;

(2) furnishing and prescribing the use of suitable protective

equipment, safety devices and safeguards as are prescribed for the work and work place; [AND]

(3) adopting and prescribing control or technological procedures, and monitoring and measuring employee exposure in connection with hazards, as may be necessary for the protection of employees; and

(4) furnishing to each of his employees employment and a place of employment which are free from recognized hazards which, in the opinion of the commissioner, are causing or are likely to cause death or serious physical harm to his employees.

* Sec. 4. AS 18.60.087 is amended to read:

Sec. 18.60.087. EMPLOYER AND EMPLOYEE PARTICIPATION. (a) A representative of the employer and a representative authorized by the employees shall be given an opportunity to accompany the representative of the department during the physical inspection of a work place for the purpose of aiding the inspection. If the authorized representative is an employee, time spent aiding the inspection shall be considered as time worked and he shall be compensated accordingly. When there is no authorized employee representative, there shall be consultation with a reasonable number of employees concerning matters of health and safety in the work place.

Strengthen confidentiality

(b) Comments relating to an [employer's compliance with the provisions of secs. 10 - 105 of this chapter] made by an employee or an employee representative to the representative of the department during the course of an inspection, and [the name of any employee or employee representative making [ADD] comments to a representative of the department, concerning an] are confidential and may not be made available by the department to the employer without the consent of the employee or the employee representative.

* Sec. 5. AS 18.60.088(b) is amended to read:

(b) If the department makes a special inspection, or an inspection under sec. 83 of this chapter, a copy of an employee notice shall be provided the employer no later than at the time of the inspection. Unless expressly consented to by [UPON REQUEST OF] the person giving the notice, his name and the name of employees referred to in the notice shall be kept confidential and may not appear in the copy provided the employer or in any record available to the employer.

* Sec. 6. AS 18.60.097 is repealed and re-enacted to read:

Sec. 18.60.097. JUDICIAL REVIEW. (a) A person affected by an order of the OSHA Review Board under sec. 93(c) or (e) of this chapter or of the commissioner under sec. 96 of this chapter may obtain a review of the order by filing a notice of appeal in the superior court as provided in Rule 45 of the Rules of Appellate Procedure of the State of Alaska.

Give Dept Right to Appeal

(b) The department may obtain review of an order of the OSHA Review Board under sec. 93(c) or (e) of this chapter by filing a notice of appeal in the superior court as provided in Rule 45 of the Rules of Appellate Procedure of the State of Alaska.

(c) An order of the OSHA Review Board under sec. 93(c) or (e) of this chapter or of the commissioner under sec. 96 of this chapter becomes final and is not subject to review by any court if a notice of appeal is not filed with the superior court within the period provided for by Rule 45 of the Rules of Appellate Procedure of the State of Alaska.

(d) An employer seeking judicial review of an order of the OSHA Review Board or of the commissioner must inform his affected employees of the fact that he is seeking judicial review.

(e) The court shall review an order of the OSHA Review Board or

of the commissioner on a substantial-evidence basis.

* Sec. 7. This Act takes effect immediately in accordance with AS 01.10.070(c).

Introduced: 1/16/76
Referred: Labor & Management
and Judiciary

IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

HOUSE BILL NO. 588

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to occupational safety and health; and providing for an effective date."

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

* Section 1. AS 18.60.020(b) is amended to read:

(b) When the commissioner promulgates any regulation or standard, [MAKES ANY RULE OR ORDER,] or grants any variance [EXEMPTION OR EXTENSION OF TIME] under this chapter, he shall include a statement of the reasons for the action, forward a copy to the OSHA Review Board and cause a copy to be published in newspapers in the state so as to receive statewide coverage.

* Sec. 2. AS 18.60.055 is amended to read:

Sec. 18.60.055. DIVISION OF OCCUPATIONAL SAFETY AND HEALTH. There is established in the department a division of occupational safety and health to be administered by a director responsible to the commissioner. Minimum qualifications shall be established for employees of the department acting as safety inspectors. These qualifications shall include, as a minimum requirement, at least five years general work experience in industry [THE FIELD THEY ARE ASSIGNED TO INSPECT].

* Sec. 3. AS 18.60.075(a) is amended to read:

(a) An employer shall do everything necessary to protect the life, health and safety of employees including, but not limited to:

(1) complying with all occupational safety and health standards and regulations promulgated by the department;

(2) furnishing and prescribing the use of suitable protective

equipment, safety devices and safeguards as are prescribed for the work and work place; [AND]

(3) adopting and prescribing control or technological procedures, and monitoring and measuring employee exposure in connection with hazards, as may be necessary for the protection of employees; and

(4) furnishing to each of his employees employment and a place of employment which are free from recognized hazards which, in the opinion of the commissioner, are causing or are likely to cause death or serious physical harm to his employees.

* Sec. 4. AS 18.60.087 is amended to read:

Sec. 18.60.087. EMPLOYER AND EMPLOYEE PARTICIPATION. (a) A representative of the employer and a representative authorized by the employees shall be given an opportunity to accompany the representative of the department during the physical inspection of a work place for the purpose of aiding the inspection. If the authorized representative is an employee, time spent aiding the inspection shall be considered as time worked and he shall be compensated accordingly. When there is no authorized employee representative, there shall be consultation with a reasonable number of employees concerning matters of health and safety in the work place.

(b) Comments relating to an employer's compliance with the provisions of secs. 10 - 105 of this chapter made by an employee or an employee representative to the representative of the department during the course of an inspection, and the name of any employee or employee representative making such comments to a representative of the department, are confidential and may not be made available by the department to the employer without the consent of the employee or the employee representative.

maintain confidentiality

* Sec. 5. AS 18.60.088(b) is amended to read:

(b) If the department makes a special inspection, or an inspection under sec. 83 of this chapter, a copy of an employee notice shall be provided the employer no later than at the time of the inspection. Unless expressly consented to by [UPON REQUEST OF] the person giving the notice, his name and the name of employees referred to in the notice shall be kept confidential and may not appear in the copy provided the employer or in any record available to the employer.

* Sec. 6. AS 18.60.097 is repealed and re-enacted to read:

Sec. 18.60.097. JUDICIAL REVIEW. (a) A person affected by an order of the OSHA Review Board under sec. 93(c) or (e) of this chapter or of the commissioner under sec. 96 of this chapter may obtain a review of the order by filing a notice of appeal in the superior court as provided in Rule 45 of the Rules of Appellate Procedure of the State of Alaska.

(b) The department may obtain review of an order of the OSHA Review Board under sec. 93(c) or (e) of this chapter by filing a notice of appeal in the superior court as provided in Rule 45 of the Rules of Appellate Procedure of the State of Alaska.

(c) An order of the OSHA Review Board under sec. 93(c) or (e) of this chapter or of the commissioner under sec. 96 of this chapter becomes final and is not subject to review by any court if a notice of appeal is not filed with the superior court within the period provided for by Rule 45 of the Rules of Appellate Procedure of the State of Alaska.

(d) An employer seeking judicial review of an order of the OSHA Review Board or of the commissioner must inform his affected employees of the fact that he is seeking judicial review.

(e) The court shall review an order of the OSHA Review Board or

of the commissioner on a substantial-evidence basis.

* Sec. 7. This Act takes effect immediately in accordance with AS 01.10.070(c).

HB
600

"An Act relating to determinate sentencing."

COMMITTEE REPORT

1/16/76

HOUSE

Mr. Speaker: Date April 9, 1976

The Committee on JUDICIARY has had HB 600

under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(✓) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

Terry Sanders recommends: NO REC

_____ recommends:

_____ recommends: DO NOT PASS

_____ recommends:

_____ recommends:

Terry Sanders Chairman

LAY MEMBERS
KENNETH L. BRADY
LEW M. WILLIAMS, JR.
ROBERT H. MOSS
LAW MEMBERS
MICHAEL A. STEPOVICH
MICHAEL M. HOLMES
JOSEPH L. YOUNG
CHAIRMAN, EX OFFICIO
ROBERT BOOCHEVER
CHIEF JUSTICE
SUPREME COURT

Alaska Judicial Council

303 K STREET
ANCHORAGE, ALASKA
99501

EXECUTIVE DIRECTOR
MICHAEL L. RUBINSTEIN

April 23, 1976

Rep. Terry Gardiner
House of Representatives
Pouch V
Juneau, AK 99811

RE: 1975 Felony Sentences for Violent Crimes

Dear Representative Gardiner:

On April 14, 1976, at a joint meeting of the Judiciary Committees of the Senate and House of Representatives, the House Rules Committee and the Alaska Judicial Council, the subjects of H.B. 600 and the Judicial Council's alternative proposal for a system of presumptive sentencing were discussed at some length. Requests were made of the Judicial Council and of the Administrative Director of Courts to provide the Legislature with data concerning persons who were convicted in 1975 of violent felonies and the sentences actually received by them.

Enclosed is a summary of our research complied through a joint effort of the Administrative Director's office and the Alaska Judicial Council.

The attached figures include only cases both opened and closed in 1975. (This excludes cases filed in 1973 and 1974, but which did not come to final judgment until 1975.) This data encompasses the entire State of Alaska. There were only 59 individual defendants in the "violent felony" category. The following summary classifies these 59 by first offenses, prior misdemeanors, prior non-violent felonies, and prior violent felonies:

1. 28 defendants (47%) had no prior convictions of any kind.
2. 17 defendants (29%) had a record of convictions for misdemeanors only, but no prior felonies.
3. 8 defendants (14%) had a record of previous convictions for felonies of a non-violent nature.
4. 6 defendants (10%) had previously been convicted of one violent felony.

No defendant in the sample had more than one prior conviction for a violent felony. The greatest proportion by far (47%) were first offenders. The sentences for the 6 individuals with one previous conviction for a violent felony who were again convicted of a violent felony in 1975 were as follows:

* * *

CRIME	SENTENCE
Manslaughter	7 years; 15 years
Kidnapping	4 years
Rape	2 years
Assault with Dangerous Weapon	0 (1 year probation - suspended imposition of sentence)
Robbery	5 years

Of the 13 individuals convicted of Robbery in 1975, one had previously been convicted of a violent felony and received a 5 year sentence. Please note that only two robbers received probation, and both were first offenders. (Other first offenders were sentenced to imprisonment for periods of between 6 months and 5 years.) Sentences for robbers who had prior non-violent felony convictions were also quite severe. (6 years, 10 years and 15 years respectively.) Persons who were convicted of Assault with Intent to Commit Robbery received sentences ranging from probation to 15 years. The average sentence in this category was 6 years, and none had a prior violent felony conviction.

The Manslaughter convictions are particularly interesting because of the extreme range of penalties represented in the sentencing pattern: e.g., 30 days, 60 days, 7 years, 12 years, 15 years. (Two of these individuals had a prior violent felony conviction.) This may illustrate the problem inherent in using the common law crimes as a basis for mandatory sentencing legislation. Although I have not examined the individual case files supporting each of these sentences, it would be my guess that the circumstances leading to the death of a human being in each of these cases must have been extremely divergent to justify a sentence of 30 days in one case and 15 years in another, where neither defendant had

any prior felony convictions. Nevertheless, all these cases are "Manslaughters", regardless of the facts.

The Assault with a Dangerous Weapon category is especially interesting and is deserving of much more careful and detailed study. There were 23 convictions for Assault with a Dangerous Weapon. Thirteen defendants (56%) were placed on probation without being required to serve any jail time whatever. One of these defendants had a prior violent felony record. Only three of the 23 individuals received more than 6 months in jail.

Does this mean that our judges are particularly tolerant of interpersonal violence as long as no profit motive is involved?* Does it mean that most of these cases represent only "technical" assaults in which little or no actual injury was done? Does it mean that prosecutors are frequently "overcharging" in this crime category, so that most of these Assault with a Dangerous Weapon charges should have been filed as misdemeanors instead?** How many of these cases involved feuds between family members or altercations between close friends? How many of these situations involved defendants who were seriously provoked by their victims? Once more the question of the appropriate labeling of crime categories must be raised. I would submit that this data tends to illustrate that "Assault with a dangerous weapon" may be an infelicitous basis for a system of mandatory minimum sentencing. At the very least, the figures would strongly suggest the need for closer study.

***

* The Supreme Court of Alaska has held that Assault with a Dangerous Weapon is "among the most serious crimes . . . ." The court has expressly disapproved a sentence of probation for this offense where the defendant was a 23 year-old Army sergeant, a "model soldier," with no previous record of violence.
State v. Armantrout, 483 P.2d 696, 698 (Alaska 1971).

* * *

** AS 11.15.22 Assault with a dangerous weapon, provides for a double set of punishments: "by imprisonment in the penitentiary for not more than 10 years nor less than six months, or by imprisonment in jail for not more than one year nor less than one month, or by a fine of not more than $1,000 nor less than $100.

Thank you for giving us the opportunity to compile this interesting data. I believe that overall the statistical information is supportive of the proposition advanced by Chief Justice Boochever to the effect that the courts are not lenient with violent criminals. The extreme disparaties reflected in some of the sentences, in particular within the category of Assault with a dangerous weapon, are indicative of the need for careful crime definition and more precise and accurate drafting than that reflected in H.B. 600.

On behalf of the Alaska Judicial Council I repeat our offer to study the entire question of sentence reform and to prepare a draft sentencing bill for your consideration prior to the next session of the Legislature.

Sincerely,

Michael L. Rubinstein/tk

Michael L. Rubinstein

CC: Chief Justice Boochever
Sen. Chancy Croft
Rep. Mike Bradner
House Judiciary Committee
Senate Judiciary Committee
House Rules Committee
Art Snowden II
Mel Martin
Keith Brown, Esq.
Brian Shortell, Esq.
Judicial Council Members
Avrum Gross, Esq.
Herb Pierson, Esq.
Peter Ring, Esq.

CTOI 0003 10.54 CTO3 0022 10.54 04/15/76
CTOI

PLEASE DELIVER THE FOLLOWING AS SOON AS POSSIBLE TO MR. SNOWDEN. HE MAY BE IN THE SUPREME COURT.

ART SNOWDEN

FOLLOWING IS THE ONLY DATA I CAN PROVIDE YOU ON A TIMELY BASIS

MEL

1973 FELONY SENTENCING FROM JUDICIAL COUNSEL SENTENCING STUDY.

CRIME CATEGORY	TYPE CONVICTION	SENTENCE 2-5 YEARS	SENTENCE OVER 5 YEARS	TOTAL
VIOLENT	FIRST	5%	13%	18%
	REPEAT	10%	15%	31%
ROBBERY	FIRST	22%	21%	43%
	REPEAT	-	56%	56%
PROPERTY	FIRST	3%	3%	6%
	REPEAT	14%	7%	21%
HARD DRUG	FIRST	33%	11%	44%
	REPEAT	-	20%	20%
SOFT DRUG	FIRST	1%	-	1%
	REPEAT	27%	-	27%
CHECK & FRAUD	FIRST	-	-	-
	REPEAT	8%	21%	29%
TOTAL	FIRST	5%	6%	11%
	REPEAT	13%	15%	28%

PLEASE ACKNOWLEDGE THIS MESSAGE.

LINDA/CTOI

CTO3 0020 10.59 CTO3 0023 10.59 04/15/76

LINDA

MSG. RECEIVED TO MR. SNOWDEN.

CHARLENE/CTO3

DRAFT #7
Law

4/7/76 md

PROPOSED PWC

Original Sponsor: Rules Committee by
Request of the Governor

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 600

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to [redacted] sentencing."

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

* Section 1. AS 11.05.150 is amended to read:

Sec. 11.05.150. IMPOSING LESS THAN PRESCRIBED PENALTY. Except in a case of murder or rape, or a case of a violent felony for which sentencing is imposed in accordance with AS 12.55.035(a)(2) or (3), the court may, upon conviction, when in its opinion the facts and circumstances make the minimum penalty provided in this title manifestly too severe, impose a lesser penalty, either of a fine or imprisonment or both. When less than the minimum penalty is imposed, the court shall set out the reasons for its action on the record in the case.

* Sec. 2. AS 12.55 is amended by adding new sections to read:

Sec. 12.55.035. SENTENCING FOR VIOLENT FELONIES. (a) Every person convicted of a violent felony shall be sentenced as follows:

(1) if the conviction for which sentencing is being rendered is a violent felony and is the defendant's first violent felony conviction, the court may sentence the defendant to a term of imprisonment, within the limits provided by law, or in accordance with AS 33.15.230 or secs. 80 or 85 of this chapter;

(2) if the conviction for which sentencing is being rendered is a violent felony and is the defendant's second violent felony conviction, the court shall sentence the defendant to a minimum term of imprisonment,

(A) of 15 years, for first degree murder under AS

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11.15.010 and AS 11.15.020;

(B) of 12 years, for second degree murder under AS 11.15.030;

(C) of 8 years, for manslaughter under AS 11.15.040;

(D) of 8 years, for negligent homicide under AS 11.15.080;

(E) of 10 years, for forcible rape as defined in AS 11.15.120;

(F) of 5 years, for mayhem under AS 11.15.140;

(G) of 5 years, for shooting, stabbing or cutting with intent to kill, wound or maim under AS 11.15.150;

(H) of 5 years, for assault with intent to kill or commit rape or robbery under AS 11.15.160;

(I) of 3 years, for assault while armed under AS 11.15.190;

(J) of 5 years, for poisoning under AS 11.15.210;

(K) of 3 years, for assault with a dangerous weapon under AS 11.15.220;

(L) of 7 years, for robbery under AS 11.15.240;

(M) of 7 years, for kidnapping under AS 11.15.260;

(N) of 5 years, for first degree arson under AS 11.20-.010;

(O) of 2 years, for assault on an officer in penitentiary under AS 11.30.140;

(P) of 2 years, for assault on an officer in jail under AS 11.30.160;

(3) if the conviction for which sentencing is being rendered is a violent felony and is the defendant's third or subsequent violent felony conviction, the court shall sentence the defendant to a minimum

term of imprisonment,

(A) of 20 years, for first degree murder under AS 11.15.010 and AS 11.15.020;

(B) of 15 years, for second degree murder under AS 11.15.030;

(C) of 12 years, for manslaughter under AS 11.15.040;

(D) of 12 years, for negligent homicide under AS 11.15.080;

(E) of 15 years, for forcible rape as defined in AS 11.15.120;

(F) of 7 years, for mayhem under AS 11.15.140;

(G) of 7 years, for shooting, stabbing or cutting with intent to kill, wound or maim under AS 11.15.150;

(H) of 7 years, for assault with intent to kill or commit rape or robbery under AS 11.15.160;

(I) of 5 years, for assault while armed under AS 11.15.190;

(J) of 7 years, for poisoning under AS 11.15.210;

(K) of 5 years, for assault with a dangerous weapon under AS 11.15.220;

(L) of 10 years, for robbery under AS 11.15.240;

(M) of 10 years, for kidnapping under AS 11.15.260;

(N) of 7 years, for first degree arson under AS 11.20.-010;

(O) of 5 years, for assault on an officer in a penitentia under AS 11.30.140;

(P) of 5 years, for assault on an officer in a jail under AS 11.30.160;

(b) For purposes of this section, no prior convictions will be considered when a period of 15 or more years has elapsed between the

date of discharge from disposition of the immediately preceding offense and the date of the commission of the violent felony for which sentencing is being rendered.

(c) For purposes of this section:

(1) a conviction in another jurisdiction which would amount to a violent felony conviction under the laws of this state is considered a prior violent felony conviction;

(2) two or more convictions arising out of the same incident are considered a single conviction;

(3) "violent felony" means the crimes listed in (a)(2) and (3) of this section.

(d) For terms of imprisonment required under (a)(2) or (3) of this section

(1) imprisonment may not be suspended under AS 12.55.080 and probation or parole may not be granted;

(2) imposition of sentence may not be suspended under AS 12.55.085; and

(3) terms of imprisonment may not be reduced under AS 11.05.150.

(e) Nothing in this section limits the authority of the court to impose fines for offenses, where authorized, in addition to the required term of imprisonment.

Sec. 12.55.037. PROCEDURE FOR DETERMINING PRIOR CONVICTIONS. (a) If it appears that a defendant has previously been convicted of a violent felony and is subject to sentencing as a second or subsequent offender under sec. 35 of this chapter, the district attorney shall file a certified copy of the record of prior convictions with the court before sentencing.

(b) If the defendant denies the truth of the certified copy of the record of prior convictions, the court shall hold a hearing,

without a jury, on the matter before sentencing. At the hearing, the only issues before the court are whether the record of prior convictions is that of the defendant and whether the conviction occurred within the period specified in sec. 35(b) of this chapter. The burden of proof is on the state to establish beyond a reasonable doubt the fact of prior convictions.

* Sec. 3. AS 12.55.060 is amended to read:

Sec. 12.55.060. PROCEDURE UPON DISCOVERY OF PRIOR CONVICTIONS. (a) Before conviction or while sentence is effective, if it appears that a person convicted of a crime in this state has previously been convicted and has not been charged under sec. [SECS. 40 AND] 50 of this chapter, the district attorney may file an information in the superior court accusing that person of the previous conviction or convictions. The court shall cause that person, whether confined in prison or otherwise, to be brought before it and shall inform him of the allegations contained in the information and of his right to be tried as to the truth of the allegations, and shall ~~require~~ inquire of the accused person ~~to say~~ whether or not he is the same person as charged in the information. If the accused acknowledges or confesses in open court, after being cautioned as to his rights, that he was previously convicted of the crimes charged, or any of them, the court shall sentence him as provided in sec. [SECS. 40 OR] 50 of this chapter, and shall vacate the previous sentence, deducting from the new sentence all time actually served on the sentence so vacated. If the accused says he is not the same person, or refuses to answer, or remains silent, the court shall examine the charge of previous convictions, which shall be the only matter in issue.

(b) If it appears from the examination that there is sufficient cause to believe the accused has been previously convicted as charged

in the information, the accused shall be committed to await the action of the grand jury, which shall consider only the fact of previous convictions of the accused If the grand jury indicts the accused and he says he is not the same person, or refuses to answer, or remains silent, he shall be tried by jury in the superior court, and the only issue before the jury shall be whether the accused was previously convicted as charged. If the jury finds that the accused is the same person previously convicted as charged, or if, after being cautioned as to his rights, the accused acknowledges or confesses in open court that he was previously convicted as charged, the court shall sentence him as provided in sec. [SECS. 40 OR] 50 of this chapter, and shall vacate the previous sentence.

(c) The accused may be admitted to bail either while awaiting examination, action of the grand jury, or trial.

* Sec. 4. AS 33.15.180 is amended to read:

Sec. 33.15.180. PERSONS ELIGIBLE FOR PAROLE. (a) A state prisoner other than a minor under age 18 [JUVENILE DELINQUENT], wherever confined and serving a definite term or over 180 days or a term the minimum of which is at least 181 days, and who is not confined as a second or subsequent offender under AS 12.55.035, whose record shows that he has observed the rules of the institution in which he is confined, may, in the discretion of the board, be released on parole, subject to the limitation prescribed in secs. 80 and 230(a,(1) of this chapter.

(b) A state prisoner confined as a second or subsequent offender under AS 12.55.035 may not be considered for parole.

* Sec. 5. AS 33.20.010 is repealed and re-enacted to read:

Sec. 33.20.010. COMPUTATION OF GOOD TIME. (a) Each prisoner convicted of an offense against the state and sentenced to confinement

in a penal or correctional institution, whose record of conduct shows that he has faithfully observe the rules of that institution and has not been subject to discipline, is entitled to a deduction from the term of his sentence of one day for every [redacted] days of good conduct served.

(b) Good time earned in excess of 30 days is not subject to forfeiture for a subsequent infraction, misconduct, or crime.

* Sec. 6. AS 12.55.040, 33.20.020 and 33.20.040 are repealed.

* Sec. 7. APPLICABILITY. (a) AS 12.55.035, as enacted in sec. 2 of this Act, applies to sentencing upon convictions only for violent felonies committed after the effective date of this Act. When sentencing for those convictions, the court shall consider prior convictions for violent felonies whether committed before or after the effective date of this Act.

(b) AS 33.15.180, as amended in sec. 4 of this Act, applies to persons imprisoned for violent felonies committed after the effective date of this Act.

(c) AS 33.20.010, as re-enacted in sec. 5 of this Act, applies to all persons imprisoned in state institutions as of the effective date of this Act, without retroactive application however.

* Sec. 8. INTENT. Section 2 of this Act is intended to strengthen present imprisonment provisions rather than lower minimum terms required by statute, especially those minimum terms provided in AS 11.15.010, 11.15.020 and 11.15.030. Under sec. 2 of this Act, a second or subsequent offender does not have available to him provisions for reduction or suspension of sentence.

1. XXXXXXX
2. XXX
XXXXXXX

DRAFT 3/16/76
Law

P R O P O S E D

Original Sponsor: Rules Committee by
Request of the Governor

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 600

IN THE LEGISLATURE FOR THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to determinate sentencing."

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

* Section 1. AS 11.05.150 is amended to read:

Sec. 11.05.150. IMPOSING LESS THAN PRESCRIBED PENALTY. Except in a case of murder or rape, or a case of a violent felony for which sentencing is imposed in accordance with AS 12.55.035(a)(2) or (3), the court may, upon conviction, when in its opinion the facts and circumstances make the minimum penalty provided in this title manifestly too severe, impose a lesser penalty, either of a fine or imprisonment or both. When less than the minimum penalty is imposed, the court shall set out the reasons for its action on the record in the case.

* Sec. 2. AS 12.55 is amended by adding new sections to read:

Sec. 12.55.035. SENTENCING FOR VIOLENT FELONIES. (a) Every person convicted of a violent felony shall be sentenced as follows:

(1) if the conviction for which sentencing is being rendered is a violent felony and is the defendant's first violent felony conviction, the court may sentence the defendant to a term of imprisonment, within the limits provided by law, or in accordance with AS 33.15.230 or secs. 80 or 85 of this chapter;

(2) if the conviction for which sentencing is being rendered is a violent felony and is the defendant's second violent felony conviction, the court shall sentence the defendant to a term of imprisonment of not less than one-half the maximum term authorized by law;

(3) if the conviction for which sentencing is being rendered

03-038

is a violent felony and is the defendant's third or subsequent violent felony conviction, the court shall sentence the defendant to the maximum term authorized by law.

(b) For the purposes of this section, no prior convictions will be considered when a period of five or more years has elapsed between the date of discharge from disposition of the immediately preceding offense and the date of the commission of the violent felony for which sentencing is being rendered.

(c) For the purposes of this section:

(1) a conviction in another jurisdiction which would amount to a violent felony conviction under the laws of this state is considered a prior violent felony conviction;

(2) a conviction which authorizes a maximum term of imprisonment for life is considered as having a term of imprisonment of 99 years;

(3) "violent felony" means a violent crime against another person or a violent crime which tends to endanger a person; "violent felony" means only the following crimes:

(A) AS 11.15.010 -- first degree murder;

(B) AS 11.15.020 -- obstructing or injuring railroad or aircraft;

(C) AS 11.15.030 -- second degree murder;

(D) AS 11.15.040 -- manslaughter;

(E) AS 11.15.080 -- negligent homicide;

(F) AS 11.15.120 -- rape;

(G) AS 11.15.140 -- mayhem;

(H) AS 11.15.150 -- shooting, stabbing or cutting with intent to kill, wound or maim;

(I) AS 11.15.160 -- assault with intent to kill or

commit rape or robbery;

(J) AS 11.15.190 -- assault while armed;

(K) AS 11.15.210 -- poisoning;

(L) AS 11.15.220 -- assault with a dangerous weapon;

(M) AS 11.15.240 -- robbery;

(N) AS 11.15.260 -- kidnapping;

(O) AS 11.20.010 -- first degree arson;

(P) AS 11.20.080 -- burglary in a dwelling house;

(Q) AS 11.30.140 -- assault on officer in penitentiary;

(R) AS 11.30.160 -- assault on officer in jail;

(4) two or more convictions arising out of the same incident are considered a single conviction.

(d) For terms of imprisonment required under (a)(2) or (3) of thi section

(1) imprisonment may not be suspended under AS 12.55.080 and probation or parole may not be granted;

(2) imposition of sentence may not be suspended under AS 12.55.085;

(3) terms of imprisonment may not be reduced under AS 11.05.150.

(e) Nothing in this section limits the authority of the court to impose fines for offenses, where authorized, in addition to the required term of imprisonment.

Sec. 12.55.037. PROCEDURE FOR DETERMINING PRIOR CONVICTIONS. (a) If it appears that a defendant has previously been convicted of a violent felony and is subject to sentencing as a second or subsequent offender under sec. 35 of this chapter, the district attorney shall file a certified copy of the record of prior convictions with the court before sentencing.

(b) If the defendant denies the truth of the certified copy of the record of prior convictions, the court shall hold a hearing, without a jury, on the matter before sentencing. At the hearing, the only issues before the court are whether the record of prior convictions is that of the defendant and whether the conviction occurred within the period specified in sec. 35(b) of this chapter. The burden of proof is on the state to establish, by a preponderance of the evidence, the fact of prior convictions.

* Sec. 3. AS 12.55.050 is amended to read:

habitual criminal section

Sec. 12.55.050. INCREASED PUNISHMENT FOR PERSONS CONVICTED OF MORE THAN ONE FELONY. Except for a person sentenced for a violent felony under sec. 35(a)(2) or (3) of this chapter, a [A] person convicted of a felony in this state who has been previously convicted of a felony in this state or elsewhere, if the same crime elsewhere would constitute a felony under Alaska law, is punishable as follows:

(1) If the person is convicted of a felony which would be punishable by imprisonment for a term less than his natural life, and has previously been convicted of one felony, then he is punishable by imprisonment for not less than the minimum nor more than twice the longest term prescribed for the felony of which that person is convicted.

(2) If the person has previously been convicted of two felonies, then he is punishable by imprisonment for not less than the minimum nor more than twice the longest term prescribed herein for a second conviction of felony.

(3) If the person has previously been convicted of three or more felonies, then on the fourth conviction he shall be adjudged an habitual criminal, and is punishable by imprisonment for not less

than 20 years nor more than the remainder of his natural life.

* Sec. 4. AS 12.55.060 is amended to read:

Sec. 12.55.060. PROCEDURE UPON DISCOVERY OF PRIOR CONVICTIONS. (a) Before conviction or while sentence is effective, if it appears that a person convicted of a crime in this state has previously been convicted and has not been charged under sec. [SECS. 40 AND] 50 of this chapter, the district attorney may file an information in the superior court accusing that person of the previous conviction or convictions. The court shall cause that person, whether confined in prison or otherwise, to be brought before it and shall inform him of the allegations contained in the information and of his right to be tried as to the truth of the allegations, and shall require the accused person to say whether or not he is the same person as charged in the information. If the accused acknowledges or confesses in open court, after being cautioned as to his rights, that he was previously convicted of the crimes charged, or any of them, the court shall sentence him as provided in sec. [SECS. 40 or 50 of this chapter, and shall vacate the previous sentence, deducting from the new sentence all time actually served on the sentence so vacated. If the accused says he is not the same person, or refuses to answer, or remains silent, the court shall examine the charge of previous convictions, which shall be the only matter in issue.

(b) If it appears from the examination that there is sufficient cause to believe the accused has been previously convicted as charged in the information, the accused shall be committed to await the action of the grand jury, which shall consider only the fact of previous convictions of the accused. If the grand jury indicts the accused and he says he is not the same person, or refuses to answer, or remains silent, he shall be tried by jury in the superior court, and the only

issue before the jury shall be whether the accused was previously convicted as charged. If the jury find that the accused is the same person previously convicted as charged, or if, after being cautioned as to his rights, the accused acknowledges or confesses in open court that he was previously convicted as charged, the court shall sentence him as provided in sec. [SECS. 40 OR] 50 of this chapter, and shall vacate the previous sentence, deducting from the new sentence all time served on the vacated sentence.

(c) The accused may be admitted to bail either while awaiting examination, action of the grand jury, or trial.

* Sec. 5. AS 33.15.180 is amended to read:

Sec. 33.15.180. PERSONS ELIGIBLE FOR PAROLE. (a) A state prisoner other than a juvenile delinquent, wherever confined and serving a definite term of over 180 days or a term the minimum of which is at least 181 days, and who is not confined as a second or subsequent offender under AS 12.55.035, whose record shows that he has observed the rules of the institution in which he is confined, may, in the discretion of the board, be released on parole, subject to the limitation prescribed in secs. 80 and 230(a)(1) of this chapter.

(b) A state prisoner confined as a second or subsequent offender under AS 12.55.035 may not be considered for parole.

* Sec. 6. AS 33.20.010 is repealed and re-enacted to read:

Sec. 33.20.010. COMPUTATION OF GOOD TIME. Each prisoner convicted of an offense against the state and confined in a penal or correctional institution, whose record of conduct shows that he has faithfully observed the rules of that institution and has not been subject to punishment, is entitled to a deduction from the term of his sentence of one day for every two days of good conduct served.

* Sec. 7. AS 12.55.040, 33.20.020 and 33.20.040 are repealed.

* Sec. 8. APPLICABILITY. (a) AS 12.55.035, as enacted in sec. 2 of this Act, applies to sentencing upon convictions only for violent felonies committed after the effective date of this Act. When sentencing for those convictions, the court shall consider prior convictions for violent felonies whether committed before or after the effective date of this Act.

(b) AS 33.15.180, as amended in sec. 5 of this Act, applies to persons imprisoned for violent felonies committed after the effective date of this Act.

(c) AS 33.20.010, as re-enacted in sec. 6 of this Act, applies to all persons imprisoned in state institutions as of the effective date of this Act, without retroactive application however.

Give copies to Members for HB600

LAY MEMBERS
KENNETH L. BRADY
LEW M. WILLIAMS, JR.
ROBERT H. MOSS

LAW MEMBERS
MICHAEL A. STEPOVICH
MICHAEL M. HOLMES
JOSEPH L. YOUNG

CHAIRMAN, EX OFFICIO
ROBERT BOOCHEVER
CHIEF JUSTICE
SUPREME COURT

Alaska Judicial Council

303 K STREET
ANCHORAGE, ALASKA
99501

EXECUTIVE DIRECTOR
MICHAEL L. RUBINSTEIN

March 25, 1976

Hon. Terry Gardiner
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Gardiner:

On March 15, 1976 the Alaska Judicial Council met in Anchorage and unanimously resolved to express its strong opposition to any and all proposed criminal sentencing legislation based on mandatory minimum or so-called "flat-time" formulae. Legislation which purports to bind the conscience of the judge by compelling him to hand down a pre-ordained term of imprisonment to broad classes of persons without any regard either to the particular facts and circumstances surrounding the commission of the crime, or to the social and personal history of the defendant is productive of more injustice than the problem it is intended to remedy.

No judge should be placed in the position of being required by the law to blind himself to the actual facts and circumstances of the cases he is called upon to decide.

The mandatory minimum and "flat-time" bills now before the Legislature use the existing criminal laws as their foundation. To superimpose entirely new sentencing provisions upon our code--a code which was never intended by its draftsman to bear such a burden--will open the door to many unforseen and anomalous results, some of which are likely to produce unintended injustice in individual cases.

The traditional common law classification of crimes into "felonies" and "misdemeanors", and the typically broad subclasses of felonies, such as "robbery", "rape", "burglary", etc. are quite general and encompass within each class many varying levels of harmfulness and culpability. Under the present system the totally unguided discretion of the sentencing judge is relied upon to take these differences

into account in each case. Many have considered that the exercise of this substantially unguided discretion by judges of widely differing personalities and predispositions has resulted in undue disparity and inequity. However, it may be well to point out that all the blame should not be placed on the judiciary for the disparity which exists. A distinguished federal jurist, Judge Marvin Frankel of the United States District Court for the Eastern District of New York commented, in his book Criminal Sentences: Law Without Order (1972):

> [O]ur legislators have not done the most rudimentary job of enacting meaningful sentencing 'laws' when they have neglected even to sketch democratically determined statements of basic purpose. Left at large, wandering in deserts of unchained discretion, the judges suit their own value systems insofar as they think about the problem at all.

If we are not to rely upon the totally unguided discretionary decisions of diverse individual judges, it becomes encumbant upon the Legislature itself to consider each offense and to provide for a system of carefully graded levels of culpability based upon the actual social harm caused by the defendant's actions, the extent of his evil motivation if any, and such aggravating or mitigating circumstances as may have surrounded the commission of the act. Even if we totally put to one side any and all considerations of the defendant's age, race, sex, and socio-economic background, a just sentencing law must take into account, for example, that not all assaults with dangerous weapons are of equal culpability. Some produce serious harm and some do not. Some are the result of extreme provocation and others are totally unprovoked. Some forgers are compulsive alcoholics, and others are professional criminals. The broad categories of the existing law are simply insufficiently precise for mandatory sentencing.

Having prepared a comprehensive analysis* and review of sentencing practices in Alaska, the Judicial

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* Sentencing in Alaska: A Description of the Process and Summary of Statistical Data for 1973.

Council is well aware of the need for reform. At this time, the Judicial Council has under consideration a proposal for basic structural changes in the sentencing process; it will report to the Legislature at the conclusion of the study. This sentencing plan, dubbed "presumptive sentencing", was recently formulated by a special task force of The Twentieth Century Fund in New York City. The task force study panel was chaired by former California Governor Edmund G. Brown, Sr. and was composed of distinguished jurists, law professors, a police chief, and other involved with the criminal justice process. Although the proposal is complex and sophisticated, complexity may well be required if we are justly to address a problem which is probably not amenable to simplistic solutions.

The enclosed New York Times article briefly describes the presumptive sentencing system. The details of this proposal, in the form of advance page proofs are now being reviewed by the Judicial Council. The final published report will not be released by the McGraw-Hill Book Company until April 13. Pursuant to our agreement with The Twentieth Century Fund, we may make available to you an advance copy of the page proofs, if you wish one.

In summary, the Judicial Council strongly urges you to defer any final legislative action in the area of sentence reform until such time as it completes its report on presumptive sentencing proposals and until adequate study of alternatives for stuctural reform can be explored.

Very truly yours,

Michael L. Rubinstein

cc: Judicial Council Members
Hon. Avrum Gross

THE PUNISHMENT FIT THE CRIME

Indeterminate prison sentences, a major reform until recently, are now considered a mess, by liberals and conservatives alike.

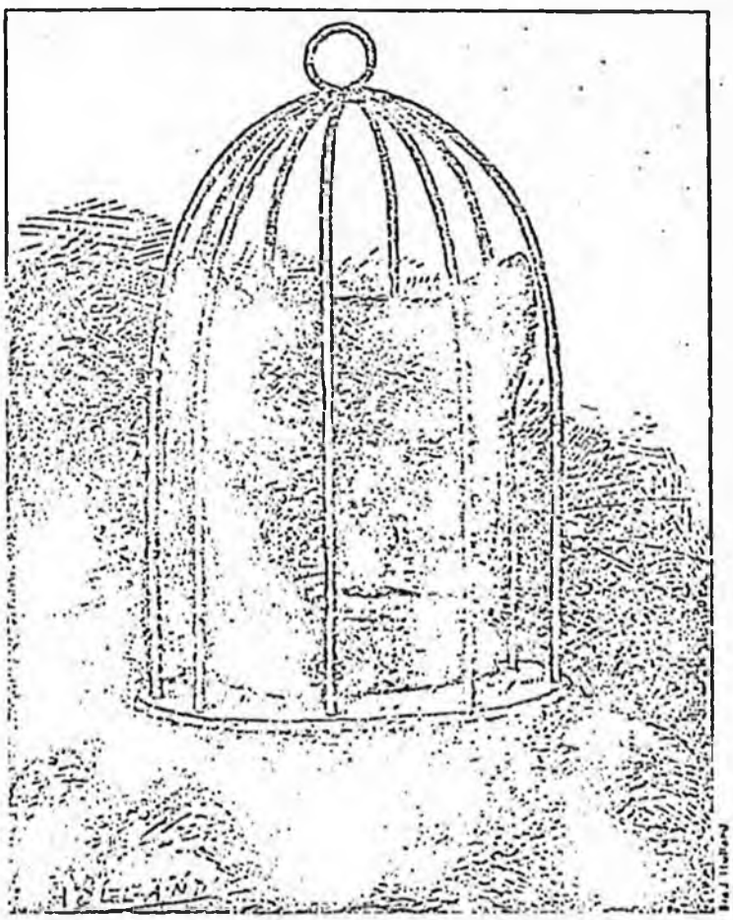
By Alan Dershowitz

When President Ford was confronted with Lynette Fromme's loaded gun, he was on his way to address the California State Legislature on the subject of violent crime. Among the key themes of his speech was a criticism of our current sentencing laws, under which judges and parole boards exercise wide discretion in determining a convicted criminal's sentence. Relating to the fact that "nearly 4 out of 10 persons using firearms to kill . . . or rob . . . are returned to the streets . . . without serving a prison sentence," the President called for the adoption of "mandatory sentences" in order to restore "the certainty of confinement that is presently lacking."

As the President was delivering his speech, its point was being dramatically highlighted in another part of town where law-enforcement officials were busily debating whether to charge Miss Fromme under Federal or state law. One primary consideration was, quite obviously, the kind of sentence she could receive if convicted. A glance at the relevant statutes concretely illustrates the pervasive lack of "certainty" under existing laws: The Federal law against attempting to kill the President carries a sentence of "any terms of years," while the applicable California statute would allow the judge to sentence her "to prison for six months to life, or in a county jail not exceeding one year, or by fine not exceeding five thousand dollars."

In other words, the judge who recently sentenced Miss Fromme to life in prison had the widest possible discretion to determine her sentence. "I have no guidelines to go by," Judge Thomas J. MacBride declared; indeed, he could also have imposed a sentence of probation, six months in jail, 20 years in prison—or even a fine.

This situation is not unique to California or the Federal system; nor is it limited to special crimes such as attempted Presidential assassinations. Virtually every state vests considerable sentencing discretion in judges. Moreover, every state and the Federal Government now employ "indeterminate sentencing" for most serious crimes.



Indeterminate sentencing simply means that the amount of time a convicted criminal will actually serve is decided not by the legislature when it enacts the criminal statute, nor even by the sentencing judge when he formally imposes sentence, but rather by some administrative agency —generally called the "parole board" or the "adult authority"—during the time the prisoner is serving his sentence. Both the legislature and the sentencing judge still have important roles to play in indeterminate sentencing: They generally set the outer limits of the confinement, but these limits are generally set very widely, and it thus becomes the responsibility of the parole agency to make the decision that really counts: When will the defendant get back on the street?

Indeterminate sentencing has emerged during this century as a major reform designed to substitute rehabilitation for retribution. Until this past decade, virtually every reformer advocated indeterminate sentencing as among the most important first steps toward humanizing the criminal law. As recently as 1970, Ramsey Clark—widely regarded as perhaps the most liberal person ever to occupy the Attorney Generalship — predicted that "the day of [increased reliance on] the indeterminate sentence is coming," since it gives "the best of both worlds—long protection for the public yet a fully flexible opportunity for the convict's rehabilitation."

Now, just five years later, it seems that the day of the indeterminate sentence is passing—and with few regrets. While law-and-order conservatives remain persuaded that indeterminate sentencing is just one more form of coddling criminals, prisoners and their defenders outside the walls are complaining that it has resulted in too much power for parole boards and longer stays in prison. Prison officials blame the system for overcrowding that has put new strain on their facilities. In short, a surprising consensus is emerging around the idea that it is time for a return to uniformity in sentencing.

The shifting attitude of reformers toward sentencing illustrates how widely the pendulum of reform is capable of swinging in a short period of time. What is proclaimed as panacea by one generation of reformers is denounced as anathema by the next. But the call for reform continues unabated, fueled by our collective frustrations over rising crime rates and staggering disparities in the sentences imposed under our present system.

In a recent study commissioned by the judges of the United States Court of Appeals for the Second Circuit, 50 Federal judges were given 20 identical files, drawn from actual cases, and asked what sentence they would impose on each defendant. The results showed "glaring disparity." In a case involving a middle-aged union official convicted on several counts of extortionate credit transactions, one judge imposed a sentence of 20 years' imprisonment plus a $65,000 fine, whereas another judge imposed a 3-year sentence with no fine. In a case of possession of barbiturates with intent to distribute, one judge gave the defendant five years in prison, while another put him on probation.

These disparities cannot be explained by the

(Continued on Page 20)

Alan Dershowitz, professor of law at Harvard, is coordinator of the Twentieth Century Fund's Task Force on Criminal Sentencing.

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Punishment

Continued from Page 7

fact that the judges in this experiment did not have "flesh and blood" defendants in front of them. Indeed, in an actual recent case, Judge Constance Baker Motley—one of the judges included in the study — sent shock waves through the legal community when she sentenced a second offender convicted of stock fraud to 10 years' imprisonment, despite his plea of guilty and his cooperation with the Government. This sentence was five times greater than that given by any judge in a stock-fraud case included in the study. A recent study in Ohio disclosed that certain judges imprison defendants four times as often as other judges in the same county for the same offense.

These disparities cannot be explained by reference to relevant differences among criminals. They are—as Federal Judge Marvin Frankel recently observed—more commonly a function "of the wide spectrums of character, bias, neurosis and daily vagary encountered among occupants of the trial bench."

There is mounting evidence, moreover, that a significant part of the disparity is a function of simple prejudice. To cite one striking, though by no means typical, example, a California judge, in imposing sentence on a teenaged Mexican-American who had been convicted of incest, made the following statement: "Mexican people, after 13 years of age, it's perfectly all right to go out and act like an animal. . . . You ought to commit suicide. . . . You are lower than animals and haven't the right to live in organized society—just miserable, lousy, rotten people. . . . Maybe Hitler was right. The animals in our society ought to be destroyed. . . ." An exhaustive study of sentences for larceny and assault disclosed that in state courts 74 percent of blacks convicted of larceny were sentenced to prison, while only 40 percent of whites with similar records were imprisoned.

Some of the blame for this kind of disparity can be attributed to indeterminate sentencing. Since the job of the legislature, under indeterminate sentencing, is only to set minimum and maximum sentences, debate—what little there is about sentencing—tends to concentrate on unrealistic cases at the extremes. Instead of asking what a typical armed robber should generally get, the question becomes: "What is the most any armed robber should ever get?" Naturally, this kind of question focuses legislative attention on the most horrible cases imaginable, such as the thrill-seeker who terrorizes old people by cocking the hammer of his gun at their heads after he has robbed and beaten them. Likewise, the question, "What is the least any armed robber should ever get?" focuses attention on the most sympathetic cases, such as the father who nervously uses a toy gun in a desperate effort to rob enough money to pay for an operation needed by his child. Since there are vast differences between the most sympathetic and the most horrible cases under a given statute, the legislature generally sets the minimum very low (usually with no imprisonment) and the maximum very high (often at life imprisonment) for serious felonies.

This has contributed to the present situation in which we have among the highest and the lowest sentences for serious crimes of any civilized country in the world: More of our serious offenders go back to the street without any imprisonment, and more of those who are imprisoned receive extremely long sentences. Historically, it is clear that as states adopted indeterminate sentencing, the lengths of maximum sentences authorized by legislatures and imposed by judges skyrocketed. Some studies have also concluded—though the evidence here is not as compelling—that indeterminate sentences have increased the time actually served in prison.

Even if indeterminacy were abolished, however, there would be considerable disparity, since different judges could still impose widely disparate determinate sentences for similar crimes. There are some who argue that the problem might be even worse. Today, when two judges impose radically different sentences for similar crimes, the parole board can employ its discretion to ameliorate the disparities.

The critical issue, therefore, is not whether to abolish indeterminacy while retaining judicial discretion—virtually everyone agrees that this would be a disaster. It is whether the present system of wide judicial discretion coupled with indeterminacy should be replaced by legislatively fixed sentences. Two major reform proposals along these lines are currently receiving serious attention. The first, called "flat-time sentencing," simply means that the legislature would define one single sentence for each crime (or degree of crime); that sentence would be imposed by the judge in every case and would be served in full, with the only possible reduction being for "good time" or by executive commutation in an extraordinary case. This approach recently received added impetus from President Ford's 1975 message to Congress on crime in which he stated that "it may be time to give serious study to the concept of so-called flat-time sentencing in the Federal law," as a way of eliminating "wide disparities in sentencing for essentially equivalent offenses."

The other reform currently under active consideration is the "mandatory minimum sentence." This proposal, which is the half-brother of flat-time sentencing, simply eliminates all discretion to go below a certain minimum sentence that must be served for a given crime, regardless of the circumstances.

In an area that has been plagued as much with polarity as law enforcement, it is indeed surprising that a return to legislatively fixed sentences has commanded the support of so diverse a group on the criminal justice spectrum, especially since only a decade ago, support for indeterminate sentencing was equally unanimous. Jessica Mitford, whose recent book on the California prison system asserts that "prisons are intrinsically evil and should be abolished," sees the elimination of the indeterminate sentence as an intermediate step. She agrees with President Ford—on this if perhaps on no other issue—that "flat-time sentencing" is preferable to indeterminate sentencing.

Nor are Mitford and Ford the only unlikely bedfellows. The Prisoners Union, a national organization controlled and staffed by ex-convicts, has made "the abolishment of the indeterminate sentence and all its ramifications" its

(Continued on Page 26)

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primary object. Its spokesman, Willie Holder, an ex-convict, argues that "criminals should be punished" rather than treated—and they should be punished "equally," without regard to their backgrounds or individual needs. If this kind of talk sounds as if it could be coming from an association of district attorneys, that is precisely because it could and it has: Many law-enforcement officials favor fixed sentencing because, as Evelle Younger—the tough Attorney General of California—recently put it: "Our records indicate [that under indeterminate sentencing, the adult authority is] releasing dangerous, violent people."

What is it that has changed so many minds so quickly? One important reason for the developing consensus is that the abolition of the indeterminate sentence and the return to legislatively fixed sentences means so many different things to so many different people. To many prisoners, it means the end of the tyranny of the parole board that determines the prisoner's fate under a veil of Kafkaesque secrecy. To President Ford, it means increased deterrence of crime on the streets. To the American Friends Service Committee, which recently called for legislatively fixed sentences, it means the end of privileges for white-collar criminals.

There are, of course, some special reasons that certain groups favor fixed mandatory sentences for particular crimes. Many conservative proponents of capital punishment favor the legislative enactment of mandatory death-penalty statutes for the simple reason that the Supreme Court has held that capital punishment cannot constitutionally be imposed in the discretionary manner in which it has been administered. Many liberal advocates of gun control favor legislation such as that recently enacted in Massachusetts, under which all persons convicted of illegal possession of handguns must serve a full year in prison, and, as the frequently broadcast TV ad says, "no one can get you out."

More fundamentally, however, there seems to be widespread agreement that the present system of sentencing simply has not worked—from any point of view. Nobody is happy about rising crime rates, increased prison violence, glaring disparities and injustices. The entire criminal justice apparatus is under heavy attack from advocates of law and order as well as from civil libertarians. It is only natural that one of its most visible characteristics—individualized sentencing—should be a focus of this attack. For generations, however, the concept of individualized sentencing was a sacred cow among civil libertarians, a manifestation of the "rehabilitative ideal." It was assumed that this reverence for rehabilitation was shared by its consumers, the prison population. But the 1960's witnessed a dramatic infusion of new inmates into the prison population. A significant number of civil-rights marchers, antiwar activists and middle-class drug users were sent to prison. Although they remained for only brief periods of time—and generally only in the "best" prisons—they did establish communication with the more permanent prison population, which tends to be poorer, blacker and less articulate. Upon their release from prison, these middle-class "passers-through" managed to convey to the media the gripes of the "real" prisoners. And much to the surprise of many civil libertarians, the foremost gripes were directed against rehabilitation in general and indeterminate sentencing in particular. Indeed, the Attica Report concluded that "the operation of the parole system was a primary source of tension and bitterness within the walls."

The tension reflects a larger problem: Rehabilitation simply has not worked. A recent survey of more than 200 studies of rehabilitation came to the discouraging conclusion that we have "very little reason" to believe that recidivism can be reduced by any of the currently employed rehabilitative techniques. This is not to say that occupational and educational programs should not be provided to prisoners who choose to avail themselves of such opportunities; it is to suggest that such programs should neither be coercively imposed on prisoners nor used as a justification for added confinement.

There is also widespread agreement that there is a clear relationship between the fact that many defendants who are sentenced to prison today receive extremely long sentences, and the fact that many convicted serious criminals receive no imprisonment at all. The primary reason so many serious criminals avoid imprisonment today is the severely overcrowded condition of most urban courts and places of confinement: The crowded court dockets force prosecutors to accept pleas of guilty in exchange for reduced charges or recommendations that result in probationary sentences; and the crowded prisons place pressure on the judges to use imprisonment as a last resort.



A recent New York Times study of prison populations in the South disclosed that in Florida, for example, prisons are so overcrowded that new prisoners are being locked into converted warehouses and herded behind Cyclone fences in Army tents. The average sentence for 801 young men (average age: 22) at one Florida correctional institution was 17½ years, with 177 of them serving life sentences. (In many parts of the world, the maximum permissible term of imprisonment is 15 years.) The consequence of high sentences and overflow of prison populations is that judges and parole boards are putting more and more convicted felons "back onto the streets," simply because there is no more room for them in state facilities. In October of this year, the Georgia parole board—in a desperate attempt to defuse the "powder keg" of overcrowded prisons—simply cut one year off the sentence of most prisoners.

These conditions have given rise to a call for the imposition of some imprisonment on a larger number of serious offenders even if that requires that those who are imprisoned serve shorter terms. President Ford told Congress that in his view "certainty of confinement" is more important than severity or length of confinement. This view, shared by liberals and conservatives alike, is emerging as the key element in proposals for sentencing reform.

It is being recognized as a fact of life that we simply cannot continue to impose prison sentences that are as long as those currently imposed and served and at the same time expect judges to imprison a larger number of serious felons. In order to have our cake and eat it too, there would have to be a significant increase in prison populations and a monumental expansion of prison plants—which is unlikely to occur in the current state of our economy. There simply has to be a trade-off of some kind between the length of imprisonment and the certainty of imprisonment.

In the last analysis, however, it is extremely unlikely that either "flat-time" or "mandatory" sentencing will emerge as an acceptable general solution to the sentencing dilemma. Flat-time sentencing is simply too extreme a remedy; by eliminating

flexibility and requiring judges to impose the identical sentence on every single defendant convicted under the same statute, flat-time sentencing threatens to create a system so automatic that it will produce major injustices of its own. It is simply impossible to come up with a single just sentence for all armed robbers, for all burglars, for all first-degree murderers. Some degree of flexibility, both at the sentencing and parole stage, has to remain in order for the system to maintain credibility.

Mandatory minimum sentencing is not a general solution either, since it deals only with discretion at the minimum end of the statutory spectrum and not with discretion at the maximum end. It addresses only the floor, not the house itself, or the ceiling.

Moreover, there is mounting evidence that rigidly fixed sentences simply do not work: Ways are found to circumvent them by prosecutors, judges and juries. In Massachusetts, for example, judges have contrived reasons for freeing otherwise "law-abiding" citizens who have run afoul of the mandatory one-year gun-control law. As one criminal lawyer put it: "Judges who had never before heard of the Constitution are now declaring searches to be illegal every time a gun is found in a white man's suit jacket." In states that have adopted mandatory death sentences for murder, prosecutors are reducing charges, and juries are returning "manslaughter" verdicts in cases where the death penalty is deemed inappropriate.

What is needed is an approach that steers a delicate course between the Scylla of glaring disparity and the Charybdis of inhumane equality—an approach that permits the sentencing judge and parole board some limited discretion to tailor the punishment to the particular criminal and his crime without producing significant disparities between similarly situated defendants. Recently, a task force of the Twentieth Century Fund, chaired by former Gov. Edmund (Pat) Brown of California and consisting of judges, academics, practicing lawyers, probation officials and a police chief, convened to recommend changes to the present system. Among the deliberation is a kind of "presumptive sentencer

would not only decide the minimum and maximum for a given crime; it would also decide what the fairly typical first offender convicted under the statute should receive. For example, a very large proportion of armed robberies are committed by unmarried males in their early 20's who never finished high school and who have been unemployed for more than a year. The robbery typically consists of an entry into a local store late at night with a loaded pistol; the store clerk and a few customers are frightened but not otherwise injured, and the robber takes several hundred dollars. Focusing on that fairly typical armed robbery, rather than on the atypically horrible or atypically sympathetic case, the legislature would decide that, say, two years' imprisonment should be the presumptive sentence for first offenders convicted of this kind of robbery. The legislature would also decide that for each prior conviction, the presumptive sentence should be increased by a fixed percentage, say, 25 percent. (The presumptive sentence for an armed robber with one "prior" would thus become two and a half years.) The trial judge would have the power to raise or lower the presumptive sentence by a given percentage based on the presence of legislatively specified mitigating or aggravating factors. He would also have the power, in extraordinary cases, to impose any sentence up to the maximum and down to the minimum, but he would have the burden of justifying in writing any departure from the range of presumptive sentences. Moreover, on appeal there would be a presumption against any such departure and in favor of a sentence within the presumptive range. This would place significant pressures on sentencing judges to impose sentences within the presumptive range, while leaving them the flexibility to go outside it in truly extraordinary cases.

The nature of the parole board would also be changed fundamentally: The board would no longer engage in the normative task of deciding the duration of the confinement, as it does under indeterminate sentencing laws; instead, it would be converted to an expert agency designed to help the inmate in his transition from prisoner to outside citizen.

The upshot of this presumptive-sentencing scheme would be to move in the direction of flat-time and mandatory minimum sentencing without eliminating all discretion. It is expected that the vast majority of sentences for a given degree of crime would cluster about the legislatively prescribed presumptive sentence. It is also expected that under presumptive sentencing a far greater number of serious criminals would be imprisoned but that the median duration of such imprisonment would be reduced.

In the end, neither this nor any other solution to the sentencing dilemma will prove to be a panacea. Discretion and disparity will not be eliminated: Policemen will still decide whom to arrest; prosecutors will still engage in plea-bargaining and Presidents and Governors will still pardon and commute. But a major source of discontent and unfairness will be regulated.

It now appears as if this sort of reform will be forthcoming. The only possible barrier might be the combined paranoia of liberals who suspect that any proposal supported by conservatives must be a disguised form of "repression" and of conservatives who believe that any change championed by liberals must be "soft on crime." The truth is that the movement toward more legislatively fixed sentences—whether they be "presumptive," "flat-time" or "mandatory minimum"—is a movement for structural reform. As such it is capable of generating either harsh or soft sentences, depending on how the blanks are filled in by the legislatures.

The quest for the fitting punishment has occupied the collective wisdom of mankind since the beginning of recorded history. The Biblical "eye for an eye" reflects at once the importance of letting the punishment fit the crime and the difficulty of going beyond simplistic symmetry. The pendulum appears now to have swung markedly in the direction of greater certainty and uniformity in sentencing. ☐

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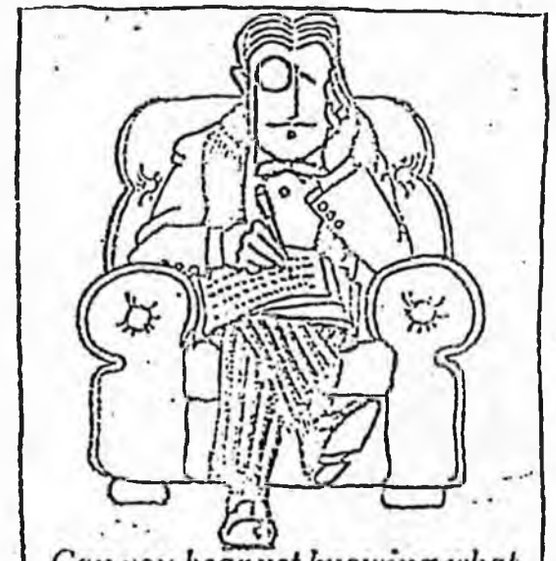

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CRIMINAL DIVISION

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March 2, 1976

The Honorable Terry Gardiner,
Chairman
House Judiciary Committee
Pouch U
Juneau, Alaska 99811

Re: Sentencing Legislation

Dear Representative Gardiner:

At the recent hearings, Representative Parr and yourself raised two points regarding the Governor's determinate sentencing bill. Both points were oversights on my part and if deemed appropriate, the committee should consider the following amendments to rectify the problem.

(1) Representative Parr's point on granting parole under Subsection 33.15.180(b) -- Subsection 12.55.050(d)(1) should be amended to read as follows:

"(1) imprisonment may not be suspended under AS 12.55.080 and probation or parole may not be granted."

(2) Your point regarding what is half of a life sentence, defining it statutorily as 99 years seems appropriate. Even if the offender gets half and under the most liberal administration of good time (one for one) the offender would serve 25 years. An amendment should read:

> Subsection 12.55.050(c)(3) a conviction which authorizes a maximum term of imprisonment of life shall be considered as having a term of imprisonment of 99 years.

If you have any further questions, please feel free to contact me.

Very truly yours,

AVRUM M. GROSS
ATTORNEY GENERAL

DANIEL W. HICKEY
DEPUTY ATTORNEY GENERAL

By: Patrick W. Conheady
Patrick W. Conheady
Legal Assistant

PWC:gm

1. in
2. det
3. prot

Au Gross

1. 50% recidivism 87% Nationwide
2. Rehab doesn't work
   grow older commit less crime

Why should judge send someone to jail
when they don't rehabilitate

inequities of sentencing

indeterminate sentencing - Parole Board make sentences
coming of Parole Board

Sentencing in a deterrence
1. Sweden - drunk driving

6% committed 50% more offenses before 18
Small number of people commit majority of crimes

Det sentencing - not Mandatory - will get in
Rehab because he wants to for himself

What happens to Family House
Defer Prosecution on 2nd offense

Whats most imp — ① det sentencing - parole Board
② Mandatory Minimums

Sentencing is determinate
1. Sweden - driving while intoxicated - felonious character though?

How about defining felonies in bill not all

Did you analyze affect on jail capacity?
what is our present rate of occupancy?

Did you analyze existing sentencing
to compare to your proposal?

448 — 545

Determinate Sentencing

GOVERNOR WALKER'S PROPOSED JUSTICE MODEL

An Analysis of Its Impact

by the

JOHN HOWARD ASSOCIATION
67 East Madison Street
Chicago, Illinois 60603

(312) 263-1901

July, 1975

INTRODUCTION

In announcing proposed revisions to the criminal justice system in Illinois on February 18, 1975, Governor Walker requested that the public as well as law enforcement, court and corrections personnel study and respond to his proposal. In light of this request, the John Howard Association would like to comment on three elements at the present time: Probation, Determinate Sentencing and Parole. Comments regarding other aspects of Governor Walker's recommendations will be forthcoming.

In general, the Association found the Proposal to contain many progressive and worthwhile recommendations. However, the Association is of the opinion that the proposal tends to be both somewhat idealistic and unrealistic in regard to the reality of prisons, parole and probation. For example, we cannot support the apparent assumption of increased effectiveness of the probation system due mainly to a change in its name to "mandatory supervision". In addition, some of the recommendations are inconsistent with the findings of sound correctional studies and reports, indicating limited research on some important issues. The following comments reveal more specifically what the Association believes to be the strengths and weaknesses of the proposal in regard to probation, determinate sentencing and parole.

PROBATION SERVICES

The Proposal recommends that:

1. Adult probation services be transferred to and administered by a newly created Bureau of Community Safety within the Illinois Department of Corrections.

2. Juvenile probation services and the preparation of adult pre-sentence investigation reports and juvenile court social studies be administered under the

through the establishment of circuit-wide departments of court

It is recommended that the judiciary establish merit criteria for employment and that the Supreme Court be given power to set training and educational requirements for all circuit court services employees.

3. The preparation of pre-sentence investigation reports in all felony cases and in misdemeanor cases involving a prison sentence in excess of 90 days be mandatory. Extensive record keeping and reporting requirements are also imposed.

It is evident from numerous studies that the probation services in Illinois are, in general, of poor quality, influenced by politics and a step-child of the criminal justice system. The need for improvements is obvious, and while Governor Walker's proposal represents a positive step toward that improvement, it is incomplete since the recommendations are not sufficiently comprehensive.

The John Howard Association, the National Council on Crime and Delinquency, the League of Women Voters, the Junior League of Evanston, and other interested organizations and individuals have long advocated statewide funding and administration of the adult and juvenile probation system in Illinois. This system would be an efficient and effective method to insure the development of uniform practices, standards of performance, criteria for hiring, standardized training, and adequate probation coverage throughout the state. The National Advisory Commission on Criminal Justice Standards and Goals, along with many other national standard setting organizations have recommended state administered probation services for these very same reasons.

The Governor's proposal would result in a fragmentation of administration and funding of probation services and would create a "splitting" of pre-sentence investigation and probation supervision functions. Accordingly, it is the recommendation of the John Howard Association that such a program would be immeasurably strengthened by:

1. The establishment of a statewide system of adult and juvenile probation services, and
2. The new system of adult and juvenile probation services should be administered and funded by the Illinois Department of Corrections.

The John Howard Association strongly endorses Governor Walker's recommendation that pre-sentence investigation reports be mandatory in all felony and selected misdemeanor cases.

DETERMINATE SENTENCING - ABOLITION OF PAROLE

One of the most significant and far reaching aspects of the proposal is in the area of sentencing practices. The proposal offers to:

> Abolish indeterminate prison sentences and replace them with fixed, flat-time penalties. Narrow the range of such sentences, so that all offenders receive roughly comparable sentences. Establish a range of longer, determinate sentences, to be employed in aggravated cases.[1]

These recommendations were made in an attempt to correct significant problems: Inmates are "...not sentenced to a definite period of imprisonment..."[2] and "...perceived vagaries..." and arbitrariness "...of the paroling process contribute tension and unrest in our correctional facilities."[3] These recommenda-

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1/ Commentary on Determinate Sentencing - An Overview, Unpublished manuscript, Illinois Law Enforcement Commission, 1975, p. 43.

2/ Ibid., p. 2

3/ Ibid., p. 7

[illegible] to eliminate apparent abuses in sentencing: Offenders [illegible] to wide-ranging periods of incarceration when [illegible] similar conditions and circumstances.

[illegible] Howard Association recognizes that the proposal appropriately identifies several significant problems inherent in the sentencing of inmates. However, the Association sees major defects in the solutions offered to correct these problems.

Under the recommendations in the Governor's proposal, felony offenders would serve longer prison sentences than they do at present. Naturally, this would result in a substantial increase in the prison population, and it is the opinion of the Association that there are too many people currently held in Illinois prisons whose rehabilitation does not require or warrant imprisonment. It is a well-documented and almost universally recognized that the sentences imposed in the United States are the highest in the Western world. In addition, researched and reported evidence shows that longer prison terms do not lead to better parole performance.[4]

Also, if implemented, the Governor's proposal would, in all probability, require extensive expansion of existing facilities or the construction of new facilities because the rated capacity of Illinois prisons is, at present, 7,400 with the actual prison population being approximately 7,000.

Another weakness in the proposal's solution relates to cost. For instance, Illinois parolees released during 1971-1973 would have served approximately 6,400 man years of additional prison time over a three-year period if they had been sentenced according to the provisions contained in the Governor's proposal

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4/ Gottfredson, D. M., M. G. Neithercutt, J. Nuffield, and V. O'Leary, Four Thousand Lifetimes: A Study of Time Served and Parole Outcomes, Davis, California: NCCD Research Center, June 1973.

[illegible] A 5,400 man-year increase in [illegible] period would cost taxpayers an additional [illegible]. This amount does not include monies that may be required for new [illegible] remodeling of existing facilities and facility expansion.

The proposal also recommends that we:

> Abolish parole, but replace it with a good-time credit of one day off of his (inmate's) sentence for each infraction-free day he spends in custody, so that each offender becomes directly responsible for the consequences of his own behavior. Retain -- indeed strengthen and expand -- needed rehabilitative services, but divorce participation in them from the release process.[6]

The recommendation that parole be abolisned is based upon the assumption that parole does not work, that parole is not an effective crime reduction and prevention device, and that the paroling process is capricious, vague and filled with uncertainties. With respect to the functioning of an individual parole board, the proposal may be correct. However, with respect to the proper functioning of parole, the proposal is, in our opinion, unsound.

The uniform Parole Report Program of the National Council on Crime and Delinquency has been following the outcomes of parolees throughout the United States since release year 1965. The statistics show that if the task of parole is to retain people in the community for a time, rather than return them to prison,

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5/ According to figures furnished by the Illinois Department of Corrections, it cost approximately $7,000 to maintain an inmate in an Illinois prison for one year.

6/ Op. Cit., Commentary on Determinate Sentencing - An Overview. p. 43.

[illegible] parolees released in 1972, followed to the end of [illegible] supervision or to their first anniversary of parole release, [illegible] "success" rate (success meaning no problems leading to parole violation. [illegible] included all those who were not returned to prison, the success rate was [illegible]. Not only is this a high success rate, but it has climbed steadily. The two-year follow-up success rate is 69%; it too, has risen regularly since 1968. The three-year success rate is 66% for 1969, the last year on which data has been published. This data suggests that the system works and is improving with time.

With respect to Illinois, the Uniform Parole Reports indicate that the success rate at the end of one year for parolees released in 1973 was 85%. For parolees released in 1972, the success rate after one year was 83%. For parolees released in 1972, the two-year success rate was 79%.

The proposal's contention that parole is not effective as a crime prevention device,[7] on either a state or national basis, must be exposed as being inconsistent with factual evidence. On June 30, 1974, there were nearly 185,267 active parolees in the United States. If every one of these parolees had committed an index crime in 1974, they would have accounted for only 2% of the known index crimes. We are confident,and the data clearly established, that over 70% of the parolees committed no new known crimes.

7/ Op. Cit., Commentary on Determinate Sentencing - An Overview, p. 11.

8/ "Number on Parole -- 1974," Newsletter, Uniform Parole Reports, Davis, California: NCCD Research Center, p. 5.

The Commission recommends that:

Sentencing in criminal cases in Illinois should conform to standards promulgated by the National Advisory Commission on Criminal Justice Standards and Goals. Specifically, Standard 5.2, Sentencing the Non-Dangerous Offender and 5.3, Sentencing to Extended Terms should be implemented. See attached copies of these Standards.

Standard 5.2, Sentencing the Non-Dangerous Offender, calls for the maximum sentence for any offender not specifically found to represent danger to others to a period not to exceed five years for felonies other than murder. No minimum sentence should be authorized by the legislature. The sentencing court should be authorized to propose a maximum sentence less than that provided by statute. It mandates the establishing of criteria for sentencing and suggests what the criteria should include.

Standard 5.3, Sentencing to Extended Terms, calls for a separate provision for sentencing offenders when, in the interest of public protection, it is considered necessary to incarcerate them for substantial periods of time. It identifies provisions to be included in the decision, e.g.,

(a) Authority for judicial imposition of extended term of not more than 25 years for (1) a persistent felony offender, (2) a professional criminal, or (3) a dangerous offender.

(b) Definition of a persistent felony offender.

(c) Definition of a professional criminal.

(d) Definition of a dangerous offender.

(e) Authority for court to impose a minimum sentence to be served

prior to eligibility for parole not to exceed one-third of the maximum sentence imposed or more than three years.

2. A system be established within the judiciary to review all sentences of incarceration in order to ensure that sentences are fair and equitable.

3. Parole services not be abolished and that parole and other reintegration and aftercare services be made available to all released offenders.

4. A system for ensuring the early release of offenders be maintained in addition to that which is based upon the accumulation of good time credits.

APPENDIX A

STANDARD 5.2

SENTENCING THE NON-DANGEROUS OFFENDER

Criminal code revisions should include a provision that the maximum sentence for any offender not specifically found to represent a substantial danger to others should not exceed five years for felonies other than murder. No minimum sentence should be authorized by the legislature.

The sentencing court should be authorized to impose a maximum sentence less than that provided by statute.

Criteria should be established for sentencing offenders. Such criteria should include:

1. A requirement that the least drastic sentencing alternative be imposed that is consistent with public safety. The court should impose the first of the following alternatives that will reasonably protect the public safety:

   (a) Unconditional release.
   (b) Conditional release.
   (c) A fine.
   (d) Release under supervision in the community.
   (e) Sentence to a halfway house or other residential facility located in the community.
   (f) Sentence to partial confinement with liberty to work or participate in training or education during all but leisure time.
   (g) Total confinement in a correctional facility.

2. A provision against the use of confinement as an appropriate disposition unless affirmative justification is shown on the record. Factors that would justify confinement may include:

   (a) There is undue risk that the offender will commit another crime if not confined.
   (b) The offender is in need of correctional services that can be provided effectively only in an institutional setting, and such services are reasonably available.
   (c) Any other alternative will depreciate the seriousness of the offense.

3. Weighting of the following in favor of withholding a disposition of incarceration:

   (a) The offender's criminal conduct neither caused nor actually threatened serious harm.
   (b) The offender did not contemplate or intend that his criminal conduct would cause or threaten serious harm.
   (c) The offender acted under strong provocation.
   (d) There were substantial grounds tending to excuse or justify the offender's criminal conduct, though failing to establish defense.
   (e) The offender had led a law-abiding life for a substantial period of time before commission of the present crime.

(i) The offender's conduct was the result of circumstances unlikely to recur.

(j) The character, history, and attitudes of the offender indicate that he is unlikely to commit another crime.

(k) Imprisonment of the offender would entail undue hardship to dependents.

(l) The offender is elderly or in poor health.

(m) The correctional programs within the institutions to which the offenders would be sent are inappropriate to his particular needs or would not likely be of benefit to him.

APPENDIX B

STANDARD 5.3

SENTENCING TO EXTENDED TERMS

State penal code revisions should contain separate provision for sentencing offenders when, in the interest of public protection, it is considered necessary to incapacitate them for substantial periods of time.

The following provisions should be included:

1. Authority for the judicial imposition of an extended term of confinement of not more than 25 years, except for murder, when the court finds the incarceration of the defendant for a term longer than five years is required for the protection of the public and that the defendant is (a) a persistent felony offender. (b) a professional criminal, or (c) a dangerous offender.

2. Definition of a persistent felony offender as a person over 21 years of age who stands convicted of a felony for the third time. At least one of the prior felonies should have been committed within the five years preceding the commission of the offense for which the offender is being sentenced. At least two of the three felonies should be offenses involving the infliction, or attempted or threatened infliction, of serious bodily harm on another.

3. Definition of a professional criminal as a person over 21 years of age, who stands convicted of a felony that was committed as part of a continuing illegal business in which he acted in concert with other persons and occupied a position of management, or was an executor of violence. An offender should not be found to be a professional criminal unless the circumstances of the offense for which he stands convicted show that he has knowingly devoted himself to criminal activity as a major source of his livelihood or unless it appears that he has substantial income or resources that do not appear to be from a source other than criminal activity.

4. Definition of a dangerous offender as a person over 21 years of age whose criminal conduct is found by the court to be characterized by: (a) a patterns of repetitive behavior which poses a serious threat to the safety of others, (b) a pattern of persistent aggressive behavior with heedless indifference to the consequences, or (c) a particularly heinous offense involving the threat or infliction of serious bodily injury.

5. Authority for the court to impose a minimum sentence to be served prior to eligibility for parole. The minimum sentence should be limited to those situations in which the community requires reassurance as to the continued confinement of the offender. It should not exceed one-third of the maximum sentence imposed or more than three years.

6. Authority for the sentencing court to permit the [illegible] offender sentenced to a minimum term prior to service of [illegible] upon request of the board of parole.

7. Authority for the sentencing court in lieu of the imposition of a [illegible] to recommend to the board of parole at time of sentencing that the offender not be paroled until a given period of time has been served.

APPENDIX C

Addendum
TABLE VIII
Uniform Parole Reports
Parole Performance Percentages
ONE Year Follow-up
1968-1973
Illinois Male

	1968	1969	1970	1971	1972	1973
Continued on Parole	68%	73%	80%	81%	83%	85%
Absconder	5%	5%	5%	3%	4%	4%
Return to Prison-Technical	22%	18%	11%	11%	9%	6%
Return to Prison-New Commitment	5%	5%	4%	5%	4%	5%
Total Cases	2,076	1,735	2,130	1,749	1,790	1,654

Appendum
TABLE IX
Uniform Parole Reports
Parole Performance Percentages
TWO Year Follow-up
1968-1972
Illinois Male

Parole Outcome	1968	1969	1970	1971	1972
Continued on Parole	62%	68%	74%	76%	79%
Absconder	4%	4%	4%	3%	4%
Return to Prison-Technical	27%	22%	15%	14%	11%
Return to Prison-New Commitment	7%	6%	6%	7%	6%
Total Cases	2,075	1,735	2,130	1,749	1,792

file with det sentencing

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CHIEF JUSTICE
SUPREME COURT

Alaska Judicial Council

303 K STREET
ANCHORAGE, ALASKA
99501

EXECUTIVE DIRECTOR
MICHAEL L. RUBINSTEIN

January 20, 1976

Rep. Terry Gardiner
House of Representatives
Pouch V
Juneau, Alaska 99801

Dear Terry:

Enclosed is a report prepared under contract for the Alaska Judicial Council pursuant to a 1974 grant from the United States Department of Justice Law Enforcement Assistance Administration, (LEAA). This report was included as a follow-up to the Council's initial statistical study, Sentencing in Alaska: A Description of the Process and Summary of Statistical Data for 1973. (March 1975) The original, comprehensive study, was prepared to assist the Legislature by developing a data-base which could then be utilized in drafting criminal legislation. The enclosed follow-up study was requested because the possibility of racial disparity in sentencing was raised by the data analyzed in the original study.

Unfortunately, (or fortunately) there were only 42 cases in Anchorage in which defendants received sentences of five years or longer; not really enough cases for a good sample. For this reason, although as Chief Justice Boochever's letter to the judges indicates, "the reports give rise to an appearance of racial discrimination", they are not conclusive in this regard.

Sincerely,

Michael Rubinstein

Michael L. Rubinstein

MLR/mb
Enclosure

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Alaska Judicial Council

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99501

EXECUTIVE DIRECTOR
MICHAEL L. RUBINSTEIN

January 20, 1976

Hon. Monroe N. Clayton
District Court Judge
Fourth Judicial District
604 Barnette
Fairbanks, Alaska 99701

Dear Judge Clayton:

This letter is being written at the request of the Alaska Judicial Council. The Council was funded in 1974 by the United States Justice Department Law Enforcement Assistance Administration to conduct a study of the sentencing process in Alaska. A comprehensive statistical analysis of the 1973 superior court felony cases in Anchorage, Fairbanks and Juneau was completed. This report indicates that a disproportionate number of blacks and Alaskan Natives failed to receive probation and that blacks received higher sentences than other groups. A follow-up report was made in an endeavor to ascertain whether there was justification for the higher percentage of black defendants receiving sentences of five years or greater when compared with the low percentage of Caucasians receiving similar sentences. I am enclosing a copy of the analysis and conclusions of this later report. The other reports are on file in the office of the Alaska Judicial Council at Anchorage and will be made available for your study upon request.

While the reports are not necessarily conclusive, they do give rise to an appearance of racial discrimination being involved in some sentencing procedures. The Council is confident that no Alaskan judge consciously discriminates against any group because of race, creed or color. As a result of the studies, however, there is concern that unconscious bias may creep into the sentencing process in certain instances. It is for this reason that I have been directed to write to each of the judges in the state advising

them of this situation so that they may consciously guard against any possible tendency toward such discimination.

Knowing the high caliber of the Alaska judiciary, I am confident that all members seek to comply with their oath in upholding the Constitution of the State of Alaska, including art. I, sec. 1 which provides that "all persons are equal and entitled to equal rights, opportunities and protection under the law", and that every effort will be made to avoid discrimination or the appearance of discrimination in all judicial functions.

Sincerely yours,

Robert Boochever
Chairman, Ex Officio

Enclosure
cc: Supreme Court Justices

Part III - ANALYSIS AND CONCLUSIONS

This paper began with the purpose of focusing on two poincs: whether or not the persons who received long sentences in 1973 had committed "particularly serious offenses" or were "dangerous offenders", "professional criminals", or "the worst type of offenders"; and whether, given these criteria, the high percentage of Black defendants who received sentences of five years or greater was as deserving of these sentences as the low percentage of Caucasians. Many facts and circumstances have been set forth in the preceding pages in order that an analysis of these questions can be attempted.

It may be instructive first to look at the supreme court's sentencing criteria. Since the sentence appeal law was enacted, effective January 1, 1973*, over 60 defendants have appealed their sentences to the supreme court.[13] (Approximately 70% of these appeals have resulted in affirmation of the lower court sentence, approximately 20% have been reversed on the grounds of excessiveness, and only 2 sentences, less than 4%, have been disapproved as too lenient.)[14] In the various supreme court opinions explaining its decisions in these cases, guidelines for sentencing have been set forth.

As noted, the court has written that, in general, maximum sentences need not exceed five years, except for particularly serious offenses, dangerous offenders, and professional criminals, and that the maximum sentence for a crime ought to be given only to the worst type of offender.[15] Regarding the definition of "serious offense", the court has noted in a

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* AS 12.55.120

case in which it affirmed a rape sentence that "Forcible rape and robbery rank among the most serious crimes."[16] In another case, where the defendant was convicted of assault with a dangerous weapon, (and in another very recent sentence affirmation for a rape case), the court has expressed the view that violent crimes involving physical injury to innocent people are to be regarded as the most serious offenses, and are not to be treated lightly.[17]

In several other cases the court has commented on the terms maximum sentence and "worst type of offender". In 1971 in affirming a maximum sentence, the court said a maximum sentence generally was not appropriate for a single violation of a law which was not surrounded by aggravating circumstances, such as a prior record or the defendant's having committed the offense while on bail, probation or parole.[18] The court further said in Galaktionoff v. State, 486 P.2d 919, 924 (Alaska 1971), in overturning a maximum sentence for petty larceny, that the following factors should be considered in assessing whether the defendant was the worst type of offender: the defendant's age; the defendant's previous offenses, if any; whether the (multiple) offenses occurred within only a single criminal transaction; and the value of the property taken. The terms "dangerous offender" and "professional criminal" have not been defined by the supreme court.

As noted earlier in this report, most of the crimes of which the 42 defendants were convicted were quite serious

offenses, although not all were rape or robbery, and not all involved harm to victims. In fact, only 3 of the 42 were convicted of rape (7%) and 13 convicted of robbery (31%), for a total of 38%.

Many of the defendants were young. It already has been noted that over half, 26 defendants or 63%, were under age 25. Eighteen were only 21 or younger, fully 43%.

Many of these defendants did not have prior records or had records of very little consequence, such as traffic offenses or misdemeanor convictions that had not resulted in jail. Nineteen defendants, or 46%, fit this description.

Many defendants also were involved in only a single criminal transaction, although the single transaction often was very serious. Eighteen defendants, or 43%, committed only a single criminal act. However, it should be noted that eight of the defendants involved in only a single transaction in 1973 had prior felony records.

With regard to the fourth guideline, the value of property injured or stolen, most of the crimes for these 1973 defendants involved harm of some value (usually over $50) if they involved harm to property.

These sentencing guides also can be compared along racial lines. (Only defendants in Anchorage are included in the following computations, as the desire to focus on racial comparisons arises from Blacks sentenced there.) Of all 12 Caucasians receiving sentences of five years or greater, 7 or 58% were 25 years old or younger, and 6 or 50% were 21 or

under. Of all 12 Blacks receiving sentences of five years or greater, 8 or 67% were 25 or younger; but only 4 or 33% were 21 or under. Thus more young Caucasians received long sentences than Blacks.

Four of the Caucasians (33%) had no prior record (or no prior record of any consequence). Eight of the Blacks (67%) had no prior record. Thus twice as many Blacks as Caucasians who had no prior record received long sentences.

Five of the Caucasians (42%) had been involved in only a single criminal transaction (including any offenses committed later while the defendant was on bail but had not yet been sentenced). Only 3 of the Blacks (25%) were involved in only one transaction.*

As noted previously (on p. 18), seven of the Caucasians (58%) did physical harm to a victim, while only one out of all 12 Blacks (the defendant who raped two women) could be said to have done physical harm to his victim. All of the homicides and aggravated assaults that resulted in long sentences were committed by Caucasian (or Native Alaskan) males.

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* Some of the sentences appear to have been based on the judge's consideration that the defendant probably had committed other offenses and merely not ben caught, although convicted of only one. However, the Supreme Court clearly has said that such consideration is not proper in sentencing. In Galaktionoff v. State, 486 P.2d 919, 924 (Alaska 1971), where the court was reviewing a judge's consideration that a defendant probably was guilty of more serious offenses than the one charged, the court said that the danger inherent in giving undue weight to such factors should be readily apparent to the judge, and that absent a conviction even an indictment is absolutely no evidence of guilty conduct.

The main offense which was committed most often by these Anchorage defendants, both Caucasian and Black, was robbery. Four of the Caucasians and 8 of the Blacks received their long sentence for robbery. All but one of the Caucasians receiving long sentences for robbery had prior felony records. Only one of the Blacks receiving a long sentence for robbery had a prior felony record.

In order to analyze whether these 7 Blacks received unduly harsh sentences, these sentences are compared below with other Anchorage sentences for robbery (that did not exceed 5 years). Although it would not be feasible to compare for each of the 42 defendants all other sentences meted out to other defendants for the same offense, it is possible to compare all of one kind of sentence for a select group of individuals. Because most of the Blacks in question were first offenders, the description below is of all 1973 defendants who committed robbery, who were first offenders or had no prior record of any consequence, but who did not receive sentences of 5 years or greater.

Firstly, it can be seen that 9 Caucasian first offenders received sentences of less than 5 years for robbery in 1973. Only 4 Blacks received such sentences. Moreover, only one of these Blacks was sentenced to less than 1-1/2 years in jail, whereas seven of the 9 Caucasians (78%) were sentenced to one year or less in jail. (Two were placed on probation.)

All defendants on Table IV, Caucasian and

TABLE IV

DEFENDANTS≠ CONVICTED OF ROBBERY WHO RECEIVED
LESS THAN A FIVE-YEAR SENTENCE
(Anchorage only - no robbery convictions in Fairbanks or Juneau)

SEX	RACE	AGE	PRIOR RECORD	SENTENCE	JUDGE	SPECIAL CIRCUMSTANCES
F	Cauc.	20	One prior misdemeanor	Probation (3 years SIS)*	Carlson	Robbed victim of watch and $50
M	Cauc.	21	No prior record	5 months (plus 5 years SIS)	Burke	Robbed person of watch and $50 at gunpoint; repeat bail recidivist
M	Cauc.	19	No prior record	1 year (plus 2 suspended)	Kalamarides	Military; liquor store robbery at gunpoint; co-defendant of defendants #25-27, Table II
M	Cauc.	21	Less than 6 misdemeanors, no jail time	1 year (plus 2 suspended)	Occhipinti	
M	Cauc.	23	Less than 6 misdemeanors; never served more than 90 days	Probation (2 years SIS)	Burke	Robbed person of money with long-barreled gun; case dismissed in return for defendant pleading guilty to other cases; repeat bail recidivist.
M	Cauc.	18	Minor traffic record	2 years (plus 2 suspended)	Occhipinti	
M	Cauc.	19	No prior record	3 years	Kalamarides	Convicted of 2 counts of robbery, one armed, one against his mother
M	Cauc.	21	No prior record	1 year (plus 4 suspended)	Moody	Turned state's evidence; ordered to make $240 restitution
M	Cauc.	23	Two prior felonies; never been sentenced to more than 90 days	115 days	Carlson	Stole $435 after putting victim in fear with .22 calibre rifle; "Pled down" to petty larceny; drug-related

≠ Defendants with no prior criminal record, or a minor record only.
* Suspended imposition of sentence.

TABLE IV - Continued

SEX	RACE	AGE	PRIOR RECORD	SENTENCE	JUDGE	SPECIAL CIRCUMSTANCES
M	Nat.	25	Less than 6 misdemeanors; no jail time	4 years	Burke	
M	Black	20	Less than 6 misdemeanors; no jail time	1-1/2 years (plus 3-1/2 years suspended)	Buckalew	
M	Black	19	No prior record	60 days (plus 3 years SIS)	Carlson	Military; recidivated on bail; defendant's father (a military officer) appeared on his behalf
M	Black	23	No prior record	3 years (mandatory 1/3)	Occhipinti	Military; drove "get away" car
M	Black	21	No prior record	2 years (plus 3 suspended)	Burke	Military; alcohol treatment recommended

Black, were under age 25. All the Caucasians except one were 21 or younger, and all the Blacks except one were 21 or younger.

None of the Blacks on Table IV were noted as having used a weapon during the robbery (although the fact that the court files did not note a weapon does not necessarily preclude the possibility of their having been one). Five of the Caucasians (56%) were noted as having used a gun.

It thus appears that even among defendants receiving less than 5 years for robbery, Blacks may have been treated more harshly.

Comparing the 9 Caucasians on Table IV with the 7 Blacks (on Table II) who were also "first offenders" but received 5 years or greater, there are some factors possibly justifying apparent disparity. It can be noted that the Blacks were slightly older--one was over 25 and 3 were over 21. Moreover, of the 7 Blacks, 5 (71%) were noted as having used a weapon, compared to 56% of the Caucasians. Five of the 7 Blacks (71%) also were involved in more than one event, whereas only 4 of the Caucasians in Table IV (44%) were involved in more than one criminal transaction.

It should be pointed out that if the 3 young Black defendants (#25-27) who participated in the same liquor store robberies had not received sentences of 5 years or greater but had received lesser sentences, a bit more of the statistical disparity among Blacks and Caucasians on both Table II and Table IV would be removed. However, those three

Blacks did receive sentences of five years or greater. It should be further noted, with regard to those liquor store robberies, that Table IV shows a fourth co-defendant in those cases, who was a Caucasian male, also age 19 with no prior record, and who received a sentence of one year plus two years suspended. (This sentence was imposed by the same judge who sentenced 2 of the 3 Black defendants.) The following analyses of certain other sentencing phenomena may help to show whether the 1973 sentencing results shown in Tables I and II might be considered disparate.

Table V below shows the number and type of defendants who had a trial on the charge for which they received their long sentence, compared to those who accepted plea negotiations. It was noted in several of the preceding Anchorage sentencing narratives that the attorneys or the judge when sentencing a defendant took into account whether or not the defendant had gone to trial.

Out of 30 Anchorage defendants with long sentences, 8 had trials (27%). This figure far exceeds the figure 6% of all convicted felony defendants who had trials in 1973.[19]

In Anchorage, none of the Caucasian males who received sentences of 5 years or greater went to trial. The first report showed the converse--that none of the Caucasian males who went to trial received sentences of 5 years or greater.[20] On the contrary, six of the Blacks who received sentences of 5 years or greater (50%) had gone to trial. The earlier study also reported that all Black males convicted

TABLE V

INCIDENCE OF TRIALS

Fairbanks		
	Number of Defendants Who Went to Trial	Percentage of Defendants
Caucasian Males	1	25%
Nat. Alaskan Males	1	33%
Males, Race Unknown	0	--

Juneau

The one defendant sentenced to five years in Juneau did have a trial.

Anchorage		
	Number of Defendants Who Went to Trial	Percentage of Defendants
Cauc. Females	1	50%
Cauc. Males	0	--
Nat. Alaskan Males	1	25%
Black Males	6	50%

at trial in Anchorage received sentences of 5 years or greater.[21]

However, Table VI below shows that whether or not there was a trial, the majority of all sentences of 5 years or greater statewide, and most of the sentences of 5 years or greater given to Blacks in Anchorage, did not occur without the benefit of a presentence report. Statewide, presentence reports were prepared in 62% of the cases, although this figure varied according to type of defendant and area of the state. In Fairbanks presentence reports were prepared for 92% of defendants receiving long sentences, but for only 50% of the Anchorage defendants. A presentence report was prepared for the one defendant in Juneau.

Among the Anchorage cases, presentence reports were prepared for 75% of the Blacks but for less than 50% of the Caucasians, and for only 33% of the Caucasian males. It might be noted that the higher incidence of presentence reports among Blacks may reflect the fact shown earlier on p. 18 that sentences for Caucasians were "negotiated" more often. (It might also be called to mind that Table II showed that the judge followed the district attorney's recommendation for Caucasians three times, sentenced above it once, and sentenced below it once; and for Blacks the statistics were not very different, the judge following the district attorney's recommendation 4 times and sentencing below it twice.

Table VII shows another factor that could indicate

TABLE VI

INCIDENCE OF PRESENTENCE REPORTS

A. Statewide. 62% of defendants sentenced to 5 years or more in jail received pre-sentence reports.

B. Areas.

Race & Sex	Anchorage	Fairbanks			Juneau	
	No. of defendants for whom report prepared	% of defendants of this race & sex	No.	%	No.	%
Cauc. Female	1	50%	--	--	--	--
Cauc. Male	4	33%	6	100%	--	--
Nat. Alaskan Male	1	25%	3	75%	1	100%
Black Male	9	75%	--	--	--	--
Male, Race Unk.	--	--	1	100%	--	--
	15		10		1	

disparity, the incidence of a judge imposing a required mandatory minimum (usually one-third of the sentence imposed) to be served before parole eligibility.

Statewide, 18 out of the 42 defendants (43%) were required to serve a mandatory minimum. In Fairbanks only 2 defendants (17%) were required to serve a mandatory minimum. The one defendant in Juneau was not required to serve a mandatory minimum.

In Anchorage 60% of the defendants were required to serve a mandatory minimum. However, 67% of Caucasian males were required to serve a mandatory minimum, while only 42% of Black males were. As is noted on the chart, however, 2 of the Caucasian males succeeded in getting their mandatory minimum eliminated, and thus the final situations are not very different. Unfortunately, the earlier report did not contain statistics on what percentage of all defendants receiving jail sentences were required to serve a mandatory minimum.

Sentencing Criteria and Treatment

The very first sentence appeal decision handed down by the supreme court after the sentence appeal law was enacted, State v. Chaney,[22] stated that a trial judge when imposing sentence should consider the following factors: the principles of reformation and the necessity of protecting the public, the objective of rehabilitation of the offender into a non-criminal member of society, isolation of the offender from society to prevent criminal conduct during the period of confinement, deterrence of the offender, deterrence of other

TABLE VII

INCIDENCE OF REQUIRED MANDATORY MINIMUMS

Fairbanks

Only two defendants in Fairbanks who received sentences of 5 years or greater were required to serve a minimum before parole eligibility. One was male, "race unknown," and one was a Caucasian male. One was required to serve one-half of a 30-year sentence before parole eligibility, which sentence is illegal,* and one was required to serve 2 years of a 10-year sentence (less than one-third of the sentence).

Juneau

In Juneau, the one defendant receiving a sentence of 5 years or greater was not required to serve a mandatory minimum.

Anchorage

	Number of Defendants Required to Serve Mandatory One-Third Minimum	Percent
Caucasian Females	1	50%
Caucasian Males	8**	67%
Native Alaskan Males	1	25%
Black Males	5	42%

* At that date the judge was allowed to fix a mandatory minimum to be served before parole eligibility only if it did not exceed more than one-third of the sentence. AS 33.15.230(a)(1). See also Sentencing in Alaska, p. 27 and p. 168.

** 2 eliminated, plus one that was less than one-third.

members of the community who might possess criminal tendencies; and community condemnation of the individual, (also described as "reaffirmation of societal norms for the purpose of maintaining respect for the norms themselves.")[23] The court further noted in a later case that the trial judge must determine the priority and relationship of these objectives in any particular case.[24]

In recent years there has been much debate over these criteria, with special focus on rehabilitation.[25] In the Anchorage sentencing narratives, the so-called "Chaney criteria" were alluded to in various ways by judges when imposing sentence. All of the "goals"--retribution and reaffirmation, deterrence of the offender and others, rehabilitation of the offender, and protections of society--were mentioned frequently as "purposes" of the sentence being imposed (as was punishment, however, which has not been set forth directly by the supreme court as a permissible basis for a sentence).

Although no tally has been made of those rationales for sentencing most frequently expressed by superior court judges, rehabilitation, deterrence, and protection of society were mentioned with regularity by the Anchorage judges.

The number of defendants recommended by the judge to receive rehabilitory treatment was discussed previously at pp. 8, 9, and 19. More defendants in Anchorage than in Fairbanks were recommended for treatment, and in Anchorage more Caucasians than Blacks were recommended for treatment. Both of the women and all 4 of the Native Alaskan males were

noted as having either an alcohol or drug problem, but only 2, both Native males, were recommended for treatment. Although in the Anchorage narratives more Caucasians than Blacks were described as having specific problems that could be "treated", it is difficult to believe that there could be a single person who needed a 5-year sentence but who did not need "treatment", in some sense.

Occasionally a judge recommended a certain correctional institution as a place where treatment should be provided. However, eight times that a judge recommended, or attached as a condition of the sentence, a certain institution or rehabilitation house such as Family House, the defendant was not placed there (or in an equivalent facility) by the Division of Corrections (or the defendant left the institution voluntarily, as was the case with 3 or 4 defendants sent to Family House). In only two cases was there a proceeding to resentence the defendant or modify his sentence once it was clear that the recommendation was not going to be followed.

The supreme court has set the rehabilitation of offenders high on the list of criteria to be considered at the time of sentencing. However, one obvious problem was expressed very succinctly by Judge Hanson when he said that the legislature has realized that persons need treatment but has not set up any way for them to get it. Especially when a defendant is sentenced to a long jail term, as were the defendants in this report, the lack of correlation between the defendant's need for treatment, the judge's recommendation for treatment, and the defendant's actual receipt of treatment is extremely

burdensome not only to the courts and the defendant, but to society who must support these persons while confined and deal with them when they are released. (It might further be noted that 7 of the defendants who were sentenced to 5 years or greater to serve in 1973 are, in mid-1975, not even in jail or an institution. Two are on bail pending their appeals, and 5 have finished serving time and are on parole or probation.)

Recommendations

The supreme court has said on numerous occasions that mere disparity in sentencing is not undesirable, and that on the contrary, disparity helps to achieve the purposes of sentencing. Rather, the key word in analyzing disparity in sentencing is whether or not it is justifiable.[26] While the supreme court will not review most of the sentences that were discussed here it is the recommendation of this report that the supreme court actively utilize the sentence appeal process to further expound the criteria it has set forth previously. Five years have passed since the sentence appeal law was enacted, and even though the court has said that sentences greater than 5 years should be given only to "the worst type of offenders" or only for "particularly serious offenses, dangerous offenders, and professional criminals", these terms have not been well enough defined. It has been noted especially that the 7 Black first offenders in Anchorage who received long sentences for robbery did not possess remarkably different characteristics from the 9 Caucasian male first offenders who received sentences of far less than 5 years.

A second proposal resulting from this study is a recommendation for better coordination of correctional activity with the purpose of any long sentence meted out in court. The "treatment" that is to be afforded a defendant during his period of incarceration or isolation must be respected as an integral part of the decision of how long that period need be. Presently the Division of Corrections, not the judge, makes the decision regarding where and how a defendant is to be confined.[27] Although no recommendation is made that this decision should be taken away from the correctional authorities, it is urged that the judge better coordinate his judgment of sentence and treatment recommendation with that of the Division of Corrections (presentence reports now are mandatory for felonies). If the judge's final recommendation is not followed, the judge should be notified forthwith by the Division of Corrections (and not by the defendant, as happened so often in 1973). Upon the DOC's notifying the judge that it cannot follow his recommendations, there should be a mandatory resentencing, subject to the present rules governing sentence modification.

To render the judge's participation in the correctional decision meaningful, judges must have an awareness of programs at existing facilities in the state and of any new developments in the broad field of corrections. Although a certain amount of judicial attention to matters concerning rehabilitation can be focused through participation in seminars and conferences, genuine devotion to theories and practices of rehabilitation or reformation must, in the end, be up to

each individual judge. Committees on judicial qualifications and other persons involved in the selection of judges should be made aware that a judge's interest in and attention to matters of criminal rehabilitation are an important aspect of his judicial abilities.

03-010

DEPARTMENT OF LAW

Intra-Office

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FROM [illegible]

Date 5/26/72

[ ] Approval	[ ] Note & Return
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Remarks:

PROPOSED COMMITTEE SUBSTITUTE FOR CSHB 600 am: A SYNOPSIS

I. OVERVIEW

The proposed committee substitute for CSHB 600 am is a comprehensive bill of limited application instituting a system of presumptive sentencing. The measure, which applies only to individuals convicted of two or more specific violent felonies, adresses one of the major shortcomings in the criminal justice system: just and equitable punishment.

Under the scheme encompassed in the proposed bill, an individual committing a violent felony for the first time is sentenced in accordance with existing law. Provisions for suspended terms of imprisonment, suspended imposition of sentence and probation would remain as alternatives to incarceration. For those sentenced to confinement, parole would be available upon completion of one-third of the sentenced term.

Only when the offender commits a second or subsequent violent felony within a prescribed period would the substantive sentencing provisions become applicable. From the nature of the offense and the offender's prior conduct, the system presumes the offender to be a danger to society, and attendently should be isolated therefrom for a minimum period. Neither the alternatives to imprisonment nor parole would be available to such an offender.

Prior to being sentenced, the offender is permitted to evidence certain circumstances which would mitigate against the presumptive term. For each of the specific factors established, the presumptive term would be automatically reduced by 10%. Similarly, the state can establish extraneous

factors which would be viewed as aggravating the crime committed. Each aggravating factor would automatically enhance the minimum presumptive term by 10%.

Recognizing that justice entails more than a mechanical scheme, the proposed bill gives the sentencing judge the discretion to certify that clear and manifest injustice would result from imposition of the presumptive term. Sentencing of the offender would then become the responsibility of a three-judge sentencing panel.

The three-judge panel would be composed of three superior court judges, designated as members, and two superior court judges, designated as alternates. The alternates would sit as members in the event of disqualification or disability. The panel would be appointed by the chief justice and would serve under rules established by the supreme court.

The panel is charged to consider all the relevant material, including trial transcripts and matters educed at sentencing. In its discretion, the panel may also hear oral testimony. A majority of the panel would then sentence the offender to any term available under the law. Effectively, the offender is no longer subject to the dictates of presumptive sentencing.

The proposed bill also addresses the system of awarding good time in correctional institutions. The present scheme is an amalgam of statutory and meritorious good time which, at best, is confusing to administrators and prisoners alike. The proposed approach allows a prisoner to earn a one day reduction in his period of confinement for each day of

good behavior served. Further, the inmate could only forfeit a maximum of thirty days accrued good time for any one subsequent infraction.

II. SECTIONAL ANALYSIS

Section 1, AS 11.05.150, is a technical amendment to existing law precluding imposition of less than the prescribed penalty for those offenses subject to a presumptive sentence. The proposed substitute differs from CSHB 600 am only in the deletion of the words "et seq.", on line 12.

Section 2, AS 12.55.035(a) mandates minimum presumptive terms of imprisonment for conviction of certain violent felonies.

Subsection (1) allows complete discretion in sentencing for first violent felony offenders. The proposed substitute makes technical changes to the same section in CSHB 600 am as an offender cannot be sentenced "in accordance with" those referenced sections.

Subsection (2) mandates presumptive terms of imprisonment for second offenders. The proposed substitute adds three offenses to the list of violent felony offenses originally contained in CSHB 600 am. Subsections (2)(n) and (2)(o) are substantive crimes and were included as aggravating factors in CSHB 600 am. Subsection (2)(P) adds the additional offenses of assault on a correctional officer. The Division of Corrections felt these crimes should be subject to presumptive terms as a deterrent to prisoner assaults.

Subsection (3) is the same as subsection (2) except that the presumptive terms apply to third or subsequent offenders and the terms have been increased accordingly. In addition to the new subsections (3)(n), 3(o) and 3(p), discussed above, the proposed substitute adds technical language for consistency with subsection (2).

Subsection (b)(1) provides a statute of limitations for consideration of prior felonies. A period of five years must elapse between the date of

discharge from the disposition of the immediately preceding offense, i.e., that date when the offender is no longer subject to any probationary or parole supervision, and the date of the commission of the offense for which sentencing is being rendered. If that five year period has not elapsed, prior violent felony convictions occurring before the "immediately preceding offense" would be considered to make the defendant subject to a presumptive term as a third or subsequent offender.

The proposed substitute differs substantially from CSHB 600 am in this subsection. The latter version allowed the five year period to run until the date of conviction for the immediate offense. This type of language would encourage defendants who faced presumptive sentencing to delay, only for the purpose of avoiding presumptive terms

Subsection (b)(2) provides for consideration of prior violent felonies committed in other jurisdictions.

Subsection (b)(3) provides that multiple convictions arising out of the same transaction would only be considered as a simple prior conviction. This avoids the situation where a defendant is convicted of two separate offenses, e.g., robbery and shooting with intent to kill, which occurred simultaneously, and he would automatically be sentenced as a second offender.

Subsection (c) is further clarification of the mandate of presumptive sentencing. Probation and parole would not be available to those sentenced as second or subsequent offenders.

Subsection (d) allows for judicial discretion in the area of fines, where authorized, and in imposing other conditions beyond the presumptive term when provided by law.

Subsection (e) defines violent felony as those crimes enumerated in subsections (a)(2) and (a)(3).

Except as otherwise noted, subsections (b), (c), (d) and (e) are identical in both the proposed substitute and CSHB 600 am.

Section 12.55.036 is an addition to the proposed substitute, setting up the procedure for determining prior convictions. It is similar to the section approved by the House Judiciary Committee in CSHB 600, except that it provides for separate notice.

A defendant who is subject to a presumptive term as a repeat offender would receive notice that the state will present his prior record. If the defendant denies that he is subject to a presumptive term, the court would hold a hearing on the issue, without a jury. Denial of subjection to a presumptive term is restricted to the issues of whether the prior convictions are those of the offender and whether the five year period provided in section 35(b)(1) has elapsed.

The state must prove these two issues beyond a reasonable doubt.

Section 12.55.037 in the proposed substitute sets out the procedure for considerations and determination of factors in aggravation and mitigation. Although CSHB 600 am contained a similar mechanism, significant substantive changes have been made.

Subsection (a) of the proposed substitute provides for a mandatory decrease or increase in the presumptive term at a rate of 10% for each factor found in mitigation or aggravation. CSHB 600 am allows a permissive adjustment to the term of up to 50% for factors in aggravation or mitigation.

This subsection in the proposed substitute also contains language, consistent with section 35, indicating a sentencing court still retains the

discretion to impose up to the maximum term. CSHB 600 am limited the ability to impose more than the presumptive term, plus 50% in aggravation, to a three-judge court.

Subsection (b) sets out the factors in aggravation.

Subsection (b)(1) makes it a factor in aggravation when a victim sustains great bodily injury. This is similar to the aggravating factor in section 35(a)(1) of CSHB 600 am, except that the proposed substitute requires the factor to be in aggravation to the crime, rather than being an aggravated crime, i.e., the injury is more than a necessary element of the crime. Under CSHB 600 am certain crimes are automatically aggravated and this should have been dealt with by increasing the presumptive term in section 35.

Subsection (b)(2) makes it a factor in aggravation when the offender's actions were deliberately cruel to another person. This is similar to subsection (a)(3) in CSHB 600 am.

Subsection (b)(3) makes it a factor in aggravation to discharge a firearm during the course of the offense and is similar to subsection (a)(2) in CSHB 600 am.

Subsection (b)(4) makes it a factor in aggravation when the offender led a criminal enterprise of three or more persons. It, too, is similar to subsection (a)(6) of CSHB 600 am.

Subsection (b)(5) makes it a factor in aggravation when the victim was incapable of resistance due to age or physical or mental infirmities. This is a "take your victim as you find them" standard from tort law and is similar to subsection (a)(7) of CSHB 600 am.

Subsection (b)(6) makes it a factor in aggravation when during the commission of first degree arson (a dwelling), the dwelling was occupied and the defendant knew or should have known that it was occupied. It is similar to subsection (a)(5) in CSHB 600 am.

Subsection (c) sets out the factors in mitigation.

Subsection (c)(1) makes it a factor in mitigation when the victim of the crime either induced or facilitated its commission. This factor is new to the proposed substitute.

Subsection (c)(2) makes it a factor in mitigation when the criminal act was principally accomplished by another and the defendants conduct manifested extreme caution or concern for the victim. This provision is similar to subsection (b)(4) in CSHB 600 am.

Subsection (c)(3) makes it a factor in mitigation when the defendant did not substantially contribute to the commission of the crime although he would be responsible as an accomplice. It is similar to subsection (b)(3) of CSHB 600 am.

Subsection (c)(4) makes it a factor in mitigation when the defendant acted under a serious provocation from the victim. This differs from subsection (b)(2) of CSHB 600 am in making it applicable only to those crimes where malice is not a necessary element. Serious provocation is a factor in crimes requiring malice which mitigates the substantive offense.

Subsection (c)(5) makes it a factor in mitigation when a youthful defendant is influenced to commit the offense by another, more mature than the defendant. This factor is new to the proposed substitute.

Subsection (c)(6) makes it a factor in mitigation when the conduct of an elderly defendant was a product of physical or mental infirmities resulting from his age. This factor is likewise new in the proposed substitute.

CSHB 600 am contained additional factors in mitigation which are substantive defenses to crime under the law. To bring them in as factors in mitigation would allow a defendant two chances to prove a substantive defense and could result in anamolous results.

Subsection (d) of the proposed substitute allows the sentencing judge discretion, when from the nature and circumstances of the case, clear and manifest injustice would result, to certify this fact to a three-judge panel for sentencing.

This mechanism is provided for in CSHB 600 am but the proposed substitute allows the sentencing judge more discretion in finding clear and manifest injustice rather than vague "extraordinary circumstances" and clear and manifest injustice.

Subsection (e) provides for establishment of factors in aggravation or mitigation by clear and convincing evidence, at the sentencing hearing.

Subsection (f) provides for the making of a record of factors in aggravation or mitigation.

Subsection (g) defines two phrases used in the aggravation and mitigation factor subsections.

Section 12.55.038 provides the mechanism for creation of the three-judge sentencing panel. The panel would be a permanent body, rather the ad hoc panel as proposed in CSHB 600 am. The chief justice would appoint the members of the panel, and two alternates, from the superior court bench.

The panel would have jurisdiction to sentence any defendant certified to it by a sentencing court. The panel could impose any sentence provided by law notwithstanding the presumptive terms set out.

Section 3; Section 12.55.060 is a technical amendment necessitated by the repeal of 12.55.040., and was omitted from CSHB 600 am.

Section 4; Section 33.15.180, amends existing law by precluding parole for those offenders sentenced to presumptive terms.

Subsection (b) is similar to subsection (b) of CSHB 600 am except it adds the requirement of providing post-release services to those sentenced to presumptive terms.

Section 5; Section 33.20.010 provides for a simple computation of good time on a one for one basis. This is similar to the provision in CSHB 600 am, except it deletes the phrase "and is subject to discipline."

This latter deletion now allows for the withholding of good time when a prisoners conduct is not in accordance with the rules of the institution Under the language previously used, a prisoner had to be disciplined, not only to take away good time, but also to withhold it. As the disciplinary process became more complex and burdensome, withholding of good time did not justify the time and expense involved. The underlying purpose of good time was then defeated.

Disciplinary hearings would still be required for the forfeiture of earned good time.

Subsection (b) substitutes the language "for anyone" for "a" as it was unclear whether a prisoner would be subject to loss of more than thirty days good time for the entire period of confinement.

Section 6 repeals provisions of existing law no longer deemed necessary and in conflict with sections of this bill.

Section 7(a) makes presumptive sentencing applicable to crimes committed after the effective date of the bill. Prior convictions however, will be considered whenever committed.

Subsection (b) makes the no parole provision applicable to persons sentenced under this act, after its effective date.

Subsection (c) makes the computation of good time section applicable to all state prisoners, with no retroactive application.

5/22/76

For an Act entitled: "An Act relating to presumptive sentencing for certain violent felonies."

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

* Section 1. AS 11.05.150 is amended to read:

Sec. 11.05.150. IMPOSING LESS THAN PRESCRIBED PENALTY. Except in a case of murder or rape, or a case of a violent felony for which presumptive sentencing is imposed in accordance with AS 12.55.035, the court may, upon conviction, when in its opinion the facts and circumstances make the minimum penalty provided in this title manifestly too severe, impose a lesser penalty, either of a fine or imprisonment or both. When less than the minimum penalty is imposed, the court shall set out the reasons for its action on the record of the case.

* Sec. 2. AS 12.55 is amended by adding new sections to read:

Sec. 12.55.035. SENTENCING FOR VIOLENT FELONIES. (a) Every person convicted of a violent felony shall be sentenced as follows:

(1) for the first violent felony conviction, the court may sentence the defendant to any term of imprisonment, or other condition or disability and under such conditions as provided for by law;

(2) for the second violent felony conviction, the court shall impose sentence pursuant to the presumptive terms set out in this paragraph, subject to adjustment for aggravating and mitigating factors provided in sec. 37 of this chapter,

(A) for first degree murder under AS 11.15.010 and AS 11.15.020, 15 years;

(B) for second degree murder under AS 11.15.030, 12

years;

(C) for manslaughter under AS 11.15.040, eight years;

(D) for forcible rape as defined in AS 11.15.120, eight years;

(E) for mayhem under AS 11.15.140, 10 years;

(F) for shooting, stabbing or cutting with intent to kill, wound or maim under AS 11.15.150, five years;

(G) for assault with intent to kill or commit rape or robbery under AS 11.15.160, five years;

(H) for poisoning under AS 11.15.210, five years;

(I) for assault with a dangerous weapon under AS 11.15.-220, three years;

(J) for robbery under AS 11.15.240, six years;

(K) for kidnapping under AS 11.15.260, eight years;

(L) for first degree arson under AS 11.20.010, five years

(M) for burglary in a dwelling house under AS 11.20.080, three years;

(N) for burglary in a dwelling house at nightime under AS 11.20.080, four years;

(O) for burglary in a dwelling house when occupied by another person under AS 11.20.080, five years;

(P) for assault on a correctional officer under AS 11.30.140 and AS 11.30.160, two years;

(3) for the third or subsequent violent felony conviction, the court shall sentence the defendant to the presumptive terms set out in this paragraph, subject to adjustment for aggravating and mitigating factors provided in sec. 37 of this chapter, for

(A) first degree murder under AS 11.15.010 and AS 11.15.-020, 20 years;

(B) second degree murder under AS 11.15.030, 15 years;

(C) manslaughter under AS 11.15.040, 12 years;

(D) forcible rape as defined in AS 11.15.120, 10 years;

(E) mayhem under AS 11.15.140, 12 years;

(F) shooting, stabbing or cutting with intent to kill, wound or maim under AS 11.15.150, seven years;

(G) assault with intent to kill or commit rape or robbery under AS 11.15.160, eight years;

(H) poisoning under AS 11.15.210, seven years;

(I) assault with a dangerous weapon under AS 11.15.220, five years;

(J) robbery under AS 11.15.240, eight years;

(K) kidnapping under AS 11.15.260, 12 years;

(L) first degree arson under AS 11.20.010, seven years;

(M) burglary in a dwelling house under AS 11.20.080, five years;

(N) burglary in a dwelling house at nighttime under AS 11.20.080, six years;

(O) burglary in a dwelling house when occupied by another person under AS 11.20.080, seven years;

(P) assault on a correctional officer under AS 11.30.140 and AS 11.30.160, three years.

(b) For purposes of this section,

(1) no prior convictions will be considered when a period of five or more years has elapsed between the date of discharge from disposition of the immediately preceding offense and the date of the commission of the violent felony for which sentencing is being rendered;

(2) a conviction in another jurisdiction of an offense, the elements of which are substantially identical with those of any of the crimes included in this section, shall be considered a prior violent felony conviction;

(3) two or more convictions arising out of the same transaction are considered a single conviction.

(c) For conviction of a second or subsequent violent felony under (a)(2) or (3) of this section.

(1) imprisonment may not be suspended under sec. 80 of this chapter and probation or parole may not be granted;

(2) imposition of sentence may not be suspended under sec. 85 of this chapter; and

(3) terms of imprisonment may not be reduced under AS 11.05.150.

(d) Nothing in this section shall limit the discretion of the sentencing judge in any manner except as specifically provided.

(e) In this section "violent felony" means the crimes listed in (a)(2) and (3) of this section.

Sec. 12.55.036. PROCEDURE FOR DETERMINING PRIOR CONVICTIONS. (a) If it appears that a defendant has previously been convicted of a violent felony and is subject to sentencing as a second or subsequent offender under sec. 35 of this chapter, the district attorney shall file a certified copy of the record of prior convictions with the court and serve such copy or copies upon the defendant or his counsel before sentencing.

(b) If the defendant denies the truth of the certified copy of the record of prior convictions, the defendant shall file with the court and serve on the district attorney notice of denial within five days prior to the date set for sentencing. The court shall hold a hearing, without a jury, on the matter of prior convictions before sentencing. At the hearing, the only issues before the court are whether the record of prior convictions is that of the defendant and whether the conviction occurred within the period specified in sec. 35(b)(1) of this chapter. The burden of proof is on the state to

establish beyond a reasonable doubt the fact of prior convictions.

Sec. 12.55.037. FACTORS IN AGGRAVATION AND MITIGATION. (a) When a defendant has been found to have previously been convicted of a violent felony and is subject to sentencing as a second or subsequent offender under sec. 35 of this chapter (1) the court shall increase the minimum presumptive sentence to which the defendant is subject by 10 per cent of the applicable term for each factor in aggravation found by the court, or (2) the court shall decrease the minimum presumptive sentence to which the defendant is subject by 10 per cent of the applicable term for each factor in mitigation found by the court. Nothing in this section shall limit the authority of the court to impose any sentence in excess of that provided for in this SECTION up to the maximum term provided by law.

(b) The defendant's conduct during the commission of the crime for which sentencing is being rendered contained a factor in aggravation when

(1) the victim or victims of the crime sustained great bodily injury as a direct result of the defendant's conduct and the injury is more than a necessary element of the offense; or

(2) the defendant's actions were deliberately cruel to another person, beyond those which are inherent in the offense alone; or

(3) the defendant discharged a firearm in the course of the offense, either with intent to inflict injury or under circumstances manifesting a reckless disregard for the lives or safety of others: or

(4) the defendant led a criminal enterprise consisting of three or more persons who participated in the crime; or

(5) the victim or victims of the crime were incapable of resistance due to age or physical or mental infirmity; or

(6) for a conviction for first degree arson under AS 11.20.010

the defendant knew or should have known that the dwelling was occupied at the time the arson was committed.

(c) The defendant's conduct during the commission of the crime for which sentencing is being rendered contained a factor in mitigation when

(1) the victim of the defendant's criminal conduct induced or facilitated its commission; or

(2) the criminal plan or act was principally accomplished by another and the defendant's conduct manifested extreme caution or concern for the safety or well-being of the victim; or

(3) the defendant, although responsible under the law as an accomplice, did not substantially contribute to the commission of the crime; or

(4) except in the case of a crime where malice is a necessary element or in the case of manslaughter under AS 11.15.040, the defendant acted under a serious provocation from the victim; or

(5) the conduct of a youthful defendant was substantially influenced in the commission of the offense by the acts of another more mature in age than the defendant; or

(6) the conduct of an aged defendant was substantially a product of physical or mental infirmities resulting from his age.

(d) When in the discretion of the court clear and manifest injustice to the defendant would result from the imposition of a minimum presumptive term, the court shall make written findings in the matter and cause these findings to be certified to a three-judge PANEL for sentencing under sec. 38 of this chapter.

(e) Factors in aggravation or mitigation shall be established by clear and convincing evidence presented to the court at the time of, but immediately preceding, imposition of sentence.

(f) In any case where the court increases or decreases the pre-

sumptive sentence under this section, the sentencing judge shall make specific written findings with respect to any applicable aggravating or mitigating factors.

(g) For purposes of this section

(1) "great bodily injury" means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function of any body member or organ;

(2) "serious provocation" means conduct sufficient to excite an intense passion in a reasonable person in the defendant's position, but does not include mere insulting words or gestures or mere hearsay reports of provocative conduct by the victim or intended victim.

Sec. 12.55.038. THREE JUDGE SENTENCING PANEL. (a) There is created within the superior court a panel of five superior court judges to be appointed by the chief justice in accordance with such rules and for such terms as may be prescribed by the supreme court. Three members of the panel shall be designated as members. The remaining two superior court judges shall be designated as first and second alternates to sit as members in the event of disqualification or disability in accordance with such rules as may be prescribed by the superme court.

(b) The three-judge panel shall sentence a defendant when a sentencing court certifies under sec. 37(d) of this chapter that a clear and manifest injustice would result from the imposition of a minimum presumptive sentence.

(c) Sentencing shall be imposed only by a majority of the three-judge panel after consideration of all pertinent files, records and transcripts, including the findings and conclusions of the judge who originally heard the matter. The three-judge PANEL may hear oral

testimony to supplement the record before it.

(d) The three-judge PANEL may in the interest of justice sentence the defendant under any law applicable to the offense in question, notwithstanding the presumptive penalties provided in this chapter.

* Sec. 3. AS 12.55.060 is amended to read:

Sec. 12.55.060. PROCEDURE UPON DISCOVERY OF PRIOR CONVICTIONS. (a) Before conviction or while sentence is effective, if it appears that a person convicted of a crime in this state has previously been convicted and has not been charged under sec. [SECS. 40 AND] 50 of this chapter, the district attorney may file an information in the superior court accusing that person of the previous conviction or convictions. The court shall cause that person, whether confined in prison or otherwise, to be brought before it and shall inform him of the allegations contained in the information and of his right to be tried as to the truth of the allegations, and shall INQUIRE of [REQUIRE] the accused person [to say] whether or not he is the same person as charged in the information. If the accused acknowledges or confesses in open court, after being cautioned as to his rights, that he was previously convicted of the crimes charged, or any of them, the court shall sentence him as provided in sec. [SECS. 40 OR] 50 of this chapter, and shall vacate the previous sentence, deducting from the new sentence all time actually served on the sentence so vacated. If the accused says he is not the same person, or refuses to answer, or remains silent, the court shall examine the charge of previous convictions, which shall be the only matter in issue.

(b) If it appears from the examination that there is sufficient cause to believe the accused has been previously convicted as charged in the information, the accused shall be committed to await the action of the grand jury, which shall consider only the fact of previous convictions of the accused If the grand jury indicts the accused and

he says he is not the same person, or refuses to answer, or remains silent, he shall be tried by jury in the superior court, and the only issue before the jury shall be whether the accused was previously convicted as charged. If the jury finds that the accused is the same person previously convicted as charged, or if, after being cautioned as to his rights, the accused acknowledges or confesses in open court that he was previously convicted as charged, the court shall sentence him as provided in sec. [SECS. 40 OR] 50 of this chapter, and shall vacate the previous sentence.

(c) The accused may be admitted to bail either while awaiting examination, action of the grand jury, or trial.

* Sec. 4. AS 33.15.180 is amended to read:

Sec. 33.15.180. PERSONS ELIGIBLE FOR PAROLE. (a) A state prisoner other than a minor under age 18 [JUVENILE DELINQUENT], wherever confined and serving a definite term or over 180 days or a term the minimum of which is at least 181 days, and who is not confined as a second or subsequent offender under AS 12.55.035, whose record shows that he has observed the rules of the institution in which he is confined, may, in the discretion of the board, be released on parole, subject to the limitation prescribed in secs. 80 and 230(a)(1) of this chapter.

(b) A state prisoner confined as a second or subsequent offender under AS 12.55.035 may not be considered for parole but the state shall make available to those offenders, upon release, such services as are offered to parolees.

* Sec. 5. AS 33.20.010 is repealed and re-enacted to read:

Sec. 33.20.010. COMPUTATION OF GOOD TIME. (a) Each prisoner convicted of an offense against the state and sentenced to confinement in a penal or correctional institution, whose record of conduct shows that he has faithfully observed the rules of that institution is

entitled to a deduction from the term of his sentence of one day for every two days of good conduct served.

(b) Good time earned in excess of 30 days is not subject to forfeiture for any one subsequent infraction, misconduct or crime.

* Sec. 6. AS 12.55.040, 33.20.020 and 33.20.040 are repealed.

* Sec. 7. APPLICABILITY. (a) AS 12.55.035, as enacted in sec. 2 of this Act, applies to sentencing upon convictions only for violent felonies committed after the effective date of this Act. When sentencing for those convictions, the court shall consider prior convictions for violent felonies whether committed before or after the effective date of this Act.

(b) AS 33.15.180, as amended in sec. 4 of this Act, applies to persons imprisoned for violent felonies committed after the effective date of this Act.

(c) AS 33.20.010, as re-enacted in sec. 5 of this Act, applies to all persons imprisoned in state institutions as of the effective date of this Act, ~~without retroactive application however~~ Act is not retroactive in application.

* Sec. 8. INTENT. (a) Section 2 of this Act is intended to strengthen present imprisonment provisions rather than lower minimum terms required by statute, especially those minimum terms provided in AS 11.15.010, 11.15.020 and 11.15.030. Under sec. 2 of this Act, a second or subsequent offender does not have available to him provisions for reduction or suspension of sentence.

(b) The Division of Corrections should examine existing rehabilitative programs and alternatives thereto to determine their applicability to prisoners sentenced under this Act.

(c) The Criminal ~~Code~~ Law Revision ~~Commission~~ Subcommission should study the ~~effects~~ feasibility and (adoption of a system of) presumptive sentencing for all offenses. (and report to the Legislature)

DRAFT 3/16/76
Law

P R O P O S E D

3/23 Milton

Original Sponsor: Rules Committee by Request of the Governor

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 600

IN THE LEGISLATURE FOR THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to determinate sentencing."

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

* Section 1. AS 11.05.150 is amended to read:

Sec. 11.05.150. IMPOSING LESS THAN PRESCRIBED PENALTY. Except in a case of murder or rape, or a case of a violent felony for which sentencing is imposed in accordance with AS 12.55.035(a)(2) or (3), the court may, upon conviction, when in its opinion the facts and circumstances make the minimum penalty provided in this title manifestly too severe, impose a lesser penalty, either of a fine or imprisonment or both. When less than the minimum penalty is imposed, the court shall set out the reasons for its action on the record in the case.

* Sec. 2. AS 12.55 is amended by adding new sections to read:

Sec. 12.55.035. SENTENCING FOR VIOLENT FELONIES. (a) Every person convicted of a violent felony shall be sentenced as follows:

(1) if the conviction for which sentencing is being rendered is a violent felony and is the defendant's first violent felony conviction, the court may sentence the defendant to a term of imprisonment, within the limits provided by law, or in accordance with AS 33.15.230 or secs. 80 or 85 of this chapter;

(2) if the conviction for which sentencing is being rendered is a violent felony and is the defendant's second violent felony conviction, the court shall sentence the defendant to a term of imprisonment of not less than one-half the maximum term authorized by law;

(3) if the conviction for which sentencing is being rendered

03-038

is a violent felony and is the defendant's third or subsequent violent felony conviction, the court shall sentence the defendant to the maximum term authorized by law.

(b) For the purposes of this section, no prior convictions will be considered when a period of five or more years has elapsed between the date of discharge from disposition of the immediately preceding offense and the date of the commission of the violent felony for which sentencing is being rendered.

(c) For the purposes of this section:

(1) a conviction in another jurisdiction which would amount to a violent felony conviction under the laws of this state is considered a prior violent felony conviction;

(2) a conviction which authorizes a maximum term of imprisonment for life is considered as having a term of imprisonment of 99 years;

(3) "violent felony" means a violent crime against another person or a violent crime which tends to endanger a person; "violent felony" means only the following crimes:

(A) AS 11.15.010 -- first degree murder;

(B) AS 11.15.020 -- obstructing or injuring railroad or aircraft;

(C) AS 11.15.030 -- second degree murder;

(D) AS 11.15.040 -- manslaughter;

(E) AS 11.15.080 -- negligent homicide;

(F) AS 11.15.120 -- rape;

(G) AS 11.15.140 -- mayhem;

(H) AS 11.15.150 -- shooting, stabbing or cutting with intent to kill, wound or maim;

(I) AS 11.15.160 -- assault with intent to kill or

commit rape or robbery

(J) AS 11.15.190 -- assault while armed;

(K) AS 11.15.210 -- poisoning;

(L) AS 11.15.220 -- assault with a dangerous weapon;

(M) AS 11.15.240 -- robbery;

(N) AS 11.15.260 -- kidnapping;

(O) AS 11.20.010 -- first degree arson;

(P) AS 11.20.080 -- burglary in a dwelling house;

(Q) AS 11.30.140 -- assault on officer in penitentiary;

(R) AS 11.30.160 -- assault on officer in jail;

(4) two or more convictions arising out of the same incident are considered a single conviction.

(d) For terms of imprisonment required under (a)(2) or (3) of this section

(1) imprisonment may not be suspended under AS 12.55.080 and probation or parole may not be granted;

(2) imposition of sentence may not be suspended under AS 12.55.085;

(3) terms of imprisonment may not be reduced under AS 11.05.150.

(e) Nothing in this section limits the authority of the court to impose fines for offenses, where authorized, in addition to the required term of imprisonment.

Sec. 12.55.037. PROCEDURE FOR DETERMINING PRIOR CONVICTIONS. (a) If it appears that a defendant has previously been convicted of a violent felony and is subject to sentencing as a second or subsequent offender under sec. 35 of this chapter, the district attorney shall file a certified copy of the record of prior convictions with the court before sentencing.

(b) If the defendant denies the truth of the certified copy of the record of prior convictions, the court shall hold a hearing, without a jury, on the matter before sentencing. At the hearing, the only issues before the court are whether the record of prior convictions is that of the defendant and whether the conviction occurred within the period specified in sec. 35(b) of this chapter. The burden of proof is on the state to establish, ~~by a preponderance of the evidence,~~ the fact of prior convictions.

beyond a reasonable doubt

* Sec. 3. AS 12.55.050 is amended to read:

Sec. 12.55.050. INCREASED PUNISHMENT FOR PERSONS CONVICTED OF MORE THAN ONE FELONY. Except for a person sentenced for a violent felony under sec. 35(a)(2) or (3) of this chapter, a [A] person convicted of a felony in this state who has been previously convicted of a felony in this state or elsewhere, if the same crime elsewhere would constitute a felony under Alaska law, is punishable as follows:

habitual criminal

(1) If the person is convicted of a felony which would be punishable by imprisonment for a term less than his natural life, and has previously been convicted of one felony, then he is punishable by imprisonment for not less than the minimum nor more than twice the longest term prescribed for the felony of which that person is convicted.

(2) If the person has previously been convicted of two felonies, then he is punishable by imprisonment for not less than the minimum nor more than twice the longest term prescribed herein for a second conviction of felony.

(3) If the person has previously been convicted of three or more felonies, then on the fourth conviction he shall be adjudged an habitual criminal, and is punishable by imprisonment for not less

than 20 years nor more than the remainder of his natural life.

* Sec. 4. AS 12.55.060 is amended to read:

Sec. 12.55.060. PROCEDURE UPON DISCOVERY OF PRIOR CONVICTIONS. (a) Before conviction or while sentence is effective, if it appears that a person convicted of a crime in this state has previously been convicted and has not been charged under sec. [SECS. 40 AND] 50 of this chapter, the district attorney may file an information in the superior court accusing that person of the previous conviction or convictions. The court shall cause that person, whether confined in prison or otherwise, to be brought before it and shall inform him of the allegations contained in the information and of his right to be tried as to the truth of the allegations, and shall require the accused person to say whether or not he is the same person as charged in the information. If the accused acknowledges or confesses in open court, after being cautioned as to his rights, that he was previously convicted of the crimes charged, or any of them, the court shall sentence him as provided in sec. [SECS. 40 or 50 of this chapter, and shall vacate the previous sentence, deducting from the new sentence all time actually served on the sentence so vacated. If the accused says he is not the same person, or refuses to answer, or remains silent, the court shall examine the charge of previous convictions, which shall be the only matter in issue.

(b) If it appears from the examination that there is sufficient cause to believe the accused has been previously convicted as charged in the information, the accused shall be committed to await the action of the grand jury, which shall consider only the fact of previous convictions of the accused. If the grand jury indicts the accused and he says he is not the same person, or refuses to answer, or remains silent, he shall be tried by jury in the superior court, and the only

issue before the jury shall be whether the accused was previously convicted as charged. If the jury find that the accused is the same person previously convicted as charged, or if, after being cautioned as to his rights, the accused acknowledges or confesses in open court that he was previously convicted as charged, the court shall sentence him as provided in sec. [SECS. 40 OR] 50 of this chapter, and shall vacate the previous sentence, deducting from the new sentence all time served on the vacated sentence.

(c) The accused may be admitted to bail either while awaiting examination, action of the grand jury, or trial.

* Sec. 5. AS 33.15.180 is amended to read:

Sec. 33.15.180. PERSONS ELIGIBLE FOR PAROLE. (a) A state prisoner other than a juvenile delinquent, wherever confined and serving a definite term of over 180 days or a term the minimum of which is at least 181 days, and who is not confined as a second or subsequent offender under AS 12.55.035, whose record shows that he has observed the rules of the institution in which he is confined, may, in the discretion of the board, be released on parole, subject to the limitation prescribed in secs. 80 and 230(a)(1) of this chapter.

(b) A state prisoner confined as a second or subsequent offender under AS 12.55.035 may not be considered for parole.

* Sec. 6. AS 33.20.010 is repealed and re-enacted to read:

Sec. 33.20.010. COMPUTATION OF GOOD TIME. Each prisoner convicted of an offense against the state and confined in a penal or correctional institution, whose record of conduct shows that he has faithfully observed the rules of that institution and has not been subject to punishment, is entitled to a deduction from the term of his sentence of one day for every two days of good conduct served.

* Sec. 7. AS 12.55.040, 33.20.020 and 33.20.040 are repealed.

* Sec. 8. APPLICABILITY. (a) AS 12.55.035, as enacted in sec. 2 of this Act, applies to sentencing upon convictions only for violent felonies committed after the effective date of this Act. When sentencing for those convictions, the court shall consider prior convictions for violent felonies whether committed before or after the effective date of this Act.

(b) AS 33.15.180, as amended in sec. 5 of this Act, applies to persons imprisoned for violent felonies committed after the effective date of this Act.

(c) AS 33.20.010, as re-enacted in sec. 6 of this Act, applies to all persons imprisoned in state institutions as of the effective date of this Act, without retroactive application however.

file with committee

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

Pouch KC-Court Bldg.
Juneau, Alaska 99811

March 2, 1976

The Honorable Terry Gardiner,
Chairman
House Judiciary Committee
Pouch U
Juneau, Alaska 99811

Re: Sentencing Legislation

Dear Representative Gardiner:

At the recent hearings, Representative Parr and yourself raised two points regarding the Governor's determinate sentencing bill. Both points were oversights on my part and if deemed appropriate, the committee should consider the following amendments to rectify the problem.

(1) Representative Parr's point on granting parole under Subsection 33.15.180(b) -- Subsection 12.55.050(d)(1) should be amended to read as follows:

"(1) imprisonment may not be suspended under AS 12.55.080 and probation or parole may not be granted."

(2) Your point regarding what is half of a life sentence, defining it statutorily as 99 years seems appropriate. Even if the offender gets half and under the most liberal administration of good time (one for one) the offender would serve 25 years. An amendment should read:

> Subsection 12.55.050(c)(3) a conviction which authorizes a maximum term of imprisonment of life shall be considered as having a term of imprisonment of 99 years.

If you have any further questions, please feel free to contact me.

Very truly yours,

AVRUM M. GROSS
ATTORNEY GENERAL

DANIEL W. HICKEY
DEPUTY ATTORNEY GENERAL

By: Patrick W. Conheady
Patrick W. Conheady
Legal Assistant

PWC:gm

Give copies to
Members for HB600

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CHAIRMAN, EX OFFICIO
ROBERT BOOCHEVER
CHIEF JUSTICE
SUPREME COURT

Alaska Judicial Council

303 K STREET
ANCHORAGE, ALASKA
99501

EXECUTIVE DIRECTOR
MICHAEL L. RUBINSTEIN

March 25, 1976

Hon. Terry Gardiner
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Gardiner:

On March 15, 1976 the Alaska Judicial Council met in Anchorage and unanimously resolved to express its strong opposition to any and all proposed criminal sentencing legislation based on mandatory minimum or so-called "flat-time" formulae. Legislation which purports to bind the conscience of the judge by compelling him to hand down a pre-ordained term of imprisonment to broad classes of persons without any regard either to the particular facts and circumstances surrounding the commission of the crime, or to the social and personal history of the defendant is productive of more injustice than the problem it is intended to remedy.

No judge should be placed in the position of being required by the law to blind himself to the actual facts and circumstances of the cases he is called upon to decide.

The mandatory minimum and "flat-time" bills now before the Legislature use the existing criminal laws as their foundation. To superimpose entirely new sentencing provisions upon our code--a code which was never intended by its draftsman to bear such a burden--will open the door to many unforseen and anomalous results, some of which are likely to produce unintended injustice in individual cases.

The traditional common law classification of crimes into "felonies" and "misdemeanors", and the typically broad subclasses of felonies, such as "robbery", "rape", "burglary", etc. are quite general and encompass within each class many varying levels of harmfulness and culpability. Under the present system the totally unguided discretion of the sentencing judge is relied upon to take these differences

into account in each case. Many have considered that the exercise of this substantially unguided discretion by judges of widely differing personalities and predispositions has resulted in undue disparity and inequity. However, it may be well to point out that all the blame should not be placed on the judiciary for the disparity which exists. A distinguished federal jurist, Judge Marvin Frankel of the United States District Court for the Eastern District of New York commented, in his book Criminal Sentences: Law Without Order (1972):

> [O]ur legislators have not done the most rudimentary job of enacting meaningful sentencing 'laws' when they have neglected even to sketch democratically determined statements of basic purpose. Left at large, wandering in deserts of unchained discretion, the judges suit their own value systems insofar as they think about the problem at all.

If we are not to rely upon the totally unguided discretionary decisions of diverse individual judges, it becomes encumbant upon the Legislature itself to consider each offense and to provide for a system of carefully graded levels of culpability based upon the actual social harm caused by the defendant's actions, the extent of his evil motivation if any, and such aggravating or mitigating circumstances as may have surrounded the commission of the act. Even if we totally put to one side any and all considerations of the defendant's age, race, sex, and socio-economic background, a just sentencing law must take into account, for example, that not all assaults with dangerous weapons are of equal culpability. Some produce serious harm and some do not. Some are the result of extreme provocation and others are totally unprovoked. Some forgers are compulsive alcoholics, and others are professional criminals. The broad categories of the existing law are simply insufficiently precise for mandatory sentencing.

Having prepared a comprehensive* analysis and review of sentencing practices in Alaska, the Judicial

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* Sentencing in Alaska: A Description of the Process and Summary of Statistical Data for 1973.

Council is well aware of the need for reform. At this time, the Judicial Council has under consideration a proposal for basic structural changes in the sentencing process; it will report to the Legislature at the conclusion of the study. This sentencing plan, dubbed "presumptive sentencing", was recently formulated by a special task force of The Twentieth Century Fund in New York City. The task force study panel was chaired by former California Governor Edmund G. Brown, Sr. and was composed of distinguished jurists, law professors, a police chief, and other involved with the criminal justice process. Although the proposal is complex and sophisticated, complexity may well be required if we are justly to address a problem which is probably not amenable to simplistic solutions.

The enclosed New York Times article briefly describes the presumptive sentencing system. The details of this proposal, in the form of advance page proofs are now being reviewed by the Judicial Council. The final published report will not be released by the McGraw-Hill Book Company until April 13. Pursuant to our agreement with The Twentieth Century Fund, we may make available to you an advance copy of the page proofs, if you wish one.

In summary, the Judicial Council strongly urges you to defer any final legislative action in the area of sentence reform until such time as it completes its report on presumptive sentencing proposals and until adequate study of alternatives for stuctural reform can be explored.

Very truly yours,

Michael L. Rubinstein

cc: Judicial Council Members
Hon. Avrum Gross

file
bb600

Alaska State Legislature

SENATOR
ROBERT H. ZIEGLER, SR.
P. O. BOX 979
KETCHIKAN, ALASKA 99901

POUCH V
JUNEAU, ALASKA 99811

Senate

CHAIRMAN
JUDICIARY

MEMBER
COMMERCE
LEGISLATIVE COUNCIL

April 26, 1976

Senator Chancy Croft
President of the Senate
Alaska State Senate
Juneau, Alaska

Dear Mr. President:

On April 23, 1976, you asked the Senate Judiciary committee to look into the sentencing brouhaha which had occured in the case of Cleary v. State of Alaska (Supreme Court Opinion No. 1257, filed April 12, 1976; File No. 2623). I immediately communicated with Mr. Chief Justice Robert Boochever who has very cooperatively furnished the committee with the following documents:

1. The subject opinion;
2. The appellant's brief on appeal;
3. Memorandum of appellee's statement of the case;
4. Transcript of the sentencing proceedings;
5. Miscellaneous criminal complaints, excerpts of court proceedings, orders, etc.;
6. Order of judgment and commitment; and
7. Probation officer's report.

Copies of any or all these documents can be made available to any legislator requesting the same from me.

The investigatory guidelines are not delineated to any great degree. I am attaching a copy of the Chief Justice's letter of April 23, 1976 in which he refers to Canon 3A(6) of the Code of Judicial Conduct in effect in the State of Alaska. This canon prohibits judges from commenting publicly about a pending or impending proceeding in any court except that judges may make public statements in the course of their official duties and may explain for public information the procedures of a court. It therefore would seem improper for the Senate and House Judiciary committees to proceed with any type of hearing in the Cleary case at this time because the resentencing of the defendant is still pending.

It would therefore be our recommendation that we refrain from taking any action until the rehearing proceedings have been held.

However, I don't think we would be precluded from holding a hearing on sentencing procedures, for whatever that might be worth, as long as we did not delve into the facts in the instant case.

Very truly yours,

Robert H. Ziegler, Sr.
Chairman
Senate Judiciary Committee

enc.

cc - Chief Justice Robert Boochever
Representative Terry Gardiner

Supreme Court
State of Alaska

CHIEF JUSTICE
ROBERT BOOCHEVER

JUSTICES
JAY A. RABINOWITZ
ROGER G. CONNOR
ROBERT C. ERWIN
EDMOND W. BURKE

April 23, 1976

POUCH U
STATE COURT AND OFFICE BUILDING
JUNEAU, ALASKA
99811
907-465-3410

The Hon. Robert H. Ziegler, Sr.
Chairman, Senate Judiciary Committee
Pouch V, Capitol Building
Juneau, Alaska 99811

Dear Senator Ziegler:

You inquired about the case of Cleary v. State. As per your request, I am enclosing a copy of the majority opinion together with the dissent. In addition, I am enclosing a copy of appellant's and appellee's briefs, the transcript of proceedings and the record on appeal.

If we can be of any further assistance to your committee, do not hesitate to call upon us. In that regard, however, I wish to call to your attention the fact that we are limited in the extent to which we may comment upon this case since a petition for rehearing has been filed, and even without it, the opinion of the court remanded the matter for resentencing. Canon 3A(6) of the Code of Judicial Conduct in effect in the State of Alaska specifies:

> A judge should abstain from public comment about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to his direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

I also enclose a copy of an article entitled "Five Years of Sentence Review in Alaska" by Justice Erwin which appeared in 5 U.C.L.A.-Alaska Law Review as it contains interesting background material pertaining to cases in which there were appeals from sentences during the five-year period after the sentence appeal act became effective on January 1, 1970.

Sincerely yours,

Robert Boochever
Chief Justice

cc: Justices
Arthur H. Snowden, II

Chapter 8

Courts and Corrections

MOST of the persons arrested for a serious crime have been arrested before. Indeed, one recent study estimates that over 87 per cent of those arrested will have been previously arrested—or, put a bit differently, the probability of being rearrested is 0.87 chances in one, or close to a certainty.[1] The research by Marvin Wolfgang and his colleagues on ten thousand Philadelphia boys born in 1945 who lived in that city until they were at least eighteen years of age showed that, once a juvenile had been arrested three times, the chances of his being rearrested were over 70 per cent.[2] In their inquiry into New York City subway crimes, Jan M. Chaiken and his group at the Rand Institute conclude that, though there are hundreds of robberies on the subways each year, there could not be in the entire city of eight million more than *ten* persons who commit such robberies regularly and who have not been arrested at least once.[3]

[illegible]—the shame and burdens of arrest even if no penalty follows, are a powerful deterrent. But the rearrest rates suggest that for others the mere fact of arrest is little or no deterrent. For such persons, who may commit the majority of all serious predatory crimes, the police are but a processing agency, inducting these arrestees once again into the familiar ritual of booking, making bail, arraignment, and pleading. Or as many police officers like to put it: "We operate the revolving door."

As crime became a popular and eventually a political issue, more attention was devoted to the police than to any other part of the criminal justice system. The frequency with which perpetrators of predatory crime are rearrested, however, should have alerted us to the possibility that, though the police need improvement, they are not the crucial agency in the system. Of far greater importance are those agencies that handle persons once arrested and that determine whether, how soon, and under what conditions they will be returned to the communities from which they came. These agencies are the criminal courts and the correctional institutions.

In theory, the function of the courts is to determine the guilt or innocence of the accused. In fact it is to decide what to do with persons whose guilt or innocence is not at issue. Our judiciary is organized around the assumption that its theoretical function is its actual one—hence the emphasis on the adversary system, the rules of evidence, and the procedures and standards for testimony. In some jurisdictions, especially small ones with relatively few cases, the courts indeed act as theory would have it, and in all jurisdictions, even the big and busy ones, the courts will act that way some of the time. But most of the time, for most of the cases in our busier courts, the important decision concerns the sentence, not conviction or acquittal. In Manhattan, for example, only 3 per cent of the 13,555 persons indicted between July 1963 and July 1966 were convicted after a trial; almost 80 per cent pleaded guilty.[4] Even in one middle-sized, nonmetropolitan county in Wisconsin, 94 per cent of the

convictions were the result of a plea of guilty, and it made little difference whether the offender had a lawyer or not.[5]

Everyone involved in the criminal justice system knows this, and increasingly the public at large is aware of it—or at least is aware that Perry Mason-style courtroom drama is found only on television, not in courtrooms. But despite this knowledge, very little has been done to equip the courts to perform their essential function well. Indeed, there has been very little serious public discussion of what we even mean by a "good" or "bad" sentence. And only by deciding that question can we begin to think seriously about what other reforms are necessary in the criminal courts.

For example, one way of defining a good sentence is to say it is that disposition that minimizes the chance of a given offender's repeating his crime. Under that definition, we would not only expect but want disparities in sentences—one armed robber getting five years in prison and another getting probation—provided only that we had good reason to believe that each sentence was appropriate to each criminal's prospects for rehabilitation. On the other hand, if we believe that a good sentence is one which deters others from committing a crime, then we might wish to impose the same penalty on persons with very different prospects for rehabilitation, and to make that penalty sufficiently severe to discourage potential criminals, especially those who believe they might be regarded as good bets for rehabilitative—which is to say, lenient—treatment.

A crucial question in deciding what is a good sentence, then, is what effect any given sentence will have on actual or potential offenders. It is not the only crucial question: We also want, or ought to want, sentences to give appropriate expression to our moral concern over the nature of the offense and to conform to our standards of humane conduct. But these latter standards, though inevitably matters of controversy, are ones which, even if met, would still leave a substantial zone of discretion to the judge.

Persons will differ over how they would resolve these issues,

but whatever definition of a good sentence one adopts, it is unlikely that it will be descriptive of what is in fact happening in our criminal courts today. It is not too much to say that many sentences being administered are, in the strict sense, irrational—that is, there is no coherent goal toward which they are directed.

For example, Martin A. Levin of Brandeis University found in a study of the Pittsburgh Common Pleas Court in 1966 that well over one-half the white males convicted of burglary, grand larceny, indecent assault, or possession of narcotics, and who had a prior record, were placed on probation; nearly one-half of the two-time losers convicted of aggravated assault were also placed on probation, as were more than one-fourth of those convicted of robbery.[6] In Wisconsin, Dean V. Babst and John W. Mannering found that 63 per cent of the adult males convicted of a felony during 1954–1959 who had previously been convicted of another felony were placed on probation, and 41 per cent of those with two or more felony convictions were given probation for the subsequent offense.[7] In Los Angeles, only 6 per cent of those charged with burglary, who had a serious prior record, were sent to prison; only 12 per cent of those charged with burglary who had already *been* in prison were sent back.[8]

The judges did not seem to operate on either the deterrence or the rehabilitation theory of sentencing—the low proportion of jail sentences for persons convicted of serious crimes who had prior convictions suggests that the judges did not believe jail had a deterrent effect, and the fact that the men were convicted after an earlier offense implies that for them, at least, there had been no rehabilitation.

The treatment of persons in organized crime is even harder to reconcile with some theory of justice. Between 1963 and 1969, the number of persons arrested in New York State on felony narcotics charges (these typically were dealers, not merely users) increased by more than 700 per cent, and the number convicted more than tripled. But the number going to state prison re-

mained unchanged, and thus the proportion going to prison fell from 68 per cent of those convicted to less than 23 per cent.[9] Being essentially businessmen (and businesswomen), members of organized crime are even less likely than youthful brawlers or addict thieves to be likely prospects for rehabilitation: They are acting, not out of passion or compulsion, but out of calculation. And in many jurisdictions those who can calculate best have seen the costs of their criminal ventures decline and the profits boom.

In Boston the average penalty in heroin cases fell during the 1960s—at the very time heroin abuse was rising. Between 1963 and 1970, the proportion of heroin cases before the Suffolk County (Boston) district and superior courts resulting in prison sentences fell from almost one-half to about one-tenth; meanwhile, the estimated number of heroin users rose from fewer than one thousand to almost six thousand. This pattern of sentencing can be explained by neither a deterrence nor a rehabilitation philosophy: Obviously the decrease in penalties did not deter heroin dealers, and the absence during most of this time of any treatment alternative to prison for heroin users meant that rehabilitation, if it were to occur at all, would have to occur spontaneously (which, of course, it did not).[10]

The reasons for the sentencing patterns in many courts have little or nothing to do with achieving some general social objective, but a great deal to do with the immediate problems and idiosyncratic beliefs of the judges. A few sentences can be explained by corruption, many more by the growing belief among some judges that since prisons apparently do not rehabilitate, it is wrong to send criminals to them, and most of all by the overwhelming need in busy jurisdictions to clear crowded court dockets.

When thousands of felony cases must be settled each year in a court, there are overpowering pressures to settle them on the basis of plea bargaining in order to avoid the time and expense of a trial. The defendant is offered a reduced charge or a lighter sentence in exchange for a plea of guilty. Though congested

dockets are not the only reason for this practice, an increase in congestion increases the incentives for such bargaining and thus may increase the proportion of lighter sentences. For those who believe in the deterrence theory of sentencing, it is a grim irony: The more crime increases, the more the pressure on court calendars, and the greater the chances that the response to the crime increase will be a sentence decrease.

But the use of probation and suspended sentences also reflects the belief of growing numbers of judges that the purpose of prisons is to rehabilitate, that the prisons have failed in this assignment, and that a criminal kept out of prison has at least as good or a better chance to stop stealing as one sent away. And there is some evidence to support this point of view. In a recent review of the studies of persons on probation, Levin concluded that they "all indicate that offenders who have received probation generally have significantly lower rates of recidivism (i.e., are less likely to be arrested for, or convicted of, a subsequent offense) than those who have been incarcerated." Furthermore, of those who are incarcerated, those receiving shorter sentences are somewhat less likely to become repeaters than those who have received longer sentences.[11]

Perhaps the most comprehensive of these studies is one completed in California in 1970 by Ronald H. Beattie and Charles K. Bridges. It found that almost two-thirds of those offenders placed on probation had, one year later, no known subsequent arrest, while less than one-half of those sent to prison had been equally successful. These differences in "success" persisted even when one took into account the sex, age, race, offense, and prior record of the offender.[12]

The policy implications of such studies are not clear, however. Naturally probationers succeeded more than did prisoners—they were selected for probation precisely because the judges thought they would succeed. Putting more offenders now sent to prison on probation would not necessarily lead to better results; it would simply put the poorer risks on the street, with a consequent increase in the overall failure rate of probationers. If

probation success rates now appear good, it is only because judges are good at guessing who will be successful.[13]

In fact, in New York, where the proportion of juveniles on probation has been going up, a *New York Times* survey in 1972 suggests that the failure rate has also been going up.[14] And it might be going up even more if we knew for certain how many persons on probation were actually breaking the law, but we don't—we know only how many are caught breaking the law, and that is probably only a small fraction of the total.

There have been very few efforts to put probation to the crucial test by assigning offenders randomly to probation and prison and then comparing the results. Perhaps the best known of these is the California Treatment Project (sometimes called the Warren study). President Johnson's crime commission singled out this experiment for special mention as evidence that rehabilitation was possible, especially if done in a community rather than institutional setting.[15] Young offenders, classified by their level of "interpersonal maturity," were assigned directly to probation officers in small groups and exposed to intensive and individually tailored therapy programs. Warren reported, and the crime commission repeated, the claim that these youth were much less likely to commit additional crimes than a similar group sent through the regular detention facilities and then placed in conventional probation. Upon later and closer study, however, it became clear that the experimental group not only did not commit fewer offenses, they committed *more*. Probation officers assigned to the experimental group were not revoking probation when young people in that group committed new offenses, while probation officers assigned to the regular youth (the "control group") were revoking probation in the normal way whenever a new offense was committed. In short, the "treatment" program did not alter the behavior of the delinquents, it only altered the behavior of the probation officers.[16]

In any event, most judges do not have a California Treatment Program to which they can sentence offenders. In most courts the practical choices are between routine probation (involving

few services) and jail or prisons with varying degrees of security and amenity. And here the evidence seems quite clear: In general, different kinds of institutions do not make an appreciable difference in the prospects of rehabilitation.

Between 1966 and 1972, Robert Martinson reviewed, initially at the request of the New York State Governor's Committee on Criminal Offenders, 231 experimental studies on the treatment of criminals, including in this list *all* those from here and abroad that were available in print between 1945 and 1967 and that met various tests of methodological adequacy. Martinson's review came to a clear conclusion: "With few and isolated exceptions, the rehabilitative efforts that have been reported so far have no appreciable effect on recidivism." [17] Studies done since 1967 do not provide grounds for altering that conclusion significantly.

It does not seem to matter what form of treatment in the correctional system is attempted—whether vocational training or academic education; whether counseling inmates individually, in groups, or not at all; whether therapy is administered by social workers or psychiatrists; whether the institutional context of the treatment is custodial or benign; whether the sentences are short or long; whether the person is placed on probation or released on parole; or whether the treatment takes place in the community or in institutions. Indeed, some forms of treatment—notably a few experiments with psychotherapy—actually produced an *increase* in the rate of recidivism.

The Martinson review is unique in its comprehensiveness but not in its findings. R. G. Hood came to much the same conclusion in a review published in 1967; [18] Walter C. Bailey, after examining 100 studies of the efficacy of treatment and especially the 50 or so that claimed positive results, concluded in 1966 that the "evidence supporting the efficacy of correctional treatment is slight, inconsistent, and of questionable reliability"; [19] Leslie T. Wilkins observed in 1969 that "the major achievement of research in the field of social psychology and treatment has been negative and has resulted in the undermining of nearly

all the current mythology regarding the effectiveness of treatment in any form." [20]

In retrospect, little of this should have been surprising. It requires not merely optimistic but heroic assumptions about the nature of man to lead one to suppose that a person, finally sentenced after (in most cases) many brushes with the law, and having devoted a good part of his youth and young adulthood to misbehavior of every sort, should, by either the solemnity of prison or the skillfulness of a counselor, come to see the error of his ways and to experience a transformation of his character. Today we smile in amusement at the naïveté of those early prison reformers who imagined that religious instruction while in solitary confinement would lead to moral regeneration. How they would now smile at us at our presumption that conversations with a psychiatrist or a return to the community could achieve the same end. We have learned how difficult it is by governmental means to improve the educational attainments of children or to restore stability and affection to the family, and in these cases we are often working with willing subjects in moments of admitted need. Criminal rehabilitation requires producing equivalent changes in unwilling subjects under conditions of duress or indifference.

The plight of the criminal court judge is obvious. Should he sentence a person to an institution that does not have a demonstrable effect on his criminality, or place him on probation, not knowing whether that will have any effect either? Even more important, should he take into account the characteristics of the offender in deciding on his prospects for rehabilitation, giving those with the best prospects (as predicted from age, sex, race, and prior record) the shortest sentences and those with the worst prospects the longest ones?

A moment's thought on such issues leads one squarely into the philosophical problem with the rehabilitation theory of sentencing. If rehabilitation is the object, and if there is little or no evidence that available correctional systems will produce much rehabilitation, why should any offenders be sent to any institu-

tions? But to turn them free on the grounds that society does not know how to make them better is to fail to protect society from those crimes they may commit again and to violate society's moral concern for criminality, and thus to undermine society's concept of what constitutes proper conduct.

Furthermore, if rehabilitation is the goal, and persons differ in their capacity to be rehabilitated, then two persons who have committed precisely the same crime under precisely the same circumstances might receive very different sentences, thereby violating the offenders' and our sense of justice. The indeterminate sentence, widely used in many states, is expressive of the rehabilitation ideal: A convict will be released from an institution, not at the end of a fixed period, but when someone (a parole board, a sentencing board) decides he is "ready" to be released. Rigorously applied on the basis of existing evidence about what factors are associated with recidivism, this theory would mean that if two persons together rob a liquor store, the one who is a young black male from a broken family, with little education and a record of drug abuse, will be kept in prison indefinitely, while an older white male from an intact family, with a high school diploma and no drug experience, will be released almost immediately. Not only the young black male, but most fair-minded observers, would regard that outcome as profoundly unjust.

In practice, the system does not work as its theory implies. But neither does it work well. The decision when to release a prison inmate is, in many states, given over to a parole board from which few if any appeals are possible. In New York State, for example, the twelve members of the board of parole have jurisdiction over all prisoners serving more than ninety days (a total well in excess of twenty thousand) and can, among other things, decide when to release a prisoner who is serving an indeterminate sentence. Supposedly the board examines all aspects of the prisoner's life and behavior to decide if he is "ready" for release. If it were capable of and had the time for such profound judgments, it might well behave in the way described in the

liquor store example above. But of course no board can make profound judgments about the thousands of cases it hears every year, with the result that it adopts instead a rule of thumb: If a prisoner is thought to be "rehabilitated," he will be released when he has served one-third of his sentence or three years, whichever is less. The board decides who is rehabilitated and who is not by reviewing a file of reports and questioning the inmate for ten or fifteen minutes at an interview. If parole is denied, the inmate is not told the reason; if he objects, there is no appeal.

The Citizen's Inquiry on Parole and Criminal Justice in New York City prepared in 1974 a study of the results of this parole system. For a four-year period, the percentage of prisoners returned to prison within one year was calculated for those who were granted parole and those who, by being denied parole, were required to serve their full sentence. Overall, there was no statistically significant difference between the return to prison rates of those paroled and those not—about 10 or 11 per cent of each group went back to prison within the year.[21] Clearly, the parole board was unable to guess who had been rehabilitated and who had not.

Now suppose we abandon entirely the rehabilitation theory of sentencing and corrections—not the effort to rehabilitate, just the theory that the governing purpose of the enterprise is to rehabilitate. We could continue experiments with new correctional and therapeutic procedures, expanding them when the evidence warrants. If existing correctional programs do not differ in their rehabilitative potential, we could support those that are least costly and most humane (while still providing reasonable security) and phase out those that are most costly and inhumane. But we would not do any of these things on the mistaken notion that we were thereby reducing recidivism.

Instead, we would view the correctional system as having a very different function—namely, to isolate and to punish. It is a measure of our confusion that such a statement will strike many enlightened readers today as cruel, even barbaric. It is not. It is

merely a recognition that society at a minimum must be able to protect itself from dangerous offenders and to impose some costs (other than the stigma and inconvenience of an arrest and court appearance) on criminal acts; it is also a frank admission that society really does not know how to do much else.

The purpose of isolating—or, more accurately, closely supervising—offenders is obvious: Whatever they may do when they are released, they cannot harm society while confined or closely supervised. The gains from merely incapacitating convicted criminals may be very large. (In the last chapter I refer to some tentative estimates of their magnitude.) If much or most serious crime is committed by repeaters, separating repeaters from the rest of society, even for relatively brief periods of time, may produce major reductions in crime rates. Yet we have pursued virtually the opposite policy. During the 1960s, while crime rates were soaring, there was no significant increase in the amount of prison space and there was an actual decline in the number of prisoners, state and federal, from about 213,000 in 1960 to 196,000 in 1970.[22] In New York State the chances of the perpetrator of a given crime going to prison fell during this period by a factor of *six*.[23] To an astonishing degree, judges and prosecutors have used their discretion to minimize the incapacitative value of prisons. In Los Angeles County, for example, the proportion of convicted robbers with a major prior record who were sent to prison in 1970 was only 27 per cent.[24] It is no defense of this policy of deprisonization to say that criminals, if sent to prison, would, on their release, merely resume the commission of crimes. Many no doubt would, but the gains to society from crimes not committed while they were in prison would be real and substantial, and if the policy of prison sentences were consistently followed, even with relatively short (one or two years) sentences, the gains would be enduring.

These gains would exist even if the prospect of going to prison deterred no one from committing a crime. And clearly that prospect has not deterred those who have already found their way into prison. But suppose the probability of imprisonment

were increased: Might there not be a reduction in crime owing to the greater deterrent value of prison as well as a gain resulting from its incapacitative effect?

Over the last few years, several efforts have been made to assess the deterrent effect of sentences. These efforts are not immune to criticism: They are based on police reports of crimes committed (which are in error to some degree), they are based on comparison of sentencing behavior among states (which are very large units within which much variation no doubt occurs), and they are not experimental studies (that is, they do not show what happens when one deliberately changes the pattern of sentencing while holding everything else constant). Nonetheless, since all the studies come more or less to the same conclusion, and since the statistical techniques used make it unlikely that the results could be due to chance, the general thrust of these studies is revealing.

George E. Antunes of Rice University and A. Lee Hunt of the University of Houston have reviewed several studies which estimate the effect on crime rates of the certainty and the severity of punishment. "Certainty" was measured by dividing the number of persons sent to prison in each state for a given crime in a given year by the number of those crimes reported to the police in that state in the preceding years. The larger the proportion of reported crimes resulting in imprisonment, the greater the certainty of punishment. "Severity" was the median length of a prison sentence (in months or years) imposed in a given state for a given crime. The longer the sentence, the more severe it is (capital punishment was ignored in these studies). All the studies suggested that the certainty of punishment has a significant deterrent effect on crime rates, while severity has such an effect only on murder.[25]

Isaac Ehrlich of the University of Chicago has carried out the most detailed statistical analysis of the effects of criminal sanctions. For 1940, 1950, and 1960, he calculated the effect on the known rates of seven major crimes of the probability of imprisonment and the length of imprisonment. He controlled for the

effects of such factors as family income and the percentage of a state's population that was nonwhite. Unlike the studies summarized by Antunes and Hunt, he concluded that *both* an increased certainty of a sentence and an increased length of sentence reduced the rate of reported crimes in the states.[26]

It is not entirely clear whether the crime reduction associated with lengthy prison terms, found by Ehrlich, is the result of the deterrent effect of those terms on would-be criminals who are contemplating imprisonment, or the incapacitating effect of those terms on would-be recidivists who are languishing in prison. Ehrlich's data are also consistent with the view that punishment deters to some degree crimes of passion as well as crimes of profit.

Though Ehrlich's findings are not entirely consistent with those of others, at least with respect to the effects of severity of sentence, reconciling these various studies is less important, and perhaps less difficult, than persuading informed persons to take them seriously. What is remarkable is that so few knowledgeable persons, especially among the ranks of many professional students of crime, are even willing to entertain the possibility that penalties make a difference. We have become so preoccupied with dealing with the causes of the crime (whether the causes are thought to be social conditions or police inadequacies) that we have almost succeeded in persuading ourselves that criminals are radically different from ordinary people—that they are utterly indifferent to the costs and rewards of their activities, and are responding only to deep passions, fleeting impulses, or uncontrollable social forces.

There is scarcely any evidence to support the proposition that would-be criminals are indifferent to the risks associated with a proposed course of action. Criminals may be willing to run greater risks (or they may have a weaker sense of morality) than the average citizen, but if the expected cost of crime goes up without a corresponding increase in the expected benefits, then the would-be criminal—unless he or she is among that small fraction of criminals who are utterly irrational—engages in less

crime, just as the average citizen will be less likely to take a job as a day laborer if the earnings from that occupation, relative to those from other occupations, go down.

Most of us are prepared to accept the notion that effective application of penalties, even rather modest ones, will deter certain forms of behavior. Everyone who has traveled to Los Angeles from the East Coast observes with awe the extent to which routine traffic laws, including those against jaywalking, are obeyed. The explanation is obvious. For decades, the police have enforced those laws with sufficient vigor to make the average Angeleno feel that the risks of breaking the law are sufficiently great, and the costs of observing the law sufficiently small, to make it worthwhile to obey. The enforcement of laws against drunken driving in Scandinavia has reduced substantially the number of persons who drive after drinking. The passing of bad checks in various states was found in one study to be related to the vigor of enforcement efforts.[27]

But while most of us are prepared to concede all this, many of us are reluctant to apply the same analysis to more serious forms of crime—apparently on the unstated assumption that traffic laws, jaywalking ordinances, and bad-check statutes are primarily enforced against middle-class people who are more "rational" than the lower-class people who commit "real" crimes. Obviously not all criminals are sensitive to costs and benefits. Some husbands will murder their wives though they are almost certain to be caught, some boys will steal cars in order to prove that they are not afraid of the police, and some madmen will plant bombs that destroy themselves as well as their victims. But this is not very different from observing that some men go on buying big, powerful cars even though the price of gasoline and auto repairs has skyrocketed and their resale value has plummeted. To understand such people, we might want to know whether they have large families, a need to prove their masculinity, or a desire to impress their neighbors. But however interesting we found this speculation, we would not for a moment doubt that, for most people most of the

time, the cost of cars is an important factor in predicting their automotive purchases.

The deterrent capacity of criminal penalties is supported by statistical data for large numbers of offenses over long periods of time. Such a theory does not, however, purport to "explain" crime. As argued in Chapter 3, the intellectual process of explanation is not the same as that of policy analysis, and can lead to quite different results. For example, a hundred persons may confront equal prospective benefits (say, having $1,000 stolen from a bank) and equal prospective costs (say, a one in five chance of imprisonment), but ninety-five will not seriously consider bank robbery, while five will pull a gun and march up to the cashier without a moment's hesitation. It is intellectually interesting to try to discover why the five steal and the ninety-five do not; no doubt it has much to do with their tolerance of risk or their values as shaped by family, friends, and media. From the point of view of public policy, however, such explanations are of little value, because government has no way of changing in any systematic fashion family backgrounds, deep-seated attitudes, friendship patterns, or media images. And even if government could do these things, the cost would be frightful—not only in money terms, because the programs would have to be directed at the ninety-five who are not likely to be criminal in order to be certain of reaching the five who are, but also in terms of those fundamental human values that would be jeopardized if government possessed the capacity to direct the inner life of the family or to mold the mental state of its citizens.

What the government can do is to change the risks of robbery and the rewards of alternative sources of income for those who, at the margin, are neither hopelessly addicted to thievery nor morally vaccinated against it, and to incapacitate, by prison or some other form of close supervision, those who rob despite the threats and alternatives society provides.

Several studies have suggested that property crime increases with increases in unemployment; this was the conclusion of Belton Fleisher after analyzing juvenile arrest rates and the find-

ing of Phillips, Votey, and Maxwell using somewhat different data.[28] Isaac Ehrlich, in the most sophisticated statistical analysis of state crime rates made to date, showed that unemployment and various other measures of economic need tended to increase crime while the certainty of punishment tended to lessen it.[29] This suggests that simultaneously decreasing teenage unemployment and increasing the risks of youthful crime may be the most rational response society can make to property crime.

Even if increasing the certainty of a prison sentence is valuable both for its deterrent as well as for its incapacitative effect, we must still consider the problem of how long a sentence should be imposed. This is a complex question. Humanity and a sense of proportion require us to make the penalty commensurate with the gravity of the offense—ten years in jail for stealing five dollars would be clearly outlandish. Even so, one must concede that in any rational system of criminal justice it will always be necessary to have some very severe penalties, even if they have no deterrent effect on crime. In the first place, the moral horror of certain offenses is such that society would not—and probably should not—tolerate the imposition of small penalties even if larger ones do not increase the deterrent effect. As the English legal philosopher James Fitzjames Stephens observed in the nineteenth century, if murder could be prevented by the fine of one shilling, we could not without doing violence to the moral bonds of society settle for a one-shilling fine for murderers.[30]

In the second place, there must always be a penalty that can be imposed on persons who, while serving the maximum existing penalty, commit another crime—for example, a convict serving a long prison sentence who kills a prison guard. Some ultimate penalty must always exist to help protect innocent persons from criminals who "have nothing to lose." Third, the threat of severe penalties is an important resource for investigators seeking to obtain criminal informers. If those who inform on a ring of heroin dealers risk death, while those who deal in

heroin risk only one year in prison, few dealers will become police informers—avoiding a one-year sentence is not worth the chance of assassination. But if the sentence they avoid is five or ten years, many more pushers will be willing to run at least a reasonable risk of being murdered.

Finally, it is possible that in particular cases very severe penalties are a deterrent, though statistically, severity seems related only to the deterrence of murder.

But even if all of these arguments are correct, there are at least two considerations that should lead us to conclude that severe penalties cannot be the norm. First, except in unusual cases, severity is probably subject to rapidly diminishing returns. The difference between a one-year and a five-year sentence is likely to appear very great to a convict, but the difference between a twenty-year and a twenty-five-year sentence (or even a thirty-year sentence) is likely to appear rather small. Second, the more severe the penalty, the more unlikely that it will be imposed. To ensure a conviction, avoid an expensive trial, reduce the chances of reversal on appeal, and give expression to their own views of benevolence, prosecutors and judges will try to get a guilty plea, and all they can offer in return is a lesser sentence. The more severe the sentence, the greater the bargaining power of the accused, and the greater the likelihood he will be charged with a lesser offense. Extremely long mandatory minimum sentences do not always strengthen the hand of society; they often strengthen the hand of the criminal instead.

If this analysis is correct, what does it imply for the criminal court system? In an ideal world, it would imply something like the following:

First, the court system would be organized around the primary task of sentencing, not around the largely mythic task of determining guilt. Hearings and trials under strict standards of due process would still be held, of course, where the issue of guilt is in doubt, but (again, in the ideal world) this would occupy only a fraction of the courts' resources and perhaps be handled by judges who specialized in that work.

Second, the sentencing process would be placed under central management, with uniform standards enforced by a presiding officer and applied under his direction.

Third, every conviction for a nontrivial offense would entail a penalty that involved a deprivation of liberty, even if brief. For many offenses the minimum sentence might be as low as one week, and even that might be served on weekends. For most offenses the average sentence would be relatively short—perhaps no more than six months or a year—but it would be invariably applied. Only the most serious offenses would result in long penalties.

Fourth, "deprivation of liberty" need not, and usually would not, entail confinement in a conventional prison. After the deprivation of liberty is decided upon, a decision would be made as to whether it would involve confinement at night and on weekends, while allowing a person to work during the day; enrollment in a closely supervised community-based treatment program; referral to a narcotics treatment program; or confinement in a well-guarded prison. Judgment as to the form the deprivation would take would be based on the need to protect society and on the prospects of the offender for rehabilitation. But the prospects for rehabilitation should not be allowed to govern the length of sentence, nor whether there should be some deprivation of liberty: To permit the former would be unjust to the offender, to permit the latter would be unjust to society. Conventional probation—releasing an offender on the understanding that occasionally he would visit his probation officer—would be virtually abolished.

Fifth, conviction for a subsequent offense would invariably result in an increased deprivation of liberty. If the second offense were minor, the increase would be small; if grave, the increase would be substantial. Whatever the case, something would be done. Penalties would be primarily designed to fit the crime, with some (but not much) range for judicial discretion in order that mitigating and exacerbating circumstances might be taken into account.

Such proposals will be opposed by judges unwilling to surrender their authority to do as they please; by legislators who feel that it is necessary to pass bills requiring massive sentences that are rarely imposed; by taxpayers' groups that do not wish to foot the bill for the substantial additional expenditures required for new correctional facilities and more court and correctional personnel; and by those who feel that punishment does not work, or that, whether it works or not, it is wrong to apply it to criminals until society itself has been punished for "producing" criminals.

If the opposition of these groups could be overcome, there would be problems in administering the new system. If every offender knew that some penalty would befall him, he might have less incentive to plead guilty, and thus would demand a trial, thereby changing the mythic function of the courts into the real one, and so paralyzing them. (In fact, I would guess that many offenders would prefer the certainty of a relatively short sentence to the cost of a trial and the possibility of a longer or more confining sentence which might result from revelations during the trial of the full range of evidence against him and of the nature of his character.)

What in fact would happen could only be learned by experience, but the inertia of the present system coupled with the myopic view that judges and correctional officers are capable of transforming human character are, unfortunately, powerful impediments to our ever acquiring that experience. Formidable as these barriers are, there is an even greater one—namely, the widespread view that hiring more judges but giving them less discretion, and building more correctional facilities, albeit decent and humane ones, are at best a confession of social failure and at worst a blindly repressive act.

I regard these actions as neither. Our society has been, with individual exceptions, remarkably forebearing. We have preserved and extended the most comprehensive array of civil liberties to be found in almost any nation, despite a rising crime rate and (during the 1960s) periods of massive social disorder. No

nation that can so value human liberty and be so willing to check governmental power, even at some substantial cost in domestic tranquillity, can be accused of placing convenience, privilege, and security over all other considerations. Arrests are far easier and trials less encumbered with evidentiary rules in most other nations, including those, such as Great Britain, which we acknowledge to be bastions of freedom. If we choose to have a comprehensive bill of rights, as I think we should, we should be willing to pay the price of that choice. That price includes a willingness to accept both a higher level of crime and disorder and a larger investment in the resources and facilities needed to cope with those who violate the law and, despite our procedural guarantees, are caught by its agents.

Nor can a greater investment in criminal justice facilities be thought repressive if one compares what is with what might be. Crowded, antiquated prisons that require men and women to live in fear of one another and to suffer not only deprivation of liberty but a brutalizing regimen are hardly preferable to modern facilities that insure a modicum of privacy and in which security can be insured. What *is* illiberal and ungenerous is either to preserve the status quo or to insist that all prisons be closed, whatever the price in increased victimization.

Chapter 10

Some Concluding Thoughts

THOSE who have read this far in hopes of finding, not merely a way of thinking about crime, but ways of ending it, have clearly been disappointed. I believe that our society has not done as well as it could have in controlling crime because of erroneous but persistent views about the nature of man and the capacities of his institutions. But I do not believe that, were we to have taken a correct view and as a consequence adopted the most feasible policies, crime would have been eliminated, or even dramatically reduced. Those who argue that we can eliminate crime if only we have the "will" to do so, whether by ending poverty (as the Left argues) or by putting more police on the street and more gallows in our jails (as the Right believes), seriously mistake what we are capable of under even the best of circumstances, and place the blame for our failings precisely where it should not be—on our will power, and by implication on our governing morality.

I argue for a sober view of man and his institutions that

would permit reasonable things to be accomplished, foolish things abandoned, and utopian things forgotten. A sober view of man requires a modest definition of progress. A 20 per cent reduction in robbery would still leave us with the highest robbery rate of almost any Western nation but would prevent about sixty thousand robberies. A small gain for society, a large one for the would-be victims. Yet a 20 per cent reduction is unlikely if we concentrate our efforts on dealing with the causes of crime or even if we concentrate on improving police efficiency. Were we to devote those resources to a strategy that is well within our abilities—namely, to incapacitating a larger fraction of the convicted serious robbers—then not only is a 20 per cent reduction possible, but even larger ones are conceivable.

Most serious crime is committed by repeaters. What we do with first offenders is probably far less important than what we do with habitual offenders. A genuine first offender (and not merely a habitual offender caught for the first time) is in all likelihood a young person who, in the majority of cases, will stop stealing when he gets older. This is not to say we should forgive first offenses, for that would be to license the offense and erode the moral judgments that must underlie any society's attitude toward crime. The gravity of the offense must be appropriately impressed on the first offender, but the effort to devise ways of reeducating or uplifting him in order to insure that he does not steal again is likely to be wasted—both because we do not know how to reeducate or uplift and because most young delinquents seem to reeducate themselves no matter what society does.

After tracing the history of nearly ten thousand Philadelphia boys born in 1945, Marvin Wolfgang and his colleagues at the University of Pennsylvania found that over one-third were picked up by the police for something more serious than a traffic offense, but that 46 per cent of these delinquents had no further police contact after their first offense. Though a third started on crime, nearly half seemed to stop spontaneously—a good thing, because the criminal justice system in that city, already sorely taxed, would in all likelihood have collapsed. Out

of the ten thousand boys, however, there were six hundred twenty-seven—only 6 per cent—who committed five or more offenses before they were eighteen. Yet these few chronic offenders accounted for *over half* of all the recorded delinquencies and about *two-thirds* of all the violent crimes committed by the entire cohort.[1]

Only a tiny fraction of all serious crimes lead immediately to an arrest, and only a slightly larger fraction are ultimately "cleared" by an arrest, but this does not mean that the police function is meaningless. Because most serious crime is committed by repeaters, most criminals eventually get arrested. The Wolfgang findings and other studies suggest that the chances of a persistent burglar or robber living out his life, or even going a year, with no arrest are quite small. Yet a large proportion of repeat offenders, as the studies cited in Chapter 8 show, suffer little or no loss of freedom. Whether or not one believes that such penalties, if inflicted, would act as a deterrent, it is obvious that they could serve to incapacitate these offenders and thus, for the period of the incapacitation, prevent them from committing additional crimes.

We have a limited (and declining) supply of detention facilities, and many of those that exist are decrepit, unsafe, and overcrowded. But as important as expanding the supply and improving the decency of the facilities is the need to think seriously about how we wish to allocate those spaces that exist. At present, that allocation is hit or miss. A 1966 survey of over fifteen juvenile correctional institutions revealed that about 30 per cent of the inmates were young persons who had been committed for conduct that would not have been judged criminal were it committed by adults. They were runaways, "stubborn children," or chronic truants—problem children, to be sure, but scarcely major threats to society.[2] Using scarce detention space for them when in Los Angeles over 90 per cent of burglars with a major prior record receive no state prison sentence seems, to put it mildly, anomalous.

Shlomo and Reuel Shinnar have estimated the effect on

crime rates in New York State of a judicial policy other than that followed during the last decade or so. Given the present level of police efficiency and making some assumptions about how many crimes each offender commits per year, they conclude that the rate of serious crime would be only *one-third* what it is today if every person convicted of a serious offense were imprisoned for three years. This reduction would be less if it turned out (as seems unlikely) that most serious crime is committed by first-time offenders, and it would be much greater if the proportion of crimes resulting in an arrest and conviction were increased (as also seems unlikely). The reduction, it should be noted, would be solely the result of incapacitation, making no allowance for such additional reductions as might result from enhanced deterrence or rehabilitation.[3]

The Shinnar estimates are based on uncertain data and involve assumptions that can be challenged. But even assuming they are overly optimistic by a factor of two, a sizable reduction in crime would still ensue. In other countries such a policy of greater incapacitation is in fact followed. A robber arrested in England, for example, is more than three times as likely as one arrested in New York to go to prison. That difference in sentencing does not account for all the difference between English and American crime rates, but it may well account for a substantial fraction of it.

That these gains are possible does not mean that society should adopt such a policy. One would first want to know the costs, in additional prison space and judicial resources, of greater use of incapacitation. One would want to debate the propriety and humanity of a mandatory three-year term; perhaps, in order to accommodate differences in the character of criminals and their crimes, one would want to have a range of sentences from, say, one to five years. One would want to know what is likely to happen to the process of charging and pleading if every person arrested for a serious crime faced a mandatory minimum sentence, however mild. These and other difficult and important questions must first be confronted. But the cen-

tral fact is that *these are reasonable questions* around which facts can be gathered and intelligent arguments mustered. To discuss them requires us to make few optimistic assumptions about the malleability of human nature, the skills of officials who operate complex institutions, or the capacity of society to improve the fundamental aspects of familial and communal life.

Persons who criticize an emphasis on changing the police and courts to cope with crime are fond of saying that such measures cannot work so long as unemployment and poverty exist. We must acknowledge that we have not done very well at inducting young persons, especially but not only blacks, into the work force. Teenage unemployment rates continue to exceed 20 per cent; though the rate of growth in the youthful component of the population has slowed, their unemployment shows little sign of abating. To a degree, anticrime policies may be frustrated by the failure of employment policies, but it would be equally correct to say that so long as the criminal justice system does not impede crime, efforts to reduce unemployment will not work. If legitimate opportunities for work are unavailable, many young persons will turn to crime; but if criminal opportunities are profitable, many young persons will not take those legitimate jobs that exist. The benefits of work and the costs of crime must be increased simultaneously; to increase one but not the other makes sense only if one assumes that young people are irrational.

One rejoinder to this view is the argument that if legitimate jobs are made absolutely more attractive than stealing, stealing will decline even without any increase in penalties for it. That may be true provided there is no practical limit on the amount that can be paid in wages. Since the average "take" from a burglary or mugging is quite small, it would seem easy to make the income from a job exceed the income from crime. But this neglects the advantages of a criminal income: One works at crime at one's convenience, enjoys the esteem of colleagues who think a "straight" job is stupid and skill at stealing is commendable, looks forward to the occasional "big score" that may make

further work unnecessary for weeks, and relishes the risk and adventure associated with theft. The money value of all these benefits—that is, what one who is not shocked by crime would want in cash to forego crime—is hard to estimate, but is almost certainly far larger than what either public or private employers could offer to unskilled or semiskilled young workers. The only alternative for society is to so increase the risks of theft that its value is depreciated below what society can afford to pay in legal wages, and then take whatever steps are necessary to insure that those legal wages are available.

Another rejoinder to the "attack poverty" approach to crime is this: The desire to reduce crime is the worst possible reason for reducing poverty. Most poor persons are not criminals; many are either retired or have regular jobs and lead conventional family lives. The elderly, the working poor, and the willing-to-work poor could benefit greatly from economic conditions and government programs that enhance their incomes without there being the slightest reduction in crime—indeed, if the experience of the 1960s is any guide, there might well be, through no fault of most beneficiaries, an increase in crime. Reducing poverty and breaking up the ghettoes are desirable policies in their own right, whatever their effects on crime. It is the duty of government to devise other measures to cope with crime, not only to permit antipoverty programs to succeed without unfair competition from criminal opportunities, but also to insure that such programs do not inadvertently shift the costs of progress, in terms of higher crime rates, onto innocent parties, not the least of whom are the poor themselves.

One cannot press this economic reasoning too far. Some persons will commit crimes whatever the risks; indeed, for some, the greater the risk the greater the thrill, while others—the alcoholic wife beater, for example—are only dimly aware that there are any risks. But more important than the insensitivity of certain criminal activities to changes in risks and benefits is the impropriety of casting the crime problem wholly in terms of a utilitarian calculus. The most serious offenses are crimes not

simply because society finds them inconvenient, but because it regards them with moral horror. To steal, to rape, to rob, to assault—these acts are destructive of the very possibility of society and affronts to the humanity of their victims. It is my experience that parents do not instruct their children to be law abiding merely by pointing to the risks of being caught, but by explaining that these acts are wrong whether or not one is caught. I conjecture that those parents who simply warn their offspring about the risks of crime produce a disproportionate number of young persons willing to take those risks.

Even the deterrent capacity of the criminal justice system depends in no small part on its ability to evoke sentiments of shame in the accused. If all it evoked were a sense of being unlucky, crime rates would be even higher. James Fitzjames Stephens makes the point by analogy. To what extent, he asks, would a man be deterred from theft by the knowledge that by committing it he was exposing himself to one chance in fifty of catching a serious but not fatal illness—say, a bad fever? Rather little, we would imagine—indeed, all of us regularly take risks as great or greater than that: when we drive after drinking, when we smoke cigarettes, when we go hunting in the woods. The criminal sanction, Stephens concludes, "operates not only on the fears of criminals, but upon the habitual sentiments of those who are not criminals. [A] great part of the general detestation of crime . . . arises from the fact that the commission of offenses is associated . . . with the solemn and deliberate infliction of punishment wherever crime is proved." [4]

Much is made today of the fact that the criminal justice system "stigmatizes" those caught up in it, and thus unfairly marks such persons and perhaps even furthers their criminal careers by having "labeled" them as criminals. Whether the labeling process operates in this way is as yet unproved, but it would indeed be unfortunate if society treated a convicted offender in such a way that he had no reasonable alternative but to make crime a career. To prevent this, society ought to insure that one can "pay one's debt" without suffering permanent loss of civil rights,

the continuing and pointless indignity of parole supervision, and frustration in being unable to find a job. But doing these things is very different from eliminating the "stigma" from crime. To destigmatize crime would be to lift from it the weight of moral judgment and to make crime simply a particular occupation or avocation which society has chosen to reward less (or perhaps more!) than other pursuits. If there is not stigma attached to an activity, then society has no business making it a crime. Indeed, before the invention of the prison in the late eighteenth and early nineteenth centuries, the stigma attached to criminals was the major deterrent to and principal form of protection from criminal activity. The purpose of the criminal justice system is not to expose would-be criminals to a lottery in which they either win or lose, but to expose them in addition and more importantly to the solemn condemnation of the community should they yield to temptation.

Anyone familiar with the police stations, jails, and courts of some of our larger cities is keenly aware that accused persons caught up in the system are exposed to very little that involves either judgment or solemnity. They are instead processed through a bureaucratic maze in which a bargain is offered and a haggle ensues at every turn—over amount of bail, degree of the charged offense, and the nature of the plea. Much of what observers find objectionable about this process could be alleviated by devoting many more resources to it, so that an ample supply of prosecutors, defense attorneys, and judges were available. That we do not devote those additional resources in a country obsessed with the crime problem is one of the more interesting illustrations of the maxim, familiar to all political scientists, that one cannot predict public policy simply from knowing popular attitudes. Whatever the cause, it remains the case that in New York County (Manhattan) there were in 1973, 31,098 felony arrests to be handled by only 125 prosecutors, 119 public defenders, and 59 criminal court judges. The result was predictable: of those arrested, only 4130 pleaded guilty to or were convicted on a felony charge.

One wonders whether the stigma properly associated with crime retains much deterrent or educative value. My strong inclination is to resist explanations for rising crime that are based on the alleged moral breakdown of society, the community, or the family. I resist in part because most of the families and communities I know have not broken down, and in part because, had they broken down, I cannot imagine any collective action we could take consistent with our civil liberties that would restore a moral consensus, and yet the facts are hard to ignore. Take the family: Over one-third of all black children and one in fourteen of all white children live in single-parent families. Over two million children live in single-parent (usually father absent) households, almost *double* the number of ten years ago. In 1950, 18 per cent of black families were female-headed; in 1969 the proportion had risen to 27 per cent; by 1973 it exceeded 35 per cent. The average income for a single-parent family with children under six years of age was, in 1970, only $3100, well below the official "poverty line." [5]

Studies done in the late 1950s and the early 1960s showed that children from broken homes were more likely than others to become delinquent. In New York State, 58 per cent of the variation in pupil achievement in three hundred schools could be predicted by but three variables—broken homes, overcrowded housing, and parental educational level. Family disorganization, writes Urie Bronfenbrenner, has been shown in thousands of studies to be an "omnipresent overriding factor" in behavior disorders and social pathology. And that disorganization is increasing.[6]

These facts may explain some elements of the rising crime rate that cannot be attributed to the increased number of young persons, high teenage unemployment, or changed judicial policies. The age of persons arrested has been declining for more than fifteen years and the median age of convicted defendants (in jurisdictions for which data are available) has been declining for the last six years.[7] Apparently, the age at which persons begin to commit serious crime has been falling. For some

young people, thus, whatever forces weaken their resistance to criminal activity have been increasing in magnitude, and these forces may well include the continued disorganization of the family and the continued deterioration of the social structure of inner city communities.

One wants to be objective, if not optimistic. Perhaps single-parent families today are less disorganized or have a different significance than such families in the past. Perhaps the relationship between family structure and social pathology will change. After all, there now seem to be good grounds for believing that, at least on the East Coast, the heroin epidemic of the 1960s has run its course; though there are still thousands of addicts, the rate of formation of new addicts has slowed and the rate of heroin use by older addicts has dropped. Perhaps other aspects of the relationship among family, personality, and crime will change. Perhaps.

No one can say how much of crime results from its increased profitability and how much from its decreased shamefulness. But one or both factors must be at work, for population changes alone simply cannot account for the increases. Crime in our cities has increased far faster than the number of young people, or poor people, or black people, or just plain people who live in those cities. In short, objective conditions alone, whether demographic or economic, cannot account for the crime increases, though they no doubt contributed to it. Subjective forces—ideas, attitudes, values—played a great part, though in ways hard to define and impossible to measure. An assessment of the effect of these changes on crime would provide a partial understanding of changes in the moral structure of our society.

But to understand is not to change. If few of the demographic factors contributing to crime are subject to planned change, virtually none of the subjective ones are. Though intellectually rewarding, from a practical point of view it is a mistake to think about crime in terms of its "causes" and then to search for ways to alleviate those causes. We must think instead of what it is feasible for a government or a community to do, and then try to

discover, by experimentation and observation, which of those things will produce, at acceptable costs, desirable changes in the level of criminal victimization.

There are, we now know, certain things we can change in accordance with our intentions, and certain ones we cannot. We cannot alter the number of juveniles who first experiment with minor crimes. We cannot lower the recidivism rate, though within reason we should keep trying. We are not yet certain whether we can increase significantly the police apprehension rate. We may be able to change the teenage unemployment rate, though we have learned by painful trial and error that doing this is much more difficult than once supposed. We can probably reduce the time it takes to bring an arrested person to trial, even though we have as yet made few serious efforts to do so. We can certainly reduce the arbitrary and socially irrational exercise of prosecutorial discretion over whom to charge and whom to release, and we can most definitely stop pretending that judges know, any better than the rest of us, how to provide "individualized justice." We can confine a larger proportion of the serious and repeat offenders and fewer of the common drunks and truant children. We know that confining criminals prevents them from harming society, and we have grounds for suspecting that some would-be criminals can be deterred by the confinement of others.

Above all, we can try to learn more about what works, and in the process abandon our ideological preconceptions about what *ought* to work. Nearly ten years ago I wrote that the billions of dollars the federal government was then preparing to spend on crime control would be wasted, and indeed might even make matters worse if they were merely pumped into the existing criminal justice system.[8] They were, and they have. In the next ten years I hope we can learn to experiment rather than simply spend, to test our theories rather than fund our fears. This is advice, not simply or even primarily to government—for governments are run by men and women who are under irresistible pressures to pretend they know more than they do—but to my

colleagues: academics, theoreticians, writers, advisers. We may feel ourselves under pressure to pretend we know things, but we are also under a positive obligation to admit what we do not know and to avoid cant and sloganizing. The government agency, the Law Enforcement Assistance Administration, that has futilely spent those billions was created in consequence of an act passed by Congress on the advice of a presidential commission staffed by academics, myself included.

It is easy and popular to criticize yesterday's empty hopes and mistaken beliefs, especially if they seemed supportive of law enforcement. It is harder, and certainly most unpopular, to criticize today's pieties and pretensions, especially if they are uttered in the name of progress and humanity. But if we were wrong in thinking that more money spent on the police would bring down crime rates, we are equally wrong in supposing that closing our prisons, emptying our jails, and supporting "community-based" programs will do any better. Indeed, there is some evidence that these steps will make matters worse, and we ignore it at our peril.

Since the days of the crime commission we have learned a great deal, more than we are prepared to admit.[9] Perhaps we fear to admit it because of a newfound modesty about the foundations of our knowledge, but perhaps also because the implications of that knowledge suggest an unflattering view of man. Intellectuals, although they often dislike the common person as an individual, do not wish to be caught saying uncomplimentary things about humankind. Nevertheless, some persons will shun crime even if we do nothing to deter them, while others will seek it out even if we do everything to reform them. Wicked people exist. Nothing avails except to set them apart from innocent people. And many people, neither wicked nor innocent, but watchful, dissembling, and calculating of their opportunities, ponder our reaction to wickedness as a cue to what they might profitably do. We have trifled with the wicked, made sport of the innocent, and encouraged the calculators. Justice suffers, and so do we all.

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CHIEF JUSTICE
SUPREME COURT

Alaska Judicial Council
303 K STREET
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EXECUTIVE DIRECTOR
MICHAEL L. RUBINSTEIN

April 23, 1976

Rep. Charles Parr
House of Representatives
Pouch V
Juneau, AK 99811

RE: 1975 Felony Sentences for Violent Crimes

Dear Representative Parr:

On April 14, 1976, at a joint meeting of the Judiciary Committees of the Senate and House of Representatives, the House Rules Committee and the Alaska Judicial Council, the subjects of H.B. 600 and the Judicial Council's alternative proposal for a system of presumptive sentencing were discussed at some length. Requests were made of the Judicial Council and of the Administrative Director of Courts to provide the Legislature with data concerning persons who were convicted in 1975 of violent felonies and the sentences actually received by them.

Enclosed is a summary of our research complied through a joint effort of the Administrative Director's office and the Alaska Judicial Council.

The attached figures include only cases both opened and closed in 1975. (This excludes cases filed in 1973 and 1974, but which did not come to final judgment until 1975.) This data encompasses the entire State of Alaska. There were only 59 individual defendants in the "violent felony" category. The following summary classifies these 59 by first offenses, prior misdemeanors, prior non-violent felonies, and prior violent felonies:

1. 28 defendants (47%) had no prior convictions of any kind.
2. 17 defendants (29%) had a record of convictions for misdemeanors only, but no prior felonies.
3. 8 defendants (14%) had a record of previous convictions for felonies of a non-violent nature.
4. 6 defendants (10%) had previously been convicted of one violent felony.

No defendant in the sample had more than one prior conviction for a violent felony. The greatest proportion by far (47%) were first offenders. The sentences for the 6 individuals with one previous conviction for a violent felony who were again convicted of a violent felony in 1975 were as follows:

* * *

CRIME	SENTENCE
Manslaughter	7 years; 15 years
Kidnapping	4 years
Rape	2 years
Assault with Dangerous Weapon	0 (1 year probation - suspended imposition of sentence)
Robbery	5 years

Of the 13 individuals convicted of Robbery in 1975, one had previously been convicted of a violent felony and received a 5 year sentence. Please note that only two robbers received probation, and both were first offenders. (Other first offenders were sentenced to imprisonment for periods of between 6 months and 5 years.) Sentences for robbers who had prior non-violent felony convictions were also quite severe. (6 years, 10 years and 15 years respectively.) Persons who were convicted of Assault with Intent to Commit Robbery received sentences ranging from probation to 15 years. The average sentence in this category was 6 years, and none had a prior violent felony conviction.

The Manslaughter convictions are particularly interesting because of the extreme range of penalties represented in the sentencing pattern: e.g., 30 days, 60 days, 7 years, 12 years, 15 years. (Two of these individuals had a prior violent felony conviction.) This may illustrate the problem inherent in using the common law crimes as a basis for mandatory sentencing legislation. Although I have not examined the individual case files supporting each of these sentences, it would be my guess that the circumstances leading to the death of a human being in each of these cases must have been extremely divergent to justify a sentence of 30 days in one case and 15 years in another, where neither defendant had

any prior felony convictions. Nevertheless, all these cases are "Manslaughters", regardless of the facts.

The Assault with a Dangerous Weapon category is especially interesting and is deserving of much more careful and detailed study. There were 23 convictions for Assault with a Dangerous Weapon. Thirteen defendants (56%) were placed on probation without being required to serve any jail time whatever. One of these defendants had a prior violent felony record. Only three of the 23 individuals received more than 6 months in jail.

Does this mean that our judges are particularly tolerant of interpersonal violence as long as no profit motive is involved?* Does it mean that most of these cases represent only "technical" assaults in which little or no actual injury was done? Does it mean that prosecutors are frequently "overcharging" in this crime category, so that most of these Assault with a Dangerous Weapon charges should have been filed as misdemeanors instead?** How many of these cases involved feuds between family members or altercations between close friends? How many of these situations involved defendants who were seriously provoked by their victims? Once more the question of the appropriate labeling of crime categories must be raised. I would submit that this data tends to illustrate that "Assault with a dangerous weapon" may be an infelicitous basis for a system of mandatory minimum sentencing. At the very least, the figures would strongly suggest the need for closer study.

***

* The Supreme Court of Alaska has held that Assault with a Dangerous Weapon is "among the most serious crimes . . . ." The court has expressly disapproved a sentence of probation for this offense where the defendant was a 23 year-old Army sergeant, a "model soldier," with no previous record of violence.
State v. Armantrout, 483 P.2d 696, 698 (Alaska 1971).

* * *

** AS 11.15.22 Assault with a dangerous weapon, provides for a double set of punishments: "by imprisonment in the penitentiary for not more than 10 years nor less than six months, or by imprisonment in jail for not more than one year nor less than one month, or by a fine of not more than $1,000 nor less than $100.

Thank you for giving us the opportunity to compile this interesting data. I believe that overall the statistical information is supportive of the proposition advanced by Chief Justice Boochever to the effect that the courts are not lenient with violent criminals. The extreme disparaties reflected in some of the sentences in particular within the category of Assault with a dangerous weapon, are indicative of the need for careful crime definition and more precise and accurate drafting than that reflected in H.B. 600.

On behalf of the Alaska Judicial Council I repeat our offer to study the entire question of sentence reform and to prepare a draft sentencing bill for your consideration prior to the next session of the Legislature.

Sincerely,

Michael L Rubinstein/lk

Michael L. Rubinstein

CC: Chief Justice Boochever
Sen. Chancy Croft
Rep. Mike Bradner
House Judiciary Committee
Senate Judiciary Committee
House Rules Committee
Art Snowden II
Mel Martin
Keith Brown, Esq.
Brian Shortell, Esq.
Judicial Council Members
Avrum Gross, Esq.
Herb Pierson, Esq.
Peter Ring, Esq.

CRIME & PRIOR RECORD	NUMBER OF PERSONS CONVICTED & THE SENTENCE GIVEN
MANSLAUGHTER	
No Prior Record	(1) 5 years
Misdemeanor Record	(4) 30 days; 4 yrs; 6 yrs; 12 yrs.
Non-Violent Felony Record	(1) 60 days
Violent Felony Record	(2) 7 yrs; 15 yrs.
NEGLIGENT HOMICIDE	
No Prior Record	(0) None Convicted
Misdemeanor Record	(0) None Convicted
Non-Violent Felony Record	(1) Probation
Violent Felony Record	(0) None Convicted
KIDNAPPING	
No Prior Record	(0) None Convicted
Misdemeanor Record	(0) None Convicted
Non-Violent Felony Record	(0) None Convicted
Violent Felony Record	(1) 4 years
RAPE	
No Prior Record	(0) None Convicted
Misdemeanor Record	(0) None Convicted
Non-Violent Felony Record	(0) None Convicted
Violent Felony Record	(1) 2 years
SHOOTING WITH INTENT TO KILL	
No Prior Record	(1) 3 years
Misdemeanor Record	(0) None Convicted
Non-Violent Felony Record	(0) None Convicted
Violent Felony Record	(0) None Convicted
ASSAULT WITH INTENT TO COMMIT HOMICIDE	
No Prior Record	(0) None Convicted
Misdemeanor Record	(1) 4 months
Non-Violent Felony Record	(0) None Convicted
Violent Felony Record	(0) None Convicted
ASSAULT WITH INTENT TO COMMIT RAPE	
No Prior Record	(3) 6 months;1 yr; 1 yr.
Misdemeanor Record	(0) None Convicted
Non-Violent Felony Record	(0) None Convicted
Violent Felony Record	(0) None Convicted

ASSAULT WITH INTENT TO COMMIT ROBBERY

No Prior Record	(3)	2 yrs; 5 yrs; 10 yrs.
Misdemeanor Record	(2)	3 yrs; probation
Non-Violent Felony Record	(1)	15 yrs.
Violent Felony Record	(0)	None Convicted

ASSAULT WITH A DANGEROUS WEAPON

No Prior Record	(13)	60 days; 79 days; 90 days; 10 sentenced to probation
Misdemeanor Record	(7)	30 days, 125 days; 150 days; 18 months; 4 yrs; 2 sent. to prob.
Non-Violent Felony Record	(2)	4 months; 10 years
Violent Felony Record	(1)	probation

ROBBERY

No Prior Record	(7)	6 months; 1 yr; 2 yrs; 3 yrs; 5 yrs; 2 sentenced to probation
Misdemeanor Record	(2)	1 yr; 5 yrs.
Non-Violent Felony Record	(3)	6 yrs; 10 yrs; 15 yrs.
Violent Felony Record	(1)	5 yrs.

1st DEGREE ARSON

No Prior Record	(0)	None Convicted
Misdemeanor Record	(1)	2 years
Non-Violent Felony Record	(0)	None Convicted
Violent Felony Record	(0)	None Convicted

HB
604

"An Act relating to the Uniform Land Sales Practices Act."

COMMITTEE REPORT

3/4/76

HOUSE

Mr. Speaker: Date April 2, 1976

The Committee on JUDICIARY has had HB 604 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(✓) recommends it BE REPLACED WITH CS FOR HB 604 AND THAT CS FOR HB 604 DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Terry Gardiner

[illegible]

[illegible]

[illegible]

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Terry Gardiner Chairman

House Judiciary Committee
March 30, 1976

The meeting was called to order by Chairman Gardiner at 1:15 p.m. Members present were Specking, Bradley, Parr, Gardiner and Cotten.

HB 604 UNIFORM LAND SALES PRACTICES ACT

HB 604

Larry Carrol, Commerce
John Tillinghast, AG:

Subdivisions of 50 or more lots must register with the department and submit for verification a public offering statement which accurately describes the land for sale. Directed at Boom towns as Valdez where land is being sold sight unseen to unsuspecting buyers. This will require full disclosure so buyer knows what he is getting into. An on sight inspection will be performed by department of commerce to see that public offering statement is accurate.

HB 634 EMPLOYMENT OF MINORS

HB 634

Lee Leland, Labor, Wage and Hour division:

Would like an exemption for licensed premises so that young people can work in kitchens, gift shops, and as maids. Also want exemption for those over 16 who are drop outs so they can work steadily. Mr. Leland offered the attached amendment by the ABC Board.

Ron Lorensen, AG's office:

Minors may work on licensed premises with written permission of commissioner and parents. Problem has been with hotels and restaurants who cannot find people willing to work for lower wages, so like young people. But most of these are licensed premises. Department of Labor would like to be notified when a minor is being hired so they can check conditions, hours, wages etc.

HB 713 STUDENT REGENT

HB 713

Student regent must actually be a student, if drops out, governor must choose a replacement.

The meeting was adjourned at 2:45 p.m.

House Judiciary Committee
April 2, 1976

The meeting was called to order by Chairman Gardiner at 1:30 p.m. Present were Cotten, Specking, Bradley, Parr, Gardiner and Eliason.

HB 600 DETERMINATE SENTENCING

HB 600

Pat Conheady
Dan Hickey

Discussion of good time. As suggested by Fogel and Schueller good time should be vested after 30 days so that no more than 30 days good time can be lost. Will give the prisoners a better outlook and more reason to not misbehave.

Get rid of parole and get determinate sentencing. Need for statutory guidelines for mandatory minimums.

HB 634 EMPLOYMENT OF MINORS

HB 634

Section 1 was changed to agree with amendment suggested by Mr. Lee Leland of Wage and Hour Division of Dept. of Labor. Section 2 was deleted and 23.10.340 (b) was repealed.

HB 604 LAND SALES

HB 604

Cotten moved to change from 50 lots to 25 lots as trigger point. No objection, so ordered.

Mr. Parr wants the state to conform to the same guidelines and moved that 34.55.042(a)(6) be repealed. No objection, so ordered and a CS was ordered drawn up.

Mr. Cotten moved CS out of committee. No objection, so ordered.

The meeting was adjourned at 2:45 p.m.

file 604

STATE OF ALASKA

JAY S. HAMMOND
GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

POUCH D — JUNEAU 99811

April 5, 1976

Honorable Terry Gardiner
Chairman
House Judiciary Committee
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Terry:

Re: CS HB 604

We received information late Friday afternoon that the House Judiciary Committee would consider HB 604 at 11:00 A.M. the next day, Saturday, April 3, 1976. However, we were apparently misinformed, because when Julius Brecht, the new Director of Banking, arrived to testify at that meeting, he was informed that the Committee had already considered the bill on Friday, and voted to send it to the House with two substantive changes, on which we would have liked to have commented. We are sorry we missed the committee meeting on Friday, however, we do have some comments on CS HB 604.

I shall briefly outline those comments at this time. First, the form of CS HB 604 reported out of the committee changed the cutoff for reporting intrastate subdivision offerings from 50 to 25. I feel that the cutoff should be left at 50. The purpose of this bill is certainly to protect potential buyers of subdivided land. But where small amounts of land are involved in the offering, e.g., 25 lots or roughly eight acres, the scope of the offering is usually extended to persons within a reasonable distance from the land. Therefore, these persons may make their own on-site inspection without difficulty. However, offerings of 50 lots or more tend to be made to a much larger group of interested buyers, a number of whom quite likely cannot afford the time or money to travel to the site to inspect the land prior to purchase. The intent of the Governor in proposing this bill was to cover the latter situation. Also, to reduce the cutoff to 25 will greatly increase the administrative burden on the Department of Commerce and Economic Development in processing the filings of offers containing 25 or more subdivisions. For these reasons, I feel the cutoff should be left at 50 and not changed to 25.

I also understand that the committee has amended HB 604 to require that sales of subdivided land by the state be expressly subject to the provisions of the bill. I understand that the committee believes that there are policy reasons for requiring the state, when offering subdivided land for sale, to follow a procedure similar to that set out in HB 604 for private businessmen. However, I do not believe that the administrative mechanism chosen by the committee, i.e. registration of those state

offerings with the Department of Commerce and Economic Development, is the best way to implement the policy. I believe that it is more reasonable to require, e.g., the Division of Lands in the Department of Natural Resources, to adopt regulations that would essentially follow the procedure outlined in HB 604, with the single exception that the registration of the offering would be with the Department of Natural Resources, not with the Department of Commerce and Economic Development.

Aside from the comments just expressed, I am pleased that the House Judiciary Committee has sent this important bill on to the House.

Thank you for your consideration of the bill.

Sincerely,

Langhorne A. Motley
Commissioner

cc: Judiciary Committee
Representative Parker

34.55.042 A(6) Repeal

Introduced: 1/16/76
Referred: Community & Regional Affairs and Judiciary

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

HOUSE BILL NO. 604

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the Uniform Land Sales Practices Act."

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

* Section 1. AS 34.55.008 is amended to read:

Sec. 34.55.008. PROHIBITIONS ON DISPOSITIONS OF INTERESTS IN SUBDIVISIONS. Unless the subdivided land or the transaction is exempt by sec. 42 of this chapter

(1) no person may offer or dispose of in this state an interest in subdivided land [LOCATED OUTSIDE THIS STATE] before the time the subdivided land is registered in accordance with this chapter;

(2) no person may dispose of an interest in subdivided land [LOCATED OUTSIDE THIS STATE] unless a current public offering statement is delivered to the purchaser and the purchaser is afforded a reasonable opportunity to examine the public offering statement before the disposition.

* Sec. 2. AS 34.55.032 is amended to read:

Sec. 34.55.032. JURISDICTION. A disposition of subdivided land is subject to this chapter and the superior court of this state has jurisdiction in claims or causes of action arising under this chapter if

(1) the subdivider's principal office is located in this state; or

(2) the subdivided land is located in this state; or

(3) [(2)] an offer or disposition of subdivided land is

made in this state, whether or not the offeror or offeree is then present in this state, if the offer originates in this state or is directed by the offeror to a person or place in this state and received by the person or at the place to which it is directed.

* Sec. 3. AS 34.55.042(a)(2) is repealed. — Exempted from Reg if 100 or more lots

* Sec. 4. AS 34.55.044(6) is repealed and re-enacted to read:

(6) "subdivision" and "subdivided land" mean any land, located outside of this state which is divided or proposed to be divided into 10 or more lots, or located in this state which is divided or proposed to be divided into 25 or more lots, whether contiguous or not, for the purpose of first sale or lease as part of a common promotional plan; if subdivided land is offered for sale or lease by a single developer, or a group of developers acting in concert, and the land is contiguous or is known, designated, or advertised as a common unit or by a common name that land is, without regard to the number of lots covered by each individual offering, presumed to be offered for sale or lease as part of a common promotional plan; all lots created by a person within a five-mile radius from any point of the most recently created lot or lots, within any consecutive five-year period, are presumed to be part of a common promotional plan;

HB

606

...tments to vacancies in the office of United States senator."

COMMITTEE REPORT

1/16/76

HOUSE

Mr. Speaker: Date Feb. 11, 1976

The Committee on JUDICIARY has had HB 606 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(/) recommends it BE REPLACED WITH CS FOR HB626 AND THAT CS FOR _____ DO PASS ~~as amended~~

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

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February 10, 1976

Mr. Richard Svobodny
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Dear Mr. Svobodny:

Pursuant to our telephone conversation of February 5, 1976, I am enclosing herewith a copy of then Superior Court Judge Burke's opinion in Hopson v. Notti, relating to filling U.S. congressional vacancies. The decision was appealed but the appeal was dropped before resolution of it. Please let me know if I can be of further help.

Sincerely,

RICE, HOPPNER & Hedland

John S. Hedland

JSH:mp
Enclosure

Mr. Fleischer

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

EBEN HOPSON, et al.,

Plaintiffs,

vs.

EMIL NOTTI, State Central Committee Chairman of the Democratic Party of the State of Alaska and CLIFFORD E. WARREN, National Committeeman for the Democratic Party of the State of Alaska,

Defendants.

FILED
IN OPEN COURT
Superior Court
State of Alaska
at Anchorage
Date 12-28-72
A. M. VOKACEK Clerk
Deputy

No. 72-3595

OPINION

This is an action for declaratory judgment and injunctive relief.

I. PARTIES.

Plaintiffs are members of the Democratic Party of the State of Alaska, a voluntary, unincorporated organization formed for the purpose of carrying on political activities, including activities designed to effect the election of candidates to political office. Several of their number are delegates to the 1972-1974 State Convention of the Democratic Party.

Defendant EMIL NOTTI is the chairman of the party's State Central Committee. Defendant CLIFFORD E. WARREN is the party's National Committeeman.

II. ACTION TO DATE.

This action was filed on December 5, 1972, after defendant NOTTI announced that he intended to call a meeting of the State Central Committee to nominate a candidate, by committee, for the office of

United States Representative, following the disappearance of Alaska's recently re-elected Representative, the Honorable Nicholas Begich.

On December 7, 1972, this Court entered a preliminary injunction enjoining defendant NOTTI, pending final disposition of the cause, from calling, conducting or participating in any meeting of the State Central Committee for that purpose.

Due to the nature of the controversy and the parties' expressed desire for a prompt decision, the matter was set on for trial commencing December 19, 1972. Allen McGrath appeared for and on behalf of plaintiffs. Hugh W. Fleischer appeared for and on behalf of defendant EMIL NOTTI. Defendant CLIFFORD E. WARREN appeared on his own behalf and without counsel.

Plaintiffs have completed the presentation of their case-in-chief. Defendants have presented evidence upon those issues raised by plaintiffs First and Second Causes of Action, and as to such issues all parties have rested. Defendants have moved for dismissal of plaintiffs' Third Cause of Action, pursuant to Civil Rule 41 (b), reserving the right to present additional evidence in the event that such Motion is denied.

The parties have stipulated that the Court may consider, as evidence introduced at trial, all affidavits, exhibits and testimony presented at the time of hearing on plaintiffs' motion for a preliminary injunction.

III. PLEADINGS.

The complaint alleges three Causes of Action. Plaintiffs' basic contentions are:

> A. That the party's State Central Committee does not have the power to nominate a candidate to run in a special election called to fill a vacancy in the office of United States Representative;
>
> B. That the membership of the State Central Committee fails to comply with the one-man, one-vote principle, thereby violating plaintiffs' equal

protection rights; and

C. That the procedures adopted at the Democratic Party's last statewide convention, whereby delegates from the South Central District were afforded the right to cast only 7/10 of each delegate's vote, were contrary to the bylaws of the Democratic Party of the State of Alaska and violative of plaintiffs' equal protection rights.

Without objection, defendant WARREN was permitted to intervene at the start of trial. By stipulation, the Answer of defendant NOTTI was deemed the Answer of both defendants.

IV. JUSTICIABILITY IN GENERAL.

Historically, courts have been extremely reluctant to take jurisdiction of or interfere in the internal affairs of political parties. King County Republican Central Committee v. Republican State Committee, 484 P.2d 387, 390-391 (Wash. 1971). See also: Annot., 20 A.L.R. 1035 (1922), 169 A.L.R. 1291 (1947). However, the scope of the "political-question" doctrine has been greatly narrowed in the recent years. Maxey v. Washington State Democratic Committee, 319 F.Supp. 673, 677 (D.C. Wash. 1970). See, also: Baker v. Carr, 7 L.Ed.2d 663 (1962); Reynolds v. Sims, 12 L.Ed.2d 506 (1964); Williams v. Rhodes, 21 L.Ed.2d 24 (1968); Powell v. McCormack, 23 L.Ed.2d 491 (1969). It seems clear that where constitutional guarantees are involved the Court can and should exercise its jurisdiction. On the other hand, where the complaint rests upon something less than the violation of a constitutional right, more restraint is called for. Then, it is only when the power to do so is expressly conferred by statute, or the issue involved is regulated by statute and the statute has been violated or misinterpreted, that the courts may properly be called upon and entitled to assume any jurisdiction.

It is with these general principles in mind that the court approaches the task at hand.

V. FIRST CAUSE OF ACTION.

On or about October 14, 1972, the Honorable Nicholas Begich, United States Representative for the State of Alaska, was reported missing on a flight between Anchorage and Juneau, Alaska. Despite extensive search efforts, Representative Begich has not been located and his exact fate remains undetermined.

On November 30, 1972, defendant NOTTI announced that he, as State Central Committee Chairman of the Democratic Party, intended to call a meeting of the State Central Committee for the purpose of nominating, by committee, a party candidate for any special election called to elect a United States Representative for the State of Alaska, when and if a vacancy occurs in the office held by Representative Begich. It was defendant NOTTI'S intention to call such meeting on or about December 14, 15, or 16, 1972. As already noted, such action was enjoined pending final disposition of the cause.

The Court takes judicial notice of the following: on December 11, 1972, the Honorable Dorothy D. Tyner, District Court Judge, impaneled a jury in the District Court at Anchorage, Alaska, to inquire into the facts surrounding the disappearance of Representative Begich; on December 12, 1972, the jury returned its verdict finding that sufficient evidence had been presented to warrant a presumption that Representative Begich is dead; Judge Tyner has not yet entered an Order of Presumptive Death.

The success or failure of plaintiffs' First Cause of Action, aside from their assertion of a deprivation of their right to vote, depends upon the answer to the following question: does the Democratic State Central Committee possess the power to nominate a candidate for the office of United States Representative under the circumstances presented?

Technically, a vacancy has not yet occurred. Defendants argue, therefore, that this action is premature. Although for

different reasons, questions of standing were also before the Court in Maxey v. Washington State Democratic Committee, 319 F.Supp. 673, 677 (D.C. Wash. 1970). There, in language which seems particularly applicable to the case at bar, the Court said:

> There is no question that plaintiffs, who are members and officers of the Washington State Democratic Party and who regularly participate in the election of state and national convention delegates, have a deep personal stake in the outcome of this case. They should not be denied relief because they have brought their action while there is yet time to determine, declare, and implement [the appropriate relief]. The failure by the plaintiffs in Irish v. Democratic-Farmer-Labor Party of Minnesota, 399 F.2d 119 (8 Cir. 1968), to bring their action within a sufficient time to permit meaningful judicial relief was a significant factor in the Court's decision in that case to deny relief. 399 F.2d at 120.

For similar reasons, I hold that plaintiffs have standing to sue and that a case or controversy exists.

On plaintiffs' First Cause of Action I am not persuaded by defendants' claim that there has been a failure to join indispensable parties. I therefore, proceed to dispose of the case on the merits.

Subject to constitutional limitations, the legislature may regulate the nomination of candidates for public office. Briscoe v. Cusper, 435 F.2d 1046 (7th Cir. 1971); Irish v. Democratic-Farmer-Labor Party of Minnesota, 287 F.Supp. 794 (D.C. Minn.), affirmed 399 F.2d 119; Socialist Labor Party v. Rhodes, 290 F.Supp. 983 (D.C. Ohio 1968), affirmed in part, modified in part on other grounds 21 L.Ed 2d 24; Azevedo v. Jordan, 47 Cal. Rptr. 125 (Cal. App. 1965); Kelley v. Adams, 238 So.2d 401 (Fla. 1970); State ex rel.

Socialist Labor Party v. State Election Board, 241 N.E.2d 69 (Ind. 1968); Andrews v. Branigan, 175 N.W.2d 839 (Mich.1970); Cox v. Katz, 293 N.Y.S.2d 829 (N.Y. 1968), affirmed 241 N.E.2d 747, cert. den. 22 L.Ed2d 452; Malinou v. Board of Elections, 271 A.2d 798 (R.I. 1971), appeal dismissed 28 L.Ed2d 527; State ex rel. Brewer v. Wilson, 150 S.E.2d 592 (W.Va. 1966).

By the enactment of AS 15.40.210 the state legislature has established the methods whereby political parties may nominate candidates for the United States House of Representatives, in special elections called to fill a vacancy occurring in the office of United States Representatives. That section provides, in part:

> The nominees of political parties may be selected by the state convention or in any other manner prescribed by the party bylaws * * * .

There is no question that the Democratic Party of the State of Alaska is a "political party" within the meaning of AS 15.40.210.

The "Plan of Organization of the Democratic Party in the State of Alaska" constitutes the bylaws of the state Democratic Party. Such bylaws are silent on the subject in controversy, making no provision for the nomination of party candidates by committee. Plaintiffs contend, therefore, that the State Central Committee is without power to make the nomination. Since the issue before the Court involves an alleged violation or misinterpretation of a state statute, this Court has jurisdiction to determine the question presented by plaintiffs' First Cause of Action.

Unless authorized to do so by statute, by party rule, or by convention, a party committee has no power to make original nominations. Russel v. Tooker, 46 Pac. 530 (Mont. 1896); State ex rel. Copenhaver v. Jack, 153 P.2d 149 (Wyo. 1944); Greenberg v. Cohen, 17 N.Y.S.2d 895 (N.Y. 1940), affirmed 17 N.Y.S.2d 878. When the matter is regulated by statute, the power of a committee to make nominations

is restricted by terms of such statute and the party rules in pursuance thereof. Clary v. Humphrey, 208 N.Y.S. 607 (N.Y. 1925); Nolan ex rel. Rawson v. Place, 20 A.2d 542 (R.I. 1941); McLyman v. Molloy, 162 A. 849 (R.I. 1932); Rook v. Skuse, 262 N.Y.S. 2d 968 (N.Y. 1965); State ex rel. Baker v. Bailey, 163 S.E.2d 873 (W..Va. 1968).

The State Central Committee has interpreted the party's bylaws and applicable statutes as giving it the authority to nominate a candidate. Defendants argue that the Court is bound to follow that interpretation; that the interpretation of a party's bylaws must be left to the party without the interference of the Court. Such argument, while attractive, is without merit, under the particular facts of the case. The meaning of AS 15.40.210 is clear. Since the Democratic Party has failed to prescribe "any other manner" of selection in its bylaws, the only lawful method of nomination is by state convention.

The authority of a political party to interpret its own bylaws cannot be used as an excuse to manufacture, under the guise of "interpretation", that which simply does not exist.

In certain instances, the legislature has specifically authorized nominations by committee. Thus, when a vacancy occurs between the primary and general elections AS 15.25.130 provides:

> The nominees of political parties by party petition may be selected for statewide offices by the party central committee or in any other manner prescribed by the party bylaws * * *. The nominees of political parties by party petition may be selected for district-wide offices by the respective party district committee or in any other manner prescribed by the party bylaws * * *. [Emphasis added]

AS 15.25.056 and 15.40.460 also authorize nominations by committee under certain circumstances.

The differences to be observed in the provisions of AS 15.-

40.210 cannot be attributed to mere accident. I must assume, in the absence of compelling reasons to believe otherwise, that the legislature considered those differences and intended that nominations under AS 15.40.210 were to be by state convention unless the party saw fit to prescribe some other method in its bylaws. To hold otherwise would be to ignore the expressed intent of the legislature.

Finally, defendants seem to argue that unless they prevail on the First Cause of Action it may be difficult or impossible to make a party nomination when and if a special election is called, due to the provisions of the party bylaws concerning the calling of a state convention. Such difficulties do not enable me to ignore the requirements of AS 15.40.210. The difficulties or inabilities complained of, real or imagined, are the product of the Democratic Party's own bylaws.

In the event that the State Central Committee should attempt to nominate a candidate, contrary to the requirements of AS 15.40.210, plaintiffs will suffer immediate and irreparable harm for which there is no adequate remedy at law.

For the foregoing reasons, plaintiffs are entitled to prevail on their First Cause of Action and to the issuance of a permanent injunction.

VI. SECOND CAUSE OF ACTION.

Plaintiffs' Second Cause of Action alleges that the membership of the State Central Committee is not selected so as to reflect compliance with the rule of one-man, one-vote, and that, therefore, any nomination by that committee would be in violation of plaintiffs' right of equal protection. It is conceded that the membership of the committee is not apportioned on a population basis.

Where a committee performs public electoral functions, such as the nomination of candidates for public office, the committee is required to apply the one-man, one-vote principle, since in such cases

it is playing an integral part in the state scheme of public elections. Seergy v. King County Republican County Committee, 459 F.2d 308 (2nd Cir. 1972). See, also: Dahl v. Republican State Committee, 319 F.Supp. 682 (D.C. Wash. 1970); Lynch v. Torquato, 343 F.2d 370 (3rd Cir. 1965); Maxey v. Washington State Democratic Committee, 319 F.Supp. 673 (D.C. Wash. 1970); Rogers v. State Committee of Republican Party, 232 A.2d 852 (N.J. 1967).

Further discussion is unnecessary as the question presented has been rendered moot, by my decision on the First Cause of Action.

VII. THIRD CAUSE OF ACTION.

In their Third Cause of Action plaintiffs allege that at the last state convention, convened on May 26, 1972, without a quorum being present, procedures were adopted whereby delegates from the South Central District were given the right to cast only 7/10 of each delegate's vote; that such procedures were contrary to the bylaws of the Democratic Party of the State of Alaska and in violation of their equal protection rights.

Plaintiffs seek a judgment requiring that the state convention be reconvened; that notice of such reconvened convention be given only to those delegates elected and certified by their respective district conventions; that the voting at such reconvened convention be held in conformity with the party bylaws.

Under the party bylaws, delegates to the state convention are selected at district conventions held for the South East, South Central, Central and North West Districts. The South Central District is comprised of election districts 6 through 12 for the State House of Representatives. Delegates are apportioned on the basis of one delegate for every 250 votes cast in the district for the statewide Democratic nominees receiving the most votes in the preceding election. At the 1972 state convention, the total number of authorized delegate

votes was 199. Of these, 89 were allocated to the South Central District, the largest segment of the group coming from House District 8.

At the South East and South Central District Conventions, a power struggle developed between two opposing groups popularly known as the "Ad Hoc" group and the "Regulars". These individuals were delegates elected to the District Convention by the precinct caucuses.

The South Central District Convention convened on April 7, 1972. Two lists of delegates, for the state convention, were proposed - one by each of the competing groups. A number of names appeared on both lists. Upon a vote of the District Convention the slate proposed by the "Regulars" was elected. The disappointed 'Ad Hoc' group then voted to present their own list of delegates to the State Convention.

At the South East District Convention the opposite occurred. The "Ad Hoc" slate was elected by the convention and the "Regulars" then voted to present their own list of delegates to the State Convention.

The 1972 State Convention was convened at Fairbanks, Alaska, on May 26, 1972. The uncontested delegations from the Central District (46 votes) and the North West District were seated and elected a temporary chairman who appointed a credentials committee. The contested delegations from the South East and South Central Districts were registered separately and were not given delegate badges, due to the challenge to their credentials.

After considering the matter, the credentials committee returned a report recommending that the convention seat those delegates appearing on the "Regulars" slate from South Central and on the "Ad Hoc" slate from the South East District, those being the prevailing slates in their respective district conventions.

A minority report recommended that the competing delegations from each district be seated on a 70-30 ratio. A motion to amend the minority report was then made to seat both slates of delegates from each district, and to give the prevailing slate of delegates .7 vote each, and those from the competing slate .3 votes each.

The party bylaws Provide, in part:

> Each duly elected delegate to the State or District Convention shall be entitled to one vote upon any question coming before the Convention.

This provision was called to the attention of the delegates assembled and proposal was made to "suspend the rules". The only delegates who voted were the 72 uncontested delegates from the Central and North West Districts. By a vote of 68 1/2 to 3 1/2 the amendment was auopted. Thereafter, the members of the competing slates from the South Central and South East Districts participated on a .7 vote - .3 vote basis.

Part of the business of the Convention involved the election of delegates to the 1972 Democratic National Convention. A challenge to certain such delegates was lodged, following the State Convention. The National Committeeman and the National Committeewoman were also challenged. The basis of the challenge was the alleged failure of the State Convention to comply with the requirements of the party bylaws.

A hearing examiner, Hans A. Linde, conducted hearings on the challenge at Anchorage, Alaska, on June 25-26, 1972. His findings and conclusions were submitted to the National credentials committee. He concluded, in part:

> The compromise method of seating and counting delegates adopted by the convention to resolve this issue required

> substantial departures from the State's Party Plan of Organization, and the decision to adopt these departures involved some apparent irregulatities of parliamentary procedure. These were not the kind to cast in doubt whether the action of the action taken was understood by or represented the wish of those voting to adopt them.

The report of the credentials committee to the Democratic National Convention recommended the seating of the delegates elected by the State Convention.

For the purposes of my decision on defendants' motion to dismiss plaintiffs' Third Cause of Action, I must view the evidence as having established a prima facie case of substantial failure to comply with the party's bylaws and the rules of parliamentary procedure adopted by those bylaws regulating the conduct of the State Convention. Civil Rule 41 (b).

My own doubts about the plaintiffs' Third Cause of Action revolve around the justiciability of the questions presented. Unlike the First Cause of Action, there is no st te statute governing the matters of controversy. In the absence of evidence of the violation of a constitutional right, I can see no basis upon which this Court can or should enter into a dispute involving the seating of delegates to the party's state convention. The fact that the convention may have violated its own bylaws and rules of procedure does not, in and of itself, present a justiciable question. The cases cited by the plaintiffs, to the effect that the court should compel compliance with those bylaws, are not persuasive. It must be remembered that political conventions are generally composed of laymen; that the delegates to a convention are often inexperienced people attending their first convention. The evidence in this trial has established beyond question the confusion that naturally attends such a meeting. To require strict or even substantial, compliance with the terms of the party's bylaws

and the rules of order used by the party, would be to invite litigation on every instance of non-compliance. The obvious result would be to destroy the entire process. If the people are to function effectively, through their political parties, they must be permitted to do so free from the strict supervision of the courts. Until such time as the people, through the legislature or their party bylaws, choose to give that authority to the court, the internal problems of conducting a political convention are best left to the parties themselves.

In O'Brien v. Brown, 34 L.Ed2d 1, 6 (1972), the Supreme Court of the United States expressed "grave doubts" as to the action taken by the Court of Appeals in taking jurisdiction of a credentials challenge, saying:

> I has been understood since our National political parties first came into being as voluntary associations of individuals that the convention itself is the proper forum for determining intra-party disputes as to which delegates should be seated.
>
> * * *.

The Court further stated:

> In the light of the availability of the convention as a forum to review the recommendation of the Credentials Committee . . . , the lack of precedent to support the extraordinary relief granted by the Court of Appeals and the large public interest in allowing the political processes to function free from judicial supervision, we conclude the judgments of the Court of Appeals must be stayed.

The justiciability question, it seems to me, turns upon whether or not the voters in the South Central District have been deprived of their right to participate in the nomination process. There is no doubt that the nomination of candidates, by convention or committee, is an integral part of the election process is constitutionally protected.

In the instant case, the voters of the South Central District are represented by two slates of delegates which together are authorized to cast all of the votes (89) allocated to that District. Aside from the fact that they have been in competition with one another from the time of their precinct caucuses, there is no evidence that those delegates do not fairly and reasonably represent the people of the South Central District as a whole. If anything, it seems reasonable to assume that they more adequately represent that area, since each group obviously has the support of a large number of voters having different political views.

So long as the procedures adopted at the state convention do not materially deprive the people of the South Central District of their right to participate in the nominating process there is no denial of the constitutional right of equal protection. Here, the representation of all the people making up that district has been broadened rather than narrowed. I am, therefore, unable to conclude that plaintiffs have presented a prima facie case on their alleged denial of a constitutional guarantee.

One extreme example may serve to illustrate the point. Suppose a political party having a similar set of bylaws, because of difficulty in seating delegates, decided to permit all registered party members from a particular district to sit as delegates, sharing the votes allocated to that district. Even if in total violation of the party bylaws, would such a procedure amount to a denial of equal protection? I suggest not.

On the grounds of justiciability, plaintiffs Third Cause of Action must be dismissed.

CONCLUSION

Plaintiffs are entitled to a permanent injunction and declaratory judgment, as prayed for, on their First Cause of Action. The question presented by plaintiffs' Second Cause of Action, being

moot, requires no decision. Plaintiffs' Third Cause of Action shall be dismissed.

Judgment shall be entered in conformity with this opinion. As permitted by Civil Rule 52 (a), the foregoing shall serve as my Findings of Fact and Conclusions of Law.

DATED this 28th day of December, 1972, at Anchorage, Alaska.

Edmond W. Burke

EDMOND W. BURKE
Superior Court Judge

House Judiciary Committee
January 20, 1976

The meeting was called to order by Chairman Gardiner at 1:20. Present were Gardiner, Cotten, Eliason, Parr, Bradley and Specking.

Under discussion was Mr. Miller's HB 606 dealing with appointments to fill vacancies in the U.S. Senators seats. Mr. Miller pointed out that the vacancy should be filled by a person of the same political party as the deceased. Mr. Miller felt that the appointment has to be made by the Governor and has outlined in HB 606 a method by which names should be submitted to the Governor, should the Governor happen to not be of the same party as the deceased. HB 606

Most of the disagreement stemmed from the method of submitting names to the Governor. Be it from the President of the Senate and the Speaker of the House, the Caucuses, the Central Committees, the District Committees or what have you. Only Mr. Specking was in disagreement that the replacement should be of the same party.

The situation of a special election was discussed, and whether an appointment should be made until the next general election, at which time the appointee would have to be duly elected.

Mr. Gardiner suggested that the members meditate on the matter, and a draft proposal be drawn up suggesting methods of submitting names, and it will be researched as to whether in the fact the Governor has to make the appointment, or if a special election will do.

The meeting was adjourned at 2:30.

House Judiciary Committee
January 28, 1976

The meeting was called to order by Chairman Gardiner at 11:05 p.m. Members present were Brown, Cotten, Eliason, Bradley, Parr and Gardiner.

HOUSE BILL NO. 606 Vacancies in U.S. Senate seats HB 606

The basic problem with the bill as it stands and as Mr. Walker was directed to draft a substitute is that the Legislature is not always in session, and by directing nominations through the Legislature, it would require a special session during those times when the Legislature was not in session.

After much discussion it was finally agreed upon that the best step to take was to have the four district conventions as filed with the Lt. Governor as to jurisdiction, each submit no more than 2 names to the Governor so that he has from 1 - 8 names to choose from.

Mr. Walker was instructed to draft a CS based on the above ideas.

The meeting was adjourned at 11:39 p.m.

CSSB 440 SECURITY INTERESTS

CSSB 440

Rick Svobodny explained that this deals with the Uniform Commercial Code. As things stand now automobiles and mobile homes which are covered by certificate of title, do not require the dealer to file liens held by the bank on his inventory until it is sold. This would make it necessary for this information to be available before the article was sold. The filing must be done when the manufacture sells the vehicles to the dealer, not when the dealer sells to the consumer.

Mr. Parr moved that CSSB 440 pass out of committee. No objection, it was done.

HB 606 VACANCIES U.S. SENATORS

HB 606

The members discussed the following amendments to CS HB 606:

Page 1, lines 27 - 29: Delete last sentence of subsection (c).

Page 2, line 6: Delete "not more than".

Mr. Cotten moved that the above amendments be adopted. No objection, so ordered.

Page 2, lines 11 - 17: Change to read:

Sec. 15.40.016. PLAN FILED WITH LIEUTENANT GOVERNOR. Each state party central committee shall maintain on file with the office of the lieutenant governor a plan which defines the "party districts" for the purposes of Sec. 15.40.010 and Sec. 15.40.015.

Mr. Gardiner moved that the above amendment to adopted. No objection, so ordered.

Mr. Parr moved that HB 606 pass out of committee in the form of CS HB 606 with the above amendments included. No objection, so ordered.

The meeting was adjourned at 8:35 p.m.

HB606

1:15

1/20

Gardiner, Cotton, Eliason, Parr, Bradley, Specking

1:20

① Miller: If death appointment need not necessarily be of same party -

If Gov not of same party - Pres & Speaker send names for recommendation. In other words, highest ranking state-level elected threats member of same party shall submit names to Gov. for selection

Speaker of Pres could nominate himself

Sp & Pres should submit at least 2
no more than 4

Miller Parr — Conventions not close enough to People
"more representative & closer to Grass Roots

By Const. appt. has to come from Gov.

Research what was done in past.

Specking — Likes present system. Doesn't need to be replaced by persons of same party.

Tracy — Same Pres or Spkr might not want to appt. self.
Therefore ⇒ Caucus.

Eliason — Caucus not allow Press to hearing

Deceased should be replaced by Same Party!!

Caucus = Party Members, not Caucus

Special Election -
too time consuming

Temp appt 2yrs 5mos only.

Appt - then run in next gen'l election

1) Original Statute that was repealed
2)

Central Committee nominate to Caucus = min. 2 max 5
Party to Caucus - Caucus could nominate from those names or not

Draft proposal for another meeting

2 from Central Comm
2 from legis Party Members.
or
2 Party Members } to Gov.
2 Central Comm }

Meditate.

Brown, Cotten, Eliason,
Bradley, Parr, Gardiner

1/28
11:05

HB606

House not always in session ∴ need special session to make nominations

Poll by mail or phone? time certain, for response back?

Dec 72 - Jan 73 Sup. Ct. Case.

Party convention: Eliason - Parr
Party should have input as to who person should be.

Bradley - no problem w/ party input ⇒ convention

Parr - convention turn in list of ≤5 names. Leg. submits ≤3 names to Gov Leg - not caucus

Brown - St. Central Committee. - poll by mail
the previous st. convention. District convention is broad & not regulated by statute. if carefully drafted.

D.C Dist to Leg. caucus - polled

State Party Convention ⇒ x nominees to Gov.
Brown doesn't like St. Conventions - Proxies

Dist. Conv submit @ 3-5 names to Gov. - carefully draft language

C.S. District Regional Arg. Conventions - filed w/ Lt. Gov.
each Conv must submit ≤ 2 names to Gov.
so that Gov gets 1-8 names.

11:38

Original Sponsor: Miller

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 606

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to appointments to vacancies in the office of United States senator."

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

* Section 1. AS 15.40.010 is repealed and re-enacted to read:

Sec. 15.40.010. CONDITIONS AND TIME OF FILLING VACANCY BY APPOINTMENT. (a) When a vacancy occurs in the office of United States senator, a qualified person shall be appointed within 30 days to fill the vacancy unless the remainder of the term of the predecessor in office will expire or the vacancy will be filled by a special election before the senate will next meet, convene or reconvene. The person appointed shall be a member of the same political party as the person who vacated the office. If the person vacating the office was not nominated by a political party any qualified person may be appointed.

(b) If the governor is a member of the same political party as the person who vacated the office, or if the person vacating the office was not elected as a member of a political party, the governor shall appoint a replacement.

(c) If the person who vacated the office was elected as a member of a different political party from that of the governor the governor shall appoint a replacement from the lists submitted to him by the party district committees of the party of the person vacating the office.

* Sec. 2. AS 15.40 is amended by adding new sections to read:

Sec. 15.40.015. PARTY DISTRICT COMMITTEES TO PREPARE LISTS. When a vacancy occurs in the office of United States senator each of the

party district committees of the party to which the person vacating the office was a member, may, within 15 days following the vacancy, submit to the governor a list containing not more than two names it proposes as nominees to fill the vacancy. "Party district committee" means the political party committee that performs the executive function on an intermediate regional basis representating an area larger than the precinct or city and smaller than the state.

Sec. 15.40.016. PLANS FILED WITH LIEUTENANT GOVERNOR. Each party district committee shall, not less than 10 days before the occurrence of a vacancy, file with the office of the lieutenant governor its plans and procedures for developing the list of nominees provided for under sec. 15 of this chapter.

at page 2 line 8

Sec 15.40.016 PLAN FILED WITH LIEUTENANT GOVERNOR.

Each state party central committee shall maintain on file with the office of the Lieutenant Governor the plan of orginization which defines the party district committee. The plan on file with the Lieutenant Governor's office shall govern for the purpose of this chapter. The plan may be revised at any time when certified as correct by each ~~sub-committee~~ sub-central committee and re-filed with the office of the Lieutenant Governor.

AT page 1 line 27 add the following sentence to the sentence ending with the word "office.":

The ~~combined~~ district convention lists of names of nominees, when submitted to the governor, shall when combined, consist of no less than two names of nominess.

Committee

Starting at line 22

. . . two or more nominees, the list to be compiled by

(1) The Central Committee of the political party to which the person who vacated the office was a member, submitting the names of two or more persons to the senators or representatives of the ~~Alaska State~~ Legislature of the State of Alaska, who are of the same political party

(2) The senators and representatives may add to, subtract from, or in any manner alter the list of nominees, before transmitting the list to the governor for his appointment

~~(B)~~ The list shall be transmitted to the governor within 20 days of the occurence of the vacancy

(2) the list shall be transmitted by the Central Committe to the senators and representatives of the Legislature of the State of Alaska within 15 days of the occurrence of the vacancy

To: David Walker

From: House Judiciary Committee

Re: HB 606

The committee would like info on (1) what restrictions the Federal Constitution places on the appointment of senators to complete the term of a senator when a vacancy occurs, and (2) what provisions of the Alaska Constitution are applicable in the filling of a senatoral vacancy.

Please have the attached, proposed committee substitute typed so the committee can take a look at it.

1) What is Fed Constitution restriction 16th Amend

2) What use to be Alaska law before changed in 1967

3) State constitution

① Alternitive
Central committee simit names, ~~more than one~~ 2 or more to legislative caucus. The names are not binding Legislative caucus submits name to governor

②

$$\begin{array}{r} 48 \\ 7\overline{)336} \\ 28 \\ \hline 56 \\ 55 \\ \hline 49 \end{array}$$

$\begin{array}{r} 19 \\ 7 \\ \hline 12 \end{array}$

22 The list to be formulated by

(1) The Central Committee of the political party to which the ~~Senator or representive belonged~~ person who vacated the office belonged submitting ~~two or more names~~ the names of two or more persons to the elected senators and representitives of the same political party ~~three who may add or subtract names from the list and then forward the list to the governor~~

(2) The Senators and representitives may add, subtract or in any manner alter the list of nominees, before transmitting list, which may not consist of less than two nominees, to the governor for his appointment

(3) ~~I~~ The list shall be transmitted to the governor within 20 days of the

48
7 ⟌ 336
28
56

The
~~This~~ plan on file shall govern for the purposes of this chapter ~~but~~ however the plan may be ~~modified at any time~~ revised and refiled at any time when certified as correct by ~~the~~ each sub-control committee

HB

HB 581 Gov

~~HB 561~~

HB 655 Gov

~~HB~~ SB 440

2-5-76

Definition of Party district Committee is defined at 15.60.010 (23)

Don't change AS 15.60.010 (23) unless prepaid

Headland

Hug. Flasher

Rice, Hopper and Headland

279-5528

Unless by laws provided otherwise vacancy had to be filled by convention when cannadt decd otherwise

Which convention — new one or old on.

Don't wor

District Convention

Plan is organizational plan on file which draws up lines for district list of 2 names

at page 2 line 8

Sec 15.40.016 PLAN FILED WITH LIEUTENANT GOVERNOR.

Each ~~s~~State party central committee shall maintain on file with the office of the Lieutenant Governor the plan of orginization which defines the party district committee. The plan on file with the Lieutenant Governors office shall govern for the purpose of this chapter. The plan may be revised at any time when certified as correct by each ~~sub-committee~~ sub-central committee and re-filed with the office of the Lieutenant Governor.

AT page 1 line 27 add the following sentence to the sentence ending with the word "office.":

The ~~con~~district convention lists of names of nominees, when submitted to the ~~gover~~governor, shall when combined, consist of no less than two names of nominess.

the judicial district to which he was appointed, except in case of assignments and transfers in which case he shall designate the district where he has served the major portion of his term. (§ 7.56 ch 83 SLA 1960)

Sec. 15.35.090. Placing name of superior court judge on ballot. The secretary of state shall place the name of a judge who has properly filed a declaration of candidacy on a separate nonpartisan judicial districtwide ballot for the general election at which approval is sought. (§ 7.57 ch 83 SLA 1960)

Chapter 40. Special Elections and Appointments.

Article
1. United State Senate (§§ 15.40.010—15.40.130)
2. United States House of Representatives (§§ 15.40.140—15.40.220)
3. Governor and Secretary of State (§§ 15.40.230—15.40.310)
4. Legislature (§§ 15.40.320—15.40.470)

Article 1. United States Senate.

Section
10. Conditions and time of filling vacancy by appointment
20. Qualification of appointee
30. Conditions for full, unexpired term appointment
40. Conditions for part-term appointment and special election
50. Date of special election
60. Proclamation of special election
70. Term of elected senator
80. Selection of nominees in manner provided for general election
90. Designation of nominees by petition
100. Requirements of petition for no-party candidates
110. Requirements of petition by political party
120. Selection of political party nominees
130. General provision for conduct of special election

Sec. 15.40.010. Conditions and time of filling vacancy by appointment. When a vacancy occurs in the office of United States senator, the governor, within 30 days, shall appoint a qualified person to fill the vacancy. However, if the remainder of the term of the predecessor in office will expire or if the vacancy will be filled by a special election before the senate will next meet, convene, or reconvene, the governor shall not fill the vacancy. (§ 8.01 ch 83 SLA 1960)

Am. Jur. reference.—18 Am. Jur., Elections, §§ 5, 8, 9, 13, 45, 46.

Sec. 15.40.020. Qualification of appointee. The appointee shall be a member of the same political party as that which nominated the predecessor in office. If the predecessor in office was not nominated by a political party, the governor may appoint any qualified person. (§ 8.02 ch 83 SLA 1960)

Sec. 15.40.030. Conditions for full, unexpired term appointment. If the vacancy is for an unexpired term of two years plus five

full calendar months or less, the appointment shall be for the remainder of the unexpired term. (§ 8.03 ch 83 SLA 1960)

Sec. 15.40.040. Conditions for part-term appointment and special election. If the vacancy is for an unexpired term of more than two years plus five full calendar months, the governor shall call a special election by proclamation and the appointment shall expire on the date the United States senate first meets, convenes, or reconvenes, following the certification of the results of the special election by the secretary of state. (§ 8.04 ch 83 SLA 1960)

Sec. 15.40.050. Date of special election. The special election to fill the vacancy shall be held on the date of the first general election which is held more than three full calendar months after the vacancy occurs. (§ 8.05 ch 83 SLA 1960)

Sec. 15.40.060. Proclamation of special election. The governor shall issue the proclamation calling the special election at least 80 days before the election. (§ 8.06 ch 83 SLA 1960)

Sec. 15.40.070. Term of elected senator. At the special election, a United States senator shall be elected to fill the remainder of the unexpired term. The person elected shall take office on the date the United States senate first meets, convenes, or reconvenes following the certification of the results of the special election by the secretary of state. (§ 8.07 ch 83 SLA 1960)

Sec. 15.40.080. Selection of nominees in manner provided for general election. If the vacancy in the office of the United States senator occurs one calendar month or more before the filing date for the party primary nomination, candidates for the special election shall be nominated in the manner provided for the nomination of candidates for general elections. (§ 8.08 ch 83 SLA 1960)

Sec. 15.40.090. Designation of nominees by petition. If the vacancy occurs less than one calendar month before the filing date for the party primary nomination and more than three calendar months before the next general election, candidates shall be nominated by petition transmitted by actual delivery to the secretary of state before September 2 immediately preceding the special election. (§ 8.09 ch 83 SLA 1960)

Sec. 15.40.100. Requirements of petition for no-party candidates. Petitions for the nomination of candidates not representing a political party shall be signed by at least 1,000 qualified voters, and shall state in substance that which is required in petitions for nomination for general elections provided in AS 15.25.180. (§ 8.10 ch 83 SLA 1960)

Sec. 15.40.110. Requirements of petition by political party. Petitions for the nomination of candidates of political parties shall

state in substance that the political party desires and intends to support the named candidate for the office of United States senator at the special election and requests that the name of the candidate be placed on the ballot. (§ 8.11 ch 83 SLA 1960)

Sec. 15.40.120. Selection of political party nominees. The nominees of political parties to be designated by special petition may be selected by the state convention or by any other manner as prescribed by the party bylaws, and the petition shall be signed by the chairman and secretary of the state convention or, if the nominee is designated by the central committee, the petition shall be signed by the chairman of the central committee or in any other manner prescribed by the party bylaws. (§ 8.12 ch 83 SLA 1960)

Sec. 15.40.130. General provision for conduct of special election. Unless specifically provided otherwise, all provisions regarding the conduct of the general election shall govern the conduct of the special election of United States senators, including, but not limited to, provisions concerning voter qualifications; provisions regarding the duties, powers, rights and obligations of the secretary of state, of other election officials, and of cities and organized boroughs; provision for notification of the election; provision for payment of election expenses; provisions regarding employees being allowed time from work to vote; provisions for the counting, canvassing, and certification of returns; provisions for the determination of the votes and of recounts, contests, and appeal; and provision for absentee voting and the use of voting machines. (§ 8.13 ch 83 SLA 1960)

Article 2. United States House of Representatives.

Section		Section	
140.	Condition and time of calling special election	190.	Requirements of petition of no-party candidates
150.	Condition for holding special election with primary	200.	Requirements of party petition
160.	Proclamation	210.	Selection of party nominees
170.	Term of elected representative	220.	General provisions for conduct of special election
180.	Date of nominations		

Sec. 15.40.140. Condition and time of calling special election. When a vacancy occurs in the office of United States representative, the governor shall, by proclamation, call a special election to be held on a date within not less than 60, nor more than 90, days after the date the vacancy occurs. However, if the vacancy occurs on a date that is less than 60 days before, or is on or after the date of the primary nomination in general election years, the governor shall not call a special election. (§ 8.21 ch 83 SLA 1960)

Sec. 15.40.150. Condition for holding special election with primary. If the vacancy occurs on a date within not less than 60, nor

Nicholas J. BEGICH, Appellant,
v.
Will Key JEFFERSON, Appellee.

Nicholas J. BEGICH, Donald E. Young, and George H. Hohman, Appellants,
v.
STATE of Alaska, Appellee.
No. 894.

Supreme Court of Alaska.
May 17, 1968.

Actions for declaratory and injunctive relief. The Superior Court, Third Judicial District, at Anchorage, Edward V. Davis, J., rendered judgments, and appeals were taken. The Supreme Court, Rabinowitz, J., held that constitutional provision that no legislator may hold any other office or position of profit under United States or state prohibited legislators from holding positions as superintendent and teachers in the state operated school district within the unorganized borough.

Affirmed.

1. Officers ⇐30.3

Phrase "position of profit" in constitutional provision that no legislator may hold any other office or position of profit under United States or state indicated legislative intention to prohibit legislators from holding any other salaried nontemporary employment under United States or State of Alaska. Const. art. 2, § 5.

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

2. Officers ⇐30.3

The phrase "position of profit" in constitutional provision that no legislator may hold any other office or position of profit under United States or state is not synonymous with "office of profit". Const. art. 2, § 5.

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

3. Officers ⇐30.3

The term "appointed" in constitutional provision that no legislator may hold any other office or position of profit under United States or state and that during term for which elected and for one year thereafter no legislator may be nominated, elected, or appointed to any other office or position of profit which has been created, or salary or emoluments of which have been increased, while he was member is sufficiently broad in meaning to encompass hiring of employees, in particular, employment of both school superintendents and teachers. Const. art. 2, § 5.

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

4. Officers ⇐30.3

The phrase "position of profit" in constitutional provision that no legislator may hold any other office or position of profit under United States or state was intended to mean something more than merely an appointive office, as distinguished from an elective office. Const. art. 2, § 5.

5. Officers ⇐30.3

Framers did not intend that "position of profit" in constitutional provision that no legislator may hold any other office or position of profit under United States or state be distinguished from "mere employees" of United States or Alaska. Const. art. 2, § 5.

6. Officers ⇐30.3

Superintendents of state schools and state school teachers hold "positions of profit" within constitutional provision that no legislator may hold any other office or position of profit under United States or state. Const. art. 2, § 5.

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

7. Officers ⇐30.3

Employment of superintendent and teachers by the state operated school system within the unorganized borough is not employment by political subdivision of State of Alaska; superintendent and teachers are

employees of State of Alaska and occupy positions of profit under State of Alaska within constitutional provision that no legislator may hold any other office or position of profit under United States or State of Alaska. AS 14.12.010; Const. art. 2, § 5; art. 7, § 1; art. 10, § 2; art. 15, § 3.

8. Schools and School Districts ⇐21

The state operated school district is not a political subdivision of the State of Alaska. AS 14.12.010; Const. art. 7, § 1; art. 10, § 2

9. Officers ⇐30.3

Statute providing that employment as a teacher is not holding office or position of profit is violative of constitutional provision that no legislator may hold any other office or position of profit under United States or state. AS 24.05.040; Const. art. 2, § 5.

10. Officers ⇐30

Alaska's constitutional prohibition against members of the three separate branches of state government holding any other positions of profit under State of Alaska reflects intent to guard against conflicts of interest, self-aggrandizement, concentration of power, and dilution of separation of powers in regard to exercise by these governmental officials of the executive, judicial, and legislative functions of state government. Const. art. 2, § 5; art. 3, § 6; art. 4, §§ 8, 14; art. 12, § 3.

Joe P. Josephson, of Pollock & Josephson, Anchorage, for appellants.

Will Key Jefferson, pro se

Dorothy Awes Haaland, Asst. Atty. Gen., Anchorage, for appellees.

Before NESBETT, C. J., and DIMOND and RABINOWITZ, JJ.

OPINION

RABINOWITZ, Justice.

The broad question raised by this appeal is whether appellants are prohibited by article II, section 5 of the Alaska constitution from holding positions as school teachers while they serve as members of the Legislature of the State of Alaska. This section of the legislative article of Alaska's constitution provides:

> No legislator may hold any other office or position of profit under the United States or the State. During the term for which elected and for one year thereafter, no legislator may be nominated, elected, or appointed to any other office or position of profit which has been created, or the salary or emoluments of which have been increased, while he was a member. This section shall not prevent any person from seeking or holding the office of governor, secretary of state, or member of Congress. This section shall not apply to employment by or election to a constitutional convention.

In the superior court appellee State of Alaska instituted a declaratory judgment action seeking a ruling that article II, section 5 of the Alaska constitution prohibits a legislator from holding any other position of profit under the State of Alaska "including, but not limited to the positions of teacher, principal or superintendent of a state-operated school."[1] The State of Alaska also sought a determination that AS 24.05.040, a portion of our statutory law relating to the qualifications of legislators, was unconstitutional. This statute, substantially reiterates the text of article II, section 5 of our constitution. An amendment to this section, enacted in 1965,[2] provides:

> An office of profit as used in this section means an elective office on the state or federal levels of government, the holder

1. Throughout the period in question appellant Nicholas J. Begich held, and now holds, the position of superintendent of on-base schools at Fort Richardson, Alaska. During the same period, appellants Donald E. Young and George H. Hohman held, and presently hold, positions as school teachers.

2. SLA 1965, ch. 85, § 1.

of which is entitled to a salary; a position of profit means an appointive position on the state or federal levels of government, the holder of which has the authority to make policy and is entitled to a salary for his services. Employment as a 'teacher' as defined in AS 14.17.250 (12) shall not be considered as holding an office or position of profit.

In addition to the declaratory relief requested as to article II, section 5 of the Alaska constitution, and AS 24.05.040 as amended, the state also sought to enjoin appellants from holding positions of profit while they were members of the Legislature of the State of Alaska.[3]

In granting summary judgment in the separate action instituted by appellee Jefferson against appellant Begich, the superior court decreed that article II, section 5 of the Alaska constitution was unambiguous, that the position of superintendent of on-base schools at Fort Richardson, Alaska, held by appellant Begich, was a position of profit under the State of Alaska within the intendment of article II, section 5 of the Alaska constitution, that such "dual office holding" by appellant Begich was in direct violation of article II, section 5, that AS 24.05.040 is unconstitutional and void,[4] and that appellant Begich should be enjoined from acting as superintendent of on-base schools of the State of Alaska during any period he holds office as a member of the Legislature of the State of Alaska. In awarding summary judgment to appellee State of Alaska in its separate declaratory judgment action against appellants, the superior court specifically decreed that:

> [T]he positions of teacher, principal, or superintendent in a State operated school constitute positions of profit under Article II, § 5 of the Constitution of the State of Alaska, which provides that no legislator may hold any other office or position of profit under the United States or the State.

The order granting summary judgment also decreed that the 1965 amendment to AS 24.05.040 was inconsistent with article II, section 5 of the constitution of Alaska, and thus unconstitutional. It was further decreed that appellants "Begich, Young and Hohman are enjoined from holding their respective positions as teachers, or as school superintendent, while they are members of the legislature of the State of Alaska." [5]

[1] The focus of our initial inquiry is upon the meaning of the phrase "position of profit" as used in article II, section 5 of the Alaska constitution. As originally proposed by the Committee on the Legislative Branch at the Alaska Constitutional Convention, section 5 read:

> No member of the legislature shall hold any other office which has been created, or the salary or emoluments of which have been increased while he was a member of the legislature, during the term for which he was elected and for one year after the expiration of such term. No legislator or other elective or appointive officer of this state shall file

443

3. In a separate suit which was consolidated with the state's action, appellee Will Kay Jefferson sued appellant Nicholas J. Begich and in part sought to enjoin appellant Begich from holding the position of superintendent of on-base schools at Fort Richardson, Alaska.

4. In the summary judgment which was entered, it was specifically stated:
> That Chapter 85, Session Laws of Alaska, 1965, codified as part of Alaska Statutes 24.05.040, is contrary to the specific prohibition of the Constitution of the State of Alaska insofar as it provides that:
> 'Employment as a "teacher" as defined in A.S. 14.17.250(12) shall not be considered as holding an office or position of profit.'
> And, for that reason, is unconstitutional and void.

5. In both cases the superior court stayed the effect of its decrees pending appellate review.

or run for election to any other state office until his services have been terminated, but a member of one house of the legislature may be nominated and elected to the other house. This section shall not apply to positions of employment in or elections to any constitutional convention.[6]

When the Committee on the Legislative Branch first introduced its Committee Proposal No. 5 at the constitutional convention (section 5 of this proposal being the forerunner of article II, section 5), the committee also made of record its commentary concerning this proposal. In this document, it was stated in part that:

> It is generally agreed that the temptation to create jobs or to increase the salary in existing jobs which legislators would then accept ought to be removed.[7]

During the January 25, 1956, proceedings of the Alaska Constitutional Convention, Mr. Steve McCutcheon, chairman of the Committee on the Legislative Branch, submitted an amendment to the then proposed sections. The amendment offered an addition to section 5 which read as follows: "No legislator may hold any other office or position of profit under the United States or the State."[8] At the time this amendment was introduced, Mr. McCutcheon made the following statement:

> Mr. President, I will say, before objection is made, that it was the intent of the Legislature Committee that there should be no dual office holding from the standpoint of a legislator, and it was drawn to our attention that our article, Section 5 at least in the article, wasn't entirely clear that dual office holding was prohibited. So this terminology has been offered in order to clarify and fortify that point.

It is apparent from the foregoing that any allusions at the constitutional convention to the meaning of the phrase "position of profit" were of a rather sketchy and inconclusive character. To further illumine the task of construing this language, we turn to other portions of our constitution in which "position of profit" has been employed. In article III, section 6, which deals with the executive branch of Alaska's government, it is provided that:

> The governor shall not hold any other office or position of profit under the United States, the State, or its political subdivisions.

In article IV of the Alaska constitution, the term "position of profit" is employed in two sections. In regard to the judicial council, which body is created by this article, section 8, provides in part that:

> No member of the judicial council, except the chief justice, may hold any other office or position of profit under the United States or the State.

Concerning the justices of this court, and superior court judges, article IV, section 14 provides in part:

> Supreme court justices and superior court judges while holding office may not practice law, hold office in a political party, or hold any other office or position of profit under the United States, the State, or its political subdivisions.

Also of importance is section 3 of article XII of Alaska's constitution. This article, entitled General Provisions, states in regard to "position of profit":

> Service in the armed forces of the United States or the State is not an office

6. 6 Proceedings of the Alaska Constitutional Convention, Appendix V, Committee Proposals and Commentary at 30.

7. The text of this same committee commentary then reads:
> There have been instances in which legislators have virtually coerced governors into appointing them to state offices as the price for their action on the governor's program; such deals would be prevented by requiring a year to elapse before eligibility. This section, furthermore, would prevent any state official from using his office or expense account as a vehicle for campaigning for another office.

8. 4 Proceedings of the Alaska Constitutional Convention (Jan. 25, 1956), at 3095.

or position of profit as the term is used in this constitution.

The foregoing provisions of Alaska's constitution shed considerable light upon the intended meaning of the phrase "position of profit." We have concluded that the trial court correctly determined that the provisions of article II, section 5 of the Alaska constitution are unambiguous. Upon a reading of the constitution as a whole, we deem it of paramount significance that the phrase "position of profit," in addition to restricting members of the legislature, has also been employed as a restriction upon members of the judicial council, justices of this court, superior court judges, and the chief executive officer of the State of Alaska. Use of the term "position of profit" in these articles of Alaska's constitution illuminates the reach the framers of our constitution intended to impart to this term in article II, section 5. This usage, considered with the fact that the constitution itself provides only two exceptions to the scope of "position of profit," namely, article II, section 5's proviso that the section itself be inapplicable "to employment by or election to a constitutional convention,"[9] and article XII, section 3's provision that "service in the armed forces of the United States or of the State is not an office or position of profit as the term is used in this constitution," indicates to us that the framers intended to prohibit members of the legislature, judiciary, judicial council, and the state's chief executive officer from holding any other salaried nontemporary employment under the United States or the State of Alaska.

[2, 3] In reaching this conclusion, we reject appellants' primary contention that the phrase "position of profit" is synonymous with "office of profit," and that the only distinction between the two is that the former applies to appointive, as opposed to elective, offices or positions under the United States or the State of Alaska.[10]

9. In AS 22.05.130 of our statutes relating to the Supreme Court of Alaska, it is provided that:

> A supreme court justice while holding office may not practice law, hold office in a political party, or hold any other office or position of profit under the United States, the state, or its political subdivisions. A supreme court justice filing for another elective public office forfeits his judicial position.

By virtue of AS 22.10.180 the same restrictions were imposed upon superior court judges. In regard to our district judges, AS 22.15.210(a) establishes that:

> A district magistrate, while holding office, may not practice law, except before a federal district court or federal agency and if the practice does not interfere with the performance of his official duties as magistrate. Except as provided in this section, a district magistrate may not engage in the conduct of any other profession, vocation or business for profit or compensation, hold office in a political party, or hold any other office or position of profit under the United States, the state or its political subdivisions, except that the district magistrate may be appointed deputy clerk of the superior court and may hold the office of United States commissioner. A district magistrate who files for an elective public office forfeits his judicial position.

As to deputy magistrates, the legislature, in AS 22.15.210(b), provides that:

> A deputy magistrate, while holding office, may not hold office in a political party. He may hold any other office or position of profit under the United States, the state or its political subdivisions, or engage in the conduct of any profession or business which does not interfere with the performance of his judicial duties or require that he repeatedly disqualify himself from judicial service because of a conflict of interest caused thereby.

10. As previously indicated, art. III, § 6 prohibits the governor from holding any position of profit under the United States, the state, or its political subdivisions. Section 14 of art. IV calls for the same prohibition (i. e., political subdivisions). No reference is made to political subdivisions in art. II, § 5.

Cf. Webster's Third New International Dictionary (2d ed. 1961) in which "position" is defined in part as "office, employment, vocation" and as "the group of tasks and responsibilities making up the duties of an employee."

Appellants cite authority to the effect that before any public employment can

As part of this argument appellants contend that the phrase "position of profit" is modified, and consequently narrowed, by the second sentence of article II, section 5 in which the terms "nominated," "elected," or "appointed" are "clearly intended exhaustively to catalogue the routes by which one can attain an 'office or position of profit.'" In our view the term "appointed," as used in article II, section 5, is sufficiently broad in meaning to encompass the hiring of employees, in particular, the employment of both school superintendents and teachers. We reach this conclusion based upon judicial precedent[11] concerning the meaning of "appoint" and the sense in which the word has been used in Alaska's statutes pertaining to education.[12] This treatment is reflected in AS 14.20.207(2) of our education laws which defines "employer" in the following manner:

> '[E]mployer' means the school board or superintendent which appoints the teacher or, in the case of a teacher in the state-operated schools, the department * * *.

Additionally, AS 14.14.130(c) establishes that the superintendent of schools "shall select, appoint, and otherwise control all school employees and administrative officers serving under him subject to the approval of the school board." In light of judicial precedent holding that "appointment" is synonymous with "employment," and in view of our legislature's use of "appointment" as a synonym for "employment" in our education laws, we reject appellants' argument that the use of "appointed" in the second sentence of article II, section 5 necessitates the conclusion that teachers are outside the ambit of article II, section 5's restrictions. In short, we hold that teachers are "appointed," as that term is commonly and ordinarily understood, to positions within our educational system.

[4–6] This holding necessitates return to appellants' initial contention that teachers do not hold positions of profit in the sense intended by the framers when they incorporated that phrase into the text of article II, section 5. We have already alluded to our belief that "position of profit" was intended to mean something more than merely an appointive office, as distinguished from an elective office. Analyzing the textual use of "position of profit" in the legislative, judicial, executive and general provisions articles of our constitution, we conclude that the term was intended to prohibit all other salaried non-temporary employment under the United States or the State of Alaska.[13] In reaching this conclusion

be deemed to be a public office, the job must be one created by law; the job must possess a delegation of a portion of the sovereign power of government to be exercised for the benefit of the public; the powers and duties pertaining to the job must be defined directly or impliedly by the legislature or through legislative authority; the duties must be performed independently and without control of a superior power, other than the law, unless they are of a subordinate office created or authorized by the legislature, in which case the job must be placed by the legislature under the general control of a superior office or body; and the job must have some permanency and continuity and not be temporary or occasional in nature. See Farley v. Board of Educ. etc., 62 Okl. 181, 162 P. 707 (1917).

11. In Morris v. Parks, 145 Or. 481, 28 P. 2d 215, 216 (1934), the court said that, "The terms 'employ' or 'hire' are equivalent to 'appoint,'" citing Burnap v. United States, 252 U.S. 512, 40 S.Ct. 374, 64 L.Ed. 692 (1920); United States v. Butler, 49 F.2d 52, 54 (5th Cir. 1931); Gracey v. City of St. Louis, 213 Mo. 384, 111 S.W. 1159 (1908). See O'Brien v. Hughes, 270 App.Div. 1072, 63 N.Y.S.2d 780, 781 (1946); Guiliano v. Thomas, 36 Misc.2d 338, 232 N.Y.S.2d 328, 329 (Sup. Ct.1962).

12. AS 14.20.207 defines "teacher" as "a person serving in a teaching, counseling, or administrative capacity and required to be certificated in order to hold the position."

13. We again emphasize that art. II, § 5 itself provided that it was inapplicable "to employment by or election to a constitutional convention." The only other exception specified in the constitution is found in art. XII where it is established that service in the armed forces of the United States or the State of Alaska is not an office or position of profit as that term is used in this constitution.

ing this conclusion, we have in essence declined to follow two additional lines of argument which have been advanced by appellants. First, appellants argue that the constitution must be read as a whole and when read in this manner it is evident that the framers intended to distinguish "position of profit," or holders of positions of profit, from "mere employees" of the State of Alaska or the United States of America. Appellants ground this argument in part upon the provisions of sections 6 and 7 of article XII of Alaska's constitution.[14] Appellants' position here is that the framers used "employment" and "employee" in these sections and thus consciously distinguished between "employment" and "position of profit" as used in article II, section 5. As we have indicated, we draw a contrary conclusion from a reading of the constitution as a whole. The use of the term "position of profit" as a restriction pertaining to all three branches of government, and the limited exceptions to the scope of this restriction provided for in our constitution, leads us to the conclusion that the use of "employment" and "employee" in sections 6 and 7 of article XII is not determinative of the meaning of "position of profit." Our study has convinced us that the framers' choice of "position of profit" in the various sections of the constitution to which we have referred reflects their intent to adopt a term which was broad in scope. This same analysis results in the conclusion that the phrase "position of profit" was intended to bar members of the legislature, justices of this court, superior court judges, members of the judicial council, and the governor of the State of Alaska from concurrently holding any other salaried, non-temporary employment under the State of Alaska. In brief, we hold that superintendents of state schools and state school teachers hold positions of profit within the prohibition of article II, section 5 of Alaska's constitution.[15]

Appellants next argue that regardless of what interpretation of "position of profit" is adopted by this court, if appellants' positions as school superintendent and teachers are not held under the State of Alaska but rather, under one of the state's political subdivisions, then such positions are not incompatible with article II, section 5. Appellants base this argument upon a comparison of the text of article II, section 5 with other sections of the Alaska constitution in which reference is made to the state or its political subdivisions.[16] Appellants maintain that all school personnel associated with schools of the unorganized borough, as appellants are, are employees of "a political subdivision" of the state and not of the state itself. Appellee State of Alaska's position is that appellants hold positions within the state-operated school district, that this school district is not a political subdivision of the state, and that

443

14. Art. XII, § 6 provides: "The legislature shall establish a system under which the merit principle will govern the employment of persons by the State."
See. 7 of art. XII provides:
> Membership in employee retirement systems of the State or its political subdivisions shall constitute a contractual relationship. Accrued benefits of these systems shall not be diminished or impaired.

Appellants do not make any reference to art. VI, § 8 of the Alaska constitution regarding legislative apportionment and the composition of our reapportionment board. This section provides in part that the reapportionment board shall "consist of five members, none of whom may be public employees or officials."

15. Precedent from other jurisdictions reveal that the word "position" is often given a meaning which embraces both officers and employees. Brown v. Boyd, 33 Cal.App.2d 416, 91 P.2d 926, 930 (1939); State ex rel. Baldwin v. Strain, 152 Neb. 703, 42 N.W.2d 706, 801 (1950); Mylod v. Graves, 249 App.Div. 455, 293 N.Y.S. 430, 432 (1937); People ex rel. Earl v. England, 10 App.Div. 97, 45 N.Y.S. 12, 13 (1897). It is sometimes said that a "position" is an employment in which duties involved are continuous and certain.

16. See art. III, § 6 and art. IV, § 14 where the prohibition against holding positions of profit extends to such positions under political subdivisions of the state.

employment by the state-operated school district is nothing less than employment by the State of Alaska.

[7-9] We reach the conclusion that the employment of appellants by the state-operated school system within the unorganized borough is not employment by a political subdivision of the State of Alaska. Article VII, section 1 of the constitution of the State of Alaska provides in part that:

> The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions.[17]

Pursuant to this constitutional authorization, the legislature enacted title 14 (education code). In establishing the districts of the state's public school system, AS 14.12.010(3) provides that

> the area outside organized boroughs and outside first, second, and third class cities is the state-operated school district.[18]

In regard to this state-operated school district, the legislature vested management and control of its operations in the state Department of Education.[19] It was further provided that the Department of Education was to furnish the "state money necessary to maintain and operate the state-operated school district."[20] In the definition section of our education laws, the legislature defined the word "employer" in the state-operated schools as meaning the Department of Education.[21] We think it apparent from the foregoing that school superintendents and teachers employed in the state-operated school district are employees of the State of Alaska. We further hold that the state-operated school district is not a political subdivision of the State of Alaska.[22] We, therefore, hold that appellants occupy positions of profit under the State of Alaska. Further, since the 1965 amendment to AS 24.05.010 is in conflict with article II, section 5 of Alaska's constitution, we affirm the superior court's

17. Secs. 4 and 5 of art. VII further provide that the legislature shall provide for the "promotion and protection of public health" and provide for "public welfare."

18. AS 14.12.010 further provides that:
(1) each first, second, and third class city in the unorganized borough is a city school district;
(2) each organized borough is a borough school district.

19. AS 14.07.010 established the Department of Education which includes "the commissioner of education, the state Board of Education, and the staff necessary to carry out the functions of the department."

20. AS 14.12.020 provides that:
Support, management, and control. (a) Operation of the state-operated school district is under the management and control of the department.
(b) Each borough or city school district shall be operated on a district-wide basis under the management and control of a school board.
(c) The department shall provide the state money necessary to maintain and operate the state-operated school district. The borough assembly for a borough school district, and the city council for a city school district, shall provide the money which must be raised from local sources to maintain and operate the district.

21. AS 14.20.207(2).

22. Art. X, § 2 of the Alaska constitution provides that all local government powers shall be vested in boroughs and cities. See Walters v. Cease, 391 P.2d 670 (Alaska 1964). Art. XV, § 3 of our constitution further provides:
Local Government. Cities, school districts, health districts, public utility districts, and other local subdivisions of government existing on the effective date of this constitution shall continue to exercise their powers and functions under existing law, pending enactment of legislation to carry out the provisions of this constitution. New local subdivisions of government shall be created only in accordance with this constitution.
On the basis of the foregoing, appellee State of Alaska argues that the intent of the constitutional convention was to create only two political subdivisions.

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the 1965 amendme

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23. We agree with
that if "position
Alaska's constitu

determination of the unconstitutionality of the 1965 amendment.[23]

[10] Alaska's constitutional prohibition against members of our three separate branches of state government holding any other positions of profit under the State of Alaska reflects the intent to guard against conflicts of interest, self-aggrandizement, concentration of power, and dilution of separation of powers in regard to the exercise by these governmental officials of the executive, judicial, and legislative functions of our state government. The rationale underlying such prohibitions can be attributed to the desire to encourage and preserve independence and integrity of action and decision on the part of individual members of our state government. On the other hand, we recognize that citizens should be interested in and seek public office. Public service and concern for the welfare of our citizenry is essential if we are to have a viable state government. By today's decision we have not ruled upon the question of whether article II, section 5's prohibition precludes legislators from holding teaching positions under political subdivisions of the State of Alaska.

The superior court's summary and declaratory judgments are affirmed

23. We agree with appellants' contention that if "position of profit," as used in Alaska's constitution, were ambiguous, this court would be bound to honor a reasonable construction of that phrase by the legislature.

443

Bay v Jefferson
Sup Ct 481 File 894
441 P2d 27 (1968)
Dec Jan
Baggech Case 1972 or 73

Whether there had to be a convention. Talk to Chaney

District convention ~~1 to 3~~ not more than 2 Submit names
By each district organization

Conventions of each party plan each party plank has to be filed with Lt Gov.

District conventions

The 4 districts will have conventions where not more that two names will be named and submitted to Gov. who will chose from that list.

HB
631

House Judiciary Committee
February 20, 1976

The meeting was called to order by Chairman Gardiner at 1:20 p.m. Members present were Brown, Eliason, Parr, Gardiner, Cotten and Bradley.

HB 631 COMMUNICATIONS CARRIER/PUC

HB 631

Mr. Brown stated that this was advocating the lowest possible rates, and was considered a priority by the subcommittee on telecommunications.

Mr. Brown moved HB 631 out of committee with a further referral to Finance. No objection, it was so ordered.

HB 633 REGULATION OF PUBLIC UTILITY RATES

HB 633

Companion bill to HB 631. Mr. Brown moved HB 633 out of committee to wait in Rules for HB 631 to come from Finance. There being no objection, it was so ordered.

HB 574 MEDICAL MALPRACTICE

HB 574

Amendment by Anne after slight modifications by Committee:

ARTICLE 3. LOAN FUND.

Sec. 21.88.110. FUND ESTABLISHED. (a) There is in the Department of Commerce and Economic Development a medical malpractice liability revolving loan fund to be administered by the director of insurance.

(b) Loans from the fund shall be made to the corporation upon certification by the Director of the Division of Insurance that the loan is necessary for the corporation to maintain adequate reserves or for initial costs of operation. If a loan is made to the corporation from the fund, the corporation shall issue a note to the fund pledging the premiums collected in the future as security for the loan.

(c) Loans from the fund shall be repaid by the corporation within four years at an annual interest rate of seven per cent.

(d) The director may sell or transfer at par value to the Department of Revenue the notes held by the Department of Commerce and Economic Development as security for loans made under this section. The Department of Revenue shall purchase all the notes offered until the current principal amount of notes purchased and held by the Department of Revenue equals $5,000,000.

Mr. Brown moved that the above amendment be adopted. There being no objection, it was adopted.

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

TO: APUC DATE: 1/20/76

(~~SENATE~~ - HOUSE) BILL 631

SB 561

RE: Providing for a communications carriers section in the APUC

Check One:

1. TOP PRIORITY - in favor of _____
2. FAVOR - in favor of, but not top priority X
3. OK - no definite stand _____
4. NOT IN FAVOR _____
5. TOP PRIORITY - "Strongly Opposed" _____
6. BILL DOES NOT PERTAIN TO DIVISION _____
7. Bill does not directly pertain to division, but I am interested in its progress. Keep me informed. _____

COMMENTS: (Justification must be stated for #1 - #6 above. Continue on another page if needed).

RECEIVED A.P.U.C. JAN 23 11 35 AM '76

I am in favor of this bill which will hopefully relieve a portion of the burden that is presently being borne by the Alaska Public Utilities Commission staff.

A minor housekeeping item which probably has been corrected by now is the mislabeling of the statute as AS 42.07 when I believe the author meant AS 42.05.

Ancother correction might be advisable in proposed section 42.05.123(a). In this section communications common carriers would be limited to the use of wire, cable, radio and space satellites. In a progressive state such as ours I do not think that the carrier should be restricted by statutes to only those modes of communications in view of

(SEE ATTACHED PAGE 2)

Writer's Signature: [signature]
Writer's Title: Chairman, APUC
(DEADLINE 24 hours)

(Note: Please return to Information Officer/Leg Asst., Office of the Commissioner)

the technological advancements in waveguides, lasers, fiber-optics, etc. I would suggest that the last sentence of 42.05.123(a) end with the words, "involving the use of telecommunications." The definition of telecommunications as set forth in AS 42.05.701(8) states:

> "'telecommunications' means the transmission and receiption of messages, impressions, pictures and signals by means of electricity, electromagnetic waves and any other kind of energy, force variations or impulses whether conveyed by cable, wire, radiated through space, or transmitted through other media within a specified area or between designated points."

This definition might be appropriate for this bill.

TO: APUC DATE: 1/20/76

(~~SENATE~~ - HOUSE) BILL 631 + SB561

RE: Providing for a communications carriers section in the APUC

Check One:

1. TOP PRIORITY - in favor of. ✓
2. FAVOR - in favor of, but not top priority.
3. OK - no definite stand.
4. NOT IN FAVOR -
5. TOP PRIORITY - "Strongly Opposed"
6. BILL DOES NOT PERTAIN TO DIVISION

COMMENTS: (Justification must be stated for the above line checked - Continue on another page if needed.)

I am strongly in favor of HB 631.

The past and current operational profile of this Commission is one of reaction --- reaction to utility requests for rate relief and reaction to consumer complaints with regard to quality of service. A dedicated strike force within the APUC would take the burden of rates and quality of service to the utility and would provide the vehicle for continuous monitoring by the Commission of their operation. It would be difficulttto place an exact dollar saving to the rate payer of Alaska but I would envision a very substantial amount.

This bill would substantially impact the APUC budget in the categories of personnel, equipment and travel.

Writer's Signature: Martin L. Weatherby
Writer's Title: APUC Commissioner
(DEADLINE 24 hours)

HB
632

HB 632 & SB 559

I am not in favor of HB 632 in its present form.

There is a very serious hazard in limiting this Commission to the review and approval of technical systems and signal quality for the low density communities to be served under this bill. The APUC could direct a community to meet Bell System telephone standards and this in turn could place undue and prohibitive burden upon the rate payers of the served communities. If the APUC is tasked with the responsibility of technical performance then the APUC must also have the ability to adjust and to prescribe rates.

This bill will also impact the APUC budget in the area of personnel and equipment.

Marvin R. Weatherly
Commissioner
Public Utilities Commission

Rural Electrification Association Utility Cooperatives

Regulated by Alaska Public Utilities Commission

Rate of Return on Rate Base/1

1974

	1974 Income	Proforma Year End 1974 Rate Base	Return on Rate Base
Alaska Village Electric Cooperative, Inc.	288,119	8,433,975	.0342
Barrow Utilities and Electric Cooperative, Inc.	2,251	569,525	.0040
Bristol Bay Telephone Communications Cooperative, Inc.	1,077	32,267	.0334
Chugach Electric Association, Inc.	1,181,741	82,132,634	.0144
Copper Valley Electric Association, Inc./2	-	-	-
Copper Valley Telephone Cooperative Incorporated	142,832	1,533,323	.0932
Glacier Highway Electric Association, Inc.	(5,138)	1,211,013	(.0042)
Golden Valley Electric Association, Inc.	1,457,051	41,153,959	.0354
Homer Electric Association, Inc.	667,571	17,078,564	.0391
Kodiak Electric Association, Inc.	(157,928)	4,362,802	.0362
Kotzebue Electric Association, Inc.	(1,299)	1,606,564	(.0008)
Matanuska Electric Association, Inc.	345,941	14,713,825	.0235
Matanuska Telephone Association, Incorporated	169,605	6,264,524	.0271
Naknek Electric Association, Inc.	(39,462)	849,745	(.0464)
Nushagak Electric Cooperative, Inc.	26,059	1,076,903	.0242
Nushagak Telephon Cooperative, Inc./3			
OTZ Telephone Cooperative, Inc./3	-	-	-
Composite Total	4,078,420	181,019,623	.0225

/1 Rate Base Computed as:
Additions:
Net Plant
Materials and Supplies
Pre-Payments
Cash Working Capital Allowance of 12.5% Cash Operating Expense
Deductions:
Customer Deposits
Customer Advances for Construction
Contributions in Aid of Construction

/2 Data as filed is not usable.

/3 Recently organized and not in operation during 1974.

HB
633

"An Act relating to the regulation of public utility rates."

COMMITTEE REPORT

1/20/76

HOUSE

Mr. Speaker: Date Feb. 20, 1976

The Committee on Judiciary has had HB 633 under consideration. A Majority of the members of the Committee

(X) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Tony Gardner - Do Pass

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Tony Gardner Chairman

1-1-

TO: APUC DATE: 1/20/76

(~~SENATE~~ - HOUSE) BILL 633 & SB 560

RE: Regulation of public utility rates.

Check One:

1. TOP PRIORITY - in favor of. ____
2. FAVOR - in favor of, but not top priority. ____
3. OK - no definite stand. X
4. NOT IN FAVOR - ____
5. TOP PRIORITY - "Strongly Opposed" ____
6. BILL DOES NOT PERTAIN TO DIVISION ____

COMMENTS: (Justification must be stated for the above line checked - Continue on another page if needed.)

The Alaska Public Utilities Commission has always felt that they had the responsibility of keeping rates at the lowest level which would allow a reasonable rate of return to the utility. The question of reasonable rate of return has been the subject of much study by commissions, public utilities, courts and the public. A reasonable rate of return is tied, of course, to the return that a prudent investor could gain in the market place. The Alaska Public Utilities Commission has had considerable input in the form of expert witness testimony on the proper rate of return. I personally would have no quarrel with this addition to the statutes since I feel it is one of the primary duties of this Commission.

I would respectfully call to the attention of the author the situation that exists with respect to several electrical utilities in the state who are probably earning less than a reasonable rate of return as determined by the market place. I am referring

(SEE ATTACHED PAGE 2)

Writer's Signature: [signature]
Writer's Title: Chairman, APUC
(DEADLINE 24 hours)

specifically to several of the REA cooperatives whose returns are in the neighborhood of 2% to 3%.

For the information of the reviewing committees I am attaching a one-page report on rates of return enjoyed by several REA cooperatives in the state.

Introduced: 1/20/76
Referred: Judiciary

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE COUNCIL SUB-COMMITTEE ON TELECOMMUNICATIONS

HOUSE BILL NO. 633

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the regulation of public utility rates."

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

* Section 1. AS 42.05.381 is amended by adding a new subsection to read:

(c) In the investigation and review of existing, new or revised rates or tariffs, the commission shall determine and establish the rates or tariffs at the lowest level which would still allow a reasonable rate of return to the utility.

#

HB
634

"An Act relating to the employment of minors."

COMMITTEE REPORT

2/6/76

HOUSE

Mr. Speaker: Date April 6, 1976

The Committee on JUDICIARY has had HB 634 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR HB 634 AND THAT CS FOR HB 634 DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

file 634

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER / BOX 1149 – JUNEAU 99811

April 16, 1976

Representative Terry Gardiner
Chairman, Judiciary Committee
Pouch V
Juneau, Alaska 99811

Dear Representative Gardiner:

I have recently completed a review of the committee substitute for House Bill No. 634 and have determined that its affect on the Department of Labor would be as follows:

1. In order for minors under the age of 18 to go to work they would need only to notify the Department in writing (*Sec. 3) rather than seeking to determine from the Department if the work is in a permissible occupation.

2. Between *Sections 4 and 5, the Department's jurisdiction in granting exemptions would be further limited in that exemptions may only be granted to 16 year olds in potentially dangerous occupations or for long hours and to 16 - 18 year olds seeking employment in restaurants on licensed premises.

3. With the exception of No. 2, above, the bill would remove Child Labor from State control, thus invoking Federal jurisdiction.

Since this bill would effectively remove Child Labor from State control I would recommend that if this is the desire of the Legislature, the entire Child Labor Law be repealed. Otherwise, I would recommend the enclosed draft.

Sincerely,

Edmund N. Orbeck

Edmund N. Orbeck
Commissioner

Enclosure

Original sponsor: Rules Committee by request of the Governor

DRAFT

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 634

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the employment of minors; and providing for an effective date."

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

* Section 1. AS 04.15.020(d) is amended to read:

(d) Presence of minors on premises. It is unlawful for a person under the age of 19 years to enter or remain upon licensed premises unless he is accompanied by his parent, guardian or spouse who has attained the age of 19 years. A [HOWEVER, A PERSON 18 YEARS OF AGE OR OLDER MAY ENTER AND REMAIN UPON LICENSED PREMISES IN THE COURSE OF HIS EMPLOYMENT AS A MUSICIAN, ENTERTAINER OR BUSBOY. IN ADDITION, A] person under the age of 19 years may enter and remain upon licensed premises which are also recognized as a restaurant for the purpose of dining or dancing if accompanied by his parent, guardian, or spouse who has attained the age of 19 years, or by the parent or guardian of any other minor also present, or by any other adult with the consent of the minor's parent or guardian. The Alcoholic Beverage Control Board, with the approval of the city council if the premises are within the city or with the approval of the borough assembly if the premises are outside the city but within a borough, shall designate which premises are restaurants for the purposes of this section. Licensed premises are premises holding licenses under AS 04.10.020(a) - 04.10.020(d). The Alcoholic Beverage Control Board shall promulgate regulations for the designation of restaurants and the continuation or withdrawal of the designation. No establishment may be designated as a restaurant for

purposes of dining without the consent of the licensee.

* Sec. 2. AS 04.15.020 is amended by adding a new subsection to read:

(h) Employment of minors on premises. A person 16 - 18 years of age may enter and remain upon the licensed premises of a hotel or restaurant in the course of his or her employment if the employment do not require or involve the serving, mixing, delivering or dispensing o alcoholic beverages and if the person has the written consent of a parent or guardian and an exemption by the Department of Labor for th employment.

* Section 1. AS 23.10 is amended by adding a new section to read:

Sec. 23.10.332. AUTHORIZATION FOR CHILDREN UNDER ~~17~~ 18 TO WORK. Except for employment exempted under sec. 330 of this chapter and other employment specifically exempted by regulations adopted by the department, no minor under ~~17~~ 18 years of age may be employed or allowed to work without the written authorization of the commissioner. The department shall adopt regulations necessary to implement this section.

* Sec. 2. AS 23.10.340 is repealed and re-enacted to read:

Sec. 23.10.340. EMPLOYMENT OF CHILDREN UNDER 16. Employment of a minor under 16 in any occupations allowed under secs. 325 - 370 of t s chapter shall be limited to:

(1) time outside of school hours;

(2) 40 hours a week when school is not in session;

(3) 18 hours a week when school is in session;

(4) eight hours a day on non-school days;

(5) three hours a day on school days;

(6) the hours between 7:00 a.m. and 7:00 p.m. on any day, except from June 1 through Labor Day when the permissible hours are 7:00 a.m. to 9:00 p.m.

* Sec. 3. AS 23.10.345 is repealed.

* Sec. 4. AS 23.10.350 is repealed and re-enacted to read:

Sec. 23.10.350. EMPLOYMENT OF CHILDREN UNDER ~~17~~ 18. (a) No minor

under ~~17~~ 18 years of age may be employed or allowed to work

(1) more than six days a week;

(2) in excavation, or in surface mining, or underground in mines; or as hoisting engineer in mines; or in the operation of cranes, derricks or hoists; or

(3) in an occupation dangerous to life or limb or injurious to his health or morals.

(b) If the commissioner determines that the duties to be performed by the minor would not unduly endanger the life, limb, health or morals of the minor and if the employment meets the conditions of wages and hours prevailing for the majority of the employees in the industry at the time of employment, the commissioner may grant an exemption in writing from (a) of this section for a minor 16 OR 17 years of age to work at those duties

(1) outside school hours, or while on school vacation, if the minor is attending school; or

(2) if the minor is no longer attending school.

House Judiciary Committee
March 30, 1976

The meeting was called to order by Chairman Gardiner at 1:15 p.m. Members present were Specking, Bradley, Parr, Gardiner and Cotten.

HB 604 UNIFORM LAND SALES PRACTICES ACT HB 604

Larry Carrol, Commerce
John Tillinghast, AG:

Subdivisions of 50 or more lots must register with the department and submit for verification a public offering statement which accurately describes the land for sale. Directed at Boom towns as Valdez where land is being sold sight unseen to unsuspecting buyers. This will require full disclosure so buyer knows what he is getting into. An on sight inspection will be performed by department of commerce to see that public offering statement is accurate.

HB 634 EMPLOYMENT OF MINORS HB 634

Lee Leland, Labor, Wage and Hour division:

Would like an exemption for licensed premises so that young people can work in kitchens, gift shops, and as maids. Also want exemption for those over 16 who are drop outs so they can work steadily. Mr. Leland offered the attached amendment by the ABC Board.

Ron Lorensen, AG's office:

Minors may work on licensed premises with written permission of commissioner and parents. Problem has been with hotels and restaurants who cannot find people willing to work for lower wages, so like young people. But most of these are licensed premises. Department of Labor would like to be notified when a minor is being hired so they can check conditions, hours, wages etc.

HB 713 STUDENT REGENT HB 713

Student regent must actually be a student, if drops out, governor must choose a replacement.

The meeting was adjourned at 2:45 p.m.

A M E N D M E N T

OFFERED IN THE HOUSE Y:

TO: HOUSE BILL NO. 634

AMENDMENT: Page 1 Line 6:

Before the period, insert: "; and providing for an effective date"

AMENDMENT: Page 2, Line 18:

Insert the following:

Sec. 5. AS 04.15.020(d) is amended to read:

(d) Presence of minors on premises. It is unlawful for a person under the age of 19 years to enter or remain upon licensed premises unless he is accompanied by his parent, guardian or spouse who has attained the age of 19 years. [HOWEVER, A PERSON 18 YEARS OF AGE OR OLDER MAY ENTER AND REMAIN UPON LICENSED PREMISES IN THE COURSE OF HIS EMPLOYMENT AS A MUSICIAN, ENTERTAINER OR BUSBOY.] In addition, a person under the age of 19 years may enter and remain upon licensed premises which are also recognized as a restaurant for the purpose of dining or dancing if accompanied by his parent, guardian, or spouse who has attained the age of 19 years, or by the parent or guardian of any other minor also present, or by any other adult with the consent of the monor's parent or guardian. The Alcoholic Beverage Control Board, with the approval of the city council if the premises are within the city or with the approval of the borough assembly if the premises are outside the city but within a borough, shall designate which premises are restaurants for the purposes of this section. Licensed premises are premises holding licenses under

AS 04.10.020(a)--04.10.020(d). The Alcoholi Beverage Control Board shall promulgate regulations for the designation of restaurants and the continuation or withdrawal of the designation. No establishment may be designated as a restaurant for purposes of dining without the consent of the licensee.

Sec. 6. AS 04.15.020 is amended by adding a new subsection to read:

(h) Employment of minors on premises. A person 16--18 years of age may enter and remain upon the licensed premises of a hotel or restaurant in the course of his or her employment if the employment does not require or involve the serving, mixing, delivering or dispensing of alcoholic beverages and if the person has the written consent of a parent or guardian and an exemption by the Department of Labor for the employment.

Sec. 7. AS 23.10.355 is amended to read:

Sec. 23.10.355. PERSONS UNDER 19. No person under 19 may be employed or allowed to sell or serve intoxicating liquors or to work in any room or other place where intoxicating liquors are sold for consumption on the premises, except as provided in AS 04.15.020(h) [(d)].

Sec. 8. This Act takes effect immediately in accordance with AS 01.10.070(c).

3/30 Milton

Introduced: 1/20/76
Referred: Labor & Management and Judiciary

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

HOUSE BILL NO. 634

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the employment of minors."

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

* Section 1. AS 23.10 is amended by adding a new section to read:

Sec. 23.10.332. AUTHORIZATION FOR CHILDREN UNDER 17 TO WORK. Except for employment exempted under sec. 330 of this chapter and other employment specifically exempted by regulations adopted by the department, no minor under 17 years of age [may be employed or allowed] to work without the written authorization of the commissioner. The department shall adopt regulations necessary to implement this section.

* Sec. 2. AS 23.10.340 is repealed and re-enacted to read:

Sec. 23.10.340. EMPLOYMENT OF CHILDREN UNDER 16. Employment of a minor under 16 in any occupations allowed under secs. 325 - 370 of this chapter shall be limited to:

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(4) eight hours a day on non-school days;

(5) three hours a day on school days;

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* Sec. 3. AS 23.10.345 is repealed.

* Sec. 4. AS 23.10.350 is repealed and re-enacted to read:

Sec. 23.10.350. EMPLOYMENT OF CHILDREN UNDER 17. (a) No minor

18
under 17 years of age may be employed or allowed to work

(1) more than six days a week;

(2) in excavation, or in surface mining, or underground in mines; or as hoisting engineer in mines; or in the operation of cranes, derricks or hoists; or

(3) in an occupation dangerous to life or limb or injurious to his health or morals.

determined by Dept. Labor

(b) If the commissioner determines that the duties to be performed by the minor would not unduly endanger the life, limb, health or morals of the minor and if the employment meets the conditions of wages and hours prevailing for the majority of the employees in the industry at the time of employment, the commissioner may grant an exemption in writing from (a) of this section for a minor 16 years of age to work at those duties

(1) outside school hours, or while on school vacation, if the minor is attending school; or

(2) if the minor is no longer attending school.

Introduced: 1/20/76
Referred: Labor & Management and Judiciary

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

HOUSE BILL NO. 634

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

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(3) in an occupation dangerous to life or limb or injurious to his health or morals.

(b) If the commissioner determines that the duties to be performed by the minor would not unduly endanger the life, limb, health or morals of the minor and if the employment meets the conditions of wages and hours prevailing for the majority of the employees in the industry at the time of employment, the commissioner may grant an exemption in writing from (a) of this section for a minor 16 years of age to work at those duties

(1) outside school hours, or while on school vacation, if the minor is attending school; or

(2) if the minor is no longer attending school.

4.15.020

HOUSE BILL NO. 634

AMENDED

Sec. 23.10.332 (New)

This section permits employment of minors in occupations not prohibited by statute or regulations without the requirement of obtaining an exemption from the Department of Labor, however, it requires the employer to have written authorization for such employment from the Commissioner. The purpose of this section is to provide the Department a handle on employers who hire minors which will give the Department the opportunity to inspect the premises and occupations performed to insure that such occupations are in fact non-hazardous or otherwise prohibited and that the employer employs such minors only during permissable hours of work.

Sec. 23.10.340

Brings Alaska Law into conformity with Federal Statutory permissable hours of work for minors under 16 and repeals sub sec. (b) which prohibits minors under 16 from employment in restaurants.

Sec. 23.10.345 (Repealed)

Repeals the very rigid restrictions of this section which denys authorization for employment to many youths who have dropped out of school though have not graduated but have attained 16 years of age.

Sec. 23.10.350 (Repealed and Reenacted)

The new language of this section broadens employment opportunity for minors 16 and over by deleting certain existing constraints as follows:

a) Removes the 8 hour per day limitation placed on the employment of minors who are 16 but under 18.

b) This hour limitation denys many minors from employment opportunities with employers engaged in industries that traditionally require longer shifts in the conduct of their business, for example: service stations, fish processors and canners who must operate when the fish are delivered until processed, some supermarkets and others. This limitation is particularly restrictive during summer vacation season.

c) Repeals the prohibition dening minors 16 to 18 years of age from employment in housekeeping occupations in Hotels or Lodging Houses.

d) It provides the Commissioner authority to grant exemptions to those 16 and over who have dropped out of school.

These amendments are twofold in value:

1) Expands the opportunity for minors to enter the workforce and engage in gainful occupations, and

2) Provides employers an expanded workforce from which to fill positions that are sometimes difficult to fill with persons who are over 18, particularly in lower paid crafts such as many service trades positions, i.e., dishwashers, kitchen helpers, service station attendants, box or bag boys, etc.

ETL/ltr

SEC. 04/ ~~05~~.15.020. (Amended)

Amends the language of this section to permit the Commissioner of Labor to grant exemption for certain occupations in Hotel and Resturants that are licensed premises covered bv this section. Exempting occupations of the type such as dishwashers, kitchen helpers, clerical employees, gift shop employees, maids, busboys, etc. Will expand employment opportunities for young people.

Further adoption of this amendment will protect the jobs of several hundred youths presently employed in these occupations without benefit of exemption who will have to be terminated by the Department of Labor's obligation to enforce the ~~preset~~ present statutory restriction mandated in the present language covering licensed premises, for example the Westward Hotel in Anchorage where the entire building is designated as a licensed premise. The new amendment however retains the prohibition from employing minors on such premises in any occupation that requires serving, mixing, delivery or dispensing of Alcoholic Beverages.

ETL/ltr

AMENDMENT #1

OFFERED IN THE HOUSE: BY: Labor & Management Comm.

To: _____ HOUSE BILL No. 634

SENATE BILL No. _____

PAGE: one LINE: 9

delete 17 insert 18

Page: one Line: 12

delete 17 insert 18

Page: one Line: 12

after "no" insert "employer may employ a"

delete "may be employed or allowed"

Page: one Line: 13

delete "to work without"

and substitute "unless the employer has"

Page: one Line: 29

delete 17 insert 18

Page: two Line: 1

delete 17 insert 18

AMENDMENT #1

OFFERED IN THE HOUSE: BY: Labor & Management Comm.

To: _____ HOUSE BILL No. 634

SENATE BILL No. _____

PAGE: one LINE: 9

delete 17 insert 18

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Page: one Line: 13

delete "to work without"

and substitute "unless the employer has"

Page: one Line: 29

delete 17 insert 18

Page: two Line: 1

delete 17 insert 18

HB
639

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

M E M O R A N D U M

April 22, 1976

SUBJECT: Attached Bill (CSHB 639 (Judiciary))
Representative Gardiner

TO: House Judiciary Committee

FROM: Joel Bennett, Legislative Counsel

I believe Mr. Walker of our office has alerted your committee through Mr. Svodbody to the potential constitutional problem with the waiver provisior of CSHB 639. That some processors should be treated differently than others raises an equal protection argument under Art. I, Sec. 1, of the Alaska Constitution. When considering the purpose of the legislation (protecting wage claims), it does not appear reasonable to deny one group of persons (large processors) the enjoyment of certain rights which are afforded to another group (small processors).

I am in no way confident that the qualifying language in (b) of the new waiver provision meets this concern. It is an effort to do so, however.

Att.

02-001B (REV. 08-73)

Put in my file on HB639

MEMORANDUM State of Alaska

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

TO: Fran Ulmer
Legislative Assistant
Office of the Governor

DATE: March 25, 1976

FILE NO:

TELEPHONE NO:

FROM: Jim Edenso
Deputy Commissioner

SUBJECT: CSHB 639

This act would require bonding for fish buyers throughout Alaska. An immediate question that should be answered prior to the State taking a position on the bill is: What is the actual magnitude of the problem being addressed by this bill?

In the past the problem was fairly large but appears to have been reduced through the passage of time and improved stability of fish processors throughout the State. It is the opinion of this department that rather than help the fishermen, the bill would, in fact, hurt the fishermen. There are numerous small operators in the State who purchase for cash and exist on a marginal cash basis that may not be bondable. The only alternative for these people may be a cash deposit and this is plainly unreasonable. The bill may force some small operators entirely out of business, thereby indirectly enhancing the large processor who could obtain the required bonding. This would strengthen the position of the large processor in bargaining with the fishermen in the establishment of each year's fish prices.

Until we have more information on the total number of small operators and their capital characteristics, the State should either remain neutral or oppose CSHB 639.

cc: Mike Whitehead

Rozier tends to agree
→ - input from labor on wage settlements
- fly by nighters in the past
: Herring - S.E.
: Japanese
- no problems w/in past couple seasons that Rozier aware of
- hardship on fishermen themselves
-

file with 639 members

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER | POUCH S – JUNEAU 99811

April 5, 1976

Honorable Terry Gardiner
Chairman
House Judiciary Committee
Alaska State Legislature
State Capitol Building
Juneau, Alaska

Re: Committee Substitute for House Bill No. 639

Dear Mr. Gardiner:

Committee Substitute for House Bill No. 639, an Act relating to security for the collection wages, according to the House Journal of April 3, 1976 was referred to the House Judiciary Committee.

For the consideration of the House Judiciary Committee, I am enclosing a copy of Fiscal Note and accompanying memorandum prepared by Gary L. Jenkins, Director, Audit Division, Department of Revenue advising of administrative costs and possible problems of administration.

If you or any members of the House Judiciary Committee have any questions on the material submitted, please telephone the writer at 465-2397 and I will contact Mr. Jenkins for further information or testimony at a hearing.

Very truly yours,

R. D. Stevenson
Special Assistant

The Honorable Theodore Smith
Chairman
House Labor & Management Committee

Gary L. Jenkins
Director, Audit Division
Department of Revenue

RDS:lc

THE LEGISLATURE OF THE STATE OF ALASKA
FISCAL NOTE
Second Session - Ninth Legislature

I. REQUEST
Bill No. CS for House Bill Number 639
Title: An Act relating to security for the collection of wages
Requested by: Date:
Return Date Requested:
Agency: Revenue Program: Enforcement

II. FISCAL DETAIL
Budget Request Unit(s) Affected: Enforcement

A. EXPENDITURES: (Thousands of dollars)

	OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100	PERSONAL SERVICES		15.8	16.3	16.8	17.3	17.8
200	TRAVEL						
300	CONTRACTUAL		3.0	3.0	3.0	3.0	3.0
400	COMMODITIES		.2	.2	.2	.2	.2
500	EQUIPMENT		.8				
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL	-0-	19.8	19.5	20.0	20.5	21.0

B. FUNDING: (Thousands of dollars)

GENERAL FUND	-0-	19.8	19.5	20.0	20.5	21.0
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	0 / 0	1 / 0	1 / 0	1 / 0	1 / 0	1 / 0
MAN MONTHS (P./T.)	0 / 0	12 / 0	12 / 0	12 / 0	12 / 0	12 / 0

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The above staffing would be for one tax examiner position to handle the processing of the security bonds.

IV. ATTACHMENTS See memo to R. D. Stevenson dated March 26, 1976

V. DATE: 3-30-76 PREPARED BY: Gary L. Jenkins

Gary L. Jenkins, Director Audit Division

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

02-0018 (REV. 08-73)

MEMORANDUM State of Alaska

TO: R. D. Stevenson
Special Assistant

DATE: March 26, 1976

FILE NO:

TELEPHONE NO:

FROM: Gary L. Jenkins
Director
Audit Division

SUBJECT: CSHB 639

This bill would require a fish processor who did not have lienable property in the state, in excess of $10,000, to file a security bond in the amount of $10,000 guaranteeing payment of wages and benefits to employees and/or independent fishermen for fish purchased from them. I see two major problems with this piece of legislation.

The bill provides for a dual control over the bonding by the Commissioner of Revenue and the Commissioner of Labor which of itself would cause administrative problems. Further, the language of the legislation in defining the responsibilities of the two departments is both confusing and inconsistent. In Sec. 1, paragraph (a), the fish processor would be required to file a security bond with the Commissioner of Revenue, however, it assigns the tasks of determining if the security is satisfactory to the Commissioner of Labor. The bill continues in paragraph (b) to provide that the processor may file a cash deposit or other negotiable security acceptable to the Commissioner in lieu of the bond. In this case the Commissioner who makes the determination whether the deposit or negotiable security is acceptable in lieu of the bond is the Commissioner of Revenue. Thus, the bill provides for the bond to be filed with the Commissioner of Revenue but subject to approval by the Commissioner of Labor, which is very cumbersome, then turns around and assigns to the Commissioner of Revenue the authority to accept other security in lieu of the bond, which is completely inconsistent. The bill has similiar inconsistent provisions regarding the respective functions of the Commissioner of Revenue and the Commissioner of Labor in subsequent sections.

Secondly, I feel that this is a piece of legislation which discriminates against one small segment of the business community. I seriously doubt that fish processors are any more guilty of failing to pay their employees or suppliers than any other business group. Further, I feel this is an encroachment of the bureaucracy in an area where it has no business. We already require a fish processor to file a bond with the Department of Revenue to guarantee payment of the fish processing tax. Further, if a processor is a non-resident business he is required to obtain a bond which will cover all potential tax liability to the State of Alaska including the fish processing tax. For the state to take on the function of requiring businesses to post a bond to guarantee they will

pay their employees and/or suppliers seems to be rather onerous to say the least. I do not feel that this legislation is in the best interest of the state or the business community within the state.

GLJ:lc

HB
684
HB
829

file

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

May 18, 1976

SUBJECT: Economic Analysis of Arrangements Tying Mobile Home Sales to Mobile Home Space Rentals (W.O. #2637)

TO: The Honorable Terry Gardiner

FROM: Gregg K. Erickson
Director of Research Services

SUMMARY

You have requested* an economic analysis of the tying arrangements that are alleged to exist between operators of mobile home parks and mobile home dealers under which the availability of a mobile home space is conditioned on purchase of a mobile home. We have reviewed, inter alia, the memorandum of Mr. Jamie Love concerning this alleged abuse, the legislation that purports to remedy it, the testimony of individuals representing the park operators and dealers' statements. In addition, several telephone interviews were conducted with persons associated with the mobile home industry in Alaska.

Our analysis reviews the current situation and briefly summarizes the legal status of tying arrangements of this sort, finding them very probably per se illegal under both the Clayton and Sherman acts. We discuss the several economic incentives that make the practice of tying attractive to dealers and touch briefly on the impact of these incentives on their customers. In conclusion, we evaluate some of the arguments that have been advanced in support of mobile home tying arrangements.

The Current Situation

As we understand it, there is currently "excess demand" for mobile home spaces in the state's major metropolitan markets and also in smaller communities, such as Valdez, impacted by the trans-Alaska pipeline

* In response to a research request substantially the same as yours, this memorandum is being separately addressed to another legislator.

construction. The sources of this shortage differ from area to area, but in general they are associated with the rapid increase in demand for housing of all sorts due to increased economic activity[1] and institutional constraints on the expansion of existing mobile home parks or the creation of new ones.

In our view, these constraints are very important factors in the current problem. They have been identified by persons in the business as:

1) Community resistance, reflected in restrictive zoning regulations, to new or expanded courts, based in the belief that they reduce property values in adjacent residential neighborhoods;

2) A shortage of suitable land for park development;

3) Difficulty in securing financing for the construction of new spaces, apparently related in part to lending institutions' fears that current space shortages may be transitory; and

4) The fact that rent control regulations or the expectation thereof may reduce the expected profitability of investments in the construction of new spaces.

While we are not certain of the relative impact of these factors, it seems clear that taken together they result in a very real constraint on the expansion of supply.

During the past 18 months, and possibly prior to that, a pattern of business relationships has developed, between mobile home dealers on the one hand and owners and operators of mobile home parks on the other, which results in the dealers gaining control of many if not most of the available spaces. We have not seen copies of any formal agreements, but an attorney representing mobile home dealers has stated that they "have typically agreed to rent or pay a fee for the reservation of newly created mobile home park spaces."[2]

The dealers, in their statements to the legislature, have emphasized the relationships between the payments they make to the park operators and the creation of new spaces, which they claim such payments make possible. They do not make it clear as to whether these reservations on newly constructed spaces are for the initial occupancy only, or if they run for fixed or indefinite periods.

In any event, there is substantial evidence that the larger dealers have been reserving spaces as they become vacant in existing parks, and that these reservations are in fact the most important mechanism whereby dealers secure control of the "frictional" stock of rapidly turning over vacant mobile home spaces.[3] Finally, a significant number of spaces are controlled directly by dealers through outright ownership of parks. It is understood that these spaces are usually reserved, as are most other spaces controlled by dealers, for persons purchasing a mobile home from that dealer.

Legal background

Although this memorandum is not directed at providing a legal analysis of these issues, it is appropriate to summarize briefly the law and relevant court decisions as they relate to tying arrangements of the sort discussed above. Under economic and judicial usage, a tying arrangement exists when a seller requires a person purchasing a desired product or service to additionally purchase a second product which the buyer would not normally desire, at least not at the price the seller is asking. Such arrangements are prohibited by the Clayton Act[4] if they have a substantially anti-competitive effect. In addition, certain tying arrangements have also been held to be illegal under Secs. 1 and 2

of the Sherman Act[5], with its more general prohibition of attempts to monopolize or otherwise restrain trade. State law contains language similar to the Sherman Act prohibitions[6], but does not contain any provision parallel to the more specific injunction against tying arrangements found in Sec. 3 of the Clayton Act.

An excellent summary of judicial treatment of these statutes is contained in Carla Hills' recently published Antitrust Advisor:

> The Supreme Court has dealt harshly with the numerous tying arrangements it has reviewed, once describing the species as serving "hardly any purpose beyond the supression of competition." ....From a series of cases has evolved the rule that tying agreements are "unreasonable in and of themselves whenever a party has sufficient economic power with respect to the tying product to appreciably restrain free competition in the market for the tied product and a not insubstantial amount of interstate commerce is affected."

Illustrative of the way the Supreme Court has treated these arrangements, and perhaps particularly relevant to the type of tying arrangement discussed in this memorandum, is the case of Northern Pacific Railway Company v. the United States.[7] In this case the railway was accused of unlawfully requiring persons leasing land owned by the railway to utilize its transportation services; the court stated unequivocally that tying arrangements are among the practices which because of "their pernicious effect on competition and lack of any redeeming virtue," are illegal per se.[8] The Court went on to say that tying arrangements "are unreasonable in and of themselves whenever a party has sufficient economic power with respect to the tying product to appreciably restrain free competition in the market for the tied product and a 'not insubstantial' amount of interstate commerce is affected."[9]

Since all the tests of a violation of Sec. 3 of the Clayton Act as

outlined in the Hills' book[10] would seem to be more than met by type of tying arrangements between mobile home vendors and court operators outlined above, the question may arise as to why additional legislation is called for. The answer to this question is naturally a policy matter, but we would point out that Alaska is about as far from the locus of federal antitrust enforcement as one can get, that only a very small proportion of federal antitrust enforcement resources are devoted to dealing with violations that are not on a national scale, and that as far as is known no antitrust enforcement efforts on the federal level are currently under way in Alaska.

Economic Analysis

From an economic viewpoint not all tying arrangements are quite as pernicious as the Supreme Court opinions quoted above would lead one to believe. For example, take the case of a man who has lost by amputation his right leg. When buying footware he is forced to take a product he does not need (the right shoe) in order to obtain the product that he requires (the left shoe). Given the realities of mass production and the extremely limited market for single shoes, it is intuitively clear, and can be rigorously demonstrated by economic analysis, that efficiency and welfare, both of the one-legged customer and society as a whole, is maximized by selling all shoes as pairs.[11]

There are a number of other types of situations where exceptions of one sort or another can be taken to the general rule that tying arrangements result in resource misallocation and failure to maximize welfare. However, most tying arrangement reflect an effort by a producer or seller who possesses some measure of monopoly power over a given product

or service to use that monopoly power to extend the monopoly to other products or services. Perhaps the classic example of this situation occurred in the early days of the U. S. petroleum industry when the Standard Oil trust used its control of crude oil pipelines to gain a monopoly in refining by refusing to transport the crude shipments of others unless they agreed to consign them to Standard's refineries. Predictably, most of Standard's competitors at that time in refining had a short life.

Also typical is the situation where a holder of a governmentally endorsed monopoly such as a patent or copyright uses that monopoly to obtain control over markets different but related to the patented or copyrighted product. Among the most well-known of these is the IBM case in which the firm was described as requiring persons leasing their patented and unique computing equipment to purchase all their data cards from IBM even though identical products were available from a host of other sources, often at lower prices.

We believe that the tying arrangements between court owners and mobile home dealers fall in these general categories rather than any of the special cases discussed in the economic literature or the usually quoted judicial opinions. We have here clearly a case where there are two complementary products--mobile homes and mobile home spaces. One of these products, mobile home spaces, is increasingly controlled by a relatively few firms, and its supply is relatively inelastic due to the institutional factors noted above. These attributes clearly indicate a measure of monopoly power.[12]

Nevertheless, the advantages to the vendors of tying these two complementary products, spaces and mobile homes, is not immediately obvious. It is intuitively appealing to assume that by extending the monopoly to a larger volume of sales, greater profits are earned. Unfortunately, it is probably just as likely that the result of such arrangements would be simply a shift in the point at which the monopoly profits are captured, without any significant increase in those profits. In effect, it may be that the gain realized by the transfer of market power to the tied product (in this case the mobile homes) is equal to--or perhaps even less than--the reduction in the price received for the tying product (the mobile home space) necessary to induce purchase of the tied item.

The microeconomic analysis of this question is relatively complex. It has been shown, however, that in situations where the tied and tying products are complements (as they are in this case), the tying arrangement can result in increased total profits to the seller of the tying product.[13] We believe that the conditions necessary and sufficient to the use of the tying arrangement to increase monopoly profits or obtain related commercial advantage exist here, and that the mechanisms of that use are among those outlined below.

The first of these relates to the extent that theoretical monopoly gains can, in practice, actually be captured in the two different markets, and the fact that tying contracts are an excellent stratagem for avoiding regulations establishing either minimum or maximum prices that may be charged for a product. In some of the communities where the practice of tying space rental to purchase of mobile homes has developed,

mobile home space rentals are subject to price controls. If demand for the spaces at the regulated price exceeds their supply, there will be a tremendous incentive on the part of space owners to find other means of charging a rent sufficiently high to allocate the limited number of spaces among the large number of individuals desiring them. The tying arrangement may provide the stratagem for evading regulations controlling the level of rents.

Of course, in a number of communities where tying arrangements have developed no such regulations exist. Even in these communities, however, it is likely that owners of courts perceive the possibility of such regulations as a threat. Also, only the most insensitive of dealers could fail to be aware of the fact that the community at large is likely to be much more sensitive to scarcity-induced increases in the level of rents than it will be to similarly induced increases in the prices of mobile homes. A precipitous rise in the level of space rents is so obviously not associated with any increase in the quality of product or service received that it is almost certain to stimulate immediate public outcry. An increase, even a rapid one, in the prices of mobile homes, on the other hand, cannot be nearly as easily identified as to cause; if the issue is raised at all, vendors may claim that the rising price of their product simply reflects higher costs to them, or perhaps higher quality. As an example of how the differences in perceptions actually work, compare the outcry that would have certainly resulted had some person in unrelated industry gone around and cornered all the frictionally unoccupied mobile home spaces in Anchorage, paying--as dealers have reportedly done--a $500 reservation fee to court operators for each space coming vacant, if he had turned around and tried to resell those

spaces at a $1,000 premium to prospective renters.

Another possible reason for developing tie-in arrangements in the mobile home business, apart from any direct increase in profits therefrom, is the effect such tie-ins may have on the ability of dealer-competitors to stay in business. Although a tying arrangement may not immediately result in additional profits for the dealer using it, it may do so in the long run if the result is the creation of conditions which make it impossible for competitors to stay in business. The legislative record on the bill barring such practices indicates that this may, in fact, be an element in the motivation here.[14] By cornering the market in spaces, one can make it very difficult for anyone not participating in the monopoly, either by virtue of his initially smaller capitalization or other reasons, to maintain the volume of mobile home sales necessary to stay in business.[15] Once competitors are forced out of the market, then the dealers will be situated to earn monopoly profits on their sales of mobile homes, regardless of what might happen in the future with respect to mobile home spaces. This is, of course, a situation exactly parallel to the use by the Standard Oil trust of crude oil pipelines to secure monopoly power in the refining sector.

Also important, but requiring a more subtle analysis, are two other factors which may be of great importance in inducing dealers to develop tying arrangements. The first of these concerns the ability as a result of tying arrangements to discriminate among customers with differing incomes or needs. In a freely competitive market, all customers will pay the same price for the same good supplied to them under the same conditions. However, these consumers may place widely differing

values on these goods. These levels are the maximum prices that individual consumers would pay for the goods in question, and the difference between those levels and what consumers actually pay is is known in economic terminology as the "consumer surplus". It would be to the advantage of any seller to be able to divide his customers up into discrete individual markets on the basis of the level of these consumer surpluses, and price his product separately in each market so as to capture as much of that surplus for himself as possible. Such a scheme is often known as "meter pricing" since the seller attempts to "meter" each individual consumer's willingness to pay for the product and then set its price to that consumer accordingly.

It is fairly clear that the tying arrangements addressed here would provide the means of accomplishing or at least facilitating this sort of pricing strategy. As a practical matter it would be very difficult to establish rents for mobile home spaces on the basis of the consumer surplus accruing to each individual space renter. It is, on the other hand, relatively easier to establish (and far more difficult to prove the existence of) such a price discrimination system in the mobile home market. Salesmen and producers, of course, attempt to do this all the time by differentiating their products and by attempting to sell an individual the largest and most expensive of the many possible purchase options available to him. Their ability to be successful in these efforts is vastly increased, however, if they have behind them the leverage of exclusive or nearly exclusive control over the market for an absolutely necessary complement (the mobile home space) to the product they are selling.

For example, if an individual approaches a dealer with a proposition to buy a relatively inexpensive unit (and thus obtain with it a mobile home space), the dealer may, if he determines that the prospective purchaser has a substantial income and few other housing options, simply refuse to deal with the prospective purchaser until he agrees to buy a far more expensive mobile home. An individual similarly situated in terms of need, but with a far lower income, could be offered a deal on a less expensive trailer that was not made available to the first, better heeled offerer. Obviously, it would be very difficult to discriminate along these lines in the absence of the dominance in the space market. Without that dominance, the prospective purchaser could simply take his business to another dealer.

In considering another reason why dealers find it advantageous to tie mobile home sales to mobile home court space rentals, it is useful to view the tied transaction from the eyes of the purchaser-renter. From his standpoint, the payments for the mobile home space and the mobile home are both made in the form of periodic, usually monthly, expenditures, a rent and a mortgage payment. If the monopoly power were restricted to the mobile home space rental, the monopoly profits or scarcity rents would be received by the trailer court owner (or the organization controlling the monopoly on spaces) over the period of time that the monopoly power exists. Under the tying arrangements currently in existence, the capitalized value of these "scarcity rents" is paid in a lump sum by the bank on behalf of the mobile home purchaser, and is thus realized immediately by the entities controlling the space market.

This results in a potential net gain for those who hold monopoly power in the space market through several mechanisms. Firstly, their

internal rate of discount is likely to be higher than the interest rate paid by the mobile home purchaser on the amount of his mobile home mortgage in excess of what he would have been willing to pay for the home alone. Furthermore, the risks involved in capitalizing the value of an uncertain stream of income are entirely transferred to the mortgagee. For example, should the demand for mobile home spaces suddenly fall off the opportunity for scarcity rents would, of course, evaporate. In a competitive market rents would fall. This is no consolation to the person whose purchase of the mobile home has been induced by means of the market power over spaces, since he has already paid the capitalized value of the (erroneously) expected stream of scarcity rents.

In this context, it should be noted that the tying arrangements tend to discriminate against transient occupants of spaces, and in favor of those who are more permanent. This comes about since the long-term occupant of a space has at least the chance of obtaining "full value" in terms of a secure place to put his mobile home in return for the excess price he was forced to pay for it. This is not true for the short-term occupant of a space unless, of course, the dealers have discovered a way to discriminate on the basis of expected duration of stay.

One would expect the fact that the capitalized value of the scarcity rents are received as a lump sum to create a clear incentive to evict or otherwise bring about the removal of mobile homes established on existing spaces. There is evidence that this, in fact, is happening, with some operators prohibiting their tenants from selling their mobile homes on the space, forcing persons leaving the community to remove them.[16]

Arguments in Support of the Tying Arrangements

In our review of these practices we have noted the arguments advanced by the dealers utilizing tying arrangements. The most frequently voiced of these is apparently directed at pursuading legislators that the tying arrangements are a necessary pre-condition to the continued flow of investment into the creation of new spaces. In support of this position, a dealer spokesman has asserted that the rental rates, at current levels, are insufficient by themselves to justify the investment without the compensating extra profit on mobile home sales, and that even if this were not the case lending institutions require pre-commitments before they will lend money for any new ventures, be they "office buildings, apartment buildings or mobile home courts."[17]

As we have pointed out, circumstances may indeed be such that dealers are uniquely situated to appropriate the scarcity rents accruing as a result of the shortage of trailer spaces. Thus, it is not unreasonable to expect that in certain circumstances dealers would find it desirable to advance financing for the creation of such spaces at times when others would refuse to do so. It is important to note, however, that the continued profitability of such arrangements depends upon the continued scarcity of mobile home spaces.

Obviously, we are dealing with a situation in which countervailing forces are at work; also, it is pretty clear that this is a case in which the classic equilibrium model of firm behavior under partial monopoly can tell us quite a bit with respect to how the dealers are likely to respond. On the basis of the theory we would predict that 1) the incentive of dealers not already in control of a significant number of spaces to add additional spaces will be increased; 2) dealers

already holding a stock of spaces, either controlled directly or by option to rent, will find that the addition of new spaces--whether controlled by them or others--will reduce their potential monopoly gains and raise the cost of maintaining their market power; and 3) at some relatively low level of concentration of control over spaces the net effect of these two countervailing forces will be a reduction in the rate of growth of new spaces. If, as appears to be the case, the level of market power wielded by the dealers is increasing, then it is almost certain that the latter point has been passed.

We would also predict, on the same basis, that the frictional unoccupancy caused by normal turnover is greater in dealer owned ("closed") courts than in open courts, and that among dealer controlled courts it is directly proportional to the dealer's control over spaces. Naturally, a dealer who is for whatever reason maintaining an inventory of unoccupied spaces greater than his needs isn't going to be particularly anxious to expend additional funds on the construction of new spaces, unless it is to foreclose the opportunity a competitor might have to obtain them.

With respect to the alleged requirement of pre-leasing we must simply say that we were not aware that it is impossible to build an apartment house in Anchorage or other Alaska city without a pre-lease commitment. One lending institution reports that it alone intends to finance--without pre-leasing--500 new apartment units in Anchorage during the current construction season.[18] If these projects are being financed without such pre-lease commitments, then we would wonder why the same shouldn't be possible, given a relatively competitive market, for the financing of mobile home spaces.[19]

It should be noted, of course, that the argument with respect to the financing of new spaces provides no support whatsoever for the practice of tying up existing spaces through the purchase of preemptive options on them as they become vacant, or the maintenance of the restrictive practice after the first renter has moved his mobile home onto the lot. If the arguments presented above by the industry spokesman are accepted, it might be justified to permit a tying arrangement with respect to the initial rental of dealer constructed spaces. On the evidence available now, however, we find no economic justification for such a distinction.

The representative of the industry drew an analogy between the practices of a downtown department store in subsidizing adjacent parking in order to "stimulate sales" and asks rhetorically why such arrangements should not be made illegal if the current practices among mobile home dealers are prohibited.[20] Actually, if a practice analogous to that of the large department store in subsidizing parking was adopted by the mobile home dealers then there would be no tying arrangement, at least not in the "pernicious" sense excoriated by the courts. Instead of developing court spaces at a "loss" or investing in options to lease existing spaces, dealers would simply subsidize (for the same expenditure) prospective purchasers, who would then use those funds, either as a lump sum payment to a trailer court operator or spread over time as increased rental, to obtain a space that would otherwise be unavailable to them. The additional funds made available by the operators for this purpose would bid up the prices for spaces and thus make financing for the expansion of existing spaces available on its own terms.

In fact, the industry spokesman supports this view in his statement that the level of space rentals will rise by $60 per month if the tying

arrangements are ended.[21] In giving us this figure he gives us, perhaps unwittingly, a means of measuring the extra amounts (comprising the scarcity rent and/or monopoly profit plus actual passed-through space costs) paid by a mobile home purchaser over and above the price that would be established in a freely competitive market: The discounted present value of the $60 per month income stream over 5.5 years[22] at 10% annual interest rate is $3,036.

-FOOTNOTES-

1. The pipeline has affected mobile home (and mobile home space) demand both directly, through the increase in population, and indirectly, by bidding up the prices of construction services. These are reflected in the costs of new residential construction and, since the market is expanding, the resale value of the existing housing stock, securing in the process substantial "windfalls" or scarcity rents for homeowners. The upshot is that an increasing proportion of the housing demand is forced out of the market for locally constructed dwellings and into the mobile home market, where prices have been restrained by excess capacity in outside facilities for the construction of mobile homes.

2. William F. Brattain III. Written Testimony before the Senate Commerce Committee, Alaska State Legislature, dated 6 April 1976, p. 7 (Xeroxed).

3. "For the past year all available spaces in open parks have been purchased by the dealer/owner corporat[ions]...", David C. Bornschein, letter dated 12 April 1976 to the chairman, House Commerce Committee, Alaska State Legislature. Mr. Bornschein is president of Buckhorn Homes Inc., an Anchorage mobile home dealer. This assertion is supported by the statements of at least two other small dealers and a number of tenants. See also Pam Millsap, "Dealers Gobble Trailer Lots", Anchorage Daily News (Xeroxed copy, no date).

4. 15 USC 14.

5. 15 USC 1, 2.

6. AS 45.52.010, 020. Colorado and Oregon have statutes specifically prohibiting tying arrangements with respect to mobile homes and mobile home spaces. (Col. Stat. 38-12-210, 212; Ore. Laws 1975, Chap. 353).

7. 356 US 1, 11 (1958).

8. Quoted in Hills, Antitrust Advisor (1971), p. 83.

9. Ibid.

10. Ibid, p. 83. The tests are summarized as follows: (1) If an insubstantial amount of interstate commerce is affected, the tie-in will not fall within the prohibitions of the Sherman or Clayton acts. However, $61,000 worth of business has been held "not insubstantial." (2) There can be no tie-in if there is only one product. (3) Assuming that there are two products and a not insubstantial amount of commerce is affected, a tie-in may be justified if the seller is a small company trying to break into a market or is only trying to protect goodwill. (4) If none of the above applies, the tie-in is unreasonable "whenever a party has

sufficient economic power with respect to the tying product to appreciably restrain free competition in the market for the tied product...". Absent a patent or copyright the existence of the tying arrangement is itself evidence of sufficient economic power.

11. Actually, the example here would probably be permissible under the "single product test". Also see Pegram, D. F., Public Regulation of Business (1959), pp. 268, 377 ff.

12. In the discussion that follows we will use the term "monopoly power" to mean any situation where a seller faces a downward sloping demand function and/or can increase total profits by restricting output. Technically, and in the economic literature, "monopoly" usually has a more restricted usage.

13. The only microeconomic analysis of tying arrangements found in our literature search is contained in Markouit's, "Tie-Ins, Reciprocity and the Leverage Theory," 79 Yale Law Journal 1397, and 80 Yale Law Journal 196. These articles are exhaustive (to a fault). The theory underlying the conclusions summarized here could, with considerable effort and time, be massaged into a form comprehensible to a non-economist and, if needed by the legislature, will be.

14. Supra, Note 3.

15. An important empirical test of this hypothesis would be possible through a review of the number of dealer controlled (closed) and non-dealer owned (open) spaces, with attention to the trend with respect to concentration of control over "closed" spaces. Reliable data is lacking now but may be available later.

16. Michael Clevenger and William Zellman, Written Statements (undated), provided to the Research Division by the staff, House State Affairs Committee, Alaska State Legislature.

17. Bernard L. Marsh (Executive Secretary, Alaska Mobile Home Association and Alaska Trailer Court Association), Written Testimony before the Senate Commerce Committee, Alaska State Legislature, dated 14 April 1976.

18. David Martin (Vice President, Commercial Mortgages, Alaska Mutual Savings Bank), Personal Communication, 18 May 1976 (reported by Jamie Love).

19. Commercial space such as offices can and has also been built without pre-leasing. However, the relatively greater volitility of demand for office space and the relatively greater responsiveness of short term rental rates to variations in that demand (higher price elasticity of

demand) make pre-lease commitments a common practice in the office space market.

20. Marsh, supra, Note 17.

21. Ibid. The current median rent is reported to be $105 per month. The dealers estimate that the free market figure will be $165 per month.

22. Estimated average term of a mobile home mortgage financed by the Juneau Branch, National Bank of Alaska (personal communication, 18 May 1976).

file on trailer bill

Penco Inc.
907 • 277-2522 BOX 4-B
ANCHORAGE, ALASKA 99509

April 21, 1976

The Honorable Terry Gardiner
Alaska State House of Representatives
Pouch V, State Capitol Building
Juneau, Alaska 99811

Dear Mr. Gardiner:

Last week five or six mobile home dealers, from Anchorage and Fairbanks, and myself were in Juneau where we testified before the Senate Commerce Committee reference HB 829 and HB 684. We talked to quite a few Senators, including President Chancy Croft, plus Speaker of the House Mike Bradner. Our intent was to visit you, as sponsor of the bill, but as Alaska Airlines left promptly at 5 P.M., we did not get a chance to see you. We apologize for this, as we would like to have discussed the bill with you; we are sure we could have clarified some points about it.

Conceptionally-wise, I certainly find sympathy in the logic for the bill. Having been in this business since 1956, and having been the "small dealer" for much of that time, I am very much aware of the complexities and problems in trying to sell mobile homes within the state of Alaska, particularly when you are some 2,500 miles away from the factories. Based on this experience, it is the writer's opinion that the effect of the bill, as written, will slow down or stop the development of any major mobile home park spaces in Anchorage and Fairbanks.

We believe the attached statistics will point out that in the last three years in Fairbanks and Anchorage, most all of the park development was done by or in financial cooperation with mobile home dealers. We can assure you we did not build a park because we wanted to; we built it as we needed an inventory of spaces for our customers. In 20 years of business we have never sold a person a mobile home that did not have a place to park it - and we never will.

Mr. Gardiner, there is only one problem, and that is a shortage of spaces. There has never been a shortage in our state such as existed last year and will exist for at least the first part of this summer. That shortage is, quite bluntly, truly from "pipeline impact". The shortage is basically caused by two problems. First is the lack of long term financing for mobile home parks - not for financing of the mobile homes themselves, but for the financing of the park development. A secondary item is the lack of suitable or adequate ground within the urban areas that can be used for mobile home parks. A park cannot be built in the Anchorage area as a right, but only as an exception in any zoning division. The planning and engineering process to construct a park requires one year's time.

Rather than having negative bills which will adversely affect consumers presently living in mobile homes, we would suggest that a positive approach be made. And that is that the State take some action toward helping cure the problem - help provide financing for mobile home parks. The State buys millions of dollars of single family dwelling mortgages per year. To the best of our knowledge, the State has bought only one mobile home park mortgage. If someone wants to do something of a positive nature to cure the problem, then they should consider a bill somewhat like that attached. One of the most important things about such a bill is that the State could then set standards such as F.H.A. construction specifications; paved streets, paved driveways, landscaped lawns, etc. One of the requirements could be that all parks that the State financed would be open parks, not for the use of any specific sales entity. This would be positive legislation that would help each and every community in which the State funded these loans. If legislation like we suggest could be passed, then good, sensible, attractive mobile home parks could be developed within our state's communities.

In summation, I apologize again for not having the opportunity to see you, and would like to leave you with this closing thought. I believe our company has developed or been involved in the development of more mobile home spaces than has any other entity within the state of Alaska. If 'others' would construct the parks that our communities so badly need, we can assure you we would never plan to build another mobile home space. We have only done so because others have not.

Sincerely,

RENCO INC.

Robert C. Penney
President

RCP/ec

Enclosure

SENATE COMMERCE COMMITTEE

April 14, 1976

rep. over 3650 Mobile Home spaces in Anchorage

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, I AM GORDON JENKINS, PRESIDENT OF ALASKA TRAILER COURT ASSOCIATION. OUR ASSOCIATION HAS CONSIDERED THIS BILL, AND HAS SOME RECOMMENDATIONS TO OFFER.

OUR FIRST RECOMMENDATION IS THAT THIS BILL BE REFERRED TO THE SENATE JUDICIARY COMMITTEE FOR STUDY, SINCE IT IS AN AMENDMENT TO THE LANDLORD-TENANT ACT OF 1974. THAT LANDMARK LEGISLATION WAS THE PRODUCT OF MANY HOURS OF WORK BY THE SENATE JUDICIARY COMMITTEE, AND WE BELIEVE THAT SUBSTANTIVE CHANGES TO IT SHOULD ALSO BE CONSIDERED BY THAT COMMITTEE.

THE ALASKA TRAILER COURT ASSOCIATION FEELS THAT THE MOTIVES BEHIND HB 829 ARE GOOD, AND THE BILL FOR THE MOST PART MANDATES PRACTICES THAT SHOULD BE FOLLOWED BY ANY ETHICAL MOBILE HOME COURT OPERATORS. WE DON'T OBJECT TO THESE. HOWEVER, THERE ARE TWO SECTIONS THAT WOULD SERIOUSLY INFRINGE PROPERTY OWNER RIGHTS AND THE ABILITY OF A PRUDENT COURT OWNER TO JUDICIOUSLY OPERATE HIS BUSINESS. WE WISH TO RECOMMEND SOME AMENDMENTS, WHICH, IF APPROVED, WOULD MAKE HB 829 ACCEPTABLE TO US.

IN SEC. 2 (c) (1), PAGE 1, LINE 22, WE RECOMMEND "14 DAYS" BE CHANGED TO "30 DAYS", TO MAKE THIS BILL CONSISTENT WITH THE REST OF THE LANDLORD-TENANT ACT.

IN THE SAME SECTION, PAGE 1, LINE 26, WE ASK THAT THE WORD "ONLY" BE DELETED.

WE RECOMMEND THAT A SUBPARAGRAPH (D) BE ADDED TO SEC. 2 (C) (1), ON PAGE 2, AFTER LINE 2, AS FOLLOWS:

(D) THE MOBILE HOME DOES NOT MEET THE STANDARDS OF THE MOBILE HOME PARK OPERATOR OR IS OLDER THAN THE MOBILE HOME PARK OPERATOR ALLOWS.

ON LINE 5, PAGE 2, PLEASE ADD THE WORDS "EXCEPT FOR LANDSCAPING" TO THE END OF THE SENTENCE.

ON LINE 13, PAGE 2, DELETE THE WORDS "AND AGREED TO IN WRITING BY THE TENANT".

ON LINE 18, PAGE 2, DELETE THE WORDS "AND AGREED TO IN WRITING BY THE TENANT"

ON LINE 4, PAGE 3, PLEASE STRIKE THE WORD "ONLY". IF THIS CANNOT BE DONE, THEN THE ASSOCIATIONS BOTH UNANIMOUSLY OBJECT TO SEC. 5 IN ITS ENTIRETY. IT CREATES A POSSESSORY INTEREST IN THE OWNER'S PROPERTY IN FAVOR OF THE TENANT THAT GOES FAR BEYOND THE NORMAL RIGHTS OF POSSESSION GRANTED THROUGH LEASE.

WE ASK THAT SEC. 5 (3), BEGINNING ON LINE 12, PAGE 3, BE AMENDED BY DELETING THE WORDS "SUBSTANTIALLY" (LINE 12), "REASONABLE" (LINE 13), AND ADD THE WORDS AT THE END OF THE SUBSECTION "THAT HAS BEEN PREVIOUSLY Agreed BY BOTH PARTIES". WE BELIEVE THE QUALIFYING WORDS IN THE SUBSECTION MAKE THE LANGUAGE VIRTUALLY MEANINGLESS.

SEC. 6 SHOULD BE STRUCK IN ITS ENTIRETY. IT IS AN AMENDMENT TO A STATUTE THAT IS INAPPROPRIATE. CHAPTER 30 REFERS ONLY TO STANDARDS OF CONSTRUCTION AND IS THE STATUTE ENFORCED BY THE DIVISION OF WEIGHTS & MEASURES. IN ANY CASE THE SECTION IS UNNECESSARY BECAUSE IT PROHIBITS A PRACTICE THAT CANNOT AND HAS NEVER HAPPENED ANYWAY. THERE IS NO WAY A VENDOR CAN LIMIT A PURCHASER'S RIGHT TO DO ANYTHING HE WISHES WITH A PRODUCT HE BUYS.

IF THESE CHANGES WERE MADE TO HB 829, THE ALASKA TRAILER COURT ASSOCIATION WOULD HAVE NO FURTHER OBJECTION TO THIS MEASURE. HOWEVER, IT SHOULD BE REFERRED TO SENATE JUDICIARY IN ANY CASE.

Original sponsors: Gardiner, McKinnon, Bradley and Miller

Offered: 2/18/76
Referred: Rules

IN THE HOUSE BY THE COMMERCE COMMITTEE

CS FOR HOUSE BILL NO. 684

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to designating certain mobile home sales and space rental practices as unfair trade practices."

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

* Section 1. AS 45.50.471(b) is amended by adding a new subsection to read:

(23) renting, leasing, subleasing, or offering to rent, lease, sublease a parcel of real property, or otherwise conveying an interest in the property, to a person for the purpose of that person locating a mobile home on it, contingent on the person purchasing or having purchased a mobile home from a mobile home sales business owned, operated by or affiliated with the rentor, lessor, sublessor, or conveyancer, or from any particular mobile home sales business, or from any one of a particular group of mobile home sales businesses, to the exclusion of or in preference to, a person who has not so purchased a mobile home from that rentor, lessor, sublessor, or conveyancer or any particular mobile home sales business;

Our recommendation for HB 684 is "DO NOT PASS!"... because it will prevent financing for new mobile home parks!

SENATE COMMERCE COMMITTEE

April 14, 1976

Mr. Chairman, Members of the Committee, I am Bernard L. Marsh, Executive Secretary of Alaska Mobile Home Association and Alaska Trailer Court Association. Our Associations have considered this bill, and are opposed to it.

We have been told that HB 684 is a consumer protection bill, that it is aimed at ending alleged abuses that occur because of the housing shortages in Anchorage, Fairbanks and Valdez. The abuse alleged is that there have been tie-in arrangements made between court owners and mobile home vendors for the purpose of preventing other vendors from making sales, or to stifle competition and overcharge the mobile home purchaser.

We find that vendors have pre-leased spaces, but there is no evidence that this was done to stifle competition, or indeed that that result actually occurred. Vendors who pre-leased in many cases released their contracted spaces to others who did not. The main purpose in contracting for spaces was to insure an outlet for units being shipped to the firm.

There are three major problems with this bill. The first is that it tries to cure a situation that may not exist. The bill is unnecessary. The second is that the bill, while intended to prohibit contract arrangements, also prohibits the ownership of a mobile home park by a mobile home vendor; a prohibition that is an unjustified restriction on free enterprise, and a selective attack on a particular type of business man and not imposed on other businesses. The third problem is that it is entirely the wrong approach, and will be counter productive in dealing with the real problem.

The real problem is that there is a shortage of mobile home spaces. This bill does absolutely nothing to increase the number of available spaces; in fact, it eliminates the only source of new spaces that now exists. The bill can have only two consequences - shutting down all new space development, and/or driving up the monthly rental rate.

Present space rents in Anchorage range from $90 to $120, with a median of $105 per month. I testified to the House Commerce Committee that HB 684 would drive space rent up to $150 per month according to my calculations. I have since been informed that it is the concensus of the Anchorage dealers that the figure will be $165.

If you prohibit mobile home vendors from developing spaces, by forcing them to make those spaces available to their competitors, then the likelihood is that no more spaces will be developed. Why? Because economics prohibit the development of land into mobile home courts in the urban areas of Alaska, when the space rental at present levels is expected to justify the investment. There have been none so built in Anchorage in the last three years, at least. Only vendors are developing spaces, and they do it at a loss, solely to stimulate sales. The principle is precisely the same as when Penney's Store builds a parking garage that can't pay for itself. The reason why this situation exists is two fold; the increasing cost of land, and progressively more restrictive government regulation.

In Anchorage, mobile home courts are allowed only in R-2, R-3, R-4, R-5, and U zones. The least costly usable land is unsubdivided R-2 land at about $24,000 per acre. The raw land is usually marginal, and may cost another $10,000 per acre to fill or grade. Current regulations limit spaces to 6 to 6 1/2 per gross acre. If we use 6.2 spaces per acre as a working figure, $34,000 for acre as land cost (price plus improvement), and $7,000 per space for utilities, streets, fencing, landscaping, etc., then we arrive at a per space figure of $12,484. To realize a 15% return on this investment, space rent would have to be $156 per month. By the time such construction comes on line, the $165 figure will be more likely, because there is a lead time of two years between land purchase and completed space.

A more constructive approach by the State would be legislation that would encourage more space development, such as making money available to purchase mobile home court commercial loan paper. Even this would not work unless a way can be found to make the venture economically feasible. The bank won't approve a loan that isn't, regardless of the availability of money on the secondary market. Some form of subsidy would be required. I don't know the answer, but the problem clearly requires more study. It will not be solved by punitive measures against the industry.

The mobile home industry provides a significant amount of all Alaskan housing. In Anchorage, the Urban Observatory Report on Housing for 1975 shows a total of 53,707 housing units, of which 6,246 (or11.6%) were mobile homes. Of the 29,507 single family dwellings in this total, mobile homes constitute 21.2%. Further, 81% of all mobile homes are owner-occupied, as compared to 65% owner-occupancy for all housing units in the Report's sample population.

Most significantly, the proportion of new housing coming on line provided by mobile homes is growing rapidly. In 1975 the Division of Weights and Measures reports 2200 mobile homes entered the State. Our own Motor Report tabulation shows 939 of these went to Anchorage and 127 went to Fairbanks. Since these are only those units with motor vehicle registration, we estimate the number of units in Anchorage at 1200. The Urban Observatory Report shows an average growth rate in the total housing stock in Anchorage as 3380 units per year since 1970. Thus we can estimate the proportion of the new units added last year provided by mobile homes to be 35.5% (1200 of 3380).

HB 684 will be damaging to the mobile home industry, and to the mobile home buyer; both because it will reduce the availability of units, and because it will drive up the cost of space rental.

A last observation that may have a bearing on the appropriatness of this bill can be suggested from the following facts:

1. New ventures cannot get bank financing unless agreements are shown for pre-leasing, whether they be office buildings, apartment buildings, or mobile home courts.

2. Alyeska Pipeline Service Company completely pre-rented several apartment buildings in 1974, because of a shortage of apartments and their need for housing of their employees.

3. The State of Alaska owns mobile home parks in Glennallen and Valdez. Occupancy is limited to state employees.

4. The State owns a parking lot adjacent to the Court Building in Anchorage. Occupancy is limited to employees in the Court Building.

5. Penney's Department Store owns a parking garage, in which preferential rates are given to Penney customers.

Both the Alaska Mobile Home Association and Alaska Trailer Court Association believe HB 684 is bad legislation. We urge you to kill it.

Respectfully Submitted,

Ben Marsh

Bernard L. Marsh, Executive Secretary
Alaska Mobile Home Association and
Alaska Trailer Court Association

BLM/ap

NEW MOBILE HOME PARK SPACES - ANCHORAGE

1974

GLENCAREN	95	DEALER
MALASPINA	138	DEALER
MANOOG'S ISLE	30	DEALER
FOREST PARK	30	NO DEALER
PENLAND PARK (available)	88	DEALER
DIMOND ESTATES (addition)	125	NO DEALER
TOTAL	506	

1975

GLENCAREN	125	DEALER
MANOOG'S ISLE	30	DEALER
PENLAND PARK	168	DEALER
MONTAGUE MANOR	70	DEALER
TOTAL	393	
SPACES IN INVENTORY 1/1/75	170	

EST 1976

GLENCAREN	125	DEALER
MONTAGUE MANOR	240	DEALER
VAN HAWKINS	105	DEALER
TOTAL	470	

The Greater Anchorage Area Borough Permits and Inspections office advises us that 1,426 single family housing permits were issued in 1975. Approximatley 80% were completed. Note. The figures below include mobile homes sold by dealers in Anchorage, Vadez, Kenai, and adjacent areas. Approximately 65% were placed in the Anchorage area only.

1975 NEW SALES (APPROXIMATE) ANCHORAGE

PENCO	254	
ANCHORAGE TRAILER SALES	268	
CAREY HOMES	250	
OTHERS	175	
TOTAL	1,012	SOLD BY DEALERS

1975 USED SALES (APPROXIMATE) ANCHORAGE

PENCO	134	
MELODY SALES	181	
ANCHORAGE TRAILER SALES	140	
DISCOUNT SALES	60	
A-1	50	
OTHERS	150	
TOTAL	685	USED SOLD BY DEALERS

ESTIMATED TOTAL NEW AND USED SALES BY ANCHORAGE AND FAIRBANKS DEALERS IN 1975 - 2,587 HOMES

NEW MOBILE HOME PARK SPACES - FAIRBANKS

1974

COLLEGIATE PARK		75 DEALER
LAKEVIEW TERRACE		40 DEALER
	TOTAL	115

1975

LAKEVIEW TERRACE		80 DEALER
RIVERVIEW		20 DFALER
THE VILLAGE		20 DEALER
TOWN & COUNTRY		40 DEALER
GOLD RUSH ESTATES		89 DEALER
RAINBOW		45 DEALER
	TOTAL	294

EST. 1976

COLUMBIA	(TOTAL OF 515 SPACES)	250 DEALER
GOLD RUSH ESTATES		70 DEALER
THE VILLAGE		80 DEALER
	TOTAL	400

APPROXIMATE 1975 USED SALES - FAIRBANKS 405

532 permits for new single family dwellings were issued in Fairbanks in 1975. Approximately 70 percent were completed, or 374 houses. Approximately 485 new mobile homes were sold and placed in parks or on private property. There were considerably more new mobile homes sold than single family dwellings.

NEW MOBILE HOME PARK SPACES - VALDEZ

1975

PENLAND/CALISTA		126 DEALER
BERING STRAITS		160 DEALER
	TOTAL	286

Proposed ~~Title~~

MOBILE HOME PARK BILL

PROBLEM: Shortage of mobile home spaces in pipeline impacted cities within the state — Anchorage and Fairbanks.

SOLUTION: Availability of adequate, well-planned, landscaped and developed mobile home spaces — Anchorage, Fairbanks and other areas.

HOW TO ACCOMPLISH SOLUTION: The main problem is lack of long-term financing for the development of mobile home spaces with a second problem lack of availability of suitable land .

POINTS TO CONSIDER:

A. Shortage of spaces cuased by impact from the pipeline and severe acceleration costs of conventional housing.

B. The State of Alaska has purchased tens of millions of dollars worth of single and miltiple family mortgages over the last several years; presently purchasing mortgages on the basis of $30 million per year. Mobile home park mortgages have been minimal, if not non-existant.

C. Long term mobile home park mortgages have been very difficult at the least to obtain through secondary mortgage markets in the South 48.

D. It has been very difficult for anyone to obtain spaces in the last three years.

E. It is to the benefit of most of the communities within the state to have will planned mobile home parks developed within their area.

F. Mobile homes are better suited to meet high impact and temporary demands for immediate housing than any other source of housing.

G. The State of Alaska has various departments interested in providing housing for its citizens. Mobile homes constitute a large percentage of the housing within the state of Alaska.

H. The City of Valdez, at the present time, has a surplus of open spaces. One year ago they had the most critical shortage within the state. The City of Valdez took the initiative and provided sizeable tracts of ground at low prices per acre to encourage private development. Approximately 300 mobile home spaces will be available in Valdez the season of 1976.

RECOMMENDATIONS: Immediate consideration and passage of a bill authorizing the State of Alaska to purchase long term mobile home park mortgages, as contained in _____ bill. Consideration be given to approximately $10,000 mortgage value per space. Approximately 1,500 spaces needed in 1976 and approximately an additional 1,000 spaces needed in 1977. Direct the State of Alaska to acquire up to $15 million worth of mortgages in 1976, and approximately $10 million in 1977.

CONCLUSIONS: Adequate mobile home park spaces will be provided in the major impact areas at the earliest possible time. Adequately planned and engineered parks through H.U.D., with M. P. S. need to be provided to each community this act relates to.

2. The State of Alaska will have in its portfolio good earning mortgages whose funding will have benefited many residents of the state of Alaska that are in dire need of this type of housing.

vertising form of the amount of state money deposited in each named bank or other financial institution. A copy of the semi-annual report on bank deposits shall also be sent to the Legislative Affairs Agency for distribution of copies to the members of the legislature. The terms of the deposit may be obtained upon a written request. (§ 12-2-1 ACLA 1949; am § 8 art III ch 82 SIA 1955; am § 5 ch 186 SLA 1957; am § 1 ch 115 SLA 1968)

Revisor's note. — Section 12-2-1 ACLA 1949 was repealed by § 48 ch 133 SLA 1951. Section 1 ch 24 SLA 1953 repealed ch 133 SLA 1951 and § 2 ch 24 SLA 1953 re-enacted § 12-2-1 ACLA 1949 as it appeared in ACLA 1949.

The reference to § 8 art III ch 82 SLA 1955 in the source refers to the second of two sections which are both numbered § 8. The amendment by § 5 ch 186 SLA 1957 corrects the error.

Cross reference. — As to deposit of state funds, see AS 37.10.075.

Effect of amendment.—The 1968 amendment added subsection (c).

Quoted in Empire Printing Co. v. Roden, 17 Alas. 209, 247 F.2d 8 (9th Cir. 1957).

Am. Jur. and C.J.S. references. — 42 Am. Jur., Public Funds, §§ 5 to 41.

26 C.J.S. Depositories §§ 7 to 14; 81 C.J.S. States § 155.

Sec. 37.10.060. Department of Revenue to deposit money to state treasury. All fees and receipts received by the Department of Revenue from any source shall be deposited in the state treasury at least once each month, and credited by the department to the proper fund. (§ 12-2-2 ACLA 1949)

Article 3. Investment and Deposit of State Funds.

Section
70. Investment of surplus funds
75. Deposit of state funds
79. Purchase of bonds
80. Sale of bonds held as investments
85. Financial aid to corporations by state or political subdivision

Sec. 37.10.070. Investment of surplus funds. (a) When the commissioner of revenue determines that there is in the state treasury a surplus above an amount sufficient to meet current demands, the surplus shall be invested in any of the following:

(1) direct obligations of the United States;

(2) obligations of agencies and instrumentalities of the United States;

(3) notes issued by Farmer's Home Administration;

(4) bank certificates of deposit which are secured as to the payment of principal and interest in accordance with Alaska law;

(5) corporate obligations of prime or equivalent quality, as rated by a nationally recognized rating organization;

(6) other securities, including corporate securities;

(7) Federal Housing Administration mortgages;

(8) Federal Veterans Administration mortgages;

(9) loans made under the provisions of AS 03.10 and AS 26.15;

(10) conventional residential mortgages if the originating financial institution retains at least 25 per cent of the mortgage;

(11) other secured loans, if the originating financial institution retains at least 33⅓ per cent of the mortgage.

(b) To qualify as a mortgage or loan which may be purchased by the state under (a) of this section, it must

(1) be secured by real estate in the state or other collateral allowed under (a) (11) of this section;

(2) have as a mortgagor an Alaska resident or a corporation in which at least 51 per cent of the stock is owned by Alaska residents;

(3) be certified by the originating financial institution that the loan being sold has been made in compliance with law and that liens supporting the loan have been perfected;

(4) have no initial closing fees or service fees which exceed one-half of one per cent, excluding closing costs.

(c) When the aggregate of all loans purchased from a financial institution becomes more than one-half per cent 60 days delinquent, the state shall discontinue purchasing loans from that financial institution until the delinquency is reduced to less than one-half per cent.

(d) The state may purchase loans provided for in (a) (10)—(11) of this section only from financial institutions which are operating under the national banking laws, federal savings and loan laws, or under the provisions of AS 06.05, 06.15, 06.25 and 06.30.

(e) The state may purchase from federal savings and loan associations 100 per cent of the mortgages provided for under (a) (10) and (11) of this section if 20 per cent of the loan is insured by a firm approved by the commissioner of revenue and the loan is for not more than 80 per cent of the appraised value of the property securing the loan. No loans may be purchased under this subsection after June 1, 1971.

(f) Investment policy shall be formulated by the commissioner of revenue who shall be advised by a committee appointed by the governor which shall contain representation from the legislature. In formulating investment policy they shall consider maximum income and safety as governed by the prudent-man rule and the benefit to the private and public sectors of the economy in terms of increased housing and commercial credit, stimulated business activity, increased employment, support of the market for state and local bonds, increased public revenue together with the possible inflationary effect of the investment, and (h) and (i) of this section.

(g) The commissioner of revenue, with the consent of the committee, may enter into contracts for services providing investment advice, custody of securities, and execution of transactions, in or out of Alaska.

add (12)

(h) An investment preference shall be given to (a) (3), (7), (8), (9), (10) and (11) of this section.

(i) The commissioner shall purchase notes and mortgages under (a) of this section at a rate conducive to develop and benefit Alaska and Alaska residents and this rate may be less than the market rate.

(j) In this section

(1) "closing costs" means appraisal costs, legal costs, title insurance, and any other out-of-pocket expenses approved by the commissioner of revenue;

(2) "mortgage" means a pledge or security of particular property for the payment of a debt or the performance of some other obligation, whatever form the transaction may take;

(3) "resident" means a person domiciled in the state;

(4) "securities" means bonds, notes, debentures and all other forms of indebtedness; common stock, preferred stock, and all other forms of equity capital; investments in stocks and equity capital may not exceed 33⅓ per cent of the unappropriated surplus as of the end of the previous fiscal year. (§ 7-1-11 ACLA 1949; am § 1 ch 140 SLA 1953; am § 1 ch 206 SLA 1970)

Revisor's note (1970). — In ch. 206, SLA 1970, AS 37.10.070(9) referred to AS 26.10. Since AS 26.10 does not deal with loans and AS 26.15 does, and since the old version of the section referred to AS 26.15, the latter citation has been substituted for the former.

Effect of amendment. — The 1970 amendment rewrote this section.

Am. Jur. and C.J.S. references. — 42 Am. Jur., Public Funds, §§ 5 to 10; 49 Am. Jur., States, Territories and Dependencies, § 64.

81 C.J.S. States §§ 154 to 159.

Sec. 37.10.075. Deposit of state funds. (a) When the commissioner of revenue determines that there are funds in the state treasury which are not being used for the purposes provided for in § 70 of this chapter, they may be deposited in financial institutions. Collateral may be required by the commissioner to secure state deposits provided for under this section.

(b) The banks in which state funds are deposited under a time deposit agreement shall pay at least a minimum interest rate to be fixed by the Department of Revenue, and this interest when paid shall be deposited in the general fund or in the other funds which are established by law.

(c) Nothing in this section prohibits the Department of Revenue from depositing the funds which it considers necessary for the proper conduct of the office in solvent banks outside the state under the terms and conditions provided in this section.

(d) The Department of Revenue may deposit funds in banks inside or outside the state in active accounts or on demand deposits without requiring those banks in which the accounts are deposited to pay interest on the deposits. It is the intention of the legislature that the department shall keep active deposits in any bank it con-

file with trailer bill

Two hundred years ago the fathers of this country fought for freedom and certain inalienable rights. Over one hundred years ago, one of our greatest presidents and legislators fought and won for the citizens of this country additional rights and privileges.

In America today, particularly in the State of Alaska, a group of citizens are being denied their rights and are treated as "second class" citizens. This, Ladies and Gentlemen, is totally unfair and unconstitutional. The group of citizens referred to are Mobile Home Owners.

We are a group of citizens unique unto ourselves. We have been given some of the rights given stationary home owners and some of the rights given rental dwellers. We now stand as a group and ask, no Ladies and Gentlemen of this great legislative body, we demand our rights and liberties as mobile home owners by the passage of House Bill 829.

We, the Mobile Home Owners, have unique problems that demand unique laws. There are too many loopholes in the Landlord-Tenant Act. One of these loopholes leave the mobile home owner at the mercy of the mobile home park owner. With proper and complete legislation, such as House Bill 829, not only will we, as mobile home owners be protected and recognized as "first class" citizens, but the mobile home park owner will also be recognized and protected by law.

We ask you to step in our shoes: You are "John Q. Public," the average man. You have a job, a family to support, and taxes to pay. In short, you are one group of citizens that make this great country tick. Further, you are a mobile home owner. You have purchased your mobile home and have rented a space on which to place it. <u>This is your home</u>.

Would you like your privacy invaded? Would you like no legal rights or laws unique to your status? You are now being denied first class citizenship. We don't like it either. We may not be wealthy, but "John Q. Public" seldom is. Big money interests may not want us to have these laws because if we have them, we can't be "ripped off" and we will have some recourse and most certainly a legal stand we can take. Without House Bill 829 we are not much better than the slave before being freed by Lincoln with the Emancipation Proclamation. Ladies and Gentlemen, all the mobile home owner asks for is their Emancipation Proclamation.

Ask yourselves: Can I do less for my constituents than Washington, Jefferson, and Lincoln did? If your answer is "No," we as mobile home owners ask you to make House Bill 829, standing before you, a vital part of the laws of the state of Alaska, and help your constituents, the common man.

Thank you,

Judy Hilton

Phyllis Evans

Paul H. Rogers

Mobile Home Owners

MEMORANDUM

TO: JAY KERTTULA

FROM: JAMIE LOVE

RE: MOBILE HOME LEGISLATION (HB 684 & HB 829)

DATE: APRIL 3, 1976

The above-mentioned bills are designed to correct serious abuses in the mobile home industry. My interest in mobile home problems dates back to last Spring. At that time, I received a call from a woman who was living in a mobile home court that had been sold. The new owner was converting the court into another land use, and each of the 20 tenants in the court was given a 30-day eviction notice. This woman owned the trailer she lived in. Neither she nor any of the other tenants were able to locate space in another court. When I talked to the woman, she was extremely distraught. She had to move her trailer within a few weeks and could not find a space to move to.

During this period of time, she and the other tenants in the park were approached by an individual who represented a mobile home sales outlet. The sales company was able to use the trailers even though there were no mobile home spaces available for rent in the marketplace. The reason for this was that in the Winter of 1975 the overall vacancy rate for mobile home spaces dipped as the Anchorage area was experiencing a housing shortage. At that time, several of the larger mobile home dealers began quietly buying up the remainder of the vacant spaces including those in independant courts. As an added incentive to the mobile home court operators, the dealers offered a commission, or fee, of approximately $400 to $500 for each mobile home which was placed in their court.

In this particular case, almost every tenant of that court sold their mobile homes, at a fraction of their value, to the single mobile home sales dealership. The dealer then resold the mobile homes at their market value, placing them in spaces they had previously tied up.

I discussed the situation with a reporter from the Anchorage Daily News, Pam Milsap. Milsap interviewed this lady and others who were having problems at the time. Her account of the mobile home situation is attached to this memo.

Shortly after the Daily News story, the Alaska Public Interest Research Group asked the State Attorney General's Office for an investigation into the apparent abuses. After being pressed by the local Consumer Protection Office for more facts, a staff person from AkPIRG approached 26 of the largest mobile home courts in Anchorage posing as an individual interested in finding a rental space for a used trailer. The results of that investigation are detailed in a letter, attached to this memo, which was sent to Attorney General Avrum Gross on July 8, 1975.

Attorney General Gross initiated an investigation to determine if the alleged practices were in violation of the State Anti-Trust Act. The investigation into the matter has been slow, hampered apparently by the shortage of staff for the State's Consumer Protection Office. Only in the last two months have industry officials been subpoened, and, as of my most recent discussion with the attorneys involved, many important issues have not yet been analyzed.

Since July, other methods of dealing with the problem have been explored. The result is he bill before your committee, HB 684, which makes the tie-in arrangement between mobile home courts and mobile home dealers a violation of the State's Unfair Trade Practices Act. Support for a legislative solution resulted from a sympathy for the situation of the offending mobile home dealers. Even though the tie-in practice is, in my opinion, an unfair and harmful business practice, many of the mobile home dealers were forced into participating when they found out that other mobile home dealers were involved. Being left out of the picture in the rush for tying up spaces meant risking going out of business. Some of us reasoned that since they obviously couldn't trust each other, the State would perform a service by stepping in and forcing everyone to end the practice. Anti-trust litigation is extremely complex, time-consuming, and expensive. The enactment of legislation would relieve the dealers from the burden of paying for legal counsel in an anti-trust action.

It is my understanding that the practice of tying space rentals to sales takes place in Anchorage, Fairbanks, Valdez, Juneau, and Ketchikan, as well as other communities across the state. I am most familiar with the situation in Anchorage. As of last Summer, there were four or five large dealers who had cornered the market of available spaces. I assume the situation has not changed dramatically, although I have heard that the larger dealers are letting the smaller outfits make a few sales from time to time. This is due to a growing concern by the larger dealers over the pending legislation and the Attorney General's investigation.

The smaller dealers have a good deal at stake in a rapid resolution to the problem, but the obvious matter which your committee should address itself to is the effect which this practice has on mobile home consumers. In Anchorage, for example, instead of having dozens of sales outlets competing against each other for sales, there are a few large dealerships which have all the spaces. The price that mobile homes are sold for, now, probably has more to do with the competitive price of conventional home ownership or rentals, than competition among dealers.

This is of particular concern, since the state is experiencing such a crisis in all other areas of housing. The costs of home ownership have skyrocketed beyond the reach of many Alaskans. Rents have also risen dramatically as a result of the housing shortages which plague many areas of the state.

Mobile homes should be an important factor in moderating the effects of the current housing market. Instead, through limited competition, mobile homes have become increasingly more expensive. To illustrate just how expensive mobile homes have become, I am attaching a summary, prepared by AkPIRG, of Anchorage mobile home sales in the month of October 1975 as listed in the trade publication, Alaska Motor Report. The average selling price was $35,000, with many sales over $45,000. (Sales are for the trailer without land).

When space rentals are tied in with the purchase of new sales, consumers cannot shop for used homes from private sellers, purchase the homes from Seattle and pay the shipping, or negotiate a selling price from the wide range of dealers. All the best features of the free enterprise system have been compromised and the protection of a free marketplace has been eliminated. There is no doubt that if tie-ins were made illegal, the result would be substantial price savings to consumers on mobile home purchases.

Not surprisingly, the large mobile home dealers and court operators which have been prospering under the present system are mounting an attack against the proposed legislation. The industry lobbyist, Mr. Ben Marsh, has presented their position before the House Commerce Committee. Anticipating a less than sympathetic response to allegations of anti-competitive practices, Mr. Marsh has tried to present their case in its best light.

This was in the form of an argument that restrictions on mobile home tie-ins would eliminate the development of new mobile home courts. The heart of this argument is the questionable assertion that it is uneconomical to develop new mobile home courts, and that courts are developed by dealers at an economic loss to provide a market for their sales. According to Marsh, dealers are the only ones developing new courts and if they are not allowed to tie in sales to their space rental, they will abandon the court development business.

When this argument was first raised by the industry, my instinct was to accept it at face value, and to think of ways we could compromise on the tie-in question. The more analysis I gave the matter, however, the more illogical it seemed. Demand for mobile home spaces was at the root of the problem. The tie-in situation was a reponse to low vacancy rates and high consumer demand for mobile home sales. People are going crazy in Anchorage and other communities, trying to find spaces for their mobile homes. It is, in fact, almost impossible to rent a mobile home space without purchasing a new mobile home. Why then, couldn't a new mobile home court operator simply charge a higher rent to pay for the increased development costs? As long as it was cheaper to pay the court rental and the mobile home mortgage than to buy a conventional house or rent an apartment, people would continue to buy mobile homes and rent the spaces.

Why was it necessary for Marsh and others to link the survival of the mobile home court industry to the tie-in practice? In my opinion, it was simply the only justification which could be used to defend a practice which flies in the face of fair trade and healthy competition.

Mr. Marsh provided the House Commerce Committee with figures which gave $11,800 as the per space development cost of new mobile home courts in Anchorage. Marsh told the Committee that a monthly rent of $147.50 would be necessary to give the court owner a 15% return on her investment. Mr. Marsh also quoted $105 as a current average monthly rental in Anchorage courts.

To arrive at his figure of $11,800 as the per space cost of new mobile home court development, Marsh used $8,000 as the per space development cost, and $24,000 per acre as the cost of raw, unsubdivided marginal land zoned R-2. Under cross examination from Rep. Tim Wallis of the House Commerce Committee, Marsh admited that some of his figures were inflated. The clearest discrepancy was in his estimated cost of land. Planning officials of the Anchorage Municipality place the cost of raw, unsubdivided R-2 land at around $9,000 per acre. Using $10,000 as the per acre cost of land, and accepting the rest of his figures for court density, development costs and reasonable profit, a new court would require $120 a month in rent. A $27.50 a month difference. There are many indications that the estimated $8,000 development costs are overstated as well. If $6,000 was used as the per space development cost, the court would be economical with a $95 monthly rent.

Although many of the older mobile home courts in Anchorage are renting for around $105 a month, most of the newer developments are getting more. For example, a partially developed Anchorage court, Montegue Manor, is currently charging $110 in monthly rents. The court manager told AkPIRG that rents would be raised to $140 to $130 a month as soon as the court was completed and the f i n a l amenities provided.

It should be noted that Montegue Manor (developed in two parts), is the most recent new court development in Anchorage, and that it is being developed by an operator who is not a vendor. Montegue is the court used by Marsh for the 6.2 spaces per acre density example. Montegue is not the only court which is being developed in Anchorage by independent court operators. The same is true in Fairbanks, where courts operated by non-vendors are currently under development.

If mobile home vendors really feel that it is necessary to subsidize the court rental business in order to stimulate sales, they could just give the mobile home purchaser a cash sum equal to the commissions they are paying the court operators to reserve spaces. The customer could then give the subsidy to the court operator of her choice. This is, after all, what the vendors are saying they do. Taking your money through higher prices for the homes, and subsidizing the court rental business. To better understand why the vendors are so anxious to retain the existing system, one must analyze the benefits that accrue to those who are able to maintain a cartel.

A good illustration is the summary of October 1975 mobile home sales obtained from the Alaska Motor Report. Sales which were made in Anchorage included 59 transactions. Of those 59, the average selling price for a mobile home was $35,000. The largest dealer in that report, Anchorage Trailer Sales, was listed as the vendor for 28 of the 59 sales. Of those 28 sales, 18 were for more than $40,000. In comparison, Globe Western, one of the smaller vendors, made three sales at an average selling price of $15,805.

The tie-in between spaces and sales has given the large vendors the opportunity to toally control the market. Not only are prices grossly inflated, but the dealers have been able to control the type of mobile home which is sold. Consumers may prefer the cheaper lower-priced trailers, which have fewer amenities; but the sales companies, which control the availability of court spaces, can make bigger profits on the sale of double wides, and luxury trailers, loaded with the extras that bring the biggest mark ups. This domination of the market by the highest priced units is among the most abusive features of the tie-in practice, and perhaps the biggest incentive to the vendors to retain it.

As a final note, the Committee should take into consideration other factors which have an effect on the supply of spaces. Planning restrictions and community pressures often discourage the development of mobile home courts. It is no secret that a mobile home park is not the most welcome addition to a residential neighbhorhood. In Anchorage, mobile home courts may only be built by special zoning exemption. Bias against mobile home courts, regardless of their merits, have an important effect on the supply side of the marketplace.

Administration officials from the Department of Commerce and the Department of Law should be able to provide further information on these points. I strongly urge passage of HB 684 and any other measure designed to deal with the tie-in situation.

Many other problems associated with mobile home court rentals are addressed in HB 829. Probably the most important and most controversial feature of the proposed legislation is the section which limits the court owner's right to evict residents of the court. Sec. 34.03.225 sets out four standards for evictions from courts. Currently, it is the practice of almost every mobile home court in Alaska to rent on a month-to-month basis. Mobile homes are treated like other tenants in the State's Landlord-Tenant law. A resident in a court may be evicted, without cause, on 30 days' notice.

It is not untypical for a mobile home owner to have 20 to 30 thousand dollars tied up in the home they are living in. The cost of moving a mobile home, if you can find a place to move to, runs from $1,000 to $2,000 on the average; or, approximately one to two years' rent in the average court. There is, obviously, very little security for the mobile home owner under the current situation. If I was living in a court, I would think

twice about hassling my court manager about deferred maintenance or any other problem if I thought I could risk an eviction. If I was evicted and couldn't find a place to move the trailer to, I would be out a good deal of money. These aren't hypothetical situations, but every-day problems for the dwellers in mobile home courts.

HB 829 recognizes the unique situation of mobile home dwellers. The proposed legislation is a recognition that it is a bit more complex than throwing your clothes in a suitcase and into the back of a VW if you get evicted from a mobile home court.

By giving a home owner rights against no-cause eviction, another important problem is addressed. The main problem in the financing of mobile homes is the short amortization period of the loans. If mobile home owners have better security for their investment, banks would have better security for their loans. This added security could result in longer loan terms and lower monthly payments.

The other features of HB 829 are important, fair, and largely unopposed. Passage of both HB 829 and HB 684 would go a long way to correct long-standing problems in the mobile home industry.

ATTACHMENTS

Article in Anchorage Daily News
Pam Milsap - "Dealers Gobble Trailer Lots"

Anchorage Area Mobile Home Sales
Alaska Motor Report, October 1975

July 8, 1975 Letter to Attorney General

Letter by J. Harold Michal, 11-10-75
Complaint Against Tie-In

California Court Decision
Sherman vs. Mertz Enterprises - 1974 Commerce Clearing House

Mr. Ben Marsh's Testimony Before
House Commerce Committee

Daily News

No room at the inn?

Daily News photos by Neal Menschel

Dealers gobble trailer lots

By PAM MILLSAP
Daily News Staff Writer

Lee Stillman has been looking for a mobile home space for a month. Cathy Edwards has been looking for about two weeks. Stuart Jensen has simply given up.

There are vacant spaces in mobile home courts all around Anchorage, but few, if any, are available for private individuals. In anticipation of this summer's population impact, several dealers apparently have cornered the market. Some reportedly are paying $40 a month or more per space to hold lots for future buyers.

"OUR FIRST CONTACT from a dealer was five to six weeks ago," says one mobile home court manager who asked not to be identified. "They have rented all of our vacant spaces, including some new ones that have never been occupied. When people call all we can tell them is that the spaces are all taken."

According to Cathy Edwards, a housewife who lives in a court that is being closed, "that's not all the court managers are telling persons looking for spaces. "We called on one ad for a space and were told it was available —

(Continued on Page 2)

• Dealers grab empty mobile home lots

(Continued from Page 1)

if we would buy a new trailer. When I said we couldn't afford one, they weren't interested."

Lee Stillman, a hotel employe who has lived in Anchorage 10 years, rented a house in August but received notice last week that the owner wanted to move back in. "We can't afford to pay the $600 a month or more they want for a house now, and we noticed all the empty trailer spaces around town so we bought a trailer a friend had for sale," she said. "It never entered our heads we wouldn't be able to find a place to put it."

AFTER HEARING TIME and time again that the spaces were available only for new trailers, she finally asked one manager for a list of the dealers holding spaces in the court. "We called one of them and he offered to take our used trailer, which we bought a month ago, as a trade-in on a new one." The dealer valued the trailer at $900 less than the bank appraiser did last month, but Stillman decided to accept the offer in order to get a trailer space.

"The dealer called back the next day and said the appraisal had been way out of line; that they would not be able to take our trailer as a down payment," said Stillman. "However, they offered to find a space for it and sell it for me without charging a commission. All I had to do was borrow $3,100 as a down payment on a new trailer. I don't make enough to make two trailer payments a month."

Fortunately for Stillman, a sympathetic salesman for the dealer called back a couple of days later and said he had located a space in a small court in Spenard.

STUART JENSEN, a bachelor, wasn't so lucky. On April 1 he was given 30 days' notice to move out of the trailer space he has rented since January 1974. After a fruitless search for spaces elsewhere in town he arranged to sell his trailer in place. No deal, said the court management. The space had already been rented to a dealer, as had other vacant spaces in the court, Jensen said he was told.

Stan Howitt, assistant attorney general for consumer protection in Anchorage, acknowledged Tuesday he is getting complaints about the trailer space shortage from individuals.

ALASKA PUBLIC INTEREST RESEARCH GROUP

P. O. BOX 1083
ANCHORAGE, ALASKA 99510

PHONE 274-6765

July 8, 1975

Mr. Avrum Gross
Attorney General
Office of the Governor
Pouch A
Juneau, Alaska 99811

Dear Av:

As discussed earlier, I am forwarding an outline of abuses in the marketing of mobile homes which we believe are in violation of the recently enacted State Anti-trust Act.

Earlier this month, one of our staff persons contacted 26 out of the 29 mobile home courts listed in the Anchorage Telephone yellow pages. She explained to the court owners or managers that she was considering the purchase of a used mobile home from a private party, and wanted to reserve a space in their courts. She was turned down in each of the 26 courts.

Approximately half of the courts surveyed refused to place her on a waiting list. When she entered into discussions with court managers, she was told she would have better luck if she purchased a new mobile home from one of the larger dealers. On several occasions, the court manager gave her the name of court dealers that had reserved spaces in their courts.

Confidential conversations with three court owners/managers indicate that the dealers have entered into agreements with the courts to rent all empty spaces (including new or newly vacated spaces) at the going rental rate with the understanding that when the dealer sells a home and places it in the court, the court owner receives a cash kickback on the sale. One court owner receives $400 per trailer, and we have reason to believe that some court owners are getting more. It is our understanding that the cost of both the month rent on empty spaces and the kickback on the sale are passed on to the consumer as additional costs in each transaction.

Only a handful of mobile home dealers have tied up large amounts of space, and some dealers are completely frozen out of the market. Private individuals trying to sell a mobile home, due to evictions, leaving the state, purchasing new homes, or other reasons, are forced to sell to mobile home dealers who have spaces tied

up, usually for a fraction of the home's value. Consumers are forced to purchase homes from a few large dealers, with practically no competition from private parties or independent or small dealers.

We have become aware of trailer courts evicting mobile home owners for frivolous reasons; changes in ownership, changes in court rules, or enforcement of rules that had been ignored for years. We suspect that some of these evictions are motivated by the desire to make profits from the placement of new trailers in empty spaces. Mobile home owners we have contacted panic when they attempt to relocate mobile homes, or market them to private individuals. One trailer court owner received one hundred calls in one day for a single space he had advertised in the evening paper.

In conclusion, we believe that the problem has adverse effects on mobile home consumers, elimates independent and small dealers from the mobile home market, and creates severe hardships on mobile home owners, faced with evictions or attempting to sell their trailers. We have reason to believe that this problem exists for other parts of the State, particularly in Fairbanks. We feel that mobile home dealers or court owners should not tie the purchase of mobile homes to the rental of a lot. We recommend an anti-trust action that would bar dealers and court owners from engaging in the current practices. As a final note, we urge your office to act immediately on this matter. It is clear that "immediate and irreparable harm" is indeed taking place. If your office decides on pursuing the anti-trust litigation, we strongly urge an immediate, intensive investigation by your staff, so that a preliminary injunction against the dealers and court owners can be granted this summer.

Thank you.

Sincerely,

James Love

pm

OCTOBER 1975

ANCHORAGE AREA MOBILE HOME SALES

ANCHORAGE TRAILER SALES, 3745 Mountain View Dr.

	PURCHASER	MAKE	FINANCER	DEL PRICE	BALANCE	SER. NUMBER
1	Richard Swartz 9004 Hartson Dr. Anchorage 99507	Schult	ASB	48,478.80	43,078.80	136447
2	Ralph Eslinger 1200 W. Dimond Blvd Anchorage 99502	Kit	ASB	82,383.36	63,876.36	s4792
3	Terry Hamilton 1504 E. Bluff Anchorage 99504	Kit	ASB	43,488.48	39,510.48	x4735
4	Johnnie Hammer 365 Dowling Rd #11 Anchorage 99503	Vandyke	ASB	36,082.53	32,582.52	12549
5	Timothy Brown 1200 W. Dimond Blvd #539 Anchorage 99502	Schult	ASB	38,674.80	35,774.80	136483
6	Bonnie Schwenke 4108 Reka Anchorage 99504	Hacienda	ASB	38,250.00	34,350.00	12589
7	Sylvester Dimonde SRA Rt 146-p Anchorage 99562	Kentwood	ASB	33,993.48	30,618.48	kw3406
8	David Meye 7800 DeBarr #75 Anchorage 99504	Schult	ASB	54,022.00	48,450.00	136457
9	John Hutler 1105 W 33rd Ave Anchorage 99503	Schult	ASB	43,967.60	38,967.60	13658[illegible]
10	Gordon White 7220 E. 32nd Anchorage 99504	Schult	ASB	42,896.00	39,916.00	136609
11	David Schnell 7628 Arctic Blvd Anchorage 99503	Vandyke	AUSAFCU	29,924.96	27,924.96	12731
12	Percy Plummer 3835 Randolph St Anchorage 99504	Vandyke	ASB	36,896.60	33,234.60	12979
13	Fred Blumer, Jr. Box 1856 Anchorage 99510	Schult	ASB	43,373.60	38,094.60	136326

This list obtained from Alaska Motor Report, Motor Statistical Div. for Oct. 1975

ANCHORAGE AREA
OCTOBER 1975 MOBILE HOME SALES (CONTINUED)

ANCHORAGE TRAILER SALES Continued

	PURCHASER	MAKE	FINANCER	DEL PRICE	BALANCE	SER. NO.
14	John Damazio 2403 Eureka #10 Anchorage 99504	Kit	ASB	46,041.80	40,477.80	S4748
15	Earl Cuzzort 3701 Eureka Sp. 80A Anchorage 99503	Schult	ASB	48,464.02	41,990.30	136455
16	Greg/Jayne LaFramboise 1545 S. Hoyt #58 Anchorage, AK 99504	Kit	ASB	39,294.00	33,294.00	S4741
17	Allan Patterson 7800 DeBarr #126 Anchorage 99504	Schult	ASB	43,710.61	37,218.20	136610
18	Douglas Daniels 533A Dyea Ft. Richardson 99505	Schult	ASB	44,081.40	39,911.40	136608
19	Dick's Trucking Inc. 429 Industrial Way Anchorage 99501	Kit	ANB	31,118.00	24,480.00	S4596
20	Eugine Weldon 3007 Arctic #4 Anchorage 99503	Schult	ASB	43,373.00	38,073.00	136490
21	Donald MacDonald 3706 Wilson Ct Anchorage 99509	Kentwood	ASB	35,289.84	31,914.84	KW3408
22	Nancy Kelley 7800 DeBarr #330 Anchorage 99504	Kit	ASB	41,358.80	34,258.80	S4742
23	Youel Smith 5180 Taku Dr #6 Anchorage 99504	Schult	ASB	44,720.00	41,820.00	136576
24	Kent Ramsay 5901 E 6th Sp 170 Anchorage 99504	Kit	ASB	42,583.40	37,403.40	S4738
25	Stephen Wilcox 731 B St. #401 Anchorage 99501	Kentwood	ASB	34,731.00	28,731.00	KW3520
26	Harvey Weldon 1400 Muldoon Rd #265 Anchorage 99504	Schult	ASB	45,146.01	40,932.01	136605

ANCHORAGE AREA
OCTOBER 1975 MOBILE HOME SALES (CONTINUED)

ANCHORAGE TRAILER SALES continued

	PURCHASER	MAKE	FINANCER	DEL. PRICE	BALANCE	SER. NO.
27	Lance Whaley Rm. 33 Bldg. 10-520 EAFB 99506	Kit	ASB	44,914.20	39,624.20	S4756
28	Scott Stringfellow Box 4-2806 Anchorage 99510	Schult	ASB	42,058.07	37,361.28	136338

OCTOBER 1975

ANCHORAGE AREA MOBILE HOME SALES

PENNEY MOBILE HOMES, 801 Airport Heights Dr.

	PURCHASER	MAKE	FINANCER	DEL. PRICE	BALANCE	SER. NO.
1	Alan Williamson 801 Airport Heights Sp 281 Anchorage 99504	Lamplight	AUSAFCU	30,237.56	25,732.56	15810
2	Lionel Hartzog 801 Airport Heights Anchorage 99504	Lamplight	ARRFCU	35,691.60	32,373.60	15325
3	Emma Brown Box 293 Anchorage 99510	Brookwood	AUSAFCU	51,917.04	43,013.04	24iges1496
4	Ed Naumann 801 Airport Hgts Dr Sp 318 Anchorage 99504	Gilbraltar	ASEFCU	34,834.96	31,048.80	9-1635
5	Tilman Grigs[illegible] Lazy Mt Trl Sp 42 Eagle River 99577	Gilbraltar	NBA	33,029.60	26,325.60	9-1876
6	John Bingham 801 Airport Hgts Sp 313 Anchorage 99504	Lamplight	NBA	37,730.48	33,009.48	15843
7	Michael Gordon 1545 S Hoyt Anchorage	Lamplight	ACFCU	30,972.00	25,116.00	15895

OCTOBER 1975

ANCHORAGE AREA MOBILE HOME SALES

BUDDY'S MOBILE HOME CORRAL, 2423 E. 5th Ave.

	PURCHASER	MAKE	FINANCER	DEL. PRICE	BALANCE	SER. NO.
1	Calvin Blackmon Gen Del Eagle River 99577	4 seasons	USARAL	31,976.80	27,976.80	4840

GLOBE WESTERN, 322 Concrete

	PURCHASER	MAKE	FINANCER	DEL. PRICE	BALANCE	SER. NO.
1.	Larry Foster Box 611 Chatanika Loop Eagle River 99577	Jamboree	AUSAFCU	16,405.20	16,405.20	G2114
2	Leslie Horn 2110 Stanford Dr. Anchorage 99501	Jamboree	AUSAFCU	16,156.80	13,117.80	A2154
3	Fred Ash 1151 Laland Pl Anchorage 99504	Jamboree	AUSAFCU	14,854.00	10,374.00	G2112

OCTOBER 1975

ANCHORAGE AREA MOBILE HOME SALES

BUCKHORN HOMES, INC., 4217 Mountain View Dr.

	PURCHASER	MAKE	FINANCER	DEL. PRICE	BALANCE	SER. NO.
1	Michael Simile 21-44 A Citrus EAFB 99506	Flamingo	AUSAFCU	28,937.48	16,900.00	s 7126
2	Edwin Alexander 1307 Hollywood Bldg 44 #2213 Anchorage 99501	Ponderosa	AUSAFCU	29,053.84	25,053.84	S6549
3	Kenneth Lowe 106 E. 11th, Apt. 4 Anchorage 99501	Flamingo	AUSAFCU	28,672.76	23,972.76	s7114
4	Robt Hawk 705 Muldoon Rd Sp 122 Anchorage 99504	Flamingo	NBA	25,552.56	20,902.56	S 7213
5	Larry Bass PSC #2 Box 4518 EAFB 99506	Brookdale	AUSAFCU	33,887.12	28,680.12	S6525
6	Dennis Taylor 1737 Norene St Anchorage 99504	Ponderosa	AUSAFCU	33,207.88	26,507.88	S6451
7	Doyle Stogner Box 758 Eagle River 99577	4 Seasons	NBA	20,598.48	16,598.48	4982

OCTOBER 1975

ANCHORAGE AREA MOBILE HOME SALES

MELODY SALES, INC., 3115 Mountain View Dr.

	PURCHASER	MAKE	FINANCER	DEL. PRICE	BALANCE	SER. NO.
1	Charles Quier 1114 Tonga Anchorage 99507	Frontier	PB&T	38,915.40	33,320.40	6228
2	Bobby Rasar 1200 W. Dimond Blvd #1448 Anchorage 99502	Portroyal	PB&T	38,249.60	32,049.60	6222A
3	LeAnn Kucera SRA Box 332 S Anchorage 99507	Safeway	ASEFCU	28,941.00	14,826.00	6109
4	Floyd Brooks 5607 Fiji Anchorage 99507	Portroyal	PB&T	38,418.00	32,418.00	6191
5	Delores Thrope 1150 Tonga Anchorage 99507	Shelby	UCAFCU	36,220.80	32,710.80	6264

OCTOBER 1975

ANCHORAGE AREA MOBILE HOME SALES

KATHY O ESTATES, 3602 Arctic Blvd.

	PURCHASER	MAKE	FINANCER	DEL. PRICE	BALANCE	SER. NO.
1	Charles Meddings 909 Chugach #30 Anchorage 99503	Vantage	None	13,700.00	-	6457
2	Norman Seewald Box 8355 Anchorage 99504	LaGrande	AUSAFCU	23,450.00	23,450.00	5662
3	James Summers Box 1844 Anchorage 99510	Ridge	AUSAFCU	20,500.00	20,500.00	LoS1154

MCBRIDE TRAVEL HOMES

1	Walter Compton 4502 Lake Otis Pky Anchorage 99507	Coachman	IBEW	25,154.56	18,977.28	1131094028

A-1 MOBILE HOMES, INC. , 2525 Spenard Rd.

OCTOBER 1975

ANCHORAGE AREA MOBILE HOME SALES

CAREY HOMES, INC. 3317 Mountain View Dr.

	PURCHASER	MAKE	FINANCER	DEL. PRICE	BALANCE	SER. NO.
1	Robt Ramey Box 484-I Eagle River 99577	Marlette	FNB	23,636.00	23,636.00	50218
2	Michael Pierson 2221 Muldoon Rd #502 Anchorage 99504	Kit	FNBA	24,718.00	24,718.00	S4591
3	Lamar Steen Box 264B Anchorage 99507	Fleetwood	PB&T	23,400.00	23,400.00	s1864
4	Ronald Yoppe 2221 Muldoon Rd #561 Anchorage 99504	New Moon	AUSAFCU	27,265.00	27,265.00	s7050

11-10-75

AKPIRG
630 W. 4th Ave
Anchorage, Alaska

Gentlemen:

There is a situation in the Anchorage Area that should be called to the attention of the powers that be for remedial action.

If an unsuspecting purchaser buys a mobile home he soon finds there is not place he can park or space he can rent.

There are numerous vacancies in many of the mobile home parks but much to the chagrin of the buyer he finds that the retail sales companies of the mobile homes have rented all these spaces for the benefit of their customers. If these companies want reserved spaces let them build their own parks (one has) and not monopolize the market. This not only is unfair to the purchasing public but to the seller as well. He can't sell if the purchaser is unable to find parking space. Investigation has found for example, one park with four vacancies for over three months and yet a private purchaser from a private seller is unable to utilize even one of these spaces.

Isn't there some sort of consumer protection in this respect? With the housing shortage so acute and honest citizens being denied space rent it seems to me there could be some anti-trust or monopoly law invoked to put a damper on this unfair practice.

Sincerely,

J. Harold Michael

P.S. - Anchorage Times.

[¶ 75,403] Robert Sherman, et al. v. Mertz Enterprises, et al.

California Court of Appeal, Second District, Division One. Civil No. 43048. Filed October 16, 1974.

Cartwright Act

Tying Arrangements—State Law—Mobile Home Park Space—Set-up Fees.—Charges that the owner of a mobile home park and mobile home sellers unlawfully agreed to exclude other sellers by granting the defendant sellers the exclusive right to sell homes at the park and by charging other sellers a $2,500 set-up fee for placing one of their homes in the park, while charging their own customers only $250, should not have been summarily dismissed. Triable issues were raised, which, if resolved in plaintiffs' favor, could establish an unlawful tying arrangement or a combination in restraint of trade. See ¶ 3090, 3095.

For plaintiffs and appellants: Ante[illegible] Dumhart. For defendants and respondents: [illegible] Ruffo, Ferrari & McNeil and Thomas P. [illegible] onnell for Mertz Enterprises; Frank Heller and Richard S. Weiner, for Moore's Mobile Home Mart, Les Spurlock and Sunrise County Mobile Homes.

Opinion

The Case

HANSON, J.: Plaintiff Robert Sherman, doing business as Howard's Trailer Sales and Bob's Trailer Sales, along with one Doug Jobson (hereinafter referred to as plaintiffs) sought an injunction and damages for unfair competition and restraint of trade against Mertz Enterprises, doing business as San Rafael Mobile Home Estates, Moore's Mobile Home Mart (hereinafter sometimes referred to as defendants), and other mobile home sale companies.

Plaintiffs filed their complaint in the Los Angeles superior court on February 21, 1973, and the application for order to show cause and preliminary injunction came on for hearing and was denied on March 6, 1973.

On March 22, 1973, defendants filed a demurrer to the complaint with supporting points and authorities, along with a motion to strike or, in the alternative, a motion for summary judgment. After consolidating all the defendants' motions, the court below, on April 6, 1973, granted their motions for summary judgment and sustained the demurrers without leave to amend.

Plaintiffs appeal from the granting of the motions for summary judgment and the demurrers.

The Facts

Defendant and respondent Mertz Enterprises is the owner and developer of a mobile home [illegible]k. On or about January 15, 1973, it entered into a written agreement with co-defendants Moore's Mobile Home Mart (Moore's), Sunrise County Mobile Homes (Sunrise) and S. W. Mobile Home Sales (S. W. Mobile), who are all retail dealers of mobile homes. The purpose of the agreement was to provide a location at which Sunrise, Moore's and S. W. Mobile could conduct their sales activities and provide lot accommodations for their customers.

In accordance with the agreement, Mertz Enterprises then notified plaintiffs and other mobile home dealers that the San Rafael Mobile Home Estates park was leased full as of January 25, 1973.

On or about January 25, 1973, Moore's, by letter, advised other various mobile home dealers that although they had completely rented San Rafael Mobile Home Estates, they would be willing to provide spaces for customers of other mobile home dealers for a set-up fee of approximately $2,500 if plaintiffs and others desired to place a mobile home on defendant's park.

The mobile home dealer defendants state that the set-up fee was necessary because they had received more than 40 complaints, out of 195 mobile homes in the park, which had been submitted to the Contractors License Board, and that in the future to insure high service standards, a set-up charge would be made to service and guarantee a coach for one year.

Contentions

Plaintiffs contend that defendants have conspired to restrain trade and commerce with the malicious and oppressive intent to deprive plaintiffs and prospective mobile home purchasers of the right to free and unrestricted competition for the general mobile home sales business.

Plaintiffs' first legal contention is that the contracts and arrangements entered into between the defendants have been declared

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unlawful per se. This contention on plaintiffs' interpretation of wright Act (Bus. & Prof. Cod et seq., which is patterned on th Anti-Trust Act).

Plaintiffs' second legal content the motions for summary judgm have been denied on plaintiffs' ge tions that defendants conspired t the purpose of restraining competi the absence of a finding that the constituted a "per se illegal tying ar

Discussion

A summarization of the rules summary judgment procedure (Proc., § 437c) was set out in t *Corwin v. Los Angeles Newspap Bureau, Inc.* [1971 TRADE CASES Cal. 3d 842 [94 Cal. Rptr. 765, 953], where the court stated 851-852: ". . . 'The matter to mined by the trial court in consi a motion is whether the defend plaintiff) has presented any f give rise to a triable issue. The not pass upon the issue itself. judgment is proper only if the a support of the moving party sufficient to sustain a judgment and his opponent does not b show such facts as may be dee judge hearing the motion suffici sent a triable issue. The aim cedure is to discover, through th affidavits, whether the parties dence requiring the weighing of a trial. In examining the su affidavits filed in connection wi tion, the affidavits of the movi strictly construed and those of liberally construed, and doubt propriety of granting the m be resolved in favor of the par the motion. Such summary drastic and should be used wit that it does not become a su the open trial method of deter (*Stationers Corp. v. Dun & Br*

[1] The summary judgment in this tered prior to the effective date Summary Judgment Act—January review of the judgment is consid light of the pre-1974 summary j (See *D'Amico v. Board of Medic* 11 Cal. 3d 1, 20, fn. 15 [112 Cal. P. 2d 10].)

[2] Section 16720 provides in part a combination of capital, skill or or more persons for any of the p poses: [1] (a) To create or carry tions in trade or commerce

unlawful per se. This contention is based on plaintiffs' interpretation of the Cartwright Act (Bus. & Prof. Code, § 16700 et seq., which is patterned on the Sherman Anti-Trust Act).

Plaintiffs' second legal contention is that the motions for summary judgment should have been denied on plaintiffs' general allegations that defendants conspired together for the purpose of restraining competition, even in the absence of a finding that the agreement constituted a "per se illegal tying arrangement."

Discussion

A summarization of the rules governing summary judgment procedure (Code Civ. Proc., § 437c) was set out in the case of *Corwin v. Los Angeles Newspaper Service Bureau, Inc.* [1971 TRADE CASES ¶ 73,582], 4 Cal. 3d 842 [94 Cal. Rptr. 735, 484 P. 2d 953], where the court stated at pages 851-852: ". . . 'The matter to be determined by the trial court in considering such a motion is whether the defendant (or the plaintiff) has presented any facts which give rise to a triable issue. The court may not pass upon the issue itself. Summary judgment is proper only if the affidavits in support of the moving party would be sufficient to sustain a judgment in his favor and his opponent does not by affidavit show such facts as may be deemed by the judge hearing the motion sufficient to present a triable issue. The aim of the procedure is to discover, through the media of affidavits, whether the parties possess evidence requiring the weighing procedures of a trial. In examining the sufficiency of affidavits filed in connection with the motion, the affidavits of the moving party are strictly construed and those of his opponent liberally construed, and doubts as to the propriety of granting the motion should be resolved in favor of the party opposing the motion. Such summary procedure is drastic and should be used with caution so that it does not become a substitute for the open trial method of determining facts.' (*Shamsunnahar Corp. v. Dun & Bradstreet, Inc.* (1965) 62 Cal. 2d 412, 417 [42 Cal. Rptr. 449, 398 P. 2d 785]; see *Joslin v. Marin Mun. Water Dist.* (1967) 67 Cal. 2d 132, 146-148 [60 Cal. Rptr. 377, 429 P. 2d 889].)"[1] (See also *D'Amico v. Board of Medical Examiners*, 11 Cal. 3d 1, 20 [112 Cal. Rptr. 786, 520 P. 2d 10].)

Summary judgment, by its nature, should be sparingly granted in cases alleging antitrust activities by defendant. The plaintiff in such a case finds himself outside a door of information that can be opened only by obtaining the key from the defendants. Unless plaintiff is allowed to probe into the secrecy of defendants, he would forever be foreclosed from finding facts to support his contention. "Trial by affidavit is no substitute for trial by jury which so long has been the hallmark of 'even handed justice.'" (*Corwin v. Los Angeles Newspaper Service Bureau, Inc., supra*, 4 Cal. 3d at p. 852, citing *Poller v. Columbia Broadcasting* (1962) [1962 TRADE CASES ¶ 70,228] 368 U. S. 464, 473 [7 L. Ed. 2d 458, 464, 82 S. Ct. 486]; as quoted with approval in *Fortner Enterprises v. U. S. Steel* (1969) [1969 TRADE CASES ¶ 72,757] 394 U. S. 495, 500 [22 L. Ed. 2d 495, 503, 89 S. Ct. 1252].)

". . . On the other hand this rule of caution should not be allowed to sap the summary judgment procedure of its effectiveness in cases wherein the party against whom the procedure is directed seeks to screen the lack of triable factual issues behind adept pleading. 'The question therefore is not whether defendant states a good defense in his answer but whether he can show that the answer is not an attempt "to use formal pleading as means to delay the recovery of just demands." (*Fidelity & Deposit Co. v. United States*, 187 U. S. 315, 320 . . . .)' (*Coyne v. Krempels* (1950) 36 Cal. 2d 257, 262 [223 P. 2d 244].)" (*D'Amico v. Board of Medical Examiners, supra*, 11 Cal. 3d at p. 20.)

Plaintiffs brought their complaint against defendants for restraint of trade under Business and Professions Code sections 16720 to 16725 (the Cartwright Act).[2]

[1] The summary judgment in this case was entered prior to the effective date of the 1973 Summary Judgment Act—January 1, 1974. The review of the judgment is considered only in light of the pre-1974 summary judgment law. (See *D'Amico v. Board of Medical Examiners*, 11 Cal. 3d 1, 20, fn. 15 [112 Cal. Rptr. 786, 520 P. 2d 10].)

[2] Section 16720 provides in part: "A trust is a combination of capital, skill or acts by two or more persons for any of the following purposes: [¶] (a) To create or carry out restrictions in trade or commerce . . . (c) To [illegible] merchandise, . . . [illegible] whereby its price to the [illegible] shall be in any manner controlled or established. . . . (e) To make or enter into or execute or carry out any contracts, obligations or agreements of any kind or description, by which they do all or any or any combination of any of the following: [¶] . . . (d) Agree to pool, combine or directly or indirectly unite any interests that they may have connected with the sale or transportation of any such article or

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"Sections 16720 and 16726 of the Cartwright Act were patterned after the Sherman Act (15 U. S. C. § 1 et seq.) and decisions under the latter act are applicable to the former. (*Chicago Title Ins. Co. v. Great Western Financial Corp.* [1968 TRADE CASES ¶ 72,557] (1968) 69 Cal. 2d 305, 315 [70 Cal. Rptr. 849, 444 P. 2d 481].) Both acts codify the general common law prohibition against restraints of trade. Section 16727 goes beyond the common law to interdict certain practices which have a tendency to lessen competition or promote monopolization. This section, enacted in 1961 (Stats. 1961, ch. 738), is based on section 3 of the Clayton Act (15 U. S. C. § 14). Hence, federal decisions interpreting section 3 are applicable to section 16727. (69 Cal. 2d 305, 315.)

"Although the Sherman Act and the Cartwright Act by their express terms forbid all restraints on trade, each has been interpreted to permit by implication those restraints found to be reasonable. (*Standard Oil Co. v. United States* (1911) 221 U. S. 1, 60 [55 L. Ed. 619, 645, 31 S. Ct. 502]; *People v. Building Maintenance etc. Assn.* (1953) [1953 TRADE CASES ¶ 67,654] 41 Cal. 2d 719, 727 [264 P. 2d 31].) 'However, there are certain agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use . . . Among the practices which the courts have heretofore deemed to be unlawful in and of themselves are price fixing [citation]; division of markets [citation]; group boycotts [citation]; and [tying arrangements (citation)]' (*Northern Pac. R. Co. v. United States* (1958) [1958 TRADE CASES ¶ 68,900] 356 U. S. 1, 5 [2 L. Ed. 2d 545, 549, 78 S. Ct. 514].)" (*Cornwell v. Los Angeles Newspaper Service Bureau, Inc.*, supra, 4 Cal. 3d at p. 832.)

Plaintiffs' first claim is that the agreement between Moore's, Sunrise, S. W. Mobile and Mertz Enterprises constituted an illegal restraint of trade. To prevail in this contention, "it must appear from the record not only that the agreements 'create or carry out restrictions in trade' (§ 16720, subd. (a)) but also that such restrictions are unreasonable." (*Corwin, supra*, 4 Cal. 3d at p. 853.)

Plaintiffs base this contention on two items, a letter sent by Mertz Enterprises to plaintiffs telling them that as of January 22, 1973, the mobile home park would be leased in full,[3] and the contract/agreement between Mertz Enterprises and the other defendants for the leasing of part of the mobile home park.[4]

On January 15, 1973, Mertz Enterprises and the codefendants entered into an agreement for the rental of mobile home spaces. There is no mention of what the rent is in terms of dollars and cents in the agreement, but simply a statement that Mertz Enterprises will rent specific spaces to the codefendants for a period of one year; that the codefendants would be the only parties allowed to sell mobile homes in the mobile home park; and that they would be permitted to maintain a model compound and sales office on the park premises. The rent paid by the codefendants to Mertz Enterprises would be the percentage each codefendant has of the entire area covered by the agreement. The rental paid by the codefendants would be reduced by the amount of rental paid to Mertz Enterprises by the occupants of the respective spaces, but only to an offset for rent actually paid by such occupants.

[illegible] agreement [illegible] support plaintiffs' claim that the agreement between Mertz Enterprises and the codefendants is more than a normal lease [illegible]

[illegible] agreement or understanding [illegible] to substantially lessen competition or tend to create a monopoly in any line of trade or commerce in any section of the State."

[illegible] *Chicago Title Ins. Co. v. Great Western Financial Corp.* [1968 TRADE CASES ¶ 72,557] 69 Cal. 2d 305, 325-326 [70 Cal. Rptr. 849, 444 P. 2d 481], disapp. by J. Mosk.

[3] Plaintiffs' Exhibit 4 to their complaint.

[4] This agreement was not part of plaintiffs' complaint, but came to light as part of the codefendants' papers in response to plaintiffs' request for an injunction. The agreement was filed with the court before the summary judgment was filed.

that all potential occupant[illegible] defendants must have [illegible] which must be approve[illegible] prises and which must [illegible] Furthermore, "[c]oncurr[illegible] arrangement by Mertz [illegible] dent of any of the spaces [illegible] [codefendants], Mertz [illegible] dent the sum of Two H[illegible] ($250.00) payable conc[illegible] to occupancy. . . . Th[illegible] ment charge shall be [illegible] Retailers [codefendant[illegible] after receipt of paymen[illegible] the event that a loss ha[illegible] made against Mertz a[illegible] payment of said lot im[illegible] Mertz and thereafter [illegible] defendants], then each [illegible] [codefendants] herein [illegible] Mertz a pro rata share [illegible] exceed twenty-five per[illegible] total monies received [illegible] [codefendants]."

Clause 4 of the agree[illegible] *Complex and Sales F*[illegible] relevant part that: "[illegible] auts] may install sign[illegible] tising and promotion[illegible] advisable after havin[illegible] written consent of M[illegible] that such consent shall [illegible] withheld. Retailers [illegible] have the right to use [illegible] Rafael Mobile Home [illegible] vertising and promoti[illegible] tising and promotion s[illegible] indicate any agency, [illegible] ship or other relation[illegible] [codefendants] and San [illegible] The [illegible] [illegible] rate with Retailers [illegible] nection with its sales [illegible] mutual benefit of all [illegible] [illegible] [illegible]

that all potential occupants procured by the codefendants must have new double coaches which must be approved by Mertz Enterprises and which must obey all park rules. Furthermore, "[c]oncurrently with any rental arrangement by Mertz with a potential resident of any of the spaces procured by Retailers [codefendants], Mertz will charge such resident the sum of Two Hundred Fifty Dollars ($250.00) payable concurrently on or prior to occupancy. . . . The total lot improvement charge shall be paid by Mertz to Retailers [codefendants] within 10 days after receipt of payment from resident. In the event that a loss results from any claim made against Mertz as the result of the payment of said lot improvement charge to Mertz and thereafter to Retailers [codefendants], then each of the Retailers [codefendants] herein agrees to reimburse Mertz a pro rata share of said loss not to exceed twenty-five percent (25%) of the total monies received by said Retailers [codefendants]."

Clause 4 of the agreement, entitled "*Model Complex and Sales Facility*," provides in relevant part that: "Retailers [codefendants] may install signs and other advertising and promotion as it may deem advisable after having first obtained the written consent of Mertz. Mertz agrees that such consent shall not be unreasonably withheld. Retailers [codefendants] shall have the right to use the name of San Rafael Mobile Home Estates in its advertising and promotion, but such advertising and promotion shall not in any way indicate any agency, joint venture, partnership or other relationship between Retailers [codefendants] and San Rafael Mobile Home Estates. The mobile home park manager of Mertz and their employees shall cooperate with Retailers [codefendants] in connection with its sales and promotion for the mutual benefit of all parties hereto in renting mobile home spaces as well as promoting the sale of mobile homes by Retailers [codefendants]. The cooperation by Retailers and Mertz, as well as their respective employees, shall be reasonable and in their best interests."

The agreement between Mertz Enterprises and its codefendants gives an exclusive right of sale to the codefendants on the leased/rented property; allows for reimbursement of payments; and provides for aid, assistance and cooperation for the sale of codefendants' mobile homes at the inferred exclusion of other individuals' sale of mobile homes to be placed on this property.

The above agreement between Mertz Enterprises and its codefendants cannot be considered in a vacuum, but must be considered in light of all the arrangements between the defendants and how these agreements would eventually affect the public and competitors.

Plaintiffs allege in their complaint that Moore's, Sunrise and S. W. Mobile conspired together, along with Mertz Enterprises to divert and take away a substantial portion of the business of plaintiffs. Plaintiffs support this contention by relying on a letter sent by Moore's, Sunrise and S. W. Mobile to plaintiffs and other dealers on January 25, 1973. The letter, addressed "Dear Fellow Dealer," informed plaintiffs and others that if they wished "to place a coach in San Rafael, we will deliver, set-up and service—and this service will be guaranteed for one (1) full year—your coach for a total cost of $2500. This will insure high service standards." An asterisk at the bottom of the letter indicates a note stating: "Since each dealer above is an individual company and sets its own prices, the $2500 costs is approximate."

The effect of the agreement and the letter to the ultimate consumer is as follows: If the purchaser buys from Moore's, Sunrise or S. W. Mobile, the purchaser will pay $250.00 to Mertz Enterprises as a set-up charge—which charge will be returned to the codefendant who sold the coach. If the purchaser buys a coach from plaintiffs, the set-up fee will be $2,500—a cost that undoubtedly would be passed on to the ultimate consumer who therefore has to pay more to buy from plaintiffs if he wishes his coach put on the Mertz Enterprises lot.

Section 16727 of the Business and Professions Code is concerned with the effects on competition, and the type of arrangement described above could be construed to seriously impair competition between parties not in privity with the arrangements between the defendants.

In examining the agreements between the parties and the statutes involved, the effects on competition, not just the competitors, must be considered. The substantially probable rather than actual effects are all that is required by the Cartwright Act as it has been interpreted by federal cases. (See *Standard Motor Products, Inc. v. F. T. C.* (2d Cir. 1959) [1959 TRADE

CASES ¶ 69,338] 265 F. 2d 674, 676, regarding interpretation of Robinson-Patman Price Discrimination Act, 15 U. S. C. A. § 13a.)

If the agreements between Mertz Enterprises and the other defendants are construed to constitute a restraint upon trade, "they violate the Cartwright Act unless they are shown to be reasonable. To determine whether the restrictions are reasonable, 'the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable. The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be obtained, are all relevant facts.' (*Chicago Board of Trade v. United States* (1918) 246 U. S. 231, 238 [62 L. Ed. 683, 687, 38 S. Ct. 242].) The court should consider 'the percentage of business controlled, the strength of the remaining competition [and] whether the action springs from business requirements or purpose to monopolize . . .' (*United States v. Columbia Steel Co.* (1948) [1948-1949 TRADE CASES ¶ 62,200] 334 U. S. 495, 527 [92 L. Ed. 1533, 1554, 68 S. Ct. 1107]; quoted with approval in *Times-Picayune v. United States* (1953) [1953 TRADE CASES ¶ 67,494] 345 U. S. 594, 615 [97 L. Ed. 1277, 1293, 73 S. Ct. 872].) Whether a restraint of trade is reasonable is a question of fact to be determined at trial. (*Times-Picayune v. United States, supra; Chicago Board of Trade v. United States, supra; Wirtz Ave. Warehouse, Inc. v. Winchester Tobacco Ware. Co.* (6th Cir. 1954) [1954 TRADE CASES ¶ 71,314] 339 F. 2d 277, 280; *Rogers v. Douglas Tobacco Board of Trade, Inc.* (5th Cir. 1951) [1950 TRADE CASES ¶ 62,359] 366 F. 2d 636, 643, cert. den. (1959) 361 U. S. 833 [4 L. Ed. 2d 75, 80 S. Ct. 85].)" (*Corwin, supra*, 4 Cal. 3d at pp. 856-857.)

Another contention of plaintiffs is that the agreements, considered jointly and severally constitute an illegal tying arrangement.

"For one product to be [illegally] tied to another it must be found . . . that a seller is willing to sell one product but only on the condition that the buyer also purchases a different (or tied) product, or at least agrees that he will not purchase that product from any other supplier. Where such conditions are successfully exacted competition on the merits with respect to the tied product is inevitably curbed. Indeed "tying agreements serve hardly any purpose beyond the suppression of competition." [Citation.] They deny competitors free access to the market for the tied product, not because the party imposing the tying requirements has a better product or a lower price but because of his power of leverage in another market. At the same time buyers are forced to forego their free choice between competing products. For these reasons "tying agreements fare harshly under the laws forbidding restraints of trade." [Citation.]' (Fns. omitted.) (*Northern Pac. R. Co. v. United States, supra*, 356 U. S. 1, 5-6 [2 L. Ed. 2d 545, 550].) Tying arrangements are illegal per se 'whenever a party has sufficient economic power with respect to the tying product to appreciably restrain free competition in the market for the tied product' (*Northern Pac. R. Co. v. United States, supra*, 356 U. S. at p. 6 [2 L. Ed. 2d at p. 550]; *Fortner Enterprises v. U. S. Steel, supra*, 394 U. S. 495, 499, 503 [22 L. Ed. 2d 495, 502, 505]) and when 'a total amount of business substantial enough in terms of dollar-volume so as not to be merely *de minimis*, is foreclosed to competitors by the tie. . . .' (*Fortner Enterprises v. U. S. Steel, supra*, 394 U. S. at p. 501 [22 L. Ed. 2d at p. 504].)" (*Corwin, supra*, 4 Cal. 3d at pp. 856-857.)

We conclude that triable issues have been raised which, if resolved in plaintiffs' favor, could establish the type of arrangement condemned by the above referred to decisions. We do not hold as a matter of law that the arrangements between defendants amount to an illegal tying agreement, but rather that it is an issue to be resolved at trial.

Accordingly, we hold that plaintiffs are entitled to a trial on their second theory of a conspiracy and combination in restraint of trade and also upon their claim of an illegal tying arrangement. We therefore hold that plaintiffs have pleaded [illegible]

[illegible] Cal. App. 3d 53 [110 Cal. Rptr. 135].)

Judgment reversed.

LILLIE, Acting P. J., and THOMPSON, J., concurred.

[¶ 75,404] Science F

U. S. District Court,
Dated November 19, 197

Basic Rules—Monop
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Memorandum

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Mr. Chairman, members of the Commerce Committee, I am Bernard L. Marsh, Executive Secretary of the Alaska Mobile Home Association and also the Alaska Trailer Court Association. HB 829 has not been available long enough for our membership to know about it, but I have shown it to the officers of the two associations, and have been asked to comment on the bill to this Committee.

HB 829 seems to have been written by consumer or tenants action groups with the intent of protecting consumers or tenants from abuses and from unfair expenses. In fact, the effect will likely be just the opposite. The cost to the consumer will be greater. A more serious consequence of this bill will be the creation of a new property right for tenants, which is probably unconstitutional, and which in any case will reduce the value of property and further damage the tight economic situation in the mobile home field. Let me explain:

1. Economics prohibit the production of mobile home spaces in any urban area of Alaska by independent court operators; that is, where the space rental is to provide a rate of return that will justify the investment. There have been no such spaces built in Anchorage in the last five years, and there will be none in the future under present conditions. Spaces have been, and are built by mobile home vendors, simply because you can't sell a mobile home unless there is some place to locate it. Spaces are provided by vendors simply to create sales. The spaces themselves are an economic loss to the vendor. The principle is exactly the same as that of J. C. Penney department store building a parking garage that loses money on parking, just to stimulate store sales. The reason for this situation is two fold; The increasing cost of land, and the progressively more restrictive government regulation.

In Anchorage, mobile home courts are allowed only in R-2, R-3, R-4, R-5, and "U" zones. The least costly usable land is unsubdivided R-2 land at about $24,000 per acre. The raw land is usually marginal, and may cost another $20,000 per acre to fill or grade. Reduced to cost per space and including utility cost, space development runs from $7,500 to $10,000 per space to develop. Current regulations limit spaces to 6 to 6 1/2 per gross acre (Glen Carin Court got 6.5 spaces per acre, and Montegue got 6.2). Using $8,000 per space as development cost, $24,000 per acre land cost, and 6.2 spaces per acre, we arrive at $11,800 per space as the final cost. To support any investment you must have a minimum of 15% return per year, or in this case $1,770 per space, or $147.50 per month. The current average space rent in Anchorage is $105 per month.

The effect of this legislation will be to prohibit the development of mobile home spaces by mobile home vendors, which will either bring space development and therefore new sales to a stop, or in the alternative drive all space rental to $150 per month. By the time the shortage becomes acute enough to drive up the price and tempt developers to build new spaces, the price will be much higher than that. It takes two years from initial planning to completion, to produce a trailer space.

2. The second bad thing this bill would do is create a possessory interest in the owner's property on the part of the tenant. In Sec 2 (C) (1) and in Sec 5, the owner of land is prohibiting tenancy, except for certain specific acts by the tenant. This literally converts a simple month-to-month tenancy into a perpetual lease, and actually creates a leasehold interest for one person in another parson's property without due process and without compensation. Under all principles of property ownership in this country, a property owner can recover his property from a tenant at the end of any lease or

forever, even through a change of ownership. It is incredible to me that this legislature would even consider such a proposal.

There are several sections of the bill to which we have no objection, and agree with. We agree with Sec 2 (C) (2), which would prohibit an owner from requiring a tenant to provide permanent improvements to his property. We also agree with (4) of the same section, prohibiting vendor or transfer fees as a condition of tenancy. We have no objection to all of Sec. 3. We also agree with Sec. 45.30.070 (a), beginning on line 16, page 3 of the bill. But we disagree with subsect. (b) of this section, which prohibits a perfectly legal and prudent practice on the part of a mobile home vendor. Any vendor who shipped mobile homes to Alaska at $4700 each, and had no spaces to locate them on, would be pretty foolish. Also, it would seem that creating a class of persons (mobile home vendors) who are prohibited from leasing spaces is highly discriminatory and in violation of the state Human Rights Act.

Ketchikan Daily News Mon, March 22 1976

Others agree with bill:

One court owner attacks house bill

By JANE HANCHETT
Daily News Staff Writer

Ketchikan trailer court owners, with one exception, today indicated they generally felt no threat from a bill that elsewhere in the state is feared will cripple the mobile home industry.

The bill, HB 684, passed 23-15 Wednesday by the house, prohibits court owners from forcing prospective tenants to buy homes from a particular dealer, either the court owners themselves or another dealer with whom the court owners have an agreement.

Sale-stipulated rentals already are illegal under anti-trust law, but the house bill puts all state anti-trust violations under unfair trade practice law. Under the latter, it would be easier to enforce, according to Rep. Terry Gardiner, D-Ketchikan, chief sponsor of the bill.

Bob Crowder, owner of Ridgewood Mobile Home Sales and Court, objects strongly to the bill which he says is likely to force him to raise space rental.

When he has space available, Crowder rents to trailer owners whose homes meet local and state standards, but develops new spaces in his court only for homes he has sold. He says his sales have subsidized his court operation so that rental rates did not have to be raised. Local space rentals average $100-$125, he says.

The bill takes away from the court owner the ability to control his own court, Crowder believes. Control of space rental in one's own court, he says, "can only lead to the upgrading of the court and protection of conditions, environment and investment of existing home owners in the courts.

"And who might I ask is more entitled to that right than the person who owns the court?" Crowder states.

"The past three years have seen our sales drop considerably . . . Additional lost sales revenue will result in additional rent increases or closure. This is fact," he states in a letter to the editor in today's Daily News. Crowder's court is at Mile 4½ N. Tongass Hwy.

Like Crowder, other local court owners and trailer sales owners do not stipulate rental of an "existing" space with a mobile home sale. But unlike him others indicated approval or no comment to the bill.

Mrs. Del Shull, who with her husband owns Beach Crest Mobile Home Park and a trailer sales and service business, says she thinks that sale-stipulated rental practices "morally stinks." The Shulls' park is at Mile 12, N. Tongass Hwy.

"We've never practiced this," she says.

Jay Coon, who with his wife owns Mountain View Trailer Court and Sales, a large court within the city, responded "no comment" when asked for his reaction to the bill.

Jean Gain, owner of the Homestead, a combination of permanent structure rentals and a trailer court, said she did not believe in the practice the bill will help prevent. Mrs. Gain's Homestead is at Mile 4½, S. Tongass Hwy.

Curly Canoles, of Canoles Trailer Sales, says sale-stipulated rental "cuts out competition" and views the bill as a "very good bill."

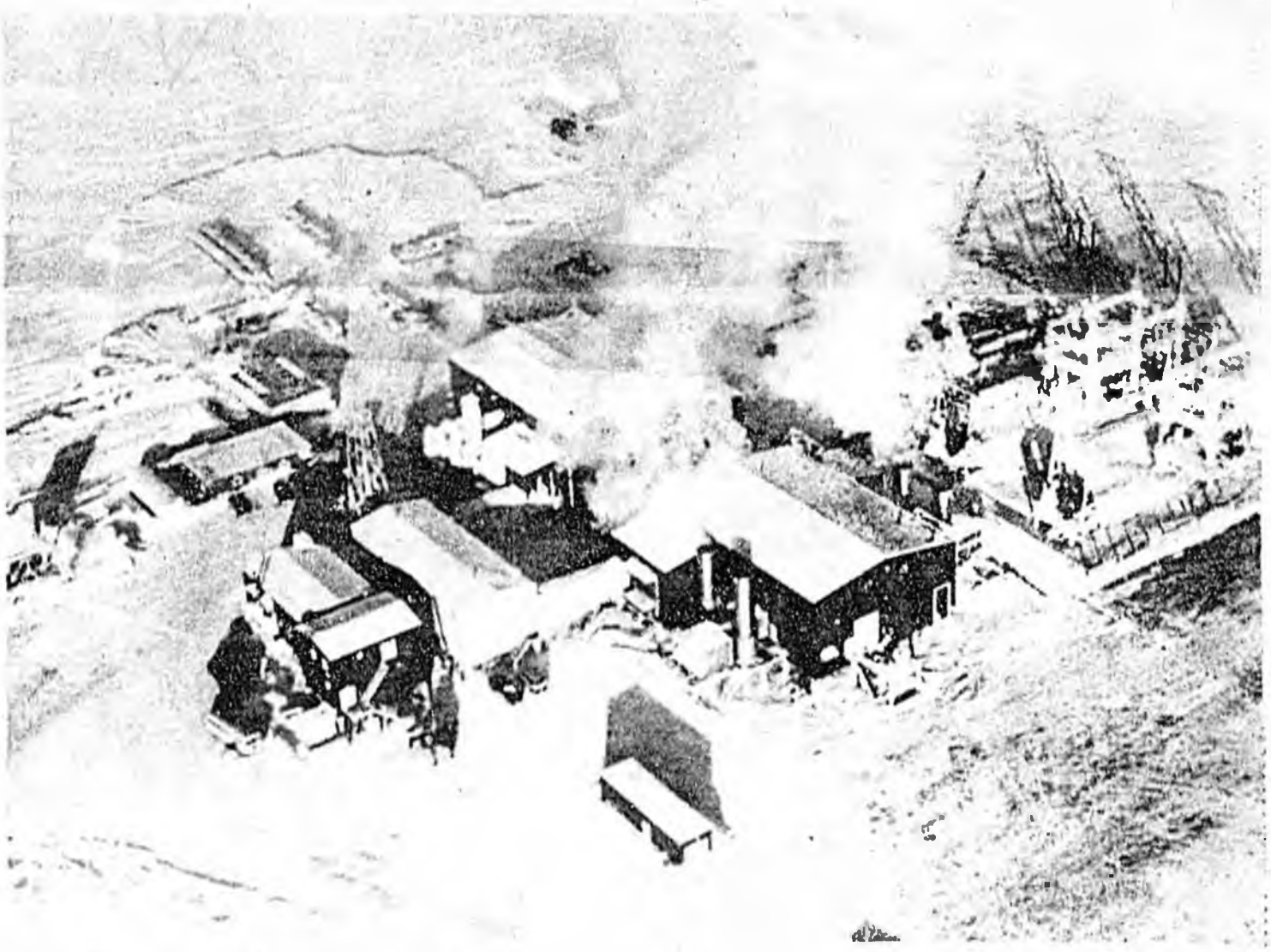
In light of Ketchikan's still lagging economy and resultant availability of housing, Stephen Reeve, borough planning department director, said he did not think the bill will have any effect here.

About 260 mobile homes now are situated in local courts with a population of about 750 court dwellers, Reeve says.

Local court owners generally agreed that the bill's greatest effect would be on fast-developing courts in pipeline impacted areas of Fairbanks and Anchorage. The house also has sent to the senate a ban against trailer home sellers forcing their customers to settle in a particular housing development as a condition of sale, a practice now occuring in both northern cities.

Those objecting to the bill say soaring land and space development costs "force" court owners to have dealerships.

Crowder classifies the bill as legislation "that places additional costs of doing business on the businessman" and therefore can result only "in additional costs to the consumer." Curtailments of business "lends to a socialistic trend with more government involvement," he adds.



Power on the way

The output of 84 megawatts is now being provided by BP Alaska's Central Power Station at Prudhoe Bay, Alaska. When fully complete, the station is projected to provide some 134 megawatts. The station has been put together after last summer's sea lift, the barges from which were stranded in the ice outside Prudhoe Bay. A causeway was built this winter to get the modules to the station site. AP wirephoto.

Patty faces up to 25 years

SAN FRANCISCO (AP) — Patricia Hearst, convicted of bank robbery by a jury convinced of her guilt by her words and actions as the revolutionary "Tania," faces up to 25 years in prison and another trial on more serious charges.

Evidence presented by the government to show that the kidnaped newspaper heiress willingly embraced the terrorism of her captors outweighed her testimony that she cooperated with them to save her life, jurors said.

"I don't think it was any particular thing at all that led to our finding her guilty," said Marilyn Wentz, a member of the panel that found Miss Hearst guilty of armed bank robbery Saturday after 12 hours of deliberation. "I think it was a combination of all the evidence."

Mrs. Wentz, 36, a dental assistant and mother of four from Hayward, Calif., said in an interview Sunday night, "I know I went over it, and over it — everything — before deciding."

She said she thought that both the prosecutor, U.S. Atty. James L. Browning Jr., and chief defense attorney F. Lee Bailey "did a very good job in presenting the case."

Another juror said the ordeal of deliberations was so intense that some members of the panel wept and others became sick to their stomachs.

Today, the 22-year-old Miss Hearst waited behind bars for the unfolding of a fate now in the hands of her judge, attorneys and prosecutors.

Sentencing by U.S. District Court Judge Oliver J. Carter is scheduled for April 19. He said Sunday that the maximum penalty he would consider would be 25 years in prison and a $10,000 fine for armed bank robbery.

Miss Hearst also was convicted of using a weapon in a felony, which carries a maximum 10-year sentence.

The minimum sentence would be probation.

[¶ 75,403] Robert Sherman, et al. v. Mertz Enterprises, et al.

California Court of Appeal, Second District, Division One. Civil No. 43043. Filed October 16, 1974.

Cartwright Act

Tying Arrangements—State Law—Mobile Home Park Space—Set-up Fees.—Charges that the owner of a mobile home park and mobile home sellers unlawfully agreed to exclude other sellers by granting the defendant sellers the exclusive right to sell homes at the park and by charging other sellers a $2,500 set-up fee for placing one of their homes in the park, while charging their own customers only $250, should not have been summarily dismissed. Triable issues were raised, which, if resolved in plaintiffs' favor, could establish an unlawful tying arrangement or a combination in restraint of trade. See ¶ 3090, 3095.

For plaintiffs and appellants: Anton Dumhart. For defendants and respondents: Ruffo, Ferrari & McNeil and Thomas P. O'Donnell for Mertz Enterprises; Frank Heller and Richard S. Weiner, for Moore's Mobile Home Mart, Les Spurlock and Sunrise County Mobile Homes.

Opinion

The Case

HANSON, J.: Plaintiff Robert Sherman, doing business as Howard's Trailer Sales and Bob's Trailer Sales, along with one Doug Jobson (hereinafter referred to as plaintiffs) sought an injunction and damages for unfair competition and restraint of trade against Mertz Enterprises, doing business as San Rafael Mobile Home Estates, Moore's Mobile Home Mart (hereinafter sometimes referred to as defendants), and other mobile home sale companies.

Plaintiffs filed their complaint in the Los Angeles superior court on February 21, 1973, and the application for order to show cause and preliminary injunction came on for hearing and was denied on March 6, 1973.

On March 22, 1973, defendants filed a demurrer to the complaint with supporting points and authorities, along with a motion to strike or, in the alternative, a motion for summary judgment. After consolidating all the defendants' motions, the court below, on April 6, 1973, granted their motions for summary judgment and sustained the demurrers without leave to amend.

Plaintiffs appeal from the granting of the motions for summary judgment and the demurrers.

The Facts

Defendant and respondent Mertz Enterprises is the owner and developer of a mobile home park. On or about January 15, 1973, it entered into a written agreement with co-defendants Moore's Mobile Home Mart (Moore's), Sunrise County Mobile Homes (Sunrise) and S. W. Mobile Home Sales (S. W. Mobile), who are all retail dealers of mobile homes. The purpose of the agreement was to provide a location at which Sunrise, Moore's and S. W. Mobile could conduct their sales activities and provide lot accommodations for their customers.

In accordance with the agreement, Mertz Enterprises then notified plaintiffs and other mobile home dealers that the San Rafael Mobile Home Estates park was leased full as of January 25, 1973.

On or about January 25, 1973, Moore's, by letter, advised other various mobile home dealers that although they had completely rented San Rafael Mobile Home Estates, they would be willing to provide spaces for customers of other mobile home dealers for a set-up fee of approximately $2,500 if plaintiffs and others desired to place a mobile home on defendant's park.

The mobile home dealer defendants state that the set-up fee was necessary because they had received more than 40 complaints, out of 195 mobile homes in the park, which had been submitted to the Contractors License Board, and that in the future to insure high service standards, a set-up charge would be made to service and guarantee a coach for one year.

Contentions

Plaintiffs contend that defendants have conspired to restrain trade and commerce with the malicious and oppressive intent to deprive plaintiffs and prospective mobile home purchasers of the right to free and unrestricted competition for the general mobile home sales business.

Plaintiffs' first legal contention is that the contracts and arrangements entered into between the defendants have been declared unlawful per se. This contentic on plaintiffs' interpretation of wright Act (Bus. & Prof. Co et seq., which is patterned on tl Anti-Trust Act).

Plaintiffs' second legal conten the motions for summary judgm have been denied on plaintiffs' ge tions that defendants conspired the purpose of restraining compet the absence of a finding that the constituted a "per se illegal tying ar

Discussion

A summarization of the rules summary judgment procedure Proc., § 437c) was set out in *Corwin v. Los Angeles Newspa Bureau, Inc.* [1971 TRADE CASES Cal. 3d 842 [94 Cal. Rptr. 785, 953], where the court stated 851-852: ". . . 'The matter t mined by the trial court in cons a motion is whether the defend plaintiff) has presented any f give rise to a triable issue. The not pass upon the issue itself. judgment is proper only if the support of the moving party sufficient to sustain a judgment and his opponent does not show such facts as may be dee judge hearing the motion suffic sent a triable issue. The aim cedure is to discover, through t affidavits, whether the parties dence requiring the weighing of a trial. In examining the s affidavits filed in connection wi tion, the affidavits of the movi strictly construed and those of liberally construed, and doubt propriety of granting the m be resolved in favor of the pa the motion. Such summary drastic and should be used wit that it does not become a su the open trial method of deter (*Stationers Corp. v. Dun & Br*

[1] The summary judgment in thi tered prior to the effective date Summary Judgment Act—January review of the judgment is consi light of the pre-1971 summary j (See *D'Arrigo v. Board of Medic* 11 Cal. 3d 1, 20, fn. 15 [112 Cal. P. 2d 101].)

[2] Section 16720 provides in part a combination of capital, skill or or more persons for any of the p poses: [1] (a) To create or carry tions in trade or commerce .

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unlawful per se. This contention is based on plaintiffs' interpretation of the Cartwright Act (Bus. & Prof. Code, § 16700 et seq., which is patterned on the Sherman Anti-Trust Act).

Plaintiffs' second legal contention is that the motions for summary judgment should have been denied on plaintiffs' general allegations that defendants conspired together for the purpose of restraining competition, even in the absence of a finding that the agreement constituted a "per se illegal tying arrangement."

Discussion

A summarization of the rules governing summary judgment procedure (Code Civ. Proc., § 437c) was set out in the case of *Corwin v. Los Angeles Newspaper Service Bureau, Inc.* [1971 TRADE CASES ¶ 73,582], 4 Cal. 3d 842 [94 Cal. Rptr. 735, 484 P. 2d 953], where the court stated at pages 851-852: ". . . 'The matter to be determined by the trial court in considering such a motion is whether the defendant (or the plaintiff) has presented any facts which give rise to a triable issue. The court may not pass upon the issue itself. Summary judgment is proper only if the affidavits in support of the moving party would be sufficient to sustain a judgment in his favor and his opponent does not by affidavit show such facts as may be deemed by the judge hearing the motion sufficient to present a triable issue. The aim of the procedure is to discover, through the media of affidavits, whether the parties possess evidence requiring the weighing procedures of a trial. In examining the sufficiency of affidavits filed in connection with the motion, the affidavits of the moving party are strictly construed and those of his opponent liberally construed, and doubts as to the propriety of granting the motion should be resolved in favor of the party opposing the motion. Such summary procedure is drastic and should be used with caution so that it does not become a substitute for the open trial method of determining facts.' (*[illegible] v. Dun & Bradstreet, Inc.* (1965) 62 Cal. 2d 412, 417 [42 Cal. Rptr. 449, 393 P. 2d 785]; see *Joslin v. Marin Mun. Water Dist.* (1967) 67 Cal. 2d 132, 146-148 [60 Cal. Rptr. 377, 429 P. 2d 889].)"[1] (See also *D'Amico v. Board of Medical Examiners*, 11 Cal. 3d 1, 20 [112 Cal. Rptr. 786, 520 P. 2d 10].)

Summary judgment, by its nature, should be sparingly granted in cases alleging antitrust activities by defendant. The plaintiff in such a case finds himself outside a door of information that can be opened only by obtaining the key from the defendants. Unless plaintiff is allowed to probe into the secrecy of defendants, he would forever be foreclosed from finding facts to support his contention. "Trial by affidavit is no substitute for trial by jury which so long has been the hallmark of 'even handed justice.'" (*Corwin v. Los Angeles Newspaper Service Bureau, Inc., supra*, 4 Cal. 3d at p. 852, citing *Poller v. Columbia Broadcasting* (1962) [1962 TRADE CASES ¶ 70,228] 368 U. S. 464, 473 [7 L. Ed. 2d 458, 464, 82 S. Ct. 486]; as quoted with approval in *Fortner Enterprises v. U. S. Steel* (1969) [1969 TRADE CASES ¶ 72,757] 394 U. S. 495, 500 [22 L. Ed. 2d 495, 503, 89 S. Ct. 1252].)

". . . On the other hand this rule of caution should not be allowed to sap the summary judgment procedure of its effectiveness in cases wherein the party against whom the procedure is directed seeks to screen the lack of triable factual issues behind adept pleading. 'The question therefore is not whether defendant states a good defense in his answer but whether he can show that the answer is not an attempt "to use formal pleading as means to delay the recovery of just demands." (*Fidelity & Deposit Co. v. United States*, 187 U. S. 315, 320 . . . .)' (*Coyne v. Krempels* (1950) 36 Cal. 2d 257, 262 [223 P. 2d 24 [illegible]]" (*D'Amico v. Board of Medical Examiners, supra*, 11 Cal. 3d at p. 20.)

Plaintiffs brought their complaint against defendants for restraint of trade under Business and Professions Code sections 16720 to 16726 (the Cartwright Act).[2]

[1] The summary judgment in this case was entered prior to the effective date of the 1973 Summary Judgment Act—January 1, 1974. The review of the judgment is considered only in light of the pre-1974 summary judgment law. (See *D'Amico v. Board of Medical Examiners*, 11 Cal. 3d 1, 20, fn. 15 [112 Cal. Rptr. 786, 520 P. 2d 10].)

[2] Section 16720 provides in part: "A trust is a combination of capital, skill or acts by two or more persons for any of the following purposes: [¶] (a) To create or carry out restrictions in trade or commerce . . . (c) To [illegible] shall be in any manner controlled or established. . . . (d) To make or enter into or execute or carry out any contracts, obligations or agreements of any kind or description, by which they do all or any or any combination of any of the following: [¶] . . . (4) Agree to pool, combine or directly or indirectly unite any interests that they may have connected with the sale or transportation of any such article or

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"Sections 16720 and 16726 of the Cartwright Act were patterned after the Sherman Act (15 U. S. C. § 1 et seq.) and decisions under the latter act are applicable to the former. (*Chicago Title Ins. Co. v. Great Western Financial Corp.* [1968 TRADE CASES ¶ 72,557] (1968) 69 Cal. 2d 305, 315 [70 Cal. Rptr. 849, 444 P. 2d 481].) Both acts codify the general common law prohibition against restraints of trade. Section 16727 goes beyond the common law to interdict certain practices which have a tendency to lessen competition or promote monopolization. This section, enacted in 1961 (Stats. 1961, ch. 733), is based on section 3 of the Clayton Act (15 U. S. C. § 14). Hence, federal decisions interpreting section 3 are applicable to section 16727. (69 Cal. 2d 305, 315.)

"Although the Sherman Act and the Cartwright Act by their express terms forbid all restraints on trade, each has been interpreted to permit by implication those restraints found to be reasonable. (*Standard Oil Co. v. United States* (1911) 221 U. S. 1, 60 [55 L. Ed. 619, 645, 31 S. Ct. 502]; *People v. Building Maintenance etc. Assn.* (1953) [1953 TRADE CASES ¶ 67,454] 41 Cal. 2d 719, 727 [264 P. 2d 31].) 'However, there are certain agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use. . . . Among the practices which the courts have heretofore deemed to be unlawful in and of themselves are price fixing [citation]; division of markets [citation]; group boycotts [citation]; and tying arrangements [citation].' (*Northern Pac. R. Co. v. United States* (1958) [1958 TRADE CASES ¶ 68,900] 356 U. S. 1, 5 [2 L. Ed. 2d 545, 549, 78 S. Ct. 514].)"[3] (*Cartwright Act Cases, Los Angeles Newspaper Service Bureau, Inc.*, supra, 4 Cal. 3d at p. 91 [81 Cal. Rptr. 533, 480 P. 2d 476].)

Plaintiffs' first claim is that the agreement between Moore's, Sunrise, S. W. Mobile and Mertz Enterprises constituted an illegal restraint of trade. To prevail in this contention, "it must appear from the record not only that the agreements 'create or carry out restrictions in trade' (§ 16720, subd. (a)) but also that such restrictions are unreasonable." (*Corwin, supra*, 4 Cal. 3d at p. 853.)

Plaintiffs base this contention on two items, a letter sent by Mertz Enterprises to plaintiffs telling them that as of January 22, 1973, the mobile home park would be leased in full,[4] and the contract/agreement between Mertz Enterprises and the other defendants for the leasing of part of the mobile home park.[5]

On January 15, 1973, Mertz Enterprises and the codefendants entered into an agreement for the rental of mobile home spaces. There is no mention of what the rent is in terms of dollars and cents in the agreement, but simply a statement that Mertz Enterprises will rent specific spaces to the codefendants for a period of one year; that the codefendants would be the only parties allowed to sell mobile homes in the mobile home park; and that they would be permitted to maintain a model compound and sales office on the park premises. The rent paid by the codefendants to Mertz Enterprises would be the percentage each codefendant has of the entire area covered by the agreement. The rental paid by the codefendants would be reduced by the amount of rental paid to Mertz Enterprises by the occupants of the respective spaces, but only to an offset for rent actually paid by such occupants.

[illegible] Plaintiffs' claim that the [illegible] between Mertz Enterprises and the codefendants is more than a normal lessor-[illegible] [illegible] [illegible] [

that all potential occupants procured by the codefendants must have new double coaches which must be approved by Mertz Enterprises and which must obey all park rules. Furthermore, "[c]oncurrently with any rental arrangement by Mertz with a potential resident of any of the spaces procured by Retailers [codefendants], Mertz will charge such resident the sum of Two Hundred Fifty Dollars ($250.00) payable concurrently on or prior to occupancy. . . . The total lot improvement charge shall be paid by Mertz to Retailers [codefendants] within 10 days after receipt of payment from resident. In the event that a loss results from any claim made against Mertz as the result of the payment of said lot improvement charge to Mertz and thereafter to Retailers [codefendants], then each of the Retailers [codefendants] herein agrees to reimburse Mertz a pro rata share of said loss not to exceed twenty-five percent (25%) of the total monies received by said Retailers [codefendants]."

Clause 4 of the agreement, entitled "*Model Complex and Sales Facility*," provides in relevant part that: "Retailers [codefendants] may install signs and other advertising and promotion as it may deem advisable after having first obtained the written consent of Mertz. Mertz agrees that such consent shall not be unreasonably withheld. Retailers [codefendants] shall have the right to use the name of San Rafael Mobile Home Estates in its advertising and promotion, but such advertising and promotion shall not in any way indicate any agency, joint venture, partnership or other relationship between Retailers [codefendants] and San Rafael Mobile Home Estates. The mobile home park manager of Mertz and their employees shall cooperate with Retailers [codefendants] in connection with its sales and promotion for the mutual benefit of all parties hereto in renting mobile home spaces as well as promoting the sale of mobile homes by Retailers [codefendants]. The cooperation by Retailers and Mertz, as well as their respective employees, shall be reasonable and in their best interests."

The agreement between Mertz Enterprises and its codefendants gives an exclusive right of sale to the codefendants on the leased/rented property; allows for reimbursement of payments; and provides for aid, assistance and cooperation for the sale of codefendants' mobile homes at the inferred exclusion of other individuals' sale of mobile homes to be placed on this property.

The above agreement between Mertz Enterprises and its codefendants cannot be considered in a vacuum, but must be considered in light of all the agreements between the defendants and how those agreements would eventually affect the public and competitors.

Plaintiffs allege in their complaint that Moore's, Sunrise and S. W. Mobile conspired together, along with Mertz Enterprises to divert and take away a substantial portion of the business of plaintiffs. Plaintiffs support this contention by relying on a letter sent by Moore's, Sunrise and S. W. Mobile to plaintiffs and other dealers on January 25, 1973. The letter, addressed "Dear Fellow Dealer," informed plaintiffs and others that if they wished "to place a coach in San Rafael, we will deliver, set-up and service—and this service will be guaranteed for one (1) full year—your coach for a total cost of $2500. This will insure high service standards." An asterisk at the bottom of the letter indicates a note stating: "Since each dealer above is an individual company and sets its own prices, the $2500 costs is approximate."

The effect of the agreement and the letter to the ultimate consumer is as follows: If the purchaser buys from Moore's, Sunrise or S. W. Mobile, the purchaser will pay $250.00 to Mertz Enterprises as a set-up charge—which charge will be returned to the codefendant who sold the coach. If the purchaser buys a coach from plaintiffs, the set-up fee will be $2,500—a cost that undoubtedly would be passed on to the ultimate consumer who therefore has to pay more to buy from plaintiffs if he wishes his coach put on the Mertz Enterprises lot.

Section 16727 of the Business and Professions Code is concerned with the effects on competition, and the type of arrangement described above could be construed to seriously impair competition between parties not in privity with the arrangements between the defendants.

In examining the agreements between the parties and the statutes involved, the effects on competition, not just the competitors, must be considered. The substantially probable rather than actual effects are all that is required by the Cartwright Act as it has been interpreted by federal cases. (See *Standard Motor Products, Inc. v. F. T. C.* (2d Cir. 1959) [1959 TRADE

CASES ¶ 69,333] 265 F. 2d 674, 676, regarding interpretation of Robinson-Patman Price Discrimination Act, 15 U. S. C. A. § 13a.)

If the agreements between Mertz Enterprises and the other defendants are construed to constitute a restraint upon trade, they violate the Cartwright Act unless they are shown to be reasonable. To determine whether the restrictions are reasonable, 'the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable. The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be obtained, are all relevant facts.' (*Chicago Board of Trade v. United States* (1918) 246 U. S. 231, 238 [62 L. Ed. 683, 687, 38 S. Ct. 242].) The court should consider 'the percentage of business controlled, the strength of the remaining competition [and] whether the action springs from business requirements or purpose to monopolize. . . .' (*United States v. Columbia Steel Co.* (1948) [1948-1949 TRADE CASES ¶ 62,260] 334 U. S. 495, 527 [92 L. Ed. 1533, 1554, 68 S. Ct. 1107]; quoted with approval in *Times-Picayune v. United States* (1953) [1953 TRADE CASES ¶ 67,404] 345 U. S. 594, 615 [97 L. Ed. 1277, 1293, 73 S. Ct. 872].) Whether a restraint of trade is reasonable is a question of fact to be determined at trial. (*Times-Picayune v. United States, supra; Chicago Board of Trade v. United States, supra; Wirtz dba. Warehouse, Inc. v. Winchester Tobacco Ware. Co.* (6th Cir. 1954) [1954 TRADE CASES ¶ 71,314] 339 F. 2d 277, 280; *Rogers v. Douglas Tobacco Board of Trade, Inc.* (5th Cir. 1959) [1959 TRADE CASES ¶ 69,350] 266 F. 2d 625, 643, cert. den. (1959) 361 U. S. 833 [4 L. Ed. 2d 75, 80 S. Ct. 85].)" (Corwin, *supra*, 4 Cal. 3d at pp. 856-857.)

Another contention of plaintiffs is that the agreements, considered jointly and severally constitute an illegal tying arrangement.

"The use of economic power to compel a buyer to purchase one product in order to be able to buy another is known as a tying arrangement. Ordinarily a seller may refuse to sell one product but only on the condition that the buyer also purchases a different (or tied) product, or at least agrees that he will not purchase that product from any other supplier. Where such conditions are successfully exacted competition on the merits with respect to the tied product is inevitably curbed. Indeed 'tying agreements serve hardly any purpose beyond the suppression of competition.' [Citation.] They deny competitors free access to the market for the tied product, not because the party imposing the tying requirements has a better product or a lower price but because of his power of leverage in another market. At the same time buyers are forced to forego their free choice between competing products. For these reasons 'tying agreements fare harshly under the laws forbidding restraints of trade.' [Citation.]' (Fns. omitted.) (*Northern Pac. R. Co. v. United States, supra*, 356 U. S. 1, 5-6 [2 L. Ed. 2d 545, 550].) Tying arrangements are illegal per se 'whenever a party has sufficient economic power with respect to the tying product to appreciably restrain free competition in the market for the tied product' (*Northern Pac. R. Co. v. United States, supra*, 356 U. S. at p. 6 [2 L. Ed. 2d at p. 550]; *Fortner Enterprises v. U. S. Steel, supra*, 394 U. S. 495, 499, 503 [22 L. Ed. 2d 495, 502, 505]) and when 'a total amount of business substantial enough in terms of dollar-volume so as not to be merely *de minimis*, is foreclosed to competitors by the tie. . . .' (*Fortner Enterprises v. U. S. Steel, supra*, 394 U. S. at p. 501 [22 L. Ed. 2d at p. 504].)" (*Corwin, supra*, 4 Cal. 3d at pp. 856-857.)

We conclude that triable issues have been raised which, if resolved in plaintiffs' favor, could establish the type of arrangement condemned by the above referred to decisions. We do not hold as a matter of law that the arrangements between defendants amount to an illegal tying agreement, but rather that it is an issue to be resolved at trial.

We [illegible] that plaintiffs are [illegible] their general theory of a conspiracy and combination in restraint of trade and also upon their claim of an illegal tying arrangement. We [illegible] that plaintiffs have proved [illegible]

(3d Civ. 34 53 [110 Cal. Rptr. 125].)

Judgment reversed.

LILLIE, Acting P. J., and THOMPSON, J., concurred.

[¶ 75,404] Science

U. S. District Court
Dated November 19, 19

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Science contends
for purposes of it
defined as follows:

"The natural
garden chemicals

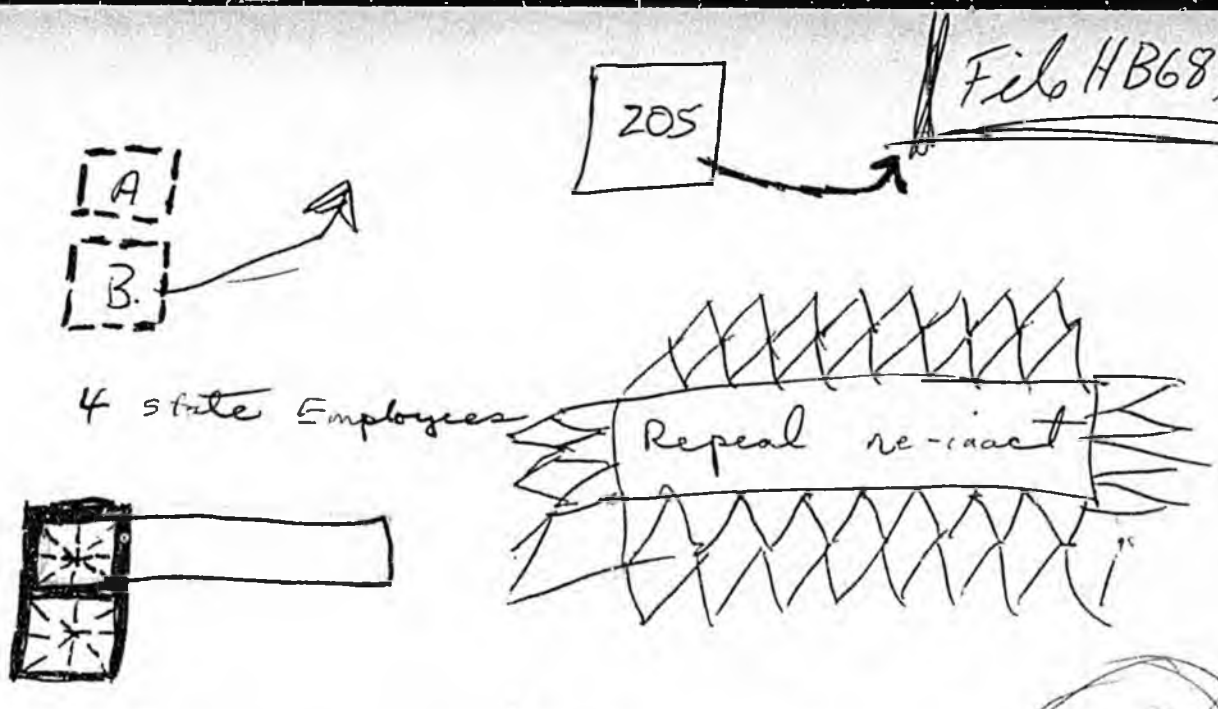
Mr. Chairman, members of the Commerce Committee, I am Bernard L. Marsh, Executive Secretary of the Alaska Mobile Home Association and also the Alaska Trailer Court Association. HB 829 has not been available long enough for our membership to know about it, but I have shown it to the officers of the two associations, and have been asked to comment on the bill to this Committee.

HB 829 seems to have been written by consumer or tenants action groups with the intent of protecting consumers or tenants from abuses and from unfair expenses. In fact, the effect will likely be just the opposite. The cost to the consumer will be greater. A more serious consequence of this bill will be the creation of a new property right for tenants, which is probably unconstitutional, and which in any case will reduce the value of property and further damage the tight economic situation in the mobile home field. Let me explain:

1. Economics prohibit the production of mobile home spaces in any urban area of Alaska by independent court operators; that is, where the space rental is to provide a rate of return that will justify the investment. There have been no such spaces built in Anchorage in the last five years, and there will be none in the future under present conditions. Spaces have been, and are built by mobile home vendors, simply because you can't sell a mobile home unless there is some place to locate it. Spaces are provided by vendors simply to create sales. The spaces themselves are an economic loss to the vendor. The principle is exactly the same as that of J. C. Penney department store building a parking garage that loses money on parking, just to stimulate store sales. The reason for this situation is two fold; The increasing cost of land, and the progressively more restrictive government regulation.

forever, even through a change of ownership. It is incredible to me that this legislature would even consider such a proposal.

There are several sections of the bill to which we have no objection, and agree with. We agree with Sec 2 (C) (2), which would prohibit an owner from requiring a tenant to provide permanent improvements to his property. We also agree with (4) of the same section, prohibiting vendor or transfer fees as a condition of tenancy. We have no objection to all of Sec. 3. We also agree with Sec. 45.30.070 (a), beginning on line 16, page 3 of the bill. But we disagree with subsect. (b) of this section, which prohibits a perfectly legal and prudent practice on the part of a mobile home vendor. Any vendor who shipped mobile homes to Alaska at $4700 each, and had no spaces to locate them on, would be pretty foolish. Also, it would seem that creating a class of persons (mobile home vendors) who are prohibited from leasing spaces is highly discriminatory and in violation of the state Human Rights Act.



5,600 spaces ~~to~~ last year

Trailor Park court owners 100

12 dealers

3-5 dealers own courts

Renting & leasing spaces on other courts

Prevent large trailor sales from pre-leasing - exclude small businessmen

Causes increase of tractors & trailor park spaces

clarification of existing anti-trust law

No economic test though

Consent Judgement in Minnesota 3 years

If dealer/owner has mixed clientele hard to prove violation

Have 2 products prices of both must be determined by the free market

Tractor lots low - Trailor prices high

Encourage competition at both levels

File with my trailer bill

3/15/76

RIDGEWOOD MOBILE HOME
Sales & Court
Rt. 1 Box 523A
KETCHIKAN, ALASKA 99901

Representative Terry Gardiner
Pouch V
Juneau, Alaska 99811

Dear Terry:

I am in receipt of your letter of March 8, 1976 and thank you for your reply even though I am somewhat disturbed by the content, therefore feel it obligitory that I respond.

First I feel insulted that you did not communicate with any of the court owners, in this area regarding this bill.

Secondly I would like to point out to you, as first named sponsor of this bill, some of the falacies of the bill.

The ability to be able to control the rental of spaces in a court can only lead to the upgrading of the court and protection of conditions, environment and investment of existing home owners in the courts. And who might I ask is more entitled to that right than the person who owns the court?

This bill for all intents puts a local dealersout of the sales business. Local dealers in the past have been in competition with stateside dealers who are volume dealers. After we have projected a sale on a proposal sheet they go south and show the proposed unit figures to the stateside dealer who can then undercut our prices. We don't get a second chance.

Speaking for myself, our sales in the past have subsidized our court operation in attempting to hold our rental rates at there present level.

The past 3 years have seen our sales drop considerably. This loss of sales revenue has resulted in a higher rental rate of court spaces. Additional lost sales revenue will result in additional rent increases or closure. This is fact.

You continuously use the word "force" in your letter. This is intolorably disgusting to me.

If you were to say that this bill would "force" Alaska dealers out of the sales business, or "force" court owners out of business, or "force" court owners to accept an undesirable rentor, or "force" a court owner to accept a mobile home in a degredated condition then you would be properly using the word "force".

Phone 225-4813

RIDGEWOOD MOBILE HOME
Sales & Court
Rt. 1 Box 523A
KETCHIKAN, ALASKA 99901

It is evident that you have not researched the difficulty of local financing of mobile homes or the difficulty of placing a mobile home on private property in the Gateway Borough. If you had, you would readily understand the difference between buying locally or buying in the states.

You say " the bill is an effort to promote the capitalistic theory of the open market place".

It has been evident that your support of limited entry certainly violates this theory and indicates a double tongued philosophy. You have certainly protected your interest and investment.

You also state in your letter "as long as a trailer park owner "allows" other people who buy trailers from other sales or who already own trailers to rent their trailer spaces, there should be no violation of law". Couldn't you more aptly have said, that if a trailer park owner is "forced" to rent their spaces to anyone who buys or owns their trailers there should be no violation of law? This would fit your way of thinking more appropriately.

It is apparent that you fail to accept the simple fact that legislation that places additional costs of doing business on the businessman only results in additional costs to the consumer and that curtailments of business lends to a socialistic trend with more government involvement.

In conclusion Mr. Gardiner, I can only project that in the event HB684 becomes law you will have raised mobile home space rentals to the existing and future home owners in the Ketchikan Gateway Borough.

I would hope you would appriss yourself of this fact and determine who you are affecting and to what extent.

Bob Crowder

Bob Crowder
Ridgewood Mobile Home Sales & Court

cc: Senator Robert Zeigler
Speaker of the House Mike Bradner
President of the Senate Chancy Croft
Editor Ketchikan Daily News Lew Williams
Ketchikan Chamber of Commerce,
Legislative Review Committee

Phone 225-4813

MEMORANDUM

TO: JAY KERTTULA

FROM: JAMIE LOVE

RE: MOBILE HOME LEGISLATION (HB 684 & HB 829)

DATE: APRIL 3, 1976

The above-mentioned bills are designed to correct serious abuses in the mobile home industry. My interest in mobile home problems dates back to last Spring. At that time, I received a call from a woman who was living in a mobile home court that had been sold. The new owner was converting the court into another land use, and each of the 20 tenants in the court was given a 30-day eviction notice. This woman owned the trailer she lived in. Neither she nor any of the other tenants were able to locate space in another court. When I talked to the woman, she was extremely distraught. She had to move her trailer within a few weeks and could not find a space to move to.

During this period of time, she and the other tenants in the park were approached by an individual who represented a mobile home sales outlet. The sales company was able to use the trailers even though there were no mobile home spaces available for rent in the marketplace. The reason for this was that in the Winter of 1975 the overall vacancy rate for mobile home spaces dipped as the Anchorage area was experiencing a housing shortage. At that time, several of the larger mobile home dealers began quietly buying up the remainder of the vacant spaces including those in independent courts. As an added incentive to the mobile home court operators, the dealers offered a commission, or fee, of approximately $400 to $500 for each mobile home which was placed in their court.

In this particular case, almost every tenant of that court sold their mobile homes, at a fraction of their value, to the single mobile home sales dealership. The dealer then resold the mobile homes at their market value, placing them in spaces they had previously tied up.

I discussed the situation with a reporter from the Anchorage Daily News, Pam Milsap. Milsap interviewed this lady and others who were having problems at the time. Her account of the mobile home situation is attached to this memo.

Shortly after the Daily News story, the Alaska Public Interest Research Group asked the State Attorney General's Office for an investigation into the apparent abuses. After being pressed by the local Consumer Protection Office for more facts, a staff person from AkPIRG approached 26 of the largest mobile home courts in Anchorage posing as an individual interested in finding a rental space for a used trailer. The results of that investigation are detailed in a letter, attached to this memo, which was sent to Attorney General Avrum Gross on July 8, 1975.

Attorney General Gross initiated an investigation to determine if the alleged practices were in violation of the State Anti-Trust Act. The investigation into the matter has been slow, hampered apparently by the shortage of staff for the State's Consumer Protection Office. Only in the last two months have industry officials been subpoened, and, as of my most recent discussion with the attorneys involved, many important issues have not yet been analyzed.

Since July, other methods of dealing with the problem have been explored. The result is the bill before your committee, HB 684, which makes the tie-in arrangement between mobile home courts and mobile home dealers a violation of the State's Unfair Trade Practices Act. Support for a legislative solution resulted from a sympathy for the situation of the offending mobile home dealers. Even though the tie-in practice is, in my opinion, an unfair and harmful business practice, many of the mobile home dealers were forced into participating when they found out that other mobile home dealers were involved. Being left out of the picture in the rush for tying up spaces meant risking going out of business. Some of us reasoned that since they obviously couldn't trust each other, the State would perform a service by stepping in and forcing everyone to end the practice. Anti-trust litigation is extremely complex, time-consuming, and expensive. The enactment of legislation would relieve the dealers from the burden of paying for legal counsel in an anti-trust action.

It is my understanding that the practice of tying space rentals to sales takes place in Anchorage, Fairbanks, Valdez, Juneau, and Ketchikan, as well as other communities across the state. I am most familiar with the situation in Anchorage. As of last Summer, there were four or five large dealers who had cornered the market of available spaces. I assume the situation has not changed dramatically, although I have heard that the larger dealers are letting the smaller outfits make a few sales from time to time. This is due to a growing concern by the larger dealers over the pending legislation and the Attorney General's investigation.

The smaller dealers have a good deal at stake in a rapid resolution to the problem, but the obvious matter which your committee should address itself to is the effect which this practice has on mobile home consumers. In Anchorage, for example, instead of having dozens of sales outlets competing against each other for sales, there are a few large dealerships which have all the spaces. The price that mobile homes are sold for, now, probably has more to do with the competitive price of conventional home ownership or rentals, than competition among dealers.

This is of particular concern, since the state is experiencing such a crisis in all other areas of housing. The costs of home ownership have skyrocketed beyond the reach of many Alaskans. Rents have also risen dramatically as a result of the housing shortages which plague many areas of the state.

Mobile homes should be an important factor in moderating the effects of the current housing market. Instead, through limited competition, mobile homes have become increasingly more expensive. To illustrate just how expensive mobile homes have become, I am attaching a summary, prepared by AkPIRG, of Anchorage mobile home sales in the month of October 1975 as listed in the trade publication, Alaska Motor Report. The average selling price was $35,000, with many sales over $45,000. (Sales are for the trailer without land).

When space rentals are tied in with the purchase of new sales, consumers cannot shop for used homes from private sellers, purchase the homes from Seattle and pay the shipping, or negotiate a selling price from the wide range of dealers. All the best features of the free enterprise system have been compromised and the protection of a free marketplace has been eliminated. There is no doubt that if tie-ins were made illegal, the result would be substantial price savings to consumers on mobile home purchases.

Not surprisingly, the large mobile home dealers and court operators which have been prospering under the present system are mounting an attack against the proposed legislation. The industry lobbyist, Mr. Ben Marsh, has presented their position before the House Commerce Committee. Anticipating a less than sympathetic response to allegations of anti-competitive practices, Mr. Marsh has tried to present their case in its best light.

This was in the form of an argument that restrictions on mobile home tie-ins would eliminate the development of new mobile home courts. The heart of this argument is the questionable assertion that it is uneconomical to develop new mobile home courts, and that courts are developed by dealers at an economic loss to provide a market for their sales. According to Marsh, dealers are the only ones developing new courts and if they are not allowed to tie in sales to their space rental, they will abandon the court development business.

When this argument was first raised by the industry, my instinct was to accept it at face value, and to think of ways we could compromise on the tie-in question. The more analysis I gave the matter, however, the more illogical it seemed. Demand for mobile home spaces was at the root of the problem. The tie-in situation was a reponse to low vacancy rates and high consumer demand for mobile home sales. People are going crazy in Anchorage and other communities, trying to find spaces for their mobile homes. It is, in fact, almost impossible to rent a mobile home space without purchasing a new mobile home. Why then, couldn't a new mobile home court operator simply charge a higher rent to pay for the increased development costs? As long as it was cheaper to pay the court rental and the mobile home mortgage than to buy a conventional house or rent an apartment, people would continue to buy mobile homes and rent the spaces.

Why was it necessary for Marsh and others to link the survival of the mobile home court industry to the tie-in practice? In my opinion, it was simply the only justification which could be used to defend a practice which flies in the face of fair trade and healthy competition.

According to Marsh's theory, vendors are propping up the court owners by giving them a subsidy, since the court rental business no longer supports itself. I can only assume that the subsidy is paid by the mobile home consumer through increased prices for mobile homes.

Marsh went on to tell the committee that if new courts were forced to pass on the real cost of court development, the rents in all the other spaces would be raised. In other words, it was better to hide the costs in increased mobile home prices than in space rents so the court owners would not be tempted to raise rents in old courts. The fact is that space rents have gone up dramatically in the last two years (from 30% to 50% in many courts). Marsh isn't kidding anyone. No one but no one is subsidizing the mobile home consumers.

The factors which have contributed to an overall shortage of mobile home spaces are many. Planning restrictions and community pressures have discouraged the development of mobile home courts. It's no secret that a mobile home park is not the most welcome addition to a residential neighborhood. These biases against courts, regardless of their merits, have an important effect on the supply factor of spaces.

Administration officials from the Department of Commerce and the Department of Law should be able to provide further information on these points. I strongly urge passage of HB 684 and any other measure designed to deal with the tie-in situation.

Many other problems associated with mobile home court rentals are addressed in HB 829. Probably the most important and most controversial feature of the proposed legislation is the section which limits the court owner's right to evict residents of the court. Sec. 34.03.225 sets out four standards for evictions from courts. Currently, it is the practice of almost every mobile home court in Alaska to rent on a month-to-month basis. Mobile homes are treated like other tenants in the State's Landlord-Tenant law. A resident in a court may be evicted, without cause, on 30 days' notice.

It is not untypical for a mobile home owner to have 20 to 30 thousand dollars tied up in the home they are living in. The cost of moving a mobile home, if you can find a place to move to, runs from $1,000 to $2,000 on the average; or, approximately one to two years' rent in the average court. There is, obviously, very little security for the mobile home owner under the current situation. If I was living in a court, I would think twice about hassling my court manager about deferred maintenance or any other problem if I thought I could risk an eviction. If I was evicted and couldn't find a place to move the trailer to, I would be out a good deal of money. These aren't hypothetical situations, but everyday problems for the dwellers in mobile home courts.

HB 829 recognizes the unique situation of mobile home dwellers. The proposed legislation is a recognition that it is a bit more complex than throwing your clothes in a suitcase and into the back of a VW if you get evicted from a mobile home court.

By giving a home owner rights against no-cause eviction, another important problem is addressed. The main problem in the financing of mobile homes is the short amortization period of the loans. If mobile homeowners have better security for their investment, banks would have better security for their loans. This added security could result in longer loan terms and lower monthly payments.

The other features of HB 829 are important, fair, and largely unopposed. Passage of both HB 829 and HB 684 would go a long way to correct long-standing problems in the mobile home industry.

ATTACHMENTS

Article in Anchorage Daily News
Pam Milsap - "Dealers Gobble Trailer Lots"

Anchorage Area Mobile Home Sales
Alaska Motor Report October 1975

July 8, 1975 Letter to Attorney General

Letter by J. Harold Michal
11-10-75 Complaint against tie-in

HB
694

17 May

Terry:

In short, this is now the only version of the fical note in the system. Like all fiscal notes, it will be laid before the Free Conference on the Budget for approval, which ought to be a mere formality in this case.

THE LEGISLATURE OF THE STATE OF ALASKA
FISCAL NOTE
Second Session - Ninth Legislature

I. REQUEST
Bill No. HB 694
Title: Criminal Law Revision Commission
Requested by: Rep. Gardiner Date: 14 May 1976
Return Date Requested:
Agency: Legislative Affairs Agency Program: Legislative Council

II. FISCAL DETAIL
Budget Request Unit(s) Affected:

A. EXPENDITURES: (Thousands of dollars)

	OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100	PERSONAL SERVICES						
200	TRAVEL		10.8	-0-			
300	CONTRACTUAL		80.5	-0-			
400	COMMODITIES		12.0	-0-			
500	EQUIPMENT		5				
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL		103.8	-0-			

B. FUNDING: (Thousands of dollars)

GENERAL FUND		103.8	-0-			
FEDERAL FUNDS						
OTHER						

C. POSITIONS: NONE

PERMANENT/TEMPORARY	/	/	/	/	/	/
MAN MONTHS (P./T.)	/	/	/	/	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

See attached. Fiscal note prepared after review of consultant's proposed budget.

IV. ATTACHMENTS

Commission Budget

V. DATE: 14 May 1976 PREPARED BY: James B. Rhode
James B. Rhode
AA to Rep. Malone, Chairman
House Finance Committee

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

H/S 50

CRIMINAL LAW REVISION COMMISSION
Budget

Contractual Services

Project Director (¼ time)	12.0
Staff Counsel (full time)	40.32
Associate Staff (¼ time)	8.4
Research Director (¼ time)	9.0
Secretary II (full time)	10.8
TOTAL	80.5

Travel

3 trips to consult with experts 1 East Coast at .55 2 West Coast at .4	1.0
15 Staff trips in Alaska at .20	2.4
Commission travel 10 trips at .20 for 13 members	2.0
Per diem	5.4
TOTAL	10.8

Supplies	3.99
Equipment	.48
Printing	7.99
TOTAL	12.5
GRAND TOTAL	103.800

LA11 0003 11.30 LA01 0006 12.23 04/23/76

HB 684

TO: HOUSE JUDICIARY COMM- MR. GARDINER
FROM: JOHN HAVELOCK

THE FOLLOWING MESSAGE HAS BEEN MAILED TO YOU BUT I UNDERSTAND YOU NEED THIS SOONER.)
CRIMINAL CODE REVISION COMMISSION PROPOSED BUDGET JULY L 76 - JULY 77

PERSONAL SERVICES
PRO. DIR. 1/4 TIME 12,000
RESEARCH DIRCTOR 1/4 TIME 9,000
SEC. 12,468
SEC. 11,688
COL INCREASE 9% 2,032
BENEFITS 18 1/2 % 8, 730 TOTAL $55,918
CONTRCTUAL SVCS. - COUNSEL 40,32
CONSULTANT FESS (4 CONS. 2 DAYS AT 135 PER) 1,080 TOTAL 49,800
TRAVEL & PER DIEM
CONSULTANTS 4 AT 500 PER TRIP 2,000
STAFF - 3 TRIPS (ETC.) 1,080
MONTHLY MEETINGS -
COMM. 10 TRIPS BY 4 FROM JUN. TO ANCHO 10 BY 2 FBKS TO JUNAU & 2 TO ANCHORA
2 TRIPS BY 7 MBRS. FROM ANCH. TO JUN. AND 2 JUNEAU TRIPS BY 5 STAFF
TOTAL ++ 11, 370 (CONTD.)

LA11 0004 11.34 LA01 0007 12.24 04/23/76

MESSAGE CONTINUED.

PUBLIC HEARINGS - IN JUNEAU; IN FAIRBANKS, 4,560

TOTAL TRAVEL+ $15,930

PER DIEM BASED ON 2-DAY MTS. AND HEARINGS 19,200

TOTAL PER DIEM AND TRAVEL 38, 210.
SUBTOTAL: $143,928

SUPPLIES & OPERATING EXPENSES
SUPPLIES 1,200; POSTAGE 600, TELEPHONE 600; XEROX 840; MC/ST RENT 1,200
TOTAL: 4,440

EQUIPMENT 500 PRINTING / REPRODUCTION 8,000
INDIRECT COSTS (10% OF DIRECT LABOR COST) 5,592

GRANT TOTAL $162,460.

EOM. H.J.

Criminal Law Revision Commission Budget.

April 1976 to July 1977

	15 months	12 months
Personal Services		
Project director (1/4 time)	15.0	12.0
Staff counsel (full time)	50.4	40.32
Associate staff (1/4 time)	10.5	8.4
Research director (1/4 time)	11.25	9.0
Secretary I (full time)	15.0	12.0
Secretary II (full time)	13.5	10.8
Cost of living increase January 1, 1977 at 9%	4.165	4.165
Benefits 17%	20.369	16.295
Total	140.184	112.980
Contractual Services		
Consultant fees	3.5	2.799
Travel		
3 trips to consult with experts 2 West coast at .4 1 East coast at .55	1.35	1.08
15 staff trips in Alaska at .20	3.0	2.4
Commission travel 10 trips at .20 for 13 members	5.2	4.159
Per diem	13.6	10.879
Total	23.15	18.519
Supplies	5.0	3.99
Equipment	0.6	.48
Printing	10.0	7.99
Indirect costs	14.018	11.214
Total	196.452	152.162

PROPOSED BUDGET

(summary)

Personal Services	$140,184
Contractual Services	3,500
Travel	23,150
Supplies	5,000
Equipment	600
Printing	10,000
Indirect Costs	14,018
Total	$196,452
Twelve Month Total	(157,162)

WORK SCHEDULE[1] FOR A REVISED CRIMINAL CODE

WORK ORDER -- BLOCK 1: Part I of General Provisions, Offenses against Property and Sentencing Structure

BLOCK 2: Crimes against the Person

BLOCK 3: Offenses against the Family
Offenses against Public Administration
Offenses against Public Order

BLOCK 4: Offenses against Public Health and Decency

BLOCK 5: General Provisions Part II and Miscellaneous

SCHEDULE --

Jan. 31, 1976	Legislative Presentation of Preliminary Report and Block one drafts, submission to Commission of first drafts, Block 2
Feb. 28, 29	Commission presentation and first review of first drafts, Block 2
March 20, 21	Presentation of first drafts, Block 3
April 3, 4	Commission first review of first drafts, Block 3
April 24, 25	Commission second review of first drafts, Block 2
May 15, 16	Commission second review of first drafts, Block 3
May 24, 25	Commission presentation of first drafts, Block 4
June 7, 8	First review of first drafts, Block 4
June 28, 29	Commission presentation of first drafts, Block 5
July 12, 13	Commission first review of first drafts, Block 5
July 26, 27	Second review of first drafts, Block 4
Aug. 9, 10	Second review of first drafts, Block 5
Aug. 16 - 31	First round public hearings
Sept. 15 - Nov. 15	Commission reviews (according to emphases emanating

[1] contingent upon timely funding

from hearings and the Commission's sense of the firmness of each block), each block to be brought to a third review.

Six meetings, one on each block, every two weeks

Nov. 29 - Dec. 10 — Final hearing round

Dec. 10, 1976 - Feb. 1, 1977 — Final draft revision presented to legislature - substantive code

Feb. 1, 1978 — Presentation of Final draft, procedural code revision

U of A
272-5522

Original sponsor: Rules Committee by request of the Legislative Council Criminal Code Revision Subcommittee

Offered: 3/3/76
Referred: Rules

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 694

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the Criminal Law Revision Commission; and providing for an effective date."

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

* Section 1. ESTABLISHMENT. There is established as a legislative advisory commission of the Alaska Legislative Council the Criminal Law Revision Commission.

* Sec. 2. MEMBERSHIP. (a) The commission is composed of the following members:

(1) the chairman of the judiciary committee of the state house of representatives or his designee from that committee and the chairman of the judiciary committee of the state senate or his designee from that committee;

(2) the attorney general, or his designee;

(3) the commissioner of public safety, or his designee;

(4) the director of the division of corrections, Department of Health and Social Services, or his designee;

(5) a judge of the superior court appointed by the chief justice;

(6) a judge of the district court appointed by the chief justice;

(7) the public defender, or his designee;

(8) one social worker appointed by the council;

(9) one mayor or his designee, from a municipality, designated by the council;

(10) one person, representative of rural Alaska, designated by the council;

(11) an attorney appointed by the president of the Alaska Bar

Association;

(12) ~~one representative of the general~~ public appointed by the council;

(13) ~~one representative~~ of the general ~~public appointed by the~~ governor.

(b) An appointing authority or a designated member of the commission may name an alternate to serve in his stead when the member is unable to attend a meeting.

* Sec. 3. TERMS, REMOVAL, COMPENSATION. (a) Members serve ex officio or at the pleasure of the appointing authority. The term of an appointed member is four years. Public

(b) Members receive no salary but are entitled to per diem and travel expenses authorized by law for other boards and commissions.

* Sec. 4. DUTIES OF THE COMMISSION. The commission shall

(1) advise the governor and the legislature on necessary and appropriate revision of the criminal law;

(2) prepare a comprehensive revision of the state criminal laws including but not limited to necessary substantive and topical revisions of crimes, criminal procedure, sentencing, and parole and probation of offenders, for submission to the legislature;

(3) conduct studies of criminal justice practices and procedures;

(4) request the Council subject to funds available receive and expend grants and appropriations from private and governmental sources for the purpose of carrying out its duties under this section;

(5) contract with other agencies or persons for the performance of necessary services;

(6) submit a report with recommendations to the First Session of the Tenth Legislature concerning substantive or topical revisions to the criminal laws before February 1, 1977;

(7) submit a report and recommendations to the Second Session of the Tenth Legislature before February 1, 1978 concerning revision of the laws governing criminal procedure and other pertinent matters relating to criminal law on which no previous report has been made, together with any recommendations concerning the future existence, purposes, or composition of the commission.

* Sec. 5. CHAIRMAN, MEETINGS, QUORUM. (a) The commission shall select a chairman and vice-chairman from among its members.

(b) The commission may hold public hearings and other meetings as necessary throughout the state and shall determine an appropriate quorum for conducting business.

* Sec. 6. DEFINITIONS. In this Act, unless the context otherwise requires,

(1) "council" means the Alaska Legislative Council established under AS 24.20.010;

(2) "commission" means the Criminal Law Revision Commission established under sec. 1 of this Act.

* Sec. 7. The commission established by this Act expires February 1, 1978.

* Sec. 8. This Act takes effect immediately in accordance with AS 01.10.-070(c).

file Crim Code Revision

AMERICAN BAR ASSOCIATION

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March 3, 1976

Honorable Terry Gardiner
House Judiciary Committee
House of Representatives
State of Alaska
Juneau, Alaska

Dear Terry:

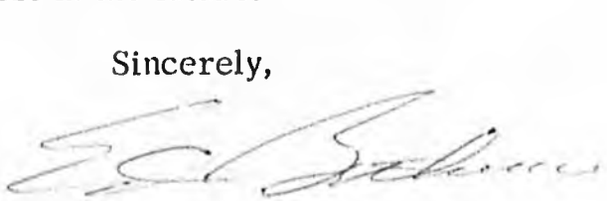
I want to thank you for a wonderful weekend. My trip was just the right mix of business and pleasure.

I hope you will let me know how you fare in the Legislature with respect to Criminal Code Revision. Almost everyone I met was aware of the need for revision and I feel confident that you will succeed.

Juneau is a lovely place and I shall always remember the Lemon Creek Turn as we flew north to Anchorage. John and Sheila took me by the Mendenhal Glacier on the way to the airport. It is beautiful and awesome.

Again, I want to thank you for your hospitality and wish you the very best in the future.

Sincerely,



EB/cp

Terry Gardiner

Box 1092, Ketchikan, Alaska 99901 Pouch V, Juneau, Alaska 99811

March 8, 1976

Lew Williams
Box 79
Ketchikan, Alaska 99901

Dear Lew,

I received your note concerning the addition of a representative of the Alaska Judicial Council to the Criminal Code Revision Commission. The membership of the Commission recommended in HB 694 was a well argued suggestion by the present Criminal Code Revision Commission.

The original Commission started out with nine members and then was later expanded to bring in representatives of more groups that were part of the criminal justice community. The Judicial Council along with various other groups were suggested for membership on the Commission. The Commission was expanded to fourteen to accomodate representatives of these other groups. One appointment by the Legislative Council and another by the Governor were left open to allow for interested groups that were not thought of.

House Bill 694 is presently on its way to the Senate and will probably be referred to the Senate Judiciary Committee. I will let Senator Ziegler know of your suggestion.

Sincerely,

_____

Terry Gardiner

Terry; Don't you think that to conform with the duties of the Alaska Judicial Council, as set out by the constitution, we should have a representative of the council on this commission? The council has and is conducting a number of studies which would be useful to this group. I'd suggest the executive director of the Judicial Council for membership.

Introduced: 2/6/76
Referred: Judiciary

BY THE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE COUNCIL CRIMINAL CODE REVISION SUBCOMMITTEE

— Lew Williams

IN THE HOUSE

HOUSE BILL NO. 694

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the Criminal Law Revision Commission; and providing for an effective date."

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

* Section 1. AS 24.20 is amended by adding new sections to read:

Sec. 24.20.470. ESTABLISHMENT. There is established as a legislative advisory commission of the Alaska Legislative Council the Criminal Law Revision Commission.

Sec. 24.20.480. MEMBERSHIP. (a) The commission is composed of the following members:

(1) one member of the state house of representatives and one member of the state senate, both appointed by the Alaska Legislative Council;

(2) the attorney general, or his designee;

(3) the commissioner of public safety, or his designee;

(4) the director of the division of corrections, Department of Health and Social Services, or his designee;

(5) a judge of the superior court appointed by the chief justice;

(6) a judge of the district court appointed by the chief justice;

(7) the public defender, or his designee;

(8) one social worker appointed by the council;

(9) one mayor or his designee, from a municipality, designated by the Alaska Legislative Council;

(10) one person, representative of rural Alaska, designated by the Alaska Legislative Council;

(11) an attorney appointed by the president of the Alaska Bar Association;

(12) one representative of the general public appointed by the Alaska Legislative Council;

(13) one representative of the general public appointed by the governor.

(b) An appointing authority or a designated member of the commission may name an alternate to serve in his stead when the member is unable to attend a meeting.

Sec. 24.20.490. TERMS, REMOVAL, COMPENSATION. (a) Members serve ex officio or at the pleasure of the appointing authority. The term of an appointed member is four years.

(b) Members receive no salary but are entitled to per diem and travel expenses authorized by law for other boards and commissions.

Sec. 24.20.500. DUTIES OF THE COMMISSION. The commission shall

(1) advise the governor and the legislature on necessary and appropriate revision of the criminal law;

(2) prepare a comprehensive revision of the state criminal laws including but not limited to necessary substantive and topical revisions of crimes, criminal procedure, sentencing, and parole and probation of offenders;

(3) conduct studies of criminal justice practices and procedures;

(4) receive and expend grants and appropriations from private and governmental sources for the purpose of carrying out its duties under this section;

(5) contract with other agencies or persons for the perfor-

mance of necessary services;

(6) submit a report with recommendations to the First Session of the Tenth Legislature concerning substantive or topical revisions to the criminal laws before February 1, 1977;

(7) submit a report and recommendations to the Second Session of the Tenth Legislature before February 1, 1978 concerning revision of the laws governing criminal procedure and other pertinent matters relating to criminal law on which no previous report has been made, together with any recommendations concerning the future existence, purposes, or composition of the commission.

Sec. 24.20.510. CHAIRMAN, MEETINGS, QUORUM. (a) The commission shall select a chairman and vice-chairman from among its members.

(b) The commission may hold public hearings and other meetings as necessary throughout the state and shall determine an appropriate quorum for conducting business.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.10.-070(c).

Introduced: 2/6/76
Referred: Judiciary

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE COUNCIL CRIMINAL CODE REVISION SUBCOMMITTEE

HOUSE BILL NO. 694

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NINTH LEGISLATURE - SECOND SESSION

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(2) the attorney general, or his designee;

(3) the commissioner of public safety, or his designee;

(4) the director of the division of corrections, Department of Health and Social Services, or his designee;

(5) a judge of the superior court appointed by the chief justice;

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(8) one social worker appointed by the council;

(9) one mayor or his designee, from a municipality, designated by the Alaska Legislative Council;

(10) one person, representative of rural Alaska, designated by the Alaska Legislative Council;

(11) an attorney appointed by the president of the Alaska Bar Association;

(12) one representative of the general public appointed by the Alaska Legislative Council;

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(3) conduct studies of criminal justice practices and procedures;

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(5) contract with other agencies or persons for the perfor-

mance of necessary services;

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(b) The commission may hold public hearings and other meetings as necessary throughout the state and shall determine an appropriate quorum for conducting business.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.10.-070(c). The com. dies Feb 1, 1978.

Introduced: 2/6/76
Referred: Judiciary

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE COUNCIL CRIMINAL CODE REVISION SUBCOMMITTEE

HOUSE BILL NO. 694

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

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

* Section 1. AS 24.20 is amended by adding new sections to read:

Sec. 24.20.470. ESTABLISHMENT. There is established as a legislative advisory commission of the Alaska Legislative Council the Criminal Law Revision Commission.

Sec. 24.20.480. MEMBERSHIP. (a) The commission is composed of the following members:

(1) one member of the state house of representatives and one member of the state senate, both appointed by the Alaska Legislative Council;

Judiciary Committee chairman or designee

(2) the attorney general, or his designee;

(3) the commissioner of public safety, or his designee;

(4) the director of the division of corrections, Department of Health and Social Services, or his designee;

(5) a judge of the superior court appointed by the chief justice;

(6) a judge of the district court appointed by the chief justice;

(7) the public defender, or his designee;

(8) one social worker appointed by the council;

(9) one mayor or his designee, from a municipality, designated by the Alaska Legislative Council;

(10) one person, representative of rural Alaska, designated by the Alaska Legislative Council;

(11) an attorney appointed by the president of the Alaska Bar Association;

(12) one representative of the general public appointed by the Alaska Legislative Council;

(13) one representative of the general public appointed by the governor.

(b) An appointing authority or a designated member of the commission may name an alternate to serve in his stead when the member is unable to attend a meeting.

Sec. 24.20.490. TERMS, REMOVAL, COMPENSATION. (a) Members serve ex officio or at the pleasure of the appointing authority. The term of an appointed member is four years.

(b) Members receive no salary tut are entitled to per diem and travel expenses authorized by law for other boards and commissions.

Sec. 24.20.500. DUTIES OF THE COMMISSION. The commission shall

(1) advise the governor and the legislature on necessary and appropriate revision of the criminal law;

(2) prepare a comprehensive revision of the state criminal laws including but not limited to necessary substantive and topical revisions of crimes, criminal procedure, sentencing, and parole and probation of offenders;

(3) conduct studies of criminal justice practices and procedures;

(4) receive and expend grants and appropriations from private and governmental sources for the purpose of carrying out its duties under this section;

(5) contract with other agencies or persons for the perfor-

mance of necessary services;

(6) submit a report with recommendations to the First Session of the Tenth Legislature concerning substantive or topical revisions to the criminal laws before February 1, 1977;

(7) submit a report and recommendations to the Second Session of the Tenth Legislature before February 1, 1978 concerning revision of the laws governing criminal procedure and other pertinent matters relating to criminal law on which no previous report has been made, together with any recommendations concerning the future existence, purposes, or composition of the commission.

Sec. 24.20.510. CHAIRMAN, MEETINGS, QUORUM. (a) The commission shall select a chairman and vice-chairman from among its members.

(b) The commission may hold public hearings and other meetings as necessary throughout the state and shall determine an appropriate quorum for conducting business.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.10.-070(c).

1. Fiscal note
2. back up info
3. referral to finance ?

1
3 1/4 times
2 sec

PROPOSED BUDGET

(summary)

Personal Services	$140,184
Contractual Services	3,500
Travel	23,150
Supplies	5,000
Equipment	600
Printing	10,000
Indirect Costs	14,018
Total	$196,452
Twelve Month Total	(157,162)

HB
705

"An Act relating to the powers of the Alaska Pipeline Commission; and providing for an effective date."

COMMITTEE REPORT

2/10/76

HOUSE

Mr. Speaker: Date March 18, 1976

The Committee on JUDICIARY has had HB 705 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(✓) recommends it BE REPLACED WITH CS FOR HB 705 AND THAT CS FOR HB 705 DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Tony Knowles Chairman

ALASKA PIPELINE COMMISSION

ANNUAL REPORT

1975

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ALASKA PIPELINE COMMISSION

1975 Annual Report

INTRODUCTION

With the discovery of substantial reserves of oil and gas on state-owned lands in the 1960's, and with the emergence of general concern regarding the importance of the transportation systems to be utilized in moving these resources to market, it became apparent to state lawmakers that transportation of oil and gas by pipeline was a business which involved the public interest.

As a result of extensive study, examination, and review of the innumerable facets of oil and gas pipeline transportation and regulation, the Alaska Legislature in 1972 enacted legislation (Alaska Pipeline Commission Act; Ch. 139 SLA 1972; AS 42.06) which brought into being the Alaska Pipeline Commission. This commission was given broad comprehensive powers to regulate (to the extent not preempted by federal authority) pipelines and pipeline carriers in the state, including the rates, classifications, tariffs, services, practices, and facilities of pipeline carriers. It was also given the responsibility to represent the interests of the state in any proceeding relating to pipelines and pipeline facilities before any officer, department, board, commission or court of this or of another state of the United States.

In the course of its work, the commission naturally adheres to the legislative declaration of policy stated in the Act (AS 42.06.010) and that is to (1) promote and oversee the development of an oil and gas pipeline transportation system in the state properly adopted to the present and future needs of the domestic commerce of the state and of the interstate and foreign commerce of the United States; and (2) promote and insure, in conjunction with the Alaska Public Utilities Commission within its jurisdiction, nondiscriminatory, efficient and economical oil and gas pipeline transportation at reasonable rates.

It was not until April 1974 that three members were officially appointed to the Alaska Pipeline Commission. One member, acting as chairman, was appointed on a full-time basis and the remaining two members assumed part-time status. A vacancy on the commission in December 1974 followed the resignation of Martin A. Farrell, Jr. (the attorney member) and the position remained vacated until October 15, 1975.

At that time, Russell E. Mulder was appointed on a full-time basis to fill the remainder of Commissioner Farrell's unexpired term.

SUMMARY OF SIGNIFICANT ACTIVITIES -- 1974 TO PRESENT

Trans-Alaska Pipeline Certification

The first formal action of the commission, following the appointment of the commissioners in April 1974, was issuance of Certificates of Public Convenience and Necessity to the seven owner companies of the Trans-Alaska Pipeline System (TAPS). This action was mandated by the legislature in Section 240 of the Alaska Pipeline Commission Act. In essence, this section of the Act eliminated, for all practical purposes, the requirement that all pipeline carriers engaging (now or in the future) in the transportation of oil and gas subject to the jurisdiction of the commission be scrutinized by the commission before they are issued a certificate of public convenience and necessity. This provision exempted pipeline carriers already engaged in transportation of oil and gas by pipeline or construction of an oil or gas pipeline on or before January 1, 1974 (January 1, 1974, was substituted by the legislature for January 1, 1973, by an amendment enacted during the special legislative session of 1973). The inclusion of these "grandfather" rights foreclosed any possibility of lengthy hearings and proceedings by the Alaska Pipeline Commission which might have delayed construction of TAPS.

This mandatory issuance of certificates was also conducted for those pipeline carriers other than TAPS who were operating in Alaska and who fell within the parameters of the statutory exemption.

Knowledge of Pipeline Regulation

During the latter half of 1974, the commission initiated a concerted effort to acquire a thorough understanding of oil and gas pipelines and the regulation of them by both state and federal authorities.

In addition to acquiring, studying, and analyzing the basic written materials available on the subject of pipeline regulation, the commission attempted to familiarize itself with the practices in other states and at the federal level in regard to this type of regulation. In the course of this endeavor, the members of the commission found it

both necessary and informative to make a number of trips to meet and discuss matters of mutual concern with representatives of other states and the federal government.

The commission met with the Texas Railroad Commission and the California and Washington State Public Utilities Commissions.

It became obvious to the members of the commission that other states did not have a compelling desire, from a public interest standpoint, in regulating pipelines. The reasoning behind this was varied, but seemed to originate from several factors: competitive forces in the transportation field tended to hold pipeline rates down to what most state officials termed "acceptable" levels; complaints against pipeline carriers and their rates were rare; many lines were interstate and thus regulation was left to federal authorities; and pipelines transported production to a great extent from lands leased from private and federal interests. Consequently, most state efforts in the field of pipeline regulation were reduced to one of monitoring such activities.

Commission members traveled on various occasions to Washington, D.C., to ascertain the federal scheme of regulation.

It became abundantly clear from a number of these encounters with the federal government that the Interstate Commerce Commission (ICC) lacked both the resources and the desire to regulate crude oil pipelines. (For the commissioners, this was not so much a matter of gaining new insight as it was a matter of confirming often mentioned criticism of the ICC.) Lack of certification authority and power over connections, abandonment, throughput, and so forth left it with essentially two functions: establishing valuation and approving (not setting) rates. The ICC's enforcement powers, however, enable it to investigate carriers and rates on its own motion (which is practically unheard of) or on complaint by a third party (a rare event).

The Federal Power Commission, on the other hand, was found to vigorously regulate gas pipelines and aggressively assert its powers. Its scheme of economic regulation is clearly defined and it possesses broad authority through its power of certification.

Against these comparative methods of regulation, and comprehending the reasoning behind the need for pipeline regulation at the state level, the commission proceeded to undertake the task of drafting regulations applicable to carriers operating in the State of Alaska.

Commission Practice and Procedure Regulations

Regulations governing rules of practice and procedure before the commission became effective in January 1976.

These regulations are of paramount importance because they establish the methods by which the commission is to carry out its appointed functions. Namely, they set forth the manner in which interested persons can bring relevant issues before the commission, the procedures to be employed by the commission in affording due process of law to all persons having dealings with the commission; the reporting and confidentiality of carrier financial and technical information; the filing of applications and tariffs; the institution of investigations and hearings; and the rules to be followed by the commission when hearings are held.

This endeavor was formally initiated by the Commission in February of 1975 when the Attorney General's Office granted permission for the commission to seek outside counsel due to the complex nature of the regulations. In June of 1975, a legal consultant was retained and by August 4 a tentative draft of the regulations was completed and submitted to the Department of Law for its review. Following some minor technical changes, the Department of Law completed its review of the regulations and they were finally noticed to the public on September 23, 1975, as required by the Administrative Procedure Act.

On September 29, 1975, the commission again submitted its version of these regulations to the Department of Law so it could further review and comment on them before they were forwarded to the lieutenant governor. On December 19, the regulations were finally filed with the Lieutenant Governor's Office and became effective on January 18, 1976.

Ex Parte No. 308, Valuation of Common Carrier Pipelines

Relative to federal regulatory practices, the Pipeline Commission had been watching closely during 1974 the progress of a protest proceeding before the Interstate Commerce Commission with respect to the tentative valuation of Williams Brothers Pipe Line Company filed by a group entitled the Mid-Continent Petroleum Shippers.

Although this is an extremely controversial and complicated proceeding involving a change in ownership of a pipeline, the details of which will not be dealt with in

this report, the early encounters between the parties culminated in the administrative law judge broadening the scope of issues involved in the case and thus a separate proceeding in August 1974 designated Ex Parte No. 308, Valuation of Common Carrier Pipelines, came into being. Ex Parte 308 deals expressly with the issue of valuation methodologies employed by the ICC and may have important long-term ramifications for all federally regulated pipelines.

This is an historic proceeding in that it is the first time since Ajax Pipe Line Corporation (Valuation Docket No. 1284, December 14, 1949), almost three decades ago, that the ICC has been forced to re-examine its valuation methodologies and manner which it employs in establishing a carrier's final elements of value.

Realizing the importance to Alaska of this landmark proceeding, the Pipeline Commission chose to petition the ICC for leave to intervene and became a party in the proceeding in June 1975.

In this endeavor, the commission sought out and employed what it thought to be one of the most competent and experienced legal counsels available. Donelan, Cleary and Caldwell of Washington, D.C., was retained on June 2, 1975, to provide legal service to the commission in regard to its intervention in Ex Parte 308.

This particular law firm has considerable experience in practicing before the ICC. In addition, they represent the MidContinent Petroleum Shippers group in their protest action against Williams Brothers Pipe Line Company and have accumulated considerable knowledge of regulatory practices employed by the ICC. Further, the commission chose this firm also because it was possible to share the costs of participation in Ex Parte 308 with the Mid-Continent Petroleum Shippers group.

While it must be recognized, of course, that state participation in Ex Parte 308 is by no means an assurance that ICC valuation methodologies will be altered, the commission believes its intervention and continued efforts in this regard will assist in precipitating a comprehensive review of the pipeline industry. If this endeavor is successful, Alaska, as well as the ICC, will be able to ascertain whether or not there needs to be a change, as viewed from a public policy standpoint, regarding valuation upon which rates of return are applied to arrive at allowble earnings.

In this regard, Ex Parte 308 seeks to ask if there is extensive prorationing within the industry (an indication of insufficient capacity); if pipelines are being prematurely

and perhaps unnecessarily abandoned; and if new construction is lagging. Answers to these questions may suggest the need for upward adjustments in the valuation base sufficient to attract capital and encourage an appropriate level of investment.

Conversely, if it is found that most pipeline traffic consists of shipper-owner commodites (particularly in light of various accounting and tax treatments allowing substantial benefits from the affiliate to accrue to the parent company), it may be appropriate to reduce the valuation base (and thereby earnings) to encourage access by non-owner shippers at reasonable rates.

A further benefit from Ex Parte No. 308 would be the simple clarification, and in some cases interpretation, of the valuation process which would eliminate present ambiguities and prevent arbitrary determinations currently employed in arriving at final value.

Kenai Pipe Line Tariff Protests

On August 4, 1975, a protest and petition for suspension was filed with the ICC by the Alaska Pipeline Commission (APC) through its Washington, D.C., legal counsel. The protest claimed that proposed tariff charges filed with the ICC by Kenai Pipe Line Company (Kenai) to become effective August 15, 1975, were unlawful and not justified. Kenai operates a crude petroleum system for transporting crude oil production from Swanson River Oil Field and Middle Ground Shoal (from onshore treating facilities near Nikishka) to storage and delivery facilities located at Nikiski, Kenai Peninsula Borough, for delivery to marine tankers and to connections with nearby refineries.

The protest action was initiated because Kenai failed to provide APC with justification for an increase in line-haul charges from 5.3¢ to 6.0¢ per barrel (a 13.2% increase) for delivery to pipelines of others; an increase from 8¢ to 10¢ per barrel (a 25% increase) for delivery to ship's rail; and for establishment of a new 10¢ per barrel terminal service charge for receiving, storing and deliveriing crude oil to pipelines of others.

After extensive deliberation, the APC decided to utilize the federal forum (as authorized by AS 42.06.140(7)) at that time in lieu of assering its own statutory powers for two specific reasons. First, time was absolutely of the essence. By the time the commission was made aware of the proposed tariff changes, it only had a day or so to act or

forego its option to protest. Once the new tariff became effective (a nearly automatic process) the burden of proof as to whether the new rates were reasonable or not would then have shifted to the state. Preparing and proving a case under these circumstances is a difficult and time-consuming endeavor, and one which could be avoided by a timely protest on the state's behalf. Second, the APC felt that while it had the statutory authority to bring a proceeding on its own behalf to challenge the tariffs in question, it needed an established procedure, consistent with due process of law, to effectively handle the matter. This course of action was precluded at that time because the commission's practice and procedure regulations were only in their formative drafting stages and in the hands of the Department of Law for its review.

Upon learning of the protest, Kenai then postponed the effective date of the line haul tariffs, filed a new tariff for the proposed terminaling service, and furnished data to the APC purporting to justify the proposed charges. After reviewing the Kenai material, the APC concluded that the justification did not properly reflect the current economic environment, particularly as it related to Kenai's claimed depreciation on its delivery facilities in respect to the new proposed service. This allegation was based on an examination of Kenai's depreciation schedule on file with the ICC at that time which had not been revised to reflect current conditions.

Specifically, the APC contended that the new service proposed by Kenai constituted a substantial change in the company's overall services and sources of revenue. The APC further contended that the service life and volume of future business for Kenai's delivery facilities would be directly linked to the potential economic life of refineries served by Kenai and other developments and growth in the State of Alaska. The APC felt that it would no longer be appropriate to relate the depreciable life of the delivery facilities to the life of producing fields served by Kenai as reflected in Kenai's depreciation schedule.

On this basis, it was concluded by the APC to pursue the protest but not to seek suspension by the ICC of the proposed tariffs (especially the new terminaling service), as this might have cut off movement of crude petroleum from tankers to the refineries served by Kenai.

Therefore, on September 3, 1975, a supplemental protest on behalf of the APC was filed. It withdrew the request for suspension but sought an investigation by the

ICC of the lawfulness of the proposed charges under Section 15(7) of the Interstate Commerce Act (49 U.S.C. Section 15(7)). The protest detailed the inadequacies of Kenai's justification for the proposed charges, particularly in the area of depreciation expenses.

On September 10, 1975, the ICC's Suspension and Fourth Section Board declined to place the protested terminal charge under investigation. This action on an informal record by the Board was appealed by the APC to Appellate Division 2 of the ICC on September 11, 1975. On September 12, 1975, Division 2, which consists of a panel of three of the eleven Commissioners, placed the terminal charges tariff under investigation in Docket No. 36244. Subsequently, on September 19, 1975, the Board placed the tariffs increasing the line-haul charges (which had a later effective date) under investigation in Docket No. 36244 (Sub No. 1).

On October 3, 1975, pursuant to the ICC's orders providing for handling the two proceedings on modified procedure (Under Rules 4554 of the ICC's General Rules of Practice, 49 C.F.R. Section 1100.4554), Kenai submitted its opening statement. After reviewing Kenai's latest depreciation study submitted to the ICC, the APC prepared a Statement of Facts and Argument and filed it with the ICC on November 12, 1975. The Statement, which included a Verified Statement (Affidavit) by Chairman John Werner of the APC and Argument prepared by counsel, pointed out the deficiencies in Kenai's case-in-chief. On November 28, 1975, Kenai filed its Reply Statement. Because this statement appeared to include material and facts not part of a proper reply, the APC on December 24, 1975, filed a motion to strike the reply statement, to which Kenai responded on January 9, 1976.

These two proceedings now stand submitted to the ICC for decision.

The Alaska Pipeline Commission's objective in respect to these actions against Kenai is to compel the carrier to recast its depreciation schedule to reflect the long-term realities of the new service they wish to provide.

Watching Service

In light of lag time between the date a tariff is formally filed with the ICC and the time such filing is noticed to the state, the Pipeline Commission retained a private watching service in Washington, D.C. (William B. Edwards), who is capable of notifying the commission by

telephone or telegram of all tariff filings on pipelines within Alaska.

This is important because effective dates of tariffs are 30 days following the filing date for tariff revisions and 10 days for new service.

Application of Nikiski Alaska Pipeline Company

On November 7, 1975, Nikiski Alaska Pipeline Company (Nikiski) submitted an application for a certificate of public convenience and necessity for the construction, operation, and maintenance of a refined petroleum products pipeline from Nikishka, Kenai Peninsula Borough, to the vicinity of the Port of Anchorage.

Nikiski is a wholly-owned subsidiary of Gulf Interstate Company, a Houston, Texas, based corporation specializing in investments and engineering of transportation and storage systems for distribution of a variety of forms of energy and related materials.

The proposed 10-3/4 inch pipeline will have the initial capacity to transport 40,000 barrels per day (bpd) of refined products. The majority of its anticipated initial throughput of 21,850 bpd will originate from the Tesoro refinery at North Kenai. Additional shipments will be accepted from the Socal refinery in the same vicinity during periods of heavy icing in the Upper Cook Inlet.

The pipeline will follow a relatively straight line from Nikiski to Point Possession, and will cross approximately 17 miles of water at Turnagain Arm, coming ashore at Point Campbell. After passing under the proposed North-South Runway at Anchorage International Airport, it will roughly parallel Northern Lights Boulevard and the Alaska Railroad right-of-way to the Port of Anchorage.

Because the APC was convinced that time was of the essence in acting upon the Nikiski application so that Nikiski would be able to commence and finish the proposed project during 1976, the APC issued an order on December 12, 1975, scheduling a public hearing and shortening the time for holding that hearing.

The hearing was conducted on December 30, 1975, to solicit public opinion in favor of or in opposition to the granting of authority to the applicant to operate as a common carrier pipeline.

Under the Alaska Pipeline Commission Act, a mandatory 30-day waiting period is required between the time of a hearing on an application and the time a certificate is issued.

To assist the commission in its analysis of the economic and technical feasibility of the project, the consulting firm of Van Scoyoc and Wiskup, Public Utility Consultants, Washington, D.C., was retained.

This firm was chosen primarily because of Mr. Wiskup's extensive and special knowledge of pipeline regulation at the federal level. In addition, the firm has previously performed work in Alaska, has an excellent reputation, and as a matter of policy has consistently represented the public interest.

A comprehensive study of project feasibility, markets, shippers, and safety was conducted by the APC with the assistance of its consultant. This in-depth analysis revealed the project to be feasible but that certain terms and conditions attached to the certificate were appropriate to protect the public interest.

In an analysis of this nature, the commission determined it essential to ascertain (AS 42.06.270) that the project was a viable one from an engineering and economic standpoint, that the applicant and its affiliated interest (Gulf Interstate) were fit and able to undertake the project (technically and financially), and that the project would be now and in the future in the public convenience and necessity.

On February 11, 1976, by order of the commission, a certificate was issued and it was formally accepted by Nikiski on February 19.

The significance of this event lies in the fact that the Nikiski project underwent comprehensive public scrutiny prior to the granting of authority to operate. Further, appropriate and reasonable terms and conditions reflecting proper regulation were imposed which, in the long run, the commission believes will protect the public interest and yet preserve an economic environment conducive to the construction and operation of pipelines in this state.

TAPS Audit

At the beginning of 1976, the commission forwarded a letter to Chairman Stafford of the ICC in regard to an audit of Alyeska Pipeline Service Company. Mr. Stafford

directed the ICC's regional auditor from San Francisco to meet with the commission in mid-January. The purpose of the auditor's visit to Alaska was to determine the scope of a financial audit of Alyeska to ensure conformance and compliance with ICC reporting requirements.

This audit is to be conducted in several stages with completion scheduled prior to mid-1977. The Pipeline Commission requested access to reports and information developed from this audit and determinations in this regard are pending from the ICC.

Acquisition of Information

The commission has acquired the complete records of all pipeline carriers currently operating within the state and they are on file with the commission's office. This includes carrier valuations, annual reports, and tariff filings for each year that a carrier operated in the state. In addition, the commission has attempted to accumulate as much literature, legal documents, textbooks, and research studies as is available concerning the history, economics, and operation of pipelines in this country.

1976 FORECAST

Regulations

Special priority in 1976 will be placed on the adoption of substantive regulations. These regulations will address themselves to matters generally dealing with the scheme of economic regulation to be employed by the commission. For rate purposes, this will include the commission's valuation methodology, depreciation guidelines for various classes of property, and treatment of income tax deferrals and credits.

Pursuant to valuation, criteria will be established in respect to property dedicated to common carrier use (including land and rights-of-way) and measures dealing with property out of service or classified by the commission as excess capacity.

These regulations will also stipulate appropriate treatment of carrying charges for property under construction and for interest incurred during construction. Working capital requirements and restrictions will be defined as well as such traditional additions to carrier valuation as administrative and engineering overhead incurred prior to and during construction and before placement of carrier property into service.

As work on this aspect of the regulations progresses, attention will be devoted to additional substantive matters dealing with operating safety, prorationing, retirement, abandonment, connections, and plant extensions and additions.

The emphasis on adoption of these regulations is necessary because the governing statutes do not clearly define how the commission must regulate, but they provide the basic framework within which regulatory policy can evolve wisely over time.

With the existence of common carrier pipelines operating in the state or under construction, and especially those certificated under the "grandfather" provisions of AS 42.06.240, it is imperative and prudent to establish commission regulatory policy as rapidly and comprehensively as possible in a manner conducive to thorough public scrutiny.

This includes public hearings and adequate opportunity for the public and industry to provide comments, criticism, and recommendations. It is the commission's belief that nebulous and arbitrary regulatory practices such as those engendered and perpetuated at the federal level are undesirable and not in the public interest. The commission seeks to avoid any performance where the rules of the game are not known in advance.

Contracts and Studies

To carry out the job of developing regulations and to assist the commission in its difficult task of proper regulation, consulting contracts will be sought to study certain aspects of the economics of pipeline regulation.

These studies will center around various valuation methodologies, financing, accounting treatments, and the effects that functional and physical depreciation play on component service life and on system life in general.

The information derived from these studies will provide valuable insight and perspective in the complex task of ascertaining fair and reasonable rates of pipeline carriers.

Additional study concerning the activities of carriers operating within the state and interstate pipelines in other states will provide necessary background information and data on which to formulate policy of the commission.

Staffing

In terms of staffing requirements, three positions have been identified and recruiting efforts will take place shortly.

The positions are: accountant, economist, and engineer, all of which will be placed in service on a contractual basis initially. The economist position requires a well-rounded person with experience in transportation and marketing. The engineer position will require someone with expertise in the area of mechanical or, preferably, petroleum engineering.

The purpose of retaining permanent staff is that there needs to be a continuing body of knowledge and expertise built up within the commission to accomplish tasks in-house as directed by commission members. It is somewhat inconvenient and expensive to retain special outside expertise for relatively routine undertakings.

Nikiski Pipeline

In November 1976, the Commission anticipates a rate hearing following completion of the Nikiski Alaska Pipeline project. Although the rate setting process involved with Nikiski may not be extensive, the project itself will be closely monitored during and after construction. This is an excellent opportunity for the commission to familiarize itself with the actual construction process, particularly from a cost standpoint. Further, operating safety requirements will consume a portion of the commission's time this year in regard to Nikiski.

Trans-Alaska Pipeline

Public concern has been voiced about the rapidly escallating construction cost on the Trans-Alaska Pipeline.

Because of the enormous investment in this project, there is a legitimate basis for concern insofar as it relates to unwarranted and unreasonable expenditures on behalf of the builders of the pipeline. Unwarranted and unreasonable does not apply to requirements imposed on the builders over which they have no control (i.e., inflation, logistical problems, weather, governmental restrictions, and so on). However, it is logical to assume that owners of the pipeline will wish to recover total system costs through their proposed rates.

Therefore, it is incumbent on this commission to ascertain the proper total system cost for rate purposes, which may or may not coincide with costs presented by owners of the pipeline.

A massive financial audit of Alyeska Pipeline Service Company could reveal items of an excludable cost nature (e.g., fraud, waste, collusion, errors in reporting). However, it is doubtful that the benefits derived would justify the expense and effort necessary to uncover such items.

Rather, an audit undertaken by the commission would be more appropriately oriented toward management. In essence, questions may be raised in reference to costs incurred due to lack of or imprudent management decisions. This could involve failure to initiate cost reduction incentive programs, lack of proper security, improper design, and so forth.

Admittedly, this is a difficult task and perhaps one which would be unproductive. Nevertheless, the commission is considering the prospect of such an audit in cooperation with selected state agencies.

Jurisdiction

One extremely important question which was not fully resolved by the express terms of the Alaska Pipeline Commission Act, or later amendments to it during the special legislative session of 1973, was what are the exact bounds on the commission's legal jurisdiction, if any. From what the commission has been able to ascertain from the legislative proceeding in regard to this matter, it appears that in light of the fact that all aspects of the jurisdictional issue could not be definitively determined (because of the complexity of legal questions involved) at the time of passage of the Act, such questions would be decided later on a case-by-case basis as they arose.

No one, of course, can foresee at this time when, or even if, the commission's jurisdiction will be questioned, nor can anyone presently envision the nature or extent of such a challenge. Even with this situation in existence, which can at best be classified as one of speculation, the commission feels it is essential that it be prepared to defend the state's interest to the utmost in the event such a confrontation is forthcoming.

In an effort to take a strong position in this regard, and one the commission feels was intended by the legislature in 1972 and 1973, the commission has already

taken various preliminary steps to either reduce the likelihood of a challenge to its jurisdiction or to put itself in a posture of readiness in case such a confrontation arises. Some of the preliminary actions taken by the commission include preparing practice and procedural regulations (after affording ample public and industry input) which are as unburdensome to parties dealing with the commission as possible and which it feels are consistent with due process of law. Also, the commission has done some preliminary research into the legal question of jurisdiction on its own and requested an in-depth analysis of the question from the Department of Law. The Department of Law has been working on this project for some time and has assured the commission that its findings would be forthcoming in the immediate future.

Although some progress has been made toward understanding and resolving questions of jurisdiction, the commission nevertheless plans to place more emphasis on this matter in 1976. This is especially true because the commission feels that with the knowledge and experience it has acquired during the previous year, it is now in a far better position to look into and make intelligent decisions with regard to this issue. While the commission cannot presently foresee all the circumstances relative to this problem, it nevertheless plans to take an active role in asserting its jurisdiction when necessary and be prepared to defend its actions to the ultimate degree at any time such a determination is required. Further, the commission strongly believes that it must continue to strive for a more complete knowledge of the jurisdictional question; and in order to accomplish this end, it plans to make an all-out effort to acquire any information and expertise available which would be helpful to the commission and the state in resolving this issue.

Proceedings Before the Federal Government

Since circumstances are continually changing when proceedings are before the ICC (as a result of actions of other parties and decisions issued by federal administrative law judges and appellate opinions emerging from various boards and similar bodies within the ICC decision making structure), it is extremely difficult for the commission to outline, at this point, exactly how, when, and to what extent it will be involved in actions before the ICC. It may be generally stated, however, that the commission intends to keep constant surveillance on any pipeline matters coming before the ICC. This effort will be undertaken by the members of the commission (through their personal contacts

with ICC staff and policy makers), the continued utilization of the ICC watching service, and the continued relationship with the commission's legal counsel for ICC matters located in Washington, D.C.

Looking at the commission's future activities before the ICC on a more specific level, it intends to continue its efforts with regard to Ex Parte No. 308, Valuation of Common Carrier Pipelines, and ICC Docket No. 36244, Charge for Terminalling and Storage, Kenai Pipe Line and No. 36244 (Sub No. 1), Increased Rates on Crude Petroleum, Kenai Pipe Line, until they are resolved.

In summary, the commission will initiate complaints, protests, and other formal actions with the ICC, FPC and any other such agency whenever carriers or their activities are in violation of federal statutes, orders, decrees or, in the judgement of the commission, whenever the activities or rates of such carriers clearly have an adverse impact on or are detrimental to the interests of Alaska.

CONCLUSION

The members of the Alaska Pipeline Commission believe they have taken an agressive and positive stance in carrying out the intent of the Alaska Pipeline Commission Act.

It is firmly believed that the commission can achieve its objectives if given the necessary resources, cooperation, and time. Determinations and policy of the commission are elements which cannot evolve overnight if it is expected that the commission is to continue to maintain credibility and effectiveness. This is particularly true when interfacing with federal agencies, which are notoriously slow and frequently unaware of local concerns.

STEPHEN J. PEARSON
ATTORNEY

ELY, GUESS & RUDD
SUITE A
MENDENHALL BUILDING
JUNEAU, ALASKA 99801

TELEPHONE
(907) 586-3210

Stephen Pearson 2/15/77

Re HB 705

Came into copy
minutes from committee
mtg. and to get
copies of some info in
files re this bill.

file HB205

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

ALASKA PIPELINE COMMISSION

338 DENALI ST./12TH FLOOR
ANCHORAGE 99501

March 26, 1976

The Honorable Terry Gardiner
Chairman, House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Terry:

Thank you for your letter of March 23. I wish to convey to you our appreciation for your continued interest in the Alaska Pipeline Commission, and to emphasize my strong belief in the commission concept and the potential benefit it can render the state and its people.

In answer to your questions regarding the Commission's budget, I will briefly summarize what has happened to date.

For FY-76, the Legislature appropriated $375,100 to the Commission. In September of 1975, the Department of Commerce and Economic Development unilaterally cut $102,600. Following my appointment in October of that year, a portion of those funds presumedly were restored to cover my salary, but we have no documentation to that effect.

In October of 1975, Chairman Werner presented a proposed budget of $376,800 to the Governor's Budget Review Committee. The committee reduced this request to $330,400, and this amount is presently before the legislative finance committees.

Since appearing before your committee and discussing the matter with legislators generally, the Commission feels it essential that its budget request be updated to reflect present and future concerns of both the legislature and administration. For example, if HB 705 and HB 706 are enacted (as well as other pending legislation; i.e., HB 728 or HB 851), and if another full-time commissioner is appointed, various adjustments will have to be made. We have already begun this reassement and will have the figures to you and your colleagues as quickly as possible. We also are working on a statement of goals that the Commission believes are attainable in FY-77 and a plan of action which will both be forth-coming in the immediate future.

Additionally, the Commission would like to receive a transcript of the committee meeting you held on HB 705. I don't know the procedure to follow in this regard, but we hereby authorize Carol Elliott of Action Secretarial Service, 128 Seward St., Juneau (586-1715) to act as our agent for the purpose of having these tapes transcribed. I hope this meets with your approval.

Thank you again, Terry, for your continued interest and concern. I hope we will be able to provide you with further information in the next week or so.

Best regards,

Russell E. Mulder
Commissioner

cc: Carol Elliot

file with members

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

ALASKA PIPELINE COMMISSION

338 DENALI ST./12TH FLOOR
ANCHORAGE 99501

February 23, 1976

Representative Terry Gardiner
Chairman, House Judiciary Committee
Pouch V
Juneau, AK 99811

Dear Mr. Chairman:

Recently two proposed pieces of legislation (HB 705 and HB 706) were introduced which taken either separately or together would have a tremendous impact upon the proper functioning of the Alaska Pipeline Commission and further could have a severe effect upon the ability of this commission to represent the best interests of the state.

As you are well aware, HB 705 has been referred to your committee for consideration. First, the members of this commission would like to impress upon you and your colleagues on the committee that they believe HB 705 (especially when considered in conjunction with HB 706 which was referred to the House committee on commerce and finance) is not only unnecessary proposed legislation but also has the potential of being extremely dangerous to the entire concept embraced in the Alaska Pipeline Commission Act (Ch. 139 SLA 1972 as amended). Enclosed is a brief summary of our comments which hopefully will give you some idea of our thinking. If you would like us to go into further detail, we would be more than happy to do so.

Second, the commission would like to have the opportunity to appear before you and your committee when HB 705 is brought up for consideration in order that the members of the commission could personally give you their views on the bill and adequately answer any questions you might have. If you could offer us this opportunity, we would appreciate it very much.

Sincerely,

Russell E. Mulder
Commissioner

REM:alk

Enclosure

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

TO: APC DATE: 3/10

(~~SENATE~~ HOUSE) BILL 705 and 706

RE: powers of APC

Check One:

1. TOP PRIORITY - in favor of _____
2. FAVOR - in favor of, but not top priority _____
3. OK - no definite stand _____
4. NOT IN FAVOR _____
5. TOP PRIORITY - "Strongly Opposed" X
6. BILL DOES NOT PERTAIN TO DIVISION _____
7. Bill does not directly pertain to division, but I am interested in its progress. Keep me informed. _____

COMMENTS: (Justification must be stated for #1 - #6 above. Continue on another page if needed).

While HB Nos. 705 and 706 must be considered together when weighing the ultimate effect they could have on the state, it is perhaps more helpful if each piece of legislation were discussed separately.

First, HB 705 is considered by the Commission to be a very real threat to the overall concept of having one governmental body (The Alaska Pipeline Commission) responsible for and instrumental in protecting the state's interests in matters of oil and gas pipeline regulation. This legislative intent in enacting the Alaska Pipeline Commission Act (Ch. 139 SLA 1972), which is supported by considerable authoritative testimony on the subject, is readily detected when one considers the broad latitude the legislature gave the Commission for dealing with matters of oil and gas pipeline regulation. Besides being vested with the general responsibility of regulating pipelines, the Commission is also directed to promote and oversee the development of an oil and gas pipeline transportation

(Continued)

Writer's Signature: John L. Werner
Writer's Title: Chairman
(DEADLINE 24 hours)

(Note: Please return to Information Officer/Leg. Asst Office of the Commissioner)

system in the state (see AS 42.06.010 and 42.06.020). Further, and more specifically, the Act claims very extensive jurisdiction for the Commission and also vests in the Commission wide authority to pass upon the validity of tariffs filed by pipeline carriers. These aspects of the Alaska Pipeline Commission Act reveal the obvious intent to keep the various segments of oil and gas pipeline regulation contained in one governmental unit and not distributed among many.

In addition, one can observe from the statutory provisions relating to the makeup of the Commission (AS 42.06.060) and the authority and tools it is given to carry out its duties (AS 42.06.120) that the Commission is presently structured in such a way as to maintain continuity and to gain the knowledge and expertise necessary to function properly in the public interest.

With this background in mind, it is apparent to the Commission that splitting up of functions between the Commission and the Department of Law would only add confusion, interfere with the Commission's policy making functions, make pipeline regulation (including promotion of them) subject to political pressure and manipulation from the executive branch, and weaken the state's credibility and posture before the federal courts and regulatory bodies.

Funds appropriated through HB 706 would be needlessly expended, since much of what is sought through the appropriation has already been accomplished by the Commission, including contracts for the services indicated.

In conclusion, the Commission cannot comprehend the net benefits to be gained by the state in splitting up its legislatively mandated functions with the Department of Law. Under AS 42.06.110, the Department of Law is the Commission's counsel in legal matters arising from the discharge of the Commission's duties and in actions to which it is a party. This is consistent with the process employed by the ATC and PUC.

Terry Gardiner

Box 1092, Ketchikan, Alaska 99901 Pouch V, Juneau, Alaska 99811

March 23, 1976

Russell Mulder
Alaska Pipeline Commission
338 Denali Street/12th Floor
Anchorage, Alaska 99501

Dear Russ,

Although the Judiciary Committee did pass out HB 705 this does mean that we do not have any further interest in the Alaska Pipeline Commission. On the contrary, I think the interest of the Legislature and the Administration in HB 705 is indicative of the concern to see the Commission function as originally envisioned at the time of the passage of the legislation in 1972 and subsequent revisions in 1973.

We are still interested in receiving the budgetary information that we requested. We intend to make some recommendations to the House Finance Committee to insure that there is adequate funding to allow the Alaska Pipeline Commission to function properly. Any additional information that you may have at this time in terms of budgetary requests that were not submitted to the Governor's budget review committee would also be appreciated.

Sincerely,

_____
Terry Gardiner

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT

ALASKA PIPELINE COMMISSION

338 DENALI ST./12TH FLOOR
ANCHORAGE 99501

March 17, 1976

The Honorable Terry Gardiner
Chairman, House Judiciary Committee
Alaska State Legislature
Pouch V, State Capital
Juneau, AK 99811

Dear Terry:

This morning I heard from Juneau that last night your committee acted on HB 705 with everyone recommending it "do pass" except Eliason and Specking who were not present. Also, as I understand it, AS 42.06.230 was amended by deleting "exclusively" in regard to the commission's jurisdiction (necessary for consistency).

If I had not spent so many years working with the legislative process, I guess I would say I was surprised or even stunned by your committee's action last night. However, after going through my confirmation hearing before the joint House and Senate Resources Committee and discussing the entire matter with as many legislators as possible, I believe I understand the prevailing sentiment of both the legislature and the administration. In light of all this, my bewilderment has lessened substantially. It is naturally disappointing to know that our arguments against HB 705 and HB 706 were obviously not persuasive but nevertheless John Werner and I appreciate the fact that you and your committee at least gave us the opportunity to try.

In view of what transpired with your committee last night, do you still want us to compile the budgetary information you requested when we appeared before you? It seems to be a moot question now, but if you still desire it, please let us know.

Again, thank you for asking us down to testify and for taking the time to let us present our side of the story. Both Commissioner Werner and I wish to thank you for your courtesy.

Personally Terry, it was good seeing and talking with you again, and I hope you the best for the remainder of the session.

Best regards,

Russell E. Mulder
Commissioner

HB 705 – Pipeline Commission
HB 706 appropriates 100,000
Pipeline Tariff – subtracted from refinery price to give wellhead value

1972 PASSED
1973
1974
1975
1976

Oil Companies will move profit margin Nole into pipeline

– Need Aggressive Action from Commission –

APC should represent us before ICC

	FY 1975	FY 76	FY 77
	282,000	295,000	330,000
Actual	94,200		

Obtained contractual Monies
Annual Report submitted this year
1. Have requested ICC Audits
2. Considering Management II

Free Conference in 1975 – $100,000 for professional fees - legal counsel for rate hearings

Charles Parker – Payed $ on hourly basis
Dec 74 – Russ filled Marty Ferrell's part time
Oct 75 became full time

Admin Ass
Contractual Services
Legal Counsel – Donald, Cleary, Caldwell D.C.
I.C.C. 2 proceeding before I.C.C.

Feb 15

When Warner Appointed ? April 74
-Why only 94,200 spent ?

~~Did you see~~

Are you satisfied with operations of APC ?
If you're not what have you requested in changes?

(1) Need 3rd full time Commissioner

Delay of Regulations - Contract through Gov office
6 Mo.) to get Regulations approved

Operation Expenses }
Capital Expenses }

ICC will probably accept Aleyeska figures on Construction/Management Costs unless somebody protests

Receive Quarterly Reports from Aleyeska Now

Get ~~ICC~~ Aleyeska annual financial audit
ICC Audit will be completed in one year

Are going to let contract for pipeline Model

HB
713

"An Act relating to the student regent on the Board of Regents of the University of Alaska; effective date."

COMMITTEE REPORT

2/27/76

HOUSE

Mr. Speaker: Date March 30, 1976

The Committee on JUDICIARY has had HB 713 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(✓) recommends it BE REPLACED WITH CS FOR HB 713 AND THAT CS FOR HB 713 DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Parr
Cohen
Brown

Members NOT concurring in the Majority report:

Terry Gardiner recommends: No REC

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Terry Gardiner Chairman

3/30 Milton

Introduced: 2/10/76
Referred: Select Committee on Education and Judiciary

IN THE HOUSE

BY PARR, MILLER, OSTROSKY AND SULLIVAN

HOUSE BILL NO. 713

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the student regent on the Board of Regents of the University of Alaska; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASK :

* Section 1. AS 14.40.~~130~~ 130 OK is amended by adding a new subsection to read:

(b) In addition to satisfying the requirements of (a) of this section, the student regent appointed under sec. 150(b) of this chapter must

(1) have attended the University of Alaska as a full-time student for at least one academic year before appointment; and

(2) be enrolled as a full-time student at the University of Alaska at the time of appointment.

(c) Failure of the student regent appointed under sec. 150(b) of this chapter to remain enrolled as a full-time student, exclusive of summer session at the University of Alaska during his term results in forfeiture of that office. The forfeiture occurs upon certification by the registrar that the student regent is no longer a full-time student. The governor shall appoint a successor from among the list of nominees submitted to him under sec. 150(b) of this chapter at the time of original appointment.

(d) For purposes of this section, "full-time student" means

(1) a person who ~~has been enrolled for an academic year and who~~ is enrolled in courses at the University of Alaska equal to 12 academic credit hours or the equivalent of 12 academic credit hours in career education, including but not limited to vocational and technical programs, or

(2) a person who is enrolled in graduate courses at the University of Alaska equal to nine graduate academic credit hours.

* Sec. 2. AS 14.40.150(b) is repealed and re-enacted to read:

(b) At least one member of the Board of Regents must be a student. The student regent shall be appointed from a list of nominees submitted to the governor. The list shall consist of the names of two students from each campus of the University of Alaska after an election is held at each campus. Elections shall be conducted under rules established by the Governor's Commission on the Involvement of Young People in Government (AS 44.19.777 - 44.19.787). The term of office of a student regent is two years.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.10.-070(c).

HB
722

File with Members

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL
POUCH K — STATE CAPITOL
JUNEAU 99811

February 19, 1976

Terry Gardiner, Chairman
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: House Bill No. 722, "An act relating to consumer protection."

Dear Terry:

I would like to express my very strong support for House Bill No. 722 which would amend AS 45.50.531(b) of the Unfair Trade Practices and Consumer Protection Act by deleting that language which requires the Attorney General's approval prior to the bringing of a class action suit by private plaintiffs. I have for some time been troubled by the implications of having such a reviewing function entrusted to this office, and I have concluded that the section as it presently reads raises a number of serious constitutional questions.

First, AS 45.50.531(b), in effect, amends Alaska Rule of Civil Procedure 23 which sets forth the factors to be considered by a court in determining the propriety of bringing a class action by giving the Attorney General the opportunity to make a nearly identical determination prior to the litigant's filing of the class action complaint in court. Article IV, § 15 of the Alaska Constitution grants the Supreme Court the exclusive power to promulgate rules "governing practice and procedure in civil and criminal cases in all courts," and the rules so promulgated may be changed by the legislature only "by two-thirds vote of the members elected to each house." To avoid the disruptive effect of inadvertent or unintentional changes by the legislature in the judiciary's rules of procedure, the Alaska Supreme Court has consistently interpreted this constitutional provision as requiring an express statement in the bill itself that it is the legislature's purpose to effect such a change. Leege v. Martin, 379 P.2d 447 (Alaska 1963); City of Valdez v. Valdez Development Company, 506 P.2d 1279 (Alaska 1973). In the case of AS 45.50.531(b), there was no such express declaration of legislative intent contained in either the bill itself nor can such a purpose be gleaned from its scant history. The "Judiciary Committee Report on HCSCS for Senate Bill No. 352," House Journal, Sixth Legislature, 2nd Sess. (Supp. No. 10 to March 31, 1970) contains the only

passage dealing directly with the class action limitation, and it makes no mention of an intent to alter an established rule of the court. Thus, I fear the portion of AS 45.50.531(b) which requires a litigant to obtain my approval to bring a class action may be in violation of Art. IV, § 15 of our State constitution.

In addition, there may well be certain separation of powers questions raised by the Act since the Attorney General's authority to disapprove of the institution of a particular class action would in effect supersede the court's authority to make its own determination on the validity of the class litigation. Interposing the Attorney General's discretion between a private litigant and his access to the court may also present due process difficulties especially in cases where the suit is brought against a state agency.

In view of my concerns relating to the constitutional soundness of the relevant portions of AS 45.50.531(b), I am in full agreement with those that seek their deletion. Furthermore, the loss of this approval authority in no way diminishes or affects the ability of the Attorney General to enforce the substantive provisions of the Unfair Trade Practices and Consumer Protection Act. Whether the named plaintiffs adequately represent the rights of the class or whether the nature of the injury suffered by the members of the class is appropriate for the invocation of the class action procedure are questions more properly left to the courts to determine in the light of the criteria set forth in Civil Rule 23.

Very truly yours,

Avrum M. Gross
Attorney General

AMG:chp

cc: Representative Bill Parker

LAW OFFICES OF

ALASKA LEGAL SERVICES CORPORATION

315 FIFTH STREET, SUITE 8

JUNEAU, ALASKA 99801

TELEPHONE 586-6xxx6425

MEMORANDUM

TO: Representative Terry Gardiner,
House Judiciary Committee

FROM: Donald E. Clocksin

RE: House Bill 772, "An Act Relating to Consumer Protection"

DATE: February 19, 1976

This memorandum is to support House Bill 772.

1. Present Law.

Under the present law, a private citizen who is injured by a violation of the Unlawful Trade Practices and Consumer Protection Act (A.S. 45.50.471 et seq.) may bring a lawsuit to recover actual damages or $200, whichever is greater. However, if similar injury has been caused to a number of people by the same illegal act, the lawsuit may not be brought on behalf of all of them until a) the Attorney General has approved the suit, and b) a bond of $5,000 or more has been filed.

2. Effect of The Bill.

House Bill 772 would eliminate the two requirements (approval and the bond) and leave it to the courts under existing law and court rules whether the lawsuit may be brought.

3. Why the Bill Was Filed.

A. The requirements of a prior Attorney General approval and the mandatory minimum bond are probably unconstitutional.

The requirement that the Attorney General approve the class amends Civil Rule 23. That rule sets out the procedure for bringing class actions. However,

there is no evidence by vote or otherwise that the sixth Legislature intended to amend Civil Rule 23. See - Judiciary Committee Report on HCSCSSB 352, House Journal, March 31, 1970 (Supplement 10), Sixth Legislature, Second Session. Therefore, the requirement violates Article IV, Section 15 of the Alaska Constitution which requires a two-thirds vote to amend a court rule of practice or procedure. No such vote occurred. The Attorney General agrees that the requirement of approval is of questionable constitutionality.

The requirement of filing a minimum $5,000 bond is probably unconstitutional because it bars the right of many litigants to assert their rights in court. Boddie v. Connecticut, 401 U.S. 371 (1971) held that it was a denial of due process for a state to deprive an indigent from getting a divorce by imposing a prohibitively high filing fee. See also Bush v. Reid, 516 P.2d 1215 (Alaska 1973) where denying a parolee access to courts was ruled to be in violation of the state and federal constitutions. To deny people similarly injured the right to be a part of a class action by requiring an arbitrarily high bond is also probably unconstitutional.

B. Whether or not the conditions are unconstitutional, they are unfair. Many people who have been injured by unfair and deceptive practices will not have a remedy unless class actions are allowed. Such actions will not be filed if the person or persons representing the class must get approval and file a bond of at least $5,000. That bond will usually exceed the amount those representatives will eventually recover and will discourage them before they begin.

cc: Representative Parker
pp

HB
723

LAW OFFICES OF

ALASKA LEGAL SERVICES CORPORATION

315 FIFTH STREET, SUITE 8

JUNEAU, ALASKA 99801

TELEPHONE 586-6425

MEMORANDUM

TO: Representative Gardiner
House Judiciary Committee

FROM: Donald E. Clocksin DEC

RE: House Bill 723 - "Residential Homestead Exemption"

DATE: February 19, 1976

---

1. Present Law.

Presently, if a family gets a court judgment against them, there are procedures for the one winning the judgment for taking some of the loser's property and wages to pay off the judgment. However, there are certain exemptions for property which cannot be taken to pay a debt. One exemption, in A.S. 09.35.090, exempts the homestead of the debtor, defined as the "actual abode" of the debtor.

However, the exemption is only $12,000 for a house and $8,000 for a mobile home. If the actual value exceeds that amount, the home can be sold to pay the debt. The excess over $12,000 or $8,000 goes to the creditor.

2. What the Bill Would Do.

House Bill 723 would increase the exemptions to $25,000 and $15,000, respectively. Only if the house or mobile home exceeded those values could it be sold to pay a creditor.

3. Why the Bill.

The amounts presently in A.S. 09.35.090 are ridiculously low. The statute was adopted 14 years ago and amended four years ago to increase the exemption for homes from $8,000 to $12,000 and to create the separate exemption for mobile homes. According to the 1970 census data, owner-occupied homes in Alaska with all plumbing facilities had a median value of $28,200. 1970 Census of Housing, Volume 1, Part 3 (Alaska), page 10, U.S. Department of Commerce (June, 1972).

The result of having a low exemption is obvious. Even

though the intent of the law is to avoid having a family put out of their home, debt could force a sale of any home exceeding $12,000 in value. According to six-year-old census figures, 86% of all owner-occupied homes could be sold to pay debts, despite the statutory exemption. With the bill, 41% could be sold.

The census data does not reveal the median value of mobile homes. However, the $8,000 exemption is surely inadequate.

4. Amendments.

Even the new $25,000 and $15,000 values are likely inadequate for 1976 and beyond. If the committee agrees, I recommend amending the bill to increase them to $30,000 and $20,000 respectively.

cc: Representative Parker
pp

HB

738

"An Act making a supplemental appropriation to the Department of Law for miscellaneous court awards; and providing for an effective date."

COMMITTEE REPORT

2/11/76 HOUS FINANCE

Mr. Speaker: Date Feb 19, 1976

JUDICIARY

The Committee on _____ has had HB 738

under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

[illegible]	Do Pass	
[illegible]	[illegible]	
[illegible]	[illegible]	

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

[illegible] Chairman

House Judiciary Committee
February 19, 1976

The meeting was called to order by Chairman Gardiner at 7:00 p.m. Members present were Brown, Cotten, Bradley, Parr, Gardiner and Specking.

HJR 45 GUN CONTROL HJR 45

Mr. Swanson stated that Alaska is different from other states. We need guns for survival, not quite like Chicago.

Mr. Brown moved that Mr. Swanson's amendment changing the Be It Resolved clause be changed somewhat. It was agreed upon. Mr. Cotten moved that the amendment be adopted. There being no objection, it was adopted and will be incorporated in a CS.

Mr. Brown moved CS HJR 45 out of committee. There being no objection, it was done.

HB 738 MISCELLANEOUS COURT AWARDS HB 738

Rick Counsel of the AG's office was here to explain that this appropriation was to pay back court costs arising out of attorney's fees, judgments against the state and interest on these for six cases.

Mr. Cotten moved HB 738 out of committee. There being no objection, it was done.

SB 296 am INTEGRATED BAR ACT SB 296 am

Mr. Bill Barrier of LAA.

This bill is detrimental to the agency and the Legislature. We are here dealing with a highly specialized kind of law. The work done here gets plenty of scrutiny, and we have only one client, the Legislature. Therefore this bill accomplished no public purpose. If imposed it would cause serious career problems for those working for the agency as they are not defined as practicing law. It would also cut down on the caliber of people the agency will be able to attract.

Mr. Allen Compton, Counsel for the Alaska Bar Association.

Page 3, line 24: It should be clear to whom in the Legislature these reports should be directed.

Page 3, line 25: Some matters are confidential by court rule, therefore cannot be included in above report.

02-001B (REV. 08-73)

AP

MEMORANDUM State of Alaska

TO: Frances Ulmer
Legislative Assistant
Governor's Office

DATE: February 13, 1976

FILE NO:

TELEPHONE NO:

FROM: Avrum M. Gross
Attorney General

SUBJECT: HB 738 (supplemental appropriation to Department of Law

As you requested, here are some quick comments on this bill. It is quite important that it be enacted very soon — like within a week.

One of the cases for which this bill would appropriate money for court costs and attorney fees is one in which we are being threatened with litigation on the issue of interest on this kind of award. Typically, when this kind of award is made and there is some delay in paying it due to lack of appropriated funds, we are able to dissuade the attorneys on the other side from pressing the interest matter. However, we are now confronted with one who says he will litigate it if he is not paid almost immediately. If he should win on the point, then a precedent would be established and other attorneys would be encouraged to press for interest on awards of court costs and attorney fees. Over the years this would amount to many thousands of dollars.

AMG:md:AHP

int 9 30 070

February 6, 1976

M E M O R A N D U M

TO: The Honorable Jay S. Hammond
Governor

FROM: Avrum M. Gross
Attorney General

RE: Attached supplemental appropriation to
Department of Law

Attached is a supplemental appropriation bill, requested by this department and approved by the Budget Review Committee, to pay miscellaneous court awards. Also attached is Wil Condon's January 23 memo to Kent Dawson, explaining the request in more detail. Here is a draft transmittal letter:

D R A F T

In accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill making a supplemental appropriation to the Department of Law to pay miscellaneous court awards. Decisions in five cases have resulted in state obligations as follows:

United States v. Alaska	$10,426.00
State of Alaska v. Pankratz	5,872.67
Abrams, et al. v. State, et al.	5,082.00
Park v. Lowell Thomas	751.83
Douglas v. Williamson	1,000.00

Another case, Stevens et al. v. McGinnis et al., has been decided by the Alaska Supreme Court, but the final award of costs has not yet been made. We estimate that it will be $12,800.

Sincerely,

Jay S. Hammond
Governor

AMG:md:AHP

STATE of ALASKA

MEMORANDUM

4A

TO:

V. Kent Dawson
Director
Division of Budget
& Management
Department of Administration

DATE : January 23, 1976

FROM: Wilson L. Condon
Deputy Attorney General

SUBJECT: Supplemental Appropriation - Legal Fees and Court Costs

The following judgment for costs and attorney's fees have been entered against the State. The Department of Law does not have sufficient funds to pay these judgments and therefore we request that supplemental appropriations be sought to cover these amounts.

1.	United States v. Alaska	$10,426.00
2.	State of Alaska v. Pankratz	5,872.67
3.	Abrams, et al. v. State, et al.	5,082.00
4.	Park v. Lowell Thomas	751.83
5.	Douglas v. Williamson	1,000.00

1. In the case of the United States v. Alaska, the dispute centered on ownership of Lower Cook Inlet. The federal government prevailed and has been awarded the costs set forth above by the United States Supreme Court.

2. In the case of Pankratz, the dispute centered on who owned a gravel bar in the Chena River directly contiguous to an island owned by Pankratz. The State filed a lawsuit to support its contention that the gravel bar was state-owned. Pankratz prevailed in the Supreme Court and has been awarded costs and attorney's fees.

3. In Abrams, the dispute concerned the constitutionality of ch. 145, SLA 1974 which concerned the Eagle River-Chugiak Borough. Abrams prevailed in the case and was awarded court costs and attorney's fees.

4. The Park case was brought when Daiil Park was denied the issuance of a notary seal because he was an alien. Park prevailed and portions of AS 44.50.020 were found unconstitutional. He was awarded costs and attorney's fees of $751.83.

5. The Douglas case concerned the validity of certain emergency regulations reducing the kinds of drugs available under the General Relief Medical Program of the Department of Health and Social Services. The regulations were determined to be invalid due to the lack of any emergency and plaintiff was awarded $1,000 in costs and attorney's fees.

Another award of costs and attorney's fees for which we certainly will have to seek funds was granted in the case of Stevens, et al v. McGinnis, et al. This case, which dealt with procedures in correctional institutions and prisoners' rights, was recently decided by our Supreme Court. The final award of costs has not yet been made; we estimate it will be $12,800. To keep supplemental requests to a minimum, we suggest that you may want to request the $12,800 for this case at this time also.

If any further information is needed, please notify the Department of Law at 465-3600.

WLC:jeh

MEMORANDUM State of Alaska

TO: Art Peterson, Assistant A.G.
Dept of Law

Do not type

DATE

FROM: ASW, Chairman
BRC

SUBJECT: Supplemental appropriation / Legal fees & court awards; Dept of Law

The Governor's Budget Review Committee has approved the request by the Department of Law ~~for a~~ to request a supplemental appropriation in the amount of $35,900 to pay various court awards as itemized in the attached memorandum. Please draft appropriate legislation to be submitted ~~[illegible]~~ by the Governor.

0.*↑

0.*↑

1,042,600.+
587,267.+
508,200.+
75,183.+
100,000.+
2,313,250.*↑

2,313,250.+
1,280,000.+
3593,250.*↑

02-001

Kent -

5.0 was appropriated for FY 76 of which 4.0 remained on 12/31. Condon says he knows of another 1.0 which will have to be spent and wants to save the other 3.0 for other small awards which he thinks they will have to pay before year end; rather than applying it to the listed claims. You will need to call a BRC meeting

BUDGET AND MANAGEMENT ROUTE SLIP

IMMEDIATE ACTION

DATE: _____

TO:	FROM:	ACTION:
( ) Director	____	( ) Review & Advise
( ) Deputy Director	____	( ) Prepare Reply
( ) Fiscal Analyst	____	( ) Initial & Return
( ) Judy	____	( ) Approval
( ) _____	____	( ) Signature
( ) _____	____	( ) Sign & Process
( ) _____	____	( ) Per Your Request
( ) _____	____	( ) Necessary Action
( ) _____	____	( ) Your Information
( ) Secretary	____	( ) File
( ) Typist _____	____	( ) Contact Me
( ) _____	____	( ) Type Please

****

REMARKS: _____

arrange with Karl to get BRC approval of this then draft memo to Art Peterson requesting

02-306 (Rev. 1/72)

HB

775

"An Act relating to criminal escapes from custody or confinement."

COMMITTEE REPORT

2/13/76

HOUSE

Mr. Speaker: Date [illegible]

The Committee on JUDICIARY has had HB 775 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(✓) recommends it BE REPLACED WITH CS FOR HB 775 AND THAT CS FOR HB 775 DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

[illegible]	[illegible]	
[illegible]	[illegible]	

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

[illegible] Chairman

File 775

April 22, 1976

Rules Committee
House of Representatives
Alaska State Legislature
Ninth Legislature, Second Session
Pouch Y
Juneau, Alaska 99811

Dear Sirs:

The Legislative Affairs Committee of the Tanana Valley Bar Association at Fairbanks has reviewed the committee substitute for House Bill 775 and would like to compliment you for what appears to us to be a substantial and excellent revision of the old original House Bill 775. It appears that our original comments on 775 was remembered in the more recent revision of the bill.

Although our committee agrees in the definitions of escape and unlawful evasion and the breakdown to first, second, and third degree thereof, we do not agree completely with the penalty provisions.

Section 11.30.095F (2) provides for mandatory minimum imprisonment term without discretion by the court to suspend or grant probation or parole. Subsection (g) then provides that such sentence must be consecutive to existing sentences. Although our committee, by majority vote, agreed with the provision for consecutive sentences, as provided for in (g), we unanimously opposed subsection 2 requiring minimum imprisonment and depriving the court of discretion to suspend all or part of that term.

Our committee has uniformly gone on record as opposing legislation taking discretion in sentencing away from the judges. It is the feeling of all of our members that it is a bad precedent to deprive the court of any discretion within the area of sentencing. We feel that each individual case should be evaluated on its own merits.

Again we compliment you on your revision of House Bill 775 and would have only a single objection, above voiced, to the bill as it now appears in your committee substitute as offered on April 9, 1976.

Sincerely,

Stephen R. Cline
Member - T.V.B.A. Legislative Affairs Committee

SRC:mb

cc: Mike Bradner
Fred Brown
Steve Cowper
Terry Gardiner
Glenn Hackney
Charles Parr
Tim Wallis
John Butrovich
John Huber
Terry Miller
John Sackett
Edward Willis
Robert Ziegler
Brian Shortell

Dear Terry:

I notice that SB 479 is in Senate Rules and HB 775 is in House Rules. Commissioner Burton, when asked to comment on both, had some interesting suggestions which I'd like to share with you.

Fran

02-001B

STATE
of ALASKA

MEMORANDUM

TO: Fran Ulmer, Legislative Assistant
Office of the Governor

DATE : March 8, 1976

FROM: Richard L. Burton, Commissioner
Department of Public Safety

SUBJECT: HB-775 and SSSB 479

HB 775 and SB 479 each have merit. By combining the better parts of each, a stronger bill would be enacted.

SB 479 includes the desired "or from a corrections officer". However, to eliminate legal argument it should be inserted between "under lawful arrest" and "from a jail or institution". This would eliminate the argument that in order to escape "from a correctional officer" the escapee must be in a jail or institution.

While SB 479 proposes the same penalty for escape after "arrest" as escape after "conviction", HB 775 changes only the penalty for escape after conviction.

HB 775 eliminates a loophole by amending AS 33.30.150 with wording that is identical to that already in 33.30.250 and 33.30.260.

HB 775 also includes 33.30.150, 33.30.250 and 33.30.260 under the mandatory penalty clause.

SB 479 adds "escape from custody or confinement" to the crimes (murder and rape) when the court may not prescribe less than minimum penalty. This is AS 11.05.150. Although one method of correcting this statute is piecemeal, a preferable method would be to repeal it. It is now used to completely subvert the intent of the legislature after that body sets minimum penalties. The courts already have suspended sentences, probation, and deferred imposition on sentence when they want to turn someone loose. With 11.05.150 on the books, legislative intent to toughen penalties by fixing minimum sentences is completely meaningless, except that it remains an insult to the intelligence of the legislative body as a whole.

AS 11.05.150 says in effect that any time any judge disagrees with a statute enacted by sixty elected representatives, he may completely disregard it.

The personal opinion and philosophy of one person therefore replaces that of the legislature.

SB-579 and HB 775 combined are attached.

Form 01-006

STATE OF ALASKA
OFFICE OF THE GOVERNOR

TO: Department of

[ ] Administration
[ ] Commerce & Econ. Develop.
[ ] Community & Regional Aff.

[ ] Education
[ ] Env. Conservation
[ ] Fish and Game
[ ] Health & Social Svcs.
[ ] Highways
[ ] Labor
[ ] Law
[ ] Military Affairs
[ ] Natural Resources
[x] Public Safety
[ ] Public Works
[ ] Revenue

ATTN: Richard Burton

[ ] Return letter w/draft
[ ] Return letter w/comment
[ ] Reply direct
[ ] Your information
[ ] Call me
[ ] Appropriate action
[ ] As requested
[ ] _____

REMARKS:

Please comment on
HB 775 & SSSB 479

From: Fran Ulmer Date: 5/19

Introduced: 2/13/76
Referred: Judiciary

IN THE SENATE BY ORSINI

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 479 + HB 775 Combined

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act providing for a mandatory penalty for escape from custody or confinement."

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

* Section 1. AS 11.30.090 is amended to read:

Sec. 11.30.090. ESCAPE FROM CUSTODY OR CONFINEMENT. A person who escapes or attempts to escape from the custody of a peace officer under a lawful arrest, or from a jail or institution in which he is detained by a peace officer or a corrections officer or confined by direction of a court in this state, or from custody under process issued by a court in this state is punishable,

(1) if the custody or confinement is by an arrest on a charge of a felony, or conviction of a felony, by imprisonment for not less than one year nor more than three years, to commence at the expiration of the terms limited by previous judgments on conviction for crime, if any; the imposition or execution of the minimum imprisonment provided in this section shall not be suspended and probation or parole shall not be granted until the minimum imprisonment provided in this section for the offense is served [BY A FINE OF NOT MORE THAN $5,000, OR BY IMPRISONMENT FOR NOT LESS THAN ONE YEAR NOR MORE THAN THREE YEARS, OR BY BOTH]; or

(2) if the custody or confinement is for extradition, or by an arrest, or charge of, or conviction of a misdemeanor, by a fine of not more than $1,000, or imprisonment for not more than one year, or by both.

* (3) if the escape is by a prisoner exercising privileges under AS 33.30.150, 33.30.250 or 33.30.260, by imprisonment for not less than one year nor more than three years. Imposition or execution of sentence shall not be suspended and probation or parole shall not be granted until the minimum imprisonment provided in this paragraph is served.

* Sec. 2. AS 33.30.150 is amended to read:

* Sec. 33.30.150. VISITATION PRIVILEGES. An honor prisoner with good behavior serving a sentence of one year or more may be permitted as a privilege and not as a right to visit with his family at a place other than his place of confinement and at his own expense for a period not exceeding one week nor more frequently than once each six months under rules and regulations adopted by the commissioner and in his sole discretion. The wilful failure of a prisoner to return to the place of confinement not later than the expiration of a period during which he is authorized to be away from the place of confinement under this section, is an escape from the place of confinement and is punishable under the laws relating to escape.

* Sec. 3. AS 11.05.150 is amended to read:

Sec. 11.05.150. IMPOSING LESS THAN PRESCRIBED PENALTY. Except in a case of murder, escape from custody or confinement, or rape, the court may, upon conviction, when in its opinion the facts and circumstances make the minimum penalty provided in this title manifestly too severe, impose a lesser penalty, either of a fine or imprisonment or both. When less than the minimum penalty is imposed, the court shall set out the reasons for its action on the record in the case.

JOHN E. HAVELOCK, Director

(907) 272-5522

File
HB775

UNIVERSITY OF ALASKA
CRIMINAL JUSTICE CENTER
3211 PROVIDENCE AVENUE
ANCHORAGE, ALASKA 99504

TO: House Judiciary Committee

FROM: Criminal Justice Center

SUBJECT: HB 775 and CS For HB 775.

DATE: March 19, 1976

PROBLEMS ASSOCIATED WITH EXISTING AS 11.30.090

1. It provides no legislative defintion of escape. Court decisions (Richards v. State, 451 P2d 359 (1969), and Alex v. State, 484 P2d 677 (1971).) have filled this gap, although not entirely in a satisfactory manner, for escapes from confinement but not for escapes from custody.

2. It deals with all forms of escape - from custody or confinement, by felons or misdemeanants, before conviction or after, attempted or successful - in the same section. While it distinguishes between felons and misdemeanants in so far as punishment is concerned, it makes no other distinctions as to the circumstances of the at empt or of the escape, nor does it effectively permit real distinctions to be made among individual defendants.

3. It does not deal with all instances where a person in confinement fails to return after exercising lawful leave privileges, e.g., 33.30.150.

4. It does not appear to apply to escapes or attempted escapes by juveniles.

5. It may be that a person who escapes from the custody of a corrections official (not from a jail, institution, etc.) does not, under a strict legal interpretation of the statute, commit a crime. Corrections officials are not peace officers - either under the definition provided in 11.30.100(1), or under the definition in AS 01.10.060, unless one could reasonably construe 11.30.100(1)(b) to cover them.

6. It is interesting to note that while any other crime committed in connection with an escape or attempted escape can be

prosecuted separately, Chapter 30 of Title 11 in two sections - 11.30.050 and 11.30.070 - creates distinct assault offenses involving those who aid in escapes. No similar distinctions are made for those who do escape, or attempt to escape. In fact, the punishment upon conviction of either 11.30.050 or 070 is greater than the punishment for escape. Obviously, it is good public policy to try to deter individuals from aiding in escapes by engaging in assaultive behavior, but should we not treat those who escape alone in a similar fashion?

PROBLEMS ASSOCIATED WITH CS FOR HB 775

1. It does not adequately deal with objections (1) (2) (4) (5) and (6) to the existing statute. Our revision answers these objections.

2. AS 11.30.090(a)(4), as proposed, may be unconstituional because it imposes the same penalties on misdemeanants as on felons, but, in any event, it is bad public policy because it does not distinguish between individual circumstances in any case. For example, the felon with 15 years left on a sentence and the misdemeanant with 15 days are treated identically. Moreover, because misdemeanants and felons are lumped together, the lowest denominator (misdemeanants) controls the upwards bounds of the punishment range. The (a)(4) may not present a deterent to a felon, unless he has two years of less to run on his original sentence. Our revision answers this objection.

3. If the proposed revision was enacted all escapes from leave would require a proof of "wilful"ness, but any other escape would just require proof of general intent (as defined in Alex, supra.). The "intent" element should be consistent throughout. Under our revision a future Alex would be vindicated if the jury believed his story - that he had no intent to escape, was an amnesia victim, fell off a truct, etc.. This would appear to be a more just result which is probably why the test of wilful is used everywhere else.

4. CS for HB775 does not deal with an offender who has been convicted but not sentenced on a felony (or misdemeanor) in terms of requiring consecutive sentences. (see AS 11.30.090(c) as proposed, which uses "then existing sentences".) Our revision so provides. (see 11.30.095 (g).)

CHANGES IN CS FOR HB 775 WHICH SHOULD BE NOTED

1. Escape has been separated from failure to return from leave.

2. Three degrees of escape have been established.

3. A new section, UNLAWFUL EVASION, deals with failure to return from leaves.

4. Possession of a deadly weapon while on escape or unlawful evasion is made a crime. This remedies a gap in the law whereby a person who had never been convicted, but escaped after arrest, could legally possess a deadly weapon.

5. Penalties are separted from the substantive definitions of

escape and unlawful evasion and are now provided for in a new section, 11.30.095.

6. Fines have been dropped from the penalties.

7. With the exception of extradition - which now carries a penalty of not less than one year nor more than five - escapes under 11.30.090(a)(2) of CS for HB 775, now carry a penalty of not less than three months nor more than one year. The three month provision is an addition.

8.As previously stated, penalties for failure to return from leaves (unlawful evasions) have been distinguished for felons and misdemeanants to overcome constitutional objections. (see 11.30.095 (d) and (e).)

9. The language concerning minimum sentence authority and limitations in 11.30.095(f) is based on AS 28.35.030. It has the same force and effect as section (b) of CS for HB 775, except that 11.30.095(h) provides an incentive to those who escape or commit unlawful evasions to <u>voluntarily</u> turn themselves in by eliminating the mandatory minimum sentence provisions. However, a judge may still impose a heavy sentence in such cases if the circumstances warrant the same.

10. Section 3 of our revision provides an amendment to AS 11.30.100 by eliminating the existing defintions and substituting a single definition of "official detention" which should solve all definitional problems. (see objections (1), (4) and (5) to exisiting AS 11.30.090.)

For an Act Entitled: "An Act relating to unlawful absence from custody or confinement"

* Section 1. AS 11.30.090 is repealed and reenacted to read:

Sec. 11.30.090 ESCAPE.

(a) A person commits an escape if without lawful authority he
(1) wilfully removes himself from official detention, or
(2) commits an unlawful evasion under 093 of this chapter and leaves or attempts to leave the state.

(b) An offense charged under (a) of this section is punishable as an escape in the first degree if
(1) the official detention is on a charge of a felony;
(2) the official detention is for extradition; or
(3) the person, during the escape or at any time prior to his being restored to official detention, has in his posession a deadly weapon.

(c) An attempt to escape under paragraph (a)(1) of this section which under paragraph (b)(1)(2,(3) of this section is an escape in the first degree is punishable as an escape in the second degree.

(d) Any other escape or attempted escape is punishable as an escape in the third degree.

* Sec 2. AS 11.30 is amended by adding new sections to read:

Sec. 11.30.093 UNLAWFUL EVASION.

(a) A person commits an unlawful evasion if he wilfully fails to return to official detention as defined in section 100 of this chapter following temporary leave granted for a specific purpose or limited period including, but not limited to privileges granted under AS 33.30.150, 33.30.250 or 33.30.260.

(b) An offense charged under (a) of this section is punishable as an unlawful evasion in the first degree if the official detention is on a charge of a felony.

(c) An offense charged under (a) of this section is punishable in the same manner as an escape in the first degree if the person during the time of unlawful evasion or at any time prior to his being restored to official detention has in his possession a deadly weapon.

(d) Any other offense under this seccion is punishable as an unlawful evasion in the second degree.

Sec. 11.30.095 PENALTIES FOR ESCAPE AND UNLAWFUL EVASION.

(a) A person convicted of escape in the first degree shall be sentenced to a specified term of not less than one year nor more than five years.

(b) A person who is convicted of escape in the second degree shall be sentenced to a specified term of not less than six months nor more than two years.

(c) A person who is convicted of escape in the third degree shall be sentenced to a specified term of not less than three months nor more than one year.

(d) A person who is convicted of unlawful evasion in the first degree shall be sentenced to a specified term of not less than three months nor more than one year.

(e) A person who is convicted of unlawful evasion in the second degree shall be sentenced to a specified term of not less than thirty days nor more than one year.

(f)(1) When satisfied that the ends of justice and the best interests of the public as well as the defendant will be served thereby, the court may suspend the imposition or execution of a portion of the sentence greater than the minimum sentence authorized under this section, and place the defendant on probation.

(2) However, the execution of sentence may not be suspended nor may probation or parole be granted until the minimum imprisonment provided in the applicable subsection of this section has been served, nor may imposition of sentence be suspended, except upon the condition that the defendant be imprisoned for no less than the minimum period provided under the applicable subsection of this section, nor may the minimum penalty provided for in this section be reduced under AS 11.05.150.

(g) Terms of imprisonment required under this section are to be consecutive to sentences then existing or which may be imposed pursuant to the official detention from which the person has escaped.

(h) When an offender has escaped or has committed an unlawful evasion and voluntarily surrenders himself to a peace officer or employee of the Division of Corrections, under circumstances when there is no imminent liklihood of his being apprehended, (f)(2) of this section is inapplicable.

* Sec 3. AS 11.30.100 is amended to read:

Sec. 11.30.100. Definitions relating to escape and Unlawful Evasion [FROM CUSTODY OR CONFINEMENT]. As used in §090-095 of this chapter, unless the context otherwise requires, "Official Detention" means arrest, custody following surrender in lieu of arrest, detention in any facility for custody of persons under charge or conviction of crime or alleged or to be delinquent, detention for extradition or deportation or any other detention for law enforcement purposes; but "official detention" does not include supervision on probation or parole, or constraint incidental to release on bail.

[(1) "PEASE OFFICER" MEANS AN OFFICER OR EMPLOYEE OR AN AUTHORIZED REPRESENTATIVE OF AN OFFICER OR EMPLOYEE OF THE UNITED STATES, THE STATE OR A POLITICAL SUBDIVISION OF THE STATE WHO HAS AUTHORITY TO EITHER (A) ARREST A PERSON BY TAKING HIM INTO CUSTODY OR (B) DETAIN A PERSON UNDER A WARRANT, ORDER OR OTHER LEGAL PROCESS;]

[(2) "JAIL OR INSTITUTION" MEANS A PENITENTIARY, JAIL, HOUSE OF CORRECTIONS OR OTHER PLACE FOR THE CONFINEMENT OR DETENTION OF PERSONS UPON A WARRANT, ORDER, OR OTHER LEGAL PROCESS. (§ 1 ch 108 SLA 1957)]

* Sec 4. AS 33.30.150 is amended to read:

Sec. 33.30.150. VISITATION PRIVILEGES.

An honor prisoner with good behavior serving a sentence of one year or more may be permitted as a privilege and not as a right to visit with his family at a place other than his place of confinement and at his own expense for a period not exceeding one week nor more frequently than once each six months under rules and regulations adopted by the commissioner and in his sole discretion. The wilful failure of a prisoner to return to the place of confinement not later than the expiration of a period during which he is authorized to be away from the place of confinement under this section, is an unlawful evasion under AS 11.30.093.

Sec 5. AS 33.30.250 (f) is amended to read:

(f) The wilful failure of a prisoner to return to the place of confinement not later than the expiration of any period during which he is authorized to be away from the place of confinement under this section is an unlawful evasion under AS 11.30.093. [ESCAPE FROM THE PLACE OF CONFINEMENT AND IS PUNISHABLE UNDER THE LAWS RELATING TO EACAPE.]

Sec 6. AS 33.30.260 is amended to read:

Sec. 33.30.26. REHABILITATION FURLOUGHS.

The commissioner may authorize a prisoner to participate in educational, training, medical, psychiatric, or other rehabilitation programs approved by the commissioner. When the prisoner is not participating in a rehabilitation program, he shall be confined in the jail unless the commissioner directs otherwise. If the prisoner violates the conditions established for his conduct or custody, the commissioner may order the balance of the prisoner's sentence to be spent in actual confinement. The wilful failure of a prisoner to return to the place of confinement not later than the expiration of any period during which he is authorized to be away from the place of confinement under this section, is an unlawful evasion under AS 11.30.093. [ESCAPE FROM THE PLACE OF CONFINEMENT AND IS PUNISHABLE UNDER THE LAWS RELATING TO ESCAPE.] (§ 1 ch 67 SLA 1970)

AS 11.050.150 is replaced with a new section reading:

(a)Upon conviction of a crime the court, subject to the described limitations, may impose a lesser penalty than the minimum penaxky provided in this title when in its opinion the facts and circumstances make the minimum penalty manifestly too severe. When less than the minimum penalty is imposed, the court shall set out the reasons and supporting facts for its action on the record in the case. As provided in 1,2,3,4 below—

(1)In the case of murder or rape the court shall not impose a penalty less than the minimum provided.

(2)In the case of a violent felony other than murder or rape for which sentencing is imposed in accordance with AS 12.55.035(a)(2) or (3) the court may find that the minimum provided is manifestly too severe and impose a penalty of imprisonment less than the minimum xfx only if:

a)the person being sentenced is a promising candidate for rehabilitation, and

b)at the time of sentencing a specific proven rehabilitation program is available for the person being sentenced,and

c)the court provides for a reasonable method of monitoring the rehabilitation program of the person being sentenced.

(3)In the case of escape or unlawful evaision the court may find that the minimum provided is manifestly too severe and impose a penalty of imprisonment less than the minimum if:a preponderance of the evidence shows that:

a)the person baing convicted ax escaped or evaded detention to avoid a clear and present danger of physical abuse, or

b)the person convicted escaped or evaded detention because of inhumane conditions caused either wilfully or by neglect. "cruel + unusual punishment"

(4)For all other crimes the court may find that the minimum provided is manifestly too severe and impose a lesser penalty either of a fine or imprisonment or both.

(b)Nothing in this section prohibits either the defendant or the state from appealing the sentence pursuant to the provisions of AS 12.55.120.

Amend the Havelock proposal by :

striking on page 2 paragraph (f)(2) the following language:

nor may the minimum penalty provided for in this section be reduced under AS 11.05.150.

adding the following language AFTER after "escaped" on page 2 paragraph (g)

,unless the court has determined that the minimum sentence provided by this section would be manifestly too severe pursuant to the provisions of AS 11.05.150.(c)3

adding the following language after "family"on page 3 on Visitation Privileges

or any person

Original Sponsors: Cotten & Gardiner

Offered: 4/9/76
For Today's Calendar

IN THE HOUSE

BY THE RULES COMMITTEE

CS FOR HOUSE BILL NO. 775 (Rules)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to unlawful absence from custody or confinement."

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

* Section 1. AS 11.30.090 is repealed and re-enacted to read:

Sec. 11.30.090. ESCAPE. (a) A person commits an escape if without lawful authority he

(1) wilfully removes himself from official detention; or

(2) commits an unlawful evasion under sec. 93 of this chapter and leaves or attempts to leave the state.

(b) An offense charged under (a) of this section is punishable as an escape in the first degree if

(1) the official detention is on a charge of a felony;

(2) the official detention is for extradition; or

(3) the person, during the escape or at any time before his being restored to official detention, has in his possession a deadly weapon.

(c) An attempt to escape under (a)(1) of this section which under (b)(1), (2) or (3) of this section is an escape in the first degree is punishable as an escape in the second degree.

(d) Any other escape or attempted escape is punishable as an escape in the third degree.

* Sec. 2. AS 11.30 is amended by adding new sections to read:

Sec. 11.30.093. UNLAWFUL EVASION. (a) A person commits an unlawful evasion if he wilfully fails to return to official detention, as

defined in sec. 100 of this chapter, following temporary leave granted for a specific purpose or limited period including but not limited to privileges granted under AS 33.30.150, 33.30.250 or 33.30.260.

(b) An offense charged under (a) of this section is punishable as an unlawful evasion in the first degree if the official detention is on a charge of a felony.

(c) An offense charged under (a) of this section is punishable in the same manner as an escape in the first degree if the person during the time of unlawful evasion or at any time before his being restored to official detention has in his possession a deadly weapon.

(d) Any other offense under this section is punishable as an unlawful evasion in the second degree.

Sec. 11.30.095. PENALTIES FOR ESCAPE AND UNLAWFUL EVASION. (a) A person convicted of escape in the first degree is punishable by imprisonment for not less than one year nor more than five years.

(b) A person who is convicted of escape in the second degree is punishable by imprisonment for not less than six months nor more than two years.

(c) A person who is convicted of escape in the third degree is punishable by imprisonment for not less than three months nor more than one year.

(d) A person who is convicted of unlawful evasion in the first degree is punishable by imprisonment for not less than three months nor more than one year.

(e) A person who is convicted of unlawful evasion in the second degree is punishable by imprisonment for not less than 30 days nor more than one year.

(f) Suspensions of imposition or execution of sentence or granting of parole shall be governed by the following considerations:

(1) when satisfied that the ends of justice and the best interests of the public as well as the defendant will be served, the court may suspend the imposition or execution of a portion of the sentence greater than the minimum sentence authorized under this section, and place the defendant on probation.

(2) execution of sentence may not be suspended nor may probation or parole be granted until the minimum imprisonment provided under this section has been served, nor may imposition of sentence be suspended, except upon the condition that the defendant be imprisoned for no less than the minimum period provided under this section, nor may the minimum penalty provided for in this section be reduced under AS 11.05.150, except upon a finding by the court that the escape or evasion was for the purpose of avoiding a clear and present danger of physical abuse or cruel and unusual conditions caused either wilfully or by neglect.

(g) Terms of imprisonment required under this section are consecutive to sentences then existing or which may be imposed pursuant to the official detention from which the person has escaped.

(h) When an offender has escaped or has committed an unlawful evasion and voluntarily surrenders himself to a peace officer or employee of the division of corrections, under circumstances when there is no imminent liklihood of his being apprehended, (f)(2) of this section is inapplicable.

* Sec. 3. AS 11.30.100 is repealed and re-enacted to read:

Sec. 11.30.100. DEFINITIONS RELATING TO ESCAPE AND UNLAWFUL DETENTION. As used in secs. 90 - 95 of this chapter, unless the context otherwise requires,

(1) "cruel and unusual conditions" mean those conditions evidencing a shocking deviation from the conditions commonly acceptable

for official detention;

(2) "official detention" means arrest, custody following surrender in lieu of arrest, detention in any facility for custody of persons under charge or conviction of crime or alleged or to be delinquent, detention for extradition or deportation or any other detention for law enforcement purposes; but "official detention" does not include supervision on probation or parole, or constraint incidental to release on bail.

* Sec. 4. AS 33.30.150 is amended to read:

Sec. 33.30.150. VISITATION PRIVILEGES. An honor prisoner with good behavior serving a sentence of one year or more may be permitted as a privilege and not as a right to visit with his family at a place other than his place of confinement and at his own expense for a period not exceeding one week nor more frequently than once each six months under rules and regulations adopted by the commissioner and in his sole discretion. The wilful failure of a prisoner to return to the place of confinement not later than the expiration of a period during which he is authorized to be away from the place of confinement under this section is an unlawful evasion under AS 11.30.093.

* Sec. 5. AS 33.30.250(f) is amended to read:

(f) The wilful failure of a prisoner to return to the place of confinement not later than the expiration of any period during which he is authorized to be away from the place of confinement under this section, is an unlawful evasion under AS 11.30.093 [ESCAPE FROM THE PLACE OF CONFINEMENT AND IS PUNISHABLE UNDER THE LAWS RELATING TO ESCAPE].

* Sec. 6. AS 33.30.260 is amended to read:

Sec. 33.30.260. REHABILITATION FURLOUGHS. The commissioner may authorize a prisoner to participate in educational, training, medical, physicatric, or other rehabilitation programs approved by the commis-

sioner. Whe.. the prisoner is not participating in a rehabilitation program, he shall be confined in the jail unless the commissioner directs otherwise. If the prisoner violates the conditions established for his conduct or custody, the commissioner may order the balance of the prisoner's sentence to be spent in actual confinement. The wilful failure of a prisoner to return to the place of confinement not later than the expiration of any period during which he is authorized to be away from the place of confinement under this section, is an unlawful evasion under AS 11.30.093 [ESCAPE FROM THE PLACE OF CONFINEMENT AND IS PUNISHABLE UNDER THE LAWS RELATING TO ESCAPE].

Division of Corrections

Prosecution of Escapes referred to the District Attorney for the period 7-1-73 thru 10-19-75 (16 months).

Anchorage area (N=63)

Prosecute	25
No prosecute	16
Unknown	10
D.O.C. Internal	5
Pending	3
Detainer - Warrant	3
Refuse to Extradite	1

Fairbanks area (N=7)

Prosecute	1
No Prosecute	5
Not found	1

Southeast (N=7)

Prosecute	6
No Prosecute	1

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES

Division of Corrections

Pouch H-03, Juneau 99811

March 19, 1976

Document# Legislature, General 14

The Honorable Terry Gardiner
Alaska State House of Representatives
Pouch "V" State Capitol Building
Juneau, Alaska 99811

Dear Mr. Gardiner:

RE: H.B. 775

Attached you will find a summary by area of the disposition of escape cases which the Division of Corrections referred to the District Attorney's Office for the period 7-1-73 through 10-19-75. The data sources were not validated with District Attorney files so caution is advised in drawing more than the most general conclusions from the data.

Concerning the "No prosecution" cases, please be aware that the Division of Corrections will frequently recommend to the District Attorney that the matter be handled within Corrections. This phenomena is not reflected properly in the data presented as we do not make a point in our system of analyzing reasons prosecution was declined.

I hope this information is useful to your deliberations.

Yours truly,

William H. Huston
Acting Director

WHH/mmw

ATTACHMENT

3/9 Milton

Introduced: 2/13/76
Referred: Judiciary

IN THE HOUSE BY COTTEN AND GARDINER

HOUSE BILL NO. 775

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to criminal escapes from custody or confinement."

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

* Section 1. AS 11.30.090 is amended to read:

Sec. 11.30.090. ESCAPE FROM CUSTODY OR CONFINEMENT. A person who escapes or attempts to escape from the custody of a peace officer under a lawful arrest or from a jail or institution in which he is detained by a peace officer or confined by direction of a court in this state or from custody under prccess issued by a court in this state is punishable,

(1) if the custody or confinement is by an arrest on a charge of a felony, [OR CONVICTION OF A FELONY,] by a fine of not more than $5,000, or by imprisonment for not less than one year nor more than three years, or by both; [OR]

(2) if the custody or confinement is for extradition, or by an arrest, or charge of, or conviction of a misdemeanor, by a fine of not more than $1,000, or imprisonment for not more than one year, or by both;

(3) if the custody or confinement is by a conviction of a felony, by imprisonment for not less than one year nor more than ~~three~~ 5 years. Imposition ~~of execution~~ of sentence under AS 12.55.080 shall not be suspended and probation or parole shall not be granted until the minimum imprisonment provided in this paragraph is served; or

(4) if the escape is by a prisoner exercising privileges

Make CS

under AS 33.30.150, 33.30.250 or 33.30.260, by imprisonment for not less than ~~one year~~ 6 MOS. nor more than ~~three~~ 2 years. Imposition or execution of sentence shall not be suspended and probation or parole shall not be granted until the minimum imprisonment provided in this paragraph is served.

* Sec. 2. AS 33.30.150 is amended to read:

Sec. 33.30.150. VISITATION PRIVILEGES. An honor prisoner with good behavior serving a sentence of one year or more may be permitted as a privilege and not as a right to visit with his family at a place other than his place of confinement and at his own expense for a period not exceeding one week nor more frequently than once each six months under rules and regulations adopted by the commissioner and in his sole discretion. The wilful failure of a prisoner to return to the place of confinement not later than the expiration of a period during which he is authorized to be away from the place of confinement under this section, is an escape from the place of confinement and is punishable under the laws relating to escape.

DIVISION OF CORRECTIONS/ESCAPE REPORT

Escapes and Walkaways - July 1, 1973 - October 19, 1975

The Alaska Statutes (Article 3, Sec. 33.30.250 and 33.30.260) require that when an offender fails to return from a work or rehabilitation furlough, he shall be reported and prosecuted as an escape. Alaska, therefore, counts as "escapes" many incidents which would not be so reported in other jurisdictions. This report thus includes, for example, walkaways from alcoholism and drug treatment programs, where the Division of Corrections is not necessarily advised that an "escape" has taken place. To the best of our knowledge, this is a complete accounting of all failures to return, as well as all bona fide escapes from Alaskan institutions during fiscal years 1974, 1975 and the first three and a half months of 1976.

During the period covered in the report, a number of changes have taken place in the structure of correctional services in the Anchorage area, which have undoubtedly contributed to the number of escapes.

On January 1, 1973, the Division of Corrections took over operation of what had formerly been the city jail. With this event, the Division began, in effect, operating a city/county/state jail system in Anchorage, as it was already doing in other parts of the state. Facilities were ill-equipped to provide these services, and staff extremely limited. The opening of the Eagle River Correctional Center, scheduled for the winter of 1973-74, was delayed by inability to obtain furniture shipments, and the facility was opened in May of 1974. On July 1, 1974, the Division's separate Halfway House in Anchorage was closed for budgetary reasons, and limited funding was provided for remodeling of the first floor of the Third Avenue facility to be used as a halfway house. One dormitory was maintained as a medium-security area. Pipeline impact funding, made available in August, provided full coverage of one security post at Third Avenue, which meant that it was often operated with one staff member on duty, although the institution

was filling two functions. These changes thrust the task of housing maximum-security prisoners onto the newly opened Eagle River facility, which was unprepared for this task, since its staff had been trained for a minimum-to-medium security operation.

From July of 1974 on, the following procedure has been utilized for housing of Anchorage area offenders: they are housed at the Correctional Center Annex prior to sentencing; those who receive sentences of six months or less are housed either in the medium-security section of the Third Avenue facility or, if they are not considered to be escape risks, sent to the minimum-security institution at Palmer which provides an almost completely open atmosphere, with no fences or security mechanisms. Those receiving sentences of more than six months are sent to the maximum-security section of the Eagle River facility, where they are held for classification. At classification, they may be accepted into the Eagle River program, or may be sent to Palmer, Juneau, Fairbanks, Ketchikan, Nome, or to the Federal Bureau of Prisons. The latter choice is made under four possible conditions: (1) the offender presents a security or management problem which is not met by Alaskan facilities; (2) he needs special treatment programs which are not available in Alaskan facilities; (3) he is a federal prisoner (in which case he may be, but is not necessarily sent to a federal prison); or (4) he requests placement in a federal prison because of his parole plans.

The 1974 legislature passed a statute requiring that offenders serve one-third of sentence before being eligible for parole. The Division of Corrections administratively applied this ruling to eligibility for work release or furlough programs. However, the Superior Court of the First Judicial District overturned this ruling as it applies to educational and vocational training passes, striking down the one-third requirement.

It is within the context of the events which took place during this period that the following information must be evaluated.

Escapes and walkaways are, of course, in part determined by the size and security level of a facility, as well as its function. To aid the reader, Table 1 shows the state institutions, rank ordered from most secure (Juneau) to least secure (Community Programs), the average daily occupancy rate of each in FY 75, and mandays boarded in FY 75.

Table 1

Average Daily Population,

and Mandays Boarded, FY 1975

Institution	Average Population	Mandays Boarded
Juneau	63	22,995
Fairbanks	99	36,135
Annex	109	39,785
Ketchikan	21	7,665
Eagle River	61	22,265
Third Avenue	46	16,790
Palmer	49	17,885
Community Programs	13	4,745

Escapes:

Table 2 shows escapes from institutional supervision, presented, for convenience, by calendar year. The term "institutional supervision" includes escapes from inside the institutions, as well as escapes from supervised exercise yards or outside work crews, and other escapes from escorts. The institutions are, again, rank ordered from most to least secure in terms of their structure and programs.

Table 2

Escapes From

Institutional Supervision

Institution	6 months CY 1973	CY 1974	10 1/2 months CY 1975	Total
Juneau	2	0	0	2
Fairbanks	1	0	0	1
Annex	0	0	2	2
Ketchikan	4	0	0	4
Eagle River	N/A	5*	3	8
Third Avenue	0	5	1	6
Palmer	2	1	7	10
	9	11	13	33

* includes 3 charged with attempted escape

Eighteen of the escapes (including three prosecuted as attempted escape) were from minimum-security facilities. Eleven were from medium-security conditions (including three from exercise yards), three were from escorts, and one was from the maximum-security unit at Eagle River, which has since adopted operational policies consistent with a maximum-security unit.

Thirty individuals accounted for the 33 escapes, with one individual escaping twice and another three times.

There were three incidents of triple escapes. In 1973, three inmates in Ketchikan overpowered a guard, locked him in a cell and escaped. In 1974, three inmates at Eagle River became involved with smuggled alcohol, and were charged with Attempted Escape. In 1975, three inmates at the Montana Creek Spike Camp smuggled alcohol into the Camp, overpowered a guard and escaped.

There were three double escapes; in 1973, two inmates escaped from Juneau by climbing the fence of the exercise yard. In a 1974 incident, two inmates of the Third Avenue facility escaped by sawing bars from a window, and lowering themselves to the ground by a rope made of sheets. In 1975 two inmates left the Eagle River facility and were apprehended within hours, outside an Anchorage Massage Parlor.

Of the 33 escapes, 21 were committed by felons, 6 by unsentenced individuals, 3 by misdemeanants, 2 by individuals whose sentence was described as "one year" (the cut-off point between felons and misdemeanants), and one by a man awaiting extradition to another state.

Of the 33 escapes, 21 involved no known new offenses while on escape status. Known offenses on escape status were: one robbery; one rape (accompanying charges of burglary and car theft were dropped); one burglary, one joyriding, one traffic offense, and one stolen boat. Pending charges are a probable first-degree murder, and two possible burglaries.

Sixteen escapees were apprehended within 24 hours, five by turning themselves in to authorities. Fifteen individuals were at large for periods ranging from one day to 60 days, an average of 11 days. Another left the state, and Alaskan officials were advised of his arrest 5 months later; one remains at large.

Walkaways:

Pre-release programs provide an incalculably important part of overall correctional programming. Among their major functions are:

1) They permit specialized treatment not available within the Alaskan correctional system, particularly for alcohol and drug problems;
2) They permit offenders to restore or maintain family ties;
3) Work programs enable offenders to support their families and themselves, and make them contributing members of society.
4) They permit vocational training not available in the institutions;
5) They provide a situation where offenders, correctional authorities and the Parole Board can observe the offender's readiness to return to society.

The major pre-release programs are:

1) Work release: When an offender is eligible for parole he may be classified for a work release program, which involves leaving an institution during working hours only.
2) Furlough programs: When eligible for parole, an offender may be furloughed to live outside the institution, for example, while participating in a training program such as the Seward Skill Center, or to work at a remote site. Supervision of furloughed offenders is provided jointly by the institution and the probation/parole office closest to the offender. Short furloughs may also be used for such purposes as seeking employment or family visitation.
3) Residential Treatment Programs: Residential treatment programs, most of which are community-operated, may be used at any appropriate time during an offender's sentence, but generally are utilized on a pre-release basis.

An offender may participate in any of these programs either on the recommendation of the Court, or through classification by correctional authorities.

Table 3 shows walkaways from unsupervised status on the various types of pre-release programs.

Table 3

Walkaways From

Pre-Release Programs

Walkaways From Unsupervised Status	6 months CY 1973	CY 1974	10 1/2 months CY 1975	Total
Work Release	0	7	8	15
Pass	0	0	2	2
Furlough	0	5	2	7
Community-operated Residential Programs	1	7	3	11
State-operated Residential - API	3	2	4	9
	4	21	19	44

Among the 44 walkaways, 16 were participating in court-recommended programs, and two were on recommendation of the Parole Board. Nine of the court recommendations and both the Parole Board recommendations were for residential treatment programs.

Table 4 shows type of pre-release program from which the walkaways occurred:

Table 4

Type of Pre-Release Program

	Number
Work Release	15
A.P.I.	9
Furlough	7
Family House	6
Church Pass	2
Future House	1
Social Development Center	1
Fairbanks Alcohol Program	1
Fairbanks Halfway House	1
Ketchikan Halfway House	1

The 44 walkaways were accounted for by 38 individuals; three individuals each walked away twice, and one left alcoholism programs four times (once after classification by Corrections, once after recommendation by the Parole Board, and twice after being recommended to the program by the Court).

Thirty walkaways were made by felons, four by unsentenced individuals, five by misdemeanants, and the remainder were "one year" or "unknown". Nine turned themselves in. The remainder were apprehended, four of them out of state.

The following new crimes were committed: one Burglary; one OMVI; one Felon in Possession of Firearm. The individual who had multiple walkaways accrued two counts of Hit and Run, two counts of Joyriding and three counts of Forgery while on walkaway status.

In two walkaways (both from API), Corrections was not notified of the event until after apprehension had taken place.

HB
784

"An Act relating to the Cook Inlet Land Exchange; e.d."

COMMITTEE REPORT

2/18/76

HOUSE

Mr. Speaker: Date March 5, 1976

The Committee on JUDICIARY has had HB 784

under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR HB 784 AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT con urring in the Majority report:

_____ recommends:

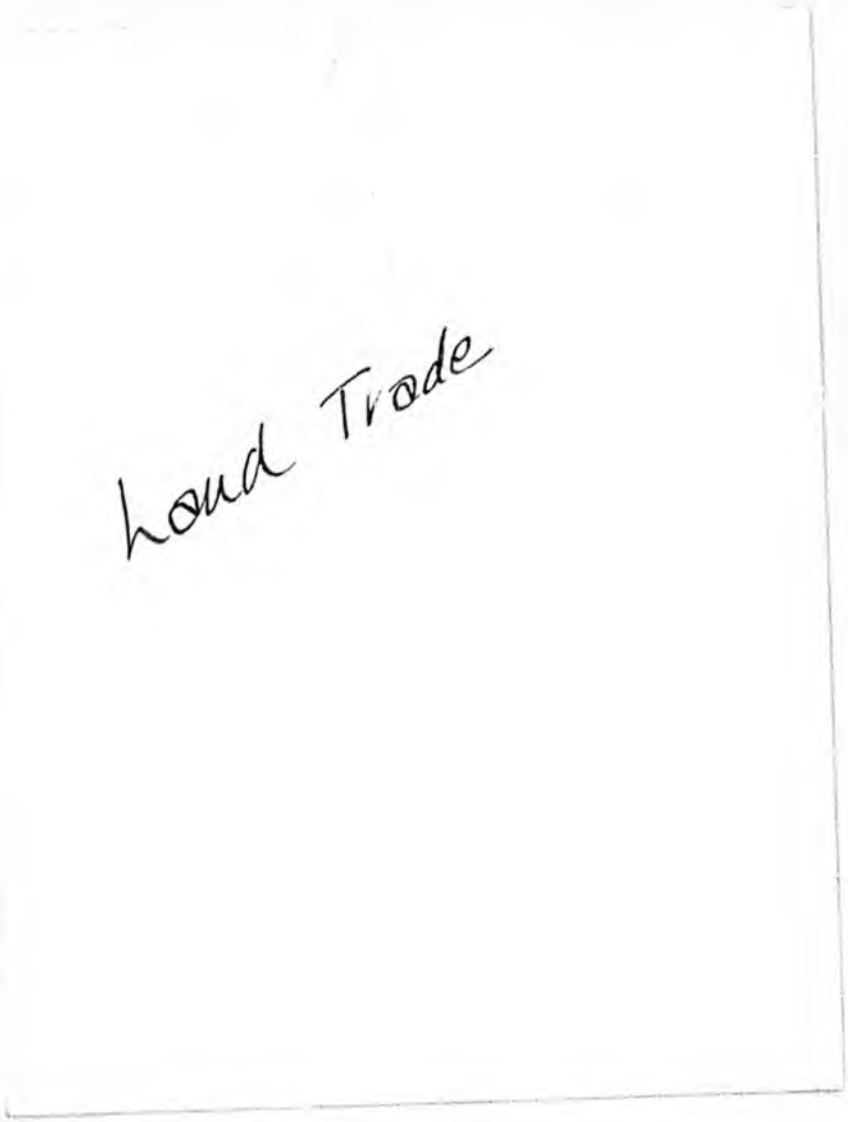
_____ recommends:

_____ recommends:

Ford Brown recommends: No Rec.

Eliason recommends: No Rec.

_____ Chairman


Loud Trade

MEMORANDUM

State of Alaska

Department of Natural Resources
Division of Geological & Geophysical Surveys

TO: Michael C.T. Smith, Director
Division of Lands

DATE: January 2, 1976

FILE NO:

THRU: Guy R. Martin, Commissioner
Department of Natural Resources

TELEPHONE NO:

FROM: Cleland N. Conwell CNC
Mining Engineer

SUBJECT: Mineral Analysis of Proposed Cook Inlet Land Trade

On or about the 8th of October, Ross Schaff, Don McGee, and I met with you in your office to advise you of the value of coal land the State was proposing to give away. It is my recollection that we advised you at that time of the value of coal on these lands and of work in progress by the private sector in exploring the Beluga coal field. As I recall, all three of us, expecially Ross and I, expressed personal disproval of the trade. It was and is our opinion that some of the most valuable land in the State is being traded for land that has little or no economic potential.

In direct comment on the articles by Mr. Galliett:

Don McGee and K. O'Connor in AOF 51, page 7, estimate 7.8 billion tons of coal in the Beluga field. Therefore, Mr. Galliett has a reference from a report of the Alaska Geological Survey. My only comment on the first article is that recovery of 50% of the coal is low by todays standards.

In reference to the second article, it is my understanding that Fish and Game have control of fishing and the streams. I believe that this is covered in Section 16 of the State Statuates, so there is no need to control the Lake Clark or Iliamna areas for the fishing potential.

In the 3rd article, Galliett appears to be accurate. I am sure we could check on the number of natives and the allocation, but the figures are approximately those that I have read.

With regard to the specific "Lands to be given by the State to CIRI":

Ft. MacKenzie (Appendix C - 1.B)and This is within the Anchorage area and is a valuable section for port facilities.

Knik-Willow (Appendix C - 1.B and 3) — This is an excellent recreation area near Anchorage. It contains the Nancy Lake State Recreation area, Meadow Creek Campground, and many lakes. There is both a coal potential and oil and gas potential in the area. Coal at one time was mined at Huston.

Kashwitna (Appendix C - 1.B) — This is prime agricultural land - Ref: Alaskas Agricultural Potential, Alaska Rural Development Council, Publication No. 1, 1974. It also contains a site selected for the future capitol of Alaska. It is accessable by road and railroad, and has many home sites. The land has potential for fossil fuels and uranium.

Chickaloon (Appendix C - 1.D and 3) — This is excellent coal land and part is under coal lease. Coals in this area have a higher calorific value than the Beluga area, i.e., 7,200 Btu Beluga vs. 12,000+ Btu Matanuska. Some of the Matanuska coals have coking qualities. Therefore, Matanuska coals have a higher market value than Beluga coals. The railroad right-of-way to the area is retained by the Alaska Railroads. There are excellent home sites in this area.

Alexander Creek (Appendix C - 1.D and 3) — Coal, oil, gas, and uranium potential.

Salamatof (Appendix C - 3) and Kenai Peninsula (Appendix C - 1.E and 3) — These are excellent coal lands. The coals are nearly horizontal, therefore, favorable for mining. Several beds at least 5 feet thick underlie the area. Undoubtedly there are at least 11.7 billion tons of coal in these areas. In addition to the loss of coal there would be a loss of recreation along the beaches of the peninsula. This includes both clam digging and fishing. I have been informed by native groups that they intend to protect these rights, and prohibit non-natives from trespassing. A law suit on this matter is presently in court (Edwardsen vs. Morton). These lands also have a high agricultural potential. In the case of strip mining the agricultural potential could be utilized the year following cessation of mining.

Beluga (Appendix C - 2(a)) — This area contains the outcrops of the Capps and Waterfall coal beds which can have respective thicknesses of 27 and 50 feet. Some sections could contain 70 million tons of coal with a stripping ratio of less than 3 to 1. One township could contain 2.5 billion tons of coal. This is also an area of high agricultural potential, and experimental work has proven that reclamation can be done after strip mining.

In regard to the lands to be given to the State by the Federal Government:

In general, these lands are underlain by Jurassic intrusives that have a low mineral potential for hard minerals, lack equivalent agricultural potential, lack the recreational value, because of inaccessability, and, if not selected by the natives might still be open to selection by the State.

In regard to the report by Dobey, Welch, and O'Connor:

There are many misleading statements in the report. I find errors in the calculations regarding the discounted cash flow. The Stanford Research Institute has a report issued in 1975 that gives figures that conflict with those of Robert Bottge. Nevertheless, assuming the inaccurate figures do have meaning, should the State give away such valuable revenue producing land?

By a separate memorandum I am requesting the report by Dobey et. all, be kept for in house use and not issued as an open-file report by the Division of Geological and Geophysical Surveys.

MEMORANDUM

State of Alaska

Department of Natural Resources
Division of Geological & Geophysical Surveys

TO: Guy Martin, Commissioner of Natural Resources

DATE: January 2, 1976

FROM: Gil Eakings, Acting State Geologist

FILE NO:

TELEPHONE NO:

FROM: Cleland N. Conwell
Mining Engineer

SUBJECT: Economic Resource Analysis of Measured and Indicated Coals
November 28, 1975
P.L. Dobey, J. Welch, K.M. O'Connor

At the request of Gil Eakins, Acting State Geologist, I have reviewed the subject report. I find that the report is misleading, contradicts Alaska Geological Survey open file report #51, is inaccurate and biased. I respectfully request that the report not be published as an open file report under your name and that of Ross G. Schaff. It may be of some use to Mike Smith within the department, but I feel that the quality is too low to justify publications as a Division Report. If published, the report certainly should be reviewed by Ross Schaff beforehand.

02-001B (REV. 66-73)

MEMORANDUM

State of Alaska

Department of Natural Resources
Division of Geological & Geophysical Surveys

TO: Michael C.T. Smith, Director
Division of Lands

DATE: January 2, 1976

FILE NO:

THRU: Guy R. Martin, Commissioner
Department of Natural Resources

TELEPHONE NO:

FROM: Gilbert R. Eakins GRE
Acting State Geologist

SUBJECT: Mineral Analysis of Proposed Cook Inlet Land Trade

In response to your letter of December 29, 1975 to Ross Schaff, I requested Cleland Conwell, State Mining Engineer, to review the three newspaper articles by Harold Galliett and again to assess the tracts of lands involved in the proposed land trade.

I concur with Mr. Conwell's assessment that it is not in the best interests of the State to make the proposed land trade. A purely economic view indicates a high potential dollar value of the tracts to be traded to the Cook Inlet Native Association. Large reserves of quality coal are known, agricultural lands are present, and a reasonably good potential exists for petroleum and uranium. In addition, the lands to be given to CINA have wisely been selected near populated areas and where industrial and population growth may be expected. We believe the potential revenues are very significant and that an attempt to put a discounted cash value on the resources today is not a fair evaluation.

In contrast, the lands to be received by the State in the trade do not appear to have an important mineral potential, are relatively inaccessable, and are not suitable for development.

cc: Ross Schaff, State Geologist

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

J. R. LEWIS and HAROLD H. GALLIETT, JR., Citizens and Taxpayers of the State of Alaska,	)
Plaintiffs,	)
vs.	)
STATE OF ALASKA; GOVERNOR JAY HAMMOND; GUY R. MARTIN, Commissioner of Natural Resources; MICHAEL C. T. SMITH, Director, Division of Lands,	)
Defendants.	)

No. 76-1608

MEMORANDUM IN SUPPORT OF TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Plaintiffs, pursuant to Alaska Civil Rule 23, have commenced this action for permanent injunction not only on their own behalf but on behalf of all citizens and taxpayers of the State of Alaska. Plaintiffs are alleging and intend to prove that the Beluga land exchange contemplated by the Hammond Administration as alleged herein violates the provisions of the United States Constitution, the Alaska Statehood Act, and the Alaska Constitution.

Plaintiffs allege that if the actions of the governor and his administration in approving the land exchange are not restrained and enjoined, the citizens of the State of Alaska will be the victims of an even greater governmental give-away through the loss of valuable mineral resources than occurred during the Teapot Dome scandal of President Harding's administration years ago.

RAYMOND A. NESBETT
ATTORNEY AT LAW
637 WEST 3RD AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 272-3477

Plaintiffs wish to emphasize that this is not a political lawsuit nor a lawsuit to harass or embarrass the Hammond Administration. The issues presented herein are very real and substantial issues involving questions concerning the State's mineral resources which will affect the citizens and taxpayers of the State of Alaska for generations to come.

Although the facts are summarized in detail in the complaint filed in this case, the chronological sequence of events is set forth again, and the basis of plaintiffs' legal claims are further set forth below..

A. FACTS

1. The chronological sequence of events leading to the present dispute can be summarized as follows:

In 1955 the then Territory of Alaska, through its legislature, provided for a constitutional convention. Elected delegates adopted a constitution on February 5, 1956 which was ratified by the people of Alaska on April 24, 1956. This constitution adopted by the people of Alaska served as a basis for subsequent petitions to Congress for statehood and constituted an offer to accept the privileges and responsibilities of that status in accordance with the terms of said constitution.

2. Article VIII, Section 9 of the Constitution of the State of Alaska provided in part as follows:

> Section 9. Sales and Grants. Subject to the provisions of this section, the legislature may provide for the sale or grant of state lands, or interests therein, and establish sales procedures. All sales or grants shall contain such reservations to the State of all resources as may be required by Congress or the State and shall provide for access to these resources.

3. Two years after the people of Alaska adopted the above constitutional provisions, Congress passed the Alaska

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Statehood Act, approved on July 7, 1958. Sec. 6(i) of the Statehood Act is a direct response by Congress to the provisions contained in Article VIII, Sec. 9 of the Alaska Constitution set forth above. The Alaska Statehood Act stated in this section as follows:

> All grants made or confirmed under this Act shall include mineral deposits. The grants of mineral lands to the State of Alaska under subsections (a) and (b) of this section are made upon the express condition that all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented, ...

Sec. 6(i) of the Act further provided that any lands or minerals disposed of by the State of Alaska contrary to the provisions of the above section would be forfeited to the United States by appropriate proceedings instituted by the Attorney General.

Sec. 8(b) of the Statehood Act provided, in addition, that:

> In the event each of the foregoing propositions (grants of land restrictions approval by majority vote in statehood election) is adopted at said election by a majority of the legal votes cast on submission, the proposed constitution of the proposed. State of Alaska, ratified by the people at the election held on April 24, 1956, shall be deemed amended accordingly. (Emphasis supplied)

4. By Public Law 92-203, 85 Stat. 688, approved December 18, 1971, Congress enacted the Alaska Native Claims Settlement Act. This Act provided for the fair and just settlement of all claims by native groups in Alaska based upon their aboriginal land claims. All prior conveyances of public land pursuant to federal law and all tentative approvals pursuant to Sec. 6(g) of the Alaska Statehood Act were declared to be an extinguishment of the aboriginal title of Alaska natives.

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The Act further provided for 12 geographic regions within the State and for appropriate regional native corporations which were given the right to select land and share in the revenues from the sale of minerals. Sec. 12 of the Alaska Native Claims Settlement Act provided for the selection of land by each village corporation within the township in which the village is located, plus an area that would make the total selection equal to the acreage to which the village was entitled under Sec. 14 of the Act.

5. Because of existing federal withdrawals, state land selection and other non-native settlement patterns within the Cook Inlet region, Cook Inlet Region, Inc., a native corporation, was not able to select lands which it considered of like and similar character under the formula established by the Alaska Native Claims Settlement Act. For approximately three years following the enactment of this Act, Cook Inlet Region, Inc. negotiated with the Secretary of the Interior in an attempt to insure its land selection of a similar and like character.

6. Cook Inlet Region, Inc. was dissatisfied with these negotiations with the United States Department of the Interior, and it filed suit in a District Court. Negotiations continued, however, and the solicitor for the Department of Interior made an offer to convey to Cook Inlet Region, Inc. ten surface and fifteen subsurface townships within the Kenai National Moose Range, including the Swanson River oilfield, as well as additional federal lands in the then Greater Anchorage Area Borough. These lands included land at Point Woronzof, Point Campbell, and a sizable portion of the Campbell air strip tract. Cook Inlet Region, Inc. declined this offer andit was later withdrawn

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by the Department of the Interior.

7. The United States District Court ruled in favor of the Secretary of the Interior and against Cook Inlet Region, Inc. in February of 1975. Pending the appeal of the case to the Ninth Circuit Court of Appeals, Cook Inlet Region, Inc. appealed to Congress for legislative relief. Despite the fact that Cook Inlet Region problems were solely with and concerning the federal government and federal land, the State entered into the negotiations in an attempt to help solve the problems between the Cook Inlet Region and the federal government.

8. The United States District Court ruled in favor of the Secretary of the Interior and against Cook Inlet Region, Inc. in February of 1975. Pending the appeal of the case to the Ninth Circuit Court of Appeals, Cook Inlet Region, Inc. appealed to Congress for legislative relief. Despite the fact that Cook Inlet region problems were solely with and concerning the federal government and federal land, the State entered into the negotiations in an attempt to help solve the problems between the Cook Inlet Region and the federal government.

9. The State, Cook Inlet Region, Inc., and the Department of the Interior entered into the negotiations concerning the exchange of lands pursuant to Sec. 22(f) of the Alaska Native Claims Settlement Act which provided as follows:

> The Secretary, the Secretary of Defense, and the Secretary of Agriculture are authorized to exchange any lands or interests therein in Alaska under their jurisdiction for lands or interests therein of the Village Corporations, Regional Corporations, individuals, or the State for the purpose of effecting land consolidations or to facilitate the management or development of the land. Exchanges shall be on the basis of equal value, and either party to the exchange may pay or accept cash in order to equalize the value of the properties exchanged.

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10. Pursuant to the exchange provisions cited above, the State volunteered the trade of various patented lands to the Department of the Interior for exchange and grant to the Cook Inlet Region, Inc. The terms of the settlement were, in summary, that the State of Alaska obligated itself to convey lands to the United States for exchange with Cook Inlet Region, Inc. in accordance with "Terms and Conditions for Land Consolidation and Management in Cook Inlet Area" made a part of the report from the Committee on Interior and Insular Affairs accompanying HR 6644, the amendment to the Alaska Native Claims Settlement Act. Further, Cook Inlet Region, Inc. was to dismiss its lawsuit in the case of Cook Inlet v. Kleppe, 75-2232, Ninth Circuit Court of Appeals; and other native village selections under Sec. 12 of the Settlement Act concerning lands within Lake Clark, and other areas outside the Cook Inlet Region, Inc., would be withdrawn to enable the exchange to take place by substituting land outside Cook Inlet region. These terms are summarized in Sec. 12(a) of Public Law 94-204, known as Alaska Native Claims Settlement Act Amendments, approved January 2, 1976. Sec. 12(f) of the Amendments states that all conveyances of lands made or to be made by the State of Alaska in satisfaction of the Terms and Conditions "shall pass all of the State's right, title, and interest in such lands, including the minerals therein, as if those conveyances were made pursuant to Sec. 22(f) of the Settlement Act."

11. Sec. 17 of the Amendment purports to amend Sec. 22(f) of the Alaska Native Claims Settlement Act by stating that in any exchange made pursuant to Sec. 22(f), the State may convey its lands, "free of the restrictions of Sec. 6(i) of the Alaska Statehood Act."

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12. In the "Terms and Conditions" contained within the report accompanying HR 6644, Sec. II at P. 42, the State of Alaska was asked to give its consent to the exchange and settlement agreement within sixty days of the commencement of the 1976 session of the Alaska State Legislature. Upon such consent being given, the State of Alaska is bound to convey to the United States for reconveyance to Cook Inlet Region, Inc. the lands set forth within the "Terms and Conditions." Plaintiffs allege on information and belief that said consent must be given, if at all, prior to March 12, 1976.

13. In an attempt to implement Sec. 22(f) of the Alaska Native Claims Settlement Act, the Alaska legislature, in 1972, enacted what is now Sec. 38.95.060 Alaska Statutes which authorizes the exchange of state land with a native corporation "with the consent of the governor," when the purpose is to effect land consolidations or to facilitate the management or development of the land. Similar to ANCSA, Sec. 22(f), the Alaska Statute provided that exchanges shall be on the basis of equal value, with either party being allowed to accept or pay cash in order to equalize the value of the properties exchanged.

14. The governor and the State, through its Commissioner of Natural Resources and Director of the Division of Lands, is proposing to give away large parcels of land andis also proposing to convey the subsurface mineral rights in such a manner as would convey all the coal, oil and gas resources of the lands. The State is proposing to give away the following estimated resources (see pages 4-13, Affidavit of Harold Gallagher):

Present value of coal	$4,732,000,00
Minimum probable present value of oil and gas	62,500,00
Present value of surface estate	451,605,00
TOTAL	$5,246,105,00

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The State proposes to receive the following estimated value as a result of the exchange:

Present value of surface estate	165,917,440

From the above summary of the exchange values, the net result to the State of Alaska is as follows:

Net loss	$5,080,187,560

15. In an attempt to rush this matter through the legislature, in complete disregard of the constitutional and statutory impairments to the execution of the exchange, the Hammond Administration, on February 17, 1976, introduced Senate Bill No. 674 which purports to give the Commissioner of Natural Resources authority to execute the exchange of land "notwithstanding any other provision of law." This bill provides in part as follows:

> While the land exchange is authorized by existing law, the vagueness and ambiguity of the provisions of the applicable law create a situation which may well involve protracted and devisive litigation and continuing uncertainty and disruption with respect to public and private land management. The law on the subject will be amended to remove any vagueness or ambiguity, but the timing for the land exchange requires action now, before amendment for clarification of the general law on land exchanges. (Emphasis supplied)

Senate Bill No. 674 is now the subject of legislative hearings and possible future action before March 12, 1976.

B. THE PROPOSED EXCHANGE VIOLATES ARTICLE VIII, SECTION 9, CONSTITUTION OF THE STATE OF ALASKA AND SECTION 6(i) OF THE ALASKA STATEHOOD ACT

Any rational consideration of the merits of plaintiffs' claims must keep in mind the distinction between laws and acts of the legislature, or of Congress, and the fundamental or basic law as set forth in the Alaska Constitution and its com-

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pact with Congress as accepted in the Alaska Statehood Act.

The general rule is that a "constitution" in the American sense of the term is the fundamental or basic law to which all others must conform; it serves to protect the people against arbitrary power; and a state constitution, like that of the nation, is the supreme law within the realm and sphere of its authority and is a limitation on the power of the legislature, binding on the several departments of state government, and the people themselves. 16 C.J.S. Constitutional Law, §3 at p. 23-26.

When a state constitution makes definite provisions covering a particular subject, that provision is exclusive and final, and must be accepted unequivocally. Hence, constitutional provisions may not be abrogated by the legislature or in any way other than by changing the constitution itself, and a right granted by the constitution, when unconditional, cannot be defeated, even in part, by statute. 16 C.J.S. Constitutional Law, §3 at p. 26.

In addition to the above general propositions, and as a corollary to these fundamental and basic rules, is the rule of law that the provisions of a state constitution, when accepted by Congress as a basis for admittance of the State into the Union, create a compact which cannot unilaterally be changed by an act of Congress or by an act of the state legislature without proper amendment to the State Constitution approved and ratified by a vote of the people. Metlakatla Indian Community v. Egan, 362 P.2d 901, 911 (Alaska 1961); State v Commissioners, 301 P.2d 655 (Okla. 1956); Opinion of the Attorney General, No. 6 (Alaska 1969).

As set forth in the Statement of Facts, supra, Article VIII, Sec. 9, Constitution of the State of Alaska, states

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that "all sales or grants shall contain such reservations to the State of all resources as may be required by Congress or the State . . . ."

The above provision of the Alaska Constitution constituted an offer to the federal government that, upon admittance to the Union as a state on equal footing, the State would abide by all restriction upon the conveyance of state lands as required by the State or Congress. This offer was accepted in Sections 6(i) of the Alaska Statehood Act, which states that "the grants of mineral lands to the State of Alaska under subsections (a) and (b) of the section are made upon the express condition that all sales, grants, deeds, or patents for any of the mineral rights so granted shall be subject to and contain a reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented . . . ."

Section 6(i) of the Alaska Statehood Act further stated that any lands or minerals disposed of by the State of Alaska contrary to the provisions of the above section would be forfeited to the United States by appropriate proceedings instituted by the Attorney General.

The offer of the State as contained in Article VIII, Section 9 of the Constitution, and acceptance of that offer through the restrictions contained in Section 6(i) of the Alaska Statehood Act, constituted a compact between two sovereign states, the purpose of which was obviously to protect the people of the State of Alaska against the arbitrary, capricious or fraudulent conveyance of the mineral rights of the State which were reserved exclusively for the citizens of the State of Alaska forever. Neither an act of Congress nor an act of Alaska legislature can unilaterally amend or change the provision of

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this compact without a proper vote of the people of Alaska.

Section 17 of the Amendments purports to amend Section 22(f) of the Alaska Native Claims Settlement Act by stating that in any exchange made pursuant to Section 22(f), the State may convey its lands "free of the restrictions of Section 6(i) of the Alaska Statehood Act." As set forth above, Section 6(i) of the Alaska Statehood Act is a part of the compact with the people of the State of Alaska through Article VIII, Section 9 of the Alaska Constitution. Pursuant to Sec. 8(b) of the Statehood Act, the Alaska Constitution was "deemed amended accordingly, "and Sec. 6(i) is therefore a part of Article VIII, Section 9 of the Alaska Constitution.

For the sole purpose of obtaining state land and its mineral rights to satisfy a federal obligation to the natives of Alaska, the federal government has attempted illegally to change the provisions of the Statehood Act, and indirectly, the Constitution of the State of Alaska.

The Supremacy Clause of the United States Constitution does not allow an act of Congress to waive or change provisions of a state constitution without an appropriate vote of the people through constitutional amendment, initiative, or referendum. Boeing Aircraft Company v. R. F. C., 171 P.2d, 838 (Wash. 1946). In this case, the Supreme Court of Washington sitting en Banc was asked to hold that an act of Congress allowing property to be taxed within the State of Washington changed, through the Supremacy Clause, the provisions of the Washington Constitution prohibiting the tax. The court replied:

> We cannot so hold, for to do so would effectively do away with the provisions of our state constitution by subjecting those provisions to be continually changed by acts of Congress. The Constitution of

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> the United States has not given that power to Congress, and Congress has only the powers expressly given it by the constitution of the United States. The American system of government is dual in nature, containing Federal and state sovereignties, each supreme within its appropriate sphere. The states do not get their power from the Federal government, but from the constitution of the United States. They exercise those powers independently of the Congress of the United States. The Federal government has no power to control the power or authority of the State except as such power may have been expressly granted, or as may be necessary to maintain the acknowledged powers of the Federal government. 171 P.2d at 842.

The Supreme Court of Washington further discussed the provisions of the enabling act admitting Washington into the Union and the extent of subsequent permissible federal control over state matters:

> True, Congress may determine the circumstances under which a state may be admitted into the Union, but that does not give it any powers to change or modify either directly or indirectly, the provisions of the state constitution. 171 P.2d at 842.

The Supreme Court of Alaska has also spoken on the issues now before this court in the case of Metlakatla Indian Community v. Egan, 362 P.2d 901 (Alaska 1961). Plaintiffs submit that this case is dispositive as to whether or not Section 17 of the Amendments to the Alaska Native Claims Settlement Act, in waiving Section 6(i) of the Alaska Statehood Act, is invalid and in violation of the state and federal compact.

In the Metlakatla case there was a dispute about the legality of the state prohibition of the use of fish traps for the taking of salmon in all of the coastal waters of the State. The Metlakatla Indian community claimed that their fish traps were exceptions to the prohibitions contained in

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the Constitution and laws of the State of Alaska because they were authorized by the Secretary of the Interior pursuant to federal law.

In determining whether the State or federal government exercised authority over fish traps of the Metlakatla Indians, the Supreme Court of Alaska carefully compared the appropriate provisions of Section 4 of the Alaska Statehood Act with Section 12, Article XII, of the Alaska Constitution. Section 12, Article XII, of the Alaska Constitution specifically agreed on behalf of the State that "unless otherwise provided by Congress, the property, as described in this section, shall remain subject to the absolute disposition of the United States." As quoted out by the Supreme Court of Alaska, the corresponding acceptance contained in Section 4, Alaska Statehood Act, stated that "all such lands or other property, belonging to the United States or which may belong to said natives, shall be and remain under the absolute jurisdiction and control of the United States . . . ."

Section 4 of the Alaska Statehood Act did not specifically reserve to the exclusive jurisdiction and control of the United States the fishing rights earlier mentioned in Section 12, Article XII, Constitution of the State of Alaska. Therefore, three days after the fishing trap controversy arose, Congress enacted a law which stated as follows:

> Section 4 of the act of July 7, 1958, (72 Stat. 339), providing for the admission of the State of Alaska into the Union, is amended by striking out the words 'all such lands or other property, belonging to the United States or which may belong to said natives', and inserting in lieu thereof the words 'all such lands or other property (including fishing rights), the right or title to which may be held by said natives or is held

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> by the United States in trust for said natives.'

In determining the effectiveness and validity of the federal attempt to amend the Alaska Statehood Act, the Supreme Court of Alaska pointed out that, as required by the Alaska Statehood Act, the following proposition was submitted to the qualified voters of Alaska on August 26, 1958:

> (3) All provisions of the Act of Congress approved (date of approval of the Statehood Act) reserving rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property therein made to the State of Alaska, are consented to fully by said State and its people.

The Supreme Court of Alaska further noted that this proposition was approved by a vote of 40,739 to 7,500 on August 26, 1958. The Supreme Court of Alaska stated:

> Section 4 of the Alaska Statehood Act is a direct response by Congress to the provisions contained in the five sentences of Section 12 of Article XII of the Alaska Constitution. The two sections constitute a compact between sovereigns . . . . The compact or contract between Alaska and the United States became effective upon approval of the terms of the Alaska Statehood Act by the voters of Alaska. 362 P.2d at 909, 910.

The Metlakatla Indian community argued that the congressional amendment to the Statehood Act was a part of the compact and merely "clarified" the original intent of Congress. The Supreme Court of Alaska held as follows:

> We cannot accept this reasoning. It is our view that the amendment forms no part of the compact between Alaska and the United States. It was not enacted until ten months after the voters of Alaska had ratified the compact, six months after Alaska had attained Statehood, and three days after these controversies had arisen. This portion of Section 4 reserves absolute jurisdiction and control in the United States. As originally enacted, it applied only to "lands or other property".

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> As amended, it purports to include fishing rights . . . . The conciseness of and correlation between the pertinent sentences of the Alaska Constitution and the responding portions of Section 4 leave no room for the construction appellants urge. 362 P.2d at 911.

The Metlakatla Indians further argued that the Congressional amendment to Section 4 of the Alaska Statehood Act transcended the police power of the State under the Supremacy Clause of the United States Constitution. This argument also was rejected by the Supreme Court of Alaska, which stated that the power of a state to control and regulate the taking of fish and game within its borders has always been recognized by the Supreme Court of the United States as a purely state concern. Also, to withhold sovereignty over the State's inland waters from the State would be a violation of the equal footing doctrine by which the State of Alaska was declared admitted to the Union upon an equal footing with all other states. 362 P.2d at 913, 925, 927.

(*) In the same manner that the federal government attempted to amend the Statehood Act concerning the fish trap controversy, Congress in Section 17 of the Amendments to the Alaska Native Claims Settlement Act attempts to waive Section 6(i) of the Alaska Statehood Act which expressly prohibit the conveyance of the mineral rights belonging to all the citizens of Alaska. Also, Section 17 attempts to induce (perhaps seduce is the better word) the State to convey away its mineral rights in violation of Article VIII, Section 9, of the Constitution of the State of Alaska.

Neither the Alaska Constitution nor the Alaska Statehood Act stand alone in defining the nature of the compact between the two sovereigns; both must be read together in the nature of an offer and an acceptance concerning the grant of lands to

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the State with the reservation of all mineral rights being required as a condition of such grants. Section 8(h) of the Statehood Act expressly amends Article VIII, Section 9 to conform to Section 6(i) of said Act.

Article XIII, Constitution of Alaska, provides for amendment and revision. Amendments to the Constitution may be proposed by a two-thirds vote of each house of the legislature, and if approved by a majority of the votes cast at the next statewide election, the amendment is adopted. Section 3 of Article XIII provides for a constitutional convention by referendum. Again, a majority of the votes cast determines the issue. Article XI of the Constitution provides for initiative and referendum. Again, if a majority of the votes cast on the proposition favor its adoption or rejection, the issue is determined. In any case, there is more than adequate provision contained in the Alaska Constitution for the enactment of a law which would amend or change Article VIII, Section 9 should the people of Alaska desire to convey away their mineral rights.

In the absence of a proper demonstration of intent of the citizens of Alaska to waive or change the provisions of Article VIII, Section 9, of the Constitution, any attempt to convey away the mineral rights belonging to the people should be held to be in violation of this section and in violation of the compact provisions between the State of Alaska and the United States pursuant to the State Constitution and the Alaska Statehood Act. The opinion of the Supreme Court of Alaska in the Metlakatla case and the express terms of Article VIII, Section 9, Constitution of Alaska, compel such a conclusion.

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C. THE ALASKA ATTORNEY GENERAL OPINIONS DECLARE THE PROPOSED EXCHANGE IN VIOLATION OF STATE AND FEDERAL LAW

The State of Alaska through its Attorney General's office in 1969 was previously concerned with the same issues discussed above. In conjunction with negotiations and congressional hearings prior to the enactment of the Alaska Native Claims Settlement Act, the question arose as to whether or not it would be legal to grant to the natives of Alaska an overriding royalty of 2% on all proceeds from any state and federal land.

In the 1969 Opinion of Attorney General, No. 6, the Attorney General presented his opinion to the Honorable Wayne N. Aspinall, Chairman of the Committee on Interior and Insular Affairs for the U. S. House of Representatives. The State of Alaska in this lengthy opinion took the clear position that the State could not convey away a 2% overriding royalty from the income from State lands. The opinion of attorney General stated in part as follows:

> A diversion of revenues which may be due to the State by virtue of State law and State leases is a flagrant violation of the United States Constitution. It not only goes beyond the scope of the Supremacy Clause of the Constitution, but it also takes the property of the people of the State of Alaska in violation of the due process clause of the Fifth Amendment to the Constitution. A provision of that nature constitutes a serious threat to any state government because it apparently recognizes a right of the federal government to control the finances and treasury of state government. Opinion No. 6, 1969, at p. 8.

Concerning the conflict between the royalty provisions and the Alaska Statehood Act, the opinion of the Attorney General asks the following question: "May the United States unilaterally enact legislation in direct conflict with the Statehood Act?" The Attorney general answered this opinion

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as follows:

> The answer to this is that the United States may not constitutionally enact effective legislation in direct conflict with the compact provisions of the Statehood Act unless there's an amendment to the Constitution of the State of Alaska because a Statehood Act constitutes a compact in a nature of a contract between two sovereign governments. Opinion No. 6, 1969, at p. 10.

The opinion of the Attorney General further states that the only constitutional method by which there can be an act of legislation which is in direct conflict with the Alaska Statehood Act is with the approval of the people of the State of Alaska of such federal legislation. Opinion, p. 11.

The opinion of Attorney General at page 11 further pointed out that proposition 3 submitted to the voters at the time of their approval of the Alaska Statehood Act, which proposition is quoted at p. 14, supra, had the effect of amending the state constitution to comply with all of the restrictions and conditions concerning the grant of land made to the State by the federal government in accordance with the Alaska Statehood Act. This is so because Section 8(b) of the Alaska Statehood Act provided in part as follows:

> In the event each of the foregoing propositions is adopted at said election by a majority of the legal votes cast on said submission, the proposed constitution of the proposed State of Alaska, ratified by the people at the election held on April 24, 1956, shall be deemed amended accordingly.

In other words, Article VIII, Section 9, Constitution of the State of Alaska, in addition to committing an offer to the federal government to abide by all restrictions ... may be imposed by Congress in the Alaska Statehood Act concerning the grant of lands, also has been "deemed amended" by Section 8(b) of the Alaska Statehood Act to comply in all

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respects with the restrictions as set forth in Section 6(i).

It is somewhat incredulous that the opinion of the Attorney General would not now be that Article VIII, Section 9, Constitution of the State of Alaska, must be properly amended in accordance with the initiative, referendum, or amendment provisions of the State Constitution prior to the effective and valid disposition of state lands and their mineral rights.

C. THE PROPOSED EXCHANGE DOES NOT GIVE THE STATE OF ALASKA FAIR AND EQUAL VALUE FOR ITS LAND AND RESOURCES

As described in detail in the affidavit of Harold Galliett, submitted herewith, the State of Alaska in accordance with the proposed exchange terms would be conveying away over 5 billion dollars representing the minimum present values of State coal, oil, gas, and surface rights. In exchange, the State would be receiving approximately 165 million dollars representing the present value of the surface estate in land.

The content of Galliett's statements and evaluations contained within the affidavit are not outlandish and speculative; to the contrary, experts employed by the State of Alaska within the Department of Natural Resources have concurred in Mr. Galliett's opinion that the proposed exchange does not result in fair or equal value to the State.

For example, the Hammond Administration on or about November 28, 1975, solicited an "economic resource analysis" from one P. O. Dobey to justify the exchange. This report, however, was received by the staff members of the Department of Natural Resources, Division of Geological and Geophysical Surveys, with pointed criticism.

On January 2, 1976, Cleland N. Conwell, Mining Engineer, Department of Natural Resources, wrote a memorandum to Guy

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Martin, Commissioner of Natural Resources, and stated in part as follows concerning the "economic resource analysis" prepared for the Administration by Mr. Dobey:

> At the request of Gil Eakins, Acting State Geologist, I have reviewed the subject report. I find that the report is misleading, contradicts Alaska Geological Survey open file report No. 51, is inaccurate and biased. I respectfully request that the report not be published as an open file report under your name and that of Ross G. Schaff. It may be of some use to Mike Smith within the department, but I feel that the quality is too low to justify publications as a Division Report.

On or about January 2, 1976, Mr. Conwell also wrote a memorandum to Michael C. T. Smith, Director of the Division of Lands, and stated in this memorandum in part as follows:

> On or about the 8th of October, Ross Schaff, Don McGee, and I met with you in your office to advise you of the value of coal land the State was proposing to give away. It is my recollection that we advised you at that time of the value of coal on these lands and of work in progress by the private sector in exploring the Beluga coal field. As I recall, all three of us, especially Ross and I, expressed personal disapproval of a trade. It was and is our opinion that some of the most valuable land in the State is being traded for land that has little or no economic potential. (Emphasis supplied)

Further, in this memorandum to Michael C. T. Smith, Conwell states that the newspaper articles published by Mr. Galliett concerning the disadvantages of the proposed trade were accurate, and even conservative. The memo specifically refers to Mr. Galliett's estimated coal recoveries of 50%, and states: "I only comment on the first article is that recovery of 50% of the coal is low by today's standards."

Concerning the claim by the Hammond Administration that the exchange will give the State control over the salmon runs,

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the Conwell report states:

> In reference to the second article, it is my understanding that Fish and Game have control of fishing and the streams. I believe that this is covered in Section 16 of the State Statutes, so there is no need to control the Lake Clark or Iliamna areas for the fishing potential.

The Conwell report further summarizes the valuable land to be given to the natives and themineral and agricultural potential of each tract. Concerning the lands to be given to the State by the federal government in exchange, the report states:

> In general, these lands are underlain by Jurassic intrusives that have a low mineral potential for hard minerals, lack equivalent agricultural potential, lack the recreational value, because of inaccessibility, and, if not selected by the natives might still be open to selection by the State.

The Conwell memorandum concludes:

> There are many misleading statements in the report. I find errors in the calculations regarding the discounted cash flow. The Stanford Research Institute has a report issued in 1975 that gives figures that conflict with those of Robert Bottge.

On January 2, 1976, Mr. Gilbert R. Eakins, Acting State Geologist, issued a memorandum on behalf of the Department of Natural Resources, Division of Geological and Geophysical Surveys, to Mr. Michael C. T. Smith, Director of the Division of Lands. In this report, Mr. Eakins refers to three of Mr. Galliett's newspaper articles assessing the valuation of the tracts of land involved in the proposed land exchange. Mr. Eakins' opinion concerning Mr. Galliett's and Conwell's assessments is set forth in full as follows:

> I concur with Mr. Conwell's assessment that it is not in the best interests of the State to make the proposed land trade. A purely economic view indicates

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> a high potential dollar value of the tracts to be traded to the Cook Inlet Native Association. Large reserves of quality coal are known, agricultural lands are present, and a reasonably good potential exists for petroleum and uranium. In addition, the lands to be given to CINA have wisely been selected near populated areas and where industrial and population growth may be expected. We believe the potential revenues are very significant and that an attempt to put a discounted cash value on the resources today is not a fair evaluation.
>
> In contrast, the lands to be received by the State in the trade do not appear to have an important mineral potential, are relatively inaccessible, and are not suitable for development.

Copies of the three memoranda referred to above are attached hereto as exhibits.

Section 38.95.060 represents existing law concerning authority for the exchange. As set forth in detail in the complaint, Section (c) of this Statute requires that exchanges shall be on a basis of equal value. While the court cannot be expected to take Mr. Galliett's calculations as an ultimate conclusion of the exact valuation of the lands proposed to be exchanged, the great disparity in the equality of the figures should at least be accepted as placing grave doubt about whether or not the exchange complies with existing Alaska Statutes.

Combined with the memoranda of the Department of Natural Resource's own experts, Mr. Galliett's representations as set forth in the affidavit should satisfy the plaintiffs' burden of proof that the proposed exchange is, more probable than not, invalid.

D. OTHER ISSUES

1. Count Two of plaintiffs' complaint sets forth, in detail, the statutory provisions relating to the sale of public lands.

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TELEPHONE [illegible]

Section 38.05.045, Alaska Statutes, provides that state land may be sold as provided in Sections 45-69 of this chapter. Section 38.05.055, Alaska Statutes, provides for public auction to the highest qualified bidder as determined by the director.

Section 38.05.125, Alaska Statutes, states that each contract for the sale, lease, or grant of state land, and each deed to state land, properties or interest in state land, made under Section 315-325 of this chapter or Section 45-120 of this chapter, . . . is subject to the reservation that the State of Alaska "expressly saves, excepts, and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, all oils, gases, coal, ores, minerals, fissionable materials, and fossils of every name, kind, or description, ..."

Section 38.05.310, Alaska Statutes states that no land may be sold or leased for less than the approved, appraised market value. The proposed exchange violates the intent and purposes of the foregoing Alaska Statutes which provide for the sale of all lands by public auction to the highest bidder. In any event, land cannot be sold for less than the appraised market value.

The proposed exchange lacks any proper appraised market value by the State concerning the lands to be exchanged, and the Alaska Statutes cited above, in addition, prohibit any conveyance without reserving to the State of Alaska all the mineral rights contained within the lands so conveyed.

2. Article VIII, Section 10, Constitution of the State of Alaska, also prohibits the sale or lease of state lands without prior public notice and other safeguards of the public interest as may be prescribed by law. This requirement is also

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cussed in Count Three of the complaint in detail.

It seems fairly obvious that "prior public notice" must include effective notice. As set forth in the complaint, the actual lands to be made the subject of the trade with the native corporation have not yet been determined. How much of the Beluga coal land and other lands now belonging and patented to the State will be selected from various "pools" and the exact location and value of such lands, still has yet to be determined, and probably will not be determined until long after the governor or the Commissioner of Natural Resources gives his consent to the proposed exchange.

Because the public will have been denied effective prior notice of the exact nature of the land exchange, even if the subsurface minerals could be conveyed the proposed exchange violates Article VIII, Section 10 of the Constitution of the State of Alaska.

3. Article VIII, Section 17, Constitution of the State of Alaska, provides as follows:

> Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

It seems fairly obvious that the proposed land exchange violates the above constitutional provision and that the trade or exchange will result in valuable state resources being conveyed to a private corporation for less than fair value and for the use and benefit of less than all citizens of the State of Alaska.

4. The proposed exchange attempts, through federal legislation, to unilaterally waive or amend the Alaska Statehood Act; disposes of state lands and minerals without ade-

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blished and appropriate sale procedures; and denies the citizens of the State of Alaska the protection of Article VIII, Section 9 of their Constitution and its compact with the federal government pursuant to Section 6(i) of the Statehood Act.

For the above reasons the proposed exchange and its implementing legislation deprive plaintiffs and the citizens of the State of Alaska of their property and resources without due process of law in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States, and Article I, Section 7 of the Constitution of the State of Alaska.

Further, the proposed exchange denies the citizens of Alaska of the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States and Article I, Section 1, Alaska Constitution.

There can be no enactment of the Alaska legislature which effectively and with validity conveys away the State's mineral resources without an appropriate amendment of the Constitution of the State of Alaska and is compact with the federal government. This must be done in accordance with the procedures outlined above concerning constitutional amendments.

5. In A. J. Industries, Inc. v. Alaska Public Service Commission, 470 P.2d 537 (Alaska 1970), the standard is set forth governing the issuance of preliminary injunctive relief. In accordance with the rulings of this case, plaintiffs submit that a more than sufficient showing has been made for the granting of a temporary restraining order and preliminary injunction.

Plaintiffs have, in the opinion of the undersigned, demonstrated real and important constitutional issues surrounding the proposed land exchange, which issues will, more probable than

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not, be resolved in plaintiffs' favor. Also, in weighing the equities of both parties, the loss to the taxpayers in failing to obtain injunctive relief at this time would be astronomical. The value of the State mineral resources about to be conveyed away to the native corporation can never be replaced and the proposed exchange would result in an economic loss to the citizens of Alaska for generations to come.

On the other hand, as far as the State of Alaska is concerned, if the injunction is granted, little or no harm will be done because even though an extension of time will have to be granted by Congress in order to effect the exchange, if the merits of the exchange are just as valid tomorrow as the State claims today, there should be no problem for Congress and the Alaska legislature to effect the exchange during the coming months.

In accordance with all applicable criteria, plaintiffs have presented more than sufficient justification for immediate injunctive relief. A preliminary injunction should issue restraining Governor Jay Hammond, the Commissioner of Natural Resources and the Director of the Division of Lands, their agents and employees, from conveying or attempting to convey in any manner any state land with mineral resources in violation of State and Federal law.

DATED this 3rd day of March, 1976.

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02-001B

STATE
of ALASKA
DEPARTMENT OF NATURAL RESOURCES

MEMORANDUM

TO: Guy R. Martin
Commissioner

DATE : December 6, 1975

FROM: Michael C. T. Smith, Director
Division of Lands

SUBJECT: Proposed Cook Inlet Land Trade

PROPOSED COOK INLET LAND TRADE

Brief History

Because of existing federal withdrawals, state land selections and non-Native settlement patterns within Cook Inlet Region, Cook Inlet Region, Inc., unlike the other regional corporations created under ANCSA, has not been able to select lands which it considered of like and similar character under the formulae established by the Act. For approximately three years following enactment of ANCSA, Cook Inlet Region, Inc. ("CIRI") carried on a long series of discussions with the Secretary of the Interior in an attempt to insure its ability to select lands considered of like and similar character. While the Secretary made a number of withdrawal adjustments, he was not able to satisfy the Region and CIRI went to court seeking redress. Discussions continued between the two parties while litigation ensued and in approximately September of 1974, Interior solicitor Kent Frizzel made an offer to Cook Inlet which specified certain lands which the Secretary would convey to Cook Inlet in settlement of the suit. The "Frizzel offer" proposed, in part, to convey to CIRI ten surface and 15 subsurface townships within the Kenai National Moose Range, including the Swanson River oil field, as well as additional federal lands in the then Greater Anchorage Area Borough. These latter lands included certain parcels which had been eyed by the Greater Anchorage Area Borough for public open space and recreation purposes, more specifically Point Woronzof, Point Campbell, and at least a sizeable portion of the Campbell Airstrip tract. The State did not participate in these discussions and thus was not aware of all contents of the

"Frizzel offer" and the tremendous impact that it would have had upon State interests, particularly financially. CIRI declined the initial offer although it apparently later changed its mind. However, the offer had been withdrawn by that time.

The U.S. District Court ruled in favor of the Secretary in February of 1975, by which point CIRI had gone to Congress to gain support for its problem. Congressional support for some form of amelioration of Cook Inlet's troubles was found with Senator Jackson and Congressman Meedis. These Members of Congress, both Chairmen and both strongest and most effective advocates for Natives and Indians in their respective House, have each publically pledged to see that Congress protects Cook Inlet Region's ANCSA rights. This guarantee must be taken very seriously. Proposals were introduced which were essentially identical to the "Frizzel offer" and hearings were scheduled on these bills for May. At the same time, CIRI had indicated that they were going to appeal the District Court decision in the 9th Circuit. At this time, the Alaska Delegation and others in Congress suggested to the State that it explore the possibility of entering the discussions between CIRI and the Secretary to see if some mutually agreeable solution to Cook Inlet's land selection problem could be agreed upon which involved State land. This was suggested for the reason that inadequate Federal land was available in the Region, and this was at the heart of the problem.

The State was thus faced with the following factors:

1. Some seven months previous an offer, largely unacceptable to the State, had been offered by the Secretary without significant notice to the State. Such an out-of-court or pre-legislative action offer might be again proposed by the Secretary without

State participation. This is a risk of not taking any State action.

2. Although CIRI had lost in District Court, its appeal to the 9th Circuit included a request that the court nullify the September 1972 agreement between the Secretary and the State of Alaska which gave Alaska selection rights to lands south and southwest of Mount McKinley National Park which CIRI claimed it should have been entitled to select. Should the court find in favor of Cook Inlet, the Secretary would be directed to make available to CIRI for its selection a more acceptable array of lands. The Secretary might then have to reject the State's approximately 484,000 acre selection in this area in favor of making these lands available to CIRI for selection. Additionally, if this should happen and the Secretary can respond to a reversal by the Ninth Circuit by seeking to recover from the State the 484,000 acres sought by CIRI, he might also be forced to recover, on behalf of other Regions, conservation groups and other parties aggrieved by the September 1972 settlement, the other of the remaining forty-three and one-half million acres covered by the September 1972 State-Federal settlement. Although the State would oppose any such legal result it remains a distinct possibility to this day. It is a risk of taking no action.

3. Assurances had been given by members of Congress (Congressman Meeds and Senator Jackson) that Cook Inlet would receive favorable legislation if their problem could not be settled by other means. The bills before the Congress at that time were essentially identical to the largely unacceptable "Frizzel offer." A similar bill is before Congress today as an alternative to the proposal below, and is a risk of taking no

State action.

4. The Congressional Delegation had asked that the State take a more active role in discussions to seek an equitable solution to the problem.

5. By entering the discussions, the State could seek to effect other land trades within the region which would guarantee certain favorable land ownership patterns as well as bring under state control specified areas which the State wished to select itself, but would be unable to select if a CIRI settlement were finalized without State participation.

On the basis of the above the State began discussions with CIRI and the Department of Interior in approximately April of 1975. The discussions continued, becoming particularly intense preceding the Congressional hearings in the middle of May. Because of the complicated nature of the discussions, and with additional time available following the May hearings, the discussions progressed throughout the summer and early autumn. At each hearing, the State responded to Congressional requests, and testified regarding progress on a negotiated settlement. Each time, the State and the other parties were requested and encouraged to continue the discussions, and were advised of Congressional time restraints. Following Congressional hearings in the latter part of September, the land trade proposal was almost complete and the State publicly presented the proposal on October 2, concomitantly holding numerous briefings of smaller, more specialized groups interested in the trade (borough governments, conservation groups, Chamber of Commerce, Legislators, etc.). A thorough press briefing was also held. Following public input, addtional discussions were held with Cook Inlet Region and the Department of Interior to reflect public sentiment of the

proposal. Details of the public input and subsequent changes in the proposal based upon that input are documented in greater detail below.

Implications

If the State endorses the proposal and it is passed by Congress and implemented, the benefits outlined later will accrue to the State and other parties involved. If the State does not support the proposal, or if the proposal is not implemented for other reasons, a significant number of possible permutations exist with respect to the final outcome of Cook Inlet's selection problem. The four most likely are listed here, but others which would have profound effects are possible.

1. Cook Inlet loses its suit--The CIRI appeal is now in the 9th Circuit. Should the suit ultimately be lost, and no other remedy found, the Region would select according to the withdrawals presently in existence which precipitated the litigation. Selections would be in conflict with over 20 townships the State had previously selected and between 10 to 20 townships that the State would now like to select (including Kamishak Bay which is the prime lower west side harbor site in Cook Inlet). The pattern of Cook Inlet Region selections would be dispersed and would create difficult management patterns throughout the Region. Substantial land would be selected which is deemed more appropriate for public ownership and use (such as the harbor site and lands in the Lake Clark area).

   It should be pointed out that this result is somewhat unlikely, even if the suit is lost, because its loss would very likely precipatate unilateral Congressional action for the reason that these selections are generally regarded as inequitable to the Region.

2. CIRI wins its suit--ramifications of this alternative would depend largely upon the court's directives. Cook Inlet would undoubtedly receive lands of more like and similar character which would be more physically suitable for settlement and development, but such lands are likely to conflict with land uses thought more appropriate by the State. Swanson River revenues might also be included. Sizeable portions of the Kenai National Moose Range, which is also a State wildlife refuge, might be selectable by the Region. The State could lose selections totaling approximately 600,000 acres in the Upper Susitna Valley near Chalatna Lake if the court concurred with one of CIRI's requests for redress (further details are indicated on the attached maps). Much more importantly, the entire Alaska v. Morton out-of-court settlement of September 1, 1972 will be threatened in that the remaining forty-three and one-half million acres of state selected lands pursuant to that agreement would be in jeopardy from other Native regions or other groups who might like to see substantial portions of that state acreage in other ownership.

3. Congressional action--having made commitments to help Cook Inlet, and having waited a considerable amount of time for discussions among the three parties to prove fruitful, Congress might well legislate an alternative amendment over any objections made by the State or others. It is hard to be specific about the form such an amendment might take, however, there is good reason to believe that some alternate form of the "Frizzel offer" might emerge. As discussed earlier, this proposal has extremely unfavorable consequences for the State.

4. Administrative settlement--although the least likely of the four, some administrative settlement between Cook Inlet and the Secretary might be arrived at which would not be in the interests of the state. Past experience indicates that any settlement proposed by Interior must be, because of land availability in the Region, either unacceptable to the Region or if acceptable, then probably extremely unfavorable for the State.

Additionally, certain advantages which the State has been able to gain through the discussions would not accrue. Specifically, the ability of the State to guarantee its selection and ownership of lands in the Talkeetna Mountains, Kamishak Bay and, more importantly, lands in the Bristol Bay areas. If Cook Inlet is forced to select lands in the Lake Clark area, the State's bargaining chip of guaranteeing that those lands remain in public ownership would be lost, and our leverage to bargain decisively for state selection rights within the Lake Iliamna-Bristol Bay proposed National Resource Refuge would be lost. One of the most compelling advantages of this proposal is the leverage which ownership of lands in the Bristol Bay area may give the State in what may be the most important single post-ANCSA federal political decision in the State's history: The 17(d)(2) question.

Basic Objectives Of Proposal

Each of the three parties had its own objectives in the discussions and would emerge with certain specific benefits.

State--The objectives of the State were basically two.

1. State land ownership--by trading 21.4 townships the State would gain selection rights and control substantially larger areas of the Talkeetna Mountains, Chakachamna Lake, Kamishak Bay, and the Lake Iliamna

and Bristol Bay areas. In these cases the State has operated from the standpoint that the State is much more capable, because of governmental infrastructure and location, to more effectively meet the needs of its people by owning these lands than can the federal government which lacks the "local" governmental structure needed to respond effectively to Alaska's needs. The juxtaposition of the Talkeetna Mountains to the rapidly expanding population in southcentral Alaska will become even more critical upon the possible establishment of a new capital city, very possibly immediately adjacent to Talkeetna Mountain lands which CIRI presently plans to select. In the Lake Iliamna and Bristol Bay National Resource Range proposal approximately 15 percent of the lands will be under the control of private Native corporations. The State can more effectively administer to the requirements of its citizens in those areas if it owns the other lands within that region. Additionally, the tremendous dependence upon the salmon fishery resources of that region, and the current responsibility of the State to manage those resources, argue cogently that the State should also control the uplands in that area.

2. Land ownership pattern--as it is the State which must provide those services and governmental functions based upon the land ownership pattern which emerges from Cook Inlet's ultimate selections, it is very much in the State's interest to assure a favorable selection pattern. Under the proposal, ownership patterns would:

A. provide CIRI with lands physically well suited to settlement and development.

B. guarantee that such developable lands would be located in close proximity to existing government services and, therefore, significantly reduce future expense in providing communication, education, transportation, and public safety services to these areas.

C. hasten the development of these suitable lands in a much shorter time frame than could be expected for the remote lands which CIRI would otherwise be forced to select.

D. a sophisticated but critical point is the fact that certain State selection rights, such as the 11(a)(1) (ANCSA) issue, will have to be resolved very shortly. The State believes it can select in these areas, and if it prevails, such 11(a)(1) selections, in combination with the selections under this proposal, would result in a highly desirable State resource ownership patter, particularly in the Iliamna area.

It might well be emphasized that, although the State believes that its own ownership in this area is critical, an equally high value must be placed on simple consolidation of ownership under as few owner-managers as possible (regardless of who is the owner). This is so far the reason that it is a "mix" of ownership and management patterns that creates the greatest difficulties over the

long view for a large resource area.

CIRI--The basic objectives of CIRI are to obtain lands of more like and similar character to those historically occupied by their ancestors within the Cook Inlet Basin. The proposal would largely accomplish this, although the Region will have reduced its entitlement significantly in obtaining these more suitable lands and would be taking over 50 percent of its entitlement outside the Region. The benefits to the 6,000+ members of Cook Inlet Region, Inc. would be increased, and as members of the Southcentral Alaska community these benefits would have substantial favorable economic and social impacts upon the State. Most important, the Region would finally have accomplished certainty in its selections, which is extremely important for the stability of the Corporation.

Federal Government--The objectives of the Federal Government were to settle the responsibilities of the Secretary with respect to the requirements of ANCSA and to accomplish this in a manner which would have minimal impacts upon other values for which the Secretary is charged with protection. More specifically, the proposal would permit a more acceptable incursion into the Kenai National Moose Range, thus protecting fish, wildlife and their habitat as well as the substantial recreational values of the Refuge. The proposal would also leave certain key areas in the Lake Clark area under Federal control and management. This makes sense in terms of other Federal ownership in the area. Most important, it would settle with finality one of the most difficult and complex legal and resource issues under ANCSA, one which has

required substantial governmental resources.

Negotiation Process

The first approach to the State requesting State participation in land trade discussions occurred in mid-February when Andy Johnson, President of CIRI, met with the Director at the Division of Lands. Following the loss of its District Court suit, and the resultant hardening of the Department of Interior's bargaining position, Cook Inlet then took the legislative solution route and only occasional discussions among and between the three parties occurred during the remainder of February, March, and early April. However, as it became obvious that a legislative solution not in the State's interest was a real probability, and following a request for State participation during Congressional hearings, a decision was made to pursue discussions concerning the proposed trade. At this time, the Commissioner and Governor were briefed, guidelines and general policies and objectives were set, and authorization was procured.

Somewhat regular meetings began in approximately mid-April and intensified considerably toward the latter part of April and the first week of May. By this time considerable public interest had been generated by media reports of the proposed amendment and the Anchorage Area Borough, in addition to the State, was working with representatives of CIRI on a very regular basis. Discussions on the part of the State were led by the Director of Lands. Staff assistance was requested when necessary and various staff attended certain of the meetings. Other divisions within the Department of Natural Resources, particularly the Divisions of Oil and Gas and Parks were consulted to a significant extent and other departments were asked to input when it was felt certain terms in the discussions affected their areas of interest. The Division of Aviation and the Department of Fish and Game were particularly involved. The ongoing progress of the discussions was regularly transmitted to the Commissioner of Natural Resources.

By the end of the first week in May substantial progress had been made and it appeared that CIRI would be willing to withdraw its proposed amendment on the basis of the tentatively proposed agreement. However, it was explicitly stated to the Region and Interior Department that final State concurrence could not be had until a public review and comment process had been effected. CIRI understood this and agreed to request that Congress not act immediately on their proposed amendment, but rather allow enough additional time for the proposed land trade to be agreed to by all parties. On May 7 a briefing was conducted by the Director of Lands for the Commissioner, the Governor, and the several appropriate department heads in Juneau. On the basis of that presentation and ensuing discussions, the decision was made for the State to also request that Congress refrain from acting on Cook Inlet's proposed amendment immediately and to allow additional time within which the parties could move to a final agreement following public input in Alaska.

On May 16 the Commissioner and the Director presented such testimony to the appropriate House and Senate Interior Subcommittees respectively. Prior to this testimony the three members of the Alaska Congressional Delegation and appropriate staff were briefed in considerable detail concerning the tentative proposal as it then existed.

Shortly following the Congressional testimony, the Cook Inlet Region, Inc. Board of Directors, for internal reasons not fully understood, voted to reject the then existing proposal and this led to an approximately three week period during which little discussion occurred between the State and CIRI. The lack of agreement was based primarily upon the Region's insistence that it ultimately obtain full surface entitlement under ANCSA, even if outside the Region. The State felt that full entitlement in addition to the lands which the State had proposed to trade to CIRI

was unacceptable. The latter part of June, following some Region concession on the full entitlement issue, discussions began again and continued intermittantly throughout July, August, and September as Congressional deadlines for action continued to recede. The extra time available was invaluable in allowing the State to more closely scrutinize various aspects of the proposal and to work with the Interior Department to insure the State could agree with the concessions which Interior was proposing. During this period additional meetings with the Congressional Delegation, other division and departmental staff and representatives from CIRI occurred. Documentation of these meetings is contained in greater detail in the file.

On September 24 additional testimony was presented before Senator Haskell's Interior Subcommittee concerning the proposal. Presentations and discussions were held with various interested parties in Washington, including the Congressional Delegation, and a more detailed presentation concerning the state-federal aspects of the proposal was made by the Commissioner and Director to the Department of Interior's Alaska Task Force.

On September 26 the Director announced that a public briefing of the proposal would be held in Anchorage on October 2 with public testimony to be received orally on October 3 with an additional period for written input. On September 30 a very detailed briefing of the proposal was made to both Division of Lands staff and a second briefing to representatives from other divisions within the Department of Natural Resources and representatives of other State departments. On October 1 another very detailed briefing was given to the Press, radio, and television media. Before the public presentation additional detailed presentations were made to various groups which had expressed considerable interest in the ongoing discussions. These included representatives of three affected municipal governments (Anchorage, Matanuska-Susitna Borough, Kenai Borough),

Legislators, and environmental groups. Public presentation on October 2 and the meeting the following night for public input were very well attended and, in response to requests for a similar hearing in Fairbanks, another presentation was made in Fairbanks on October 7. As a result of the media campaign and the public meetings, significant public input was received and a number of meetings were held between the Director and interested parties as well as several additional detailed briefings to groups specifically requesting them. Those latter included the Bureau of Land Management, Anchorage Chamber of Commerce, Kenai Borough Assembly, Capital Site Selection Committee, and the Federal-State Land Use Planning Commission. A summary of the input from the public and the various interested groups, as well as the State's response to this input, is detailed later.

Specific Nature of Proposal

The proposal is basically composed of three different parts; a State-CIRI agreement, a CIRI-Federal agreement, and a State-Federal agreement. All aspects of each sub-agreement must be executed before the entire proposal would be binding. In essence, the State of Alaska would make available to CIRI State lands which the Region feels are of like and similar character to those lands which it has historically used. In return, the State would fall heir to approximately one-half of Cook Inlet's 12(c) entitlement in the Talkeetna Mountains, Chakachamna Lake, Lake Clark, and the Kamishak Bay areas. The remaining approximately one-half of Cook Inlet Region's 12(c) entitlement would remain in federal hands and the Federal Government would in turn convey to the State an equivalent amount of acreage in the Bristol Bay area. Additionally, the Federal Government would convey to Cook Inlet certain other lands within the region, including lands from the Kenai National Moose Range, as well as a total of approximately 26 townships to be selected from federal lands outside of Cook Inlet Region.

Because certain Cook Inlet Region village selections have or are likely to impact state, federal or CIRI interests related to Cook Inlet's selections, smaller sub-agreement proposals have been discussed with approximately seven villages or groups. These proposals function very rationally within the framework of the Cook Inlet Region selection proposal. Without the inclusion of these sub-agreements the interests of one or more of the three major parties would be likely frustrated by the existing village or group selection patterns.

Attached as Appendix A to this document is a more detailed breakdown of the specific aspects of the "original" proposal as presented publicly on October 2. Each aspect of the proposal was specifically keyed by number to an attached map which shows the location of that particular aspect of the proposal. Each aspect was also briefly explained as it pertained to the overall proposal. With only a few exceptions those aspects were the same ones which we had been discussing since last May and, therefore, there was relatively little new with respect to the proposal at that time. Following public input, as described below, and as a result of the U.S. District Court's finding Salamatof and Alexander Creek as certified villages, the proposal was modified and is shown in its final form under the "Current Status" hearing below.

Characterization of Public and Agency Input

The more or less finalized "original" proposal was presented to state agencies and the public in detail during the first week of October. As a result of this process input was received from many sources, primarily the public. This input was used for a series of additional sessions with CIRI in which significant modifications were made. This resulted in the "modified" proposal described later. The characterization below represents agency and public input with respect to the "original" proposal before modification.

As with the public input, other state agencies generally supported the concept of the State's attempts at insuring rational land ownership patterns. One aspect of the proposal, that of the approximately 12 township selection in the Beluga area, generated significant comment from the Division of Geological and Geophysical Survey as well as the Minerals Section within the Division of Lands. This input, both oral and written, emphasized both the amount of known and inferred coal reserves as well as the potential for coal exploitation under various conditions. While general parameters of the coal resource in the Beluga area had been known during the discussions with CIRI, more detailed and specific input from these agencies was requested and received. The specifics of this input may be found in the case file. Input from other state agencies which requested specific alterations or suggestions, e.g. the Department of Highways, was inputted during the modification discussions and this input may again be found in the file. Other agencies generally expressed approval either orally or written of the basic aspects of the proposal.

Public input following presentation of the "original" proposal came in both oral and written form. The vast majority of respondents indicated favorable support for the concept of the State entering the discussions and the general expression was that, with the exception of certain aspects of the proposal, the overall benefit which accrues to the State outweighed any deficits involved. Against this background of significant public support for the concept of the proposal, eight specific areas were singled out which received comment.

1. Mental Health Lands - Testimony brought out the fact, inadvertently overlooked by all parties, that approximately six and one-half townships from within the original pool of land CIRI could select from in the Beluga area had been selected by the State as mental health lands. Input and interest concerning these lands was received not only at the public hearings but

also through several telephone calls from interested members of the public. It might be noted that this finding alone made the extensive public process invaluable, and demonstrates the need for public exposure on all similar complex issues.

2. Coal Deposits - By far the most controversial aspect brought out by the public hearings and subsequent input concerned the inclusion of the "Beluga Coal Fields" in the proposal. Concern was genuinely expressed, although facts, figures and questions were often uninformed in nature. However, the sum total of input at the public hearings, from interested calls and appearances at the Division of Lands by interested parties, and inquiries from several groups indicated a definite feeling that significant acreage of lands with coal potential were felt to be "too much."

3. Insufficient Time - A number of comments were received which indicated that because of the complexity of the proposal insufficient time was available within which to satisfactorily study and comment. Interested parties were understanding of the fact that the "deadlines" were largely a result of a Congressional time schedule beyond our direct control, but the feeling of inappropriate time constraints was still evident. Later announcements by the State that over five weeks were available for public input ameliorated this feeling considerably.

4. State Agency Input - A few respondents indicated that they felt that insufficient input had been received from some State agencies during the negotiation process. While such comments generally indicated an understanding that specific recommendations from all agencies could not necessarily be accommodated in the proposal, the feelings were that all resource aspects should be addressed equally before a final decision is made on the proposal.

5. Legal Aspects - Two respondents raised the question of the authority of the State to enter into such a proposed trade. Their comments were almost exclusively directed at the authority of the State to alienate sub-surface resources in apparent contradiction to the Alaska Statehood Act and to the process by which "equal value" was determined.

6. Parks and Recreation Protection - A very significant number of respondents indicated approval of those few aspects of the proposal which offered some measure of protection for future open space and/or recreational options.

7. Accelerated Development - Several respondents indicated a favorable disposition to those aspects of the proposal which, by providing the Native corporations with lands appropriately located and suitable for development, would hasten the settlement and development of these lands in a manner which would favorably impact the State's economy. It was also felt that the location of private development in the Cook Inlet basin was appropriate and timely.

8. Extra-Regional Selection - Comments were received from three regional corporations which protested the out-of-region entitlement for Cook Inlet. These comments centered largely on a fear that CIRI's interests would not be compatible with those of Native residents of other regions, particularly with respect to CIRI's responsiveness to their life styles and subsistence needs. A fourth region, however, testified in favor of the proposal.

At a meeting of the Alaska Legislative Council in Anchorage on November 4, a presentation to the Council concerning the proposed Cook Inlet land trade was made by Mr. Harold H. Galliett, Jr. Mr. Galliett was particularly concerned with the Beluga lands aspect of the proposal. Not being familiar with the

"modified" proposal which resulted from public input of the preceding month, Mr. Gallett's presentation unfortunately conveyed some erroneous information. As a result of the presentation and an ensuing discussion, the Council became very interested in the proposal, and a subcommittee, chaired by Senator Kay Poland of Kodiak, was appointed to look into the matter and to report back to the Council. This subcommittee met in Juneau with the Governor, Commissioner of Natural Resources, and Director of Lands on November 7. In addition to Senator Poland, other Legislators present included Senator Rader and Representatives Smith, Miller, and Specking. The session included a detailed presentation of all aspects of the proposal followed by extensive questioning. The session lasted approximately three and one-half hours. On Monday, November 10, a conference telephone call was held among members of the Legislative Council concerning the proposal and the response of the Council was made in a letter from Council Chairman Genie Chance to Commissioner Martin on November 12. The Council felt that because of the early time deadlines and complexity of the proposal that the Council was in no position to either condone or oppose the trade proposal. Senator Chance did, however, indicate that members of the Council were free to express individual opinions on this or future land trade proposals.

The press was somewhat indecisive in commenting on the entire proposal. The "Daily News" did not discuss specifics, but rather applauded this attempt by government to actively participate in a proposal which would have such a great effect on the State. The "Daily Times" pointed out some of the benefits to be accrued, particularly the aspects of putting lands more suitable for development into native hands at an early time, but also questioned whether all aspects of the trade had been publicized so that a full and complete judgement might be made by the public. More recently, following the interest expressed by the Legislative Council in early November, the "Times" questioned

why the State was even involved in the matter in light of the paper's feeling that the problem was really one between the Federal Government and the Natives.

Generally, press coverage of the entire process has been extensive, and it is safe to conclude that public exposure, for those who chose to follow the issue, was extremely high. The Press briefing given by the State regarding the initial proposal was probably the most extensive ever given on any issue regarding State lands.

Current Status

As a result of public and agency input certain substantial changes were made to the tentative proposal which was made public during the first week of October. In addition, the decision by Judge Gazell in the United States District Court, which found that the villages of Salamatof and Alexander Creek were certified and therefore entitled to select large acreage within areas very important to the agreement, caused other necessary changes to the original proposal since certain aspects of the proposal sought an agreement before a decision was rendered. The significant changes to the "original" proposal, which have resulted in a "modified" proposal, are outlined below.

1. Beluga Area--the original proposal would have permitted CIRI to select 12 townships from a pool of approximately 22.5 townships in the Beluga Area. The modified proposal would permit CIRI to select 13.5 townships out of a pool of approximately 16 townships. The reduced pool reflects the 6½ townships of Mental Health lands which were withdrawn from the pool. This reduction would leave approximately 75 per cent of the measured or indicated coal reserves in State ownership. Despite this very significant diminu-

tion of value to Cook Inlet Region, the modified proposal calls for only 1.5 additional townships which may be selected from the diminished pool. In addition, a much larger area on the coast southwest of the Tyonek Reservation would remain in State ownership for future resource development in that area. Rather than CIRI owning a land corridor from its selected lands to the coast, the State would guarantee a public right-of-way for various resource and other transportation needs.

2. Bristol Bay Area--the original total of approximately 30 townships in the area of the Interior Department's Lake Clark d(2) proposal which were to be traded by the State in return for an equal number of townships in the Bristol Bay Area has been reduced to approximately 25. This change resulted from a determination by the State that it would be of greater benefit for the State to receive title to approximately 5 townships in the Lake Chakachamna Lake area. In addition to the inherent value of these lands, the Interior Department is very interested in these townships for inclusion in its d(2) proposal. For this reason, the State would retain a very strong bargaining position by obtaining title at this time to those lands.

3. Anchorage Bowl Federal Surplus Lands--while the original proposal specifically prevented CIRI from obtaining title to Federal Surplus Lands in the Campbell Tract, Point Campbell and Point Woronzof withdrawals, the modified proposal goes further in also protecting the Goose Lake withdrawal and in guaranteeing transfer of the Campbell

Tract to the State immediately and the Point Campbell and Point Woronzof of those surplus properties to the State or the Anchorage Municipality surplus properties as soon thereafter as possible.

4. Other Federal Surplus Lands Or Withdrawals--the original proposal permitted CIRI to select up to 3 townships of Federal lands in the Cook Inlet region from a pool of Federal surplus property, revoked Federal withdrawals and unperfected public land entries such as homesteads, etc., on an acreage basis. The modified proposal recognizes that such Federal lands may have significant economic values and there is therefore a provision to reduce CIRI's selection entitlement by 1 acre for every $500 of land value selected by CIRI from such Federal lands. In addition, the State is given certain veto and appeal prerogatives to insure that public interests are protected prior to selection by CIRI.

5. Extra-Regional Selections--In response to input by other Native regional corporations which expressed apprehension at CIRI's ability to select lands in close approximation to their land selections, the modified proposal permits affected village and regional corporations outside Cook Inlet to exercise a veto over CIRI's land selections in their 11(a) withdrawals. This will assure the other Native corporations of protection for subsistence, economic or other values. To insure that CIRI would have sufficient lands available to select from, the modified proposal permits CIRI to select from d(1) lands extra-regionally by following a selection process which guarantees both the Federal and State governments a role in determining the location of selections and in protecting each government's own specific interests.

6. Kenai National Moose Range--the District Court's finding that Salamatof is an eligible village immediately impacted the Moose Range with an additional 56,500 acres of selections. Since it appears the Federal government may appeal the decision, the impact and final date of land selections on the refuge are unknown at this time. The modified proposal therefore assumes a maximum selection by all Native corporations of approximately 108,000 acres. If the Federal government appeals and is successful, then the lands otherwise selected by Salamatof would probably go the CIRI as shown in the original proposal. However, if Salamatof does remain an eligible village, CIRI would obtain lands in the refuge only to the extent that some of the villages were willing to trade out of the Moose Range and make lands available for CIRI. In essence, therefore, total impact upon the refuge would remain roughly the same as in the original proposal; the only difference would be which corporation would own the lands.

7. Lake Clark Village Selection Tradeouts--as a result of the District Court decision which found Salamatof and Alexander Creek as eligible villages, the acreage of village selections in the Lake Clark area approximately doubled. Although the State would still trade out those village selections on a 1 for 4 basis, total State acreage involved would remain about the same. The only differences from the original proposal would be that 4 rather than 2 villages would be involved, and the Federal government would be required to provide any other additional acreage from within other village deficiency withdrawals.

Eight specific aspects of the original proposal were commented upon during the public input process. These aspects are outlined above on pages 15-17. Aspects number 1 (Mental Health lands) and 2 (coal deposits) were very substantively addressed and the changes described under number 1 of current status above. Aspect number 3 (insufficient time) has been taken care of by the continued Congressional postponement of action which has provided over 60 days for public reaction and input. Aspect number 4 (State agency input), if a valid basis for comment ever existed, was also addressed during this 60 day period. Contacts with most state agencies, particularity the Division of Geological and Geophysical Survey, resulted in additional comment and input from these agencies. The Division of Geological and Geophysical Survey in particular submitted additional memoranda and reports concerning resource values in the Beluga area. Items number 6 (Parks and Recreation Protection) and 7 (accelerated development) were merely supportive of certain aspects of the original proposal. These aspects were retained in the modified version. Aspect number 8 (extra-regional selection) was specifically addressed in number 5 under current status above. Only aspect number 5 (legal aspects) of the public input summary has not yet been specifically addressed in this memorandum. These legal points of the proposal are discussed in greater detail in the following section.

Major Considerations Before Decision

Two important considerations in all land exchanges were emphasized by a few members of the public and also by the Special Legislative Council Subcommittee:

1. Is there existing legal authority to conclude an exchange?
2. Would the State be receiving at least equal value for the value it gives?

These aspects had, of course, been investigated by the State at the onset as an integral part of any such decision-making process.

1. Authority - It is the opinion of the Attorney General and, we believe, of most other attorneys who have addressed the matter in detail that the Executive presently has State statutory authority to undertake this proposed land exchange. Authority has apparently existed since the enactment of the Alaska Land Act shortly after Statehood for the State to conclude an agreement such as this land trade proposal. Under AS 38.05.020(b)(2), the Commissioner, and, under AS 38.05.035(a)(14), the Director, have several times since Statehood entered into land trades or other agreements affecting lands that were not treated as sales or leases under the Land Act. Additional specific authority for land exchanges such as the present proposal was provided by the 1972 Legislature in the form of AS 38.95.060 as a counterpart to Section 22(f) of ANCSA. Among other things, this law permits the State to exchange land or interest in land with a Native corporation for the purpose of affecting land consolidations or to facilitate the management or development of the land.

The authority cited above does not prohibit the alienation of minerals as proposed in the trade. Although there is no State statutory obstacle, the Statehood Act prohibition against such alienation, found in Section 6(i), is regarded by some as a Federal constraint. Many persons take the position that Section 6(i) has been amended by implication in Section 22(f) of ANCSA so that it does not come into play in such exchange transactions. To erase any questions, the Federal Legislation which will implement the land

trade proposal will specifically address this matter to remove any doubt as to Congressional intention regarding state authority to enter into such a proposal.

2. Equal Value Consideration--In determining whether equal value will be received for value given in an exchange such as this proposal, there are basically two different types of "values" which require consideration. One is a value which can be determined with reasonable accuracy to have an economic value, often expressed in dollars. Secondly, there is value which either may be capable of expression in economic terms but for which a specific dollar value cannot be estimated with any particular degree of certainty at this time, or for which an economic value may never be specifically determined. However, values in this second category are very real and a reasonable person would recognize their existence and importance in computing the overall value received or given in a trade. With respect to this proposal paragraphs A and B below outline, respectively, the two types of values mentioned above.

A. Economic Values--The information presented below represents a summary of economic values identified with respect to State interests in the proposal. The information is based upon reports from various State sources and is expressed in terms of current 1975 dollars, i.e. economic values of resource potentials such as the Beluga coals have been discounted back to present day value. Only those resources specifically known to exist were valued. For example, although there are unquestionably very real and significant subsurface economic mineral values on lands which the State

would receive under the proposal, since they are as of this time unidentified no attempt was made to infer a particular economic value. In the Beluga area where certain measured or indicated reserves exist, however, estimated valuations were made.

Under the proposal the State would exchange approximately 21.2 townships of its land in return for 51 townships of Federal land and the right to select, at the State's discretion, an additional 20 townships. Also, the State would receive title immediately to the Campbell Tract in heart of the Anchorage Bowl as well as a commitment to an expedited transfer of the Federal surplus lands at Point Campbell and Point Woronzoff. In estimating the economic value of the lands to be given and received by the State, estimates were made on the value of the land itself, any timber thereon, and any known mineral resources thereunder. The table below summarizes these values. Documentation may be found in the files.

TABLE I.

ESTIMATED ECONOMIC VALUES, IN PRESENT DOLLARS, OF LANDS GIVEN AND RECEIVED BY THE STATE

LANDS GIVEN BY STATE

LOCATION	ACREAGE	VALUES ($MILLIONS) LAND	MINERALS	TIMBER	TOTAL
Scattered Tracts	69,721	15.7	---	1.8	17.5
Kenai Penn.	107,650	16.1	---	1.3	17.4
Beluga	314,640	22.0	15.9[a]	1.2	39.1
TOTAL	492,011	53.8	15.9	4.3	74.0

LANDS RECEIVED BY STATE

LOCATION	ACREAGE	VALUES ($MILLIONS) LAND	MINERALS	TIMBER	TOTAL
Kamishak Bay	276,480	11.1	---	.2	11.3
Koksetna R.	161,230	6.4	---	.2	6.6
Talkeetna Mts.	161,280	6.4	---	.1	6.5
Bristol Bay	576,000	23.0	---	---	23.0
Campbell Tract	3,930	5.9[b]	c	c	5.9
Pt. Campbell	1,179	6.6[d]	---	---	6.6
Pt. Woronzoff	[illegible]3	4.2[d]	---	---	4.2
Capt. Cook Rec. Area	4,800	.8	---	.1	.9
TOTAL	1,228,742	64.4	---	.6	65.0

NOTE:

a. The 15.9 value for the Beluga Coal resources is based on the middle of three scenarios for production in that area (pessimistic, medium, optimistic). The value has been discounted at eight percent from future revenues to present dollar values. The most optimistic scenario, which makes several very optimistic assumptions, would yield a discounted value of $38.2 million (figures attached to memo).

b. A very conservative figure of three thousand dollars per acre has been assumed for the Campbell Tract. This figure has then been discounted fifty percent under the assumption that if the State did not gain immediate title to the area under this proposal it would still stand a respectable chance of obtaining the land at some time in the future.

c. Although other values including timber and specifically gravel are found on the Campbell Tract, sufficient data were not immediately available to make a good estimate of value. However, the value of gravel alone, located as it is within the center of the Anchorage Bowl, would be very substantial, certainly totaling in the millions of dollars.

d. As with the Campbell Tract the values of the Point Campbell and Point Woronzoff surplus lands has been discounted to recognize that the State might obtain these lands at some unknown future date in other ways if the proposal is not executed. However, because these lands are outside of the two-mile radius of the old city boundaries, and because they are not as important as the Campbell Tract for other public purposes, there is a measureably greater probability that these surplus

Table I. NOTE d. continued.

lands would go to CIRI under some other form of settlement of their claims. Therefore, the conservative values of $8,000 and $10,000 per acre, respectively, are further discounted only thirty percent.

To the values to be received by the State as estimated above must be added values which, if the proposal is not consummated, might be lost to the State. The two most prominent values in this category are the ninety percent royalty revenues which the State receives from oil production in the Swanson River area of the Kenai National Moose Range, and 26 townships of state selected land which CIRI would select if they prevailed in their court suit and the Secretary made such lands available for native selection by refusing to convey them to the State. Any estimation of the value of these two possibilities to the State must assume certain levels of probability that the situation would occur without execution of the proposal.

Swanson River Revenues--There are any number of factors which may enter into assuming a probability that the Secretary or the Congress might convey to CIRI substantial subsurface title in the Moose Range. While only 15 months ago such a possibility would have seemed small to the State, ownership of 15 townships of Moose Range subsurface estate was offered to CIRI by the Secretary in September of 1974. Had CIRI accepted the offer at

that time the possibility of that event would have been one-hundred percent. In view of both that offer and Congress' assurance to CIRI of some settlement of their land claims problem, and assumption of a .5 probability does not appear unreasonable. Using State revenue projections for oil and gas royalty receipts from the Moose Range for only the next 14.5 years, and discounting those revenue projections at eight percent, a figure $41 million is obtained. Use of a probability of .5 yields an estimated value of $20.5 million.

Chalatna Lake 26 Townships--In assuming a probability that the State might lose title to lands currently selected south of Mount McKinley National Park in the Lake Chalatna area two probabilities must be estimated. The first is the possibility that CIRI would prevail in its court suit. Assuming that CIRI did prevail, a probability must then be estimated as to whether the Secretary would attempt to break the 1972 out-of-court settlement of Alaska v. Morton and whether he would be successful in that attempt over almost certain State court action. Numerous agruments may be proposed regarding these two probabilities but for this analysis probabilities of 50 and 40 percent respectively are used. Applying these probabilities to an estimated current land value for the 26 townships of $24.0 million and an estimated value for timber of $3.3 million, a value of $5.5 million is found.

A third value which must be estimated is that of the

additional 20 townships which the State may select at its discretion. A though statehood selection entitlement would be used, three factors must be considered. First, there is a possibility that the State may never be able to exercise its full selection rights under the Statehood Act and that the State must look closely at every opportunity it has to select lands. Secondly, the lands which could be selected are, relative to the lands that will be remaining after implementation of ANCSA and settlement of the d(2) question, certainly in closer proximity to existing state lands and populated areas. Thirdly, an exercise of State selection rights would be the first selections under the Statehood Act in the past four years. In other words, the "right to select" certain lands now that are in close proximity to existing state selections is in and of itself of value. Using the very conservative total value for these lands of $40 per acre, and discounting the 20 township selection right by a factor of two-thirds to account for the use of selection entitlement, the result is an estimate of $6.1 million.

Thus, the total estimated value of the three factors described above is $32.1 million. This total, when added to the estimated appraised values cited in Table I. above, gives a total estimated economic value to the State of $97.1 million. To this total must be added or subtracted the values described below to which a reasonable economic value cannot be applied at this time, or perhaps ever,

with any degree of certainty.

B. Other Values--As mentioned earlier, there are two types of other values which must be taken into consideration for purposes of evaluating this proposal. First are economic values which cannot be identified with any reasonable specificity at this time, and secondly there are those values which might never be capable of having a specific economic value attached to them, but which are unquestionably of significant value none the less. Paragraphs number one and two below present, respectively, positive and negative values to the State associated with the present proposal. Although certainly not exhaustive, the listing attempts to outline the major non-economic values involved.

1. Positive Values--the following positive values would accrue to the State should the proposal be consummated.

(a) CIRI Court Suit--as explained earlier in this memorandum, if Cook Inlet wins its appeal the State might lose not only considerable acreage from its present selections south of Mt. McKinley National Park, but it might also lose substantial additional lands should the September 1972 out-of-court settlement with the Secretary be abrogated. In view of the District Court's decision that the Secretary was in error concerning his finding eleven villages ineligible, Cook Inlet Region's chances

of success with its court suit were measurably increased.

(b) Moose Range Surface Protection--private surface ownership within the Moose Range would be kept to a minimum, thus protecting the very significant wildlife and recreational values of the Moose Range. The Moose Range is also a state wildlife refuge and its already tremendous value for recreational pursuits including hunting, fishing, canoeing, etc., will continue to grow with increased settlement and development of state and private lands outside the refuge on the Kenai Peninsula. Some, however, would argue that maximum Moose Range lands should be given to the natives so that development may occur.

(c) Suitable Lands In Private Ownership--the state lands received by the Native corporations are lands suitable for settlement and development because of physical characteristics and location, thus substantially reducing future costs to the State to provide services to these areas. Additionally, the Native corporations receiving these lands will be in a much better position to develop them at an earlier date, thereby stimulating economic development and providing an

additional tax base both to the State and to the local governments involved.

(d) Kamishak Bay Lands--under the proposal the State would receive title to approximately 12 townships of land on the west side of Cook Inlet on Kamishak Bay. These lands would represent the only State presence on the west side of Cook Inlet for at lest 400 miles south of Kalgin Island. Kamishak Bay itself, owned by the State, is believed to have significant oil and gas resource potentials and these coastal lands represent the only feasible areas for onshore development facilities. This proposal would put these lands in State hands. Additionally, the terminus of the Interior Department's "western transportation corridor", which originates in Petroleum Reserve Number 4, terminates on Bruin Bay which the State would also receive.

(e) Talkeetna Mountain Land--the State would receive approximately 14 townships in the Talkeetna Mountains area, some of which would be located immediately adjacent to currently State patented land. Three of these townships are contiguous to one of the three final sites to be considered for the new State Capital. Additionally, the proposal would bring to

State ownership lands otherwise selected by Native groups which would be included in the current Talkeetna Mountain State Park proposal. The land trade would permit a manageable park boundary proposal to be established, thus obviating the inevitable costly routine of buying back private property in the future. Also, watershed protection for a new Capital or for other settlement to the west would be assured.

(f) Addition To Captain Cook Recreation Area--the proposal would insure that a minimum of 7 sections of land would be added to the Captain Cook Recreation Area from federal lands within the Moose Range. Otherwise, Native selection of these sections would result in a significantly less manageable recreation unit.

(g) Public Lands--the proposal would insure that lands with significant public interest would remain in public ownership, particularly in the vicinity of Lake Clark. In addition, the State would receive lands in the Chakachamna Lake area which would give the State significant bargaining power in influencing federal action with respect to hunting, mining or other State interests in any permanent federal withdrawal in the Lake Clark area.

(h) Increased State Presence in Bristol Bay--the proposal would increase the State's presence in the Bristol Bay area by gaining for the State approximately 25 townships of d(2) land in addition to the 12 townships on Kamishak Bay. The 17(d)(2) land would, of course, be otherwise unavailable to the State. This enhanced state position will strengthen the State's bargaining power with respect to the proposed National Resource Range in the Bristol Bay-Lake Iliamna area. If the Resource Range proposal is adopted as presently proposed, the State, with the single exception of the Wood River-Tikchik area, would be totally removed from any significant land ownership position west of Cook Inlet.

(i) State Interests in Other Federal Lands--under the proposal other federal surplus lands and unperfected public land entries which might go to CIRI within the region would be subject to a State veto and/or appeal process to protect State and public interests in these lands. Since the eventual settlement CIRI receives, whether by agreement, legislation, or by court action, will undoubtedly include these lands, the proposal represents the State's only opportunity to participate in protecting the public interests on these lands. As an example, the Bradley Lake Power Withdrawal is specifically protected from Native ownership; if the withdrawal should

be revoked, it could be selected by the State.

2. Negative Values--the following negative values would accrue to the State should the proposal be consummated.

(a) Beluga Coal Management--the proposal would remove the State from its current position of almost total ownership of lands in the Beluga area by putting into CIRI's hands approximately 25 percent of the measured and indicated coal reserves and surrounding lands which may contain additional reserves. While the State would still of course have very substantial environmental controls over mining through its air and water quality standards, etc., and while it could pass surface mining legislation applicable to private lands, it would lose the additional landlord power to control strip mining operations. However, with regard to revenues, the State would lose its royalty interest, but all informed opinion agrees that a severance tax would yield the best returns, and is the proper course for the State to follow.

(b) Loss of Port Area--approximately 7 sections of land northeast of the village of Tyonek with potential for industrial development and docking facilities would be transferred to native hands. Perhaps the best site on the west side of northern Cook Inlet, which is located just to the south of these 7 sections, is already owned

by the village of Tyonek. The State would retain, however, another site of at least equal suitability and potential just west of the Tyonek village lands. This latter site is the one which has benn primarily suggested and studied from the standpoint of the use and/or shipping of coal from the existing coal leases in the Beluga area.

Economic Summary--As mentioned earlier in determining equal value two types of value have been used; value in economic terms and value in a sense which cannot be strictly expressed in dollars. As outlined above, the economic values themselves which accrue to the State are in excess of those values which the State relinquishes. These are calculated as shown below.

TABLE 2.
SUMMARY OF ESTIMATED ECONOMIC VALUES ($MILLIONS)

GIVEN BY STATE

Existing values relinquished	74.0
TOTAL	74.0

RECEIVED BY STATE

New values received	65.0
Existing values not lost	32.1
TOTAL	97.1

To the total economic values received by the State the non-economic values cited above, both positive and negative, must be added. Since the degree to which these non-economic values accrue positive or negative benefits to the State is somewhat subjective, certainly no quantifcation is possible. However, they are very important considerations and any decision making process must reasonably incorporate

them in determining the overall equal value consideration.

Finally, it should be emphasized that the agreement represents a negotiated settlement, which is an extremely important factor. First, it can certainly be suggested that negotiation, particularly regarding non-quantifiable items, is man's best procedure for reaching equity. While this is not relied upon for legal foundation here, it is nonetheless crucial for public policy reasons.

Second, a settled three party negotiation implies that each has left the bargaining feeling that either he got a fair and equal share, or more likely, a better share than the others. The Director would certainly assert the latter in terms of a negotiated value for the State, but would recognize that each party may feel the same for its own reasons and seek to demonstrate this to its constituency or higher authority.

Third, it is important to convey some sense of the "paths not taken" regarding trading items and other values. While no blanket conclusion is possible, there can be every assurance that a comprehensive effort took place, over many months, to seek out and discuss a multitude of alternatives before reaching the agreement herein.

Conclusions and Recommedations

This memorandum of transmittal has attempted to outline in a structured fashion the basis for State participation, the process of that participation, and the results as found in the proposal. It is my conclusion that State participation

In the modified proposal as described above is in the best interests of the State and that the State will receive considerable excess value for the value it relinquishes. As your approval and the concurrence of the Governor are needed to authorize State participation in this proposal, this document can serve as basis for that decision, augmented by any further information you may require. In this particular case since you have been very closely and continuously involved with the process, and as the Governor has been fully briefed at several different times, I believe most of the aspects are suitably covered above, and in the complete files on this matter.

While it is my opinion, and that of most others I know who have addressed the matter in detail, that the Executive Branch presently has the state statutory authority to execute this proposed land exchange, it is also true that questions have been raised by members of the public and by legislators concerning the adequacy of this authority. While I believe that these questions would certainly be answered by the courts in the executive's favor, the process of litigating a test case would be inordinately time-consuming. That intervening litigation period would protract the commencement of passage of lands under the agreement, a consequence which all parties regard as undesirable, and possibly fatal, if the basic merits of the agreement are accepted.

There is no doubt that the proposed exchange cannot come to pass without prior federal legislation clearing its way under NEPA and Section 6(i) and dealing with other matters of implementation. The opportunity - perhaps the only opportunity - for such legislation is upon us now with the omnibus ANCSA amendments bill.

After the Congressional legislation is passed, it of course will be necessary for the State to assent to the exchange. While the Commissioner is authorized under existing law to give that assent, unilateral executive action on a matter of this

magnitude would be inconsistent with the policy of the present administration that all important social institutions should have the opportunity to participate to the fullest extent possible in such decisions. Therefore, I believe the State should structure the proposed transaction so as to maximize the Legislature's ability to participate in the decision. (Indeed, the Administration endeavored to involve the Legislature throughout the public review process as the proposal has been developed.) The problem, of course, is that there is no mechanism by which the federal government can legally "negotiate" the matter through the Legislature during the session, for Congress must act now to get federal authority for a specific proposed transaction. Nor is it likely under our Constitution that the Legislature could, or would choose, to do so.

Given these premises, the only opportunity that the State has to insure that the Legislature may pass upon the merits of the proposal is for Congress to enact legislation empowering the Secretary to consummate the transaction (removing federal obstacles to the State's participating), such legislation to be subject to the State's subsequent consent. The state administration, in its turn, pledges that consent to the Congressionally legislated "offer" will be forthcoming, if at all, only after review and consideration by the Legislature. An action by the Legislature disapproving the exchange should result in an action by the Governor denying consent.

If the decision is made to seek legislative review the time factor is particularly important. For several reasons, including the Congressional need for certainty the inexorable progress of Cook Inlet's appeal, and the dynamic nature of land status in Alaska, final action by the State would be needed as soon as practicable consistent with the Legislature's need to have a thorough opportunity to review the proposal in sufficient detail to make responsible public policy. I believe we would be in a position during the first week of the session to thoroughly brief

members of the Legislature and make available to them any information we might have concerning the proposal. Under that scenario it would appear that 50 to 60 days should be sufficient time for the Legislature to thoroughly review the proposal, particularly in view of the already widespread publicity and general public awareness of the various aspects of the proposal.

I close with the request that action taken affirmatively and expeditiously on this matter as I believe it to be a unique, perhaps singular, opportunity to achieve a vital series of public and private objectives. It is important, and in my view, right.

Federal-State
Land Use Planning Commission
For Alaska

701 W. FOURTH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99501

REC'D CIRI FEB 2 '76

ROUTE TO:	Info.	Action	Initial	Date
PRESIDENT	✓			
GEN. MANAGER				
LAND DEPT.	✓			
VILLAGE COORDINATOR				
PUBLIC RELATIONS DIR.	✓			
LEGAL DEPT.				
CENTRAL FILES		1		
COPY FOR BOARD MBRS.				
COPY FOR VILLAGES				

October 30, 1975

Honorable Henry M. Jackson
Chairman
Senate Committee on Interior
and Insular Affairs
Attn: Steve Quarles
3106 Dirksen Building
Washington, D.C. 20510

Dear Chairman Jackson:

It is our understanding that the Interior Committee will soon commence its markup of certain proposed amendments to the Alaska Native Claims Settlement Act. With this in mind, I am writing to communicate the Commission's strong support for amendatory legislation relating to the land entitlement of Cook Inlet Region, Inc., and its constituent villages, as such legislation is described in the recently announced agreement between Cook Inlet and the State of Alaska.

For the past three years, the Commission has been actively involved in efforts to resolve the land-related problems which have confronted Cook Inlet and its constituent villages. These efforts have taken the form of technical assistance to the regional corporation and, more recently, to the State of Alaska, and recommendations to the Secretary of the Interior with respect to the location and quantity of withdrawals needed to help satisfy the requirements provided in Section 11(a)(3) of the Settlement Act. Most recently, the full Commission has considered the tentative agreement arrived at between Cook Inlet and the State of Alaska. On the basis of this consideration, which took place at a Commission meeting held on October 24-25, 1975, I have been authorized to communicate our unanimous support for the approach taken in the proposed agreement.

The Commission's position is premised on the following principal considerations. First, in our opinion, a significant portion of the acreage presently withdrawn for possible selection by Cook Inlet does not meet the qualitative criterion provided in Section 11(a)(3) of the

Settlement Act. In arriving at this conclusion, we are cognizant of the Federal District Court's ruling in Cook Inlet v Morton, and are constrained to disagree with that portion of the ruling which relates to compliance with the criteria specified in Section 11. Second, the land status pattern in the Cook Inlet region, which encompasses large Federal withdrawals and significant acreage in State and private ownership, indicates that it would be very difficult for Cook Inlet to obtain a satisfactory land entitlement in the absence of the land exchanges and other mechanisms provided in the pending agreement. Third, implementation of the agreement would greatly improve land management within the Cook Inlet region by consolidating Federal, State, and Native ownership in areas which aptly reflect the interests of the various parties. Thus, for example, the agreement would result in Native ownership of certain areas on the Kenai Peninsula which, by virtue of their location, soils, and other characteristics, appear suitable for private settlement and development. Similarly, the State would obtain additional lands in the Bristol Bay watershed, which is of critical importance to the State for its fishery and recreational values, and the Federal government would be assured of a viable management unit in the Lake Clark area, which has been proposed for national park status pursuant to Section 17(d)(2) of the Settlement Act. Improved management and ownership patterns would also result in other areas of the Cook Inlet region, including the Talkeetna Mountains and the Kenai Peninsula. Fourth, the proposed agreement would lessen the impact of private ownership on the Kenai National Moose Range by reducing the total acreage that might otherwise be transfered to Native corporations and by requiring that certain protective measures be taken in a significant portion of the lands that would be conveyed. In short, implementation of the agreement would permit the creation of rational patterns of land management and ownership which reflect the varied interests of the parties involved. Neither the administrative nor judicial alternatives afford the flexibility which is necessary to accomplish this result.

In supporting the proposed agreement, the Commission does not mean to minimize the technical and other problems which must be overcome prior to its final adoption. For example, there are certain legal issues which must be addressed. However, the research conducted by our staff and more extensive work performed by attorneys for Cook Inlet and the State indicate that solutions to these problems do exist. Moreover, since the agreement would authorize Cook Inlet to select lands within the boundaries of certain other regional corporations, the views of those corporations must be considered with great care, and an effort must be made to insure that in the process of improving land ownership and management patterns in the Cook Inlet region, we do not jeopardize

the opportunity to create sensible patterns in other areas of the State. In addition, full participation on the part of Cook Inlet's constituent villages and groups will be required, for the agreement calls for the relocation of certain withdrawals made for their benefit. We believe that the participation and cooperation of all of the parties to the agreement and other affected Native corporations will create an atmosphere in which possible problems can be resolved and the objectives of the current proposal can be successfully achieved.

Thank you for your consideration of this correspondence.

Sincerely,

Burt Silcock, Jr.

Burton W. Silcock
Federal Co-Chairman

cc: Senator Ted Stevens
Senator Mike Gravel
Royston C. Hughes, Assistant Secretary, Program Development and Budget
Ken Brown, Legislative Counsel, Department of the Interior
Guy Martin, Commissioner, State Department of Natural Resources
Michael C.T. Smith, Director, State Division of Lands
Sam Kito, President, Alaska Federation of Natives
Roy Huhdorf, President, Cook Inlet Region, Inc.

JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 20, 1976

The Honorable Nels A. Anderson, Jr.
Chairman
House Resources Committee
Alaska State Legislature
Pouch V Capitol Building
Juneau, Alaska 99811

Dear Chairman Anderson:

I would like to cooperate with the Senate and House Resources Committees in their efforts to evaluate the Cook Inlet-State of Alaska Land Trade.

However, I cannot grant your request of February 16 for a 30-day extension of the March 12 deadline because it is out of my power to do so. Subsection 1 of Section 12 of the Act incorporates by reference the terms of the agreement of the parties (see page 42 of the House Report accompanying 6644).

Three conditions must exist before the Secretary of the Interior may act, the first of which is that the State of Alaska, within 60 days of the effective date of the Act, January 12, 1975, must irrevocably commit to the transaction: "Upon consent by the State of Alaska to be bound by the terms and conditions of this Document, which consent must be given, if at all, within 60 days of the commencement of the 1976 Session of the Alaska State Legislature, the State of Alaska shall convey to the United States for reconveyance to CIRI the lands described in Appendix C to this Document."

I believe that it is not only unrealistic to expect the federal Congress to pass yet another bill, but also inappropriate for us to expect them to do so when a little extra energy and committment by all of us can accommodate the March 12 deadline.

I assure you that I will do what I can to encourage the joint State-Federal Land Use Planning Commission to expedite their deliberation.

Sincerely,

Jay S. Hammond
Governor

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

FEB 27 1975

Honorable Avrum M. Gross
Attorney General
State of Alaska
Department of Law
Pouch K
Juneau, Alaska 99811

Dear Mr. Gross:

This is in response to your inquiry of February 23, 1976. Specifically, you inquire whether lands described in subsection IC(2)(e) of Terms and Conditions for Land Consolidation and Management in Cook Inlet Area (H.R. 94-729, 94th Congress, 1st Session, December 15, 1975; hereinafter Terms and Conditions), may be transferred to the State of Alaska by the Federal Aviation Administration for airport purposes. It is our understanding that FAA has the authority to make such a transfer by virtue of the Airport and Airway Development Act of 1970, 49 U.S.C. §§1701-1741 (1970).

Subsection IC(2)(e) of Terms and Conditions provides that Cook Inlet Region, Inc., may not include certain lands, including Point Woronzof, in the selection pool created by this document. The subsection further provides that:

> [S]uch lands shall be reserved by the United States for early conveyance to the State for park and recreation purposes as an integral part of the consideration for this document.

The issue is whether this provision precludes transfer of part of the Point Woronzof tract to the State of Alaska by the FAA for other than park and recreation purposes, if the transfer were otherwise authorized by law.

The Terms and Conditions must be read in conjunction with section 12 of P. L. 94-204, January 2, 1976. This section directs the Secretary, after certain conditions are met, to make a number of conveyances to Cook Inlet Region, Inc., and to the State of Alaska. The mandatory conveyances to the State of Alaska are described in paragraph (d) of section 12, and this paragraph refers to the Terms and Conditions to clarify the identities and amounts of lands to be conveyed to the state. Section 12 does not specifically direct the Secretary to convey Point Woronzof to the state for park and recreation purposes. Paragraph (b) of section 12 states that the duties and obligations of the United States and Cook Inlet Region, Inc., under the Terms and Conditions, are ratified as a matter of federal law.

We should note that it certainly was not the intention of the Departmental or State negotiators that the subject provision be construed as exclusive. And we are not aware of any reason why legislation authorizing a transfer of land to the state for park and recreation purposes should be construed as prohibiting a transfer of those lands to the state for airport purposes, if that transfer were also authorized by law. Apparently, the State of Alaska desires to receive part of Point Woronzof for airport purposes, rather than for park and recreation purposes. We see no impediment to such an action, if the proposed FAA action is authorized by law.

Sincerely,

Curtis Bohlen

E. U. Curtis Bohlen
Deputy Assistant Secretary for
Fish and Wildlife and Parks

March 3, 1976

Representative Terry Gardiner
Juneau, Alaska

Dear Rep. Gardiner;

I want to make it clear for the record that Cook Inlet Region agrees with the state that nothing in the terms and conditions included in House Report 94-729 is intended to require a conveyance by the federal government that would preclude the use of Point Woronzoff by the state or the borough for public purposes including an airport runway.

We have joined the state in urging the Department of the Interior to issue an opinion that would confirm the needed flexibility in the state. It is my understanding that such a letter is on the way.

Sincerely,

Roy Hundorff

#1

1. Special Act
2. Mineral Rights
3. Equal Value
4. "Left Field"

Original sponsor: Rules Committee by request of the Governor

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 784

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the Cook Inlet land exchange; and providing for an effective date."

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

* Section 1. PURPOSE. The purpose of this Act is to provide for settlement of certain claims and in so doing to consolidate land ownership among the United States, the Cook Inlet Region, Incorporated, and the State of Alaska in order to facilitate land management, to create land ownership patterns which encourage settlement and development in appropriate areas, to facilitate implementation of the Alaska Native Claims Settlement Act by resolving problems created in context of the Act by the concentration of state patented land selected within the Cook Inlet region and to preclude the need for regional selections that would impact important state interests. The legislature finds the Cook Inlet land exchange is a matter of statewide significance, is in the general public interest, will accomplish the purposes set out and will both settle existing litigation and foreclose possible protracted and devisive litigation.

* Sec. 2. APPROVAL OF TRANSFER. The governor is authorized to convey to the United States for exchange with Cook Inlet Region, Incorporated, that land described in Appendix C of the agreement entitled "Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area, December 10, 1975" set out in House of Representatives Report No. 74-729, 94th Congress, First Session in accordance with the conditions of that agreement. The conveyance shall pass all the state's right, title and interest in the land, including the mineral subsurface estate notwithstanding any other provisions

subsurface mineral rights

38.95.060 - equal value exchanges

of law.

Mineral Res. Equal Value

* Sec. 3. WAIVERS. The provisions of AS 38.05.125 and 38.95.060(c) do not apply to a conveyance made under this Act.

* Sec. 4. This Act takes effect immediately in accordance with AS 01.10.-070(c).

dup

Federal-State
Land Use Planning Commission
For Alaska

[illegible] FOURTH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99501

REC'D CIRI FEB 2 '76

ROUTE TO:	Info	Action	Initial	Date
PRESIDENT	✓			
GEN. MANAGER				
LAND DEPT.	✓			
VILLAGE COORDINATOR				
PUBLIC REL./EDITOR				
LEGAL DEPT.	✓			
CENTRAL FILES		1-		
COPY FOR BOARD MBRS.				
COPY FOR VILLAGES				

October 30, 1975

Honorable Henry M. Jackson
Chairman
Senate Committee on Interior
and Insular Affairs
Attn: Steve Quarles
3106 Dirksen Building
Washington, D.C. 20510

Dear Chairman Jackson:

It is our understanding that the Interior Committee will soon commence its markup of certain proposed amendments to the Alaska Native Claims Settlement Act. With this in mind, I am writing to communicate the Commission's strong support for amendatory legislation relating to the land entitlement of Cook Inlet Region, Inc., and its constituent villages, as such legislation is described in the recently announced agreement between Cook Inlet and the State of Alaska.

For the past three years, the Commission has been actively involved in efforts to resolve the land-related problems which have confronted Cook Inlet and its constituent villages. These efforts have taken the form of technical assistance to the regional corporation and, more recently, to the State of Alaska, and recommendations to the Secretary of the Interior with respect to the location and quantity of withdrawals needed to help satisfy the requirements provided in Section 11(a)(3) of the Settlement Act. Most recently, the full Commission has considered the tentative agreement arrived at between Cook Inlet and the State of Alaska. On the basis of this consideration, which took place at a Commission meeting held on October 24-25, 1975, I have been authorized to communicate our unanimous support for the approach taken in the proposed agreement.

The Commission's position is premised on the following principal considerations. First, in our opinion, a significant portion of the acreage presently withdrawn for possible selection by Cook Inlet does not meet the qualitative criterion provided in Section 11(a)(3) of the

Settlement Act. In arriving at this conclusion, we are cognizant of the Federal District Court's ruling in Cook Inlet v Morton, and are constrained to disagree with that portion of the ruling which relates to compliance with the criteria specified in Section 11. Second, the land status pattern in the Cook Inlet region, which encompasses large Federal withdrawals and significant acreage in State and private ownership, indicates that it would be very difficult for Cook Inlet to obtain a satisfactory land entitlement in the absence of the land exchanges and other mechanisms provided in the pending agreement. Third, implementation of the agreement would greatly improve land management within the Cook Inlet region by consolidating Federal, State, and Native ownership in areas which aptly reflect the interests of the various parties. Thus, for example, the agreement would result in Native ownership of certain areas on the Kenai Peninsula which, by virtue of their location, soils, and other characteristics, appear suitable for private settlement and development. Similarly, the State would obtain additional lands in the Bristol Bay watershed, which is of critical importance to the State for its fishery and recreational values, and the Federal government would be assured of a viable management unit in the Lake Clark area, which has been proposed for national park status pursuant to Section 17(d)(2) of the Settlement Act. Improved management and ownership patterns would also result in other areas of the Cook Inlet region, including the Talkeetna Mountains and the Kenai Peninsula. Fourth, the proposed agreement would lessen the impact of private ownership on the Kenai National Moose Range by reducing the total acreage that might otherwise be transfered to Native corporations and by requiring that certain protective measures be taken in a significant portion of the lands that would be conveyed. In short, implementation of the agreement would permit the creation of rational patterns of land management and ownership which reflect the varied interests of the parties involved. Neither the administrative nor judicial alternatives afford the flexibility which is necessary to accomplish this result.

In supporting the proposed agreement, the Commission does not mean to minimize the technical and other problems which must be overcome prior to its final adoption. For example, there are certain legal issues which must be addressed. However, the research conducted by our staff and more extensive work performed by attorneys for Cook Inlet and the State indicate that solutions to these problems do exist. Moreover, since the agreement would authorize Cook Inlet to select lands within the boundaries of certain other regional corporations, the views of those corporations must be considered with great care, and an effort must be made to insure that in the process of improving land ownership and management patterns in the Cook Inlet region, we do not jeopardize

the opportunity to create sensible patterns in other areas of the State. In addition, full participation on the part of Cook Inlet's constituent villages and groups will be required, for the agreement calls for the relocation of certain withdrawals made for their benefit. We believe that the participation and cooperation of all of the parties to the agreement and other affected Native corporations will create an atmosphere in which possible problems can be resolved and the objectives of the current proposal can be successfully achieved.

Thank you for your consideration of this correspondence.

Sincerely,

Burt Silcock, Jr.

Burton W. Silcock
Federal Co-Chairman

cc: Senator Ted Stevens
Senator Mike Gravel
Royston C. Hughes, Assistant Secretary, Program Development and Budget
Ken Brown, Legislative Counsel, Department of the Interior
Guy Martin, Commissioner, State Department of Natural Resources
Michael C.T. Smith, Director, State Division of Lands
Sam Kito, President, Alaska Federation of Natives
Roy Huhdorf, President, Cook Inlet Region, Inc.

1	Smith	PLAN
2	Backman	RESPONSE
3	Smith	RESPONSE

Kay
Barrier
Iran

Alaska State Legislature
Senate

POUCH V
JUNEAU, ALASKA 99811

February 16, 1976

The Honorable Jay S. Hammond
Governor, State of Alaska
Pouch A, State Capitol
Juneau, Alaska 99811

Dear Governor Hammond,

Following several days of comprehensive hearings in Anchorage and Juneau, many questions relating to the Cook Inlet - State of Alaska land trade remain unresolved.

The joint Senate and House Resources Committees are now sifting the testimony received. In addition, we have requested the joint State-Federal Land Use Planning Commission to thoroughly examine the matter and report its findings to the Legislature. I am sure that you too would welcome their researched and reasoned contribution.

We are advised by both the Federal and State co-chairmen that they cannot complete their report prior to March 10th. This is only two days before the date given to the Legislature to comply with your request that it render either approval or disapproval on the matter.

Therefore, we respectfully request that you assist in securing a 30 day extension to the Legislature, so that it can complete its own work toward a reasoned decision of acceptance or rejection of the Terms and Conditions of the land trade between the State of Alaska and the Cook Inlet Regional Corporation.

Sincerely yours,

Kay Poland
State Senator

Nels A. Anderson, Jr.
Representative

KP:ss

CC: Chancy Croft, Senate President
Mike Bradner, Speaker of the House
Mr. David Jackman
Mr. Burton Silcock

JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 20, 1976

The Honorable Kay Poland
Chairperson
Senate Resources Committee
Alaska State Legislature
Pouch V Capitol Building
Juneau, Alaska 99811

Dear Kay:

I would like to cooperate with the Senate and House Resources Committees in their efforts to evaluate the Cook Inlet-State of Alaska Land Trade.

However, I cannot grant your request of February 16 for a 30-day extension of the March 12 deadline because it is out of my power to do so. Subsection 1 of Section 12 of the Act incorporates by reference the terms of the agreement of the parties (see page 42 of the House Report accompanying 6644).

Three conditions must exist before the Secretary of the Interior may act, the first of which is that the State of Alaska, within 60 days of the effective date of the Act, January 12, 1975, must irrevocably commit to the transaction: "Upon consent by the State of Alaska to be bound by the terms and conditions of this Document, which consent must be given, if at all, within 60 days of the commencement of the 1976 Session of the Alaska State Legislature, the State of Alaska shall convey to the United States for reconveyance to CIRI the lands described in Appendix C to this Document."

I believe that it is not only unrealistic to expect the federal Congress to pass yet another bill, but also inappropriate for us to expect them to do so when a little extra energy and committment by all of us can accommodate the March 12 deadline.

I assure you that I will do what I can to encourage the joint State-Federal Land Use Planning Commission to expedite their deliberations.

Sincerely,

Jay S. Hammond
Governor

TERMS AND CONDITIONS FOR LAND CONSOLIDATION AND MANAGEMENT IN THE COOK INLET AREA, DECEMBER 10, 1975

I. The United States shall convey to Cook Inlet Region, Inc., the following lands:

A. Sixteen (16) sections of land, as described in Appendix A, presently within the boundaries of the Kenai National Moose Range, excluding the bed of Lake Tustumina, but to be removed from the boundaries of the Range. The conveyance of these lands shall be subject to the following conditions:

(1) Included in the lands described in this paragraph shall be a restricted zone of lake front and river front lands, not to exceed an average of 160 acres per linear mile, to be measured from the high water line, the exact boundaries to be determined by mutual agreement between CIRI and the Secretary no later than September 1, 1976. The conveyance of the lands within this zone shall contain the following restrictions so long as Lake Tustumena remains a part of the Range:

(a) A restrictive covenant running with the land which provides that no development shall take place or facilities be

constructed within the zone, except those which are directly necessary to support water dependent activities, such as a boat dock, airplane tie-up and marina. Reasonable access to these facilities will be permitted. It is contemplated that a lodge may also be located within the restricted zone, provided, however, that the lodge shall be of such a design, size and at a location agreed upon by the United States Fish and Wildlife Service. CIRI must submit a request in writing to the Fish and Wildlife Service for approval of any construction or development within the zone, which approval will not be unreasonably withheld. The Fish and Wildlife Service will notify CIRI of its decision on any such request within 120 days of receipt of such request, and failure of any response will be considered as approval.

(b) a provision that CIRI will not sell the lands to any third party for a period of 25 years from the date of the conveyance, without the consent of the Secretary.

(c) a provision that CIRI and its assigns will offer the United States the right of first refusal to purchase the lands if the lands are ever sold. The right of first refusal shall be for a period of 120 days from the date of notice in writing to the United States that the owner of the land has received a bonafide offer of purchase. The United States shall not be deemed to have exercised its right of first refusal if the owner does not consummate this sale in accordance with notice to the United States.

(d) the conveyance of the lands comprising this restricted zone shall not include the bed of Lake Tustumena and shall only convey the surface estate to CIRI. The United States shall retain the rights in oil and gas and all minerals, including but not limited to common varieties of minerals.

(e) the United States reserves the right of re-entry on these lands to be exercised upon occurrence of the following conditions:

(1) The United States obtains a final judgment in a proceeding in law or equity to enforce in whole or in part the restrictive covenants contained in the conveyance of the lands described in this section; and

(2) subsequent to such final judgment, the United States institutes proceedings in law or equity to enforce the provisions of the restrictive covenants which were the subject of the final judgment obtained in subparagraph (1) of this paragraph. The right of re-entry shall be asserted in such subsequent action but may not be actually exercised except upon and in accordance with the final judgment in favor of the United States in such subsequent action.

(3) such right of re-entry shall be limited, in any case, to the lands which were the subject of the final judgment referred to in subparagraph (1) hereof.

(2) The remainder of the lands described in Appendix A shall be conveyed to CIRI without restriction, other than the reserva-

tion of those easements authorized by 17(b) of ANCSA or other applicable federal statutes. The conveyance of such remainder shall include both the surface and the subsurface estates to such lands.

B. Three and fifty-eight one hundreds (3.58) townships of the subsurface estate to oil and gas and coal as identified in Appendix B; provided that the United States shall retain all other minerals including but not limited to common varieties of minerals; and provided that the right to extract coal shall be conditioned upon the opening for the extraction of coal of that portion of the Range in which these lands are located, and provided further, that coal shall only be extracted in a liquid or gaseous state. The extraction of oil and gas and coal shall be conducted in accordance with a surface use plan approved by the Secretary. Such extraction shall be undertaken in accordance with the most advanced technology commercially available at that time and causing the least practicable temporary and permanent harm to the fish and wildlife habitats of the Range. Any surface damage caused by the exercise of the rights herein must be repaired or reclaimed by CIRI, its successors and assigns, as rapidly as practicable without unreasonable interference with the rights of extraction. The United States shall make available to CIRI, its successors and assigns, sand and gravel as is reasonably necessary for the construction of facilities and rights of way appurtenant to the exercise of the rights conveyed under this section, pursuant to the provisions of 30 U.S.C. 601 et seq., and the regulations implementing that statute which are then in effect. By mutual consent of CIRI and the Secretary, CIRI may exchange any interest described in this paragraph for other mineral interests of equal value outside the boundaries of the Kenai National Moose Range.

(1) All federal lands and interests in lands within the following:

(a) T. 10 S., R. 9 W., F. M. (Healy); and

(b) T. 20 N., R. 9 E., S. M. (Glenn Highway).

(2) T 1 N R 21 W, S. M. (sections 13, 14, 15, 22, 23, 24, 25, 26, 27, 28, 32, 33, 34, 35, 36). The Secretary shall only convey the rights to metalliferous minerals in the land herein described. Extraction of such minerals shall be subject to a surface use plan submitted by CIRI and approved by the Secretary. Surface use of the purposes of exploration, extraction, access and beneficiation shall be conducted in accordance with the most advanced technology commercially available at that time consistent with the exercise of the rights conveyed under this subparagraph. CIRI, its successors and assigns, shall be required to repair and reclaim any surface damage as rapidly as practicable consistent with the reasonable exercise of such mineral rights.

(3) T 1 S, R 21 W, S. M. (Sections 3-10, 15-22, 29 and 30) The Secretary shall transfer to CIRI the above described lands in fee simple. Such conveyance shall be subject to a restrictive covenant, running with the land, providing that the surface shall only be used for purposes reasonably incident to mining and mineral extraction, including processing and transportation. The Secretary shall also convey to CIRI, an easement for a port which shall reasonably provide for receiving, shipping, storage and incidental handling, and incidental facilities thereto, of the minerals extracted from the lands conveyed under

this subparagraph. The Secretary shall also convey to CIRI a transportation easement to provide for transportation by road, rail or pipeline, of the minerals from the above described lands to the port easement. The Secretary and CIRI shall mutually agree upon the location of the port and transportation easements.

C. (1) Twenty nine and sixty six one hundredths (29.66) townships from any federal public lands withdrawn under sections 11(a)(1), 11(a)(3), and 17(d)(1) without the exterior boundaries of Cook Inlet Region; to be identified in the manner herein provided; provided that if CIRI's total entitlement under Section 12(c) of ANCSA is determined to be greater or less than 54 townships, the number of townships to be conveyed under this paragraph (hereinafter out-of-Region entitlement) shall be increased or decreased one for one.

(a) lands to be nominated and conveyed under this paragraph C-1 shall be limited as follows: The entitlement shall be satisfied from lands within Ahtna Region, Bristol Bay Region, Calista Region, Chugach Region, and Doyon Region. With the concurrence of the Secretary and the State and any affected Region other than those described above, selections may be made from one or more of the other Regions, on the basis hereinafter described or on such other basis as the parties shall contemporaneously agree. CIRI shall not nominate any of the following:

(1) lands located west of the 161 degree west longitude of Greenwich Meridian

(2) lands within Areas of Environmental Concern as described in the Secretary's 1973 Four Systems proposals to Congress

(3) lands within any of the Secretary's 1973 Four Systems proposals to Congress

(4) lands made available to the State for selection pursuant to Sections 2 and 5 of the State-Federal Agreement of September 1, 1972.

(b) By May 1, 1976 the Secretary shall, after consultation with the State, submit to CIRI a list of areas where approval of out-of-Region selections is unlikely. CIRI may thereafter nominate to the Secretary, with simultaneous notice to the State, a township or townships for selection. Within 120 days after such nomination, the Secretary after consultation with the State shall approve or disapprove it for withdrawal for placement in the selection pool as described herein. By October 18, 1978 CIRI must nominate at least 6 times its remaining out-of-Region entitlement. If the Secretary fails to approve a pool of three times that remaining out-of-Region entitlement from said nominations, then he and CIRI, by mutual consultation and study, shall agree by January 18, 1979 on sufficient additional townships to compose that number. The Secretary must, on that date, report to Congress as to the operation of this selection mechanism, and the need for remedial legislation, if required. Upon completion of the pool, the State and CIRI shall commence a striking and selecting process. The State may strike ten percent of the pool and the Region may select a number of townships equal to ten percent of the original pool. Alternate strikes and selections of five percent of the

original pool shall continue until CIRI's out-of-Region entitlement is, as defined in this paragraph, satisfied. The State and CIRI must complete this process within four months of completion of the pool. Notwithstanding the foregoing, with the consent of the United States, State of Alaska, and CIRI, lands may be conveyed wihout resort to the pool and striking mechanism herein provided, or in the manner described in subparagraph 2 of this paragraph C, in which case the number of townships to be nominated, pooled, struck and selected, shall be reduced proportionately.

(c) The State may continue to select lands under the Statehood Act which may be affected by this paragraph C, provided however, that any Regional nomination made hereunder shall be superior to and take precedence over any such State selection made after July 18, 1975. None of those lands selected by the State under the Statehood Act after July 18, 1975, and also nominated by CIRI pursuant to this paragraph C, shall be tentatively approved for patent to the State by the Department of the Interior for so long as these lands are potentially available to CIRI under this subparagraph unless CIRI has consented to such tentative approval.

(d) Lands approved by the Secretary for the out-of-Region pool shall, as of the date of such approval, be withdrawn from all forms of entry and location under the Public Land Laws including the mining and mineral leasing laws, but not from selection by the State, for so long as the said lands shall be included in the said pool.

(e) Prior to nomination of any townships for secretarial approval, the Region shall obtain the consent of other Native Corporations where applicable, and a copy of such consent shall be attached to such nomination.

(f) CIRI shall select its out-of-Region entitlement in blocks no less than 36 sections in size, along section lines, with no segment of an exterior line less than six miles in length, unless the Secretary specifically authorizes another manner of selection.

(g) CIRI may, with the consent of the Secretary and the State, select that portion of the mineral estate reserved by the United States in a township if the remainder of the estate may not be legally or readily available for selection, in which case, however, such substitute selection shall be treated as full satisfaction of the entitlement represented by the acreage involved and no additional selection rights shall arise by reason of the lack of conveyance of the entire estate.

(h) It is the intent of the Secretary and the State that all out-of-Region selections shall be as compact as is practicable, and that wherever possible, CIRI shall select lands which are contiguous to privately owned lands.

(i) Nothing in this paragraph shall be construed as limiting any Congressional review and approval of the Secretary's 1973 four systems proposals to Congress.

2(a) The Secretary, in conjunction with the General Services Administrator, shall promptly identify and take the necessary steps by

January 15, 1978, to create a selection pool which shall consist of all the following lands, within the exterior boundaries of the Cook Inlet Region, now in existence or hereafter coming into existence by January 15, 1978:

(i) abandoned or unperfected public land entries, provided however, that the United States shall not be obligated to initiate any adversary proceedings other than an adjudication by the BLM to determine if such entries are abandoned or unperfected, and the burden of identifying such lands shall be on CIRI;

(ii) federal surplus property;

(iii) revoked federal reserves;

(iv) cancelled or revoked power site reserves, with the exception of the Bradley Lake reserve, reserves in the Lake Clark proposal, and the Chakachamna Lake reserve, if any are ever cancelled or revoked;

(v) public lands created by the reduction of federal installations as defined in Section 3(e) of ANCSA, except that, if such lands are within a Section 11(a)(1) withdrawal area, they shall be subject to prior Village Corporation selections properly filed prior to December 18, 1975; and

(vi) any other federal lands as agreed by the State the Region and the Secretary, including but not limited to lands withdrawn under Section 17(d)(1) of ANCSA and not withdrawn for any other purpose.

The Secretary shall notify CIRI after any above-described lands have been placed in the pool. With the concurrence of CIRI, the State and any other concurrence that may be required under paragraph I-C(1)(e) of this Document, the Secretary may, in his discretion, contribute to such pool properties of one or more of the foregoing categories from without the boundaries of the Cook Inlet Region, provided that properties described in subparagraphs (2)(a)(ii) and (2)(a)(iii) of this paragraph shall be removed from the pool if not selected by CIRI within 90 days after the Secretary notifies CIRI that such properties have been placed in the pool or valued by the Secretary in Subparagraph 2(c) of this document whichever date is later.

(b) The State shall be advised of all properties located within the exterior boundaries of Cook Inlet Region to be placed in the pool described in subparagraph 2(a) and may require Secretarial consultation with the Joint Land Use Planning Commission with respect to any specific piece of property so included, except those in subparagraph 2(a)(i) hereof, to determine whether private ownership of such property would be incompatible with reasonable land-management principles; provided, that the Secretary shall not be bound by any recommendation of the Joint Land Use Planning Commission. The Secretary shall notify the State, CIRI and the Commission of his decision in writing. The State may conclusively object to the inclusion in the pool of up to 1,500 of the acres, described in paragraph 2(a)(i) and 2(a)(iv), and additional lands within these two categories may be excluded from the pool upon replacement by the State with lands of equal values. Lands not included in the pool as result of the State's conclusive objection or which have been replaced by the

State under this subparagraph shall, immediately upon their exclusion or replacement from the pool thereby, be made available by the Secretary to the State for selection under the Alaska Statehood Act for a period of 90 days to the exclusion of all competing claims or parties.

(c) Unless specifically excepted by the Secretary, all tracts of land and improvements thereto in said pool shall be appraised by one or more appraisers mutually agreeable to CIRI and the Secretary.

(d) CIRI shall be entitled to select any tract of land from said pool in exchange for its out-of-Region selection rights, in part or in whole and *pro tanto*, in satisfaction thereof, in the following manner:

(1) any tract of land and improvements thereto specifically excepted from appraisal by the Secretary as described in subparagraph (c) of this paragraph may be exchanged acre for acre;

(2) any tract of land and improvements thereto valued by CIRI and the Secretary, after review of the appraisals, at less than $500 per acre at fair market value may be exchanged acre for acre;

(3) any tract of land and improvements thereto valued by CIRI and the Secretary, after review of the appraisals, at $500 per acre or more at fair market value shall be exchanged as follows:

(i) for each acre of land in said tract, each valued increment of $500 or proportion thereof shall be considered an acre of land or proportion thereof, in the same proportion, hereinafter called an "acre/equivalent"; and

(ii) any acre/equivalents may be exchanged for any acres of CIRI's out-of-region entitlement.

(e) Anything in the foregoing provisions notwithstanding, the selection pool created hereunder shall not include or affect lands within the Point Woronzof, Point Campbell, Goose Lake, and Campbell tracts, to which CIRI waives any claim which it may have had; and such lands shall be reserved by the United States for early conveyance to the State for park and recreation purposes as an integral part of the consideration for this Document.

(f) The Secretary shall utilize his best efforts to maximize the pool through the use of all available properties within the described categories in order to enhance the opportunity for the land exchanges described herein. If, by January 15, 1978, the Secretary and the General Services Administrator have not identified for the pool at least 138,240 acres, or acre/equivalents of lands within the exterior boundaries of Cook Inlet Region, the Secretary shall add to the pool an amount equal to the difference between 138,240 acres, or acre/equivalents, and the number of acres so identified from the following:

(1) with the consent of the State, lands located within the boundaries of the Region, withdrawn for the purposes of section 17(d)(1) of ANCSA, and valued by the Secretary and CIRI at $200 per acre, or more,

(2) with the consent of the State and CIRI, lands described in subparagraph I-C(2)(a) of this Document from without the exterior boundaries of Cook Inlet Region.

CIRI must select all lands in the pool located within the Region which are valued by the Secretary and CIRI at $200 per acre, or more, until CIRI has selected 138,240 acres, or acre/equivalents as described in subparagraph 3(i) of this paragraph.

(g) No later than 90 days following the conclusion of the period for creation of the pool as specified in subparagraph (1) hereof, the Secretary shall, with the assistance of the General Services Administrator, report to Congress on the status of the conveyances under paragraph C and the need for remedial legislation, if required.

(h) Conveyances under this subparagraph I–C(2) shall not be subject to the provisions of Section 22(1) of ANCSA.

II. Upon consent by the State of Alaska to be bound by the terms and conditions of this Document, which consent must be given, if at all, within 60 days of the commencement of the 1976 Session of the Alaska State Legislature, the State of Alaska shall convey to the United States for reconveyance to CIRI the lands described in Appendix C to this Document. Said lands shall be considered State lands until the United States accepts the State deed of title. Upon acceptance of a State deed of title, the Secretary shall withdraw the lands conveyed thereby, subject to valid existing rights, from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and from selection under the Alaska Statehood Act, as amended; such withdrawal to expire upon reconveyance of said lands to CIRI.

III. A. The Secretary shall convey to the State of Alaska all right, title and interest of the United States in and to all of the following lands:

(i) At least 22.8 townships and no more than 27.0 townships of lands from those presently withdrawn under section 17(d)(2) of the Alaska Native Claims Settlement Act in the Lake Iliamna area and within the Nushagak River and Koksetna drainages near lands heretofore selected by the State, the amount and identities of which shall be determined pursuant to Appendix D hereof; and

(ii) Twenty-six townships of lands in the Talkeetna Mountains, Kamishak Bay, and Tutna Lake areas, the identities of which are set forth in Appendix E hereof.

All lands granted to the State of Alaska pursuant to this subsection shall be regarded for all purposes as if conveyed to the State under and pursuant to section 6 of the Alaska Statehood Act; provided, however, that this grant of lands shall not constitute a charge against the total acreage to which the State is entitled under section 6 of the Alaska Statehood Act.

B. The Secretary shall convey to the State of Alaska, without consideration, all right, title and interest of the United States in and to all of that tract generally known as the Campbell Tract and more particularly identified in Appendix F hereof except for one compact unit of land which he determines, after consultation by the State of Alaska, is actually needed by the Bureau of Land Management for its present operations; provided, that in no event shall the unit of land so excepted exceed 1,000 acres in size. The land authorized to be conveyed pursuant to this paragraph shall be used for public parks and recreational purposes and other compatible public purposes in conformance with the generalized land use plan outlined in the Far North Bicentennial Park master development plan of September, 1974.

As a result of Section 12(a) of ANCSA, selections by Village corporations within the Kenai National Moose Range, or as a result of any section 14(h) (1), (2) or (5) of ANCSA selections within the Kenai National Moose Range or within the Secretary's 1973 Lake Clark proposal; and to the extent that CIRI's section 12(a) of ANCSA subsurface rights are reduced by virtue of exchanges resulting in the relinquishment of village selections in the Secretary's 1973 Lake Clark proposal or lands in paragraph VI CIRI shall take, in lieu thereof, an equal acreage from the following:

(a) The subsurface estate to oil and gas and coal in those lands described in Appendix B to the extent that such interests are not transferred under paragraph I–B of this Document, and are subject to the restrictions therein described; and

(b) Up to 46,080 acres of lands within section 11(a)(3) of ANCSA withdrawals in the Talkeetna Mountains; provided CIRI shall make all 12(b) selections in this withdrawal contiguous to existing 12(a) selections, first selecting all over-selected 12(a) lands in this withdrawal.

(c) If sufficient acreage to satisfy any such selections does not exist in those areas described in subparagraphs (1) and (2) of this paragraph, the Secretary shall make available lands outside the Region, in his discretion, for selection by CIRI.

Except as provided otherwise in this paragraph, the Secretary shall utilize the procedures of the Recreation and Public Purposes Act (44 Stat. 741), as amended, and regulations developed pursuant to that Act; provided, however, that the acreage limitation provided by section 1(b) of that Act, as amended by the Act of June 4, 1954 (68 Stat. 173), shall not apply to this conveyance, nor shall the lands conveyed pursuant to this paragraph be counted against that acreage limitation with respect to the State of Alaska or any subdivision thereof.

C. The Secretary shall make available for selection by the State, in its discretion, under section 6 of the Alaska Statehood Act, 12.4 townships of land to be selected from lands within the Talkeetna Mountains and Koksetna River areas as described in Appendix G.

IV. The lands and interests conveyed to CIRI under paragraphs I and II of this Document shall constitute CIRI's full entitlement under Section 12(c) of ANCSA, except that the mineral estate conveyed pursuant to subparagraph I–B of this Document shall constitute full entitlement of CIRI's surface and subsurface entitlement under Section 14(h)(8) of ANCSA. The lands which would comprise the difference in acreage between the lands actually conveyed under paragraphs I and II of this Document, and any final determination of what CIRI's acreage rights under Section 12(c) and 14(h)(8) of ANCSA would have been notwithstanding the provisions of this Document, shall be retained by the United States, and this Document shall create no right or interest in any other Regional Corporation or Village Corporation notwithstanding any provisions of ANCSA to the contrary.

To the extent that CIRI is or becomes entitled to subsurface rights;

V. The Secretary, CIRI, and the State shall seek legislation authorizing the Secretary to convey title to those selections by Native Corporations within the exterior boundaries of Power Site Classifica-

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tion 443, February 13, 1958, provided however, that the patents conveying the above described lands shall contain the reservations required by Section 24 of the Federal Power Act, 16 U.S.C. 818.

VI. A. The State shall not select any of the following lands, so that such lands may be added to a management unit in the Lake Clark Area:

T 4 S R 23 W (N ½), S.M.
T 3 S R 20–24 W, S.M.
T 2 S R 24–25 W, S.M.
T 1 S R 24–26 W, S.M.
T 1 S R 27 W (sections 1–6, 8–15, 23–25), S.M.
T 1 S R 28 W (sections 1–6), S.M.
T 1 S R 29 W (sections 1–6), S.M.
T 1 N R 24–29 W, S.M.
T 2 N R 24–30 W, S.M.
T 3 N R 28–30 W and 31 W (E½), S.M.
T 4 N R 30 W and 31 W (E ½), S.M.

B. The Secretary, CIRI and the State recognize that there are nationally significant resources in the Lake Clark area. Management of this area should be flexible and recognize the scenic, recreational, and inspirational resources that should be preserved as well as State and local interests including subsistence and sport hunting.

VII. A. In fulfillment of its obligation to equitably reallocate acreage among villages pursuant to section 12(b) of the Act, CIRI shall allocate section 12(b) selections to the following areas:

1. Four and one-half townships in the Talkeetna Mountain withdrawal, provided that such selections shall be compact and contiguous to 12(a) selection in said withdrawals and 12(a) overselections shall be selected first;

2. All lands that will not otherwise be conveyed to the villages under 12(a) on the Iniskin Peninsula;

3. To the extent necessary to fulfill any remaining 12(b) entitlement lands within the following:

T 7 S, R 25 & 26 (Except Secs. 29–31) W, S.M.
T 6 S, R 25 W and 26 (E½) W, S.M.
T 5 S, R 25 W. S.M. (except sections 18, 19, and 30).
T 4 S, R 24 W (S½), S.M.
T 4 N, R 19 W, S.M.
T 4 N, R 20 W (E½) S.M.
T 4 N, R 18 W (W½) S.M.
T 3 N, R 17–20 W. S.M.
T 3 N, R 21 W (Secs. 31–36, and 25–30 in the Tuxedni River Watershed), S.M.
T 2 N, R 18–20 W. S.M.
T 2 N, R 21 W (North and East of the Tuxedni River and Bay), S.M.

B. By mutual consent of the Secretary and CIRI, Village Corporations within the Region may exchange selections or selection rights under section 12 of ANCSA for acres, or acre/equivalents contained in the pools established out in paragraph I–C(2)(a) of this document.

C. Up to two townships without the exterior boundaries of Cook Inlet Region, to be mutually agreed upon by the Secretary, CIRI, and

the State, shall be made available for 12(b) selection. To the extent acreage is allocated to a Native village pursuant to this subparagraph C, the village must have an equal amount of acreage, in section units, from 12(a) selections in the hereinafter described acres on an acre-for-acre basis outlined in this subparagraph in the out of Region townships identified in this paragraph:

T 4 S, R 23 W (N½) S.M.
T 3 S, R 20, 21, and 23 W, S.M,
T 2 S, R 19–21 W, S.M.
T 1 S, R 19–21 W, S.M.
T 1 N, R 20 W, S.M.

Provided that should the respective village not have any 12(a) selections in the above, 12(a) selection for the following shall be traded under the provision of this paragraph:

T 2 N, R 18–21 W, S.M.
T 3 N, R 18–20 W, S.M.
T 4 N, R 19–21 W, S.M.
T 5 N, R 19–20 W, S.M.

VIII. A. CIRI and the Secretary shall publicly support the establishment of a unit of the National Park System in the Lake Clark area including those lands withdrawn under section 17(d)(2) of ANCSA and those lands described in paragraph VI–A of this agreement. The Secretary and CIRI shall also agree to seek a provision in said legislation that would provide that before entering into any contract arrangement to provide new revenue producing services within the proposed Lake Clark Unit of the National Park System within the boundaries of the Cook Inlet Region, the Secretary shall offer to CIRI in cooperation with Village Corporations within the Region when appropriate, the right of first refusal to provide such services, the right to remain open for a period of ninety days. CIRI and the Secretary shall seek legislation that provides that the United States may acquire lands selected by Village Corporations within the boundaries of the Lake Clark unit established by that legislation, but only with the consent of the appropriate Village Corporation.

B. CIRI and the Secretary shall publicly support the establishment of the Caribou Hills, Swanson River, Mystery Creek, and Andy Simons Wilderness Areas within the Kenai National Moose Range. CIRI and the Secretary shall seek a provision in such legislation that would provide that before entering into any contract or agreement to provide new revenue producing services within the Kenai National Moose Range, the Secretary shall offer to CIRI in cooperation with Village Corporations within the Region when appropriate, the right of first refusal to provide such services, the right to remain open for a period of ninety days.

IX. Lands conveyed to CIRI and/or its Village and Group Corporations in accordance with this document, notwithstanding their source (whether federal or state), shall upon conveyance to CIRI and/or the appropriate Village or Group Corporation, be considered and treated as conveyances under and pursuant to ANCSA, except as may be expressly provided otherwise in this document.

X. As soon as practicable after any estate or interest in federal lands to be patented to CIRI in accordance with this document is identified,

CIRI and the Secretary shall review all leases, contracts, permits, rights-of-way and easements covering or concerning such estate or interest to determine whether the administration thereof may be waived by the Secretary, in his discretion, in accordance with the provisions of section 17(g) of ANCSA.

XI. Effective the date that State lands to be conveyed to the United States for CIRI are designated by CIRI pursuant of paragraph II of this document, the State, if so authorized, shall place all revenues received from such lands in escrow to be transferred to the Region when appropriate. The administration of all leases, contracts, permits, rights-of-way and easements prior to the conveyance of such lands to the United States shall be by the State, except that all decisions concerning modification, conversion, renewal or appraisal of such interests will be with the concurrence of the Region. Effective the date of conveyance of such lands from the State to the Secretary, the State shall waive in favor of CIRI administration of all leases, contracts, permits, rights-of-way and easements totalling embraced by such lands. The State shall give timely written notice of the change of ownership and administration to the holders of rights on such lands.

XII. The responsibilities of and benefits accruing to the Secretary, the State and CIRI under this document shall become binding only when such legislation as is necessary has been enacted. Upon passage of such legislation, CIRI and all plaintiffs/appellants shall, with the consent of the Secretary, dismiss their pending appeal in *Cook Inlet Region vs. Kleppe*, No. 75-2232, (9th Cir.) by executing and filing pursuant to Rule 42(h) of the Federal Rules of Appellate procedure an agreement that the proceeding may be dismissed.

XIII. A. For the purposes of this document, a township shall be considered 23,040 acres.

B. The words "land" and "lands" as used in this document shall not include properties owned by the State of Alaska under section 6(m) of the Alaska Statehood Act and the Submerged Lands Act.

Appendix A

T. 1 N., R 11 W S.M.

Secs. 1–4, 9–12, 16, W½S17—comprising approx. 6,080 acres, more or less

T. 2 N., R 11 W S.M.

Sec. 9, approx. 70 acres in the SW¼ lying south and west of the high water mark on the south and west bank of the Kasilof River.

Sec. 16, approx. 430 acres comprising all moose range lands in this section lying south and west of the high water mark on the south and west bank of the Kasilof River.

Sec. 21, all.

Sec. 22, approx. 130 acres comprising all moose range lands in this section lying south and west of the high water mark on the south and west bank of the Kasilof River.

Sec. 27, approx. 330 acres comprising all moose range lands in this section lying west of the high water mark on the west bank of the Kasilof River and those lands in this section lying south and west of the high water line on the south and west shore of Tustemena Lake.

Sec. 28, all.
Sec. 33, all.
Sec. 34, approx. 600 acres comprising all moose range lands in this section lying south and west of the high water line on the south shore and west shore of Tustemena Lake.
Sec. 35, approx. 290 acres comprising all moose range lands in this section lying south of the high water line on the south shore of Tustemena Lake.
Sec. 36, approx. 360 acres comprising all moose range lands in this section lying south of the high water line on the south shore of Tustemena Lake.
Comprising approximately 4,160 acres, more or less.

Appendix B

Appendix B-1

82,560 acres of the specified mineral estate to be selected from the following described lands:*

Priority

1—T. 8 N., R. 9 W; Secs. 1–8; Sec. 9 excluding E/2 SE/4, NW/4 SE/4, SE/4 NE/4; Sec. 10 excluding SW/4, S/2 SE/4, NW/4 SE/4, S/2 NW/4, NW/4; Secs. 11–14; Sec. 16 W/2; Secs. 17–20; Sec. 21 excluding NE/4, E/2 NW/4, NE/4 SW/4, N/2 SE/4, SE/4 SE/4; Secs. 23–26; Sec. 27 excluding N/2. SW/4, W/2 SE/4; Sec. 28 excluding SE/4, E/2 SW/4, E/2 NE/4, SW/4 NE/4; Secs. 29–31; Sec. 32 excluding S/2 SE/4, NE/4 SE/4, Sec. 33 excluding S/2, NE/4, S/2 NW/4, NE/4 NW/4; Sec. 34 excluding W/2, W/2 NE/4; Secs. 35–36–comprising approx. 18,440 acres.

1– T. 8 N., R. 10 W.: Secs. 1; 12–14; 23–26; 32–36–comprising approx. 7,680 acres.

1—T. 7 N., R. 9 W.: Sec. 3, E/2; Sec. 5 excluding S/2, NE/4; Secs. 6; 7; 8 excluding E/2, E/2 SW/4, E/2 NW/4, NW/4 NW/4; Sec. 10 excluding W/2 SW/4, W/2 NW/4, NE/4 NW/4; Sec. 14 excluding NE/4; Sec. 15; Sec. 16 excluding NW/4, N/2 NE/4, SW/4 NE/4; Sec. 17 excluding NE/4 NE/4; Secs. 18–36–comprising approx. 16,560 acres.

1—T. 7 N., R 10 W.: Secs. 1–5; 7–25; Sec. 26 excluding W1/2 SW1/4; Sec. 27 excluding S1/2 N1/2; Sec. 28 excluding S1/2 NE1/4, SE1/4, E1/2 SW1/4; Secs. 29–32; Sec. 35 excluding W1/2, S36 comprising approx. 19,920 acres.

2—T. 6 N., R 10 W.: Sec. 1; Sec. 2 excluding W/2 NW/4; Sec. 4 excluding N/2, SE/4, E/2 SW/4; Sec. 5–8; Sec. 9 excluding N/2 NE/4; Sec. 12; 16–17; 20–21–comprising approx. 7,600 acres.

4—T. 7 N., R 11 W., Sec. 23–26; 35; 36–comprising approx. 3,840 acres.

3—T. 6 N., R 11 W., Sec. 1–2; 11–14–comprising approx. 3,840 acres.

3—T. 10 N., R 7 W., Sec. 19–21; 28 (N/2); 29–32–comprising approx. 4,800 acres.

*These lands total approximately 82,080 acres (128 townships). Any unselected portions of the above described lands shall be first priority selection for in-lieu selections from Appendix B-2 below.

Up to 138,240 acres (6.0 townships) of specified mineral in lieu estate to be selected from the following described lands by priority ranking and in the order listed.

Priority

2—T. 9 N., R 9 W.: Sec. 13; 23 excluding SE/4 SE/4; Sec. 24 excluding W/2 SE/4, SW/4; Sec. 25 excluding W/2 E/2, W/2; Sec. 26 excluding E/2 E/2; Sec. 27; Sec. 31 E/2; Sec. 32–35; Sec. 36 excluding W/2 NE/4, NW/4, and N/2 SW/4–comprising approx. 6,120 acres.

3—T. 9 N., R 8 W.: Sec. 1–5; 7–36–comprising approx. 22,400 acres.

2—T. 6 N., R 9 W.: Sec. 1–17; 20–29; 34–36–comprising approx. 19,200 acres.

3—T. 8 N., R 8 W.: All-comprising approx. 23,040 acres.

2—T. 4 N., R 10 W.: Sec. 9–10; 13–36–comprising approx. 16,640 acres.

2—T. 4 N., R 11 W.: Sec. 25; 36-comprising approx. 1,280 acres.

3—T. 1 N., R 11 W.: Sec. 17 (E/2); Sec. 21–28; Sec. 33–36–comprising approx. 6,720 acres.

3—T. 3 N., R 11 W.: Sec. 1; 12–15; 22–27; 34–35–comprising approx. 8,320 acres.

3—T. 8 N., R 10 W.: Sec. 1–30–comprising approx. 19,200 acres.

3—T. 4 N., R 9 W.: Sec. 2 excluding SE/4; 3–10; 11 excluding E/2; Sec. 14 excluding E/2; 15–20; 21 excluding SE/4; 29–34–comprising approx. 12,480 acres.

APPENDIX C

If CIRI has on or before January 12, 1976 presented evidence satisfactory to the State that the villages of Kink, Chickaloon, Alexander Creek, Tyonilchik and Salamatof have withdrawn selection applications for and relinquished all claims to land in the Lake Clark, Lake Kontrashibuna and Malchatna River areas, the State shall convey under paragraph 11 of this document to the United States for reconveyance to CIRI all of the state lands identified or to be identified in this Appendix C. All conveyances of lands made in accord with this document shall pass all of the State's right, title and interest in the lands, including the minerals therein, as if those conveyances were made pursuant to section 22(f) of the Alaska Native Claims Settlement Act, except that dedicated or platted section line easements and highway or other rights-of-way may be reserved to the State.

1. Acreage from each of the five pools identified in this paragraph in the amounts therein set forth. Out of each such pool, the identity of the required acreage shall be determined to the extent possible by mutual agreement of the State and CIRI. For so many of the required acres as have not been so determined by agreement in each pool within eighteen months following implementation of this document, those remaining required acres shall be identified by CIRI's selecting acreage in that remaining amount from an array of 1½ that many acres within the pool, said array to be identified to CIRI by the State.

A. *Point McKenzie.*—3,200 acres must be identified from state lands within the following areas:

T 15 N, R3 W through 5W, S.M.
T 14 N, R4 W through 5W, S.M.
T13 N, R4 W S.M. (North of Knik Arm)

B. *Knik-Willow Pool.*—4,480 acres must be identified from state-lands within the following areas:

T 16 N through 18 N. R 2W through 5W, S.M.

C. *Kashwitna Pool.*-38,040 acres must be identified from state-lands within the following areas:

T 21 N through 25N, R3 and 4W, S.M. (or other nearby lands).

D. *Chickaloon Pool.* 4,480 acres must be identified from state lands within the following areas:

T 19 N, R3 E through 5E, S.M.
T 20 N, R4 E through 7E, S.M.

E. *Kenai Pool.*—115,200 acres must be identified from state lands on the Kenai Peninsula.

Provided however that the State may with CIRI's concurrence supplant acreage otherwise to be identified from the Kenai pool in subparagraph E on an acre-for-acre basis with lands near Alexander Creek, Nimilchik or Salamatof. Supplanting lands near any one of these villages may not exceed in acreage that number of acres to which the State is obligated under paragraph 3 to provide in respect of each of those three villages.

2.(a) Thirteen and one-half townships of lands in the Beluga Area [illegible] ships listed in this paragraph. The identity of those lands shall [illegible] determined by CIRI within eighteen months following the implementaiton of this document by nomination of compact units no less than ¼ township in size lying along township lines, provided that where constrained by selection pool boundaries or water bodies they may be smaller; *Provided*, However that if Tyonek Corporation desires to trade the surface estate it holds in the Kenai National Moose Range for State surface lands within the vicinity of its village lands but within CIRI's selection pool, it may obtain up to one township of such lands. If Tyonek Corporation does trade for CIRI's selection pool lands, CIRI shall select an equivalent acreage of other surface estate from within its selection pool.

T. 16 N., R. 14 W., S.M.;
T. 16 N., R. 13 W., S.M.;
T. 16 N., R. 12 W., S.M., Secs. 7, 16, 17, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36;
T. 16 N., R. 11 W., S.M., Secs. 20, 21, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36;
T. 15 N., R. 14 W., S.M.;
T. 15 N., R. 13 W., S.M.;
T. 15 N., R. 12 W., S.M.;
T. 15 N., R. 11 W., S.M.;
T. 15 N., R. 10 W., S.M., W½, excluding Sec. 4;
T. 14 N., R. 15 W., S.M.;
T. 14 N., R. 14 W., S.M.;
T. 14 N., R. 13 W., S.M., W½;
T. 14 N., R. 11 W., S.M.;

T. 14 N., R. 10 W., S.M., W½;
T. 13 N., R. 15 W., S.M.;
T. 13 N., R. 14 W., S.M.;
T. 13 N., R. 10 W., S.M., E½ excluding lands east of the west bank of the Beluga River;
T. 12 N., R. 15 W., S.M.;
T. 12 N., R. 14 W., S.M., excluding Secs. 23, 24, 25, 26, 29, 31, 32, 33, 36;
T. 12 N., R. 10 W., S.M.;
T. 11 N., R. 13 W., S.M., Secs. 12, 13 excluding W½SW¼; 24 NE/4 NE/4.
T. 11 N., R. 12 W., S.M., Secs. 18, 19 excluding SW¼, S½ SE/4; 20.

(b) Provided, However, that the following described lands shall *not* be available for CIRI's selection of *subsurface* estate:

Beluga

T. 13 N., R. 10 W., S.M., Secs. 11, E-½; 12, 13, 14, 22, 23, 24, 25, 26, 27, 34, 35, 36.
T. 12 N., R. 10 W., S.M., Secs. 2, 3 4, 5, 8, 9, 10.

Nicolaick

T. 11 N., R. 12 W., S.M., Secs. 16, SW-¼; 17, SW-½; 18, SE-¼; 19, E-½, E-½ W-½; 20; 21, W-½; 28, W-½; 29, 30, 31, 32.

(c) The State shall provide a floating, public, 300 foot wide transportation easement from T. 13 N., R. 14 W., S.M. to the shore of Cook Inlet in T. 11 N., R. 12 W., S.M. Said easement to be determined upon the ground at such future time as a need exists and there are adequate field data available upon which the State may finally plan and locate the corridor.

3. Lands in an amount equal to ¼ of the acres to which each of the villages of Knik, Chickaloon, Alexander Creek, Nimilchik, and Salamsatof are or would be entitled under ANCSA Sec. 12(a), under selection applications on file with the BLM as of July 18, 1975, in the Lake Clark, Lake Kartrashibuna and Mulchatna River areas. Each acre identified for conveyance by the State hereunder must be located within or near the 11(a)(1) withdrawal of the village to which the displaced ANCSA acreage to which that acre corresponds would otherwise have passed under ANCSA. The lands so identified in respect to displaced acres attributable to Alexander Creek and Salamstof shall be conveyed by the State if and only if the village to which the displaced acres are attributable retains its village eligibility status under ANCSA.

Appendix D

Lands in the Lake Iliamna Area and in the Nushagak River and Lake Clark Drainages

Paragraph III(A)(1))

I. The Secretary shall convey to the State at least 22.8 townships and no more than 27.0 townships of land from those presently withdrawn under section 17(d)(2) of the Alaska Native Claims Settle-

ment Act in the Lake Iliamna area and within the Nushagak River or Lake Clark drainages near lands heretofore selected by the State.

II. The following townships shall be conveyed to the State as part of the minimum of 22.8 townships to be conveyed to the State from lands identified in paragraph I.

T 4N, R 36 W, S.M.
T 3N, R 36 W, S.M.
T 2N, R 36 W, S.M.
T 1N, R 36 W, S.M.
T 1S, R 37 and 38 W, S.M.
T 2S, R 37 and 38 W, S.M.
T 3S, R 37 and 38 W, S.M.
T 4S, R 37–39 W, S.M.
T 5S, R 40–42 W, S.M.
T 6S, R 40 W, S.M. (except sections 21–28, 33–36).
T 6S, R 41 and 42 W, S.M.
T 7S, R 42 W, S.M. (secs. 3–10, 15–18).

III. For each acre of valid village 12(a) selections relinquished in the Lake Clark, Lake Kontrash/buna and Mulchatna River areas pursuant to paragraph II of the document to which this forms an Appendix, the Secretary shall convey to the State, on an acre for acre basis, lands from within the 17(d)(2) area described in Paragraph I up to a total of 4.2 townships.

IV. To the extent that lands to be conveyed to the State pursuant to Paragraphs II and III above are not specifically identified in this Appendix, they shall be identified by mutual consent of the State and the Secretary from lands described in Paragraph I within 60 days of the date the State becomes bound to this document, or within 60 days of the date that any entitlement vests in the State pursuant to Paragraph III of this Appendix, whichever shall come first.

V. All lands granted to the State of Alaska pursuant to this Appendix D shall be regarded for all purposes as if conveyed to the State under and pursuant to section 6 of the Alaska Statehood Act: *Provided*, however, that this grant of lands shall not constitute a charge against the total acreage to which the State is entitled under section 6(b) of the Alaska Statehood Act.

Appendix E

Lands in the Talkeetna Mountains, Kamishak Bay and Tetna Lakes Areas

(Paragraph III(A)(2))

The Secretary shall convey to the State the following described lands, subject to valid village selections under section 12(a), but not 12(b), of ANCSA.

T 22N, R 2W, S.M.
T 23N, R 2W, S.M.
T 24N, R 1 and 2 W, S.M.
T 26N, R 1 and 2 W, S.M.
T 27N, R 2W, S.M.

T 29N, R 2W, S.M.
T 7S, R 26W, S.M. secs. 29-31
T 7S, R 27–29 W, S.M.
T 8S, R 26–29 W, S.M.
T 9S, R 26–30W, S.M.
T 10S, R 28–30 W, S.M.
T 11S, R 28–30 W, S.M.
T 4N, R 33–35 W, S.M.
T 3N, R 34 and 35 W, S.M.
T 2N, R 34 and 35 W, S.M.

Appendix F

Far North Bicentennial Park

(Paragraph III B)

T 12 N, R 3 W, S.M.:
Section 1.
Section 2.
Section 3 (except SW ¼).
Section 10 (except S ½).
Section 11 (except S ½).
Section 12.

T 13 N, R 3 W, S.M.:
Section 34 (except N ½ NE ¼ NE ¼)
Section 35 (except NW ¼ NW ¼, N ½ SW ¼ NE ¼ NE ¼)
Section 36 (except NE ¼ SE ¼ SE ¼ NE ¼)

Appendix G

Talkeetna Mountains—Koksetna River Lands

(Paragraph III (c))

The Secretary is authorized and directed to make available for selection by the State, in its discretion, under section 6 of the Alaska Statehood Act, 12.4 townships of land to be selected from lands within the Talkeetna Mountains and Koksetna River areas as described below.

T 4N, R 31 W, S.M. (W ½).
T 4N, R 32 W, S.M.
T 3N, R 31 W, S.M. (W ½).
T 3N, R 32 and 33 W, S.M.
T 2N, R 31–33 W, S.M.

Subject to valid village 12(a) and 12(b) selections under ANCSA, the following lands located south of the Susitna River:

T 29N, R 11E—1 W, S.M.
T 30N, R 11E—2 W, S.M.
T 31N, R 9E—1 W, S.M.

Edwardsen v. *Morton*

During the Subcommittee hearings H.R. 6644, the Committee was made aware of an issue which may have long-range significance for the Native land claims settlement contained in the Settlement Act.

This issue concerns the decision in the case of *Edwardsen* v. *Morton* (369 F. Supp. 1359), 1973. The Settlement Act had as its principal purpose the provision of a "fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims." (Section 2(a)). On April 19, 1973, Judge Oliver Gasch, the District Court for the District of Columbia, in ruling on a motion by the defendants for summary judgment in *Edwardsen*, held if the Native plaintiffs of the Arctic Slope of Alaska "were in fact disturbed in their use and occupancy by trespassers, i.e., by any parties coming onto the land except for those entering under Congressional authorization, then there accrued a cause of action in tort against the trespassers and a cause of action for trespass and breach of fiduciary duty against Federal officers authorizing such trespass." 369 F. Supp. at 1378–1379. The Court continued, "It is not at all clear that the Settlement Act bars litigation of plaintiffs' claims relating to the alleged trespasses even though they are linked to claims of aboriginal title. * * * In any event, a construction of (the Act's provisions) to bar claims relating to pre-Settlement Act trespasses would appear to create constitutional infirmities in the Act which are better avoided if a constitutionally sound construction does not violate clearly expressed legislative intent." 369 F. Supp. at 1379. Accordingly, Judge Gasch refused to hold "that a later Act of Congress [Settlement Act] could wipe out all claims against any person * * * simply because Congress has decided to extinguish aboriginal title." Id.

Pursuant to a stipulation entered into by the parties in August of 1974, and approved by the Court in October, 1974, further proceedings in the *Edwardsen* case were held in abeyance pending an investigation by the Department of the Interior of the extent of the trespass claims involved. That investigation has been completed and the United States, acting as trustee for the Natives involved, has filed suit in the United States District Court for the District of Alaska against several corporate and individual defendants, including the State of Alaska, for damages arising from such trespasses.

It is not clear just what impact a final decision upholding the *Edwardsen* ruling might have on the Settlement Act and the orderly development of the State of Alaska. As a consequence, the Committee determined not to deal with that critical issue in H.R. 6644. This decision should not be interpreted to mean that the Committee finds the ruling to be either correct or incorrect with respect to the congressional intent in barring or not barring such claims. At this point, that is a judicial matter.

However, the Committee intends to follow the course of this litigation and the impact that it has or may have on the Settlement Act and the development of lands and resources in Alaska. Should circumstances warrant, the Committee then will consider the matter further.

94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 94-729

PROVIDING, UNDER OR BY AMENDENT OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT, FOR THE LATE ENROLLMENT OF CERTAIN NATIVES, THE ESTABLISHMENT OF AN ESCROW ACCOUNT FOR THE PROCEEDS OF CERTAIN LANDS, THE TREATMENT OF CERTAIN PAYMENTS AND GRANTS, AND THE CONSOLIDATION OF EXISTING REGIONAL CORPORATIONS, AND FOR OTHER PURPOSES

December 15, 1975.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HALEY, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany H.R. 6644]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 6644) To provide, under or by amendment of the Alaska Native Claims Settlement Act, for the late enrollment of certain Natives, the establishment of an escrow account for the proceeds of certain lands, the treatment of certain payments and grants, and the consolidation of existing regional corporations, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 1, beginning on line 3, strike out all after the enacting clause and insert in lieu thereof the following:

That (a) the Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") is authorized to review those applications submitted within one year from the date of enactment of this Act by applicants who failed to meet the March 30, 1973, deadline for enrollment established by the Secretary pursuant to the Alaska Native Claims Settlement Act (hereinafter in this Act referred to as the "Settlement Act"), and to enroll those Natives under the provisions of that Act who would have been qualified if the March 30, 1973, deadline had been met: *Provided*, That Natives enrolled under this Act shall be issued stock under the Settlement Act together with a pro rata share of all future distributions under the Settlement Act which shall commence beginning with the next regularly scheduled distribution after the enactment of this Act: *Provided further*, That land entitlement of any Native village, Native group, Village Corporation, or Regional Corporation, all as defined in such Act, shall not be affected by any enrollment pursuant to this Act, and that no tribe, band, clan, group, village, community, or association not otherwise eligible for land or other benefits as a "Native village", as defined in such Act, shall become eligible for land or other benefits as a Native village because of any enrollment pursuant to this Act: *Provided further*, That no tribe, band, clan, village, community, or village association not otherwise eligible for land or other benefits as a "Native group", as defined in such Act, shall become eligible for land or other benefits as a Native group because of any enrollment pursuant to this Act: *And provided further*, That any "Native group", as defined in such Act shall not lose its status as a Native group because of any enrollment pursuant to this Act.

(b) The Secretary is authorized to poll individual Natives properly enrolled to Native villages or Native groups which are not recognized as village corporations under section 11 of Alaska Native Claims Settlement Act and which are included within the boundaries of former reserves who elected to receive surface and subsurface entitlement pursuant to subsection 19(b) of the Settlement Act. The Secretary may allow these individuals the option to enroll to a Village Corporation which elected the surface and subsurface title under section 19(h)

or remain enrolled to the Regional Corporation in which the village or group is located on an at-large basis: *Provided*, That nothing in this subsection shall affect existing entitlement to land of any Regional Corporation pursuant to section 12(b) or 14(h)(8) of the Settlement Act.

(c) In those instances where, on the roll prepared under section 5 of the Settlement Act, there were enrolled as residents of a place on April 1, 1970, the minimum number of Natives required for a Native village or Native group, as the case may be, and it is subsequently and finally determined that such place is not eligible for land benefits under the Act on grounds which include a lack of sufficient number of residents, the Secretary shall, in accordance with the criteria for residence applied in the final determination of eligibility, redetermine the place of residence on April 1, 1970, of each Native enrolled to such place, and the place of residence as so redetermined shall be such Native's place of residence on April 1, 1970, for all purposes under the Settlement Act: *Provided*, That each Native whose place of residence on April 1, 1970, is changed by reason of this subsection shall be issued stock in the Native Corporation or corporations in which such redetermination entitles him to membership and all stock issued to such Native by any Native Corporation in which he is no longer eligible for membership shall be deemed canceled: *Provided further*, That no redistribution of funds made by any Native Corporation on the basis of prior places of residence shall be affected: *Provided further*, That land entitlements of any Native village, Native group, Village Corporation, Regional Corporation, or corporations organized by Natives residing in Sitka, Kenai, Juneau, or Kodiak, all as defined in said Act, shall not be affected by any determination of residence made pursuant to this subsection, and no tribe, band, clan, group, village, community, or association not otherwise eligible for land or other benefits as a "Native group" as defined in said Act, shall become eligible for land or other benefits as a Native group because of any redetermination of residence pursuant to this subsection: *Provided further*, That any distribution of funds from the Alaska Native Fund pursuant to subsection (c) of section 6 of the Settlement Act made by the Secretary or his delegate prior to any redetermination of residency shall not be affected by the provisions of this subsection. Each Native whose place of residence is subject to redetermination as provided in this subsection shall be given notice and an opportunity for hearing in connection with such reexamination as shall any Native Corporation which it appears may gain or lose stockholders by reason of such redetermination of residence.

SEC. 2. (a) From and after the date of enactment of this Act; or January 1, 1976, whichever occurs first, any and all proceeds derived from contracts, leases, permits, rights-of-way, or easements, issued pursuant to section 14(g) of the Settlement Act, pertaining to land or resources of lands withdrawn for Native selection pursuant to the Settlement Act shall be deposited in an escrow account which shall be held by the Secretary until lands selected pursuant to that Act have been conveyed to the selecting corporation or individual entitled to receive benefits under such Act. As such withdrawn or formerly reserved lands are conveyed, the Secretary shall pay from such account the proceeds which derive from contracts, leases, permits, right-of-way, or easements, pertaining to lands or resources of such lands, to the appropriate corporation or individual entitled to receive benefits under the Settlement Act together with interest. The proceeds derived from contracts, leases, permits, rights-of-way, or easements, pertaining to lands withdrawn or reserved, but not selected or elected pursuant to such Act, shall, upon the expiration of the selection or election rights of the corporations and individuals for whose benefit such lands were withdrawn or reserved, be deposited in the Treasury of the United States or paid as would have been required by law were it not for the provisions of this Act.

(b) The Secretary is authorized to deposit in the Treasury of the United States the escrow account proceeds referred to in subsection (a) of this section, and the United States shall pay interest thereon semiannually from the date of deposit, such deposit to bear simple interest at a rate determined by the Secretary of the Treasury: *Provided*, That the Secretary in his discretion may withdraw such proceeds from the United States Treasury and reinvest such proceeds in the manner provided by the first section of the Act of June 24, 1938 ([illegible] 162a): *Provided further*, That this section shall not be construed to terminate any trust relationship between the United States and any [illegible] or individual entitled to receive benefits under the Settlement Act.

(c) Any and all proceeds from public easements reserved pursuant to subsection 17(b)(3) of the Settlement Act, from or after the date of enactment of this Act, shall be paid to the grantee of such conveyance in accordance with such grantee's proportionate share.

(d) To the extent that there is a conflict between the provisions of this section and any other Federal laws applicable to Alaska, the provisions of this section will govern. Any payment made to any corporation or any individual under authority of this section shall not be subject to any prior obligation under section 9(d) or 9(f) of the Settlement Act.

SEC. 3. The Settlement Act is amended by adding at the end thereof the following new section:

"SEC. 28. Any corporation organized pursuant to this Act shall be exempt from the provisions of the Investment Company Act of 1940 (54 Stat. 789), the Securities Act of 1933 (48 Stat. 74), and the Securities Exchange Act of 1934 (48 Stat. 881), as amended, through December 31, 1991. Nothing in this section, however, shall be construed to mean that any such corporation shall or shall not, after such date, be subject to the provisions of such Acts. Any such corporation which, but for this section, would be subject to the provisions of the Securities Exchange Act of 1934 shall transmit to its stockholders each year a report containing substantially all information required to be included in an annual report to stockholders by a corporation which is subject to the provisions of such Act.".

SEC. 4. The Settlement Act is further amended by adding at the end thereof the following new section:

"SEC. 29. (a) The payments and grants authorized under this Act constitute compensation for the extinguishment of claims to land, and shall not be deemed to substitute for any governmental programs otherwise available to the Native people of Alaska as citizens of the United States and the State of Alaska.

"(b) Notwithstanding section 5(a) and any other provision of the Food Stamp Act of 1964, in determining the eligibility of any household to participate in the food stamp program, any compensation, remuneration, revenue, or other benefit received by any member of such household under the Settlement Act shall be disregarded.".

SEC. 5. For purposes of the first section of the Act of February 12, 1929 (45 Stat. 1164), as amended, and the first section of the Act of June 24, 1938 (52 Stat. 1037), the Alaska Native Fund shall, pending distributions under section 6(c) of the Settlement Act, be considered to consist of funds held in trust by the Government of the United States for the benefit of Indian tribes: *Provided*, That nothing in this section shall be construed to create or terminate any trust relationship between the United States and any corporation or individual entitled to receive benefits under the Settlement Act.

SEC. 6. The Settlement Act is further amended by adding a new section 30 to read as follows:

"SEC. 30. (a) Notwithstanding any provision of this Act, any corporation created pursuant to section 7(d), 8(a), 14(h)(2), or 14(h)(3) within any of the twelve regions of Alaska, as established by section 7(a), may, at any time, merge or consolidate, pursuant to the applicable provisions of the laws of the State of Alaska, with any other of such corporation or corporations created within or for the same region. Any corporations resulting from mergers or consolidations further may merge or consolidate with other such merged or consolidated corporations within the same region or with other of the corporations created in said region pursuant to section 7(d), 8(a), 14(h)(2), or 14(h)(3).

"(b) Such mergers or consolidations shall be on such terms and conditions as are approved by vote of the shareholders of the corporations participating therein, including, where appropriate, terms providing for the issuance of additional shares of Regional Corporation stock to persons already owning such stock, and may take place pursuant to votes of shareholders held either before or after the enactment of this section: *Provided*, That the rights accorded under Alaska law to dissenting shareholders in a merger or consolidation may not be exercised in any merger or consolidation pursuant to this Act effected prior to December 19, 1991. Upon the effectiveness of any such mergers or consolidations the corporations resulting therefrom and the shareholders thereof shall succeed and be entitled to all the rights, privileges, and benefits of this Act, including but not limited to the receipt of lands and moneys and exemptions from various forms of Federal, State, and local taxation, and shall be subject to all the restrictions and obligations of this Act as are applicable to the corporations and shareholders

which participated in said mergers or consolidations or as would have been applicable if the mergers or consolidations and transfers of rights and titles thereto had not taken place: *Provided*, That, where a Village Corporation organized pursuant to section 10(b) of this Act merges or consolidates with the Regional Corporation of the region in which such village is located or with another Village Corporation of that region, no provision of such merger or consolidation shall be construed as increasing or otherwise changing regional enrollments for purposes of distribution of the Alaska Native Fund; land selection eligibility; or revenue sharing pursuant to sections 6(c), 7(m), 12(b), 14(h)(8), and 7(i) of this Act.

"(c) Notwithstanding the provisions of section 7 (j) or (m), in any merger or consolidation in which the class of stockholders of a Regional Corporation who are not residents of any of the villages in the region are entitled under Alaska law to vote as a class, the terms of the merger or consolidation may provide for the alteration or elimination of the right of said class to receive dividends pursuant to said section 7 (j) or (m). In the event that such dividend right is not expressly altered or eliminated by the terms of the merger or consolidations, such class of stockholders shall continue to receive such dividends pursuant to section 7 (j) or (m) as would have been applicable if the merger or consolidation had not taken place and all Village Corporations within the affected region continued to exist separately.

"(d) Notwithstanding any other provision of this section or of any other law, no corporation referred to in this section may merge or consolidate with any other such corporations unless that corporation's shareholders have approved such merger or consolidation.

"(e) The plan of merger or consolidation shall provide that the right of any affected Village Corporation pursuant to section 14(f) to withhold consent to mineral exploration, development, or removal within the boundaries of the Native village shall be conveyed, as part of the merger or consolidation, to a separate entity composed of the Native residents of such Native village.".

SEC. 7. Section 17(a)(10) of the Settlement Act is amended to read as follows:

"(10) The Planning Commission shall submit, in accordance with this paragraph, comprehensive reports to the President of the United States, the Congress, and the Governor and legislature of the State with respect to its planning and other activities under this Act, together with its recommendations for programs or other actions which it determines should be implemented or taken by the United States and the State. An interim, comprehensive report covering the above matter shall be so submitted on or before May 30, 1976. A final and comprehensive report covering the above matter shall be so submitted on or before May 30, 1979. The Commission shall cease to exist effective June 30, 1979.".

SEC. 8. (a) Notwithstanding the October 6, 1975 Order of the United States District Court for the District of Columbia in the case of Alaska Native Association of Oregon et al. v. Rogers C. B. Morton et al., Civil Action No. 2133-73, and Alaska Federation of Natives, International, Inc., et al. v. Rogers C. B. Morton, et al., Civil Action No. 2141-73 (F. Suppl.), changes in enrollment of Alaska Natives which are necessitated or permitted by such Order shall in no way affect land selection entitlements of any Alaska Regional or Village Corporation nor any Native village or group eligibility.

(b) Stock previously issued by any of the twelve Alaska Native Regional Corporations or by Alaska Native Village Corporations to any Native who is enrolled in the thirteenth region pursuant to said Order shall, upon said enrollment, be cancelled by the issuing corporation without liability to it or the Native whose stock is so cancelled: *Provided*, That, in the event that a Native enrolled in the thirteenth region pursuant to said Order shall elect to re-enroll in the appropriate Alaska Regional Corporation pursuant to the sixth ordering paragraph of that Order, stock of such Native may be cancelled by the Thirteenth Regional Corporation and stock may be issued to such Native by the appropriate Alaska Regional Corporation without liability to either corporation or to the Native.

(c) In the event section 5(a) of the Settlement Act is amended to re-open the Alaska Native Roll for additional enrollment, any Native enrolling under such authority who is determined not to be a permanent resident of the State of Alaska under criteria established pursuant to such Act shall, at the time of enrollment elect whether to be enrolled in the thirteenth region or in the region determined pursuant to the provisions of section 5(b) of the Settlement Act and such election shall apply to all dependent members of such Natives' household who are less than eighteen years of age on the date of such election.

(d) No change in the final roll of Alaska Natives established by the Secretary pursuant to Section 5 of the Settlement Act resulting from any regulation promulgated by the Secretary of the Interior providing for the disenrollment of Alaska Natives shall affect land entitlements of any regional or village corporation or any Native village or group eligibility.

SEC. 9. Section 16 of the Settlement Act is amended by inserting at the end thereof a new subsection (d) to read as follows:

"(d) The lands enclosing and surrounding the village of Klukwan which were withdrawn by subsection (a) of this section are hereby rewithdrawn to the same extent and for the same purposes as provided by said subsection (a) for a period of one year from the date of enactment of this subsection, during which period the Village Corporation for the village of Klukwan shall select an area equal to twenty-three thousand forty acres in accordance with the provisions of subsection (b) of this section and such Corporation and the shareholders thereof shall otherwise participate fully in the benefits provided by this Act to the same extent as they would have participated had they not elected to acquire title to their former reserve as provided by section 19(b) of this Act: *Provided*, That nothing in this subsection shall affect the existing entitlement of any Regional Corporation to lands pursuant to section 14(h)(8) of this Act: *Provided further*, That the foregoing provisions of this subsection shall not become effective unless and until the Village Corporation for the village of Klukwan shall quitclaim to Chilkat Indian Village, organized under the provisions of the Act of June 18, 1934 (48 Stat. 984), as amended by the Act of May 1, 1936 (49 Stat. 1250), all its right, title, and interest in the lands of the reservation defined in and vested by the Act of September 2, 1957 (71 Stat. 596), which lands are hereby conveyed and confirmed to said Chilkat Indian Village in fee simple absolute, free of trust and all restrictions upon alienation, encumbrance, or otherwise: *Provided further*, That the United States and the Village Corporation for the Village of Klukwan shall also quitclaim to said Chilkat Indian Village any right or interest they may have in and to income derived from the reservation lands defined in and vested by the Act of September 2, 1957 (71 Stat. 597) after the date of enactment of this Act and prior to the date of enactment of this subsection.".

SEC. 10. Section 16(b) of the Settlement Act is amended by adding at the end thereof the following: "Such allocation as the Regional Corporation for the southeastern Alaska region shall receive under section 14(h)(8) shall be selected and conveyed from lands not selected by such Village Corporations that were withdrawn by subsection (a) of this section, except lands on Admiralty Island in the Angoon withdrawal area and, without the consent of the Governor of the State of Alaska or his delegate, lands in the Saxman and Yakutat withdrawal areas.".

SEC. 11. Section 7(a) of the Settlement Act is amended by changing the period at the end thereof to a colon and adding the following: "*Provided*, That the boundary between the southeastern and Chugach regions shall be the 141st meridian: *Provided further*, That, with respect to any lands conveyed to it in the vicinity of Icy Bay, the Regional Corporation for the Chugach region shall accord to the Natives enrolled to the village of Yakutat the same rights and privileges to use such lands for purposes traditional thereon, including, but not limited to, subsistence hunting, fishing, and gathering, as it accords to its own shareholders, and shall take no unreasonably or arbitrary action relative to such lands for the primary purpose, and having the effect, of impairing or curtailing such rights and privileges.".

SEC. 12. Cook Inlet Settlement. (a) The purpose of this section is to provide for the settlement of certain claims, and in so doing to consolidate ownership among the United States, the Cook Inlet Region, Incorporated ("Region" hereinafter), and the State of Alaska, within the Cook Inlet area of Alaska in order to facilitate land management and to create land ownership patterns which encourage settlement and development in appropriate areas. The provisions of this section shall take effect at such time as all of the following have taken place:

(1) The State of Alaska has conveyed or irrevocably obligated itself to convey lands to the United States for exchange, hereby authorized, with the Region in accordance with the document referred to in subsection (b);

(2) The Region and all plaintiffs/appellants have withdrawn from Cook Inlet v. Kleppe, No. 75-2232, 9th Circuit, and such proceedings have been dismissed with prejudice; and

MOOSE RANGE, SWANSON RIVER

(3) All Native village selections under section 12 of the Alaska Native Claims Settlement Act of the lands within Lake Clark, Lake Kontrashibuna, and Mulchatna River deficiency withdrawals have been irrevocably withdrawn and waived.

The conveyances described in paragraph (1) of this subsection shall not be subject to the provisions of section 6(i) of the Alaska Statehood Act (72 Stat. 339).

(b) The Secretary shall make the following conveyances to the Region, in accordance with the specific terms, conditions, procedures, covenants, reservations, and other restrictions set forth in the document entitled "Terms and Conditions for Land Consolidation and Management in Cook Inlet Area," which was submitted to the House Committee on Interior and Insular Affairs on December 10, 1975, the terms of which are hereby ratified as to the duties and obligations of the United States set forth therein:

(1) Approximately 10,240 acres of land within the Kenai National Moose Range; except that there shall be no conveyance of the bed of Lake Tustamena, or the mineral estate in the water-front zone described in the document referred to in this subsection.

(2) Title to oil and gas and coal in not to exceed 9.5 townships within the Kenai National Moose Range;

(3) Federal interests in townships 10 South, Range 9 West, F.M., and township 20 North, Range 9 East, S.M.;

(4) Township 1 South, Range 21 West., S.M.; secs. 3-10, 15-22, 29 and 30; and rights to metalliferous minerals in the following sections in township 1 North, Range 21 West, S.M.: secs. 13, 14, 15, 22, 23, 24, 25, 26, 27, 28, 32, 33, 34, 35, 36;

(5) Twenty-nine and sixty-six hundredths townships of land outside the boundaries of Cook Inlet Region; unless pursuant to the document referred to in this subsection a greater or lesser entitlement shall exist, in which case the Secretary shall convey such entitlement:

(6) Lands selected by the Region from a pool which shall be established by the Secretary and the Administrator of General Services: *Provided*, That conveyances pursuant to this paragraph shall not be subject to the provisions of section 22(1) of the Alaska Native Claims Settlement Act: *Provided further*, That conveyances pursuant to this paragraph shall be made in exchange for lands or rights to select lands outside the boundaries of Cook Inlet Region as described in paragraph (5) of this subsection and on the basis of values determined by agreement among the parties, notwithstanding any other provision of law. Effective upon their conveyance, the lands referred to in paragraph (1) of this subsection are excluded from the Kenai National Moose Range, but they shall automatically become part of the Range and subject to the laws and regulations applicable thereto upon title thereafter vesting in the United States. The Secretary is authorized to acquire lands formerly within the Range with the concurrence of the owner. Section 22(c) of the Alaska Native Claims Settlement Act, concerning refuge replacement, shall apply with respect to lands conveyed pursuant to paragraphs (1) and (2) of this subsection, except that the Secretary may designate for replacement land twice the amount of any land without restriction to a native corporation.

No lands outside the exterior boundaries of Cook Inlet Region shall be conveyed to Cook Inlet Region, Inc., unless, in the following circumstances, the consent of other Native Corporations is obtained:

I. Where the township to be nominated is located within an area withdrawn as of December 15, 1975, pursuant to Section 11(a)(1) CIRI shall obtain the consent of the Region and Village Corporation affected.

II. Where the township to be nominated is located within an area withdrawn pursuant to Section 11(a)(3) as of December 15, 1975, CIRI shall obtain the consent of the Region in which the township is located.

There shall be established a buffer zone outside the withdrawals described in subparagraphs I and II which zone shall extend one township from any such Section 11(a)(3) withdrawal and one and one-half townships from any Section 11(a)(1). Any nomination of a township within such zone shall be subject to

the consent of the Region, or of the Village Corporation if adjacent to a Section 11(a)(1) withdrawal, provided, however, that the affected Regional Corporation may designate additional lands to be included by substitution in the buffer zone so long as the buffer zone location is no greater than two townships in width and the total acreage of the buffer zone is not enlarged. The affected Region shall designate the enlarged buffer zone, if any, no later than six months following the passage of this act. Any use or development by Cook Inlet Region, Inc., of land conveyed under this paragraph shall give due protection to the existing subsistence uses of such lands by the residents of the area; and no easement across Village Corporation lands to lands conveyed under this paragraph shall be established without the consent of the said Village Corporation or Corporations.

(c) The lands and interests conveyed to the Region under the foregoing subsections of this section and the lands provided by the State exchange under subsection (a)(1) of this section, shall be considered and treated as conveyances under the Alaska Native Claims Settlement Act unless otherwise provided, and shall constitute the Region's full entitlement under sections 12(c) and 14(h)(8) of the Alaska Native Claims Settlement Act. Of such lands, 3.5 townships of subsurface in the Kenai National Moose Range shall constitute the full surface and subsurface entitlement of the Region under section 14(h)(8). The lands which would comprise the difference in acreage between the lands actually conveyed under and referred to in the foregoing subsections of this section, and any final determination of what the Region's acreage rights under sections 12(c) and 14(h)(8) of the Alaska Native Claims Settlement Act would have been, if the conveyances set forth in this section to the Region had not been executed, shall be retained by the United States and shall not be available for conveyance to any regional corporation or village corporation, notwithstanding any provisions of the Alaska Native Claims Settlement Act to the contrary.

(d)(1) The Secretary shall convey to the State of Alaska, all right, title and interest of the United States in and to all of the following lands:

(i) At least 22.8 townships and no more than 27.0 townships of land from those presently withdrawn under section 17(d)(2) of the Alaska Native Claims Settlement Act in the Lake Illiamna area and within the Nushagak River or Koksetna River drainages near lands heretofore selected by the State, the amount and identities of which shall be determined pursuant to the document referred to in subsection (b); and

(ii) Twenty-six townships of lands in the Talkeetna Mountains, Kamishak Bay, and Tutna Lake areas, the identities of which are set forth in the document referred to in subsection (b).

All lands granted to the State of Alaska pursuant to this subsection shall be regarded for all purposes as if conveyed to the State under and pursuant to section 6 of the Alaska Statehood Act: *Provided*, however, that this grant of lands shall not constitute a charge against the total acreage to which the State is entitled under section 6(b) of the Alaska Statehood Act.

(2) The Secretary is authorized and directed to convey to the State of Alaska, without consideration, all right, title and interest of the United States in and to all of that tract generally known as the Campbell Tract and more particularly identified in the document referred to in subsection (b) except for one compact unit of land which he determines, after consultation with the State of Alaska, is actually needed by the Bureau of Land Management for its present operations: *Provided*, That in no event shall the unit of land so excepted exceed 1,000 acres in size. The land authorized to be conveyed pursuant to this paragraph shall be used for public parks and recreational purposes and other compatible public purposes in accordance with the generalized land use plan outlined in the Greater Anchorage Area Borough's Far North Bicentennial Park Master Development Plan of September 1974: *Provided*, That if the land is not used for the above purposes it shall revert to the United States. Except as provided otherwise in this paragraph, in making the conveyance authorized and required by this paragraph, the Secretary shall utilize the procedures of the Recreation and Public Purposes Act (44 Stat. 741), as amended, and regulations developed pursuant to that Act: *Provided, however*, that the acreage limitation provided by section 1(b) of that Act, as amended by the Act of June 4, 1954 (68 Stat. 173), shall not apply to this conveyance, nor shall the lands conveyed pursuant to this para-

graph be counted against that acreage limitation with respect to the State of Alaska or any subdivision thereof.

(3) The Secretary is authorized and directed to make available for selection by the State, in its discretion, under section 6 of the Alaska Statehood Act, 12.4 townships of land to be selected from lands within the Talkeetna Mountains and Kokasena River areas as described in the document referred to in subsection (b).

(e) The Secretary may, notwithstanding any other provision of law to the contrary, convey title to lands and interests in lands selected by Native corporations within the exterior boundaries of Power Site Classification 443, February 13, 1958, to such corporations, subject to the reservations required by section 24 of the Federal Power Act.

(f) All conveyances of lands made or to be made by the State of Alaska in satisfaction of the terms and conditions of the document referred to in subsection (b) of this section shall pass all of the State's right, title, and interest in such lands, including the minerals therein, as if those conveyances were made pursuant to section 22(f) of the Alaska Native Claims Settlement Act, except that dedicated or platted section line easements and highway and other rights-of-way may be reserved to the State.

(g) The Secretary through the National Park Service, shall provide financial assistance, not to exceed $25,000, hereby authorized to be appropriated, and technical assistance to the Region for the purpose of developing and implementing a land-use plan for the West side of Cook Inlet, including an analysis of alternative uses of such lands.

(h) Village corporations within the Cook Inlet Region shall have until December 18, 1976, to file selections under section 12(b) of the Alaska Native Claims Settlement Act, notwithstanding any provision of that act to the contrary.

(i) The Secretary shall report to the Congress by April 15, 1976, on the implementation of this section. If the State fails to agree to engage in a transfer with the Federal Government, pursuant to subsection (a)(1), the Secretary shall prior to December 18, 1976, make no conveyance of the lands that were to be conveyed to the Region in this section, nor shall he convey prior to such date the Point Campbell, Point Woronzof and Campbell tracts, so that the Congress is not precluded from fashioning an appropriate remedy. In the event that the State fails to agree as aforesaid, all rights of the Region that may have been extinguished by this section shall be restored.

SEC. 13. Section 21 of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688), is hereby amended by adding the following subsection at the end thereof:

"(f) Until January 1, 1992, stock of any Regional Corporation organized pursuant to section 7, including the right to receive distributions under subsection 7(j), and stock of any Village Corporation organized pursuant to section 8 shall not be includable in the gross estate of a decedent under sections 2031 and 2033 of the Internal Revenue Code.".

SEC. 14. (a) The Secretary shall pay, by grant, $250,000 to each of the corporations established pursuant to section 14(h)(3) of the Settlement Act.

(b) The Secretary shall pay, by grant, $100,000 to each of the following Village Corporations:

(1) Arctic Village;
(2) Elim;
(3) Gambell;
(4) Savoonga
(5) Tetlin; and
(6) Venetie.

(c) Funds authorized under this section may be used only for planning, development, and other purposes for which the corporations set forth in subsections (a) and (b) are organized under the Settlement Act.

(d) There is authorized to be appropriated to the Secretary for the purpose of this section a sum of $1,600,000 in fiscal year 1976.

SEC. 15(a). The Secretary shall convey under sections 12(a)(1) and 14(f) of the Settlement Act to Koniag, Incorporated, a Regional Corporation established pursuant to section 7 of said Act, such of the subsurface estate, other than title to or the right to remove gravel and common varieties of minerals and materials, as is selected by said corporation from lands withdrawn by Public

Land Order 5397 for identification for selection by it located in the following described area:

T 36 S, R 52 W
T 37 S, R 51 W
T 37 S, R 52 W
T 37 S, R 53 W, sec. 1–4, 9–12, 13–16, 21–24, north ½ of 25–28
T 38 S, R 51 W, sec. 1–5, 9, 10, 12, 13, 18, 24, 25
T 38 S, R 52 W, sec. 1–35
T 38 S, R 53 W, sec. 1, 12, 13, 24, 25, 36
T 39 S, R 51 W, sec. 6, 7, 16–21, 28–33
T 39 S, R 52 W, sec. 1, 2, 11, 12, 13–16, 21–24
T 39 S, R 53 W, sec. 26, 33–36
T 40 S, R 52 W, sec. 6, 7, 8, 9, 16, 17, 18–21, 27–36
T 40 S, R 53 W, all except sec. 20, 29–33
T 40 S, R 54 W, all except sec. 35 & 36
T 41 S, R 52 W, sec. 4, 8–15
T 41 S, R 54 W, sec. 3
T 41 S, R 53 W, sec. 1, 2, 11, 12, 13

Notwithstanding the withdrawal of such lands by Public Land Order 5179 as amended, pursuant to section 17(d)(2) of the Settlement Act: *Provided*, That notwithstanding the future designation by Congress as part of the National Park System or other national land system referred to in section 17(d)(2)(A) of the Settlement Act of the surface estate overlying any subsurface estate conveyed as provided in this section, and with or without such designation, Koniag, Incorporated, shall have such use of the surface estate including such right of access thereto, as is reasonably necessary to the exploration for and the removal of oil and gas from said subsurface estate, subject to such regulations by the Secretary as are necessary to protect the ecology from permanent harm.

The United States shall make available to Koniag, its successors and assigns, sand and gravel as is reasonably necessary for the construction of facilities and rights of way appurtenant to the exercise of the rights conveyed under this section, pursuant to the provisions of 30 U.S.C. 601 et seq., and the regulations implementing that statute which are then in effect.

(b) The subsurface estate in all lands other than those described in subsection (a) within the Koniag Region and withdrawn under section 17(d)(2)(e) of the Settlement Act, shall not be available for selection by Koniag Region, Incorporated.

SEC. 16. Within ninety (90) days after the date of enactment of this Act, the corporation created by the enrolled residents of the Village of Tatitlek may file selections upon any of the following described lands:

COPPER RIVER MERIDIAN

Township	Range	Section
9 S	3 E	23, 26, 34–35.
9 S	3 E	2–27, 34–36.
1 S	4 E	5, 6, 8, 9, 16, 17, 20–22, 27–29, 33–36.
9 S	3 E	3–6, 9–11.
9 S	3 E	14–16, 21, 22, 27, 28.

The Secretary shall receive and adjudicate such selections as though they were timely filed pursuant to Section 12(a) or 12(b) of the Alaska Native Claims Settlement Act (85 Stat. 688) and were withdrawn pursuant to Section 11 of that Act.

The Secretary shall convey such lands selected pursuant to this authorization which otherwise comply with the applicable statutes and regulations. This section shall not be construed to increase the entitlement of the corporation of the enrolled residents of Tatitlek or to increase the amount of land that may be selected from the National Forests system. The subsurface of any land selected pursuant to this section shall be conveyed to the Regional Corporation for the Chugach Region pursuant to Section 14(f) of the Alaska Native Claims Settlement Act.

SEC. 17. Section 22(f) of the Alaska Native Claims Settlement Act is amended to provide as follows:

(f) the Secretary, the Secretary of Defense, the Secretary of Agriculture, and the State of Alaska are authorized to exchange lands or interests therein, including native selection rights, with the Group Corporations, Village Corporations, Regional Corporations, the Native Corporations, for the Cities of Juneau, Sitka, Kodiak and Kenai, other municipalities and corporations or individuals, the State (acting free of the restrictions of section 6(i) of the Alaska Statehood Act), or any federal agency for the purpose of effecting land consolidations or to facilitate the management or development of the land, or for other public purposes. Exchanges shall be on the basis of equal value, and either party to the exchange may pay or accept cash in order to equalize the value of the property exchanged: *Provided*, That when the parties agree to an exchange and the Secretary determines it is in the public interest, such exchanges may be made for other than equal value.

SEC. 18. Except as specifically provided in this Act, (i) the provisions of the Settlement Act are fully applicable to this Act, and (ii) nothing in this Act shall be construed to alter or amend any of such provisions.

PURPOSE

The purpose of H.R. 6644, introduced by Mr. Young of Alaska, is to amend and supplement, in certain respects, the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688). Among other things, the bill as introduced, would accomplish the following:

The roll of Alaska Natives would be reopened for one year from date of enactment to enroll those Natives who failed to meet the March 30, 1973, enrollment deadline established by the Secretary of the Interior. No changes in land selection rights pursuant to the Settlement Act would occur as a result of the new enrollment process. (Sec. 1(a)).

The Secretary would be required to redetermine the place of residence of Natives who had enrolled in Native "villages" or "groups", as defined in the Settlement Act for purposes of receiving benefits, which villages or groups have subsequently been found ineligible. Prior distribution of benefits and land entitlements under the Act would not be affected (Sec. 1(c)).

Natives who reside on lands of, but are not members of, village(s) which elected to retain their former reservations under section 19(b) of the Act are given the opportunity to enroll to such village corporations. (Sec. 1(b)).

The Secretary is directed to establish an escrow account in which are to be deposited funds earned on lands withdrawn for Native selection pending issuance of patents thereon. Interest will be earned on such account and it will be paid out as interests appear upon issuance of final patents to the Native corporations. (Sec. 2).

Native corporations would be exempt from the provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Company Act of 1940 until December 31, 1991. (Sec. 3).

Clarification is made that (1) payments and grants to Natives under the Act are not to be deemed as a substitute for any government programs Natives otherwise would be eligible for as citizens and that (2) benefits received by Natives under the Act are not to be counted as income or other resources for purposes of the Food Stamp program. (Sec. 4).

Money, in the Alaska Native Fund, pending distribution, is to be

treated as trust funds of Indian tribes for interest and investment purposes. (Sec. 5).

Mergers of Native village corporations which are too small to be economically viable with other village corporations or with the regional corporation would be permitted under certain conditions. (Sec. 6).

The life of the Joint Federal-State Land Use Planning Commission is extended three years until June 30, 1979. (Sec. 7).

The decision of the village of Klukwan to retain their former reservation under section 19(b) of the Settlement Act rather than share in the benefits of the Act resulted in a severe inequity to some of its members because of a prior valid right to the lands of such reservation. This inequity is corrected by, in effect, vitiating such election and allowing Klukwan to share in the Act's land benefits. (Sec. 9).

The Regional Native Corporation of the southeastern region (Sealaska, Inc.) is given authority to select its land entitlement under section 14(h)(8) of the Act from lands withdrawn for, but not selected by, village corporations of that region. (Sec. 10).

The boundary between the southeastern Native region and the Chugach region is confirmed at the 141st meridian. (Sec. 11).

The severe land selection problem encountered by the Cook Inlet Native region in securing its land entitlement under the Act is resolved by providing for certain conveyance of lands to the regional corporation from the U.S. and the State of Alaska. (Sec. 12).

The value of share of stock in Native corporations and the right to receive dividends therefrom are excluded from the gross estate of a Native shareholder for Internal Revenue Code purposes. (Sec. 13).

Grants of $250,000 each are authorized for the Native corporations of Juneau, Sitka, Kodiak, and Kenai and $100,000 each for the villages of Artic Village, Elim, Gambell, Savoonga, Tatlin, and Venetie for planning, development and other purposes for which these corporations were organized. (Sec. 14).

The Koniag Native regional corporation is conveyed title to approximately 186,000 acres of subsurface estate in lands which lands are proposed for inclusion in the Aniakchak Caldera National Monument. (Sec. 15).

Background

On December 18, 1971, the President signed into law the Alaska Native Claims Settlement Act (the Settlement Act), Public Law 92-203, 85 Stat. 688. This legislation extinguished all aboriginal claims to land in Alaska and in return provided the Natives (individually and through 12 Regional Corporations and approximately 220 Village Corporations established under the law's provisions) with a land settlement of approximately 40 million acres and a monetary settlement of nearly a billion dollars ($462,500,000) from the general fund of the Treasury, and $500 million from mineral revenues from lands in Alaska conveyed to the State under the Statehood Act after the enactment of the Settlement Act and from the remaining Federal lands, except Naval Petroleum Reserve No. 4).

Organization

The Act provided that, within 2 years from the date of enactment, the Secretary of the Interior was to prepare a roll of all Natives who

were born on or before, and who were living on, the date of enactment. Within one year of enactment, the Secretary was required to divide the State of Alaska into 12 geographic regions for purposes of the Settlement Act. The Natives of each region were authorized to establish a Regional Corporation to conduct business for profit under the laws of Alaska, and all 12 Regional Corporations have been organized. The Act also listed 217 villages, the members of which were to establish profit or non-profit Village Corporations. The Secretary was required to review the listed village within 2½ years of enactment, disqualify those that do not meet the Act's criteria, and add those which do meet the criteria but were not listed in the Act. Some 220 Village Corporations have been established.

The Act also revoked existing Native reserves and authorized the Native Village Corporations formed on each reserve to elect to take either title to the reserve lands or the benefits of the Settlement Act. Native groups which were not eligible as villages were also asked to incorporate. Finally, the Natives of four urban centers in which the Native population constitutes a minority (Sitka, Kenai, Juneau, and Kodiak) were also expected to incorporate.

The Corporations are to issue stock to their members, however such stock is inalienable for a period of 20 years.

The Land

To permit the Regional and Village Corporations to select 38 million acres, the Act requires the Secretary to withdraw approximately 25 townships around each Native village listed in section 11 and, in case of insufficient lands within that area, withdraw nearby lands equal to three times the deficiency. The Secretary was authorized to withdraw and convey an additional 2 million acres outside the otherwise withdrawn areas for specific purposes: cemetery sites and historic places; not more than 23,040 acres for each Native group which does not qualify as a Native village; not more than 23,040 acres for each of the Native Corporations in four urban centers the populations of which are no longer composed predominantly of Natives (Sitka, Kenai, Juneau, and Kodiak); and not more than 160 acres for each Native living outside the otherwise withdrawn areas.

Of these withdrawn lands, the Village Corporations are to receive title to 22 million acres of surface estate only: 18½ million acres of surface estate in the 25 township areas surrounding each Village, divided among the villages according to population, and 3½ million acres of surface estate, divided among the Village Corporations in 11 regions (excluding the southeastern region, Sealaska) by the Regional Corporations on an equitable basis after considering historic use, subsistence needs, and population. The deadline for selection of lands by the Village Corporations was December 18, 1974.

The 12 Regional Corporations are to receive the subsurface estate in the 22 million acres patented to the Village Corporations, and the full title to 16 million acres selected within the 25 township areas surrounding the villages. This land would be divided among the 12 Regional Corporations on the basis of land areas within each region. The Regional Corporations would also receive the subsurface estate

of land selected by Native groups (one township, 23,040 acres, each), individual Natives residing outside villages (160 acres each), and the Native Corporations for Sitka, Kenai, Juneau, and Kodiak (23,404 acres each). The balance remaining from the two million acres withdrawn for the group, individual, and town selections after selection is made is also to go to the Regional Corporation. Finally, Regional Corporations would be conveyed cemetery and historical sites. The deadline for Regional Corporation land selections is December 18, 1975.

The Funds

The Act established in the Treasury an Alaska Native Fund into which is to be paid $462,500,000 in Federal funds over an 11-year period and a 2% overriding royalty from all proceeds received from the disposition of minerals subject to the Mineral Leasing Act in Alaska from both Federal (other than Naval Petroleum Reserve No. 4) and State lands until an additional sum of $500,000,000 is reached.

The Regional Corporations would receive all payments on a quarterly basis as funds are made available on passage of appropriations acts. The payments are divided among the regions on the basis of Native population. The Regional Corporations must also divide among themselves 70 percent of the mineral and timber revenues received by them from lands conveyed to them. Each Regional Corporation must then distribute to the Village Corporations and the class of stockholders who are not residents of these villages not less than 50 percent (45% during the first five years) of the funds granted to it and all timber and mineral revenues from its lands. During the first five years, not less than 10% of all corporate funds from the two above-mentioned sources are to be distributed by the Regional Corporations among their stockholders.

With some minor exceptions, the land and moneys received under the settlement are not taxable at time of receipt.

Explanation

The Alaska Native Claims Settlement Act is a very complicated, far-ranging law. It was the subject of exhaustive congressional hearings, consideration and debate. The final product represents a delicate balancing of the myriad of interests within the State of Alaska and the Nation as a whole.

The primary purpose of the Act was to finally settle the long-standing land claims of the Alaska Natives in a fair, expeditious manner. In addition, however, the Act attempted to secure the interests of the public at large preserving the unique status and value of certain lands in the State, in providing for the orderly development of the resources of Alaska, and in preserving the ecological and environmental balance on this land.

The Act also sought to permit the development of the vast energy potential of the State to aid in meeting the growing energy shortages of the Nation while meeting the needs of the Natives and of the public at large.

In light of the many issues and circumstances which the Act attempted to meet and equitably resolve, it is little wonder that

experience in the implementation of the Act has disclosed some deficiencies and oversights on the legislation. This is particularly true with respect to insuring that the Native beneficiaries of the Act obtained the rights to which they were entitled.

The Committee, in the exercise of its oversight responsibilities and in extensive hearings on the Settlement Act has identified several pressing deficiencies in the Act and resultant inequities which require legislative remedy. H.R. 6644, as amended, will provide that remedy.

Section-By-Section Analysis

SECTION 1

Subsection (a) of the bill authorizes the Secretary of the Interior to review all applications filed within one year after the date of enactment of the bill by persons who missed the March 30, 1973 deadline for filing applications for enrollment as Alaska Natives. The Secretary would then enroll those Alaska Natives who meet the qualifications for enrollment set out in the Alaska Native Claims Settlement Act except for their failure to meet the March 30, 1973 deadline.

In addition, section 1(a) sets forth the procedures for making all the changes required by amendments to the roll resulting from the new enrollments thereunder, specifically with regard to issuance of stock in the proper Native corporation to any Native newly enrolled and to future distributions under the Settlement Act. Also, the subsection provides that no land entitlements of "village" or "group" eligibility will be affected by the changes in enrollment thereunder.

Some 77,000 Alaska Natives filed timely enrollment applications and were included on the final roll certified by the Secretary of the Interior on December 18, 1973. However, approximately 800 applicants filed after the March 30, 1973 deadline. There applications were summarily denied. In addition, numerous other Natives were dissuaded from filing upon learning that the deadline had passed. Further, because of the remoteness and isolation of Native settlements in Alaska, the subsistence hunting and fishing culture of many Natives, and the wide dispersion of other Natives throughout the United States and foreign countries, many Natives did not receive timely notice about the enrollment process.

This new enrollment period will afford these Natives the opportunity to share in the benefits Congress intended for them. While there is no accurate count of eligible Natives who missed enrollment, estimates indicate that the number would be greater than 1,000.

Subsection 1(b) provides that the Secretary is authorized to poll Natives enrolled to villages or groups not recognized as village corporations under the Settlement Act and which are located within the boundaries of former reserves where village corporations elected surface and subsurface rights under section 19(b) of the Settlement Act. The Secretary may allow these natives to enroll to a section 19(b) village corporation or to remain enrolled on an at-large basis in the Regional Corporation of the region in which the village or group is located.

Although the language of the provisions is general and would apply to any case falling within its terms, the provision is specifically

directed toward an inequitable situation identified by the Committee on the Island of St. Lawrence. The villages of Gambell and Savoonga elected to retain and take title to their former reservation pursuant to section 19 of the Settlement Act. That former reservation constituted the entire Island.

Approximately 30 Natives who live on the Island enrolled to places other than Gambell or Savoonga. Since all the land was taken by the two villages as the former reserve, these Natives cannot realistically obtain land benefits as a Native group. The subsection will correct this and other such inequitable and unintended results of the Settlement Act.

The Committee adopted an amendment which makes clear that no enrollment changes resulting from subsection (c) will affect any land entitlements under section 12(b) or 14 (h)(8) of the Settlement Act. The Committee does not intend that the addition of the proviso be taken to be a congressional determination that any such enrollment change might or might not otherwise affect such entitlements.

Section 1(c) provides that, in those cases where, under the enrollment provisions of the Settlement Act, there were enrolled as residents of a place the minimum number of Natives necessary to qualify as a Native village or group and where it is later determined by the Secretary that such place is not eligible for land benefits as a village or group on grounds which include an insufficient number of residents, the Secretary is required to redetermine the place of residence of such Native as of April 1, 1970, and to enroll such Native in the appropriate Native corporation or corporations.

The subsection maintains existing or past distributions of funds or land entitlements under the Settlement Act notwithstanding such redetermination of residence. In addition, it affords an opportunity for notice and a hearing for those Natives whose residence is being redetermined and for those Native corporations gaining or losing stockholders.

SECTION 2

Section 2 contains provisions to correct ambiguities which have arisen during the implementation of the Settlement Act concerning the distribution of certain receipts and proceeds.

Subsection (a) provides the Secretary of the Interior with authority to deposit receipts derived from contracts, leases, permits, rights-of-way or easements pertaining to land or resources of land withdrawn for Native selection pursuant to the Settlement Act in an escrow account until such time as disposition is made of the land and then to transfer the receipts to the person or entity receiving title to the land. Upon the expiration of the selection rights of the Natives for whose benefit such lands were withdrawn or reserved, the proceeds from lands withdrawn but not selected are to be paid out as required under law. Subsection 2(b) provides the authority needed to pay interest on the funds held in the escrow account and to allow the Secretary of the Interior to reinvest them to obtain a higher return pursuant to the Act of June 24, 1938 (52 Stat. 1037, 25 U.S.C. 162(a)).

Despite the stricture provided in section 14(a) of the Settlement Act that patents to lands selected by Native corporations are to be conveyed "immediately after selection," delays between the selection of land by a Native corporation and the transfer of title to that corporation are unfortunately likely to occur. Several reasons for such delays, such as the absence of an easement policy, probably will be eliminated in the near future. Others are likely to continue for the duration of the Native land selection process, in that the Bureau of Land Management appears to lack the manpower and money necessary to process expeditiously the hundreds of selection applications which it has or will soon receive from the twelve Regional Corporations and the approximately 220 Village Corporations which have qualified for benefits under the Settlement Act.

Under existing law, any funds derived from lands owned by the Federal government must be deposited in the Treasury or other appropriate depository until title passes, despite the fact that such lands may have been selected by a Native corporation. Therefore, in the absence of section 2 of H.R. 6644, no authority exists to establish an escrow fund on behalf of the Native corporations. Accordingly, these corporations could be deprived of a significant asset which they would be entitled to receive but for the existence of problems beyond their control—delays in conveying the selected land and lack of authority to protect Native proceeds in the interim. The Settlement Act vests the Secretary of the Interior with interim authority to grant leases, contracts, permits, rights-of-way, and easements on Native lands. In a growing number of situations, Native corporations have wanted the Secretary to enter into one of these arrangements, but have been forced to abandon their plans due to the lack of escrow authority.

Subsection (c) relates to public easements reserved in any conveyance pursuant to section 17(b)(3) of the Settlement Act. Many of the actions arising from these reserved easements may not be performed until years after the conveyance has been issued. Although the reservation would have been made in the conveyance, section 2 would insure that proceeds derived from these section 17(b)(3) reserved easements at any time after conveyance has been issued will be paid to the grantee of such conveyance in accordance with the grantee's proportionate share. The Department of the Interior believes it would be administratively prohibitive to distribute the income to the owners of the land covered by the easement reservation without the certainty provided by section 2.

Subsection (d) provides that, where there is a conflict between the provisions of this section and other Federal law applicable to Alaska, this section will prevail. In addition, it provides that payments made to any corporation or individual from the escrow account shall not be considered revenue for purposes of the mineral revenue sharing section 6(d) and (f) of the Settlement Act.

SECTION 3

Section 3 adds a new section 28 to the Settlement Act which exempts Native corporations organized under that Act from the provisions of certain federal securities laws during the time that the stock of those

corporations is subject to prohibitions on sale or disposition, i.e. December 31, 1991.

A. The Investment Company Act of 1940

The exemption is necessary because of certain "mechanical" provisions of the Investment Company Act and the present uncertain status under the 1940 Act of Native corporations established pursuant to the Settlement Act. The 1940 Act requires highly technical registration and periodic reports to the Securities Exchange Commission (SEC) from corporations which are by design "investment companies" as well as corporations which are deemed "inadvertent" investment companies because more than 40 percent of their total assets, exclusive of cash and government securities, are held in the form of "investment securities."

The Native corporations are designed to be operating profitmaking business corporations. They are not expected to be "investment companies" as that term is customarily used. All of them will eventually own surface and/or subsurface interests in substantial amounts of land. Once the corporations are fully organized it is apparent that many of them will never be "investment companies" by virtue of their intentional business decisions or because they happen to have more than 40 percent of their non-cash assets in investment securities. The probable value of certain land interests makes it unlikely that several of these corporations will ultimately fall under the 1940 Act because of the 40 percent test.

The structure of the Settlement Act results, however, in substantial cash flowing to these corporations years ahead of conveyance and evaluation of land selections. Over $150 million has been distributed to Native corporations; whereas land selections have not yet resulted in title passing to the corporations, selections will not be completed until the end of 1975, at the earliest, and conveyances will not be completed for perhaps 15 years.

The Native corporations must do something with the money they are receiving. They cannot let it lie fallow in checking accounts, yet they are unprepared now to proceed immediately into profit-oriented business for themselves. To meet this problem corporations are to some extent planning to put money into commercial bank time deposits or certificates of deposit with interest returns somewhat higher than savings accounts, but lower than "high-risk" investment ventures.

These plans present another potential problem under the 1940 Act. While the Court of Appeals for the Second Circuit has held that "certificates of deposit" are not "investment securities" for 1940 Act purposes, the SEC staff informally takes a contrary position. Thus the Native coporations which prudently try to obtain moderate return by purchasing certificates of deposit may be required to undergo costly and time-consuming registrations under the 1940 Act only to find that three years from now when land selections are complete they are no longer subject to that Act and must then go through costly and time-consuming procedures to deregister. The end result is extensive paperwork and a needless waste of time, money, and manpower.

It is too early for these fledgling corporations to know even what their investment policies and legal and accounting problems may be to

make registration practicable for them under the Investment Company Act. On the other hand, the penalty for failure to register under that Act, even for a company which inadvertently becomes subject to its provisions, are severe. It is the purpose of Section 3 of H.R. 6644, amended, to provide the corporations formed under the Settlement Act with turnaround time in order to identify any problems which they may ultimately have under the Investment Company Act and to work out appropriate solutions for such problems internally and in consultation with the staff of the Securities and Exchange Commission.

The SEC has promulgated a temporary rule exempting Native corporations which register as investment companies from most of the provisions of the 1940 Act. Nonetheless, the exemption provided for in this section is necessary. The Committee is informed that some Regional Corporations have not registered under the SEC temporary rule and there exists some risk that their corporate acts and contracts might be vulnerable to challenge under the 1940 Act. The exemption will provide necessary breathing room to the SEC and the Native corporations in order to permit resolution of long-range solutions.

Another reason for temporarily exempting these entities from the Investment Company Act is to enable them to merge under provisions of Section 6 of H.R. 6644. In 1975 the NANA Corporation and the eleven Village Corporations in that region agreed on a plan of merger. The Natives spent about $200,000 in preparation and filing of a prospectus under the Securities Act of 1933. They did so in reliance on a "no-action" letter from the SEC advising them that no application would be necessary under section 17 of the Investment Company Act, a section which prohibits transactions between "affiliated persons" without a prior order from the SEC that the terms of the transaction are fair and equitable. At the last moment, however, the SEC withdrew their no-action letter, insisted on a section 17 application, and advised that no action would be taken on the application until extensive public hearings had been held. This administrative procedure imposes such substantial costs that merger may be impracticable. Since the very purpose of the merger authority in section 6 is to reduce administrative expense and overhead, it is appropriate at the same time to eliminate unnecessary expenses and delays imposed by federal securities laws.

B. The Securities Act of 1933 and the Securities Exchange Act of 1934

During the 20 year period when Native stock cannot be sold or transferred it is not necessary to subject these corporations to the expense and administrative burdens of compliance with the 1933 Securities Act and the 1934 Securities Exchange Act. Until December 1991, there will be no "market" in the stock of Native corporations since the stock is inalienable. Therefore it does not seem necessary to subject these corporations to the requirements of registering stock under the 1933 Act. The SEC has itself recognized that the 1933 Act need not be applied to those corporations in certain cases when it issued a "no-action" letter regarding the issuance of the initial shares of stock to Natives enrolled in Regional and Village Corporations.

The exemption from the 1933 Act is also needed to effectuate the merger authority in section 6. The 1933 Act requires that the stock be registered with the SEC, and a prospectus prepared and mailed

to all stockholders to whom the stock is offered, prior to the time at which they make the decision on the merger. Stock registration under the 1933 Act is an extremely elaborate and technical proceeding. The resulting prospectus, to be mailed to the stockholders, is intended to disclose every last detail bearing on the question of whether the person should acquire the stock. In the merger which NANA and the Village Corporations attempted to undertake in the spring of 1975, the prospectus, which had not yet been cleared by the SEC but which resulted from the SEC's initial round of comments on an earlier version submitted, consisted of a total of 80 printed pages, including 50 pages of financial statements, and accompanying footnotes, on all the corporations involved. In view of the lack of sophistication of most of the stockholders, particularly on matters such as complex mergers, such a document clearly is not an appropriate method of informing the stockholders. Yet, such a document would be required. It is extremely costly to prepare, and, as noted in the case of the NANA merger, costs well over $100,000. Clearly such costs for practical purposes would preclude the possibility of merger between two small Village Corporations which might be most in need of it.

Conversely, the tight restrictions of the 1933 Act on the verbal communications which may be made in conjunction with the prospectus virtually preclude any meaningful or simplified discussion at village or community meetings in order to explain merger to the stockholders. Thus the 1933 Act requires for disclosure an extremely complex and expensive document which does not serve its intended purpose at least as to Native corporations, but also precludes the one effective means of communication.

Similarly, application of the 1934 Securities Exchange Act is not necessary during the period when Native stock is inalienable. The 1934 Act applies to corporations with over 500 stockholders and $1,000,000 in assets. An exemption of Settlement Act corporations from only the 1940 Investment Company Act would result in all the Regional Corporations and approximately 19 of the Village Corporations being subject to the 1934 Act which requires expensive initial registration with the SEC, the filing of periodic reports with the SEC, and makes the detailed proxy rules applicable to any vote of stockholders. For the reasons discussed above under the 1940 Act, these requirements again have little proper application to Native corporations and do not fulfill their intended purpose in this context. In fact, in a recent letter to Congressman Lloyd Meeds in connection with the question of exempting the corporations from the 1940 Act, the SEC characterized the 1934 Act as "a statute which is designed basically to inform the Commission and the investing public as to securities of publicly traded companies." Since the stock of Native corporations may not be traded and the "public" may not invest in it until 1991, the 1934 Act has no proper application to these corporations.

Although the SEC has stated that the 1934 Act is designed to inform the "investing public" about securities, the federal securities laws do provide useful information to the stockholders as well as the investing public. Accordingly the new section 38 of the Settlement Act provides that any Native corporation which, but for the provisions of that section, would be subject to the 1934 Act, must transmit an annual

report to its stockholders containing subsantially all the information contained in annual reports of corporations subject to the 1934 Act. Such reports by Native corporations would not be filed with or reviewed by the SEC, but the Committee believes that the Native leadership will comply fully with the intent of this provision and will submit annual reports to their stockholders which are as effective in disclosing corporate activities as those prepared by companies regulated under the 1934 Act by the SEC. Finally, the Committee understands that the general provisions of Alaska law provide protection for Native stockholders from any corporate mismanagement and misrepresentations or omissions to represent in connection with sales of securities, and that Alaska courts would look to precedents under federal securities laws for appropriate standards of conduct by management and other persons connected with securities transactions. Native corporations have assured the Committee that they do not intend to seek an exemption from state securities laws on the basis of this exemption from federal laws and intend to pursue the passage of State legislation to the extent necessary to provide any appropriate additional protection. Therefore, it is not necessary at this time to impose additional federal requirements.

It should be noted that these corporations are being exempted from the federal securities laws on the understanding that federal regulation of Settlement Corporations is not necessary to protect Native stockholders or the public during the twenty-year period when Native-owned stock cannot be sold. However, if this assumption proves invalid in light of experience, the Committee is prepared to re-impose such provisions of the federal laws as may be necessary. In short, the twenty-year exemption should be viewed by the Natives as an experiment which will be stopped if it is abused.

SECTION 4

Subsection (a) merely makes clear the congressional intent that payments and grants under the Settlement Act are not to be deemed a substitute for any governmental program or benefit which is otherwise available to Alaska Natives as citizens of the United States and Alaska.

Subsection (b) makes clear that benefits under the Settlement Act shall not be considered as income or other resources for purposes of the Food Stamp program. The background to subsection (b) is provided in an August 6, 1974, memorandum prepared by the Congressional Research Service of the Library of Congress:

THE LIBRARY OF CONGRESS, WASHINGTON, D.C. 20540

THE COUNTING OF INCOME FROM PAYMENTS UNDER THE ALASKA NATIVE CLAIMS SETTLEMENT ACT IN DETERMINING ELIGIBILITY FOR AND THE AMOUNT OF FOOD STAMP AND CASH WELFARE BENEFITS

Food Stamps

In March 1974, the State of Alaska notified the Federal offices of the Food Stamp Program (in the USDA's Food and Nutrition Service) that it was Alaska's interpretation that

payments made under the Alaska Native Claims Settlement Act (P.L. 92–203) should be *disregarded* in determining eligibility for the Food Stamp Program and the extent of the food stamp benefit received by participating households. In addition, it asked for a decision from the USDA as to whether these payments should or should not be disregarded under the Federal regulations and instructions governing the counting of income and resources in the Food Stamp Program.

Alaska based its interpretation on numerous grounds—most notably, the provisions of section 2(c) of the Alaska Native Claims Settlement Act.[1] Section 2(c) of the Act states, in part—

"... no provision of this Act shall replace or diminish any right, privilege, or obligation of Natives as citizens of the United States or of Alaska, or relieve, replace, or diminish any obligation of the United States or of the State of Alaska to protect and promote the rights or welfare of Natives as citizens of the United States or of Alaska; ..."

However, on April 22, 1974, the Washington headquarters of the Food Stamp Program notified its San Francisco regional office that payments to individuals and households under the Alaska Native Claims Settlement Act were *not to be disregarded* as income for purposes of the Food Stamp Program—although stock (in the various native corporations established under the Act) and land granted under the Act were to be disregarded as resources (assets) available to individuals and households applying for food stamps.[2] This notification was transmitted to Alaska—where payments under the Act were beginning—on April 23, 1974.

From discussions with Food Stamp Program personnel in San Francisco and Washington, D.C., it appears that the basic rationale behind the USDA's decision not to disregard these payments as income was that—

> Since the Alaska Native Claims Settlement Act contains no specific language requiring that these payments be disregarded in determining food stamp benefits,
>
> And since it is the general policy under the Food Stamp Program to count all income available for food expenditures unless legislation directs a disregard, and
>
> Income from payments under the Alaska Native Claims Settlement Act should be counted for food stamp purposes and to disregard them would grant Alaskan natives a privilege not granted to others applying for the Food Stamp Program.[3]

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[1] This description of the rationale behind Alaska's claim that these payments should be disregarded for food stamp purposes is based on information gained through discussions with the Food Stamp Program's San Francisco regional office. For a complete picture of the State's rationale, it would be advisable to obtain a copy of Alaska's letter to the USDA. The letter originated with Alaska's welfare commissioner.

[2] The actual text of the notification was—"For FSP [Food Stamp Program] purposes, cash payments made under P.L. 92–203 must be treated as income in accordance with the provisions of the program regulations. Stock and land received under P.L. 92–208 shall be excluded from resources as being unavailable to the household [applying for or participating in the Food Stamp Program]."

[3] As noted, this description of the reasoning behind the USDA's decision was gained through discussions with Food Stamp Program personnel—both in Washington and the San Francisco regional office. As yet, it has not been possible to obtain any *written* description of the USDA's rationale.

In addition, two points of "legislative history" were mentioned in discussing the reasoning backing up the USDA's decision. First, it was noted that the Senate version of the Alaska Native Claims Settlement Act (and the report accompanying it) contained language that might be construed to call for the disregarding of payments under the Act for Food Stamp Program purposes. However, this language did not find its way into the final Act, or the conference report. Second, provisions of a later act, P.L. 93-134, called for the disregarding of payments under court settlements of certain Indian claims in determining benefits under the Social Security Act.[4] However, this was *not* done in the case of payments under the Alaska Native Claims Settlement Act, for either Social Security Act programs or the Food Stamp Program.

Cash Welfare Benefits

In March 1974, HEW was notified of the questions existing as to whether to disregard payments under the Alaska Native Claims Settlement Act in determining eligibility for and the amount of cash welfare benefits under the Aid to Families with Dependent Children (AFDC) Program and the Supplemental Security Income (SSI) Program.

On May 3, 1974, Mr. Carlucci, Under Secretary of HEW, announced in Seattle that it had been decided that tax-exempt payments under the Alaska Native Claims Settlement Act *would be disregarded* in determining eligibility and benefits under the AFDC and SSI Programs (authorized by title IV-A and XVI of the Social Security Act). A later program instruction issued on July 3, 1974 (copy attached) confirmed this announcement for the AFDC Program, and SSI Program rules were also changed accordingly.

From discussions with Washington, D.C., personnel of HEW's Social and Rehabilitation Service and the content of the July 3, 1974 program instruction, it appears that HEW's basic rationale in deciding to disregard payments under the Alaska Native Claims Settlement Act in determining AFDC and SSI cash welfare benefits was that—

> 'The Alaska Native Claims Settlement Act, specifically section 2(c)[5] of the Act, required that the payments be disregarded to the extent they are tax-exempt.'[6]

In addition it was pointed out in discussions that the provisions of P.L. 93-134 (requiring the disregarding of certain other Indian claims payments) could be construed to indicate a general Congressional intent that payments of Indian claims be disregarded in determining benefits under the Social Security Act programs administered by HEW (i.e., AFDC and SSI).

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[4] P.L. 93-134 did *not* require that these payments be disregarded for Food Stamp Program purposes.

[5] The relevant portion of section 2(c) of the Act is quoted at the beginning of this report.

[6] As noted, the only available *written* description of the rationale behind HEW's decision is the July 3, 1974 program instruction. As yet, it has not been possible to obtain any other written description of HEW's reasoning.

This inconsistency in Federal policy remained undisturbed until June 23, 1975. On that date, the United States Court of Appeals for the Ninth Circuit rendered a decision in *Hamilton* v. *Butz* (No. 75-1268) reversing the District Court's order denying a preliminary injunction to prohibit the Secretary of Agriculture and other public officials from considering funds paid to Natives under the Settlement Act as "resources" available to Native households in determining whether such households are eligible for assistance under the Food Stamp Act. The Court of Appeals ordered the District Court to permanently enjoin the Secretary from so considering Settlement Act payments as "resources" and to prescribe "such other relief as may be necessary to restore the eligibility for food stamps to those Native households that have been denied food stamps because of the Secretary's decision that settlement payments are 'resources' and to compensate Native households that may have been overcharged for food stamps because of the Secretary's actions".

The Committee concurs fully in this decision and subsection (b) of section 4, in requiring restoration of Native eligibility for food stamps, provides assurance that the decision will stand.

SECTION 5

Section 5 corrects an anomalous situation regarding the Alaska Native Fund which has arisen as a result of rulings by the Comptroller General. Appropriations of federal funds under the Settlement Act are credited to the Alaska Native Fund upon enactment of the appropriation measure. Under section 6(c) of the Settlement Act the appropriated funds are not paid to the Native corporations until the end of the fiscal quarter. Thus the funds appropriated in settlement of the Natives' claims may remain in the Treasury for as long as three months before actual payment to the Natives.

Since 1929, federal law has provided that all funds with balances over $500.00 carried on the books of the Treasury to the credit of Indian tribes would bear interest at the rate of 4% per annum (Act of February 12, 1929; 45 Stat. 1164, as amended; 25 U.S.C. § 161a). Since 1938, federal law has permitted the Secretary of the Interior to withdraw such tribal funds from the Treasury for alternative investment (Act of June 24, 1938; 52 Stat. 1037; 25 U.S.C. § 162a). On October 31, 1972, the Comptroller General ruled that the provisions of these two laws were applicable to the Alaska Native Fund "pending enrollment" under the Settlement Act, 52 Comp. Gen. 248 (B-108439). On December 28, 1973, the Comptroller General ruled that as of December 31, 1973, after enrollment had been completed, the Alaska Native Fund would no longer bear interest or be eligible for investment by the Secretary of the Interior. The effect of this latter ruling is that funds appropriated under the Settlement Act for payment to the Natives may remain idle for up to three months without payment of *any* interest to the Natives. The United States in effect can use those funds during that period to offset other obligations as a form of interest-free loan.

According to a 1971 report of the Treasury Department, there were approximately 450 trust accounts maintained by the government to the

credit of American Indian groups.[1] All of those funds, with the exception of one with a balance under $500.00, earned interest under federal law. The Committee believes that the Alaska Native Fund should be treated like every other Indian tribal fund. It appears that the Alaska Native Fund is the *only* Indian tribal fund which does not earn interest and is not available for investment by Interior. The Committee believes that the appropriations into the Alaska Native Fund are, in substance, the property of the Natives from the date of enactment of the appropriations bill. The requirement of subsection 6(c) of the Settlement Act that funds be distributed at the end of the fiscal quarter was intended to avoid administrative inconvenience, not to permit the United States to use the Natives' funds during the interim. The provisions of section 5 of this bill would reverse the Comptroller General's decision of December 28, 1973, and restore the Alaska Native Fund to the status it held under his October 31, 1972, ruling and the status held by all other Indian tribal funds. Section 5 applies the provisions of 25 U.S.C. §§ 161a, 162a to the Alaska Native Fund as long as there are funds on deposit in that fund and regardless of the completion of the enrollment process.

The Committee adopted an amendment to this provision which make clear its intent that nothing in the amendment shall be taken to create or terminate any trust relationship between the United States and Alaska Native individual or corporation.

SECTION 6

Section 6 would amend the Settlement Act by adding a new section 30 to permit mergers or consolidations among Native corporations within the same region. This section is required to permit such mergers because sections 7(h) and 8(c) of the Settlement Act prohibit for a period of twenty years from the date of enactment of that Act the sale or other alienation of corporation shares isued pursuant to the Act except under certain limited circumstances. There is no exception concerning alienation for the purpose of merger or consolidation.

Many of the 220 Village Corporations appear to lack the financial wherewithal and trained manpower which they must possess to become economically viable entities. Village Corporation income will be derived primarily from two sources: distributions from the appropriate Regional Corporation and money derived from the development of the surface estate. Since many Village Corporations have relatively few shareholders, their monetary allocations from the region may be quite small. Moreover, Village Corporations which do not have lands with recreational, timber, or other surface potential will derive little income from this ownership. Finally, many Village Corporations in the remote areas of Alaska do not now possess a trained leadership group, and it is unlikely that they will be able to develop one or to hire needed personnel in the foreseeable future.

For these reasons, it is likely that many Village Corporations will fail if merger authority is not provided. Such a result would frustrate

[1] Receipt, Appropriation and other Fund Account Symbols and Titles, as of Jan. 11, 1971, Dept. of the Treasury, Fiscal Services, Bureau of Accounts, Dir. of Govt. Fin. Oper., Accts. 14X7000–14X7468, pp. 111–140.

the purposes of the Settlement Act, because Native shareholders would be denied the opportunity to participate in the benefits which the Act was intended to provide. Monetary income would be lost, and Native corporations could lose the use and control of their land. Moreover, the lack of sufficient cash flow to a failing corporation might require the hasty and undesired development of those natural resources which the corporation does possess. Such development could jeopardize Native culture, the preservation of which is a central objective of many Native groups. The failure of Native corporations would also have an adverse impact on the general economy of Alaska, for the State and its constituent regional and local areas have much to gain from the existence of financially viable Native entities.

Subsection (a) of the new Section 30 would authorize mergers or consolidations among Native corporations of the same region. It would also allow the subsequent merger or consolidation of merged or consolidated corporatins with each other so long as they also are in the same region. The Native corporations affected by this provision are Regional Corporations established pursuant to section 7(d) of the Settlement Act, Village Corporations established pursuant to section 8(a), corporations for Native groups established pursuant to section 14(h)(2), and corporations established for the four urban centers (Sitka, Kenai, Juneau, and Kodiak) pursuant to section 14(h)(3).

Subsections (b) through (d) of the new section 30 set forth the procedures and conditions for such mergers or consolidations.

Subsection (b). Under subsection (b), all mergers or consolidations would be subject to the applicable provisions of the laws of the State of Alaska, as would any resulting corporations, and to such terms and conditions as are approved by the shareholders of the corporations involved. The mergers authorized by corporation shareholders either before or after passage of H.R. 6644 would be covered and could take place under the provisions of the Bill. Thus, subsection (b) would allow a merger to be completed upon enactment of H.R. 6644 which was approved by corporation stockholders with the merger vote contingent upon subsequent enactment of legislation. This provision is necessary because of ongoing efforts to merger Village Corporations, particularly in the NANA Region of Alaska.

Subsection (b) gives to the merger corporation, upon the effectiveness of the merger, all rights and benefits that the Settlement Act confers upon the individual corporations and also makes it subject to all the restrictions and obligations that were made applicable to the individual corporations by the Settlement Act. The provision specifically states that transfers of rights and titles made pursuant to a merger would not affect the tax exemptions granted by the Settlement Act.

Subsection (b) specifically provides for the issuance of stock in the newly merged or consolidated corporations. In particular, it authorizes the issuance of additional shares of Regional Corporation stock in instances where other Native corporations merge or consolidate with the Regional Corporation. This authorization is required because of the Settlement Act's section 7(g) requirement that Regional Corporations issue 100 shares of stock to each Native enrolled in their respective regions. Subsection (b) also states that "the rights accorded under

Alaska law to dissenting stockholders in a merger or consolidation may not be exercised in any merger or consolidation pursuant to this Act prior to December 19, 1991". The purpose of this provision is to eliminate any ambiguity as to the continued effectiveness of the Settlement Act's section 7(h)(1) prohibition against alienation of Native corporation stock for a period of twenty years.

The Committee adopted an amendment to subsection (b) which provides that if a village corporation which elected to retain its former reservation under section 19 of the Settlement Act merges or consolidates with another Native corporation within such region, nothing in such merger or consolidation shall affect any land entitlements, fund distributions, or revenue sharing rights under the Settlement Act. As in the case of section 1(b) of the bill, some question exists as to whether or not members of the so-called "19(b) Village Corporations" are to be counted as regional enrollees. The amendment adopted is merely to preserve the named entitlements or rights in any case and is not meant to be a congressional determination of that issue.

Subsection (c) concerns the rights of enrolled Natives who are shareholders of a Regional Corporation but are not residents of any of the villages in that region. Section 7(m) of the Settlement Act gives those Natives a right to receive dividents paid to Village Corporations under section 7(j) of that Act. This provision would allow the elimination of this right to dividends if it is part of a merger or consolidation plan but only if those non-village residents can, under the laws of the State of Alaska, vote as a class on the question of the merger or consolidation which contains the elimination provision. However, after any merger in which the special dividend rights were not affected and the at-large shareholders did not vote as a class on the merger, distributions to the at-large shareholders would continue as if the merger had not taken place.

Subsection (d) specifically provides that notwithstanding the provisions of H.R. 6611 or any other law, no merger or consolidation of Native corporations can take place without the approval of the shareholders of the corporations being merged or consolidated.

Subsection (e).—Section 14(f) of the Settlement Act provides that the right to explore, develop, or remove minerals from the subsurface estate in the lands within the boundaries of any Native village are to be subject to the consent of the Village Corporation. This provision provides protection to villages from a precipitate decision by Regional Corporations to develop the subsurface estate. This provision seeks to avoid potential conflicts between villages which are holders of the surface estate and which may be made concerned with preserving the use of the land in accordance with traditional local life-styles and subsistence economy and Regional Corporations which are holders of the subsurface estate and which may have as their focus the generation of revenues from the land. Without specific provisions to the contrary, once a Village Corporation merges or consolidates with other corporations under this new section 30, it would lose this authority over its immediate land base. Therefore to preserve this authority, subsection (e) has been included. Subsection (e) requires that any plan of merger or consolidation must provide that the 14(f) right of any

affected Village Corporation is to be conveyed, as part of the merger or consolidation, to a separate entity composed of the Native residents of that village.

SECTION 7

Section 7 extends the life of the Joint Federal-State Land Use Planning Commission for three years from December 31, 1976 to June 30, 1979.

The Joint Federal-State Land Use Planning Commission for Alaska was established pursuant to section 17(a) of the Settlement Act. The principal responsibilities of the Commission were set forth in section 17(a)(7) and 17(b) of the Settlement Act. That the Commission has met its responsibilities in an effective and even-handed manner is best demonstrated by the support for the extension of its term beyond the December 31, 1976, termination date. This support, as demonstrated in hearing testimony and communications with the Committee, comes from the Secretary of the Interior, the Governor of Alaska, the entire Alaska Congressional delegation, the Alaska Federation of Natives and various Regional Corporations, and environmental groups.

SECTION 8

Section 8 of H.R. 6644, as introduced, provided for the establishment of a 13th Region and the incorporation of a 13th Regional Corporation for the benefit of enrolled Natives who were not permanent residents of the State of Alaska.

Section 5(c) of the Settlement Act provided that such "non-resident" Natives (eighteen years of age or older) would elect, when they filed their application for enrollment, whether they wish to enroll in a 13th Region or in one of the twelve Alaska regions. If a majority of such non-residents voted for a 13th Region, the Secretary was required to establish such region and authorize the creation of a 13th regional corporation for their benefit to administer distribution of funds from the Alaska Native Fund. Those who voted against the 13th would be enrolled to the appropriate Alaska region.

In the event less than a majority voted for the 13th, the issue filed and all non-residents were enrolled to their appropriate region in Alaska.

When the Secretary of the Interior certified the final Native roll on December 18, 1973, he also declared that less than a majority of the non-resident Natives voted for the 13th and the 13th region issue had failed. All non-residents were, accordingly, enrolled in the appropriate Alaska region.

Two organizations (Alaska Federation of Natives International, Inc. and the Alaska Native Association of Oregon) representing the interests of non-residents and the concept of the 13th region, separately, brought suit against the Secretary in the United States District Court for the District of Columbia. Requesting that the declaration of the Secretary be declared invalid and that the 13th region be established, the Plaintiffs alleged, inter alia, that:

(1) certain departmental officials involved in the enrollment process had evidenced a bias against the 13th region;

(2) the Secretary had failed to recognize amendments by

non-residents to their original enrollment application changing their vote from "no" to "yes";

(3) the Secretary had improperly counted non-residents who had abstained as "no" votes; and

(4) there was a general denial of due process in the secretarial enrollment-election process.

Legislation was introduced in the 93rd Congress which would have established the 13th Region, notwithstanding the determination of the Secretary, but which failed of enactment. H.R. 6644, as introduced, contained similar language.

On October 6, 1975, the District Court entered a final order implementing an earlier order in 1974, directing the Secretary to create the 13th Region, enroll therein all non-resident Natives who had indicated, on his last formal communication with the Secretary, his desire to enroll in a 13th region, and to provide for the incorporation of the 13th regional corporation. As the Committee considered the bill, the implementation of that order by the Secretary was well underway.

As a consequence, the Committee struck all of section 8 of the bill as being made moot by the Court's order. However, it added back language as section 8 which it deemed necessary to supplement the Court's order. The amendment provides that no change in enrollment to either the 13th region or to one of the twelve Alaska regions which is required or permitted by the Court's order shall affect any land entitlements of an Alaska Native corporation existing at the time of the creation of the 13th region. Also, it provides that, in furtherance of the Court's order, any cancellation of stock of a Native shall be without liability to either the corporation or the individual. Finally, it provides that in the event the Native roll is re-opened for new enrollment, eligible Natives who are permenant non-residents of Alaska shall elect whether they wish to enroll in the 13th Region or the appropriate Alaska region at the time of their enrollment.

In addition, the Committee adopted an amendement which preserves land entitlements notwithstanding administrative changes in the Alaska Native roll. Under section 14 of the Settlement Act, land entitlements of villages corporations are established on a scale based upon population. Proposed Interior Department regulations setting up a procedure for challenging enrollments of individual Natives has raised the possibility that a village having a minimum number of shareholders for its existing entitlement could lose an entire township if only one of its shareholders is successfully challenged and disenrolled. While the Committee, by this amendment, has not determined whether the Secretary has or has not the authority to make such administrative changes in the roll, this amendment would preserve existing land entitlements notwithstanding any such changes in the roll.

SECTION 9

Section 9 amends section 16 of the Settlement Act by adding a new subsection (d).

Under section 19 of the Settlement Act, former reservations in Alaska established by Executive or Secretarial order or by Act of Congress, with the exception of the Annette Island Reserve, were abol-

ished. Native villages within such reserves had the option of retaining the lands, surface and subsurface, set aside as a reservation or of participating in land entitlements under the Settlement Act, in which case they received no subsurface rights. These rights are reserved for the regional corporations.

A reservation was set aside by the Act of September 2, 1957 for the Chilkat Indian Village which was organized pursuant to the provisions of the Indian Reorganization Act, as amended. The land was near the village of Klukwan and was an enlargement of an Executive order reservation. The same Act permitted the IRA corporation to lease the minerals underlying the lands for its benefit. This was done.

The Natives of the Klukwan village area voted to retain the former reserve. However, section 19 made such lands, in the hands of the Native corporations, subject to valid existing rights. One such right was the existing iron ore mineral lease by the IRA corporation which remained separate from the ANCSA corporation.

While all of the members of the IRA corporation are also members of the ANCSA corporation, the reverse is not true. Since the IRA corporation has a vested right to the subsurface of lands and very likely to the surface also, the net effect is that the ANCSA corporation and its shareholders have no real assets whatsoever.

The new subsection (d) of section 16 would, in effect, vitiate the election of Klukwan, Inc. to retain their former reserve. Lands which were withdrawn for them for selection prior to that election are to be rewithdrawn for a period of one year after the date of enactment of this section and Klukwan, Inc. is to select an area equal to 23,040 acres in accordance with the Act. The corporation and its shareholders will share fully in the benefits of the Act as if there had been no election under 19(b).

The foregoing provision will not become effective until Klukwan, Inc. quitclaims to Chilkat, Inc. any interest it may have in the former reserve lands which are quieted in Chilkat, Inc., in fee simple.

The Committee adopted an amendment to section 9 which provides that the United States and Klukwan, Inc., must also quitclaim any interest they may have in certain funds earned on the lease of the mineral resources of the former reserve since enactment of the Settlement Act to Chilkat, Inc.

In addition, the Committee adopted another amendment which provides that nothing in the new subsection shall affect existing land entitlements in 14(h)(8) of the Settlement Act.

SECTION 10

The Native region created by the Settlement Act for southeastern Alaska was precluded, generally, by the Congress from sharing in the land benefits of the Act. This area encompasses the Tlingit-Haida Indians. Prior to enactment of the Settlement Act, this tribe recovered an award of several million dollars against the United States for extinguishment of their aboriginal land claims in the southeastern area.

In consideration of this fact, the southeast region (Sealaska, Inc.) does not generally share in the land benefits accorded to other regional corporations. However, Sealaska, Inc., does receive certain land entitle-

ments under section 14(h)(8) of the Act. The estimate is that Sealaska's share will approximate 200,000 acres.

Practically the entire area of southeastern Alaska is encompassed by the Tongass National Forest. What remains is either State or privately-owned lands, national monuments, village selected lands, mountain tops or glaciers, or otherwise valueless lands. If Sealaska's entitlement under section 14(h)(8) is not to be meaningless, it must be allowed to select lands within the Tongass National Forest.

This section provides that Sealaska, Inc., may select its approximately 200,000 acre entitlement from lands which were withdrawn in the National Forest for selection by village corporation of the southeastern region, but which were not so selected. The section provides that Sealaska, Inc., may not select any lands an Admiralty Island in the withdrawal for the village of Angoon. In addition, no selections can be made in the withdrawal for the villages of Yakutat and Saxman, unless the Governor of the State of Alaska or his delegate consents to such selection.

SECTION 11

Section 11 resolves a dispute between the Chugach Regional Corporation and Sealaska on the boundary between the two regions. It confirms the boundary at the 141st meridian, but provides that the members of the southeastern regional village of Yakutat must be accorded certain traditional uses of lands in the vicinity of Icy Bay in the Chugach region. It is the intent of the Committee that the phrase "in the vicinity of Icy Bay" be construed narrowly to those areas to which the Natives of Yakutat can clearly show past and current traditional uses and that such use right shall not unreasonably restrain Chugach, Inc. from developing its lands in accordance with the purposes of the Settlement Act.

SECTION 12

From the outset of the implementation of the Settlement Act, there have been extreme difficulties encountered in adequately fulfilling the land entitlements of the Cook Inlet Regional Corporation under section 12(c) of the Settlement Act. Under the Statehood Act, the State had already obtained patents to much of the low-lying lands in the region, except for lands within the Kenai National Moose Range. In addition, the Secretary, in an agreement with the State of Alaska in 1972, committed additional lands to the State even though there had not yet been withdrawn sufficient lands for Cook Inlet Region. The subsequent efforts of the Secretary to fulfill his statutory obligation to Cook Inlet has yielded, for the region, selections largely comprised of mountains and glaciers, hardly the settlement contemplated by the Congress. Since early 1972, the Region has been attempting to resolve these issues by litigation, negotiation, and now by legislation.

In the last eight months, a series of intense discussions with the Secretary, the State, and various other interested groups (including local government, mining interests, and environmental groups) has resulted in a negotiated settlement entitled "Terms and Conditions for Land

Consolidation and Management in the Cook Inlet Area." The document harmonizes conflicting interests, seeking to adjust an equitable settlement for Cook Inlet Region consistent with the needs of Alaska and the public at large. As such, it is more than a Cook Inlet Region, Inc. settlement. It seeks to resolve harmful jurisdictional conflicts and arbitrary ownership patterns within the Cook Inlet region. It opens for development lands that should be in private ownership and conserves for public use lands that should have that status.

The section accomplishes this complex task by ratifying and incorporating the proposed "Terms and Conditions" as a part of the bill.

Under the bill, the Region agrees to shift more than half of its statutory entitlement away from the populated Cook Inlet area and, with the consent of the other regions (where applicable), into the adjacent regions.

The Federal government conveys approximately 50 townships of land to the State in addition to other valuable consideration (including a key tract near Anchorage and improved selection rights for the State under the Statehood Act) in exchange for approximately 20.5 townships of land to be conveyed to the United States for the benefit of the Cook Inlet Region and certain of its village corporations.

The Federal government conveys approximately 10,000 acres of the Kenai National Moose Range and certain other lands to the Cook Inlet Region, Inc., in addition to the lands received from the State. The lands thus received by Cook Inlet are in complete satisfaction of its entitlement under section 12(c) and section 14(h)(8) of the Settlement Act.

The settlement.—This section directs and authorizes the Secretary to perform the obligations imposed upon the United States by the section and the "Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area," which document has been submitted to the House Committee on Interior and Insular Affairs, is incorporated into the section by reference, and is printed in full elsewhere in this report.

State participation.—The Committee views the context of an ongoing need for federal-state cooperation in the resolution of land issues in Alaska. The concentration of State patented land, selected within the Cook Inlet Region prior to the 1969 land freeze, makes State participation virtually indispensable. With respect to Cook Inlet, the bill provides the State with a more substantial role in the designation of any land to be received than was true under the Alaska Native Claims Settlement Act. The bill clears the opportunity for the Secretary to convey certain important tracts to the State and precludes the need for Regional selections that would impact important State interests. Resolution of the outstanding Cook Inlet issues precludes the need for Congressional evaluation of the Secretary's 1972 agreement with the State, subsequent to the passage of the Alaska Native Claims Settlement Act, making available to the State lands that might otherwise have satisfied the Cook Inlet Region entitlement. In addition, the Region relinquishes rights it may have to the Swanson River, Beaver Creek and certain other proven oil and gas fields, to lands in the Chelatna area, and to lands located near potential capital sites in the State. Under the bill, the Secretary must report to the

Congress, by April 15, 1976 on the State's final consent to the land consolidation and management plan. Until the issues are resolved, the Secretary is precluded from making conveyances to the State, as identified in the legislation, that would limit the opportunity of the Congress to devise a suitable legislated resolution.

Kenai National Moose Range.—The Secretary is directed to convey sixteen sections of unrestricted surface and subsurface estate, except for a zone along lake and river frontage in which the surface only is transferred and is subject to significant restraints to protect the environment. In addition, the Secretary is directed to convey up to 9.5 townships of subsurface in the Range. There are 3.5 townships in lieu of the Region's entitlement under section 14(h)(8) of the Act. In addition, the Secretary is directed to convey, up to the statutory limit, such subsurface under the Moose Range, as indicated in the "Terms and Conditions," to supplant "in lieu" entitlement under section 12(a) of ANCSA, to compensate for subsurface loss in the Lake Clark area, and in lieu of certain subsurface that would otherwise be obtained under section 14 of ANCSA. The subsurface rights in the Moose Range are to oil and gas and coal, but the extraction of coal is explicitly restricted to carefully supervised insitu liquefaction and gassification processes.

Extra-regional selection.—The Secretary is directed to convey approximately 29.66 townships from outside the boundaries of Cook Inlet Region. These will come from five named Regions unless there is specific consent from another Region and the Secretary and the State. The Regions from which the lands are to be selected have the power to consent. It is not anticipated that the consent will be unreasonably withheld. It was envisioned that the consent would provide, for the other Regions, the ability to protect, primarily, the subsistence interests of their stockholders and certain economic activities. The power to consent, as understood by the Committee, will not be linked to the extraction of consideration from Cook Inlet Region, Inc. Nor is it foreseen that the power would be exercised in withdrawals where the Region involved has no selection itself or where no villages within the Region have selections.

Exchange pool.—The Secretary is directed to maximize a pool of federal properties available to reduce the extent of out-of-region acreage. The Region, after such properties are declared surplus, would be permitted first priority. To the extent properties are made available pursuant to the process described in Section 3(c) of the Alaska Native Claims Settlement Act, only those clearance procedures, if any, there required, will apply. Village corporations may exercise Section 12(b) rights in the pool on the same basis as the Region, but only when the Region determines that it would be appropriate in light of the pool's primary function.

Village selection.—Because of the uncertainties rising from the negotiations, additional time is necessary for the village corporations in the Region to file their selections. The legislation provides an additional year. In case of failure of the agreement, the Region also needs the opportunity to alter its priorities but it is the hope of the Committee that this will be done administratively by the Secretary.

The Committee feels that the Cook Inlet Region was under some

constraints in the negotiations resulting in this agreement. It is expected that ambiguities and uncertainties in the complex, delicately balanced settlement will be resolved favorably, where appropriate, to the Cook Inlet Region.

SECTION 13

Section 13 amends section 21 of the Settlement Act by adding a new subsection (f).

The new subsection provides that, until January 1, 1992, the stock of any Native corporation, including the right to receive dividends therefrom, shall not be included in the gross estate of a decedent under sections 2031 and 2033 of the Internal Revenue Code.

SECTION 14

This section directs the Secretary to pay, by grant, $250,000 to each of the Native corporations of the cities of Juneau, Sitka, Kodiak, and Kenai, and $100,000 to each of the village corporations of Artic Village, Elim, Gambell, Savoonga, Tetlin, and Venetie.

Under the terms of the Settlement Act, the Native corporations organized for the Natives of the four named cities received limited land benefits. However, they are not entitled to share in the fund distribution of the Act. Without funds, these corporations have been severely hampered in carrying out their obligations and duties under the Settlement Act, to plan for the development of the resources, and to preserve and protect those resources.

The listed village corporations elected to retain their former reserves pursuant to section 19(b) of the Settlement Act. As a consequence, they are also precluded from sharing in the monetary compensation of the Act. They too, are severely hampered in carrying out the functions which Congress intended.

SECTION 15

Section 15 directs the Secretary to convey to the Koniag, Inc., the Native Regional Corporation for the Kodiak Region, approximately 186,000 acres of subsurface estate in the area which was withdrawn for that purpose by Public Land Order 5397 and for the proposed Aniakchak Caldera National Monument under Public Land Order 5179. Koniag is permitted access to the surface as reasonably necessary to explore for and extract oil and gas, subject to reasonable regulations by the Secretary.

Under the terms of the Settlement Act, the regional corporations are entitled to the subsurface estate underlying the surface of lands selected by the village corporations of that region, except in cases where such selections are made in a National Wildlife Refuge or in Naval Petroleum Reserve Numbered 4. In that case, the region has the right to an "in lieu" subsurface selection of equal acreage from other lands withdrawn pursuant to section 11(a) of the Act, within the region if possible.

All of the villages of the Koniag region are on Kodiak Island which constitutes the Kodiak National Bear Refuge. As a consequence,

Koniag must take an "in lieu" selection to its subsurface entitlement from other available lands. The nearest such lands are across the straits on the Alaska peninsula.

Pursuant to section 17(d)(2) of the Settlement Act, the Secretary, by Public Land Order 5179, as amended, withdrew approximately 580,000 acres of land for the proposed Aniakchak Caldera National Monument.

Koniag's subsurface entitlement is approximately 600,000 acres. Approximately 380,160 acres were withdrawn by Public Land Order 5397 within the area withdrawn for the Aniakchak Caldera National Monument for purposes of such selection. Under the terms of the Settlement Act such dual withdrawals are reserved for the Congress to decide.

Under the terms of an agreement reached with the Secretary, Koniag agrees to limits its rights in the 17(d)(2) withdrawal to approximately 186,000 acres of lands designated by the Secretary, with a limitation of oil and gas extraction subject to reasonable regulations by the Secretary to preserve surface values from permanent harm. As amended by the Committee, the section requires the Secretary to reasonably make available to Koniag sand and gravel necessary to exercise the rights conveyed.

SECTION 16

Section 16 is intended to prevent the Village Corporation for the Village of Tatitlek from losing part of its land entitlement as a result of a misunderstanding. Tatitlek relied on a consultant firm's advice and the apparent approval of the Interior Department in selecting two townships of its five township entitlement in an area withdrawn by the Secretary pursuant to section 17(d)(2) of the Settlement Act. Subsequently, however, the Bureau of Land Management disapproved the selection of the two townships. Because Tatitlek assumed that its selection had Departmental approval, it did not over-select other lands to provide alternate lands for selection in case its first selections were not approved. The deadline for village selections has passed and the Department has advised Tatitlek that no administrative remedy exists to allow re-selection of the two townships elsewhere. This amendment provides that Tatitlek can select the remainder of its entitlement—40,000 acres—from within the village deficiency area originally withdrawn for its selection.

SECTION 17

Section 17 amends subsection (f) of section 22 of the Settlement Act which provides certain authorities for land exchanges by Federal agencies with other land owners in Alaska.

In order to facilitate the Cook Inlet Area agreement provided for in section 12, the Department of the Interior advised that additional authorities for land exchanges would be needed.

The existing language of the subsection would not permit direct exchanges of land between the State and with Native corporations.

Secondly, section 6(i) of the Alaska Statehood Act prohibits the State from transferring the mineral interest to third parties in patents of lands selected by it under the Statehood Act.

Finally, the existing language of subsection (f) requires exchanges to be on the basis of equal value.

The amended language will permit direct exchanges of land between the State and Native corporations. It will permit the State or transfer mineral interests, notwithstanding section 6(i) of the Statehood Act, to Federal agencies in such exchanges. Finally, it will permit exchanges under the subsection to be on a basis other than equal value if the parties agree to the exchange and the Secretary deems it to be in the public interest.

SECTION 18

Section 18 is merely a savings clause which provides, that except as specifically provided in this legislation, the provisions of the Settlement Act are fully applicable to this legislation and nothing herein shall be construed to alter or amend those provisions.

TERMS AND CONDITIONS FOR LAND CONSOLIDATION AND MANAGEMENT IN THE COOK INLET AREA

Section 12 of H.R. 6644, as amended by the Committee, implements an agreement reached among the United States, the State of Alaska, the Cook Inlet Regional Corporation, and other interested parties to resolve the problem Cook Inlet Region, Inc., encountered in realizing its land entitlements under the Settlement Act. That section is general in terms and incorporates into it, by reference, the text of the agreement reached by the parties. The Committee intends that section 12 and the implementing agreement be construed together to give effect to the settlement of the Cook Inlet problem in a manner that is fair and equitable to the Cook Inlet Regional Corporation and the other parties.

The agreement is as follows:

TERMS AND CONDITIONS FOR LAND CONSOLIDATION AND MANAGEMENT IN THE COOK INLET AREA, DECEMBER 10, 1975

I. The United States shall convey to Cook Inlet Region, Inc., the following lands:

A. Sixteen (16) sections of land, as described in Appendix A, presently within the boundaries of the Kenai National Moose Range, excluding the bed of Lake Tustumina, but to be removed from the boundaries of the Range. The conveyance of these lands shall be subject to the following conditions:

(1) Included in the lands described in this paragraph shall be a restricted zone of lake front and river front lands, not to exceed an average of 160 acres per linear mile, to be measured from the high water line, the exact boundaries to be determined by mutual agreement between CIRI and the Secretary no later than September 1, 1976. The conveyance of the lands within this zone shall contain the following restrictions so long as Lake Tustumena remains a part of the Range:

(a) A restrictive covenant running with the land which provides that no development shall take place or facilities be

constructed within the zone, except those which are directly necessary to support water dependent activities, such as a boat dock, airplane tie-up and marina. Reasonable access to these facilities will be permitted. It is contemplated that a lodge may also be located within the restricted zone, provided, however, that the lodge shall be of such a design, size and at a location agreed upon by the United States Fish and Wildlife Service. CIRI must submit a request in writing to the Fish and Wildlife Service for approval of any construction or development within the zone, which approval will not be unreasonably withheld. The Fish and Wildlife Service will notify CIRI of its decision on any such request within 120 days of receipt of such request, and failure of any response will be considered as approval.

(b) a provision that CIRI will not sell the lands to any third party for a period of 25 years from the date of the conveyance, without the consent of the Secretary.

(c) a provision that CIRI and its assigns will offer the United States the right of first refusal to purchase the lands if the lands are ever sold. The right of first refusal shall be for a period of 120 days from the date of notice in writing to the United States that the owner of the land has received a bonafide offer of purchase. The United States shall not be deemed to have exercised its right of first refusal if the owner does not consummate this sale in accordance with notice to the United States.

(d) the conveyance of the lands comprising this restricted zone shall not include the bed of Lake Tustumena and shall only convey the surface estate to CIRI. The United States shall retain the rights in oil and gas and all minerals, including but not limited to common varieties of minerals.

(e) the United States reserves the right of re-entry on these lands to be exercised upon occurrence of the following conditions:

(1) The United States obtains a final judgment in a proceeding in law or equity to enforce in whole or in part the restrictive covenants contained in the conveyance of the lands described in this section; and

(2) subsequent to such final judgment, the United States institutes proceedings in law or equity to enforce the provisions of the restrictive covenants which were the subject of the final judgment obtained in subparagraph (1) of this paragraph. The right of re-entry shall be asserted in such subsequent action but may not be actually exercised except upon and in accordance with the final judgment in favor of the United States in such subsequent action.

(3) such right of re-entry shall be limited, in any case, to the lands which were the subject of the final judgment referred to in subparagraph (1) hereof.

(2) The remainder of the lands described in Appendix A shall be conveyed to CIRI without restriction, other than the reserva-

tion of those easements authorized by 17(b) of ANCSA or other applicable federal statutes. The conveyance of such remainder shall include both the surface and the subsurface estates to such lands.

B. Three and fifty-eight one hundreds (3.58) townships of the subsurface estate to oil and gas and coal as identified in Appendix B; provided that the United States shall retain all other minerals including but not limited to common varieties of minerals; and provided that the right to extract coal shall be conditioned upon the opening for the extraction of coal of that portion of the Range in which these lands are located, and provided further, that coal shall only be extracted in a liquid or gaseous state. The extraction of oil and gas and coal shall be conducted in accordance with a surface use plan approved by the Secretary. Such extraction shall be undertaken in accordance with the most advanced technology commercially available at that time and causing the least practicable temporary and permanent harm to the fish and wildlife habitats of the Range. Any surface damage caused by the exercise of the rights herein must be repaired or reclaimed by CIRI, its successors and assigns, as rapidly as practicable without unreasonable interference with the rights of extraction. The United States shall make available to CIRI, its successors and assigns, sand and gravel as is reasonably necessary for the construction of facilities and rights of way appurtenant to the exercise of the rights conveyed under this section, pursuant to the provisions of 30 U.S.C. 601 et seq., and the regulations implementing that statute which are then in effect. By mutual consent of CIRI and the Secretary, CIRI may exchange any interest described in this paragraph for other mineral interests of equal value outside the boundaries of the Kenai National Moose Range.

(1) All federal lands and interests in lands within the following:

(a) T. 10 S., R. 9 W., F. M. (Healy); and

(b) T. 20 N., R. 9 E., S. M. (Glenn Highway).

(2) T 1 N R 21 W, S. M. (sections 13, 14, 15, 22, 23, 24, 25, 26, 27, 28, 32, 33, 34, 35, 36). The Secretary shall only convey the rights to metalliferous minerals in the land herein described. Extraction of such minerals shall be subject to a surface use plan submitted by CIRI and approved by the Secretary. Surface use of the purposes of exploration, extraction, access and beneficiation shall be conducted in accordance with the most advanced technology commercially available at that time consistent with the exercise of the rights conveyed under this subparagraph. CIRI, its successors and assigns, shall be required to repair and reclaim any surface damage as rapidly as practicable consistent with the reasonable exercise of such mineral rights.

(3) T 1 S, R 21 W, S. M. (Sections 3–10, 15–22, 29 nd 30). The Secretary shall transfer to CIRI the above described lands in fee simple. Such conveyance shall be subject to a restrictive convenant, running with the land, providing that the surface shall only be used for purposes reasonably incident to mining and mineral extraction, including processing and transportation. The Secretary shall also convey to CIRI, an easement for a port which shall reasonably provide for receiving, shipping, storage and incidental handling, and incidental facilities thereto, of the minerals extracted from the lands conveyed under

this subparagraph. The Secretary shall also convey to CIRI a transportation easement to provide for transportation by road, rail or pipeline, of the minerals from the above described lands to the port easement. The Secretary and CIRI shall mutually agree upon the location of the port and transportation easements.

C. (1) Twenty nine and sixty six one hundredths (29.66) townships from any federal public lands withdrawn under sections 11(a)(1), 11(a)(3), and 17(d)(1) without the exterior boundaries of Cook Inlet Region; to be identified in the manner herein provided; provided that if CIRI's total entitlement under Section 12(c) of ANCSA is determined to be greater or less than 54 townships, the number of townships to be conveyed under this paragraph (hereinafter out-of-Region entitlement) shall be increased or decreased one for one.

(a) lands to be nominated and conveyed under this paragraph C-1 shall be limited as follows: The entitlement shall be satisfied from lands within Ahtna Region, Bristol Bay Region, Calista Region, Chugach Region, and Doyon Region. With the concurrence of the Secretary and the State and any affected Region other than those described above, selections may be made from one or more of the other Regions, on the basis hereinafter described or on such other basis as the parties shall contemporaneously agree. CIRI shall not nominate any of the following:

(1) lands located west of the 161 degree west longitude of Greenwich Meridian

(2) lands within Areas of Environmental Concern as described in the Secretary's 1973 Four Systems proposals to Congress

(3) lands within any of the Secretary's 1973 Four Systems proposals to Congress

(4) lands made available to the State for selection pursuant to Sections 2 and 5 of the State-Federal Agreement of September 1, 1972.

(b) By May 1, 1976 the Secretary shall, after consultation with the State, submit to CIRI a list of areas where approval of out-of-Region selections is unlikely. CIRI may thereafter nominate to the Secretary, with simultaneous notice to the State, a township or townships for selection. Within 120 days after such nomination, the Secretary after consultation with the State shall approve or disapprove it for withdrawal for placement in the selection pool as described herein. By October 18, 1978 CIRI must nominate at least 6 times its remaining out-of-Region entitlement. If the Secretary fails to approve a pool of three times that remaining out-of-Region entitlement from said nominations, then he and CIRI, by mutual consultation and study, shall agree by January 18, 1979 on sufficient additional townships to compose that number. The Secretary must, on that date, report to Congress as to the operation of this selection mechanism, and the need for remedial legislation, if required. Upon completion of the pool, the State and CIRI shall commence a striking and selecting process. The State may strike ten percent of the pool and the Region may select a number of townships equal to ten percent of the original pool. Alternate strikes and selections of five percent of the

original pool shall continue until CIRI's out-of-Region entitlement is, as defined in this paragraph, satisfied. The State and CIRI must complete this process within four months of completion of the pool. Notwithstanding the foregoing, with the consent of the United States, State of Alaska, and CIRI, lands may be conveyed wihout resort to the pool and striking mechanism herein provided, or in the manner described in subparagraph 2 of this paragraph C, in which case the number of townships to be nominated, pooled, struck and selected, shall be reduced proportionately.

(c) The State may continue to select lands under the Statehood Act which may be affected by this paragraph C, provided however, that any Regional nomination made hereunder shall be superior to and take precedence over any such State selection made after July 18, 1975. None of those lands selected by the State under the Statehood Act after July 18, 1975, and also nominated by CIRI pursuant to this paragraph C, shall be tentatively approved for patent to the State by the Department of the Interior for so long as these lands are potentially available to CIRI under this subparagraph unless CIRI has consented to such tentative approval.

(d) Lands approved by the Secretary for the out-of-Region pool shall, as of the date of such approval, be withdrawn from all forms of entry and location under the Public Land Laws including the mining and mineral leasing laws, but not from selection by the State, for so long as the said lands shall be included in the said pool.

(e) Prior to nomination of any townships for secretarial approval, the Region shall obtain the consent of other Native Corporations where applicable, and a copy of such consent shall be attached to such nomination.

(f) CIRI shall select its out-of-Region entitlement in blocks no less than 36 sections in size, along section lines, with no segment of an exterior line less than six miles in length, unless the Secretary specifically authorizes another manner of selection.

(g) CIRI may, with the consent of the Secretary and the State, select that portion of the mineral estate reserved by the United States in a township if the remainder of the estate may not be legally or readily available for selection, in which case, however, such substitute selection shall be treated as full satisfaction of the entitlement represented by the acreage involved and no additional selection rights shall arise by reason of the lack of conveyance of the entire estate.

(h) It is the intent of the Secretary and the State that all out-of-Region selections shall be as compact as is practicable, and that wherever possible, CIRI shall select lands which are contiguous to privately-owned lands.

(i) Nothing in this paragraph shall be construed as limiting any Congressional review and approval of the Secretary's 1973 four systems proposals to Congress.

2(a) The Secretary, in conjunction with the General Services Administrator, shall promptly identify and take the necessary steps by

January 15, 1978, to create a selection pool which shall consist of all the following lands, within the exterior boundaries of the Cook Inlet Region, now in existence or hereafter coming into existence by January 15, 1978:

(i) abandoned or unperfected public land entries, provided however, that the United States shall not be obligated to initiate any adversary proceedings other than an adjudication by the BLM to determine if such entries are abandoned or unperfected, and the burden of identifying such lands shall be on CIRI;

(ii) federal surplus property;

(iii) revoked federal reserves;

(iv) cancelled or revoked power site reserves, with the exception of the Bradley Lake reserve, reserves in the Lake Clark proposal, and the Chakachamna Lake reserve, if any are ever cancelled or revoked;

(v) public lands created by the reduction of federal installations as defined in Section 3(e) of ANCSA, except that, if such lands are within a Section 11(a)(1) withdrawal area, they shall be subject to prior Village Corporation selections properly filed prior to December 18, 1975; and

(vi) any other federal lands as agreed by the State the Region and the Secretary, including but not limited to lands withdrawn under Section 17(d)(1) of ANCSA and not withdrawn for any other purpose.

The Secretary shall notify CIRI after any above-described lands have been placed in the pool. With the concurrence of CIRI, the State and any other concurrence that may be required under paragraph I-C(1)(e) of this Document, the Secretary may, in his discretion, contribute to such pool properties of one or more of the foregoing categories from without the boundaries of the Cook Inlet Region, provided that properties described in subparagraphs (2)(a)(ii) and (2)(a)(iii) of this paragraph shall be removed from the pool if not selected by CIRI within 90 days after the Secretary notifies CIRI that such properties have been placed in the pool or valued by the Secretary in Subparagraph 2(c) of this document whichever date is later.

(b) The State shall be advised of all properties located within the exterior boundaries of Cook Inlet Region to be placed in the pool described in subparagraph 2(a) and may require Secretarial consultation with the Joint Land Use Planning Commission with respect to any specific piece of property so included, except those in subparagraph 2(a)(i) hereof, to determine whether private ownership of such property would be incompatible with reasonable land-management principles; provided, that the Secretary shall not be bound by any recommendation of the Joint Land Use Planning Commission. The Secretary shall notify the State, CIRI and the Commission of his decision in writing. The State may conclusively object to the inclusion in the pool of up to 1,500 of the acres, described in paragraph 2(a)(i) and 2(a)(iv), and additional lands within these two categories may be excluded from the pool upon replacement by the State with lands of equal values. Lands not included in the pool as result of the State's conclusive objection or which have been replaced by the

State under this subparagraph shall, immediately upon their exclusion or replacement from the pool thereby, be made available by the Secretary to the State for selection under the Alaska Statehood Act for a period of 90 days to the exclusion of all competing claims or parties.

(c) Unless specifically excepted by the Secretary, all tracts of land and improvements thereto in said pool shall be appraised by one or more appraisers mutually agreeable to CIRI and the Secretary.

(d) CIRI shall be entitled to select any tract of land from said pool in exchange for its out-of-Region selection rights, in part or in whole and *pro tanto*, in satisfaction thereof, in the following manner:

(1) any tract of land and improvements thereto specifically excepted from appraisal by the Secretary as described in subparagraph (c) of this paragraph may be exchanged acre for acre;

(2) any tract of land and improvements thereto valued by CIRI and the Secretary, after review of the appraisals, at less than $500 per acre at fair market value may be exchanged acre for acre;

(3) any tract of land and improvements thereto valued by CIRI and the Secretary, after review of the appraisals, at $500 per acre or more at fair market value shall be exchanged as follows:

(i) for each acre of land in said tract, each valued increment of $500 or proportion thereof shall be considered an acre of land or proportion thereof, in the same proportion, hereinafter called an "acre/equivalent"; and

(ii) any acre/equivalents may be exchanged for any acres of CIRI's out-of-region entitlement.

(e) Anything in the foregoing provisions notwithstanding, the selection pool created hereunder shall not include or affect lands within the Point Woronzof, Point Campbell, Goose Lake, and Campbell tracts, to which CIRI waives any claim which it may have had; and such lands shall be reserved by the United States for early conveyance to the State for park and recreation purposes as an integral part of the consideration for this Document.

(f) The Secretary shall utilize his best efforts to maximize the pool through the use of all available properties within the described categories in order to enhance the opportunity for the land exchanges described herein. If, by January 15, 1978, the Secretary and the General Services Administrator have not identified for the pool at least 138,240 acres, or acre/equivalents of lands within the exterior boundaries of Cook Inlet Region, the Secretary shall add to the pool an amount equal to the difference between 138,240 acres, or acre/equivalents, and the number of acres so identified from the following:

(1) with the consent of the State, lands located within the boundaries of the Region, withdrawn for the purposes of section 17(d)(1) of ANCSA, and valued by the Secretary and CIRI at $200 per acre, or more.

(2) with the consent of the State and CIRI, lands described in subparagraph I–C(3)(a) of this Document from without the exterior boundaries of Cook Inlet Region.

CIRI must select all lands in the pool located within the Region which are valued by the Secretary and CIRI at $200 per acre, or more, until CIRI has selected 138,240 acres, or acre/equivalents as described in subparagraph 3(i) of this paragraph.

(g) No later than 90 days following the conclusion of the period for creation of the pool as specified in subparagraph (1) hereof, the Secretary shall, with the assistance of the General Services Administrator, report to Congress on the status of the conveyances under paragraph C and the need for remedial legislation, if required.

(h) Conveyances under this subparagraph I–C(2) shall not be subject to the provisions of Section 22(1) of ANCSA.

II. Upon consent by the State of Alaska to be bound by the terms and conditions of this Document, which consent must be given, if at all, within 60 days of the commencement of the 1976 Session of the Alaska State Legislature, the State of Alaska shall convey to the United States for reconveyance to CIRI the lands described in Appendix C to this Document. Said lands shall be considered State lands until the United States accepts the State deed of title. Upon acceptance of a State deed of title, the Secretary shall withdraw the lands conveyed thereby, subject to valid existing rights, from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and from selection under the Alaska Statehood Act, as amended; such withdrawal to expire upon reconveyance of said lands to CIRI.

III. A. The Secretary shall convey to the State of Alaska all right, title and interest of the United States in and to all of the following lands:

(i) At least 22.8 townships and no more than 27.0 townships of lands from those presently withdrawn under section 17(d)(2) of the Alaska Native Claims Settlement Act in the Lake Iliamna area and within the Nushagak River and Koksetna drainages near lands heretofore selected by the State, the amount and identities of which shall be determined pursuant to Appendix D hereof; and

(ii) Twenty-six townships of lands in the Talkeetna Mountains, Kamishak Bay, and Tutna Lake areas, the identities of which are set forth in Appendix E hereof.

All lands granted to the State of Alaska pursuant to this subsection shall be regarded for all purposes as if conveyed to the State under and pursuant to section 6 of the Alaska Statehood Act; provided, however, that this grant of lands shall not constitute a charge against the total acreage to which the State is entitled under section 6 of the Alaska Statehood Act.

B. The Secretary shall convey to the State of Alaska, without consideration, all right, title and interest of the United States in and to all of that tract generally known as the Campbell Tract and more particularly identified in Appendix F hereof except for one compact unit of land which he determines, after consultation by the State of Alaska, is actually needed by the Bureau of Land Management for its present operations; provided, that in no event shall the unit of land so excepted exceed 1,000 acres in size. The land authorized to be conveyed pursuant to this paragraph shall be used for public parks and recreational purposes and other compatible public purposes in conformance with the generalized land use plan outlined in the Far North Bicentennial Park master development plan of September, 1974.

As a result of Section 12(a) of ANCSA, selections by Village corporations within the Kenai National Moose Range, or as a result of any section 14(h) (1), (2) or (5) of ANCSA selections within the Kenai National Moose Range or within the Secretary's 1973 Lake Clark proposal; and to the extent that CIRI's section 12(a) of ANCSA subsurface rights are reduced by virtue of exchanges resulting in the relinquishment of village selections in the Secretary's 1973 Lake Clark proposal or lands in paragraph VI CIRI shall take, in lieu thereof, an equal acreage from the following:

(a) The subsurface estate to oil and gas and coal in those lands described in Appendix B to the extent that such interests are not transferred under paragraph I-B of this Document, and are subject to the restrictions therein described; and

(b) Up to 46,080 acres of lands within section 11(a)(3) of ANCSA withdrawals in the Talkeetna Mountains; provided CIRI shall make all 12(b) selections in this withdrawal contiguous to existing 12(a) selections, first selecting all over-selected 12(a) lands in this withdrawal.

(c) If sufficient acreage to satisfy any such selections does not exist in those areas described in subparagraphs (1) and (2) of this paragraph, the Secretary shall make available lands outside the Region, in his discretion, for selection by CIRI.

Except as provided otherwise in this paragraph, the Secretary shall utilize the procedures of the Recreation and Public Purposes Act (44 Stat. 741), as amended, and regulations developed pursuant to that Act; provided, however, that the acreage limitation provided by section 7(b) of that Act, as amended by the Act of June 4, 1954 (68 Stat. 173), shall not apply to this conveyance, nor shall the lands conveyed pursuant to this paragraph be counted against that acreage limitation with respect to the State of Alaska or any subdivision thereof.

C. The Secretary shall make available for selection by the State, in its discretion, under section 6 of the Alaska Statehood Act, 124 townships of land to be selected from lands within the Talkeetna Mountains and Koksetna River areas as described in Appendix G.

IV. The lands and interests conveyed to CIRI under paragraphs I and II of this Document shall constitute CIRI's full entitlement under Section 12(c) of ANCSA, except that the mineral estate conveyed pursuant to subparagraph I-B of this Document shall constitute full entitlement of CIRI's surface and subsurface entitlement under Section 14(h)(8) of ANCSA. The lands which would comprise the difference in acreage between the lands actually conveyed under paragraphs I and II of this Document, and any final determination of what CIRI's acreage rights under Section 12(c) and 14(h)(8) of ANCSA would have been notwithstanding the provisions of this Document, shall be retained by the United States, and this Document shall create no right or interest in any other Regional Corporation or Village Corporation notwithstanding any provisions of ANCSA to the contrary.

To the extent that CIRI is or becomes entitled to subsurface rights:

V. The Secretary, CIRI, and the State shall seek legislation authorizing the Secretary to convey title to those selections by Native Corporations within the exterior boundaries of Power Site Classifica-

tion 443, February 13, 1958, provided however, that the patents conveying the above described lands shall contain the reservations required by Section 24 of the Federal Power Act, 16 U.S.C. 318.

VI. A. The State shall not select any of the following lands, so that such lands may be added to a management unit in the Lake Clark Area:

T 4 S R 23 W (N ½), S.M.
T 3 S R 20–24 W, S.M.
T 2 S R 24–25 W, S.M.
T 1 S R 24–26 W, S.M.
T 1 S R 27 W (sections 1–6, 8–15, 23–25), S.M.
T 1 S R 28 W (sections 1–6), S.M.
T 1 S R 29 W (sections 1–6), S.M.
T 1 N R 24–29 W, S.M.
T 2 N R 24–30 W, S.M.
T 3 N R 28–30 W and 31 W (E½), S.M.
T 4 N R 30 W and 31 W (E ½), S.M.

B. The Secretary, CIRI and the State recognize that there are nationally significant resources in the Lake Clark area. Management of this area should be flexible and recognize the scenic, recreational, and inspirational resources that should be preserved as well as State and local interests including subsistence and sport hunting.

VII. A. In fulfillment of its obligation to equitably reallocate acreage among villages pursuant to section 12(b) of the Act, CIRI shall allocate section 12(b) selections to the following areas:

1. Four and one-half townships in the Talkeetna Mountain withdrawal, provided that such selections shall be compact and contiguous to 12(a) selection in said withdrawals and 12(a) overselections shall be selected first.

2. All lands that will not otherwise be conveyed to the villages under 12(a) on the Iniakin Peninsula;

3. To the extent necessary to fulfill any remaining 12(b) entitlement lands within the following:

T 7 S, R 25 & 26 (Except Secs. 29–31) W, S.M.
T 6 S, R 25 W and 26 (E½) W, S.M.
T 5 S, R 25 W, S.M. (except sections 18, 19, and 30).
T 4 S, R 24 W (S½), S.M.
T 4 N, R 19 W, S.M.
T 4 N, R 20 W (E½) S.M.
T 4 N, R 18 W (W½) S.M.
T 3 N, R 17–20 W, S.M.
T 3 N, R 21 W (Secs. 31–36, and 25–30 in the Tuxedni River Watershed), S.M.
T 2 N, R 18–20 W, S.M.
T 2 N, R 21 W (North and East of the Tuxedni River and Bay), S.M.

B. By mutual consent of the Secretary and CIRI, Village Corporations within the Region may exchange selections or selection rights under section 12 of ANCSA for acres, or acre/equivalents contained in the pools established out in paragraph I–C(2)(a) of this document.

C. Up to two townships without the exterior boundaries of Cook Inlet Region, to be mutually agreed upon by the Secretary, CIRI, and

the State, shall be made available for 12(b) selection. To the extent acreage is allocated to a Native village pursuant to this subparagraph C, the village must have an equal amount of acreage, in section units, from 12(a) selections in the hereinafter described acres on an acre-for-acre basis outlined in this subparagraph in the out of Region townships identified in this paragraph:

T 4 S, R 23 W ($N\frac{1}{2}$) S.M.
T 3 S, R 20, 21, and 23 W, S.M.
T 2 S, R 19–21 W, S.M.
T 1 S, R 19–21 W. S.M.
T 1 N, R 20 W, S.M.

Provided that should the respective village not have any 12(a) selections in the above, 12(a) selection for the following shall be traded under the provision of this paragraph:

T 2 N, R 18–21 W, S.M.
T 3 N, R 18–20 W, S.M.
T 4 N, R 19–21 W, S.M.
T 5 N, R 19–20 W, S.M.

VIII. A. CIRI and the Secretary shall publicly support the establishment of a unit of the National Park System in the Lake Clark area including those lands withdrawn under section 17(d)(2) of ANCSA and those lands described in paragraph VI–A of this agreement. The Secretary and CIRI shall also agree to seek a provision in said legislation that would provide that before entering into any contract arrangement to provide new revenue producing services within the proposed Lake Clark Unit of the National Park System within the boundaries of the Cook Inlet Region, the Secretary shall offer to CIRI in cooperation with Village Corporations within the Region when appropriate, the right of first refusal to provide such services, the right to remain open for a period of ninety days. CIRI and the Secretary shall seek legislation that provides that the United States may acquire lands selected by Village Corporations within the boundaries of the Lake Clark unit established by that legislation, but only with the consent of the appropriate Village Corporation.

B. CIRI and the Secretary shall publicly support the establishment of the Caribou Hills, Swanson River, Mystery Creek, and Andy Simons Wilderness Areas within the Kenai National Moose Range. CIRI and the Secretary shall seek a provision in such legislation that would provide that before entering into any contract or agreement to provide new revenue producing services within the Kenai National Moose Range, the Secretary shall offer to CIRI in cooperation with Village Corporations within the Region when appropriate, the right of first refusal to provide such services, the right to remain open for a period of ninety days.

IX. Lands conveyed to CIRI and/or its Village and Group Corporations in accordance with this document, notwithstanding their source (whether federal or state), shall upon conveyance to CIRI and/or the appropriate Village or Group Corporation, be considered and treated as conveyances under and pursuant to ANCSA, except as may be expressly provided otherwise in this document.

X. As soon as practicable after any estate or interest in federal lands to be patented to CIRI in accordance with this document is identified,

CIRI and the Secretary shall review all leases, contracts, permits, rights-of-way and easements covering or concerning such estate or interest to determine whether the administration thereof may be waived by the Secretary, in his discretion, in accordance with the provisions of section 17(g) of ANCSA.

XI. Effective the date that State lands to be conveyed to the United States for CIRI are designated by CIRI pursuant of paragraph II of this document, the State, if so authorized, shall place all revenues received from such lands in escrow to be transferred to the Region when appropriate. The administration of all leases, contracts, permits, rights-of-way and easements prior to the conveyance of such lands to the United States shall be by the State, except that all decisions concerning modification, conversion, renewal or appraisal of such interests will be with the concurrence of the Region. Effective the date of conveyance of such lands from the State to the Secretary, the State shall waive in favor of CIRI administration of all leases, contracts, permits, rights-of-way and easements totalling embraced by such lands. The State shall give timely written notice of the change of ownership and administration to the holders of rights on such lands.

XII. The responsibilities of and benefits accruing to the Secretary, the State and CIRI under this document shall become binding only when such legislation as is necessary has been enacted. Upon passage of such legislation, CIRI and all plaintiffs/appellants shall, with the consent of the Secretary, dismiss their pending appeal in *Cook Inlet Region vs. Kleppe*, No. 75-2232, (9th Cir.) by executing and filing pursuant to Rule 42(b) of the Federal Rules of Appellate procedure an agreement that the proceeding may be dismissed.

XIII. A. For the purposes of this document, a township shall be considered 23,040 acres.

B. The words "land" and "lands" as used in this document shall not include properties owned by the State of Alaska under section 6(m) of the Alaska Statehood Act and the Submerged Lands Act.

Appendix A

T. 1 N., R 11 W S.M.

Secs. 1–4, 9–12, 16, W½S17—comprising approx. 6,080 acres, more or less

T. 2 N., R 11 W S.M.

Sec. 9, approx. 70 acres in the SW¼ lying south and west of the high water mark on the south and west bank of the Kasilof River.

Sec. 16, approx. 480 acres comprising all moose range lands in this section lying south and west of the high water mark on the south and west bank of the Kasilof River.

Sec. 21, all.

Sec. 22, approx. 130 acres comprising all moose range lands in this section lying south and west of the high water mark on the south and west bank of the Kasilof River.

Sec. 27, approx. 330 acres comprising all moose range lands in this section lying west of the high water mark on the west bank of the Kasilof River and those lands in this section lying south and west of the high water line on the south and west shore of Tustemena Lake.

Sec. 28, all.
Sec. 33, all.
Sec. 34, approx. 600 acres comprising all moose range lands in this section lying south and west of the high water line on the south shore and west shore of Tustemena Lake.
Sec. 35, approx. 290 acres comprising all moose range lands in this section lying south of the high water line on the south shore of Tustemena Lake.
Sec. 36, approx. 360 acres comprising all moose range lands in this section lying south of the high water line on the south shore of Tustemena Lake.
Comprising approximately 4,160 acres, more or less.

APPENDIX B

APPENDIX B–1

82,560 acres of the specified mineral estate to be selected from the following described lands:*

Priority

1—T. 8 N., R. 9 W: Secs. 1–8; Sec. 9 excluding E/2 SE/4, NW/4 SE/4, SE/4 NE/4; Sec. 10 excluding SW/4, S/2 SE/4, NW/4 SE/4, S/2 NW/4, NW/4; Secs. 11–14; Sec. 16 W/2; Secs. 17–20; Sec. 21 excluding NE/4, E/2 NW/4, NE/4 SW/4, N/2 SE/4, SE/4 SE/4; Secs. 23–26; Sec. 27 excluding N/2, SW/4, W/2 SE/4; Sec. 28 excluding SE/4, E/2 SW/4, E/2 NE/4, SW/4 NE/4; Secs. 29–31; Sec. 32 excluding S/2 SE/4, NE/4 SE/4, Sec. 33 excluding S/2, NE/4, S/2 NW/4, NE/4 NW/4; Sec. 34 excluding W/2, W/2 NE/4; Secs. 35–36–comprising approx. 18,440 acres.

1—T. 8 N., R. 10 W.: Secs. 1; 12–14; 23–26; 32–36–comprising approx. 7,680 acres.

1—T. 7 N., R. 9 W.: Sec. 3, E/2; Sec. 5 excluding S/2, NE/4; Secs. 6; 7; 8 excluding E/2, E/2 SW/4, E/2 NW/4, NW/4 NW/4; Sec. 10 excluding W/2 SW/4, W/2 NW/4, NE/4 NW/4; Sec. 14 excluding NE/4; Sec. 15; Sec. 16 excluding NW/4, N/2 NE/4, SW/4 NE/4; Sec. 17 excluding NE/4 NE/4; Secs. 18–36–comprising approx. 16,560 acres.

1—T. 7 N., R 10 W.: Secs. 1–5; 7–25; Sec. 26 excluding W1/2 SW1/4; Sec. 27 excluding S1/2 N1/2; Sec. 28 excluding S1/2 NE1/4, SE1/4, E1/2 SW1/4; Secs. 29–32; Sec. 35 excluding W1/2, S36 comprising approx. 19,920 acres.

2—T. 6 N., R 10 W.: Sec. 1; Sec. 2 excluding W/2 NW/4; Sec. 4 excluding N/2, SE/4, E/2 SW/4; Sec. 5–8; Sec. 9 excluding N/2 NE/4; Sec. 12; 16–17; 20–21–comprising approx. 7,600 acres.

4—T. 7 N., R 11 W., Sec. 23–26; 35; 36–comprising approx. 3,840 acres.

3—T. 6 N., R 11 W., Sec. 1–2; 11–14–comprising approx. 3,840 acres.

3—T. 10 N., R 7 W., Sec. 19–21; 28 (N/2); 29–32–comprising approx. 4,800 acres.

*These lands total approximately 82,080 acres (128 townships). Any unselected portions of the above described lands shall be first priority selection for in-lieu selections from Appendix B–2 below.

APPENDIX B–2

Up to 138,240 acres (6.0 townships) of specified mineral in lieu estate to be selected from the following described lands by priority ranking and in the order listed.

Priority

2—T. 9 N., R 9 W.: Sec. 13; 23 excluding SE/4 SE/4; Sec. 24 excluding W/2 SE/4, SW/4; Sec. 25 excluding W/2 E/2, W/2; Sec. 26 excluding E/2 E/2; Sec. 27; Sec. 31 E/2; Sec. 32–35; Sec. 36 excluding W/2 NE/4, NW/4, and N/2 SW/4–comprising approx. 6,120 acres.

3—T. 9 N., R 8 W.: Sec. 1–5; 7–36–comprising approx. 22,400 acres.

2—T. 6 N., R 9 W.: Sec. 1–17; 20–29; 34–36–comprising approx. 19,200 acres.

3—T. 8 N., R 8 W.: All-comprising approx. 23,040 acres.

2—T. 4 N., R 10 W.: Sec. 9–10; 13–36–comprising approx. 16,640 acres.

2—T. 4 N., R 11 W.: Sec. 25; 36-comprising approx. 1,280 acres.

3—T. 1 N., R 11 W.: Sec. 17 (E/2); Sec. 21–28; Sec. 33–36-comprising approx. 6,720 acres.

3—T. 3 N., R 11 W.: Sec. 1; 12–15; 22–27; 34–35–comprising approx. 8,320 acres.

3—T. 3 N., R 10 W.: Sec. 1–30–comprising approx. 19,200 acres.

3—T. 4 N., R 9 W.: Sec. 2 excluding SE/4; 3–10; 11 excluding E/2; Sec. 14 excluding E/2; 15–20; 21 excluding SE/4; 29–34–comprising approx. 12,480 acres.

APPENDIX C

If CIRI has on or before January 12, 1976 presented evidence satisfactory to the State that the villages of Kink, Chickaloon, Alexander Creek, Ninilchik and Salamatof have withdrawn selection applications for and relinquished all claims to land in the Lake Clark, Lake Kontrashibuna and Malchatna River areas, the State shall convey under paragraph II of this document to the United States for reconveyance to CIRI all of the state lands identified or to be identified in this Appendix C. All conveyances of lands made in accord with this document shall pass all of the State's right, title and interest in the lands, including the minerals therein, as if those conveyances were made pursuant to section 22(f) of the Alaska Native Claims Settlement Act, except that dedicated or platted section line easements and highway or other rights-of-way may be reserved to the State.

1. Acreage from each of the five pools identified in this paragraph in the amounts therein set forth. Out of each such pool, the identity of the required acreage shall be determined to the extent possible by mutual agreement of the State and CIRI. For so many of the required acres as have not been so determined by agreement in each pool within eighteen months following implementation of this document, those remaining required acres shall be identified by CIRI's selecting acreage in that remaining amount from an array of 1½ that many acres within the pool, said array to be identified to CIRI by the State.

A. *Point McKenzie.*—3,200 acres must be identified from state lands within the following areas:

T 15 N, R3 W through 5W, S.M.
T 14 N, R4 W through 5W, S.M.
T13 N, R4 W S.M. (North of Knik Arm)

B. *Knik-Willow Pool.*—4,480 acres must be identified from state lands within the following areas:

T 16 N through 18 N, R 2W through 5W, S.M.

C. *Kashwitna Pool.*—38,400 acres must be identified from state lands within the following areas:

T 21 N through 25N, R3 and 4W, S.M. (or other nearby lands).

D. *Chickaloon Pool.*—4,800 acres must be identified from state lands within the following areas:

T 19 N, R3 E through 5E, S.M.
T 20 N, R4 E through 7E, S.M.

E. *Kenai Pool.*—115,200 acres must be identified from state lands on the Kenai Peninsula.

Provided however that the State may with CIRI's concurrence supplant acreage otherwise to be identified from the Kenai pool in subparagraph E on an acre-for-acre basis with lands near Alexander Creek, Ninilchik or Salamatof. Supplanting lands near any one of these villages may not exceed in acreage that number of acres to which the State is obligated under paragraph 3 to provide in respect of each of those three villages.

2.(a) Thirteen and one-half townships of lands in the Beluga Area Townships listed in this paragraph. The identity of those lands shall be determined by CIRI within eighteen months following the implementaiton of this document by nomination of compact units no less than ¼ township in size lying along township lines, provided that where constrained by selection pool boundaries or water bodies they may be smaller: *Provided*, However that if Tyonek Corporation desires to trade the surface estate it holds in the Kenai National Moose Range for State surface lands within the vicinity of its village lands but within CIRI's selection pool, it may obtain up to one township of such lands. If Tyonek Corporation does trade for CIRI's selection pool lands, CIRI shall select an equivalent acreage of other surface estate from within its selection pool.

T. 16 N., R. 14 W., S.M.:
T. 16 N., R. 13 W., S.M.:
T. 16 N., R. 12 W., S.M., Secs. 7, 16, 17, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36:
T. 16 N., R. 11 W., S.M., Secs. 20, 21, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36:
T. 15 N., R. 14 W., S.M.:
T. 15 N., R. 13 W., S.M.:
T. 15 N., R. 12 W., S.M.:
T. 15 N., R. 11 W., S.M.:
T. 15 N., R. 10 W., S.M., W½, excluding Sec. 1:
T. 14 N., R. 15 W., S.M.:
T. 14 N., R. 14 W., S.M.:
T. 14 N., R. 13 W., S.M., W½:
T. 14 N., R. 11 W., S.M.:

T. 14 N., R. 10 W., S.M., W½;
T. 13 N., R. 15 W., S.M.;
T. 13 N., R. 14 W., S.M.;
T. 13 N., R. 10 W., S.M., E½ excluding lands east of the west bank of the Beluga River;
T. 12 N., R. 15 W., S.M.;
T. 12 N., R. 14 W., S.M., excluding Secs. 23, 24, 25, 26, 29, 31, 32, 33, 36;
T. 12 N., R. 10 W., S.M.;
T. 11 N., R. 13 W., S.M., Secs. 12, 13 excluding W½SW¼; 24 NE/4 NE/4.
T. 11 N., R. 12 W., S.M., Secs. 18, 19 excluding SW¼, S½ SE/4; 20.

(b) Provided, However, that the following described lands shall *not* be available for CIRI's selection of *subsurface* estate:

Beluga

T. 13 N., R. 10 W., S.M., Secs. 11, E-½; 12, 13, 14, 22, 23, 24, 25, 26, 27, 34, 35, 36.
T. 12 N., R. 10 W., S.M., Secs. 2, 3, 4, 5, 8, 9, 10.

Nicolaick

T. 11 N., R. 12 W., S.M., Secs. 16, SW-¼; 17, SW-½; 18, SE-¼; 19, E-½, E-½ W-½; 20; 21, W-½; 28, W-½; 29, 30, 31, 32.

(c) The State shall provide a floating, public, 300 foot wide transportation easement from T. 13 N., R. 14 W., S.M. to the shore of Cook Inlet in T. 11 N., R. 12 W., S.M. Said easement to be determined upon the ground at such future time as a need exists and there are adequate field data available upon which the State may finally plan and locate the corridor.

3. Lands in an amount equal to ¼ of the acres to which each of the villages of Knik, Chickaloon, Alexander Creek, Ninilchik, and Salamsatof are or would be entitled under ANCSA Sec. 12(a), under selection applications on file with the BLM as of July 18, 1975, in the Lake Clark, Lake Kartrashibuna and Mulchatna River areas. Each acre identified for conveyance by the State hereunder must be located within or near the 11(a)(1) withdrawal of the village to which the displaced ANCSA acreage to which that acre corresponds would otherwise have passed under ANCSA. The lands so identified in respect to displaced acres attributable to Alexander Creek and Salamstof shall be conveyed by the State if and only if the village to which the displaced acres are attributable retains its village eligibility status under ANCSA.

Appendix D

Lands in the Lake Iliamna Area and in the Nushagak River and Lake Clark Drainages

Paragraph III(A)(1))

I. The Secretary shall convey to the State at least 22.8 townships and no more than 27.0 townships of land from those presently withdrawn under section 17(d)(2) of the Alaska Native Claims Settle-

ment Act in the Lake Iliamna area and within the Nushagak River or Lake Clark drainages near lands heretofore selected by the State.

II. The following townships shall be conveyed to the State as part of the minimum of 22.8 townships to be conveyed to the State from lands identified in paragraph I.

T 4N, R 36 W, S.M.
T 3N, R 36 W, S.M.
T 2N, R 36 W, S.M.
T 1N, R 36 W, S.M.
T 1S, R 37 and 38 W, S.M.
T 2S, R 37 and 38 W, S.M.
T 3S, R 37 and 38 W, S.M.
T 4S, R 37–39 W, S.M.
T 5S, R 40–42 W, S.M.
T 6S, R 40 W, S.M. (except sections 21–28, 33–36).
T 6S, R 41 and 42 W, S.M.
T 7S, R 42 W, S.M. (secs. 3–10, 15–18).

III. For each acre of valid village 12(a) selections relinquished in the Lake Clark, Lake Kontrash/buna and Mulchatna River areas pursuant to paragraph II of the document to which this forms an Appendix, the Secretary shall convey to the State, on an acre for acre basis, lands from within the 17(d)(2) area described in Paragraph I up to a total of 4.2 townships.

IV. To the extent that lands to be conveyed to the State pursuant to Paragraphs II and III above are not specifically identified in this Appendix, they shall be identified by mutual consent of the State and the Secretary from lands described in Paragraph I within 60 days of the date the State becomes bound to this document, or within 60 days of the date that any entitlement vests in the State pursuant to Paragraph III of this Appendix, whichever shall come first.

V. All lands granted to the State of Alaska pursuant to this Appendix D shall be regarded for all purposes as if conveyed to the State under and pursuant to section 6 of the Alaska Statehood Act: *Provided*, however, that this grant of lands shall not constitute a charge against the total acreage to which the State is entitled under section 6(b) of the Alaska Statehood Act.

Appendix E

Lands in the Talkeetna Mountains, Kamishak Bay and Tutna Lakes Areas

(Paragraph III(A)(2))

The Secretary shall convey to the State the following described lands, subject to valid village selections under section 12(a), but not 12(b), of ANCSA.

T 22N, R 2W, S.M.
T 23N, R 2W, S.M.
T 24N, R 1 and 2 W, S.M.
T 26N, R 1 and 2 W, S.M.
T 27N, R 2W, S.M.

T 29N, R 2W, S.M.
T 7S, R 26W, S.M. secs. 29–31
T 7S, R 27–29 W, S.M.
T 8S, R 26–29 W, S.M.
T 9S, R 26–30W, S.M.
T 10S, R 28–30 W, S.M.
T 11S, R 28–30 W, S.M.
T 4N, R 33–35 W, S.M.
T 3N, R 34 and 35 W, S.M.
T 2N, R 34 and 35 W, S.M.

Appendix F

Far North Bicentennial Park

(Paragraph III B)

T 12 N, R 3 W, S.M.:
Section 1.
Section 2.
Section 3 (except SW ¼).
Section 10 (except S ½).
Section 11 (except S ½).
Section 12.

T 13 N, R 3 W, S.M.:
Section 34 (except N ½ NE ¼ NE ¼)
Section 35 (except NW ¼ NW ¼, N ½ SW ¼ NE ¼ NE ¼)
Section 36 (except NE ¼ SE ¼ SE ¼ NE ¼)

Appendix G

Talkeetna Mountains—Koksetna River Lands

(Paragraph III(c))

The Secretary is authorized and directed to make available for selection by the State, in its discretion, under section 6 of the Alaska Statehood Act, 12.4 townships of land to be selected from lands within the Talkeetna Mountains and Koksetna River areas as described below.

T 4N, R 31 W, S.M. (W ½).
T 4N, R 32 W, S.M.
T 3N, R 31 W, S.M. (W ½).
T 3N, R 32 and 33 W, S.M.
T 2N, R 31–33 W, S.M.

Subject to valid village 12(a) and 12(b) selections under ANCSA, the following lands located south of the Susitna River:

T 29N, R 11E—1 W, S.M.
T 30N, R 11E—2 W, S.M.
T 31N, R 9E—1 W, S.M.

Edwardsen v. *Morton*

During the Subcommittee hearings H.R. 6644, the Committee was made aware of an issue which may have long-range significance for the Native land claims settlement contained in the Settlement Act.

This issue concerns the decision in the case of *Edwardsen* v. *Morton* (369 F. Supp. 1359), 1973. The Settlement Act had as its principal purpose the provision of a "fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims." (Section 2(a)). On April 19, 1973, Judge Oliver Gasch, the District Court for the District of Columbia, in ruling on a motion by the defendants for summary judgment in *Edwardsen*, held if the Native plaintiffs of the Arctic Slope of Alaska "were in fact disturbed in their use and occupancy by trespassers, i.e., by any parties coming onto the land except for those entering under Congressional authorization, then there accrued a cause of action in tort against the trespassers and a cause of action for trespass and breach of fiduciary duty against Federal officers authorizing such trespass." 369 F. Supp. at 1378–1379. The Court continued, "It is not at all clear that the Settlement Act bars litigation of plaintiffs' claims relating to the alleged trespasses even though they are linked to claims of aboriginal title. * * * In any event, a construction of (the Act's provisions) to bar claims relating to pre-Settlement Act trespasses would appear to create constitutional infirmities in the Act which are better avoided if a constitutionally sound construction does not violate clearly expressed legislative intent." 369 F. Supp. at 1379. Accordingly, Judge Gasch refused to hold "that a later Act of Congress [Settlement Act] could wipe out all claims against any person * * * simply because Congress has decided to extinguish aboriginal title." Id.

Pursuant to a stipulation entered into by the parties in August of 1974, and approved by the Court in October, 1974, further proceedings in the *Edwardsen* case were held in abeyance pending an investigation by the Department of the Interior of the extent of the trespass claims involved. That investigation has been completed and the United States, acting as trustee for the Natives involved, has filed suit in the United States District Court for the District of Alaska against several corporate and individual defendants, including the State of Alaska, for damages arising from such trespasses.

It is not clear just what impact a final decision upholding the *Edwardsen* ruling might have on the Settlement Act and the orderly development of the State of Alaska. As a consequence, the Committee determined not to deal with that critical issue in H.R. 6644. This decision should not be interpreted to mean that the Committee finds the ruling to be either correct or incorrect with respect to the congressional intent in barring or not barring such claims. At this point, that is a judicial matter.

However, the Committee intends to follow the course of this litigation and the impact that it has or may have on the Settlement Act and the development of lands and resources in Alaska. Should circumstances warrant, the Committee then will consider the matter further.

Inflationary Impact Statement

The Federal expenditures and costs authorized and required by this legislation are relatively small and would have no significant inflationary impact.

Cost and Budget Act Compliance

The bill authorizes appropriations of $25,000 in section 12(g) and $1,600,000 in section 14.

In addition, extension of the Land Use Planning Commission by section 7 for three years will mean an extension of the appropriation authorized by section 17(a)(9)(B) of the Settlement Act which is for $1,500,000 for each fiscal year.

Indirect costs can be attributed to the payment of interest on the escrow account authorized by section 2; the payment of interest on the Alaska Native Fund authorized by section 5; and loss of tax revenue from the exemption contained in section 13. It would be impossible to ascertain such indirect costs at this time, but they would be relatively minimal.

Oversight Statement

The development and consideration of the bill, H.R. 6644, was in large part due to the oversight activities of the Subcommittee on Indian Affairs. The Subcommittee held oversight field hearings on the Settlement Act in Alaska in the 93rd Congress and again in August of 1975.

Committee Recommendation

The Committee on Interior and Insular Affairs, by a voice vote, recommends enactment of H.R. 6644, as amended.

Changes in Existing Law

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Act of December 18, 1971 (85 Stat. 688)

* * * * * * *

Sec. 7. (a) For purposes of this Act, the State of Alaska shall be divided by the Secretary within one year after the date of enactment of this Act in twelve geographic regions, with each region composed as far as practicable of Natives having a common heritage and sharing common interests. In the absence of good cause shown to the contrary, such regions shall approximate the areas covered by operations of the following existing Native associations: . . . . Any dispute over the boundaries of a region or regions shall be resolved by a board of arbitrators consisting of one person selected by each of the Native associations involved, and an additional one or two persons, whichever is needed to make an odd number of arbitrators, such additional person or persons to be selected by the arbitrators selected by the Native associations involved [.] *: Provided, That the boundary between the southeastern and Chugach regions shall be the 141st meridian: Provided further, That, with respect to any lands conveyed to it in the vicinity of Icy Bay, the Regional Corporation for the Chugach region shall accord to the Natives enrolled to the village of Yakutat the same rights and privileges to use such lands for purposes traditional thereon, including, but not limited to, subsistence hunting, fishing, and gathering, as it accords to its own shareholders, and shall take no unreason-*

able or arbitrary action relative to such lands for the primary purpose, and having the effect, of impairing or curtailing such rights and privileges.

* * * * * * *

(b) . . .

SEC. 16. (a) * * *

(b) During a period of three years from the date of enactment of this Act, each Village Corporation for the villages listed in subsection (a) shall select, in accordance with rules established by the Secretary, an area equal to 23,040 acres, which must include the township or townships in which all or part of the Native village is located, plus, to the extent necessary, withdrawn lands from the townships that are contiguous to or corner on such township. All selections shall be contiguous and in reasonably compact tracts, except as separated by bodies of water, and shall conform as nearly as practicable to the United States Land Survey System. *Such allocation as the Regional Corporation for the southeastern Alaska region shall receive under section 14(h)(8) shall be selected and conveyed from lands not selected by such Village Corporations that were withdrawn by subsection (a) of this section, except lands on Admiralty Island in the Angoon withdrawal area and, without the consent of the Governor of the State of Alaska or his delegate, lands in the Saxman and Yakutat withdrawal areas.*

(c) * * *

(d) The lands enclosing and surrounding the village of Klukwan which were withdrawn by subsection (a) of this section are hereby withdrawn to the same extent and for the same purposes as provided by said subsection (a) for a period of one year from the date of enactment of this subsection, during which period the Village Corporation for the village of Klukwan shall select an area equal to twenty-three thousand forty acres in accordance with the provisions of subsection (b) of this section and such Corporation and the shareholders thereof shall otherwise participate fully in the benefits provided by this Act to the same extent as they would have participated had they not elected to acquire title to their former reserve as provided by section 19(b) of this Act: Provided, That nothing in this subsection shall affect the existing entitlement of any Regional Corporation to lands pursuant to section 14(h)(8) of this Act: Provided further, That the foregoing provisions of this subsection shall not become effective unless and until the Village Corporation for the village of Klukwan shall quitclaim to Chilkat Indian Village, organized under the provisions of the Act of June 18, 1934, (48 Stat. 984), as amended by the Act of May 1, 1936 (49 Stat. 1250); all its right, title, and interest in the lands of the reservation defined in and vested by the Act of September 2, 1957 (71 Stat. 596), which lands are hereby conveyed and confirmed to said Chilkat Indian Village in fee simple absolute, free of trust and all restrictions upon alienation, encumbrance, or otherwise: Provided further, That the United States and the Village Corporation for the Village of Klukwan shall also quitclaim to said Chilkat Indian Village any right or interest they may have in and to income derived from the reservation lands defined in

and vested by the Act of September 2, 1957 (71 Stat. 597) after the date of enactment of this Act and prior to the date of enactment of this subsection.

* * * * * * *

SEC. 17. (a) * * *

[(10) On or before May 30, 1976, the Planning Commission shall submit its final report to the President of the United States, the Congress, and the Governor and Legislature of the State with respect to its planning and other activities under this Act, together with its recomendations for programs or other actions which it determines should be taken or carried out by the United States and the State. The Commission shall cease to exist effective December 31, 1976.]

(10) The Planning Commission shall submit, in accordance with this paragraph, comprehensive reports to the President of the United States, the Congress, and the Governor and Legislature of the State with respect to its planning and other activities under this Act, together with its recommendations for programs or other actions which it determines should be implemented or taken by the United States and the State. An interim comprehensive report covering the above matter shall be so submitted on or before May 30, 1976. A final and comprehensive report covering the above matter shall be so submitted on or before May 30, 1979. The Commission shall cease to exist effective June 30, 1979.

* * * * * * *

SEC. 21. (a) * * *

(f) Until January 1, 1992, stock of any Regional Corporation organized pursuant to section 7, including the right to receive distributions under subsection 7(j), and stock of any Village Corporation organized pursuant to section 8 shall not be includable in the gross estate of a decedent under sections 2031 and 2033 of the Internal Revenue Code.

* * * * * * *

SEC. 22. (a) * * *

[(f) The Secretary, the Secretary of Defense, and the Secretary of Agriculture are authorized to exchange lands or interests therein in Alaska under their jurisdiction for lands or interests therein of the Village Corporations, Regional Corporations, individuals, or the State for purpose of effecting land consolidations or to facilitate the management or development of the land. Exchanges shall be on the basis of equal value, and either party to the exchange may pay or accept cash in order to equalize the value of the properties exchanged.]

(f) the Secretary, the Secretary of Defense, the Secretary of Agriculture, and the State of Alaska are authorized to exchange lands or interests therein, including native selection rights, with the Group Corporations, Village Corporations, Regional Corporations, the Native Corporations for the Cities of Juneau, Sitka, Kodiak and Kenai, other municipalities and corporations or individuals, the State (acting free of the restrictions of section 6(i) of the Alaska Statehood Act), or any federal agency for the purpose of effecting land consolidations or to facilitate the mangament or development of the land, or for

other public purposes. Exchanges shall be on the basis of equal value, and either party to the exchange may pay or accept cash in order to equalize the value of the property exchanged: Provided, That when the parties agree to an exchange and the Secretary determines it is in the public interest, such exchanges may be made for other than equal value.

SEC. 28. Any corporation organized pursuant to this Act shall be exempt from the provisions of the Investment Company Act of 1940 (54 Stat. 789), the Securities Act of 1933 (48 Stat. 74) and the Securities Exchange Act of 1934 (48 Stat. 881), as amended, through December 31, 1991. Nothing in this section, however, shall be construed to mean that any such corporation shall or shall not, after such date, be subject to the provisions of such Acts. Any such corporation which, but for this section, would be subject to the provisions of the Securities Exchange Act of 1934 shall transmit to its stockholders each year a report containing substantially all information required to be included in an annual report to stockholders by a corporation which is subject to the provisions of such Act.

* * * * * * *

SEC. 29. (a) The payments and grants authorized under this Act constitute compensation for the extinguishment of claims to land, and shall not be deemed to substitute for any governmental programs otherwise available to the Native people of Alaska as citizens of the United States and the State of Alaska.

"(b) Notwithstanding section 5(a) and any other provision of the Food Stamp Act of 1964, in determining the eligibility of any household to participate in the food stamp program, any compensation, remuneration, revenue, or other benefit received by any member of such household under the Settlement Act shall be disregarded.

* * * * * * *

SEC. 30. (a) Notwithstanding any provision of this Act, any corporation created pursuant to section 7(d), 8(a), 14(h)(2), or 14(h)(3) within any of the twelve regions of Alaska, as established by section 7(a), may, at any time, merge or consolidate, pursuant to the applicable provisions of the laws of the State of Alaska, with any other of such corporation or corporations created within or for the same region. Any corporations resulting from mergers or consolidations further may merge or consolidate with other such merged or consolidated corporations within the same region or with other of the corporations created in said region pursuant to section 7(d), 8(a), 14(h)(2), or 14(h)(3).

"(b) Such mergers or consolidations shall be on such terms and conditions as are approved by vote of the shareholders of the corporations participating therein, including, where appropriate, terms providing for the issuance of additional shares of Regional Corporation stock to persons already owning such stock, and may take place pursuant to votes of shareholders held either before or after the enactment of this section: Provided, That the rights accorded under Alaska law to dis-

senting shareholders in a merger or consolidation may not be exercised in any merger or consolidation pursuant to this Act effected prior to December 19, 1991. Upon the effectiveness of any such mergers or consolidations the corporations resulting therefrom and the shareholders thereof shall succeed and be entitled to all the rights, privileges, and benefits of this Act, including but not limited to the receipt of lands and moneys and exemptions from various forms of Federal, State, and local taxation, and shall be subject to all the restrictions and obligations of this Act as are applicable to the corporations and shareholders which participated in said mergers or consolidations or as would have been applicable if the mergers or consolidations and transfers of rights and titles thereto had not taken place: Provided, That where a village Corporation organized pursuant to section 19(b) of this Act merges or consolidates with the Regional Corporation of the region in which such village is located or with another Village Corporation of that region, no provision of such merger or consolidation shall be construed as increasing or otherwise changing regional enrollments for purposes of distribution of the Alaska Native Fund; land selection eligibility; or revenue sharing pursuant to sections 6(c), 7(m), 12(b), 14(h)(8), and 7(i) of this Act.

"(c) Notwithstanding the provisions of section 7 (j) or (m), in any merger or consolidation in which the class of stockholders of a Regional Corporation who are not residents of any of the villages in the region are entitled under Alaska law to vote as a class, the terms of the merger or consolidation may provide for the alteration or elimination of the right of said class to receive dividends pursuant to said section 7 (j) or (m). In the event that such dividend right is not expressly altered or eliminated by the terms of the merger or consolidations, such class of stockholders shall continue to receive such dividends pursuant to section 7 (j) or (m) as would have been applicable if the merger or consolidation had not taken place and all Village Corporations within the affected region continued to exist separately.

"(d) Notwithstanding any other provision of this section or of any other law, no corporation referred to in this section may merge or consolidate with any other such corporations unless that corporation's shareholders have approved such merger or consolidation.

"(e) The plan of merger or consolidation shall provide that the right of any affected Village Corporation pursuant to section 14(f) to withhold consent to mineral exploration, development, or removal within the boundaries of the Native village shall be conveyed, as part of the merger or consolidation, to a separate entity composed of the Native residents of such Native village.".

Departmental Reports

The Committee received two reports from the Department of Interior; one dated May 12, 1975 which addressed H.R. 6644, as originally introduced, and one dated December 10, 1975, which addressed the bill as reported by the Subcommittee. In addition, the Securities and Exchange Commission, and the Department of Agriculture commented on the legislation. The letters follow:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., May 12, 1975.

Hon. JAMES A. HALEY,
Chairman, Committee on Interior and Insular Affairs,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for the views of this Department on H.R. 6644, a bill "To provide, under or by amendment of the Alaska Native Claims Settlement Act, for the late enrollment of certain Natives, the establishment of an escrow account for the proceeds of certain lands, the treatment of certain payments and grants, and the consolidation of existing regional corporations, and for other purposes."

We recommend enactment of H.R. 6644, if amended as suggested herein.

Section 101 of the bill authorizes the Secretary of Interior to review all applications filed within one year after the date of enactment of the bill by persons who missed the March 30, 1973, deadline for filing applications for enrollment as Alaska Natives. The deadline was established by regulations issued pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688). Under section 101, the Secretary would enroll those Alaska Natives who meet the qualifications for enrollment set out in the Alaska Native Claims Settlement Act except for their failure to meet the March 30, 1973 deadline. The section also provides for the issuance of regional corporation stock to those Alaska Natives enrolled pursuant to this provision as well as the distribution of payments to those Natives enrolled pursuant to this section that are equal to payments made to those Natives originally enrolled. It further states that Natives enrolled pursuant to this provision shall not affect the eligibility status of land entitlement of eligible village corporations, regional corporations, the four named cities, or groups as defined by the Alaska Native Claims Settlement Act.

We strongly support the reopening of the rolls of Alaska Natives eligible to receive benefits under the Alaska Native Claims Settlement Act (ANCSA), and to allow otherwise eligible Alaska Natives who missed the enrollment deadline to enroll. Although we make no apology for the manner in which we handled in a very brief period of time one of the largest enrollment campaigns ever conducted, we recognize that not every eligible Alaska Native learned about the benefits of ANCSA in time to meet the filing deadline of March 30, 1973. Our estimate is that as many as 2,000 otherwise eligible persons had not applied for enrollment by that date. Some of these cases involve substantial equities. For example, some are minors whose guardians neglected to enroll them; others did not receive the enrollment forms or were under misapprehensions concerning their ancestry.

We are also in agreement with the provisions of section 101 that would not allow the addition of these late enrollees to result in changing the status of those villages and groups whose eligibility status was determined pursuant to the figures that were established by the roll certified by the Secretary of the Interior on December 18, 1973. That roll would, under the provision of section 101, establish the proportionate shares of villages, groups, and regional corporations as to their

land entitlements and the new enrollment authorized by this amendment would not affect the proportionate share, nor would it be used to disqualify a group because it had more than 24 Natives enrolled as a result of the addition of late filers. We question the need for the inclusion of the four named cities, Sitka, Juneau, Kenai, or Kodiak, in this section because their land entitlement is not determined by the number of Natives enrolled to each of these locations. Therefore, we recommend that all reference to the four named cities be omitted.

Section 101 refers to the enrollment deadline of March 30, 1973, as having been established by section 5(a) of ANSCA. That deadline was established by regulation (25 C.F.R. 43h *et seq.*). We recommend that the reference to the authority of section 5(a) of ANCSA be deleted.

Section 102(a) of the bill provides the Secretary of the Interior with authority from and after the date of enactment, to deposit receipts derived from contracts, leases, permits, rights-of-way or easements pertaining to lands or resources of lands withdrawn for Native selection pursuant to ANCSA in an escrow account until such time as disposition is made of the land and then to transfer them to the person or entity receiving title to the land. Upon the expiration of the selection rights of the Natives for whose benefit such lands were withdrawn or reserved, the proceeds from lands withdrawn but not selected shall be deposited in the U.S. Treasury or paid out as required under law. Section 102(b) provides the authority needed to pay interest on the funds held in the escrow account and to allow the Secretary of the Interior to reinvest them to obtain a higher return pursuant to the Act of June 24, 1938 (25 U.S.C. 162(a)). However, the section specifically prohibits the creation of a trust relationship with regard to the funds authorized for investment and reinvestment by the section.

There presently exists no authority in the Secretary of the Interior to pay over to the Alaska Natives the proceeds derived from actions which he must take with regard to lands that are withdrawn for Native selection but which are not yet conveyed. The Alaska Natives have indicated to the Department the need for this authority, and we support the establishment of an escrow account.

While we support the creation of the escrow account, we cannot support the provisions of section 102(b), which would authorize interest payments on such account and give authority to the Secretary to reinvest the proceeds in the account. There are many other similar accounts administered by the Federal Government on which no interest is paid and in which there is no reinvestment authority. In our judgment, section 102(b) would establish an unfavorable precedent.

Section 102(a) contains two separate time periods for paying out the funds in the escrow account and we recommend that they be conformed. The proceeds derived from the activities on lands withdrawn for Native selection, which are deposited in the escrow account, are to be paid to the selecting corporation or individual at the time of conveyance. However, receipts in the escrow account from lands withdrawn but not selected shall be paid to non-Natives "upon the expiration of the selection or election rights of the individuals for whose benefit such lands were withdrawn or reserved." We advise that payments to non-Natives from the escrow account be made at the time of con-

veyance to the Natives, thereby making the two payments operative at the same time.

While subsection 102(a) establishes an escrow account, and addresses the issue of the disposition of receipts from activities by the Secretary on lands withdrawn for Native selection but not yet conveyed, it does not clarity certain accounting procedures related to these activities. A system is necessary to accurately relate revenues to specific tracts producing the revenues and tracts selected. To clarify these accounting procedures we recommend the addition of subsections (c) and (d) to section 102.

Subsection 102(c) relates to public easements reserved in any conveyance pursuant to subsection 17(b)(3) of ANCSA. Many of the actions arising from these reserved easements may not be performed until years after the conveyance has been issued. Although the reservation has been made in the conveyance, subsection 102(c) would insure that proceeds derived from these subsection 17(b)(3) reserved easements at any time after conveyance has been issued, shall be paid to the grantee of such conveyance in accordance with such grantee's proportionate share:

"(c) Any and all proceeds from public easements reserved pursuant to subsection 17(b)(3) of the Alaska Native Claims Settlement Act (85 Stat. 688), from or after the date of enactment of this Act, shall be paid to the grantee of such conveyance in accordance with such grantee's proportionate share."

Without the certainty provided by subsection 102(c), it would be administratively prohibitive to distribute the income to the owners of the land covered by the easement reservation.

Subsection 102(d) will clarify accounting procedures under ANCSA, so that although most contracts, leases, permits, rights-of-way and easements may be paid on lands withdrawn for Native selection on an annual basis, payment to be made at the begining of the year, if a conveyance should be made in the middle of the year, the grantee would receive proportional income from such contracts, leases, permits, rights-of-way, and easements:

"(d) Any and all income on all earnings from contracts, leases, permits, rights-of-way, or easements issued for the surface or minerals covered under the conveyance prior to the issuance of such conveyance under the Alaska Native Claims Settlement Act (85 Stat. 688), shall be paid to the grantee of such conveyance on that portion of the lands conveyed pro-rated from the date of enactment of this Act."

Subsection 102(a) refers to "any and all proceeds derived" from certain less-than fee interests which may be derived from Native lands prior to conveyance. On certain types of applications, the applicant must pay for a Federal processing fee and for the cost of the environmental impact statement. The language of subsection 102(a) should be amended in order to exempt these two payments from the application of this provision.

Section 102 should contain a provision parallel to that of section 26 of ANCSA. We recommend that a new subsection (e) be added:

"(e) To the extent that there is a conflict between the provisions of subsection (2) of this section and any other Federal laws applicable to Alaska, the provisions of subsection (a) of this section shall govern.

Any payment made to any corporation or any individual under the authority of subsection (a) of this section shall not be subject to any prior obligation under sections 9(d) and 9(f) of the Alaska Native Claims Settlement Act (85 Stat. 688)."

Section 103 of the bill would add a new section 28 to ANCSA. Section 28 would exempt until December 31, 1976, any corporation organized pursuant to ANCSA from the provisions of the Investment Company Act of 1940 (54 Stat. 789, as amended). We defer in our views concerning the provisions of section 103 of H.R. 6644 to those of the Securities and Exchange Commission who, we understand, will shortly submit its report to the Congress.

Section 104 of this bill would add a new section 29 to ANCSA. New subsection 29(a) would provide that payments and grants made under ANCSA are compensation for extinguishment of claims to land by Alaska Natives and are not to be deemed to substitute for any governmental program that would otherwise be available to Alaska Natives as citizens of the United States and of the State of Alaska.

New subsection 29(b) of ANCSA would specifically exempt any benefits an Alaska Native might receive pursuant to ANCSA from consideration in determining the eligibility of any Native household to participate in the food stamp program under the Food Stamp Act of 1964.

With regard to the provisions of section 104 of this legislation, we have not yet formulated a position and, therefore, we are not able to offer comments at this time. This provision is currently under examination within the Administration.

Section 105 of the legislation provides that the funds deposited in the Alaska Native Fund under ANCSA are to be considered funds held in trust by the United States Government for Indian tribes pursuant to the provisions of Section 1 of the Act of February 12, 1929 (25 U.S.C. 161(a)).

We object to the classification of these funds as trust funds. Section 2(b) of ANCSA specifically declares that the settlement of aboriginal claims by Alaska Natives should be accomplished ". . . in conformity with the real economic and social needs of Natives . . . without creating a reservation system or lengthy wardship or trusteeship . . ."

Under section 106, except as specifically provided in H.R. 6644, the provisions of ANCSA are fully applicable to this legislation and this bill shall not alter or amend any such provisions. We have no objection to this section.

Section 107 of the bill authorizes mergers or consolidations among regional and village corporations within the same region and would apply only to corporations authorized pursuant to sections 7 and 8 of the Alaska Native Claims Settlement Act. All mergers would be subject to the applicable provisions of the laws of the State of Alaska, as would any resulting corporations. Section 107 would also allow the subsequent merger or consolidation of merged corporation with each other, provided they are in the same region. The mergers authorized by corporation shareholders either before or after passage of this bill would be covered and could take place under the provisions of the bill. This provision would allow a merger that was approved by corporation stockholders with the merger vote contingent upon enactment of legis-

lation of the type set out in this bill to be completed upon enactment of the bill. This provision is necessary because of ongoing efforts to merge village corporations, particularly in the NANA Region of Alaska.

The section gives to the merged corporation, upon the effectiveness of the merger, all rights and benefits that ANCSA confers upon the individual corporations and also makes them subject to all the restrictions and obligations that were made applicable to the individual corporations by the Alaska Native Claims Settlement Act. The section specifically states that transfers of rights and titles made pursuant to a merger would not affect the tax exemptions granted by the Alaska Native Claims Settlement Act.

Subsection (c) deals specifically with the rights of enrolled Alaska Natives who are shareholders of a regional corporation but are not residents of any of the villages in that region. Section 7(m) of the Alaska Native Claims Settlement Act gives those Alaska Natives a right to receive dividends that represent their pro-rata share of the dividends paid to village corporations when the regional corporations make distributions to the village corporations under secton 7(j) of the Settlement Act. This provision would allow the elimination of this right to dividends if it is part of a merger or consolidation plan but only if those non-village residents can, under the laws of the State of Alaska, vote as a class on the question of the merger or consolidation which contains the elimination provision. However, after any merger in which the special dividend rights were not affected and the at-large shareholders did not vote as a class on the merger, distributions to the at-large shareholders would continue as if the merger had not taken place.

Subsection (d) specifically provides that notwithstanding the provisions of this bill or any other law, no merger or consolidation of corporations can take place without the approval of the shareholders of the corporations being merged or consolidated.

Since enactment of the Settlement Act, many of the village corporations have found that they are too small to effectively manage their resources and responsibilities under the provisions of ANCSA. In the remote areas of Alaska, there is a shortage of trained managers who can run the many corporations, a demand that would be lessened by the bringing together of several of the smaller villages into one management unit. It would also be easier for the regional corporations to deal with one or two village corporations rather than ten or fifteen. The multiplicity of villages also dissipates the funds that are distributed to the villages, funds that can be used for improvements for Native people rather than being paid out to large numbers of professional managers necessitated by the large number of villages.

This section is needed to allow mergers or consolidations to take place because the Alaska Native Claims Settlement Act prohibits for a period of twenty years from the date of its enactment the alienation of corporation shares issued pursuant to the Act except under certain limited circumstances. There is no exception concerning alienation for the purpose of merger or consolidation. H.R. 6644 will modify this restriction on alienation sufficiently to authorize mergers and consolidations.

In our judgment this section offers sufficient safeguards and offers

the Alaska Natives the opportunity to bring about mergers and consolidations that will better enable them to manage the benefits they are receiving under ANCSA. We recommend its enactment.

Section 108 extends the life of the Joint Federal-State Land Use Planning Commission, created by section 17(a)(10) of ANCSA, to June 30, 1979. We have no objection to the provisions of this section.

Section 109 amends section 7(c) of the Settlement Act. The new amendment directs the Secretary of the Interior to create a 13th region for those Alaska Natives who are non-residents of Alaska and gives them authority to establish a regional corporation. Section 110 of the bill creates a new section 30 of ANCSA which sets out the procedures to be followed by the Secretary of the Interior in carrying out his responsibilities in creating the thirteenth region. These responsibilities include: (1) enrolling therein those Alaska Natives who wish to participate; (2) how the corporation for the thirteenth region shall be created and how its interim Board of Directors is to be selected; (3) the instructions for submission of the articles of incorporation for the thirteenth regional corporation; (4) provisions covering the distributions made from the Alaska Native Fund and the impact of the thirteenth region on that fund; (5) authority to make adjustment in the distributions from the Alaska Native Fund when the thirteenth region enrollment is completed; and (6) the authority of regional corporations to cancel, without any liability, the stock of those of their members who shift their enrollement to the thirteenth region.

While we support the enactment of sections 109 and 110, we recommend that section 110 be amended as suggested herein.

It appears that little purpose would be served in prohibiting a potential enrollee in the 13th region from notifying the Secretary of his decision before the end of 60 days after enactment of this section. A Native should not be punished for immediately notifying the Department of his decision. Therefore, we recommend that the phrase "not less than 60 days nor" be deleted from the new section 30(a) of ANCSA.

In carrying out the provision of ANCSA, some of the time constraints under which the Department has had to operate have been extremely limited. We recommend that the time provided for each Alaska Native to inform the Secretary of his intention be extended.

Further, some Natives attempted to amend their enrollment applications before December 1, 1973, to indicate a change in whether they wished to be enrolled in the 13th region. Section 110 provides in the new section 30(a) of ANCSA that any Native who does not file a change with the Secretary within the 60 to 90 day period must return to the status in his "original enrollment application." It would seem more appropriate to place such Native under the "election last filed," and we recommend that this language be substituted instead.

New section 30(a) requires the Secretary to prepare and certify a "final roll" within 120 days which will supersede the temporary roll authorized by "this subsection." Subsection 30(a) does not authorize a temporary roll. This could result in a construction in subsection 30(a) of reference to the roll of December 18, 1973. New subsection 30(f) of ANSCA created by section 110 of this bill authorizes a temporary roll, and if subsection 30(a) refers to this temporary roll then the word "subsection" should be changed to "section."

The fourth provision of new section 30(a) directs the Secretary to prepare and certify a final roll under that section within 120 days of the section's enactment. New section 30(a) would require a second enrollment campaign in addition to that authorized by section 101 of this legislation. In our judgment, the enrollment requirement upon the Secretary of 120 days after enactment under new section 30(a), running simultaneously with the one year enrollment requirement under section 101, would impose a prohibitive administrative burden. We recommend that the words "Within one hundred and twenty days of the enactment of this section" in the fourth provision of new section 30(a) be amended to read "Within one year of the enactment of this section."

The final provision of new section 30(a) allows the Secretary to incorporate in the final roll authorized here "other changes made by the Secretary in accordance with the Act." The changes presently being made in the roll are not literally "in accordance with the Act" but are changes made on earlier principles of law which have been construed as applicable to the Settlement Act. Therefore, this last phrase should be deleted. The presence of this last sentence raises the possibility of the construction that the temporary roll referred to earlier will be the roll of December 18, 1973. It cannot be expected that all corrections in that roll will be made in time for the applicability of this section.

New Section 30(c) of ANCSA provides the instructions for the submission of the articles of incorporation for the 13th region. The time periods specified are so short for each of the proposed steps that carrying them out will be administratively prohibitive. We recommend these time periods be extended.

New section 30(d) requires that articles of incorporation for the 13th region be approved in accordance with subsection 7(c) of the Settlement Act. Section 109 of this bill amended that section and the amended language is inapplicable to the last sentence of section 30(d). The reference intended is probably to that of section 7(c) of ANCSA.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

STANLEY B. DOREMUS,
Acting Assistant Secretary of the Interior.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., December 10, 1975.

HON. JAMES A. HALEY,
Chairman, Committee on Interior and Insular Affairs, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This Department would like to offer its views on H.R. 6644, as reported by the Subcommittee on Indian Affairs of the House Committee on Interior and Insular Affairs on September 30, 1975. H.R. 6644 is a bill "To provide, under or by amendment of

the Alaska Native Claims Settlement Act, for the later enrollment of certain Natives, the establishment of an escrow account for the proceeds of certain lands, the treatment of certain payments and grants, and the consolidation of existing regional corporations, and for other purposes."

We recommend enactment of H.R. 6644 as reported by the Subcommittee on Indian Affairs if amended as suggested herein.

SECTION 1

Section 1(a) of the bill authorizes the Secretary of the Interior to review all applications filed within one year after the date of enactment of the bill by persons who missed the March 30, 1973, deadline for filing applications for enrollment as Alaska Natives. The Secretary would then enroll those Alaska Natives who meet the qualifications for enrollment set out in the Alaska Native Claims Settlement Act (ANCSA) except for their failure to meet the March 30, 1973, deadline.

Further, section 1(a) sets forth the procedures for making all the changes required by the amendments to the roll resulting from the new enrollments thereunder, specifically with regard to the issuance of stock in the proper Native corporation to any Native newly enrolled and to future distributions under the Settlement Act. Section 1(a) also provides that no land entitlements of regions, villages or groups, or eligibility of villages or groups, will be affected by the changes in enrollment thereunder. We support the provisions of section 1(a).

Under section 1(b), thee Secretary is authorized to poll Natives enrolled to villages or groups not recognized as village corporations under ANCSA, and which are located within the boundaries of former reserves where village corporations elected surface and subsurface rights under section 19(b) of ANCSA. The Secretary may allow these Natives to enroll to a section 19(b) village corporation, or enroll on an at-large basis to the region in which the village or group is located.

On St Lawrence Island, where the village corporations of Gambell and Savoonga elected to take title to their former reserves, approximately 20 Natives enrolled to places or the Island itself other than to Gambell or Savoonga. Therefore, they are not members of either village, and are not entitled to benefits received by these village corporations under ANCSA. These individuals are currently shareholders at-large in their regional corporation. Under section 1(b) they would be given the opportunity to enroll in one of the villages, or remain shareholders at-large in their region. The language of section 1(b) is general and would apply to other situations similar to St. Lawrence Island.

While we support the provisions of section 1(b), we would note that St. Lawrence Island is not a village or group, but a place. This section would better serve its purpose if the words "Native villages or Native groups" on page 3, line 6, were deleted, and the word "places" substituted instead, and the words "village or group is" on line 13, page 3, were deleted, and the words "those places are" substituted. Otherwise, the bill may not resolve the problem of the major category of people it was designed to help—the Natives enrolled to places on St. Lawrence Island.

Section 1(b) is unclear as to whether the Secretary may allow these individuals to enroll to the section 19(b) villages at their option, or at the option of the villages concerned. We construe section 1(b) to mean the former.

Further, we would note that the individuals eligible to elect under section 1(b) are currently enrolled at-large to their region and, if they do not elect to enroll to a section 19(b) village corporation, they will remain at-large shareholders. Accordingly, we recommend that the words "to enroll" on page 3, line 12 be deleted and the words "remain enrolled" be substituted in their place.

We would also note that section 1(b) may impact the Regional entitlements under sections 12(b) and 14(h)(8) of ANCSA by changing the Regional population factors.

While we support the provisions of sections 1 (a) and (b), we cannot support the provisions of section 1(c) and recommend that it be deleted.

Section 1(c) directs the Secretary to redetermine the places of residence, as of April 1, 1970, for those Natives who, in the enrollment process, designated their domicile as a place that was later determined ineligible as a Native village or group on grounds which include an insufficient number of residents. Such redetermined residence shall be such Native's place of residence as of April 1, 1970, for all purposes under ANCSA.

We oppose the provisions of section 1(c) for a number of reasons: First, the Natives affected by section 1(c) theoretically designated their residence properly, and this provision would authorize forum shopping to give these Natives a chance to circumvent the consequences of their original choice. These Natives would not only qualify for additional benefits, but would dilute the benefits of those Natives enrolled in those villages or groups to which these section 1(c) Natives would redetermine their residence. In fact, under this interpretation of section 1(c), those Natives who redetermine their residence would receive a greater per capita distribution than those Natives who enrolled properly in the beginning.

Second, section 1(c) discriminates among Natives who are at-large shareholders in a region. Many Natives designated their place of residence on their enrollment application at a location that did not qualify as a Native village under the provisions of ANCSA. Many of the locations failed to qualify as villages because of an insufficient number of enrollees, while other locations failed to qualify for other reasons. All Natives whose place of enrollment failed to qualify as a village were enrolled as at-large members of their respective Regional Corporation. Therefore, those at-large shareholders who enrolled to a location determined ineligible as a village because of an insufficient number of residents get a second chance, while those at-large shareholders who enrolled to a location found ineligible as a village on other grounds, do not. This result is inequitable.

Third, many of the villages determined ineligible by the Department have appealed the determination, so the issue of eligibility is presently in litigation. Further, the Department has not yet determined the eligibility of any Native groups. Therefore, section 1(c) is premature and speculative.

Finally, section 1(c) is unclear as to whether the section applies only to those Natives enrolled to villages found ineligible because of insufficient number of residents, or to villages also found ineligible on other grounds.

SECTION 2

Under section 2(a), the Secretary is given the authority to deposit proceeds received by the Federal government which are derived from contracts, leases, permits, rights-of-way or easements pertaining to lands or resources of lands withdrawn for Native selection pursuant to ANSCA in an escrow account until such time as disposition is made of the land and then to transfer such proceeds to the person or entity receiving title to the land. This provision would be effective from either the date of enactment of H.R. 6644 or January 1, 1976, whichever occurs first.

There presently exists no authority in the Secretary of the Interior to pay over to the Alaska Natives the proceeds derived from actions which he must take with regard to lands that are withdrawn for Native selection but which are not yet conveyed. The Alaska Natives have indicated to the Department the need for this authority, and we support the establishment of an escrow account.

While we support the provisions of section 2(a), we recommend a number of clarifying amendments.

First, on page 5, line 2, we recommend that the words "or January 1, 1976, whichever occurs first," be deleted. To administer the escrow account it will be necessary to develop a system which will accurately relate revenues to the tracts producing the revenues and the tracts selected. If H.R. 6644 is enacted after January 1, 1976, the escrow account will be partially retroactive, and the accounting procedures will present administrative and legal difficulties. Further, the monies derived between January 1, 1976 and the date of enactment of H.R. 6644 may have already been distributed to either the State of Alaska under the Mineral Leasing Act, or to the Alaska Native Fund, and thus expended.

Second, the refernce to section 14(g) of ANSCA on page 5, line 2, is incorrect. These leases, licenses, permits or rights-of-way were not issued pursuant to section 14(g), but, rather, were outstanding at the time of conveyance to the Native Corporation and were reserved by section 14(g). Thus, we recommend that the following language be inserted between the words "to" and "section" on line 4, page 5: "appropriate law and which would be reserved in any conveyance in accordance with."

Third, section 2(a) refers to "any and all proceeds derived" from certain less-than-fee interests which may be derived from Native lands prior to conveyance. On certain types of applications, the applicant must pay for a Federal processing fee and for the cost of the environmental impact statement. We recommend that the language of section 2(a) be amended to exempt these two payments from the application of this provision.

Finally, section 2(a) contains two separate time periods for paying out the funds in the escrow account and we recommend that they be conformed. The proceeds derived from the activities on lands with-

drawn for Native selection, which are deposited in the escrow account, are to be paid to the selecting corporations or individual at the time of conveyance. However, receipts in the escrow account from lands withdrawn but not selected shall be paid to non-Natives "upon the expiration of the selection or election rights of the individuals for whose benefit such lands were withdrawn or reserved." We advise that payments to non-Natives from the escrow account be made at the time of conveyance to the Natives, or when the Secretary determines that these lands will not be conveyed to the selecting corporation. Otherwise, the monies in the escrow account may be tied up for a considerable length of time.

While we support the creation of the escrow account, we cannot support the provisions of section 2(b), which would authorize interest payments on such account and give authority to the Secretary to reinvest the proceeds in the account. There are many other similar accounts administered by the Federal Government on which no interest is paid and in which there is no reinvestment authority. In our judgment, section 2(b) would establish an unfavorable precedent.

Section 2(c) relates to public easements reserved pursuant to section 17(b)(3) of ANSCA. Section 2(c) would insure that proceeds derived from these section 17(b)(3) reserved easements at any time after conveyance has been issued, shall be paid to the grantee of such conveyance in accordance with such grantee's proportionate share. Without the certainty provided by section 2(c), it would be administratively prohibitive to distribute the income to the owners of land covered by the easement reservation.

However, we would note the potential ambiguity with regard to the interpretation of the word "proceeds," in section 2(c). It is unclear whether the term applies to fees derived from permits issued by the U.S. for hauling timber and minerals over these reserved easements, or to the receipts from the sale of the items hauled. Accordingly, we recommend substituting the words "rental and use fees" for the word "proceeds" in section 2(c), line 18, page 6.

Further, we recommend that the words "paid by commercial users for" be inserted right after the term "rental and use fees" on line 18, page 6. It should be recognized that most easements will produce little or no income. However, commercial uses will generate income, which should be made available to the Native owners.

We would also recommend that the period on line 22, page 6, be changed to a comma, and the following words be added: "to be computed in the same manner as fractional interests are computed pursuant to section 14(g) of the Settlement Act."

Finally, we would suggest an additional sentence after our amended sentence on line 22, page 6. This sentence reads as follows: "As used in this subsection rental and use fees shall not include road maintenance or other cost-recovery charges levied to a non-Federal user." These costs would not be in the nature of proceeds, but go to the actual cost of maintaining the easement by the United States.

These recommendations are the result of discussions between this Department and the United States Forest Service.

Section 2(d) provides that to the extent there is a conflict between the provisions of section 2 and any other Federal laws applicable to

Alaska, the provisions of section 2 will govern. Further, any payment made to any corporation or individual under section 2(a) of H.R. 6644 shall not be subject to any prior obligations under sections 9(d) or (f) of ANCSA. This Department recommended the addition of a provision to section 2 parallel to that of section 26 of ANCSA in our report on H.R. 6644 as introduced, dated May 12, 1975. This recommendation has become section 2(d) of H.R. 6644 as reported by the Subcommittee on Indian Affairs and we support its enactment.

SECTION 3

Section 3 amends ANCSA to exempt, until December 31, 1991, corporations organized thereunder from the provisions of the Investment Company Act of 1940, the Securities Act of 1933, and the Securities and Exchange Commission Act of 1934. We defer in our views to the Securities and Exchange Commission.

SECTION 4

Section 4(a) amends ANCSA to provide that payments and grants thereunder shall not be deemed to substitute for any governmental programs otherwise available to the Natives as citizens of the United States and of Alaska.

Section 4(b) further amends ANCSA to exempt benefits received by any member of a household under the Settlement Act from being used in a determination of that individual's eligibility to participate in the Food Stamp Act.

The provisions of section 4 are currently under examination within the Administration.

SECTION 5

Section 5 relates to a December 28, 1973, decision by the Comptroller General that the Alaska Native Fund will not bear interest or be eligible for reinvestment by the Secretary pursuant to sections 161a and 162a of title 25 of the United States Code. The actual language of section 5 states that for purposes of 25 U.S.C. 161a and 162a the Alaska Native Fund shall, pending distributions under Section 6(c) of ANCSA, "be considered to consist of funds held in trust by the Government of the United States for the benefit of Indian tribes." Section 5 further provides that nothing in the section will be construed to create or terminate any trust relationship between the U.S. and any corporation or individual entitled to receive benefits under ANCSA.

We object to the classification of these funds as trust funds. Section 2(b) of ANCSA specifically declares that the settlement of aboriginal claims by Alaska Natives should be accomplished ". . . in conformity with the real economic and social needs of natives . . . without creating a reservation system or lengthy wardship or trusteeship . . ." Although the proviso in section 6(c), on page 14, lines 12–13, there is no definition as to what constitutes "within the boundaries of the Native village." We would note that the majority of Native villages are not municipalities and, therefore, do not have boundaries created by State statute as do other Alaskan communities.

SECTION 7

We have no objection to the provisions of section 7, which would extend the life of the Joint Federal-State Land Use Planning Commission for Alaska to June 30, 1979.

SECTION 8

Section 8 amends section 7(c) of the Settlement Act. The new amendment directs the Secretary of the Interior to create a 13th Region for those Alaska Natives who are non-residents of Alaska and gives them authority to establish a regional corporation.

With the exception of the savings clause proviso of new section 7(c)(9), we recommend that section 8 be deleted. Pursuant to an order entered October 6, 1975, by the United States District Court for the District of Columbia, the 13th Region has already been established and the 13th Regional Corporation is in the process of being formed. The manner of formation of the corporation is similar to that prescribed by section 8, with the exception of the election of eligible non-resident Alaska Natives to be in or out of the 13th Region. The manner of this election has also been prescribed by the October 6, court order.

Effective October 1, 1975, this Department established the 13th Region. On October 11, by computer effort, 4,534 persons were transferred from the twelve Alaska Regions into the 13th Region according to their last written request made on or before August 15, 1975. Pursuant to the October 6 court order the Department has invited eight bona fide organizations presently known by the Secretary to represent non-resident Alaska Natives to submit the names of no more than five consenting nominees for election as incorporators and members of the interim board of directors of the 13th Regional Corporation. The Department prepared ballots with the names of 24 such nominees and on November 10 sent one ballot to each of the 3,100 adult 13th Region enrollees with instructions to vote for not more than 5 nominees and to return the ballot by December 1. The results will be tabulated by December 10 and the nominees receiving the highest number of votes shall be recognized as incorporators for the purpose of preparing and submitting the proposed articles of incorporation and bylaws for the 13th Regional Corporation. Those so recognized will also constitute the initial board of directors to serve until the first meeting of shareholders or until their successors are elected and qualify.

The proposed articles of incorporation and bylaws are to be approved by early January 1976; the first meeting of the shareholders and election of the board of directors is to be held by early February, 1976; and by February 15, 1976, the corporation is to be paid its share of monies in the Alaska Native Fund. Pursuant to the October 6 order, when the 13th Regional Corporation makes its first distribution, all adult non-resident Native enrollees, whether or not presently enrolled in the 13th Region, shall be given a final opportunity to elect their preference for enrollment in the 13th Region or one of the other 12 Regions.

Accordingly, we recommend that section 8 be deleted as it is unnecessary, but that the savings clause of amended section 7(c)(9) of ANCSA under section 8 of this bill be retained.

SECTION 9

Under section 19(b) of ANCSA, seven Native villages elected to acquire title to the surface and subsurface estate of former reserves in lieu of receiving both benefits as a Native village under ANCSA, and regional corporation benefits.

Section 9 concerns one of the seven villages, Klukwan, Inc., which voted to retain the former reserve, the Klukwan Reserve or Reservation. Chilkat Indian Village, the organization of Natives who actually reside on the reserve, had negotiated a mineral lease in 1970, and it has been alleged in pending litigation that valid existing rights under this lease may survive the enactment of ANCSA and the extinguishment of the reserve itself. While all the residents of the reserve are members of Chilkat Indian Village, many of those non-residents who enrolled there and are stockholders in Klukwan, Inc., are not members of Chilkat. The mineral deposit is the major element of value in the lands of the former reserve and if the Chilkat position is correct the majority of Kluwan's shareholders would not receive the benefit of either the lease or the Settlement Act.

Section 9 would amend section 16 of ANCSA to allow the shareholders of Klukwan, Inc., to participate in the Act's benefits as if they had not elected to acquire title to their former reserve, including the selection of land, providing that Klukwan, Inc., will quit claim all its rights, title and interest in the reserve to Chilkat Indian Village.

We support the provisions of section 9. However, while section 9 would take care of the reserve land and rights thereto, it may not extend to $100,000 in lease rentals already derived from the lease after the passage of the Settlement Act. In our judgment, the United States and Klukwan, Inc., should also quit claim to Chilkat all rights to rentals and other benefits paid by the lessee prior to the passage of this bill. Further, Chilkat should also relinquish any claims it might have against Klukwan, Inc., the United States or the lessee, for mispayment.

We would note that section 9 may affect the Regions under section 12(c) of ANCSA by decreasing the acreage factor by 23,933, and under section 14(h)(8) by changing the Regional population factor.

SECTION 10

Section 10 would amend section 16(b) of ANCSA. Pursuant to amended section 16(b), the allocations received by the Southeastern Alaska Regional Corporation under section 14(h)(8) of ANCSA would be selected and conveyed from lands withdrawn by section 16(a) of ANCSA that were not selected by the village corporations, with the exception of lands on Admiralty Island in the Angoon withdrawal area, and lands in the Yakutat and Saxman withdrawal areas without the consent of the Governor of Alaska.

With the exception of some small amounts of public domain land around the Village of Klukwan, section 10 would permit the Sealaska Regional Corporation to make land selections pursuant to section 14(h)(8) of ANCSA primarily within the Tongass National Forest. Accordingly, this Department defers to the views of the U.S. Forest Service, as they are the agency with jurisdiction over those lands.

We would point out, however, that section 10 of H.R. 6644 as reported by the Subcommittee on Indian Affairs could have an impact upon section 12(c) of ANCSA. Part of the section 12(c) formula concerns allocations among the Regional Corporations based upon lands selected under section 16 of the Settlement Act. Since section 10 of H.R. 6644 amends section 16(b) rather than section 14(h)(8) of ANCSA, section 10 could be interpreted to affect the formula, and thus the entitlements of the other Regions, under section 12(c) of the Settlement Act.

SECTION 11

Section 11 of H.R. 6644 would amend section 7(a) of ANCSA to fix the boundary between the Southeastern and Chugach Regions at the 141st meridian provided that with regard to lands conveyed to it in the vicinity of Icy Bay, the Chugach Regional Corporation shall accord to Natives enrolled to the village of Yakutat the same rights and privileges for traditional purposes on such lands as it would accord its own shareholders.

The effect of this amendment would be to settle the boundary dispute between the two Regions, and within the settled boundary allow the Natives of the village of Yakutat, which is in the Southeastern Alaska Region, to use the lands around Icy Bay, in the Chugach Region, for subsistence purposes.

Although the boundary question is presently in arbitration in accordance with section 7(a) of ANCSA, if this amendment is acceptable to the two Regions involved, then we would support it. However, we would note that we construe this provision to be self-executing, with the rights and obligations therefrom flowing between the two Regions, and conferring no obligation upon this Department to write this language into patents issued pursuant to ANCSA.

Further, we would suggest that the term "in the vicinity of Icy Bay" on lines 14-15, page 30, be more precisely defined.

SECTION 12

Section 12 of H.R. 6644 as reported by the Subcommittee on Indian Affairs contains provisions to resolve the land selection problem of the Cook Inlet Region, Inc. For several months now representatives of the Department, the State of Alaska, and Cook Inlet have engaged in extensive discussions about possible solutions to this problem. The parties to these discussions have not yet arrived at a mutually acceptable settlement. As of this writing, the final details are still being negotiated.

SECTION 13

Under section 13, a new subsection (f) would be added to section 21 of ANCSA. This new section 21(f) would provide that until December 18, 1991, the stock of any regional corporation organized pursuant to section 7 of ANCSA, including the right to receive distributions under section 7(j), and the stock of any Village Corporation organized pursuant to section 8 of ANCSA, shall not be includable in the gross estate of a decedent under sections 2031 and 2033 of the Internal Revenue Code.

We have no objection to the provisions of section 13. However, we would note that section 7(h)(3) of ANCSA prohibits alienation of stock until January 1, 1992, not December 18, 1991. Accordingly, we recommend that the date "December 18, 1991," on line 4, page 33, be deleted, and the date "January 1, 1992" be substituted in its place.

SECTION 14

Section 14(a) would provide a one-time payment of $250,000 to each of the corporations organized pursuant to section 14(h)(3) of ANCSA. Although the members of these four corporations (Kenai, Sitka, Juneau and Kodiak) are stockholders in their respective regional corporations, these corporations are not themselves recipients of funds under ANCSA. These corporations, however, are incurring expenses in organizing and operating themselves, making land selections and in engaging in necessary planning.

Section 14(b) provides for payments of $100,000 each to six of the seven villages (excluding Klukwan, Inc.) who chose to retain former reserves under section 19(b) of ANCSA. These villages chose title to former reserves in lieu of the benefits accorded a village under ANCSA and, as such, are not eligible to select other land or receive a distribution of regional corporation funds. Further, the members thereof are not shareholders in their respective regional corporations.

Under section 14(c), the funds provided under 14 (a) and (b) are to be used only for planning and development, and for other purposes for which these corporations were organized under ANCSA.

Section 14(d) authorizes $1,600,00 in fiscal year 1976 to implement section 14.

We believe there is no basis for increasing the total amount of the Alaska Native Claims Settlement Act by $1.6 million in addition to the $962,500 million already provided. Any funds provided for these 10 corporations should be authorized from the present Alaska Native Fund.

SECTION 15

Section 15 of H.R. 6644 would direct the Secretary of the Interior to convey to the Koniag Regional Corporation the subsurface estate of certain lands selected by such corporation located within the Aniakchak Caldera National Monument. Further, notwithstanding the inclusion of the surface estate of these lands in any national monument or other national land system referred to in section 17(d)(2) of ANCSA, Koniag, Inc., may use the surface estate as is reasonably necessary to mine the subsurface, subject to regulations by the Secretary to protect the surface.

This provision would legislate an agreement between this Department and Koniag, Inc., concerning the lands within the area proposed by this Department for establishment as the Aniakchak Caldera National Monument in the National Park System under section 17(d)(2) of ANCSA. The Department had agreed to recommend to the Congress, at the time the Aniakchak proposal was being considered, that Koniag, Inc., be permitted to make specific subsurface selections within the Monument.

We believe, however, that a Congressional decision regarding the lands available for selection within the Monument be made at the same time Congress considers the establishment of the Monument. In that way Congress would have before it all of the relevant information concerning the resource values in the area and it would be in the best position to make a judgment on the matter. Further, we believe that public hearings on the amendment should be held. We continue to believe that the better course would be to consider all aspects of each D–2 proposal together, rather than in piecemeal fashion. However, should the Committee decide to go forward with the Koniag amendment at this time, we have no objection to the substance of the amendment in section 15 of H.R. 6644 as reported by the Subcommittee on Indian Affairs.

Time has not permitted securing advice from the Office of Management and Budget as to the relationship of this report to the program of the President.

Sincerely yours,

KENT FRIZZELL,
Acting Secretary of the Interior.

SECURITIES AND EXCHANGE COMMISSION,
Washington, D.C.

HON. LLOYD MEEDS,
Chairman, Subcommittee on Indian Affairs, House Committee on Interior and Insular Affairs, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: It has come to our attention that your Committee is now considering H.R. 6644,[1] a bill to amend the Alaska Native Claims Settlement Act of 1971.[2] The staff of the Commission has recently conferred with representatives of the Department of the Interior and the Office of Management and Budget, and, as a result of that conference, we wish to offer comments with respect to two sections of the proposed bill, Sections 103 and 107, which involve the securities laws, the Investment Company Act of 1940 ("1940 Act") in particular.

Section 103 would add a new provision to the Settlement Act giving the corporations organized pursuant thereto ("ANCSA Corporations") a temporary exemption from the 1940 Act until December 31, 1976. In introducing this bill to the House, Congressman Young indicated that without such an exemption, certain ANCSA Corporations investing some of their funds "in commercial bank time deposit-or certificates of deposit" might "risk being classified as investment companies." He farther indicated that such an exemption would "provide necessary breathing room to the SEC and the Native corporations to permit resolution of long-range problems."[3]

As I indicated in my letter to you of February 1, 1975, commenting upon an identical provision in H.R. 1355,[4] I believe it would be unwise to exempt the ANCSA Corporations from all provisions of the 1940 Act. The Commission's position was then, and continues to be,

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[1] 94th Cong., 1st Sess. (1975), 121 Cong. Rec. H–3506 (daily ed., May 1, 1975).
[2] 85 Stat. 688.
[3] Supra n. 1, at 3506, 3507.
[4] 93rd Cong., 2nd Sess. (1974); 120 Cong. Rec. H–290 (daily ed., January 29, 1974).

that certain provisions of the Act should be applied to ANCSA Corporations falling within the 1940 Act's definition of investment company in order to protect the substantial pools of liquid capital which these companies hold in trust for the benefit of numerous unsophisticated Alaska native shareholders.

ANCSA Corporations are not restricted by the Settlement Act, the securities laws, or Alaska law to investing in bank time deposits or certificates of deposit; and, in fact, it is our understanding that certain of them are investing in other types of securities. In any event, the application of the 1940 Act to a corporation investing in certificates of deposit and other securities of a relatively non-speculative character is more than a technical complication. Numerous so-called money market funds registered under the 1940 Act voluntarily restrict their investments to certificates of deposit, government securities, and like investments; and certain of the protections afforded shareholders of such funds by the 1940 Act would be appropriate for an ANCSA Corporation with similar voluntary investment restrictions.

As you are probably aware, in accordance with my earlier letter to you, the Commission acted promptly last year to exempt the ANCSA Corporations from all but the most essential provisions of the 1940 Act by adopting temporary Rule 6c-2(T).[5] The Commission has received a number of comments on the proposed rule, and, having analyzed these, the Commission's staff has recently submitted a revised version of the proposed rule to the Commission. The Commission intends promptly to consider the staff recommendations and either to adopt a permanent exemptive rule or ask for further public comments on a revised proposal. As presently proposed by the staff, Rule 6c-2 would add the proxy, reporting and record-keeping requirements of the Act to the group of provisions from which ANCSA Corporations registering under the rule would not be exempt. It should be emphasized that both the temporary rule and the proposed permanent rule affect only those ANCSA Corporations which choose to register with the Commission pursuant to Section 8(a) of the 1940 Act.

We should also point out that, if the Congress exempts the ANCSA Corporations from the 1940 Act, a number of the companies would continue to be subject to the Securities Exchange Act of 1934 ("Exchange Act") as companies having 500 or more shareholders and more than $1,000,000 in assets. Such companies would have to comply with the registration, reporting, and proxy solicitation provisions of the Exchange Act. We believe that these provisions provide significant protections to the shareholders of the ANCSA Corporations and that such shareholders should not be given any less protection under the Exchange Act than Congress has given to shareholders of other, more conventional corporations. However, we believe it would be most unfortunate if the ANCSA Corporations were exempted during the time they are investment companies from a statute specifically designed to regulate investment companies and be subject only to the requirements of a statute which is designed basically to inform the Commission and the investing public as to securities of publicly traded companies.

[5] Rule 6c-2(T) exempts ANCSA Corporations registering pursuant to Section 8(a) of the Act from all provisions of the 1940 Act except Sections 9, 17, 30, and 37 (Investment Company Act Release No. 8251, February 20, 1974, attached).

Section 107 of the bill would authorize the ANCSA Corporations to merge or consolidate under Alaska law. First, assuming that Section 103 is not adopted, we do not think this provision standing alone would exempt merger transactions from the Commission's jurisdiction under Section 17 of the 1940 Act, which relates to the transactions between affiliates.

Second, if the bill were changed to exempt such mergers from the 1940 Act, we do not feel that such a change would serve the interests of ANCSA shareholders. Any mergers of ANCSA Corporations which constitute transactions of affiliated persons or companies within the meaning of Section 17 should remain subject, in our view, to the standards of fairness imposed by that section. Commission review of these mergers is especially important because of the difficulty of ascertaining the value of ANCSA Corporation assets for purposes of an exchange of shares or an acquisition of assets.

We have gained some familiarity recently with at least one proposed merger involving ANCSA Corporations, that proposed by the NANA Regional Corporation and a number of its village corporations. As we understand it, that merger would involve the exchange of rights now vested in natives belonging to the various corporations. Such vested rights, although difficult to value at this time, would presumptively differ from one corporation to another; yet, subsequent to the exchange, the affected natives would all have equal rights. We are troubled that such a shift in vested rights among investors who now have the protections of the 1940 Act might, if the proposed bill were adopted, take place without any consideration of its fairness. Our view in this regard is buttressed by our understanding that there is no provision of Alaska Corporation law which provides protections comparable to those afforded by Section 17.

Thank you for the opportunity of commenting on H.R. 6644. We trust that our comments will be of assistance to you and we stand ready to provide you with whatever further assistance you may desire.

Sincerely,

RAY GARRETT, JR., *Chairman.*

Enclosure.

INVESTMENT COMPANY ACT OF 1940

Release No. 8251/February 26, 1974

NOTICE OF ADOPTION OF TEMPORARY RULE 6C-2(T) AND OF PROPOSAL TO ADOPT RULE 6C-2, BOTH UNDER THE INVESTMENT COMPANY ACT OF 1940 CONDITIONALLY EXEMPTING CORPORATIONS ORGANIZED PURSUANT TO THE ALASKA NATIVE CLAIMS SETTLEMENT ACT FROM ALL PROVISIONS OF THE INVESTMENT COMPANY ACT OF 1940 EXCEPT SECTIONS 8(a), 9, 17, 36, AND 37. (FILE NO. 87-514)

Notice is hereby given that the Securities and Exchange Commission hereby adopts temporary Rule 6c-2(T) and proposes to adopt Rule 6c-2, both under the Investment Company Act of 1940 ("Act") to exempt from all provisions of the Act except Sections 8(a), 9, 17, 36, and 37 corporations organized pursuant to the Alaska Native Claims Settlement Act of 1971[1] ("Settlement Act") (such corporations here-

[1] 85 Stat. 688.

inafter referred to collectively as "ANCSA Corporations"). Such exemptions are conditioned upon adherence by the ANCSA Corporations to reporting and other requirements specified herein. Rule 6c-2(T) is effective as of December 18, 1971, the date of the enactment of the Settlement Act; it will be superseded at such time as the Commission takes action on proposed Rule 6c-2, which, as proposed, would provide the same relief on a permanent basis as is now provided by Rule 6c-2(T).

The ANCSA Corporations have been (or will soon be) organized to hold and administer the extensive land grants, mineral rights, cash, and mineral revenues intended by the Government of the United States to recompense Alaska's native Indian Aleut and Eskimo population ("Alaska Natives") for lands within the State of Alaska. In accordance with this statutory purpose, the ANCSA Corporations will be owned and managed exclusively by Alaska Natives, who will be given shares of stock in the ANCSA Corporations. The ANCSA Corporations consist of twelve "Regional Corporations," representing the Alaska Natives residing in twelve geographical districts designated by the Department of the Interior, and more than 200 "Village Corporations" within these districts each representing Alaska Natives residing in a village.

Although the ANCSA Corporations are to be given substantial real estate and subsurface mineral interests, many of such interests are not presently specifically identifiable as they are to be selected and acquired over a four-year period in accordance with the provisions of the Settlement Act. Distribution of a significant portion of monetary compensation was made almost immediately upon enactment of the Settlement Act, however, and $130,000,000 of such monies has already been received by the twelve Regional Corporations. Furthermore, large additional distributions of cash will be made to the ANCSA Corporations in the next few years, so that, during this period, at least until they have fully exercised their land grant privileges and have begun to engage primarily in owning land or operating a business, many of the ANCSA Corporations may be investment companies within the meaning of Sections 3(a)(1) and 3(a)(3) of the Act.[2]

It appears that, without compliance with the Act or exemptive relief by the Commission, questions may be raised whether many ANCSA Corporations may operate in interstate commerce or buy securities in interstate commerce.[3] Several ANCSA Corporations have filed applications for orders of the Commission pursuant to Section 3(b)(2) of the Act, each claiming, in effect, that the applicant is primarily engaged in a business other than that of being an investment com-

[2] Section 3(a)(1) defines "investment company" as any issuer which is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities. Section 3(a)(3) defines "investment company" as any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 percent of the value of such issuer's total assets (excluding Government securities and cash items) on an unconsolidated basis.

[3] Such activities might be precluded by Sections 7(a)(4) and 7(d)(3) of the Act, which provide, respectively, that an unregistered investment company may not engage in any business in interstate commerce and that no depositor or trustee of or underwriter for any unregistered investment company may sell or purchase for the account of such company, by the use of the mails or any means or instrumentality of interstate commerce, any security or interest in a security, by whomever issued.

inafter referred to collectively as "ANCSA Corporations"). Such exemptions are conditioned upon adherence by the ANCSA Corporations to reporting and other requirements specified herein. Rule 6c-2(T) is effective as of December 18, 1971, the date of the enactment of the Settlement Act; it will be superseded at such time as the Commission takes action on proposed Rule 6c-2, which, as proposed, would provide the same relief on a permanent basis as is now provided by Rule 6c-2(T).

The ANCSA Corporations have been (or will soon be) organized to hold and administer the extensive land grants, mineral rights, cash, and mineral revenues intended by the Government of the United States to recompense Alaska's native Indian Aleut and Eskimo population ("Alaska Natives") for lands within the State of Alaska. In accordance with this statutory purpose, the ANCSA Corporations will be owned and managed exclusively by Alaska Natives, who will be given shares of stock in the ANCSA Corporations. The ANCSA Corporations consist of twelve "Regional Corporations," representing the Alaska Natives residing in twelve geographical districts designated by the Department of the Interior, and more than 200 "Village Corporations" within these districts each representing Alaska Natives residing in a village.

Although the ANCSA Corporations are to be given substantial real estate and subsurface mineral interests, many of such interests are not presently specifically identifiable as they are to be selected and acquired over a four-year period in accordance with the provisions of the Settlement Act. Distribution of a significant portion of monetary compensation was made almost immediately upon enactment of the Settlement Act, however, and $130,000,000 of such monies has already been received by the twelve Regional Corporations. Furthermore, large additional distributions of cash will be made to the ANCSA Corporations in the next few years, so that, during this period, at least until they have fully exercised their land grant privileges and have begun to engage primarily in owning land or operating a business, many of the ANCSA Corporations may be investment companies within the meaning of Sections 3(a)(1) and 3(a)(3) of the Act.[2]

It appears that, without compliance with the Act or exemptive relief by the Commission, questions may be raised whether many ANCSA Corporations may operate in interstate commerce or buy securities in interstate commerce.[3] Several ANCSA Corporations have filed applications for orders of the Commission pursuant to Section 3(b)(2) of the Act, each claiming, in effect, that the applicant is primarily engaged in a business other than that of being an investment com-

[2] Section 3(a)(1) defines "investment company" as any issuer which is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities. Section 3(a)(3) defines "investment company" as any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 percent of the value of such issuer's total assets (excluding Government securities and cash items) on an unconsolidated basis.

[3] Such activities might be precluded by Sections 7(a)(1) and 7(b)(2) of the Act, which provide, respectively, that an unregistered investment company may not engage in any business in interstate commerce and that no depositor or trustee of or underwriter for any unregistered investment company may sell or purchase for the account of such company, by the use of the mails or any means or instrumentality of interstate commerce, any security or interest in a security, by whomever issued.

pany.[4] In view of the large number of ANCSA Corporations, many of which are potential applicants of this type, and the serious question as to whether such ANCSA Corporations can meet the operational prerequisites for a Section 3(b)(2) order, the Commission has determined to grant appropriate temporary exemptive relief by the promulgation of a rule pursuant to Section 6(c) of the Act and to propose that such relief be made permanent.

Rule 6c-2(T) temporarily removes all ANCSA Corporations from the burden of complying with various requirements of the Act. Such corporations will be obliged to comply with only those provisions which provide essential protection for the substantial pools of liquid capital they hold in trust for the Alaska Natives. Accordingly, Rule 6c-2(T) provides that the ANCSA Corporations shall be exempt from all provisions of the Act except Sections 8(a), 9, 17, 36, and 37, provided, however, that such corporations must comply with certain reporting and other requirements set forth in the rule. Rule 6c-2 would provide exactly the same relief on a permanent basis, if adopted.

Section 8(a) of the Act requires the ANCSA Corporations to register with the Commission by filing a Form N-8A disclosing basic information such as the name and address of the corporation, the names of its officers, directors, and adviser and the identity of other companies substantial amounts of the securities of which are held by the registrant. The more detailed Form N-8B-1 registration statement will not be required.

Section 9 of the Act prohibits a person convicted of certain crimes or enjoined from certain specified activities, generally crimes and activities involving securities transactions and the functions of underwriters, brokers, dealers and financial institutions, from serving as an officer, director, member of an advisory board, investment adviser, or depositor of a registered investment company. Section 9 also provides procedures for the removal of this prohibition under appropriate circumstances.

Section 17, generally speaking, requires Commission approval before the ANCSA Corporations may engage in certain transactions with affiliated persons.

Section 36 authorizes the Commission or a shareholder to bring a civil action against officers, directors, members of advisory boards, investment advisers, depositors or underwriters of registered companies for breach of fiduciary duty involving personal misconduct. It further provides that an investment adviser is deemed to have a fiduciary duty with respect to the receipt of compensation for services or payments of a material nature paid by the investment company.

Section 37 makes it a crime under the Act to steal or embezzle the property of an investment company.

The exemptions granted by the rules may be claimed only by ANCSA Corporations which meet conditions requiring them to file annually with the Commission copies of reports required by Section 7(o) of the Settlement Act, and to maintain the records used as the basis for such reports for examination by the Commission.

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[4] Section 3(b)(2) provides, in pertinent part, that if the Commission finds that an issuer is primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities, such issuer will not be an investment company within the meaning of the Act.

Rule 6(c)-2(T) is hereby adopted pursuant to Sections 6(c), 38(a), and 39 of the Act. Proposed Rule 6(c)-2 would be adopted pursuant to the same provisions. Section 6(c) of the Act provides that the Commission by rule, regulation, or order may conditionally or unconditionally exempt any person, security, or transaction or any class of persons, securities, or transactions from any provision or provisions of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes intended by the policy and provisions of the Act. Section 38(a) states, in part, that the Commission shall have the authority from time to time to make, issue and amend such rules and regulations as are necessary or appropriate to the exercise of the powers conferred upon the Commission elsewhere in the Act. Section 39 states in part that, subject to the Federal Register Act, rules and regulations of the Commission under the Act shall be effective upon publication in the manner prescribed by the Commission.

The text of Rule 6c-2(T) is as follows:

> Rule 6c-2(T): Temporray Exemption for Corporations Organized pursuant to the Alaska Native Claims Settlement Act of 1971.

Any corporation organized pursuant to the Alaska Native Claims Settlement Act of 1971 ("Settlement Act") ("ANCSA Corporations") shall be temporarily exempt from all provisions of the Act except Sections 8(a), 9, 17, 36, and 37 subject to the following conditions:

Any company claiming exemptions pursuant to this rule shall file annually with the Commission copies of the reports required by Section 7(o) of the Settlement Act and shall maintain and keep current the accounts, books, and other documents relating to its business which constitute the record forming the basis for such information and of the auditor's certification thereto. All such accounts, books, and other documents shall be subject at any time and from time to time to such reasonable periodic, special, and other examinations by the Commission, or any member or representative thereof, as the Commission may prescribe. Such company shall furnish to the Commission, within such time as the Commission may prescribe, copies of extracts from such records which may be prepared without undue effort, expense, or delay as the Commission may by order require.

The Commission finds that the adoption of Rule 6c-2(T) is appropriate in the public interest and is consistent with the protection of investors and the purposes intended by the policy and provisions of the Act. The Commission further finds, in accordance with the requirements of the Administrative Procedure Act[5] that notice of Rule 6c-2(T) prior to its adoption and public procedure thereon are impracticable and unnecessary since the rule will be temporary in its effect and will not exempt any ANCSA Corporations from those provisions of the Act needed to provide essential protections for the assets being held for the benefit of the Alaska Natives until such time as the rule is adopted.[6] Accordingly, Rule 6c-2(T) shall become effective on February 26, 1974, retroactive to December 18, 1971, the date of enactment of the Settlement Act.

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[5] 5 U.S.C. § 551 et seq. (1970).
[6] Id. § 553(d)(1).

The text of proposed Rule 6c-2 is as follows:

Rule 6c-2: Exemption for Corporations Organized pursuant to the Alaska Native Claims Settlement Act of 1971.

Any corporation organized pursuant to the Alaska Native Claims Settlement Act of 1971 ("Settlement Act") ("ANCSA Corporation") shall be exempt from all provisions of the Act except Sections 8(a), 9, 17, 36, and 37 subject to the following conditions:

Any company claiming exemptions pursuant to this rule shall file annually with the Commission copies of the reports required by Section 7(o) of the Settlement Act and shall maintain and keep current the accounts, books, and other documents relating to its business which constitute the record forming the basis for such information and of the auditor's certifications thereto. All such accounts, books, and other documents shall be subject at any time and from time to time to such reasonable periodic, special, and other examinations by the Commission, or any member or representative thereof, as the Commission may prescribe. Such company shall furnish to the Commission, within such time as the Commission may prescribe, copies of or extracts from such records which may be prepared without undue effort, expense, or delay as the Commission may by order require.

All interested persons are invited to submit views and comments with respect to proposed Rule 6c-2, in writing, to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549, on or before April 10, 1974. All communications with respect to this matter should refer to File No. S7-514. Such communications will be available for public inspection.

By the Commission.

GEORGE A. FITZSIMMONS, *Secretary.*

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., December 3, 1975.

Hon. JAMES A. HALEY,
Chairman, Committee on Interior and Insular Affairs,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: The Department of Agriculture would like to offer its views on certain provisions of the Subcommittee Print of H.R. 6644, a bill "To provide, under or by amendment of the Alaska Native Claims Settlement Act, for the late enrollment of certain Natives, the establishment of an escrow account for the proceeds of certain lands, the treatment of certain payments and grants, and the consolidation of existing corporations and for other purposes."

The bill was ordered reported to the full Committee on October 2 by the Subcommittee on Indian Affairs. We understand that the Committee will consider the bill early in December.

The Department of Agriculture has major concerns about certain provisions of the Subcommittee Print which affect the responsibilities of this Department. These include (1) the definition of "proceeds" from public easements as contained in section 2(e); (2) the special treatment provided in section 10 relating to Sealaska's entitlement

under 14(h)(8) of the Settlement Act; (3) the settlement of Cook Inlet Regional Corporation's land selection difficulties as proposed in section 12; and (4) the conveyance of subsurface estate in the proposed Aniakchack Caldera National Monument to Koniag Regional Corporation. Our recommendations on each of these provisions are presented in the enclosed supplemental statement. If H.R. 6644 is amended as recommended in our statement, this Department would have no objection to the enactment of the bill.

This Department is seriously concerned with the repeated efforts to amend the Settlement Act. In our view, the Alaska Native Claims Settlement Act represents a fair and equitable settlement of the interests of the Alaska Natives, the State of Alaska and the nation at large. The Act resulted from long and careful deliberation by several Congresses and represents a careful balance and compromise of the various interests. We are concerned that amendments to the Settlement Act will ultimately result in major alterations of the settlement and lead to the reopening of issues that the Congress and the Executive Branch clearly thought were settled by passage of the Act. This Department would prefer that amendments to the Act be limited to resolving conflicts that are inherent in the Act and to resolving procedural matters which have developed in trying to implement the Act.

The Office of Management and Budget advises that the presentation of this report is consistent with the Administration's objectives.

Sincerely,

ROBERT W. LONG,
Assistant Secretary.

SUPPLEMENTAL STATEMENT OF THE U.S. DEPARTMENT OF AGRICULTURE ON SUBCOMMITTEE PRINT OF H.R. 6644

Section 2(c)—Proceeds From Public Easements

Section 2(c) provides that proceeds from public easements reserved pursuant to section 17(b)(3) of the Settlement Act shall be paid to the grantee of such conveyance in accordance with such grantee's proportionate share. The intent of the provision is not clear, and we are concerned about how the term "proceeds" might be construed.

Two types of easements are being reserved in support of the National Forest System program in Alaska. The first type includes those necessary to maintain the existing rights of third parties. Proceeds from these easements will pass to the Natives under the provisions of section 14(g) of the Settlement Act. No easements are being reserved by the Forest Service solely for the future use of third parties.

The second type of easement includes those necessary to provide access to the National Forests and to otherwise support management of National Forest programs. We do not participate any proceeds from these public easements.

We would strongly object to section 2(c) if the intent is to interpret the term "proceeds" to include receipts from sale or use of National Forest resources which require use of a reserved easement—for example, a timber sale contract which required hauling logs over a road on a reserved easement—or if the "proceeds" were to include road maintenance or cost-recovery charges levied by the Forest Service on

a non-Federal user. We do not believe that such receipts or cost-recovery charges should be considered as proceeds.

Therefore, if the Committee determines that Natives should receive certain proceeds from public easements reserved pursuant to section 17(b)(3), we recommend that section 2(c) be amended as follows:

"(c) Any and all rental and use fees paid by commercial users of public easements reserved pursuant to section 17(b)(3) of the Settlement Act shall be paid to the grantee of such conveyance in accordance with such grantee's proportionate share, to be computed in the same manner as fractional interests are computed pursuant to section 14(g) of the Settlement Act. As used in this subsection, the term rental and use fee shall not include road maintenance or other cost-recovery charges levied to a non-Federal user."

This proposed amendment has been developed by this Department and the Department of the Interior. It accommodates our concerns about what constitutes a proceed derived from these easements. Under this provision, the receipts from sale or use of National Forest resources which required use of a reserved easement would clearly not fall within the meaning of rental and use fees. In addition, charges levied to commercial users by the Forest Service to recover direct costs would also not be subject to distribution under section 2(c).

Section 10—Sealaska Amendment

Section 10 of the Subcommittee Print would amend section 16(b) of the Settlement Act to permit Sealaska Regional Corporation to select the lands to which it is entitled under section 14(h)(8) from lands withdrawn for but not conveyed to Village Corporations within the Region. However, Sealaska could not select lands on Admiralty Island and, without the consent of the Governor of Alaska, could not select lands in the Saxman and Yakutat withdrawal areas.

The Department of Agriculture strongly recommends that section 10 not be incorporated into H.R. 6644, as amended by the Subcommittee.

The Alaska Native Claims Settlement Act (ANCSA) was the result of long and careful deliberation, negotiation, and compromise by the Congress, the Executive Branch, the State of Alaska, and the Alaska Natives. The resulting settlement represented a carefully constructed balance which was deemed equitable to the interests of the American people, the Alaska Natives, and the State of Alaska. To amend the Act now with regard to land selection would, in our view, undo the balance and equity achieved by ANCSA and lead to the reopening of issues which Congress and the Executive Branch clearly thought were settled by enactment of the Alaska Native Claims Settlement Act.

An important aspect of the balance achieved by ANCSA was the special treatment of land selection by the natives of southeast Alaska. In 1968 the Court of Claims entered judgment in behalf of the Tlingit and Haida Indians of southeast Alaska in the amount of some $7.5 millions. Most of this amount represented compensation for the Federal taking of land which became the Tongass National Forest. In formulating ANCSA, the Congress recognized this cash settlement. It also recognized that the value of lands in southeast Alaska with its water access and commercial timber is greater than that of other regions in Alaska and that there was a need to prevent conflict between

the purposes of the Act and the purposes for which the National Forests were established. Accordingly, under ANCSA, the southeast native village corporations were limited to selections of 23,040 acres each, and the Southeast Regional Corporation (Sealaska) was excluded from land selection under section 12. The only land which Congress entitled Sealaska to select was a share of the balance of the two million acres withdrawn under section 14(h). By specifically authorizing conveyances from the National Forests for section 14(h)(1), (2)(3), and (5), it is clear that Congress did not intend for 14(h)(8) conveyances to be made from National Forest lands.

Section 10 of the Subcommittee Print would alter the balance of the Act by awarding Sealaska a greater settlement than Congress intended and by giving Sealaska selection rights on lands for which compensation has already been granted. It would also have a detrimental effect on land selections by the other Regional Corporations and represent an inequity to them. First, by amending section 16, the Sealaska amendment would affect the formula under section 12 which governs the amount of lands that all other Regional Corporations may select and would reduce the amount of lands to which these corporations are entitled. The effect would be to prevent the conveyance of the full 40 million acres provided for in the Act. Secondly, Sealaska Region would receive 14(h)(8) lands of far greater surface value than would the other Regional Corporations. Moreover, if section 10 is enacted, it is probable that the Chugach and Koniag Regions would desire similar treatment for their entitlements under 14(h)(8). These Regions are claiming difficulty in selecting the full amount of lands to which they are entitled under section 12(c) because of the limitation on selections from the National Forests and the National Wildlife Refuge System.

In our view, the proposal contained in section 10 of H.R. 6644 represents the kind of conflict between National Forest purposes and the interests of the Alaska Natives that ANCSA sought to eliminate. Section 10 would likely result in an additional 200–250,000 acres being withdrawn from the Tongass National Forest. These lands contain the full range of resource values for which the National Forest was established. The public values include significant wildlife habitat, recreation use areas, access to major fishing areas, and lands suited to timber harvest. We believe the benefits of multiple resource management can best be achieved by retaining these lands as part of the National Forest System.

In summary, we urge the Committee not to incorporate section 10 in H.R. 6644. There are sufficient D-1 lands within southeastern Alaska to provide for Sealaska Corporation's selection as originally contemplated in the Alaska Natives Claims Settlement Act. We believe that selections from these lands would be comparable to lands available to other regional corporations under section 14(h)(8) of the Act.

Section 12—Cook Inlet Regional Corporation

Section 12 of the Subcommittee Print would amend section 12 of the Settlement Act by adding a new subsection (f) to permit exchange of Federal lands withdrawn under section 17(d) for State patented lands and interests therein. These State lands would then be conveyed to Cook Inlet Regional Corporation along with two townships of National Forest lands. In addition, subsection (3) would permit the Cook

Inlet Region to select lands withdrawn for village selection in other regions.

We oppose section 12. The proposed conveyance of two townships of National Forest land represents precisely the kind of conflict between the purposes of the Settlement Act and the purposes of National Forests that Congress sought to resolve in passing the Settlement Act.

We understand from the Department of the Interior that a mutually acceptable settlement has not yet been reached with Cook Inlet Regional Corporation. For this reason, we recommend that congressional action on this issue be deferred.

Section 15—Conveyance to Koniag Regional Corporation

Section 15 of the Subcommittee Print would convey to Koniag Regional Corporation the subsurface estate under certain lands proposed for establishment as the Aniakchak Caldera National Monument.

While the lands and interests involved in this conveyance are not under the jurisdiction of this Department, we are opposed to the inclusion of this provision in H.R. 6644.

The Settlement Act provides for dual withdrawals of the d-2 lands and for these dual withdrawls to be considered at the time the Congress considers the d-2 proposals for new national forests, parks, refuges, and wild and scenic rivers. We are unaware of any urgency which would necessitate resolving the selection of Koniag Regional Corporation's land selection problems now. In our view, the better course is to consider all aspects of each d-2 proposal together as the Settlement Act provides. Accordingly, we recommend that section 15 not be enacted.

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Joint Meeting of the House and Senate Natural Resources Committees
Jury Assembly Room, State Court Building, Anchorage, Alaska
Saturday, February 7, 1976

(tape one)

: ...people somehow feel that the Congress of the United States has the authority to liberalize what State administrators can do with the authority that they have been given by the State Legislature. This is absolutely false; Congress cannot release State administrators from the responsiblities of the State Constitution and State Statutes. Only the Legislature of the State of Alaska can do this. So whatever Congress says or whatever you may think Congress may have said with respect to the supposed amendment of the Statehood Act, it's irrelevant. What the administration can do, must be done within the framework of the laws which you have passed or which you will pass. So in no way is this trade related to what Congress has said or has not said with respect to the section of the recently passed Omnibus Act. I would like at this point, since I believe that we will have a substantial amount of testimony today from interested members of the public concerning one aspect of the trade, that is the trade involving lands in the Beluga area, to have Mr. Ross Shaff explain in a short summary form some of the points that were raised in the document which has been put out as an open file report by the Division of Geological-Geophysical Survey, namely this yellow report which a number of you have and I see Senator Rader reading now, entitled "Economic and Geologic Studies of the Beluga/Capps Area and Geologic Resource Occurances in the other areas of the Proposed Cook Inlet Land Trade." We feel that this is appropriate at the outset to define a few of the terms and parameters which you may hear mentioned today so that everyone here will be able to understand when a term's used that, hopefully, everybody is using it in the same method. And so I would like at this time to ask Ross to summarize that report.

Sen. Poland: As each of the people speak, we would appreciate if they would give their names and position in the department (IA)

Shaff: Senator Poland and members of the committee. My name is Ross Shaff and I'm the State Biologist and as such, I'm Director of the Division of Geological/Geophysical Surveys of the Department of Natural Resources. Traditionally, our State survey as well as the United States geological surveys, our main function has been to provide information in part about land areas if possible and to be involved in policy decisions. Since the Cook Inlet State land trade became an issue, our survey has provided as much information to various interested parties as possible including the Division of Lands and the Commissioner of Natural Resources. We thought it might be helpful to the Legislature if we could compile as much of this information that has been submitted to other people into one report and this is a preliminary open file report which I believe was distributed by the Commissioner a few weeks ago. The authors of this report are present here today to answer any of the details of the technical questions which you may have. Actually our interest in the Cook Inlet Basin began some time ago and there are other detailed publications of our survey, Open File Report #51 dealing with coal resources in Alaska in general. And Open File Report #74 dealing with Cook Inlet coals in particular. This Open File Report then is essentially a summary of information that we have access to and would like to share with the Legislature.

(IA - inaudible)

The report is divided into three parts; part one speaks specifically to the reserves that we estimate are present within the land trade area in the Beluga region. This report was done by Don McGee who is here today and he'll answer questions as to how we arrived at these figures and so forth. His best estimate of known coal reserves in the Beluga land trade area only 570 million short tons. The hypothetical reserves within the land trade area, amounts to 2 billion short tons. This does not include the 1.6 billion known short tons in the mental health lands. These figures are only for the land trade area within the Beluga region. I think it is very important that we come to a clear definition as to what we mean by known reserves and hypothetical. We have seen in newspaper articles very large figures without a qualifying adjective to indicate whether they're talking about known coals or hypothetical. There is an established terminology, I say established - generally accepted terminology for known and hypothetical which are the two terms that we've used mainly in our report and I think the easiest way to say this is that in the case of known recoals, we're 95% sure that those coals are there. We are not saying necessarily that the coals are economic, that they are recoverable; we are saying we know those coals exist in a given region. When we're talking about hypothetical coals, we are in the realm of speculation and we are really saying that in our professional opinion the geological setting is adequate for the formation of coals and that it is probable that those coals exists and we must make a few assumptions as to the thicknesses of coals based on very scattered data and arrive at some very broad figures. Actually, this hypothetical estimate will be different depending upon the operator or the investigator.

Part two of our report speaks to the loss of royalty income to the State of Alaska if the Beluga coals are transferred to CIR. The study that we did shows two main things; one is that the income to the State of Alaska in terms of royalty on coals is really a function of the rate at which those coals are produced. Inasmuch as the royalty is based upon ten cents per ton, the royalty may be moved upward or downward, but based on a tonnage factor. Pat Doby is the author of this report; he is here today to answer specific questions on this and to give you some summary numbers of this part of the report - our total estimated accumulative to the year 2025 would range between 84 million dollars and 650.9 million dollars. If we discount those figures at 8% to present day values, we would be talking between 6.5 million and 67 million. If we discount them at 10%, we would be talking between 3.7 million and 42 million as income to the State. This does not include rental fees or lease fees. Now the royalty would be the largest amount of money of income to the State. This is what this study points out.

The third section of our report deals with the other trade areas and here we are more or less in the realm of speculation because of the uncertainty of the actual land that will be traded. I would point out that the third section simply indicates the kinds of resources that we know to exist in the trade areas. Where possible, we give an estimate of known coal reserves or known metallic deposits and so forth. In the other trade areas and in the Beluga-Capps trade area, our estimate is that we are dealing with a total of 895 million known short tons of coal. So that in terms of the total trade, the State would be trading away a total of 895 short tons of known coal. In terms of hypothetical coal, and again the figure of hypothetical reserves are very speculative, we are probably talking about 50 billion tons would be our estimate. We have the figure before us that we would like to have clarified at some point and that is the range of figure for recoverable coal in the trade area which ranges between 4 and 17 billion tons. This was in a newspaper article. We have no idea how this particular figure was arrived at. Actually, when we look at the 50 billion total, hypothetical, we are

not really talking about 50 billion because our estimates for the hypothetical reserves, for example in the Kenai Peninsula includes the entire Kenai Peninsula and we are not including specific townships (IA) in consideration. Just for your information, in comparison to the total hypothetical coals in the State reported by McGee and Oakland File at 51, we're probably talking about 4 trillion short tons of coals.

Sen. Poland: Thank you very much. Are there further questions from (IA)

: Mr. Shaff, could we determine our known likely oil and gas reserves in this area?

Shaff: The report speaks to that very briefly. In the Beluga, as you know, there is a potential for oil and gas inasmuch as we're dealing with a similar geological formation. We do not have any direct evidence that oil and gas exists. We can speak of the potential.

Sen. Poland: Senator (IA)

: I wasn't quite clear on what you mentioned about the mental health land; are they involved in this to any degree?

Shaff: We have... mental health lands are not involved in the trade. I did mention the mental health lands because we do have a known reserve in the mental health lands at 1.6 billion tons. That is not included in the figure that I gave you for the trade area in the Beluga region.

Smith: Just to summarize that, within the Beluga area, 75% of the known coal reserves remain with the State, approximately 25% of the known coal reserves would be available if selected by Cook Inlet.

Sen. Poland: (IA)

: Seventy-five per cent would remain with the State?

Smith: Would remain with the State, has nothing to do with the trade.

: You said that percentage of the known coal reserves. What percentage of what you're calling the hypothetical coal reserves would remain with the State and, of the reserves in that area, what percentage becomes(IA)?

Shaff: I don't have a hypothetical figure for the coal reserves in the mental health lands before me so I can't quickly calculate the percentage. We could do that when we put up - we have a map. . .

: Do you think it's about that same proportion or is it different?

Shaff: Well, he was speaking about the known.

: I know, but do you think that the hypothetical coal reserves, subject to check of your materials that it would even out backwards - same order of magnitude or proportion to (IA) or substantially different?

Shaff: I think staff is working that ou right now.

Doby: It's not an answer exactly but we can work that figure out for you. But if we take the hypothetical coal reserves in the entire Cook Inlet region, the State possesses a very large percentage of reserves. The estimates of reserves underneath the Cook Inlet which may be developed some day through liquification are extremely large - up in the trillions of tons. I think Mr. McGee can bear that out. The potential for the entire State is in excess of 5 trillion and again we could bear that out. The State has a huge coal potential in the hypothetical range and there is a lot of coal in the Cook Inlet region that is not involved in the trade. To answer your question, I think the percentage would probably be (IA).

Sen. Poland: Would you please identify yourself?

Doby: My name is Patrick Doby. I work for this gentleman here.

Smith: Pat is one of the authors of the report in front of you.

: Are you determining that because there no doubt will be people here who will testify that what you're calling hypothetical coal reserves may be a little more than hypothetical so any representations you make as to what proportion you think is in or out of the land that is subject to the trade would be important to both what you're calling hypothetical reserves as it would be for what you're calling proven or known.

Sen. Poland: (IA) Representative Cotten.

Rep. Cotten: Mr. Smith, although probably "threat" wasn't the best word to use in - anytime I hear the subject (IA) about what the Federal Government might do. But it seems that the possiblity of another Frizzel type offer occurring, that the State does nothing. The evidence of that, it seems to me, to be a - threat maybe is a little bit too large a term - but perhaps you might address your attendant to, in the rest of the testimony, go over what the status of such lands like the Swanson oil fields, the Campbell tract, Point Campbell out there - what would be the status of those if the trade doesn't go through?

Smith: First of all, I would like to say that when I alluded before to the term "threat", I was tying it more to the wording that occurred in that particular article which said that no other lands would be transferred to the State, as though they were refusing to transfer our statehood entitlement because of this and that's what I was trying to say - that that is not the case at all. With respect to the point you raise now, taking heed of your term that maybe we shouldn't use the word threat but being in the realm of that ballpark, the U.S. Congress has said that they will seek an equitable solution to the Cook Inlet problem. They are aware of what the Secretary offered to Cook Inlet at one point, the quote 'Frizzel' offer. And this of course is what, last year, approximately a year ago, the Cook Inlet region approached Congress to implement, was that offer. And if Congress does - if the trade does not go through and Congress does decide that they are going to legislate a settlement, it's hard to say - our Congressional delegation which asked the State initially to become involved, is aware, I think, that Congress is serious when they say that. I think our delegation would indicate that they do feel that the settlement might not be at all in the State's best

interest. With respect to the particular aspect that you're talking about now, the Swanson River oil revenues, the park lands out here in the Campbell airstrip area, it's very hard to say. I do feel that the State would put up a tremendous hue and cry concerning the oil revenues in the Swanson River. The question about whether or not the delegations would feel that or whether or not they could hold that line in Congress, that's a discretionary judgement. I should say a subjective judgement on various peoples parts. We do know that it was offered. We do know, since the State gets 90% of those revenues anyway, they're not of particular interest or significance to the Secretary because he doesn't get them one way or the other. With respect to the land within the Anchorage Bowl, Section 22-L of the Claims Act says that in implementing the Claims Act the Sectretary would not be able to allow any native corporation to get title to federal land within two miles of a first class city. Now, in the agreement in front of you, Congress has waived that right. So even though we're talking about what happens if the agreement doesn't go through, Congress has already indicated that it does not feel that that protection, you might say, for municipality is sacrosanct. They have already waived it once. Of the three areas about a third of the Campbell tract is outside that two mile limit as it existed in 1971 anyway. And I believe Pt. Campbell is completely out and I'm pretty sure that the approximately 255 acres of Pt. Woronzof is also out, certainly it is right on the edge. Now again, how Congress will review those, I don't know. They might decide to protect one and allow the other to be part of an agreement. It's very hard to say. I think it is fair to say that Congress did indicate that if the State decided not to participate in the agreement, which they fully realize is within the States' rights, the State has come into this on their own, that Congress has asked that those lands not be transferred, to leave its options open. And again, that could be read on the face for face value for what you think they meant by indicating that. But it is their land over which they do have control.

: (IA) I understood you to say at the previous meeting that the Frizzel offer wasn't withdrawn?

Smith: The Frizzel offer was withdrawn before Cook Inlet did select it, that's true. I just indicate again, it was an offer that we feel on its face was valid at the time.

Sen. Poland: (IA)

: What is the status then right now of, for instance the Campbell tract? You say that they waived that provision for this agreement but if this agreement doesn't go through, then the Campbell tract really wouldn't be eligible for selection by CIRC.

Smith: If the agreement did not go through, it is my assumption that the Secretary will still be bound by Section 22-L. If Congress decides to legislate some settlement, they can do what they want with that restraint. They can allow it to stand or get rid of it. The Secretary would not be able to go around that constraint however. Although as I say, approximately 1/3 of Campbell airstrip, the Campbell tract itself is outside that two mile limit.

Sen. Poland: Senator Orsini.

Sen. Orsini: Part of the study on the economic end of the study involved the use of probabilities of certain lawsuits either taking place or not taking place. Who estimated the probabilities?

Smith: It's a result of a number of discussions. Again, that is something which you could call subjective on any one individual's part. But when you bat these around, you come out with a figure. I guess I was the person who ultimately nailed down the final probability on it.

Sen. Orsini: (IA) consultation with a number of attorneys who will be familiar with the cases, discuss the matter and in your opinion that the different viewpoints that these were the average or most likely (IA)?

Smith: More or less. For instance, with respect to one as an example, the Cook Inlet appeal in court - some counsel has said that the appeal might probably have a little bit less than fifty. Other people who - not necessarily directly counseled here but who have probably a darn good background of what happened in the State and would be knowledgeable - say that it might be as high as, and might even be 70% for that specific aspect of the analysis. So it's hard to say. I think people could generally say that the appeal Cook Inlet has lodged with the Court of Appeals is certainly stronger than their initial District Court appeal. Most people think that it's got a stronger possiblity than they had on the first go around.

Sen. Poland: (IA)

Smith: Excuse me Madam Chairman, can I - I would like to add to that. As an early part of this negotiation, something which has fallen out now because the time has changed, the State was offering half a township to each of the villages of Salmantof and Alexander Creek if they dropped their appeals to become villages. A lot of people including a number of attorneys felt that the State was out of their mind because there was no way those two villages were going to win their suit. Those two are now villages. They have selected tremendous amounts of land including State mental health land around Salamator. Alexander Creek has selected land that under the terms of this agreement would come to the State, so it came right out of the State part of what we would have gotten from the agreement. And yet a good deal of counsel and expertise said that they would not do it. They are now villages. So my point is, to emphasize that it's a subjective situation.

: You were giving us some figures on royalty, that figured on present royalty?

Shaff: The numbers that I gave you were based upon two assumptions; that they would continue with the present royalty until the year 1991 at 10¢ per ton. After that the study includes three possible royalties anticipating that the State perhaps -I wish to change its royalty policy and a fixed dollar amount per ton, you would fix dollar per (IA) a ton of coal. We used the package three royalties, 1/3 royalty or 33 and a third percent or 1/8 (IA) 1991 to the year 2025 would change the scenario to a royalty fixed on the cost of coal as best we could estimate the cost of coal in 1991. And we used the Bureau of Mines figures for that estimate.

: (IA)

Shaff: Our agreements were, or our discussions and work in the survey started sometime in October. I can't be more specific now on the date than October, 1975.

Sen. Poland: (IA)

: What is this ten cents per ton based on (IA) picked out of the air or based on some rational process or how is it arrived at?

Schaff: The ten cents per ton is the present State policy for the royalty to be received per ton of coal. But where that ten cents came from, I can't answer that question.

: Since time immemorial or is that something more recent or . . .(IA)

Smith: The ten cents per ton figure is a figure which is put into the initial prospecting permit when an applicant asks for a right to go out and explore on State lands. In the cases of most of the major leases in the Beluga area, the value is ten cents a ton. These leases were taken - or this prospecting permits were taken to lease in approximately 1971 in the case of the land trade area; 1972 in the case of other State lands in that area. Which means the prospecting permits themselves were issued say about 1969. At that time, ten cents a ton was a figure that was arrived at within the leasing section of the Division of Lands as an appropriate return to the State. Right now, current prospecting permits, as an example, carry a value of thirty cents per ton. In both cases these are fixed values and one of the results of the report in front of you, one of the recommendations is that setting a fixed value for a period of twenty years is the case, is probably not the best idea particularly in a time of inflation as we're faced with now. I think, as a result of this we can look to a change in this in the future. Because as was queried a moment ago concerning what happens to our economic analysis after 1991 - we hypothesize in the analysis that we would go to a percentage royalty basis, a percent of the actual coal and that would be a much better return, probably, to the State as a royalty on simply because as the price of coals goes up the State would rise with it. We would take a bit more of the risk but we would share in those profits. I might add with respect to that assumption in here, that assumption increases tremendously with some dubious legal status the totals that the State would be trading away in this case. In other words, we have no reason to believe that the leasee would actually allow the State to change to this more favorable status at that time. They have a lease which says that certain cents per ton and they would probably argue very strongly to keep it. So another reason why this assumption is a very liberal assumption for coming up with totals of the value of that royalty to the State, in this case ....

: (IA) leases of this whole area is involved in (IA) What do you think is implied (IA)

Smith: Under the terms of the lease, as they stand now, they can be renegotiated, or not renegotiated. They will be reappraised after a period of twenty years which would be 1991 in the leases involved here. The lease itself would extend as long as the person pays their lease fees and essentially maintains within the framework of requirements.

: What happens to the Cook Inlet Regional Corporation when they take over this land, they take over the leases too (IA) then they will get to use (IA) ten cents a ton or what happens (IA)?

Smith: If the trade was consumated, Cook Inlet would receive title to the surface and subsurface resources in the area and that would include administration of the lease. They would be bound by the terms and conditions of the lease. If any coals were mined before 1991, Cook Inlet would receive the ten cents a ton. If any coal was mined after that, that would be on the basis of whatever the reappraised value would be under the reappraisal clause.

: (IA) exact definition to the State (IA)

Smith: That's true. As Senator Rodey observed on Wednesday, in a way the State is giving away what we now look at as kind of some poor bargaining in the past as far as fixed royalty rate perhaps or just giving this on to Cook Inlet and they are going to have to worry about the problems that they would have there. We're still going to have the same problems on the three quarters that we retain now.

: Has your department projected the earliest possible development date for the reserves that exist there (IA)

Shaff: Yes. (IA) report we've made some assumptions as to when production might begin and make preparations. (IA) If I can find (IA) I could tell you. We took three scenarios for that (IA) and the most optimistic would be that in 1981 production would start in the trade area of the Beluga (IA) at one million tons per year. And the most pessimistic would be that no production would start until 1990 at half a million short tons per year. The rates of production were geared to accumulative production at the end of fifty years of a hundred and fifty million tons in the pessimistic case and 891 million accumulative production in the optimistic case presuming a production of 21 million tons per year - shows that twentyone million tons per year as it was cited in a report by Stanford Research Institute. However, production rate of 21 million tons per year is almost three times the annual production rate of the largest coal producer in the United States. The (IA) Mine produces about 7.4 million tons. So our optimistic rate of production is about three times as optimistic (IA) is not.

: What sort of date would be necessary for full production by 1981?

Shaff: I'm sorry, I don't understand the question?

: If we're going to have coal produced by 1981, then we're going to have to start at...

Shaff: I would assume that they would start with their planning now.

: Now?

Shaff: Now.

: Next week? Last week?

Shaff: Right. Our optimistic is that it would take approximately 6 years, or 5

years to get coal producers...

Smith: I would like to add...

Shaff: These are somewhat arbitrary figures, difficult to (IA) available, etc.

Smith: I would like to add something to that briefly. Two points; one, in the optimistic case we also assume that there are approximately 400 million more tons of coal over there than we know today. We are not quite doubling, but I think it's an increase from 570 to 891 of over 400. It must be about 80% more over there than we actually know under that scenerio. Again, another temendous assumption, which is just that, very optimistic. But, I would like to indicate that this also, the whole report, makes the assumption that the Capps Glacier area, the know coal reserves that would be transferred under the proposal, would be developed first. I think that most people would agree that that will not be the case. The 3/4ths of the known resources that are within the mental health lands that would stay with the State, will most probably be developed first. It's interesting that the same company that holds the Capps lease also holds a major portion of the coal reserves that will remain on State land and one of their early and most prominant concerns in talking with the State on this, was that they might have to develop the Capps Glacier before the other, the Chuitna field, that would stay with the State, because they are looking at developing the Chuitna fields first and, therefore, every year that development of the Capps Glacier is put off, the present, lost value to the State under the terms of the trade, of course, decreases.

: I understand half (IA) coal (IA) the hypothetical problems that are coming up. You're estimating up to 80% of how much coal is there (IA) 25 million to 42 million. The spread is fantastic (IA).

Smith: Well, that's one of the risks they're taking. They personally are not, I don't believe, looking at that as the crown jewels in the trade at all.

: We have a right to look with suspicion when you're talking about those (IA) involved in this decision here. (IA) hard money figures that are given to us about what values are represented (IA) in this trade. We simply don't know.

Smith: That's a very good theme, I think, that's running through it and what we're trying to present in here are the best ideas on the various scenarios by State experts. Cook Inlet, I believe, values the lands even lower than the State does from the standpoint of the mineral rights.

: One more thing, has anybody from our State people (IA) federal people (IA) looked at this with a better eye than the State has?

Smith: There are other people that have looked at it. I'm sure that they will be before you before the end of your meeting here. As to whether they've looked at it with better eyes than the State, I would withhold that. I would be biased on that question. I think, I can say that nobody has looked specifically at this area particularly recently in trying to analyze the aspects of the trade. But what you have are, as I say from the standpoint of the State's experts, is the best information we can come up with.

: (IA) optimistic assumption for production in 1981. What did you assume to be the use of the coal there (IA) typical or what? (IA)

: (IA) for export not power generation (IA)

: Japanese export or what?

: Probably.

: (IA)

: You have to make an assumption that there's a market for it (IA) what the assumption was.

Doby: (IA) the assumptions actually made were a pessimistic assumption that the coal would not be exported - that was the pessimistic. The first thing that was assumed, that the real pessimistic is zero production, nothing ever happens, which is possible. A catastrophe could arise that we would have no production. We said, or I said, that the pessimistic assusmption, and this has been realized by some other people at least in your minds, that the coal would be produced for internal use primarily for electric generation and this type of thing and that's the low end.

Then taking the optimistic, this is the second optimistic, I have a previous calculation that's about half of this much and I talked to a number of people and the technique was to call mines and a number of people and say, 'how quick can you actually come to production?' I keep asking people. And then, 'what do you think the market will be?' and that's a big question. The assumption here is that somebody can absorb 21 million tons a year of our coal which is a tremendous amount of coal. And that's why it's extremely optimistic - if it has to be exported, most likely Japan and the western United States, and that's assuming the western United States isn't going to go ahead and do what they're trying to do and that's produce a lot of coal. So, I think I mentioned in the report that it's very optimistic - it's just about as far out as we can possibly get and the reason for that is that this is probably the best discounted income we could expect to get for the State. I used a 1/6 royalty. I just negotiated what I thought was the best deal we could possibly make and produce a heck of a lot of coal for the whole world as fast as I could do it and that's about what it is. You come down from that a heck of a lot but those numbers, from the people I talked to and it's just plain reason or as much money as they could see (IA)

(IA)

Doby: Thank you.

Sen. Poland: Senator (IA)

: It's my understanding the legislation pending before Congress embodied the transfer of Swanson River fields as well as Anchorage (IA) lands to Cook Inlet (IA). Is that correct?

Smith: If you're talking about the legislation that was proposed to talk about last spring, in other words the old Frizzel offer which was there - that did

include all the things, whether it's pending before Congress, I would say that that's back burner now since we've all come up with a proposal as something that we all felt we could live with. I don't know if it is in Congress, exactly where it is. I would assume it would still be in sub-committee, probably House sub-committee.

: Both houses by Congressman Meeds and Senator Jackson respectively. And sponsored in...

: Certainly in the House by Congressman Meeds. I cannot say for sure in the Senate who it was. Cook Inlet Region might be able to help you with that question.

: It's also my understanding that gentlemen in the various houses have recourse to input (IA) legislature and have they (IA) to push the legislation through and some reasonable settlement of (IA) might be (IA)

Smith: I think that's a pretty set conclusion. Congressman Meeds felt he wanted a 13th regional corporation over some considerable opposition from both the natives of Alaska and others and he got a 13th regional corporation. Senator Jackson, I don't feel I have to say about his power in the Senate.

: (IA) capable that the State must do something to negotiate a settlement that will prevent the transfer of the Swanson River fields which brings (IA) revenue to the State, (IA) Anchorage (IA) prevent (IA) I don't know whether it raised the proper word uses (IA) Point out it seems that they have a considerable hold on much of our natural resources and something has to be done even discounting the possibility of (IA)

Smith: Again I, that's what I meant when I alluded at the outset to the alternatives we're faced with and I concur again. It's hard to say that Congress, in fact, if someone were to ask me, I would say that Congress would probably not pass the Frizzel offer as such because it would impact the State and I'm sure that the Congressional delegation would be out there running interference but they can just throw so many blocks and my point is, I think we could safely say that there would definitely be some aspects of any settlement which would not be in the State's interests. You mentioned a couple of them that the State might protect but they can't protect all of them is what I'm saying.

(IA)

Sen. Poland: Senator (IA)

: Most of what you've talked about so far in regard to the Cook Inlet lands that are proposed to be traded under this three-way trade to the Cook Inlet Regional Corporation, what about the other lands that the State would be getting in exchange - what do you have to say about those? I know that they're not only mentioned in the material (IA) reports but if you're going to give a capsule summary of one part of it, you should give a capsule summary of the other part.

Shaff: I can't. I would have to walk through the report and respond in terms of each area we're talking about and give you a (IA) areas of the State.

: We're talking in terms of value in dollars for various purposes - what kind of comments in regard to the (IA) you might (IA)

Shaff: Very few because in those areas we're talking mainly about resource potential rather than resource value. And in the case of the Beluga fields we have known coals and in certain other areas, for instance the Matanusak and so forth, some known coals, so we can speak a little more specifically. In terms of some of the other areas of the State will receive, we're in geological no-man's land essentially (IA) in regard to certain types (IA) problems (IA) proper subject. So that, there is not too much I can say about those lands.

Smith: I think one of the reasons on that is that, with respect to the Beluga area, we're talking about coal which is found usually in, if it's of importance at all, in some type of thick beds in one area and because of the nature of our leasing requirements, before they are leased, we have a good handle on what's there. Secondly, the State does get royalty from coal. If we were able, in some way, to have the prescience to know exactly what minerals were on the land the State was getting, we could put a dollar value on their value. The State gets nothing. We have no royalty, we have no severance tax on those minerals right now so even if we knew what was there, as far as the value, it's kind of unfair because we do not have a royalty or a severance on those minerals where we do on the situation with coal.

Sen. Poland: (IA)

Smith: Well, this was all we had in the way of prepared text because of the request by the Committee that we limit our initial presentation to within half an hour subject from then on afterwards to questioning. We have other members available here pursuant to your request as Mr. Shaff indicated, members of the Geological survey staff and if you have any particular questions to ask, I would feel that as you feel it appropriate to ask, we could then refer the questions to the proper individuals.

: (IA) economics value tables, as I recall (IA) two rates of discount (IA)

Smith: That's correct

: Which of those (IA)?

Smith: I believe it's the 8%.

(IA)

: This is the December 6th memorandum?

Smith: Yes, my December 6th memorandum is based upon the 8% summary that's in this book which, of course, is less favorable to the State than the 10% discount and we ran into discount rates because some people discount higher than others. Industry generally discounts at a higher rate. We felt that 8% was more realistic with respect to what the State returns as an investment on. I should say gets as interest on its investments within the general fund.

(IA)

Smith: I'm not sure but it was certainly an in-the-ball-park figure that we felt more comfortable with than the 10%.

(IA)

Doby: It was the 8%, Mike and I have discussed this. In most cases we kept trying to favor value of the resource and this is a standard economic cash flow calculation and we kept trying to push the numbers - or I did - to look at the most optimistic return to the State because when you're looking at the 8 - so we used the 8% as being a pretty optimistic cash flow and 10% is probably a little bit high with respect to the way we discount or sometimes, with respect, with a State project I would like to discount at 10% - I would like to think we could do that well and I wish we could.

: What about (IA)?

Doby: Well, I'm not an economist and I couldn't tell you that. Probably more than 10%, I'm sure.

(IA)

Doby: I wouldn't know. Sorry, But I'll find out for you.

(IA)

Smith: I would like to interject here that that figure of 8%, as far as a discount rate, it's in the ball park but I think that we may have missed the point if we try to put it against what we're getting within our investment funds where the State has had its general fund monies, and one of the reasons being that a state operates not like a giant corporation. We, whatever we got for this, if somebody was paying us money based upon these, for those lands, or whatever, the State would probably not be putting it into an investment trust fund. The State has other requirements and duties to its citizens of railroads, schools, hospitals, what have you, so that is a return; the capacity of doing something now with that money, not necessarily just whipping it into a bank. But you have to refer that probably to Commissioner Warwick to get an idea what - I should say Commissioner Gallagher - to find out what we're receiving from investments.

(IA)

Rep. Brown: Thank you Madam Chairman. I was not able to attend the Senate Resources Committee hearing again in Juneau on some of this (IA) having (IA) issues (IA) I think still are (IA) but I'm a little perplexed about what exactly really is the Administration's position. Is the Administration's position right now that they are strongly urging us to approve or bless or whatever this particular land trade or are they saying that the Administration wishes not to take a position and wants the Legislature to decide one way or the other?

Smith: I think we can fairly safely say the Administration is definitely behind this bill. We have been in the process of negotiations for going on, or in excess

of, nine months right now and until about three days ago, as Senator Poland mentioned earlier, we had indicated that the Governor was going to consummate the trade and bind the State to the agreement on March 12, and let the Legislature indicate an action definitely one way or the other. That does not at all diminish the Administration's intent on fulfilling the terms of the agreement which we inititaled with the other two parties involved and the only reason we will not do it is if the Legislature votes it down since the only other alternative would be that they would confirm the trade.

Rep. Brown: You know, you really do change the ball game an awful lot when on Tuesday one week you're saying you're going to do what you're going to do unless the Legislature says no and now you're saying you're not going to do what you're going to do unless the Legislature says yes. There's alot of difference between sitting in the Legislature and doing absolutely nothing and passing a bill or a resolution and it seems to me, at least based upon press releases from the Governor's office and reports in the press the last two or three days, there has been a change in position and that now the Governor wants to be almost for something and if any decision is made, it has to be made by the Legislature and if there's anything wrong with the decision, even though it was all generated by the Administration, the Legislature is given a deadline of about three weeks, it's all the fault of the Legislature in the event there is a mistake.

Smith: No. On the contrary. I don't agree with that, Representative Brown.

Rep. Brown: It sure sounded like what the press release said.

Smith: Well, I'm sorry. Press releases aren't always the best method of getting information and I believe that that was the interpretation by the Associated Press which removes it once again from the horse's mouth. I think what is the main point which the Governor has said is that because of the on-going tracking we have done on this, on a legal basis, and because of the amount of effort involved and because of the very large significance of the trade, that we don't want to be in a position of having a trade occur after the Legislature has spent a large amount of time looking at the trade even should they decide under the first scenario not to do anything. We do not want to consummate it with it still what might be a legal could as to whether or not the authority existed. This, as you realize, is one of the reasons why the Governor indicated in the first place that he wished the Legislature to take a look at it indicating that we feel the authority is there.

Rep. Brown: In the first place, my understanding is that the Administration didn't intend the Legislature to take a look at it at all. As a matter of fact, in Legislative Council we were constantly in the situation that we thought we were going to be presented with fait accompli that had already been completely finished before we even began the Legislative session and it seems to me that now, at least the part that was supposed to be direct quotes from the Governor as opposed to a press release or a re-recording by John Greely, who is a relatively competent reporter, is that even in the direct quotes, the Governor was saying that 'I want you to give me the authority that my legal advisors have told me I don't need.'

Smith: To try to sum it up without getting into a political argument, I think the Governor has said, as he did three days ago, that we wish the Legislature to look

at the land trade and the values that it holds for the State, weigh that, look at the alternatives, and to vote up or down concerning it. And that if the Legislature votes up on it, that we are going to feel much more comfortable in consummating the trade with the other two parties than we would have, had the Legislature looked at it and just done nothing. And that, I think, was the purpose in the change of course.

Sen. Poland: (IA) Representative Brown and Mr. Smith, as you know when the Select Committee went to Juneau there was no indication that the Legislature would have any part of the action and we insisted on it and I was very happy that the Governor took the attitude that if he were in the Legislature, he would feel the same way about it. But he has switched horses in mid-stream here and left us in the position of, we must either take a positive action or fail. The other alternative, if we didn't do anything, it was going to go through so you can see where it does give us cause to take an extra look at this. I notice that, I believe it was Mr. Doby who said that he was figuring exports as a market for this coal. Now I realize that your department probably does not have a bunch of economists on hand to give us all the various types of figures but I can't help but wonder if you have taken into consideration if these were converted or used for other performance of (IA), if there were worries to get it out if we, a figure based on the oil equivalent by conversion, has there been any thought to any of this?

Smith: I'll defer those points to Mr. Doby. I will say that the array of possibilities of course, is quite large. It does not matter, under the terms of the scenarios, really what the use is if the use is there. If somebody's going to slurry it out and take it somewhere, if they're taking out 21 million tons a year, it's irrelevant as to what they're using it for as long as they're taking it out in the quantities and under the time tables shown in the chart here.

Sen. Poland: Well, for the next 20 - or since the 1971 leases, but after that there would certainly be a drastic change, wouldn't there - when they start renegotiating?

Doby: The optimistic scenario is the 21 million tons a year - was taken from the Stanford Research Institute study which assumes that the coals would be run through - they have two different studies, but that some type of electric or slurry process would be used. That high scenario, more or less, that could be in there. The market for that amount of barrel oil equivalent within our next period of time is probably not too good in the State because of our own indigenous oil and gas reserves and this type of thing. By assuming an export, it means that really there is a market for it and most people assume that we're an energy exporting State - that most of our energy is going to be exported. But really the use of coal probably will be barrel oil equivalent to some type of a slurry. A lot of people feel that's the way the coal will go out and we have within your report (IA) that we've handed out, we have the Stanford Research Institute report which discusses this type of conversion (IA)

Sen. Poland: We had requested that Mr. Cleveland Conwell of Fairbanks (IA)

Smith: Mr. Conwell is here if you have any questions for him.

Sen. Poland: I would like to have him, I know he's involved in a coal seminar that was held in Fairbanks this year and since this subject is directly involved in the trade lands, I would like to hear from Mr. Conwell.

Conwell: Can everybody hear me? I certainly will be glad to answer any questions. My name is Cleveland Conwell and I'm a State mining engineer.

Sen. Poland: Mr. Conwell, have you ever been asked to give an appraisal of the land involved in the trade?

Conwell: I was asked twice. Once about the 8th of October when I was with Mr. Smith and he asked me if there were substantial coal reserves in the area (IA) said there were and then again on the 31st of January I was asked to make a very quick appraisal of the (IA) valley appraisal that had been made for the Beluga fields.

Sen. Poland: Did the figures that you came up with agree basically with the figures in the report that has been presented to this Committee?

Conwell: I have some very defininte opinions of the report that was given. As far as mathematics, I'd say yes, I think they're correct. But there are other...

Sen. Poland: As far as reserves, what do you think?

Conwell: Well, I think it's a little bit misleading, yes. The report, to me, if I was reading it without the knowledge that perhaps I have of it, I would interpret the 10 cents per ton royalty as applying to the trade area. Actually we're talking about 10 cents per ton royalty on one specific lease that was granted in 1971 and that is only on 7,000 acres and that specifically says the approximately 550 million tons of proven reserve coal which was drilled and outlined by Amex Plastic Development Company. Of course, they are now working down in the Chalitna area. And, as Mr. Smith has already point out to you, in more recent times the royalty has been raised - I think he mentioned 30 cents a ton on any permits we would be doing and certainly we have the perogative, the Director of the Division of Lands, to increase that royalty.

Sen. Poland: Representative Brown.

Rep. Brown: What range of royalty is, what is the widest range from lowest to highest figure that's common or familiar to those people who know the coal business in the United States. I mean, is 10 cents nominal, is it kind of like a magic figure like that 12 and 1/2 over any royalty overtures over oil or is it low...?

Conwell: It's a low historic figure that was used, say, prior to 1969.

Rep. Brown: What other kinds of figures are used by the public, private landowners outside for royalty...?

Conwell: The state of Montana recently has raised their royalty to, I understand, 33%.

Rep. Brown: 33%?

Conwell: 33%. And that's your range. I mean, you were asking for a range (IA)

Rep. Brown: That's quite a wide range?

Conwell: It's quite a wide range.

Sen. Poland: Representative Beirne.

Rep. Beirne: Mr. Conwell, in your estimation what is the (IA) what time frame?

Conwell: Well, I don't think the time frame is so bad in this. Of course, Amex is working on it and they're spending a great deal of money but I think you have to sort of look at the political climate before development actually proceeds. Be sure who you're dealing with and then even if all those were settled, the time frame of actually getting the equipment on the ground, I don't think we would actually have a large scale mining - and I'm talking about 10 million tons or greater - in less than probably 6 years - I don't think we could do that. And I would say that 6 to 10 year time limit for a major operation is realistic.

Sen. Poland: Representative (IA)

: What would you think that climate was (IA)?

Conwell: Well, prime market today, I think, would be for export. I think the markets are there. Well, I know of two markets in the Pacific Northwest that each supply 4 millior tons per year now. There certainly is Japanese, have been looking for from 2 to 4 million ton a year markets. And certainly if you go to the coal conversion which is the Stanford Research, you're looking at 100 thousand barrels of oil per day and certainly that will be absorbed into the market with no problem.

Sen. Poland: Representative (IA).

: (IA) expiration? (IA)

Sen. Poland: Mr. Hackett, were you included when (IA) report that was prepared (IA)

Hackett: No ma'am.

(IA)

Hackett: Steve Hackett, exploration geophysicist for the Division of (IA) project for geophysical survey.

Sen. Poland: Are you, you're familiar with the figures that have been given here, do you basically agree with them, with the research that you've done in this field?

Hackett: The area, in a recent geophysical survey, indicates that the Beluga Basin area's quite a bit more complex than had been assumed previously. There is substantial evidence that indicates that here is quite a bit of tertiary sediment in the Beluga Basin north of the Casa mountain fault.

Sen. Poland: What does that mean?

Fishburger: Are you trying to tell me that there's a bunch of dirt that you hadn't planned on finding on top or coal that you thought you might take out sometime? You've got more problems than you thought you had?

Hackett: Right. I don't want to get into a technical discussion but kind of a summary is that the gravity and magnetics in the area indicate that there could be a substantial tertiary sediment which encloses the coal and possibly oil and gas resources within the area of discussion, the trade discussion.

Fishburger: I assume then that the natural question to follow that, is that the six year plan for (IA) production is possibly higher?

Hackett: That's completely out of my specialty, of my realm. I couldn't answer that.

Sen. Poland: Representative Brown.

Rep. Brown: Madam Chairman, following up on Mr. Fishburger's question, at least your statement that you've just given us right now, as far as you know, was not taking into account, or doesn't seem to be taking into account in the estimate study we're talking about here...

Hackett: I believe that this report refers specifically to a coal evaluation and it does mention oil and gas potential but the survery, as such, just used known geologic evidence. The areas that I work in are more in direct evidence of structure and basins and mineral accumulation and it's not, it's kind of an ambiguous science is what I'm trying to say and I don't know why it was not considered in the economic evaluation of the Beluga Basin. Other than that, I can't answer your question.

: I'd like to ask a question, if I could, of perhaps Mr. Hackett. Are you saying that the comment you just made in some way affects the known recoverable resources over there - that we know about.?

Hackett: Right. I think that there's quite a bit of evidence to indicate that there is oil and gas potencial in Beluga Basin area that has not been previously considered.

: That wasn't my question. Is what you're talking about affecting the 570 million figure that this report speaks of, of tons of known coals?

Hackett: Yes, it could.

: You mean, it could reduce it?

Hackett: It could make it greater. The basin outline in actual potential or possible thickness for Kenai coal group could be alot more than had previously been recognized.

: I don't seem to be able to get my question across. This is based on known coal. We're not talking about what may be out there; we're talking about what is

there today. Is what you're saying, if we only know that here's so much now, and you're hypothesizing there may be more, it does not mean that what we have put out here today is not correct as far as it goes.

Hackett: Correct...as far as the coal resources.

: Okay. That, I think, was important because that is not what I understood Representative Brown to ask.

Shaff: Could I attempt to clarify a little. I think what we're stumbling over a little bit is a matter of scale. We're talking about the Cook Inlet Basin that has been fairly well defined by aeromatics and gravity studies as well as several wells. Steve's work dealing primarily with aeromatic data and gravity data has recently indicated that the Beluga Basin seems to be of larger magnitude in terms of depth and Steve might want to predict that depth from these studies and this report of his in press and he has reported to the Society of Experimental Geophysicists this past fall. We're really talking about a bigger basin. Now, how does it affect the hypothetical reserves? Don correct me if I say this incorrectly, but hypothetical reserves are based at times on a depth of 2500 feet and at other times on doubling that figure. So, in a sense it does mean in terms of the coals, that here may be more coal in the Beluga Basin simply because the basin's bigger than we thought it was. But in terms of the hypothetical reserves and our estimation, it may not have that much effect. So, it's sort of a yes and no answer but it's really a matter of scale, I think, that we're talking about.

Sen. Poland: Representative Smith.

Rep. Smith: I'm having trouble following this tale. Sometimes we're talking about the Beluga Basin and sometimes the Kenai Basin and (IA) differentiate that from (IA) specifically the area he's talking about. (IA)

Shaff: We came loaded with maps.

(IA)

Hackett: The area in question outlines, first of all, the Beluga Basin is on the west side of Cook Inlet, water bound by the (IA) faults cuts across the west side of Cook Inlet and around by Mt. Susitna here, Mt. Beluga, and Mt. (IA) here and (IA) Basin bound by faults and the black dot here represents (IA) myself with a survey a couple of summers ago and (IA) help outline the basin. The trade lands per se that we were talking about are right here in Beluga Lake and what is indicated from summary survey is that it was previously believed that the basin north, northwest of the Beluga (IA) fault was quite shallow, in other words, less than 2000 feet of tertiary sediment and both gravity and magnetic data indicate that there is a 6th section involved possibly up to 7500 feet of tertiary sediment sitting over (IA) right through here and Lake Beluga and in summary to just indicate the technology previously suspected and there is a lot of various potential, I think, just a larger basin than previously recognized. Does that help answer or clarify in very generalized terms.

: What does (IA) on the map?

Hackett: Kenai (IA) Anchorage is right here Bar Island, (IA) Island, this area right here, Beluga Basin is about 600 square miles, it covers about 600 square miles of the tertiary basin per se.

: Where's (IA) go on that map?

Hackett: It's right here.

: You said that an area (IA) in the middle of that is one of the areas that is the subject of the trade that is proposed, is that right?

Hackett: (IA) trade is sitting in the middle of the basin.

: I'm trying to spin my head back and forth and look here and there and back again.

Hackett: This yellow outline here is outlined on this gravity (IA). Recent production, oil and gas production, is associated right here (IA) bay. Right in here, Cook Inlet Basin is defined by this gravity low right here.

: If (IA) basin is larger than you thought it was, how does that, only a portion of the basin apparently is involved in the proposed trade...to what extent does that change the assumptions that have been used by those who have looked at the trade lands and estimated their value?

: On that question, I think the analysis of the coal subject based on the upper 2000 feet of sediment, in other words, that was considered to be economically feasible to mine. The point being that (IA) there is also oil and gas potential in the area nd also the basin covers a larger area (IA) than previously considered.

: You mean within the trade area, is that right?

: The trade area is still the same (IA) I don't believe I can answer your question.

Smith: Mr. Chairman, I believe that Mr. Doby would like to add a comment.

Doby: Let me put on a couple of different hats. This is my geophysicist hat. I am a geophysicist by trade so I understand a little bit about gravity and then I'll also put on my chief petroleum geologist's hat. But first I'll put the geophysicist hat on. I've got a coal hat sticking out here too so if I get confused, you'll know what's going on. I just talked to Mr. McGee and within the value of the coal in the geographic area of the trade, there's different assumptions, but with the economics we're looking at, we're assuming about 500 feet for strip mining and we're looking at strip mining, really, for economic reasons for this quantity of coal, producing this coal within 500 feet and certainly the deepest is 2000. Now, the gravity can tell you the thickness of a particular section of rock and we're talking about sedimentary rock of tertiary age, which is young, and what we find in the coal in here. Now, Mr. McGee had a report of '74 which calculated that coal underneath the water of Cook Inlet, we had 15 or 20,000 feet of the same kind of rock and we had trillions of tons of coal in it. But with respect to this particular trade, the actual thickness, whatever gravity, the variation of thickness

in terms of the trade doesn't really have a bearing because we're only mining the upper, economically feasible part of it - that's the coal. To answer your question, except for the edges, (IA) 50 foot on the edge, we don't know, but I mean, except for the edges as the basin increases, it shouldn't have much bearing if we add another 5000 foot because the calculations then, within this period of time, 50 years, we can only mine so much coal at a strip mining rate as fast as we can get it out if the market will take it. Now, the oil and gas, I have nothing - anybody can take their best guess at the value of the oil and gas there. It's been there a long time - there's quite a bit of information (IA) from whatever else, I can't answer that. Generally, I can say is, again as a chief petroleum geologist, the relative value of that land - it hasn't been exactly very high in the past. I mean, there could be oil any where out there but we simply haven't seen much activity, much discoveries, much luck and data doesn't indicate that it's what we would call high potential petroleum land and has not been rated as such by ourselves.

(IA)

: Question for Mr. (IA)

Sen. Poland: Representative Rhode.

Rep. Rhode: In other words, if you've got, let's say the coal ceiling was 10,000 feet deep, it doesn't mean anything, say, below 2500 anyway (IA) we mine it.

Doby: Pretty much in the future. The problem is we're looking at here, primarily at this time, strip mining, scraping it off to get to it, because we've got to have high volume production to equate the transportation costs and the costs of mining it here and with that type of production, of course, the deeper you get, the higher your costs and frankly, most people I've, at least according to Mr. McGee, you're looking at 500 feet for the economic projections we have. We're looking at economically mining the shallower coals now. Sometime far off in the future it's possible that deeper coals might become economic someday but it's always tough up here to think about, of that potential (IA)

Rep. Rhode: One more question: coming back to this ten cents a ton oil lease, then, the determination of the ten cents could easily be based on the, say, the feasibility of getting the coal out, would it not be that near salt water were easy to mine, the royalty would be, say, ten cents or way up in, say, the coal country or something (IA) it really wouldn't be worth anything, would it?

Doby: That's true. Actually, the paragraph in the report, the whole principle of assigning a constant monetary value for a royalty, like 10 cents, just is not done anymore because of inflation. We're living in an inflationary world and I discount that 10 cents, that dime, at the end of ten years is worth a penny or two and the rate royalty, a percentage royalty like we have on oil and gas of 12 1/2%, but this you take a little bit of money and you pay a little bit of money and that's...the ten cents a ton is just, I said it in there, is just not very darn good, it just stinks, to be quite frank. And I hope that we don't use that type of approach anymore.

Sen. Poland: Representative (IA)

: Who did you say you work for again?

Hackett: I work for the Geological/Geophysical Survey.

: That's the State?

Hackett: Right. It's part of Natural Resources.

: Do you agree with Mr. Doby's assessment of the possible future production of oil and gas in the specified area there?

Hackett (IA) previously, these statements right here other than all the wells, all the deep wells that are around the (IA) Lake faults or (IA) in that area so the only deep control we have in Cook Inlet Basin is out of Beluga, the basin per se. These new gravity stations here, (IA) this helps to find the gravity field in the area and very strong (IA) this area has been overlooked by companies and by the State as possible petroleum (IA).

: So you disagree then?

Hackett: Right. I think that the reason why there hasn't been any interest here before, we had no data to, or (IA) of the area other than the activity down where Paul Gaston was.

: You just did this, these gravity studies and so forth last summer?

Hackett: Summer before last. The project (IA). So, I don't disagree with Pat's conclusions there, other than this evidence indicated that there is additional possibilities that have never been recognized before (IA)

: You completed your analysis much more recently than the time that you did the survey(IA)

Hackett: No, this analysis has been in preliminary form but, to my knowledge, it was in our division since last year. I gave a talk in Denver in October summarizing the study (IA) exploration (IA)

: Mr. Hackett, do you have anyway of determining the potential for oil and gas?

Hackett: The only way that this type of data can be expanded (IA) drilling and the same thing with any other speculations, coal (IA), the only way that we can really get a grip on any analysis of the Beluga land trade is to actually get in there and (IA) what's there. A lot of the tools that we use for surface geology and a lot of geophysical/physical properties to project what's there, the only reality we could (IA) from drilling.

: Thank you very much.

Sen. Poland: Excuse me, Representative Smith had another question.

Rep. Smith: For Mike Smith. Mike, do you know offhand if any of this land is under oil and gas lease at present?

Smith: I'd have to defer that. I believe my mineral leasing officer, Detro Denton, is here at the moment. I believe that most of the area of interest is, as was just indicated, much more coastally oriented in the areas where we have the two known existing fields, the Nicholia and the Beluga gas field, but I'll have to check.

Sen. Poland: (IA) anyway, would you come forward please? Representative Smith had a question here?

Rep. Smith: Is this area under oil and gas lease now?

(IA)

Denton: I'm Detro Denton with the State Division of Lands. I'm not sure. I believe that a part of it is. I expect some mixed status. We've had a lot of leases terminate in that area recently. Expiring or terminating. I haven't looked at it with that in mind so I can't be sure.

Sen. Poland: Mr. Denton. were you involved in the firming up of the, I realize you're not involved in the policies, but were you brought into the discussions on this land trade?

Denton: In a very limited way.

Sen. Poland: Were you in from the beginning?

Denton: The first contact I had with, was at about the time the proposal was made public, a few weeks before that.

Sen. Poland: Do you see any problem in the difference of management between the State or private ownership?

Denton: You mean as far as the development of the resource goes?

Sen. Poland: Yes sir.

Denton: Yes. It's always easier and better if you have the land under one management.

Sen. Poland: And part of these leases would be under the State, those that are not involved in the land trade, and the other part would be under a private corporation with the set-up that we have right now if this trade were consummated.

Denton: Yes ma'am.

Sen. Poland: Are there any further questions? Representative Beirne?

Rep. Beirne: You mentioned that several of the leases were terminated. Is there - part of the termination is because they realize that (IA) region potential is not there and would feel at this time, this is a second question, we know more or less about potential leases than at the time those leases were (IA)?

Denton: Now we're speaking of the oil and gas leases terminating?

Rep. Beirne: Right.

Denton: I would say we know more but leases terminate under a variety of circumstances; one is that they abandon them, another is that their time runs out and they haven't got everything put together to spend the money to explore them, and it's a common practice in the areas that are being explored in the State now, this is something that happens all the time, is re-leased and re-leased and...

Rep. Beirne: (IA) they are (IA) to re-lease them, that's correct? (IA)

Denton: Yes ma'am.

Sen. Poland: Representative Rhode?

Rep. Rhode: That was my question, thank you.

Sen. Poland: Thank you, Mr. Denton. I would also like to hear from Mr. McGee who was, as I understand, was one of the authors of the book.

McGee: My name is Don McGee. I'm a member of the State Division of Geological/Geophysical Survey. Mr. Ross is my boss here.

Sen. Poland: You were, as I understand it, Mr. McGee, also working on the report that was prepared and presented to the Legislators with regards to the reserve?

McGee: Yes ma'am.

Sen. Poland: Were you involved in the negotiating, not the policy, but again, the preparation for the negotiations of the land trade?

McGee: Yes.

Sen. Poland: Early on or...?

McGee: In October, just before the announcement to the public in the newspapers.

Sen. Poland: And you, I take it, agree with the figures that are in the book - do you feel that they are a complete picture, that we're in a position to make profit judgements is this one of the things (IA)?

McGee: Yes. I think the figures are probably as accurate as we can make them (IA). Again, I want to emphasize that when we talk about known coals, we're talking about coal that has a high probability of being there. Hypothetical coals may have a plus or minus value maybe as much as 50 or even 75% - the best guess we have based on our present knowledge.

Sen. Poland: Representative Smith.

Rep. Smith: I have a problem with this scale still, Don. When we talk about the known reserve, I assume they're in the area that's pretty well defined here. Does that same hold true for hypothetical reserves, that when you find a hypothetical value, do you look at a whole valley or...?

McGee: No sir. The hypothetical value, as we mentioned here, are those values

within that area.

Rep Smith: Roughly within the area outlined by yellow here or...?

McGee: Yes, within the area we're talking about, the land trade area. If we go outside the area, we get much larger hypothetical reserves, much more area's involved.

Sen. Poland: Are there any further questions? Mr. Smith?

Smith: I have a question, I might, or a couple, I might ask Mr. McGee while he's here to bring out for the Committee, particularly as alluded to earlier by Mr. Shaff on some of the reports we've seen floating around in the papers concerning the various amounts of coal to be found and Mr. McGee, I know, is aware of some of these and I would like to ask, without getting into specifics, but do you feel that, your estimates as published in this report here, that, say, some of the amounts of coal and tonnages that have been quoted in the newpapers, do you feel that these have reasonable bases on which to use estimates following the work that you've done, this type of work in that area?

McGee: This is terminology. In the paper, the tonnages mentioned were mentioned as recoverable coal; I don't know what the word recoverable means. To me, it means what I would call known coals, coals we can extract within a reasonable economic picture. Hypothetical coals may, at some time in the future, become known coals for reason of drilling 17 (IA) and etc. But at the present time, they're not what I consider recoverable coal. So we're talking about two different things; we're talking about the coal (IA) and the coal that may be there.

Sen. Poland: And you feel these figures, there may be a combination of the two?

McGee: (IA)

Sen. Poland: Recoverable. Do you feel those were put forth and that they're a combination of (IA)?

McGee: I think they're too high to be called recoverable coal. They may become a hypothetical and a known coal (IA) combination (IA)

Sen. Poland: Representative Brown.

Rep. Brown: Thank you, Madam Chairman. Smith, when did you first become involved in the subject at hand?

Smith: The subject being?

Rep. Brown: The entire subject, the subject of the land trade. When were you first directly involved in discussions relating to it and what land would be included or not included?

Smith: I would say just about a year ago, almost to today.

Rep. Brown: And how would other people within your division answer that question. Mr. McGee has just said that he became involved shortly before the matter got into

public press in October and at least another member of that same division said the same thing. How many members of your division were involved in these discussions?

Smith: Well, you mean involved in the actual discussions with the three parties?

Rep. Brown: Or participating, whether they were participating as advisors of the represented the State or whatever.

Smith: Oh, at one time or another, I would say there were several people involved. As to when, most intense, I say intense when we really began under the initial congressional deadline of approximately mid to late May, there were people involved, discussed at various lengths, not in any great detail, but it would include the staff, with (IA) backgrounds. I had talked to Mr. Denton on one or two occasions, again, not in great detail. Whatever other resources we have, our land people, our planning department.

Rep. Brown: It just seems very strange to me, we've already had two people with quite a lot of expertise who work for the State say that they did not become involved in these matters until a matter of just a couple of weeks before it got to the public press. Now, the way I interpret that, you know, I can only interpret this is that a policy decision was made first and the defense of the policy decision was put together afterwards including getting all the technical support. At least, that's certainly what it sounds like.

Smith: I couldn't agree with you more, Mr. Brown. If you have taken the time to read some of the information that I believe was passed on to you by the Governor, you would have seen that the final decision to go on this was not made until sometime after the 6th of December and...

Rep. Brown: That certainly was not the way we heard it on Legislative council.

Smith: Well, I don't know how you heard it in Legislative council. Since the State did not enter into any agreements until after the 6th of December, I don't see how you could feel... I would like to explore that, there seems to be some problem here. I'd be very happy if somebody would show me where the Administration committed itself with respect to the land trade until early December in Washington.

Sen. Poland: I think you're playing with semantics. It was published on about (IA) 29th of September and announced a public hearing on the 3rd of October and when we went down there, Representative Smith and Senator Rader...

: That was November, wasn't it?

Sen. Poland: Early part of November and...

Smith: May I ask...

(tape three)

Smith: ...when the decision was made. Now, I think it's very obvious that the proposal which we have right here today that was made public on the 1st of October,

is very, very different from the agreement that was finally negotiated and agreed to in Washington D.C. I will stand up and say that the Legislative Committee, Select Committee, of which you are a member, was told at that time that some very significant changes had been made pursuant to the public announcement and public presentation in early October, which, of course, was a specific reason why the Administration went public, was to get the information and the ideas of the public. The memo transmittal said, dated December 6, lays out in two or three pages what that public input was and precisely how the agreement document was changed. Among other things, the six townships involved in the Beluga area which contains the other 75% of the known coal reserves were dropped. Now, if Mr. Brown wishes to say that that was not a change, that the Administration had made up its mind before that, I would just let the Alaskan public look at those two things to make the decision.

Rep. Brown: Madam Chairman, I didn't intend to make Mr. Smith think that I was cross examining him. I was asking questions and just drawing conclusions from what seemed like the answer to questions had been. I still think, you know, I think I might well end up when push comes to shove, voting for the bill that now the Governor says we need that we didn't need a few weeks ago. But I still just have the feeling that there's an awful lot about the whole way in which this was done, is something I just don't like and I don't say - see that was but that's just a suspicion. Maybe this isn't a forum for suspicions but, you know, if he thinks I'm throwing spears at him, I'm not.

Sen. Poland: I believe that's taken care of all the people you had here without (IA).
Excuse me, Representative Rhode, did you have a further question?

Rep. Rhode: No. I thought maybe we were - I was going to ask unanimous consent for a ten minute stretch.

Break.

Sen. Poland: Professor Wolf. We've turned the table so we hope that you folks will be able to hear better. We were unable to get a microphone.

Wolf: My name is Ernest Wolf. I am employed by the University of Alaska (IA) Research Laboratory. I hope that the Committee is not disappointed in my testimony because how much you like (IA) more information (IA) or which you have already gotten or might get better from these other people. I'm no expert on this coal trade or land trade here. I know I've been asked because I've thought a lot about the land situation in Alaska and the resource situation in Alaska and in the country and in the world. (IA) pipeline and the (IA) coal industry will also have to come here (IA) Washington to further make a deal (IA). A very short statement which I have (IA) to the Chairman and he asked me to just read this. It is a very (IA) broad statement and it touches on one aspect of the proposed trade:

"The land along with its resources in Alaska is one of the most important heritages that all people of the State have for individual benefit, as well as for providing a strong economy for the State. The land trade, as proposed, and as I understand the situation, would take State land that has mineral potential and place it in Native Corporation ownership. In return, the land that the State will

obtain has value for surface products (IA) which are less valuable than the wealth represented by the coal potential. The mineral land, if held by the State, can be leased to private industry. As provided for by the Settlement Act, a portion of the State's income from this land will go to each of the native corporations. The remaining portion of the mineral royalty receipts will go to the State for the benefit of all people of Alaska. Thus, in my opinion, the State should retain as much of its mineral resources as possible and make such resources available to the private sector for exploration and mining - which in the final analysis, will be for the good of all people of the State and the Nation."

My own statement of this and I might add a little for a statement that the mineral (IA) surface land (IA) cooked up by (IA) laboratory (IA) Fairbanks (IA) quadrangel which has been pretty well mined out (IA). Now if you want to adopt these (IA) northern (IA) cost the public an equivalent amount (IA) agriculture and 3/4 of you who think that's (IA) 47 years. (IA) at any rate (IA) 50 years anyway. Now I don't have a prepared statement. I've got down a number of observations that I've made about this (IA) which we've been hearing about today. First, I think that with all the insights the economists (IA) the economy studies that have been made. (IA) I think we're (IA) in fact, we've been talking about 8% and 10% (IA) present value (IA) gold return (IA) land economy (IA). We've got these other things which (IA) land (IA). Too many labels to really get down to business (IA) ten cents a ton and 33 and 1/3%. We've got inflation, all kinds of things and if you look ahead (IA) present value (IA) things is practically zero. Certainly (IA) resources will be zero if we consider that (IA) subsidy but before the land (IA) in 1956 the resources of Alaska had no dice. You couldn't get across (IA) file for (IA), And I submit (IA) again. (IA) but before (IA) in 1966, of Alaska (IA) again, the surface value (IA) drops very rapidly. The problem is (IA) back off (IA) land and we don't have to be economists or engineers (IA). But the basis of all production and the basis of all (IA). We're talking about land (IA) land (IA) of gold or recreation or climbing or whatever you want to do. The other thing I think we should say is that, as an old mining friend of mine used to say, everything we have comes out of the ground or off the ground. (IA) We've got to have land in order to keep up our agriculture potential and that's all that's standing between us and disaster right now. (IA) our farmers (IA). In order to have mining, you're going to have to have energy. (IA) of our civilization and our cultural attainment. And we're running (IA) consequences (IA) people throughout the State, right off the bat (IA). I don't care what the present value of coal is. It does supply (IA) people of the State and the nation and maybe the world (IA) pass through to the State. Now (IA) from the State's standpoint (IA) mining geologists and mineral economy (IA) one of the things that we don't seem to think about is that (IA) study reduces by an equal amount the potential (IA) and the result of this in thi. context is (IA) State (IA) known coal reserves decreases by that amount the potential for future discoveries on State land (IA) mining engineers on State land than we've got right now. Another incidence of high (IA) of discovery and development of mineral deposits (IA) takes longer to find than to develop. (IA) critical factor (IA) requires not related to discovery (IA) raise production (IA) rate of production and the result is (IA) state land and reserves. (IA) down the road somewhere (IA) We've got a few hundred pounds of (IA) here. I believe the price, I think we could say (IA) royalty would be the only loss to the State. (IA) Matanuska field (IA) we're going to have to have (IA) probably that first (IA) the corporation (IA) native lands (IA). We've got to realize that we are (IA) and we've got to take care of those needs first and then we can take care of the recreational needs and the environmental needs and the spiritual needs and so

on (IA) got a contract, they had a contract with the Federal Government (IA) several times (IA) Federal Government (IA) contract (IA). Thank you.

Sen. Poland: Are there any questions for Mr. Wolf? Representative Brown.

Rep. Brown: (IA)

Sen. Poland: Representative Rhode.

Rep. Rhode: Dr. Wolf, you mentioned in Dr. Breistline's statement there's, he felt that private industry was being asked to develop these resources particularly coal (IA). It was my understanding that if this land trade goes through and the Beluga coal fields wind up with the native corporation, they are considered private corporations and (IA) private industry was an efficient way to be developed.

Wolf: I think what Dr.Breistline meant there was that either way it was going to be developed by private industry (IA) incorporated (IA) private industry (IA) developed (IA)

Sen. Poland: Representative Brown.

Rep. Brown: Thank you Madam Chairman. Mr. Rhode said, you know, at least it seemed at the beginning of our statement that you're implying that if the land trade goes through, that the State would then lose the benefit of ever developing the resource at all. Of course, Representative Rhode questioned your answer, points out that's not really the case. I'm sure that, you know, and that there are economically feasible lands to develop in these areas and they're going to be developed whether somebody has a lease from the state or somebody has a lease from a private corporation or a native corporation or any corporation at all. So I would disagree with those implications at the beginning of the statement. That's all I have to say.

Sen. Poland: Representative Anderson.

Rep. Anderson: You say you work for the University of Alaska?

Wolf: Yes.

Rep. Anderson: And is this the University of Alaska's position of this?

Wolf: (IA) to that. I was asked to attend this hearing . I got a letter from Senator Poland. I think that I can say that much of what I've said might reflect (IA)

: I don't see why they should be involved anyway.

(IA)

Sen. Poland: (IA) Thank you for testifying Professor Wolf. We have one gentleman here who has to catch an airplane and he has asked me if he can testify at this time and I'll ask those that are having to wait to bear with us. Mr. Bill Waugeman.

Waugeman: My name is Bill Waugeman. Can you hear? I'm president of the Alaska Miners Association. I've been a coal miner in Alaska for 25 years. I'm one of the last of the breed. I think I know a little about it, at least I should. I have tried to analyze the situation as carefully as I can from various and sundry viewpoints and I, for one, and the Alaska Miners Association's position on this is that this trade (IA) regard to the coal land itself. Actually (IA) it's over the mental health lands. As far as I'm concerned, that should go too. What the people in Anchorage don't realize, I'm sure, some of these days, and it's not very far off, the Federal Government's going to come up with a fuel policy. When they come up with that fuel policy, it's not going to be good for the oil producers in the Anchorage area. It may not even be very good for the home owners as far as their heating facility is concerned in their homes. We have been using a high quality fuel in our boilers in this area ever since gas was struck at (IA) inlet. We've been using gas in our homes, too. Now this is a high quality fuel that should never be used in a boiler and my personal opinion is, and it's the opinion of many other people in the United States, that it shouldn't be used in the home. We have billions of tons of coal in the Beluga field as well as in the Nenana field and the othe coal fields around here. And this is the kind of fuel that we should be using foı boilers. So, it appears to me that one of these days that fuel office in Washington D.C. is going to finally come to the conclusion that they're going to have to write a policy and that policy regardless of the public (IA) something like this. Any place that has coal available will utilize that for their own heating and their (IA) and any other place that they can utilize that fuel. And oil and gas is going to be reserved for a better and higher use. Now, as far as the Alaska Miners Association is concerned, there are some other areas in this area with regard to hard rock minerals that I'm not going to touch on today. I'm just going to talk about coal. When you analyze that Beluga coal field, and I've prospected in there for about a week 25 years ago, 24 years ago. I didn't think too much of the field because it's too far away from transportation and too far away from the market. Our Administration, our State Administration, with it's no (IA) policy has turned off practically all of the investors, especially the mineral investors, in Alaska and if anything is going to be developed in the way of coal or minerals in Alaska, it's going to have to be done by local people. We had our oil for sale and the outfit that was interested in it, decided against it. I know one of the contributing factors was the fact that they didn't like this political climbing of the ladder. We need cheap power. It's a cold country and we need cheap heat. We should have utilized our coal resources. Now, frankly, it is the policy of the Miners Association to get as much of this land into private hands as possible. Although I thought the Native Land Claims Act, of 40 million acres, I can now see where I made a mistake. Unless we get more land into private hands in Alaska we're going to be a poor people. The only thing that makes wealth is natural resources. About the only natural resource we can develop in this country is the coal resources which we'll utilize ourselves and our precious metals. Why do I say the native corporation should have it? Since the State has turned off the biggest part of the potential dollars that would come in and develop our State, the only poeple that are going to have enough money to do this is going to be the native corporations, so if anybody (IA) these park lands (IA) is fuel, it looks to me like it's going to be the Cook Inlet Region, and I think the people in the Anchorage area should be encouraging, and I, for one, think it's a good idea. Thank you.

Sen. Poland: Thank you, Mr. Waugeman. Any questions? Representative Beirne.

Rep. Beirne: Mr. Waugeman, when you're talking about cheap energy, if the reason you believe that here in Alaska that coal would be any cheaper than hydroelectric power, you could put (IA) or out in some of the remote areas that (IA)

Waugeman: I'm glad you asked that question because that's one of the things I'm going to touch on. We put a few figures together on the Devils Canyon Dam deal, and we estimated that we could build a power plant (IA) developing the same amount of energy for just the interest cost on that project, basically the interest that we (IA). So the question is, yes; not only yes, but definitely yes, much cheaper. That construction cost has gotten pretty high.

Rep. Beirne: Madam Chairman, could we have the (IA)?

Sen. Poland: If Mr. Waugeman has the ...

(IA)

Waugeman: (IA) background material? I don't have it with me, but I can work it up for you very simply.

Sen. Poland: If you could send that to us in Juneau...

Waugeman: Sure.

Sen. Poland: Wednesday we're going to be having another hearing on this trade and we'd certainly welcome it.

Waugeman: (IA) done by a consulting engineering firm (IA) by a couple of our engineers.

Rep. Beirne: (IA)

Sen. Poland: Representative Osterback.

Rep. Osterback: Madam Chairman. You said it won't be too long before we'll get the bill from Washington D.C. saying that we can't burn fuel, gas in our homes?

Waugeman: I predict this to be true, yes.

Rep. Osterback: How many cubic feet (IA) home (IA) gas (IA) or whatever you're using?

Waugeman: Well, we're exporting that in the form of a product. We're manufacturing that. We're getting the benefit of the manufacturing profit on that and the utilization of our own manpower.

Rep. Osterback: But you're trying to tell us that we will still ship it over to Japan but we'll be outlawed to use it in our own homes. Nobody's going to give it to us, we'll have to buy it. But we're going to burn coal and let them burn gas.

Waugeman: Well, I don't know what (IA) contract already been let on (IA) this

sort of thing. All I'm saying is that gas is too good to be used for heating purposes. When you have a requirement for this high quality element for the purposes of (IA). There's darn few substitutes for gas, for petro-chemical (IA) and if we have a substitute (IA) substitute (IA) that's coal. Now what is wrong with building a power plant that can furnish you with electricity to heat with?

Rep. Osterback: That's not the question, the answer to the question I asked. We're going to outlaw ourselves through Washington that we can't burn gas but we're still going to ship it to Japan and what are they going to do? It's too good for us to use, but it's fine for the foreign countries?

Waugeman: Well, Japan uses it for heat because they use it for petro-chemical use?

Rep. Osterback: That's the question I asked you.

Waugeman: I don't know. I'm just saying, all I'm predicting is what I think the Federal Government is going to do with regard to a fuel policy for the United States. After all, we don't have 15 (IA) of gas return (IA)

Rep. Osterback: Thank you.

Sen. Poland: Representative Huntington?

Rep. Huntington: I have to kind of disagree with you on your use of coal potential on the basis that environmentalists seem to be pretty successful in blocking all uses of any kind of energy that has a puff of smoke to it.

Waugeman: Well, actually, when you take the analysis of the coal in the Beluga field and the Nenana field and well, those two main fields which are both accessible somewhat to the rail belt (IA) The sulfer in coal, in the coal, is low enough that they will meet the standards very easily. So the initial standards, to be exact, are no problem.

Rep. Huntington: Thank you.

Sen. Poland: Representative Brown.

Rep. Brown: Thank you Madam Chairman. Mr. Waugeman, you indicated that you thought that the resource more likely to be developed was (IA) a good portion we're talking about (IA) regional corporation (IA)

Waugeman: Well, I've - the State, I hope, will never see (IA) they would turn it over to somebody else.

Rep. Brown: I realize that, but I'm saying in that you (IA) way you introduce yourself (IA) you apparently feel that it's more likely to be developed, I'm just asking...

Waugeman: Yes, it's much better (IA) Cook Inlet. What I'm, what I really meant to say was I can see a great possiblitity of the Cook Inlet Region going into (IA) Now if you're going to build a power plant (IA) and put in full (IA) the only way you can go with that outfit is to have them own their own coal mine. We can't be dependent on somebody else for the coal. So (IA)

Rep. Brown: I notice that electric rates in Fairbanks is (IA) recently (IA) oil company that did not own coal resources.

Waugeman: Well, that is not the problem in that town. (IA) increase, that surcharge on fuel is for oil, not coal (IA)

Rep. Brown: I was, if you like playing games there a little bit, but at any rate I have, after showing all the disputes (IA) the Administration from earlier questions, I'd like to at least point out one thing to you. You were talking about the discouraged attitude of the people and miners and that (IA) in developing an industry (IA) requirements of the State and the attitudes of the Administration. I hope you did know that I did, at least on one issue (IA) the Administration did withdraw the sale relating (IA) to the mineral (IA) act.

Waugeman: Reluctantly.

(IA)

Waugeman: I like to be nice, too.

Rep. Brown: That's all I have to say.

Sen. Poland: Thank you Mr. Waugeman. Now a gentleman who's been most patient, the president of the Cook Inlet Native Corporation, Mr. Roy Huhndorf, and his attorney, Monroe Price.

Huhndorf: Thank you. Chairman Poland, Chairman Anderson and members of the Committee. My name is Roy Huhndorf and I am the President of the Cook Inlet Region, Inc. I had planned to give more than a blanket talk today but knowing that you're pressed for time, I shortened my presentation. The Cook Inlet Region Corporation consists of more than 6000 native shareholders.

Sen. Poland: Mr. Huhndorf, in all fairness to you, we think that we're going to be able to get a building for an additional four hours tomorrow and I hate to see you cut your testimony unless you feel that you can do so without harming your presentation.

Huhndorf: I will be happy to answer all questions that you may want to ask and perhaps continue with my presentation tomorrow?

Sen. Poland: You go ahead and take all the time you want.

Huhndorf: The Cook Inlet Region Corporation consists of more than 6000 native shareholders, most of whom are residents of the State of Alaska. I welcome the opportunity to appear before you to discuss the document entitled "Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area."

I come here as part of a long journey, a journey to secure for the people of Cook Inlet Region their land entitlement under the Alaska Native Claims Settlement Act.

The land that Cook Inlet obtained under the Alaska Native Claims Settlement Act is its birthright. We must protect that birthright. If we failed to protect that birthright, through inside selection of lands, the historical claims of our people might forever be lost or slowly reduced to nothing. The Region would be taxed out of existence shortly after 1991. There would not be a viable corporation.

In 1972, after the Act was passed, the Secretary withdrew what was mainly

mountain tops and glaciers for the Region. The State had already patented most of the low-lying land in the Region. Virtually all of the remaining low-lying land was committed to the State by the Secretary of the Interior in September, 1972 when Alaska vs. Morton was settled. This was done without consultation with the Region even though our interests were substantially affected.

The State had taken the land that the Federal government should have withdrawn for Cook Inlet Region under the Act.

This was the situation faced by our shareholders for over two years. In 1974, Senator Jackson and Congressman Meeds promised legislative relief for Cook Inlet Region. It appeared that a just solution could be worked out. On the event of such a solution, as it became clear that there was Federal support for our cause, Cook Inlet Region was urged by the State to change its legislative strategy so that the interests of the State's citizens would be better harmonized with the interests of Cook Inlet's shareholders. The Borough urged the Region to change its legislative goals and remove the Campbell Airstrip, Point Woronzof and other lands from consideration in the draft legislation then before Congress. In effect, the Region was urged by all sides not to look selfishly at its claims for a just settlement of its entitlement under the Alaska Native Claims Settlement Act. The Region was urged to work out with all the competing interests what would be a rational and thoughtful approach in which public needs could be melded with private needs.

This was one of the most difficult periods in the Corporation's history. We were being asked to abandon our past course of action and set out on an entirely new approach, one where we could be asked, where we would be asked to put the claims of the Region in the context of the general public interest.

Let me recount some of the hurdles that this new approach placed in our way: We were being asked to abandon claims to Point Campbell, Campbell Airstrip, and Point Woronzof in light of the Borough's interests. We were asked to abandon claims to the Swanson oil fields so that the present income of the State of Alaska could be maintained. We were asked by environmental groups to abandon claims that would affect the recreational interests, not only of Alaskans, but of the American public. We were asked to abandon claims that would adversely affect wildlife habitats or that would impair the quality of water. We were asked to abandon claims to lands, even though they were withdrawn for the Region, because they were located near potential capitol sites.

The Region agreed to work for a thoughtful general approach that would demonstrate that the interests of the native corporations would be consistent with the interests of the State as a whole. It was critical to show that the native corporations were concerned with orderly growth.

This approach meant more than eight months of constant negotiations. Working out a thoughtul solution has had its physical and mental toll on the voluntary, volunteer members of our Board of Directors who gave unselfishly of their own time.

We bargained in good faith. We followed the rules imposed by the State. I do not think we should be penalized for that. We thought

we had reached a settlement last December. Now, Madam Chairman, we fear that the bargaining rules may be changing after a settlement has been reached.

To be sure, we are not altogether pleased with the outcome of the settlement. We have had to shift more than half our land outside the boundaries of our Region against our will, and only with the deepest tolerance and concern by our sister Regions. The total surface land to which the Region is entitled has been reduced. We have agreed to a greater State and Federal role on some of our lands than would be the case under the Act.

Our village corporations were required to abandon selections in Lake Clark. We surrendered claims to other very valuable and important lands withdrawn for our selection. These are points that are overlooked. It is also overlooked that the native people lived on and occupied all the low-lying land in this area. The Act provides that the land for the native corporations should be similar to village land. Our Region is the one Region where the State had patented almost all such land for itself.

Also overlooked are some of the benefits to the State in the agreement. In the absence of the agreement there are certain hazards for the State. Some of the problems faced by the State in the absence of a negotiated settlement are as follows:

Possible elimination of a steady stream of income to the State from producing federal fields. Possible elimination of the chance to receive immediately the Campbell Airstrip for the Anchorage Borough. The possibility that the Ninth Circuit or the Congress will set aside the 1972 Agreement between the State and the Federal government on the ground that the agreement breached the federal trust responsibility to Cook Inlet Region. Long and painful litigation for every piece of land to which Cook Inlet is entitled. In addition and conversely, the State adds substantially to its Statehood entitlement. It improves its bargaining position in the upcoming Section 17, D-2 negotiations. The agreement also provided the State with its only coastline on the west coast of Cook Inlet, south of Tuxedni Bay. More generally, the agreement seeks to improve land holding patterns from the Talkeetnas to the mouth of the Kvichak.

Madam Chairman, I want to, at this time, also touch on a few issues that have become of particular concern.

The first is the relationship between this agreement and the Statehood Act. I have made it clear to the Chairman that we did not seek an amendment to the Statehood Act nor did we consider such an amendment necessary to carry out the terms of our agreement. The House Judiciary Committee in the House Journal for April 21, 1972, explaining A.S. 38.95.060(b), suggested that subsurface transfers could be accomplished by three way transfers with the Secretary of Interior. We relied on that suggestion and on our interpretation of Section 6 (i) of the Statehood Act. We maintain that there was no need for an Amendment to the Statehood Act for our transfer.

We fought to have the amendment removed from the Cook Inlet provision of the Statute. Second, there is the question whether this transfer is a bad precedent. No Region in Alaska had the concentration of State patented lands that faced Cook Inlet Region. In the first ten years after Statehood when these lands were selected by Alaska, the State was already on notice that the Natives had claims to such land. It is only because more than five million acres of low-lying land had been patented to the State in Cook, in the Cook Inlet Region that the Federal Government and the Congress looked to the State for participation in the solution. It is doubtful that this Legislature, this Legislature will find another instance where this is the case.

Third, there is the question of procedures for such land trades. I assure you that we support legislative efforts to make clearer the procedures to be followed by a Native Corporation seeking to work with the State. We have suffered because of the lack of such procedures. I think Cook Inlet did the best that could be done under the circumstances. We think such procedures should provide guidance on the following issues:

What steps should be taken to consult with local governments where land to be traded is in their vicinity.

At what point should the intention of the State to engage in exchange negotiations be made public and what steps should be taken to notify the public.

What role should the public play, if any, in the exchange negotiations.

At what point should tentative agreements be made public.

What size transfer agreement would be referred to the Legislature.

Under what circumstances, if any, should there be subsurface transfers. And if there can be such transfers, what special procedures should be developed.

How should value determinations be made, particularly for large tracts where there are no present obvious ways of calculating value.

Fourth, there is the question of the Beluga coal lands. These lands were a crucial part of the bargain. The State precluded all known producing oil fields. The Cook Inlet Region concurred - if the Beluga lands were included. We then agreed, after very hard bargaining, to the exclusion of over 75% of the coal-bearing lands because they had Mental Health status.

I believe this was a fair bargain. I also believe that erroneous figures have been employed to inflate the loss to the State and the gain to the Cook Inlet Region. The coal in the Capps Glacier lease is not clearly economic in the short run. It is uncertain that it will be developed before the coal in the Chuitna lease (coal that remains in State ownership). If that is so, the modest figures in the State geology report may, themselves, be too high.

It should also be made clear that the State had already transferred to private parties the right to extract the coal. If the State lost it's coal future, it is not because of this transaction, but because of the leases it entered into some years ago.

Finally, it h s already been made clear from preliminary talks with some of the lessees that Cook Inlet will not be able to profit from the coal unless it contributes, through capital, to the acceleration of development. Our feeling is that we will be a good and helpful partner as lessor; better, we think, for the economy than the State as a partner.

(tape four)

And finally, Madam Chairman, I wish to summarize by saying that this agreement is a difficult and complex one. It represents months of negotiations, of consultations with the Anchorage Borough, with the various interests that are involved in the future of Alaska. It has been praised by Congressman Don Young. The Alaska delegation unanimously supported it.

It passed the Senate and House of Representatives unanimously. I am glad that the agreement is the subject of these discussions under your careful guidance. I am glad that questions as to the Governor's authority will be clarified by the Legislature's action. Many technical questions will arise as you go through your process of deliberation. We are ready to answer those questions. Our very future is at stake. We have done everything that we think could reasonably be expected of us. We are now asking for your support and approval.

Sen. Poland: Thank you, Mr. Huhndorf. Are there questions? Rep. Beirne.

Rep. Beirne: Madam Chairman. Mr. Huhndorf, in your testimony you refer in one place here to where the State (IA) transfer to private parties like (IA). Could you expand on that?

Huhnsdorf: I'm referring to the existing State leasing procedures (IA) so that the prospecting firm that's going to lease (IA) fixed a (IA) royalty (IA). I believe the figures are ten cents a ton.

Rep. Beirne: Does that mean then that if agreement is negotiated and you become the owners of this land (IA) anything lease which now is in effect will remain in effect and you have to honor any negotiations that have taken place prior to this.

Huhnsdorf: We believe that it is necessary (IA) lease.

Rep. Beirne: How large a portion (IA) that lease?

Huhnsdorf: I believe the entire tract in question is under some sort of computer contracting firm (IA) leases or leases themselves. Our geological consultants indicated that (IA) I would have to get the actual map and look at it but it appears the entire area in question would (IA) some preliminary (IA).

Rep. Beirne: Mr. Huhnsdorf, that means that you actually have purchased a land lord's rights, probably negotiations (IA).

Huhnsdorf: That is essentially correct.

Sen. Poland: Representative Brown.

Sen. Brown: I'd like to follow that up. In your statement, you stated that your understanding of, I guess the economic development of coal in that area was the developers or the people who have the leases might not be developing it but for future capital from - in your case, if the swap goes, the Cook Inlet Regional Corporation, if it is your understanding, have you been advised by those you consulted with that this is the case? Did I understand you?

Huhnsdorf: Yes. It is expected us (IA) to inject capital. We want to inject capital and (IA).

Rep. Brown: Well, there's at least some room for speculation that if the land remains State land, there might be some problems developing over coal resources (IA).

Huhnsdorf: I can't speak to that.

Rep. Brown: I notice on page four of your statement you said that the Cook Inlet Region surrendered claims to other very valuable and important land withdrawn for it's selection. Can you give us one or two examples of that?

Huhnsdorf: One example is approximately seven townships in the upper part of the Susitna-Matanuska Valley that was withdrawn for Regional selection (IA).. another area (IA)..

Rep. Brown: What are those townships (IA).

Huhnsdorf: There's basically only low-lying lands that come to us under normal withdrawal the Secretary made to us (IA) The other lands include the West side of the lower inlet about (IA). We desire to obtain those lands, therefore, we agreed to have the Secretary handle this withdrawal for us.

Rep. Brown: Have you already, have you made an irrevocable decision in relinquishing these claims (IA) position (IA) so that you wouldn't be able to go back and regain these claims without a lot of litigation and problems?

Huhnsdorf: The Statutes of the U.S. Congress guarantee that our rights will be re-established if the State (IA).

Rep. Brown: I'm very interested in, in the comments that you had in your statement on page six where you said that the Cook Inlet Region had suffered because of the lack of procedures for dealing with these trades. I'm sure you might have heard under my breath (IA) Osterback, he's suffered too. He's seen some of the pushing and pulling going on between the administration and the Legislature recently in this regard. I find the comments you make on pages six and seven very helpful, but, at least as far as I'm concerned, those address the things that I'm most disturbed about in this land trade. In my view, at least, many factors that - the things addressed in your statement are also some of the political realities regarding (IA) have done and other things that at least make me tentatively support the land trade. But, I am very distressed about some of the procedures that were followed by the administration and the lack of procedures and, at least what looked to me, like a lack of any involvement of the Legislature (IA)...if you were disturbed about something like (IA) administration, they were addressed to the procedures involved and I would not attempt to express an opinion on the substance of the trade itself. I suspect that we might have to, or we should go a lot broader in the areas of those things discussed on pages six and seven so that rather than just involving issues involving likely trades with native corporations, but other matters involving unilateral dis..., you know, prejudicial disposition of State resources by the administration with no Legislative input. That sort of thing could be addressed by (IA) and I thank you very much for your time in that regard.

Huhnsdorf: I would ask, Madam Chairman, that all (IA) Monroe Price our legal consultant in this matter (IA). He has been intimately associated with all of the policy (IA) documents that have been written inviting the trade and if there are questions that you want to ask him after I'm through, I'm sure that he'll be happy to answer them.

Sen. Poland: (IA) I had a question for you, Mr. Huhnsdorf. You know, this

consistent mention of the possible and probable Legislative relief that the U.S. Congress would provide for Cook Inlet in the event that the State didn't take any action here. You probably have an idea of what that might entail. Would you like, perhaps, to describe generally what you could expect in a settlement with someone other than the State?

Huhnsdorf: It would be difficult for me to say what would happen in the event that the Federal Government had to, Congress had to determine (IA) Cook Inlet on the grounds (IA) State participation. I can only say that our position, in my mind, is stronger than (IA). I say that because if the State, with the State now trying to participate, (IA) feeling I'm sure is (IA) I don't know what view Congress would take of that (IA) they could simply write that off as possible (IA) without paying as much attention to (IA) as they did (IA) personal. Maybe it's wrong, maybe that's not the case, but I know last spring when the (IA) was going on in the newspapers in Washington (IA) Congress was paying a lot of attention to the Anchorage Borough and to the State, and I'm not so sure that they'll do that next time.

Sen. Poland: You say that they wouldn't be, in your opinion, they wouldn't be, they would be less sympathetic to the State's needs if the State doesn't conclude the negotiations.

Huhnsdorf: Right. Well, and I don't want that to sound as a threat. I don't mean it as a threat. I just think that the situation, if the State (IA)..because for very real economic reasons it is impossible. The Congress might not feel that way.

Sen. Poland: Representative Huntington.

Rep. Huntington: Mr. Huhnsdorf, I'm very sorry to see this situation here (IA) football, but, at the same time, the agreement you have with the State now, the negotiated agreement, do you feel that your Region will become completely satisfied if there was no alternation to that agreement and it went through as is?

Huhnsdorf: Yes, sir. I believe the settlement represents a carefully balanced and carefully calculated working out of all the differences and kind of like (IA) so that I would say, that yes, it is a very finely tuned agreement for all three parties are in basic agreement. I think that would be the situation.

Sen. Poland: Senator Rhodes.

Sen. Rhodes: Mr. Huhnsdorf, I'm a little bit curious why, especially with regard to the Beluga lands, the Cook Inlet Region would be terribly anxious to accept them. There are leases on all the lands. The royalty on those leases is extremely small, the State literally gave those lands away to the detriment of the taxpayers and I can understand the State wanting to transfer that land, and I'm curious as to why or possibly how Cook Inlet envisions it will manage these lands to the best of it's corporate ability.

Huhnsdorf: We, as negotiators, are taking into consideration the fact that, under the existing Federal withdrawals, no more than six townships, if that, of land were available for Cook Inlet, that would satisfy the (IA) under this agreement, there are twenty townships, and that, to my Board of Directors, is very good

attractive and whether or not there was coal, whether or not the coal was leased or not, the surface value had a lot to do with decisions (IA). The very fact that we were getting land surrounding (IA) and these lands were low-lying (IA). That was one of the big considerations (IA).

Sen. Rhodes: Madam Chairman, I have one more question. In considering the value of the portion of the Beluga coal fields that would be conveyed to the Cook Inlet Corporation, has the spector of increased taxation on resource taxation, on these lands been considered by the Cook Inlet Corporation? The lease royalty is extremely low and there is a possibility that there may be additional increases at some point in the future in terms of (IA) Was this taken into account by the Cook Inlet Region and, if so, what was your analysis of it?

Huhnsdorf: Yes, Senator, it was. All I can say to that is that we do ourselves a good favor. We see the potential for (IA)under the (IA) we feel we can take our chances.

Sen. Poland: Thank you very much. Representative Beirne.

Rep. Beirne: Madam Chairman, may I just ask one question (IA) clarify my (IA) on coal (IA) a certain period of time and then we support the possibility of coal not really being (IA) for use for a long period of time, wouldn't it be a possibility that those leases will have to be renewed and that (IA) re-negotiated.

Huhnsdorf: That's a possibility.

Rep. Beirne: What would be your estimate of the time frame if we ever do use this coal for energy, when would that be? How long a period of time?

Huhnsdorf: I would agree with most estimates, the time frame would be (IA) early 1980s (IA)

Sen. Poland: Mr. Huhnsdorf, I'm going to ask you a question that you and I have discussed so I know the answer, but the reason I'm asking it is for the benefit of the Committee and the audience here is that, the first time that the select Beluga Committee met with the State, they said that Cook Inlet was not interested in the coal - you do intend to draw out the coal?

Huhnsdorf: Yes, we do.

Sen. Poland: Thank you. And I also wish to express my appreciation and I'm sure other members of the Committee here, on your thoughts on amending the Statehood Act. I know from earlier discussions with Mr. Huhnsdorf that this was true from the very beginning. They did not feel (IA) was needed and opposed and the State now tells us that they didn't feel it was needed either. We've now been left with Congressman Young wearing the hat of amending the Statehood Act, and I intend to talk to Congressman Young because I don't believe he dreamed that idea up by himself.

Huhnsdorf: Madam Chairman, we know that the Dept. of Interior wished that (IA)

Sen. Poland: I think you're exactly correct, Mr. Huhnsdorf. Representative Brown.

Rep. Brown: Mr. Huhnsdorf, Senator Rhodes asked you some questions about whether or not the (IA) tract is considering (IA) subject to the leases that most people in the State have had a relatively low royalty. But you also said, in your statement that the Cook Inlet Region may well be, you'd be putting capital rather than just asking or (IA) the people with coal (IA) leases into contingency development and maybe as a suggested and speculated answer to that, one little bit of leeway that you may have that the State does not have, is to re-negotiate those leases and getting higher (IA) if you're offering the developer capital to aid the owner in development of the resources so in addition to the question of renewal appearing, it also gives the idea that you're entering into the business transaction involving diffusion of capital, might well end up re-negotiating the lease. I would be reluctant to (IA) capital basis myself.

Sen. Poland: Are there further questions for Mr. Huhnsdorf? Representative Osterback (IA)

Rep. Osterback: Yes, Mr. Huhnsdorf. How, I still can't get it clear, how long will the State lease, if you do get the land? Will they expire in five years or two years or (IA) they expire based on the lease (IA)

Huhnsdorf: The leases are written in such a way..I'm not quite sure I understand that legally, but they're written in such a way that the holder can virtually perpetuate his lease holdings and there really isn't too much other than re-negotiation to some degree that the holder of the lease can do. And I know I told you at the proceedings that we will be the administrator of the lease, we will negotiate to the extent that we can to improve any detriments that we might be able to (IA) of the leases. But, again we don't see any real way of breaking the State's contract with the existing lease. We have not sought to do that, nor do we want to do that. We think that (IA) and we're prepared to live with that and do the best we can.

Rep. Osterback: Thank you.

Sen. Poland: Representative Cotton.

Rep. Cotton: Thank you. Mr. Huhnsdorf raised the question in his testimony that I have for Mr. Smith and he brought up the question of, if I could direct the question to Mr. Smith, the question of the procedures for such trades; and, apparently the legality is somewhat in question whether the administration can do it by themselves without the approval of the Legislature and this is still in question, I assume.

Smith: (IA) The administration, after looking at the Statutes (IA) particularly the Statutes referring to Title 38.095 (IA) code permitted the same type of trade for the purposes of consolidating land ownership and management that was alluded to in Section 22(f) of the Claims Act. In that Section of the Claims Act, Congress gave the Secretary of the various Federal agencies the right for making this type of trade for land management and ownership consolidation purposes. Two months or three months after that bill was passed, the State

Legislature passed the Statute I just made reference to using some of the exact language of the Federal Act. So that it is our feeling that this trade dealing those criteria does not meet this Legislative context (IA) approval from a legal standpoint, I believe the Governor (IA) made clear (IA) a couple of things. One, it is a very large land trade - it does effect a sizeable amount of acreage and in the vicinity of 50% of the State's population and, as Senator Poland indicated that she and the Legislators would like the time to review, that was a very important feature. Secondly, and this was brought out again this week, he feels that the people have raised questions about whether or not such trades as this are legal whereas he feels that they are. He has said to the Legislature, while you are looking at this trade, if there is any question concerning the legality, we want you to vote on it. If you approve it, we feel that you approve the trade and having gone through that process, what with the addition of the administrations the last year, let us sit down and make sure there's no question about the method in which future land trades will be conducted; because, I think we feel quite strongly, having looked at what has happened during implementation (IA) that future land trades are going to be absolutely necessary if we're to have the type of action passed that are needed. They're probably aware that selections have occured right in the heart of two of our State parks and there has been an indication, certainly by the Legislature initially, that they felt these suitable (IA) set aside for park purposes. So, if there is to be a trade out, the administration is working with the Legislature. (IA) have by the administration can testify these procedures on how the Senate (IA) can set up some type of bill, perhaps emerge after the Legislature. Address (IA) trade (IA) to make sure that all agree in the future on this question of is it legal - what is precisely, the way to go about doing it no more is in question.

Rep. Cotton: Okay, I just have one further question. I wanted to know..in that case, I just interpret from your previous testimony and Commissioner Martin's previous testimony that this trade is going to kind of establish a precedent and I just wonder, and again, the point that Mr. Huhnsdorf brought up, what size transfer agreement should be referred to the Legislature. I mean, do you feel that that would be included in any legislation? Do you think that...

Smith: Well, it's (IA) that the Legislature at some point has a need to decide something. I think it would be an appropriate thing to view. I think I can say safety that I don't view the type, certainly not the complexities of the trade such as Cook Inlet and would feel (IA) something that was moving on the rise with the exception of the D-2 property because the landowners stated that already (IA) Claims Act which would be more or less between the State and Federal Governments (IA). I would emphasize the point that, yes, this is a first time, it is a pilot operation. I can safely say that it is the, by far the most drawn out, the most meticulously discussed and negotiated trade that affects State land. Many of the others, because of political necessity, (IA) just larger had to be done much quicker. For example, the State's monumental land selection four years ago last month. That probably could never have gone through what was gone through today.(IA) The Governor had indicated that public process and the opportunity for people to review, I mentioned earlier is subject to change, this is the process that we (IA) is appropriate (IA) from what we've just done and trying to look ahead with the help of the Legislature to set up a proper course for the next (IA) impossible. But this is the first attempt to do it.

Rep. Cotton: This is kind of a unique trade. I think most people agree to that. I mean, a unique situation. Other than the upcoming deed to the possible negotiations of those lands, do you have anything else in mind in the near future?

Smith: Well, as example, (IA) the most important (IA) that I foresee on the horizon are considerably smaller and just a minuscule amount compared to this one. There will be hearing later on in the month concerning proposals about somewhere between sixty or seventy acre land trade in the Yakutat area. We have (IA) selected a (IA) State park(IA) the village is included in that, up to two townships of land or close to it in this or close to the Chugiak forest right behind Anchorage. We have a number of situations, we have been approached by other people and corporations who, looking at their land patterns which by the formula in the Claims Act (IA) land ownership pact some anticipate the same thing. We've got the (IA). We've got the land, perhaps we can work together. I believe (IA) the State will be involved in for many years obviously recognizing the (IA) the Claims Act was passed, and it's starting to come home to us now. I think you realize the reality of the situation.

Rep. Cotton: In other words, then, if we would establish somewhat of a precedent here, in the future, smaller trades that you mentioned there that the Legislature probably wouldn't come into participation in those cases.

Smith: Yes, that's the present criteria. With something like the Yakutat situation, first, perhaps, long public hearings will be involved there. This is (IA) attitude (IA) this is why the government. (IA) Legislative point of view (IA).

Rep. Cotton: Okay.

Sen. Poland: Representative Anderson.

Rep. Anderson: I became concerned here, Mr. Smith, when I was told by one of the Bristol Bay Native Corporation officials that they had not been notified of, or that the State had failed to notify them of what was really going on. I read about it in the paper and wasn't too concerned because I naturally assumed that the State had made it's contact in Bristol Bay and would assume, since I represent that district where land is being talked about being traded, and the Chairman of the Resources Committee, I felt that I should have been notified, I mean, of the up-coming decisions that were being made. I think it was sloppily done and I think that both the Senate and the House Resources Committee members should have been notified of what was going on and I think it's causing the Cook Inlet Region some very serious concern now because of the sloppy manner in which it was handled. I think that's why I object to the...I wrote a letter to the Governor expressing my concern and I also sent a copy to Senator Poland stating that we certainly hope that in the future, some method of alerting the appropriate committees in the Legislature, or at least inform them what they intend to do. I think that may interest in the area is also, with the position that I have as House Resources Chairman in the Beluga area, we're talking about sub-surface minerals that the State is entitled to and we ought to take a very close look at that. I'd be very greatly, I mean, I'd be very happy with what Cook Inlet's been able to do - they've come down to Juneau at great expense - I know they've spent an awful lot of time doing the job that I think the State

government should have been doing and speaking as (IA) what's happening. And I think I'd like to compliment Mr. Huhnsdorf whose been extremely patient and I hope he won't be too - I hope he'll be patient a little bit longer because we do intend to look into this a little bit more.

Smith: I would like to say that, in respect to the area you represent and the Bristol Bay Native Corporation, the only impact on the area with respect to land ownership would be possibly twenty-five (IA) of land which the State (IA) title to and the State, under the Statehood Act, has a right to select land. The State, because of (IA) really not involved in land selection since the Claims Act was passed. That's like trying to tell (IA) what the State policy should be with respect to the public process of selecting future land. I think the extent to which the State is required or obligated to (IA) select lands for public trade, in a way, that's something we should very much discuss..what I'm trying to say is we are not in any way (IA) in the area, we were, in fact, putting State preference in the area (IA) nine days before the public hearing was held that the Div. of Lands (IA) each and every legislator in the State of Alaska Legislature gave notice of the public hearing, when and what it was, and where it was going to be held and two days before that time all (IA) President of the Senate and one or two other hearings of the Legislative Council which was going to be meeting in Anchorage and they made an exclusive offer to give them full and complete agreement concerning the matter and only after Representative Cotton showed up at the meeting. So, to the extent that you feel that the legislators are not contacted, I think I can say that the administration made a two phase attempt at that time to bring the Legislature on board, and it was not until the following month (IA) made through Legislative Council that we were even aware that the Legislature had been (IA) because as I say, we had tried (IA) unfounded. But I agree (IA) mentioned before that (IA) good outcome of this whole process may be the codification of the process in the future which both the administration and the Legislature would proceed along in the accomplishment of any future land trade.

Sen. Poland: Representative Kelley.

Rep. Kelley: Yes, earlier, Mr. Smith, earlier in your testimony you stated tha. the lands in the Beluga coal field which are not in this land swap, talking to the people that have the leases, that they felt those areas would be developed first, is that correct?

Smith: Yes, (IA)

Rep. Kelley: Okay, my question is, that when speaking to them, that, at that time, did you ever speak to them about the possibility of this time frame being reversed if, indeed, the land swap was to go through and the Native Corporation did, indeed, go partnerships with them in developing those leases? Would that reverse, you seem to be very strong on the feeling that the others would be developed first and I can see a very strong potential for the opposite happening, that the land...

Smith: It's hard to say exactly from (IA) how they view the operations. They expressed apprehension to me early when we made the State proposal public, we talked to them, let them know that we're interested in protecting (IA) and they

indicated a bit of apprehension there that they might in some way, in both cases, through future capital or (IA) whatever, be pressed into a (IA) developing their operation and we assured them that they were the lessees, in both cases and it was strictly up to them to take (IA) position or (IA) land owner (IA). A land owner might be, such as Cook Inlet (IA) mitigated (IA) indicated attempt to speed up development of those areas (IA) area I could not say right now whether (IA) measurable effect on that land to develop (IA) economic basis (IA) develop (IA) assumes that the leases (IA) would be developed first and we made the assumption that the State holdings would not be developed so we've given you the worst scenario in that respect (IA)

Sen. Poland: Any further question for Mr. Smith (IA). Thank you very much, Mr. Huhnsdorf. Dave Jackman.

Jackman: Madam Chairman, I appreciate this opportunity to appear before you. I'm David Jackman, State Co-Chairman of the Federal State Land Planning Commission for Alaska. I want to first review the actions of the Commission with respect to this land trade and make clear that the Commission at this time has nothing further to add regarding subjects of the land trade and then, second, to offer some of my, some thoughts on this trade that are solely my own. And I want to make this clear too, today, at this time. The Commission was presented with the rudimentary outline of this land exchange at one of it's earlier meetings which occured during the period of time that the Omnibus Act was being debated before the United States Congress. They communicated their views of general approval for this kind of a land trade effort. I think there are many of us who were concerned that when the Alaska Native Claims Settlement Act was passed, that it had laid the groundwork for, you might say, the callous dismembering of the State of Alaska - that if anything was to be gained in the long run, it required the greatest of efforts of all the parties involved, State, Federal, and Native, and try to make the best of what on paper looked like some rather unreasonable or unrealistic land patterns. The Commission viewed this proposed trade very much in that context, as a very highly motivated effort to try to resolve these kinds of problems which are likely to occur time and time again in the next few years in this State. At that time, the Commission did not have the ability to, given the other issues before it, to delve in great detail into the substance of the exchange and they have not done so as the meeting is adjourned today. But they did authorize me to say, and took formal action on this yesterday, again, supporting legislative reform, State law legislative reform, which would set down guidelines and procedures and standards for trades of this kind which would make, hopefully, a, would set a pattern so that important trades of this kind can be formed where there is reason for them, to move away from the strict equal value cash appraisal type of judgement to something that can successfully lay out the benefits in cost in a way that will make these trades possible in the future.

That was the conclusion which the Commission reached and that is the recommendation that I bring here today.

Second, on my own thoughts regarding this exchange, I want to say that I have the utmost respect for the efforts of all the parties that are involved from (IA) very much from the sidelines, I have been impressed greatly with the diligence with which and the good faith with which the parties have bargained and for the overall integrity of the entire process. I think that the Alaska Native Claims Settlement Act must be, we must remember that it was a Federal

settlement and I refer back to the remarks of Mr. Huhnsdorf has just made; therewere many unfortunate aspects of that settlement as they affected the Cook Inlet Region. The State, I think, wisely took notice of this and made every effort to cooperate in a wise and more just resolution of these claims. But I think at this junction, the State must look at this as eventually a land trade. The authority and the guidelines that are laid out in the State now, the law now speaks of equal value. Perhaps not equal value in a straight cash sense but the State, whatever the Federal failures in implementing the Settlement Act, they were Federal failures. I would submit that the State was not morally culpable in creating the situation in which Cook Inlet found itself. I want today to very briefly lay out what I see as some of the issues which have not yet been addressed. I think I can put your mind at ease - I'm no expert on coal nor do I intend to address (IA). As a matter of fact, and I've studied over this agreement, the Beluga coal field aspect seems one aspect that is least subject to question, (IA) my mind.

But I would like to try to note some issues that I think raise questions that must be answered before any of us can strike that final balance sheet. There is uncertainty involving this land trade, the count has been made several times that a lot remains to be done, that in a sense the selection period has been extended for two and a half years and that's the first point I'd like to make. I hope these questions can be answered, but I think there are major ones that we have to address. The extra-regional selection rights, as I'm sure you know, Cook Inlet has an opportunity to take another two and a half years to look at available Federal lands outside the Region and nominate lands that may be desirable for it to select, and also it can select up to about thirty townships of those lands. This provision underlines the basic theme of what I'm trying to say. It is very, very difficult to appraise what the ultimate effect of that provision will be. To begin with, those lands, absent this provision, would be lands the State could select. So there's clearly a cost involved to the State of Alaska and Cook Inlet and that's the provision in the agreement of extra regional selection rights. Let me explain that. These lands can be drawn from the so-called 17-D-1 lands or what remains of the public domain lands outside the region. The State has up to about, I think around thirty-five or forty million acres left to select in the Statehood Act entitlement (IA). Now, it's probably reasonable to assume that Cook Inlet will act in a rational manner and will try to find lands that will have high resource value, perhaps not just developable resources such as coal, minerals, oil and gas, but low-lying lands that may have other attributes that make them desirable. One of the main motivations of this exchange was that otherwise, they would wind up with mountains and glaciers. So, they're going to be looking for desirable and valuable lands and I only note this as a cost, or a loss, that has to be addressed in the equation because in effect, your displacing thirty townships that might otherwise rank fairly high in the unfolding scheme of State selection. And the loss in value, in my mind, would be roughly equal to the difference in value between those thirty townships off the top and the last thirty townships the State would otherwise be able to select in this thirty-five or forty million acres. And if that value were only $50 an acre, you're dealing with an order of magnitude of $60 million, so it is not an insubstantial consideration. On the other side of that question, and there is another side, it's quite possible, I suppose, that the United States Congress should decide that they've had enough of State selection and that all Federal land should be closed to State selection, that States should not be allowed to fulfill it's entitlement.

If this happens, there will be no loss, clearly; but I think that it would be a rather unlikely course of events.

The other thing that worries me about these extra regional selections, and there may be answers, I hope that there are, is that we have, within the Region, tried to consolidate land and improve land management patterns. But by creating the prospect of extra regional selection, thirty townships which can be selected in tracts no larger than one township, we create the prospect of several new isolated tracts of private lands scattered around the other areas of Alaska which may create land management problems of the very type we're trying to avoid to begin with. It's very difficult to know. They could all be consolidated in a single block in a very logical way, but they could be scattered in thirty separate tracts hither an yon across the State. So, all I suggest is there is a trade-off there that should be addressed.

There is a township pool a six township pool that will be created on land within the region and it's, the way I understand this agreement, if Cook Inlet desires, they can move any of those out side the region selection site into that township pool and take them within the region where the lands will tend to be more valuable - higher value land. As a matter of fact, the agreement sets forth an acre equivalency standard for those six townships of land based on a rough rule of some value of an acre being worth $500. So 138,00 acres at $500 an acre, again, is on the order of, I think, $35 million. Now, a lot of these lands would have been available perhaps for Cook Inlet to select after this agreement. There would have been surplus Federal property under (IA) of the Settlement Act. There are five categories of lands that could potentially wind up in this category - in the pool. As to two of them, I think they would otherwise have been available so there's no loss to the State there. But there's at least a potential of loss in terms of the other three categories that after this agreement, they would have been available for State selection and they are in the heavily impacted area, the northern Cook Inlet area and then converted back to land (IA). The other side of that coin is that (IA) region selection pool, the State has insured itself the right to consult the Secretary to strike up the 1500 acres. I'm sure that Mike Smith has explained these things to you so, again, my concern isn't that it's a bad deal - but it is unclear what kind of deal it is - that it's very, very difficult to anticipate how that will unfold and what the magnitude of the cost may be to the State.

Some of the plus factors that have to be noted. The Kameshak Bay land is one of the few stretches of coast line that is available on the western Cook Inlet shore. The Mulchatna lands, the Talkeetna lands, no one would gainsay the value of those lands. But even though it's a complex trade, what it boils down to within the region is this; the State's giving up twenty-one townships of land on the Kenai Peninsula and northern Cook Inlet in exchange for fifty-three townships in Kameshak Bay and Mulchatna range and the Talkeetna mountains plus the other factors that I normally term in the extra regional selections.

I think the other thing that's been a recurring theme in the testimony here today is what's going to happen, what kind of risks is the State running, or is the State running now, and they're very real. I think that Congress has, in a sense, indicated that they feel that Cook Inlet did not get a fair shake and that they will make some restitution of this if they fail, if Cook Inlet fails to win their court appeal, and get that kind of a result anyway in the straight-a-way. And in many respects I think the State's, or Mike Smith's pamphlet, has set forth some of the values involved in this trade, has undervalued the likeli-

hood that Cook Inlet may prevail in their court appeal. But, by the same token, I think it's over-valued the likelihood that State lands would be threatened by the outcome of that. I think the most logical result would be a remand to the District Court and perhaps ultimately a mandate to the Secretary that he is to find better lands but first, I think he would look at the Federal land, the D-2 lands, the D-1 in the area.

Turning to State land would at least involve him in more protracted..

(tape five)

(IA)

Jackman: ...they might turn the Swanson River oil revenues (IA) although it's my understanding (IA) copper or minerals (IA) have not been overturned. The State may very well lose the Swanson River oil revenues anyway. So these are answers. They're variables, they're very difficult to calculate. I don't know how they ultimately weigh out, I just know that...

There is a possibility, too, that some of these lands that we're getting in trade, and I'm speaking of the D-2 lands over in the Iliamna area, the State would have received anyway. From my work on Land Use Planning Commission, I think it's fair to say that some weaknesses, D-2 reserve proposal from the Secretary's book, were in Iliamna and the Lake Clark area. And that under 17,D-2 the State can select those lands, they won't receive them until Congress acts. But they can go before Congress and make their case that those lands should not be put in federal reserves and tell them they should come to the State. So again, these lands that we have received in trade that are not available for us to select, now might come to us anyway. I think that's also true with respect to the Campbell tract. There's a question in my mind about what state of affairs had to take place to remove that from public holding in State use which would be the status that's guaranteed under this agreement. I think that it is unlikely, even if it does not pass the State, that the Federal Government would ever have disposed of that this way. That would destroy the protection of the (IA) watershed value, public (IA) state recreational value.

We've spoken of the bargaining position with respect to D-2 lands. That was a very difficult thing to anticipate. Certainly many of these lands have been eyed by the federal agencies as desirable additions to the national park system. But the question in my mind, to what extent this proposal will indignify those receommendations and make it difficult for the State to take another tack with respect to these lands. To sum up, I believe that the uncertainty of this agreement is perhaps one of the most disturbing factors. That here we, in effect, are fleshing out the settlement provisions, I'm speaking of (IA) the actual regional selections. For two and a half years in dispute under 7 (IA) all will share in those benefits, in the benefits of those extra regional selections. And that is as it should be. But we will not have certainty as to land status in Alaska for another (IA) years. And one of the things I think a lot of people have in mind with the passage of the Settlement Act is that all (IA) somewhat will be under (IA) close. We'll be able (IA) State selections and move forward from there. I will reiterate again that I'm only raising these questions because they trouble me and because I think they have to be addressed. And I think that when that (IA) deed is struck, the highest standard of public trust has to be applied because we're dealing with literally thousands and thousands of acres of public land that belongs to all the people of the

State. (IA)

I'm not speaking from prepared remarks today. I want to check down my list to make sure I covered all points that I wanted to cover. One final note on the Beluga coal fields. Again, I'm perhaps less troubled by that section of the agreement than anything else. I think it's clear that most of the valuable coal lands are still within State hands and that the real benefits (IA) coal zones will be just (IA) the spin-off benefits of development and that's almost one aspect of this trade that I think deserves... I'm not suggesting it doesn't deserve further (IA), but I'm really less concerned by that aspect after the mental health lands which were excluded from the trade. I believe that I'll close with that and ask if there are any questions.

Sen. Poland: Senator Rader.

Sen. Rader: Mr. Jackman, we have maybe three or four weeks within which to act on this under the Governor's request. And of course I don't think there's anyway to give that definition to the well thought-out policy which is mentioned here. Do you think there is anyway to give definition to that in the next three of four weeks?

Jackman: I think some of it can be analyzed with some degree of precision. I think that some of the costs involved, probably draft dollar figures can't be tied down, but I think order of magnitude can be approached and I'm not suggesting that I for a minute think that it is improper for any trade like this to go forward in the absence of exact equality of balance sheets. All I'm saying is that I think that over the next three or four weeks all the issues have to be brought out and examined.

Sen. Rader: Do you think that we could by committee report deal with some of these questions and perhaps review some legislative intent as to what the intent is to approve here on some of these State matters or not? Our problem is, we keep being presented with an accomplished agreement that people say (IA) hard to do and the proofs of negotiations and settlement and compromise. It's difficult for us to, at this point, to change that agreement, redefine the terms. We almost have to accept or reject it, don't we?

Jackman: I agree. I'm very troubled by that aspect. I don't think there is. It's a very complex agreement. I don't feel that I fully understand it and I spent several days trying to study it out. It is complicated. I don't know what the answer is. There is one thing that troubles me, it makes it very difficult to evaluate when there are so many exact points or provisions that are sort of yet to be fulfilled. As a matter of fact, I would suggest that if you want, in terms of the Legislature, again I would offer as much technical assistance (IA) trying to think about trades like this, can be provided for, but any one deed would be that transaction before completion in a given period of time, if you follow what I'm saying, is not stretched out over a period of years. But in this case, we are dealing with the same situation, something that will be negotiated in the context of the Omnibus Act. I'm not (IA) that. It probably was discussed (IA) State of Alaska. But again, we still have to (IA).

Sen. Rader: Even if we could qualify some of these dollar figures, you know, and put the values there, or some estimate - so what? Is that going to help us

in three weeks now in deciding whether to approve this or disapprove it?

Jackman: If I were in your position, I think that's certainly where I would start. Look and see if the equities are there in terms on what the State is giving and what the State is getting. Because the other elements, I think, there will be no question of good faith given the intent, the desire to make a better land management decision. I don't think that's assailable.

Sen. Poland: Thank you, Mr. Rader. Representative Brown.

Rep. Brown: My question, in light of Senator Rader's question. Do you think some of these things you've pointed out for the record as being inconclusive could be addressed by, in an equally effective way, by committee report or some form of committee... any kind of legislation, Senate document? Do you have any final proving board at all with respect to some of these questions or do you pretty well have whole (IA)?

(tape six)

Jackman: (IA) valid point because rational mechanism and if so use it for (IA). I think (IA)

Sen. Poland: (IA)

Rep. Brown: (IA) I suppose my question is, do you think that anything along the order suggested by Senator Rader, legislative intent, is going to be of any help at all to State (IA)

Jackman: I think that, this is subjective, (IA) to be effective here (IA) legislative guide telling the State how to execute that. In other words, with respect to what type of land (IA) protect (IA) protect the mechanism. In other words, how (IA) is going to play (IA) as opposed to things that are (IA) agreement is signed subject to (IA) cooperation, in terms of setting a time when this standard under which (IA) will occur. State (IA) there (IA) lands State has opportunity there (IA) select lands which the public would want to inspect things - Cook Inlet will be nominated by us. The State has the right to (IA) those lands could not then be selected by Cook Inlet. That problem could have influence. But I think that you will find that the State's interest (IA) Legislator (IA) and Legislator (IA)

(inaudible portion)

Jackman: Madam Chairman, I wonder if I could go into a little more detail. I know it is getting late. But this extra regional selection pool, the Secretary has protected those lands that are of federal concern. They cannot be drawn from the lands west of 161° West Meridian. I might suggest a very logical place, one place the State can't select. But under this agreement they cannot be drawn from there, they cannot be drawn from any of the D-1 areas included in the Secretary's D-2 proposals. They cannot be drawn from any of the D-1 areas that surround the areas of ecological concern. So what I'm saying is we're throwing - that this pool comes from those very lands that will be the prime candidate for future State selection and they have up to three years to nominate those. We won't know really for two and a half years, I believe, what lands

they're talking about and that's the basic sum of my concern. Also, there is a buffer zone provided as perhaps there should be around other native coporate and village lands. But the very existence of that buffer zone again will create a non-compact, a scattered pattern of private lands which one of the land management objectives that, in my mind, we ought to be trying to get away from. And this one theme I forgot to mention because I didn't have a formal presentation, that is worth mentioning, I think. I think the question could be raised - if the loss of control over these tracts of lands in the northern Cook Inlet area and on the Kenai Peninsula isn't a very great loss in terms of the State's ability to direct or control the timing of development and the disposal of lands, we're really giving over to a private corporation the ultimate decisions on how to dispose of those lands, subdivide them, and what role they'll play in community growth in the most heavily impacted areas of the State. The counter-argument could be made that it's in the northern Cook Inlet, the Anchorage Bowl, the Kenai Peninsula region, that we should really be hanging onto some of the remaining tracts of public land or at least disposing of lands fairly carefully with some planning and design. That's just another factor, I think, that should be weighed.

Sen. Poland: Representative Hershberger.

Rep. Hershberger: The fact that we're hanging onto lands around there, started this whole problem.

Jackman: Sure it did. It was a Federal Government problem. That's my point. And at this point, we have an obligation, in good faith, to try to help with the resolution of that, but I don't think it's fair to say the State was really morally culpable at the time of the Settlement Act or the Secretary's withdrawal. So what happened in this region?

Rep. Hershberger: Now this whole (IA) and questions that have not solved this as far as my experience goes. And I appreciate your concern, very important questions that you raised. Mr. Rader (IA) for three weeks if we have an agreement here that parties have agreed to and certainly some of this must have been thought of at the time that it was entered into...

(inaudible - two people talking at once)

Rep. Hershberger: Perhaps I am painting things so black, I'm really afraid (IA) said tonight (IA) fall asleep.

Jackman: I can honestly say that every member of, here present, that I've been going over these things. That I think, I hope the question - that answers are there. Some of the answers have become more clear to me as I read through the agreement. I'm not saying that there perhaps aren't some answers to these questions but at this point in my study of the thing I think that these are difficult issues that have to...

Sen. Poland: Senator Rader.

Sen. Rader: Mr. Jackman, in your mulling through this ignorance, in your own mind, do you think that we can do much be, let's say this (IA) committee report, couple of bills?

Jackman: It would be difficult in my mind because so many of the terms of the agreement are, even though executory, the (IA) discretion is pretty well laid out within the... As to the excercise of some of the State discretion, that would be true, but a major area of concern is Secretarial discretion and the discretion of Cook Inlet region and clearly we can't bind them.

Sen. Rader: At least to some extent we have a five party agreement here and our legislative intent would be the understanding of one party of what that agreement meant and I suppose that if the other parties didn't agree with that, you'd say there was a failure of the minds to work on an agreement even though we tentatively approved it. If the other parties didn't agree, somebody thought that our interpretation was not their interpretation. I don't know how you contract by statute, that's kind of a new concept, but we have a problem situation here. I'm wondering if we might not be able to, in effect, actually define some of the terms and the areas that concern us. I think their concerns are representative and very helpful. I think their testimony has added new dimensions to our hearings and our understanding of this problem. I'm just groping for some way in three weeks here with the good auspices of the Cook Inlet people and the Legislature, the Executive branch of this government, to try to sit down and define at least what two of the parties maybe agree upon. It's a matter of working out, I think, virtually the policy raised. I think that would be very helpful.

(tape seven)

Jackman: ...kind of disturb me in a way because even though the native corporations have agreed to this, they may not be completely satisfied and I don't think they are completely satisfied, but they have agreed to it in good faith. And the State has agreed to it in good faith and I doubt that the State is completely satisfied with this swap either. It's all been in good faith. Congress has approved it. At some time along the line, someone is going to have to bite the bullet and settle it, which is what the Legislature is going to have to do in a matter of a month or six weeks, as Senator Rader mentioned. But I don't think that the problem is resolved and twenty years from now history is only going to tell us who got the best deal out of this. This is just about the size of it as I see it. I don't see how we can tell who's going to get the best deal. Whatever (IA) administrate, I'm sure. But I'm just at a loss at how we're going to add any more to it in two or three weeks. After all, we must have put (IA) off. Whether it's good or bad. History will tell us. (IA)

Sen. Poland: Representative Anderson.

Rep. Anderson: Senator Poland, Mr. Jackman and I (IA) listened to the testimony of Mr. Huhndorf, I think you expressed his concern. I think you heard that, didn't you, that he had the very same concerns that you do, that there is no structure, no vehicle yet by the State by which an exchange of this nature can occur. And I heard it very clearly in my discussion with their attorney, I heard this very clearly. It's not a new thing, that this thing, at least to my attention anyway, it has been addressed by the Cook Inlet people. I think it's a meaningful concern and certainly concerns me also. But what is the answer, you know, in the time frame, how can you address adequately, I don't know.

Jackman: I think that the very fact that we're here is evidence of a real

milestone. Land trades like this couldn't even be thought about before Section 22-F had been passed, before we really looked at the problem we're facing with the Settlement Act. I couldn't be more supportive of the needs for these kinds of trades and that's why I think some legislative reform, some procedure setting how we're going to go about it, what the periods of review will be. And I'm not so sure that in the future you can expect a Legislature to negotiate this thing. I mean I think this all may come back to you in an administrative manner but the guidelines can be set down, the rules of the road. So I really believe and this is what the Commissioner sent me over to say, they feel very strongly that whatever happens in the context of this exchange, these kinds of exchanges are absolutely essential.

Sen. Poland: Representative Huntington.

Rep. Huntington: Yes, I'm looking at it, I've got no education, I (IA) I don't see any problem with it myself. If the State of Alaska can't handle it's own affairs (IA) so far. And I don't think that the trading off of this land is going to hurt the State of Alaska one bit. I think it's better for (IA) hands and see what they can do and come up with some solutions to the problem. I think the State of Alaska has got a lot to learn from the people that have lived here a long time. You get all the fine education and stuff - you start fooling around with problems, you start fooling around with lawyers, you don't know which one is right. (IA)

(inaudible)

Sen. Poland: Are there any further questions for Mr. Jackman? Thank you and I hope, David, you will be able to attend the hearing in Juneau on Wednesday. There will be many other legislators there that were unable to attend today.

Jackman: Perhaps I could call you later on that but there will be some problems. We have a series of meetings scheduled with Representatives from the House and Senate Interior Committee. But I may be able to arrange it, I just can't make a committment right now.

Sen. Poland: Thank you very much.

: Let me ask Mr. Jackman. Mr. Jackman, how much time could you devote to this in the next two or three weeks with perhaps staff and this committee and others in trying to go through some of these things you're talking about? (IA)

Jackman: I simply don't have the time in the next two or three weeks, Senator. I'm not trying to be unhelpful. I'll try to spend as much time as I can, but I don't see how I can make a large time slot.

: (IA) telephone.

Jackman: I suppose so.

Sen. Poland: We have time for one more witness and then we're going to take a break for dinner. We will resume at seven o'clock and continue on until 9:00 this evening. Those that have not been heard tonight, we're attempting to make

arrangements and we will make some kind of arrangements but we're attempting to get this room again tomorrow morning.

: I haven't approached this in the budget yet but we should be able to get this room.

Sen. Poland: We should be able to, Representative Brown. The next person we have here is Sam McDowell of the Alaska Fisheries Resources and I just welcome you.

McDowell: Senator Poland, members of the committee and ladies and gentlemen. My name is Sam McDowell. I'm wearing two hats also. Tonight I'm wearing the hat of Chairman of the environmental section of our league. We want to go on record that we do feel that the State of Alaska and the people who represent our interests have worked very diligently and we do support this trade, however, with some reservations. We feel that there're some points that should be touched on that have not to my knowledge been touched on. In this trade area there is considerable private land holdings. We feel that these people that do have these land holdings should not be financially hurt due to this trade. Therefore, we feel that the State of Alaska should make some provisions to insure that they do have access to their private property. We are a part of and, I'm happy to say, the State of Alaska has gone on record with a letter to us, that they also endorse many easements along all streams, all lakes and along coastlines in the State of Alaska. We questioned the State of accepting as a standard criteria the recent decision of Secretary of Interior, Kleppe. As I'm sure that most of you are aware, this decision is in litigation. We would be very disappointed if the State puts themselves in the position where they also have to be incorporated into this litigation. I understand that this criteria that's being worked out in this trade will possibly and most likely be used in future trades, for various other lands that various native regional corporations own and the State should decide to bargain. For this reason, we feel that it's extremely important that this matter be addressed and, hopefully, taken care of so that all Alaskans that are involved in this are protected. Thank you.

Sen. Poland: Representative Rhode.

Rep. Rhode: Mr. McDowell, in my understanding of your statement, you feel that the lease holder within any of this area that the State owns and is going to trade off should be protected?

Mc.Dowell: We feel this land that is being traded has been used by especially a lot of Alaskans for many, many years. Lots of them get in their float planes, fly over there. The land was put out many years ago as captain flags. They purchased this land, they have built their summer homes and they rely upon this as their recreational retreat. Now it's possible, if these easements along these lakes or along these streams are not granted for, this title to this land will fall to the regional corporations. Therefore, their investments, for all practical purposes, would be lost. And this is something that's very, very serious. Now, we do, like I said before, want this matter in the record. We feel the Cook Inlet Native Corporation has acted in good faith, we feel the State has. Now, we will endorse this trade with these reservations. We feel that the State of Alaska and especially our League has a responsibility. We are dedicated to the protection of the woods, waters, and wildlife and fish of

this State. And we ask that you pursue this to try to make Alaska a better place to live. And we feel it would be a horrible mistake to take and make a practice to go in and trade off land that people have a substantial investment because we all came to Alaska, I would say almost 100% of us, to enjoy Alaska. And I think it would be an absolute disaster for the people who are sitting in this room at this negotiating table and make an error in their judgement whereby many Alaskans could get hurt.

Sen. Poland: Representative Brown.

Rep. Brown: I was just saying, the reason I asked that question, we have a problem in the Kachemak Bay area and you wouldn't mind if I quote you on the protection of the resources would you?

McDowell: No sir.

: I suppose this is a question for whoever wants to answer it. (IA) staff attorney Berry or someone else, I'm sorry, Director of Legal Services (IA) be more (IA). What does happen? I know that when the State has land in, which is private in holdings, it has a legal obligation to try (IA) egress. What happens when (IA) having trade or sell us all of that land to a private entity? Does that private entity still have some of those same obligations or not? The question is (IA) occurred to me, it never occurred to me before. (IA)

: With respect to land involved here (IA) one of our federal land. Those lands from the Federal Government to Cook Inlet (IA) will come with the same restrictions on them that all the land under the Native Claim Act. (IA) They will have to have seventeen feet either put on - same process (IA) I wonder (IA) that is some State's land (IA) Cook Inlet. These lands will first go to the Secretary of the Interior, to the Federal Government. And he will then take those lands and (IA) same process as all the rest of these lands already been (IA) Will put on (IA)

: (IA) in the Act?

: procedure in the Act. . .

: Because I know (IA) they're already State land (IA)

: Yes. They will be put on. In addition, the greviance in the Legislature (IA) that on lands the State does transfer (IA) those lands, the State will retain (IA) and all dedicated or (IA) highways or otherwise. So (IA) but that where the State has (IA) that he was going to require (IA) So the State (IA)

: I wonder what Mr. Huhndorf and Mr. Price have to say about this?

Reeves: I'm Jim Reeves, attorney (IA). There's one further layer of protection to (IA) again one which applies to protect all the land (IA) to the Federal Government in the regional (IA). That (IA) Section 14-B (IA) which protects all (IA) Certainly 14-G (IA) protect all (IA). So that I think, you know, a number of instances in which one would (IA) context would be very few. I hate to say this but if I had (IA) I would hate to rely on my access to (IA) on the

basis of how somebody is going to interpret that phrase. (IA) one of the biggest question marks of the whole Act.

: I'm sorry, I'm sorry. Your (IA) have taken the position that every State grant under State law to the third party creates (IA). And the Bureau of Land Management's people are specifically identifying everyone in the entire involved (IA) setting before in detail and (IA). Originally, you're right, that was very complex (IA)

: I question that but anyway I wonder what the people from Cook Inlet have to say on the question?

: Well, I think personally (IA) testify (IA) So whatever the body is (IA)

: I don't really know if anybody answered my question but I'll just try to answer your question. But I also (IA) call for witnesses. But of course you were talking about two different things. One was the question (IA). But the other question was, you went ahead and said you assumed that the way in which this land trade is being carried out is, or will be in many respects, to be the precedent for land trades in the future and I sure don't think that's true. That's the whole point, I think, of the Bill that's sitting in the Senate. Some of the reasons for the disagreements that you heard here earlier and some of the suggestions the Legislation. So I hope very much that it's not a precedent. I don't think there's anything wrong in saying that the way in which Cook Inlet proceeded but I have some question in my mind about the other two parties. That, of course, is not something that we have to decide in the next two or three weeks. That's legislation that would affect future negotiations. Hopefully, we won't feel under the gun and we can push that through with the proper amounts of Committee deliberation. I'm sure that that's what's intended. I don't think that it's a precedent for the way in which land trades...(IA) native groups or any kind of disposal of large amounts of natural resources that the Administration has in the future. At least what I was (IA) legislation is something - not just addressed to land trades involving native lands but ways of properly and necessarily restricting the Executive in the ways in which he's talking about proposals and natural resources in the State of Alaska (IA)

McDowell: I believe the wording in this easement is frequent and submit (IA) use. Now again I question you. I have friends that have cabins over there that walk two and a half, three miles across country to go to their cabin. Now I have heard provisions not made (IA) that there are many easements along the lakes and along the streams. Suppose you Legislators go ahead and endorse this, and we are endorsing this, like I say, with exceptions and what happens if this thing goes to court and all of a sudden it's decided that perhaps the natives of this State do have a right to this. Will this affect this trade? Now definitely it's going to affect the people in the (IA) and there's going to be some very irate people when they find out all of a sudden, when all the smoke clears, that they no longer have access to their private holdings. Now if you walk down -as I interpret this and I've been very close to it - if there is no access on these streams and if you should even be in a boat and step out of that boat -you are trespassing. I don't think the State of Alaska should take and pass any laws that are against or for any segment of the population. This is

what I'm asking. I'm asking you to give very serious consideration when you do make this trade, that you do look out for all Alaskans and I don't think that's an unfair request. Thank you.

Sen. Poland: Thank you Mr. McDowell. We will take our dinner break now.

Sen. Poland: We're going to resume. I don't care whether people (..) or not. Helen Neinhauser?

(many people talking at once)

Neinhauser: My name is Helen Neinhauser and I am testifying for myself this evening. I am a resident of Anchorage and have been a resident of Alaska for nearly seventeen years. I support the land trade and urge the Legislature to approve it. My reason for supporting the land trade is that it just plain makes sense. It's effect will be to place the bulk of the land in private hands and to retain land which ought not to be developed in public ownership. This is rational land ownership and is in the best interest of all the residents of the State. If land is suitable for development, whether it be coal mining or residential use, it ought to be in private hands. The only question is, which private hands. In my opinion, it is fair that Cook Inlet Region be the private party which develops that portion of Alaska's land. The lands originally available to them under NCSA were not fair to Cook Inlet. If the land trade does not go through, I fear that the result will be unsatisfactory to Anchorage residents and detrimental to the State as a whole. It is particulary important to Anchorage residents that as a result of the trade, the Campbell Tract, Point Larenso, Point Campbell, and Goose Lake lands will be retained in public ownership for park and recreation purposes. Can we place a dollar value on what these park lands will mean to Anchorage residents in the future? Projections of Anchorage's future population are frightening. As our population grows, the present de facto open spaces will be filled in. What price can we set on the peace of mind and the physical excercise derived from a two hour ski trip in a nearby park, all the time a busy urban resident may have. As one of the originors of the Talkeetna Mountain State park proposal, now also before you, I am particulary happy that as a result of the land trade, the State will ob ain ownership of key sections of the proposals which were formally eligible for native selection. These lands are valuable recreation lands but totally unsuited for development. The capitol will almost surely go into this vicinity. Can we put a dollar value on what that park will mean to future residents of the capitol? Or what it will mean to Anchorage and Matanuska Valley residents where local parks and the Chugach are overcrowded and can't afford the time to get to Talkeetna. I visited Lake Clark last summer and loved it. One of the loveliest spots I've seen in a State full of beauty. Lake Kontrashibuna is also very special and has fantastic fishing. Both belong in a national park where their use will be available to all for generations to come. Uncontrolled private development along the shores of Lake Clark would be a tragedy. The natives relinquished their claims to this area as a part of the trade leaving it in federal ownership thereby opening the way for a park. It will be used and enjoyed by many Alaskans. What dollar value can be placed on this? Private ownership to the Moose Range will be held to a lower level than would be the case without the trade so I cannot object. The selections in the Iliamna area are sensible inasmuch as they give the State D-2 lands that would not otherwise be available to them. They will doubtlessly

select remaining federal lands in the region giving them basic cont of the area, important to the fisheries resource and more compatible with the native ownership in the area than would be federal ownership. There has been a lot of talk about the dollar value of what the State will give up. Those who talk about this are not looking at the whole picture. They are not talking about what the State will gain. And they certainly are not looking at what the people of the State will gain by continued public ownership by the Federal Government of such areas as Lake Clark and the Moose Range. Besides the intangible values, there are others. What about the taxes that will eventually accrue to the State or political subdivisions from private property ownership of developable land. What about taxes on profits of this (IA) taking place on these lands. What about the values to the Iliamna fisheries, of State control of the lands in the area? What about the reduced cost to the State that will occur because of the development that will take place on native lands will now be closer to population centers and therefore less expensive to service? One gentlemen said earlier that we some recreational lands but we need to worry about food and housing first. It seems to me that he was forgetting that there are other coal deposits as well as oil and gas fields that will remain in State ownership. There isn't another Campbell tract or Lake Clark. It is crucial that the Legislature look at the whole picture. As you do, ask yourselves some questions. What is it we value about living in Alaska? What is the best way to achieve a balance between necessary private development of Alaska's mineral resources and public protection of Alaska's fantastic scenic resources? What must we do in the face of increasing development to keep Alaska a special place to live?

Sen. Poland: Thank you Helen. There's one item I would like to have cleared up. It's my understanding that the villages have regained their lands along the lake.

Neinhauser: It's my understanding that the lake ownership where Cook Inlet, in the more mountainous end of the lake - that will go to federal... you're talking about Lake Clark? But (IA) will retain it's ownership.

Sen. Poland: Perhaps Mr. Huhndorf could clear up that point. Do the villages retain the land along the lake?

Huhndorf: No. The villages have agreed under this exchange to (IA)

Sen. Poland: Thank you.

Neinhauser: Helen Heinhauser.

Sen. Poland: Yes. (IA) Were there any questions from the committee? If not, thank you very much.

Neinhauser: Thank you.

Sen. Poland: Virginia dal Piaz?

(inaudible)

: There won't be any snow machines going by.

dal Piaz: I'm glad (IA)

: ... the trade.

dal Piaz: private joke. That Talkeetna Mountain hearing this morning (IA) 500 is going right by. (IA) I think Neils arranged it.

dal Piaz: My name is Virginia dal Piaz and I'm President of the Upper Cook Inlet Chapter of the Alaska Conservation Society. We've not previously had the public opportunity to announce our position on the Cook Inlet land trade and we appreciate the chance to tell the Legislature that we do favor the trade. We support totally the concept of trading lands to facilitate rational ownership patterns and management. Federal, State, native and other land owners have different goals as owners and managers of Alaska's land. It is therefore reasonable and laudible to negotiate trades which, on the balance, benefit all parties concerned. We are thankful the State Administration perceived the need for a land trade with Cook Inlet Region and devoted so much energy to this settlement. We're pleased that Congress sought this Act quickly and supported the trade, thus placing their trust in Alaska negotiators familiar with the Cook Inlet land situation. We're equally appreciative that members of the Legislature have taken an interest in the trade. It gives us faith in the checks and balances of government. However, we feel that the energies of the detractors of the Cook Inlet trade are misplaced. Early October, '75 the State Administration first announced the conditions of the trade. The time allowed for public input appeared ludicrously short. However, since then, the public has had ample opportunity to consider the proposal and the trade has been altered as the result of public input. The land trade approved by Congress is favorable to State interests and urge the Legislature to lend its support to the final agreement. Now, I'll briefly discuss a few specifics. It's our feeling that the Kenai Moose Range should be held substantially intact. To this extent, the pieces of the Moose Range were traded to the Cook Inlet natives, those pieces should be located on the edge of the range away from prime wildlife habitat. Further we hope that this is the last time the Moose Range's borders are tampered with thus reducing the size of the range. We will urge the Federal Government to protect the Canus system from development and to designate eligible parks of the range as wilderness. We find the Cook Inlet land trade in keeping with our interest in the Kenai Moose Range although we regret that it was necessary for the Federal Government to trade away any portion of the range. This is one of the most heavily used outdoor recreation areas in the State. The townships the State will pick up in the Talkeetna Mts. are critical additions to the proposed Talkeetna Mt. State Park. The Upper Cook Inlet Chapter of the ACS is on record in strong support of this park proposal. We're happy that Campbell Airstrip, Point Woronzof, Point Campbell and Goose Lake are all being retained in public ownership. We're paticularly pleased that Congressional action (IA) conveyance of the Campbell Airstrip tract to a plan for a (IA) Bi-centennial park. We will be watching implementation of the selection pool that Mr. Jackman alluded to earlier which is 1C-2A, page 39-40 of the agreement document. Important potential park and open space acerage on the Anchorage hillside may be declared federal surplus property and we intend to keep an eye on any conveyance of such critical acerage from public to private ownership. I'll be adding when I send in my testimony a little more in depth on that particular subject. We're hopeful that the land trade will ultimately lead to State management of Iliamna watershed, a region of

extreme value for fish habitat. Moreover, we support federal ownership of the lands around Lake Clark and areas serving as protection for the valuable recreation land. It appears that by reducing native land ownership in the Lake Clark, Lake Iliamna region, the State and Federal governments are moving closer to a workable management plan for that portion of the State. Finally a few comments on the Beluga coal fields. Since the State has retained the land of highest value for coal production, it, nevertheless, has given up many acres of potentially energy rich resource land. It's time the State looked beyond how many dollars worth of nonrenewable resources we control. It's obvious that the State has to give something of value in order to receive valuable renewable resource land including the possibility of gaining control of the extremely valuable fish and wildlife habitat around Iliamna. What the State is giving up in revenue might very well accrue to tax periods of one generation. What it is gaining is control of renewable resources that will benefit many generations of State citizens. I think that the Beluga fields are a reasonable loss for what the State will gain including retention of revenue from the Moose Range oil field. In conclusion, the Upper Cook Inlet Chapter of the Alskan Conservation Society strongly supports the Cook Inlet land trade. We urge the Legislature to do the same. We also wish to thank the committee for holding these hearings and allowing the public to express their views.

Sen. Poland: Thank you. Are there any questions from the committee?

dal Piaz: I also will ask the committee's advise on how to handle the following: the Alaska representative from the Sierra Club had to catch a plane and left his testimony with me. There are quite a few copies here. I could just give them to you or I could read them.

Sen. Poland: You can just hand them out to us and we'll put them (IA). If there's time at the end, you might want to read it but otherwise, I'd like to go ahead and hear the people that are here. Senator Rader, did you have a question?

Sen. Rader: One brief question. What is your position on the acquisition of Bristol Bay lands by the State of Alaska (IA) aspects of that land acquisition? Do you feel that's of particular value for conservation purposes?

dal Piaz: I would have to - I must admit I'm not really familiar with that area. I will find out an answer for our group.

(inaudible)

dal Piaz: I can just summarize briefly the Sierra Club statement is in support of this land trade (IA)

Sen. Poland: Mr. Homer Burrell?

Burrell: Madam Chairman, members of the Senate and House Resources Committees, Legislators, staff, public. Speaking for myself. We've got a real problem here tonight. We've really bitten the bullet. The Administration has given (IA) I'm not here to recommend you approve it or recommend you disapprove it. I'm here to recommend you find out something before you take any action. You have not got any adequate information. I don't think you have correct legal information, for instance AS 38-95.060 limits you to a one township exchange, limits you to

equal value and makes no reference to minerals. If you don't change the entire law, either appeal that one or enact a new one or amend that one, or do something, I think you're going to be very susceptible to a law suit over this action, over the action proposed by the Administration should... If you want to do that, fine. You should do it. But the main thing that bothers me about this is a lack of information. You've heard testimony from experts and I am not an expert. You've heard experts testify tonight on the value of the resources that would be exchanged on both sides. What hasn't been dealt with is, what are we talking about when we say value. We're talking about economic value, talking about recreational value, aesthetic values, what are we talking about? There's been no definition of those terms. That is where you are somewhat in the position of a jury in the condemnation case. When I say that the land the Highway Department took worth ten thousand dollars and the Highway Department says it's worth ten dollars, you know the jury has to reach the verdict there as to what that land is worth. What did I deprived of and that's your unenviable position. And I do not envy you for that. There's no definition of value. I don't think the straight economic value is right, I don't think it can be entirely disregarded. I don't know what the coal in Beluga is worth or the coal which apparently's been overlooked to a large extent. And the coal in the Kenai Peninsula and the other lands that are purported to be part of this exchange. I have no idea what they're worth. I have no idea how to find out. If you'll tell me what the Arabs are going to do with oil prices or what the Federal Government is going to do with oil prices, then I could tell you what coal might be worth. But I don't know the answers to that. I deplore the Administration's, despite their protestations to the contrary, keeping the details of this thing confidential for so long. Now the Legislature has got something like three weeks or four weeks to try to make their own independent determination. You've already heard the conflicts to the Department of Natural Resources itself and other qualified mining engineers and geologist over the value of this. It is not clear cut. If you buy the Dept. of Natural Resources position of what this is, you are commiting an error which is going to approach Teapot Dome someday. And I don't think the Legislature wants to. The Administration may want to. Now, I know, as you all do, that despite some baloney that came out of Juneau and other places recently, the revenues from the subsurface resources and timber resources, 70% of them are spread around all regional corporations. You don't even have to be a member of the corporations to share them. Likewise, if I had a lodge on a lake, I would not want a profit making corporation own the land in the area because I'd have competition. Consider that. The history of this transaction from a secrecy standpoint has been sickening. Two things have been done wrong. Because the State law requires under criminal penalty that records be made available to the public, simply a private file is kept so that nobody, including the Legislature, had the opportunity to find out what is going on. There's another Legislative Act which you have - I'm not going to give you the citations here, I'm sure the attorney knows about all of this. It says that all meetings of agencies shall be public with certain specified exceptions which these type of meetings didn't fall under. I happen to think a meeting with the Div. of Lands, with Cook Inlet Region and the U.S. Dept. of Interior is an agency meeting. I came within one fourth of an inch of signing a criminal complaint against the State's negotiator on this. He was perfectly willing to file against somebody else who got trapped by conflicting orders of various State agencies. I suggest you take a hard look at this. You have not been given the facts. Despite what they say, this has been the most secret game played right up to the last minute until they decided

to have a deal and wanted (IA) Therefore, you're at a terrible handicap right now trying to get the facts. What you should get is some independent appraisals of the values. And I don't mean from somebody with an ax to grind on either side. I mean an independent appraisal. And I don't know whether how an independent appraisor could consider the recreational value and the subsurface values at the same time. That's beyond me. But it should be considered if you don't want to go down as a Teapot Dome legislation. And if you could get that information before you move, I think you'd be a lot better off and you could defend your position. Thank you.

Sen. Poland: Representative Hershberger?

Rep. Hershberger: Mr. Burrell, maybe you could tell us, are the indians trying to stop us or are we trying to shoot them? If this is collusion, which are the bad guys? Mr. Huhndorf? Who is it?

Burrell: I don't know.

Rep. Hershberger: Who's playing the game to what advantage?

Burrell: I would say this...

Rep. Hershberger: I mean, I know why your remarks are stated as they are. We all recommend political values and all that, but you tell us what's wrong here now?

Burrell: Alright, I'd be happy to. Madam Chairman and strike the (IA) remarks. Obviously both sides, I think, think they have something to gain or they wouldn't make the deal. Actually, all three sides think they're either gaining or at least not losing or they wouldn't make the deal. That's a typically negotiated transaction. Right? Okay, I'm speaking, not asking. I beg your pardon. Everybody thinks they're either going to gain or at least not going to lose or they wouldn't enter into the transaction. Okay. Now, the only thing you can assume from that is that they have different motives, different objectives. And I suggest, the State objectives are different from those of the Cook Inlet region and different from the United States Department of Interior. Everbody has different objectives and they're all happy with them apparently. When I say the State, I mean the State Administration.

Rep. Hershberger: It's pretty obvious that the State has done something with the region natives that they don't know about so would you go to the natives and tell them to be on their guard or are you telling us to tell them to be on their guard?

Burrell: Madam Chairman, I am not saying that the State is doing some thing the natives do not know about. I said the State had different objectives than the natives have and apparently both groups in this case, let's leave the Dept. of Interior and the Federal Government out of it. In each case, both groups were satisfied with the objectives and thought their objectives were attained. Like I might want your red card and you might want my blue card and to both be happy, we make a trade because you like red and I like blue or whatever.

Rep. Hershberger: (IA) I'm confused then. If both parties are in agreement,

what's this (IA)? You said somebody's trying to take advantage of someone else so presumably...

Burrell: Madam Chairman, my remarks were the fact that I think you ought to get an appraisal. That's all. You can't buy something that's just been fed to you, spoon fed. You're going to have to live with what you do. If you, quote "give away" - and I don't mean it that way, but if you give away the Beluga coal reserves and the Kenai Peninsula coal reserves or various park land, that may or may not be right. I'm not saying it's wrong, I'm saying you've got to know. And I don't think you know. There's obviously controversy within the Department of Natural Resources itself, you've heard the controversy over parks and values, or differing interpretations of the values from various people who've testified. And I don't necessarily say either one is right or wrong, I'm saying you ought to find out. I guess that's why we're all here.

Sen. Poland: Representative Rhode.

Rep. Rhode: Where would one go to find out what the recreational value of these lakes are? Just where would we go to find this out and tie this in to the value of the coal field?

Burrell: Madam Chairman, that's the, in reference to Rep. (IA), that is a value judgement and that is why I made my previous remarks, that you're sitting here as a jury. I don't know what a recreational site or a recreational use of it were...

Rep. Rhode: Who would know that we could go to?

Burrell: I think you have to get the testimony as to the economic value of both. Many of you have to throw in your own evaluation of its recreational or renewable resource value and determine what you are gaining and make your own evaluation.

: May I make one remark here.

Sen. Poland: Senator ?

: If you would tell who (IA). I don't know where you go to get an evaluation until after say twenty years from now, we find out who gained and who didn't.

Burrell: Madam Chairman, I'd hate to wait twenty years to found that out. I'd like to find out before. But I'm for (IA) find out.

: Madam Chairman, I have to agree completely. I don't know where to go to find out either. But what I would say is this, what is the State losing from a control standpoint in giving up ownership of the Lake Clark area. I don't know. I haven't seen anything in writing that explains to me what the State is losing. As far as I know, we have not lost our management control over Fish & Game although we might lose it over the habitat for the fish and game. (IA) I appreciate that. All I'm suggesting is that we just don't have enough facts on what is the State giving up and what is the State gaining in both areas, say Lake Clark for instance, and Beluga. I don't know.

Sen. Poland: Representative Brown.

Rep. Brown: (IA) Rep. Cotten is (IA) is not mentioning anything that (IA) already passed last year.

: (IA) designated smoking area.

Rep. Brown : Designated smoking area. Just one comment. You talked about whether or not negotiations were carried on privately and the way in which things were done and this doesn't directly relate to that but (IA) you just might be interested in the fact that Rep. Cotten and I were sitting in the House Judiciary Committee (IA)

tape 8

: (IA)

Sen. Poland: We said if we couldn't finish that there would be (IA) we didn't want to lock ourselves in because we would certainly like to finish, in fact we figured if we were almost through by 9:00 we would ask the people to stay (IA) because some of our legislators are unable to get reservations on the plane tomorrow and they will have to leave on the morning plane. Bob Rude.

Rude: Madam Chairman and Legislators, my name is Bob Rude, I am a stockbroker in the Cook Inlet region and I am the First Vice-President of the Cook Inlet region, President and General Manager of the Cook Inlet General Property Corporation and am a member of the Cook Inlet Region Land Negotiation Committee. I have been a resident of Anchorage for 35 years and I am here today to testify in favor of the proposed land trade. I believe the land trade is something that is beneficial to all three parties. The proposed land trade provides for the settlement of certain claims and in doing so it consolidates ownership among the United States Government, the Cook Inlet Region and the State of Alaska within the Cook Inlet area of Alaska. The proposed land trade facilitates land management and creates land ownership patterns which encourage settlement and development in appropriate area. The proposed land trade will enhance the State of Alaska's land holdings by 48.8 to 53 additional townships of land. The proposed land trade makes available Point Campbell, Point Woronzof, and Campbell Field to the State of Alaska. The land trade protects wildlife and fishing resources of the State of Alaska. The land trade provides areas for future recreation of the Anchorage residents and the residents of the State. As a member of the Cook Inlet Region's Land Negotiating Committee, I have been involved in with Cook Inlet Region's land problems for three years. In 1972 and 1973, I was on the first land negotiation committee of Cook Inlet Region. Our committee met many times with the Federal Government. We made many trips to Washington, D. C. and spent thousands of dollars only to see negotiations fall apart. A full year went by before negotiations were resumed and it was at this time that the State of Alaska, the Federal Government and the Cook Inlet Region began to negotiate. These negotiations resulted in our present land trade that is now before you. Throughout our negotiations with the State of Alaska and the Federal Government, Cook Inlet Region has made many concessions. We gave up our rights to Campbell Field, Goose Lake Point, Woronsoff and Point Campbell, to appease the residents of Anchorage. We gave up our rights to the Swanson oil fields to appease the State of Alaska. We

dropped our claims to National Forest lands and reduced our claims to Moose range land to appease the Federal Government. We saw the State of Alaska and the Federal Government transfer 17 townships of land during the land freeze that could have come to us. We relinquised the right offered us on Beluga Mental Health lands. This area was supposed to contain 80 percent of the estimated coal resources first offered to us. We agreed to accept approximately (?) townships out of our region so that the State and Federal Government could retain more land within the Cook Inlet Gulf. In doing this, we will again have to spend millions of dollars to study the land in five other regions, so that we can select the land most suitable for our corporation. I have attended several hearings concerning our land trade and have heard adverse testimony by many non-natives, the testimony that I have heard makes me sad. Some individuals feel the only lands we are entitled to are mountains and glaciers and that any land with any value should be kept from us Natives. Are the people aware that the Natives lived on and occupied all of the lowland, low-lying land in this area? Are you aware of the fact that we agreed to a land claims bill that specified that we could receive land of similar character as the lands we gave up in the Act? Are the people aware of the fact that if this trade is not approve, there will be no land planning in this area? Are the people aware that if this trade does not materialize, that Cook Inlet Region will progess in its court case and will file and fight for every piece of land possible in this area? In conclusion, I feel that Cook Inlet Region has paid its price. The Cook Inlet Region (IA) and the lands listed within CL 94-204, I believe it will greatly benefit the State of Alaska and the community of Anchorage. It is my belief that Cook Inlet Region will move to develop the land in the Beluga area and this development will bring additional income in the form of taxes to the State of Alaska. Millions of dollars will be made available to the Anchorage community and many jobs will become available. I believe it would be a very embarrassing situation if the State Legislature fails to approve this land trade. This land trade has been supported by the Federal Government, the State Administration, State Congressional Delegation, and conservation groups in the Cook Inlet Region. CL 94-204 was overwhelmingly passed by the Congress of the United States. For the State Legislature to (IA) the trade now would show the Nation and the world that this State does not have the concern of the rights of its first citizens. I hope you will seriously consider our views and I hope you will support the proposed land trade when it comes up for a vote in Juneau. Thank you.

Sen. Poland: Thank you Mr. Rude. Representative Cotton?

Rep. Cotton: Mr. Rude, you mentioned that you had given up your claim to several areas of land around Anchorage here that were considered by some to be uh-anyway Anchorage wanted them and so you gave them up to appease the Anchorage area. Are there any other lands left in that same category that were either asked for or that can be considered similar lands that you haven't given up?

Rude: No, what I was referring in this statement --like I mentioned I was on the first negotiating committee. Federal Government came into Anchorage and with a team of negotiators at that time these were the areas that they brought up and said that the changes there and the final offer was something like 23 townships of land that we would give up our title on 48 townships.

Rep. Cotton: (IA) Campbell Point, Campbell Air Strip that you mentioned you gave up your claim to in order to appease Anchorage. Were these the onl" areas that Anchorage asked you to give up in order to appease them?

Rude: Yes, to my recollection.

Rep. Cotton: Well now, this is just Cook Inlet Region, that doesn't include any of the other corporation, isn't that correct? You don't have anything to do with any other village corporation within that region?

Rude: No, I don't.

Cotton: Thank you.

Sen. Poland: Representative Brown.

Rep. Brown: The tone of your testimony concerns me. I hope you understand that there is no great negative feeling for the Cook Inlet Region Corporation, not that I know of. It bothers me very much that you seem to think the people would threater or appear to threaten to lower the boom on your efforts. I want you to feel that your birthright as a people. That's not what is happening at all. My concern and the concern of many of the others of the group is the whole process. There is something wrong with the process. Probably (IA) hindsight and some of us have only been in the Legislature a year or so and some of us a long time, we see these (IA) differently but you have heard no doubt, that the dispute (IA) the representative administration (IA) legislation involved in a very important decision (IA) and I think it is that process that really (IA) as opposed to the particular issue in question or merits of the particular Act (IA) it was represented here that I and other members of the council have (IA) if that is ture I certainly don't remember (IA) certainly it was not presented in a way (IA) we found later the (IA) the State of Alaska that we found out that we would likely be coming back to Juneau and it was at the beginning of the session that we found out this had all taken place (IA) and it occurred with a shouting of the press and were drawn into the action (IA) through the process of the issue (IA) legislation make sure that the administration's feeling on the disposal of a, or trading large lots of land or resources in the State of Alaska (IA) I don't know (IA) the distribution if possible. Maybe this Governor or some other Governor (IA) a different feeling (IA) we could have some serious problems. All of those concerns are not directed at you or at the Cook Inlet Region (IA) you know we come to a legislative council meeting and we get work, formally or informally, on and off the record that vital decisions (IA) without any input from the Legislature at all. (IA) I don't think that it was anything directed in a negative fashion. That's all I have, thank you.

Sen. Poland: Are there any other questions of Mr. Rude? Thank you very much, Mr. Rude. Patrick Pourchot, of Knik, Knoers & Kyahers, Inc.

Jeff Knaebel: Senator Poland and members, I am Jeff Knaebel, a resident of Fairbanks, I am a member of an engineering and geological consulting firm with head offices in Fairbanks, Anchorage, and Ketchikan, and which numbers among its clients, more than two dozen mining and construction companies to whom we have provided engineering and geologic service. Cook Inlet Region is among my firm's clients. I am not however, testifying on behalf of any of my clients nor on behalf of my firm, but as a citizen of Alaska, on my own behalf. First, I think it is important to bear in mind that the purpose of the proposed trade

is to complete in an orderly manner, the implementation of the Alaska Native Claims Settlement Act, which was an Act for the purpose of settling aboriginal land claims, that has behind it the full moral weight of the Congress of the United States, and also citizens of the United States. It is also important to remember that when you talk about the Native people of Alaska, it is not a "them and us" situation. These people are Alaskan citizens. They are the first citizens of this great land, they and we share a common bond of Alaskan citizenship. They are us, in other words. When we propose to deed land to the Native ownership, we are giving ourselves land. I doubt that there are many Alaskans who would not rather have us own our own land than the Federal Government own our land. And this trade offers a net gain (IA) ownership and a net gain of State and title land. State government has seen fit to provide to private ownership only 3/10 of 1 percent of Alaska's land. The citizens of this State desparately need land. Land to live on, and to earn a livelihood on. Private productive land ownership is a corner stone of individual liberty and free enterprise, two things which are sadly rapidly slipping from our grasp. The Alaska Native Claims Settlement Act, in my opinion, is the single Act in support of individual liberties in decades. The land trade in force today goes a long ways toward meeting the needs of the citizens of this State. Aside from the direct land benefits to Alaska citizens I will enumerate shortly, there is a moral issue to be decided here. In the past four years I have witnessed treatment of Cook Inlet Region at the hands of our Federal Government that is so shabby that it would make Americans hang their heads in shame. It grieves me that a law enacted by the people of the United States assembled in Congress can be so blatantly abused by the Federal Government charged with the implementation of the law of the land. I have seen glaciers and mountains withdrawn from the Cook Inlet Region, and have seen good faith on and an attempt in taking corrective action met with hypocrisy, deceit and broken promises. The State also has a moral obligation to redress the wrong done to these, its first citizens, when the State entered a secretly negotiated contract with the Federal Government in September 1972, which took away lands in the Lake Tulatin area which should properly have been made available for Cook Inlet selection. Incidentially, the dedication of that contract is still pending and can be settled by the agreement before us today. I think it is time for these things to be put behind us. Since 1972, all attemps to have the Alaska Claims Settlement Act properly implemented for Cook Inlet Region have failed except for the proposed agreement before us today, and this agreement contains good faith compromises made by Cook Inlet in recognition of the interests of the State of Alaska, because of 1975 sympathy for Cook Inlet Region by the U. S. Congress resulted in committments that would have given Cook Inlet certain trade lands including Swamp River plus Campbell Air Strip, Point Uronsoff, Point Kanby and other areas that were in negotiation at the time. When the State of Alaska became actively interested, Cook Inlet agreed to discuss issues in good faith negotiations which ensued between the three parties for over eight months. From my own contact with people, it appears to me that most Alaskans knowledgable of the details feel that the agreement before us is in the best interests of all the parties. Except for objections centering on the Beluga coal issue and the method by which the agreement was negotiated. It is my opinion that many of the figures quoted in the newspapers on this Beluga matter are misleading. First, those figures are based on trends of mental health land in trading. Mental health land has subsequently been removed from the trade, thereby moving 75 percent of the reserves that are being argued about. Second, the figures quoted in the newspapers are based on reserves calculated to the depth of 2000 feet. It is unlikely that mining will progress to that depth in the forseeable future. Coal reserve figures are meaningful only if they are reserves that can be economically mined. It is needed by people

of the greater Anchorage area, and add to the local borough tax base. The State is reimbursed with other potential resource lands. The title cloud on all lands in the Cook Inlet region is removed. Cook Inlet withdraws blanket filings and draws its lawsuit. The State-Federal agreement of September 1972, remains intact. This agreement protects that area to selectable and selective State lands, a large portion of which could go to Cook Inlet should Cook Inlet win it's law suit. Cook Inlet has given up its right as you have heard other people say, on the majority of the Moose Range, Campbell Air Strip, Point Woronsoff, Point McKinsey, the Lake Tulatin land and 30 townships within the region of the lake park area and Talketna mountain area plus Cook Inlet has given up 46,000 acres of its total legal entitlement under the Alaska Native Claims Settlement Act. I think that Cook Inlet has conducted itself in an exemplary manner, that the Alaska Native Claims Settlement Act guaranteed a just settlement, that this particular trade before us, is just and as well brings a net increase in value to the State in the particular situation that we face. I ask you to analyze those portions of public law 94-204, which apply to Cook Inlet alone. Other issues in that law may be controversial but they do not apply to the Cook Inlet Land trade and should not be considered in judging the agreement before us today. It is time that this issue should be settled. It is time for the Government of our State and Nation to uphold the laws of this land as those governments expect the citizens to do. Thank you.

Sen. Poland: Do you have any questions of Mr. Knaebel?
I would like to make a statement here. Your remarks seem to place the burden on the State, and in that I think you are being as unfair as you accuse the State of being. I don't think there is anyone here that hasn't supported the Alaska Native Land Claims Settlement Act, nor do I sense in any of our members and there may be a few whose feelings I don't know, I can't speak for all 60 , that don't have the decent concurrence, but let's not lose site of the fact that the original agreement was with the Federal Government, and Cook Inlet and the other regions. I could not agreee with you more, that Cook Inlet was offered something that was completely unsatisfactory, on the other hand, the Federal Government also has an obligation to see that Cook Inlet receives its proper entitlement. I hate to see them give up 46,000 acres. I think they should get their full entitlement. but I think you're twisting things a little bit to say that the State is this involved.

Knaebel: It was not my intention to imput any blame to the State. I do think that there are moral issues involved there that the State, whether they like it or not, is placed in a position of making the final decision, and that the State, in my own opinion, did clearly do a wrong thing in that the previous administration did set down with the Federal Government and gave away Lake ? land to the Feds and to itself that properly under the standard of the Act, should have been withdrawn for Cook Inlet region, and had they been withdrawn for Cook Inlet region, there is a distinct chance that this whole thing might never have come to pass, because there might not have been a legal basis for Cook Inlet's complaint. To that extent, I feel that the past administration of the State is involved and to that extent I think there is a moral issue that relates directly to the State as well as the uninvited moral issue that has

significantly (IA)
like Federal reserves that have little chance of being mined in the forseeable future. Return to Cook Inlet, or loss to the State of Alaska is related not to the total reserves in the ground, but to the rate and time which they are mined. THe largest coal mine in the United States according to a state report, produced about 7 million tons per year. The question then becomes when will production start on the Caps ground which is the coal that Cook Inlet would now get in the agreement. The Chitna coal is closer to tidewater and has an estimated 1.6 billion tons of coal. This coal will in all probability, be mined first. At a production rate of 7 million tons per year, it will be 228 years before Chitna is mined out and it would be logical in terms of the Caps. The present value of the Caps ground is nearly zero. On the other hand, let's just suppose hypothetically the Cap was mined first. There is certainly value in lease rental and production royalties. The cap has about 50 million tons of coal, sufficient to operate a mine of seven million tons per year for 79 years. Present value of royalties calculated by State engineers are for a mine of 6 million tons a year and calculated between 3.7 and 6.5 million. A probable scenerio for the Cap might be that mining starts and progresses for 20 to 50 years. Since the Chitna is closer and both areas will be under lease to the same party on the assumption that both areas remain in State hands, the low cost coal in Chitna would be gone 50 years from now and the Cap would then be opened up. The present value of Caps then are lease payments through the years, plus royalties after 20 years. This totals up to a series of figures which, including the lease payments and royalties and the value of the coal itself brings the total present value of the Caps to about two million, seven hundred eighty seven thousand dollars ($2,787,000) rather than several billion dollars. In summary, regarding the Beluga, Cook Inlet has received 13.5 townships. This excludes 75 percent of the known coal. 1.6 billion tons of known coal remain to the State. Cook Inlet gets 570 million tons of known coal, 850 million tons of hypothetical coal. The State estimates royalties to Cook Inlet at 15 million dollars on the 570 millon tons of known coal in the Cap. Since however, Chitna would probably be mined first, the present value of the Caps, the value of future income discounting the present is 3 million for land. Therefore, what we have here is the State giving up very hypothetical future coal income of very uncertain value in exchange for high present value of land exemplified by Campbell Air Strip, Swanson River revenue and other Federal excess properties. In summary, the net effect of the whole trade agreement appears to be as follows. The State gets high valued Federal excess property near Anchorage that might otherwise go to Cook Inlet. The State oil revenues from Swanson River are protected for the State. Cook Inlet gets some resource land that would otherwise be locked up by the Federal Government and not used for the economic benefit of Alaska. Contrary to what has been said earlier, the out-of-regions selected do not cost the State. There is enough (IA) land and land available (IA) to more than meet the State's entitlement, and in addition to that, the effect of this Act and this trade is to increase the final total State title, over and above the Statehood Act by approximately 30 townships. It appears to me that the potential gain of 30 extra townships of State ownership has a good chance of exceeding the potential loss from the production of coal reserves of questionable value. Also, approximately 19.7 townships of State land are transferred to private ownership. These lands are

been dropped into the State's lap, but I surely did not mean to impune any tendancy on the part of the State or you folks to rule against Cook Inlet, per se, I simply wanted to bring out these points.

Sen. Poland: Did you help Cook Inlet select this particular range that they selected?

Knaebel: We advised them on technical matters relating to land and have helped them to decided the priority of the lands that were available up to this time for selection.

Sen. Poland: Are there any further questions of Mr. Knaebel?

Rep. Brown: Madam Chairman?

Sen. Poland: Brown.

Rep. Brown: I am interested in the computation that has been made in regard to the comparison of various coal lands and I am sure that other people here will be testifying and variously agreeing and disagreeing with what you have to say and because that is true and because the issue falls back to Juneau, and we'll be looking at those same figures again, I am wondering if it would be possible for you to have that portion of your remarks or that summary typed up and sent to the committee.

Knaebel: Yes sir. We can not only do that but we can show you the basis of how we arrived at that figure. I might point out that to the engineers here that probably the most common point of disagreement is going to be the assignment of a probability function as to whether or not a given unit of coal is going to be economically mineable by a certain point in time. We have taken the State's report and we think they are basically right and have taken a somewhat more conservative view point on what are true economic reserves that can be mined at a profit.

Brown: I am sure that those who agrree with you would like to have that material in support the argument and the disagreeing people would like to have it (IA) to try to shoot it down.

Sen. Poland: Thank you very much. Mr. Chuck Hawley.

Hawley: I am C. C. Hawley, the local mining geologist, I am president of the local chapter of the Alaska Mining Association.
We don't feel that we can take a negative position on this for two main reasons, one the complexity of the thing, and we have only just been able to get the facts and then we have conflict of interest too. For one thing, the mining companies are members of the Cook Inlet Native Association and members of the Alaska Mining Association and we have had difficulty in getting all the facts. It doesn't appear the proper course to advocate a position. I think we will,..... there are

several things that we need to talk about and some of them haven't been brought up at all. Several things. First thing would be the trade off in volume mineral values are not easily assessible, but they probably should not be an overriding factor. And there are two considerations that lead to that.
Blank tape.

Hagey: Are not appreciably different. The second point is that some of the land which the State now can select has been demonstrated by the efforts of Cook Inlet Region to be mineralized. This was done on their behalf by contract mineral companies and this land would formerly have been in D-2 status, this land that they thought they could select and they made the expenditures to go out and prospect it and determined that it was, in fact, mineralized. This land that you can't put a value on it, but in other words, the State may be giving up some things that they're getting mineral values in return. Another related factor is that the major and perhaps only mineable coal in the Beluga area is that that remains in State ownership. I know pretty much what company reserves figures are in the Beluga fields and that they do not exceed the figures brought out by the State or just introduced in testimony; in fact, they're appreciably less than this. This is coal that can be mined in a reasonable future, say the next 25 to 50 years. Okay, so as far as mineral, I think this has been over quite a few, to a large extent. A point that the committee, or legislative action might address, the State will receive land in this trade and these, the trade would obviously be more effected by the mining industry if we can be assured, or, not assured, but, if we can have some assurance that we would be able to prospect on this land. In other words. the land that the State is now getting trade in the Illiamna area, Kamishak Bay area and the Talkeetna Mountain area; some of this probably will end up as parks, say the Kamishak Bay area, the other bear protection area and the salmon area; but it also has high mineral potential. And so, we would feel that the lands that are returned to State selection, many of them should be open to mineral (IA). So, that's a point that I don't think has been brought up.
The most serious problem involved in the trade, that I can see, involves a change of D1 and D2 lands, specifically in the Lake Clark area.
The, and this is one area that's not treated in the economic evaluation of the State, in other words, the State has tried to look for trade offs in the paper that they've prepared; but the State, in the provisions of the government, had given up the right to select anything in this Lake Clark area which is about 30 townships. And, it further has agreed that this land would go into national parks status, not perhaps national parks, but it will be under national park management. We have further agreed that certain lands inthe Kenai Moose Range will not be automatically, that the Secretary of the Cook Inlet Native Association, will encourage their placement in the growing system. In other words, this land is getting the D2 type legislation, they're prejudicing they're already trying to make decent settlements. The land in the Lake Clark area includes a (IA) which has been billed and the value ... the only (IA) official number that can be estimated (IA) is open file publication of about three or four years ago, the value (IA) ... results in excess of 200 million

dollars. This land would go into national parks and, in effect, constitute a taking because there's no way you can mine a national park or a national park recreation area regardless of what the park service says will happen. This has been pretty much provided in Glacier Bay and if you give it to a national park, you've lost it. I think maybe this whole trade has gone so far that this particular item cannot be remedied but we see similar problems in the southern part of the Brooks Range where the State selected mineral land in the Mt. McKinley area where State-Fedreal trades were involved that the legislature should look closely to what lands the State is going to trade back to the Federal government. The national park service never gives up. They're the most effective group I've ever seen as far as land acquisition and they'll get you every possible way. Maybe some people think that's highly desireable but, I think giving of known mineral land is something that's really questionable; especially since there's no compensation mechanism that really appears to work. Okay, kind of emotional or something like that. But I would like to talk a little bit about taxation and revenue since this was yesterday and this 10 percent royalty provision was negotiated at a time when coal values were low. I think that you also need to put yourself in the position of (IA) at about this time. At the time that they started to pick up coal lands, there was no good coal potential anywhere in the United States. The people had pretty much given up on coal - you couldn't sell acreages in that area. They felt that here was an area where they could acquire coal which was not economical and by putting in a liquification plant upgrade that coal to the extent that it was economical. Now, events subsequent to that have probably made this coal economical and feasible, but that wasn't their initial plan and they acquired this ground in, they were going to convert it artifically to, say, an environmentally clean product. And, so, when you look at revenues, it's sometimes forgotten that the total revenue to the State isn't just a royaly --it's the State income tax, all the indirect benefits to the State and, in contradiction to what other people have said today, we do have a settlement tax, it's a 7 percent on the net tax, and it would exist on properties and would give a return to the State just as much as if it were to say, remain in State ownership. So, a lot of you people maybe should have been in the tax business anyway. I couldn't resist the chance to get a little plug in there.

One other further danger that I can see in things that are happening in the State is the tendancy for the, I don't know how to say it exactly, but the political, anyway, making the geological survey of the State into a political body. Now, I don't say that this is happening in this case, but the State administration has asked the State geological survey to come up with a document which justifies this trade and they asked them to do after the fact that the trade has been arranged. And I think that's extremely bad and even though I agree with the things in here, the fact that you're asking technical people to get into the political arena is very, very dangerous. It didn't happen in previous administrations because the Commissioner of Natural Resources knew something about resources. It happens here because, they have to go back down the staff to find out anything about natural resources.

(IA)

Well, the previous administration (IA) a minute ago, but they were trying

to acquire economic value for the citizens of the State of Alaska. Maybe they made some mistakes ... Thank you very much.

Sen. Poland: Thank you Mr. Hawley. Representative Brown.

Brown: I'm going to yield to (IA) first because I keep looking like I'm putting my hand up here all the time. Am I the only one asking questions?

Sen. Poland: You can just talk for all of us.

Rep. Brown: One of the things he talked about was a matter involving concern over this 10 percent royalty and I didn't really understand what it was that you were talking about or what it was you were worried (IA) or somebody.....

Hawley: Well,

Rep. Brown: Let me finish my comments and question --and that is, the State, my impression is you can't go ahead and change the royalty on coal that has already been granted and those in Cook Inlet, they may well be re-negotiating but they'll be re-negotiating on the basis of a business decision. The other party probably won't want it if (IA) negotiate (IA) lots of money for the operation. So, what is the danger and the worry here (IA) concerned about?

Hawley: Okay. The danger that I heard today is that people here say " oh boy, coal has just gone from $5 a ton to $20 a ton — there's really going to be a tremendous windfall profit that people can tax." I think you need to look carefully at that. The State can increase their royalties, it does have the potential at any time to increase, say to raise the net tax or other tax provisions for gaining revenue.

Rep. Brown: (IA) there's a royalty and then there's a tax.

Hawley: Okay, but there's still (IA) the State. It's sort of a technical question but it still comes out as profit, a piece of the pie and you can only cut it so small. Well, this thing is happening on oil legislation right now. They want to increase the (IA). They can increase the royalty (IA) little bit tricky right at the moment. But, don't assume that these people are going to make a tremendous windfall profit. If it goes to a liquification plan, about three or four years ago it was estimated that a plant like this would cost a hundred million dollars and no one had ever built one then; so, I think you're looking at capital costs of one to two hundred million dollars that they need to get back before you start worrying about trying to tax any excess profits. That's what I'm getting at. There's a tendancy to think that people in the resource industry are making .....

(tape nine)

Hawley: ... extract resources other than oil and gas, some specific industries of the entire century so far has been a net loss. (IA)

Sen. Poland: Are there any other further questions of Mr. Hawley? Thank you very much. Stewart Ramstad?

Sen. Poland: Cecil Barnes? And William Johnson has submitted written testimony to the committee and will not appear. Dr. Douglas Stark?

Stark: My name is Douglas Stark and I live in Anchorage. I want to say that I appreciate your committee being here and holding the exhaustive hearing on stoppages hearing this morning in Palmer. I have no personal ax to grind. I could stay home and trust that you will recommend approval of the agreement but I know that there is opposition for various reasons and a Legislative body such as yours can't help but think that maybe the testimony here is in fact representative of the constituents. So I figure it is desirable for citizens to testify. (IA) background of this issue. The Native Claims Settlement Act provides that the Cook Inlet region has a right to a certain amount of land because private parties in the State have already selected the best land for themselves. We have a problem in the regional (IA) court. Settlement Act provides a very rigid formula for land distribution but since there was a problem in this area, the State, the region and the feds sat down and negiotiated an agreement. This, in itself, is commendable because all factors can be taken into account (IA) this rigid statewide guidelines. (IA) which reads: "which was not to the benefit of one and the detriment of another but which would benefit all parties." In earlier stages of negotiations various issues were raised as to what the region wide did. During these negotiations, the region gave up the following claims: number one, the Swanson River oil fields; number two, the Campbell Airstrip, Point Campbell and Point Woronzof Tract; number three, the Beluga mental health coal lands. During the negotiations the State held public hearings on the trade. We may not agree with the region's position. We may not agree with the State's position. We may not agree with the federal position. But in a complex issue such as this, there is bound to be at least one bid from key cities, persons confined in this view. In other words, we have to take the whole thing as a package. This complex issue contains many safeguards for the various parties such as restrictions on the sale and restrictions on manner of use. And the State appears to gain 700,000 acres more from the Federal Government than it gives up to the region. In addition, the State gets the Campbell Airstrip, the Campbell Point, Point Woronzof Tracts. A lot of side issues have been brought up. Somebody that (IA) such as the Legislature versus the Administration. As far as care of the land and proper development, based on what I've observed, the land would be best off in the region's hands. In the final analysis we have to examine the alternatives to this agreement and what would happen if it were rejected. Another agreement would involve having to go back to Congress. The various staff who have devoted a substantial amount of effort to this issue, the State in particular, has many other things to do with its limited personnel, sources beside rehashing this issue. I doubt that at this moment, consideration would substantially improve the agreement. I think that it would be similar to the union that rejects an agreement, strikes for three more months and then accepts the same offer that it was originally offered. I think the agreement is a good one and the rejection of it is unwise and I urge your approval of it.

Sen. Poland: Thank you Dr. Stark and Representative ?

Rep. : What is your profession?

Stark: I'm a consultant in management engineering and planning.

: Pr ate?

Stark: Private practice.

: Thank you.

Sen. Poland: Representative Brown.

Rep. Brown: I only have one comment. You said there were some side issues that created muddy waters such as problem of the Legislature with (IA). As far as I'm concerned, I think that side issue is not a side issue. I also would (IA) I think it would have (IA) democrat, republicans or (IA) the legislature (IA) same thing. And it demonstrates a major problem, as people have testified and pointed out, we don't have procedures (IA) we should have. So that this kind of thing has been going on for (IA) So I would strongly disagree with that portion of your testimony. That's all I have to say.

Stark: Well, on that I think we all agree that that's an issue, whether it's a side issue or a prime issue, to some extent it is subsidary to the main issue which is the agreement itself. If the agreement is a good agreement for the State, is a good agreement for the region, a good agreement for the Federal Government, if the alternatives to approval are very negative, then the question is, what is the subsequent issue which is the agreement and if there are some problems at the way in which it was arrived at, then we'll see that it doesn't happen again.

Rep. Brown: But, you know, you really kind of work like you're disaproving the actions of these committes and legislative council and say someone raised a side issue to muddy the water as though there was some kind of criminal intent on the members of the legislative council who asked that the subcommittee involving Senator poland, Senator Rader and some of the others look into that, (IA) I don't think there's any kind of intent. I just wanted to call or question your use of the word. Maybe you didn't intend that that was the case.

Stark: No I didn't.

Sen. Poland: Are there any other questions of (IA)? Dr. Stark, thank you very much. John Baxandall? (IA) speak to us? I guess he's not here. Alec Sisson? Doris Clark? Andrew Camkoff?

Camkoff: My name is Andy Camkoff. I'm a stockholder in Cook Inlet Region. I'm also the General Manager for the Knik Village Corporation, the Alexander Creek Native Association and have been into the particular thing of the land trade quite extensively in the last few months. And in behalf of Knik-Knik stockholders, we have gone through quite an awful lot of additional work in achieving and selecting the entitlement lands that the two village corporations were entitled

to under the Act. We have looked into this trade quite extensively in behalf of our own particular demand problems in and around the Knik and Alexander village port townships prior to the negotiations and the outcome of the tri-party agreement. Knik and Alexander have been burdened with selecting lands in far-off locations such as Lake Clark, Talkeetna Mountains, west side Cook Inlet and only by the means and the outcome of Cook Inlet, State of Alaska and the Department of Interior land trades have the means to particular villages have arrived at any lands close and near to their villages' area. We highly support the trade. We welcome the opportunity to settle the land problems that the village corporations are faced with. The land trade has brought about an awful lot of additional work to corporations (IA) village. An awful lot of additional expenses. We feel that the land trade not only benefits Cook Inlet but also that of the village corporations that are involved that were forced into selecting deficiency lands in the Lake Clark area, the lower west side Cook Inlet. We had mixed emotions about identifying and selecting those lands that were set aside by the Secretary. Consequently we had no choice but to select them (IA) Cook Inlet, Lake Clark. We would have, and if this trade does not follow through with approval, these corporations would be burdened quite heavily in the future with a management problem. Even though we will have lands (IA) we are still going to be land holders in the lower Cook Inlet and geographical problems in consolidation with (IA) lands in the lower Cook Inlet and far-off places. But through the means of the land trade, we're very happy with this and we highly support it and we highly support and appreciate the efforts that have been extended and the time and dollars and efforts of Cook Inlet and the State and also the Department of the Interior. I know that - I don't think any of us have come and testified that this has directly affected this and my intentions were to come before you and present our faces and values and our understanding and that we do support it. But I...thank you.

Sen. Poland: Mr. Camkoff, when I talked to you earlier today, I told you that (IA) that I would like you to confirm that this offer also takes care of the Montana (IA) problem.

CamkoffL Yes. Montana and Caswell group, these two organizations and corporations are not village corporations, have been brought out and brought into the binding documents as to the extent that they are affected. They have been working with the Cook Inlet Region, they have these agreements and understandings of their problems. They too were - faces a lot of problems in identifying proper and desirable lands. Their problems, I believe, have been satisfied by Cook Inlet and the State.

Sen. Poland: Representative Huntinton?

Rep. Huntington: I get the feeling sitting here (IA) I'd like to ask you two questions. First of all, who was in agreement first (IA) Washington, Anchorage or Juneau?

Camkoff: Speaking of what agreement?

Rep. Huntington: (IA) Cook Inlet and (IA)

Camkoff: As it affects the villages within Cook Inlet?

Rep. Huntington: No. You know, you said you were working under (IA) Where was this (IA) drawn up at?

Camkoff: Okay. Let me drop back a little bit and draw you the village picture, those villages that are affected within this agreement within the Cook Inlet boundary. The Cook Inlet villages have brought in, I would call it, under a double tri-party agreement. The original tri-party agreement was called the Cook Inlet, the State of Alaska and the Department of the Interior tri-party. That set out and identified certain parameters of the trade. As it affected the villages, those had been as selected lands in Lake Clark, i involved us in this tri-party agreement where the Cook Inlet villages, State of Alaska and the affected villages. So when I'm talking about an agreement, we had an agreement with Cook Inlet and the State of complying and fulfilling these (IA) of these (IA).

Rep. Huntington: No. First I asked you where does this mean, where was this brought up - Washington D.C.? This agreement that (IA) the one where we're testifying on now, the (IA) royalty agreement. (IA) Washington D.C., Anchorage or Juneau?

Camkoff: I couldn't tell you.

Rep. Huntington: You don't know?

Camkoff: No. I think it's probably a combination of... I think that the federal (IA) much more technical (IA) than I do.

(inaudible)

: Inaudible

: Yes, the agreement, that is (IA) I would first (IA) about a year ago. We had some (IA) in the State (IA) the Federal Government and as we talked with people, plan and develop a coastal development (IA) contribution (IA) benefit Cook Inlet region (IA) and (IA)

Rep. Huntington: Then you feel the native corporations are capable of drawing up its own agreement then on their own side?

: Yes I do.

Rep. Huntington: Then you don't have to run to the Legislature everytime you want a (IA)?

: I agree.

Rep. Huntington: Thank you.

Sen. Poland: Are there any further questions of Mr. Camkoff?

Camkoff: Mr. Huntington, in the one agreement I was saying that the Knik village corporations had gone into Cook Inlet as a...

: I think that's... (IA) clarification of that law. I think (IA)

Camkoff: Knik village corporation and other villages that identified lands in Lake Clark more or less signed a contract agreement supporting those characteristics of the trade with Cook Inlet and we...

: (IA) the village corporations (IA) and the regions (IA) desire to have the villages present (IA) or abandon the selections in Lake Clark (IA) do that. And so the villages have to agree with (IA) selections in Lake Clark (IA) agree to do that and so (IA)

Rep. Huntington: Okay. The reason I asked you is that I get the feeling here that the Legislature wants to do that and everytime you want take (IA) paper and pencil and ask someone if it's okay (IA) and I don't agree with it.

(inaudible)

Sen. Poland: Are there any further questions of Mr. Camkoff? Thank you very much. John Alsworth?

Alsworth: Senator Poland, members of the committee, ladies and gentlemen, my name is John Alsworth, a native of Port Alsworth, Alaska. For your information Port Alsworth is located within the subject land of this hearing and has been in existence since 1941 when my father and mother moved there. We have incorporated as a native group as Tanalian Incorporated under the provisions of the Alaskan Native Land Claims Settlement Act of 1971. However, there are certain complications which have hindered our attempt to attain recognition and gain rightful benefits under this said Act. These complications are as follows: we are enrolled to Port Alsworth and shareholders in the Bristol Bay Region. The location of Port Alsworth is within the boundaries of the Cook Inlet Region. I understand that this land was withdrawn as regional deficiency land and converted to village deficiency land by Public Land Offer. Prior to December 18th of last year certain villages of Cook Inlet filed applications for the lands we have applied for. The reason for this testimony is to bring to light the property interests which we lay claim to within this contested area. Regardless of the outcome, we want our claim to the Port Alsworth lands protected and written into the land swap agreement. After attending the hearings here tonight, our feeling as a group is that we are being ignored by higher interests of bigger corporations or operations. After thirty-five years of my family living at Port Alsworth, we as a group feel that we should have first choice of the land to be filed on.

Rep. Anderson: Mr. Alsworth, really as far as I can determine, there's very little that this committee can do to resolve your problems. But I think it's very helpful for your claim from your point of view to have this particular problem brought to our attention. I think that Mr. Huhndorf has probably listened very carefully to your need here and I'm sure that he will be getting in contact with you. So I think it would be a good idea if you two got together.

Sen. Poland: Senator Rader.

Sen. Rader: Excuse me, I understand, Mr. Alsworth, are you a member of the Cook Inlet (IA) organization?

Alsworth: No. I'm a member of Bristol Bay.

(inaudible)

: (IA) Cook Inlet. (IA) is that down south of Homer?

: No, that's located on Lake Clark.

: Oh, that's right. Yes, that's right... We're, as you've probably gathered by what you have heard here, we (IA) position, you write this Act. I don't know... (IA) I don't know what should be done...

Sen. Poland: (IA) I appreciate Mr. Alsworth's bringing this to our attention but Rep. Anderson and I feel sure that he'll be able to work with Mr. Huhndorf...

Alsworth: I kind of feel, myself, like a mouse under the rug because I'm representing a second people in this group. And I realize that I'm facing the State, Federal Government and the Cook Inlet Native Corporation and this is something that, you know, that I realize could be rather impossible for a group of (IA). But the reason why I come here tonight is to state my interest in the land. I've lived here all my life and it's kind of like someone giving away your (IA)

Sen. Poland: Representative Hershberger.

Rep. Hershberger: John, how much, beside the strip of your actual homesite and where the house is, acreage is involved?

Alsworth: 2,240 acres.

Rep. Hershberger: Less than 2,500 acres. All along the same continuous...

Alsworth: My dad has 160 acres patented that's on the edge of that.

: This was in the plot?

Alsworth: The Port Alsworth area was withdrawn from some five villages now on the south side of Cook Inlet.

(ianudible)

Alsworth: And I realize the problem. The land is rather inaccessible, you can't, you know...

(inaudible)

Sen. Poland This is something over which we haven't any...

: Has the earmarkings of an internal problem.

Sen. Poland: (IA) two regions...

Sen. Poland: Mr. Huhndorf, do you care to comment on...

Huhndorf: I've had a couple of occasions to talk with representatives of Port Alsworth and (IA) trying to (IA) under the trade (IA) and the land would then revert back to its original (IA) we take that stand (IA) and we're prepared to (IA)

: (ianudible)

Sen. Poland: When could we (IA)

Huhndorf: Inaudible

Sen. Poland: Thank you Mr. Alsworth. Thank you. Nelson Ankapak?

Ankapak: Good evening Madam Chairman, ladies and gentlemen. I really don't know where to begin primarily because each time that there is a person up here testifying for Cook Inlet Region, State of Alaska and the Department of Interior land swap it seems like they have looked at my notes. So I really can't (laughter) Anyway, because we have a limited amount of time, I'll make my statement very brief. You have just recently got the agreement between Cook Inlet Region, State of Alaska and the Department of Interior was finalized. I believe that this is a first of its kind to be reached here in Alaska. That is, that three of the largest land holders have came to an agreement, State of Alaska and the native community. We have followed the progress of the course of agreement very closely, primarily because Calista Corporation is one of the corporations that is adjacent to Cook Inlet. And I might add that although the agreement identifies Cook Inlet, State of Alaska and (IA) as parties to that agreement, that before the terms were finalized that Cook Inlet and the members of Calista Regional Corporation had a few meetings and came to some kind of a compromise. I might add that when the Land Claims Act was passed in 1971 and consequently signed into law on December 18, 1971 by, then, President Nixon, the United States Congress declared that there was a need for a fair and just settlement of claims of (IA). Some of the terms of the land swap, I believe, even (IA) by the Federal Government, the State of Alaska to fulfill this need. I believe that late in the game, the Dept of Interior realizing that they did not really fully fulfill, and yet the Act was passed by the United States Congress for fair and just settlement. Thus, I beleive, that was one of the reasons why the tri-party agreement was reached. In short, Calista Corporation is supportive of the terms of the Cook Inlet settlement and would urge the State Legislatures to support them of it. Thank you very much.

Sen. Poland: Thank you. Are there any questions for Mr. Ankapak? Thank you very much Mr. Ankapak for appearing here this evening. (IA)

Armstrong: My name is Carl Armstrong. I'm chairman of the Kodiak Regional Native Corporation in the Kodiak Islands. I'm secretary of that corporation and I serve on the staff as public relations. I'm editor of the Kodiak Islander newspaper. I'm here to urge that the settlement that has been proposed be approved and to... I think I wrote out a list. I find it almost incredible that the Alaska Department of Fish & Game, Alaska Wildlife Service, the U.S. Forest Service, the Land Use Planning Commission, the Governor, the environmentalists, the Borough and the Congressional delegation made up of democrats and republicans are in agreement. I think in the course of the four years we have tried to

implement the Act, believe me, it has never happened before.
I serve as the... Kasilof Land Department...

(break in tape)

Armstrong: ...at least I'm in debt. Hopefully you will correct that situation. In addition to all my other activities, I often serve as a consultant to other regional corporations around there - Iliamna Corporation. Those of you who have been in the Legislature a long time, I think John Rader was the one who told me that a consultant -the definition of a consultant is a man who knows eighty-seven different ways of making a buck but he doesn't know any women. Sometimes that's the way we feel in trying to implement this Act. This agreement, placed in front of you, represents, we think in Kodiak, a pioneering effort under the most difficult circumstance, combining land planning, equal value, the interest of local communities, the future economy of the State and the need for a just and equitable settlement. I'm not going to say anymore than that. I would just urge that you consider the fact that all these agencies and these personalities are very diverse and yet in consulting together on a most complicated matter have come to an agreement. And they put it in front of you people and it's up to the Alaska Legislature now to either say yes or no. And that's my understanding. If you try to alter it, my understanding, than it's all over with. You're saying that in effect (IA) I hope that you won't do that. It would seem to me that the Congresssional delegation, after the display they made over the two hundred mile limit, if they could come to an agreement on this complicated matter, it surely went through the mill, so all the compromises have been made. All the debates have been spoken and there isn't much more than can be done. I'm aware of some of the complications that they got in to and of the sacrifices that everbody has contributed in arriving at some sort of an agreement that is acceptable. I sincerely urge that you do everything within your comprehension to approve that agreement. Thank you.

Sen. Poland: Thank you Mr. Armstrong. Mr. Anderson wants to read the statement of the Bristol Bay Corporation into the record and we have one more witness.

Rep. Anderson: Thank you. I just received a letter from the Bristol Bay Native Corporation that they wrote to me and they state that, "the Bristol Bay Native Corporation hereby goes on record in support of the land exchange agreement between the Federal Government, the State of Alaska and the Cook Inlet Region Incorporated provided that the parties involved recognize and give assurance that the property interests of Port Alsworth are protected." And that's signed by Harvey Samuelson, President of the Bristol Bay Native corporation.

Sen. Poland: Thank you. Mr. Galliett.

Galliett: (IA) Maps (IA) like to mention took me about 60 seconds and think I can do it.
Sen. Poland: Mr. Galliett is our last witness so we will not be meeting (IA)

(inaudible - many people talking at once)

Galliett: Senator Poland, members of the committee, thank you for the opportunity to (IA) I know you've waited a long time (IA) and I admire your tenacity. I think one question here at the outset should be, how far ahead should a statesman

look? I don't know whether you consider yourselves statesmen or not but what we're talking about here is income to our children, our childrens' children and beyond that. The question is whether we're going to give that income to a small percentage of the population of this State or whether the eighty percent of the population of this State is going to retain our most valuable State lands. Now, we're going to be here a long time as citizens and our children are going to be here a long time. Now, what surface and mineral estate are we giving away in this deal? There's a long list of lands that I could cite and it would just waste your time. You have the list. It's difficult and tedious to analyze it. It's taken me weeks. I presume you will just have to do it. The most important moneywise piece of land in this deal is the Beluga coal fields. But close in importance would be the Homer coal fields. And possible next in order would be an industrial and port site on the west side of Cook Inlet which is also involved in this give-away. Now I think, I will try to confine my technical remarks to the Beluga coal fields and the Homer coal fields because there isn't time to go in to the other details. One of the problems that we have with this deal is its uncertainty. It's a blank check to which you're going to put your signatures and then Mr. Smith behind me is going to sit down with the native corporations and he is going to decide what he wants to give them of our State lands. You are not going to know the deal. The way it is written does not permit that. Now one of the problems built into this arrangement, and it was done deliberately because otherwise too many objections would have arisen in particular instances of land being given away, but one of the problems is that many of these villages have overselected, they have selected according to the map which sets forth all alternatives. And I'm not sure that anyone knows what it is they're going to get or what it is that you're being asked to give away to villages. You've seen various figures in the newspapers and you have, I believe, a copy of all my articles in your hand so there is no point in belaboring that issue. How much coal are we giving away? You've heard the experts from the Division of Lands and the Division of Geological/Geophysical Survey who were called in after the fact to justify this deal give their quantities. Now, I would like to tell you how I got into this so you understand something about whether I have a conflict of interest and just how much work has gone into my determination of quantities of coal in the Beluga area. In the first place, I was brought into this by an oil company which calls itself an energy company which still has interests in Alaska that they're pursuing with very, very little help from me. They asked, when they put me to work looking for an industrial site for a refinery to refine State royalty oil, to carefully consider the fact that they were an oil company and therefore interested in coal and not merely oil or gas. So I think I went overboard a little and acquired an awful lot more information than they ever expected. At any rate, they got it. And particularly on the Beluga coal fields. Now, initially I depended on a report by Barnes which is available to the committee which dealt almost entirely with surface outcrops because in the days when Barnes did his work, t n or twelve years ago, no one would think any deeper than a very limited stripping depth of coal and ...

(tape ten)

Galliett: ...the knowledge of how to convert it into something that we can afford to ship, the fact that we're now at the point where we can make oil out of coal competitively with foreign oil. The situation is getting slowly better as research improves the details of the processes that are available to us. The first oil control plant was just contracted for the United States government and it's to go in near St. Louis. This production plant and not merely a (IA). What I did later, after my initial studies of coal and acceptance of some of Barne's figures, was look back again at the rules that these people in the geological profession applied. When they estimate coal, for example, they are very conservative. They don't like to be put in the position of making a grand statement and later having it shot full of holes and being embaressed. So rather than be embarrasses, they establish very arbitrary limits as to how far they will project coal, or infer coal, from the outcroppings or drill holes. Now, this kind of estimate is totally inadequate for the purpose of a large corporation or the State or any other person or group that has the stewardship of valuable property. Of course, the best information, there are others that weren't, and using the mud logs and the electric logs, he has given us information on coal how much coal at varied depths, how thick, what kind of (IA) and various information like this that general good math (IA) how much thickness of coal occurs between 0 and 2,000 feet, 2,000 to 5,000 feet and then again from 0 to 10,000 feet. The quantities of coal are almost unbelievable and yet, on top of all that, I have obtained logs on some of the wells closest to the Beluga area and its my opinion that Mr. McGee, again, as geologists are wont to be, he has been very conservative. I think he has understated even the enormous amounts of coal, but nevertheless, I accepted his figures. I even reduced his figures in making projection from them. Now one of the problems you have here (IA) value (IA) coal (IA) corporation (IA) one we have a lot of faults (IA) all the oil and gas wealth comes in this (IA) faults (IA) instead of drawing the arbitrary (IA) lowland (IA) now, what this figure gives us finally? (IA) coal (IA) 2,000 feet

(testimony barely audible)

(IA) don't understand (IA) the Department of Interior has practically required that coal land (IA) prospecting here in my studies somewhat based on actual physical knowledge. One thing that I'm very conservative in when I talked to Mr. Hackett of the University, still formulating his information on this area. He was (IA) prospectus, he was (IA) information and I recollect and my notes reflect (IA) tertiary sediments contain coal in varying amounts (IA). So to some extent all this work is based on (IA) actual drill holes and the use of mud (IA) the only thing I can't report to you, as that I have not completed the analysis of the electric log - we're working on it (IA) next week instead of coming in here and giving you a lot of malarky about how little coal there is in defense of the deal that's already been made. At least you can see I've done some actual physical work on it and I bring the results of it to you and they can critize my newspaper articles and they can critize my work but at least you have it. (IA) Now from that from those contours, I took every township in the Beluga basin that was in the swap area, and marked on the maps, and I took three

things: I took the percentage of the townships that contained any coal, that is, within the sedimentary basin, the depth of coal as shown by the contours within 2,000 feet of the surface, and finally the 50% factor of ultimate recovery. That would yield recoverable coal, if you multiply each township (IA) figure by 40 million tons for every foot of coal covering the township. The mechanics are really not so important. I've done this twice, independently. The first time I came up with 15 billion, 800 million tons. The second time I came up with 13 billion. Now, we're allowed certain variations in that -it's very crude. I make no claims that it is absolutely accurate or that it constitutes very reliable information. But it's better than just making guesses or taking an arbitrary boundary around coal outcrops. It's a heck of a lot better than taking below that level. And that's what has been done. (IA) Now, since I did that, I've listened to Mr. Hackett who tells us the sedimentary base is several thousand feet deeper than the information on which my prospectus was based. If anything, it nearly halves the coal, not greatly but somewhat. Now, there's so much coal in that area that you're not going to mine it out within a short period of years. It's not going to be a flash in the pan like some of our oil fields. You're going to be mining there for a hundred years or more, probably more. We really needn't concern ourselves with whether it's going to be surface mining or underground mining, we know (IA) accessibility to deep tide water. It's going to be mined by surface mining methods first, then underground methods as mining becomes established and market lines are put up. And finally, I have no doubts but what underground gasification will take the last measures of coal in that area. Possibly long after we're gone. Mental health lands, by comparison, mentioned 13 billion. The State figures on mental health lands with similar calculations came up with about 10 billion (IA) We're not talking about 75% having been taken out of this deal, not at all. We're talking about more in the deal yet than what's taken out. We can labor over figures all night and you folks are tired, so I'll go on. A critical deep water port (IA) we're giving away in this deal will probably end up in the hands (IA) because they're allowed to select one township of surfaces in that area, too. Why is that site so important to us? (IA) has done damn good planning in this State than wander in and out with all kinds of environmental (IA) and never sits down and talks planning. Where are the railroads going to go, where are the pipelines going to go, where are the cities going to stand, where (IA) going to be. Do they think about it (IA)

(testimony becomes nearly inaudible again)

do they think we're going to stay 300 or 400 thousand (IA) that's ridiculous (IA) we should have State lands for some physical improvements that must be made for lack of good (IA) and because I have a client who's interested, I have (IA) bring (IA) over future life of the enormous coal field. There's simply no correspondence in value. This is something that takes a lot of work and the only way to do it, is to make a list and start putting your dollar values down on both sides of the column. I'd like to ask another question to illustrate some of the troubles with this (IA). Why did the amendments to our Statehood Act permit a waiver of the equal value provision? Well, I can tell you in a few words. That amendment had to be put in or people like myself and other citizens who are aggrieved by this

whole thing, would have stopped it in court on federal grounds, not State law grounds, but federal law. Now, what's going to happen is, unless you folks write a bill to eliminate equal values from our State Act, this thing is going to be challenged in the State courts on the basis of our statutes. The changes shall be on the basis of equal value and either party to the exchange (IA) cash in order to equalize the value of the property of exchange. I'm not asking you to write such a provision. I'd just as soon you passed a resolution and then we'll take it to court. (IA) don't want injustice to most Alaskans. You have many proponents here, many of them stand to benefit financially. Why is this deal being pushed so vigorously and in such a short time? Another year or two would permit the State to do the transferring necessary to determine what the values are and do it right. I submit that (IA) of Norway, who's going to (IA) coal and Inland Pacific who owns that coal (IA) would never, never dispose of even a fraction of these coal lands without a drilling program and a complete geological report and this report that you got from the State Division of Geological/Geophysical Survey simply does not conform to what constitutes a good geological report and it lacks information from drilling. The cost of that drilling is such a tiny fraction of the potential values lost here that it simply is not right to dispose of that land without knowing what you're letting go.

I think it boils down to one thing - these Cook Inlet lands that you are being asked to dispose of (IA) survey once they change hands, any production, of course, benefits these native corporations, but more important than that production, which is going to be very low income production for some years I'm afraid, is the asset value added to this cost. It shores up the soft so that other management still needs (IA) values (IA) in a few years when it's saleable will have a very high value. It will simply be impossible to lose those values in that time.

What is a prudent course for the State to do in a thing like this so that all citizens are treated fairly and we don't rob one group to benefit another? We're all citizens of the State, some would rather be treated specially and given special benefits. But we're all together and many of us plan to stay and we'll probably be buried here. First, I suggest that you reject this blank check trade. It is wrong. Second, I say drill these coal fields; that takes an appropriation. Then you'll know what you're doing. (IA) Finally, give the native corporations a chance to obtain title to specific lands and rights that they claim and to make the selections that they're given two years to make. (IA) instead of the mystery (IA) adjucated by Mr. Smith. Another item, trade only on an equal value basis as determined by independent appraisals. I

do not trust the State administration to appraise this land in any way. Another recommendation, all coal lands should be frozen. We're throwing away income on the cheap (IA) have no escalation (IA). This should be done immediately. Finally, (IA) change our coal royalties to a percentage (IA) price so that we get a fair return on our (IA). And last, but not least, if we turn this land over to the Native corporation for a profit making enterprise, and they administer their lease to another profit mining company, you're throwing the doors open for all the evils of surface mining that occured in the other states. I hardly need to remind you that you don't have any surface mining laws, you don't have any coal conservation laws that I know of. You're starting this thing loose for destruction just as bad as I've seen in Missouri around my wife's old home —mounds of material that will take years to grow over with something (IA)....Finally, and I think this makes sense to the people on this Committee and the Legislature, let's call a spade a spade. I would like to see this committee and this legislature purge itself of conflict of interest in this matter. There are too many people that have a financial gain in this deal serving on this committee and in the Legislature and I would like to see them not vote on this issue at all. Thank you.

Sen Poland: Representative Cotton.

Rep. Cotton: You know, there are probably a lot of comments to be made about many of the things you said, but, one thing you did mention about people on the committee and people in the Legislature that may have a conflict of interest making a decision on their own not to vote on the matter, of course you know, that's not up to them. Any time a member of the Legislature decides that they don't want to vote on an issue, they have to have the full consent of the rest of the body and that's a point I thought you might not be aware of.

Galliett: I'm aware of it. I don't know how to solve it but I also know the system, the principle of good government should not be overlooked in the matter of such potentially great loss to the people. It won't pass. It will be observed and it will be criticized and it shouldn't be done that way.

Sen. Poland: Representative Osterback.

Rep. Osterback: Madam Chairman. When you talk about "we", would you explain who "we" is?

Sen. Poland: As far as I'm concerned, right now when I talk about we, I'm talking about 80% of the non-native citizens.

Rep. Osterback: Well, you were talking about the (IA) too and we don't have any up here unless its from California or Texas.

: That's right.

Rep. Osterback: So, you don't want, you want everything to (IA) be controlled (IA)...

: No. ABsoluetely not.

Rep. Osterback: Well, that's the way I took it (IA).

: Well, that's not right. I don't. (IA) State of Alaska to retain ownership of their lands and to administer them in the public interest and in an open way.

Sen. Poland: Senator Rodey.

Sen. Rodey: You mentioned certain conflict of interest that the Legislature has. Could you be more specific with regard to those so that you don't implicate the whole Legislature (IA) would like to know (IA) conflict of interest (IA) suggest a better word.

: I think suggest (IA) I have gone thru the records in the Alaska Public Office Commission of most of the Legislators - not all of them - I didn't really have time. But I have found that quite a substantial number own stock in Native corporations and some that apparently should have reported stock in Native corporations either as trust or interest actual ownership that have not so reported. They very probably do, because they hold office in Native corporation, and (IA) the records are public....I don't see any great point in mentioning names and I probably (IA) ....

: (IA) object.

Sen. Poland: Senator Rodey.

Rodey : You stated that you think that the Governor's royalty rate as unreasonable. I agree with you, this was a fantastic give-away by the State But you also state that if in 17 or 18 years I believe, that you said we we could do something about the royalty rates. On what do you base that statement?

Galliett: Discussions with various people and in reading the contracts that we have with the mining companies. There is going to be some litigation, I feel, when they, when the State attempts to change these but, I think it can be done, in fact, it must be done. You can't leave these royalties rates (IA).

: (IA) I would hope you object (IA). Price could answer that question as to the validity of the leases for the forseeable future and the length of years by which their value is judged and how long it will be before (IA).

Price: (IA)

Galliett: Now, may I comment (IA). I don't propose doing anything doing anything to those leases during the next 18 years or so, that's a valid contract but when it's time for re-negotiations, that's the time to

I think, we can make a change. When the laws are passed, some of them are not direct. Some of them (IA) negotiations. Sitting down with these people and telling them "alright, you've gotten away with a good thing for 18 years and you've paid all your development costs, now we're going to get ours back again," but that's something that will have to be left to the year that it comes up.

: (IA) leases. I'm not aware of the attitudes the State might have in re-negotiating. (IA).

Price: (IA)

: (IA)

: (IA)

: Thank you.

Sen. Poland: Is Mr. Bateman still here? Representative Cotten.

Rep. Cotten: I'd like to comment on something that Senator Rodey mentioned, also Mr. Galliett said that there sometimes not so direct methods of re-negotiating and someone else brought up the fact that there is a mining license tax that probably would apply to the coal fields. In answer to your question, how do you re-negotiate (IA) might be worth (IA)
(IA) comment. (IA)....In regards to who owns the land, of course, a severance tax is being applied to this coal and the State can derive the benefits from them, the royalties, in this case would probably be much less than oil severance providing the vast bulk of 90% of the income to the State. Would you comment on this, the question being does the actual ownership of the land make a great deal of difference to the State has the ability thru severance tax to extract any reasonable amount of income from it that it (IA) of that resource.

Galliett: That's a very good point and it's one I've thought about a lot. It depends on the make-up of the Legislature, I suppose. Now, let's be realistic. You've got a group that will benefit from no severance tax because it's their land, their money, their income (IA). They will oppose it. It's not too easy (IA)...you fellas haven't been awfully successful in taxing the mining industry as I see it. What'll happen in these proposed severances taxes is pretty obvious (IA) money that the native corporations might otherwise enjoy?.

: (IA)

Sen. Poland: Mr. Hawley.

Hawley: (IA)
The gentleman's point is well taken, as far as drilling having been done, however, the depth of that drilling is inadequate to show the reserves of deposit resources of coal that are in that area. I've talked to some of the people that held leases (IA)...they've told me that results of their limited drilling. None of those people have, except possibly (IA) and one or two others, have wanted to spend a lot of money drilling because, up until recently, the

whole thing didn't look like a very good proposition. You must realize that only a very large mine over there can afford all of the overhead costs in establishing shipping facilities, (IA) and so on. So, a lot of the little guys fall by the wayside. I have been advised that there's enough confidential information that is available to you but not to me that you could learn a lot more, alot more about these coal fields than I can make available to you with the information that is public. I would suggest that this information be presented to you before you make any decision. But, more than that, none of us can know what's going to happen in that sedimentary basin which is immediately adjacent to (IA) thickness of coal measures (IA), of course, until you drill it. (IA) to drill it, there are companies that would be only too happy to do it. Until you drill it, you don't know what you're getting into and that's what, in my opinion, you need to do to protect the State.
I don't think this agreement has to go this year or next, maybe the year after. I think being rushed into this thing is typical of the pressure and tactics and all justifications for this haste, this three weeks or a month to the Legislature, ...are just an attempt to cover up what you could discover or perhaps discover in four years in just a little more time. I think the Congress would fully understand if you hesitated to dispose of a coal field as energy resources and in all probability as great as Prudhoe, or greater, while you took those minimum steps to determine just what you're doing.

Sen. Poland: Are there any further questions of Mr. Galliett. Thank you very much. Is there anyone who wants to testify. We will not resume the meeting tomorrow. Have we covered all the names we had on the list of people that were here? Yes?

: I'd just like to say (IA) .... My name is Bob and I've also (IA) geologist here in Anchorage. I've lived here in Alaska for several years now and have been involved mainly in metal exploration for several companies. I'd just like to put this thing in the full potential here which is the main (IA) people are concerned about into a perspective of profitability. This is what we're talking about over here is what the State gives up and what the Cook Inlet Region, or whoever, may gain from it is profitability in the long term. We can do a lot of things with percentages and figures here. It has been suggested (IA) .... there's lots and lots of drill holes, particularly south of Katchimak and the Cook Inlet Basin that indicate a fantastic amount of reserves in coal if you total up,as has been done here, every single bed down to 2,000 feet and if you go below that to 5,000 feet, you come up with just whopping figures and if you put a dollar value per ton on this figure, even if it's very low, with those kinds of figures, you arrive at an exhorbitant potential dollars in possible royalties. But, the thing is that the Committee here should be considering as far as this land trade goes, is the profitability of reserves (IA) at those depths the coal is there (IA) the near fuuure and that might not be in the next hundred years, there's not going to amount to that much. There's coal, even more coal reserves than that underneath the Cook Inlet Basin, underneath the water and a lot of talk has been generated here about possible gasification methods and (IA) going to be able to turn this coal into oil and so forth.
There's some credibility to that and hopefully this is going to be one of the ways that the U. S. and Alaska keeps going here as far as energy goes but, again, you're forced with the same thing, the deeper you go, the more

expensive the cost of drilling, the more expensive the cost of your vacuum and the whole thing deals in profitiblity. If you can't its always been in our economic system, if the dollars aren't there, then there's either another way found or the price goes up to (IA) ...And my suggestion is that in spite of the fantastic tonnages that are possible in the Beluga area that it is the profitability of the thing that the committee should be concerned with and I contend that this is far below what has been spoken of here, if the profitability from my estimates and from other reports over there is in the order of a few billion dollars. The State reports contend there is 15 million dollars or so and another projections have been up into 60 million dollars but the point is that it's a few million dollars of potential royalties if they're sure and in the long run and not billions of dollars. Once you look at the overall land trade here and what the State is getting and what the Federal Government is getting.
In order to appease Cook Inlet, and other parties here, the State would be giving up a potential few million dollars worth of mining royalties but in turn they're gaining surface real estate of high value near Anchorage, Campbell Airstrip and so forth that's been talked about; but, if you want to talk about future dollars and what this (IA) may be worth in future years, what's Campbell Airstrip going to be worth in 50 or a hundred years? I just thought I would like to get a point in there on bringing this thing back into perspective a little bit as to what the Committee should be looking at. If you have questions, I might be able to help you.

Sen. Poland: Are there any questions of (IA). Thank you very much. We appreciate everyone's patience and (IA).

: Madam Chairman, (IA) perhaps an opportunity to speak concerning some of the points that we have not had the ability to listen to some of the comments, however, because of the late hour, because of the people (IA) of the committee to put in, and also because of your request that, again, certain members of the staff be present in Juneau, I think that if we could have access to some of the information that Mr. Galliett has indicated here, we could probably, by Wednesday, have a response from the State Geological Survey concerning some of the items raised and other points that came up from some of the speakers (IA) so if that's ok, refer that till Wednesday.

Sen. Poland: (IA)

: (IA)

Adjournment

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M March 2, 1976

SUBJECT: Cook Inlet Land Trade (Work Order 2316)

TO: Senator Kay Poland
Chairman, Senate Resources Committee

FROM: Billy G. Berrier BGB
Director, Legal Services

As a result of substantial negotiations between the State of Alaska, the United States and the Cook Inlet Region, Inc., an agreement was reached concerning the exchange of land among the parties. Since the agreement is quite complex and has been presented in great detail to your committee I will not attempt to setout the terms except to point out that one essential element of the agreement is the transfer of subsurface lands by the State of Alaska. This transfer is to be made to the United States which will in turn transfer the lands to CRIR.

It is my opinion that under existing state law adequate authority to implement this agreement does not exist and that, therefore, for the State of Alaska to make the conveyances required under the agreement enabling legislation is mandatory.

While it would appear that problems exist under section 6(i) of the Alaska Statehood Act, in my opinion these problems are apparent rather than real. This section provides:

> "(i) All grants made or confirmed under this Act shall include mineral deposits. The grants of mineral lands to the State of Alaska under subsections (a) and (b) of this section are made upon the express conditions that all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the State of all the minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the same. Mineral deposits in such lands shall be subject to lease by the State as the State legislature may direct: Provided, That any lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States District Court for the District of Alaska."

This section is not a prohibition to the State of transfer of mineral rights. It is legally a conditional conveyance to the state, conditioned upon the requirement that mineral lands granted by the state be granted subject to reservation of all the minerals, with the enforcement of the condition being forfeiture of the lands to the United States by appropriate proceedings.

Under this pattern a transfer to the United States is not included. To look at it another way in the direct context of this bill if the section did not apply to the transfer to the United States, then the contemplated transaction is valid and title to the land and minerals passes to the United States; but if it were held that the section does apply to the United States a grant to the United States of the minerals, would be a breach of condition making both lands and minerals subject to forfeiture to the United States. In either event title would go to the United States contingently under the second hyposthesis upon a forfeiture action. It would be an unreasonable interpretation of the section to consider it applicable to transfers to the United States.

In any event, at this stage the question is hypothetical since it would have been removed by passage of HR 6644.

However, passage of the federal act has no effect on the state law. It is clear that the United States does not have authority to override state law in this area, and it is equally clear that in this bill Congress did not attempt to assert such an authority.

In my opinion the transfer of the surface estate contemplated in the agreement is authorized under AS 38.05.315 which provides in relevant part:

> "(a) the lease, sale, or other disposal of state land or resources may be made to a state or federal agency or political subdivision..."

This leaves the question as to whether there is adequate authority to convey the mineral estate. In my opinion there is not.

Alaska law requires reservations of mineral rights to the State of Alaska in any conveyance AS 38.05.125 provides in relevant part:

> "RESERVATION. Each contract for the sale, lease, or grant of state land, and each deed to state land, properties or interest in state land, made under §§315-325 of this chapter or §§45-120 of this chapter, except for those lands originally acquired by purchase, exchange, condemnation, gift, escheat or foreclosure are subject to the following reservations:..."

This section then goes on to setout the wording of the reservation.

Transfers to the United States are specifically included in the section. It should be noted here that the rationale under which transfers to the United States are excluded from the operation of section 6(i) of the Statehood Act is not applicable. Unlike section 6(i), which is a condition on a grant between sovereigns, section 125 is positive law. As the section is worded the mineral reservations apply whether set out in the conveying document or not and would apply even though the conveying document expressly attempted to convey the subservice estate.

The administration has set out three sources of authority for the proposed land exchange. Two of the three are clearly not relevant to a proposed subsurface conveyance. The authority of the commissioner of natural resources under AS 38.05.020(b)(2) and the authority of the director of the division of lands under AS 35.05.335(a)(14) were cited as authorization. While these do give authority to enter into land trades and agreements this authority is clearly limited to transactions made in accordance with other law. Any contention that these sections authorize either the commissioner or the director to waive positive provisions of law must rest on the fundamentally unsound assumption that, except for these sections, the rest of the title has legal effect only to the extent that the commissioner and director determine that it should have legal effect.

The provisions of AS 38.95.060 especially when considered in the light of the 1972 House Judiciary statement in connection with the bill is relevant, but in my opinion not adequate authority for the proposed land exchange. Paragraph (b) of that section provides:

> "(b) An individual Native (as defined in the federal Act) or a corporation referred to in (a) of this section may exchange land or an interest in land with any other individual Native or corporation referred to in (a) of this section or the state for the purpose of effecting land consolidations or to facilitate the management or development of the land."

The report from House Judiciary Committee accompanying CSHB 731 which was the source of this section, comments on this section as follows:

"AS 38.15.060. Exchange of Land. Under the 1968 state Act, Native corporations were granted the right to obtain state-patented lands near the villages through exchange of lands with the state, with the consent of the Alaska Native Commission. This section revises and relocates those provisions to reflect the form of the federal Act, substituting the consent of the governor for consent of the commission, and adds a provision comparable to section 22(f) of the federal Act which provides for exchanges between the federal government and Native corporations or the state. The principle is

extended in this section to exchanges between Native corporations and the state. A "boot" clause comparable to the federal language is also included. The statehood Act will have to be amended to permit the state to exchange mineral interests, or the Secretary of the Interior will have to consent to being an intermediary under section 22(f) transfers in order to gain full utility from the exchange concept."

In light of these comments, section 22(f) of the Alaska Native Claims Settlement Act must also be looked at. That section provides:

> "(f) The Secretary, the Secretary of Defense, and the Secretary of Agriculture are authorized to exchange any lands or interest therein in Alaska under their jurisdiction for lands or interest therein of the Village Corporations, Regional Corporations, individuals, or the State for the purpose of effecting land consolidations or to facilitate the management or development of the land. Exchanges shall be on the basis of equal value, and either party to the exchange may pay or accept cash in order to equalize the value of the properties exchanged."

It can and has been, argued that the clearly stated purpose of the Alaska law was to facilitate settlement under the Alaska Native Claims Settlement Act and, since section 22(f) was specifically referred to AS 38.95.060 gives to the state administration equivalent authority to the authority given to the secretaries under section 22(f).

Although there is logic to this argument, it has extremely serious shortcomings. The most obvious shortcoming is that the language of paragraph .060(b) simply is not as broad as the language of 22(f). Unlike 22(f) which gives direct authority to the secretaries, paragraph (b) on its face gives authority only to the individual natives and native coorporations. The argument by inference is if these are given authority to exchange land or interest in land with the state, the state inferentially must have been given authority under this section to exchange land is somewhat weak but plausable. But the inference that follows, if this section is to be treated as authorization for the proposed transfer, is quite far fetched. That inference is that since the purpose of the act was to facilitate settlement under the Alaska Native Claims Settlement Act and since the section inferentially authorizes the state to exchange land or an interest in land, it also authorizes the state to transfer any interest they may have in land regardless of other laws. One of the sections necessarily waived would be AS 38.05.125. To accept this hypothesis one would have to accept that by a double pyramid inference the legislature repealed for this specific type case a major state policy embodied both in the statehood act and in state statute. In my opinion this interpretation places far more weight on inferential reasoning and the statement of intent than the reasoning or statement can bear.

A more reasonable interpretation of the legislature's decision not to grant authority commensurate with that granted in section 22(f), (and as noted in the committee report, section 22(f) was before the legislature), is found in the last sentence in the Statement of Intent quoted. That is the transfers of subsurface estates to other than the United States are prohibited by the Statehood Act, no amendment to the Statehood Act had been made at that time leaving a serious problem of possible forfeitures if the problem were dealt with then rather than awaiting possible amendment of the Statehood Act. Under this interpretation, as under the clear language of the statute, the provisions of AS 38.05.125 are unaffected by AS 38.95.060.

Based upon this analysis, it is my opinion that the transfer of the subsurface estate contemplated in the Cook Inlet Land Exchange is specifically prohibited by state law, that this law is uneffected by the federal act, and that if it is desired that the exchange be made enabling legislation will be necessary. At any event, regardless of the legal theory adopted, it is clear that basing title to land of very substantital value upon a legal foundation open to serious question is most unsatisfactory.

Corrective legislation would fall in three classes:

1. General legislation covering all of the land transfers and exchanges that will be necessary in order to fully implement the Alaska Native Claims Settlement Act, or;

2. Specific enabling legislation for the Cook Inlet Exchange, or;

3. Specific enabling legislation for this exchange with subsequent general legislation.

Although specific enabling legislation for the Cook Inlet Exchange must surmount the constitutional hurdle posed by Article II, Section 19 of the Constitution which prohibits a local or special act if a general act can be made applicable, it would appear that specific enabling legislation to be followed by general enabling legislation is the only practicable course. Both factually and legally, the Cook Inlet Land Exchange is unique. The scope of the problem, the size of the exchange contemplated, the peculiar impact of concentrated selections on the Cook Inlet region, the time parimeters set on this exchange, and the actual and potential litigation make this a special situation. The subject is clearly a matter of statewide interest since highly important economic and planning values are involved and since implementation of the Native Claims Settlement Act is clearly of importance to the state. Further the unusual aspects here are significant and present an insurmountable barrier to action pursuant to a general statute. It would seem clear that under the tests in Boucher v. Engstrom, 528 P2 534 91 (Alaska 1974) and Abrams v. State, 534 P2 91 (Alaska 1975) carefully drawn enabling legislation for this specific transfer would be

upheld. General legislation involves very substantial policy decisions concerning the procedural mechanics by which such transactions will be allowed and consideration of the mechanics, if any, of legislative approval. It may very well be because of the unique nature of large transactions involved in implementing the Settlement Act the legislature may require specific approval by it of certain transfers.

Any specific legislation should (1) contain recitalsrelating to the Cook Inlet Land Trade and what the legislature intends to accomplish by approval of the land trade; (2) a specific waiver of the provision of AS 38.05.125 since this is clearly the major impediment existing currently; (3) a specific waiver of the equal value exchange requirement contained in AS 38.95.060. While arguably this equal value requirement would not apply in any event, the values on both sides of the transaction are of such nature that appraisals would be complex and subject to substantial dispute. For that reason waiver of the equal value requirement removes a cloud which is potentially significant and which could lead to litigation; (4) a general waiver clause of other provisions of law to make it clear that the legislature intends to waive any barriers to the consummation of the transaction.

This memorandum, of course, expresses no opinion as to whether it is desirable that the Cook Inlet Land Transfer be approved, but is intended to sketch the problems in existing law and steps that should be taken if the legislature elects to approve the transfer.

BGB:smh

Phil Holsworth

David Jackman
February 25, 1976

WHAT'S WRONG WITH THE COOK INLET LAND TRADE

Simply a bad deal for the state

For all its alleged complexity, the proposed Cook Inlet land trade is not that hard to understand. In return for 52 townships (approximately 1.2 million acres) of federal lands that are mostly remote and of questionable value, the state is giving the federal government 21.5 townships (approximately .5 million acres) of very valuable lands that the federal government will in turn use to solve two nettlesome federal problems:

1) The four-year dispute over the adequacy of the lands withdrawn by the Interior Department for the satisfaction of Cook Inlet Native Corporation's land selection rights; and

2) The need to get private ownership (in the form of pending Native corporate land selections) out of the Lake Clark area, so that the National Park Service will have a more salable national park proposal for the d-2 lands in that area.

The 21.5 townships the state is giving up are located on the Kenai peninsula (5 townships), in the Mat-Su Valley (3 townships), and in the Beluga area across northern Cook Inlet from Anchorage (13.5 townships). All of these areas are within zones very favorable for the occurrence of oil and gas, and the Beluga area is also a known coal area with reserves of immense proportions. All of these lands are low-lying and well-suited for future settlement. Furthermore, because they are located near the population centers of southcentral Alaska, they also have extremely high importance for recreation and public use by the common man who cannot afford to fly-in long distances.

The 52 townships the state will receive in exchange are for the most part quite remote, have little income producing potential, and are of relatively little value for either future settlement, the protection of state wildlife resources, or even public recreational use. Half of these lands (26 townships) are located in the Mulchatna river drainage northwest of Lake Iliamna. Another 7 townships are located in the adjacent Tutna Lake area approximately 25 miles west of Lake Clark.

Eleven townships will be adjacent to Kamishak Bay on the west coast of Cook Inlet, southwest of Augustine Island. There will also be 8 townships in the Talkeetna Mountains and the 4,000 acre Campbell tract in the Anchorage bowl.

There are many other aspects of this trade to be reviewed, but the basic inequality of the land values alone is enough to condemn it. To put it in perspective, consider one of the worst hypotheticals advanced by proponents of the trade: that Cook Inlet Inc. wins its law suit on appeal (it has already lost at the trial level), and that Interior is also ordered to break its 1972 agreement with the state and make state selected lands available for Cook Inlet's regional selections. Cook Inlet is due to receive approximately 54 townships total. At least 20-30 townships presently withdrawn from federal lands are probably acceptable to Cook Inlet region. Therefore, at most, 24-34 additional townships would then be made available from remote, generally lower-value state-selected lands, either in the area across the Alaska Range toward the Stony River country or northwest of the Susitna valley toward Denali.

According to any scale of values these 24-34 townships would be worth far less than the 21.5 townships the state plans to give up in the proposed trade. It is worth re-emphasizing that we would be less out-of-pocket with this "worst hypothetical" than with the proposed trade, and even the advocates of the trade place the likelihood of this hypothetical at less than 20 percent.

The Campbell Tract

In contrast with the other lands to come to the state, the 4,000 acre Campbell tract in the heart of the Anchorage bowl is valuable land of the first order. But even this benefit is more apparent than real because either the state or borough was almost certain to get this tract anyway, and in any event it had clearly been placed off limits for Native selection by the federal government. So here as elsewhere throughout this trade we are getting lands we would likely get anyway, and protecting public interests that were already protected.

Even advocates of the trade concede that the state "would stand a respectable chance of obtaining the (Campbell tract) lands at some time in the future" under the federal Recreation and Public Purposes Act. High sources within the Interior Department emphasize that this was almost certainly to be so. These same sources also stated that in earlier discussions between the Interior Department and Cook Inlet Region, Interior announced its firm opposition to this tract being made available for Native selection. The only Anchorage-area tracts that

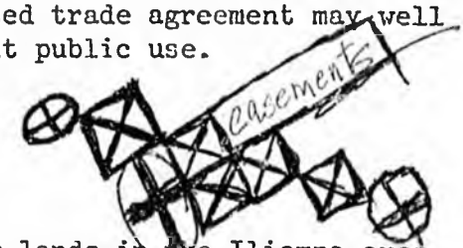
Interior seriously considered letting the Natives select were Fire Island and surplus lands from Fort Richardson, and these may well still go to Native ownership under the trade agreement.

Much of the Campbell tract was further protected from any possibility of Native selection by the two-mile buffer zone in Section 22(1) of the Settlement Act. Finally, there is every indication that the federal government intended to keep this tract in public open space use because of its importance as a watershed and recreational area. So about all the state "gained" here was the administrative expense and the "pride of ownership".

A Cloud Over the North-South Runway

Another much-touted plus of the proposed trade agreement is that it will insure the early transfer of the Point Woronzof, Point Campbell and Goose Lake tracts to the state. In the words of the agreement, "such lands shall be reserved by the United States for early conveyance to the State for park and recreation purposes...." But this language creates a new problem in view of the importance of the Woronzof tract for the proposed north-south runway at the Anchorage airport.

Without this agreement the state or borough was still very likely to get most of these tracts under the Recreation and Public Purposes Act. The terms of that Act are broad enough to permit a "public purpose" such as an airport runway. The more restrictive language regarding "park and recreation purposes" in the proposed trade agreement may well have the effect of blocking such an important public use.



No Special Protection for Fisheries

The importance for the state of getting lands in the Iliamna area has been tied by the advocates of the trade to the protection of Bristol Bay fishery values. Presumably this extra protection would occur through state ownership of the upland drainages adjacent to important spawning streams. So far so good.

However, under the actual terms of the trade, the state will not get a single acre within the Iliamna Lake watershed which is the key salmon producer for the Bristol Bay fishery. The lands the state does receive are in the upper Mulchatna River drainage, an area of very minor importance for the Bristol Bay fisheries.

With or without the proposed trade, the State will have an opportunity, recognized in Section 17(d) of the 1971 Settlement Act, to select lands in the Iliamna drainage within the Bristol Bay village withdrawals after

Native selections are completed. Furthermore, the fishery values of public lands in that area are perfectly well protected with the lands in federal ownership, and nothing significant is gained by transferring them to state ownership. Add to this fact the existence of state regulatory tools such as the Anadromous Fish Stream Act which can be used to protect fisheries habitats.

Out-of-Region Selection Rights

Under the proposed trade agreement, Cook Inlet Region will have an additional three years to identify and select approximately 30 townships of land from available federal lands outside the region. They are prohibited by the agreement from selecting any lands the Federal Government wants, such as d-1 or d-2 lands included in the Secretary's park, refuge, and forest proposals, or any of the d-1 buffer lands around these areas called "zones of ecological concern". This will throw Cook Inlet into those lands that would otherwise be prime candidate areas for State selection. Cook Inlet Region will have the opportunity to take the best available lands from a resource utilization standpoint.

The out-of-region selections constitute a loss to the State because these are lands that otherwise would have been available for State selection. (Approximately 35 million acres of land remain to be selected out of the Statehood Act grant of 103.5 million acres.) Cook Inlet will be looking for the same kind of income-producing resource lands or other valuable lands that would be high on the list for State selection. With respect to the millions of acres that could be nominated under this procedure, there will be a freeze on the processing of any State selections for three years.

Thirty townships broken up in isolated private tracts will create the same kind of land management problems outside Cook Inlet Region that it was the partial purpose of this trade to avoid within this region. So in order to consolidate ownership in the Cook Inlet area, we are furthering a fragmented land pattern elsewhere in the state.

Impact on the Proposed Lake Clark National Park

This trade will make it difficult for the State to ever oppose the establishment of a National Park or other area managed by the National Park Service in the Lake Clark area. The proposal would result in the return of certain key lands around Lake Clark to federal control, and would prevent further Native selections in this area. In the agreement, the Secretary, Cook Inlet Native Corporation, and the State all acknowledge that there are nationally significant resources in the Lake

Clark area, and that the "scenic, recreational and inspirational resources of this area should be preserved." "Nationally significant" is a catch phrase applying to d-2 lands indicating that they should be permanently preserved in federal park or refuge status. Nothing is said of the significant mineral resources in the Lake Clark area.

By the express terms of the agreement, Cook Inlet Native Corporation is bound to publicly support the establishment of such a National Park Service management unit around Lake Clark. There are three other national parks either existing or proposed for the Alaska Range: Wrangell Mountains, Mt. McKinley and Katmai; many view the proposed Lake Clark National Park as a far less justifiable fourth proposal.

Impact on the Kenai National Moose Range

Much of what the conservationists might view as net gains in the Lake Clark area under the proposed trade, they lose in the Kenai Moose Range. Cook Inlet Native Corporation will receive full ownership of 16 sections of key public use lands in the Lake Tustemena area. There will be some restrictions on waterfront development, but basically, these will be private lands. Elsewhere in the Moose Range, Cook Inlet will receive full rights to oil, gas and coal under another 9.5 townships of land.

Why was it necessary for any lands to come out of the Moose Range? In earlier settlement negotiations between Cook Inlet and the Interior Department, before Cook Inlet lost its suit at the trial court level, some lands were offered from the Moose Range. However, this so-called "Frizzel offer" was withdrawn and never re-offered. The legal authority of the Interior Department to ever offer the Moose Range for Native regional selections without Congressional authorization was then and is still seriously questioned. Under the proposed trade the loss of these lands to private ownership in this important recreational area, so heavily used by the Kenai and Anchorage area people, will be irreplaceable.

In-region Selection Pool of Surplus Federal Lands

The Secretary of the Interior, working with the General Services Administration is obligated to try to find 138,240 acres (6 townships) or acre equivalents (in terms of appraised land values figured at $500 an acre) of land within Cook Inlet region made up of odd federal tracts such as lapsed homestead entries, surplus federal lands, or revoked federal reserves. These lands would then be made available for selection by Cook Inlet Region using some of the 30 townships of out-of-region entitlement, and also made available for land exchanges with villages to trade them out of proposed National Park lands on the west side of Cook Inlet.

Some of the federal lands to be included in this pool, without this agreement, would be available for State selection under the 90-day preference right guaranteed in the Statehood Act. These are potentially very valuable lands, and could include tracts such as Fire Island and surplus lands at Fort Richardson. The $500/acre equivalent formula agreed on in the proposal would imply total land values for this 6 township pool of over $69 million, and the State would have the right to veto only 1,500 acres from this pool.

Disposal Without Planning or Classification

As the agreement is written the state does not know exactly what lands will go to Cook Inlet Corporation on the Kenai or in the Mat-Su Valley. The specific lands are to be identified over the next eighteen months "to the extent possible by mutual agreement" from five selection pools: the Point McKenzie pool, the Knik-Willow pool, the Kashwitna pool, the Chickaloon pool, and the Kenai pool. If the state and the Natives cannot agree, then the state identifies one and a half times their entitlement, and Cook Inlet chooses.

This process of mutual agreement may work very well or it may break down completely. It is impossible to know now. In either event eighteen months is hardly adequate time to complete the kind of land use planning and classification process that would normally preceed the disposal of such large tracts into private ownership. Private ownership of more land in these areas may make good sense, but the state is losing most of its ability to determine what specific tracts are best suited for private development in terms of local government needs, public services, and provision for recreation and open space lands. It is true that local zoning could serve as a stopgap, but it can never be as effective as a wise and carefully thought out disposal policy.

Swanson River Oil Revenues

Without this proposed agreement, there is some chance that either an administrative or a legislative settlement arrived at by the Federal Government alone might give Swanson River oil revenues to Cook Inlet Region. At present, the State receives 90 percent of these royalty revenues although there is a recent opinion of the U.S. Comptroller General challenging the right of the State to these revenues.

Under this Comptroller General's opinion, the State may lose Swanson River revenues anyway unless the State is successful in legally overturning this opinion. Also, in the absence of a finding by the Secretary that these lands are no longer necessary for the Moose Range, federal legislative action would probably be required to give these subsurface benefits to Cook Inlet Region.

Serious Breach of Public Trust

Aside from its citizens, this state's public land is its most basic asset. It should go without saying that both the legislative and the executive branches should use the highest standard of care in managing or disposing of this land patrimony.

The only standard that presently exists in state law against which land trades can be measured is equal value. This legal standard has always been viewed in the past as meaning equal appraised dollar values. Where this was not possible a cash equalizer was permitted.

Even if we now allow this equal value test to be broadened into a public benefit versus public cost analysis, there has been no such rigorous and complete cost-benefit comparison offered by the administration that can meet even such a liberalized test. Thus we are asked to discard the only standard that presently exists in state law, and to rely on the individual judgement of one or two administrators. To borrow Governor Hammond's analogy of Alaska, Inc., the Cook Inlet trade appears to constitute an unwarranted dissipation of corporate assets.

Better Alternatives Are Still Available

It is simply not true that this agreement must be approved if Cook Inlet is to have a satisfactory resolution of its land selection problems. The federal legislation that authorized the Interior Department's participation in the trade recognized that the parties might not be able to finally agree, and provided full protection for Cook Inlet's selection rights in that event.

This Act requires the Secretary to report to Congress by April 15th of this year on the implementation of this agreement. If there is no agreement at that time, the Secretary must until the end of 1976 hold on to those federal lands that would have gone to Cook Inlet Corporation so that Congress can consider an alternative solution. All of Cook Inlet's original selection rights would be restored, and they would continue to pursue the appeal of their law suit.

The simplest alternative to the proposed trade would be for Interior to simply withdraw additional d-1 and d-2 federal land within Cook Inlet region for Native selection. This would require neither legislation nor a single acre of state land.

A second quite simple alternative is suggested by the proposed trade agreement. Since 30 townships of out-of-region selection rights have already been approved by Congress as a part of this trade, Congress could

pass a two-sentence amendment simply directing the Secretary to specifically withdraw up to 90 townships from within these same d-1 land areas outside the region as an additional deficiency area for Cook Inlet's regional selections. The other regions have already accepted this concept in the present trade, and by requiring the selection area to be identified and narrowed down, state selections would not be frozen over so broad an area.

Conclusion

It is now up to the state legislature to either approve or disapprove this proposed trade. If they choose not to approve it, they may well decide to suggest an alternative that would throw it back into federal hands. Whatever course is taken they must eventually decide the larger issue concerning standards and procedures to govern such trades in the future if the public interest is to be adequately protected.

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Alaska State Legislature

SENATOR
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P.O. BOX 45
KODIAK, ALASKA 99615

KODIAK-ALEUTIAN
DISTRICT

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811

Senate

February 23, 1976

Mr. Burton Silcock, Federal Co-Chairman
Federal/State Land Use Planning Commission
733 West Fourth Avenue, Suite 400
Anchorage, Alaska 99501

Re: Cook Inlet Land Trade

Dear Mr. Silcock:

During hearings in Anchorage, and again in Juneau, on the above referenced matter, the State Co-Chairman was informally requested to supply the Legislature with its opinion concerning the various facets of the trade.

Please regard this as the Senate Resources Committee's formal request for the assistance of the FSLUPC in whatever manner the Commission deems appropriate.

At the very least, we are concerned with relative values of lands given and received, and the impact of such intervention by the State on future land selections by the State under the terms of the Statehood Act and the Alaska Native Claims Settlement Act. Additionally, we are very much concerned about the long term effects of the seemingly arbitrary and unnecessary amendment of Section 6(i) of the Statehood Act.

As you know, on February 16, I requested Governor Hammond to assist in receiving a 30 day extension of the March 12 deadline imposed on the Legislature, so that the Commission could properly prepare its report. His letter of February 20 stating his inability to do so is attached for your reference, as is mine of the 16th.

We understand that you have compressed your schedule to accomodate our demands upon you, and that the Commission will meet in Anchorage on the 5th and 6th of March. I should like to attend that meeting, together with some members of my Committee and, possibly, participate through questions intended to clarify for us the Commission's findings.

Please, also accept my sincere thanks for your concern and assistance to the Legislature in its attempts to reach a reasoned decision.

We have not yet been advised as to who is acting Co-Chairman for the State. Please convey the above sentiments to that person when the name is made known to you.

Sincerely,

Kay Poland

Kay Poland
State Senator
Kodiak-Aleutian District

KP:ss

CC: Governor Jay S. Hammond
Senator Chancy Croft, Senate President
Representative Mike Bradner, Speaker of the House
Representative Terry Gardiner, Chairman, House Judiciary



Alaska Conservation Society

Incorporated in 1960

Box 80192 College, Alaska 99701

STATEMENT: COOK INLET LAND TRADE
February 23, 1976

The Alaska Conservation Society wishes to reiterate and to take the same position in this matter as that of the Upper Cook Inlet Chapter dated February 7, 1976.

The Alaska Conservation Society supports totally the concept of trading lands to facilitate rational ownership patterns and management. Federal, State, Native and other landowners have different goals as owners and managers of Alaska's land. It is, therefore, reasonable and laudable to negotiate trades which on balance, benefit all parties concerned.

We are thankful that the State Administration perceived the need for a land trade in the Cook Inlet Region and devoted so much energy to the settlement. We are pleased that Congress saw fit to act quickly in support of the trade; thus placing their trust in Alaskan negotiators familiar with the Cook Inlet land situation.

We are equally appreciative that members of the Legislature have taken interest in the trade. It gives us faith in the checks and balances of government, however, we feel that the energies of detractors of the Cook Inlet trade are misplaced.

In early October, 1975 when the State Administration first announced the conditions of the trade, the time allowed for public input appeared ludicrously short. However, since then the public has had ample opportunity to consider the proposal and the trade has been altered as a result of public input. The land trade approved by Congress is favorable to state interests and we urge the Legislature to lend its support to that final agreement.

A discussion of specifics follows: It is our feeling that the Kenai Moose Range should be held substantially intact. To the extent that pieces of the Moose Range are traded to the Cook Inlet Natives, those pieces should be located on the edge of the Range, away from prime

wildlife habitat. Further, we hope that this is the last time the Moose Range's borders are tampered with -- reducing the size of the Range. We will urge the Federal government to protect the canoe system from development and to designate eligible parts of the Range as wilderness. We find the Cook Inlet land trade in keeping with our interests in the Kenai Moose Range, although we regret that it was necessary for the Federal government to trade away any portion of the Range. It is one of the most heavily used outdoor recreation areas in the state.

The townships the State will pick up in the Talkeetna Mountains are critical additions to the proposed Talkeetna Mountain State Park. The Upper Cook Inlet Chapter of the ACS and the Alaska Conservation Society itself are on record as supporting strongly this park proposal.

We are happy that Campbell Airstrip, Point Woronzof, Point Campbell and Goose Lake will all be retained in public ownership. We are particularly pleased that Congressional action has tied conveyance of the Campbell Airstrip tract to the plan for a Far North Bicentennial Park.

We will be watching the development of the implementation of the "selection pool" mentioned in I.C.2(a) (pg. 39-40) of the agreement document. Important potential park and open space acreage on the Anchorage hillside may be declared "federal surplus" property and we intend to keep an eye on any conveyance of such critical acreage from public to private ownership. We realize this section cannot be changed and we certainly do not feel it is reasonable to stop the whole land trade because of it, but we would like to call it to the attention of the Committees. We can only hope that when this "pool" is selected, it will be done openly and publically allowing the State and Municipality to object. The particular lands we are concerned about are those of the Anchorage military bases, especially Fort Richardson, which could be included in this selection pool by reduction of that federal installation. Much of this acreage is located adjacent to the Campbell tract in the Muldoon area, close to the Chugach State Park. We see these lands as critical to the Anchorage area for open space, but more importantly, as water recharge area for the city. To have this area go into private ownership and possibly development, would be poor land use planning. We do not know that this would happen, but can see this as a possible complication of the land trade later on.

We are hopeful that the land trade will ultimately lead to State management of the Iliamna watershed, a region of extreme value as fish habitat. Moreover, we support Federal ownership of the lands around Lake Clark, an area deserving of protection for its value as recreation land. It appears that by reducing Native land ownership in the Lake Clark-Lake Iliamna region, the State and Federal governments are moving closerto a workable management plan for that portion of the state.

Finally, let us consider the Beluga coal fields. Here the State has retained the lands of highest value for coal production, but nonetheless has given up many acres of potentially rich energy resource lands. It is time the State looked beyond how many dollars worth of nonreneweable resources we control. It is obvious that the State had to give something of value in order to receive valuable renewable resource lands, including the possibility of gaining control of extremely valuable fish and wildlife habitat around Iliamna.

What the state is giving up in revenue might very well have accrued to the tax-payers of one generation. What it is gaining is control of renewable resources that will benefit many generations of state citizens. It seems that the Beluga fields are a reasonable loss for what the state will gain, including retention of revenue from the Moose Range oil fields.

In conclusion, the Alaska Conservation Society <u>supports</u> the Cook Inlet Land Trade. We urge the Legislature to do the same. We wish to thank the committees for holding these hearings and allowing the public to express their views.

*****for further information please contact Tina Stonorov, Executive Secretary, Alaska Conservation Society, Box 80192, College, Alaska 99701 - 452-2240 (in Fairbanks).

COOK INLET LAND TRADE PROPOSAL

This proposal is fairly complicated as a result of the existing land ownership patterns within the Cook Inlet Basin, the individual interests of the three parties concerned, and the legal constraints of the Alaska Native Claims Settlement Act (ANCSA). Additionally, the parties felt it imperative to deal with several closely associated issues such as ANCSA land selections by certain villages within the Cook Inlet Region. The various aspects of the tentative proposal are outlined below in conjunction with the attached map. The reader must realize that this is a simplified, capsulized summary and that persons wanting more information are requested to contact the Alaska Division of Lands in Anchorage.

TABLE 1.

COOK INLET LAND TRADE PROPOSAL

PARTIES	LAND TRADED LOCATION	AMOUNT	MAP NO.*	COMMENTS
State to Cook Inlet Region, Inc.	Kenai Penn.	5 Twps.**	1	These are lands suitable for pvt. ownership and development where settlement has occurred or will occur in the future.
	Beluga Area	12 Twps.	2	
	Scattered Tracts (Matanuska & Susitna Valleys)	1.2 Twps.	3 a-d	
	Total	18.2 Twps.		
State to Villages or Certified Native Groups	Montana Ck.	.5 Twp.	3d	More suitable lands for pvt. ownership and to prevent native selection of key Kashwitna River lands in proposed state park.
	Caswell Ck.	.5 Twp.	3d	
	Salamatof Area	.5 Twp.	4	"Out of court" offer to drop village eligibility suit which threatens loss of a total of 4 twps. from state and Moose Range lands.
	Alexander Ck. Area	.5 Twp.	5	"Out of court" offer to drop eligibility appeal which threatens lands in Lake Clark area and the west side of Cook Inlet that are of interest to the State.

* See Attached Map for area location

** "Twp" = "Township" = 36 Sections = 23,040 acres

COOK INLET LAND TRADE PROPOSAL

PARTIES	LAND TRADED LOCATION	AMOUNT	MAP NO.*	COMMENTS
	Tyonek Area	<.5 Tv	2	Lands offered to Tyonek to reduce to a minimum Tyonek ownership of land within the Kenai National Moose Range.
	Knik Area	.21 Twps.	3a	More suitable lands near villages in return for public ownership of important lands selected by these villages on Lake Clark.
	Chickaloon Area	.08 Twps.	3c	
	Total	2.8 Twps.		
Cook Inlet, Inc. to State	Talkeetna Mtns. Lake Clark west side of Cook Inlet	31 Twps.	6 a-f	State will designate which twps. from a total pool of approximately 180 twps. from which Cook Inlet, Inc. may select.
Villages and Groups to State	Montana Ck.	.5 Twp.	6 a	State receives lands selected by these groups within proposed Talkeetna Mtns. State Park.
	Caswell Ck.	.5 Twp.	6 a	
	Tyonek	<.5 Twp.	7	State receives lands selected by Tyonek on Kenai Penn. within or on edge of National Moose Range.
	Knik	.85 Twp.	6 e	State receives these lands on shores of Lake Clark.
	Chickaloon	.32	6 e	
	Total	2.7 Twps.		
Federal Gov't. to Cook Inlet	Kenai Nat'l. Moose Range	.87 Twps (20,000 ac.)	8	Moose Range boundary to be adjusted to exclude these lands; a 1/4 mi. "no development zone" on edge of Tustamena Lake.
	Kenai Nat'l. Moose Range	.87 Twps (20,000 ac.)	9	Lands to be within Moose Range and subject to restrictions such that any use of the land must be beneficial to the purposes of the Moose Range.

* See Attached Map for area location
** "Twp" = "Township" = 36 Sections = 23,040 acres

COOK INLET LAND TRADE PROPOSAL

PARTIES	LAND TRADED LOCATION	AMOUNT	MAP NO.*	COMMENTS
Cook Inlet to Villages	Salamatof	1.5 Twps.	6f	"Out of court" offer to Salamatof to drop village eligibility suit which, if successful, would significantly reduce Cook Inlet's land within National Moose Range.
	Knik Area	.21 Twps.	3 a	More suitable lands near villages to ensure public ownership of important lands selected by these villages on Lake Clark.
	Chickaloon Area	.08 Twps.	3 c	

MISCELLANEOUS

The proposal does not convey to Cook Inlet, Inc.:

1) Subsurface resources in any producing oil and gas fields (e.g. Swanson River).

2) Any of the Swanson River canoe system lands.

3) The Russian River area

4) The present federal lands at Point Woronzoff, Point Campbell or the Campbell Tract.

Guy Martin

Federal-State
Land Use Planning Commission
For Alaska

733 W. FOURTH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99501

March 5, 1976

MEMORANDUM:

TO: Commission

FROM: Dr. Bradford H. Tuck, Economic Analyst

SUBJECT: Cook Inlet Land Trade: Some Economic Considerations

I. Introduction

Recent discussions surrounding the Cook Inlet land trade, including those presented in various testimony, in the newspapers, and in discussions at the Commission have raised a variety of economic issues. Many of these are related to a major concern of all parties, namely, that the lands involved including resources, are of equal value. A variety of State and Federal statutes require some treatment of the equal value issue in land trades, and Cook Inlet Region, Inc. is of course interested that it receives at least equal value. However, none of the statutes are explicit about how value is to be determined.

When the magnitude of the trade is taken into account and uncertainty surrounding lands and resources involved in the Cook Inlet trade are considered, the problems of determining equal value are extreme. Ordinary valuation procedures are simply inadequate.

The Commission must decide whether or not the trade meets standards implicit in the ANCSA; specifically that its recommendations are conducive to enhanced land use planning for Alaska and that its recommendations are designed to:

> "insure that economic growth and development is orderly, planned and compatible with State and national environmental objectives, the public interest in the public lands, parks, forests, and wildlife refuges in Alaska, and the economic and social well-being of the Native people and other residents of Alaska."

The State must also apply broad economic standards in attempting to evaluate the trade. Three major questions of economic significance should be addressed.

1. What, in real economic measures, is the State either gaining or losing in the trade?

2. What impact does the trade have on the future fiscal viability of the State?

3. What consequences does the trade have with respect to the future general economic well-being of the State?

An analysis of these issues and questions, and not a parcel by parcel evaluation, must be the basis for measuring the economic values of the trade.

II. Summary and Conclusions

A variety of issues of economic significance have been explored in relation to the proposed land trade. The conclusions can be summarized as follows.

1. Because of the complexities of the trade and the very real difficulties in applying ordinary valuation methods, broad economic standards must be used in judging the trade. These standards must include the Commissison's mandate to make recommendations relating to orderly economic growth compatible with other social, cultural, and environmental values. The standards must also include an assessment of the impact of the trade or the future fiscal and economic viability of Alaska.

2. The economic losses that the State will purportedly incur as a result of the trade are generally found to be highly exaggerated. When highly speculative gross asset values are converted to "net present value" of possible foregone revenues, the State's probable losses are minimal. In short, little, if anything of economic consequence, is lost.

3. The future fiscal viability of the State is largely unaffected by the trade. This is so for a variety of reasons, including the fact that the State power of taxation can effectively recoup possible economic rents given up in the trade. Also, the probable foregone revenues would constitute only a minute fraction of total State revenues.

4. The net effect of the trade on total economic activity is quite limited, and in any case, the bias would be toward increased activity. This is based on the assumption that CIRI is at least as economically development oriented as the State.

III. The Problem of "Equal Value"

Value can be determined (at least theoretically) in a variety of ways, but for present discussion purposes, there are two methods that are of particular interest. The first of these relates to determining value on the basis of market comparisons or other transactions of a similar nature, and the second approach attempts to find a present value of some kind of expected future income from the lands and resources involved. The concepts are not mutually exclusive, but can be treated separately.

The market comparison approach is one frequently used in appraisals. The basic idea is to find other transactions of "like kind and character" which reflect what the present market is willing to pay for a particular parcel. When one attempts to apply this method to an evaluation of the Cook Inlet trade, many serious flaws emerge. The first is, quite simply, that the magnitude of the land parcels involved in almost all cases dwarfs anything that typically trades in the private sector. In other words, there are no comparable trades. Hence, we must look at much smaller parcels and then estimate what the effect of a significant increase in the quantity of land would have on the market clearing price, and this involves, in turn, some estimate of the rate of disposal of the lands and resources.

A second major problem in the present situation is that in most instances both surface and subsurface property rights are involved. While the surface resources are known to some degree, knowledge of the subsurface is much more limited. Thus, a high level of uncertainty surrounds any attempt at evaluating the subsurface resources. Even if subsurface resources were known, major problems in valuing these resources would exist. Specifically, we would have to know the net income stream that could be derived from the resource. At best, such estimates are highly speculative.

A much more fundamental problem with market comparison valuation lies in the theoretical underpinnings of this method. In essence, valuation by market comparison rests on the assumptions of pure competition; a large number of buyers and sellers, none of which is sufficiently large to effect the market price, and freedom of entry and exit from the market by all interested parties. If these conditions are not met, then the result is bargaining between parties holding some degree of monopoly control over the market and, as a consequence, over the resulting price. A price, or value, determined under these conditions does not necessarily reflect the "socially desirable" market clearing price that is the basis for market comparison valuation.

In the present trade we are faced with a situation in which the sheer magnitude of the lands involved (even with full knowledge of the quality of the lands and resources) means that no valid market comparisons exist. Both in terms of the size of the trade and the limited number of parties involved, the setting is one that closely parallels an oligopolistic bargaining situation. It is highly unlikely that the three-party valuation of the trade would be anything like that which would emerge on the basis of competitive market forces.

With these reservations in mind, it is interesting to look at some rough attempts at valuation of the trade. A somewhat cursory attempt at placing market comparison values on the State lands involved in the trade was carried out by the State Division of Lands. Using their data, and supplementary guesses where necessary, Table 1 was constructed. The assumptions underlying the table are set out in the notes to the table, but in general, only surface values are considered. In one instance (the Beluga area) discounted coal royalties are included, and in one other instance (Campbell tract) sand and gravel values are included in one case.

It is clear from inspection of the information in the table that the net value of the trade is highly sensitive to certain assumptions. Using value per acre figures that would find some support in at least some quarters in all instances, the State either gains, loses, or emerges in a neutral position, depending upon which set of assumptions one wishes to use. A recent suit filed in which it is claimed that the State is losing 285.7 million dollars in the trade (surface estate only) is a further indication that the problem of determining value (in the appraisal sense) is great.

A second approach to the valuation of lands or resources is based on the capitalization of expected net income flows resulting from the lands and resources involved. The problems associated with this approach also present serious obstacles to accurate valuation of the present trade. In general, two key variables, the "net income stream" and the "discount" rate are involved.

From the State's perspective, the net income flows from the lands and resources involved may take the form of sales revenue, leases, bonus payments, rentals, royalties, severance taxes, property taxes, etc. In some cases there may also be personal and corporate income taxes that might otherwise not occur. From these revenues must be subtracted the administrative costs of managing and disposing of the lands and resources involved to obtain the net income stream. Thus, the revenues to the State depend on a complex set of policy considerations relating to the disposition of State lands and resources as well as the timing of this disposition, and on a whole

TABLE 1

Sensitivity of "Equal Valuation" Considerations to Per Acre Valuations,
Cook Inlet Land Trade, State Lands

Area Lands to State	Acres (000)	[1]Valuation, State $/Acre	Total (mil$)	Modified Valuation[4] "Unfavorable" $/Acre	Total (mil$)	Modified Valuation[5] "Favorable" $/Acre	Total (mil$)
Nushagak Chulitna	) 599.04)	40	24.0	30	17.97	120	71.88
Sheep Creek	23.04	40	0.9	30	0.69	120	2.76
Sheep Creek	69.12	40	2.8	30	2.07	120	8.29
Campbell Tract	4.00	1501	5.9	1000	4.00	1000	16.00
Pt. Woronzof	0.59	5598	6.6	1000	0.59	1000	0.59
Pt. Campbell	1.18	7083	4.2	1000	1.18	1000	1.18
Tutna Lake	161.28	40	6.5	30	4.84	120	19.35
Chunilna	23.04	40	0.9	30	0.69	120	2.76
Talkeetna River	69.12	40	2.8	30	2.07	120	8.29
Kokhetna Susitna	285.70	40	11.4	30	8.57	120	34.28
Kamishak Bay	299.52	40	12.0	30	8.99	120	35.94
TOTAL	1535.63		$78.0		$51.66		$201.32
Lands From State							
Pt. Mackenzie	3.20	200	0.640	667	2.13	667	2.13
Knik-Willow	4.48	300	1.344	1000	4.48	1000	4.48
Kashwitna	38.40	250	9.600	500	19.20	500	19.20
Chickaloon	4.80	125	0.600	300	1.44	300	1.44
Kenai	115.20	150	17.280	450	51.84	450	51.84
Beluga, Nikolai[2]	311.04	70	38.872	100	48.20	100	48.20
Misc. Lands to Villages[3]	41.47	225	9.331	300	12.44	300	12.44
TOTAL	518.59		$77.667		$139.73		$139.73
NET TOTAL (To-From)			+0.333		-88.07		+61.59

Source: See Notes.

Notes:

1. Valuation based on information contained in a memorandum from Michael C.T. Smith to Guy Martin, dated December 6, 1975, and in supporting materials for memorandum.

2. Includes 15.9 million for [illegible] royalties and revenues foregone, and 1.2 million dollars of foregone timber values. Both numbers are present value figures.

3. Informed guess.

4. Assumes; "$40" land is actually worth $30 per acre; that restriction on use of Campbell Tract, Point Woronzof, and Point Campbell (for recreation, etc.) reduce value to $1,000 per acre; and that lands relinquished by the State are revalued upwards as indicated. While there is no particular basis for assuming these figures, they are not out of keeping with general observations on land prices in the respective areas, and the probable impact that relocation of the capital might have.

5. Assumes that the values for lands relinquished by the State remain as in note 4, but that the value of lands received by the State is $120 per acre instead of $30, and that sand and gravel sales from development of Campbell Tract (at 12 million dollars) are included. Gravel sales are restricted to the development of Campbell Tract for recreation purposes only. Data based on Division of Lands information.

set of future economic conditions which in general have neither been predicted nor in any sense are knowable at present. Some truly Herculean assumptions would be necessary to even begin to estimate either the magnitude or the timing of the net income stream that the State is either giving up or obtaining in the trade.

A further problem exists in the case of public resources in attempting to estimate net income. It is one of attempting to assign dollar values to nonmonetary flows of services such as those derived from recreational use of the lands. For example, the Campbell tract if restricted to park and recreation uses might be expected, at the outside, to yield an annual income of perhaps $100,000 net. If we capitalize this income stream, in perpetuity, at 5 percent then the tract is theoretically worth 2 million dollars, or about $500 per acre. I suspect that many people would place a substantially higher valuation on the tract precisely because the land is restricted to park and recreation purposes. Or, for example, how does one place a dollar value on the preservation of fisheries habitat? In other words, there are real problems with setting dollar values on many of the benefits associated with public lands.

The problems that Cook Inlet Region, Inc. and the Federal government face are similar, although in the case of Cook Inlet, the subjective valuations (aside from uncertainty due to imperfect knowledge) are of a different nature given the private identity of the corporation.

To compare net income streams they must somehow be capitalized or discounted to obtain comparable present values. Thus, a second major consideration in this approach to valuation is the choice of discount or capitalization rates.

The present value of income received far in the future is highly sensitive to the particular discount rate selected. For example, $100 received 50 years in the future has a present value of $8.72 if the discount rate is 5 percent, while the value of $100, 50 years in the future, is only $2.13 if the discount rate is 8 percent. Alternatively, the capitalized value of a perpetual income stream of $100 is $2,000 at a 5 percent capitalization rate, but only $1,250 at an 8 percent rate. The point is simple; the value of future income or the capitalized value of a future stream of income, is highly sensitive to the discount or capitalization rate used. When this is combined with the highly speculative nature of future net income streams, either public or private, any attempt to estimate value is subject to extreme error.

The discussion of the issue of "equal value" can be summarized as follows. A serious problem arises as soon as we attempt to determine value on the land and resources involved in the trade. The

magnitude of the tracts involved, and the uncertainties as to the kinds and qualities of the lands and resources involved, as well as the uncertainties related to future income anticipated, make standard valuation techniques inappropriate. In short, if the concept of equal value is to have real meaning in the analysis of the present trade it must be based on broader economic concepts than those set out above.

IV. What is the Economic "Loss" to the State?

There currently are many numbers being mentioned purporting to show various values that the State is losing in the trade. In a suit filed by Galliett and Lewis, asking for a permanent injunction against the trade, the net loss to Alaskan citizens is estimated to exceed 5 billion dollars in present value. Figures prepared by the Bureau of Mines, which you have, indicate that about 2.0 billion dollars of potential royalty income to the State will be foregone. Another figure points to roughly 90 million dollars of potential agriculture and forest land values that will be lost by the State. A detailed critique of these and other numbers goes beyond the scope of this memorandum, but certain points should be made.

The most important point is that generally the losses are grossly exaggerated. What the State stands to lose (and the same standard applies to what it might gain) is the present value of revenues that it would derive from the disposition of the lands and resources that it would not otherwise derive, minus the associated costs of managing and disposing of the lands and resources.

In each of the above cases, it is implicitly assumed that every acre and every resource, be it known, inferred, or hypothesized, is going to be sold, leased, extracted, or in some other way converted into revenue going to the State. Such an assumption is simply in error. Clearly only a small fraction of land that the State is giving up in the trade would have gone into private ownership or in some other way generated revenue for the State. Even with substantial population growth in the State, market demand will not exist in sufficient magnitude to absorb the vast quantities of acreages being discussed.

In a period of rising land prices past history must be interpreted with caution, but it is instructive to take note of the history of land disposition in the State. It is generally recognized that revenue was only one of several forces influencing land disposal. Much of the pressure was, in fact, counter to the revenue objective, inspired as it was by the desire to obtain "cheap" land. Presently proposed legislation to create "homestead" land is indicative of a continuing sentiment that revenue is not the only concern in the disposal of land.

A second consideration is that, for example, during the years 1972-74, land disposal revenues to the State ranged between 1.5 and 3.0 million dollars per year. This is hardly a significant source of revenue. Furthermore, disposal of lands, particularly when random settlement and development is the result, probably generates costs to the State far in excess of the revenues received.

For similar reasons, it is highly unlikely that the State would or could market every last acre of timber resource that has been identified in the trade, nor is it probable that the State could convert all of the lands with agricultural potential that have been identified into some form of revenue. In other words, the gross value of the surface estate is a far cry from future income streams that the State might derive from these lands.

It was pointed out earlier that the relevant economic value to the State is the present value of the revenues, not their nominal value some generations in the future. This clearly further reduces any hypothetical loss to the State.

Similar remarks apply to the subsurface resources. The assumption that all of the known, inferred, and hypothesized deposits or resources will be developed, even with the time frame suggested, is at best rank speculation. There is, firstly, a real question as to whether some (or perhaps any) of these resources will ever have commercial value. Secondly, it is entirely possible that, as a matter of State choice, the resources would not have been developed in any event.

It is meaningless to compare future gross royalties when no adjustment is made either for timing or for the uncertainty of the future revenues. It is a problem of adding apples and oranges. A common denominator is necessary and present value is the most frequently accepted means of making the comparison. For example, if the numbers prepared by the U.S. Bureau of Mines are discounted for both time and risk, the present value (1976) of all royalties estimated amounts to about 24 million dollars. This is a far cry from the several billion dollars that might be inferred from the tables. While the choice of risk factors and timing are arbitrary, a wide range of factors will result in present value amounting to millions, not billions of dollars.

A more concrete example of what present coal prospects look like is available. According to the Alaska Scouting Service, a huge coal complex is planned for the Beluga area. Informed sources place annual production at an average of 5 million tons per year, at a royalty of $0.30 per ton. Thus the revenue amounts to 1.5 million dollars per year. Assuming that production begins four

years from now, and lasts for thirty years, the present value of the royalty (discounted at 8 percent) is about 12 million dollars. It might also be pointed out that the project is still in the planning stage and there is no guarantee that production will ever take place.

There is another point that needs to be made with respect to State "losses." This relates to the issue of income foregone by the State on resources traded off. Since economic rents are closely tied to this discussion, we should briefly define the concept. We can define economic rent as the revenue received from the sale of a resource minus the real economic cost of producing the resource (including a competitive rate of return on investment).

The importance of this concept is that economic rent is a "surplus" above and beyond that necessary to bring a resource into production, and that the economic rent is the only source of revenue from the resource that the State may acquire. In other words, only if economic rent is present will the State be able to impose any kind of royalty or tax on the resource. If the rent is not there, and the State attempts to impose a royalty, production will not take place.

Hence, the question of what the State gives up in the transfer of the resource is really a question of how much economic rent the State stands to loose. The answer varies according to the assumption one makes.

If we assume that the State uses its full power of taxation, then 100 percent of the economic rent can be returned to the State, and the State has given up nothing in the transfer of the resource to the private sector.

While the State is unlikely to do this, it is reasonable to expect that the State will be as successful at "capturing" rents from the private sector as it is in capturing them in its own negotiations. Under these assumptions, the State again has lost little or nothing.

In other words, while the State may give up ownership of the resource, it in no way gives up the ability to derive roughly the same revenue that it would have derived otherwise. Whether it chooses to do so or not is another matter.

V. The Issue of the State's Fiscal Viability

The second major economic question that should be addressed is "does the trade impair the future fiscal viability of the State?" The answer is almost certainly no.

Considerable insight into the question can be obtained in work done by ISEGR in the Man in the Arctic Program. In particular, they have developed an economic growth model for the State and have applied the model to an analysis of future economic conditions in the State. Various combinations of petroleum development rates and petroleum prices have been used, in conjunction with assumptions about State saving out of petroleum revenues, to estimate future economic and fiscal conditions.

For example, in 1990, under assumptions of limited petroleum development, with crude oil at $5 per barrel, the State is projected to have a general fund balance of 5.7 billion dollars, and petroleum sector revenues of 1.7 billion dollars. Under assumptions of maximum petroleum development, with oil at $7 per barrel, the general fund balance would be 9.6 billion dollars, and petroleum sector revenues for the year would be 4.0 billion dollars.

It is clear that over the near-term future of 20 to 30 years petroleum and petroleum related revenues are going to dominate State government revenues. Furthermore, barring total fiscal irresponsibility, the State should amass a general fund surplus running in the billions of dollars.

In short, revenues that the State might derive from the disposal of resources and lands given up in the trade would, at most, be inconsequential in the State's overall fiscal position.

Does the conclusion hold over the longer run? For a variety of reasons, the answer is probably yes. First, there are strong grounds for believing that significant additional amounts of oil and gas remain in Alaska to be discovered. Second, the growth of the economy over the next 20 to 30 years will result in substantial diversification of economic activity, with at least some decrease in the dependence of the economy on oil, per se. Finally, it should be pointed out that if the State applies its powers of taxation to the economic rents associated with resource development, it can, for all intents and purposes, recoup any revenues otherwise foregone in the trade.

To gain some perspective on the fiscal consequences of the trade, it is helpful to consider the following. Suppose that the total "loss" to the State is 6 billion dollars. This would amount to only about 48 million dollars per year over the roughly 125-year period during which the foregone revenues might have occurred. Forty-eight million dollars represents about 1.1 percent of a State budget that we can anticipate roughly 15 years from now. Alternatively, an investment of about 800 million dollars, yielding 6 percent, would provide 48 million dollars of income per year, in perpetuity. While the numbers may seem large in absolute terms, they are not particularly

significant in the context of the numbers with which the State will be dealing in the near future. In any event, the assumed foregone income is substantially over stated.

In short, relatively small investments by the State over the next 20 to 30 years could easily endow an income stream in perpetuity that would exceed anything that would likely be derived from the lands and resources being given in the trade.

For these, and other reasons stated above, the future fiscal impact of the trade is negligible.

VI. Economic Consequences of the Trade

The final question of significance is the impact of the trade on the general level of economic well-being in the State. In all probability, total economic activity will be largely unaffected by the trade. If we assume that Cook Inlet Region, Inc., is as development oriented as the State, then the net effect is negligible.

There are some factors that suggest that the trade will actually lead to an increase in activity. For example, the State's requirement of primary processing on timber sold from State land means that privately owned timber of comparable quality is more readily marketable. The fact that CIRI is a "for profit" corporation may also promote development that might not have occurred if the State had retained possession of the resources.

In any event, it is unlikely that the net difference will be of any significance in the overall situation. The ISEGR projections indicate that total personal income in the State in 1990 will be in excess of 10 billion dollars, even under the limited growth assumptions. It is hard to envision the net consequences of the trade having much effect on such a total.

TESTIMONY OF ROY HUHNDORF, PRESIDENT
COOK INLET REGION, INC.
BEFORE JOINT HOUSE-SENATE RESOURCES COMMITTEES

Chairman Poland, Chairman Anderson, and Members of the Committees: I am the President of the Cook Inlet Region, Inc., a Corporation that consists of more than 6,000 Native Shareholders, most of whom are residents of the State of Alaska. I welcome the opportunity to appear before you to discuss the "Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area."

I come here as part of a long journey, a journey to secure for the people of Cook Inlet Region their land entitlement under the Alaska Native Claims Settlement Act.

The land that Cook Inlet obtains under the Alaska Native Claims Settlement Act is its birthright. We must protect that Birthright. If we failed to protect that birthright, through ~~wise~~ unwise selection of lands, the historical claims of our people might be forever lost or slowly reduced to nothing. The Region would be taxed out of existence shortly after 1991. There would not be a viable Corporation.

In 1972, after the Act was passed, the Secretary withdrew mountaintops and glaciers for the Region. The State had already patented most of the low-lying land in the Region. Virtually all of the remaining low-lying land was committed to the State by the Secretary in September, 1972, when Alaska vs. Morton was settled. This was without consultation with the Region even though our interests were substantially affected.

The State had taken the land that the Federal government should have withdrawn for Cook Inlet under the Act.

This was the situation faced by our Shareholders for over two years. In 1974, Senator Jackson and Congressman Meeds promised legislative relief for Cook Inlet Region. It appeared that a just solution could be worked out. On the eve of such a solution, as it became clear that there was Federal support for our cause, Cook Inlet Region was urged by the State to change its legislative strategy so that the interests of the State's citizens would be better harmonized with the interests of Cook Inlet's shareholders. The Borough urged the Region to change its legislative goals and remove the Campbell Airstrip, Point Woronzoff and other lands from consideration in the draft legislation then before Congress. In effect, the Region was urged by all sides not to look selfishly at its claims for a just settlement of its entitlement under the Alaska Native Claims Settlement Act. The Region was urged to work out with all the competing interests what would be a rational and thoughtful approach in which public needs could be melded with private needs.

This was one of the most difficult periods in the Corporation's history. We were being asked to abandon our past course of action and set out on an entirely new approach, one where we would be asked to put the claims of the Region in the context of the general public interest.

Let me recount some of the hurdles that this new approach placed in our way:

1. We were being asked to abandon claims to Point Campbell, Campbell Airstrip and Point Woronzoff in light of the Boroughs interests.

2. We were asked to abandon claims to the Swanson oil

fields so that the present income of the State of Alaska could be maintained.

3. We were asked by environmental groups to abandon claims that would affect the recreational interests, not only of Alaskans, but of the American public.

4. We were asked to abandon claims that would adversely affect wildlife habitats or that would impair the quality of water.

5. We were asked to abandon claims to lands, even though they were withdrawn for the Region, because they were located near potential capital sites.

The Region agreed to work for a thoughtful general approach that would demonstrate that the interests of the Native Corporations would be consistent with the interests of the State as a whole. It was critical to show that the Native Corporations were concerned with orderly growth.

This approach meant more than eight months of constant negotiations. Working out a thoughtful settlement has had its physical and mental toll on the volunteer members of our Board of Directors who gave unselfishly of their time.

We bargained in good faith. We followed the rules imposed by the State. I do not think we should be penalized for that. We thought we had reached a settlement last December. Now, Madam Chairman, we fear that the bargaining rules may be changing after a settlement has been reached.

To be sure, we are not altogether pleased with the outcome of the settlement. We have had to shift more than half our land outside the boundaries of our Region against our will, and only with the deepest tolerance and concern by our sister Regions. The total surface land to which the Region is entitled has been reduced. We have agreed to a greater state and federal role on some of our lands than would be the case under the Act.

Our Village corporations were required to abandon selections in Lake Clark. We surrendered claims to other very valuable and important lands withdrawn for our selection. These are points that are overlooked. It is also overlooked that the Native people lived on and occupied all the low-lying land in this area. The Act provides that the land for the Native Corporations should be similar to Village land. Our Region is the one Region where the State had patented almost all such land for itself.

Also overlooked are some of the benefits to the State in the agreement. In the absence of the agreement there are certain hazards for the State. Some of the problems faced by the State in the absence of a negotiated settlement are as follows:

a) elimination of a steady stream of income to the State from producing federal fields.

b) elimination of the chance to receive immediately the Campbell Air Strip for the Anchorage Borough.

c) The possibility that the Ninth Circuit or the Congress will set aside the 1972 Agreement between the State and the Federal government on the ground that the agreement breeched the federal trust responsibility to Cook Inlet Region.

d) Long and painful litigation for every piece of land to which Cook Inlet is entitled.

In addition and conversely, the State adds substantially to its Statehood entitlement. It improves its bargaining position in the upcoming Section 17(d)(2) negotiations. The Agreement also provides the State with its only coastline on the west coast of Cook Inlet, South of Tuxedni Bay.

More generally, the agreement seeks to improve land holding patterns from the Talkeetna's to the mouth of the Kvichak.

Madam Chairman, I want to, at this time, also touch on a few issues that have become of particular concern.

The first is the relationship between this agreement and the Statehood Act. I have made it clear to the Chairman that we did not seek an amendment to the Statehood Act nor did we consider such an amendment necessary to carry out the terms of our Agreement. The House Judiciary Committee in the House Journal for April 21, 1972 explaining A.S. 38.95.060(b), suggested that subsurface transfers could be accomplished by three way transfers with the Secretary of the Interior. We relied on that suggestion and on our interpretation of Section 6(i) of the Statehood Act. We maintain that there was no need for an Amendment to the Statehood Act for our transfer. We fought to have the amendment removed from the Cook Inlet provision of the statute.

Second, there is the question whether this transfer is a bad precedent. No Region in Alaska had the concentration of State patented lands that faced Cook Inlet Region. In the first ten years after statehood when these lands were selected by Alaska, the State was already on notice that the Natives had claims to such land. It is only because more than five million acres of low lying

land had been patented to the State in Cook Inlet Region that the federal government and the Congress looked to the State for participation in the solution. It is doubtful that this legislature will find another instance where this is the case.

Third, there is the question of procedures for such land trades. I assure you that we support legislative efforts to make clearer the procedures to be followed by a Native Corporation seeking to work with the State. We have suffered because of the lack of such procedures. I think Cook Inlet did the best that could be done under the circumstances. We think such procedures should provide guidance on the following issues:

a) what steps should be taken to consult with local governments where land to be traded is in their vicinity.

b) at what point should the intention of the State to engage in exchange negotiations be made public and what steps should be taken to notify the public.

c) what role should the public play, if any, in exchange negotiations.

d) at what point should tentative agreements be made public.

e) what size transfer agreement should be referred to the Legislature.

f) under what circumstances, if any, should there be subsurface transfers. And if there can be such transfers, what special procedures should be developed.

g) how should value determinations be made, particularly for large tracts where there are no present obvious ways of calculating value.

Fourth, there is the question of the Beluga coal lands. These lands were a critical part of the bargain. The State precluded all known producing oil fields. The Cook Inlet Region concurred if the Beluga lands were included. We then agreed, after very hard bargaining, to the exclusion of over 75% of the coal-bearing lands because they had mental health status.

I believe that this was a fair bargain. I also believe that erroneous figures have been employed to inflate the loss to the State and the gain to the Cook Inlet Region. The coal in the Capps Glacier lease is not clearly economic in the short run. It is uncertain that it will be developed before the coal in the Chuitna lease (coal that remains in State ownership). If that is so, the modest figures in the State geology report may, themselves, be too high.

It should also be made clear that the State has already transferred to private parties the right to extract the coal. If the State lost its coal future, it is not because of this transaction, but because of the leases it entered into some years ago.

Finally, it has already been made clear from preliminary talks with some of the lessees that Cook Inlet will not be able to profit from the coal unless it contributes, through capital, to the acceleration of development. Our feeling is that we will be a good and helpful partner as lessor; better we think, for the economy than the State as a partner.

And finally, Madam Chairman, I wish to summarize by saying that This agreement is a difficult and complex one. It represents months of negotiations, of consultations with the Anchorage Borough, with the various interests that are involved in the future of Alaska. It has been praised by Congressman Don Young. The Alaska delegation unanimously supported it.

It passed the Senate and House of Representatives unanimously. I am glad that the Agreement is the subject of these discussions under your careful guidance. I am glad that questions as to the Governor's authority will be clarified by the Legislature's action. Many technical questions will arise as you go through your process of deliberation. We are ready to answer these questions. Our very future is at stake. We have done everything that we think could reasonably be expected of us. We are now asking for your support and approval.

Special To The Times - By Harold H. Galliett, Jr.
First of a Series

THE GREAT COAL FRAUD

Of what are we defrauded?

A clique of top state officials conspires to give the Cook Inlet Native Corporation the following immensely-valuable state lands:

1. 13.5 townships (311,000 acres) of patented state coal land in the Beluga coalfield, including the critical deep-water port and industrial area essential to Alaska coal processing and shipment. I have estimated the recoverable coal in these townships from work by Barnes, McGee, Hackett and Grantz and from private data. Using a 50 percent recovery factor applied to coal in seams over 2 feet thick and less than 2,000 feet deep, I estimate that there are at least 5 billion tons - and possibly as much as 14 billion tons - of recoverable coal in these townships.

2. 5 townships (115,000 acres) of patented or tentatively-approved state coal land in the Homer coalfield. I have estimated the recoverable coal in these townships from work by Barnes and McGee and from private data. Using a 50 percent recovery factor applied to coal in seams over 2 feet thick and less than 2,000 feet deep, I estimate that there are at least 7 billion tons - and possibly as much as 12 billion tons - of recoverable coal in these townships.

3. 1.2 townships (28,000 acres) of the most valuable tracts of patented or tentatively-approved state land in various areas of the Matanuska-Susitna Borough. The specific tracts to be given away have not been made public, but, if the profligacy of the rest of this deal holds, we can expect these tracts to include Point Mackenzie port lands and proven coal lands of great value. I have estimated the recoverable coal in these most valuable tracts from work by McGee and from private data. Using a 50 percent recovery factor applied to coal in seams over 2 feet thick and

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less than 2,000 feet deep. I estimate that there are at least 1.5 billion tons - and possibly as much as 3 billion tons - of recoverable coal in these tracts.

4. Other, smaller tracts are also involved.

At a coal royalty of only 20 cents per ton, we will be losing 2.7 to 5.8 billion dollars in future coal royalties. At a price of only $10,000 per acre for critical deep-water port and industrial land, we will be losing 100 to 150 million dollars in future state land income. At a price of only $2,000 per acre for Matanuska-Susitna land, we will be losing over 50 million dollars in future state land income. In adding it all up, we stand to lose the appalling sum of 2.8 to 6.0 billion dollars in future state income because of this deal!

We are being gulled into giving away an enormous resource of readily-accessible, easily-mined coal of phenominally-low sulfur content. This coal is on the threshold of development to replace declining US production of oil and gas and to reduce our national dependence on foreign oil.

We are asked to hand over the critical deep-water port and industrial area essential to the future processing and shipment of not only Beluga coal, but also Susitna coal, Matanuska coal, Nenana coal and other resources from the Interior and North Slope! We are importuned to dispose of routes to Mental Health coal lands and rights-of-way for road and railway extensions, pipelines and water supply works.

Are we expected to hold still for this outrageous defalcation without a map, without a legal description, without a development plan, without a geological report, without a drilling program, without a valuation? Are we to be kept in the dark to the eleventh hour, so that this robbery can be railroaded through Congress?

Under the circumstances, we ordinary citizens may be forgiven for demanding a searching, unhurried, no-nonsense investigation by our legislature.

Next: What kind of "Gold Brick" do we get?

Special To The Times - By Harold H. Galliett, Jr.
Second of a Series

THE GREAT COAL FRAUD

What kind of "Gold Brick" do we get?

In return for immensely-valuable state coal lands, which were described in the first article of this series, the Cook Inlet Native Corporation proposes to give the state 31 townships (714,000 acres) of almost-inaccessible back country in the following areas:

1. Mountains and hills near the canyon of the Susitna River. This land surrounds a federal power site withdrawal for the Susitna power project, and is almost worthless except as a state-financed hunting preserve. Most of the poor-best of this area has been selected by Native Village Corporations.

2. Hills and mountains northwest of Lake Clark and Lake Iliamna and the rocky coastline, hills and mountains fronting on Kamishak Bay. This land is almost worthless, except as a state-financed hunting preserve.

The Department of Interior "magnanimously" proposes to allow the state to use part of our statehood acreage entitlement to select 30 townships (691,000 acres) of hard-to-reach hinterlands in the following areas:

1. Lake Clark - Lake Iliamna watershed. Local Native Village Corporations have selected almost all of the waterfront land on Lake Iliamna and about one-quarter of the waterfront land on Lake Clark. The Department of Interior proposes to retain about one-quarter of the waterfront land on Lake Clark in a new national park. Native allotment claims and private hunting lodges occupy another significant fraction of the waterfront land on Lake Clark.

   The state owns the beds of all navigable lakes, rivers and streams in the Lake Clark - Lake Iliamna watershed. The famous red salmon from this area spawn in the lakes, rivers and larger streams. The state has jurisdiction over fish and game, and has adequate authority to protect fish and game on both public and private lands. The state will continue

to govern, tax and serve citizens in the area. The area and its citizens cannot be somehow severed from the state by proposed improvements in federal management of the hinterlands.

Therefore, "control", as touted by top state officials, of the Lake Clark - Lake Iliamna watershed, even by state acquisition of all 30 townships in this one area, is impractical. Ownership of the entire watershed would require a far greater commitment of statehood selection entitlement than the proposed 30 townships. Clearly, this schemer's dream of somehow wresting "control" of the entire watershed is impractical and unnecessary: Impractical because of federal, Native and other ownership of nearly all waterfront land; unnecessary because of existing state ownership, jurisdiction and authority.

This land is almost worthless except as a state-financed hunting preserve.

2. High mountains and glaciers around Chakachamna Lake. This land surrounds a federal power site withdrawal, and is so rugged as to be almost worthless, even for hunting.

   Other, smaller tracts are also involved.

Thus, for 19.7 townships (454,000 acres) of state coal lands worth 2.8 to 6.0 billion dollars in future state income we are to receive 31 townships of almost-inaccessible backcountry and hard-to-reach hinterlands which are nearly worthless except as a state-financed hunting preserve!

Next: Who gains? Who loses?

Special To The Times - By Harold H. Galliett, Jr.

Third of a Series

THE GREAT COAL GIVEAWAY

Who gains? Who loses? And how much?

In return for immensely-valuable state coal lands, the Cook Inlet Native Corporation proposes to give the state almost-inaccessible backcountry and hard-to-reach hinterlands. The state coal lands to be given away are estimated to be worth $2.7 to $5.8 billion in future coal royalties, based on present royalty rates. The surface estate to be given away is estimated to be worth $200 to $400 million in future state income, based on present land prices.

The estimates given above look far to the future. To determine the present value of future receipts, we need first to increase present royalty rates and present land prices by an escalation factor representing inflation plus real increase in the price of energy resources and land. We also need to decrease future receipts at a discount rate representing inflation plus the real cost of hiring money.

Foreseeable improvements in coal extraction, conversion and transportation; increase of world population and industrialization; inexorable depletion of US and world oil and gas - all these factors foretell a rapid increase in coal royalties. For example, from 1967 to 1973 state coal royalties in the Beluga coalfield increased from 5 cents to 30 cents per ton.

Future state coal royalty rates will probably be based on a percentage of pit-head price backed in from the market. And, world oil, which paces the price of coal, is on an escalator from which there is no exit. Price of surface estate at state land auctions has also increased rapidly.

Consequently, I estimate that the escalation factor will offset the discount factor, and that present value of future income may be calculated with sufficient accuracy using present royalty rates and present land prices.

There are about 75,000 Natives enrolled in the 12 Native regional corporations located in Alaska. About 6,500 of these Natives are enrolled in the Cook Inlet Native Corporation. The population of Alaska today is

about 385,000 persons. Under the Alaska Native Claims Settlement Act, 70 percent of all revenues received by each regional corporation from subsurface estate patented to it under the Act shall be divided among all 12 regional corporations according to the number of Natives enrolled in each region. Native corporation profit, after effective taxes and administrative costs, is estimated at 50 percent of coal royalties and 40 percent of income from surface estate. The present value of future coal royalties and the present value of future income from surface estate to be lost by the state to the Cook Inlet Native Corporation is estimated at $2.7 to $5.8 billion and $200 to $400 million, respectively.

Who gains?

From the premises above, I calculate as follows:

1. Each enrolled Native in the 11 Native corporations in Alaska other than the Cook Inlet Native Corporation, will receive an increase in the present value of his or her stock of from $12,600 to $27,100. Thus, for a family with only three enrolled Native members, this generous gift will total $37,800 to $81,300!

2. Each enrolled Native in the Cook Inlet Native Corporation will receive an increase in the present value of his or her stock of from $87,200 to $185,500. Thus, for a family with only three enrolled Native members, this munificent endowment will total $261,600 to $556,500!

Who loses?

Each citizen loses in increased state taxes or in benefits which must be denied by our state government.

I estimate coal extraction will require 100 years, and the state will lose an average of $29 to $62 million in 1975 dollars during each year of that century.

And who will pay for the impact of coal development?

Next: Conflict of interest?

Special To The Times - By Harold H. Galliett, Jr.

Fourth of a Series

THE GREAT COAL GIVEAWAY

Recent Events

On January 2, 1976, President Ford signed into law - over objections by the Treasury, the Office of Management and Budget and the Department of Agriculture - an Omnibus Bill amending the Alaska Native Claims Settlement Act. This Omnibus Bill also amends our Statehood Act by removing the basic protection that the state retain mineral rights in land exchanges. To cap this piece of politically-expedient, election-year legislation, the Secretary of Interior is given authority to waive the "equal value" provision in future exchanges of state land.

Earlier proposals by the Hammond administration have been changed, voted by Congress and signed into law with neither adequate notice nor opportunity for response by Alaskans. Nevertheless, the Omnibus Bill, as sent to the conference committee, does give the State of Alaska a chance to accept or reject the controversial Cook Inlet land swap.

Most of the Omnibus Bill amending the Alaska Native Claims Settlement Act helps our Native people without hurting the other 80 percent of Alaskans. However, the controversial land swap destroys the compact integrity of patented state lands in the heartland of our state, creates conflict in land management where none existed, discourages settlement except by leasehold tenants on terms dictated by Native corporations, and denies 80 percent of Alaskans the income and responsible state control of an empire of coal on the threshold of development.

The consent of the State of Alaska to the controversial Cook Inlet land swap must be given, if at all, within 60 days of the commencement of the 1976 session of the Alaska legislature. Surely, it is arrogant that so short a time is allowed our legislature to evaluate a giveaway of energy resources at least equal to Prudhoe. However, the strategy of the proponents of this dissipation of the common property is to keep us in the dark, and to ram this infamous give-away through before common sense can prevail. For example,

it took two weeks to get a copy of the bill as voted by the House, and that copy was incomplete. It is unlikely that Alaskans will have the printed Omnibus Bill to study until well after our legislature convenes.

One or more bills will soon be filed with our legislature to give the consent of the State of Alaska to the controversial Cook Inlet land swap. Our legislature may then (1) consent to the vague and indefinite terms of the Omnibus Bill, (2) consent to a hard and specific bargain within the outlines of the Omnibus Bill, (3) refuse to consent or (4) do nothing. If the legislature does nothing, I expect Governor Hammond will proceed without legislative approval, unless restrained by the courts.

Next: How will the coal be mined?

Special To The Times By Harold H. Galliett, Jr.

Fifth of a Series

THE GREAT COAL GIVEAWAY

How will the coal be mined?

Recoverable coal which may be given away by the Hammond administration in the infamous Cook Inlet land swap, is estimated at 13 to 29 billion tons. At a royalty of only 20 cents per ton, this coal is estimated to be worth $2.7 to $5.8 billion in future state income, or about $7,000 to $15,000 for each man, woman and child in Alaska today!

In the deeper parts of the Cook Inlet basin, the coal-containing Kenai formation, which contains numerous thick and thin coal beds, is more than 20,000 feet thick. Oil well logs, coal drilling, outcrop measurements and geophysical surveys are available today for useful estimates of coal resources. Contour maps of coal thickness have been plotted. The estimated coal resources in the entire Cook Inlet Basin exceed 1.3 trillion tons, but most of this coal is either beneath Cook Inlet, covered by thick glacial deposits, below a depth of 2,000 feet, or distant from deep tidewater.

In the Beluga area, near deep tidewater, enough coal has been found in the shallow Capps and Chuitna beds alone, to keep two, 6 million ton-per-year surface mines going for over 50 years. Stanford Research Institute estimates that the Capps beds will be 30 percent cheaper to mine than the Chuitna beds. Unfortunately, the Hammond administration proposes to give the Capps beds to the Cook Inlet Native Corporation.

No matter how large our coal resources may be, these resources have little value until we can foresee a regular progression of future technologies by which the coal can be mined at a net benefit.

Today, our coal must be mined by surface methods. Colossal bucket-wheel excavators will remove soft overburden. Huge power shovels and draglines will excavate hard materials and coal. Conveyor belts will move the excavated materials. Belt stackers will spread the overburden on mined-out areas. Under our climatic conditions, it will be relatively-easy to establish forest or grassland on recontoured areas.

The quality of surface restoration and the effectiveness of coal conservation will depend on land ownership and future laws. If the state owns the land, we may expect mining to be controlled in the long-term public interest.

Coal recovery by surface mining methods may be as high as 90 percent. Each 6 million ton-per-year surface mine will create about 200 mining jobs with top pay and benefits.

In favorable locations, underground mining will begin soon after surface mining. Sophisticated continuous mining machines and longwall methods will be used. Coal recovery will range from 50 to 90 percent.

Underground gasification of coal will begin soon after conventional mining. Steam and oxygen will be used to drive the reaction. The raw product will be synthesis or fuel gas consisting of hydrogen and carbon monoxide with impurities.

In one method of underground coal gasification, high-speed tunnel boring machines will open the coal beds by boring a grid of tunnels in the coal. Some solid coal will be produced by tunnel boring, and this will pay most or all of the cost of opening the coal beds. Shafts, pipes, stoppings and controls will be installed to direct gas flow and to guide the firefront. The burn will be lit, steam and oxygen supplied, and coal gas recovered. Roof let-down will follow the firefront.

Coaly-shale and coal in thin beds - values usually lost in conventional mining - may be recovered by underground gasification. Coal recovery should range from 50 to 90 percent. Safe mining depths will be moderately greater than for conventional coal mining.

In another method of underground coal gasification, wells will be drilled into the coal. Adjacent wells will be linked by hydraulic fracturing. The burn will be lit, steam and oxygen injected and coal gas withdrawn from adjacent wells. Coal recovery may be less than 50 percent, but this and similar underground gasification methods are expected to recover coal from deep coal beds which can be mined in no other way.

Next: Oil from coal! Who needs OPEC?

Monroe Price

10,000
100

4,000
3000
12% 7,000

1. Historical Opportunity - won't be available again

2. Full Public Process

3. Alternatives

— Amendments from Admin
— Barrier Testimony

Cook Inlet gives up rights in legal standing by further delay - hence the March 12 deadline

Legis May not amend land trade

1. Coal - in beluga land
25% / 75% Mental Health land
2,000 / 500 ++ Measurements

2. Oil in Beluga lands

3. Mechanism of selecting out of Region lands

90 select 30
strike 10% select 10%
81 strike 5% select 5%

HB
785

Crooks take to new weapon designed for self-defense



ack Cover displays his controversial Taser electric dart gun hich, he told a government panel, is a safe, effective alterna- ve to firearms.

WASHINGTON (AP) — The inventor of an electric dart gun designed as an alternative to firearms and sold for self defense says the weapon has been used as much by criminals as by persons protecting themselves from attack.

John H. Cover, president of Taser Systems Inc., says he has received reports that his controversial "Taser Public Defender" has been used at least 20 times, "one-half in self defense and one-half by crooks."

The Taser, a hand-held device resembling a flashlight, fires two, inch-long barbs connected to a battery by a 15-foot copper and stainless steel wire. The electric charge that pulses through the wires is sufficient to immobilize a person, but not cause permanent damage, Cover says.

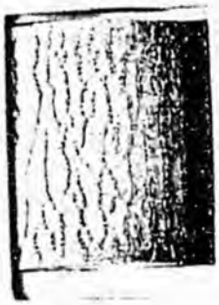
COVER MET recently for 75 minutes with staff members of the U.S. Consumer Product Safety Commission to review the medical and engineering tests performed on the device since he began developing it eight years ago.

The device has law enforcement and other government officials puzzled. The Bureau of Alcohol, Tobacco and Firearms has decided that it is not covered by the federal Gun Control Act of 1968.

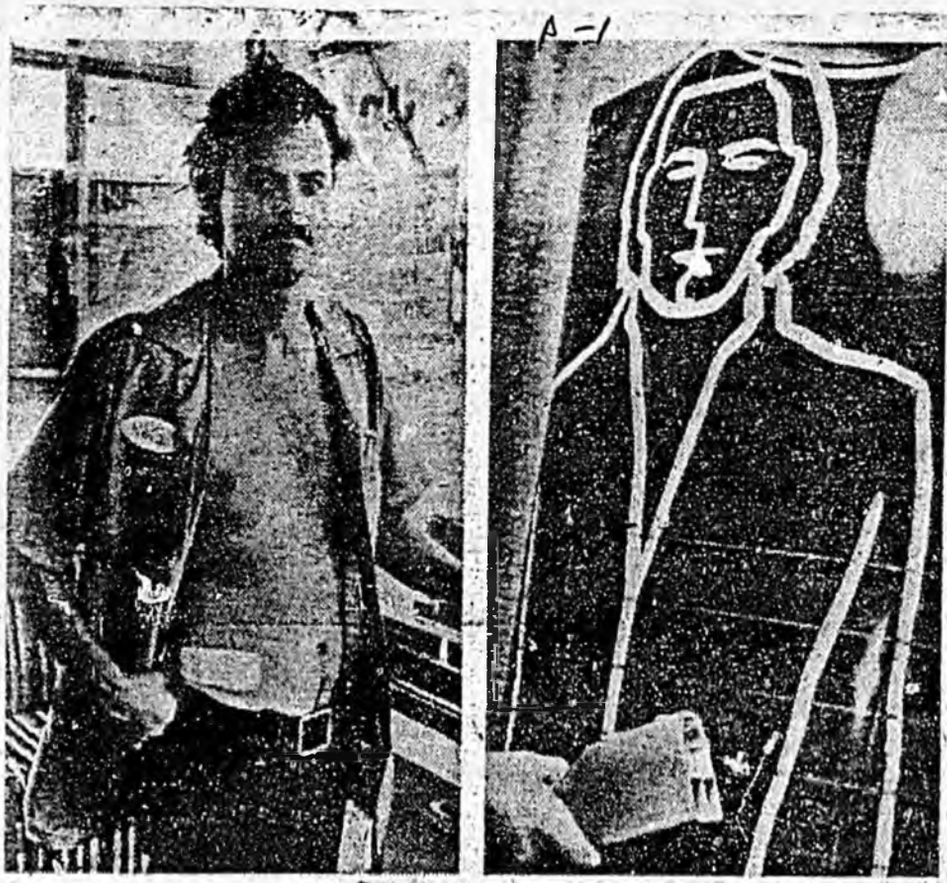
In California, where it was developed, it is termed a gun and must be registered and bear a serial number. New York City has ruled that carrying a Taser is a crime, as has Canada.

"THE RISK of this potentially lethal weapon falling into the hands of criminals is too great to allow it to be sold, manufactured or imported into Canada," said Canadian Justice Minister Ron Basford, in announcing the decision to ban the Taser.

THE SHOCK FROM the weapons causes muscles to contract, incapacitating the victim for up to a minute







—AP Photo

WILLIAM LAWSON, LEFT, WEARS PATCH OVER ELECTRIC GUN INJURY
On right, a dummy holds the gun, which has shot a dart into its left side

Zap! 50,000-volt Blonde Stages Shocking Robbery

MIAMI — (AP) — The young blonde in a pink sweater walked into the gas station and zapped the attendant, William Lawson, with 50,000 volts. Then she and a mate accomplice robbed the station and fled.

Police said Lawson was the first known victim of an electronic-age dart gun, which immobilizes its victims.

Lawson told police the young woman entered the station and asked to use the phone. As he showed her where it was, she turned toward him and, "calm and smiling," shot him.

"It was like sticking your finger in a wall socket," he said. "I fell on the floor and couldn't move. It was the worst pain I ever felt. My whole right side was jumping. I couldn't control my muscles."

Lawson said the woman was joined by a man who leaned over and pulled the wires from the darts in his belly, then helped the woman clean out the cash register of an undetermined amount. One of the darts was left in his flesh.

The Taser, which Lawson said reminded him of a gray flashlight, launches two small darts attached to batteries by 18-foot wires. The darts can penetrate 1½ inches of clothing and the 50,000-volt charge is described as incapacitating and very painful.

The weapon's makers, Taser System Inc. of Los Angeles, describe it as a nonlethal crime prevention device for stopping attackers in their tracks. Literature that comes with it says that, in early testing, a blast from the gun using only 30,000 volts flattened a 250-pound bull.

The New York Times

WASHINGTON — The Justice Department has begun a criminal investigation of the circumstances surrounding the destruction of a threatening letter delivery by Lee Harvey Oswald to the Dallas office of the Federal Bureau of Investigation shortly before the assassination of president John F. Kennedy.

The investigation, which is being conducted by lawyers in the department's criminal division, is said by authoritative sources to be focusing on "conflicting statements" given by present and former FBI agents and officials about their roles in — or knowledge of — the decision to destroy the letter following Kennedy's murder on Nov. 22, 1963.

The letter in question reportedly contained a threat by Oswald, the accused assassin of the late president, to "blow up" a Dallas police station unless the FBI ceased its efforts to locate and interview him in Dallas and what he described as its harassment of his Russian-born wife, Marina.

According to several sources familiar with the results of a recently ordered administrative inquiry by the FBI into the incident, the Oswald letter made no mention of any intention on his part to commit a murder, or of any animosity toward Kennedy.

The FBI's efforts to seek Oswald in the days before the assassination

Stun Gun on the Market

Criminals Buying It, Police Fear

LOS ANGELES — (AP) — Promoted as a humane defensive weapon that will immobilize but normally not kill, the electric stun gun may be winning unwanted acceptance in the underworld as a sort of jailhouse insurance.

More than 1,000 Taser Public Defenders, which pack a 50,000-volt wallop, have been sold since the weapon was first marketed in March, and a company spokesman said new orders are straining production lines. Only 10 guns have been sold to police, the intended buyer.

Just who is buying the stun guns, the manufacturer, Advanced Chemical Technology of Los Angeles, can't say. It is a question some police worry over.



—A.P. Photo

THE TASER—PROMOTED AS A HUMANE DEFENSIVE WEAPON

It shoots tiny darts with a 50,000-volt wallop

Recently a holdup woman in Miami and a burglar in Redondo Beach fired Tasers at their victims. Miami police also reported nine Tasers stolen from a distributor.

Some Los Angeles police theorize that criminals may like the weapon because if they are forced to shoot and are caught later, the potential prison sentence will be far lighter tha if they had used conventional firearms.

The laws of many states carry much different penalties for robbery and armed robbery, or simple assault and assault with a deadly weapon. Criminals who shoot their victims are commonly charged with attempted murder or murder if the victim dies.

The Taser is a flashlight with two mechanisms for firing tiny darts which are attached to the light's nickel cadmium batteries by 18-foot-long wires. When the darts strike a person and the low current, high voltage charge hits, the victim's nervous system is effectively short-circuited and they normally drop, temporarily stunned. The flashlight is not integral to the weapon other than helping the user to aim at night. The darts and wires are enclosed in cassettes which cannot be re-used.

The gun's name is a loose acronym taken by inventor Jack Cover from the book title, "Tom Swift and His Electric Rifle."

Some authorities have questioned just how effective and safe the weapon really is.

In the Redondo Beach burglary, Michael Mattingly was hit by both darts from one Taser. He was knocked to his knees and stunned. But he was able to pluck out the darts and tackle the burglar, who after a scuffle escaped emptyhanded.

Dr. Peter Rocovich, a Los Angeles neurosurgeon, said the gun potentially is lethal. He said such a heavy shock could result in cardiac arrest for a victim with heart trouble.

"Electricity is very unpredictable and hard to control. What would be a strong shock to one person could be fatal in someone else," Dr. Rocovich said.

Cover said: "There is no medical evidence that a heart patient would necessarily be killed. The shock does not affect heart pacemakers. We have never said this is a nonlethal weapon."

Only one sale has been made to a law enforcement agency — 10 stun guns have been delivered to the Lauderdale Lakes, Fla., police force.

Los Angeles police chief Ed Davis, dismissing all "gun substitutes" now on the market, said: "None of these devices can ever replace a police firearm . . . If the bad guy knows that his worst fate is tranquilization and the policeman knows his worst fate is being killed by the bad guy, the bad guys would become roaring lions."

"Is the Taser a good idea? Well, we already have had two felonies committed with them," says Lt. Dan Cooke, spokesman for the Los Angeles Police Department. "It is potentially a thoroughly deadly weapon in heart cases."

He said it would be up to the courts or lawmakers to decide if the Taser is a controllable deadly weapon or if it is something anyone could own and carry with him.

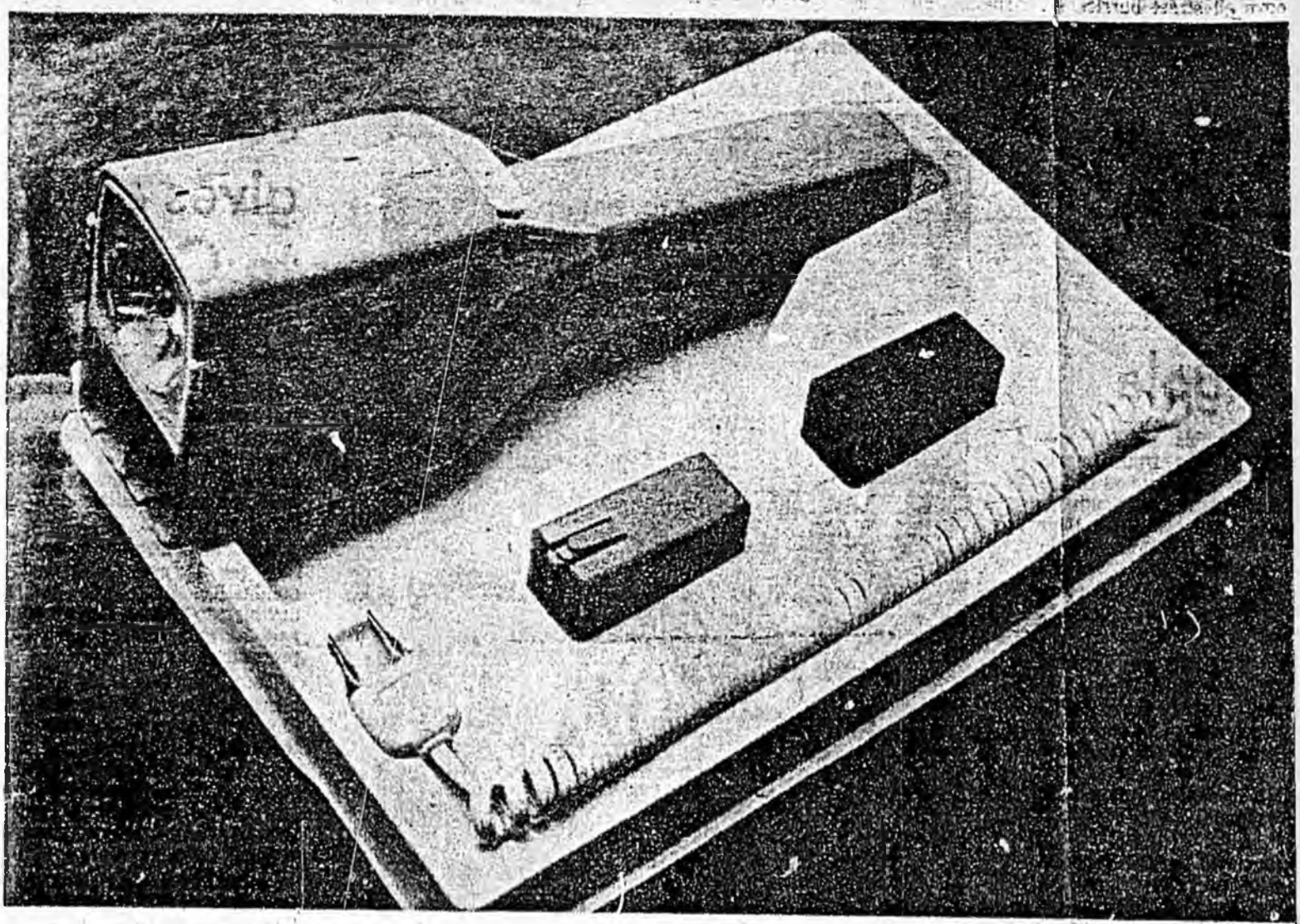
A sampling of some major Los Angeles gun dealers showed public interest in the Taser, but few distributors are stocking them.

One gun dealer who asked that he not be identified said: "I guess it is supposed to appeal to the antigun people who think they can get something that's not going to kill people. But we aren't all that sure."





Gun triggers 50,000-volt deba



A Taser, its two dart cartridges and the cord for recharging the battery.

By CHARLES AWEEKA
Times Suburban Writer

AUBURN — The Taser Public Defender is for real.

Promoters bill it as an alternative to the gun, designed to immobilize, not kill. It zaps its victims with a 50,000-volt charge that can be maintained for up to five minutes..

But already some grave questions have been raised about the electric-dart gun.

Larry (Dusty) Johnston, an independent distributor for the Taser, says it'll knock down an elephant in five seconds.

"If it was going to be the answer to the gun, I wanted to be in on the ground floor," he said. "I'm looking for an honest way to make a living. I don't like violence. I don't even go hunting."

Since last fall, he said, he has peddled about 40 of the $200 Ta ers, which are manufactured by the Advanced Chemical Technology Co. of Los Angeles.

WHO ARE HIS customers?

Mostly housewives and nurses in the University District, "because they are afraid 'Ted' might come back," he said. But also private detectives, police officers, boat owners, campers and drug pushers "to guard against persons ripping them off."

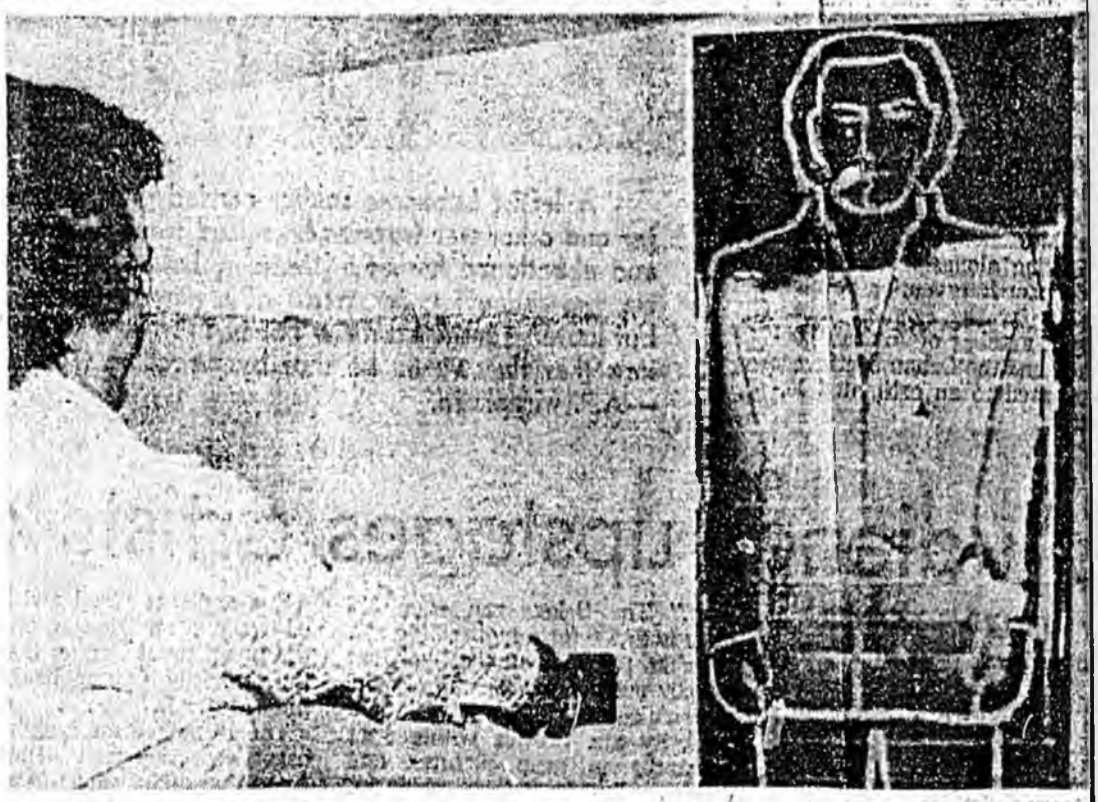
Johnston said he is concerned that the weapon could fall into the wrong hands.

Almost half the Tasers he has sold have been sent via a delivery service to persons he has never seen. Many of them live in Alaska.

He retains the name and address of each purchaser, along with a record of the purchaser's driver's license number, height, weight, color of hair and his guarantee that he is 18 or older.

A Taser has three serial numbers, one of them hidden "for the company's protection."

The first known victim of the electronic-age dart gun was a Miami, Fla., service-station attendant. A young blond woman plugged him [illegible] September



Larry Johnston fired a Taser dart at a target.

c uciating pain he'd ever had," Johnston said.

Brochures stress that although the Taser is designed to be nonlethal, "there is no guarantee that serious inury will not occur or that harmful after effects will not reharmful aftereffects will not result" sult" from its use.

Critics warn that victims might suffer a heart attack.

THE TASER HAS two cartridges enclosing tiny darts which are attached to nickel-cadmium batteries by wires. When the darts with their barbed tips strike and the low-current, high-voltage charge hits, the victim's neuromuscular system is short-circuited and he hits the deck, temporarily stunned.

The batteries can be recharged, but once the darts have been fired they cannot be reused. Each cartridge holds two darts which fire

The range is about 15 feet; the charge is capable of passing through 1½ inches of clothing.

The dart gun poses some prickly problems for police.

The Treasury Department's Bureau of Alcohol, Tobacco and Firearms determined that the Taser isn't covered by the Gun Control Act of 1968.

California, however, classified it as a dangerous weapon after a Redondo Beach man was shot by a burglar. The victim yankd out the darts after he had been knocked to his knees, then tackled his tormentor.

New York also has controls on the Taser. Officials said Johnston had agreed to demonstrate the Taser for them, but never showed up.

The Consumer Product Safety Commission is investigating a request that it ban the gun.

Jerry Olson, chief of the cri section, said it would be up courts or lawmakers in this st decide if the Taser is a contro deadly weapon or if it is some that anyone could own or with him.

LAST YEAR, Johnston professional skin diver, found use for the Taser when he bu into a bluefin shark 40 feet u water off Catalina Island.

Luckily he had his Taser alo ward off the rambunctious shar

Connected to the waterproo was a plastic-coated spear. P coated, that is, except for the metal end.

"That shark had the bi shock of his life," he said. didn't bother me any more. He took off. I did it on a couple o

HB
795

Terry Gardiner

Box 1092, Ketchikan, Alaska 99901 Pouch V, Juneau, Alaska 99811

March 23, 1976

Hugh Malone, Chairman
House Finance Committee

Re: Fiscal note for HB 795, Status of Women in Alaska

Dear Hugh,

Neil Thomas, the executive director of the Human Rights Commission in drafting the fiscal note for HB 795 has divided the note into two sections. The first section is a request for a budget of $40,400 for carrying out public information activities and the second part of the fiscal note is a request for $101,200 for a study of the status of women in Alaska.

It is the feeling of the Judiciary Committee that the study of the status of women in Alaska would be of little input of the Human Rights Commission had no mechanism to distribute the knowledge obtained as a result of the study, to the public. Consequently the $40,000 appropriation for public information activities is an integral part of this fiscal note.

In the past the Human Rights Commission has been able to engage in a modest amount of public information activities by the utilization of the assistance of VISTA volunteers. The Human Rights Commission has informed the Judiciary Committee that they will no longer be able to use the assistance of a VISTA in this capacity.

In summation, the Judiciary Committee believes that the distribution of information obtained as a result of the study of the status of women in Alaska is a substantial and integral part of HB 795.

Very truly yours,

Terry Gardiner, Chairman
House Judiciary Committee

cc Lisa Rudd

THE LEGISLATURE OF THE STATE OF ALASKA
FISCAL NOTE
Second Session - Ninth Legislature

REVISED AT COMMITTEE & SPONSOR REQUEST

I. REQUEST

Bill No. HB 795
Title: Status of Women in Alaska
Requested by: Representative Rudd Date: 03/16/76
Return Date Requested: 03/16/76
Agency: Office of the Governor Program: Human Rights Commission

II. FISCAL DETAIL

Budget Request Unit(s) Affected: 01.67.01.01.00

A. EXPENDITURES: (Thousands of dollars)

	OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100	PERSONAL SERVICES		18.0				
200	TRAVEL		5.0				
300	CONTRACTUAL		74.4				
400	COMMODITIES		3.2				
500	EQUIPMENT		0.7				
600	LAND & STRUCTURES		-0-				
700	GRANTS, CLAIMS, ETC.		-0-				
	TOTAL		101.3				

B. FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	/1.0	/	/	/	/	/
MAN MONTHS (P./T.)	/12.0	/	/	/	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The revised note changes prior assumption that a full-time person would be required to manage the studies. Assumption that most work of the studies would be done by contract with HRC remains unchanged.

The sponsor and the Judiciary Committee, based upon comments at hearings that HRC lacks resources to effectively carry out public information activities, recommends that the Finance Committee fund the other half of the position in this Fiscal Note in HRC's regular budget to provide a public information function, as follows:

(cont'd. next page)

IV. ATTACHMENTS

V. DATE: 3/16/76 PREPARED BY: Hal Rogers
EXEC DIR.

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

H/S 50

Public Information Budget

100	Personal Services			
	1/2 Information Officer II, Range 17			
	975 hours x $9.71	9,467		
	+ 21% Benefits	1,988		
	1 1/2 merit	142		
			11.6	
	1/2 Clerk-Typist III, Range 8			
	975 Hours x $5.30	5,168		
	7.5% Benefits	388		
			5.5	17.1
200	Travel			
	Instate travel to meet with media representatives; agency staff travel, particularly to rural areas to publicize Commission & receive complaints			5.0
300	Contractual			
	320 Printing & Advertising - Radio spots & easy to read literature		15.0	
	380 Professional fees - creation of radio spots		2.0	17.0
400	Commodities - Tapes, etc. for information activity			1.0
500	Equipment - Portable tape recorder			0.3
				40.4

Reductions in this fiscal note for the women's studies project to meet realistic cost considerations yield the following budget:

100	Personal Services			
	1/2 Hum. Rts. F.R.II Range 18			
	975 Hours x $10.46	10,199		
	21% Benefits	2142		
	1 1/2% Merit	153	12.5	
	1/2 Clerk-Typist III, Range 8			
	975 hours x $5.30	5,168		
	7.5% Benefits	388	5.5	
				18.0
200	Travel			
	Instate travel to meet with media representatives; agency staff travel, particularly to rural areas to publicize Commission & receive complaints			5.0
300	Contractual			
	310 Communications (Telephone)		1.1	
	320 Printing & Advertising (Reduced in size & quantity)			
	Summary reports + 4 individual reports			
	25 pages each 500 copies @ $2./copy		2.5	
330	Rents & Utilities		2.0	
360	Equipmental Rental			
	Typewriter		0.3	
	2 desks with chairs		1.0	1.3

380	Professional Fees & Services	
	Employment study - Contracts on recruitment sources, job benefits, promotion opportunities, "flex-time" & other work systems & child care 5 @ 7500 each	37.5
	Education study - Contracts on equal treatment of women in textbooks & equal athletic opportunities 2 @ $7500	15.0
	Health study - 1 contract on treatment availability of physical and emotional disorders unique to or prevalent in women as compared with treatment available for men 1 @ 7500	7.5
	Minority women - 1 contract on effects of urban impact on you: Native women arriving from villages 1 @ 7500	7.5
		67.5
		74.4
400	Commodities	
	470 Professional & Scientific Supplies Books & Subscriptions relevant to areas of study	3.2
500	Equipment	
	530 Calculation for Statistical Studies	0.7
		101.3

To reduce total cost of studies; the Committee has;

a) Reduced staff coordination time by half

b) Projected shorter reports (25 pages instead of 100 pages) and fewer copies (500 instead of 100) and no special graphics ($2 per copy instead of $3)

c) Reduced cost per study (or sub-study) from approximately $20,000 to$7500 each

d) More narrowly defined the subjects to be studied, e.g. instead of a study on status of all minority women, to focus just on young Native women arriving in cities.

141.7

Introduced: 2/17/76
Referred: Judiciary

BY RUDD,H.BEIRNE,BRADNER,
KELLEY,SULLIVAN,BUCHHOLDT,
ITTA AND OSTROSKY

IN THE HOUSE

HOUSE BILL NO. 795

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the status of women in Alaska; and providing for an effective date."

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

* Section 1. The State Commission on Human Rights shall contract for an investigation of the status of women ~~in Alaska~~ in the fields of employment, education, health, and minority women for the purpose of reporting to the legislature and developing educational materials on the status of women in Alaska to be distributed to concerned groups and citizens.

* Sec. 2. The State Commission on Human Rights shall contract for this study with persons or groups who have experience and education in the areas to be reported on, and preference shall be given to Alaska residents who are knowledgeable of the status of women in Alaska.

* Sec. 3. The report on the status of women in Alaska shall contain recommendations to remedy inequities to women in Alaska in the subjects of the report, and shall be submitted to the legislature no later than July 1, 1977. The report shall also contain recommendations for action by the State Commission on Human Rights in the subjects of the report. The educational materials shall be made available to the public by the State Commission on Human Rights no later than July 1, 1977.

* Sec. 4. This Act takes effect July 1, 1976.

relative to that of men in ~~the~~ Alaskan society, specifically with relation to legal, social, economic and cultural barriers to full equality.

We The undersigned urge you

to give full support to Bill # HB 795

which concerns The Status of ♀ WOMEN:

Audie Burnham	RR3, Box 3091 Jno 99801
Bonnie Harris	544 W. 12th St. Juneau 99801
Pamela Finley	P.O. Box 193 Auke Bay 99821
Kerry Boness	Rt 4 P.O Box 4772 JUNEAU, AK
Karen Manhouse	128 Behrends Juneau 99801
Regina Galleher	433 - 3rd Juneau, Al.
Phyllis Carlson	419 2nd #2 Juneau
Barbara Bondi	General Delivery (Valley Court) Juneau
Susan Warner	PO Box 1241, Juneau
Frances Still	Box 188, Douglas. 99824
Susan Koester	P. O. Box 232, Auke Bay 99821
Shar Stark	RR 3 box 3746 juneau, Alaska 99801
Anne L. H[illegible]	Box 571 Douglas Alaska 99824
Carol Anderson	Box 571 Douglas, AK 99824
Mary Ellen Frank	RR 3 Box 3291 Juneau 99801
Ellen Siegel	same as above
Janice Hollender	Box 305, Juneau, AK 99802
Janet Underwood	Box 1451, Juneau AK. 99801
Anne L. H[illegible]	Box 575 Douglas 99824

We feel it is very important that the status of women in Alaska be studied & recommendations made to rectify our conditions, particularly in the area of women's health care, which is sadly, & often disastrously lacking in this state; There are no gynocologists or obstetricians in our capital city, not to mention the almost total lack of preventative medicine or any other kinds of health facilities in many of our bush communities. A comprehensive study of this problem is one step in the right direction.

Jane Sheridan P.O. Box 368, Juneau
Cheryl Barnes P.O. Box 473, Juneau

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WOMEN'S BUREAU
WASHINGTON, D.C. 20210

WOMEN WORKERS IN ALASKA, 1970

Of the 302,173 persons of all ages in Alaska in 1970, 79 percent were white (including those of Spanish origin); 5 percent, American Indian; 3 percent, Negro; 1 percent, Oriental; and 12 percent, all other races.1/ Among all women aged 16 and over in the population, 2 percent were black and 2 percent were of Spanish origin.

Labor Force Status

During the sixties, the proportion of women in the labor force of Alaska increased considerably. While the population of women 14 years of age and over rose by 50 percent between 1960 and 1970, the number of women workers increased by 66 percent.

In 1970 there were 38,003 women 16 years of age and over in the civilian labor force, accounting for 39 percent of all workers (table 1). Of these women workers, 1,158 (3 percent) were black and 778 (2 percent) were of Spanish origin (table 2). About 46 percent of all women were workers, as were 57 percent of the black women and 48 percent of Spanish-origin women. In addition, 825 girls 14 and 15 years of age were in the labor force.

Nearly 2,900 women workers were unemployed in 1970, creating a 7.6 percent unemployment rate. The rate for men was 10.2 percent.

Age

Women's participation in the labor force varied by age. Among all women, there was only one-fourth participation of those 16 and 17 years of age, since most of these young women were in school during the census month. But in the age groups between 18 and 64 years there was participation of 45 percent or more, with the highest rate (54 percent) shown by women 20 to 24 years. The rate for those 65 years and over was 19 percent. Among black and Spanish-origin women, the highest labor force participation rates (76 percent and 53 percent, respectively) were shown by women 45 to 64 years.

1/ U.S. Department of Commerce, Bureau of the Census: "Census of Population: 1970. General Population Characteristics, PC(1)-B3."

Note.—Unless otherwise indicated, data in this report are for April 1 and apply to persons 16 years of age and over.

Education

Women 25 years old and over had attained a median of 12.4 years of schooling. One-fourth of the women 16 to 64 years of age with less than 15 years of schooling had received some vocational training.

Marital Status

Seven out of 10 women workers in Alaska were married and living with their husbands. Of all married women, almost 27,000, or 44 percent, were in the labor force. Of the single, widowed, divorced, or separated women, more than 12,000, or 52 percent, were workers.

Working Mothers and Family Heads

Two-fifths of all mothers with own children under 18 years of age were in the labor force in 1970, and these mothers represented 46 percent of the female work force. Nearly 10,000 mothers with children 6 to 17 years of age only, or 51 percent of all such mothers in the population, were in the labor force. About 8,000 mothers with children under 6, or 32 percent of those in the population, were workers.

More than 4,000 families, or 6 percent of all families in Alaska, were headed by women. Of the 1,531 women family heads with related children under 6, 56 percent were in the labor force. About 800 women with children under 6 headed families where incomes were below the poverty level;2/ 36 percent of these women were workers.

Occupations

More employed women in Alaska (38 percent) were in clerical work than in any other occupation (table 2). The next largest proportion (20 percent) were professional and technical workers, while 18 percent were service workers outside the home. Sales workers (7 percent) and nonfarm managers and administrators (6 percent) made up the fourth and fifth largest groups of employed women.

A slightly different pattern is presented by the proportion women were of all persons working in the various occupation groups. They made up 98 percent of the private household workers, 81 percent of clerical workers, 54 percent of service workers outside the home, 53 percent of sales workers, and 40 percent of professional and technical workers (table 1). They were only 20 percent of all nonfarm managers and administrators, while their proportion was lowest (3 percent) among craft workers and foremen.

2/ The poverty level is based on the Social Security Administration's poverty thresholds, adjusted annually in accordance with the Department of Labor's Consumer Price Index. Classified as poor in 1969 were those nonfarm households where total money income was less than $1,340 for an unrelated individual; $2,383 for a couple; and $3,743 for a family of four. (The poverty level for farm families is set at 85 percent of the corresponding level for nonfarm families.)

Black employed women in Alaska were concentrated (32 percent) in service work outside the home (table 2). A slightly smaller proportion (28 percent) were engaged in clerical work. Employed Spanish-origin women were primarily in clerical work (37 percent) and service work outside the home (25 percent).

Of the 2,586 unemployed women of all races who had worked during the last 10 years, 12 percent had worked in professional, technical, or managerial occupations, 28 percent had been employed as service workers outside the home, 26 percent as clerical workers, and 16 percent as operatives (including transport).

Family Income

The mean income for Alaska families headed by women 14 years of age and over was $6,999 in 1969, as compared with $13,856 for all families. The 115 black families headed by women had a mean income of $6,253, as compared with $9,917 for all black families. The income of the 75 families headed by Spanish-origin women was $5,617; for all Spanish-origin families it was $11,421.

About 6,200 families, or 9 percent of all families, had incomes in 1969 below the poverty level. About one-fourth (24 percent) of these poor families were headed by women. Of all families headed by women, 37 percent were poor. Most (93 percent) of the 1,504 women family heads with incomes below the poverty level had related children under 18 years of age; 52 percent had children under 6.

Table 1.--Employment Status and Occupations of Employed Persons in Alaska, by Sex, 1970

(Persons 16 years of age and over)

Employment status and occupation	Total	Women	Men	Women as percent of total
Employment Status				
Civilian population	159,702	83,155	76,547	52.1
In civilian labor force	98,296	38,003	60,293	38.7
Employed	89,236	35,122	54,114	39.4
Unemployed	9,060	2,881	6,179	31.8
Not in labor force	61,406	45,152	16,254	73.5
Occupation				
Total	89,236	35,122	54,114	39.4
Professional, technical workers	17,373	6,988	10,385	40.2
Managers, administrators (except farm)	10,291	2,053	8,238	19.9
Sales workers	4,926	2,595	2,331	52.7
Clerical workers	16,717	13,478	3,239	80.6
Craft workers, foremen	13,437	425	13,012	3.2
Operatives (except transport)	5,498	1,477	4,021	26.9
Transport equipment operatives	2,741	244	2,497	8.9
Nonfarm laborers	5,032	382	4,650	7.6
Farmers, farm managers	134	39	95	29.1
Farm laborers, foremen	201	57	144	28.4
Service workers (except private household)	11,862	6,385	5,477	53.8
Private household workers	1,024	999	25	97.6

Source: U.S. Department of Commerce, Bureau of the Census: "Census of Population: 1970. General Social and Economic Characteristics, PC(1)-C3."

Table 2.--Labor Force and Occupational Status of Women in Alaska, by Ethnic Group, 1970

(Women 16 years of age and over)

Labor force status and occupation	All women	Black	Spanish origin
Civilian Labor Force			
Number	38,003	1,158	778
Participation rate	45.7	56.9	48.4
Women as percent of all workers	38.7	1/54.1	2/46.5
Occupation of Employed			
Number	35,122	1,057	722
Percent	100.0	100.0	100.0
Professional, technical workers	19.9	16.8	15.7
Managers, administrators (except farm)	5.8	2.7	4.7
Sales workers	7.4	4.8	8.2
Clerical workers	38.4	28.3	36.8
Craft workers, foremen	1.2	--	--
Operatives (including transport)	4.9	8.5	3.7
Nonfarm laborers	1.1	(3/)	--
Farm workers	.3	(3/)	--
Service workers (except private household)	18.2	32.2	25.1
Private household workers	2.8	5.8	5.8
Last Occupation of Experienced Unemployed			
Worked during last 10 years	2,586	(4/)	(4/)
Percent	100.0		
Professional, technical, managerial workers	12.2		
Sales workers	7.2		
Clerical workers	25.9		
Operatives (including transport)	16.4		
Other blue-collar workers	5.2		
Farm workers	.3		
Service workers (except private household)	28.4		
Private household workers	4.3		

1/ Black women workers as percent of black work force.
2/ Spanish-origin women workers as percent of Spanish-origin work force.
3/ Less than 0.5 percent.
4/ Fewer than 100 persons.

Source: U.S. Department of Commerce, Bureau of the Census: "Census of Population: 1970. General Social and Economic Characteristics, PC(1)-C3."

GPO 873.777

AB 795 -
Lisa Rudis

1972 - Commission on Women repealed

41 other states have Commission

1. Alt to starting an ongoing Commission
2.

Education
Health
Employment
Minority Women

— Dept. of Labor study on Women employment

— How does Alaska rank
— 1. laws
2. employment

→ Human Rights Comm. Work ?
1. a lot of cases ? Now
2. enforcement

20 Women Tay Thomas → National Citizens Advisory Council

subtle discrimination // outside

Isabel MacClean
Womens Commission - No staff 2 Meetings a year

Janet Bradley - Ass Director
40% Sex Complaints
New statutes ? or compilation ?

Patricia Abney +

Kate Bowns — Womens Actions Alliance

Susan Custer - JNV Womens Health Collective

CATEGORY: ADMINISTRATION OF JUSTICE **AGENCY:** OFFICE OF THE GOVERNOR

PROGRAM: PROTECTION OF INDIVIDUAL RIGHTS **BRU:** HUMAN RIGHTS COMMISSION

The Human Rights Commission is responsible for receiving, investigating, conciliating, or bringing to public hearings complaints alleging discrimination in employment, housing, or public accommodations, for reason of race, color, national ancestry, physical handicap, age, or sex. In addition, the Commission must "study the problems of discrimination . . . . . and publish results of investigations and research as in its judgment will tend to eliminate discrimination . . . . ."

The objectives of this BRU is to:

- Reduce the present rate of growth of non-meritorious cases by 25%.
- Reduce the rate of growth of cases in which discrimination was present by 25%.
- Return on the average 60% of the losses resulting from discrimination in all cases where discrimination was present.

The FY 77 budget includes nine new positions and associated costs for a substantial expansion.

Service Measures	FY 75		FY 76	FY 77	
	Plan	Actual	Plan	Maintenance	Total
Cases open at beginning of year	N/A	Not	400	500	500
New case filings	"	Available	400	750	675
Cases closed	"	"	300	450	650
Cases open at end of year	"	"	500	600	525
Dollar value returned to claimants	"	"	$600,000	$800,000	$1,600,000

BUDGET OPERATING EXPENDITURES SUMMARY

BUDGET REQUEST UNIT 01 67-1-01-00-00 AGENCY OFFICE OF GOVERNOR

CATEGORY	PROGRAM	SUB-PROGRAM	ELEMENT	SUB-ELEMENT
ADMIN OF JUSTICE	PROT INDIV RIGHTS	HUMAN RIGHTS COMMS		

COMPONENT STRUCTURE	COMPONENT DESCRIPTION	FISCAL YEAR 1975 LEG.APPROP.	FINAL AUTH.	ACTUAL	FISCAL YEAR 1976 AUTHORIZED	REVISED	FISCAL YEAR 1977 GOV.BUDGET	LEG.ALLOW.
67-1-01-00-00	HUMAN RIGHTS COMMS	198.5	302.4	294.2	405.3	137.1	765.8	
TOTAL	HUMAN RIGHTS COMMS	198.5	302.4	294.2	405.3	137.1	765.8	
BUDGET PERCENTAGE CHANGE OVER 1976							88.9	
OBJECT EXPENDITURE DESCRIPTION								
	PERSONAL SERVICES	124.8	177.9	171.5	253.1	115.3	491.3	
	TRAVEL	20.0	38.0	37.6	44.4	7.9	83.2	
	CONTRACTUAL SERVICES	49.4	73.6	73.1	99.8	11.5	172.1	
	COMMODITIES	3.2	8.5	7.8	6.0	1.4	9.1	
	EQUIPMENT	1.1	4.4	4.2	2.0	1.0	10.1	
	LANDS,BUILDINGS,IMPROVEMENTS							
	GRANTS,CLAIMS,SHARED REVENUE							
	MISCELLANEOUS							
FUNDING SOURCE								
	FEDERAL RECEIPTS					46.2		
	REQUIRED GEN.FUND MATCHING							
	OTHER GENERAL FUND	198.5	302.4	294.2	405.3	90.9	765.8	
	INTER-AGENCY RECEIPTS							
GEN.FUND PERCNTGE CHANGE OVER 1976							88.9	
POSITIONS								
	PERMANENT FULL TIME	8.0	8.0	8.0	14.0		23.0	
	PERMANENT PART TIME							
	TEMPORARY (FULL TIME EQUIV.)							
	NUMBER OF MAN MONTHS	96.0	96.0	96.0	168.0		276.0	

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6140
JUNEAU, ALASKA 99801

1976 MAR 10 AM 11 09

02 023 POM ANCHORAGE AK 15 03-10 850A AST

PMS REPRESENTATIVE TERRY GARDINER

JUN 2459

STRONGLY SUPPORT HB795 URGENTLY NEEDED TO OBTAIN

INFORMATION AS BASE FOR REMEDIAL ACTIONS

PATRICIA MAYO 1718 TALKEETNA STREET

ANCHORAGE ALASKA 99504

Charlotte Fox
P.O. Box 553
Juneau, Alaska 99802

March 9, 1976

Dear members of the committee:

I would like to address this committee today as a concerned citizen, and also as an active member of the Juneau Chapter of the National Organization For Women. I believe that N.O.W.'s interest in the passage of this bill is clear, as it will greatly benefit the status of women in Alaska, but I would like to take just a few minutes to give you some ideas and facts.

There has long been a need for a study as proposed in the provisions of HB 795. This legislation is unique, and I believe, very fitting to be initiated during this year. Alaska, from its earliest days, has been the land of "pioneers". Residents of this state have made great strides towards developing Alaska as a state that looks out for its people.

In discussin the merits of this bill with you, I would like to take the points one by one.

First off, the area of employment. The last in-depth information we have obtained comes from the 1970 census. These figures indicate that women comprised 39% of all workers in Alaska. However, this did not take into account those women employed in jobs which employers did not contribute to social security and other benefits.

According to this census, "More than 4,000 families, or 6% of all families in Alaska, were headed by women. Of the 1,531 women family heads with related children under 6, 56% were in the labor force. About 800 women with children under 6 headed families where incomes were below the poverty level; 36% of these women were workers.

The mean income of families headed by women was $6,999, compared with $13,856 for all families. Of all families headed by women, 37% were poor. More (93%) of the 1,504 family heads with incomes below the poverty level had related children under 18 years of age; 52% had children under 6.

This study proposed, besides giving us more recent facts, will hopefully also give us a direction to follow which may eliminate some of the above inequities.

Also, in the area of employment, this study would also involve examining the hiring and promotional practices, training and re-training needs of women in this state. With the state ratification of the ERA, and our own state ERA, hopefully these statistics above have changed in the last 6 years. Since much of the employment opportunities in this state lie within organized labor, I hope that they begin to open their doors more widely to women, so that we may begin to become more self-supporting and helping ourselves to a better lifestyle.

This same census dealt briefly with the area of education. It reported that women had attained a median of 12.4 years of schooling. One fourth of the women 16 to 64 years of age with less than 15 years of schooling had received some vocational training. When you combine that figure with the fact that in 1970 39% of all workers in this state were women, the answer is that most of the jobs held by women were relatively unskilled, and generally low-paying. This situation must be rectified.

Education needs to be closely looked at. Not only the aspect of women receiving adequate education in order to better support themselves, but the whole current system of education as pertains to women. This involves investigating high schools, to see which direction women are counseled to take regarding their future education, and teachers themselves, which are a great influence over the sex-role stereotyping which now exists. In order to change these trends, we must start at the roots, which is as young as possible.

When we gather facts pertaining to health care for women, we should be looking at child care and child abuse, nursing home care, sexual assault, women offenders, ageism, venereal disease, planned parenthood. From looking at these areas, and studying them closely, hopefully facts will emerge that will enable us to raise the level of health care. This also would involve educating women as to how to care for themselves.

Minority women is one area that is really important. For instance, many of the minorities in this state are natives. Yet in the 1970 census, the only women of other ethnic groups included were black or spanish origin. We learned nothing from these figures as to the number of native women involved in the labor force, or their current status. This needs to be changed, but first, as I've said before, we must get <u>facts</u> to back us up.

We cannot make changes without first investigating the source of the problems, and how to make those changes. Hopefully, this study proposed under HB 795 will pass the legislature, and in the end, help improve the quality of life for all Alaskans.

I encourage the support of HB 795 by every member of your committee. The need for a study such as this one is clear. I thank you for your time.

Sincerely,

Charlotte A. Fox

Table 1.--Employment Status and Occupations of Employed Persons in Alaska, by Sex, 1970

(Persons 16 years of age and over)

Employment status and occupation	Total	Women	Men	Women as percent of total
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Managers, administrators (except farm)	10,291	2,053	8,238	19.9
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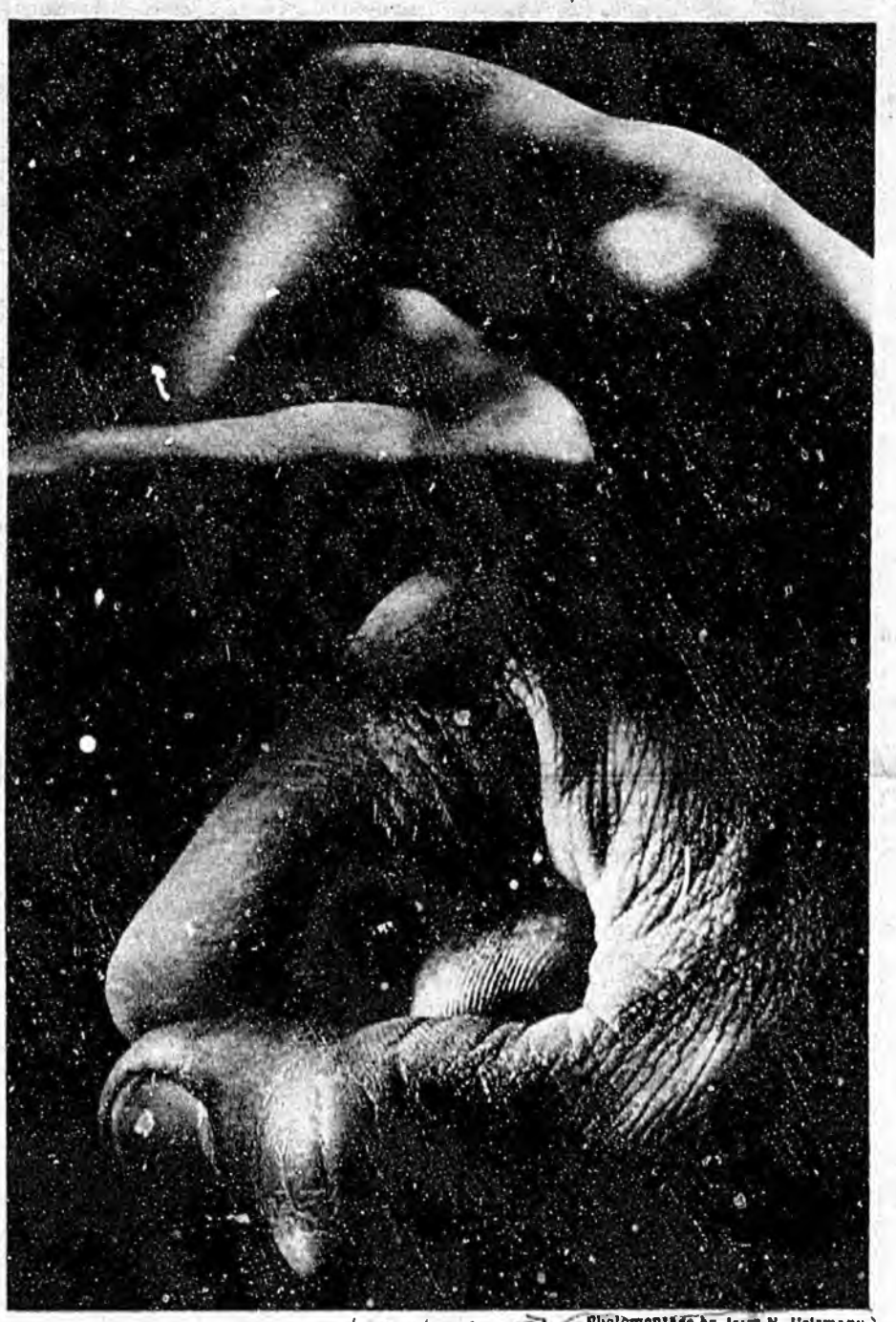
Nonfarm laborers	5,032	382	4,650	7.6
Farmers, farm managers	134	39	95	29.1
Farm laborers, foremen	201	57	144	28.4
Service workers (except private household)	11,862	6,385	5,477	53.8
Private household workers	1,024	999	25	97.6

Source: U.S. Department of Commerce, Bureau of the Census: "Census of Population: 1970. General Social and Economic Characteristics, PC(1)-C3."

The New York Times Book Review

OCTOBER 12, 1975 SECTION 7

I found this very interesting - worth the attention of NOW - See marked last pg back of this page



Photomontage by Jerry N. Uelsmann

my teacher →

Against Our Will

Men, Women and Rape.
By Susan Brownmiller.
472 pp. New York: Simon and Schuster. $10.95.

Rape as the ultimate exercise of man's domination of women

By MARY ELLEN GALE

Rape is a metaphor of our times. Men rape the land and ravage the oceans. They even penetrate the skies. And, as a sort of environmental afterthought, they rape women.

That is how many of us who lay uncertain claim to the tarnished titles of liberal or intellectual have thought about rape, if we think about it at all. The accomplishment of Susan Brownmiller's chilling and monumental study of rape—the act not the metaphor—is that she proves us wrong.

The rape of women comes first. Rape in its primary meaning permeates our lives. Wars between tribes and nations, clashes of ignorant armies, arise and fall away. But the guerrilla war of men against women, suppressed or transformed though it may be in civilization and polite society, never ends. As Brownmiller sees it, rape is the hidden foundation for too much of our social order, the cardinal act of defilement by which men assert possession and control over the other half of humanity.

Her vision is informed and compelling. "Against Our Will: Men, Women and Rape" is far more than a feminist polemic, despite the passion and power of its language. Carefully researched, written from a perspective broad enough to encompass psychoanalysis, sociology, criminology, law and historical fact, it blends investigative and personal journalism into a demand for justice.

"Against Our Will" deserves a place on the shelf next to those rare books about social problems which force us to make connections we have too long evaded, and change the way we feel about what we know.

The investigation of rape turned out to be an arduous journey. Brownmiller discovered that scholars and historians have frequently left the facts to gather dust and accrete misinterpretation. Rape taken seriously, confronted beyond the comfortable confines of symbols and statistics, was unexplored territory.

The title itself is a provocation. "Do women want to be raped? Do we crave humiliation, degradation and violation of our bodily integrity?" Brownmiller asks. "Must a feminist deal with this preposterous question?" The answer is yes, because a pride of experts — psychoanalysts, novelists, jurisprudents, policemen and pornographers — has imbued our culture and our laws with the suspicion that maybe rape is not against women's will after all.

Brownmiller begins at the beginning. She chronicles rape in war, from Troy to Vietnam, where American soldiers combined cultural and sexual imperialism, and Bangladesh, where a quarter of a million women, ravaged by their enemies, were rejected by their husbands as unclean. She records rape by whites and Indians in the battle for America, by white American slaveowners against their human property, by black Congolese in the recapture of their native land. She exposes homosexual rape of the weak by the strong in prisons and child abuse by relatives and strangers.

She finds the origins of rape, marriage and family intertwined. The evidence lies in such fossilized customs as bride capture, by which men in primitive societies, and in England as late as the 15th century, acquired legal title to the woman of their choice by forcible abduction and rape. "Female fear of an open season of rape, and not a natural inclination toward monogamy, motherhood or love, was probably the single causative factor in the original subjugation of woman by man," she speculates, "the most important key to her historic dependence, her domestication by protective mating." But the price of protection was legal death. In most

Continued on next page

Mary Ellen Gale is staff counsel with the American Civil Liberties Union of Southern California.

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societies, including our own, the law long regarded women as property of the male, father or husband. "Man's historic desire to maintain sole, total and complete access to woman's vagina, as codified by his earliest laws of marriage, sprang from his need to be the sole physical instrument governing impregnation, progeny and inheritance rights." Under man's law, rape was theft, a violation of his estate. Ancient rules compensated, if anyone, not the woman but her male protector.

Even now, in the midst of feminist challenge, rape statutes still except a woman's spouse from the prohibition of forcible sexual intercourse. As Brownmiller observes, legal sanction of a husband's right of unconditioned access to his wife's body "gives the lie to any concept of equality and human dignity. . . . A sexual assault is an invasion of bodily integrity and a violation of freedom and self-determination wherever it happens to take place, in or out of the marriage bed."

Yet a law that would turn intraspousal rape into a crime could skew the wretched bargaining over the shreds of a marriage. Battles within marriage could become the grounds for a felony accusation. How could the law distinguish the true rape from the false charge?

But Brownmiller demonstrates such concerns are sexist to the core. She traces the male depiction of women as temptresses with fickle tongues from the Biblical story of Potiphar's nameless wife, who calumniated Joseph because he rejected her, to the New York cop's statement to Brownmiller that unsolved rapes represented "prostitutes who didn't get their money."

Against this backdrop of male skepticism Brownmiller sets down the cold facts we know about rape—that reported rapes increased 62 per cent over the five years from 1968 to 1973, that serious students of rape agree that no more than one of every five rapes is ever brought to police attention, that rape is a crime of brutal violence, often committed by men in pairs or gangs, and, most disturbing of all, that sociological studies show the average rapist is more likely the boy next door than the sexually deprived fetishist of psychiatric imagining. Brownmiller reports, "The typical American perpetrator of forcible rape is little more than an aggressive, hostile youth who chooses to do violence to women."

Sometimes he does violence to another race. She reports an odd and anguished conversation with an elderly black male librarian, schooled in the values of the old left. Asked for historical material on the rape of black women, he urged her to "start with the historic injustice to black men." No, said Brownmiller, she was interested in the historic injustice to women. "To black people, rape has meant the lynching of the black man," he insisted. So imagination supersedes experience. The pens of history, however reluctantly, wielded by the dominant male imaginers, recorded the metaphorical rape of black men. The rape of black women, being mere fact, was lost.

Brownmiller neither shrinks from nor panics over the recent studies that indicate black-on-black and black-on-white rape may be a greater problem today than either rape by white men (though there is still plenty of it) or false accusations of black men by white men and women. But her account of the Emmett Till murder case most clearly illuminates her belief that "the crossroads of racism and sexism had to be a violent meeting place."

Till, a Northern black youth summering in Mississippi 20 years ago, took his friends' dare to ask a young white woman for a date. She chased him with a pistol; he wolf-whistled at her; and that night her husband and another man fatally shot Till and dumped him in the Tallahatchie River. An all-male, all-white jury acquitted the killers.

American liberals were aghast at the jury and the murder. For years, Brownmiller recalls, she smilingly acknowledged sexual invitations and insults from "street-corner cowboys," black and white, in honor of Till's memory. But slowly she came to realize that "Till's action was more than a kid's brash prank," that among the things at stake was the age-old male claim to free access to all women, and that Till's insult, though no justification for murder, formed another link in a long chain of verbal and physical abuse. Yet another link followed. As Eldridge Cleaver has recorded, the Till murder (never mind that men did it) inspired his career as a rapist of white women. As he saw it, they were to blame.

Perhaps it is not surprising that female self-determination means nothing to male aggressors. But what are we to make of the fact that it meant no more to the original explorers of the human mind? Freud and his disciples scarcely bothered with the phenomenon of rape despite their fascination with the male organ that makes it all possible.

Power is partly a matter of definitions. It would be easy but wrong to blame the outrageous cultural distortions of male and female sexuality on an exclusively male band of sexual definers. Brownmiller reminds us that two brilliant women psychoanalysts, Helene Deutsch and Karen Horney, chose to compromise their own sex rather than break altogether with Freudian orthodoxy. "Deutsch's theory that masochism is an essential element of femininity, and a condition of erotic pleasure" is, as Brownmiller uncompromisingly declares, "inimical to women." Those too young to remember the days when Deutsch and her theories were household words, may react with incredulous laughter, rather than political rage or private misery, at her insistence on the inadequacy of the female sex organs to achieve sexual joy. Yet Deutsch became "the ultimate authority for sex-crime experts who wished to explain away the victims of rape." A victim herself of male conditioning, Deutsch legitimated the victimization of a generation of women.

Campaigning for vaginal parity, Horney, though she courageously argued that female masochism was a culturally-induced neurosis, similarly betrayed women by accepting the notion that women dream incessantly of (and therefore long for) rape.

Rape feeds on the myth that women should be passive and beautiful—a myth perpetuated by fairy tales like "Snow White" and "Sleeping Beauty," by the confession magazines many women read regularly, by legends of the female star as victim (Marilyn Monroe, Billie Holliday, even Janis Joplin and Sylvia Plath), by novels by such diverse hands as Harold Robbins, Ayn Rand and John Updike. The whole absurd theory of woman as provocative of her own destruction shimmers implicit in a single line Brownmiller gleans from Updike: "He fought against her as a raped woman might struggle, to intensify the deed."

"Against Our Will" proves that raped women struggle not out of sexual perversity but out of a straightforward, commonsense terror for their lives. "This wasn't an act of sex I was going through—I felt I was being murdered," a typical rape victim recalled. And some women do not struggle at all—either because they are paralyzed by fear or by a realistic assessment of their chances of prevailing, or because they believe that in return for submission, the rapist will spare their lives.

The bargain is a hollow one. In Chicago a lone assailant raped and murdered eight student nurses who eschewed resistance in hopes of survival. And a different kind of assault awaits raped women who seek help from the law. They find that their ordeal by terror, in the eyes of police, prosecutor and jury (if they ever get that far) is not enough: the legal system is reluctant to prosecute or convict without objective evidence of struggle. Screams (when overheard), scratches on the rapist, or bruises on the victim may stand in as corroborative witness for the prosecution. But to the law, a victim injured only in her sense of integrity and control, is merely in danger of venereal disease and unwanted pregnancy, a lasting horror of such simple activities as walking in the park or going to bed at night, and has scarcely been damaged at all. The law views her skeptically, as Potiphar's wife.

Consent and resistance are not serious legal issues in any crime of violence but rape. No one expects a victim of aggravated assault to fight back. If a robbery victim tamely hands over her wallet, preferring the certain loss of money to a possible kick in the face or knife in the stomach, the law does not sanction the crime because of her behavior. Brownmiller concedes that proof of rape is often intangible, a contest of oaths. But if the stolen property is never recovered, the law must take the victim's word for the robbery and the manner in which she relinquished her possession. In crimes other than rape, juries for centuries have been allowed to weigh word against word and to believe whom they choose. Yet in cases of rape it was only this year that the California Supreme Court finally struck down the ancient instruction to the jury to "examine the testimony of the female person . . . with caution."

The reverse side of the myth of female passivity is the myth of the heroic rapist. "As man conquers the world," Brownmiller notes, "so too he conquers the female. Down through the ages, imperial conquest, exploits of valor and expressions of love have gone hand in hand with violence to women in thought and deed." Genghis Khan, Jack the Ripper, Pancho Villa, the Hell's Angels—rapists of women but heroes to men. Brownmiller tellingly recollects that the real Bluebeard was a 15th-century sex-murderer of small boys. Yet in the fairy tale his victims became young and beautiful wives.

"It is almost as if the *truth* of Bluebeard's atrocities was too frightening to men to survive in the popular imagination," Brownmiller suggests. "Within the heterosexual world that most of us inhabit by choice, sexual violence is exalted by men to the level of ideology only when the victims are female and the victimizers are male." The conquest is theirs; the terror is ours.

In two of its concrete forms, hardcore pornography and prostitution, Brownmiller believes that the myth should be legally suppressed. "Pornography," she argues, "is the undiluted essence of antifemale propaganda." It views women as "anonymous, panting playthings, adult toys, dehumanized objects to be used, abused, broken and discarded." What would civil libertarians do, she wonders, "if, come tomorrow morning, the bookstores and movie theatres lining 42d Street in New York City were devoted not to the humiliation of women by rape and torture, as they currently are, but to a systematized, commercially successful propaganda machine depicting the sadistic pleasures of gassing Jews or lynching blacks?" Few liberals expect blacks to acquiesce in

Some blacks like Uncle Tom's Little black Sambo —

their portrayal as King Kong or Little Black Sambo to prove their devotion to the First Amendment. Why should women submit to similar denigration and ridicule, when their physical and psychological integrity is at stake?

Similarly, Brownmiller argues that rape is culturally encouraged by the business of prostitution. Boys, growing up, learn that "being a male means access to certain mysterious rites and privileges, including the right to buy a woman's body." Implicit in consumer sex is the notion that if the goods are withheld, or priced too high, they may be taken by force. Business, after all, is theft by other means.

"Against Our Will" is in part a moving and persuasive record of Brownmiller's personal odyssey. (Even our mythic referents are male. Where is the appropriate word for a woman's quest for self-knowledge?) She traveled from the land of traditional liberalism, with its general sympathy for the criminally accused and its specific distrust of rape charges as the scourge of black men in a racist society, to a feminist country of understanding that rape and the fear of rape are the terrorist tools of male oppression.

The depth of her research is matched by the complexity of her insight. Despite her vigorous feminist prose and her refusal to engage in either jargon or poetry, she is almost constantly sensitive to the implications of her opinions.

Of course, much of what she thinks and says is highly controversial. Some of it may even be wrong. For instance, she concedes that untrammeled political speech is a democratic necessity, yet fails to make the linguistic connection between politics and sex. Even the Supreme Court of the United States grudgingly conceded that "screw (well, that wasn't the exact word) the draft" was a protected political comment rather than a punishable obscenity. And banning prostitution is an illusory remedy which doubly victimizes the prostitute by marking her as a criminal and an outcast. Prostitution is by and large a crime of the poor. The rich buy stock and the poor play numbers. But only the poor have to pay off the cops as well.

Nor do I share Brownmiller's belief that training women for physical combat is a social good. To me it seems merely a regrettable necessity. The use of one's body as a weapon is in itself a concession to the ideology of rape, an acknowledgement that in most human confrontation there still is a winner and a loser. Not until we go beyond the politics of rape, primal and metaphorical, will men and women meet each other on a common ground, equals at last. ■



Terry -

The judicial note on HB 795 (Status of Women)

Lisa

LISA RUDD

THE LEGISLATURE OF THE STATE OF ALASKA
FISCAL NOTE
Second Session - Ninth Legislature

I. REQUEST
Bill No. HB 795
Act Relating to: Status of Women in Alaska
Requested by: Representative Rudd Date: 02/20/76
Return Date Requested: 02/27/76
Agency: Office of the Governor Program: Human Rights Commission

II. FISCAL DETAIL
Budget Request Unit(s) Affected: 01.67. 01.01.00

A. EXPENDITURES: (Thousands of dollars)

	OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100	PERSONAL SERVICES		34.7				
200	TRAVEL		5.0				
300	CONTRACTUAL		156.4				
400	COMMODITIES		3.2				
500	EQUIPMENT		0.7				
600	LAND & STRUCTURES		-0-				
700	GRANTS, CLAIMS, ETC.		-0-				
	TOTAL		200.0				

B. FUNDING: (Thousands of dollars)

GENERAL FUND		200.0				
FEDERAL FUNDS		-0-				
OTHER		-0-				

C. POSITIONS:

PERMANENT/TEMPORARY	/	10.5	/	/	/	/
LABOR MONTHS (L./T.)	/	12.06.0	/	/	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Assumes major part of the studies will be performed by individuals and organizations under contract with HRC under general coordination of staff person at journey-level investigator rate (HRFR II). Staff coordinator would identify Alaskan resources, negotiate separate contracts to avoid duplication of effort, coordinate development of educational materials and preparation of recommendations, and serve as chief resource person to the Legislature and Commissioners on overall findings of the study. Other "in-house" costs support this staff function, with balance of appropriation (70%) devoted to contracts. (Continued on attached sheet.)

IV. ATTACHMENTS

V. DATE: 02/20/76 PREPARED BY: Niel Thomas

Niel Thomas, Executive Director

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

H/S 50

100	Personal Services				
	1 HRFR II, Range 18, 12 mos as staff coordinator				
	1862 X 12		22,344		
	+ 21% Benefits		4,692		
	4.5% COLA		1.011		
				28.0	
	1/2 Clerk-Typist III, Range 8				
	1040 hrs X 5.77		6,001		
	+ 7.5% benefits		720		
				6.7	
					34.7
200	Travel				
	Instate travel to perform functions listed in Assumptions, above (liaison with contractors & on-site consultation)				
	Travel		2.2		
	Per diem		2.0		
				4.2	
	One outside trip to consult with state officials conducting similar studies				
	Travel		0.5		
	Per diem		0.3		
				0.8	
					5.0
300	Contractual				
310	Communications (Telephone)			1.1	
320	Printing & Advertising				
	4 Reports & Summary Reports Approx 100 pp ea, 1,000 copies/5 reports at $3/copy			15.0	
330	Rents & Utilities			2.0	
360	Equipment Rental				
	Typewriter		0.3		
	2 desks with chairs		1.0	1.3	
380	Professional Fees & Services				
	Employment Study - Contract w/as many as 4 individuals or organizations each at 20.8		83.2		
	Education Study - Contract with one organization		18.3		
	Health Study - Contract with one organization		14.5		
	Minority Women - Contract with 3 individuals: Native, Black, SSA each at 7.0		21.0	137.0	
					156.4
400	Commodities				
470	Professional & Scientific Supplies				
	Books & Subscriptions relevant to areas of study			1.2	
480	Stationery & Office Supplies				
490	Other			1.5	
	Graphic design materials			0.5	
					3.2
500	Equipment				
530	Calculation for Statistical Studies			0.7	
					0.7
					200.0

HB
801

Original sponsors: Smith, Bradley, Buchholdt, et al

Offered: 3/29/76
Referred: Judiciary

IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE

CS FOR HOUSE BILL NO. 801

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the Capital Planning Commission; and providing for an effective date."

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

* Section 1. AS 44.06 is amended by adding new sections to read:

ARTICLE 3. CAPITAL PLANNING COMMISSION.

Sec. 44.06.200. CAPITAL PLANNING COMMISSION. There is created in the Office of the Governor the Capital Planning Commission. The commission is responsible to the executive branch of the state government for administrative and fiscal purposes but has an existence independent from the executive branch.

Sec. 44.06.210. MEMBERSHIP. (a) Within 15 days following the date of the election in which the site is selected, the governor shall appoint a commission consisting of nine members, subject to confirmation by a majority of the members of the legislature in joint session. Members shall be appointed with due regard to geographic representation and on a nonpartisan basis, and shall be selected as follows:

(1) one member must be a registered architect; ~~who may be selected from a list of names submitted by professional architect societies or associations;~~

(2) one member must be a registered engineer; ~~who may be selected from a list of names submitted by professional engineer societies or associations;~~

(3) one member with a financial or economic background; ~~who may be selected from a list of names submitted by banking and financial~~

associations or societies;

(4) one member with land use planning background, who may be selected from a list of names submitted by professional planner societies or associations; and

(5) five members appointed from the general public.

(b) The commissioners of natural resources, public works, revenue, community and regional affairs or their designees, and the mayor of the Matanuska-Susitna Borough or his designee, shall serve as nonvoting ex officio members of the commission.

(c) The members are entitled to receive $100 per day for their service on the commission [and per diem] and travel expenses as authorized by law.

Sec. 44.06.220. MEETING OF THE COMMISSION. The members shall elect a chairman and vice-chairman from among their membership. The governor shall call the first meeting of the commission within 30 days after appointment of the members. A majority of the members constitutes a quorum for conducting business and exercising the powers of the commission. The commission shall meet at the call of the chairman or at the request of a majority of the members.

Sec. 44.06.230. PURPOSE; DETAILED DEVELOPMENT PLAN; DUTIES OF COMMISSION. (a) The purpose of the commission is to prepare a detailed plan for development of the capital site within the guidelines set out by the legislature. This detailed development plan shall be completed no later than January 1, 1979 and shall be made subject to public input during its formulation. Following completion of the plan, the commission shall make public presentations of it throughout the state.

(b) The detailed development plan shall include, but need not be limited to, the following elements: community facilities, transportation, public utilities, industrial development, residential development,

water resources, environmental aspects. It shall include provisions addressing each element in terms of its social and economic impact. The plan should also address governmental jurisdictions, including statements as to the appropriate planning authority and recommendations as to the forms and powers of the local government. The commission shall also develop a planning work program.

(c) The commission shall perform physical and geotechnical site-specific analysis and related mapping.

(d) The commission shall conduct an analysis of the opportunity for the reorganizing and regionalization of state government, and develop a list of executive agencies which are expected to be located in the capital. This list shall include the offices to be moved, the number of personnel to be employed in those offices, and the anticipated required office space for that number of persons. This list shall be used for capital site planning purposes only, and is not binding as to which executive agencies may be located in the capital. The commission shall then develop a relocation phasing plan.

(e) The commission shall develop options for compensatory measures to minimize the impact on both the City and Borough of Juneau and the Matanuska-Susitna Borough.

(f) The commission shall recommend to the legislature the type of development entity which would be responsible for capital city development as well as the powers and authority which should be vested in this development entity.

(g) The commission shall conduct a financial cost analysis and develop funding alternatives to present to the legislature by January, 1978.

Sec. 44.06.240. FUNDING. The commission is subject to the Executive Budget Act (AS 37.07) and funding by the legislature.

Sec. 44.06.250. ASSISTANCE TO COMMISSION. (a) The commission shall use all the competent professional and technical services required to assist in the planning. The commission may choose the consultants which in its judgment are necessary to assist in the planning. The commission may also request any information which it considers essential from any agency or division of the state.

(b) The commission shall develop an appropriate procedure in order to select competent firms to develop the elements involved in the capital site development plan within the time frame called for in sec. 230 of this chapter. The commission shall consider the feasibility of conducting an international competition for the design of the capital city.

Subject to bill we passed on Dept. of Public Works

Sec. 44.06.260. REPORTS. The commission shall report on its work every six months. This report shall be distributed to the governor, presiding officers of the legislature, chief justice of the supreme court, and the general public.

* Sec. 2. AS 39.50.200(9) is amended by adding a new subparagraph to read:

(LL) Capital Planning Commission (AS 44.06.200).

* Sec. 3. This Act takes effect July 1, 1976.

HB 801

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH S – JUNEAU 99811

February 24, 1976

The Honorable Joseph McKinnon
Chairman
House State Affairs Committee
Alaska State Legislature
State Capitol Building
Juneau, Alaska

Re: House Bill No. 801

Dear Mr. McKinnon:

House Bill No. 801, an Act relating to the Capital Site Development Authority was introduced in the House on February 17, 1976 and was referred to the House State Affairs and Judiciary Committees.

Sec. 44.58.230 of the proposed legislation appearing on pages 13 and 14 of the Bill provides as follows:

"QUARTERLY AUDIT. The authority shall provide for a quarterly audit of the accounts and financial transactions of the authority by the audit division of the Department of Revenue. Copies of the audit shall be furnished to the legislature within 10 days of each audit."

For the consideration of the House State Affairs Committee, I am enclosing a Fiscal Note and accompanying memorandum prepared by Gary L. Jenkins, Director, Audit Division, Department of Revenue concerning the Quarterly Audits to be performed by the Audit Division of the Department of Revenue.

If you or any members of the House State Affairs Committee have any questions on the material submitted, please telephone the writer at 465-2397 and I will contact Mr. Jenkins for further information or testimony at a hearing.

Very truly yours,

R. D. Stevenson
Special Assistant

Enclosure

cc: The Honorable Terry Gardiner
Chairman
House Judiciary Committee

The Honorable Theodore Smith
Prime Sponsor
House Bill No. 301

Gary L. Jenkins
Director, Audit Division
Department of Revenue



MEMORANDUM State of Alaska

TO: R. D. Stevenson
Assistant to the Commissioner
Department of Revenue

DATE: February 23, 1976

FILE NO:

TELEPHONE NO:

SUBJECT: House Bill 801

FROM: Gary L. Jenkins
Director
Audit Division

This bill would establish a capital site development authority whose prime responsibility would be the development of the new proposed capital site. Among the other provisions of this bill, Section 44.58.230 provides for a quarterly audit of the accounts and transactions of the authority which is to be performed by the Audit Division of the Department of Revenue. The language further provides that copies of the audit shall be furnished to the Legislature within ten days of each audit.

There are two major difficulties with this bill in our opinion. First of all, we are assigned the audit responsibilities for an agency which is totally out of the area in which we normally operate. Our audits have always been audits of taxpayer's records to insure that the proper amount of tax has been paid to the State of Alaska. It would seem far more logical to assign this audit function to either the State Internal Auditor, Legislative Audit or to provide for contracting with a professional accounting firm.

Further, the wording of the legislation concerns me for several reasons. First of all, it provides for a quarterly audit which is an inordinately high frequency if a full scale professional audit is to be undertaken. I would recommend instead that the language be modified to provide for a full scale audit on an annual basis with the auditors to perform either a semi-annual or, if deemed necessary, a quarterly review of the accounting records of the authority.

Secondly, the law does not define how extensive of an audit is expected. Perhaps the language could be modified as to specify exactly what is expected of the auditors.

Thirdly, the provision that copies of the audit will be furnished to the Legislature within ten days of each audit, if taken literally, would mean that once the field work was completed, the audit would have to be completed and sent to the Legislature within ten days. It is my experience that on a complete indepth professional audit, the write-up time could take from six to eight weeks after completion of the field work. Thus, I would suggest that the language in the bill be changed to read "copies of the audit shall be furnished to the Legislature within ten days of the completion of each audit."

GLJ/bjm

Attachment

R83072

FISCAL NOTE

Second Session - Ninth Legislature

I. REQUEST

Bill No. House Bill 801

Title: Act relating to Capital Site Development Authority

Requested by: R. D. Stevenson Date: 2-19-76

Return Date Requested: 2-23-76

Agency: Revenue Program: Audit

II. FISCAL DETAIL

Budget Request Unit(s) Affected: Audit Division

A. EXPENDITURES: (Thousands of dollars)

	OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100	PERSONAL SERVICES		99.3	99.3	99.3	99.3	99.3
200	TRAVEL		2.0	2.0	2.0	2.0	2.0
300	CONTRACTUAL		11.7	11.7	11.7	11.7	11.7
400	COMMODITIES		1.0	1.0	1.0	1.0	1.0
500	EQUIPMENT		2.6				
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL	-0-	116.6	114.0	114.0	114.0	114.0

B. FUNDING: (Thousands of dollars)

GENERAL FUND	-0-	116.6	114.0	114.0	114.0	114.0
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	/	4/0	4/0	4/0		4/0
MAN MONTHS (P./T.)	/	48/0	48/0	48/0	48/	48/0

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The above is the cost of the staffing needed to perform the audit as proposed in the legislation.

IV. ATTACHMENTS

See memo attached dated 2-23-76

V. DATE: 2-23-76 PREPARED BY: Gary Glenn

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

H/S 50

HB 801

Terry Gardiner

Box 1092, Ketchikan, Alaska 99901 Pouch V, Juneau, Alaska 99811

In your file only

April 7, 1976

Ralph C. Gregory
Box 1853
Ketchikan, Alaska 99901

Dear Mr. Gregory,

I received with interest your letter concerning the different proposals for the design of the proposed new state Capitol Complex. This is the first time that I have been aware of the proposal made by the Alaska Chapter of the American Institute of Architects. I have not seen any information other than what you have sent me.

I have enclosed a copy of CS HB 801 sponsored by Rep. Ted Smith of Anchorage. The bill does not necessarily address the question you have raised. I would be interested in receiving any comments you might have about this bill as it is in the House Judiciary Committee at the present time, and of which I am chairman. Possibly some kind of limitation or direction to the proposed Capitol Planning Commission as per your suggestions are in order if this legislation were to fly this year.

Sincerely,

Terry Gardiner

File on HB 801

RALPH C. GREGORY ARCHITECT

March 29, 1976

The Honorable Terry L. Gardner
Representative
The House of Representatives
Pouch V, State Capitol Building
Juneau, Alaska

Dear Representative Gardner:

I am enclosing a series of recent correspondence between myself and Mr. Plunkett, Chairman of the State Chapter A.I.A. for your consideration.

In addition, please note the following arguments against formation of an international competition for design of the State Capitol Complex.

1. An international competition would by definition invite the design of an extremely important component of Alaska's future growth and development by firms with only marginal experience and association with the State. The time for the competition, it appears, has been preliminarily established at something in the range of nine months. As you are aware, all three sites represent social, environmental and physical problems which simply cannot be absorbed in so short a period of time.

2. Any monies set aside for payment of prizes for such a competition could be much more efficiently used in the design and/or construction.

3. The selection of a "design" would tie the state to a development plan of unknown merit and potential. The flaws of such a design would only become apparent as the plan was implemented.

4. A study of the history of architectural competitions of this nature reveals that execution of the winning design results in incredible cost overruns, sometimes insurmountable construction problems and in many cases, an incompatibility with their intended uses.

I would respectfully suggest that the Capitol move now projected at Three Billion Dollars ($3,000,000,000,000.) is in the first instance a waste of the State's resources, but that in any case, if the project does go ahead, it should be designed by architects and planners with long experience and association with the State and the social, economic and physical problems associated with the development of the state and that any effort by outside interests to gain control

BOX 1853 KETCHIKAN, ALASKA 99901

of this major construction and design project should be resisted by legislators interested in a quality development scaled to the real needs of Alaskans as opposed to the aspirations of designers viewing the proposed Capitol relocation as a means of personal or corporation aggrandizement.

Sincerely,

RALPH C. GREGORY, ARCHITECT

RCG/j

Enclosures

ALASKA CHAPTER THE AMERICAN INSTITUTE OF ARCHITECTS

March 17, 1976

Mr. Ralph C. Gregory
Box 1853
Ketchikan, AK 99901

Subject: Capital Planning Competition

Dear Ralph:

Thank you for your letter of March 11, 1976. I find your comments very interesting and certainly exactly the opposite of my personal feelings and most chapter members on this issue. I am enclosing a copy of the statement mailed to the Capital Site Selection Committee which more completely outlines the AIA's position on this.

For your information, it is the large "monolithic architectural offices" who violently oppose the competition idea. Each of them feel they have the forces necessary to obtain the job for themselves regardless of talent. It is the small Alaska Chapter firms who adamantly supported the resolution of the AIA. Should one of the large firms get the planning study, you can rest assured that most of the work will be done out of the state. If the competition is held there is at least a chance an Alaska resident firm will be the successful entry.

I hope this answers some of your concerns.

Sincerely,

Michael E. Plunkett A.I.A.

MEP/bc

Enc.

PLEASE REPLY TO: 505 W. Northern Lights Blvd.
Anchorage, AK 99503

ALASKA CHAPTER
THE AMERICAN INSTITUTE OF ARCHITECTS

PRESIDENT
VICE PRESIDENT
SECRETARY-TREASURER
DIRECTOR
DIRECTOR
DIRECTOR
CHAIRMAN ANCHORAGE SECTION
CHAIRMAN FAIRBANKS SECTION
CHAIRMAN JUNEAU SECTION
DIRECTOR NW REGION
DIRECTOR NW REGION

December 22, 1975

Capital Site Selection Committee
830 H Street, Suite 209
Anchorage, AK 99501

Ladies and Gentlemen:

In response to our proposal that the comprehensive planning for Alaska's new capital be determined by means of an international design competition, you have asked that we respond to the following points:

1. Reasons for holding a design competition.
2. Content of such a competition.
3. Administration of the competition.
4. Examples of similar projects that have benefited from the competition method of design selection.
5. The time frame required to hold such a competition.

The principal reason for holding a competition is that a wealth of creative thought and design talent will be focused on Alaska's capital planning project--a securing of the best and most advanced thinking at a fraction of the true cost. A selection based on a test of architectural and planning excellence is certainly in the public interest. Perhaps this will be the last new capital city built in the United States. We must look at the brightest and the best before choosing a scheme. Such a competition will attract worldwide attention and publicity.

From the public view an open competition provides the greatest protection against the selection of a planning and design team based on improper influences or favoritism. A public body can free itself of suspicions of political favoritism or conflict of interest through following the

competition method. From the professional view the outstanding advantage of competitions lies in the encouragement offered to good design and the possibility for the emergence and development of new creative talent and ideas. A competition provides stimulus and challenges the design and planning professions to an intensified search for quality. Further, the public enthusiasm and support for improvement in our physical environment that may be generated by the publication of fresh and exciting competition designs is to the public benefit.

The scope of a design competition is really dependent upon the sponsor's wishes. Perhaps the State should consider a two-stage competition with the first stage devoted to the overall comprehensive scheme of the capital city with only sketchy attention to the state governments' space requirements. From this first stage, five or six entrants would be selected to compete in a second state, in which elements of the capital would be more specifically defined. The "ideas" competition described in the enclosed Regulations for International Competitions is probably the best outline of the competition's scope currently available.

The administration of the competition could be by a professional advisor employed for the purpose by the sponsor (see Page 3 of the enclosed AIA Code for Architectural Design Competitions and the enclosed Regulations for International Competitions).

Australia and Brazil held competitions for the designs of their new capitals, Canberra and Brasilia, the former an international competition, the latter a national competition. Many U. S. state capitals have been done by competition, perhaps more than half, most during the 19th century, but two, Nebraska and Oregon, during the 20th century.

From the time a decision is made to hold a competition to the announcement of a winner could be accomplished in nine months for the first stage competition and an additional four to five months if a second stage were included. A suggested timetable is included in the appendices.

Although we are aware of increased administrative problems inherent in an international competition, communications problems, customs problems, etc., we have recommended that the State consider holding an international competition because we feel that in so doing Alaska would be availing herself of the best design thought and talent that the world has to offer. A proposed cost breakdown for a proposed one stage and two stage competition is also included. Prize

money could be donated by interested part[illegible] Entry fees could be increased to offset costs.

The Alaska Chapter, AIA with full support from the Institute will be happy not only to assist the State in further exploration of the possibilities for holding a capital design competition, but also to assist the State in the development of the competition should that be the course chosen. The chapter has prepared a slide presentation illustrating the many types of planning possibilities afforded by a competition along with implementation data for presentation to interested parties. We would appreciate a few minutes of your time for a formal graphic presentation.

Sincerely,

Michael E. Plunkett

Michael E. Plunkett, President
Alaska Chapter,
The American Institute of Architects

MEP/bc

Encs.

APPENDIX A

Preliminary Timetable
Capital City Design Competition
Prepared December 1975

January 1976	Introduce Design Competition Bill to Alaska State Legislature with budget
January-May 1976	Obtain competition approval from American Institute of Planners, American Institute of Architects, International Union of Architects
June 1976	Legislative and Executive Branch approval, appoint Citizens Advisory Committee, select professional advisor
July 1976	Develop competition guidelines, compile site information for alternative sites, formulate program, select jury
August-September 1976	Preliminary announcement, establish prize money amounts, set detailed dates, obtain final approval from professional societies
October 1976	Complete program, schedule, advertise
November 1976	Receive requests for program, bond issue, print program for specific site, mail program
February 1977	Phase One submittal due, jury convenes, finalists selected and announced, critique made of town plan schemes
May 1977	Final submittal due, jury convenes, winner selected, critique made, design implementation commences, prizes awarded

APPENDIX B

Preliminary Cost Estimate
Capital City Design Competition
Prepared December 1975

Revenues			
Preliminary Entry Fee	2,000 @ $25.00 each		$ 50,000
Final Entry Fee	1,000 @ 25.00 each		25,000
Total Revenues			$ 75,000
Expenses			
Professional Advisor and Consultants			
10 months @ $4,000/month			$ 40,000
Printing, Graphic Design and Postage			
Advertisement		$3,000	
Program		5,000	
Addenda		1,000	
Announcement		1,000	
Total			10,000
Transportation and Per Diem			20,000
Jurors Honorarium			5,000
Second Stage Compensation			50,000
Awards			50,000
Total Expenses			$175,000
Contingency			$ 25,000
Total Cost			$200,000
Additional Funds Required			$125,000

RALPH C. GREGORY ARCHITECT

March 11, 1976

Mr. Michael E. Plunkett AIA
President
Alaska Chapter
The American Institute of Architects
505 W. Northern Lights
Anchorage, Alaska 99503

Dear Mike:

I read with interest your letter to the "Daily News" regarding HB 801 relating the the development of the new Capitol site.

Your comments illustrate again and more forcibly how completely the practice of architecture in Alaska has been dominated by the monolithic international architectural offices controlled by forces outside of Alaska and without concern for the people of the State. An international competition as proposed by the Alaska Chapter A.I.A. would take the development of a Capitol site out of the hands of those of us who must continue to live with it and place it into the hands of giant design conglomerates who have very minimal concerns for Alaskan values and even less interest in the cost to Alaskan taxpayers.

Considering that the latest projected construction costs for the new site run in excess of Three Billion Dollars, it would appear at this point a new state capitol site is a luxury that the population of the State (those of us who intend to stay on after the boom has bust) are neither interested in nor can afford. I would respectfully suggest that the Alaska Chapter A.I.A. concern itself with the ethical practice of the profession within the State and remove itself from the arena of abject servitude to the multi-national parent architectural firms which will be interested in Alaska only to the extent of the profits they can derive from their conquest of the State.

Sincerely,

RALPH C. GREGORY, ARCHITECT
RCG/j

BOX 1853 KETCHIKAN, ALASKA 99901

EDITOR, Daily News:
SUBJECT: House Bill 801—An Act Relating to the Capital Site Development Authority

The Alaska Chapter of the American Institute of Architects has received copies of HB 801. The bill has been reviewed and we feel that it is basically an excellent piece of legislation.

As stated in our letter of February 11, 1976, the Alaska Chapter of A.I.A. is endorsing the concept of an international competition for the planning of the capital city. As stated in that letter, we would appreciate any endorsement or inclusion of language to provide for such a competition in some form under HB 801.

The current bill calls for the authority to "conduct contests for building designs." We feel, however, that the competition for the planning of the city will be of the greatest benefit for Alaska. This fact is best illustrated by the Australia capital of Canberra. The low density accomplished through the competition's winning scheme is the key element of Canberra's social and environmental success. The A.I.A. has prepared a ten minute slide presentation illustrating the many potential types of city plans and concepts possible for any site. Concepts which can be explored only by a competition. We would be pleased to present these slides at any public hearings that might be scheduled.

Any questions you might have can be directed to this office or Frank Maier. Mr. Maier's address and telephone number are: Rt. 5, Box 5538, Juneau, AK 99803. 789-9229.

Your assistance is very much appreciated in this matter of importance to all Alaskans.

Sincerely,
MICHAEL E. PLUNKETT
A.I.A. President
Alaska Chapter A.I.A.

HB 801

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER / POUCH S – JUNEAU 99811

February 24, 1976

The Honorable Joseph McKinnon
Chairman
House State Affairs Committee
Alaska State Legislature
State Capitol Building
Juneau, Alaska

Re: House Bill No. 801

Dear Mr. McKinnon:

House Bill No. 801, an Act relating to the Capital Site Development Authority was introduced in the House on February 17, 1976 and was referred to the House State Affairs and Judiciary Committees.

Sec. 44.58.230 of the proposed legislation appearing on pages 13 and 14 of the Bill provides as follows:

"QUARTERLY AUDIT. The authority shall provide for a quarterly audit of the accounts and financial transactions of the authority by the audit division of the Department of Revenue. Copies of the audit shall be furnished to the legislature within 10 days of each audit."

For the consideration of the House State Affairs Committee, I am enclosing a Fiscal Note and accompanying memorandum prepared by Gary L. Jenkins, Director, Audit Division, Department of Revenue concerning the Quarterly Audits to be performed by the Audit Division of the Department of Revenue.

If you or any members of the House State Affairs Committee have any questions on the material submitted, please telephone the writer at 465-2397 and I will contact Mr. Jenkins for further information or testimony at a hearing.

Very truly yours,

R. D. Stevenson
Special Assistant

Enclosure

cc: The Honorable Terry Gardiner
Chairman
House Judiciary Committee

The Honorable Theodore Smith
Prime Sponsor
House Bill No. 801

Gary L. Jenkins
Director, Audit Division
Department of Revenue

MEMORANDUM State of Alaska

TO: R. D. Stevenson
Assistant to the Commissioner
Department of Revenue

DATE: February 23, 1976

FILE NO:

TELEPHONE NO:

FROM: Gary L. Jenkins
Director
Audit Division

SUBJECT: House Bill 801



This bill would establish a capital site development authority whose prime responsibility would be the development of the new proposed capital site. Among the other provisions of this bill, Section 44.58.230 provides for a quarterly audit of the accounts and transactions of the authority which is to be performed by the Audit Division of the Department of Revenue. The language further provides that copies of the audit shall be furnished to the Legislature within ten days of each audit.

There are two major difficulties with this bill in our opinion. First of all, we are assigned the audit responsibilities for an agency which is totally out of the area in which we normally operate. Our audits have always been audits of taxpayer's records to insure that the proper amount of tax has been paid to the State of Alaska. It would seem far more logical to assign this audit function to either the State Internal Auditor, Legislative Audit or to provide for contracting with a professional accounting firm.

Further, the wording of the legislation concerns me for several reasons. First of all, it provides for a quarterly audit which is an inordinately high frequency if a full scale professional audit is to be undertaken. I would recommend instead that the language be modified to provide for a full scale audit on an annual basis with the auditors to perform either a semi-annual or, if deemed necessary, a quarterly review of the accounting records of the authority.

Secondly, the law does not define how extensive of an audit is expected. Perhaps the language could be modified as to specify exactly what is expected of the auditors.

Thirdly, the provision that copies of the audit will be furnished to the Legislature within ten days of each audit, if taken literally, would mean that once the field work was completed, the audit would have to be completed and sent to the Legislature within ten days. It is my experience that on a complete indepth professional audit, the write-up time could take from six to eight weeks after completion of the field work. Thus, I would suggest that the language in the bill be changed to read "copies of the audit shall be furnished to the Legislature within ten days of the completion of each audit."

GLJ/bjm

Attachment

R83072

HB
808

House Judiciary Committee
April 12, 1976

The meeting was called to order by Chairman Gardiner at 1:30. Members present were Cotten, Eliason, Parr, Gardiner, Specking and Bradley.

HB 808 HIPPIE HOMESTEAD BILL

HB 808

Oral Freeman, sponsor:

Land should be made available for homesites for Alaskan residents. $10.00 is to cover paperwork when receive patent.

Mr. Parr moved page 1, line 24, change to read "shall classify and survey" No objection, adopted.

Mr. Parr moved page 2, line 1 after "years" add "and after paying cost of survey of the land" No objection, adopted.

Mr. Gardiner moved page 3 (D) change to read "agree to pay for land survey made under this subsection." No objection, adopted.

Mr. Cotten moved that page 2-3, change age of majority to 18 years of age. No objection, adopted.

The meeting was adjourned at 3:00 p.m.

39.50.200 (9). Mr. Specking objected. Question : 3-3 so motion failed.

HB 808 HIPPIE HOMESTEAD BILL

HB 808

Oral Freeman, sponsor:

Regarding remarks by Department of Natural Resources:

1) A lottery would defeat the purpose of making land available to Alaskan citizens.

4) False statements on residency, cancellation should be punishment enough. Burden of proof is on applicant.

3) 300 sites on a 2 year cycle. Trial program. Not very many sites. Should be able to do more than 300 sites in 2 years. According to fiscal note, this would be $2000/site. a bit ridiculous!

Mr. Specking moved that only one permit be issued per household. No objection, adopted.

Page 2, line 5, Change "2" to "2 1/2" No objection, adopted.

Mr. Cotten moved page 3, lind 17, add "and conveyed," No objection, adopted.

Mr. Cotten moved on page 2, line 29 to change "seven" to "three" Question: 2-4 so failed.

Mr. Parr moved to change (2) on page 2 so that DNR does not have an out to do nothing. Suggests that perhaps should be on a rotating basi of Judicial districts. Question: 4-1 so adopted.

Mr. Cotten moved that publication should be at least 3 times. Page 2 (3). No objection, adopted.

The meeting was adjourned at 9:55.

House Judiciary Committee
April 17, 1976

The meeting was called to order by Chairman Gardiner at 9:00 a.m. Present were Brown, Cotten, Specking, Bradley and Gardiner.

SB 696 TELECOMMUNICATIONS SB 696

George Shaganaw, GOT:
Larry Golden:

Groups other than government should have access to the use of the transponder when not being used otherwise.

Shaganaw: we are not ready for use by public.

Village sites shall be chosen on bases of criteria, not political whim, be AFN.

Mr. Bradley moved to adopt Eric Eckholm's new language for Senate HESS letter of intent.

Mr. Brown moved to change "stations" to "facilities" in proposed change. No objection, adopted.

Senate HESS letter of intent with changes adopted.

Mr. Specking moved to include $150,000 for public radio network. No objection, adopted.

Mr. Bradley moved HCS out of committee with letter of intent.

SB 484 ABANDONED MOTOR VEHICLES SB 484

Page 3, lind 16: Mr. Brown moved to change "disposal" to "sale or relinquishment". Question 3-1 so adopted.

Mr. Specking moved that in order to be eligible, the tower must be certified. Withdrawn.

Mr. Brown moved HCS out of committee. No objection,so ordered.

HB 808 HIPPIE HOMESTEAD BILL HB 808

Mr. Specking concerned that trailer owners are being discriminated against.

Mr. Specking requested standards in a letter of intent. No objection, so ordered.

United States Department of Agriculture
Forest Service

TERM SPECIAL USE PERMIT

Act of March 4, 1915, as amended July 28, 1956, or Act of March 30, 1948
(Ref. FSM 2710)

a. Record no. (1-2)	b. Region (3-4)	c. Forest (5-6)
70	---	--
d. District (7-8)	**e. User number (9-12)**	**f. Kind of use (13-15)**
--	----	---
g. State (16-17)	**h. County (18-20)**	**k. Card no. (21)**
--	---	1

Permission is hereby granted to _____

of _____,
hereinafter called the permittee, to use subject to the conditions set out below, the following described lands or improvements for the period of _____ years from the date thereof:

This permit covers _____ acres and is issued for the purpose of:

1. Construction or occupancy and use under this permit shall begin within _____ months, and construction, if any, shall be completed within _____ months, from the date of the permit. This use shall be actually exercised at least _____ days each year, unless otherwise authorized in writing.

2. In consideration for this use, the permittee shall pay to the Forest Service, U.S. Department of Agriculture, the sum of _____ Dollars ($_____) for the period from _____ 19____, to _____, 19____, and thereafter annually on _____, _____ Dollars ($_____):
Provided, however, That the charges for this use shall be readjusted as of, and effective on, the beginning of each 5-year period from the due date of the first annual payment in order to place the charges on a basis commensurate with the value of use authorized by this permit.

3. This permit is accepted subject to the conditions set forth herein, and to conditions _____ to _____ attached hereto and made a part of this permit.

	NAME OF PERMITTEE	SIGNATURE OF AUTHORIZED OFFICER	DATE
PERMITTEE		TITLE	
	NAME AND SIGNATURE	**TITLE**	**DATE**
ISSUING OFFICER			

(CONTINUED ON REVERSE)

4. Development plans; lay-out plans; construction, reconstruction, or alteration of improvements; or revision of lay-out or construction plans for this area must be approved in advance and in writing by the forest supervisor. Trees or shrubbery on the permitted area may be removed or destroyed only after the forest officer in charge has approved, and has marked or otherwise designated that which may be removed or destroyed. Timber cut or destroyed will be paid for by the permittee as follows: Merchantable timber at appraised value; young-growth timber below merchantable size at current damage appraisal value; provided that the Forest Service reserves the right to dispose of the merchantable timber to others than the permittee at no stumpage cost to the permittee. Trees, shrubs, and other plants may be planted in such manner and in such places about the premises as may be approved by the forest officer in charge.

5. The permittee shall maintain the improvements and premises to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the forest officer in charge.

6. This permit is subject to all valid claims.

7. The permittee, in exercising the privileges granted by this permit, shall comply with the regulations of the Department of Agriculture and all Federal, State, county, and municipal laws, ordinances, or regulations which are applicable to the area or operations covered by this permit.

8. The permittee shall take all reasonable precaution to prevent and suppress forest fires. No material shall be disposed of by burning in open fires during the closed season established by law or regulation without a written permit from the forest officer in charge or his authorized agent.

9. The permittee shall exercise diligence in protecting from damage the land and property of the United States covered by and used in connection with this permit, and shall pay the United States for any damage resulting from negligence or from the violation of the terms of this permit or of any law or regulation applicable to the national forests by the permittee, or by any agents or employees of the permittee acting within the scope of their agency or employment.

10. The permittee shall fully repair all damage, other than ordinary wear and tear, to national forest roads and trails caused by the permittee in the exercise of the privilege granted by this permit.

11. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this agreement or to any benefit that may arise herefrom unless it is made with a corporation for its general benefit.

12. Except as provided in Clause 16 below, upon abandonment, termination, revocation, or cancellation of this permit, the permittee shall remove within a reasonable time all structures and improvements except those owned by the United States, and shall restore the site, unless otherwise agreed upon in writing or in this permit. If the permittee fails to remove all such structures or improvements within a reasonable period, they shall become the property of the United States, but that will not relieve the permittee of liability for the cost of their removal and the restoration of the site.

13. This permit is not transferable. If the permittee through voluntary sale or transfer, or through enforcement of contract, foreclosure, tax sale, or other valid legal proceeding shall cease to be the owner of the physical improvements other than those owned by the United States situated on the land described in this permit and is unable to furnish adequate proof of ability to redeem or otherwise reestablish title to said improvements, this permit shall be subject to cancellation. But if the person to whom title to said improvements shall have been transferred in either manner above provided is qualified as a permittee, and is willing that his future occupancy of the premises shall be subject to such new conditions and stipulations as existing or prospective circumstances may warrant, his continued occupancy of the premises will be authorized by a permit to him, which may be for the unexpired term of this permit or for such new period as the circumstances justify.

14. The permittee may sublease the use of land and improvements covered under this permit and the operation of concessions and facilities authorized; Provided the express written permission of the Forest Supervisor has been secured. The permittee shall continue to be responsible for compliance with all conditions of this permit by persons to whom such premises may be sublet.

15. This permit may be revoked upon breach of any of the conditions herein.

16. If during the term of this permit or any extension thereof, the Secretary of Agriculture or any official of the Forest Service acting by or under his authority shall determine that the public interest requires termination of this permit, this permit shall terminate upon thirty days' written notice to the permittee of such determination, and the United States shall have the right thereupon to purchase the permittee's improvements, to remove them, or to require the permittee to remove them, at the option of the United States, and the United States shall be obligated to pay an equitable consideration for the improvements or for removal of the improvements and damages to the improvements resulting from their removal. The amount of the consideration shall be fixed by mutual agreement between the United States and the permittee and shall be accepted by the permittee in full satisfaction of all claims against the United States under this clause: *Provided,* That if mutual agreement is not reached, the Forest Service shall determine the amount and if the permittee is dissatisfied with the amount thus determined to be due him he may appeal the determination in accordance with the Appeal Regulation (36 C.F.R. 211.20 - 211.37) and the amount as determined on appeal shall be final and conclusive on the parties hereto; *Provided further,* That upon the payment to the permittee of 75% of the amount fixed by the Forest Service, the right of the United States to remove or require the removal of the improvements shall not be stayed pending final decision on appeal.

17. The permittee agrees that the amount which the United States shall be required to pay for improvements in accordance with Clause 16 shall in no event exceed $_____, and that this instrument may be introduced in any judicial proceedings for the acquisition of such improvements by the United States as the stipulation of the permittee and the United States with regard to the maximum amount which the United States shall be required to pay for the taking thereof.

18. In case of change of address the permittee shall immediately notify the forest supervisor.

19. In the event of any conflict between any of the preceding printed clauses or any provision thereof and any of the following clauses or any provisions thereof, the following clauses will control.

GPO 934-599

United States Department of Agriculture Forest Service	a. Record no. (1-2)	b. Region (3-4)	c. Forest (5-6)
	70	--	--
SPECIAL USE PERMIT	d. District (7-8)	e. User number (9-12)	f. Kind of use (13-15)
	--	----	---
Act of June 4, 1897 This permit is revocable and nontransferable (Ref. FSM 2710)	g. State (16-17)	h. County (18-20)	k. Card no. (21)
	--	---	1

Permission is hereby granted to _____

of _____,
hereinafter called the permittee, to use subject to the conditions set out below, the following described lands or improvements:

This permit covers _____ acres and/or _____ miles and is issued for the purpose of:

1. Construction or occupancy and use under this permit shall begin within _____ months, and construction, if any, shall be completed within _____ months, from the date of the permit. This use shall be actually exercised at least _____ days each year, unless otherwise authorized in writing.

2. In consideration for this use, the permittee shall pay to the Forest Service, U.S. Department of Agriculture, the sum of _____ Dollars ($ _____) for the period from _____ 19____, to _____, 19____, and thereafter annually on _____,
_____ Dollars ($ _____):
Provided, however, Charges for this use may be made or readjusted whenever necessary to place the charges on a basis commensurate with the value of use authorized by this permit.

3. This permit is accepted subject to the conditions set forth herein, and to conditions _____ to _____ attached hereto and made a part of this permit.

	NAME OF PERMITTEE	SIGNATURE OF AUTHORIZED OFFICER TITLE	DATE
PERMITTEE			
ISSUING OFFICER	NAME AND SIGNATURE	TITLE	DATE

(CONTINUED ON REVERSE)

4. Development plans; layout plans; construction, reconstruction, or alteration of improvements; or revision of layout or construction plans for this area must be approved in advance and in writing by the forest supervisor. Trees or shrubbery on the permitted area may be removed or destroyed only after the forest officer in charge has approved, and has marked or otherwise designated that which may be removed or destroyed. Timber cut or destroyed will be paid for by the permittee as follows: Merchantable timber at appraised value; young-growth timber below merchantable size at current damage appraisal value; *provided* that the Forest Service reserves the right to dispose of the merchantable timber to others than the permittee at no stumpage cost to the permittee. Trees, shrubs, and other plants may be planted in such manner and in such places about the premises as may be approved by the forest officer in charge.

5. The permittee shall maintain the improvements and premises to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the forest officer in charge.

6. This permit is subject to all valid claims.

7. The permittee, in exercising the privileges granted by this permit, shall comply with the regulations of the Department of Agriculture and all Federal, State, county, and municipal laws, ordinances, or regulations which are applicable to the area or operations covered by this permit.

8. The permittee shall take all reasonable precautions to prevent and suppress forest fires. No material shall be disposed of by burning in open fires during the closed season established by law or regulation without a written permit from the forest officer in charge or his authorized agent.

9. The permittee shall exercise diligence in protecting from damage the land and property of the United States covered by and used in connection with this permit, and shall pay the United States for any damage resulting from negligence or from the violation of the terms of this permit or of any law or regulation applicable to the National Forests by the permittee, or by any agents or employees of the permittee acting within the scope of their agency or employment.

10. The permittee shall fully repair all damage, other than ordinary wear and tear, to national forest roads and trails caused by the permittee in the exercise of the privilege granted by this permit.

11. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this agreement or to any benefit that may arise herefrom unless it is made with a corporation for its general benefit.

12. Upon abandonment, termination, revocation, or cancellation of this permit, the permittee shall remove within a reasonable time all structures and improvements except those owned by the United States, and shall restore the site, unless otherwise agreed upon in writing or in this permit. If the permittee fails to remove all such structures or improvements within a reasonable period, they shall become the property of the United States, but that will not relieve the permittee of liability for the cost of their removal and restoration of the site.

13. This permit is not transferable. If the permittee through voluntary sale or transfer, or through enforcement of contract, foreclosure, tax sale, or other valid legal proceeding shall cease to be the owner of the physical improvements other than those owned by the United States situated on the land described in this permit and is unable to furnish adequate proof of ability to redeem or otherwise reestablish title to said improvements, this permit shall be subject to cancellation. But if the person to whom title to said improvements shall have been transferred in either manner provided is qualified as a permittee and is willing that his future occupancy of the premises shall be subject to such new conditions and stipulations as existing or prospective circumstances may warrant, his continued occupancy of the premises may be authorized by permit to him if, in the opinion of the issuing officer or his successor, issuance of a permit is desirable and in the public interest.

14. In case of change of address, the permittee shall immediately notify the forest supervisor.

15. The temporary use and occupancy of the premises and improvements herein described may be sublet by the permittee to third parties only with the prior written approval of the forest supervisor but the permittee shall continue to be responsible for compliance with all conditions of this permit by persons to whom such premises may be sublet.

16. This permit may be terminated upon breach of any of the conditions herein or at the discretion of the regional forester or the Chief, Forest Service.

17. In the event of any conflict between any of the preceding printed clauses or any provisions thereof and any of the following clauses or any provisions thereof, the following clauses will control.

GPO 914-671

2722.23 Residence

2713 - POLICIES APPLICABLE TO INDIVIDUAL USES

50 - Residence

Other than Recreation. Residence, for other than recreation purposes, may be permitted in isolated locations when needed for the exercise of legitimate use of the Forest or adjacent areas. In addition, old settlers who formerly made their living from use of the National Forest or adjacent areas in the locality applied for, and have no other homes, may be granted residence permits. Residence areas for group occupancy will be approved by the Regional Forester. All residence use shall be located where there will be no conflict with present or planned recreational development or with other resource use.

Authorization for such residence use will be on an annual permit basis without promise of elimination. Individual permits within approved group areas will be issued by the Forest Supervisor. Residence permits may not be granted for sites within designated or anticipated roadside, waterfront, or other near-natural zones.

Residence permits issued under this policy are intended for use as a headquarters for the permittee during the entire year. (See FSH 2713, Item No. 9.)

Recreation and Year-long.

g. Sample Specifications for Development of Recreation Residence Sites

(3) Building Materials. In approving construction of recreation or yearlong residence, there is no obligation to accept building materials simply because they are cheaper or more convenient for the permittee. However, as stated in FSH 2315, "There is no prejudice against the use of any durable building material which can be applied or adapted to meet the principles of design." On the other hand, caution must be exercised to avoid emphasizing durability at the expense of appearance

The following materials are approved for use in Region 10 under the circumstances specified:

(a) Foundations. Full Cell treated timbers may be used for foundation material in areas where it is impractical to transport materials for concrete or masonry foundations, and if the design accomplishes the objectives of FSH 2713 and 2315.24 for foundations. Construction using treated timbers must meet proper engineering

standards. Adequate footings and bracing for piers will be required. Clearance between bottom of floor joints and the ground level shall not be less than 18 inches as specified in FSH 2713.

*-Cedar or hemlock piling 12" or more in diameter may be used for foundation material when treated with wood preservative and anchored below the frost line.

Untreated timbers may be used for foundation material for hunters' cabins authorized under the provisions of FSH 2713, if approved by Forest Supervisors.-*

(b) Roofing. The only metal roofing authorized for residences is embossed brown or green enameled aluminim with a minimum thickness of .024 inches. It must meet or exceed the standards for roofing specified for Region 10 A-frame cabins. Use of *-unpainted-* aluminum roofing for residneces will be permitted only in remote locations where *-the buildings are not visible from the water.-* One type of rolled roofing will be permissible only for residences in remote locations or for hunter cabins. This is two-ply, 19-inch selvage edge, 17-inch mineral surfaced, rolled roofing, 60-pound weight, in acceptable colors.

Composition shingles are approved for use in all situations. They should be asphalt tab strip shingles of acceptable colors (see FSH 2315.23) with a minimum weight of 168 pounds per square.

(c) Chimneys and Fireplaces. Metal, factory-built chimneys, roofjacks, and/or fireplaces may be approved provided they meet Underwriter's Laboratory standards and are properly installed. However, if stone, brick, or concrete chimneys and fireplaces are permitted, adequate foundations must be required.

Original sponsors: Freeman, Anderson, H. Beirne, et al

Offered: 4/6/76
Referred: Judiciary

IN THE HOUSE BY THE RESOURCES COMMITTE

CS FOR HOUSE BILL NO. 808

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act authorizing state land to be made available a homesites."

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

* Section 1. PURPOSE OF ACT. The longstanding policy of the state, declared in the Constitution of the State of Alaska (art. VIII, sec. 1) and t Alaska Land Act (AS 38.05.350), has been to encourage the settlement of the state's land and the development of its resources by making them available for maximum use consistent with the public interest. In authorizing the classification of land for settlement as homesites, this Act is intended to further that policy explicitly, by recognizing that the immediate production of revenues to the state through the auction of land to the highest bidder, virtually the only method by which state land has been made available to the public for residential use, is secondary in importance to the primary, and ultimately more beneficial and productive goal, of providing land for Alaska to settle at a cost reasonably within their means, and that the highest and best use of some land may clearly be for habitation.

* Sec. 2. AS 38.05 is amended by adding a new section to read:

Sec. 38.05.327. CLASSIFICATION OF LAND FOR HOMESITE ENTRY. (a) The director may classify shall and survey for homesite entry state land which is otherwise vacant, unappropriated and unreserved and is suitable for erection of a residential dwelling to use as a permanent abode. A person qualified under law to acquire state land may enter upon homesite entry land under a permit issued by the director and, after occupying the land in habitable dwelling for a period of not less than seven months each year

and after paying the cost of the survey of the land for three consecutive years, he shall be issued a patent to the land conveying an unencumbered title. Entry and patent under this section are subject to the following conditions and procedures:

(1) Homesite entry land shall be divided into parcels not exceeding two one half acres, in reasonably compact form.

(2) Insofar as feasible, offerings of homesite entry land shall be made on a rotating regional basis among the judicial districts of the State, and at a rate consistent with the planning processes of the division and taking into account other statutory responsibilities of the division.

(3) Following classification of land for homesite entry, the director shall publish notice of the availability of the land in at least three newspapers of general circulation in the state, at least one of which, if possible shall be a newspaper of general circulation in the vicinity of the available lands.

(4) Fees for filing an application may not exceed $10. An applicant may apply for more than one available homesite but, no applicant may be issued more than one homesite entry permit or patent during the lifetime of the applicant.

(5) If the number of applicants qualified for homesite entry exceeds the number of available homesites offered, or if several applicants apply and qualify for the same homesite, priority in award of an entry permit shall be accorded on the basis of proof of length of residence within the state and to an applicant who, at the time of application, holds no title to, or interest, other than as a tenant for a limited term, in a dwelling suitable as a permanent place of abode (including but not limited to a mobile home irrespective of whether or not it is attached to land or connected to utilities).

(6) To qualify for homesite entry, an applicant shall

(A) at the time of application have attained the legal

age of ~~majority~~ 18 years as provided in AS 25.25.010;

(B) submit proof of not less than three years' continuous residence in the state immediately preceding the date his application was submitted;

(C) within a period of time determined to be reasonable by the director, erect the habitable dwelling; place in a different section

(D) agree to ~~have~~ pay for a land survey made which is approved by the director and is made at the applicant's expense; and required under this subsection

(E) agree to occupy the habitable dwelling for the required time as provided in this subsection.

(b) An applicant satisfying the requirements for homesite entry under this section shall be issued a revocable permit to occupy and improve the homesite for patent as provided in this section. The application fee is the sole rent chargeable on the permit for its duration. The permit may not be revoked except for substantial breach of the terms and conditions of the homesite entry under (a) of this section. The permit may not be assigned, conveyed or otherwise transferred, but rights under the permit may devolve by testate or intestate succession. An attempt to assign, convey or to otherwise transfer the permit, is void and constitutes a substantial breach.

(c) Upon revocation and termination of a permit, improvements or chattels upon the homesite shall be managed, and subsequent issuance of a permit for entry on the homesite shall be conditioned, in the same manner as provided in sec. 90 of this chapter for removal or reversion of improvements upon termination of leases of state land.

(d) No state land which is located within the boundaries of an organized borough or city may be classified for homesite entry under this section until the proposed use of the land has been studied and reviewed jointly by the director and the local planning authority.

Nothing in this section or AS 29.18.190 prevents the director from selecting and classifying for homesite entry land which would otherwise be available for borough or city selection under AS 29.18.190. If classified for homesite entry, the land shall not be available for city or borough selection.

(e) Nothing in this section obligates the state to provide services to lands which are the subject of homesite entry and patent.

(f) In this section "habitable dwelling" means a dwelling of a permanent nature, together with fixtures and facilities, including sanitary facilities, required or customary in the vicinity of the land made available for homesite entry. The commissioner by regulation shall establish reasonable requirements to satisfy the standard of a habitable dwelling set out in this subsection.

4-17-79

Fast home site building requirements
Letter of intent
Proilgate regulations

Multifaseted program
this is not to be instead of other programs

These standards are not to make it
unreasonable (an jump

6-7151 Ken Mitchell

Spicific to regional areas
Standards for different uses
Recreation Residence

Should waterfrount property be limited to 400 ft.

Carrying too problem. Should it not be done before moving on. land. Should state pay that.

Page 1 line 24 put in committee report that there sall be a reasonable amount of land not all land.

Department must do this

$$2.25\overline{)640}\quad 2$$
$$450$$
$$90$$

4-14-76

limite it one permit per household

lined should be 2½ acres rather than 2

have to live on land for 7 months

HB

809

"An Act relating to limitation on proceeds from bingo, raffles and lotteries, ice classics, dog mushers' contests, fish derbies and contests of skill."

COMMITTEE REPORT

2/17/76

HOUSE

Mr. Speaker: Date F. 26, 1976

The Committee on JUDICIARY has had HB 809

under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(X) recommends it BE REPLACED WITH CS FOR _____ AND THAT

CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____

COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

MEMORANDUM State of Alaska

TO: Representative Terry Gardiner
House Judiciary Committee
Alaska State Legislature
State Capitol Building

DATE: March 4, 1976

FILE NO:

TELEPHONE NO:

FROM: Gary L. Jenkins
Director
Audit Division

SUBJECT: House Bill 809

In reviewing House Bill 809 several questions have come up which I feel are pertinent to this legislation.

1. What expenses may be funded from the net proceeds of the Games operated by a political party or club? Does it include any operating expenses of the club or party as well as expenses incurred in support of candidates?

2. The last paragraph of the bill states that the net proceeds of a game conducted by a political party may be distributed to candidates for a particular office, but that equal amounts must be given to each candidate from the party for that office. Can the funds be distributed to unsuccessful primary candidates as well as the successful ones who go on the general election ballot? This does not appear to be prohibited. Is it intended that political clubs could distribute the money which they raise to candidates? With the restrictive wording "political party", I would interpret the law that they could not.

With the above aside, I have some very serious philosophical concerns with this bill. As one reads the current law, the apparent intent is that the law was enacted so that groups or communities could raise funds for community betterment projects, or to improve the community through religious, educational, self-help or social projects. Thus, a group could raise monies for a community center, church, school, hospital, Little League, college scholarships, and a whole host of other projects. To provide that monies could be raised and expended for political campaigns appears to be a complete departure from the intent of the original law.

This legislation seems to be further unnecessary in light of the current liberal campaign credit law which is currently in existence in Alaska. The $50 credit per individual would appear to be more than sufficient to raise all funds necessary for political campaigns.

GLJ:lc

HB
833

Memo to Terry Gardiner and Bill Parker

Re: Act Relating to the Abatement of Nuisances

Purpose and Effect of Bill

Suits to enjoin pollution have been taking place for hundreds of years(contrary to the popular belief that the Sierra Club dobied up the idea). Prior t modern environmental and pollution statutes the classic garden va iety case was one to abate a "nuisance" in the courts of equity. In order facilitate the growing number of suits as population and industrial growth clashed the courts evolved a distinction between "public nuisances" and "private nuisances."

The so-called "private nuisance" is classicly defined as "an interference with the use and enjoyment of land." Prosser, Law of Torts p. 611.

> "So long as the interference is substantial and unreasonable, and such as would be offensive or inconvenient to the normal person, virtually any disturbance of the enjoyment of the property may amount to a nuisance." Supra, p. 613.

"No better definition of a public nuisance has been suggested than that of an act or omission 'which obstructs or causes inconvenience or damage to the public in the exercise of rights common to all Her Majesty's subjects.'" Prosser, supra p. 605. The term comprehends a miscellaneous group of acts or omissions which interfere with the interests of the community, or the comfort or convenience of the general public.

To be considered public, the nuisance must affect an interest common to the general public, rather than peculiar to one individual, or several. Thus, while the mere pollution of a stream inconveniencing property owners along the stream would be a private nuisance, the nuisance would become public if fish began to die from the pollution.

In the latter situation the courts have long held that a private individual cannot abate such a public nuisance unless his damage is in some way to be distinguished from that sustained by other members of the general public. The effect of this bill, if passed into law, would be to grant standing to any member of the public affected by the pollution to abate that pollution after the individual went through the specified drill.

Need For the Bill

A. Small Picture-right now the Dept. of Law initiates actions at the request of DEC. As you might suspect the requests for action cover situations such as cesspools overflowing into a creek as well as the big cases such as the Galbraith Lake oilspill. As a practical matter the DOL-Civil Section is swamped with the big cases. Result: the small public nuisance pollution cases are prioritized to the bottom of a big list. DEC requests for action in small cases invariably is initiated by a citizen complaint. Prioritization often leaves an outraged citizenry, disgusted with red tape, with no remedy and worse no answer to the problem he complained of.

B. Big Picture-every day Reserve Mining dumps 60,000 tons of asbestos like fibers into Lake Superior near Duluth. 40% of Duluth drinks bottled water. A study of the history of the Reserve case reveals that this "public nuisance" has been such for years, yet for some reason in the past the public body responsible for protecting the public interest in public nuisances would not force a settlement with Reserve for cleaner, healthier water. Now the equities in balance are staggering. Its simply a matter of balancing the interests in the health of thousands versus the interest in employing thousands. Had Minnesotta a law on the books such as this years ago when the Reserve health hazard became apparent, the politics of the times could have been checked by a citizen suit resulting in the problem being dealt with in 1946 when solutions were workable rather in 1976 when no solution is equitable for the public interest.

Committee Testimony

For the sponsor, Bill Parker, Doug Pope testified essentially the same as the above material. Commissioner Mueller testified that DEC approved of the bill. Will Condon, DOL, approved a letter from the AG's th stated no opposition to concept or form.

Questions to Field

A. Is this another non-problem? There's no telling how many small cases have been prioritized to the bottom of the list, but I saw several in 3 months time in Fairbanks. The bigger cases are more obvious and fo the most part have been dealt with very well by the AG. There have been abuses though, most notably in recent years the Collier Chemical destruction of water supplies in Kenai. Although there may have been politics in the Galraith Lake cases, it's important to note how this overlaps with the answer to the next question.

B. Does this open the door to the environmental groups from the states to barge in? No, emphatically no. It's important to remember that before an individual can proceed he must be part of the general public sustaining damage. That puts the standing question right where it should be--with the court. This bill merely eliminates the public-private distinction when the right drill is followed. A person still has to show thathe is part of the public being damaged. Returning to the Galbraith Lake situation, the court would inquire whether any public damage is alleged. In short, it's arguable that only the State can still proceed in an area so remote that there is no definable public. More clear would be an example of pollution in Dillingham. If the Dillingham public is damaged, then it must be a member of the Dillingham public before standing is granted.

C. Does this interfere with the boroughs? No. Read the bill, it forces the person to contact the DEC or "the local authority vested with pollution control powers."

D. Will this bill result in increased litigation? Only if DEC is not doing its job. Comm. Mueller agreed that in regard to the little cases that this might provide them with a more satisfying relief. Right now DEC couldn't let the citizen get in the action even if they wanted him to, which they would prefer in some of the smaller cases.

E. Who could file an action after the appropriate steps are taken? "Person" is defined in title 46 so broadly that it could include an individual, a partnership or corporation, or any municipal or government body.

F. Does this mean that DEC will have to file suits when they would otherwise settle a pollution problem? No. Abate means to either put an end to or to decrease in amount or degree. If DEC responds to the demand that they are settling the problem through avenues short of litigation then the spirit of the bill is complied with.

G. Do any other states have a law like this? At least one--Wisconsin.

H. Who would object to a bill such as this? Business or industrial concerns who make or save capital by polluting rather than complying. When a lot of money is at stake private interests can be lobbied against public officials who must make the determination whether to proceed with a plan to abate an infringement on the public interest. This bill democratizes that decision making process. Another one of the many ideas from the boys who brought you open government.

Introduced: 2/17/76
Referred: Judiciary

IN THE HOUSE BY PARKER

HOUSE BILL NO. 833

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the abatement of nuisances."

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

* Section 1. AS 46.03.760(e) is amended to read:

(e) Nothing in this section affects an individual's right to recover damages or to obtain injunctive relief under sec. 870(c) of this chapter, other applicable statutes or the common law.

* Sec. 2. AS 46.03.870(a) is amended to read:

(a) Except as specified in secs. 822 - 828 of this chapter, the bases for proceedings or actions resulting from violations of this chapter or a regulation promulgated under this chapter inure solely to and are for the benefit of the state, and are not intended to in any way create new, or enlarge existing rights of persons or groups of persons in the state except as provided in (c) of this section.

* Sec. 3. AS 46.03.870(c) is amended to read:

(c) This chapter does not estop the state, persons or political subdivisions of the state in the exercise of their rights to suppress nuisances, to seek damages, or to otherwise abate or recover for the effects of pollution or other environmental degradation. If a person has submitted a formal request to the department that it take action to abate a form of pollution or environmental degradation or any other condition declared to be a nuisance under this chapter and that request either has been rejected or the department has not responded to the request within 30 days after it has been submitted, nothing in this chapter affects the right to bring an action to abate that pollution or environmental degradation as a

nuisance. A person bringing the action need not show injury different in kind, or in degree, from that sustained by the general public to prevail.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K — STATE CAPITOL
JUNEAU 99811

February 27, 1976

The Honorable Terry Gardiner
Chairman
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: HB 833

Dear Representantive Gardiner:

In regards to your request as to our view of HB 833, the Department of Law, after consultation with the Department of Environmental Conservation, has no objections to HB 833.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By: John R. Messenger
Assistant Attorney General

JRM:jeh

AS 46.03.760(e) is amended to read:

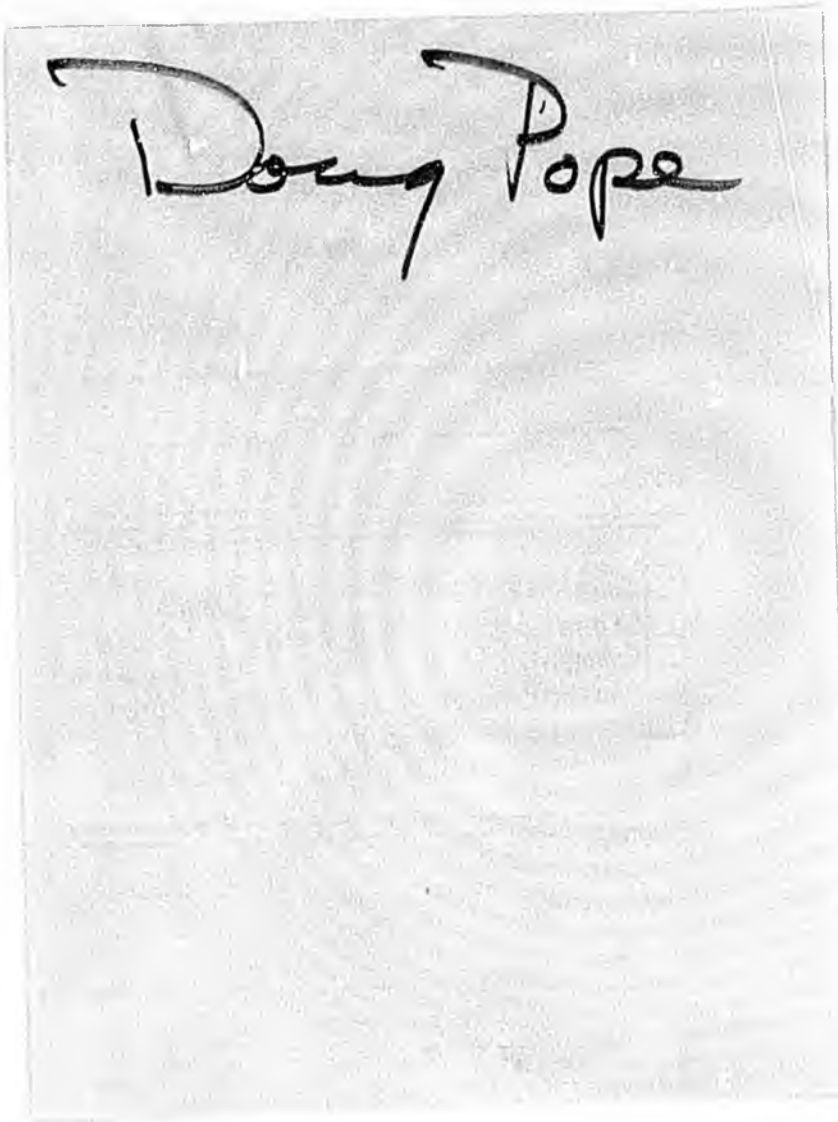
(e)Nothing in this section affects an individual's right to recover damages or to obtain injunctive relief under sec. 895 of this chapter, ~~or~~ other applicable statutes of the common law.

AS 46.03.870(a) is amended to read:
(a)Except as specified in secs. 822-828 of this chapter, the bases for proceedings or actions resulting from violations of this chapter or a regulation promulgated under this chapter inure solely to and are for the benefit of the state, and are not intended to in any way create new, or enlarge existing rights of persons or groups of persons in the state except as provided in sec. 895 of this chapter.

AS 46.03 is amended by adding ~~an~~ new section to read:

46.03.895(a) A person has standing to enforce the provisions of this chapter in abating pollution, environmental degradation or any other matter declared to be a nuisance under this chapter if that person has submitted a formal request to the department or an appropriate municipality vested with local pollution control powers, that either the department or municipality take action to abate a form of air or water pollution, environmental degradation or nuisance and that request has been formally rejected or the department or municipality has not affirmatively responded to the request within 30 days after it has been submitted. A person bringing the action need not show injury different in kind, or degree, from that sustained by the general public to prevail.

(1)"affirmatively responded" as used in ~~sec~~ this section means that the department or appropriate municipality has determined and formally replied that action will be taken to abate the pollution, degradation or nuisance complained of.


Doug Pope

Introduced: 2/17/76
Referred: Judiciary

IN THE HOUSE BY PARKER

HOUSE BILL NO. 833

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the abatement of nuisances."

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

* Section 1. AS 46.03.760(e) is amended to read:

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* Sec. 3. AS 46.03.870(c) is amended to read:

(c) This chapter does not estop the state, persons or political subdivisions of the state in the exercise of their rights to suppress nuisances, to seek damages, or to otherwise abate or recover for the effects of pollution or other environmental degradation. If a person has submitted a formal request to the department that it take action to abate a form of pollution ~~or~~ environmental degradation ~~declared to be a nuisance under this chapter~~ and that request either has been rejected or the department has not responded to the request within 30 days after it has been submitted, nothing in this chapter affects the right to bring an action to abate that pollution or environmental degradation as a

nuisance. A person bringing the action need not show injury different in kind, or in degree, from that sustained by the general public to prevail.

am 1

If a person and has submitted a formal request to the department, that it take action to abate a form of pollution, environmental degradation or any other matter declared to be a nuisance under this chapter and that request either has been formally rejected or the department has not affirmatively responded to the request within 30 days after it has been submitted, nothing in this chapter affects the right to bring an action to abate that pollution, environmental degradation, or nuisance. A person bringing the action need not show injury different in kind, or degree, from that sustained by the general public to prevail.

HB
851

"An Act relating to the quasi-judicial regulatory agencies in state government; and providing for an effective date."

COMMITTEE REPORT

HOUSE

3/18/76

Mr. Speaker: Date April 8, 1976

The Committee on JUDICIARY has had HB 851 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(✓) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

IN THE HOUSE BY THE JUDICIARY COMMITTEE

A M E N D M E N T NO. 2

TO: HB 851 (permits commissioners rather than governor to select commission chairman; reduces APUC chairman's term from four to two years; limits chairman to one two-year term)

On page 1, between lines 20 and 21, insert a new section, and renumber the sections of the bill accordingly:

"* Sec. 2. AS 42.05.020(b) is amended to read:

(b) The commission members [GOVERNOR] shall elect [DESIGNATE] one member of the commission as chairman of the commission. This member shall serve as chairman for a term of two [FOUR] years, and [BUT] may not be re-elected [APPOINTED] for a successive term [TERMS]."

On page 4, between lines 1 and 2, insert a new section and renumber the sections of the bill accordingly:

"* Sec. 8. AS 42.06.030(b) is amended to read:

(b) The commission members [GOVERNOR] shall elect [DESIGNATE] one member of the commission as chairman of the commission. This member shall serve as chairman for a term of two years, and may not be re-elected [APPOINTED] for a successive term [TERMS]."

On page 5, between lines 28 and 29, insert a new section and renumber the sections of the bill accordingly:

"* Sec. 14. AS 42.07.011(b) is amended to read:

(b) The commission members [GOVERNOR] shall elect [DESIGNATE] one member of the commission as chairman of the commission. This member shall serve as chairman for a term of two years, and [BUT] may not be re-elected [APPOINTED for a successive term [TERMS]."

IN THE HOUSE BY THE JUDICIARY COMMITTEE

A M E N D M E N T NO. 3

TO: HB 851 (shifts commission employees from classified service to exempt service)

On page 2, strike out lines 28 and 29, and on page 3, strike out lines 1 - 12, inclusive, and insert:

"(a) The commission may employ an executive director who shall have had at least five years of experience in an administrative capacity and who is experiended in public utility management or regulation. [THE EXECUTIVE DIRECTOR MAY BE ONE OF THE COMMISSION MEMBERS.] The commission may employ engineers, hearing officers, experts, clerks, accountants, and other agents, [AND] assistants and employees it considers necessary. The executive director[, IF NOT A MEMBER OF THE COMMISSION,] and all other employees and agents of the commission[, OTHER THAN LEGAL COUNSEL,] are in the exempt [CLASSIFIED] service under AS 39.25.110. [THE COMBINED SALARY OF AN EXECUTIVE DIRECTOR WHO IS A MEMBER OF THE COMMISSION MAY NOT EXCEED THAT OF A SUPERIOR COURT JUDGE.]

On page 5, strike out lines 9 - 13, inclusive, and insert:

"(c) The executive director, his deputy and all [HIS SECRETARY, ARE IN THE PARTIALLY EXEMPT SERVICE DESCRIBED IN AS 39.25. ALL] other employees of the commission[, OTHER THAN LEGAL COUNSEL,] are in the exempt service under AS 39.25.110.

On page 7, strike out lines 15 - 20, inclusive, and insert:

"(a) The commission may employ an executive director, engineers, hearing officers, experts, clerks, accountants, and other agents, [AND] assistants and employees it considers necessary. Employees and agents of the commission[, OTHER THAN LEGAL COUNSEL,] are in the exempt [CLASSIFIED]

service under AS 39.25.110.

On page 7, strike out lines 26 and 27, and insert:

"(13) commissioners and employees of the Alaska Public Utilities Commission, Alaska Pipeline Commission, and Alaska Transportation Commission;

On page 7, strike out lines 28 and 29, and on page 8, strike out lines 1 and 2.

4/6
Milton

IN THE HOUSE BY THE JUDICIARY COMMITTEE

A M E N D M E N T NO. 1

TO: HB 851 (Re Removal Power)

On page 1, between lines 25 and 26, insert:

Alternatively, the legislature, by a concurrent resoution adopted by a roll call vote of (~~two-thirds~~/a majority) of the members in each house entered in the journal, may remove a commissioner from office for cause as prescribed in this section. Gov. must concur. No override.

On page 4, between lines 6 and 7, insert:

(The same language as above.)

On page 6, line 4, after "session.", insert:

(The same language as above.)

Original Sponsor: Judiciary Committee

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 851

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the quasi-judicial regulatory agencies in state government; and providing for an effective date."

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

* Section 1. AS 42.05.010 is amended to read:

Sec. 42.05.010. ALASKA PUBLIC UTILITIES COMMISSION CREATED. There is created [WITHIN THE DEPARTMENT OF COMMERCE] the Alaska Public Utilities Commission. The commission is a quasi-judicial regulatory agency within the meaning of art. III, secs. 22 and 26, of the Constitution of the State of Alaska. The commission may request, and the Departments of Administration and Commerce and Economic Development shall provide, administrative support services. However, the commission is not a division in either department, and its members, executive director and employees are not subject to the direction of the commissioner of either department.

* Sec. 2. AS 42.05.020(b) is amended to read:

(b) The commission members [GOVERNOR] shall elect [DESIGNATE] one member of the commission as chairman of the commission. This member shall serve as chairman for a term of two [FOUR] years, and [BUT] may not be reelected [APPOINTED] for a successive term [TERMS].

* Sec. 3. AS 42.05.035 is amended to read:

Sec. 42.05.035. REMOVAL OF COMMISSIONERS. The governor may remove a commissioner from office for cause, including but not limited to incompetence, neglect of duty or misconduct in office, by and with the

consent of a majority of the members of the legislature in joint session. Alternatively, the legislature, by a concurrent resolution adopted by a roll call vote of a majority of the members in each house, may remove a commissioner from office for cause as prescribed in this section, subject to the approval of the governor. However, if the governor disapproves the resolution, that veto is not subject to a vote by the legislature to override it.

* Sec. 4. AS 42.05.111 is amended to read:

Sec. 42.05.111. LEGAL COUNSEL. (a) The attorney general is legal counsel for the commission. He shall assign an assistant attorney general to the commission on a full-time basis. He shall advise and assist the commission in legal matters arising in the discharge of its duties and represent the commission in actions to which it is a party whether in state or federal courts. He shall also represent the commission in proceedings before federal regulatory agencies if so requested by the commission. If, in the opinion of the commission, the public interest is not adequately represented by counsel in a proceeding, the attorney general or his designated assistant attorney general, upon request of the commission, shall represent the public interest.

(b) If the attorney general is unable to assign an assistant attorney general to the commission on a full-time basis, the [THE] commission may employ [TEMPORARY] legal counsel to advise and assist the commission in legal matters arising in the discharge of its duties and to represent the commission in actions or proceedings to which it is a party, in which the state has an interest, or in which there is a public interest [FROM TIME TO TIME IN PROCEEDINGS BEFORE THE COMMISSION IN WHICH THE ATTORNEY GENERAL IS REPRESENTING THE PUBLIC INTEREST OR A PARTY BEFORE THE COMMISSION].

* Sec. 5. AS 42.05.111 is amended by adding new subsections to read:

(c) Legal counsel employed by the commission under (b) of this section shall be selected by the commission from a list of at least three but not more than five candidates submitted by the attorney general. The commission may request additional candidates for consideration. After appointment, legal counsel is subject to removal by the commission only for cause.

(d) With the approval of the commission, the legal counsel may employ additional attorneys or other persons needed to carry out his duties.

* Sec. 6. AS 42.05.121(a) is amended to read:

(a) The commission may employ an executive director who shall have had at least five years of experience in an administrative capacity and who is experienced in public utility management or regulation. The executive director may not be one of the commission members. The commission may employ engineers, hearing officers, experts, clerks, accountants, [AND OTHER] agents, [AND] assistants and other employees it considers necessary. The executive director [, IF NOT A MEMBER OF THE COMMISSION,] and all other employees and agents of the commission [, OTHER THAN LEGAL COUNSEL,] are in the exempt [CLASSIFIED] service under AS 39.25. The [COMBINED] salary of an executive director [WHO IS A MEMBER OF THE COMMISSION] may not exceed that of a member of the commission [SUPERIOR COURT JUDGE].

* Sec. 7. AS 42.05.121 is amended by adding a new subsection to read:

(c) The commission shall, by regulation, establish a personnel management system for its employees.

* Sec. 8. AS 42.05 is amended by adding a new section to read:

Sec. 42.05.133. BUDGETS. The commission shall submit a budget of its anticipated needs for each fiscal year to the governor and to the legislature under the Executive Budget Act (AS 37.07).

* Sec. 9. AS 42.06.020 is amended to read:

Sec. 42.06.020. ALASKA PIPELINE COMMISSION CREATED. There is created [WITHIN THE DEPARTMENT OF COMMERCE] the Alaska Pipeline Commission, to regulate pipeline facilities and pipeline carriers, to regulate the access of information concerning pipeline facilities and carriers to this state, and to represent the interests of the state in any proceedings relating to them as provided for in this chapter. The commission is a quasi-judicial regulatory agency within the meaning of art. III, secs. 22 and 26, of the Constitution of the State of Alaska. The commission may request, and the Departments of Administration and Commerce and Economic Development shall provide, administrative support services. However, the commission is not a division in either department, and its members, executive director and employees are not subject to the direction of the commissioner of either department.

* Sec. 10. AS 42.06.030(b) is amended to read:

(b) The commission members [GOVERNOR] shall elect [DESIGNATE] one member of the commission as chairman of the commission. This member shall serve as chairman for a term of two years, and may not be re-elected [APPOINTED] for a successive term [TERMS].

* Sec. 11. AS 42.06.050 is amended to read:

Sec. 42.06.050. REMOVAL OF COMMISSIONERS. The governor may remove a commissioner from office for cause, including but not limited to incompetence, neglect of duty or misconduct in office, by and with the consent of a majority of the members of the legislature in joint session. Alternatively, the legislature, by a concurrent resolution adopted by a roll call vote of a majority of the members in each house, may remove a commissioner from office for cause as prescribed in this section, subject to the approval of the governor. However, if the governor disapproves the resolution, that veto is not subject to a vote by the

legislature to override it.

* Sec. 12. AS 42.06.110 is amended to read:

Sec. 42.06.110. LEGAL COUNSEL. (a) The attorney general is legal counsel for the commission. He shall assign an assistant attorney general to the commission on a full-time basis. He shall advise and assist the commission in legal matters arising in the discharge of its duties and represent the commission in actions to which it is a party whether in state or federal courts. He shall also represent the commission in proceedings before federal regulatory agencies if so requested by the commission. If, in the opinion of the commission, the public interest is not adequately represented by counsel in a proceeding, the attorney general or his designated assistant attorney general, upon request of the commission, shall represent the public interest.

(b) If the attorney general is unable to assign an assistant attorney general to the commission on a full-time basis, the [THE] commission may employ [TEMPORARY] legal counsel to advise and assist the commission in legal matters arising in the discharge of its duties and to represent the commission in actions or proceedings to which it is a party, in which the state has an interest, or in which there is a public interest [FROM TIME TO TIME IN MATTERS IN WHICH THE COMMISSION IS INVOLVED].

* Sec. 13. AS 42.06.110 is amended by adding new subsections to read:

(c) Legal counsel employed by the commission under (b) of this section shall be selected by the commission from a list of at least three but not more than five candidates submitted by the attorney general. The commission may request additional candidates for consideration. After appointment, legal counsel is subject to removal by the commission only for cause.

(d) With the approval of the commission, the legal counsel may

employ additional attorneys or other persons needed to carry out his duties.

* Sec. 14. AS 42.06.120(c) is amended to read:

(c) The executive director, his deputy, and all [HIS SECRETARY, ARE IN THE PARTIALLY EXEMPT SERVICE DESCRIBED IN AS 39.25. ALL] other employees of the commission [, OTHER THAN LEGAL COUNSEL,] are in the exempt [CLASSIFIED] service under AS 39.25. The salary of an executive director may not exceed that of a member of the commission.

* Sec. 15. AS 42.06.120 is amended by adding a new subsection to read:

(d) The commission shall, by regulation, establish a personnel management system for its employees.

* Sec. 16. AS 42.06 is amended by adding a new section to read:

Sec. 42.06.135. BUDGETS. The commission shall submit a budget of its anticipated needs for each fiscal year to the governor and to the legislature under the Executive Budget Act (AS 37.07).

* Sec. 17. AS 42.07.011(a) is amended to read:

(a) There is created the Alaska Transportation Commission [WITHIN THE DEPARTMENT OF COMMERCE]. The commission is a quasi-judicial regulatory agency within the meaning of art. III, secs. 22 and 26, of the Constitution of the State of Alaska. The commission may request, and the Departments of Administration and Commerce and Economic Development shall provide, administrative support services. However, the commission is not a division in either department, and its members, executive director and employees are not subject to the direction of the commissioner of either department. The commission consists of three members appointed by the governor and confirmed by the legislature in joint session.

* Sec. 18. AS 42.07.011(b) is amended to read:

(b) The commission members [GOVERNOR] shall elect [DESIGNATE] one member of the commission as chairman of the commission. This member

shall serve as chairman for a term of two years, and [BUT] may not be reelected [APPOINTED] for a successive term [TERMS].

* Sec. 19. AS 42.07.021(d) is amended to read:

(d) The governor may remove a commissioner from office for cause, including but not limited to incompetence, neglect of duty or misconduct in office, by and with the consent of a majority of the members of the legislature in joint session. Alternatively, the legislature, by a concurrent resolution adopted by a roll call vote of a majority of the members in each house, may remove a commissioner from office for cause as prescribed in this section, subject to the approval of the governor. However, if the governor disapproves the resolution, that veto is not subject to a vote by the legislature to override it. [A COMMISSIONER, TO BE REMOVED FOR CAUSE, SHALL BE GIVEN A COPY OF THE CHARGES AGAINST HIM AND AFFORDED AN OPPORTUNITY TO BE PUBLICLY HEARD IN PERSON OR BY COUNSEL IN HIS OWN DEFENSE UPON NOT LESS THAN 10 DAYS NOTICE. IF A COMMISSIONER IS REMOVED FOR CAUSE, THE GOVERNOR SHALL FILE WITH THE LIEUTENANT GOVERNOR A COMPLETE STATEMENT OF ALL CHARGES MADE AGAINST THE COMMISSIONER AND HIS FINDING BASED ON THE CHARGES, TOGETHER WITH A COMPLETE RECORD OF THE PROCEEDINGS.]

* Sec. 20. AS 42.07.091 is amended to read:

Sec. 42.07.091. LEGAL COUNSEL. (a) The attorney general is the legal counsel for the commission. He shall assign an assistant attorney general to the commission on a full-time basis. He shall advise and assist the commission in legal matters arising in the discharge of its duties and represent the commission in actions [SUITS] to which it is a party whether in state or federal courts. He shall also represent the commission in proceedings before federal regulatory agencies if so requested by the commission. If, in the opinion of the commission, the public interest is not adequately represented by counsel in a proceeding,

the [THE] attorney general or his designated assistant attorney general, upon request of the commission, shall [MAY] represent the public interest [IN ANY PROCEEDING BEFORE THE COMMISSION].

(b) If the attorney general is unable to assign an assistant attorney general to the commission on a full-time basis, the [THE] commission may employ [TEMPORARY] legal counsel to advise and assist the commission in legal matters arising in the discharge of its duties and to represent the commission in actions or proceedings to which it is a party, in which the state has an interest, or in which there is a public interest [IN PROCEEDINGS BEFORE THE COMMISSION IN WHICH THE ATTORNEY GENERAL IS REPRESENTING THE PUBLIC INTEREST OR A PARTY BEFORE THE COMMISSION].

* Sec. 21. AS 42.07.091 is amended by adding new subsections to read:

(c) Legal counsel employed by the commission under (b) of this section shall be selected by the commission from a list of at least three but not more than five candidates submitted by the attorney general. The commission may request additional candidates for consideration. After appointment, legal counsel is subject to removal by the commission only for cause.

(d) With the approval of the commission, the legal counsel may employ additional attorneys or other persons needed to carry out his duties.

* Sec. 22. AS 42.07.101(a) is amended to read:

(a) The commission may employ an executive director, engineers, hearing officers, experts, clerks, accountants, [AND OTHER] agents, [AND] assistants and other employees it considers necessary. Employees and agents of the commission [, OTHER THAN LEGAL COUNSEL,] are in the exempt [CLASSIFIED] service under AS 39.25. The executive director may not be one of the commission members. The salary of an executive director may

not exceed that of a member of the commission.

* Sec. 23. AS 42.07.101 is amended by adding a new subsection to read:

(c) The commission shall, by regulation, establish a personnel management system for its employees.

* Sec. 24. AS 42.07 is amended by adding a new section to read:

Sec. 42.07.106. BUDGETS. The commission shall submit a budget of its anticipated needs for each fiscal year to the governor and to the legislature under the Executive Budget Act (AS 37.07).

* Sec. 25. AS 39.25.110(13) is amended to read:

(13) commissioners and employees of the Alaska Public Utilities Commission, Alaska Pipeline Commission, and Alaska Transportation Commission;

* Sec. 26. This Act takes effect immediately in accordance with AS 01.10.070(c).

HB
856

ARMED GUARDS
RADIO PATROLS

American Guard & Alert, Inc.

N. B. Newbury
PRESIDENT

P.O. BOX 4-683
ANCHORAGE, ALASKA 99509
PHONE 907-272-8884

March 17, 1976

To Judiciary Committee members.

From N.B. Newbury, President American Guard and Alert, Inc.

RE: HB 856 Security Guards

I am in basic agreement with the aforementioned bill, however I feel the following sections should be modified as follows:

Sec. 18.65.410 A $100.00 non-refundable application fee for each applicant is exhorbitant. The City of Anchorage license fee is $20.00. The highest fee we know if is $45.00 in Memphis Tenn. I recommend a $100.00 fee for company applications and $25.00 fee for individuals.

Sec. 18.65.420 Allow companies to furnish proof of bonding and insurance for their individual employees. It would probably be impossible for individuals to get the coverage required..

Sec. 18.65.460 Add to existing material:

"unless those employees are hired specifically to perform security functions." Example--Penny's Sears, Wards, etc., have an actual security staff that I feel should come under the same licensing requirements as private companies.

Sec. 18.65.490 Definitions:

(2) In this section a person in the business of furnishing himself for hire should be included also.

02-001B

STATE
of ALASKA

MEMORANDUM

Like with Fuel bill
We Introduced

TO: The Honorable Jay S. Hammond
Governor
State of Alaska

DATE : March 3, 1976

FROM: Richard L. Burton
Commissioner
Department of Public Safety

SUBJECT: AS 23.10.025 - Use of Armed Guards
BINKS SECURITY SYSTEM

The above firm has been using the permit of CAPITAL CITY SECURITY since acquisition of that firm in October 1975. Since that time, however, we have been attempting to obtain the information necessary in making our recommendation to you on the issuance of the permit for BINKS.

Applications have been received from the owner and eight (3) guards. Five of the guards have since resigned and one additional guard has not submitted an application.

At the present time the firm is reportedly made up of the owner and four guards. The owner and one guard falsified their applications in that they denied ever having been arrested or convicted of a crime. Both have been arrested several times with at least two convictions each.

It is our recommendation that the present interim permit (CAPITAL CITY SECURITY) be revoked, and that the BINKS SECURITY SYSTEM request for a permit be denied.

This action will not affect the firm's ability to continue in business. It will, however, disarm the owner and his employees, which in our opinion will be for the good of the community.

Addendum - We have just been verbally notified of the sale of this business to two of the employees. Our recommendation remains the same. In the event the new owners wish a permit, they are aware of the necessary procedures.

STATE OF ALASKA

Inter-Department Route Slip

TO:
MAIL STATION NUMBER 3100

DEPARTMENT Legislature,

ATTENTION House Judiciary Com Ch. / Gardiner

☐ Approval	☐ Note & Return
☐ Signature	☐ Initial & Return
☐ Comment	☐ Return As Requested
☐ Contact Me	☐ Return For Approval
☐ Prepare Reply	☑ Necessary Action
☐ For Your File	☐ Your Information

Remarks:

FROM:
MAIL STATION NUMBER 1200

DEPARTMENT Public Safety

BY T.E. Hermann DATE 3-25

02-002 (REV.10/73)

THE LEGISLATURE OF THE STATE OF ALASKA
FISCAL NOTE
Second Session - Ninth Legislature

I. REQUEST
Bill No. HB 856
Title: Licensing of security guards
Requested by: _____ Date: 3/24/76
Return Date Requested: As soon as possible
Agency: Public Safety Program: Building Security

II. FISCAL DETAIL
Budget Request Unit(s) Affected: _____

A. EXPENDITURES: (Thousands of dollars)

	OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100	PERSONAL SERVICES		9.7	10.0	12.0		
200	TRAVEL		1.0	1.0	1.2		
300	CONTRACTUAL		1.5	2.0	2.5		
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL	ø	12.2	13.0	15.7		

B. FUNDING: (Thousands of dollars)

GENERAL FUND		(27.8)	11.0	4.4		
FEDERAL FUNDS						
OTHER Program Revision		40.0	2.0	11.3		

C. POSITIONS:

PERMANENT/TEMPORARY	/	1 /	1 /	1 /	/	/
MAN MONTHS (P./T.)	/	6 /	6 /	6 /	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

An initial estimate of 400 applicants is projected. The program receipts would be $40,000. For a 5% increase in 1978, $2,000. in program receipts is estimated. @ $25,00 per renewal, program receipts in FY 79 will be $10,000. in renewal fees and $1,300. in new application fees (3%).

Personal services cost is not expected to go up substantially. Issuance as well as renewal require record check, public hearing and fingerprinting. Six month's clerk typist (PPT) position and less than 100 hours of overtime for Fingerprint Technician is anticipated.

IV. ATTACHMENTS

V. DATE: 3/24/76 PREPARED BY: Trygve R. Hermann, Director
Division of Administrative Services
Department of Public Safety

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

H/S 50

Mr Personnel

Introduced: 3/8/76
Referred: Judiciary

IN THE HOUSE BY THE JUDICIARY COMMITTEE

HOUSE BILL NO. 856

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the licensing of security guards; and providing for an effective date."

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

* Section 1. AS 18.65 is amended by adding new sections to read:

ARTICLE 4. SECURITY GUARDS.

Sec. 18.65.400. LICENSE AS SECURITY GUARD. No person may be employed as a security guard until he has obtained a license from the commissioner of public safety under secs. 400--490 of this chapter.

Sec. 18.65.410. APPLICATIONS. Application for a license as a security guard must be on forms provided by the commissioner. The application must require the furnishing of information reasonably required by the commissioner to carry out the provisions of secs. 400--490 of this chapter, including classifiable fingerprints to enable the search of criminal indices for evidence of a prior criminal record. The application must be accompanied by a non-refundable application fee of $100. 200 G - 25 guards

Sec. 18.65.420. BONDING AND INSURANCE. As a condition to issuance of a license, the applicant or his employer must furnish a bond or proof of a policy of insurance to protect the State of Alaska and its residents from damages arising out of the acts of the licensee.

Sec. 18.65.430. DURATION OF LICENSE. A security guard license issued under secs. 400--490 of this chapter is valid for a period of two years, and may be renewed for additional two-year terms. A renewal fee of $25 must be paid for each renewal.

Sec. 18.65.440. REVOCATION OF LICENSE. A security guard license issued under secs. 400--490 of this chapter is subject to revocation in accordance with the Administrative Procedure Act (AS 44.62) for the following reasons:

(1) false statements in an application issued under secs. 400--490 of this chapter;

(2) violation of a provision of secs. 400--490 of this chapter or a regulation adopted under sec. 450 of this chapter;

(3) conviction of a felony or a crime involving moral turpitude while licensed;

(4) ~~impersonation of~~ knowingly impersonate intentional a law enforcement official; or

(5) knowingly continuing the employment of an individual as a security guard who has been convicted of a felony or a crime involving moral turpitude, or who has impersonated a law enforcement officer while employed by the licensee.

Sec. 18.65.450. REGULATIONS. The commissioner shall adopt regulations necessary to implement secs. 400--490 of this chapter, including provisions specifying the amount of bond or insurance required, and the types of uniforms, badges and insignia that may be used.

Sec. 18.65.460. EXCEPTIONS TO LICENSURE. An employer is not required to seek licensure for his employees who provide unarmed plant security on that employer's premises.

Sec. 18.65.470. FIREARMS TRAINING. Security guards licensed under secs. 400--490 of this chapter may not be armed with a firearm for the purpose of protecting property until they have completed firearms training acceptable to the commissioner.

Sec. 18.65.480. PENALTY. A violation of a provision of secs. 400--490 of this chapter or a regulation adopted under sec. 450 of this chapter is a misdemeanor and, upon conviction, is punishable by

imprisonment for not more than 60 days or by a fine of not more than $1,000, or by both.

Sec. 18.65.490. DEFINITIONS. As used in secs. 400--490 of this chapter,

(1) "commissioner" means the commissioner of public safety;

(2) "security guard" means a person in the business of furnishing for hire private watchmen, patrol service, or other services designed to prevent the theft, misappropriation, or concealment of goods, money or valuable documents.

ARTICLE 5. BODYGUARDS.

Sec. 18.65.500. USE OF ARMED BODYGUARDS. A person who, in this state, hires another person to guard a person in this state with arms or deadly weapons, or a person who comes into this state armed with deadly weapons for the purpose of guarding a person, without a written permit from the commissioner of public safety, is guilty of a misdemeanor, and upon conviction is punishable by imprisonment for not more than 60 days or by a fine of not more than $1,000, or by both.

* Sec. 2. AS 44.62.330(a)(23) is amended to read:

(23) Department of Public Safety, as to suspension or revocation of a security guard's license under AS 18.65.400--18.65.490, and as to suspension, revocation, cancellation or limitation of driver's licenses, except as to revocations and suspensions under AS 28.35.031--28.35.034, and except as to suspension, revocations, limitations, or denials under AS 28.15.282--28.15.288

* Sec. 3. AS 23.10.025 is repealed. To old armed guard statute Governor

* Sec. 4. This Act takes effect January 1, 1977.

HB
857

"An Act relating to the election campaign disclosure law; and providing for an effective date."

COMMITTEE REPORT

3/23/76

HOUSE

Mr. Speaker: Date Mar 19 1976

The Committee on JUDICIARY has had HB 857 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

#1

Original sponsor: State Affairs Committee

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 857 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the election campaign disclosure law; and providing for an effective date."

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

* Section 1. AS 15.13.020(j) is amended to read:

(j) The commission shall establish an office [, WHICH MAY BE CALLED A REGIONAL OFFICE,] in each senate district in the state to keep on file for public inspection copies of all reports required to be filed with the commission by candidates for statewide office and by candidates for legislative office in that district; however, where one municipality contains more than one election district, only one commission office shall be established in that municipality. Each [THE REGIONAL] office shall make all forms and pertinent material available to candidates. Reports [ALL REPORTS] shall be filed by candidates, groups and individuals directly with the commission's central or district offices [OFFICE]. If the candidate files required reports with the commission's central office, the [THE] commission shall ensure [INSURE] that copies of all reports by statewide [AND LEGISLATIVE] candidates, by legislative candidates in each senate district, and by judges seeking electoral confirmation [IN EACH SENATE DISTRICT] are forwarded promptly to the [THAT DISTRICT OR REGIONAL] office located in the district in which the candidate or judge is seeking office.

* Sec. 2. AS 15.13.040(d) and (f) are amended to read:

(d) Every individual or [,] person [OR GROUP] making a contribution or expenditure shall make a full report, upon a form prescribed by

the commission, of the following contributions or expenditures:

(1) any contribution of cash, goods or services valued at more than $250 [$100] a year to any group or candidate; or

(2) any expenditure whatsoever for advertising in newspapers, on radio or on television; or, for the publication, distribution or circulation of brochures, flyers, or other campaign material for any candidate or ballot proposition or question.

(f) During each year in which an election occurs, all [BUSINESSES,] persons who [, OR GROUPS WHICH] furnish any of the following services, facilities, or supplies to a candidate or group shall maintain a record of each transaction: newspapers, radio, television, advertising, advertising agency services, accounting, billboards, printing, secretarial, public opinion polls, or research and professional campaign consultation or management, media production or preparation, or computer services. The records shall be maintained on the forms provided and in the manner required by the commission. The supplier shall file a report of the complete record of each transaction with all candidates or groups to whom he provides services, facilities or supplies in excess of $250 for each candidate or group in the aggregate in accordance with sec. 110 of this chapter. [ALL RECORDS SHALL BE AVAILABLE FOR PUBLIC INSPECTION.]

* Sec. 3. AS 15.13.050 is amended by adding a new subsection to read:

(b) A group that makes expenditures or receives contributions with the authorization or consent, express or implied, or under the control, direct or indirect, of a candidate shall be considered to be controlled by that candidate. A group whose major purpose is to further the nomination, election, or candidacy of only one person, or intends to expend more than 50 per cent of its money on a single candidate, shall be considered to be controlled by that candidate and its actions done with his

knowledge and consent unless, within 10 days from the date the candidate learns of the existence of the group he files with the commission, on a form provided by the commission, an affidavit that the group is operating without his control. A group organized for more than one year preceding an election and endorsing candidates for more than one office or more than one political party is presumed not to be controlled by a candidate.

* Sec. 4. AS 15.13.060(c) and (d) are amended to read:

(c) Each candidate shall file the name and address of the campaign treasurer with the commission no later than seven days after the date of filing his declaration of candidacy or his nominating petition. [THE NAME OF THE CANDIDATE MAY BE PLACED ON THE BALLOT BY THE LIEUTENANT GOVERNOR OR MUNICIPAL CLERK ONLY IF THE CANDIDATE HAS COMPLIED WITH THIS SUBSECTION.]

(d) In the case of the death, resignation or removal of a campaign treasurer, the candidate shall appoint a successor as soon as practicable and file his name and address with the commission within 48 hours of the appointment. [THE CANDIDATE IS DISQUALIFIED WHEN HE HAS BEEN FOUND TO HAVE BEEN IN WILFUL VIOLATION OF THIS SUBSECTION.]

* Sec. 5. AS 15.13.070(a) is amended to read:

(a) No person or group, including but not limited to all political committees, businesses, corporations, and labor unions, may contribute [TO OR EXPEND] more than $1,000 a year <u>to a candidate</u> [ON BEHALF OF OR IN OPPOSITION TO THE COMPETING CANDIDATES] for each elective office. Political parties and their subdivisions are not subject to the limitation prescribed in this subsection, but they are subject to the reporting requirements prescribed by secs. 40(b) and 110 of this chapter. Nothing in this chapter prohibits

(1) a candidate from contributing more than $1,000 of his own

money to his own campaign; or

(2) individuals or groups, including but not limited to all political committees, businesses, corporations, and labor unions, from contributing to or expending on behalf of a ballot proposition or question more than $1,000 a year; however, these contributions and expenditures shall be reported in accordance with secs. 40 and 110 of this chapter.

* Sec. 6. AS 15.13.090 is amended to read:

Sec. 15.13.090. IDENTIFICATION OF COMMUNICATION. All advertisements, billboards, handbills, paid-for television and radio announcements and other communications intended to influence the election of a candidate or outcome of a ballot proposition or question shall be clearly identified by the words "paid for by" followed by the name and address of the candidate, group or individual paying for the advertising. [IN ADDITION, CANDIDATES AND GROUPS MUST IDENTIFY THE NAME OF THEIR CAMPAIGN TREASURER.]

* Sec. 7. AS 15.13.100 is amended to read:

Sec. 15.13.100. EXPENDITURES BEFORE FILING. Political [NO POLITICAL] campaign expenditure may be made or obligation for that expenditure incurred by a person in an election or by a person or group with his knowledge and on his behalf before the date upon which he or she files for nomination for the office which the person seeks [, EXCEPT FOR PERSONAL TRAVEL EXPENSES OR FOR OPINION SURVEYS OR POLLS]. However, these [THESE] expenditures [SHALL BE CHARGED AGAINST THE SPENDING LIMITATION THAT APPLIES TO THE OFFICE FOR WHICH HE SUBSEQUENTLY FILES, AND] shall be included in the first report required under this chapter [AFTER FILING FOR OFFICE].

* Sec. 8. AS 15.13.110(b) and (c) are amended to read:

(b) Each contribution or expenditure which exceeds $250 and which

is made within 10 days [ONE WEEK] of the election shall be reported to the commission by date, amount, and contributor or recipient within 24 hours of receipt or expenditure by the candidate or campaign treasurer.

(c) [THE REPORTS OF CANDIDATES SHALL BE FILED WITH THE COMMISSION'S CENTRAL OFFICE.] All statements, records and reports required by this chapter are public records and shall be kept open for [TO] public inspection. Within 30 days after each election, the commission shall prepare a summary of reports [EACH REPORT] which shall be made available to the public at cost upon request. Each summary shall use uniform categories of reporting.

* Sec. 9. AS 15.13 is amended by adding a new section to read:

Sec. 15.13.121. CRIMINAL AND CIVIL PENALTIES; FORFEITURE OF OFFICE; LIMITATIONS ON ACTIONS. (a) A person who violates a provision of this chapter is guilty of a misdemeanor and upon conviction is punishable by imprisonment for not more than one year or by a fine of not more than $5,000. A violation includes but is not limited to any of the following acts or omissions:

(1) failing to make a statement or report required to be made, or at the time it is required to be made, under this chapter;

(2) knowingly making a false statement or false report under this chapter;

(3) giving or furnishing money to another person or group for the purpose of making a contribution or expenditure anonymously, in a fictitious name, or in the name of another, or contributing in violation of sec. 70(d) of this chapter;

(4) making a communication to support or defeat a candidate without identification of sponsorship, in violation of sec. 90 of this chapter;

(5) knowingly accepting a contribution in violation of sec.

70 of this chapter;

(6) providing false or misleading information in the course of an investigation.

(b) In addition to the penalties provided for in (a) of this section, a person who violates secs. 60 and 110 of this chapter is liable, in a civil action, to the state for a sum to be assessed by the court of not more than $10,000 for each day on which the violation occurs and which shall reflect, where applicable:

(1) reasonable compensation in the nature of liquidated damages according to the benefit received by the candidate in not disclosing his campaign expenses; or

(2) reasonable costs incurred by the state in detection, investigation, and attempted correction of the violation.

(c) Action under (b) of this section may not be used for punitive purposes and sums assessed by the court must be compensatory or remedial in nature.

(d) The nomination for and election to an office of a candidate who himself violates or whose campaign treasurer or deputy campaign treasurer violates any of the following described provisions is voidable if it is determined in an action filed under (g) of this section that a candidate knowingly

(1) made a false statement on any report required of him under this chapter;

(2) accepted a contribution in violation of secs. 70(b) or 70(d) of this chapter;

(3) made a campaign expenditure in violation of secs. 70(c), 70(h), or 100 of this chapter.

(e) When a violation of (f) of this section is charged, the case shall be promptly tried and the case shall be accorded a preferred

status by the courts to ensure a speedy disposition on the matter.

(f) The commission by certified mail shall promptly notify all persons who are delinquent in filing reports and statements, including contributors who failed to file a statement in accordance with sec. 40 of this chapter, and shall make available a list of delinquents for public inspection. The commission shall also report to the attorney general the names of all candidates in an election whose campaign treasurers have failed to file the reports required by this chapter.

(g) A candidate who, or whose campaign treasurer, has failed to file reports required under this chapter may not file a declaration of candidacy at a subsequent election for a public office subject to this chapter until all delinquent reports required under this chapter have been filed with the commission. The commission shall report to the lieutenant governor and to municipal clerks all candidates who, or whose campaign treasurers, have failed to file the required reports.

(h) A person who believes a violation of this chapter has occurred may file a complaint with the commission. The commission shall expeditiously make an investigation of the complaint. When the commission has reasonable cause to believe that a person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of a provision of this chapter, or a regulation or order issued under it, it shall promptly report the information to the attorney general for appropriate action. The commission shall promptly inform the person who filed the complaint of its disposition of the matter.

(i) Prosecution for violation of a provision of this chapter may not be commenced after four years have elapsed from the date of the alleged violation.

* Sec. 10. AS 15.13.130(2) is amended to read:

(2) "contribution" means purchase, payment, promise or obligation to pay, loan or loan guarantee, deposit or gift of money, goods or services for which charge is ordinarily made and which is made for the purpose of influencing the nomination or election of a candidate, and in sec. 10(b) of this chapter for the purpose of influencing a ballot proposition or question, including the payment by a person other than a candidate or political party of [, OR] compensation for [OF] the personal services of another person which are rendered to the candidate or political party; however, "contribution" does not include

(A) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or ballot proposition or question, but it does include professional services volunteered by individuals for which they ordinarily would be paid a fee or wage;

(B) services provided by an accountant or other person to prepare reports and statements required by this chapter;

(C) ordinary hospitality in a home;

* Sec. 11. AS 15.13.130(3) is amended to read:

(3) "group" means every state and regional executive committee of a political party and, in addition, means any combination of two or more persons or individuals acting jointly who take action the major purpose of which is to influence the outcome of an election; [A GROUP THAT MAKES EXPENDITURES OR RECEIVES CONTRIBUTIONS WITH THE AUTHORIZATION OR CONSENT, EXPRESS OR IMPLIED, OR UNDER THE CONTROL, DIRECT OR INDIRECT OF A CANDIDATE SHALL BE CONSIDERED TO BE CONTROLLED BY THAT CANDIDATE; A GROUP WHOSE MAJOR PURPOSE IS TO FURTHER THE NOMINATION, ELECTION, OR CANDIDACY OF ONLY ONE PERSON, OR INTENDS TO EXPEND MORE THAN 50 PER CENT OF ITS MONEY ON A SINGLE CANDIDATE, SHALL BE CONSIDERED TO BE CONTROLLED BY THAT CANDIDATE AND ITS ACTIONS DONE WITH HIS KNOWLEDGE AND CONSENT

UNLESS, WITHIN 10 DAYS FROM THE DATE THE CANDIDATE LEARNS OF THE EXISTENCE OF THE GROUP HE FILES WITH THE COMMISSION, ON A FORM PROVIDED BY THE COMMISSION, AN AFFIDAVIT THAT THE GROUP IS OPERATING WITHOUT HIS CONTROL; A GROUP ORGANIZED FOR MORE THAN ONE YEAR PRECEDING AN ELECTION AND ENDORSING CANDIDATES FOR MORE THAN ONE OFFICE OR MORE THAN ONE POLITICAL PARTY IS PRESUMED NOT TO BE CONTROLLED BY A CANDIDATE; HOWEVER, A GROUP THAT CONTRIBUTES MORE THAN 50 PER CENT OF ITS MONEY TO OR ON BEHALF OF ONE CANDIDATE SHALL BE CONSIDERED TO SUPPORT ONLY ONE CANDIDATE FOR PURPOSES OF SEC. 70 OF THIS CHAPTER, WHETHER OR NOT CONTROL OF THE GROUP HAS BEEN DISCLAIMED BY THE CANDIDATE;]

* Sec. 12. AS 15.13.070(f) and (g), 15.13.080, and 15.13.120 are repealed.

* Sec. 13. This Act takes effect immediately in accordance with AS 01.10.070(c).

#2

Original sponsor: State Affairs Committee

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 857 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the election campaign disclosure law; and providing for an effective date."

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

* Section 1. AS 15.13.020(j) is amended to read:

(j) The commission shall establish an office [, WHICH MAY BE CALLED A REGIONAL OFFICE,] in each senate district in the state to keep on file for public inspection copies of all reports required to be filed with the commission by candidates for statewide office and by candidates for legislative office in that district; however, where one municipality contains more than one election district, only one commission office shall be established in that municipality. Each [THE REGIONAL] office shall make all forms and pertinent material available to candidates. Reports [ALL REPORTS] shall be filed by candidates, groups and individuals directly with the commission's central or district offices [OFFICE]. If the candidate files required reports with the commission's central office, the [THE] commission shall ensure [INSURE] that copies of all reports by statewide [AND LEGISLATIVE] candidates, by legislative candidates in each senate district, and by judges seeking electoral confirmation [IN EACH SENATE DISTRICT] are forwarded promptly to the [THAT DISTRICT OR REGIONAL] office located in the district in which the candidate or judge is seeking office.

* Sec. 2. AS 15.13.040(d) and (f) are amended to read:

(d) Every individual or [,] person [OR GROUP] making a contribution or expenditure shall make a full report, upon a form prescribed by

the commission, of the following contributions or expenditures:

(1) any contribution of cash, goods or services valued at more than $250 [$100] a year to any group or candidate; or

(2) any expenditure whatsoever for advertising in newspapers, on radio or on television; or, for the publication, distribution or circulation of brochures, flyers, or other campaign material for any candidate or ballot proposition or question.

(f) During each year in which an election occurs, all [BUSINESSES, persons who [, OR GROUPS WHICH] furnish any of the following services, facilities, or supplies to a candidate or group shall maintain a record of each transaction: newspapers, radio, television, advertising, advertising agency services, accounting, billboards, printing, secretarial, public opinion polls, or research and professional campaign consultation or management, media production or preparation, or computer services. The records shall be maintained on the forms provided and in the manner required by the commission. The supplier shall file a report of the complete record of each transaction with all candidates or groups to whom he provides services, facilities or supplies in excess of $250 for each candidate or group in the aggregate in accordance with sec. 110 of this chapter. [ALL RECORDS SHALL BE AVAILABLE FOR PUBLIC INSPECTION.]

* Sec. 3. AS 15.13.050 is amended by adding a new subsection to read:

(b) A group that makes expenditures or receives contributions with the authorization or consent, express or implied, or under the control, direct or indirect, of a candidate shall be considered to be controlled by that candidate. A group whose major purpose is to further the nomination, election, or candidacy of only one person, or intends to expend more than 50 per cent of its money on a single candidate, shall be considered to be controlled by that candidate and its actions done with his

knowledge and consent unless, within 10 days from the date the candidate learns of the existence of the group he files with the commission, on a form provided by the commission, an affidavit that the group is operating without his control. A group organized for more than one year preceding an election and endorsing candidates for more than one office or more than one political party is presumed not to be controlled by a candidate.

* Sec. 4. AS 15.13.060(c) and (d) are amended to read:

(c) Each candidate shall file the name and address of the campaign treasurer with the commission no later than seven days after the date of filing his declaration of candidacy or his nominating petition. [THE NAME OF THE CANDIDATE MAY BE PLACED ON THE BALLOT BY THE LIEUTENANT GOVERNOR OR MUNICIPAL CLERK ONLY IF THE CANDIDATE HAS COMPLIED WITH THIS SUBSECTION.]

(d) In the case of the death, resignation or removal of a campaign treasurer, the candidate shall appoint a successor as soon as practicable and file his name and address with the commission within 48 hours of the appointment. [THE CANDIDATE IS DISQUALIFIED WHEN HE HAS BEEN FOUND TO HAVE BEEN IN WILFUL VIOLATION OF THIS SUBSECTION.]

* Sec. 5. AS 15.13.070(a) is amended to read:

(a) No person or group, including but not limited to all political committees, businesses, corporations, and labor unions, may contribute [TO OR EXPEND] more than $1,000 a year <u>to a candidate</u> [ON BEHALF OF OR IN OPPOSITION TO THE COMPETING CANDIDATES] for each elective office. Political parties and their subdivisions are not subject to the limitation prescribed in this subsection, but they are subject to the reporting requirements prescribed by secs. 40(b) and 110 of this chapter. Nothing in this chapter prohibits

(1) a candidate from contributing more than $1,000 of his own

money to his own campaign; or

(2) individuals or groups, including but not limited to all political committees, businesses, corporations, and labor unions, from contributing to or expending on behalf of a ballot proposition or question more than $1,000 a year; however, these contributions and expenditures shall be reported in accordance with secs. 40 and 110 of this chapter.

* Sec. 6. AS 15.13.090 is amended to read:

Sec. 15.13.090. IDENTIFICATION OF COMMUNICATION. All advertisements, billboards, handbills, paid-for television and radio announcements and other communications intended to influence the election of a candidate or outcome of a ballot proposition or question shall be clearly identified by the words "paid for by" followed by the name and address of the candidate, group or individual paying for the advertising. [IN ADDITION, CANDIDATES AND GROUPS MUST IDENTIFY THE NAME OF THEIR CAMPAIGN TREASURER.]

* Sec. 7. AS 15.13.100 is amended to read:

Sec. 15.13.100. EXPENDITURES and contributions BEFORE FILING. Political [NO POLITICAL] campaign expenditures [EXPENDITURE MAY BE MADE] or obligations for those expenditures may be made or incurred by a person in an election or by a person or group with his knowledge and on his behalf before the date upon which he or she files for nomination for the office which the person seeks [, EXCEPT FOR PERSONAL TRAVEL EXPENSES OR FOR OPINION SURVEYS OR POLLS]. However, these [THESE] expenditures [SHALL BE CHARGED AGAINST THE SPENDING LIMITATION THAT APPLIES TO THE OFFICE FOR WHICH HE SUBSEQUENTLY FILES, AND] shall be included in the first report required under this chapter [AFTER FILING FOR OFFICE].

* Sec. 8. AS 15.13.110(b) and (c) are amended to read:

(b) Each contribution or expenditure which exceeds $250 and which

is made within 10 days [ONE WEEK] of the election shall be reported to the commission by date, amount, and contributor or recipient within 24 hours of receipt or expenditure by the candidate or campaign treasurer.

(c) [THE REPORTS OF CANDIDATES SHALL BE FILED WITH THE COMMISSION'S CENTRAL OFFICE.] All statements, records and reports required by this chapter are public records and shall be kept open for [TO] public inspection. Within 30 days after each election, the commission shall prepare a summary of reports [EACH REPORT] which shall be made available to the public at cost upon request. Each summary shall use uniform categories of reporting.

* Sec. 9. AS 15.13 is amended by adding a new section to read:

Sec. 15.13.121. CRIMINAL AND CIVIL PENALTIES; LIMITATIONS ON ACTIONS. (a) A person who violates a provision of this chapter is guilty of a misdemeanor and upon conviction is punishable by imprisonment for not more than one year or by a fine of not more than $5,000. A violation includes but is not limited to any of the following acts or omissions:

(1) knowingly failing to make a statement or report required to be made, or at the time it is required to be made, under this chapter;

(2) knowingly making a false statement or false report under this chapter;

(3) giving or furnishing money to another person or group for the purpose of making a contribution or expenditure anonymously, in a fictitious name, or in the name of another, or contributing in violation of sec. 70(d) of this chapter;

(4) making a communication to support or defeat a candidate without identification of sponsorship, in violation of sec. 90 of this chapter;

(5) knowingly accepting a contribution in violation of sec. 70 of this chapter;

(6) providing false or misleading information in the course of an investigation.

(b) In addition to the penalties provided for in (a) of this section, a person who violates secs. 60 and 110 of this chapter is liable, in a civil action, to the state for a sum to be assessed by the court of not more than $10,000 for each day on which the violation occurs and which shall reflect, where applicable:

(1) reasonable compensation in the nature of liquidated damages according to the benefit received by the candidate in not disclosing his campaign expenses; or

(2) reasonable costs incurred by the state in detection, investigation, and attempted correction of the violation.

(c) Action under (b) of this section may not be used for punitive purposes and sums assessed by the court must be compensatory or remedial in nature.

(d) The nomination for and election to an office of a candidate who himself violates or whose campaign treasurer or deputy campaign treasurer violates any of the following described provisions is voidable if it is determined in an action filed under (e) of this section that a candidate knowingly

(1) made a false statement on any report required of him under this chapter;

(2) accepted a contribution in violation of secs. 70(b) or 70(d) of this chapter;

(3) made a campaign expenditure in violation of secs. 70(c), 70(h), or 100 of this chapter.

(e) When a violation of (d) of this section is charged, the case

shall be promptly tried and the case shall be accorded a preferred status by the courts to ensure a speedy disposition on the matter.

(f) If in a proceeding under (e) of this section, a candidate is convicted of a violation of (d) of this section and the action involved a successful candidate at a general election for membership in the state legislature or, at a municipal election, for a seat on a city council or borough assembly, or to the office of borough or city mayor, [the court may not void the candidates election to office, but only] may recommend that the member-elect of the legislature, city or borough assembly be expelled, or that the mayor be removed from office, subject to art. II, sec. 12, Constitution of the State of Alaska, or AS 29.23.060(c), 29.23.130(f), 29.23.210(b) or 29.23.255, as applicable.

(g) The commission by certified mail shall promptly notify all persons who are delinquent in filing reports and statements, including contributors who failed to file a statement in accordance with sec. 40 of this chapter, and shall make available a list of delinquents for public inspection. The commission shall also report to the attorney general the names of all candidates in an election whose campaign treasurers have failed to file the reports required by this chapter.

(h) A candidate who, or whose campaign treasurer, has failed to file reports required under this chapter may not file a declaration of candidacy at a subsequent election for a public office subject to this chapter until all delinquent reports required under this chapter have been filed with the commission. The commission shall report to the lieutenant governor and to municipal clerks all candidates who, or whose campaign treasurers, have failed to file the required reports.

(i) A person who believes a violation of this chapter has occurred may file a complaint with the commission. The commission shall expeditiously make an investigation of the complaint. When the commission has

reasonable cause to believe that a person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of a provision of this chapter, or a regulation or order issued under it, it shall promptly report the information to the attorney general for appropriate action. The commission shall promptly inform the person who filed the complaint of its disposition of the matter.

(j) Prosecution for violation of a provision of this chapter may not be commenced after four years have elapsed from the date of the alleged violation.

* Sec. 10. AS 15.13.130(2) is amended to read:

(2) "contribution" means purchase, payment, promise or obligation to pay, loan or loan guarantee, deposit or gift of money, goods or services for which charge is ordinarily made and which is made for the purpose of influencing the nomination or election of a candidate, and in sec. 10(b) of this chapter for the purpose of influencing a ballot proposition or question, including the payment by a person other than a candidate or political party <u>of</u> [, OR] compensation <u>for</u> [OF] the personal services of another person which are rendered to the candidate or political party; however, "contribution" does not include

(A) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or ballot proposition or question, but it does include professional services volunteered by individuals for which they ordinarily would be paid a fee or wage;

(B) services provided by an accountant or other person to prepare reports and statements required by this chapter;

(C) ordinary hospitality in a home;

* Sec. 11. AS 15.13.130(3) is amended to read:

(3) "group" means every state and regional executive committee of a political party and, in addition, means any combination of two or more persons or individuals acting jointly who take action the major purpose of which is to influence the outcome of an election; [A GROUP THAT MAKES EXPENDITURES OR RECEIVES CONTRIBUTIONS WITH THE AUTHORIZATION OR CONSENT, EXPRESS OR IMPLIED, OR UNDER THE CONTROL, DIRECT OR INDIRECT, OF A CANDIDATE SHALL BE CONSIDERED TO BE CONTROLLED BY THAT CANDIDATE; A GROUP WHOSE MAJOR PURPOSE IS TO FURTHER THE NOMINATION, ELECTION, OR CANDIDACY OF ONLY ONE PERSON, OR INTENDS TO EXPEND MORE THAN 50 PER CENT OF ITS MONEY ON A SINGLE CANDIDATE, SHALL BE CONSIDERED TO BE CONTROLLED BY THAT CANDIDATE AND ITS ACTIONS DONE WITH HIS KNOWLEDGE AND CONSENT UNLESS, WITHIN 10 DAYS FROM THE DATE THE CANDIDATE LEARNS OF THE EXISTENCE OF THE GROUP HE FILES WITH THE COMMISSION, ON A FORM PROVIDED BY THE COMMISSION, AN AFFIDAVIT THAT THE GROUP IS OPERATING WITHOUT HIS CONTROL; A GROUP ORGANIZED FOR MORE THAN ONE YEAR PRECEDING AN ELECTION AND ENDORSING CANDIDATES FOR MORE THAN ONE OFFICE OR MORE THAN ONE POLITICAL PARTY IS PRESUMED NOT TO BE CONTROLLED BY A CANDIDATE; HOWEVER, A GROUP THAT CONTRIBUTES MORE THAN 50 PER CENT OF ITS MONEY TO OR ON BEHALF OF ONE CANDIDATE SHALL BE CONSIDERED TO SUPPORT ONLY ONE CANDIDATE FOR PURPOSES OF SEC. 70 OF THIS CHAPTER, WHETHER OR NOT CONTROL OF THE GROUP HAS BEEN DISCLAIMED BY THE CANDIDATE;]

* Sec. 12. AS 15.13.070(f) and (g), 15.13.080, and 15.13.120 are repealed. Delete limitation on expenditures *

* Sec. 13. AS 29.13.100 is amended by adding a new paragraph to read:

(37) AS 29.23.060(c) (expulsion of borough assemblyman), AS 29.23.130(f) (removal of borough mayor from office), AS 29.23.210(b) (expulsion of city councilman from office), AS 29.23.255 (removal of mayor from office), AS 29.28.050(f) (expulsion, removal from office).

* Sec. 14. AS 29.23.060(c) is amended to read:

(c) The assembly shall determine its own rules and order of business and provide for keeping a journal of its proceedings. The assembly is the judge of the election and qualifications of its members and may expel a member with the concurrence of two-thirds of its members, including but not limited to, a conviction for a violation of AS 15.13.121(d). The assembly shall consider that conviction during its organizational meeting following a municipal election.

* Sec. 15. AS 29.23.130 is amended by adding a new subsection to read:

(f) Whether or not the borough mayor is a member of the assembly, the assembly may remove the mayor from office upon conviction for a violation of AS 15.13.121(d) with the concurrence of two-thirds of its members. The assembly shall consider that conviction during its organizational meeting following a municipal election.

* Sec. 16. AS 29.23.210(b) is amended to read:

(b) The council shall determine its own rules and order of business and provide for keeping a journal of its proceedings. The council is the judge of the election and qualifications of its members and may expel a member with the concurrence of two-thirds of its members, including but not limited to, a conviction for a violation of AS 15.13.121(d). The council shall consider that conviction during its organizational meeting following a municipal election.

* Sec. 17. AS 29.23 is amended by adding a new section to read:

Sec. 29.23.255. REMOVAL FROM OFFICE. Whether or not the mayor is a member of the council, the council may remove the mayor from office upon a conviction for a violation of AS 15.13.121(d) with the concurrence of two-thirds of its members. The council shall consider that conviction during its organizational meeting following a municipal election.

* Sec. 18. AS 29.23.570(5) and (7) are amended to read:

(5) is removed or expelled from office;

(7) is convicted of a felony, [OR] of an offense involving a violation of his oath of office, or the provisions of AS 15.13.121(d).

* Sec. 19. AS 29.28.050 is amended by adding a new subsection to read:

(f) Notwithstanding the provisions of (e) of this section, the expulsion of a member of a borough assembly, under AS 29.23.060(c) or of a member of a city council, under AS 29.23.210(b), or the removal of a borough mayor, under AS 29.23.130(e), or of a city mayor, under AS 29.23.255, is not subject to judicial review.

* Sec. 20. This Act takes effect immediately in accordance with AS 01.10.070(c).

4/1 Milton

Offered: 3/23/76
Referred: Judiciary

Original sponsor: State Affairs Committee

IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE

CS FOR HOUSE BILL NO. 857

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the election campaign disclosure law; and providing for an effective date."

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

* Section 1. AS 15.13.020(j) is amended to read:

(j) The commission shall establish an office [, WHICH MAY BE CALLED A REGIONAL OFFICE,] in each senate district in the state to keep on file for public inspection copies of all reports required to be filed with the commission by candidates for statewide office and by candidates for legislative office in that district; however, where one municipality contains more than one election district, only one commission office shall be established in that municipality. Each [THE REGIONAL] office shall make all forms and pertinent material available to candidates. Reports [ALL REPORTS] shall be filed by candidates, groups and individuals directly with the commission's [CENTRAL] or district offices [OFFICE]. [The commission shall ensure [INSURE] that copies of all reports by statewide [AND LEGISLATIVE] candidates, by legislative candidates in each senate district, and by judges seeking electoral confirmation [IN EACH SENATE DISTRICT] are forwarded promptly to the [THAT DISTRICT OR REGIONAL] office located in the district in which the candidate or judge is seeking office.]

* Sec. 2. AS 15.13.040(d) and (f) are amended to read:

(d) Every individual or [,] person [OR GROUP] making a contribution or expenditure shall make a full report, upon a form prescribed by the commission, of the following contributions or expenditures:

housekeeping

(1) any contribution of cash, goods or services valued at more than $250 [$100] a year to any group or candidate; or

(2) any expenditure whatsoever for advertising in newspapers, on radio or on television; or, for the publication, distribution or circulation of brochures, flyers, or other campaign material for any candidate or ballot proposition or question.

(f) During each year in which an election occurs, all b nesses or [,] persons [, OR GROUPS] which furnish any of the following services, facilities, or supplies to a candidate or group shall maintain a record of each transaction: newspapers, radio, television, advertising, advertising agency services, accounting, billboards, printing, secretarial, public opinion polls, or research and professional campaign consultation or management, media production or preparation, or computer services. The records shall be maintained on the forms provided and in the manner required by the commission. The supplier shall file a report of the complete record of each transaction with all candidates or groups to whom he provides services, facilities or supplies in excess of $250 for each candidate or group in the aggregate in accordance with sec. 110 of this chapter. [ALL RECORDS SHALL BE AVAILABLE FOR PUBLIC INSPECTION.]

clarification

redundant

* Sec. 3. AS 15.13.050 is amended by adding a new subsection to read:

(b) A group that makes expenditures or receives contributions with the authorization or consent, express or implied, or under the control, direct or indirect, of a candidate shall be considered to be controlled by that candidate. A group whose major purpose is to further the nomination, election, or candidacy of only one person, or intends to expend more than 50 per cent of its money on a single candidate, shall be considered to be controlled by that candidate and its actions done with his knowledge and consent unless, within 10 days from the date the candidate learns of the existence of the group he files with the commission, on a

taken from definition section & rearranged to here

form provided by the commission, an affidavit that the group is operating without his control. A group organized for more than one year preceding an election and endorsing candidates for more than one office or more than one political party is presumed not to be controlled by a candidate.

* Sec. 4. AS 15.13.060(c) and (d) are amended to read:

(c) Each candidate shall file the name and address of the campaign treasurer with the commission no later than seven days after the date of filing his declaration of candidacy or his nominating petition. [THE NAME OF THE CANDIDATE MAY BE PLACED ON THE BALLOT BY THE LIEUTENANT GOVERNOR OR MUNICIPAL CLERK ONLY IF THE CANDIDATE HAS COMPLIED WITH THIS SUBSECTION.]

(d) In the case of the death, resignation or removal of a campaign treasurer, the candidate shall appoint a successor as soon as practicable and file his name and address with the commission within 48 hours of the appointment. [THE CANDIDATE IS DISQUALIFIED WHEN HE HAS BEEN FOUND TO HAVE BEEN IN WILFUL VIOLATION OF THIS SUBSECTION.]

* Sec. 5. AS 15.13.070(a) is amended to read:

(a) No person or group, including but not limited to all political committees, businesses, corporations, and labor unions, may contribute [TO OR EXPEND] more than $1,000 a year <u>to a candidate</u> [ON BEHALF OF OR IN OPPOSITION TO THE COMPETING CANDIDATES] for each elective office. Political parties and their subdivisions are not subject to the limitation prescribed in this subsection, but they are subject to the reporting requirements prescribed by secs. 40(b) and 110 of this chapter. Nothing in this chapter prohibits

(1) a candidate from contributing more than $1,000 of his own money to his own campaign; or

(2) individuals or groups, including but not limited to all

political committees, businesses, corporations, and labor unions, from contributing to or expending on behalf of a ballot proposition or question more than $1,000 a year; however, these contributions and expenditures shall be reported in accordance with secs. 40 and 110 of this chapter.

* Sec. 6. AS 15.13.090 is amended to read:

Sec. 15.13.090. IDENTIFICATION OF COMMUNICATION. All advertisements, billboards, handbills, paid-for television and radio announcements and other communications intended to influence the election of a candidate or outcome of a ballot proposition or question shall be clearly identified by the words "paid for by" followed by the name and address of the candidate, group or individual paying for the advertising. [IN ADDITION, CANDIDATES AND GROUPS MUST IDENTIFY THE NAME OF THEIR CAMPAIGN TREASURER.]

not necessary

* Sec. 7. AS 15.13.100 is amended to read:

Sec. 15.13.100. EXPENDITURES BEFORE FILING. Political [NO POLITICAL] campaign expenditure may be made [or incurred] by a person in an election or by a person or group with his knowledge and on his behalf before the date upon which he or she files for nomination for the office which the person seeks [, EXCEPT FOR PERSONAL TRAVEL EXPENSES OR FOR OPINION SURVEYS OR POLLS]. However, these [THESE] expenditures [SHALL BE CHARGED AGAINST THE SPENDING LIMITATION THAT APPLIES TO THE OFFICE FOR WHICH HE SUBSEQUENTLY FILES, AND] shall be included in the first report required under this chapter [after filing for office]

cannot incur expenditures

* Sec. 8. AS 15.13.110(b) and (c) are amended to read:

(b) Each contribution or expenditure which exceeds $250 and which is made within 10 days [ONE WEEK] of the election shall be reported to the commission by date, amount, and contributor or recipient within 24 hours of receipt or expenditure by the candidate or campaign treasurer.

closes 5 day gap

(c) [THE REPORTS OF CANDIDATES SHALL BE FILED WITH THE COMMISSION'S CENTRAL OFFICE.] All statements, records and reports required by this chapter are public records and shall be kept open for [TO] public inspection. Within 30 days after each election, the commission shall prepare a summary of reports [EACH REPORT] which shall be made available to the public at cost upon request. Each summary shall use uniform categories of reporting.

* Sec. 9. AS 15.13 is amended by adding a new section to read:

Sec. 15.13.121. CRIMINAL AND CIVIL PENALTIES; FORFEITURE OF OFFICE; LIMITATIONS ON ACTIONS. (a) A person who violates a provision of this chapter is guilty of a misdemeanor and upon conviction is punishable by imprisonment for not more than one year or by a fine of not more than $5,000. A violation includes but is not limited to any of the following acts or omissions:

(1) knowingly making a false statement or report under this chapter;

(2) giving or furnishing money to another person or group for the purpose of making a contribution or expenditure anonymously, in a fictitious name, or in the name of another, or contributing in violation of sec. 70(d) of this chapter;

(3) making a communication to support or defeat a candidate without identification of sponsorship, in violation of sec. 90 of this chapter;

(4) knowingly accepting a contribution in violation of sec. 70 of this chapter;

(5) providing false or misleading information in the course of an investigation.

(b) In addition to the penalties provided for in (a) of this section, a person who violates secs. 60 and 110 of this chapter is liable, in a civil action, to the state for a sum to be assessed by the court of

not less than $1,000 nor more than $10,000 for each day on which the violation occurs and which shall reflect, where applicable:

(1) reasonable compensation in the nature of liquidated damages according to the benefit received by the candidate in not disclosing his campaign expenses; or

(2) reasonable costs incurred by the state in detection, investigation, and attempted correction of the violation.

(c) Action under (b) of this section may not be used for punitive purposes and sums assessed by the court must be compensatory or remedial in nature.

(d) Notwithstanding the criminal penalties and civil sums assessed otherwise under this section, no candidate who files reports required by secs. 60(c) - (d) and 110(a)(1) - (2) of this chapter later than three days after the date established in secs. 60(c) - (d) and 110(a) of this chapter may have his name placed on the ballot or have votes cast for him counted by the lieutenant governor or municipal clerk. Determination that reports have not been filed shall be certified promptly by the commission to the lieutenant governor or municipal clerk. The nomination to office or election to office shall be certified to the highest vote getter for that nomination for that office who complies within the time limits specified and that person shall be declared nominated or elected.

(e) Notwithstanding the criminal and civil sums assessed otherwise under this section, a successful candidate who files reports required under secs. 110(a)(3) - (4) and 110(b) of this chapter later than three days after the date established in secs. 110(a)(3) - (4) and 110(b) of this chapter may not hold office. The nomination for office or election to office shall be certified to the highest vote getter for that nomination for that office who complies within the time limits specified and

question of enforceability

pretty stiff

that person shall be declared nominated or elected.

(f) The nomination for and election to an office of a candidate who himself violates or whose campaign treasurer or deputy campaign treasurer violates any of the following described provisions is [void] if it is determined, that a candidate knowingly

(1) made a false statement on any report required of him under this chapter;

(2) accepted a contribution in violation of secs. 70(b) or 70(d) of this chapter;

(3) made a campaign expenditure in violation of secs. 70(c), 70(h), or 100 of this chapter.

(g) When a violation of (f) of this section is charged, the case shall be promptly tried and the case shall be accorded a preferred status by the courts to ensure a speedy disposition on the matter.

(h) The commission shall promptly notify all persons who are delinquent in filing reports and statements, including contributors who failed to file a statement in accordance with sec. 40 of this chapter, and shall make available a list of delinquents for public inspection. The commission shall also report to the attorney general the names of all candidates in an election whose campaign treasurers have failed to file the rep equired by this chapter.

(i) A person who believes a violation of this chapter has occurred may file a complaint with the commission. The commission shall expeditiously make an investigation of the matter complained of. When the commission has reasonable cause to believe that a person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of a provision of this chapter, or a regulation or order issued under it, it shall promptly report the information to the attorney general for appropriate action. The commission shall

promptly inform the person who filed the complaint of its disposition of the matter.

(j) Prosecution for violation of a provision of this chapter may not be commenced after four years have elapsed from the date of the alleged violation.

* Sec. 10. AS 15.13.130(2) is amended to read:

(2) "contribution" means purchase, payment, promise or obligation to pay, loan or loan guarantee, deposit or gift of money, goods or services for which charge is ordinarily made and which is made for the purpose of influencing the nomination or election of a candidate, and in sec. 10(b) of this chapter for the purpose of influencing a ballot proposition or question, including the payment by a person other than a candidate or political party <u>of</u> [, OR] compensation <u>for</u> [OF] the personal services of another person which are rendered to the candidate or political party; however, "contribution" does not include

Housekeeping

(A) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or ballot proposition or question, but it does include professional services volunteered by individuals for which they ordinarily would be paid a fee or wage;

(B) services provided by an accountant or other person to prepare reports and statements required by this chapter;

(C) ordinary hospitality in a home;

* Sec. 11. AS 15.13.130(3) is amended to read:

(3) "group" means every state and regional executive committee of a political party and, in addition, means any combination of two or more persons or individuals acting jointly who take action the major purpose of which is to influence the outcome of an election; [A GROUP THAT MAKES EXPENDITURES OR RECEIVES CONTRIBUTIONS WITH THE AUTHORIZATION

OR CONSENT, EXPRESS OR IMPLIED, OR UNDER THE CONTROL, DIRECT OR INDIRECT, OF A CANDIDATE SHALL BE CONSIDERED TO BE CONTROLLED BY THAT CANDIDATE; A GROUP WHOSE MAJOR PURPOSE IS TO FURTHER THE NOMINATION, ELECTION, OR CANDIDACY OF ONLY ONE PERSON, OR INTENDS TO EXPEND MORE THAN 50 PER CENT OF ITS MONEY ON A SINGLE CANDIDATE, SHALL BE CONSIDERED TO BE CONTROLLED BY THAT CANDIDATE AND ITS ACTIONS DONE WITH HIS KNOWLEDGE AND CONSENT UNLESS, WITHIN 10 DAYS FROM THE DATE THE CANDIDATE LEARNS OF THE EXISTENCE OF THE GROUP HE FILES WITH THE COMMISSION, ON A FORM PROVIDED BY THE COMMISSION, AN AFFIDAVIT THAT THE GROUP IS OPERATING WITHOUT HIS CONTROL; A GROUP ORGANIZED FOR MORE THAN ONE YEAR PRECEDING AN ELECTION AND ENDORSING CANDIDATES FOR MORE THAN ONE OFFICE OR MORE THAN ONE POLITICAL PARTY IS PRESUMED NOT TO BE CONTROLLED BY A CANDIDATE; HOWEVER, A GROUP THAT CONTRIBUTES MORE THAN 50 PER CENT OF ITS MONEY TO OR ON BEHALF OF ONE CANDIDATE SHALL BE CONSIDERED TO SUPPORT ONLY ONE CANDIDATE FOR PURPOSES OF SEC. 70 OF THIS CHAPTER, WHETHER OR NOT CONTROL OF THE GROUP HAS BEEN DISCLAIMED BY THE CANDIDATE;]

reinserted on page 243

* Sec. 12. AS 15.13.070(f) and (g), 15.13.080, and 15.13.120 are repealed.

mistake

supreme ct limits

existing reformement statute. Now 121

[* Sec. 13. Sections 1 - 2 and 11 of this Act are retroactive to June 26, 1975.]

* Sec. 14. This Act takes effect immediately in accordance with AS 01.10.070(c).

offered by
Barnes w/ APOC

4/8
Melton

Sec. 7 AS 15.13.100 is amended to read:

Sec. 15.13.100. EXPENDITURES BEFORE FILING. Campaign expenditures may be made or incurred by a person ~~**~~ or by a person or group with his knowledge and on his behalf before the date upon which he or she files for nomination for office which the person seeks provided that:

1) the period for filing a nominating petition or declaration of candidacy for the position the candidate seeks is not open; and

applies to municipal but not state

2) the person notifies the Alaska Public Offices Commission in writing that he or she is a candiate for a specific office and intends to file for that office when the period for filing is open; and

3) the person files with the Commisison the name of a campaign treasurer as required by AS 15.13.060; and

4) the person files expenditure and disclosure reports as requried by AS 15.13.110.

MEMORANDUM
LEAGUE OF WOMEN VOTERS OF ALASKA

TO: Rep. Terry Gardiner, Chairman and Members of House Judiciary Committee

DATE: April 1, 1976

FROM: Marjorie Gorsuch & Janice Gates, LWV Lobbyists

RE: CSHB857

In reviewing CSHG857, the LWVAk finds that certain provisions raise questions which the House Judiciary Committee might be interested in pursuing.

Sec. 1 AS 15.13.020 (j) Lines 19-26
The LWV has long emphasized the importance of disclosure reports being filed in local offices to ensure adequate accessibility and public scrutiny. This provision requires that reports be filed with the commission's "district offices". It is unclear which offices are being referred to. We believe that it was the intent of the House State Affairs Committee that reports be filed in the district office from which the candidate is seeking office and in which the"groups and individuals"reside. The League questions the intent of Lines 20-26.

Sec. 15.13.121 (3) The League questions the application of criminal penalties in this provision unless the communication is "knowingly" made without identification of sponsorship.

Sec. 15.13.121 (d) (e)
The League questions the likelihood of enforcement of these provisions.

Sec. 15.13.121 (h)
The League finds this provision vague. It does not specify the method by which the A.P.O.C. shall notify those who are delinquent in filing reports. It does not define the term "promptly" and does not deal with the question of whether the delinquent party si still liable for civil and criminal penalties if the Commission does not, in fact, notify the candidate.

The League also recommends that the list of delinquent filers not only be available for public inspection, but that it be published. We suggest that this might be an additional deterent to late filing.

JAY S. HAMMOND
GOVERNOR

LOWELL THOMAS, JR.
LIEUTENANT GOVERNOR

Rec. 2-18

STATE OF ALASKA

ALASKA PUBLIC OFFICES COMMISSION

610 C STREET, SUITE 209
ANCHORAGE, ALASKA 99501
(907) 274-0321

February 16, 1976

Hon. Mike Bradner
Speaker of the House
Alaska State Legislature
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Rep. Bradner:

The Alaska Public Offices Commission is submitting herewith, in accordance with AS 15.13.030(9), its recommendations and proposals for changes to the Campaign Disclosure Law (AS 15.13) and Financial Disclosure Law (AS 39.50) to the second session of the Ninth State Legislature.

We would point out that the areas of significant change in the Campaign Disclosure Law are: (1) The removal of the limitation on campaign expenditure, which brings the Alaska law into conformity with the recent U. S. Supreme Court Decision; (2) the addition of civil penalties for late filing of reports as well as changes in the criminal penalties; and (3) the provision for forfeiture of nomination to office or election to office for violation of certain sections of the Law.

While many of the amendments to the Financial Disclosure Law (AS 39.50) are of the "housekeeping" nature, there are areas of significant change: (1) Requires that former state and municipal officials who contract or offer to contract with the state or their municipality within one year after leaving office will file a statement at the time they contract or offer to contract with the state or municipality, (2) more clearly defines when an appointed public official forfeits salary, travel, and per diem and when they shall be removed from office; and (3) requires state officers and employees of the state who exercise responsibilities under AS 37.10.030 to file financial disclosure statements which shall be filed with and review by their most immediate supervisor who is required to file a statement and provides that such statements shall remain confidential.

The Commission respectfully requests that these proposed amendments be introduced, and hopefully enacted into law, this legislative session. Please be advised that I, and other members of the Commission, will be most pleased to discuss these proposed amendments with the appropriate legislative Committee if it should be desired. Commission members may be reached by notifying Wilda Hudson, Acting Executive Director, at 274-0321 or 276-4176.

Sincerely,

Wilda Hudson

for GORDSON S. HARRISON, Chairman
Alaska Public Offices Commission

GSH:wgh

encls.

IN THE _____ BY _____

_____ BILL NO. ____

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: An Act relating to the financial disclosure law (CONFLICT OF INTEREST] law; and providing for an effective date."

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

* Section 1. AS 39.50.020(a) is amended to read:

(a) An appointed public official [A JUDICIAL OFFICER, COMMISSIONER, CHAIRMAN OR MEMBER OF A BOARD SPECIFIED IN SEC. 200(9) OF THIS CHAPTER, PERSONS HIRED OR APPOINTED AS HEAD OR DEPUTY HEAD OF, OR DIRECTOR OF A DIVISION WITHIN, A DEPARTMENT IN THE EXECUTIVE BRANCH, PERSONS APPOINTED AS ASSISTANT TO THE GOVERNOR, AND A MUNICIPAL OFFICER,] shall file a statement giving his income sources and business interests, under oath and on penalty of perjury, within 30 days after he takes office as a public official. Candidates for state elective office shall file such a statement at the time of filing a declaration of candidacy or within 30 days of the filing of any nominating peitition, or within 30 days of becoming a candidate by any other means. candidates for elective municipal office shall file such a statement at the time of filing a nominating petition, declaration of candidacy, or other required filing for the elective municipal office. Former public officials who

contract or offer to contract with the state within one year after leaving office will file a statement at the time that they contract or offer to contract with the state; former municipal officers who contract or offer to contract with their municipality within one year after leaving office will file a statement at the time that they contract or offer to contract with their municipality. Refusal or failure to file within the time prescribed shall require that the candidate's filing fees, if any, and filing for office be refused or that his previously accepted filing fee be returned and his name removed from the filing records. The lieutenant governor or other certifying authority may not certify a person's nomination for office or his election to office if the person does not comply with the requirements of this subsection within the time specified. The nomination to office or election to office shall be certified to the highest vote getter for that nomination for that office or election to that office who complies within the time limits specified and that person shall be declared nominated or elected. A statement shall also be filed by public officials no later than April 15 [OR 15 DAYS AFTER THE PERSON FILES HIS FEDERAL INCOME TAX RETURN] in each following year [, WHICHEVER SHALL COME FIRST]. [PERSONS WHO, ON OR AFTER DECEMBER 11, 1974, WERE MEMBERS OF BOARDS OR COMMISSIONS NOT NAMED IN SEC. 200(9) OF THIS CHAPTER ARE NOT REQUIRED TO FILE STATEMENTS.]

* Sec. 2. AS 39.50.020(b) is amended to read:

(b) Public officials of the state and candidates for

state elective office, [THE GOVERNOR, LIEUTENANT GOVERNOR, MEMBERS OF THE LEGISLATURE, AND CANDIDATES FOR THESE OFFICES, JUDICIAL OFFICERS, EACH COMMISSIONER, HEAD OR DEPUTY HEAD OF, OR DIRECTOR OF A DIVISION WITHIN, A DEPARTMENT IN THE EXECUTIVE BRANCH, ASSISTANT TO THE GOVERNOR OR CHAIRMAN OR MEMBER OF A COMMISSION OR BOARD] required to report under this chapter, shall file the statement with the Alaska Public Offices Commission. Municipal officers, and candidates for elective municipal office, shall file with the municipal clerk or other municipal official designated to receive their filing for office. All statements required to be filed under this chapter are public records.

* Sec. 3. AS 39.50.070 is amended to read:

Sec. 39.50.070. FAILURE TO REPORT BY APPOINTED PUBLIC OFFICIALS [DEPARTMENT, DIVISION, OR DEPUTY DEPARTMENT HEADS]. A person hired or appointed as a public official of the state, other than a judicial officer, [THE HEAD OR DEPUTY HEAD OF, OR DIRECTOR OF A DIVISION WITHIN, A DEPARTMENT IN THE EXECUTIVE BRANCH WHO REFUSES OR FAILS TO FILE A REPORT OF FINANCIAL INTERESTS REQUIRED UNDER THIS CHAPTER WHEN DUE MAY NOT HOLD OFFICE OR] may not have his name submitted to the legislature for confirmation until he complies with the requirements of this chapter. He may not receive salary, travel expenses, or per diem for any period after the initial 30 days after the completion of his appointment or after his entry into state employment if he has not complied with the requirements of this chapter; if he has not complied with the requirements of this chapter by the 60th day he is re-

moved from office and his position is vacant. [HE MAY NOT BE CONFIRMED, HIRED, OR APPOINTED, AND HE FORFEITS AND MAY NOT BE PAID ANY SALARY AND PER DIEM AND TRAVEL EXPENSES UNTIL HE COMPLIES.] If after installation as an appointed public official [THE HEAD OR DEPUTY HEAD OF, OR DIRECTOR OF A DIVISION WITHIN, A DEPARTMENT,] he refuses or fails to file the required statement when due, he is guilty of a misdemeanor and upon conviction is punishable by a fine or not less than $100 nor more than $1,000 [AND SHALL BE REMOVED FROM OFFICE IF COMPLIANCE IS NOT MADE WITHIN 30 DAYS AFTER THE DUE DATE OF THE REPORT].

* Sec. 4. AS 39.50 is amended by adding a new section to read:

Sec. 39.50.160. REPORTS BY OTHER OFFICERS AND EMPLOYEES. (a) Officers and employees of the state who exercise responsibilities under AS 37.10.030 shall file a statement containing the information required of public officials by sec. 30 of this chapter.

(b) Statements required under this section shall be filed with and reviewed by the public official in the instrumentality of the state who himself files a statement of business and financial interest and may be reviewed by the public offices commission but are otherwise confidential; notwithstanding secs. 20(b) and 50(c) of this chapter or any other provision of law.

* Sec. 5. AS 39.50.200(1) is amended to read:

(1) "public official" means a judicial officer, a member of the legislature, the governor, the lieutenant governor, a person hired or appointed as the head or deputy

head of, or director of a division within, a department in the executive branch, an assistant to the governor; the chairman, each [OR] member, and full-time executive officer of a state commission or board specified in (9) of this section, the president of the University of Alaska, its vice-presidents, chancellors, and provosts, directors of community colleges, the ombudsman, the deputy ombudsman, and their professional staff, the administrator and directors of the legislative affairs agency and the legislative budget and audit committee, the administrative director of courts, the executive director of the judicial council, and each appointed or elected municipal officer.

* Sec. 6. AS 39.50.200(8) is amended to read:

(8) "source of income" means the entity for which service is performed or which is otherwise the origin of payment; if the person whose income is being reported is employed by another, his employer is the source of his income; but if he is a proprietor [SELF-EMPLOYED BY MEANS OF A SOLE PROPRIETORSHIP], a member of a partnership, or is a shareholder in a professional corporation, or a corporation in which he or his spouse or his children, or a combination of them, hold a controlling interest, the "source" is the client, patient, or customer of the proprietorship, partnership, or corporation, but if the entity which is the orgin of payment is not the same as the client, patient, or customer for whom the service is performed, both are considered the source;

* Sec. 8. AS 39.50.200( ) is amended to read:

[(J) BOARD OF FISHA AND GAME (AS 16.05.220);]

(LL) Board of Fisheries (AS 16.05.221(a);

(MM) Board of Game (AS 16.05.221);

* Sec. 9. AS 39.50.060(b) and AS 39.50.080 are repealed.

* Sec.10. This Act takes effect immediately in accordance with AS 01.10.070(c).

IN THE _____ BY _____

_____ BILL NO. ____

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to election campaigns; and providing for an effective date."

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

* Section 1. AS 15.13.020(j) is amended to read:

Section 15.13.020. ALASKA PUBLIC OFFICES COMMISSION.

(j) The commission shall establish an office [WHICH MAY BE CALLED A REGIONAL OFFICE,] in each senate district in the state to keep on file for public inspection copies of all reports <u>required to be</u> filed with the commission by candidates for statewide office and by candidates for legislative office in that district; however, where one municipality contains more than one election district, only one commission office shall be established in that municipality. <u>Each</u> [THE REGIONAL] office shall make all forms and pertinent material available to candidates. [ALL] Reports shall be filed by candidates, groups and individuals with the commission's central and district offices. The commission shall insure that copies of all reports by statewide [AND LEGISLATIVE] candidates [IN EACH SENATE DISTRICT]<u>, by legislative candidates in each senate district, and by judges seeking electoral confirmation</u> are forwarded promptly to <u>the</u> [THAT DISTRICT OR

[REGIONAL] office located in the district in which the candidate or judge is seeking office.

* Sec. 2. AS 15.13.040(d) is amended to read:

(d) Every individual or [,] person [OR GROUP] making a contribution or expenditure shall make a full report, upon a form prescribed by the commission, of the following contributions or expenditures:

* Sec. 3. AS 15.13.040(d)(1) is amended to read:

(1) any contribution of cash, goods or services valued at more than $250 [$100] a year to any group or candidate; or

* Sec. 4. AS 15.13.060(c) is amended to read:

(c) Each candidate shall file the name and address of the campaign treasurer with the commission no later than seven days after the date of filing his declaration of candidacy or his nominating petition. [THE NAME OF THE CANDIDATE MAY BE PLACED ON THE BALLOT BY THE LIEUTENANT GOVERNOR OR MUNICIPAL CLERK ONLY IF THE CANDIDATE HAS COMPLIED WITH THIS SUBSECTION.]

* Sec. 5. AS 15.13.060(d) is amended to read:

(d) In the case of the death, resignation or removal of a campaign treasurer, the candidate shall appoint a successor as soon as practicable and file his name and address with the commission within 48 hours of the appointment. [THE CANDIDATE IS DISQUALIFIED WHEN HE HAS BEEN FOUND TO HAVE BEEN IN WILFUL VIOLATION OF THIS SUBSECTION.]

* Sec. 6. AS 15.13.070(a) is amended to read:

(a) No person or group, including but not limited to all political committees, businesses, corporations, and labor unions, may contribute [TO OR EXPEND] more than $1,000 a year to a candidate [ON BEHALF OF OR IN OPPOSITION TO THE COMPETING CANDIDATES] for each elective office.

* Sec. 7. AS 15.13.090 is amended to read:

Sec. 15.13.090. IDENTIFICATION OF COMMUNICATION. All advertisements, billboards, handbills, paid-for television and radio announcements and other communications intended to influence the election of a candidate or outcome of a ballot proposition or question shall be clearly identified by the words "paid for by" followed by the name and address of the candidate, group or individual paying for the advertising. [IN ADDITION, CANDIDATES AND GROUPS MUST IDENTIFY THE NAME OF THEIR CAMPAIGN TREASURER.]

* Sec. 8. AS 15 13.110(b) is amended to read:

(b) Each contribution or expenditure which exceeds $250 and which is made within 10 days [ONE WEEK] of the election shall be reported to the commission by date, amount, and contributor or recipient within 24 hours of receipt or expenditure by the candidate or campaign treasurer.

* Sec.9. AS 15.13.110(c) is amended to read:

(c) [THE REPORTS OF CANDIDATES SHALL BE FILED WITH

THE COMMISSION'S CENTRAL OFFICE.] All reports required by this chapter shall be kept open to public inspection. Within 30 days after each election, the commission shall prepare a summary of each report which shall be made available to the public at cost upon request. Each summary shall use uniform categories of reporting.

* Sec. 10. AS 15.13 is amended by adding a new section to read:

Sec. 15.13.121. CRIMINAL AND CIVIL PENALTIES; FORFEITURE OF OFFICE; LIMITATIONS ON ACTIONS. (a) A person who violates a provision of this chapter is guilty of a misdemeanor and upon conviction is punishable by imprisonment for not more than one year or by a fine of not more than $5,000. A violation includes but is not limited to any of the following acts or omissions:

(1) failing to make a statement or report required to be made under this chapter, or failing to make a statement or report at the time the statement or report is required to be made under this chapter;

(2) making a false statement or report under this chapter;

(3) giving or furnishing money to another person or group for the purpose of making a contribution or expenditure anonymously, in a fictitious name, or in the name of another, or contributing in violation of sec. 70(d) of this chapter;

(4) making a communication to support or defeat a candidate without identification of sponsorship,

in violation of sec. 90 of this chapter;

(5) knowingly accepting a contribution in violation of sec. 70 of this chapter;[.]

(6) providing false or misleading information in the course of an investigation.

(b) In addition to the penalties provided for in (a) of this section, a person who violates secs. 60 and 110 of this chapter is liable, in a civil action, to the state for a sum to be assessed by the court of not less than $1000 nor more than $10,000 for each day on which the violation occurs and which shall reflect, where applicable:

(1) reasonable compensation in the nature of liquidated damages according to the benefit received by the candidate in not disclosing his campaign expenses; or

(2) reasonable costs incurred by the state in detection, investigation, and attempted correction of the violation.

(c) Action under (b) of this section may not be used for punitive purposes and sums assessed by the court must be compensatory or remedial in nature.

(d) Notwithstanding the criminal penalties and civil sums assessed otherwise under this section, no candidate who files reports required by secs. 60(c) and (d) and 110(a)(1) and (2) of this chapter later than three days after the date established in secs. 60(c) and (d) and 110(a) may have his name placed on the ballot or have votes cast for him counted by the lieutenant governor or

municipal clerk. Determination that reports have not been filed shall be certified promptly by the commission to the lieutenant governor or municipal clerk. The nomination to office or election to office shall be certified to the highest vote getter for that nomination for that office who complies within the time limits specified and that person shall be declared nominated or elected.

(e) Notwithstanding the criminal and civil sums assessed otherwise under this section, a successful candidate who files reports required under secs. 110(a)(3) and (4) and 110(b) of this chapter later than three days after the date established in secs. 110(a)(3) and (4) and 110(b) may not hold office. The nomination to office or election to office shall be certified to the highest vote getter for that nomination for that office who complies within the time limits specified and that person shall be declared nominated or elected.

(f) The nomination for and election to an office of a candidate who himself violates or whose campaign treasurer or deputy campaign treasurer violates any of the following decribed provisions is void if it is determined that a candidate knowingly:

(1) made a false statement on any report required of him under AS 15.13;

(2) accepted a contribution in violation of 70(b) or 70(d);

(3) made a campaign expenditure in violation of 70(c), 70(h), or 100.

(g) When a violation of (f) is charged, the case shall be promptly tried and the case shall be accorded a preferred status by the courts so as to assure a speedy disposition on the matter.

(h) The commission shall promptly notify all persons who are delinquent in filing reports and statements, including contributors who failed to file a statement in accordance with sec. 40 of this chapter, and shall make available a list of delinquents for public inspection. The commission shall also report to the attorney general the names of all candidates in an election whose campaign treasurers have failed to file the reports required by this chapter.

(i) A person who believes a violation of this chapter has occurred may file a complaint with the commission. The commission shall expeditiously make an investigation of the matter complained of. When the commission has reasonable cause to believe that a person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of a provision of this chapter, or a regulation or order issued under it, it shall promptly report the information to the attorney general for appropriate action. The commission shall promptly inform the person who filed the complaint of its disposition of the matter.

(j) Prosecution for violation of a provision of this

chapter may not be commenced after four years have elapsed from the date of the alleged violation.

* Sec. 11. AS 15.13.130(3) is amended to read:

(3) "group" means every state and regional executive committee of a political party and, in addition, means any combination of two or more persons or individuals acting jointly who take action the major purpose of which is to influence the outcome of an election; a group that makes expenditures or receives contributions with the authorization or consent, express or implied, or under the control, direct or indirect, of a candidate shall be considered to be controlled by that candidate; a group whose major purpose is to further the nomination, election, or candidacy of only one person, or intends to expend more than 50 per cent of its money on a single candidate, shall be considered to be controlled by that candidate unless, within 10 days from the date the candidate learns of the existence of the group he files with the commission, on a form prescribed by the commission, an affidavit that the group is operating without his control; a group organized for more than one year preceding an election and endorsing candidates for more than ony office or more than one political party is presumed not to be controlled by a candidate; [HOWEVER, A GROUP THAT CONTRIBUTES MORE THAN 50 PER CENT OF ITS MONEY TO OR ON BEHALF OF ONE CANDIDATE SHALL BE CONSIDERED TO SUPPORT ONLY ONE CANDIDATE FOR PURPOSES OF SEC. 70 OF THIS CHAPTER, WHETHER OR NOT CONTROL OF THE GROUP HAS BEEN DISCLAIMED BY THE CANDIDATE;]

* Sec. 12. AS 15.13.070(f) and (g), AS 15.13.080, and AS 15.13.120 are repealed.

* Sec. 13. This Act takes effect immediately in accordance with AS 01.10.070(c).

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y, STATE CAPITOL
JUNEAU, ALASKA 99811
465-3800

M E M O R A N D U M 19 April 1976

SUBJECT: Amendments to Proposed CS for House Bill 857 (Judiciary)(election campaign disclosure law)

TO: Rep. Terry Gardiner, Chairman
House Judiciary Committee

FROM: Stuart C. Hall, Senior Legislative Counsel

Attached per the committee's request are amendments incorporating the changes proposed by Representatives Brown and Parr relative to submitting a conviction for violation of proposed AS 15.13.121(d) by a member-elect of a legislative body (state and local), or a Mayor-elect of a city or borough, to the appropriate legislative body for action. The amendments also empower local legislative bodies to be the judge of the election and qualifications of their members (some local legislative bodies already enjoy that authority by charter; see, e.g., Charter of the City & Borough of Juneau, and Miller v. North Pole, 532 P.2d 1013 (Alaska, 1975) construing the charter of that city).

The Director of Legal Services sees both a separation of powers problem with these amendments as well as a constitutional problem stemming from the apparent request of a court that it issue what constitutes, in effect, an advisory opinion.

Also, I see a single subject rule violation, potentially, even under the more liberal rules enunciated in Gellert v. State.

Committee members should be apprised of the fact that under present law, election contests at the local level of government are committed to the courts: AS 29.23.570 and 29.28.050(e). Read together, these sections probably constitute authority to act as the judge of the election and qualifications of council/assembly members.

Amendments to proposed CS for House Bill 857 (Judiciary) (election campaign disclosure law)

On page 7 of the proposed CS, between lines 1 and 2, insert a new subsection, and reletter the existing subsections accordingly:

(f) If in a proceeding under (e) of this section, a candidate is convicted of a violation of (d) of this section and the action involved a successful candidate at a general election for membership in the state legislature or, at a municipal election, for a seat on a city council or borough assembly, or to the office of borough or city mayor, the court may not void the candidate's election to office, but only may recommend that the member-elect of the legislature, city council or borough assembly be expelled, or that the mayor be removed from office, subject to art. II, sec. 12, Constitution of the State of Alaska, or AS 29.23.060(c), 29.23.130(e), 29.23.210(b) or 29.23.255, as applicable.

On page 9, between lines 12 and 13, insert the following new sections, and renumber the sections of the bill accordingly:

* Sec. 13. AS 29.13.100 is amended by adding a new paragraph to read:

(37) AS 29.23.060(c)(expulsion of borough assemblyman), AS 29.23.130(e)(removal of borough mayor from office), AS 29.23.210(b) (expulsion of city councilman from office), AS 29.23.255(removal of mayor from office), AS 29.28.050(f)(expulsion, removal from office).

* Sec. 14. AS 29.23.060(c) is amended to read:

(c) The assembly shall determine its own rules and order of business and provide for keeping a journal of its proceedings. The assembly is the judge of the election and qualifications of its members and may expel a member with the concurrence of two-thirds of its members, for including but not limited to, a conviction for a violation of AS 15.13.121(d). The assembly shall consider that conviction during its organizational meeting following a municipal election.

* Sec. 15. AS 29.23.130(e) is amended to read:

(e) Whether or not the borough mayor is a member of the assembly, the assembly may remove the mayor from office upon conviction for a violation of AS 15.13.121(d) with the concurrence of two-thirds of its members. The assembly shall consider that conviction during its organizational meeting following a municipal election.

* Sec. 16. AS 29.23.210(b) is amended to read:

(b) The council shall determine its own rules and order of business and provide for keeping a journal of its proceedings. The council is the judge of the election and qualifications of its members and may expel a member with the concurrence of two-thirds of its members, including but not limited to a conviction for a violation of AS 15.13.121(d). The council shall consider that conviction during its organizational meeting following a municipal election.

* Sec. 17. AS 29.23 is amended by adding a new section to read:

Sec. 29.23.255. REMOVAL FROM OFFICE. Whether or not the mayor is a member of the council, the council may remove the mayor from office upon conviction for a violation of AS 15.13.121(d) with the concurrence of two-thirds of its members. The council shall consider that conviction during its organizational meeting following a municipal election.

* Sec. 18. AS 29.23.570(5) and (7) are amended to read:

(5) is removed or expelled from office;

(7) is convicted of a felony, [OR] of an offense involving a violation of his oath of office, or the provisions of AS 15 13.121(d).

* Sec. 19. AS 29.28.050 is amended by adding a new subsection to read:

(f) Notwithstanding the provisions of (c) of this section, the explusion of a member of a borough assembly, under AS 29.23.060(c) or of a member of a city council, under AS 29.23.210(b), or the removal of a borough mayor, under AS 29.23.130(c), or of a city mayor, under AS 29.23.255, is not subject to judicial review.

HB
861

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

SUBJECT: Proposed CS for House Bill 861 13 April 1976

TO : Rep. Terry Gardiner, Chairman
House Judiciary Committee

FROM : Stuart C. Hall, Senior Legislative Counsel

I have prepared a Committee Substitute for the Judiciary Committee for the above bill (educational incentive grants). However, may I call to your attention (1) there is no definition of what constitutes a "low income" family or "low income" circumstances; it occurs to me that was done in requiring "substantial financial need" and then defining it; (2) the bill in several places makes clear that students are eligible for these grants only if they are accepted for admission to or enrolled in postsecondary educational institutions in the state (see Sec. 14.40.945). I genuinely doubt that proposed Sec. 14.40.950(b) is necessary.

THE LEGISLATURE OF THE STATE OF ALASKA
FISCAL NOTE
Second Session - Ninth Legislature

I. REQUEST
Bill No. HB 861
Title: State Educational Incentive Grant Program
Requested by: _____ Date: _____
Return Date Requested: _____
Agency: Commission on Postsecondary Education Program: _____

II. FISCAL DETAIL
Budget Request Unit(s) Affected: Commission on Postsecondary Education-Division of Student Financial Aid

A. EXPENDITURES: (Thousands of dollars)

	OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100	PERSONAL SERVICES						
200	TRAVEL						
300	CONTRACTUAL						
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.		120.0	130.0	140.0	160.0	180.0
	TOTAL	-0-	120.0	130.0	140.0	160.0	180.0

B. FUNDING: (Thousands of dollars)

GENERAL FUND	-0-	60.	65.	70.	80.	90.
FEDERAL FUNDS	-0-	60.	65.	70.	80.	90.
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	/	-0-/	-0-/	-0-/	-0-/	-0- /
MAN MONTHS (P./T.)	/	/	/	/	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Funds will provide educational grants to needy Alaskan students. Administrative expenses will be borne by existing financial aids division budget.

IV. ATTACHMENTS

V. DATE: March 30, 1976 PREPARED BY: Kerry D. Romesburg

Kerry D. Romesburg, Executive Director
Alaska Commission on Postsecondary Education

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

HB
881

"An Act relating to interference with physician-patient relationships."

(1)

5/6/76

COMMITTEE REPORT

HOUSE

Mr. Speaker: Date May 12, 1976

The Committee on JUDICIARY has had HB 881

under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(X) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Terry Gardiner Do Not Pass

[illegible] [illegible]

Members NOT concurring in the Majority report:

[illegible] recommends: Do Pass

[illegible] recommends:

[illegible] recommends:

_____ recommends:

_____ recommends:

Terry Gardiner Chairman

Original sponsor: State Affairs Committee by request

Offered: 5/6/76
Referred: Judiciary

IN THE HOUSE

BY THE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

CS FOR HOUSE BILL NO. 881

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to interference with physician-patient relationships."

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

* Section 1. No person, group, organization or facility may interfere with the physician-patient relationship by attempting to suppress, restrict or forbid the use of amygdalin (laetrile) when prescribed or administered by a physician and requested by a patient unless the substance as prescribed or administered by the physician is found to be harmful by the State Medical Board in a hearing conducted under the provisions of the Administrative Procedure Act (AS 44.62).

* Sec. 2. No physician may be subject to disciplinary action by the State Medical Board for prescribing or administering amygdalin (laetrile) to a patient under his care who has requested the substance unless the State Medical Board in a hearing conducted under the Administrative Procedure Act (AS 44.62) has made a formal finding that the substance is harmful.

Legis does not have this power.

*delete sec. 1

Par drafted

6-6050 Hedges

file

Diplomate of the American Board of Surgery

Fellow of the American College of Surgeons

PAUL SAYER, M.D.
A Professional Corporation
GENERAL SURGERY

2211 EAST NORTHERN LIGHTS
ANCHORAGE, ALASKA 99504

Telephone 279-2578
24 HOUR CALL

May 5, 1976

Representative Lisa Rudd
Pouch V
Juneau, Alaska 99801

Dear Representative Rudd:

This is in protest to HR881, the bill which in my opinion would prevent physicians from policing their own ranks. It also is my professional opinion that Laetraile has no scientific reason to be worthwhile in cancer treatment and also has certainly caused various patients to not receive good cancer treatment and therefore has decreased the quality of cancer treatment and probably actually has cost lives, in my opinion. Therefore I urge you not to support HR881.

Yours truly,

Paul Sayer

PAUL SAYER, M. D.

PS/alc

ALASKA STATE
MEDICAL ASSOCIATION
1135 W. Eighth Avenue • Anchorage, Alaska 99501 • (907) 277-6891

May 6, 1976

Rep. Lisa Rudd
Pouch V
Juneau, AK 99801

Dear Rep. Rudd:

Enclosed for your information please find a copy of my letter to Rep. Susan Sullivan in reference to the position the Legislative Committee of the Alaska State Medical Association has taken against HB 881 entitled "An Act Relating to Interference with Physician Patient Relationship."

Sincerely yours,

Richard L. Witt

Richard L. Witt, M.D., Chairman
Legislative Committee

Enclosure

April 8, 1976

Representative Susan Sullivan
House HESS Committee
Alaska House of Representatives
Juneau, Alaska 99801

Dear Representative Sullivan:

The Legislative Committee of the Alaska State Medical Association has studied HB 881 entitled "An Act Relating to Interference with Physician-Patient Relationship".

This bill if passed would effectively destroy all of the safety which has been developed in the hospital staff by-laws in the state of Alaska over the years. These safety regulations have been devised for the benefit of the patient. It would render any peer review procedures totally useless and would allow all manner of quackery, ineptness and unqualified activity, both medical and surgical, to go on. In short, chaos would reign in our hospitals.

Today, with our own by-laws, an active surveillance of physician activity in hospitals, only qualified people can do intricate, risky procedures and only properly recognized proven modalities of treatment are given. This is what all the laws have pointed towards many years. The "real" right of the patient is the right to know he will receive the best possible medical care and will not be subject to whims, capriciousness, and down right quackery.

We urge that HB 881 be tabled in the best interest of the public.

Sincerely yours,

Richard L. Witt, M. D., Chairman
Legislative Committee
Alaska State Medical Association

RLW:mln

file 84

Peter E. Cannava, M.D.
OPHTHALMOLOGY
BOX 29
SALDOTNA, ALASKA 99669

TELEPHONE 262-4462

9 April 1976

Rep. Lisa Rudd
House Office Bldg.
Juneau, Alaska

Dear Mrs. Rudd;

After viewing the filmstrip "World Without Cancer" I researched the subject rather extensively and it immediately became apparant that so called facts presented by the film are really prefabrications! The drug never got past the preliminary studies done by reputable research groups and the so called "trophoblastic theory" of cancer is not even considered by eminent science people.

Mr. McNaughton, one of the top Laetrile people in Mexico, was convicted in Canada for conspiracy to misrepresent the value of mining stock, and in Italy he has been charged with swindling investors in a plant to produce Laetrile.

I'd be happy to testify at any hearings you may have on the sugject.

Sincerely,

Peter E Cannava MD

Peter E. annava, M.D.

PEC:vr

HB
885

File 885

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

12075 NL FAIRBANKS ALASKA 95 04-08 343P AST

PMS TERRY GARDINER CHAIRMAN

1859

HOUSE JUDICIARY COMMITTEE

JUN

RE: HB 885

THE ASUA STUDENT LIBBY REQUESTS THAT PORTION OF THE FRAFT LANGUAGE FOR HB 885, BEGINNING WITH QUOTE THE POST SECONDARY EDUCATION.."AND ENDING WITH"..INSTITUTION OF POST SECONDARY EDUCATION." BE DELETED. IT IS SUGGESTED THAT THE RIGHT TO SEEK INJUNCTION IS AVAILABLE TO ANY OR ALL INTERESTED PARTIES AND NEED NOT BE SPECIFICALLY DEFINED.

IN THE INTEREST OF CLARITY THAT PORTION OF HB 885, SEC. 23.40.245 (D) READING "THE MEMBERS OF THE POST SECONDARY EDUCATION STUDENT COMMITTEE NEED NOT BE STUDENTS." SHOULD BE RETAINED.

RESPECTFULLY

ALLEN D BLUME ACTING CHAIRMAN ASUA LAC FOR JAMES LARSEN MEMBER LAC

1976 APR 8 PM 3 14

give to members on HB855

ALASKA STATE
MEDICAL ASSOCIATION
1135 W. Eighth Avenue • Anchorage, Alaska 99501 • (907) 277-6891

April 8, 1976

Representative Terry Gardiner, Chairma
House Judiciary Committee
Alaska House of Representatives
Juneau, Alaska 99801

Dear Representative Gardiner:

The Legislative Committee of the Alaska State Medical Association has studied CSHB 855. We are concerned that the bill would require a physician to list patients as "sources of income" if he were to run for office or be appointed to any public office. This would include such jobs as the state jail physician job. Such action on the physicians part is by law unethical. Hence, as a result, the physician is disenfranchised. He either cannot hold public office or cannot practice medicine. Clearly the conflict is intolerable and probably was not the intent of the authorities writing the proposed legislation.

We would like to ask that this bill not be passed as written. Hopefully, some alternative could be found which would permit the physician to serve in public office and yet not be in violation of the ethics.

Thank you very much for your consideration.

Sincerely yours,

Richard L. Witt

Richard L. Witt, M. D., Chairman
Legislative Committee
Alaska State Medical Association

RLW:mlm

HB
890

"An Act relating to cooperative resource management or development agreements; effective date."

COMMITTEE REPORT

4/22/76

HOUSE

Mr. Speaker: Date _____

The Committee on JUDICIARY has had HB 690 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

Mr. Chairman, Members of the Committee, My name is Willie Goodwin. I presently ~~work for RurAL CAP in Anchorage and~~ am ~~also~~ developing a cooperative management agreement between NANA Regional Corporation, the Alaska Department of Fish and Game, and various agencies within the U.S. Department of Interior. The Agreement would affect all the lands within the NANA boundaries, which is approximately 23.5 million acres.

For background information, it has always been the intent of the people of NANA, that if agreement could be reached by all the parties concerned the lands should be managed cooperatively. They realize that if each land owner went and "did their own thing" without consultation of the adjoining landowners, impacts that would have detrimental effects could happen to people that use the lands, resources on the lands, and habitat that is important to the resources and people. Without proper management of the habitat,the resources that the people depend on could begin to deplete. At the same token the people know that the lands that have been selected under Public Law 92-203 are insufficient for their survival.

Although the statutes authorizes the commissioner to enter into agreements, this act would ~~make it~~ clearly authorize him to do so with a village or municipality or a private person. It would be much easier for a private person to enter into an agreement with the state knowing that the commissioner has clear authority.

I believe also that this bill would strengthen the Governor's ~~common~~ COMMAN concept and also fall in the concepts the Federal State Land Use Planning Commission has studied in the Mt. McKinley Cooperative Planning and Management Area.

endorsement by PSLUPC

Willie Goodwin
279-2441

Barrow

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

02 054 ANCHORAGE AK 34 04-14 135P AST

PMS NELS ANDERSON CHAIRMAN HOUSE RESOURCE COMMITTEE 4653781

POUCH V 2590

JUNEAU AK 99811

CALISTA CORPORATION AFTER REVIEWING HB890 IS SUPPORTIVE OF ITS INTENT GIVING STATE OF ALASKA EXPLICIT AUTHORITY TO GO INTO COOPERATIVE RESOURCE MANAGEMENT OR DEVELOPMENT OF AGGREEMENTS OF BOTH RENEWABLE AND NON-RENEWABLE RESOURCES IS COMMENDABLE

RAYMOND C CHRISTSEN CHAIRMAN OF BOARD CALISTA CORP

1978 APR 14 PM 4 11

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF PARKS / 323 E. 4TH AVENUE — ANCHORAGE 99501

April 15, 1976

Honorable Nels Anderson, Chairman
Resources Committee
Alaska House of Representatives
Pouch V
Juneau, Alaska 99801

Dear Nels:

Guy Van Doren has asked me to comment on HB 890, "An Act relating to cooperative resource management or development agreements; and providing for an effective date." Although the bill has not undergone thorough legal review by the Department, I can comment on its usefulness in park management.

I concur with the basic intent of the bill and with its specific guidelines with one exception. The exception is in Sec. 2 (b) on Page 1. I believe that an annual summary to the legislature would be an unnecessary addition of workload with no substantial benefits.

I believe that the Directors of the Divisions of Lands and Parks presently have the power to enter into agreements of this type. Perhaps a resolution of the legislature emphasizing the issue would be more appropriate. Thank you for the opportunity to comment on this bill.

Sincerely,

Russell W. Cahill

Russell W. Cahill
Director

CC: Commissioner Martin
Mike Smith

ESCA-TECH CORP.

EARTH SCIENCE CONSULTING AND TECHNOLOGY

April 14, 1976

The Honorable Nels Anderson, Chairman
House Resource Committee
House of Representatives
Pouch V
Juneau, Alaska 99811

RE: H. B. 890

Dear Honorable Anderson:

Reference is made to H. B. 890, a proposed legislation relating to cooperative resource management or development agreements; and providing for an effective date.

Our office has reviewed H. B. 890 and as a result has one concern. That is, we feel that, in order to insure that public interest is protected, we suggest that the word "that" be substituted for the present word "whether" on line 21 of Sec. 38.05-025.

Other than this one expressed concern we are supportive of the intent of H. B. 890. If this bill is passed, it will give explicit authority, rather than implied authority, to the State of Alaska to go into cooperative resource management or development agreements with the federal government and/or private corporations. This is a very wise move and your committee should be commended for its ability to look at both short and long range utilization of Alaska resources, both renewable and non renewable.

Sincerely,

Nelson Angapak

/pw

Ref/76-164

3701 Mountain View Drive Anchorage, Alaska 99504 907/277-2527
a subsidiary of Calista Corporation

Federal-State
Land Use Planning Commission
For Alaska

733 W. FOURTH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99501

April 15, 1976

Honorable Nels A. Anderson, Jr.
Chairman
House Resource Committee
State of Alaska
Pouch V
Juneau, Alaska 99811

Dear Chairman Anderson:

We understand that the House Resource Committee will be holding a hearing tomorrow on HB 890, "An Act relating to cooperative resource management development agreements; and providing for an effective date."

Without regard to the technical aspects of this bill or the question which has been raised about the existing authority of certain State officials to consummate cooperative agreements, we are writing to communicate our belief that appropriate State officials should be vested with the authority to enter into cooperative management agreements with adjoining landowners and other parties. The land ownership pattern in Alaska is growing ever more complex as a consequence of the implementation of the Alaska Statehood Act and the Alaska Native Claims Settlement Act. Lands owned by the Federal government, the State, Native corporations, and other parties lie adjacent to each other in tracts the boundaries of which do not necessarily take congnizance of the biotic and other resources found on such lands. This intermixture of land ownership and the somewhat arbitrary location of certain boundaries often jeopardize prudent land management and use.

Given this situation, we believe that adjacent landowners including the custodians of the State public domain and the resources found there, must have the authority to enter into cooperative resource management agreements. Such authority would facilitate the coordinated and consistent management of fish and game which know no man-made boundaries. In addition, the authority to enter into cooperative-management agreements would help facilitate the efficient management and use of renewable and nonrenewable resources located on adjoining lands. Through such agreements, fragmented decisionmaking, with all of the deleterious consequences

resulting therefrom, could be avoided. As a result, each of the parties to an agreement would be benefited, and the resource would be managed more rationally.

Thank you for this opportunity to comment on HB 890. If we can be of any subsequent assistance in your evaluation of this legislation, please let us know.

Sincerely,

Burton W. Silcock
Federal Co-Chairman

Sincerely,

Walter B. Parker
State Co-Chairman

cc: Senator Ray Poland

Original Sponsor: Resources Committee

Offered: 4/22/76
Referred: Judiciary

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 890

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to cooperative resource management or development agreements; and providing for an effective date."

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

* Section 1. INTENT. The legislature recognizes the changing resource ownership patterns and increasing complexity of natural resource management and development in the state and the reality that use and enjoyment of land and resources by one possessor or owner may significantly affect rights of other adjacent or remote possessors or owners. It is the intent of this Act to clearly authorize the state to enter into cooperative resource management or development agreements when in the state and public interest, and under specific guidelines designed to protect the public and state interest.

* Sec. 2. AS 38.05 is amended by adding a new section to read:

Sec. 38.05.025. COOPERATIVE RESOURCE MANAGEMENT OR DEVELOPMENT AGREEMENTS. (a) Consistent with his authority under law, the commissioner, after determining that the agreement is in the best interests of the public and the state, may enter into cooperative resource management or development agreements with the federal government, a state agency, a village or municipality, or a person as defined in AS 01.10.-060(7). Specific guidelines to protect the state and public interest shall be established, if necessary, by the commissioner before entering into an agreement under this section.

(b) A summary of agreements entered into under this section shall be submitted to the legislature within 30 days of the beginning of each



43.23.020

regular session.

(c) The attorney general shall enforce an agreement made under this section in a civil suit.

* Sec. 3. AS 16.05 is amended by adding a new section to read:

Sec. 16.05.055. COOPERATIVE RESOURCE MANAGEMENT OR DEVELOPMENT AGREEMENTS. The commissioner may enter into cooperative resource management or development agreements consistent with his authority under law, as specified in AS 38.05.025, subject to approval by a majority of the Board of Game or the Board of Fisheries, as appropriate.

* Sec. 4. This Act takes effect immediately in accordance with AS 01.10.-070(c).

Willie Goodwin HB890

Working on Co-op Management agreement with fed

— Dept of F.+G. 38.05.025

— Expanding authority of Commissioner ? Sect. 3

— (c.) shall to "May"

HJR

1

Proposing amendments to the Constitution of the State of Alaska providing for a unicameral legislature.

1/20/75

COMMITTEE REPORT

HOUSE

Mr. Speaker: Date _____

The Committee on JUDICIARY has had House Joint Resolution 1 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(✓) recommends it BE REPLACED WITH CS FOR HJR 1 AND THAT CS FOR HJR 1 DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Jerry Gardiner	Do Pass	
[illegible]	[illegible]	
[illegible]	[illegible]	
[illegible]		

Members NOT concurring in the Majority report:

[illegible] recommends: [illegible]

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Jerry Gardiner Chairman

legislature question. Is there objection? Hearing no objection, then the Convention will resolve itself into a Committee of the Whole. Mr. Victor Rivers, would you take the Chair?

V. RIVERS: Mr. President, I would like to ask to be excused as I have comments to make from the floor.

PRESIDENT EGAN: Mr. Barr, would you take the Chair?

BARR: Mr. President, I had hoped to be able to talk on the floor on this. I feel quite strongly on this.

PERATROVICH: Mr. President, the chairman can participate in the discussion in the Committee of the Whole, so I don't see why these capable men are refusing to take the Chair.

PRESIDENT EGAN: The Chairman of course during the Committee of the Whole could give the Chair to someone else if he so desired. Mr. Riley, will you take the Chair?

RILEY: Obviously, Mr. President, I have little that I can say.

COMMITTEE OF THE WHOLE

CHAIRMAN RILEY: The Committee will come to order. Being among those who were late to arrive, I did not hear the motion for our resolution as a Committee of the Whole, but I presume that the order of business is as announced and the matter before us is discussion of the structure of the legislature as proposed, I believe, by Mr. McCutcheon yesterday. The matter is now open for discussion. Mr. Victor Rivers?

V. RIVERS: Mr. Chairman, in adding up the discussion of the chairmen of the committees the other day, it seemed to me we would have a long session unless we came to some conclusion in this Committee of the Whole as to the time limit of the debate. Now the questioning of this subject and bringing it up before us at this time was for the purpose of determining an opinion -- not for the matter of final debate. I move and ask unanimous consent that we limit debate to ten minutes for each individual member on this subject.

CHAIRMAN RILEY: Mr. Rivers moves and asks unanimous consent that we limit debate to ten minutes for each individual member on this subject. Is there objection? Mr. Barr?

BARR: Mr. Chairman, I object for the moment for a point of information. Does that mean that ten minutes at one time? If a man has a chance at a second time, what then?

V. RIVERS: I had thought in adding up here that we have 55 members; if each uses ten minutes we have 550 minutes or ten

minutes less than ten hours. I thought if each member got a chance to speak that ten minutes would be the maximum we could allow. Some of them will not desire to speak that long.

BARR: Some will not speak at all, but I have great powers of endurance myself.

CHAIRMAN RILEY: Do you object, Mr. Barr?

BARR: I do not object to limiting it to ten minutes each time that a member speaks, but if it comes around to him the second time I believe he should be able to speak again if he wishes for another ten minutes.

CHAIRMAN RILEY: Mr. Rivers, does that constitute an objection to your motion?

V. RIVERS: No, it constitutes no objection.

CHAIRMAN RILEY: Without objection it is so ordered. There will be a ten minute limitation. Mr. Sundborg?

SUNDBORG: Mr. Chairman, are you going to appoint a time keeper?

CHAIRMAN RILEY: I am going to ask the Clerk to give the Chair a copy of the roll call and I shall undertake to keep track of the time. Mr. McNees?

MCNEES: Mr. Chairman, will there be any yielding of time on the part of one delegate to another?

CHAIRMAN RILEY: I know of no reason why that cannot be allowed. We have nothing in the rules on the subject. I would say that each member has ten minutes allotted to him under the proposal. Mr. Rivers?

V. RIVERS: Mr. Chairman, I would object to that if that is a form of unanimous consent request on the grounds that we are trying to limit the total time of debate here to some reasonable figure. I think that if a member does not use his time, does not have ten minutes of time to devote to the subject, we should not allow that time to go to someone else.

CHAIRMAN RILEY: I would suggest in that event if the Chair may, that the matter be clarified right now with a request for unanimous consent or motion as in the case is necessary.

V. RIVERS: I ask unanimous consent that any member be limited to speak not more than ten minutes at this one time, the first time and his ten minutes if not used, not be transferable to some other member.

MCNEALY: I second the motion.

CHAIRMAN RILEY: It has been moved and seconded that each member be confined to ten minutes discussion and that his ten minutes not be transferable to some other member, if not exhausted by the one speaking. Mr. Kilcher?

KILCHER: Mr. Chairman, point of information only. This ten minute time -- if the first time -- is that to be construed that it is only one time if it is only three or four minutes, or can the ten minutes be cut into two or three small parts?

CHAIRMAN RILEY: Mr. Kilcher, as I construe the rule, if one does not use his full ten minutes the first time, he must allow all others who wish to speak on an intermediate basis, to speak before him on the same subject before he resumes.

KILCHER: Will the whole evening be one subject?

CHAIRMAN RILEY: I suspect it will be one subject as indicated by the call. You've heard the motion. Is there further discussion?

UNIDENTIFIED DELEGATE: Question.

CHAIRMAN RILEY: All in favor signify by saying "aye", all opposed saying "no". The "ayes" have it. So ordered. You each have ten minutes.

BUCKALEW: Mr. Chairman, if no one is going to speak, I request that we rise and report progress.

MCCUTCHEON: Mr. Chairman, the purpose of our discussion here is to develop some of the thinking on the side of the proponents of unicameralism in showing the contrast between the two types of legislatures. There has been a good deal of condemnation in past years of the fashion in which our Territorial Legislature has proceeded on the several subjects, and there has been a good deal of thinking by people not well acquainted with the legislative constitution as the way it is in effect currently, believing that in putting the total membership of both the houses into one body the matter of the affairs of the state may be expedited and that an economy may be there effected. There is considerable argument in behalf of bicameralism predicated upon the historical aspects of our legislative assemblies throughout the United States, in England and in other countries. There have been a good number of proposals for unicameralism in the United States during the history of the United States, and it appears that currently only one is functioning. Our particular committee seems to be of two different opinions, and it is possible that some of the debate tonight may serve to strengthen either side or convince either side that they are incorrect. Consequently, I prefer, Mr. Chairman, to have someone take up the cudgels in behalf of either side and get the wheels going around.

CHAIRMAN RILEY: Mr. McNealy.

MCNEALY: Mr. Chairman, in view of the fact that the matter of ten minutes allocated to each delegate with possible chance of twenty minutes, and with the thought in mind that I don't want to be here at the end of ten or twenty hours, I seize this opportunity of being able to lead off and so have my brethren, and possibly sisters, who can speak longer and more fluently than I, have the privilege to carry on their speaking while I am enjoying much needed rest. To get down to the subject, I don't know whether -- first I will back up. I want to make my standing and my premise very clear. I am unalterably opposed to the unicameral legislature. I don't know whether there is any other delegate here who is from Nebraska. I was born and raised in Nebraska and practiced law there a good many years. I will have to say that I did not live too much time under the unicameral system. In fact, it was only in operation for a period of two years there before I came to Alaska to make my home. However, I have been back to Nebraska, I have exchanged correspondence with attorneys, politicians of Nebraska, and this being a Committee of the Whole I feel that I can safely say "Republican" and "Democrat" without any fear of criticism, because that is one thing that we have very admirably avoided in the meeting of the plenary sessions of the Convention and even carried on by those two great statesmen yesterday who referred to greater statesmen in both political parties. I believe we can more or less call a spade a spade. One of the reasons I left Nebraska was that I was probably one of the last Democrats who stayed in Nebraska, and to have freedom and get out from under a one-party system, I felt that a new, growing and progressive place such as Alaska would hold some future, a place where a two-party system could exist and continue in operation. Nebraska is, and I probably don't need to say this, Nebraska is a Republican state. The chances of a Democrat being elected in Nebraska are even less than that of the rich man mentioned in the Bible, getting into heaven. In Nebraska the unicameral system -- there are objections to it there -- on the whole it has worked and is working very well. That much I am going to grant in favor of the unicameral legislature as far as Nebraska is concerned. There my friends, we have a system whereby the Republicans, you have practically a one-party system setup on the non-partisan basis, for one thing. The second is that Nebraska has a stable population. "Stable" is hardly the word. It is not only stable but they are ultra ultra conservative. The largest town in Nebraska (I may be off a little on my figures now as I am probably using figures of ten or fifteen years ago), the population of Omaha (my home town was south of Omaha where the few Democracts were still able to congregate) was about 300,000 as against a state population of 3,000,000. That is not a bad deal under a unicameral system. You compare the size of Anchorage, or the greater Anchorage area with the population of Alaska and you will find your percentagewise that the unicameral

system on that basis would not be as fair here as it is in the State of Nebraska. There you have your sound and conservative farmers throughout the state and they see more or less eye to eye, there is not a chance of ramrodding things through the unicameral legislature in Nebraska because they are all as I said before the ultra conservative type, and it is only conservative measures that are going to get through that unicameral legislature in Nebraska. I can recollect back to the bicameral days when we tried to get some measures through that were not so conservative, and they failed pretty flat even when we still had some semblance of the two-party system in Nebraska. Now I am going to close off here very shortly. I am going to say some things to some of my fellow legislators who served with me in the House of Representatives, it is going to hurt me a little to say this. There are a number of Senators here that I served with in the last legislature. It hurts me but I am going to have to say a kind word for those Senators. There were times when I thought they were wrong and when I thought they were wrong, why they were wrong. There were other times, ladies and gentlemen, when in that House of Representatives things were ramrodded through by a certain segment of the members of the House of Representatives, of which I was one, and had we not had a Senate over there, much as I hate to say this, had we not had a Senate there to cool off the House a little and water down some of these bills that we sent over to them, maybe if we had not known there was a Senate over there, very likely we would not have shoved some of these bills through. We depended a large part on the Senate to kill them. I can see -- is my time about up?

CHAIRMAN RILEY: Three minutes, Mr. McNealy.

MCNEALY: I can see whereby the unicameral legislature with the same ideas and the same thoughts, ladies and gentlemen as the House of Representatives in which I served this last time, on a good number of measures, a unicameral legislature could ram through legislation there that the people of Alaska would bow their heads in shame to think it had passed a representative body. It is a dangerous proposition from that point. In closing, I forget whether it was Hamilton or Madison, when he was asked about the bicameral deal in the United States, (incidentally the Senate and House of Representatives have worked pretty well for almost 170 years in our federal government) he said why the two-house system -- remember in the old days about Madison's time, when they used to pour the coffee out in a saucer and blow it off a little to cool it? Well, he said here is a hot cup of coffee and a hot cup of tea, which he said represented the House of Representatives -- a hot, impetuous body. The saucer here represents the United States Senate -- we pour a little of the hot tea into the saucer, we cool it off a little bit and drink it. I believe that more fully shows that I think that we could stand in this hot impetuous, a growing Territory, we could stand a little cooling off by a

Senate. Incidentally, I am not now nor do I intend to be a candidate for Territorial Senator.

CHAIRMAN RILEY: Is there furthur discussion? Mr. Marston?

MARSTON: Mr. Chairman, may I speak? How much time do we have here?

CHAIRMAN RILEY: Ten minutes sir.

MARSTON: I am the only man that comes from Spenard, Alaska, who is in this Convention. That group of people represents the largest single group of people back of any group that came here as a delegate, and I am thinking back over the people who live there, the 200 homes at Turnagain By the Sea. I am thinking seriously about the people and why I am here and I have used my influence here. Helen Fischer and some others and I have declared that I would vote for the one-house system. I don't think I had too much influence on them, and I have thought it over here tonight and this afternoon. Those 200 families who live in my development, they expect me to help write a constitution that will be acceptable to the United States group and I think that is my first duty. If we need reforming I think I want to join up with a family of states and then reform from within and not start my reforming from the outside. I believe that is what I am here for, and I am going to go along with the system, the pattern that has built a great United States of America, and I am going to throw my influence along the side of the two-house system that has made America great. Thank you, Mr. Chairman.

COOPER: Mr. Chairman, apparently I am laboring under some false ideas here. I thought there was going to be an argument. I prepared my little speech on the basis that someone would already have been on the floor for the unicameral legislature, but apparently right at this moment, just to stir up some debate, I would like to make the statement. I don't think they are very proud of it, so I will present mine with the full idea that I know very shortly there will be more people on the floor. I have one thing to say in reference to our first speaker. If he could guarantee a certain party in a unicameral legislature, I would swing my opinions to the unicameral. With your indulgence I would like to read this. I really haven't had time to study it out well enough to speak freely. Many of the strong points for a bicameral legislature and, of course, strong points for a unicameral legislature have been presented here. Primarily, unicameralism points out economy and expeditious legislation. My concern with the mentioned economy and expeditious legislation is, will this be accomplished at the sacrifice of good, strong comprehensive acts of legislation for the people. Very true, as has been pointed out, unicameralism could possibly forestall and correct some of the "log rolling", "passing the buck" and other undesirable means by which legislators in the past have used to gain personal fame, rather than

vote an issue for the good of the Territory and their constituents. I, for one, would like to assume that had a unicameral house existed in the past, the same caliber of representative referred to above would have been present in the legislature, and could have found other undesirable methods to further his or her purpose at the expense of the voters. Naturally, a bicameral house cannot legislate in the reported fast, economical manner of a unicameral house. However, for our age-old American custom of checks and balances, a bicameral procedure is far more desirous. Secondly, unicameralism cannot give the representation desired by the people. With a two-house system the lower house would be apportioned for representation on population alone. This guarantees each and every election district of 2500 population or more at least one representative in the House and naturally that representative would have the one vote. To enlarge on this, the election districts would be, where necessary due to greater population, multiple member districts based on the total population. The Senate, however, by custom (and I am not attempting to run for Senator in any way, shape or form) a more learned, sedate and responsible body, would be apportioned for representation by geographical areas. Possibly, to go further, geographic and economic areas. This body, the Senate, would then be responsible not to an immediate area, due to population, but would be responsible to the territory or the state at large. The Senate as such would be, in effect, a board of directors for the corporation which in this instance the State of Alaska. Individual Senate members would not be so apt to be concerned about minor legislation but would be instead the liaison between the lower house which is represented by population and the government of the State of Alaska based on over-all population, economics and geographic districts. To summarize, a great deal of the concern voiced in this body against a two-house legislature has been and is based on the supposed incompetence or lack of faith of the representatives to be elected by the people. We were told yesterday by a most distinguished gentleman that the words "politician, politics, government", are in most cases referred to or thought of as synonymous of graft and incompetence. The capabilities of the elected representative or senator we cannot control or guide. They are elected by the people, and rightly so, but a two-house system does install checks and balances, not otherwise obtainable to hold in check any ill-advised or unwanted legislation which would not benefit all.

SWEENEY: Mr. Chairman, I would like to ask a question but not be docked any time.

CHAIRMAN RILEY: Without objection Mrs. Sweeney, the question may be entertained.

SWEENEY: I do not think bicameralism has to be sold and so I came here expecting to hear unicameralism sold, but if there is no sales talk on it I think we might just as well adjourn.

CHAIRMAN RILEY: I would say that any motion is entertained that is in order.

MCNEES: Mr. Chairman, may I answer the question and not be docked any time?

CHAIRMAN RILEY: Mr. McNees.

MCNEES: There are several proponents of unicameralism in the crowd. I well know that. The only reason I am reserving my comments at the present time is that I have had on committee work, a preponderance of public time for the presentation of the subject of unicameralism. I felt that it was better that it come from the floor for the time being rather than by committee. I am prepared to go at any time.

R. RIVERS: Mr. Chairman, Mr. McNees I believe is an able proponent of unicameralism and I subscribe to the old idea that the one who advocates the proposition should have the affirmative and also should have the rebuttal. I think to help this Committee proceed that we would all welcome the argument of Mr. McNees for unicameralism. Then I am willing to have him make his rebuttal after I get through talking without being docked any time.

CHAIRMAN RILEY: The opportunity is open to all.

EMBERG: Mr. Chairman, as a result of the recommendations from the Committee, I would like to hear from that Committee and the members of it.

HINCKEL: Well, I am a member of the Committee, and I came here to learn. I never learned anything by listening to myself, and I did not intend to say anything, but from the study I have made of the subject I feel unicameralism is the type of house that I think will give us the best representation. I come from a portion of Alaska that has never had any representation in the legislature, and there are a lot of other parts that never have either. To me, to devise a lower house that will give us the representation we should have Territory-wide and then also give us a Senate that will also be a fair distribution throughout the Territory in any way so that the seats in the Senate will not be monopolized by the big heavily populated centers, we will have a complete legislature of such size that we cannot afford it in my opinion. The arguments they have against the unicameral house, that is that they will rush legislation through in the heat of the moment, so to speak, and without sufficient judgment, I don't think it is true. I think if we only have one house that the people in that house will give more deliberation to the subject that they are discussing, and I think they will vote the way they feel they should and the way the people they represent expect them to, and not just vote any old way having full knowledge that

the Senate is going to kill the thing anyway. I am not a very good speaker, and I can't express myself too well, but I feel real strongly about the subject, and probably on a different kind of debate, where I could get up and speak in rebuttal after somebody else talks, I could probably get up and say something that might make sense. But for the time being I have said about all I can. I am for a unicameral house on the basis that we will get a truer and better representation and have a better legislature.

CHAIRMAN RILEY: The Chair is noting just three and one-half minutes so you'll have ample opportunity, Mr. Hinckel.

NOLAN: Mr. Chairman, I don't think the people in the back are hearing what is going on.

CHAIRMAN RILEY: What is the situation as to the PA system in the gallery? Is there any hookup?

SOUNDSCRIBING ENGINEER: We have seen nothing of the amplifier -- I believe it is over in the gymnasium as of yesterday, however that is not our equipment and we have no control over it.

HELLENTHAL: Might I suggest, Mr. Chairman, that we move our tables up and permit the people that have visited us here this evening to bring their chairs into the main body. It will not offend my dignity.

LEE: May I move that we recess for five minutes so we can move the chairs?

CHAIRMAN RILEY: Mr. Lee asks unanimous consent without objection for a five-minute recess for rearranging purposes. If there is no objection so ordered.

(People moved chairs in from gallery at this time.)

CHAIRMAN RILEY: The Committee will come to order. I might suggest that to simplify the audience's hearing, the Chair certainly has no particular need to be addressed, except for recognition, and that the speaker, wherever he may stand, could perhaps address the audience to maximum advantage and catch most of those in the room from where he stands.

JOHNSON: Mr. Chairman, I doubt that we can do that because of the transcribing. We will have to face the microphone.

CHAIRMAN RILEY: Would it be the pleasure of the Committee that the speaker step forward?

COMMITTEE: No.

CHAIRMAN RILEY: We will see how it goes from the rear of the

room. Is there further discussion? Mr. Davis.

DAVIS: Mr. Chairman, as I understand it, the purpose of the meeting was to try to give the Committee some idea about the way the delegates felt on the question of a bicameral house and a unicameral house. So far as I am concerned, I am not going to take ten minutes or any fraction thereof. I believe that we should keep the traditional two-house system, and so far as I am concerned I have seen no demand or, for that matter, no request from the people of Alaska that we depart from that system, and I doubt seriously that were we to experiment with a one-house system that the people would be pleased with what we have done. My opinion is not such that it could not be changed, but that is the way I feel now, and I am willing to go on record that way.

CHAIRMAN RILEY: Mr. Fischer.

V. FISCHER: Mr. Chairman, I am not committed to myself one way or the other on unicameralism or bicameralism. I would like to make one point though before speaking on a specific point on unicameralism, and that is that I don't think we should talk in terms of will the people accept what we do. We are here as representatives of the people of Alaska. The people have not told us to go one way or the other. They have not demanded that we adopt unicameralism or that we preserve bicameralism. I think if this body by majority vote adopted unicameralism, that the people of Alaska are just as cognizant of all the factors as we would be in taking such action and would go along with this kind of a system. What I want to emphasize is that we are the people here and we should not worry about being on a higher plane than the rest of the people of Alaska. Insofar as unicameralism is concerned, I would like to bring out one particular point that to me carries more in its favor than anything else, and that is the better committee operation that you can have under a unicameral system. All of us who have worked here within the last few weeks have been engaged in committee work. We have seen the importance of committees for the actual formulation of proposals. A legislature basically is a similar body from that standpoint. The United States Congress is a good example. Most of the basic work is done in committees. Most of the studies and research and debates take place there. Most of the arguments are worked out there. Once a proposition gets on the floor of Congress, of either house, it is only a matter of final debate in the most serious questions of national importance. Most of the other things are pretty well worked out. Now I draw upon the example of the national Congress even though it has two bodies for the simple reason that they have worked out a committee system due to the large number of congressmen and senators that they have. It has generally been agreed that Alaska or any state legislature should not be overburdened with too many members due to cost factors and other considerations.

Taking this into account, if you have a 20-member House or a 20-member Senate or 22-member Senate in Alaska, if you have a 30-or 37-member House that means that each house of the legislature has to subdivide itself into a series of basic committees. They cannot get around that. They must study each bill, they must analyze it fully. That means that 20 people may have to spread themselves over 12, 14 or 15 committees, meaning that very little attention can be paid to any piece of legislation. In the unicameral legislature all the effort of all legislators can be concentrated in the work of the same number of committees that would be sufficient in one house of the two-house legislature. You could have twice as much study for each bill and probably much more thorough study since you would not have duplication and multiplicity of membership as you have in a two-house legislature, especially with a small number of members. I don't want to point to the Alaska Territorial Legislature. We probably should get away and think in terms of the state and the future rather than in thinking of what we have had in the past, although we are used to it and sometimes have to draw upon that as an example, but I am sorry to say that the committee system certainly does not work in a small legislature, as shown by what we have had during recent years. What happens is that the committees do not have time to go into the proposals, the members rush through bills, report them out to the floor because they feel they do not have time in committees to give them full consideration, therefore, let's throw them on the floor and give everybody a chance to talk about them. That is exactly what happens. You talk and talk and talk about various bills. They are amended time and again and sent back and forth to second reading, and the result is that the committee work is done on the floor of the legislature. To me this kind of operation does not result in the enactment of good legislation, and therefore I throw this out as one of the aspects of unicameralism that I feel has much to offer for the legislature of Alaska.

CHAIRMAN RILEY: Mr. Harris?

HARRIS: Mr. Chairman, I have not said too much at this Convention so far because I was sent up here by a bunch of people that told me, "Tommy, it is always best to stay quiet and let people think you are a fool than to open your mouth and prove it." But I have heard a lot of talk tonight on the one-party, two-party system. Alaska for the past two to three sessions has been a one-party system, kind of a one-party at a time, but we still must keep a system of checks and balances. Therefore, to my mind the two-house system has been more or less tried and proven and 47 of the 48 states seem to like the two-house system. In 1836, I believe, Virginia went from the unicameral house to the bicameral house. Evidently they had a reason. So since we have got something that we know has worked pretty good, I can't see much use in changing it.

CHAIRMAN RILEY: Mr. McNees.

MCNEES: Mr. Chairman, the legislature was originally organized as a check to curb the power of royalty. It had no representative functions. They did what the king desired and gradually this began to take shape and model out a form that we now know today as a democracy. They gradually assumed powers as the king was weakened. The king's powers lessened, the legislators' powers grew. It gradually split into a two-house system of legislation, one as a check upon royalty, the other one in the interest of legislation for the people. The members of the two-house system or the two houses of our present system are elected by the same people, from the same class of people. They are given the same legislative authority. There is no division on the basis of aristocractic lines or on the lines of wealth. There is no qualification whatsoever with regards to wealth and property. There is no need to give the two branches the same authority to do the same thing. Where they possess the same qualifications for office and where the work of the two bodies is identical, requiring that the work be done twice, identical action by each branch, although each branch has the same jurisdiction -- unreasonable, illogical, and required by no other government agency. This illogical procedure is well illustrated by what happened in our courts of justice. The case in court may involve a lifetime of savings. It may involve the liberty of one or more of the litigants. It may even involve human life, but however important may be the issue, it is unnecessary to have more than one trial. Under the guidance and control of the presiding judge each side offers all the evidence deemed important or relevant. When all the evidence is in, the attorneys argue the case to the jury. The jury retires and after deliberation renders a verdict. The judge renders judgment upon this verdict. This determination of the issue is then settled. It is ended unless the jury or the judge has violated some constitutional provision, in which case the entire trial is set aside and held for naught by the appellant act. This same check would exist in the legislative matters if we had the one house. First point -- if the legislature exceeded its constitutional authority in the enactment of any law, it would be set aside by the supreme court. Number two -- there would also exist the veto power of the governor. Number three -- there would also be the referendum provisions of the state constitution so that the people could by such referendum nullify any law passed by the one-house legislature, as they have the power to do so now. Let me trace, by way of an example, a bill through our present two-house system. A bill is introduced, we shall say in the house, stemming from the people. The first step -- by the house, it is referred to a committee whereupon the committee holds hearings. The committee then debates the question. The committee then reports the bill to the house. The bill comes up for discussion and debate. All members have the right to be heard. The bill is

argued in all its phases. The House votes. If the bill is passed the House then sends it to the Senate. We now have the bill in the Senate, and what happens? The same thing all over again, usually the same people testify before the Senate as testifies before the House committees. Finally it is reported out, debated, perhaps this time amended in some particular way, and so they pass the bill. The bill is then returned to the House for action upon the amendment. The House rejects the Senate amendment. The bill is sent to a conference committee. Practically all legislation over which there is any controversy goes to a conference committee. What is a conference committee? It is the third house. The conferees, usually free from the House and free from the Senate, take up the bill for consideration. Usually these deliberations are held behind closed doors. There is no roll call. There is no provision of law for a record of proceedings. The conference committee perhaps writes a new bill, modified perhaps, without any hearing whatsoever, modified perhaps without any publicity whatsoever, modified perhaps without any recorded vote. Is that democracy? If they agree, they report it to the House and the Senate. The conference bill comes up in the House and the Senate and it must be voted either up or down and that without amendment. That is a big point, remember it. There is no such thing as the amendment of a conference bill. Members may find provisions that they think are wrong, they cannot move to strike them out, they cannot move to insert good provisions that may have been left out. They must accept the evil to get the good. To reject the evil is to reject the good. This places the members of the House and Senate in a very unfavorable and unfair light. Modifications or changes of a bill have been made finally without public discussion, without the knowledge of the public, without any roll call, without any record, and it must be approved or disapproved as a whole. If the House or Senate (either one) rejects the conference rep it goes again to the conference committee, and in the , days of a session especially, this means death to what otherwise might have been a good bill. What a terrible waste of man power, time and expense! Now let us trace a bill through the one-house legislature. The bill is introduced to the single house, considered by the proper committee, hearings are held, subject is exhausted on the floor with every person given a chance to speak. A vote would be taken, any amendment offered would there be fully discussed and voted upon. The vote would be out in the open. Immediately the public would know with the next issue of the paper or the next radio broadcast at breakfast time, just what the record of the public servant was. Not only would they be able to punish the unworthy servant, but they would be better able to reward the one who is faithful. I could go on and on, but I'm not going to do it. My time must be about up.

CHAIRMAN RILEY: One minute.

MCNEES: The merits claimed for the unicameral system -- membership in a single chamber carries greater prestige, dignity and greater opportunity for public service than membership in a bicameral legislature, and hence attracts more distinguished, outstanding and representative citizens. A single chamber operates more efficiently than two and is able to give more thorough consideration to proposed legislation than two chambers. By the adoption of suitable rules of procedure and the establishment of effective committee systems it can insure that every measure is carefully reviewed before it is acted upon, with adequate safeguards to prevent hasty action and thus avoid the serious ills of the closing rush that pertains in many states. The jealousy, friction and rivalry in the two houses is gone. Responsibility can be definitely fixed. A single house facilitates the development of essential leadership. The single house permits closer and more effective relationships between the governor and executive departments and the legislature. Some observers in the Nebraska legislature claim that a single chamber law-making body reduces the power of special interest groups and lobbyists to defeat needed legislation and at the same time makes it easier for the groups of citizens who are interested in pending legislation to present their recommendations openly and above board to the legislature. The unicameral legislature does away with the need for conference committees. We have covered that. I won't go into detail on it.

CHAIRMAN RILEY: Mr. McNees, the Chair is obliged to call time on you.

R. RIVERS: I ask for unanimous consent to give Mr. McNees another five minutes. He is making the primary presentation of the affirmative of that proposition.

CHAIRMAN RILEY: Without objection, Mr. Rivers has asked unanimous consent. So ordered. Proceed, Mr. McNees.

MCNEES: The unicameral system facilitates public reporting of the work of the legislature and this is very important. If the press is in, the public is in, and the issues before it enables the public to keep informed on the course of legislation which should serve to increase the public confidence in the legislative body. The unicameral legislature results in substantial savings money-wise, and who does that not make an appeal to? The cost of the legislature itself is reduced because the number of its members and the size of the legislative staff are reduced. There are many many other advantages, but I want to take just a few minutes that I have left and point out that unicameralism is not limited to Nebraska. Canada -- nine provinces with eight of the nine, unicameral. They have found that they have better laws and less expense, while the activities of corrupt lobbyists are cut to a minimum. Finland -- the little republic of Finland has been so well governed that it

is the only European power that has the financial ability to meet the installments of war loans due to the American government. Finland has been a one-house legislature for 37 years. England -- even though the House of Lords exists it is in name only, and it is essentially a one-house legislature. The history of unicameralism in the United States is not, has not, and will not be limited to Nebraska's very short term with it. It is significant that three states -- Pennsylvania, Georgia and Vermont for varying periods of time operated with unicameral legislatures. Georgia abandoned its unicameral plan in 1790, apparently influenced by the pattern of the national Congress. Pennsylvania did likewise in 1789, apparently because of dissatisfaction with the council of censors and with the executive council which acted as a plural executive. The new constitution created a second house of the legislature, abolished the council of censors and established a single executive. Vermont -- the longest experience of any American state with the unicameral legislature was that of Vermont, from the year of 1777 until 1836 -- a period of over 59 years. This experience, after a legislative deadlock that year in the election of a governor, none having received a minority at the last general election, the recommendation of the council of censors for the adoption of a bicameral legislature was approved by a close vote. It was found after close study of the merits claimed for the bicameral system were not realized, and that as far as can be judged from historical evidence, the previous unicameral legislature worked as well as if not better than the succeeding bicameral legislature. Now the big question -- why have not more states adopted it if it is so good? Here is the answer. Out of 197 bills introduced into the various state legislatures across the nation in the last 25 to 30 years, 189 were introduced by the House, the body representing the people. Eight were introduced by the Senate. Of the eight introduced by the Senate, they all died in the Senate. Of the 189 introduced in the House, 176 of them passed and went on into the Senate and were all killed in the Senate. I thank you.

R. RIVERS: Mr. Chairman, I appreciate the sincerity and the persuasiveness of Mr. McNees's case. I wonder if the Senate did not kill those bills for changing the form of those state legislatures because it exceeded the constitutional authority of the legislature to change its own form. I would not know. The reason that I advocate staying with the bicameral system is largely a matter of representation. I think of the United States, as big as it is, having had through the years the heavy center of population east of the Mississippi River. I think of a one-house body based upon proportional representation which would absolutely dominate the whole United States. I think of the western states and the more sparsely populated area as not having any check on legislation, such as would be controlled under proportional representation in a one-legislature congress. The reason that our constitution was drawn to

give equal geographic representation to all the states, and that is in the form of two senators for each state, was that the highly populated area could not absolutely control and dominate the whole country without some check in behalf of the less populated area. The United States Senate sometimes shows as much liberality as the House of Representatives, at one time showed a little more with regard to statehood for Alaska. The Territory of Alaska, one-fifth as big as the United States, is a diversity of economies and could be several states if you want to look at it from the standpoint of size and also from the standpoint of industries and diversity of activities. Southeastern is as different with its forests and its fish from the Fourth Division with its mines and furs, as one state would be from another. Then westward, the Alaska peninsula, the Arctic, Nome, and the northern westward is so different that very few people in Southeastern Alaska have ever been up to see what it looks like. I used to be grateful when the First Division had headquarters with the capital and all the brains and all the influence used to "wag the whole dog around" and practically run the Territory of Alaska. The only safeguard in those days was that you had a Senate with two senators from the Second Division, two from the Fourth and two from the Third. Now conceivably as the golden heart of Alaska might be the great power with the big build-up in the future, that would be "wagging the dog", but I am not saying that it will. You have the example of the Third Division that now outstrips by population any other division by two at least, and you can visualize that a one-house legislature with straight proportional representation would place at the present stage of history a preponderance of strength in the hands of the Third Division. It is conceivable that in the course of events the First, with its forests and its development down there might again become strongly preponderant over any other part of the Territory. But nevertheless, we are so widely scattered, we have such a diversity of economies, there are so many people in the Second Division that have never spent any time in the First and so many in the First that have never spent any time in the Second or the Fourth or the Third, that don't know anything about the rest of the country, that I hesitate to see a unicameral legislature based entirely out of proportional representation. I feel that with a country as big as Alaska that you should have one body with equal geographic representation. I am not saying that we would be sticking to the four divisions as we have known them, but from the standpoint of economic areas based on widespread geographic locations, you would have something similar or comparable to the four divisions as far as districting for senate representation is concerned, so that is the primary reason for Alaska. Not withstanding all the good arguments in favor of unicameralism which have been introduced by Mr. McNees, I favor the bicameral system for the State of Alaska.

MCNEES: Mr. Chairman, may I ask Mr. Rivers a question? Does he not consider this present group representative of the people

of Alaska, our 55 Delegates to the Convention?

R. RIVERS: Yes, I do consider this group representative for the purposes of writing a constitution. There is no great diversity of policy to be considered. We are not appropriating money or taking anything away from the taxpayers. We are not trying to "slice the pie" a little thinner for one group or thicker for the other. I have every respect for the fine widespread representation that exists in this body.

KILCHER: Point of information. If I am right, I am of the impression that the public was also invited to take the stand on the issue tonight, or am I wrong?

CHAIRMAN RILEY: I recall noting the story in the press, Mr. Kilcher. I don't know its source. I believe that if any member wishes to call on the public that he may ask for the privilege of the floor for that member of the public. Subject to correction, why that's the way I understand it.

KILCHER: In that spirit I would invite the public in general to do so. I have no personal acquaintances among them that I know would like to speak.

CHAIRMAN RILEY: Mr. Barr.

BARR: Mr. Barr, this Committee of the Whole was called for the purpose of airing the views of the different delegates. This matter of the one or two-house legislature is the business of the Legislative Committee. Our different committees hold public hearings and invite the public to take part, and I believe that is the time the public should state their views, when the Legislative Committee holds a public hearing.

CHAIRMAN RILEY: Mr. Doogan..

DOOGAN: Mr. Chairman, I may have to be corrected, but if I recall correctly when Mr. McCutcheon, the Chairman of the Committee that asked for this public hearing, he stated that the purpose was for the delegates and for the public to participate.

CHAIRMAN RILEY: Mr. Egan.

EGAN: Mr. Chairman, in order to attempt to clear the situation, I would put a motion on the floor and that would be that if there is any member of the audience who would desire to be heard before this Committee of the Whole on this question, that he be granted the privilege of coming before us and stating his opinions if he so desires. I would ask unanimous consent.

V. RIVERS: I would object temporarily until we have heard the delegates express their opinions. I think we should not invite

the public as a whole until after each member has had a chance to say what he has to say on this subject.

EGAN: Mr. Chairman, that would be acceptable, waiting until all the delegates who wish to speak on the subject have been heard.

DOOGAN: Second the motion.

CHAIRMAN RILEY: Mr. Doogan, would you withhold your second for a moment? Is there further discussion from the membership? Mr. Hurley?

HURLEY: Mr. Chairman, I rise to point out what appears to me to be an inconsistency (I may be wrong here) on the part of the people that support the unicameral legislature. I can't think of any way of organizing a unicameral legislature without by necessity diluting the area representation. I can see where they will get area representation coupled with population representation, but by nature I think it will reduce area representation over a two-house legislature. I wonder if those people, while advocating that dilution, will also demand of the United States Congress the seating of two Senators from Alaska which is purely on a basis of area representation. If they do, I think they would be inconsistent.

ARMSTRONG: I agree.

CHAIRMAN RILEY: Is there further discussion from the delegates? Mrs. Sweeney?

SWEENEY: Mr. Chairman, I would like to say a few words. In connection with Mr. McNees's statement concerning the three states which at one time had unicameral legislatures, he also mentioned that at the present time Nebraska was the only state. He failed to mention that Nebraska has a non-partisan legislature and attempts have been made at various time to return the legislature to a bicameral system. You might be interested to know, and I believe many of you do know, that there have been attempts made to have the unicameral system in Alaska. In 1945, House Joint Memorial No. 12 was introduced by Representative Chris Henning. This was introduced on the 33rd day and of course was sent to the Committee on Elections, Election Returns, and Mileage. It was reported out by the Committee the following day with a "do not pass" with one of the committee members not concurring. It was placed on the calendar then for a second reading. No one was interested enough in that House Joint Memorial to see that it was read or that action was taken on it until 17 days had elapsed. On the 51st day it was read for the second time. The rules were suspended, it was considered engrossed and was read for the third time and the question was asked -- "Shall the memorial pass?" and it failed. It failed by a narrow margin -- 11 to 12 and one absent.

Later in the day one of the representatives gave notice of reconsideration which was then taken up on the 52nd day, and during the night he was able to swing not only himself but another to the other side, and so the memorial passed. However, it was so late in the session that the Senate refused to accept it on a vote of three to thirteen. That was in 1945. In 1946, House Joint Memorial No. 4, also by Chris Henning, was introduced on the 13th day. It went to committee and reported out "do not pass", with three members of the committee, Stan McCutcheon, Andrew Hope and Mr. Taylor returning it "without recommendation." It went to second reading and was brought up for reading on the 19th day when there was a motion made to lay it on the table which carried eleven to nine and three absent. It was laid on the table. Absent at that time were Stanley McCutcheon, Mr. Taylor and Mr. Peterson, The following day the author moved to call the Memorial from the table, and the call was successful and then it was to be brought up on the 23rd of March for final consideration and second reading but it was delayed and not brought up until the 29th. At that time it was read the second time, the rules were suspended, it was considered engrossed, read the third time and the question asked, and it failed. Now I bring this out to show you that in '46 it failed in the House. In '45 it failed also, except that on a reconsideration vote it squeaked by. If someone were really interested in unicameral legislature it seems to me that the author at least would have seen to it that that memorial, since it had already come out of committee, would have been read. It was on the calendar. It would have been read and action would have been taken before it was too late to be received in the Senate without the necessary vote after the certain period when no bills or memorials could be received. I think that the most important consideration on this business of whether we are going to have a unicameral or bicameral legislature is whether we can get the approval of the citizens of Alaska and the members of Congress. Now Mr. Fischer has told us that we have been elected by the people. We are the people and that if we put in a unicameral system or any other system, that should be all right. We should accept it then as all right, but if that is the case, why are we putting the constitution before the people for approval? I believe this is not just something that is up to us entirely. I think we have to reckon with the fact that we must get approval of a unicameral legislature if that is what we put in the constitution and there is a question in my mind whether you can get that and whether you get it from the people of Alaska and Congress too, I am not sure, but I think we should be very careful. I feel very strongly about this, that we must have the constitution so good and so easy to get an approval on so that it will go through, and I hope that everyone will consider the importance of that. I think that if we do not go to Congress with some assurance that the unicameral legislature is going to work in Alaska, then we will find ourselves waiting, not to be the 49th state but the 50th state. The legislature

in Nebraska being a non-partisan legislature, is no criterion for success of the unicameral legislature in Alaska. We have a two-party system here. Since coming to the Constitutional Convention I recognize that there is even a third party on the way. and so with a three party or two party strong system in a unicameral legislature, we cannct say because it is successful in Nebraska, it will be successful here. Mr. Hinckel thinks we would get better representation under the unicameral system. I hardly think that is an argument for the unicameral system. I believe that the apportionment of delegates to the Senate and House of Representatives in the new State can be worked out so that all the areas will be properly represented. I can't go along with many of the arguments that Mr. McNees stated. He would have you think that he has gone through a legislative session in both the House and the Senate, that it is very easy to get a bill through the House and the Senate, and I would grant you that that might be easy if you had a very simple bill such as the bill which was passed in this last session to designate Marie Drake's "Alaska Flag" as the song for Alaska. However, in the question of introducing a bill on which there is a great deal of question and the bill squeaks through one house on a majority of one, it is not as easy as he has made it appear. I think it is very important that where there is division of opinion that we should have the check of the other house. If you have a wide difference in a single house, even though those representatives were all elected by the people of the state, you would still have, maybe just one person throwing the bill into an act -- he tells you that the legislators will have greater prestige and dignity, there would be more distinguished legislators, more effective legislation, closer relationship between the legislature and the executive. It would reduce lobbying, it would facilitate publication or newspaper printing and save moneywise. How can he say that this is so? How does he know that we will have more distinguished representatives? How can he say that it will be more effective? We will we have a two-party house, if it is unicameral and we cannot go by and base it on the Nebraska legislature. I have a number of other things here that I would like to mention. There was something about better legislation but as I said before, I don't know how they figure they can have better legislation on the unicameral system. If our procedure under a two-house is not good enough, it is our own fault and it is our business to see that our legislators are doing a better job than they are. As I mentioned the other night, we are a republican form of government, and operating under democratic principles and under the republican form of government you have a system of checks and balances which gives us our executive, judiciary and the legislative branches. It is a system that has been in effect for centuries, and I feel with this experience that we should go along rather than to go on the untried unicameral system for which we have absolutely no basis of success.

CHAIRMAN RILEY: Mr. Victor Rivers.

V. RIVERS: Mr. Chairman, I have listened with a good deal of interest to the unicameral comments. When I came to this Convention I did not come here with any direction from the people whom I knew in our home country, to give deep consideration to unicameralism. I saw no one run on any ticket in which they came out and strongly advocated that we should have a unicameral legislature. I happen to know that there were three people in the Territory who advocated unicameralism and who were candidates for delegates and all three of these people were defeated. They are not here with us tonight. We have no mandate that says that we should give deep consideration or go to a unicameral type of legislature. I was a member of the Statehood Committee, and as such I am a great believer in presenting to the delegates all of the facts insofar as we possibly could. I was a strong advocate of the idea that we get the best theory that we could possibly get and that that theory then be presented to us in a form such that it was unbiased, present the theory from both sides of view, and we have done so with the work of the PAS. They have presented you as nearly as possible a balanced opinion on the questions that would come to this Convention. Along with that I have been a strong advocate, as you all know, of having with us the best theory we can get in the way of personal consultants. I want that theory. I want to know what the theorist thinks is the very best for us and then from that point we must take a hold and apply the long experience, the practical approach and the touch that we know that is best for the people of Alaska. We must apply the common sense touch that will be the answer to the problems of government for our people here. I have heard it said tonight by one of the delegates that it was not our problem to answer back to the people, or words to that effect, in regards to what we did here. We were their elected representatives and as such, were the people. However, I feel differently than that. I feel we are answerable to the people, and I feel we should come up with something that we know is not only the best for us and the best for them and also satisfactory and acceptable to them. I just wanted to read a little bit from the comments of the PAS in their handbook to us on this subject. On the one line they say, "The advocates of unicameralism can make, on paper at least, a very reasonable case." I want to read you this summary now of the two types of legislature. "There are no inherent reasons why either sort of legislature cannot work satisfactorily. The theoretical case for the unicameral body is good, yet only one state has adopted this form and no more are likely to in the near future, unless Alaska chooses the unconventional but not unprecedented course. As Dr. Graves observes, the opinions of the people who ought to know vary widely, in fact they are often diametrically opposite. A large majority of political scientists favor unicameralism while an overwhelming majority of persons with actual legislative experience are opposed to

it. Delegates to the Convention can weigh arguments, on the one side -- tradition, experience, the possibility of the double check, on the other side -- simplicity, economy, clear responsibility." I want to go into that matter just a little bit. We have had in the United States, as you know, through all history, with the exception of the first three states, Pennsylvania, Vermont and Georgia, the bicameral type of legislation, and on the other hand in Canada you have provinces all of which have unicameral legislature except the one of Quebec. Quebec has some 594,000 square miles, is the largest of the provinces and very similar to Alaska. However, I want to say that in Canada they did not have the separation of the legislative and executive powers. They have the governor general appointed by the Crown. The Crown appoints in each province a lieutenant governor. The lieutenant governor then is the governor of that particular province. They elect the representatives to their one house. From that one house then is chosen what is called the cabinet. The cabinet sits as the year around executives under the lieutenant governor. You really always have sitting a second legislature in the form of that cabinet who are from among the elected representatives in the one-house system. It is in no way comparable in my opinion to the problems of government in the United States. We have had a good chance to observe in the United States three states which have chosen to go from unicameralism to bicameralism -- Vermont, Pennsylvania, and Georgia. Now it is my opinion -- we were told otherwise by another delegate tonight -- it is my opinion that in all probability those states went from unicameralism to bicameralism at a time when communications were slow, travel was difficult. It is my opinion that the people in those states did not feel they had the proper check and balance. I have been in the legislature a number of times, as many of you know. It has been my experience that even though after careful weighing, careful consideration, the hearing of all arguments by each house or by the first house that handled a bill, that many times after that measure had passed the first house, that there were voices heard from different parts of the Territory, there were different issues brought into the picture, that radically changed the condition and the situation of the thinking, even of the people in one house who had sometimes passed the bill. I have had men come to me from one house and say "we did not find this out; we did not know this was something that affected the First Division, the Third Division, the Fourth Division; we did not have their voice so for that reason we wish you would change this matter in the Senate." I have had the same thing happen in the Senate where they did not have the complete details. Some people might say that we have a similarity between a one-house legislature and a city council. I want you to realize that in a city council, the people that the city council is serving are people living within a radius of perhaps five or ten miles. A city council sits every week. People can come to the city council and express their opposition, and they do frequently.

The next week if they haven't had their voice heard they can raise their voice again, but that does not compare to handling the area of a state as large as ours would be, 684,000 square miles, one-third of the area of the whole United States. It seems to me we must have this additional check and balance of the two house system in order to get a proper voice from the people in the more remote areas. I feel sure that the people who espouse this matter of a unicameral house are sincere. I feel certain by that they are honest, but it says here that the practical men in politics realize that the two-house system best serves the American system. It's so because in Canada your people are a different type of thinking people. They are not the driving, aggressive, energetic people, that we have in the United States, in many ways. At least that should be true in the matter of forcing legislation through their government. They don't pass as many laws, they don't seem to have as many lobbyists. We know it's a fact that our government --

CHAIRMAN RILEY: I'm sorry Mr. Rivers, I don't like to break in on you but the stenotypist is having a little difficulty. May we call a five-minute recess while the machine cools off and your time stands still?

RECESS

CHAIRMAN RILEY: The Convention will come to order. On recessing Mr. Barr asked that unanimous consent be allowed Mr. Rivers to extend his time two minutes for the interruption of trend of thought. Without objection, was there an objection?

V. FISCHER: I would like to object for the sake of saying this has given Mr. Rivers more chance to think. (Laughter) I withdraw my objection.

CHAIRMAN RILEY: Is there objection? Without objections, so ordered.

V. RIVERS: I want to say then I have watched this Territory prepare for statehood and in my small way have been a part in helping it prepare for statehood for many years. I want to say briefly that after the big depression of the '30's, Alaska was in dire circumstances. We had elected Tony Dimond to office and his first move, of course, was to try with the administration to help get a raise in the price of gold. We got it. The next thing, of course, was to try and stabilize and get temporary employment for people who were unemployed. That came through, and it became evident that Alaska was geogr[illegible]ically very strategic and a strong defense program was c[illegible]ized. But at that time the military coming into Alaska [illegible] the undeveloped condition of the Territory, and at that time it became more and more evident we should have a well developed economy functioning normally in order to have

the best defense. It seemed only logical to get such an economy functioning normally that we should have a state government, and as far back as '37 we talked about such things and began to prepare for it. And under the two-house legislature which we had, 16 members in the Senate and 24 in the House, it was changed, pardon me, in '41. However, under that we passed many things. First came Social Security, welfare department, public health. We instituted and established a highway patrol which was to be the nucleus of the state police. It was told us by members of one of the congressional hearings that we did not have a firm revenue program. Under our system of legislation we passed a firm revenue program. We have no bonded indebtedness. We have money in the treasury. We are paying our bills. Those things have all been done with our two-house legislature, and I for one want to say that it has worked successfully in the Territory of Alaska. I also want to concede that there are areas in which there should be better geographic representation. I think that is one of our duties here to get proper proportioning in the matter of representation in this legislature when we set up this constitution. I just want to read you again though one line here, but before I do I want to say that in this Constitutional Convention and in this constitution we draft, we have many hours of work by many people. We have many private dollars invested on trips to Washington and hearings before Congress. We have at stake here some $300,000 of taxpayers' money who want to see us come up with a constitution which is acceptable, not only to the people of Alaska, but also to the members of Congress. I want to read a line to you again which I read before: "An overwhelming majority of persons with actual legislative experience are opposed to it." (Meaning the unicameral legislature). Now remember that if those men are opposed to it, the practical men with practical experience, those are the men who are going to have to approve the constitution for the State of Alaska and grant us statehood when it comes before Congress. I want to say again that I believe the people here are all honest and all sincere. Those who are favoring unicameralism -- I believe they are sincere in their beliefs, but I believe it is up to us and believe that if we did not adopt a bicameral legislature that we would be guilty of a great error in judgment, and I want to say that I hope and I will work hard for and continue to work hard for the establishment of the bicameral legislature or the two-house system of representation because I think for an area this large, where transportation and communications are apt to be delayed, it is the best system for Alaska. It has also proven to be, with our energetic, fast-moving, hard-pushing American people, I think it has also proven to be best for the states, or there would not be 47 states using it today. (Applause)

CHAIRMAN RILEY: Mr. Fischer.

V. FISCHER: Mr. Chairman, I would like to have permission to clarify a statement I previously made. Apparently it is being misunderstood or misinterpreted.

CHAIRMAN RILEY: You may proceed, Mr. Fischer.

V. FISCHER: I said before that among other things that we, the 55 delegates are the people. I did not mean in the least to imply that since we are the people that we are above the people, that we are not answerable to the people. What I meant to say is that we should not put ourselves in a separate category from the 200,000 Alaskans who sent us here. They are as intelligent as we are. If something makes sense to us, it will make sense to them, and therefore, we should not keep talking about them as something apart from us, something a group that we aren't sure will understand what we are talking about. In other words, what I meant to say was that as representatives, we reflect the thinking of Alaska. Certainly what we come up with is subject to a referendum approval. There is no question about that, and certainly we are answerable to the people.

CHAIRMAN RILEY: Miss Awes.

AWES: I would like to make just a few remarks prompted by statements made this evening.

CHAIRMAN RILEY: You may proceed.

AWES: We just had read to us the portion of the summary of the considerations of the two methods of two types of legislatures. I would like to fill out the picture by reading the last two sentences of that summary. "Alaska's relatively small population and the economy and simplicity of the unicameral legislature seem to argue in the favor of a single house. On the other hand, the apparent satisfaction with the two-house system in the Territorial legislature makes any departure from tradition difficult." That again places the final argument in favor of the two-house system on the basis of tradition. It seems to me that most arguments in favor of the two-house system so end. Now I am not opposed to tradition as tradition. However, I do not think we should follow it blindly but ever so often we should reconsider tradition in the light of present-day conditions. I did not run on the platform of the unicameral legislature. However, I did run on the platform that this body should seriously consider the unicameral legislature before deciding on which form it should adopt. As you can see, I was not defeated by running on that platform. There has been much talk tonight as to what the people want and putting in what the people want. I agree that we are here as representatives of the people, but I believe the people elected us to draft the best possible constitution. We have an opportunity that Alaskans have probably never had

before, in our opportunity to study the two types of legislature. I think we have the obligation to do that and to adopt the legislature we conclude is the best type, and if those reasons are sufficient to convince us, they will probably be sufficient to convince the people, if adequately presented to them.

HINCKEL: I have already spoken. May I speak again.

CHAIRMAN RILEY: You have not used your time, Mr. Hinckel. I believe you have several minutes left.

HINCKEL: I stated before I am on the Legislative Committee, and I ran for this body not on any particular platform of one type house or the other, but I did tell the people that I would try to see they got the best type of constitution that we were able to write for them. And I think that, as Miss Awes more ably stated, well in other words I concur with most of the things she said. I think there are some things we have forgotten on the apportionment. I know that from attending the committee meetings I not only attended our own meetings but I attended a lot of the other meetings, that it is quite possible to apportion the legislature so we will have better representation with a single house than we could hope to have with both. That is merely my opinion. The main thing I wanted to say when I got up this time was the constitution must be written for one type of house or the other, and the Committee in discussing it felt that the time to decide that was now. It is my opinion that a lot of the state legislatures, had I been sitting on them, I would have gone along with them just exactly the way they did and refused to change because they already had everything else set up for it. But the experts that have written all the data that has been submitted, both for our own and for the Hawaii constitution, they all tell us that the one-house system is the best but usually go back to the same answer that Miss Awes stated -- that it is a tradition that we have the other kind. If we are going to have two houses, why now is the time we have to know it because if we write a constitution for one house and then attempt to change to two, we are going to have to have a constitutional convention and rewrite the whole thing and make it work and vice versa. If we write it for the two, and then want to change to a one because all of a sudden everybody else thinks it better too and they all start changing, we are going to have to tear ourselves all apart and put it together again. It was the concensus of opinion in the Committee that those are things we ought to find out now so as to stop wasting time and get things rolling in all the committees. That is the reason that I have spoken in favor of it as poorly as I have done, but that was my idea in working for it that I think it should be considered very thoroughly, and if we are going to consider it at all, now is the time to do it and not later on.

CHAIRMAN RILEY: If the Chair may make an observation, Mr. Hinckel, I think your point is well taken in that it represents the thinking of the body in resolving itself into a Committee of the Whole because of the inter-relationship of the two questions. Is there further discussion? Mrs. Hermann?

HERMANN: I just wanted to add a little historical footnote to the remarks that Mrs. Sweeney made about the efforts to secure a referendum on the matter of a unicameral legislature. I am a little older than Mrs. Sweeney and I have probably been watching legislatures a little longer, but way back yonder in the '30's there were two attempts made to pass a referendum providing for a unicameral legislature. There was also a bill introduced to provide for a unicameral legislature, and it was killed in the House, not in the Senate, but in the House. Both of the bills providing for referenda on the matter -- one in one session and one the next session, were likewise killed, and it is my recollection that they were killed in the House and not in the Senate, so that the legislature of Alaska itself has written a considerable volume of history in regard to the unicameral legislature. I think Mr. Fischer's statement of comparison with the value of committee work as applied to this Convention is probably a little bit premature. His suggestion that it is working so well here might also have a footnote in a day or two when some of these committee reports are turned loose on the floor. I hope he will not have a rude awakening at that time. There is little to say as far as I am concerned in regard to the merits of unicameral or bicameral houses. I think the time to say it is on the floor when we finally are going to vote on this measure, but I do think that it is advisable that everybody here stand up and be counted on how they stand on the matter at the present time, so that the committees may have some idea on what sort of report to bring out in regard to that particular angle of their work, and I am perfectly willing to tell the world here and now and next week also, that I favor the bicameral system.

CHAIRMAN RILEY: Mr. Egan -- if I may correct the Chair and recognize Mr. Barr. While I had recognized Mr. Barr earlier, no time was charged against him.

BARR: Mr. Chairman, I yield to Mr. Egan for the time being.

CHAIRMAN RILEY: Mr. Egan.

EGAN: Mr. Chairman, I know that each delegate who is in favor of the unicameral system is absolutely sincere. I have talked to every one of those people who have spoken on that subject so far, and it has occurred to me and been my observation in my conversations with those delegates that one of their chief worries and one of their chief reasons for being for the unicameral system is that there has been a fear in their minds

because of the past situation that has existed in Alaska. Now, I am absolutely certain that we are coming out of this Convention and are going to write into the constitution that comes out of this Convention, an apportionment feature in the constitution that will be accepted by, if not all the delegates, by almost all the delegates in the Convention and will be adopted into the constitution that it will be as fair an apportionment as is humanly possible to come up with at this time. I would like to point out that in Alaska the trouble has been, and I think the trouble that has caused most of these fears and most of the support for the unicameral system has been that we have not even had a bicameral system of legislative apportionment in Alaska. We have had a running-wild system, you might say, both in the makeup of the Territorial Senate and the makeup of the Territorial House. Our citizens here have not had the opportunity to view, so far as their Territorial government is concerned, a bicameral system of legislative bodies in action, and I feel very strongly, personally that at this time it would be unwise to adopt the unicameral form of government. We know that our United States has become the freest, the fairest and the greatest nation on earth under the bicameral system, and I hope that this Convention will continue that form of legislative government.

CHAIRMAN RILEY: Mr. Barr.

BARR: Mr. Chairman, I would ask the Chair to give me a warning about a minute before my time is up, as I don't want to leave a thought or a participle dangling in mid-air. I will submit to you that the ideal system for a legislature is the unicameral or one-house legislature, and that is just exactly what is wrong with it. It is an ideal. It is backed by theorists who have never had any experience in the practical applications of their theories. The unicameral system would work very well if human beings ceased to be human, if every voter got out and voted and every voter was aware of what he was voting for and acquainted with the candidates and if every elected man that was a member of that legislature were a statesman, then it would work, but unfortunately human beings are human. Now, I would like to give you a couple of illustrations of why we should have two houses. You have heard many times that our American system of government is based on checks and balances. It is in our present legislature. There are three forms of government to serve as a check on each other, and we have courts for that purpose -- we even have auditors, examiners and erasers on lead pencils for that reason. Now in the past I have served in the legislature, and I have seen the time I was very thankful we had two houses. I will give you two examples. The first one most of you are acquainted with, so I will not go into details on that. That was the time the House passed a so-called "luxury tax" which in effect really was a sales tax. It was passed by a large majority in the House. They thought it was a good tax and they were

concerned with raising more tax revenues. It was needed, I will grant you that. They were immediately flooded with telegrams and letters from everywhere protesting this tax, but meanwhile it had gone to the Senate and was in the taxation committee in the Senate. I doubt it would have passed the Senate even before the protest came in, but it failed in the Senate, and I have never seen anyone more thankful for two houses than all the members of that House of Representatives. The Senate really got them off the hook. Now, I will reverse the case. In the Senate there was a member who was an experienced legislator and a well-respected lawyer in the Territory. He submitted a bill which was a fairly complicated one, that was designed for a very good purpose, but during the debate in the Senate it was brought out that if one section of that bill was interpreted a certain way it would stop all the placer mining in the Territory, or at least start litigation in that direction. That bill passed the Senate and went to the House, but by this time the author of the bill was greatly concerned. He was afraid he would not be able to go home and face his constituents because it was a mining division that he came from, so he contacted certain members of the House and it was amended in the House to take that possibility out, that there would be any harm done or restriction on placer mining, and that bill is now a law, and the mining fraternity is still in existence and still doing business. That was through an oversight which is a very likely thing in a long and complicated bill, and it was corrected in the House. I have seen many other examples but those are two. We should stick to the system of checks and balances. I want to say that I was just as concerned as Mr. Hinckel here with the lack of representation from the outlying districts. I have been in more outlying districts perhaps than Mr. Hinckel. I have spent all my life in Alaska. I know they would like to be represented. I know there are able men who are willing to represent them. The reason they don't is because they can't be elected. We only have four election districts, the four judicial divisions and each one has a large center of population. But a unicameral or bicameral legislature does not cure that problem at all. The only thing that will cure that is the redistricting for the election and reapportionment. No matter what form of house we have, if the electors in a certain outlying district have a chance to vote for their man, they will get representation. Mr. Rivers here said that this body very well represented the people. I grant you it does, it represents the people a great deal better than the legislature, and why -- because the Territory was redistricted for the election that sent us here. Now Mr. Fischer here has studied this matter from books, but there are a few things he does not seem to realize, even says that everything in a unicameral legislature will be brought out in the open and debated on the floor. He seems to think there will be no committees or at least no committees behind closed doors. That is a system that has been in existence for 170 years in all state legislatures and in the

Congress of the United States. There is a reason for it because they can do their business better. They are not afraid of what you think of them for what they do. They are afraid testimony might come up that will hurt some outsider and I have seen that happen in committee right here. When we were talking about former governors, things were said about former governors that brought up points that we wanted to bring out to clinch an argument. That could not be done in the public. We are operating under a republican form of government. The people delegate their authority to members of the legislature and they trust those members of the legislature to do their business for them and do it the best way possible, which sometimes should not be open to the public. It is said that the State of Nebraska, the one state that has a unicameral legislature which works very well. I am not well acquainted with Nebraska. Very likely it does, but a state more unlike Alaska could not have been pointed out. The geography is different, the terrain is different, the people are different. We have different races up here, different industries, most of the people in Nebraska are farmers or cattle raisers. They are all very conservative and while every Alaskan that I ever met was a distinct individual. Also it was brought up that it works in Canada and Europe. Well, it probably does. Our forefathers came to this country to get away from the European system of government. Don't let us import it to Alaska. Now it was said also that the closer relationship could be had between the governor and a unicameral legislature. I believe that is so, especially if the governor was trying to control them and also perhaps if the governor was of the opposite political faith then the majority of the legislature -- there would be more wrangling, more confusion and less done. A one-house legislature also might be more easily controlled by a special interest group or lobbyists. It would be very difficult to control two houses. Now, when we are granted statehood, we are going to launch our ship of state on her maiden voyage -- an untried ship with an untried crew. What system of navigation shall we use? Shall we try the old tried and true system that has steered 47 states through these past years or shall we try a new system advanced by theorists that has no system of checks and balances and one in which we would not know where we are going? I don't believe that the people of Alaska would want to try that. It is too early in the game when we are starting our state, and we want everything to work and work properly.

CHAIRMAN RILEY: Mr. Peratrovich.

PERATROVICH: Mr. Chairman, what I have to say will be very brief, but I want to get up, as Mrs. Hermann suggested, to be counted. I have expressed my view to quite a number of delegates here upon my arrival. Much to my surprise this has been a primary question in this Convention, and I am glad we gathered here tonight to try to arrive at some conclusions and with that thought in mind I wish to offer my conclusions tonight.

I gather from what has been said here, the primary concern is the true representation of all areas, and I can sympathize with Mr. Hinckel, because I am more or less representing people of this type. However, I made it very plain when I was approached on this topic that I would never obstruct any constructive move. I am here to see that if I can contribute, in my own little way, to draw up a constitution acceptable to the people of the Territory. I might add, friends, that I worked mighty hard for statehood of Alaska and I'm still plugging. My area is limited, but there are voters there too. They are very much concerned, and I think it is only fair that they should have a voice in the state of Alaska, and I am very much encouraged after I listened to two or three speakers here tonight. Perhaps there will be reapportionment. I think that is the solution. My mind has been open on this thing and it is just about made up tonight. If that angle is thrashed out, I am sure they will forget about everything else. We will go back to the two-house system. That is all I have to offer.

CHAIRMAN RILEY: Mr. White.

WHITE: Mr. Chairman, I am on the fence on this proposition, so as not to frustrate the team who are checking off one side or the other, I lean toward bicameralism, but I have the feeling that a much better case can be made by more people for unicameralism than has been made tonight. I have just jotted down a few notes here that I would like to go over at random with a preface that I am not the one to make the case for unicameralism. I don't know enough about it. But in the two examples given by Mr. Barr, as to the legislature, it seems to me, the one in regard to the placer mining bill and the other the luxury tax, it seems to me it could be argued equally well that if there had been a one-house legislature in those two instances it would not have come to pass. I have heard that argued before here by people who were in the legislature at the time and particularly in the case of the luxury tax -- that that was designed to jar something loose from the other house. That makes sense to me. In the other case of a bill slipping through with a mistake in it, I think it might be argued equally well that if you had the one-house legislature, it would tend to make that one house considerably more careful in what it does than would be the case with the two-house legislature. Each member would be well aware his action is final and not subject to revision or review by another house. In that same vein I think it is equally logical to argue that when you give a person, properly qualified, additional responsibilities you generally get a better performance, a better qualified person running for the office or applying for the job. We have heard a good deal on the subject of representation. I don't know how you can get better representation than you would have in a one-house legislature. The point has been brought up that the lower house in a two-house legislature is

generally representative of the people and the upper house, representative of areas. I am not sure that that is too good an argument for maintaining two houses. It seems to me that one of our primary problems in Alaska in the past has been the problem of sectionalism. I wonder if in having a single house we might not tend to reduce that problem, make each member of a one-house in Alaska more conscious of the fact that he represents all of the Territory. In this case I submit that a system of checks and balances could equally well be called a "deadlock system". If one house represents the people and the other house represents areas and you have a irreconcilable problem, you get no where. I am not particularly impressed by the argument either, as to tradition. This will probably startle some of my friends. There is always friction when you suggest a change. There is always resistance to change. I think it has been made amply clear here the reason why there has been resistance to change in this particular matter. I think it is a rare case indeed when a body votes to do away with itself or to radically change its form, and it has been shown to my satisfaction that the death of most of the one-house unicameral bills that have been introduced, can be laid at the door of the Senate, which would be abolished were you to have one house. Also, I think we sometimes make a mistake of viewing a new idea in the context of the old. By that I mean that merely because certain procedures have been followed in the past with a certain system, we should not assume that the same rules, same customs, same reactions to problems, are going to apply in the future in the new system. I think that is a mistake often made. These are just random thoughts. The last one -- I think it would be very proper for us, should we decide to stick with the two-house system, to provide for an automatic referendum at some stated time or stated intervals so the matter could be brought up before the people. I think the reason for that is amply clear again, because once you start out with a two-house system you are never going to change it except by vote of the people. The legislature itself is not going to vote. Conversely, perhaps if we should decide on a one-house system, some of the fears of the people who don't like to experiment could be allayed by a similar provision to submitting the one-house legislature to a referendum after a stated interval of years. Two arguments given by one of the proponents of unicameralism impressed me as possibly worthy of further amplification. If they could do so I would like to have it. One of them was that a one-house legislature tends to reduce the effectiveness of lobbyists. I would like to have that amplified if that is possible. Secondly, that a one-house legislature tends to reduce the log jam of bills that plagues all legislatures at the last minute. I think those are two problems that have been very much before us here in Alaska in the past and if it can be shown that a unicameral legislature would eliminate or substantially reduce those problems, I think we should give it careful attention.

CHAIRMAN RILEY: Mr. Buckalew.

BUCKALEW: Mr. Chairman, I did not intend to address this body tonight, but I feel that I am compelled to speak, probably because we have such an attentive audience is another compelling factor. To begin with, as I recall the campaign of all of the delegates about the general nature of their campaigning was that the constitution should be clear, concise, short, confine itself to fundamentals. I don't recall even one candidate addressing any particular remarks to bicameral and unicameral. I got the impression that we were going to have a bicameral house, and I frankly did not give it much thought until Mr. McNees talked to me several times. My thought is that if we went ahead and adopted a unicameral house, we will be taking the voters of Alaska by surprise. I mean this was a nonparty election and I think we would be more or less slipping the people a gimmick which they did not expect. Then we are going to have the burden, and I don't care how fine this new system is, we are going to have the burden of selling this new idea to the people of Alaska, and I don't think it will do us any good. I think it will put an additional burden on the ratification of the constitution. I want to say a few things about the evils of the two houses. Mr. McNealy said that he was thankful that we had a Senate. I can recall on several occasions that I would have leaped to an opportunity to abolish the Senate during the last session of the legislature. I disagree with Mr. McNealy in that one particular. I think I should for the purpose of the public, clarify this luxury tax, this progressive fish tax and this property tax. Now this is a result of a conflict which developed between the two houses, and that is the most controlling and compelling argument that I see for the unicameral house. It will make it awfully difficult for the lobbyists to get control of the one house. If it was not for the fact that we hadn't put this idea to the people beforehand, I would vote for the unicameral house. The only reason I am not going to vote for it is that I think we are taking the people by surprise. It puts an additional burden on us to sell the constitution. Now, back to this luxury tax, this progressive fish tax and property tax, the idea of the House was to get a progressive fish tax or property tax. We figured we would put the luxury tax through and we were hoping that the Senate rather than tax the individual Alaskan, would tax the traps. I have only been in one session of the legislature, but the thing that shocked me and something I was never aware of was when I was in the halls there in Juneau and I observed a lobbyist by the name of Mr. Gilmore writing amendments on House bills. Right then I said if we could do away with that Senate, I am for it. Now I would be for the unicameral house except I think we are taking the people of Alaska by surprise and it is not fair to the people of Alaska but Mr. McNees certainly convinced me with the lobby argument.

CHAIRMAN RILEY: Mr. Collins.

COLLINS: Mr. Chairman, I have sat here and listened with a great deal of interest to the statements pro and con for the one-house and two-house legislature. Personally, I am in favor of a two-house legislature, and Delegate Barr brought to my attention a happening in favor of the two-house. I had presented a health bill in '45, ten years ago, and in that it had to do with the pollution of the streams of Alaska. It was a health bill, and we passed it, not thinking, not realizing the danger that might happen to the mining industry throughout the Territory of Alaska. After that bill had passed the Senate and went to the House, my attention was drawn to that dangerous provision in that bill, had it passed. I immediately contacted the committee in the House and presented the fact that if they did not amend that bill to protect the mining industry of the Territory of Alaska, 90 percent of all the mines in the Territory of Alaska would be shut down. It gave us that time to reconsider that, brought to our attention. It was inadvertently on the part of the drafters of that bill that it would affect one industry in Alaska. Mr. Barr brought that to my attention. I had forgotten it. Now, the question of one-house or two-house. We have if we pass the one-house proposition and have that in our constitution and present that to the Territory of Alaska for the voters to ratify, we have two hurdles to make. We have got to make that hurdle and then that bill of the constitution is sent on to the Congress of the United States. One state in the United States is practicing the one-house proposition. Each state is given two Senators throughout the states. What will they think of us if we present this constitution to the Congress of the United States? Will we make that hurdle? Can we sell our constitution under those conditions? Those gentlemen in Congress of the United States have been practicing under the proposition of the old tradition of a two-house legislature. Shall we break that strong thread of tradition with admission of our constitution for the coming state of Alaska? I say no, and I am very much in favor of a two-house legislature.

CHAIRMAN RILEY: Mr. Nolan.

NOLAN: Mr. Chairman, I am for the bicameral system. Now you have just heard an argument by Delegate Buckalew that it would probably be easier to control lobbyists under a one-house system. I have served in both houses over quite a few years, and if Mr. Buckalew had been down there a few years ago he would have seen a lobbyist passing notes in the House. Now I have found in my terms in the House and the Senate, that there has never been a time that the lobbyists have been able to control both houses.

CHAIRMAN RILEY: Mr. Stewart.

STEWART: Mr. Chairman, I am in a position to make observation or two or that myself. I have attended nearly every session of the legislature since the first and often. Session after session I have seen measures that were for the benefit of the people as a whole pass through the House with a heavy majority, come up to the Senate, which in the earlier days had eight members, two of those members were employees of one large mining company, one of them their chief attorney. If those two men alone with one other could persuade a fourth person to join them, they would kill any beneficial legislation for the benefit of the whole people by producing a tie. I have seen that happen over and over again. I don't know that the unicameral system is the cure for that. It may be that with better representation from all the districts those things can be controlled, but the history of the past I think demonstrates that something should be done to eliminate that, not control it but eliminate it. It may be that with the representation of the apportionment being provided in a way that will give representation from all districts in a fairer way. It may be also that having more frequent sessions of the legislature so that measures originating at one session cannot be passed on finally but held over between two sessions, and thereby giving a chance for the people to express themselves on what has gone on in the first session. That may help, but anything we can do to eliminate the painful effects of the lobbying I have seen in the legislature ever since I have been here, I am for.

CHAIRMAN RILEY: Mr. Ralph Rivers.

R. RIVERS: Mr. Stewart, did not that situation improve when they enlarged the Senate to 16 members?

STEWART: To a degree.

R. RIVERS: Do you think that if we had a larger Senate so that not such a small group of people could cause a tie, that that would minimize the lobby effect?

STEWART: It might improve it, I wouldn't say that it would eliminate it. I think to eliminate it, some means should be provided whereby the people throughout the Territory, maybe that's possible now with the communications the way they are, let the people know what is going on in those halls, the way we who live in Juneau and attend the legislature observe.

R. RIVERS: I would like to observe, Mr. Chairman, that one of the historic reasons for increasing the Territorial Senate was that that closeknit group of eight men could kill any measure coming up from the House was the reason for increasing the Territorial Senate to 16 members.

CHAIRMAN RILEY: Mr. Johnson.

JOHNSON: Mr. President, it seems to me that Mr. Rivers' observation is a perfectly good answer to Mr. Stewart's objections of the bicameral system on the ground that it is too easily controlled by lobbyists. Certainly with the question of a proper proportionment being once settled by this Convention, then I think we have found the answer that is necessary to give every person in Alaska the proper representation in the legislature. I am unqualifiedly in favor of the bicameral system. I was in the House when in 1945 and '46, when these matters were before us by way of a joint memorial. I recall distinctly that I voted against those projects at that time, and I think the record will substantiate that, and I certainly feel no differently today, or I feel no differently after having listened to all the arguments here tonight. Mr. McNees argues that the unicameral system would still provide us with the so-called checks and balances and he says by way of illustrating that that we would have the supreme court to check us on faulty legislation. However, he did not point out that the supreme court rules, not on wise legislation, but only on illegal legislation. And besides that, every once in awhile the supreme court can make a mistake. In addition, he argues the check of the veto power. I have seen many times the veto power overridden by the legislature, and when it can be overridden by two houses with a two-thirds vote in each house, it certainly stands to reason it could be overridden in one house. So the two checks and balances he talks about do not seem to be sound. He made some reference, or rather comparison, to the one-house system with our courts. Well, everybody has his day in court, he gets a fair hearing, and if he does not like it he has an appeal. That is exactly the same as the Senate. This litigant appeals to the supreme court. The House perhaps has a bill that is not proper and the appeal is taken to the Senate and vice versa, so I don't believe there is any comparison between the unicameral system and the court system. He made reference to the fact that many countries have the unicameral system. He did not mention the name of a single country that I would trade for the United States of America, and he made reference to the fact that this bicameral system was, as he put it, "an illogical procedure" and yet it seems to me that that is not a very tenuous argument because if this bicameral system is such an illogical procedure, then the United States of America acting under that system for 175 or odd years could never have reached its present position of economic, political and military strength. I am unalterably opposed to the unicameral system. I believe that if we are going to keep faith with the people who sent us here to write the constitution that we should write it on the basis that was set out in the federal Constitution so many years ago so wisely by 55 men.

CHAIRMAN RILEY: Mr. McNees?

MCNEES: Mr. Chairman, I don't like to hear myself misquoted as I have two or three times tonight. I am going to pass over

most of them but this latest one I am going to have to take up. I am going to quote directly as I quoted before. I referred very closely to my notes tonight due to the time limitation that was politically pulled on me here, but my quotation, Mr. Johnson, was this: "If the legislature exceeded its constitutional authority in the enactment of any law, it would be set aside by the supreme court." I did not say a supreme court would pass upon the measure of a good bill or a bad bill. I have another point I would like to make if no one else would desire the floor right now.

CHAIRMAN RILEY: You may have the floor, Mr. McNees.

MCNEES: Thank you. Mr. Barrie White asked a question awhile ago about control of the lobbying in a one-house legislature as compared to that in the bicameral legislature. There are six points at which the lobbyist can gain very effective control in the two-house system. First, and I pointed that out rather graphically and spent a little time on it, the conference committee where he may gain control. We know session after session of the legislature where there is the constant battle over who is going to be speaker of the House. Why does that battle take place? It is a jockeying for position, so to speak, and don't think the lobbyists don't have their hands in that. Control of the election of the speaker is an important point. By control of the Senate at large, which Mr. Stewart pointed out here awhile ago, or by control of the House, the larger body and the hardest one to control, or getting down basically, if he can control the speaker of the House or the presiding officer of the Senate he might be in a position as a lobbyist, to name those two members to that conference committee from either the House or the Senate. If he only named those two he would have control of the conference committee. That I think is the important point to make here is that we have a conference committee squeezed in between two houses where everything is out of sight and where you can get at one, two or three men to maintain very, very effective control. If I were to make a rebuttal it would be this -- there is a committee known as the Committee of State Government made up of a very fine list of the top political scientists, statesmen, in our nation today, and those men recognize, as I do, the beauty of the theory of the unicameral system. I too feel the people of Alaska sent us here to represent them. I knew when I took hold of this issue that I was representing a minority group, but I believe that minority group should have a right to be heard. I got a very good hearing tonight and I am very pleased with it. I know that during the course of these many discussions we have had, there have been some of you won over but there have been a lot more of you have modified your thinking. During the course of the last 20 years or better, paralleling the growth or the interest, the information so to speak, of the unicameralistic theory of thought has been a group that I think is to be reckoned with, and that is

your Legislative Council. Today there are 35 states of the 48 that have active legislative councils. Prior to Nebraska switching to the unicameral system in 1937, there was a total of two legislative councils in the nation. Today there are 35. If you could have traced, as I did, over a period of many weeks running into months, the story that I painted to you tonight of the introduction of bills in favor of unicameralism and how they died, you would have seen this parallelism that I would like to draw your attention to tonight, and that is that prior to 1943 now we had 10 legislative councils. Today there are 35. Since the war ended there has been a very, very great increase in it and primarily that increase has been in the interest of more efficient government. The legislative council is a policy-making group. The usual size of the group -- we have to take a median number -- that median number across the nation as a whole is 18. That is hardly a fair number to reckon with because many states make the provision that every member of their legislature is on that legislative council. But the main thinking behind the idea of the legislative council is that here is a board of experts that sits through the year or meets quarterly, at least much more frequently than your biannual sessions of your legislature. There is a great trend of thought here on the present conference floor for an annual session, and I would not be at all surprised to see it come up with an annual session and more easily called special sessions because we must survey our laws constantly. We must introduce new laws constantly. We must revise laws constantly. The general policy of these legislative councils across the nation is that they meet not less than four times a year, some of them meet in continuous sessions. We have here in the Territory a Legislative Council that is very active and very fine, but the point I want to make and stress particularly is the fact that with the growth of the legislative council, we have a greater interest, greater participation judged primarily by the number of bills introduced in the unicameral system. I might say there has been only one state ever to repeal their legislative council. The principal thing that I think stands out in my thinking on this is that in a one-house system you have immediate reflection of how your public is going to react, how they feel, and if we have an annual session of our legislature meet annually instead of biannually as we have in the past, you are going to see that reflected in the voting, and in time it will give you a house that truly represents your people to the very best of their ability. I don't think I would have anything more to say except this -- that if 28 people, which is the number it will take to swing this issue one way or the other, go for a bicameral session, which I probably might weaken my own cause by saying that, I rather think that is the trend that will take place, but if 28 people here in the present Constitutional Convention vote for bicameral legislature, I will be one of the first to go out and try to help sell this constitution to the people of Alaska, will give my full efforts for it just as I would hope and feel sure

that if it went the other way you would do likewise. (Applause)

CHAIRMAN RILEY: Mr. Walsh.

WALSH: Mr. Chairman, I want to compliment my colleague from the Second Division, Mr. McNees, for the very able, earnest, and efficient manner in which he presented his case for unicameralsim. I know that Mr. McNees has put a lot of time and research into that subject. He has studied it. I have talked with him prior to tonight many times, and I have great admiration for the amount of work and the intelligent approach that he has made to present his case here tonight. I think he did an excellent job. I regret, however, that I cannot agree with him for a unicameral legislature. I am not going to bring in the State of Nebraska, or I am not going to take up any time of the members here and go into details. I look to our Federal Constitution, and from there I take my views. It has withstood the test of time. It has gone past 150 years and today it is respected the world over as the greatest form of government known to man. We have, of course, 47 states to counteract the one lone State of Nebraska. That has been gone over by other people. I rise here principally on the statement made by Mrs. Hermann that I think we should stand up and be counted. I want to be counted for bicameralism.

CHAIRMAN RILEY: Mr. Londborg.

LONDBORG: Mr. Chairman, I would like to say a few words at this time. I don't wish to condemn unicameralism as such. In theory it may be good. I have not had a chance to study it through and through. I would like to say that as far as Alaska is concerned, I believe it is just good for the theorists. I had a chance to observe unicameralism to a small degree, having been raised in the State of Nebraska. I had the privilege of seeing it come into effect. I remember in high school we were very much interested in it, and as we noted this morning the interest in this one school grade here in Fairbanks in our Convention, we took a similar interest in our little part of Nebraska and had a chance to see it come into effect and also see it operate. I attended a few sessions sitting in the gallery at Lincoln when I lived there. One argument that we have heard over and over again, not just here but elsewhere, is that it works in Nebraska. I believe it was adopted there to simplify the government and also to give representation. However, they were able to sell it to the Nebraskans or Nebraska adopted it because at that time, in the 1930's, Nebraska was largely a rural population. According to Mr. McNealy who is also from Nebraska, he said that the largest city according to proportion would be about 10 percent of the total population. Now that is not too bad a proportion, city versus rural population, taking your largest city, but now due to the larger farms, many of the farmers moving to the cities, etc., Omaha has grown and the rural areas have declined in

population so that Omaha has about 20 percent of the population. The metropolitan area around there is close to 33 percent. The representation that some people in the outer regions of Nebraska thought they were getting, is slipping away. It is slipping away because the population is moving toward the cities, and I believe now that it is largely impossible for Nebraska to return to the bicameral system because the heavily populated area is not likely to turn back the representation to the rest of Nebraska. So much for the state at this time. I don't think, as has been mentioned, that we can really compare Nebraska and Alaska except they sound similar at the end of the names. We have, as has been mentioned, the larger area, the floating population, many who will not vote, but I believe will be counted in apportionment. They will of course be in the larger areas, giving more representation to the areas -- I don't mean larger areas but the more populated areas -- yet they will not take an active part in voting. Representation in Alaska, I think we find that about 50 percent of our Alaskan people live in just a few of the larger cities and if we go on that basis we are going to have representation by the cities alone, if we go to direct population apportionment. Taking it on the national scales when we become a state, if the United States was on apportionment in the Senate and the House, we would have probably one senator out of 1000 less representation than we now have in our non-voting Delegate Bartlett. Take some of the fairness now and apply it to Alaska. Each division should be entitled to equal representation. That would be playing fair on that standpoint just as we expect the United States of America to play fair with us and give us two full-fledged voting senators. The argument of cost -- it may cost a little less to operate with one house, but if the two houses give us better government I think it is worth it. There was mention of the log jam of bills that seemed to flood in the two-house system at the end of the session. I don't know much about that. I think we will probably have something like that here in our one-house if we keep on, toward the end of the session, but I think one reason that Nebraska gets their bills in early is that their congressmen, I believe they're called, I think are paid $200 for the whole session, stay as long as they like. You can be sure they get their bills in early to get back home again. As far as the lobbyist system, I think the lobbyists would have an open house if they had just one house because they would have all their eggs in one basket and only the one house to worry about. I think the way to get rid of the undue and unfair lobbying is the suggestion that we received from Dr. Gruening yesterday to educate the people of Alaska in our school system and on up to whatever is necessary, that they take more interest in the government, more schools with teachers in the schools as we were privileged to observe this morning, teachers training the youngsters to really get interested in the government of Alaska. Last year in our high school at Unalakleet we requested that all the proposals in the House

and the Senate be sent to us. We did not get a chance to read through them all, but it stimulated some good interest among the students. I think that should be done all over to create an interest among the students so that when they grow up they will take an interest in their government and then the men and women in legislature will vote for the people and not for the lobbyists, because they will know the people are watching them. As far as tradition is concerned, I don't particularly like tradition as such. I like to start out on something new. Yet I will never forget the advice that was given to me once. "Be not the last to leave the old nor the first to try the new." Now it is true that we would not be the first in one sense of the word, as Nebraska now has unicameral legislature but we would be the first state to start with unicameralism in the last 150 years. I don't believe we dare take such a gamble as to put unicameralism into the constitution that we will operate under when we first become a state.

CHAIRMAN RILEY: Is there further comment? Mr. Robertson?

ROBERTSON: Mr. Chairman, I would like to announce I am strongly for bicameralism. I doubt if it is necessary to state so because I have introduced two proposals to this Convention based upon the bicameral system, but I would like to emphasize one thing. Views have been expressed by so many which accord with my own views, but I would like to emphasize the fact that I don't think we should discard the nearly 42 or 43 years of experience in the two-house system in Alaska. We don't want to discard the experience that our government is based on a two-party system and we don't want to risk the chance that Congress will say that those Alaskans are simply trying to experiment in a new kind of legislation. Therefore, I hope this Convention adopts the bicameral system

CHAIRMAN RILEY: Is there further discussion? Mr. Armstrong.

ARMSTRONG: Mr. Riley, I think I can make this very brief. I would want to be counted for the bicameral system because I believe that this constitution will correct any error that has been perpetrated on the people of Alaska under our Territorial form of government. We will have adequate representation, we will provide for an annual meeting where we will not have all these log jams which have cluttered up the halls and wastebaskets of Juneau. I did not come here feeling that I had any mandate to change the form of government under which we are to operate. I believe that we would have a terrific job in the 120 days to educate the public to a change of form. I doubt that we would have the acceptance of the right kind of publicity from press, radio and TV that would be necessary in this type of an endeavor. I am also aware too that we have people from every state in the Union who have come into the family of Alaska. I do not believe that we can at this time afford to confuse them by this type of change, and I would add

this one other word -- that I have been in the halls of the legislature of Juneau, and I can say personally that I have been blessed to see the checks and balances that have been made available there to the people of Alaska. So you know exactly how I stand and how I will vote when this comes out of the committee. I hope we won't tarry many days before this does come for final action.

CHAIRMAN RILEY: Mr. Metcalf?

METCALF: I want to make a few brief remarks along the line Mr. Londborg has made. I am for the bicameral legislature, though I came to this meeting tonight with an open mind. The meeting has been very educational. I certainly sympathize with folks that are in favor of a unicameral legislature. There are abuses there. There certainly are but I believe could be corrected with the system of reapportionment and whereby the people out in the rural areas will have more active interest in government affairs. There is one other angle that has not been mentioned in adjusting this system of checks and balances. If we become a state or after we set up this constitution we would also have the initiative, referendum, amendments and revision clauses plus the recall which will give the common man further checks and balances on his legislature. I mention this because I don't believe it has been mentioned before.

CHAIRMAN RILEY: Mr. Cross.

CROSS: Mr. Chairman, we came here to build a constitution. This constitution has two basic requirements -- one is that it must be workable, the other that it must be acceptable. I believe Alaska could work a constitution with either form of legislature. I doubt very much that we could sell one with any but a two-house legislature. I am for the two-house legislature.

CHAIRMAN RILEY: Mr. Rosswog.

ROSSWOG: Mr. Chairman, I would like to say just a few words. I have not served in the legislature but I have served on city councils and quite a few other boards, and I am in favor of a two-house system. I know at times on these boards we would have been glad to have some other check so that we would not have had to reverse ourselves. There is another thing that I think I am concerned about is the distribution of our representation, but I am sure that this Convention and the committees can work out distribution of representation so the areas are represented.

CHAIRMAN RILEY: Mr. Sundborg.

SUNDBORG: Mr. Chairman, we have heard this evening thus far

from 29 delegates and if my box score is correct, 23 of them have spoken in favor of a bicameral system and only six against. The six who were against, and this bears out something that appeared in the reference work that we had from the technical services which were employed by the Statehood Committee, were all men who had never served in any session of the legislature. By men that are against, I mean men who are for a unicameral system. The 23 who were for included six delegates here who had served in the Alaska Senate, and everyone of those men was in favor of a bicameral system. It included five men who have served in the Alaska House of Representatives, and every such representative who has been heard has been in favor of a bicameral system. We have heard from "the two great Rivers of the North", from Senator Barr, Senator Collins who served in the very first Territorial legislature and in many others, from Senator Nolan who was the President in our most recent Alaska Senate and from our own President, Bill Egan who is held I know in as high respect by every one here as any member among us and probably in higher respect. We owe much to the judgment of these men, and yet I feel that in exploring a problem of this kind that we should look at the problem itself and not necessarily only at those who advocate one course or the other. As for my own views on this subject, I was one, I found out after I got here, of a relatively few who answered a poll from the Associated Press after we were elected and before we had come here to serve, which asked a number of questions including the one, "Do you favor a one or two-house legislature?" I answered very readily that I favored a two-house legislature. The other evening I had the privilege of watching a television show. It was a televised committee meeting of our Committee on the Legislative Branch, and because of that show and the things that were said there I was pretty well convinced by a presentation that was made, particularly by Mr. McNees and also by another member who has not been heard from tonight, but who was very eloquent and persuasive on that occasion, Mrs. Helen Fischer, that a unicameral system had much to recommend it. Tonight, as I think has been the case with most of the delegates here, I have been pretty well won back to the other view that a bicameral system is the thing for us. This argument, if it is an argument, is not over yet. We are still going to hear from a Committee. We are going to debate the Committee's recommendations on the floor. We are going to arrive at some kind of decision and then after that there is still a whole lot more. For example, I think the Committee of which I happen to be Chairman, Style and Drafting, might conceivably drop out the second house as a matter of redundancy in the language. The best purpose served I think by this discussion tonight has not been at helping us to arrive at a decision in this one matter of whether we should have a one-house or two-house legislature. It has been most valuable because it has thrown light on so many other problems which will concern us. There is this great problem of representation, supreme in the minds of so many of our delegates.

This body I believe is the first ever elected in Alaska where we had actual representative districts. I think the result is commendable. We have a fine Constitutional Convention here which I think represents all sections and all elements of the economy and all interests of the people. It is a unicameral body. Let's look for a moment at what kind of a body it would be if on that same election day last September, we had been electing, the people of Alaska had been electing, not a one-house but a two-house body. Let us look at what it would be -- first of all there were 19 members elected from separate representative districts. Those districts did not overlap and they covered the whole Territory. So every area of our great Alaska is represented here. Then in addition to that we elected 36 from larger areas, we elected a number of them from the Territory at large. We elected another number of them from each of the judicial divisions, and the results of those elections if we look at them are as follows: one member came here from each of six small places, Wrangell, Klawock, Haines, Sitka, Unalakleet and Valdez. Three came from Nome, seven came from Juneau, eight came from Fairbanks and twelve came from Anchorage. Just from those at large elected. Now that would be your Senate if this were a two-house body, and if the election had been held on that same day and we were a bicameral Constitutional Convention. The delegates here from Anchorage and Fairbanks alone would control more than one-half of the upper house, and it does not matter how preponderant the sentiment may be in the body that has representatives from all over the Territory, nothing is ever finally passed through a two-house legislature unless it passes both houses. Getting through one house is not getting half-way there, it isn't getting any place. You have to get through both of them or you haven't got a law, you haven't got a bill or an act. So I think we need to give some thought to the matter of representation. It is supremely important and I hope we have another session such as this, with attendance such as this and with as eloquent expressions of opinion from the delegates as we've had tonight on that subject, in a Committee of the Whole. The matter of checks and balances has been mentioned. In my view, there is a need in government for checks and balances among the three coordinate equal bodies of any government. There needs to be checks between the legislative on the one hand and the judicial and the executive on the other, and between those three we do not find any system of checks and balances within any of the coordinate branches except in the legislature. We don't find that we have two courts on an equal level trying the same case and that there will never be a verdict unless the two courts come up with exactly the same decision on any matter. We have one court and when it decides something, that is it. There is a court on another level to which an appeal is possible in some cases, but only one. You don't go to two more and have no verdict unless both of them happen to decide the same thing. If it is good to have two houses of the legislature why is it not good to have two governors? Indeed, if it is good to have

two houses of the legislature why is it not good to have three houses, to make it even more certain that no bad legislation will get through, or four and let's be perfect. I believe that responsibility is the thing and that responsibility will be developed by placing the responsibility upon a number of people, whether that may be a one-house legislature or in a two-house legislature. There would be no five percent luxury tax passed by a one-house Alaska legislature if we had had a unicameral system, at the last session. I am convinced of that. I was close to it and watched what happened. I think that there is no argument either in tradition. The reason we have a two-house legislature in our national government, in our Congress, is because there was need of a compromise. There never would have been a nation, there never would have been a Congress, or Constitution if we had not been able to have one house which would be based upon representation of people and the other that would be based upon areas. We would not have had a nation. Now this matter of lobbyists of which Mr. Stewart spoke so feelingly. I can speak feelingly of that too. It was mentioned here a few minutes ago that one of the members who has had long legislative experience has never seen a lobby control both houses. A lobby doesn't have to control both houses. It has to control only one house, it doesn't even have to control a whole house. When we have a situation such as we have in Alaska at the present time where perhaps the executive is on a different side of the fence from the preponderant feeling of expression in a legislature and something comes up on a measure to override a veto, all that the lobby has had to do and all that the lobby had to do in the last session of our legislature was control just five members and no piece of legislation which the governor opposed could ever get through that legislature, although there were 40 members there, the lobby that could control five members (and believe me they did) can stop it. It was mentioned here too that somebody once saw a lobbyist pass a note to a member of the House. Of course, that happens all the time. It would happen in a one-house legislature. But what is the real meaning of that? In order to control a house, even if the house were only as large as that of our Alaska at present, the lobby would have to control 13 members. If we had a lobby trying to control this body, it would have to control 28 members, vastly more difficult than controlling a little group even if we doubled the size of our present Senate, the lobby would still only have to control 10 members.

CHAIRMAN RILEY: I'm sorry Mr. Sundborg but your time is past. Mr. Buckalew?

BUCKALEW: If there is no further discussion, I move that we report progress.

CHAIRMAN RILEY: Mr. Buckalew has made the motion that the Committee rise and report progress.

HARRIS: Point of order, did the motion come before the house that the visitors would be allowed to speak?

CHAIRMAN RILEY: That was discussed a few minutes ago. We will have two minutes of recess. The Convention is at recess.

RECESS

CHAIRMAN RILEY: The Committee will come to order. Mr. Doogan?

DOOGAN: Mr. Chairman, I think that most of the Committee, all of the Convention delegates who want to be heard have been heard from. I would like to move and ask unanimous consent that if there is anybody in the gallery that wishes to be heard, that they be granted the privilege.

CHAIRMAN RILEY: Without objection it is ordered that anyone in the audience who wishes to comment on the subject under discussion this evening may step forward and do so.

DR. HUGH FATE: I feel that this group should be represented and if others are too timid to do so, I shall pass a few remarks. We have heard the pros and cons of this debate. If I were to judge the debate I would say on the basis of brilliant presentation, the pros resolved that the unicameral system be adopted, would have won. On the basis of solid argument, I feel that the negative side would have won. We have had a classic example of how, if this house were evenly divided, one brilliant speaker might change the whole complexion of the house and a measure be passed, and that would be your unicameral system. It could be, and if that one brilliant speaker, which does not exist here, happened to be under the thumb of a lobbyist you might have a law that you did not want. I want to remark also that if this body thinks that the people of Alaska are not watching you, you are mistaken. We expect you to come up with something good, and we believe you will do so, and the attentiveness of your audience I think proves that point. It might be a good idea to take a straw vote among the audience. That is all, sir.

DOOGAN: Mr. Chairman, may I ask that the people that speak from the audience state their name for the benefit of those people who are not from Fairbanks and where they are from. That was Dr. Hugh Fate.

CHAIRMAN RILEY: Are there others who care to address any remarks?

MR. KOPONNEN: My name is Neil Koponnen. I am a homesteader on Chena Ridge and an electrician by trade, an unsuccesful candidate for the last election and I stuck my neck out on the unicameral issue. Nobody knows me very well. I don't belong to any party, I don't belong to any lodges, I don't have much

money and I didn't have any time to campaign, but 400 people voted for me and I think largely because I stuck my neck out, so I guess that is about what I would be said to represent. I never could see any sense in the taxpayers hiring two bunches of politicians to go off in to opposite ends of a big building and argue the same bloody question and take twice as long to come to an answer and then finally disagree. But as it was pointed out, the control is always in the joint committees and if the lobby controls the joint committees, they control everything. I have heard a number of speeches by a number of people over the years, not necessarily running for this, but running for some other office, especially running for the legislature up here. They rant about the bureaucracy, they rant about executive, about how the government outside is doing something. One of the things that has lead to government by the executive and government by executive decree and judicial decree has been the fact that the legislature is unable to function. It is internally checked, I wouldn't say that there was very much balance to it. There are checks and balances but it's the complete brake on the system, on the legislature itself. It is unable to express itself, it is unable to act when it needs to act. Action has to be taken in a crisis sometimes, like during the depression or during a case of war, it is taken by the executive. To whom do we turn if something is wrong with that? Do we turn to the legislature for a good law? We don't give a damn, if we have enough money we go and hire a lawyer and go to the judges to secure relief. I don't think there is any argument in tradition as has been said or in the fact that the bicameral system has lasted 175 years. If you study history, the bicameral system is a simplification of what went before, when you had a four-part system. The medieval courts, the medieval legislatures were very often split amongst the nobles, the house of lords. You had a house of clergy, well let's have a third house if two houses are so good. I think that always we've tried to simplify our government so the people themselves can better express themselves through it. The government, I think I said, exists to do for us collectively that which we cannot individually do ourselves. If it cannot act, then how can we act in a question which concerns us? I am glad I had some representation here even if it comes from Kodiak and Nome.

CHAIRMAN RILEY: Thank you Mr. Koponnen. Is there other comment? Mr. Barr?

BARR: I would suggest that the public here be informed that their remarks are being taped probably will be broadcast from a radio station. In any case if they are groping for words, they will at least look at a dictionary and use some words that are in the dictionary instead of something that I don't recognize as English.

CHAIRMAN RILEY: Is there further comment from the audience?

Miss Stuart?

ALICE STUART: I am also a defeated candidate. I got 2616 votes at large. I also don't belong to either political party nor do I belong to any civic or fraternal groups. However, I thought we should have a good constitution that should be based on fundamental American principles. One book that I have read that has been of great interest to me is The Federalist. I haven't read it all but parts that I have read, I enjoyed. There is one I would like to refer you all to and that is No. 62, credited to either Hamilton or Madison. In it is refers to ". . . inquiring into the purposes which are to be answered by the senate and in order to ascertain these, it will be necessary to review the inconvenience . . ." You will find that many of these reasons, I think there are five or six of them, will apply equally to the State of Alaska and I think you would all, if you haven't read The Federalist No. 62 will find it of great interest. It is in favor of the two-house system.

CHAIRMAN RILEY: Thank you, Miss Stuart.

CONSTANCE GRIFFITH: I am one of the three that lost in spite of sticking my neck out for unicameral legislature but I don't think in all fairness it is fair to say that was the reason I lost. It seems to me that the three points that have been advanced against unicameral legislature -- the embarrassment of a member of the House or the Senate because something passed that he was sorry he voted on, I would say that in the unicameral legislature, you would take more time and that would save the groping around, the running back and forth and the embarrassment, and that that would perhaps make much better legislation because a bill would not have to be rushed through the other house. In taking more time, then people would have a chance to get their views to the one house and the deliberations would be more gratifying to all concerned. The other two things are ratification and tradition. Now the tradition of our government in having a two-house legislature is because we have states and then the government. We don't have anything comparable to states in a state that needs representation in a separate house, so I don't see that purpose is served and that tradition needs to be so clung to in this particular instance. As far as ratification, I think the people trust you and are willing to go along with anything that you at the Constitutional Convention devise for us to ratify, and I don't think you need to be afraid if you really think this thing through and come out with either unicameral legislature or bicameral legislature, I am pretty sure the people of Alaska are going to get behind you and will ratify anything you do. Thank you very much.

CHAIRMAN RILEY: Thank you, Miss Griffith.

UNIDENTIFIED MAN: It has impressed me tonight how many people have said we must sell the constitution to the people of Alaska, and sell it to Congress, but somehow that smacks of something small to me. Maybe that is wrong, but all the great theories that have come from history have been something new, something different, and they have not always been impractical, because they haven't been done before but quite often the thing that turned out to be the most practical as well as the most inspirational for most people. I think a lot of people came to Alaska because they felt the United States was not completely God's country, that it wasn't perfect, but no country is. Maybe it's strong but strength isn't everything. I love Alaska because I feel that there is so much wrong up here, but there is still so much that can be done and so much future and that we need to have the courage to step forward and that we need not rely and say that we must do everything because it is done in the states and always has been done in the states. That doesn't make it perfect. I know people that have the courage to believe in theories if they feel that the theories are right and good, because I think most of the progress in the United States originally and throughout history has been through people having the courage of their convictions.

CHAIRMAN RILEY: If there are no further comments from the audience, the Chair would entertain a motion to rise.

V. RIVERS: Mr. Chairman, I make a motion and ask unanimous consent that the Committee of the Whole now rise and report progress.

CHAIRMAN RILEY: I might state first that the bus has been called and should be here in a matter of about 15 minutes. Without objection the Committee shall rise and report progress. So ordered.

RECESS

PRESIDENT EGAN: The Convention will come to order. Is there any business to come before us at this time?

RILEY: Mr. President, your Committee of the Whole has met, risen, and reports progress.

PRESIDENT EGAN: Mr. Riley reports that the Committee of the Whole has risen and reports progress. Is there other business to come before the Convention?

HELLENTHAL: Mr. Chairman, I move the meeting be adjourned until 9 o'clock tomorrow morning.

PRESIDENT EGAN: Mr. Hellenthal moves and asks unanimous consent that the Convention stand adjourned until 9 a.m. tomorrow. Is there objection? Hearing no objection it is so ordered.

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

February 6, 1975

M E M O R A N D U M

TO: Representative Terry Gardiner, Chairman
House Judiciary Committee

FROM: Stuart C. Hall
Legislative Counsel

SUBJECT: Proposed constitutional amendments establishing a unicameral legislature: HJR 1 (Bradner, et al) and SJR 1 (Rader, et al)

Article II (Legislature)

The initial section of the measures amending article II replace the existing two-house legislature consisting of a 20-member Senate and 40-member House of Representatives with a 61-member single-house, or unicameral, legislature whose members are designated "senators".

Qualifications for membership are redefined by setting a uniform minimum age of 21 years and by deleting from the second section of article II the 25 years of age requirement presently in force for members of the Senate. (At least one incumbent House member is under 25.) No change is made in the three-year state, one-year election district residence required in the present constitution.

Section 3 in SJR1provides for a uniform staggered four-year term for legislators, 31 of whom would be elected in gubernatorial election years, 30 in presidential election years; HJR 1, however, proposes that 31 be elected in presidential election years, 30 in gubernatorial election years.

Under the proposed section 10, in SJR 1, the governor retains the power to adjourn the legislature where there is disagreement over adjournment. That power is customary in a two-house legislative system; it may not be necessary under a unicameral structure (HJR 1 simply repeals this section), but its retention is thought wise in the event there is substantial disagreement among the membership. Certification to the governor probably would require more than a handfull of members, and there is no reason to believe that a wilful minority could prevent adjournment because an adjournment sine die resolution still requires a majority of the membership's approval.

There is no substantive change in section 12 other than to remove references to a two-house body and replace it with single-house terminology.

In a two-house legislature the second house serves as a kind of "filter" for the legislation emanating from the house of origin. That process is eliminated in a unicameral legislature. Thus, there is a need to build in some other device to ensure that legislation will be enacted in deliberate manner. Section 14(b) provides that final passage of a bill may not occur until five calendar days after its introduction have elapsed and until the bill has appeared on the daily legislative calendar at least one day. An exception is made for urgency bills -- those designed to meet some emergency, such as an Anchorage-type earthquake or a Fairbanks-type flood, that demands immediate legislative action to provide for relief. However, in SJR 1, a three-fourths vote is required to permit action earlier than the five days, and an urgency bill must set forth the facts constituting the necessity for immediate legislative action. That statement plus the bill itself each must be passed by a separate two-thirds vote. No urgency bill may create or abolish an office, modify its salary, term or duties, grant a franchise, special privilege, or create any vested right or interest. In HJR 1, both steps require a two-thirds vote, and an urgency bill may not levy a tax.

Sections 15,16 and 18 are amended solely to remove references to two-house legislative action and replace them with single-house nomenclature.

In the impeachment provisions, section 20, there is one change. Under the existing provisions, impeachment originates in the Senate and the trial is in the House (the reverse of the procedure in the U. S. Congress); impeachment is brought by a two-thirds vote of the senators, with judgment requiring a two-thirds vote in the House following trial by that body. SJR 1 provides for impeachment brought by resolution (rather than on motion) by a majority vote of the legislature, but judgment requires a two-thirds vote, thus ensuring that some greater number of members be persuaded to take so significant a political step that would remove an officeholder. HJR 1, however, provides for a two-thirds vote both for impeachment and judgment (or conviction).

Article VI (Legislative Districting)

The elimination of a two-house legislature in favor of a unicameral system necessitates changes in the procedure for the state's system of legislative districting. Moreover, the Alaska Supreme Court's decision in Egan v. Hammond, 502 P.2d 856 (Alaska, 1972),

has rendered significant language in the existing article VI void because it was declared unconstitutional under the Equal Protection Clause of the 14th Amendment to the U. S. Constitution.

In addition to deleting language in existing article VI (sections 4, 5 and 7) providing for separate, different bases for representation in the Senate and in contrast to the House, made obsolete by earlier court decisions requiring "one man, one vote" as the representation base in both houses of a state legislature (Reynolds v. Sims, 377 U.S. 533 (1964); Wade v. Nolan, 414 P.2d 689 (Alaska, 1966)), this proposal makes a major change in article VI: a shift of the legislative representation base from civilian population to registered voters. The Alaska Supreme Court, in Egan v. Hammond, held that civilian population as the basis for redistricting was unconstitutional because it discriminated against the state's military population on account of its employment. However, the court recognized that many, if not most, of the military personnel stationed in Alaska (about 10 per cent of the state's total population) well might vote elsewhere and their inclusion in the population base for representation in the legislature seriously could distort a districting scheme. Consequently, the court authorized the use of registered voters or a special state census of residents or citizens. Inasmuch as the latter would be both costly (because special arrangements would have to be made with the U. S. Bureau of the Census to count state residents or citizens and the state would be charged for that extra service) and time-consuming and in all likelihood probably would produce about the same results as would registered voter totals, the use of registered voters is recommended, provided that the state's voter registration laws are revised so that the "purge" of registered voters no longer resident in the state or precinct and who have not voted at a primary or general election occurs more frequently than once every four years (as at present) to ensure that the total number of registered voters accurately reflects their proportion to the state's total population.

Use of registered voters for redistricting rather than population as reported in the decennial federal census, was authorized by the U. S. Supreme Court for use in Hawaii where, as in Alaska, there is a substantial concentration of military personnel in proportion to the state's total population and in Vermont where the ratio of students to total population is very high. Thus each legislator would represent, as nearly as possible, an equal number of registered voters.

No substantive change is made in present language requiring that districts be formed of "compact and contiguous territory" and contain "as nearly as practicable, a relatively integrated socio-economic area."

The measure does make one other important substantive change: it prohibits the abrogation of a legislator's four-year term as the result of redistricting. Legislative terms are set in article II, not in article VI. However, the Alaska Supreme Court ruled in Egan v. Hammond that the governor's power to cut short senatorial terms of office was one that was "incidental to his general reapportionment powers." 502 P.2d 856, 874. If the governor is able to shorten a legislator's term every 10 years following redistricting, the value of continuity achieved by the staggered four-year term is all but destroyed. Moreover, as a practical matter the most significant shift in representation occurred following the original "one man, one vote" decisions of the United States and Alaska Supreme Courts. The governor decided to redistrict the state in 1965. He eliminated the regional senatorial districts and departed from the general geographic or area orientation for Senate representation. From 1965 on, normal population growth in Alaska probably will not produce shifts in the population growth pattern so dramatic as to warrant premature termination of a legislator's tenure in office in order to effect a change in political boundaries that will reflect shifts in population (or registered voter) growth patterns. Under the Alaska Supreme Court's concept of gubernatorial redistricting authority, it would be possible for all 61 legislators, under the unicameral proposal, to turn over at one election every decade following redistricting. It is doubtful that that result was intended by the framers of the Alaska Constitution. Despite the court's concern for "unrepresented" areas following redistricting, if legislator terms were not truncated, those areas potentially without representation would be small and then only for temporary periods not exceeding two years. Practically speaking, it is doubtful if any area of the state would go unheard. Such a discrepancy pales in significance alongside the value of some degree of continuity provided by the maintenance of a system of staggered, four-year terms.

In Groh v. Egan, the Court reaffirmed the view it had taken in Egan v. Hammond (502 P.2d at 873-74) that the governor, exercising his general redistricting powers, had the discretionary authority to order mid-term elections, thus abrogating the four-year terms to which four Anchorage senators had been elected in 1972. 526 P.2d 863, 880-81. The Court conceded, however, that had it had the original decision to make, it might have been persuaded by reasons advanced by the California Supreme Court to permit the four Anchorage senators involved to conclude their terms; nevertheless, the Court asserted there was a rational basis for permitting truncation of senatorial terms. Compare Groh v. Egan, loc. cit., with Legislature v. Reinecke, 516 P.2d 6, 11-12 (Cal., 1973). In short, the effect of proposed sec. 1(d) of article VI, in SJR 1 (it appears as sec. 2(b) in HJR 1) is to nullify the Alaska Supreme Court's decision in Egan v. Hammond and Groh v. Egan with respect to gubernatorial power to abrogate senatorial terms at the time of redistricting.

In the revised article VI the governor retains the power to redistrict the legislature, assisted by an advisory board he appoints. There is no substantive change from the existing constitution in sections 2, 3 or 4.

In proposed section 5 some additional modifications are recommended. When the Alaska Constitution was drafted in 1955, the decision of the U. S. Supreme Court in Baker v. Carr, 369 U.S. 186 (1962), still was seven years distant. Thus, the state's "founding fathers" could not have known that judicial review of legislative redistricting would be authorized. To correct that omission, express provision for judicial review of redistricting is included along with the existing authority for a voter to compel gubernatorial performance of redistricting duties or to correct a redistricting error. Importantly, this measure also shifts original jurisdiction in redistricting litigation from the superior court to the supreme court, following the example of Oregon. Ore. Const. art. IV, sec. 6(2)(a), (3)(b). The requirement that proceedings commence in the superior court is time-consuming and unproductive. In these redistricting cases, the facts rarely are in dispute: the population of the state, of a given subdivision, the geographic/topographic configuration of the state, its social and economic characteristics, etc. If "facts" must be developed, a special master can be appointed, as was done with such salutary effect for the first time in the state's history in Egan v. Hammond.

What is at issue is the application of the law to the facts, and that, in any event, is peculiarly an appellate function. Appeals in this type of a dispute are almost inevitable. Thus, in order to telescope drawn-out proceedings that might otherwise result in a decision so close to an election as to make its administration impossible or nearly so, it seems advisable to allow proceedings to be brought before the supreme court at the outset. This seems especially wise when litigation, such as this type of proceeding, involves the co-equal branches of the state government.

Further, the measure repeals article XIV which created the initial election districts. Their boundaries have been recast significantly both in 1965 and in 1972. Consequently, today, they are of little more than historic interest and legally the district descriptions are without force or effect. Thus, the language describing them is superfluous and should be removed from the constitution as obsolete material.

The final section of the resolution, section 5, sets out transitional provisions required to shift from bicameralism to unicameralism:

First, assuming voter approval of a one-house legislature in 1976, those legislators elected at the 1976 general election plus senators holding over from the 1974 election would sit during the initial session of the tenth Alaska Legislature as a two-house body,

but during the second session as a unicameral legislature. During the first session (1977), the legislature would be required to make those preparations enabling it to meet as a unicameral body during the second session (1978), e.g., provide a chamber large enough to accommodate the 61 members en bloc, conduct a study of required rules changes, etc.

Second, the governor would be obliged to convene a redistricting advisory board and redistrict the state to accommodate a 61-member unicameral legislature preparatory to the 1978 elections. At that election, under SJR 1, those 10 members of the Senate elected in 1976 would hold over until the normal expiration of their term in 1980, 30 members would be elected to four-year terms, and 24 others to two-year terms (until 1980, then four-year terms thereafter). (Under HJR 1, at the 1978 election, 31 members would be elected to four-year terms, and 20 others to two-year terms, until 1980, and then 30 members to four-year terms thereafter.) Which legislators would be assigned four-year and which two-year terms would be determined by the governor's redistricting plan on this occasion only.

SCH/lb

cc: Senator John Rader

ARTICLE VI

Legislative Apportionment

Proposed Article VI	Existing Article VI
Sec. 1(a) of both SJR 1 and HJR 1 change the term "election" district to "legislative" district.	Sec. 1
Sec. 1(b) of both SJR 1 and HJR 1 changes the base for redistricting from "civilian" population to registered voters.	Sec. 3
Sec. 1(c) of both SJR 1 and HJR 1	Sec. 6.
Sec. 1(d) of SJR 1 Sec. 2(b) of HJR 1 These provisions prohibit gubernatorial truncation of senatorial terms of office as a result of redistricting.	No comparable provision.
Sec. 2 of SJR 1 Sec. 2(a) of HJR 1	Sec. 3
Sec. 3(a) of both SJR 1 and HJR 1	Sec. 8
Sec. 3(b) of both SJR 1 and HJR 1	Sec. 9
Sec. 4 of both SJR 1 and HJR 1	Sec. 10
Sec. 5 of both SJR 1 and HJR 1 shift original jurisdiction in redistricting litigation from the superior court to the supreme court.	Sec. 11

ARTICLE VI

Legislative Apportionment

	Existing Article VI	Proposed Article VI
Election Districts	SECTION 1. Members of the house of representatives shall be elected by the qualified voters of the respective election districts. Until reapportionment, election districts and the number of representatives to be elected from each district shall be as set forth in Section 1 of Article XIV.	SJR 1 and HJR 1: See Sec. 1(a). The term "election" district is changed to "legislative" district.
Senate Districts	SECTION 2. Members of the senate shall be elected by the qualified voters of the respective senate districts. Senate districts shall be as set forth in Section 2 of Article XIV, subject to changes authorized in this article.	SJR 1 and HJR 1: See Sec. 1(a)
Reapportionment of House	SECTION 3. The governor shall reapportion the house of representatives immediately following the official reporting of each decennial census of the United States. Reapportionment shall be based upon civilian population within each election district as reported by the census.	SJR 1: See Sec. 1(b) and 2. HJR 1: See Sec. 1(b) and 2(a) The base for redistricting is changed from "civilian" population to registered voters.
Method	SECTION 4. Reapportionment shall be by the methods of equal proportions, except that each election district having the major fraction of the quotient obtained by dividing total civilian population by forty shall have one representative.	SJR 1 and HJR 1: No comparable provision; deleted as obsolete. Representation no longer apportioned among fixed geographical units since Reynolds v. Sims and Wade v. Nolan as the original election districts based on the judicial divisions created inherently unequal districts.

Existing Article VI		Proposed Article VI
Combining Districts	SECTION 5. Should the total civilian population within any election district fall below one-half of the quotient, the district shall be attached to an election district within its senate district, and the reapportionment for the new district shall be determined as provided in Section 4 of this article.	SJR 1 and HJR 1: No comparable provision; deleted as obsolete for same reasons stated as to existing sec. 4, above.
Redistricting	SECTION 6. The governor may further redistrict by changing the size and area of election districts, subject to the limitations of this article. Each new district so created shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area. Each shall contain a population at least equal to the quotient obtained by dividing the total civilian population by forty. Consideration may be given to local government boundaries. Drainage and other geographic features shall be used in describing boundaries wherever possible.	SJR 1 and HJR 1: See Secs. 1(b) and (c). The first sentence of the existing sec. 6 is unnecessary as the gist of it is in the above cited sections as well as in Sec. 2 and 2(a) of SJR 1 and HJR 1, respectively.
Modification of Senate Districts	SECTION 7. The senate districts, described in Section 2 of Article XIV, may be modified to reflect changes in election districts. A district, although modified, shall retain its total number of senators and its approximate perimeter.	SJR 1 and HJR 1: No comparable provision; deleted as obsolete for same reasons stated as to existing sec. 4, above.
Reapportionment Board	SECTION 8. The governor shall appoint a reapportionment board to act in an advisory capacity to him. It shall consist of five members, none of whom may be public employees or officials. At least one member each shall be appointed from the Southeastern, Southcentral, Central and Northwestern Senate Districts. Appointments shall be made without regards to political affiliation. Board members shall be compensated.	SJR 1 and HJR 1: See Sec. 3(a).

Existing Article VI		Proposed Article VI
Organization	SECTION 9. The board shall elect one of its members chairman and may employ temporary assistants. Concurrence of three members is required for a ruling or determination, but a lesser number may conduct hearings or otherwise act for the board.	SJR 1 and HJR 1: See Sec. 3(b)
Reapportionment Plan and Proclamation	SECTION 10. Within ninety days following the official reporting of each decennial census, the board shall submit to the governor a plan for reapportionment and redistricting as provided in this article. Within ninety days after receipt of the plan, the governor shall issue a proclamation of reapportionment and redistricting. An accompanying statement shall explain any change from the plan of the board. The reapportionment and redistricting shall be effective for the election of members of the legislature until after the official reporting of the next decennial census.	SJR 1 and HJR 1: See Sec. 4
Enforcement	SECTION 11. Any qualified voter may apply to the superior court to compel the governor, by mandamus or otherwise, to perform his reapportionment duties or to correct any error in redistricting or reapportionment. Application to compel the governor to perform his reapportionment duties must be filed within thirty days of the expiration of either of the two ninety-day periods specified in this article. Application to compel correction of any error in redistricting or reapportionment must be filed within thirty days following the proclamation. Original jurisdiction in these matters is hereby vested in the superior court. On appeal, the cause shall be reviewed by the supreme court upon the law and the facts.	SJR 1 and HJR 1: See Sec. 5. Jurisdiction shifted from Superior to Supreme Court.
Existing Article XIV		SJR 1 and HJR 1: Repealed as obsolete.

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February 6, 1975

Mr. Terry Gardiner
Chairman, Judiciary Committee
House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99801

Dear Terry:

Attached is an excerpt from my manuscript on the Alaska constitutional convention dealing with the unicameralism debate. As you will note, my tally indicated that of those who spoke out on the issue, bicameralism was favored by 25 to 2, even though no formal vote was ever taken. The endless arguments in favor of the bicameral system, as reported in the Proceedings, are summarized in the middle paragraph on attached page 87.

Upon returning to Fairbanks, I looked at my files and found a haphazard collection of tidbits dealing with the unicameral issue. Rather than passing these on to you, I suggest you pursue the obtaining of information through the National Municipal League. In case you are not able to locate the address, here it is: Mr. William N. Cassella, Jr., Executive Director, National Municipal League, 47 East 68th Street, New York, New York 10021.

Should you have a hearing on the proposed constitutional amendment to establish a unicameral legislature, I would be glad to testify, timing permitting. While I was very lukewarm on this issue in 1955-56, I am now firmly convinced that Alaska would gain much by switching to a unicameral system, both in terms of legislative operations and a better system of representing the people.

If there is any ready way, I would greatly appreciate being kept informed of developments on this issue.

Best personal regards.

Sincerely,

Victor Fischer, Director
Institute of Social, Economic
and Government Research

VF:jd

Attachment

cc: Mike Bradner
Bill Parker

PLEASE REPLY BY AIRMAIL

NATIONAL MUNICIPAL LEAGUE

State Constitutional Convention Studies

Number Nine

ALASKA'S CONSTITUTIONAL CONVENTION

VICTOR FISCHER
Institute of Social, Economic and Government Research
University of Alaska



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lators, length of legislative sessions, salaries, and legislative rules and organization.

Unicameralism versus Bicameralism

From the beginning, the Committee on the Legislative Branch devoted considerable time to discussing the relative merits of the unicameral legislative structure. The PAS report gave little background information, primarily pointing out that:

> Alaska's relatively small population and the economy and simplicity of the unicameral legislature seem to argue in favor of the single house. On the other hand, the apparent satisfaction with the two-house system in the Territorial Legislature makes any departure from tradition difficult.[3]

In addition, a preconvention poll of delegates indicated a widespread acceptance of the existing bicameral structure.[4]

Committee members decided that the first question they must resolve was that of the bicameral-unicameral legislature, since the number of legislative chambers would determine other structural and procedural characteristics. Therefore, they decided to obtain the views of all delegates and, if possible, the public. To accomplish this at an early stage, the committee put the question of the unicameral versus the bicameral legislature to the entire convention.

When the proposal for a full-dress discussion of legislative structure was brought before the convention, delegates were not only ready to debate the issues, but some even wanted specific action to follow the discussion. Much of the preliminary discussion revolved around the procedure to be followed in determining delegates' preferences, particularly whether there should be a poll of delegates at the end of the Committee of the Whole session. Despite the interest and enthusiasm, however, the convention took no action to require a vote or poll on unicameralism.[5] A three-and-one-half-hour night session, to which the public had been invited, proved that no formal expression was necessary.

Debate clearly revealed that a majority of delegates favored unicameralism. Expressions of individual opinions by thirty-one of the fifty-five delegates indicated that only two delegates (Jack Hinckel of Kodiak and John McNees of Nome) firmly favored the unicameral legislature; twenty-five firmly favored bicameralism; and

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[3]PAS, "Legislative Structure and Apportionment," *Constitutional Studies*, p.4.
[4]*Fairbanks Daily News-Miner*, November 7, 1955.
[5]*Alaska Constitutional Convention Proceedings* (Juneau: Alaska Legislative Council, March 1965), pp. 377-390.

four delegates raised points favoring one system or the other without committing themselves to a specific preference.[6] Each of the twelve delegates who had served in the bicameral territorial legislature and who spoke on the issue favored bicameralism.

Delegate McNees made the case for a one-house legislature. He described how the traditional two-house system was an outgrowth of democracy's progress against royal power and argued that members of the two-house system were now elected by the same class of people and were given the same legislative authority, without regard to wealth and property. He pointed out that it was not necessary to have two houses for purposes of checking each other: checks would exist with unicameralism. Laws could be set aside by the court if the legislature exceeded its constitutional authority: the governor could exercise his veto; and the people could, under the referendum provisions, nullify any law passed by the one-house legislature. Under the referendum provisions, McNees listed a series of merits claimed for the unicameral system:

1. A single chamber operates more efficiently than two and is able to more thoroughly consider proposed legislation. By adopting suitable rules of procedure and establishing an effective committee system, it can ensure that every measure is carefully reviewed before it is acted upon, with adequate safeguards to prevent hasty action and thus avoid the serious ills of the closing rush that pertains in many states.

2. The unicameral legislature does away with jealousy, friction, and rivalry between two houses and eliminates the need for conference committees.

3. A single house permits legislative responsibility to be definitely fixed and facilitates the development of essential leadership.

4. The unicameral legislature results in substantial savings through a reduction in the number of members and size of legislative staff.

5. Membership in a single chamber carries greater prestige, dignity, and greater opportunity for public service and hence attracts more distinguished, outstanding, and representative citizens.

6. A single-chamber law-making body reduces the power of special interest groups and lobbyists to defeat needed legislation, and at

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[6]The Committee of the Whole discussion of unicameralism and bicameralism is covered in *Proceedings*, pp. 419-467.

the same time makes it easier for groups of citizens who are interested in pending legislation to openly and aboveboard present their recommendations to the legislature. It facilitates public reporting of legislative activity, thus serving to increase the public confidence in the legislative body.

7. The single house permits closer and more effective relationships between the governor and executive departments and the legislature.

McNees also pointed out that Nebraska was not the only political subdivision with a unicameral legislature: "many nations operate with single legislative bodies," he said. He described the extensive attempts at legislative reform among the states, with a consistent pattern of support of unicameral proposals by population-based houses of representatives and their defeat in area-oriented senates.

Aside from these and other unicameral arguments set forth by McNees and Jack Hinckel, as well as a few equivocal statements by several others, most delegates favored a two-house legislature.

Arguments favoring the bicameral system claimed that it would retain a system that has been proved in most states, preserve an effective system of checks and balances and a more deliberative process, and assure more representation for different groups. Further, proponents voiced fear that Congress (which had to approve the state constitution) would not look with favor upon a unicameral legislature, and they raised the spectre that Alaska voters also might not go along with a change from the traditional system.

Convention President Egan, who favored the prevailing system, argued that Alaskans had not experienced a true bicameral system of legislative apportionment. He stated:

> We have had a running-wild system . . . both in the makeup of the Territorial Senate and the makeup of the Territorial House. Our citizens here have not had the opportunity to view . . . a bicameral system of legislative bodies in action, and I feel very strongly, personally, that at this time it would be unwise to adopt the unicameral form of government.[7]

Others, such as delegate Frank Barr of Fairbanks, referred to the unicameral legislature as an "ideal" system, but dismissed it as not practical or desirable for the future state. Seaborn Buckalew pointed out that delegates had not addressed themselves to a bicameral versus unicameral question during the election and stated:

> . . . if we went ahead and adopted a unicameral house, we will be taking

[7] *Ibid.*, p. 446.

> the voters of Alaska by surprise . . . I think it will put an additional burden on the ratification of the constitution.[8]

Juneau delegates Dora Sweeney and Mildred Hermann advised the convention of previous attempts in the Alaska territorial legislature to bring the unicameral question before popular referendum. On two occasions, first in the 1930's and then in the 1940's, bills or resolutions were introduced providing for a unicameral legislature. Both times the proposals failed, although a memorial to Congress favoring unicameralism was approved by the house in 1945.

The first "great debate" of the convention ended with the floor being opened to the public. Four visitors spoke, two for unicameralism and two for bicameralism.

Given the overwhelming support for a two-house structure among the delegates, the issue was never again seriously raised before the convention. However, in several subsequent debates, accusations were made that vestiges of the unicameral scheme were being incorporated in the constitution. Thus, in the debate on the executive article, there were complaints about the provision for confirmation of gubernatorial appointments by joint session of the legislature, rather than by the senate or by each house separately.[9] The legislative proposal similarly incorporated a unicameral feature in regard to veto considerations. Upon the veto of a bill by the governor, both houses of the legislature would sit as one body to reconsider the passage of the vetoed bill. The entire legislature could then override a veto by a two-thirds vote on regular bills and a three-fourths vote on money bills. (The proposal also provided that any bill vetoed by the governor and not overridden by those required majorities could be submitted to popular referendum by a simple majority of all legislators sitting as one body. Also, the governor was to be authorized to submit to referendum any bill failing passage by the legislature, either in its original form or with any amendments considered by the legislature that he could designate.)

During subsequent floor consideration, joint house-senate action on gubernatorial vetoes became an issue of prime controversy; indeed, it was the chief reason six delegates later gave for voting against final approval of the entire legislative article. Chairman McCutcheon explained the committee's stand:

> . . . From past experience we felt that the authority of the senate should be diluted to a certain extent by requiring that the vetoes of the governor shall be heard in both houses and that it shall require the vote of both houses sitting as one body to override the veto of the governor, the theory

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[8] *Ibid.*, p. 451.

[9] *Ibid.*, pp. 2179-2180.

being that with a small senate it required so few to sustain the governor, that it gave an extremely strong executive arm more power and authority than he should have.[10]

Others, however, argued that such joint action eliminated a basic aspect of checks and balances in democratic government, putting decision making on vetoed bills in the hands of the more populist house of representatives. Thus, Maurice Johnson of Fairbanks stated:

> I have always felt that when the veto message was acted upon by each house separately, as I believe it should be, that it afforded an additional check and balance that very frequently was the only protection that a minority could have in a legislature which was overbalanced, one way or another by one political party or the other.[11]

A similar position was held by Frank Barr, also of Fairbanks:

> I disagree on adopting a unicameral process in acting on a veto when a bill is returned by the governor. We have gone on record here for a bicameral legislature by a large majority, and then we become inconsistent and turn right around and provide for the unicameral process in acting on the veto.[12]

Recent problems in the territorial legislature gave rise to the proposed unicameral approach to vetoes. During the legislative session earlier in 1955, a bill dealing with procedures for appointments requiring legislative confirmation was passed by the house by twenty-one to three and approved in the senate by a two-thirds margin. When the governor vetoed the appointment bill, the house overrode the veto by the same twenty-one to three vote. In the senate, however, the legislation failed to get the necessary two-thirds majority, and the governor's veto was sustained. The issue had been highly charged politically, the legislature then being overwhelmingly Democratic while the governor was a Republican, and the resulting political controversy was reflected in the proposed constitutional provision.

Just before the convention vote on the issue of veto overrides, a delegate inquired:

> How many states have provisions for veto where both houses meet jointly, such as proposals before us?

McCutcheon's response "Nebraska" was met by a peal of laughter from the delegates, who then proceeded to reject on a tie vote the amendment to have each house act separately on vetoed bills.[13] An

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[10] *Ibid.*, pp. 1731-32.
[11] *Ibid.*, p. 3186.
[12] *Ibid.*, p. 3184.
[13] *Ibid.*, p. 1735.

attempt to raise the issue again during third reading was voted down by a more substantial margin.[14]

Impeachment procedures raised once more the question of how the houses of the legislature were to function. The Legislative Committee had recommended that impeachment originate in the senate and trial be conducted by the house of representatives, a reversal of roles in Congress. Motions were made to reverse these roles, to authorize either house to initiate impeachment with trial by the other, and to have the proceedings carried out by a joint session of the legislature. The proposed changes were rejected, in part because many members did not care enough about these procedural aspects to override the committee that had worked on the article for many weeks.

Committee Proposals

With the question of basic legislative structure resolved, the Committee on the Legislative Branch proceeded with its work and in two weeks submitted Committee Proposal No. 5, Legislative Powers and Duties. The proposed article provided for a senate of twenty and house of forty members. Senators were to be at least twenty-five years old, two-year residents of Alaska, and one-year residents of their district. Minimum age of house members was set at twenty-one years, with the same residence requirement. The committee proposed that the legislature convene each year, with no limit on the length of session. Each legislator was to receive an annual salary, with the presiding officers of the two houses authorized to receive an additional amount. Committee chairman Steve McCutcheon of Anchorage explained the salary provisions:

> Most states have not paid legislators respectable salaries and the citizens have often been disappointed when the legislators were not respectable either. The salaries will not automatically produce good legislators: rather they make their selection possible. Poor salaries tend to produce two types of legislators—those who have private means and who are, consequently, likely to be upper class in their attitudes, and those who are on the payroll of an outside interest and who are sent to the legislature to vote as that interest desires.[15]

Provisions were also made for a legislative council and other interim committees, prohibition of local and special acts, adoption of uniform rules, impeachment proceedings, freedom of religion, disclaimer of rights to land of Alaska Natives as required by

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[14] *Ibid.*, p. 3117.

[15] *Fairbanks Daily News-Miner*, 19 December 1955.

February 11, 1975

Victor Fischer, Director
Institute of Social, Economic
and Government Research
University of Alaska
Fairbanks, Alaska 99701

Dear Vic,

Thank you for your letter of February 6 and the information which was attached.

I am writing to inform you of a public hearing on the proposal to form a unicameral legislature which has been scheduled for February 20 in Juneau. Your testimony at this hearing would be most welcome.

If the 20th isn't convenient for you, please let me know when you'll next be in Juneau and I'll schedule a special meeting.

Sincerely,

Terry Gardiner
Representative

HJR 1

February 25, 1975

Victor Fischer, Director
Institute of Social, Economic
and Government Research
University of Alaska
Fairbanks, Ak. 99701

Dear Vic,

Sorry you were not able to testify at our last public hearing. I'm not sure whether we will still have hhe Unicameral resolution in our committee on March 3. If we do, we would certainly like to have you testify.

It seems that more and more opposition towards the concept of a unicameral legislature is coming from the Senate side. It appears doubtful as to whether the resolution would even receive a floor vote in the Senate. In that case those of us who favor the concept would at least like to get it before the entire House and have a full debate on the topic.

Sincerely,

Terry Gardiner
Representative

UNIVERSITY OF ALASKA
FAIRBANKS, ALASKA 99701

February 18, 1975

Representative Terry Gardiner
Chairman, House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99801

Dear Terry:

Thanks for the invitation to testify at the February 20 hearing on the proposal for a unicameral legislature. Unfortunately, I cannot be there.

I expect to be in Juneau March 3-5, and could probably make myself available that Monday afternoon or Tuesday morning. I am not sure whether all might not have been quite well said by then. Will leave to you whether a personal appearance might be worthwhile. If there are any specific questions that I could deal with, I would certainly be glad to do that.

Best personal regards.

Sincerely,

Victor Fischer, Director
Institute of Social, Economic
and Government Research

VF:jd

PLEASE REPLY BY AIRMAIL

clear that the legislative has all of the balance of the power.

One, I suppose, example, Delegate Mathias, would make it definitely clear that the legislature does have the power to perform investigation into the branch of the judiciary with respect to the matter of impeachment. I think this would clear up for all time the problem of the *Cusack* case. It's a matter that is a basic, fundamental principle that is stated in other constitutions, and we feel that because of the confusion of our Illinois courts, that it should be placed in ours, since we do take out so many sections and we take them out only because of the theory set forth and the basic principle set forth in that line.

PRESIDENT WITWER: Mr. Parkhurst?

MR. PARKHURST: Thank you, Mr. President. We've got another section of the constitution forthcoming that this might affect and might conflict with, and that's the local government article. Mr. President, it seems to me that what we are trying to do basically in the local government article is reverse dear old Dillon's rule which is the idea that the state is the sovereign and that all local governments are merely creatures of the state. In our article, as you know, having read it by now, we try to give some autonomy in the name of home rule to local governmental entities.

Now this sentence that we are talking about that's affected by the Knuppel amendment, it seems to me, would simply restate in the constitution Dillon's rule, because it would simply say that the General Assembly has all the power of the state. That would cancel out effectively in this paragraph what we are going to try to do in the home rule article—in the local government article—and give some of the power to the local governments. So I believe that this would be a very dangerous thing to have in the constitution if you believe in the concept of reversing Dillon's rule; and for that reason, among the others that have been stated here, which primarily boil down to the fact that this doesn't say anything anyway, I think that we should be very careful about this and not put in with the left hand what we are going to try to take out later with the right hand.

PRESIDENT WITWER: Thank you. Any further debate? Mr. Fay?

MR. FAY: I would like to ask Delegate Lewis if it is not true that the problem you refer to raised by the *Cusack* case you handled in the article on impeachment, making it clear that the legislature does have the power to investigate in connection with impeachment.

MR. LEWIS: I am sorry, Delegate Fay. I didn't hear—

MR. FAY: Don't you clear that up in the section on impeachment? The *Cusack* problem?

MR. LEWIS: Yes, we do try to take care of it there.

PRESIDENT WITWER: Thank you. Are you ready now? If you are, would you like to speak in summation, Mr. Lewis, for the committee. If not, Mr. Knuppel?

MR. LEWIS: Mr. President, since I have just spoken, I don't think that I can add anything to what I've said.

PRESIDENT WITWER: Thank you. Mr. Knuppel?

MR. KNUPPEL: I think the debate made it abundantly clear that these words add nothing to our constitution and may be a Pandora's Box with respect to the general government, the bill of rights, the separation of powers clause, and therefore the amendment should be allowed.

As has already been pointed out by Mr. Fay's que[stion] rebuttal to Mr. Lewis, we have taken care of the *Cu[sack]* in another part of the legislative article. This article sa[ys] legislative power," and defines what it is—"legislative [power] is vested"—and then it goes on down, and it seems [to] add something more by saying, "the General Assembl[y] have all power." This would be additional judicial pow[er] develops, I assume—other powers that would normall[y] the executive branch, and so forth—so it creates con[fu]court action. It will promulgate litigation over what it [is] and what the effect of it is, because if it is in there it mus[t] something; but, really, I don't think it is intended t[o] anything, and I would ask the delegates to join with [me] striking it. Thank you.

PRESIDENT WITWER: All right, we are now [on] Knuppel's motion. Those who would favor the adoptio[n] will please say aye. Those opposed, nay. I guess it is car[ried]

Now any further amendments? Any further amendme[nts] section 1? Mr. Knuppel?

MR. KNUPPEL: I have an amendment which pr[o]—and I am joined in it by Robert Canfield, Betty H[o] and William Fogal—which proposes a unicameral legi[s] with not more than 177 members and by striking the [en] section and substituting. Now if this is out of order at thi[s] until there are further amendments in the perfection [of] than substitution, I would be happy to stand aside if there other amendments.

MR. LEWIS: Mr. President, I think it would be en[tirely] appropriate and in order at this time. I think it would [be a] good time to have it.

MR. KNUPPEL: It reads as follows—the clerk will re[ad] it.

PRESIDENT WITWER: Just a minute, please. Is [there] any minority proposal on section 1 of this report?

MR. KNUPPEL: There is a minority proposal.

MR. LEWIS: There is, Mr. President, but solely [on] the number which we would not need to get to, and as [far] the committee is concerned it would waive any further pe[ti]tion until the matter of unicameral, bicameral, and parliam[en]tary form are decided.

PRESIDENT WITWER: Well, the point is, there [is a] minority proposal the thrust of which is adverse to the leg[is]tive establishment?

MR. LEWIS: No.

PRESIDENT WITWER: It is only on number?

MR. LEWIS: It is only on number.

PRESIDENT WITWER: Then it would seem appro[pri]ate at this time to receive this amendment. It is in the nature a substitute, and we will go ahead. Will you read the amend[ment], please?

CLERK: Amend section 1 by striking the entire se[ction] and substituting, in lieu thereof, the following: "Legisl[ative] power is vested in a single-house General Assembly of [not] more than 177 members."

PRESIDENT WITWER: Is it seconded? Mr. Can[field] seconds. Would you like to proceed with it? Mr. Alexan[der] will you kindly take the gavel?

VICE-PRESIDENT ALEXANDER: Delegate Kn[up]pel, will you proceed?

MR. KNUPPEL: Yes. Mr. Chairman and ladies and ...emen of this Convention, this proposal, in my opinion, ...ents one of the threshold questions—one of the truly great ...hold questions—of the Constitutional Convention. The ...tion here is whether you want a two-house General As...bly or a single-body General Assembly.

...er the last 100 years the people of the State of Illinois and ...er the United States have watched the legislative branch ...vernment atrophy in its effectiveness with relation to the ...ial and executive branches of government. We have all ...essed the fact that the Supreme Court of the United States ...other courts have taken onto themselves legislative func...s in the discharge of their duties which rightfully belong to ...state legislatures. This is one of the factors that we have ...e in contact with here in this twentieth century, is the de...e and eclipse of the legislative branch of government as a ...partner in a tripartite form of government.

...ow in reference to the legislative article, comparative in...mation will lead you to the debates of the 1870 Constitu... and I would commend to your reading commencing at ...e—this is not paged, but it is following the unicameralism, ...n two-thirds of the way back in your book. It is an inter...g and a very informative article on the history of bicamer...gislatures as opposed to unicameral legislatures.

...came to this Convention totally dedicated to a bicameral ...slature. I campaigned on this and came to the committee ...porting it. I listened for four months to the testimony that ...brought before the Legislative Committee by the various ...bers of the legislature, ex-members of the legislature and ...eral Assembly, and by professors from all over the United ...es. The longer I listened, I came to the conclusion that ...e were no effective recommendations that would upgrade ...status of our legislative branch of government except—...ept—that of a unicameral body, where a proposition would ...debated once. It would be decided. It would make the legis...re a stronger branch of government in relation to the other ...branches of government. It would make the legislative ...ess more visible.

...We were told that there should be two-body houses for the ...on that bad bills sometimes got through one house. No...y—no legislator—explained how this happened. We were ...by one legislator that he gets a note from somebody else ...n his area that says, "Don't ask me why, but a bad bill got ...ough the house. Kill it in the senate," or vice versa. The ...ple are entitled to more than this. The people are entitled ...n effective legislature in the state of Illinois.

...Now, I submit that just abolishing cumulative voting, ...withstanding all of the newspaper editorials we have been ...ding, will not correct the situation we witnessed here in Il...is this year where twice—where twice the General Assem... has adjourned without effectively dealing with the prob...s of the people of the state of Illinois; and it would not real...ave mattered if those people in those houses had been elect...n the first instance from single-member districts or elected, ...hey are, by cumulative voting, regardless of what the news...ers may have said. The only way that we can abrogate the ...putes which arise between the two houses is to abolish one ...hem.

...Now, I realize that probably there is not enough strength in this Convention to carry a unicameral form of government; but I submit to you that we will take and consider this problem again, either as an amendment to our constitution or in some other manner within the next twenty years, because as the total number of bills introduced into the house and senate increase from 2,000 to 4,000 to 6,000, it seems ridiculous that we should grind these bills through two sets of committees, two houses, and then resolve the differences in a conference committee.

Now many of the witnesses who testified before the Legislative Committee praised the conference committee. One person even said that he liked a bicameral house because of the great effect of the conference committee; and, when asked, he couldn't really explain what the conference committee was. I'll tell you what the conference committee is. It's a unicameral body created out of the two houses to solve the inadequacies of the bicameral system.

Now a single-house legislature would increase the prestige of its members—would make more visible and understandable to the people of our state the legislation which comes before our General Assembly. I have proposed some sixteen or seventeen different improvements that would be created by the adoption of a unicameral body. It would provide for a united rather than a diffused representation of each district in legislative matters. The way it is now, the senators blame the representatives—the bill was killed in the house or vice versa—it was killed in the senate. It would fix responsibility.

Apportionment would be simplified. This is one of the real tragedies, and this is why unicameralism is getting a second look. It used to be that there was a reason for two houses. One represented geography, the other represented people, and there is a reason for it in the federal form of government because each state has two senators, chosen on the basis of geography, and it was formed from thirteen sovereign nations who gave up some of their pow..., and they made a contract, and this is the way they made a contract.

But in a state all power derives from the state, and under the concept of one man-one vote, there is no longer the reason for geographic representation. The reason now is to represent one man, and he doesn't need to be represented in two different houses. I submit that if two houses are better than one, then why not three or four? And if this is true, why not two Constitutional Convention bodies here? Possibly some of the differences we have might be resolved by a second body—have a higher and lower house.

There are cities larger than many states which today operate with city councils composed of a single house. Nowhere in the history of the world has there been bodies where one had the veto power over the other designed to serve exactly the same function. Now in England the House of Lords was elected in a different manner, designed to represent different interests and to act differently. The same was true in Italy and in every other history of the world. But we some way got off on the wrong foot for the one man-one vote concept when we followed the federal system. Now, if we could still elect the senate on a geographic basis, and the House on a one man-one vote concept, there would be some reason for retaining bicameralism.

One house will elimate deadlocks resulting from rivalry

between the houses which we have witnessed this year. It will attract better candidates because of increased prestige and visibility. The buck-passing between the houses will stop, and responsibility will be squarely placed on that one legislative body. The legislators will be less readily corrupted, because public visibility will be focused upon the single chamber. The actual practice has failed to demonstrate that the two-house chamber acts as a check upon unwise legislation because both houses frequently pass bills which are quite similar with only a little bit of difference and the two bills go to the governor for his acceptance or rejection. This happens in a number of cases in each session of the legislature.

Since fewer members would be involved, fewer bills would be introduced. Thus those bills that are introduced would make it possible for legislators to give them more and fuller consideration. It would avoid simultaneous introduction of bills in two separate houses and the vast expense that goes with grinding 4,000 or 5,000 bills through each house.

One house would result in a substantial savings in tax money to the taxpayers. A study done in Michigan pointed out that each member of the General Assembly cost the people of the state an estimated $192,000 per year. Stop and think what 100 unnecessary legislators in our two-house chamber is costing the people of the state of Illinois over the next 10 years. You must consider these things, because we are here to deal with concepts that will go into our constitution to last in perpetuity—we hope.

The space provided for the smaller legislative body would provide office and service area necessary—so vitally necessary. Our General Assembly presently is badly understaffed. It would provide space to give them offices and assistants. It would eliminate competition between the houses for legislative recognition; allow proper use of checks and balances between the legislative, executive, and judicial branches of government. Instead of the two houses acting as checks and balances upon each other, they would act as a proper check and balance on the executive and judicial branches of government. It would avoid duplicative enactments requiring gubernatorial review and veto, and would avoid wasted effort in reconsideration of identical bills and proposals by two houses.

I submit, ladies and gentlemen of this Convention, regardless of whether or not you adopt this proposal, it belongs in the debates of this Convention for the purposes of history, for political researches and otherwise, because I say that the unicameral legislative body is the way of the future. Every province in Canda now had adopted a unicameral system. And I thank you for your time and attention.

VICE-PRESIDENT ALEXANDER: Thank you, Delegate Knuppel. Before we proceed, I would like to inform you that we are proud to have with us today Mrs. Kathryn McPherson of Downers Grove, and Mr. and Mrs. Edward Zitka of Hinsdale, Delegates Kinney and Peccarelli inform the Chair. We are glad to have you with us and our other guests as well. We are happy to welcome you to this session of the Sixth Illinois Constitutional Convention. Delegate Canfield, and then Delegate Friedrich.

MR. CANFIELD: Mr. President and members of this Convention, I hope that those of you who are here will think seriously of what Mr. Knuppel said. I think very often, as we find today, that he is very close to the feeling and the understanding of the people of this state. Now I haven't been on the floor for nearly two weeks for anything, and I would like to touch upon this for just a little bit, because I think probably while we may not win, we probably may accomplish a great deal, and I hope you do give us your vote on it.

But I think Mr. Knuppel has hit the core when he has ascertained that the people of this state already have accepted the fact that the legislature is too large, too cumbersome, and too confused; and they want a change. They want a decrease in number. They want a decrease in the kind of confusion that we have just witnessed.

The people of Chicago are properly concerned that they have been neglected by the legislature; but it is so hard to attach responsibility to a two-house body of varying sizes from overlapping and confusing districts, and as a result of this confusion I think that the people of our state are demanding simplification in government, and I think every one of us knows that they were for the reduction of duplication in government.

The duplication which we have in the legislature of this state is purely traditional. As far as I can determine there is no reasonable basis for it. I think Mr. Knuppel hit the thing right square on the head. It would be exactly as sensible to have two Constitutional Conventions in session at the same time. I don't think there is any reasonable distinction between the two. How utterly illogical it would be, how unhappy we would be if we had another body, we'll say three times as large as the one we have here, passing upon what we do after we get through here. We wouldn't be through for years at that rate, but yet that's the procedure that goes through the legislature and that's why you have the consternation on the front pages of our newspapers day after day—saying that the house and the senate agreed, and one day they say the house and the senate disagreed, and the next day they say they have disagreed and finally they all pack up and go home. I have been through the process; I know it. And we are paying for it.

Now, I am sure that this Convention will fail the people of this state if it doesn't do something about the duplication, the confusion, and the oversize of our legislative bodies. We can say that the people are not aware of it, but you can't talk to your constituents any day on the street without knowing whether it is a CTA bus or whatever it is, that we know what the legislature is costing the state, and I would say that 95 per cent of that could be eliminated if you had one sound body that would face up to the problems.

Now the idea of shifting responsibility between the house and the senate has grown to be a very serious thing in this state, probably more serious today than it has ever been before. The idea of having two houses in the legislature is only an attempt to copy the federal system without any rhyme or reason for doing it.

With one man-one vote there is absolutely no reason at all for having two houses of the legislature. It is purely duplication. It is purely running over the same track twice with different groups of people. It is duplication, as I say. If duplication existed at any other level of government—in city government, county government, or state—any other level or any other municipality—we would cut it out so quickly in this Convention that it would make your head swim. But still

tolerate it purely because it is traditional, purely because we've got some people in there who may oppose us if we go to a one-house system.

I long ago learned never to vote for anything because somebody might oppose me one way or the other. The only question is—is the cause good or bad. As soon as you start voting on the public's rights on the side that will give you, you think, the most votes, or the least opposition—you are failing the people who sent you there. And I hope that no one will vote for this simply because they think the people who are involved in the legislature, either as members or associates, will oppose it—because probably they will. But that is going to happen on every issue.

Now, in conclusion, I would say that all the problems that we are having here regarding the General Assembly could well and properly be cured. Our problem of cumulative voting would go out the window if we got down to one solid, sensible house of reasonable size. The legislature in Illinois has always been much larger than most of the other states, and it is truly much larger than comparable states today. What we should do is get down to one house. We wouldn't have to worry about single-member districts, cumulative districts, coterminous districts, overlapping districts—all those problems would be cured by simply facing up to what the people want. They want removal of duplication. They want efficiency. They want responsibility attached to where it should be.

You can go over this thing for weeks and weeks, and the only reason that we have the two-house system in any state is because that state has copied the federal system, which is entirely different, has no relation to state government, and perhaps we would shock the tradition of some people if we change. If we are afraid to move away from the traditional and the past in an area like this, we will have failed the people of this state for the future.

I agree with Mr. Knuppel. I believe he is close to the people. I believe he is giving them what they want, and I hope he wants it too, because I know he is a good student of this problem. And I hope that we can have the courage to look into this thing, not as somebody who is trying to protect a few people in the house or the senate, not on the theory that duplication is good in government, but on the theory that duplication is bad, it's expensive, and it's confusing. And I hope that this body will consider this thing seriously, for I don't think that there is one valid reason for maintaining two cumbersome, large houses of the legislature in this state; and I am convinced that Mr. Knuppel—if he does not win on this today—will win on this in the future. Thank you.

VICE-PRESIDENT ALEXANDER: Thank you, Delegate Canfield. Delegate Friedrich?

MR. FRIEDRICH: Mr. President and delegates, the only reason I can think of being for this is, if you are for the 1870 Constitution, this might be one way of getting it, that is, put this section in here.

I was about to suggest that if Delegate Knuppel became Senator Knuppel and served a little while over there, he might think differently about this, until Senator Canfield, who has served time over there, supported it.

I will say this, the theory, I think, on the two-house thing—and this is being a little facetious—but there is a theory, which I agree with most of the time, that anything that slows down the process of legislation is probably good for the people, and certainly the two houses do that.

As for having a second house around here, there are days when I think that might be a good idea, too, but I doubt at this time if we can get that adopted.

I want to talk a little bit about the conference committee, because Delegate Knuppel belittled that process. I had the privilege for four years of appointing the senate members to these conference committees and serving on a number of them, and I can say that that serves a very useful function in the process of legislation in getting together and getting some compromises which we don't seem to be able to get around here. But those conference committees are a very valuable part, and there are times when even they do not agree and a second conference committee is appointed with different members; and they do have to be changed in the second round on matters of reapportionment, for example, which are some of the most difficult things that the legislature has to do. They invariably end up in conference committee, and I have appointed the members and also served on it. I think that is an important argument for the two-house system.

Now, it was said that nothing was ever developed in the committee which indicated that one house killed the bad bills of the other. Well, I can tell you that the senate killed a lot of bad house bills, and even once in a while the house killed a bad senate bill. That's not quite so frequent, but it does happen. I want to tell you one case that happened, and this is what can happen. Representative Norman Shade, who is a good friend of mine, when he first came down to Springfield introduced a very bad bill, in my opinion. It had to do with mechanic's liens. Well, Norm Shade was a fine guy and everybody liked him, and nobody ever said anything about the bill. They stood up and told what a great guy Norm Shade was. The bill came out of the house with a unanimous vote. That's not uncommon for a new member to have that kind of treatment on a bill. It got over to the Senate Committee on Judiciary. It had a short hearing in which Senator Groen told what a great guy Norm Shade was. It got exactly two votes, which is exactly what it should have gotten in the house. That's one of the finest examples I know of a second housing killing a bad bill that came from the first.

I think any of you who observe the legislative process here in Illinois, and in the federal level for that matter, knows it was by design of the writers of the original Constitution that there be two separate houses and for two very good reasons. The first house—the lower house—was supposed to be very responsive to the people. They were kept at two-year terms even at the national level—and I know that congressmen hate to run every two years—they are literally running all the time. As soon as they are elected they almost have to announce their intentions to run again. The same thing is true here. The senate, with a four-year term, has a great deal more stability. If I had a choice, I would have the senate on an area basis, but that's out. But it still has the element of more stability than the house because of the smaller number, the longer terms, and the fewer members that turn over between sessions. I think it would be a tremendous mistake for Illinois to go to a one-house legislature.

VICE-PRESIDENT ALEXANDER: Thank you, Delegate Friedrich. Are there others who wish to speak before we ask Delegate Lewis to speak for the committee and then Delegate Knuppel to close the debate?

MR. LEWIS: Mr. Vice-President, I did not intend to speak for the committee, but only to speak.

VICE-PRESIDENT ALEXANDER: Excuse me, then why don't you go ahead? I believe Delegate Kenney wants to speak as well. So Delegate Lewis, you are recognized at this time.

MR. LEWIS: Well, I merely, as chairman of the committee, wanted to applaud the effort made by Delegates Fogal and Canfield, who certainly made very excellent presentations to our committee that were highly impressive and certainly swayed our feelings considerably. I think that the committee felt, on balance, that at this time there was not a sufficient ground swell for a change of this kind, either in the press or in the public, that we could possibly risk the sale of this with the entire package, without a considerable lot more groundwork being made.

We do not discount the possibility that some time in the future the public might determine that this would be the way that they would prefer to go; but as of the present time, we remember the testimony of one of the witnesses who stated that he thought the unicameral system was a system whose future was well behind it. It is one that is a difficult matter to assess because of the lack of experimentation with it in the United States. We did have a witness from the state of Nebraska, Mr. Sorenson, who was the lieutenant-governor of the state of Nebraska who certainly testified as to how it works there, and yet the majority of the committee was unable to relate the experience there to the vastly different state of Illinois. For that reason I do want to express our appreciation to the two delegates who made the proposal originally and to Delegate Knuppel for his rather historical presentation here today. With that I will defer then to the summation by our vice-chairman.

VICE-PRESIDENT ALEXANDER: Thank you, Chairman Lewis. The Chair now recognizes Delegate David Kenney.

MR. KENNEY: Thank you, Mr. Vice-President. As one who favors Mr. Knuppel's amendment, I would like to offer you certain information relating to the number of bills introduced in the General Assembly in recent years, and the effect of the bicameral system upon the effective bill load. Due to the rapidly increasing complexity of social, economic, political, and other affairs of a state so populous and technologically inclined as the state of Illinois, the number of bills introduced in the last decade in the General Assembly has increased very rapidly. I think I can illustrate this quite readily.

In 1945, the number of bills introduced in both houses was approximately 1,500. Twenty years later it had slightly more than doubled to, in 1965, approximately 3,600 bills introduced. Then in the sessions of 1967-68—and the General Assembly met in both of those years—the number of bills introduced was over 5,000. So we had, you see, an increase of about 40 percent from '65 to '67, and in '69—and of course the present General Assembly has not yet adjourned sine die—in '69, the first six months, the number was over 4,200. I am sure there have been a great many more in meetings of the General Assembly since that time. My point is that the number of bills introduced is rising very rapidly, the curve is going up very rapidly.

And let me point out an aspect of bicameralism that is not often given attention. It multiplies the actual number of bills introduced because, of course, in a bicameral system the senate must consider bills approved by the house, and the house must consider bills approved by the senate, in addition to the initial introductions. And thus if we take the year 1965, in the General Assembly of that year, there were 3,590 bills introduced. The effective gross bill load was 6,266 because of this fact that the bills passed in one house then had to be considered by the other. So as the actual number of bills goes sharply upward the effective or gross bill load goes to even higher levels; and I would certainly agree with Mr. Knuppel that if we don't at this time give serious consideration to unicameralism and adopt it, we are going to be forced by gross bill load within the next few years to return to this extremely vital subject. And I certainly urge your support of Mr. Knuppel's amendment. Thank you.

VICE-PRESIDENT ALEXANDER: Thank you, Delegate Kenney. Were there others who wish to speak? Delegate Howard?

MRS. HOWARD: I can't add much to what has been said by the other delegates in favor of unicameralism. I do feel that the difficulties that we have in evaluating unicameralism rise from the fact that Nebraska is the only state that does have it. However, I would beg any of you that are interested in good government to closely examine the structure in Nebraska, for I think their experiment there does demonstrate that unicameralism can run with efficiency. It is free from log jams and deadlocks and recurrent crises as we have in our bicameral legislature.

And also if you will do some of the reading of some of the publications on good government, I think you will find in book written by Dr. Snyder, one of the foremost scholars on state and local government, that he strongly recommends and strongly feels that in our modern day a unicameral legislature is a necessity. The National Municipal League in their Model State Constitution does recommend it, and also someone mentioned today about the public perhaps not being ready for this. I would like to call your attention to an editorial which appeared in the *Peoria Journal Star* on October 4 of last year in which they said, "Tradition is probably the greatest and only strength of the two-house system." I personally feel that the time is here to abolish the duplication which we have in a bicameral legislature, but like the other speakers and proponents of unicameralism, I do not expect you to be ready for today.

VICE-PRESIDENT ALEXANDER: Thank you, Delegate Howard. The Chair now recognizes Father Lawlor, and then we will ask Vice-Chairman Reum and Delegate Knuppel to conclude the debate.

FATHER LAWLOR: Mr. Vice-President, fellow delegates, I wish somebody would explain to me the reason for two houses when we are using the same basis on which to elect them. They are going to do exactly the same work. It seems like a total duplication to me. The same people are electing the

some individuals and then asking each one to come up with legislation for the common good, and I don't see any real check and balance in this. It just seems to be extra work, extra staff, extra salaries. We need more seats, more accommodations, and they are a burden on each other's back because what one does, the other has to do over again. It doesn't seem reasonable.

I don't think the same reasons are there that we have in the existence of the United States Senate and the House of Representatives. The Senate represents states, the Representatives, people; and I think that the time has come when maybe a single house would best serve our needs, and I am utterly surprised that more of you are not debating this issue because there is a lot of experience here, and those who know the facts, I wish you would somehow bring them out and justify why you want two to do the work that one can do.

VICE-PRESIDENT ALEXANDER: Thank you, Father Lawlor. And now—excuse me—Delegate Helen Kinney?

MRS. H. KINNEY: Even though its time has not come perhaps, there is some merit in considering this proposal. I should simply like to supplement what my friend and seatmate Dr. Kenney has said. There have been occasions in the Criminal Code where in the same section, covering the same subject matter, there has been a house bill number so and so, a senate bill number so and so, both have been adopted, and then to determine what the law actually is, one must compare the bills for inconsistencies and determine from the effective date of both bills which one is controlling. I think there have been very meritorious arguments made for giving this serious consideration. Thank you.

VICE-PRESIDENT ALEXANDER: Thank you, Delegate Kinney. And now, Vice-Chairman Reum, will you summarize for the committee?

MRS. REUM: Mr. Vice-President and distinguished delegates, I would like to repeat that Illinois has always had a bicameral legislature and it has been well accepted by the people of the state. I repeat again, it should be given a further opportunity to prove its merits under one man-one vote.

The arguments for a bicameral legislature rest upon these important premises: (1) two houses provide a technical review and tend to minimize careless legislation; (2) a second house provides a check on hasty legislation and on legislation prompted by popular passion.

A two-house system permits "graduation" from the lower house to the upper and thereby aids in developing a group of experienced and capable legislators; fifty percent of the senators are six-termers, and in the house 30 percent are six-termers.

A bicameral legislature is more difficult to corrupt than a unicameral legislature, and with a bicameral system one would expect a larger legislature and the citizens might feel that this would increase the possibility that they would know someone in the legislature. They can always find some member in the house that might agree with their philosophy as against the member in the senate, or vice versa. As one of the members of an important organization in this state testified, they felt that they had two chances to approach legislators, and they felt that this was very significant.

So I would like to also add that the people are guaranteed an opportunity to organize and oppose legislation during the period before enactment by the second house. We have felt that this is so important that we have also included in the constitution that there shall be adequate public notice for committee hearings, so that the public has an opportunity to contact their legislators, and they have the time.

A bicameral system permits the defeat of undesirable but popular legislation where outright opposition to the legislation would be politically dangerous.

I might respond that the majority of the committee has recommended a reduction in the size of the legislature and that this would be a considerable savings of money right off the bat, and would involve saving at least $1,200,000.

I might respond to the fact that Nebraska has a unicameral legislature. I might suggest, ladies and gentlemen, that Nebraska has nonpartisan elections and is a state much smaller than ours—a much simpler society as compared with our complex problems of the rural and with the metropolitan and urban problems that we have.

And finally I would like to quote, with reference to the conference committee, recently in one of the metropolitan newspapers the President of the United States was quoted as saying—was referred to by Mr. William McGaffin of the Washington Bureau who kind of editorialized in this first sentence that

> The President was on solid ground last week when he reminded his television interviewers of the importance of the House-Senate Conference Committee in the United States legislative system. He said that although the public may not think it is very important, it is probably the most important legislative entity that we have in our government.

For these reasons the committee recommends the retention of a bicameral legislature. Thank you.

VICE-PRESIDENT ALEXANDER: Thank you, Vice-Chairman Reum. And now Delegate Knuppel, you have a maximum of five minutes in which to summarize your position.

MR. KNUPPEL: If you will let me know a minute before I finish.

First I'll address myself, ladies and gentlemen of this Convention, to the remarks made in opposition to a unicameral body, and we'll start with the proposition of what a wonderful thing the conference committee is. Somebody said I criticized it. I didn't. I praised it. It is a unicameral body. The conference committee is a unicameral body, and it is the only way. You've got to go to a unicameral body to resolve the differences—the inadequacies which arise by reason of a bicameral house. Now it is suggested, and therefore this is not an argument at all in favor of bicameralism, but rather an argument in favor of unicameralism, because you'd have your conference committee in the single house which then would exist.

Now something was said that this could slow down legislation. This can also be done by rules, by delaying second readings. I say that this is no argument for a bicameral as opposed to a unicameral house. An argument was made that they thought so much of this bicameral system that they were going to post notices of the meetings. I'd suggest that in the confusion which exists in our General Assembly they *have* to post notices, and maybe they'd only have to post half as many if

they had a unicameral house. It is suggested that the senate kills bad bills. I thought that was the function of the governor to veto bad bills. I didn't think that the senate had to do the duties of an already overpowerful executive branch of government in our state.

Also Chairman Lewis spoke apparently in opposition to it, but I will quote and paraphrase what Mr. Lewis said in the committee. He served as a good chairman and took no position in the violent debate and close cross-examination which occurred with respect to every witness who appeared before that committee and advocated bicameralism. At the conclusion of the whole thing Mr. Lewis leaned back in his chair, and I think these are his exact words: "I've not been impressed by the arguments of those who appeared here favoring bicameralism. I nevertheless will support it."

Also the only argument—the only argument of Mrs. Reum, the only argument of any other member on this floor is that it is traditional. Now that is the poorest argument. Farmers planted corn in forty-inch rows so the horses could walk between. And after they stopped using horses, they continued to plant it in forty-inch rows for twenty years because it was traditional; and all of a sudden the modern farmers have discovered that thirty-inch rows are far more productive and most of them are going to thirty-inch rows, and the farmers in this Convention know that. I can see no reason why we should be tied to tradition.

Another thing I would say is, Mrs. Reum suggested, "Let's let it prove itself." If we don't give it a chance to prove itself here or in some other state, how can it prove itself? Where will it prove itself? I ask her, if they don't give it a chance to prove itself any place but Nebraska where it has proved itself eminently well, then how can it prove itself? And I suggest that the comparison of Illinois with Nebraska is unfair to the unicameral system, because Nebraska could function much better under a bicameral system than we do because it is smaller and less complex. The unicameral body is designed to solve problems of a complex society as exists in large cities where they have adopted it.

Now I ask you, please, delegates of this Convention, raise up your eyes unto the future. Give the people of this state the representation which they are entitled to, and as Abraham Lincoln stood only a few feet from where I stand 100 years ago and said that "a house divided within itself cannot long endure," I submit to you that the people of the state of Illinois cannot long endure the inadequacies of a bicameral system in the complex society—the horizons of the nuclear and the atomic age in which we live—and the cost annually of $19,-200,000 that's caused by continuing a bicameral system. I say again, raise up thine eyes and follow and go with me into that area of better government where the legislature has been raised up to a full partnership with the judicial and the executive branches of government. Thank you.

VICE-PRESIDENT ALEXANDER: Thank you, Delegate Knuppel.

MR. KNUPPEL: I want a division, please, on it.

VICE-PRESIDENT ALEXANDER: You want a division? There has been a request for a division on the Knuppel amendment which would strike section 1 and provide, in lieu thereof, "Legislative power is vested in a single-house General Assembly of not more than 177 members."

You have heard the request for the division. Are there four who join the request? There are. Mr. Clerk, will you count the hands? Those who favor the Knuppel amendment will indicate by raising a hand. Will you lower them? Now, those who are opposed will indicate by the same sign. On this question the yeas are eighteen; the nays are sixty-five. The time has not yet come for unicameralism, John. Delegate Knuppel?

MR. KNUPPEL: I want to thank those who voted with me. That's a lot better than the single member who stood here 100 years ago alone. Thank you. (Applause)

VICE-PRESIDENT ALEXANDER: John, as somewhat of a history buff, I would like to ask you more about that Lincoln speech given 100 years ago. According to my calculations, he had been in his grave for five years. (Laughter)

Are there other amendments to Section 1? Delegate David Kenney?

MR. KENNEY: Mr. Vice-President, I have one relating to the number of legislative districts, but I believe by agreement it was to follow Mr. Peccarelli's amendment. Is this not the case, Mr. Lewis?

VICE-PRESIDENT ALEXANDER: The chairman indicates that is the case.

MR. LEWIS: That is correct, and I think we would move on to Tony Peccarelli.

VICE-PRESIDENT ALEXANDER: Before I call on Delegate Peccarelli, I think you would be glad to know that the wife of our good friend and colleague, Delegate Sam Martin, is in the gallery today. She is with a group of women from the Iroquois County Republican Women's Federation and their president, Mrs. Mary Bricker. We are glad to have you with us. (Applause)

Now, Delegate Peccarelli?

MR. PECCARELLI: If the clerk would read the amendment, please.

VICE-PRESIDENT ALEXANDER: Mr. Clerk, will you read the Peccarelli amendment?

CLERK: Amendment to section 1 of the Legislative Committee Proposal No 1.

> Amend Section 1 by striking lines 1 through 6 on page 9 and substituting, in lieu thereof, all the lines on pages 1 through 12 of the dissent to Committee on the Legislative Article's majority report and proposed substitute of entire majority report of the Committee on the Legislative Article submitted by Anthony M. Peccarelli on July 7, 1970, which is incorporated herein by reference and made a part hereof, which proposes a complete revision of the legislative article to provide a modified parliamentary system.

MR. PECCARELLI: Mr. President, I move its adoption.

VICE-PRESIDENT ALEXANDER: You have heard the motion. Is there a second? Seconded by Delegate Peres. Now, Delegate Peccarelli, will you proceed with the explanation?

MR. PECCARELLI: Thank you, Mr. Vice-President, fellow delegates, you do not have all of the language attached to this one page of my proposed amendment before you at the

For a One-House Legislature

By Jess Unruh

The heavy double doors are locked and barred. A burly sergeant-at-arms gently, but with authority, refuses entrance to everyone. Even senators and assemblymen cannot pass. Occasionally the doors will be opened by the sergeant and through the cigar smoke a quick look will reveal six men. Shirt-sleeved, ties loosened, they reflect the same harmless goodwill you can see four nights a week in any of a dozen rooms in the Senator Hotel when a poker or blackjack game is in progress.

But there is nothing harmless about the meeting going on behind the barred doors. And the stakes are far higher than the crisp hundred dollar bills that change hands between lobbyist and legislator in friendly poker games.

Before the six men come out of the walnut-panelled room they will have passed judgment on life and death matters for many of California's 20 million residents and will have spent nearly 7 billion tax dollars collected from the citizenry.

There are no rules—except those decided on by the conferees. No reporter is inside the room to report the proceedings. There is no requirement that the report on their deliberations be rendered by a certain time. And there will in all likelihood be very little time for other legislators or the public to do more than skim the document which will finally be produced.

All of the work laboriously put into a budget bill for nine months by thousands of civil servants, administrators and legislators means absolutely nothing if it does not meet the approval of the six tribunes in that room.

This is a free conference of the California legislature. Scary, you say? Should be changed and cleaned up? The press ought to be allowed in? Perhaps. But, before condemning the six legislators and the institutions they represent, let's take another look.

The three senators and three assemblymen who will spend over a billion dollars each are doing what comes naturally in today's legislature. They are reconciling the differences between the decisions made in each of the two houses. It is a process which has been going on for decades in 49 states and will continue as long as the two-house or bicameral legislature exists.

State legislatures under the bicameral system are costly and inefficient anachronisms which thwart the popular will, cater to private interests, and hobble responsible decision making, until they are no longer responsive to the needs of the people they are supposed to serve.

This lack of accountability to the people is not a problem unique to our state legislatures, but is permeating every level of our government. We see it at work in our monolithic bureaucratic agencies which have almost become governments unto themselves; we see it in our costly and iniquitous system of justice; we see it in the wasted education of our youth. And we feel it in the growing hostility and frustration of a large number of our citizens. Indeed, it may be that this frustration is the only thing that will "bring us together."

If we look at the militant student protesting the Vietnam war or irrelevance in his classroom, and at the middle-income suburbanite venting his ire on local school bond requests, we see they have at least one thing in common: They are both enraged at the inability of government to deal effectively with what they see as the principal problems that confront them.

In response to these growing complaints, some attempts are being made at governmental reform. President Nixon and others are now talking seriously about reforming the federal executive and bringing the states into parity with the federal government through revenue sharing and block grants.

I predict that their efforts will have little effect on improving the quality and responsiveness of state government unless state institutions themselves are drastically revised. And basic to that restructuring is the overhauling of that institution which will have to pass upon the revision of every other state agency —the state legislature.

The most far-reaching reform, the most drastic step we could take toward making our state governments more responsive, more honest, more efficient and more economical is the introduction of the unicameral or one-house legislature.

No matter how much we concern ourselves with upgrading the legislative process, we will fail unless unicameralism is made central to the present efforts to reform and modernize state legislatures. I believe in increased salaries, better facilities and profes-

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Jess Unruh, "One House Legislature Advocated by Unruh," *National Civic Review*, May, 1971, pp. 253–258, 270. Reprinted by permission of the publisher.

sional staff. But they are not enough. These reforms in themselves only make a more efficient horse and buggy. The bicameral legislature still remains almost hopelessly outmoded, only perpetuated by tradition and special interests.

Even the original rationale for the two-house legislature, to guarantee some representation of people as well as of property, has been removed by recent Supreme Court decisions guaranteeing equal representation. Under the one man, one vote rulings first enunciated in *Baker* v. *Carr*, representation of people has finally become paramount over the representation of geographic areas. . . .

If efficiency and representativeness stand to gain under unicameralism, the special interest groups which now dominate our bicameral legislative process stand to lose a great deal.

Consider just one special interest—the liquor industry. In California the wholesale liquor distributors have succeeded in building into our laws protective measures such as state-guaranteed collection of accounts from retailers. To kill any reform legislation dealing with the liquor industry and preserve this economic sanctuary, all the liquor lobbyists have to do is woo and win a majority of *one* committee in *either* house of the state legislature. This may mean only three men. Elimination of bicameralism would increase the possibility of repealing this grossly unfair legislation.

Almost every state has its privileged industries or groups which thrive under the protection that unwieldy, unresponsive legislatures afford them. The power of these groups over the government should be curbed, but cannot be as long as the many obstacles to reform are compounded by a bicameral legislature. It is clear that basic reform cannot happen in state legislatures which were designed to afford maximum protection to those who need it least.

If the clandestine "poker game" of the free conference and the "legislative black jack" of special interests now witnessed under our bicameral system do not offer reason enough to consider unicameralism, let us look at the problems from a point of reference we can all understand—in terms of money and economy.

Today there is a renewed interest in making legislatures equal partners in the governmental process. And, as we have indicated, there is probably no more important step to be taken in making our federal system work better. To upgrade legislatures is, however, an expensive proposition. For many years legislative budgets have been neglected. Most legislatures are still woefully underpaid, understaffed and lacking in such basic necessities as office space, clerical help and even telephone allowance. Some legislatures will have to build expensive new buildings to house a significantly enlarged staff. Taxpayers are not likely to look with favor on the drastic increases in spending that will be necessary to achieve these reforms under the present, inefficient bicameral system.

But most legislatures, particularly those in the larger states, could give themselves the tools necessary for proper decision making *without* significant budgetary increase by eliminating one house. Not only would this greatly decrease the number of legislators, offices, telephones and secretaries that must be paid for directly, it would also permit a reduction in staff and spending by those public and private agencies which must deal with the legislature.

To illustrate, let's use again the annual state budget and follow its tortuous course through the California legislature, a body universally conceded to be the best in the nation. The budget is introduced in the same form in *both* houses. It is then sent to the finance committee of each house. There it consumes most of the time of 25 to 30 per cent of the members of each house for from four to five months, sometimes more. It also consumes the bulk of the time of the highest-paid Assembly and Senate staff employees.

But, this is only the visible and expected part of the iceberg. It also draws the major part of the staff time of the top people in the governor's Department of Finance—scurrying back and forth between the Assembly Ways and Means Committee and the Senate Finance Committee. Each executive department whose budget is being scrutinized also sends representatives to these two committees and their many subcommittees. Lobbyists and interested citizens' groups also have to cover both houses. All of these people will be paid either directly by the taxpayers or indirectly by the tax write-off.

But all this is really shadowboxing because, as we have seen, the budget is finally written by three senators and three assemblymen in a free conference committee, and the product of their labors and decisions may bear little relationship to the budget passed by either house.

The days (sometimes weeks) of labor that these six members contribute again require the attendance of top staff people of the Legislative Analyst's office and the Department of Finance.

It is just as bad with other legislation. A school finance bill must be sent first to the education committee of the house in which it was introduced, then to its finance committee, then to the floor and then, if the bill passes, the whole maddening process is repeated again in the other house. This requires

representatives of executive agencies, legislative staff and affected interests to appear at every repetitive step of the way. And, again, the final bill may well be written in a so-called free conference committee of six members to resolve the disputes between the houses, or to do *whatever else* comes into their minds.

Or there can be yet another level of committee operation in this mess—the joint committee, which is almost beyond anyone's control and often costs much more than it's worth in productive output. The joint committee has the added advantage—to everyone but the people—of allowing legislators to avoid politically difficult problems by banishing them to the limbo of a powerless joint committee. The need for these committees would be *totally eliminated* if there were a one-house legislature.

In those states, such as California, which have already done much to modernize their procedures and abilities, unicameralism should bring no less than a 40 per cent reduction in the costs of the legislature and of those groups which must work directly with it. In California, about $20 million could be saved annually. The savings would be far more, if you consider future capital construction costs connected with increased staffing and legislative upgrading under the bicameral system.

But I do not suggest merely a penny-pinching approach to federalism. What I am really concerned with is responsible decision-making power at the state level. Two-house legislatures neutralize the force of the legislature in state government. Governors can, and do, arrange alignments of one house against the other over pieces of legislation and programs. This kind of whipsaw technique can ensure the defeat of legislation even though it may be supported by the majority of legislators. Also, most of the more vicious logrolling and logjamming in the legislative process comes about between the two houses.

The California State Senate Finance Committee for years has had a practice of holding all Assembly bills until the last few days of the session to keep a bargaining lever over members of the lower house. Without that excuse, the chairman of a one-house finance committee would be hard put to hold all appropriation measures until the last 10 days.

In my opinion, the committee system provides opportunity enough for governors and special interest groups to exert pressure on legislatures. When one house is pitted against the other, a serious power vacuum is created—a vacuum that outsiders are all too eager to fill. With only one house, however, the legislature would more nearly match the unified structure of the executive branch and, therefore, be a more worthy competitor.

When a smart governor plays one house against the other the public can rarely identify where the responsibility for defeat of legislation lies. The public can rarely detect the real culprit.

Let me say parenthetically that the press might do a much better and more thorough job covering the legislative process, and pinpointing responsibility, if there were, for example, only one-third as many committees functioning.

Specifically, what legislators desperately need today is visibility. Visibility promotes competence in, and attracts talent to, the legislative arena. It is also the best deterrent to corruption.

What the public needs is to be able to fix responsibility. I do not believe that we can expect the public to support state government until it can be seen who is responsible for what is happening or not happening in state government.

But consider the citizen's problem. He currently has a representative or an assemblyman and a state senator. They may well be in direct disagreement about a measure the voter is interested in. Whose word does he take as to what has happened to his interests? And who is really "representing" his point of view? Under bicameralism the assemblyman can say, "Well, we passed that bill but the Senate defeated it," or vice versa. Under unicameralism, responsibility to one's constituency cannot be so lightly evaded.

Unicameralism may also offer the best hope for our tripartite system to survive as a democratic form of government. If state legislatures are to play a significant role in twentieth-century American government, such basic kinds of reforms must be implemented, and within the very near future. If this does not occur, I doubt rather seriously that legislatures or state governments in general will be an effective instrument of the people's will. The states (and certainly state legislatures) will simply be bypassed in favor of a federal government which is no more responsive.

But, single-house legislatures will only happen if people understand how wasteful and unresponsive the two-house legislature has become.

When your legislature is in session take a close look at its operations. How much time is spent on interhouse squabbles that should be spent on policy deliberations? Are committees in one house passing out bad bills so that the other house will have to take the heat for killing them? Is the Senate stalling bills from the other house as leverage to get its own bills through? Are they creating unwieldy joint committees in an attempt to get around the problems

of two houses and begetting Frankenstein's monsters as a result?

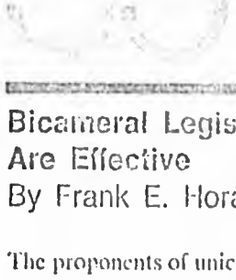
Ask yourself these questions about your legislature. Is there interhouse bill highjacking and name calling? Who speaks with authority on questions involving major legislation? Where would testimony on such legislation get the fairest hearing? Can you identify *exactly* who killed the legislation you felt to be important? Are the lobbyists playing off one house against the other so that legislation on which both houses basically agree goes down the tubes? Is the governor doing the same?

By now you can ask the rest of the questions yourself. The answers should leave you with a clearer understanding of why a lot of people in this nation have concluded that the system cannot produce answers anymore. These people are proposing solutions of their own: burn the whole country down and start over; abolish the states; drop out.

If the states are the critical link in the federal system, state government should have solutions too. If the federal system is worth saving, people at the state level are going to have to give it a lot of help. In every state constitution I have ever seen, the legislative article precedes the executive. I take this to mean that the drafters believed in the importance of a strong and responsive legislature. If the constitution has to be amended to make the legislature unicameral, then the people will have to carry the ball. Few politicians can be expected to abolish their own jobs.

We are constantly told, today, that government should be more businesslike in its conduct. Legislatures can be likened in the governmental structure to boards of directors in a corporate structure. No business has two boards of directors with equal power; under such a structure there could be no direct accountability to the stockholders. We should be able to expect at least as good an organization from the public corporations which spend $70 billion of our money every year. It's time we got down to business with one board of directors for our state governments.

Or we could abolish it all and let the six men in the free conference committee run the whole thing. That would at least be more efficient—and more honest—than what we have today.



Bicameral Legislatures Are Effective

By Frank E. Horack, Jr.

The proponents of unicameralism have catalogued its merits with a persuasive marshalling of virtues. They assert that the single bodied legislature:

1. Saves time and expense.
2. Guards against hastily enacted and ill-considered legislation.
3. Eliminates the evils of the committee system and the dictatorship of the conference or steering committee.
4. Reduces total legislative costs and permits increases in legislators' salaries so that more qualified legislators may be procured.
5. Facilitates the non-partisan election of legislators.

The worth of these assertions can be measured only in terms of the function of a legislature in our modern society. The choices involved relate not to the form of a particular system of legislative organization but rather to the capacities of any system to realize the social and economic objectives of democracy.

In brief, society expects of a legislative body:

First. An adequate and accurate representation of the electorate in matters legislative.

Second. A capacity to enact accurate and effective legislation based on reliable research and reflecting practical experience.

Third. A facility for the expeditious enactment into law of the wishes of the community when the desires of the community are crystallized and the community is ready for action.

Fourth. The ability to retard legislative enactments when community policy is not yet crystallized and when inaction is more protective of sound community growth than is premature legislative experimentation.

Frank E. Horack, Jr., "Bicameral Legislatures Are Effective," *State Government*, April, 1941, pp. 79-80, 96. Reprinted by permission of the publisher.

Bicameral assemblies have long been criticized for their "unrepresentative" character. It is true that the historic origins of bicameralism stem from a desire to give preference to propertied and titled classes. It is also true that this basis of representation has been discarded in American legislatures and legislators are selected by all electors without qualifications based upon economic status. The apparent irrational consequences of continuing a bicameral legislature with a unitary basis of representation is the foundation of the unicameralists' argument. But a system of representation founded on area will remain just as arbitrary in a unicameral legislature. And the practicality or desirability of formal interest group representation certainly is not now worthy of consideration.

Economic representation by lobbyists

Furthermore, the failure of the American legislature to secure adequate interest group representation is more apparent than real. Such representation, today, is informally achieved through lobbyists and representatives of farm bureaus, trade associations, labor unions, temperance organizations, and the multitude of interests that have found legislative representation desirable. The informality of this representation is its chief virtue. Within the framework of an orderly two party system, highly specialized interests may make their influences felt. And no matter what the popular superstition may be, legislators and lobbyists know that influence must come from integrity and ability.

With the growing formalization of legislative committee procedure, the lobbyist must work more and more, as the lawyer, in open court, relying on his special knowledge and skill. To be sure he represents his client—but that, indeed, is democracy.

In an ever increasing measure interest group representatives have demonstrated their capacity for these responsibilities. We have, in fact, today, a type of interest group representation which could be no more effectively achieved under the unicameral system.

The proponents of the unicameral system assert that it will attract more qualified men to the legislature. There is little assurance, however, that a change in legislative form will have more than temporary significance in improving the caliber of legislators. Nor indeed is there any certainty that the caliber of legislators should or need be improved. In spite of the over-emphasis on the deficiencies of legislative bodies the competence of legislators compares favorably with that of judicial and administrative officials. It is true that misfits find their way to legislatures as they do to positions of responsibility in other walks of life. But in a legislature these individuals seldom if ever have significant influence in the enactment or rejection of legislative proposals. Legislative leadership, in the main, is on a high level.

Legislative procedure

Even with competent legislative personnel many critics assert that the bicameral procedure prevents fair and expeditious consideration of legislation. This argument is unconvincing. On the one hand unicameralists contend that existing procedure clogs and delays the efficient consideration of legislation and on the other hand they assert that legislation may be rushed through the legislature and enacted without the safeguards of deliberation. Even if true these are not exclusively the consequence of the bicameral system. Procedure must rely on human integrity and judgment.

Criticisms directed at clumsy procedure frequently overlook the cause and justification for such procedure. Without desiring to defend some of the archaic constitutional limitations such as the three-reading rule and certain voting procedures, justification of many deterrents to action may well be defended on the grounds of their deliberative effect. In other words when legislatures are unable to agree on proposals they frequently reflect the uncertainty of the society which they represent and the resulting inaction may best accord with the wishes of the electorate. On the other hand when controversies over policy have been settled in a given community the obstacles to rapid legislative enactment frequently are dissipated. Many informal devices promote this result.

With a single party in control of the legislature, the party caucus provides ready means for agreement on procedure and on enactment. The governor likewise in many instances provides the legislative leadership. He may sponsor specific legislation, submit administration bills, and through his office, insure their adoption. The legislature itself, by joint committees or by the joint meeting of the committees of the two houses, can and often does reduce the time for committee hearings and irons out the minor controversies so that final enactment is a speedy and formal process. Where solid public interest supports a particular legislative program, the bicameral system accomplishes the expedition of unicameral procedure so that *de facto* unicameralism is achieved.

The unicameralist will still respond that although the bicameral system can achieve the efficiency of the unicameral system its legislative product is still unconsidered, unsupported by reliable data, and

poorly drafted. Often these charges are true, but the question remains whether the creation of a unicameral legislature will improve the product. Improvement can be achieved only through adequate legislative research and competent draftsmanship. These requirements are unaffected by the form of legislative organizational structure.

Within the framework of the bicameral system great improvement has already been made. The active and able research organizations maintained by the Kansas and Illinois Legislative Councils and the code revision commissions of several States have made outstanding contributions to the improvement of the content and form of legislation. The continuation of this improvement will depend, however, not so much on the change of legislative form as it will upon the increase in funds and personnel for those legislative agencies which have already demonstrated their capacity in improving the legislative process.

Legislative costs insignificant

Perhaps the reader will feel that if the unicameral and bicameral systems are so similar in operation, that on the ground of expense alone the unicameral method should be adopted. An analysis of state budgets provides the answer. Legislators' salaries or even legislators' salaries plus the legislative perquisites are so small a proportion of the total state budget that an elimination of fifty per cent of the elected representatives would not change the proportion of state expenditures for the legislative department a single percentage point.

Though generally considered a controversy of form the unicameral-bicameral debate involves a fundamental issue of political philosophy. It raises a question of the flexibility of legislative action in terms of legislative responsibility to the electorate.

The streamlining of deliberation is obviously attractive in a world which places high value upon action. It is not accidental that the democratic influences of the early Greek civilization and the democratic movements of the later 18th and 19th centuries paralleled philosophical movements which found importance in idealism rather than in realism, which placed greater value in contemplation than in action. Conversely the pragmatic and realistic schools of the early 20th century consciously abandoned much of the moral and ethical nature of man for pure mechanism or Watsonian psychology.

The challenge of actionism

In the realm of politics, although the forms remain unchanged, innumerable straws in the wind indicate the effect of a machine age on the thinking and acting habits of the people. Even the bitterness of a political campaign has not produced great editorial writers or outstanding commentators; news print moves to larger type and shorter stories, from word to picture, and from printed word to radio voice. The forum fights an uphill battle to regain the position of the town meeting. Men have become accustomed to delegate tasks to others, to institutions, to machines. They want their answers ready made and so a philosophy of action challenges, in the realm of ethics and politics, the philosophy of deliberation. And it challenges a double-bodied legislature as an extravagance and a monstrosity. Indeed, the philosophies of those we consider not quite respectable challenge even the existence of any legislative or deliberative body. Action is the password. *Blitz* is the fashion.

The usefulness of joint legislative committees and the party caucus have already been elaborated as a means of unicameral action within the framework of the bicameral system. Unicameral action is necessarily the result of single leadership. It occurs in the American legislative scene only when there is a general unification of political and social objectives which have insured a political party a dominant position on the political scene. It seems to me that this is the outstanding advantage of a *de facto* unicameralism—it is not a permanent or fixed way of life for the State and its people. When there is uncertainty and doubt, the additional brakes that a second house of a legislature can provide is both necessary and desirable in order that legislative action does not run ahead of popular acceptance. When popular demand has unified on a particular social program so that whatever opposition develops cannot be described in terms of general uncertainty, machinery is then available in the framework of our present bicameral organization to speed the achievement of the objectives without an application of brakes by the second house. This ability to accelerate or brake the speed of government should not be abandoned quickly for a vehicle built on horsepower and without brakes.

To a great many persons a legislature is a rather remote body "passing laws" by means of some formalized procedures about which they have involuntarily read at some time in the past. In the next selection Richard L. Neuberger, late United States Senator from Oregon and a former member of the Oregon state senate, brings a legislature to life for us with his highly readable first-term impressions of legislators, constituents, and the legislative process.

Nebraska now has had its unicameral legislature for thirty years. The following article underlines that it has met the test of time at home. It points also to renewed interest in unicameralism elsewhere, following adoption of the one-man, one-vote standard of legislative apportionment. If the unicameral idea spreads henceforth, the author concludes, Nebraskans will applaud. Dr. Sittig, who gives us the paper, is Assistant Professor of Political Science at the University of Nebraska.

Unicameralism in Nebraska, 1936-1966



by Robert F. Sittig

IT HAS NOW been thirty years since the unicameral legislature in Nebraska was instituted. By the passage of an initiated constitutional amendment, after a spirited campaign led by United States Senator George W. Norris, the voters in the State abolished its two-house legislature.[1]

Thus, Nebraska became the sole State in modern times to adopt the single house arrangement for its state legislature.[2]

UPDATING THE UNICAMERAL

In the years since 1936 the unicameral has periodically adapted itself to meet the changing legislative needs of the State. In the field of reapportionment, the original forty-three seats were never altered until 1963, despite repeated efforts by metropolitan interests. At that time the number was increased to forty-nine and the seats were reallocated. The combined population-area formula used in this reapportionment had earlier been approved by the voters, but it failed to satisfy the constitutional standards which were being enunciated by the United States Supreme Court (*Baker* v. *Carr*, *Reynolds* v. *Sims*) during the years 1962-64. As a result, a second reapportionment was concluded in 1965, substantially on a population basis. This measure then won the approval of the federal district court.

The salaries of the legislators have been raised from $1,744 a biennium three decades ago to $2,400 a year. This puts Nebraska near the middle of the States so far as legislative salaries are concerned.

A recent change in internal procedures has improved the operation of the unicameral. It came after certain legislative members voiced dissatisfaction with the method by which committee assignments were made and committee

[1] The amendment passed with a comfortable margin (286,086-193,152). Interestingly, a strikingly new state capitol with two legislative chambers had just been completed, after a decade of construction. The members of the unicameral now meet in the more spacious chamber which had been designed for the lower house; what had been expected to be the upper chamber is utilized for committee hearings and other public affairs. The members, however, have retained the more prestigious title of "Senator."

[2] For more comprehensive historical surveys consult Adam C. Breckenridge, *One House for Two*, Washington, D.C., Public Affairs Press, 1957; and James C. Olson, *History of Nebraska*, University of Nebraska Press, 1955, Chapter 24.

spread public support for a return to partisan legislative elections. The movement is sparked chiefly by official leaders in the parties. The sitting legislators are, for the most part, unenthusiastic about changing the system. Evidently nonpartisanship carries with it certain advantages, real or imagined, as far as the incumbent legislators are concerned.[7]

The nearest any proposal for reverting to partisan elections has come to being decided by the voters was in 1964, when an initiative drive to have a constitutional amendment placed on the ballot was momentarily successful. However, the Nebraska Supreme Court ruled the proposed amendment off the ballot because of certain irregularities which occurred during the signature collection phase of the petition process. Informed opinion at the time was divided as to the probable outcome of the popular vote, with perhaps most observers predicting defeat for the amendment. The decision of the Court ended the speculation, and no organized effort has since been made to reconsider the question. To summarize, a unicameral system which is nonpartisan evidently is what the people, as well as the legislators, prefer for the Nebraska legislature.

FURTHER SUPPORT

The National Municipal League has been the most influential civic organization to take up the principle of unicameralism and advocate its adoption. The NML has consistently supported the idea in numerous versions of its *Model State Constitution*. In fact, the league may claim a measure of credit for the Nebraska unicameral since its recommendation of the single-house system in the *Model* predates the adoption in Nebraska. Officials of the league give assistance and advice to those seeking information on the subject. The NML reported in 1964 that various influential newspapers—including the *New York Times, Kansas City Star, Milwaukee Sentinel* and *St. Louis Post-Dispatch*—had carried articles or editorials in favor of a single house. The league had received inquiries or noted favorable news articles in more than fifteen States.[8]

In the spring of 1966 the American Assembly, a group of eminent public and private civic leaders who gather periodically to study public affairs and report their findings, suggested that States consider the possibility of adopting the unicameral arrangement. However, the nonpartisan feature of the Nebraska unicameral was not acceptable to the Assembly. These influential community leaders implied that a single-house legislature might now be especially suited for smaller States where legislative operations might be burdensome. And they indicated that recent court decisions had removed one of the historical justifications for bicameral legislatures in any State. Thus they felt that the present was an opportune time for States to weigh the possible benefits of adopting the unicameral system.

Perhaps the unicameral device is more appropriate for smaller States, which may have fewer and less intense divisive elements within their borders. But this is a conjecture, difficult either to disprove or verify. In any event it is worth noting that Guam and the Virgin Islands have unicameral legislatures. Virtually all American cities use the unicameral principle in their city councils. The same is true of most Canadian Provinces. Some of the cities determine public policies for millions of diverse constituents and hundreds of opposing interest groups—which indicates that size alone is not an absolute factor in determining the character of legislative institutions.

In Nebraska, the unicameral enjoys overwhelming support from the public, leading newspapers, interest groups and the State's political leaders.[9] A rehearing on the system in any other interested State undoubtedly would appeal to informed Nebraskans, who find themselves somewhat perplexed because the innovation has not yet spread elsewhere. Perhaps the reapportionment revolution will lead indirectly to a renascence of unicameralism.

[7] In the 1963 session of the unicameral the Senators voted 34 to 8 against proposing a constitutional amendment which would have allowed the people to vote on the question of returning to partisan legislative elections.

[8] *National Civic Review*, LIII (September, 1964), p. 446.

[9] See Jack W. Rodgers, "One House for 20 Years," *Ibid.*, XXXXVI (July, 1957), pp. 338-42.

injudicious to ignore them, since requests have come from sources in more than half of the States for information regarding the operation of the single house.

The inquiring parties receive virtually standard reports from Nebraska political observers and practitioners. Typical replies make it clear that the unicameral has not fully satisfied either its most enthusiastic supporters or its avowed opponents. They indicate, however, that the system has met the test of time and that its future course seems solidly established.[5] In fact, on one recent occasion it took considerable searching to find a Nebraskan willing and able to speak against the system after a constitutional convention in another State requested that equal time be filled by a spokesman opposed to the unicameral.

THE NONPARTISAN UNICAMERAL

A reputed drawback of the Nebraska unicameral is the nonpartisan election of its members. It should be emphasized that although the nonpolitical feature of the system was a part of the original reform, there is no compelling reason why these two features should be considered a single package in other States. Each is independent of the other, and each can stand or fall on its relative merits. It just so happened that the Progressive movement of the early 1900's was strongest in the Plains and Western States. One plank in the platform of the Progressives of that era was nonpartisanship. The distaste of many Progressive reformers of the past for political parties, whether Republican or Democratic, is well known. This dislike became translated into action which weakened party lines throughout the Western States. Results are evident even today in the large amount of ticket-splitting which occurs in general elections. It is also evident in the use of the open primary, which deemphasizes formal party affiliation in the making of party nominations in a number of these States.

Nebraska in this sense is typical of the West; its parties often seem to be for the most part personal gatherings temporarily attached to a particular candidate for a single election. The relative weakness, or flexibility, of the political parties remains as a legacy of the Progressive era in Nebraska. In retrospect, it seems logical that when and where the Progressive movement was especially successful it would apply the principle of nonpartisanship to state as well as local elections.[6] The campaign which culminated in the adoption of the unicameral in Nebraska was closely identified with the Progressive movement, and when the question was put to a vote the nonpartisan feature was included.

The Progressive forces have since lost a good deal of their political influence; they are now chiefly working within the confines of the existing political parties in the Western States. But many of their accomplishments have endured, and Nebraska's nonpartisan unicameral is one of them. However, the unicameral approach and nonpartisanship need not be considered a single innovation. In many States it undoubtedly would be futile to advocate a system which included the nonpartisan election of legislators.

Within Nebraska the nonpartisan aspect of the legislature has been attacked more than the unicameral feature. Most Republican leaders and many Democrats have for some time supported efforts to change the state constitution to eliminate the nonpartisan election of legislators. This, if accomplished, would restore the parties to a formal role in the selection process, as was the case in the State's earlier bicameral system. It would not be accurate to assume, however, that there is wide-

[5] The late Professor Shumate, a longtime advocate of unicameralism, stated that it is now considered to be an accepted part of the political tradition of the State. See Roger Shumate, "The Nebraska Unicameral Legislature," *Western Political Quarterly*, V (September, 1952), pp. 501-12.

[6] Minnesota is the only other State with a nonpartisan legislature. In California, the practice of crossfiling in party primaries, during the time it was allowed, brought a measure of nonpartisanship to its politics. And for a brief span county officials in that State were elected in nonpartisan races. The wide open or "blanket" primary in Washington, which permits voters to participate in both party primaries simultaneously, has had a nonpartisan effect on nominations. These, of course, are all Plains and Western States. For more comprehensive descriptions of their electoral practices, see G. Theodore Mitau, *Politics in Minnesota*, University of Minnesota Press, 1960; Winston W. Crouch, *et al.*, *California Government and Politics*, Prentice-Hall, 1960; and Daniel Ogden and Hugh Bone, *Washington Politics*, New York University Press, 1960.

chairmen selected. The solution that grew out of this largely revolved around giving a greater voice in the selection process to the members from populous Douglas County (Omaha).

In an attempt to bring a greater measure of competence to legislative decision-making, the unicameral now utilizes professional aid and advice in two major policy areas, fiscal matters and higher education; on occasions it has contracted with private experts on a fee basis to do the research involved, and recently it provided its standing budget committee with a permanent professional-clerical staff. These newer services supplement the important activities of the long-established Legislative Council and Statutory Revisor's office. In the regular 1965 session, the members considerably increased the role of the Speaker. In the past this office had been largely honorary; the Lieutenant-Governor is the presiding officer. Henceforth, the Speaker will more than likely function as a floor leader in the unicameral.

These periodic modifications over the years have done much to keep the Nebraska legislature responsive to changing political conditions. Human institutions everywhere require this kind of updating, and the single-house legislative chamber is no exception.

RECENT DEVELOPMENTS ELSEWHERE

Recently, the unicameral system has been receiving renewed interest in a number of States outside Nebraska. This no doubt has been stimulated by the "one-man, one-vote" reapportionment revolution touched off by the federal courts. The new reapportionment standard, which requires that seats in both houses of state legislatures be distributed on a population basis, has eliminated for them the so-called "federal" plan of apportioning one house on a population formula and the other on some combination of population and area. This has had the effect of pushing the unicameral approach up to the forefront as a feasible political institution which States can well consider.

Until this time, only those political reformers who viewed things through rose-colored glasses were confident about the future of unicameralism. In thirty years not a single State had followed the pathway Nebraska had opened.[3] In the last few years, discussion of the unicameral principle has enjoyed a rebirth.

Perhaps the most thorough consideration of the single-house system has come in the States of Rhode Island, Connecticut and New Jersey. Constitutional review conventions in these States have provided arenas for reexamination and possible overhaul of entire political systems. Professional observers from these States and Nebraska exchanged viewpoints and visits. In the end, none adopted unicameralism, although significant support for it existed in all of them. For example, in Rhode Island, Governor John H. Chafee and Former Governor Dennis J. Roberts, (who presided over the convention), along with numerous civic and economic interest groups, were instrumental in having the question considered by the convention delegates. It was ultimately voted down.[4]

ASSESSING THE UNICAMERAL

Nebraska officials, as well as other interested citizens who are associated with or informed about the operation of the unicameral, have received numerous inquiries about it in recent months. The Governor, Lieutenant-Governor and Legislative Clerk have made a number of trips to different States (including Texas, New Jersey and Rhode Island) to explain why they support the system and believe it to be of considerable worth. Their remarks typically include the favorable judgments that the unicameral is open, deliberative, representative, direct and economical. It would be presumptuous to claim that these isolated inquiries and speaking engagements represent "real" movements toward unicameralism. It would also be

[3] Alaska probably came nearer than any other State to adopting the unicameral system. When the "Empire of the North" was drafting it's first constitution, various political advisors suggested adoption of a single-house legislature. This proposal received a favorable hearing in the constitutional convention. Tradition rather than innovation, however, carried the day, and the delegates approved a bicameral body. Some delegates were apprehensive about the reception Congress might give the statehood application if a unicameral system were part of the package. See John Bebout, "Charter for the Last Frontier," *National Civic Review*, XXXXV (April, 1956), pp. 158-63.

[4] "Rhode Island Convention Defeat for Unicameralism," *Ibid.*, LV (May, 1966), pp. 263-4.

Drive for Unicameralism Needs National Support

by Lloyd B. Omdahl*

TEN years ago the United States Supreme Court pulled the last of the rational underpinnings from the bicameral legislative system in its *Reynolds* v. *Sims* edict of one man, one vote. By requiring both houses of state legislatures to use only population as the basis for apportionment, the court deprived advocates of their historical defense of the two-house assembly.

Readily perceiving this, the unicameralists who survived three decades of drought were exuberant. The decision brought new adherents to their cause. Articles appeared in national publications. Prominent newspapers, among them the *St. Louis Post-Dispatch* and the *New York Times*, editorialized in favor of unicameralism.

The *Reynolds* case did more than renew the spirit of unicameralism. It afforded new opportunities for implementation by forcing a number of states to call constitutional conventions to bring state apportionment provisions within Supreme Court guidelines. While some of these conventions were limited to reapportionment, others were not and considered wholesale revision of state constitutions.

Without question, the decade following *Reynolds* appeared to be the golden opportunity for unicameralism. But the decade that opened with glowing optimism closed with another dismal scorecard: no gains made; no victories in sight. It is obviously time for realistic reassessment of the game plan. Why hasn't the unicameral scored new gains? It must be concluded that either the proposal is wanting or the politics of the controversy frustrates adoption.

It is not possible to concede that the unicameral is basically defective in design and therefore not a rational alternative to the two-house system. Extensive research and analysis have demonstrated the viability of the unicameral system. It has worked well in Nebraska. Failure to adopt it cannot be ascribed to lack of merit. The only logical conclusion is that failure emanates from the politics that governs the decision makers who must act to implement unicameralism. We can no longer maintain the pretense that politics is a minor element in securing this reform for state assemblies, and until we come to grips with this fact, no ground will be gained in the next decade either.

It is imperative that unicameralists address this primary fact: adoption of

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the system fails to gain fruition because it challenges the power of state legislators who are the principal initiators of the constitutional revision required to secure its adoption.

Legally, as well as theoretically, legislatures are regarded as the people in session. Consequently, it was probably inevitable that they would be awarded custody of the people's document, the state constitution. As a part of this guardianship, legislatures were given primary responsibility for proposing constitutional amendments for acceptance or rejection by the people. If they perceive no need to amend the constitution they propose no changes. And because legislatures are the only perennially active source of proposals for constitutional amendments in most states they hold a virtual monopoly on revision in those jurisdictions. Without their leave nothing can be done.

Since legislatures are parties to the constitutional issues involving the separation of powers, they are not disinterested representatives of the people on a significant number of issues. Unicameralism is one of those issues. Their guardianship gives them a strategic opportunity for vetoing the unicameral proposal and there is little evidence to suggest that they will achieve any degree of objectivity on that issue.—Their political interests are too crucial.

To substantiate this charge we need only turn to the sordid history of legislative malapportionment that forced federal courts to enter the political thicket in the first place. Before *Reynolds* v. *Sims* most legislative assemblies were responsible for redrawing districts after each decennial census. Defying their own state constitutions in many cases they refused to reapportion. It was only after decades of stubborn legislative resistance that the federal courts reluctantly acted on this historically political question.

Why didn't state legislatures comply with constitutional directives? After considerable analysis, scholars of government agree that, principles of fairness and equality notwithstanding, internal politics simply paralyzed legislative initiative. Alteration of legislative district boundaries to conform to shifting population patterns would have resulted in losses to certain legislators, power blocs and political parties. The politics of such a task was so overwhelming that, even after *Reynolds*, federal courts were required to review reapportionment plans in every state to see that constitutional principles were implemented.

If the politics of legislative reapportionment inhibited action for decades, then how much more serious the politics involved in legislative adoption of a proposed amendment to state constitutions calling for the abolition of one house? In most states a change of this magnitude surpasses that required for redistricting. By virtue of this intense interest, legislative assemblies are inherently hostile to the unicameral proposal. It is more than a mere passive hostility—it is unrelenting aggression sharpened by the instinct for political survival.

With this antagonism prevailing, most states, for all practical purposes, will never be given the opportunity to consider changing their bicameral legislative systems. In states where legislatures control the flow of con-

stitutional amendments to the people, the only alternative is to wait until a convention is called. Unfortunately, such conventions are infrequent because interest is low and procedures difficult. In most states, legislatures must initiate the procedure by placing a convention call on the ballot. Historically, legislatures have not been enthusiastic about calling these uncontrollable bodies as they tend to meddle with legislative prerogatives. As a result they place the call only with the advent of insurmountable problems or great pressure. (In recent years, several state constitutional conventions wisely seized their opportunity to provide for automatic mechanisms for calling future conventions.)

But even after the people have approved a convention call and delegates have been elected victory for unicameralists is not in sight. Legislators and legislative influences often pervade convention proceedings. By and large, legislator-delegates secure strategic committee appointments and spend much of their time defending existing legislative practices. As the proceedings of conventions attest in state after state, proposals to alter the legislative institution ignite the opposition of legislator-delegates. In the Rhode Island convention which ran from 1964 to 1968 legislator-delegates spent long hours working to keep a unicameral proposal from being submitted to the people even though some observers believed it would have been approved in a public referendum. The North Dakota convention did get a unicameral proposal submitted as an alternate proposal only because a large bloc of delegates felt the people should be given the opportunity to decide the issue even though they themselves did not support it. In Montana, state officeholders were prevented from serving in the convention. With the absence of this interest group the Montana convention was able to get the proposition on the ballot as an optional measure. These are exceptions. By and large, convention experiences throughout the country suggest anything but an easy route for unicameralists.

In all fairness it must be observed that legislators are not unanimous in their opposition to the unicameral system. But generally the opposition is unyielding. In order to elude the legislative roadblock 16 states devised the initiative petition procedure for proposing constitutional amendments. Of the alternatives available to unicameralists this appears to hold the most promise. But it has its pitfalls which must be weighed realistically. The difficulties are directly related to a second major point regarding adoption of the unicameral: because it will not result in particular benefit for any interest group there are very few resources available to secure its adoption.

To unicameralists who have been engaged in the verbal wars over the merits and demerits of their legislative proposal, this second obstacle is ironic. Bicameralists attack the unicameral as conducive to high-pressure lobbying, since fewer legislators would be more accessible to interest groups. If this were true, special interest groups would be leading the parade for a one-house legislature, and pouring money and manpower into the campaign for its adoption. But they are not, which should say something for the system.

The openness of the unicameral system is adverse to the machinations of special interests. Simplifying the system and making the legislators more visible would obviously frustrate the inter-house manipulation that has long been a boon for lobbyists. Because interest groups have nothing to gain and everything to lose under unicameralism, they have no interest in underwriting the cost of securing its adoption. This is true for every phase of the effort, whether it is securing legislative or convention approval, obtaining signatures on initiative petitions, or financing a public information campaign.

Where, then, can resources be obtained? While all citizens would benefit from a change to unicameralism, that gain is not significant enough (in their perception) to warrant monetary contributions or volunteer services. This being the case, unicameralism has been forced to rely on a small band of civic-minded citizens for its sustenance. As a consequence, manpower and money have been available in only limited quantities.

This lack of support has starved the movement. Without money to prepare informational material for citizens, legislators or delegates, and without money to pay minimal lobbying expenses at legislative sessions or conventions, unicameralists have been unable to overcome politically motivated resistance with a full explanation of their proposition. Similarly, this lack of resources has prevented the printing and circulation of petitions to secure the thousands of signatures required to circumvent legislatures and conventions. The most recent attempt at initiating the unicameral proposal in California during the spring of 1974 collapsed when resources dried up.

Even if it were possible to get the proposition on the ballot, the resources would not be available to complete the task. Where it was necessary to finance communications with only a hundred people in the legislature or convention, once the measure is on the ballot it becomes necessary to inform hundreds of thousands of voters. The cost of reaching the electorate with sufficient information is nothing short of staggering. While the media are often willing to provide free time or space for opposing viewpoints as a public service, cash is still needed to make the campaign effective. A typical modern mass media campaign requires thousands of dollars for television, radio and newspaper advertising. Public solicitations for this effort usually cost more than they collect.

The unsuccessful attempts to secure adoption of the unicameral system in North Dakota and Montana are indicative of the problems involved. In North Dakota, attempts to obtain funds through mail solicitations failed. At the same time, strong opposition developed against the proposed constitution, requiring unicameral proponents to divert their efforts toward saving the main document. A parallel situation developed in Montana when the courts deprived the pro-constitution forces of their state educational funds. As a consequence the unicameral proposal was defeated in both states. In North Dakota the vote was 107,643 to 64,073; in Montana it was 122,425 to 95,259. Even though decisive, these two 1972 defeats cannot be considered a unicameral Waterloo. In neither state was the unicameral concept

given full exposure to the people so they could render an informed judgment on the basis of a fair comparison of the two legislative systems. In fact, observers in both states were amazed at the amount of support for unicameralism reflected at the polls.

A course of action must be developed to overcome the political resistance of legislative interests and to provide sufficient resources to inform the electorate of the advantages of unicameralism. The opposition of legislators can be overcome through a continuous educational program conducted by permanent organizations at the state level. An educational program will, hopefully, convince some legislators that the unicameral is in fact a substantial improvement over the two-house, buck-passing system. For those legislators who put political considerations ahead of unicameralism, the educational campaign will serve to create an enlightened citizenry that will demand legislative reform. If enough citizens can be rallied to the cause of unicameralism, their presence in legislative constituencies will force legislators to support reform.

With the recent national scandals the public has begun demanding reforms to assure the people that government is responsive and accountable. State and national legislative bodies have been flooded with corrective proposals, such as full disclosure of financial interests, restrictions on conflicts of interest, and open hearings and meetings. The temper of the time offers a unique opportunity for rallying citizen support for a more accountable, responsive legislative system in state governments. If launched in the near future, unicameralism could well become one of the reforms of this era.

To overcome the chronic shortfall of resources a national pooling of talent and money must be organized to support the unicameral drive in states offering the best opportunities for adoption. Experience has fully demonstrated that the resources of unicameralists are too diffused for any one state to mount an effective campaign. A national organization for the unicameral could draw the resources together from supporters in all states to be applied in effective campaigns in selected states. While it is true that such a system would shift resources away from some states, a new victory in one state at this time could result in a major breakthrough for any number of states. Such a gain would make the investment worthwhile as it would surely result in new interest and support.

Heightened citizen interest and support are the currency that will give unicameralism the political muscle it needs to overcome the political resistance that has waylaid it through the decades. Only through the adoption of deliberate steps to solidify this interest and support will unicameralism be translated from vision to reality in state governments.

Those who prefer the now traditional biennial session demur on most of the above points. They hold that the virtues of the annual session have been greatly exaggerated, that its flaws have not been understood. In the first place, there are already enough laws. Annual sessions inevitably will lead to the persistent advocacy of new legislation and to the adoption of meretricious policies; biennial sessions constitute a safeguard against precipitate and unseemly legislative action. Stability of policy is itself a mark of an orderly and effective legislature. Proponents of the biennial system also argue that yearly meetings of the legislature will contribute to legislative harassment of the administration and its agencies; although an annual session may help to put life back into the legislature, it might be expected to diminish administrative efficiency. The biennial system affords legislators more time to renew relations with constituents, to mend political fences, and to campaign for reelection. The interval between sessions also may be put to good advantage by individual legislators and interim study commissions, since there is never sufficient time during a session to study proposed legislation.

There is, finally, the matter of cost. Annual sessions inevitably lead to a spiraling of legislative costs, for the legislators and other assembly personnel are brought together twice as often. Other costs will become inflated, and perhaps legislative salaries will be increased. Moreover, new programs and new appropriations are likely to result; more expensive government is a natural consequence of annual sessions.

Advocates of annual sessions reject the argument of excessive expense in operating the legislature, pointing out that although state expenditures have climbed rapidly in recent decades, the percentage of legislative costs to the total budget is much smaller today than it was in the past. A study of the period 1927–32 revealed that legislative costs came to less than 1 percent of the total budget; follow-up investigations in 1948 and 1963 have shown a decrease in the proportion of funds allocated to legislative operations.[24] Given the magnitude of state government today, this view holds, there is no good reason to hope for economies simply by cutting legislative costs.

Unicameral or Bicameral Legislature?

Familiar and conventional political arrangements, no less than familiar and conventional ideas, have an extraordinary capacity for perpetuating themselves. Such is the case of bicameralism.

COLONIAL EXPERIENCE

The earliest colonial legislatures, developing out of stockholders' meetings, were unicameral in form. Deputies elected by the freemen of the towns and the appointed assistants of the colonial governors sat together in a single house. Conflict between these two groups was doubtless inevitable, leading to plans

[24] Belle Zeller, ed., *American State Legislatures* (New York: Thomas Y. Crowell Company, 1954), p. 93; *The New Jersey Legislature* (New Brunswick, N.J.: Rutgers University, Eagleton Institute of Politics, 1963), pp. 52A–53A.

for the creation of two chambers. First to adopt the bicameral form was the Massachusetts Bay Colony, when, in 1644, "following an acrid dispute between magistrates and Deputies over the case of Goody Sherman and her stray sow, the General Court separated into two co-equal Houses, the House of Assistants and the House of Deputies."[25] Many other colonies followed Massachusetts' lead, though the flight from unicameralism was not complete until the state of Vermont switched to a two-house legislature in 1836. Part of the stimulus to bicameralism in the states had come from the formation of a national legislature of two houses, replacing the single house under the Articles of Confederation.

THE ARGUMENT OVER VIRTUES

It is difficult to account for the acceptance of the bicameral idea today other than to note, as we have earlier, popular reluctance to abandon old moorings. Of the fifty states, only Nebraska, in 1934, has adopted the plan for a one-house legislature. Moreover, save in a few academic and reform circles, the debate over unicameralism vs. bicameralism is no longer very lively. Nevertheless, it may be useful to sketch briefly the principal claims made for each.

Bicameralism, its proponents have argued, "prevents hasty and careless legislation," "serves as a check against popular passions and impulses," "provides protection against corruption and the control of the legislature by special interest lobbies," "permits the use of a different basis of representation in the two houses," and represents "the traditional American form of legislature."[26]

On the whole, the arguments made by bicameralists have not been found convincing.[27] As much as anything, they appear to be rooted in a distrust of the legislature and the representative function. No evidence exists to suggest that bicameral legislatures prevent the passage of hasty and undesirable legislation—the principal claim made for the arrangement. In fact, an extraordinary number of bills move from one house to the other in the final days of the session, when the pressure of time often precludes anything more than superficial examination. Moreover, if the same party controls both houses, and a party matter is involved, the check supposedly given in the second house is unlikely to amount to much. Numerous studies have shown that a majority of the bills that clear one house go through the

[25] Manual for the Massachusetts Constitutional Convention of 1917, p. 7, as quoted in Commonwealth of Massachusetts, *Report of the Special Commission on Legislative System and Procedure,* Senate Report no. 50, January 1, 1943 (Boston: Wright & Potter Printing Co., 1943), p. 94.

[26] Zeller, *op. cit.,* pp. 51–56 *et passim.*

[27] For an article which supports the "braking" function of bicameralism, see Frank E. Horack, Jr., "Bicameral Legislatures Are Effective," *State Government,* XIV (April 1941), 79–80, 96. But also see JeDon A. Emenhiser, "Sober Second Thought in the Utah Legislature: Toward a Theory of Inter-Chamber Relations," (Manuscript, Utah State University, 1965). This study finds slight evidence that the second chamber gives "sober second thought" to bills that have already passed the other house. Rather, what does emerge is that bills which pass both houses often have two things in common: early introduction and overwhelming passage in the initial chamber.

other without amendment, and far more bills are lost in the house of origin than in the second chamber. Finally, it is well to remember that the legislature has numerous other built-in safeguards against hasty and impulsive action—including intricate rules of procedure and an elaborate committee system. And in the background is the governor's veto power.

The other virtues claimed for bicameralism are hardly more impressive. Are lobbyists more powerful in a unicameral than in a bicameral legislature, their "corrupting" influence more pervasive in one house than in two? Although there is no way of proving this point one way or another, we have the argument of one authority, Roger V. Shumate, that lobbyists "will be less influential in a small body in which responsibility of individual members for passing or defeating bills can be more definitely fixed than under a system in which responsibility can be shunted back and forth from one house to the other...."[28] On this score, it should also be recognized that, since lobbyists often seek to block legislation rather than to advance it, bicameralism may afford new opportunities for defeating proposals.

The claim concerning the representative value of bicameralism requires a comment or two. At one time, state senators were chosen on a basis different from that of state representatives, with the upper house designed to represent an elite of property owners, the lower house to represent population. With one house "conservative" and the other "radical," a natural check, one upon another, would be present. In point of fact, it has been a long time since this concept held any significance. Today, senators and representatives are selected in the same way in all states. The qualifications for the state senate may differ from those of the house, and the senate term of office is usually longer than the house term, but the voters in all cases are the same. Moreover, the contention is spurious that any legislator today simply represents a district or area; rather he represents a heterogeneous grouping of voters, some of whom have augmented their power by membership in organized groups (including parties) whose constituencies extend far beyond the local legislative district.

The final assertion in support of bicameralism—that it is "American" and traditional while unicameralism is "foreign" and radical—needs little comment. Its fundamental flaw is that it is simply nonsense, plausible only to those who know nothing of colonial political organization or those who believe the Founding Fathers fashioned a political system without benefit of a glance at British or other European experience and theory.

Much of the literature concerned with legislative structure in the states comes down heavily on the side of unicameralism.[29] A survey of the case

[28] "The Nebraska Unicameral Legislature," *Western Political Quarterly*, V (September 1952), 510.

[29] There are a number of books and articles on the issue of bicameralism vs. unicameralism: C. A. Breckenridge, *One House for Two* (Washington: Public Affairs Press, 1958); Daniel B. Carroll, *The Unicameral Legislature in Vermont* (Burlington: University of Vermont Press, 1933); Mona Fletcher, "Bicameralism as Illustrated by the Nineteenth General Assembly of Ohio," *American Political Science Review*, XXXII (February 1938), 80-85; Jack W. Rodgers, "One House for 20 Years," *National Municipal Review*, XLVI (July 1957), 338-42, 347; John P. Senning, *The One-House Legislature* (New York: McGraw-Hill Book Company, Inc., 1937) and "Unicameralism Passes Test," *National Municipal Review*, XXXIII (July 1944), 60-65; Charles W. Shull, *American Experience with Unicameral Legislatures*

for this arrangement includes the claims that a single chamber "carries greater prestige...and hence attracts more outstanding and representative citizens," "is able to give more thorough consideration to proposed legislation than two chambers," eliminates "the jealousy, friction, and rivalry between the two houses," "facilitates the development of essential leadership...by concentrating such leadership in one place," "permits closer and more effective relations between the governor and the executive departments and the legislature," "reduces the power of special interest groups," "does away with the need for conference committees," "facilitates public reporting of the work of the legislature," reduces the cost of the legislature, and increases the possibility for fixing responsibility for legislative action.[30]

Notwithstanding the attractiveness of these assertions, for the most part their validity must be assumed; the "efficiency" of unicameralism, like the "Americanism" of bicameralism, is a difficult item to gauge. A fairly recent attempt to canvass the experience of the Nebraska legislature, for three decades the unicameral model, arrives at these conclusions: it has led to some saving in salary payments for legislators and in general legislative expense, to lengthened legislative sessions, to the introduction of fewer bills but the enactment of substantially more, to a decrease in the number of special sessions, to a more deliberate mode of procedure, and to an increase in the tenure of legislators. No evidence was found that unicameralism leads to the passage of hasty and ill-considered legislation. Whether legislators in the unicameral scheme are superior in talent, intellect, and moral caliber cannot be proved, nor can it be verified that the quality of legislation enacted by the "unicameral" is better than that enacted under the earlier bicameral legislatures. In sum, the unicameral experiment in Nebraska "has not fulfilled either the most optimistic hopes of its friends or the most pessimistic fears of its opponents. On the whole, however, it has given a good account of itself."[31]

Legislative Scheduling: The "Log Jam" in the States

The typical legislature operates at a bewildering pace in the closing days of the session. Few things are more common in the course of legislative affairs, especially in the states, than the last-minute rush to wind up business for another year or another biennium. It is not unusual to find as many as 50 percent of all bills passed during a session receiving final approval in the last week before adjournment.

(Detroit: Bureau of Government Research, 1937); O. Douglas Weeks, *Two Legislative Houses or One?* (Dallas, Texas: Arnold Foundation Studies, 1938); Charles B. Hagan, "The Bicameral Principle in State Legislatures," *Journal of Public Law*, no. 2 (1962), 310–27; Donald Janson, "The House Nebraska Built," *Harper's Magazine*, November 1964, pp. 124–30; Talbot D'Alemberte and Charles C. Fishburne, Jr., "The Unicameral Legislature," *University of Florida Law Review*, XVII (Winter 1964), 355–67; Demitrios M. Moschos and David L. Katsky, "Unicameralism and Bicameralism: History and Tradition," *Boston University Law Review*, XLV (Spring 1965), 250–70.

30 Zeller, *op. cit.*, pp. 57–58.

31 Shumate, "The Nebraska Unicameral Legislature," 504–12.

House Judiciary Committee
January 27, 1975

HJR 1 - Unicameral Legislature

The meeting was called to order at 1:34 by Chairman Gardiner. Members present: Gardiner, Brown, Cotton, Parr, Bradley, and Fink.

Representatives Parker and Bradner, sponsors of HJR 1, gave presentations on the merits of the bill and fielded questions.

Rep. Parker gave a brief history of the bicameral legislature to the time of the "one man, one vote," decision. Since this time state legislators represent the same constituents. He stressed that the unicameral legislature would do away with the free conference committees powers, shorten sessions, and eliminate the unnecessary check within the legislative branch which does not exist in the other two branches of government. In response to a question from Rep. Parr, Rep. Parker explained that although either house can reject the report of a free conference committee, it is rarely done since such committee reports are made in a bunch at the end of the session.

Rep. Fink questioned the time restrictions on passing a bill as contained in HJR 1 as well as the redistricting procedures. He suggested that redistricting be done on the basis of substantial population change instead of every ten years. Perhaps the minimum percentage increase should be stipulated.

Rep. Brown questioned that any of these changes should be made to the Constitution but to the statutes.

Rep. Parker expressed the opinion that rural representatives would be on a more equal footing in a unicameral legislature. He said that the power of committee chairmen would increase due to fewer committees but decrease as a result of loss of "bargaining status." It would force committee members to accept responsibility for their actions. Mr. Fink added that chairman power would depend on the number of referrals given a bill.

Rep. Bradner expressed the following: The situation in Alaska is different from other states due to our streamlined judiciary and powerful executive. A unicameral system would allow the public to fix responsibility, would limit chairmen's power, would eliminate passing the buck to the other house and the guessing game of whether a bill would pass, would be an advantage to rural areas since smaller districts would allow more personal representation, would eliminate personality clique power in the Senate, would lend itself to either single member districts or plurality districts, and would provide stability due to longer terms.

Rep. Brown urged restrictions on the number of days required to pass a bill as a guarantee of civil rights against quick, arbitrary change. Mr. Bradner explained that at present the free conference committee has virtually no restrictions on changing a bill or time constraints. Mr. Brown expressed the hope that there would be some other way of limiting the power of the free conference committee. He suggested that the language "in final form" be added to the bill when stipulating time restrictions. Mr. Bradner explained that at present, bills can be amended on the floor and passed the same day.

The question was raised concerning when reapportionment for such a unicameral body would be done. It was suggested that some time after the expiration of the terms of present legislators but before the construction of the new capitol be considered and stipulated in the bill.

The committee adjourned at 2:40 p.m.

House Judiciary Committee
February 6, 1975

HJR 1 - Unicameral Legislature

Senator John Rader, sponsor of SJR 1, testified that the House and Senate versions are very similar. HJR 1 contains no section on adjournment. He stated that since there is no longer a historical basis for two houses due to the one man, one vote decision, it is merely an "historical accident" that our legislatures have continued to be bicameral. He explained that the bills have been designed so that the transition occurs in 1978, the second session of the 10th Legislature. This would allow for no inexperienced legislators.

Rep. Fink asked if it would perhaps be wise to have the bill go into effect in 1980, after the new capitol building was built. Senator Rader replied that the cost of remodeling the present physical chamber should not be a consideration in voting on the bill. Mr. Fink stated that he was opposed to reapportionment on the basis of registered voters rather than census. Stu Hall of Legislative Affairs stated that although numbers of registered voters have been more accurate than census data, problems still exist.

Senator Rader stated that the body's size - 61 - had been chosen to allow more equal representation to sparcely populated areas.

Rep. Specking brought up the question of the numbers of "displaced" voters as a result of the Pipeline. Senator Rader stated that he was agreeable to either method of apportionment. Rep. Brown mentioned the possibility that this committee amend the bill to allow for apportionment by population.

In response to a question by Rep. Parr, Senator Rader stated that it was better to be able to seperate the accuser in an impeachment case from those who tried the case. However, we haven't used the impeachment procedures effectively in the past and the absence of this seperation of function under the unicameral system isn't a major problem.

Rep. Brown suggested that the bill be amended to assure adequate time for deliberation. An emergency action would require nearly unanimous consent. Mr. Rader reminded the body of the present powers of free conference to pass what is, in fact, sometimes brand new legislation in a matter of minutes. In a unicameral system reports could be amended on the floor.

Mr. Fink asked about the proposed amendment to state that reapportionment would take place every ten years or "whenever a substantial population change occurs." Senator Rader stated that in drafting the bill they tried to change as little as possible of substance. If the bill passed and was approved by the voters, another amendment on reapportionment could be drawn up later.

In response to a question from Rep. Parr, Senator Rader stated that the committee chairman's power would probably be greater under a unicameral system but since there would be more committees, areas of jurisdiction would be more narrow. The whole system would be more open and the number of people with power to stop legislation would be limited. Rep. Specking stated that we need rules changes not a whole new system.

Rep. Gardiner asked the committee how they wanted to handle this piece of legislation. All members present indicated that they wished to pass it out of committee after amended. Rep. Gardiner stated that announcements would be made to the press of a public hearing to be held in about three weeks. In the mean time, amendments would be drawn up and considered.

HB 55 - SB 53

The proposed statement of intent was approved by the committee on a voice vote. Rep. Brown moved and asked unanimous consent that House CS for SB 53 be passed out of committee. There being no objections, the motion passed.

HB 6

Rep. Fink suggested an amendment to change the language to general recklessness or negligence and delete the reference to smoking materials. The committee asked that research be done into the present statutes on negligence. The title too would have to be amended.

House Judiciary Committee
February 20, 1975

HJR 1 Unicameral

The meeting was called to order at 1:40 p.m. by Chairman Gardiner. All members were present.

Senator Terry Miller testified that he had an alternative to the proposed unicameral legislature which he would like to offer to the committee and which he proposes to have drafted. He proposed reapportionment so that House and Senate districts represent different peoples while still in compliance with one man, one vote. He proposed that the Senate be made up of members representing regional socio-economic groups, that they be elected at large and that they fill designated seats. The House would be made up of members from single member districts. If the bicameral system could be further reformed through rules changes, he sees no need to go to a unicameral system.

Senator Joe Orsini endorsed Senator Miller's proposal with the exception of designated seats.

Both senators then answered general committee questions.

House Judiciary Committee
February 28, 1975

The meeting was called to order at 1:40 by Chairman Gardiner. All members were present except Mr. Brown.

HJR 1 Unicameral

Mr. Fink moved in Section 5 that a reapportionment take place in 1979 and that the first unicameral legislature sit in 1981. Mark all the other necessary changes to the section. Amendment 1 passed.

Write in provisions for use of figures updated past 1970 census. Stu Hall will draw up language. Amendment 2 passed.

Mr. Fink moved that reapportionment be done on the basis of population, not registered voters. Make all necessary changes. Amendment 3 passed.

Page 2, line 17 - 29 insert Senate (b) language. Require 3/4 to consider emergency legislation and 2/3 to pass. Amendment 4 passed.

Mr. Gardiner moved that on page 2, line 29 the House language on ability to levy a tax be inserted into the Senate (b) language adopted by Amendment 4. Amendment 5 passed.

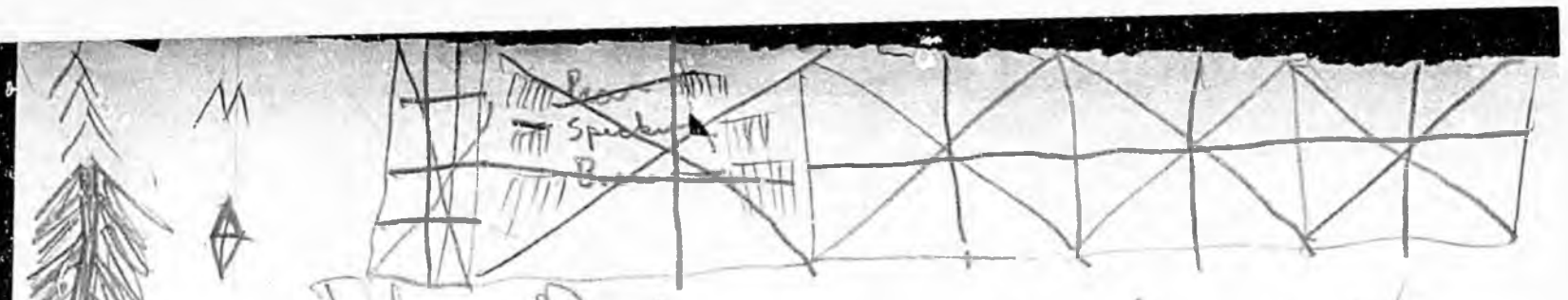
Page 5, lines 5 and 6 There must be a representative from each recognized political party in the state. Amendment 6 passed.

page 3, line 24, Mr. Specking moved that there must be 3/4 vote to convict in impeachment. Amendment 7 passed.

Mr. Cotton moved that it require a majority vote to bring up impeachment. Amendment 8 passed.

Mr. Specking moved that on page 5, line 14: that the redistricting plan of the advisory committee be made public simultaneously with submission. Amendment 9 passed.

Mr. Bradley moved that CS HJR 1 pass out of committee. Mr. Specking objected. On vote, the bill was passed out with a do pass.



John Rader – Unicameral Legis *

leave out SJR 1 section on adjournment
like house version

Reapportionment Article VI – should be revised anyway

effective date of 1980?

Rader – have no strong feeling on registered voters vs census

? does ratio of registered voters vary in different areas of the state
ASK elections office

PAAR – Unicameralism leaves less impediment to impeachment
check Nebraska

Reapportionment every 10 years and when substantial pop change

looks at Mune. requirements for 1 bill readings

Proceedings of Const Materials
letter to Legis. council



Jan 27

U HJR 1 Unicameral Legis.

7 of 13 states were unicameral at time of drawing federal constitution

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Page 4 comparison to existing const. language

to existing statutes

Tom Fink

Stu Hall has already

New section on 3rd reasons for reapportionment - subst. population change

Brown include specifics in statutes not Const.

Bradner Public fix responsibility

1. would therefore limit chairman + leaderships vote

better Rep for rural area - more leg

more effective Rep.

Paar

~~Brown~~

Paar

Bradley

Brown - on 5 day limit

state bill has to mean substantial same substance

Nebraska has holding committee between 2nd + 3rd reading

Fink - because of reapportionment problem

delay till 1980

Problem of cutting Sen. terms

---

new capitol construction one chamber of two

41 32
46 41 1970 1979 1978 1980

Coincide with reapportionment

Section 14

79
80

Amend #1 delay 2 years

Amend #2 Mem no. 5 for 1980 reapport.

61/10 Amend #3 voters to population

Amend #4 Senate Sec 14(6)

Amend #5 ,of) levy a Tax.

Amend #6 Each Major party

Amend #7 $\frac{1}{2}$ impeachment $\frac{3}{4}$ conviction

Amend #8 make public plan.

February 5, 1975

Mr. Willaim Lassella
Executive Director
National Municipal League
Carl H. Pforcheimer Bldg.
47 East 68th
New York, New York 10021

Dear Mr. Lassella:

The Alaska State Legislature presently has under consideration a proposal to adopt a unicameral legislative system. Professor Victor Fisher of the University of Alaska has referred me to you as a possible source of information on unicameralism.

I would very much appreciate receiving any information you may have on this subject. Since our legislative session is short, your prompt reply would be appreciated.

Thank you very much.

Sincerely,

Paddy Moriarty
House Judiciary Committee

State of Alaska

OFFICIAL RETURNS

By

Election Precinct

General Election

November 5, 1974



William A. Egan
GOVERNOR

H. A. Boucher
LIEUTENANT GOVERNOR

STATE OF ALASKA

OFFICIAL RETURNS

BY

ELECTION PRECINCT

GENERAL ELECTION

NOVEMBER 5, 1974

Published By

LIEUTENANT GOVERNOR
Capitol Building Juneau, Alaska

GENERAL ELECTION
November 5, 1974

SOUTHEASTERN

Election District and Precinct	Number Of Persons Voting	Governor-Lieutenant Governor			U. S. Senator		U. S. Representative	
		Egan-Boucher (D)	Hammond-Thomas (R)	Vogler-Peppler (AIP)	Gravel (D)	Lewis (R)	Hensley (D)	Young (R)
District 1								
Cape Pole	43	21	21	1	28	12	14	27
Clover Pass	120	56	50	10	55	59	49	68
Coffman Cove	34	22	11	0	19	13	14	18
Craig	114	49	54	5	63	44	56	51
El Capitan	29	21	7	0	17	11	12	16
Hydaburg	94	68	24	2	78	10	74	16
Hyder (Absentee)								
Ketchikan #1	211	143	49	4	162	32	137	60
Ketchikan #2	288	169	99	5	191	74	147	122
Ketchikan #3	278	140	107	5	141	100	104	146
Ketchikan #4	205	106	89	7	109	89	72	131
Ketchikan #5	193	105	81	6	116	70	76	114
Ketchikan #6	300	155	133	6	155	131	104	191
Ketchikan #7	327	177	133	9	171	134	109	209
Ketchikan #8	357	193	137	13	220	109	144	200
Klawock	69	52	13	3	58	10	49	20
Metlakatla	309	225	71	6	254	41	160	141
Mountain Point	170	77	69	5	84	72	53	111
Mud Bay	236	82	132	14	126	96	83	146
Myers Chuck	25	4	14	6	4	20	9	13
Naukati	31	7	11	2	17	10	12	18
Pennock-Gravina	32	5	16	1	15	16	8	23
Point Baker	31	10	16	5	26	4	15	16
Saxman (Revilla)	223	141	68	10	137	80	100	119
Thorne Bay	110	62	34	10	84	22	39	66
Tuxekan	11	8	1	1	6	3	4	6
Twelve Mile Arm (Absentee)								
Wacker	111	52	42	12	46	57	34	69
Ward Cove	169	71	91	2	77	79	50	111
Whale Pass	29	19	10	0	21	8	15	14
SUBTOTAL	4149	2260	1583	160	2480	1406	1743	2242
Absentee	463	210	235	6	251	193	195	250
Questioned		59	38	7	69	35	50	53
DISTRICT 1 TOTALS	4612	2529	1856	173	2800	1634	1988	2545
District 2								
Angoon	124	99	21	1	105	12	86	41
Funter Bay (Absentee)								
Gustavus	49	11	28	5	28	13	22	21
Hoonah	228	180	35	0	179	36	163	47
Kake	142	94	40	1	88	47	74	60
Petersburg #1	328	143	174	2	197	120	97	222
Petersburg #2	264	180	71	7	174	71	98	154
Rowan Bay	40	19	11	7	16	22	17	20
Scow Bay	106	49	45	5	50	44	35	60
Stikine	226	98	93	20	122	88	87	124
Tenakee Springs	45	34	7	1	28	12	24	17
Wrangell #1	180	95	76	4	101	71	68	105
Wrangell #2	227	120	92	2	135	78	90	121
Zarembo (Absentee)								
SUBTOTAL	1959	1127	693	55	1219	614	861	982
Absentee	254	122	120	3	138	100	108	133
Questioned		29	15	3	24	21	22	25
DISTRICT 2 TOTALS	2213	1278	828	61	1381	735	991	1140

SOUTHEASTERN

Election District and Precinct	Number Of Persons Voting	Governor-Lieutenant Governor			U. S. Senator		U. S. Representative	
		Egan-Boucher (D)	Hammond-Thomas (R)	Vogler-Peppler (AIP)	Gravel (D)	Lewis (R)	Hensley (D)	Young (R)
District 3								
Elfin Cove	22	4	14	3	9	10	8	12
Halibut Point	401	212	173	4	263	107	141	242
Jamestown Bay	255	91	155	5	150	88	103	142
Listanski (Pelican)	70	33	30	4	40	20	32	30
Mt. Edgecumbe	240	137	86	3	166	51	136	88
Port Alexander	19	6	9	4	12	7	8	11
Rodman Bay	32	21	10	0	25	6	23	7
Sitka #1	204	122	76	1	153	41	111	78
Sitka #2	381	183	189	7	248	114	164	201
Sitka #3	379	197	163	5	226	128	168	195
Sitka #4	290	173	108	0	183	79	105	171
Yakutat	95	64	23	2	68	19	71	19
Yakutat Airport	53	25	27	1	13	40	10	42
SUBTOTAL	2441	1268	1063	34	1556	700	1080	1238
Absentee	258	109	141	3	145	95	121	127
Questioned		33	28	0	51	7	32	27
DISTRICT 3 TOTALS	2699	1410	1232	37	1752	802	1233	1392
District 4								
Auke Bay	569	242	290	18	266	259	214	334
Chilkat	66	43	20	2	34	24	28	37
Douglas #1	274	138	120	[illegible]	135	109	107	156
Douglas #2	266	151	105	3	166	84	124	132
Haines	216	121	65	15	105	91	71	129
Juneau #1	224	167	41	2	171	34	154	51
Juneau #2	295	174	107	3	198	70	167	120
Juneau #3	276	159	92	7	172	78	129	131
Juneau #4	299	173	103	3	191	71	162	111
Juneau #5	207	143	37	5	138	43	102	82
Juneau #6	285	170	103	4	181	82	137	134
Juneau #7	385	220	142	10	198	153	160	211
Juneau #9	331	219	97	5	219	97	187	135
Juneau Airport	432	230	170	5	222	159	163	245
Klukwan	67	50	3	11	42	20	40	22
Lemon Creek	630	367	235	10	348	241	270	342
Lower Mendenhall	500	260	199	14	262	189	197	274
Lynn Canal	227	90	130		113	99	95	125
North Douglas	257	135	108		157	85	124	126
Port Chilkoot	119	61	46	7	65	43	40	72
Salmon Creek	144	79	53	5	68	65	52	84
Sheep Creek	52	19	31	1	28	18	23	27
Skagway	267	181	79	5	169	88	107	155
Upper Mendenhall	676	368	283	10	346	288	261	399
SUBTOTAL	7064	3960	2659	158	3994	2490	3114	3634
Absentee	988	511	432	16	531	386	465	484
Questioned		98	82	4	125	59	114	73
DISTRICT 4 TOTALS	8052	4569	3173	178	4650	2935	3693	4191

SOUTHCENTRAL

Election District and Precinct	Number Of Persons Voting	Governor-Lieutenant Governor			U. S. Senator		U. S. Representative	
		Egan-Boucher (D)	Hammond-Thomas (R)	Vogler-Peppler (AIP)	Gravel (D)	Lewis (R)	Hensley (D)	Young (R)
District 5								
Bear Creek	134	56	68	7	80	45	63	69
Cooper Landing	74	23	39	6	31	36	26	44
Copper Center	78	54	20	1	44	26	40	33
Cordova	503	280	213	4	245	223	199	292
Eyak	75	30	33	0	32	28	21	43
Glennallen	269	82	136	24	66	178	53	187
Hope	39	7	28	2	14	23	14	23
Kenny Lake	107	25	44	20	31	55	33	56
Moose Pass	77	23	48	5	24	46	22	54
Seward #1	216	121	82	6	129	68	96	109
Seward #2	296	136	142	12	172	94	101	187
Tatitlek	12	4	5	1	8	2	5	5
Valdez	616	336	154	17	304	193	212	294
Whittier	54	30	17	4	35	17	20	32
SUBTOTAL	2550	1207	1029	109	1215	1034	905	1428
Absentee	325	134	153	17	153	150	125	178
Questioned		90	58	9	107	55	89	74
DISTRICT 5 TOTALS	2875	1431	1240	135	1475	1239	1119	1680
District 6								
Big Lake	148	59	64	12	60	76	48	92
Butte	485	162	242	46	169	255	130	322
Eska Sutton	87	49	30	6	50	35	44	41
Houston	75	31	29	15	43	30	30	44
Matanuska	687	256	308	58	234	357	172	449
Palmer	498	224	223	30	224	233	149	331
Sheep Mountain	52	11	34	5	11	38	15	34
Susitna	114	30	54	19	52	50	38	68
Talkeetna	126	22	90	12	63	55	41	79
Wasilla	667	256	310	65	301	311	286	343
Willow	144	45	84	13	60	81	45	93
SUBTOTAL	3083	1145	1468	280	1267	1521	998	1896
Absentee	368	145	194	13	155	170	132	212
Questioned		37	60	10	41	63	39	70
DISTRICT 6 TOTALS	3451	1327	1722	304	1463	1754	1169	2178
District 7								
Anchorage #4	350	154	147	24	185	141	151	184
Anchorage #6	500	235	205	16	252	212	203	262
Anchorage #9	303	129	144	9	156	129	131	155
Anchorage #11	411	169	187	18	201	160	184	202
Anchorage #12	619	265	235	25	320	227	277	298
Anchorage #13	429	211	162	20	269	121	219	182
Anchorage #14	457	253	149	15	275	138	237	187
Anchorage #15	327	150	107	9	185	100	182	107
Anchorage #16	305	130	116	21	149	137	115	180
Anchorage #17	317	134	137	9	184	115	163	145
Anchorage #19	410	209	123	17	243	107	209	142
Anchorage #20	283	154	87	13	209	50	192	65
Anchorage #21	294	122	107	10	172	87	150	112
Anchorage #25	463	165	228	20	207	227	196	247
Anchorage #30	406	178	140	16	221	146	181	197
SUBTOTAL	5074	2658	2274	242	3228	2097	2790	2665
Absentee and Questioned	477	469	464	41	397	280	361	336
DISTRICT 7 TOTALS	6351	3127	2738	283	3625	2377	3151	3001

SOUTHCENTRAL

Election District and Precinct	Number Of Persons Voting	Governor-Lieutenant Governor			U. S. Senator		U. S. Representative	
		Egan-Boucher (D)	Hammond-Thomas (R)	Vogler-Peppler (AIP)	Gravel (D)	Lewis (R)	Hensley (D)	Young (R)
District 8								
Anchorage #27	495	228	169	23	290	133	265	181
Anchorage #28	485	233	166	29	279	161	239	206
Anchorage #29	457	207	207	22	242	185	195	243
Anchorage #31	216	80	102	15	101	89	77	121
Anchorage #34	237	96	109	7	121	99	86	135
Gr Anch Boro #139	498	224	211	26	275	177	239	234
Gr Anch Boro #142	528	243	209	36	281	209	193	310
Gr Anch Boro #143	496	203	225	39	236	220	201	271
Gr Anch Boro #144	593	229	286	47	253	301	226	344
Gr Anch Boro #147	667	220	339	43	290	309	256	367
Gr Anch Boro #148	669	242	306	50	276	321	230	373
Gr Anch Boro #149	376	141	176	21	150	188	126	211
Gr Anch Boro #150	444	176	186	30	204	195	162	253
Gr Anch Boro #151	304	125	124	28	135	134	97	181
SUBTOTAL	6465	2647	2815	416	3133	2721	2592	3430
Absentee and Questioned	330	285	418	52	289	262	266	304
DISTRICT 8 TOTALS	6795	2932	3233	468	3422	2983	2858	3734
District 9								
Anchorage #3A	226	84	82	11	122	78	109	100
Gr Anch Boro #101	390	153	199	12	190	172	180	188
Gr Anch Boro #102	487	224	208	14	253	199	212	252
Gr Anch Boro #103	431	198	176	33	230	175	206	212
Gr Anch Boro #104	146	66	57	12	77	52	64	70
Gr Anch Boro #105	285	156	106	8	187	89	137	136
Gr Anch Boro #106	197	108	67	7	123	60	103	83
Gr Anch Boro #107	500	219	164	12	274	188	223	254
Gr Anch Boro #108	253	95	127	10	134	94	111	122
Gr Anch Boro #109	423	177	185	27	212	169	189	204
Gr Anch Boro #110	606	257	250	48	285	266	229	341
SUBTOTAL	3944	1737	1621	194	2087	1542	1763	1962
Absentee and Questioned	182	138	157	15	183	129	180	137
DISTRICT 9 TOTALS	4126	1875	1778	209	2270	1671	1943	2099
District 10								
Anchorage #12A	342	154	156	8	145	180	119	211
Anchorage #22	556	240	241	27	226	299	188	351
Anchorage #22A	762	329	372	36	241	487	197	548
Anchorage #23	485	176	199	21	280	165	225	237
Anchorage #24	545	222	245	23	243	256	214	295
Anchorage #32	881	304	472	29	456	463	251	602
Anchorage #33	728	249	390	33	327	342	256	434
Gr Anch Boro #135	456	178	226	15	193	223	163	264
Gr Anch Boro #137	291	109	146	20	138	134	124	158
Gr Anch Boro #138	636	261	312	29	276	316	199	419
Gr Anch Boro #139A	325	119	138	25	146	140	137	154
Gr Anch Boro #140	426	149	241	11	165	230	147	263
Gr Anch Boro #141	778	308	389	38	309	405	251	497
Gr Anch Boro #145	244	108	98	15	134	93	93	140
SUBTOTAL	7455	2906	3625	330	3179	3733	2564	4573
Absentee and Questioned	425	322	492	41	270	327	238	380
DISTRICT 10 TOTALS	7880	3228	4117	371	3449	4060	2802	4953

SOUTHCENTRAL

Election District and Precinct	Number Of Persons Voting	Governor-Lieutenant Governor: Egan-Boucher (D)	Governor-Lieutenant Governor: Hammond-Thomas (R)	Governor-Lieutenant Governor: Vogler-Peppler (AIP)	U. S. Senator: Gravel (D)	U. S. Senator: Lewis (R)	U. S. Representative: Hensley (D)	U. S. Representative: Young (R)
District 11								
Gr Anch Boro #117	325	111	149	17	158	146	136	175
Gr Anch Boro #118	706	310	291	40	330	316	283	385
Gr Anch Boro #122	670	251	315	36	390	319	246	382
Gr Anch Boro #123	436	192	184	18	212	185	186	215
Gr Anch Boro #125	100	34	45	16	68	25	67	29
Gr Anch Boro #126	137	32	64	10	88	31	83	38
Gr Anch Boro #127	429	140	234	30	163	241	155	252
Gr Anch Boro #128	678	252	319	45	284	320	232	391
Gr Anch Boro #129	1025	347	509	49	414	526	384	589
Gr Anch Boro #130	408	130	222	27	149	221	152	238
Gr Anch Boro #131	646	224	367	30	255	365	260	378
Gr Anch Boro #132	623	248	205	52	304	262	246	329
Gr Anch Boro #134	762	341	349	23	356	351	284	453
Gr Anch Boro #136	548	247	220	39	292	225	265	262
SUBTOTAL	7493	2859	3503	432	3373	3524	2978	4116
Absentee and Questioned	393	396	519	68	350	303	296	383
DISTRICT 11 TOTALS	7886	3255	4022	500	3723	3827	3274	4499
District 12								
Anchorage #1	590	218	313	22	224	319	183	394
Anchorage #2	550	216	274	18	197	315	159	378
Anchorage #3	404	203	168	19	146	235	124	[illegible]
Anchorage #5	762	313	380	20	310	395	288	[illegible]
Anchorage #7	295	125	116	5	143	116	114	149
Gr Anch Boro #111	508	201	249	26	203	291	176	339
Gr Anch Boro #113	679	211	294	35	278	352	212	443
Gr Anch Boro #114	384	162	172	26	181	172	147	221
Gr Anch Boro #116	669	295	284	33	308	289	272	362
Gr Anch Boro #119	969	323	528	53	396	501	315	619
Gr Anch Boro #120	420	126	223	20	171	215	128	267
Gr Anch Boro #121	1046	394	509	42	416	516	335	634
SUBTOTAL	7276	2787	3510	319	2973	3716	2453	4518
Absentee and Questioned	466	252	371	17	267	329	253	366
DISTRICT 12 TOTALS	7742	3039	3881	336	3240	4045	2706	4884
District 13								
Anchor Point	201	44	127	13	63	120	45	141
Diamond Ridge	41	16	23	1	23	18	21	20
English Bay	32	28	4	0	29	3	27	5
Fritz Creek	199	51	119	12	78	102	52	130
Halibut Cove (Absentee)								
Homer	525	108	352	17	200	257	173	303
Kalifonsky	280	90	166	19	124	141	120	155
Kenai #1	433	164	235	23	190	213	184	239
Kenai #2	429	140	239	25	208	192	158	248
Kenai #3	199	87	94	5	97	89	75	116
Nikiski #1	221	69	122	12	99	112	72	133
Nikiski #2	424	143	235	20	203	198	153	247
Nunlichik	122	41	80	1	62	57	51	69
Port Graham	51	35	8	3	47	0	32	15
Ridgeway	317	124	173	14	127	165	112	188
Seldovia	120	47	66	6	71	46	48	69
Soldotna	446	172	238	16	208	213	178	253
Sterling	247	60	156	23	80	144	92	148
Tustumena	231	64	138	14	106	103	125	93
Tyonek	52	35	16	1	46	5	43	9
SUBTOTAL	4570	1508	2591	225	2051	2178	1761	2581
Absentee	496	135	325	21	190	282	201	277
Questioned		57	91	8	92	27	77	81
DISTRICT 13 TOTALS	5066	1700	3007	254	2333	2487	2039	2939

SOUTHCENTRAL

Election District and Precinct	Number Of Persons Voting	Governor-Lieutenant Governor			U. S. Senator		U. S. Representative	
		Egan-Boucher (D)	Hammond-Thomas (R)	Vogler-Peppler (AIP)	Gravel (D)	Lewis (R)	Hensley (D)	Young (R)
District 14								
Cape Chiniak	70	26	40	3	36	31	22	46
Coast Guard Base	93	34	52	2	36	49	39	48
Kodiak #1	293	150	130	2	166	112	118	158
Kodiak #2	300	155	128	2	179	93	131	153
Kodiak #3	322	121	185	2	174	125	113	185
Mission Road	374	125	220	5	206	139	136	208
Ouzinkie	60	51	5	3	56	2	49	10
SUBTOTAL	1512	662	760	19	853	551	608	808
Absentee	152	53	87	5	94	49	72	70
Questioned		15	29	0	26	18	16	27
DISTRICT 14 TOTALS	1664	730	876	24	973	618	696	905
District 15								
Adak	94	26	52	5	48	30	27	56
Akutan	35	28	7	0	28	7	28	7
Alitak	20	16	4	0	19	1	15	5
Atka	15	13	2	0	15	0	6	9
Belkofski (Absentee)								
Chignik	23	8	13	1	19	3	11	12
Chignik Lagoon (Absentee)								
Chignik Lake	35	15	16	1	31	1	10	22
Cold Bay	59	22	29	4	19	35	22	31
False Pass (Absentee)								
Ivanof Bay	10	2	6	0	7	1	4	4
Karluk	33	29	1	3	32	1	28	5
King Cove	66	40	18	5	47	19	32	33
Larsen Bay	34	26	5	2	26	7	20	12
Nelson Lagoon (Absentee)								
Nikolski	27	23	3	1	25	2	20	6
Old Harbor	61	45	15	1	52	9	32	29
Pauloff Harbor (Abandoned)								
Perryville	44	28	16	0	41	3	36	8
Port Lions	63	44	18	0	52	10	33	30
Sand Point	128	103	17	3	103	17	45	73
Squaw Harbor	18	11	5	1	13	3	5	9
St. George	47	19	21	5	38	9	24	23
St. Paul	122	99	13	4	110	7	63	54
Uganik Bay (Unreported)								
Unalaska	86	36	41	2	59	20	42	41
SUBTOTAL	1020	633	302	38	784	185	503	469
Absentee	95	45	35	8	76	17	63	28
Questioned		13	14	1	18	8	14	14
DISTRICT 15 TOTALS	1115	691	351	47	878	210	580	511

CENTRAL

Election District and Precinct	Number Of Persons Voting	Governor-Lieutenant Governor			U. S. Senator		U. S. Representative	
		Egan-Boucher (D)	Hammond-Thomas (R)	Vogler-Peppler (AIP)	Gravel (D)	Lewis (R)	Hensley (D)	Young (R)
District 16								
Aleknagik	46	30	16	4	32	6	25	14
Clark's Point	34	23	10	0	33	1	28	6
Dillingham	354	166	130	4	225	76	192	110
Egegik	37	7	25	0	22	12	19	16
Ekwok	40	21	18	0	34	5	29	10
Goodnews	35	32	3	0	32	3	20	15
Iliamna (New Halen)	63	6	46	3	25	29	33	21
Kakhonak Bay	43	0	40	0	16	23	27	13
King Salmon	97	43	45	2	36	50	25	64
Kipnuk	100	86	13	1	91	9	69	31
Koliganek	42	12	24	0	40	0	38	2
Kongiganak	68	57	10	0	65	2	57	10
Kwigillingok	42	35	5	2	32	10	35	7
Levelock	25	9	8	0	17	1	12	6
Manokotak	78	45	22	3	67	5	61	9
Naknek	116	37	76	3	68	44	63	51
New Stuyahok	82	53	17	2	71	6	58	16
Nondalton	60	20	18	2	33	8	34	7
Ohgsenakale	22	11	6	1	18	0	11	7
Pedro Bay	13	3	10	0	7	6	6	7
Pilot Point (Absentee)								
Platinum	19	13	6	0	16	1	7	11
Port Heiden	30	6	24	0	24	6	17	13
Quinhagak	110	99	6	3	105	3	94	14
South Naknek	41	22	17	1	37	3	28	12
Togiak	113	77	28	4	101	8	74	35
SUBTOTAL	1710	903	623	35	1247	317	1062	507
Absentee	138	45	82	1	86	38	77	52
Questioned		32	25	2	46	16	39	22
DISTRICT 16 TOTALS	1848	98	730	38	1379	371	1178	581
NORTHWEST								
District 17								
Akiachak	98	67	25	1	83	11	66	27
Akiak	54	13	32	1	36	10	31	15
Aniak	74	32	30	0	42	20	29	33
Atmautluak	52	42	6	4	44	0	31	21
Bethel #1	381	159	171	2	274	54	224	105
Bethel #2	342	116	195	4	238	61	212	100
Chefornak	69	47	17	3	53	14	19	46
Eek	62	26	28	2	55	4	32	25
Kalskag	46	21	9	2	25	6	23	8
Kasigluk	97	67	26	0	83	10	76	17
Kwethluk	137	115	11	0	120	6	113	13
Lower Kalskag	46	42	4	0	45	1	45	1
Napaktak	83	56	13	2	66	5	64	8
Napa Atak	42	35	6	1	39	3	26	16
Newtok	45	22	13	6	41	0	23	19
Nightmute	38	16	17	5	32	6	18	20
Nunapitchuk	103	70	19	3	89	3	72	20
Nunivak Island	70	21	27	7	11	15	25	29
Nyac (Absentee)								
Oscarville	13	12	1	0	13	0	12	1
Toksook Bay	86	49	23	7	66	19	46	40
Tuluksak	58	51	6	1	52	6	47	11
Tuntutuliak	60	51	8	0	36	23	39	20
Tununak	94	62	24	3	78	11	37	52
SUBTOTAL	2150	1192	711	54	1651	290	1309	649
Absentee	159	90	63	3	125	31	119	39
Questioned		67	68	6	119	20	99	42
DISTRICT 17 TOTALS	2309	1349	842	63	1895	347	1527	730

NORTHWEST

Election District and Precinct	Number Of Persons Voting	Governor-Lieutenant Governor			U. S. Senator		U. S. Representative	
		Egan-Boucher (D)	Hammond-Thomas (R)	Vogler-Peppler (AIP)	Gravel (D)	Lewis (R)	Hensley (D)	Young (R)
District 18								
Alakanuk	90	48	38	1	69	15	38	43
Anvik	30	14	14	0	20	7	12	13
Chevak	97	56	35	2	83	10	64	29
Chuathbaluk	34	25	8	0	27	6	22	12
Crooked Creek	24	10	13	1	18	6	10	14
Emmonak	112	68	27	0	86	10	61	36
Flat (Absentee)								
Fortuna Ledge	51	32	14	0	37	11	31	18
Galena	103	30	40	7	53	22	55	22
Grayling	47	15	29	2	34	12	18	28
Holy Cross	71	32	35	1	53	14	35	33
Hooper Bay	138	56	74	5	119	16	118	17
Hughes	24	12	6	1	16	3	17	2
Huslia	44	21	19	1	32	11	28	13
Kaltag	45	9	32	1	39	3	30	13
Koyukuk	24	15	4	0	17	2	10	6
McGrath	96	23	44	19	41	42	31	53
Mountain Village	101	66	31	0	80	17	60	36
Nikolai	30	16	11	0	25	3	19	10
Nulato	78	29	38	3	66	6	52	20
Pilot Station	49	31	9	0	36	4	22	17
Pitkas Point	16	10	6	0	14	2	13	3
Red Devil (Absentee)								
Ruby	45	5	26	6	27	6	21	14
Russian Mission	46	18	25	0	34	11	27	17
St. Mary's	100	65	30	3	73	20	64	32
Scammon Bay	48	22	19	2	34	14	27	20
Shageluk	28	11	16	0	19	7	13	13
Sheldon Point	18	9	4	2	13	5	10	5
Sleetmute	21	15	4	2	17	3	9	12
Stony River (Absentee)								
SUBTOTAL	1610	763	651	59	1182	288	917	551
Absentee	126	67	45	2	86	26	81	33
Questioned		24	31	2	40	17	39	18
DISTRICT 18 TOTALS	1736	854	727	63	1308	331	1037	602

CENTRAL

Election District and Precinct	Number Of Persons Voting	Governor-Lieutenant Governor			U. S. Senator		U. S. Representative	
		Egan-Boucher (D)	Hammond-Thomas (R)	Vogler-Peppler (AIP)	Gravel (D)	Lewis (R)	Hensley (D)	Young (R)
District 19								
Alatna	53	16	31	1	39	9	47	1
Anderson	130	61	57	2	78	42	61	61
Arctic Village	39	16	15	0	25	5	25	6
Beaver	26	15	8	1	19	4	19	4
Bettles	29	4	14	6	11	12	11	13
Big Delta	390	123	205	39	183	166	104	260
Cantwell	56	24	21	0	29	13	25	20
Chalkyitsik	28	8	15	0	22	1	9	14
Chicken (Absentee)								
Chistochina	95	41	27	9	37	37	26	49
Circle	28	14	2	11	19	8	14	11
Clear	138	64	52	12	73	49	46	81
Dot Lake	26	8	9	2	15	4	9	10
Eagle	61	27	28	4	22	35	21	35
Fort Yukon	186	95	68	3	138	21	46	115
Gakona	79	38	27	7	36	36	36	38
Healy	103	35	43	2	40	32	33	46
Lake Minchumina (Absentee)								
Lakeview	18	9	7	1	10	7	5	12
Manley Hot Springs	36	7	19	7	12	22	13	21
McKinley Park	41	0	36	3	19	15	23	16
Minto	51	20	22	0	39	1	38	2
Nenana	210	113	72	9	135	56	105	88
Northway	55	33	21	1	40	14	37	18
Paxson	53	8	16	3	12	13	5	22
Rampart	18	4	13	0	10	7	10	6
Stevens Village	21	13	0	0	12	0	11	2
Suntrana	77	50	17	3	61	10	33	37
Tanacross	42	31	8	0	39	0	34	5
Tanana	124	41	55	9	66	42	56	53
Tetlin	59	42	10	0	46	6	36	16
Tok	214	91	102	6	106	88	76	120
Venetie	41	14	23	0	31	6	8	29
SUBTOTAL	2527	1065	1043	141	1423	761	1022	1211
Absentee	291	98	136	14	138	104	123	122
Questioned		102	107	19	158	61	122	104
DISTRICT 19 TOTALS	2818	1265	1286	174	1719	926	1267	1437

CENTRAL

Election District and Precinct	Number Of Persons Voting	Governor-Lieutenant Governor			U. S. Senator		U. S. Representative	
		Egan-Boucher (D)	Hammond-Thomas (R)	Vogler-Peppler (AIP)	Gravel (D)	Lewis (R)	Hensley (D)	Young (R)
District 20								
Aurora	457	181	225	29	231	190	158	272
Badger Road #1	325	132	143	21	164	126	112	181
Badger Road #2	270	108	112	36	151	99	110	153
Big Bend	288	130	100	36	151	107	116	144
Central House (Absentee)								
Chatanika (Absentee)								
Chena	595	127	362	31	328	170	344	191
Elelson	158	53	85	6	83	61	66	80
Ester	183	60	96	12	109	56	92	76
Fairbanks #1	300	126	123	32	167	111	129	161
Fairbanks #2	239	127	81	17	136	83	120	103
Fairbanks #3	283	137	86	9	144	75	115	115
Fairbanks #4	238	98	95	26	129	81	111	110
Fairbanks #5	295	128	112	15	158	88	116	138
Fairbanks #6	347	215	82	21	243	68	190	125
Fairbanks #7	277	113	127	15	154	98	130	129
Fairbanks #8	252	105	112	12	142	81	123	114
Fairbanks #9	241	94	129	12	101	127	66	169
Fairbanks #10	304	144	113	18	176	95	132	142
Fairbanks #11	223	96	100	16	137	70	107	103
Fairbanks #12	324	140	174	11	192	116	138	185
Fairbanks #13	458	166	232	31	222	196	157	276
Fairbanks #14	374	163	170	15	196	136	133	214
Fairbanks #15	280	123	124	18	163	97	118	152
Fairbanks #16	333	148	134	19	157	136	100	205
Fairbanks Pioneers Home	34	24	8	0	19	9	10	19
Farmers Loop	339	83	215	15	194	106	180	137
Fort Greeley (Absentee)								
Fort Wainwright	95	24	52	2	37	42	39	41
Fox	128	28	53	24	57	46	49	58
Geist	481	146	281	11	230	196	214	237
Graehl-Derby	192	74	68	11	102	56	73	80
International Airport #1	238	94	90	28	123	85	98	110
International Airport #2	217	72	90	23	100	85	72	121
Johnston-Westwood	159	44	80	27	70	76	69	79
Lemeta	260	121	99	30	170	77	118	129
North Lemeta	100	45	39	7	58	33	52	41
North Pole	553	230	233	45	305	194	241	275
Salcha	154	42	81	16	71	67	40	102
Shanley-Totem	344	96	199	15	182	123	173	151
Steese East	602	184	336	47	323	226	260	315
Steese West	457	134	262	38	224	200	182	259
Two Rivers	96	17	60	12	34	50	36	54
University Campus	777	161	424	10	424	154	368	237
SUBTOTAL	12,300	4533	5787	819	6552	4206	5257	5983
Absentee	927	328	518	91	482	321	400	439
Questioned		322	435	44	462	193	404	269
DISTRICT 20 TOTALS	13,227	5183	6740	954	7496	4800	6061	6691

NORTHWEST

Election District and Precinct	Number Of Persons Voting	Governor-Lieutenant Governor			U. S. Senator		U. S. Representative	
		Egan-Boucher (D)	Hammond-Thomas (R)	Vogler-Peppler (AIP)	Gravel (D)	Lewis (R)	Hensley (D)	Young (R)
District 21								
Ambler	49	21	22	1	39	5	39	7
Anaktuvuk Pass	46	19	26	1	37	9	32	14
Atkusook (Absentee)								
Barrow	338	240	64	3	262	46	246	55
Barter Island	41	31	5	2	37	1	33	5
Bornite-Kobuk	26	11	9	2	22	2	22	2
Browerville	88	51	9	0	54	6	45	15
Kiana	80	61	17	1	64	13	67	11
Kivalina	68	55	10	2	67	1	65	3
Kotzebue	509	235	167	8	350	103	363	94
Noatak	64	51	5	0	50	6	53	3
Noorvik	142	95	33	2	114	19	124	11
Nuiqsut	35	26	7	2	32	2	25	8
Point Hope	93	51	27	0	71	2	74	3
Point Lay	14	7	4	0	9	2	9	2
Shungnak	54	34	20	0	48	6	52	2
Wainwright	97	67	23	2	79	13	56	35
SUBTOTAL	1741	1105	448	26	1335	237	1305	270
Absentee	108	66	35	3	83	15	87	14
Questioned		46	27	1	69	8	67	11
DISTRICT 21 TOTALS	1852	1217	51	30	1497	260	1459	295
District 22								
Brevig Mission	22	13	7	0	14	6	12	7
Buckland	53	46	5	0	47	4	47	4
Candle (Absentee)								
Deering	34	17	6	0	20	3	18	5
Diomede Island	43	32	5	1	37	4	31	9
Elim	68	57	11	0	60	7	56	12
Gambell	115	81	31	3	100	12	88	26
Golovin	39	25	12	0	29	5	32	4
Kotlik	75	48	12	3	50	11	32	27
Koyuk	45	26	11	2	34	5	30	9
Nome #1	392	169	156	4	209	121	182	148
Nome #2	415	219	161	3	250	123	233	145
Northeast Cape (Absentee)								
Savoonga	132	105	21	2	116	11	101	28
Selawik	127	70	32	2	81	15	84	15
Shaktoolik	32	25	6	0	26	6	27	5
Shishmaref	91	64	24	1	81	10	74	14
Stebbins	62	47	5	5	54	5	40	19
St. Michael	60	50	6	1	49	10	42	18
Teller	57	27	23	1	41	9	39	13
Unalakleet	160	88	53	3	96	46	96	49
Wales	47	34	10	0	39	7	37	9
White Mountain	33	14	14	0	16	13	22	7
SUBTOTAL	2102	1257	611	31	1449	433	1323	573
Absentee	139	65	60	5	91	39	86	47
Questioned		90	42	2	103	30	100	34
DISTRICT 22 TOTALS	2241	1412	713	38	1643	502	1509	654

STATEWIDE

	Number Of Persons Voting	Governor-Lieutenant Governor			U. S. Senator		U. S. Representative	
		Egan-Boucher (D)	Hammond-Thomas (R)	Vogler-Peppler (AIP)	Gravel (D)	Lewis (R)	Hensley (D)	Young (R)
District 1	4612	2529	1856	173	2800	1634	1988	2545
District 2	2213	1278	828	61	1381	735	991	1140
District 3	2699	1410	1232	37	1752	802	1233	1392
District 4	8052	4569	3173	178	4650	2935	3693	4191
District 5	2875	1431	1240	135	1475	1239	1119	1680
District 6	3451	1327	1722	304	1463	1754	1169	2178
District 7	6351	3127	2738	283	3625	2377	3151	3001
District 8	6795	2932	3233	468	3422	2983	2858	3734
District 9	4126	1875	1778	209	2270	1671	1943	2099
District 10	7880	3228	4117	371	3449	4060	2802	4953
District 11	7886	3255	4022	500	3723	3827	3274	4499
District 12	7741	3039	3881	336	3240	4045	2706	4884
District 13	5066	1700	3007	254	2333	2487	2039	2939
District 14	1664	730	876	24	973	618	696	905
District 15	1115	691	351	47	878	210	580	511
District 16	1848	980	730	38	1379	371	1178	581
District 17	2309	1349	842	63	1895	347	1527	730
District 18	1736	854	727	63	1308	331	1037	602
District 19	2818	1265	1286	174	1719	926	1267	1437
District 20	13227	5183	6740	954	7496	4800	6061	6691
District 21	1852	1217	510	30	1487	260	1459	295
District 22	2241	1412	713	38	1643	502	1509	654
STATEWIDE TOTALS	98,557	*45,381	*45,602	*4,740	54,361	38,914	44,280	51,641

*Official Recount of the Governor's race reflects the following totals:

EGAN	HAMMOND	VOGLER
45,553	45,840	4,770

STATE SENATOR

Senate District A

Election District and Precinct	Number Of Persons Voting	Whittaker (I)	Ziegler (D)
District 1			
Cape Pole	43	11	30
Clover Pass	120	45	70
Coffman Cove	34	6	26
Craig	114	45	60
El Capitan	29	7	21
Hydaburg	94	55	36
Hyder (Absentee)			
Ketchikan #1	211	99	95
Ketchikan #2	288	91	176
Ketchikan #3	278	82	171
Ketchikan #4	205	66	134
Ketchikan #5	193	57	133
Ketchikan #6	300	84	207
Ketchikan #7	327	71	243
Ketchikan #8	357	93	246
Klawock	69	35	34
Metlakatla	309	158	139
Mountain Point	170	56	105
Mud Bay	236	82	144
Myers Chuck	25	12	11
Naukati	31	11	19
Pennock-Grevina	32	10	22
Point Baker	31	16	12
Saxman (Revilla)	223	83	136
Thorne Bay	110	37	67
Tuxekan	11	4	7
Twelve Mile Arm (Absentee)			
Wacker	111	40	63
Ward Cove	169	54	107
Whale Pass	29	11	17
SUBTOTAL	4149	1421	2531
Absentee	463	166	265
Questioned		34	54
DISTRICT 1 TOTALS	4612	1621	2850

Senate District C

District 4		Nelson (R)	Ray (D)
Auke Bay	569	127	417
Chilkat	66	8	56
Douglas #1	274	50	212
Douglas #2	266	42	213
Haines	216	40	157
Juneau #1	224	22	160
Juneau #2	295	43	239
Juneau #3	276	46	208
Juneau #4	299	48	226
Juneau #5	207	24	156
Juneau #6	285	32	240
Juneau #7	385	73	297
Juneau #9	331	53	266
Juneau Airport	432	63	340
Klukwan	67	7	55
Lemon Creek	630	106	496
Lower Mendenhall	500	86	376
Lynn Canal	227	58	157
North Douglas	257	38	207
Port Chilkoot	119	21	90
Salmon Creek	144	42	95
Sheep Creek	52	16	31
Skagway	267	43	221
Upper Mendenhall	676	112	542
SUBTOTAL	7064	1200	5477
Absentee	988	163	741
Questioned		32	138
DISTRICT 4 TOTALS	8052	1395	6356

STATE SENATOR

Senate District E

Election District and Precinct	Number Of Persons Voting	Chance (D)	Croft (D)	Harris (R)
District 7				
Anchorage #4	350	190	231	189
Anchorage #6	500	252	307	275
Anchorage #9	303	162	193	156
Anchorage #11	411	244	273	187
Anchorage #12	619	327	385	303
Anchorage #13	429	229	283	202
Anchorage #14	457	245	299	195
Anchorage #15	327	193	197	131
Anchorage #16	305	159	188	179
Anchorage #17	317	211	207	137
Anchorage #19	410	222	252	153
Anchorage #20	283	187	172	82
Anchorage #21	294	158	185	116
Anchorage #25	463	243	327	251
Anchorage #30	406	221	272	194
SUBTOTAL	5874	3243	3771	2750
Absentee and Questioned	477	312	354	274
DISTRICT 7 TOTALS	6351	3555	4125	3024

District 8		Atwater (D)	Bradley (R)	Martin (R)	Willis (D)
Anchorage #27	495	189	205	179	215
Anchorage #28	485	166	232	181	227
Anchorage #29	457	152	217	203	211
Anchorage #31	216	67	96	115	74
Anchorage #34	237	72	130	112	83
Gr Anch Boro #139	498	161	257	242	199
Gr Anch Boro #142	528	152	263	248	261
Gr Anch Boro #143	496	154	275	213	222
Gr Anch Boro #144	593	174	319	290	279
Gr Anch Boro #147	667	259	268	278	377
Gr Anch Boro #148	669	267	245	233	375
Gr Anch Boro #149	376	143	138	118	220
Gr Anch Boro #150	444	186	150	128	300
Gr Anch Boro #151	304	133	104	95	162
SUBTOTAL	6465	2273	2899	2643	3205
Absentee and Questioned	330	197	198	170	251
DISTRICT 8 TOTALS	6795	2470	3097	2813	3456

District 9		Roday (D)	Saylors (R)
Anchorage #3A	226	130	68
Gr Anch Boro #101	390	258	101
Gr Anch Boro #102	487	327	125
Gr Anch Boro #103	431	299	107
Gr Anch Boro #104	146	88	42
Gr Anch Boro #105	285	180	89
Gr Anch Boro #106	197	120	56
Gr Anch Boro #107	500	270	187
Gr Anch Boro #108	253	142	83
Gr Anch Boro #109	423	262	125
Gr Anch Boro #110	606	352	211
SUBTOTAL	3944	2428	1194
Absentee and Questioned	182	148	83
DISTRICT 9 TOTALS	4126	2576	1277

STATE SENATOR

Senate District H

Election District and Precinct	Number Of Persons Voting	Orsini (R)	Wright (D)
District 10			
Anchorage #12A	342	165	161
Anchorage #22	556	283	244
Anchorage #22A	762	488	247
Anchorage #23	485	217	239
Anchorage #24	545	250	260
Anchorage #32	881	514	330
Anchorage #33	728	397	291
Gr Anch Boro #135	456	246	178
Gr Anch Boro #137	291	136	137
Gr Anch Boro #138	636	347	251
Gr Anch Boro #139A	325	139	147
Gr Anch Boro #140	426	254	154
Gr Anch Boro #141	778	443	300
Gr Anch Boro #145	244	105	123
SUBTOTAL	7455	3984	3062
Absentee and Questioned	425	263	205
DISTRICT 10 TOTALS	7880	4247	3267

Senate District I

District 11		Colletta (R)	Ryan (D)
Gr Anch Boro #117	325	156	147
Gr Anch Boro #118	706	339	316
Gr Anch Boro #122	670	344	278
Gr Anch Boro #123	436	196	196
Gr Anch Boro #125	100	32	60
Gr Anch Boro #126	137	48	66
Gr Anch Boro #127	429	215	185
Gr Anch Boro #128	670	323	286
Gr Anch Boro #129	1025	511	451
Gr Anch Boro #130	408	194	185
Gr Anch Boro #131	646	312	306
Gr Anch Boro #132	623	252	305
Gr Anch Boro #134	762	374	343
Gr Anch Boro #136	548	239	273
SUBTOTAL	7493	3535	3397
Absentee and Questioned	393	283	267
DISTRICT 11 TOTALS	7886	3818	3664

Senate District J

District 12		McShea (R)	Rader (D)
Anchorage #1	590	222	346
Anchorage #2	550	224	295
Anchorage #3	404	188	194
Anchorage #5	762	299	420
Anchorage #7	295	78	180
Gr Anch Boro #111	508	254	256
Gr Anch Boro #113	679	259	370
Gr Anch Boro #114	384	130	224
Gr Anch Boro #116	669	216	405
Gr Anch Boro #119	969	364	554
Gr Anch Boro #120	420	154	234
Gr Anch Boro #121	1046	401	553
SUBTOTAL	7276	2789	4031
Absentee and Questioned	466	185	293
DISTRICT 12 TOTALS	7742	2974	4324

STATE SENATOR

Senate District L

Election District and Precinct	Number Of Persons Voting	Fisk (R)	Poland (D)
District 14			
Cape Chiniak	70	11	57
Coast Guard Base	93	11	77
Kodiak #1	293	25	249
Kodiak #2	300	31	252
Kodiak #3	322	45	252
Mission Road	374	38	308
Ouzinkie	60	5	54
SUBTOTAL	1512	166	1249
Absentee	152	24	113
Questioned		4	31
DISTRICT 14 TOTALS	1664	194	1393
District 15			
Adak	94	33	45
Akutan	35	7	28
Alitak	20	9	11
Atka	15	4	11
Belkofski (Absentee)			
Chignik	23	0	23
Chignik Lagoon (Absentee)			
Chignik Lake	35	6	26
Cold Bay	59	20	32
False Pass (Absentee)			
Ivanof Bay	10	1	7
Karluk	33	0	33
King Cove	66	13	50
Larsen Bay	34	5	27
Nelson Lagoon (Absentee)			
Nikolski	27	3	21
Old Harbor	61	10	49
Pauloff Harbor (Abondonend)			
Perryville	44	4	40
Port Lions	63	4	58
Sand Point	128	18	101
Squaw Harbor	18	2	13
St. George	47	11	36
St. Paul	122	18	97
Ugamik Bay (Unreported)			
Unalaska	86	14	63
SUBTOTAL	1020	182	771
Absentee	95	17	67
Questioned		5	9
DISTRICT 15 TOTALS	1115	204	847
SENATE DISTRICT L TOTALS	2779	398	2240

STATE SENATOR

Senate District O

Election District and Precinct	Number Of Persons Voting	Butrovich (R)	Carrol (R)	Hamme (D)	Huber (D)	Roberts (AI)
District 20						
Aurora	457	220	181	170	225	42
Badger Road #1	325	141	125	117	169	31
Badger Road #2	270	112	102	112	134	42
Big Bend	288	134	104	94	147	32
Central House (Absentee)						
Chatanika (Absentee)						
Chena	595	293	304	124	228	45
Elelson	158	80	66	37	88	14
Ester	183	90	78	46	96	13
Fairbanks #1	300	181	113	85	133	24
Fairbanks #2	239	120	94	73	120	20
Fairbanks #3	283	150	99	66	105	12
Fairbanks #4	238	125	81	87	117	21
Fairbanks #5	295	158	97	82	133	8
Fairbanks #6	347	91	169	108	165	19
Fairbanks #7	277	151	92	76	140	26
Fairbanks #8	252	126	109	88	111	16
Fairbanks #9	241	163	88	59	107	21
Fairbanks #10	304	139	110	103	141	15
Fairbanks #11	223	113	76	80	115	14
Fairbanks #12	354	178	137	106	197	19
Fairbanks #13	458	252	213	140	202	30
Fairbanks #14	374	242	161	95	147	18
Fairbanks #15	280	129	135	110	130	16
Fairbanks #16	333	202	142	77	145	22
Fairbanks Pioneers Home	34	21	4	11	16	8
Farmers Loop	339	179	155	83	150	24
Fort Greeley (Absentee)						
Fort Wainwright	95	42	40	24	36	7
Fox	128	56	45	24	59	23
Geist	481	257	212	132	218	40
Gracia Derby	192	77	62	54	85	9
International Airport #1	238	107	61	90	120	29
International Airport #2	217	108	72	71	100	24
Johnston-Westwood	159	80	63	47	76	21
Lemeta	260	120	89	99	137	24
North Lemeta	100	33	29	38	60	14
North Pole	553	221	190	207	288	73
Salcha	154	75	49	60	76	19
Shanley-Totem	344	183	137	93	163	37
Steese East	502	324	251	163	291	66
Steese West	457	241	198	139	214	47
Two Rivers	96	45	36	28	34	30
University Campus	777	345	3 4	133	281	35
SUBTOTAL	12300	6104	45 .3	3631	5699	1042
Absentee	927	434	369	265	357	83
Questioned		257	278	206	278	54
DISTRICT 20 TOTALS	13227	6795	5560	4102	6334	1179

STATE SENATOR

Senate District P

Election District and Precinct	Number Of Persons Voting	Ferguson (D)
District 21		
Ambler	49	45
Anaktuvuk Pass	46	40
Atkasook (Absentee)		
Barrow	338	287
Barter Island	41	36
Bornite-Kobuk	26	23
Browerville	88	59
Kiana	80	76
Kivalina	68	67
Kotzebue	509	449
Noatak	64	54
Noorvik	142	138
Nuiqsut	35	31
Point Hope	93	74
Point Lay	14	11
Shungnak	54	52
Wainwright	97	88
SUBTOTAL	1744	1530
Absentee	108	84
Questioned		59
DISTRICT 21 TOTALS	1852	1673
District 22		
Brevig Mission	22	18
Buckland	53	51
Candle (Absentee)		
Deering	34	23
Diomede Island	43	36
Elim	68	60
Gambell	115	97
Golovin	39	34
Kotlik	75	56
Koyuk	45	33
Nome #1	392	263
Nome #2	415	308
Northeast Cape (Absentee)		
Savoonga	132	121
Selawik	127	93
Shaktoolik	32	30
Shishmaref	91	86
Stebbins	62	51
St. Michael	60	56
Teller	57	50
Unalakleet	160	120
Wales	47	43
White Mountain	33	27
SUBTOTAL	2102	1656
Absentee	139	111
Questioned		107
DISTRICT 22 TOTALS	2241	1874
SENATE DISTRICT P TOTALS	4093	3547

STATE REPRESENTATIVE

Election District and Precinct	Number Of Persons Voting	Freeman (D)	Gardiner (D)	Zastrow (R)
District 1				
Cape Pole	43	34	18	17
Clover Pass	120	87	71	54
Coffman Cove	34	24	23	6
Craig	114	67	89	31
El Capitan	29	21	20	7
Hydaburg	94	75	80	12
Hyder (Absentee)				
Ketchikan #1	211	149	158	41
Ketchikan #2	288	198	195	90
Ketchikan #3	278	207	155	98
Ketchikan #4	205	153	114	102
Ketchikan #5	193	135	125	79
Ketchikan #6	300	207	180	142
Ketchikan #7	327	247	196	147
Ketchikan #8	357	261	232	134
Klawock	69	49	56	9
Metlakatla	309	195	253	64
Mountain Point	170	132	96	70
Mud Bay	236	171	165	87
Myers Chuck	25	19	13	7
Naukati	31	22	24	4
Pennock-Gravina	32	17	21	18
Point Baker	31	25	20	6
Saxman (Revilla)	223	177	143	75
Thorne Bay	110	78	74	18
Tuxekan	11	5	7	2
Twelve Mile Arm (Absentee)				
Wacker	111	78	73	36
Ward Cove	169	127	104	74
Whale Pass	29	19	17	14
SUBTOTAL	4149	2989	2722	1444
Absentee	463	312	301	149
Questioned		59	67	30
DISTRICT 1 TOTALS	4612	3360	3090	1623

District 2		Haugen (R)
Angoon	124	86
Funter Bay (Absentee)		
Gustavus	49	29
Hoonah	228	132
Kake	142	114
Petersburg #1	328	273
Petersburg #2	264	229
Rowan Bay	40	25
Scow Bay	106	82
Stikine	226	168
Tenakee Springs	45	25
Wrangell #1	180	139
Wrangell #2	227	175
Zarembo (Absentee)		
SUBTOTAL	1959	1477
Absentee	254	186
Questioned		24
DISTRICT 2 TOTALS	2213	1687

STATE REPRESENTATIVE

Election District and Precinct	Number Of Persons Voting	Eliason (R)	Flynn (D)
District 3			
Elfin Cove	22	9	7
Halibut Point	401	196	163
Jamestown Bay	255	149	78
Lisianski (Pelican)	70	54	16
Mt. Edgecumbe	240	134	90
Port Alexander	19	10	9
Rodman Bay	32	13	16
Sitka #1	204	91	94
Sitka #2	381	213	137
Sitka #3	379	186	158
Sitka #4	290	172	96
Yakutat	95	28	48
Yakutat Airport	53	27	23
SUBTOTAL	2441	1292	935
Absentee	258	155	80
Questioned		20	18
DISTRICT 3 TOTALS	2699	1467	1033

District 4		Banfield (R)	DeBoer (R)	Duncan (D)	Miller (D)
Auke Bay	569	322	163	257	319
Chilkat	66	24	13	31	41
Douglas #1	274	136	76	127	170
Douglas #2	266	119	54	147	178
Haines	216	112	51	90	125
Juneau #1	224	67	37	134	147
Juneau #2	295	118	57	165	210
Juneau #3	276	110	68	144	169
Juneau #4	299	119	44	171	180
Juneau #5	207	74	39	117	125
Juneau #6	285	143	84	123	170
Juneau #7	385	201	103	177	233
Juneau #9	331	135	73	187	226
Juneau Airport	432	204	102	236	254
Klukwan	67	16	14	46	47
Lemon Creek	630	245	177	364	389
Lower Mendenhall	500	224	157	233	282
Lynn Canal	227	115	51	108	146
North Douglas	257	127	83	121	148
Port Chilkoot	119	64	26	52	66
Salmon Creek	144	79	44	63	78
Sheep Creek	52	28	13	21	28
Skagway	267	159	64	120	169
Upper Mendenhall	676	327	211	322	422
SUBTOTAL	7064	3268	1804	3556	4312
Absentee	988	473	245	431	607
Questioned		61	51	96	113
DISTRICT 4 TOTALS	8052	3802	2102	4083	5032

STATE REPRESENTATIVE

Election District and Precinct	Number Of Persons Voting	Day (D)	Specking (R)
District 5			
Bear Creek	134	43	86
Cooper Landing	74	14	56
Copper Center	78	39	32
Cordova	503	154	329
Eyak	75	11	49
Glennallen	269	61	175
Hope	39	10	26
Kenny Lake	107	25	63
Moose Pass	77	11	65
Seward #1	216	63	139
Seward #2	296	64	216
Tatitlek	12	[illegible]	4
Valdez	616	367	128
Whittier	54	22	24
SUBTOTAL	2550	890	1392
Absentee	325	126	160
Questioned		23	22
DISTRICT 5 TOTALS	2875	1039	1574

District 6		Ose (D)	Vickaryous (R)
Big Lake	148	55	76
Butte	485	270	172
Eska Sutton	87	52	31
Houston	75	42	31
Matanuska	687	339	274
Palmer	498	339	136
Sheep Mountain	52	9	39
Susitna	114	30	72
Talkeetna	126	37	83
Wasilla	667	357	260
Willow	144	58	80
SUBTOTAL	3083	1588	1254
Absentee	368	166	158
Questioned		32	37
DISTRICT 6 TOTALS	3451	1786	1449

District 7		Avery (R)	Beirne (R)	Fink (R)	Gruening (D)	Milos (I)	Ostrom (D)	Parker (D)	Rosa (D)	Sumner (R)
Anchorage #4	350	68	129	181	199	135	135	139	98	125
Anchorage #6	500	125	195	248	267	182	216	194	109	145
Anchorage #9	303	71	126	143	169	97	131	132	67	75
Anchorage #11	411	88	145	193	236	144	195	180	100	124
Anchorage #12	619	93	207	251	355	222	282	274	185	170
Anchorage #13	429	96	138	159	244	127	211	207	147	107
Anchorage #14	457	75	127	165	280	149	214	235	154	98
Anchorage #15	327	57	100	110	187	87	152	168	112	72
Anchorage #16	305	56	114	149	187	121	124	139	97	87
Anchorage #17	317	58	115	127	200	105	176	147	101	88
Anchorage #19	410	49	103	108	222	92	202	196	173	109
Anchorage #20	283	23	52	70	178	64	160	164	137	46
Anchorage #21	294	38	84	97	174	80	132	144	84	71
Anchorage #25	463	101	164	206	262	177	219	205	134	176
Anchorage #30	406	66	131	131	239	168	175	206	114	122
SUBTOTAL	5874	1064	1930	2338	3399	1950	2724	2730	1812	1615
Absentee and Questioned	477	155	208	254	318	141	249	257	164	152
DISTRICT 7 TOTALS	6351	1219	2138	2592	3717	2091	2973	2987	1976	1767

STATE REPRESENTATIVE

Election District and Precinct	Number Of Persons Voting	Armstrong (R)	Bradley (D)	Cotten (D)	Kallenberg (R)	Kelley (D)	Kelly (R)	Phillips (R)	Sullivan (D)
District 8									
Anchorage #27	495	104	311	233	109	228	131	108	264
Anchorage #28	485	109	308	241	121	220	126	126	262
Anchorage #29	457	112	281	230	127	191	158	155	216
Anchorage #31	216	53	116	102	54	80	61	79	107
Anchorage #34	237	94	117	92	73	92	100	89	115
Gr Anch Boro #139	498	155	301	321	134	242	201	146	246
Gr Anch Boro #142	528	139	298	239	132	252	205	184	268
Gr Anch Boro #143	496	151	297	225	150	224	180	169	246
Gr Anch Boro #144	593	180	318	261	201	257	276	224	281
Gr Anch Boro #147	667	168	349	346	309	264	240	278	286
Gr Anch Boro #148	669	160	278	332	302	231	188	306	291
Gr Anch Boro #149	376	76	169	184	212	112	95	133	149
Gr Anch Boro #150	444	92	219	234	262	157	143	168	201
Gr Anch Boro #151	304	76	135	149	165	104	88	111	131
SUBTOTAL	6465	1669	3497	3195	2351	2654	2192	2276	3063
Absentee and Questioned	330	134	222	218	188	193	148	157	234
DISTRICT 8 TOTALS	6795	1803	3719	3413	2539	2847	2340	2433	3297

District 9		Buchholdt (D)	Garrett (R)	McKinnon (D)	Weiss (R)
Anchorage #3A	226	104	78	120	63
Gr Anch Boro #101	390	208	111	219	118
Gr Anch Boro #102	487	256	138	247	177
Gr Anch Boro #103	431	228	126	239	159
Gr Anch Boro #104	146	82	44	70	51
Gr Anch Boro #105	285	153	73	166	104
Gr Anch Boro #106	197	104	45	106	53
Gr Anch Boro #107	500	263	165	277	156
Gr Anch Boro #108	253	117	84	133	96
Gr Anch Boro #109	423	220	150	239	129
Gr Anch Boro #110	606	269	197	299	261
SUBTOTAL	3944	2004	1211	2115	1367
Absentee and Questioned	182	133	67	139	88
DISTRICT 9 TOTALS	4126	2137	1278	2254	1455

District 10		Call (R)	Smith (D)	Tomco (D)	Urion (R)
Anchorage #12A	342	124	179	144	165
Anchorage #22	556	225	292	232	234
Anchorage #22A	762	347	274	309	429
Anchorage #23	485	128	285	208	205
Anchorage #24	545	162	306	225	236
Anchorage #32	881	422	437	284	411
Anchorage #33	728	257	408	230	354
Gr Anch Boro #135	456	157	226	185	213
Gr Anch Boro #137	291	72	141	154	137
Gr Anch Boro #138	636	355	291	204	280
Gr Anch Boro #139A	325	84	176	139	124
Gr Anch Boro #140	426	183	206	163	210
Gr Anch Boro #141	778	382	337	287	354
Gr Anch Boro #145	244	57	140	103	120
SUBTOTAL	7455	2955	3698	2867	3472
Absentee and Questioned	425	194	204	196	246
DISTRICT 10 TOTALS	7880	3149	3902	3063	3718

STATE REPRESENTATIVE

Election District and Precinct	Number Of Persons Voting	Beirne (R)	Bowman (D)	Garrigues (D)	Schacle (R)
District 11					
Gr Anch Boro #117	325	148	174	107	129
Gr Anch Boro #118	706	281	363	255	322
Gr Anch Boro #122	670	327	356	193	281
Gr Anch Boro #123	436	182	233	136	179
Gr Anch Boro #125	100	37	74	44	15
Gr Anch Boro #126	137	61	66	37	28
Gr Anch Boro #127	429	213	240	109	198
Gr Anch Boro #128	678	297	357	213	289
Gr Anch Boro #129	1025	578	563	244	422
Gr Anch Boro #130	408	180	249	108	165
Gr Anch Boro #131	646	338	339	171	303
Gr Anch Boro #132	623	217	320	247	257
Gr Anch Boro #134	762	385	406	218	338
Gr Anch Boro #136	548	239	295	212	220
SUBTOTAL	7493	3483	4039	2294	3146
Absentee and Questioned	393	277	314	185	244
DISTRICT 11 TOTALS	7886	3760	4353	2479	3390
		Fischer (D)	Flint (R)	Hershberger (R)	Milne (D)
District 12					
Anchorage #1	590	305	331	285	143
Anchorage #2	550	269	311	290	118
Anchorage #3	404	248	196	192	78
Anchorage #5	762	387	352	391	185
Anchorage #7	295	140	103	123	96
Gr Anch Boro #111	508	289	219	307	128
Gr Anch Boro #113	679	381	265	365	159
Gr Anch Boro #114	384	213	134	202	119
Gr Anch Boro #116	669	418	224	265	241
Gr Anch Boro #119	969	547	401	482	255
Gr Anch Boro #120	420	241	152	201	141
Gr Anch Boro #121	1046	577	394	459	312
SUBTOTAL	7276	4015	3082	3562	1975
Absentee and Questioned	466	265	222	266	128
DISTRICT 12 TOTALS	7742	4280	3304	3828	2103
		Malone (D)	Schade (D)	Tillion (R)	Westphal (R)
District 13					
Anchor Point	201	91	41	129	84
Diamond Ridge	41	34	11	24	10
English Bay	42	28	23	7	6
Fritz Creek	199	103	79	116	43
Halibut Cove (Absentee)					
Homer	525	277	136	357	130
Kalifonsky	280	176	100	157	94
Kenai #1	433	310	138	231	107
Kenai #2	429	315	111	221	123
Kenai #3	199	148	76	93	42
Nikiski #1	221	161	57	116	58
Nikiski #2	424	314	158	187	101
Ninilchik	122	92	51	51	47
Port Graham	51	38	15	35	6
Ridgeway	317	202	100	169	101
Seldovia	120	72	41	69	32
Soldotna	446	270	167	246	136
Sterling	247	132	79	152	99
Tustumena	231	131	91	124	69
Tyonek	52	38	26	16	8
SUBTOTAL	4570	2934	1500	2500	1286
Absentee	496	293	131	300	152
Questioned		69	37	58	26
DISTRICT 13 TOTALS	5066	3296	1668	2858	1464

STATE REPRESENTATIVE

Election District and Precinct	Number Of Persons Voting	Craig (I)	Naughton (D)	Wood (R)
District 14				
Cape Chiniak	70	20	33	16
Coast Guard Base	93	46	29	11
Kodiak #1	293	97	142	40
Kodiak #2	300	85	141	53
Kodiak #3	322	100	156	43
Mission Road	374	105	181	60
Ouzinkie	60	8	36	15
SUBTOTAL	1512	461	718	238
Absentee	152	29	77	32
Questioned		10	18	7
DISTRICT 14 TOTALS	1664	500	813	277

Election District and Precinct	Number Of Persons Voting	Laktonen (R)	Osterback (D)
District 15			
Adak	94	40	40
Akutan	35	7	27
Alitak	20	7	13
Atka	15	1	14
Belkofski (Absentee)			
Chignik	23	3	19
Chignik Lagoon (Absentee)			
Chignik Lake	35	16	17
Cold Bay	59	22	32
False Pass (Absentee)			
Ivanof Bay	10	1	7
Karluk	33	16	17
King Cove	66	6	55
Larsen Bay	34	27	6
Nelson Lagoon (Absentee)			
Nikolski	27	2	24
Old Harbor	61	19	40
Pauloff Harbor (Abondonend)			
Perryville	44	14	25
Port Lions	63	30	32
Sand Point	128	25	92
Squaw Harbor	18	5	11
St. George	47	16	31
St. Paul	122	16	98
Uganik Bay (Unreported)			
Unalaska	86	27	49
SUBTOTAL	1020	300	649
Absentee	95	29	48
Questioned		7	4
DISTRICT 15 TOTALS	1115	336	701

STATE REPRESENTATIVE

Election District and Precinct	Number Of Persons Voting	Anderson (D)	McGill (Write-In)
District 16			
Aleknagik	46	18	21
Clark's Point	34	12	21
Dillingham	354	72	233
Egegik	37	29	3
Ekwok	40	21	18
Goodnews	35	14	21
Hiamna (New Halen)	63	36	11
Kakhonak Bay	43	35	4
King Salmon	97	48	27
Kipnuk	100	58	42
Koliganek	42	16	24
Kongiganak	68	63	4
Kwigillingok	42	7	35
Levelock	25	16	2
Manokotak	78	38	34
Naknek	116	69	44
New Stuyahok	82	48	25
Nondalton	60	32	8
Ohgsenakale	22	15	3
Pedro Bay	13	7	6
Pilot Point (Absentee)			
Platinum	19	14	3
Port Heiden	30	15	13
Quinhagak	120	38	70
South Naknek	41	26	13
Togiak	113	41	68
SUBTOTAL	1710	788	753
Absentee	138	73	42
Questioned		19	10
DISTRICT 16 TOTALS	1848	880	805

District 17		Guy (D)	Shavings (R)
Akiachak	98	77	15
Akiak	54	26	20
Aniak	74	42	17
Atmautluak	52	21	31
Bethel #1	381	214	72
Bethel #2	342	214	82
Chefornak	69	13	54
Eek	62	24	34
Kalskag	46	22	8
Kasigluk	97	75	18
Kwethluk	137	117	9
Lower Kalskag	46	43	3
Napakiak	83	56	12
Napaskiak	42	36	6
Newtok	45	7	34
Nightmute	38	9	29
Nunapitchuk	103	56	36
Nunivak Island	70	26	28
Oscarville	13	13	0
Tuntutuliak	94	19	70
Toksook Bay	86	23	60
Tulukvak	58	41	17
Tuntutuliak	60	30	29
SUBTOTAL	2150	1234	684
Absentee	159	99	38
Questioned		70	46
DISTRICT 17 TOTALS	2309	1403	768

STATE REPRESENTATIVE

Election District and Precinct	Number Of Persons Voting	Huntington (R)	Moore (D)
District 18			
Alakanuk	90	34	42
Anvik	30	16	3
Chevak	97	34	58
Chuathbaluk	34		
Crooked Creek	24		
Emmonak	112	10	84
Flat (Absentee)			
Fortuna Ledge	51	3	6
Galena	103	51	1
Grayling	47	38	2
Holy Cross	71	52	6
Hooper Bay	138	29	101
Hughes	24	17	0
Huslia	44	36	0
Kaltag	45	19	1
Koyukuk	24	1	0
McGrath	96	10	2
Mountain Village	101	31	51
Nikolai	30	15	0
Nulato	78	58	6
Pilot Station	49	3	28
Pitkas Point	16	4	7
Red Devil (Absentee)			
Ruby	45	32	0
Russian Mission	46	26	9
St. Mary's	100	12	26
Scammon Bay	48	0	29
Shageluk	28	9	0
Sheldon Point	18	0	13
Sleetmute	21	3	0
Stony River (Absentee)			
SUBTOTAL	1610	543	475
Absentee	126	24	14
Questioned		21	7
DISTRICT 18 TOTALS	1736	*588	*496

*An official recount of the ballots cast in District 18 House of Representatives race showed the following totals to be correct:

Huntington (R)	Moore (D)
594	500

STATE REPRESENTATIVE

Election District and Precinct	Number Of Persons Voting	Swanson (D)	Wilson (R)
District 19			
Alatna	53	8	8
Anderson	130	76	42
Arctic Village	39	19	10
Beaver	26	4	2
Bettles	29	7	13
Big Delta	390	204	161
Cantwell	56	30	11
Chalkyitsik	28	4	1
Chicken (Absentee)			
Chistochina	95	62	14
Circle	28	21	4
Clear	138	82	45
Dot Lake	26	12	7
Eagle	61	27	31
Fort Yukon	186	48	3
Gakona	79	52	20
Healy	103	30	17
Lake Minchumina (Absentee)			
Lakeview	18	5	11
Manley Hot Springs	36	14	18
McKinley Park	41	13	24
Minto	51	24	12
Nenana	210	1.7	40
Northway	55	22	29
Paxson	53	18	8
Rampart	18	7	4
Stevens Village	21	4	1
Suntrana	77	63	7
Tanacross	42	19	4
Tanana	124	57	34
Tetlin	59	42	10
Tok	214	57	132
Venetie	41	19	18
SUBTOTAL	2527	1217	741
Absentee	291	131	89
Questioned		46	26
DISTRICT 19 TOTALS	2818	1394	856

STATE REPRESENTATIVE

Election District and Precinct	Number Of Persons Voting	Barnes (R)	Bennett (R)	Bradner (D)	Brown (D)	Cowper (D)	Hackney (R)	Jensen (R)	Joiner (R)	Orbeck (D)
District 20										
Aurora	457	176	153	268	196	225	249	169	114	210
Badger Road #1	325	117	109	197	122	139	179	118	64	161
Badger Road #2	270	109	87	167	123	128	145	92	69	124
Big Bend	288	84	84	182	120	152	142	94	47	156
Central House (Absentee)										
Chatanika (Absentee)										
Chena	595	180	145	355	250	342	241	163	103	201
Eielson	158	59	44	108	65	80	76	59	43	73
Ester	183	56	42	117	82	106	85	50	39	69
Fairbanks #1	300	96	93	180	110	147	156	116	55	168
Fairbanks #2	239	60	66	140	108	115	112	75	42	133
Fairbanks #3	283	68	64	163	113	112	116	83	39	134
Fairbanks #4	238	90	71	151	104	132	125	96	47	117
Fairbanks #5	295	109	69	166	114	140	133	91	53	141
Fairbanks #6	247	78	58	216	156	174	141	85	43	169
Fairbanks #7	277	87	69	168	120	130	137	86	42	161
Fairbanks #8	252	103	62	156	108	123	122	76	59	109
Fairbanks #9	241	123	85	125	71	91	166	105	64	128
Fairbanks #10	304	98	80	172	139	134	143	107	53	127
Fairbanks #11	223	92	59	142	104	118	101	72	38	119
Fairbanks #12	354	132	108	218	139	162	195	125	74	180
Fairbanks #13	458	204	162	272	155	238	266	181	103	194
Fairbanks #14	374	159	120	196	130	166	226	123	74	226
Fairbanks #15	280	94	80	189	130	134	133	93	61	147
Fairbanks #16	333	127	101	174	115	146	196	122	73	158
Fairbanks Pioneers Home	34	9	5	15	11	8	11	16	5	18
Farmers Loop	339	95	82	247	158	191	160	90	57	129
Fort Greeley (Absentee)										
Fort Wainwright	95	38	28	45	28	44	45	35	30	28
Fox	128	44	57	65	53	54	68	35	20	42
Geist	481	191	148	292	183	243	270	171	104	184
Graehl-Derby	192	57	35	110	74	100	82	52	13	78
International Airport #1	238	72	71	131	95	111	99	88	40	114
International Airport #2	217	94	62	117	62	96	126	81	46	98
Johnston-Westwood	159	49	51	89	64	72	85	65	34	72
Lemeta	260	83	89	178	124	127	125	88	39	123
North Lemeta	100	38	18	73	44	47	50	31	20	47
North Pole	553	179	157	359	233	312	271	197	142	262
Salcha	154	59	45	85	64	71	78	70	39	73
Shanley Totem	344	120	104	206	155	180	178	109	88	125
Steese East	602	202	211	364	242	306	334	212	155	246
Steese West	457	178	162	281	173	243	276	165	103	206
Two Rivers	96	44	34	57	32	45	59	38	28	38
University Campus	777	213	158	437	278	401	244	188	114	208
SUBTOTAL	12300	4266	3528	7372	4947	6085	6146	4112	2476	5496
Absentee	927	293	250	520	293	390	413	325	166	429
Questioned		202	134	426	279	369	252	180	119	255
DISTRICT 20 TOTALS	13227	4761	3912	8320	5519	6844	6811	4617	2761	6180

STATE REPRESENTATIVE

Election District and Precinct	Number Of Persons Voting	Parr (D)	Voight (AI)	Wallis (D)	Wood (R)
District 20					
Aurora	457	204	93	175	161
Badger Road #1	325	155	78	127	106
Badger Road #2	270	133	78	94	76
Big Bend	288	132	71	112	89
Central House (Absentee)					
Chatanika (Absentee)					
Chena	595	319	86	211	152
Elelson	158	66	27	75	41
Ester	183	103	32	64	46
Fairbanks #1	300	135	76	132	76
Fairbanks #2	239	116	52	98	55
Fairbanks #3	283	106	48	112	66
Fairbanks #4	238	96	44	97	64
Fairbanks #5	295	129	39	98	69
Fairbanks #6	347	166	42	165	70
Fairbanks #7	277	129	47	116	88
Fairbanks #8	252	117	45	106	73
Fairbanks #9	241	72	39	65	100
Fairbanks #10	304	132	49	113	94
Fairbanks #11	223	122	42	83	62
Fairbanks #12	354	160	73	127	99
Fairbanks #13	458	198	74	180	145
Fairbanks #14	374	166	54	130	130
Fairbanks #15	280	151	56	120	85
Fairbanks #16	333	114	63	100	116
Fairbanks Pioneers Home	34	8	3	10	4
Farmers Loop	339	203	50	140	86
Fort Greeley (Absentee)					
Fort Wainwright	95	30	12	36	31
Fox	128	56	49	37	31
Geist	481	231	65	159	140
Graehl-Derby	192	91	36	66	37
International Airport #1	238	95	59	92	58
International Airport #2	217	92	49	70	73
Johnston-Westwood	159	70	38	73	48
Lemeta	260	119	56	110	74
North Lemeta	100	39	23	40	20
North Pole	553	283	118	232	142
Salcha	154	67	42	55	54
Shanley-Totem	344	179	63	131	99
Steese East	602	309	129	207	181
Steese West	457	233	85	160	151
Two Rivers	96	35	37	23	33
University Campus	777	364	81	235	176
SUBTOTAL	12300	5725	2303	4576	3501
Absentee	927	367	189	323	249
Questioned		310	92	281	147
DISTRICT 20 TOTALS	13227	6402	2584	5180	3897

STATE REPRESENTATIVE

Election District and Precinct	Number Of Persons Voting	Itta (D)
District 21		
Ambler	49	41
Anaktuvuk Pass	46	45
Atkasook (Absentee)		
Barrow	338	29-
Barter Island	41	38
Bornite-Kobuk	26	23
Browerville	88	56
Kiana	80	67
Kivalina	68	67
Kotzebue	509	369
Noatak	64	59
Noorvik	142	106
Nuiqsut	35	35
Point Hope	93	71
Point Lay	14	11
Shungnak	54	54
Wainwright	97	88
SUBTOTAL	1744	1423
Absentee	108	80
Questioned		54
DISTRICT 21 TOTALS	1852	1557

District 22		Davis (D)
Brevig Mission	22	11
Buckland	53	38
Candle (Absentee)		
Deering	34	19
Diomede Island	43	38
Elim	68	59
Gambell	115	94
Golovin	39	31
Kotlik	75	50
Koyuk	45	34
Nome #1	392	257
Nome #2	415	301
Northeast Cape (Absentee)		
Savoonga	132	116
Selawik	127	83
Shaktoolik	32	30
Shishmaref	91	77
Stebbins	62	49
St. Michael	60	50
Teller	57	43
Unalakleet	160	120
Wales	47	42
White Mountain	33	24
SUBTOTAL	2102	1568
Absentee	139	105
Questioned		102
DISTRICT 22 TOTALS	2241	1775

SUPREME COURT

Election Districts	Number Of Persons Voters	Erwin Yes	Erwin No
STATEWIDE			
District 1	4612	3059	919
District 2	2213	1343	549
District 3	2699	1608	706
District 4	8052	4485	2089
District 5	2875	1524	925
District 6	3451	1691	1140
District 7	6351	3460	1687
District 8	6795	3349	2119
District 9	4126	2217	1139
District 10	7880	4467	2117
District 11	7886	4190	2260
District 12	7741	4479	1879
District 13	5066	2411	1758
District 14	1664	1036	390
District 15	1115	719	311
District 16	1848	1080	557
District 17	2309	1553	567
District 18	1736	1125	431
District 19	2818	1416	954
District 20	13227	7105	2996
District 21	1852	1174	425
District 22	2731	1416	562
STATEWIDE TOTALS	98557	54907	26460

SUPERIOR COURT

Election Districts	Number Of Persons Voting	Carlson	
		Yes	No
District 1	4612	3140	847
District 2	2213	1424	476
District 3	2699	1890	558
District 4	8052	4923	1773
TOTAL JUDICIAL #1	17576	11377	3654

		Sanders	
		Yes	No
District 18	1736	686	167
District 21	1852	1426	251
District 22	2241	1748	320
TOTAL JUDICIAL #2	5829	3860	738

		Burke		Hanson		Singleton	
		Yes	No	Yes	No	Yes	No
District 5	2875	1492	839	1467	827	1394	843
District 6	3451	1776	1028	1745	953	1734	951
District 7	6351	3579	1554	3482	1431	3504	1435
District 8	6795	3499	2006	3612	1728	3611	1722
District 9	4126	2273	1089	2317	966	2343	923
District 10	7880	4509	2063	4587	1794	4702	1704
District 11	7886	4278	2176	4380	1899	4476	1861
District 12	7741	4499	1853	4511	1641	4637	1532
District 13	5066	2444	1633	2890	1556	2421	1530
District 14	1664	1201	275	1025	321	1014	324
District 15	1115	726	279	718	263	652	321
District 16	1848	803	381	759	411	712	435
District 19	2818	77	92	62	96	66	92
TOTAL JUDICIAL #3	59616	31156	15268	31555	13886	31266	13673

		Taylor		Vanlloomissen	
		Yes	No	Yes	No
District 16	1848	285	95	253	119
District 17	2309	1577	493	1315	670
District 18	1736	522	159	405	207
District 19	2818	1577	627	1323	709
District 20	13227	8408	2395	8421	2383
TOTAL JUDICIAL #4	21938	12369	3769	11717	4088

DISTRICT COURT

Election Districts	Number Of Persons Voting	Keene Yes	Keene No
District 1	4612	3341	1088
District 2	2213	1493	410
District 3	2699	1765	538
District 4	8052	4672	1779
TOTAL JUDICIAL #1	17576	11271	3815

		Windahl Yes	Windahl No
District 18	1736	672	175
District 21	1852	1293	286
District 22	2241	1699	296
TOTAL JUDICIAL #2	5829	3664	757

		Brewer		Tucker		Tyner		Vochoska	
		Yes	No	Yes	No	Yes	No	Yes	No
District 5	2875	1523	824	1457	736	1500	826	1433	814
District 6	3451	2026	865	1791	888	1728	1044	1705	971
District 7	6351	3502	1671	3435	1427	3537	1524	3353	1491
District 8	6795	3746	1796	3581	1685	3551	1863	3410	1853
District 9	4126	2383	997	2305	930	2278	1059	2205	1005
District 10	7980	4341	2258	4541	1775	4383	2113	4390	1911
District 11	7886	4319	2195	4375	1850	4305	2113	4269	1922
District 12	7741	4271	2093	4457	1577	4378	1874	4407	1652
District 13	5066	2546	1523	2512	1423	2522	1533	2415	1543
District 14	1664	1033	320	1033	293	1048	293	1002	455
District 15	1115	732	260	717	271	696	282	682	299
District 16	1648	813	366	752	403	780	383	711	440
District 19	2818	76	91	69	88	78	86	62	95
TOTAL JUDICIAL #3	59616	31311	15259	31025	13396	30784	14993	30044	14451

		Connelly		Guinn		Miller		Robson	
		Yes	No	Yes	No	Yes	No	Yes	No
District 16	1848	270	105	347	27	279	94	259	114
District 17	2309	1471	536	1799	351	1491	550	1363	666
District 18	1736	487	170	513	173	478	181	432	213
District 19	2818	1510	629	1389	660	1317	834	1338	777
District 20	13227	8562	2410	7469	2646	5831	5479	7596	3698
TOTAL JUDICIAL #4	21938	12300	3850	11517	3857	9396	7138	10988	5468

BONDS

Election District	Number Of Persons Voting	Bond #1 Yes	Bond #1 No	Bond #2 Yes	Bond #2 No	Bond #3 Yes	Bond #3 No	Bond #4 Yes	Bond #4 No	Bond #5 Yes	Bond #5 No
STATEWIDE											
District 1	4612	2538	1776	2310	1976	1797	2446	1630	2642	2771	1558
District 2	2213	1326	655	1303	703	1110	862	1117	866	1493	555
District 3	2699	1653	878	1483	1039	1235	1269	1473	1038	1866	688
District 4	8052	4518	3128	4554	3121	3427	4203	3590	4051	4692	2639
District 5	2875	1630	1018	1467	1165	1302	1316	1388	1225	1825	954
District 6	3451	1656	1572	1114	2019	1321	1878	1309	1872	1693	1537
District 7	6351	3625	2109	2936	2749	3084	2606	2914	2781	3405	2458
District 8	6795	3678	2571	2686	3535	3055	3173	2759	3443	3555	2816
District 9	4126	2322	1607	1764	2134	1844	2076	1870	2043	2175	1640
District 10	7880	4448	3117	3568	3957	3658	3893	3502	4008	4210	3170
District 11	7886	4320	3246	3244	4260	3493	4049	3363	4143	3944	3409
District 12	7741	4394	3011	3625	3764	3721	3671	3612	3764	3984	3188
District 13	5066	2371	2406	1997	2729	2097	2653	1850	2865	2267	2493
District 14	1664	1014	553	1090	470	855	700	1032	529	1101	477
District 15	1115	661	196	733	321	647	388	795	257	751	299
District 16	1848	1270	407	971	683	978	671	1317	307	1068	602
District 17	2309	1900	346	1559	660	1555	657	1909	321	1608	612
District 18	1736	1320	279	910	639	1033	498	1378	216	1048	512
District 19	2818	1724	858	1151	1371	1489	1035	1505	1044	1667	892
District 20	13227	8148	3944	5422	6456	8197	3970	6550	5410	7320	5006
District 21	1852	1451	225	1048	598	1116	515	1417	267	1144	518
District 22	2241	1755	328	1345	697	1311	711	1708	352	1548	522
STATEWIDE TOTALS	98557	57922	34230	46280	45046	48335	43240	47980	43511	55138	36545

Bond #1 - State General Obligation Fire Protection Facilities
Bond #2 - State General Obligation Port Facilities Development
Bond #3 - State General Obligation 1974 Library Construction
Bond #4 - State General Obligation Trunk and Secondary Airport Construction
Bond #5 - State General Obligation Highway, Ferry and Local Service Road and Trail Construction

		Bond #6 Yes	Bond #6 No	Bond #7 Yes	Bond #7 No	Bond #8 Yes	Bond #8 No	Bond #9 Yes	Bond #9 No	Bond #10 Yes	Bond #10 No
District 1	4612	2434	1880	2549	1790	2963	1422	2553	1782	1874	2440
District 2	2213	1348	642	1337	657	1440	553	1358	660	927	1037
District 3	2699	1595	929	1750	778	1742	789	1572	943	1303	1221
District 4	8052	4076	3220	4503	2802	4371	2950	4444	3278	4099	3687
District 5	2875	1657	995	1646	1013	1757	905	1833	836	1487	1192
District 6	3451	1639	1567	1538	1658	2213	1055	1820	1409	1559	1690
District 7	6351	3539	2375	3578	2294	3946	2038	3598	2213	3667	2205
District 8	6795	3408	2941	3638	2724	3739	2661	3873	2461	3784	2571
District 9	4126	2095	1699	2231	1564	2324	1505	2343	1614	2410	1583
District 10	7880	3856	3537	4212	3165	4065	3332	4238	3383	4775	2932
District 11	7886	3808	3541	4175	3102	4135	3242	4455	3194	4540	3147
District 12	7741	3822	3336	4132	3046	4335	2885	4256	3199	4522	2982
District 13	5066	2375	2386	2253	2501	2461	2302	2338	2404	2266	2517
District 14	1664	1099	467	1094	485	997	566	1070	494	933	645
District 15	1115	884	181	794	263	745	312	880	185	744	321
District 16	1848	1330	342	1059	621	1110	552	1416	281	1122	543
District 17	2309	1902	334	1462	765	1583	635	1983	255	1749	488
District 18	1736	1354	219	1116	456	1181	377	1424	171	1183	384
District 19	2818	1740	822	1480	1065	1810	752	2035	566	1394	1176
District 20	13227	7841	4530	6937	5309	8564	3888	8538	3794	7286	5136
District 21	1852	1460	195	1095	559	1312	355	1489	184	1296	382
District 22	2241	1778	289	1365	686	1514	536	1811	261	1525	541
STATEWIDE TOTALS	98557	55040	36427	53944	37383	58307	33612	59327	33567	54445	38820

Bond #6 - State General Obligation 1974 Health Care Facilities Capital Improvement
Bond #7 - State General Obligation Fish and Game Management, Development and Enforcement Facilities
Bond #8 - State General Obligation Pioneers' Homes
Bond #9 - State General Obligation Rural School Construction
Bond #10 - State General Obligation University of Alaska Construction


THE SEAL OF THE STATE
OF ALASKA

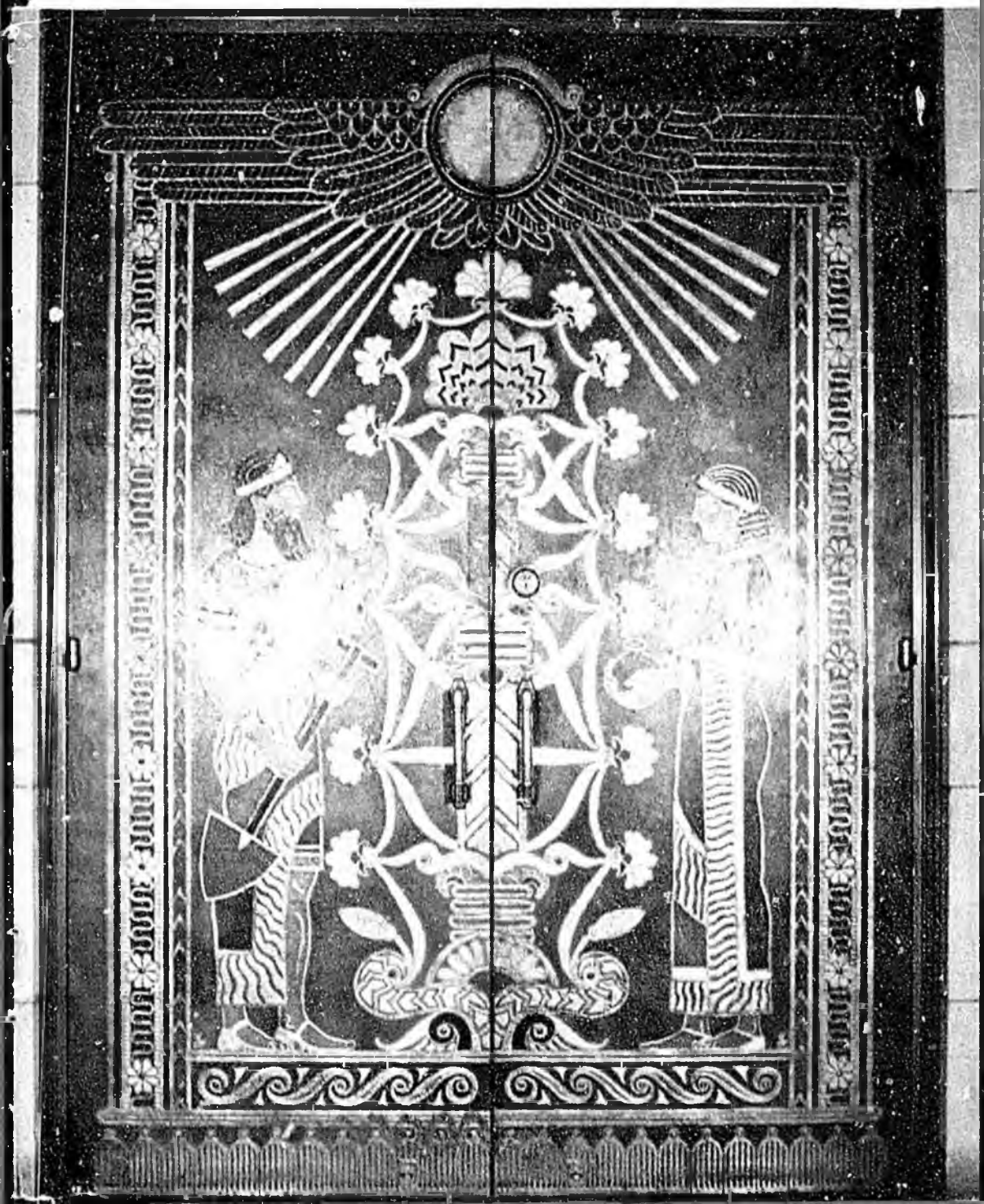
EMPLOYMENT SECURITY DIVISION
Alaska Department of Labor

ANNUAL MANPOWER PLANNING REPORT
POPULATION ESTIMATES
JULY 1, 1974

Census Divisions	MILITARY	CIVILIAN	TOTAL
Aleutian Islands	3,208	4,506	7714
Anchorage	13,533	139,579	153,112
Angoon	4	477	481
Barrow	126	3,105	3234
Bethel	112	8,384	8,496
Bristol Bay Borough	556	683	1,239
Bristol Bay	–	3,875	3,875
Cordova-McCarthy	65	1,895	1,960
Fairbanks	5,958	41,804	47,762
Haines	–	2,054	2,054
Juneau	219	16,976	17,195
Kenai-Cook Inlet	57	13,905	13,962
Ketchikan	199	11,323	11,522
Kobuk	109	7,698	7,807
Kodiak	733	8,499	9,232
Kuskokwim	322	2,355	2,677
Matanuska-Susitna	–	9,737	9,737
Nome	167	6,834	7,001
Outer Ketchikan	126	1,577	1,703
Prince of Wales	–	2,525	2,525
Seward	16	2,667	2,683
Sitka	57	6,371	6,428
Skagway-Yakutat	18	2,458	2,476
Southeast Fairbanks	741	3,763	4,504
Upper Yukon	135	2,507	2,642
Valdez-Chitina-Whittier	–	3,833	3,833
Wade Hampton	109	4,055	4,164
Wrangell-Petersburg	25	5,823	5,848
Yukon-Koyukuk	858	5,243	4,385
TOTAL	27,453	323,706	351,159

Behind these doors is the story of

Nebraska's Unicameral



Nebraska's Unicameral

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A Word About This Booklet

The material in this booklet was originally published by the University of Nebraska School of Journalism in 1961 as the result of a project undertaken by a class in depth reporting.

Most of the material is still timely. The historical matter can stand on its merits as history. Many of the mechanics—and the problems—of the Legislature are much the same today as they were in 1961. And in some instances the material gathered in 1961 is irreplaceable; many of the witnesses interviewed then—legislators, politicians, scholars, and widows and friends of the men who built the Unicameral Legislature—are now dead.

But in some instances details have changed since 1961. For instance, the number of legislators, then 43, is now 49. In some places, the editors of the 1970 booklet were able to insert the current number without extensive revision of the text or without confusing 1961 conditions with today's conditions. But in direct quotations and in places specifically describing conditions as they were in 1961, the number 43 has been left standing.

Some lists—the governors, lieutenant governors, speakers, special sessions, session costs—have been brought up to date although the articles they accompany have been left essentially as they were written in 1961.

The section on the survey of senators who had experience in both the bicameral and unicameral legislatures has been left unchanged, although some of the changes they advocated in 1961 have been made in the past decade, or conditions they spoke of have changed.

The article on apportionment has been left as it was written in 1961, although shifts in population, subsequent reapportionments, and numerous court decisions have vastly changed—and complicated—the apportionment problem. The map of legislative districts has been brought up to date, but the article remains as written in 1961.

Where the editors have felt it necessary to note changing circumstances or to remind the reader of the nine-year aging of information given, brief editor's notes have been inserted.

* * *

The editors of the 1961 depth report acknowledged the help of many persons and groups.

—The Newspaper Fund, Incorporated, of the Wall Street Journal, which gave financial support for the preparation and publication of the report.

—Dr. Adam C. Breckenridge, then dean of faculties and professor of political science at the University of Nebraska.

—Dr. William D. Aeschbacher, Dr. Donald F. Danker, Miss Myrtle Berry and other members of the staff of the Nebraska State Historical Society.

—Hugo F. Srb, then clerk of the Nebraska Unicameral Legislature.

—John C. Kissler, then manager of the Printing Division of the University of Nebraska.

—Edward J. Hirsch and other members of the staff of the Department of Public Relations of the University of Nebraska.

The editors of the revised edition of the

report also want to thank those who have helped in the publication of the 1970 edition:

—The Legislative Council of the Nebraska Legislature, which has financed this edition.

—Vincent Brown, clerk of the Nebraska Legislature.

—Harold Bathel, manager of the Printing and Duplicating Service of the University of Nebraska.

—The Nebraska State Historical Society and its staff.

—The photographs on pages 7, 10, 13, and 14 were provided by the Nebraska State Historical Society.

The bibliography of published sources for this publication includes (where necessary because of copyrights, permission has been obtained to quote sources in both the 1961 and 1970 editions):

Democracy's Norris by Alfred Lief. Copyright 1939, The Stackpole Co.

The Fighting Liberal by George W. Norris and James E. Lawrence. The Macmillan Co., 1945.

Integrity: The Life of George W. Norris by Richard L. Neuberger and Stephen B. Kahn. Copyright 1937, The Vanguard Press.

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The Albion News, Albion, Nebraska.

The Lincoln Journal, Lincoln, Nebraska.

The Lincoln Star, Lincoln, Nebraska.

The McCook Gazette, McCook, Nebraska.

The New York Times. Quotations from an article by George W. Norris in the issue of Jan. 28, 1923. Copyright 1923 by the New York Times. Reprinted by permission.

The Omaha World-Herald, Omaha, Nebraska.

Material was also used from two unpublished master's theses written by University of Nebraska graduate students:

"George Norris's Persuasion for the Unicameral Legislature" by Phillip Knox Tompkins, 1957.

"The Speaking of John N. Norton" by Robert William Kimball, 1959.

Part I:
The Men Who Built It

The First Champion:

The Gentleman from

By Judy Harrington

SPEAKER: "The chair recognizes the gentleman from Polk County."

Then arose a man with a mission, a conservative-looking dark-haired man in a blue suit, white shirt and black bow tie. He was of medium build, about 5' 11" tall, 170 pounds. His voice was clear and low and he used it with confidence as he addressed the Nebraska State Legislature.

"I know of no proposition that can be more properly submitted to the people of this state than the question of a one-house legislature," he said.

That was a Thursday afternoon in March 1920, and John N. Norton already had campaigned for a unicameral legislature in Nebraska for seven years.

It took another 14 years before voters approved the state's unique one-house law-making body that Norton had believed would save time, talk and money.

It took years, too, for Norton to get legislation enacted in the interest of agriculture, specifically an all-risk crop insurance program and an agency within the U.S. Department of Agriculture to administer that program.

To these ends — the unicameral legislature and farmers' benefits — Norton was dedicated.

When J. N., or Nate, as friends called him, was a small boy on the family homestead west of Stromsburg, two of his brothers and one sister died within a month from diphtheria. Those close to him believe the realization that he was saved from the dreaded disease made him intensely interested in making a contribution to society.

This apparent drive kept him active on the Nebraska political scene for some 19 years as an elective office-holder from 1908 to 1926 and again in 1937. On the national level he served two terms in the U.S. House of Representatives and 14 years in the Department of Agriculture.

Beyond Expectations

When young John was growing up, his parents did not think it necessary for him to continue his studies beyond the country school. But he prevailed upon his father to let him go to Bryant Normal in Stromsburg during the winter months and later, to the University of Nebraska, where he became interested in the beliefs of William Jennings Bryan.

"He decided against taking law," Mrs. Norton said "and that was the one thing he regretted more than anything else."

However, his son, his son-in-law and two grandsons are lawyers and his daughter had two years of law.

"My husband's primary interest in life was politics and good government," Norton's widow recalled.

Polk County



John N. Norton

"He was a voracious reader and recognized the farm problem long before it was even considered in the Congress. He worked hard in the farm organizations, spoke all over the United States and advocated solutions which have since been adopted.

"All this time he was interested in state government and he was determined to work day and night for the things in which he believed."

Entry into politics came as somewhat of a surprise to Norton when at the age of 28 he was elected Polk County clerk.

"At that time Nebraska had no provision for primary elections," he said, "and so I was nominated in a county convention at a time when I had no previous intention of becoming a candidate."

But in 1908 he served the town of Osceola as mayor and two years later he was nominated without opposition and elected to the Nebraska House of Representatives.

Voters sent him back to the 1912, 1914, and 1916 sessions. The Democratic party was in majority then and Norton served as majority leader and as speaker pro tem of the House.

It was in 1913, during his second term, that Norton proposed a constitutional amendment to provide for a one-house legislature. His resolution provided for a joint committee to study improved methods of legislation and to file a report with the governor not later than January 1, 1914. The material was assembled but no action was taken.

In 1922 Norton was a candidate for nomination for governor by both the Democratic and Progressive parties. He won the Progressive party's nomination but declined it and lost the Democratic nomination.

An Important Role

When he was not in office and much of the time when he was, Norton was filling speaking engagements. Public address played an important role throughout his life; as he said, every position he held or every activity he had been part of had required the delivery of some speeches.

His widow, Mrs. Selma Norton of Washington, D.C., said he was a fluent speaker and much in demand. "He wrote his own speeches, but never read from a

'I know of no proposition that can more properly be submitted to the people of this state...'

prepared text. He would memorize an outline of the thoughts he wished to express — and the outline would remain in the pocket of his coat. At first he would practice his speeches before a mirror in order to get the right effect, but as time went on he became too busy to follow this procedure."

By 1926 Norton again was politically active, this time being elected to the U.S. House of Representatives from Nebraska's normally Republican Fourth District.

But in 1933, when Nebraska's representatives were reduced from six to five, Norton was pessimistic about the chances to retain his seat, so he limited his campaign.

"Even though I lost that nomination," he said, "I did not do so by a margin of 8,000 votes as I had anticipated but only by 3,600 votes. And so ended my effort to seek further service in the Congress of the United States."

Return to Fight

In 1934 J. N. took a month's leave from work in the Agricultural Adjustment Administration to campaign in Nebraska once again for the cause he had so long advocated — the one-house legislature.

He was no longer working alone but with such men as U.S. Senator George Norris, former Nebraska Attorney General C.A. Sorenson, former Governor A.J. Weaver, Professor John P. Senning and William Ritchie.

What happened in 1934 to Nebraska's two houses was described in 1937 by John T. Flynn for The Commentator magazine.

"In the Big Wind that blew over the land and the prairies, that blew all the banks into the dust and all the dust into the Atlantic, one house of Nebraska's Legislature got blown out of the capitol building; and with it about ninety bucolic statesmen went with the wind to the great honor and glory of the Cornhusker State. They then committed their destinies to a single body. Unicameral, they call it.

"A member of this body, John Norton from Polk County, sits in the back row of the house, vigilantly watching his baby grow, taking little part in the controversies over policy, centering his attention upon the parliamentary measles and mumps and other infantile diseases to which this young Legislature may fall victim."

After heavy opposition, which included nearly 400 of the state's 440 newspapers, the amendment had passed. Only 73 of 229 precincts voted against it; only nine counties out of 93.

Nebraska had adopted the Union's only one-house legislature.

In 1938 after serving the first term in his Unicameral Legislature Norton returned to Washington and resumed his efforts on behalf of the American farmer. He held a

Department of Agriculture appointment until 10 years later.

He retired with his wife to their homey, second-floor apartment at 2615 16th St. N.W. in Washington, D.C. There, he read and kept up correspondence with the aid of his daughter, Mrs. Evelyn Lincoln, Senator John F. Kennedy's personal secretary.

In September 1960, Norton became ill. At first the illness did not appear serious, but his doctor advised him to go to the hospital where he could get better care than Mrs. Norton was able to give him at home. In the hospital, complications set in and Norton died October 5, 1960.

Back Home

He is buried in the pinebordered Swede Plain Cemetery, two miles from his Polk County home. The grave is only a few feet from his parents' graves and not far from those of his wife's relatives. A simple marker and four artificial lilies give no hint of the man's accomplishments.

From a hilltop nearby one can see a tower in Stromsburg to the east and the Polk grain elevator to the southwest.

The Rev. John Ekwall of Seward, a former pastor at the Swede Plain Church and an old friend of Norton's spoke at the funeral:

"When I was very young, I overheard a conversation of young people who had been at a camp meeting. I heard them tell about a remarkable young man who had such tremendous ability to speak fluently — his friendliness — and the girls mentioned his good looks. I was told that this man was Nate Norton from the Swede Plain Church.

"Years later I had entered the ministry and literally was dropped upon the Swede Plain Church. I assure you I was both amazed and scared to discover that this Nate Norton, this distingueshed American, was a member of my new congregation.

"Many times I visited the Nortons and through his kindness, tact, and great heart I received more spiritual guidance and understanding than I think I was able to give him.

"At one of my visits with him, he suggested that soon every farm in Nebraska could and would have electric lights and power. I am afraid I smiled and thought that this time Nate dreamed too much. How little I knew!"

How little many of his associates knew in the beginning, but John Nathaniel Norton came to be known as a champion of the initiative and referendum, direct primary, women's suffrage, and public ownership of water power and utilities.

And the gentleman from Polk County left Nebraska a special legacy — he was perhaps the first to dream of and then actively promote a system of legislature that he believed would "save time, talk, and money."



George W. Norris

Prestige on the Line:

The Lonely

By Carol Schliesser

"IF I OFFERED the Lord's Prayer as an amendment, they would fight it."

The speaker: George William Norris. The place: McCook, Nebraska, his home town. The time: November 5, 1934. The words represented a moment of discouragement in the life of a man for whom lonely political battles had been not the exception but the rule.

These weary words spoken in 1934 came at the end of another battle. They were spoken on election eve when Nebraskans were pondering the fate of the proposed unicameral legislature amendment. Norris's final plea was recorded by the McCook Gazette:

"In a voice shaking with emotion, Senator George William Norris told approximately a thousand southwestern Nebraska voters that he would rather death close his eyes before a check is made of today's ballots if the vote brings defeat to his proposal to install a Unicameral Legislature in Nebraska."

The next day the voters fulfilled a dream of George Norris. He had written the amendment advocating this type of state government and he had been a factor—perhaps the prime factor—in convincing the people that it would bring better government than the old bicameral system.

It is hard to pinpoint when Norris first became interested in a unicameral legislature. He rarely gave dates in his autobiography, Fighting Liberal, but said that he first became interested while living in Furnas County, which would put the date sometime between 1885 and 1900. He said, "I was anxious that the State of Nebraska abolish its illogical and clumsy two-house legislature and substitute the unicameral plan for it."

The earliest record of Norris's interest in a one-house legislature is an article he wrote for the New York Times, January 28, 1923, in which he likened state government to a business:

"The governor is the president of the corporation, the legislature is the board of directors, and the people are the stockholders. The stockholders have a right to know what their board of directors does and how it is done. The have a right to be able by the record of the votes, to know whether the members of the board of directors have properly represented the stockholders."

His article urged that the house be small and well paid, with few enough members to be carefully watched by the public. He did little else about the unicameral legislature until 1934.

Liberal from McCook

An Old Dream

The unicameral legislature was no sudden fantasy on his part. For years he had studied the idea of providing a unicameral legislature by amendment to the constitution. He had been asked to run for both the House and the Senate in the state legislature, he wrote in his autobiography, but could not afford to live on the low pay ($300 a term).

But, he did not invent the idea of a unicameral legislature. John Norton probably was Nebraska's first vigorous advocate. And much earlier other states—Pennsylvania, Vermont, and Georgia—had created one-house legislatures during the Revolution but, Georgia and Pennsylvania had abandoned the one-house system in 1789 and 1790. Vermont followed suit in 1836—a century before Nebraska embarked upon the "great experiment."

Norris traced the adoption of the bicameral assembly back to the early struggles between the English classes and hailed the ascendancy of the people's branch and the decline of the House of Lords in the English Parliament.

"Assuming two such classes exist and that their interests conflict," he said, "there is some reason for a two-house legislature, but in this country we have no such classes and the constitutions of our various states are built upon the idea that there is but one class. If this be true, there is no sense or reason in having the same thing done twice, especially if it is to be done by two bodies of men elected in the same way and having the same jurisdiction."

For years Norris had watched the machinations of the two-house system of legislation, both in the state and federal government. He learned from the inside the vast powers held by the conference committee — a group of three senators and three representatives who met in secret to decide the fate of bills already passed by both houses. He saw these conferees modify and even thwart legislation which had been approved by a majority of their colleagues.

In this system, lobbyists did not have to control both houses, Norris pointed out, but merely two members of the conference committee from either chamber.

It is not certain just what induced Norris to pick 1934 for the year to stump the state for the unicameral legislature, but he said that he had promised friends to help in the movement in 1934. In his biography of Norris, Alfred Lief wrote that the people urged Norris, "by mail and in person, to lead the way."

With Professor John P. Senning of the University of Nebraska, Norris worked out an amendment embodying his plan. It provided for a single legislature of from 30 to 50 members. To Norris the most cherished part of the amendment was the sentence that read:

"Each member shall be nominated and elected in a nonpartisan manner and without any indication on the ballot that he is affiliated with or endorsed by any political party or organization."

His proposal to eliminate partisanship in state government gained for this amendment the opposition of both Nebraska political parties.

John Senning wrote that Norris "felt the time was ripe to give the people an opportunity to free themselves of a bicameral legislature if they so desired."

'I have never made a more complete campaign...'

Senning gave credit to Norris not for his speaking, but for his leadership and for choosing "the strategic moment in which to present the question to the people."

On December 21, 1933, Senator Norris drafted the original amendment. After preliminary discussions, a public meeting was arranged for February 22, 1934, in the auditorium of the Cornhusker Hotel in Lincoln. Norris traveled from Washington to address the meeting, "at which, to my surprise, eight hundred men and women, from all parts of the state, were present," he said.

This was to be the beginning of a long and strenuous campaign by Senator Norris. "I never made a more complete campaign in Nebraska, or in any other political contest in which I became engaged. I traveled every section of the state, nearly wearing out my automobile," he said.

"The Senator and his son-in-law, John Robertson, started out in a car and wore out two sets of tires and two windshields, and hit every nook and cranny in Nebraska," Mrs. Norris, the Senator's widow, recalled at her McCook home in 1961.

Reaching the People

"At first he was discouraged," she continued, "but when he got out among the people, they were for it. The mail was preponderantly for it." Mrs. Norris told of the Senator's discouragement when the meetings for the unicameral legislature got almost no publicity because all the state papers, except the Hastings Daily Tribune and the Lincoln Star, were against it. If the publicity was good, many people came to hear the Senator speak, but if the publicity was poor, few turned out, his wife said. "When they put up handbills to announce the meetings, sometimes the opposition tore them down," she explained.

It is estimated that Norris delivered over 40 speeches between October 8 and November 5, 1934, in all parts of the state. He was heard in person by 20,000 to 30,000 persons. Many more thousands of persons heard the Senator over the radio. He spoke in all kinds of halls; to men, women, farmers and ranchers, businessmen and laborers. He spoke under the auspices of various farm organizations, women's clubs, commercial clubs, church groups, service clubs, and the Democratic party, although he was nominally a Republican. He had the support of labor, farm groups, and an organization including at least four ex-governors and other influential Nebraskans, wrote Phillip Knox Tompkins in his master's thesis on "George Norris's Persuasion for the Unicameral Legislature."

The Senator's speeches usually contained arguments dealing with the evils of a bicameral system and extolling the virtues of a unicameral system. These would be followed by his "last and best fight," a personal appeal directly to those who had supported him for 30 years, Tompkins said.

Norris often put humor into his speeches. The Falls City Journal reported: "Senator Norris was full of the pointed quips which have made him famous. 'Checks and balances,' he chortled. 'After the legislative session comes to an end and we balance the books, we generally find that the politicians get the checks and the special interests get the balance.' "

"During the campaign someone spread the rumor that the Negroes in Omaha would lose their representation if the unicameral legislature were approved," Mrs. Norris said. "He was slow to anger, but he was perfectly furious over that. He had to laugh when he saw how it turned out. The only Negro representative to the Unicameral Legislature was elected from that Omaha district."

Denying charges that he had ulterior motives in advocating a unicameral legislature, Norris told a large audience in



Congressman Norris in 1903

O'Neill, "I haven't many more years to live. Why should I deceive you now?"

The date of the first session of the Unicameral Legislature, January 3, 1937, was also the date for the opening at Washington of the first Congressional session under the new Lame Duck Amendment, which Senator Norris had helped to initiate. However, he chose to be present in Lincoln where he sat on the rostrum as guest of honor when the Unicameral Legislature opened. Another of his plans had become a reality. "I have always been called the worst demagogue who ever walked down the pike," he grinned, "until the things I wanted began to work."

As he walked into the chamber, a thunderous burst of applause greeted him.

"I congratulate you," he told the first session of Nebraska's Unicameral Legislature. "Every professional lobbyist, every professional politician, and every representative of greed and monopoly is hoping and praying that your work will be a failure."

After giving the Unicameral Legislature this send-off, he devoted all his time to work in Washington, leaving the Unicameral Legislature to work under the ideals he had set up for it.

Image of Norris

The Unicameral Legislature did more than fulfill one of George William Norris's dreams. With its nonpartisan provision, it was his whole way of life.

Yet, when he was elected to the U. S. House of Representatives in 1902, Mrs. Norris said, "there was never a more standpat Republican. Norris was born in poverty in Ohio July 11, 1861. He was first elected prosecuting attorney and later district judge in McCook, Nebraska. Before that he had taught school in the rough, unsettled Washington Territory.

In his youthful enthusiasm, the newly elected member of the 58th Congress "thought the Republican party was perfect," Norris wrote in **Fighting Liberal.** When he saw party members voting along party lines regardless of the issue involved, he wrote later, he was disappointed and began his life of nonpartisanship and liberalism. In explanation he said, "I cannot be anything but myself." Because of his liberalism, he was not held in favorable regard by some of his fellow Republicans.

"His eternally youthful vision, his courage and his honesty, gave strength and faith to millions of his countrymen," said James E. Lawrence, former editor of the Lincoln Star.

Norris's Congressional record, which covered 40 years in the House and Senate, is one of struggle for what he believed in. He was the author of and led the fight for

the 20th Amendment to the Federal Constitution. In 1910 he waged a historic fight to end the dictatorial authority of the speaker of the House over committee appointments. This battle with "Uncle Joe" Cannon required political courage and parliamentary ability of a high degree, said Richard Neuberger in his book about Norris, **Integrity: The Life of George W. Norris.** Under Norris's leadership the House passed progressive legislation after the change in power.

During four decades on Capitol Hill, George Norris knew many presidents. But a president he did not know—John F. Kennedy—later described the Nebraskan on the day in 1910 when he fired the opening shot in the battle with Joe Cannon. In his book **Profiles In Courage,** Kennedy envisioned Norris as "a somewhat shaggy looking Representative in a plain black suit and a little shoestring tie."

Norris's successes have been attributed by **Time** magazine to the fact that through the years, his cocked eyebrows never grew weary while he watchfully waited for an opportunity to come his way. In 1932 he won Congressional approval of the 20th Amendment. He then secured passage of the Norris-La Guardia Bill restricting the powers of courts to grant injunctions in labor cases and forbidding them to entertain suits based on labor contracts that forbid workers to join unions. This was followed by the Tennessee Valley Authority to ensure governmental operation of Muscle Shoals. "At this time many people said that Tennessee had three senators and that Nebraska had only one," said Alex Gochis, resident of McCook and friend of Norris.

Many people feel that his greatest achievement was the Rural Electrification Administration. "It was an electrical revolution," said Judge Victor Westermark of McCook.

Proudest of REA

Carl Marsh, McCook realtor and close friend of the Senator, once asked Norris what was the most important of his accomplishments. Norris replied that he wanted to be remembered for the REA because it relieved the farm woman of the slavery of farm work.

"If I were a citizen of Nebraska, regardless of what party I belonged to, I would not allow George Norris to retire

President Roosevelt listens to the senator he greatly admired.



No one doubts George Norris's 100 per cent integrity'

from the U.S. Senate," said Franklin D. Roosevelt. Norris was one of the few men in public life for whom F.D.R. had an almost reverential respect.

"No one doubts George Norris's 100 per cent integrity," said a Time magazine article on January 11, 1937. "Frankness is almost a fetish with him. His other engaging traits include a mild manner, great personal modesty, a disarming habit of coupling every declaration with the frank admission that 'maybe I am wrong,' or 'it seems to me,' and a 15-year-old spirit of disillusionment about the possibility of getting anything liberal done for the benefit of mankind. However, he tried to get the last word in every Senatorial debate and found it hard to believe that his opponents' motives were honest."

Rated Tops

In a 1939 poll of senators by Washington correspondents, Norris rated tops for integrity, intelligence, industry, and influence. The question visitors asked as they looked down upon the Senate floor was, "Which one is Norris?"

The mainspring of his career took the form of insurgency and liberalism, but it took other forms as well and at bottom it appeared to be an emotional objection to doing anything that was expected of him. He was one of six men who voted against the declaration of Wrold War I. "I feel we are committing a sin against humanity and against our countrymen. I wish we might delay our action until reason could again be enthroned in the minds of men. I feel we are about to put a dollar mark upon the American flag," he said.

His vote against entry into World War I was not his first unpopular stand in those troubled times before American soldiers were first sent out of the Western hemisphere. On March 2, 1917, he led a successful but unpopular filibuster that delayed passage of the Armed Ships Bill designed to arm our merchant ships against German submarine attack.

President Kennedy's book described Norris's return to Lincoln to face an audience after that widely denounced filibuster:

"Calm, but trembling, he walked out on the stage before them and stood for a moment without speaking. A solitary figure in a baggy black suit and a little shoestring tie. . . .

"In his homely, quiet, and yet intense manner, Senator Norris began with the simple phrase:

" 'I have come home to tell you the truth. . . .' "

However, in 1941 he voted for President Roosevelt's request to arm all American merchant ships because, he said, of the changing national scene and Hitler's determination to dominate the world.

In 1957 he was on a list being considered by a Senate committe that was selecting the five outstanding senators in history. But, he was not one of those chosen. "Like other prophets and dreamers, he is without honor among some of his own people," said Thomas L. Stokes, United Features Syndicate columnist.

Image Lives On

"George Norris ought to be among the five great senators," Stokes said. "But it really won't matter much if his picture doesn't hang in the Senate. It surely wouldn't matter to him. He was a simple and unaffected person to whom such things mattered so little. His image is in the minds and hearts of people all over the world."

An Omaha World-Herald editorial in 1941 said that possibly the real value of Norris had been largely in his independence and imagination and his capacity to follow through. After his death September 2, 1944, Time magazine said that his radicalism had consisted mainly of his persistent belief that the United States could somehow be made into a

better place for the plain man to live. Time also said it was his baggy old-fashioned suit, topped by a limp string of a bow tie, and his droopy eyelids under bushy brows that made him look perpetually tired.

And perhaps he was a little tired, for he sometimes worked 16 to 18 hours a day handling correspondence, reading, researching, and preparing for his legislative work. He would not discuss public issues on which he did not feel himself properly prepared.

"He was a studious senator," said his widow. "He always had a room of his own," she said. "The study belonged to Father. When he closed the door, no one went in, but when the door was open, the family enjoyed many pleasant times with him in that study."

"Their social life wasn't too much," said Miss Frances Egan of McCook, who served as Senator Norris's secretary in Washington for 10 years. "His diversion was his family," said Mrs. Norris, "and he was happier when he was home, and was devoted to his family."

Mrs. Norris said the Senator "gave his whole life to his work." He liked to row for enjoyment, but not to hunt. She recalled that as a young man he had been shot in the face while hunting and it was feared for a while that he might lose an eye. "George William knew who had shot him for he saw the man take aim, but the man himself did not know what he had done," she said. "George William never told who fired the shot. I asked and he said, 'I have never told.' I never asked again."

"I thought that was very noble of George," she added fondly, her dark eyes sparkling.

Scholarly Strategist:

The Practical Professor

By James Forrest

"I REMEMBER how on the election eve of 1934 I found Dr. Senning sitting quietly in his favorite chair by the radio," recalled Mrs. John P. Senning. "When I asked what he was doing, he gave a little puff on his pipe and said, 'I'm listening to the election returns in order to see if I still have a job at the University come morning.' "

When morning finally came, the Sennings gave a sigh of relief. The radio had just given the final returns—all but nine counties had voted to make Nebraska a unicameral state.

The victory on election day 1934 marked the closing of a relatively short but bitter campaign in Nebraska. To Dr. John P. Senning, it was an ending and a beginning. It was an end of nearly 20 years of constant study, investigation, promotion, and preaching. And it was the beginning of more than 20 years of hard work to set the Nebraska Unicameral machinery in motion and to chart its progress.

This German-born political scientist, whose work changed the political life of Nebraska, would have been difficult to pick out of a crowd. As one associate put it, he "almost destroyed his career in a battle to gain for the state and its people whom he dearly loved that which he knew was right."

His light-complexioned features, topped with full brown hair and set with piercing gray eyes, gave the medium-built Dr. Senning an appearance of determined casualness.

Orphaned as a child, Dr. Senning came to the United States at the age of nine and began to work his way through school by helping out on a farm near LeMars, Iowa.

"John was always striving to obtain the best education possible," said Mrs. Senning. "To him this always remained important. I think he was a student all of his life."

Proud Moment

When Senning entered Westmar College at LeMars he had nearly mastered the language and customs of his adopted country. However, according to an associate, Senning always felt that one of his greatest honors was his election as president and class orator of Westmar College's 1908 class. Soon afterward, Dr. Senning enrolled in the universities of Chicago and Yale.

After his marriage in 1913 to Elizabeth Anna Stone, he began his graduate studies again. While doing graduate work, he took various part-time instructorships, coming to the University of Nebraska in 1916. After teaching history for a year, Dr. Senning in 1917 joined the political science department, where he began his extracurricular study of legislative systems. He received his doctor's degree from the University of Illinois in 1924 and returned to Nebraska and the chairmanship of the political science department. He headed the department for 10 years.

"As a student or as a professor, Dr. Senning's favorite courses were on legislative systems," said Dr. Norman Hill, professor of political science at Nebraska. "All the time he was in school ...he collected books and writings and listened to other educators discuss legislation, particularly the one-house theory."

He prepared himself well for the battle

'...bicameral legislative systems have...become obsolete...hand-me-downs from the old English system.'

that was to take place in a few years. Starting with his freshman year at Westmar College, he began gathering data on legislative systems. There is now a wealth of material in his personal library on the second floor of his brick home at 2730 Manse, that testifies to the seriousness with which John Senning researched his favorite subject.

The scholar who puffed on his pipe beside the radio in 1934 loved to raise gladiolas and play golf (though he was, he admitted, just mediocre). He also took great joy in the company of any number of cats. He found time somehow to teach Sunday school every week at the First Plymouth Congregational Church and to serve on the Board of Education in Lincoln before and after his retirement in 1952.

Though this was the only public office he ever held, "Dr. Senning, I think, would have liked to become a member of the Legislature," his wife Elizabeth said, "but he could not bear to give up his position on the University's staff."

"The students liked Senning," Dr. Hill said. "He was a man who had learned in spite of a hard youth to love life and enjoy living. He had a good sense of humor and a winning personality that could keep the department meetings as well as the classroom in laughter. . . ."

As a careful student and teacher of law-making systems, Dr. Senning was known to his colleagues at the University and in the Legislature as a political scientist who preferred to study government as a working proposition rather than a theory.

Dabbled in Practical

"I remember how Dr. Senning was always dabbling with the practical," reminisced his wife.

Even after the Unicameral Legislature came into existence he traveled the nation and Canada collecting more material.

"He never liked to travel just for pleasure," Mrs. Senning said. "There always had to be a legislature to study or a group to listen to or talk to on his strong beliefs concerning legislatures and the Unicameral."

During one of his many debates during the vitriolic campaign of 1934, Dr. Senning said, "Since the inauguration of Jacksonian universal suffrage, bicameral legislative systems have actually become obsolete—carry-overs or hand-me-downs from the old English system." He considered the unicameral the logical, natural, next step in the evolution of American legislative machinery.

As his wife said, Dr. Senning began to "dabble" in 1919-1921, when he was a member of the survey committee for the constitutional drafting committee. In 1921 he served as chief assistant to Governor Samuel R. McKelvie in the reorganization of the state's administration.

But it was not until 1934 that Dr. Senning, prompted by the problems of the 1933 depression Legislature, became included in a major political battle. Along with U. S. Senator George Norris, he helped form a citizen's committee. The committee drafted a unicameral amendment for Nebraska's Constitution.

"The bicameral, partisan Legislature in 1933 was faced with the problems of the depression, with the majority of its members inexperienced," explained Mrs. Senning. "The people demanded action but there was nothing the Legislature could do. It fell flat."

And so began the first campaign to get the amendment on the 1934 ballot. Senator Norris keynoted the drive, saying, "Now is the time for change. . .the people are ready." The people may have been ready but the university professor and the U. S. senator had a battle on their hands. At the end of it, through the use of Nebraska's constitutional right to initiative, Dr. Senning's proposed amendment went on the 1934 ballot.

"I worried constantly about the firm



John P. Senning

position Dr. Senning took throughout the 1920s and into the 1930s in his proposing the controversial unicameral idea for the state," said Mrs. Senning. "But he had such a great deal of determination and zeal in his belief that Nebraska needed a unicameral that there was nothing I or anyone else could do to discourage him."

"Though the actual length of the campaign for the adoption of the amendment was short it was a great and bitter affair," Mrs. Senning continued.

Senning and Norris were assailed by powerful men, groups, and newspapers. Observers believe that the publicity, in general favorable for Norris's political career, nearly destroyed Dr. Senning. Some of the members of the University of Nebraska Board of Regents, the observers pointed out, became upset as the campaign grew fiercer. A member of the faculty—a department head at that—was in the middle of a controversial and national issue.

Career in Balance

And so it was that Dr. Senning, his hair now more gray than brown, sat beside his radio on the night of the election with possibly his career and all in which he believed hanging in the balance as the vote was counted.

The Nebraska Blue Book gives the most accurate summation:

". . .On November 6, 1934, the people of Nebraska adopted a constitutional amendment providing for a single house or unicameral legislature. This was an initiative amendment drafted by a committee of citizens. It was adopted by a vote of 286,086 for and 193,152 against. The amendment required the 1935 Legislature to apportion the state into 30-50 legislative districts."

The Sennings went to bed on the sunbright morning of November 7, 1934, only to awake to perhaps an even greater task.

The next day, Norris, on his way back to Washington, came by to see Dr. Senning. Together they agreed that there was still much work to be done to ensure the success of the unicameral legislature. The responsibility fell to the 51-year-old political scientist. He worked tirelessly and succeeded; as one writer has said: "... abandonment of the Unicameral has not become an issue in Nebraska."

Almost immediately Dr. Senning and his wife, who worked for 20 years in the Legislature's research department, began to assemble charts, statistics, and figures from their own library, from other legislative libraries and from some of the unicameral provinces of western Canada. All this preparation was for the following months when it came time to set up the one-house legislature and redistrict the state.

In 1935, the last year of a bicameral legislature, Dr. Senning was officially named consultant to the Legislature on the unicameral and assigned the task of dividing the state into 43 districts, the number decided upon by the 1935 Legislature.

"Dr. Senning spent the entire legislative session, when not in class (for he never forgot his duties at the University),

traveling to every county in the state. He listened to disputes. He re-educated the people to the unicameral idea. All the time he drew maps of proposed redistricting plans for the state, only to have them disputed by one county or senator or the other," said Mrs. Senning who was not only her husband's wife and companion but also a research assistant.

Finally Accepted

"Finally," she continued, "on the last night of the 1935 session, the Legislature accepted and passed the redistricting bill." The Sennings and their staff had compiled more than 30 different maps before everyone was satisfied.

Drawing upon the mass of information he had collected in his fight for the unicameral legislature, Dr. Senning wrote a book, **The One-House Legislature**, which was published in 1937. At the time of his death, he was working on a second book, "but it was never finished," said Mrs. Senning. "I still have all the material he collected."

Kept Working

Even with the Unicameral Legislature now organized and running well, Dr. Senning wasn't through. For the rest of his life, until a series of heart attacks caused his death in 1954 at the age of 71, be worked for and promoted the unicameral system in other states. As one associate put it: "He was first the student, then the promoter, then the builder and finally the defender of Nebraska's Unicameral Legislature."

The Converted Cornhusker

Pioneer, Pied Piper

By Judy Harrington

A PIONEER in some respects — a Pied Piper when it came to collecting friends — a professor and researcher by occupation.

This was Dr. Roger V. Shumate, first director of the Legislative Council, a research bureau engaged in the problems of state government.

As the first Nebraska director and one of three or four others in the country in 1937, Shumate was a pioneer in legislative research. In his 17 years at the Capitol, he compiled detailed studies on practically every phase of state government.

As a conversationalist he attracted many friends — anyone who could talk government or hunting and fishing.

"Since Roger died, I haven't felt much like hunting or fishing," said Boyd Carter, a former University of Nebraska professor and one of Shumate's many friends.

Dr. Adam Breckenridge, dean of faculties at the University of Nebraska, also indicated a lack of interest in hunting since Shumate's death.

As a professor he was exceptionally qualified and popular, ". . .popular in the sense that he had the students' respect and excited their academic interest," Breckenridge, Shumate's close friend and colleague, explained.

At the Statehouse, Shumate's Council job was to make impartial studies of any issue a legislative committee or individual senator would request.

The 43 senators and a research staff of five comprise the Council and informally work together between the biennial sessions. In this atmosphere the emphasis is on scientific approach of fact, statistics, and study rather than politics, pressures, and emotion.

"I don't make any recommendations," the director explained before his sudden death in 1954. "I just gather the facts and point out the alternatives."

In a 1945 report on educational problems in Nebraska, Shumate said: "This (study) is done for the information of members of the Legislature. The treatment of these proposals is not intended to argue for or against any one of them."

To endorse this necessary position of neutrality, both he and his wife registered as independent voters.

In his work he was brilliant, "a real scholar," friends have said. He was described as distinguished and soft-spoken, "Not looking at all like an ex-merchant marine."

Life at Sea

Schumate had enlisted in the Navy during World War I and then served in the merchant marine, where he rose to a quartermaster's rank. At one time he sailed on a banana boat from Alaska to the tropics.

Shumate was conscientious, always abiding by the rules.

"If a legislative report wasn't to be released until 11:58 a.m., it wouldn't go out a minute earlier," a former wire service reporter said. "Under all kinds of pressure, he stuck to the rules."

By 1950 he had completed 65 large research reports and 668 brief analyses. Shumate said of his own work that "the bill-drafting services and the state revisor of statutes say the more recent laws are better drafted and fit in better with the compiled statutes than before the Council was set up."

He worked full time at his legislative job in the summer, and the rest of the year, as he said, split his time "60-60." On Tuesdays, Thursdays, and Saturdays he

went to the Capitol as usual. Mondays, Wednesdays and Fridays, wearing a different hat, he was Dr. Shumate, University of Nebraska professor of political science.

Former students praised Shumate for his keen knowledge and pace-setting enthusiasm for his subject. One recalled that Shumate generally was quiet and all business, but had a sense of humor and liked telling stories, many about his seafaring days.

"One day a fellow had fallen asleep in class," a University graduate recalled. "Dr. Shumate took a piece of chalk from the blackboard tray and aimed for the kid's gaping mouth, in an attempt to wake him. He missed his target but the resulting class laughter woke up the student."

Shumate taught a popular course in political parties. In addition, there were classes in national and state government, public opinion and constitutional law.

He had come to Lincoln in 1937 as an associate professor after stints as an instructor at the University of Cincinnati, 1929-31; the University of Minnesota, 1931-33; and the University of Pittsburgh, 1933-37.

By the time he came to Nebraska, his blond hair had receded just a bit and he wore a thin mustache. He still was tall and broad-shouldered and possessor of a carefully enunciated pattern of speech.

In 1944, full professorship was granted the man who had only five years' formal education before reporting as a student to the University of California at Berkeley. In 1948-49 he was acting chairman of the political science department.

The Outdoorsman

During the years Shumate and Breckenridge were in the department, the two spent off-duty hours around the rivers and fields near Lincoln.

"On warm Saturday afternoons, we'd take his car or mine and look for a place to fish," Breckenridge recalled.

"Even if we didn't get much game, which was usually the case, we enjoyed each other's company. Surely, if Roger Shumate had any hobby beyond hunting and fishing, it was conversation."

Had he ever been made to choose between school and the Statehouse, however, it is likely that his loyalty would have leaned toward teaching.

"My husband always talked about giving up Council work," said Mrs. Shumate, who still lives in their brown-shingled home at 3050 Puritan Street in Lincoln. "I looked for him to quit. Although he liked all his work, his teaching probably came first."

He quit both jobs unexpectedly.

On a Friday afternoon, the kind of day that lured the professor-director out of his offices and to the outdoors, Shumate and Jack Rodgers, his friend, former student, and eventual successor to the Council job, had gone fishing near Roca.

"Jack came to the door about 5:30 and told me I should get ready to go to the

'I don't make any recommendations. I just gather the facts...'

hospital, that Roger was pretty sick," Mrs. Shumate began.

"I couldn't imagine its being anything serious; he'd always been in good health. But this time it was serious, a cerebral hemorrhage. They carried him into the hospital on a stretcher. I saw him then and it was the first time I realized how bad he was," she said. "He lived through the night and died late Saturday."

That was May 22, 1954, one day after his 54th birthday.

He left his wife and two daughters, Marilyn, now Mrs. Robert Ahlschwede, and Marcia, a University of Nebraska freshman in Fine Arts College.

His family remembers that he liked to talk — about all phases of government and about the outdoors.

He liked to read westerns, play bridge, go riding with his family, occasionally stopping to pick plums. "Usually we were looking for new places for Roger to hunt and fish," his widow said.

"He seemed to have a flair for writing," she said. "If it hadn't been for his workload, he probably would have written a book. He did write a chapter once, in a text called Introduction to Western Civilization. That was 15 or 20 years ago and I still receive small royalties from it, $5 or $6 a semester."

Shumate's boyhood was spent on a farm of "poor but respectable parents" in Mexia, Texas. Because of the lack of educational facilities and the demands of farm work, his mother taught him writing and simple arithmetic.

He entered the third grade but left school at age 13. Later he had said he became conscious of the lack of formal education. He quit the sea and took a newspaper job in Trinidad, Colorado.

Finally, he enrolled at the University of California at Berkeley, taking a matriculation examination and passing the equivalent of three years of high school.

The Dropout

He dropped out once and earned money at various jobs along the Mexican border.

Yet when he graduated in 1928, Shumate was awarded the high scholastic rating of Phi Beta Kappa. He went on to earn his master's degree in political science.

It soon became apparent to Shumate that "a doctor's degree is essential in the academic world." He got a halftime instructorship at the University of Minnesota and gained his doctorate there.

"I taught school in Minnesota then," Mrs. Shumate, now a doctor's receptionist, said. "We met there and were married soon after."

And who was the man she had married?

From the day he arrived in Nebraska, Shumate became a Cornhusker. Yes, he caught a lot of bullheads and turtles from the banks of Nebraska's creeks. And even more, he was a Nebraskan who led a life that attracted ardent friends and contributed tremendously to the development of the state's Legislature.

Three Decades as Clerk:

They Call Him 'Mr.

By Judy Waser

BE IT ENACTED by the people of the State of Nebraska, Section One ..."

As the mellow bass voice resounded through the legislative chamber, the tall figure from which it came leaned on the rostrum, placed his glasses on the bridge of his nose, picked up a yellow pencil, and, turning the pages of the book, continued reading.

His words, clearly and quickly spoken, reached the senators in a rhythm of low phrases and occasional emphasis.

It is appropriate that this man who once helped in the construction of the Capitol, once served in the Senate of the old bicameral Legislature, and who so ardently supports the Unicameral Legislature of Nebraska, should have served as the permanent clerk of that body since the day it became the only one-house legislature in the United States. He retired September 25, 1969, and was designated by the Unicameral clerk emeritus. He has been succeeded as clerk by Vincent D. Brown.

"Ask him about the Unicameral," said a wire service Statehouse reporter, "He thinks it's the greatest thing man ever devised."

Indeed he does, as anyone who knows him will readily point out. Srb is often called upon to give talks on the Unicameral Legislature. He willingly answers innumerable queries from all over the United States and a good deal of the rest of the world.

"Compare it with the old system or any two-house system in the country, the more favorable view you will get," challenges Srb, then concedes, "Nothing is ever perfect, but it is better than in other states."

He is always quick to point out the strength he sees in the nonpartisan aspect of the Unicameral Legislature. It eliminates many of the complicated procedures of the two-house systems and puts the principle above the party, Srb insists. The lawmakers, he says, have the benefit of a "now-we-are-facing-a-crisis, it's-time-to-put-aside-party-politics" attitude at all times.

As It Should Be

There is nothing partisan about highways, schools, or state expenditures, he adds, raising his graying eyebrows. "This is the way it should be. The Unicameral is a sample of what can be done when the senators approach their governmental problems from the standpoint of the people of the state to such a remarkable degree."

As clerk of the Legislature, Srb's main duties — on the face of it — are the preparation of the daily journal and the maintenance of staff and quarters for the Legislature. The work is divided into two phases — that done during the legislative sessions of about six months out of every two years, and the various duties connected with compiling the journal and laws during the interim. Actually the office has become the glue that holds the whole unicameral process togther.

Srb first became aware of the need for a permanent clerk when he was serving as a senator under the two-house system. He realized the necessity of having someone who should know the procedural steps and

Unicameral'



Hugo Srb surveys his Legislature.

keep things going between sessions. The office of clerk was made permanent on June 1, 1937, at the close of the first session of the Unicameral Legislature.

Many senators consider Srb the ultimate source for any information concerning the Nebraska Legislature or the unicameral system.

As one senator put it, "When he retires, they'll never be able to have a clerk as great as he is; he's so kindly to all the senators and helps them in many ways — always without a frown. . . He graciously explains mixups to the senators during the daily sessions, straightens out complicated parliamentary problems, and generally keeps things going. All the senators have a lot of love and respect for him."

Srb has been credited with maintaining the continuity between sessions of the Legislature, His many years of experience, coupled with his devotion to the Unicameral Legislature and his job, have provided him with vast amounts of information which he willingly contributes.

A graduate of the University of Nebraska Law College, Srb's legal training and 14 years of practice have enabled him to interpret the laws, their relationship, and their impact in many difficult situations.

According to Frank Marsh, Nebraska secretary of state and a Republican, Srb "is in a pretty touchy position. He is an avowed Democrat," Marsh explained,"yet has always been very fair, and has tried to represent both sides of the question in legislative matters. He cements the people of both parties together."

Srb, a man with clear-cut political philosophies, believes the "ultimate purpose of government is to be fair."

"He does an outstanding job of not mixing politics with his legislative duties and services, one state offcial said.

Democrats and Republicans add their nonpartisan praise.

Governor Frank B. Morrison, a Democrat who has known Srb personally for many years, observed, "He is one of the most efficient, conscientious, and able fellows in the field that I know of. He is highly respected by people in this field that I know of. He is highly respected by people in this field all over the United States."

"Former legislators always greet him with unusual friendliness," a Lincoln senator noted.

Other senators attach such adjectives to him as "efficient, loyal, respected, conservative, willing and able."

"He knows all the angles of state government," added Lieutenant Governor Dwight Burney, a Republican.

Another long-time Republican friend, George L. Santo, who has served as

sergeant-at-arms since the first Unicameral Legislature, said, "He is one of the finest fellows I know, always looking out for the public interst. He is a gentleman all the way through."

Loves Jokes

This man of tact is also a man of humor. He loves to tell jokes, but often keeps his listeners in suspense by playing down or deliberately forgetting the punch line. One of his most frequent listeners, a member of his permanent staff, quipped, "Watching his expressions in telling them is often funnier than the joke itself."

His secretary, Mrs. Sherill Neibuhr, noted that he "brightens up the place." He always has a welcome smile for everyone he sees, added the journal clerk, Theba Lubken. "There's never a day that's dull when he's around."

He loves to sing. "Just get him near a piano — or even if there isn't one handy just get him to singing — and you can't stop him," his wife said.

Agreeing, Frank Marsh recalled many times when he and Srb have traveled on bus trips together, singing all the way. "We also sing with the men's club at Christmas time in the halls of the Statehouse," Marsh added.

Mrs. Srb, a member of the staff of the University of Nebraska Extension Division, pointed out his immense enjoyment of people. "He likes to know what is going on, and he likes to know the people who are doing it."

He particularly likes young people and enjoys working with them and answering their questions. He works with the members of Boys State and Girls State each summer. As treasurer of Boys State and adviser and instructor for both groups, Srb directs their mock legislative sessions, contributing all of his knowledge of legislative procedures to the young people of Nebraska.

Mrs. Srb, born Frances Grace Davey, is a native of Lancaster County. She met her husband, who is from Dodge, Nebraska, when he was teaching for a year between the time he graduated from Wayne Normal School and the time he entered law college.



Srb's successor, Vincent Brown

'Ask him about the Unicameral. He thinks it's the greatest thing man ever devised.'

Four of the Srbs' five children are gone from home now. The fifth, Sara, attends Mearle Beattie school. The oldest son, Richard, is studying for his Ph.D. at the University of Munich.

'Do More'

"Always do a little more than you're expected to do," Srb advised his son, Arthur, at one time, and Art has never forgotten it. He is now working for the Associated Press in Springfield, Illinois, and like his father, has a great love for the Legislature.

A daughter, Lois, is now Mrs. Charles E. Miller of Pasadena, California. The Srbs' other son, Charles, is working for the State Highway Department in Lincoln.

According to Mrs. Srb, the only activity the family has ever done regularly is to go to church. The Srbs are members of Tabernacle Christian Church in Lincoln, which he serves as a trustee.

Srb has found little time to take his allotted two weeks vacation in his busy job. When he does, Mrs. Srb adds, he uses the time to attend the National Legislative Service Conference where he is highly regarded by those in similar positions in other states. And at these meetings, as always, he continues his personal campaign for the unicameral system of legislature.

While his work is his pleasure and his first devotion, he loves an occasional joke. As clerk, Srb is in charge of hiring all employees concerned with the Legislature. A girl applying for a job once came shyly into the outer office and asked for the clerk's office. Srb told her that the clerk was in the next office down the hall. Then he quickly sprinted into his office to greet her.

There are many who have a special name for the grinning man who greeted the startled would-be job holder. They call him "Mr. Unicameral."

The First Session:

The Nation Watched

By Don Ferguson

"THERE WILL never be a legislature equal to the first Unicameral."

That was Lester L. Dunn speaking. The former senator, who served in both the first unicameral session and the last bicameral session, was commenting on the caliber of work done as Nebraska made legislative history in 1937.

During that first one-house session the legislative eyes of the nation were trained upon "Nebraska's laboratory in better lawmaking."

Observers, some cynical and some hopefully optimistic, were watching to see what problems would arise and what would happen to them. Indeed, that first session did have its problems but most of the men who served look back upon it as a success. In fact, many of them describe how they believe the legislators rose above party and personal consideration to make the unicameral system work. True, they may have argued over everything from nonpartisanship to proper seating procedure. In fact, one of the initial problems arose over seating arrangements. How were they to seat 43 senators in a house equipped to seat 100? Some thought every other desk should be used. Finally, it was decided to use the first 43 seats and assign each member an extra seat in the rear of the chamber.

Perhaps more serious was the painful changeover from partisanship to nonpartisanship. E. M. Neubauer of Orleans described some of the behind-the-scenes maneuvering before the session opened. Neubauer, who served in nine sessions of Nebraska's Legislature, told of a meeting just before the first Unicameral Legislature went into official session:

"The leader of the Democrat party called all the members of the Democrat party of the Legislature to meet in a room at the hotel the night before the session opened. We were all there. Here is one of the things he said:

"'If the Republicans introduce any legislation that might give them any prestige or credit, try to amend it so it is no good, or kill the bill.'

"I (Neubauer) think the Republicans used that same attitude quite a bit toward the Democrats.

"That might be all right for party politics, but it was against my principles. It made me an independent voter all through my legislative work.

"That is one reason that I favor the unicameral system."

Members of that first session, looking back on it almost 25 years later, apparently felt that many senators took Neubauer's attitude toward nonpartisanship. Senator Dunn described the majority's reactions this way:

"The men who sat on the unicameral committee in the two-house system were men of integrity, and everyone who sat on that committee, irrespective of party, was desirous of making the new system work, and carry out the will of the people.

"And I also was a member of the first Unicameral Legislature....The members of the new Unicameral, every one of them, were desirous of making the new system work.

"They showed this by electing as a speaker the oldest member with

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"Unaccustomed as I Am——!"

Legislature Awaits Gong

May Slash Committee List to About 14

(By a World-Herald Staff Writer.)

Lincoln, Neb., Jan. 4.—Nebraska's laboratory in better law making will be formally opened and

Electric Firm Sued for New False Teeth After Light Failure

Newark, N. J., Jan. 4 (AP).—There was a smile today for the Public Service Electric and Gas company in a lawsuit resulting from the five and one-half hour night power failure last Monday.

A local man sued the company for a new set of false teeth. He was cleaning his uppers that night, he claimed, and dropped them when the lights went out.

Staff Seeks Gesman Scalp

Employes of Hospital Threaten to Quit

BY WILLIAM H. GRAHAM.

Ouster of George D. Gesman, superintendent of the Douglas

Cartoon in Omaha World-Herald shows how Nebraskans felt in limelight.

'Everybody wanted to make it work.'

legislative experience. He was a Republican. And the next important office was the chairman of the Committee on Committees. He was selected because he was the next oldest member in legislative experience. And he was a Democrat. Both of these men were of high caliber, sincere of purpose, and men of great integrity. And both of them had the respect and confidence of every member of the new system and the respect of the people of the state."

That first session did not run entirely without bumps. There were problems to be ironed out. This was indicated by several changes made in the rules of procedure on the last day of the session. Primary among the changes was the abolition of the committee of the whole. This issue, according to the **Omaha World-Herald**, was the cause of the first serious dispute of the session.

Abolition of the committee was felt necessary to cut red tape, the newspaper reported. The senators had agreed to abolish the committee to speed the budget through the chamber.

The Senate also faced a salary snag in the opening weeks of the session. The unicameral amendment had set up the total salary budget at $75,000 per biennium "payable in such a manner and such a time as shall be provided by law." This meant that senators had to go through the complete process of passing a law to provide payment of their own salaries.

"Time-saving" was one of the adjectives used frequently during the campaign for the unicameral legislature. Indications that speed was possible under the new system were evidenced in several ways during the first session. At the outset, organization of the session took only two weeks, a process that hitherto had taken three weeks.

The handling of the budget bill produced another example of speed. Anxious to conclude their work at the end of the session, the senators pushed the budget bill through the chamber in five hours and 40 minutes. In the previous bicameral session, it had taken nearly five days to clear the bill through the committee of the whole and advance it.

The first Unicameral Legislature passed 226 bills in 98 days, compared with 192 passed in 110 days by the last bicameral session. Total cost of the first unicameral session was $140,000 compared with $203,000 spent by the 1935 session.

Veteran legislator and former speaker Charles F. Tvrdik summed up that first session this way:

"To begin with, they were very tight indeed as I remember them—nothing, no nothing, made the state senators budge one bit aside. Everybody felt that the eyes of the world were upon Nebraska and the new system, and everybody wanted to make it work.

"And we worked and worked—night and day—for everyone felt that the least little bit of hesitation would draw the strings of dissatisfaction around all of our necks. So we worked and worked.

"What job we did, of course, is for history to tell. I, personally, feel that we did a good job."

Part II:

The Survey Of the Senators

Participating Senators

John Adams, Sr., Omaha
Elvin Adamson, Cody
James H. Anderson, Omaha
Robert Armstrong, Lincoln
LeRoy Bahensky, St. Paul
John E. Beaver, Columbus
Frank J. Brady, Atkinson
Henry F. Brandt, Sr., Lincoln
William B. Brandt, Unadilla
W. C. Bullard, Denver, Colo.
Dwight W. Burney, Hartington
Roy B. Carlburg, Pender
Arthur Carmody, Trenton
Earl W. Carpenter, Red Cloud
Hugh Carson, Newport Beach, Cal.
John Comstock, Lincoln
Cecil Craft, North Platte
Glenn Cramer, Albion
Robert B. Crosby, Lincoln
Sidney J. Cullingham, Omaha
John G. Donner, Elgin
Lester L. Dunn, Lincoln
Dale Erlewine, Grant
A. A. Fenske, Sunol
M. M. Forrester, Anselmo
Dr. Harry A. Foster, Omaha
George C. Gerdes, Alliance
H. L. Gerhart, Newman Grove
Edward Gillette, Arlington, Va.
George Hoffmeister, Imperial
Carl P. Jeffords, Seneca
J. Hans O. Jensen, Aurora
Lloyd Kain, Lexington
Albert A. Kjar, Lexington
Sam Klaver, Omaha
Otto Kotouc, Sr., Humboldt
Marvin Lautenschlager, Grand Island
John J. Larkin, Omaha
C. C. Lillibridge, Crete
Theodore McCosh, Gering
John P. McKnight, Auburn
Robert D. McNutt, Lincoln
Stanley A. Matzke, Hastings
John E. Mekota, Crete
William A. Metzger, Louisville
William S. Moulton, Omaha
Frank Nelson, O'Neill
E. M. Neubauer, Orleans
Cliff N. Odgen, Jr., Omaha
Fern Hubbard Orme, Lincoln
John O. Peck, Columbus
Dr. O. H. Person, Wahoo
C. Petrus Peterson, Lincoln
Harry V. Pizer, North Platte
Stanley L. Portsche, Lincoln
Otto J. Prohs, Gering
Ross H. Rasmussen, Hooper
Michael P. Russillo, Omaha
Edwin T. Schultz, Lincoln
Frank Sorrell, Syracuse
Ernest H. Staubitz, Kearney
Marvin E. Stromer, Lincoln
George T. Sullivan, Omaha
George Syas, Omaha
Donald L. Thompson, McCook
Charles F. Tvrdik, Omaha
Willard H. Waldo, DeWitt
Charles Wilson, Norfolk

Does Nonpartisanship Work?

What Happens When

"NONPARTISANSHIP is probably the strongest advantage of the Unicameral."

"Nonpartisanship is a joke."

These two statements made by senators with long experience in Nebraska's Legislature represent the extremes in viewpoints about nonpartisanship. That word — nonpartisanship — has been wed to the Unicameral Legislature since the campaign in 1934.

Those who favor it and those who oppose it both with equal vigor admit that there is nothing peculiar about nonpartisanship that makes it a necessary part of a one-house legislature. It could be they point out a part of a two-house system a part of a city council, or a part of any lawmaking body.

But in Nebraska, nonpartisanship was firmly attached to the Unicameral Legislature by the men who fought for its approval in 1934. With George Norris as the leading spokesman for this aspect of Nebraska's new legislature, the proponents made nonpartisanship a major provision in the plan to give the state a one-house system.

Their arguments and those opposing them have echoed throughout Nebraska during the nearly quarter-century the state has had its unique system of legislation.

But the senators who have made laws within the system generally seem to have found a preference for nonpartisanship. Of the 68 senators participating in this survey, a large majority of them said nonpartisanship was a strength rather than a weakness in the system. Their views varied from absolute backing, to lukewarm approval, to absolute opposition. Even so, the large majority of them had their answers to the critics of the system.

What are the criticisms? What are the answers?

Pro and Con

Here from the survey of Nebraska senators, are the criticisms and the answers:

1. Nonpartisanship leads to buckpassing.

(There is just as much buck-passing between the two houses of a bicameral system.)

2. Nonpartisanship weakens the two-party system, which is a part of American political life.

(While nonpartisanship does not strengthen the party system, the advantages gained in independent legislation outweigh this objection.)

3. Nonpartisanship cannot separate an office-holder from his politics.

(There have been few instances in the history of the Unicameral Legislature where partisanship was obvious.)

4. Nonpartisanship eliminates the normal development of leadership.

(The lack of party control allows leadership to develop on its own merit.)

5. Nonpartisanship makes it difficult for a governor elected on a partisan basis to coordinate his program with the Legislature.

(A large majority of the senators participating in the survey felt that this liaison was not a problem. However, Nebraska governors, who also were interviewed, felt

There Are No Parties?

that problems of liaison had arisen during their administrations.)

6. Nonpartisanship leads to a lack of responsibility and subsequently a lack of legislative action.

(The Unicameral Legislature has produced enough legislation to govern Nebraska, and, in some instances, more good legislation than bicameral, partisan legislatures in other states.)

These, as the senators saw it, were the criticisms and the answers. While the majority of those taking part in the survey backed nonpartisanship, in several instances men strongly in favor of the unicameral system departed from their support to criticize this aspect of Nebraska's Legislature. The history of the Unicameral Legislature and the replies to the survey by the senators bore out the notion that partisanship versus nonpartisanship has long been a lively subject in Nebraska's political circles.

No Label

The theory of nonpartisanship differs from partisanship in one major respect: In a nonpartisan situation, a candidate is elected on his own personal integrity and convictions without a party label. In a partisan system, however a candidate accepts the party stand and is backed by his party before, during, and after his campaign and election.

There is a "naturalness" in the two-party system, according to two University of Nebraska political science professors. There are always at least two sides to every issue. The clash of opinions and competition between the two parties results in better decisions, they say.

Yet, as indicated by the operation of the Unicameral Legislature, there may be more than two sides. Instead of a two-sided disagreement, there is sometimes a 43-sided argument that in most cases is resolved into one legislative bill.

R. D. Slean Jr., assistant professor of political science at the University, explains that when an issue comes before the public in a two-party situation, the parties assume responsibility by making certain promises. Responsibility can thus be pinpointed and much buck-passing is eliminated.

The two-party system began with the disagreement between Alexander Hamilton and Thomas Jefferson on the question of a centralized government or a confederation of sovereign states, according to Dr. J. B. Shannon, chairman of the political science department. The Civil War widened the split, resulting in the majority of the northern states joining the Republican party while the South became staunchly Democratic.

"When there are two parties, there is constant criticism to keep people on their toes," Dr. Shannon added.

Laymen, political scientists, and other states view Nebraska quite critically because it is the only state employing both a one-house legislature and the nonpartisan system. One answer for which they are all searching is: Has nonpartisanship worked in this state?

Adam C. Breckenridge, dean of faculties at the University of Nebraska, contends that the nonpartisan system does fulfill the need for obtaining good legislators and good legislation. In his book, **One House for Two**, he said the absence of party politics

Pro: it allows each senator to be a representative of all the people.

in the Unicameral Legislature has not caused a lack of responsibility, lack of leadership, or lack of liaison between the governor and the legislators. Nor has nonpartisanship caused much buck-passing.

"One reason for this may be that for the majority of people of the state, and the majority of legislators past and present, the differences between Democrats and Republicans on most state questions are difficult to ascertain. Indeed, the basis for party distinctions may be difficult for most of them much of the time."

The personal abilities of members determine the kind of leadership and this leadership may change from session to session on separate questions, Breckenridge continued. Instead of being bound to one certain party the legislators are shaped by seniority, geographical distribution, and positions on various committees.

Breckenridge also contends that many Democrats have been elected from areas that would have denied them that privilege had the party label been attached.

A majority of the senators surveyed agreed with Dr. Breckenridge on the apparent success of nonpartisanship. But several who observed the earliest days of Nebraska's one-house legislature pointed out that nonpartisanship did not become a legislative fact of life overnight.

"In the beginning," one senator wrote, "the nonpartisanship feature was a weakness. There was no responsibility of any member of the Legislature except to his own voters in his district. However, the commonly accepted system of responsibility and leadership has been developed. As a result, party lines have no effect on legislation and the governor is able to work in cooperation with the Legislature."

Independence

Many of the senators praised the independence given them under the nonpartisanship system. One of them commented:

"I think this is part of the one house. It allows each senator to be just what the people have elected him to be: a representative of all the people regardless of party. This gives the senator more incentive since it eliminates going to the party bosses with anything that he thinks will be good for all the people and told to lay off if it may make a few votes for the other party."

Some evidence of partisanship was found by another, but he added from the senators' viewpoint:

"I personally like the feeling of direct responsibility to the people."

Experience in Washington, D. C., was cited by a senator who said:

"After considerable experience in Washington, D. C., and the resulting political pressures, better legislation is enacted by the unicameral system with each senator allowed to use his own good judgment."

While this was the majority view, an outspoken minority did not view the workings of nonpartisanship with so much optimism.

"The nonpartisanship is a joke," said one. "Every senator is either a Democrat or a Republican before he is elected to the nonpartisan Legislature, and he remains the same after he is elected."

"Nonpartisanship did not eliminate

Con: there is a 'naturalness' in the two-party system.

anything," a senator said. "Check the record for the past 30 years, and you will discover that the Republicans always voted as a body, and also the Democrats."

Several of the senators cited two examples over the past few years in which they felt partisanship had played a part in legislative dealings. One pointed out several times was the period during the recount after the election of Governor Ralph G. Brooks in 1958. The second incident cited involved the appearance of Governor Frank Morrison in 1961 before the Legislature to complain that partisanship may have helped to kill a bill on Nebraska Hall of Fame nominations.

Interestingly, several of the legislators who felt that nonpartisanship had not worked in the unicameral system did not feel that the system had lead to buck-passing.

This charge of buck-passing has been heard periodically since 1937. These critics said that the lack of party responsibility has made it possible for Nebraska legislators to ignore vital legislation. The survey, however, indicated that most of the senators themselves felt this charge was not borne out by the facts.

One senator said, "You can't keep partisanship out of a government man. I say the unicameral boys still follow their politics."

But this same senator added, "There's nothing to the buck-passing idea."

Another senator who said he was "personally opposed to the nonpartisan feature of the Legislature," added, "I do not believe, however, that nonpartisanship has led to buck-passing."

Conversely, another senator who praised almost every aspect of the unicameral system found nonpartisanship to be the great weakness in the system and said that buck-passing is a favorite sport in the Unicameral Legislature.

In reply to the buck-passing charge, one senator pointed out that he found it "hard to pass the buck with bills having a public hearing."

Another senator attacked the two-house system on the very same charge. He said:

"A student of legislative history knows that the bicameral system enables buck-passing between the two houses. One passes a bill; the other kills it; and vice versa — without mentioning what a conference committee can do, and does very often."

Party Control

This same senator complained about efforts of the political parties to control the Legislature. He said:

"Many who are eligible to vote do not vote, as sad commentary upon our citizens; only a few citizens actually participate in politics. And only a handful control a party, and it is only the handful who control the party who also want to control the Legislature. The citizenry is not anxious to control the Legislature or to have anyone else control it except their elected representatives."

The major political parties have voiced criticisms of the nonpartisan system. During the 1960 state conventions, Democratic and Republican parties both spoke out against nonpartisanship and urged a return to party politics in state government.

Charles Hein, executive state secretary of the Democratic party, concurred,

saying that he feels that although people are not apathetic toward state government as a whole, party effectiveness is destroyed by the nonpartisan system. So the passage or defeat of certain bills is often inconvenient or impossible, Hein said.

'Aimless Group'

Speaking from a personal standpoint and not for the Democratic party, Hein continued, "It is impossible to pinpoint responsibility on any group. The Legislature is an aimless group without any leaders."

Charles Thone, state chairman of the Republican party, said the same thing in different words when he described the nonpartisan Legislature as "43 leaders going in different directions."

He said that senators can also escape responsibility more easily in a nonpartisan system. Instead of taking a definite stand for or against an issue, Thone added, the legislator often passes the buck to the next man. No one is willing to take full responsibility, Thone contended.

He said that members of the Legislature are not willing to return to a partisan system because they can escape much responsibility. "A guy with a full house," Thone said, "doesn't ask for a new deal."

Thone also was concerned over what he considers an apathetic attitude toward political parties in any phase. He blamed part of this apathy on the lack of party politics in state government.

While a majority of the senators surveyed favored nonpartisanship, a number of them agreed in part with the stand taken by the state political parties. One senator who had served under both systems said he preferred partisanship. He added:

"In other words, candidates for an office on a platform would have the backing of their party. At present, you represent no party. On matters on legislation in regard to parties, no one outside the Legislature may talk authoritatively for a party, and our country is run on the party system."

A need for two parties was cited by several senators.

"There ought to be an area of opposition to all legislation," one said. "I believe there ought to be a place to put responsibility. Call 'em Federals and Whigs, there should be some way to divide the responsibility. Of course it should be partisan."

"More responsibility toward vital issues would develop under partisan election of members," another senator said. "Political parties would then be able to work for programs of benefit to the state in matters pertaining to taxes, education, roads, resource development, etc. . ."

But another veteran senator was dubious of the influence of party platforms. "The political parties refuse to be specific on a platform," he said. "The political parties' promises are vague, but (make) promises to all groups.

"For example, they are for good schools, for labor, for fair taxes, for business, etc., but they don't nail their opinions . . . to a specific program."

Not for All States

And another senator did not feel that nonpartisanship would necessarily work well in all states. He wrote:

"The Unicameral would not work in a state where political bossism or strong political machines were in control. It is obvious that the whole thing would be greased all the way down the hall to the governor's office. There would not be enough of a check if the machine had the Unicameral and the governor."

Concern was expressed by several senators about what they felt was the weakness of the two-party system in Nebraska. "It is doubtful," one said, "if the two parties have fared as well on the state level. The big problem of Nebraska is an outmoded tax structure. Both political

parties seem to shy away from it, and leave it to the nonpolitical Legislature, which is unable to cope with it. A one-house legislature, elected on a partisan basis, might be able to get something done."

Two points closely allied to nonpartisanship brought a flood of comments from the senators cooperating in the survey. These two points — leadership and liaison with the governor.

One senator, who backed almost every other aspect of the unicameral system, voiced the complaint about leadership:

"In this one respect I agree with opponents of the system. In my opinion, this has resulted in a loss of leadership that the partisan feature would probably provide. Effective leadership has not, in fact, developed in the Unicameral. It is not only difficult but in my opinion, impossible to have effective liaison between a partisan governor and a nonpartisan Legislature. It is my experience that a nonpartisan Legislature makes it a particular point not to be led by a partisan governor."

Another senator emphasized the leadership point, although he called nonpartisanship "the strongest advantage of the Unicameral." He made the leadership point when he added, "A senator acts as he personally sees the problems without answering to the party leader. This makes it a little difficult for some members to go further in political life (U.S. Senator, or Representative, or governor)."

In Nebraska's Legislature the aisle isn't a battle line between the parties.



Senators Split:

Do Leaders Develop

THERE IS a shopworn phrase of the space age that involves the punch line of many jokes: "Take me to your leader."

Questions not unlike this statement are frequently asked by visitors to Nebraska's Unicameral Legislature. The observer, looking down from the galleries may ask:

"Who is the majority leader?"

"Who is the minority leader?"

"Where are the party whips?"

The reply to all of these questions is the same — "There are none."

When questions about leadership were put to the 68 senators who participated in this survey, their answers were considerably more complete and in many instances considerably more controversial.

The nonpartisan unicameral system develops better leaders than any other system, many said.

There are 43 leaders, or maybe no leaders at all, said those who disagreed — often vehemently.

The question of leadership and its development in the one-house nonpartisan system brought the widest variety of opinions of any of the issues discussed by the senators, except nonpartisanship, itself, which was closely attached to the leadership problem by practically every cooperating senator. They could not agree on what kind of leadership should be developed, and although many generally favored almost every aspect of Nebraska's Unicameral Legislature, they indicated reservations about leadership.

The statistics of their replies give an incomplete picture, but they provide a starting point.

Of the 59 senators who commented specifically on leadership, 37 felt it had developed as well or better under nonpartisanship.

Some Dissent

Seventeen said the nonpartisan Unicameral Legislature had definitely not developed leadership as well as the bicameral system. Five felt the type of system made no difference.

But a closer examination of the 37 who seemed to favor the nonpartisan development showed that their backing was not as strong as the statistics indicated. Ten of the 37 believed that leadership developed only as well as — but not better than — under partisanship. This left 27, a minority of the total responding, who considered nonpartisanship the most fertile ground for the nurture of leadership.

As the opinions of these veteran legislators were examined, it became obvious they were talking about several kinds of leadership. To some, the development of leadership in a legislative body meant the growth of individuals to serve as party leaders or as elected officeholders. This kind of leadership, they pointed out, involves the combined use of the two-party system and public office as stepping stones to political prominence.

A large number of the senators were talking about another kind of leadership.

Under Nonpartisanship?

They discussed the actual legislative leadership that puts programs and laws and appropriations through a legislature. They admitted that under the partisan system this kind of leadership sometimes means the establishment of responsibility through a party legislative program. They cited, for example, the idea that certain issues such as taxation, education, roads, and recreation could be part of a party platform upon which partisan members were elected to a partisan legislature. In such a case, these senators explained, the party members in the legislature would be responsible for pushing through the party platform. The leaders basically responsible for rallying party votes would be party-picked leaders.

Another Type

But many of Nebraska's senators felt that the nonpartisan one-house system had developed another type of leadership. Time after time, senators referred to a "better kind of leadership." They explained that they meant a kind of leadership that developed on the "experience, integrity, and natural leadership qualities" of an individual rather than the choice of what may be called "party bosses." By "better" leadership these senators seemed to mean a kind of independent leadership that is better for legislation in Nebraska. From their viewpoint it had little to do with the development of leaders to hold higher office.

In fact, a number of them pointed out that, while they favored this kind of leadership, they believed the system did not develop leaders in the other sense of the word.

One summarized the view of those talking about "better" leadership when he said, "Leaders in the Nebraska Legislature are usually men of experience in the Legislature with the knowledge and broadmindedness to think fairly on all issues. There is seldom a case of following a political leader for whatever advantages this may warrant."

Another felt that leadership thrives without party pressure. He explained, "There is not as much pressure put on individuals by party leaders. Look for examples of pressure in the national legislature."

Several senators emphasized similar beliefs. "Under partisanship," one said, "leadership was generally placed in partisan leaders who were the mouthpieces of their respective parties. The party in power claimed, in effect, a mandate from the electorate to pass legislation favorable to the party's position. Independent leadership is sometimes highly desirable."

"In my opnion," one senator commented, "leadership develops to a greater extent in the one-house system in that in the two-house system there exists a majority leader and a minority leader of each party. This makes it more difficult for individuals to develop leadership because of the tendency of the party caucus system to follow the leadership of the majority or minority leader."

Another senator made this point even more pointedly when he said, "The men with ability become the leaders of the unicameral body without party interference and without political bickering and interference."

A minority of 17 senators took a directly opposite view. Typical of their comments was that of one who said, "There has been no development of leadership since the two-house system went out of existence. There is too much individual thinking and jealousy among the members, with each wanting the governor's job or some assignment."

A colleague who agreed carried the criticism one step further. He said, "Each year the leadership becomes less responsive."

Only Defect

One senator who was in general agreement with the unicameral system disagreed violently on the point of nonpartisanship and its allied development of leadership.

"In one respect," he said, I agree with the opponents of the system. In my opinion, this has resulted in a loss of leadership that the partisanship feature would probably provide. Effective leadership has not, in fact, developed in the Unicameral . . . I think the answer is that leadership develops better in a par-

Visitors often look for leaders who aren't there.



'It is every man for himself in the Unicameral. (I enjoyed it...)'

tisan legislature. This is, of course, based upon the assumption that men capable of leadership will be elected to the Legislature in the first place."

At least a half-dozen of the senators who opposed nonpartisanship because they felt it discouraged leadership used a similar descriptive phrase. One put it this way, "It is often said that out of 43 members there are 43 governors."

Another said, "I believe partisanship would be preferable. Organization would hew to one line of thinking and approach. As it is now, we have almost 43."

"Every issue has 43 solutions — all ignored," a colleague added.

Some senators agreed that there might be 43 leaders, but found this an advantage.

"I feel that we are developing leaders to a certain degree," one of this group said. "Beyond this point, I do not feel any legislator should be considered to be more influential than any other. We are here to consider issues and not be blindly led by some popular leadership."

Another legislative veteran said that "because of nonpartisanship, leadership is fragmented in the Unicameral. It is every man for himself in the Unicameral. (I enjoyed it for that reason.)"

This senator added that while leadership does not develop as well under this system, "each legislator thinks more independently."

As all of these senators presented their viewpoints, a picture — or more accurately several pictures — of leadership in the Unicameral Legislature began to emerge.

Leadership Shifts

Experienced legislative observers have said for perhaps two decades that leadership in the Unicameral Legislature is a shifting, parttime phenomenon. They meant that a man might develop a following in a certain legislative area. For example, a senator might be considered a budgetary expert or an agricultural expert or an educational expert. In these areas his fellow senators might look to him for leadership. Seldom, these observers said, did one man develop as a leader in all areas. This survey bears out the observers' conclusions to a degree. No other issue brought more comment or a wider variety of opinion.

One explained it this way: "It develops as you go along, as the Legislature progresses, irrespective of party affiliation."

Another senator said that leadership could be developed either under partisanship or nonpartisanship. But he added, "In the nonpolitical legislature a 'leader' may have a few followers — in a party he may have a following."

Do Senate, Governor Harmonize?

It Depends on Where

HOW DOES a partisan governor get along with a nonpartisan legislature?

The answer seems to depend upon which chair you are sitting in. If you are sitting in the legislative chamber as a senator in Nebraska's Unicameral Legislature, the chances are you probably would say, "Just fine."

If you were sitting in the governor's chair, the answer would apparently be, "Not very well."

At least these were the majority answers in this survey of 68 senators and six governors. Most governors said that liaison with the Legislature was difficult to maintain in at least some instances. The senators told a different story. Sixty-two senators commented on the liaison with the governor. Fifty of them said liaison could be maintained or worked out very easily. Twelve of them disagreed.

And the senators who disagreed did so with some vigor. For instance, one said, "Not worth a darn. As a matter of fact, it doesn't even work that well. To be perfectly honest about it, in most legislative sessions liaison is nonexistent and this is coupled with the legislative feeling that they will have no part of it."

Another senator agreed with a terse, "There is practically none (liaison) now."

In many instances the senators took into account the fact that Nebraska's legislators—outside of the Legislature—are predominantly Republican. Several of them who had not served with a Democratic governor wondered aloud how liaison would work under these circumstances.

One described a situation of mixed politics this way:

"Under nonpartisanship, liaison between the governor and the Legislature has been very cooperative. For instance, a Legislature composed predominantly of members of the Republican party has elected a Democrat as speaker and it has elected also a Democrat as chairman of the Committee on Committees, which committee receives the names of the governor's appointees for consideration and approval. In each case the closest harmony prevailed between the Legislature and the governor who was a Republican."

Another legislator wondered how a different mixture of parties might work out: "There have been times when the relationship between the governor and the Legislature has not functioned too well under the nonpartisanship Unicameral. On the other hand, probably the liaison would not be too good if the governor was of one party and a partisan Unicameral was controlled by the opposing party."

Too Much Fuss

Some senators felt that the political parties had made too much of an issue of the problem of liaison. "Personally, I didn't feel that there was as much of a problem as party bosses made it out to be," one explained.

Another cited what he thought would be a disadvantage under a partisan approach: "The governor now generally pays attention to each senator—under the partisan approach he might pay real attention only to the majority or minority leaders."

Storm warnings were sent up for governors who might get "too partisan" in

You're Sitting

their approach. One veteran legislator said, "In this field, a great deal depends upon the governor and his ability to work with a partisan group. If a governor attempts to inject partisanship into his association with the Legislature, then he will fail with his program...."

Another agreed and commented: "The liaison between the Legislature and the governor is good unless he becomes too political in his actions."

Other legislators frankly admitted that when it came to liaison between a partisan governor and a nonpartisan Legislature the governor sought out members of his own party within the legislative body.

"I believe this liaison exists," said one, "since I find that the governor tends to rely on members in the Legislature that he knows belong to his party."

A colleague agreed that liaison was not a problem for about the same reason. He said, "There are always enough representatives in the Legislature from both parties to provide liaison between the governor and the Legislature."

Several senators indicated without going into detail that a governor must tread a rather narrow path. One senator, who is for the shift to partisanship in the Legislature, warned that liaison is "O.K., except the governor has to be careful what he asks of them."

At least one legislator expressed his faith in the governor's negative power. He wrote that liaison has worked out fairly well so far, and he added: "The power of veto held by the governor is worth 26 votes. He can introduce a bill at any time. He is not handicapped."

Belong Apart

Another legislator simply felt that liaison was no problem because "the governor is the executive and should not concern himself with any legislation. The three main divisions of government have their individual responsibilities and should not infringe on the duties of others." He added a rebuke for some of his fellow legislators when he said, "I think the Legislature does not, or never has, assumed its full responsibilities."

These were the senators talking. These are the men who party leaders say are in an enviable position. In fact, party leaders who have long advocated a shift to partisanship in the Unicameral Legislature admit that they themselves as senators might not like the shift. As one party leader who has been quoted earlier put it, "A guy with a full house doesn't ask for a new deal."

How then does it look from the other side of the fence? How does it look from the governor's office?

As one governor put it, "In the Unicameral, the governor ordinarily doesn't try to take leadership in it. He is almost entirely out. If the governor sponsors something, the Legislature looks down on it. He only tries to stay in between politically and doesn't try to exhibit leadership."

All six of Nebraska's living governors agreed that there could be improvements in the relations between the Unicameral Legislature and the governors.

Roy Cochran, who was governor during the transitional period from the two-house to one-house system, describes the change

he had to make in his second term with the new Unicameral. From 1935 to 1937, Cochran said, his position of governor was well known in the two-house Legislature through the actions and statements of the Democratic party leaders.

Gap to Fill

"When I came to the 1937 session, I had the problem of filling this gap," he added.

Cochran explained the unique way he solved his problem. He said that radio was comparatively new at the time, and he began giving a 15-minute talk over a local radio station once a week.

"During the time the Legislature was in session, I talked about my position on certain matters each Sunday.

"The press services also got a copy of the speech and as a result the Lincoln and Omaha papers carried it Monday morning," he added.

And, according to the governor, each senator also in turn had a copy of a newspaper on his desk each Monday morning.

"Actually it was kind of a left-handed way of letting my position be known to the senators through the people," Cochran added.

So while Governor Cochran managed to solve his problem, the problem is still there. There are still no party leaders in the Unicameral Legislature for the governors to turn to for help. Where then does the governor turn for support or introduction of a bill? Who are the leaders in the Nebraska Legislature?

As Governor Cochran puts it, "There is no formal leadership. It's just like a Mexican army...all generals."

And Val Peterson said, "The Unicameral Legislature discourages leadership per se."

The ex-ambassador to Denmark and governor of Nebraska from 1947 to 1953 said that there is no effective way to hold the entire membership in the Legislature responsible for their actions. Instead each member is elected from an individual area and does what the people in that area want.

Lieutenant Governor Dwight Burney said, "One of the weaknesses of the Legislature is that there is no leadership of the group."

Burney served as governor of Nebraska from September 1960 to January 1961 after the death of Governor Ralph Brooks.

Where does the governor go then for support if there is no group leader?

Robert Crosby, governor from 1953 to 1955, said that in each legislative session some men—by reason of personal ability and to a lesser extent their experience—are able to get more accomplished than other members are able to do. Crosby said, "I would go to the men who could get the most done because of their abilities." He explained that leadership develops along issues, or in other words several senators may feel strongly about redistricting or a sales tax and become leaders on these individual issues.

"With only 43 men sometimes even a first termer develops this kind of leadership," added Crosby, who also is a former senator, speaker, and lieutenant governor.

A senator also gains respect on the kind of bill he introduces, according to Victor Anderson, governor from 1955 to 1959. Conduct as a loser helps, he said. If one of his bills loses, he shouldn't carry a grudge.

'As it is, not a single legislator thinks about a party platform...'

Regardless of these other qualities, according to Anderson, if the governor has a bill he would like to have introduced he approaches a senator who has interest in that bill and fight for it. To do this, he said, you have to know the senator's legislative record and his opinion on the subject.

Good Fight

"This is so he wouldn't get up before the Legislature and just say that he is introducing the bill for the governor, but so that he would strongly believe in the bill himself and put up a good fight for it," he added.

Governor Frank Morrison believes that leadership develops along the capacity of individuals to know what to talk about and to convince others. He said that the governor can then discuss with the individual senators matters that they are particularly interested in.

And Val Peterson feels that a governor gets to know all the senators as well as he can by visitation and then by persuasion bring them around to the governor's viewpoint on a subject. It also helps, he said, to get other people close to the legislators to help persuade them.

Dwight Burney, who has watched the legislative process for more than 15 years as a senator and lieutenant governor, feels the governor has some power through the process of legislative hearings. He said that the governor can go before a committee and testify on a certain bill.

"He can also have a bill drawn up and then ask any senator to sign it. The bill automatically then has to be introduced," he added.

Burney explained that the usual procedure for the governor is first to go to the committee hearing and testify, and then call in individual senators and ask for their support on the bill. He said that it isn't too hard to find out which senators are in favor of a bill since each bill has three signers.

"The leaders of a bill then are usually those who introduced it and signed it. Also if a committee brings a bill out onto the floor, then the committee must be back of the bill and the governor can seek support from them," he added.

Would the liaison between the governor and the Legislature be more effective if the Legislature were partisan?

According to Val Peterson, "We could improve membership (in the Legislature) on a political basis only in one area." He explained that this would be in the area of debate during the election campaigns of the senators.

"We would have a more adequate and full debate of the issues during the campaign, and leadership and responsibility would be fixed for the results of legislation."

Develop Issues

About partisanship, Robert Crosby said, "In some respects it's bad for the state." Crosby feels that some issues could be developed and pushed better.

"For example," he added, "the governor and the Legislature could take a stand on an issue such as sales tax.

"As it is, not a single legislator thinks about a party platform after coming to Lincoln."

Crosby said that as the situation exists

The senators find a pleasant sense of independence.

now he "wouldn't think of putting the party into an issue unless you need it in something like redistricting, but not on education or highway programs."

The ex-governor said that the party plays practically no role in the Legislature now.

"When I was governor, some of my best help came from the Democrats in the Legislature," the Republican added.

Dwight Burney said that the "nonpartisan part of the Legislature is a weak link."

He feels that a partisan Legislature would tend to strengthen partisan politics in the state. In turn, the party would have a platform, and the people would know what they are voting for.

"If we had a partisan Legislature, the liaison between the governor and the Legislature would be closer," Burney said.

"As it is now, the senators don't run on a platform, they run on their standing in their community. You only have to be against most everything to be elected," he added.

The lieutenant governor said that although partisanship was indistinct in the 1961 session, it has been stronger in other recent years. He attributed this to the close race for governor in 1958 when the Republicans asked for a recount of the ballots.

"The Democrats felt that they had to line the people up," he added.

Victor Anderson also feels that "nonpartisanship in the Legislature is a downfall for the state."

Anderson said he thought there is more active leadership when there is partisanship, because "a man must run on a campaign and then deliver."

As it is now, Anderson says, the governor must walk a center line and not show any leadership.

Needs Role

"The legislators sometimes feel that the governor shouldn't take part in legislative proceedings, but as in business, the head needs to take active part," he added.

Roy Cochran, who says he is not a strong partisan, also is in favor of a strong two-party system. Under the old two-party system, Cochran said, if he had some objections to a bill, he would call in the party leader to make certain changes in the bill. He said that he felt this was better since the governor would do what was best for the state as a whole, not just for a district. Cochran also felt it was sort of a paradox the way the governor is elected in Nebraska. He said that now "the governor is elected on a party platform and then as soon as he takes office he becomes nonpartisan."

Governor Frank Morrison admits that things would be easier for the governor if the majority of the Legislature belonged to

the same party, but he added, "partisanship tends to destroy the judgment of the individual and substitute his party likings."

"Collectivism or individualism, which is better?" he asked.

Morrison, who says he is an individualist, said he hated to see an individual submerged in a group, because there are too many disadvantages.

"The political parties will destroy themselves unless they change their approach. Now a party member goes against his own conscience because it is merely against the party platform," he said.

An Improvement

"As such, the Nebraska Legislature is an improvement because the men in it can base their decisions on their own conscience, and not as it is in the other case, just to destroy others," Morrison added.

The Governor concluded, "It is the test of the governor in the nonpartisan Legislature to use the tools the Legislature gives him, and then exert executive power for the betterment of the state."

Liaison between the governor and the Legislature? The definition obviously depends upon whether you are a governor or a legislator. The governors would find partisanship a way to ease their work. The senators find nonpartisanship gives a pleasant sense of independence to their work.

Nebraska Governors

David Butler 1867-1871
W. H. James 1871-1873
Robert W. Furnas 1873-1875
Silas Garber 1875-1879
Albinus Nance 1879-1883
James W. Dawes 1883-1887
John M. Thayer ... 1887-Jan. 15, 1891
May 5, 1891-Feb. 8, 1892-1893.
James E. Boyd .... Feb. 8, 1892-1893
Lorenzo Crounse 1893-1895
Silas A. Holcomb 1895-1899
William A. Poynter 1899-1901
Charles H. Dietrich .... Jan. 3, 1901-
May 1, 1901.
Ezra P. Savage 1901-1903
John H. Mickey 1903-1907
George L. Sheldon 1907-1909
Ashton C. Shallenberger ... 1909-1911
Chester H. Aldrich 1911-1913
John H. Morehead 1913-1917
Keith Neville 1917-1919
Samuel R. McKelvie 1919-1923
Charles W. Bryan 1923-1925
Adam McMullen 1925-1929
Arthur J. Weaver 1929-1931
Charles W. Bryan 1931-1935
Robert Leroy Cochran 1935-1941
Dwight Griswold 1941-1947
Val Peterson 1947-1953
Robert Crosby 1953-1955
Victor Anderson 1955-1959
Ralph G. Brooks 1959-1961
(Died Sept. 9, 1960.)
Dwight W. Burney 1960-1961
Franklin B. Morrison 1961-1966
Norbert T. Tiemann 1967-

Too Much Work?

Senators Like the

THE SENATORS who took part in this survey gave Nebraska's one-house Legislature the kind of a landslide vote they themselves would like to have at the polls.

Sixty-three of the 68 senators approved in one way or another the idea of a one-house legislature. Only four expressed disapproval enough to want to return to the two-house system.

Beyond the idea of a unicameral legislature into the details of its workings the senators were not nearly so unanimous. But so far as the one house itself was concerned there could be no doubt that these men who had served in its lone chamber felt it had been a resounding success.

They had found the house a fine place to do their job, but what did they have to say about their working conditions?

Did they feel they worked too hard?

Did they feel they turned out a quality product?

Did they feel there were ways to improve the product and so better serve their customers?

To these questions the senators had answers and suggestions to refine the system.

Typical of the way the senators backed the unicameral system was the comment of one who first explained that there were certain aspects of it that he did not like — for instance, nonpartisanship. But he added, "It is by all odds the most efficient form of state legislative process. I have discussed the matter with former members of the bicameral, have observed the bicamerals of other states in session, and have discussed the matter with some of their members or former members. And to me, at least, there is simply no comparison. From the persons I have talked with in Nebraska who have observed both the old bicameral and the Unicameral Legislature, some of whom served ... with both, the impression I get is that they feel the Unicameral Legislature is far superior."

Practically none of the senators were concerned about the lack of the checks and balances built into the bicameral system. One legislator explained the one-house system of checks and balances this way:

"I approve of the unicameral system because of the method of publishing hearing dates and the simple methods which permit any citizen of the state to express his or her views on any bill before the committee."

Public Is Heard

Another veteran legislator called upon Professor John Senning to express his viewpoint. He quoted Dr. Senning as saying, "The public hearings held by the Unicameral make the whole state the lower house."

When Nebraska's voters said "Yes" in 1934, they established the number of their legislators as "not more than 50." When the last of the bicameral legislators and Dr. Senning had completed their work of apportioning the state, they had trimmed the number of state legislators from 133 to 43.

Had this drastic cut almost tripled the work for the men who would serve in the

System—But...

Legislature? Or had Nebraska created a legislative system with a new brand of automation that made it possible for fewer men to do more work?

This survey showed that the large majority of the legislators felt their workload was heavy. But that did not mean this same majority thought their workload was too heavy. Of the 62 senators who commented on workload, 46 agreed that although the workload was heavy, they could handle it. Sixteen said it was entirely too heavy.

Even among those who felt they could handle the workload, there were many suggestions for making it lighter and more efficient. (These suggestions are included with the other suggestions at the end of this section of the survey).

Another point of agreement among senators who served in both the bicameral and Unicameral Legislatures was that the workload in the one-house system was heavier than in its predecessor. Only one or two of the veteran legislators felt the unicameral system had lightened the load.

From that point on the senators' comments on workload and the reasons for it were both interesting and sometimes startling.

One said that the workload is beyond the ability of all of us to handle . . ."

Kept Alert

Another added, "The workload per individual is heavier, of course, simply because 43 members do the work 133 formerly did."

A colleague gave a different reason. He said, "I believe there is a greater workload on individual senators as they must be alert to almost every bill and cannot overlook some of the measures which may have been killed by the other house as is the situation in a two-house system."

Several legislators placed the problem directly on themselves and their fellow senators.

"There is an increased workload, it is true," one said, "but you know this when you file, and if you are unwilling to work for the interests of the people in your district, you had better stay home."

Another senator complained, "Most of the work is done by about 25 per cent of the members. Quite a number are there just for the ride, and don't know what is going on."

One legislator found another reason. "The so-called workload is not excessive in itself," he said. "It is the extracurricular activities and distractions that occupy too much time. It is the same thing that causes many failures of students leaving home and attending the university."

One of the reasons frequently given by observers for the heavy workload is that the smaller group of men have too many committee duties. About this, a legislator said:

"At present there are 11 committees on subject matter. There are five committees on administration and rules. This makes a total of 16 in all. There are only 43 men. The 11 committees on subject matter each has nine members, so each senator has to serve on at least two major committees."

But a number of senators felt that the size of the Legislature lent itself to better

committee work. One simply said the committee load was not excessive. He added, "The committee chairmen carry the heaviest workload, and very few ever complain."

An Education

Another senator found committee work an education toward better legislators. This lawmaker commented, "Service on several committees by each senator is helpful in knowing more of the proposed material. More are acquainted with and prepared to discuss measures on general file."

Finally, several of the senators commented on one of the unbreakable rules of Nebraska's unicameral system. That rule is that every bill that becomes law must have had a public hearing. As Dr. Senning and other pioneers of the system explained this rule, it was to provide an additional check and balance for the Unicameral Legislature. Several of the senators, however, pointed out that this requirement greatly increased the amount of committee work.

Directly related to the size of the Unicameral Legislature and the number of its members and their workload is the quality of their product — legislation. The senators participating in this survey were asked to assess — or run a quality control check, if you please — on their product.

On this question, as on several others, there was no series of clearcut majority opinions. There were one or two very general majority opinions. They were:

1. The majority of senators thought plenty of bills were introduced and plenty were passed.

2. The majority felt that there should be some way to limit the number of bills that had to have complete consideration by the whole Legislature.

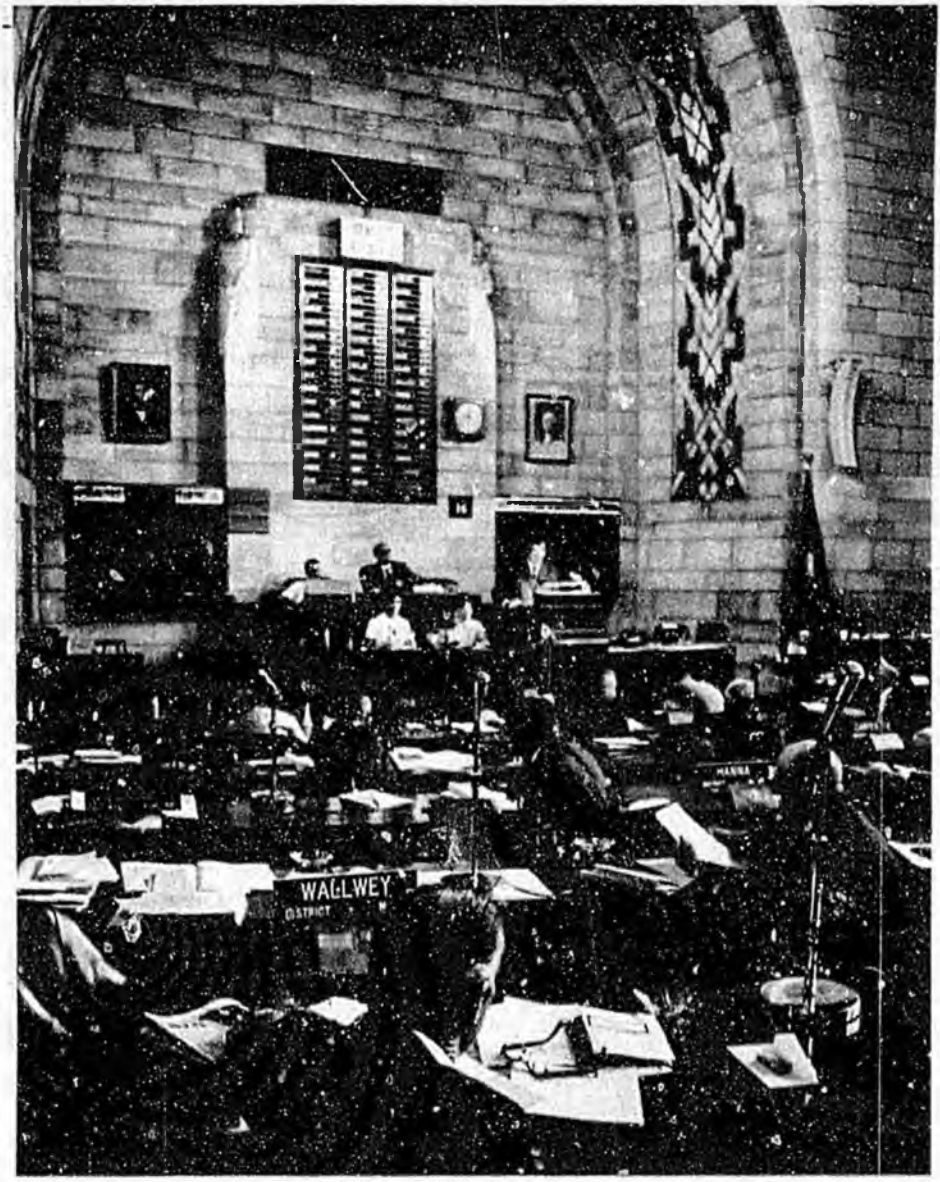
There was, of course, no disagreement on the point that the unicameral system had cut the overall number of bills introduced. The unicameral statistics compared with the number of bills produced in bicameral sessions of similar states showed that in most instances about half as many bills were introduced by Cornhusker senators.

When the senators talked of more legislation than was needed, they also talked about unnecessary legislation. Sometimes they meant inferior legislation. This was the way one senator described the situation:

"Unnecessary legislation has not in fact been eliminated, but I feel this is the fault of the senators and not the system. At the same time, new and progressive legislation has not been forthcoming and I feel this is caused by lack of leadership and clear public feeling. Again this is only partly caused by the system."

A colleague defended the senators, indicating that outside pressures caused the introduction of too many bills. He said, "The legislators are doing well to hold down as well as they do. If the legislators had their own way they would introduce fewer bills."

To a considerable number of the senators the number of bills, which has been running in the vicinity of 600 to 700



Senators are kept on their toes in the small one-house Legislature.

'If the legislators had their own way they would introduce fewer bills.'

each session in recent years, was a little amazing. One said, "It is difficult for me to understand how 43 or 143 men can come up with 600 or more new ideas for legislation every two years."

Another made a point that statistics bear out when he added, "The number of bills introduced and passed seem to increase each session."

Several of the senators admitted that there were too many bills and that too many of these were unnecessary. But they sharply opposed reduction. One put it this way:

"In the matter of unnecessary bills, the fact is very evident that the public must be heard and even a few should be entitled to their hearing."

A colleague agreed: "In our democratic system, the amount of legislation is governed by the desires of the electorate and should not be limited. Unnecessary legislation is usually readily disposed of."

Perhaps the most valuable contribution the cooperating senators made in their comments on their workload and its products were their suggestions for changing the system to meet the problems they felt it faced. For clarity and reading ease, these suggestions have been divided into categories and listed. (Where senators duplicated ideas, one or two representative statements have been chosen. But wherever possible the complete quotation was retained.)

Legislative Aids

Legal Assistance

"There should be three or four paid lawyers to help get information for the committees."

* * *

"I believe under the present system the senators should have professional help in order to know and understand what is in the bill. I do not mean that they should tell the senator that it is a good or bad bill. Just tell the senator what is in the bill and let the senator do his own thinking on the merit of the bill."

* * *

"It would be a great assistance if senators were given the assistance of law students or graduates who could aid in research of the many complicated issues which come before the Legislature. It is very difficult with the heavy schedule to delve into some matters that require extra study and research."

Research Assistance

"I believe that added trained research personnel could ease the workload to a considerable extent. This could be done by assigning trained personnel to the standing committees and making their services available to individual legislators."

* * *

"I do not favor proposals for student help as proposed by some unless a great deal of study is put into the program ahead of time and considerable orientation of students made. Ford Foundation funds are available on this. I can see where some senators would use research help a lot — others little — in fact, some senators would be prone to exploit the help, I fear — give them tasks too difficult or not needed."

(Ford Foundation funds were available but the Legislature voted not to provide the required matching funds.)

Secretaries for Senators

"Each member should have his own secretary and that would be the greatest aid a member could receive. The conflicts arising as to when a member can get a secretary and how long he can use her or him are numerous, continuous, and very frustrating."

Budget Administrator

"Perhaps a full-time budget administrator would be in greater need than any other one thing I could suggest."

Reduce Bills

Screening Processes

"There could be more consolidation of bills by committee and lower considerably the number of bills handled."

* * *

"There should be a way of checking on bills before they are introduced. About one-fourth of the bills are every year indefinitely postponed, in other words, should never have been introduced. I know that throwing them out beforehand does not set well with the would-be introducer, but I have always felt that the number of bills introduced could easily be cut in half without any loss and make for the rest being given better attention. When a session is drawn out it often makes for bad feelings and careless legislation at the end of the session. Hence a short session with fewer and only necessary and better bills would add to the quality."

* * *

"(1) Create two study groups to screen bills prior to introduction. Each group would have a distinct area of responsibility. (2) Bills introduced one session to be passed during next session (except emergency measures)."

* * *

"Senators should present outline (not complete) bill to the Committee on Committees. May be rejected here if useless legislation. Then assigned to a committee. If passed by committee, then presented in complete form to chamber."

Limit Introduction Period

"Make it more difficult to introduce bills after the first 20 legislative days."

* * *

"A 15 day bill introduction period, and a closer scrutiny of the need for legislation might help. No attempt to limit bill introduction by legislators should be made."

Limit Bills Per Senator

"No legislator should be allowed to introduce more than one bill in any session. No bill should be passed without two-thirds majority, regardless of the number of legislators."

* * *

"I would suggest that the Rules Committee set up a limit on the number of bills each senator should be allowed to introduce at any session. This would eliminate many of the bills that never were of any good to the people as a whole."

Session and Terms

"I would suggest that the Legislature

meet for 90 days each year and every other year being devoted entirely to budget and revenue and every other to legislative matters."

* * *

"I believe that legislators should be elected for a four-year term and on a staggered base so that half would at all times have experience in the workings of the Legislature. And I would also suggest yearly sessions where bills would be introduced at the first session and then lay over so that they can be studied and then go back the next spring and take action on them."

* * *

"No. 1. I would elect a legislator for a term of six years. No. 2. A legislator would have to be at least 45 years of age, and have conducted a private business successfully. No. 3. He could not succeed himself for at least another 6 years. No. 4. One third to be elected every two years. No. 5. The last two years of his term he would have to put in his entire time at state business. They, the one-third, would serve as heads of all state bureaus. No. 6. The pay should be remunerative and I think less expensive than the present set-up. No. 7. If this set-up were adopted, I think it would be the best form of government."

* * *

"I would suggest shorter sessions, say 90 days, and have them annually."

Choose Up Sides

"Divide the membership of the Legislature into odd and even numbers, and pit them against each other. Too simple to consider? We think not. That type of procedure is used at Boys State. Even there it is recognized good legislation cannot be had with everyone trying to go the same direction at the same time. There is too much legislative fraternalism among members, in the early stages of the session, under the present system. When the Pros and Cons square off in earnest the people are apt to get a much better deal."

Omnibus Bill

"There are too many separate bills partly because of omnibus correction bill is not possible and because there is not enough correlation between senators offering bills on the same general subject. I feel that inconsequential and even silly legislation is put in because the senators do not study legislation when they are not in session but wait for individuals and organizations to offer bills just before the session commences. As a result, many bills are introduced with the knowledge that they may be withdrawn later."

Citizens' Committee

"It has long been a favorite theory of mine that the efficiency of the Legislature could be much improved by the creation of a group of nonpartisan citizens whose job would be to act solely as committee hearing members. With the exception of the Budget Committee, their job would be only with the bills assigned to the committees on which they would serve and to hold public hearings and determine the

fate of the bill with complete independence of the senators themselves, excepting, of course, the testimony of the introducers and any other senators appearing before the committee pro or con. This would not take away the right of the Senate body to raise any bill which they saw fit to in the same manner as at present. . . . I realize that such a theory, if put into practice, could create very powerful committees but if proper safeguards such as the Senate body override were properly set up, this power could be held to a harmless minimum. This would not necessarily have to be a large group, perhaps six or seven members to be elected from each of the three new Congressional districts and possibly three at large, to be assigned to the various committees on which they would serve by the Senate as a whole. Since these members would serve only during the period of public hearings and would be spending full days at their work, and considering the time that might be saved by the entire body, the net result might be a saving in money as well as a possible gain in overall efficiency in Nebraska Government.

EDITOR'S NOTE — Changes have taken place in some of the conditions discussed by the senators in the survey in 1961. For example, senators' terms have been lengthened to four years, as suggested by at least one senator in the survey. The 1969 legislature passed four resolutions that instructed the Executive Board of the Legislative Council to study ways of improving procedures in the Legislature. The Board's report is not yet available.

Bicameral, Bills

		Introduced	Passed
1917		1135	273
1918	(Special)	19	12
1919		848	300
1919	(Special)	3	3
1919	(Special)	4	4
1921		975	313
1922	(Special)	16	11
1923		1057	193
1925		733	186
1927		947	198
1929		896	200
1930	(Special)	27	9
1931		872	164
1931	(Special)	11	8
1933		1082	163
1935		1056	192
1935	(Special)	54	35

Unicameral, Bills

		Introduced	Passed
1937		581	214
1939		523	138
1940	(Special)	8	6
1941		515	196
1943		446	240
1944	(Special)	6	6
1945		395	260
1946	(Special)	10	8
1947		568	358
1949		546	318
1951		562	354
1952	(Special)	2	2
1952	(Special)	8	8
1953		595	369
1954	(Special)	10	6
1955		559	354
1957		615	404
1959		739	475
1960	(Special)	3	3
1960	(Special)	2	2
1961		737	465
1963	73rd	815	545
1963	(Special)	26	17
1965	75th	937	584
1966	(Special)	3	3
1967	77th	947	632
1968	(Special)	6	2
1968	(Special)	3	2
1969	80th	1440	858
1970	(Special)	7	6

Always Good for a Fight:

Apportionment Poses

THERE ARE many political truisms. Some of them are true, and others, as veteran observers will point out, are simply clever.

But there is one truism upon which you can get nearly unanimous opinion from those who deal in politics. That one is—"a sure way to start a fight in a legislative body is to suggest that its members reapportion themselves."

This has been a fight-starting issue since Nebraska first became a territory and it was not lessened necessarily after the adoption of the unicameral system. There have been from one to a half-dozen bills offered to almost every session of the Unicameral Legislature on the subject of reapportionment.

And the senators who took part in this survey were in as much disagreement as those who quote the truism with respect. But before examining their viewpoints, the first question to be answered is: What is apportionment?

According to Nebraska's constitution, it means dividing the state into districts having near equal population. One senator represents one district. The present 1961 apportionment took place in 1935 with the advent of the Unicameral Legislature, and the districting was based on 1930 census figures.

In 1935, Dr. John P. Senning and the bicameral committees on the forthcoming Unicameral Legislature set about their work. Perhaps they reflected upon the state's history in this area of reapportionment. Perhaps they remembered that Nebraska started out its territorial history with a 13-year quarrel over the original apportionment of the state and the subsequent location of the territorial capital at Omaha. Perhaps they remembered the bitter battle before the state capital was moved from Omaha in 1867. Perhaps they remembered that their legislative predecessors of those early days had literally resorted to fists and guns over apportionment.

Delicate Job

At any rate, Dr. Senning and the committees went about their work with care. In his book, **The One-House Legislature**, Dr. Senning wrote:

"To determine an equable representation between the minimum of 30 and the maximum of 50 districts, the committees utilized all available means of research. More than 30 maps were drawn to illustrate the possibilities of districting....The reaction to this publicity was instantaneous. Delegations from various sections of the state appeared before the unicameral committees to argue either for a realignment of their county or to have it set off by itself as a single district...."

Senning described how that last bicameral session wrestled over its problem. For weeks no official action was taken while members hoped for the wisdom of Solomon. During the deliberations, Senator George Norris appeared before the Legislature but he kept his promise that he would not attempt to influence the legislators in their search

Tough Problems

for a blueprint for a one-house system. On February 14, 1935, he told the lawmakers: "I have kept my promise inviolate and have no word to say to anyone as to what I think you should do." He explained that he was sure that no districting plan would be entirely acceptable and that as in all important legislation, concessions must be made.

Senning explained how the two houses worried over the number of legislators in the unicameral body. The conference committee recommended the number 43 when the Senate and House figures did not agree. This figure was rejected. A second conference committee also recommended the number 43. This figure was rejected again. But finally on May 16, 1935, the number had been accepted by both houses, and the governor signed it into law May 18.

So Nebraska's unique system of state government had become an accomplished fact and the state's voters began to pick 43 men every two years to make it run. How has it run? How has that apportionment served the state?

These questions were put to the 68 senators who participated in this survey. Their answers indicated that after almost a quarter of a century of the unicameral system there is no sizable majority opinion. But some conclusions may be drawn from an analysis of their replies.

For example, 33 said there should be more members than the present 43. Thirty believed the present number is sufficient. Several advocated fewer legislators or quite radical departures from usual systems.

This did not mean that all those who wanted more senators wanted to redistrict the state. In fact, of those who commented on reapportionment—redistricting—only 25 said the state should be redivided. Thirty-one wanted the districts left as they are.

How much did the senators want to change the present body? That varied from a total of 49 in one house to as many as 100 in a return to the two-house system. The figure mentioned most frequently was 50.

What Basis?

On what basis did the senators want their state reapportioned? Although this was an area where a simple yes or no was nearly impossible, it appeared that about 39 senators would base reapportionment primarily on population. A very small number would make it totally on area, and about a dozen outspokenly favored a combination of area and population.

Dr. A. B. Winter of the University of Nebraska political science department helped explain why reapportionment becomes so complicated.

"A facet of political dynamics—this is the most apt description," he said. "This is as specific as is possible about a non-specific subject.

"Unicameral or bicameral, populational or geographical apportionment, partisan or non-partisan system—these are only rough frameworks outlined in constitutions."

He explained that elements behind the dynamics consist of rural versus urban,



Early cartoon shows battle in territorial legislature, where apportionment was a hot issue.

political group versus political group, racial interests, religious interests, etc.

All at Work

These dynamics—or forces—all are at work where reapportionment is involved. To find them in Nebraska you need only turn to the state's history. There you will find:

—East versus West.

—North of the Platte versus south of the Platte.

—City dwellers (urban) versus country dwellers (rural).

—Omaha and Lincoln versus the rest of the state.

—Omaha versus Lincoln.

—Ranchers versus farmers.

—Agriculture versus industry.

These are the interests that reach the boiling point, observers point out, when reapportionment is the subject. The senators who participated in this survey were all aware of these dynamics. Their reasons for wanting a change or the lack of it were as widely varied as the divisions of interest.

Some of those who wanted a change did so on what might be called the dynamics of the rules of the Legislature. Many of the senators who proposed an increase of from 6 to 8 members did so because they felt it would ease the workload. A typical comment was:

"There should be at least 50. There is too much committee work, which means bills are not fully understood or thoroughly discussed."

A smaller group of senators took the opposite viewpoint. Basically, they said that there was no need to increase the number of senators to lighten the workload.

One of this mind said, "It makes no difference in the number of legislators. A certain per cent are sent to the Legislature by special groups to get specific legislation. The rest go for various personal reasons, or no reason at all."

But this senator's colleagues were not so hard on their fellow legislators. In fact, they praised the quality of the senators. One put it this way:

"I think there are enough. If you increase the number, you lighten the load and reduce the responsibility of the type who serve because they feel they are giving a real service. If you reduce the responsibility, you reduce the quality, in my opinion."

Another legislator agreed and added, "An increase in numbers is self-defeating."

At least one senator objected to the bills that are introduced biennially to reapportion the state. "The only reason for



these bills is not because there is a need for more senators," he said, "but a selfish motive on the part of the introducers wanting more control in their respective districts. I think the (present) set-up is fair."

Two senators actually proposed a reduction in the number of legislators. They reasoned that 43 men are turning out more bills than necessary.

People Move

Many senators gave the shift in population as their reason for wanting a reapportionment. Time after time they pointed out how the state's population had shifted since the 1930 census, which was the basis for the original unicameral apportionment. One spoke the thoughts of several when he said, "The present 43 districts so far as apportionment goes perhaps call for some reapportionment to be considered. Originally each district was to contain approximately 35,000 people. Because of the shifting population, this has greatly changed until about 50 per cent of the districts have less than that number."

(According to the 1960 census figures, 29 of the 43 districts have less than 35,000 population. While the 1960 census figures do not break down into districts within counties, it appears there are several districts in Lancaster and Douglas counties over 50,000 population.)

Another senator spoke for several when he said, "I have never felt that sheer numbers should command representation, thus making necessary reapportionment with each shift of population."

This question of whether apportionment should be based upon population, or area, or both, brings into play a number of Dr. Winter's dynamics.

In the United States the recognition that both population and area may command representation starts with the history of U.S. Congress. Throughout the country's history, the Senate has been based upon area—two senators per state—no matter what the population. The House, on the other hand, has been strictly on the basis of population with reapportionment coming after each 10-year census.

But even when Nebraska had two houses, the members were chosen by population. So the shift to the unicameral system was not as violent as it might have been.

The senators participating in the survey were aware of the dynamics of area and population. One of them put his view this way:

"To me, legislators primarily represent people because in the people are included the problems that arise because of land holdings, highways, and all other parts of the state. In my opinion, representation now in our Legislature is badly out of line, and to a certain extent our lack of legislative progress reflects this. I feel

that greater emphasis should be placed on representation of people with very little emphasis given to area. Therefore I would favor an increase to 50 members with reapportionment to bring a greater number of senators who represent the more populous areas."

Another legislator, obviously from a populous area, stated his case this way: "I believe we should have at least six more (legislators). On a population basis my district, for instance, is as much as 15 or 18 times larger than some. I have 140,000 people in it...." He went on to explain that other districts have only a fourth or a fifth that much population.

A fellow senator said present legislative districts were all right except "in a few instances where little counties are tied to large ones." But he doubted that any changes could be made "since Omaha would want too much."

That question of what to do about the state's population centers of Omaha and Lincoln was mentioned frequently. But one senator did not consider the problem too serious. He put it this way:

"The large centers like Lincoln and Omaha receive about all they ask for. If the situation were reversed, the other side might find cause for complaint, too."

An examination of the Nebraska census figures from 1930 to 1960 explains the concern of these senators. There is little question that the population has been shifting.

Farm Loss

To include another facet of Nebraska apportionment dynamics, census figures have been assembled on rural farm population. The ways people make their livings also are considered in the tug and pull of apportionment. Since Nebraska has been considered primarily an agricultural state the population of this farm group was traced. It is important to understand that this is the farm population, not simply the total population of people who do not live in cities. Obviously, there is a considerable numerical difference between farm population and the total rural population.

Here is the way Nebraska's population shifted during that period:

Year	Total Population	Rural Farm Population
1930	1,377,963	582,981
1940	1,315,834	495,477
1950	1,325,510	391,435
1960	1,411,330	.....

Since Douglas and Lancaster counties, the homes of Omaha and Lincoln, were consistently cited by the senators, an examination of these counties helps explain the problem.

First, compare Douglas County, with seven legislative districts (in 1961; it now has 12), with a rural district (1961) including Wheeler, Valley, Greeley, and Howard counties.

Douglas County

Year	Total Population	Rural Farm Population
1930	232,982	7,401
1940	247,562	7,029
1950	281,020	4,965
1960	343,490	Unavailable

The following figures cover the same period for the rural district.



Senators push vote buttons.

Year	Total Population	Rural Farm Population
1930	30,330	20,304
1940	25,600	15,911
1950	21,579	11,956
1960	19,023	Unavailable

The census takers changed the questions being asked to determine rural farm population between the 1940 and 1950 censuses. It is estimated that approximately 9 per cent more persons would have been classified as farm residents had the earlier methods been used. But even with these changes the farm-to-city trend would still have been evident.

Now, a look at Lancaster County, the other populous area most frequently cited by the senators. Lancaster includes Districts 18 through 20 (In 1961; it now has six districts). Here is what happened between 1930 and 1960:

Year	Total Population	Rural Farm Population
1930	100,324	13,200
1940	100,585	11,054
1950	119,742	8,663
1960	155,272	Unavailable

For comparison examine the (1961) district that includes Cherry, Brown, and Sheridan counties. This area is primarily a ranching region.

Year	Total Population	Rural Farm Population
1930	27,463	16,609
1940	25,468	13,937
1950	23,100	10,859
1960	21,703	Unavailable

Between 1930 and 1950, 22 legislative districts showed a decrease in total and farm population. The same 22 decreased in total population between 1950 and 1960.

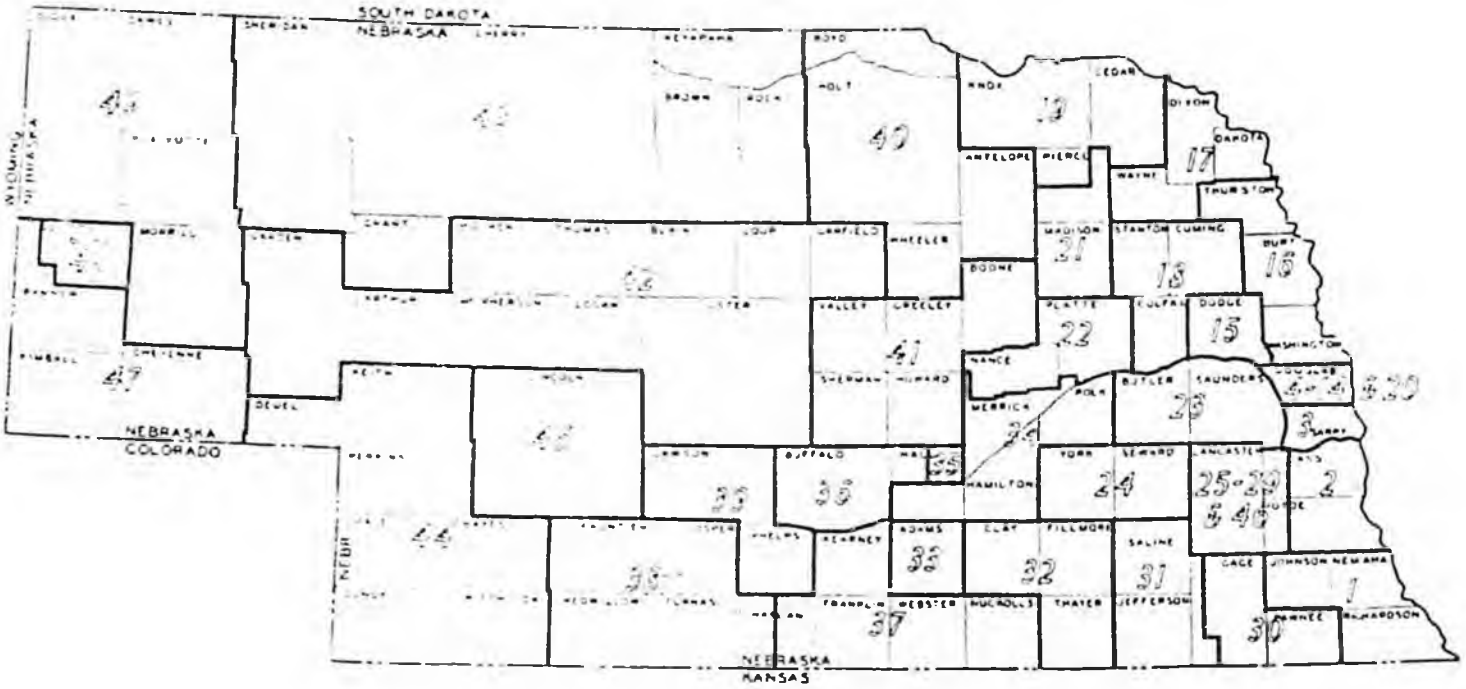
Fourteen districts, including those in Lancaster and Douglas counties, showed an increase in total population between 1930 and 1960. The same districts showed a general trend toward a decreased farm population. They also were districts located in the state's populous areas with relatively large cities.

Others Stable

The remaining districts also were located near cities, but included large rural areas. These districts had remained relatively stable over the 30-year period but also had shown a decreased farm population.

The problems of this shift in population were commented upon by a number of the senators. One of them explained the problem in western Nebraska. He said there should be more members in the Legislature because "members in the

Nebraska Legislative Districts, 1971



western section of the state have to represent too many counties and some of them have different interests."

The same idea with a variation was expressed by a colleague who put it this way:

"I believe in the near future the Legislature may well provide for at least 50 members in the Legislature in order to provide more representatives in over-populated areas and to limit some of the larger districts to fewer counties. Sometimes senators are placed in embarrassing positions when one county in their district requests passage of certain bills which another county in their district may oppose."

Another senator expressed the viewpoint of the less populated districts like this:

"The most important economic areas of Nebraska are practically without representation while Omaha and Lincoln control the state. In addition to 43 senators elected from districts made up on population basis, area representation should be achieved by giving each two counties one senator (Cherry County one) for a total of 90 members."

(According to the 1960 census, Lancaster and Douglas counties, with less than 25 per cent of the senators, have more than 35 per cent of the population.)

Some of the legislators were worried about the small number of Nebraska senators for quite different reasons.

A Potent Few

"I believe there should be more legislators," one said. "I believe there are too many bills passed that are not good for the state with a mere 22-vote majority."

A small minority of senators thought the answer was a return to the two-house system.

At least one senator pointed out that the shifting population had also, in practice, shifted the representation from population to a combination of population and area. He could see, for this reason, no sense in changing the present number of districts. He said, "We must strive in a one-house Legislature to maintain an average that is a median between area and population, much as it is now."

Another legislator, who served in the early unicameral sessions, felt that reapportionment today could be easier than in the 1930s.

"Conditions are so different today than they were at that time," he said, "there is no actual experience for a comparison. However, I feel certain that the problems of apportionment could be more easily worked out today than under the old two-house system."

* * *

A Reminder

This article on apportionment was included in this new edition of the School of Journalism report primarily for the historical material it contains and for the view it gives of legislators' attitudes toward apportionment in 1961. The reader will recognize that many of the conditions that existed then have changed and that many of the ideas expressed predated the U.S. Supreme Court's "one man-one vote" decisions of the 1960s.

The original report also contained, along with the map of legislative districts, a table showing the decennial population of each district from 1930 through 1960. This allowed convenient comparison of population trends because the 43 legislative districts in 1961 were the same as they were at the beginning of the Unicameral Legislature in 1937. But since 1961 the legislative districts have been increased to 49 and district lines have been redrawn so it is no longer convenient to compare in table form the 1961 District 35 (Custer, Loup, and Garfield Counties), for example, with the 1970 District 35 (approximately the northeastern quarter of Hall County). Because of the confusion that would arise from trying to make such comparisons, the table of district populations has been omitted.

And for the Women...

The women of Nebraska have been represented in the state's Legislature, too — although not in proportion to their share of the population.

Ten women served in the bicameral legislatures before 1937. Eight have served in the Unicameral Legislature. They are:

Nell Krause of Albion. Served in special 1946 session after appointment to fill unexpired term.

Fay O. Britt of Lincoln. Served in special 1954 session after appointment to fill unexpired term of her late husband.

Kathleen Foote of Axtell. First woman to be elected to the Unicameral Legislature. Served two terms, 1955 and 1957.

Fern Hubbard Orme of Lincoln. First elected to the 1959 session, has served continuously since. Re-elected to a four-year term in 1968.

Fannie B. Wylie of Elgin. Served in 1964 after she was appointed to fill the vacancy left by the death of her husband.

Calista Cooper Hughes of Humboldt. Served in 1965 through 1967 sessions after election to a four-year term in 1964.

Ellen E. Craft of North Platte. Appointed in 1966 to fill the unexpired term of her late husband. Elected to a four-year term in 1968.

Florence B. Reynolds of Omaha. Elected to a four-year term in 1966.

Effect of Lobbies:

That 'Other House'

TO MANY people, the word "lobbyist" has an unpleasant meaning. But to a large number of the senators who co-operated in this survey the word had no such flavor. In fact, to many it meant an important aid for good legislation.

In 1934 when Nebraskans were voting on the amendment to give them a unicameral legislature, they heard a good deal about lobbying. For instance, George Norris said the unicameral idea would eliminate the "third house," which is yet another title for those who bring the viewpoint of a special interest group to the attention of legislators. During that campaign there were many who agreed with Senator Norris and many who disagreed.

No Bosses

It was felt by some that a single house with a small group of men would be so easily observed that lobbyists would lose their influence. These supporters also believed that without partisan leaders the lobbyists would have to concentrate on 43 men rather than on a few party leaders in the Legislature. At the very least, they said, the lobbyists would have to convince 22 senators, a bare majority of the one house.

The opposition argued that the smaller group of men would merely simplify the lobbyist's job. He would, they said, have only to deal with 43 men instead of 133, the number in the two-house system.

After almost 25 years of a Unicameral Legislature, the senators who have served in it are still not entirely in agreement. But, this survey does show some clear-cut viewpoints of the lobbyist and the Legislature.

For instance, of the 64 senators who commented on lobbying, 41 felt that the lobbying situation is improved under the unicameral system. The other 23 believed that the Unicameral Legislature had either failed to improve the situation or had worsened it.

Among the majority the idea of a helpful lobbyist was advanced time after time. One put it this way:

"I feel that lobbying is the right of the people to give their ideas and views of legislation to legislators by lobbyists. Lobbying as such is beneficial to legislators who are unacquainted or uninformed on laws being considered."

Another said, "Anyone not familiar with the reason for honest lobbying just doesn't know what it is all about. After all, just because I am elected a public servant does not endow me with any political wisdom."

These Senators recognized both "good" and "bad" lobbyists. One put it this way:

"A good lobbyist is held in high regard."

Another legislator rated his colleagues with reference to lobbyists. He said, "Lobbyists are a help to a good legislator, but they are a nuisance to one who is not so good."

"If you are a weak sister, the lobbyist will influence you whether it be a one or two house," a legislator said. "I believe they can be a great help to any legislator in furnishing information that a legislator does not have time to look up. Then it is up to him to pick the good from the bad and make his decision."

Some said citizens could watch small house, lobbies would lose influence

Level Raised

Several senators tied closely the relation of good senators to good lobbyists. They felt that the Unicameral Legislature had attracted a quality senator. Subsequently, they also felt that the quality of the lobbyist had improved. One said, "Good lobbying influence has been increased under the Unicameral while bad (not in the public interest) has been largely eliminated."

A minority of the senators surveyed had less complimentary things to say about the influence of lobbyists. One put it bluntly, "This system (unicameral) is a lobbyist's dream."

Another added, "I believe that the lobby has too much power."

One senator explained his viewpoint this way:

"I feel as though because of the one-house Legislature the lobbyists have a much better opportunity to be effective than they would with the two-house."

A colleague disagreed:

"I think the smaller legislative body is less easy to influence than a large body would be since there is better control. I also know that reports you hear about the lobbyists are very much exaggerated. I found them very useful, since I could get both sides of the question, and it helped me to make decisions."

With the term "lobbyist" many people have associated the idea of gifts and favors given public officeholders. Very few of the senators in this survey even commented on this aspect of lobbying as a problem. But, one of them pointed out that "perhaps the unicameral system costs the special interest groups a little less money since there are fewer to entertain. . . ."

Another went to some length when he said: "Influence to me is a matter of the individual. You can get helpful information from a lobbyist if you use it as such. However, if you accept all of his gratuities, you are in a poor position to use any information you get. Better pay for the senators may help to cut down on the acceptance of these offers, as I know it was tempting to cut down on expenses, where as a matter of fact, your pay did not cover expenses."

A colleague put it bluntly: "If you are inclined to accept favors (money or meals) the size of the body won't matter."

Finally, several of the senators included as a lobbyist the pressure groups from back home. One said, "The lobbying as such is not bad. The pressure groups at home are the real threat."

Another defended the pressure groups at home: "The legislator's thinking is based on his opinion and those of the 'folks back home.' I don't think lobbyists really affect legislative opinions at all. Speaking for myself, I listened to what lobbyists had to say, but didn't let them sway me."

These were the senators talking. How about the lobbyists?

First who are they?

This information is easily obtainable since under Nebraska law the lobbyist is required to register and identify the organization he represents. He does this in the secretary of state's office. He is also required to present an expense report each month to the secretary of state. In this report, he is to list his salary and the expenses incurred in exercising his lobbying



Relief and inscription over main door of Capitol

activities. Failure to submit this report makes the lobbyist liable to a fine of $5,000 and or one year's imprisonment.

While it is assumed that under this law the report is open to audit, thus far in the history of the Unicameral Legislature, observers point out, no such audit has been conducted.

The registered lobbyists represent a great variety of organizations. In the 1961 session 121 lobbyists represented 128 organizations. (This does not include the state agencies, whose representatives are not required to register.)

Here is the way the list broke down. The largest lobby bloc represented insurance with 17 companies or associations. Utilities were next with 14. Representatives of 12 associations indicated the interest in farming and ranching. Professional societies (medicine, pharmacy, etc.) numbered 10, as did retail merchant organizations. Nine unions were represented with a majority associated with railroads. Civic and investment organizations each accounted for nine. Six lobbyists represented liquor interests. And six companies hire their own lobbyists to represent them in the Unicameral Legislature. Transportation of raw materials and finished goods by motor freight were represented by seven lobbyists from four organizations. Education associations (not institutions) had five lobbyists from three associations. The morals of the state found champions in three lobbyists representing churches, temperance, etc. Banking also had three representatives. And three persons listed themselves as representing "Self." Petroleum and cooperatives completed the list with two representatives each.

Now, how do these lobbyists feel about their jobs?

One of them pointed out quickly that it was his experience that an occasional lunch or a cigar were as far as he felt a lobbyist dared go in setting the stage for a friendly conversation with a senator.

"To do otherwise," he said, "will prejudice the lobbyist for all time and severely limit his future usefulness."

Observers point out that it has been a practice for some time for a lobby or lobbies to provide free lunches for any senator who wanted them.

Expert Help

Several of the lobbyists felt part of their function was to give technical information without which legislative errors might be made.

One former senator recalled problems in drafting legislation regarding Rural Electrification Administration power lines. The power lines had set up "interference fields" which made it almost impossible to talk on several rural telephone lines. This senator recalls that the bill that was passed to rectify the problem could not have been satisfactorily drafted without the technical assistance of the REA lobbyist.

Perhaps the lobbyists' viewpoint of the Unicameral Legislature was best summarized by a Statehouse veteran who denied that there was "under-the-table" dealing. He said:

"In our work, it is just as important to remember that 22 senators can kill a bill as it is to try to influence an equal number in favor of it."

Part III:

The Machinery

Between Sessions:

Work with Less

"NOW THAT," say many visitors to Nebraska's Unicameral Legislature, "is the kind of job I would like to have. Those senators work only six months out of every two years."

These visitors are normally about one-fourth right. For six months of their two-year term the senators make laws under the hot klieg lights of statewide publicity.

During the remaining 18 months the senators do the other three-fourths of their job with a good deal less fanfare. As members of committees of the Legislative Council the senators take time from their private jobs to do law-making research.

But the senators do not do the job alone nor without technical assistance. A director and his staff assist in this relatively unpublicized research job.

Why a Legislative Council?

Because, political scientists point out, lawmaking is not simply a one-shot arrangement each two years. It needs to have continuity from session to session. It needs to have the advantage of research and technical assistance.

In Nebraska particularly, political scientists say, the nonpartisan nature of the Legislature as well as its small size make continuity a problem. For instance, without continuity how can a legislative program in an individual area carry over from session to session? Upon what do senators lean in knowing where legislation is necessary? These are just two of the many questions the Legislative Council attempts to answer.

The senators and the Legislative Council staff members go to work in search of the answers just as soon as committees can be appointed at the end of the regular legislative session. Dr. Jack Rodgers, Council director since 1954, said that senators are given an opportunity to voice a committee preference. However, final decisions are made by the Council's Executive Board composed of the chairman and the vice chairman of the Council, the speaker of the Legislature, and the chairman of the Committee on Committees.

Each senator serves on from two to three Council committees during the approximately 18-month period.

What do they look into in the off-legislative season? They can and have looked into almost anything regarding Nebraska legislation.

Wide Range

Historically, the Council's 138 major studies have included local government, birth registration, groundwater use, mothers' pensions, public power, interstate toll bridges, district courts, religious societies, state highway construction, and even murals and panels for the state Capitol. Taxation has been studied 17 times and education 13 times.

Just how the Council goes about assembling those reports is most easily understood by following one of them through the process of lawmaking research.

In 1958 one of the studies was on consumer credit. That report had its beginnings when various Nebraska groups dealing with consumer credit asked that legal boundaries be set on revolving credit agreements and installment sales. Ideas

Fanfare

By Nancy Whitford

for reports may originate with the public as well as the Legislature, Rodgers explained.)

There was, at the time the Council's work started, a climate favorable to credit purchasing. Rodgers described it this way:

"Technology had placed the automobile and other durable goods such as washers, freezers, and air conditioners within reach of the average consumer — if arrangements could be made to finance them over a period of time.

"Banks had expanded installment loan departments, retail sellers had established credit systems, and consumer finance companies grew in number.

"Installment credit buying alone increased from $1, million in 1920 to $34 million in 1957."

Rodgers and his office staff, which includes Mrs. Marguerite M. Price, assistant director, and Helen S. Griess, research assistant, gathered the preliminary data. This early research involved a study of legal and financial problems and contact with other states to learn what has been done elsewhere.

This information was presented to each member of the committee. Then came six public hearings to gain more information and opinions.

The testimony was then summarized and the committee met in executive session to add its own recommendations.

Basis Laid

When the 1959 Unicameral Legislature met it had research, public opinion, and recommendations upon which to base its lawmaking. Two laws resulted from this study of the complicated business of credit. One, LB301, regulated revolving credit agreements, and LB652 governed installment sales.

Rogers believes the Council is successful in such cases as this "because the committees start with the general problem and work toward legislation that is acceptable to those concerned with the area studied."

During three recent bienniums, nearly 60 per cent of the Council's recommendations presented to the Legislature have been enacted into law. In 1955, 17 of 27 recommendations became law; in 1957, 24 of 42; and in 1959, 18 of 30. No earlier comparisons are available since the practice of listing recommendations that became law did not begin until Rodgers' appointment in 1954.

Rodgers is the third man to hold the position of director of the Council. Hugo Srb was appointed temporary director in 1937 until Dr. Roger V. Shumate became the first permanent director of the Council. The Council's history almost parallels the history of the Unicameral Legislature itself. It was established by statute during the first session of the one-house Legislature in 1937. The original resolution sponsored by Senator John Norton of Polk provided for a council patterned after one developed in Kansas. Dr. Frederic H. Guild, a member of the faculty of the University of Kansas and director of research for the Kansas Legislative Council, was instrumental in guiding Nebraska legislators. The Unicameral senators set up a 15-member Council. It was made up of three members from each



The Executive Board of the Legislative Council in 1970 (from left): Henry F. Petersen, William M. Wylie, Chairman C. W. Holmquist, William F. Swanson, Jerome Warner.

of the areas comprising the state's five Congressional districts.

Under Srb, the Council's first two studies were conducted on the homestead tax exemption and state assistance and child welfare.

Minutes from the early meetings suggest the Council was formed to meet a change in public opinion regarding government.

Senator Amos Thomas of Omaha noted in his introductory address as the first permanent chairman that government was becoming "more and more complex." More was being expected of the government, and because of the public demand, government was broadening its activities.

"As a result," he said, "there is a marked tendency toward more complex legislation and administration. It is becoming more and more difficult to enact just legislation without scientifically gathered data from which sound conclusions may be deduced."

Thomas greeted the other 14 senators who were members of the first Council with a note of optimism that was to be severely tested during the first years of operation.

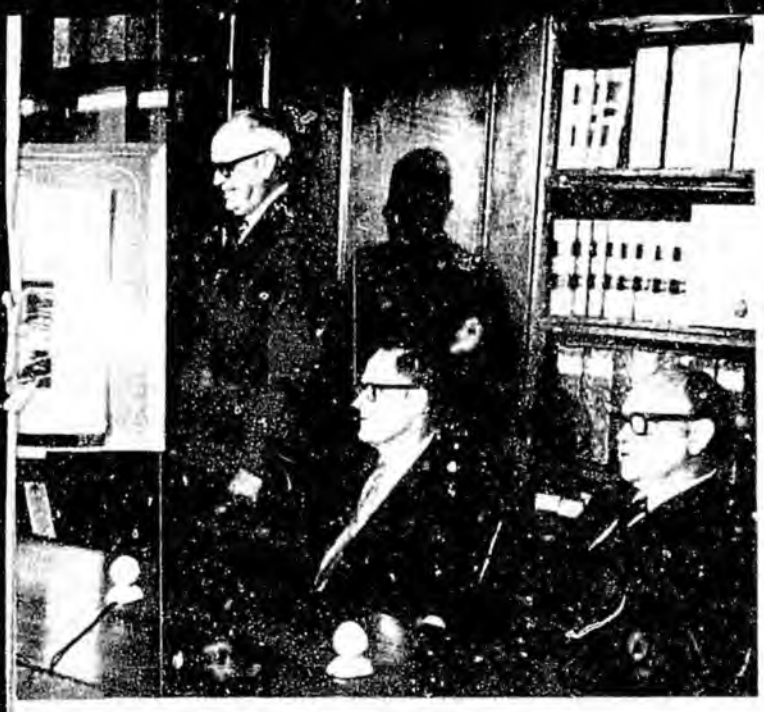
Bright Hopes

"I am sure of full cooperation, and confident that if our work is conscientiously, impartially, and thoroughly performed we will enjoy the confidence and support of the Legislature and of the public as well."

Mrs. Price recalled the difficulties the Council had to face because it was new.

"During the first eight years bills to abolish the Council were introduced in nearly every session," she said. "The Council had to sell itself and convince the Legislature it was beneficial."

There were problems in the early days. One that came up immediately involved expense accounts. Council members receive no additional pay, but are reimbursed for proper expenses incurred while attending Council sessions.



In September of 1937 Senator Allan A. Strong of Gordon questioned the constitutionality of this provision. However, a month later Deputy Attorney General Francis V. Robinson handed down his opinion that "expenses of legislative committees meeting when the Legislature is not in session are official rather than personal expenses."

The 1961 speaker of the Legislature, Senator Don Thompson of McCook, and other veteran observers noted a less tangible source of friction during this period.

"Senators who were not chosen (for the Council) resented their 'favored colleagues' and refused to consider Council reports properly. It was felt the small group was trying to dictate policy to the large group."

In 1949, the situation was remedied when the Legislature voted to make all 43 senators members of the Council.

Ten years earlier, in 1939, additional functions were placed within the Council structure. The already existing Legislative Reference Bureau was transferred to the Council. The duties of the Bureau included reference library and general reference service, preparation and distribution of the state **Blue Book**, and maintenance of the bill drafting service. The Council also supplies information on specific problems to individual senators.

Over the years, more and more information on a wider variety of subjects has been organized and researched by the Legislative Council. As Dr. Rodgers points out, not all studies "result in specific legislation. Many reveal there is no need for legislation. Others show a need which is not fulfulled."

Senator Thompson summed up the work of the Council this way:

"More and more requests for studies are received each year because people have seen the results which can be produced in the form of better legislation."

Safeguards Guide Bills

Are There Checks

By Leon Nyberg

YES, IT IS less complicated than the two-house system," said the cautious, "but is it safe? Is it possible for a bill to become law so swiftly that not all the legislators, let alone the public, have time to examine it?"

In 1934 these cautious Nebraskans were worried about the simplified procedure by which a bill becomes law in the unicameral system. They were concerned about the loss of the normal checks and balances of the conventional two-house legislature.

But today such staunch supporters of the one-house way of state government as Hugo Srb, clerk of the Legislature, feel there need have been no fear. In fact, Srb believes there are better safeguards built into the Nebraska system than in the bicameral legislatures.

The one-house defenders point to the 13 steps a bill must take before it becomes the law of Nebraska. The steps are:

1. Introduction and first reading.
2. Reference to standing or select committee.
3. Consideration by standing or select committees, after at least five days' notice of public hearing on each bill.
4. Report by standing committee and reference to general file or indefinite postponement.
5. General file: reading, consideration, and general debate by the Legislature and amendment if necessary.
6. Reference to Enrollment and Review Committee for review.
7. Report by chairman of Enrollment and Review and reference to select file.
8. Select file: amendment, by unanimous consent; to recommit to standing committee; to recommit to general file; to postpone indefinitely and to advance for engrossment are some of the motions in order.
9. Advancement to Enrollment and Review for engrossment unless recommitted to a standing committee or indefinitely postponed.
10. Report by chairman of Enrollment and Review in reference to final reading file or to select file by specific amendment.
11. Final reading.
12. Emergency clause (if there is one).
13. Consideration if vetoed by the governor.

Limit Bills

Any member of the Legislature may introduce a bill. But individual senators may not introduce a bill after the 20th legislative day, except by recommendation of the governor, or at the request of a standing committee and 26 affirmative votes, or upon a suspension of the rules, which requires 29 votes.

"This deadline speeds preparation of bills and encourages legislators to use bill drafting services and research facilities of the Legislative Council before the start of a session," Dr. Adam Breckenridge pointed out in his book, **One House for Two.**

After a bill is introduced, it is read by title (the first reading) and referred to the proper committee. After at least five days' public hearing on each bill before taking final action.

The committees have the authority to combine and correlate bills, as well as to

and Balances?

propose amendments to them. Public hearings on each bill before final committee disposition allow private citizens to express their views and provide information for committee members.

An example of a committee's amending power can be found in many of the bills a committee considers each session. For instance, in 1961 LB208, which set the tax levy for the State Park Fund, provided for a .35 mill tax when first introduced. After committee and initial floor debate, the figure was lowered to .30 mill. With this compromise figure, the bill was approved by the committee and later received final approval on the floor of the Legislature.

If the committee's vote on a bill is favorable, it is advanced to the floor to be placed on general file. General file is the first debate stage before the entire Legislature. On general file committee amendments are accepted or rejected and further amendments are in order.

A dissenting vote by a committee postpones indefinitely action on the bill. Postponing a bill in a committee has the effect of killing it unless a majority of the legislators vote to place it on general file within three days after being reported to the Legislator as indefinitely postponed. After that it takes 29 votes.

General File

After consideration and debate on general file, the Legislature votes on further disposition of the bill. Approval means advancement of the bill to the Committee on Enrollment and Review for review; disapproval postpones the bill indefinitely. At this stage the Legislature also has the alternative of recommitting the bill to the committee.

The Committee on Enrollment and Review is a one-man committee. This legislator, usually a lawyer, has authority to correct such things as spelling, capitalization, and phraseology of bills to make certain they are legally correct.

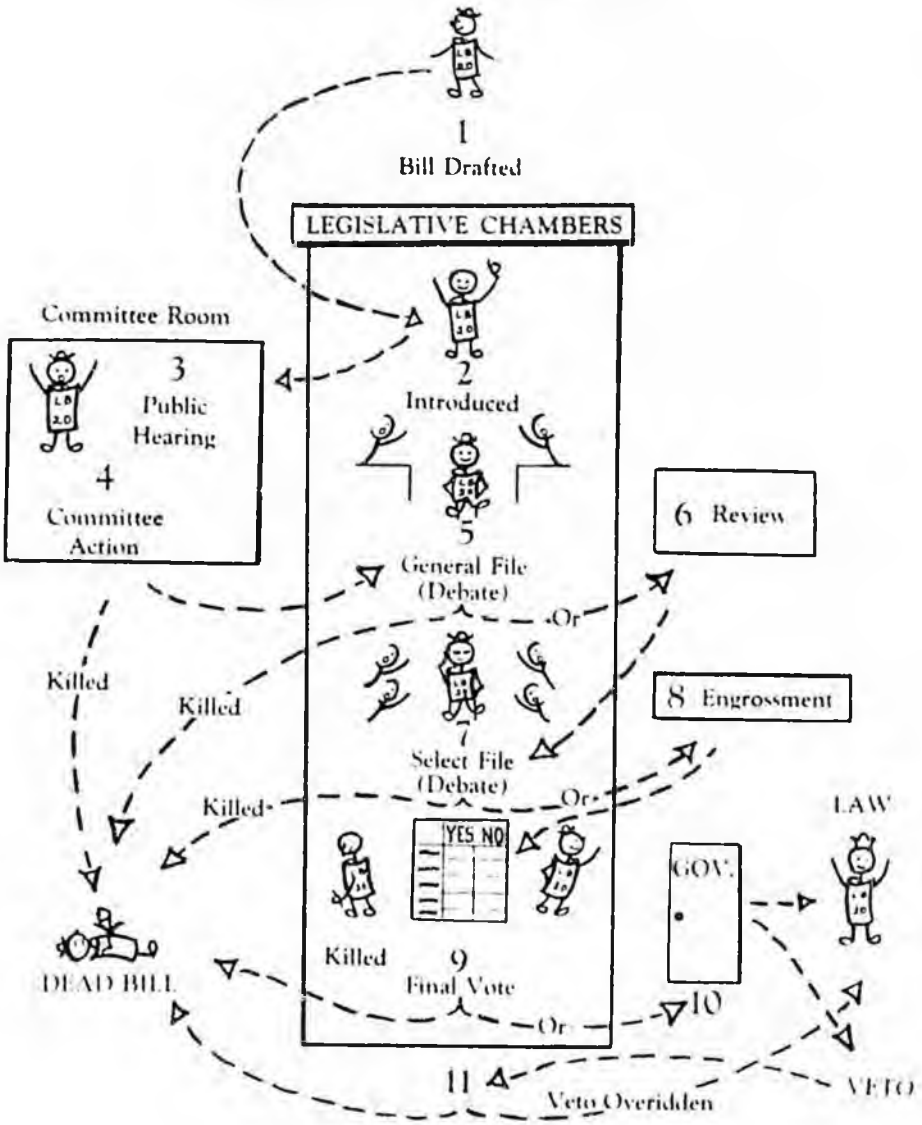
The bill is returned to the Legislature on select file. Select file is a preferential calendar of bills. At this point, the Legislature has several alternatives. The bill can be advanced, postponed indefinitely, recommitted to the general file or to the standing committee, changes recommended by the chairmen of enrollment and review can be approved or rejected, or it may be amended by unanimous consent.

A favorable vote on select file advances the bill once again to the Committee on Enrollment and Review, this time for engrossment (a formal transcript). The legislative rules state that with all amendments "all bills, before being advanced to final reading . . . shall be engrossed by typewriter, and . . . copies thereof shall be supplied for the use of members."

After engrossment the bill is sent back to the floor of the Legislature to the final reading file. When on final reading file the bill must be read in full, including all the amendments, before the Legislature. At this time the Legislature may vote to recommit the bill to Enrollment and Review, the standing committee, or to the select file for specific amendment.

If the bill is not recommitted, a final roll call vote is taken. If passed, the bill goes to

Step-by-Step: Life of a Bill



Many steps for bills make up for checks of a second house.

the governor to be signed. If voted down, the bill is killed.

An approved bill becomes law 90 days after the adjournment of the legislative session if it is signed by the governor. However, in some cases, an emergency clause is attached to a bill. An example of this is found in LB659, a 1961 bill to limit hours and work of female employees. The final section of this bill provided the emergency clause, "Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law." In some cases, the bill may state a specific day on which it is to go into effect.

A three-fifths vote of the Legislature is required to override a veto by the governor. If such is the case, the bill becomes law without the governor's signature.

Any bill not returned by the governor within five days after he receives it becomes law without his signature. If the Legislature adjourns before the five days are up, and the governor does not subsequently sign it, the bill goes into effect without his signature.

If the Legislature adjourns and prevents the return of a vetoed bill it is filed, with the governor's objections, in the office of the secretary of state within five days after the adjournment and the bill is dead.

Item Veto

On certain money appropriation bills the governor has the power of the item veto. That is, he may disapprove any item or items of the appropriation by striking only those items from the bill.

After final approval all bills are filed with the secretary of state to become law at the specified time.

These steps through which a bill must pass, say one-house proponents, more than make up for the checks and balances lost by the elimination of a second house. Nebraska observers point out that each step is strictly followed on every bill. They explain that in many two-house states the requirement for a public hearing is either ignored or can be by-passed. To these men who have worked with the Unicameral Legislature for more than two decades the one-house system has provided ample protection for the integrity of Nebraska law-making.

Drafter's Job:

To See That

By George Peterson

"BILL INTRODUCTION Sets Record."

"20 New Bills Tolled Into Hopper."

"Senators Race to Beat Bill Deadline."

Headlines like these tell Nebraskans that their state senators are hard at work during the first 20 days of each Unicameral Legislature session.

During this period when individual senators can introduce bills it would seem that the proposals crop up by the handful and are tossed into the "hopper" by the bushel. The process is neither so simple nor so disorganized.

As the bill drafter works on every measure introduced into the Legislature he is guided by constitutional and statutory provisions, as well as legislative rules and principles. From these sources come certain key phrases:

"Constitutionality . . . phraseology . . . harmony of style . . . typographical style . . . uniformity of laws. . . ."

Average 562

Since 1937 an average of 562 bills have been introduced in each session. They all had to pass the standards of the bill drafter.

The reason all bills must move through his office is found in the Rules of the Legislature, which state "No bill shall be introduced unless it has been approved as to form and draftsmanship by the legislative bill drafter."

This valuable service is available only to the legislators and the executive departments of the state.

If a citizen wants an idea drafted into a bill he must confer with his district representative and gain his consent to back the idea. The law requires that the introducer must be willing "to endorse and support personally" each bill he introduces. The representative can then take the citizen's idea to the draftsman for preparation.

Letters, laws, and ideas are the raw materials the drafter must work with to come up with his finished product. His service becomes available December 1 before the session of the Unicameral Legislature begins.

The office often receives letters from legislators mapping out an idea, and the drafter must then turn this letter into a presentable bill.

If some other state already has a law that a Nebraska senator feels should be enacted, in whole or in part, the drafter must revise the law so it will harmoniously fit into the Nebraska statutes.

Sometimes a senator presents only sufficient information and gives only the intent and purpose of the proposed legislation. The drafter must take over from there.

Since the draftsman usually receives limited instructions, this imposes a heavy responsibility and requires the exercise of impartial discretion in the public interest, according to John J. Wilson, bill drafter in 1961.

For example, an initial decision based on the constitutional provision that "no bill shall contain more than one subject," must be reached. This is often difficult to determine, but a bill becomes unconstitutional if this one technical detail is improperly handled.

Laws Fit In

Before proceeding with the drafting of a bill, the draftsman checks the constitution, the cross-reference file, the court decisions, and, if the measure is amendatory legislation, the statute to be changed.

Since all formal requirements and inhibitions of the constitution must be met, the manner in which the proposed legislation can be drafted may be limited. For example:

1. No local or special laws shall be enacted into a general law.

2. No grant of extra compensation can be made to public officers and contractors.

Also, there must be a study of the court decisions to ensure that legislation already declared unconstitutional by the courts is not re-enacted into a new law. This, the bill drafter knows, would only invoke the power of the courts to again set it aside.

If the opinion of the drafter is that the constitution and other principles of law would be violated by the proposed legislation, he calls it to the attention of the senator requesting the bill. The decision of whether the bill still should be prepared then is the senator's.

Other Laws

The cross-reference file also must be checked. It shows all statutes that may be affected by amendatory or new legislation. If other related statutes are covered, it is necessary that they, too, be amended or repealed.

The reading of the statutes to be amended is important since there is a possibility that the proposed legislation may have been enacted and be law at the present time.

Once the bill is drafted, the draftsman turns to writing a title for it.

No question, according to Wilson, is raised in court more often or more persistently than that of the validity of the title.

"A poor title can kill the best bill," Wilson explained. It must be general enough to tell the public exactly what is in it.

A total of six copies of each bill are typed. They go, among other places, to the printer, the press, the senator for whom it was drawn, and into the bill drafter's files as an office copy. The bill drafter's job is done, temporarily at least, once the introducing senator picks up the copies and turns them over to the clerk of the Legislature for introduction and distribution.

If a bill is postponed indefinitely at any stage of the legislative process the drafter never sees it again.

However, if amendments have been made when a bill reaches the stage of select file, the amendments must be added to the bill so it will be in complete form for final reading. The drafter must see the bill once again, because his office prepares the final printer's copy. This involves receiving the bill from the engrossing clerk and comparing it against the original bill and the amendments.

The drafter is not required to formulate all the amendments, but he does a large percentage of them. But the responsibility of informing senators of any amendments rests with the clerk of the Legislature.

The work of the draftsman is not confined just to bills. An estimated 95 per cent of the resolutions are written by him. Resolutions are for such purposes as offering condolences, memorializing the Congress of the United States to pass particular federal legislation, requesting action of state officials and departments, assigning duties to the Legislative Council, and other similar objectives.

The major qualification of the drafter, observers say, is that he be an able lawyer who is impartial and can ensure secrecy to all persons who make requests.

The appointment of the drafter is made by the Legislative Council in the November before the regular biennial session of the Legislature. It has been customary that the appointment goes to the same individual for a good many years. Only three men have held the job from 1937 through 1961.

The drafting service is part of the legislative branch of government. The drafter works with the Nebraska revisor of statutes, a judicial branch position, given the duty "to aid and assist the bill drafting service." This close liaison between the judicial and legislative branches works to get harmonious style, arrangement, and similar terminology of the statutes. The revisor in 1961 was Walter D. James.

The bill drafting service has not always been available to legislators before the session opened. The unicameral system adopted in 1934 did not make provision for such a service. But statutory provision was made in the first session of the Unicameral Legislature. It provided for preparation of a legislative program in the form of bills, or otherwise, as required.

In that 1937 session, with the inception of the Legislative Council, the office was established and duties of the bill drafter were laid down. George Mann held the office from 1937 until 1941.

Own Style

Mann had his own style, which was perhaps a little more detailed than the style used today, according to John J. Wilson, who has held the position for all sessions since December 1, 1944. (Walter James, who later became revisor, was the bill drafter from 1941 to 1944. Wilson was his assistant.)

Wilson graduated from the Nebraska University Law School and is assistant revisor of statutes when the Legislature is not in session.

The codifying and filing of all the statutes was a new idea incorporated into the work of the drafter in 1943. This innovation came as the result of a major revision of the statutes when James held the drafting position. The file was not completed until 1945 and since that time has been kept current.

The latest change in the composition of the drafter's office was made in 1959 when the position of attorney of enrollment and review was moved from the jurisdiction of the clerk of the Legislature to the bill drafter who now, in a sense, "hires" the attorney.

This job has a dual role—that of attorney on enrollment and review and assistant bill drafter. Emory Burnett, an instructor at the University of Nebraska Law School, who had been assistant drafter, acquired the additional responsibilities.

His job is to correct the spelling of words and errors of punctuation and capitalization and to proofread bills and amendments as they travel through the Legislature.

These two men work closely under the rules clause, "the bill drafting service shall have supervision of legal work performed for the Enrollment and Review Committee."

Wilson and Burnett feel that it is necessary and advantageous that they see eye-to-eye on the major as well as the minor aspects of bill drafting.

The harmony, observers say, that results from such an approach helps give Nebraska the "complete and efficient" bill drafting service called for by the statutes—even when bills are tossed into the hopper by the bushel.

'No bill shall be introduced unless it has been approved ...by the...bill drafter.'

The Nebraska state flag

THE STATE FLAG



Speaker's Role:

The Nonpartisan

THE PRESIDING officer: W. F. Chapin, speaker of the Territorial Legislature of Nebraska.

The time: 1867, just before statehood.

The place: Omaha, in the Territorial Capitol.

The subject: reapportionment.

The power behind the presiding officer: a Colt revolver.

A group of scowling legislators approached the platform. They had every intention of deposing the speaker—bodily, if necessary. The first of the disgruntled lawmakers placed his foot on the step of the platform. Speaker Chapin drew his Colt. The rebellious legislators hesitated for a moment, and in that instant Chapin acted.

He declared the house adjourned under the rule that it was in his power to do so if "disorder reigns."

A Colt revolver is not part of the equipment of the speaker of the modern Unicameral Legislature. Over the years the speaker's power has shifted and in some cases has been reduced. But the honor of being named to the job has not diminished since that riotous session in 1867.

The speaker, who is chosen by a majority vote of the senators, acts as presiding officer of the Unicameral Legislature in the absence of the lieutenant governor. His other duties include membership on the Budget Committee, the Reference Committee, and the Executive Board of the Legislative Council.

But as Dwight Burney, a past speaker, pointed out, although there are few duties of the speaker, the job changes from session to session. He explained that the problems arise and differ with each meeting.

One of the speaker's main duties is to act as a kind of nonpartisan whip. John E. Beaver, speaker in 1957, explained this job of co-ordination by the speaker. He said committee chairmen seldom fail to move bills as quickly as they should, "but there were several occasions when I felt hearings weren't being held as quickly as they could have been and suggested that they do so."

Push Work

Burney explained that the speaker must make sure all committees know how much work each is completing and see to it that each committee keeps pace.

Don Thompson, speaker of the 1961 session, described his job as "seeing that the Legislature is properly organized; in general, guiding the operation so that there isn't any slowing down in procedure and trying to keep a balance of bills on general file, select file, and general reading."

The speaker's other job—presiding in the lieutenant governor's absence, is not as hit and miss as it might seem. Burney pointed out that the strain of presiding is such that the lieutenant governor needs a break and so most speakers fill in several times each day. Harry L. Pizer said he took over at intervals each day and was the sole presiding officer in 1960 when Burney had become governor after the death of Governor Ralph Brooks.

"I was tough," Pizer said. "I wouldn't want to be on the floor while I was speaker. I felt the job was to keep the senators in

Normally, previous experience is a factor in the selection of the speaker, legislative records indicate. Only one man, Robert B. Crosby, speaker in 1943 and later lieutenant governor and governor, served in the job before he had been in at least four previous sessions as a senator. Charles J. Warner in 1937 came to the job with more experience than any of the Unicameral Legislature's speakers. He served 13 terms as a legislator.

The actual power of the speaker has shifted over Nebraska's history as a state. In the days of the Territorial Legislature (1855-1867) and bicameral Legislature (1867-1935) the speaker was in a different position. At that time he was the presiding officer of the lower chamber. The lieutenant governor presided over the state Senate. Today the speaker takes the chair, preserves order, puts questions to the floor, and signs bills only in the absence of the lieutenant governor.

Indications of the speaker's power may be noted in early legislative rulebooks. These show that the speaker had the authority to appoint all committees unless otherwise directed by the House. Today this is the job of the Committee on Committees.

Because the modern Unicameral speaker is one of the three members of the Reference Committee, it would seem that this small group could influence the flow of legislation. The Reference Committee assigns bills to the various standing committees. But Thompson pointed out, "The majority of the bills fit into a prescribed category according to their title, and that's where they go."

The Unicameral Legislature also lacks the partisan politics upon which earlier elections of speakers used to depend. Before adoption of the unicameral system with its nonpartisan members, party strength was a factor in the choice of the speaker.

When J. G. Megeath was chosen speaker of the Territorial Legislature in 1866 by a 25-9 vote, he was reported to have said that his election was due partially to providential absences and manipulation. Records show that the Democratic speaker was right. The Republican senator from Gage County was delayed by a storm and the Republican representative from Burt County received information that the Legislature was to open a week later than it did. The Republican from Richardson County turned Democrat temporarily in return for the chairmanship of the Committee on County Seats and County Roads.

Background

Over the years men whose parttime job has been speaker of the Legislature have come from many occupations. But since 1937 about one-third have been farmers or ranchers and another third lawyers. Legislative records show a wide variety of jobs among the speakers. J. H. Mockett, speaker in 1903, was a school teacher at the age of 18 before entering college. John Kuhl (1911) was in the harness business, and G. W. O'Malley (1933) was a collector of internal revenue.

Two Omahans

The statistics also show that since Nebraska became a state only two of the speakers have come from Omaha, the state's largest city. They were J. A. Rodman, who held the position in 1927, and Charles F. Tvrdik, in 1953.

Rodman, Tvrdik, O'Malley, Kuhl,

Mockett, Crosby, Beavers, Burney, Pizer, Thompson—these are a few of the names on the long list of men who have been speakers of Nebraska's Legislature. And observers of the Unicameral Legislature point out that it is often difficult to spot the leaders in this form of state government. But they agree that one sure way is to read the list of the men who have held the title, Speaker of the Nebraska Legislature.



A Capitol mosaic

Roster of Nebraska Legislative Speakers

Territorial Legislature

A. P. Hanscom 1855
P. C. Sullivan 1855
I. L. Gibbs 1857
J. H. Decker 1857
H. P. Bennett 1858
S. A. Strickland 1859
H. W. DePuy 1860
A. D. Jones 1861
George B. Lake 1864
S. M. Kirkpatrick 1865
James G. Megeath 1866
W. F. Chapin 1867

Bicameral Legislature

W. A. Pollock 1868
W. F. Chapin 1867-68
W. McLennan 1869-70
George W. Collins 1871
M. Sessions 1873
Edward S. Towle 1875
Albinius Nance 1877
C. P. Mathewson 1879
H. H. Shedd 1881
George M. Humphrey 1883
Allen W. Field 1885
N. V. Harlan 1887
John C. Watson 1889
S. M. Elder 1891
J. N. Gaffin 1893
C. L. Richards 1895
J. N. Gaffin 1897
Paul F. Clark 1899
W. G. Sears 1901
J. H. Mockett, Jr. 1903
George L. Rouse 1905
D. M. Nettleton 1907
C. W. Pool 1909
John Kuhl 1911
P. C. Kelley 1913
George Jackson 1915-18
Dwight S. Dalby 1919
Walter L. Anderson 1921
A. N. Mathers 1923
Allen G. Burke 1925
James A. Rodman 1927
Born R. Coulter 1929
Max Kier 1931
George W. O'Malley 1933
W. H. O'Gara 1935

Unicameral Legislature

Charles J. Warner 1937
William H. Diers 1939
R. M. Howard 1941
Robert B. Crosby 1943
C. Petrus Peterson 1945
Walter R. Raecke 1947
Earl J. Lee 1949
Ed Hoyt 1951
Otto Prohs 1952
Charles F. Tvrdik 1953
Dwight W. Burney 1955
John E. Beaver 1957
Harry L. Pizer 1959
Don Thompson 1961
William Moulton 1963
Kenneth L. Bowen 1965
Elvin Adamson 1967
Jerome Warner 1969

Lieutenant Governor:

The Partisan in

By Sylvia Rodehorst

THE CHIEF presiding office of the Nebraska Unicameral Legislature is held by a man who must be a part-time politician, a part-time nonpartisan, and a part-time governor, and whose fulltime job is almost always in private enterprise.

This description represents the paradox that is the lieutenant governor's job in Nebraska. While he is all of these things he is also one heartbeat away from the governor's chair.

Some observers believe his partisan election is of value in his job as the nonpartisan presiding officer of the Legislature. Others believe that this necessity for wearing two hats hinders him. At least one former lieutenant governor asked a subsequent Legislature to abolish the job.

But so far as the Unicameral Legislature is concerned the lieutenant governor of Nebraska performs a vital function during every legislative session. As presiding officer he recognizes speakers from the floor, rules on questions of parliamentary procedure, and clears the back of the legislative chamber and the galleries if visitors become too noisy. His vote counts only in the case of ties.

Administratively, his role in the one-house system differs little from that in a bicameral legislature. The major difference is that his presiding domain in the Unicameral Legislature is over the entire state lawmaking body. Under this system, the speaker, elected from the floor, presides only in the lieutenant governor's absence. But before 1937 in Nebraska the speaker presided over the House while the lieutenant governor was in charge of the Senate. Politically, according to Hugo Srb, clerk of the Legislature, the lieutenant governor's role has decreased in importance. Before 1937, Srb pointed out, the lieutenant governor was the party leader who played an influential part in naming committee members and getting bills passed. Now, although he is still elected on a partisan basis, the lieutenant governor is expected to be impartial on all political questions arising in the nonpartisan Unicameral Legislature. Lieutenant Governor Dwight Burney, a past speaker and long-time legislator, feels that the present approach is the best one.

"The lieutenant governor has no voice except to preside," he said. "He can detach himself more than someone—such as the speaker—who has bills of his own."

Jobs for Both

Burney added that it is good to have both a lieutenant governor and a speaker. The lieutenant governor can deal with the mechanical job of keeping the legislative process under control and the speaker can concern himself with legislation and contact with chairmen of separate committees to see how they are progressing.

Burney explained that the speaker, who by the very nature of his job as a legislator is prone to favor certain bills, might swerve legislation. The lieutenant governor said this might be done by his vote to break a tie or his decision on a voice vote. A voice vote, Burney explained, requires that the presiding officer—whether he be lieutenant governor or speaker—decide which is louder, the yeas or the nays.

the House

"Any member, however, can demand a machine vote if he does not agree with the decision," Burney said.

The fact that the speaker is nonpartisan and the lieutenant governor is partisan means the lieutenant governor might be prone to take a partisan viewpoint on a bill and the speaker might not. But according to Burney, this has not been a problem.

And Harry Pizer, the speaker in 1959, agreed. He said the partisan election of the presiding officer makes no difference. The lieutenant governor, as an elected partisan official, should have the job of presiding over the Senate, Pizer added. It is very good, he said, if the lieutenant governor has had experience as a legislator such as Burney has.

But the lieutenant governor should keep out of contact with bills, if possible, Pizer continued, and added that because he doesn't introduce any bills it is easier for him to avoid taking sides. In Pizer's 10 sessions in the Legislature he had not seen lieutenant governors who showed partisanship toward bills.

Robert Crosby, a former legislator, former speaker, former lieutenant governor, and former governor, is the man who suggested the lieutenant governor's job be abolished. He said it would be more appropriate for the speaker to be the chief presiding officer.

The speaker, Crosby said, is elected on a nonpartisan ballot and would make a more appropriate presiding officer for a nonpartisan Legislature. Crosby believed that the lieutenant governor who has been elected on a party platform might be inclined to inject party politics. Crosby said he had seen—though infrequently—partisanship crop up in Unicameral proceedings. This was not in the matter of parliamentary rulings, he said, but in the power of the lieutenant governor and speaker to refer a bill to a committee or to help in the appointment of senators to a committee.

No Duties

"A second reason for my view," Crosby said, "is that a lieutenant governor has no significant duties except to preside over the Legislature and this is not enough reason to have one." In case of illness or death, another elected official could take the governor's place.

The lieutenant governor also acts as governor during the latter's absence from the state. Of the 26 men who have served as lieutenant governors, only two have succeeded the chief executive. Ezra P. Savage served in both offices from 1901 to 1903 after the resignation of Charles H. Dietrich. Dietrich resigned after only four months as governor to accept a nomination for a short term in the United States Senate. The 1961 lieutenant governor, Dwight Burney, was governor for almost four months after the death of Ralph G. Brooks September 9, 1960. Two lieutenant governors have become governors by election. Samuel R. McKelvie was elected to the governorship in 1919 after serving as lieutenant governor from 1913 to 1915. Robert Crosby, lieutenant governor from 1947 to 1949, served as governor from 1953 to 1955.

Only two lieutenant governors have died

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Committee Work:

The Public is Heard

By Lee Gayle Hord

AT 2 P.M. for several months during the legislative sessions it is impossible to find all of Nebraska's senators in one spot.

At that hour the legislators start doing what many students of government consider their most important job—committee work. At no time, they point out, does a bill get closer consideration than during the committee hearing.

Here the public is heard. Here friends and foes of a bill face each other. Here revisions, called amendments, are proposed. And here the weight of each senator's voice is multiplied many times.

Potent Vote

In the legislative sessions, each senator's vote is one of 49. But in a seven-member committee his vote is one of seven, or seven times more powerful.

The committee system has not always been as organized as it is today or as it has been since 1937 when the unicameral system took over in Nebraska.

But there were some similarities. Under the bicameral system, both the House and the Senate had standing committees. Each had a Committee on Committees that operated almost exactly as in the unicameral system. In the House, it was composed of 13 members, consisting of two members from each Congressional district and one member at large as chairman. (There were six Congressional districts then. By 1961 the number had shrunk to three.)

The Senate's was similar, with seven members, one from each Congressional district and one at large as chairman.

The big difference between bicameral and unicameral committee systems shows up in the number of committees.

In 1935, the last bicameral session, there were 29 committees in the Senate and 32 in the House. The numbers varied from year to year, but were ordinarily close to 30 in each body.

The earliest major effort to reform legislative procedure came in 1913 when the Legislature provided for a joint committee to investigate the subject and report to the succeeding Legislature.

After that investigation of the standing committees, the reform committee reported that while the most powerful work of the Legislature is done by committees, the organization and regulation of their work was the weakest feature of legislative procedure.

The investigators recommended for the 1915 Senate 27 committees with a total membership of 139, compared with 42 committees with 255 members in 1913. A similar recommendation was made in the House, reducing 47 committees with 496 members to 30 committees with 238 members.

"Committee work in Nebraska has become a joke," the investigators reported. "There are now more committees than there is use for. We recommend abolition and consolidation, and a radical reduction in the membership in

order that a member shall serve on two or three committees only."

Selfish Favored

"The advantages of our present system," the report continued, "are entirely in favor of the selfish unscrupulous member, for he finds great possibilities in conflicting committee meetings, excessively large committees, private sessions and unrecorded action."

With such large committees, it was not uncommon for a bill to be purposely held, never officially voted upon, never officially considered, and sometimes never even recorded.

The investigators also were concerned over the simple matter of attendance at committee meetings. They pointed out that there was very little effort made under legislative rules to encourage or help make it possible for a member to attend committee meetings. In 1915, as recommended by the reform committee, afternoon hours were devoted so far as possible to committee work, the House from 3 to 6 p.m., the Senate all of Thursday afternoon and other legislative days from 4 to 6 p.m.

That was the beginning of committee reform in Nebraska's Legislature. The next major change came with the adoption of the unicameral system.

Under the unicameral system, there are only 15 committees. Their members and chairmen are chosen by a Committee on Committees. This body has 13 members. Twelve of them are chosen by the Legislature so that each of the state's Congressional districts is given equal representation. One member, chosen at large, becomes chairman. Each member of the Legislature serves on one or more of these committees.

(There is another important committee that, according to Legislative Clerk Hugo Srb, is not normally listed as a standing committee. This committee, the Reference Committee, is a permanent committee made up of the lieutenant governor, the speaker, and the chairman of the Committee on Committees. Its job is to assign bills to the proper standing committee.)

The rules provide that each committee, before taking final action on a bill or resolution, must hold a public hearing and must give five days' notice before the session. Each committee also keeps a record of its proceedings. Committee meetings are open to the public. Executive sessions are open to the press, although reporters are bound under a gentleman's agreement to keep individual votes and discussions confidential.



Committee hearings give the public a chance to speak.

Does it Work?

Has the system worked? Many observers, including senators and former senators, believe additional minor changes might be beneficial. Most of these suggestions concern the committee workload of the senators.

But the record of the first decade of the Unicameral Legislature tells part of the story. In the bicameral Legislature, an average of 907 bills were considered each session, and an average of 120 were passed. In the first 10 years of the unicameral system, an average of 492 were considered and an average of 209 were passed.

And today, at shortly before 2 p.m., as senators hustle along the Statehouse corridors, they are on their way to what many consider their most important assignments—committee meetings.

Special Sessions:

Emergencies

By Don Bennett

THE EIGHT special legislative sessions held since the formation of the Nebraska Unicameral Legislature in 1937 have been called to deal with matters ranging from taxation to diseased pigs.

The special sessions, which are called by the governor, are held to conduct matters of primary importance that will not wait until the next regular session.

The special session often assumes some extraordinary features not found in the regular sessions of the Legislature. The law requires that no bill can be passed until five days after its introduction. This means that the legislators must convene during that time on separate days even if there is no actual business to discuss.

Formalities

These brief meetings during the required period are sometimes just formalities. The Legislature may meet at 11:30 p.m. Wednesday, introduce a few people, adjourn at 11:45, and reconvene at 12:05 a.m. Thursday for a few minutes to complete two of the required number of meetings.

Since the first special session of the Unicameral Legislature was called in 1940, these sessions have cost the state $37,000 through 1960. The last bicameral special session, in 1935, lasting 24 days, cost $30,769.52. In 1960 under the unicameral system two special sessions were called. The second of these, lasting seven days, cost $4,291.40. Backers of the Unicameral Legislature point out that even during this 25-year period of great inflation the cost of special sessions with onehouse has remained relatively inexpensive.

Unlike the regular session, the special session considers only matters specifically mentioned in the call.

One bill that is always introduced in the special session and in the governor's message of intent calls for the proper appropriation of funds for payment of all costs of the session.

While all special sessions are considered to be called to deal with emergency measures, there have been only three that were called in the wake of a catastrophe.

On January 2, 1940, Governor Roy L. Cochran called a special session to deal with relief measures "as a result of the war abroad."

This 54th session of the Nebraska Legislature was termed by Cochran as one with "a humanitarian purpose."

On April 17, 1952, Lieutenant Governor Charles J. Warner brought the gavel down, calling the 63rd and extraordinary session of the Unicameral Legislature to order.

Addressing the senators, Governor Val Peterson grimly stated:

"We face... a catastrophe. Thousands of Nebraskans living along the Missouri River are homeless and in the days that lie ahead other thousands may be forced to evacuate.

"I plead with you, in the name of those who today are suffering unprecedented floods, to provide money in order that our state government may extend a helping hand to these citizens."

The senators rallied to his call and appropriated one-half million dollars for flood relief.

On August 27, 1952, only four months later, Governor Peterson again called the

from Pigs to Taxes

members of the Legislature back into session to consider another catastrophe. He met the 64th session with the challenge to enact a measure to save "one of our most valuable exports."

"Nebraska's hog population numbers three million and is a $100 million industry," stated Peterson. "Today, this industry is threatened by the outbreak of visicular exanthema."

The senators voted into law measures to provide funds to purchase infected animals and to make it illegal to feed garbage to livestock. Also, in order to maintain a fight against livestock diseases, the Legislature voted to provide for a revolving fund to purchase test cattle.

Peterson also asked the special session to raise the ceiling on old age assistance benefits to $60. The senators granted his request. An earlier special session called in 1946 by Governor Dwight Griswold had raised the ceiling on old age assistance to $55.

Education

Other measures requested by Griswold and granted by the Legislature provided for the removal of state limits on junior college tuition; $10,000 for the distribution of national school lunch funds; $25,000 for administration of national funds for on-the-job veterans' training; and $1,685,000 for postwar construction of state institutions by the Board of Control.

This was the second special session that Governor Griswold had called. Two years earlier, on March 27, 1944, he called the 57th Legislature to regulate the issuance and sale of bonds and to provide a safeguard in the employment of agents for public power and irrigation districts.

The state's tax structure prompted Governor Robert B. Crosby to summon the lawmakers. "Not in many years has there been a special session as important as this one," said Governor Crosby. He was speaking of the 66th session of the Nebraska Legislature on April 20, 1954.

"This session has but a singular purpose," said Governor Crosby. "To submit proposals on which the people shall vote at the election in November."

He requested the senators to prepare amendments to exempt household furnishings and personal effects to an extent that the Legislature deemed desirable; to allow the Legislature to equalize assessments among the counties; and to protect the people from the "extravagant" use of support taxes.

The Legislature, in addition to these requests, put on the ballot a constitutional amendment providing that if a general sales tax, or an income tax, or a combination sales and income tax is adopted, a property tax cannot be levied.

Job Needs

Two special sessions were held in 1960. The first, called by Governor Ralph Brooks on August 1, requested that the citizens of the state be given an amendment to vote upon in November 1960.

"...Nebraskans will need to create 56,000 new jobs in the next 10 years, and if we are able to stem the tide of our migration Nebraska needs 146,000 new job opportunities," said Brooks.

The amendment was to allow the Legislature to authorize governmental subdivisions to acquire, own, lease, and develop real and personal property for the use of private interests. The amendment was approved by the voters.

On December 12, 1960, Governor Dwight W. Burney, who assumed office upon Brooks' death, asked the Legislature to convene. In his opening message he stated that he had called the senators to provide legislation that would "activate the intent of the constitutional amendment that was passed at the recent elections."

The amendment he referred to provided for a pay increase not to exceed $200 for the state senators.

The call for a special session is rarely issued, only 24 times in the history of Nebraska state government. Yet political scientists point out that it is a necessary provision that makes the Unicameral Legislature flexible in emergencies.

Special Sessions Of Nebraska Legislature

Date	Governor	Days Met
Feb. 20, 1867	(still territory)	2
May 16, 1867	Butler	34
Oct. 27, 1868	Butler	2
Feb. 17, 1870	Butler	14
Mar. 4, 1870	Butler	1
Mar. 27, 1873	Furnas	3
Dec. 5, 1876	Dawes	
Dec. 5, 1876	Dawes	
May 10, 1882	Nance	13
Mar. 26, 1918	Neville	12
July 29, 1919	McKelvie	5
Oct. 14, 1919	McKelvie	5
Jan. 24, 1922	McKelvie	9
Mar. 4, 1930	Weaver	11
June 9, 1931	Bryan	11
Oct. 28, 1935	Cochran	24
Jan. 2, 1940	Cochran	11
Mar. 27, 1944	Griswold	11
Aug. 22, 1946	Griswold	7
Apr. 17, 1952	Peterson	7
Aug. 27, 1952	Peterson	7
Apr. 20, 1954	Crosby	12
Aug. 1, 1960	Brooks	7
Dec. 12, 1960	Burney	7
Oct. 21, 1963	Morrison	24
June 6, 1966	Morrison	7
Jan. 3, 1968	Tiemann	7
Dec. 9, 1968	Tiemann	7
June 9, 1970	Tiemann	7



Bryan statue north of Capitol

One Can Live Cheaper

By Roger Wait

FOR A STATE in the grip of drought and depression in 1934, one attractive element of the proposed unicameral was the suggestion that it might cost less.

While post mortems on the passage of the unicameral amendment cannot clearly indicate any one reason Nebraska's voters said "Yes," most political scientists agree that economy was a vote producer. No one believes that a majority of the voters favored the unicameral legislature only because it cost less. But the views of two recognized students of the Unicameral Legislature are that cost was a factor. Dr. Adam C. Breckenridge, author of One House for Two, summarized many of the factors involved and added, "Others found comfort that the change might cost less in pay and in general legislative expenses."

133 to Pay

Dr. John P. Senning in his book, The One-House Legislature, explained that in the bicameral system 33 senators and 100 representatives were each paid $800 for regular sessions and up to $100 for additional sessions. This made a total expense for salaries each biennium, excluding special sessions, of $106,400.

Although past experience "had proved that a salary of $800 for a regular session was inadequate," Senning pointed out, proponents of the unicameral idea considered holding legislators' salaries to an overall $100,000 per biennium. They did

Observers believe bicameral would cost two or three times as much.

this, he explained, knowing that the unicameral system, if approved, would have far fewer men in it than the two-house body.

At the same time, Senning noted that Senator George Norris, in his original unicameral proposal, had said that each legislator should be paid $2,400 a year. But the senator's advice on this point was not followed.

Dr. Breckenridge pointed out in his book published in 1957:

"Proponents of the 1934 amendment were well aware of the political advantage of showing that public funds could be saved if the unicameral plan were adopted. The state's economy at that time was depressed and dollars were hard to come by.

Set Limit

"A saving of even a few thousand dollars would be attractive to many in making their decision for or against the amendment, so the drafters of the plan probably with some reluctance inserted a provision that the total pay for the entire membership — whether 30 or 50 or something in between — would be $75,000 for the two-year term of office.

"This meant a demonstrated saving of about one-third from the salary costs of the bicameral Legislature. This point was emphasized again and again during the dry summer of 1934.

"Undoubtedly it won thousands of votes."

Nebraska's voters approved the unicameral amendment and with it the $75,000 salary figure. And they held that line for 23 years. Proposals to boost the senators' salaries were made from time to time. In 1952 the voters refused to raise the pay to $1,250 a year for each member. In 1960 the issue again went to the voters, this time for $2,400 a year. The voters approved it. In 1968 the voters approved another amendment, raising each senator's pay to $4,800 a year.

Besides senators' salaries, of course, there are other legislative expenses. These expenses also showed a drop in the switch from two houses to one.

The dollars-and-cents statistics of Nebraska's legislative expenses bear out the contention of those campaigning for the unicameral amendment in 1934. Comparatively, the Unicameral has cost less.

True, the statistics show that the most recent sessions cost nearly as much or more than the most expensive sessions of the bicameral legislature. But if the cost for 133 legislators — the number in the old bicameral — were prorated at the present cost for 49 senators, observers believe the budget would be from two to three times higher.

Cost of Sessions

The following table indicates the sessions, their length, and the cost. Due to budgeting, accounting, and service changes made over the years, a comparison was not possible simply by listing Nebraska Blue Book statistics. In order to make a fair comparison, the figures from 1927 on were acquired from the office of the clerk of the Legislature. In order to maintain a fair comparison, these figures, then, cover only the same comparable costs that were listed in the earlier years.

	Bicameral	
1866 (1st)	8 days	$2,309.20
1867 (2nd)	2 days	1,528.60

Note: Official records erroneously list the above two sessions as state legislature sessions, although Nebraska was not admitted to the Union until March 1, 1867.

1867 (3rd)*	34 days	$ 8,218.05
1868 (4th)*	2 days	960.65
1869 (5th)	33 days	16,190.20
1870 (6th)	14 days	4,849.92
1870 (7th)	1 day	
1871 (8th)	61 days	18,134.98
1873 (9th)	40 days	22,500.46
1873 (10th)*	3 days	1,918.75
1875 (11th)	39 days	23,901.20
1876 (12th)	1 day	1,010.20
1876 (13th)	same day	
1877 (14th)	36 days	30,858.81
1879 (15th)	40 days	42,423.96
1881 (16th)	40 days	46,780.00
1882 (17th)*	13 days	14,291.32
1883 (18th)	43 days	71,050.63
1885 (19th)	43 days	84,874.68
1887 (20th)	62 days	166,607.02
1889 (21st)	67 days	174,280.10
1891 (22nd)	71 days	143,833.35
1893 (23rd)	74 days	117,629.16
1895 (24th)	71 days	113,330.72
1897 (25th)	73 days	102,083.30
1899 (26th)	65 days	98,957.68
1901 (27th)	64 days	126,855.45
1903 (28th)	65 days	103,918.35
1905 (29th)	63 days	88,088.70
1907 (30th)	67 days	100,000.00
1909 (31st)	68 days	93,723.91
1911 (32nd)	67 days	104,954.52
1913 (33rd)	71 days	159,758.83
1915 (34th)	71 days	129,648.48
1917 (35th)	86 days	147,912.97
1918 (36th)*	12 days	14,330.10
1919 (37th)	76 days	141,708.23
1919 (38th)*	5 days	10,433.80
1919 (39th)*	5 days	10,382.04
1921 (40th)	91 days	189,859.71
1922 (41st)*	9 days	17,695.05
1923 (42nd)	87 days	181,547.69
1925 (43rd)	65 days	165,908.63
1927 (44th)	82 days	184,328.38
1929 (45th)	85 days	182,426.54
1930 (46th)*	11 days	23,861.06
1931 (47th)	89 days	186,704.42
1931 (48th)*	11 days	26,746.05
1933 (49th)	99 days	173,023.98
1935 (50th)	110 days	202,593.49
1935 (51st)*	24 days	30,769.52
1937 (52nd)	98 days	103,445.38
1939 (53rd)	111 days	100,678.33
1940 (54th)*	11 days	3,676.72
1941 (55th)	99 days	102,755.13
1943 (56th)	103 days	101,547.65
1944 (57th)*	11 days	3,324.71
1945 (58th)	89 days	100,469.68
1946 (59th)*	7 days	2,140.01
1947 (60th)	105 days	117,459.22
1949 (61st)	100 days	121,305.78
1951 (62nd)	102 days	130,080.85
1952 (63rd)*	7 days	2,620.53
1952 (64th)*	7 days	3,465.47
1953 (65th)	113 days	153,369.17
1954 (66th)*	12 days	6,388.37
1955 (67th)	114 days	177,739.05
1957 (68th)	115 days	202,811.93
1959 (69th)	120 days	241,690.84
1960 (70th)*	7 days	4,887.36
1960 (71st)*	7 days	4,291.40
1961 (72nd)	126 days	287,585.69
1963 (73rd)	132 days	399,973.83
1963 (74th)*	24 days	21,023.38
1965 (75th)	149 days	446,134.32
1968 (76th)*	7 days	6,020.40
1967 (77th)	134 days	535,475.00
1968 (78th)*	7 days	8,660.00
1968 (79th)*	7 days	5,266.00
1969 (80th)	165 days	614,289.40
1970 (81st)*	7 days	7,685.67

* Special Session

Appendix A

The Constitutional

Adopted November 6, 1934

That Section 1 of Article III of the Constitution of Nebraska be amended to read as follows:

Sec. 1. Commencing with the regular session of the Legislature to be held in January, nineteen hundred and thirty-seven, the legislative authority of the state shall be vested in a Legislature consisting of one chamber. The people reserve for themselves, however, the power to propose laws, and amendments to the constitution, and to enact or reject the same at the polls, independent of the Legislature, and also reserve power at their own option to approve or reject at the polls any act, item, section, or part of any act passed by the Legislature. All authority vested by the constitution or laws of the state in the Senate, House of Representatives, or joint session thereof, in so far as applicable, shall be and hereby is vested in said Legislature of one chamber. All provisions in the constitution and laws of the state relating to the Legislature, the Senate, the House of Representatives, joint sessions of the Senate and the House of Representatives, Senator, or member of the House of Representatives, shall, in so far as said provisions are applicable, apply to and mean said Legislature of one chamber hereby created and the members thereof. All references to Clerk of House of Representatives or Secretary of Senate shall mean, when applicable, the Clerk of the Legislature of one chamber. All references to Speaker of the House of Representatives or temporary president of the Senate shall mean Speaker of the Legislature. Wherever any provision of the constitution requires submission of any matter to, or action by, the House of Representatives, the Senate, or joint session thereof, or the members of either body or both bodies, it shall after January first, nineteen hundred and thirty-seven, be construed to mean the Legislature herein provided for.

That Section 5 of Article III of the Constitution of Nebraska be amended to read as follows:

Sec. 5. At the regular session of the Legislature held in the year nineteen hundred and thirty-five the Legislature shall by law determine the number of members to be elected and divide the state into Legislative Districts. In the creation of such Districts, any county that contains population sufficient to entitle it to two or more members of the Legislature shall be divided into separate and distinct Legislative Districts, as nearly equal in population as may be and composed of contiguous and compact territory. After the creation of such districts, beginning in nineteen hundred and thirty-six and every two years thereafter, one member of the Legislature shall be elected from each such District. The basis of apportionment shall be the population excluding aliens, as shown by next preceding federal census. In like manner, when necessary to a correction of inequalities in the population of such districts, the state may be redistricted from time to time, but no oftener than once in ten years.

That Section 6 of Article III of the Constitution of Nebraska be amended to read as follows:

Amendment

Sec. 6. The Legislature shall consist of not more than fifty members and not less than thirty members. The sessions of the Legislature shall be biennial except as otherwise provided by this constitution or as may be otherwise provided by law.

That Section 7 of Article III of the Constitution of Nebraska be amended to read as follows:

Sec. 7. Members of the Legislature shall be elected for a term of two years beginning at noon on the first Tuesday in January in the year next ensuing the general election at which they were elected. Each member shall be nominated and elected in a non-partisan manner and without any indication on the ballot that he is affiliated with or endorsed by any political party or organization. The aggregate salaries of all the members shall be $37,500 per annum, divided equally among the members and payable in such manner and at such times as shall be provided by law. In addition to his salary, each member shall receive an amount equal to his actual expenses in traveling by the most usual route once to and returning from each regular or special session of the Legislature. Members of the Legislature shall receive no pay nor perquisites other than said salary and expenses, and employees of the Legislature shall receive no compensation other than their salary or per diem.

That Section 10 of Article III of the Constitution of Nebraska be amended to read as follows:

Sec. 10. The Legislature shall meet in regular session at 12:00 o'clock (noon) on the first Tuesday in January in the year next ensuing the election of the members thereof. The Lieutenant Governor shall preside, but shall vote only when the Legislature is equally divided. A majority of the members elected to the Legislature shall constitute a quorum; the Legislature shall determine the rules of its proceedings and be the judge of the election returns, and qualifications of its members, shall choose its own officers, including a Speaker to preside when the Lieutenant Governor shall be absent, incapacitated, or shall act as Governor. No member shall be expelled except by a vote of two-thirds of all members elected to the Legislature, and no member shall be twice expelled for the same offense. The Legislature may punish by imprisonment any person not a member thereof who shall be guilty of disrespect to the Legislature by disorderly or contemptuous behavior in its presence, but no such imprisonment shall extend beyond twenty-four hours at one time, unless the person shall persist in such disorderly or contemptuous behavior.

That Section 11 of Article III of the Constitution of Nebraska be amended to read as follows:

Sec. 11. The Legislature shall keep a journal of its proceedings and publish them (except such parts as may require secrecy) and the yeas and nays of the members on any questions, shall at the desire of any one of them be entered on the journal. All votes shall be viva voce. The doors of the Legislature and of the Committees of the Whole, shall be open, unless

when the business shall be such as ought to be kept secret.

Sec. 14. Every bill and resolution shall be read by title when introduced, and a printed copy thereof provided for the use of each member, and the bill and all amendments thereto shall be printed and read at large before the vote is taken upon its final passage. No such vote upon the final passage of any bill shall be taken, however, until five legislative days after its introduction nor until it has been on file for final reading and passage for at least one legislative day. No bill shall contain more than one subject, and the same shall be clearly expressed in the title. And no law shall be amended unless the new act contain the section or sections as amended and the section or sections so amended shall be repealed. The Lieutenant Governor, or the Speaker if acting as presiding officer, shall sign, in the presence of the Legislature while the same is in session and capable of transacting business, all bills and resolutions passed by the Legislature.

That Sections 12 and 28, of Article III, and Sections 9 and 17, of Article IV, be and the same hereby are repealed, effective as of January 1, 1937.

Appendix B

The Rules of The Nebraska Legislature

As revised by the Eightieth Session of the Nebraska Legislature, 1969

RULE 1
Authority

Constitution of Nebraska. Art. III, Sec. 10

Gregg's Handbook of Parliamentary Law. The rules of parliamentary practice comprised in Gregg's Handbook of Parliamentary Law, Rev. Ed. c 1940, shall govern the Legislature in all cases to which they are applicable and in which they are not inconsistent with the standing rules of the Legislature.

Amendment and suspension of rules. Rule 17.

RULE 2
Presiding Officer

Section 1. Presiding Officers: Lieutenant Governor, Speaker. The Lieutenant Governor shall preside as President of the Legislature, and the Speaker shall preside when the Lieutenant Governor shall be absent, incapacitated or shall act as Governor. (Const. Art. III, Sec. 10). All references herein made to the President shall be construed as meaning also the Speaker whenever he may preside.

Member of Reference Committee. Rule 14.

Member of Committee on Order and Arrangement. Rule 5.

Sec. 2. Chairmen of Committees Preside, When. In the absence of both the Lieutenant Governor and the Speaker, the order of the presiding officer of the Legislature shall be as follows:

Chairman of the Legislative Council
Chairman of the Committee on Committees
Chairman of Committee on Judiciary
Chairman of Committee on Government and Military Affairs
Chairman of Committee on Budget
Chairman of Committee on Revenue
Chairman of Committee on Education
Chairman of Committee on Banking, Commerce and Insurance
Chairman of Committee on Public Works
Chairman of Committee on Agriculture and Recreation
Chairman of Committee on Public Health and Welfare
Chairman of Committee on Miscellaneous Subjects
Chairman of Committee on Salaries and Claims
Chairman of Committee on Labor
Chairman of Committee on Urban Affairs

All the powers herein conferred on the President shall be exercised, except the authority to sign bills or resolutions passed by the Legislature.

Sec. 3. Member Presides, When. The President shall have the right to name any member to perform the duties of the chair, but such substitution shall not extend beyond adjournment.

Sec. 4. President Calls Legislature to Order: Quorum. The President shall take the chair each legislative day at the hour to which the Legislature shall have adjourned at the last sitting. He shall call the Legislature to order, and a quorum being present, shall proceed in the manner and order prescribed by these rules. A majority of the members elected to the Legislature shall constitute a quorum. (Const. Art. III, Sec. 10.)

Sec. 5. Absence of Quorum. If the President finds that a number less than a quorum is present, he shall so state, and a majority of the members present, if five in number, may compel the presence of all members subject to a call of the Legislature.

Sec. 6 President to Preserve Order. The President shall preserve order and decorum, and in case of disturbance or disorderly conduct in the galleries, or in the lobby, may cause the same to be cleared.

Sec. 7. Point of Order, President Decides: Appeal. The President may speak to a point of order in preference to members, rising from his seat for that purpose, and shall decide the questions of order, subject to an appeal to the Legislature by any member; on which appeal no member may speak more than once, unless by leave of the Legislature.

Sec. 8. Putting Question. The President shall rise to put a question, but he may state it sitting.

Sec. 9. President Shall Sign. The President shall sign, in the presence of the Legislature, while the same is in session and capable of transacting business, all bills and resolutions passed by the Legislature. (Const. Art. III, Sec. 14.) All writs, warrants and subpoenas issued by order of the Legislature shall be under his hand and seal, attested by the Clerk.

Sec. 10. Lieutenant Governor Votes, When. The Lieutenant Governor, when presiding, shall vote only when the Legislature is equally divided. (Const. Art. III, Sec. 10.)

RULE 3
Officers Elected and Their Duties: Recall; Employees, Selection and Duties.

Sec. 1. Nomination and Election. At the commencement of each regular session, the Legislature shall nominate and second from the floor and before the ballot is taken each person so nominated for the following offices shall make a public statement to the Legislature indicating what the Legislature may expect from him or her in the area of the responsibility of such office; secret ballots shall be taken:

Speaker
Chairman of Committee on Committees
Chairman of Legislative Council
Vice-Chairman of Legislative Council

Sec. 1A. At the commencement of each regular session, the Legislature shall nominate by informal ballot and shall elect by ballot the following officers:

Chief Clerk of the Legislature
Assistant Clerk of the Legislature
Sergeant-at-arms
Assistant Sergeant-at-arms
Postmaster
Chaplain

Officers and employees recommended by the Executive Board of the Legislative Council. See 50-111, R.S.Supp. 1967.

Sec. 2. Officers, Vote Necessary to Elect. A majority vote of the elected members shall be required for the election of each such officer.

Sec. 3. Recall of Officers. Any officer of the Legislature may be recalled upon a two-thirds majority vote of the members elected to the Legislature, and the vacancy thus created shall be filled by a majority vote of the members.

Sec. 4. Oath of Officers. Each permanent officer shall take an oath to support the Constitution of the United States, and the Constitution of the State of Nebraska, and to discharge faithfully the duties of his office according to the best of his ability.

Sec. 5. Duties of Officers, General. In general the duties of the officers of the Legislature shall be those usual to such officers.

Sec. 6. Speaker, Duties. Rule 2.

Speaker is member of Reference Committee. Rule 14, Sec. 1.

Speaker is member of the Executive Board of the Legislative Council. See 50-401.01, R.S.Supp. 1967.

Speaker is co-ordinator for the chairmen of standing committees.

Speaker provides floor leadership so as to expedite Legislative processes.

Sec. 7. Clerk of the Legislature, Duties.

(a) The Clerk of the Legislature shall keep a brief but accurate daily journal of the proceedings of the Legislature.

Const. Art. III, Sec. 11

Daily Journal Rule 8.

(b) The Clerk of the Legislature shall have the responsibility to supervise employees once they are hired.

(c) The Clerk of the Legislature shall print no paper or document, except bills and the daily journal, unless authorized by a majority vote of the elected members of the Legislature.

(d) The Clerk of the Legislature shall make a detailed and itemized report to the Legislature each month, concerning the number of employees, and the amount paid for their services, especially setting out the amount of regular time and overtime, and to whom paid.

(e) The Clerk of the Legislature shall have general charge, except as may be provided by law or by rule, of such parts of the Capitol and its passages as are or may be set apart for the use of the Legislature and its officers and employees.

Sec. 8. Assistant Clerk, Duties. The Assistant Clerk shall, in the absence of the Clerk, be authorized to exercise all of the duties herein prescribed for the Clerk of the Legislature, including the signing of those papers which may require the signature of the Clerk of the Legislature.

Sec. 9. Sergeant-at-arms, Duties. The Sergeant-at-arms shall attend the Legislature during its sittings, to execute the commands of the Legislature from time to time, together with all such processes issued by authority thereof as shall be directed to him by the presiding officer, and shall enforce strictly the rules as they relate to privileges of the Legislative Chamber.

Sec. 10. Assistant Sergeant-at-arms, Duties. The Assistant Sergeant-at-arms shall assist the Sergeant-at-arms and in the absence of the latter, shall perform all of the duties herein prescribed for the Sergeant-at-arms.

Sec. 11. Postmaster, Duties. The Postmaster shall superintend the post office kept in the Capitol for the accommodation of the members, and shall be responsible for the prompt and safe delivery of their mail.

Sec. 12. Chaplain, Duties. The Chaplain shall attend and shall open with prayer each day's sitting of the Legislature.

Sec. 13. Employees, Seclection. A committee of five members shall recommend to the Legislature for its approval and election, employees and their salaries as provided for in Section 50-111 and 50-112, R.S.Supp. 1967. All employees shall be selected without reference to party affiliation.

RULE 4

Members: Attendance, Decorum and Debate

Sec. 1. Presence of Members Required. Every member shall be present within the Legislative Chamber during the meetings of the Legislature and shall attend the regular meeting of the standing committee of which he is a member, unless excused by the Legislature or the Committee Chairman. Members who have been excused by the Legislature shall notify their Committee Chairman that they will be absent.

Sec. 2. Presence of Member May Be Compelled. The presence of any member may be compelled, if necessary, by sending the Sergeant-at-arms, or such other person or persons as the membership present may authorize, at the expense of such absent member, unless such excuse for non-attendance is made as the Legislature may judge sufficient; and in that case the expense shall be paid out of the contingent fund.

Call of the Legislature, Rule 9, Sec. 8.

Sec. 3. Absence of Member May Be Explained. Upon the completion of the roll call on the final passage of a bill, any member may explain the absence of any other member, and if requested in writing by the absent member to do so, may state how he would have voted if present, and such statement, if submitted to the Clerk in writing, and containing not more than thirty words, shall be entered in the daily journal.

Sec. 4. Expulsion of Members. No member shall be expelled except by a vote of two-thirds of all members elected to the Legislature, and no



Lincoln statue west of Capitol

member shall be twice expelled for the same offense. (Const. Art. III, Sec. 10.)

Sec. 5. Decorum: Members May Speak Only When Recognized by President. When a member desires to speak in debate or to deliver any matter to the Legislature, he shall rise from his seat and respectfully address himself to "Mr. President." A member shall speak only when recognized and shall confine himself to the question before the Legislature.

Sec. 6. Decorum: Abusive Language and Interruptions Prohibited. No member shall speak to another who has the floor, except when he may yield to a question, or otherwise interrupt the business of the Legislature. No member shall rise to a question of privilege for the introduction of guests while a member is speaking. Visitors may be introduced only upon written notice to the presiding officer, who shall then recognize the introducer at a proper time. No member shall use profane or abusive language when speaking to or about another member.

Sec. 7. Decorum: During Final Reading. Members shall remain in their seats during the Final Reading of a bill and until the vote thereon has been announced, except when excused by the President.

Sec. 8. Transgression of Rules: Call to Order. If any member, inspeaking or otherwise, transgresses the rules of the Legislature, the presiding officer shall, or any member may, call him to order, in which case he shall immediately sit down, unless permitted on motion of another member to explain, and the Legislature shall, if appealed to, decide the case without debate. If the decision be in favor of the member called to order, he shall be at liberty to proceed, but not otherwise; and if the case requires it, he shall be liable to censure or such punishment as the Legislature may deem proper.

Sec. 9. Call to Order: Words Excepted to Must Be Indicated. If a member is called to order for words spoken in debate, the member calling him to order shall indicate the words excepted to, and they shall be taken down in writing at the Clerk's desk and read aloud to the Legislature; but he shall not be held to answer, nor be subject to the censure of the Legislature therefor, if further debate or other business shall have intervened.

Sec. 10. Debate: Limitations, Proponent May Close. No member shall speak more than twice, nor for more than ten minutes on each occasion, upon any one question in debate during the same legislative day, without leave of the Legislature, except in explanation, unless he be the mover, proposer or introducer of the matter pending, in which case he shall be permitted to speak in reply, but not until every other member choosing to speak shall have spoken.

For right of proponent to close debate when previous question ordered, see Rule 10, Sec. 11.

Sec. 11. Explanation of Vote Permitted. A member shall be permitted to explain his vote on roll call upon any question, but such explanation shall be limited to fifty words, and shall not be entered in the daily journal unless the same be submitted to the Clerk in writing.

Sec. 12. Debate: Permanent Record. A verbatim record of all debate and questions on all bills and resolutions, and amendments offered thereto, shall be made, transcribed and preserved, under the direction of the Clerk.

RULE 5

Committees

Sec. 1. Committee on Committees. At the commencement of each session, the Legislature shall elect a Committee on Committees to consist of thirteen members, one at large who shall be chairman, and three from legislative district Nos. 1, 2, 25 through 33, 37 and 46; three from legislative districts Nos. 3 through 14 and 20; three from legislative districts Nos. 15 through 19, 21 through 24, 34 and 35; and three from legislative districts 36 through 49 with the exception of 37 and 46.

Chairman is member of Reference Committee for bills and resolutions. Rule 14, Sec. 1.

Committee on Committees is reference committee on nominations by Governor. Rule 14, Sec. 2.

Sec. 2. Committee on Committees Shall Recommend Standing Committees, Designate Chairmen. The Committee on Committees, by a majority vote of all of its members, shall recommend to the Legislature for its approval and adoption the following standing committees, each with the number of members as hereinafter set forth, one of whom shall be designated by the Committee on Committees as chairman thereof:

Agriculture and Recreation	8 members
Banking, Commerce & Insurance	8 members
Budget - Appropriation	9 members
Education	8 members
Enrollment and Review	1 member
Government & Military Affairs	8 members
Intergovernmental Cooperation	5 members
Judiciary	8 members

Labor	7 members
Miscellaneous Subjects	8 members
Public Health and Welfare	7 members
Public Works	8 members
Reference	3 members
Revenue	8 members
Rules	5 members
Salaries and Claims	7 members
Urban Affairs	8 members

The Speaker shall not be a member of any standing committee except as provided in section 11 of Rule 5

Sec. 3. **Committee on Committees Shall Select Other Committees.** The Committee on Committees shall select, aside from the standing committees of the Legislature, all other committees, except where otherwise ordered by the Legislature. No investigating committee of the Legislature shall be created except by resolution which shall set forth, with supporting statements, the reasons for and purposes of the investigation, and no committee thus established shall function except during the interim between legislative sessions.

Sec. 4. **Committee on Committees Shall Arrange and Publish Schedules of Standing Committee Hearings.** The Committee on Committees shall arrange and publish a schedule of regular standing committee meetings, in such manner as to avoid, as far as possible, conflicts in the assignment of members to such committees, and shall cause a copy of such schedule to be posted in some conspicuous place in the Capitol near the Legislative Chamber

Sec. 5. **Enrollment and Review, Privileged Committee.** The Chairman of Enrollment and Review shall be privileged, and shall be in order at any time in reporting bills which have been engrossed for Final Reading and passage. In the absence of the Chairman, the Vice-Chairman of the Judiciary Committee shall assume the duties of the Chairman of Enrollment and Review. The bill drafting service shall have supervision of and provide legal services for the Enrollment and Review Committee

Sec. 6. **Enrollment and Review, Authority to Make Corrections.** The Chairman of Enrollment and Review shall have authority, without being required to include the same specifically in his reports and recommendations to the Legislature, in accord with accepted usage:

a. To correct the spelling of words, to correct erroneous division and hyphenation of words, to capitalize or decapitalize words, and to change numbers from words to figures or from figures to words, in new and independent acts, in the new matter of amendatory acts, in standing committee reports, and in General File, Select File and specific amendments.

b. To underscore or remove underscoring, as the case requires, in standing committee reports and in General File, Select File and specific amendments.

c. When an amendment to add the emergency clause is adopted on Select File which does not spell out the standard emergency clause and make the necessary change in the title, the Chairman of Enrollment and Review shall also have the authority to add to the engrossed bill the standard emergency clause, assigning to it the appropriate section number, and make the necessary change in the title as a matter of course without including such action in his reports and recommendations to the Legislature or making any special record thereof.

Chairman of Enrollment and Review to give preference to bills readvanced from General File after having been recommitted from Select File. Rule 12, Sec. 8-d.

Sec. 7. **Committee on Salaries and Claims; Filing, Limitation.** No claim shall be considered by the Salaries and Claims Committee unless filed and considered by the Sundry Claims Board within or before the first twenty legislative days of the session, unless otherwise ordered by the Legislature.

Sec. 8. **Claims Previously Rejected.** The Claims Committee shall not consider any claims heretofore filed with and rejected by the Legislature at two or more previous sessions.

Sec. 9. **Committee on Order and Arrangement: Members, Duties.** The Committee on Order and Arrangement shall consist of the Speaker of the Legislature: Chairman. Other members: Chairman of the Committee on Committees and the Lt. Governor. It shall be the duty of this committee beginning the twenty-first legislative day to report to the Legislature the order in which bills and resolutions shall be considered on General File. The order so reported shall become effective only upon approval of the Legislature. The committee shall meet subject to call by the Chairman.

Sec. 10. The chairman of each committee shall take into consideration the importance, need for, and passage of the bills referred to his committee and set the bills for hearing accordingly.

Reference Committees:

For bills and resolutions. Rule 14, Sec. 1.

For nominations by Governor. Rule 14, Sec. 2.

For amendment of rules. Rule 17.

Sec. 11. When a member or members of the Legislature are absent because they are incapacitated and unable to serve, or continue to serve, on a committee, the chairman of such committee after a majority vote of the committee shall request one or more temporary appointments as the case may be to fill such vacancy or vacancies. The request shall be made to the Committee on Committees and such Committee shall appoint either the Speaker, or a member from a regular standing committee having eight members to fill such vacancy or vacancies. A temporary appointment may also be made by the Chairman of the Committee on Committees for only one day when requested by a chairman of a regular standing committee which lacks a quorum. When a member is appointed from an eight-member committee the consent of the member to be appointed shall first be obtained. The temporary appointee shall have the right to vote only on the bill or bills that actually have been heard by the appointee and provided that the vote is taken on such bills on the day the bill or bills are heard. When such appointment is made in case of an incapacitated member or members, such appointee shall cease to be a member of such committee upon the return of the incapacitated member for whom he was appointed.

Sec. 12. The Nebraska Retirement Systems Advisory Committee together with the chairman of the Budget Committee shall function during each legislative session as a standing committee of the Legislature, shall have jurisdiction over

all bills proposing new or amending existing retirement systems of the state and its political subdivisions.

RULE 6

Committee Hearings and Reports, Officers

Sec. 1. Vice-Chairmen. Each standing committee shall elect from its membership a vice-chairman to serve in the absence of the chairman.

Chairmen designated by Committee on Committees. Rule 5, Sec. 2.

Enrollment and Review Vice-Chairman is Vice-Chairman of Judiciary. Rule 5, Sec. 5.

Sec. 2. Committee Hearings, Time. Standing committees shall meet at 2:00 p.m., unless otherwise ordered by the Legislature. Any Committee Chairman before deciding not to hold committee meetings or a committee meeting on an assigned day, must receive permission from a majority of the Reference Committee.

Sec. 3. Committee Hearings, Notice. Before taking final action on a bill or resolution, a committee shall hold a public hearing thereon and shall give at least five calendar days' notice, by publication in the Legislative Journal, of the date and time of said hearing. Committee chairmen shall make rules concerning length of public hearings but no rebuttal shall be for more than ten minutes.

Reference committee exception. Rule 14, Sec. 1.

Sec. 4. Committees May Combine and Correlate Bills, Adopt Amendments. Standing Committees shall be authorized to combine and to correlate the provisions of different bills referred to them and related to the same subject under the number of one of the correlated bills, and may, before taking final action on any bill, adopt amendments thereto, for the consideration of the Legislature.

Sec. 5. Record of Committee Proceedings. Each standing committee shall keep a record of its proceedings. Any two members of the committee may demand a roll call upon the reporting of any bill, or upon amendments thereto. The vote so taken shall be made a part of the committee report, and shall be entered in the daily journal.

Sec. 6. Committees shall Report Promptly. Standing committees shall consider and report without unnecessary delay all bills and resolutions referred to them.

Sec. 7. Legislature May Request Committee Report or to Advance Bill. Except for the general appropriation bills necessary for the support of the state government for the biennium, the Legislature may, by vote of a majority of the elected members, request a report from any standing committee at any time after said committee shall have been in possession of a bill or resolution for twenty legislative days.

Any Senator may move that a bill be placed on General File twenty days or more after the committee hearing, and by a vote of a majority of the elected members, said bill shall be placed on General File.

Anytime the introducer of a bill attempts to take a bill from committee to be placed on General File, the bill shall stand Indefinitely Postponed if the motion fails to receive a majority vote of the members elected to the Legislature.

Sec. 8. Committee Reports Must Recommend Bills for General File or Indefinite Postponement: Majority Vote of Members at Regular Meeting Required. In reporting bills to the Legislature, whether with or without amendments, a standing committee shall by vote of a majority of its members, recommend (a) that the bill be placed on General File for the consideration of the Legislature, or (b) that the bill be Indefinitely Postponed. Such action shall be taken at regularly scheduled committee meetings only. A report on a bill or resolution must be made to the Legislature within eight calendar days after the committee has acted upon the particular measure. No bill shall be reported by the committee to be placed on General File unless the amendments, if any, are approved as to form and draftsmanship by the bill drafter.

Sec. 9. Effect of Committee Report to Postpone Indefinitely. If the standing committee report on a bill be to postpone indefinitely, the bill shall stand Indefinitely Postponed; Provided, that such bill may be placed on General File or referred back to the standing committee by a majority vote of all the elected members upon motion made within three legislative days after the committee makes its report to the Legislature, or by a two-thirds vote of all elected members upon motion made more than three legislative days after such committee report. Not more than one bill shall be raised from committee on any one motion. A motion to raise cannot be amended to include any other bill or subject matter. A motion to raise must be disposed of by the Legislature within five legislative days after making the same or it shall be deemed defeated. Consideration of motions pending shall be included in the regular order of business following resolutions.

Sec. 10. Committee Reports, Statements and Amendments; Minority Report. Each standing committee shall, when reporting a bill, submit therewith a brief statement of the main purpose of the bill, and, if recommended to General File, a copy of all amendments recommended by the committee. Such statement shall give the committee's reason for so reporting, and the minority view, if such there be, shall also be given. Copies of such statements and amendments shall be furnished to the members.

Sec. 11. Executive Sessions. Members and reporters of regularly accredited newspapers, press associations, and radio and television stations shall be admitted to executive sessions of the standing committees, and such reporters and the members of such committees shall respect as confidential the discussions and voting of the other members of any standing committee.

RULE 7

Order of Business

Sec. 1. Hour of Meeting and Adjournment. The Legislature shall meet each legislative day at 9:00 a.m., and adjourn not later than 1:00 p.m., unless otherwise ordered by a majority vote of its members present and voting thereon.

Sec. 2. Order of Business. The order of business of the Legislature shall be as follows:

a. Prayer by the Chaplain
b. Roll call
c. Call for correction of the journal
d. Petitions and memorials

e. Notice of committee hearings
f. Reports of standing committees
g. Reports of select committees
h. Bills on Final Reading
i. Resolutions
j. Introduction of bills
k. Bills on First Reading by title
l. Reference of bills to committees on a day subsequent to First Reading
m. Consideration of bills on Select File
n. Motions to reconsider
o. Motions to advance bills from committee
p. Other pending motions
q. Unfinished business, including messages on the President's desk
r. Special order of the day
s. Consideration of bills on General File
t. Miscellaneous business

Sec. 3. **Messages From the Governor, Preference.** Messages from the Governor may be received at any stage of the proceedings, except when a question is being put, the yeas and nays are being called for, the ballots are being counted, or a question of order or a motion to adjourn is pending.

Sec. 4. **Special Order of the Day, Effect of Adjournment.** When a bill shall have been made a special order for a definite time and an adjournment shall intervene for a time beyond the time fixed for such special order, then in that event the bill so made a special order shall be placed in its order on General File.

Sec. 5. **Unfinished Business, Effect of Adjournment.** The unfinished business in which the Legislature was engaged at the adjournment of the last preceding sitting shall have preference in the special order of the day.

Sec. 6. **Legislative Days.** Each day except Saturday and Sunday shall be considered a legislative day, unless otherwise specifically ordered by the Legislature, by a majority of the members present and voting thereon.

RULE 8

Daily Journal

Sec. 1. **Journal Prepared by Clerk, Furnished to Members; Corrections.** A daily journal of the proceedings of the Legislature, as prepared by the Clerk, shall be printed and placed each day upon the desks of the members; and the presiding officer shall call in the regular order of business for corrections thereof. After corrections, if any, are made, the journal shall stand approved without motion.

Sec. 2. **Journal Entries.** The Clerk shall enter in the daily journal messages of the Governor in full; titles of bills; every vote, including the yeas and nays, and a brief statement of the contents of each resolution, petition, and memorial or other paper presented for the consideration of the Legislature.

Constitutional amendments printed in Journal. (Const. Art. XVI, Sec. 1.)

Sec. 3. **Title, Parts of Bills Entered in Journal.** In addition to the title, only such parts of a bill as shall be affected by proposed amendments shall be entered in the daily journal.

Sec. 4. **Amendments Offered, But Not Adopted, Not Entered; Exception.** In the consideration of bills on General or Select File, amendments offered but not adopted shall not be entered in the journal except where a record vote is demanded.

Sec. 5. **Hour of Adjournment Entered.** The hour at which the Legislature adjourns shall be entered in the daily journal.

Sec. 6. **Additional Copies for Members.** Additional copies of the daily journal, to be mailed at his direction, shall be supplied for the use of each member, in such manner as shall be provided by the Legislature.

Sec. 7. **Bound Journal, How Printed.** The bound journal of the session shall be printed from the corrected daily journal.

Journal, cross references:

Yeas and nays entered in journal at request of any member. (Const. Art. III, Sec. 11.)

Yeas and nays on final passage of bill shall be published in the journal. (Const. Art. III, Sec. 13.)

Explanation of absence and statement of how absent member would have voted. Rule 4, Sec. 3.

Explanation of vote. Rule 4, Sec. 11.

Committee reports. Rule 6, Sec. 5.

Only totals of machine vote entered. Rule 9, Sec. 3.

Notice of committee hearings must be published. Rule 6, Sec. 3.

RULE 9

Manner and Record of Voting

Sec. 1. **Votes Taken Viva Voce: Form of Question.** All votes shall be taken viva voce. Questions shall be distinctly put in this form, to wit: "Those who are in favor of the question say 'aye'; those who are opposed to the question say 'no'."

Sec. 2. **Yea and Nay Vote Required on Final Passage of Bill: Applies to Resolution, When.** Upon the final passage of a bill, or of a resolution if the same requires the same consideration as a bill, the vote shall be by yeas and nays, and this rule shall not be suspended.

Sec. 3. **Machine Vote, When.** If a machine vote is called for, or if the presiding officer is in doubt, he shall cause the result to be obtained by means of the electric roll call system, and only the totals shall be printed in journal.

Sec. 4. **Record Vote, Member May Demand.** Any member may call for a record vote upon any question (Const. Art. III, Sec. 11), and upon declaration of the yeas and nays by the members, the record thereof shall be made and taken upon the electric roll call system, unless the Legislature by a majority vote decides that a roll call shall be taken.

Sec. 5. **For Yeas and Nays and Call of House, Vote on Electric System: Limitation on Time to Vote.** In taking the yeas and nays and upon call of the Legislature, the members shall register their vote upon the electric roll call system. When the yeas and nays are taken upon any question in the manner heretofore indicated, no member shall be permitted to vote after the decision is announced from the chair.

Sec. 6. **When More Than Majority Vote Necessary, Electric System Used.** In all instances where the vote necessary to adopt a motion or other proposition, is other than that of a majority voting upon the question, the presiding officer shall, unless the Legislature by unanimous vote decides otherwise, cause the result thereof to be obtained by means of the electric roll call system. In such case, no member shall be permitted to vote after the yeas have been announced by the Clerk. Votes not

registered on the electric roll call system or given to the Clerk by voice shall not be counted for or against a proposition.

Sec. 7. Member May Demand Verification of Vote. Any member may demand verification of the vote on roll call; Provided, that on the final passage of bills verification shall always be made.

Sec. 8. Call of the Legislature. A call of the Legislature must be seconded by at least five members. Thereupon, and upon call of the presiding officer, each member present shall indicate his presence upon the electric roll call system and shall remain in his seat during the call. After the Clerk shall note the names of the absentees, proceedings under the call may be suspended at any time by a majority vote of the members elected, and when so suspended shall not again be ordered on the proposition pending, except by a majority vote of the members present and voting thereon. When the Legislature has been under call for fifteen minutes, and if all absentees were to vote on one side of the question, and if their combined vote would be insufficient to change the result of the vote, the President shall declare the call raised.

Voting, cross references:

Lieutenant Governor votes only when Legislature equally divided. Rule 2, Sec. 10.

Explanation of vote. Rule 4, Sec. 11.

RULE 10
Motions and Their Precedence

Sec. 1. Statement of Motions. When a motion has been made and seconded, the presiding officer shall state it, or being in writing, shall cause it to be read aloud by the Clerk before being debated.

Sec. 2. Motions Must be Written, When. Every motion shall be reduced to writing if the presiding officer or any member desires it.

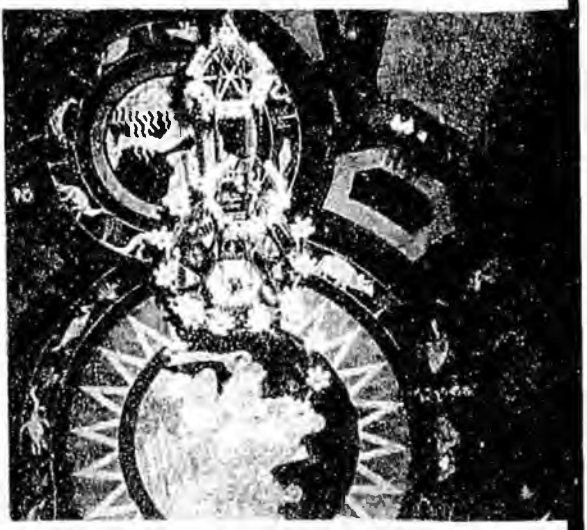
Sec. 3. Withdrawal or Modification of Motions. After a motion has been stated by the presiding officer, or read by the Clerk, it shall be deemed in possession of the Legislature, but may be withdrawn or modified by the mover at any time before a decision, amendment, or ordering of the yeas and nays, except a motion to reconsider, which shall not be withdrawn without leave.

Sec. 4. Motions Received When Questions Under Debate: Precedence. When a question is under debate no motion shall be received but

a. To adjourn
b. To lay on the table.
c. For the previous question
d. To postpone to a certain time.
e. To commit.
f. To amend.
g. To postpone indefinitely.

Such motions shall have precedence in the order in which they are arranged; except that motions to postpone indefinitely and amend do not yield to each other. No motion to postpone to a certain time, to commit or to postpone indefinitely being decided, shall again be allowed on the same day at the same stage of the bill or proposition.

Sec. 5. Motion to Strike Enacting Clause; Effect, Precedence. A motion to strike the enacting clause of a bill, if carried, is equivalent to rejection of the bill. Such motion shall not have precedence over a motion to amend nor over a motion to postpone indefinitely.



Chandelier and mosaics, main rotunda.

Sec. 6. Motion to Adjourn, Adjourn to Time Certain, to Recess: Precedence. A motion to adjourn, or a motion to fix the day to which the Legislature shall adjourn shall always be in order, except:

a. While a member is speaking.
b. When a motion to adjourn has just been defeated.
c. When a motion to fix the day to which the Legislature shall adjourn has just been defeated.
d. After the Final Reading of a bill and during roll call thereon.

Provided, however, that a motion to adjourn to a time certain shall have precedence over a motion to adjourn; and provided further, that a motion to recess shall take precedence over either of such motions.

Sec. 7. Motion to Adjourn Pending Motion to Suspend Rules. Pending a motion to suspend the rules, the presiding officer may entertain one motion to adjourn, but after the result thereon is announced he shall entertain no other motion until the vote has been taken on suspension.

Sec. 8. The Previous Question, Form. The previous question shall be in this form, "Shall the debate now close?"

Sec. 9. The Previous Question: Seconds Required, Vote Necessary, Effect. The previous question shall be in order when demanded by five or more members and must be sustained by the vote of a majority of the elected members, and until decided shall, except as provided in Section 11 of this rule, preclude further debate and all amendments and motions, except one motion to adjourn and one motion to lay on the table.

Sec. 10. Previous Question Undebatable. On a previous question there shall be no debate. All incidental questions of order, arising after a motion is made for a previous question, and pending such motion, shall be decided, whether on appeal or otherwise, without debate.

Sec. 11. Previous Question Ordered: Proponent to Close Debate. When the previous question shall have been ordered on a

proposition under debate, the mover, proponent or introducer of such proposition shall be given the right to close the debate thereon.

Sec. 12. Questions of Privilege, What Are. Questions of privilege shall be, first, those affecting the rights of the Legislature collectively, its safety, dignity, and the integrity of its proceedings; second, the rights, reputation, and conduct of members, individually, in their representative capacity only; and shall have precedence over all other questions, except motions to adjourn. Questions of privilege shall not be used to permit any discussion or debate pertaining to any measure pending before the Legislature. All questions of privilege shall be channeled through the presiding officer and the reason for such stated. The decision of order of permission shall be made by the presiding officer.

Question of privilege is not in order for introduction of guests while member speaking. Rule 4, Sec. 6.

Sec. 13. Reconsideration: Who May Move, Time for Motion. When a question has been decided, it shall be in order for any member voting with the prevailing side, or not voting, to move a reconsideration thereof. A motion to reconsider must be made on the same day the original question was decided or on the next legislative day, except when it be to reconsider the vote on a bill which lacked the constitutional majority on a Final Reading. In such case, it must be made on the same day the original question was decided or on one of the next three legislative days. A motion to reconsider must be disposed of by the Legislature within 5 days after making the same or it shall be deemed defeated. If the Legislature shall refuse to reconsider, or upon reconsideration shall affirm its first decision, or upon reconsideration shall affirm its first decision, no further motion to reconsider shall be in order unless by unanimous consent.

Motion to reconsider cannot be withdrawn without leave. Rule 10, Sec. 3.

Sec. 14. Reconsideration, Precedence. Every motion to reconsider shall take precedence over all other questions, except a motion to adjourn.

Sec. 15. Reconsideration, Vote Necessary. For its adoption, a motion to reconsider shall require the vote of a majority of the elected members, except:

a. Where such motion be to reconsider the vote on a bill which lacked the constitutional majority on a Final Reading, then a three-fifths vote shall be required for adoption.

b. Where such motion be to reconsider the vote on a bill which lacked the constitutional majority on a Final Reading with the emergency clause attached, but which received the constitutional majority with the emergency clause stricken and the purpose of the motion is to again add the emergency clause, then a two-thirds vote of the elected members shall be required for adoption.

Sec. 16. Amendments in Order. When a motion or other proposition is under consideration, a motion to amend and a motion to amend that amendment shall be in order.

Sec. 17. Amendment to Title of Bills. Amendments to the title shall not be in order during the consideration of a bill or resolution on General or Select File until the bill or resolution shall have been considered in full.

Sec. 18. Amendment Laid on Table Does Not Carry Principal Measure. When an amendment proposed to any pending measure is laid on the table, it shall not carry with it or prejudice such measure.

Sec. 19. Amendments, Preference in Consideration. When the Legislature is considering bills on either General or Select File, after giving consideration to standing committee amendments, it shall give preference to such amendments as may have been on file with the Clerk, with copies on the members' desks for one legislative day in advance, and then to such other amendments as have been deposited with the Clerk, in the order in which they were received by him.

Sec. 20. Amendments, Must Be Germane. No motion, proposition or subject, different from that under consideration, shall be admitted under color of amendment.

Sec. 21. Division of a Question, When. Any member may call for the division of a question, which shall be divided if it comprehends propositions in substance so distinct that, one being taken away, a substantive proposition shall remain for the decision of the Legislature. A motion to strike out and insert shall be deemed indivisible; but a motion to strike out, being lost, shall not preclude an amendment or a motion to strike out or insert.

Sec. 22. No bill shall be divided into two or more bills.

RULE 11

Bills—General Provisions

Sec. 1. Introduction. Upon call for the introduction of bills, any member or any standing committee to which bills are referred for consideration may introduce one or more bills. No bill shall be introduced unless it has been approved as to form and draftsmanship by the legislative bill drafter. The name of the introducer shall be followed by the number of his legislative district. Preceding each legislative session, the Chairman or any member of the Executive Board of the Legislative Council, or, if the Executive Board so requests, the Senator who, in the preceding session served as Chairman of the Judiciary Committee, shall sign as introducer of the Revisor of Statutes correctional bills. The Clerk of the Legislature shall number these bills consecutively beginning with number 1 and shall show the committee reference to be to General File. The Clerk of the Legislature shall have these bills printed before the convening of the next regular session.

Sec. 1(b) In addition to causing to be printed the revisor bills the Clerk shall number and cause to be printed all bills delivered to him by the executive board, provided said board has referred said bills to a standing committee. No bill so printed shall be withdrawn until after the Legislature convenes.

Sec. 2. Introducer Must Be Willing to Support. Members shall introduce only such bills as they are willing to endorse and support personally. Not more than three Senators shall sign any single bill; Provided that, this limitation shall not apply to committee bills, to Legislative Council bills, and to Revisor of Statutes corrective bills. Any additional signers shall be by the suspension of the rules with a machine

vote, and cannot be made by a unanimous consent motion.

Sec. 3. Time for Introduction, Limitation, Fiscal Notes. No bill shall be introcuded after the twentieth legislative day, except upon recommendation of the Governor or by a majority of the members of a standing committee whose names shall be affixed to the bill and upon the vote of three-fifths of the elected members of the Legislature. After the ninetieth legislative day, no bill be introduced except by the unanimous consent of the Legislature or upon recommendation of the Governor. After January 1, no bill shall be drafted by the bill drafter unless requested or authorized by a member of the legislature.

Before an individual member may apply to a committee for introduction of a bill, he must first submit the bill to the Reference Committee; the Reference Committee shall determine which committee of the Legislature the subject of the bill is germane to. The bill shall then be submitted to the committee designated by the Reference Committee. A standing committee shall not recommend a bill for introduction unless the subject matter of the bill is germane to the subjects assigned to such committee.

A copy of intent of a bill recommended for introduction by a committee must be placed on each member's desk before such introduction of bill is voted upon.

A copy of every bill introduced shall be transmitted by the Clerk to the Legislative Fiscal Analyst. The Legislative Fiscal Analyst shall review each bill and make an estimate of the anticipated change in state expenditures or revenue under the provisions of the bill. The Legislative Fiscal Analyst shall prepare a statement to be known as a fiscal note to be attached to each bill prior to its public hearing by a committee, or its first consideration on General File if the bill is referred directly to General File. The fiscal note shall set forth the fiscal impact of the bill as determined by the Legislative Fiscal Analyst. No bill which has a fiscal impact of more than five thousand dollars shall be heard by a committee or considered on General File unless the fiscal note is attached.

In determining the fiscal impact of any bill, the Legislative Fiscal Analyst shall request the appropriate department or other entity of state government which will be affected by the bill to prepare the fiscal note within five calendar days.

The Legislative Fiscal Analyst shall review the fiscal note prepared by the department or other entity, and shall also request a review of such fiscal note by the Budget Division of the Department of Administrative Services. The statement by the Budget Division of the Department of Administrative Services shall be attached to and become a part of the fiscal note. The Legislative Fiscal Analyst shall include in the fiscal note any exceptions to the conclusions of the department or other entity and of the Budge Division of the Department of Administrative Services.

The fiscal note shall be delivered by the Legislative Fiscal Analyst to the Clerk within ten calendar days of receipt of a copy of the bill for analysis. The Clerk shall attach the fiscal note to the bill and to all copies prepared for members.

When amendments to a bill are adopted by a committee or the Legislature, and such amendments would change the fiscal impact of the bill, the appropriate changes shall be made in the fiscal note.

When the Legislative Fiscal Analyst determines that the fiscal impact of a bill will be less than five thousand dollars, it shall not be necessary to prepare a detailed fiscal note, and the fiscal note may merely state this fact.

When any bill proposes adoption of a new program for which appropriations have not previously been made, an appropriations bill for the purposes of funding the provisions of such bill shall be prepared from the information contained in the fiscal note. Such appropriations bill shall be introduced by the introducer of the original bill, shall bear the number of the original bill with the letter "A" added (for example LB 1A), and shall accompany the original bill through all stages of the legislative process.".

2. The legislative bill drafter is hereby directed to prepare any amendments to other Rules of the Legislature made necessary by adoption of this amendment, and to submit such amendments to the Rules Committee.

The note shall be factual in nature, as brief and concise as may be, and shall if possible provide a reliable estimate in dollars and, in addition, it shall include both the immediate effect and, if determinable or reasonably foreseeable, the long range effect of the measure. If, after investigation, it is determined that no dollar estimate is possible, the note shall contain a statement to that effect, setting forth the reasons why no dollar estimate can be given.

No comment or opinion shall be included in the fiscal note with regard to the merits of the measure for which the note is prepared; however, technical or mechanical defects may be noted.

The subject matter of bills submitted to boards, commissions, departments, agencies or other entities of the state by the Fiscal Analyst shall be kept in strict confidence by said agencies and by the Office of Fiscal Analyst together with the content of the fiscal note itself and no information relating thereto shall be divulged by any official or employee prior to its introduction in the Legislature.

Sec. 4. Bills, How Designated. A bill shall be designated as Legislative Bill ——.

Sec. 5. Bill Must Contain Only One Subject: Amendment of Laws. No bill shall contain more than one subject, and the same shall be clearly expressed in the title. And no law shall be amended unless the new act contains the section or sections as amended, and the section or sections so amended shall be repealed. (Const. Art. III, Sec. 14.)

Sec. 6. Amendatory Bill, How Printed. An amendatory bill or constitutional provision shall be so prepared and printed as to show the new matter proposed, old matter to be retained, and old matter to be omitted from the Statutes or Constitution.

Sec. 7. Bills Must Be Engrossed Before Final Reading. All bills, before being advanced to Final Reading and passage, shall be engrossed by typewriter, and if amended, shall be reprinted in the manner prescribed in the preceding section, and copies thereof shall be supplied for the use of members.

Sec. 8. Bills Must Receive Two Readings Before Passage. Every bill and resolution shall be read by title when introduced, and a printed

copy thereof provided for the use of each member, and the bill and all amendments thereto shall be printed and read at large before the vote is taken upon its final passage. (Const. Art. III, Sec. 14.)

Sec. 9. Vote Required to Expend Money or Change Compensation. It shall require the vote of a majority of the members elected to expend money by the Legislature or to change the compensation of any officer or employee.

Sec. 10 Withdrawal of Bills. No bill, having been introduced, may be withdrawn except upon motion of the first introducer with the consent of his co-introducers. Such motion, when made, shall not be considered prior to the next succeeding legislative day, and, for its adoption, shall require the affirmative vote of a majority of those voting upon the question.

RULE 12

Bills—Stages in Consideration

Sec. 1. Introduction and First Reading.

Introduction. Rule 11, Secs. 1, 2.

Time for introduction. Rule 11, Sec. 3.

First Reading. Rule 11, Sec. 8.

Sec. 2. Reference to Standing or Select Committee.

Reference committee. Rule 14, Sec. 1.

Readings. Rule 11, Sec. 8.

Sec. 3. Consideration by Standing or Select Committee, Together With Desired Committee Hearings.

Committee Hearings. Rule 8, Secs. 2-5.

Sec. 4. Report by Standing or Select Committee and Reference to General File.

Committee reports. Rule 8, Secs. 6-10.

Effect of committee report to postpone indefinitely. Rule 8, Sec. 9.

Sec. 5. General File: Reading, Consideration and General Debate by the Legislature.

a. The clerk of the Legislature shall read the number and title of the bill and the name of the principal introducer as it comes up for consideration on General File. A bill will not be read section by section unless requested by a member of the Legislature.

b. Each section shall be open to amendment as read, and the amendments, if any, recommended by the standing committee, shall first be considered for adoption or rejection, after which other amendments may be offered.

Amendments. Rule 10, Secs. 16-20.

c. Bills shall be listed and considered on General File in the order in which they shall be reported from the standing committees, except as modified by the Committee on Order and Arrangement; Provided, that any bill that comes up for debate for a second time, with the introducer present, shall be placed at the bottom of General File if said introducer asked for further time. And no change shall be made in such order, except by a majority vote of the elected members.

d. The general appropriation bills, necessary for the support of the state government for the biennium, shall take precedence over all other bills on General File.

e. At any time during consideration of bills on either General or Select File, any member may move that the bill be passed over, and if the motion is carried by a majority of those voting, the bill shall be passed over and shall retain its place on the File. This motion shall have the same precedence as to lay on the table.

f. In the event a motion to Indefinitely Postpone a bill is made before the bill is read on General File, such motion shall require the affirmative vote of a majority of the elected members.

Sec. 6. Reference to Enrollment and Review. Advancement to Enrollment and Review for recommendations relative to arrangement, phraseology and correlation, unless Indefinitely Postponed or recommitted to a standing committee. Advancement to Enrollment and Review from General File for such purpose shall require a majority of those voting, but there must be a minimum of eighteen affirmative votes.

Sec. 7. Report by Chairman of Enrollment and Review and Reference to Select File.

Enrollment and Review report. Rule 5, Sec. 6.

Sec. 8. Select File. Consideration by the Legislature, in review on Select File, wherein any of the following motions shall be in order:

a. A motion to approve or reject any or all of the changes recommended by the Chairman of Enrollment and Review.

b. A motion to adopt a unanimous consent amendment, to which no objection shall be offered. When a motion is made to adopt a unanimous consent amendment, the mover shall be required to explain the amendment sought.

c. A motion to recommit to the proper standing committee.

d. A motion to recommit to General File for one or more specific amendments. If such a motion is adopted, the bill shall be transferred forthwith to the head of the General File where consideration of the specific amendment shall be the first order of business on that File. After disposition of the amendment, the bill may be readvanced to Enrollment and Review for review, amended further, Indefinitely Postponed, or recommitted to the proper standing committee. If the bill is readvanced, it shall be given prior consideration by the Chairman of Enrollment and Review and returned to the Select File as soon as possible and placed at the head of that File; Provided, if the bill is not amended, Indefinitely Postponed, or recommitted, it may be advanced to Enrollment and Review for engrossment.

Effect of passing over bill. Rule 12, Sec. 5d.

e. A motion to postpone indefinitely.

f. Motions made pursuant to subsections c, d and e hereof may be adopted only upon the affirmative vote of a majority of the elected members.

No bill shall be considered initially on Select File until three legislative days after its advancement from General File to Enrollment and Review; Provided, that the amendments so recommended shall not be read by the Clerk except upon the request of a member of the Legislature.

Notwithstanding any other provision contained in this section, if the Enrollment and Review Committee returns a bill to Select File from engrossment, then only the specific enrollment and review amendments may be considered.

Sec. 9. Advancement to Enrollment and Review for Engrossment, Unless Recommitted to a Standing Committee or Indefinitely Postponed.

Sec. 10. Report by Chairman of Enrollment

and Review and Reference to Final Reading File, or to Select File for Specific Amendment.

Bills must be engrossed before advancement to Final Reading. Rule 11, Sec. 7.

Sec. 11. Conditions Precedent to Placing Bill on Final Reading. No bill shall be placed upon Final Reading and passage until:

a. Five legislative days after the initial reference to Enrollment and Review.

b. Two legislative days after its reference to Final Reading file.

c. Printed copies of the bill in its final form, as amended, shall have been available to members and on their desks for at least one legislative day. (Const. Art. III, Sec. 14.)

Sec. 12. Final Reading. Consideration on Final Reading and passage when the bill shall be read at large with all amendments thereto before the vote is taken (Const. Art. III, Sec. 14); Provided, that at any time before the roll call shall have begun on Final Reading of the bill, it shall be in order to move:

a. To recommit the bill to Enrollment and Review to correct an error and for re-engrossment.

b. To recommit the bill to the proper standing committee, with or without instructions.

c. To recommit the bill to Select File for specific amendment, which amendment may be adopted by a vote of a majority of the elected members; Provided, however, if the proposed amendment be to add the emergency clause, it may only be adopted by a vote of two-thirds of the elected members.

Sec. 13. Question After Final Reading: Emergency Clause. The question after the Final Reading of a bill shall be: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?' " If the emergency clause is contained in the bill, the words "with the emergency clause attached" shall be added to the question.

Sec. 14. Emergency Clause: Failure to Receive Constitutional Majority; Effect; Question. When a bill containing the emergency clause does not receive the required two-thirds constitutional majority on Final Reading, then the emergency clause shall be considered stricken, and the bill without the emergency clause shall be pending on Final Reading, and the question then shall be, "Shall the bill pass with the emergency clause stricken?" (Const. Art. III, Sec. 27.)

Sec. 15. Governor's Veto, Consideration. Upon the day of receipt of a message from the Governor announcing his veto of a bill, or on either of the next five legislative days, any member may move that the bill so vetoed be taken up for passage. Whereupon, the question shall be, "Shall the bill pass, notwithstanding the objection of the Governor?"

Three-fifths vote of the elected members required to pass bill over Governor's veto. (Const. Art. IV, Sec. 15.)

The Governor may disapprove any item or items of appropriation contained in bills passed by the Legislature, and the item or items so disapproved shall be stricken therefrom, unless repassed in the manner prescribed in case of disapproval of bills. (Const. Art. IV, Sec. 15.)

RULE 13

Petitions and Memorials

Sec. 1. Petitions, Memorials and Other Papers Referred to Committees. Every petition, memorial, or other paper shall be referred to the proper committee without putting a question for that purpose, unless the reference be objected to by a member at the time such petition, memorial or other paper is presented, in which case the Legislature shall decide the question of reference.

Sec. 2. Introducer may make statement. Before any petition or memorial addressed to the Legislature is received and read at the table, whether the same be presented by the presiding officer or a member, a brief statement of the contents of the petition or memorial may be verbally made by the introducer.

Sec. 3. Communications, When Read. No communications or letters shall be read by the Clerk of the Legislature unless authorized by a majority of the Reference Committee.

RULE 14

Questions and Reference

Sec. 1. Reference Committee for Bills and Resolutions, Who Constitutes. The Lieutenant Governor, the Speaker, and the Chairman of the Committee on Committees shall constitute the Reference Committee for the assignment of bills and resolutions to the various standing committees. The Reference Committee shall either refer bills to standing committees or place them on General File. Those placed on General File will be bracketed for five days, and if one senator requests a public hearing on one or more of these bills, they will then be referred to a committee. Bills on General File for which public hearings have not been requested will be handled as all bills on General File.

Sec. 2. Nominations by Governor Referred to Committee on Committees. All nominations made to the Legislature by the Governor, requiring confirmation by the Legislature, shall be referred to the Committee on Committees, and the same procedure shall be followed as governs the handling of other matters before standing committees, unless the Legislature shall otherwise direct by unanimous vote.

Sec. 3. Members May Object to Reference. Any member may object to the reference of any bill or other proposition, and correction in case of error in reference may be made by the Legislature on any legislative day, immediately following corrections of the daily journal, by unanimous consent, or by the vote of a majority of the elected members.

Sec. 4. Motions for Reference; Preference. When motions are made for reference of the same subject to a select committee and to a standing committee, the question on reference to the standing committee shall be put first.

Proposed amendments to rules referred to Rules Committee. Rule 17.

Sec. 5. Statement of Purpose by Introducer. Immediately upon the referral of any bill to a standing committee, the first introducer of the bill shall prepare and submit to the committee a statement in writing setting forth the reason for the bill and the purposes sought to be accomplished thereby. Such statement shall be incorporated into the committee records. No bill shall be reported to the Legislature by a committee whether the bill is Indefinitely Postponed or advanced to General File, unless such a statement has been submitted by the introducer of the bill.

RULE 15
Resolutions

Sec. 1. Resolutions: How Designated. A resolution shall be designated as Legislative Resolution ——.

Sec. 2. Resolutions Proposing Constitutional Amendments, Granting Money, or Requiring Governor's Approval: Consideration and Adoption. Resolutions which propose amendments to the state constitution, propose the ratification of amendments to the federal constitution, provide for the grant of money out of the contingent or any other fund, or require the approval of the Governor, shall be considered and adopted in the same manner as bills (Const. Art. III, Secs. 13, 14; Art. XVI, Sec. 1.)

Sec. 3. Resolutions Proposing Legislative Council Studies Reference. Resolutions which propose that studies be made by the Legislative Council shall be first referred to the Executive Board of the Legislative Council, this Board to submit a report with each resolution recommending that the proposed study be made or rejected.

Sec. 4. Resolutions Laid Over One Legislative Day. All other resolutions, except by the unanimous consent of the members present and voting, shall lie over for consideration until the next legislative day.

Sec. 5. Resolutions; Reference to Committee; Vote Necessary for Adoption. When called for consideration on the next legislative day after its introduction, any such resolution shall be referred to the proper standing committee, if as many as five members object to its consideration at that time. The vote of a majority of the elected members shall be required for the adoption of any such resolution.

Sec. 6. Effect of Committee Report to Indefinitely Postpone. If the standing committee report on a resolution be to postpone indefinitely, the resolution shall stand Indefinitely Postponed; Provided, that such resolution may be considered by the members of the Legislature or referred back to the standing committee by a majority vote of all the elected members upon motion made within three legislative days after the committee makes its report to the Legislature, or by a two-thirds vote of all elected members upon motion made more than three legislative days after such committee report. Not more than one resolution shall be raised from committee on any one motion. A motion to raise cannot be amended to include any other resolution or subject matter.

RULE 16
Privileges of the Floor

The floor of the Legislative Chamber shall consist of that part of the Legislative Chamber forward from the row of desks or dividing line back of the last row of Senators including the space under the balcony on either side adjacent thereto, or any other space designated by the Legislature or the Executive Board thereof.

No person shall be admitted to the floor of the Legislature, as described in this rule, except the following:

Members of the Legislature and their immediate families, officers and employees, including the bill drafter and employees of the Legislative Council.

Reporters of regularly accredited newspapers and broadcasting stations.

No one shall be permitted to be seated beside members of the Legislature except members of their immediate families upon permission from the chair. When bills are being read on Final Reading, no one shall be permitted to be seated beside members of the Legislature.

No person, other than those hereinbefore excepted, shall be admitted to the members' cloak room or post office, unless accompanied by a member.

The Governor, state officers and distinguished visitors may be admitted to the floor upon permission from the chair.

No printed or written material of any nature may be placed on the desks of the members or distributed to them in the Legislative Chamber, unless such material clearly indicates on its face the party or parties responsible for its distribution. The distribution must be approved by at least one member of the Legislature.

RULE 17
Suspension and Amendment of Rules

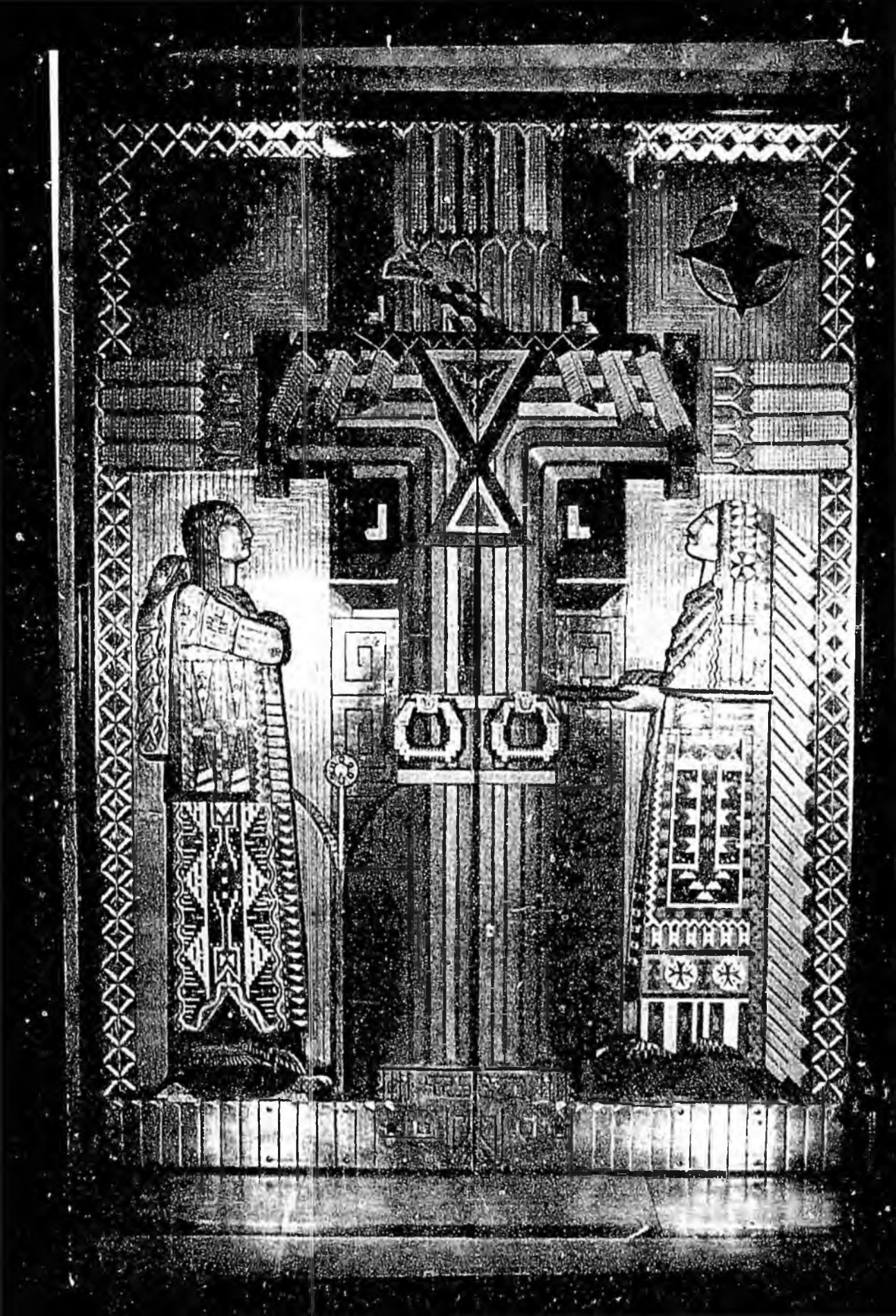
These rules may only be suspended by a two-thirds majority of the elected members by a machine vote, and may be amended by a three fifths majority vote of the members elected; Provided, any proposed amendment must first be referred to the Committee on Rules for consideration and report.

The Covers

The cover illustrations are photographs of the doors of the Senate chambers in Nebraska's tower Capitol. The front cover is of the West Senate Chamber doors. These doors lead to the chamber used by the Unicameral Legislature.

The back cover is of the Indian doors to the East Senate Chamber, where the Senate met under the old bicameral system. This room has become a hearing room.

The color photographs were made by James Dean, a student teaching assistant in the University of Nebraska School of Journalism.



HJR

4

HOUSE - ROLL CALL

_____ 19___

Subject HJR4

Effective date 6 year Gov Term

	Yea	Nay	Absent
ANDERSON			
BEIRNE			
BRADLEY			
BRADNER			
BROWN			
BUCHHOLDT			
COTTEN	✓		
COWPER			
DAVIS			
DUNCAN		?	
ELIASON			
FINK			
FISCHER			
FREEMAN			
GARDINER	✓		
GRUENING	✓		
GUY			
HACKNEY			
HAUGEN			
HERSHBERGER			
HUNTINGTON			
ITTA			
KELLEY			
MCKINNON			
MALONE	✓		
MILLER	✓		
NAUGHTON	✓		
OSE			
OSTERBACK			
OSTROSKY			
PARKER	✓		
PARR		?	
RHODE			
RUDD			
SMITH	✓		
SPECKING			
SULLIVAN			
SWANSON			
URION			
WALLIS		?	

YEAS _____

NAYS _____

ABSENT _____

EXCUSED _____

The _____ passed

The _____ did not pass

March 3, 1975

TO: Rep. Bill Parker

FROM: Terry Gardiner

SUBJECT: HJR 4

In case you hadn't heard, the House Judiciary Committee has moved out the Unicameral - HJR 1 - resolution with several amendments, with five "do pass" and one "do not pass, " (from Rep. Specking). Hopefully now you will take up my HJR requesting a six year term for the governor. Thank you for your very fine cooperation in this matter. Now is the time for all good show businessmen to act.

A M E N D M E N T S

TO: HOUSE JOINT RESOLUTION NO. 4 BY THE STATE AFFAIRS COMMITTEE

Page 1, line 20: after "intervened." insert:

"If a lieutenant governor succeeds to the office of governor under sec. 11 of this article and four or more years of the term of office of the governor whom he succeeded remain, the lieutenant governor may not succeed himself as governor until one full term has elapsed."

Page 1, after line 24, insert:

"Sec. 4. If the amendment proposed by this resolution is ratified by a majority of the qualified voters voting on the resolution, the following provision shall be ~~followed in~~ adhered to the transition from a four-year gubernatorial term of office to a six-year gubernatorial term: if the candidate elected governor at the 1978 general election is the incumbent in that office, he shall hold office only for two years; if the candidate elected in 1978 is not the incumbent in that office his term of office is six years."

Hammond 4pm

If a lieutenant governor succeeds to the office of governor under sec. 11 of this article and four or more years of the term of office of the governor whom he succeeded remain, the lieutenant governor may not succeed himself as governor until one full term has intervened.

Add amendment on Lt. Gov. from Mike Kelley

~~Lt Gov Legislature~~

State Admin is getting more complex

Cannot afford to have gov, com, and office running for election while in office

6 years would be sufficient time to launch program

only 2 yrs. less than present law

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The 50 STATES ☆☆☆☆☆ *and Their* ☆☆☆☆ *Local Governments*

Karl A. Bosworth
James W. Fesler
Daylon D. McKean
Harvey C. Mansfield
Robert L. Morlan
Allan R. Richards
Victor G. Rosenblum
York Willbern

Under the editorship of James W. Fesler
YALE UNIVERSITY



Alfred·A·Knopf, Inc.
NEW YORK

electoral constituency is the whole state, he has a claim to speak for the state's "general interest" in contrast to each legislator's identification with a much smaller constituency. Both of these factors give him a prominence that no legislator can match, while the dignity of the office and its range of concerns permit him to outshine any head of an administrative department, even if, like the governor, he is elected on a statewide basis.

TERM OF OFFICE. The states have been following what is generally regarded as a wholesome tendency to lengthen the governor's term to four years.[62] Thirty-nine of them had adopted this period as of 1966; the rest have two-year terms. Where his term is four years, the governor has an opportunity to develop his policy leadership out of his experience and to formulate ideas about how the administrative machinery can be improved. However, in 13 of the states with four-year terms, the constitutions forbid governors a second successive term [63] (and two states with two-year terms limit their governors to two successive terms, thereby also limiting tenure to four years). This contrasts with the national Constitution, whose Twenty-second Amendment permits the President to serve two four-year terms.[64]

So apparently prosaic and formal a matter as a constitutional barrier to reelection has in fact both theoretical and practical import. A good deal of theoretical writing about representative government assumes that those vested with large amounts of political power will normally be subject to the people's judgment of their stewardship at a subsequent election.[65] This assumption is supposed to have two consequences on the actual behavior of officeholders: (*a*) An incumbent will be more responsible, and more

---

[62] *The wholesomeness of the trend from two- to four-year terms may be open to argument. Legislators are generally elected at two-year intervals. If at alternate elections there are no gubernatorial candidates to emphasize programs and to dramatize party differences, public interest may flag at these off-year elections and elected legislators may be less clearly bound to the governor's (or opposition party's) policies. Given the prevalently low degree of public interest in state government, some risk of greater discontinuity in the governorship may be a reasonable price to pay for increasing the meaningfulness of state elections.*

[63] *Most southern and border states have the one-term, four-year limit; of the total of 15 states with such a limit, only Indiana and Pennsylvania are in other regions.*

[64] *A person who acts as President or succeeds to the Presidency on the death or disability of the President may serve a maximum of six or ten years, depending upon whether he served more or less than two years of his predecessor's term. The first case under this provision of the Twenty-second Amendment was Lyndon B. Johnson, who may constitutionally serve two four-year terms in addition to his year and two months during President Kennedy's uncompleted term.*

[65] *For simplicity we state the assumption broadly. The earlier discussions of legislators' turnover and the remarks in this section about governors demonstrate that the assumption would need substantial rephrasing and qualification to be sound, even in the absence of formal obstacles to reelection.*

responsive to the people's needs and wishes, if he is constantly aware that his performance will be judged when he seeks reelection; and (*b*) his ability to win the support of other participants in policy making and politics during his term will be affected by their expectations as to whether he will or will not be likely to continue in office.

In the case of a key post such as the governorship there are further derivatives of these general consequences. A governor reasonably confident of long tenure in office is more likely to be interested in long-range development of the state; he can afford to take an interest in ten-year plans, in initiating projects whose benefits will not appear for several years (for example, highway or school construction programs), in planting seeds of policy ideas that will not grow to command popular and legislative majorities until several years of widespread discussion have passed. On the other hand, a governor whose vision is confined by a four-year limit on his period of service is likely to see his influence wane in the last year or two of his term; the ban on a second four years may thus reduce his period of practical power to two or three years. This is because he will already have dispensed most of the rewards at his disposal (patronage appointments, local projects, etc.) and so will have lost bargaining power with the men whose support he needs and who adapt their behavior to prospective rewards and deprivations.

Well before the governor's term ends, some key figures, even in his own party, will be emerging as his potential successors. Unless he has built up enough political strength to dictate who his party's nominee shall be or to make his endorsement a potentially critical factor, these prospective heirs (often in the legislature or the executive branch) will play their own game rather than his. Less prominent legislators, executive officials, and local party leaders will also tend to cultivate alliances useful in the future, rather than to follow the leadership of the "dying king." Some legislative measures may be postponed by the governor and his party if they see a likelihood that the opposition will win the next election (perhaps because the governor cannot be the party's candidate) and so can be made to bear the onus of passing unpopular but needed measures (tax increases, for example). Or the opposition party (which often controls one or both legislative houses) may postpone enactment of some measures if it anticipates winning the governorship and so wants to get credit for popular measures or wants to make patronage appointments under new and expanded programs.[66]

[66] *So far as the argument here depends on two-party competition, it identifies less the evils in states that now forbid a second term (since most such states are one-party*

This is of course no argument for granting lifetime tenure to governors. Nor does it assume that every governor, if there are not constitutional barriers to it, should or will seek renomination and reelection. The governorship for some is a stepping stone to nomination for the Presidency, appointment to the President's cabinet, or election to the United States Senate. And some governors must retire because of demonstrated unfitness in the post, or the emergence of abler and more attractive candidates in their own parties, or the opposition party's ability to win the electorate's preference. The basic position is that the governors who wish to seek reelection and can command sufficient party support to win renomination should not be barred from doing so. Most political scientists view the Twenty-second Amendment's limitation of the President to two four-year terms as an unwise provision. But one may leave open the question of the wisdom of some similar limitation on a governor's tenure[67] without weakening the case against the one-term, four-year limitation on such tenure.

CAREER PATTERNS. The governorship of a state is a position of high distinction, considerable power, and great responsibility. Among offices within the gift of the statewide electorate, its only rivals are the two United States senatorships. Though the relative prestige of the governorship varies among the states, over time, and with the personal qualities of the incumbent, it is often sufficient for its holder to play a national role concurrently with or subsequently to his governorship. He may do this as state party leader in a major national party (whose strength, as we have seen, lies in the state and local organizations), as head of the state's delegation to the national party convention, as a possible nominee for the Presidency or Vice Presidency, as an appointee to the President's cabinet or to an ambassadorship, or as a United States senator.[68] There is little doubt that many governors keep these possibilities in mind or that their performance as governors is affected by them. Most will prudently remain aware that their records during their gubernatorial service must be able to sustain searching scrutiny if their further ambitions are to be realized.

The paths to the governorship are varied, but some patterns can be

---

southern and border states) than the evils avoided by the two-party states that lack such a ban.

[67] *Seven states set two successive four-year terms as the limit.*

[68] *Recent illustrations in the national appointive office field are the following former governors: Chief Justice Earl Warren (California); Secretary of the Interior Douglas McKay (Oregon); Secretary of Agriculture Orville L. Freeman (Minnesota); Secretary of Commerce Luther H. Hodges (North Carolina); Secretary of Health, Education, and Welfare Abraham Ribicoff (Connecticut); Under Secretary of State Averell Harriman (New York); Under Secretary of Commerce LeRoy Collins (Florida); Assistant Secretary of State G. Mennen Williams (Michigan); and U.S. Representative to the United Nations Adlai Stevenson (Illinois).*

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THE GOVERNOR:
The Office and Its Powers

THE COUNCIL OF STATE GOVERNMENTS
Lexington, Kentucky

Term of Office and Term Limitations

While Governors in the past were normally allowed short terms of office, there has been a strong recent trend toward the four-year term. Forty-two States in 1972 provided for four-year gubernatorial terms compared to 34 States in 1960 and 27 in 1950 (See Table II). During the last decade, Arizona, Massachusetts, Michigan, Minnesota, Nebraska, New Mexico, North Dakota and Wisconsin extended the gubernatorial term from two to four years. The people of Arkansas, Iowa, New Hampshire, South Dakota and Texas will vote on a four-year gubernatorial term during 1972; initial legislative action on a similar proposal has occurred in Vermont.

With the switch to four-year terms, more States have limited the maximum number of terms which a Governor may serve. Seventeen States which allow a maximum of two consecutive terms are listed below:

Alabama	*Maryland*	*Oklahoma*
Alaska	*Missouri*	*Oregon*
Delaware	*Nebraska*	*Pennsylvania*
Florida	*Nevada*	*South Dakota*
Louisiana	*New Jersey*	*West Virginia*
Maine	*Ohio*	

Nine States which provide that the Governor cannot serve an immediate successive term are Georgia, Indiana, Kentucky, Mississippi, New Mexico, North Carolina, South Carolina, Tennessee and Virginia. Two States, Delaware and Missouri, have absolute two-term limitations. An amendment to the Indiana constitution permitting the same Governor to serve eight years in any 12 will be voted on at the 1972 general election.



GOVERNMENT IN TENNESSEE

SECOND EDITION

Lee Seifert Greene
and
Robert Sterling Avery

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THE UNIVERSITY OF TENNESSEE PRESS
KNOXVILLE

The governor (as a result of one of the 1953 amendments) is elected for a term of four years; he cannot succeed himself in office, although he may serve non-consecutive terms. What the length of the term should be is always debatable. Most states now use the four-year term. It is argued with considerable reason that the two-year term is too short. Political campaigns are expensive and arduous. The governor hardly has time to get his administration organized before he must run for re-election. Further, he has but one session of the legislature in which to obtain the program promised in his platform. The trend is in favor of the four-year term, and Tennessee has probably done well in adopting this practice.

Twenty-two states place some limitation on the number of consecutive terms which may be served by their governors. This is done on the theory that unless the terms are either limited or interrupted, the governor will be able to build a powerful machine and perpetuate himself in office. The argument is hard to follow. As long as the people have a voice in free periodic elections, their consent is essential to continuance in office. The limitation has the clearly bad effect of depriving the people of the services of a capable governor after he has served to the constitutional limit. Those who favor the limitation display a remarkable lack of faith in the democratic processes as well as a naïve belief in the utility of constitutional limitations in preserving freedom.

The governor is elected by the same voters who elect members of the legislature "on the first Tuesday after the first Monday in November" in alternate even-numbered years. The election takes place at the same time and places as the election of legislators. The election returns for the office of governor are sent to the speaker of the Senate. He opens and publishes them before a majority of each legislative house. A plurality vote elects. Tie votes (which are, of course, extremely unlikely) are broken by a joint vote of the two houses. Contested elections are also resolved by the two houses, but in any manner that they prescribe by law.

The session of the General Assembly begins on the first Monday in January following the election. The governor is inaugurated during this session and holds office thereafter for four years and until his successor is qualified. If a vacancy occurs in the office of governor, the powers and duties devolve on the speaker of the Senate, now called, by statute, lieutenant governor. Succession then follows to the speaker of the House of Representatives, the secretary of state, and the state comptroller.

THE GOVERNOR AS CHIEF EXECUTIVE

Distinguishing between executive and administrative functions is a difficult task because the two are so closely related. All executives are administrators, but not all administrators are executives. The executive is the

Modernizing State Constitutions 1966-1972



THE COUNCIL OF STATE GOVERNMENTS
Lexington, Kentucky

and provide more time for lawmaking. Persistent traditional popular distrust of legislators, however, was manifested in some States by rejections of proposals designed to achieve these ends.

The Executive and Administration

Efforts to strengthen the gubernatorial office, reduce the number of elective officers, and streamline state administration along the same lines as had been advocated for decades continued during 1966–72. Provisions in all new and revised constitutions and amendments in no fewer than seven States further increased the number of States with four-year terms for the Governor. Limitation of the Governor to two successive terms, however, was provided by amendments in at least nine States during the seven-year period. The new Virginia constitution retains the prohibition against self-succession, and the proposed Delaware document contains a restriction to two consecutive terms for the Governor. Approximately one third of the States impose a two-term limit for the Chief Executive. The trend toward longer terms applies also to other state elective officials. Some amendments specify longer terms for all or for named elective officers of the State.

Procedural provisions for determining inability of the Governor to perform his functions are included in most new or revised constitutions. Amendments relating to this matter and further defining the line of succession to the governorship were adopted in at least half a dozen States. Of the States that created compensation commissions, at least two extended their mandate to state elective officers, including the Governor.

Expansion of the Governor's powers further enhanced the effectiveness of the executive office in some States. The trend in new and revised constitutions is to lengthen the period during which the Governor may act on legislative bills, both before and after adjournment of the lawmaking body; these documents all grant the item veto power on appropriation bills to the Governor. An important addition to the Governor's control over administration is the authority to propose reorganization of administrative agencies, subject to veto by the Legislature. Amendments extending or authorizing such power were approved in no fewer than five States.

Joint election of the Governor and Lieutenant Governor as a team, like the President and Vice President of the United States, is another significant development during the period of this analysis. Selection of the two top state elective officers as a team on the same ticket was approved by amendment in a fifth of the States during the 1966–72 period. Such provision is included in the new or revised constitutions of Florida, Hawaii, Illinois, Montana, and in the proposed Delaware document. Approximately a third of the States now provide this method of election.

The Government and Administration of MISSISSIPPI

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AMERICAN COMMONWEALTHS SERIES
W. Brooke Graves, *Editor*

THOMAS Y. CROWELL COMPANY
New York

tions for the office have remained the same, with these exceptions, throughout Mississippi's history.

Nomination and Election

Candidates for governor are nominated by direct primary, as are all other party candidates. A majority is necessary to nominate, a requirement that not uncommonly necessitates a second, or run-off, primary.

Mississippi's constitution provides that governors shall be elected in odd-numbered years on the first Tuesday after the first Monday in November every fourth year.* The effect of this timing of the general election is to prevent coincidence of state elections with the presidential elections and to make the gubernatorial contest an important and hard-fought race. The method of election, however, creates one important problem.

The division of the state into three districts is employed as a device in the election of the governor and other executive officers. The successful candidate must receive a majority of the popular vote and also of the electoral votes. The requirement provides that the candidate receiving in each county or district the highest number of votes shall receive as many electoral votes as the county or district is entitled to members in the house of representatives. If no candidate receives both a state-wide popular and electoral majority, the house selects one of the two highest candidates for the office.[7] By this requirement the basic law clearly is intended to safeguard white control of the office. Since the popular and electoral majorities have always coincided, the provision for electoral votes has never been of practical significance in the election process.

Terms and Compensation

The governor's term of office is four years. Early constitutions specified a two-year term, and not until 1869 was the tenure lengthened.[8] The Constitution of 1890 included provision that the governor shall be ineligible to succeed himself immediately in office, a departure from the state's previous experience.

Compensation for the office is fixed by the legislature with the usual limitation that it may not be increased or diminished for any specific incumbent of the governorship. The governor currently receives a salary of $15,000 and the use of the executive mansion without rentals.

* Constitution of 1890, art. 5, sec. 140. Only two other states, Kentucky and Virginia, have made similar provisions.

Vacancies and Removals

The governorship may be vacated temporarily or permanently in Mississippi by five methods: death, resignation, illness or other disability, temporary absence from the state, or impeachment.* The lieutenant governor succeeds to the office on the death of the governor. When the chief executive is absent from the state, the lieutenant governor also assumes the office and discharges its duties.† He is free to make important policy decisions and to exercise the powers of office just as the governor would.

If the lieutenant governor is incapable at the death or resignation of the chief executive, the president pro tempore of the senate succeeds to office, and following him the speaker of the house of representatives. When any doubt exists as to a vacancy in the governorship, the secretary of state is authorized to submit the question to the judges of the supreme court, whose opinion shall be in writing and is conclusive.[9]

The legislature possesses the customary impeachment power to remove the governor upon conviction of treason, bribery, or any high crime or misdemeanor. The house of representatives must bring the charges by a two-thirds vote, and the governor is tried by the senate with the chief justice of the supreme court presiding. A two-thirds concurrence is necessary for conviction. No governor has been removed by impeachment under the Constitution of 1890.[10]

CONSTITUTIONAL POSITION

Article 5 of the Constitution of 1890 prescribes the powers of the governor as in the summary that follows:

Section 116. The chief executive power shall be vested in a governor.

Section 119. The governor shall be commander-in-chief of the military and naval forces of the State except when they are in the service of the United States.

Section 120. The governor may require written reports from officers of the executive departments.

Section 121. He may convene the legislature in extraordinary session.

Section 122. He shall report from time to time to the legislature on the state of the government and make recommendations for its improvement.

* There being no recall provided, this method of removal is not operative.

† Constitution of 1890, art. 5, sec. 131. Even though the governor be absent no more than a day, this provision applies.—*Montgomery* v *Cleveland*, 134 Miss. 132, 98 So. 111 (1923).

INDEX DIGEST

of

STATE CONSTITUTIONS

SECOND EDITION

LEGISLATIVE DRAFTING RESEARCH FUND

OF

COLUMBIA UNIVERSITY

GOVERNOR (Cont'd)
QUALIFICATIONS (Cont'd)
Dual Office Holding (Cont'd)
United States Office (Cont'd)

Person holding United States office at time of election ineligible. La V 3.

Member of Congress or person holding office or position of profit under United States not to be governor, and if governor or person administering office of governor shall accept any office or position of profit under United States, office of governor to be vacant. NJ V Sec I 3.

Person holding office of profit or trust under authority of Congress, other than commissioned or enlisted member of reserve components of United States armed forces while not on extended active duty, ineligible. Vt II 50.

Person holding office under United States not to exercise office of governor. Cal V 12.

Person holding office or place under United States not to exercise office of governor. Me V Pt I 5.

Member of Congress, or person holding office under authority of United States, not to exercise office of governor. Ark VI 11; Ohio III 14.

Person holding office under authority of United States not to exercise office of governor. Iowa IV 14.

Office Outside State

Person holding office under other power not to fill office of governor. Ore V 3.

Person holding office or place under any other power not to exercise office of governor. Mo V Pt I 5.

Not to hold office under other state or government. Ala V 130.

Not to hold place or office or receive pension or salary from any other state, government or power. NH II 93.

Not to hold place or office from any other state or government or power. Mass VI 2.

Not to hold office or other commission (except in militia) under authority of any other power. SC IV 3.

Electoral

Must be qualified elector to be eligible to office. Alas III 2; Conn IV 4; Fla IV 3; H IV 1; Nev V 3; ND III 73; SD IV 2; Wis V 2 ; Wyo IV 2.

Must be qualified elector at time of election. Md II 5; Utah VII 3.

Qualified state elector ten years next preceding election. Okla VI 3.

Engaging in Business

Not to practice profession and receive reward, fee or promise thereof, nor to receive salary, reward or compensation or promise thereof for service rendered while governor or to be thereafter rendered. Tex IV 6.

Failure to Qualify

See below, this title, SUCCESSION TO OFFICE.

Prior Service in Office

Ineligible as own successor. Ala V 116; Fla IV 2; La V 3; Miss V 116; Mo IV 17; Okla VI 4; Pa IV 3; SC IV 2; Tenn III 4; Va V 69.

Ineligible for four years after term for which elected. Ga V Sec I 1; Ky 71; W Va VII 4.

Not to be elected third time. Del III 5.

No person elected governor for two full successive terms again eligible until one full term intervenes. Alas III 5.

After two consecutive popular elective four year terms of office, governor ineligible to succeed self. Me V Pt I 2.

If served two consecutive popular elected terms as governor, ineligible to succeed self for term immediately following. Md II 1.

If elected for two successive terms, including an unexpired term, ineligible until third Tuesday in January of fourth year following expiration of second successive term. NJ V Sec I 5.

Ineligible to hold state office for two years after serving two consecutive terms. NM V 1.

Ineligible more than four in any period of eight years. Ind V 1.

Ineligible more than four in any period of eight years unless office cast on him as lieutenant-governor or president of senate. NC III 2.

Ineligible for period longer than two successive terms of four years. Ohio III 2, XVII 2.

Ineligible more than eight in any period of twelve years. Ore V 1.

Religious Test

No person eligible who denies existence of Supreme Being. SC IV 3.

Residence

Residence during term, *see below, this title,* RESIDENCE WHILE IN OFFICE.

In state, one year preceding election. Minn V 3.

In state, two years preceding election. Colo IV 4; Ida IV 3; Iowa IV 6; Mich VI 3; Mont VII 3; Nev V 3; NC III 2; SD IV 2.

In state, three years preceding election. Ore V 2.

ful execution of laws; by court action or proceeding brought in name of state, may enforce compliance with any constitutional or legislative mandate or restrain violation of any constitutional or legislative power, duty or right by any officer, department or agency of state; not to be construed as authorizing proceedings against legislative or judicial branches. NH II 41

¶ 7, insert after: Governor to supervise each principal executive department, unless constitution otherwise provides, Mich V 8; may make changes in organization of executive branch or in assignment of functions within its 20 prinicpal departments; where change requires the force of law, to be set forth in executive order and submitted to legislature which has 60 days to disapprove, after which the order becomes effective at date designated by governor. Mich V 2

Powers and Duties—Membership on Boards

P 505 col 2

¶ 3, insert after: Board of investment. Minn VIII 4

¶ 4, delete Ariz XI 3, NM XII 6

¶ 13, delete entry Ala XIV 266, and insert in lieu: Auburn University, ex officio president of board of trustees. Ala XIV 266 Am CLIXT

¶ 17, delete entry Cal XVI 3

¶ 25, add W Va VI 51B

Qualifications—Age, Minimum

P 506 col 1

¶ 8, delete Cal V 3

¶ 10, renumber Conn IV 4 to Conn IV 5, Mich VI 13 to Mich V 22

P 506 col 2

Part ¶ 1, delete NC III 2

¶ 2, add NC III 2

Qualifications—Citizenship—In United States

¶ 7 renumber Cal V 3 to Cal V 2

¶ 8, delete Mich VI 13

Qualifications—Dual Office Holding—In General

P 507 col 1

¶ 5, delete entry Mich VI 15

Qualifications—Dual Office Holding—Office in This State

¶ 6, delete entry Nebr IV 2

¶ 15, delete Cal V 12 and insert after: Not to hold other public office. Cal V 2

P 507 col 2

¶ 4, delete entry NH II 95 and insert in lieu: Judge, secretary of state, treasurer, attorney-general, military officers receiving pay from state (except militia officers called forth on emergency), register of deeds, sheriff, collector of state taxes, not to hold office of governor at same time; election or appointment to any of these offices and acceptance to operate as resignation of office of governor and vacancy to be filled. NH II 95

Dual Office Holding—United States Office

¶ 10, delete Mich VI 14

¶ 15 delete, entry NH II 95 and insert in lieu: Military officers receiving pay from United States, collectors of federal taxes, members of Congress, or persons holding United States office, not to hold office of governor; election or appointment to any of these offices and acceptance to operate as resignation of governorship and vacancy to be filled. NH II 95

P 508 col 1

¶ 4 delete entry Cal V 12

Qualifications—Electoral

¶ 14, renumber Conn IV 4 to Conn IV 5

¶ 16, insert after: Registered elector in state for four years next preceding his election. Mich V 22

Qualifications—Prior Service in Office

P 508 col 2

¶ 1, delete Mo IV 17, La V 3, Okla VI 4, Pa IV 3; add NC III 2

¶ 1 delete Ala V 116 and insert after: May not succeed himself for more than one additional term. Ala V 116

¶ 4, insert after: Eligible for two successive terms but not for term immediately following second successive term to which elected. La V 3

¶ 6 insert after: Not to be elected more than twice; no one having held the office, or acted as governor for more than two years of a term to which some other person was elected to the office may be elected to the office more than once. Mo IV 17

¶ 8 insert after: No person to be elected governor more than two times in succession. Okla VI 4

¶ 10, delete entry NC III 2

¶ 12, insert after: Ineligible for four years after two consecutive terms. Nebr IV 1

¶ 12, insert after: Eligible to succeed self for one additional term. Pa IV 3

Qualifications—Residence

¶ 15, delete Mich VI 3

Wallen
Leg. Appairs

CONSTITUTIONAL LIMITATIONS ON REËLIGIBILITY OF NATIONAL AND STATE CHIEF EXECUTIVES

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On March 1, 1951, the Administrator of General Services certified that the proposed presidential tenure amendment submitted to the states by Congress in 1947 had been ratified by thirty-six states, thus making it a part of the United States Constitution.[1] Adoption of this proposal, which becomes the Twenty-second Amendment to the United States Constitution, disposes of an issue that has agitated American politics periodically since the establishment of the Presidency. Hereafter no person will be eligible for a third term as President if he has served two full elective terms or one full elective term plus more than one-half of another term through succession to the office. President Truman, who would otherwise be rendered ineligible for reëlection following completion of his current term, is exempted from the ban by a qualifying clause which excludes from coverage "any person holding the office of President when this Article was proposed by the Congress."[2]

Hostility to long continuance in office, particularly for executive officers, has been a prominent feature of American political thinking since Revolutionary times. Seven of the original state constitutions, all of which were formulated prior to adoption of the federal Constitution, carried clauses limiting reëligibility of the state chief executive. These provisions reflected a widely-held belief that a rotation in executive office was essential to the preservation of liberty.[3] A sectional preference for the principle of limitation was noticeable;

[1] 16 Fed. Reg. 2019 (1951). Favorable action by the legislatures of Nevada and Utah on February 26 had brought the total of ratifying states to the constitutional three-fourths majority.

[2] The Amendment reads: "No person shall be elected to the office of President more than twice, and no person who has held the office of President, or acted as President for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once.

"But this Article shall not apply to any person holding the office of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term."

[3] Article 31 of the Declaration of Rights in the Maryland constitution of 1776 endorsed the principle of rotation in the following language: "That a long continuance, in the first executive departments of power or trust, is dangerous to liberty; a rotation, therefore, in those departments, is one of the best securities of permanent freedom" (Francis Newton Thorpe, *The Federal and State Constitutions, Colonial Charters and Other Organic Laws of the States, Territories and Colonies*, Washington, 1909, Vol. 3, p. 1689).

In a similar vein Section 5 of the Bill of Rights of the Virginia constitution of 1776 declared: "that the [members of the legislative and executive branches of government] may be restrained from oppression, by feeling and participating the burdens of the people, they should, at fixed periods, be reduced to a private station, return into that body from

for it was found only in the constitutions of the group of states lying from Pennsylvania to the southward.[4] The method by which the governor was chosen was evidently a factor in the situation. Legislative selection was the mode of choice in all of the seven states where limitations on reëlection were imposed; while New Jersey was the only state employing this mode of selection without imposing also a tenure restriction. In the four New England states and New York, where the governor was chosen by popular election, there were no provisions barring reëlection. Prevention of intrigue and bargaining with the legislature by a governor intent upon securing his own continuance in office seems to have been a major objective of these early state constitutional restrictions on reëligibility. A survey of the record demonstrates that continuation of chief executives in office for term after term was by no means viewed everywhere as dangerous in Revolutionary times. In those states where tenure limitations were lacking, repeated reëlections of governors were common during the Revolutionary period and immediately after.[5]

These differences in attitudes and practices among the original states help to explain the vacillations of the framers of the federal Constitution on the question of reëligibility of the President. The issue was closely associated in their minds with the manner of his election and the length of term. If the President was to be chosen by Congress, it was generally conceded that a reëligibility limitation was necessary in order to avoid, as George Mason expressed it, "a temptation on the side of the Executive to intrigue with the Legislature for a re-appointment."[6] Consequently the advocates of this mode of selection tended

which they were originally taken, and the vacancies be supplied by frequent, certain, and regular elections, in which all, or any part of the former members, to be again eligible, or ineligible, as the laws shall direct" (*ibid.*, Vol. 7, p. 3813).

[4] Georgia's constitution of 1777 was the most restrictive in providing that no one should be eligible for the office of governor more than one year in any three-year period. As a further precaution the governor was obliged by his oath to relinquish his office "peaceably and quietly" at the end of his term. South Carolina's constitution of 1778 gave the governor a two-year term, but made him ineligible for more than one term in any six-year period. Delaware, with a three-year term for its "president," forbade an immediate reëlection. Virginia, Maryland, and Pennsylvania permitted no more than three one-year terms in any seven-year period; while North Carolina set a limit of three annual terms in any six-year period.

[5] New Jersey's first governor, William Livingston, was elected for fourteen consecutive annual terms, running from 1776 to 1790. George Clinton, the first governor of New York, was elected for six consecutive three-year terms running from 1777 to 1795. Jonathan Trumbull served as colonial and state governor in Connecticut by annual election from 1769 to 1786. John Hancock, the first governor of Massachusetts, served five consecutive annual terms from 1780 to 1785 and was returned to office in 1787 for six additional terms. William Greene, second governor of Rhode Island, served eight consecutive annual terms running from 1778 to 1786. Meshech Weare, "president" of New Hampshire under its temporary constitution, served nine consecutive annual terms extending from 1776 to 1785; while John T. Gilman, the sixth governor, was elected for eleven consecutive annual terms from 1794 to 1805.

[6] "Debates in the Federal Convention of 1787 as Reported by James Madison," in Charles C. Tansill (ed.), *Documents Illustrative of the Formation of the Union of the American States* (1927), p. 135.

to favor also the idea of a comparatively long term, since only in this way could continuity in the administration over a fairly long period of time be assured. Establishment of a term of six, seven, or eight years accordingly became their objective. Opponents of the principle of legislative selection emphasized the point that to place the choice of the President in the hands of an authority other than Congress would eliminate the necessity for a reëligibility limitation and make feasible the establishment of a relatively short term.[7] These considerations were undoubtedly factors of considerable importance in inducing acceptance of the plan of selection finally adopted. While a few members were firm in their conviction that the President should not be eligible for reëlection regardless of the mode of selection and others were opposed to a limitation of this nature in any case, the controlling factor in the minds of a decisive majority of the Convention on the point of reëligibility was whether his election was to be achieved through Congress or by some other mode.

The lack of a clause limiting the reëligibility of the President was a point advanced against the Constitution by some of its critics during the ratification struggle.[8] Hamilton felt obliged to devote the major part of one of the *Federalist Papers* to a defense of the Convention's conclusions on this point.[9] Three of the state conventions adopted recommendations that Congress should immediately submit to the states an amendment establishing a limitation on presidential tenure;[10] but the First Congress failed to act in accordance with these recommendations.

The fact that the idea of tenure restriction was associated so closely with the device of legislative election in the thinking of many of the founding fathers suggests that as popular election was substituted for legislative selection in the choosing of state governors, constitutional restrictions on reëligibility would be relaxed or abandoned. A trend in this direction did become manifest in the decade following the adoption of the Constitution. The constitution of Vermont, which was admitted to the Union as a full-fledged state in 1791, and that of Kentucky, admitted in 1792, provided for independent modes of choosing the governor and carried no clauses limiting reëligibility.[11] Tennessee, ad-

[7] For example, Gouverneur Morris and James Wilson, who were the leading advocates of the idea of direct popular election, favored a two-year and a three-year term, respectively, provided there was no limitation on reëligibility (*ibid.*, pp. 134, 410–411).

[8] For criticisms of this nature see the remarks of George Mason in the Virginia convention in Jonathan Elliot (ed.), *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* (2nd ed., 1836–59), Vol. 3, pp. 484–485; and of James Lincoln in the South Carolina convention, *ibid.*, Vol. 4, p. 314.

[9] No. 72 of the *Papers* contains an excellent theoretical analysis of the problem. In later debates in Congress and elsewhere on the issue, little has been added to the analysis of the principle of tenure limitation there presented.

[10] The New York convention recommended an amendment prohibiting the election of a President for a third term; while the conventions in Virginia and North Carolina advocated an amendment that would limit service to eight years in any sixteen-year period. *Documents Illustrative of the Formation of the Union*, pp. 1032, 1042, 1049.

[11] In line with the practice of the other New England states, Vermont provided for popular election, with the legislature making the choice in case no candidate received a

mitted in 1796, permitted three successive two-year terms under a system of popular election, followed by a two-year period of ineligibility. Georgia, although not adopting the direct election idea until 1824, abandoned the ineligibility rule in 1789 when it lengthened the term of the governor to two years. Pennsylvania in 1790 adopted direct popular election for a three-year term and at the same time liberalized the eligibility rule so as to permit three three-year terms in any twelve-year period. When Delaware went over to the popular election principle in 1792, however, it retained its original prohibition against a second successive three-year term.

The principle of rotation in office was a cardinal point in the lexicon of Jeffersonian and Jacksonian democratic thought. As elements deriving their political philosophy from these leaders became dominant in American politics, their thinking was reflected in constitutional developments relating to executive tenure and reëligibility at both the national and state levels of government. Jefferson's refusal to seek a third term as President on grounds of principle laid the foundation for the "two-term tradition" with respect to that office. In 1824 and again in 1826 the Senate passed constitutional amendment proposals designed to incorporate this rule in the written Constitution.[12] Although Jackson accepted a second nomination and election to the Presidency, he repeatedly urged the adoption of a constitutional amendment limiting a President to a single term of four or six years.[13] Meanwhile, as the remaining original states which had at first embraced the legislative election device for choosing their governors changed to the system of popular election, they saw fit to retain strict limitations on reëligibility. Adoption of the principle of popular election in North Carolina in 1835, in Maryland in 1837,[14] in New Jersey in 1844, in Virginia in 1850, and in South Carolina in 1865 produced no change or only slight modification of their original constitutional rules limiting reëligibility of their governors. Of the fourteen states admitted to the Union between 1800 and 1850, nine entered with constitutions containing limitations of one kind or another on gubernatorial tenure, and one of the remaining five

popular majority. Kentucky provided for a system of election by specially chosen electors, the system of choice being somewhat similar to the national plan for choosing the President. In 1799 the Kentucky constitution was revised to provide for direct popular election, and at the same time a provision prohibiting an immediate reëlection was adopted. Thorpe, *op. cit.* (above, n. 3), Vol. 6, p. 3755; Vol. 3, pp. 1268, 1281. The analysis which follows of state constitutional practices on the matter of reëligibility up to 1908 is based on documentary materials in this source.

[12] Herman V. Ames, *The Proposed Amendments to the Constitution of the United States During the First Century of its History*, 54th Cong., 2nd sess., H. Doc. No. 353, pt. 2 (Ser. 3550, 1897), pp. 124–125. On the first occasion the proposal was passed by a vote of 36 to 3 in the Senate; the second time it was favored by a 32 to 7 majority.

[13] *Ibid.*, p. 127.

[14] The system in effect in Maryland from 1837 to 1864 was unique in that it required a rotation of the office of governor among different areas of the state. The constitution divided the state into three districts and required that the office be rotated in order among them; consequently no individual was eligible for the office for more than three years in any nine-year period.

(Mississippi) adopted a provision of this type soon after achieving statehood.

By 1850 approximately two-thirds of the states had constitutional limitations of this character. A sectional preference for the idea, as in Revolutionary times, was still discernible. The states with restrictions included all those, with the exception of Georgia, comprising the block extending from Pennsylvania and New Jersey to the South and West. The six New England states, New York, Michigan, Wisconsin, and Iowa, along with Georgia, were the only ones in which the idea of a rotation in office, enforced by constitutional rule, had failed to win acceptance. In most of the states with restrictive clauses at that time, the prohibition was in the form of a limit of one term of two, three, or four years. It is significant that by 1860 a one-term tradition with regard to the office of President seemed also in process of establishment. Most of the amendment proposals designed to limit presidential tenure introduced in Congress from 1825 to 1860 were directed to this end.[15] No President from the time of Jackson to Lincoln, a period covering seven full presidential terms, was able to win reelection and only one, Van Buren, obtained renomination by his party for a second term. In his inaugural address in 1841, President Harrison pledged himself to one term only,[16] and the Whig party's platform of 1844 endorsed the single-term principle.[17]

Abandonment of the constitutional restriction on reëligibility of the governor by Ohio in 1851 marked the beginning of a period of reaction against this principle in the states. From 1850 to the decade of the 1870's, the idea was definitely on the wane as the Republican party, in some degree the intellectual heir of the original Federalist party which was not hostile to the idea of unrestricted executive tenure, rose to ascendancy. With the exception of Oregon in 1857, none of the eight new states admitted between 1850 and 1880 limited reëligibility of the governor by constitutional rule. Revision of constitutions in the southern states under Republican auspices during the era of Reconstruction brought about a general abandonment of the principle in that region.[18] Revisions in Maryland in 1864 and in Illinois in 1870 resulted in removal of reëligibility limitations on their governors. By 1880 only 12 of the 38 states comprising the Union at that time had constitutional provisions limiting in any way reëlection of their governors. Meanwhile the election of Lincoln in 1864 and of Grant in 1872 to second terms had laid to rest the "one-term tradition" in respect to the Presidency which had earlier seemed to be in process of establishment.

[15] Ames, p. 127. It should be noted also that the constitution of the Confederate states adopted in 1861 limited the President to one six-year term.

[16] *Ibid.*

[17] Kirk H. Porter (comp.), *National Party Platforms* (New York, 1924), p. 15.

[18] The Georgia constitution of 1865, drawn up under the terms of President Johnson's milder reconstruction policies, ran contrary to the trend in that it adopted a restriction on reëligibility of the governor, although that state had not had such a provision since 1789; but this constitution was replaced by another one in 1868 in which the reëligibility clause was omitted. Louisiana's revised constitution of 1864 omitted the restrictive clause of its original constitution. It was restored in the revised constitution of 1868 only to be omitted again in the constitution of 1879.

Near the close of President Grant's second administration suggestions began to be heard from some quarters in his party that he should be renominated for a third term. Opposition to the suggestion at once was quickly voiced by elements within the Republican party as well as by the rival party. On December 15, 1875, the House of Representatives passed by a vote of 234 to 18 a resolution introduced by Representative Springer, Democrat, declaring that a departure from the two-term tradition would be "unwise, unpatriotic and fraught with peril to our free institutions."[19] Nevertheless, four years later this tradition was subjected to its first serious challenge when in the Republican convention of 1880 a nearly successful effort was made to nominate Grant for what would have been a third, but nonsuccessive, term.[20] This rebuff to the third-term suggestion at the national level coincided with a reversal in the trend in state practice with regard to the governorship, particularly in the South. West Virginia, which had entered the Union in 1863 with a constitution carrying no limitation on reëligibility of its governor, adopted such a rule in 1872, and Georgia restored its provision in 1877. Eventually all but two of the former Confederate states which had more or less willingly abandoned the principle at one time or another, returned to it.[21] Two new states, Oklahoma in 1907 and New Mexico in 1912, entered the Union with provisions of this nature in their constitutions. The most recent converts to the principle have been Idaho (1944) and Maryland (1948). Although some states have modified their reëligibility provisions in recent years, none has abandoned the principle since 1880.[22]

Currently the constitutions of 21 states carry provisions limiting the reëligibility of the governor in some fashion. Fifteen states[23] limit him to one four-year term but permit his election again after an interval of four years. Three states[24] permit two successive four-year terms followed by a four-year period of ineligibility. New Mexico permits two successive two-year terms followed by two years of ineligibility, while Tennessee has continued its original plan of permitting election to three two-year terms in an eight-year period. Only one state, Delaware, has a provision similar to that recently applied to the President by the Twenty-second Amendment. In that state after two four-year terms a governor is disqualified from ever holding that office again. In addition to those states which limit the tenure of governors by constitutional rule, in a

[19] Ames, p. 125.

[20] Grant, who led the balloting on 33 roll calls, secured at one point a total of 314 votes, with 378 being necessary to win nomination. Fred Rodell, *Democracy and the Third Term* (New York, 1939), p. 73.

[21] The dates of restoration were Florida, 1885; Mississippi, 1890; Louisiana, 1899; Alabama, 1901; and South Carolina, 1926. Texas and Arkansas are the only ex-Confederate states which have failed to reinstate their reëligibility limitations.

[22] In 1941 the Georgia provision was changed from a prohibition of more than two successive two-year terms to a prohibition of a successive four-year term. New Jersey in 1947 liberalized its prohibition of an immediate reëlection under a three-year-term plan by permitting two successive four-year terms.

[23] Pennsylvania, West Virginia, Virginia, Kentucky, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Indiana, Missouri, Oklahoma and Idaho.

[24] New Jersey, Maryland and Oregon.

number of otners "two-term traditions" of more or less force have been observed for some time.[25] But as was demonstrated with respect to the presidential two-term limit in 1940, traditional barriers do not always prove effective in barring reëlection of incumbents.[26]

Implicit in the system of limiting executive tenure by constitutional rule is the question of whether such a limitation shall apply to a person who falls heir to the office by reason of the death, resignation or removal of the regularly elected incumbent. The framers of the Twenty-second Amendment were aware of the problem of the partial term and disposed of it explicitly in the Amendment. The debates over whether Theodore Roosevelt and Calvin Coolidge would have been given "third" terms if they had been elected in 1912 and 1928, respectively, were sufficiently fresh in mind to account for the inclusion of specific language on this point; and the case of President Truman, who was at the time of submission of the Amendment serving out the remainder of F. D. Roosevelt's fourth term, was also directly at hand. Few of the states have had the foresight to deal explicitly with this question in their constitutional provisions. The matter is further complicated by the fact that in a number of states, including New Jersey, Delaware, Kentucky, Georgia, and Oregon, a vacancy in the office of governor occurring during the first part of a four-year term is filled by special election at the next succeeding general election. In all these states except Delaware, the ensuing election is for the unexpired portion of the current term. In Delaware the special election is for a full four-year term.[27]

The constitutions of only two states deal specifically with this question. North Carolina under its one-term rule excludes from consideration service as governor by an incumbent "when the office shall have been cast upon him as lieutenant-governor or president of the senate."[28] The New Jersey constitution of 1947 provides that election to complete an unexpired term shall be regarded as election to a full term under its rule prohibiting more than two successive terms; but the reëligibility limitation does not apply to an officer who succeeds only temporarily to the powers and duties of the governorship.[29] Immediate reëlection of incumbents who have served partial terms in recent years in Mississippi, Georgia and Kentucky, all of which have a one-term limit of four years, indicates that their constitutional limitations are not construed to forbid an immediate reëlection of a succeeding officer who has served less than a full

[25] States with two-year terms in which a two-term limit has been observed for more than half a century are Kansas, Maine, South Dakota, and Texas. No governor has been elected for a third successive two-year term in Arkansas since 1905.

[26] Thus Governor Albert C. Ritchie, of Maryland, in winning reëlection three successive times beginning in 1924, broke a one-term tradition of long standing in that state. Governor John G. Winant, by winning a second, but nonsuccessive term in New Hampshire in 1930, defied a tradition against a second election; and in 1932 he set a new precedent by obtaining another, successive term. In 1926 Governor John E. Weeks, of Vermont, by his reelection to a second successive term, broke a one-term tradition which had persisted in that state for over fifty years.

[27] Constitution of Delaware, Art. 3, Sec. 9.

[28] Constitution of North Carolina, Art. 3, Sec. 2.

[29] Constitution of New Jersey, Art. 5, Sec. 1, par. 5.

term.[30] On the other hand, by judicial interpretation the Oklahoma constitution has been held to forbid immediate reëlection of an incumbent who succeeded to the office after removal of the regularly elected governor.[31]

The continuing support given to the principle of limited tenure for chief executives, as evidenced in the adoption of the Twenty-second Amendment and in the practices of a considerable number of states, invites inquiry into the factors accounting for its wide acceptance. As has already been shown, one of the main considerations which led to its adoption originally has long since vanished with the abandonment of legislative election of chief executives. Modern defenders of the principle of limited tenure, however, are still able to capitalize upon the traditional popular distrust of the executive which had its origins in American experience prior to the Revolution. The modern tendency toward strengthening the legislative and executive powers of chief executives at the national and state levels operates to keep such fears alive. Supporters of tenure limitation therefore continue to stress the arguments that it will tend to give an executive greater freedom from narrow partisan considerations in the conduct of his office; curb his lust for power; free him from the temptation to use his powers, especially the patronage power, to achieve his own renomination and reëlection; and in general afford greater security against the threat of "dictatorship." They deny or discount materially the counterarguments that adequate protection is afforded against executive usurpation in a limited term of office, the system of separation of powers, and a written constitution; that the opportunity of securing a vote of confidence from the people by obtaining reelection gives a chief executive a powerful incentive to deport himself with rectitude and administer his office with due consideration to the public interest and desire; and that in time of crisis an enforced rotation in the office of chief executive may be highly undesirable. They ignore the contention that a genuine would-be "dictator" would have ample time to attempt to accomplish his

[30] Governor Fielding L. Wright, of Mississippi, served out the last fourteen months of the term of Governor Thomas Bailey, who died in office. Wright was then elected for a full four-year term in 1947. Governor Herman Talmadge of Georgia, now serving a regular four-year term to which he was elected in 1950, was elected in 1948 to complete the last two years of the 1947–1951 term. To clear the way for his reelection to a full term immediately after serving an elective partial term, the Georgia Legislature passed two statutes in 1949. One provided that the state executive committee of a party should determine all questions relating to the qualifications of a candidate for nomination for state office at its primary, including the question of his eligibility for the office sought. The other made the General Assembly the sole judge of the constitutional qualifications and eligibility of the person elected as governor. See *Georgia Laws* (1949), pp. 967, 1948. The Georgia constitution provides that a governor "shall not be eligible to succeed himself and shall not be eligible to hold the office until after the expiration of four years from conclusion of his term of office" (Art. 5, Sec. 1, par. 1).

In October, 1939, Lieutenant-Governor Keen Johnson, of Kentucky, who was subsequently chosen for a full term as governor in the November, 1939, election, succeeded briefly to the governorship upon the resignation of incumbent Governor Chandler, who had resigned to accept appointment to the United States Senate. Johnson thus served some two months more than the normal period of four years.

[31] *Fitzpatrick v. McAlister*, 121 Okla. 83, 248 Pac. 509 (1926).

purposes during one term of office, to say nothing of two, and would be as little inclined to respect a written constitutional limitation on his tenure as any other part of the constitutional plan which stood in his way.

While public reaction to the debate on the issue in terms of these arguments accounts in some measure for current practice, considerations of party advantage of the moment, personal politics, the traditional jealousy of legislative bodies toward the executive, and the character of the party system are factors which also help to account for constitutional limitations on the chief executive. The records of the two major parties on the issue since the time of the Civil War have been curiously inconsistent. By and large, up to 1940 the Democratic party had shown more hostility to the idea of unlimited tenure for chief executives than had the Republicans. The two most serious challenges to the anti-third term tradition in connection with the Presidency were made in the Republican conventions of 1880 and 1912; while Democratic members of Congress more consistently supported efforts to prevent its violation than did their Republican colleagues.[32] In most of the states which limit the tenure of governors the Democrats are the majority party. But in the struggle over the Twenty-second Amendment, these party roles were in large measure reversed.

The fact that this proposal came so soon after the two-term tradition had been successfully challenged by a Democratic President gave it the character of a pro-Roosevelt, anti-Roosevelt partisan issue in much the same sense that earlier actions by Congress had reflected anti-Grant, anti-Theodore Roosevelt and anti-Coolidge partisan sentiment. Not a single Republican vote was cast against it in either House of Congress. Those Democrats in Congress who supported it were for the most part identified with the anti-Roosevelt faction of the party. In the first three years of the period in which the Amendment was before the states for ratification, Democratic-controlled legislatures generally showed a reluctance to act favorably upon it, while Republican-dominated legislatures rushed to approve it. Only after political developments in the post-war period had begun to raise increasing doubts in Democratic ranks concerning the soundness of President Roosevelt's judgment as a policy-maker did Democratic-dominated state legislatures display in any numbers a favorable attitude toward the Amendment. During 1950 and 1951 reaction against President Truman's leadership within the Democratic party also played a part in bringing about favorable action in states where this party controlled the legis-

[32] The Springer Resolution of 1875, noted above, was passed by a Democratic-controlled House of Representatives. On February 1, 1913, shortly before the inauguration of President Wilson, the Senate passed, by a vote of 47 to 23, an amendment resolution which would have limited a President to a single six-year term. It was favored by 28 Democrats and 19 Republicans and Progressives, and opposed by one Democrat and 22 Republicans and Progressives. *Congressional Record*, 62nd Cong., 3rd sess., Vol. 49, p. 2419 (1913). On February 10, 1928, the Senate passed the La Follette Resolution, which was essentially a restatement of the sentiment expressed in the Springer Resolution of 1875 opposing the third-term idea. The 56 votes in its favor were cast by 37 Democrats, 18 Republicans, and one Farmer-Laborite, and the opposing votes were cast by four Democrats and 22 Republicans. *Congressional Record*, 70th Cong., 1st sess., Vol. 69, p. 2842 (1928). For reviews of efforts in the past to limit presidential tenure see Rodell, *op. cit.* (above, n. 20); *The Congressional Digest*, Vol. 26, pp. 14–23 (Jan., 1947).

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an argument that rotation in executive office must be enforced to permit the rise of a new leadership.[34] Naturally enough, the legislators who advance this argument see no need to apply this principle to themselves as holders of positions of power and importance in the party hierarchy.[35]

A constitutional restriction on reëligibility is in the final analysis an expression of lack of faith in the electorate's ability to make an intelligent decision on whether to continue in office a chief executive who has had an opportunity to make a record upon which he can be judged. It is a denial of power to the voters to retain in office a chief executive who would otherwise win renomination and reëlection, for a fixed term of office provides them with opportunity at periodic intervals to dismiss an unsatisfactory incumbent. Consequently the attitude of the people on the general issue, rather than that of persons of influence in party affairs who may be suspected of reflecting a certain amount of bias arising from their own partisan or personal interests is of particular significance.

Popular approval of state constitutional amendments of this character in three states since 1925 and popular rejection of a proposal to repeal the tenure limitation provision of the New Mexico constitution in 1937 indicate that the idea has some measure of support by the people. However, the issue was not presented to the electorate in clear-cut fashion in all these referenda. When South Carolina reinstituted the reëligibility limitation for its governors in 1926, the question was submitted as a part of a proposal to extend the term from two to four years.[36] When Idaho's voters approved a similar limitation in 1944, the issue was again complicated by being made part of a proposal to extend the term of the governor and of other major state administrative officers to four years and to require them to reside in the county where the seat of government is located during their incumbency in office.[37] Modifications of tenure limitations

[34] In the Senate debate on the presidential tenure proposal, Senator O'Conor, of Maryland, stated the point as follows: "Certainly nothing could act more definitely to halt or impede development of potential leadership in the city, State, or Nation than to permit any one man or any one party to persuade the people that he or they alone are competent and therefore must be perpetuated in office" (*Cong. Rec.*, 80th Cong., 1st sess., Vol. 93, p. 1780 [1947]).

[35] When in the course of deliberations upon the presidential tenure proposal Senator O'Daniel, of Texas, offered an amendment to apply a six-year limitation to the Presidency and to legislative officers as well, it received only his own vote. Senator Kilgore, of West Virginia, also questioned the logic of limiting executive tenure without likewise limiting the tenure of legislators, but his query stirred no debate (*ibid.*, pp. 1963, 1947).

[36] *South Carolina Acts and Joint Resolutions* (1924), p. 1492; *South Carolina Acts and Joint Resolutions* (1926), p. 960. For a considerable time prior to adoption of this amendment, a "two-term tradition" under which a governor was limited to two consecutive two-year terms had been observed in this state.

[37] In *Keenan v. Price*, 68 Idaho 423, 195 Pac. (2nd) 662 (1948), the Supreme Court of Idaho overruled a contention that the amendment was invalidly submitted in that the electorate was not permitted to vote separately on the different propositions contained in it. In 1928 a similar amendment, but lacking the ineligibility clause for the governor, was ratified by the state electorate. It was declared by the Idaho Supreme Court to have been invalidly submitted on the ground that the question as presented on the referendum

in Georgia in 1941 and in New Jersey in 1947 also were approved in connection with changes in the length of term of office, and therefore provided no clear test of popular sentiment on the general issue of tenure limitation. The refusal of the electorate in New Mexico in 1937 to abandon the reëligibility limitation of that state,[38] and the adoption of a two-term limit in Maryland in 1948, after the electorate had earlier refused to approve a more restrictive proposal,[39] were clearer expressions of popular approval of the general principle. Over against these indications of popular support for the principle of tenure limitation stand the actions of many state electorates which have in recent times refused to be bound by the anti-third term rule and have retained governors in office for three consecutive terms or longer.[40]

Whether the Twenty-second Amendment is merely a "politician's amendment," introduced into the Constitution by action of national and state legislators who registered only their own partisan and personal views, or was the reflection of a strong, genuine public opinion remains a debatable point. Provision for its reference to popularly chosen state conventions, as was made in in the case of submission of the Twenty-first Amendment, was deliberately avoided by its backers in Congress.[41] In view of the fact that the two-term tra-

ballot was stated as whether the terms of the state officers involved should be "limited" to four years. *Lane v. Lukens*, 48 Idaho 517, 283 Pac. 532 (1929).

[38] *New Mexico Laws* (1937), p. 693. The provision which the voters refused to eliminate was one which forbids a third consecutive two-year term. In November, 1948, a proposed constitutional amendment extending the term of office of the governor and other state administrative officials from two to four years, and making such officers ineligible to succeed themselves after one term, was defeated by an affirmative vote of 28,914 and a negative vote of 30,364 (*New Mexico Statutes Anno.*, 1949 Supp., Vol. 1, p. 13).

[39] *Laws of Maryland* (1949), p. 1968. The popular vote in favor of the anti-third term proposal was 162,043 to 106,255. Senator O'Conor of Maryland asserted on the Senate floor that the two-term limit proposal had the unanimous support of the 123 members of the House of Delegates when it was voted on by the legislature in 1947 (*Cong. Rec.*, 80th Cong., 1st sess., Vol. 93, p. 1780 [1947]). In 1940 the voters of Maryland rejected a constitutional amendment which would have prohibited an immediate reëlection of the governor to a second four-year term (*Laws of Maryland*, 1939, p. 828).

[40] States in which governors have been elected for three consecutive two-year terms in the period since 1900 include Arizona, Arkansas, Colorado, Connecticut, Idaho, Iowa, Massachusetts, Michigan, Minnesota, Nebraska, New Hampshire, New York, North Dakota, Ohio, Rhode Island, Tennessee, Wisconsin and Wyoming. States in which governors have been elected for three consecutive four-year terms include California, Maryland, Montana and New York. The "record" for number of terms elected in recent times is held by the first governor of Arizona, George W. P. Hunt, Democrat, who was elected for seven two-year terms in the period from 1912 to 1932. Governor Albert C. Ritchie, Democrat, of Maryland, had the longest period of continuous service, which extended over four four-year terms running from 1920 to 1935.

[41] An attempt to make the convention method of ratification applicable to the proposal failed in the House by a vote of 134 to 74. The Senate Judiciary Committee report on the resolution recommended use of the convention device, but this recommendation was rejected 63 to 20 (*Cong. Rec.*, 80th Cong., 1st sess., Vol. 93, pp. 871, 1862 [1947]). Discussion of the alternative modes of ratification revealed a startling lack of understanding by members of Congress of this aspect of the amending process. Cf. Everett S. Brown, "The Term of Office of the President," AMERICAN POLITICAL SCIENCE REVIEW, Vol. 41, pp. 447-452 (June, 1947).

dition had been repudiated by the voters of the nation by the reëlection of President Roosevelt in 1940 and 1944, supporters of the proposal in Congress had good reason to mistrust a ratification method which would have, in effect, permitted a popular referendum, state by state, on the issue.[42] Polls of popular opinion on the issue of maintaining the two-term tradition with reference to the Presidency showed a considerable shifting of attitudes in the nation from 1936 to 1947. Prior to 1937 there was majority support for the two-term principle. Then, in line with the action of the voters in breaking the tradition with the reëlection of President Roosevelt in 1940, there was a shift to the contrary view. Republican voters consistently favored the principle by a heavy margin; while Democratic voters opposed it by a somewhat lesser margin.[43] These polls suggest that the Amendment might still have been approved if its ratification had been left to popularly chosen conventions; but the public's attitude on the issue was by no means so clear as to have assured this outcome.[44]

[42] In the congressional debate no backer of the proposal frankly stated this as a reason for opposing the use of the convention device. Reasons advanced in support of the legislative method of ratification were that it was more expeditious, less complicated, and less expensive than the convention method; that the public was not greatly concerned and interested in so "technical" a question; and that conventions might be "manipulated." Perhaps the most astounding statement was that of Senator McClellan, of Arkansas, who in opposing the convention system declared: "I know that the process of ratification through action of the State Legislatures affords the best opportunity for getting the correct sentiment of the people, because legislators are elected, whereas in many States delegates to conventions are appointed and the question is not made an issue and debated before the citizenship and the electorate, before the votes are cast" (*Cong. Rec.*, 80th Cong., 1st sess., Vol. 93, p. 1800 [1947]).

[43] American Institute of Public Opinion polls, as reported in the *Detroit News* for June 14, 1936, and the *Public Opinion Quarterly*, Vol. 2, pp. 304–305 (1947–1948), show the following results:

Date	Per Cent For Two-Term Limit	Per Cent Against	Democrats		Republicans	
			For	Against	For	Against
June, 1936	57	43	44	56	78	22
1937	49	51				
1938	48	52				
1939	42	58				
1940	41	59				
1943 (April	46	54				
1943 (Dec.)	54	46				
1944 (April)	57	43	32	68	84	16
1945 (May)	60	40				
1947 (Feb.)	57	43	41	59	74	26
1947 (May)	59	41	43	57	79	21

[44] It may be contended, of course, that the fact that the amendment proposal received a two-thirds majority vote in each House of Congress and majority approval in the legisla-

The ultimate effect on the Presidency of the now-formalized rule of compulsory retirement after two terms is difficult to assess. A backward projection gives some indication of its future impact. If the Twenty-second Amendment had been in effect since 1789, it appears that the outcome of two presidential elections in addition to those of 1940 and 1944 would have been affected. If General Grant had not been a strong contender for a third-term nomination in 1880, the "dark horse" Garfield might well have never emerged as the candidate of the Republicans, and the election of that year would probably have placed some one else in the White House. Again in 1912 Theodore Roosevelt would not have been eligible for the Presidency, and the split in the Republican party which resulted from his candidacy and made possible the election of Woodrow Wilson conceivably would not have occurred. Of the 32 persons who have occupied the office of President, ten would have been rendered ineligible for further service. Those who would have been forever disqualified include six of the seven Presidents who are generally recognized as having been our most outstanding and able ones.[45]

To judge from the experience of the states in connection with the governorship, one probable result of the Amendment will be to diminish somewhat the effectiveness of the President as a legislative leader as the time for his enforced retirement nears. Competent observers agree that this is an effect of reëligibility restrictions on state governors.[46] The reasons for this are rather obvious.

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tive bodies of 36 states is *prima facie* evidence that it had overwhelming popular support. However, eighteen of the state ratifications were given by state legislatures within less than three months of its submission. Obviously few, if any, of them could be said to have acted in accordance with a popular mandate on this question, since it was not formally before the voters as an issue when the members of these legislative bodies were elected. It may also be questioned whether the issue of ratification of the pending amendment played any significant part in the election of members of the remaining state legislatures which ratified at later dates.

[45] Washington, Jefferson, Jackson, Theodore Roosevelt, Wilson and Franklin D. Roosevelt. The other outstanding President, Lincoln, would not have been affected since he was assassinated before the end of his second term. Some might include Grover Cleveland, who would also have been disqualified, among the "outstanding and able" Presidents.

[46] Dealing with this point in the Senate debate on the presidential tenure, Senator Kilgore of West Virginia asserted: "I have had the opportunity during the past 8 years to study the record of governors in States in which there are limitations as to terms, and I have discovered that the last half of the term was a record of failure" (*Cong. Rec.*, 80th Cong., 1st sess., Vol. 93, p. 1949 [1947]).

Another observer states: "One state official felt very strongly that the inability of the governor to succeed himself placed him in a position where 'he has no incentive for good administration other than his own desire to perform efficiently.' Others interviewed were skeptical about the effect of this provision on the administration of the governor's program, pointing out that the people, even if they had an opportunity to express themselves, 'weren't interested in good administration,' but judged a governor by his ability to get his promised program through the legislature. It was generally conceded, however, that this provision did have a deleterious effect on the governor's relation with the legislature. This is particularly true of the second half of his term when the legislators were more concerned with the programs of potential candidates for the governorship and with potential

On the one hand, his fellow partisans in the legislative branch, knowing that he can not present himself to the voters again as a candidate seeking vindication for his party and its record under his leadership, will be under less compulsion to remain loyal to him. As election time approaches they will become more and more concerned with promoting the candidacies of the various aspirants to the succession. The chief executive on his part may feel less inclined to pursue a course calculated to maintain party harmony and solidarity. In such an atmosphere the relationship between the executive and the legislative branch can hardly fail to become less cordial and coöperative. This is not to say, of course, that as the time of his enforced retirement approaches, the executive will become wholly powerless and ineffectual as a party leader. He will retain to the end of his term his constitutional powers, which are the basis of his control over his party; and the realization by him and by his fellow partisans in the legislative branch that they and the party will be judged at the next election in large part on the record achieved under its current head will operate as a restraining influence against these divisive tendencies.

Comparison of the practices of those states which impose limitations on reeligibility of their governors with the system prescribed by the Twenty-second Amendment reveals two major differences which to some minds should be assessed in favor of the prevailing state practice, if it be conceded that a tenure limitation should be imposed by constitutional rule. The Twenty-second Amendment, in contrast to the constitutions of three-fourths of the states having limitations of this character, fails to prevent an incumbent chief executive from seeking to succeed himself in office. One of the most persuasive arguments for a limitation on reëligibility is that it discourages the use of official powers by a chief executive to promote his own renomination and reëlection. His ineligibility to succeed himself permits him to render judgment on public issues with which he must deal without taking into account his immediate personal ambitions and interests. A President, moreover, acquires such a grip on the party machinery that it becomes difficult, if not impossible, for the party to refuse him renomination if he seeks it.[47] If the evil to be eliminated is an incumbent's prostitution of official power for personal and partisan ends, then a prohibition upon an immediate reëlection, rather than a prohibition of a third

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patronage from those candidates than with the incumbent who had distributed most of the lucrative state positions and contracts and who could not be looked upon as a candidate for at least another four years, if at all" (Coleman B. Ransone, Jr., *The Office of Governor in the South*, University, Alabama, 1951, pp. 59–60).

Key, *op. cit.* (above, n. 33), p. 102, summarizes the observations of an official in the state house in Florida, where a single four-year term rule obtains: "A governor usually goes out of office with many enemies. He can control his first legislature with patronage and favors, but the second is often beyond his control. As his term wears on even his own appointees become independent .... Among the enemies of the administration, those seeking to organize a group powerful enough to take over the governorship find their most willing recruits."

[47] Every one of the ten Presidents since Grover Cleveland who has lived to complete a first full term or partial term has been renominated by his party. Six were returned to office and a seventh, Cleveland, was reëlected after an intervening term.

term, is the logical remedy. If it be answered that a President or a governor should be entitled to win vindication once on his record at the hands of his party and the voters, the question arises, if once, why not a second or a third time?[48]

In the second place the Twenty-second Amendment rule stands in contrast to those of the states in that it imposes a permanent ineligibility upon an incumbent who has occupied the Presidency for the permissible length of time. With the exception of Delaware, all the states with reëligibility restrictions on their governors impose only a temporary disqualification. A temporary ineligibility makes possible the return to office of a chief executive whose performance affords a basis upon which the voters may render a judgment, without their being influenced by his direct use of the powers and prestige of the chief executive's office. While the number of governors who have been returned to office after a period of ineligibility is not large,[49] there have been enough instances to demonstrate that the voters, on occasion, may prefer such an experienced chief executive over an untried one. If the people can be trusted at all to choose their chief executives, they ought to be capable of making an intelligent choice under these conditions. A similar disposition of this aspect of the issue as it relates to Presidents who have served the permissible period of time would have rescued them from the role of "discontented ghosts, wandering among the people and sighing for a place which they are destined never more to possess,"[50] and saved to the nation their talents as leaders in case of future need.

[48] "In their haste to register disapproval of the late President for seeking a third and then a fourth term, these gentlemen [who sponsored the Twenty-second Amendment] neglected or ignored the really critical issue, which is *whether a President should be permitted to succeed himself at all.* Inasmuch as the Presidency is a 'killing job,' to which few men come until they have passed the peak of their physical vigor, few Presidents will be likely to seek a third term, and certainly not a fourth, remembering the penalty which Mr. Roosevelt paid for doing so.

"The chief objection to presidential reëligibility, to my mind, is just as valid against a *second* successive term as it would be against a *third* one. It consists in the fact that a President who is looking forward to reëlection will evaluate all programs and policies primarily for their probable effect on his political fortunes and will, in fact, be expected and required by his party to do so" (Edward S. Corwin, *The President: Office and Powers*, 3rd ed. rev., New York, 1948, pp. 48–49).

[49] Among state governors of recent years who have been returned to office after periods of ineligibility are Gifford Pinchot, of Pennsylvania; A. Harry Moore, of New Jersey; Olin Johnston, of South Carolina; David Bibb Graves, of Alabama; Eugene Talmadge, of Georgia; Theodore Bilbo and Hugh White, of Mississippi; and Henry Schricker, of Indiana. The number of governors who have been returned to office after a period of ineligibility would undoubtedly be larger were it not for the fact that many of them in the meantime successfully sought federal offices, especially seats in the Senate, which they have preferred to retain rather than to seek the governorship a second time.

[50] Cf. Alexander Hamilton in Number 72 of the *Federalist Papers*. During senate consideration of the presidential tenure proposal Senators Holland, of Florida, and Magnuson, of Washington, strongly urged an amendment which would have made possible the later reëlection of a President who had served the permissible two consecutive elective terms. The proposed amendment was rejected 50–34 (*Cong. Rec.*, 80th Cong., 1st sess., Vol. 93, pp. 1941, 1955 [1947]).

The fundamental problem toward which constitutional limitations on executive tenure are advanced as solutions is the dangerous accretion of power in the hands of the chief executive. The trend toward concentration of authority and influence in the office of chief executive has become more pronounced at both the national and state levels of government in recent decades. That developments in this direction have carried to the point where there is ample cause for grave concern can hardly be questioned, particularly in the case of the Presidency. It may be seriously doubted, however, whether a constitutional limitation on executive tenure offers any substantial measure of relief. The causes for the recent growth of executive power and influence are to be found in the expansion of the functions of government generally, in the increasing complexity of the matters with which government must grapple in a period of worldwide economic and political dislocation induced by two world wars in one generation, and in the increasing reliance which must be placed upon a bureaucracy functioning under the immediate direction of the chief executive to effectuate the purposes of government. In the case of the Presidency, the rise of the United States to a position of leadership among the free nations of the world is another factor of momentous consequence in the situation.

Constitutional limitations on executive tenure fail to come to grips with the basic issue. By promoting a false sense of security, they may actually hinder the development of those types of safeguards in which salvation against the evils of an overweening executive power really lies. A reshaping of our political institutions to make the opposition party a more effective instrument for holding the administration to account, reëxamination by the legislative branch of the question of its proper role and function in the governmental process and the devising of means and methods to give it a more powerful voice in various areas of high-level policy-making, and insistence upon a rigid regard for the right of the people generally to criticize and oppose within the broad limits assumed by the democratic dogma—these are lines of action which offer far greater promise as safeguards against the threat of "dictatorship" than do measures of the sort illustrated by the Twenty-second Amendment.

THE AMERICAN CHIEF EXECUTIVE

THE PRESIDENCY AND THE GOVERNORSHIP

JOSEPH E. KALLENBACH

The University of Michigan

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popular vote, was favored in the New England states. Under the Connecticut and Rhode Island charters the freemen of the colony had been privileged to participate in the choice of the governor from among their "Company." This practice was continued in these states after statehood was achieved. A majority vote was required for election; if there was no popular majority the assembly chose the governor. Massachusetts in 1780 and New Hampshire in 1784 also adopted this system, with one refinement: their constitutions provided that in case there was no candidate with a popular majority the choice should be made by the upper house of the legislature from a panel of two selected by the lower house from among the four highest in the popular voting. The New York constitution of 1777 was unique in that it anticipated the modern mode in providing for direct election of the governor by the state's freeholders, i.e., those owning property in land, the candidate with a popular plurality to be deemed elected without further recourse.

In all the states from Pennsylvania and New Jersey southward the principle of legislative appointment was favored. The most common method of choice was by joint vote of the two houses. Ordinarily a majority in the joint vote was required, successive ballots being taken until a majority was mustered for one candidate. The Maryland constitution of 1776 provided that in case there was a tie vote between the two leading candidates after a second ballot the issue should be decided by lot. Under Georgia's constitution of 1777, election of the governor from among its own membership was a function of the unicameral assembly. A variation from the general practice was found in Pennsylvania, where the "president" was chosen annually by the unicameral assembly from among the 12 executive councilmen who were themselves popularly elected for a term of three years.

TERM AND RE-ELIGIBILITY

The idea that executive and legislative officers should hold office for a specific term was accepted without question by the framers of the original state constitutions. In keeping with the aphorism of John Adams in his *Thoughts on Government* that "where annual elections end, there slavery begins," all but three of the original state constitutions gave the chief executive a one-year term. Exceptions were Delaware and New York, with three-year terms, and South Carolina, which allowed a two-year term. The temporary plan of government in effect in Georgia for a brief time in 1776 provided for only a six-month term, but it was replaced the next year by a more complete plan of government under which the chief executive enjoyed a one-year term.

In seven states, all lying from Pennsylvania southward, tenure in office was further limited by various restrictions upon re-eligibility. It should be noted that these were all states in which the principle of legislative election prevailed. Georgia's constitution of 1777 was the most restrictive in that it limited an individual to no more than one one-year term in each three-year period. Despite the further provision obligating a governor through his oath of office "peaceably and quietly" to relinquish his office at the end of one year, that state was the only one to become involved in a squabble over occupancy of the governorship during the Revolutionary War period.[21] In the New England states as well as in New York and New Jersey there were no re-eligibility limitations. Continuance of the same person in office for long periods through successive elections was the usual practice in these states both during and after the Revolutionary War. For example, George Clinton was governor of New York for six successive three-year terms from 1777 to 1795; William Livingston, the first governor of New Jersey, served 14 successive one-year terms from 1776 to 1790; Jonathan Trumbull of Connecticut served as colonial governor and state governor from 1769 to 1786; and except for a two-year interlude (1785–1787), John Hancock was governor of Massachusetts from 1780 to 1793.

CONSTITUTIONAL POWERS AND FUNCTIONS

The role assigned the chief executive under most of the original state constitutions, while not an insignificant one in all cases, was considerably less important than that of the colonial governor in the royal and proprietary provinces. The influence of colonial practice was seen in the fact that in every state a conciliar body or bodies was provided to advise, assist, and in some respects restrict the governor in the exercise of certain powers. The agency created took various forms. In Pennsylvania and Vermont and under the temporary plans of government in Massachusetts, New Hampshire, and Georgia, the executive powers were actually in the hands of the executive council itself, rather than in those of the chief executive officer, but under the other forms of government a clearer distinction was made between the chief executive and the body associated with him in the exercise of his powers.

[21] Conditions in Georgia were particularly chaotic after British military forces occupied the major portion of the state in 1778. Choice of a successor to the first governor elected under the Constitution of 1777 could not be effected by the new assembly because of British occupation of Savannah, the capital. Rival groups comprised of remnants of the assembly later met and each chose a set of executive officials. For some years there was a succession of rival claimants to the post of governor in that state. See Green, *op. cit.*, pp. 124–126; and Ethel Kime Ware, *A Constitutional History of Georgia* (New York: Columbia University Press, Columbia University Studies in History, Economics and Public Law, No. 528, 1947), p. 52.

HJR

10

HJR 10



ALASKA CONSERVATION SOCIETY

UPPER COOK INLET
CHAPTER
BOX 3395
ANCHORAGE, ALASKA
99501

March 1, 1975

Rep. Terry Gardiner, Chairman
House Judiciary Committee
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Terry:

The Upper Cook Inlet Chapter of the Alaska Conservation Society strongly supports HJR 10 - An Environmental Bill of Rights, Constitutional Amendment. We urge your committee to report favorably on the resolution and to press for passage in both houses of the Legislature.

The need and rationale for this action has been well expressed by Dr. Charles Konigsberg on several occasions including the Dinner for Legislators held in January in Anchorage and sponsored by the Upper Cook Inlet Chapter and the local and state Sierra Club organizations. The Upper Cook Inlet Chapter represents more than 100 Anchorage area citizens. All present and future generations of Alaskans will be the beneficiaries if favorable action is taken this year.

Now is certainly the time to add these needed safeguards to the Alaska Constitution - before serious inroads have been made on our near pristine Alaskan air, lands and waters. As you well know our State is poised on the brink of a massive effort to extract and develop its oil, gas and mineral resources. Alaskans must have the assurance that in the process we will not be called upon to sacrifice our rights to a clean and liveable environment. This Environmental Bill of Rights must be considered as a necessary companion to other legislation which will be acted upon this session in order to foster and control wise land and resource use by the oil industry and other extractive industries. It is especially important that favorable action on HJR 10 precede the large influx

of population which the State can expect which will bring increased pressures to our rural and urban environments.

As a Constitutional amendment, it will serve as an expression of our environmental and social goals and will thus guide our development and growth, and our efforts to formulate land and water use plans with the fullest respect for the people's need for and right to the highest quality of iar, land and water. It will provide the most effective assurance that the maximum possible protection will be given to Alaska's natural resources, wildlife, scenic beauty and opportunity for quiet - those qualities which have attracted a major portion of us to choose Alaska as our home.

We urge your committee to act favorably on HJR 10 and to work for passage in both houses of the legislature. It is vitally important that the State take this action to recognize the rights of its citizens. We are fortunate in Alaska in being able to provide assurance of these rights. Elsewhere they have already been denied by the thoughtless actions of countless numbers of people and organizations.

Sincerely yours,

Ian W. McLeod

Ian W. McLeod, President
Upper Cook Inlet Chapter, ACS

cc: Members of the House
Judiciary Committee
Also:

Rep. Susan Sullivan
Rep. Nels Anderson
Rep. Mike Bradner
Rep. Brenda Itta
Rep. Mike Hershberger
Rep. James Huntington

HJR

11

"Amending the Constitution of the State of Alaska to provide for consideration of vetoed bills during special sessions of the legislature."

COMMITTEE REPORT

2/28/75

HOUSE

Mr. Speaker: Date 4/1/75

The Committee on JUDICIARY has had HJR 11 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(✓) recommends it BE REPLACED WITH CS FOR HJR 11 AND THAT CS FOR HJR 11 DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Terry Gardiner

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends

_____ recommends:

_____ recommends:

Terry Gardiner Chairman

Introduced: 2/13/75
Referred: State Affairs and Finance

BY URION,BOWMAN,BRADNER, ELIASON,FINK,FREEMAN,MILLER, PARKER AND WALLIS

IN THE HOUSE

HOUSE BILL NO. 164 am

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to consideration of vetoed bills during special sessions; and providing for an effective date."

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

* Section 1. AS 24.05.100(1) is amended to read:

(1) The governor may call the legislature into special session by issuing a proclamation at least 15 days in advance of the convening date stated in the proclamation. At a special session called by the governor, legislation is limited to the subjects designated by the governor in his proclamation or to the subjects presented by him. This provision does not curtail the duty of the legislature to consider a bill that has been vetoed following adjournment of the last regular session of that legislature.

* Sec. 2. AS 24.30.100 is amended to read:

Sec. 24.30.100. ACTION UPON VETO. When the governor vetoes a bill or by veto strikes or reduces an item in an appropriation bill, during a regular session of the legislature, the legislature shall proceed to act in accordance with sec. 16, art. II, of the state constitution as it is implemented by the rules of the legislature. A bill vetoed after adjournment of a regular session shall be reconsidered by the full membership of the legislature sitting as one body no later than the fifth day of the next regular or special session convened during that legislature.

* Sec. 2. EFFECTIVE DATE. This Act takes effect immediately upon the date

House Judiciary Committee
March 4, 1975

The meeting was called to order at 1:20 p.m. by Chairman Gardiner. All members were present except Mr. Brown.

The committee agreed that a public hearing should be scheduled on medical malpractice and that representatives of the medical, law and insurance professions be invited.

HJR 11 Special Session Veto

The following possible amendments were discussed:

page 2 line 2 insert regular or special session/ change the title to eliminate reference to special session.

Mandate a veto session to take place 30 days after the regular second session for a maximum number of days.

The committee decided to consider this bill further at a later time.

HB 27 School Bus Drivers

Mr. Fink moved the bill out of committee with the HESS amendment. There being no objection, the bill was passed out.

HB 48 Transfer of Interest in Realty

Mr. Bradley moved that in line 11 after no person ADD other than a natural person. This amendment was meant to disinclude individuals but not corporate persons. Amendment 1 passed.

Mr. Bradley moved that in 19 the following be added (language to be worked on) The Commissioner of the Department of Commerce may exempt federal agencies if he finds that they will stop activities in Alaska as a result of the bill. Amendment 2 passed but the committee requested that the language drawn up to accomplish this amendment be approved by Commissioner Motley.

Mr. Fink requested that a letter of intent be drawn up by committee staff to state that there are lending institutions in the state following the practice prohibited by this bill, to explain what a natural person is, and to explain why certain agencies may be exempted.

Mr. Fink moved the bill out of committee as CS HB 48. There being no objection, the bill was passed out of committee.

House Judiciary Committee
April 3, 1975

The meeting was called to order at 7:20 p.m. by Chairman Gardiner, and was ruled a continuance of the afternoon meeting.

HB 191 Transportation Tariff

Commissioner Motley testified that the ATC would like to give 45 days notice, but this creates problems in administration. It would be theoretically possible to have two different rates in effect at the same time. He felt that this problem could be worked out, possibly by giving the federal notice earlier than required.

Mr. Specking suggested making the language similar to that of the ICC. He questioned whether the commission or the shipper was required to notify the public.

Mr. Bradley moved HB 191 out of committee and asked unanimous consent. Mr. Parr objected. Mr. Bradley withdrew his motion. Mr. Parr requested that the ATC be notified for one final time and requested to present justification as to why they oppose the 45 days notice.

HJR 11 Veto, special session

The following amendments were adopted:

page 1, line 7: in the title -- after "bills" insert a period and delete the rest of the title.

page 2, line 2: delete the underlined language in lines 2 and 3 and insert: "than the fifth day of the next regular or special session of that legislature."

CS HJR 11 was moved out of committee.

HJR 4 Governor's term

Mr. Gardiner turned the chair over to Mr. Bradley. Mr. Gardiner, sponsor of the bill, testified that the adverse effects of an election in the middle of a governor's possible term must be weighed against the public accountability that the election provides. He said that work in an election year is just as important as any other time and should not be sacrificed to political ambition. He suggested that language be put in the bill to state that a governor having a 4 year term previous to election to a six year term would be allowed to serve the full six year term. This would hold true not only for transitional periods but could also be incorporated to cover a lt. governor who serves more than 4 years of a governor's term -- who would then not be eligible to run, but who serves less than four years -- would be eligible for a six year term of his own.

It was decided that proposed amendments would be drawn up.

HJR

39

Proposing an amendment to the Alaska Constitution, establishing a permanent fund for certain proceeds derived from non-renewable resources.

COMMITTEE REPORT

3/10/76

HOUSE

Mr. Speaker: Date 3/24

The Committee on JUDICIARY has had SSHJR 39 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(X) recommends it BE REPLACED WITH CS FOR SSHJR 39 AND THAT CS FOR SSHJR 39 DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

hjr 39

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER / POUCH S – JUNEAU 99811

February 4, 1976

The Honorable Hugh Malone
Chairman
House Finance Committee
Alaska State Legislature
State Capitol Building
Juneau, AK 99811

Re: Sponsor Substitute for House Joint Resolution No. 39

Dear Mr. Malone:

Sponsor Substitute for House Joint Resolution No. 39, proposing an amendment to the Alaska Constitution, establishing a permanent fund for certain proceeds derived from non-renewable resources was introduced on January 15, 1976 by the Rules Committee at the request of the Governor and was referred to the House Finance and Judiciary Committees.

For the consideration of the House Finance Committee, I am enclosing a copy of a fiscal note prepared by Lawrence P. Eppenbach, Deputy Commissioner, Treasury, Department of Revenue along with a copy of a memorandum from the same employee detailing fiscal note comments.

If you or any members of the House Finance Committee have any questions on the material submitted, please telephone the writer at 465-2397 and I will contact Mr. Eppenbach for further information or testimony at a hearing.

Very truly yours,

R. D. Stevenson
Special Assistant

Enclosures

cc: The Honorable Terry Gardiner
Chairman
House Judiciary Committee

Lawrence P. Eppenbach
Deputy Commissioner, Treasury
Department of Revenue

THE LEGISLATURE OF THE STATE OF ALASKA
FISCAL NOTE
Second Session - Ninth Legislature

I. REQUEST
Title: Joint Resolution - Permanent Fund
Requested by: Governor Date: January 12, 1976
Return Date Requested:
Agency: Revenue Program: State Investment Advisory Committee

II. FISCAL DETAIL
Budget Request Unit(s) Affected:

A. EXPENDITURES: (Thousands of dollars)

OBJECT		FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100	PERSONAL SERVICES						
200	TRAVEL						
300	CONTRACTUAL		150,000				
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL		150,000				

B. FUNDING: (Thousands of dollars)

GENERAL FUND		150,000				
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

	/	/	/	/	/	/

STATE of ALASKA

MEMORANDUM

TO: Sterling Gallagher
Commissioner
Department of Revenue

DATE: January 12, 1976

FROM: Lawrence C. Ippenbach
Deputy Commissioner, Treasury
Department of Revenue

SUBJECT: Fiscal Note Comments - Permanent Fund Concept

The proposed Constitutional initiative would establish a permanent fund composed of 10 percent of all mineral lease revenue and production taxes received by the State. The amendment calls for the fund to be invested in income yielding projects and investments, with the income transferred to the general fund.

The amendment language is broad in nature and a comprehensive piece of enabling legislation will be required to make the concept work. Many topics will have to be addressed by this enabling legislation such as the investment objectives, the creation of development financing institutions, new loan programs, and even the organizational framework. To study these questions and to have draft legislation ready for introduction at the beginning of the 1977 session will require research to commence right away. In addition, since the success of this fund will hinge on the quality of management personnel work must also proceed in identifying and recruiting qualified managers.

This fiscal note assumes that the present State Investment Advisory Committee will research and draft this legislation and that it will be completed by January 15, 1977. This Committee is presently responsible for advising the Commissioner of Revenue with respect to investments and its membership (legislative, executive, and public) is broadly representative of Alaskan interests.

The State Investment Advisory Committee does not have a permanent staff; this fiscal note would provide funds for securing the necessary research capability. In addition, new members may be appointed to the Committee to enhance its ability to undertake this responsibility. Even though the approach taken ultimately will be up to the Committee, the following outline might represent a typical plan. It divides the work into four phases:

1. Preliminary/Conceptual Research: Typical assignments would include a study of the experience of similar funds in other states; a thorough cataloging of Alaska's renewable and non-renewable resources; an examination of the need for credit expansion in Alaska; the evaluation of present loan programs; the identification of alternative administrative frameworks for the fund; and background data gathering on the State's financial position.

2. Economic Research: Work in this area might consist of the classification of present and potential revenue sources into recurring and non-recurring components; the identification of possible recurring revenue increments related to development activity, and the identification of environmental costs associated with that activity. This should provide a ranking of potential economic projects with respect to long term net economic benefit to Alaskans. Careful coordination with the development plans of Native Regional and Village Corporations, State authorities, municipal, and private sector corporations will be required.

3. Financial Research: Here the detail work begins in identifying alternative investments that may qualify for permanent fund participation. Each project would have to be ranked according to its ability to stimulate net recurring revenue benefits to the entire State. Measurements of the impact of fund operation on State budget expenditures would also have to be made.

4. Legal Research: Reviews of legal investments, the legal status of investing in quasi-public institutions, and the actual writing of proposed legislation would logically fall into this category.

LCE:ge
Enclosure

Amendments to HJR 39

(1) Page 1 line 6
Changed title to Alaska Permanent Fund from "a permanent fund

(2) lines 13 & 14 changed "except as provided in sec 15, and" to as provided in sec 15 of this artical or" The deletion of "when required" is a type This is better language construction

(3) line 21 added the word "ALASKA" to title to be consistant with HJR title

(4) line 21 changed "10%" to "25%" Reason is more bucks

(5) line 22 added "fedral mineral"

(6) line 23 added "all" see committee report for reason

(7) line 25 through 28. The original words were "shall be used for income investment". The committee amended this to read "shall be used only in a manner to be provided by law". This was again changed without committee aprovel to say "shall be used only for those income producing investments specifically designated by law as eligible for permanent fund investment" This was done so a state employee could

page 2

not argue that any chang in present law, i.e vet loans, which had fical emplications was empliedly "in a manner to be provided by law" and hence tape the fund.

(8) Page 2 line one; added "unless otherwise provided by law."

Reason: Standard language and to be consistent with amendment 7

(9) Page 2 line 6 through 8 added Sec 4 at request of Fiance Constitution ~~has~~ says an amendment belcomes effective 30 days after certification unless amendment ~~say~~ give another time. This ~~am~~ section says 90 days from certification. I don't know the reasoning

Introduced: 1/15/76
Referred: Finance and Judiciary

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

SPONSOR SUBSTITUTE FOR HOUSE JOINT RESOLUTION NO. 39

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

Proposing an amendment to the Alaska Constitution, establishing a permanent fund for certain proceeds derived from non-renewable resources.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. Article IX, Section 7, Constitution of the State of Alaska, is amended to read:

SECTION 7. DEDICATED FUNDS. The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 and except when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this constitution by the people of Alaska.

* Sec. 2. Article IX, Constitution of the State of Alaska, is amended by adding a new section to read:

SECTION 15. PERMANENT FUND. [Ten] 25 per cent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments, bonuses, and all mineral production taxes received by the state shall be placed in a permanent fund, the principal of which shall be used only for income investments which shall be established by law. The legislature may appropriate additional amounts to the permanent fund which shall become a part of the principal of the fund. All income from the permanent fund shall be deposited in the general fund unless otherwise provided by law.

AMENDMENT #1

OFFERED IN THE HOUSE: BY: FINANCE COMMITTEE

To: _____ HOUSE BILL No. SSHJR 39

SENATE BILL No. _____

1) PAGE: 1 LINE: 6 Title

after "estab shing" insert: an ALASKA PERMANENT FUND

2) 1 22

before PERMANENT FUND insert: ALASKA

before "per cent" delete: Ten

insert: Twenty-five

3) 1 23

before "revenue" insert: federal mineral

4) 1 26

after "investments" insert: In a manner to be provided by law which shall be established by law

5) 1 29

after "fund" add: In a manner to be provided by law unless otherwise provided by law

6) 2 5

add another section: * Sec. 4. The amendments proposed by this resolution if adopted by the voters at the next general election shall become effective 90 days after the certification of the election returns by the lieutenant governor.

Before the House Judiciary Committee
Regarding: HJR 39 Exception for Dedication of Revenues
Constitutional Amendment for a "permanent fund"

Testimony by Norman Bailey of Anchorage, Alaska - March 15, 1976

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

As the permanent fund concept is before you for passage during this Legislature we cannot stress its importance to the State, and to the future of its citizens, enough.

Alaska is to be the recipient of an additional one billion dollars each year (if tax laws remain unchanged). As oil begins to flow in 1978 and continues on for nearly 20 years, we will be awash in "petro-dollars".

Prudence dictates that we begin now to set up a mechanism for the management of these monies we will receive from the sale of one of our non-renewable resources.

The permanent fund, or placement of a certain percentage, is a fund to preserve the money while it waits to be placed in the State economy to help that economy be more self-reliant. In the past we have seen the negative results of economic exploitation.

The gold industry, once the most influential in Alaska, now presents only closed up mines, ghost towns, and old cabins as evidence of the period. The wealth left Alaska to New York, Seattle, San Francisco, Chicago, and elsewhere. It did Alaskans little good and left no economic benefit for Alaskans of today.

The fishing industry, once strong and thriving, has been exploited nearly beyond recovery. For the most part the wealth has left Alaska. The canneries are owned, still today, almost all by outside interests. The wealth from exploiting that resource has been of little benefit to Alaskans.

The story line is almost the same in each industry. The permanent fund can alter that line. It can allow Alaska the ability to exercise a greater degree of control that ever before over its economic and financial destiny.

Through no acts of our own, we are heir to the benefits of this ONCE occuring treasure. It is doubtful that another Prudhoe Bay will come Alaska's way. It is the obligation and duty of the members of this Legislature to offer all Alaskans the opportunity to decide - since this time they have a chance - what they think the policy of the State ought to be with regard to the preservation of our oil wealth.

I urge you pass HJR 39 out of Committee and give it early attention on the floor.

Norman Bailey

ASSUMPTIONS

NATIVE CLAIMS
(millions)

FY76 - $ 6.4 FY77 - $ 5.9 FY78 - $ 71.6
FY79 - $90.8 FY80 - $124.6 FY81 - $140.9
FY82 - $59.8

This is the payment schedule which is included in State Expenditures.

PROPERTY TAX
(millions)

FY76 - $16.3 + $70.1 = $86.4 FY77 - $70.1 + $58.1 = $128.2
FY78 - $128.2 + $23.9 = $152.1 FY79 - $152.1 + $2.3 = $154.4
FY 1980 = $154.4 FY 1981 = $154.4 FY 1982 = $148.2

The Petroleum industry property is depreciated at 4% per year from FY81 on.

The aforementioned assumes a move up in the effective payment date from Sept. to June. This is why the additional (+) revenues appear from FY76 to FY79.

BONUS SALES

No Anticipated Bonus Sale Receipts Included

RESERVE TAX CREDIT
(millions)

The Permanent Fund is calculated on the total reserve tax before the companies receive credits. This is in conformity with the intent of the bill.

Receipts	$220 in FY76	$269 in FY77	for a total of $489
Paybacks	$109.2 in FY78 $ 39.4 in FY81	$142 in FY79	$198.4 FY80

INTEREST RATES

The Permanent Fund earns 6% on the previous year's balance which is deposited in the General Fund.

The General Fund earns 6% on the previous year's balance which is deposited into the General Fund.

ANALYSIS OF PERMANENT FUND - AT 25% CONTRIBUTION RATE
(in millions of current dollars)

FISCAL YEAR	TOTAL UNRESTRICTED GENERAL FUND REVENUE BEFORE CONTRIBUTION	TOTAL REVENUE SUBJECT TO PERMANENT FUND CONTRIBUTION	25% CONTRIBUTION TO PERMANENT FUND PER YEAR	PERMANENT FUND BALANCE	TOTAL UNRESTRICTED GENERAL FUND REVENUE AFTER CONTRIBUTION	TOTAL UNRESTRICTED GENERAL FUND EXPENDITURES + ALASKA NLC	GENERAL FUND SURPLUS (DEFICIT)	GENERAL FUND BALANCE
FY75	333.4	---	---	---	333.4	490.0	(156.6)	379.3
FY76	650.0	68.6	17.2	17.2	632.8	626.4	6.4	385.7
FY77	728.7	63.5	15.9	33.1	712.8	705.9	6.9	392.6
FY78	986.4	688.7	172.2	205.3	814.2	871.6	(57.4)	335.2
FY79	1181.5	874.3	218.6	423.9	962.9	990.8	(27.9)	307.3
FY80	1493.0	1198.9	299.8	723.7	1193.2	1124.6	68.6	375.9
FY81	1871.3	1374.9	343.7	1067.4	1527.6	1240.9	286.7	662.6
FY82	2111.7	1526.4	381.6	1449.0	1730.1	1259.8	470.3	1132.9
FY83	2403.8	1757.1	439.3	1888.3	1964.5	1300.0	664.5	1797.4
FY84	2651.7	1931.0	482.8	2371.1	2168.9	1400.0	768.9	2566.3
FY85	2819.8	2018.5	504.6	2875.7	2315.2	1500.0	815.2	3381.5

THE LEGISLATURE OF THE STATE OF ALASKA
FISCAL NOTE
Second Session - Ninth Legislature

HJR 39

I. REQUEST
********* Joint Resolution - Permanent Fund
Title:
Requested by: Governor Date: January 12, 1976
Return Date Requested:
Agency: Revenue Program: State Investment Advisory Committee

II. FISCAL DETAIL
Budget Request Unit(s) Affected:

A. EXPENDITURES: (Thousands of dollars)

	OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100	PERSONAL SERVICES						
200	TRAVEL						
300	CONTRACTUAL		150,000				
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL		150,000				

B. FUNDING: (Thousands of dollars)

GENERAL FUND		150,000				
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	/	/	/	/	/	/
MAN MONTHS (P./T.)	/	/	/	/	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

This fiscal note displays the reasonable minimum in research expenses to draft bills for introduction in the 1977 legislative session to implement the permanent fund. It does not describe the longer term revenue impact of such a fund.

IV. ATTACHMENTS

V. DATE: January 12, 1976 PREPARED BY: Lawrence C. Eppenbach

Lawrence C. Eppenbach

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

H/S 50

MEMO TO: Terry Gardiner

FROM: Rick Svobodny

RE: SS HJR 39 Permanent Fund

March 16, 1976

After the Committee meeting of March 15 I discussed the question of broadening the language concerning taxation of mineral products and severance with Av Gross. Av suggested I contact John Messenger, the attorney in the Department of Law who deals with tax matters. On March 16, Messenger and I discussed the committee's desire to broaden the language of sec. 15 while at the same time restricting the income to the fund to proceeds of mineral production or severance. Messenger and I suggest that on page 1, line 24 the word "all" be added after the word "and". The addition of this word makes the language more explicit but is not overly broad. We discussed other language but given the propensity for the Supreme Court to liberally construe the Constitution we felt that any other language will be overly broad.

The proposed amendment should be coupled with a Chairman's Report to read as follows:

Introduced: 1/15/76
Referred: Finance and Judiciary

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

SPONSOR SUBSTITUTE FOR HOUSE JOINT RESOLUTION NO. 39

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

Proposing an amendment to the Alaska Constitution, establishing a permanent fund for certain proceeds derived from non-renewable resources.

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* Section 1. Article IX, Section 7, Constitution of the State of Alaska, is amended to read:

SECTION 7. DEDICATED FUNDS. The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 and except when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this constitution by the people of Alaska.

* Sec. 2. Article IX, Constitution of the State of Alaska, is amended by adding a new section to read:

SECTION 15. PERMANENT FUND. Twenty-five per cent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments, bonuses, and all mineral production taxes received by the state shall be placed in a permanent fund, the principal of which shall be used only for income investments as provided by law. The legislature may appropriate additional amounts to the permanent fund which shall become a part of the principal of the fund. All income from the permanent fund shall be deposited in the general fund unless otherwise provided by law.

* Sec. 3. The amendments proposed by this resolution shall be placed before the voters at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

> x sec. 4 ...

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

M E M O R A N D U M

March 15, 1976

SUBJECT: SSHJR 39 and amendments proposed by the House Finance Committee

TO: Representative Gardiner, Chairman
House Judiciary Committee

FROM: Randolph Berry
Revisor of Statutes

I have examined the amendments proposed by the House Finance Committee to SSHJR 39 and do not find any problems or internal inconsistencies created by those amendments. I would, however, recommend that for grammatical clarity and to conform to the cross-citation form used elsewhere in the constitution, the amendment to the constitution made by sec. 1 of the resolution be worded in the following manner:

> SECTION 7. DEDICATED FUNDS. The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this constitution by the people of Alaska.

RB/sm

Permanent fund: new independence

By CLARK GRUENING

ALASKA FORUM



(Today's Alaska Forum writer is Clark Gruening, a Democratic state representative from Anchorage District 7.)

The Fourth of July came three days early to Alaska in 1958. Alaskans paraded in the streets, exploded fireworks, and generally showed their pleasure over President Eisenhower's signature of the Alaska Statehood Act. Passage of the Act culminated nearly a century of struggle by Alaskans for political self-determination enjoyed by the rest of the Union.

The future of the new state could not have looked brighter. Two factors weighed in the state's favor – a scarcity of population and an abundance of natural resources. Even though lack of population was not universally seen as an asset, it has allowed the state to apply a liberal per capita dose of money to social ills.

TODAY, THE ORIGINAL optimism is tempered by a growing recognition that statehood was an important, but not final victory in a larger struggle. The continuing struggle is both political and economic.

On the political front, Alaska has much to lose if, true to historical patterns, federal decisions to lease the Gulf of Alaska for offshore oil development and to classify large acreages of 17 d-2lands are made with indifference to state needs and rights.

On the economic front, it was hoped statehood would provide relief from the political impotence that seemed to allow financial subjugation of the Territory by outside interests. It is significant that when Alaskans overwhelmingly approved their State Constitution on April 24, 1956, the ordinance to abolish fish traps placed on the same ballot also passed by a wide margin.

ALTHOUGH THE FISH TRAP issue was often debated in terms of conservation and fair competition, the reality was that fish traps, being owned and operated by absentee-owned cannery interests, were a symbol of the worse kind of economic exploitation. Yet, today, as fish traps fade from memory, the processing and marketing segment of Alaska's fishing industry is still largely owned by absentee interests.

As oil exploitation finances an increasing portion of the state's operating budget, Alaskans with an eye to the future are wondering with some apprehension what happens when the oil runs out. Oil and gas production will fund some 29 per cent of the operating budget now under consideration for Fiscal Year 1977. By 1982, oil revenues (projected at current tax rates) will supply at least 80 per cent of all available state revenues.

Of course, other non-renewable resource revenues will be found, but like the Prudhoe Bay oil, these too will dwindle as the resource is extracted. Prudhoe Bay revenues will begin to wane around 1985 and if the present trend of oil consumption continues, use of oil as an energy source, as well as a revenue source, will become history within one generation of Alaskans.

HOW MUCH OF THIS OIL wealth will benefit future generations of Alaskans? The answer is precious little, unless some of today's mineral wealth is set aside in a permanent fund, the principle of which is invested and reinvested in the Alaska economy.

The concept of a permanent fund was debated right after the state fell heir to the $900 million Prudhoe Bay bonus lease sale monies. But at that time there were, as there are now, many immediate needs crying for immediate relief. The temptation of being able to meet present needs without raising taxes was too much and the permanent fund idea was shelved.

It would be unfair to say that the total expenditure of the $900 million between 1970 and 1976 will provide little future benefit for Alaska. The lion's share of the bonus money was dedicated to education which is an investment in people (who certainly should be considered a renewable resource). Indeed, people have proven to be a much more renewable resource than fish, to whose propagation the state has also devoted a large segment of the Prudhoe bonuses.

IN GENERAL, HOWEVER, the bonus money has helped to promote a governmental boom which is responsible for the present flurry of economic activity as the construction of the pipeline.

Today, one out of every three Alaskans is employed by federal, state, or local government. The number of permanent full-time state employes has blossomed from 5,790 in 1969 to over 12,000 in fiscal year 1976. Nearly one-half of the state's general funds is allocated to salaries and benefits for state employes.

The permanent fund, by reducing the amount of money available for use in the state's operating budget, would limit the operation of Parkinson's Law. Nevertheless, the main purpose of the fund would be to accumulate a meaningful capital pool for investment within the state. Investment by the fund would help smooth out the boom and bust cycles and reduce outside financial domination.

Last session, the legislature passed House Bill 324 which provided for the placing of 50 per cent of the state's mineral lease bonuses into a perpetual trust ". . . for the benefit of both present and future generations of Alaskans." The governor, although voicing support for the concept, vetoed the bill, ostensibly on technical grounds.

THIS SESSION, THE GOVERNOR has introduced Sponsor Substitute for House Joint Resolution 39; a proposal for a constitutional amendment to establish a permanent fund of at least 10 per cent of all mineral lease rentals, royalties, bonuses, as well as mineral production taxes, the principal of which may only be used for income producing investments. Commissioner of Revenue Sterling Gallagher, in a hearing before the House Finance Committee on HJR 39, testified that the 10 per cent is intended as a floor.

The establishment of a permanent fund of revenue from the production of the state's mineral wealth is a task this legislature and the administration should not postpone. Passage of HJR 39 will require two-thirds concurrence of each house. If the resolution passes, the permanent fund will be before the voters in the upcoming general election in November of this year.

After a thorough study of possible alternative investment strategies, a more detailed design of the investment programs can be incorporated in a bill to be considered either this session or by the next Legislature. In either event, the purpose of the fund would be to provide a capital pool for investments which will maximize the benefits of our renewable resources and help promote a viable Alaskan economy.

A RECURRENT BUT SHALLOW criticism of the permanent fund concept is that it would be arrogant for one legislature to tell future legislatures how to spend the state's money. If by chance too much of the state's revenues is earmarked for specific purposes, future legislatures will be unable to respond effectively to changing priorities and problems.

However, the real problem facing the state is just the opposite extreme — too much is being spent to meet supposed immediate needs by auctioning off non-renewable resources which in some part rightfully belong to future generations.

The supreme arrogance is the supposition that any one administration or legislature has all the answers. The annual allocation of 100 per cent of current non-renewable resource revenues to what are then perceived as priorities hardly gives future governments much to work with. A permanent fund should and can be structured to as to be flexible enough to meet future needs. On the other hand, given the present level of per capita government spending in Alaska, a modest 25 per cent set aside of revenues from one time only mineral development will not hamstring necessary government operations.

THE CANADIAN PROVINCE of Alberta, with current annual government expenditures nearly equal to Alaska, has established the "Alberta Heritage Savings Trust Fund" funded from 30 per cent of all non-renewable resource revenues.

The preface to the Alberta act states that ". . . it would be improvident to spend all non-renewable resource revenues as they are received . . ." and ". . . it is appropriate that a substantial portion of those revenues be set aside and invested for the benefit of the people of Alberta in future years."

The kind of foresight Alberta has shown is needed in Alaska. Given Alaska's need for a greater degree of financial independence, the establishment of a permanent fund makes good sense in the continuing battle for statehood.

HJR

42

9- anti trust

January 27, 1975

Jan Van Dort
Faulkner, Banfield, Doogan,
Gross & Holmes
Suite 201
311 Franklin Street
Juneau, Alaska 99801

Dear Mr. Van Dort:

Thank you for your comments regarding the anti-trust bill. We will probably be working on HB 42 some time next week. We will certainly notify you of the meetings.

I would be interested in obtaining a copy of a report mentioned in Mr. Banfield's letter of March 12, 1971, "Insurance Underwriting Under Antitrust" by Mr. Edwin M. Zimmerman.

Sincerely,

Terry Gardiner
Representative

LAW OFFICES OF
FAULKNER, BANFIELD, DOOGAN, GROSS & HOLMES

HERBERT L. FAULKNER (1882-1972)
NORMAN C. BANFIELD
FRANK M. DOOGAN
AVRUM M. GROSS
MICHAEL M. HOLMES

SANFORD SAGALKIN
RANDALL J. WEDDLE
WILLIAM B. ROZELL
JAN VAN DORT
LAWRENCE T. FEENEY

SUITE 201, 311 FRANKLIN STREET
JUNEAU, ALASKA 99801

TEL. 586-2210
AREA CODE 907

January 24, 1975

The Honorable Terry Gardiner
Chairman, House Judiciary Committee
Pouch V, State Capitol
Juneau, Alaska 99801

Re: House Bill No. 42

Dear Mr. Chairman:

As a representative of the American Mutual Insurance Alliance, I am interested in House Bill No. 42, which would provide an anti-trust law for the State of Alaska. House Bill No. 42 appears to be identical to Senate Bill No. 5 which was identical to House Bill 142 which was introduced in the previous legislature. None of these bills contained an exemption for the insurance industry when it was introduced. I am enclosing a copy of a letter which Mr. Banfield wrote to Mr. Jalmar Kerttula on March 12, 1971 when he was the Chairman of the House Commerce Committee. This letter describes the impact of an earlier bill on the insurance industry and explains why the industry should be exempt from the bill's provisions.

The House Commerce Committee which considered the bill recognized the problems that the bill created for the insurance industry and therefore prepared a substitute bill which contained the following exemption:

> Persons engaged in the business of insurance, to the extent they are regulated under AS 21, are exempt from the provisions of this chapter.

I would appreciate the opportunity to discuss this subject with your committee when the bill comes up for

consideration. Please let me know when work sessions or committee hearings will be held on House Bill No. 42.

Very truly yours,

FAULKNER, BANFIELD, DOOGAN & HOLMES

By Jan Van Dort

JVD/aw

Enc.

March 12, 1971

The Honorable Jalmar M. Kerttula
Chairman, Commerce Committee
House of Representatives
Juneau, Alaska 99801

Dear Mr. Chairman:

Re: H.B. No. 164, Anti-Trust Bill

I previously wrote to you on February 23, as a representative of American Mutual Insurance Alliance, stating I would investigate the impact which H.B. No. 164 would have on the insurance industry in Alaska and report to you.

Congress has the right to regulate the insurance industry by reason of the fact that it is engaged in interstate commerce. In 1945, it passed the McCarran-Ferguson Act (15 USCA 1011,et seq), which provides that the business of insurance shall be subject to the laws of the several states which relate to the regulation and taxation of the industry. It also provided that the Sherman Anti-Trust Act, the Clayton Act, the Federal Trade Commission Act and the Robinson-Patman Anti-Discrimination Act would not apply to the business of insurance until June 30, 1948, and after that date said Acts shall be applicable to the business of insurance "to the extent that such business is not regulated by state law." Therefore, the states have the right to regulate monopolies and combinations in restraint of trade in the insurance industry. Many states have anti-trust statutes such as proposed by H.B. 164, but New York is the only state which did not exempt the insurance industry. However, when New York did enact such a law on January 1, 1970, it specifically exempted the setting of rates through rating bureaus. The reason various states other than New York have not attempted such regulation is that the Insurance Departments have complete control over discrimination, unfair trade practices, etc., under the Insurance Code. The Insurance Departments, therefore, have control insofar as they care to exercise it, but they recognize that rating bureaus are an absolute necessity. There are other practices in the industry which might be said to be combinations in restraint of trade, such as formulating and adhering to standard insurance policies, the content of which are, in turn, under the control of the State Commissioners. The State Commissioners have their own

association to which the industry goes for guidance with the result that the standard fire insurance policy is used everywhere and any deviations from it can be used only with the approval of the State Director of Insurance. You can understand what a chaotic situation would be created, especially for the consumers, if you had 200 different types of insurance policies in Alaska and how difficult it would be for the Director to regulate the industry.

The reason the companies use rating bureaus to recommend how much they should charge and the State Commissioners use the same bureaus to ascertain what they should allow to be charged, is because the loss experience of all the companies in an area especially under standard policies, is more reliable for rate making than individual loss experience. Therefore, our Director is a subscriber to and pays to support the various bureaus which specialize in rate making for particular purposes. These must be continued, but H.B. No.164 would prohibit such use of, rating bureaus.

From the foregoing, I think it is evident that the industry should be exempt from H.B. No. 164 since it is completely regulated in the same respects by the Insurance Code. If the state should decide to do like New York and prohibit monopolies and regulate the insurance industry under a bill of this type, then it is necessary to work out some specific exemptions such as has been done in New York. Whereas New York is the state in which most of the big companies are incorporated and it is the insurance center of the Western Hemisphere, Alaska is at the opposite end of the spectrum and is in no position to competently regulate the insurance industry except through its Director of Insurance. Therefore, unless the industry is exempt from the provisions of this bill there is a need for specific amendments which can be patterned after the recent New York law. I am furnishing to your staff and particularly Mr. Rhode, a copy of a report made by Mr. Edwin M. Zimmerman, of Washington, D.C., who talked on "Insurance Underwriting Under Antitrust" at a meeting of the 1970 Mutual Insur-

ance Technical Conference at Philadelphia, last November. It will give him some idea of the complexity of the subject of trying to regulate insurance companies under limited exemptions such as are contained in the New York Act.

Yours very truly,

N. C. Banfield

c.c. Mr. Charles A. Brown
Mr. Kenneth H. Nails
Mr. F. O. Eastaugh
Mr. W. W. Fritz
NCB:k

GOV

February 10, 1975

Page 156-159 of journal

The Honorable Mike Bradner
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Pursuant to the Uniform Rules of the Legislature, I am transmitting a bill to prohibit monopolies and combinations in restraint of trade.

Mor than forty states have already enacted antitrust legislation. Consequently, we have had the benefit of reviewing a large and diverse body of state antitrust law in preparing this bill. In addition, antitrust bills have been introduced in the Alaska Legislature regularly for several years. The attached bill retains many of the provisions of these earlier bills but also attempts to improve upon those provisions which were weak or deficient, and adds provisions which are lacking in earlier bills.

The substantive provisions of this bill follow closely the language of the corresponding federal law. The advantage to using language closely paralleling the federal antitrust laws is that a large body of case law interpreting this language is already in existence.

SECTION-BY-SECTION ANALYSIS

Section 10 prohibits combinations and conspiracies in restraint of trade. For example, this prohibits price fixing agreements, agreements between competitors to allocate markets, exclusive dealing contracts, tying arrangements, and group boycotts, to name but a few.

Section 20 prohibits monopolies and attempts to monopolize.

Section 30 prohibits agreements and conditions which would have the effect of limiting a purchaser or lessee from using products of the seller or lessor's competitor. Examples of this might include exclusive dealing arrangements and tying arrangements. This will at times overlap with section 10, but it also covers situations which would not be reached by section 10 (such as where no agreement exists).

Section 40 prohibits unfair competition and deceptive practices. This provision prohibits many of the acts proscribed above, but also some which might not be covered; for example, price discrimination and boycott by one individual firm.

Section 50 makes unlawful mergers which substantially lessen competition or tend to create a monopoly. It applies to acquisitions by private individuals as well as acquisitions by corporations. The court is authorized to order divestiture in such cases if that is necessary to eliminate the injurious effect.

Section 60 proscribes interlocking directorates and other arrangements of a similar nature. The attorney general is given authority to bring an action to terminate the interlocking relationship.

Section 70 provides the customary exemptions for labor unions, agricultural organizations, and commercial fishermen. In addition, exemptions are provided for bank holding companies organized under AS 06.05.236 and for organizations established under the Cooperative Corporation Act, AS 10.15.

Section 100 makes any contract or agreement made in violation of this chapter voidable by either party, but allows the court the latitude to prevent unjustified gain by a guilty party.

Section 110 provides that persons suffering injury as a result of a violation (including the state, a city, borough, or other government entity) may sue for treble damages, an injunction, or both.

Section 120 makes it a misdemeanor punishable by a fine and imprisonment not exceeding one year to restrain trade (section 10), monopolize or attempt to monopolize (section 20), or make agreements or conditions of sale not to deal with competitors (section 30).

Section 130 authorizes the attorney general to bring an injunctive action, even if the State is not an injured party (for which case the attorney general would be authorized to maintain an injunctive action under section 110). Thus, the attorney general might seek an injunction in combination with an action charging a criminal violation.

Section 140 states that actions under this chapter must be brought in the superior court.

Section 150 acknowledges the use of consent judgments and establishes rules for entry of such judgments in court. It allows any interested party to file objections to the consent judgment or decree during a 60-day period after which it is filed and provides for a hearing on the objections.

Section 160 permits a final judgment in an action brought by the State to be used as prima facie evidence in any subsequent action brought by the State or other party. A consent judgment or decree may not be used in this fashion.

Section 170 establishes a four-year statute of limitation with a tolling of the statute once an action is commenced by the attorney general.

Section 200 gives the attorney general the power to compel production of documents or testimony during investigation for possible antitrust violations and prior to commencement of any action in court.

Section 210 establishes specific guidelines for the contents of the demand and method of serving the demand upon a person, where the material demanded is documentary evidence. It provides that no demand may seek material which is privileged nor may it be unreasonable. Subsection (e) forbids disclosure of the documentary evidence to anyone other than an authorized state employee without the permission of the person who produced the material. Finally, it is made a misdemeanor to disobey or deliberately thwart the demand; however, if the demand is improper, the person on whom it is served is authorized to obtain a court order protecting him from compliance.

Section 220 is substantially identical to section 210, but deals with the procedures for compelling testimony. It provides that when a witness declines to give testimony on the grounds of self-incrimination, he may be given "transactional immunity" and then compelled to testify.

Section 300 contains definitions for the terms "asset," "documentary evidence," and "trade and commerce." "Documentary evidence" is defined to cover all possible forms business records might take.

SUMMARY

Article 1 contains the substantive provisions. It prohibits restraints of trade, monopolies and attempts to monopolize, agreements not to deal with competitors, unfair competition and deceptive practices, mergers which substantially lessen competition or tend to monopoly or interlocking directorates. It also exempts certain organizations from coverage.

Article 2 of the bill contains the provisions on enforcement. Any person injured by a violation of the act may bring a civil action for treble damages, or an action to enjoin the unlawful practice, or an action for both. This remedy is available to the State, a city, borough, or other government entity, as well as all private persons. In addition, any contract made in violation of the anti-trust law is voidable by either party.

Violations of the provisions prohibiting combinations in restraint of trade, monopolies and attempts to monopolize, and transactions and agreements not to use or deal in commodities or services constitute a misdemeanor punishable by a fine, imprisonment not exceeding one year, or both. It is desirable that these violations constitute a misdemeanor since that penalty will no doubt provide a strong deterrent to those who might otherwise engage in such unlawful activities. Furthermore, there is no question of unfairly criminalizing the legitimate activities of businessmen since these violations are seriously harmful to the public and quite easily understood as such by the business community. On the other hand, violations of these provisions prohibiting unfair competition and deceptive practices, mergers which lessen competition, and interlocking directorates, are not made criminal acts

since they pose a less serious threat to the public and may be more difficult for the businessman to understand. Furthermore, in those instances where violation of these provisions is blatant and seriously injurious to the public, it may also constitute a violation of those provisions prohibiting restraints of trade and monopolies or be covered by the Unfair Trade Practices and Consumer Protection Act, AS 45.50.

Article 3 of the bill grants to the attorney general the power to compel production of documents and testimony prior to filing an action in court. Several states have enacted similar provisions. The federal government also has similar powers to compel production of documents but is not authorized to compel testimony. A provision of this nature is desirable because detection of violations of the antitrust laws is often a difficult matter requiring review of numerous business transactions which have occurred over an extended period of time.

The theory behind Article 3 is to provide the attorney general with the power he needs, but also to provide detailed procedural controls which will prevent unfair and arbitrary action by the attorney general. Section 210 of the bill prescribes the contents of a demand and establishes limits on the breadth and scope of the demand. Section 210(f) grants to any person upon whom a demand has been served the right to petition the court for relief from any demand if it exceeds the statutory standards and also gives that person the right to obtain a court order commanding the attorney general to perform any duty imposed upon him by Article 3.

Sincerely,

Jay S. Hammond
Governor

Need

1. 40 states Have
2. ~~No Action by Feds in Alaska~~
3. Protect Capitalism - (Economic System)
   if no anti-trust to protect businessman
   then govt regulation to prevent abuses
   of economic system

3a. NO Federal Action in state
   1. lack of jurisdiction
   2. inadequate fed staff
      1. We can provide advisory & surveillance
      of activities to the Fed staff

"Monopoly by itself is not illegal"

Utilization of power to fix, control prices of
to eliminate competition

John Holt

(1.) Follow 8 U.S. Form of Uniform Code
(2.) Exemption of Utilities, insurance - regulated industries
(3.) Can State enforce Clayton act provisions?
(4.) How valuable are treble damages provision
example of ~~shoe~~ shoe stores in small town

Apply only to

Sherman Act is general Policy statement)
controls by "private governments"; control by
private individuals of economy - should be govt. function

If you have a monopoly soon govt. will have to interfere
with regulation

Monopoly nature of oil companies bread govt. regulation

Reasons for State Anti-Trust

1. not Fed jurisdiction
2. inadequacy of Fed. enforcement staff
~~3.~~ advisory & surveillance activities keep Fed staff busy
3, Feds want state help

SS SBS

Uniform State Anti-Trust Laws

1. Gain advantages of Fed Case laws definitions etc.
2. Minimize application of Fed "Doctrine of Pre-emption"
3. Sherman Act was design to supplement State Laws
4. ~~Obvious~~ Attorneys will have problem advising clients on uniform Anti-Trust Law; not very extensive adoption SBS will actually cause more uniformity

020 020 - wording against "monopolize"

this language in Sherman Act

clear distinction "Monopoly by itself is not illegal"
in Fed court cases

Power to fix, control price - eliminate competit

have to utilize power - Predatory behavior

exercising ~~Predatory~~ Monopoly power in predatory manner

O Hertail - utilities interstate

Public utility used transmission monopoly (legal)
to influence Elbow to be Utilities

030 A Inter Phasing with Regulatory Commissions
Different Issue Hogey + Spencer

040 040 - from FTC act
Is this in Consumer Protection Act
Was made for Commission enforcement not Judicial enforcement

050 Sect. 7 of Clayton Act
is useful + appropriate
Sometimes easier to enforce 050 before they
commit 020 + 030

Mergers foster Anti Competitive activity

660 Sect 8 of Clayton - goes beyond Fed statute
Native Land Claims - if permits or requires by Fed
Statute then it pre-empts our anti-trust bill

070 Exemptions

1. Doctrine of "primary jurisdiction"

if an activity is ~~or~~ within scope of agency is exempt.

Truckers Unlimited - use of protest power

explicit exemption on govt regulated activities
070 B (put exemption here

Unitization in small fields have been held to be "reasonable" restraints of trade

State unitization act exempts from anti-trust

divide unitization from operation & production of field

unless such actions or arrangements occur or are used in a manner clearly beyond the scope of such statutes.

of processing of selling in markets other than those in retail sales.

of delivering to processors for valve.

Any Activity of a govt. regulated Corp that is required by law of regulation is exempt.

Anti-Trust

Andrew Hogey – Regulated industries

R.E.A. Co-operatives telephone; electric
Certificate public convenience + necessity

Rate bureau – internal procedure for setting rates
file them with ATC of ICC
Commission then can suspend
want to exempt the rate making process

ICC Act 5A + 5B exempt carriers from Sherman + Clayton Acts

John Spencer

Can't conceive of any activity by utilities that aren't regulated by Commissions



Bill Hopkins James Tingle San Francisco

drafted Uniform Bill - favors a bill

anti-Trust Committee of ABA

1966 draft finished - National Conference on Uniform Laws 1972

Arizona adopted uniform act

5535 enact Sect 1 + Sect 2 of Sherman act
if parallel to Sherman Act - State courts
would have benefit of federal case law

040 way written citizen could receive damages
030 050 060 — from Clayton Act

Sherman act - applies to conduct
"unreasonable restraint of trade"

Clayton - reasonable prospects of such activity

Alaska & any other state could it enforce
"Clayton Act" type restrictions

Flagrant violation should be only cases of
Treble damages

Uniform Act has civil penalties - procedures
for bringing suit are less complex
Sherman ~~Statute~~ Act doesn't have criminal ~~sanction~~

Treble damages is deterrent - also encourage suits "private enfolcement"

1. How

Need exemption for public utilities - Cartwright Act in California has exemptions

If state orders such an action that are illegal Courts have held that Sherman Act doesn't apply

060 - Any problem with native Corp?
Are they exempted by Native Lands Claim Act.

suggestion from Ann - Automatic treble damages in per se cases

☼ willful & flag instead of flagrant

HJR

43

House Judiciary Committee
January 20, 1976

The meeting was called to order by Chairman Gardiner at 10:50 a.m. Members present were Brown, Cotten, Eliason, Parr and Gardiner.

Under discussion was HJR 43 regarding Traps by Mr. Swanson. Mr. Swanson stated that his position was that trapping is a renewable resource and a means of subsistance for many in Alaska. Alaska has very specific regulations regarding trapping and it is his feeling that trapping should be regulated by the state, not by Washington D.C. HJR 43

Mr. Brown suggested that an exemption be asked for, for not only Alaska, which is unconstitutional, but for any state with extensive regulations regarding trapping.

Testimony was received from Mr. A.W. Bud Boddy of the Territorial Sportsman and Alaska Wildlife Organization and Mr. Ray Meketa of the Juneau Gun Club and Juneau Rifle and Piston Club. They offered the attached resolution by the National Wildlife Foundation and amendments to HJR 43 as shown. It is their belief that asking congress for an exemption for Alaska will work more against us than for us, and that we would be better put to support congress in their efforts to stop legislation of the sort that would regulate trapping and gun control in the states.

Mr. Brown offered an amendment asking for exemptions for Alaska and other states which have sufficient trapping regulations.

Mr. Gardiner suggested that trapping in Alaska is a part of subsistence living, which is not necessarily true in other states. Mr. Brown then withdrew his amendment and offered a more substantial one which included exemptions for Alaska and mentioned that trapping is of a subsistence nature. The amendment is being incorporated in the form of a CS by Legislative Affairs. The CS passed out of committee.

The meeting was adjourned at 11:30.

1/20
1:50

HJR 43 - Traps - Swanson

Brown, Cotten, Eliason, Parr, Gardiner

① Swanson: Trapping is a renewable resource. Use every means to protect Ak. trappers.

Don't want to be under jurisdiction of Wash DC

Brown - offered amendment:
p1 l 20 after "Alaska" add "and other states with as extensive regulations on trapping"

Embarrassing to ask Congress to grant Ak a favor which is unconstitutional

② A.W. Bud Boddy - Territorial Sportsman & Ak Wildlife Org.
Ray Mikola - Juneau Gun & Rifle Pistol Clubs

Want trapping stopped.
Don't want Ak. asking for specific privileges

Offer amendment as attached:

Don't think congress will exempt one or several states. Will therefore work against rather than for us. We should support them in their efforts to stop legislation of the sort

17 WA the regulation of trapping should be left to the States

Parr - let States regulate if they have sufficient regulations

Jerry 22 - trapping is part of subsistence living.

Brown moved his amendment & asked that it be included in CS

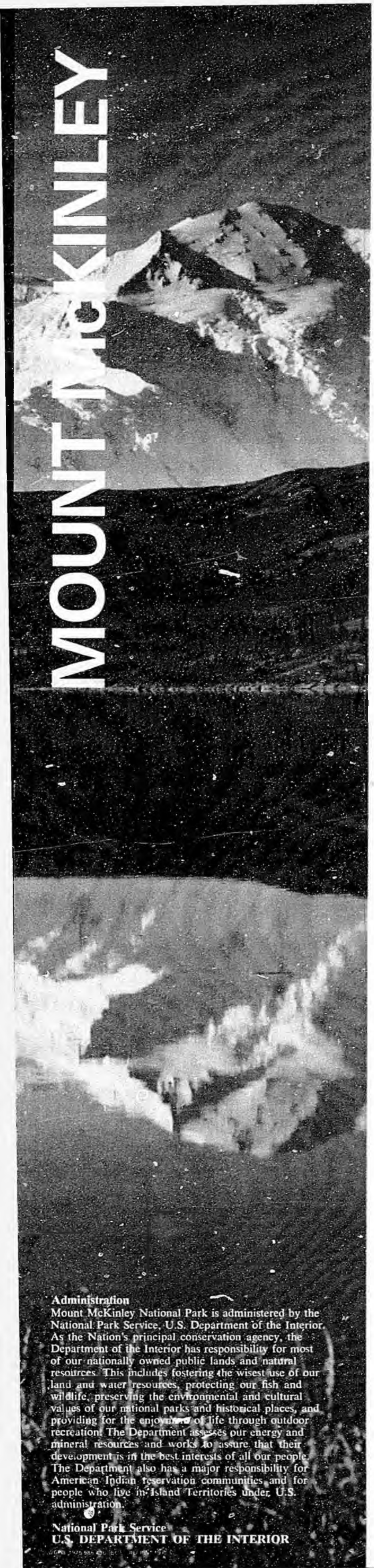
Beddy - trappers now sell out trapping and unaware of meeting

Brown w/d previous am. & offer new amendment in form of CS & asked that it pass out of Com.

Adjourned 11:30

HJR

44



At the northern edge of the continent, close to the Arctic Circle, stands the highest mountain in North America. A massive monument to the forces of nature, Mount McKinley reigns over an immense wilderness park where Dall sheep, caribou, grizzly, lynx, moose, and wolf dwell together in a balanced natural system.

"The High One" of the Alaska Range

Small wonder that the Indians of Alaska called Mount McKinley *Denali*—"The High One." No other mountain in the world, not even in the Himalayas, rises so dramatically above its own base and stands in such lofty isolation over its neighbors. McKinley's summit, crowned by twin peaks, soars to an altitude of 6,194 meters (20,320 feet), rising 4,800 meters (16,000 feet) above the surrounding landscape.

McKinley is by far the most impressive feature of the Alaska Range, a curved chain of mountains that stretches 930 kilometers (580 miles) across the lower third of Alaska. Though most of the peaks are less than half McKinley's height, the range acts as a natural land barrier between Anchorage on the coastal lowlands and Alaska's interior to the north. West of the park the range forms a drainage divide for rivers flowing west to the Bering Sea or south to the Gulf of Alaska.

McKinley's geology features a portion of the Denali Fault System, the largest crustal break in North America, that stretches for 2,100 kilometers (1,300 miles), across the full width of the State of Alaska. Associated with the Alaska Range, the fault passes through the park, separating the most ancient rocks in Alaska from those of much younger age. Events that took place between these extremes have created a beautiful land with contrasting wide, low plains, and dark, somber mountains, brightly colored peaks, and sheer granite domes.

Surprisingly, much of Alaska north of the park never was covered by the last continental ice sheet, which retreated 10,000-14,000 years ago. The park lies at the northern limit of this ice age glaciation, which covered most of the northern hemisphere. From the park road you can see numerous ice flows still radiating from the high peaks of the Alaska Range, where extreme temperatures keep them from melting. The snout of Muldrow Glacier, 56 kilometers (35 miles) long, lies within 1 kilometer (about 0.6 mile) of the park road. Silt-laden streams that flow from these glaciers form wide gravel bars that serve as natural pathways into the wilderness.

A Land of Little Sticks and Tiny Flowers

Only plants that have adapted to long, bitterly cold winters can survive in this subarctic wilderness. Large areas of the park are locked in deep beds of permafrost—ground that has been frozen for thousands of years. Only a thin layer of topsoil thaws each summer, enough to support life; and limited sun for most of the year stunts the growth of most plants and gives them little time for reproduction.

Taiga, "the land of little sticks," is a term of Russian origin that vividly describes the scant growth of trees near the Arctic Circle. Much of the *taiga* in the park lies in relatively narrow strips that follow the winding path of rivers through the park. Sometimes water-saturated surface soils slip downslope over the underlying permafrost and the *taiga* takes on the comic appearance of a "drunken forest."

White and black spruce are most common in the *taiga*, interspersed with quaking aspen, paper birch, and balsam poplar. Pure stands of deciduous trees occur along streamside gravel bars or where soils have been disturbed by fire and other causes. Frequently the woods are carpeted with a thick, springy mat of mosses and lichens. The more open areas are filled with shrubs such as dwarf birch, blueberry, and several species of willow.

Timberline, the limit of tree growth, occurs at about 823 meters (2,700 feet) in McKinley park, much lower in elevation than it does in warmer mountain regions to the south. On the wind-swept slopes above timberline, the *taiga* gives way to the *tundra*—a fascinating world of dwarfed shrubs and miniature wildflowers adapted to the short growing season and the thin crust of life-giving topsoil. The *tundra* habitat is of two main types, although there are many gradations between the two.

Moist tundra vegetation generally grows at the lower mountain elevations in flatter, poorly drained areas where glacial runoff, snowmelt, rain and ground thaw collect in many scattered ponds. *Moist tundra* varies in appearance and composition. In some areas tussocks of cottongrass and sedges grow. In other places, dwarfed shrubs, especially willows and birches, predominate.

Plants of the *dry tundra* live scattered among the barren rocks of the higher elevations, and upward to regions of perpetual ice. Here, the tiny plants of the highlands cling precariously to the ground, spreading outward like a mat, to soak up daylight. White flowered dryas, dwarf fireweed, moss campion, dwarf rhododendron, and forget-me-not—the Alaska State flower—all dot the rocky, well-drained landscape in a stunning display of delicate blossoms.

Wet (arctic) *tundra*, the type that grows on Alaska's north slope where an unbroken bed of permafrost prevents ground drainage, does not grow here, but a very similar type of vegetation can be found in the park.

Animals: The Challenge of Life in the North

McKinley's vast wilderness permits a spectacular array of wildlife to live together in a balanced, natural system. Caribou still follow ancient migration patterns as they move in herds of hundreds or more over open tundra and through mountain passes. Sure-footed Dall sheep survey the rugged country from high, rocky slopes, while moose browse below in willow thickets near the spruce forest. In fall or early winter, all three species enter the rut, and the mature males engage in energy-draining battles for the right to breed with adult females.

Wolves roam huge territories in search of weakened caribou, moose, or sheep that may provide their next meal. Ravens, magpies, and gray jays quickly clean up any scraps left over from a kill. The grizzly bear will feed on any carcass it comes across during its ambles along a river bar or over the open tundra, but its dietary staples are grass, roots, blueberries, peavine, and ground squirrels that it digs from their burrows.

Beavers cut trees and build dams and lodges. The red squirrel caches spruce cones for the winter. The pika and singing vole carefully lay vegetation in loose piles in the underground nests to which they will retreat once the snow flies. Marsh hawks and short-eared











Administration

Mount McKinley National Park is administered by the National Park Service, U.S. Department of the Interior. As the Nation's principal conservation agency, the Department of the Interior has responsibility for most of our nationally owned public lands and natural resources. This includes fostering the wisest use of our land and water resources, protecting our fish and wildlife, preserving the environmental and cultural values of our national parks and historical places, and providing for the enjoyment of life through outdoor recreation. The Department assesses our energy and mineral resources and works to assure that their development is in the best interests of all our people. The Department also has a major responsibility for American Indian reservation communities and for people who live in Island Territories under U.S. administration.

National Park Service
U.S. DEPARTMENT OF THE INTERIOR

owls swoop low over the tundra in pursuit of voles, ground squirrels, and small birds. The golden eagle soars high overhead looking for small-mammal prey. The lynx hunts the snowshoe hare, its year-round major source of food.

Winter brings severe challenges to subarctic communities. Temperatures become frigid, plant growth ceases, and food is scarce. Grizzly bears meet the problem by fattening up in summer and sleeping most of the winter. Occasionally a grizzly stirs from its deep slumber; but the ground squirrel, a true hibernator, stays curled up with its body functions at a virtual standstill. Beavers and red squirrels subsist on cached foods. The weasel, ptarmigan, and snowshoe hare turn white and continue their struggle for survival above ground under extreme conditions.

Most birds escape the northern winter by flying south. The long-tailed jaeger winters in Japan, the golden plover in Hawaii, the wheatear and arctic warbler in Asia. The arctic tern may travel all the way to Antarctica.

The fragile web of McKinley's interdependent wildlife includes 37 mammal species and 130 bird species. Extreme cold prevents most cold-blooded land vertebrates from living in the park; but one amphibian, the wood frog, makes its home here.



Snowy white is McKinley's abiding hue. It is there in bright patches of snow, where caribou find relief from pestering varble and nostril flies. In the winter, the ptarmigan dons a white coat to match the relentless snows. Then in summer, the bird disappears again into the tundra grasses, its camouflage reversed to brownish. Dall sheep, the only white wild sheep in the world, bound from ledge to ledge with incredible speed and agility. Among the many wildflowers that flourish in the tundra is the Narcissus-flowered Anemone, a small perennial with white-petaled blossoms at the ends of long hairy stems. Lying on the ground you can see a fascinating little world on a scale quite different from the massiveness of things as you hike toward white mountains far away.



Were the day clear I could see Mount McKinley from the window. As I picture in my mind its stupendous height, I compare it to our science. Many have assailed its flanks; some have proclaimed untruths about it; some have climbed by great effort well up the slopes; a very few, the best by natural selection, have reached the summit and there attained the broad vision denied those at lower altitudes. As for me, I am satisfied to have been able to traverse the great lowland to the base and to climb the foothills.

—Alfred Hulse Brooks

Clouds shroud McKinley, high above Wonder Lake.



Men and Mount McKinley

On January 24, 1897, with national attention focused on the Alaskan gold rush, a New York newspaper carried a startling story. The author, a gold prospector in Alaska, had traveled inland from Cook Inlet, there to discover a great mountain higher than any he had ever seen before. The experienced mountain man, William A. Dickey, was confident he had gazed upon the highest peak in North America.

. . . *it compelled our unbounded admiration,* Dickey wrote; . . . *never before had we seen anything to compare with this mountain.*

Dickey's article would set others on a course northward, not for gold but to confirm the report of America's grand rival to Mount Everest. The mountain had long been known to Alaskan Indians by its name, Denali, "the great one." Soon most of the world would be calling it by the name Dickey gave it after he returned from the wilderness and heard of William McKinley's nomination to the presidency. It has been said, although some challenged the statement, that Dickey had been forced to travel with several "free silver men" and was reacting to their peevish arguments when he named the mountain after the 19th century's leading advocate of the gold standard.

A brief 20 years later, through the exploits of several energetic men, Mount McKinley would capture enough public admiration to be established as one of the nation's largest national parks. In 1902 Alfred H. Brooks and D. L. Raeburn of the U.S. Geological Survey studied the geology of the Alaska Range. Mount McKinley was placed on the map. And Brooks, for whom the Brooks Range in far north Alaska was named, became the first white man known to have set foot upon its slopes. The next year Dr. Frederick A. Cook contributed new geographic knowledge of the area by leading a daring trip completely around Mount McKinley.

Not long afterwards, Charles Sheldon, a noted conservationist, arrived on McKinley's slopes to study Dall sheep and other wildlife. Sheldon was a member of the Boone and Crockett Club of New York, which began as a hunting organization and later had broadened its efforts to include wildlife conservation. The wilderness wonders displayed within sight of the mountain convinced him that the area should be protected, and Sheldon became the prime figure in efforts to make it a national park.

In 1910 a party of four Alaskan sourdoughs pioneered the Muldrow Glacier route up the mountain, and two, William Taylor and Pete Anderson, made it to the top of the lower north peak at 5,934 meters (19,470 feet). The south peak, the true summit, was finally conquered in 1913 by Archdeacon Hudson Stuck, Walter Harper, Robert G. Tatum, and Harry Karstens, who later served as superintendent of the park. Both teams used sled dogs on the first phases of their climbs.

Meanwhile Sheldon's promotion of the park idea in the Congress had attracted valuable allies who wanted to promote travel to Alaska. But it was the provision calling for the protection of McKinley's wildlife that eventually cleared the way for passage of the bill. The act creating Mount McKinley National Park was signed by President Wilson in February 1917.

HELP PROTECT THE PARK AND YOURSELF

To preserve the park and to make your visit as safe as possible, please follow these regulations:

Hiking Permits. A back-country use permit for overnight camping must be obtained and then returned when the trip is complete. Permits are issued at the Visitor Orientation Center, Eielson Visitor Center, and at any ranger station during the summer season. In winter they must be obtained at park headquarters. A stove is recommended for backpacking; do not bury or leave behind any garbage or trash. Everything packed in must be packed out; littering in the back country destroys the wilderness values of the park for everyone.

Vehicles at Campsites. Only one vehicle is permitted at each registered campsite.

Safe Driving. The park road was built for scenic enjoyment and not for high speed. Maximum speed is 56 kilometers per hour (35 mph) and 40 kilometers (25 mph) for trucks and buses except where lower limits are posted. Fast driving is dangerous to you and the wildlife you have come to see.

Other Vehicles and Boats. Trail bikes and motorcycles must not leave the park road. Snowmobiles are permitted only along the shoulders of Alaska Highway 3 through the park. Off-road use of snowmobiles is prohibited. Motor-powered boats are not permitted on any park waters.

Natural Features. The park was established to protect a natural system. Destroying, defacing, or collecting plants, rocks, and other features is prohibited. Feeding, capturing, molesting, or killing any animal is prohibited.

Firewood. Use only down *and* dead wood. A gasoline stove is recommended because firewood is scarce.

Wildlife Protection Zones. The Sable Pass wildlife protection zone is prime grizzly bear habitat and offers excellent opportunities to observe and photograph bears and other wildlife from the road. The zone is strictly off limits for hiking. Visitors who get out of their vehicles to view the animals must remain on the road. Other protection zones are established temporarily as the need arises. Check at the Visitor Orientation Center or any ranger station to learn the locations, and please do not enter.

Limits on Fishing. No fishing licenses are required. Limits for each person per day: lake trout (2 fish), grayling and other fish (10 fish or 10 pounds and 1 fish).

Hunting Prohibited. Firearms must be surrendered or made inoperative upon entering the park. The hunting ban is strictly enforced.

Controlling Pets. Pets and wildlife don't mix. Pets must be leashed or under restraint at all times. They are not permitted with you on trails or in the back country.

WRITING FOR INFORMATION

Further information on campground reservations, the park transportation system, and other details useful in planning your trip can be obtained by writing to: Superintendent, Mount McKinley National Park, P.O. Box 9, McKinley Park, AK 99755. A National Park Service information office is located at 334 West Fifth Ave., Suite 250, Anchorage, AK 99501.

A price list of maps and booklets about park animals, plants, geology, and hiking may be obtained by writing to the Alaska National Parks and Monuments Association, McKinley Park, AK 99755.

We're Joining the Metric World

The National Park Service is introducing metric measurements in its publications to help Americans become acquainted with the metric system and to make interpretation more meaningful for park visitors from other nations.



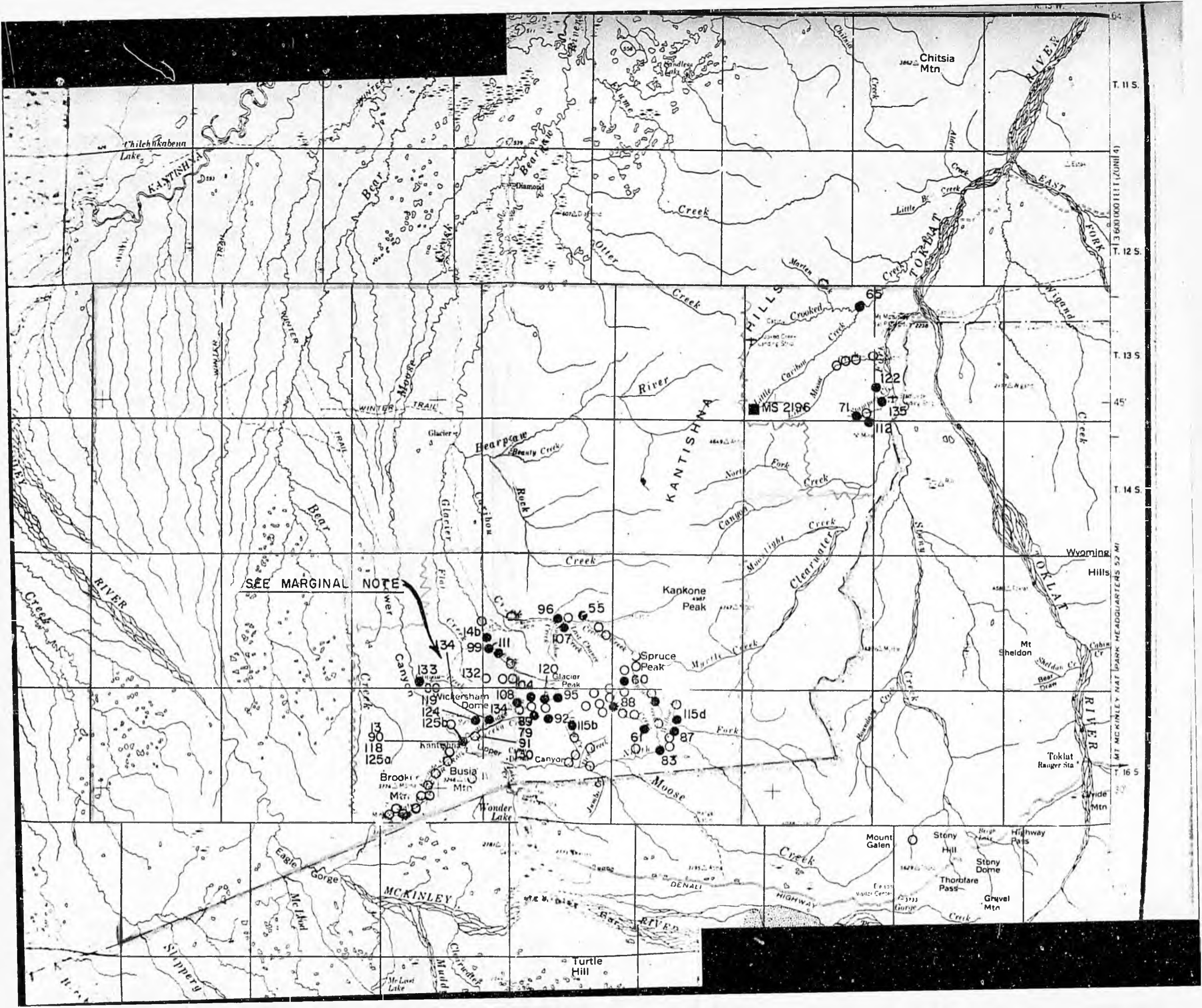
A healthy moose can stand off a pack of wolves with its powerful front legs.

ANIMALS: KEEP YOUR DISTANCE

Bear, moose, and other wild animals are unpredictable and potentially dangerous. They are always dangerous when protecting themselves, their young, and their territories. Take the following precautions:

- **Make noise when you hike. Bears are especially dangerous when surprised. By announcing your presence and letting bears know where you are, you give them a chance to retreat.**
- **Do not walk toward bears, moose, or any animals. They think you mean harm.**
- **Never try to feed any wild animal.**
- **Photograph wild animals using a telephoto lens. Trying to get close because you don't have enough lens power will only disturb the animal and endanger yourself.**
- **Keep your campsite and your equipment clean. All food should be sealed in containers so odors will not attract any animals.**

MAP ON REVERSE
OF PRECEDING
DOCUMENT
NOT
FILMED



Chitsia Mtn
Chilchukabena Lake
KANTISHNA
Bear
Bearpaw
Diamond
Creek
Otter
Marten
Crooked
Little Caribou
Moose
River
KANTISHNA HILLS
TOKLAT
EAST FORK
RIVER
Wigand
Creek
Glacier
Bearpaw
Beauty Creek
Rock
Caribou
North Fork
Canyon
Moonlight
Clearwater
Stony
Wyoming Hills
Kankone Peak
Spruce Peak
Myrtle Creek
Glacier Peak
Wickersham Dome
Kantishna
Upper
Canyon
Busia Mtn
Brooker Mtn
Wonder Lake
Moose
Mt Sheldon
Toklat Ranger Sta
Wide Mtn
Mount Galen
Stony Hill
Highway Pass
Stony Dome
Thorofare Pass
Gravel Mtn
Eagle Gorge
McKINLEY
DENALI HIGHWAY
Turtle Hill
Slippery
Mc Leod
Mc Leod Lake
Clearwater
Mudd
Bear
SEE MARGINAL NOTE
MS 2196
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14b
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T. 14 S.
T. 16 S.
45'
MT MCKINLEY NAT PARK HEADQUARTERS 52 MI

RICHARD SVOBODNEY
HOUSE JUDICIARY COMMITTEE

ENCLOSED IS A MAP SHOWING "LEGALLY LOCATED & MAINTAINED" CLAIMS (BLACK CIRCLES) AND "NO LONGER MAINTAINED" CLAIMS (OPEN CIRCLES) IN THE KANTISHNA AND SUSHANA AREA NORTH OF MOUNT McKINLEY NAT'L PARK.

THE BLUE LINE REPRESENTS THE BOUNDARY THAT YOU DESCRIBED OVER THE PHONE. AS YOU CAN SEE IT MORE THAN ENCOMPASSES THE APPARENT MINERALIZED AREAS.

AL HENSON
ALASKA TASK FORCE
NATIONAL PARK SERVICE

HJR

45

Requesting the exclusion of Alaska from federal gun control legislation.

COMMITTEE REPORT

1/16/76

HOUSE

Mr. Speaker: Date Feb 17 1976

The Committee on JUDICIARY has had HJR 45

under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR HJR 45 AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

Delete all Line 21 through 23 and amend to read:

BE IT RESOLVED THAT the Alaska State Legislature, recognizing the subsistence needs of its citizens and in furtherance of its regulatory scheme, respectfully requests that Alaska and other States with comprehensive laws and regulations regarding the use of firearms be excluded from Federal legislation which would prohibit or limit the use of firearms; leaving the regulation of firearms exclusively to such States without restriction as to the possession or use of firearms.

Adopted

HJR

73

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K — STATE CAPITOL
JUNEAU 99811

May 11, 1976

The Honorable Jay S. Hammond
Governor
State of Alaska
Pouch A
Juneau, Alaska 99811

Re: Constitutionality of state's tuition grant program

Dear Governor Hammond:

Since we issued our March 16, 1976 opinion which concluded that a proposal for the state to enter a contract for educational services with Alaska Methodist University was impermissible under the Alaska Constitution, considerable interest and discussion has been focused on the constitutionality of the state's tuition grant program, AS 14.40.776-14.40.801. Of special significance have been two carefully written and researched legal opinions directed at that precise issue and reaching opposite conclusions. The Legislative Affairs Agency has issued an opinion to the effect that the tuition grant program violates Article VII, Section 1 of our constitution. On the other hand, Ely, Guess & Rudd, a private firm representing Sheldon Jackson College, has concluded that the tuition grant program is valid under both our state constitution and the First Amendment to the United States Constitution. You have now

asked that we provide you with our opinion on the matter, concurrently advising the Commissioner of Administration whether further payments of state funds for the tuition grant program would be consistent with our constitution.

BACKGROUND

The present tuition grant program was established by the legislature in 1972 to equalize tuition rates paid by students attending private postsecondary educational institutions in the state with those rates paid by students at the University of Alaska and state community colleges. The private colleges, as the result of increasing costs and decreasing endowments, had been required to raise their tuition rates to levels above those charged by the state-subsidized University of Alaska. Students were becoming unable or unwilling to pay the higher charges.

The tuition grant program was designed to help reverse or at least reduce this increasing cost/decreasing revenue trend by making available to each Alaska resident attending one of the private colleges in the state a grant equal to the difference between the tuition rate charged by the private college and that charged by the state institution located in the same city. By equalizing the tuition payments in this manner, it was hoped that cost would not be a factor in the student's decision of whether to attend one of the state's private or public institutions; that the decision of

where to go to college would be made based on where he desired to go, not on where he could afford to go. The program has apparently been moderately successful. Alaska Methodist University, although now closing its doors, has been able to operate for the past several years in the face of constant financial difficulties. Sheldon Jackson College has recently enjoyed increasing enrollments and relative financial stability, receiving in excess of $600,000 through the tuition grant program in the current school year. To date, these are the only two educational institutions which have benefited from the program.

DISCUSSION

The tuition grant program, like the direct loan program discussed in our earlier opinion, must be measured by two basic legal standards. First, it is necessary to analyze whether or not the Federal Constitution bars a program of this nature. Second, even assuming the program is valid from a federal Constitutional viewpoint, the Alaska Constitution must be considered separately, for, as we noted in our opinion, our constitution contains particular limitations on aid to education beyond those contained in the federal document.

In that earlier opinion which concerned the state contracting with A.M.U., we reviewed the various criteria applied by the courts in determining whether a program

violated federal Constitutional restrictions. The key question in the analysis is whether an educational program violates the Establishment Clause of the First Amendment because a given educational institution of higher learning is "religious" in nature. 1/ The basic criteria for that analysis include whether the institution imposes religious restrictions on admissions, requires attendance at religious activities, requires instruction in and adherence to a particular theology or doctrine, requires that its personnel have a particular religious affiliation, adheres to a stated sectarian purpose, or is under direct control of a particular sectarian organization. 2 Under the federal Constitution, not all state aid to private colleges is barred. Only that aid which goes to institutions "in which religion is so pervasive that a substantial portion of its functions are subsumed in the religious mission" 3/ is barred by the

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1/ The U.S. Supreme Court has now recognized a significant distinction between church-affiliated institutions at the elementary-secondary level and the postsecondary level which, in certain situations, will lead to the conclusion that state aid to church-related colleges is valid even though similar aid to parochial elementary-secondary schools would violate the Establishment Clause. Tilton v. Richardson, 403 U.S. 672 (1971), Hunt v. McNair, 413 U.S. 734 (1973).

2/ Tilton, supra, Horace Mann League v. Board of Public Works, 220 A.2d 51 (Maryland, 1966), and Weiss v. Bruno, 509 P.2d 973 (1973).

3/ Hunt, supra at 743.

Establishment Clause. Stated another way, are the institution's "operations . . . oriented significantly towards sectarian rather than secular education"? 4/

The major benefactor of the tuition grant program, were it to continue, would be Sheldon Jackson College. There is, of course, an issue as to the religious nature of that institution. We have received certain information from the Legislative Affairs Agency and Ely, Guess & Rudd, counsel for the College, about the operations of that school. On the basis of those facts, which in light of our subsequent analysis there is no reason to challenge, we would be able to conclude that Sheldon Jackson is not an "instrument of the church for purposes of indoctrination or proselytizing." 5/ Therefore, were it not for our subsequent conclusion that the tuition grant program violates the Alaska Constitution, we would have little reluctance in concluding that state aid to Sheldon Jackson or other nonreligious schools in the form of tuition grants is valid.

However, Alaska's constitution does go beyond the federal prohibition to religious institutions, providing in

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4/ Id. at 744.

5/ Americans United for Separation of Church and State v. Bubb, 379 F. Supp. 872, 880 (D. Kansas, 1974). This case, decided after the Tilton/Hunt distinction between secondary and higher education was acknowledged by the Supreme Court, upheld in a detailed and carefully reasoned opinion, the constitutionality of a Kansas tuition grant program quite similar to our own as it was applied to some 19 church-related colleges operating in the state.

Section 1 of Article VII that:

> No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.

Under this constitutional provision, the question of whether or not Sheldon Jackson or any other school is "religious" is basically irrelevant, for even if it is not, it is certainly a private educational institution. The relevant question under the Alaska Constitution is whether or not the tuition grant program constitutes a "direct benefit" to a private school. We believe that it does.

There are essentially two basic positions on the issue of when an institution is benefited by an expenditure of public funds. The first position, generally referred to as the "child benefit theory" 6/, approaches various state-supported programs which provide a benefit to an institution from the standpoint of whether the benefit is primarily to the institution or to the students of the institution. The alternative analysis looks beyond the child to determine whether or not the institution receives a benefit from the state program. 7/

6/ See, for example, the U. S. Supreme Court's opinion in Everson v. Board of Education, 330 U.S. 1, 7 (1947).

7/ See, for example, the dissenting opinion of four Justices in Everson, id.

The Alaska Supreme Court has confronted the choice between these alternatives directly. In 1961, the Court in Matthews v. Quinton, 362 P.2d 932 (Alaska 1961), rejected the "child benefit theory," inquiring instead whether or not the state-supported program (in that case bussing of parochial school students) also provided a benefit to the private school. In holding that the furnishing of transportation to parochial school students at public expense did constitute such a direct benefit to the school, the Alaska Court in essence adopted the dissenting opinion of the United States Supreme Court decision in Everson v. Board of Education, 330 U.S. 1 (1947). In Everson, the majority had held such transportation to be consistent with the federal Constitution. The dissenters disagreed, and their views were found most persuasive by the Alaska Supreme Court. In holding transportation of students a direct benefit to the institution, the Alaska Court stated:

> Payment of transportation is no more, nor is it any the less essential to education, whether religious or secular, than payment for tuitions, for teachers' salaries, for buildings, equipment and necessary materials. 8/ (emphasis added)

8/ Everson, id. at 47-49.

If the Alaska Court viewed bus transportation as a direct benefit to a private institution, it would follow that the state's tuition grant program, which provides partial payment of tuition to private institutions, would be an even more direct benefit to the private school. While under that program, the applicant for the grant is the student 9/ and the check is made payable to the student as well as the institution 10/, those facts are insufficient to alter the result, since the student, by law, is required to apply the grant to his tuition expenses. 11/ As we indicated in our earlier opinion concerning A.M.U., the Matthews opinion compels the conclusion that "any financial aid to a private institution such as AMU, whether provided directly or as an incidental effect from a student benefit program, would violate Section 1, Article VII of the Constitution."

Alaska is not alone in taking a "restrictive view" 12/ of its constitution's proscription against aid to private educational institutions. The highest courts of numerous other states have held various state programs, including

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9/ AS 14.40.791 and 14.40.796

10/ AS 14.40.786(a)

11/ AS 14.40.776(a)

12/ Roberts v. State, 458 P.2d 340, 342, N.Y. (1969).

tuition grants 13/, bussing of parochial students 14/, furnishing of text books for parochial students 15/, and other forms of aid to private schools 16/ to be invalid under similar state constitutional provisions. Many of these decisions were rendered after the Alaska Supreme Court's decision in Matthews, and would, we believe, support that Court's adherence to its original view of what constitutes a "direct benefit" under Article VII, Section 1. Under that view, the tuition grant program would be invalid. 17/

13/ Rogers v. Swanson, 219 N.W.2d 726 (Nebraska, 1974); Weiss v. Bruno, 509 P.2d 973 (Washington, 1973); Klinger v. Howlett, 305 N.E. 2d 129 (Illinois, 1973); Miller v. Ayres, 191 S.E.2d 261 (Virginia, 1972); Hartness v. Patterson, 179 S.E.2d 907 (South Carolina, 1971); Almond v. Day, 89 S.E.2d 851 (Virginia, 1955).

14/ Epeldi v. Engelking, 488 P.2d 860 (Idaho, 1971); Spears v. Honda, 499 P.2d 130 (Hawaii, 1969); McVey v. Hawkins, 258 S.W.2d 927 (Missouri, 1953); Visser v. Nooksack Valley School District No. 506, 207 P.2d 198 (Washington, 1949).

15/ Gaffney v. State Department of Education, 220 N.W.2d 550 (Nebraska, 1974); Dickman v. School District No. 62C, Oregon City, 366 P.2d 533 (Oregon, 1961).

16/ Synod of Dakota v. State, 50 N.W. 632 (South Dakota, 1891) (contracting for services).

17/ At least three of these cases, Spears, supra; Epeldi, supra; and Dickman, supra relied, in part, on the Alaska court's refusal, in Matthews, to adopt the "child benefit" theory.

We realize that our conclusion is not free from debate. It has, for instance, been argued that the Alaska Supreme Court's analysis of the meaning of the Alaska Constitution in the Matthews case was dicta since the basic resolution of the issue in that case was under the terms of the no longer existent Organic Act. Heavy reliance on that distinction, however, could be very misleading. The court in Matthews apparently felt that there was a real issue of whether a law authorizing bussing which was invalid under the Organic Act could be revived through a new and different state constitutional provision. Accordingly, the court specifically and comprehensively interpreted Article VII, Section 1 of the Alaska Constitution and its analysis on this point is obviously more significant than the often casual judicial remarks characterized as dicta. It has also been argued that the Matthews case cannot be relied on too heavily since it was decided by a three-judge court, none of whose members presently serve on the five-person Alaska Supreme Court. There is, of course, always the possibility of a newly constituted court changing a prior judicial decision on a subject. However, in this instance the reasoning of the Matthews case has been reinforced by decisions from other states discussed earlier, and we believe there is little chance of the court completely reversing itself on the issue. While our court has not been hesitant to break new ground, it does give credence to the doctrine of stare decisis and I think we must conclude in

the absence of indications to the contrary that it will honor its earlier interpretation of the constitutional provision. In any event, I feel that this office has an obligation to interpret the law as it has been announced by the Supreme Court, at least until that Court changes its interpretation.

It is therefore our conclusion that the present tuition grant program is in violation of the Alaska Constitution. In reaching that conclusion, we are not unmindful of the significant effect of the decision. Individual students who have enrolled in institutions dependent upon the tuition grant program may find their educational futures much in jeopardy. The very existence of Sheldon Jackson College may be at stake. We have real hesitancy in creating such enormous impact through the simple means of the issuance of an opinion of this office. Yet, the law requires that we issue legal opinions to state agencies, and if we conclude as we have that payment under the tuition grant program would be an unconstitutional expenditure of state funds, we see no choice but to advise the Commissioner of Administration to stop payment.

Mindful of the consequences of this opinion, we contacted the attorneys for Sheldon Jackson last week. I advised them that we were prepared to issue an opinion which would effectively terminate payments under the tuition grant

programs. I told them this so as to permit them the opportunity to mount a legal challenge to our ruling. I have been advised by the attorneys for Sheldon Jackson that within a day or two after the issuance of our opinion they will go into court here in Juneau seeking a declaratory judgment that the tuition grant program is constitutional and also seeking a restraining order and preliminary injunction to keep the program in operation until courts have had an opportunity to rule upon the question. At such time as they present a proposed restraining order to the court, a judge will have an opportunity to make at least an initial analysis of this program. If the judge believes that the plaintiffs have a reasonable prospect of prevailing on the merits, he will issue a restraining order directing the state to continue payments until this legal issue is resolved. If, on the other hand, the judge concludes not merely that our opinion is correct, but that the plaintiffs have no reasonable chance of proving it incorrect, he will refuse to issue a restraining order and no further state funds will be expended on the program. This procedure will mean that there will be a judicial review of our action directing the Commissioner of Administration to terminate this program. I frankly welcome that. I think on an issue of this significance, when so many people are involved and the amount of state expenditures is substantial, that while this office should not hesitate to carry out its obligations to interpret the

law, it should permit affected parties every opportunity to review the decision of this office in the proper judicial forum. We intend to continue our efforts in that regard, but, pending a judicial order, we are instructing the Commissioner of Administration to terminate all financial payments under the tuition grant program and to notify recipients that no further funds will be forthcoming.

Yours very truly,

Avrum M. Gross
Attorney General

and

Ronald W. Lorensen
Assistant Attorney General

AMG:as

cc: The Honorable Andrew S. Warwick
Commissioner of Administration

HCR

2

MEMORANDUM

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

POUCH Y — STATE CAPITOL
JUNEAU, ALASKA 99811

TO: Rep. Mike Miller

DATE: 27 February 1975

FROM: Stuart C. Hall, Legislative Counsel

SUBJECT: HCR 2 (Study of use of election districts for admin. and judicial purposes)

Am advised that Mrs. Betty Price of Dept. of Health & Social Services (ext. 3310) has a set of maps, with acetate overlays, showing the plethora of districts now being employed in the state. You might find this useful in any presentation on HCR 2. I am even more persuaded now that we have before us both the Judicial Council's and the Supreme Court's judicial redistricting proposals that the kind of study urged in HCR 2 is absolutely imperative. I have taking the liberty of discussi ng this with Jack Chenoweth of Dept. of C&RA, and I take it he is in substantial agreement. He urges use of the old, original election districts as described in AK Const. art. XIV as the building blocks. He may be right, but even those might need adjustment; in any event, they belong in the statutes, not the constitution.

Miller
Wants Price to present overlays -

HCR

5

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

POUCH N — STATE CAPITOL
JUNEAU 99801

To Bradley Gardiner Sperling

May 28, 1975

The Honorable Mike Bradner
Speaker of the House
Pouch V
Juneau, Alaska 99811

Dear Representative Bradner:

The proposed driver license classification regulations previously resubmitted to you 9 May 1975 incorporating amendments proposed by the Senate State Affairs Committee are currently being held on the Senate floor for additional amendment and clarification. The concerns of Senators Kertulla, Chance and Ferguson were expressed to our Traffic Laws consultant and have been hopefully satisfied. Therefore, we respectfully request that you either withdraw all previous submissions of these regulations and substitute the attached version thereof in their place, or offer the accompanying regulations as an alternative to the version approved by the House. Amendments and clarifications made are as follows:

1) The weight which an "A-1 vehicle" may tow is raised to 20,000 pounds; however, tandem trailer combinations are excluded from "A-1 vehicles," thus by being included under the "A-3" license; tandem trailer combinations are defined at the end of regulation Section 150;

2) "A-1" vehicles include common passenger cars, pick-up trucks, and motor homes, whether or not they are towing another vehicle, as provided. Concurrence has been obtained from Mr. Joe Hill of the Attorney General's Office and any alteration of wording may render the entire A-1 subclassification verbally cumbersome (i.e., the words "may tow" legally suffice and this Department is cognizant of this wording);

3) motorcyclists may either obtain one of the B-Class licenses or, in addition to an A-Class license, recieve endorsement or additional classification to also operate B-Class vehicles; additional examination may be required as provided in regulations Section 150 (b).

We sincerely appreciate your cooperation and assistance in the legislative processing of these regulations.

Sincerely,

Richard L. Burton
Commissioner

CHAPTER 08. DRIVER LICENSING
AND SAFETY RESPONSIBILITY

ARTICLE 3. CLASSIFIED DRIVER'S LICENSES

Section
140. Unlawful Use of Classified License
150. Classes of Licenses
160. Medical Certification Required for Certain Licenses and Permits

13 AAC 08.140. UNLAWFUL USE OF CLASSIFIED LICENSE. It is unlawful for a holder of a classififed driver license to operate a motor vehicle other than the type of motor vehicle which he is permitted to operate under sections 150-160 of this chapter according to the classification or endorsement on his license. (Eff. / / , Reg.)

Authority: AS 28.05.030
AS 28.15.070

13 AAC 08.150. CLASSES OF LICENSES. (a) An applicant for a classified license or for an endorsement to a classified license shall submit to an examination appropriate to the class of license or endorsement for which he is applying.

(b) The classifications of driver licenses and the vehicles which a holder of each class or subclass of license may operate are as follows:

(1) Class A license - Cars, buses, trucks, and towed vehicles. A person holding a Class "A" Driver's license may only operate the vehicles designated in one of the following subclassifications as indicated upon his license:

(A) A-1; All two or three-axle motor vehicles which vehicle may tow one other vehicle with a declared or actual gross laden weight of less than 20,000 pounds, excepting tandem trailer combinations as defined in (e) of this section; providing that the operation of vehicles with a Class A-1 license may be modified by the department by means of a permit;

(B) A-2; Buses and vehicles permitted under A-1;

(C) A-3; Motor-vehicles and towed vehicles exceeding the limits specified for subclassification A-1, and vehicles permitted under A-1;

(D) A-4; Any vehicles or combination of vehicles under Class A.

(2) Class B license - Motorized Cycles. A person holding a

Class "B" driver's license may only operate the vehicles designated in one of the following subclassifications as indicated upon his license:

(A) B-1; Motorcycles, Motor-driven Cycles, and Motorized Bicycles, single or in combination with trailers or side cars designed to be used with these vehicles;

(B) B-2; Motor-driven Cycles and Motorized Bicycles.

(c) School bus operator permits may be obtained as prescribed in AS 28.15.130 and Sec. 5-60 of this chapter.

(d) A holder of a classified license who wishes to change the classification of his license or to obtain an additional endorsement for another class of license, shall make an application for a change or endorsement and shall submit to an appropriate examination for the change or endorsement for which he is applying; however, the department in its discretion, will not require an applicant for a change or endorsement to submit to an examination for vehicles for which he has already qualified by his existing license. An applicant for a change in classification or an endorsement shall pay the fee set forth in AS 28.15.340 for an operator's license and renewal.

(e) As used in this section, "tandem trailer combination" means a combination of towing and towed vehicles in which the distance between the front and the rear most axles of the towed vehicle equals or is in excess of 10 feet; the term includes those vehicles commonly known as "compounds", "doubles", and "pups". (Eff. / / , Reg.)

Authority: AS 28.05.030
AS 28.15.070

13 AAC 08.160. MEDICAL CERTIFICATION REQUIRED FOR CERTAIN LICENSES AND PERMITS. (a) In order to qualify for a Class A-2, Class A-3 or Class A-4 license, an applicant shall provide the department, at the time of application, with a medical certificate approved by the department or the United States Department of Transportation. The medical certificate shall have been issued within the two years prior to the date of application for Class A-2, A-3, or A-4 license and must be renewed every two years. A copy of each renewal of the medical certificate is filed with the department.

(b) Class A-2, Class A-3, and Class A-4 licenses are valid for operating Class A-2, A-3, and A-4 vehicles respectively only so long as a currently effective and approved medical certificate as prescribed in (a) of this section, that person may not operate Class A-2, A-3, or A-4 vehicles until a valid medical certificate is filed with the department.

(c) A requirement for a medical examination as a condition precedent to ob-

taining an operator's license or school bus driver's permit shall be satisfied if the applicant is the holder of a current and valid first - or second - class medical certificate issued under the federal aviation regulations and has passed any requirement of the Department of Education relating to tests for tuberculosis. (Eff. / /, Reg.)

Authority: AS 28.05.030
AS 28.15.070

"January 22, 1975

Honorable Mike Bradner
Speaker of the House
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Bradner:

AS 28.15.070 EXAMINATION OF APPLICANTS was amended during the second session of the Seventh Legislature to set forth the requirement for the issuance, by this Department, of a classified driver license to qualified applicants. This law provides that appropriate regulations be adopted and promulgated by the Department of Public Safety, but "before any such regulations are enforced, the same shall be submitted to and approved by the Legislature."

In accordance with this legislative mandate, the Department of Public Safety herewith submits for the review and approval by both Houses, its proposed regulations concerning the State's Classified Driver Licensing Program. Please call upon me or designated members of my staff to furnish testimony on these regulations as you may require.

Sincerely yours,

RICHARD L. BURTON
COMMISSIONER"

PUBLIC SAFETY

Register

13 AAC 08.140
13 AAC 08.150

CHAPTER 08. DRIVER LICENSING AND SAFETY RESPONSIBILITY

ARTICLE 3. CLASSIFIED DRIVER'S LICENSES

Section
140. Unlawful Use of Classified License
150. Classes of Licenses
160. Medical Certificate for Class A and Class B Licenses
170. Waiver -- Certificate of Driving Experience

13 AAC 08.140. UNLAWFUL USE OF CLASSIFIED LICENSE. It is unlawful for a holder of a classified driver license to operate a motor vehicle other than the type of motor vehicle which he is permitted to operate under sections 150-180 of this chapter according to the classification or endorsement on his license. (Eff. / / , Reg.)

Authority: AS 28.05.030
Authority: AS 28.15.070

13 AAC 08.150. CLASSES OF LICENSES. (a) An applicant for a classified license or for an endorsement to a classified license shall submit to an examination appropriate to the class of license or endorsement for which he is applying.

(b) The classifications of driver licenses and the vehicles which a holder or each class or subclass of license may operate are as follows:

(1) Class A license - Cars, buses, trucks, and towed vehicles. A person holding a Class "A" driver's license may only operate the vehicles designated in one of the following subclassifications indicated upon his license:

(A) A-1: Passenger cars and two-axle trucks, excluding truck-tractors; which vehicles also may tow another vehicle with a declared gross laden weight of less than 5,000 pounds;

(B) A-2: Buses and vehicles permitted under A-1;

(C) A-3: Trucks with three or more axles, including truck-tractors, towed vehicles, and vehicles permitted under A-1;

(D) A-4: Any vehicles or combination of vehicles under Class A.

(2) Class B license - Motorized Cycles. A person holding a Class "B" driver's license may only operate the vehicles designated in one of the following subclassifications as indicated upon his license:

(A) B-1: Motorcycles, Motor-driven Cycles, and Motorized Bicycles, single or in combination with trailers or sidecars designed to be used with these vehicles;

(B) B-2: Motor-driven Cycles and Motorized Bicycles.

(c) School bus operator permits may be obtained as prescribed in AS 28.15.130 and Sec. 005-060 of this chapter.

(d) A holder of a classified license who wishes to change the classification of his license or to obtain an additional endorsement for another class of license, shall make an application for a change or endorsement and shall submit to an appropriate examination for the change or endorsement for which he is applying, except that the department in its discretion, will not require an applicant for a change or endorsement to submit to an examination for vehicles for which he has already qualified by his existing license. An applicant for a change in classification or an endorsement shall pay the fee set forth in AS 28.15.340 for an operator's license and renewal. (Eff. / / Reg.)

Authority: AS 28.05.030
AS 28.15.070

13 AAC 08.160. MEDICAL CERTIFICATION FOR CLASS A AND B LICENSES. (a) In order to qualify for a Class A-2, Class A-3, or Class A-4 license, an applicant shall provide the department, at the time of application, with a medical certificate approved by the department or the United States Department of Transportation. The medical certificate shall have been issued within the two years prior to the date of application for a Class A-2, A-3, or A-4 license and must be renewed every two years. A copy of each renewal of the medical certificate shall be filed with the department.

(b) Class A-2, Class A-3, and Class A-4 license are valid for operating Class A-2, A-3, and A-4 vehicles respectively only so long as a currently effective medical certificate approved by the department or by the United States Department of Transportation is on file with the department. If the medical certificate of a holder of a Class A-2, A-3, or A-4 license is revoked or is not renewed as required by (a) of this section, that person may not operate Class A-2, A-3, or A-4 vehicles until a valid medical certificate is filed with the department. (Eff. / / , Reg.)

Authority: AS 28.05.030
AS 28.15.070

13 AAC 08.170. WAIVER: CERTIFICATE OF DRIVING EXPERIENCE. (a) The department will, in its discretion, accept a certificate of driving experience in lieu of a driving test on Class A-2, Class A-3, or Class A-4 license applications when the certificate is issued by an employer of the applicant has first qualified for a Class A-1 license and has met the other examination requirements for the license for which he is applying. Certificates of driving experience shall be submitted on departmental forms furnished for this purpose and shall certify that the applicant is presently qualified to operate Class A-2, A-3, or A-4 vehicles as appropriate.

(b) When an applicant for a Class A-2, Class A-3, or Class A-4 license is self-employed and wishes to waive the driving test, he must furnish evidence acceptable to the department, of a minimum of one year's safe and competent driving experience in vehicles or combinations of that class for which he is applying. All such qualifying experience shall be upon the public highways.

(c) Certificates of driving experience will be accepted only at the discretion of the department and a complete examination will be required at the department's option.

(d) A holder of a Class A-1 license who cannot obtain a waiver or who cannot otherwise meet the requirements of this section may operate Class A-2, Class A-3, or Class A-4 vehicles only when accompanied by an operator properly licensed to operate the vehicle and who is occupying a seat beside the driver. (Eff. / / , Reg.)

Authority: AS 28.05.030
AS 28.15.070

DRIVER LICENSING LAWS ANNOTATED

1973

It is suggested this book be cited as DLLA § ..... (1973)

NATIONAL COMMITTEE
ON
UNIFORM TRAFFIC LAWS AND ORDINANCES

Utah Code Ann. §§ 41-2-5, -33, -34, -35 (1970).
Vt. Stat. Ann. tit. 23, §§ 603, 606, 607, 614, 632 (1967).
Va. Code Ann. §§ 46.1-357, to -366 (1972. Supp. 1972).
Wash. Rev. Code Ann. §§ 46.20.031, .070 (1970); § 46.20.100 (Supp. 1972).
W. Va. Code Ann. § 17B-2-3 (Supp. 1972).
Wis. Stat. Ann. §§ 343.06, .08, .09, .10(5), .125 (1958, Supp. 1971).
Wyo. Stat. Ann. § 31-252 (1967); § 31-262 (Supp. 1971).
32 D. C. Rules & Regs. §§ 2.203, .607, .608, .609 (1970).

§ 6-104—Classes of Licenses

(a) The department upon issuing a driver's license shall indicate thereon the type or general class of vehicles the licensee may drive.

(b) The department shall establish such qualifications as it believes reasonably necessary for the safe operation of the various types, sizes or combinations of vehicles and shall appropriately examine each applicant to determine his qualification according to the type or general class of license applied for.

(c) No person who is under the age of 21 years shall drive any school bus transporting school children or any motor vehicle when in use for the transportation of persons for compensation nor in either event until he has been licensed for either such purpose and the license so indicates. The department shall not issue a license for either such purpose unless the applicant has had at least one year of driving experience prior thereto and the department is fully satisfied as to the applicant's good character, competency and fitness to be so employed.

Historical Note

The 1926 edition of the Uniform Vehicle Code contained a provision similar to current subsection (c) imposing minimum age limits for the operation of a school bus or a "public passenger-carrying vehicle." This original provision imposed an 18-year minimum age for school bus operation and a 21-year minimum age for operation of a public passenger-carrying vehicle:

> It shall be unlawful for any person, whether licensed under this act or not, who is under the age of eighteen years to drive a motor vehicle while in use as a school bus for the transportation of pupils to or from school or for any person, whether licensed under this act or not, who is under the age of twenty-one years to drive a motor vehicle while in use as a public passenger-carrying vehicle.

UVC Act III, § 6 (1926, 1930). In 1934, the minimum age limit for school bus operation was changed to 21, the same as for a "motor vehicle used as a public or common carrier of persons or property," a new classification replacing the 1926 Code provision's reference to "public passenger-carrying vehicle." Additionally, operators of these vehicles were required to procure a "special chauffeur's license." Qualifications for this "special chauffeur's license" included one year of driving experience and certification of good moral character by three responsible persons. The department was given authority to impose rules and regulations for the use of the special chauffeur's license and could deny such a license if not satisfied with the applicant's competency and fitness. The 1934 Code section provided as follows:

> (a) No person who is under the age of 21 years shall drive any motor vehicle while in use as a school bus for the transportation of pupils to or from school, nor any motor

vehicle while in use as a public or common carrier of persons or property, nor in either event until he has been licensed as a chauffeur and received a special chauffeur's license.

(b) No person shall be granted a special chauffeur's license unless he has had 1 year of driving experience prior to the issuance thereof, nor until he files with the department a certificate showing his employment as such chauffeur and one or more certificates signed by a total of at least three responsible people to whom he is well known certifying as to his good character and habits.

(c) No such license shall be granted until the department is fully satisfied as to the applicant's competency and fitness to be so employed.

(d) The department may, in its discretion, impose such rules and regulations for the exercise of such special chauffeurs' licenses as it may deem necessary for the safety and welfare of the traveling public.

UVC Act II, § 10 (1934).

In 1938, the concept of the "special chauffeur's license" was deleted and replaced by a concept of classified chauffeurs' licenses. The chauffeur's license was to contain an indication of the class of license. The revised provision retained the special qualifications for the class or classes of chauffeur's license which would cover school bus operation and operation of "motor vehicles used for transportation of persons or property for compensation," a new phrase replacing the 1934 Code provision's reference to "public or common carriers of persons or property." With these revisions, the 1938 section provided as follows:

(a) The department upon issuing a chauffeur's license shall indicate thereon the class of license so issued and shall appropriately examine each applicant according to the class of license applied for and may impose such rules and regulations for the exercise thereof as it may deem necessary for the safety and welfare of the traveling public.

(b) No person who is under the age of 21 years shall drive any school bus transporting school children or any motor vehicle when in use for the transportation of persons or property for compensation nor in either event until he has been licensed as a chauffeur for either such purpose and the license so indicates. The department shall not issue a chauffeur's license for either such purpose unless the applicant has had at least 1 year of driving experience prior thereto and has filed with the department one or more certificates signed by a total of at least three responsible people to whom he is well known certifying as to his good character and habits and the department is fully satisfied as to the applicant's competency and fitness to be so employed.

UVC Act II, § 11 (1938). The provision remained unchanged until 1962. UVC Act II, § 11 (1944, 1948, 1952); UVC § 6-104 (1954, 1956).

In 1962, the requirement that the applicant submit certification of his good character from three responsible persons was deleted in favor of a more general requirement that the department must be satisified as to the applicant's good character prior to issuing a license.

The section was revised to its present form in 1968. The operator-chauffeur distinction in driver licensing was deleted from the Code at that time and the concept of a classified license, formerly applicable only to chauffeurs' licenses, was applied to to all drivers' licenses. Subsections (a) and (b) were then added to reflect that change. Subsection (c) was revised by deleting the references to chauffeurs and by making the special qualifications in that section no longer applicable to vehicles used for the transportation of property (as opposed to persons) for compensation.

Statutory Annotation

Subsection (a)

This Annotation covers state laws which provide for license classification or special licensing based upon factors of vehicle type (such as body style, size, number of wheels or axles, weight, etc.), or factors of vehicle use (such as use for the transportation of school children, farm use, use to transport persons or property for compensation, use as an authorized emergency vehicle, use to transport explosives, etc.), or a combination of such factors. All but two states have some kind of license classification based upon vehicle type or use although, as noted below, some of the laws contain only a limited recognition of the classified license concept. Unlike the Code, some of these states retain the operator-chauffeur distinction in licensing which is based upon the status of the driver—whether or not he is employed to drive. For a listing of the states which retain the operator-chauffeur distinction, see the Annotation at § 6-101(a) under the subheading "Valid Driver's License," *supra*.

Eight jurisdictions have laws which are in substantial conformity with subsection (a) by generally providing that all drivers' licenses issued must contain an indication of the type or general class of vehicles the licensee may drive. Each of these jurisdictions, however, has an additional provision relating to the issuance of one or more specific types or classes of license. The eight jurisdictions and their additional provisions are as follows:

Alaska—The law contains an additional provision relating to the issuance of a "school bus driver's permit."

Delaware—The law also contains express provisions relating to the issuance of a "school bus driver's license," a motorcycle license or endorsement, and a "taxicab driver's license."

Illinois—The law also contains a provision relating specifically to motorcycle licenses and endorsements.

Massachusetts—The law also provides for the issuance of "a license to be a school bus operator."

Nevada—The law contains provisions relating specifically to the licensing of persons to drive a motor vehicle when in use as a school bus or for the transportation of persons for compensation. A special set of laws provides for licensing to operate a motorcycle.

New Jersey—The law specifies that a "separate license shall be required to operate a motorcycle." Another law contains provisions relating to the issuance of a "special license" for the operation of:

> [A]ny motor vehicle or trackless trolley with a capacity of more than 6 passengers and used for the transportation of passengers for hire, except taxicabs, hotel buses, and omnibusses used for the transportation of passengers in interstate or foreign commerce, or any bus used to transport children to and from school . . . .

Washington—The law provides that no person shall operate any motor truck, truck-tractor, school bus, private carrier bus, "auto stage" or for-hire vehicle "found by the director to require special operating skills" unless he has successfully completed tests demonstrating his ability to operate such a vehicle. Upon completion of the test the driver's license of the person is endorsed to indicate the type of vehicle qualifications that have been met. Another law contains an additional provision relating to motorcycle endorsements.

District of Columbia—The law contains extensive provisions relating to school bus drivers' licenses and has a separate provision dealing with motorcycle permits.

Ten states have laws which are similar in effect to subsection (a), but these laws, instead of containing only a general directive to the department with respect to classifying licenses, expressly set forth a full classification system. The provisions in these 10 states are:

California—Section 12804(b) provides that vehicles and licenses are classified as follows:

Class 1. Any combination of vehicles and includes the operation of all vehicles under class 2 and class 3.

Class 2. Any bus, any "farm labor truck," any single vehicle with three or more axles, any such vehicles towing another vehicle weighing less than 6,000 pounds gross, and all vehicles covered under class 3, except that a person holding a valid class 3 license on the effective date of this act may drive a bus designed to carry not more than 15 passengers until such time as the license expires without obtaining a class 2 license.

Class 3. A three-axle housecar, any two-axle vehicle, and any such housecar or vehicle towing another vehicle weighing less than 6,000 pounds gross, except a bus, two-wheel motorcycle, or "farm labor truck."

Class 4. Any two-wheel motorcycle. Authority to operate vehicles included in a class 4 license may be granted by endorsement on a class 1, 2 or 3 license upon completion of appropriate examination. A person holding a valid class 1, class 2 or class 3 driver's license on the effective date of the amendments to this section enacted at the 1968 Regular Session of the Legislature may drive a motorcycle until such time as the license expires without obtaining a class 4 license or endorsement.

The law additionally provides that a class 1 or 2 driver's license shall be valid for operating class 1 or 2 vehicles only when the licensee has in his possession a valid medical certificate approved by the department or by the Federal Highway Administration of the United States Department of Transportation. Otherwise, the license is valid only for the operation of class 3 vehicles and, if so endorsed, class 4 vehicles. Another law prohibits the operation of a farm labor truck or a farm labor bus unless a person has in his possession an appropriately classified license with an endorsement or certificate attached to it which permits the operation of farm labor vehicles. Still another law provides that any person operating any piece of special construction equipment upon a highway, when its dimensions are such that special permission must be obtained prior to its movement, is required to hold an appropriately endorsed driver's license or have a special construction equipment certificate attached to his license.

Connecticut—The law provides that motor vehicle operators' licenses are classified and issued according to the types of vehicles which licensees are eligible to operate, as follows:

(1) Class 1, any motor vehicle or combination of motor vehicle and trailer or semi-trailer; (2) class 2, any motor vehicle or combination of motor vehicle and trailer or semi-trailer, except a tractor semi-trailer combination or a truck trailer combination, and (3) class 3, any motor vehicle or combination of motor vehicle and trailer or semi-trailer, except a tractor semi-trailer combination, truck trailer combination or truck having a gross weight of more than eighteen thousand pounds.

Other laws specifically provide for the issuance of a "motorcycle operator's license" and a "public service license." A public service license is required before any driver holding a regular operator's license may operate a "public service motor vehicle" or a school bus.

Georgia—The law provides that no person shall operate any motor vehicle unless he has a valid license permitting the operation of such vehicle according to the following classifications:

Class 1—All motor vehicles not included within classes 2 through 5.

Class 2—Motorcycles.

Class 3—Motor vehicles 80 inches or wider, designed to carry more than 10 passengers and used as a common or contract carrier, and motor vehicles included within Class 1.

Class 4—Trucks licensed and registered for 24,000 pounds or more gross weight, and motor vehicles included within Class 1.

Class 5—Tractor-trailers and motor vehicles included within Classes 1 and 4.

Hawaii—The law provides that an operator of a motor vehicle must be duly licensed according to the following categories of motor vehicles:

(1) Motor scooters;

(2) Motorcycles and motor scooters;

(3) Passenger cars of any gross weight and trucks having a registered gross weight of less than six thousand pounds;

(4) All of the motor vehicles in category (3) and trucks having a registered gross weight of six thousand pounds or more, other than tractor-semitrailer combinations and truck-trailer combinations;

(5) All of the motor vehicles in categories (3) and (4) and buses;

(6) All of the motor vehicles in categories (3), (4), and (5) and tractor-semitrailer combinations; and

(7) All of the motor vehicles in categories (3), (4), (5), and (6) and truck-trailer combinations.

Louisiana—The law provides that every motor vehicle operator shall secure an appropriately classified driver's license. The different classes of licenses to be issued are:

CLASS "A":

Permits the operation of all passenger vehicles and two-axle trucks, for personal use only, and vehicles of similar description towing trailers or other vehicles of not more than five thousand pounds gross weight. This class of license does not include the operation of motorcycles and motorscooters except as an endorsement to the basic license.

CLASS "B":

Permits the operation of all vehicles included in Class "A" and, in addition, permits the operation of two-axle vehicles designed to carry not more than fourteen passengers or the hauling of cargo for hire. This class of license does not include the operation of motorcycles and motorscooters except as an endorsement to the basic license.

CLASS "C":

Permits the operation of all vehicles included in Classes "A" and "B" and, in addition, permits the operation of any three-axle straight truck or any bus designed to carry fifteen or more passengers. A "straight truck" is defined for the purpose of this class as being one that does not bend or have movable joint in its frame between the driver's seat and the cargo compartment. This class of license does not include the operation of motorcycles and motorscooters except as an endorsement to the basic license.

CLASS "D":

Permits the operation of all vehicles included in Classes "A", "B", and "C" and, in addition, permits the operation of any vehicle or combination of vehicles with three or more axles, to include but not to be limited to semi-trailers, truck-trailers, and tractor-trailers, and any vehicle towing trailers or other vehicles of more than five thousand pounds gross weight. This class of license does not include the operation of motorcyles and motorscooters except as an endorsement to the basic license.

The law also provides that motorcycles, motorbikes, motorscooters and authorized emergency vehicles are not to be given a separate class as such but are to be included by an appropriate endorsement on one of the above classes. The law specifically provides that classes "B," "C" and "D" are chauffeurs' licenses and that all individuals driving vehicles in the course of their employer's business must have one of these classes.

Maryland—The law provides that every driver's license shall be clearly identified by class. The classes specified and the vehicles a licensee may operate under each class are as follows:

> A Class A license shall authorize the licensee to drive combinations of vehicles and any vehicle which the holder of a Class B, C or D license may drive.
>
> A Class B license shall authorize the licensee to drive vehicles of a gross weight of 20,000 pounds or more, and any vehicle which the holder of a Class C or D license may drive.
>
> A Class C license authorizes the licensee to drive any bus and any vehicle which the holder of a Class D license may drive.
>
> A Class D license shall authorize the licensee to drive any vehicle except (i) combinations of vehicles, (ii) trucks with a gross weight of more than 20,000 pounds, (iii) buses and (iv) motorcycles.
>
> A Class E license shall authorize the licensee to drive motorcycles.

The law additionally provides that any Class A, B, C, or D license may also be endorsed as a Class E license. Another provision specifies that holders of Class B, C, or D licenses are entitled to operate an appropriate type of vehicle to which a trailer or semitrailer is attached.

Minnesota—The law provides that drivers' licenses are to be classified according to one of three general classes of vehicle types:

> a. Class C; valid for all farm trucks as defined in section 168.011, subdivision 17, operated by the owner or an immediate member of his family or an employee not primarily employed for the purpose of operating the farm truck, and all single unit two axle vehicles not in excess of 24,000 pounds GVW including vehicles with a temporary auxiliary axle as defined in Minnesota Statutes, Section 169.67, Subdivision 4. Holder may also tow trailers under 10,000 pounds GVW including house trailers. Buses as defined under this chapter may not be driven by a holder of a Class C license.
>
> b. Class B; valid for all vehicles in Class C and all other single unit vehicles including buses.
>
> c. Class A; valid for any vehicle or combination thereof.

The commissioner may, as appropriate, subdivide the above classes and issue licenses classified accordingly. The law specifically provides that no class of license shall be valid to operate a motorcycle or school bus unless so endorsed. Another law provides that school bus drivers must hold a class B or A license with a school bus endorsement. Licensed persons without a school bus endorsement may drive a passenger automobile or station wagon used as a school bus for occasional trips.

New Hampshire—The law provides that all motor vehicle operators must be licensed as either an "operator" or "commercial operator." Another law provides that a "commercial operator's" license is required for the operation of a bus, light truck, heavy truck or tractor trailer as defined in RSA § 259:1, without regard to whether the use is for compensation, as part of employment, or private. With respect to these vehicles the law provides that

> A license to operate a tractor-trailer shall authorize the operation of any motor vehicle registered in this state other than a school bus or a motorcycle; a license to operate a heavy truck shall authorize the operation of any motor vehicle registered in this state other than a tractor-trailer, school bus or motorcycle; a license to operate a light truck shall authorize the operation of any motor vehicle registered in this state other than a tractor-trailer, heavy truck, school bus or motorcycle. The provisions of this section shall not apply to the operation of a motor truck bearing agricultural or farm registration.

To operate a motorcycle, a "special motorcycle license" is required. Drivers of school buses must obtain a "special school bus operator's certificate."

New York—The law provides that licenses shall be valid only for the operation of the type of vehicles specified by the following classes:

Class 1. Such license shall be valid for the operation of any passenger vehicle, any taxicab, any truck, any tractor, any truck-trailer combination, or any tractor-trailer combination.

Class 2. Such license shall be valid for the operation of any bus.

Class 3. Such license shall be valid for the operation of any passenger vehicle, any taxicab, any truck or any tractor.

Class 4. Such license shall be valid for the operation of any passenger vehicle, any taxicab, or any truck having a maximum gross weight of eighteen thousand pounds or less.

Class 5. Such license shall be valid for the operation of any passenger vehi or any truck having a maximum gross weight of eighteen thousand pounds or less.

Class 6. Such license shall be valid for the operation of any passenger vehicle or any truck having a maximum gross weight of eighteen thousand pounds or less by a person under eighteen years of age, subject to the restrictions contained in subdivision three-a of this section. Such license shall automatically become a class 5 license when the holder becomes eighteen years of age.

The law further provides that no license shall be valid for the operation of a motorcycle unless one of the above classes is so endorsed.

North Dakota—§ 39-06-14 provides that a classified license authorizes the holder to drive the vehicles set forth in such class as follows:

Class 1. Any vehicle or combination of vehicles except vehicles under class four.

Class 2. Any vehicle or combination of vehicles except:

a. Vehicles towing a trailer when the trailer being towed has a gross weight in excess of six thousand pounds; and

b. Vehicles under class four.

Class 3. Any two-axle or tandem-axle vehicle except:

a. A truck tractor combination as defined in subsection 70 of section 39-01-01;

b. A bus more than 80 inches in width and designed to carry more than ten persons and used for carrying passengers;

c. A two-axle or tandem-axle vehicle or combination of vehicles when towing a trailer when the trailer being towed has a gross weight in excess of six thousand pounds; and

d. Vehicles under class 4.

Provided, however, an operator with a class 3 license may operate a farm tractor towing another vehicle having a gross weight in excess of six thousand pounds.

Class 4. Any motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding tractors and vehicles on which the operator and/or passengers ride within an enclosed cab.

With respect to class 4 vehicles, the law expressly provides that a person must first be licensed to operate one of the other classes of vehicles before he can be examined and licensed to operate vehicles in class 4.

One state—Vermont—has a law which authorizes but does not require the department to issue classified licenses. That law provides as follows:

The commissioner may, in his discretion, determine that certain types of motor vehicles require that an operator possess specialized skill or knowledge to operate those vehicles

CHAPTER 08. DRIVER LICENSING
AND SAFETY RESPONSIBILITY

ARTICLE 3. CLASSIFIED DRIVER'S LICENSES

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~~170. Waiver -- Certificate of Driving Experience~~

13 AAC 08.140. UNLAWFUL USE OF CLASSIFIED LICENSE. It is unlawful for a holder of a classified driver license to operate a motor vehicle other than the type of motor vehicle which he is permitted to operate under sections 150-180 of this chapter according to the classification or endorsement on his license. (Eff. / / , Reg.)

Authority: AS 28.05.030
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13 AAC 08.150. CLASSES OF LICENSES. (a) An applicant for a classified license or for an endorsement to a classified license shall submit to an examination appropriate to the class of license or endorsement for which he is applying.

(b) The classifications of driver licenses and the vehicles which a holder or each class or subclass of license may operate are as follows:

(1) Class A license - Cars, buses, trucks, and towed vehicles. A person holding a Class "A" driver's license may only operate the vehicles designated in one of the following subclassifications indicated upon his license:

(A) A-1: ~~Passenger cars and~~ two-axle ~~trucks, excluding truck tractors, vehicle-vehicle also,~~ may tow another vehicle with a declared gross laden weight of less than 6,000 pounds;

(B) A-2: Buses and vehicles permitted under A-1;

(C) A-3: ~~Trucks~~, with three or more axles, ~~including truck tractors,~~ towed vehicles, and vehicles permitted under A-1;

(D) A-4: Any vehicles or combination of vehicles under Class A.

(2) Class B license - Motorized Cycles. A person holding a Class "B" driver's license may only operate the vehicles designated in one of the following subclassifications as indicated upon his license:

(A) B-1: Motorcycles, Motor-driven Cycles, and Motorized Bicycles, single or in combination with trailers or sidecars designed

to be used with these vehicles;

(B) B-2: Motor-driven Cycles and Motorized Bicycles.

(c) School bus operator permits may be obtained as prescribed in AS 28.15.130 and Sec. 005-060 of this chapter.

(d) A holder of a classified license who wishes to change the classification of his license or to obtain an additional endorsement for another class of license, shall make an application for a change or endorsement and shall submit to an appropriate examination for the change or endorsement for which he is applying; the department in its discretion, will not require an applicant for a change or endorsement to submit to an examination for vehicles for which he has already qualified by his existing license. An applicant for a change in classification or an endorsement shall pay the fee set forth in AS 28.15.340 for an operator's license and renewal. (Eff. / / , Reg.)

Authority: AS 28.05.030
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13 AAC 08.160. MEDICAL CERTIFICATION FOR CLASS A AND B LICENSES. (a) In order to qualify for a Class A-2, Class A-3, or Class A-4 license, an applicant shall provide the department, at the time of application, with a medical certificate approved by the department or the United States Department of Transportation. The medical certificate shall have been issued within the two years prior to the date of application for a Class A-2, A-3, or A-4 license and must be renewed every two years. A copy of each renewal of the medical certificate shall be filed with the department.

(b) Class A-2, Class A-3, and Class A-4 license are valid for operating Class A-2, A-3, and A-4 vehicles respectively only so long as a currently effective medical certificate approved by the department or by the United States Department of Transportation is on file with the department. If the medical certificate of a holder of a Class A-2, A-3, or A-4 license is revoked or is not renewed as required by (a) of this section, that person may not operate Class A-2, A-3, or A-4 vehicles until a valid medical certificate is filed with the department. (Eff. / / , Reg.)

Authority: AS 28.05.030
AS 28.15.070

13 AAC 08.170. WAIVER: CERTIFICATE OF DRIVING EXPERIENCE. (a) The department will, in its discretion, accept a certificate of driving experience in lieu of a driving test on Class A-2, Class A-3, or Class A-4 license applications when the certificate is issued by an employer of the applicant has first qualified for a Class A-1 license and has met the other examination requirements for the license for which he is applying. Certificates of driving experience shall be submitted on departmental forms furnished for this purpose and shall certify that the applicant is presently qualified to operate Class A-2, A-3, or A-4 vehicles as appropriate.

(b) When an applicant for a Class A-2, Class A-3, or Class A-4 license is self-employed and wishes to waive the driving test, he must furnish evidence acceptable to the department, of a minimum of one year's safe and competent driving experience in vehicles or combinations of that class for which he is applying. All such qualifying experience shall be upon the public highways.

(c) Certificates of driving experience will be accepted only at the discretion of the department and a complete examination will be required at the department's option.

(d) A holder of a Class A-1 license who cannot obtain a waiver or who cannot otherwise meet the requirements of this section may operate Class A-2, Class A-3, or Class A-4 vehicles only when accompanied by an operator properly licensed to operate the vehicle and who is occupying a seat beside the driver. (Eff. / / , Reg.)

Authority: AS 28.05.030
AS 28.15.070

1 Jan 76

CHAPTER 08. DRIVER LICENSING
AND SAFETY RESPONSIBILITY

ARTICLE 3. CLASSIFIED DRIVER'S LICENSES

Section
140. Unlawful Use of Classified License
150. Classes of Licenses
160. Medical Certificate for Class A and Class B Licenses
~~170. Waiver - Certificate - Driving Experience~~

13 AAC 08.140. UNLAWFUL USE OF CLASSIFIED LICENSE. It is unlawful for a holder of a classified driver license to operate a motor vehicle other than the type of motor vehicle which he is permitted to operate under sections 150-180 of this chapter according to the classification or endorsement on his license. (Eff. / / , Reg.)

Authority: AS 28.05.030
Authority: AS 28.15.070

13 AAC 08.150. CLASSES OF LICENSES. (a) An applicant for a classified license or for an endorsement to a classified license shall submit to an examination appropriate to the class of license or endorsement for which he is applying.

(b) The classifications of driver licenses and the vehicles which a holder or each class or subclass of license may operate are as follows:

(1) Class A license - Cars, buses, trucks, and towed vehicles. A person holding a Class "A" driver's license may only operate the vehicles designated in one of the following subclassifications indicated upon his license:

(A) A-1: Passenger cars and two-axle trucks, excluding ~~truck tractors, thick vehicles, etc.~~ may tow another vehicle with a declared gross laden weight of less than 6,000 pounds;

(B) A-2: Buses and vehicles permitted under A-1;

(C) A-3: Trucks with three or more axles, ~~including truck tractors,~~ towed vehicles, and vehicles permitted under A-1;

(D) A-4: Any vehicles or combination of vehicles under Class A.

(2) Class B license - Motorized Cycles. A person holding a Class "B" driver's license may only operate the vehicles designated in one of the following subclassifications as indicated upon his license:

(A) B-1: Motorcycles, Motor-driven Cycles, and Motorized Bicycles, single or in combination with trailers or sidecars designed

to be used with these vehicles;

(B) B-2: Motor-driven Cycles and Motorized Bicycles.

(c) School bus operator permits may be obtained as prescribed in AS 28.15.130 and Sec. 005-060 of this chapter.

(d) A holder of a classified license who wishes to change the classification of his license or to obtain an additional endorsement for another class of license, shall make an application for a change or endorsement and shall submit to an appropriate examination for the change or endorsement for which he is applying; the department in its discretion, will not require an applicant for a change or endorsement to submit to an examination for vehicles for which he has already qualified by his existing license. An applicant for a change in classification or an endorsement shall pay the fee set forth in AS 28.15.340 for an operator's license and renewal (Eff. / / , Reg.)

Authority: AS 28.05.030
AS 28.15.070

13 AAC 08.160. MEDICAL CERTIFICATION FOR CLASS A AND B LICENSES. (a) In order to qualify for a Class A-2, Class A-3, or Class A-4 license, an applicant shall provide the department, at the time of application, with a medical certificate approved by the department or the United States Department of Transportation. The medical certificate shall have been issued within the two years prior to the date of application for a Class A-2, A-3, or A-4 license and must be renewed every two years. A copy of each renewal of the medical certificate shall be filed with the department.

(b) Class A-2, Class A-3, and Class A-4 license are valid for operating Class A-2, A-3, and A-4 vehicles respectively only so long as a currently effective medical certificate approved by the department or by the United States Department of Transportation is on file with the department. If the medical certificate of a holder of a Class A-2, A-3, or A-4 license is revoked or is not renewed as required by (a) of this section, that person may not operate Class A-2, A-3, or A-4 vehicles until a valid medical certificate is filed with the department. (Eff. / / , Reg.)

Authority: AS 28.05.030
AS 28.15.070

13 AAC 08.170. WAIVER: CERTIFICATE OF DRIVING EXPERIENCE. (a) The department will, in its discretion, accept a certificate of driving experience in lieu of a driving test on Class A-2, Class A-3, or Class A-4 license applications when the certificate is issued by an employer of the applicant has first qualified for a Class A-1 license and has met the other examination requirements for the license for which he is applying. Certificates of driving experience shall be submitted on departmental forms furnished for this purpose and shall certify that the applicant is presently qualified to operate Class A-2, A-3, or A-4 vehicles as appropriate.

(b) When an applicant for a Class A-2, Class A-3, or Class A-4 license is self-employed and wishes to waive the driving test, he must furnish evidence acceptable to the department, of a minimum of one year's safe and competent driving experience in vehicles or combinations of that class for which he is applying. All such qualifying experience shall be upon the public highways.

(c) Certificates of driving experience will be accepted only at the discretion of the department and a complete examination will be required at the department's option.

(d) A holder of a Class A-1 license who cannot obtain a waiver or who cannot otherwise meet the requirements of this section may operate Class A-2, Class A-3, or Class A-4 vehicles only when accompanied by an operator properly licensed to operate the vehicle and who is occupying a seat beside the driver. (Eff. / / , Reg.)

Authority: AS 28.05.030
AS 28.15.070

CHAPTER 08. DRIVER LICENSING
AND SAFETY RESPONSIBILITY

ARTICLE 3. CLASSIFIED DRIVER'S LICENSES

Section
140. Unlawful Use of Classified License
150. Classes of Licenses
160. Medical Certification Required for Certain Class A Licenses

13 AAC 08.140. UNLAWFUL USE OF CLASSIFIED LICENSE. It is unlawful for a holder of a classified driver license to operate a motor vehicle other than the type of motor vehicle which he is permitted to operate under sections 150-160 of this chapter according to the classification or endorsement on his license. (Eff. / / , Reg.)

Authority: AS 28.05.030
AS 28.15.070

13 AAC 08.150. CLASSES OF LICENSES. (a) An applicant for a classified license or for an endorsement to a classified license shall submit to an examination appropriate to the class of license or endorsement for which he is applying.

(b) The classifications of driver licenses and the vehicles which a holder of each class or subclass of license may operate are as follows:

(1) Class A license - Cars, buses, trucks, and towed vehicles. A person holding a Class "A" Driver's license may only operate the vehicles designated in one of the following subclassifications as indicated upon his license:

(A) A-1; Two-axle motor vehicles which vehicle may tow another vehicle with a declared gross laden weight of less than 6,000 pounds, or a boat not more than 25 feet in length; providing that the operation of vehicles with a Class A-1 license may be modified by the department by means of a permit for a limited period to allow operation in excess of the stated limit in this subclassification for personal, but not for commercial, use;

(B) A-2; Buses up to and including 16,000 lbs. net weight and vehicles permitted under A-1;

(C) A-3; Buses over 16,000 lbs. net weight and vehicles permitted under A-1 and A-2;

(D) A-4; Motor-vehicles with three or more axles, any towed vehicles, and vehicles permitted under A-1;

(E) A-5; Any vehicles or combination of vehicles under Class A.

(2) Class B license - Motorized Cycles. A person holding a Class "B" driver's license may only operate the vehicles designated in one of the following subclassifications as indicated upon his license:

(A) B-1: Motorcycles, Motor-driven Cycles, and Motorized Bicycles, single or in combination with trailers or side cars designed to be used with these vehicles;

(B) B-2: Motor-driven Cycles and Motorized Bicycles.

(c) School bus operator permits may be obtained as prescribed in AS 28.15.130 and Sec. 5-60 of this chapter.

(d) A holder of a classified license who wishes to change the classification of his license or to obtain an additional endorsement for another class of license, shall make an application for a change or endorsement and shall submit to an appropriate examination for the change or endorsement for which he is applying; however, the department in its discretion, will not require an applicant for a change or endorsement to submit to an examination for vehicles for which he has already qualified by his existing license. An applicant for a change in classification or an endorsement shall pay the fee set forth in AS 28.15.340 for an operator's license and renewal. (Eff. / / , Reg.)

Authority: AS 28.05.030
AS 28.15.070

13 AAC 08.160. MEDICAL CERTIFICATION REQUIRED FOR CERTAIN CLASS A LICENSES. (a) In order to qualify for a Class A-2, Class A-3, Class A-4, or Class A-5 license, an applicant shall provide the department, at the time of application, with a medical certificate approved by the department or the United States Department of Transportation. The medical certificate shall have been issued within the two years prior to the date of application for a Class A-2, A-3, A-4, or A-5 license and must be renewed every two years. A copy of each renewal of the medical certificate shall be filed with the department.

(b) Class A-2, Class A-3, Class A-4, and Class A-5 licenses are valid for operating Class A-2, A-3, A-4, and A-5 vehicles respectively only so long as a currently effective and approved medical certificate as prescribed in (a) of this section is on file with the department. If the medical certificate of a holder of a Class A-2, A-3, A-4, or A-5 license is revoked or is not renewed as required by (a) of this section, that person may not operate Class A-2, A-3, A-4, or A-5 vehicles until a valid medical certificate is filed with the department. (Eff. / / , Reg.)

Authority: AS 28.05.030
AS 28.15.070

Additional information for classification of driver license regulations obtained from:

LYNDEN TRANSPORT, INC. (Juneau)
CHANNEL MARINA, INC. (Juneau)

MARINE HIGHWAY SYSTEM: max. weight = 35 tons (dependent upon loading ramp limitations)

TRUCK - TRACTORS (towing veh. w/5th wheel): usually 10,000 lbs.
Generally 8 ft. wide
13 ft. 6 in. high
25 ft. long (2 axle; most truck tractors)
45 ft. long (3 axle)

Most large trucks and trailers (towed vehicles) are of generally constant height and width within and approximately equal to legal limits.

MOTOR HOMES (Winebago's, etc.) generally weigh more than most Class 1, 2 axle trucks (Dept. Highways Vehicle Load Chart). Motor Homes usually have 2 axles, but some have 3 axles.

BOATS AND BOAT TRAILERS (gross weight of trailer plus boat with motor, depending on materials used in construction):

12 ft. boat - 25 ft. boat (most boats towed on highways) - 42 ft. + (15,00 lbs.+)
(600 lbs.) (7000 lbs.)

STATE OF ALASKA
DEPARTMENT OF HIGHWAYS
JUNEAU, ALASKA

STATEMENT OF POLICY GOVERNING THE ISSUANCE OF OVERSIZE AND OVERWEIGHT PERMITS:

Section 1. Statement of Policy

In order to protect the public investment in the State Highways System, and in the interests of the public safety and welfare, no vehicles carrying loads in excess of the legal limits authorized in the Vehicle Loading Chart of the State of Alaska will be authorized to operate upon the state highways without first securing a special permit from a designated and authorized representative of the Department of Highways. Authority: AS 28.05.020.

Section 2. Overweight Vehicles

a. Overweight Permits authorizing the operation of vehicles, and vehicles with loads, in excess of the maximums authorized in the Vehicle Loading Chart may be authorized by the District Engineer of the Department of Highways, except that no permits authorizing the movement of vehicles with a gross weight of 150,000 lbs. or more, will be issued without the approval of the Commissioner of Highways.

b. No Overweight Permits will be issued during the period of seasonal highway weight restrictions for the operation of vehicles on roads where a restricted weight limit has been ordered by the Commissioner of Highways or by any of his authorized representatives.

Section 3. Oversize Vehicles

a. Overwidth Permits authorizing the operation of vehicles and vehicles with loads, the dimensions of which do not exceed 16 feet in width, may be issued by the Department of Highways, subject to the conditions in Sec.'s 4, 5 and 6 following.

b. Overheight Permits authorizing the operation of vehicles, and vehicles with loads, the dimensions of which do not exceed 18 feet in height, may be issued by the Department of Highways, subject to the conditions in Sec.'s 4, 5 and 6 following.

c. Overlength Permits authorizing the operation of vehicles in combination, the dimensions of which do not exceed 80 feet in length, may be issued by the Department of Highways, subject to the conditions in Sec.'s 4, 5 and 6 following.

d. Overwidth, Overheight and Overlength Permits in excess of the dimension outlined above may be issued only when necessitated by extreme emergency or in cases of unusual hardship, and such permits may only be granted by the Commissioner of Highways.

Section 4. General Conditions Governing Issuance of Permits

a. Overweight and Oversize Permits will be issued only when the applicant for the permit is unable to reduce the proposed load sufficiently to meet the requirements of the Vehicle Loading Chart relating to maximum vehicle sizes and weights.

b. The issuance of the Overweight and Oversize Permit is contingent upon the applicant's assuming responsibility for all damage to the public highways, bridges, appurtenant structures, highway signs, public utilities and any other public feature encountered on the movement route. Whenever the driver is not the owner of a vehicle damaging any public utility, bridge, highway sign or highway, but is so operating, driving or moving the same with the express or implied permission of said owner, then said owner and driver shall be jointly and severally liable for any such damage. Action for recovery of damages may be instituted by the Attorney General of Alaska under the authority of AS 28.35.220.

c. Any damage to public or private structures, utility lines, etc. which occurs must be immediately reported to the issuing agency or officer.

d. The issuing agency may require the posting of a bond or evidence of insurance to indemnify the applicant for any damage to the highway or appurtenant structures which may occur as the result of the movement of oversize or overweight vehicles and loads.

e. Possession of an Overweight Permit issued hereunder does not absolve the driver from the requirement to stop at all highway scale installations on the route of travel and permit the inspection and weighing of the vehicle and load. Failure or refusal to permit weighing will result in the immediate cancellation of the permit.

f. All vehicles and trailers for which Overweight or Oversize Permits are issued shall be licensed in accordance with the applicable licensing laws of the State of Alaska, and all permits and applications shall record the military serial numbers or vehicle registration numbers of the vehicles to which issued.

g. Violation of the provisions of the Oversize or Overweight Permit with respect to required equipment, route of travel, hours of travel or rate of travel, will result in the immediate cancellation of same.

h. Oversize and Overweight Permits shall be carried by the operator of the vehicle at all times while operating on the public highway and shall be available for inspection by any employee of the Department of Highways or State Police.

i. The Department of Public Safety and the Department of Highways reserves the right to inspect any vehicle or vehicles described in the permit application. Additional conditions of operation including the requirement to provide a certified weight slip, may be imposed to provide for the safety of other persons using the highways, or to prevent damage to the roadway, bridges or other structures adjacent thereto.

j. The Department of Public Safety and the Department of Highways may refuse to issue an Overweight or Oversize Permit and may stop, suspend or delay the movement of any overweight or oversize load even though it may have a valid permit, whenever such movement is deemed to be unduly harmful or damaging to the highway or its appurtenances by the Department of Public Safety or the Department of Highways.

described in the permit application. Additional conditions of operation including the requirement to provide a certified weight slip, may be imposed to provide for the safety of other persons using the highways, or to prevent damage to the roadway, bridges or other structures adjacent thereto.

j. The Department of Public Safety and the Department of Highways may refuse to issue an Overweight or Oversize Permit and may stop, suspend or delay the movement of any overweight or oversize load even though it may have a valid permit, whenever such movement is deemed to be unduly harmful or damaging to the highway or its appurtenances by the Department of Public Safety or the Department of Highways.

Section 5. Issuance of Oversize Permits

a. All oversize vehicles or loads moved on the public highways shall display red flags on the traffic side of the towing vehicle and trailers. Red flags will not be required for vehicles or loads, the dimensions of which do not exceed 10 feet, if the towing vehicle displays on the front bumper a sign designating "OVERWIDTH" or "WIDE LOAD" in letters not less than 8 inches high. The sign shall have a white background and red letters.

b. All oversize vehicles or loads which exceed 10 feet in width must be accompanied by a separate pilot car in front. All pilot cars must also display a red flag, and sign on the front of the vehicle as described in (a) above.

c. An additional pilot car, in the rear, will be required for all vehicles and loads which exceed the dimensions of 10 feet when the route of movement is over roads having curves, hills or other features which might reduce the extensive forward vision of motorists.

d. No permit shall be issued for the movement on the highway of any house trailer, the dimensions of which exceed 12 feet in width, except that such movement may be authorized when the trailer wheels have been removed and the trailer is mounted upon a low-boy or flat bed trailer, and the provisions of (a) and (b) above, have been complied with.

e. Permits authorizing the movement of overwidth vehicles and loads shall in all instances be limited to daylight hours, except that military vehicles, operated in convoy, the leading vehicle of which is equipped with a "WIDE LOAD" sign, and all overwidth vehicles are equipped with red lights or torches on their traffic side, may be authorized for night movement with the approval of the Commissioner of Highways.

f. Permits for the operation of overwidth vehicles and loads during Saturday afternoons, Sundays and holidays may be issued for local movements only, and only when there is an emergency requirement for same. No permits for movements on the open highway between towns or settlements will be authorized on these days of the week.

g. Single trip permits may be issued, but permits authorizing the operation of fixed load oversize vehicles, or the movement of house trailers by trailer dealers, may be issued for periods up to six months.

h. Permits will not authorize any operation at speeds in excess of 35 miles per hour.

i. In the event application for the issuance of a permit is made for the movement of any house or structure, the dimensions of which exceed 12 feet in width, or 13 feet in height, the applicant must certify that he has surveyed the route of movement to determine whether or not there will be any interference with public utility lines or other structures on the route of movement, and must provide a minimum of three (3) day's notice to the public utility prior to the date of movement to permit the relocation of any power lines, telephone lines or other utilities. The applicant will be civilly liable for any damage to public utilities on the route of movement, the relocation of which has not been communicated to the public utility agency responsible for the installation and maintenance of same. All permits for the movement of buildings or structures shall be one-trip permits.

Section 6. Issuance of Overweight Permits

a. Overweight Permits may be issued permitting the movement of vehicles and loads which exceed those authorized in the Vehicle Loading Chart only when the vehicle is equipped with pneumatic tires of a sufficient width to provide for the effective distribution of weight on the surface of the roadway.

b. No permits shall be issued during periods of seasonal highway weight restrictions.

c. Blanket Overweight Permits authorizing the operation of vehicles in excess of the time required for a single one-way trip, will not be issued.

d. Overweight Permits will not authorize operation at speeds in excess of 35 MPH. If the vehicle is also oversize, the maximum allowable speed will be 25 MPH. The maximum allowable speed across bridges will be 15 MPH and may be further reduced by reference on the permit.

In Accordance with Regulations Adopted Aug. 1, 1966

STATE OF ALASKA
DEPARTMENT OF HIGHWAYS

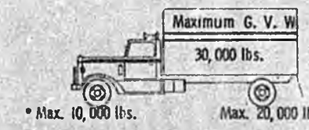
VEHICLE LOAD CHART

LEGAL GROSS WEIGHT TABLE

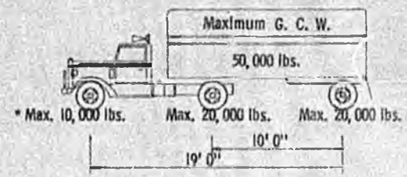
TYPICAL MAXIMUM GROSS WEIGHTS
Subject to Limitations of Permissible Axle Loadings
SEE TABLE

DEFINITIONS

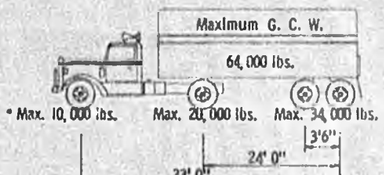
G. V. W.: Gross Vehicle Weight
G. C. W.: Gross Combination Weight
Combination: Truck Tractor & Semi-Trailer, or Truck & Full Trailer, or Truck Tractor with Semi-Trailer & Full Trailer



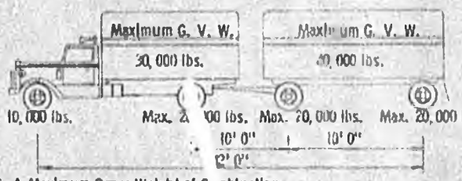
CLASS 1 Maximum Gross Weight, Including Load 30,000 lbs.



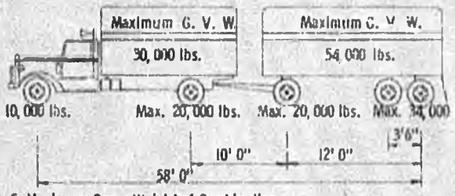
CLASS 2 Maximum Gross Weight of Combination with Minimum Axle Spacing as shown 50,000 lbs.



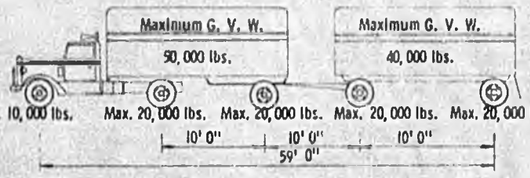
CLASS 3 Maximum Gross Weight of Combination with Minimum Axle Spacing as shown 64,000 lbs.



CLASS 4 Maximum Gross Weight of Combination with Minimum Axle Spacing as shown 70,000 lbs.



CLASS 5 Maximum Gross Weight of Combination with Minimum Axle Spacing as shown 84,000 lbs.



CLASS 6 Maximum Gross Weight of Combination with Minimum Axle Spacing as shown 85,000 lbs.

Distance in feet between the extremes of any group of 2 or more consecutive axles unless otherwise specified.	2 Axles	3 Axles	4 Axles	5 Axles	6 Axles	7 Axles	8 Axles
4	34,000						
6	34,000						
8	34,000	42,000					
10	40,000	43,500					
12		45,000	50,000				
14		46,500	51,500				
16		48,000	52,500	58,000			
18		49,500	54,000	59,000			
19		50,000	54,500	60,000			
20		51,000	55,500	60,500	66,000		
22		52,500	56,500	61,500	67,000		
24		54,000	58,000	63,000	68,500	74,000	
26		55,500	59,500	65,000	69,500	75,000	
28		57,000	60,500	65,500	71,000	76,500	82,000
30		58,500	62,000	66,500	72,000	77,500	83,000
32		60,000	63,500	68,000	73,000	78,500	84,500
33			64,000	68,500	74,000	79,000	85,000
34			64,500	69,000	74,500	80,000	85,500
36			66,000	70,500	75,500	81,000	86,500
38			67,500	72,000	77,000	82,000	87,500
40			68,500	73,000	78,000	83,500	89,000
42			70,000	74,000	79,000	84,500	90,000
44			71,500	75,500	80,500	85,500	91,000
46			72,500	76,500	81,500	87,000	92,500
48			74,000	78,000	83,000	88,000	93,500
50			75,500	79,000	84,000	89,000	94,500
51			76,000	80,000	84,500	89,500	95,000
52			76,500	80,500	85,000	90,500	95,500
53			77,500	81,000	86,000	91,000	96,500
54			78,000	81,500	87,000	91,500	97,000
55			78,500	82,500	87,500	92,000	97,500
56			79,500	83,000	87,500	92,500	98,000
57			80,000	83,500	88,000	93,000	98,500
58				84,000	89,000	94,000	99,000
59				85,000	89,500	94,500	99,500
60					90,000	95,000	100,000

Note: Where foot distance is omitted, subtract 1,000 lbs. from next longer measurement, except 5 & 7 feet which are 34,000 lbs.
Where inches are involved: Under 6 inches, take lower -- 6 inches and over, take higher.

Gross Vehicle Loads: All vehicle combinations, including those not shown in diagram, are subject to restrictions by the Legal Gross Weight Table, in conjunction with Axle and Wheel Loading restrictions listed below.

Maximum Overall Height: (Including Load) Not to exceed 13 feet 6 inches.

Maximum Overall Width: (Including Load) Not to exceed 96 inches, plus 6 inches maximum for safety devices and/or load binders.

Maximum Overall Lengths: (Including Load)

Single unit truck, bus, or Semi-trailer	40 feet
Truck Tractor - Semi-trailer	60 feet
All other combinations	65 feet

Axle Spacing:

Between single axles	Minimum	10 feet
Between single and closest tandem axle	Minimum	8 feet
Between tandem axles	Minimum	3 feet 6 inches

Axle Loadings:

Single axles not to exceed	20,000 lbs.
Tandem axles not to exceed	34,000 lbs.

Wheel Loadings: Individual wheels not to exceed 500 lbs. per inch of tire width as customarily measured and rated by the manufacturer.

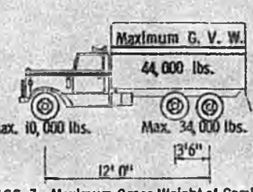
Excess Weight, Height, Width or Length: Oversize and overweight permit information on back side of this form.

Solid Steel Wheels or Tracks: Are prohibited from travel on paved roads. Tractors with lugs are prohibited from travel on, or crossing pavement or bridges, unless protected by planking.

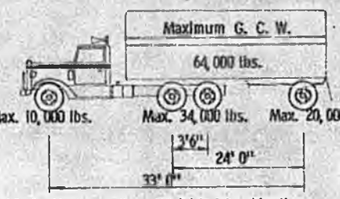
Note: ALLOWABLE LOADS ARE SUBJECT TO TEMPORARY REDUCTION FOR WEAKENED ROADBED OR BRIDGE CONDITIONS.

Note: All Axle Spacings as shown are minimum spacings for weights indicated.

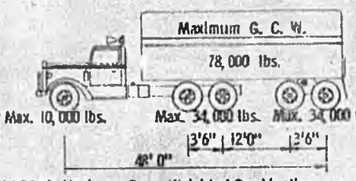
* Maximum Gross & Axle Loadings shown on diagrams are with use of 10.00 inch tires. Increased Front Axle Loading and any resulting increase in Maximum Gross Loads as described in diagram are restricted by wheel and axle loading limitations and Gross Weight Table shown above.



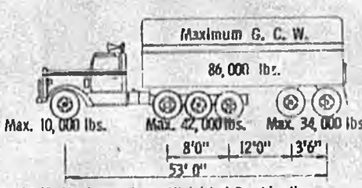
CLASS 7 Maximum Gross Weight of Combination with Minimum Axle Spacing as shown 44,000 lbs.



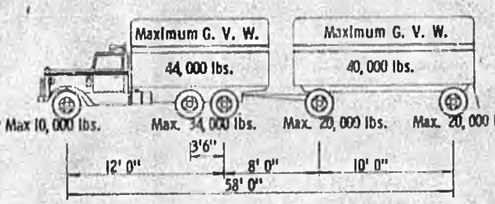
CLASS 8 Maximum Gross Weight of Combination with Minimum Axle Spacing as shown 64,000 lbs.



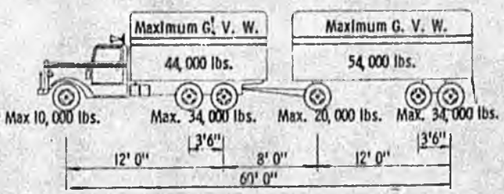
CLASS 9 Maximum Gross Weight of Combination with Minimum Axle Spacing as shown 78,000 lbs.



CLASS 10 Maximum Gross Weight of Combination with Minimum Axle Spacing as shown 86,000 lbs.



CLASS 11 Maximum Gross Weight of Combination with Minimum Axle Spacing as shown 84,000 lbs.



CLASS 12 Maximum Gross Weight of Combination with Minimum Axle Spacing as shown 90,000 lbs.

The 1973 amendment added paragraph (21).

affected by the amendment, it is not set out.

Chapter 15. Operators' Licenses.

Article
2. Cancellation, Suspension or Revocation of Licenses (§§ 28.15.170—28.15.288)

Article 1. Issuance, Expiration and Renewal of Licenses.

Section
40. Instruction permits and temporary licenses
70. Examination of applicants

Sec. 28.15.040. Instruction permits and temporary licenses.

(d) The department may issue a special operator's permit to a person who is at least 14 years of age with the consent of his parents or guardians for the purpose of operating a motor scooter or motor bicycle upon the highways. This permit shall be issued upon application and payment of the prescribed fee and is valid for the same period of time as an operator's license. The permit is not valid in a city or borough which by ordinance prohibits operation of a motor scooter or motor bicycle by a person under the age of 16 years. A borough may adopt the ordinance on a non-areawide basis only, unless the power to adopt it on an areawide basis is acquired under AS 29.33.250-29.33.290.

(am § 41 ch 53 SLA 1973)

Effect of amendments.

The 1973 amendment substituted "29.33.250—29.33.290" for "07.15.350" at the end of subsection (d).

As the rest of the section was not affected by the amendment, it is not set out.

Legislative committee report.—For report on ch. 53, SLA 1973 (CSHB 382), see 1973 House Journal, pp. 793, 885.

Sec. 28.15.070. Examination of applicants. (a) The department shall examine every applicant for a driver license, except as otherwise provided in this section. The examination shall include a test of the applicant's eyesight, his ability to read and understand highway signs regulating, warning and directing traffic, his knowledge of the traffic laws of the state, and shall include a demonstration of ability to exercise ordinary and reasonable control in the operation of the appropriate vehicle. The department shall provide for an examination in the community where the applicant resides or at a place convenient to the applicant.

(b) A driver license issued after July 1, 1973, under the authority of this section, shall indicate the classification for which the applicant has qualified by examination. Driver license classifications shall be prescribed by regulations promulgated by the department. The regulations may specify classifications as to operation of vehicles, whether operated singly or in lawful combination and whether for hire or not for hire, and may specify such other classifications as the department in its discretion may prescribe. Before any such regulations are enforced, they shall be submitted to and approved by the legislature.

(c) The department may enter into agreements with local governments for the conduct of the examinations provided for in this section. (§ 9 ch 173 SLA 1959; am § 1 ch 59 SLA 1972)

Effect of amendment. — The 1972 amendment, in subsection (a), substituted "a driver" for "an operator's" in the first sentence, substituted "a demonstration" for "an actual demonstration" in the second sentence, and substituted "the appropriate" for "a motor" in that sentence. The amendment also added present subsection (b) and redesignated former subsection (b) as present subsection (c).

Article 2. Cancellation, Suspension or Revocation of Licenses.

HCR

39

Relating to a revision of the substantive criminal law of the state.

COMMITTEE REPORT

3/18/75

HOUSE

Mr. Speaker: Date 3/18/75

The Committee on Judiciary has had HCR 39 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

(✓) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Terry Gardiner [illegible] Brown

[illegible]

[illegible]

[illegible]

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Terry Gardiner Chairman

AMENDMENT

OFFERED IN THE HOUSE: BY: House Judiciary

To: _____ HOUSE BILL No. HCR 39

SENATE BILL No. _____

PAGE: _____ LINE: _____

page 1, line 25

after "should be" INSERT "broadly"

page 1, line 27: DELETE all on lines 27, 28, 29 after "laws,"
page 1, line 27: after "criminal laws" INSERT "; and be it"

page 2, line 3: DELETE "work of the commission,"
and INSERT "commission's work,"

House Judiciary Committee
March 20, 1975

The meeting was called to order at 7:20 p.m. by Chairman Gardiner. All members were present except Mr. Fink and Mr. Specking.

HB 265/266 Community Legal Assistance

Mr. Brown moved out both bills with a do pass recommendation. Mr. Bradley objected and withdrew his objection. There being no further objection, HB 265 and HB 266 were passed out of committee do pass.

HCR 39 Criminal Code Revision

Mr. Parr moved the bill out do pass. The group objected. Mr. Brown moved that on page 1, line 29, law enforcement officers and members of the lay public be included and "and the like" deleted. There was an objection and Mr. Brown withdrew his amendment.

Mr. Gardiner moved that on page 1, line 25, insert "broadly" after should be and on line 27 put a period after laws and delete the rest of the sentence to line 29 "and be it" The amendment passed.

Mr. Parr moved that on page 2, line 3 "the work of the commission" should be deleted and replaced with "the commission's work." The amendment passed.

Mr. Brown moved HCR 39 am out do pass. There being no objection, the bill was passed out of committee.

HB 237 Divorce/mediation

Mr. Brown moved the following amendments:
page 1, line 14, 15 delete all and insert "Sec. 09.55.115. MEDIATION. (a) At any time within 30 days after a complaint or cross complaint is filed, a party to the action may submit a request to the court"
page 1, line 20, delete all and insert: "the court may at any time order the parties to submit to mediation if there is"
page 1, line 28, delete all and insert: "of any minor children of the marriage, shall attend. Counsel for the parties may attend."
page 2, line 5, delete all of sec (e).
page 1, line 23, delete "himself"
Mr. Brown's amendments passed.
Mr. Brown moved CS HB 237 out of committee do pass. There being no objection, the bill was passed out of committee.

HCR

88

Relating to the selection of a new capital site.

COMMITTEE REPORT

4/30/76

HOUSE

Mr. Speaker: Date May 6, 1976

The Committee on JUDICIARY has had HCR 83 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(✓) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

Terry Harding recommends: DO REC

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Terry Harding Chairman

AMENDMENT

OFFERED IN THE HOUSE: BY: STATE AFFAIRS

TO: _____ HOUSE BILL No. HCR 88

SENATE BILL No. _____

PAGE: 1 LINE: 25

After "Committee", insert "or its successor";

Page 1, Line 26

Delete "transfer" and insert in its place "make available"

Introduced: 2/10/76
Referred: State Affairs and Judiciary

IN THE HOUSE BY PARR

HOUSE CONCURRENT RESOLUTION NO. 88

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

Relating to the selection of a new capital site.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS at the November 1976 General Election the qualified voters of the state will select the site of the new capital city; and

WHEREAS under the provisions of AS 44.06.160 (Initiative No. 1, 1974) "the legislature at its next session following the selection of the new capital site, shall provide for the planning of subdivision of a new capital city and district within the bounds of the area selected, and for the construction of necessary state and public facilities and for their administration;" and

WHEREAS the magnitude of the task of planning the new capital city requires that the legislature do as much advance planning and research as possible;

BE IT RESOLVED by the Alaska State Legislature that the Legislative Council is respectfully requested to establish a capital planning committee composed of members of the legislature to investigate the problem of planning the new capital city and to submit a report to the legislature, including recommendations concerning legislation to carry out the mandate of the voters, not later than February 1, 1977; and be it

FURTHER RESOLVED that the Capital Site Selection Committee is respectfully requested to transfer all of its books, records, papers, plans, and other materials to the capital planning committee established by ~~the Legislative Council no~~ later than ~~June 30~~ Dec 1, 1976. AS44.06.200

#

SB

5

"An Act prohibiting monopolies and combinations in restraint of trade."

COMMITTEE REPORT

4/4/75

HOUSE

Mr. Speaker: Date 4/4/75

The Committee on JUDICIARY has had CSSSSE 5 am under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(✓) recommends it BE REPLACED WITH CS FOR [illegible] AND THAT CS FOR [illegible] DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Terry Gardiner

[illegible]

[illegible]

[illegible]

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Terry Gardiner Chairman

House Judiciary Committee
February 19, 1974

Joint Hearing with Senate Commerce

Anti Trust - HB 42/HB 137/ SS SB 5

The meeting was called to order at 2:30 by Senator Kerttula. All House committee members were present except Mr. Fink.

Since those who wished to testify were unprepared, the meeting was rescheduled for 2:15 Friday, February 21.

The Attorney General fielded questions from the committee members. The question was raised concerning the possibility of differences between interpretation of federal law and the intention of very similar state legislation.

Mr. Gross stated that bigness would not constitute a violation and that Alaska needs anti trust legislation despite federal laws. Over 40 states already have such legislation. He would hope that anti trust would be handled as another consumer protection action.

33

Tingle

House Judiciary Committee
February 21, 1975

HB 137/HB 42/SS SB 5 Anti Trust

A joint meeting of the House Judiciary and Senate Commerce committees was called to order by Senator Kerttula at 2:30.

William Hopkins, Manager of Alaska Oil and Gas, introduced Mr. James O'M. Tingle of the law firm Pillsbury, Madison and Sutro in San Francisco. Mr. Tingle testified that he favors a bill on this subject, but an "appropriate" state bill. He favors adoption of the uniform state anti trust act.

Mr. Tingle made the following comments concerning SS SB 5. Sections 1 and 2 of the Sherman Act concerning restraint of trade and monopolies is included. Federal cases could be used to interpret the state legislation. He suggested the addition of "predatory intent" to the monopoly section.

Section 40 of SB 5 -- unfair competition and practices -- this is already covered in Alaska's Consumer Protection Act and is not needed in this bill.

Sections 30, 50 and 60 are from the Clayton Act and are not suitable for a state statute.

Other comments: The state should not have automatic triple damages. He was against criminal instead of civil penalties. Section 60 raises a problem with the Native Corporations. Provisions on investigatory powers should be "has reason to believe." Section 150 -- consent decrees hampers the Attorney General. Section 160 -- delete nolo contendre reference.

Bill Fritch of the Alaska Carriers Association testified that there should be exemptions for regulated public utilities and carriers.

House Judiciary Committee
February 27, 1975

Lamont

Joint Hearing with Senate Commerce

Anti trust legislation SS SB 5, HB 42, HB 137

William J. Lamont testified at the request of the committees. He cited the following as reasons why states need anti trust laws:
-- there are commercial activities beyond the interstate commerce clause
-- inadequacy of federal enforcement
-- federal agents advise and provide surveillance, not direct prosecution. The government helps organize industry to almost encourage monopolies
-- federal agencies want state help.

He favored state statutes modeled on the federal statutes for the following reasons:
-- have judicial definitions of terms
-- minimum application of doctrine of federal preemption
-- Sherman Act designed to supplement state legislation (no inconsistencies)
-- need for uniformity among states - familiarity with laws -- (The uniform act is not widely accepted) - adoption Arizona

He made the following section by section comments on SS SB 5:
Section 10 - Section 1 of the Sherman Act.
Section 20 - Sherman Act. Against active monopolization not the existence of a monopoly as in the title of the section. A monopoly by itself isn't illegal if it results from superior business practices or chance (federal interpretation)
Deliberate price fixing to exclude competition -- a monopoly deliberately started or being exploited. (need letter of intent to state that definitions developed in federal law apply)
Section 40 - From Federal Trade Commission Act -- unnecessary, already in Consumer Protection statutes
Section 50 - Section 7 of Clayton Act -- useful and appropriate
Section 60 - Goes a little farther than Section 8 of the Clayton Act -- good. Might need a specific exemption for the Native Corporations for a limited time "activities in aid of or necessary to the federal act . . ."
Section 70 - Co-op activity -- Regulated public utilities specifically authorized to do things would not be challenged under anti trust. Problem of unitization of oil leases (may be taken care of by federal action) Statement of Intent

Mr. Hogey, representing the Alaska Carriers Association, stated that certain public utilities are required by law to serve certain areas (inherent monopoly). He further stated that carrier rates are generally fixed by a bureau and that they need this joint rate making power.

John Spencer, Anchorage City Attorney, stated that there was a need to exempt regulated utilities and that setting concurrent tariffs was a common practice.

House Judiciary Committee

March 28, 1975

SS
vs.
Comm CS

The meeting was called to order at 1:35 p.m. by Chairman Gardiner. All members were present except Rep. Parr, Specking, and Bradley.

Anne Carponetti explained the differences between the SS SB 5 and the Commerce CS SS SB 5.

The CS deleted Sect. 40 of the SS -- similar to what is already covered in the Consumer Protection Law. Sect. 40 of the CS pertains to mergers after the effective date of the Act. (b) was clarified to make divestiture a last resort remedy. (c) was redrafted to cover fishermen as fishermen, not as cannery owners. (d) was added to exempt the regulated activities of certain industries. (e) was added to exempt those activities expressly required by the Native Claims Settlement Act.

Sect. 120 of the CS eliminates violations of Sect 30 as criminal. Sect. 150 of the CS (b) deletes the authority of the court to modify consent judgments. Sect. 160 deletes nolo contendre as prima facie evidence in consent judgment. Sect. 210 of the CS (c) (2) added that the Attorney General could obtain documents outside the state.

Don Clocksin suggested the following:
page 6, line 23 delete "party" and insert "person". Mr. Brown moved the amendment which was adopted without objection.

page 7, Sect 170 suggested the adding of assurances that the statute of limitations is not running when the determination of the members in a class in a class action suit has not yet been reached. Fred Boness was asked to prepare language to this effect and to research how this would apply to the federal laws.

Page 4, line 13: Mr. Brown moved after "state," add " unless such actions or arrangements occur or are used in a manner clearly beyond the scope of such statutes;" Mr. Brown withdrew his amendment. The committee requested that alternate language be drawn up.

page 4 (e) line 25 add "or permitted" add Public Law Statute number. Add This exemption shall terminate on December 31, 1991. Mr. Brown moved the termination date and that part of the amendment was adopted.

page 4, line 18 "catching, collecting or delivering to processors for value. Mr. Brown moved the above language which was adopted with no objections.

February 19, 1975

Tingle

Alaska House Bill 137

Following is an analysis of the principal defects in the above-noted bill, which would enact a general antitrust statute for Alaska:

A. For reasons discussed below, appropriate state antitrust legislation should be limited in substantive scope to provisions based upon the Sherman Act (15 U.S.C. §§ 1, 2). Sections 10 and 20 of this bill are based upon the Sherman Act but are deficient in the following respects:

1. Since the affected "trade or commerce" is not defined in terms of any activity in or affecting Alaska, these sections could literally be applied to trade restraints or monopolistic practices not occurring in or having any relation whatever to Alaska. This can be corrected by inserting after "to" in the first line of section 300(3) the words "any of the following economic activity all or any part of which is within this state: * * *." It would also be desirable to add this new section after section 20, to wit:

> "In deciding whether conduct violates section 10 or section 20* the determination of the relevant market or effective area of competition shall not be limited by the boundaries of this state."

This will make it clear that the market analysis required to determine a violation of the substantive provisions will not be artificially limited by the state's boundaries.

2. Section 20, covering monopolization and attempts to monopolize, should be amended by adding at the end of the section the words "for the purpose of excluding competition or controlling, fixing or maintaining prices". While this would be slightly stricter than some applications of Sherman Act §2, it is very desirable at the state level to require a predatory intent in order not to outlaw the quite common situations in which monopolies have innocently arisen in limited local markets. As stated on this subject in the prefatory note to the Uniform State Antitrust Act:**

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* If, contrary to the recommendations in part B hereof, sections 30 through 60 are not dropped, then the proposed new section should refer to them as well as to sections 10 and 20.

** This uniform act, recently adopted by the National Conference of Commissioners on Uniform State Laws, is recommended for Alaska and the other states as appropriately complementing the Federal antitrust legislation.

"There is a diversity of economic conditions and business problems in the many different states; and practices that are undesirable on a national scale are not necessarily undesirable, or even avoidable, in local areas. Thus, there are a large number and variety of local monopolies which were not created with an anti-competitive intent and which are not continued with such a purpose. Moreover, the persons involved in purely local business activity are on the whole less aware, and their advisers are less informed, of the possible illegality of business conduct other than the most obvious predatory practices such as boycotting and price fixing.

"Because of these considerations, and because the resources of states and their courts are typically not suited to resolving the complex economic issues associated with the enforcement and application of certain of the federal laws, the Uniform Act has borrowed only the generalities of Sections 1 and 2 of the Sherman Act. * * *"

B. Sections 30, 40, 50 and 60 should be dropped from the bill. Sections 30, 50 and 60, derived from but broader than sections 3, 7 and 8 of the Clayton Act (15 U.S.C. §§ 14, 18, 19), forbid respectively certain exclusive dealing contracts, mergers and acquisitions, and interlocking directorates and other relationships. No comparable provisions appear in the Uniform State Antitrust Act. The inappropriateness of such legislation at the state level results from several considerations, some of which are referred to in the foregoing quotation from the prefatory note to the Uniform State Antitrust Act. In the first place, any such trade restraints significantly affecting the state's economy would probably fall within the jurisdiction of the Federal enforcement agencies. Secondly, cases under such provisions typically raise complex issues of economics and law that lie beyond the state's experience and would principally serve to tax its resources to little purpose. Most importantly, and this reason is closely related to the other two, the complex nature of these issues in their typical interstate setting strongly indicates the desirability of having a uniform statutory interpretation, which quite obviously could not be expected if the courts of the 50 states were to attempt to apply such provisions.

So far as section 40 is concerned, its chief vice is that it would be enforceable not only through injunctive relief but through state and private actions for trebled damages. This would be a sharp and unwarranted departure from Federal law. Section 5 of the Federal Trade Commission Act (15 U.S.C. §45), on which section 40 is based, is enforceable only by the Federal Trade Commission. This is because the great breadth of the statute's terms (e.g. "unfair methods of competition") would make it unfair to subject violators to trebled damages, ex post facto, for acts often not defined as unlawful prior to their commission. If

section 40 is to be retained, it should be made enforceable only through proceedings by the state that do not exceed the types of remedies authorized for the Federal Trade Commission, which are largely confined to relief having only prospective application.

C. Section 100 should be dropped. While agreements in restraint of trade are unenforceable under the Sherman Act, without the necessity of any specific provision like section 100, it is settled that a person who obtains goods or services may not refuse to pay for them on the ground that, for example, the sales price had been fixed by the seller with others in violation of the statute. If the price was illegally inflated, the buyer may sue under the antitrust laws for the damages sustained, but he cannot refuse to pay for the goods in an action brought for their price (see e.g. Kelly v. Kosuga (1959) 358 U.S. 516). Although section 100 is addressed to this general subject, it is at best ambiguous and would leave to the discretion of the court whether goods or services must be paid for to prevent unjust enrichment.

D. There are several objections to section 110. In the first place, it is not desirable at the state level to provide for the mandatory trebling of the actual damages sustained as a result of an antitrust violation. The Uniform State Antitrust Act provides in a private action that "If the trier of fact finds that the violation is flagrant, it may increase recovery to an amount not in excess of three times the damages sustained." Secondly, section 110 would appear to give the state the right to recover treble the amount of any damage sustained by it as a result of a violation of the statute's substantive provisions. Federal law limits the government to single damages (15 U.S.C. §15(a)) since that agency should not require the goad of multiple damages to encourage it to enforce the law. Accordingly, the Uniform State Antitrust Act also limits the state to single damages. The comments of the National Conference of Commissioners on these points are apt:

> "The private right of action for injury to business or property by reason of a violation of the Act found in Section 4 of the Clayton Act (15 U.S.C.A. §15) has been adopted in this section, but with an important modification. The automatic trebling of damages under the Clayton Act which can bring about an in terrorem settlement by a defendant of a defensible case has been discarded.

"Instead, the trier of facts, the judge or the jury as the case may be, is given the discretion to increase the damages up to threefold the actual damages if it is found that the violation of the Act was "flagrant". The intent is to provide a punishment commensurate with the degree of guilt rather than a bludgeon which strikes with equally devastating force in both clear and doubtful cases.

"The state, its subdivisions and public agencies are also accorded a cause of action for injuries to their business or property because of violations of the Act; but like the right accorded the United States in the Clayton Act (15 U.S.C.A. §15a), recovery is limited to single damages."

In addition, as noted above in part B, it is entirely inappropriate to provide a remedy in multiple or even single damages for a violation of section 40 of this bill.

E. Section 130(b) provides that in injunctive proceeding by the Attorney General the court may, among other things, enter such orders or judgments "as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by an act prohibited by this chapter * * *." This provision would unnecessarily embroil the Attorney General in private litigation, which should be adequately encouraged by the prospect of trebled damages. The Federal Department of Justice has no such authority. The recently enacted Consumer Warranty - Federal Trade Commission Improvement Act grants the Commission the power to obtain restitution to consumers in court but only after the Commission has entered a cease-and-desist order against an unfair or deceptive practice by the defendant which, as a reasonable man, he must have known was "dishonest or fraudulent" under the circumstances (Public Law 93-637, Title II, §206(a)).

F. Section 150(a) seems to contemplate that consent decrees in private as well as government litigation would be filed with the court, together with a statement concerning the alleged violations, the terms of the decree and "the reasons for entering into the consent judgment or decree". Subpart (b) provides that no such consent decree would become final until 60 days from its filing, during which period "any interested party" may file exceptions to the decree and the court, after a full hearing on the

matter, "may approve, refuse to enter, or may modify the consent judgment or decree". The only possible need for this section would be in respect of consent decrees in cases brought by the state to vindicate the public interest. It is not necessary or desirable to create this kind of burdensome procedure in private litigation. In addition, while it may be appropriate for the court to refuse to enter a consent decree in a case brought by the state, it would seem singularly inappropriate and incongruous to grant to the court a power to "modify" a consent decree. By its very nature, such a decree would require the consent of both parties and is not a matter that could be resolved by court order except after a full trial.

G. Section 160 provides that final judgments in civil or criminal antitrust actions are prima facie evidence against the defendant in private antitrust actions. The section is broader than comparable Federal legislation, however, because it gives prima facie effect to "a judgment rendered under a plea of nolo contendere", an expansion which will inevitably frustrate expeditious settlement of criminal antitrust cases. If state resources are to be conserved and settlements favored, as the exclusion of consent judgments from section 160 implies, judgments rendered under a plea of nolo contendere should not be accorded prima facie effect.

H. Article 3 concerns investigatory powers to be granted to the Attorney General. The chief difficulty here is that the Attorney General's power to issue compulsory process is not subject to appropriate controls but may be exercised "whenever it appears to the attorney general", or "whenever the attorney general believes", that a person has information or documentary material relevant to an antitrust investigation. This opens up the possibility of administrative harrassment. Accordingly, it is recommended that this article be dropped and that there be substituted for it the provisions of section 6 of the Uniform State Antitrust Act, which give equal investigatory coverage but which require that the Attorney General have "reasonable cause to believe" that the person to whom a demand is directed has information or documents relevant to an antitrust investigation. In any event, this standard of control of the Attorney General's actions should be substituted for the illusory ones now contained in proposed sections 200 and 210.

Anne

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

February 19, 1975

MEMORANDUM

TO: Senator Kerttula, Chairman
Senate Commerce Committee

FROM: Anne Carpeneti
Legislative Counsel

SUBJECT: Sponsor Substitute to Senate Bill 5

In response to your request, here follows an analysis of the Sponsor Substitute to SB 5(SSSB5), proposed legislation for the prohibition of monopolies and combinations in restraint of trade. Fred Boness, Assistant Attorney General and drafter of the Department of Law's version of the antitrust legislation, HB 137, contributed greatly to this analysis. HB 137 and SSSB 5 are substantively the same; there are minor differences in the style of drafting of the bills.

Section 10 prohibits contracts, combinations or conspiracies in restraint of trade or commerce. The operative language is identical to section 1 of the Sherman Antitrust Act, 15 United States Code Sec. 1. The federal act has been exhaustively interpreted by the federal courts since its adoption in 1890; hence, use of the same language in this bill would have the advantage of bringing with it an extensive body of case law to aid state courts in its interpretation. Its purpose is to prohibit two or more parties from acting in a way which unreasonably restricts competition. The agreement or combination need not be explicit; most in fact are tacit agreements to act in a certain way. The language of the section is very general, and practices covered by it may also be covered by the more specific provisions of secs. 30 - 60.

Section 20 prohibits monopolies, attempts and conspiracies to monopolize any part of trade or commerce, and is modeled after sec. 2 of the Sherman Act. It differs from sec. 10 in that sec. 10 prohibits combinations in restraint of trade and sec. 20 prohibits monopolies. Thus, the former is directed at joint action by two or more parties, while the latter is aimed at individual action by a single party.

An example of a prohibited act under this section would be the act of pricing below cost by a retailer who has a high percentage of the market in order to force competitors out of business. One of the leading cases under the corresponding federal provision is U. S. v. Aluminum Co., 148 F.2d 416 (1945), which discussed what share of the market constitutes a monopoly. It held that over 90 per cent of the market does constitute a monopoly; but that 60 per cent of the market was not clear and that other factors such as the number of parties making up the rest of the market, the ease of entry into the market, and other factors would be relevant.

Section 30 prohibits a seller or lessor of goods or services from conditioning the sale or lease on the buyer's or lessee's agreement not to purchase or use the goods or services of a competitor of the seller or lessor. This section is derived from section 3 of the Clayton Act, 15 United States Code Sec. 14, which supplemented the Sherman Act and which is much more specific in its provisions than the Sherman Act. The Clayton Act prohibits exclusive dealing, tying agreements, and certain requirements contracts.

An example of prohibited activity under the section would be the refusal of an area's sole distributor of fuel, who also runs a grocery store, to sell fuel to people who do not buy groceries from him.

A leading case decided under the comparable federal provisions is Standard Oil Co. (Calif) v. United States, 337 U. S. 293 (1949). There the Court found that Standard Oil, by requiring independent retail service stations to sign exclusive dealer contracts with Standard Oil in order to purchase Standard's product, violated this provision of the antitrust laws.

Section 40 prohibits unfair competition and deceptive practices, and contains the same language as AS 45.50.471(a), recently enacted consumer protection provisions of the Alaska Statutes. It covers tactics such as mislabeling and "bait and switch". (The latter practice involves advertisement of a product at a very attractive price, and then, when the customer has responded to the "bait", telling him that item or model is no longer available but offering a more expensive model in its place: the "switch".)

Although there is some overlap in coverage between this section and secs. 10 - 30, there is good reason for their separate existence. The bill provides that a violation of this section alone is not a misdemeanor, contrary to secs. 10 - 30, but only provides for civil remedies for violation of sec. 40. (Sections 10 - 30 have civil remedies as well as criminal penalties.)

Section 50 prohibits mergers and acquisitions of the capital stock or assets of a corporation if the effect of the merger or acquisition substantially lessens competition or tends to create a monopoly. It differs from the comparable federal provision, 15 United States Code Sec. 18, because it applies to individuals and to corporations acquiring capital stock or assets of another corporation. The federal provision applies only when a corporation acquires an interest in another corporation.

Section 50 does not apply to acquisitions solely for investment if there is no attempt to substantially lessen competition by means of the investment. Nor does sec. 50 apply to the formation of subsidiary corporations if the formation does not substantially lessen competition. Section 50 also does not apply to mergers or acquisitions allowed by AS 06.05.235 or to mergers under AS 21.69.590 - 21.69.600.

United States v. El Paso Natural Gas Co., 376 U. S. 651 (1964), involved the acquisition by the major supplier of natural gas to Southern California of a smaller natural gas company that had entered the Southern California market. The Court found that the acquisition had the effect of substantially lessening competition and ordered divestiture.

Federal courts have looked closely at mergers which, though alone appear innocent, are a part of a trend leading to less competition. In United States v. Von's Grocery Co., 384 U. S. 270 (1966), the Court found a merger of two grocery chains violative of this provision of the antitrust law. The merged companies had a combined total of 7.5 per cent of the total sales in the market area, but the Court found the merger to be part of a trend toward fewer competitors in the area, and ordered divestiture.

Section 60 prohibits interlocking relationships: parties holding policy making positions in two or more companies, firms, partnerships or associations at the same time, if either the companies, firms, partnerships or associations are competitors, or if the effect substantially lessens competition or tends to create a monopoly.

Section 60 provides that the attorney general or a person affected may bring an action to terminate a prohibited interlocking relationship.

The exemptions from coverage under the Act in sec. 70 for labor unions, agricultural organizations, fishing associations, bank holding companies, and cooperatives have their roots in policy decisions. To some extent the state is required to exempt certain groups by federal statute. For example, federal law prohibits states from bringing labor unions under state antitrust legislation.

Section 100 provides that contracts or agreements violating the antitrust provisions are voidable. This approach avoids enforcement of unlawful agreements but allows the Court to fashion a judgment to achieve equitable results; for example, if a party to an unlawful agreement gets the benefit of the bargain and then seeks to avoid the agreement before suffering the burden of the agreement, a court may find the agreement illegal but still require the benefited party to pay the reasonable value of goods received.

Section 110 provides that any injured party, including the state and a political subdivision of the state, may bring a civil action for treble damages and for an injunction of the unlawful practice.

Section 120 provides for criminal penalties for the violation of secs. 10 - 30 of the bill. Violation of secs. 10 - 30 is a misdemeanor, and punishment by fine and by imprisonment is provided.

Section 130 allows the attorney general to bring an injunction of unlawful practices even though the state is not an injured party under sec. 110.

Section 140 provides for jurisdiction in Superior Court for actions arising under the bill.

The great majority of antitrust cases are settled by consent judgments. Section 150 allows interested parties who object to the consent judgment to bring their exceptions to the consent judgment before the court for a hearing.

Section 160, by allowing judgments won by the state to be used as prima facie evidence against the defendant in a suit brought by another party, is an incentive for avoidance of litigation and encourages consent judgments.

Article 3, secs. 200 - 220, provide the attorney general with power to investigate practices which appear to be violations of the antitrust law before filing a cause of action in court. The attorney general may compel the production of documents and may take testimony under these sections.

Although the attorney general may compel the production of all documents he believes relevant to the investigation, the demand must be specific in terms of the alleged violation under investigation, the material demanded, the deadline for production and the person to whom the documents should be delivered. In addition, a demand for documents may not be unreasonable or include privileged matter. The person on whom the demand is served may petition the Court to set aside or to modify the investigatory demand.

Subsection (g), sec. 210, provides penalties for persons who do not comply with the investigatory demand for documents.

Section 220 provides that the attorney general may issue an investigative demand compelling a person to appear for examination under oath.

Subsection (d) of sec. 220 provides penalties for persons who fail to appear. It also provides for transactional immunity to persons who answer questions, after first refusing to answer on the ground that the answers might incriminate him, in response to a written demand by the attorney general.

2

A M E N D M E N T

Offered in the SENATE BY MILLER

TO CS SSSB 5.(Commerce Committee)

Page 4, between lines 20 and 21: insert the following material and reletter existing subsections accordingly:

"(d) This chapter does not apply to public utilities which have been issued a certificate of public convenience and necessity under AS 42.05. Utilities

(e) This chapter does not apply to carriers regulated under AS 42.10, AS 42.15, and AS 02.05, or to ferries regulated under AS 42.25. Motor Freight bus air

(f) This chapter does not apply to banks and financial institutions regulated under AS 06."



3

A M E N D M E N T

Offered in the SENATE BY ZIEGLER

TO CS SSSB 5 (Commerce Committee)

Page 5, lines 13 - 16: delete all material and insert:

"(1) for damages sustained by him plus the costs of the suit, including reasonable attorney fees; if judgment is for the plaintiff and if the trier of fact finds that the violation was knowing and wilfull, the court may increase recovery to an amount not in excess of three times the damages sustained; and"

Page 5, line 18

Delete: "shall"

and insert: "may"

4

A M E N D M E N T

Offered in the SENATE BY MILLER

TO CS SSSB 5 (Commerce Committee)

Page 7, lines 15 and 16:

Delete: "When it appears to the attorney general, either upon complaint or otherwise,"

and Insert: "If the attorney has reasonable cause to believe"

Page 7, lines 25 and 26:

Delete: "When the attorney general believes that a person may be"

and Insert: "If the attorney general has reasonable cause to believe that a person is"

Original sponsor: Kerttula

IN THE SENATE BY THE JUDICIARY COMMITTEE

HOUSE CS FOR CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 5

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act prohibiting monopolies and combinations in restraint of trade."

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

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

CHAPTER 52. MONOPOLIES; RESTRAINT OF TRADE.

ARTICLE 1. SUBSTANTIVE PROVISIONS.

Sec. 45.52.010. COMBINATIONS IN RESTRAINT OF TRADE UNLAWFUL. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce is unlawful.

Sec. 45.52.020. MONOPOLIES AND ATTEMPTED MONOPOLIES UNLAWFUL. It is unlawful for a person to monopolize, or attempt to monopolize, or combine or conspire with another person to monopolize any part of trade or commerce.

Sec. 45.52.030. TRANSACTIONS AND AGREEMENTS NOT TO USE OR DEAL IN COMMODITIES OR SERVICES UNLAWFUL. It is unlawful for a person to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, or services, whether patented or unpatented, for use, consumption, enjoyment, or resale, or fix a price charged for it, or discount from, or rebate upon, that price, on the condition, agreement, or understanding that the lessee or purchaser will not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodity or service of a competitor or competitors of the lessor or seller, if the effect of the lease, sale or contract for sale, or of the condition, agreement, or understanding may be sub-

stantially to lessen competition or tend to create a monopoly in any line of commerce. Original 040 deleted — Unfair Competition; deceptive practices Already is in Consumer Protection statute

Sec. 45.52.040. MERGERS, ACQUISITIONS, UNLAWFUL WHEN COMPETITION LESSENED. (a) It is unlawful for a person to acquire and hold, directly or indirectly, the whole or a part of the stock, other share capital, or assets of any corporation before deleted - don't penalize past actions after the effective date of this Act if the effect of the acquisition and holding may be substantially to lessen competition or to tend to create a monopoly in any line of commerce in the state or in a section of the state. This subsection does not apply to persons purchasing such stock solely for investment if it is not used by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nothing in this subsection prevents a corporation from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions of it, or from owning and holding all or a part of the stock of the subsidiary corporation, when the effect of the formation is not substantially to lessen competition.

Clayton

Redrafted technical

(b) When the court finds that the effect of the holding of such stock, share capital, or assets is substantially to lessen competition or tends to create a monopoly and no other remedy will eliminate the lessening of competition or the tendency to create a monopoly, the court shall order the divestiture or other disposition of the stock, share capital, or assets and shall prescribe a reasonable time, manner, and degree of the divestiture or other disposition of it.

(c) This section does not apply to mergers, acquisitions or holding companies permitted by AS 06.05.235 or to a merger carried out in accordance with AS 21.69.590 - 21.69.600, or to mergers, acquisitions or holding companies permitted and regulated by a regulatory agency of

the United States having jurisdiction and control over those mergers and acquisitions.

Sec. 45.52.050. INTERLOCKING DIRECTORATES AND RELATIONSHIPS. (a) It is unlawful for a person to be at the same time a director, officer, partner, or trustee in any two or more firms, partnerships, trusts, associations, or corporations or any combination of them engaged in commerce, if these firms, partnerships, trusts, associations, or corporations or a combination of them, are, by virtue of their business and location or operation, competitors and if the effect may be substantially to lessen competition or tend to create a monopoly.

"or have been" deleted — Some argument 040 retroactive change

changed from "or" "need both elements now

(b) No person may by the use of a representative accomplish the result prohibited in (a) of this section.

(c) The validity or invalidity of an act of a director, officer, or trustee done by him while occupying such a position in violation of this section shall be determined by the statutory and common law of the state relating to corporations, trusts, or associations.

(d) The attorney general may bring an action at any time to cause a director, officer, or trustee who may be occupying such a position in violation of this section, to vacate the office or offices to effect the termination of the prohibited interlocking relationship.

(e) A person affected by an act of a director, officer, or trustee may bring an action at any time to cause the director, officer, or trustee who may be occupying such a position in violation of this section to terminate the prohibited interlocking relationship.

(f) The court, upon finding that a director, officer, or trustee is holding office in violation of this section, shall order the person to terminate the interlocking relationship, and, in the case of a trustee, the court may, when it considers it appropriate, order the trustee to vacate his office. A remedy provided in this section does

not limit and is in addition to any other remedy available under another section of this chapter or another law.

Sec. 45.52.060. EXEMPTIONS. (a) This chapter does not forbid the existence or operation of labor, agricultural or horticultural organizations created for the purpose of mutual help, and not conducted for profit, or forbid or restrain members of those organizations from lawfully carrying out the legitimate objectives of them; nor are these organizations or members illegal combinations or conspiracies in restraint of trade under the provisions of this chapter.

Pre-emption clause for Feds

(b) This chapter does not forbid actions or arrangements authorized or regulated under the laws of the United States which exempt these actions or arrangements from application of the antitrust laws of the United States or under the following statutes of this state:

(1) AS 06.05.235; banks

(2) AS 10.15; and co-ops

(3) AS 31.05.110. - unitization

(c) This chapter does not forbid persons engaged in the fishing industry as fishermen, catching or collecting aquatic products, from acting together in associations for the purpose of catching, collecting, or preparing for market their product.

(d) This chapter does not apply to public utilities which have been issued a certificate of public convenience and necessity under AS 42.05. - P. Utilities

(e) This chapter does not apply to carriers regulated under AS 42.10, AS 42.15, and AS 02.05, or to ferries regulated under AS 42.25.

Motor Carriers Buses Air Carriers Ferries

(f) This chapter does not apply to banks and financial institutions regulated under AS 06. Banks

General exemption Section

(g) This chapter does not forbid activities expressly required by a regulatory agency of the state. Activities permitted by a regu-

latory agency of the state are not forbidden by this chapter if the regulatory agency has given due consideration to the possible anti-competitive effects before permitting the activities, and enforcement of the provisions of this chapter would be disruptive of the regulatory scheme.

(h) This chapter does not forbid actions or arrangements ~~expressly~~ necessary ~~required under~~ to carry out the provisions of the Alaska Native Claims Settlement Act.

ARTICLE 2. ENFORCEMENT PROVISIONS.

Sec. 45.52.100. CONTRACTS VOIDABLE. A contract or agreement in violation of a provision of this chapter is voidable by either party as to future performance by either party; however, the court may, in its discretion, order payment for goods or services already received to prevent unjust enrichment.

Sec. 45.52.110. SUITS BY PERSONS INJURED. (a) A person who is injured in his business or property by a violation of secs. 10, 20, 30, 40 or 50 of this chapter, or a person so injured because he refuses to accede to a proposal for an arrangement which, if consummated, would be a violation of secs. 10, 20, 30, 40 or 50 of this chapter, may bring a civil action

(1) for damages sustained by him, and if the judgment is for the plaintiff and the trier of fact finds that the defendant's conduct was wilfull, the plaintiff shall be awarded threefold the amount of damages sustained by him, plus the costs of the suit, including reasonable attorney fees; and original version did not have "wilfull" mandatory treble damages are in fed statute

(2) to enjoin the unlawful practice, and if judgment is for the plaintiff, he may be awarded the costs of the suit, including reasonable attorney fees. injunction

(b) When the state, a home rule or general law city or borough or other government entity is injured by reason of a violation of

secs. 10, 20, 30, 40 or 50 of this chapter, it may maintain an action in the same manner as prescribed in (a) of this section for an injured person; and the state, city, borough, or other governmental entity is entitled to the same relief as provided in (a) of this section.

Sec. 45.52.120. CERTAIN VIOLATIONS CONSTITUTE MISDEMEANOR. A person who violates secs. 10 or 20 30 was deleted Not a criminal Act under Clayton less serious offenses of this chapter is guilty of a misdemeanor and, upon conviction is punishable, if a natural person, by a fine of not more than $20,000 or by imprisonment for not more than one year, or by both; and if not a natural person, by a fine of not more than $50,000. – Feds are a straight $50,000

Sec. 45.52.130. INJUNCTION BY ATTORNEY GENERAL. (a) In addition to any other relief provided by this chapter, the attorney general may bring an action to enjoin a violation of this chapter. This action may be brought as a sole action or in conjunction with another action which the attorney general is authorized to bring.

(b) The court may make additional orders or judgments as may be necessary to restore to a person in interest any money or property, real or personal, which may have been acquired by an act prohibited by this chapter, and as may be necessary to prevent continuing or future violations of this chapter. Taxi cab case for equity

Sec. 45.52.140. JURISDICTION OF COURT. An action arising under this chapter shall be brought in the superior court.

Sec. 45.52.150. CONSENT JUDGMENT. (a) In an action maintained under this chapter, the parties to it may file with the court a consent judgment or decree. The consent judgment or decree shall set out the alleged violations, future obligations of the parties, if any, damages, or other relief, the defendant agrees to make, if any, and the reasons for entering into the consent judgment or decree.

(b) No consent judgment or decree becomes final until 60 days

this is O.K. if you trust A.G. and courts

Nolo contendre - criminal cases - plea of no contest (spite action) - if left in hands would ever plead nolo contendre

You can't use nolo contendre as evidence in civil suit as you could use "guilty plea"

plaintiff has to prove 51% (preponderence of evidence) prima facie evidence is enough to win suit

from its filing. During the 60-day period an interested party may file verified exceptions to the form or substance of the consent judgment or decree, and the court, upon a full hearing on those exceptions, may approve or refuse to enter the consent judgment or decree.

Sec. 45.52.160. JUDGMENT IN FAVOR OF THE STATE AS EVIDENCE IN ACTION. A final judgment rendered in a civil or criminal action brought by the state under this chapter, including a judgement rendered under a plea of nolo contendre, is prima facie evidence against the defendant in any other action under this chapter brought by another party, or by the state, a city, a borough, or other governmental entity; however, this section does not apply to consent judgments or decrees entered under sec. 150 of this chapter.

Sec. 45.52.170. LIMITATION OF ACTIONS. An action to enforce a claim arising under this chapter is barred unless commenced within four years after the claim accrues, except that when an action is brought by the attorney general under this chapter, the running of this period of limitation, with respect to every private right of action for damages which is based in whole or in part on a matter complained of in the action by the attorney general, shall be suspended during the pendency of the action brought by the attorney general. For the purpose of this section, a claim for a continuing violation is considered to accrue at any time during the period of the violation.

ARTICLE 3. INVESTIGATORY POWERS. Historically allowed to stall to prove A.G. had probable cause

Sec. 45.52.200. POWERS OF THE ATTORNEY GENERAL. If the attorney general has reasonable cause determines, upon complaint or otherwise, that a person has engaged in, or engages in, or is about to engage in an act or practice prohibited or declared unlawful by this chapter, or that a person has assisted or participated in a plan, scheme, agreement or combination of the nature described in this chapter, or when he believes it to be in the public interest, the attorney general may commence an investigation.

D.A. doesn't need reasonable cause to go to grand jury to start investigation

The attorney general may compel production of documentary material and take testimony, under oath, before the institution of an action under this chapter.

Sec. 45.52.210. DOCUMENTARY EVIDENCE. (a) If the attorney general reasonable cause determines that a person is in possession, custody, or control of a documentary evidence, wherever situated, which he believes to be relevant to an investigation authorized in sec. 200 of this chapter, he may execute in writing and cause to be served upon that person an investigative demand requiring him to produce the documentary material and permit inspection and copying.

(b) Each demand shall

(1) state the specific statute the alleged violation of which is under investigation, and the general subject matter of the investigation;

(2) describe, with reasonable specificity so as fairly to indicate the material demanded, the documentary material to be produced;

(3) prescribe a return date within which the documentary material is to be produced; and

(4) identify the state employees or representatives to whom the documentary material is to be made available for inspection and copying.

(c) No demand may

(1) require the production of documentary material which would be privileged from disclosure if demanded by a subpoena duces tecum issued by a court of the state; or

(2) contain a requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of the state; however, this shall not limit the power of the attorney general to require production of documents located outside the state

which pertain to matters affecting the state.

(d) The demand may be served by the attorney general or his designee by

(1) delivering a copy of it to the person to be served, or, if the person is not a natural person, to an officer of the person to be served;

(2) delivering a copy of it to a place of business in the state of the person to be served; or

(3) mailing by registered or certified mail a copy of it addressed to the person to be served at a place of business in the state, or, if the person has no place of business in the state, to his principal office or place of business.

(e) No documentary material produced pursuant to a demand, or copies of it, unless otherwise ordered by a superior court for good cause shown, may be produced for inspection or copying by, nor may its contents be disclosed, to anyone other than an authorized employee of the state without the consent of the person who produced the material. However, under those reasonable terms and conditions the attorney general prescribes, copies of the documentary material shall be available for inspection and copying by the person who produced the material or an authorized representative of him. The attorney general, or his designee, may use copies of the documentary material as he considers necessary in the enforcement of this chapter, including presentation before a court; however, material which contains trade secrets may not be presented except with the approval of the court in which the action is pending after adequate notice to the person furnishing the material.

(f) At any time before the return date specified in the demand, or within 20 days after the demand has been served, whichever period is shorter, a petition to extend the return date for, or to modify or

set aside a demand issued under (a) of this section, stating good cause, may be filed in the superior court for the judicial district where the parties reside. A petition by a person on whom a demand is served, stating good cause, to require the attorney general or another person to act in accordance with the requirements of (e) of this section, and all other petitions in connection with a demand, may be filed in the superior court for the judicial district in which the person on whom the demand is served resides.

(g) A person upon whom a demand is served under this section shall comply with the terms of the demand unless otherwise provided by an order of court issued in response to a petition filed under (f) of this section. A person who, with intent to avoid, prevent, or obstruct compliance, in whole or in part, with an investigative demand under this section removes from any place, conceals, withholds, or destroys, mutilates, alters, or by any other means falsifies, a documentary material in the possession, custody, or control of a person which is the subject of a demand duly served upon any person, or who otherwise wilfully disobeys any such demand, is guilty of a misdemeanor, and is punishable upon conviction by a fine of not more than $5,000, or by imprisonment for a term of not more than one year, or by both. Failure of the state to serve the demand properly under (d) of this section is a defense to prosecution under this subsection, but invalidity of the demand under (b) or (c) of this section is not a defense, and that invalidity may be tested only in an action under (f) of this section to modify or set aside the demand.

(h) Nothing in this section impairs the authority of the attorney general or his designee to lay before a grand jury of this state evidence concerning a violation of this chapter, to invoke the power of a court to compel the production of evidence before a grand jury,

or to file a civil complaint or criminal information alleging a violation of this chapter.

Sec. 45.52.220. TESTIMONY OF WITNESSES. (a) In connection with an investigation authorized by sec. 200 of this chapter, the attorney general may issue an investigative demand compelling the attendance of a person for examination under oath before himself or before a court of record.

(b) Each demand shall

(1) state the specific statute the alleged violation of which is under investigation, and the general subject matter of the investigation;

(2) state the date, time and place at which the examination is to take place.

(c) A demand may be served by the attorney general, or his designee, in accordance with the procedures prescribed in sec. 210(d) of this chapter.

"use immunity"
"transactional immunity" - more protective

(d) If a person ordered to attend the inquiry fails to attend without good cause, he is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $5,000, or by imprisonment for not more than one year, or by both. If a person in attendance at the inquiry refuses to answer a question on the ground that he may be incriminated by his answer, and if the attorney general, or his designee, in a writing directed to the person being questioned orders the person to answer the question, the person shall comply with the order. After complying, and if but for this section he would have been privileged to withhold the answer given, he may not be prosecuted for an offense or subjected to a penalty or forfeiture for or on account of a transaction, matter or thing concerning which he gave evidence. However, he may nevertheless be prosecuted or subjected to penalty or forfeiture for a perjury, false

Violation 5th Amend

swearing or contempt committed in answering or failing to answer. If a person refuses to testify after being granted immunity from prosecution and after being ordered to testify, he may be adjudged in contempt and committed to jail until the time he purges himself of contempt by testifying. A grant of immunity does not prevent the attorney general from instituting civil contempt proceedings against a person who violates any of the above provisions.

ARTICLE 4. GENERAL PROVISIONS.

Sec. 45.52.300. DEFINITIONS. In this chapter

(1) "asset" includes any property, tangible or intangible, real, personal, or mixed and wherever located, and any other thing of value;

(2) "documentary evidence" includes an original or copy of a book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical tabulation, magnetic tape, or other computer data storage system, or other tangible document or recording;

(3) "trade" and "commerce" include but are not limited to, trade in goods, merchandise, natural resources, whether or not severed, extracted, harvested or produced, agricultural products, produce, choses in action, commodities, and any other article of commerce; they include trade or business in service trades, transportation, banking, lending, advertising, bonding and any other business whether or not that business furnishes a personal service.

Offered: 2/10/75
Referred: Commerce

IN THE SENATE BY KERTTULA

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 5

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act prohibiting monopolies and combinations in restraint of trade."

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

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

CHAPTER 52. MONOPOLIES; RESTRAINT OF TRADE.

ARTICLE 1. SUBSTANTIVE PROVISIONS.

Sec. 45.52.010. COMBINATIONS IN RESTRAINT OF TRADE UNLAWFUL. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce is unlawful.

Sec. 45.52.020. MONOPOLIES AND ATTEMPTED MONOPOLIES UNLAWFUL. It is unlawful for a person to monopolize, or attempt to monopolize, or combine or conspire with another person to monopolize any part of trade or commerce.

Sec. 45.52.030. TRANSACTIONS AND AGREEMENTS NOT TO USE OR DEAL IN COMMODITIES OR SERVICES UNLAWFUL. It is unlawful for a person to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, or services, whether patented or unpatented, for use, consumption, enjoyment, or resale, or fix a price charged for it, or discount from, or rebate upon, that price, on the condition, agreement, or understanding that the lessee or purchaser will not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodity or service of a competitor or competitors of the lessor or seller, if the effect of the lease, sale or contract for sale, or of the condition, agreement, or understanding may be sub-

stantially to lessen competition or tend to create a monopoly in any line of commerce.

Sec. 45.52.040. UNFAIR COMPETITION, DECEPTIVE PRACTICES UNLAWFUL. Unfair methods of competition or deceptive practices in the conduct of trade or commerce is unlawful.

Already is in Consumer Protection

delete

Sec. 45.52.050. MERGERS, ACQUISITIONS, UNLAWFUL WHEN COMPETITION LESSENED. (a) It is unlawful for a person to acquire and hold, directly or indirectly, the whole or a part of the stock, other share capital, or assets of any other corporation whether or not acquired before the effective date of this Act if the effect of the acquisition and holding may be substantially to lessen competition or to tend to create a monopoly in any line of commerce in the state or in a section of the state. This subsection does not apply to persons purchasing such stock solely for investment if it is not used by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nothing in this subsection prevents a corporation from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions of it, or from owning and holding all or a part of the stock of the subsidiary corporation, when the effect of the formation is not substantially to lessen competition.

delete Unconstitutional get monopolies under 020

(b) When the court finds that the effect of the holding of such stock, share capital, or assets is substantially to lessen competition or tends to create a monopoly, the court shall order the divestiture or other disposition of the stock, share capital, or assets and shall prescribe a reasonable time, manner, and degree of the divestiture or other disposition of it. However, the court may not order the divestiture or other disposition of the assets of the corporation unless it is

redrafted in CS to make clear

necessary to eliminate the lessening of competition or the tendency to create a monopoly.

(c) This section does not apply to mergers, acquisitions or holding companies permitted by AS 06.05.235 nor to a merger carried out in accordance with AS 21.69.590 - 21.69.600, nor to mergers, acquisitions or holding companies permitted and regulated by a regulatory agency of the United States having jurisdiction and control over those mergers and acquisitions.

Sec. 45.52.060. INTERLOCKING DIRECTORATES AND RELATIONSHIPS. (a) It is unlawful for a person to be at the same time a director, officer, partner, or trustee in any two or more firms, partnerships, trusts, associations, or corporations or any combination of them engaged in commerce, if these firms, partnerships, trusts, associations, or corporations or a combination of them, are or have been by virtue of their business and location or operation, competitors; or if the effect may be substantially to lessen competition or tend to create a monopoly.

(b) No person may by the use of a representative accomplish the result prohibited in (a) of this section.

(c) The validity or invalidity of an act of a director, officer, or trustee done by him while occupying such a position in violation of this section shall be determined by the statutory and common law of this state relating to corporations, trusts, or associations.

(d) The attorney general may bring an action at any time to cause a director, officer, or trustee who may be occupying such a position in violation of this section, to vacate the office or offices to effect the termination of the prohibited interlocking relationship.

(e) A person affected by an act of a director, officer, or trustee may bring an action at any time to cause the director, officer,

or trustee who may be occupying such a position in violation of this section to terminate the prohibited interlocking relationship.

(f) The court, upon finding that a director, officer, or trustee is holding office in violation of this section, shall order the person to terminate the interlocking relationship, and, in the case of a trustee, the court may, when it considers appropriate, order the trustee to vacate his office. A remedy provided in this section does not limit and is in addition to any other remedy available under another section of this chapter or another law.

Sec. 45.52.070. EXEMPTIONS. (a) This chapter does not forbid the existence or operation of labor, agricultural or horticultural organizations created for the purpose of mutual help, and not conducted for profit, or forbid or restrain members of those organizations from lawfully carrying out the legitimate objectives of them; nor are those organizations or members illegal combinations or conspiracies in restraint of trade under the provisions of this chapter.

(b) This chapter does not forbid actions or arrangements authorized or regulated under those laws of the United States which exempt those actions or arrangements from the antitrust laws of the United States or under the following statutes of this state:

(1) AS 06.05.235; and

(2) AS 10.15.

(c) Persons engaged in the business of commercial fishing may act together in associations, corporate or otherwise, with or without capital stock in collectively handling and marketing fish without violating the provisions of this chapter. These associations may have marketing agencies in common; and these associations and their members may make the necessary contracts and agreements to effect those purposes.

ARTICLE 2. ENFORCEMENT PROVISIONS.

Sec. 45.52.100. CONTRACTS VOIDABLE. A contract or agreement in violation of a provision of this chapter is voidable by either party as to future performance by either party; however, the court may, in its discretion, order payment for goods or services already received to prevent unjust enrichment.

Sec. 45.52.110. SUITS BY PERSONS INJURED. (a) A person who is injured in his business or property by a violation of secs. 10, 20, 30, 40, 50 or 60 of this chapter, or a person so injured because he refuses to accede to a proposal for an arrangement which, if consummated, would be a violation of secs. 10, 20, 30, 40, 50 or 60 of this chapter, may bring a civil action

(1) for damages sustained by him, and if the judgment is for the plaintiff, he shall be awarded threefold the amount of damages sustained by him, together with the costs of the suit, including reasonable attorney fees; and

(2) to enjoin the unlawful practice, and if judgment is for the plaintiff, he shall be awarded the costs of the suit, including reasonable attorney fees.

(b) When the state, a home rule or general law city or borough or other government entity is injured by reason of a violation of secs. 10, 20, 30, 40, 50 or 60 of this chapter, it may maintain an action in the same manner as prescribed in (a) of this section for an injured person; and the state, city, borough, or other governmental entity is entitled to the same relief as provided in (a) of this section.

not criminal under Clayton Act
less serious offenses

Sec. 45.52.120. CERTAIN VIOLATIONS CONSTITUTE MISDEMEANOR. A person who violates secs. 10, 20, or 30 of this chapter is guilty of a misdemeanor and, upon conviction, is punishable, if a natural person,

by a fine of not more than $20,000 or by imprisonment for not more than one year, or by both; and if not a natural person, by a fine of not more than $50,000.

Sec. 45.52.130. INJUNCTION BY ATTORNEY GENERAL. (a) In addition to any other relief provided by this chapter, the attorney general may bring an action to enjoin a violation of this chapter. This action may be brought as a sole action or in conjunction with another action which the attorney general is authorized to bring.

(b) The court may make additional orders or judgments as may be necessary to restore to a person in interest any money or property, real or personal, which may have been acquired by an act prohibited by this chapter; and as may be necessary to prevent continuing or future violations of this chapter.

Sec. 45.52.140. JURISDICTION OF COURT. An action arising under this chapter shall be brought in the superior court.

Sec. 45.52.150. CONSENT JUDGMENT. (a) In an action maintained under this chapter, the parties to it may file with the court a consent judgment or decree. The consent judgment or decree shall set out the alleged violations, future obligations of the parties, if any, damages, or other relief, the defendant agrees to make, if any, and the reasons for entering into the consent judgment or decree.

(b) No consent judgment or decree becomes final until 60 days from its filing. During the 60-day period an interested party may file verified exceptions to the form or substance of the consent judgment or decree, and the court, upon a full hearing on those exceptions, may approve, refuse to enter, or may modify the consent judgment or decree.

Sec. 45.52.160. JUDGMENT IN FAVOR OF THE STATE AS EVIDENCE IN ACTION. A final judgment rendered in a civil or criminal action

brought by the state under this chapter, including a judgment rendered under a plea of nolo contendre, is prima facie evidence against the defendant in any other action under this chapter brought by another party, or by the state, a city, a borough, or other governmental entity; however, this section does not apply to consent judgments or decrees entered under sec. 150 of this chapter.

Sec. 45.52.170. LIMITATION OF ACTIONS. An action to enforce a claim arising under this chapter is barred unless commenced within four years after the claim accrues, except that when an action is brought by the attorney general under this chapter, the running of this period of limitation, with respect to every private right of action for damages which is based in whole or in part on a matter complained of in the action by the attorney general, shall be suspended during the pendency of the action brought by the attorney general. For the purpose of this section, a claim for a continuing violation is considered to accrue at any time during the period of the violation.

ARTICLE 3. INVESTIGATORY POWERS.

Sec. 45.52.200. POWERS OF THE ATTORNEY GENERAL. When it appears to the attorney general, either upon complaint or otherwise, that a person has engaged in, or engages in, or is about to engage in an act or practice prohibited or declared unlawful by this chapter, or that a person has assisted or participated in a plan, scheme, agreement or combination of the nature described in this chapter, or when he believes it to be in the public interest, the attorney general may commence an investigation. The attorney general may compel production of documentary material and take testimony, under oath, before the institution of an action under this chapter.

Sec. 45.52.210. DOCUMENTARY EVIDENCE. (a) When the attorney

general believes that a person may be in possession, custody, or control of a documentary evidence, wherever situated, which he believes to be relevant to the investigation authorized in sec. 200 of this chapter, he may execute in writing and cause to be served upon that person, an investigative demand requiring him to produce the documentary material and permit inspection and copying.

(b) Each demand shall

(1) state the specific statute alleged violation of which is under investigation, and the general subject matter of the investigation;

(2) describe, with reasonable specificity so as fairly to indicate the material demanded, the documentary material to be produced;

(3) prescribe a return date within which the documentary material is to be produced; and

(4) identify the state employees or representatives to whom the documentary material is to be made available for inspection and copying.

(c) No demand may

(1) require the production of a documentary material which would be privileged from disclosure if demanded by a subpoena duces tecum issued by a court of this state; or

(2) contain a requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of this state.

(d) The demand may be served by the attorney general or his designee by

(1) delivering a copy of it to the person to be served, or, if that person is not a natural person, to an officer of the person to be served;

(2) delivering a copy of it to a place of business in this state of the person to be served; or

(3) mailing by registered or certified mail a copy of it addressed to the person to be served at a place of business in this state, or, if that person has no place of business in this state, to his principal office or place of business.

(e) No documentary material produced pursuant to a demand, or copies of it, unless otherwise ordered by a superior court for good cause shown, may be produced for inspection or copying by, nor may its contents be disclosed to anyone, other than an authorized employee of the state, without the consent of the person who produced the material. However, under those reasonable terms and conditions the attorney general prescribes, copies of the documentary material shall be available for inspection and copying by the person who produced the material or an authorized representative of him. The attorney general, or his designee, may use copies of the documentary material as he considers necessary in the enforcement of this chapter, including presentation before a court; however, material which contains trade secrets may not be presented except with the approval of the court in which the action is pending after adequate notice to the person furnishing the material.

(f) At any time before the return date specified in the demand, or within 20 days after the demand has been served, whichever period is shorter, a petition to extend the return date for, or to modify or set aside a demand issued under (a) of this section, stating good cause, may be filed in the superior court for the judicial district where the parties reside. A petition by the person on whom the demand is served, stating good cause, to require the attorney general or another person to perform a duty imposed by this section, and all

other petitions in connection with a demand, may be filed in the superior court for the judicial district in which the person on whom the demand is served resides.

(g) A person upon whom a demand is served under this section shall comply with the terms of the demand unless otherwise provided by an order of court issued in response to a petition filed under (f) of this section. A person who, with intent to avoid, prevent, or obstruct compliance, in whole or in part, with an investigative demand under this section, (1) removes from any place, (2) conceals, (3) withholds, or (4) destroys, mutilates, alters, or by any other means falsifies, a documentary material in the possession, custody, or control of a person which is the subject of a demand duly served upon any person, or who (5) otherwise wilfully disobeys any such demand, is guilty of a misdemeanor, and is punishable, upon conviction, by a fine of not more than $5,000, or by imprisonment for a term of not more than one year, or by both. Failure of the state to serve the demand properly under (d) of this section is a defense to prosecution under this subsection, but invalidity of the demand under (b) or (c) of this section is not a defense, and that invalidity may be tested only in an action under (f) of this section to modify or set aside the demand.

(h) Nothing in this section impairs the authority of the attorney general or his designee to (1) lay before a grand jury of this state evidence concerning a violation of this chapter, (2) invoke the power of a court to compel the production of evidence before a grand jury, or (3) file a civil complaint or criminal information alleging a violation of this chapter.

Sec. 45.52.220. TESTIMONY OF WITNESSES. (a) In connection with an investigation authorized by sec. 200 of this chapter, the attorney general may issue an investigative demand compelling the attendance of

a person for examination under oath before himself or before a court of record.

(b) Each demand shall

(1) state the specific statute alleged violation of which is under investigation, and the general subject matter of the investigation;

(2) state the date, time and place at which the examination is to take place.

(c) A demand may be served by the attorney general, or his designee, in accordance with the procedures prescribed in sec. 210(d) of this chapter.

(d) If a person ordered to attend the inquiry fails to attend without good cause, he is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not more than $5,000, or by imprisonment for not more than one year, or by both. If a person in attendance at that inquiry refuses to answer a question on the ground that he may be incriminated by his answer, and if the attorney general, or his designee, in a writing directed to the person being questioned orders that person to answer the question, that person shall comply with the order. After complying, and if but for this section he would have been privileged to withhold the answer given, he may not be prosecuted for an offense or subjected to a penalty or forfeiture for or on account of a transaction, matter or thing concerning which he gave evidence. However, he may nevertheless be prosecuted or subjected to penalty or forfeiture for a perjury, false swearing or contempt committed in answering, or failing to answer. If a person refuses to testify after being granted immunity from prosecution and after being ordered to testify, he may be adjudged in contempt and committed to jail until the time he purges himself of contempt by testifying.

A grant of immunity does not prevent the attorney general from instituting civil contempt proceedings against a person who violates any of the above provisions.

ARTICLE 4. GENERAL PROVISIONS.

Sec. 45.52.300. DEFINITIONS. In this chapter

(1) "asset" includes any property, tangible or intangible, real, personal, or mixed and wherever located, and any other thing of value;

(2) "documentary evidence" includes an original or copy of a book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph. mechanical tabulation, magnetic tape, or other computer data storage system, or other tangible document or recording;

(3) "trade" and "commerce" include but are not limited to, trade in goods; merchandise; natural resources, whether or not severed, extracted, harvested or produced; agricultural products; produce; choses in action; commodities; and any other article of commerce; they include trade or business in service trades, transportation, banking, lending, advertising, bonding and any other business whether or not that business furnishes a personal service.

CSSB

28 AM

"An Act relating to the capacity of persons to consent to marriage; and providing for an effective date."

COMMITTEE REPORT

2/26/75

HOUSE

Mr. Speaker: Date _____

The Committee on JUDICIARY has had CSSB 28 am

under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

"An Act relating to the capacity of persons to consent to marriage; and providing for an effective date."

COMMITTEE REPORT

3/14/75

HOUSE

Mr. Speaker: Date _____

The Committee on JUDICIARY has had HCS CSSB 28 am H under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

(X) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends: Do Pass

_____ recommends:

_____ recommends:

_____ Chairman

AMENDMENT

OFFERED IN THE HOUSE: BY: Judiciary Committee

To: _____ HOUSE BILL No. _____

SENATE BILL No. HCS CS SB 20 am House

PAGE: _____ LINE: _____

Amendment adopted on floor:

page 1, line 20 DELETE "over 13" and INSERT "who has reached the age of 16"

JUDICIARY COMMITTEE AMENDMENTS

page 1, line 26 DELETE "over 13" and insert "who has reached the age of 14"

page 2, before line 1 ADD a new (1) that the parents have given their consent, or

renumber line 1 (1) to (2)

and line 7 (2) to (3)

House CS CSSB 28 am House

Judiciary committee recommendation, March 19, 1975

* Sec. 2. AS 25.05.171 is repealed and re-enacted to read:

Sec. 25.05.171. PERSONS CAPABLE OF CONSENTING TO MARRIAGE: MINIMUM AGES, AND CONSENT OF PARENTS OR GUARDIAN. (a) A person who has reached the age of 16 but under the age of 18 years shall be issued a marriage license if the written consent of the parents of each person who is underage, or of the parent having actual care, custody and control, or of his or her guardian is filed with the licensing officer issuing the marriage license as provided in sec. 111 of this chapter.

(b) A superior court judge may grant permission for a person who has reached the age of 14 but under 18 years of age to marry and order the licensing officer to issue the license if he finds, following a hearing at which the parents and children are given the opportunity to appear and be heard, .

(1) that the parents have given their consent, or

(2) that the parents are

(A) arbitrarily and capriciously withholding consent; or

(B) absent or oth rwide unaccountable; or

(C) in disagreement amongst themselves on the question; or

(D) unfit to decide the matter; and

(3) that the marriage is in the best interest of the minor.

as it appears with amend. adopted in 2nd rdg & Judiciary Committee proposed amendments

House CS CSSB 28 am House

Judiciary committee recommendation, March 19, 1975

* Sec. 2. AS 25.05.171 is repealed and re-enacted to read:

Sec. 25.05.171. PERSONS CAPABLE OF CONSENTING TO MARRIAGE: MINIMUM AGES, AND CONSENT OF PARENTS OR GUARDIAN. (a) A person who has reached the age of 16 but under the age of 18 years shall be issued a marriage license if the written consent of the parents of each person who is underage, or of the parent having actual care, custody and control, or of his or her guardian is filed with the licensing officer issuing the marriage license as provided in sec. 111 of this chapter.

(b) A superior court judge may grant permission for a person who has reached the age of 14 but under 18 years of age to marry and order the licensing officer to issue the license if he finds, following a hearing at which the parents and children are given the opportunity to appear and be heard,

(1) that the parents have given their consent, or

(2) that the parents are

(A) arbitrarily and capriciously withholding consent; or

(B) absent or otherwide unaccountable; or

(C) in disagreement amongst themselves on the question; or

(D) unfit to decide the matter; and

(3) that the marriage is in the best interest of the minor.

House Judiciary Committee
March 3, 1975

The meeting was called to order at 1:15 p.m. by Chairman Gardiner. All members were present except Rep. Bradley and Rep. Specking.

CS SB 28 am Marriage

Rep. Brown moved that the bill pass with the HESS amendment and the following amendments to lines 14 and 20: After 18 years of age ADD "but above the age of 13 years" Mr. Fink objected. Mr. Brown withdrew his motion. Mr. Brown moved the above amendment only. Amendment 1 to lines 14 and 20 passed.

Mr. Fink moved the following amendment to line 20 after parental consent INSERT language that in essence says "due to parental absence, disagreement between the two parents, or if the parents are determined unfit. Mr. Parr moved to amend Mr. Fink's amendment by adding that the parents withhold consent for arbitrary or capricious reasons. Amendment 2 as amended by Mr. Parr passed.

Mr. Cotton moved that a section be added to state that members of the military service of the U.S. are not prevented from marriage by any sections of this act. Amendment 3 passed.

The committee asked that a CS be prepared to incorporate the above amendments before the committee moves the bill out of committee.

HB 59 Teacher Tenure

Mr. Brown moved the bill out of committee with a do pass. There being no objection, the bill was passed out of committee.

House Judiciary Committee
March 6, 1975

The meeting was called to order at 11:30 a.m. by Chairman Gardiner. All members were present except Reps. Brown and Parr.

CS CS SB 28 Marriage

The committee reviewed the proposed Judiciary CS. Mr. Fink moved and asked unanimous consent that H CS for CS for SB 28 pass out of committee with a do pass recommendation. There being no objections, it was so ordered.

HB 237/238 Divorce

Speaker Bradner, sponsor of the legislation testified that HB 237 was intended to provide for an informal forum outside the Rules of Court Procedure. He suggested the following amendments:

p 1, line 14 - within 30 days after
p 1, line 23 - delete "himself"
p 2 - delete section (e)
add a section stating that counsel may be present

He explained the purposes of HB 238 as follows: if custody is at issue, the court will be notified and will consider the possibility of appointing a lawyer for the child. It specifies the method of payment for the lawyer. Mr. Fink raised the question of why legal services would have a special exception.

The meeting adjourned at 12:10 p.m. and was reconvened at 1:20 p.m. All members were present except Mr. Parr and Mr. Brown.

Art Snowden testified that the Court system had no objections to the bills.

Don Clocksin of Alaska Legal Services stated that they supported HB 237 with the following amendments:
- p 1, line 14 - within 30 days after all necessary papers (cross complaints) had been filed
- p 1, line 20 - may, at any time,
- p 1, line 23 - delete "himself"
- p 2 - delete section (e)

Mr. Fink stated that if (e) were deleted, "himself could be retained for those circumstances where only the judge would be qualified to do the mediation. There was no objection from anyone present.
Mr. Clocksin continued that he thought that the right to counsel in attendance at mediation was implied, but if there was a question to add language to that effect. "Parties to the action and their counsel, if they choose . . "

586-1458

LEAGUE OF WOMEN VOTERS OF ALASKA
128-B Behrends Avenue
Juneau, Alaska 99801

Representative Terry Gardiner
Chairman, House Judiciary Committee
Alaska State Legislature
Pouch V, State Capitol
Juneau, Alaska 99801

re: CSSB 28 am - Age for Consent to Marriage

Dear Representative Gardiner:

The League of Women Voters of Alaska supports CSSB 28 am only if Section 1(c) is amended to permit a judge to have more latitude in making a decision.

We agree there is a need to revise the law in elation to the age for consent to marriage because of the revisor statute error in 1974. However, we do not feel it is necessary to alter the law in such a way as to make it more restrictive in its other provisions such as would be the case with the proposed (c) of Section 1 - "where there is evidence of actual or potential physical trauma."

A person under the age of 18 years may be an emancipated youth or may have other reasons that prevent him from obtaining parental consent. Each case should be judged on its own merits. Therefore we recommend the following amendment to CSSB 28 am:

Section 1(c): remove all wording in line 22 after the word "marry" and substitute the words "if there is substantial reason to believe that marriage is in the best interests of the persons involved."

Or,

---reinstate Section 1(b)(1) from SB 28
---change Section 1(b)(2) to read: "if parental consent is unobtainable, after such showing as the superior court may require, an order of the court granting permission to the underage person to marry."
---reinstate Section 1(c)

Very truly yours,

LEAGUE OF WOMEN VOTERS OF ALASKA

Judy Hopkins

c: Robert H. Ziegler, Sr.

SB

44

"An Act relating to the negligent use of smoking materials."

COMMITTEE REPORT

2-6-75

HOUSE

Mr. Speaker: Date Feb. 13, 1975

The Committee on JUDICIARY has had SB 44 under consideration. A Majority of the members of the Committee

(X) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR SB44 AND THAT CS FOR SB44 DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

House Judiciary Committee
Statement of Intent - House CS SB 44

This new criminal offense is not intended to preclude prosecutions for other criminal offenses in appropriate cases.

Original Sponsor: Ray

IN THE SENATE BY THE JUDICIARY COMMITTEE

HOUSE CS FOR SENATE BILL NO. 44

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the negligent use of combustible materials."

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

* Section 1. AS 11.15 is amended by adding a new section to read:

Sec. 11.15.340. NEGLIGENT USE OF COMBUSTIBLE MATERIALS. A person who negligently or recklessly causes a fire which results in physical harm to another person or in damage to the property of another is guilty of a misdemeanor, and upon conviction is punishable by imprisonment for not more than one year, or by a fine of not more than $500, or by both.

changes

1.) property of another

2.) all negligently or recklessly

3.) Text

AUTION

ANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 70-27

IT IS UNLAWFUL TO SMOKE IN BED

32.05.010. SMOKING. Whoever, by reason of careless or willful conduct in smoking or in the use of lighters or matches shall set fire to any bedding, carpet, curtains, drapes, furniture, household equipment or other goods or chattels or to any building shall be guilty of a misdemeanor.

32.05.020. DEFINITION. The term "careless conduct in smoking" shall include as used herein, any of the following acts of commission or ommission.

Permitting a spark or sparks from a lighted cigar, cigarette, or pipe to fall upon or into anything flammable; placing any lighted smoking material on or about or in close proximity to any flammable article or articles; falling asleep with lighted smoking material of any kind at hand; throwing lighted smoking material out of a window or into an elevator pit or elsewhere than in a proper receptacle therefore; dropping a lighted cigarette or cigar or part thereof into a mail chute in any building; failure to extinguish the fire of a match or any kind of lighter device after use of the same; failure to destroy the lighted part of a cigar or cigarette when disposing of it; failure to destroy the burning smidgen or smidgens of tobacco from a pipe when cleaning or unloading a pipe.

32.05.030. NOTICE TO BE POSTED. A plainly printed notice of the provisions of this chapter shall be posted in a conspicious place in every sleeping room of every hotel, motel, rooming house, tourist home, tourist court, or other place renting rooms for the accomodation of the public. Such notice shall be posted by the owner, proprietor, lessee or managing agent of such establishment.

32.05.040. VIOLATIONS A MISDEMEANOR. Any person, firm, copartnership or corporation violating any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than three hundred dollars ($300.00) and imprisoned for not more than thirty (30) days, or both.

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FIRE MARSHAL, CITY AND BOROUGH OF JUNEAU

MINER PUBLISHING CO.

HB 6

Amendmert proposed by Rep. Parr

Line 13

in da age to the property of another,

---

language in SB 44 which has passed the Senate

Line 13

to another person is guilty

---

proposed language of letter of intent

This new criminal offense is not intended to preclude prosecutions for homicide in appropriate cases.

A M E N D M E N T

IN THE HOUSE BY THE JUDICIARY COMMITTEE

TC: HOUSE BILL NO. 6

Page 1, line 6: delete all matter and insert:

"For an Act entitled: "An Act relating to the negligent use of flammable materials."

Page 1, line 10: delete all matter and insert:

"Sec. 11.15.340. NEGLIGENT USE OF FLAMMABLE MATERIALS. A person who negligently or recklessly causes a fire-"

Page 1, line 13: delete all matter and insert:

"to another person or in damage to the property of another, is guilty of a misdemeanor,-"

House Judiciary Committee
February 5, 1975

The meeting was called to order at 1:35 by Chairman Gardiner.
Members present: Gardiner, Parr, Cotton, Brown

HB 6 - Smoking materials

SB 44

Representative Jim Duncan gave a brief description of the bill. He stated that the city and borough of Juneau presently have such an ordinance and the passage of this bill would not jeopardize anyone's option to file suit as the result of a fire.

The question was raised as to whether the passage of this bill would eliminate the possible felony prosecution of negligent homicide.

Rep. Parr offered a proposed amendment to line 13: in damage to the property of another to eliminate the possibility of being fined for damage to one's own property.

Rep. Brown suggested that a letter of intent accompany the bill to state that "This new criminal offense is not intended to preclude prosecutions for homicide in appropriate cases."

HJR 3 - Grand Jury

Dan Hickey, District Attorney stated that the 5th amendment guarantee in the U.S. Constitution of grand jury indictment is not transferred to the states through the 14th amendment. He cited two Supreme Court decisions.

He indicated that if the bill passes, prosecutors would still choose grand jury indictments in cases of: fugitive defendents, corrupt public conduct, doubtful cases, and to get testimony under oath.

He stated that 12.80.020 should also be amended. The committee agreed that, should HJR 3 receive voter approval, there would still be time for the next legislature to amend the above statute prior to the existence of a conflict.

Mr. Hickey favored the proposed amendment to line 12 - felony. He suggested that "presentment" be deleted in line 12 since in Alaska persons are not held on a presentment. In line 14 he suggested that the language, "or magistrate" be added after "judge." In line 14 eliminate "hearing" and insert "examination."

In response to a question from Rep. Parr, Senator Rader stated that the committee chairman's power would probably be greater under a unicameral system but since there would be more committees, areas of jurisdiction would be more narrow. The whole system would be more open and the number of people with power to stop legislation would be limited. Rep. Specking stated that we need rules changes not a whole new system.

Rep. Gardiner asked the committee how they wanted to handle this piece of legislation. All members present indicated that they wished to pass it out of committee after amended. Rep. Gardiner stated that announcements would be made to the press of a public hearing to be held in about three weeks. In the mean time, amendments would be drawn up and considered.

HB 55 - SB 53

The proposed statement of intent was approved by the committee on a voice vote. Rep. Brown moved and asked unanimous consent that House CS for SB 53 be passed out of committee. There being no objections, the motion passed.

HB 6

Rep. Fink suggested an amendment to change the language to general recklessness or negligence and delete the reference to smoking materials. The committee asked that research be done into the present statutes on negligence. The title too would have to be amended.

SB44

House Judiciary Committee
February 13, 1975

The meeting was called to order at 1:35 p.m. by Chairman Gardiner. Members present: Gardiner, Fink, Specking, and Brown.

HCR 5 Drivers License Regulations

Charlie Smith and Dennis Robertson from the Department of Public Safety testified that the following changes had been made: The effective date was July 1, the implimentation date January 1. The maximum weight a towed vehicle could be with a regular license was increased from 5,000 to 6,000 lbs.

The committee suggested that a separate category of license be created for 5th wheel, boats and recreation vehicles but not house trailers.
Special permits could also be issued for limited times.

Public Safety will make the requested changes and appear again before committee with a copy of the new regulations.

HB 112 Conspiracy

Dan Hickey, District Attorney explained the proposed CS. It is limited to specific crimes in section (a). Section (b) contains an area open to court interpretation: whether one could be prosecuted for an agreement made outside the state with an overt act within the state. Section (c) is just slightly changed. He also suggested no effective date, but would have the legislation go into effect 90 days after enactment.

Committee suggestions included adding to the list of covered crimes, forgery and drugs, adding a definition of overt act and agree to commit, and that some language should be added to cover those who renounce the crime and actually attempt to thwart its success.

Mr. Weberg and Mr. Wellington of Public Safety supported the bill and urged inclusion of narcotics offenses.

HB 6/SB 44

Gary Crouse, Deputy Fire Marshall testified for the bill. The committee agreed to accept the proposed amendments of Mr. Fink and Mr. Parr and submit House CS for SB 44.

SB

53

"An Act repealing the requirement that a plaintiff suing the state post bond for costs at the filing of the complaint; and providing for an effective date."

1/30/75

COMMITTEE REPORT

HOUSE

Mr. Speaker: Date Feb. 6, 1975

The Committee on Judicia has had SB 53 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR SB 53 AND THAT CS FOR SB 53 DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

Statement of Intent
HCS SB 53 - "An Act repealing the requirement that a plaintiff suing the state post bond for costs at the filing of the complaint; and providing for an effective date."

by the House Judiciary Committee
February 6, 1975

The purpose of this bill is to clarify the language of the existing law authorizing suits against incorporated units of local government and to prohibit any requirement that bond be posted before suing the state or any incorporated unit of local government. It is not the committee's intent to amend the rules of court relating to the court's discretionary powers to require security in matters involving injunctive relief.

Requirement to post bond: to sue state { Page 194 of House Journal

1. serves no real purpose
2. Federal govt. doesn't require
3. Courts now only require nominal bonds to be posted

Our bill goes beyond Senate and strikes bond requirements as related to local governments
SB simply repealed 260

Attorney general was mildly opposed and would have preferred discretionary judgement ~~of~~ for bond requirement by the judge

~~Brown~~
Paar

Fed. govt. doesn't require bond to file suit

State insured by tort liability

lawsuits vs. injunctions
court rules

this act affects only wage earners

A. F. - Mildly opposed

Why not have discretionary
provision for the court

Judge makes decision re V

Spencer wanted it clear
that bill didn't apply to injunctions

Question re drafting re line 14 & 15, 16

FAIRBANKS OFFICE
Edward A. Merdes
Grace Berg Schaible
Howard Staley
Dennis E. Cook
Thomas F. Keever
Monroe N. Clayton

ANCHORAGE OFFICE
Stephen S. DeLisio
Alan Sherry
John W. Pletcher, III

LAW OFFICES OF
MERDES, SCHAIBLE, STALEY & DeLISIO, Inc.
A PROFESSIONAL CORPORATION
POST OFFICE BOX 810
FAIRBANKS, ALASKA 99707

300 Barnette Street
Telephone: (907) 452-1855

Cable Address:
MERFAIR

February 3, 1975

Mr. Terry Gardner
House Judiciary Committee
House of Representatives
Pouch V
Juneau, Alaska 99801

Re: Senate Bill 53

Dear Representative Gardner:

I would urge you to give serious and favorable consideration to Senate Bill 53 which would eliminate the requirement of AS 09.50.260 that a party filing an action against the State file an undertaking or bond in an amount to be fixed by the judge as security for any costs incurred by the State if the party fails to prosecute the action or if the State wins the action. My acquaintance with the problem arises from the fact that I frequently represent the State's insurance carrier in tort actions against the State. Examples of such actions are those arising out of automobile accidents with vehicles driven by State Troopers, or actions against the State for personal injuries arising out of alleged negligence of the State Highway Department in highway maintenance. I have handled a number of these cases from the time they were filed until the time when they were settled or tried, and I have yet to see one case in which this statute gave any real protection to either the State or its insurance company, or in which it served to discourage the filing of irresponsible lawsuits. Most of the judges consider the requirement of the undertaking to be rather unfair, and seem to feel that it places an unfair burden upon someone suing the State, that is not placed upon other litigants. As a consequence, the judges tend to fix the bond in a very nominal amount, frequently $250 or less, which is hardly worth the paper work involved in seeing that the requirement is met. Attorneys who represent litigants against the State generally fell that the requirement is very unfair, and at least one of them, Representative Steve Cowper, has maintained that the requirement constitutes an unconstitutional discrimination among litigants. I think the requirement should be eliminated because it imposes a useless complication in litigation against the State which does not benefit anyone including the State.

HB92

It is also my understanding that another bill will be introduced to repeal AS 09.50.290, which provides, "Actions against the state under §§ 250-300 of this chapter shall be tried by the court without a jury." This of course means that an action against the

State is tried by a judge without a jury. In virtually all other litigation, either the plaintiff or the defendant can ask for a jury trial. This provision, like the rest of our State Tort Claims Act, has been taken almost word for word from the Federal Tort Claims Act. I believe the intent of this statute is that the State should be protected by any arbitrary or impassioned action of a jury, and that the State's interests would actually be protected by requiring trial before a judge. This has not worked out in practice. As an attorney representing the State and its insurance carrier, I would greatly prefer to have the trial of a personal injury action against the State tried to a jury rather than to a judge. I believe that many judges, either consciously or unconsciously, give considerable weight to the fact that the State does have insurance, and recent awards by judges in personal injury actions against the State have tended to be considerably higher than juries probably would have awarded. Repealing AS 09.50.290 would put the State on the same basis with other litigants. In a personal injury action or other action against the State, both the party suing the State and the State itself would have the same right to a jury trial as other litigants. If neither the State nor the party suing the State requested a jury, of course the action would still be decided by a judge.

I think in the final analysis it is probably immaterial whether repealing this statute would be a benefit or a detriment to the State. Our State Constitution and our legal system is generally based upon respect for the jury trial, and I can't see any good reason why actions involving the State should be an exception. Of course in a jury trial, the judge still determines what is relevant evidence, and the judge can still determine whether or not there is enough evidence on any particular issue of fact that the issue should be submitted to the jury. There is therefore no danger of a jury making new law in regard to actions involving the State tried to a jury because the scope of the jury's decision, the evidence it may consider, and the principles of law to be applied to that evidence are supplied to the jury by the judge.

I would like to thank you in advance for your serious consideration of Senate Bill 53 and the other bill which I expect will be forthcoming during this session, both of which I feel would substantially improve the ground rules laid down by statute regarding litigation against the State.

Yours sincerely,

Howard Staley

Howard Staley

HS:jb

Proposed statement of intent

HB 55/SB 53

The purpose of this bill is to clarify the language of the existing law authorizing suits against incorporated units of local government and to prohibit any requirement that bond be posted before suing the state or any incorporated unit of local government. It is not the committee's intent to amend the rules of court relating to the court's discretionary powers to require security in matters involving injunctive relief.

SB 53

February 28, 1975

TO: Mike Miller

FROM: Terry Gardiner

SUBJECT: SB 53

I would suggest that the House not recede to the Senate. The basic difference between our bill and the Senate bill is that our bill includes municipalities. Under the Senate bill a municipality could require that a person post a bond for cost at the filing of a complaint. According to Rep. Cowper the only community that now requires this is Fairbanks. If it's good enough for the state policy, it's good enough for the municipal policy. Furthermore, Rep. Cowper also feels that this requirement is probably unconstitutional. We are not talking about a case of whether the state is trying to set municipal policy, it is more a matter of an individual's right to file a complaint.

Terry--
for your information--
Mike M.

Alaska State Legislature
Senate

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

MESSAGE TO THE HOUSE

Date: 2-27-75

MI. SPEAKER

The Senate has failed to concur in the House amendment to SENATE BILL NO. 53 (namely HOUSE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 53) and respectfully requests that the House recede from its amendment.

SENATE BILL NO. 53 (repealing the requirement that a plaintiff suing the state post bond for costs at the filing of the complaint; eff. date)

Senate Secretary

SB

60

"An Act relating to arbitrary discrimination; and providing for an effective date."
a

COMMITTEE REPORT

4/29/75

HOUSE

Mr. Speaker: Date 5/12/75

The Committee on JUDICIARY has had CSSB 60 (Rules) [illegible] under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(✓) recommends it BE REPLACED WITH CS FOR CSSB 60 AND THAT CS FOR [illegible] DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

[signature] _____ _____

[signature] _____ _____

[signature] _____ _____

[signature] _____ _____

Members NOT concurring in the Majority report:

[signature] recommends: [illegible]

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

[signature] Chairman

R. E. ROBERTSON (1885-1961)
F. O. EASTAUGH
J. B. BRADLEY
W. G. RUDDY
L. B. JACOBSON
R. B. BAKER (ANCHORAGE)
M. T. THOMAS
L. J. BARKER (ANCHORAGE)
W. F. BRATTAIN II
J. F. CLARK
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OF COUNSEL
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ANCHORAGE, ALASKA 99510
PHONE (907) 277-6693
TELEX (090) 26-486

PLEASE REPLY TO
☒ JUNEAU OFFICE
☐ ANCHORAGE OFFICE

May 6, 1975

Honorable Terry Gardiner
Chairman
House Judiciary Committee
Alaska State House of Representatives
Pouch "V", State Capitol Building
Juneau, Alaska 99811

Re: CSSB 60 (Rules) Amended

Dear Chairman Gardiner:

This letter is written on behalf of Beneficial Management Corporation, a company affiliated with Beneficial Finance Company.

Beneficial Management has no objection to the laudable purposes of the referenced bill. It has come to our attention, however, that compliance with its provisions relating to loan applications would involve loan companies in violation of the Alaska Small Loans Act, and specifically AS 06.20.240. That section reads:

> "Loans for purpose of obtaining higher interest. No licensee may induce or permit any borrower to split up or divide any loan. No licensee may induce or permit any person, nor any husband and wife jointly or severally, to become obligated, directly or contingently or both, under more than one loan contract at the same time, for the purpose or with the result of obtaining a higher rate of interest than would otherwise be permitted by § 230 of this chapter."

In the common situation where a husband or wife applied for a loan when a loan was already outstanding to the spouse of the applicant, the quoted section would require denial

of the application, exactly because of the marital status of the applicant. This would be a violation of AS 18.80.250 as amended by the pending bill.

We believe that the protections afforded by each of the conflicting provisions can best be retained by allowing the application of the second spouse to be processed normally, unless under the circumstances the intent is not to extend credit separately to the second spouse, but rather to split up an application for a loan exeeeding the small loan limits into two loans in order to extract interest not otherwise lawful for a loan of the total amount applied for. For example, when a couple wants a loan for a single purpose, and as part of a single transaction loans are granted to each to avoid the small loan limits, the purpose of the pending bill is not being furthered, and AS 06.20.240 should control.

I have drafted an amendment to Sec. 12 of the act, adding a subsection (c) to AS 18.80.250, which hopefully will effectively deal with this problem. That amendment is enclosed.

I am sorry that other commitments preclude my attendance at your hearing this afternoon. I hope the Committee will favorably consider the proposed amendment, and will contact me if further information or input will be helpful.

Thank you for considering this letter.

Very truly yours,

M. T. THOMAS

MTT:kh

Enclosure

(c) No action by a financial institution or other commercial institution extending credit taken in compliance with (a) of this section, including the extension of credit or the making of a loan, shall be a violation of AS 06.20.240, unless done with the intent or purpose of obtaining a higher rate of interest than would otherwise be permitted by AS 06.20.230.

National Observer
May 1975

Rules on Credit Aim to End Bias Against Women

By Barbara J. Katz

Women who seek credit from retail stores, mortgage institutions, and other concerns may soon have an easier time of it.

Regulations proposed by the Federal Reserve Board last week would prohibit creditors from discriminating against credit seekers on the basis of sex or marital status. The regulations were issued to implement the Equal Credit Opportunity Act, passed by Congress last year.

The act, which goes into effect Oct. 28, was sought by women's and consumer groups who contended that women were often denied credit solely because they were women. Divorced, separated, and widowed women often found that after years of obtaining credit under their husbands' names, they were unable to get credit in their own name.

To remedy these and other discriminatory practices, the proposed regulations would forbid creditors from:

- Terminating credit because of a change in a person's marital status without evidence that the credit applicant's financial circumstances had been unfavorably affected.
- Requiring the signature of a spouse on a credit application if the applicant is creditworthy in his or her own right.
- Assigning any value to sex or marital status in the "point system" used by many creditors.
- Ruling that married persons are more creditworthy than unmarried or separated persons.
- Asking—as many creditors have asked women in the past—whether the applicant uses birth control or intends to have children.
- Discounting any part of a person's income because of sex or marital status, a common practice of mortgage lenders when evaluating a working wife's income.

The proposed regulations also would require creditors to do such things as consider alimony and child support as part of a person's income, and supply a written statement of reasons for denying or terminating credit when a rejected applicant requests an explanation.

The regulations also would require creditors to establish separate accounts for husbands and wives who apply for credit separately and are creditworthy in their own right, and to extend credit in any legal name designated by a qualified applicant.

Among the more far-reaching proposals put forth is one that would require creditors by Oct. 28, 1976—one year after the act takes effect—to maintain accounts used by both a husband and wife in both names. This regulation is aimed particularly at solving the problem of the newly divorced woman who is unable to get credit because she has never held credit in her own name.

The board will hold a hearing on these and other proposed regulations on May 28 and 29 in Washington, D.C. Persons who wish to testify are to notify the secretary of the board of governors of the Federal Reserve System by May 14. Persons who wish to submit written testimony are to do so by June 30.

ALASKA STATE COMMISSION FOR HUMAN RIGHTS

JAY S. HAMMOND, Governor

March 26, 1975

The Honorable Patrick Rodey
Alaska State Legislature
State Capitol
Pouch V
Juneau, Alaska 99811

Dear Senator Rodey:

The following is a short explanation of the changes proposed for AS 18.80:

AS 18.80.060(b)(3) is amended to put subpoena and discovery powers into a separate subsection (new subsection 18.80.060(b)(4)), thereby expressly making these powers independent of the power to hold hearings. Such a move would end procedural challenges alleging that the Commission does not have discovery powers during its investigation of a discrimination complaint.

AS 18.80.060(b)(4) this new subsection makes express the Commission's power to require discovery during investigation of alleged discriminatory conduct. The language is substantially the same as that which appears in AS 42.06.160(c) (Alaska Pipeline Commission discovery powers) and AS 42.07.141(d) (Alaska Transportation Commission discovery powers).

AS 18.80.130(a)(1) as presently written could be construed as limiting the relief that may be granted to an aggrieved person to that which is set out in the statute. The amendment would clarify the Commission's power to shape appropriate relief. Federal court decisions and many other states' court decisions make it clear that the Commission does have discretion in shaping relief.

AS 18.80.130(a)(2) is amended to provide some form of adequate relief for a person who has been discriminated in housing. The present statutory relief is inadequate in that the housing accommodation sought to be rented, leased or purchased is often unavailable at the time the Commission issues an order. The Civil Rights Act of 1968 provides for an award of actual damages and not more than $1,000 punitive damages, together with costs and reasonable attorney's fees. (See sec. 812(c)). A similar relief should be provided for citizens who file a complaint with the State.

AS 18.80.130(e) is based upon the language in the Clean Air Act, 42 U.S.C. §1857 et seq. In a case of first impression under that act an award of counsel fees and costs to an unsuccessful litigant was upheld. Citizens Association of Georgetown v. Washington, United States District Court for the District of Columbia, September 30, 1974.

an award of attorney's fees to any private party is meant to avoid the type of problem encountered by the courts in applying the "prevailing party" language found in various statutes. (See, for example, Hughes, Award of Attorney's Fees in Alaska: An Analysis of Rule 82.) Furthermore, in the civil rights field, awarding attorney's fees to an unsuccessful complainant has been held proper if the complainant performed a valuable public service in bringing the suit.

The word "private" is meant to indicate that a public agency such as the Commission would not be entitled to recover expenses but a private attorney who may be designated by the executive director to present a case before the Commission (as was the situation in ASCHR v. University of Alaska) could recover reasonable attorney fees.

AS 18.80.240. In the sale, lease or rental of commercial property or commercially zoned property, it is legal in the State of Alaska to discriminate against a person on the basis of that person's race, color, religion, sex, marital status, changes in marital status, pregnancy or national origin. The proposed change in the title of this section would fill this large loophole and more adequately protect our citizens.

AS 18.80.240(4) thru (7). These, subsections are designed to bring the state's statutes up to federal standards. Subsections (4) and (5) are taken from the Washington statutes against discrimination (RCW 49.60.220). Subsections (6) and (7) are taken and are substantially similar to Sections 804(d) and (e) of the Civil Rights Act of 1968 (Title VII, Fair Housing).

AS 18.80.300(8). This definition is the same as that which was adopted by Washington at RCW 49.60.040.

AS 18.80.310. Presently, it is questionable whether or not second-class boroughs and possibly other local governments have the power to protect their citizens on a local level. This section authorizes local governments to set up local human rights commissions to handle discrimination complaints on a local level. The wording of this section is taken from Section 962.1 of the Pennsylvannia Human Rights Act.

I will be available to answer any questions you may have on the Commission's proposed amendments or these explanations anytime before April 1, 1975. After that date, please contact Larry Shaw in the Juneau Office for assistance desired.

Sincerely,

Tim Stearns
Administrative Counsel

TS:kc

A M E N D M E N T

TO: HCS FOR CS FOR SENATE BILL NO. 60 BY PARKER

Page 6, line 5: after "origin," insert "or because of the fact that that person has control or custody of a minor child who will occupy the premises;"

Page 6, line 10: after "origin" insert ", or because of the fact that that person has control or custody of a minor child who will occupy the premises,"

Page 6, line 24: after "origin" insert ", or the fact that the person has control of a minor child who will occupy the premises,"

Page 7, line 1: after "person" insert ", or because of the fact that that person has control or custody of a minor child who will occupy the premises"

Page 7, line 7: after "origin," insert "or the fact that the person has control of a minor child who will occupy the premises,"

HCS CSSB 60

Page 3, Lines 9 through 17:

(b) Therefore, it is the policy of the state and the purpose of this chapter to eliminate and prevent discrimination in employment, in credit and financing practices, in places of public accommodation,[IN HOUSING ACCOMMOD...ONS] and in the sale, [OR] lease, or rental of real [OF UNIMPROVED] property because of race, religion, color, national origin, [OR, IN THE CASE OF EMPLOYMENT, BECAUSE OF] sex, [OR] age, marital status, changes in marital status, pregnancy or parenthood. It is not the purpose of this chapter to supersede laws pertaining to child labor, the age of majority or other age restrictions or requirements.

Drafting Correction

SB

62

"An Act relating to conflicts of interests; and providing for an effective date."

COMMITTEE REPORT

3/26/75

HOUSE

Mr. Speaker: Date _____

The Committee on JUDICIARY has had CSSB 62 am under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other" Ind. Rec

Members signing the Majority report:

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

HOUSE ROLL CALL

Permanent Fund

_____ 19__

Subject

Effective date

✓ withdrew sponsor 324
O Not originally sponsors

	Yea	Nay	Absent
ANDERSON	✓		
BEIRNEX			
BOWMAN			
BRADLEY			
BRADNER			
BROWN			
BUCHHOLDT			
COTTEN			
COWPER			
DAVIS	✓		
DUNCAN			
ELIASON	✓		
FINK O			
FISCHER	✓		
FREEMAN	✓		
GARDINER			
GRUENING			
GUY O			
HACKNEY	✓		
HAUGENX			
HERSHBERGER	✓		
HUNTINGTON O			
ITTA	✓		
KELLEY			
MCKINNON			
MALONE			
MILLER			
NAUGHTON			
OSE ?			
OSTERBACK	✓		
OSTROSKY			
PARKER			
PARR			
RHODE ?			
SMITH			
SPECKINGX			
SULLIVAN			
SWANSON			
URION	✓		
WALLIS O			

YEAS _____
NAYS _____
ABSENT _____
EXCUSED _____

The _____ passed

The _____ did not pass

Ose - parimutuel betting

Guy - 7 Sud districts

Freeman - Hydro fund

OFFICE OF THE GOVERNOR
Juneau, Alaska

BOARDS AND COMMISSIONS

Administration of Justice, Governor's Commission on the
Aging, Advisory Committee on
Alaska Growth Policy Council
Alaska Map Advisory Committee
Alaska State Housing Authority
Alcoholic Beverage Control Board
Alcoholism, Advisory Board on
Architects, Engineers and Land Surveyors, State Board of Registration for
Arts, Alaska State Council on the
ASSESSMENT REVIEW BOARD, STATE
Athletic Commission

Barber Examiners, Board of
Bicentennial Commission, Alaska American Revolution
Bristol Bay Regional Development Council

Capital Site Selection Committee
Child Advocacy, Board of Directors for the Office of
Chiropractic Examiners, Board of
Collection Agency Board
COMMERCIAL FISHERIES ENTRY COMMISSION
COMPREHENSIVE HEALTH ADVISORY COUNCIL

DENTAL EXAMINERS, BOARD OF
Developmental Disability Planning & Advisory Council
Dispensing Opticians, Board of
Division of Family & Children Services Advisory Committee
Drug Abuse, Advisory Board

EDUCATION, BOARD OF
EDUCATIONAL BROADCASTING COMMISSION, ALASKA
Educational Commission of the States
Election Campaign Commission
ELECTRICAL EXAMINERS, BOARD OF
Emergency Medical Service Committee, State
Employment of the Physically Handicapped, Committee on
EMPLOYMENT SECURITY ADVISORY COUNCIL
Environmental Advisory Board
Equal Employment Opportunity Committee

FISH AND GAME, BOARD OF
Fishermen's Fund Advisory and Appeals Council

Geographic Board, State
GUIDE LICENSING AND CONTROL BOARD

BOARDS AND COMMISSIONS CONTINUED

Hairdressing and Beauty Culture Examiners
Historical Commission, Alaska
HISTORIC SITE ADVISORY COMMITTEE
Housing Finance Corporation, Alaska
HUMAN RIGHTS, STATE COMMISSION FOR

International Development Commission, Alaska
Investment Advisory Committee

JUDICIAL COUNCIL
JUDICIAL QUALIFICATIONS, COMMISSION ON

KING CRAB MARKETING AND QUALITY CONTROL BOARD, ALASKA

Land Use Planning Commission, Joint Federal-State
Law of the Sea, Commission on the Conference of the
Libraries, Advisory Council on
LOCAL BOUNDARY COMMISSION

Manpower Advisory Committee
Manpower Planning Council, State
Manpower Services Council, State
MARINE FISHERIES COMMISSION, PACIFIC
MARINE PILOTS, BOARD OF
MEDICAL BOARD, STATE

Nursing, Board of
Nursing Home Administrators Licensing Board, Alaska

OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD
Optometry, Board of Examiners in

PAROLE, STATE BOARD OF
PERSONNEL BOARD
PHARMACY, BOARD OF
Physical Therapy Board, State
Pioneers' Home Advisory Board, Alaska
PIPELINE COMMISSION, ALASKA
Police Standards Council, Alaska
PROFESSIONAL TEACHING PRACTICES COMMISSION
Post-Secondary Education, Alaska Commission
PSYCHOLOGIST AND PSYCHOLOGICAL ASSOCIATE EXAMINERS,
BOARD OF
Public Accountancy, Alaska State Board of
PUBLIC UTILITIES COMMISSION

REAL ESTATE COMMISSION
Regents, Board of, University of Alaska
Rural Affairs Commission
Royalty Oil and Gas Board

Safety Council, Alaska
Small Business Development Corporation of Alaska
SOIL, CONSERVATION BOARD
Special Legislative oil development Impact Review Committee
STATE DEVELOPMENT CORPORATION, ALASKA
STATE-OPERATED SCHOOLS, BOARD OF DIRECTORS
Student Financial Aid Committee

Teachers' Retirement Board, Alaska
TOURISM ADVISORY BOARD
TRANSPORTATION COMMISSION, ALASKA

VETERINARY EXAMINERS, BOARD OF
Violent Crimes Compensation Board
Vocational Education Advisory Council, Alaska State

WATER RESOURCES BOARD
Welding Examiners, Board of
WESTERN INTERSTATECCOMMISSION FOR HIGHER EDUCATION
WORKEMN"S COMPENSATION BOARD, ALASKA

YOUNG PEOPLE IN GOVERNMENT, GOVERNOR'S COMMISSION ON THE
INVOLVEMENT OF
Yukon-Taiya Commission

The following boards and commissions are not listed in the State's Boards and Commissions publication.

Department of Administration
- Labor Relations Agency
- Public Employees' Retirement System

Department of Education
- Advisory for Innovative Educational Programs
- Special Education Advisory Council
- Teacher Education & Certification Advisory Board
- Museum Collection Advisory Board
- Title III, ESEA Advisory Council
- Southcentral Vision/Hearing Impaired Advisory Committee
- Southcentral Vision/Hearing Impaired Medical Advisory Committee
- Southeastern Vision/Hearing Impaired Advisory Committee
- Northern Vision/Hearing Impaired Advisory Committee
- Statewide Advisory Council (Right-to-Read)

Department of Fish and Game
- Approximately 40 Advisory Boards

Department of Health and Social Services
- Medical Care Advisory Committee

Department of Natural Resources
- Alaska Parks and Recreation Council Advisory Committees
- Loan Fund--Division of Agriculture

Department of Public Safety
- Technical Advisory Committee
- Traffic Court Task Force
- Medical Advisory Committee

CORRECTED as of 10 a.m. after consultation with Messrs. Hanley and Walker. S.C.H.

13 amend

A M E N D M E N T S

TO: CSSB 62 amended BY THE JUDICIARY COMMITTEE

On page 1, line 27, strike out "local elective", and insert: "elective municipal"

On page 2, line 14, after "within", insert a comma.

On page 6, line 16, after "within", insert a comma (,).

On page 6, line 23, after "within", insert a comma (,).

On page 8, line 13, after "200", insert "(1)".

On page 8, line 18, after "200", "(2)".

On page 9, line 19, after "voters", insert: "voting on the question".

On page 9, line 20, strike out "the municipality", and insert: "its municipal officers".

On page 9, line 20, after "chapter.", insert:

"The question of exemption from the requirements of this chapter may be submitted by the city council or borough assembly by ordinance or by initiative ordinance."

On page 10, line 9, after "within", insert a comma (,).

On page 10, line 26, after "includes", insert: "a"

Page 10, line 29: after "planning" add "or zoning"

Page 11, line 12: after "corporation" delete ";" add ", ~~however~~ but

SB
80

"An Act repealing the requirement that a cause of action against the state be tried by a judge without a jury: and providing for an effective date."

2/11/75 FINANCE

COMMITTEE REPORT

HOUSE

Mr. Speaker: Date _____

The Committee on Judiciary has had SB 50 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

House Judiciary Committee
January 30, 1975

The meeting was called to order at 1:35 by Chairman Gardiner. Members present: Gardiner, Bradley, Parr, Fink, Cotton, Brown.

HB 94 - Conflict of interest

Rep. Fink mentioned that SB 62, which is the Governor's bill on the same subject, stipulates that one must file if still in office at the filing deadline, instead of the December 11 date stipulated in HB 94. The committee agreed that the language in SB 62 was preferable.

Rep. Brown moved CS for HB 94 which included Section 10 from SB 62 and Sections II and III from HB 94. The CS was approved and reported out of committee with a do pass.

HCR 5 - Drivers License regulations

Three representatives of the Department of Public Safety, Charlie Smith, Director of Traffic Safety, Dan Kanouse and Dennis Robertson, fielded questions from the committee. They requested that the effective date of the regulations be postponed to allow time for reorganization of several department offices.

The committee requested that the Department resubmit the regulations with the effective date included so that the total package could receive legislative approval.

The committee also pointed out a typographical error in the regulations which should be corrected. Members also requested additional information concerning the weights of vehicles which are generally towed by passenger cars.

Mr. Smith indicated that the Department would gather the requested information and make the requested changes in the regulations. A meeting would be called for next week to reconsider HCR 5.

HB 55 by Cowper
SB 53
HB 91 - all concerning the requirement of posting bond before bringing suit against the State

John Spencer, City Attorney of Anchorage, testified concerning the problem of collecting attorneys fees in suits against political subdivisions other than the State. He emphasized that bonds should still be required in injunctions and temporary restraining orders cases and suggested that this be mentioned in the committee report to avoid possible misinterpretation of the law.

Rep. Cowper, sponsor of HB 55, indicated that his bill goes further than HB 91.

The committee requested that the bills be held and that a representative of the Attorney General's Office be invited to give testimony.

Adjourned 2:50 p.m.

Mr. Hickey continued that in a preliminary hearing, probable cause is the standard of proof. In a grand jury hearing, sufficiency of evidence is unexplained and uncontradicted.

Rep. Parr indicated that probable cause needn't be defined in the constitution but in the court rules or statutes. Rep. Fink indicated that he preferred that this guarantee be specified. Mr. Hickey stated that only suspicion is less grounds than probable cause.

Rep. Brown expressed his concern that the investigative functions of the grand jury would be virtually eliminated as would most grand juries.

Mr. Hickey expressed the opinion that although grand juries should improve the prosecutors' public images, in reality they do not.

HB 55 - Bond/Suit

Mr. Walker of Legislative Affairs explained a proposed amendment to lines 12 - 18. He also presented a proposed committee report to accompany the bill.

Rep. Fink moved and asked unanimous consent that the amendment suggested by Arthur Peterson of the AG's office be adopted. Mr. Brown objected. On a tied vote, the amendment failed.

Mr. Brown moved the admendment explained by Mr. Walker and asked unanimous consent. There being no objection, the amendment was accepted.

SB 53, on the same subject and currently in this committee will be acted on. A House CS for SB 53 will be drawn up which incorporates all of HB 55 as amended.

The meeting was adjourned at 3:20.

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Dennis E. Cook
Thomas F. Keever
Monroe N. Clayton

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March 25, 1975

Mr. Terry Gardner
House Judiciary Committee
House of Representatives
Pouch V
Juneau, Alaska 99801

Re: Senate Bill 53

Dear Representative Gardner:

I am again writing to you in behalf of the bill, the number of which I don't have. which would repeal AS 09.50.290 requiring that any tort action against the State be tried by a judge, so that neither the State nor the parties suing the State have a right to a jury trial. The present law requiring a trial to a judge is usually explained as giving the State the "protection" from the possible passion and prejudice of a jury. From the standpoint of an attorney who has frequently represented the State and its insurance carriers, I know that this does not stand up in practice. The State is often treated far more harshly by a judge than it would be by a jury. I am enclosing an example of this in the form of an Alaska Supreme Court Opinion in State v. I'Anson issued by the Alaska Supreme Court on November 29, 1974. In that case, a civilian jeep was in the process of making a left turn across a state highway into a campground and collided with a vehicle which was passing it. The driver of the jeep sued the State for not having posted signs which would have in effect prohibited the driver of the overtaking vehicle from passing. The case was tried to a judge and an advisory jury, since the statute has been interpreted as allowing the judge to empanel an advisory jury. It should be noted that when an advisory jury is empaneled, the expense to the State is just the same as if the trial was to a judge and an advisory jury was not used. The advisory jury found in the State's favor, but the judge decided, as he is entitled to do under the law, to disregard the verdict of the advisory jury and entered a verdict against the State.

I don't believe that there is any valid reason to believe that jurors would favor the State because of having an interest as taxpayers in the outcome of litigation against the State. There are jury trials in actions brought against Alaska cities where the taxpayer's interest is far more direct than in an action against the State and there has certainly been no indication that jurors tend to be lenient with Alaskan cities because the jurors are taxpayers.

If the amendment allowing the State and litigants against it the right to a jury trial is passed, there will undoubtedly be individual cases in which the State is either hurt or helped by having the claims against it tried to a jury, but that is not the issue. I believe the issue is whether or not the State as well as litigants against the State have a right to a jury trial in litigation of this sort. I don't think there is any valid reason for giving the State any more or any less privilege than any other litigant in this regard.

Yours sincerely,

Howard Staley

Howard Staley

HS/mh
Enc.

THE SUPREME COURT OF THE STATE OF ALASKA

STATE OF ALASKA, Petitioner, v. THOMAS I'ANSON and MAUREEN I'ANSON, Respondents.	RECEIVED DEC 13 1974 MERDES, SCHAIBLE, STALEY & DeLISIO File No. 2032 O P I N I O N [No. 1102 - November 29, 1974]

Petition for Review from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Eben H. Lewis, Judge.

Appearances: Charles P. Flynn and Theodore M. Pease, Burr, Pease and Kurtz, Inc., Anchorage, for Petitioner. Harland W. Davis, Anchorage, Joel E. Bradshaw and Russell Newman, Newman & Bradshaw, Inc. P.S., Seattle, Washington, for Respondents.

Before: Rabinowitz, Chief Justice, Connor, Erwin, and Fitzgerald, Justices. [Boochever, Justice, not participating]

RABINOWITZ, Chief Justice.

This petition for review arises out of a bifurcated superior court trial in which the issue of petitioner State of Alaska's liability was tried to the superior court with the assistance of an advisory jury. The central contention in this petition focuses on construction of the discretionary function or

duty exception to Alaska's Tort Claims Act.[1]

The automobile collision which led to the liability trial occurred in May 1970 at approximately Mile 63 of the Seward Highway near the entrance to the Granite Creek Campground. Between 7:30 and 8 p.m. on the day of the accident, John Ward was driving his car in a southerly direction on the Seward Highway. In the vicinity of the Granite Creek Campground he observed ahead an old Jeep pickup traveling from 15 to 20 miles per hour in a southerly direction.[2] According to Ward's testimony, he then blinked his lights and pulled out to pass the Jeep pickup; just as he was about to pass, the driver of the Jeep pickup pulled across the road in front of Ward whose vehicle then collided with the left rear portion of the Jeep.

Respondent Maureen I'Anson was a passenger in the Jeep pickup which was being driven by Andy DeBeau. DeBeau testified that just prior to the collision he was attempting a left turn into the entrance roadway of the Granite Creek Campground. DeBeau further testified that the Jeep did not have operative electric turn signals

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1. AS 09.50.250 where applicable provides:

> A person . . . having a . . . tort claim against the state may bring an action against the state in the superior court. . . . However, no action may be brought under this section if the claim
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> (1) . . . is an action for tort, and based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state agency or an employee of the state, whether or not the discretion involved is abused . . . .

2. Ward testified that at this time he was travelling at 50 to 55 miles per hour.

and that he did not give a left turn hand signal, but he had "effectively" given a turn signal by pumping his brakes which in turn illuminated the Jeep's sole brake light which was located on the vehicle's left side. DeBeau admitted he observed Ward's vehicle approaching from the rear before he commenced the left turn.

As to the State of Alaska's liability for the collision and ensuing personal injuries sustained by respondent Maureen I'Anson, it was asserted that the state was negligent in failing to post a warning sign in advance of the entrance road to the Granite Creek Campground, and that the state should have placed no-passing striping between the crest of a slight rise north of the campground and the campground entrance roadway. The parties called expert witnesses who differed sharply over whether warning signs and no-passing zone striping should have been placed in the area immediately to the north of the entrance road to the Granite Creek Campground.

After hearing extensive testimony regarding the issue of liability, the advisory jury found in favor of petitioner State of Alaska. The trial judge in turn rejected the verdict of the advisory jury and entered findings of fact and conclusions of law resolving the issue of liability in respondents' favor. This petition followed.

Before treating the central question of whether highway signing and striping comes within the discretionary function or duty exception of AS 09.50.250, Alaska's Tort Claims Act, two minor issues will be dealt with.

Civil Rule 39(c) provides that:

> In all actions not triable of right by a jury the court upon motion or of its own initiative may try an issue with an advisory jury or, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right. 5 /

It is established that the trial court has discretion whether or not to use an advisory jury. In the event one is used, it is entirely within the trial court's discretion to accept or reject, in whole or in part, the verdict of the advisory jury.[6] On appeal from a trial conducted with an advisory jury, review is limited to the findings of fact and conclusions of law of the trial court as if there had been no verdict from the advisory jury.[7] There can be no review of asserted errors relating to rulings before and instructions to an advisory jury.[8] In light of these established principles, we do not reach petitioner's contention that the superior court erred in refusing to instruct the advisory

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5. AS 09.50.290 provides that actions against the state under AS 09.50.250 "shall be tried by the court without a jury". Lee v. State, 490 P.2d 1206, 1208 (Alaska 1971).

Fed. R. Civ. P. 39(c), which parallels Alaska's Civ. R. 39(c), codifies the equity practice which permitted the court to summon an advisory jury to assist it in deciding a case. 9 Wright & Miller, Federal Practice and Procedure § 2335, at 124 (1971); Kohn v. McNulta, 147 U.S. 238, 37 L. Ed. 150 (1893).

6. Chicago & N.W. Ry. Co. v. Minnesota Transfer Ry. Co., 371 F.2d 129 (8th Cir. 1967); In re Pan-American Life Ins. Co., 188 F.2d 833 (5th Cir. 1951); Cudmore v. Smith, 260 F. Supp. 760 (D.C. Conn. 1966).

7. Cox v. Babcock and Wilcox & Co., 471 F.2d 13 (4th Cir. 1972); Mallory v. Citizens Util. Co., 342 F.2d 796 (2d Cir. 1965).

8. Chicago & N.W. Ry. Co. v. Minnesota Transfer Ry. Co., 371 F.2d 129 (8th Cir. 1967); Frostie Co. v. Dr. Pepper Co., 361 F.2d 124, 125 (5th Cir. 1966).

jury in accordance with its requested instruction regarding the "dangerous condition doctrine."

The second minor issue presented by this review proceeding involves two closely related assertions of error. In its original petition for preview, the State of Alaska claimed that the superior court not only improperly viewed the scene of the accident but erroneously conducted experiments at the accident site.[9] In his memorandum decision, the trial judge wrote in part:

> Certain facts evolved clearly from the testimony and were confirmed by a court view of the accident site and the approach to it from the north -- the direction from which the vehicles involved in the accident were traveling. . . .
>
> . . . .
>
> One observation by Thomas I'Anson in his testimony was confirmed by the court in taking a view of the scene. His statement was, substantially: 'You come over the hill and you are on it'. In approaching the scene at 50 miles per hour in a fairly heavy car equipped with good brakes, but without any special attempt to avoid an emergency situation, the court found that slowing from 50 miles an hour to a dead stop would be very difficult before reaching the campground entrance, in order to turn into it.

The subject of views by juries is governed by Civil Rule 48(c) which provides:

> When the court deems proper, it may order a proper officer to conduct the jury in a body to view the property which is the subject of the litigation or the

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9. Pursuant to Civ. R. 52(a), the superior court's memorandum decision was filed with the intent of satisfying the rule's requirement of formal findings of facts and conclusions of law.

conduct an impermissible experiment, this aspect of the case must necessarily be remanded in order to afford the parties an opportunity to develop the facts regarding both the alleged experiment by the court, and whether counsel were informed of and present during the court's carrying out of such experiment.[12] On remand, the trial court should not only insure that the record reflects the relevant facts pertaining to the alleged experiment but should also indicate what weight, if any, was accorded the experiment in deciding the liability issue.

We now turn to the central issue in this review proceeding, namely, whether the placement of traffic signs and highway striping comes within the ambit of the discretionary function or duty exception of the Alaska Tort Claims Act.[13] Counsel for petitioner

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12. Professor McCormick writes:

> On the other hand, where the trial judge is present to rule on admissibility, and provision for proper preparation of a proper record is made, there would appear no inherent vice in receiving testimony or allowing demonstrations or experiments during a view. These practices, however, have often been looked upon with disfavor by appellate courts and some jurisdictions appear to hold reception of testimony or experiments during a view improper under any circumstances.

McCormick on Evidence § 216, at 538-39 (Cleary ed. 1972).

13. Our formulation of the question parallels that of respondents. Petitioner, on the other hand, views the issue as whether the State of Alaska can be held liable for negligent design of its highways contending that design is exempted under the planning discretionary exclusion of the Alaska Tort Claims Act.

In this court's order granting review in the instant case, we requested the parties to brief the questions of whether the placement of traffic signs could be characterized as a planning discretionary function, or as an operational function, and if operational, what standard of care was required of the State of Alaska and its agents or employees in the circumstances of this case.

view the question as one which was left unanswered by our opinion in State v. Abbott, 498 P.2d 712 (Alaska 1972). Respondents' counsel, on the other hand, view Abbott as controlling. To a large extent we are in agreement with respondents' position and begin with a review of the relevant portions of Abbott.[14] In Abbott, we noted that the critical language in Alaska's Tort Claims Act, which establishes the discretionary function or duty exception of the State of Alaska's waiver of immunity, is identical to that contained in the Federal Tort Claims Act.[15] Abbott then proceeded to review relevant federal case law on the subject of the discretionary function exception. Our discussion commenced with an analysis of Dalehite v. United States, 346 U.S. 15, 97 L. Ed. 1427 (1953). There the Supreme Court of the United States held that the federal government's decision to carry out a fertilizer export program without testing the explosiveness of the ammonium nitrate contained in the fertilizer was within the federal act's discretionary function exception. In so holding, Justice Reed, writing for the Court, first articulated the planning-operational test for resolution of scope of discretionary function

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14. We recommend that the reader read in full Justice Erwin's incisive treatment of the subject of governmental immunity and the discretionary function or duty exception of both the Federal Tort Claims Act and Alaska's parallel legislation.

15. 28 USCA § 2680(a).

exception questions.[16] In light of the "almost unanimous" adverse reaction of legal commentators to Dalehite and the limitations placed on the decision by subsequent federal decisions, we concluded that Dalehite was "now of questionable authority."[17] Our evaluation of Dalehite was based in part upon analysis of Indian Towing Co. v. United States, 350 U.S. 61, 100 L. Ed. 48 (1955); Rayonier Inc. v. United States,[18] 352 U.S. 315, 1 L. Ed. 2d 354 (1957); and Eastern Air Lines, Inc. v. Union Trust Co., 95 U.S. App. D. C. 189, 221 F.2d 62, aff'd per curiam, 350 U.S. 907, 100 L. Ed. 796 (1955). We also noted that due to the widespread belief that the Dalehite majority carried the discretionary function exception too far, Justice Jackson's dissenting opinion in Dalehite is quoted as often as is the majority opinion.[19] Of particular significance is the fact that while we recognized that Justice Jackson "conceded there were many policy decisions of a

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16. By way of dictum, Justice Reed wrote:

> In short, the alleged negligence does not subject the government to liability. The decisions held culpable were all responsibly made at a planning rather than operational level. . . .

Dalehite v. United States, 346 U.S. 15, 42, 95 L. Ed. 1427, 1444 (1953).

17. State v. Abbott, 498 P.2d 712, 718 (1972).

18. In Rayonier the Supreme Court said in part that the Federal Tort Claims Act "was founded on the premise that it is preferable to spread the cost of governmental 'negligence' among all those who contribute financially to the government rather than allow the entire risk to fall on the injured party". Rayonier Inc. v. United States, 352 U.S. 315, 319-20, 1 L. Ed. 2d 358 (1957).

19. Reynolds, The Discretionary Function Exception of the Federal Tort Claims Act, 57 Geo. L.J. 81, at 95 (1968).

regulatory or governmental nature which should properly be 'controlled solely by the statutory or administrative mandate and not by the added threat of private damage suits'" he would not extend the discretionary function exception to "housekeeping" activities of the federal government.[20] In this regard, Justice Jackson stated:

> [T]here is no good reason to stretch the legislative text to immunize the Government or its officers from responsibility for their acts, if done without appropriate care for the safety or others. Many official decisions even in this area may involve a nice balancing of various considerations, but this is the same kind of balancing which citizens do at their peril and we think it is not within the exception of the statute.[21]

In Abbott, in addition to our discussion of federal case law, we emphasized several decisions of the Supreme Court of California in reaching the conclusion that "discretionary" acts should include only those made at the planning level, while decisions made at the operational or ministerial level should be actionable. In particular, we relied upon Johnson v. State, 73 Cal. Rptr. 240, 447 P.2d 352 (1968). There the court noted that almost any act involves some discretion, and therefore focused its inquiry on the policy behind the discretionary immunity doctrine. In so doing, the Johnson court recognized that

> the very process of ascertaining whether

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20. State v. Abbott, 498 P.2d 712, 718 (1972).

21. Dalehite v. United States, 346 U.S. 15, 60, 97 L. Ed. 1427, 1453 (1953).

> an official determination rises to the level of insulation from judicial review requires sensitivity to the considerations that enter into it and an appreciation of the limitations on the court's ability to reexamine it. . . .
>
> . . . Courts and commentators have therefore centered their attention on an assurance of judicial abstention in areas in which the responsibility for basic policy decisions has been committed to coordinate branches of government. Any wider judicial review, we believe, would place the court in the unseemly position of determining the propriety of decisions expressly entrusted to a coordinate branch of government. Moreover, the potentiality of such review might even in the first instance affect the coordinate body's decision-making process . . . . (emphasis in original) 24/

We take this occasion to reaffirm our adoption in Abbott of the planning-operational test, within an analytical framework which is sensitive to the policies underlying the discretionary function or duty exception of Alaska's Tort Claims Act. Act. In applying these analytical tools to the circumstances of the case at bar, we hold that the superior court did not err in refusing to extend the discretionary function exception to

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22. Johnson v. State, 73 Cal. Rptr. 240, 248, 447 P.2d 352, 360 (1968).

In Abbott, we also noted that Professor Reynolds holds the view that the planning-operational distinction adequately serves what he regards as the main purpose of the discretionary function exception, namely: (1) The need to preserve separation of powers by limiting judicial re-examination of decisions made by the other branches of government; (2) the fact that courts are not equipped to investigate and balance all the factors that go into an executive or legislative decision; (3) the public interest in preventing the enormous and unpredictable liability that could result from judicial re-examination of the decisions of the other branches of government. Reynolds, note 19 supra at 121-23, 128-31.

petitioner.[23] In the trial court, the questions in dispute turned on whether the state properly marked and striped a portion of the Seward Highway north of the Granite Creek Campground access road. In our view, functions of this nature do not involve broad basic policy decisions which come within the "planning" category of decisions which are expressly entrusted to a coordinate branch of government. We are further persuaded that resolution of questions such as whether or not the state properly striped or marked a portion of highway as it relates to the state's duty of care to users of the highway presents facts that courts are equipped to evaluate within traditional judicial fact-finding and decision-making processes.[24]

Our decision is in accord with the holding and reasoning of the Supreme Court of Hawaii in Rogers v. State, 51 Hawaii 293, 459 P.2d 378 (1969). In Rogers, the state contended that its negligence in locating the road signs and restriping the center lines was not actionable under the discretionary function

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23. In his memorandum decision, the trial judge wrote in part: "The defendant State has pled a defense that no cause of action was stated by the plaintiff in the claim under the Alaska Claims Act. While not specified by the State, I assume this is the discretionary function defense asserted in an earlier tort action against the State (AS 09.50.250). Inapplicability of this defense to tort claims involving operational level decisions was settled in State v. Abbott, 498 P.2d 712, 717-21 (Alaska 1972). No further discussion is required of this defense".

24. Inherent in our holding is the conclusion that no eroding of the separation of powers doctrine will result from a ruling that the functions in question are not within the ambit of the discretionary function exception of Alaska's Tort Claims Act.

exception of Hawaii's tort liability act. More particularly, the state contended that

> discretion on the part of a State employee is involved in the placement of road signs and restriping of pavement in that road signs are placed after the district maintenance engineer has made a visual observation and has determined where and how they are to be placed, and center lines are restriped after the engineer has taken into consideration such factors as the geographical area involved, the amount of rain, and the volume of traffic in the area. 25 /

Justice Marumoto, writing for the Supreme Court of Hawaii, rejected the state's contention. After discussing the history of the Federal Tort Claims Act and federal decisional authority, Justice Marumoto wrote:

> None of the cases mentioned above gave a precise definition as to what is meant by operational level acts. However, we may draft from the decisions in those cases, and others involving the discretionary function exception, a conclusion that operational level acts are those which concern routine, everyday matters, not requiring evaluation of broad policy factors. 26/

Employing this definitional framework, the Supreme Court of Hawaii concluded that:

> Here, such matters as the kinds of road signs to place and where to place them, and which center line stripings to repaint and when to repaint them, did not require evaluation of policies but involved implementation of decisions

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25. Rogers v. State, 459 P.2d 378, 380 (Hawaii 1969).

26. Id.

made in everyday operation of governmental affairs. 27/

Admittedly, application of the Abbott "planning - operational" distinction regarding levels of decision-making involves delicate degrees of judgmental values.[28] Although we recognize that it is not possible to articulate a rule which would provide more certainty, we remain convinced that the analytical approach adopted in Abbott is viable and will yield just results.

A second issue the parties were requested to brief related to the standard of care required of the State of Alaska. More particularly, this court asked what is the appropriate standard of care required of petitioner's agents in the event the placement of traffic signs and striping are held to be operational

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27. Id. Compare Carroll v. State, Road Comm'n, 27 Utah 2d 384, 496 P.2d 888 (1972); Cameron v. State, 102 Cal. Rptr. 305, 497 P.2d 777 (1972).

In Carroll, the court concluded that

> the decision of the road supervisor to use berms as the sole means of protection for the unwary traveler was not a basic policy decision essential to the realization or accomplishment of some basic governmental policy, program, or objective. His decision did not require the exercise of basic policy evaluation, judgment, and expertise on the part of the Road Commission. His determination may properly be characterized as one at the operational level of decision making . . . . (footnotes omitted)

Carroll v. State, Road Comm'n, 27 Utah 2d 384, 496 P.2d 888, 891-92 (1972).

28. It appears that the Court of Appeals of Oregon would reach a different holding than we do in the instant case. Weaver v. Lane County, 499 P.2d 1351 (Ore. App. 1972).

functions rather than planning functions for purposes of the discretionary function exception to Alaska's Tort Claims Act. In response, petitioner State of Alaska has argued that "The State is to be judged by a standard of professional care in the same manner as a private engineer. To establish negligence on the part of the State or its agents, it is necessary to demonstrate professional malpractice". Respondents counter with the argument that the state's duty of care in the circumstances was established in State v. Abbott, 498 P.2d 712 (Alaska 1972). Again we find we are in agreement with respondents' position and think Abbott controlling.

In Abbott, we held that the state's duty of care to users of its highways "should be defined by ordinary negligence principles".[29] There we stated that the state "is not an insurer of the safety of motorists" and recognized that it is "the duty of highway authorities to exercise reasonable care to keep the highway in safe condition".[30] In deciding that this was the appropriate standard to employ, we were influenced by the fact that AS 09.50.250 "contains no indication that the legislature intended the state should be held to a lesser standard of care than private individuals";[31] that AS 09.50.250 embodies a legislative decision in favor of risk-spreading; and that "While the negligence

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29. State v. Abbott, 498 P.2d 712, 724 (Alaska 1972).

30. Id., 498 P.2d at 726, note 41, where case authorities from other jurisdictions adopting the same standard of care are collected.

31. Id., 498 P.2d at 724.

standard satisfies the strong public policy favoring compensation of individuls injured by the tortious conduct of the state, it is an extremely flexible standard, and consequently will not inhibit the vigorous and effective performance by the state of its duties in the way that a more rigid standard might".[32]

We are unpersuaded that our adoption in Abbott of ordinary negligence principles as the appropriate standard of care owed by the State of Alaska to users of its highways should be either abandoned or modified. Therefore, we hold that the superior court did not err in following ordinary negligence principles in deciding the liability issues in the case at bar. Thus, the appropriate standard of care required of petitioner and its agents was to use reasonable care to keep the highway in a safe condition for the reasonably prudent traveler.[33]

At trial the disputed issues concerning the state's

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32. Id., 498 P.2d at 725. In this regard, Justice Erwin, writing for this court in Abbott, further elaborated:

> Moreover, when the negligence standard is applied in conjunction with the policy-oriented interpretation of the discretionary function exception outlined in the previous section, the danger of excessive judicial interference with important decisions committed to the coordinate branches of government is avoided.

State v. Abbott, 498 P.2d 712, 725 (Alaska 1972).

33. Donnelly v. Ives, 159 Conn. 163, 268 A.2d 406, 408 (Conn. 1970); Martin v. State, Dep't of Highways, 175 So. 2d 441, 443 (La. 1965), where the court stated, "Generally it is the duty of the highway department to construct and maintain the highways . . . reasonably safe for a traveler himself exercising ordinary care; a highway will be deemed safe within these requirements if it may be negotiated successfully by all but the very reckless and careless drivers, there being no obligation to construct and maintain highways so as to insure the safety of such drivers".

alleged liability centered on whether or not the state should have placed a no-passing barrier stripe on the Seward Highway in the area leading up to the Granite Creek Campground entrance, and whether or not the state should have placed highway warning signs in advance of the campground roadway intersection with the Seward Highway.[34] Concerning the state's duty of care, AS 19.05.010 provides that the Department of Highways "is responsible for the planning, construction, maintenance, protection, and control of the state highway system". AS 19.05.130 defines the term "maintenance" in part to encompass the preservation and operation of "highway facilities and services to provide satisfactory and safe highways". AS 19.10.040 requires that "[t]he department shall classify, designate and mark highways under its jurisdiction and shall provide a uniform system of marking and posting these highways. The system of marking and posting shall correlate with and shall, as far as possible, conform to the recommendations of the Manual on Traffic Control Devices as adopted by the American Association of State Highway Officials".[35] At the time of the

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34. More specifically, it was asserted that the State of Alaska was negligent in failing to place a yellow "no pass" barrier stripe, preventing southbound vehicles from legally passing, at the entrance of the Granite Creek Campground, and for an appropriate distance north.

35. AS 19.10.050 provides that:

> The department shall prescribe types of traffic control signals to regulate traffic on highways. These signals shall correlate with and, as far as possible, conform to the recommendations of the Manual on Uniform Traffic Control Devices as adopted by the American Association of State Highway Officials. The department shall prescribe uniform rules for the placing and installation of traffic control signals.

accident in question, the 1961 Uniform Manual of Traffic Control Devices provides in Section 2B-7 that:

> No-passing zones shall be established at vertical and horizontal curves and elsewhere on two and three lane highways where passing must be prohibited because of dangerously-restricted sight distances or other hazardous conditions.

During the trial the bulk of the professional engineering testimony received went to the issue of whether or not the entrance roadway to the Granite Creek Campground was an "other hazardous condition" within the ambit of Section 2B-7, although other theories of liability were advanced and evidence produced relating thereto by respondents.[36] All of which bring us to another aspect of the proceedings below which is raised by our review of the superior court's decision.

In his memorandum decision, the trial court concluded in part "that the State was negligent in failing, as a safety minimum, to provide a yellow no-pass barrier stripe on the Seward Highway, from the present southerly terminus of the existing barrier stripe about 663 feet to the north, and continuing south past the entrance

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36. The trial court found it "immaterial that a no-passing banner stripe appears once to have been in existence along the stretch of road where the accident occurred. It is also of little materiality to determine that, at the time of the accident, the junction of the campground with the Seward Highway be determined an 'intersection'".

to the Granite Creek Campground. This negligence was a legal cause of plaintiffs' damages."[37]

Study of the court's memorandum decision indicates that the trial judge found the following "facts" furnished the basis for his conclusions: John Ward could have stopped his vehicle before striking DeBeau's jeep, if he had known DeBeau was going to turn left; that Ward would not have pulled out if there had been a no-pass barrier stripe or a "do not pass" sign;[38] and that "the narrow road and lack of shoulder gave him no safe electives in evading the collision when he was committed to his pass, and it was too late to stop. He should not have been permitted to

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37. In an order entered subsequent to its memorandum decision, the superior court implemented and amended its findings of fact and conclusions of law in part by stating that

> the Court's decision was not based on dangerously restricted sight distance within the meaning of Sections 2b-7 and 2b-10 of the Manual of Uniform Traffic Control Devices . . . . [and] that the stopping sight distance of the junction of the Granite Creek Campground roadway and the Seward Highway was not a basis for the court's decision.

38. The trial judge also found that "If there had been a 'T' intersection sign, he would have passed, but would have travelled more slowly".

attempt a 'flying pass' at this location".[39]

Civil Rule 52(a) requires that in a nonjury trial or in an action tried with an advisory jury, the "Court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment". In applying this rule, we have consistently said that it is the trial court's duty under this rule to make findings sufficient to give a clear understanding of the basis of its decisions in order to enable intelligent review on appeal.[40] Although the trial court's findings of fact and conclusions of law embodied in its memorandum decision probably satisfy the requirements of Civil Rule 52(a) and the judicial construction this rule has received, we deem it

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39. In reaching this conclusion, the trial court gave particular emphasis to the testimony of two of respondents' expert witnesses. In his memorandum decision, the trial judge wrote in part:

> It was the testimony of the expert witness Cysewski, who testified . . . that the circumstances at the accident scene, including the configuration of the road and the traffic control markings, encouraged an overtaking driver to make in effect an illegal pass in too short a space of time and space. In other words, Mr. Cysewski testified, the driver was entrapped by the circumstances.
>
> . . . Mr. Bishop, a traffic engineer . . ., testified that the existence of the free passing zone beginnning at the crest of the hill, 633 feet to the intersection, placed the driver of the passing vehicle within a dangerous condition, as he would have to complete his pass over a distance of 516 feet, otherwise he will be in the intersection during his pass.

40. Morrison v. State, 516 P.2d 402, 407 (Alaska 1973); Abbott v. State, 498 P.2d 712, 730 (Alaska 1972); Beaulieu v. Elliott, 434 P.2d 665, 670 (Alaska 1967); Patrick v. Sedwick, 413 P.2d 169, 174-75 (Alaska 1969); Hamilton v. Lotto, 391 P.2d 948, 949 (Alaska 1964).

appropriate on remand to afford the trial court the opportunity of making more detailed findings of fact pertaining to the negligence of the state, causation, and whether either or both of the parties to the collision failed to act in a reasonably prudent manner, and if they did, whether such conduct affects in any manner the state's liability in the circumstances of the case.[41]

Affirmed in part and remanded for further proceedings in accordance with this opinion.

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41. Earlier we held that a remand is necessary in order to permit the parties and the trial court to develop the record pertaining to the court's view of the accident scene and carrying out an experiment. In this regard, we deem it advisable for the trial court to indicate not only what weight it accorded the results of any experiment conducted but also to review its memorandum decision in order to make any modifications necessitated by its supplemental findings regarding the view and experiment.

SB

89

"An Act relating to conflicts of interest; and providing for an effective date."

3/21/75

COMMITTEE REPORT

HOUSE

Mr. Speaker: Date Jan 31, 1975

The Committee on Judiciary has had SB 87

under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR SB 87 AND THAT CS FOR SB 87 DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

SB

96

"An Act relating to the sale of subsistence caught salmon eggs."

COMMITTEE REPORT

3/24/75

HOUSE

Mr. Speaker: Date 4/ /75

The Committee on JUDICIARY has had CSSB 96 am under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(X) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

Original sponsor: Hohman

IN THE SENATE BY THE JUDICIARY COMMITTEE

HOUSE CS FOR CS FOR SENATE BILL NO. 96 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the sale of subsistence caught salmon eggs."

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

* Section 1. INTENT. (a) It is the intent of sec. 2 of this Act to permit the sale or trade of salmon roe under strict permit and regulatory provisions to assure the health of subsistence economies in areas where such use will not jeopardize or interfere with the maintenance of existing salmon stocks.

(b) It is the intent of sec. 3 of this Act to control the waste of salmon resources.

* Sec. 2. AS 16.05 is amended by adding a new section to read:

Sec. 16.05.827. SALE OF SUBSISTENCE SALMON ROE. (a) Notwithstanding 940(17) of this chapter, the board may adopt regulations permitting the sale of subsistence salmon roe under conditions the board considers advisable.

(b) The board may permit subsistence salmon roe sales under (a) of this section if

(1) the accustomed contribution of salmon to particular subsistence economies will be maintained, as modified by current needs; and

(2) subsistence salmon roe sales will not jeopardize or interfere with the maintenance of salmon stocks on a sustained yield basis.

(c) No person may purchase or trade for or attempt to purchase or trade for subsistence salmon roe unless he possesses an annual permit

issued by the commissioner. The commissioner may specify terms and conditions of a permit required under this section. No license, entry permit or interim permit is required for the specific act of selling subsistence salmon roe. No person may purchase or transport or attempt to purchase or transport salmon roe which he knows or has reason to know was taken in violation of this section or regulations adopted under it.

(d) If the commissioner finds that sale of subsistence salmon roe is resulting in waste of salmon carcasses, damage to salmon stocks, or circumvention of salmon management programs, he may close any or all areas to subsistence salmon roe sale by emergency order. If the commissioner finds that the subsistence catch in an area exceeds or is likely to exceed, by 10 per cent, the 1974 subsistence catch for that area, he shall close that area to subsistence salmon roe sale by emergency order.

(e) Original purchasers of subsistence salmon roe shall record information required by the department on fish tickets supplied by the department.

(f) The board may adopt regulations it considers necessary for the administration of this section. The board may delegate its authority under this section to the commissioner.

(g) A person who violates this section or a regulation adopted under it is subject to a fine of not more than $10,000, or imprisonment for not more than six months, or both.

(h) In this section, "subsistence salmon roe" means salmon roe incidentally obtained as an unavoidable by-product of lawful subsistence fishing.

* Sec. 3. AS 16.05 is amended by adding a new section to read:

Sec. 16.05.831. WASTE OF SALMON. (a) It is unlawful for a person to waste salmon intentionally, knowingly, or with reckless disregard for

the consequences. In this section, "waste" means the failure to utilize the majority of the carcass, excluding viscera and sex parts, for salmon which are to be

(1) sold to a commercial buyer or processor;

(2) utilized for consumption by humans or domesticated animals; or

(3) utilized for scientific, educational, or display purposes.

(b) The commissioner may authorize other uses of salmon upon request if he finds that to do so would be consistent with maximum and wise use of the resource.

(c) A person who violates this section or a regulation adopted under it is subject to a fine of no more than $10,000, or imprisonment for ~~not more~~ up to than six months, or both. In addition, a person who violates this section is subject to a civil action by the state for the cost of replacing the salmon wasted. who is financially capable

* Sec. 4. Sections 1(a) and (2) of this Act expire January 1, 1977.

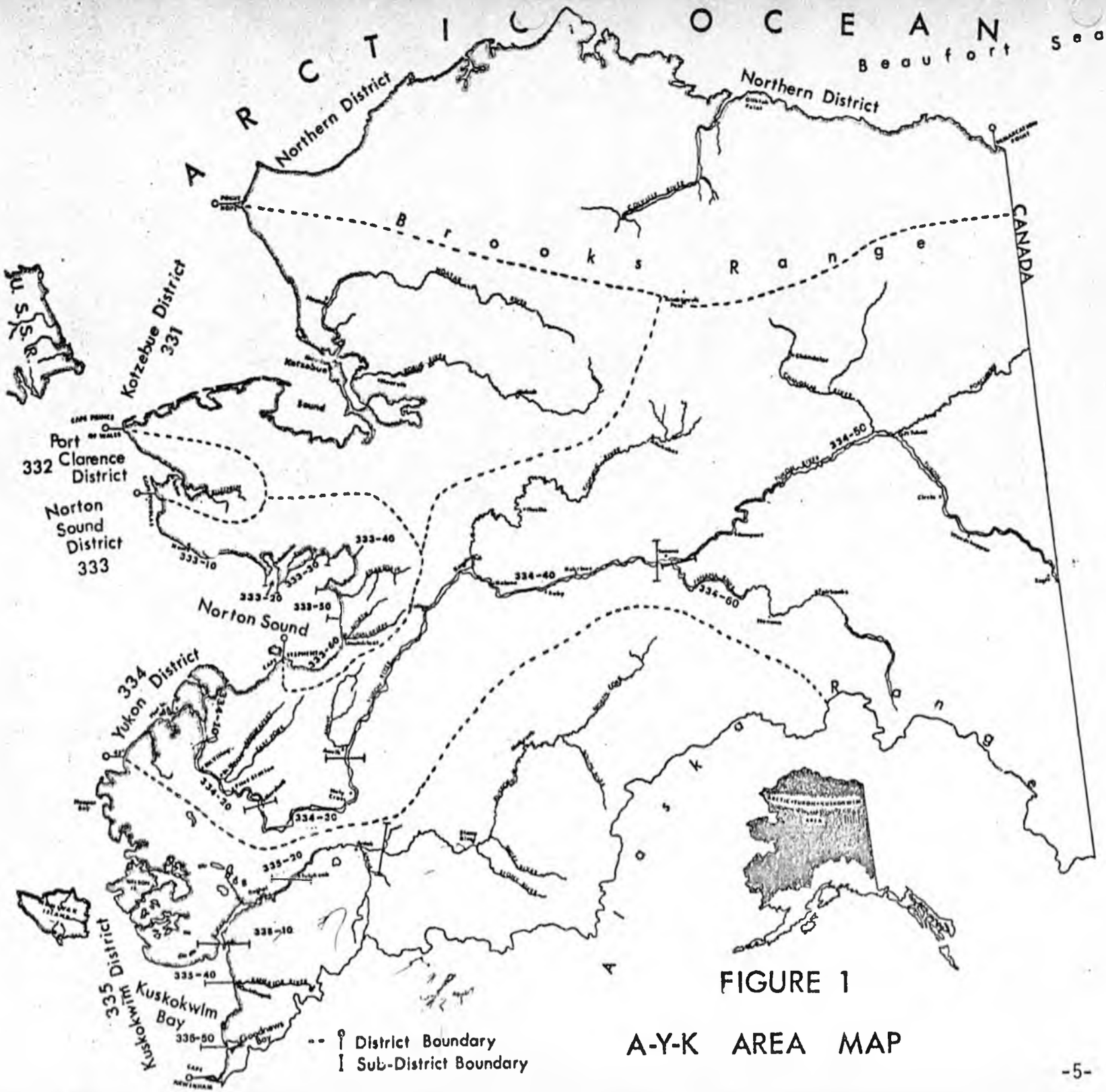


FIGURE 1

A-Y-K AREA MAP

The 1974 commercial catches made in each management area are shown below:

Area	King	Red	Coho	Pink	Chum	Total
Kuskokwim	30,700	29,000	179,300	60,000	196,100	495,100
Yukon	96,900		16,800		877,400	991,100
Norton Sound	2,500		1,800	147,900	149,800	302,000
Kotzebue					631,200	631,200
Totals, 1974	130,100	29,000	197,900	207,900	1,854,500	2,419,400
Previous season record	161,500	13,500	174,500	147,000	1,196,700	1,576,100
5-year average (1969-72)	148,800	8,800	96,300	56,000	717,200	1,026,000

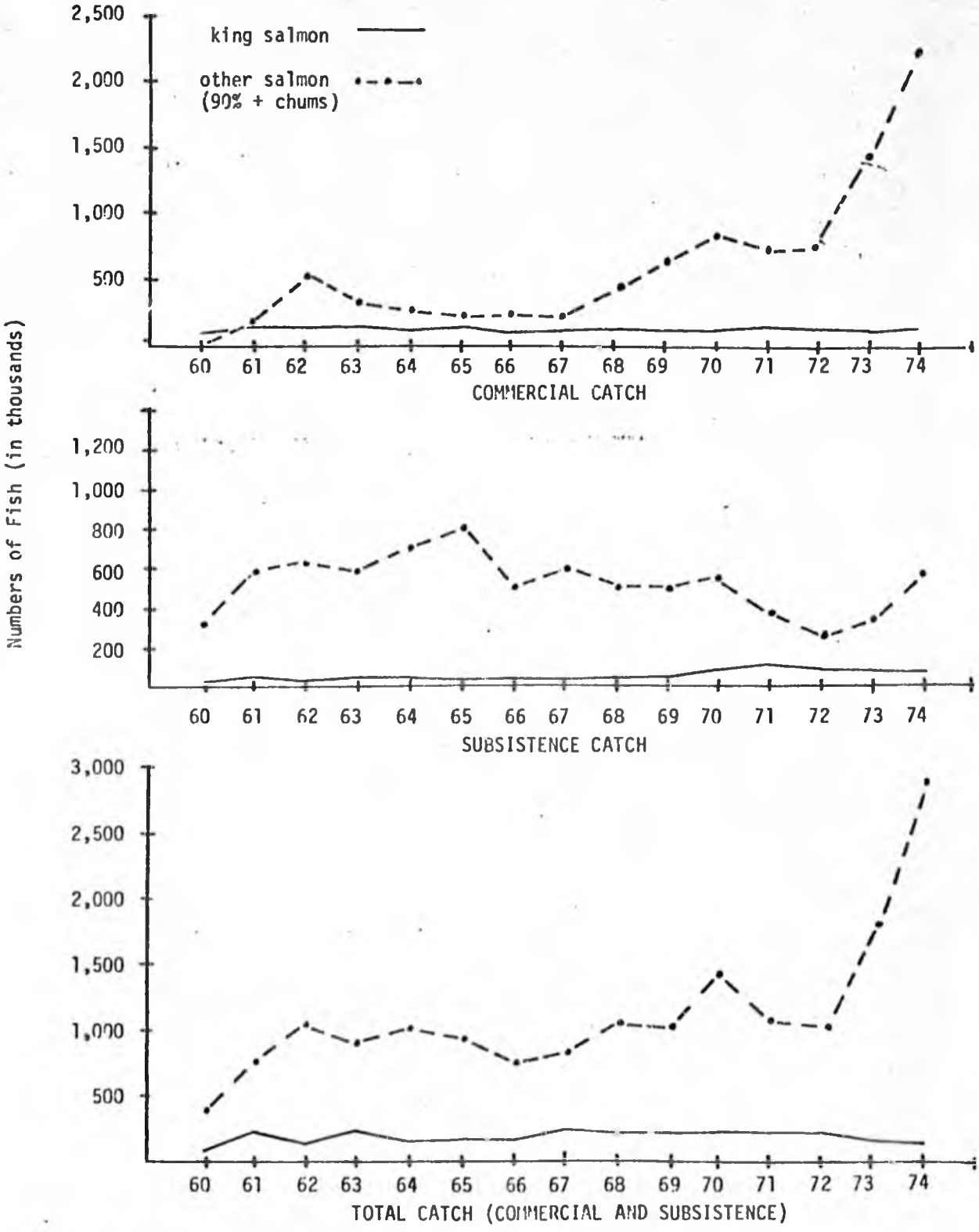
Commercial harvests in the region have increased about thirty times since 1960. Recent increases have been largely due to development of chum salmon fisheries in the Yukon River, Kuskokwim River and Kotzebue areas.

The region-wide license registration in 1974 of 2,685 commercial, 2,042 vessel and 2,285 gear licenses was a record high total. License registration in the region increased at a rate of about 6 percent annually during the 1968-72 period. In 1973, the rate increase over the previous year was 15 percent for vessel and 12 percent for gear licenses. In 1974 vessel and gear license registration increased 24 and 16 percent respectively over that for 1973. Most of this increase was in the Kuskokwim and Kotzebue areas. This expansion is largely the result of increasing numbers of subsistence fishermen who are beginning to also participate in the commercial fishery. The vast majority of commercial fishermen are Eskimo and Indian residents of the region.

Trends in license registrations and commercial harvests in the region during 1960-1974 are illustrated in Figure 2.

Figure 3 shows commercial, subsistence and total catches of king and other salmon species made in the region during 1960-1974.

Figure 3. Commercial, subsistence and total catch in numbers of salmon for the Arctic-Yukon-Kuskokwim region, 1960-1974.



EDFELI

SALE OF ROE FROM SUBSISTENCE-CAUGHT SALMON IN THE ARCTIC-YUKON-KUSKOKWIM REGION, 1974

Background

In years past when native people were experiencing a pure subsistence type of livelihood, all or nearly all portions of fish captured were probably utilized. Salmon roe was consumed by people with probably greater quantities fed to their sled dogs. Due to recent changes in employment and welfare opportunities, there has been a gradual decline in the dependence upon subsistence fishing. Replacement of the sled dog with the snowmachine has had a very significant effect in regards to utilization of chum salmon and roe. From reports received from various village residents, much of the roe taken from subsistence caught salmon in recent years was discarded. The amount of salmon roe discarded or not utilized has never been documented by the Department. There is no question that wastage of salmon roe was and is occurring, but the Department has been unable to quantify the amount.

There are many problems involving the documentation of the amount of roe utilized and/or wasted in the subsistence fishery. It is believed that some native fishermen continued to store or dry their salmon roe with the intention of some future use, but significant amounts may never be used. With regards to wastage, most fishermen would be hard pressed to quantify the amount of roe retrieved from their salmon catch, the amount consumed or the amount wasted.

Beginning with the 1973 season, nearly all commercial salmon buyers in the Kuskokwim area and a few buyers in the upper Yukon area augmented their roe production to some extent from subsistence channels. It was estimated, for example, that illegal sales of subsistence roe in 1973 represented

10-15 percent of the reported commercial roe production in the Kuskokwim area. Illegal sale of salmon roe from subsistence caught salmon was not a problem in the remainder of the region during 1973.

Three different bills were introduced in last year's Legislature that involved legalization of the sale of subsistence caught salmon roe. None of these bills passed as they remained in committee through adjournment.

Department staff members have discussed the issue of subsistence roe sales with A-Y-K region fishermen on many occasions, most recently during spring and fall public meetings. Most A-Y-K fishermen are in favor of legalizing these sales for the following reasons: (1) There is no other use for the roe; (2) Roe sales would provide extra income for wives and children of fishermen.

In the spring of 1974 it was apparent that several buyers were gearing up to purchase even larger amounts of subsistence roe. Both the Departments of Fish and Game and Public Safety assigned additional personnel for fishery patrol in an attempt to minimize the illegal sale of subsistence roe. The major thrust of the enforcement program was increased surveillance of buying and processing stations. News releases and notices were issued to clarify existing regulations.

An emergency regulation with an effective date of June 15, 1974 was issued by the Commissioner which allowed the sale of subsistence salmon roe in the A-Y-K region. Issuance of the emergency regulation was coincidental with the beginning of the salmon runs. A copy of this emergency regulation is attached as Appendix I.

This emergency regulation was in effect for 120 days or until October 13, 1974. Therefore, the sale of subsistence roe is presently illegal and will

continue so through the 1975 season unless changed by further regulation and/or legislation.

All buyers filing Intent to Operates for the A-Y-K region in 1974 were sent a letter notifying them of the emergency regulation. This letter also contained instructions for documenting subsistence roe data on fish tickets. In addition to most information required on regular fish tickets, the number of roe skeins and pounds of roe by species was required.

A-Y-K Regional Summary, 1974 Season

Table 1 presents volume, value, numbers of fishermen and estimated numbers of salmon harvested associated with the sale of subsistence roe for each management area. In 1974, a total of 182,428 pounds of roe was sold, bringing fishermen an estimated $216,940 in earnings. The estimated first wholesale value of this production was $550,000. A subsistence harvest of 432,766 salmon was derived from the volume of roe sold.

By comparison, approximately 422,000 pounds of processed salmon roe was reported as commercial production in 1973. This included a small undetermined volume of illegal subsistence roe. Commercial roe production for 1974 is not yet available.

The majority of the subsistence roe came from the Kuskokwim area (73 percent by weight) and the upper Yukon area (26 percent by weight). A small amount was sold in the vicinity of Nome in the Norton Sound area. No sales of subsistence roe were recorded in the following locations: (1) Norton Sound area (except Nome); (2) Kotzebue area including Kobuk and Noatak Rivers; (3) Upper Kuskokwim River drainage upstream from Kalskag; (4) Koyukuk, Chandalar and Porcupine drainages of the Yukon River; (5) Upper Yukon River drainage upstream from Stevens Village.

Table 1 . Subsistence salmon roe sales data, A-Y-K Region, 1974.

	Kuskokwim Area	Yukon Area 1/	Norton Sound Area	Totals
Pounds of raw product				
King	34,581	468	249	35,298
Chum	98,602	46,901	1,627	147,130
Total	133,183	47,369	1,876	182,428
Number of fishermen	1,438	186	-	-
Value to fishermen	$180,000	$35,533	$1,407	$216,940
Average value/fisherman	$125	$191	-	-
Nos. of fish estimated from roe poundages 2/				
King	20,342	283	150	20,775
Chum	313,024	93,802	5,165	411,991
Total	333,366	94,085	5,315	432,766

1/ Minimum poundages as sale of roe from subsistence caught salmon by licensed commercial fishermen not included.

2/ Based on sex ratios of 1:1 and average roe wts/fish of 3.4 lbs. for Kuskokwim and Norton Sound kings; 3.3 Yukon kings; .63 Kuskokwim and Norton Sound chums; 1.0 Yukon chums.

Kuskokwim Area, 1974 Season

Tables 2 through 5 show volumes of subsistence roe sold in each subdistrict. Estimates of the subsistence harvests were derived from these sales and this information is also included in the above tables. Numbers of persons in each village selling subsistence roe are shown in Table 6.

Within the first two days of legalized sales, more than 2,300 pounds of subsistence roe were sold. Sales increased until a peak of more than 40,000 pounds were purchased during the week of June 17-23. By mutual agreement, the major buyers ceased active recruitment of subsistence roe after July 27. The reason given for this was that further roe sales may have resulted in discarding of carcasses due to the large subsistence catches made by that date.

A total of 5,616 separate sales of subsistence roe was made by 1,438 persons. A total of 34,581 pounds of king salmon roe and 98,602 pounds of chum salmon roe totaling 133,183 pounds was sold. The vast majority of these sales or 122,173 pounds occurred in subdistrict 1 (lower Kuskokwim River) with lesser amounts occurring in subdistrict 2 (middle Kuskokwim River), subdistrict 4 (Quinhagak) and subdistrict 5 (Goodnews Bay).

Estimated value of subsistence roe to the fishermen was $180,000 for an average of $125/fisherman. Roe prices ranged from $1.25-$1.50 per pound with greater prices paid for chum salmon roe. The first wholesale value of the subsistence roe pack was estimated at $400,000. The major buyer/processor realized a value of $270,000.

Numbers of salmon were "back calculated" from reported subsistence roe poundages. Therefore, estimates of the subsistence harvest were made as the season progressed. These derived catches represent minimum figures as all roe from subsistence caught salmon was probably not sold. These calculations

THE FOLLOWING DOCUMENT(S) MAY NOT FILM LEGIBLY BECAUSE OF POOR QUALITY OF THE ORIGINAL.

ated that a minimum of 20,336 king and 313,024 chum salmon were captured the vast majority taken in the Kuskokwim River. These estimates are similar to catches obtained from an independent survey of the subsistence ery which has been made annually since 1960. It was apparent that by early , the estimated Kuskokwim River subsistence chum salmon harvest had surd the 1973 harvest and was one of the largest harvests made since 1960.

Numerous reports were received of discarded carcasses, but the staff ble to document only one such case involving 300-500 carcasses. Roe a single chum salmon was worth about $.95 compared to $1.25-$1.50 for arcass when sold in the usual commercial channels. Therefore the inent to sell roe and discard the carcass was always present. There is anton waste" provision for either commercial or subsistence fishing and ors cannot be cited or prosecuted.

nother more subtle form of wastage was brought to the Department's ion by some fishermen. Although the vast majority of fishermen pre- their subsistence catches, the magnitude of some catches will prevent from using all the fish before next spring when the remaining fish ikely be disposed of.

THE PRECEDING DOCUMENT(S) MAY NOT FILM LEGIBLY BECAUSE OF POOR QUALITY OF THE ORIGINAL.

Table 2 . Subsistence salmon roe sales data by subdistrict, Kuskokwim area, 1974.

	Kings		Chums	
Subdistrict	Pounds of Roe	Est. Nos. of Fish	Pounds of Roe	Est. Nos. of Fish
335-10	28,530	16,782	93,643	297,280
335-20	3,932	2,312	4,861	15,432
335-40	1,631	960	93	296
335-50	488	282	5	16
TOTAL	34,581	20,336	98,602	313,024

Table 3 . Subsistence roe data, Kuskokwim River kings, 1974.

Date	Roe Sales in Pounds 335-10	335-20	Total
6/10 - 6/16	2,311	15	2,326
6/17 - 6/23	17,118 1/	1,326	18,444
6/24 - 6/30	6,853	1,260	8,113
7/1 - 7/6	509	1,331	1,840
7/7 - 7/13	1,683		1,683
7/14 - 7/20	56		56
7/21 - 7/27			
TOTALS	28,530	3,932	32,642

1/ Probably mostly king salmon roe. Major buyer did not differentiate between chum and king salmon roe.

Estimates of Numbers of Salmon 1/

335-10	28,530 lbs. roe / 3.4 lbs roe/female	=	8,391 Females 8,391 Males 16,782 Kings
335-20	3,932 lbs. roe / 3.4 lbs. roe/female	=	1,156 Females 1,156 Males 2,312 Kings
TOTAL			19,094 Kings

1/ Based on average roe weight per female of 3.4 lbs and 1:1 sex ratios.

Table 4. Subsistence roe data, Kuskokwim River chums, 1974

Date	Roe Sales in Pounds 335-10	335-20	Total
6/10 - 6/16			
6/17 - 6/23	395	28	420
6/24 - 6/30	30,444	1,485	31,929
7/1 - 7/6	30,137	642	30,779
7/7 - 7/13	22,567	531	23,098
7/14 - 7/20	9,474	471	,945
7/21 - 7/27	626	1,704	2,330
TOTALS	93,643	4,861	98,504

Estimates of Numbers of Salmon 1/

335-10	93,643 lbs. roe / 0.63 lbs. female	=	148,640 Females 148,640 Males 297,280 Chums
335-20	4,861 lbs. roe / 0.63 lbs. roe/female	=	7,716 Females 7,716 Males 15,432 Chums
TOTAL			312,712 Chums

1/ Based on average roe weight per female of .63 lbs and 1:1 sex ratio.

Table 5 . Subsistence roe data, Quinhagak and Goodnews Bay, 1974.

	Pounds of Roe	
	subdistrict 4 (Quinhagak)	subdistrict 5 (Goodnews Bay)
King	1,631	488
Chum	93	5
Total	1,724	493

Estimates of Numbers of Salmon 1/

Quinhagak:

1,631 lbs. roe / 3.4 lbs. roe/female = 480 Females + 480 Males = 960 Kings

93 lbs. roe / .63 lbs. roe/female = 148 Females + 148 Males = 296 Chums

Goodnews Bay:

488 lbs. roe / 3.4 lbs. roe/female = 141 Females + 141 Males = 282 Kings

5 lbs. roe / .63 lbs. roe/female = 8 Females + 8 Males = 16 Chums

1/ Based on average roe weight per female of 3.4 lbs for kings and .63 lbs for chums; 1:1 sex ratio.

Table 6 . Numbers of people by village that sold roe from subsistence caught fish, Kuskokwim area, 1974.

Village	No. of People	Percent
Kwigillingok	3	0.3
Kipnuk	2	0.2
Kongiganak	3	0.3
Tuntutuliak	45	5.0
Chefornak	1	0.1
Eek	60	6.3
Chuathbaluk	3	0.3
Kasigluk	3	0.3
Nunapitchuk	9	1.0
Atmauthluak	2	0.2
Napakiak	52	5.5
Oscarville	35	3.7
Napaskiak	88	9.4
Bethel	158	16.8
Kwethluk	163	17.4
Akiachak	84	8.9
Akiak	68	7.2
Tuluksak	27	2.9
Kalskag (Urper & Lower)	32	3.4
Aniak	42	4.5
Quinhagak	59	6.3
Subtotal	939	100.0
Village not entered on fish ticket	499	
TOTAL	1,438	

Yukon Area, 1974 Season

Table 7 presents subsistence roe sales data for each subdistrict. There was 468 pounds of king salmon roe and 46,901 pounds of chum salmon roe totaling 47,369 pounds sold by 186 fishermen. The majority of these sales were made by subsistence fishermen (not commercially licensed) and a few licensed commercial fishermen that fished for subsistence after the close of the commercial season.

An unknown amount of subsistence roe was included with the "commercial production" which totaled 36,766 pounds (2,184 pounds king roe, 34,582 pounds chum roe) in subdistricts 4, 5 and 6. This was roe sold by commercial fishermen from fish captured during weekly closures of the commercial fishery. Therefore, the subsistence roe poundages represent minimum figures.

The documented 47,369 pounds of subsistence roe sales earned fishermen about $35,500 or an average of $191 per fisherman. A total of 16 buyers purchased subsistence roe that had an estimated first wholesale value of $142,000. The major buyer/processor in the area realized an estimated first wholesale value of $93,000 from subsistence roe.

There were no sales of subsistence roe in subdistrict 1 and only 239 pounds in subdistrict 2. Nearly all the fishermen in these two subdistricts are commercial fishermen and in addition, subsistence fishing is prohibited during weekly commercial fishing closures.

The greatest amounts of subsistence roe was sold in subdistrict 4 which also had the greatest number of participants. Relatively small amounts were sold in subdistricts 3 and 5 probably due to the remoteness of most fishermen precluding regular tendering by buyers.

It is difficult to assess the impact of allowing the sale of subsistence caught salmon roe on the Yukon River fishery. Preliminary 1974 figures indicate that in excess of 271,000 salmon were taken for subsistence. This is a 30 percent increase over the 1973 harvest and a 28 percent increase over the previous 5-year annual average harvest. The sale of subsistence caught roe and a large summer chum salmon run were probably both contributing factors to the large subsistence harvest in 1974. Also, the river was low and fishing conditions were judged excellent.

Subsistence roe poundages were entered on fish tickets but could not always be separated from roe sold by commercial fishermen (either from commercially captured fish or from fish taken for subsistence during commercial fishing closures). Some of the subsistence roe was not identified as to species on fish tickets.

There were no documented instances of fish being taken for roe only and the carcasses being discarded although there were unsubstantiated reports of this occurring in the Anvik-Grayling area. It is likely that some individuals engaging in the sale of subsistence roe this season captured salmon in excess of their needs.

Table 7. Subsistence salmon roe sales data, Yukon area, 1974

Subdistrict	Pounds of Roe			No. of	Value to	Estimated Nos. of Salmon 1/		
	King	Chum	Total	Fishermen	Fishermen	King	Chum	Total
1								
2		239 2/	239 2/	10	$179		478	478
3		4,103 1/	4,103 1/	25	$3,077		8,206	8,206
4	51	23,493	23,544	91	$17,665	31	46,986	47,017
5	238	3,282	3,520	36	$2,640	144	6,564	6,708
6	179	15,784	15,963	24	$11,972	108	31,568	31,676
TOTAL	468	46,901	47,369	186	$35,533	283	93,802	94,085

1/ Based on average roe weights of 3.3 lbs for kings and 1.0 lbs for chums and 1:1 sex ratios.
2/ Species not identified by buyers; assumed to be all chums.

Discussion

Traditionally, the subsistence salmon fishery was naturally limited by the personal food requirements and the numbers of salmon that could be handled in a day and hung to dry or smoke during the season. These restraints do not apply to a commercial fishery where the profit motive is paramount.

A possible consequence resulting from the authorization of sale of subsistence caught salmon roe is that the concept and future direction of subsistence fishing may be permanently altered. Present subsistence fishing regulations in the A-Y-K Region are quite liberal which is in recognition of the traditional personal needs of the large native population. If the sale of subsistence caught salmon roe is permanently authorized and subsistence fishermen begin making harvests in excess of recent traditional levels, then a new management strategy must be developed. There are two main options to pursue in this event,i.e., restricting the subsistence harvest or restricting the commercial harvest to bring the total harvest in line with optimum sustained yield. If subsistence fishing requires further restriction, many persons with genuine subsistence needs will be adversely affected by others who are much less dependent on a subsistence livelihood, but continue to fish mainly for the purpose of selling roe.

Another consideration is that the monetary value of such a fishery in terms of local economy should greatly exceed the cost of establishing and monitoring the fishery. In some areas the reverse will be true.

The effect of allowing the sale of subsistence roe on the 1974 subsistence fishery remains unclear. Kuskokwim and Yukon River subsistence chum salmon catches were significantly larger than recent year levels. Both the large salmon run and increased effort due to the opportunity to sell roe

were probably factors contributing to the large subsistence harvests in 1974.

If the sale of subsistence roe is authorized for the 1975 season, it should be more rigidly controlled similar to any commercial enterprise and only authorized initially in relatively few areas.

Several options involving greater control seem worthy of discussion and include the following:

1. If the sale of roe from subsistence caught fish is authorized, it should pertain only to salmon. There will be more than enough problems involved with these species without the inclusion of the entire fishery fauna of the A-Y-K Region. Also, only the salmon resource is sufficiently abundant to withstand commercial utilization in addition to subsistence fishery requirements.

2. A new regulation or statute defining wanton waste of fish and establishing fines or penalties should be promulgated. The suggested wording would be similar to the statute referring to waste of wild animals (16.30.010.)"a person who intentionally captures fish for any purpose and does not make a reasonable attempt to utilize most of the usable flesh, excluding the viscera and sex products, for human and animal consumption is guilty of a misdemeanor and upon conviction, is punishable by a fine of not more than $500 or by imprisonment for not more than six months or by both." Care must be taken in the wording of this so that the discarding of roe, viscera, etc., is not in violation of the newly written law or regulation. Large-scale discarding of the fish carcasses merely for the sale of the roe cannot be tolerated and any authorized sale of subsistence caught roe would be prohibited by emergency order during the season in this event.

3. The sale of roe from subsistence caught salmon should be allowed only in areas presently open to commercial fishing. This would prevent the

expansion of subsistence fishing solely for salmon roe and would protect spawning areas from this practice. Also, by confining this practice to present commercial fishing areas, the Department staff can better monitor the fishery and enforce associated regulations. This would prohibit the sale of roe from subsistence caught fish in all spawning areas throughout the region and all tributary streams of the Kuskokwim and Yukon Rivers except the Tanana River below its confluence with the Chena River. Most of the areas excluded can be characterized by (1) remoteness and (2) small traditional subsistence salmon harvests.

4. In specific areas, allow the sale of roe from subsistence caught salmon only during commercial fishing seasons and during regular commercial fishing periods. This will also prevent the expansion of the subsistence fishery solely for the purpose of sale of roe and insure adequate spawning escapements during the season.

5. Allow the sale of roe from subsistence caught fish only after the king salmon run or season is completed. This in effect could be labeled a "special roe season." The king salmon runs are already extensively harvested and there are indications that these runs are depressed at the present time. The runs of other species of salmon are comparatively more abundant, have less fishing effort and some can probably withstand a small increase in utilization. If the authorization of sale of subsistence caught roe results in an increase above traditional harvest levels, then these runs would have to be managed more conservatively in the future. This method may have most merit in the Yukon-Kuskokwim areas where king salmon runs are present.

6. Establish a roe quota in each management area based on recent subsistence harvest levels. Reasonable estimates can be made of the salmon roe production (numbers of skeins and/or poundage) resulting from recent subsistence harvest levels using known catches and sex ratios. Once these quotas are taken, the sale of roe from subsistence caught salmon would be prohibited for the remainder of the season. This would prevent large-scale expansion of the subsistence fisheries solely for the purposes of selling roe and would assist in maintaining subsistence harvests at recent traditional levels.

7. Due to the vast size of the fishing areas involved, in addition to the large numbers of fishermen and processing stations, enforcement of regulations and monitoring of the fishery associated with the authorized sale of subsistence caught salmon roe would require several additional personnel assigned to the Department. The following additional seasonal employees would be required in each area: (1) Kuskokwim--three employees from June through August; (2) Yukon--three employees from June through September; (3) Norton Sound-Kotzebue--one employee from July through September.

BOARD OF FISH AND GAME
FINDING OF EMERGENCY

The Board of Fish and Game finds that an emergency exists and that the attached regulation is necessary for the immediate preservation of the public peace, health, safety or general welfare. A statement of the facts constituting the emergency is:

1. A subsistence salmon fishery occurs in the Arctic-Yukon-Kuskokwim area. In 1974, the subsistence salmon catch is expected to be approximately 400,000 fish.

2. The laws and regulations governing subsistence fishing are premised on traditional utilization practices that involved use of the flesh for human food and of the viscera and gonads for dog food. With the advent of snow machines and the rapid decline in numbers of dogs, salmon gonads are now largely extraneous to home requirements and are wasted.

3. Salmon roe has recently increased in value as a commercial product, and as an otherwise useless by-product of subsistence fishing, its sale would be consistent with the expressed state policy of maximized utilization of natural resources and enhancement of the welfare of people in an economically depressed region. Therefore, an emergency regulation that remedies the existing conflict between existing regulations and the best interests of the people and resources is required.

The regulation, 5AAC 39.890(d), attached hereto, is therefore adopted as an emergency regulation to take effect immediately upon filing by the lieutenant governor as provided in AS 44.62.180.

DATE June 14, 1974

James W. Brooks, Secretary
Board of Fish and Game

I, Henry A. Boucher, Lieutenant Governor for the State of Alaska, certify that on June 15 1974, at 12:15 P.m., I filed the attached regulation according to the provisions of AS 44.62.040-44.62.120.

Register 51

Henry A. Boucher (NORMAN GORSUCH)
Lieutenant Governor, DESIGNEE
State of Alaska

NOTICE OF ADOPTION OF EMERGENCY REGULATION

Pursuant to the Administrative Procedure Act (Alaska Statutes 44.62) notice is hereby given that the Alaska Board of Fish and Game has adopted the following regulation:

REGULATION PERMITTING THE SALE OF SALMON ROE FROM SUBSISTENCE CAUGHT FISH IN THE ARCTIC-YUKON-KUSKOKWIM AREA

5AAC 39.890 RESTRICTIONS.

(d) It is unlawful to buy, sell or barter subsistence caught fish or parts thereof provided, however, that in the Arctic-Yukon-Kuskokwim Area salmon roe incidentally obtained as an unavoidable by-product of legal subsistence fishing may be bought, sold or bartered in quantities directly related to salmon otherwise fully utilized for traditional subsistence purposes.

End of Regulation

If trends on week to week basis indicate catch will go above 1974

How much waste before exercising emergency closure

What was catch increase last year

How about limit 10% above 10 year ave
10% above catch in last 10 years

400,000 lbs roe 400,000 fish A-YK

polled board – May voted for 1974 emergency regulation

– 1974 – 422,000 of processed from Com. fish
182,000 of " " Sub "
$216,900 net worth

only allow 10% above 1974 subsistence level

1675 C STREET
ANCHORAGE, ALASKA 99501
PHONE (907) 274-3611

Interaction, Pride in Heritage, Progress

EXECUTIVE OFFICES

April 7, 1975

Guy A. VanDoren, Staff Assistant
House Resource Committee
Fouch V
Juneau, Alaska 99811

Dear Mr. VanDoren:

For the information of the House Resource Committee, it was a Conference on Rural Legislative Priorities held in Juneau on March 24-25, 1975 and sponsored by the Alaska Federation of Natives, Inc., the Rural Alaska Community Action Program, and the Department of Community and Regional Affairs that considered commercial use of fish roe taken from subsistence fish a low priority piece of legislation. The Conference results are recommendations until ratified by the AFN Human Resource Committee and that is scheduled for April 15, 1975 here in Anchorage.

Reasons for considering the commercial use of fish roe taken from subsistence fish a low priority piece of legislation is concern that we would forget about subsistence and catch for commercial use, therefore depleting further an already endangered species. This would also endanger the subsistence fishing activities in the long run if many violations were proven. Many voiced the opinion they would much rather keep their traditional subsistence fishing activities than to have the annual take regulated by the Department of Fish and Game. Their regulation maintaining salmon stocks on a sustained yield basis hasn't proven very successful throughout the State. In fact, management on a sustained yield basis is often justification for closure. Another real concern is the possibility of all Alaskans catching fish in the name of subsistence entering into the picture and jeopardizing a noble effort on the part of your Committee. There were other arguments in the Fisheries Committee and during the Conference, but the above I believe are the primary reasons.

Once again, we aren't opposed to this piece of legislation, but it has been recommended a low priority item. I expect our Committee to ratify this recommendation next week however.

Please let me know if you wish further explanation. My best wishes to Chairman Anderson.

Sincerely,

Gordon Jackson
Executive Vice-President
Human Resources Administration

GJ:jb

cc: Robert Schaeffer, Chairman, AFN Human Resources Committee
Trefon Angasan, Chairman, Fisheries Committee
Phil Smith, RurAL CAP
✓Richard Listowski

ALASKA
STATE LEGISLATURE

MEMORANDUM

3/21

Rep. Anderson,

Are you certain that you want sec. 831 to expire in 1977? It strikes me that this is a very valuable general provision for the fish code and not really connected to or dependent on the preceding provision relating to sale of eggs.

Secondly, Confining the sale of eggs to one group of subsistence users, excluding others in the same category

ALASKA
STATE LEGISLATURE

MEMORANDUM

must be able to be justified on a management basis or is surely subject to challenge. I'm assuming that you are prepared to justify it on the basis that sale of eggs elsewhere would in some way jeaprodize or interfere with the maintenance of existing stock there. Of course, it would also be permissible if the use in another area was not a subsistence use.

Finally, a letter of intent is for the

ALASKA
STATE LEGISLATURE

MEMORANDUM

purpose of clarifying or explaining something in a bill that is unclear or ambiguous. ~~It would be the~~ A court would not controvert the clear wording of the statute as generally applicable, and read it to apply only to the arctic - Kuskokwim area.

I hope this may be of some assistance to you.

Joel Bennett

The People

Dear Editor:

The following was sent to Gov. Jay Hammond.

Dear Governor,

Once again I'm compelled to call to your attention an illegal act perpetrated amid the grossest political overtones by a member of your administration, although not during it. And once again one can demonstrate how the professional management of the state's fish and game resources has been subverted in recent years by calculated political manipulation, on behalf of special economic interests and in a manner which is destructive of the state's natural fisheries resources.

Last June 14 Fish and Game Commissioner Jim Brooks promulgated, in the name of the Board of Fish and Game, acting as it's secretary, an emergency regulation permitting the sale of roe from subsistence-caught salmon in the Arctic-Yukon-Kuskokwim area. Issuance of the regulation caught the area's fisheries staff utterly by surprise, and wholly unprepared to cope with its management responsibilities, co-inciding as it did with the start of seasonal salmon migrations upstream. However, even had the regulation been promulgated well in advance of the salmon runs, the field staff would have been unable to monitor and manage the subsistence harvests, greatly expanded by the incentive to maximize roe harvests, without the assignment of at least eight additional enforcement personnel in the A-Y-K area.

Subsequent harvest figures show that subsistence salmon catches from the Yukon and Kuskokwim Rivers were substantially larger in 1974 than in recent years. Since the trend in the subsistence catch in the years prior to 1974 was stable or downward, one must deduce that the vastly increased catch in 1974 was in large part attributable to the lure of a new economy based on subsistence-caught salmon roe, thus expanding the 1974 salmon harvest without demonstrably expanding subsistence consumption.

The obvious implication, of course, is that uncounted numbers of salmon were harvested for the purpose of obtaining theroe only, and their carcasses discarded. Although department field personnel were able to document only one case of salmon wastage involving some 500 fish . there were many undocumented reports of wastage which went unconfirmed by the department because there were insufficient enforcement officers in the field to monitor the harvests.

The economic incentive for thesale and purchase of subsistence-caught salmon roe, as you know, is considerable. The first wholesale value of the subistence-caught roe from the Kuskokwim River alone was estimated at $400,000, and the major buyer-processer, Kemp-Palucci, a Minnesota-based firm operating out of Bethel, realized a value of $270,000.

Whereupon, the politico-economic implications visibly intrude. Shortly before the issuance of the emergency regulatin, the previous administration received Telegrams from Two prominent Minnesota political figures, one of them U.S. Senator Hubert Humphrey, urging Gov. Egan to legalize the sale of subsistence-cauht roe. Obviously, Sen. Humphrey and his congressional colleague covertly intervened on behalf of their constituent, a promient Minnesota fish processor who just happened to be the principal beneficiary of the increased roe harvest in the A-Y-Karea in 1974.

It should be noted that although three bills which would have legalized the sale of subsistence-caught salmon roe were intoroduced in ,the legislature in 1974, none passed, clearly establishing the legislature's negative intent in this regard. Notwithstanding that clear expression of legislative disapprobation, Commissioner Brooks presumed to issue Emergency Regulation 5AAC 39.830, in the absence of statutory authority. Furthermore-although it's not really relevant, since the regulatin was clearly illegal—there is no evidencce in the board's minutes that Commissioner Brooks polled the members of the Board of Fish and Game to obtain a quorum consent, which he must do in any case when acting on its behalf as secretary of the board.

Since my experience with your legal department has already shown that one cannot rely upon it for critical and independent evaluation of your administration, I've attempted to establish the illegality of Commissioner Brooks acuons in this regard. Please note that Title 16 of the Alaska Statutes, 05.940 (17), defines subsistence fishing as "...the taking, fishing or possession of fish, shellfish, or other fishery resources for personal use and not for sale or barter..." (Emphasis added).

Please note also that Title 16.05.920 makes it"...unlawful for a person to take, possess, transport, sell, offer to sell, purchase, or offer to purchase, game or marine aquatic plants, or any part of fish, game or aquatic plants, or a nest or egg of fish and game...unless permitted by this chapter or by regulation made under this chapter." (Emphasis added). Dince legislative attempts in 1974 to legalize regulations providing for the sale of subsistence-caught salmon roe under AS Title 16, as noted above, failed to pass the legislature, no such authority presently exists.

Since Commissioner Brooks' illegal actions precipitated a myriad of illegal sales and purchases of subsistence-caught salmon roe, numbering in the thousands, and implicating literally hundreds of persons as accomplices, it seems improbable that the state has any practical recourse in this matter, ex post facto. Nonetheless, I felt these circumstnaces and their implications should be brought to your attention, in hopes that they will at the very least, preclude any recurrence.

Sincerely,

Joe La Rocca

Fairbanks, Alaska

ALASKA FEDERATION OF NATIVES, INC.

1675 C STREET
ANCHORAGE, ALASKA 99501
PHONE (907) 274-3611

Dedicated to Pride in Heritage, Progress

EXECUTIVE OFFICERS

April 7, 1975

Guy A VanDoren, Staff Assistant
House Resource Committee
Pouch V
Juneau, Alaska 99811

Dear Mr. VanDoren:

For the information of the House Resource Committee, it was a Conference on Rural Legislative Priorities held in Juneau on March 24-25, 1975 and sponsored by the Alaska Federation of Natives, Inc., the Rural Alaska Community Action Program, and the Department of Community and Regional Affairs that considered commercial use of fish roe taken from subsistence fish a low priority piece of legislation The Conference results are recommendations until ratified by the AFN Human Resource Committee and that is scheduled for April 15, 1975 here in Anchorage.

Reasons for considering the commercial use of fish roe taken from subsistence fish a low priority piece of legislation is concern that we would forget about subsistence and catch for commercial use, therefore depleting further an already endangered species. This would also endanger the subsistence fishing activities in the long run if many violations were proven. Many voiced the opinion they would much rather keep their traditional subsistence fishing activities than to have the annual take regulated by the Department of Fish and Game. Their regulation maintaining salmon stocks on a sustained yield basis hasn't proven very successful throughout the State. In fact, management on a sustained yield basis is often justification for closure. Another real concern is the possibility of all Alaskans catching fish in the name of subsistence entering into the picture and jeopardizing a noble effort on the part of your Committee. There were other arguments in the Fisheries Committee and during the Conference, but the above I believe are the primary reasons.

Once again, we aren't opposed to this piece of legislation, but it has been recommended a low priority item. I expect our Committee to ratify this recommendation next week however.

Please let me know if you wish further explanation. My best wishes to Chairman Anderson.

Sincerely,

Gordon Jackson
Executive Vice-President
Human Resources Administration

GJ:jb

cc: Robert Schaeffer, Chairman, AFN Human Resources Committee
Trefon Angasan, Chairman, Fisheries Committee
Phil Smith, RurAL CAP
✓Richard Listowski

CHAIRMAN
NELS A. ANDERSON, Jr.

STAFF ASSISTANT
GUY VANDOREN

POUCH V
JUNEAU, ALASKA 99811

VICE CHAIRMAN
TED SMITH

SECRETARY
BETH O'DONNELL

PHONE 465-2715
465-3761

House Resource Committee

FRED BROWN ALVIN OSTERBACK DICK ELIASON LEO RHODE
MIKE HERSHBERGER LESLIE (RED) SWANSON JAMES HUNTINGTON

April 3, 1975

Mr. Gordon Jackson
Alaska Federation of Natives
1675 C Street
Anchorage, Alaska 99501

Dear Mr. Jackson:

It has recently come to the attention of the House Resources Committee that A.F.N. has come out against commercial use of fish roe taken from subsistence fish.

The committee passed the fish roe bill out of committee having heard positive testimony from many natives especially in the Yukon-Kuskokwim area.

Although the bill is now in the House Judiciary Committee, we would like to have testimony regarding the reason A.F.N. is in opposition to this bill.

Sincerely,

Guy A. Vandoren
for Nels A. Anderson, Jr.
Chairman-House Resource Committee

GAV/bl

House Judiciary Committee
April 22, 1975

The meeting was called to order at 7:13 p.m. by Chairman Gardiner. All members were present.

HB 314 Outdoor Advertising

Walt Parker, Commissioner of the Department of Highways, testified that the present statute bans signs within 660 feet -- the bill would ban signs visible within 660 feet. The bill is needed to conform to federal statutes. Without it Alaska will lose 10% of federal highway monies - $10-12 million.

page 1, line 19: delete "secondary"
page 2, line 14: insert "primary delete "secondary"
This amendment was to permit advertising on secondary roads which are not funded by federal money.

Mr. Williams of the Department of Highways stated that non-complying signs would be allowed to stand until July 1, 1976. After that date there would be condemnation and compensation paid to the sign owner.

Mr. Bradley moved to adopt the Commerce amendments and move the bill out. Mr. Specking objected.

Mr. Parr moved to amend the motion to delete "or secondary" from the existing laws. Mr. Gardiner objected. The amendment carried.

The bill was moved out as CS with individual recommendations.

SB 96 Salmon eggs

Commissioner Brooks stated that last year this bill died in committee. During the summer regulations were adopted permitting the sale of eggs. The Attorney General recommends that this sale be allowed in the statute. Roe are worth from $1 to $1.50 a pound. This is wasted if the eggs are not sold. This was why emergency regulations were adopted affecting a limited area. Roe used to be used for dog food, but now there are fewer dogs in the area. 2.4 million subsistance fish were taken last year. This was due to a large chum run.

Jimmy Huntington stated that illegal traffic in roe was minimal in the AYK area, heavier in the Nenana area. Statistics showed illegal sales accounted for 10-15% of the total in areas where Japanese had processing. He favored trying the bill.

page 2, line 10 add: "When the commissioner finds that the subsistence catch in the area exceeds, or is expected to exceed by 10% the subsistence catch of the 1974 season, he shall close that area to subsistence salmon roe sale by emergency order."

page 1, line 16 add "a" new section
page 2, line 22 AS 16.05 is amended by adding a new section to read
page 3, line 11 strike 3, insert 4
sections 16 1 and 2 of this Act expire
January 1, 1977

The above amendments were adopted and SB 96 passed out of committee as a CS.

SB 59 Juveniles

Diane Nelson testified that some juvenile offenders cannot be rehabilitated. Citizens should know the names of muntiple offenders. The superior court approves the CS and it was drafted by Associate Justice Boochever. The CS recommends publication of only certain names at the discretion of the court, even after second conviction.

SB

99

"An Act relating to public records; and providing for [illegible] an effective date."

2/20/75

COMMITTEE REPORT

HOUSE

Mr. Speaker: Date 4-2-75

The Committee on Judiciary has had CSSB 99 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

Original sponsor: Rules Committee

IN THE SENATE BY THE JUDICIARY COMMITTEE

HOUSE CS FOR CS FOR SENATE BILL NO. 99

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to public records; and providing for an effective date."

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

* Section 1. AS 09.25 is amended by adding a new section to read:

Sec. 09.25.125. ENFORCEMENT: INJUNCTIVE RELIEF. A person having custody or control of a public record who obstructs or attempts to obstruct, or a person not having custody or control who aids or abets another person in obstructing or attempting to obstruct, the inspection of a public record subject to inspection under sec. 110 or 120 of this chapter may be enjoined by the superior court from obstructing, or attempting to obstruct, the inspection of public records subject to inspection under sec. 110 or 120 of this chapter.

* Sec. 2. AS 11.30.240 is amended to read:

Sec. 11.30.240. MISHANDLING OF PUBLIC RECORDS. A person who has the legal custody of and who wilfully destroys, secretes, or mutilates a public record, book, paper, or writing, or a person [AN ATTORNEY] who wilfully destroys, secretes, or mutilates a public record, book, paper, or writing, or wrongfully takes a public record, book, paper, or writing from the person having legal custody of it, or who has obtained possession wrongfully and refuses or neglects to return or produce it when lawfully required or demanded so to do, upon conviction, is punishable by a fine of not less than $100 nor more than $500, or by imprisonment for not less than 90 days nor more than one year, or by both [IMPRISONMENT IN THE PENITENTIARY FOR NOT LESS THAN SIX MONTHS NOR MORE THAN ONE

expand to all persons

YEAR, OR BY IMPRISONMENT IN A JAIL FOR NOT LESS THAN THREE MONTHS NOR MORE THAN ONE YEAR, OR BY A FINE OF NOT LESS THAN $100 NOR MORE THAN $500].

* Sec. 3. AS 11.30 is amended by adding a new section to read:

Sec. 11.30.245. OBSTRUCTION OF ACCESS TO PUBLIC RECORDS. A person who has custody or control of a public record who intentionally obstructs or attempts to obstruct, or a person not having custody or control who intentionally aids or abets another person in obstructing or attempting to obstruct, the inspection of a public record subject to inspection under AS 09.25.110 or 09.25.120 is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not less than $100 nor more than $500. Upon a subsequent conviction, that person is guilty of a misdemeanor and is punishable by a fine of not less than $250 nor more than $1,000, or by imprisonment for not more than six months, or by both.

* Sec. 4. This Act takes effect immediately in accordance with AS 01.10.-070(c).

↘ criminal belongs in title 11 - we relocated this part

*Sec. 1 provides for injunctive remedy - would be in addition to a writ of mandamus remedy available to force public officials to do their duties properly.

House Judiciary Committee
April 28, 1975

The meeting was called to order at 1:25 p.m. by Chairman Gardiner. All members were present except Mr. Eliason.

SB 99 Public Records

The committee reviewed the proposed CS by the Judiciary Committee which put section 2 in title 11 and incorporated material relating to the Ombudsman. Mr. Brown moved the Judiciary CS CS SB 99 do pass. There being no objection, it was so ordered.

SB 167 False reports

Mr. Brown moved SB 167 out do pass since it had been determined that it was in the correct title.

HB 418 Conflict of Interest

The committee reviewed the proposed CS by the Judiciary Committee which cleans up the problem of "members of municipal bodies" and "special" elections.

Mr. Parr raised the question on page 1, line 26 as to whether "legislative" only applied to state level or whether it could be interpreted to include municipal level. Mr. Walker stated that it could be open to interpretation. The committee requested Mr. Walker to draw up additional language to the effect that legislative related to matters before the state government.

HB 416 Abuse of power

Since the bill was determined to be in the correct title, Mr. Brown moved HB 416 out of committee as amended. There being no objection, it was so ordered.

HB 417 Intelligence Information

Mr. Brown moved HB 417 out of committee. There being no objection, it was so ordered.

CS SCR 5 Criminal Code

Mr. Brown moved this bill out of committee as it was the same as a bill already acted on by the committee. Mr. Gardiner mentioned the possibility of getting a LEAA grant for the study to be matched by state funds.

SB 99 Public records

The committee felt that (b) should be in title 11.
line 12: change hinder to withhold or deny or obstructs of to a phrase using several other words.
line 11: change to the person responsible for the custody of the records -- also in line 17

HB 246 Liquor license

Don Clocksin stated that the first section concerns notice. Section 2 provides that if one person objects to any license filed, the ABC Board has the option of accepting his protest. If 35% of the adults object, an election is required in which they can vote to go dry. This must cover all establishments in the area and not be selective. Outside a village, if a majority of the people object at a public hearing, the Board may refuse to grant the license. Section 4 makes a violation of the law a misdemeanor so that Troopers could be called in to enforce.

Mr. Bradley moved the C & RA CS out of committee do pass. There being no objection, it was so ordered.

SB 180 Salmon Hatcheries

Phil Daniels stated that the bill will require Fish and Game to cooperate with private hatchery groups. This was the legislative intent in allowing private hatchery groups in the past but this apparently was not clear to the Department because some problems developed.

Mr. Brown moved SB 180 out of committee do pass.

The committee agreed that the four bills discussed earlier should go to legislative affairs to make sure that they were in the correct titles.

MEMORANDUM

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

POUCH Y — STATE CAPITOL
JUNEAU, ALASKA 99811

TO: Rep. Terry Gardiner, Chairman
House Judiciary Committee

DATE: 31 March 1975

FROM: Stuart C. Hall, Legislative Counsel

SUBJECT: Public Records Act (CSSB 99)

As you consider CSSB 99, you may wish to include an amendment to clean up AS 11.30.240 relative to mishandling of public records. This section was deleted from the Ombudsman Act due to questions raised by the press and others, and I have excluded those questioned provisions. However, the present law is unduly narrow in its application, and the penalty provisions confusingly written. The amendment I suggest is as follows:

On page 1, between lines 26 and 27, insert:

"* Sec. 2. AS 11.30.240 is amended to read:

Sec. 11.30.240. MISHANDLING OF PUBLIC RECORDS. A person who has the legal custody of and who wilfully destroys, secretes, or mutilates a public record, book, paper, or writing, or a person [AN ATTORNEY] who wilfully destroys, secretes, or mutilates a public record, book, paper, or writing, or wrongfully takes a public record, book, paper, or writing from the person having legal custody of it, or who has obtained possession wrongfully and refuses or neglects to return or produce it when lawfully required or demanded so to do, upon conviction, is punishable by a fine of not less than $100 nor more than $500, or by imprisonment for not less than 90 days nor more than one year, or by both [IMPRISONMENT IN THE PENITENTIARY FOR NOT LESS THAN SIX MONTHS NOR MORE THAN ONE YEAR, OR BY IMPRISONMENT IN A JAIL FOR NOT LESS THAN THREE MONTHS NOR MORE THAN ONE YEAR, OR BY A FINE OF NOT LESS THAN $100 NOR MORE THAN $500]."

The amendment makes no substantive change to the penalty clause, but merely re-writes it in the style contemporarily employed by this office and the legislature. The restrictive application of the present law to attorneys only seems curious, and it is suggested that be broadened to include any person.

cc: Sen. Chancy Croft

Original sponsor: Rules Committee

Offered: 2/14/75
Referred: Rules

IN THE SENATE BY THE JUDICIARY COMMITTEE

CS FOR SENATE BILL NO. 99

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to public records; and providing for an effective date."

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

* Section 1. AS 09.25 is amended by adding a new section to read:

Sec. 09.25.125. ENFORCEMENT: INJUNCTIVE RELIEF; CRIMINAL SANCTIONS. (a) A person having custody or control of a public record who hinders or attempts to hinder, or a person not having custody or control who aids or abets another person in hindering or attempting to hinder, the inspection of a public record subject to inspection under sec. 110 or 120 of this chapter may be enjoined by the superior court from committing a violation of sec. 110 or 120 of this chapter.

(b) A person who has custody or control of a public record who intentionally hinders or attempts to hinder, or a person not having custody or control who intentionally aids or abets another person in hindering or attempting to hinder, the inspection of a public record subject to inspection under sec. 110 or 120 of this chapter is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not less than $100 nor more than $500. Upon a subsequent conviction, that person is guilty of a misdemeanor and is punishable by a fine of not less than $250 nor more than $1,000, or by imprisonment for not more than six months, or by both.

doesn't belong in civil procedure title

* Sec. 2. This Act takes effect immediately in accordance with AS 01.10.-070(c).

#

AMENDMENT

OFFERED IN THE HOUSE: BY: Smith

TO: _____ HOUSE BILL No. HCR 60

SENATE BILL No. _____

PAGE: 2 LINE: 17

2 18-24

Page 2, line 17, delete ";" and add after the word "interest"

"if the long lines carrier fails to provide adequate satellite earth stations;"

Page 2, lines 18-24, delete existing material and insert:

"BE IT RESOLVED by the Legislature of the State of Alaska that funds appropriated to build state owned satellite earth stations should be used for such purposes only in in the event the long lines carrier fails to install satellite earth stations in numbers and according to specifications that have already been determined by the Governor's Office of Telecommunications in consultation with the long lines carrier."

9 civil procedure

Original sponsor: Rules Committee

Offered: 2/14/75
Referred: Rules

IN THE SENATE BY THE JUDICIARY COMMITTEE

CS FOR SENATE BILL NO. 99

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to public records; and providing for an effective date."

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

* Section 1. AS 09.25 is amended by adding a new section to read:

Sec. 09.25.125. ENFORCEMENT; INJUNCTIVE RELIEF; CRIMINAL SANCTIONS. (a) A person having custody or control of a public record responsible for the who hinders or attempts to hinder, or a person not having custody or control who aids or abets another person in hindering or attempting to hinder the inspection of a public record subject to inspection under sec. 110 or 120 of this chapter may be enjoined by the superior court from committing a violation of sec. 110 or 120 of this chapter.

change to withhold or deny

not strong enough lang. for offense provided

(b) A person who is responsible for the custody or control of a public record who intentionally hinders or attempts to hinder, or a person not having custody or control who intentionally aids or abets another person in hindering or attempting to hinder, the inspection of a public record subject to inspection under sec. 110 or 120 of this chapter is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not less than $100 nor more than $500. Upon a subsequent conviction, that person is guilty of a misdemeanor and is punishable by a fine of not less than $250 nor more than $1,000, or by imprisonment for not more than six months, or by both.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.10.-070(c).

→ title 11

Alaska State Legislature

Senate

JUNEAU, ALASKA

MEMORANDUM

April 2, 1975

TO: Representative Terry Gardiner

FROM: Senator Chancy Croft

I have reviewed Stuart Hall's memorandum to you of March 31 regarding CSSB99. I think his suggestion is a good one, and if House Judiciary sees fit to add it to the bill, I think the Senate would probably concur.

cc: Stuart Hall

Original sponsor: Rules Committee

Offered: 2/14/75
Referred: Rules

IN THE SENATE BY THE JUDICIARY COMMITTEE

CS FOR SENATE BILL NO. 99

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to public records; and providing for an effective date."

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

* Section 1. AS 09.25 is amended by adding a new section to read:

Sec. 09.25.125. ENFORCEMENT: INJUNCTIVE RELIEF; CRIMINAL SANCTIONS. (a) A person having custody or control of a public record who hinders or attempts to hinder, or a person not having custody or control who aids or abets another person in hindering or attempting to hinder, the inspection of a public record subject to inspection under sec. 110 or 120 of this chapter may be enjoined by the superior court from committing a violation of sec. 110 or 120 of this chapter.

(b) A person who has custody or control of a public record who intentionally hinders or attempts to hinder, or a person not having custody or control who intentionally aids or abets another person in hindering or attempting to hinder, the inspection of a public record subject to inspection under sec. 110 or 120 of this chapter is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not less than $100 nor more than $500. Upon a subsequent conviction, that person is guilty of a misdemeanor and is punishable by a fine of not less than $250 nor more than $1,000, or by imprisonment for not more than six months, or by both.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.10.-070(c).

#

MEMORANDUM

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

POUCH Y — STATE CAPITOL
JUNEAU, ALASKA 99811

TO: Rep. Terry Gardiner, Chairman
House Judiciary Committee

DATE: 31 March 1975

FROM: Stuart C. Hall, Legislative Counsel

SUBJECT: Public Records Act (CSSB 99)

As you consider CSSB 99, you may wish to include an amendment to clean up AS 11.30.240 relative to mishandling of public records. This section was deleted from the Ombudsman Act due to questions raised by the press and others, and I have excluded those questioned provisions. However, the present law is unduly narrow in its application, and the penalty provisions confusingly written. The amendment I suggest is as follows:

On page 1, between lines 26 and 27, insert:

"* Sec. 2. AS 11.30.240 is amended to read:

Sec. 11.30.240. MISHANDLING OF PUBLIC RECORDS. A person who has the legal custody of and who wilfully destroys, secretes, or mutilates a public record, book, paper, or writing, or a person [AN ATTORNEY] who wilfully destroys, secretes, or mutilates a public record, book, paper, or writing, or wrongfully takes a public record, book, paper, or writing from the person having legal custody of it, or who has obtained possession wrongfully and refuses or neglects to return or produce it when lawfully required or demanded so to do, upon conviction, is punishable by a fine of not less than $100 nor more than $500, or by imprisonment for not less than 90 days nor more than one year, or by both [IMPRISONMENT IN THE PENITENTIARY FOR NOT LESS THAN SIX MONTHS NOR MORE THAN ONE YEAR, OR BY IMPRISONMENT IN A JAIL FOR NOT LESS THAN THREE MONTHS NOR MORE THAN ONE YEAR, OR BY A FINE OF NOT LESS THAN $100 NOR MORE THAN $500]."

The amendment makes no substantive change to the penalty clause, but merely re-writes it in the style contemporarily employed by this office and the legislature. The restrictive application of the present law to attorneys only seems curious, and it is suggested that be broadened to include any person.

cc: Sen. Chancy Croft

SB

113

"An Act relating to health care information."

COMMITTEE REPORT

3/8/75

HOUSE

Mr. Speaker: Date _____

The Committee on JUDICIARY has had SB 113 amended under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(✓) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

[signature]	[signature]	
[signature]	[signature]	
[signature]		
[signature]		

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

[signature] Chairman



Ketchikan General Hospital

3100 TONGASS AVE.
Ketchikan, Alaska 99901

May 5, 1975

Representative Terry Gardiner
Chairman House Judiciary Committee
Pouch V
Juneau, Ak. 99811

Re: Senate Bill #113

Dear Representative Gardiner:

I understand that Senate Bill #113 now being referred to the HESS Committee may also be referred to the House Judiciary Committee. If it is I would like to urge you to support it.

In the interest of high quality care and cost containment, Medicare/Medicaid and the Joint Commissiong on Accreditation of Hospitals mandate that a program of on-going self-evaluation and peer review be carred out in hospitals.

The hospital medical and professional staff, organized to monitor specific aspects of care, includes committees for utilization review, medical audit, medical records, tissue, infection and pharmacy-therapeutics, among others, each committee responsible for a separate component of quality of care.

For this medical care evaluation process to be effective, the staff must look at its own medical performance objectively, rationally, and nonthreateningly with a means to make changes where changes are needed. It must measure the performance of peers against norms of care and medical criteria which the staff itself has set up. Unless the staff is assured of some degree of confidentiality and of immunity from having the records of these review processes subpoened, it cannot and will not have free, open and uninhibited discussions. Therefore, it is the concern of the Governing Board, Administration and Medical Staff of this hospital that we obtain this immunity.

Thank you very much for your efforts in obtaining the passage of this bill, Senate Bill #113.

Sincerely,

Sister Ellen Caldwell

Sister Ellen Caldwell
Administrator

SEC:ls

DRS. WILSON AND WILSON, P.C.
ARTHUR N. WILSON, M.D.
JAMES A. WILSON, M.D., F.A.C.S.
ARTHUR N. WILSON, JR., M.D.
P.O. BOX 319
KETCHIKAN, ALASKA 99901

May 5, 1975

Representative Susan Sullivan
House Health Education and Social Services Committee
House of Representatives
Juneau, Alaska 99811

Dear Representative Sullivan:

I am writing this letter to express the views of myself, Dr. Arthur Wilson, Jr. and Dr. James Wilson with respect to Senate Bill 113. Dr. James Wilson has supported action of the kind outlined for several years during the times that he has been Chief of Staff, on the Executive Board of the Ketchikan General Hospital and an officer in the state Medical Society.

I would say that all of the doctors who are on executive boards of the hospitals in Alaska, or who serve on the various Review Committees, want this bill. I have personally spoken to the presidents of the state Medical Society during the last three years--thay have told me that attempts have been made to introduce such a bill and have been met with the objection that members of other boards do not get this kind of immunity.

The most recent review board known as the Professional Service Review Organization is being implemented this year. We think there are features of this bill which are unworkable and restrictive, nevertheless it is law and hence must be complied with. Part of the duties of doctors who are on this board will be to look over patients records to determine whether they are getting adequate treatment, whether it is being done on time, whether hospitalizations are unduly prolonged. Any records that show a physician's judgment is faulty, that his treatment is below par, is reported to the Review Board. I think it is obvious that the PSRO member would not want records of their meetings, discussions on cases at hospital staff meetings, available for perusal "in an action brought by a person whose activities have been or are being scrutinized or reviewed by a review organization" to quote the second section of the bill.

Physicians on hospital staffs owe a duty to the patients in the hospital, to the medical profession and the public to see that the practice of medicine is conducted with the utmost skill possible. Physicians who do slip shod work must be corrected. In many instances this can be done quietly, but when it becomes necessary to refuse further hospital privileges to a staff member because of incompetence, the board member who is trying to set high medical standards should be immune from suits. We want these records confidential and not subject to subpoena or discovery as set forth in Section 18-23-030.

42 U.S.C., Section 1320c-1 which memtions disciplinary actions by state licensing boards should also have immunity. At the presant time they do not have this.

The above are our ideas of what we want, why we want it. We need it because we don't have it. On reading the bill I have not found any objectionable features.

Very truly yours,

Arthur N. Wilson, M.D.

Arthur N. Wilson, Sr., M.D.

ANW:kf

CC: George Holman, Senate HESS Committee
Terry Gardiner, House Judiciary Committee

SB 113

May 7, 1975

TO: Senator Ziegler

I have spoken to Susan Sullivan regarding SB 113 and she assures me that it will be scheduled in the near future.

Alaska
Regular Session
Chapter Laws
SB Bill No. 113

An Act relating to medical review committees: exempting proceedings of medical review committees from discovery: providing for limitations of liability of medical review committees.

Preface: The public interest lies in the costs of health insurance. These costs are directly related to the costs of hospital and medical services plus the currently mounting problems in the area of medical malpractice insurance.

At this time Federal Law and voluntarily the Joint Committee on Accreditation of Hospitals (J.C.A.H.) are requiring and various health services, professional societies and associations in the State of Alaska are premulgating programs and establishing committees for the purpose of reviewing professional credentials and standards of care, utilization and expense in the rendering of health services. Such review is an effort to deter or eliminate some of the causes of increased claims and costs of providing health services and to provide a statistical basis for further analysis and recommendations.

The public interest is thus best served by providing immunity for peer review committees so that the medical profession can with candor evaluate the credentials and competence of professional peers in connection with hospital staff appointment reappointment and the delineation of clinical privileges; can explore over utilization of medical services, problems of charges for medical services and alleged acts of malpractice in order that it can better influence its members and can better document the experience rate of its physicians and thus help improve both quality and costs of health care delivery.

Section 1. a) medical review committee - definition as used in this section, the term "medical review committee" or "committee" shall mean a committee , which may include professional and administration staff members, of a state or local professional society, or of a medical staff or a licensed hospital or nursing facility, provided the medical staff operates pursuant to written by laws that have been approved by the governing body of the hospital or nursing facility, which is formed to evaluate and improve the quality of health care rendered by providers of health service or to determine that health services rendered were professionally indicated or were performed in copliance with the applicable standard of care: or that the cost of health care rendered was considered reasonable by the providers of health services in the area.
b) medical review committee, immunity from discovery.

The proceedings and records of committees as described in 1 (a) shall not be subject to discovery or introduction into evidence in any civil action against a provider of professional health services arising out of matters wich are the subject of evaluation and review by such committee and no person who was in attendance at a meeting of such committee shall be permitted or regarded to testify in any such civil action as to any evidence or other matters produced or presented during the proceedings of such committee or as to any findings, recommendations, evaluations, opinions or other actions of such committees or any members thereof; provided, however, that information, documents or records otherwise available from original sources are not to be construed as immune from discovery or use in any such civil action merely because they were presented during proceedings of such committee, nor should any person who testi-

fies before such committee or who is a member of such committee be prevented from testifing as to matters within his knowledge, but the said witness can not be asked about his testimony before such a committee or opinions formed by him as a result of such committee hearings.

c) medical review committee, limitation of liability.

No person who is a member or employee of, who acts in an advisory capacity to who furnishes counsel or services to a medical review committee (1a) shall be liable for damages or other relief in any action brought by a person or persons whose activities have been or are being scrutinized or reviewed by a medical review committee, by reason of the performance by him of any duty, function or activity of such a committee, unless the performance of such duty, funtion or activity was motivated by malice toward the person affected thereby. No person shall be liable for damages or other relief in any action by reason of the performance of him of any duty, function or activity as a member of a review committee when the person acts in the reasonable belief that his action or recommendation is warranted by facts known to him or the committee after reasonable efforts to ascertain the facts upon which the medical review committee action or recommendation is made.

MEMO May 2, 1975

FROM SENATOR ZIEGLER

TO REPRESENTATIVE SULLIVAN

RE SB 113

House HESS just received the captioned bill which was given a secondary referral to House Judiciary.

I am attaching copies of correspondence which may be helpful to you. It is a good bill, I feel, and one which is badly needed by hospitals, clinics, the medical profession and so on.

It is about the only piece of personal legislation I would like to see fly and, if there's anything you can do to move it along, I would be appreciative.

RHZ/pkz

enc.

cc ✓Representative Gardiner

DRS. WILSON AND WILSON, P.C.
ARTHUR N. WILSON, M.D.
JAMES A. WILSON, M.D., F.A.C.S.
ARTHUR N. WILSON, JR., M.D.
P.O. BOX 319
KETCHIKAN, ALASKA 99901

March 12, 1975

Senator Robert Zeigler
Pouch V
Juneau, Alaska 99811

Dear Senator Zeigler:

I am writing this letter to express the views of myself and Dr. Arthur Wilson, Jr. with respect to Senate Bill 113. Dr. James Wilson is out of town. He has supported action of the kind outlined for several years during the times that he has been Chief of Staff, on the Executive Board of the Ketchikan General Hospital and an officer in the state Medical Society.

I would say that all of the doctors who are on executive boards of the hospitals in Alaska, or who serve on the various Review Committees want this bill. I have personally spoken to the presidents of the state Medical Society during the last three years--they have told me that attempts have been made to introduce such a bill and have been met with the objection that members of other boards do not get this kind of immunity.

The most recent review board known as the Professional Service Review Organization is being implemented this year. We think there are features of this bill which are unworkable and restrictive, nevertheless it is law and hence must be complied with. Part of the duties of doctors who are on this board will be to look over patients records to determine whether they are getting adequate treatment, whether it is being done on time, whether hospitalizations are unduly prolonged. Any records that show a physician's judgment is faulty, that his treatment is below par, is reported to the Review Board. I think it is obvious that the PSRO member would not want records of their meetings, discussions on cases at hospital staff meetings, available for perusal "in an action brought by a person whose activities have been or are being scrutinized or reviewed by a review organization" to quote the second section of the bill.

(Physicians on hospital staffs owe a duty to the patients in the hospital, to the medical profession and the public to see that the practice of medicine is conducted with the utmost skill possible. Physicians who do slip shod work must be corrected. In many instances this can be done quietly, but when it becomes necessary to refuse further hospital privileges to a staff member because of incompetence, the board member who is trying to set high medical standards should be immune from suits.) We want these records confidential and not subject to subpoena or discovery as set forth in Section 18-23-030.]

42 U.S.C., section 1320c-1 which mentions disciplinary actions by state licensing boards should also have immunity. At the present time they do not have this.

The above are our ideas of what we want, why we want it. We need it because we don't have it. On reading the bill I have not found any objectionable features.

Very truly yours,

Arthur N. Wilson M.D.

Arthur N. Wilson, Sr., M.D.

ANW:kf

CC: Robin Taylor, Attorney
Sister Ellen Caldwell
Rodman Wilson, M.D.

Ketchikan Medical Clinic

3612 TONGASS
KETCHIKAN, ALASKA 99901

J. W. Mortensen, M. D.
H. J. Henrickson, M. D.
D. E. Johnson, M. D.

Phone 225-5144
Phone 225-5145

March 25, 1975

Senator Robert H. Ziegler
Pouch V
Juneau, Alaska 99811

Dear Senator Ziegler:

I am writing to you in reference to Senate Bill No. 113, regarding the availability of hospital medical audit minutes to the courts.

As a practicing physician and as a participant in the Professional Standards Review Organization for Alaska, I am very concerned that our work in reviewing medical care be done in the most frank and completely honest manner possible. It is only if this is true, that the audit will perform its function in assuring that each patient receives the best possible care.

If audit is not preserved separate and distinct from any external inquiry, physicians will be considerably less than forthright in their analyses, to protect themselves from litigation as well as to protect their colleagues. Audits, then, would simply be an elaborate charade.

Because I believe that auditing is important, I earnestly request that you report out this bill favorably from your committee and that you support it on the Senate floor.

Thank you for your assistance in this matter.

Yours truly,

David E. Johnson, M.D.

SB

132

"An Act relating to the licensing of nursing home administrators."

COMMITTEE REPORT

4/22/75

HOUSE

Mr. Speaker: Date 5/12/75

The Committee on JUDICIARY has had SB 132 am

under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(X) recommends it BE REPLACED WITH CS FOR SB 132 AND THAT CS FOR SB 132 DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

House Judiciary Committee
May 6, 1975

The meeting was called to order at 1:30 p.m. by Chairman Gardiner. All members were present except Mr. Brown.

HB 422 Public Assistance Programs

Rod Betit, director of the Food Stamp Program stated that this is primarily a clean up bill. In the present law the crime is defined but no penalty is provided. This bill provides a penalty which fits the crime. Under present law they can only prosecute fraud felonies. This bill was submitted at the request of the department.

Mr. Parr moved on page 2, lines 1 and 28: add "wilfully" fails. The amendment passed on vote.

Harry Trager, a fraud investigator in the Department of Health and Social Services stated that the bill will assist him. The present law refers to a "reasonable" time while the bill provides for 10 days. This will eliminate the need to determine what is reasonable.

Mr. Bradley moved on page 2, line 17: add ; or
The amendment passed.

Mr. Bradley moved CS HB 422 out of committee. There being no objection, it was so ordered.

SB 60 Arbitrary Discrimination

Mr. Bowman presented proposed amendment to give communities local option. These were adopted by the committee. He stated that he had no objection to the proposed amendment by Mike Thomas but felt that it should be checked out with Legislative Affairs.

SB 132 Nursing home administrators

Larry Sullivan, Director of Medical Assistance in the Department of Health and Social Services stated that the bill was needed to comply with federal requirements in order to obtain federal medicade funds. He stated that licensing was now being done under H & SS emergency regulations. He suggested that on line 14, page 1 of the HCS to reduce the number of professionals by one and add another member of the general public. On page 3, line 10 he suggested deleting "19" and adding "21" since this is the age requirement for federal contracts. On page 3, lines 17 - 19 there is a grandfather clause. He felt that page 1, lines 19 - 21 were not necessary. He explained that the religious exemption is for Christial Scientists.

Sharon Andrew of the Department of Commerce stated that she favored elimination of the board and placing licensing under H & SS or Commerce.

House Judiciary Committee
May 9, 1975

The meeting was called to order at 4 p.m. by Chairman Gardiner. All members were present.

SB 350 Marijuana

The amendments proposed by the AG in response to Commissioner Burton's objections (search, confiscate, id) were adopted. The Attorney General stated that under the bill it would be more difficult to initiate a case, but easier to prove one. Mr. Parr moved Judiciary CS SS SB 350 am out of committee. There being no objection, it was so ordered.

HB 432 Child Protection

Mr. Brown moved that Section 2 (e) be deleted. The amendment passed.

Mr. Brown moved on page 2, lines 7 and 8: add imprisonment for not more than one year or . . . $5,000, or by both. The amendment passed.

Page 2, line 6: add willfully. The amendment passed.

Federal statutes require mandatory compliance. The definition in the bill is parallel to the federal definition.

CS HB 432 (Judiciary) was moved out of committee.

HB 402 Disabilities of a minor

Mr. Parr raised the question of specific exemptions for voting and drinking. Mr. Brown moved on line 29 language to the effect that: constitutional age requirements, except for those pertaining to alcohol. The amendment passed.

Mr. Brown moved on page 1, line 20: change the parent to a parent. The amendment passed.

Mr. Brown moved on page 1, line 21: subsection, as to that parent or guardian. The amendment passed.

Mr. Brown moved on page 2, line 1: inc ded but not limited to. The amendment passed.

Judiciary CS HB 402 was passed out of committee.

SB 132 Nursing Home administrators

Research showed that a board was necessary in order to get federal funding. The committee recommended a letter of intent to the effect that it is the desire of the legislature to see a uniform act -- which would eliminate the need for a bunch of boards.

Page 1, delete (b) after consult
line 14: 1 administrator, 2 public representatives
lines 19 - 21 governor. delete rest
page 2, line 1 delete "at least"
page 2, line 17: delete (5) and renumber
page 3, line 4 add not applicable to Pioneers Homes
page 3 delete 100 and renumber, delete "qualified"
page 2, line 5 delete are of good character, with
page 4 delete (2) investigation

The above amendments were adopted and Judiciary CS SB 132 was moved out of committee.

SB 60 Arbitrary Discrimination

The amendments suggested by Mr. Bowman and Mr. Thomas were adopted and the bill reported out of committee as a CS.

Changes from Senate version:

Effective date - The Department of Health and Social Services is not and has not been budgeted for travel, per diem, and clerical support expenses of this board since its inception and does not have the support staff, expertiese, nor moneys necessary to provide continued administration of this Board. Therefore, the House HESS Committee amended SB 132 am to provide an effective date that was ameniable to both the Department of HSS and the Department of Commerce.

Membership of the Board

Membership of the Board - The House HESS Committee amended SB 132 am to provide that the two nursing home administrators on the board would not both be employed by the same corporation. This amendment was added to ensure that any corporation which operates more than one nursing home in the state would not gain undue influence over the Board through appointment of their administrators to the Board.

The HESS Committee also deleted "a person from the Pioneers of Alaska Grand Lodge" and inserted "a person from the general public". Specification by the bill that the only consumer representative be "a person from the Pioneers of Alaska Grand Lodge" runs counter to federal anti-discrimination policies since the 25 year residency requirement for membership in the Lodge will preclude appointment of many other well-qualified Alaskan citizens (example: Elderly members of Senior Citizens Centers). This amendment would not preclude a Member of Alaska Grand Lodge from being appointed.

The other amendments added to the Senate version were technical in nature. Their purpose was to ensure that all those administrators licensed by the Provisional Board would be recognized. In addition the definition of "nursing home" was broadened to include intermediate nursing care as required by the federal government.

Genie Chance
SENATE

LEGISLATIVE COUNCIL
CHAIRMAN
FINANCE COMMITTEE
HESS COMMITTEE

May 6, 1975

M E M O R A N D U M

TO: MEMBERS OF THE HOUSE JUDICIARY COMMITTEE

FROM: SENATOR GENIE CHANCE

SUBJECT: HCS SB No. 132am, NURSING HOME ADMINISTRATORS

Background

The Department of Health and Social Services (DHSS) administers the Medicaid Program (Title XIX of the Social Security Act) which is funded 50% by the Federal Government. One of the requirements of this federal program is that administrators of skilled nursing facilities be licensed by the State. The Department of Health, Education, and Welfare, Region X, has advised the DHSS that this requirement will be extended to include administrators of intermediate nursing homes. In an effort to prevent imposition of financial penalties on the Medicaid Program, the DHSS promulgated emergency regulations in Register 51, July 8, 1974 (7ACC 12.045) establishing a Nursing Home Administrator Licensing Board. The Board has been functioning since that time under DHSS supervision. However, the Department of Health and Social Services has neither the support staff nor the expertise necessary to provide permanent administration of this Board.

Failure to establish a viable nursing home administrator licensing board could result in significant loss of federal monies. For FY 74, the federal portion of skilled nursing home services claimed amounted to $765,744. The federal portion claimed for intermediate nursing care was $851,501. However, it is possible for the entire Medicaid program to be found out of compliance with federal law and regulations on this single issue. In FY 74 the federal share of medical assistance under Medicaid entered as a claim totaled $3,690,739,

Purpose:

As amended, the bill provides for the establishment of a Board of Nursing Home Administrators within the Department of Commerce and specifies the composition of the Board's membership. The bill requires that only a nursing home which is supervised by a licensed nursing home administrator may operate in Alaska unless specifically exempted by the Board. Basic requirements for licensure, including written examination, and delineation of who must be licensed are provided. Also included are provisions for provisional licensure, expiration and renewal of licenses, requirements for licensure fees, definitions of unlawful acts, and penalties for violation of the Act.

Changes from Senate version:

Effective date - The Department of Health and Social Services is not and has not been budgeted for travel, per diem, and clerical support expenses of this board since its inception and does not have the support staff, expertiese, nor moneys necessary to provide continued administration of this Board. Therefore, the House HESS Committee amended SB 132 am to provide an effective date that was ameniable to both the Department of HSS and the Department of Commerce.

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The HESS Committee also deleted "a person from the Pioneers of Alaska Grand Lodge" and inserted "a person from the general public". Specification by the bill that the only consumer representative be "a person from the Pioneers of Alaska Grand Lodge" runs counter to federal anti-discrimination policies since the 25 year residency requirement for membership in the Lodge will preclude appointment of many other well-qualified Alaskan citizens (example: Elderly members of Senior Citizens Centers). This amendment would not preclude a Member of Alaska Grand Lodge from being appointed.

The other amendments added to the Senate version were technical in nature. Their purpose was to ensure that all those administrators licensed by the Provisional Board would be recognized. In addition the definition of "nursing home" was broadened to include intermediate nursing care as required by the federal government.

May 15, 1975

House Judiciary Committee
Statement of Intent on
Judiciary CS for SB 132 (Nursing Home Administrators)

In view of the relatively small number of potential licensees, the committee was reluctant to create another Title 8 licensing board and would have preferred to include the licensing of the nursing home administrators in an already existing medical board. However, federal statutes seem to require a Uniform Healing Arts statute or the creation of a separate board. Since Alaska has no such statute, the new board is necessary to comply with federal law. With the numerous medically related licensing boards already in existence, the committee suggests that a Uniform Healing Arts licensing statute, which might be placed under the Department of Health and Social Services instead of the Department of Commerce, be drawn up for legislative consideration.

_____

Terry Gardiner
Chairman
House Judiciary Committee

SB

138

"An Act relating to zoning in state parks."

COMMITTEE REPORT

HOUSE

Mr. Speaker: Date 3/12/75

The Committee on Judiciary has had SB 178 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

(✓) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

AMENDMENT

OFFERED IN THE HOUSE: BY: House Judiciary

To: _____ HOUSE BILL No. _____

SENATE BILL No. 138

PAGE: 1 LINE: 12 & 13

Line 12

after "parks" ADD "and state recreation areas"

after "established" ADD "by law." and DELETE the rest of the sentence

Line 13

after [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

"An Act relating to zoning in state parks."

COMMITTEE REPORT

HOUSE

5/22/75

Mr. Speaker: Date June 25 1975

The Committee on JUDICIARY has had SB 138 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other" Majority No Rec

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

House Judiciary Committee
March 5, 1975

HB 106/SB 138 Zoning in State Parks

Ted Smith, sponsor of HB 106 testified that it was primarily to prevent incompatible business enterprises in the parks.

Mr. Fink suggested that an amendment be made to line 13 to the effect that actions are not final unless approved by the legislature.

Mr. Fink requested a letter from the Attorney General regarding whether or not land in Chugach State Park would be subject to zoning (since private land in the park has previously been designated as enclaves and not inholdings).

The bill will be held pending receipt of the letter from the AG.

HB 99 Guide Licensing

Mr. Brown testified that the Resources CS cleans up the language but does not make any substantive changes.

Mr. Fink brought up the problem in line 23 of the reference to 200 (e) Joel Bennett will study the matter to determine if 200 (e) should be changed or repealed.

HB 170 Judicial payments of subdivisions

Hearing scheduled for Monday, March 24 at 1:15 p.m. Invite: Art Snowden, John Spencer, Municipal League, Community and Regional Affairs, Reps. Gruening and Cowper, get fiscal note.

HB 148 Conscience Clause

Hearing scheduled for Monday, March 10. Invite representatives of the unions.

HB 14 Criminal Code

Since the Senate resolution hasn't made much progress, the Chairman will draft a House resolution for committee discussion.

House Judiciary Committee
March 11, 1975

The meeting was called to order at 1:20 p.m. by Chairman Gardiner. All members were present.

HB 209 Income tax penalty

Fred Boetsch, Deputy Commissioner of the Department of Revenue testified that the Federal Internal Revenue Code has provisions for punishing those who give false withholding information but at present the state can only prove fraud after a person has either filed a false or no tax return. This bill would give the state authority to prosecute those who give false information on W-4 forms.

Mr. Parr moved that HB 209 be reported out of committee with a do pass recommendation. There being no objection, it was so ordered.

SB 138 Zoning state parks

Chugach and Kachemak parks exclude "valid entries" so that zoning for enclaves in these two parks only comes under the borough rather than the park. To exclude the valid entry provision would require a bill, an exemption in the Municipal Code, a change in the enclave status, and possibly boundary changes in the parks.

Mr. Brown moved that in line 12 "and state recreation areas" be added after "state parks". There being no objection, the amendment was adopted.

Mr. Brown moved that in line 12 "established under this chapter" be deleted and replaced by "established by law." There being no objection, the amendment was adopted. The committee also requested that the Revisor of Statutes be informed that all state parks are not in the same statute.

Mr. Fink moved that on line 13 to end the language be changed to state "Zoning under (a) of this section is final when approved by concurrent resolution of the legislature at the next regular session after the regulations are adopted." There being no objection, the amendment was adopted.

House Judiciary Committee
March 13, 1975

The meeting was called to order at 1:25 p.m. by Vice Chairman Bradley. Mr. Gardiner and Mr. Specking were absent.

HB 139 Rental Adjustment

Rep. Gruening stated that the bill deletes the waiver section which, in the past, has been abused. This bill would not affect past waivers, but could affect the Teamsters lease now under contention.

Kathy Jacobson of the Department of Natural Resources stated that the Department favors the bill. The Teamsters problem has given publicity to the possible waiver and they anticipate that more people will attempt to receive a waiver.

Mr. Fink stated that FHA won't finance housing developments if there is a possibility that the land will be reassessed every five years.

Bill Fackler, Deputy Commissioner of Natural Resources, tesitfied that there are presently 2 - 3 thousand state leases exclusive of those dealing with extracting resources.

Mr. Parr moved on page 1, line 11: After "lease" add , except an open-to-entry lease" The amendment passed

Mr. Brown moved HB 139 am out of committee. There being no objection, it was so ordered.

HB 35 Guide Licensing

The committee agreed to await further testimony Mr. Parr would obtain in Fairbanks this weekend.

HB 99 Guide Licensing

Mr. Gardiner explained that the CS changes the departments in sections 2 and 3 to the correct departments.

Mr. Bradley moved CS HB 99 out of committee. There being no objection, it was so ordered.

SB 138 Zoning in State Parks

Mr. Cotton moved SB 138 out as amended previously. Mr. Fink objected.

The committee discussed adding language in line 10 to give the Department "exclusive" authority.

The committee agreed to send the bill to Community and Regional Affairs and then back to Judiciary. Mr. Fink moved that the bill be signed out with the amendments previously adopted. There being no objection, it was so moved.

House Judiciary Committee
May 26, 1975

The meeting was called to order at 2:15 p.m. by Chairman Gardiner. All members were present.

CS SB 257 am Municipal Fire Departments

Douglas Body, Coordinating Fire Chief, testified that there is no statutory authority for the fire departments to do some of the things they are presently doing.

The following amendments passed:

page 1, line 18, page 1, line 23: after city insert: organized village.
page 2, line 7: after trespass insert: upon property at or near the scene of a fire.
page 2, line 7: delete without liability
page 2, line 21: delete without liability
page 2, line 17: insert before inspect: upon 24 hour notice to the owner or occupant,
page 2, line 24: delete all of subsection (9) and renumber
page 3, line 2: insert after misdemeanor: , and upon conviction, is punishable by imprisonment for one year, or by a fine of not more than $1,000, or by both.
page 2, line 3: delete all of Section 3
page 3, line 6: insert definition section "preplanning" to be drafted.

The Judiciary CS for CS SB 257 am was passed out of committee.

SB 384 Revise statutes

page 6, line 9: delete bring and insert seek, delete action and insert or an action in the nature of an action for mandamus.

The Judiciary CS for SB 384 was passed out of committee.

SB 138 Zoning State Parks

The C and RA CS for SB 138 was passed out of committee.

SB

140

"An Act relating to the Governor's Commission on the Administration of Justice."

COMMITTEE REPORT

5/3/75

HOUSE

Mr. Speaker: Date 5/13/75

The Committee on JUDICIARY has had SB 140 am under consideration. A Majority of the members of the Committee

(X) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

(✓) "other" Individual Recs

Members signing the Majority report:

[illegible] _____ _____

[illegible] _____ _____

[illegible] _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

[illegible] recommends: [illegible]

[illegible] recommends: [illegible]

[illegible] recommends: Same as above

_____ recommends:

_____ recommends:

[illegible] Chairman

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL / POUCH K — STATE CAPITOL
JUNEAU 99801

May 23, 1975

The Honorable Terry Gardiner
Chairman, Judiciary Committee
Alaska House of Representatives
Pouch V, State Capitol
Juneau, Alaska 99811

Re: SB 140 am (Increasing Membership of Governor's Commission on Administration of Justice)

Dear Mr. Gardiner:

As I told you in our telephone conversation, SB 140 am is very important to the Department of Law, the Governor's Commission on the Administration of Justice, and more particularly the Attorney General. As evidence of the Attorney General's concern, I have enclosed a copy of a letter which he had intended to send you today, before he learned of the fate of SB 140 am.

As I also mentioned in our telephone conversation, SB 140 am originates generally out of the Federal "Juvenile Justice and Delinquency Prevention Act of 1974" which provided in part that:

> The State planning agency and any regional planning units within the State shall, within their respective jurisdictions, be representative of the law enforcement and criminal justice agencies including agencies directly related to the prevention and control of juvenile delinquency, units of general local government, and public agencies maintaining programs to reduce and control crime, and shall include representatives of citizens, professional, and community organizations including organizations directly related to delinquency prevention."
> (emphasis added)

More specifically, SB 140 am is required by a special condition attached to the 1975 Law Enforcement Assistance Administration Planning Grant for the State of Alaska. This planning grant, in the amount of $204,000, funds the operations of the

Criminal Justice Planning Agency for 1975-76. I have attached to this memorandum copies of the special condition and the relevant section of Pub. Law 93-415.

If additional information is needed as to the importance of this bill, please contact me.

Sincerely yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By James L. Hanley
James L. Hanley
Assistant Attorney General

JLH:as
Enclosures

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

JAY S. HAMMOND, Governor

POUCH K — STATE CAPITOL
JUNEAU 99801

May 23, 1975

The Honorable Terry Gardiner
Chairman, Judiciary Committee
Alaska House of Representatives
Pouch V, State Capitol
Juneau, Alaska 99811

Re: SB 140

Dear Terry:

As Chairman of the Governor's Commission on the Administration of Justice, I naturally have a personal interest in SB 140, which pertains to the membership on the Commission. It is necessary that we have this bill to entitle us to certain federal funds, as well as to insure adequate representation on the Commission for representatives of juvenile programs. I would appreciate it if you could bring the bill out for floor action during the closing days if at all possible. If you have any questions on the bill, please do not hesitate to call and we can discuss them.

Yours very truly,

Avrum M. Gross
Attorney General

AMG:as

SB

153

"An Act relating to sound recordings."

COMMITTEE REPORT

5/1/75

HOUSE

Mr. Speaker: Date

The Committee on JUDICIARY has had SB 153 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Members NOT concurring in the Majority report:

_____ recommends:

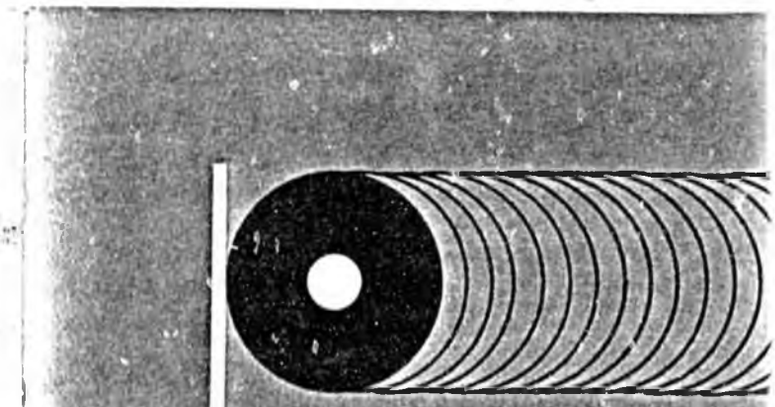
_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman



Piracy: a booming racket

Here's what you and your legislators need to know to help eliminate the illegal piracy of sound recordings. It's a $200 million a year crime and growing. And *every* honest taxpayer is the victim.

John L. Murphy.

Nearly one-third of all tape recordings sold in the U.S. are produced by pirates!

You'll find pirated copies of legitimate recordings in practically every area in the U.S. where recordings are sold.

Why is piracy so widespread?

It's very profitable for the pirates. Duplication of tapes is mechanically simple. Federal laws protect only those recordings produced since February, 1972. Most of the pirated material was originally recorded prior to that time. *Most states with criminal laws prohibiting piracy penalize piracy only as a misdemeanor, so when a pirate is caught, he may pay only a small fine, pack up and move to a new location under a new name.* It's a perfect setup for the fast-buck con artist.

Many law enforcement people are either unaware that piracy is illegal or too busy with other "important" problems to give piracy the attention it needs. The consumer is either unaware that he's paying for "hot," inferior merchandise, or else he can't resist the cheap price.

Whom does piracy hurt?

Piracy is harmful in many ways to many people. It hurts every segment of the public, it hurts elderly citizens in nursing homes and countless other citizens who are deprived of free entertainment financed by royalties from legitimate sales; it hurts service personnel in veterans hospitals because it likewise reduces the funding available for their free entertainment. Piracy hurts every artist (not just the big stars with earnings in six figures), musician and vocalist alike; it hurts legitimate manufacturers, retailers, wholesalers, and everyone who works for them. It hurts every level of government that suffers from lost taxes, thereby adding an additional burden to every honest taxpayer.

How does piracy hurt?

Some of the damage that pirates do was recently described by Hal C. Davis, President of the American Federation of Musicians, in testimony before the House Subcommittee of the Judiciary.

Mr. Davis said: "Now, I have heard it said that record pirates are engaged in a legitimate business which they should be able to pursue because they are represented by respectable counsel. . . . We all know that murderers and thieves have often been represented by respectable counsel. To me, a pirate is a pirate in anybody's language. To put it bluntly, a pirate is a person who steals a product made by my people and the other great artists, the vocalists. In my judgment, he has no right to grow wealthy on the creative efforts of those gifted people. He flagrantly violates human and moral rights. This pirate could easily become legitimate by signing the applicable collective bargaining agreements, and paying prevailing wages and other benefits.

"The legitimate recording industry pays into two funds for every record or commercial recording sold. One is known as the Special Payments Fund and the other is the Music Performance Trust Funds. On September 1, 1974, out of the Special Payments, some $8 million was paid to all the musicians recently employed by the Recording Industry. This is in addition to the basic scale they received for making the records.

"In addition, some $9 million last fiscal year were spent by the Trustee of the Music Performance Trust Funds. This nonprofit, public service organization provided free live concerts of various sizes and descriptions for the people of this country. Some took place in schools, some took place in veterans hospitals, some took place at block parties, some took place in public parks. In all, approximately 100,000 of these programs were performed free of charge last year and all were open to and given for the benefit of the public. Every act of piracy deprives both of these funds of the proper payments."

Aside from these losses from piracy to all legitimate sectors of society described by Mr. Davis, piracy hurts the public in other significant ways. Here are some of them:

"100,000. . .programs free to the public . . . (were deprived by) piracy of proper payment"

Piracy is harmful in many ways to many people

1. Pirate merchandise is generally of poor quality; the sound isn't as good as a legitimate recording.
Since a pirate tape is a reproduction of a reproduction, the sound can't be as good as the initial version. It's like reproducing a photograph from a photograph, instead of from the original negative. Some pirate tapes are of such poor quality, or are so poorly assembled, that they foul up tape recorders.

2. Legitimate companies are hampered in offering a wide selection of recordings to meet the widely varying interests of the public.
Pirates copy only the big-selling records. And these big sellers subsidize thousands of lesser-selling recordings, including much classical and jazz output. Without the income from the big sellers that are pirated, the selection of recordings available to the public will decline. Most recordings don't appeal to the masses and many fail to recover their costs. The $200 million the pirates steal each year could finance a lot of different legitimate records. ($200 million is four times the amount spent to operate all U.S. Attorney offices throughout the nation for a year!)

3. It's more difficult for recording companies to invest in new artists, new musicians and song writers, as well as classical orchestras, because of the income lost to the pirates.
Introducing and popularizing new talent requires money, and that money has to come from the profitable recordings.

4. Pirates seldom pay full taxes. That means the rest of the public has to pay more.
Tax authorities estimate that a large percentage of the $200 million pirate take is not reported to the Internal Revenue Service or state and local governments. That's a lot of taxable income.

Piracy also hurts a broad range of other people. *The artist gets no income from pirate recordings.* His talent, his unique performance, his time, his contractural rights, all go unrewarded. Since the professional life span of the average popular artist is relatively short, he is entitled to 100 per cent of the income from his talent—which is the only thing he has to sell. Remember, all artists suffer—not just the stars.

Musicians and arrangers are heavily dependent on the income from recordings for their livelihood.
The pirates pay them nothing. Income from legitimate recordings goes to their pension and welfare funds, pays for retired musicians and those who are sick and out of work. These funds get nothing from the pirates. The Music Performance Trust Funds depends on income from legitimate tape and record sales to finance its free public concerts.

Legitimate retailers and wholesalers are badly damaged by sellers of pirate recordings.
The honest businessman cannot compete with competitors who sell stolen merchandise or "swag." Stolen goods are cheap, and pirate tapes and records are actually the same as stolen goods. Pirates copy only the big sellers. They take no risks and incur none of the expenses of the companies which created and popularized the big sellers.

The law enforcement community is also affected because piracy has become so widespread.
Any criminal business that flourishes in practically every area, that produces illegal income of $4 million a week, contributes to the erosion of public respect for the law and its enforcers.

Is this an issue of labor vs. management?
No! On the contrary—the fight against piracy has united labor and management in common cause. It should be recognized that at every level both the 330,000-member American Federation of Musicians (AFL-CIO) and the Recording Industry Association of America (the industry association representing most legitimate recording companies) are working together to achieve enactment of strong laws in every state.

But everywhere the pirates are fighting back. Astonishingly enough, they have often been successful in persuading even some of our most sincere legislators that their efforts help the plain people of America because they can buy their product cheaper! The notion that the public is benefited when a thief sells a stolen automobile or radio at a cheaper price than the honest manufacturer can meet is nonsense!

Help is available for law enforcers

The music and recording industry and the American Federation of Musicians are committed to the elimination of piracy. The recording companies and the music publishers maintain investigators who are ready and able to cooperate with Federal, state and local law enforcement.

The Anti-Piracy Intelligence Bureau of the Recording Industry Association of America, Inc. (RIAA), is located at 1 East 57th Street, New York, New York 10022, (212) 688-3778. The Bureau conducts and supervises all investigations of piracy on a national basis, cooperates closely with federal, state and local authorities and serves as a clearing house for collecting and reviewing all information on pirate activities—manufacturers, wholesalers and retailers.

If you know where pirate products are being produced or sold, or if you want help in identifying pirate or counterfeit merchandise, contact the RIAA Bureau.

How to spot pirate recordings

Tape recordings are the most widely sold form of pirate merchandise. Here are some good clues you can use to spot pirate tapes.

1. Watch out for package or label with no familiar company name or trademark.
Pirates create their own packaging, and most show no company name or trademark. Rarely is there an address; usually just a phony post office box number.

2. Be alert for clumsy, inferior-looking package art work.
Record companies creatively make their album and tape covers "arty," distinctive, and attractive. Pirates generally do not. Few pirates use multi-color printing and artwork. Photos or illustrations of performers are never used.

3. Be leery of look-alike cover designs.
Pirates often use the same package and label design on several different tapes. They change only the names of the songs and artists.

4. Beware of statements saying "fees and royalties have been paid," or "the law has been complied with."
Legitimate companies pay the proper royalties and fees and need not acknowledge this on their packages.

5. Watch out for more than one top artist or musical group on the same tape.
Most artists and groups perform exclusively for one record company. *Some discs are also produced by pirates, but not many.* The same clues used in spotting tapes also apply to discs.

The bottom line

Each of us in recent years has been tragically affected by so-called "white collar" or "business" crimes in our society. Piracy is one of these. It is a big and rotten business. It is, quite simply, stealing and no invocation of "free enterprise" can clothe it in respectability.

You, your friends, your elected representatives at every level of government have a stake in outlawing piracy, because you are its victim.

Model Legislation

Statement of Purpose

This bill is intended to prevent the unauthorized duplication and sale of sound recordings, either tape recordings or discs. Pirates of recordings divert some $200 million a year from legitimate sources—retailers, wholesalers, musicians, arrangers, artists, the musicians union and recording companies. Nearly one in three tape recordings sold in the United States come from pirate sources.

The pirates are parasites who rob legitimate retailers, wholesalers, producers, artists, musicians and the unions of the fruits of their honest labors. Because piracy is simple and lucrative, it attracts the shady operator and the fast buck artist.

Record piracy grew out of modern technology, the advent of the tape recorder and the ease with which recordings can be duplicated. When the United States copyright law was enacted in 1909, this was not envisioned.

Federal law was amended in late 1971 to protect recordings. United States copyright law now protects all sound recordings produced *after* February 15, 1972. State laws are necessary to protect other recordings. A majority of the states have passed such laws.

The constitutionality of state anti-piracy statutes, such as this proposed law, has been upheld by the U.S. Supreme Court [Goldstein v. Calif. 412 US 546 (1973)].

The courts have also held that piracy is a form of unfair competition and illegal under civil laws. The 9th and 10th United States Circuit Courts of Appeals have

You . . . have a stake in outlawing piracy, because you are its victim

DeHart and Broide

March 28, 1975

The Honorable Robert Ziegler
Pouch V
Capitol Building
Juneau, Alaska 99801

Dear Senator Ziegler:

I appreciate your taking the time to discuss Senate Bill 153 with me by phone. This letter is in response to your request for information concerning the merits of the bill.

S.B. 153 amends the present law, which was enacted last year as House Bill 680.

Federal law prohibits the unauthorized manufacture or sale of sound recordings released after February 15, 1972. This was done in late 1971 through extension of the federal copyright law (Public Law 92-140). Congress did not grant this limited copyright to sound recordings published prior to February 15, 1972 because this would have involved granting a copyright retroactively. Recordings produced by legitimate manufacturers after that date display this symbol to indicate post February 15, 1972 production.



As you can understand, when the original copyright law was enacted in 1909, no one foresaw the future popularity of sound recordings, the development of the tape recording, and the ease with which tapes can be duplicated today.

State laws are necessary to protect pre-February 15, 1972 recordings because tape piracy remains a widespread problem, diverting hundreds of millions of dollars from those who have legitimately earned it. It is estimated that nearly one out of every three tape recordings sold in the U.S. is a pirate copy. Because of piracy, some $200 million a year is diverted from its rightful recipients -- artists, musicians, music publishers, composers, retailers, wholesalers and record manufacturers, and the unions. (Some background material on the piracy problem is enclosed as Attachment A.)

The U.S. Department of Justice has recommended to the states that special legislation be adopted to prohibit piracy.

DeHart and Broide, Inc., Public Affairs Counsel
1505 22nd Street, N.W., Washington, D. C. 20037
202-659-4004

DeHart and Broide

March 28, 1975

The Honorable Robert Ziegler
Pouch V
Capitol Building
Juneau, Alaska 99801

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Ⓟ

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DeHart and Broide, Inc., Public Affairs Counsel
1505 22nd Street, N.W., Washington, D. C. 20037
202-659-4004

To date, some 27 states have passed criminal laws against record piracy, and this number is expected to grow. (See Attachment A-1, page 9.)

The constitutionality of state anti-piracy laws has been upheld by the U.S. Supreme Court (Goldstein v. California, 412 U.S. 546, June 1973).

State laws are necessary because record piracy continues to be rampant. This is unfair competition, and also deprives the lawful owners of sound recordings of their property and their profits.

Record piracy has been consistently held unlawful in various U.S. courts, even in the absence of state anti-piracy statute.

Moreover, four U.S. Circuit Courts of Appeals have ruled that the compulsory licensing provisions of the Copyright Act may not be used as justification for unauthorized duplication of sound recordings. These appeals came about because some pirates argued that they are "legal" when they pay royalties to the music publishers.

Despite these court decisions, piracy continues. That is because a pirate found guilty in one jurisdiction merely moves to another. Piracy is so profitable that the pirates are willing to take the risk of misdemeanor penalties, with modest sentences or fines. Under such circumstances, it is up to the states to join with the federal government to protect law-abiding citizens and declare piracy illegal.

Like the other states, Alaska has also been the scene of a good deal of pirate sales of recordings. A state law is therefore important.

The amending bill introduced by Senator Chance defines "owner" in a manner developed in discussions with the Justice Department, and stemming from court decisions. It also contains an amendment (starting on line 13) which would curtail the growth of so-called "sound-alike" recordings. A sound-alike recording is one which simulates a hit recording by imitating the style and sound of the original performer(s). Sound-alikes generally involve deceptive packaging, labeling display techniques, as well as advertising, which are intended to dupe the consumer into believing that he is buying the original.

Full disclosure of the name of the manufacturer and the performers, as required by Senator Chance's bill, should alert the would-be buyer to the fact that he is buying a simulation, not the original.

The production of sound-alikes has been growing as a result, we believe, of the crackdown on pirates. (See Attachment B for background information on sound-alikes.)

On behalf of the Recording Industry Association of America, our client, we urge that the Alaska legislature enact Senate Bill 153. Its passage is supported by all segments of the legitimate recording industry, including the manufacturers, the artists, musicians, the American Federation of Musicians, mus : publishers and composers, wholesalers and retailers.

If you have questions, we would be pleased to answer them.

Sincerely,

Ed DeHart

Edward H. DeHart

Enclosures
EDH:jn

The committee agreed that after two weeks were taken, a man should be able to extend his leave for medical reasons. Line 13 in the old bill stating which leave could be used would be put into the CS and lines 11 and 12 of the proposed CS deleted.

The Judiciary CS was passed out of committee.

HB 298 Security

Miles Scholsberg, Director, Division of Banking, stated that this bill would expand the definition of securities in order to close loopholes in enforcement of securities law - to prevent fraud by providing a deterrant. Included under the definitions of securities are pyramid sales (chain letters), commodities option contracts, health clubs (charter members). Lines 21 - 25 leave the option for possible exemptions for such companies as Avon and Fuller Brush. Mr. Brown moved on page 1, line 22: add: after consultation with the Attorney General. This amendment passed. The Commerce committee amendments were adopted except in line 4 delete /.

The Judiciary CS was passed out of committee.

SB 153 Sound Recordings

Senator Chance, sponsor of the bill, stated that the language "federally copyrighted" was inserted on the floor last session and made the bill worthless. SB 153 deletes this language and defines "owner." The copyright law for recordings became effective in 1972 but was not retroactive. This bill is designed to prevent pirates and sound alike recordings. The committee passed out SB 153.

LAWS OF ALASKA

1974

Source: SCS CSHB 680

Chapter No.: 134

AN ACT

Relating to the protection of the rights of owners of sound recordings.

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

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

CHAPTER 51. SOUND RECORDINGS.

Sec. 45.51.010. REPRODUCTION, SALE WITHOUT CONSENT PROHIBITED. A person who reproduces for sale, sells, offers for sale, or knowingly advertises for sale any federally copyrighted sound recording that has been reproduced without the written consent of the owner of the master recording is guilty of a misdemeanor and upon conviction for the first offense is punishable by (1) confiscation of the unlawful stock of the reproduced recording and (2) by imprisonment for a period of not more than one year, or by a fine of not more than $1,000, or by both.

Sec. 45.51.020. EXEMPTIONS. The prohibition contained in sec. 10 of this chapter is not applicable to the reproduction of a sound recording that

(1) is used, or intended to be used, solely for broadcast by commercial or educational radio or television stations; or

(2) constitutes the verbatim transcript, or other public record, of the proceedings of a judicial, legislative or administrative agency, department or other public body for which a charge or fee may or may not be made or collected for the reproduced recording.

Approved by governor: May 22, 1974
Actual effective date: August 20, 1974

SB 153

The language "for the first offense" was removed from ch. 134 SHA 1974 by the reviser of statutes as there was no other language in the section referring to second or subsequent offenses and it was felt that the penalty provided in the statute was intended to apply to second (and subsequent) as well as first offenses.

DeHart and Broide

April 7, 1975

Senator Robert H. Ziegler, Sr.
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Ziegler:

Thanks so much for your letter of April 3.

As I explained by phone, Senate Bill 153 has no bearing on those "antique copyright laws" or the ASCAP situation.

I trust this clarifies the matter and will enable S.B. 153 to move forward, as you indicated.

Let me know if you have any further questions.

Sincerely,

Edward H DeHart

Edward H. DeHart

edh/ec

DeHart and Broide, Inc., Public Affairs Counsel
1505 22nd Street, N.W., Washington, D. C. 20037
202-659-4004

SB

157

"An Act relating to the Public Employment Relations Act; and providing for an effective date."

COMMITTEE REPORT

3/24/76

HOUSE

Mr. Speaker: Date April 13, 1976

The Committee on JUDICIARY has had CSSH 152 under consideration. A Majority of the members of the Committee

(/) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends: Do Not Pass

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

Ketchikan, Alaska
March 28, 1976

Honorable
Mr Terry Gardner, Chairman
House Trust Committee
State Capital Building
Pouch C
Juneau, Alaska

Dear Mr. Gardner;

I am writing to you to show my concern for bill CS-SB 157. I urge you to support CS-SB 157, which will allow those with religious convictions to follow the dictates of their conscience.

Thank you. Terry.

Sincerely

Mrs Stella G. Mackie
518 Dermount
Ketchikan, Alaska

Ketchikan Alaska
Mar-28-1976

To The Honorable Terry Gardner
State Capitol Building
Pouch "C"
Juneau Alaska 99801

Dear Sir:-

We urge you to support CS-SB 157 which will allow those with religious convictions to follow the dictates of their conscience.

Thank you,
Sincerely
Mr. & Mrs W. E. Eastham

April 8, 1976

The Honorable Representative Terry Gardiner
Alaska State House of Representatives
Pouch "V" State Capitol Building
Juneau, Alaska 99811

Dear Sir:

Please vote favorably on bill No. CS-SB 157 (L&M) which has passed the Senate and will soon be in the house. This bill is supported by the Alaska Federation of Labor and by many Alaskans who are concerned about protecting the right of the individual to the freedom to live according to the dictates of his conscience.

This country was built upon the principles of freedom and it has made the U.S. one of the most powerful countries in the world. We don't want destroyed the great gift that our forebears gave their all to win. We do have a tendency to take our freedoms for granted, but we must not, we must continue to protect it. This is why I must write to you with this request, and so again, I ask that you vote "yes" on this bill.

Sincerely,

Lola Romine

Lola Romine

Pouch O
Ketchikan, Ak. 99901
April 6, 1976

The Honorable Terry Gardiner, Chairman
House of Representatives
Pouch "V" State Capitol Building
Juneau, Alaska 99811

Dear Mr. Gardiner:

Please support CS-SB 157 (L&M) now in the House Judiciary Committee. All people have certain rights including those with religious convictions.

Sincerely Yours,

R. F. Crookes
Claire Crookes
Malcolm Crookes

Pouch K
Ketchikan, AK 99901
April 4, 1976

The Honorable Terry Gardiner
Alaska State House of Representatives
Pouch "V" State Capitol Bldg.
Juneau, AK 99811

Dear Mr. Gardiner:

Please vote for CS-SB 157 (Fin) which was passed by the Senate and is now in the House. Protection of religious freedom is important and I urge your full support of this bill.

Yours truly,
(Mrs.) Ruth E. Talley

Pouch X
Ketchikan, AK 99901
April 4, 1976

The Honorable Terry Gardiner
Alaska State House of Representatives
Pouch "V" State Capitol Bldg.
Juneau, AK 99811

Dear Mr. Gardiner:

Please support CS-SB 157(L&M) which was passed by the Senate and is now in the house. Protection of religious freedom is important and I urge your full support of this bill.

Yours truly,
Ralph Talley

Pouch "K"
Ketchikan, Alaska 99901
April 5, 1976

The Honorable Terry Gardiner
Alaska State House of Representatives
Pouch "V" State Capitol Building
Juneau, Alaska 99811

Dear Mr. Gardiner,

No doubt you, or your "Office Secretary" will be wondering why, why one of the loyal citizens of Alaska, now topping four score years by nearly five, am writing a personal letter to you at this time. Well, it is this way: because CS-SB 157 (L&M) has made two hurdles. One of the main obstacles to the passage of CS-SB 157 (&M) until recently has dissappeared. Approval has been given by the Alaska Federation of Labor. This is as it should be. The Senate has passed the measure without ONE VOTE of dissent. The House of Representatives now has the final vote. In this Bicentennial Year of our nation protection of religious freedom and the free exercise thereof must not be forgotten. I respectfully solicit your vote in support of this bill, and to use your influence also in its favor. You will be glad you did! Thank you!

Sincerely,

Alice C. Gildersleeve

Alice C. Gildersleeve

A. C. G.--ACG.

FIRST BAPTIST CHURCH

1905 First Avenue
KETCHIKAN, ALASKA 99901
Phone 907-225-3588

James Dan Hill
Mission Pastor

JUDSON D. OWEN
Pastor

Marion B. Dunham
Radio Minister

April 1, 1976

The Honourable Terry Gardiner
Alaska House of Representatives
Pouch V
State Capitol Building
Juneau, Alaska 99811

Re: CS for Senate Bill No. 157 (L&M)

Dear Mr. Gardiner,

It is my understanding that the above mentioned bill is now in the House and with your committee. Perhaps by the time you read this letter some action will have been taken; if so, then my purpose will have been accomplished. If not, then let me urge you to take whatever steps are necessary to get it either passed or rejected.

It is my desire, however, that the bill will pass. My reasons are based upon personal beliefs and Baptist heritage.

The reasons arising from my personal beliefs are just that. Though I am the pastor of the First Baptist Church in Ketchikan, I do not speak for all of my members. Nor am I bound by what they believe. Neither does the Southern Baptist Convention, with which we are affiliated, dictate policy to us.

As for Baptist heritage, our history is replete with incidents of stands taken for religious liberty. We may not agree with another person's religious beliefs, but we will defend very strongly their right to believe as they feel led. For this reason, I, as a Baptist, urge you to take a positive approach toward this bill.

Thank you for taking time to read this letter and giving consideration to my request.

Sincerely,

Judson D. Owen

Judson D. Owen

R. M. HARDCASTLE General Insurance

106 MAIN STREET
KETCHIKAN, ALASKA 99901

Telephone: 225-2176

March 30, 1976

The Hon. Terry Gardiner
Alaska House of Representatives
Pouch V State Capitol Building
Juneau, Alaska 99801

Dear Terry:

I would support the amendment to Senate Bill 157, providing for exemption on grounds of religious convictions to those employee members' dues and making said dues payable to a charity not affiliated with a religious, labor or employee organization.

I feel the principle of religious convictions should be respected.

Thank you.

Yours truly,

R. M. Hardcastle

YOUR Independent Insurance AGENT
SERVES YOU FIRST

2303 First Ave
Ketchikan, Alaska
March 27, 1976

Dear Mr Chairman:

It has come to my attention that the conscience clause CS-SB 157 is coming before your committee soon. As a concerned resident I urge you to support this bill.

Similar bills have been passed in Oregon, Idaho, and Montana, allowing employable persons to work at "Union Jobs" and still follow the dictates of their conscience. It seems to me the "last frontier" should also grant the individual this right.

Thank you for your time and interest.

Sincerely,
Karen Sanders

March 24

To The Honorable Gardner
State Capital Bldg.
Pouch "C"
Juneau, Alaska 99801

Dear Honorable Gardner:

As an advocate of religious liberty, I sincerely urge you to support the Conscience Clause CS-SB 157 which would allow those with religious convictions to follow their beliefs in this regard.

I understand the bill passed 23-0 in the Senate & I feel this is an indication on the Senate's feelings on furthering religious liberty.

Yours very Truly,

Sandee E. Fellers
418 Canyon #1
Ketchikan, Alaska
99901

March 26, 1976
P.O. Box 1085
Ward Cove, Alaska
99928

Dear Chairman Gardner:

I am a supporter of the religious convictions bill before the House, CB-SB 157. I am writing to you to express my support of this bill and, in turn, hope you also will support this bill, coming shortly, before your Committee.

We in Southeastern Alaska have expressed our support for you in past years and we sincerely hope you give full

28 MAR 1976

Dear Mr. Gardiner,

As resident of the last state of Alaska and my desire is to remain so.

Please consider the importance of the conscience clause CS-SB 157 I support this bill and would very much like to see it pass, For the protection of my religious liberties

Thank you for attention to furthering this matter.

Sincerely

M. L. Ivey



NORTH PACIFIC UNION CONFERENCE

ALASKA
IDAHO
MONTANA
OREGON
WASHINGTON

10225 EAST BURNSIDE
P.O. BOX 16677

PORTLAND, OREGON 97216
(503) 255-7300

March 23, 1976

The Honorable Terry Gardiner
House of Representatives
Pouch "V", State Capitol Building
Juneau, AK 99811

Dear Terry:

Re: CS for Senate Bill No. 157 (L&M)

Dwayne Carlson, President of the Alaska Federation of Labor, pledged the support of the AFL for the "conscience clause" amendment to the Alaska Public Employment Relations Act in testimony before the Senate Labor and Management Committee on Thursday, March 18.

The members of the Seventh-day Adventist Church are deeply grateful to Mr. Carlson and the AFL for lending their influence in behalf of CS-SB 157 (L&M) which will give protection to public employees with religious convictions against membership in or payment of dues to labor unions.

Enclosed are copies of CS-SB 157 (L&M) and a news clipping from the Southeast Alaska Empire which reports labor's support.

When this issue comes to the House, your support will be deeply appreciated.

Sincerely yours,

Arthur R. Lickey
Director of Public Affairs

cs

Enclosures 2

SOUTHEAST ALASKA EMPIRE

The Capital City's Daily Newspaper

VOL. 70 NO. 56 THURSDAY, MARCH 18, 1976 10 PAGES TODAY 25 CENTS

Union Sides With Church On Measure

By CLARK MILLER
Empire Staff Reporter

The Alaska Federation of Labor has come out in support of a bill sought by the Seventh Day Adventist Church which will exempt church members who are public employes from union membership and the payment of union dues.

Dwayne Carlson, president of the AFL, said this morning he would testify before the Senate Labor and Management Committee later today in favor of the bill. It would require the church member to pay an amount equal to dues to the union, and would require the union to contribute that money to "a charity of its choice not affiliated with a labor or employe organization," as the bill reads.

The committee heard testimony in favor of the bill this morning by Arthur Lickey, director of public affairs for the Alaska Mission of Seventh-day Adventists. He said the church asks its members not to belong to or pay dues to unions, primarily because the church cannot condone some of the methods unions have historically used to attain their goals.

Lickey said the church has tried for years in both the public and private sector to achieve "voluntary accomodation," by which both parties agree that the money will be paid to some non-union, non-religious charity voluntarily. He said, however, legislative remedies are now being sought in state and federal governments because of widespread labor resistance.

Oregon, Washington and Montana all have recently enacted "conscience clauses," Lickey said, and in those states it "is working beautifully" and posing no undue hardship on the unions.

While the issue is in the courts all over the country, Lickey said the legislature should take the lead on the question, rather than waiting for the courts to decide it.

Lickey mentioned in his testimony that Alaska Teamster chief Jesse Carr has in the past strongly opposed the idea behind the bill under consideration, and has told Lickey that he may oppose any such bills in the future.

Carlson said after the morning hearing Lickey's remarks on Carr were "not appropriate." He said he did not know if the Teamsters would be represented in later hearings on the bill.

The Alaska Public Employes Association is voluntarily accomodating church members now and is expected to support the bill. Not all of the estimated 50 Seventh Day Adventists included in the state's 26,000 public employes are opposed to union membership. Those who seek the exemption under the proposed law would have to submit "proper proof of religious conviction" to the state Labor Relations Agency.

Sen. Brad Bradley, R-Anchorage, engaged in a little theological debate with Lickey, mentioning Samson's slaughter of a thousand men with the jawbone of an ass as an apparently divine exception to the "non-retaliatory" principles on which the church bases its union stand. He also mentioned Jesus' anger as he drove the money changers from the temple.

Lickey said the church is concerned with protecting the consciences of those members who are genuinely committed to the non-retaliatory principles. He said in a war an Adventist will usually serve in a medical or other non-combative role. "Members may be strange, but they are not cowards," he said.

Lickey mentioned teachers' and nurses' associations, and the American Medical Association, as groups which, because of their increasingly union-like activities, are coming under close scrutiny by the church.

He stressed to the committee the church's desire to have friendly relations with labor. "Unions have traditionally helped the little man...this bill will help the little man" whose conscience won't allow him to join or support union.

March 27, 1976

Mr. Terry Gardiner
Alaska State House of Representatives
State Capital Building
Pouch V
Juneau, Alaska 99801

Dear Mr. Gardiner;

We despratly have need of a law which provides protection for those Whose religious beliefs are contrary to the joining or the supporting of labor unions.

Please suport bill no. CS-SB 157 (L&M) in the House Judiciary committee.

Sincerely yours

Paul C Shelf

Wrangell, Alaska
P.O. Box 964
Wrangell, Alaska
99929

Mr Terry Gardiner
Chairman

Dear Sir:

In this memorial year of our nation's history, it would be indeed proper and wonderful to re-call, that the desire of Religious Freedom was intence in the hearts of our Pioneer Settlers.

I implore you to please consider sincerely, and vote for (support) CS-SB 157 (L+M)

Sincerely,
Felicia O. Thruston

March 29, 1976

Dear Ms. Hardiman:

I would like to write a short note to ask you if you would support CS-SB 157 (Lam) in the House Judiciary Committee.

I think this Bill would be a great step in the right direction as it would help those with religious convictions to be protected.

Thanks you very much.

Sincerely

Karen Lamm

Mr and Mrs Eugene Edgerly
247 Grand Larry
Anchorage Alaska
99504

3/29/76

Mr Terry Gardiner
Alaska State House of Representatives
State Capitol Building
Pouch V
Juneau, Alaska 99801

Dear Sir:

"Please support CS-SB 157 (Land M) in the House Judiciary Committee. All people have rights including those with religious convictions."

Sincerely yours

Mr and Mrs Eugene Edgerly
247 Grand Larry
Anchorage Alaska
99504

10049 Klatt Sta.
Anchorage, Alaska
99502

Mar 27, 1976

Mr Terry Gardner
Alaska State House of Representatives

Would you please support CS-SB 157 (L+M) in the House Judiciary Committee so people with Religious convictions about not joining a labor union will be able to make a choice.

Thank you

Sincerely
Robert Parks

Pastor R. M. Hausman
2001 "E" 3rd Ave.
Anchorage, Alaska 99501

3-29-76

Dear Mr. Gardiner

Please support bill C.S. SB 157(L+M) in the House Judiciary committee. All people have rights including those with religious convictions".

Sincerely your
Pastor R.M. Hausman

CUSTOM INTERIORS
OF ALASKA, INC.
Box 8288 Anchorage, Alaska 99504

March 27, 1976

Mr. Terry Gardiner
Alaska State House of Representatives
State Capital Building
Pouch V
Juneau, Alaska

Dear Mr. Gardiner:

We as a contracting co, ask that you PLEASE suport Bill no. CS-SB 157 (L&M) in the House Judiciary Committee.

We feel that the law should provide a protection for the conscience of those in the sector of public employ from joining or supporting labor unions.

Sincerely yours

CUSTOM INTERIORS OF ALASKA INC.

Dwight D Shull

Dwight D Shull
President

DS:de

CI of A Inc.

3-29-76
Box 306
Wrangell Ak. 99929

Terry Gardener
Dear Sir;

I understand that CS-SB 157 (L+M) has been referred to your comitee after passing the Senate.

I strongly urge you to pass the bill. In this, the year of our countrys Bicentennial it seems only right to me that Alaska's have the religious freedoms that other states enjoy.

Thank you for your consideration

Sincerely Yours
Robert A. Wendzell

P.O. Box 135
Wrangell, AK 99929
March 29, 1976

The Honorable Terry Gardiner, Chairman
House Judiciary Committee
House of Representatives
Pouch "V" State Capitol Building
Juneau, AK 99801

Dear Mr. Gardiner:

It would be appreciated if you would support religious convictions of CSSB 157(L&M) now in your committee.

In this Bicentennial year of our nation it seems fitting to uphold the freedoms our nation was founded on.

Thank you for giving this your consideration.

Sincerely yours,

Mary O. Cooper

3-29-76
Box 306
Wrangell, Ak. 99929

Jerry Gardiner

Dear Sir:

I urge you to speak up and vote for religious rights. Your vote for C.S.B. 157 (2nd) will be duely appreciated. This bill has been ignored too long.

Sincerely Yours,
Shirley C. Worchell

March 29, 76
Box 1703
Wrangell, AK 99929

The Honorable Terry Gardiner, Chairman
House of Representatives
Pouch "V" State Capitol Building
Juneau, Alaska 99801

Dear Mr. Gardiner:

Please support CS-SB 157 (H+W) now in the House Judiciary Committee. All people have certain rights including those with religious convictions.
Thank you.

Sincerely yours,
Mr. & Mrs. Wm Black

3/27/76
Juneau ak

The Honorable Terry Gardiner
House of Representatives
Pouch "V" State Capitol Building
Juneau, Alaska 99811

Dear Mr. Gardiner:

On this the 200th anniversary of our county it is appropriate to consider one of the freedoms guaranteed by the Constitution of this great land. This is the freedom of religious convictions.

Please support CS-SB 157 (L+M). There are many who need your help in this matter.

Thanks.

Larry St. Clair
P O Box 1614
Juneau, Alaska 99802

Douglas Alaska
March 27, 1976

Honorable Terry Gardiner,
Chairman Judiciary Committee,
Dear Representative
Terry Gardner;

I am writing in the interest of all people who have strong convictions concerning union membership,

I would like your affirmitave vote on CS-Senat Bill 157(L+M)

Thank you for your consideration

Daniel A. & Anne S.
Ulery

Box 69
Douglas Alaska 99824

PS

Please don't let this bill get lost in committee

Thank You

Mar 29, 1976

The Honorable Terry Gardiner
House of Representatives
Pouch "V" State Capitol Bldg.
Juneau, Alaska 99801

Dear Mr Gardiner

Please support CS-SB 157 (L & A) now in the Judiciary Committee. All people have certain rights including those with religious convictions. Surely, on this Bicentennial Year of our nation it would be fitting to give renewed support to religious freedom. Your vote would be greatly appreciated.

Thank you.

Sincerely,

Mrs Fred Thurston
Box 767
Wrangell, Ak. 99929

Denny Evans
Box 80, SRB
Palmer, AK 99645
3-27-76

The Honorable Terry Gardiner
House of Representatives
Pouch "V" State Capitol Bldg.
Juneau, Alaska 99811

Dear Mr. Gardiner,

Please support CS-SB 157 (L+M) that is in the House Judiciary Committe.

I believe all people should have freedom to do as they believe.

Sincerely Yours,

Denny Evans

March 27, 1976

Mr. Terry Gardiner
Alaska ~~State~~ House of Representatives
State Capitol Bldg.
Pouch V
Juneau, Alaska 99801

Dear Mr. Gardiner,

I am writing you to ask your support of CS-SB157 (L & M) please. I think everyone has rights including those with religious convictions.

Your help & support will be greatly appreciated.

Thankyou.

Sincerely,

Mrs. Jean Mayer
Box 4-1179
Anchorage,
Alaska 99509

Mr. & Mrs. K. Ueck
Box 498
Palmer, Ak. 99645

3-30-76

The Honorable Terry Gardiner
Chairman, House of Representatives
Pouch V State Capitol Bldg.
Juneau, Ak. 99801

Dear Mr. Gardiner,

I am concerned about CS-SB 157 I feel this bill affects our Civil and religious rights. Your support for the passing of this bill would be greatly appreciated.

Thank you.

Sincerely,
Mrs. Kurt Ueck

P.O. Box 576
Kodiak, Alaska 99615

March 30, 1976

The Honorable Terry Gardiner, Chairman
House of Representatives
Pouch "V" State Capitol Building
Juneau, Alaska 99811

Dear Mr. Gardiner:

We were so thankful that the "conscience clause" amendment passed the Senate.

I am so hopeful now, that each member/House Judiciary Committee will also support this bill.

We understand that this "conscience clause" did receive the House support at a former time and we would urge you to vote again for the passing of CS-SB 157 (L&M).

Thank you for your voice in support of those with religious convictions . Religious freedom should be renewed, especially now, in this Bicentennial Year.

Sincerely yours,

Kathryn Madson

(Mrs.) Kathryn K. Madson

Star Route
Valdez, Alaska
March 31, 1976

Honorable Terry Gardiner
House of Representatives
Pouch "V" State Capital Building
Juneau, Alaska 99811

Dear Mr. Gardiner:

Won't you please vote for C.S.S.B. 157 (L&M).
It seems that in this Bicentennial
year of our nation it would be
fitting to give renewed support to
religious liberty. This bill has
been ignored too long.

Thank you.

Sincerely,
Milford & Bonnie Taylor

March 30, 1976

The Honorable Terry Gardiner
Alaska State House of Representatives
Pouch "V" State Capital Building
Juneau, Alaska 99811

Dear Representative Gardiner:

I urge you to speak up and vote for religious rights. True labor does have rights, but so do those with religious conviction! This action has been ignored to long.

Surely in this Bicentennial Year of our nation, it would be fitting to give renewed support to religious freedom. I ask you to vote for CS-SB 157 L & M.

Your vote for CS-SB 157 L & M will be deeply appreciated.

Best personal regards.

March 30, 1976

The Honorable Terry Gardiner
Alaska State House of Representatives
Pouch "V" State Capital Building
Juneau, Alaska 99811

Dear Representative Gardiner:

I urge you to speak up and vote for religious rights. True labor does have rights, but so do those with religious conviction! This action has been ignored to long.

Surely in this Bicentennial Year of our nation, it would be fitting to give renewed support to religious freedom. I ask you to vote for CS-SB 157 L & M.

Your vote for CS-SB 157 L & M will be deeply appreciated.

Best personal regards.

Sitka, Alaska
March 30, 1976

The Honorable Terry Gardiner
Chairman
House of Representatives
Pouch "V" State Capitol Building
Juneau, Alaska 99811

Dear Mr. Gardiner,

I urge you to speak up and vote for religious rights. Your vote for CS-SB 157 (I&M) will be deeply appreciated. This bill has been ignored too long.

Thanks much,

Evon Reeves

Evon Reeves

Sitka, ak.
3-30-76

The Honorable Terry Gardiner
Chairman
House Judiciary Committee
Pouch "V" State Capitol Bldg.
Juneau, Alaska 99811

Dear Mr. Gardiner, Re: CS-SB 157 (L&M)

Please remember that those of us who do not believe in the ille of arganized labor have rights & Priviledges as Alaskan, American citizens too.

Please support the "conscience clause" in CS-SB 157 (L&M).

My thanks,

Ray M. Reeves
Box 1540
Sitka 99835

Wayne & Pat Ward
General Delivery
Aleknagik, Ak. 99555



The Honorable Mr. Davidson
House of Representatives
Pouch "V" State Capitol Building
Juneau, Alaska

2-3311

Dear Mr. Terry Gardiner;

Surely, in this Bicentennial year of our nation it would be fitting to give renewed support to religious freedom. I ask you to vote for CS-SB 157 (LEM).

Sincerely,

Wayne G. Pat Ward

Anch AK
28/11E 7—
4-5-76

Dear Mr Jerry Gardiner

Concern for the protection
of Religious freedom is not dead.
The Alaska Senate proved this
by passing CS-SB 157(L+M)
unanimously with support of
Alaska Federation of Labor.

We need your full support
also.

Thank you

Ralph A. Jordan

April 1, 1976
S.R. B Box 93
Palmer, Ak. 99645

Dear Mr. Gardiner:

Please support religious rights. In our nations Bicentennial Year it would be very fitting to give renewed support to our heritage of religious freedom. Speak up and vote for CS-SB 151 (L+M). Keep our Great State great.

Thank you.

Respectfully,

Mr. + Mrs. George Alder

Anch. AK.
28411 ET
4-5-76

Dear Mr. Terry Gardiner:

"I hope you will support CS-SB 157 (L+M) that is in the House Judiciary Committee. Every one has rights even those with Religious Convictions"

Thank you

Reta M. Jordan

RETA M. JORDAN

March 27, 1976

Mr. Terry Gardner
Alaska State House of Representatives
State Capitol Building
Pouch V
Juneau, Alaska 99801

I believe all people have rights, including those with religious convictions.

So please support Bill no. CS-SB 157 (L+M) in the House Judiciary Committee.

Sincerely yours
Mary Lou Shull

Dear Mr. Gardiner,

I would like to solicit your support for the CS-SB 157 (L+M) bill now in your Committee. I feel very strongly about this bill and urge you and your committee to pass it. Thank you.

Sincerely Yours
Jack R. Bone
Sitka, Alaska

April 6, 1976

Dear Representative Gardner,

Please join those who have already supported CS-SB 157(L&C) in protecting religious freedom in this great land of ours.

Our country desperately needs people of conviction & stand for issues that are right - but not always popular.

Thank you

Sincerely,

Mrs. Velma Beaver

718 Barrow

Anchorage, Ak.

99501

Box 929
Wrangell, Alaska 99929
April 4, 1976

The Honorable Terry Gardiner, Chairman
House of Representative
Pouch "V" State Capitol Building
Juneau, Alaska 99811

Dear Mr. Gardiner:

Please support CS-SB 157 (L&M) now in the House Judiciary Committee. In this nation's Bicentennial year, how fitting to give renewed support to all people and their religious convictions. Your vote for this bill will be deeply appreciated.

Very truly yours,
Mildred E. Bloom
Mildred E. Bloom

Box 929
Wrangell, Alaska 99929
April 4, 1976

The Honorable Terry Gardiner
House of Representative
Pouch "V" State Capitol Building
Juneau, Alaska 99811

Dear Mr. Gardiner:

I urge you to speak up and vote for Religious rights,

especially in this Bicentennial Year of our nation.

Your vote for CS-SB 157 (L&M) will be deeply appreciated.

This bill has been ignored too long.

Sincerely,
William Bloom
Sincerely, William K. Bloom

Box 929
Wrangell, Alaska 99929
April 4, 1976

The Honorable Terry Gardiner
House of Representative
Pouch "V" State Capitol Building
Juneau, Alaska 99811

Dear Mr. Gardiner:

I urge you to speak up and vote for religious rights.

Your vote for CS-SB 157 (L&M) will be deeply

appreciated. This bill has been ignored too long.

Sincerely,

Keith G. Bloom

SB

180

"An Act relating to salmon hatcheries."

COMMITTEE REPORT

3/2[illegible]'75

HOUSE

Mr. Speaker: Date _____

The Committee on JUDICIARY has had SENATE BILL NO. 1[illegible]

under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ _____ recommends:

_____ Chairman

SB 99 Public records

The committee felt that (b) should be in title 11.
line 12: change hinder to withhold or deny or obstructs of to a phrase using several other words.
line 11: change to the person responsible for the custody of the records -- also in line 17

HB 246 Liquor license

Don Clocksin stated that the first section concerns notice. Section 2 provides that if one person objects to any license filed, the ABC Board has the option of accepting his protest. If 35% of the adults object, an election is required in which they can vote to go dry. This must cover all establishments in the area and not be selective. Outside a village, if a majority of the people object at a public hearing, the Board may refuse to grant the license. Section makes a violation of the law a misdemeanor so that Troopers could be called in to enforce.

Mr. Bradley moved the C & RA CS out of committee do pass. There being no objection, it was so ordered.

SB 180 Salmon Hatcheries

Phil Daniels stated that the bill will require Fish and Game to cooperate with private hatchery groups. This was the legislative intent in allowing private hatchery groups in the past but this apparently was not clear to the Department because some problems developed.

Mr. Brown moved SB 180 out of committee do pass.

The committee agreed that the four bills discussed earlier should go to legislative affairs to make sure that they were in the correct titles.

Comments of Dr Jack Van Hyning
at Fairbanks Public hearing
March 8, 1975

(Jw)

I would also like to comment on Senate Bills 180 and 181, relating to the private nonprofit salmon hatchery legislation passed by the 1974 session.

It may come as somewhat of a surprise to you to learn that Alaska's first private salmon hatchery corporation is headquartered here in Fairbanks. We also have the first provisional permit. Our hatchery, however, is located in Prince William Sound, on an island near Whittier. and in our group in addition to myself we have a Cordova commercial fisherman and an Anchorage businessman. Incidentally, the private hatchery concept originated in Oregon.

With reservations we endorse Senate Bill 180 which refers to the Department of Fish & Game making every effort, within the limits of time and resources, to assist and advice applicants in the planning, construction or operation of private salmon hatcheries. I find that the Department personnel are already committed to this philosophy, but submit that they will not be able to adequately carry out the mandate of such legislation without adequate funding. At the very least there should be a full-time coordinator or liason between the Department and the private hatchery operators. In the future there will be additional personnel needed to monitor the hatcheries for diseases, etc. On the other hand, I would warn against creating another empire of state government for the express purpose of assisting private industry. There are a number of consultants, advisors,

and engineering firms that specialize in this field and are available for working with the private sector in the design and operation of salmon hatcheries. These are private businessmen, taxpayers, and they should not have to compete with tax-supported government agencies. There should be a clear policy on the respective roles of the state staff and private advisors.

We strongly endorse Senate Bill 181 which extends the Commercial Fishing Loan Act to include private hatcheries. The only addition I might request to this would be a delayed payment option. Unlike a fishing boat which can start fishing immediately, private hatcheries will not receive any income for from 2 to 5 years after the beginning of operations. Therefore I suggest that a minimum 2-year delay be considered before the first repayment, as is the case with the federal farm loan program.

I would also like to ask the legislature to consider a change in the Renewable Resources Fund Act. As I understand this legislation, these funds will go to the state for projects dealing with the enhancement of renewable resources. Presumably some could be contracted to universities and other bodies for research and other work, but if Murphy's principle prevails a bureaucracy will expand to fill any vacancy in space or funds. Whether it be 5 or 50 million dollars, I am sure our state agencies will rise to the occasion. I urge that there be some mechanism set up whereby a portion of these funds can be set aside for use by qualified private concerns in research and development projects -- programs to benefit fishermens' organizations, farmers' groups, etc. For example, the Cordova fishermens' aquaculture program, under the leadership of Wally Hoerenberg, with adequate funding could do great things in the rehabilitation of Prince William Sound fisheries. Persons familiar with Alaska's agricultural problems could probably cite similar examples.

Obviously there needs to be strong guidelines and control, but perhaps private industry could do a job cheaper, faster, better and more efficiently than a state agency.

Thank you.

SB

202

"An Act relating to malicious mischief and destruction of property."

4/24/75

COMMITTEE REPORT

HOUSE

Mr. Speaker: Date 5/2/75

The Committee on JUDICIARY has had CSSB 202am under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(X) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

Original sponsor: Bradley and Huber

IN THE SENATE BY THE JUDICIARY COMMITTEE

HOUSE CS FOR CS FOR SENATE BILL NO. 202

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to malicious mischief and destruction of property."

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

* Section 1. AS 11.20 is amended by adding a new section to read:

Sec. 11.20.515. MALICIOUS MISCHIEF AND DESTRUCTION OF PROPERTY. (a) A person who wilfully or maliciously destroys, defaces, injures or exposes to injury real or personal property not his own, is guilty of malicious destruction of property. Upon conviction, if the property harm exceeds $250, a person guilty of malicious destruction of property is punishable by imprisonment for not ~~less than one year~~ nor more than 5 10 years. If the property harm does not exceed $250, the person, upon conviction, is punishable by imprisonment for not less than one month nor more than one year, or by a fine of not more than $1,000, or by both. In addition, the court may order restitution by the defendant to the owner of the injured property for the amount of the harm. Restitution does not bar a civil action for the injury suffered through wilful or malicious action under this subsection, but the amount of money paid under the order of restitution shall be credited against any judgment resulting from the civil action.

(b) A person who wilfully interferes with or tampers with property not his own, with the purpose to harm the property of another person, or with reckless disregard for the risk of harm to or loss of the property, is guilty of malicious mischief and, upon conviction, is punishable by imprisonment for not more than one year, or by a fine of not less than

$100 nor more than $5,000, or by both.

(c) This section does not apply to secs. 520 - 525, 575 and 670 of this chapter.

* Sec. 2. AS 11.20.520 is amended to read:

Sec. 11.20.520. MALICIOUS OR WANTON INJURY TO ANIMALS [OR OTHER PERSONALITY]. A person who maliciously or wantonly kills, wounds, disfigures, or injures any animal the property of another, or wilfully administers poison to the animal, or maliciously exposes poison with intent that it be taken by the animal, [OR WHO MALICIOUSLY OR WANTONLY, BY MEANS NOT SPECIFIED IN THIS CHAPTER, DESTROYS OR INJURES PERSONAL PROPERTY OF ANOTHER,] upon conviction, ~~is punishable by imprisonment~~ [IN THE PENITENTIARY] ~~for not less than six months nor more than three years,~~ or by imprisonment in a jail for not less than one months nor more than one year or by a fine of not less than $50 nor more than $1,000. or by both

* Sec. 3. AS 11.20.530, 11.20.550, 11.20.560, 11.20.570, 11.20.580, and 11.20.620 are repealed.

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K — STATE CAPITOL
JUNEAU 99801

April 10, 1975

Senator Robert H. Zeigler, Sr.
Chairman
Senate Judiciary Committee
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Bob,

I have read CS SB 202 and urge its approval by the Senate.

By creating a dividing line between misdemeanor and felony based on the amount of property damage, the bill alleviates a serious problem that exists due to judicial interpretation of existing statutes in the area of destruction of property. Statutes presently provide for a possible prison sentence in excess of one year irrespective of the amount of property damage and hence a conviction for the offense is a felony. As prosecutors are reluctant to have people adjudicated as felons for small amounts of property destruction, cases are often times not being pursued with the obvious deleterious effect on deterrence of crimes of this sort.

In addition, CS SB 202 would compile in one statute what is presently found in eight - an obvious improvement in terms of simplifying the ever increasing body of state law as well as easing the burden on our district attorneys with respect to charging procedures and proof problems.

It is therefore my strong recommendation that CS SB 202 be approved.

Very truly yours,

Avrum M. Gross
Attorney General

AMG:jf

cc: Senator W. E. Bob Bradley

Dept of Public Safety

FIRST SESSION / NINTH STATE LEGISLATURE

BILL NO: SB 202

OLD BILL

SUBSTANCE OF BILL: Increases penalties for certain offenses when value of loss or damage exceeds $500.00 such as:

11.20.520 Malicious or wanton injury to animals
11.20.550 Injury to transportation or communication facilities
11.20.560 Damage to water or power systems
11.20.570 Injury to buildings, fences, growing things, produce
11.20.575 Malicious destruction of property by a tenant
11.20.620 Injuring trees or removing timber or minerals

BACKGROUND OF BILL: Unknown

OLD BILL

RECOMMENDATION: With the exception of injury to animals, the bill increases the penalty, when loss or damage exceeds $500.00, to a maximum of ten years imprisonment. Certainly penalties should be commensurate with the extent of loss or damage and should reflect the inflationary problems which exist.

Support for the bill recommended.

(2)

3 From Ulmer

ASSIGNED TO: Fred M. Woldstad DATE: 3/3/75

Mr. Parr objected to repealing section on cruelty to animals. He suggested that this be left in the statutes and be reworked by the committee working on the revision of the criminal code.

Mr. Brown moved on line 27: omit 520 and amend 520 to omit references to anything but animals. The amendment passed.

Senator Bradley, sponsor of the bill, stated that the above amendment was ok with him. He said that the bill was the result of a request from the Anchorage school board. The $250 figure was reached since this is the California figure. The bill is primarily a consolidation measure that provides for restitution for damages.

Mr. Brown moved on line 23 after harm add: to or loss of such property. The amendment passed.

Mr. Brown moved on line 19: required to order
line 20 add: such restitution does not bar any civil action for the injury suffered through such wilful or malicious action, but amounts paid pursuant to such order shall be credited against any judgement resulting from such action.
The amendment passed.

The committee raised the question of whether public property was adequately covered -- or abandoned property. Senator Ziegler assured the committee that it was.

The CS was moved out of committee.

House Judiciary Committee
May 12, 1975

The meeting was called to order at 1:20 p.m. by Chairman Gardiner. All members were present.

CS HB 418 Conflict of Interest

Mr. Walker explained the new CS stating that it takes care of the committee's concerns about members of a municipal body. Mr. Hanley of the Attorney General's Office agreed that the proposed CS solves the problem created by the earlier legislation. Mr. Bradley moved the Judiciary CS HB 418 out of committee. There being no objection, it was so ordered.

SB 302 Convicts/weapons

Mr. Turnbull explained that the proposed language from the Attorney General's office clears up the vague problem in lines 10 and 11 and the committee's problem with section (c). The Judiciary CS was moved out of committee.

SB 113 Health Care Information

This bill fulfills a federal requirement which will enable the state to receive medicade money -- that of a professional staff review. The bill stipulates those situations under which the person affected cannot sue and which records must be kept confidential.

Senator Ziegler testified that 030 provides adequate safeguards for someone who feels that he didn't receive a fair hearing. Only the actual minutes of the hearing are to be kept confidential.

Mr. Brown moved on page 2, line 4: change punctuation and add except as provided in this section, all
line 8: except as provided in this section, all
line 11: organization and the proceeding
line 21: hearings, except as provided in this section Testimony, doucments, proceedings, records and other evidence adduced before a review organization that are otherwise inaccessible under this section, may be obtained under subpoena for discovery proceedings brought by a plaintif who claims that information provided to a review organization was false and that the person providing the information knew or had reason to believe that the information was false.
These amendments passed in substance. The committee requested that a CS be prepared for their review.

SB 202 Malicious mischief

The repealers are covered under the bill's definition of real or personal property. They included mostly misdemeanor penalties which, according to the bill, will be dependent upon the value of the property.

AMENDMENT

OFFERED IN THE HOUSE: BY: Gardiner

TO: Judiciary CS HOUSE BILL No. _____

SENATE BILL No. 202 am

PAGE: 2 LINE: _____

Delete lines 4 - 15 inclusive and insert:

* Sec. 2. AS 11.20.520 is repealed and re-enacted to read:

Sec. 11.20.520. MALICIOUS OR WANTON INJURY TO ANIMALS. A person who maliciously or wantonly kills, wounds, disfigures, or injures any animal which is the property of another, or wilfully administers poison to the animal, or maliciously exposes poison with intent that it be taken by the animal, upon conviction is punishable by imprisonment for not less than one month nor more than one year or by a fine of not less than $50 nor more than $1,000, or by both.

CS FOR SENATE BILL 202

This bill was requested by members of the Anchorage School Board and two Anchorage school principals that I visited prior to the current legislative session.

During the past several years there has been a rapid and continual increase in the malicious, willful, and senseless damage to, and destruction of, property by someone other than its owner -- an incident better known as vandalism.

The damage to only the State's public school property has amounted to a tremendous amount of money.

During 1974, the Anchorage schools alone received more than $100,000 damage as a result of vandalism.

Only recently about $10,000.00 worth of damage was done by vandals to the Anchorage East High School.

The average monthly vandalism damage to Anchorage schools during 1974 amounted to about $10,000.00.

This is merely one of many examples of the expense resulting from this crime. On your desk are a few very recent news-clippings I ran across and have distributed copies to save the time of reading. These pertain to schools only, of course.

There are many other instances of vandalism -- the damage to homes, cabins in remote areas, automobiles, highway signs, State park property, public buildings other than schools, and many other types of public and private property (Police Dept. Report).

I+'s thought by many that the current law pertaining to criminal penalties for property damage and destruction crimes is not adequate enought to deter people from committing these type crimes.

As a result, a legislative counsel, assistant attorney general, the Judiciary Committee, and I finally came up with what we thought was a far superior bill pertaining to the crime of vandalism, which is the CS for SB 202.

This bill reduces a tremendous amount of repetition by repealing eight (8) sub-sections of the current Alaska Statue; consolidates the types of damage and destruction into two paragraphs, and standardizes the penalty based on amount of damage done.

I think this bill adequately covers the crimes pertaining to vandalism, malicious mischief, and property damage or destruction.

The proposed CS makes the dividing line value of the property harmed $250.00, which, if it matters, the State of California uses.

This amount of damage was finally decided on as opposed to the $500 which was used in the original bill.

The current Alaska Statue uses $100.00 as a dividing line value.

We thought the amount used by California was a more reasonable figure -- somewhat of a happy medium between the two -- as a cutoff between misdemeanors and felonies.

In addition, the CS states that the court may require restitution by the defendant to the owner of the damaged or destroyed property for the amount of the harm.

The CS also covers malicious mischief, the intent to harm property of another, and the reckless disregard for the risk of harm for which, if convicted, a defendant can be punished.

This bill has been well nit-picked by the Attorney General himself, the Director of Public Safety himself, the Judiciary Committee, and least important myself.

If this Bill is enacted into law, I believe it will be far superior to our current law -- it is brief but more adequate, easier to understand and enforce, offers more justice to the victim, and provides more reasonable punishment of the convicted person. (Read Attorney General's letter)

THE END

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL / POUCH K — STATE CAPITOL
JUNEAU 99801

April 10, 1975

Senator Robert H. Zeigler, Sr.
Chairman
Senate Judiciary Committee
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Bob,

I have read CS SB 202 and urge its approval by the Senate.

By creating a dividing line between misdemeanor and felony based on the amount of property damage, the bill alleviates a serious problem that exists due to judicial interpretation of existing statutes in the area of destruction of property. Statutes presently provide for a possible prison sentence in excess of one year irrespective of the amount of property damage and hence a conviction for the offense is a felony. As prosecutors are reluctant to have people adjudicated as felons for small amounts of property destruction, cases are often times not being pursued with the obvious deleterious effect on deterrence of crimes of this sort.

In addition, CS SB 202 would compile in one statute what is presently found in eight - an obvious improvement in terms of simplifying the ever increasing body of state law as well as easing the burden on our district attorneys with respect to charging procedures and proof problems.

It is therefore my strong recommendation that CS SB 202 be approved.

Very truly yours,

Avrum M. Gross
Attorney General

AMG:jf

cc: Senator W. E. Bradley

Ziegler Asks More Backing On Vandal Bill

Times Juneau Bureau

JUNEAU — The sponsor of a bill to revamp many of the state's vandalism laws was told to get the attorney general's opinion of it before it would be moved out of committee.

"I'll tell you what you do," Senate Judiciary Chairman Robert Ziegler, D-Ketchikan, told Sen. W. E. "Brad" Bradley, R-Anchorage. "You get a letter from the attorney general, saying he has read it, approved of it, and telling why it should be enacted into law, and then I suspect we'll move on it."

The bill is a sponsor substitute of Bradley's, quite different from an original bill he introduced.

The substitute bill proposes to repeal laws on malicious or wanton injury to animals or other personality; injury to transportation or communications facilities; damage to water and power systems; injury to buildings, fences, growing things and produce; malicious destruction of property by a tenant and injuring trees or removing timber or minerals.

Bradley's original bill amended these sections to make it a misdemeanor to damage property valued at less than $500 and a felony to damage property worth more than $500 with imposition of fines and prison sentences for persons convicted.

His new bill encompasses these categories, but simplifies them by stating that "a person who wilfully or maliciously destroys, defaces, injures or exposes to injury real or personal property not his own is guilty of malicious destruction of property."

It lowers the value of property being damaged to $250 as the cutoff point between misdemeanors and felonies.

Vandalism raises discipline issue

By GAIL MILLER
Daily News Staff Writer

A report that more than $11,000 was spent on Anchorage school vandalism in December and the activity of a new School Board subcommittee promise to respark the issue of school decorum.

School Board member Bob Hartig, chairman of a subcommittee to study decorum, said his committee plans to ask the board to add several thousand dollars to the school district's fiscal 1976 budget, now under consideration, for increased security personnel in schools.

IN CONTRAST TO this fall when corporal punishment and drugs led to a rash of public debate on school discipline, it is vandalism and theft that is impelling Hartig's committee.

"We're mainly concerned with the reporting of law violations. Last year more than $100,000 damage was done in school vandalism. In many cases we don't know if the vandal was ever prosecuted. According to state law, parents are responsible for student actions of vandalism up to $2,000," said Hartig.

As requested by the decorum committee, the school administration released this week its first monthly report of vandalism and theft. It lists 23 acts in December, from a $611 theft of guitars and a sewing machine from Scenic Park Elementary to the scattering of rat and gerbil cages at West High. The crimes cost the district $4,747 in materials and $3,476 in labor.

HARTIG AND committee members Ed Tomco and Sue Linford have met with superintendents and school principals during the past two weeks discussing reporting, discipline, attendance, dress regulations and security. In the next two to four weeks they plan to make a proposal to the School Board.

School Vandalism Triples

The total cost to the Anchorage Borough School District for vandalism and theft tripled from last month. February's figures were $2,387.25 and March's were $6,075.61.

One of the major areas of vandalism came in the emptying and theft of fire extinguishers. Five extinguishers were stolen from Dimond High School and eight needed refilling at Bartlett High School.

Other thefts included a set of tools valued at $250 from East Anchorage High School and a transmitter-receiver valued at $825 taken from Bartlett. At East phonograph speakers, a 16 millimeter projector, cassettes, and Audiotron and one spider plant were taken from the library. The total cost was $870.76.

Buildings and grounds spent $2,747.61 for the total materials and $3,328.00 for total labor related to vandalism.

School Vandalism Reaches Crisis Level

By STEVE GERSTEL

WASHINGTON (UPI) — A Senate report charged Wednesday violence and vandalism in the nation's schools has reached a crisis level and is worsening rapidly.

A senior who said the problem costs $500 million a year to remedy called it "a vandalism surtax" on the cost of educating America's children and said it was equal to all the money spent on school books in 1972.

The report said "our schools are experiencing serious crimes of a felonious nature including brutal assaults on teachers and students, as well as rapes, extortions, burglaries, thefts, and an unprecedented wave of wanton destruction and vandalism."

In addition, the report said, there is "clear and compelling evidence that violence and vandalism in the schools has reached a level of crisis that demands immediate comprehensive review and legislative action. The level of violence and vandalism . . . is rapidly increasing in both intensity and frequency."

The report by the Senate Juvenile Delinquency subcommittee was presented at a news conference by its chairman, Sen. Birch Bayh, D-Ind.

Bayh said a survey of 757 public elementary and secondary school districts throughout the country produced a "Ledger of violence confronting our schools that reads like a casualty list from a war zone or a vice squad annual report.

"These hallways and playgrounds of fear and terror also account for an estimated $500 million annual bill for vandalism," he added. "This astonishing sum, which is actually a vandalism surtax on the cost of education, is comparable to the entire investment for textbooks for our nation's schools in 1972."

Bayh said he would introduce legislation to provide financial assistance for alternative educational programs and security plans.

The report disclosed that between 1970 and 1973, homicides increased by 18.5 per cent; rapes and attempted rapes by 40.1 per cent; robberies by 36.7 per cent; assault on students by 85.3 per cent; assaults on teachers by 77.4 per cent; burglaries of school buildings by 11.8 per cent; drug and alcohol offenses on school property by 37.5 per cent; and dropouts by 11.7 per cent.

The report said an "even more ominous statistic" was that by the end of the 1973 school year the number of weapons confiscated by school authorities increased by 54.4 per cent.

"These weapons include knives, clubs, pistols and even sawed-off shotguns designed to be easily concealed within a student's locker," the report said.

The subcommittee said indications are that violence and vandalism occur most fequently in large urban secondary schools.

"It should be emphasized, however, that this is not a problem found exclusively in large cities or solely involving older students," the report said. "Simply put, the trend in school violence over the last decade in America has been, and continues to be, alarmingly and dramatically upwards."

CITY YEARLY 1973

CALLS AND REQUESTS FOR POLICE SERVICES EXCEPT PART 1 OFFENSES

ACCIDENTAL AND NATURAL DEATHS	37
ANIMAL BITES AND CALLS (Handled by Patrol)	295
ANNOYING AND OBSCENE PHONE CALLS	229
ARSON	37
ASSAULT AND BATTERY	499
BLACKMAIL, EXTORTION AND BRIBERY	0
CAB VIOLATIONS	196
CHILD NEGLECT - INCLUDING CRIMES AGAINST FAMILY & CHILDREN	106
COUNTERFEITING	3
DISTURBANCE & BREACH OF PEACE	2700
DISTURBANCE - FAMILY	461
DRIVING WHILE INTOXICATED	512
DRUNKENNESS	2958
EMBEZZLEMENT & FRAUD	252
FAILURE TO APPEAR WARRANT	0
FAILURE TO PAY CAB FARE	0
FALSE ALARM CALLS - FIRE, BOMB, BURGLAR	1200
FIRE CALLS	544
FORGERY & BAD CHECKS	193
GAMBLING	10
IMPOUNDS (Private Property)	413
JAIL & FARM INCIDENTS	0
KIDNAPPING	1
LIQUOR, Misc.	6
Liquor Violations - Prostitutes on Premises	75
Furnishing to Minor & Minor Purchasing	1
Minor on Premises	30
Drinking in Public	36
Minor in Possession	9
LOCATE & ASSISTS FOR OTHER AGENCIES	424
LOST & FOUND PROPERTY	764
MENTAL ILLNESS INVESTIGATIONS	103
MESSAGES & CORRESPONDENCE FROM OUTSIDE JURISDICTION	81
MISSING PERSONS	152
Lost Children	233
NARCOTICS & DANGEROUS DRUGS	819
OPEN DOORS & WINDOWS	598
PARKING PROBLEMS	2456
POSSESSION AND SALE OF OBSCENE PICTURES & LITERATURE	1
PROFANE & OBSCENE LANGUAGE	67
PROSTITUTION & COMMERCIALIZED VICE	142
RESCUE ASSISTS & INJURIES NON-TRAFFIC	913
RESISTING OR OBSTRUCTING AN OFFICER	7
SEX CRIMES	140
SUICIDE	13
Attempted Suicide	
SUMMONS & WARRANTS SERVED ON CASES NOT ORIGINATING IN THIS DEPT.	356
SUSPICIOUS PERSONS, VEHICLES, TRESPASSING & PROWLERS	2221
VAGRANCY	24
VANDALISM	931
VIOLATION OF MISC. REGULATORY LAWS	110
WEAPONS	
Carry Concealed	77
Illegal Possession or Sale of	27
Discharge Firearms	246
MISC. INCIDENTS	5924
TOTAL	26825

Anchorage

SPENARD YEARLY 1973

CALLS AND REQUESTS FOR POLICE SERVICES EXCEPT PART I OFFENSES

ACCIDENTAL AND NATURAL DEATHS	14
ANIMAL BITES AND CALLS (Handled by Patrol)	123
ANNOYING AND OBSCENE PHONE CALLS	82
ARSON	8
ASSAULT AND BATTERY	129
BLACKMAIL, EXTORTION AND BRIBERY	0
CAB VIOLATIONS	65
CHILD NEGLECT - INCLUDING CRIMES AGAINST FAMILY & CHILDREN	35
COUNTERFEITING	1
DISTURBANCE & BREACH OF PEACE	662
DISTURBANCE - FAMILY	152
DRIVING WHILE INTOXICATED	220
DRUNKENESS	284
EMBEZZLEMENT & FRAUD	70
FAILURE TO APPEAR WARRANT	---
FAILURE TO PAY CAB FARE	---
FALSE ALARM CALLS - FIRE, BOMB, BURGLAR	587
FIRE CALLS	171
FORGERY & BAD CHECKS	55
GAMBLING	3
IMPOUNDS (Private Property)	75
JAIL & FARM INCIDENTS	0
KIDNAPPING	0
LIQUOR, Misc.	0
Liquor Violations - Prostitutes on Premises	0
Furnishing to Minor & Minor Purchasing	2
Minor on Premises	5
Drinking in Public	3
Minor in Possession	2
LOCATE & ASSISTS FOR OTHER AGENCIES	128
LOST & FOUND PROPERTY	150
MENTAL ILLNESS INVESTIGATIONS	29
MESSAGES & CORRESPONDENCE FROM OUTSIDE JURISDICTION	9
MISSING PERSONS	18
Lost Children	99
NARCOTICS & DANGEROUS DRUGS	262
OPEN DOORS & WINDOWS	462
PARKING PROBLEMS	490
POSSESSION AND SALE OF OBSCENE PICTURES & LITERATURE	0
PROFANE & OBSCENE LANGUAGE	23
PROSTITUTION & COMMERCIALIZED VICE	[illegible]
RESCUE ASSISTS & INJURIES NON-TRAFFIC	182
RESISTING OR OBSTRUCTING AN OFFICER	0
SEX CRIMES	35
SUICIDE	7
Attempted Suicide	[illegible]
SUMMONS & WARRANTS SERVED ON CASES NOT ORIGINATING IN THIS DEPT.	103
SUSPICIOUS PERSONS, VEHICLES, TRESPASSING & PROWLERS	867
VAGRANCY	7
VANDALISM	355
VIOLATION OF MISC. REGULATORY LAWS	30
WEAPONS	
Carry Concealed	12
Illegal Possession or Sale of	17
Discharge Firearms	84
MISC. INCIDENTS	1022
TOTAL	7258

Spenard

ANCHORAGE BOROUGH
SCHOOL DISTRICT
4600 DeBarr Road - Anchorage, Alaska
99504
AREA CODE 907 333-9561

April 21, 1975

Senator W. E. "Brad" Bradley
Alaska State Senate
Pouch B
Juneau, AK. · 99801

Dear Senator Bradley:

Per Mr. Robert Hartig's request, enclosed is a copy of the Vandalism Report from the Anchorage Borough School District for the month of March, 1975.

Sincerely yours,

Joe D. Montgomery
Superintendent

JDM:ged

Encl.

AIR MAIL TO ALASKA IS FASTER

FOR INFORMATION

VANDALISM REPORT RECAP
MARCH, 1975

DATE			SCHOOL
1-20	Theft	Electronic calculator - Sharp - Elsi-804	East
2-24	Theft	Radio, G.E. - Model T2105 - $20.00	East
2-28	Theft	Set of Tools - $250.00	East
3-3	Theft	Motorola transmitter-receiver, model #H23FFN3100N serial #N-32-FOH, taken from registrar's office - $825.00.	Bartlett
3-3	Theft	10 lb. Dry chemical fire extinguisher, model #421, Amerex Corp., located at station at west entrance of building - $21.25.	Career Center
3-3	Theft	2 Lenses missing from Xerox microfilm equipment - 24 x #582 P0025. Equipment was presumably stolen - was discovered missing from Library work center approximately 11:00 a.m. on 2/26/75 - $75.00 each - $150.00.	Service
3-4	Vandalism	2nd Traveler - stage right, was slit about 12 times vertically with what appeared to be a very sharp knife. It was discovered after the talent show last month. - $400.00.	East
3-5	Vandalism Theft	Telephone, extension #41, taken from counselor's office.	East
3-6	Theft	1 30 lb. Dry chemical fire extinguisher stolen after school hours from Bldg. M hall - $45.00.	Dimond
3-6	Theft	2 20 lb. Dry chemical fire extinguishers stolen after school hours from Bldg. G hall - $60.00.	Dimond
3-6	Theft	1 20 lb. Dry chemical fire extinguisher stolen after school hours from Bldg. D hall - $30.00,	Dimond
3-6	Theft	1 20 lb. Dry chemical fire extinguisher stolen after school hours from Bldg. E hall - $30.00.	Dimond
3-10	Vandalism	Lock for fire hose cabinet removed in gym.	Romig
3-10	Vandalism	Light switch damaged in boys' P.E. hall - southwest hall.	Romig
3-10	Vandalism	Door vent was kicked in and some of it missing - boys' restroom by front entryway.	Romig

VANDALISM REPORT RECAP - Page 2
March, 1975

DATE			SCHOOL
3-10	Theft	1 Digital clock taken from principal's desk in locked office. - $30.00.	Chugach
3-10	Theft	1 Steam iron, Sunbeam, model #W3940, taken from locked classroom #U328 - $22.85.	Career Center
3-11	Vandalism	Broken urinal and mirror. Urinal broken off the wall and fire extinguisher emptied all over boys' restroom - upper gym. Need to have 8 fire extinguishers refilled - $230.00.	Bartlett
3-11	Vandalism	1 Large solar ban window, large size 68½ x 45-3/4 x ¼. Someone threw rock through window in Room 4, Bldg. M - $175.00.	Dimond
3-12	Theft	2 Upholstered pillows (backs of chairs) in faculty area - $120.00.	Bartlett
3-12	Theft	Stanley saber saw, ABSD #12400, serial #101655, model #90455, stolen from Room 45 on or before 3-10-75, and after 3-5-75 - $75.00.	West
3-12	Theft	1 10 lb. Dry chemical fire extinguisher, model #421, Amerex Corp., stolen from west entrance station - $25.00.	Career Center
3-13	Theft	Someone broke the window into Mr. McKelvey's office, pried open locked drawer in receptionist's office, stole some artifacts from Mr. Hahn's office, broke into a locked filing cabinet, locked cash box, and stole money and checks listed on attached sheet - $797.50.	East
3-15	Theft	Building entered by window in Room 18. A-V and Library materials stolen: Phonograph speakers, ABSD #14193, Newcomb 562386- $107.26 16MM Projector, ABSD 2246, Bell & Howell 3155127 - $498.60 Cassettes: ABSD 22893, Audiotron 136, serial #561082, $124,95, ABSD 22781, Audiotron 136, serial #022781, $124.95 1 Spider plant in red pot missing from Library - $15.00 TOTAL - $870.76. Also missing: Microphones - 2 small Audiotronics, 2 small Sony, 4 small Wollensacks.	East

DATE			SCHOOL
3-17	Vandalism	Broken window in room #4.	Rabbit Creek
3-17	Vandalism Theft Burglary Illegal Entry	Stolen fire extinguisher, broken scissors, faculty room vandalized. Apparently someone hid in school on Saturday evening after Winter Carnival and did the damage after others had left - $100.00.	Rogers Park
3-17	Vandalism Theft	Broken window and door. Supports torn off one outside basketball backboard - $15.00. Calculator, cassette recorder stolen. Window pane taken out for entry; storage corridor door kicked in; money taken from 2 teachers' desks; calculator from another teacher's desk.	Huffman
3-18	Vandalism	Material torn off stairway by main entry.	Romig
3-18	Vandalism	Door by room 215, upstairs, was sprung so that it does not close properly.	Romig
3-18	Vandalism	Fire extinguisher pin pulled and broken - southwest hallway - Industrial Arts 2.	Romig
3-18	Vandalism	Urinal was damaged in boys' restroom by Science 6.	Romig
3-19	Vandalism	Door torn off hinges, exit torn off ceiling, window broken. Young people became unruly at Borough Parks & Recreation function.	Muldoon
3-19	Theft	Cross-country skis stolen. Metal along edge of door was peeled back making it possible to push back hardware bolt - $225.00.	Bartlett
3-19	Theft	1 Microphone #300Z - wireless - $50.00.	Bartlett
3-19	Vandalism	Door glass was cracked in boys' PE Arts room.	Romig
3-19	Vandalism	Needle-nosed pliers, large drawing compasses, Exacto knife, files. Jeff Sinclair, a runaway, was found in the building on 3/19/75 at 2:00 a.m. The files are at his house. The other tools, compasses, pliers are at Doug Peratrovich's home. - $20.00.	East
3-19	Vandalism	Glass broken in fire alarm box - boys' P.E. hall - S.W. hallway.	Romig
3-20	Vandalism	Glass to fire extinguisher box by Arts & Crafts room, southeast end of upstairs hall broken.	Romig

VANDALISM REPORT RECAP - Page 4
MARCH, 1975

DATE			SCHOOL
3-20	Vandalism	Fire started in boys' restroom by Science 6 - light cover burned.	Romig
3-20	Vandalism	Broken mirror, several baskets twisted so they cannot open.	East
3-20	Vandalism	1 Wire reinforced entry glass, size 24 x 27 x $\frac{1}{4}$, broken during lunch period. Bldg. H - H to D entry - $15.00.	Dimond
3-20	Vandalism	1 Wire reinforced entry glass, size 24 x 27 x $\frac{1}{4}$, broken by rock. Bldg. H - H to M entry - $15.00.	Dimond
3-20	Theft	1. CB Radio, model 323, serial #052-46-567 taken from car while at Polar Moto's for repairs. Antenna also cut. - $300.00.	N/A
3-21	Theft	2 Socket sets taken from construction shop area - $200.00.	Career Center
3-24	Vandalism	Door frame was pulled away from wall in room 221.	Romig
3-24	Vandalism Theft	4 Outdoor speakers for the bell system were taken - $176.00.	Chester Valley
3-25	Vandalism	Lockers #83, 82, 78, 73, 74, 72, 55, 61, 63. Some lockers had grating bent, some had grating cut, and some had handles and locks torn completely off - $240.00.	West
3-27	Theft	Sewing machine - model #291, serial #TC646783, ABSD #25535, stolen from storeroom in Commercial Arts area (State Troopers case #C75-04389) - $565.00.	Career Center
3-31	Theft Illegal Entry	Maranz stereo w/twin speakers, and 2 2' x 3' wire door glasses stolen; 1 4' x 6' chalkboard defaced - Mears music room.	Mears
3-31	Theft Illegal Entry	4 Large column speakers by DuKane for amplifier. After hours 3-28 someone used rollaround ladder and stole all 4 speakers - $400.00.	Dimond

EXPENDED BY BUILDINGS & GROUNDS FOR VANDALISM REPAIRS
March, 1975

Total Materials.....$2,747.61
Total Labor..... 3,328.00

TOTAL..... $6,075.61

Dept of Public Safety

FIRST SESSION / NINTH STATE LEGISLATURE

BILL NO: SB 202

OLD BILL

SUBSTANCE OF BILL: Increases penalties for certain offenses when value of loss or damage exceeds $500.00 such as:

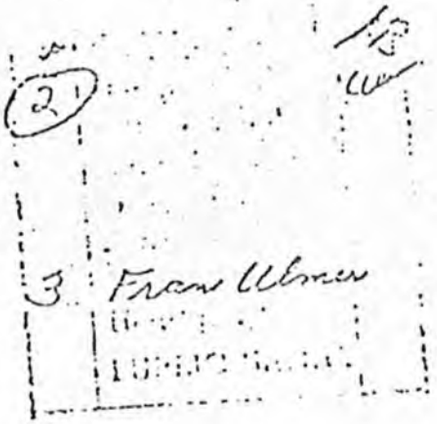
11.20.520 Malicious or wanton injury to animals
11.20.550 Injury to transportation or communication facilities
11.20.560 Damage to water or power systems
11.20.570 Injury to buildings, fences, growing things, produce
11.20.575 Malicious destruction of property by a tenant
11.20.620 Injuring trees or removing timber or minerals

BACKGROUND OF BILL: Unknown

OLD BILL

RECOMMENDATION: With the exception of injury to animals, the bill increases the penalty, when loss or damage exceeds $500.00, to a maximum of ten years imprisonment. Certainly penalties should be commensurate with the extent of loss or damage and should reflect the inflationary problems which exist.

Support for the bill recommended.



ASSIGNED TO: Fred M. Woldstad DATE: 3/3/75

SB

230

"An Act relating to the taking of anterless moose."

4/8/75

COMMITTEE REPORT

HOUSE

Mr. Speaker: Date _____

The Committee on JUDICIARY has had CSSB 230 am

under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

(v) "other"

Members signing the Majority report:

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

Original Sponsor: Huber, Bradley, Colletta, et al

Offered: 3/11/75
Referred: Rules

IN THE SENATE BY THE RESOURCES COMMITTEE

CS FOR SENATE BILL NO. 230 am

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the taking of antlerless moose."

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

* Section 1. AS 16.05 is amended by adding a new section to read:

Sec. 16.05.780. TAKING OF ANTLERLESS MOOSE PROHIBITED. (a) The taking of antlerless moose in any game management unit, other than in Game Management Units 22 and 23, is prohibited until January 1, 1978.

(b) After January 1, 1978, antlerless moose, except in game management units 22 and 23, may be taken in numbers and upon conditions prescribed by the board, only in units

(1) that the department recommends be opened, based on biological evidence, and

(2) in which a majority of active local advisory boards for that unit have recommended an opening, after each has taken a vote and a majority of the members of that board has voted in the affirmative.

(c) After July 1, 1975, antlerless moose may be taken in numbers and upon conditions prescribed by the board in game management units 22 and 23 only

(1) if the department recommends they be opended, based on biological evidence, and

(2) if a majority of the active local advisory boards in those units have recommended an opening, after each has taken a vote and a majority of the members of that board has voted in the affirmative.

AMENDMENT

OFFERED IN THE HOUSE: BY: Ulion

TO: _____ HOUSE BILL No. ~~[illegible]~~

SENATE BILL No. CSSB 23 am

PAGE: 1 LINE: 8

Delete all material beginning on line 8 and insert:

Section 1. AS 16.05 is amended by adding a new section to read:

Sec. 16.05.780. TAKING OF ANTLERLESS MOOSE. The taking of antlerless moose in any game management unit or subunit, other than Game Management Units 22 and 23, may be prohibited by majority vote of the local advisory committee for that game management unit or subunit. In the case of game management units or subunits in which more than one local advisory committee functions, the prohibition shall be by majority vote of all members of all local advisory committees for that unit or subunit. Only active local advisory committees are authorized to vote under this section.

HB 276 Real Estate Appraisers

It was suggested that all the specific requirements in the bill be eliminated so as to allow the board to provide for specifics in regulations. The committee agreed to make the commission the Board of Real Estate Appraisers. On page 2, line 27 the committee agreed to add "except those employees who are engaged in appraising for public acquisition." 08.89.060 would be eliminated the the remaining sections renumbered. Page 1, line 15, put a period after "years" and delete the rest of the sentence. The original regs would need legislative approval while subsequent regs would be considered approved unless disapproved by a resolution. Mr. Brown suggested that on page 2, line 26, reference to the United States be deleted. Mr. Specking wanted to include a grandfather clause in the statute so the committee agreed on page 2 line 21 to add an exemption that no test would be required for one year after the effective date of the regulations. The committee also agreed that changes should be made in page 1 to have three members be real estate appraisers and two members lay persons. The bill will be redrafted as a committee substitute and be presented again for committee consideration.

HB 242 Dress code

Mr. Specking stated that the bill was initially prompted because of the ferry regulations, however the State Affairs committee now favors legislative review of regulations having to do with appearance of state employees. Previously these rules were distributed by memo. This bill would require that they be in the form of formal regulations. Mr. Gardiner stated that he had requested a formal opinion of the Attorney General on the ferry dress standards but had received none as yet.

The following amendment was adopted: line 17 "15 and 20" should be "10 and 15"

Mr. Brown moved HB 242 am out of committee do pass. There being no objection, it was so ordered.

SB 230 am Antlerless Moose

Mr. Brown stated that Fish and Game hadn't been able to solve the problem so it was necessary that the legislature step in temporarily to save the moose. Mr. Swanson stated that Fish and Game had been making improper management decisions for 10 years concerning moose and doesn't now seem able to correct the problem. He stated that the bill is not a perfect solution but that Fish and Game needs legislative direction now.

Mr. Parr suggested that all references to "antlerless" be deleted. Mr. Bradley stated that some moose are needed for subsistence. Mr. Brown deemed the suggestion politically unfeasible. And Mr. Specking stated that the Department has not always been responsive to reduced seasons and bag limit suggestions.

Mr. Gardiner moved that lines 12 to 19 be deleted since this bill was a temporary measure only. The motion failed.

Mr. Brown moved SB 230 am out of committee. It was so ordered.

SB

257

an Act relating to officers and employees of a municipal fire department."

COMMITTEE REPORT

5/13/75

HOUSE

Mr. Speaker: Date May 21, 1975

The Committee on JUDICIARY has had CSSB 257 am under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

May 28, 1975

House Judiciary Committee
Statement of Intent
HCS CSSB 257

AS 18.70.075(a) (7) is not intended to relieve the authority demanding a preplanning inspection from the necessity of having to obtain a search warrant covering the premises or the area in which the premises are located. The inspecting authority is normally going to have the consent of the owner or occupier of the premises, but when permission to inspect is denied, a warrant will have to be obtained by the inspectors. AS 18.70.075(a) (7) is intended to give statutory authority for requesting a warrant and to assist in the showing of cause for issuance of the search warrant.

Terry Gardiner, Chairman

House Judiciary Committee
May 26, 1975

The meeting was called to order at 2:15 p.m. by Chairman Gardiner. All members were present.

CS SB 257 am Municipal Fire Departments

Douglas Body, Coordinating Fire Chief, testified that there is no statutory authority for the fire departments to do some of the things they are presently doing.

The following amendments passed:

page 1, line 18, page 1, line 23: after city insert: organized village.
page 2, line 7: after trespass insert: upon property at or near the scene of a fire.
page 2, line 7: delete without liability
page 2, line 21: delete without liability
page 2, line 17: insert before inspect: upon 24 hour notice to the owner or occupant,
page 2, line 24: delete all of subsection (9) and renumber
page 3, line 2: insert after misdemeanor: , and upon conviction, is punishable by imprisonment for one year, or by a fine of not more than $1,000, or by both.
page 2, line 3: delete all of Section 3
page 3, line 6: insert definition section "preplanning" to be drafted.

The Judiciary CS for CS SB 257 am was passed out of committee.

SB 384 Revise statutes

page 6, line 9: delete bring and insert seek, delete action and insert or an action in the nature of an action for mandamus.

The Judiciary CS for SB 384 was passed out of committee.

SB 138 Zoning State Parks

The C and RA CS for SB 138 was passed out of committee.

GASTINEAU CHAPTER ALASKA STATE FIREFIGHTERS ASSOCIATION

P. O. BOX 1708 JUNEAU, ALASKA 99801

May 24, 1975

OPEN LETTER TO MEMBERS OF HOUSE JUDICIARY COMMITTEE:

SUBJECT: CSSB 257 am.

Gentlemen:

I wish to introduce myself and my affiliation with the Fire Service. My name is Alan Judson, Engineer with the Juneau Fire Department, Chairman of the Legislative Committee for the Alaska State Firefighter's Association and spokesman for the Alaska Fire Chief's Association.

In the rare event I or a member of our committee is unable to attend the Judiciary Hearing on CSSB 257 am, I wish to express our needs for this bill.

Section 1, Paragraph (B). This deals with the liability of an employee of a fire department during the performance of his duties, and using discretion, this act would prevent the employee from law suit. The intent of this is to protect the firefighter, but it does not stop lawsuits from being brought against a department.

Section 2. With the passage of this Bill, what fire officers and personnel have been doing for years and assuming has been legal will now be clear, well defined, and legal.

In answer to Mr. Parr's questions to Paragraph 7 & 8:

(7) Inspections. In the Federal Life Safety Code, which the State of Alaska has been using - there is a clause that states, owners must be given 24 hours notice before preplanning inspections, or general insepctions. Complaints for hazards - or life safety may be inspected without notice.

(8) The removal or destruction of fences, house, vehicle, etc. The recourse for the owner is his insurance company, or gross negligence, the Fire Department and City. In many cases, vehicles have blocked hydrants, chain fences have been cut, even houses and buildings have been dynamited to control or prevent the spread of fire.

I cannot see anything in this Bill that would prevent the citizen from some recourse should gross negligence be shown.

The Alaska State Firefighter's Association, The Alaska Fire Chief's Association and the Interior Fire Chief's Assocation, all strongly urge the immediate passage of CSSB 257 am.

Alan Judson

Alan Judson, Chairman
Legislative Committee

SB

266

"An Act transferring those functions of the Department of Revenue relating to motor vehicles to the Department of Public Safety; and providing for an effective date.

COMMITTEE REPORT

4/10/75 HOUSE FINANCE

Mr. Speaker: Date 4/22/75

The Committee on JUDICIARY has had SB 200

under consideration. A Majority of the members of the Committee

(X) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

OFFICE OF THE COMMISSIONER / *POUCH C–JUNEAU 99801*

April 21, 1975

Honorable Hugh Malone
Chairman, House Finance Committee
Alaska State Legislature
State Capitol - Pouch V
Juneau, Alaska 99811

Dear Representative Malone:

A revised fiscal note is attached for Senate Bill 266, an Act to transfer Motor Vehicle function to the Department of Public Safety. This amount is the administration's total requirement for both the Department of Revenue and the Department of Public Safety. We anticipate this transfer will continue to generate savings in future years.

Additional information will be provided if requested.

Sincerely,

Andrew S. Warwick, Commissioner
Department of Administration

Attachment

cc: Legislative Finance
Fran Ulmer, Legislative Assistant
Office of the Governor
Sterling Gallagher, Commissioner
Department of Revenue
Richard L. Burton, Commissioner
Department of Public Safety

ASW/WEW/co

V. DATE: April 18, 1975 PREPARED BY: Wayne E. Weeks

Wayne E. Weeks, Senior Budget Analyst

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

Title: Transfer Motor Vehicle to Department of Public Safety
Requested by: Date: 4-18-75
Return Date Requested:
Agency: Administration Program: Budget and Management

II. FISCAL DETAIL
Budget Request Unit(s) Affected: Motor Vehicle
A. EXPENDITURES: (Thousands of dollars)

	OBJECT	FY 75	FY 76	FY 77	FY 78	FY 79	FY 80
100	PERSONAL SERVICES		5.0	(30.0)			
200	TRAVEL		5.0				
300	CONTRACTUAL		-0-	(16.0)			
400	COMMODITIES		-0-				
500	EQUIPMENT		-0-				
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL		10.0	(46.0)			

B. FUNDING: (Thousands of dollars)

GENERAL FUND		10.0	(46.0)			
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	/	0 /	(3)/	/	/	/
MAN MONTHS (P./T.)	/	0 /	36)/	/	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)
Field Travel will be required to management staff.

The Personal Services cost increase is necessary as three positions require reclassifications. The positions PCN 042028, a Revenue Office Manager III, one Juneau field position and one Fairbanks field position. These are necessary to provide management, administration and support for the new Division.

Saving will be realized in all future years as present leases expire and the number of new personnel should be reduced.

IV. ATTACHMENTS

V. DATE: April 18, 1975 PREPARED BY: Wayne E. Weeks

Wayne E. Weeks, Senior Budget Analyst

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

House Judiciary Committee
April 23, 1975

The meeting was called to order at 1:25 by Chairman Gardiner All members were present.

SB 266 Motor Vehicles

Charlie Smith of the Department of Public Safety testified that at present various agencies serve intra related motor vehicle functions. SB 266 would consolidate these functions under the Department of Public Safety and is expected to produce a fiscal savings of $30,000 in FY 77. Initially the transfer will cost $10,000 to reclassify employees and relocate some facilities. Employees of other departments will become employees of Public Safety.

Mr. Specking moved SB 266 out of committee do pass. There being no objection, it was so ordered.

HB 276 Real Estate Appraisers

The committee discussed the need to protect the public vs. the profession's need to protect themselves. Since there had been no public input regarding a problem, Mr. Specking moved to hold the bill until next year. Mr. Brown objected. On vote, the committee decided to hold the bill but to prepare all the latest suggestions into another proposed CS to be ready to consider at that time.

HB 418 Conflict of Interest

Mr. Walker stated that the language "general election" is defined in statute to mean only the November election. This bill would include "regular" elections (annual municipal elections) or special elections.

Mr. Eliason moved in line 14 to delete "called for that purpose" since it was possible that a special election would be called for another purpose but the subject of conflict of interest could be considered. The amendment passed.

Mr. Walker brought up a problem with HB 390 which is now on the Governor's desk. "Members of municipal bodies" was the language used to provide a further exemption. These people (this language) was not in the original bill so Mr. Walker felt that by exempting them the bill impliedly included them in the rest of the bill. There is no definition for who a member of a municipal body is. The committee requested that Mr. Walker draw up a CS for HB 148 which would include Mr. Eliason's amendment and would correct the problem in HB 390. The committee would consider the CS when prepared.

SB

269

"An Act establishing procedures for punch-card voting in state elections."

COMMITTEE REPORT

HOUSE

4/28/75

Mr. Speaker: Date 5/12/75

The Committee on JUDICIARY has had SB 269 am

under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(/) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

House Judiciary Committee
May 9, 1975

The meeting was called to order at 7:30 p.m. by Chairman Gardiner. Mr. Speckin and Mr. Eliason were absent.

SB 296 Integrated Bar Act

Alan Compton explained that this bill would repeal statutes that purport to grant the Bar certain powers. These powers now rest with the court, despite statutes to the contrary (determining qualifications of attorneys, discipline and disbarment).
Mr. Compton suggested the following amendments:
page 3, line 18 Sects 210 and 230 and for admission to the Alaska Bar,
page 2 except as provided in the Alaska Bar rules
page 2, line 2 (a) except as may be otherwide provided in the Alaska Bar Rules, the board
Mr. Brown moved this amendment which passed.
Mr. Compton suggested that the fine for violation be lowered, so as to still provide a deterrent but to not frighten off paralegals.

SB 269 Punch Card Voting

Patty Ann Polly testified that the bill would put the regulations into law. It would allow the program to pick up the area around the X if it was not in exactly the correct position. She explained the the board members on page two are appointed on the basis of the best available rather than party affiliation.

Mr. Brown moved on line 23: , and one who is registered to vote either as an independent, non partisan, or has declined to state his party affiliation when registering to vote. The amendment passed.

Mr. Brown moved on line 26: omit computer expertise and insert sufficiently familiar with computer programming and operation, sufficient to comply with the provisions of this article.
The amendment passed.

Page 1, line 12 change precinct to area.
page 2, line 16 testing section rewritten
page 3, line 14 "at polling place" added
The above are the changes incorporated into the State Affairs CS.

Mr. Brown moved on page 3, line 15 after process, add and each voter shall be informed that such demonstration is available.
The amendment passed.

The Committee moved the Judiciary CS out of committee do pass.

House Judiciary Committee
May 10, 1975

The meeting was called to order at 3 p.m. by Chairman Gardiner. Mr. Specking was absent.

SB 11 Artificial Insemination

Mr. Parr moved the bill out do pass. There being no objection, it was so ordered.

SB 302 convicts/weapons

Language in the proposed CS was taken from the gun will. Lines 11 and 12 were considered vague. The committee requested that lines 11 and on be checked out for wording change to include those instruments commonly considered weapons.

HB 444 Insurance

The committee received the sectional analysis. Since Alaska is not the only state to change their laws before this change can go into effect, the committee requested input be solicited and that the bill be held until next year.

SB 269 Punch Card voting.

The committee passed the CS out with the amendments already adopted by the committee.

SB 296 Integrated Bar Act

Mr. Brown moved on page 3, line 26 add: or an active member of the Alaska Bar who wilfully employs such a person knowing such person is engaging in the practice of law or representing himself to be entitled to so engage. The amendment passed.

Mr. Parr suggested that the rules for employment of paralegals be set forth by the Supreme Court. An amendment was drawn up to add a new (b) on page 3, line 29 Nothing in this section shall prohibit the use of paralegal personnel as defined by the rules of the Supreme Court. This amendment passed.

On page 3, line 28 the amount was changed to $5,000. This amendment passed.

Exhibit B

0077

TOP

A

OFFICIAL GENERAL ELECTION BALLOT

GENERAL ELECTION NOVEMBER 5, 1974

INSTRUCTIONS TO VOTER: The Governor and Lieutenant Governor are elected as a team. A vote for Governor automatically casts a vote for the Lieutenant Governor.

STATE OF ALASKA
General Election November 5, 1974

GOVERNOR AND LIEUTENANT GOVERNOR
Vote for One

HAMMOND, JAY S. (Governor) THOMAS, LOWELL JR. (Lieutenant Governor)	Republican	+
VOGLER, JOSEPH E. (JOE) (Governor) PEPPLER, WAYNE M. (Lieutenant Governor)	Alaskan Independence	+
EGAN, WILLIAM A. (Governor) BOUCHER, H. A. (RED) (Lieutenant Governor)	Democratic	+
(Governor) (Lieutenant Governor)		+

UNITED STATES SENATOR
Vote for One

LEWIS, C. R.	Republican	+
GRAVEL, MIKE	Democrat	+
		+

UNITED STATES REPRESENTATIVE
Vote for One

YOUNG, DON	Republican	+
HENSLEY, WILLIAM L. (WILLIE)	Democrat	+
		+

01111 VOTE BOTH SIDES A

EXAMPLE OF OPTION TO ALASKA BALLOT CARD

TOP

A- 98133

OFFICIAL BALLOT

GENERAL ELECTION

TUESDAY, NOVEMBER 7, 1972

EIGHTH REPRESENTATIVE DISTRICT

CITY AND COUNTY OF HONOLULU

FIRST CONGRESSIONAL DISTRICT

STATE OF HAWAII

This stub shall be removed by the ballot box clerk only.

PRESIDENT AND VICE PRESIDENT
FOR A TERM TO EXPIRE JANUARY 20, 1977
Vote For Not More Than One (1) Party

(D)	FOR PRESIDENT McGOVERN, George FOR VICE PRESIDENT SHRIVER, R. Sargent	▷
(R)	FOR PRESIDENT NIXON, Richard M. FOR VICE PRESIDENT AGNEW, Spiro T.	▷

REPRESENTATIVE TO CONGRESS
FOR A TERM TO EXPIRE JANUARY 3, 1975
Vote For Not More Than One (1)

(D)	MATSUNAGA, Spark M.
(R)	ROHLFING, Fred W.

STATE REPRESENTATIVES
FOR A TERM TO EXPIRE NOVEMBER 5, 1974
Vote For Not More Than Two (2)

(D)	AU, Ronald (Ron)
(R)	KONO, Norm N.
(D)	O'CONNOR, Dennis
(R)	SOARES, W. Buddy

MAYOR
FOR A TERM TO EXPIRE JANUARY 2, 1977
Vote For Not More Than One (1)

(R)	ANDERSON, D. G. (Andy)
(D)	FASI, Frank F.

AF 8

HCS for SENATE BILL 269

HCS for Senate Bill 269 adds a new section which establishes punch card voting.

Section 1.

Rewrites the section which gives permission for the use of punch card in State elections.

Section 2.
Appointment of Officials

Punch card voting requires 3 boards for the proper handling and safeguards for the ballots.

1. Data Processing Review Board is made up of at least 3 members Two members would be of the same political party as the Governor and the third member would represent the party whose candidate received the 2nd largest number of votes. Two members must have computer expertise. One member must be familiar with the election process. This board is responsible for the testing of the program and for the computer room processing.

2. The receiving team actually receives the ballots from the election board.

3. The control board opens the boxes of ballots and inserts the header and end cards.

Party Representation

There are not many people available with the necessary computer and election knowledge to serve on the Data Processing Review Boards. This section is written as it is for that reason.

Alternate Site

Alternate sites are available in Anchorage and Juneau for the counting of punch card ballots. There is not an alternate site currently available in Fairbanks.

Tests

This section specifies the tests which must be done to insure the accuracy of the counting. Test ballots are punched and hand tallied by the Data Processing Review Board. These punched ballots are then used in the accuracy tests.

Demonstration

A member of the election board is designated to demonstrate the punch to each voter.

Processing at Polling Place

This section specifies the steps the election boards follow in preparing the official ballots for delivery to the computer center. The ballots are inspected and bended before sealing the official ballot container. After sealing the ballot container, the container is placed in a transport box which is secured for delivery to the computer center.

Delivery of Ballots to Computer Counting Center

Two election board members, one from each major political party, transport the sealed container to the receiving team at the counting center.

Receipt of Ballots at Computer Counting Center

The steps to be followed in receiving the ballots from the election boards are set out in this section including such items as checking the seals on the ballot containers, and the logging in of each precinct's ballots.

Receipt of Ballots by Control Board

This section sets up the procedures for receiving the ballots from the control board, removal of the seals, insertion of the header and end cards, and handling of questioned and challenged ballots.

Counting of Ballots by Computer

The procedures to be followed in the computer room by the Data Processing Review Board and the computer operator are set out in this section.

Alternate Site Counting

This section covers the procedures to be followed if a move must be made to the alternate counting site. After sealing all material, it is transported to the alternate site. At the alternate site the computer is tested and all ballots counted. All ballots are counted including any counted at the previous location. After all counting is finished, the ballots are resealed and transported to storage.

Disposition of Ballots

After the official ballots have been counted, the boxes containing the ballots are sealed to be stored. Write-in ballots, questioned and challenged ballot envelopes and facsimile ballots are sealed and delivered to the election supervisor for further processing by the absentee ballot canvass board. The procedures are set out for delivery of the punch card ballots to the Lieutenant Governor.

Report of Partial Results

Partial reports may be provided. The program can be activated to print the information.

Public Observation

The public can observe the punch card counting process through closed circuit television or by direct observation into the computer room.

Interpretation of Ballot Marks

This section sets up the rules to be followed in programming the computer to count the ballots.

SB

290

"An Act relating to rent regulation and control in emergency situations; and providing for an effective date."

COMMITTEE REPORT

4/2/75 HOUSE FINANCE

Mr. Speaker: Date 4/[illegible]/75

The Committee on JUDICIARY has had SB 290

under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(✓) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Jerry Gardiner	[illegible]	
[illegible]		
[illegible]		
[illegible]		

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Jerry Gardiner Chairman

copy

LETTER OF INTENT

In the context of emergency rent controls, it is anticipated that the term "adjustments" in AS 34.06.030 includes the authority in appropriate cases to order "rollbacks" in residential rents.

HB 321 added on
Rest of bill is what got cut out of the rent control bill last year
Based on New York law

Original sponsor: Miller, Huber, Ray and Butrovich

IN THE SENATE BY THE JUDICIARY COMMITTEE

HOUSE CS FOR SENATE BILL NO. 290

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to rent regulation and control in emergency situations; and providing for an effective date."

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

* Section 1. AS 34.06.020 is amended to read:

Sec. 34.06.020. DECLARATION OF HOUSING EMERGENCY. (a) In accordance with regulations promulgated under sec. 30 of this chapter, when the governor finds that emergency conditions exist with regard to residential rental housing, after public hearings in the area or areas affected, he may by written proclamation declare that a state of housing emergency exists. A housing emergency exists when the rate of vacancies in residential rental housing is so low that there is a substantial impairment of free choice in residential rental housing [OR WHEN THE AVERAGE VACANCIES IN RESIDENTIAL HOUSING RENTALS FALLS BELOW THREE PER CENT IN THE AREA, OR AREAS, AFFECTED AND REMAINS BELOW THREE PER CENT FOR A PERIOD OF AT LEAST 90 DAYS]. The proclamation shall state the nature of the housing emergency, the area or areas affected, and shall be published generally through the state in the manner provided by law. When the state of emergency no longer exists, the governor shall issue a written proclamation stating this fact and publish it generally throughout the state in the manner provided by law.

(b) <u>After the governor issues</u> [ON ISSUING] a proclamation of a housing emergency, the <u>attorney general</u> [GOVERNOR] may invoke the provisions of this chapter to regulate and control residential rents and

evictions in some parts or all of the state.

* Sec. 2. AS 34.06.030 is amended to read.

Sec. 34.06.030. SCOPE OF EMERGENCY HOUSING REGULATIONS. Subject to the Administrative Procedure Act (AS 44.62), the attorney general [COMMISSIONER OF COMMERCE], who is charged with the administration of this chapter, shall promulgate regulations concerning the control of residential rents, including but not limited to provision for the establishment and adjustment of maximum rents, the classification of residential housing accommodations, [AND] the regulation of evictions and the standards for issuance of certificates of eviction.

* Sec. 3. AS 34.06 is amended by adding a new section to read:

Sec. 34.06.035. INVESTIGATIONS. (a) The attorney general may make studies and conduct investigations and hearings when necessary for the enforcement of the provisions of this chapter.

(b) The attorney general may administer oaths and affirmations, and, when necessary, may issue subpoenas and order a person to appear and testify, or appear and produce documents, at any designated place. If a person refuses to obey a subpoena served upon him by the attorney general, the superior court of the judicial district in which that person resides or transacts business may issue an order requiring him to appear and testify, produce documents, or both. Failure to obey an order of the superior court is punishable by the court as contempt.

* Sec. 4. AS 34.06 is amended by adding new sections to read:

Sec. 34.06.041. PROHIBITIONS. (a) During a proclaimed housing emergency, regardless of any existing contract, lease or other agreement, no person may demand or receive rent for a residential housing accommodation in excess of the maximum rent established for the accommodation by the attorney general by regulation, or to perform or omit to perform an act which violates this chapter or a regulation or order

issued under this chapter. However, the attorney general may by regulation permit increases in the maximum rent established under this subsection to allow for increases in local property taxes, actual maintenance costs, or charges for utility services including but not limited to heat, water, electricity, natural gas, garbage or other solid waste disposal services when supplied by the landlord.

(b) During a proclaimed housing emergency, no person may remove or attempt to remove from a residential housing accommodation the tenant or occupant of the accommodation or refuse to renew the lease or agreement for the use of the accommodation because the tenant or occupant has taken or proposes to take action authorized by this chapter or a regulation or order issued under it.

(c) During a proclaimed housing emergency no landlord or person acting on his behalf, with intent to cause a tenant to vacate, may engage in a course of conduct including but not limited to interruption or discontinuance of essential services which interferes with or is intended to interfere with the quiet enjoyment of the tenant in his use or occupancy of a residential housing accommodation.

(d) No officer, employee, agent, or consultant of the department may disclose, other than in the course of his official duty under this chapter, information obtained under this chapter or use any of that information for his personal benefit.

Sec. 34.06.042. INJUNCTIVE RELIEF. When a person has engaged or is about to engage in acts or practices which constitute or will constitute a violation of this chapter or a regulation or order issued under it, a tenant or the department may apply to the superior court in the judicial district where the alleged violation has occurred or is about to occur for an order enjoining these acts or practices, or for an order enforcing compliance with this chapter or the regulations or

orders issued under it, or for an order directing the landlord to correct the violation. Upon a showing that a person has engaged in or is about to engage in a violation a permanent injunction, temporary restraining order, or other appropriate order shall be granted without bond.

Sec. 34.06.043. CRIMINAL PENALTIES. A person who wilfully violates a provision of this chapter or a regulation or order issued under it is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $2,500, or by imprisonment for not more than one year, or by both.

Sec. 34.06.044. ACTION FOR DAMAGES. (a) If a landlord violates a provision of this chapter or a regulation or order issued under it, an aggrieved tenant, within one year from the date of the violation, may bring an action against the landlord for damages, except as provided in this section. In an action for damages the landlord is liable for reasonable attorney fees and costs as determined by the court, plus whichever of the following sums is the greater: (1) an amount not more than three times the damages upon which the action is based, as the court in its discretion may determine; or (2) $100.

(b) If a landlord violates a provision of this chapter or a regulation or order issued under it and the aggrieved tenant fails to institute an action under (a) of this section within 90 days from the date of the violation, the department may bring an action under this section within one year from the date of the violation, and for damages provided in (a) of this section. If the department brings the action, the tenant affected is barred from bringing an action for the same violation, unless the action brought by the department has been dismissed without prejudice. If judgment is rendered in favor of the department, the department shall pay the affected tenant one-third of the recovery,

exclusive of costs and attorney fees.

(c) A judgment in an action for damages under (a) or (b) of this section is a bar to recovery in any other action under this section against the same landlord for the same violation.

(d) A tenant who has vacated his residential housing accommodation because the landlord or person acting on his behalf intentionally engaged in a course of conduct, including but not limited to interruption or discontinuance of essential services, which interfered with the quiet enjoyment of the tenant in his use or occupancy of the residential housing accommodation, may within 90 days after vacating apply for a determination from the department that the housing accommodation was vacated as a result of that conduct, and may within one year after the determination bring an action against the landlord by reason of his misconduct under this subsection. In this action the landlord is liable to the tenant in an amount not more than three times the damages sustained on account of the landlord's misconduct plus reasonable attorney fees and costs as determined by the court. In addition to any other damages the cost of removal and storage of property and any increase in rent is a lawful measure of damages.

Sec. 34.06.045. CERTIFICATE OF EVICTION. During a proclaimed housing emergency the department, upon application by the landlord, shall issue a certificate of eviction if it finds that the reasons given by the landlord are reasonable and consistent with the purposes of this chapter. If after the department has granted a certificate of eviction allowing the landlord to pursue his legal remedies to acquire possession, the landlord evicts the tenant and permits use of the residential housing accommodation in any manner other than contemplated in the eviction certificate, unless good cause is shown, the landlord is liable to the tenant in an amount not more than three times the damages sus-

FAIRBANKS NORTH STAR BOROUGH
Box 1267, Fairbanks, Alaska 99707

April 3, 1975

Langhorne A. Motley
Commissioner
Department of Commerce
Pouch D
Juneau, Alaska 99801

Dear Commissioner Motley:

With further reference to my letter of February 24th, and yours of March 5th, concerning rent control regulations, I am enclosing a letter received from Mrs. Marie White for your information and records.

Very truly yours,

J. D. Nordale
Borough Attorney

JDN:ds
Enclosure

March 18, 1975

James D. Nordale
Borough Attorney
Fairbanks North Star Borough
P. O. Box 1267
Fairbanks, Alaska 99701

Dear Mr. Nordale:

Re: The Outrageous Prices of Rent in this Town and No Controls on Rent to Protect the Renter

I believe that Fairbanks ought to have some sort of controls over landlords in this town. We have boards that review applications for rate increases, etc. for utilities, so how about one for landlords and rent? I realize that the suggestion "smacks of governmental control", but we desperately need control for the protection of the tenant.

For those of us who are in no way affiliated with the pipeline, our salaries have not increased significantly and proportionately with those that do work for Alyeska. There are plenty of us who cannot afford the price tag of $500.00 a month for a two bedroom apartment and other outrageous rates put on us by greedy landlors.

Granted the housing situation is very critical here in Fairbanks, but is that any reason for the landlords to "take the tenant to the cleaners"? (The cost of living is higher here, but financially it still seems to balance out to a degree compared with the lower "48".) So after paying rent, food and utility bills (which the apartment rent does not include), there is little left over for a person to feel even a little financially secure. Now with the increased rent hikes, it's that much more difficult. Please note the article titled "For Rent: One Room, No Plumbing for $500.00" and the clipping from the classified section under Mobile Homes for Rent. People will rent and pay anything for a roof over their head. This is a very unfair advantage.

We received a notice as of April 1 [illegible], our rent will be increased 50% for the apartment which we occupy. This increase will make our rent $500.00 a month and somehow we must dind another $175.00 to pay out on top of what we were paying. (I figured I would have to work for one full month and what I clear after taxes would just pay the rent with approximately $30.00 left over)

My husband and I both work and he has taken on another job in order that we may meet the higher cost of living (rent). This is a pretty sad state of affairs, I'd say. (Neither of us are unskilled)

If enough tenants complain long and loud enough, are the landlords going to evict all of us? Then what will the city or borough do? - Build refugee camps for evicted tenants because they can't afford rent for the greedy landlords? It just isn't fair that people are suffering because they have to have someplace to live and are at the mercy of a money-grubbing landlord. Therefore they must pay his grossly inflated price of what the place should reasonably rent for.

My husband and I are not newcomers to Fairbanks, We have lived here quite a number of years and intend to make this our permanent home. We must be able to financially withstand the higher cost of living, and the increased rent has the wolves creeping closer to the door.

I had heard that Klondike Inn evicted their tenants in favor of a contract with Alyeska for a reported $55,000.00 a month. I cannot comprehend the fact that landlords are becoming so greedy just for the almighty dollar, this includes the Fairbanks merchants. The pipeline people knew the housing situation and the number of personnel they had to hire, so why didn't they make arrangements prior to all of this? When I asked the manager of Klondike Inn if he had any vacancies, the answer was no. I then asked if they were rented to Alyeska and Bechtel, to which there was a long pause and then the reply was a meek yes. Where did the previous tenants go? Were they lucky enough to find another place or were they forced to leave Fairbanks because of the pipeline and the inflated rent?

Sincerely,

Marie White

P. O. Box 91166
College, Alaska 99701

Reply dictated 1/7/75 by Bm for CRM sig.

March 27, 1975

RECEIVED
APR - 1 1975
GOVERNOR'S OFFICE

The Honorable Jay S. Hammond
Governor, State of Alaska
Third Floor
State Capitol Building
Pouch A
Juneau, Alaska 99801

Dear Sir:

You have asked for response from the public concerning rent control and its implications. Before responding to the question at issue, I have personally contacted several tenants from various parts of Fairbanks in several brackets of income. Upon questioning these residents of Alaska, I have received diversified answers. The general consensus among the tenants is favorable toward rent control, although they fear that when the landlords feel the rent control is about to be adopted, they will immediately raise the rent for compensation. Nearly 75% of the questioned tenants have had their rent raised 20% - 50% in the last year. While admitting that costs for upkeep and repairs have been increased, the majority of tenants pay their own utilities. These utilities, along with raised rent, have put a double burden upon them. Since February, 1975, rentals have virtually disappeared from the market in Fairbanks, thereby allowing landlords to choose at their discretion whom they accept to be tenants, providing there is an opening, and to charge almost any price for an apartment or house. If a landlord charges a fair price and a tenant leaves, there is the temptation to then charge a higher price, of which he would surely get. Since the rental shortage has been in effect, the population has not decreased but increased, with more on the way anticipating the pipeline and construction boom this summer; but, in fact, the construction people I've talked to are leery about new construction, not knowing how long the pipeline influx of people will last. Many families have been forced to take whatever is available, often substandard housing for exorbitant prices. The so-called oil rush has brought many people to Alaska and many jobs as well, and Alaskans are in some of these jobs; but many more are working the same occupation that they have worked for years, as in the city, borough, state university, local educational, etc. Since receiving virtually little increase in pay compared to the high cost of living that has sky-rocketed, such as gasoline, utilities, heating fuel, food and rent, the resident worker has not the financial means to combat the high cost of living. Granted, the jobs will always be filled, but if qualified personnel can't afford to stay and are forced to leave and qualified personnel can't enter because of housing shortage and high cost of living, the vacant job openings will possibly be filled with people that aren't qualified for particular positions. If this is to happen, the competence and quality of Fairbanks will be lowered, with

the resident to suffer most. Getting quality or even qualified teachers may pose a problem, as teachers presently are either accepting pipeline positions or leaving Alaska. Where are the new teachers going to reside?

Sir, I do not envy your job at all. If Alaska is to maintain the quality of people and the independent ideas that reflect the ideals of the state, Alaska must adopt a position of helping the economy of Alaska. One last item for thought: while I have conferred with tenants about the rental situation concerning rent controls, I have also talked to several landlords; and while the majority of them have expressed concern for the tenant, they have also cited that so many costs have increased that the 20% - 50% increase is warranted. These landlords are also against rent control and anticipate that if they feel rent control is being adopted, landlords, not necessarily these landlords, will raise rents to compensate for future costs.

I realize that these thoughts possibly pose more questions, but sometimes more and pointed questions can direct toward more valid conclusions.

Sir, you are governor of the state with possibly the most potential in growth concerning natural resources and population. Your immediate future decisions will affect future generations toward which direction the state is to move. These thoughts have led me to ask one consideration. Although the state will progress with the oil boom, let the resident Alaskan progress with it and not stagnate or suffer any negative consequences.

Sincerely,

David Fritz

Box 60476, 99501

GREATER ANCHORAGE AREA BOROUGH
3500 EAST TUDOR ROAD
ANCHORAGE, ALASKA 99507

PLANNING DEPARTMENT

Bill mini
rent control
file.

March 25, 1975

Langhorne A. Motley,
Commissioner of Commerce
State of Alaska
Pouch D
Juneau, Alaska 99811

Dear Commissioner Motley:

Anchorage already has begun to experience a housing shortage, perhaps not as severely yet as in Fairbanks but the vacancy rate seems less than 1%.

We want to assist your office to explore the possible use of the state "rent control" law. The law is only a few paragraphs in the statute book but is laden with many questions such as the legal definition of housing vacancy and the mode of control enforcement. We are available to help with research of local technical matters.

Respectfully,

Darrell van Ness

Darrell vanNess
Planner

DvN:jh

CLEAN AIR • CLEAN WATER • A CLEAN COMMUNITY

February 3, 1975

The Honorable John Sackett
Pouch V
State Capitol
Juneau, AK 99801

Dear Senator Sackett:

I apologize for the delay in my response to your inquiries about rent control regulations. I was suddenly called out of town for a few days.

A cursory study of the files on rent control regulations yields the following:

There are two pertinent statutes concerning rent control: the Uniform Residential Landlord and Tenant Act and the Emergency Rent Regulation and Control Act. To date, regulations have not been formulated relating to either law.

The Uniform Residential Landlord and Tenant Act provides guidelines for rental property with specific regard to remedies and procedures. However, it does not appear to provide powers of enforcement. No public hearings have been held as yet.

Public hearings have been held relating to the Emergency Rent Regulation and Control Act. No regulations have been prepared.

Two major problem areas appeared from the public hearings in Fairbanks and Valdez. First, the rents are rising sharply; secondly, there is a dire shortage of adequate housing.

I'm afraid that is all the information I can give you at the moment. Be assured that the Department of Commerce plans to hold hearings and prepare regulations in compliance with the statutes.

Thank you for your interest in this matter. If I can be of future help to you, please let me know.

Personal regards,

L. A. Motley /by Bill Nile

Langhorne A. Motley
Commissioner

02-001B (REV. 08-73)

MEMORANDUM

State of Alaska

DEPARTMENT OF COMMERCE

TO: Langhorne A. Motley
Commissioner
Department of Commerce

DATE: January 31, 1975

FILE NO:

TELEPHONE NO:

FROM: BM
Bill Miles, demon memo writer

SUBJECT: Rent Control

The file history on rent control includes the following:

1. Pertinent statutes (Uniform Residential Landlord and Tenant Act; Emergency Rent Regulation and Control Act).

2. Correspondence from complaintants and responses from the previous Administration.

3. Minutes from public hearings held in Valdez and Fairbanks. Two overall problems appear:
   a. sharply rising rents
   b. shortage of adequate housing.

Briefly, the Landlord-Tenant Act provides guidelines for rental property with regard to remedies and procedures. However, this Act, upon cursory glance, and upon checking correspondence does NOT provide powers of enforcement.

The public hearings that were held (and, probably, regulations which might be forthcoming) will be pursuant to the Emergency Rent Regulation and Control Act...unless new hearings are conducted, an idea that should be discussed.

©R63072

FORM 02-001BC
FOR BRIEF COMMUNICATIONS
MAY BE HANDWRITTEN

MEMORANDUM

State of Alaska

DEPT. Law
DIV.
SEC. Consumer Protection

TO: Bill ~~Bob~~ Miles
Department of Commerce

DATE : February 21, 1975

FROM: JO
Terry O'Connell
Consumer Protection Section

SUBJECT: Rent Control

Attached is the memo received by me from Stan Howitt in our Consumer Protection Office in Anchorage regarding the need for rent controls. In addition, attached to his memo are two pieces of correspondence dealing with rent increases in the Valdez and Anchorage areas.

MEMORANDUM State of Alaska

TO: Terry O'Connell
Assistant Attorney General
Consumer Protection Section
Juneau AGO

DATE: February 19, 1975

FILE NO:

TELEPHONE NO:

FROM: Stanley Howitt
Assistant Attorney General
Consumer Protection Section
Anchorage AGO

SUBJECT: Rent control hearings - Anchorage, Fairbanks & Valdez

Again, I would like to report to you that we are having quite a large number of telephone calls concerning rent increases. In many cases it is not always one large rental increase but quite a number of smaller increases over a period of a few months. This seems to be causing many of the difficulties.

Therefore, I would recommend that we do hold rent hearings in Anchorage and Fairbanks as well. Insofar as Valdez is concerned, attached hereto is a letter from Herbert W. Lehfeldt, City Manager, concerning a rent increase. As you will note, he actually has examples of true rent gouching. You will note that he is mentioning that a two bedroom apartment which is borderline substandard is renting for $520.00. Attached thereto you will find the apartment that he is referring to.

Please let me know if rent control hearings will be held for the purposes of gauging consumer commentaries and for the purposes of getting information for regulations. Also, I would like to have any drafted rent control regulations for my comments and would be glad to assist in any way possible.

SH:cs

cc: Avrum M. Gross

RECEIVED
Department of Law
FEB 21 1975
AM PM
12 8 9 10 11 12 1 2 3 4 5 6

@R63072

CITY OF VALDEZ

P. O. BOX 506
PHONE: 835-4313

January 31, 1975

RECEIVED
Department of Law
FEB 3 1975
Office of the Attorney General
Anchorage Branch
Anchorage, Alaska

State of Alaska
Consumer Protection Section
360 K Street, Suite 250
Anchorage, Alaska 99501

Att: Stanley Howett

Subject: Valdez Rent Increases

Dear Mr. Howett:

Attached is a copy of a rent increase notice sent to a Valdez resident. In the past, I have been sending this information to the Governor's office. However, with the new administration I am at a loss as to how to route it.

Valdez has been subject to a good deal of this type of rent gouging. Something is going to have to bedone. $520.00 for a two bedroom apartment which is borderline substandard is completely inexcusable.

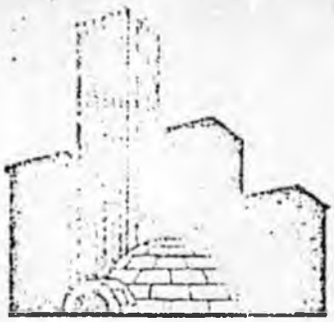
Valdez has had a high demand for housing that many land owners are exploiting.

We will appreciate any help that your section can give.

Very truly yours,

Herbert W. Lehfeldt
City Manager

HWL/my



INCOME INVESTED FUNDS, INCORPORATED

BOX 2:03 ANCHORAGE, ALASKA 99510 Phone 907·277·3116

January 15, 1975

David Oehler

Dear Mr. Oehler:

As you are probably well aware, inflation has really gone wild here in Alaska.

We have tried to avoid raising the rent on your apartment, but have been fighting a losing battle.

The income from the four-plex is not enough to cover the current expenses, maintainence, taxes, insurance, ect.

We are sure that you are well aware that there is a lot of maintainence and repair work that needs to be done on the buildings but hasn't been, because there just wasn't enough money to pay for it.

In order for us to be able to do these things, and also set aside enough to cover the anticipated tax increase that will be coming in the near future, we have no alternative but to increase the rent on your apartment.

As of March 1, 1975, the rent on apartment # 2 will be $520.00, plus tax.

Board of Directors
Income Invested Funds

Jack Turinsky, President

cc Leonard Everman

Current $338.00

"Except the Lord build the house, they labor in vain that build it" PSALMS 127:1

April 7, 1975

RC-Valdez

To: Herb Lehfeldt
City Manager
Valdez

Reports on rent, not necessarily factual.

Walker's Village Motel - units rented at $900.00 per month;

Walker's house - 2nd from Meals Avenue on south side of Dadina St. reported rented at $4,000 per month;

Walker's house - north side of end of cul-de-sac on Dadina St., reported by one of occupants - usually 8 men at $900 per month each;

Simmons Trailer Court - $140 per month per space, was $90 per month;

Kennedy, et al - by the airport - $600 per month per unit and up.

Teeters Apts. reported to be in the process of raising rents again. On the 1st of March 1975, was raised to $350 for a one bedroom apt.

Apartments at 101 Alatna - rents being raised to $1600 per month per apartment on May 1, 1975.

343 Nabesna - Joe Zaremba - $1000 per month.

Rainbow Trailer Park - rent was raised from $98 to $134 a month per space;

George Kolitis Apartments - Rent has raised from $225 to $375 during the past few months and is reported to be raised again.

APR 0 8 1975

4-7-75

High Rent Comment:

We rented a one bedroom trailer at Rainbow Trailer Court, the toilet did not work, the bedroom ceiling leaked over the entire room, the living room ceiling leaked in five places, the front door to the trailer was off the hinges, and the back door exit blocked by snow as high as the trailer itself.

This we paid $400.00 a month, all utilities were extra.

When the lanlord wanted to sell the trailer we looked for a place to rent, we found a house on the corner of Nabesna and Haxelette for $1,000.00 a month, the utilies were not included.

APR 07 1975 RC-Valdez

April 3, 1975

To whom it may concern:

We, Allison L. Pike and I, Katherine E. Reid, currently live in the Atlatna Apartments, Apt. 4 at 101 Atlatna Street, Valdez, Alaska. Apt. 4 is an unfurnished two bedroom apartment.

As of January 1, 1975, our rent was $286.00 including tax. On January 30, 1975 we received a letter from Income Invested Funds, Inc. that beginning March 1, 1975 our rent would be $488.00 including tax. However, when the manager, Leonard Everman, came to collect the rent, he informed us that we had a "month's reprieve." Thus we paid the original rate of $286.00. On March 30, 1975, we were informed the building had been sold to Valdez Industries. We also received an eviction notice as of May 1, 1975. We and two other tenants, Carlene Mobert and Jean Salinas, conferred with the authorized agent for the owner, Marty Barbero to see if we could remain in the building until June 1, 1975. Mr. Barbero informed us that the four of us could live in Apt. 4 for the month of May, however, the rent would be increased to $1,600.00. Since we could not afford it, we verbally accepted the eviction notice. The other tenants in the other three apartments received mandatory evictions.

On April 2, 1975, we were informed by Leonard Everman and Jim Lindsey, who had conferred with Mr. Barbero, that the four of us, could live in Apt. 4 until June 1, 1975 at the rate of $940.00. This still is too expensive for us so we verbally accepted the eviction notice.

Ms. Katherine E. Reid

Katherine E. Reid

101 Apt. 4, Atlatna St.
Valdez, Alaska 99686

ID

NOTICE TO VACATE

TO: Apt #4
Tenant

The undersigned, authorized agent for the owner of the following described property, does hereby notify you that you are to vacate the premises on or before 30 days from the due date of your next rent payment, which is the 1 day of April, 1975.

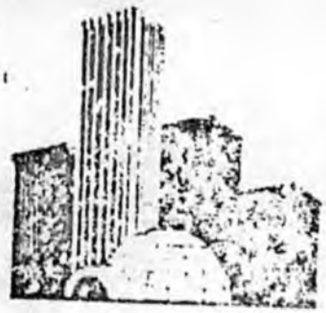
Therefore, you must vacate on or before the 1 day of May, 1975.

ADDRESS: 101 Alatna Street
Valdez, Alaska

Apartment No. 4

DATED _____

Authorized Agent for Owner.



INCOME INVESTED FUNDS, INCORPORATED

BOX 203 ANCHORAGE, ALASKA [illegible]

Allison Pike
P. O. Box
Valdez, Alaska

Dear Ms. Pike:

As per our phone conversation January 28, 1975, please be advised that as of March 1, 1975, the rent on apartment number 4 will be $470.00 plus tax, since your apartment is unfurnished.

Sincerely,

Board of Directors
Income Invested Funds
Jack Turinsky, President

cc Leonard Everman

"Except the Lord build the house, they labor in vain [illegible]



INCOME INVESTED FUNDS, INCORPORATED
BOX 203 ANCHORAGE, ALASKA [illegible] Phone 907-27[illegible]3116

Allison Pike

Dear Ms. Pike:

As you are probably well aware, inflation has really gone wild here in Alaska.

We have tried to avoid raising the rent on your apartment, but have been fighting a losing battle.

The income from the four-plex is not enough to cover the current expenses, maintainence, taxes, insurance, ect.

We are sure that you are well aware that there is a lot of maintainence and repair work that needs to be done on the buildings but hasn't been, because there just wasn't enough money to pay for it.

In order for us to be able to do these things, and also set aside enough to cover the anticipated tax increase that will be coming in the near future, we have no alternative but to increase the rent on your apartment.

As of March 1, 1975, the rent on apartment # 4 will be $520.00, plus tax.

Board of Directors
Income Invested Funds

Jack Turinsky, President

cc Leonard Everman

Dorothea Doty

Senior Citizens Survey

Question 11: Do you favor some type of rent control this summer?

Income of Respondent	Total Sample				Homeowners				Non-Homeowners			
	Yes	No	N/A	Total	Yes	No	N/A	Total	Yes	No	N/A	Total
under $300	30	13	12	55	6	9	6	21	24	4	6	34
$300-$500	25	4	10	39	11	4	8	23	14	0	2	16
$501-$700	13	2	7	22	9	1	6	16	4	1	1	6
$701-$900	7	2	2	11	5	2	2	9	2	0	0	2
$901-$1100	7	5	3	15	5	3	3	11	2	2	0	4
more than $1100	4	4	0	8	1	3	0	4	3	1	0	4
unknown	10	11	4	25	9	2	3	14	1	9	1	11
TOTAL	96	41	38	175	46	24	28	98	50	17	10	77

Survey taken in March 1975 by North Star Council on Aging and Fairbanks North Star Borough's Impact Information Center

from Don Carlson

April 1, 1975

The Honorable Senator Mike Gravel
P. O. Box 2283
Anchorage. Alaska 99510

Your Honor:

Yesterday my x-husband called from Fairbanks to tell me his rent had been increased from $225.00 a month to $400.00. Having been born and raised in Alaska I believe myself to be somewhat of an authority on its assets as well as its liabilities. One such liability being that their is NO LAW to protect the rentee but many to protect the rentor. The apartment in question is not worth $225.00 much less $400.00. It is a basement apartment with two extremely small bedrooms, one of which fits a twin, the other a double bed, and neither have room for anything else. There is not one item NEW or anywhere near excellent condition. The kitchen and living room are combined. Hardly ones idea of 'home'.

Since 1969 I have watched our reactions to the coming of the pipeline. I have yet to feel any pride in those reactions nor have our actions been anything to be proud of.

While recent statistics show us we have progressed a considerable amount economically and even socially, our attitudes and 'help thy neighbor' philosophy seems only to have REgressed an even more amount.

Also since 1969 there has been a rush to make ones garages, basements and whatever else is available into supposedly livable quarters for those unsuspecting naive "lower 48er's" and even worse to their own friends and neighbors. Since we do not have the availability of apartments (which in itself is odd to me, as we have had over five years to prepare) people either pack up and leave or give in and pay the high rental cost. I have heard some say 'what will happen to the apartment buildings once the pipeline rush is over'. That too makes sense, but anyone in their right mind would not WANT to stay under present circumstances.

We are not only going through a recession, (depression?), inflation AND high unemployment (of which Alaska has the highest at over 10%) but we are forced to act like dogs forging together scraping and pushing to reach that 'precious' bone (not caring if its old and dirty with no meat on it). Of ccurse in our case its PEOPLE forging together scraping and pushing etc. etc.

I'am well aware the landlords have their own obligations and they too are affected by the ecoromic situation, but the fact remains that they have no real laws to control them, and they are well AWARE of this.

Believe it or not, there once WAS a time when landlords worked very hard to sell us on his available apartment. Now? Well, now we say yes BEFORE we have even seen the darn thing.

Does it have to be a disaster, as in the flood and earthquake, that once again brings us together, really together? Alaska was supposed to be different, remember?

I myself recently had a rent increase in the amount of $9.00 a month. I was given a letter of explanation and two months with which to prepare. This I considered FAIR. And FAIRNESS is all that we ask for, all that we EXPECT and EVENTUALLY what we will DEMAND.

I have no intentions of having my letter ignored and/or shoved aside, therefore I'am mailing copies to the following:

Govenor J. Hammond
Mayor John Carlson
Mayor Harold Gilliam
Representative Mike Bradner
Representative Fred Brown
President G. Ford
Senator Terry Miller
Senator John Huber
Senator John Butrovich
Representative Don Young
Anchorage Daily Times
Daily News Miner

HOPEFULLY SOMEONE WILL LISTEN!

Respectfully,

Dianne Phelps
951 E. 20th
Anchorage, Alaska 99501
279-1989

March 17, 1975

Mr. John Carlson
Borough Mayor
Fairbanks North Star Borough
P. O. Box 1267
Fairbanks, Alaska 99707

Dear Mayor Carlson:

Re: The Outrageous Prices of Rent in this Town and No Controls on Rent to Protect the Renters.

I believe that Fairbanks ought to have some sort of controls over the landlords in this town. We have boards that review applications for rate increases, etc. for utilities, so how about one for landlords and rent? I realize that the suggestion "smacks of governmental control", but we desperately need control for the protection of the tenant. For those of us who are in no way affiliated with the pipeline, our salaries have not increased significantly and proportionately with those that do work for Alyeska. There are plenty of us who cannot afford the prices of $500.00 a month for a two bedroom apartment and other outrageous rates put on us by greedy landlords.

Granted the housing situation is very critical here in Fairbanks, but is that any reason for the landlords to "take the tenants to the cleaners"? (The cost of living is higher here, but financially it still seems to balance out to a degree as compared with the lower '48".) So after paying rent, food and utility bills (which the apartment does not include), there is little left over for a person to feel even a little financially secure. Now with the increased rent hikes, it's that much more difficult. Please note the article titled "For Rent: One Room, No Plumbing for $500.00" and the clipping from the classifie section under Mobile Homes for Rent. People will rent and pay anything for a roof over their head. This is a very unfair advantage.

We received a notice as of April 1, 1975, our rent will be increased 50% for the apartment which we now occupy. This increase will make our rent $500.00 a month and somehow we must find another $175.00 to pay out on top of what we were paying. (I figured I would have to work for one full month and what I clear after taxes would just pay the rent with approximately $30.00 left over)

My husband and I both work and he has taken on another job in order that we may meet the higher cost of living. This is a pretty sad state of affairs, I'd say. (Neither of us are unskilled)

If enough tenants complain long and loud enough, are the landlords going to evict all of us? Then what will the city or borough do? - Build refugee camps for evicted tenants because they can't afford rent for the greedy landlords? It just isn't fair that people are suffering because they have to have someplace to live and are at the mercy of a money-grubbing landlord. Therefore they must pay his grossly inflated price of what the place should reasonably rent for.

My husband and I are not newcomers to Fairbanks. We have lived here quite a number of years and intend to make this our permanent home. We must be able to financially withstand the higher cost of living, and increased rent has got the wolves creeping closer to the door.

I had heard that Klondike Inn evicted their tenants in favor of a contract with Alyeska for a reported $55,000.00 a month. I cannot comprehend the fact that landlords and merchants are becoming so greedy just for the almighty dollar. The pipeline people knew the housing situation and the number of personnel they had to hire, so why didn't they make arrangements prior to all of this. When I asked the manager of Klondike Inn if he had any vacancies, the answer was no. I then asked if they were rented to Alyeska and Bechtel, to which there was a long pause and then the reply was a meek yes. Where did the previous tenants go? Were they lucky enough to find another place or were they forced to leave Fairbanks because of the pipeline and inflated rent?

Sincerely,

Marie White

P. O. Box 91166
College, Alaska 99701

RECEIVED
APR -4 1975
GOVERNOR'S OFFICE

Grassi
3.7 Mile Farmers Loop Road
Fairbanks, Alaska 99701

March 27, 1975

Jay S. Hammond
Governor of Alaska
Pouch A
Juneau, Alaska 99801

Dear Sir:

We wish to advise you of some of the reasons why we are opposed to Rent Controls. We really want you to take serious measures to prevent Rent Controls.

First of all, they are unconstitutional, they are against free enterprise, they are discriminatory to one group of people, they reduce the building of new apartments, they cause higher local revenue taxes by holding down prices on apartment houses, they cause a rise in assessments to other commercial buildings and private homes. At this time, in Fairbanks, Rent Control plays favoritism to seasonal and/or pipeline workers from other states instead of the year-round Fairbanksan (us, included) who was here before the oil discovery and who will be here after the pipeline is built. We will also be here to vote after the transients are gone. Anyone who votes for Rent Control will have lost our support permanently. It is quite evident how the long-time Alaskan resident feels if one looks at the fate of the last two officials who pressed for rent control (I'm referring, of course, to Mr. Egan and Mr. Parsons)

It is nauseating, indeed, to realize that we have voted into office some politicians who are more concerned with winning votes than in fairness and justice for all the people, especially the ones who labor hard to get a little ahead of the masses. Those politicians are prejudiced because if they want to impose controls they should also be considering controls on labor (i.e. plumbing, heating, electrical, appliance, carpentry labor); controls on the rising costs of materials (i.e. windows, roofing, carpet, beds, lumber, etc.); controls on utilities (water and electricity); on fuel, taxes and assessments; controls on all kinds of business, hospitals and on other housing. Yes, on other housing...We haven't heard a word on controlling hotels, motels and rooming houses. Why not? Do they have too much political influence? If you are going to impose Rent Controls on apartments, then you must also impose controls on the rent.

What about the lean years, when 25% to 50% of the apartments in Fairbanks were empty? What did all the political do-gooders do for the apartment owners then? What will you do when all the Pipeline workers go back home to the Lower 48 with their savings? Just what will you do for the lean years to come? I know...you will increase the taxes to clear up the mess that will be left. Right? I hope you realize what we think of that idea.

We know first-hand what rent control can do. It started in New York City for the war years. 34 years later, it is still there, but the City Government is now the largest landlord in town; who got that way by having to repossess the buildings that weren't bringing in enough rent to pay the increased bills and taxes. So, they had to tax business to counteract the loss of tax revenue from the former apartment owners. Now, business has left in droves and the city is in chaos. They built the Twin Towers, but they are half empty. The Stock Market threatened to move out to the Virginia, Maryland, Washington D.C. area in 1965 until they were exempt from some taxes. The last we heard was that someone had suggested foreign aid.

We started in the apartment business before the oil discovery and we own twelve apartments. We managed to barely stay in the black for a number of years and we looked forward to a little relief in the construction of the pipeline. But, between the excessive high rise in costs and the possibility of Rent Control, we are beginning to feel it was not worth the effort or investment. If you think it is such a good business, please try it. We are so disgusted between the rent control crisis and the excessive costs (particularly in labor) that, although we had planned to build some apartments near Airport Road and Cushman Street, we have cancelled all plans until this rent control situation is settled once and for all.

For your information, the following is a percent cost increase within the past year. We arrived at these figures by comparing our own bills and/or by contacting the businesses in Fairbanks that we deal with and checking with them. If you feel you wish to check on our credibility, just go talk to the business people.

...assessment increase over last year range from 20% on some property to 100% on others

...taxes: unknown at present, but estimated possibility of 50% increase

...Fuel Oil (per 1,000 gal. tank price): increase of 9%
price Aug.'74...43.9¢; Feb '75...47.7¢
plus a 5¢ per gal. Federal increase is expected

...Plumbing maintenance & repairservice: increase of 50 to 100%
went from $20 to $30 per hour, with a possibility
of going to $40 per hour by end of summer

...Burner service: increase of 33.3% to 66.6%
went from $18 to $24 per hour, with a possibility
of going to $30 per hour by summer

...Garage door repairs: increase of 25%
went from $24 to $30 per hour

...Business & Snow Removal Vehicle (Jeep) increase of 70%
labor repair costs went from $14 to $24 per hr.

...Carpenter labor went from $16 to $24 per hour increase of 50%

...Garbage pick-up went from $25 to $33.33 increase of 33%

...Miscellaneous furniture items often needing replacement in furnished apartments:

mattresses went from $87.75 to $150	increase of 71%
couch (July '73)from $207.85 to $369.00	increase of 75%
couch reupholstery from $125 to $185	increase of 50%
carpet from $11 per sq.yd. to $15	increase of 33.3%

...Water...Electricity...Insurance: increases are unknown presently

...last, but not least, let us mention the increase as of April first in the newspaper subscription rates from $4 to $4.50

We average six hours per month, per apartment for maintenance, repair, supervision and management. I need an increase per hour, too.

What about our investment of cash for down payments, totalling $48,000.00?; which otherwise could be drawing interest at the bank.
We feel that we need an increase this year of 25%. Our apartments range from our best two-bedroom (1200 sq.ft.,carpeted, expensively panelled, modern kitchens/built-in appliances, table-top stove, breakfast bar, heat & water, completely furnished, near the center of town) that rents for $375; our smallest two-bedroom that rents for $325; our largest (as plush as mentioned above) one-bedroom that rents for $300; to our smallest one-bedroom that rents for $225. Major repairs are beginning to be needed in two of our duplexes (in Arctic Park) as they are approximately 20 to 25 years old. Items needed such as:

new kitchen...estimated cost of	$2,000.00
new burner, furnace & air blowers	1,000.00
aluminum siding	2,700.00
peaked roof	2,500.00
total cost est.	$ 8,200.00

If a substantial rent increase is not allowed, these improvements cannot be made and the original investment will be lost as we stated in the example of New York City. We feel we are in need of a minimum of 25% increase over our present rents, provided the City and Borough taxes do not become excessive. Some apartment owners need to charge higher rents that others due to their having paid higher purchase prices to start with. So, how can a blanket rent control be set up fairly?

We were impressed with the Governor's recent statement in which he wanted Alaskans to be hired first to work on the pipeline. If this came to pass, the housing problem would be minimal because the Alaskan from Ketchikan or Juneau or Barrow is not bringing his family to Fairbanks. He is not the one who is screaming for rent control. Rather, the newcomer, who will also return to his home when the bonanza is over, is the one who is making himself heard. Unfotunately, we Alaskans will still be here to pay the taxes, suffer the consequences, and vote.

I suggest a guide-line for both rentor and rentee as to what is fair, because most people simply do not know. They can easily be influenced by second-hand stories and by inflammatory statements published in the newspaper. As for the landlord who is excessive in his rents, we feel the Consumer Protection Agency should be able to take care of the problem.

Thank you.

Yours truly,

Mario Crassi Vilma M. Crassi

Mario & Vilma M. Crassi

R.C. - Corr'l

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FEDERAL HOUSING ADMINISTRATION
ANCHORAGE INSURING OFFICE
334 WEST FIFTH AVENUE
ANCHORAGE, ALASKA 99501

REGION X
Arcade Plaza Building
1321 Second Avenue
Seattle, Washington 98101

April 7, 1975

IN REPLY REFER TO:
10.3S

Honorable Tony Motley
Commissioner
Department of Commerce
State of Alaska
Pouch D
Juneau, Alaska 99801

Dear Tony:

The following statement was prepared in case of public hearings here in Anchorage on rent control.

If such hearings are held, you already know that only renters who want control will show up in volume.

In addition to the approximate 2,500 rental units wherein HUD controls the rent, we have about 500 trailer spaces under rent control here in Anchorage; in Fairbanks we control approximately 1,000 rental units, and in Juneau 208 trailer spaces and approximately 270 units of rental.

So, in effect we do control the rent of many of the low-income people. I cannot over-emphasize the danger of any further control on rental units.

If I can be of further assistance please advise.

Sincerely,

Roger A. Riddell
Director

Enclosure

cc: Chamber of Commerce

April 7, 1975

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Rent Control Public Hearings

My name is Roger A. Riddell, I am Director of the HUD-FHA office for Alaska. Our office is at 334 W. Fifth Avenue in Anchorage. I appear here to speak in opposition to rent control.

What incentive was not killed to construct new apartments by the Alaska State Landlord Act would certainly be killed by the establishment of any type of rent control. There is no way theFederal or State Government can force a person to invest his money in the construction of rental property. There are no Federal programs which can construct rental units.

An analysis of the market here in Anchorage indicates that it has been a renter's market rather than an owner's market. Ownership has been enhanced by the idea of an unearned increment gain but such a gain is based upon a regular inflationary rate over a period of time. Any lessening of this rate would eliminate this gain in home ownership. The old rule of thumb is still fairly true, that 1/100 of the cost of a unit of housing is equal to its monthly rental. In other words, if a unit costs $50,000 it would have to rent for at least $500 to be a break even investment. This rule of economics was developed during a period of time when there was 4 and 5 percent money. A market which is based upon 10 to 12 percent for construction money and 8 to 8 1/2 percent in long term money demands that the return to the owner must be greater.

At the present date here in Anchorage, ther are approximately 200 rental units under construction and 300 in construction planning. Those under

construction planning would not be feasible if a rental freeze was imposed. There are about 2500 units in this area wherein the rent is under the control of our office. These units do have rental control. Any increase in rent must be approved by my office and any increase would be based upon factual increase in costs. For example, the recent increase in sewer rate is allowed to be passed on to the renter. Increases in real property taxes, out of necessity must be passed on to the occupant through the owner.

Rent control is an unfair restriction which cannot be effectively policed. It invites undercover payment, black marketing tactics, and the many subterfuges that can be initiated to require a tenant to pay more than the base amount allowed.

Rent control has the opposite result of that which is intended. It actually works against those whom can least afford to pay unusual charges.

Rent control is an unfair charge against the property owner whom pays the greater amount of taxes. Why should this investor be penalized from making a fair return on his capitol while the grocier, the car dealer, the druggist, the merchant, the doctor or dentists be allowed to raise their prices without great capitol risk or real contribution to the growth of a community?

There are many better ways to gain control rather than by an autocratic dictate by Government. One method would be publicizing unrealistic or unfair rent increases. The best method to correct the problem is to encourage rental unit construction. Give the owner of rental units a property tax break. To encourage construction of new rental units there must be a desire and a profit motivation for the investor to invest in this type of property.

A Mayor's Housing Advisory Committee acting as an information point for people who are looking for rental property could be an effective tool to prevent rent gouging. The Committee could keep a record of units of rental available at a fair market price. The prospective renter could find from this Committee if the unit being offered was within the reasonable price range. This Committee could act as a damper on the rental market, along with the restrictive control exercised on FHA controlled units.

Rent controls have never successfully been imposed during any peacetime period in any government. During the wartime when the materials were not available for any type of construction, and housing was in critical shortage, there was a possible justified use of rent control. However, at the present time any restriction on rental property growth would be to court disaster. The way we are going to lick our housing and rental units shortage is by production. Curtailing production by control can have no beneficial end result.

At the present time in the City of Anchorage, there is planned the first luxury unit apartment house the city has known. The market is sufficient to bear the cost of a luxury type apartment house. There is a demand by people to become the occupants of such a structure. The establishment of rent control would make this project unfeasible from a financial investment standpoint.

I lived through and saw the economic blight casued by World War II rent control. Many of our great cities still carry the scars of this unfortunate time. I urge you to reject rent control and adopt a positive program of

encouragement to the builder and investor in rental property. Let our community grow in economic health and not die in sickness from the application of socialistic governmental control.

R.C.-Arch

CITY OF ANCHORAGE ALASKA

International
Polar air crossroads of the world

GEORGE M. SULLIVAN, MAYOR

Office of The Mayor

April 3, 1975

The Honorable Langhorne A. Motley
Commissioner of Commerce
State of Alaska
Pouch D
Juneau, Alaska 99801

Dear ~~Commissioner Motley~~ Tony:

Since receiving your letter in regards to possible hearings on rent controls, I have discussed this matter with a good many people here in Anchorage. I have also asked the Chamber of Commerce Manager to bring it to the attention of his board and membership for consideration.

There seems to be a consensus at the present time that, at least in Anchorage, new construction for apartment houses at the present rental rates now being derived are not financially feasible. There has been a substantial increase in land valuation, labor, and other items that have increased costs for this type of construction substantially.

I think possibly what we need to look at is some way of getting more housing available rather than putting rent controls on the present housing. I would assume it would be a further deterrent to any new construction, especially apartments in this area.

I am also told that many out of state brokerage or loaning firms will not loan funds into a state where rent controls are applicable. This, unfortunately, could also curtail more units being built in the Anchorage area.

There does seem to be, presently, financing available for apartment units. Unfortunately, as I am told, the present rent figure now being charged does not, again, make it feasible for people to get into this market.

Do you plan to have hearings in Anchorage? In our discussion the other day on the phone, I understood you to say that you planned hearings in Fairbanks and Valdez. Today, I heard on the radio this also included Anchorage. If

so, I would appreciate the dates and location of same. Thank you.

Most sincerely,

George M. Sullivan
Mayor

GMS:kt

P.S. Needless to say, I am also a landlord and not a renter.

.1 RC-Arch

Greater Anchorage
CHAMBER of COMMERCE

April 7, 1975

Crossroads of the Air World

Mr. Langhorne A. Motley, Commissioner
Alaska State Department of Commerce
Office of the Governor
Pouch D
Juneau, Alaska 99801

Dear Commissioner Tony:

Immediately prior to his departure for sunny Hawaii, President Ken Hume and his Impact Committee met with our two Mayors (Sullivan and Roderick) plus a representative group of eight local businessmen. On the agenda was your letter to Mayor Sullivan requesting our opinion on "rent control".

Unanimously, the answer was quick, loud and clear! Rent control will unquestionably play havoc with the housing market in Anchorage. The entire committee cited the basic premise of "why would anyone build new housing units if the market return is controlled and there is reason to believe the builder cannot come out financially on his or her investment?"

While Anchorage is not in the tight position as that of Fairbanks and we can understand the concern of other markets, please do not consider rent control in this market as we sincerely believe it would have a disastrous effect.

Sincerely,

Claire

Claire O. Banks
Executive Vice President

COB:tlb

TESTIMONY PRESENTED BY
C. W. Baer, General Manager
Greater Fairbanks Chamber of Commerce
at the
Rent Control Hearings
April 8, 1975

Fairbanks has a critical housing shortage -- both family units and transient rooms. There is a reason for this. Fairbanks is the construction headquarters for the trans-Alaska oil pipeline, an eight billion dollar effort and the world's largest private construction project.

As an indication of the impact this construction project has had upon our city it should be noted that the population of Fairbanks on April 1, 1973 was 18,640. On April 1, 1975 that figure is 32,989 -- a gain of 57% in two years. A similar expansion has occurred throughout the Fairbanks North Star Borough.

Recognizing the problems created by this influx of people, particularly in the matter of housing, the Greater Fairbanks Chamber of Commerce initiated action early this year to determine the best course of action to be followed in attacking both phases of the housing problem -- permanent family housing and transient facilities.

With regard to transient rooms, our research revealed that as early as last January all existing hotel-motel facilities were operating at or near capacity. It was readily apparent that with the influx of tourist traffic during the summer months we would have an acute shortage of accommodations for the overnight visitor.

It was at this point that the Chamber began working with the Administration at the University of Alaska to determine whether or not University dormitory beds might be available to help meet this shortage. We are now in the process of concluding an arrangement whereby the local hotel-motel industry will operate a clearing house for all transient housing. Under this arrangement, when all privately operated hotel-motel facilities are full, up to 300 dormitory beds will be available at the University. This cooperative agreement will be a major help in solving the transient housing problem.

With regard to the shortage of permanent family type housing, and in particular the shortage of rental housing, the Chamber has, for the past three weeks, been conducting a study of both the availability of rental housing and the rental rates for such facilities. Through announcements in the news media, we asked both tenants and landlords to advise us of their problems and their opinions as to the advisability of imposing rent controls.

For the purpose of this hearing, we will omit any reference to the need for permanent family type housing in the private sector and address our remarks only to those facilities available for rent.

Based upon the information we have received, we make the following observations. That there is a critical shortage of rental units cannot be questioned. That there has been a widespread increase in rental charges over the past year is also apparent. That

there has been widespread "gouging" in the rental markets is not a substantiated fact. There have been a few landlords who could not resist temptation and have indeed "ripped off" their tenants but they have been the exception and not the rule. By and large, rent increases throughout the area have pretty well reflected increased costs to the landlord.

In the most flagrant instance of "gouging" reported to the Chamber we have written the landlord requesting his voluntary compliance in adjusting his rent schedule to a more justifiable level and are in hopes that he will do so.

It is apparent from the information we have received that operational expenses have indeed risen sharply for most landlords and that if they are to continue to realize a fair return on their investments then rents must be increased. So long as such increases are made in direct ratio to increased costs there can be little honest objection.

We are also aware, from the information we have received, of the very serious problem of the tenant on a low, fixed income who is simply not in a position to pay substantially increased costs for housing. How this matter is to be resolved with fairness to both landlord and tenant is the crux of the problem.

For your information and assistance in your deliberations, we submit the attached exhibits. These include a recent series of articles published in the Fairbanks Daily News-Miner, a list of apartment rental facilities in Fairbanks which indicates the size of the unit and the current rental charge and a summary of the information received by the Chamber in response to our requests through the news media.

In conclusion, it is the opinion of the Greater Fairbanks Chamber of Commerce, based upon the information we have been able to gather from landlords and tenants as well as the expert opinion of Fairbanks leaders in the housing, banking, real estate and other allied industries, that the imposition of rent controls is not the answer to the critical housing shortage facing our community at this time. Rather, it is our feeling that prompt and effective governmental action to insure the immediate construction of sufficent additional rental housing units would be the most effective means of stabalizing the rental market and making housing available at a fair price to all concerned.

BUTLER BUILDER

SANDERS CONSTRUCTION CO.
565 UNIVERSITY AVENUE • FAIRBANKS, ALASKA 99701
PHONE: 907-479-6931

2 April 1975

Marc Langland
National Bank of Alaska
Fairbanks, Alaska 99707

Dear Marc,

You had ask if I would prepare a resume of operational costs with regard to a 6-plex we own and the rent we charge on these units. So will attempt to set forth some of these facts.

The apartment house was built during 1967 and completed in 1968. In June of 68, we leased the entire unit to Alyeska at the rate of $325.00 for the 3 upper units, and $300.00 for the daylight basement units. This was unfurnished and each tenant paying their own electrical costs. We furnished the heat, garbage services and electricty for the common elements of the building--hallways, entryways, laundry rooms.

The above named units are all 2 bedroom units, all walls paneled except in the bath and kitchen areas and they have marlite. All floors are carpeted, even the kitchens and baths in the lower apartments. Kitchen & baths in the upper units have flooring that never requires waxing. All units are complete with self-cleaning refrigerators (16 cu. ft.) and stoves with self-cleaning ovens.

Costs incurred in the operation during 1968 were as follows:

Fuel costs-----Averaged between $150.00 --$195.00 per month
Water, electricity----------$59.00-----$70.00 per month
Garbage Service---------- $20.00 per month
Insurance----------$840.00 per year
Taxes----------$1,250.00 per year
Bank Payment----------$1,225.00 per month

When the pipeline failed to materialize and apartments were difficult to keep filled, we dropped our rent to $295.00 for the upper units, and $250.00 for the lower units. Accordingly the bank dropped our payments to $925.00 per month.

BUTLER BUILDER

SANDERS CONSTRUCTION CO.
565 UNIVERSITY AVENUE • FAIRBANKS, ALASKA 99701
PHONE: 907-479-6931

Since 1971, we have held the rents on these units at those costs. But our operational costs, with the exception of the bank payment have increased.

In 1973 and 1974, we furnished all of the apartments completely with all new furniture from Nerland's and did not raise the rent, until in March of 1974 we raised the rent to $300.00 and $260.00

In April of this year, we have now been forced because of increase in operational costs to raise the rent to $350.00 and $325.00 for these rental units.

Operational costs are now averaging the following:

Fuel----------$220.00 to $250.00 per month
Water, electricity----$85.00 to 120.00 per month
Garbage service-----$37.50 to $42.50
Taxes----------$1,850.00 per year
Insurance-------- $1,491.00 per year
Bank Payment (because we refinanced the unit)------$1,198.00

included in bank payment

In neither of the comparative costs have I mentioned the incidental expenses which are incurred in operating a rental unit, e.g. snow removal from parking lot, repair and maintanence on heating elements, electrical appliances; landscaping and other such type incidentals.

As you can see, we have never intended to make this our chief source of livelihood, nor have we charged rents that would allow us to pay off the indebtedness in a 5 year period. But it does not take a mathemation to see that costs for its operation have risen considerably, as it has for everyone else who owns rental units or homes. I know that Fairbanks is experiencing a terrible housing situation at this moment and some of our fellow citizens have seen fit to take full advantage of the problem, but I do not think that governmental controls will answer the need to stem the rental hikes being felt.

Sincerely,

Merrilynn

Merrilynn Sanders

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Tie Wire
Plumbing Supplies
Plumbing Fixtures
Building Hardware
Stoves — Grills —
Heavy Hardware

March 22, 1975

C. W. Baer, General Manager
Chamber of Commerce
550 First Avenue
Fairbanks, Alaska 99701

Re: Inquiry on Rent Controls

Dear Mr. Baer:

It would seem to me that rent controls would be a very difficult thing to enforce. I understand building costs are now roughly $60.00/per sq. ft. and that interest rates are running 13%.

Our apartment house, with the exception of the penthouse, are all efficiencies. Our rents on the efficiencies average out at about $160.00 per month with the tenants paying the telephone and lights. The penthouse, which is quite luxurious, rents for $400.00 per month plus lights and telephone.

Our building was built for $30.00 per sq. ft. We have established long-time residents that have never had a rent raise. We do, however, when and if we get a vacancy raise the rent $15.00 per month. Our fuel costs have doubled and we have the 25% surcharge on water and yard and hall lights. We have very few vacancies so very few tenants are paying the extra $15.00 a month.

I have been fortunate that my taxes haven't increased drastically; however, if I get insurance increases, utility increases, and tax increases I certainly do not want anybody telling me what I can charge for rent.

Sincerely,

FAIRBANKS PLUMBING AND HEATING
SAMSON HARDWARE

E. S. Albright

E. S. Albright, President

RAY OIL BURNERS & FURNACES — MILLER FALLS TOOLS — FLINT & WALLING PUMPS
MILWAUKEE ELECTRIC TOOLS — PACIFIC PUMPS — WILBURT STOVES — KEROSENE REFRIGERATORS — PROPANE GAS

GOLDEN NUGGET MOTEL, INC.

900 NOBLE STREET
FAIRBANKS, ALASKA 99701

March 27, 1975

Mr. C. W. Baer
General Manager
Greater Fairbanks Chamber of Commerce
550 First Ave.
Fairbanks, Alaska 99701

Dear Mr. Baer:

We are pleased to see the Chamber take an active role in seeking out the housing situation as it really exists, rather than relying on the heresay of such an emotion packed subject. The following is a summary of the major cost increases that we have endured during this last year:

The oil surcharge effected by GVEA last August has recently increased our monthly GVEA bill between 35 and 45%. In real dollars, it added to our bill last month approximately $4000, half of which we have had to absorb. We have been advised by GVEA that next months bill, on a percentage basis, will be even greater.

We have our own water treatment system that services approximately 161 of our units. During the last 12 months, the cost of producing approximately the same quantity of water has increased 80%. In real dollars, that amounts to $800 per month increase. This has resulted from an increase in the cost of chemicals and an increase in the cost of freight to bring those chemicals to Fairbanks.

We are serviced by Far North Sanitation Service. Our cost of refuse collection has increased during the last 12 months more than 60%. That is approximately $300 per month.

Maintenance costs have also risen substantially. Materials appear to be rising at an annual rate of 20% and our maintenance wages have increased nearly 30%. Together, these amount to nearly $500 per month increase during the last month.

When totaled, the above increases have significantly advanced the costs of our operations, yet we have regained only a portion of those increases in the form of higher rents. An arbitrary rent control during these inflationary times would only serve to

(Cont'd)

cripple the entire Fairbanks housing industry. Establishing the bureaucratic machinery necessary to effectuate equitable rent controls which would enable the landlord to pass on his increased costs of operations while providing for a reasonable profit would take too long to be helpful. We are in a period of high inflation brought on by a feverish economy and controls of any kind will do nothing but cost the taxpayer additional dollars.

Very truly yours,

Dennis A. Osterdock
Vice President

Tanana Trailer Village
Tanana Village Apartments
Geist Apartments
Nanook Niches Apartments

DAO:pt
file

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DOWNTOWN OFFICE
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CUSHMAN-GAFFNEY OFFICE
570 GAFFNEY ROAD

MAIL: P.O. BOX 709
FAIRBANKS, ALASKA 99707

PHONE 452-4471

March 25, 1975

The Honorable Jay S. Hammond
Governor, State of Alaska
Pouch A
Juneau, Alaska 99801

Re: Rent controls

Dear Governor Hammond:

The Daily News-Miner in two or three recent articles indicates that you are surveying the housing situation with the possibility of invoking rent controls. (Clipping from March 19, 1975, enclosed.)

This Association, its Directors and officers, feel that rent controls would be detrimental to the housing market in our community, and not in the ultimate public interest, for the following reasons:

(1) Developers discouraged. Developers involved in housing, both residential and multiple, would be discouraged from entering the local rental market by rent control laws. At present, and the immediate future the City of Fairbanks and the State should be encouraging such developments, and not raising impediments, because of the great rental housing demand. Developers must seek adequate rents to justify the risks, and to cover skyrocketing construction costs, high interest rates, and continually climbing taxes, utility rates, insurance rates and cost of labor.

Apparently at a recent hearing reported in the Daily News-Miner on March 24, 1975 (clipping enclosed), held by State Senator Pat Rody and Charles Parr, Representative from Fairbanks, it appeared from the summary of that hearing that rent controls were not the answer. Mr. Mario Grassi from Fairbanks testified that he was thinking of building additional housing, but would not do so now in view of the possibility of rent controls.

This Association has contracted to sell a tract of approximately five acres in Hamilton Acres, which it acquired through foreclosure, where a builder went into bankruptcy last year apparently because of the rising construction costs and the low rentals. The new buyers have already questioned whether they should go through with their proposed purchase because of the prospect of rent controls. They were planning to rush completion of 24 units of housing (2-bedroom apartments) by June

on existing foundations. They further planned to build approximately 150 more units by October. There are other projects under consideration or planned, which may stop because the fear of rent controls may discourage lending institutions from proceeding with loans, because of the income uncertainties which would follow, or because the builders are discouraged by such uncertainties. It is difficult to encourage builders to construct housing when rent controls are threatened, when such builders can find ample work on commercial projects, the Alyeska pipeline project, and various City, State and Federal projects, involving no such controls on income.

(2) Mortgage investors discouraged. Such discouragement would affect also mortgage investment funds. These would seek areas, which have fewer restrictions, and a more positive basis for a return as good as is available in other markets, and commensurate with risks involved. We have already been confronted by reluctance of investors to consider the Fairbanks market because of the low rentals, which had prevailed since the partial closing of F. E. Wainwright. It is only since approximately last spring that housing has become tight in the Fairbanks area, and that apartment owners have been able to secure a reasonable rental commensurate with their costs of operation and meeting mortgage payment requirements, insurance, and taxes. It is our opinion that any rental gouging is not by the recognized, stable rental projects, but by scattered cases of individuals with one or two, or a handful of units to rent.

(3) Property values lowered. Such rental controls would lower property values of existing multiple apartment projects, affect their maintenance and upkeep, and ultimately reduce the tax base. Examples can be found in New York state, where core areas of cities deteriorated, and ghettos were created, because of rent controls.

(4) Encourage bad building practices. It would encourage low-cost housing building practices, and proliferate cheap trailer courts, which would remain as a scar in this community. Builders of this type of low-cost homes are quickly in and out of the building market. As a result of rent controls, our reputable builders could not enter the housing market, because of the limitations as to income to be realized from their investment, but no limitations on their costs.

(5) Sound rental controls. Supply and demand has long been recognized as the stimulus for economic growth. It is also the sound basis in a free enterprise system on which to control rental rates. Encouraging more housing so that a vacancy factor of 3% to 6% is achieved will control rental rates more efficiently. Rental gouging has no place when there are vacant units into which a tenant can move. Vacant units are offered at reasonable market rates.

When taxes, interest rates, insurance, utilities and the cost of repairs are so high, and continue to climb annually, who is to say what the rental rate should be on a particular type of apartment? Obviously the market, the law of supply and demand must control it. The recent Federal price and wage controls have been generally recognized as failing to achieve their purpose. There is no war or disaster, which inhibits the supply, and which would justify rental control. Rental control may inhibit supply. If additional housing is desired, and more adequate and acceptable housing, then rent controls are not the answer.

Sincerely yours,

Walter Sczudlo
President

WS/eb
Enclosures
cc: Fairbanks Chamber of Commerce
Dr. William R. Wood, Executive Vice President
Fairbanks Industrial Development Corporation
Mr. Don Dennis, City Editor
Daily News-Miner
Senator John Butrovich
Senator John Huber
Senator Terry Miller
Representative Mike Bradner
Representative Fred Brown
Representative Steve Cowper
Representative Glenn Hackney
Representative Charles Parr
Mr. Roger A. Riddell, Director
Federal Housing Administration
Mr. Ray Hartlieb, President
Alaska League of Savings Associations

Daily News-Miner

"America's Farthest North Daily Newspaper"

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More views on the housing problem

Don't believe all landlords getting fat on rental gouge

Despite previously published reports of rent gouging in Fairbanks discovered in a Daily News-Miner survey, most landlords here are facing rising costs of doing business with minor increases and in some cases no increases.

This coupled with a pending decision facing Gov. Jay Hammond on whether to establish rent controls adds up to challenge for Fairbanksans to solve its housing problems as best it can.

Chamber of Commerce Manager Wally Baer said today the chamber is starting a survey among renters and landlords alike to determine the need for rent controls and to discover exactly what problems both tenants and landlords are having.

A spokesman for the governor said today that some form of rent control is being considered but, said Hammond representative here, Larry Hillstrom, the governor wants comments from Fairbanksans to determine how he will proceed on the matter if at all.

The Daily News-Miner today contacted several apartment complex managers who indicated they are leary of rent controls because, as one put it, "what's fair for one owner is not fair for another."

Hillstrom said the governor wants to know if Fairbanks think rent controls are justified, what specific examples persons have to justify them, and what form they want the controls to take.

The chamber began a survey of existing rental rates last week and discovered that rents in most large complexes have risen slightly to not at all.

A comparison of reported rental rates between March of this year and April of last year, showed increases from as little as 4 per cent to as much as [illegible] per cent.

Chandler Apartments, reportedly up for sale, recently increased rents 10 per cent for its two-bedroom, unfurnished apartments which will cost existing tenants $262 and new tenants about $150 a month.

Although increases were not necessarily uniform, it appears that landlords are raising their rents to cope with rising costs for heat and utilities and maintenance and taxes.

Notable exceptions where no increases occurred during the year included Blevins apartments, Chena Court, Dixon apartments, Northward Building, Patty Aiello, Pleasant Manor, Smith apartments, and some units at Tanana Village.

A sampling showed increases for two-bedroom furnished apartments at Ambassador, 33 per cent; Ballaine Lake, 16 per cent, E P Rentals, 15 per cent for unfurnished; Fairview Manor, 12 per cent; Goldner, 8 per cent; Glenwood Manor, 10 per cent; and Midtown, 25 per cent.

The manager of the Ambassador, who asked not to be identified said, "I don't think rent controls are necessary in our case. I don't understand how they could make it a fair deal all around.

I don't think other owners are charging outrageous prices, especially for new apartments. They've got to charge high prices to come out on them due to high cost of building and furnishing.

"Your newspaper went from 10 to 15 cents in 15 years. That's a bigger increase than we've had," the manager said.

The manager said since 1958 Ambassador rents have been raised from $165 to $250 for a one-bedroom unfurnished apartment, and from $225 to $300 for a one-bedroom furnished.

The Ambassador property is assessed at $700,000, "so we pay a pretty good hunk in taxes," the manager said.

Zelma Trafton, who owns Ballaine Lake apartments and is business office manager for the Daily News-Miner, said she agrees there is some price gouging going on but, "prices for everything are going up. Maybe rent controls are necessary, but I can't really say I favor any type of controls. You have to keep in mind the high building costs now as well as interest rates."

(See LANDLORDS, page 3)

LANDLORDS . . .

(Continued from page 1)

The manager at Moose Creek apartments reported a rent increase of [illegible] in the past year. Two-bedroom apartments there including utilities cost $293 monthly. The manager said there are 11 persons on the waiting list to move in.

A tenant at Midtown apartments, where rents increased more than 25 per cent in a year, said the rent was too high for the apartments offered.

Alice Brinker, manager for Spearman and McLean's complex at Goss Road said the complex is still below the market rate for increases while heating costs have gone up as much as 60 per cent over last year.

"I think it would be a wonderful idea (rent control)," she said. I can see now some people recognize that with no vacancies in town they can charge what they want. I'd rather keep our tenants than run them off by raising the rent."

Barbara Donathan of Spruce Wood Manor reported their rents had gone up $20 in the last year because the bank "raised its interest rate on us so we were forced to that. I imagine there will be another rent increase this summer because the manager is going to make some repairs.

Barbara Morris of Tanana Village said, "Rent is getting out of control but not here because we're not that way. Compared to what I see in the paper people do need some sort of protection.

"There is such demand and no availability, they're asking high prices and getting them. I'm leaving at the end of the month.

Housing dominates impact hearings

By SUZANNE BUSHONG
Family Editor

Although testimony wandered through topics ranging from child care to the State Office on Aging, impact hearings in Fairbanks Saturday turned out to be a forum on the housing crunch.

And though a few solutions to Fairbanks' housing shortage were offered, the two legislators conducting the hearings will take more complaints than suggestions back to Juneau.

State Sen. Pat Rody of Anchorage summed up the feelings of many of those testifying: "This impact is coming from the oil companies, not the pipeline workers. They have brought us inflation on top of inflation and they should bear that cost as part of the cost of doing business. We must reduce the burden on the average Alaskan who is paying the way for Standard Oil and BP."

Rody ard Charles Parr, representative from Fairbanks, were conducting the hearing to gather information for the legislature on the impact of pipeline construction on low and fixed income persons. They also were looking for residents' opinions on rent control.

The three solutions suggested were installation of railroad sleeping cars in the town, erection of several small units for izens at the 33 Mile Senior Citizen Center and development of parks for mobile and modular homes.

Doris Southall, who has been instrumental in getting the senior citizen high rise project started, suggested that the city look into stationing railroad cars around town for temporary housing this summer. She said the Canadian railroad has several cars to lease or sell to the state, which could be used in Fairbanks the way railroad cars are used for housing at McKinley Park. Borough Mayor John Carlson said it would be difficult to find a place to put the cars, however, since the Alaska Railroad has plans to develop the railroad area for industry in the near future.

Joe Steinard, a member of the Senior Citizens of Interior Alaska, said the organization has land at the 33 Mile Center and about 1,000 logs which could be used to construct housing. He suggested the group look for assistance in the way of federal and state matching funds to put up several small units on the property. The units would be only for sleeping, with a utility building for laundry and showers and meals provided at the main center.

Perry Stoop told the legislatorss mobile and modular units were the only answer for a temporary increase in housing. But he said utilities would have to be provided by the city before any sites could be developed for the units.

Older persons were one of the main concerns of the hearing, and many testified individually and as members of senior citizen groups.

Marjorie Lockwood said she was finding it impossible to locate a place to live. She is moving out of her large home, which she no longer can maintain, she said, and is looking for an apartment. She said she saw one place for $250 a month, "but you would have to pay me $250 a month to live in it." She noted that several nice apartment complexes in town have kept their rates reasonable. "If one can do it, I can't understand why the others get such awful prices."

Sue Ohata, director of the North Star Council on Aging, testified that there are 40 elderly the Golden Age Apartments on Ninth Avenue. That complex has 20 units. She also noted that there are many persons in Careage North who don't need nursing care, but can't be released because there is no place for them to go. "It costs the state $900 a month to keep them there and I don't think that's a good way for our tax money to be spent," she said.

There are persons taking up residence at the Salvation Army and Rescue Mission as well, Ohata said, preventing these agencies from providing the emergency relief services they are designed to provide.

But retired persons aren't the only ones on fixed income who are suffering from the housing crunch. Testimony also was received from many young people, including a teacher, a borough employe and a federal employe.

Pat Johnson, a federal government employe, said she has lived in Alaska all her life and in Fairbanks the last five years and doesn't want to move. She is, however, faced with finding an apartment because the building in which she resides is being demolished to make way for the Steese Bypass. She said she had been trying to save money to buy her own home, "but I can't save anymore, I just cant afford to." She said although inflation on food and other items is causing problems, rent is the biggest cause. Johnson said she has been looking for housing since notification from the Highway Department, and hasn't had any luck yet.

Rody questined her about trailers, and she said she would live in one if she had to, but preferred apartments to trailer parks. Parr pointed out that many banks have been reluctant to loan money for construction of trailer courts, and Carlson said there are not enough trailers coming into town to meet the demand anyway. "If someone could get 400 mobile homes in here tomorrow he would sell them all," the mayor said.

Pat Rutledge, a borough employe, said she may have to leave Fairbanks if she receives another rent increase. "I have lived here 15 years, I have worked in this area and spent my money here. I resent this situation. I consider Fairbanks my home and I am being driven out."

Rutledge said she does not think her landlord is gouging, and said the increases have been reasonable and over a reasonable period of time, but her salary has not gone up accordingly. She said half of her pay goes toward rent and utilities. "There is a lot of money in town and I don't balme the people who own apartments. They could make a lot more. Everyone says if you can't make it in Fairbanks go work on the pipeline, but I don't think that's an answer," she said.

Rutledge, like many of those testifying, felt the permanent residents of Fairbanks with stable jobs were the ones suffering most from the impact of pipeline construction, and the ones who are being forced to move out, but she didn't know what the state could do.

One suggestion has been [illegible] controls, but Mario Grassi, a landlord here, told the legislators that would be a mistake. He said if rent controls were instituted, landlords would raise rents to the maximum in order to insure income for the duration of the controls. Other problems landlords face, he said, are increased costs and the risks in any new construction here. "I was thinking of building but I won't now with the possibility of rent controls," he said.

Other testimony included statements about lack of child care facilities, increase in juvenile delinquency, high food prices, high fuel costs, and hiring of out-of-state persons over Alaskan residents for pipeline jobs.

Grassi
3.7 Mile Farmers Loop Road
Fairbanks, Alaska 99701

March 27, 1975

Mr. John Carlson
Borough Mayor
Box 1267
Fairbanks, Alaska 99701

Dear Sir:

We wish to advise you of some of the reasons why we are opposed to Rent Controls. We really want you to take serious measures to prevent Rent Controls.

First of all, they are unconstitutional, they are against free enterprise, they are discriminatory to one group of people, they reduce the building of new apartments, they cause higher local revenue taxes by holding down prices on apartment houses, they cause a rise in assessments to other commercial buildings and private homes. At this time, in Fairbanks, Rent Control plays favoritism to seasonal and/or pipeline workers from other states instead of the year-round Fairbanksan (us, included) who was here before the oil discovery and who will be here after the pipeline is built. We will also be here to vote after the transients are gone. Anyone who votes for Rent Control will have lost our support permanently. It is quite evident how the long-time Alaskan resident feels if one looks at the fate of the last two officials who pressed for rent control (I'm referring, of course, to Mr. Egan and Mr. Parsons)

It is nauseating, indeed, to realize that we have voted into office some politicians who are more concerned with winning votes than in fairness and justice for all the people, especially the ones who labor hard to get a little ahead of the masses. Those politicians are prejudiced because if they want to impose controls they should also be considering controls on labor (i.e. plumbing, heating, electrical, appliance, carpentry labor); controls on the rising costs of materials (i.e. windows, roofing, carpet, beds, lumber, etc.); controls on utilities (water and electricity); on fuel, taxes and assessments; controls on all kinds of business, hospitals and on other housing. Yes, on other housing...We haven't heard a word on controlling hotels, motels and rooming houses. Why not? Do they have too much political influence? If you are going to impose Rent Controls on apartments, then you must also impose controls on the rest.

What about the lean years, when 25% to 50% of the apartments in Fairbanks were empty? What did all the political do-gooders do for the apartment owners then? What will you do when all the Pipeline workers go back home to the Lower 48 with their savings? Just what will you do for the lean years to come? I know...you will increase the taxes to clear up the mess that will be left. Right? I hope you realize what we think of that idea.

We know first-hand what rent controls can do. It started in New York City for the war years. 34 years later, it is still there, but the City Government is now the largest landlord in town; who got that way by having to repossess the buildings that weren't bringing in enough rent to pay the increased bills and taxes. So, they had to tax business to counteract the loss of tax revenue from the former apartment owners. Now, business has left in droves and the city is in chaos. They built the Twin Towers, but they are half empty. The Stock Market threatened to move out to the Virginia, Maryland, Washington D.C. area in 1965 until they were exempt from some taxes. The last we heard was that someone had suggested foreign aid.

We started in the apartment business before the oil discovery and we own twelve apartments. We managed to barely stay in the black for a number of years and we looked forward to a little relief in the construction of the pipeline. But, between the excessive high rise in costs and the possibility of Rent Control, we are beginning to feel it was not worth the effort or investment. If you think it is such a good business, please try it. We are so disgusted between the rent control crisis and the excessive costs (particularly in labor) that, although we had planned to build some apartments near Airport Road and Cushman Street, we have cancelled all plans until this rent control situation is settled once and for all.

For your information, the following is a percent cost increase within the past year. We arrived at these figures by comparing our own bills and/or by contacting the businesses in Fairbanks that we deal with and checking with them. If you feel you wish to check on our credibility, just go talk to the business people.

...assessment increase over last year range from 2% on some property to 100% on others

...taxes: unknown at present, but estimated possibility of 5% increase

...Fuel Oil (per 1,000 gal. tank price): increase of 9%
price Aug.'74...43.9¢; Feb '75...47.7¢
plus a 5¢ per gal. Federal increase is expected

...Plumbing maintenance & repairservice: increase of 50 to 100%
went from $20 to $30 per hour, with a possibility
of going to $40 per hour by end of summer

...Burner service: increase of 33.3% to 66.6%
went from $18 to $24 per hour, with a possibility
of going to $30 per hour by summer

...Garage door repairs: increase of 25%
went from $24 to $30 per hour

...Business & Snow Removal Vehicle (Jeep) increase of 70%
labor repair costs went from $14 to $24 per hr.

...Carpenter labor went from $16 to $20 per hour increase of 50%

...Garbage pick-up went from $15 to $23.33 increase of 55%

...Miscellaneous furniture items often needing replacement
in furnished apartments:
mattresses went from $87.75 to $120 increase of 73%
couch (July '73)from $20[illegible].85 to $369.00 increase of 75%
couch reupholstery from $125 to $185 increase of 50%
carpet from $11 per sq.yd. to $15 increase of 33.3%

...Water...Electricity...Insurance: increases are unknown presently

...last, but not least, let us mention the increase as of April first in the newspaper subscription rates from $4 to $4.50.

We average six hours per month, per apartment for maintenance, repair, supervision and management. I need an increase per hour, too.

What about our investment of cash for down payments, totalling $48,000.00?; which otherwise could be drawing interest at the bank.
We feel that we need an increase this year of 25%. Our apartments range from our best two-bedroom (1200 sq.ft.,carpeted, expensively panelled, modern kitchens/built-in appliances, table-top stove, breakfast bar, heat & water, completely furnished, near the center of town) that rents for $375; our smallest two-bedroom that rents for $325; our largest (as plush as mentioned above) one-bedroom that rents for $300; to our smallest one-bedroom that rents for $250. Major repairs are beginning to be needed in two of our duplexes (in Arctic Park) as they are approximately 20 to 25 years old. Items needed such as:

new kitchen...estimated cost of	$2,000.00
new burner, furnace & air blowers	1,000.00
aluminum siding	2,700.00
peaked roof	2,500.00
total cost est.	$ 8,200.00

If a substantial rent increase is not allowed, these improvements cannot be made and the original investment will be lost as we stated in the example of New York City. We feel we are in need of a minimum of 25% increase over our present rents, provided the City and Borough taxes do not become excessive. Some apartment owners need to charge higher rents that others due to their having paid higher purchase prices to start with. So, how can a blanket rent control be set up fairly?

We were impressed with the Governor's recent statement in which he wanted Alaskans to be hired first to work on the pipeline. If this came to pass, the housing problem would be minimal because the Alaskan from Ketchikan or Juneau or Barrow is not bringing his family to Fairbanks. He is not the one who is screaming for rent control. Rather, the newcomer, who will also return to his home when the bonanza is over, is the one who is making himself heard. Unfotunately, we Alaskans will still be here to pay the taxes, suffer the consequences, and vote.

I suggest a guide-line for both rentor and rentee as to what is fair, because most people simply do not know. They can easily be influenced by second-hand stories and by inflammatory statements published in the newspaper. As for the landlord who is excessive in his rents, we feel the Consumer Protection Agency should be able to take care of the problem.

Thank you.

Yours truly,

Mario & Vilma M. Grassi

CONFERENCE COMMITTEE
REPORT

_____
Date

Mr. President
Mr. Speaker

The Conference Committee [with powers of free conference]

which has had SENATE BILL NO. 290 and HOUSE COMMITTEE

SUBSTITUTE FOR SENATE BILL NO. 290 (rent control)

under consideration, recommends that

Senate members	House members
Senator Kerttula, Chairman	Rep. Gardiner, Chairman
Senator Rodey	Rep. Specking
Senator Miller	Rep. Parr

May 15, 1975

Statement of Intent
Free Conference Committee on
SB 290 and House CS SB 290 (Rent Control)

Emergency rent control is new to Alaska and therefore the committee has sought to avoid the problem of having all the enforcement provisions necessary to carry out the intent of the act contained in statutes which could not be modified between legislative sessions to meet unexpected or changing circumstances in the months ahead. Basic enforcement provisions are set out in regulations promulgated by the commissioner of the Department of Commerce, and are already in effect. The commissioner has the authority to change the regulations should the need arise as he administers the program. However, the bill does not limit the aggrieved person to administrative remedies and litigation sponsored on his behalf by the Department of Commerce; the person may take his cause of action into court, after having exhausted administrative remedies provided in the regulations, and seek either injunctive relief or monetary damages, or both.

Rep. Terry Gardiner

Senator Jay Kerttula

Rep. Keith Specking

Senator Terry Miller

Rep. Charles Parr

Senator Pat Rodey

CONFERENCE COMMITTEE
REPORT

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Date

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Senator Miller	Rep. Parr

letter of intent
Act left broad so Dept can attempt other regs

AMENDMENTS TO HCSSB 290

PAGE 1, LINE 27:

Delete "After the governor issues [ON ISSUING]" and insert in its place "On issuing."

PAGE 1, LINE 28:

Delete "attorney general [GOVERNOR]" and insert in its place "governor."

PAGE 2, LINES 4 and 5:

Delete "attorney general [COMMISSIONER OF COMMERCE]" and insert in its place "commissioner of commerce."

PAGE 2, LINES 7 and 8:

Delete "including but not limited to provision for the establishment and adjustment of maximum rents."

PAGE 2, LINE 12

Delete "attorney general" and insert in its place "commissioner of commerce."

PAGE 2, LINE 15:

Delete "attorney general" an insert in its place "commissioner of commerce."

PAGE 2, LINES 18 and 19:

Delete "attorney general" and insert in its place "commissioner of commerce."

PAGE 2, LINES 27 and 28:

Delete "in excess of the maximum rent established for the accomodation by the attorney general by regulation," and insert in its place "without justification for an increase in accordance with regulations adopted under this chapter,"

PAGE 3, LINES 1-3:

Delete "the attorney general may by regulation permit increases in the maximum rent established under this subsection to allow for increases in" and insert in its place "the commissioner of commerce may permit rent increases in accordance with regulations adopted under this chapter for a reasonable rate of return on investment," + increased costs

PAGE 3, LINE 23 -- PAGE 4, LINE 5:

Delete all material. Renumber following sections accordingly.

PAGE 4, LINE 11 -- PAGE 6, LINE 4:

Delete all material. Renumber following sections accordingly.

PAGE 6, LINE 5:

Delete all material. Renumber following sections accordingly.

PAGE 6, LINES 6 and 7:

Delete all material. Renumber following sections accordingly.

JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 29, 1975

The Honorable Terry Gardiner
Alaska State House of Representatives
Pouch "V" State Capitol Building
Juneau, Alaska 99811

Dear Representative Gardiner:

As you probably know, my administration has endeavored to develop a workable solution to the residential-rent problem in various areas of the State. This month alone, we have studied a dozen different "rent-control" plans, held hearings in Fairbanks and Valdez, issued a statement of findings, declared that an emergency housing crisis exists in the two areas and created what appears to be a completely workable solution to the problem including the drafting of a set of regulations.

After advising the Valdez City Council and the Fairbanks Borough Assembly on the details of the plan, each body unanimously approved the plan.

In essence, the Emergency Rent Review Program is composed of four points:

1. A local advisory board of adjustment is created in each area wherein an emergency exists;
2. Landlords are required to give 30-day notice of rent increases. Upon complaint, the board of adjustment advises the Commissioner of Commerce on the validity of the rent increase within 15 days of submission;
3. An appeal to the Commissioner of Commerce or to the courts is provided;
4. Reasonable expense and profit increases are allowed.

Members of my administration have, in the past, testified at many committee hearings on four rent-control bills. Regularly, they have supported my theory of opposition to a broad-brushed approach: such an approach is cumbersome, costly and inappropriate for the problems facing Alaska today.

JAY S. HAMMOND
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OFFICE OF THE GOVERNOR
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Members of my administration have, in the past, testified at many committee hearings on four rent-control bills. Regularly, they have supported my theory of opposition to a broad-brushed approach: such an approach is cumbersome, costly and inappropriate for the problems facing Alaska today.

Hence, I feel obliged to strongly urge you to introduce the amendments below deleting reference to "maximum rent established in H.C.S.S.B. 290:

AMENDMENT 1. Page 2, lines 7-8: delete "including but not limited to provision for the establishment of maximum rents"

AMENDMENT 2. Page 2, lines 27-28: replace "in excess of the maximum rent established for the accomodation by the Attorney General by regulation," with "without justification for an increase as set out in regulations pursuant to this chapter,"

AMENDMENT 3. Page 3. lines 2-3: Replace "increases in the maximum rent established under this subsection to allow for increases in" with "rent increases under this subsection to allow for increases in reasonable rate of return,"

Furthermore, in that the Department of Commerce has had substantial input into this program, I would prefer that the statutory authority for implementation of any such program remain with that department.

And finally, I feel that the following sections of H.C.S.S.B. 290 will be covered in the regulations now being prepared by the Attorney General in conjunction with the Department of Commerce and, therefore, should be deleted from the bill:

1. Sec. 34.06.042. Injunctive Relief;
2. Sec 34.06.044. Action for Damages;
3. Sec. 34.06.045. Certificate of Eviction.

It is unfortunate that the timing of completion, presentation and subsequent approval of the rent-review program by the most affected areas (any many members of the legislature) coincided with the diligent work you have performed and as such we did not have the opportunity to formally present the program to your committee. Nevertheless, I feel that an unamended H.C.S.S.B. 290 could detract from the program as understood and approved by local communities, that it is (unamended) a broad control program vice and individual case-by-case approach that we found acceptable and desirable through public hearings.

Thank you for your consideration in this matter.

Sincerely,

Jay S. Hammond
Governor

file under Rent control

RONALD G. NELSON
Professional Civil Engineer
1500 AIRPORT WAY P.O. BOX 888
FAIRBANKS, ALASKA 99701
(907) 456-4854

April 29, 1975

Alaska House of Representatives
Pouch V
Juneau, Alaska 99801

Dear Representative:

REF: House Bills No. 448, No. 449 & House Concurrent Resolution No. 52
(All introduced 4/22/75)

I'm strongly opposed to all of the referenced legislation in its present form and request that you do not support its passage.

I'm currently midway in development of a 179 unit mobile home park near Fairbanks at 3/4 mile cGrath Road. I will begin accepting units in June 1975 with completion scheduled this construction season.

The referenced legislation will place me and other private developers of mobile home parks in competition with state government, a situation which I'm sure you'll agree is contrary to the basic free enterprise system.

If the legislature sees fit to single out the mobile home industry as its vehicle for alleviating the current housing shortage in the Fairbanks area I strongly recommend a method be employed that will accomplish the objective of making available mobile homes to individuals of lower, fixed or moderate income in a manner that will not adversely affect any segment of the mobile home industry as the referenced legislation certainly would do.

Contrary to wording in HCR # 52 which states "....Whereas there is no indication that private industry can or will supply the low-cost housing necessary to meet this crisis..." I submit for your information the following list of mobile home parks which have been approved by the Alaska Dept. of Enviornmental Conservation, The Fairbanks North Star Borough and further are under construction:

Greenwood Village	179 Units
Tanana Mobile Home Park	182 Units
Town & Country Mobile Home Park	40 Units
TOTAL	401 Units

Verbal contact with the two above mentioned agencies revealed also that a 500 unit mobile home park is presently in the final stages of planning and approval for the North Pole area to be constructed by Columbia Developers this season. Additionally, Mr. Jeff Cook of Cook Real Estate, estimated that there are approximately 200 private subdivision lots

presently available in the Fairbanks area on which placement of mobile homes are approved. Considering the above, I believe it is evident that the private sector can and is supplying the necessary spaces for mobile homes in the Fairbanks community.

I recommend that the legislature direct its efforts in this area towards establishment of a form of state guaranteed/ and or subsidized loans to individuals for purchase of the mobile home units from the various established dealers for placement of said units in the various parks or on private lots which are available and are continuing to be made available by private industry. I believe such an approach would make lower cost housing available to the desired segment of the population, greatly alleviate the housing emergency in the Fairbanks area and accomplish it in a manner acceptable to all portions of the mobile home industry.

Sincerely,

Ronald G. Nelson P.E.

RGN/bd

cc: Govenor Hammond
Fairbanks Borough Mayor, John Carlson

LAW OFFICES OF
ALASKA LEGAL SERVICES CORPORATION
315 FIFTH STREET, SUITE 8
JUNEAU, ALASKA 99801
TELEPHONE 586-~~XXX~~ 6425

By: Donald E. Clocksin May 12, 1975

PROPOSED AMENDMENTS TO HCS for SB 290

1. On P. 3, line 24, strike all of section 34.06.042 and insert:

"Sec. 34.06.042. [INJUNCTIVE RELIEF]. An aggrieved person or the department may apply to the Superior Court for an order enjoining any act which is or may be a violation of this chapter or a regulation or order issued under it. The order shall be granted without bond.

2. On P. 4, line 11, strike all of section 34.06.044 and insert:

Sec. 34.06.044. [ACTION FOR DAMAGES.] For any violation of this chapter or a regulation or order issued under it, an aggrieved person may bring an action for damages within one year from the date of the violation or from the effective date of a declaration of a housing emergency, whichever is greater. In such an action, the prevailing party may recover attorney fees and costs and damages, as determined by the court.

3. On P. 5, line 20, strike section 34.06.045 and insert:

Sec. 34.06.045. [CERTIFICATE OF EVICTION.] During a housing emergency the department shall adopt regulations which allow evictions upon a finding that the reasons for the eviction are fair and consistent with the purposes of this chapter.

LAW OFFICES OF
ALASKA LEGAL SERVICES CORPORATION
315 FIFTH STREET, SUITE 8
JUNEAU, ALASKA 99801
TELEPHONE 586-6425

MEMORANDUM

TO: Representative Terry Gardiner

FROM: Donald E. Clocksin

RE: HCSSB 290 - Rent Control

DATE: April 29, 1975

- -

The following are proposed amendments to the rent control bill to satisfy some of the concerns of the governor in his April 29 letter to you, and to eliminate unnecessary confusion and inconsistencies between the governor's plan and the bill.

1. On p. 2, line 8, after "rents" insert "or rent increases"

   Explanation: This clarifies that the program implemented by the governor could adopt either of the two alternative systems of rent control - across-the-board rent maximums or individually authorized rent increases. The governor's plan adopts the second alternative, but the situation may require more flexibility in the future.

2. On p. 2, line 27, after "rent" insert "or rent increases"

   On p. 2, line 28, after "general" strike "by regulation"

   Explanation: Same as above. In addition, the deleted language would not allow the attorney-general to forbid a rent increase in an order, as opposed to an across-the-board regulation.

3. On p. 3, line 2, after "permit" insert "rent" and after "increases" delete "in the maximum rent established"

   Explanation: Same as #1 above.

4. On p. 3, line 3, after "allow for" delete the remainder of the sentence and insert "certain justifiable cost increases in accordance with regulations adopted by the attorney general."

   Explanation: The proposed regulations allow the pass-along of costs and have identified other justifiable costs not included in the bill. The change would allow the regulations to specify what costs could be passed along.

5. On p. 3, line 26, strike "a tenant" and insert "an aggrieved person"

   Explanation: This achieves balance by recognizing that either party can be injured.

6. On p. 4, line 1, strike "landlord" and insert "responsible person"

   Explanation: same

7. On p. 4, line 11
   On p. 4, line 14
   On p. 4, line 15
   On p. 4, line 20, after "landlord" insert "or tenant"

   Explanation: Either landlord or tenant could hypothetically violate this chapter.

8. On p. 4, line 13
   On p. 4, line 21
   On p. 4, line 26
   On p. 4, line 29, strike "tenant" and insert "person"

   Explanation: same

9. On p. 5, line 4, strike "landlord" and insert "person"

   Explanation: same

DEC:mjb

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF COMMERCE

OFFICE OF THE COMMISSIONER / POUCH D — JUNEAU 99801

May 7, 1975

The Honorable Terry Gardiner
Alaska State House of Representatives
Pouch "V"
Juneau, Alaska 99811

Dear Representative Gardiner:

The attached amendments to HCSSB 290 are offered for your consideration. They reflect the feeling and program outlined by the Governor to local governments affected by the declaration of the housing emergency.

Essentially, the amendments intend to accomplish the following:

optional

1) The elimination of a statutory provision requiring the establishment of maximum rents prior to implementation of any rent regulation plan. (Reason: The Emergency Rent Review program calls for a one-on-one approach, not broad maximum rent ceilings.)

yes

2) The transfer of the rent regulation program to the Department of Commerce. (Reason: The Department of Commerce has geared up for this emergency. Transfer to another agency at this time will incur delay in solving emergency problems.)

3) The deletion of the sections dealing with Injunctive Relief, Action for Damages and Certificate of Eviction. (Reason: They are either covered in existant regulations or not consistent with the primary target of the regulations. "Teeth" are provided in the ~~regulations~~ Act through the retention of the criminal penalties.)

I would be more than happy to meet with the members of the Free Conference Committee and d scuss these amendments - or any of the information attached - at any time.

Hopefully, the committee will also discuss methods of financing a rent regulation program. Should the committee decide to transfer the program to the Department of Commerce, suggested appropriation bills, with supportive data, are attached.

Thank you for your consideration.

Sincerely yours,

Lah Motley

Langhorne A. Motley
Commissioner

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF COMMERCE

OFFICE OF THE COMMISSIONER / POUCH D — JUNEAU 99801

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Thank you for your consideration.

Sincerely yours,

Langhorne A. Motley
Commissioner

CHAPTER 90. EMERGENCY RENT REVIEW.

Section
10 Application of chapter
20 Procedure for Increase in Rent
30 Complaints by Tenants
40 Notice of Filing a Complaint
50 Retroactivity
60 Emergency Rent Review Board
70 Operation of the Board
80 Hearings
90 Objections to Adverse Board Recommendations
100 Commissioner of Commerce
110 Standard for Review of Proposed Increase
120 Evictions and Vacations
130 Retaliatory Conduct Prohibited
140 No Waiver of Rights
150 Definitions

3 AAC 90.010. APPLICATION OF CHAPTER. This chapter applies to all residential housing accommodations, as defined in sec. 150 of this chapter, if the property is located in an area declared by the governor to be in a state of housing emergency, pursuant to AS 34.06.020. Except as provided in sec. 120 of this chapter, nothing in this chapter affects application of the Uniform Residential Landlord and Tenant Act (AS 34.03). The following are exempt from the provisions of this chapter:

(1) the first rent assessed and collected upon the initial occupancy of a residential housing accommodation;

(2) rent charged for transient occupancy in hotels, motels, and motor inns, as defined in sec. 150 of this chapter;

(3) rent in federal or state-owned residential housing accommodations where the amount of rent charged is regulated by a public authority. (Eff. / / , Register)

Authority: AS 34.06.020
AS 34.06.030

3 AAC 90.020. PROCEDURE FOR INCREASE IN RENT. Before imposing any rental increase for a unit, a landlord shall deliver to a current tenant notice in writing of the proposed increase at least 30 days before the effective date of the increase. A landlord shall deliver such a notice in writing to a prospective tenant before the landlord-tenant relationship is created. The notice shall state:

(1) the amount of the proposed increase and its effective date;

(2) the specific reasons for the increase; and

(3) the tenant's right to present the matter to the board within ten days. (Eff. / / , Register)

Authority: AS 34.06.030

3 AAC 90.030. COMPLAINTS BY TENANTS. (a) Upon receipt of the notice required in sec. 20 of this chapter, a tenant, or a person who has reached an agreement with his or her prospective landlord, who believes that the proposed rent increase for the r ntal unit occupied or about to be occupied is unjustified may file a complaint with the Emergency Rent Review Board for his or her area. A complaint must be filed within 10 days after the receipt of a notice of intent to increase the rent; however, complaints as to rent increases which become effective after December 31, 1974 and before the effective date of this chapter must be filed within 30 days after the effective date of this chapter.

(b) Complaints may be on forms provided by the board, but any written statement which clearly delineates the complaint of the tenant shall be accepted as a properly filed complaint.

(c) A person who is unable to prepare a written complaint may make an oral statement to the board which clearly delineates his or her complaint, and this complaint shall be accepted by the board. The board shall prepare a memorandum of an oral complaint which shall be signed by the complaining party. (Eff. / / , Register)

Authority: AS 34.06.030

3 AAC 90.040. NOTICE OF FILING A COMPLAINT. Within five days after a tenant has filed a complaint with the board under sec. 30 of this chapter, the board shall notify the landlord by sending to the landlord, or the landlord's agent who collects rent on the property, a copy of the complaint. Upon receipt of the complaint, the landlord may not implement the proposed rent increase until he is issued a rent order approving the increase by the commissioner of commerce or his designee, as set out in this chapter. (Eff. / / , Register)

Authority: AS 34.06.030

3 AAC 90.050. RETROACTIVITY. When applicable, an approved increase is retroactive to the effective date specified in the notice of increase. A tenant who, after the effective date of this chapter, mistakenly pays a rental increase which is later denied in whole or in part, is entitled to a refund of the denied amount of that increase which he paid. (Eff. / / , Register)

Authority: AS 34.06.030

3 AAC 90.060. EMERGENCY RENT REVIEW BOARD. (a) Appointments. A three-member Emergency Rent Review Board is created in each area in which a housing emergency is declared by the governor to exist. Within 20 days after the housing emergency is declared or after this chapter takes effect, whichever occurs last, members will be appointed by the governor in the following manner, assuring insofar as possible an equal representation of the interests of landlords and tenants:

(1) one member will be appointed from a list of three names submitted by the borough assembly;

(2) one member will be appointed from a list of three names submitted by the city council;

(3) one member will be appointed at-large by the governor.

(b) Failure to nominate. If the governing body of a municipality fails to provide the governor with its list of candidates within 10 days after the housing emergency is declared or after this chapter takes effect, whichever occurs last, the governor will appoint another at-large member.

(c) Single government areas. If only a single municipal government exists in the emergency area, two members of the board will be appointed by the governor from a list of five names submitted by that municipal government within 10 days after the housing emergency is declared or after this chapter takes effect, whichever occurs last.

(d) Vacancies. A board member who misses three consecutive meetings is considered to have resigned from his or her board. If a vacancy occurs, the original recommending authority shall, within 10 days, submit a list of three names to the governor for appointment. If the vacancy is in the position of the at-large member, the governor will appoint a person to fill the vacancy within 10 days. (Eff. / / , Register)

Authority: AS 34.06.020
AS 34.06.030

3 AAC 90.070. OPERATION OF THE BOARD. (a) Compensation and residence. All members serve without pay at the pleasure of the governor and must reside within the area declared to be under a housing emergency.

(b) Quorum. Two members of each board constitute a quorum for the transaction of business.

(c) Meetings. Each board shall meet at least once every 15 days. The first meeting of the board shall be held within 10 days after the official appointment date of the second member appointed.

(d) Duties. Each board shall review all complaints submitted to it within 15 days of submission. It shall recommend to the commissioner whether or not a proposed rent increase should be allowed to go into effect. If the board determines that a rent increase is not justified, it shall recommend to the commissioner that the increase be denied. If the board determines that the increase is justified, in whole or in part, it shall recommend to the commissioner the increase that should be allowed. The board shall notify the parties of its recommendation and notify them of their right to object to the commissioner as set out in sec. 90 of this chapter.

(e) Jurisdiction. Each board is authorized to review complaints involving any rent increases for residential housing accommodations which have or are proposed to become effective after December 31, 1974, in its area which has been declared by the governor to be in a state of housing emergency.

(f) Publication of Board Activities. Each board shall publish once a month during the period of housing emergency, in a newspaper of general circulation within its area, the names of its members, the dates of its meetings, the precise address to which all correspondence, complaints and reports should be directed, and a statement of the availability of a monthly journal. Each board shall publish a monthly journal which lists the increases requested and the commissioner's final disposition of complaints disposed of during the previous month. (Eff. / / , Register)

Authority: AS 34.06.030

3 AAC 90.080. HEARINGS. (a) Hearing Procedure. Each board shall hold a hearing if it is requested by either party. Parties may be represented by counsel or by any other individual or agency if they desire representation. Any person designated by the commissioner may appear before the board. The board need not follow strict rules of evidence at a hearing but may consider any evidence it considers relevant in the interest of justice. Testimony shall be taken on oath or affirmation. The time of the hearings shall be set with regard to the convenience of the board and the parties.

(b) Record of hearing. Each board shall make a tape recording of each hearing. (Eff. / / , Register)

Authority: AS 34.06.030
AS 34.06.040

3 AAC 90.090. OBJECTIONS TO ADVERSE BOARD RECOMMENDATIONS. (a) Procedure for objecting to a board recommendation. A party aggrieved by an adverse recommendation of the board may object to the commissioner within 10 days from the notification of an adverse board recommendation. The objections shall be in writing and shall state in a brief and informal manner the

reasons for the objection. Upon receipt of the objection, the commissioner shall review the record and issue a final determination concerning the proposed rental increase.

(b) Record. The record for purpose of reviewing objections or for purposes of judicial review consists of all written statements, evidence, and reports submitted to the board, and the recording of the hearing. (Eff. / / , Register)

Authority: AS 34.06.030
AS 34.06.040

3 AAC 90.100. ORDERS OF COMMISSIONER OF COMMERCE. (a) Review of Objections to Board Recommendations. All recommendations of Emergency Rent Review Boards shall be forwarded to the commissioner for final action. The commissioner or his authorized designee will review on the record each recommendation of the board and issue a rent order approving or denying, in whole or in part, the proposed rental increase. A copy of the commissioner's order will be sent by certified mail to the landlord and the tenant. A rent order is considered a final order for purposes of judicial review and will include a statement of the parties' right to have the order reviewed in court, if a notice of appeal is filed in the superior court within 30 days after the issuance of the rent order.

(b) Effect of orders in actions for eviction. An order by the commissioner prohibiting an increase in rent is a defense in an action for eviction of a tenant for failure to pay that rent increase. An order by the commissioner allowing an increase in rent may be pleaded by the landlord in support of an action for eviction for failure to pay that rent increase.

(c) Prospective effect of orders affecting rents raised between December 31, 1974 and the effective date of this chapter. Any order of the commissioner requiring roll-back of a rent increase which became effective after December 31, 1974 and before the effective date of this chapter has the effect of invalidating the increase, but the tenant does not have an action to recover the amount of rent paid under the increase before the order of the commissioner is issued. (Eff. / / , Register)

Authority: AS 34.06.030
AS 34.06.040

3 AAC 90.110. STANDARD FOR REVIEW OF PROPOSED INCREASES IN RENT. (a) It is the intent of this chapter to allow landlords in housing emergency areas to implement only those rent increases sufficient to enable them to recover increased costs for items reasonably and actually related to the operation of their properties and to permit them a reasonable profit on their investment.

(b) A rent increase will be approved by the commissioner if it does not exceed increased costs for the property or would not result in a profit on investment which is higher than that required to attract capital to the rental market in the housing emergency area. In determining what profit on investment would attract capital to the rental market in a particular emergency area, a board may take evidence on that subject before hearing particular cases, or it may consider evidence of that kind in particular cases. The burden of proof to establish, by a preponderance of the evidence, the profit on investment which would attract capital to that rental market is on the party alleging the appropriateness of a particular level of profit. If the evidence is inadequate, the allowable profit on investment is 15 per cent.

(c) In this section, "increased costs" means:

(1) increases in taxes assessed;

(2) municipal property assessments imposed since the last rent increase;

(3) increase in utility costs;

(4) increases in maintenance and repair costs;

(5) increases in profit for a sole proprietorship or a partnership other than a limited partnership which are comparable to increases in the cost of living for the area;

(6) the cost of capital improvements made after December 31, 1974 on residential housing accommodations existing on January 1, 1975, amortized over the useful life of the structure;

(7) the cost of fixtures and furnishings provided after December 31, 1974 for residential housing accommodations existing on January 1, 1975, amortized over the useful life of the item;

(8) increases in premiums for insurance on the property involved;

(9) increases in credit losses occurring since the last rent increases;

(10) increases in personnel or other management costs.

(d) In considering the items set out in (c)(1)--(10) of this section, allowable increases include but are not limited to the tenant's pro rata share of that cost item. In this subsection, "pro rata share" means the portion of the increase paid or assessed which bears the same ratio to the total increase as the rent set for the complaining tenant's unit bears to the total rent set for all units covered by that cost increase.

(e) A recommendation of the board either to approve or disapprove a requested increase shall set out in writing those findings of the board which, in the opinion of the board, were relevant to a determination of the validity of the increase. (Eff. / / , Register)

Authority: AS 34.06.030

3 AAC 90.120. EVICTIONS AND VACATIONS. (a) Notice of eviction. A landlord shall deliver a written notice of eviction to a tenant at least 30 days before the effective date of the eviction. In an area declared by the governor to be in a state of housing emergency, the notice of eviction shall clearly state reasons for the eviction.

(b) Notice of intent to vacate. A tenant shall deliver to a landlord a notification in writing that the tenant intends to vacate the premises. The notice shall be delivered to the landlord at least 30 days before the tenant vacates the premises. (Eff. / / , Register)

Authority: AS 34.06.030

3 AAC 90.130. RETALIATORY CONDUCT PROHIBITED. A landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession after the tenant has exercised his rights under this chapter or AS 34.06. (Eff. / / , Register)

Authority: AS 34.06.030

3 AAC 90.140. NO WAIVER OF RIGHTS. No landlord or tenant may waive his or her rights under this chapter or AS 34.06. (Eff. / / , Register)

Authority: AS 34.06.030

3 AAC 90.150. DEFINITIONS. Unless the context indicates otherwise, in this chapter,

(1) "board" means an Emergency Rent Review Board established under sec. 60 of this chapter;

(2) "commissioner" means the commissioner of commerce or his designee;

(3) "transient occupancy in hotels, motels, and motor inns" means the customary short-term presence of guests in those facilities and does not mean arrangements which substantially compete with other residential housing accommodations;

(4) "residential housing accommodation" means a single or multiple unit private dwelling, including mobile homes, or a

structure on the land that may be leased for any term of one week or longer, or other condition of tenancy, that is used for dwelling purposes. (Eff. / / , Register)

Authority: AS 34.06.030
AS 34.06.040
AS 34.06.050

House Judiciary Committee
April 15, 1975

The meeting was called to order at 1:20 p.m. by Chairman Gardiner. All members were present except Mr. Cotton.

SB 290 Rent Control

Bill Miles of the Department of Commerce, testified that approximately 200 persons attended the April 8 hearing in Fairbanks on rent control. He felt that the testimony at the hearing was about evenly divided. Two written statements were submitted which Mr. Miles will forward to the committee. He felt that the majority opinion was that if anything was to be done, now was the time to do it.

Regarding SB 290, the Department of Commerce requests that the committee delay action. The Department hopes to work out a less broad solution to the present situation than presented in the bill. He felt that the bill would slow down planned emergency action because the stipulations of the bill require normal judicial procedures. He felt that the governor would make a decision within two weeks as to whether an emergency situation exists. Mr. Specking suggested that the committee check with the governor on Friday, to allow him time to get the results of the Valdez hearing. Mr. Bradley and Mr. Brown suggested that the committee prepare the bill and get it to Rules, just in case it was determined needed.

Mr. Miles stated that the broad base approach will probably not work. He suggested a case by case approach.

Mr. Parr raised the question of whether the bill required blanket controls or could the controls be selective?

Don Clocksin testified in favor of the bill. He stated that the two objections raised at the Fairbanks hearing were that rent control would discourage new construction and prevent landlords from passing on reasonable increased costs. He stated that the bill was concerned with rent control, not a freeze. He stated that a freeze definitely would not work. He testified that the bill provided, in effect, the regulations with which to work. This is the first step in a series of requirements (regulations, hearings on regs, emergency proclaimed) before the Governor may declare an emergency. He said that the bill basically provides a stronger enforcement mechanism. He felt that the long term answer to the present problem was construction, but that rent control as a short term solution was needed immediately.

Mr. Parr moved on page 2, line 5, after "taxes" add "actual maintenance costs." The amendment passed.

Mr. Bradley moved on page 3, line 18, change $1,000 to $2,500. Mr. Specking objected. The amendment passed.

page 5, sections (1) and (2) were determined to be confusing and the committee requested that . . language be drafted. line 9 - delete "or the amount directed to be refunded" add "or not less than" "three times the amount the department directed by refunded" line 12 should be part of (d)

page 4, lines 10 - 19 Does the department have a vested interest in the suit. If the department sues, this bars the tenant from suit.

The committee requested that the new language be drawn up and that after further consideration, SB 290 would be attached to HB 321.

House Judiciary Committee
April 17, 1975

The meeting was called to order at 7:10 p.m. by Chairman Gardiner. All members were present except Mr. Specking.

SB 290 Rent Control

The committee met in work session and adopted the following amendments:

page 3, line 6 after "costs" insert ,

page 4, lines 21 and 22 delete "who receives rent from a tenant"
lines 23, 24, 25, 26, 27, 28: Delete all beginning with "that prescribes . . . to . . . account of the overcharge" and insert: an aggrieved tenant within one year from the date of the occurrence of the violation, may bring an action against the landlord for his damages, as provided in this section."

page 5, lines 2 and 3 delete "The amount of the overcharge" and insert "the damages"

page 5, line 6 delete "who receives rent from a tenant"
page 5, line 7 after "department" insert , and delete "prescribing maximum rent with respect to the residential housing accommodations for which rent is received from the tenant,"
page 5, line 9 insert "aggrieved" before "tenant"
page 5, line 10 change 30 days to 90 days
page 5, line 15 insert ", unless the action brought by the department has been dismissed without prejudice."

page 5, line 16 change "and" to "or"
page 5, line 17 delete "the" before "recovery and delete "either by the tenant or the department under this section of damages"
page 5, line 18 insert after "action "under this section"
page 5, line 19 delete "overcharge" before "the bringing of the action in which the judgment was rendered." and insert "violation."

page 5, line 15 insert "When judgment is rendered in favor of the department, there shall be paid to the tenant from the sum recovered one-third of the recovery, exclusive of costs and other disbursements." Delete this language from lines 20 - 24.

page 5, line 24 delete "who receives rent from a tenant"
line 25 delete "containing a directive" and insert "directing"

page 6, line 5 delete "or the amount directed to be refunded"
page 6, line 7 insert "When judgement is rendered in favor of the department in the action, there shall be paid to the tenant from the sum recovered one-third of the recovery, exclusive of the costs and other disbursements." and delete this language from lines 19-23.

page 6, line 7 delete "paying the rent also may" and insert "may also"
line 8 after "section" insert "and recover the same damages"

after "violation" in line 12, page 6 insert "unless the action brought by the Department has been dismissed without prejudice."

page 6, line 13 delete "either by the department or the tenant, as the case may be,"
delete lines 14 and 15 "under this section for damages"
delete line 16 and 17 "before the bringing of the action in which the judgment was rendered."

page 6, line 16 - 19 Delete the language"When an action is brought by the tenant, the damages which shall be awarded to the tenant shall be the same as if the action were brought by the department."

Insert page 6, line 12 "When an action is brought by the tenant, the landlord is liable as in subsection (d)."

page 6, line 23 insert "The department, upon application by the landlord, shall issue a certificate of eviction if it finds that the reasons given by the landlord are reasonable and consistent with the purpose of this chapter." Delete "when" and insert "After"
page 6, line 25 - 29 delete "and a tenant voluntarily . . . under law"

page 7, lines 1 and 2 delete to "occupied by it, or" and insert "evicts the tenant, and"

page 7, line 2 delete "it" and insert "the residential housing accommodation"

page 7, line 7 insert after "property" "and any increased rent"

page 7, lines 10 and 11: delete "with intent to cause the tenant to vacate" and insert "intentionally"

Mr. Brown moved the addition of new language to form sections (f) and (g) to state that the official map shall be published 90 days before becoming effective and that owners would be notified by registered mail. No municipality may exercise powers in this bill unless they require by ordinance, building permits. The amendment passed.

Mr. Parr moved that the 18 months be changed to 12 in sections (b) and (e). The amendment passed.

Mr. Brown moved that the five year period be changed to seven years, but that reference to a second five year period be deleted.
The amendment passed.

Mr. Brown moved CS HB 140 out of committee.

SB 290 Rent Control

Mr. Turnbull went through the bill with the committee, explaining how their previous amendments had been incorporated. He deleted the definition of overcharge since the term had been changed to damages in the bill. Mr. Brown mentioned the need for a one line committee report defining adjustments.

The committee signed CS SB 290 out.

Rine 26 p 2

No person may demand or receive rent for a residential housing accommodation without justification for an increase as set out in regulation pursuant to this chapter.

[redacted] may

(a) proclaimed

During a housing emergency, regardless of any existing contract, lease or other agreement, rental prices on residential housing accommodations shall ~~[illegible] exceed the price level at~~ not be increased, except as provided in (c) of this section.

JAY S[illegible]MMOND
[illegible] GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 29, 1975

The Honorable Terry Gardiner
Alaska State House of Representatives
Pouch "V" State Capitol Building
Juneau, Alaska 99811

Dear Representative Gardiner:

As you probably know, my administration has endeavored to develop a workable solution to the residential-rent problem in various areas of the State. This month alone, we have studied a dozen different "rent-control" plans, held hearings in Fairbanks and Valdez, issued a statement of findings, declared that an emergency housing crisis exists in the two areas and created what appears to be a completely workable solution to the problem including the drafting of a set of regulations.

After advising the Valdez City Council and the Fairbanks Borough Assembly on the details of the plan, each body unanimously approved the plan.

In essence, the Emergency Rent Review Program is composed of four points:

1. A local advisory board of adjustment is created in each area wherein an emergency exists;
2. Landlords are required to give 30-day notice of rent increases. Upon complaint, the board of adjustment advises the Commissioner of Commerce on the validity of the rent increase within 15 days of submission;
3. An appeal to the Commissioner of Commerce or to the courts is provided;
4. Reasonable expense and profit increases are allowed.

Members of my administration have, in the past, testified at many committee hearings on four rent-control bills. Regularly, they have supported my theory of opposition to a broad-brushed approach: such an approach is cumbersome, costly and inappropriate for the problems facing Alaska today.

Hence, I feel obliged to strongly urge you to introduce the amendments below deleting reference to "maximum rent established in H.C.S.S.B. 290:

AMENDMENT 1. Page 2, lines 7-8: delete "including but not limited to provision for the establishment of maximum rents"

AMENDMENT 2. Page 2, lines 27-28: replace "in excess of the maximum rent established for the accomodation by the Attorney General by regulation," with "without justification for an increase as set out in regulations pursuant to this chapter,"

AMENDMENT 3. Page 3, lines 2-3: Replace "increases in the maximum rent established under this subsection to allow for increases in" with "rent increases under this subsection to allow for increases in reasonable rate of return,"

Furthermore, in that the Department of Commerce has had substantial input into this program, I would prefer that the statutory authority for implementation of any such program remain with that department.

And finally, I feel that the following sections of H.C.S.S.B. 290 will be covered in the regulations now being prepared by the Attorney General in conjunction with the Department of Commerce and, therefore, should be deleted from the bill:

1. Sec. 34.06.042. Injunctive Relief;
2. Sec. 34.06.044. Action for Damages;
3. Sec. 34.06.045. Certificate of Eviction.

It is unfortunate that the timing of completion, presentation and subsequent approval of the rent-review program by the most affected areas (any many members of the legislature) coincided with the diligent work you have performed and as such we did not have the opportunity to formally present the program to your committee. Nevertheless, I feel that an unamended H.C.S.S.B. 290 could detract from the program as understood and approved by local communities, that it is (unamended) a broad control program vice and individual case-by-case approach that we found acceptable and desirable through public hearings.

Thank you for your consideration in this matter.

Sincerely,

Jay S. Hammond
Governor

REPLY MEMO

State of Alaska

MESSAGE	REPLY
TO Rep. Terry Gardnier DATE 4/28	TO DATE
Just heard that S.B. 290 is on today's calendar. Is it possible to hold it for a day for an amendment to the section 34.06.042(a) relating to the Commissioner establishing maximum rents by regulation? Would cause excessive delay, I think.	
SIGNED Bill Miles	SIGNED

1. KEEP YELLOW COPY. 2. SEND WHITE AND PINK COPIES WITH CARBON INTACT. 1. WRITE REPLY. 2. DETACH STUB, KEEP PINK COPY. RETURN WHITE COPY TO SENDER

FM 02-06

S. Bill 290

April 8 - Fairbanks 200 people

John Carlson - Borough Mayor
C.W. Bare - chamber

Emergency - Do it now

Delay action on 290 - slows down emergency action

(1.) Rent Control should exclude new housing
(2.) Allows passing on of costs

1. Gen regulations —
2. hearings
3. then proclamation

Original sponsor: Miller, Huber, Ray and Butrovich

Offered: 4/26/75
Referred: Rules

IN THE SENATE BY THE JUDICIARY COMMITTEE

HOUSE CS FOR SENATE BILL NO. 290

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to rent regulation and control in emergency situations; and providing for an effective date."

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

* Section 1. AS 34.06.020 is amended to read:

Sec. 34.06.020. DECLARATION OF HOUSING EMERGENCY. (a) In accordance with regulations promulgated under sec. 30 of this chapter, when the governor finds that emergency conditions exist with regard to residential rental housing, after public hearings in the area or areas affected, he may by written proclamation declare that a state of housing emergency exists. A housing emergency exists when the rate of vacancies in residential rental housing is so low that there is a substantial impairment of free choice in residential rental housing [OR WHEN THE AVERAGE VACANCIES IN RESIDENTIAL HOUSING RENTALS FALLS BELOW THREE PER CENT IN THE AREA, OR AREAS, AFFECTED AND REMAINS BELOW THREE PER CENT FOR A PERIOD OF AT LEAST 90 DAYS]. The proclamation shall state the nature of the housing emergency, the area or areas affected, and shall be published generally through the state in the manner provided by law. When the state of emergency no longer exists, the governor shall issue a written proclamation stating this fact and publish it generally throughout the state in the manner provided by law.

(b) <u>After the governor issues</u> [ON ISSUING] a proclamation of a housing emergency, the <u>attorney general</u> [GOVERNOR] may invoke the provisions of this chapter to regulate and control residential rents and

evictions in some parts or all of the state.

* Sec. 2. AS 34.06.030 is amended to read:

Sec. 34.06.030. SCOPE OF EMERGENCY HOUSING REGULATIONS. Subject to the Administrative Procedure Act (AS 44.62), the attorney general [COMMISSIONER OF COMMERCE], who is charged with the administration of this chapter, shall promulgate regulations concerning the control of residential rents, ~~including but not limited to~~ which may include a provision for the establishment and adjustment of maximum rents, the classification of residential housing accommodations, [AND] the regulation of evictions and the standards for issuance of certificates of eviction.

allow option

May not need if eviction selection deleted

* Sec. 3. AS 34.06 is amended by adding a new section to read:

Sec. 34.06.035. INVESTIGATIONS. (a) The attorney general may make studies and conduct investigations and hearings when necessary for the enforcement of the provisions of this chapter.

(b) The attorney general may administer oaths and affirmations, and, when necessary, may issue subpoenas and order a person to appear and testify, or appear and produce documents, at any designated place. If a person refuses to obey a subpoena served upon him by the attorney general, the superior court of the judicial district in which that person resides or transacts business may issue an order requiring him to appear and testify, produce documents, or both. Failure to obey an order of the superior court is punishable by the court as contempt.

* Sec. 4. AS 34.06 is amended by adding new sections to read:

Sec. 34.06.041. PROHIBITIONS. (a) During a proclaimed housing emergency, regardless of any existing contract, lease or other agreement, no person may demand or receive rent for a residential housing accommodation in excess of the maximum rent established for the accommodation by the attorney general by regulation, or to perform or omit to perform an act which violates this chapter or a regulation or order

issued under this chapter. However, the attorney general may by regulation permit increases in the maximum rent established under this subsection to allow for increases in local property taxes, actual maintenance costs, or charges for utility services including but not limited to heat, water, electricity, natural gas, garbage or other solid waste disposal services when supplied by the landlord.

delete

(b) During a proclaimed housing emergency, no person may remove or attempt to remove from a residential housing accommodation the tenant or occupant of the accommodation or refuse to renew the lease or agreement for the use of the accommodation because the tenant or occupant has taken or proposes to take action authorized by this chapter or a regulation or order issued under it.

(c) During a proclaimed housing emergency no landlord or person acting on his behalf, with intent to cause a tenant to vacate, may engage in a course of conduct including but not limited to interruption or discontinuance of essential services which interferes with or is intended to interfere with the quiet enjoyment of the tenant in his use or occupancy of a residential housing accommodation.

(d) No officer, employee, agent, or consultant of the department may disclose, other than in the course of his official duty under this chapter, information obtained under this chapter or use any of that information for his personal benefit.

Sec. 34.06.042. INJUNCTIVE RELIEF. When a person has engaged or is about to engage in acts or practices which constitute or will constitute a violation of this chapter or a regulation or order issued under it, a tenant or the department may apply to the superior court in the judicial district where the alleged violation has occurred or is about to occur for an order enjoining these acts or practices, or for an order enforcing compliance with this chapter or the regulations or

orders issued under it, or for an order directing the landlord to correct the violation. Upon a showing that a person has engaged in or is about to engage in a violation a permanent injunction, temporary restraining order, or other appropriate order shall be granted without bond.

Sec. 34.06.043. CRIMINAL PENALTIES. A person who wilfully violates a provision of this chapter or a regulation or order issued under it is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $2,500, or by imprisonment for not more than one year, or by both. Willful violation of this chapter or reg will include falsification of information given for eviction

Sec. 34.06.044. ACTION FOR DAMAGES. (a) If a landlord violates a provision of this chapter or a regulation or order issued under it, an aggrieved tenant, within one year from the date of the violation, may bring an action against the landlord for damages, except as provided in this section. In an action for damages the landlord is liable for reasonable attorney fees and costs as determined by the court, plus whichever of the following sums is the greater: (1) an amount not more than three times the damages upon which the action is based, as the court in its discretion may determine; or (2) $100.

(b) If a landlord violates a provision of this chapter or a regulation or order issued under it and the aggrieved tenant fails to institute an action under (a) of this section within 90 days from the date of the violation, the department may bring an action under this section within one year from the date of the violation, and for damages provided in (a) of this section. If the department brings the action, the tenant affected is barred from bringing an action for the same violation, unless the action brought by the department has been dismissed without prejudice. If judgment is rendered in favor of the department, the department shall pay the affected tenant one-third of the recovery,

exclusive of costs and attorney fees.

(c) A judgment in an action for damages under (a) or (b) of this section is a bar to recovery in any other action under this section against the same landlord for the same violation.

(d) A tenant who has vacated his residential housing accommodation because the landlord or person acting on his behalf intentionally engaged in a course of conduct, including but not limited to interruption or discontinuance of essential services, which interfered with the quiet enjoyment of the tenant in his use or occupancy of the residential housing accommodation, may within 90 days after vacating apply for a determination from the department that the housing accommodation was vacated as a result of that conduct, and may within one year after the determination bring an action against the landlord by reason of his misconduct under this subsection. In this action the landlord is liable to the tenant in an amount not more than three times the damages sustained on account of the landlord's misconduct plus reasonable attorney fees and costs as determined by the court. In addition to any other damages the cost of removal and storage of property and any increase in rent is a lawful measure of damages.

+ Sec. 34.06.045. CERTIFICATE OF EVICTION. During a proclaimed housing emergency the department, upon application by the landlord, shall issue a certificate of eviction if it finds that the reasons given by the landlord are reasonable and consistent with the purposes of this chapter. If after the department has granted a certificate of eviction allowing the landlord to pursue his legal remedies to acquire possession, the landlord evicts the tenant and permits use of the residential housing accommodation in any manner other than contemplated in the eviction certificate, unless good cause is shown, the landlord is liable to the tenant in an amount not more than three times the damages sus-

tained on account of the removal plus reasonable attorney fees and costs as determined by the court. In addition to any other damage, the cost of removal and storage of property and any increase in rent is a lawful measure of damage.

* Sec. 5. AS 34.06.050(1) is repealed.

* Sec. 6. AS ~~34.06.050(2)~~ is ~~amended~~ to read:

(2) "department" means the ~~Department of Law~~ [COMMERCE].

* Sec. 7. AS 34.06.050 is amended by adding a new paragraph to read:

(4) "essential services" means running water, hot water, heat, sanitary facilities, or the supply of other like services; and electricity and garbage or other solid waste disposal services when supplied by the landlord.

* Sec. 8. Section 3, ch. 128, SLA 1974, is amended to read:

Sec. 3. This Act expires July 1, 1977 [1975].

* Sec. 9. This Act takes effect immediately in accordance with AS 01.10.-070(c).

LAW OFFICES OF
ALASKA LEGAL SERVICES CORPORATION
315 FIFTH STREET, SUITE 8
JUNEAU, ALASKA 99801
TELEPHONE 586-XXX 6425

MEMORANDUM

TO: Representative Terry Gardiner

FROM: Donald E. Clocksin

RE: HCSSB 290 - Rent Control

DATE: April 29, 1975

- -

The following are proposed amendments to the rent control bill to satisfy some of the concerns of the governor in his April 29 letter to you, and to eliminate unnecessary confusion and inconsistencies between the governor's plan and the bill.

1. On p. 2, line 8, after "rents" insert "or rent increases"

   Explanation: This clarifies that the program implemented by the governor could adopt either of the two alternative systems of rent control - across-the-board rent maximums or individually authorized rent increases. The governor's plan adopts the second alternative, but the situation may require more flexibility in the future.

2. On p. 2, line 27, after "rent" insert "or rent increases"

   On p. 2, line 28, after "general" strike "by regulation"

   Explanation: Same as above. In addition, the deleted language would not allow the attorney-general to forbid a rent increase in an order, as opposed to an across-the-board regulation.

3. On p. 3, line 2, after "permit" insert "rent" and after "increases" delete "in the maximum rent established"

   Explanation: Same as #1 above.

4. On p. 3, line 3, after "allow for" delete the remainder of the sentence and insert "certain justifiable cost increases in accordance with regulations adopted by the attorney general."

   Explanation: The proposed regulations allow the pass-along of costs and have identified other justifiable costs not included in the bill. The change would allow the regulations to specify what costs could be passed along.

5. On p. 3, line 26, strike "a tenant" and insert "an aggrieved person"

   Explanation: This achieves balance by recognizing that either party can be injured.

6. On p. 4, line 1, strike "landlord" and insert "responsible person"

   Explanation: same

7. On p. 4, line 11
   On p. 4, line 14
   On p. 4, line 15
   On p. 4, line 20, after "landlord" insert "or tenant"

   Explanation: Either landlord or tenant could hypothetically violate this chapter.

8. On p. 4, line 13
   On p. 4, line 21
   On p. 4, line 26
   On p. 4, line 29, strike "tenant" and insert "person"

   Explanation: same

9. On p. 5, line 4, strike "landlord" and insert "person"

   Explanation: same

DEC:mjb

Again
Mon

thrust of
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Pass — in Commerce

Pass

stat auth option max rents p2 line 6

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Pass

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Clarkson

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02-00[illegible]B

STATE
of ALASKA

MEMORANDUM

TO: Rep. Terry Gardiner, Chairman
House Judiciary Committee

DATE : April 18, 1975

FROM: Bill Miles
Department of Commerce

SUBJECT: Rent Control

Attached is the information on rent control you requested. Although the file is not, by any means, complete, it will give you a fair idea of what's been coming in. I purposely left out much redundant material, inter-department memos and letter carbons because the Xerox machine threatened a walk-out.

Should you wish additional material or information, just give me a call.

EDITORIAL PAGE
Anchorage Daily Times
ROBERT B. ATWOOD
Editor and Publisher
WILLIAM J. TOBIN
Associate Editor
And General Manager
CLINTON T. ANDREWS JR.
Managing Editor

Rent Gouging

SUREST WAY TO CONTROLS

ANCHORAGE IS in no position to sit back and point a finger at Fairbanks when it comes to accusations of rent-gouging as a result of the pipeline boom. There are mounting indications that abuses are occurring here and some formal note needs to be made of the fact before the situation gets completely out of hand.

One example to prove the point:

A friend of ours, apartment shopping last summer, found a two-bedroom unit renting for $290 a month — a reasonable enough figure for a quality place to live. By last month, however, rentals in the same building for the same type unit were up to $325. This month the price jumped to $375.

That's an increase of 29.3 per cent over a nine-month period.

TO BE SURE, the life of a landlord is not all gravy. Financing new homes and new apartment buildings is an expensive proposition. Real estate taxes are on the rise, and charges for such services as sewers and utilities seem to know only one way to go — and that's up.

But there is a limit to reasonable and justified increases to meet real or anticipated tax hikes.

In defense of sudden and apparently outrageous increases in rents, some landlords say they are forced to take such steps in order to protect their investments from the possibility that stringent rent controls might be imposed by the state.

If rent controls come, they argue, they will be unable in the future to meet increased tax assessments and to set aside sufficient funds to cover necessary upkeep and maintenance.

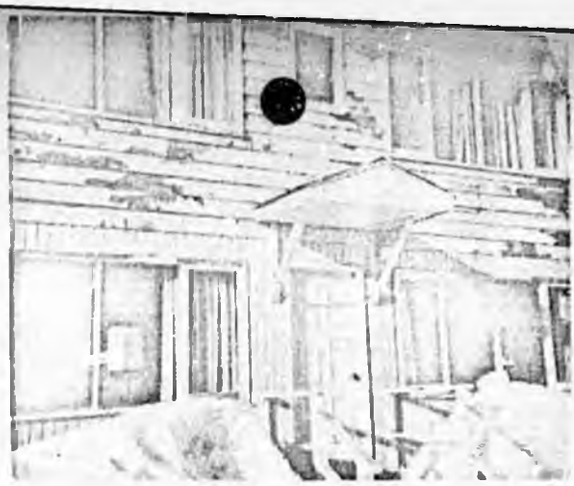
THERE IS some merit to this concern, of course. One of the evils of artificially controlled rents and rent ceilings is that the regulations tend to devalue property and over the years create slum conditions.

On the other hand, outlandish and arbitrary rent increases merely to make a financial killing can hardly be condoned. And the surest way to get incentive-stopping controls is to permit rent gouging on a rampant scale without any pressure or effort to bring about voluntary restraint on those who would act in an unscrupulous manner during boom periods when housing is in short supply.

There is a happy medium that needs to be struck.

If Anchorage is to avoid the bad name now being given to some other communities of the state, and if government imposed rent ceilings are to be avoided, the business community — in its own self-interest — is going to have to take some action.

The Greater Anchorage Chamber of Commerce should look into this matter. Its leadership in avoiding what could become a crisis would be a feather in its cap and a plus-mark for the entire community.



Kathy Reid's Valdez apartment building.

$1,600 a month for apartment

By PAM MILLSAP
Daily News Staff Writer

When teacher Kathy Reid moved into the two-bedroom unfurnished apartment she shares with another teacher in Valdez the rent was $286 a month, plus tax. That was in December.

On Jan. 30 the two women were informed that beginning March 1 the rent would be $520, plus tax. The reason? Rampant inflation which made it impossible to cover current expenses, maintenance, taxes and insurance in income from the four-plex, according to the owner — an Anchorage investment firm.

ON MARCH 30 Kathy and her roommate, Allison Pike, were told the building had been sold. They also received a notice they were being evicted as of May 1. They asked the new owners if they could stay in the apartment until the end of May when school gets out. They were told they could — if they allowed two other tenants to move in with them, and if they paid a new rent of $1,600 a month.

"I was outraged at the price increase and decided to stand up and protest," said Kathy in an interview with the Daily News Friday. "We went to the school board and they appointed one of the members to talk with the new owners to see if they would allow a more reasonable rent until the end of the school term. The owners informed us they would let four teachers live in the apartment during the month of May only — for $940."

The teachers cannot afford the $940, so they plan to move temporarily into a trailer provided by Harborview Hospital. But that won't solve the problem of where they and a lot of other Valdez residents will live next year.

"IF YOU AREN'T into big money, and school teachers and others not employed by the pipeline companies aren't, you can't afford the rents," said Kathy. "The whole town is upset, but nothing is being done to solve the problem."

According to Valdez City Manager Herb Lehfeldt, there is little that can be done, at least on the local level.

"The rental problem here is absolutely atrocious," he said Tuesday. "The people of Valdez are very irate about it. The fact that there isn't any housing available puts the existing housing in extremely high demand, and people all over town are being evicted because they can't pay the high rents."

LEHFELDT ADDED that apartment owners won't have much trouble getting as much as $1,600 a month for a small apartment.



Kathy Reid

"They're not talking about a family moving in but turning the apartments into a barracks or dormitory," he said. "If they put two guys in a room paying $250 or more each they can hit that $1,600 in a hurry."

He said holding more rent control hearings in Valdez as recently proposed by the state won't solve the problem. "They're only talking about rent gouging, not providing the additional housing we need," he said. "And I don't think anything will ever come of rent gouging, it's too touchy a political problem."

In the meantime, he expects as many as 600 trailers and campers carrying transients looking for pipeline work to move into Valdez within the next two months. Accordingly, the city is asking the state for $250,000 in impact funds to build a temporary camper park. And to help alleviate the high cost of housing for local residents, the city has developed a number of trailer sites which are being made available to city employes and teachers at reasonable rents.

NEVERTHELESS, Superintendent of Schools Herman Hutchins is still worried about finding housing for teachers next year. "We had 21 students register yesterday and today and all but one came from pipeline families," he said. "We have 44 teachers now and we're projecting 61 for next year. And not all the new teachers will be able to afford trailers." He said several construction companies had been buying apartment buildings and converting them into places where their men can bunk "for a night or two."

High rent deposit penalty rejected

JUNEAU (AP) — A double-damages clause applied to landlords who overcharge on security deposits or prepaid rent was rejected Wednesday by the State House.

Reversing a Tuesday vote 22 to 14, the House left intact the ability of tenants to recover the actual amount of an overcharge. Deposits and prepaid rent now are limited to the total of two months' rent

KETCHIKAN Democrat Terry Gardiner argued that a double assessment was needed to prevent landlords from deliberately gouging tenants on the grounds that "they have nothing to lose."

Nine legislators, most of them saying a double penalty was too stiff and not clearly defined, switched their votes.

The penalty clause was contained in a bill requiring landlords to make an inventory of damages before a tenant moves in or be prohibited from collecting prepayments. The bill now goes to the Senate.

Earlier, the House rejected 19 to 16 an amendment removing a penalty clause leaving landlords liable for twice the amount of any overcharges.

"You're not helping the tenant," said Rep. Leslie Swanson, a Nenana Democrat who owns apartments himself. "The penalty is going to cause the landlord to raise the rent to protect himself" and to recover possible attorneys' fees.

SPONSORED by Rep. Joe McKinnon, D-Anchorage, and others, the bill was held for additional debate.

The measure removing rent-control administration from the department of commerce also extended the life of the emergency law two years until mid-1977.

And, it deleted a clause de[fining] a housing emergency [as a] 90-day period when the [vacancy] factor in a community falls below 3 per cent. The remaining test would be an administrative decision that "there is a substantial impairment of free choice" in selecting rental housing.

DEMOCRATIC Rep. Steve Cowper said his constituents in Fairbanks would receive better service if the attorney general's office assumed control of the law. The Department of Commerce does not have a full-fledged office there.

Other amendments were needed, he said, because there were no reliable statistics on vacancy rates in most communities except Anchorage. The ceiling also might be indefensible in court, he said.

"Besides," Cowper said, "we cannot wait 90 days to find out" if a 3-per-cent rate exists.

Commerce officials held a hearing late Tuesday in Fairbanks to determine whether the law should be enforced for the first time. Other hearings were planned later in Anchorage and Valdez.

Fairbanks hearing

By JANE PENDER
Our Fairbanks Correspondent

FAIRBANKS — Landlords and tenants squared off Tuesday night in a hearing on rent controls conducted by Commerce Commissioner Tony Motley.

One tenant said his apartment rent had been raised $250 to $750 for a three-bedroom apartment. Another said rent for his three-bedroom unfurnished apartment is being raised to $525 from last June's $375.

Ed Noonan, supervising attorney for Alaska Legal Services, said there has been a "very significant increase" in landlord-tenant cases. He said in some instances people just don't have the money and cited one individual who after rent increases found his rent cost $12 more than his income.

Landlords on the other hand said they felt rent controls would be unfair. Some said the only solution was to build more houses. Others mentioned higher costs of fuel, electric surcharge, increases in general labor, water treatment costs (up 60 per cent), freight costs. The same men claimed garbage disposal was up six per cent and maintenance up 20 per cent and taxes up 50 per cent to 110 per cent.

Others talked about the prospect of a bust to follow the boom and mentioned the insecure economics of Fairbanks over the past few years as a reason the "get it while they could."

Chamber of Commerce general manager Wally Baer said, "It is the opinion of the Greater Fairbanks Chamber of Commerce that the imposition of rent controls is not the answer to the critical housing shortage." He said the chamber felt governmental action to ensure immediate construction of additional rental housing would be the best way to stabilize the market.

Daily News-Miner

"America's Farthest North Daily Newspaper"

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More views on the housing problem

Don't believe all landlords getting fat on rental gouge

Despite previously published reports of rent gouging in Fairbanks discovered in a Daily News-Miner survey, most landlords here are facing rising costs of doing business with minor increases and in some cases no increases.

This coupled with a pending decision facing Gov. Jay Hammond on whether to establish rent controls adds up to challenge for Fairbanksans to solve the housing problem as best it can.

Chamber of Commerce Manager Wally Hickel said today the chamber is starting a survey among renters and landlords alike to determine the need for rent controls and to discover exactly what problems both tenants and landlords are having.

A spokesman for the governor said today that some form of rent control is being considered but, said Hammond representative here, Larry Helmstrom, the governor wants comments from Fairbanksans to determine how he will proceed on the matter if at all.

The Daily News-Miner today contacted several apartment complex managers who indicated they are leary of rent controls because, as one put it, "what's fair for one owner is not fair for another."

Helmstrom said the governor wants to know if residents think rent controls are justified, what specific examples persons have to justify them, and what form they want the controls to take.

The chamber began a survey of existing rental rates last week and discovered that rents in most large complexes have risen slightly to not at all.

A comparison of reported rental rates between March of this year and April of last year, showed increases from as little as 4 per cent to as much as 8 per cent.

Chamblar Apartments, reportedly up for sale, recently increased rents 10 per cent for its two-bedroom unfurnished apartments which will cost existing tenants $162 and new tenants about $150 a month.

Although increases were not necessarily uniform, it appears that landlords are raising their fees to cope with rising costs for heat and utilities and maintenance and taxes.

Notable exceptions where no increases occurred during the year included Blevins apartments, Sheha Court, Dixon apartments, Northward Building, Polly Anello, Pleasant Manor, Smith apartments, and some units at Tanana Village.

A sampling showed increases for two-bedroom furnished apartments at Ambassador, 33 per cent; Ballaine Lake, 16 per cent, E P Rentals, 13 per cent for unfurnished; Fairview Manor, 12 per cent; Golder, 8 per cent; Glenwood Manor, 10 per cent; and Midtown, 25 per cent.

The manager of the Ambassador, who asked not to be identified said, "I don't think rent control is necessary in our case. I don't understand how they could make it a fair deal all around.

I don't think other owners are charging outrageous prices, especially for new apartments. They've got to charge high prices to come out on them due to high cost of building and furnishing.

"Our newspaper went from 10 to 15 cents in 15 years. That's a bigger increase than we've had," the manager said.

The manager said since 1958 Ambassador rents have been raised from $185 to $250 for a one-bedroom unfurnished apartment, and from $225 to $300 for a one-bedroom furnished.

The Ambassador property is assessed at $700,000, "so we pay a pretty good hunk in taxes," the manager said.

Zenon Tretton, who owns Ballaine Lake apartments and is business office manager for the Daily News-Miner, said she agrees there is some price gouging going on but, "prices for everything are going up. Maybe rent controls are necessary, but I can't really say I favor any type of controls. You have to keep in mind the high building costs now as well as interest rates."

(See LANDLORDS, page 3)

Scarce, high-priced housing poses problems for military

By CANDACE KIMKER
Staff Writer

Maintaining lists of available housing for newcomers in Fairbanks is an exercise in futility, officials at the school district and two military reservations report.

"We tell military families there is no civilian housing available here," Maj. J.S. Vincent, family housing manager at Ft. Wainwright, said. "We have nothing listed," Mrs. Jerry Andrews, manager at Eielson Air Force Base, said.

Both still try to find housing in the community and both are having almost no success. Vincent said "We maintain a list but housing is almost non-existent and the prices are out of sight."

"What we find our people can't afford," Vincent said. "You know as well as I do what Alyeska is paying for housing," Vincent said in reference to high offers by Alyeska Pipeline Service Company to find housing for employes.

Of six families that arrived in the first week in December, Vincent said one found a one bedroom apartment for $260 a month. "An E-4 can't afford that kind of rent," he said.

Vincent said he heard of a captain who was looking and finally found a three bedroom house...with an $800 a month price tag. "I'm sure he didn't take it," he said.

The housing crunch is apparently most critical at Ft. Wainwright. Vincent said he had requests for housing for about 75 individuals and families. Those waiting are jammed into transient living quarters which Vincent described as "like a hotel room but not as nice."

"Some families have been living there so long that it has become a financial burden," he said. One family has been in the cramped quarters for three and a half months. Although 75 quarters are requested, Vincent estimated he would piece "maybe 10-15 quarters."

The crisis was foreseen last fall but housing didn't literally dry up until just before Christmas, he said. Vincent said the base was hurt by a move within the Defense Department to stop moving people from post to post in order to save money. A freeze on such transfers is scheduled to go in effect from April to July.

Since no one is being transferred, no base housing is opening up. "Usually we could send people downtown for relief but not now."

Eielson has been spared from the housing shortage by selectively approving and disapproving requests by servicemen to bring their families with them, Andrews said. The serviceman must find housing before a transfer of his family is approved.

About 24 families are now living in transient housing at Eielson. Andrews said they would be housed within 30 days. There is sufficient bachelor housing at the base.

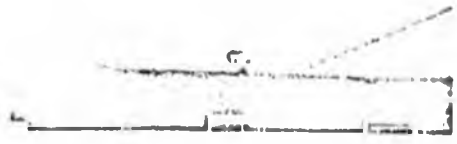
The school district doesn't maintain its housing list for new teachers from outside until later in the summer. But Dale Durrwachter, director of personnel, is anticipating "grave difficulties."

"With the reversed statistics of most of the teachers being hired within the community," he said the problem will be limited to placing 20 to 25 teachers and their families.

H.O. Williams, president of the Fairbanks

(See SCARCE, page 3)





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year if they are able to pro...e their own transportation. They must request to remain at their present school before /...15.

Smith said major considerations in dividing attendance areas included keeping as many students in their present school as possible, placing students in schools nearest their ... Homer Court and along ... Horn Road, Cushman Extension, the east side of Peger Road and Ft. Wainwright will also attend East.

West students will come from Goldstream, Sheep Creek, Murphy Dome, Yankovich Road, Miller Hill, Ballaine Lake Road, Farmers Loop from McGrath ... the remaining principals.

Board members didn't comment at length on the proposed development. Member Jim Movius said any decision would have to be final and asked that the vote be postponed until the next meeting.

The board voted unanimously ... Lathrop. Assistant Principal of West Robert D. Cope will be principal at North Pole and a Skagway teacher Gordon C. Tope will be assistant principal at North Pole.

Also approved at the meeting were names chosen by a board committee for the new schools in ... rushing to take graduate studies!'

She said the board should have a way to make sure the teachers weren't taking pipeline jobs for a year instead of studying fulltime. Mendenhall said she didn't think the district should guarantee jobs to those who quit to take pipeline work.

SCARCE . . .

(Continued from page 1)

Education Association, said he expects turnover to be higher this year than normal as teachers here take higher paying pipeline jobs.

Addressing the school board Tuesday, he asked, "How can we ask new teachers to come and live here with no housing available?" Calling Fairbanks a "landlord and real estate agent paradise," he said that the quality of education would suffer if sufficent housing can't be found for needed teachers.

He asked the board to work with other governmental bodies to solve the problem.

"It's going to be super difficult. In my 14 years here, I've never seen housing as critical as it is now," Durrwachter said. "We've always been able to take care of our people. Last fall, only two of 25 people encountered long delays."

Durrwachter claims teachers have an advantage over others competing for shelter. "It will be teacher assisting teachers. Many teachers do own rentals and they will often call and place openings," he said.

He said many landlords prefer to rent to teachers because they have a steady income and aren't as itinerant as pipeline workers.

The situation with rental shortages has caused a shift in buying and renting statistics among teachers. "Far more are going out and buying a trailer or house. When large numbers were hired from outside, 90 per cent rented. Now I think it is 60-40." He said 60 per cent are renting.

He said teachers who buy and sell their house a year later at the end of their contract aren't losing money. Several teachers were amazed to find the value of their house increased three to four thousand dollars in the short time.

Durrwachter said the district isn't doing anything about securing commitments for housing. He added "Nobody seems too interested" in listing available units.

South Vietnamese abandon north Quang Tri province

SAIGON (AP)— A North Vietnamese troop buildup was reported in South Vietnam's northern provinces today, and thousands of frightened civilians are fleeing southward.

Foreign relief workers said about 100,000 refugees had collected in Hue, the former imperial capital 50 miles north of Da Nang. They fled from fighting in Quang Tri province, just below the North Vietnamese border.

Lt. Col. Le Trung Hien, the government's chief military spokesman, said there are five North Vietnamese divisions, or about 30,000 troops, in the northern part of the country. He said 40 per cent of them are in the Quang Tri-Hue area, where there has been heavy fighting for more than two weeks.

Hien said Hue is threatened by at least two divisions, including one that moved into the region recently.

Meanwhile, officials of the South Vietnamese ministry of social welfare said they expect as many as 450,000 refugees from the three Central Highlands provinces of Pleiku, Kontum and Darlac which the government is abandoning to the North Vietnamese and Viet Cong.

With the main highways to the coast cut, the swarm fleeing from the highlands stretched out from Pleiku southward along Highway 19, heading for the coastal city of Tuy Hoa.

It appeared that most of them would not reach the safety of the coastal lowlands for three or four more days.

An exodus also was reported under way from Dalat, 140 miles northeast of Saigon in the lower central highlands. It is outside the three provinces the government is giving up, but its highway to Saigon has been cut by North Vietnamese and Viet Cong attacks on Dinh Quan, a district capital 75 miles northeast of Saigon.

The government reported more Communist attacks on Binh Quan as well as on Hoai Duc and Gia Ray, two other district capitals south of Dinh Quan. The Saigon command said nearly 200 shells were fired into Hoai Duc.

In Cambodia, about 1,000 militant university students held a four-hour rally on their campus in Phnom Penh urging the U.S. Congress to cut off aid to the Cambodian government and demanding that President Long Nol resign.

LANDLORDS . . .

(Continued from page 1)

The manager at Moose Creek apartments reported a rent increase of $28 in the past year. Two bedroom apartments there including utilities cost $293 monthly. The manager said there are 30 persons on the waiting list to move in.

A tenant at Midtown apartments, where rents increased more than 30 per cent in a year, said the rent was too high for the apartments offered.

Alice Brinker, manager for Spackman and McLean's complex on Geist Road, said the complex is still below the market rate for increases while heating costs have gone up as much as 60 per cent over last year.

"I think it would be a wonderful idea (rent control)," she said. I can see how some people recognize that with no vacancies in town they can charge what they want. I'd rather keep our tenants than run them off by raising the rent."

Barbara Donathan of Sprucewood Manor reported their rents had gone up $20 in the last year because the bank "raised its interest rate on us so we were forced to that. I imagine there will be another rent increase this summer because the manager is going to make some repairs.

Barbara Morris of Tanana Village said, "rent is getting out of control but not here because we're not that way. Compared to what I see in the paper people do need some sort of protection.

"There is such demand and no availability, they're asking high prices and getting them. I'm leaving at the end of the month.

Fbks News Miner, Mar. 24, 1975

Housing dominates ...npact hearings

By SUZANNE BUSHONG
Family Editor

Although testimony wandered through topics ranging from child care to the State Office on Aging, impact hearings in Fairbanks Saturday turned out to be a forum on the housing crunch.

And though a few solutions to Fairbanks' housing shortage were offered, the two legislators conducting the hearings will take more complaints than suggestions back to Juneau.

State Sen. Pat Rody of Anchorage summed up the feelings of many of those testifying: "This impact is coming from the oil companies, not the pipeline workers. They have brought us inflation on top of inflation and they should bear that cost as part of the cost of doing business. We must reduce the burden on the average Alaskan who is paying the way for Standard Oil and P."

Rody and Charles Parr, representative from Fairbanks, were conducting the hearing to gather information for the legislature on the impact of pipeline construction on low and fixed income persons. They also were looking for residents' opinions on rent control.

The three solutions suggested were installation of railroad sleeping cars in the town, erection of several small units for seniors at the 33 Mile Senior Citizen Center and development of parks for mobile and modular homes.

Doris Southall, who has been instrumental in getting the senior citizen high rise project started, suggested that the city look into stationing railroad cars around town for temporary housing this summer. She said the Canadian railroad has several cars to lease or sell to the state, which could be used in Fairbanks the way railroad cars are used for housing at McKinley Park. Borough Mayor John Carlson said it would be difficult to find a place to put the cars, however, since the Alaska Railroad has plans to develop the railroad area for industry in the near future.

Joe Steinard, a member of the Senior Citizens of Interior Alaska, said the organization has land at the 33 Mile Center and about 1,000 logs which could be used to construct housing. He suggested the group look for assistance in the way of federal and state matching funds to put up several small units on the property. The units would be only for sleeping, with a utility building for laundry and showers and meals provided at the main center.

Perry Stoop told the legislatorss mobile and modular units were the only answer for a temporary increase in housing. But he said utilities would have to be provided by the city before any sites could be developed for the units.

Older persons were one of the main concerns of the hearing, and many testified individually and as members of senior citizen groups.

Marjorie Lockwood said she was finding it impossible to locate a place to live. She is moving out of her large home, which she no longer can maintain, she said, and is looking for an apartment. She said she saw one place for $250 a month, "but you would have to pay me $250 a month to live in it." She noted

that several nice apartment complexes in town have kept their rates reasonable, "If one can do it, I can't understand why the others get such awful prices."

Sue Ohata, director of the North Star Council on Aging, testified that there are 40 elderly in the Golden Age Apartments on Ninth Avenue. That complex has 20 units. She also noted that there are many persons in Carriage North who don't need nursing care, but can't be released because there is no place for them to go. "It costs the state $900 a month to keep them there and I don't think that's a good way for our tax money to be spent," she said.

There are persons taking up residence at the Salvation Army and Rescue Mission as well, Ohata said, preventing these agencies from providing the emergency relief services they are designed to provide.

But retired persons aren't the only ones on fixed income who are suffering from the housing crunch. Testimony also was received from many young people, including a teacher, a borough employe and a federal employe.

Pat Johnson, a federal government employe, said she has lived in Alaska all her life and in Fairbanks the last five years and doesn't want to move. She is, however, faced with finding an apartment because the building in which she resides is being demolished to make way for the Steese Bypass. She said she had been trying to save money to buy her own home, "but I can't save anymore, I just cant afford to." She said although inflation on food and other items is causing problems, rent is the biggest cause. Johnson said she has been looking for housing since notification from the Highway Department, and hasn't had any luck yet.

Rody questined her about trailers, and she said she would live in one if she had to, but preferred apartments to trailer parks. Parr pointed out that many banks have been reluctant to loan money for construction of trailer courts, and Carlson said there are not enough trailers coming into town to meet the demand anyway. "If someone could get 400 mobile homes in here tomorrow he would sell them all," the mayor said.

Pat Rutledge, a borough employe, said she may have to leave Fairbanks if she receives another rent increase. "I have lived here 15 years, I have worked in this area and spent my money here. I resent this situation. I consider Fairbanks my home and I am being driven out."

Rutledge said she does not think her landlord is gouging, and said the increases have been reasonable and over a reasonable period of time, but her salary has not gone up accordingly. She said half of her pay goes toward rent and utilities. "There is a lot of money in town and I don't balme the people who own apartments. They could make a lot more. Everyone says if you can't make it in Fairbanks go work on the pipeline, but I don't think that's an answer," she said.

Rutledge, like many of those testifying, felt the permanent residents of Fairbanks with stable jobs were the ones suffering most from the impact of pipeline construction, and the ones who are being forced to move out, but she didn't know what the state could do.

One suggestion has been rent control, but Mario Grassi, a landlord here, told the legislators that would be a mistake. He said if rent controls were instituted, landlords would raise rents to the maximum in order to insure income for the duration of the controls. Other problems landlords face, he said, are increased costs and the risks in any new construction here. "I was thinking of building, but I won't now with the possibility of rent controls," he said.

Other testimony included statements about lack of child care facilities, increases in juvenile delinquency, high food prices, high fuel costs, and hiring of out-of-state persons over Alaskan residents for pipeline jobs.

POLITICAL SCENE

Housing Hearings Slated Here

Governor Jay Hammond indicated this week that he had ordered that public hearings be held in Fairbanks, Anchorage, and Valdez to determine whether residents feel there is a need for imposition of rent controls.

Commissioner of Commerce Tony Motley will chair the meetings which are to be held in the next two weeks.

"I am concerned about the problems facing residents of communities impacted by pipeline construction activities. I want to do what is possible to help but at the same time I do not want to force state decisions on local residents where they are not desired."

"To date I've received no request for consideration of rent controls from the local governmental leaders of those cities.

"I am, therefore, sending letters to them asking they respond with their comments and recommendations. Requests for state action have already come from some local residents, from Fairbanks legislators, and I am aware of news reports on the rental situation.

"Commissioner Motley is organizing the public meetings at this time. He will seek public input to determine whether rent controls should be imposed."

The pipeline activity continues to escalate each week as does pipeline impact. And the housing crunch which began last year and provided the pressure for the passage of the rent control measure in the dying days of the last legislature continues to intensify.

The advertisements seeking housing are getting more and more desperate, with some making pleas for housing for the sake of children remaining in school, et cetera.

Local governmental leaders have not made it a point to call for rent control. One reason is that there are two groups of constituents, the landlords and the tenants. The landlords want to increase rents to cover climbing costs.

Some Chamber of Commerce people are concerned that rent control might put a damper on construction of more housing this summer. The Chamber has asked input from both tenants and landlords and for a while the chamber indicated it was getting very little response. This week, a spokesman indicated that the situation had changed and that quite a number of persons had contacted the chamber on the subject.

Most local leaders are receptive at least on the idea of having hearings to find out the wishes of the people.

* * *

Stampede Coming?

Many Fairbanksans are worried that Fairbanks will be overrun this summer by a stampede of jobseekers from the lower states and that to take care of the influx some kind of public campground or tent city will have to be devised so that there will be some place where those with little funds can at least have access to water and sanitary facilities.

Already the jobseekers are flooding into the city and even the public parking lots are beginning to fill up with campers, old buses being utilized as mobile homes, and even panel trucks, stations wagons and old hearses fixed up for batching.

One city councilmen Monday night pointed out that these

Nuggeteer ...

—Continued from page 1

clamping down on security as they did prior to the big 1969 lease sale.

* * *

THE RUMOR IS TRAVELING, however, of a significant strike by Mobil Oil Co. on the slope and the announcement is expected soon.

The strike reportedly is at the Gwydyr Bay South No. 1 exploratory well. Unofficially, reports indicate the strike was made in the Sadlerochit formation, the main producing zone in the Prudhoe Bay Field.

The Gwydyr Bay South No. 1 is located about 6 miles north of a BP development well.

* * *

MUS General Manager Wally Droz confirmed recently that the MUS System was still selling lists of its customers but only to organizations soliciting charitable contributions.

A Fairbanks woman had a non-list phone installed under her maiden name which name was known to only members of her immediate family and one other person. While her phone number may not have been divulged, the name and address was. She received a letter from the Easter Seal campaign which had purchased the list of telephone customers from MUS for about $500.



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IF YOU CAN
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All-Alaska Weekly, Apr. 11, 1975 (Palmer)

Mobile Homes a Solution?

With existing housing overpriced and over-crowded, it isn't long before people in need of a place to live start thinking about a mobile home, that modern-day answer to the tent.

At first some people might be put off by the price. ("$4,500 down for a trailer?" exclaims a young mother. "Outside you can GET one for $4,500.")

But nevermind. You'll have two months to find the money since it will take at least that long, according to one mobile home salesman, to get delivery.

And you needn't waste time wishing you could get it sooner — there isn't anyplace to put it anyway.

"Right now there are no spaces," said a woman at a sales yard, an amazing admission for someone who was hoping to sell mobile homes.

"Nothing," said the woman at the Lakeview Court. "No, we aren't expanding."

But another mobile home salesman was more optimistic. "There will be parks sprouting up all around," he said hopefully. "There should be spaces around the first of July." And he mentioned a 300 space development which he understands is going in somewhere on Badger Road.

But is it?

"Lots of people are coming in with the idea of building trailer courts," says John Jansen of the State Department of Environmental Conservation.

The department is still waiting, in most cases, for the necessary data to be supplied.

But, Jansen says, it appears that much of the land being purchased for this purpose has either a high water table or permafrost. Either condition makes it almost impossible to dispose of waste. If the waste water can not percolate down, says Jansen, there is no place for it to go but to the surface.

Even if they put in treatment facilities, he says, they still can't pump it into the ground if its going to come back up.

Of the larger courts which are proposed, Jansen says only one court looks like it will be the state but also with borough zoning ordinances. "We get 25 to 30 calls a day," says borough Planning Director Donald Gilmer," from people wanting to know what they can do."

Every case, Gilmer says, has to be studied on its merits. The zone and the size of the parcel must be considered.

"But," he says, "we are remembering that what we put in we're going to have to live with after the boom is over. We have good examples from World War II of what not to do. People rented out spots in their back yard, side yard. We still have some of that junk left."

Any mobile home park — defined as any land parcel which is occupied by more than two mobile homes — must get a borough permit. And in general the borough requires 3,000 square feet per trailer. The trailers must be at least 15 feet apart.

Anyone found operating a mobile home park in violation of borough or state ordinances can be charged with a misdemeanor and if found guilty fined $300 for every day the park continues to operate.

Illicit trailers are usually discovered, Gilmer says. Besides two employees whose duty it is to enforce the ordinances, the neighbors usually supply a tip.

"Then we take them to court," Gilmer says, "and we are currently winning our cases."

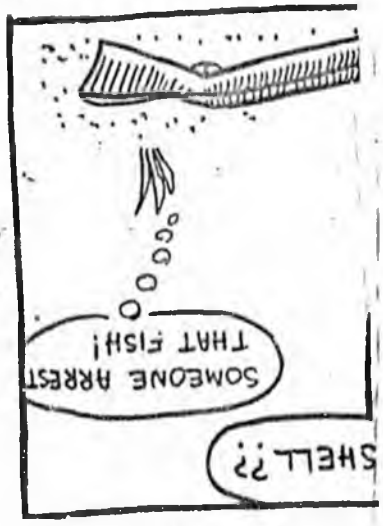
trols were justified only if housing was limited by a disaster like war. The solution, he said, was to build more housing and he warned that funds for housing could dry up if rent controls were instituted.

Landlord Dennis Osterdock, who has four rental installations, detailed the price increases landlords must face. Taxes are up 50-110 per cent, he said. Maintenance materials are up 20 per cent; general labor, 35 per cent; cost of water and heat, 85 per cent; garbage service, 60 per cent. Even with full occupancy, Osterdock said, two of his four operations were run at a loss in February.

And Jim Price, who said he was both a landlord and a tenant, suggested that if the state was going to control rents it should guarantee that landlords were able to cover their costs during times when their rental units were vacant.

The next step, according to the governor's office, will be for Motley to review the evidence given at the hearing with his staff and the governor's staff and come up with a recommendation for the governor. The recommendation is expected within two or three weeks.

Hearings on the housing situation are also planned for Valdez and possibly Anchorage.



Hoffman

Rent Hearing

—Continued from page 1

stantial impairment of free choice in residential rental housing, or when the average vacancies fall below 3 per cent in the area and remain there for at least 90 days."

At the hearing Motley heard all sides. Nobody, though, told him that housing wasn't tight in Fairbanks.

There was general agreement that there isn't enough rental housing to go around and that the rental costs are making life difficult for many people, especially those on non-pipeline incomes. But there were clearly two opposing views of what should be done.

Those speaking for and against rental controls appeared to be out in equal force. Landlords and tenants followed one another to the podium to explain their positions.

Typical of the renters' positions was that of Ron Tracy who said his rent had been raised from $395 in June to $455 in November to $525 this month.

"They cite heating, maintenance, taxing, insurance," said Tracy.

"As far as maintenance goes they haven't done anything. And I know fuel has gone up but they could save on the bill if they did something about the heat loss."

Tenant Rodney Blakestead testified that the rent at his quadriplex had gone up from $475 in October to $750 this month.

Blakestead, a geologist, said he plans to move out and added that two of his neighbors in the quadriplex, a doctor and a computer technician, were moving away from Fairbanks because of the high rents. Only the construction worker, the fourth tenant, could afford to stay.

And tenant Ted Switz drew applause when he said that the rent increases imposed in his apartment complex added up to $100,000 a year.

"That," said Switz, "is a hell of a lot of fuel."

On the other side Walter Sczudlo, president of Arctic

All-Alaska Weekly Apr. 11 (Fairbanks)

Over 200 Attend Hearings

Is there a housing emergency in Fairbanks?

Does the situation justify the extreme measure of rent control?

More than 200 people came to the Alaskaland theatre Tuesday night to hear Fairbanksans give their views on what is happening and what should be done about housing in Fairbanks.

One of the 200 was Commerce Commissioner Tony Motley. On the basis of the testimony given, Motley will advise the governor on the necessity of imposing rent controls. A 1974 law gave the governor the power to "promulgate regulations concerning the control of resident rent."

An emergency, as defined by that law, exists when "the rate of vacancies in residential housing is so low that there is a sub-

—Continued on page 15

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The Pioneer 50¢

ALL-ALASKA WEEKLY

Vol. 5, No. 39 | All-Alaska Weekly, April 11, 1975 | Page 1

All Alaska Weekly, April 11 (Fairbanks)

HOUSING CRUNCH INTENSIFIES

★ ★ ★ Homeless Describe Their Dilemmas ★ ★ ★



In a Housing Office sweat shirt, Rusty Myers in a crunch lifting 250 lb. weight. —Jo K. Brown Photo

Some Leave, Some Live in Hotels, Good Tent Business Seen

"There's lots of rooms but they're all took."

The husky man in the brand-new parka was explaining why he had spent the night at the Salvation Army but he could have been telling the story of housing in Fairbanks.

"The tent business is gonna be good," said the man at Alaska Tent and Tarp. "We're building 'em as fast as we can." And indeed, a wall tent from Tent and Tarp was one of two offerings in the Unfurnished Apartment section of the daily newspaper one day last week.

No one has yet offered a prize for the best housing crunch story but everyone seems to have a candidate.

There are stories about apartment vacancies being auctioned off, about rents of $1000 per month, of old-time residents being kicked out to make room for renters who can afford exorbitant rents.

But there are always stories. Is it really so bad?

"Yes," says Linda Resh. "This is the last straw." She has lived in Fairbanks all of her life and is now being forced not only to leave her log house on 2nd street but to leave Fairbanks entirely.

For a while it seemed that she was one of the luckier ones. Her landlord, who was living in Montana, was offered $600 a month and more for the two-bedroom log house. But he only raised the rent to $400.

Then the landlord decided to return to Fairbanks and sent word that he would want to move into his house. Resh doesn't blame him: "He's up the creek too."

"We checked everything," says Resh, who, with her daughter Jenny, shares the house with another woman and her two children. "We called all the realtors; we were willing to take a lease with an option to buy. But nothing."

"We put the word out to all of our friends. It seems that the only way you might find a place is through word of mouth. Somebody knows somebody who's leaving."

But nothing came of the efforts and so the two women, their three children, along with Grandma the parrot, the kids' pet rabbit and the baby plants which are just getting a start, will be moving out of the log house at the end of the month.

They will move, all five of them, into the spare bedroom of some married friends, where they will get along until they make the move to Juneau. They are confident that the housing situation there, even when bad, is much better than the situation in Fairbanks.

"There are a lot of people — old-timers — who are leaving," says Resh, "either going to Southeast or to the bush."

Will the Fairbanksans who leave be coming back someday? "I don't know if this will ever be over," she says. "There are more pipelines to be built. It may be 20 years. And naturally people come; this is the only

—Continued on page 2

All-Alaska Weekly, April 11, 1975 (Front)

Rent Control - Pro and Con

In an attempt to clarify the arguments for and against rent controls, the All-Alaska Weekly interviewed Alaska Legal Services Supervising Attorney Ed Noonan, who favors some form of rental control, and Sam Barnes, Fairbanks realtor who opposes rent control.

Tenants aren't denying landlords the right to make a reasonable profit, says Noonan. Rent control is not a price freeze. It would allow increases. That point hasn't been brought out well.

Rent control is just control. It is just trying to control the gougers — as the landlord who increases the rent from $300 to $850. There's no justification for that. It's usually clear who the gougers are.

With rent controls, says Noonan, landlords would be able to raise rents but they would have to give justification. They wouldn't be able to make unlimited increases in their profits. People shouldn't get fat with windfall profits when they are hurting other people. And they are. They are hurting all the people with fixed incomes, especially elderly people and people on welfare. We are having to ship some people out of the state, because they can't afford the rent.

What is gouging exactly? Going for the windfall profits, says Noonan. Going well beyond actual increases in cost.

There's a word, he says, used in law: unconscionability. It has to do with the relative bargaining power. If the tenant has no alternatives he has no bargaining power. This is what we are seeing our office. We've had more people come in than we actually have represented. Most people don't dare to make waves because they have no place else to go.

We can go to court in landlord-tenant cases using the charge of unconscionability. We can get the rent back. But we can't secure the individuals right to stay in the apartment at the old rate.

Most rent control systems, says Noonan, exempt new housing from the controls. The purpose of this is to allow the long time residents to keep their apartments.

Will there be rent controls? There is enough momentum, Noonan says. I think there will be some sort of control. People are actually willing to listen to the problems of consumers, even though the consumers don't think they are. If people write

—Continued on page 3



Ed Noonan



Sam Barnes

Rent Controls Pro and Con

—Continued from page 1

to the governor, if they speak out, public opinion will be felt. People have to give the governor an idea of what the public opinion really is.

Rent controls, says Fairbanks realtor Sam Barnes, are not going to do anything for the availability of housing at this point. And it is unlikely that they would have a large effect on price. It is conceivable that there could be a price roll back — what a mess that would create.

In considering controls we must be concerned about the bundle of rights the property owner has, Barnes says. I don't think Alaskans are extremists.

We would like to see the state moving toward helping with the problem. There is legislation now which would insure that money will continue to be available for low interest veteran loans. These loans can help people build single family housing and also small apartment units. We would like to see that money continue to be available in spite of the problems with the general fund.

The state can help by moving quickly with its low income housing program. The state has already acquired land on Noble street and we hope that they get that building off the ground as soon as possible. With luck that building should be ready by this time next year.

The toughest problem is the low-income people. Those who come for a job can either afford the high rents or they leave.

But we don't think the rent controls are the answer at this time. The hearings and the input is important. But I hope the commission will hold this in abeyance. There may come a time when realtors favor rent controls. Opinion is not totally one-sided among realtors now.

And controls might even harm some tenants. If the Department of Commerce said a landlord couldn't charge more than X dollars a month, some landlords might be encouraged to take the maximum.

Also any time you institute controls, there is an expense involved. If the landlord has to fill out forms, comply with regulations, that's going to be a burden and cause additional overhead expense. In the end the tenants will end up paying.

Rent controls too will make it harder to get money to build new housing.

If the new housing is not affected by the rent controls, will money for new construction be hard to find? To exclude new construction, Barnes says, would be grossly unfair to the guy who has had rental units for years and who has suffered through vacancies. And besides, people in financing shy away from rent control areas.

How would landlords react to controls which did not freeze prices, but which asked landlords to justify rent increases?

Alaskans are individualistic. I think it would not set well with the landlords in the community to have to justify their actions to a review board. For one thing a lot of people don't keep those kinds of records. If they had records of what their expenses were they would probably raise the rent more than they do.

What can be done in cases of gouging? The community should try some jawboning. When a tenant is treated unfairly, he should discuss it with somebody who is knowledgeable. If he is truly being gouged he should go to the public.

Some landlords have gotten bad publicity in the past and there will be a stigma on those establishments for a long time. Public pressure.

What is the future for housing in Fairbanks? In the long terms, says Barnes, the future looks somewhere between good and wonderful. But we do have a legitimate concern: what happens during the lulls. A one year lull between the oil pipeline and the gas pipeline could really push a landlord out of shape. If anybody has an obligation to the landlord to see that he makes it through the "bust" periods it's the current "boomers."

Martial law in Da Nang

SAIGON, South Vietnam (AP) — Da Nang's military commander declared martial law in the refugee-clogged city Friday, imposed a 24-hour curfew and ordered his men to shoot to kill anyone causing disturbances.

Viet Cong gunners shelled the Da Nang area and some officials said the military situation was deteriorating and the city might fall to the enemy.

The United States began its emergency airlift of military equipment and medical supplies to South Vietnam Saturday, a U.S. Embassy spokesman said.

He said one plane already had landed in Saigon and although he was not certain he believed the airlift was being staged from bases in Thailand.

America also is financing an airlift of fuel, food and ammunition into the Cambodian capital of Phnom Penh and another plane shuttle to remove refugees from Da Nang in the crumbling northern section of South Vietnam.

The Saigon command described the situation at Da Nang as "critical" Saturday as thousands sought to flee the city under North Vietnamese artillery attack.

Small North Vietnamese and Viet Cong probes were reported on the outer defense perimeter and radio contact was reported lost with Hoi An, the provincial capital of Quang Nam province 15 miles to the south. Da Nang is included inside Quang Nam province but is an autonomous city.

It was not clear whether Hoi An was attacked or whether the garrison simply fled in panic.

Officials said radio contact was lost before dawn with Da Nang command headquarters but later said contact was being maintained through other radio channels. There was no elaboration.

...avoiding military entaglement — and that includes Cambodia," Woodcock said.

...They include the Tanana area near Fairbanks; the Cook Inlet area near Anchorage and the Kenai ... selection.

Where the legislature stands

By ANDY WILLIAMS
Our Juneau Bureau Chief

JUNEAU — The legislature is gearing up for a push for adjournment in early May, but legislative leaders say they may go home without passing what they consider their top priority — a tax on oil and gas reserves.

Senate President Chancy Croft, D-Anchorage, and House Speaker Mike Bradner, D-Fairbanks, both mentioned the reserves tax first when asked what their priorities were. And both indicated there might not be enough votes to pass it.

Croft said a reserves tax would be a major ingredient in the state's plan to raise revenue to bridge the deficit after the general fund runs dry and before oil from the North Slope begins to flow.

"But there are still a considerable number of senators who don't favor that approach," he said.

Bradner said the House intended "to put taxation of oil and gas in place in some sort of viable form.

"That doesn't mean it has to pass, but it means a substantial piece of homework should be done, expertise brought to bear, and that the bill should



Fink Croft

reach its substantially finished form this session so that if it is held over, the critics can have something to shoot at during the interim," he said.

House Minority Leader Tom Fink, R-Dist. 7, predicted flatly the tax would not pass.

"The tax on oil and gas in ground is dead. The Natives have absolutely killed it," he said.

Fink said the nine-member Republican caucus would oppose it, as would Native legislators. He predicted enough conservative Democrats and others sympathetic to the Natives' arguments would split off from the 30-member Democratic caucus to kill the bill.

Representatives from five Native regional corporations opposed the bill at a recent Senate Resources Committee hearing. They said the tax could cost the Arctic Slope Regional Corporation $2 million a year and harm other oil and gas development programs. Oil and gas companies also oppose the bill, which could bring to the state up to $250 million a year.

Bradner and Croft said they hoped to get priority bills into the other house by the middle of April, allowing two weeks to a month to push for adjournment.

"I would call an early estimated departure date out of here as being the first week in May," said Bradner.

"I'm notoriously bad at predicting length of sessions, but I'd still say somewhere around the first of May," said Croft.

House Finance Chairman Hugh Malone, D-Kenai, said the budget would be ready for presentation by the middle of April and that it would reflect total state spending of about $600 million. That figure, Malone said, is what the

(Continued on Page 2)

Feeling the pain of a housing crunch

By STEVE KLINE
Daily News Staff Writer

(c) 1971 Anchorage Daily News

News analysis

Anchorage faces a summer housing shortage of crisis proportions, and the reaction of public officials ranges from unconcerned to uninformed, tempered with political buck-passing.

Already the vacancy factor throughout the metropolitan area is about 1 per cent — but that figure includes homes, and the rental market is practically nil.

When asked about the anticipated problems, projections and possible solutions for the housing shortage, public officials said:

"We're not doing anything on it."
— George Sullivan, Anchorage mayor

"It's a statewide problem. The state should do something about it."
— Harry Donahue, staff director, Greater Anchorage Area Borough

"I think probably these things can best be addressed at the local level."
— Jay Hammond, governor

"We can't get into it, even if the need is there."
— Robert Wilson, director of housing management, Alaska State Housing Authority (ASHA)

"We know so little about it, we're going to wait and see."
— William Sacheck, director, Alaska Division of Parks

Everywhere the statistical signs point to a major influx of newcomers to Alaska by summer, with pie-in-the-sky pipeline jobs looming as the major attraction for unemployed Outsiders.

Border crossings have nearly doubled. Out-of-state unemployment claims and motor vehicle registrations are up dramatically. The population has soared to about 170,000 in the Anchorage area, up from 126,389 logged in the 1970 census.

Ben Marsh, who represents mobile home court and dealer associations, predicts the area will run out of mobile home spaces by October. Landlords renting apartments report 50 to 100 responses per ad.

Demand for beds at the Armed Services YMCA is up 160 per cent over last year at this time. Monthly private housing costs are up 40 per cent. A man overhears a story of a woman who rents out seven beds in her suburban home.

The Marston Rental Office does not bother to advertise any more, and still receives five calls an hour from persons seeking rentals.

"I was looking for an apartment about four months ago," said Patty Kelley, of the Marston office, "and I had trouble, too."

Cindy Thaxton, at the borough planning department, has been studying — and living — pipeline impact. She shares a duplex with four other women. And in her research, she has seen buck-passing assume absurd proportions.

"Once I made five calls to get the answer to one question," she said, "and

(Continued on Page 2)

SB

346

files SB346

To: Terry

From: Rick

Re: SB 346

The question presented is ~~was~~. will the inactment of SB 346 emasculate the Uniform Alcoholism and Intoxication Treatment Act as indicated in the note to AS 47.37.250.

Answer: No

Reason: The note at 47.37.250 was the result of Peter v. State. The facts in Peter are that ~~a~~ State Trooper Sage arrested Peter after observing Peter in an intoxicated condition on a highway. Peter was brought to jail rather than his home. Later that night a burglary was reported and Trooper Sage recognized some of the missing items as having been taken from Peter as the result of a search incident to his arrest.

The question was did AS 47.37 impliedly repeal 13 AAC 02.175(c) which would mean Peters arrest was illegal.

The court will find an imped repealer if a later act covers the whole subject of the earlier one and is clearly intended as a substitute. 13 AAC 02.175(c) provided "[a] person may not be upon or along a highy under the influence of an intoxicating liquor." ~~The~~ 13 AAC 10.115 defined highway to include public subdivision and the entire width between

property lines. The court ~~case~~ said that these two take together were nothing more "than a law prohibiting public drunkenness in the guise of a traffic regulation," and hence should be impliedly repealed by AS 47.37.

SB 346 is not as ~~broad~~ all incompassing as 13 AAC.02.175(c) because ~~it~~ it is limited to the "traveled portion of a highway" and "so as to be a hazard to the motoring public." In other words SB 346 is not a bill empesing penalties for public drunkenness

Introduced: 4/3/75
Referred: Health, Education
and Social Services

IN THE SENATE BY RAY, MILLER AND HUBER

SENATE BILL NO. 346

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the applicability of the Uniform Alcoholism and Intoxication Treatment Act."

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

* Section 1. AS 47.37.250(a) is amended to read:

(a) Nothing in this chapter affects a statute, ordinance, or regulation relating to (1) drunken driving, driving under the influence of alcohol, or other similar offenses involving alcohol and the operation of a vehicle, aircraft, boat, machinery, or other equipment, [OR] (2) the sale, purchase, dispensation, possession, or use of alcoholic beverages at specified times and places or by a particular class of persons, including prohibitions against drinking intoxicating beverages in specified public places, or (3) being upon the traveled portion of a highway while intoxicated [so as to be a hazard] to the motoring public.

Uniform Act causes ambiguities with different specific legal prohibitions on certain pages

needed for # 345

SB

354

"An Act relating to limited liability companies."

COMMITTEE REPORT

4/25/76

HOUSE

Mr. Speaker: Date May 22, 1976

The Committee on JUDICIARY has had CSSB 954 am under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends: NC REC

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

As per request by Representative Brown

Letter of Intent CSSB #354am

The House Judiciary Committee has had committee substitute for Senate Bill # 354am(Limited Liability Companies) under consideration and has held public hearings concerning the bill.

Questions have been raised before the committee similar to those raised before the Senate Judiciary Committee, in particular in regard to what body of law would govern when questions arose as to undercapitalization and using a limited liability company to perpetrate a fraud on the public.

The bill is silent in this respect. The Committee is concerned with this matter. Legal research has indicated that there is little history in this respect. The Committee, therefore, feels it important to expressly state the legislative intent to those situations in which the established body of law concerning corporations and "piercing the corporate veil" would apply to limited liability companies.

The Judiciary committee recognizes that in certain circumstances the veil by which the limited liability company protects its members from personal liability for the debts of the company ought to be pierced, holding the members personally liable. The committee feels that circumstances giving rise to personal liability of members ought to be closely akin to the kinds of circumstances which permit a court or administrative agency to set aside the "corporate veil" for the purpose of holding corporate shareholders personally liable for the debts of the corporation. Thus, in situations where the court would set aside the corporate entity to hold shareholders liable when the corporation is acting as the alter ego of the

shareholders, or is undercapitalized, or where a corporate fiction is used as a means of evading legal obligations, circumventing statutes, perpetrating fraud, achieving or perpetrating monopoly, or for protection of crime and justification of wrong, or any other circumstances which might give rise to the disregard of the corporate veil, the committee expects the courts to treat the limited liability company in the same manner.

In other words, the limited liability company act should not be utilized as a device by which the organizers could avoid penalties for fraudulent or non-legal propositions any more than they could if they were incorporators of a regular corporation.

Respectfully submitted,

Representative Terry Gardiner
Chairman
House Judiciary Committee

As per request by Representative Brown

Amendment to CSSB #354 (Limited Liability Companies)

Add new Subparagraph....

AS 10.50.120(c)

In those instances in which the validity of the limited liability company is brought into question because of under capitalization, use of the limited liability company to perpetrate a fraud on creditors of the company or use of the limited company to violate public policy, the protection of the limited liability company may be disregarded and personal liability imposed on the contributing members of the company, to the same extent a I same manner

(1)

SENATE JOURNAL

ALASKA STATE LEGISLATURE

NINTH LEGISLATURE - SECOND SESSION

JUNEAU, ALASKA Friday February 20, 1976

Fortieth Day

Pursuant to adjournment, the Senate was called to order by President Croft at 10:16 a.m.

The roll call showed all members present.

The prayer was offered by the Chaplain, Father Dale Sarles.

Senator Kerttula moved and asked unanimous consent that the journal for the thirty-ninth legislative day be approved as certified. Without objection, it was so ordered.

MESSAGES FROM THE GOVERNOR

CS HB 550 am S

February 19, 1976

The Honorable Chancy Croft
President of the Senate
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. President:

I have this day vetoed Committee Substitute for House Bill no. 550 amended Senate. The portion of the bill which required the veto is that which attempts to give to the Legislative Affairs Agency the power to allocate office space in the capitol building except for that occupied by the Governor's Office. Since all floors of the capitol building but the third and fourth are already occupied by the legislature, the reason for the bill appears to be to give the Legislative Affairs Agency control over the fourth floor.

Initially this bill would have given the Legislative Council administrative control over space assigned to the legislature. In the Senate the bill was amended to grant the Legislative Affairs Agency control over the physical space in the capitol building regardless of

CS
HB
550
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which branch of government occupied that space. In doing that, the legislature went beyond a specific contractual agreement reached with the executive branch for the allocation of office space prior to the beginning of the session. More significantly, the legislature has attempted to establish a scheme whereby it may now engage in the administrative function of allocating office space. I am advised by the Department of Law that insofar as the bill attempts to do that, it apparently violates the doctrine of separation of powers.

Rather than engage in any extended legal discussion in this message, I am making available the opinion I received from the Department of Law on the subject. You will note that the Department finds two basic legal defects with the bill. First the Department feels that the amendment on the floor of the Senate changed the subject of the bill, which resulted in the original title of the bill not adequately expressing its subject matter. The Department also raises the strong possibility that the bill violates the separation-of-powers principle.

I sincerely hope that my veto does not result in another legal confrontation between the legislative and the executive branches of government. During the last three years, two suits have already been brought by the legislature against the administration in an effort to expand legislative powers. The legislature has lost both of those suits. In Egan v. Pipeline Impact Committee, C. A. No. 74-236, Super. Ct., 1st Jud. Dist. (Alaska 1974), appeal dismissed, Sup. Ct. No. 2424, Order of Nov. 7, 1975, the Superior Court held that while the legislature might impose conditions for allocation on impact funds, it could not administer the allocation of those funds. In Bradner v. Hammond, C. A. No. 75-383 (1st Jud. Dist. (Alaska 1976)), the Superior Court in Ketchikan recently held that the legislature could not expand its confirmation powers beyond that permitted in the Constitution. That latter decision, of course, has brought into question a whole host of confirmations which, until now, have been submitted to the legislature out of comity rather than necessarily legal obligation.

The administration has already tried hard to accommodate the legislature's need for space. During the period of one year the legislature has increased its total office space from 47,907 square feet to 67,900 square feet. Its space in the capitol building has been increased from 29,600 square feet to 40,800 square feet. After an initially confused situation over whether executive offices would move from the capitol, extensive good faith negotiations were held with the legislature to reach an amicable resolution. We thought we had achieved that resolution. We also thought that we had set the tone for additional negotiations in the future to provide adequate working space for the legislature. This bill removes the discussion from one of cooperation to a point of confrontation.

CS HB 550 am S

There are a great many problems facing this state. I know that legislators want to deal with those problems just as the administration wants to deal with them. I think it is disheartening for the general public to see public time and money being spent on this type of business. Surely the legislative branch and the executive branch have better things to do than to confront each other in court over whether or not particular legislators are entitled to a particular office on a particular floor of a state building.

I have advised individual legislators and I advise the legislature as a whole that the administration stands prepared to try to reach long-range solutions to the space problem and to continue our dealings in good faith with the legislature to do so. I have no intention, however, of accepting another effort by the legislature to extend its constitutional powers by usurping authority of the executive branch. I think this bill would be destructive even if it were constitutional, for it makes it more difficult to reason together. The problem is simply compounded by the bill's legal defects.

Sincerely,

Jay S. Hammond
Governor

MESSAGES FROM THE HOUSE

SB 607 am H

Message of February 19 was read, stating the House has passed SENATE BILL NO. 607 (budget information available to the legislature) with the following amendment:

Page 1, line 12: After "year" change the period to a comma and add:

"except that following a gubernatorial election year the advance copy shall be provided by the second Monday in January."

and transmitting SENATE BILL NO. 607 amended by the House for consideration.

Senator Ray moved and asked unanimous consent that the Senate concur in the House amendment to SENATE BILL NO. 607. Without objection the Senate concurred and SENATE BILL NO. 607 amended by the House was referred to the Secretary for enrollment.

CS HB 606 am Message of February 19 was read, stating the House has passed COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 606 amended and transmitting same for consideration.

FIRST READING AND REFERENCE OF HOUSE BILLS

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 606 amended, entitled:

"An Act relating to appointments to vacancies in the office of United States senator."

was read the first time and referred to the State Affairs Committee.

STANDING COMMITTEE REPORTS

SB 670 The Judiciary Committee has had SENATE BILL NO. 670 (number of superior court judges) under consideration and a majority of the committee recommends it do pass. The report was signed by Senator Ziegler, Chairman, and concurred in by Senators Miller, Meland and Poland. Senator Tillion signed: "No recommendation."

Senator Ziegler moved and asked unanimous consent that the letter of legislative intent be spread in the Journal. Without objection, the letter follows:

"LETTER OF LEGISLATIVE INTENT

Re: Senate Bill 670 - relating to the number of superior court judges.

The captioned bill would increase the number of superior court judges in our state from 17 to 18. Four of those judges, rather than 3, will be assigned to the First Judicial District.

We are advised by the Supreme Court that if the legislation becomes law, the new superior court judge will be stationed permanently in Sitka. We have been assured that no new judge will be appointed to the district court bench in that city, although a vacancy now exists which is being filled as of this date on a temporary basis.

In other words, the district court judgeship will become vacant, and the superior court judge will handle the caseload of both courts.

Respectfully submitted,

Senator Robert H. Ziegler, Sr.

Chairman, Senate Judiciary Committee"

SENATE BILL NO. 670 was referred to the Finance Committee.

The Finance Committee has had SENATE BILL NO. 640 (special appropriation to ACTION for the Foster Grandparent Program) under consideration and a majority of the committee recommends that it do pass. The report was signed by Senator Ray, Chairman, and concurred in by Senators Rader, Chance, Poland, Sackett and Ferguson. Senator Butrovich signed: "No recommendation." SB 640

SENATE BILL NO. 640 was referred to the Rules Committee.

The Finance Committee has had SENATE BILL NO. 664 (making of reparations to the taxpayer for late payment of tax refunds) under consideration and a majority of the committee recommends it do pass. The report was signed by Senator Ray, Chairman, and concurred in by Senators Rader, Chance, Poland, Sackett and Ferguson. Senator Butrovich signed: "No recommendation." SB 664

SENATE BILL NO. 664 was referred to the Rules Committee.

The Judiciary Committee has had SENATE BILL NO. 671 (appointment and qualifications of acting magistrates) under consideration and the committee recommends it do pass. The report was signed by Senator Ziegler, Chairman, and concurred in by Senators Miller, Meland and Tillion. SB 671

SENATE BILL NO. 671 was referred to the Rules Committee.

The Judiciary Committee has had SENATE BILL NO. 672 (small claims and magistrate jurisdiction) under consideration and the committee recommends it do pass. The report was signed by Senator Ziegler, Chairman, and concurred in by Senators Miller, Meland and Tillion. SB 672

SENATE BILL NO. 672 was referred to the Rules Committee.

The Judiciary Committee has had SENATE BILL NO. 673 (judicial appointments) under consideration and a majority of the committee recommends it do pass. The report was signed by Senator Ziegler, Chairman, and concurred in by Senators Miller and Meland. Senator Tillion signed: "No recommendation." SB 673

SENATE BILL NO. 673 was referred to the Rules Committee.

INTRODUCTION AND REFERENCE OF SENATE RESOLUTIONS

SENATE CONCURRENT RESOLUTION NO. 83 by the Judiciary Committee by request SCR 83

Supporting the Governor's position for a delay in offshore lease sales for the Gulf of Alaska.

was read the first time and referred to the Resources Committee.

INTRODUCTION AND REFERENCE OF SENATE BILLS

SB 678 SENATE BILL NO. 678 by the Health, Education and Social Services Committee, entitled:

"An Act relating to the public school foundation program; and providing for an effective date."

was read the first time and referred to the Health, Education and Social Services Committee and the Finance Committee.

SB 679 SENATE BILL NO. 679 by the Health, Education and Social Services Committee, entitled:

"An Act relating to the public school foundation program; and providing for an effective date."

was read the first time and referred to the Health, Education and Social Services Committee and the Finance Committee.

Senator Kertula moved and asked unanimous consent that the Senate recess to a call of the Chair for the purpose of Democratic and Republican party caucuses. Without objection, the Senate recessed at 10:29 a.m.

AFTER RECESS

The Senate reconvened at 11:05 a.m.

Senator Kertula moved and asked unanimous consent that the Senate revert to Communications. Without objection, it was so ordered.

COMMUNICATIONS

Memorandum of February 20 was received from J. H. Hogan, Director of the Legislative Finance Division. This memorandum appears on Senate and House Supplement No. 3 to today's journal.

Senator Ziegler moved and asked unanimous consent the Senate revert to Standing Committee Reports. Without objection the Senate reverted to:

STANDING COMMITTEE REPORTS

SB 354 The Judiciary Committee has had SENATE BILL NO. 354 (limited liability companies) under consideration and the

committee reports it back as follows: Senator Ziegler, Chairman, recommends it be replaced with COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 354 and that the committee substitute do pass with the following amendment: SB 354

Page 17, line 17:

After "$100" delete the period and insert: "for each year or part thereof the company is delinquent in filing."

Senators Miller, Meland, Poland and Tillion signed: "No recommendation."

Senator Ziegler moved and asked unanimous consent that the letter of legislative intent accompanying the report be spread in the journal. Without objection, the letter follows:

LETTER OF LEGISLATIVE INTENT

Re: CSSB 354--limited liability companies

The Senate Judiciary committee has had the captioned bill under consideration since late in the 1975 session. It was sent us by the Senate Commerce committee for our review and for possible amendments.

We have considered the bill, taken public testimony, and the Committee Substitute for Senate Bill 354 represents the final work product of all people who have shown an interest in the legislation. The bill authorizes the creation of limited liability companies. The limited liability company is neither a corporation, a partnership, a limited partnership nor a joint venture. Rather, it is an organization which would enable the organizers of the company to have limited liability as is the case with corporate officials but which would enable the company to be taxed as a partnership, thereby enabling the organizers to live in the best of both possible worlds.

If certain criteria are met, it is likely, we feel, that the Internal Revenue Service will furnish us with a favorable ruling as to the mode of taxation to be applied to the company.

The Director of the Division of Banking, Securities, Small Loans and Corporations, Miles S. Schlosberg, is on record before our committee as being in favor of the act. He has devoted a great deal of time, research and analysis to the bill and feels that, if enacted into law, it might do for the state of Alaska what corporations have done for the state of Delaware in terms of income to our state.

When we began, Mr. Schlosberg's five areas of concern were:

1. Applicability of federal and state securities laws to a limited liability company;

2. Alien ownership disclosure;

3. Limited liability company name;

4. Piercing the corporate veil; and,

5. Miscellaneous drafting changes.

SB 354 As to the items 1, 2, 3, and 5, there are no problems in the committee substitute, in his opinion. We concur. As to item 4, the Judiciary committee recognizes that in certain circumstances the veil by which the limited liability company protects its members

from personal liability for the debts of the company ought to be pierced, holding the members personally liable. The committee feels that circumstances giving rise to personal liability of members ought to be closely akin to the kinds of circumstances which permit a court or administrative agency to set aside the "corporate veil" for the purpose of holding corporate shareholders personally liable for the debts of the corporation. Thus, in situations where the court would set aside the corporate entity to hold shareholders liable when the corporation is acting as the alter ego of the shareholders, or is undercapitalized, or where a corporate fiction is used as a means of evading legal obligations, circumventing statutes, perpetrating fraud, achieving or perpetrating monopoly, or for protection of crime and justification of wrong, or any other circumstances which might give rise to the disregard of the corporate veil, the committee expects the courts to treat the limited liability company in the same manner.

(The preceeding paragraph was furnished the committee by Mr. Schlosberg.)

In other words, the limited liability company act should not be utilized as a device by which the organizers could avoid penalties for fraudulent or non-legal proposaitions any more than they could if they were incorporators of a regular corporation.

Respectfully submitted,

Senator Robert H. Ziegler, Sr.
Chairman
Senate Judiciary Committee

SENATE BILL NO. 354 was referred to the Rules Committee.

CONSIDERATION OF THE CALENDAR

SECOND READING OF SENATE RESOLUTIONS

SJR 47 SENATE JOINT RESOLUTION NO. 47 (Congressional action on H.R. 200) was read the second time.

Senator Kerttula moved and asked unanimous consent that SENATE JOINT RESOLUTION NO. 47 be considered engrossed, advanced to third reading and placed on final passage. Without objection, it was so ordered.

SENATE JOINT RESOLUTION NO. 47 was read the third time.

The question being: "Shall SENATE JOINT RESOLUTION NO. 47 (Congressional action on H.R. 200) pass the Senate?" The roll was taken with the following result:

Yeas:	20	Bradley, Butrovich, Chance, Colletta, Croft, Ferguson, Hohman, Huber, Kerttula, Meland, Miller, Orsini, Poland, Rader, Ray, Rodey, Sackett, Tillion, Willis, Ziegler	SJR 47
Nays:	0		

And so, SENATE JOINT RESOLUTION NO. 47 passed the Senate and was referred to the Secretary for engrossment.

SECOND READING OF SENATE BILLS

Senator Rader moved and asked unanimous consent that SENATE BILL NO. 491 (state aid to school districts affected by state activities) be returned to the Rules Committee. Without objection, it was so ordered. SB 491

SECOND READING OF HOUSE BILLS

HOUSE BILL NO. 120 (eye examinations for needy persons) was read the second time. HB 120

Senator Ray moved and asked unanimous consent for adoption of the Finance Committee report, thus adopting the Senate committee substitute offered by that committee, page 535. Senator Kerttula objected, then withdrew his objection. Without further objection, SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 120 was adopted.

SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 120 was read the second time. SCS HB 120

Senator Kerttula moved and asked unanimous consent that SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 120 be considered engrossed, advanced to third reading and placed on final passage. Without objection, it was so ordered.

SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 120 was read the third time.

The question being: "Shall SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 120 (eye examinations for needy persons) pass the Senate?" The roll was taken with the following result:

SCS HB 120

Yeas: 20 Bradley, Butrovich, Chance, Colletta, Croft, Ferguson, Hohman, Huber, Kerttula, Meland, Miller, Orsini, Poland, Rader, Ray, Rodey, Sackett, Tillion, Willis, Ziegler

Nays: 0

And so, SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 120 passed the Senate.

Senator Kerttula moved and asked unanimous consent that the roll call on the passage of SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 120 be considered the roll call on the effective date clause. Without objection, it was so ordered.

SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 120 was referred to the Secretary for engrossment.

HB 424

HOUSE BILL NO. 424 (membership of the advisory board on alcoholism) was read the second time.

Senator Chance moved and asked unanimous consent for adoption of the Health, Education and Social Services Committee report, thus adopting the Senate committee substitute offered by that committee, page 324. Without objection, SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 424 was adopted.

SCS HB 424

SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 424 was read the second time.

Senator Kerttula moved and asked unanimous consent that SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 424 be considered engrossed, advanced to third reading and placed on final passage. Without objection, it was so ordered.

SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 424 was read the third time.

The question being: "Shall SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 424 (membership of the advisory board on alcoholism) pass the Senate?" The roll was taken with the following result:

Yeas:	20	Bradley, Butrovich, Chance, Colletta, Croft, Ferguson, Hohman, Huber, Kerttula, Meland, Miller, Orsini, Poland, Rader, Ray, Rodey, Sackett, Tillion, Willis, Ziegler	SCS NB 424
Nays:	0		

And so, SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 424 passed the Senate and was referred to the Secretary for engrossment.

UNFINISHED BUSINESS

The reconsideration of HOUSE BILL NO. 551 (supplemental appropriation to Legislative Affairs Agency) was not taken up this legislative day. HOUSE BILL NO. 551 was signed by the President and Secretary and returned to the House. HB 551

SPECIAL ORDERS

Senator Ferguson moved and asked unanimous consent that he be excused from a call of the Senate February 23. Without objection, Senator Ferguson was excused.

ENGROSSMENT AND ENROLLMENT

The following have been engrossed, signed by the President and Secretary and transmitted to the House for its consideration:

SENATE JOINT RESOLUTION NO. 47

SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 120

SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 424

SENATE CONCURRENT RESOLUTION NO. 78 has been enrolled, signed by the President and Secretary, Speaker and Chief Clerk, and the engrossed and enrolled copies were transmitted to the office of the Governor at 3:15 p.m. February 19, 1976. SCR 78

ANNOUNCEMENTS

Joint Gas Pipeline Impact Committee w/Resources and State Affairs	Court Bldg.	Feb 20	1:00 p.m.
Judiciary	Room 5 Capitol	Feb 22	1:30 p.m.
Commerce	Room 6 Capitol	Feb 23	3:00 p.m.
Finance	4th Floor Capitol	Feb 24	2:00 p.m.

ADJOURNMENT

Senator Kerttula moved and asked unanimous consent that the Senate adjourn until 2:00 p.m. February 23, 1976. Without objection, the Senate adjourned at 11:35 a.m.

Beverly Keithahn
Secretary of the Senate

February 1976

CORPORATION V. PARTNERSHIP V. LIMITED LIABILITY COMPANY

A. NON-TAX CONSIDERATIONS

	CORPORATION	PARTNERSHIP	LIMITED LIABILITY COMPANY
LIFE	Perpetual in most cases.	Agreed term, or life of any partner.	Agreed. Not to exceed 30 years.
ENTITY	Separate legal person.	Not a separate entity from individual partner.	Separate legal entity.
LIABILITY	No individual liability.	General partner individually liable for all obligations. Limited partner usually liable to the amount of capital contributed.	No individual liability.
TRANSFER OF INTEREST	In absence of restrictions interest may be sold to strangers.	New partnership agreement usually required.	May be transferred; however, if all other members do not approve of the proposed transfer by unanimous written consent, the transferee has no right to participate in the management and affairs of the company or to become a member, but is entitled only to receive his share of the profit or return of contributions.
CAPITAL	Capital may be enlisted by sale of stock.	New capital secured only by loans, increase in membership or new contributions by existing partners.	Capital is contributed in money or property at inception or during the course of operation as set out in the Articles of Organization.
BUSINESS ACTION	Action authorized by specified percentage of directors and/or stockholders.	Unanimity of partners usually required.	Action authorized by majority in interest of the members.

	CORPORATION	PARTNERSHIP	LIMITED LIABILITY COMPANY
CREDIT CONSIDERATIONS	The corporation possesses credit ability apart from stock membership. Certificates of stock may be used as collateral.	Credit is coincidental with membership and partners assume joint and several responsibility. Interests in partnerships are not ordinarily accepted as basis for loan or credit.	Credit will be extended to the company on the strength of its contributed or to-be-contributed capital.
MANAGEMENT	Shareholders may invest without participation in management.	All general partners involved in management responsibility	Management of the company is in the members unless management by a manager or managers to be elected by the members is provided in the Articles of Organization.
FLEXIBILITY	A corporation operates within its corporate franchise granted by the state or states in which it is authorized to do business.	A partnership is a contractural relationship which may be altered by unanimous agreement of the partners.	Flexibility is perhaps the Limited Liability Company's strongest point. The Articles of Organization will contain a minimum of restrictions and the working rules of the company may be drafted in the form of an operating agreement.
B. TAX FACTORS			
TAX BURDEN	As a separate legal personality a corporation is subject to taxation, in addition to the taxation of the income received as dividends by its members. Electing "Small Business Corporation". (1) Each shareholder's proportionate share of the corporation's undistributed taxable income is included in the gross income of the shareholder. The corporation pays no tax thereon. This substantially parallels the taxation of a partner's income from the partnership.	Each partner is taxed on his proportionate share of income whether distributed or not.	Private revenue ruling will be requested of the Internal Revenue Service requesting that the company be classified as a partnership for federal tax purposes. As drafted the Limited Liability Company will lack at least two and perhaps three of the characteristics of a corporation; the third centralization of management, will be lacking if management is reserved to the members.

	CORPORATION	PARTNERSHIP	LIMITED LIABILITY COMPANY
TAX CONCERN	In close corporations, gross corporate income is reduced by reasonable salaries paid to officer-stockholders. Accumulation of profits may be made up to at least $150,000 or to such larger extent as not to constitute avoidance of surtax by the stockholders and an unreasonable accumulation in terms of the requirements of business. Corporation taxes, plus individual taxes on the compensation for services or dividends, represent the tax burden of the corporate investment, as against the individual tax paid by partners. Electing "Small Business Corporation." Undistributed taxable income of an electing corporation is taxable proportionately to each shareholder. Subsequent distributions out of this income to the shareholders are tax free. This substantially parallels the taxation of a partner's income from the partnership.	All earnings and profits are taxable to the individual partner, unaffected by accumulations of earnings However, once so taxed, thereafter any distributions of these earnings are tax exempt to the individual partner.	All earnings and taxes are taxable to the members whether distributed or not. It is contemplated that the distribution rules and basis rules now applicable to the partnership interest will also be applicable to a limited liability company. As are Losses !
PENSION TRUST	Corporate contributions to a pension trust, within the amount allowed by law are deductible by the corporation. Stockholder-employees may be covered to same extent as other	Members of a partnership are not employees and are not proper beneficiaries under an exempt Pension Trust. However, under the Self-Employed Individuals Tax Retirement Act of 1962,	Unknown but it is suggested that the rules now applicable to a Subchapter S corporation which impose the limits of the Keogh Plan will also be applicable.

	CORPORATION	PARTNERSHIP	LIMITED LIABILITY COMPANY
	employees, so long as there is no discrimination in favor of such stockholders. Electing "Small Business Corporation". An electing corporation's contributions to a pension trust, within the amount allowed by law, are deductible by the corporation from its taxable income.	partners who own more than 10% of the capital or profit interest in the partnership may, deduct the full amount of their contribution to a pension plan up to $7,500.	
SOCIAL SECURITY TAX	Compensation paid to stockholding officers and employees is subject to Social Security Taxes. Electing "Small Business Corporation". Compensation paid to stockholding Officers and employees is subject to Social Security Taxes.	Partners do not pay Social Security Taxes upon their salaries from the partnership. However, they are required to pay the tax on self-employment income.	Compensation for services paid to employee, whether member or not, subject to social security tax. Distribution of profits to members would not be.
ASSIGNABILITY OF INTEREST OR INCOME	An unqualified transfer of stock ordinarily requiring no other person's consent, will entitle transferee to dividends or distributions Electing "Small Business Corporation". Transferee is entitled to dividends and distributions, but the stock must be transferred to an individual or estate and the transferee must consent to the continuation of the "tax option" status.	Any assignment of interest requires consent of the other partners and may create a new partnership.	A member's interest in a Limited Liability Company may be transferred (see page 1). Income from date of transfer taxed to transferee. May be capital gain to transferor on transfer of his interest.

	CORPORATION	PARTNERSHIP	LIMITED LIABILITY COMPANY
COMMUNITY PROPERTY STATES	Dividends from investments made from community property become community property. Electing "Small Business Corporation". Dividends from investments made from community property become community property.	Whether income is community or separate income depends upon the law of the state of domicile.	Same as partnership, with the results depending on the community property laws in the several states. Alaska does not have community property.
DUAL MEMBERSHIPS	Because it would be extending its credit, liability and the powers of the Board of Directors beyond legal scope, a corporation cannot be a direct member of a partnership in some states. Can in Alaska. Electing "Small Business Corporation". Stock may not be held by either a partnership or another corporation.	A partnership may own some or all of the stock of a corporation and so function in two capacities.	A Limited Liability Company enjoys flexibility in this area and may be owned by other entities or individuals and participate in other entities and business enterprises.

(1) An electing "small business corporation" is a domestic corporation which does not have more than 10 shareholders and which otherwise comes within the requirements of Subchapter "S" of the Internal Revenue Code, and whose shareholders elect to include in their personal income the current taxable income of the corporation.

B 354

STATE OF ALASKA

DEPARTMENT OF REVENUE

JAY S. HAMMOND, GOVERNOR

STATE OFFICE BUILDING / POUCH SA – JUNEAU 99811

May 19, 1976

The Honorable Terry Gardiner
Pouch V
Juneau, AK 99811

Dear Terry:

In response to your letter of May 18, please be advised that we have no statistical for estimating the impact of the limited liability companies. The proponents of this legislation have estimated that, based on their research, there may be up to 5,000 companies organizing in the State of Alaska. We have no basis on which to confirm or refute their estimate.

The exact effect of the enactment of this legislation is difficult to ascertain at this point. The law was drafted with the intent that those companies are to be treated as limited partnerships for tax purposes. Our review of the law would indicate that this is probably correct. Actually, the final decision will be made by the Internal Revenue Service after the law is enacted. To the best of our knowledge, there is no reason to believe that the State of Alaska will lose any revenue as a result of this legislation, since it would appear that the majority of organizations taking advantage of this law would have organized as partnerships anyhow.

Our fiscal note anticipated revenue being generated through our normal audit of returns filed and did not take into consideration the additional estimated $1,000,000 which will be generated in the form of filing fees from the 5,000 companies which may organize under this statute.

In summary, based on our research, it does not appear that the State of Alaska will incur any loss of tax revenues from the enactment of this legislation. In fact, the State should receive additional revenue in the form of filing fees which it would not normally receive.

If you have any further questions regarding this law, please feel free to contact me.

Sincerely,

Sterling Gallagher
Commissioner

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

Pouch K, Capitol Bldg.
Juneau, Alaska 99811

May 20, 1976

The Honorable Terry Gardiner
Chairman
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: SB 354 - Limited Liability Companies

Dear Representative Gardiner:

You have requested this office for an opinion for the Judiciary Committee regarding the method of taxation which would be imposed on a limited liability company. Because, as you state in your letter, the time before adjournment is short, and because of the unique character of the limited liability company, I will be unable to give you a definitive answer to your opinion request. Accordingly, I will instead indicate to you our best judgment on this matter, realizing that the Internal Revenue Service will make their own determination on the question with regard to federal income taxes.

For purposes of state income taxes levied under AS 43.20, a limited liability company will be treated as specified by the Internal Reve ue Code and the regulations and rules adopted by the Internal Revenue Service (IRS). Since limited liability companies do not exist in any other state, and the Internal Revenue Service will not issue a ruling with regard to their tax status until SB 354 becomes law, no one can say with certainty how they will be treated. A fair judgment, however, can be made by testing the elements of a limited liability company under SB 354 against the requirements of Sec. 7701 of the Internal Revenue Code and the regulations promulgated thereunder. In viewing SB 354 in the light of Sec. 7701 of the Internal Revenue Code and Reg. 301.7701-2, it is our best judgment that they will be taxed as partnerships. That is not to say, however, that the IRS would not determine otherwise, since obviously they might. No one can say with certainty, but it is our belief under present rules that it would be taxed as a partnership for state income tax purposes.

AMERICAN REVOLUTION BICENTENNIAL 1776-1976

"1776-A TRIBUTE FROM OUR STATE TO OUR NATION-1976"

THE SEAL OF THE STATE OF ALASKA

For other taxes imposed by the state, such as business license taxes and excise taxes, the method of taxation does not vary with the type of taxpayer. Accordingly, SB 354 should not change the method of taxation for other taxes, and a limited liability company would be subject to tax as any other person whether individual, corporation or partnership.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By: John R. Messenger
Assistant Attorney General

JRM:chp

LAW OFFICES OF
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WILLIAM B. ROZELL

JAN VAN DORT
LAWRENCE T. FEENEY
CHARLES N. DRENNAN
PATRICK E. MURPHY
TOM BATCHELOR

May 4, 1976

The Honorable Terry Gardiner
Chairman, House Judiciary Committee
State of Alaska
Pouch V
Juneau, Alaska 99811

Re: SB 354 -- Limited Liability Companies

Dear Chairman Gardiner:

Please be advised that Huna Totem Corporation, a village corporation organized under the provisions of the Alaska Native Claims Settlement Act, supports generally the limited liability company concept and supports specifically the version of SB 354 which is in your committee.

Very truly yours,

Jan Van Dort

JVD/amz
cc: Gerald Gray
Frank See, Sr.

Gerald Goay - Hoonah Totem Corp

Shareholder in Sanco

Eaval ~~#~~ SB 354

Pay less tax - Circulate funds to tax one again

Bob Loescher Goldbelt Corp

have looked at joint venture / limited partnership

$$\begin{array}{r} 24\% \\ 4\% - 16\% \\ \hline 24 \end{array} \qquad 4$$

4

$\boxed{.64}$

[Title 39] 39.05.060

THE LEGISLATURE OF THE STATE OF ALASKA
FISCAL NOTE
Second Session - Ninth Legislature

I. REQUEST

Bill No. CS SB 354 AM
Title: "An Act related to Limited Liability Companies"
Requested by: House Judiciary Committee Date: 05-17-1976
Return Date Requested: 05-17-76
Agency: Revenue Program: Audit

II. FISCAL DETAIL

Budget Request Unit(s) Affected: Audit

A. EXPENDITURES: (Thousands of dollars)

	OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100	PERSONAL SERVICES		39.4	39.4	63.1	63.1	86.8
200	TRAVEL		4.0	4.4	6.8	7.0	9.4
300	CONTRACTUAL		25.5	19.0	21.2	23.3	25.6
400	COMMODITIES		.4	.4	.6	.6	
500	EQUIPMENT		1.2	-	.6	-	.6
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL	-0-	70.5	63.2	92.3	94.0	123.2

B. FUNDING: (Thousands of dollars)

GENERAL FUND	-0-	70.5	63.2	92.3	94.0	123.2
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	0 / 0	2 / 0	2 / 0	3 / 0	3 / 0	4 / 0
MAN MONTHS (P./T.)	/	24 / 0	24 / 0	36 / 0	36 / 0	48 / 0

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

This is a new type of organization for Alaska as well as the rest of the United States. The sponsors anticipate up to 5,000 companies will organize under this statute in the first year. It is imperative that there be sufficient staffing to deal with the many problems which will arise in how to file in Alaska as well as how to determine what portion of their income is taxable in Alaska. The positions requested are one (1) office auditor and one (1) tax examiner. It is anticipated that these positions will generate $200,000 in additional revenue in the first year.

IV. ATTACHMENTS

V. DATE: 0 - 17 - 76 PREPARED BY:

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

H/S 50

MEMORANDUM

file 354

May 26, 1976

TO: Steve Cowper and Terry Gardiner

RE: Senate Bill 354 AM

As you are both probably aware the most important aspect of any business operation is the distribution of any income or loss.

In general, income and loss to a corporation appear as an increase in the value of the company's stock or in the form of dividends. In the case of loss, lower values of stock and no dividends. Of course many tax applications exist with regard to income or loss for example, tax loss carry forwards and deferred taxes. The loss as income is distributable to the shares.

In the case of a sole proprietorship the proprietor must (obviously) bear directly the burden or benefit; though there are some tax benefits to the proprietor, they have little value.

Partnerships generally attribute distribution per agreement of the parties normally, along the lines of their financial interests. Partners are generally individually liable for all obligations. Limited partnership partners are liable to the extent of capital contributed.

Limited liability companies who get letters of intent to contribute capital or provisional letters of credit, or who have the strength and connections to have long lines of bank credit, gain a distinct tax advantage through the LLC.

EXAMPLE:	Two "heavys" contribute	$ 55 K each = 110 K
	Ten others contribute	$ 10 K each = 100 K
	12 Individuals	= 210 K

The LLC takes the 210 K plus its "line" of credit, $700 K, and begins operations--drills a wildcat well for example. "Losses" are incurred for three years = each member of the LLC has his proportionate share of loss "distributed" to him. He may reduce, in proper circumstances,

his taxable income in other ventures by the amount of this loss. This loss, like his gain, is assessed in the amount of his interest. If the capital and the borrowed funds (credit line) are high ($910,000) and if all of the operation showed a loss then the partners (1-2) would have a "loss" they could use, in this example, 27 1/2% of 910,000 or $250,250. The amount of investment was $55 K so the limited liability allows a loss five times greater than the amount of investment.

The other partners, 3-12, have just shy of 1/2 interest (5% of total invest each) their loss benefit would be only 5% of 409,500 (20,475). For the small partner, he gets a tax benefit two times his investment. If this were to continue several years the benefit would be substantial when profits were finally made and distributed. Partners could carry tax losses forward to apply against future distribution of income. (Numberless tax "advantages" exist along side this one example of loss--carry forward.) Income could be distributed for up to five years with no tax liability. If previous losses were incurred as part of a plan. Of course in oil if you hit a big one tax liabilities are irrelevant.

In my view there would be a definite tax advantage for members of LLC's in Alaska if SB 354 becomes law. There would, concurrently, be a tax disadvantage to the state since we use the Federal Revenue Code which contains all the loopholes. The State could lose far more than it gained in filing fees. Likely as not most of these Corps would not be "Alaskan" Corps. Further, the application of this to multinational corporations should be thoroughly and carefully researched and investigated.

See Attached

Subchapter S Corp

Bob Hartig - Bernard Doherty - Hamilton Brothers Oil Co.

Corp - limited partnership - Cross

Corp - limits liability to stock can't go through to stockholder to sue

Partnership - one layer of taxation

IRS letter

Generate $1 million in filing fees etc
outside companies would incorporate in Alaska

Follows Corporation Act in drafting

None in any other states - same before 1900's

Corporation pays taxes on two levels

~~Corp~~

1. Centralization Under this bill - choice over centralized management not
3. Ore transferability " " " Sec 17C limited restriction on transferring stock
4. Continuity Corp has perpetual life

Joint Ventures + Partnerships will shift to this
they would switch because of advantage of limited liability

Small Corporations might switch over
Potential loss of tax dollars to state ?

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February 24, 1976

MEMORANDUM

RE: CS Senate Bill #354, Limited Liability Company Act

Senate Bill 354 was introduced by Senator Colletta in the first session of the ninth legislature and hearings on the bill have been held in the Senate Commerce and Judiciary Committees.

The bill should provide additional revenues to the State of Alaska in excess of one million dollars per year. This revenue will be derived from filing fees and annual fees for the registration of the limited liability company.

The Act is designed to provide a business entity to be used by persons desiring to invest both in Alaska and outside Alaska. Through its use as an investment entity outside Alaska, the Act would provide revenue to the state without corresponding liability of any kind.

Use of the limited liability company will not in any way reduce income taxes payable to the state as it will be used mainly by investors currently using a partnership or limited partnership fo m.

Miles Schlosber , Director of the Division of Banking, Securities, Small Loa s & Corporations, has testified before the Senate Judiciary Committee on two occasions and the administration has taken a position of "in favor" in their letter to Senator Jalmar M. Kerttula of May 5, 1975.

Enclosed are explanatory materials to assist you with regard to the proposed legislation.

Robert L. Hartig

MEMORANDUM

LIMITED LIABILITY COMPANY

The limited liability company has predecessors in New Jersey, Pennsylvania, Michigan and Ohio. In New Jersey and Ohio it was known as a "limited partnership association" and in Pennsylvania and Michigan as a "partnership association".

The business entity which we will now call the limited liability company had its origins in the third quarter of the 19th century. It was adopted in Pennsylvania in 1874, in Michigan in 1877, in New Jersey in 1880, and in Ohio in 1881. No other states have used this form of business entity.

The reason for its creation seems to be the particularly restrictive corporation statutes common in the late part of the 19th century. At that time in the development of the corporate entity, the restrictions in some states included the limitation of business to one state, the limitation of the corporation's business to a sole purpose stated in the Articles of Incorporation and various similar confining requirements. In the early days of the development of the corporation, the case law also was extremely restrictive on what a corporation could do and how it could do it, because of the roots in the English system that a corporation, being chartered by the Crown, was authorized to do only what the Crown specifically authorized it to do.

In the early 20th century, these restrictions on corporate activity were greatly reduced and have continued to be reduced through the introduction of the Delaware corporate statute and the Model Business Corporation Act, upon which many states have based their corporation statutes. These statutes gave much greater freedom to the shareholders and the board of directors to structure the activities of the corporation to meet their particular needs. This has especially been true in the case or closely held corporation which most often is a family corporation. Indeed, some states have adopted statutes which govern the activity of such close corporations and give them wide latitude in arranging their affairs. As these new corporate statutes were adopted by the various states and the case law governing the activities of corporations began to be less restrictive, the vehicle of the limited partnership association or partnership association fell in to disuse.

In introducing the Limited Liability Company Act in the State of Alaska, it is our desire to provide to investors, and particularly real estate investors, the opportunity to utilize this new form of business entity to conduct their business affairs with less expense and fewer restrictions.

The Ohio statute proves to be not usable for these objectives because of its preclusion of dealing in real estate

from the uses of the Ohio Limited Partnership Association, (Ohio Rev. Stats. §1783.01).

Also, the statutes in the other states are substantially more restrictive than the Alaska legislation being introduced and thus provide a less useful vehicle for conduct of a business. For example, the New Jersey statute (NJ Stats. Ann. §42.3-1) requires that the principal place of business of a New Jersey limited partnership association must be established and maintained within the State of New Jersey. The Ohio and Michigan statutes, though a little less restrictive, still require that that organization shall have its principal office or principal place of business within the state. The Pennsylvania statute was repealed in 1966, except as to professions which are not permitted to incorporate in the state.

The Alaska proposed legislation does away with this requirement as to the principal office or principal place of business. The reason for this is the desire to draw to the state investors interested in organizing under the Alaska Limited Liability Company Act for business or investment in other states as well as the State of Alaska. The legislation requires a registered agent in the state which would always insure a resident on whom process can be served in suit against the limited liability company.

The legislation proposed would provide a good amount of revenue each year to the state as there are provisions in the proposed legislation for the following fees:

1. A filing fee upon formation of the Limited Liability Company, which is based on capital invested upon a sliding scale to a maximum of $1,000;
2. An annual fee of $100;
3. A filing fee for amendment to the Certificate of Organization of $25.00; and
4. A filing fee of $25.00 upon dissolution.

It is suggested that this form of business entity will draw a substantial number of investors from other states who, up to this time, have used the limited partnership, corporation or joint venture vehicle for their investments.

In the first ten months of 1974, approximately 1,300 limited partnerships were filed in the State of Texas, which requires a filing of the limited partnership within the state. In Texas this is used as a revenue measure and there is a requirement of a filing fee which rapidly reaches the maximum fee of $2,500 at capital contributed of $500,000. This figure would not at all be uncommon in the real estate market of today.

It is estimated that in excess of half of these limited partnerships would be drawn to use the Limited Liability Company authorized by the proposed legislation in the

State of Alaska to conduct their business or to direct their investments, thus providing this increased revenue for the State. This figure is only for the State of Texas and it is suggested that this legislation would be attractive to investors of all states and may substantially contribute to the revenue of our state.

In addition, it is hoped that in drawing investors to the state for the purpose of utilizing our Limited Liability Company Act as a vehicle for investment in other states, such investors will also use the device as an investment entity in our state, thus providing increased work for real estate personnel, title companies, and all those persons who assist in transactions concerning real estate. In addition, it will be necessary for each limited liability company to establish and maintain a registered agent in the state and it will be necessary for the state to employ a number of additional persons to file and administer the limited liability companies.

The provisions of the act enable the persons forming a limited liability company to provide for management of the limited liability company either by the members or by a manager or managers elected by the members of the limited liability company. The voting power of the members is to be in proportion to their investment in the capital of the company. As with a corporation, the liability of the limited liability

company is to be limited to assets of the company. A member would have a liability not to exceed his contribution to the company or any amount which he is committed to contribute but has not as yet contributed. Why would this vehicle be used rather than a limited partnership? Because it combines the attractive characteristics of a corporation with the attractive characteristics of a partnership.

It is hoped that in submitting a request for a private ruling from the Internal Revenue Service of the United States Treasury Department, a limited liability company could obtain partnership classification for tax purposes.

There are four characteristics in distinguishing between partnership classification and classification and taxation as an association or corporation for purposes of the Internal Revenue Code. These are: (1) centralization of management; (2) continuity of life; (3) free transferability of interests; and (4) limited liability.

In order to be taxed as an association, an entity must have more corporate characteristics than partnership characteristics. A similar problem with regard to taxation is faced by the limited partnership vehicle which would often request advanced revenue rulings to make the limited partnership attractive to an investor.

As drafted, the limited liability company obviously would always have limited liability.

It is expected that the Internal Revenue Service would rule favorably on the continuity of life characteristic because of provision 10.50.180 which states that a limited liability company shall be dissolved upon the death, retirement, resignation, expulsion, bankruptcy, dissolution of a member or occurrence of any other event which terminates the continued membership of a member in the limited liability company, unless the business of the limited liability company is continued by the consent of all the remaining members thereof. Thus, without consent of all the remaining members, the limited liability company would be dissolved upon one of the stated events.

Free transferability of interests is treated in Section 10.50.170. This section provides that a member may always transfer his interest in the limited liability company, but unless unanimous approval is obtained from the other members, the member transferring an interest, can transfer merely the profit and loss interest and not a right to share in the management of the limited liability company.

As to the characteristic of centralization of management, the provisions of the proposed legislation enable the members of the limited liability company to choose whether the limited liability company will be governed by themselves as members or by a manager or management elected by them. If the

members choose to retain management, the limited liability company would also lack the corporate characteristic of centralization of management.

Thus, it can be seen that at least two and possibly three of the corporate characteristics may be lacking in the classification of the limited liability company as a partnership or as an association for the purposes of the Internal Revenue Code.

In conclusion, a limited liability company offers the investor a business entity which combines the attractive elements of both a partnership and a corporation. It combines the limited liability offered to shareholders of a corporation with the tax treatment of a partnership.

The possibilities of increased revenue to the state have been set forth and it appears that increased revenues in excess of one million dollars may be obtained with very little increased expense incurred.

SUPERVISION OF OPERATIONS OF CERTAIN MANUFACTURERS

§ 301.7641 [Comprises Code section 7641, see 26 U.S.C.A. (I.R.C. 1954) § 7641]

§ 301.7641–1 Supervision of operations of certain manufacturers

For regulations under section 7641, except the provisions thereof relating to the manufacture of opium suitable for smoking purposes, see Subparts E, F, G, and H of Part 45 of this chapter (Miscellaneous Stamp Tax Regulations). For regulations relating to the manufacture of opium suitable for smoking purposes, see 26 CFR (1939) 150 (Narcotics Regulations 3, 3 F.R. 1402) as made applicable to section 7641 of the 1954 Code by Treasury Decision 6091, approved August 16, 1954 (19 F.R. 5167).

Added Nov. 3, 1967, 32 F.R. 15241.

POSSESSIONS

§ 301.7651 [Comprises Code section 7651, see 26 U.S.C.A. (I.R.C. 1954) § 7651]

§ 301.7652 [Comprises Code section 7652, see 26 U.S.C.A. (I.R.C. 1954) § 7652]

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§ 301.7655 [Comprises Code section 7655, see 26 U.S.C.A. (I.R.C. 1954) § 7655]

DEFINITIONS

§ 301.7701 [Comprises Code section 7701, see 26 U.S.C.A. (I.R.C. 1954) § 7701]

§ 301.7701–1 Classification of organizations for tax purposes

(a) **Person.** The term "person" includes an individual, a corporation, a partnership, a trust or estate, a joint-stock company an association, or a syndicate, group, pool, joint venture, or other unincorporated organization or group. Such term also includes a guardian, committee, trustee, executor, administrator, trustee in bankruptcy, receiver, assignee for the benefit of creditors, conservator, or any person acting in a fiduciary capacity.

(b) **Standards.** The Internal Revenue Code prescribes certain categories, or classes, into which various organizations fall for purposes of taxation. These categories, or classes, include associations (which are taxable as corporations), partnerships, and trusts. The tests, or standards, which are to be applied in determining the classification in which an organization belongs (whether it is an association, a partnership, a trust, or other taxable entity) are determined under the Internal Revenue Code. Sections 301.7701–2 to 301.7701–4 set forth these tests, or standards, which are to be applied in determining whether an organization is (1) an association (see § 301.7701–2), (2) a partnership (see § 301.7701–3), or (3) a trust (see § 301.7701–4).

(c) **Effect of local law.** As indicated in paragraph (b) of this section, the classes into which organizations are to be placed for purposes of taxation are determined under the Internal Revenue Code. Thus, a particular organization might be classified as a trust under the

law of one State and a corporation under the law of another State. However, for purposes of the Internal Revenue Code, this organization would be uniformly classed as a trust, an association (and, therefore, taxable as a corporation), or some other entity, depending upon its nature under the classification standards of the Internal Revenue Code. Similarly, the term "partnership" is not limited to the common-law meaning of partnership, but is broader in its scope and includes groups not commonly called partnerships. See § 1.761–1 of this chapter (Income Tax Regulations) and § 301.7701–3. The term "corporation" is not limited to the artificial entity usually known as a corporation, but includes also an association, a trust classed as an association because of its nature or its activities, a joint-stock company, and an insurance company. Although it is the Internal Revenue Code rather than local law which establishes the tests or standards which will be applied in determining the classification in which an organization belongs, local law governs in determining whether the legal relationships which have been established in the formation of an organization are such that the standards are met. Thus, it is local law which must be applied in determining such matters as the legal relationships of the members of the organization among themselves and with the public at large, and the interests of the members of the organization in its assets. Nevertheless, the labels applied by local law to organizations, which may now or hereafter be authorized by local law, are in and of themselves of no importance in the classification of such organizations for the purposes of taxation under the Internal Revenue Code. Thus, a professional service organization, formed under the law of a State authorizing the formation by one or more persons of a so-called professional service corporation, would not be classified for purposes of taxation as a "corporation" merely because the organization was so labeled under local law. See Morrissey et al. v. Commissioner, 296 U.S. 344 (1935). The classification in which a professional service organization belongs is determined under the tests and standards set forth in §§ 301.7701–2, 301.7701–3, and 301.7701–4.

Added Nov. 3, 1967, 32 F.R. 15241.

§ 301.7701–2 Associations, including organizations labeled "corporations"

(a) **Characteristics of corporations.** (1) The term "association" refers to an organization whose characteristics require it to be classified for purposes of taxation as a corporation rather than as another type of organization such as a partnership or a trust. There are a number of major characteristics ordinarily found in a pure corporation which, taken together, distinguish it from other organizations. These are: (i) Associates, (ii) an objective to carry on business and divide the gains therefrom, (iii) continuity of life, (iv) centralization of management, (v) liability for corporate debts limited to corporate property, and (vi) free transferability of interests. Whether a particular organization is to be classified as an association must be determined by taking into account the presence or absence of each of these corporate characteristics. The presence or absence of these characteristics will depend upon the facts in each individual case. In addition to the major characteristics set forth in this subparagraph, other factors may be found in some cases which may be significant in classifying an organization as an association, a partnership, or a trust. An organization will be treated as an association if the corporate characteristics are such that the organization more nearly resembles a corporation than a partnership or trust. See Morrissey et al. v. Commissioner (1935) 296 U.S. 344.

(2) Since associates and an objective to carry on business for joint profit are essential characteristics of all organizations engaged in business for profit (other than the so-called one-man corporation and the sole proprietorship), the absence of either of these essential characteristics will cause an arrangement among co-owners of property for the development of such property for the separate profit of each not to be classified as an association. Some of the major characteristics of a corporation are common to trusts and corporations, and others are common to partnerships and corporations. Characteristics common to trusts and corporations are not material in attempting to distinguish between a trust and an association, and characteristics common to partnerships and corporations

are not material in attempting to distinguish between an association and a partnership. For example, since centralization of management, continuity of life, free transferability of interests, and limited liability are generally common to trusts and corporations, the determination of whether a trust which has such characteristics is to be treated for tax purposes as a trust or as an association depends on whether there are associates and an objective to carry on business and divide the gains therefrom. On the other hand, since associates and an objective to carry on business and divide the gains therefrom are generally common to both corporations and partnerships, the determination of whether an organization which has such characteristics is to be treated for tax purposes as a partnership or as an association depends on whether there exists centralization of management, continuity of life, free transferability of interests, and limited liability.

(3) An unincorporated organization shall not be classified as an association unless such organization has more corporate characteristics than noncorporate characteristics. In determining whether an organization has more corporate characteristics than noncorporate characteristics, all characteristics common to both types of organizations shall not be considered. For example, if a limited partnership has centralized management and free transferability of interests but lacks continuity of life and limited liability, and if the limited partnership has no other characteristics which are significant in determining its classification, such limited partnership is not classified as an association. Although the limited partnership also has associates and an objective to carry on business and divide the gains therefrom, these characteristics are not considered because they are common to both corporations and partnerships.

(4) The rules of this section and §§ 301.7701–3 and 301.7701–4 are applicable only to taxable years beginning after December 31, 1960. However, for any taxable year beginning after December 31, 1960, but before October 1, 1961, any amendment of the agreement establishing the organization will, in the case of an organization in existence on November 17, 1960, be treated for purposes of determining the classification of the organization as being in effect as of the beginning of such taxable year (i) if the amendment of the agreement is made before October 1, 1961, and (ii) if the amendment results in the classification of the organization under the rules of this section and §§ 301.7701–1, 301.7701–3, and 301.7701–4 in the same manner as the organization was classified for tax purposes on November 17, 1960.

(5) The rules of paragraph (h) of this section are applicable only to taxable years beginning after December 31, 1960. However, in the case of an organization formed as a partnership association, a business trust, an ordinary business corporation, or a professional service organization formed under a local law or regulatory rule specifically authorizing the formation of such organizations, the rules of paragraph (h) of this section shall not apply to any taxable year ending on or before December 31, 1964, if such organization made its return for any such taxable year, filed at or prior to the time (including extensions thereof) that the return for such taxable year was required to be filed, as if its income were subject to the tax imposed by section 11 of the Code (relating to tax imposed on corporations).

(b) Continuity of life. (1) An organization has continuity of life if the death, insanity, bankruptcy, retirement, resignation, or expulsion of any member will not cause a dissolution of the organization. On the other hand, if the death, insanity, bankruptcy, retirement, resignation, or expulsion of any member will cause a dissolution of the organization, continuity of life does not exist. If the retirement, death, or insanity of a general partner of a limited partnership causes a dissolution of the partnership, unless the remaining general partners agree to continue the partnership or unless all remaining members agree to continue the partnership, continuity of life does not exist. See Glensder Textile Company (1942) 46 B.T.A. 176 (A., C.B. 1942–1, 8).

(2) For purposes of this paragraph, dissolution of an organization means an alteration of the identity of an organization by reason of a change in the relationship between its members as determined under local law. For example, since the resignation of a partner from a general partnership destroys the mutual agency which exists between

ship Act, such a general partnership cannot achieve effective concentration of management powers and, therefore, centralized management. Usually, the act of any partner within the scope of the partnership business binds all the partners; and even if the partners agree among themselves that the powers of management shall be exclusively in a selected few, this agreement will be ineffective as against an outsider who had no notice of it. In addition, limited partnerships subject to a statute corresponding to the Uniform Limited Partnership Act, generally do not have centralized management, but centralized management ordinarily does exist in such a limited partnership if substantially all the interests in the partnership are owned by the limited partners.

(d) Limited liability. (1) An organization has the corporate characteristic of limited liability if under local law there is no member who is personally liable for the debts of or claims against the organization. Personal liability means that a creditor of an organization may seek personal satisfaction from a member of the organization to the extent that the assets of such organization are insufficient to satisfy the creditor's claim. A member of the organization who is personally liable for the obligations of the organization may make an agreement under which another person, whether or not a member of the organization, assumes such liability or agrees to indemnify such member for any such liability. However, if under local law the member remains liable to such creditors notwithstanding such agreement, there exists personal liability with respect to such member. In the case of a general partnership subject to a statute corresponding to the Uniform Partnership Act, personal liability exists with respect to each general partner. Similarly, in the case of a limited partnership subject to a statute corresponding to the Uniform Limited Partnership Act, personal liability exists with respect to each general partner, except as provided in subparagraph (2) of this paragraph.

(2) In the case of an organization formed as a limited partnership, personal liability does not exist, for purposes of this paragraph, with respect to a general partner when he has no substantial assets (other than his interest in the partnership) which could be reached by a creditor of the organization and when he is merely a "dummy" acting as the agent of the limited partners. Notwithstanding the formation of the organization as a limited partnership, when the limited partners act as the principals of such general partner, personal liability will exist with respect to such limited partners. Also, if a corporation is a general partner, personal liability exists with respect to such general partner when the corporation has substantial assets (other than its interest in the partnership) which could be reached by a creditor of the limited partnership. A general partner may contribute his services, but no capital, to the organization, but if such general partner has substantial assets (other than his interest in the partnership), there exists personal liability. Furthermore, if the organization is engaged in financial transactions which involve large sums of money, and if the general partners have substantial assets (other than their interests in the partnership), there exists personal liability although the assets of such general partners would be insufficient to satisfy any substantial portion of the obligations of the organization. In addition, although the general partner has no substantial assets (other than his interest in the partnership), personal liability exists with respect to such general partner when he is not merely a "dummy" acting as the agent of the limited partners.

(e) Free transferability of interests. (1) An organization has the corporate characteristic of free transferability of interests if each of its members or those members owning substantially all of the interests in the organization have the power, without the consent of other members, to substitute for themselves in the same organization a person who is not a member of the organization. In order for this power of substitution to exist in the corporate sense, the member must be able, without the consent of other members, to confer upon his substitute all the attributes of his interest in the organization. Thus, the characteristic of free transferability of interests does not exist in a case in which each member can, without the consent of other members, assign only his right to share in profits but cannot so assign his rights to participate in the management of the organization. Furthermore, although the agreement

provides for the transfer of a member's interest, there is no power of substitution and no free transferability of interest if under local law a transfer of a member's interest results in the dissolution of the old organization and the formation of a new organization.

(2) If each member of an organization can transfer his interest to a person who is not a member of the organization only after having offered such interest to the other members at its fair market value, it will be recognized that a modified form of free transferability of interests exists. In determining the classification of an organization, the presence of this modified corporate characteristic will be accorded less significance than if such characteristic were present in an unmodified form.

(f) Cross reference. See paragraph (b) of § 301.7701–3 for the application to limited partnerships of the rules relating to corporate characteristics.

(g) Examples. The application of the rules described in this section may be illustrated by the following examples:

Example (1). [Deleted]

Example (2). A group of seven doctors forms a clinic for the purpose of furnishing, for profit, medical and surgical services to the public. They each transfer assets to the clinic, and their agreement provides that except upon complete liquidation of the organization on the vote of three-fourths of its members, no member has any individual interest in its assets. Their agreement also provides that neither the death, insanity, bankruptcy, retirement, resignation, nor expulsion of a member shall cause the dissolution of the organization. However, under the applicable local law, a member who withdraws does have the power to dissolve the organization. While the agreement provides that the management of the clinic is to be vested exclusively in an executive committee of four members elected by all the members, this provision is ineffective as against outsiders who had no notice of it; and therefore, the act of any member within the scope of the organization's business binds the organization insofar as such outsiders are concerned. While the agreement declares that each individual doctor alone is liable for acts of malpractice, members of the clinic are, nevertheless, personally liable for all debts of the clinic including claims based on malpractice. No member has the right, without the consent of all the other members, to transfer his interest to a doctor who is not a member of the clinic. The organization has associates and an objective to carry on business and divide the gains therefrom. However, it does not have the corporate characteristics of continuity of life, centralized management, limited liability, and free transferability of interests. The organization will be classified as a partnership for all purposes of the Internal Revenue Code.

Example (3). A group of twenty-five lawyers forms an organization for the purpose of furnishing, for profit, legal services to the public. Their agreement provides that the organization will dissolve upon the death, insanity, bankruptcy, retirement, or expulsion of a member. While their agreement provides that the management of the organization is to be vested exclusively in an executive committee of five members elected by all the members, this provision is ineffective as against outsiders who had no notice of it; and, therefore, the act of any member within the scope of the organization's business binds the organization insofar as such outsiders are concerned. Members of the organization are personally liable for all debts, or claims against, the organization. No member has the right, without the consent of all the other members, to transfer his interest to a lawyer who is not a member of the organization. The organization has associates and an objective to carry on business and divide the gains therefrom. However, the four corporate characteristics of limited liability, centralized management, free transferability of interests, and continuity of life are absent in this case. The organization will be classified as a partnership for all purposes of the Internal Revenue Code.

Example (4). A group of twenty-five persons forms an organization for the purpose of engaging in real estate investment activities. Each member has the power to dissolve the organization at any time. The management of the organization is vested exclusively in an executive committee of five members elected by all the members, and under the applicable local law, no one acting without the authority of this committee has the power to bind the organization by his acts. Under the applicable local law, each member is personally liable for the obligations of the organization. Every member has the right to transfer his interest to a person who is not a member of the organization, but he must first advise the organization of the proposed transfer and give it the opportunity on a vote of the majority to purchase the interest at its fair market value. The organization has associates and an objective to carry on business and divide the gains therefrom. While the organization does have the characteristics of centralized management and a modified form of free transferability of interests, it does not have the corporate characteristics of continuity of life and limited liability. Under the circumstances presented, the organization will be classified as a partnership for all purposes of the Internal Revenue Code.

Example (5). A group of twenty-five persons forms an organization for the purpose of engaging in real estate investment activities. Under their agreement, the organization is to have a life of twenty years, and under the applicable local law, no member has the power to dissolve the organization prior to the expiration of that period. The management of the organization is vested exclusively in an executive committee of five members elected by all the members, and under the applicable local law no one acting without the authority of this committee has the power to bind the organization by his acts. Under the applicable local law, each member is personally liable for the obligations of the organization. Every member has the right to transfer his interest to a person who is not a member of the organization, but he must first advise the organization of the proposed transfer and give it the opportunity on a vote of the majority to purchase the interest at its fair market value. The organization has associates and an objective to carry on business and divide the gains therefrom. While the or-

ganization does not have the corporate characteristic of limited liability, it does have continuity of life, centralized management, and a modified form of free transferability of interests. The organization will be classified as an association for all purposes of the Internal Revenue Code.

Example (6). A group of twenty-five persons forms an organization for purposes of engaging in real estate investment activities. Each member has the power to dissolve the organization at any time. The management of the organization is vested exclusively in an executive committee of five members elected by all the members, and under the applicable local law, no one acting without the authority of this committee has the power to bind the organization by his acts. Under the applicable local law, the liability of each member for the obligations of the organization is limited to paid and subscribed capital. Every member has the right to transfer his interest to a person who is not a member of the organization, but he must first advise the organization of the proposed transfer and give it the opportunity on a vote of the majority to purchase the interest at its fair market value. The organization has associates and an objective to carry on business and divide the gains therefrom. While the organization does not have the characteristic of continuity of life, it does have limited liability, centralized management, and a modified form of free transferability of interests. The organization will be classified as an association for all purposes of the Internal Revenue Code.

Example (7). A group of twenty-five persons forms an organization for the purpose of investing in securities so as to educate the members in principles and techniques of investment practices and to share the income from such investments. While the agreement states that the organization will operate until terminated by a three-fourths vote of the total membership and will not terminate upon the withdrawal or death of any member, under the applicable local law, a member has the power to dissolve the organization at any time. The business of the organization is carried on by the members at regular monthly meetings and buy or sell action may be taken only when voted by a majority of the organization's membership present. Elected officers perform only ministerial functions such as presiding at meetings and carrying out the directions of the members. Members of the organization are personally liable for all debts of, or claims against, the organization. No member may transfer his membership. The organization has associates and an objective to carry on business and divide the gains therefrom. However, the organization does not have the corporate characteristics of limited liability, free transferability of interests, continuity of life, and centralized management. The organization will be treated as a partnership for all purposes of the Internal Revenue Code.

(b) Classification of professional service organizations. (1) (i) A professional service organization is treated as a corporation (or as an association and, therefore, taxable as a corporation) only if it has sufficient corporate characteristics to be classifiable as a corporation under paragraph (a) of this section, rather than as a partnership or proprietorship. For purposes of determining the classification of an organization under these regulations, the term "professional service organization," as used in this paragraph, means an organization formed by one or more persons to engage in a business involving the performance of professional services for profit which under local law, may not be organized and operated in the form of an ordinary business corporation having the usual characteristics of such a corporation. Thus, even if a professional service organization is organized as an ordinary business corporation, this paragraph applies if such corporation is subject to local regulatory rules which deprive such corporation of the usual characteristics of an ordinary business corporation. This paragraph applies irrespective of whether an organization is labeled under local law as a professional service corporation, a professional service association, a trust, or otherwise.

(ii) In determining whether a professional service organization has the major characteristics ordinarily found in a business corporation and whether any other significant factors are to be taken into account in classifying the organization, the special professional requirements of the profession engaged in by the members of the organization must be taken into consideration. Although such an organization may have associates and is engaged in business for profit, the relationships of the members of such an organization to each other as well as their relationships to employees, to clients, patients, or customers and to the public are inherently different from the relationships characteristic of an ordinary business corporation. In determining the nature of these relationships, consideration must be given to the law under which the organization is formed, the character, articles of association, bylaws, or other documents relating to the formation of the organization, and all other facts and rules governing or pertaining to such relationships in the usual course of the practice of the profession of the participants.

(2) A professional service organization does not have continuity of life within the meaning of paragraph (b) of this section if the death, insanity, bankruptcy, retirement, resignation, expulsion, professional disqualification, or election to inconsistent public office of any member will (determined without

regard to any agreement among the members) cause under local law the dissolution of the organization. A business corporation has a continuing identity as an entity which is not dependent upon a shareholder's active participation in any capacity in the production of the income of the corporation. Furthermore, the interest of a shareholder in an ordinary business corporation includes a right to share in the profits of the corporation, and such right is not legally dependent (determined without regard to any agreement among the shareholders) upon his participation in the production of the corporation's income. However, the interest of a member of a professional service organization generally is inextricably bound to the establishment and continuance of an employment relationship with the organization, and he cannot share in the profits of a professional service organization unless he also shares in the performance of the services rendered by the organization. For purposes of this paragraph, the term "employment relationship" is used to describe such active participation by the member and is not restricted to the common-law meaning of such term. If local law, applicable regulations, or professional ethics do not permit a member of a professional service organization to share in its profits unless an employment relationship exists between him and the organization, and if in such case, he or his estate is required to dispose of his interest in the organization if the employment relationship terminates, the continuing existence of the organization depends upon the willingness of its remaining members, if any, either to agree, by prior arrangement or at the time of such termination, to acquire his interest or to employ his proposed successor. The continued existence of such a professional service organization is similar to that of a partnership formed under the Uniform Partnership Act, whose business continues pursuant to an agreement providing that the business will be continued by the remaining members after the withdrawal or death of a partner (see paragraph (b) of this section), and is essentially different from the continuity of life possessed by an ordinary business corporation. Consequently, such a professional service organization lacks continuity of life.

(3) In applying the rules of paragraph (c) of this section, relating to centralization of management, a professional service organization does not have centralization of management where the managers of a professional service organization under local law are not vested with the continuing exclusive authority to determine any one or more of the following matters: (i) The hiring and firing of professional members of the organization and its professional and lay employees, (ii) the compensation of the members and of such employees, (iii) the conditions of employment—such as working hours, vacation periods, and sick leave, (iv) the persons who will be accepted as clients or patients, (v) who will handle each individual case or matter, (vi) the professional policies and procedures to be followed in handling each individual case, (vii) the fees to be charged by the organization, (viii) the nature of the records to be kept, their use, and their disposition, and (ix) the times and amounts of distributions of the earnings of the organization to its members as such. Moreover, although a measure of central control may exist in a professional service organization, the managers of a professional service organization in which a member retains traditional professional responsibility cannot have the continuing exclusive authority to determine all of the matters described in the preceding sentence. Instead, such measure of central control is no more than that existing in an ordinary large professional partnership which has one or more so-called managing partners and in which a member retains the traditional professional autonomy with respect to professional decisions and the traditional responsibility of a professional person to the client or patient. Such measure of central control is essentially different from the centralization of management existing in an ordinary business corporation. Therefore, centralization of management does not exist in such a professional service organization.

(4) A professional service organization has the corporate characteristic of limited liability within the meaning of paragraph (d) of this section only if the personal liability of its members, in their capacity as members of the organization, is no greater in any aspect than that of shareholder-employees of an ordinary business corporation. If under local law and the rules pertaining to professional practice, a mutual

agency relationship, similar to that existing in an ordinary professional partnership, exists between the members of a professional service organization, such organization lacks the corporate characteristic of limited liability.

(5) (i) If the right of a member of a professional service organization to share in its profits is dependent upon the existence of an employment relationship between him and the organization, free transferability of interests within the meaning of paragraph (e) of this section exists only if the member, without the consent of other members, may transfer both the right to share in the profits of the organization and the right to an employment relationship with the organization.

(ii) The corporate characteristic of free transferability of interests exists in a modified form within the meaning of paragraph (e) (2) of this section when a shareholder in an ordinary business corporation can transfer his interest in such corporation only after having offered such interest to the other shareholders at its fair market value. In such a case, the so-called right of first refusal applies only to an interest which is a right to share in the profits, the assets, and the management of the enterprise. However, if the interest of a member of a professional service organization constitutes a right to share in the profits of the organization which is contingent upon and inseparable from the member's continuing employment relationship with the organization, and the transfer of such interest is subject to a right of first refusal, such interest is subject to a power in the other members of the organization to determine not only the individuals whom the organization is to employ, but also who may share with them in the profits of the organization. The possession by other members of the power to determine, in connection with the transfer of such an interest, whom the organization is to employ is so substantial a hindrance upon the free transferability of interests in the organization that such power precludes the existence of a modified form of free transferability of interests. Therefore, if a member of a professional service organization who possesses such an interest may transfer his interest to a qualified person who is not a member of the organization only after having first offered his interest to the other members of the organization at its fair market value, the corporate characteristic of free transferability of interests does not exist.

Added Nov. 3, 1967, 32 F.R. 15241.

§ 301.7701–3 Partnerships

(a) **In general.** The term "partnership" is broader in scope than the common law meaning of partnership and may include groups not commonly called partnerships. Thus, the term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not a corporation or a trust or estate within the meaning of the Internal Revenue Code of 1954. A joint undertaking merely to share expenses is not a partnership. For example, if two or more persons jointly construct a ditch merely to drain surface water from their properties, they are not partners. Mere co-ownership of property which is maintained, kept in repair, and rented or leased does not constitute a partnership. For example, if an individual owner, or tenants in common, of farm property lease it to a farmer for a cash rental or a share of the crops, they do not necessarily create a partnership thereby. Tenants in common, however, may be partners if they actively carry on a trade, business, financial operation, or venture and divide the profits thereof. For example, a partnership exists if co-owners of an apartment building lease space and in addition provide services to the occupants either directly or through an agent.

(b) **Limited partnerships—(1) In general.** An organization which qualifies as a limited partnership under State law may be classified for purposes of the Internal Revenue Code as an ordinary partnership or as an association. Such a limited partnership will be treated as an association if, applying the principles set forth in § 301.7701-2, the organization more nearly resembles a corporation than an ordinary partnership or other business entity.

(2) **Examples.** The principles of this paragraph may be illustrated by the following examples:

Example (1). Three individuals form an organization which qualifies as a limited partnership under the laws of the State in which the organization was formed. The purpose of the organization is to acquire and operate various pieces of commercial and other investment property for profit. Each of the three individuals who are general partners invests $100,000 in the enterprise. Five million dollars of additional capital is raised through contributions of $100,000 or more by each of thirty limited partners. The three general partners are personally capable of assuming a substantial part of the obligations to be incurred by the organization. While a limited partner may assign his right to receive a share of the profits and a return of his contribution, his assignee does not become a substituted limited partner except with the unanimous consent of the general partners. The life of the organization as stated in the certificate is 20 years, but the death, insanity, or retirement of a general partner prior to the expiration of the 20-year period will dissolve the organization. The general partners have exclusive authority to manage the affairs of the organization but can act only upon the unanimous consent of all of them. The organization has associates and an objective to carry on business and divide the gains therefrom, which characterize both partnerships and corporations. While the organization has the corporate characteristic of centralized management, since substantially all of the interests in the organization are owned by the limited partners, it does not have the characteristics of continuity of life, free transferability of interests, or limited liability. The organization will be classified as a partnership for all purposes of the Internal Revenue Code.

Example (2). Three individuals form an organization which qualifies as a limited partnership under the laws of the State in which the organization was formed. The purpose of the organization is to acquire and operate various pieces of commercial and other investment property for profit. The certificate provides that the life of the organization is to be 10 years, unless a general partner dies, becomes insane, or retires during such period. On the occurrence of such death, insanity, or retirement, the remaining general partners may continue the business of the partnership for the balance of the 10-year period under a right so to do stated in the certificate. Each of the three individuals who is a general partner invests $50,000 in the enterprise and has means to satisfy the business obligations of the organization to a substantial extent. Five million dollars of additional capital is raised through the sale of freely transferable interests in amounts of $10,000 or less to limited partners. Nine hundred such interests are sold. The interests of the 900 limited partners are fully transferable, that is, a transferee acquires all the attributes of the transferor's interest in the organization. The general partners have exclusive control over management of the business, their interests are not transferable, and their liability for debts of the organization is not limited to their capital contributions. The organization has associates and an objective to carry on business and divide the gains therefrom. It does not have the corporate characteristics of limited liability and continuity of life. It has centralized management, however, since the three general partners exercise exclusive control over the management of the business, and since substantially all of the interests in the organization are owned by the limited partners. While the interests of the general partners are not transferable, the transferability test of an association is met since substantially all of the interests in the organization are represented by transferable interests. The organization will be classified as a partnership for all purposes of the Internal Revenue Code.

(c) Partnership associations. The laws of a number of States provide for the formation of organizations commonly known as partnership associations. Such a partnership association will be treated as an association if, applying the principles set forth in § 301.7701–2, the organization more nearly resembles a corporation than the other types of business entities.

(d) Partner. The term "partner" means a member of a partnership.
Added Nov. 3, 1967, 32 F.R. 15241.

§ 301.7701–4 Trusts

(a) Ordinary trusts. In general, the term "trust" as used in the Internal Revenue Code refers to an arrangement created either by a will or by an inter vivos declaration whereby trustees take title to property for the purpose of protecting or conserving it for the beneficiaries under the ordinary rules applied in chancery or probate courts. Usually the beneficiaries of such a trust do no more than accept the benefits thereof and are not the voluntary planners or creators of the trust arrangement. However, the beneficiaries of such a trust may be the persons who create it and it will be recognized as a trust under the Internal Revenue Code if it was created for the purpose of protecting or conserving the trust property for beneficiaries who stand in the same relation to the trust as they would if the trust had been created by others for them. Generally speaking, an arrangement will be treated as a trust under the Internal Revenue Code if it can be shown that the purpose of the arrangement is to vest in trustees responsibility for the protection and conservation of property for beneficiaries who cannot share in the discharge of this responsibility and, therefore, are not associates in a joint enterprise for the conduct of business for profit.

(b) Business trusts. There are other arrangements which are known as trusts because the legal title to property is conveyed to trustees for the benefit of

Vern GATES

Dr Rodgers

1. Income — Clinic Average per physician
2. Average premium
3. Who owns clinic — What percentage of phy own clinic

6,000

185,00

270

1. limit size on award
2. limiting contingency

3,800

1. obligation to public
2.

Other proposals

Continental

1 3 2 6 4

383

485) 1,856,508

~~40~~

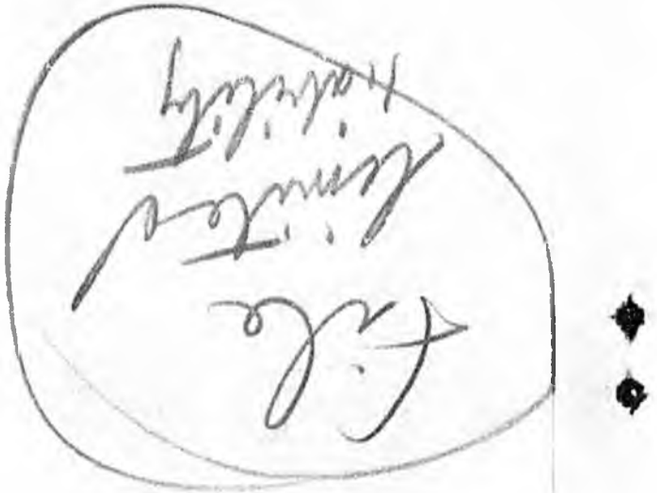
1455

4015

3880

1358

1455



File limited liability

SB

357

"An Act relating to minors on premises selling intoxicating beverages."

5/9/75

COMMITTEE REPORT

HOUSE

Mr. Speaker: Date 5/9/75

The Committee on JUDICIARY has had SSSB 357 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

AMENDMENT

OFFERED IN THE HOUSE: BY: House Judiciary

To: _____ HOUSE BILL No. _____

Judiciary CS SENATE BILL No. SS SB 357

PAGE: 3 LINE: 5

DELETE all of line 5 and
REPLACE with: ancing if accompanied by his parent, guardi , or
spouse who has attained the age of 19 years,
or by the parent or

May 16, 1975

The Honorable Jalmar Kerttula
Chairman
Senate Commerce Committee
Alaska State Legislature
State Capitol
Juneau, Alaska

Re: Committee Substitute for
House Bill No. 246 am.

Dear Senator Kerttula:

Committee Substitute for House Bill No. 246 am, an Act relating to liquor licenses, fees and municipal regulation of the sale of intoxicating liquor was introduced in the Senate on May 13, 1975 and was referred to the Senate Commerce and Finance Committees.

For the consideration of the Senate Commerce Committee, I am enclosing a memorandum from P. A. Wall, Director, Administrative Services Division which will disclose the additional wholesale license fee revenues to be obtained by that portion of the bill concerning new proposed fees to be paid by holders of general wholesale licenses and by holders of wholesale malt beverage and wine licenses.

With respect the revenue portion of the bill, consideration should be given to an effective date so as to avoid two rates of license fees for one calendar year.

If you or any members of the Senate Commerce Committee have any questions on the material submitted, please telephone the writer at 465-2397 and I will contact Mr. Wall (who served during part of 1974 as Acting Director of the Alchholic Beverage Control Board, for further material or testimony.

Very truly yours,

R. D. Stevenson
Special Assistant

RDS:eh

cc: The Honorable Bill Ray
Chairman, Senate Finance Committee

P. A. Wall, Director
Administrative Services

Linda E. Brown, Director
Alcoholic Beverage Control Board

MEMORANDUM State of Alaska

TO: Phil A. Wall
Director
Administrative Services Division

DATE: May 14, 1975

FROM: R. D. Stevenson
Special Assistant
Department of Revenue

SUBJECT: CSHB 246 am

Attached is a copy of Committee Substitute for House Bill No. 246 amended, an Act relating to liquor licenses, fees and municipal regulation of the sale of intoxicating liquor.

The bill passed the House with an amendment to increase wholesale liquor license fees and now has been referred to the Senate Commerce and Finance Committees.

Please review the attached bill and prepare a memorandum to the writer advising of effect on Treasury.

Please comment on the lack of an effective date as it concerns the fee increases.

MEMORANDUM State of Alaska

TO: R. D. Stevenson
Special Assistant
Department of Revenue

DATE: May 15, 1975

FROM: P. A. Wall
Director
Administrative Services Division
Department of Revenue

SUBJECT: CS for House Bill No. 246 am

CS for House Bill No. 246 am passed the House and has been referred to the Senate Commerce and Finance Committees.

The Committee Substitute relates to liquor licenses, fees, and municipal regulation of the sale of intoxicating liquor.

With relation to the amendment concerning liquor licenses and fees, this office has recently received the 1974 reports concerning the gross volume of business transacted by all wholesalers in Alaska for the calendar year 1974.

In order to up-date the statistics and provide the Legislature with a projection of increases in revenue that would be obtained by passage of the bill, the following information is submitted:

It is to be noted from AS 04.10.110 (a) concerning general wholesale licenses that the minimum license fee is $500 and is in payment for the first $50,000 of business transacted for one distributing point. Effective rate of the initial fee is 1% ($50,000 X.01 equals $500). The schedule then provides various brackets of gross receipts with increasing fees until the top amount of $500,000 is reached where the present additional fee is $5,000 or again an effective rate of 1% ($500,000 X .01 equals $5,000). There is presently no additional fee for receipts received in amounts over $500,000 for one distributing point.

Reference is now made to the attached schedule, prepared from statistics contained in reports furnished yearly to the Alcoholic Beverage Control Board by holders of General Wholesale Licenses and by holders of Wholesale Malt Beverage and Wine Licenses.

It is to be noted on the subject schedule that for 1959 all holders of General Wholesale Licenses paid initial fees in total amount of $7,000 and excess fees dependent upon the present schedule in total amount of $59,500 for a grand total of fees in amount of $66,500 to pay all fees due on gross receipts at various distributing points totaling $15,490,169.50.

Form SA 1 # 2

MEMORANDUM State of Alaska

TO: [illegible]

DATE :

FROM: SUBJECT:

Some 15 years later, in 1974, all holders of General Wholesale Licenses paid initial fees of $7,500. and excess fess dependent upon the present schedule in total amount of $66,000 for a grand total of fees in amount of $73,500 to pay all fees due on gross receipts at various distributing points totaling $40,439,525.74.

In comparison 15 years apart, the holders of General Wholesale Licenses were, under the prevailing fee schedule, able to increase their total volume of business from $15,490,169.50 to $40,439,525.74, an increase of $24,949,356.24 or 161.07% increase, and yet pay in effect only $7,000 more fees, an increase of 10.53% in total fees. This is due to the top fee schedule being set at $5,000 for gross business of over $500,000 at each distributing point.

The present fee schedule is described in 35-4-21 (H) ACLA 1949 amended by Chapter 131, SLA 1957 and Chapter 197, SLA 1959. There have been no further amendments or changes to date on the fee schedule so described.

From the present fee schedule, a wholesaler who had business transacted, for example, at some distributing point under the present fee schedule of $4,000,000 would not pay more than the wholesaler who did total business at one distributing point of $510,000. Each under the present fee schedule would pay the top additional fee of $5,000.

During 1974 statistics available from the Alcoholic Beverage Control Board disclose that 13 holders of General Wholesale Licenses at various distributing points reported gross receipts in excess of $500,000.

The present schedule for the General Wholesale License fees is in essence a fee of 1% of the total amount of business transactions each year at each distributing point up to a total of $500,000. After that point no additional fees are incurred for gross receipts above $500,000.

You will note from AS 04.10.110 (b) concerning Wholesale Malt Beverage and Wine Licenses that the minimum fee if $100 and is in payment for the first $10,000 of business transacted for one distributing point. Effective rate of the initial fee is 1% ($10,000 X .01 equals $100.00). The schedule then provides various brackets of gross receipts with increasing fees until the top amount of $400,000 is reached where the present additional fee is $5,000.

MEMORANDUM State of Alaska

TO: [illegible]

DATE :

FROM: SUBJECT:

With respect the seven holders during 1974 of Wholesale Malt Beverage and Wine Licenses, only one holder did in excess of $200,000 in gross receipts at one distributing point; accordingly, the top bracket in the present schedule was not reached.

Based on the 1974 receipts of all wholesale licenses of firms doing business within the State, as reported to the Alcoholic Beverage Control Board, the provisions concerning the excess fee schedule that are incorporated in CS for House Bill No. 246 am would provide increased license fee revenues as follows:

GENERAL WHOLESALE:

15 initial fees @ $500 (covering first $50,000 of gross receipts)		$ 7,500.00
Total Gross Receipts	$40,439,525.74	
Less: Gross Receipts covered by initial fee (15 x $50,000)	750,000.00	
Balance of gross receipts subject to 1% fee	$39,689,525.74	396,895.25
Total proposed fees (based on 1974 sales)		$404,395.25
Total fees under present schedule (based on 1974 sales)		73,500.00
Net increase in revenue on general wholesale licenses		$330,895.25

WHOLESALE MALT BEVERAGE AND WINE LICENSES:

7 initial fees @ $100 (covering first $10,000 of gross receipts		$ 700.00
Total Gross Receipts	$ 723,405.70	
Less: Gross Receipts covered by initial fee (7 @ $10,000)	70,000.00	
Balance of gross receipts subject to 1% fee	$ 653,405.70	6,534.05
Total proposed fees (based on 1974 sales)		$ 7,234.05
Total fees under present schedule (based on 1974 sales)		9,200.00
Net decrease in revenue on wholesale malt beverage and wine licenses		$ 1,965.95

Form SA-1

4

MEMORANDUM State of Alaska

TO: [illegible]

DATE :

FROM:

SUBJECT:

Summarizing the effect of the changes on both types of wholesale license fees is as follows:

Net increase in revenue on general wholesale license fees as compared to present fee schedules	$330,895.25
Net decrease in revenue on wholesale malt beverage and wine license fees as compared to present fee schedules	1,965.95
Net additional revenue pursuant to CSHB 246 am	$328,929.30

The new additional revenue based on 1974 sales would amount to $328,929.30. For your information the 1975-76 budget request for the Alcoholic Beverage Control Board was in amount of $275,200.

FIGURES FOR COMPARISON

Year	Wholesale Malt Gross	Excess Fee	License Fee	General Wholesale Gross	Excess Fee	License Fee
1959	$ 960,001.48	$10,700.00	$1,600.00	$15,490,169.50	$ [illegible]	$7,000.00
1960	1,024,576.12	12,300.00	1,400.00	16,119,810.78	[illegible]	7,500.00
1961	764,479.56	8,700.00	1,200.00	15,650,947.52	[illegible]	7,000.00
1962	743,310.48	8,650.00	1,600.00	15,455,670.63	[illegible]	7,000.00
1963	601,747.82	7,400.00	1,000.00	16,162,541.62	[illegible]	7,500.00
1964	727,244.06	8,300.00	1,000.00	17,332,349.12	[illegible]	7,500.00
1965	708,760.25	7,300.00	1,000.00	15,914,811.61	[illegible]	6,000.00
1966	543,554.14	6,400.00	900.00	18,771,534.47	[illegible]	7,500.00
1967	663,528.38	7,550.00	1,100.00	21,616,597.71	[illegible]	7,500.00
1968	674,202.58	8,000.00	1,000.00	23,500,115.31	[illegible]	6,500.00
1969	795,918.54	9,750.00	900.00	26,658,756.88	[illegible]	6,000.00
1970	675,244.35	8,300.00	800.00	30,141,106.99	[illegible]	6,000.00
1971	649,422.17	8,050.00	800.00	30,730,205.25	[illegible]	6,000.00
1972	642,609.35	7,900.00	800.00	30,783,714.55	[illegible]	6,000.00
1973	688,507.19	8,300.00	700.00	32,919,173.60	[illegible]	7,500.00
1974	723,405.70	8,500.00	700.00	40,439,525.74	[illegible]	7,500.00

SB

384

"An Act making corrective amendments in the Alaska Statutes as recommended by the revisor of statutes."

COMMITTEE REPORT

5/15/75

HOUSE

Mr. Speaker: Date 5/20/75

The Committee on JUDICIARY has had SB 384 am under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

MEMORANDUM

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

POUCH Y — STATE CAPITOL
JUNEAU, ALASKA 99811

TO: Legislative Council

DATE: April 16, 1975

FROM: Randolph Berry
Revisor of Statutes

SUBJECT: "An Act making corrective amendments in the Alaska Statutes as recommende by the revisor of statutes."

This bill was prepared by the Revisor of Statutes under AS 01.05.-036. The proposed amendments are designed to accomplish the following purposes: (1) correction of citations; (2) correction or change in language due to court decisions; (3) cleanup to make provisions consistent with other law or to recognize more recently enacted law; and (4) miscellaneous clarification and correction.

It is suggested that this explanatory memorandum accompany the bill through its legislative course.

SECTIONAL ANALYSIS

Section 1 corrects the name of the American Physical Therapist Association.

Section 2 amends AS 08.84.030(3) to reflect the separation of the Professional Examination Service from the American Public Health Association.

Sections 3 and 4 correct citations which were inadvertantly not changed when AS 08.84.030 was repealed and re-enacted, ch. 71 SLA 1974.

Section 5 repeals AS 09.55.140 (setting a one year residency requirement for divorce) which was declared in State v. Adams, 522 P. 2d 1125 (1974).

Section 6 corrects the terminology of an internal citation.

Section 7 deletes language which is inconsistent with the remaining age provisions of the section. There is actually no other provision which would limit the entitlement of a person 19 years old on the basis of age.

Section 8 changes the terminology of AS 14.17.010 to conform with current terminology found in Alaska municipal law (AS 29).

Section 9 corrects the language of AS 14.20.175(a) to reflect that the director of education for state operated schools rather than the commissioner of education sits on the panel described in that section.

Section 10 expands a citation to reflect additional sections subsequently added to ch. 47.

Section 11 changes the terminology of the paragraph to clarify the definition of "member of a political party."

Section 12 adds language to AS 16.05.820 to recognize that other agencies (i.e. the National Fisheries Service under the U. S. Department of Commerce) conduct research in the state.

Section 13 deletes a reference to AS 16.05.830 which was repealed by ch. 73 SLA 1968.

Section 14 amends AS 16.10.010(3) to transfer responsibility for particular duty. This transfer was apparently missed when the Department of Environmental Conservation was created.

Section 15 expands the citation to reflect section 55 subsequently added to Article 1 of AS 18.10 by ch. 55 SLA 1974.

Section 16 changes the terminology of the paragraph to conform to the standard style used in defining terms.

Section 17 changes the terminology of the provision to conform to the terminology used in the present applicable federal Act.

Section 18 deletes a reference to "writ of mandamus" as writs of mandamus are abolished by Rule 91(b) of the Rules of Civil Procedure.

Section 19 updates the language of the provision to conform to the amendment to AS 18.85.100(b) contained in sec. 1, ch. 16 SLA 1974.

Sections 19 - 25 change the references in those provisions to Office of Vocational Rehabilitation to the division of vocational rehabilitation in the Department of Education. This change was requested by the Department of Education to conform to the practice in the majority of other states.

Section 26 corrects an error that was contained in the amendment of that provision enacted by ch. 106 SLA 1971.

Sections 27 and 28 change the language of AS 29.33.050 and AS 29.41.010(a) in order to clarify meanings of those provisions.

Section 29 corrects citations contained in the section which were overlooked when that section was codified.

Section 30 would repeal AS 39.05.010 ("employment of persons not citizens prohibited"): It is considered that this is necessary to conform to the decision of the United States Supreme Court in Sugarman v. Dougal 413 U. S. 634 (1973).

Section 31 changes the language of AS 43.56.020 to clarify the exemptions and conform to the intent of the legislature as expressed in the Free Conference Committee report on FSS FCCSSCS CSHB1 (ch. 1 FSSLA 1973) which appears in the Senate Journal for November 11, 1973, p. 126.

Section 32 adds a definition of "municipality" to the definitions under AS 43.56.

Section 33 transfers the responsibility for the Village Safe Water Act from the Department of Health and Social Services to the Department of Environmental Conservation (see section 14 above).

Introduced: 4/21/75
Referred: Judiciary

IN THE SENATE

BY THE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE COUNCIL

SENATE BILL NO. 384

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act making corrective amendments in the Alaska Statutes as recommended by the revisor of statutes."

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

* Section 1. AS 08.84.010(a) is amended to read:

(a) There is created the state Physical Therapy Board, which consists of five members appointed by the governor. The membership consists of one physician licensed to practice medicine in the state, three physical therapists registered in the state, and one lay person. The members shall be selected from a list of 10 persons which shall be submitted by the Alaska Chapter of the American Physical Therapy [THERAPIST] Association. Members of the board shall be appointed for terms of one, two and three years, respectively; all subsequent appointments shall be made for a term of three years and until their successors are appointed. Vacancies on the board shall be filled by appointment in like manner. Board members are not entitled to a travel or per diem allowance.

* Sec. 2. AS 08.84.030(3) is amended to read:

(3) pass to the satisfaction of the board an examination from the Professional Examination Service [PROFESSIONAL EXAMINATION SERVICE OF THE AMERICAN PUBLIC HEALTH] Association, to determine his fitness for practice as a physical therapist or physical therapy assistant, or be entitled to registration without examination as provided in sec. 60 of this chapter.

* Sec. 3. AS 08.84.065(a) is amended to read:

(a) The board may issue a nonrenewable temporary permit to an applicant for registration by endorsement or by examination who meets the requirements of sec. 30(1) and [,] (2) [AND (3)] of this chapter and pays the required fee.

* Sec. 4. AS 08.84.100(b) is amended to read:

(b) A penalty of $10 shall be charged in addition to all delinquent renewal fees for reinstatement of a registration which remains lapsed for more than 60 days. If the registration remains lapsed for more than three years, the board may require the applicant to take and pass the examination given under sec. 30(3) [30(4)] of this chapter.

* Sec. 5. AS 09.55.140 is repealed.

* Sec. 6. AS 09.65.100(a)(5) is amended to read:

(5) the parent or guardian of the minor shall be relieved of all financial obligation to the provider of the service under this section [SEC. 100 OF THIS CHAPTER].

* Sec. 7. AS 13.16.065(c) is amended to read:

(c) A person entitled to letters under (a)(2) - (5) of this section, and a person aged 19 and over [WHO WOULD BE ENTITLED TO LETTERS BUT FOR HIS AGE], may nominate a qualified person to act as personal representative. Any person aged 19 and over may renounce his right to nominate or to an appointment by appropriate writing filed with the court. When two or more persons share a priority, those of them who do not renounce must concur in nominating another to act for them, or in applying for appointment.

* Sec. 8. AS 14.12.010 is amended to read:

Sec. 14.12.010. DISTRICTS OF STATE PUBLIC SCHOOL SYSTEM. The districts of the state public school system are as follows:

(1) each first [, SECOND, AND THIRD] class city in the unorganized borough is a city school district;

(2) each organized borough is a borough school district;

(3) the area outside organized boroughs and outside first [, SECOND, AND THIRD] class cities is the state-operated school district.

* Sec. 9. AS 14.20.175(a) is amended to read:

(a) A teacher who has not acquired tenure rights is subject to nonretention for the school year following the expiration of his contract for any cause which the employer determines to be adequate. However, at his request, the teacher is entitled to a written statement of the cause for his nonretention. The board of directors for state schools, and the districts for district schools, shall provide by regulation or by law a procedure under which a nonretained teacher may, at his request, be heard informally by a panel consisting of the director of education for state-operated schools [COMMISSIONER] and two or more board members in the case of state schools, and by the local school board in the case of a district school.

* Sec. 10. AS 14.47.060 is amended to read:

Sec. 14.47.060. DEFINITIONS. In secs. 10 - 140 [50] of this chapter

(1) "diploma" means a degree, certificate, transcript, document, or other writing in any language representing that a person has completed a course of study beyond high school or is honored for achievement, and includes but is not limited to a diploma purporting to be a degree of bachelor, master, doctor, or fellow in any field of knowledge or endeavor. Graduation from high school or its equivalent need not be nor purport to be a prerequisite for undertaking or completing the course of study;

(2) "commission" means the Alaska Commission on Postsecondary Education.

* Sec. 11. AS 15.60.010(7) is amended to read:

(7) "member of a political party" means any person who

supports the political program of a party; filing as an independent candidate shall not be interpreted as precluding the candidate from being a member of a political party; and recognition of the independent as a member of a political party at a party caucus held by members of the legislature at the legislative session following his election, shall be considered recognition of party membership at the time filings were received by party candidates for the preceding general election;

* Sec. 12. AS 16.05.820 is amended to read:

Sec. 16.05.820. RESEARCH BY THE FEDERAL GOVERNMENT. The Secretary of the Interior, the Secretary of Commerce or the Secretary of Agriculture of the United States and their authorized agents or other appropriate federal agencies may conduct fish cultural operations and scientific investigations in the state in the manner and at the times jointly considered necessary or proper by the board and the secretary and their authorized agents.

* Sec. 13. AS 16.05.900(a) is amended to read:

(a) A person who violates secs. [830,] 870 - 895 [,] or 920 of this chapter or any [RULE OR] regulation promulgated under this chapter is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not more than $1,000 or by imprisonment for not more than six months, or by both. A person who violates a [RULE OR] regulation promulgated under this chapter for the regulation of commercial fisheries shall be punished as provided in sec. 720 of this chapter.

* Sec. 14. AS 16.10.010(3) is amended to read:

(3) render the waters inaccessible or uninhabitable for salmon for that purpose without first applying for and obtaining a permit or license from the Department of Environmental Conservation [HEALTH AND SOCIAL SERVICES]. The application shall set out [FORTH] the name and style of the person or concern, describe the waters and

location and state in particular the plans, purpose and intention for which the application is made.

* Sec. 15. AS 16.10.030 is amended to read:

Sec. 16.10.030. VIOLATION OF SECS. 10 - 55 [50] OF THIS CHAPTER A MISDEMEANOR. A person who violates secs. 10 - 55 [50] of this chapter is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not less than $100 nor more than $500.

* Sec. 16. AS 17.20.370(12) is amended to read:

(12) "antiseptic" [THE REPRESENTATION OF A DRUG], in the [ITS] labeling or advertisement of a drug, [AS AN ANTISEPTIC] is a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or other use involving prolonged contact with the body;

* Sec. 17. AS 18.05.031 is amended to read:

Sec. 18.05.031. PROGRAM PLANNING FOR DEVELOPMENTAL DISABILITY [MENTALLY RETARDED]. (a) The department shall

(1) plan for and take other steps leading to comprehensive state and community action to combat developmental disabilities [MENTAL RETARDATION];

(2) be the sole agency for carrying out the purposes of the federal act;

(3) make applications for, receive, and expend grants under the federal act; the applications shall set out plans and contain provisions and assurances for the expenditure of any grant as required by the federal act or the secretary.

(b) As used in this section

(1) "federal act" means the Developmental Disabilities Services and Facilities Construction Act (P.L. 91-517) [TITLE XVII OF THE

SOCIAL SECURITY ACT, GRANTS FOR PLANNING COMPREHENSIVE ACTION TO COMBAT MENTAL RETARDATION (P.L. 88-156)];

(2) "secretary" means the Secretary of Health, Education, and Welfare or his designee.

* Sec. 18. AS 18.55.210 is amended to read:

Sec. 18.55.210. RIGHT OF OBLIGEE OF AUTHORITY TO BRING [MANDAMUS OR] INJUNCTION. An obligee of the authority may, in addition to all other rights which may be conferred and subject only to contractual restriction binding upon him, bring an [A MANDAMUS OR] injunction action against the members, the authority, its officers, agents or employees.

* Sec. 19. AS 18.85.120(a) and (b) are amended to read:

(a) The determination of a person's indigency shall be made [BY THE AGENCY OR] by the court in which an action against him is pending. [WHEN IT IS MADE BY THE AGENCY IT IS SUBJECT TO REVIEW BY THE COURT.]

(b) In determining whether a person is indigent and in determining the extent of his inability to pay, [THE AGENCY OR] the court shall consider such factors as income, property owned, outstanding obligations, and the number and ages of his dependents. Release on bail does not preclude a finding that a person is indigent. In each case, the person, subject to the penalties for perjury, shall certify under oath, and in writing or by other record, material factors relative to his ability to pay which the court prescribes.

* Sec. 20. AS 23.15.040 is amended to read:

Sec. 23.15.040. DIVISION [OFFICE] OF VOCATIONAL REHABILITATION ESTABLISHED. The division [OFFICE] of vocational rehabilitation is established under the Board of Vocational Rehabilitation to carry out secs. 10 - 210 of this chapter.

* Sec. 21. AS 23.15.050 is amended to read:

Sec. 23.15.050. DIRECTOR OF VOCATIONAL REHABILITATION. The board

shall appoint a director of the division [OFFICE] of vocational rehabilitation. The director has the administrative authority delegated to him by the board and necessary to carry out secs. 10 - 210 of this chapter and the regulations and policies adopted by the board.

* Sec. 22. AS 23.15.060 is amended to read:

Sec. 23.15.060. AGREEMENTS UNDER SOCIAL SECURITY ACT. (a) The board acting through the division [OFFICE] of vocational rehabilitation may enter into necessary agreements on behalf of the state with the Secretary of Health, Education and Welfare to carry out the provisions of the federal Social Security Act, as amended, and as it is subsequently amended, relating to the making of determinations of disability under Title II of that Act.

(b) The Department of Revenue shall act as the custodian of funds paid by the federal government to the state, shall comply with agreements entered into under the Social Security Act, and shall disburse the funds in accordance with instructions from the director of the division [OFFICE] of vocational rehabilitation.

* Sec. 23. AS 23.15.070 is amended to read:

Sec. 23.15.070. PERSONNEL POLICIES. The board shall adopt personnel policies for the division [OFFICE] of vocational rehabilitation. The director shall execute these policies and keep them on file in his office.

* Sec. 24. AS 23.15.110 is amended to read:

Sec. 23.15.110. EXTENSION OF SERVICES OUTSIDE STATE. Vocational rehabilitation service may be extended to the continental United States to all individuals eligible under secs. 10 - 210 of this chapter. The director of the division [OFFICE] of vocational rehabilitation may place professional or clerical personnel or both inside the continental United States to carry out the purposes of secs. 10 - 210 of this chapter.

* Sec. 25. AS 23.15.210(1) and (3) are amended to read:

(1) "agency" means the division [OFFICE] of vocational rehabilitation;

(3) "director" means the director of the division [OFFICE] of vocational rehabilitation;

* Sec. 26. AS 23.20.520(12) is amended to read:

(12) "employing unit" means an individual or type of organization, partnership, association, trust, estate, joint trust company, insurance company or domestic or foreign corporation, or the receiver, referee in bankruptcy, trustee, or successor of one of these, or the legal representative of a deceased person, which has or subsequent to January 1, 1937, had one or more individuals performing service for it within the state; an [AND] individual performing services inside the state for an employing unit which maintains two or more separate establishments inside the state is considered as employed by a single employing unit for the purposes of this chapter; notwithstanding any provision in this chapter, any employing unit which employs individuals whose services must be covered by the unemployment insurance laws of this state after December 31, 1971 as a condition of approval of the unemployment insurance laws of this state under sec. 3304(a) of the U.S. Internal Revenue Code of 1954, as amended, will be considered an employer as to those individuals and is subject to contributions on all wages paid after December 31, 1971, or reimbursement payments to cover benefits paid based on services performed after December 31, 1971, depending on the applicable law;

* Sec. 27. AS 29.33.050 is amended to read:

Sec. 29.33.050. EDUCATION. Each borough constitutes a borough school district and establishes, maintains, and operates a system of public schools on an areawide basis as provided in AS 14.14.060. A

military reservation within an organized borough is not part of the borough school district until the military mission is terminated and [OR UNTIL] inclusion in the borough school district is approved by the Department of Education. However, operation of the military reservation schools by the borough school district may be required by the Department of Education under AS 14.14.110, with the consent of the borough school district board. If the military mission of a military reservation terminates and continued management and control by the state-operated schools is disapproved by the Department of Education, operation, management and control of schools on military reservations transfers to the borough school district in which the military reservation is located.

* Sec. 28. AS 29.41.010(a) is amended to read:

(a) A third class borough shall exercise the areawide powers of education and tax assessment and collection in the manner provided for second class boroughs. Provisions of law relative to first and second class organized boroughs apply with respect to third class boroughs only to the extent they are consistent with this chapter. A military reservation within an organized borough is not part of the borough school district until the military mission is terminated and [OR UNTIL] inclusion in the borough school district is approved by the Department of Education. However, operation of the military reservation schools by the borough school district may be required by the Department of Education under AS 14.14.110, with the consent of the borough school district board. If the military mission of a military reservation terminates and continued management and control by the state-operated schools is disapproved by the Department of Education, operation, management and control of schools on military reservations transfers to the borough school district in which the military reservation is located.

* Sec. 29. AS 34.07.010(a) is amended to read:

(a) This chapter is applicable only to property, the sole owner or all of the owners of which submit it to the horizontal property regime by executing and recording a declaration under (c) of this section and sec. 20 [SECS. 150 - 160] of this chapter.

* Sec. 30. AS 39.05.010 is repealed.

* Sec. 31. AS 43.56.020 is amended to read:

Sec. 43.56.020. EXEMPTIONS. (a) The following are exempt from local taxes levied or authorized under sec. 10(b) of this chapter:

(1) property rights attached to or inherent in the right to explore for or produce oil or gas;

(2) oil or gas leases or properties, whether producing or not;

(3) oil or gas in place;

(4) oil or gas produced or extracted in the state;

(5) the value of intangible drilling expenses and exploration expenses;

(6) an interest in property described in AS 43.55.010(b) [;

(7) BEFORE THE CONSTRUCTION COMMENCEMENT DATE, PROPERTY TAXED UNDER SEC. 10(a) OF THIS CHAPTER WHICH IS COMMITTED BY CONTRACT OR OTHER AGREEMENT FOR USE IN THIS STATE PRIMARILY FOR PIPELINE TRANSPORTATION OF GAS OR UNREFINED OIL OR FOR THE PRODUCTION OF GAS OR UNREFINED OIL TO BE TRANSPORTED BY THAT PIPELINE;

(8) BEFORE THE CONSTRUCTION COMMENCEMENT DATE, PROPERTY TAXED UNDER SEC. 10(a) OF THIS CHAPTER WHICH IS COMMITTED BY CONTRACT OR OTHER AGREEMENT FOR USE IN THIS STATE PRIMARILY IN THE OPERATION OR MAINTENANCE OF FACILITIES FOR PIPELINE TRANSPORTATION OF GAS OR UNREFINED OIL, OR FACILITIES FOR PRODUCTION OF GAS OR UNREFINED OIL TO BE TRANSPORTED BY THAT PIPELINE].

(b) There is exempt from state taxes levied or authorized under

sec. 10(a) of this chapter, before the construction commencement date, property which is committed by contract or other agreement for use in this state primarily for the production or pipeline transportation of gas or unrefined oil, or in the operation or maintenance of facilities for the production or pipeline transportation of gas or unrefined oil.

(c) In (a)(2) of this section, "properties" means mineral interests in oil and gas and working interests, royalty interests, and overriding royalty interests in oil and gas leases.

* Sec. 32. AS 43.56.210 is amended by adding a new paragraph to read:

(8) "municipality" means a home rule or general law city or borough and includes but is not limited to a unified municipality organized under AS 29.68.

* Sec. 33. AS 46.07.080(1) is amended to read:

(1) "commissioner" means the commissioner of environmental conservation [HEALTH AND SOCIAL SERVICES];

House Judiciary Committee

May 22, 1975

The meeting was called to order at 1:35 by Chairman Gardiner. All members were present except Mr. Specking.

HB 3 Department of Justice

line 26 after made: add by the governor

This bill was moved out of committee as amended.

SB 182 Arrest without warrant

Jim Hanley of the AG's office testified that the bill was needed so that police could make an arrest and draw blood for OMVI testing.

line 16: add if the violation is alleged to have occurred less than eight hours before the time of such arrest. This amendment passed.

Mr. Brown moved the Judiciary CS out of committee.

SB 411 Doctors guide

Joe Hill, of the AG's office testified that this bill was needed so that the group in Anchorage wanting to compile the guide could receive federal monies. Either the statute had to be changed or the AG would have to issue an opinion that such a guide was legal under the present statute. The AG has determined that since it is the doctors who furnish the information to be contained in the guide, and since this information could cause competition, that it was advertising of a sort and therefore illegal under the present statute.

The bill was moved out of committee.

SJR 37 Outb oard motor numbering

This bill was moved out of committee.

SB 384 am Revise Statutes

Randy Berry, the Revisor of Statutes explained the Section 28 as follows: The Free Conference Committee report and the statute language appear to be in conflict. The Department of Revenue has not been enforcing the statute and has been, in effect, following the report. This section makes the language in the statute consistent with the intent.

The committee reinserted the old section 30 which had been deleted by the senate as a new section 31.

Mr. Berry requested that the Senate delete the old sections 27 and 28 relating to military schools.

The committee agreed to delete section 7 and renumber.

House Judiciary Committee
May 26, 1975

The meeting was called to order at 2:15 p.m. by Chairman Gardiner. All members were present.

CS SB 257 am Municipal Fire Departments

Douglas Body, Coordinating Fire Chief, testified that there is no statutory authority for the fire departments to do some of the things they are presently doing.

The following amendments passed:

page 1, line 18, page 1, line 23: after city insert: organized village.
page 2, line 7: after trespass insert: upon property at or near the scene of a fire.
page 2, line 7: delete without liability
page 2, line 21: delete without liability
page 2, line 17: insert before inspect: upon 24 hour notice to the owner or occupant,
page 2, line 24: delete all of subsection (9) and renumber
page 3, line 2: insert after misdemeanor: , and upon conviction, is punishable by imprisonment for one year, or by a fine of not more than $1,000, or by both.
page 2, line 3: delete all of Section 3
page 3, line 6: insert definition section "preplanning" to be drafted.

The Judiciary CS for CS SB 257 am was passed out of committee.

SB 384 Revise statutes

page 6, line 9: delete bring and insert seek, delete action and insert or an action in the nature of an action for mandamus.

The Judiciary CS for SB 384 was passed out of committee.

SB 138 Zoning State Parks

The C and RA CS for SB 138 was passed out of committee.

SB

406

"An Act relating to oil terminal facilities and the marine transportation of crude oil, refined petroleum products or their by-products; effective date."

COMMITTEE REPORT

5/13/76

HOUSE

Mr. Speaker: Date May 12, 1976

The Committee on JUDICIARY has had CS SS SB 406

under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(X) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Tony Smithers Chairman

Put in my file on SB406

May 14, 1976

Memo to: ~~Gay Van Doren~~

From: Norman Gorsuch

Re: HCS CSSSSB 406

Page 20, Line ~~10~~ 17
Strike lines ~~19~~ through ~~20~~ and replace with the following language:

(ii) partial, complete or defensively placed segregated ballast systems;

(iii) a double bottom of a minimum height of one-fifteenth of the beam or two meters, whichever is the greater, or a double hull throughout the cargo-carrying length or compartments of the tank vessel of a minimum of two meters;

Purpose:
(1) sets forth clear statutory criteria that can be used by DEC in setting risk certificate premiums - avoids arbitrary rate setting

(2) recognizes that segregated ballast systems on tankers are safer than single hull vessels - arguably, double hulls would be even safer. Allows some recognition in premium rates of difference between rate for single hull vs. segregated ballast tankers.

Separates page 20, line 18 (ii) into 2 parts

Keep fund at #20 million

CS SS SB 406

Each year the waters of the Earth are subjected to a massive input of petroleum and its products. In the years 1969-70, 4.9 million metric tons of oil were dumped into the oceans.

Although 46.3 per cent of the above stated figure originated from vessels, there are many sources for pollution. Alaskans were made dramatically aware of the possibilities on May sixth of this year when workmen attempting to move the George Ferris drilling rig in Kachemak Bay discovered its legs were buckling. By the morning of the May tenth, an oil slick was evident extending two to three miles south from the rig through one of the world's largest shrimp and crab regions. At the same time some six million salmon fry were known to be moving through the polluted area.

Tankers and other vessels do contribute their share of oil to the oceans. At about the same time that crews were attempting to stop the leakage from the George Ferris, a tanker went aground in Spanish waters dumping some 80,000 tons of oil into the ocean.

Alaska has already been subjected to the consequences of a tanker accident. For instance, on March 7,1973 the SS Hillyer Brown ran aground at Cold Bay resulting in what the Coast Guard report described as "...a major polluting incident." But Alaska has not yet become acquainted with vessels of the breathtaking dimensions which will soon be plying northern waters removing oil from Valdez.

Some of the vessels scheduled for service in Alaska are capable of carrying up to 160,000 tons oil. They are just under a quarter of a mile long and 200 feet wide. An emergency stop requires three miles and 20 minutes.

As a contrast to these massive vessels, the environment of Prince William Sound and other Alaskan waters in their paths is among the most delicate in the world. Prince William Sound is known to produce winds of more than 60 mph velocity for periods of up to two weeks. At the same time, the three fisheries in the route of the tankers produce from six to 15 per cent of the state's fishery harvest.

Cleaning up after a spill is, according to industry testimony, an ineffective science and is extremely expensive. Even in the relatively small incident on the George Ferris the spreading oil proved a match for technology when the oil slipped through the containment boom which had been placed around the rig.

CS SS SB 406 is intended to make the danger of pollution from a tanker or terminal facility as minimal as possible while providing the resources to restore the environment in the event of a spill. It establishes as mandatory for all vessels: 1) Loran-C navigational equipment;
2) collision avoidance systems;
3) back up radar systems.

Vessels over 40,000 DWT are required to have tug escorts if they lack:
1) lateral thrusters;
2) controllable pitch propellers or astern horsepower equal to 40 per cent of rated horsepower;
3) redundant boilers.

The bill establishes an insurance certification program with premiums based on the aforementioned safety features as well as flue gas inerting systems and segregated ballast tanks including double bottoms.

Operators of vessels and terminal facilities are required to pay annual premiums into the program with the funds to be made available to cover the cost of cleaning up any oil spills.

The Department of Environmental Conservation is authorized to enforce the provisions of this bill and administer the fund. It is also directed to establish uniform vessel traffic regulations in cooperation and compliance with Coast Guard standards.

Because of the concern over the effect of the bill on rural Alaska, certain exemptions have been allowed. Exempt are marinas with storage capabilities of 10,000 barrels or less and on shore facilities with storage capabilities of 25,000 barrels or less. In addition, on shore facilities with storage capabilities of up to 200,000 barrels are required to carry third party liability insurance of only $100,000.

Keep this in Cool file

Original Sponsors: Croft, Kerttula,
and Poland

IN THE SENATE BY THE JUDICIARY COMMITTEE

HOUSE CS FOR CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 406 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to oil terminal facilities and the marine transportation of crude oil, refined petroleum products or their by-products; and providing for an effective date."

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

* Section 1. AS 30 is amended by adding a new chapter to read:

CHAPTER 20. REGULATION OF TANK VESSEL TRAFFIC.

Sec. 30.20.010. POLICY AND PURPOSE. (a) Because of the danger of spills, the legislature finds and declares that the marine transportation of crude oil, refined petroleum products or their by-products by tankers or other carriers so engaged in the coastal waters and inside coastal waters of the state creates a great potential hazard to important natural resources of the state and to jobs and incomes dependent on these resources. The legislature also recognizes that the state's coastal and inside coastal waters are a relatively confined saltwater environment with irregular shorelines and therefore there is a greater than usual likelihood of long-term damage from a large oil discharge. Certain areas of the state's coastal and inside coastal waters have limited space for maneuvering large tank vessels engaged in the marine transportation of crude oil, refined petroleum products or their by-products. These waters also contain many natural obstacles and phenomena and at certain times and places a high density of commercial, fishing and pleasure boat traffic. Thus, it is important that large tank vessels have sufficient capability for rapid maneuvering responses.

(b) It is also the purpose of this chapter to decrease the likelihood of oil discharges in the coastal and inside coastal waters of the state and its shorelines by requiring tank vessels engaged in the marine transportation of crude oil, refined petroleum products or their by-products to be equipped with certain safety and maneuvering capability features and, if these vessels are above a certain size but lack these features, to be escorted by tugs while navigating in the coastal and inside coastal waters of the state.

(c) The legislature further finds and declares that the particular marine environment of the state through which tank vessels engaged in the marine transportation of crude oil, refined petroleum products or their by-products will navigate is potentially more hazardous than other maritime routes. The introduction of crude oil, refined petroleum products or their by-products into the marine environment of the state's coastal and inside coastal waterways causes extreme damage to the marine, estuarine and adjacent terrestrial environment lasting beyond the visible existence of the spilled, discharged or escaped oil and is potentially destructive of the valuable species of fish and shellfish that are harvested in Alaskan waters.

Sec. 30.20.020. STANDARD SAFETY, MANEUVERABILITY FEATURES. (a) A tank vessel engaged in the marine transportation of crude oil, refined petroleum products or their by-products while navigating those portions of the navigable coastal, inside coastal or other navigable waters of the state prescribed by the department by regulation shall be equipped or fitted with

(1) LORAN-C navigational system receivers and other position location systems as may be prescribed from time to time by the department by regulation;

(2) electronically controlled collision avoidance systems

where applicable to an appropriate vessel prescribed by the department by regulation; and

(3) two radars of types prescribed by the department by regulation in working order, one of which is operating.

(b) A tank vessel engaged in the marine transportation of crude oil, refined petroleum products or their by-products of 40,000 deadweight tons or more, which lacks the following maneuverability and stopping features, must be escorted by tugs with an aggregate shaft horsepower equivalent to five per cent of the deadweight tons of that tank vessel while navigating those portions of the navigable coastal, inside coastal or other navigable waters of the state prescribed by the department by regulation:

(1) lateral thrusters;

(2) controllable pitch propellers or astern horsepower equal to 40 per cent of rated horsepower; and

(3) redundant boilers, an auxiliary propulsion source or other backup equipment that the department may require by regulation to provide for a vessel's safe operation if the primary equipment fails.

(c) However, the department may by regulation exempt a tank vessel from the tug escort provisions of (b) of this section in certain ports, harbors or navigable waters of the state or at certain times of the year, as in the judgment of the department are dictated by meteorological or oceanographic conditions.

Sec. 30.20.030. TANK VESSEL TRAFFIC REGULATIONS. (a) The department shall adopt and maintain a comprehensive, uniform system of traffic regulations for the operation of tank vessels engaged in the transportation of crude oil, refined petroleum products or their by-products in the navigable waters of the state that may be required to implement the provisions of this chapter and that are not in conflict with traffic

regulations contained in federal navigation laws or regulations promulgated by the United States Coast Guard.

(b) In adopting these regulations, the department may prescribe the maximum and minimum speed for vessels subject to this chapter and the weather conditions under which the movement of these vessels may be prohibited.

(c) The department shall consult and cooperate with the United States Coast Guard in the establishment, adoption, maintenance, administration and enforcement of the traffic regulations adopted under this chapter.

(d) The Administrative Procedure Act (AS 44.62) applies to regulations adopted by the department under this chapter.

Sec. 30.20.040. ENFORCEMENT; PENALTIES. (a) This chapter and the regulations adopted under it shall be enforced by a peace officer or an employee of the department or other state agency authorized by the commissioner.

(b) An owner or operator of a tank vessel who violates a provision of this chapter, or a regulation adopted under it, upon conviction is guilty of a misdemeanor and is punishable by a fine of not less than $1,000 nor more than $25,000, or by imprisonment for not more than one year, or by both. Each day on which a violation occurs may be considered a separate and additional offense.

Sec. 30.20.050. INTERSTATE, FOREIGN COMPACTS, OTHER AGREEMENTS, ARRANGEMENTS AUTHORIZED. Subject to the approval of the legislature or of the Congress of the United States, as may be required under applicable provisions of law, the governor may execute supplementary agreements, reciprocal arrangements or compacts with any other state or with a foreign government to implement the purposes of this chapter.

Sec. 30.20.060. DEFINITIONS. In this chapter

(1) "carrier" means a person who owns or who, for compensation, operates or otherwise provides a tank vessel engaged in, used or capable of being used for, the marine transportation of crude oil, refined petroleum products or their by-products on the waters of this state;

(2) "commissioner" means the commissioner of environmental conservation;

(3) "deadweight tons" or "DWT" means the difference in metric tons between the lightweight displacement and the total displacement of a vessel measured in water of specific gravity 1.025 at the load waterline corresponding to the assigned summer freeboard;

(4) "department" means the Department of Environmental Conservation;

(5) "crude oil, refined petroleum products or their by-products" means oil of any kind and in any form including, but not limited to, petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oil refuse, oil mixed with other wastes, crude oils, liquified natural gas, propane, butane or other liquid hydrocarbons regardless of specific gravity;

(6) "operate" means to navigate or otherwise use a vessel subject to the provisions of this chapter;

(7) "operator" means the person who operates or has charge of the navigation or use of a vessel subject to the provisions of this chapter;

(8) "owner" means a person, other than a lienholder, having the property in or title to a vessel; the term includes a person entitled to the use or possession of a vessel subject to an interest of another person reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a

lease not intended as security;

(9) "tank vessel" means a self-propelled vessel that is specially constructed or converted to carry liquid bulk cargo in tanks and includes tankers, tankships and combination carriers when carrying crude oil, petroleum products or their by-products in bulk; it does not include vessels carrying crude oil, petroleum products or their by-products in drums, barrels, or other packages, or vessels carrying crude oil, petroleum products or their by-products as fuel or stores for that vessel;

(10) "waters of the state" means the navigable coastal, inside coastal and other navigable waters within the territorial limits of this state, and the marginal sea adjacent to this state, as defined in AS 44.03 and AS 46.03.900(22).

Sec. 30.20.070. SHORT TITLE. This chapter may be cited as the Tank Vessel Traffic Regulation Act.

* Sec. 2. AS 30 is amended by adding a new chapter to read:

CHAPTER 25. OIL TERMINAL FACILITIES: TRANSFER OF CRUDE OIL, REFINED PETROLEUM PRODUCTS OR THEIR BY-PRODUCTS.

Sec. 30.25.010. DECLARATION OF POLICY AND PURPOSE. (a) The legislature finds and declares that it is a matter of the highest urgency and priority to protect the coastal and inside coastal waters, estuaries, wetlands, beaches and public lands adjoining the seacoast, taking into account multiple use accommodations necessary to provide the broadest possible protection of public and private interests with the least possible conflicts among these diverse uses.

(b) The legislature further finds and declares that the transfer of crude oil, petroleum products or their by-products between vessels, and between vessels and onshore or offshore facilities within the jurisdiction of the state is a hazardous undertaking. Spills, discharges and

escapes of crude oil, refined petroleum or their by-products that may occur as a result of procedures involved in the transfer and storage of these products pose threats of great danger and damage to the marine, estuarine and adjacent terrestrial environment of the state, to owners and users of shorefront property, to public and private recreation, to residents of the state and other interests deriving livelihood from fishing and other marine-related activities, and to the beauty of the state's coastline. These spills have occurred frequently and present future threats of potentially catastrophic proportions, all of which are expressly declared to be inimical to the paramount interests of the state as set out in this section. These state interests outweigh any economic and liability burdens imposed by the legislature upon those engaged in transferring crude oil, refined petroleum products or their by-products and related activities.

(c) The legislature intends by the enactment of this legislation to

(1) exercise the police power of the state through the Department of Environmental Conservation by conferring upon the department the authority to deal with the hazards and threats of danger and damage posed by these transfers and related activities and to encourage and ensure cooperation with the United States Coast Guard and any other state or federal department or agency;

(2) require, through the maximum practicable utilization of contractual services, the prompt containment and removal of the pollution occasioned by oil spills;

(3) provide procedures whereby persons suffering damage from these occurrences may be made whole promptly;

(4) establish a fund to provide for the inspection and supervision of oil transfer activities and guarantee the prompt cleanup of

oil spills and the payment of those costs; and

(5) to establish a system of regulation by requiring the possession of a certificate of risk avoidance, the payment of risk charges and the proof of financial responsibility by owners or operators of oil terminal facilities and tank vessels engaged in the transportation or transfer of crude oil, refined petroleum products or their by-products; the risk avoidance scheme is designed to provide incentives to owners or operators of tank vessels engaged in the marine transportation of crude oil, refined petroleum products or their by-products to incorporate safety and maneuvering capability features in those tank vessels to reduce the risk that these vessels will release crude oil, refined petroleum products or their by-products into the marine environment by granting a reduction in the risk established under sec. 250 of this chapter and by reducing requirements for proof of financial responsibility under sec. 50 of this chapter.

(d) The legislature further finds and declares that the preservation of the public uses referred to in this section is of grave public interest and concern to the state in promoting its general welfare, promoting health and providing for the public safety, and that the state's interest in the preservation of these interests outweighs any burdens of strict liability imposed by the legislature upon those engaged in transferring crude oil, refined petroleum products or their by-products and related activities.

ARTICLE 2. REGULATION OF OIL TERMINAL FACILITIES, MARINE CARRIERS; ISSUANCE OF CERTIFICATES OF RISK AVOIDANCE.

Sec. 30.25.020. POLLUTION AND CORRUPTION OF WATERS AND LANDS OF THE STATE PROHIBITED. Except as provided in AS 46.03.740, the discharge of crude oil, refined petroleum products or their by-products into or upon any waters and lands of the state, as defined in AS 46.03.826(7),

is prohibited.

Sec. 30.25.030. AUTHORITY OF DEPARTMENT. (a) The authority of the department under this chapter extends to the areas described in sec. 20 of this chapter, and in AS 44.03.

(b) Certificates of risk avoidance required under this chapter shall be obtained from and proof of financial responsibility shall be submitted to the department subject to the terms and conditions prescribed in this chapter and regulations adopted under it.

Sec. 30.25.040. OPERATION WITHOUT A CERTIFICATE PROHIBITED; APPLICATION; PERIODIC INSPECTION. (a) No person may operate, or cause to be operated in the state, an oil terminal facility used or capable of being used in the transfer of crude oil, refined petroleum products or their by-products without proof of financial responsibility submitted to, and a certificate of risk avoidance issued by, the department under this chapter.

(b) No person may operate, or cause to be operated, a tank vessel engaged in the marine transportation of crude oil, refined petroleum products or their by-products without proof of financial responsibility submitted to, and a certificate of risk avoidance issued by, the department under this chapter

(1) to or from oil terminal facilities located onshore in the ports, harbors or elsewhere in the state;

(2) to or from deepwater port facilities located offshore in the waters of the state; or

(3) through the waters of the state.

(c) The department shall prohibit the loading or unloading of a tank vessel subject to the provisions of this chapter, that does not possess a certificate of risk avoidance or proof of financial responsibility, or both the certificate and proof.

(d) Certificates of risk avoidance shall be issued on an annual basis subject to those terms and conditions the department considers necessary and prescribes by regulation to carry out the purposes of this chapter.

(e) As a condition precedent to the issuance or renewal of a certificate of risk avoidance the department shall require payment of an annual risk charge established under sec. 250 of this chapter and submission of satisfactory evidence that the applicant has, or is in the process of implementing state and federal plans and regulations for control of pollution related to crude oil, refined petroleum products or their by-products and the abatement of the pollution when a discharge occurs.

(f) In addition to the evidence supplied under this section, applicants for an oil terminal facility certificate shall demonstrate that they can provide all necessary equipment, personnel and supplies to prevent, contain, and remove discharges of oil and other pollutants, and shall submit information to the department in a form satisfactory to it, describing the following:

(1) the barrel or other measurement capacity of the terminal facility;

(2) all containment and removal equipment, including but not limited to vehicles, vessels, pumps, skimmers, booms, chemicals and communications devices to which the facility has access, whether through direct ownership or by contract or membership in an oil cleanup organization; and

(3) the terms of agreement and operation plan of any discharge cleanup organization to which the owner or operator of the terminal facility belongs

(g) In addition to the other evidence supplied under this section,

applicants for a marine carrier certificate shall demonstrate that they can provide all necessary equipment, personnel and supplies to prevent, contain, and remove discharges of oil and other pollutants, and shall submit information to the department in a form satisfactory to it, describing the following:

(1) the name and description of each tank vessel for which a certificate is sought that is engaged in, used or capable of being used by the carrier for the marine transportation of crude oil, refined petroleum products or their by-products to and from onshore and offshore oil terminal facilities in this state; the vessel description shall include, but is not limited to, the overall length, beam, draft, gross tonnage, deadweight tonnage, net tonnage, and design capacity for transporting crude oil, refined petroleum products or their by-products, and a detailed statement as to the tank vessel's seaworthiness; the department may, in addition, require that the carrier furnish a marine survey of the tank vessel's condition;

(2) a projection of the number of visits each tank vessel will make annually to or from an oil terminal facility in the state, or through the waters of the state;

(3) all containment and removal equipment, including but not limited to vehicles, vessels, pumps, skimmers, booms, chemicals, and communication devices to which the carrier or the tank vessel has access, whether through direct ownership or by contract or membership in an approved discharge cleanup organization; and

(4) the terms of agreement and operation plan of any discharge cleanup organization to which the carrier or the owner or operator of the tank vessel belongs.

(h) Upon showing of satisfactory containment and removal or cleanup capability under this section, and upon payment of the annual

risk charge, the department shall issue the applicant a certificate of risk avoidance for each terminal facility and related appurtenances or for each tank vessel. In addition to the annual risk charge, the department may assess a penalty for late applications and a fee for the processing of an application for the issuance or renewal of a certificate of risk avoidance under this section. This fee shall be reasonably related to the administrative costs of verifying the data submitted under (e), (f) and (g) of this section.

(i) Oil terminal facilities engaged in the transfer of, and carriers engaged in the marine transportation of crude oil, refined petroleum products or their by-products, that are applicants for, or are holders of, a certificate of risk avoidance under this section are subject to inspection by the department to ensure compliance with the provisions of this chapter.

Sec. 30.25.050. PROOF OF FINANCIAL RESPONSIBILITY. (a) Carriers and facilities subject to the provisions of this chapter shall present to the department evidence of insurance, bonding or other forms of financial responsibility acceptable to the department for property damage, personal injuries, loss of income or other losses resulting from the unlawful discharge of crude oil, refined petroleum products or their by-products.

(b) The amount of financial responsibility required for each carrier shall not be less than $20,000,000, or an amount required under applicable federal law or regulation.

(c) The amount of financial responsibility required for each facility with a capacity of less than 200,000 barrels of crude oil, refined petroleum products or their by-products is $100,000; the amount for the same type of facility with a capacity of 200,000 barrels or more of crude oil, refined petroleum products or their by-products is

420,000

$1,000,000.

Sec. 30.25.060. EXEMPTIONS. (a) Because of the restricted nature of marina and limited capacity facility operations and the minimal danger to the environment posed by their activities, [a marina used or capable of being used to store less than 10,000 barrels of refined petroleum products or their by-products] or an onshore limited capacity facility used or capable of being used to store less than 25,000 barrels of refined petroleum products or their by-products, is exempt from the proof of financial responsibility requirements of sec. 50 of this chapter and the certificate of risk avoidance requirements of sec. 40 of this chapter.

(b) For the purposes of (a) of this section

(1) "marina" means a person or facility engaged in the business, whether onshore or offshore, of servicing the fuel requirements of aircraft, pleasure watercraft, fishing boats and other commercial vessels, where the purchaser and the consumer are the same entity, and the fuel capacity of the servicing or serviced vessel is less than 10,000 barrels of refined petroleum products or their by-products, and is not covered by the definition of limited capacity facility in (2) of this subsection; [however, a marina does not include a seafood processing vessel or tender when, incidental to its seafood processing operations, it transfers refined petroleum products to a fishing boat;]

(2) "limited capacity facility" means a small tank farm, small bulk fuel storage facility, or other onshore facility storing refined petroleum products or their by-products, except asphalt, and which is engaged in the business of servicing the requirements of product transporters and vendors, or storing the fuel requirements for village domestic, school or commercial use, including but not limited to

fish processing, logging operations, construction projects or electric power generation.

Sec. 30.25.070. SCOPE OF REGULATIONS. The department shall adopt regulations to carry out the purposes of this chapter that do not conflict with federal law or regulations issued by any federal department or agency, including but not limited to the following:

(1) operating and inspection requirements for oil terminal facilities, tank vessels, personnel, equipment, supplies and other matters relating to the insured's operations under sec. 40 of this chapter;

(2) procedures and methods of reporting discharges and other occurrences prohibited by this chapter;

(3) procedures, methods, means and equipment to be used by persons subject to this chapter and the implementing regulations;

(4) procedures, methods, means and equipment to be used in the removal of oil and petroleum pollutants;

(5) development and implementation of criteria and plans to meet oil and petroleum pollution discharges, spills or other occurrences of various degrees and kinds;

(6) requirements for the safety and operation of tank vessels and motor vehicles, motorized equipment and other equipment relating to the use and operation of terminals, facilities and refineries and the approach and departure from terminals, facilities and refineries;

(7) establishment of the risk charges for annual issuance of the certificate of risk avoidance; and

(8) those other regulations that may be required by or for emergency conditions or that reasonably may be necessary to carry out the purposes of this chapter.

ARTICLE 3. EMERGENCIES.

Sec. 30.25.080. GOVERNOR'S POWERS: EMERGENCY PROCLAMATION. (a) In addition to exercising his civil defense powers under AS 26.20, or directing the department to exercise its emergency powers under AS 46.-03.820, when a disaster or catastrophe occurs or appears imminent arising from the discharge of crude oil, refined petroleum products or their by-products, the governor, or in his absence or inability, the lieutenant governor, shall by proclamation declare (1) that fact and (2) that an emergency exists in one, several or all sections of the state. A copy of the proclamation shall be filed with the lieutenant governor in the manner prescribed by law.

(b) The governor has general direction and control of the department and is responsible for carrying out the provisions of this chapter when a disaster or catastrophe occurs or appears imminent arising from the discharge of crude oil, refined petroleum products or their by-products.

(c) In performing his duties under this chapter, the governor may

(1) issue, amend and rescind the necessary orders and regulations to carry out the provisions of this chapter within the limits of the authority conferred upon him and not inconsistent with the regulations and directives of the President of the United States or of any federal department or agency that has specifically authorized emergency functions;

(2) delegate any authority vested in him under this chapter and provide for the subdelegation of that authority.

(d) When the governor is satisfied that an emergency no longer exists, he shall terminate the proclamation issued under (a) of this section by another proclamation affecting the sections of the state covered by the original proclamation. The proclamation shall be published in the newspapers of general circulation in the state and posted

at other places that the governor, or the person acting in that capacity, considers appropriate.

(e) The provisions of AS 26.20 as they apply to eminent domain and compensation, mutual aid, immunity, aid in emergency, right-of-way, enforcement and compensation apply to disasters or catastrophes proclaimed by the governor under this chapter.

Sec. 30.25.090. INTERAGENCY COOPERATION. In performing his duties under sec. 80 of this chapter, the governor shall secure cooperation from all departments and agencies of the federal government, and the governments of other states and foreign countries, and the political subdivisions of them, as well as from private agencies, in all matters relating to disaster or catastrophe.

ARTICLE 4. REMOVAL OF PROHIBITED DISCHARGES.

Sec. 30.25.100. IMMEDIATE REMOVAL REQUIRED. A person discharging crude oil, refined petroleum products or their by-products in a manner prohibited by sec. 20 of this chapter shall immediately undertake to remove the discharge to the department's satisfaction. Notwithstanding this requirement, the department may undertake the removal of the discharge and may retain agents and enter into contracts for that purpose notwithstanding the provisions of AS 37.05.220 - 37.05.280. These agents or contractors shall operate under the direction of the department.

Sec. 30.25.110. UNEXPLAINED DISCHARGES. An unexplained discharge of crude oil, refined petroleum products or their by-products within the state's jurisdiction or discharge of crude oil, refined petroleum products or their by-products occurring in waters beyond state jurisdiction that for any reason penetrates within state jurisdiction shall be removed by or under the direction of the department.

Sec. 30.25.120. OIL DISCHARGE CLEANUP PERSONNEL, EQUIPMENT, EX-

PENSES. (a) The department may establish and maintain at ports, harbors or other locations in the state, the personnel, equipment and supplies that, in its judgment, may be necessary to carry out the provisions of this chapter. Whenever feasible, the department shall enter into contracts with persons or private organizations to provide the oil discharge cleanup personnel, equipment or other services or supplies that may be required to carry out the provisions of this chapter.

(b) The salaries of department employees and the cost of equipment, supplies and contracts entered into under (a) of this section required to carry out the provisions of this chapter shall be paid from the coastal protection fund.

(c) The department and the Departments of Natural Resources and Fish and Game shall consult with one another periodically relative to procedures for the prevention of oil discharges into the coastal and inside coastal waters of the state from offshore drilling production facilities. These departments shall jointly establish predesignated sites for the deposit of oil discharge refuse and waste.

(d) Those inspection and enforcement employees of the department designated by the commissioner are peace officers under AS 01.10.060(6) in their line duty under this chapter and AS 46.03.

(e) Expenses involved in the removal of discharges, whether by the person causing the discharge, the person reporting it, or the department by itself, or through its agents or contracts shall be paid solely from the coastal protection fund established under this chapter.

ARTICLE 5. ENFORCEMENT; PENALTIES.

Sec. 30.25.130. ADMINISTRATIVE ADJUDICATION. When it appears, after investigation, that there is a violation of a regulation, order or certificate issued by the department, the department shall proceed in accordance with the provisions of this chapter and the regulations

adopted under it.

Sec. 30.25.140. CRIMINAL SANCTIONS. A person who violates sec. 20 of this chapter is punishable under AS 46.03.760 or 46.03.790. A person who falsifies information required under sec. 40 of this chapter is punishable under AS 46.03.760 or 46.03.790.

Sec. 30.25.150. CIVIL PENALTIES. A person who violates a provision of this chapter or a regulation or order of the department is subject to the penalties prescribed in AS 46.03.760 - 46.03.780.

Sec. 30.25.160. INJUNCTIVE RELIEF. A person may be enjoined by the superior court from committing a violation of a provision of this chapter, or the implementing regulations.

Sec. 30.25.170. ACTIONS TO RECOVER PENALTIES, DAMAGES. (a) Actions to recover penalties or damages under this chapter shall be brought by the attorney general in a court of competent jurisdiction.

(b) All penalties recovered under sec. 140 or 150 of this chapter shall be paid to the department and deposited by it in the coastal protection fund.

Sec. 30.25.180. EACH VIOLATION IS A SEPARATE OFFENSE. Each violation of a provision of this chapter, an implementing regulation, or an order or certificate issued by the department under them, is a separate and distinct offense and, in case of a continuing violation, each day the violation continues constitutes a separate offense.

Sec. 30.25.190. PENALTIES CUMULATIVE. (a) All penalties imposed under this chapter are cumulative.

(b) An action to recover a civil penalty is not a bar to an enforcement proceeding to require compliance, or to any other remedy or sanction provided by this chapter.

Sec. 30.25.200. JOINDER OF ACTIONS. Under the applicable court rules, appeals from orders of the department, and actions for recovery

of damages or penalties may be joined. The court may in the interests of justice separate the actions.

Sec. 30.25.210. PRIVATE CAUSE OF ACTION. (a) A person subjected to a prohibited discharge in violation of this chapter may sue in a state court of appropriate jurisdiction for damages resulting from the prohibited discharge.

(b) A person recovering damages under this section is entitled to a reasonable attorney fee, fixed by the court, to be taxed and collected as costs of the suit.

ARTICLE 6. COASTAL PROTECTION FUND.

Sec. 30.25.220. FUND CREATED; USES; LIMITATIONS; CHARGES. (a) The coastal protection fund is created as a revolving fund. The fund shall be used by the department to carry out the purposes of this chapter.

(b) To this fund shall be credited all risk charges, penalties, and other fees or charges established under or related to this chapter. To this fund shall be charged all expenses of the department related to this chapter, including administrative expenses, and costs of abatement, containment or removal of discharges of pollutants.

Sec. 30.25.230. SURPLUS FUNDS. Money in the fund not currently needed to meet the obligations of the department in the exercise of its responsibilities under this chapter shall be deposited with the commissioner of revenue to the credit of the fund and shall be invested in the manner provided in AS 37.10. Interest received on that investment shall be credited to the fund.

Sec. 30.25.240. RESEARCH AND DEVELOPMENT. The department may allocate annually not more than five per cent of the amount [than] currently in the fund for research and development into the causes, effects, prevention and removal of pollution of the aquatic environment caused by crude oil, refined petroleum products, or their by-products. These

allocations shall be made in accordance with the Executive Budget Act (AS 37.07).

Sec. 30.25.250. FUNDING; RISK CHARGES. (a) Annual risk charges for each classification of certificates issued by the department under sec. 40 of this chapter shall be based on the following factors:

(1) data submitted by applicants under that section;

(2) with respect to the issuance of certificates to carriers engaged in the marine transportation of crude oil, refined petroleum products or their by-products, the design characteristics of the tank vessel for which the certificate is issued, including but not limited to

(A) the presence or absence of the standard safety or maneuvering capability features prescribed in AS 30.20.020; and

(B) if the tank vessel is 40,000 deadweight tons or more, the presence or absence of

(i) flue gas or other gas inerting systems to be prescribed by the department by regulation; and

(ii) segregated ballast tanks, the combined capacity of which shall be of sufficient size, as prescribed by the department, so that the tank vessel can operate safely on ballast voyages without recourse to the use of cargo tanks for water ballast, and which is achieved in part by fitting, throughout the cargo-carrying length or compartments of the tank vessel: either a double bottom of a minimum height of one-fifteenth of the beam or two meters, whichever is the greater, or a double hull of a minimum of two meters;

(3) the risk experience of oil terminal facilities and carriers during the previous period for which the certificate of risk avoidance was issued and risk charges paid; and

(4) any other data, information or standards the department

considers relevant or essential to an appropriate determination of the annual charges for the issuance of certificates of risk avoidance under sec. 40 of this chapter.

(b) The annual risk charge for a tank vessel that lacks some or all of the design characteristics prescribed in (a)(2) of this section shall be increased accordingly in the manner prescribed by the department. The annual risk charge shall be reduced when the tank vessel is equipped or fitted with the design characteristics prescribed in (a)(2) of this section.

(c) Charges may be adjusted from time to time during each year to allow for risk experience or the equipping or fitting of design characteristics prescribed in (a)(2) of this section during that period.

(d) The aggregate annual risk charges to be collected each year shall be sufficient to cover anti ipated authorized disbursements from the fund for that year, except costs involved in the abatement, containment or removal of pollution under sec. 260(a)(2) of this chapter, plus 20 per cent of the amount necessary to fund the pollution abatement expense reserve established under (f) of this section.

(e) At the time the full pollution abatement expense reserve has been collected, there shall be returned to those holders of certificates of risk avoidance who paid into the fund in its first year of operation their pro rata share of the excess, if any, of risk charges paid over all disbursements from the fund made for that year plus interest on the amount of the excess returned. In each year thereafter, so long as the pollution abatement expense reserve is maintained, excess risk charges, if any, shall be paid to the certificate holders in the year following the last year for which a return of excess risk charge has been made if due or calculated and found not due.

(f) The initial pollution abatement expense reserve is $30,000,000

At least once every five years during the fund's operation, the department shall determine an appropriate amount necessary to maintain adequate funds to abate containment or removal anticipated oil pollution and establish a new amount for the pollution abatement expense reserve.

(g) Risk charges shall be paid to the department and upon receipt by it deposited in the coastal protection fund.

Sec. 30.25.260. DISBURSEMENTS FROM FUND. (a) Money in the coastal protection fund may be disbursed for the following purposes and no other, subject to the provisions of AS 37.07 and AS 37.10:

(1) administrative expenses, personnel expenses, contract fees, and equipment and supplies costs of the department related to the enforcement of this chapter;

(2) all costs involved in the abatement, containment or removal of pollution related to the discharge of crude oil, refined petroleum products or their by-products covered by this chapter;

(3) sums allocated to research and development in accordance with sec. 240 of this chapter; and

(4) payment of costs of insurance by the state to implement this chapter.

(b) The department shall submit annually to the legislature, through the Department of Administration and the governor, in accordance with the Executive Budget Act (AS 37.07), its recommendations for disbursements from the fund under (a) of this section and sec. 240 of this chapter.

Sec. 30.25.270. SPECIAL RISK CHARGES. (a) If a discharge occurs in any year necessitating disbursements from the fund in excess of expenses funded by that year's charges, the department shall collect from all carriers and facilities subject to the provisions of this chapter at the time the discharge occurs that amount which will

reimburse the fund by the aggregate amount of the excess expenditures.

(b) The amount to be collected shall be prorated among those carriers and facilities subject to this chapter at the time of the discharge and shall be determined on the basis of the same criteria used to determine annual risk charges under sec. 250 of this chapter.

(c) If a carrier or facility subject to (a) of this section refuses to pay the special risk charges established under (a) of this section, those charges shall be prorated among the remaining carriers or facilities.

(d) Requests for payment of the special risk charges established under (a) of this section, if not paid within 30 days of demand, shall be turned over to the Department of Administration or the Department of Law, or both, for collection.

Sec. 30.25.280. OIL TERMINAL FACILITY, CARRIER STRICTLY LIABLE. An operator of an oil terminal facility and a carrier are strictly liable, without regard to fault, under AS 46.03.822 - 46.03.828 for all acts and omissions of their employees and agents. The liability of a carrier extends from the time the vessel enters state waters until the time the vessel leaves state waters.

ARTICLE 7. GENERAL, MISCELLANEOUS PROVISIONS.

Sec. 30.25.290. INTERSTATE, FOREIGN COMPACTS AUTHORIZED. The governor may execute supplementary agreements, reciprocal arrangements or compacts with any other state or with foreign governments, subject to the approval of the legislature and of the Congress of the United States that may be required by applicable provisions of law, for the purpose of implementing this chapter.

Sec. 30.25.300. ANNUAL REPORT. The department shall prepare and publish an annual report to the governor and to the legislature reviewing its work under this chapter and shall include in the report its

recommendations for the enactment of appropriate legislation.

Sec. 30.25.310. MUNICIPAL ORDINANCES, REGULATIONS; POWERS LIMITED. If a conflict occurs between a provision of this chapter, or a regulation, certificate, order, decision or other determination of the department and a charter, ordinance, permit, regulation, franchise, decision or other determination of a municipality, the provisions of this chapter or a regulation, certificate, order, decision or other determination of the department prevails. However, nothing in this chapter may be construed to preclude a municipality, by ordinance or regulation, from exercising its police powers in the area regulated by this chapter.

Sec. 30.25.320. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT. (a) The administrative adjudication procedures of the Administrative Procedure Act (AS 44.62) do not apply to the adjudicatory, certificate issuing, or other proceedings of the department under this chapter. However,

(1) final administrative determinations or orders by the department are subject to judicial review under that Act; and

(2) department hearings shall be held only after at least 10 days public notice, unless it is an emergency hearing; they shall be held at a place most convenient for those interested in the subject of the hearing.

(b) Notwithstanding the provisions of (a)(1) of this section, no regulation or order of the department may be stayed pending appeal under the provisions of the Administrative Procedure Act.

(c) The Administrative Procedure Act applies to regulations promulgated by the department.

Sec. 30.25.330. LIMITATION ON LIABILITY OF THE STATE. Neither the state nor the fund is liable for any act or omission arising out of the enforcement or implementation of this chapter or the failure to enforce

or implement this chapter.

Sec. 30.25.340. CONSTRUCTION. This chapter shall be liberally construed to effect the purposes set out in sec. 10 of this chapter.

Sec. 30.25.350. DEFINITIONS. In this chapter, unless the context requires otherwise,

(1) "barrel" means 42 U. S. gallons at 60 degrees Fahrenheit;

(2) "board" means a board of arbitration established under this chapter;

(3) "carrier" means a person who owns or who, for compensation, operates or otherwise provides a vessel engaged in, used or capable of being used for, the marine transportation of crude oil, refined petroleum products or their by-products on the waters of this state;

(4) "commissioner" means the commissioner of environmental conservation;

(5) "deadweight tonnage" or "DWT" means the difference in metric tons between the lightweight displacement and the total displacement of a vessel measured in water of specific gravity 1.025 at the load waterline corresponding to the assigned summer freeboard;

(6) "department" means the Department of Environmental Conservation;

(7) "discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping;

(8) "fund" means the state coastal protection fund;

(9) "municipality" means a home rule or general law borough or city including but not limited to a unified municipality organized under AS 29.68;

(10) "crude oil, refined petroleum products, or their by-products" means oil of any kind and in any form including, but not limited to, petroleum, fuel oil, gasoline, lubricating oils, oily

sludge, oil refuse, oil mixed with other wastes, crude oils, liquefied natural gas, propane, butane or other liquid hydrocarbons regardless of specific gravity;

(11) "oil terminal facility" means an onshore or offshore facility of any kind and related appurtenances, including but not limited to a deepwater port, located in, on, or under the surface of any land or water of the state, including tide and submerged land, which is used or capable of being used for the purpose of transferring, processing or refining, or storing crude oil, refined petroleum products or their by-products; a vessel shall be considered an oil terminal facility only in the event of a ship-to-ship transfer of crude oil, refined petroleum products or their by-products, and only that vessel going to or coming from the place of transfer and the oil terminal facility; however, an oil terminal facility does not include a seafood processing vessel or tender when, incidental to its seafood processing operations, it transfers refined petroleum products to a fishing boat;

(12) "operate" or "operator" means a person owning or operating an oil terminal facility or a carrier whether by lease, contract or any other form of agreement, or a person who navigates or has charge of the navigation or use of a vessel;

(13) "transferred" includes both onloading and offloading, between terminal and vessel and vessel to vessel;

(14) "tank vessel" means a self-propelled vessel that is specially constructed or converted to carry liquid bulk cargo in tanks and includes tankers, tankships, and combination carriers when carrying crude oil, petroleum products or their by-products in bulk; it does not include vessels carrying crude oil, petroleum products or their by-products in drums, barrels, or other packages, or vessels carrying crude oil, petroleum products or their by-products as fuel or stores for

that vessel;

(15) "waters of the state" means the navigable waters within the territorial limits of the state, and the marginal sea adjacent to the state, and as defined in AS 44.03 and AS 46.03.900(22).

Sec. 30.25.360. SHORT TITLE. This chapter may be cited as the Alaska Oil Discharge Prevention and Pollution Control Act.

* Sec. 3. AS 46.03.750 is amended by adding a new subsection to read:

(e) Cargo in tank vessels, as defined in AS 30.20.060(9), engaged in the marine transportation of crude oil, refined petroleum products or their by-products may not be placed in segregated ballast tanks, nor may ballast be placed in cargo tanks of those tank vessels having segregated ballast systems. However, the department may by regulation permit the placing of ballast in the cargo tanks of those vessels in emergency situations. All ballast placed in cargo tanks shall be processed by or in an onshore ballast water treatment facility and may not be discharged into the waters of the state.

* Sec. 4. AS 46.03 is amended by adding a new section to read:

Sec. 46.03.755. DISCHARGE REPORTING. (a) A person in charge of a facility, operation or vessel, as soon as he has knowledge of any discharge from the facility, operation or vessel in violation of sec. 740 or 750 of this chapter or AS 30.25.020, shall immediately notify the department of the discharge.

(b) Notwithstanding (a) of this section, the department may enter into a written agreement with a person for the periodic reporting of minor discharges other than into the waters of the state.

* Sec. 5. AS 46.03.760 is repealed and re-enacted to read:

Sec. 46.03.760. CIVIL ACTION FOR POLLUTION; DAMAGES. (a) A person who violates or causes or permits to be violated a provision of this chapter or AS 30.25.020, or a regulation, a lawful order of the

department, or a permit or certificate, or term or condition of a permit or certificate issued under this chapter or AS 30.25 is liable, in a civil action, to the state for a sum to be assessed by the court of not less than $500 nor more than $100,000 for the initial violation, nor more than $5,000 for each day thereafter on which the violation continues, and which shall reflect, when applicable,

(1) reasonable compensation in the nature of liquidated damages for any adverse environmental effects caused by the violation, which shall be determined by the court according to the toxicity, degradability and dispersal characteristics of the substance discharged, the sensitivity of the receiving environment, and the degree to which the discharge degrades existing environmental quality;

(2) reasonable costs incurred by the state in detection, investigation, and attempted correction of the violation, except disbursements for pollution abatement costs under AS 30.25.260(a)(2); and

(3) the economic savings realized by the person in not complying with the requirement for which a violation is charged.

(b) Actions under this section may not be used for punitive purposes, and sums assessed by the court must be compensatory and remedial in nature.

(c) The court, upon motion of the department or upon its own motion, may defer assessment of all or part of that portion of the sum imposed upon a person under (a)(3) of this section conditioned upon the person complying, within the shortest feasible time, with the requirement for which a violation is shown.

(d) As used in this section, "economic savings" means that sum which a person would be required to expend for the planning, acquisition, siting, construction, installation and operation of facilities necessary to effect compliance with the standard violated.

Coastal Protection Fund
Return state damages obtain under suit from persons not having insurance

(e) In addition to liability under (a) - (d) of this section, a person who violates or causes or permits to be violated a provision of secs. 740 - 750 of this chapter is liable to the state, in a civil action brought under sec. 822 of this chapter, for the full amount of actual damages caused to the state by the violation, [including direct and indirect costs associated with the abatement, containment or removal of the pollutant,] restoration of the environment to its former state, and all incidental administrative costs. Except for special risk charges collected under AS 30.25.270, a person holding a risk avoidance certificate may not be held liable for costs associated with the abatement, containment or removal of the pollutant.

New

* Sec. 6. AS 46.03 is amended by adding a new section to read:

Sec. 46.03.765. INJUNCTIONS. The superior court has jurisdiction to enj in a violation of this chapter or AS 30.25, or of a regulation, lawful order of the department, or permit or certificate, or term or condition of a permit or certificate issued under this chapter or AS 30.25. In actions brought under this section, temporary or preliminary relief may be obtained upon a showing of an imminent threat of continued violation, and probable success on the merits, without the necessity of demonstrating physical irreparable harm. The balance of equities in actions under this section may affect the timing of compliance, but not the necessity of compliance within a reasonable period of time.

* Sec. 7. AS 46.03.780(a) is amended to read:

(a) A person who violates a provision of this chapter or AS 30.25, or who fails to perform a duty imposed by this chapter or AS 30.25, or violates or disregards an order, permit, or other determination of the department made under the provisions of this chapter or AS 30.25, respectively, and thereby causes the death of fish, animals, or

vegetation or otherwise injures or degrades the environment of the state is liable to the state for damages

* Sec. 8. AS 46.03.790 is repealed and re-enacted to read:

Sec. 46.03.790. CRIMINAL PENALTIES. (a) A person who violates or who causes or permits a violation of a provision of this chapter or AS 30.25, or of a regulation, lawful order of the department, or permit or certificate, or term or condition of a permit or certificate issued under this chapter or AS 30.25 is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not more than $25,000 and costs of prosecution.

(b) A person who wilfully violates a provision of this chapter, or of a regulation, lawful order of the department, or permit or certificate, or term or condition of a permit or certificate issued under this chapter or AS 30.25 is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not more than $25,000 and costs of prosecution, or by imprisonment for not more than one year, or by fine, costs, and imprisonment.

(c) Each day on which a violation described in (a) or (b) of this section occurs is considered a separate violation.

(d) A person who fails to provide or falsely states information required under sec. 755 of this chapter or AS 30.25 is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not more than $25,000, or by imprisonment for not more than one year, or by both. Each unlawful act constitutes a separate offense.

* Sec. 9. AS 46.03 is amended by adding a new section to read:

Sec. 46.03.850. COMPLIANCE ORDER. (a) When, in the opinion of the department, a person is violating or is about to violate a provision of this chapter or AS 30.25, or a regulation or lawful order of the department, or a permit or certificate, or a term or condition of a

permit or certificate issued by the department under this chapter or AS 30.25, the department may notify the person of its determination by personal service or certified mail. The determination and notice do not constitute an order under sec. 820 of this chapter.

(b) The recipient of the determination must file with the department, within the time period specified in the notice, a report stating what measures have been and are being taken, or are proposed to be taken, to correct or control the conditions outlined in the notice.

(c) After the report is filed under (b) of this section or the time period specified for it has elapsed, the department may issue a compliance order in conformity with the authority of the department and the public policy declared in sec. 10 of this chapter. A copy of the compliance order shall be served personally or sent by certified mail to the person affected. A compliance order is effective upon receipt.

(d) Within 30 days after receipt the recipient may request a hearing to review the compliance order. Failure to request a hearing within 30 days after the receipt of a compliance order constitutes a waiver of the recipient's right of review.

(e) The department shall hold a hearing within 20 days after receipt of a request for one under (d) of this section. After the hearing the department may rescind, modify or affirm the compliance order.

(f) The attorney general shall seek enforcement of a compliance order.

* Sec. 10. AS 46.03 is amended by adding a new section to read:

Sec. 46.03.875. REMEDIES CUMULATIVE. All remedies provided by this chapter or AS 30.25 are cumulative, and the securing of relief, whether injunctive, civil or criminal, under a section of this chapter or AS 30.25 does not estop the state from obtaining relief under any other section of this chapter or AS 30.25.

* Sec. 11. SEVERABILITY. If any provision of this Act or the application of it to any person or circumstance is held invalid, particularly those provisions that establish incentives for carriers to use vessels with certain safety or maneuvering capability features, the remainder of this Act and the application to other persons or circumstances, including but not limited to those provisions which create a coastal protection fund, shall not be affected.

* Sec. 12. This Act takes effect July 1, 1977.

A M E N D M E N T

TO: HCS CSSSB 406 (Judiciary)

On page 20, strike out lines 17 - 25, inclusive, and insert:

(ii) partial, complete or defensively placed segregated ballast tanks or systems, ~~the combined capacity of which shall be of sufficient size, as prescribed by the department, so that the tank vessel can operate safely on ballast voyages without recourse to the use of cargo tanks for water ballast;~~ or

(iii) throughout the cargo-carrying length or compartments of the tank vessel: either a double bottom of a minimum height of one-fifteenth of the beam or two meters, whichever is the greater, or a double hull of a minimum of two meters;

provided however that a certification of such change shall be provided to such individual within such period.

4. Section 1224.1–17 is added to provide for internal appeal of any denial of access.

§ 1224.1–17 Denial of access and appeals with respect hereto.

In the event that the agency finds it necessary to deny any individual access to a record about such individual pursuant to provisions of the Privacy Act or of these regulations, a response to the original request shall be made in writing within ten working days from the date of such initial request. The denial shall specify the reasons for such refusal or denial and advise the individual of the reasons therefore, and of his or her right to an appeal within the agency and/or judicial review under the provisions of the Privacy Act.

(a) In the event an individual desires to appeal any denial of access, he may do so in writing by addressing such appeal to the attention of the Deputy Director, ACTION, c/o the Director, AF/Administrative Services, 806 Connecticut Avenue, NW., Washington, D.C. 20525. Although there is no time limit for such appeals, ACTION shall be under no obligation to maintain copies of original requests or responses thereto beyond 180 days from the date of the original request.

(b) The Deputy Director, or his designee, shall review a request from a denial of access and shall make a determination with respect to such appeal within 20 days after receipt thereof. Notice of such determination shall be provided to the individual making the request in writing. If such appeal is denied in whole or in part, such notice shall include notification of the right of the person making such requests to have judicial review of the denial as provided in the Privacy Act (5 U.S.C. 552a).

Any person interested in the proposed regulations as amended herein may submit written comments or views on such regulations by addressing ACTION/Office of the General Counsel, M–607, 806 Connecticut Avenue, NW., Washington, D.C. 20525 on or before June 14, 1976. All written comments received on or before that day will be considered by the agency in formulating final rule changes.

Dated: May 5, 1976.

JOHN L. GANLEY,
Deputy Director, ACTION.

[FR Doc.76–13946 Filed 5–12–76;8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 157]

[CGD 76–075]

CERTAIN EXISTING TANK VESSELS SEGREGATED BALLAST

Advance Notice of Proposed Rule Making

Purpose. The Coast Guard is considering developing regulatory requirements for a segregated ballast capability for certain existing tank vessels of 70,000 DWT and over. The purpose of this advance notice is to solicit comments from the public on the cost involved in retrofitting existing vessels, the inflationary impact on the economy by requiring this retrofitting, and on technical and other possible problems that could be expected during and as a result of implementing this concept.

Written comments. Interested persons are invited to participate in the proposed rule making by submitting written views, data, arguments, objections, and comments to the Executive Secretary, Marine Safety Council (G–CMC/81), Room 8117, U.S. Coast Guard, Washington, D.C. 20590. Each person submitting written comments should include his name and address, identify this notice (CGD 76–075), and give reasons for any recommendations. Comments received will be available for examination by interested persons in Room 8117, U.S. Coast Guard Headquarters, Washington, D.C.

Closing date for comments. All communications received before June 30, 1976, will be evaluated before further action is taken.

Background: The International Convention for the Prevention of Pollution from Ships, 1973, requires new tankers of 70,000 DWT and over to have a segregated ballast capability. The concept of segregated ballast is that a tank vessel must have sufficient spaces set aside for carrying ballast water separately so that in all but unusually rough weather conditions, it will not be necessary to introduce ballast water into cargo tank spaces. In the October 14, 1975 issue of the FEDERAL REGISTER (40 FR 48280) this concept was implemented for certain new U.S. tank vessels carrying oil in domestic trade. In the FEDERAL REGISTER (41 FR 16059) of April 15, 1976 the Coast Guard proposed that this concept apply to certain new U.S. tank vessels in foreign trade and certain new foreign tank vessels entering the navigable waters of the United States. New vessels are defined by calendar dates in the regulations and the proposed regulations. Existing vessels are those vessels that are not within the definition of new vessels.

Resolution 3 adopted by the International Conference on Marine Pollution, 1973, recommends that governments undertake concerted efforts to reduce the discharge of oil from ships into the sea with a view to the complete elimination of international pollution as soon as possible but not later than the end of the present decade. Segregated ballast, as stated in the Coast Guard Final Environmental Impact Statement, Regulations for Tank Vessels Engaged in the Carriage of Oil in Domestic Trade, August 1975, is a concept that has gained worldwide acceptance for offering major environmental benefits. The Coast Guard is now considering extending the segregated ballast concept to existing U.S. tank vessels of 70,000 DWT and over and to existing foreign tank vessels of 70,000 DWT and over that enter the navigable waters of the United States.

According to both domestic and international studies available to the Coast Guard, the retrofitting of existing tankers with segregated ballast capability appears feasible because:

(a) There presently exists on a worldwide basis a considerable excess of available tank vessel tonnage capacity, a condition projected to continue for at least the next five years. Because of this excess capacity, and allowing a modest period for necessary shipyard alternation, the requirement should result in minimal disruption of the oil transportation system.

(b) The vessel alterations will not entail major conversions but in most instances would at least require changes to the cargo and ballast piping systems.

(c) Increases in consumer cost of oil and oil products as a result of this contemplated action should have a minimum impact on the present inflationary trend. There will be some small increase in the transportation cost of oil because of this action; however, transportation costs are a relatively small part of the price consumers pay today. Further, this action should reduce the size scale of needed reception facilities at loading ports.

It is recognized by the Coast Guard that segregated ballast alone will not eliminate the need for good operational practice on board tankers. Cargo tanks must be washed in order to remove sludge and before entering shipyards; however, segregated ballast will eliminate the major source of operational pollution, dirty ballast. Emerging techniques for crude oil washing of cargo tanks (under development by industry), in combination with improved methods of stripping cargo tanks and cargo piping systems, hold promise for even further reduction of the amount of oil discharged into the sea from tankers.

The Coast Guard has examined and will continue to examine the feasibility of requiring retrofitting of certain existing tankers with segregated ballast capacity. The purpose of this advance notice is to learn as much as possible from the public and industry as to the costs involved, the expected inflationary impact, and the technical and other possible problems resulting from the contemplated retrofitting of existing vessels.

(R.S. 4417a (3) and (7), as amended (46 U.S.C. 391a (3) and (7); 49 CFR 1.46(n) (4)).)

J. V. CARTHY,
Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

MAY 6, 1976.

[FR Doc.76–13764 Filed 5–12–76;8:45 am]

[33 CFR Part 164]

[CGD 76–025]

TUG ASSISTANCE IN CONFINED WATERS

Proposed Minimum Standards

Correction

In FR Doc. 76–13210, appearing in the issue for Thursday, May 6, 1976, on page

18771, in the second column, in paragraph 6, the word "drugs" appearing in the third sentence should read, "tugs".

Also, in paragraph 8, the word "bands" appearing in the fourth sentence should read "bends".

Finally, the word "In" appearing at the beginning of paragraph 10 should read "Is".

[33 CFR Part 164]

[CGD 74-77]

NAVIGATION SAFETY REGULATIONS

Proposed Testing Requirements

Correction

In FR Doc. 76-13209, appearing in the issue for Thursday, May 6, 1976, on page 18767, in the third column, in the fifth line of the last paragraph, the sentence which reads as follows: "The misapplication or reversal orders to * * *," should read as follows: "The misapplication or reversal of orders to * * *."

[33 CFR Part 164]

[COD 76-051]

MINIMUM NET BOTTOM CLEARANCE

Request for Comments

Correction

In FR Doc. 76-13211, appearing on page 18771, in the issue for Thursday, May 6, 1976, in the first line of the authority citation which reads as follows: "* * * 86 Stat. 8662" should appear as follows: "* * * 86 Stat. 862."

Federal Aviation Administration

[14 CFR Part 39]

[Docket No. 15698]

MESSERSCHMITT - BOLKOW - BLOHM MODEL BO-105A AND BO-105C HELICOPTERS

Airworthiness Directives; Notice of Proposed Rule Making

The Federal Aviation Administration is considering amending Part 39 of the Federal Aviation Regulations by adding an airworthiness directive applicable to certain Messerschmitt-Bolkow-Blohm (MBB) Model BO-105A and BO-105C helicopters. There have been reports of cracks occurring in the piston rods of the main rotor hydraulic servo actuators that could result in the failure of an actuator and loss of control of the helicopter. Since this condition is likely to exist or develop in other helicopters of the same type design, the proposed airworthiness directive would require periodic inspections and the replacement of the piston rods in the main rotor hydraulic servo actuators on certain MBB Model BO-105A and BO-105C helicopters.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue, S.W. Washington, D.C. 20591. All communications received on or before June 14, 1976, will be considered by the Administrator before taking action upon the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons.

This amendment is proposed under the authority of sections 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

In consideration of the foregoing, it is proposed to amend § 39.13 of Part 39 of the Federal Aviation Regulations by adding the following new airworthiness directive:

MESSERSCHMITT - BOLKOW - BLOHM GmbH. (MBB). Applies to Model BO-105A and BO-105C helicopters, certificated in all categories, incorporating Teledyne Hydra-Power hydraulic actuators, P/N 105-45021, with the following serial numbers: 1012, 1014, 1015, 1016, 1017, 1018, 1019, 1021, 1023, 1027, 1028, 1029, 1030, 1033, 1034, 1035, 1037, 1038, 1040, 1041, 1043, 1044, 1045, 1046, 1049, 1056, 1057, 1062, 1064, 1065, 1083, 1069, 1071, 1075, 1091, 1093, 1101, 1104, 1109, 1113, 1119, 1121, 1123, 1126, 1127, 1150, 1160, and 1161 which have piston rods, P/N D133-750.08E, with S/N's 101 through 440.

Compliance is required as indicated, unless already accomplished.

To prevent possible failure of the main rotor hydraulic actuator and loss of control of the helicopter, accomplish the following:

(a) Before the accumulation of 600 hours total helicopter time in service or within the next 25 hours time in service after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 600 hours time in service from the last inspection until modified in accordance with paragraph (e) of this AD, comply with paragraph (b) of this AD.

(b) Inspect the piston rods, P/N D133-750.08E, in the hydraulic actuators, P/N 105-45021, for cracks, using a dye penetrant method in accordance with Paragraph 2.B. of the "Accomplishment General" section of MBB Service Bulletin No. 40-10, dated June 3, 1976, or an FAA-approved equivalent.

(c) If a crack is found in a piston rod during an inspection specified in paragraph (b) of this AD, before further flight, replace the cracked piston rod with a serviceable part of same part number and continue to inspect in accordance with paragraph (b) of this AD at intervals not to exceed 600 hours time in service until the modification specified in paragraph (e) of this AD is accomplished.

(d) Comply with paragraph (e) of this AD as follows:

(1) For helicopters with less than 1800 hours total time in service on the effective date of this AD and for which it has been less than 4 years since the issuance of its airworthiness certificate, comply with paragraph (e) of this AD in accordance with paragraph (i) or (ii), whichever occurs later.

(i) Before the accumulation of 1800 hours total time in service or within four years of the date of issuance of its airworthiness certificate, whichever occurs sooner.

(ii) Within the next 25 hours time in service after the effective date of this AD.

(2) For helicopters with 1800 hours or more total time in service on the effective date of this AD or helicopters for which the effective date of this AD is four years or more after the date of issuance of its airworthiness certificate, comply with paragraph (e) of this AD within the next 25 hours time in service after the effective date of this AD.

(e) Disassemble the Teledyne Hydra-Power actuators, P/N 105-45021, and replace the piston rods, P/N D133-750.08E, which have S/N's 101 through 440 with serviceable parts of the same part number which have serial numbers other than 101 through 440.

Issued in Washington, D.C., on May 6, 1976.

JAMES M. VINES,
Acting Director,
Flight Standards Service.

[FR Doc.76-13706 Filed 5-12-76; 8:45 am]

[14 CFR Part 39]

[Docket No. 75-NE-17]

PRATT & WHITNEY JT9D MODEL ENGINES

Withdrawal of Notice of Proposed Rulemaking

In the April 23, 1975, issue of the FEDERAL REGISTER (40 FR 17852), the Federal Aviation Administration published a Notice of Proposed Rulemaking (Docket No. 75-NE-17) to amend Part 39 of the Federal Aviation Regulations by adding an airworthiness directive applicable to the Pratt & Whitney JT9D turbofan engine. The proposed airworthiness directive required an inspection for residual nickel chloride on the internal air surface of the T_{t_2} temperature sensing bellows.

Two comments were received on the proposal. One commentator suggested some changes of an editorial nature, and also sugested that the inspection interval of 600 hours was unnecessarily restrictive in view of service experience. This commentator recommended that the inspection interval be extended to 1000 hours. The other commentator questioned the need for an AD on this subject since actual service experience indicated that there have been no in-flight shutdowns that could be attributed to a corroded sensing bellows. This commentator also recommended that the inspection interval be extended to 1000 hours and that the applicability of the AD be limited.

Since the publication of the NPRM in the FEDERAL REGISTER, additional evidence has become available which indicates that the extent of corrosion is not as severe as originally anticipated and that even the most critical failure of the T_{t_2} bellows would not create a significant unsafe condition.

This information, in conjunction with reports that there have been no reported instances of service difficulty caused by a T_{t_2} sensor failure, indicate that an AD on the subject is not necessary at this time. Accordingly, the agency has determined that the NPRM should be, and hereby is, withdrawn.

The agency will, of course, continue to monitor the service experience of the T_{t_2} temperature sensors and will initiate rulemaking action on this subject should

02112 NL ANCHORAGE ALASKA 428 05-17 0535P ADT

file 438

PMS REP TERRY GARDINER

2739

JUN

WE OBJECT TO THE PASSAGE OF SB438. THE HOURS OF BUSINESS ARE OFTEN NOT ALWAYS NEGOTIABLE AND COULD MAKE SERVICE UNAVAILABLE IN MANY AREAS DEALERS ARE FREE AT ANY TIME TO REFUSE TO BUY AN PRODUCTS EXCEPT GASOLINE AND ARE NOT COMPELLED TO BUY ANY OTHER PRODUCTS OR SERVICES IT WOULD TAKE A COURT DECISION IN EACH CASE OF TRANSFER OF OWNERSHIP TO DEFINE UNREASONABLE AND ANOTHER TO DEFINE QUALIFIED WE UNDERSTAND THAT THE MAIN REASDON FOR SECTION A-8 WAS TO PROVIDE RIGHTS OF SURVIVORSHIP IF SO WHAT MAKES ANY HEIR A QUALIFIED ASSIGNEE THIS PARAGRAPH EFFECTIVELY ELIMINATES THE COMPANYS RIGHT TO BE SELECTIVE IN CHOOSING A DEALER FOR A RETAIL OUTLET IF PASSED IT CAN ONLY HAVE A DETERIORATIVE EFFECT ON THE QUALITY OF DEALERS AND STATION A DEALER CAN GET AN OUTLET WITHOUT PROPER TRAINING TO MEET THE QUALITY OF HIS PEERS WHICH WOULD MEAN LOWERING THE QUALITY OF SERVICE TO THE PUBLIC THE APPEARANCE OF SERVICE STATIONS IN A COMMUNITY WOULD LIKEWISE SUFFER DUE TO THE PROBABILITY OF AN ASSIGNEE HAVING A LOWER LEVER OF ACCEPTANCE THAN THE COMPANYS ACCEPTED DEALER THE COMPANIES GENERALLY BEING MUCH MORE CONCIOUS OF THE COMMUNITY IMAGE

THE VALUE OF GOODWILL IS SO ABSTRACT THAT THERE WOULD ALMOST BE UNIVERSALLY BE DISAGREEMENT OVER IT AND THE DIFFERENCES BEING RESOLVED IN A COURT OF LAW IN EACH CASE EVEN THEN THE POSSIBILITY OF A FAIR DECISION FOR BOTH PARTIES WOULD BE REMOTE DUE TO THE INABILITY OF ANYONE TO EVALUATE THE DIFFERENCE BETWEEN THE GOODWILL OF THE OPERATOR AND THAT OF THE COMPANIES HALLMARK AND CREDIT CARD SYSTEM GOODWILL HAS NEVER ENTERED INTO THE CHANGE OF DEALERSHIPS IN AHICH THE LEASING FROM THE OIL COMPANIES IS INVOLVED TO

1976 MAY 18 AM 12 27

EVEN THEN THE POSSIBILITY OF A FAIR DECISION FOR BOTH
PARTIES WOULD BE REMOTE DUE TO THE INABILITY OF ANYONE
TO EVALUATE THE DIFFERENCE BETWEEN THE GOODWILL OF THE OPERATOR
AND THAT OF THE COMPANIES HALLMARK AND CREDIT CARD SYSTEM
GOODWILL HAS NEVER ENTERED INTO THE CHANGE OF DEALERSHIPS IN
AHICH THE LEASING FROM THE OIL COMPANIES IS INVOLVED TO
INSTITUTE IT TO THE EXTENT OF THIS BILL COULD ONLY GIVE PRESENT
DEALERS A BONANZA SINCE THEY DID NOT PAY IT ON THEIR INCEPTION
BUT WOULD DEMAND IT UPON DEPARTURE IT WOULD OPEN THE SERVICE STATION
BUSINESS TO SPECULATION RATHERN THAN TO SOLID SALES AND SERVICE
THE SERVICE STATION HAS TRADITIONALLY BEEN ONE OF THE FEW PLACES
WHERE A PERSON OF LIMITED MEANS COULD ENTER BUSINESS AND MAKE
GOOD IF THIS BILL WERE TO BECOME LAW IT WOULD EFFECTIVELY
REMOVE THE GREATER PERCENTAGES OF THESE OPPORTUNITIES AND COULD
PLACE THE SERVICE STATION INDUSTRY AT THE MERCY OF BIG BUSINESS
WE FEEL WE NEED A BILL RELATING TO FRANCHISE AGREEMENTS
BUT MORE CLOSELY RELATED TO A JOINT VENTURE BETWEEN THE
COMAPNY AND DEALER LEGISLATION COULD ONLY CAUSE FRICTION BETWEEN
THE TWO WE APPROXIMATELY 1/3 OF THE ANCHORAGE CHEVRON
DEALERS STRONGLY OPPOSE THE PASSAGE OF THIS BILL

B C BYLSMA, E L BRODY, L W MCCONNELL

HARRY K BEESON, LR HAAG JR, EDWARD E CLARK, W MOORE

TELEGRAM
RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

A M E N D M E N T S

TO: HCS CSSB 406 (Judiciary) BY THE JUDICIARY COMMITTEE

Passed

AMENDMENT NO. 1

On page 14, between lines 2 and 3, insert:

"(c) A person, facility or vessel exempt from this chapter under (a) - (b) of this section may, at his or its option, apply for and obtain a certificate of risk avoidance by complying with the applicable provisions of sec. 40 of this chapter."

Passed

AMENDMENT NO. 2

On page 19, line 14, after "charges,", insert: "damages,"

On page 29, line 8, after "costs.", insert:

"That portion of the damages recovered by the state in a civil action brought under sec. 822 of this chapter attributable to costs incurred by the department in the abatement, containment or removal of the pollutant resulting from a discharge of crude oil, refined petroleum products or their by-products shall be deposited in the coastal protection fund created under AS 30.25.220."

Passed

AMENDMENT NO. 3

On page 20, line 29, after "standards", insert:

", including but not limited to partial, complete or defensively placed ballast tanks or systems with respect to (2)(B)(ii) of this subsection,



Maine, Florida + Model Act

HB 34 by Speaking

Hearings this summer

(1.) Fed Const problem
(2.) p " pre-emption

— Page 2 - three requirements of all Alaska traffic

— Page 3 - unless tug escort - 3 Mile requirement
Exemption clause

— Insurance system - incentive program
Additional Requirements

— Oil landing facilities

Fed Changes

Page ~~17~~ 29 - New language

Page 21, line 29 - 30 million to 20 million

Page 29, old Section 7 - deleted Civil seizure of vessel
Had constitutional problems
Retain authority for violation of criminal laws

Page 21, line 15

1 ——

2 □

A

Article 7 — 3rd party damages - deleted references
+ arbitrators

You can't sue state for faulty cleanups

Oil transporter under existing state law is strictly liable - just dispute damages

---

Norm Goorsuch - Mr. Schowalter

Provision for incentives
Pages 20 line 17-25

existing " only allows incentive for specific ballast tanks

Solo - 2 - double bottoms
6 - ballasts

#720 Million

Gene Wilder 5
Ken Schowalter - Solo 20,000,000

fund level $900 - #7

#6½ - #7 Million - 1969

⅓ of fund belongs to state

20 companies involved - All majors involved because of onshore facility

Gorsuch

A M E N D M E N T

TO: HCS CSSSB 406 (Judiciary)

On page 20, strike out lines 17 - 25, inclusive, and insert:

(ii) partial, complete or defensively placed segregated ballast tanks or systems, the combined capacity of which shall be of sufficient size, as prescribed by the department, so that the tank vessel can operate safely on ballast voyages without recourse to the use of cargo tanks for water ballast; or

(iii) throughout the cargo-carrying length or compartments of the tank vessel: either a double bottom of a minimum height of one-fifteenth of the beam or two meters, whichever is the greater, or a double hull of a minimum of two meters;

SB

407

"An Act relating to the Motor Vehicle Safety Responsibility Act; and providing for an effective date."

5/12/75

COMMITTEE REPORT

HOUSE

Mr. Speaker: Date 5/12/75

The Committee on JUDICIARY has had SB 407

under consideration. A Majority of the members of the Committee

(X) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

(X) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends: No Rec

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Jerry Hendricks Chairman

House Judiciary Committee
May 19, 1975

The meeting was called to order at 1:30 p.m. by Chairman Gardiner. All members were present except Mr. Parr.

SCR 15, 17, 19 Rape

Senator Chance briefly explained these resolutions which were then p ssed out of committee.

SB 182 arrest without warrant

Pat Wellington testified that if an officer does not witness a drunk driving, there is nothing on which he can make an arrest. The drunk in public and drunk on a highway statutes have been overturned by the courts. He was particularly concerned when there had been an accident but no witness.

Line 13: change reasonable to probable.
Line 14 and 15 omit: while under the influence

Several amendments were suggested to close a possible abuse the bill could create by limiting the bill to accidents in which there had been damage to life or property, or a moving violation. Mr. Brown suggested on line 16 add: and the person has been operating a vehicle which has been involved in an accident, or the person has been charged with another offense at a time during which he is alleged to have committed such violation. The amendment failed. Mr. Gardiner suggested on line 14: reasonable (immediately) prior to the arrest - as soon as practicable but in no event more . . .
The committee determined to hold the bill to work on further amendment.

SB 407 Motor Vehicle Safety

Alan Compton stated that the bill was to bring the rate and coverage up to date. The present rates were set in 1966. Mr. Brown moved the bill out of committee.

SB 140 am Commission on Administration of Justice

This bill adds members representative of juvenile groups. Mr. Brown moved the bill out of committee.

SB 358 Trust Lands

Mr. Wallace and Senator Sackett testified that the AG had drafted this bill and had his approval. The following amendment was passed: end of (b) add: Such approval shall be by resolution and filed with the department. The bill was moved out of committee.

May 5, 1975

Honorable Robert H. Ziegler, Sr.
Chairman, Senate Judiciary Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

RE: SB 407 (Safety Responsibility Act)

Dear Mr. Chairman:

I note that the above bill, co-sponsored by you and Senator Croft, has been referred to your Committee for review. I have accumulated some resource material with respect to the bill, both in terms of its justification and questions concerning its affect on rates.

I have discussed the matter of increased coverage vis-a-vis premiums with an insurance broker dealing in "old line" companies and an insurance broker dealing in mutuals and, in addition, I've had discussions with Mr. Don Koch from the Alaska Department of Commerce, Division of Insurance.

The broker from the "old line" agency gave me figures for 15-30-5 and 25-50-10. These figures assume a normal driving record. The base rate for the former coverage would be $62. For the latter, it would be $68. Thus, the increase would be approximately 10%. He remarked that his agency of course always tries to sell policies higher than the minimum required under Financial Responsibility. Further, he said that of course the minimums would be increased if the record were poor, although the percentage increase between the 15-30-5 and the 25-50-10 would still be in approximately the same percentage.

The broker selling insurance through mutual companies gave me different figures for different situations. For their lower risk carrier selling insurance for a pleasure vehicle only, the increase would be from $19.80 to $21.60. If the vehicle were driven to and from work, the increase would be from $31 to $33.50. For their high risk coverage, a pleasure vehicle would increase from $30 to $32.50. Under that same type coverage, a vehicle used to go to and from work would increase from $45.50 to $49. Again, a poor driving record would increase the base, but the percentage increase from the base at 15-30-5 to 25-50-10 would be about the same as the above.

Mr. Koch was able to give me an estimate of the increase in percentage under the assigned risk plan. His figures disclose that under an assigned risk plan, an increase from 15-30-5 to 25-50-10 would increase the bodily injury premium 15% and the property damage premium 8%. Since the bodily injury premium is about two-thirds of the cost, he estimates that the overall increase would be about 13%. As stated, this is with respect to assigned risk, which is of course the highest risk coverage.

Mr. Koch further advised that financial responsibility coverage is being increased generally throughout the country. He stated that during the late '50's and '60's, many states had financial responsibility coverage at 10-20-5. However, since the late '60's and into the early '70's, most of those states that he has records for have gone to either 15-30-5 or 20-40-10. He further stated that many Canadian provinces have higher minimum coverage, such as single limit 50, single limit 75, or variations thereof.

From these figures, it would appear that while bodily injury coverage is being increased by 66-2/3% and property damage coverage by 100%, the total premium increase would, at a maximum, be 13% for assigned risk policies and 10% or less for non-assigned risk policies.

Mr. Koch also furnished me with some of his statistical data from rate filings filed by Allstate Insurance Company and by I.S.O., which is an insurance rating bureau handling rate filings for multiple insurance carriers. The I.S.O. data is from the period commencing 3/31/70 through 12/31/72. It only relates to claims settled at less than $10,000 limits for bodily injury, but does not include total limits for property damage. The Allstate figures commence 12/31/71 through 9/30/74. Neither bodily injury nor property damage are limited to settlements of less than $10,000. Thus, the I.S.O. figures would be somewhat distorted.

A phrase is used that is foreign to me. That is "line of best fit". As best I can describe that phrase, it relates to a simplification procedure for actuarial purposes in rate filings which in part projects trends. Presumably, if the projection of trends and other factors are based on correct assumptions, the "line of best fit" and the actual loss will be roughly equivalent. In any twelve-month period, an unusual experience may lead to some distortion between actual and "line of best fit".

The figures provided on both the I.S.O. filing and the Allstate Insurance Company filing include Alaska and countrywide figures.

In Alaska, the actual payment per claim for bodily injury during the two-year period from 9/30/72 through 9/30/74 increased from $2,788 to $5,112. The "line of best fit" for that period increased from $2,953.57 to $4,094.13. In both categories, Alaska is substantially higher than the countrywide figures.

In regard to property damage from the Allstate filing for that same period, actual loss went from $317 to $430, while "line of best fit" went from $341.30 to $428.58. Again, Alaska figures are higher than countrywide figures and the percentage disparity between the two is becoming greater.

On the I.S.O. filing from the period from 12/31/70 to 12/31/72, the actual damage went from $1,632 to $1,496, while the "line of best fit" went from $1,599.40 to $1,847.72. Thus, while there was some decrease in the actual, there was a substantial increase in the "line of best fit" which takes into consideration the projection of trends. Property damage for that same period went from an actual of $358 to $393, while the "line of best fit" went from $353.93 to $368.91. Alaska is again higher than the countrywide calculation, particularly in the "line of best fit" in regard to bodily injury.

Using the year ending 12/31/72 for comparative purposes between the Allstate filing and the I.S.O. filing, there appears a relatively high degree of correlation between the property damage payments in both. However, the Allstate filing, which does not limit included figures to those below $10,000, shows a much higher bodily injury payment.

These are of course average figures. Further, they are apparently figures per claim and not figures per policy. Thus, an accident involving multiple claims occurring during the year ending 9/30/74 would reflect a per claim actual payment of $5,112. The trend disclosed by the figures is one of substantial increase in both bodily injury and property damage commencing 1973.

I do not know whether the premium figures and statistical data answer all of the questions that may be raised regarding the propriety of this bill. The present minimum coverage requirements were adopted a number of years ago, and if 15-30-5 made sense then,

it would seem to logically follow that general cost-of-living increases and inflationary pressures would dictate an upward revision. It should also be remembered that persons required to comply with safety responsibility are persons who have already evidenced a potential for harm to others by virtue of having been involved in an accident "resulting in bodily injury to or death of a person or damage to the property of any one person exceeding $200". AS 28.20.050(a)

I would be pleased to appear before your Committee if I may be of assistance.

Respectfully,

Allen T. Compton
Legislative Counsel
Alaska Bar Association

ATC/bt

cc: Keith E. Brown, Esquire
Mary F. LaFollette, Esquire

May 7, 1975

Honorable Robert H. Ziegler, Sr.
Chairman, Senate Judiciary Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

RE: SB 407 (Safety Responsibility Act)

Dear Mr. Chairman:

Subsequent to yesterday's hearing on the above bill, I have again conferred with Mr. Don Koch at the Division of Insurance. He advises me that the increased premium for uninsured motorist coverage would be at approximately the same percentage as the overall premium increase the bill would necessitate. Rounded off to the nearest dollar, it would be a $1.00 increase in the premium.

He stated that the Division of Insurance had prepared several charts regarding the increase proposed by this legislation and they disclose that an increase to the 25-50-10 minimum would in practical effect reestablish the basic purchasing power of the 15-30-5 minimum when it was enacted in 1966. Thus, this legislation does in fact bring us abreast with current purchasing power.

If requested, Mr. Koch would advise your Committee that the Division of Insurance supports this bill. He of course could not do this voluntarily, but would respond to your inquiry.

Respectfully,

Allen T. Compton
Legislative Counsel
Alaska Bar Association

ATC/bt

cc: Keith E. Brown, Esquire
Mary F. LaFollette, Esquire

ALLSTATE INSURANCE COMPANY

ALASKA

AUTOMOBILE INSURANCE--VOLUNTARY PRIVATE PASSENGER CARS
DETERMINATION OF FACTORS TO ADJUST CALENDAR
ACCIDENT YEAR DATA FOR SUBSEQUENT CHANGE

BODILY INJURY
PAID FREQUENCY

	ALASKA		COUNTRYWIDE *	
YEAR ENDED	ACTUAL	LINE OF BEST FIT	ACTUAL	LINE OF BEST FI
12/31/71	1.30	1.142	1.52	1.476
3/31/72	1.19	1.095	1.45	1.463
6/30/72	1.06	1.048	1.42	1.450
9/30/72	0.99	1.001	1.42	1.437
12/31/72	0.83	0.954	1.42	1.424
3/31/73	0.78	0.907	1.38	1.411
6/30/73	0.76	0.860	1.40	1.398
9/30/73	0.70	0.813	1.42	1.385
12/31/73	0.66	0.766	1.43	1.372
3/31/74	0.73	0.719	1.36	1.359
6/30/74	0.80	0.672	1.33	1.346
9/30/74	0.79	0.625	1.30	1.333

	ALASKA	COUNTRYWIDE *	COMBIN
AVERAGE ANNUAL CHANGE BASED ON LINE OF BEST FIT	-0.188	-0.052	
LAST POINT ON LINE OF BEST FIT	0.625	1.333	
STATE CREDIBILITY BASED ON 126 PAID CLAIMS IN YEAR ENDED 9/30/74	0.10	0.90	
AVERAGE ANNUAL PERCENT CHANGE BASED ON LINE OF BEST FIT	-30.1	-3.9	

ALLSTATE INSURANCE COMPANY

ALASKA

AUTOMOBILE INSURANCE--VOLUNTARY PRIVATE PASSENGER CARS
DETERMINATION OF FACTORS TO ADJUST CALENDAR
ACCIDENT YEAR DATA FOR SUBSEQUENT CHANGE

BODILY INJURY
PAID SEVERITY

	ALASKA		COUNTRYWIDE *	
YEAR ENDED	ACTUAL	LINE OF BEST FIT	ACTUAL	LINE OF BEST FIT
12/31/71	3489	2525.86	1793	1710.82
3/31/72	3198	2668.43	1768	1741.08
6/30/72	2482	2811.00	1801	1771.34
9/30/72	2768	2953.57	1827	1801.60
12/31/72	2758	3096.14	1811	1831.86
3/31/73	2625	3238.71	1736	1862.12
6/30/73	2958	3381.28	1802	1892.38
9/30/73	2926	3523.85	1849	1922.64
12/31/73	3021	3666.42	1954	1952.90
3/31/74	4095	3808.99	1959	1983.16
6/30/74	4268	3951.56	2065	2013.42
9/30/74	5112	4094.13	2162	2043.68

	ALASKA	COUNTRYWIDE *	COMBINED
AVERAGE ANNUAL CHANGE BASED ON LINE OF BEST FIT	$ 570.28	$121.04	
LAST POINT ON LINE OF BEST FIT	4094.13	2043.68	
STATE CREDIBILITY BASED ON 126 PAID CLAIMS IN YEAR ENDED 9/30/74	0.10	0.90	
AVERAGE ANNUAL PERCENT CHANGE BASED ON LINE OF BEST FIT	13.9	5.9	6.7

ALLSTATE INSURANCE COMPANY

ALASKA

AUTOMOBILE INSURANCE--VOLUNTARY PRIVATE PASSENGER CARS
DETERMINATION OF FACTORS TO ADJUST CALENDAR
ACCIDENT YEAR DATA FOR SUBSEQUENT CHANGE

PROPERTY DAMAGE
PAID FREQUENCY

	ALASKA		COUNTRYWIDE *	
YEAR ENDED	ACTUAL	LINE OF BEST FIT	ACTUAL	LINE OF BEST FIT
12/31/71	7.35'	6.863'	7.10'	7.143'
3/31/72	6.78'	6.794	7.01	7.092
6/30/72	6.49'	6.725	6.99	7.041
9/30/72	6.48'	6.656	6.97	6.990
12/31/72	6.35'	6.587	6.97	6.939
3/31/73	6.55'	6.518	6.94	6.888
6/30/73	6.47'	6.449	6.93	6.837
9/30/73	6.26'	6.380	6.94	6.786
12/31/73	6.36'	6.311	6.85	6.735
3/31/74	6.25'	6.242	6.68	6.684
6/30/74	6.15'	6.173	6.53	6.633
9/30/74	6.30'	6.104	6.43'	6.582'

	ALASKA	COUNTRYWIDE *	COMBINE
AVERAGE ANNUAL CHANGE BASED ON LINE OF BEST FIT	-0.276	-0.204'	
LAST POINT ON LINE OF BEST FIT	6.104	6.582'	
STATE CREDIBILITY BASED ON 1001' PAID CLAIMS IN YEAR ENDED 9/30/74	0.30'	0.70'	
AVERAGE ANNUAL PERCENT CHANGE BASED ON LINE OF BEST FIT	-4.5	-3.1'	-3.5

ALLSTATE INSURANCE COMPANY

ALASKA

AUTOMOBILE INSURANCE--VOLUNTARY PRIVATE PASSENGER CARS
DETERMINATION OF FACTORS TO ADJUST CALENDAR
ACCIDENT YEAR DATA FOR SUBSEQUENT CHANGE

PROPERTY DAMAGE
PAID SEVERITY

YEAR ENDED	ALASKA ACTUAL	ALASKA LINE OF BEST FIT	COUNTRYWIDE * ACTUAL	COUNTRYWIDE * LINE OF BEST FIT
12/31/71	330	308.57	280	275.42
3/31/72	327	319.48	282	279.51
6/30/72	331	330.39	283	283.60
9/30/72	317	341.30	286	287.69
12/31/72	326	352.21	289	291.78
3/31/73	355	363.12	291	295.87
6/30/73	377	374.03	298	299.96
9/30/73	396	384.94	302	304.05
12/31/73	415	395.85	310	308.14
3/31/74	406	406.76	314	312.23
6/30/74	413	417.67	317	316.32
9/30/74	430	428.58	323	320.41

	ALASKA	COUNTRYWIDE *	COMBINED
AVERAGE ANNUAL CHANGE BASED ON LINE OF BEST FIT	$ 43.64	$ 16.36	
LAST POINT ON LINE OF BEST FIT	428.58	320.41	
STATE CREDIBILITY BASED ON 1001 PAID CLAIMS IN YEAR ENDED 9/30/74	0.30	0.70	
AVERAGE ANNUAL PERCENT CHANGE BASED ON LINE OF BEST FIT	10.2	5.1	6.6

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AUTOMOBILE LIABILITY AND PHYSICAL DAMAGE INSURANCE
PRIVATE PASSENGER CARS
DETERMINATION OF FACTORS TO ADJUST
LOSS RATIOS FOR SUBSEQUENT CHANGE

AVERAGE PAID CLAIM COST DATA

ALL COMPANIES REPORTING

	ALASKA				COUNTRYWIDE#			
	BODILY INJURY ($10,000 LIMIT)		PROPERTY DAMAGE (TOTAL LIMITS)		BODILY INJURY ($10,000 LIMIT)		PROPERTY DAMAGE (TOTAL LIMITS)	
(1) YEAR ENDED	(2) ACTUAL	(3) LINE OF BEST FIT	(4) ACTUAL	(5) LINE OF BEST FIT	(6) ACTUAL	(7) LINE OF BEST FIT	(8) ACTUAL	(9) LINE OF BEST FIT
3/31/70	$1320	$1506.28	$343	$ 348.65	$1227	$ 1221.04	$262	$ 265.69
6/30/70	1366	1537.32	360	350.41	1247	1240.82	268	270.17
9/30/70	1519	1568.36	363	352.17	1260	1260.60	274	274.65
12/31/70	1632	1599.40	358	353.93	1269	1280.38	279	279.13
3/31/71	1678	1630.44	343	355.69	1280	1300.16	285	283.61
6/30/71	1794	1661.48	352	357.45	1310	1319.94	291	288.09
9/30/71	1902	1692.52	360	359.21	1334	1339.72	296	292.57
12/31/71	2042	1723.56	360	360.97	1361	1359.50	301	297.05
3/31/72	1989	1754.60	359	362.73	1414	1379.28	306	301.53
6/30/72	1830	1785.64	346	364.49	1407	1399.06	306	306.01
9/30/72	1562	1816.68	373	366.25	1412	1418.84	307	310.49
12/31/72	1496	1847.72	383	368.01	1417	1438.62	309	314.97

	B.I.	P.D.
(10) AVERAGE ANNUAL DOLLAR CHANGE IN PAID CLAIM COSTS BASED UPON LINE OF BEST FIT:		
A) STATE	$ +124.16	$ + 7.04
B) COUNTRYWIDE	+ 79.12	+ 17.92
(11) AVERAGE POINT ON LINE OF BEST FIT:		
A) STATE	$ 1677.00	$ 358.33
B) COUNTRYWIDE	1329.83	290.33
(12) AVERAGE ANNUAL PERCENT CHANGE IN PAID CLAIM COSTS BASED UPON LINE OF BEST FIT (LINE(10)/LINE(11)):		
A) STATE	+ 7.4%	+ 2.0%
B) COUNTRYWIDE	+ 5.9	+ 6.2
(13) STATE CREDIBILITY:	0.15	0.35
(14) CREDIBILITY WEIGHTED AVERAGE ANNUAL CHANGE IN CLAIM COSTS (12A)X(13)+(12B)X(1.0-(13)):	+ 6.1%	+ 4.7%

	COMP.	COLLISION
(15) AVERAGE ANNUAL CHANGE IN PREMIUM REVENUE RESULTING FROM EFFECT OF AGE AND SYMBOL CLASSIFICATION:	+ 1.7%	+ 0.6%
(16) AVERAGE ANNUAL CHANGE IN PHYSICAL DAMAGE LOSS RATIOS $\left[\frac{(1.0 + N \times \text{LINE(14) PROPERTY DAMAGE})}{(1.0 + N \times \text{LINE(15)})} - 1.0\right] / N$:	+ 2.8%	+ 3.8%

NOTE: N=NUMBER OF YEARS OF PROJECTION, 3.58 IN THIS REVISION.
EXCLUDING DEL.,FLA.,ILL.,MASS.,ORE. AND P.R. FOR B.I.
AND FLA. AND MASS. FOR P.D.

AUTOMOBILE LIABILITY INSURANCE - PRIVATE PASSENGER CARS

DETERMINATION OF FACTORS TO ADJUST ACCIDENT YEAR
LOSS RATIOS FOR SUBSEQUENT CHANGE
AVERAGE PAID CLAIM FREQUENCY DATA

ALL COMPANIES REPORTING — CLAIM FREQUENCIES PER 100 CARS

	BODILY INJURY				PROPERTY DAMAGE			
	STATEWIDE		COUNTRYWIDE#		STATEWIDE		COUNTRYWIDE#	
(1) YEAR ENDED	(2) ACTUAL	(3) EXPNTL CURVE	(4) ACTUAL	(5) EXPNTL CURVE	(6) ACTUAL	(7) EXPNTL CURVE	(8) ACTUAL	(9) EXPNTL CURVE
3-31-67	1.4978	1.3794	2.7386	2.7838	5.8214	5.6613	7.8428	7.9822
6-30-67	1.6139	1.3754	2.7459	2.7571	5.8740	5.6577	7.8937	7.9521
9-30-67	1.6167	1.3714	2.7265	2.7308	5.6944	5.6541	7.8020	7.9220
12-31-67	1.4960	1.3675	2.7003	2.7046	5.6193	5.6505	7.7988	7.8921
3-31-68	1.4250	1.3635	2.6881	2.6788	5.5871	5.6468	7.8067	7.8622
6-30-68	1.2191	1.3596	2.6347	2.6531	5.4413	5.6432	7.6706	7.8325
9-30-68	1.1869	1.3557	2.6266	2.6278	5.6397	5.6396	7.7704	7.8029
12-31-68	1.2501	1.3517	2.6056	2.6026	5.5957	5.6360	7.7739	7.7734
3-31-69	1.2278	1.3478	2.5544	2.5777	5.6075	5.6324	7.7159	7.7440
6-30-69	1.228.	1.3439	2.5424	2.5531	5.6924	5.6288	7.7760	7.7148
9-30-69	1.2818	1.3401	2.5127	2.5286	5.7102	5.6251	7.7370	7.6856
12-31-69	1.2550	1.3362	2.4920	2.5045	5.6300	5.6215	7.7818	7.6566
3-31-70	1.1897	1.3323	2.4736	2.4805	5.4718	5.6179	7.8707	7.6276
6-30-70	1.1826	1.3285	2.4712	2.4568	5.4330	5.6143	7.9361	7.5988
9-30-70	1.1259	1.3246	2.4655	2.4333	5.2751	5.6107	7.9092	7.5701
12-31-70	1.2002	1.3208	2.4734	2.4100	5.3109	5.6071	7.8165	7.5415
3-31-71	1.3427	1.3170	2.4785	2.3869	5.6308	5.6035	7.6783	7.5130
6-30-71	1.4536	1.3132	2.4432	2.3641	5.5722	5.5999	7.4923	7.4846
9-30-71	1.5349	1.3094	2.3928	2.3415	5.6499	5.5964	7.3509	7.4563
12-31-71	1.4998	1.3056	2.3351	2.3191	5.6261	5.5928	7.2813	7.4281
3-31-72	1.4541	1.3018	2.3165	2.2969	5.8787	5.5892	7.3815	7.4000
6-30-72	1.3797	1.2981	2.2270	2.2749	5.8809	5.5856	7.1422	7.3721
9-30-72	1.3295	1.2943	2.1791	2.2532	5.7026	5.5820	7.1404	7.3442
12-31-72	1.2150	1.2906	2.1310	2.2316	5.3888	5.5784	7.1455	7.3164

	B.I.	P.D.
(10) RATE OF CHANGE IN CLAIM FREQUENCIES FOR ANY 12 MONTH INTERVAL ON EXPONENTIAL LINE OF BEST FIT:		
A. STATE	-1.15%	- .26%
B. COUNTRYWIDE	-3.77	-1.50
(11) STATE CREDIBILITY:	0.15	0.35
(12) CREDIBILITY WEIGHTED AVERAGE ANNUAL CHANGE IN CLAIM FREQUENCY (10A)X(11)+(10B)X(1.0-(11)):	-3.4%	-1.1%
(13) CREDIBILITY WEIGHTED AVERAGE ANNUAL CHANGE IN CLAIM COSTS (SEE SHEET 1, LINE(17)):	+ 6.1%	+ 4.7%
(14) AVERAGE ANNUAL CHANGE IN LIABILITY LOSS RATIOS ((1.0+N(12))X(1.0+N(13))-1.0)/N:	+ 1.9%	+ 3.4%

NOTE: N=NUMBER OF YEARS OF PROJECTION, 3.58 IN THIS REVISION.
EXCLUDING DEL.,FLA.,ILL.,MASS.,ORE. AND P.R. FOR B.I.
AND FLA. AND MASS. FOR P.D.

file on 407

LAW OFFICES OF
FAULKNER, BANFIELD, DOOGAN & HOLMES
SUITE 201, 311 FRANKLIN STREET
JUNEAU, ALASKA 99801

TEL. 586-2210
AREA CODE 907

HERBERT L. FAULKNER (1882-1972)
NORMAN C. BANFIELD
FRANK M. DOOGAN
MICHAEL M. HOLMES
RANDALL J. WEDDLE
WILLIAM B. ROZELL

JAN VAN DORT
LAWRENCE T. FEENEY
CHARLES N. DRENNAN

May 22, 1975

The Honorable Terry Gardiner
Chairman, House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: Senate Bill No. 407

Dear Representative Gardiner:

I notice that Senate Bill No. 407 which would raise the minimum liability limits under Alaska's Financial Responsibility Law from 15/30/5 to 25/50/10, has been referred to your committee.

I have been informed by the home office of the American Mutual Insurance Alliance that such a raise in the minimum liability limits will increase premiums which the policyholder must pay approximately 11%. The Alliance is not taking a position on this bill; we are only passing cost information along to you.

Very truly yours,

FAULKNER, BANFIELD, DOOGAN & HOLMES

By Jan
Jan Van Dort

JVD/aw

cc: Don Koch - Division of Insurance

ALLEN T. COMPTON
ATTORNEY AT LAW
201 FRANKLIN STREET
JUNEAU, ALASKA 99801
TELEPHONE 907-586-2482

May 19, 1975

Honorable Terry Gardiner
Chairman, House Judiciary Committee
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

RE: SB 407 (Safety Responsibility Law)

Dear Mr. Chairman:

Last Saturday your House Judiciary Committee held a hearing on the above bill. At that time reference was made to the position of the Division of Insurance, Department of Commerce, regarding the measure. Unfortunately, no one from that agency attended the hearing.

I have obtained from Senator Ziegler a copy of the memorandum from Mr. Don Koch, Rate Analyst for said agency, regarding the proposal. Although I realize your Committee has already taken action on the measure, I thought it might nonetheless be advisable for you and the Committee to at least have reference to the memorandum prior to House action.

Thank you for your consideration.

Respectfully,

Allen T. Compton

ATC/bt
Enclosure

02-001B

STATE
of ALASKA

MEMORANDUM

DEPARTMENT OF COMMERCE
DIVISION OF INSURANCE

TO: File

DATE : 5-7-75

FROM: Don Koch
Rate Analyst

SUBJECT: SB-407

During our analysis of this legislation, we examined the purchasing power of the existing limits required by law. Our review determined that the proposed limits would be roughly equivalent to the purchasing power that the current limits had when passed in 1966. SB-407 is desirable legislation and we favor its passage.

STATE OF ALASKA
Inter-Department Route Slip

TO:
MAIL STATION NUMBER _____

DEPARTMENT STATE SENATE

ATTENTION SENATOR ZIEGLER

☐ Approval	☐ Note & Return
☐ Signature	☐ Initial & Return
☐ Comment	☐ Return As Requested
☐ Contact Me	☐ Return For Approval
☐ Prepare Reply	☐ Necessary Action
☐ For Your File	☐ Your Information

Remarks:

AS PER YOUR REQUEST

FROM:
MAIL STATION NUMBER 0800

DEPARTMENT COMMERCE - INSURANCE

BY DON KOCH DATE 5-7-75

02-002 (REV.10/73)

SB

411

Pls don't misplace.

SB 411 – Joe Hill – talked to lawyer in D.C.
A.G.

---

local Medical Assoc. have challenged

Stopped other Doc's from participating

Borough Health Dept
Says need A.G. opinion
or pass bill

MEMORANDUM

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

POUCH Y—STATE CAPITOL
JUNEAU, ALASKA 99811

TO: Senator Chancy Croft
President of the Senate

DATE: April 1, 1975

FROM: Anne Carpeneti
Legislative Counsel

SUBJECT: PIRG - Physicians Guide

The issue you requested researched is whether a consumer's guide to the Anchorage area physicians, proposed by the Alaska Public Interest Research Group (hereinafter PIRG), would violate the provisions of the Alaska statutes prohibiting physicians from advertising.

The guide proposed by the Alaska PIRG is a compilation of all physicians in the Anchorage area, their addresses, types of practice (group or sole practitioner), specialties, hospital affiliations, office hours, and the language(s) spoken by each physician. It would also include fees charged by each physician for an initial visit, a routine office visit, a routine hospital visit, and for various tests including a chest X-ray, throat culture, and a complete blood count. The guide will not contain evaluations of a physician's ability or reputation and will not include self-aggrandizing statements by physicians. All information reported will be factual and set out in a uniform, nondiscriminatory manner. The data for the guide will be collected by telephone interviews with physicians or persons on their staffs. A copy of the data taken over the phone will be sent to each physician so that he/she may correct errors or misstatements. The guide will be sold to consumers at a nominal cost.

AS 08.64.330(b) provides that a license to practice medicine or osteopathy may be revoked for unprofessional or dishonorable conduct as defined by AS 08.640.380(3), or for professional incompetence. AS 08.64.380(3) contains in its definition of unprofessional or dishonorable conduct subparagraph D, providing that advertising professional services to the public except for notice of opening, closing, or removing practice is unprofessional conduct. There is no legislative history to aid in the interpretation of AS 08.640.-380(D); on its face however, the prohibition of advertising by physicians in Alaska is very broad. Comparable provisions in other states are generally narrower than the Alaska provision. For

example, California prohibits physicians from deceitful advertising, advertising without using the advertiser's name, advertising claiming treatment for regulation or reestablishment of the menses, and advertising treatment of veneral disease, impotence, and other sexual disorders. Deering's Business and Professions Code Annotated, sections 2380, 2380.5, 2381, 2382. Presumably, advertising that does not fall into the above categories is not prohibited in California. In Alaska, however, the statute bars all advertising except notice of opening, closing, or removing practice.

It is not clear whether supplying information in response to a questionnaire by a nonprofit public interest group which plans to publish a consumer's guide falls within the meaning of advertising envisioned by the drafters of the statute. In Missouri Dental Board v. Eastern Dental Co., 256 S.W. 2d 832 (Mo. App. 1953), the court held that the word advertise, in a statute prohibiting dentists from advertising, means to give public notice by emphasizing desirable qualities in order to arouse a desire to purchase. In State v. Guardian Foundation of Texas, 128 S.W. 2d 880 (Tex. App. 1939), the court defined advertising as meaning more than merely announcing or making something known to the public, advertising according to the court meant making information known to the public for the purpose of selling a product or service. Under the definitions in Eastern Dental Co. and Guardian Foundation of Texas it does not seem that the proposed guide to physicians would be considered advertising. The purpose of the guide is to provide information to consumers in the Anchorage area so that they may make a more informed choice when selecting a physician, and not to sell the services of a particular physician or the medical community in general.

The proposed guide does not seem to create the risk of the evils that AS 08.64.380(3)(D) presumably was enacted to avoid. Such statutes are usually enacted for the purpose of maintaining a high standard of competency among medical professionals, to protect the medical profession against commercialized exploitation, and to protect the public from deception, particularly members of the public susceptible to "bait" advertising or promises of quick physical relief. Semler v. Oregon State Board of Dental Examiners, 294 U.S. 608, 79 L.Ed. 1086 (1934). A consumer's guide to physicians in a format intended to inform the public without stressing the comparative differences among the physicians listed could only serve to strengthen the standards of professionalism and the avoidance of situations where the public is misled or duped by unscrupulous practitioners.

There is litt.. help from other jurisdictions in deciding the issue. Cities in Illinois and New York have consumer's guides to physicians; however, the prohibitions against advertising by physicians in Illinois and New York are significantly narrower than the Alaska prohibition./1 Thus the fact that the Illinois and New York provi..ions hav not prevented the publication of consumer's guides does not provide definitive guidance to an interpretation of Alaska's statute. There is litigation in the United States Distric' Court of Maryland involving

/1 The Illinois Medical Practice Act provides

> Section 16m. MISLEADING ADVERTISING - PENALTY. Any person, not being licensed in this State to practice medicine in all of its branches, who shall hold himself out by any sign or advertisement, or by a writing of any kind, to treat human ailments without therein attaching to his name a word or words indicating the system, method or kind of practice which he is lawfully licensed to pursue in this State, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by confinement in the county jail not more than one year, or by both such fine and imprisonment, in the discretion of the court.
> Illinois Annotated Statutes, Chapter 91.

The New York Statute provides for revocation, suspension, or annulment of a license to practice medicine, osteopathy, or physiotherapy if it is found

> (d) That a physicial, osteopath or physiotherapist offered, undertook or agreed to cure or treat disease by a secret method, procedure, treatment or medicine or that he can treat, operate and prescribe for any human condition by a method, means or procedure which he refuses to divulge upon demand to the committee on grievances; or that he has solicited or advertised for patronage by means of handbills, posters, circulars, letters, stereoptical slides, motion pictures, radio, television, magazines, telephone directories, classified telephone directories, or other directories; except, however, the publication, distribution and circulation by any group duly organized and existing as a non-profit insurance plan, pursuant to article nine-c of the state insurance law, or classified professional directories among its subscriber and members, stating group and participating physicians, osteopaths and physiotherapists, their addresses, telephone numbers and special branch of profession practiced, shall in nowise be deemed violative of the provisions of this subdivision; or by means of flamboyant or glaring or flickering signs; or
> New York Education Code, Section 6514 (2)(d).

Maryland's prohibition against advertising by physicians, which is almost as broad as Alaska's provision./2 The plaintiffs, various public interest groups in Prince George County, Maryland, are seeking to have the Maryland prohibition declared unconstitutional on First Amendment grounds. However, there has been no decision handed down in the case.

If the provisions of AS 08.64.330(b) and 380(3)(D) are interpreted to prohibit publication of the consumer's guide to physicians, there is a serious question as to whether the provisions would withstand a constitutional challenge on the grounds that they violate the free speech provisions of the United States and Alaska Constitutions, as found in the First Amendment to the Constitution of the United States and Article 1, Section 5, of the Alaska Constitution.

The First Amendment prohibits Congress from making laws abridging freedom of speech, press and the right of people to assemble peaceably. Its prohibitions are applicable to the states through the due process clause of the Fourteenth Amendment. Gitlow v. New York, 268 U.S. 652, 69 L.Ed. 1138 (1924). The Supreme Court has found that a necessary incident of First Amendment freedoms is the right to receive and possess information and ideas. Stanley v. Georgia, 394 U.S. 557, 22 L.Ed.2d 542 (1969). It is not entirely clear, however, whether actions to acquire information to be used in connection with First Amendment freedoms fall within the protection of the First Amendment. In Zemel v. Rusk, 381 U.S. 1, 14 L.Ed.2d 1179 (1965), the court held that the First Amendment does not carry with it the unrestrained right to gather information. In Branzburg v. Hayes, 408 U.S. 665, 33L.Ed.2d 626 (1972), the court gave limited recognition to the right of news gathering, although it found that a newsman is not privileged to refuse to reveal his sources in response to a proper grand jury investigation. A three judge District Court in Alabama recently held that the First Amendment right to publish must logically include reasonable access to information and the right to gather information, particularly where the information is available to the general public. Lewis v. Baxley, 368 F. Supp. 768 (M.D. Ala., N.D. 1973). In Houston Chronicle Publishing Co. v. Kleindienst, 364 F. Supp. 719 (S.D. Tex. 1973), the court, in invalidating a rule giving the United States attorney's office unlimited discretion in denying newsmen interviews with federal prisoners, held that a newspaper publisher's right to seek out news is an internal part of its First Amendment right to publish news.

/2 Article 43, Section 129 of the Annotated Code of Maryland (1971 Replacement Volume) and Regulation F promulgated pursuant thereto permit only the use of business cards, change of address notices, and small signs outside and on the door of the physician's office.

The trend of decisions in the courts indicates that the right to gather information probably inheres in the right to receive and publish information, and is protected by the First Amendment. Thus it appears that the Alaska PIRG has the right under the First Amendment to gather and publish a consumer's guide to physicians in the Anchorage area.

First Amendment rights enjoy special protection as compared with other constitutional rights. They are not, however, absolute. Obscenity and "fighting words", for example, are not protected by the First Amendment. Purely commercial advertising may also be prohibited without running afoul of the First Amendment. Valentine v. Chrestensen, 316 U.S. 52, 86 L.Ed. 1262 (1942), Pittsburgh Press Co. v. Pittsburgh Human Relations Commr., 413 U.S. 376, 37L.Ed.2d 669 (1973). The courts have made a distinction between purely commercial and noncommercial advertising. New York Times v. Sullivan, 376 U.S. 254 (1964), and Pittsburgh Press, supra, both recognized that Chrestensen applies only to purely commercial advertising.

Even if the publication planned by the Alaska PIRG is found to be advertising under AS 08.64.380(3)(D), it is not purely commercial advertising. It is not intended to financially benefit physicians listed in the guide or the publishers of the guide. It is intended to give consumers a factual guide to all physicians in the Anchorage area so that they may make an informed choice in the vital area of health care.

The validity of restrictions on the exercise of First Amendment rights depends on the weighing of two factors: (1) the type and strength of the government interest in imposing the restriction, and (2) the type of disability imposed on the individual and the scope of the restriction imposed. The state's interest in the present case is maintaining a high standard of competency among medical professionals and protecting the public against misleading and deceptive advertising. Semler, supra.

The state's interest in maintaining high professional standards and protecting the public is a valid interest. If the Alaska prohibition is found to proscribe the guide, by barring all advertising by physicians, AS 08.64.380(3)(D) excludes advertising which does not demean the professionalism of physicians and which does not deceive the public. Indeed, a consumers' guide such as that proposed by the Alaska PIRG, by providing a nondiscriminatory factual compilation of physicians, their education, specialties, etc., supports the goals that are the basis of the statute. There seems to be little rational relationship between the broad prohibition of AS 08.64.380(3)(D) and the state's interest in enacting it. Thus it appears that the statute probably would fall against a constitutional challenge on the grounds that the state's interest is outweighed by the scope of the restriction.

Assuming that the guide is found to be advertising under AS 08.64.-380(3)(D), the statute is probably also invalid due to overbreadth. An overbroad statute regulates rights which are protected by the First Amendment as well as those rights which are not constitutionally protected. By prohibiting all advertising, whether purely commercial or not, or whether rationally related to the state's interest or not, the statute has a chilling effect on the exercise of First Amendment rights. Broadrick v. Oklahoma, 413 U.S. 601, 37 L.Ed.2d 830 (1973). Overbroad statutes relating to First Amendment rights are void on their face, and cannot be used to regulate even that kind of speech or expression that is not constitutionally protected. Thus, until AS 08.64.380(3)(D) is amended by the legislature or judicially construed to cure its overbreadth, it probably is not valid to prohibit any advertising by physicians in Alaska.

In conclusion, it appears that AS 08.64.380(3)(D) should not be read to prohibit a consumer's guide to physicians as proposed by the Alaska PIRG. If, however, the statute is interpreted to bar such a guide, the application of the statute would probably violate the First Amendment to the Constitution of the United States.

POSITION PAPER
ON
SENATE BILL 411

An Act entitled: "An Act relating to advertising of professional services by physicians; and providing an effective date."

To change the intent of paragraph 3 (D) from prohibiting advertising except for "professional services to the public except for notice of opening, closing, or removing practice", to "untruthful or misleading advertising of professional services".

Position: This Division believes this amendment is inappropriate and inadvisable. Advertising by the medical profession would lead to increased costs of medical care and is considered to be unethical by the American Medical Association. The Division does not support passage of this amendment.

Recommend By: James R Chandler MD 5-8-75
(Division Director) (Date)

Approved By: _____ _____
(Commissioner) (Date)

Comments by Governor's Office:

By: _____ _____
(Date)

withdrawn in favor of May 8, 1975

POSITION PAPER

ON

SENATE BILL NO. 411

An Act relating to advertising of professional services.

This measure repeals that definition of unprofessional or dishonorable conduct which states "advertising professional services to the public except for notice of opening, closing, or removing practice" and substitutes as the definition, "untruthful or misleading advertising of professional services."

This measure appears to substitute a more comprehensive and satisfactory definition.

The Department favors passage of this measure.

Recommended By: Donald R. Freedman 5/9/75
Division Director Date

Approved By: Francis S. L. Williamson 5/9/75
Commissioner Date

Comments by Governor's Office:

By: _____ _____
Date

10
SB-411

ALASKA PUBLIC INTEREST RESEARCH GROUP

P. O. BOX 1093
ANCHORAGE, ALASKA 99510

PHONE 274-6785

May 6, 1975

Senator George Hohman
Chairman, Senate HESS
Pouch V
Juneau, Alaska 99811

Dear Senator Hohman:

This letter is a request for your support on the passage of SS SB 411, an act which would amend the state's laws pertaining to advertising by physicians. My interest in the legislation is as follows: Earlier this year our organization was planning to publish a consumers guide to doctors in the Anchorage area. We were advised that it may not be legal for a doctor to cooperate in publishing of such a guide due to AS 08.64.330-380 (3)(d) which limits advertising by doctors to the opening, closing, and reopening of practice.

This bill is, as I understand it, an attempt to exempt the publishing of a doctors guide, which is comprehensive, non-discriminatory, and which does not make qualitative statements about doctors' abilities, from normal restrictions regarding advertising. I am enclosing other correspondence on this matter, along with publications which describe the guide we are hoping to publish. I would appreciate your consideration of this request as early as possible, since we had planned on publishing the guide this summer. Thank you.

Sincerely,

James Love
Director, Alaska Public Interest
Research Group, Inc.

ALASKA PUBLIC INTEREST RESEARCH GROUP

P. O. BOX 1093
ANCHORAGE, ALASKA 99510

PHONE 274-0755

April 22, 1975

Representative Terry Gardner
Chairman, House Judiciary Committee
House of Representatives
Juneau, Alaska 99801

Dear Terry,

Enclosed is a packet of back up information regarding the problems we are having getting a go ahead on publishing a consumer guide to Anchorage area Doctors. Present state statutes are vague, but restrictive, insofar as advertising of physicians services is concerned. AkPIRG is interested in publishing a guide to doctors services similar to guides originally published by the Nader Health Research Group (Nader Health Group publication enclosed), and outlined in a recent issue of Consumer Reports (enclosed).

I wrote Chancy Croft in March hoping to get a clarification of the legal problems, and asked that he get an AG opinion, and introduce legislation to clear up ambiguities in the existing statute. Chancy requested an AG opinion, and an opinion from Legislative Affairs. (Chancy's letter to Gross, and LA opinion by Carpeneti are enclosed). Carpeneti wrote an opinion which supported our position that the consumers guide does not constitute advertising. The AG has been sitting on Chancy's request since March 19, and will probably say that the guide is illegal, but that the statute is unconstitutional. All this leaves us in a bad spot. Without enabling legislation, we would have to get a Supreme Court decision to publish the guide (we don't have the bucks for litigation at present), and any legal problems would probably preclude any hopes for a majority of doctors cooperating on the survey.

It would be a great help to us if someone would ask Carpeneti to draft an amendment to the advertising law, (probably would be brief) so that we can have a chance of passage this year. I would appreciate receiving your response to this as soon as possible. Thank You.

Sincerely,

James P Love
Director,
Alaska Public Interest Research Group

Alaska State Legislature

SENATOR CHANCY CROFT
PRESIDENT OF THE SENATE

POUCH V
JUNEAU, ALASKA 99811
PHONE 907-465-3755

425 G STREET
ANCHORAGE, ALASKA 99501

March 19, 1975

Avrum M. Gross, Esq.
Attorney General , State of Alaska
Pouch K
Juneau, Alaska 99811

Dear Av:

I have received a letter from the Alaska Public Interest Research Group outlining their interest in publishing a consumers guide to physicians in the Anchorage area. This publication will be patterned after a gui e designed by the Ralph Nader Health Care Research Group. The goal is to publish a comprehensive directory of physicians, with information for the health care consumer regarding the qualificiations, services, and costs which a particular physician offers.

They are concerned that the provisions of AS 08.64.330 - 380(3)(d) may make physicians wary of participating in the proposed survey because of the definition of unprofessional or dishonorable conduct defined as "advertising professional services to the public, . . .".

I request that you prepare an opinion regarding the legality of the physicians cooperating in the survey in light of the provisions of the above statute. Legislation could be introduced defining the limits of information permissible in the listing to prevent any misunderstanding on the part of the Alaska Public Interest Research Group, the physicians and the general public. I would appreciate receiving the opinion as soon as possible.

Very truly yours,

Chancy Croft

cc: Alaska Public Interest Research Group

hallucinogenic or stimulant drugs, as defined in AS 17.12.180(3), or addiction to the use of narcotic drugs as defined in AS 17.12.230(13);

(C) conviction of an offense involving moral turpitude;

(D) advertising professional services to the public except by notice of opening, closing, or removing practice;

(E) making untruthful or fraudulent statements in the application for examination, or deceiving or cheating during the examination for license, or procuring a license by deceit or fraud;

(F) violating the Controlled Substances Act (P.L. 91-513, 84 Stat. 1242) or any other federal law pertaining to medical practice and drugs;

(4) Repealed by § 1 ch 148 SLA 1970.

(5) "department" means the Department of Commerce. (§§ 1-3-94, 35-3-38 ACLA 1949; am § 27 ch 77 SLA 1969; am § 3 ch 103 SLA 1970; am §§ 25—27 ch 148 SLA 1970; am § 9 ch 32 SLA 1971; am § 1 ch 117 SLA 1971; am § 4 ch 85 SLA 1972)

Cross reference.—As to malpractice actions, see AS 09.55.530—09.55.550.

Effect of amendment. — The 1972 amendment, in paragraph (3)(F), substituted "Controlled Substances Act, P.L. 91-513, or any other federal law pertaining to medical practice and drugs" for "Harrison Anti-Narcotic Act."

Legislative committee report.—For report on ch. 32, SLA 1971 (HB 111 am), see 1971 House Journal, p. 138.

The statutory definition of practicing medicine or surgery is very broad and within the literal meaning of the words would include the practice of dentistry, optometry, podiatry, chiropractic, etc. By its very breadth the definition precludes a literal interpretation inasmuch as dentists, for example, have had a separate licensing procedure as long as have those who practice medicine or surgery. 1961 Op. Att'y Gen., No. 17.

Prescription of drugs or medicine by chiropractor. — It is illegal and criminal for a chiropractor, without additional qualifications, to prescribe drugs or medicine to sick or injured persons. 1961 Op. Att'y Gen., No. 31.

Cited in Leege v. Martin, Sup. Ct. Op. No. 131 (File No. 256), 379 P.2d 447 (1963).

Chapter 66. Motor Vehicle Dealers.

Section		Section	
10.	Dealers to register	50.	Renewal of registration
20.	Application, bond, and fee	60.	Bond
30.	Form of application	70.	Action on bond
40.	Filing application for registration	80.	Penalties
		90.	Dealer defined

Sec. 08.66.010. Dealers to register. Every dealer in motor vehicles, trailers or semi-trailers shall, as a condition to engaging in business in this state, register annually with the Department of Revenue. (§ 1 ch 135 SLA 1959)

Sec. 08.66.020. Application, bond, and fee. Application for dealer registration shall be accompanied by an annual registration fee of

Newsweek

November 18, 1974

MEDICINE

The Doctors Guide

When choosing a doctor, Americans usually have less information to go on than they do when shopping for a toaster, color TV or new car. They don't know how to determine a physician's qualifications and are reluctant to ask about such delicate matters as how much he charges for his services. For their part, doctors have been discouraged from publishing details about their training or practice for fear of violating state laws against professional advertising. But during the past year, consumer groups have begun to tear away at the mystique that has traditionally surrounded the medical profession by issuing directories designed to help the layman make an informed choice of a doctor.

Volunteers: The first was a guide to doctors in Prince Georges County, Md., published last winter by Ralph Nader's Health Research Group. More recently, Nader-inspired consumer task forces have issued similar directories for Queens County, N.Y., Sangamon County (Springfield), Ill., and Hawaii; others are scheduled to come out soon for communities in Massachusetts, Colorado and Washington. In most instances, the directories have been put together by student and faculty volunteers at local colleges by telephone interviews and follow-up questionnaires.

The directories are a revolutionary departure from the published information now available on physicians. The Yellow Pages list only a doctor's address, phone number and, possibly, his specialty. Professional directories put out by the American Medical Association or local medical societies may include the physician's age, medical school and type of practice. Most telephone referral services run by medical societies provide only the names of two or three doctors from which the caller can make a choice. But typically, the consumer guides list the doctor's training, hospital affiliation and specialty, together with such items as the fees he charges for office visits, whether he makes house calls, treats emergencies, accepts medicare and Medicaid patients, plus what tests he can give in his office and their cost. In some cases, doctors who refuse to provide information are listed as "uncooperative."

List: The compilation of the guides has raised the hackles of the profession. According to Robert McGarrah, attorney for the Health Research Group, the Prince Georges Medical Society told its members that any doctor who provided information for the Prince Georges directory might be violating state laws against advertising. As a result, only 115 of the 461 doctors practicing in the county cooperated. The New York Public Interest Research Group had better luck putting together the Queens guide. The local medical society refused to supply a list of physicians for the survey, but did not actively try to put a stop to it. Of the 589 doctors queried, an NYPIRG spokesman said, more than half responded to questions and most listed their fees. However, about 38 per cent of the county's physicians could not be reached because the state medical directory used by the surveyors was out of date.

Even when they agree in principle with the idea of the directories, some doctors complain about the abrasive manner displayed by the consumer advocates as they go about their task. "They came on like a blitz and declined meaningful communications," says one Prince Georges Medical Society member. Even some doctors listed in the Queens guide as cooperative voice a range of reservations. A few claimed that they didn't know how the information had been obtained and said they did not want to be listed. One complained that the information had been supplied by her son and that much of what appeared in the directory was wrong. Others warned, quite sensibly, that such a guide would not assure a person of choosing a good doctor. "It's not a good idea for patients to shop around," says Dr. Cecil Reid, a Queens GP. "You can't equate care with fees." A better way of selecting a doctor, several pointed out, is asking a neighbor, a hospital, the medical society or another doctor.

While most states have laws that prohibit doctors from advertising, it remains unclear how these restrictions relate to consumer directories. Legal counsel for the Prince Georges Medical Society interprets the listing of information that might give a doctor an apparent competitive advantage, such as his fees, as "indirect" advertising and a violation of state law. However, the HRG has brought suit to challenge the interpretation. Meanwhile, the American Medical Association's Judicial Council has ruled that a doctor is not violating medical ethics by listing his name in a consumer directory so long as it is open to all the physicians in the community and does not include "any self-aggrandizing statement or qualitative judgment" regarding his competence as a medical practitioner. The ruling leaves open the question of listing fees. But if adopted by the AMA House of Delegates next month, the ruling could do much to remove the present legal obstacles faced by the consumer advocates.

REPORT OF THE JUDICIAL COUNCIL

Report: C
(C-74)

Subject: Community Medical Directories

Presented By: George W. Petznick, M.D., Chairman

Referred To: Reference Committee D
(William A. Sodeman, M. D., Chairman)

COMMUNITY PROFESSIONAL DIRECTORIES

It is not unethical for a physician to authorize the listing of his name and practice in a directory for professional or lay use which is intended to list all physicians in the community on a uniform and non-discriminatory basis. The listing shall not include any self-aggrandizing statement or qualitative judgment regarding the physician's skills or competence. The American Medical Directory provides an example of the kind of information that may be properly listed in national as well as community directories for health service personnel. Likewise, specialties or specialty practices used in the American Medical Directory should set the pattern for specialty designations.

ADOPTED BY THE HOUSE OF DELEGATES DECEMBER, 1974.

dr guide
SB 411

ALASKA PUBLIC INTEREST RESEARCH GROUP

P. O. BOX 1093
ANCHORAGE, ALASKA 99510

PHONE 274-6765

April 22, 1975

Representative Terry Gardner
Chairman, House Judiciary Committee
House of Representatives
Juneau, Alaska 99801

Dear Terry,

Enclosed is a packet of back up information regarding the problems we are having getting a go ahead on publishing a consumer guide to Anchorage area Doctors. Present state statutes are vague, but restrictive, insofar as advertising of physicians services is concerned. AkPIRG is interested in publishing a guide to doctors services similar to guides originally published by the Nader Health Research Group (Nader Health Group publication enclosed), and outlined in a recent issue of Consumer Reports (enclosed).

I wrote Chancy Croft in March hoping to get a clarification of the legal problems, and asked that he get an AG opinion, and introduce legisiation to clear up ambiguities in the existing statute. Chancy requested an AG opinion, and an opinion from Legislative Affairs. (Chancy's letter to Gross, and LA opinion by Carpenetiare enclosed). Carpeneti wrote an opinion which supported our position that the consumers guide does not constitute advertising. The AG has been sitting on Chancy's request since March 19, and will probably say that the guide is illegal, but that the statute is unconstitutional. All this leaves us in a bad spot. Without enabling legislation, we would have to get a Supreme Court decision.to publish the guide (we don't have the bucks for litigation at present), and any legal pro problems would probably preclude any hopes for a majority of doctors cooperating on the survey.

It would be a great help to us if someone would ask Carpeneti to draft an ammendment to the advertising law, (probably would be brief) so that we can have a chance of passage this year. I would appreciate receiving your response to this as soon as possible. Thank You.

Sincerely,

James P Love
Director,
Alaska Public Interest Research Group

SB

438

"An Act relating to franchising agreements involving gasoline refiners, distributors and dealers; and providing for an effective date."

COMMITTEE REPORT

HOUSE

4/15/76

Mr. Speaker: Date May 22, 1976

The Committee on JUDICIARY has had SB 438 am

under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

file 438

SENATE BILL 438
ALASKA GASOLINE PRODUCTS FRANCHISE ACT

WHAT DOES IT DO?

REFERENCE	ITS IMPACT
Page 2-810(a)3	Most if not all stations will be closed on Sunday. Getting gasoline in evenings will be much more difficult. Adverse impact on tourists, economy, emergency vehicles, and other travelers will result.
Page 2-810(a)5	Section provides for public utility control of our product pricing with courts serving as the regulatory agency. This conflicts with free enterprise system to the determent of the consumer on product pricing.
Page 2-810(a)6	May enable dealers to buy and sell competitive gasoline. Subject to differing court interpretation. Impossible to administer. No sales assurance may mean no company investment in service stations.
Page 2-810(a)8	Allows dealers to lease or sublease stations. Dealer may have no concern for qualifications of sublessee or assignee. Level of service will drop to public. Dealer will assign lease to highest bidder. No company control over investment may mean no further investment in service stations.
Page 3-810(b)	Requires supplier to give dealer 90 days notice of termination in cases where there is a breach of contract. Does not afford dealer opportunity to cure the breach and avoid termination. Immediate termination is not included in cases of fraudulent and deceptive sales practices, in cases of fire caused by dealer, dealer mental incapacity, debts owed by dealer, etc.
Page 4-810(c)	Good causes for termination do not include dealers death, dealer debt, tradmark violations, consumer complaints, etc. Part 4 allows for differing interpretation of "similar" stations in requiring our rental be the same for "similar retail outlets." Rental for all stations should not be the same since they are of different size, type, and in different locations.
Page 5-810(d)	Restrains competition. Would not enable supplier to lower prices to dealers experiencing bonefide competition; therefore consumer pays more.
Page 5-820	Enables dealers to sell good will. In conjunction with ability to assign lease, allows dealers to sell station to highest bidder, regardless of candidates qualifications to manage business or provide service to public. Results in station speculation by real estate investors. Service to public deteriorates. There is no justification for good will - There is nothing to sell. Supplier carries accounts receivable. Growth in business is due to location and one dealer s ability - not transferrable to succeeding dealers. Dealer does not pay company for good will initially.

Mr. Chairman and Members of the Committee:

My name is John Sanders. I am Division Manager for Standard Oil Company of California in its Alaska Division. I am responsible for the sale of its products throughout the state of Alaska. I appreciate the opportunity to present my company's views on this legislation, after which I will try to answer any questions you may have. As I understand it, the intent of this legislation is to guarantee service station dealers fair and equitable treatment by their petroleum suppliers. In my opinion, however, Senate Bill 438 would not do that. In some instances, it would merely duplicate existing state and federal law. In others, it would merely provide a shield for ineffective dealers and would be to the detriment of consumers and good dealers alike. At the onset, we believe additional legislation to protect the service station dealers is unnecessary. Furthermore, we believe the importance of an efficient and successful independent dealer organization cannot be over-emphasized. It is through such independent dealers that the vast majority of service station sales are made.

In the state of Alaska, Standard Oil Company of California supplies products to 42 conventional dealer stations, all of which are operated by independent businessmen. We provide, at our expense, all the marketing research, site location, land acquisition, facility construction, fixed equipment, tankage, and signs. We then lease the complete facility and site to a dealer, with the

dealer being responsible only for such things as operating tools, moveable equipment, and inventory. There is no "Franchise Fee" for the dealer to pay Standard. This arrangement affords the dealer entry into the service station business at a comparatively modest initial investment; in most instances, between $15,000 and $25,000. On the other hand, in recent years, our average investment for a new service station has been approximately $500,000, including real property and facilities.

Our enormous investment and our complete marketing reliance upon the service station dealer demonstrate a very fundamental point about us and Chevron dealers--we need each other, and we must assure the dealer a reasonable opportunity for success if we are both to profit.

Our forms of dealer supply contract and dealer lease are available to the committee if it wishes to see them. We think that these agreements testify to our good faith in providing to Chevron Dealers on commerically fair terms a very valuable place of business in which the dealer has a reasonable opportunity to make a good living. These agreements are for a five year term, and, after a brief initial trial period, they can be terminated by us during the term only for good cause. Our relationship with dealers is both fair and reasonable and is founded upon the mutual interest of both parties. From the very beginning we have been aware of the antitrust laws that govern our relationship with Chevron Dealers. Accordingly, Chevron Dealers are entirely free to price

their products and services and to purchase also from other suppliers as they may decide. In other words, we recognize and respect the dealer as an independent businessman. If we were to change our policy and seek improperly to control a dealer's pricing or purchasing discretion, we would surely be subject to the formidable sanctions of the antitrust laws, including treble damages. We therefore believe that the commercial interests of suppliers and the dealers who sell their products are mutual interests. These interests, together with the severe sanctions of the existing antitrust laws, are, we believe, entirely adequate to protect service station dealers and hence no further legislation is necessary.

We acknowledge that S.B. 438 was amended in the Commerce Committee to remove several undesirable and unresponsible provisions; however, the very fact that it comes to this body on the strength of only one affirmative vote, indicates that many problems remain intact in the legislation before you. With your permission, I will highlight these problem areas:

1. Section 45.50.810(a)(4)

This section would prohibit us from requiring Chevron Dealers to buy any quantity of our products unless we proved that such purchase obligations are "reasonably necessary for lawful purposes justified on business grounds and do not substantially affect competition."

This provision is unnecessary since the antitrust laws, including Alaska's antitrust statutes as well as the Federal Clayton Act and Sherman Act provide ample protection to dealers, including treble damage provisions, by forbidding any agreements which would require them to buy all or substantially all of their inventory requirements from a particular supplier. Accordingly a Chevron Dealer is merely required by contract to buy from us only such quantities of our products as may be necessary to satisfy customer demand for our products at his station. He may also handle any competitive products that he desires. Indeed, we find that most of our dealers do in fact choose to handle substantial quantities of competitive petroleum products and tires, batteries and accessories.

In addition, this section is wholly impractical because of the uncertainty of the language measuring the legality of the purchasing obligation. When are such obligations "reasonably necessary for lawful purposes justified on business grounds?" And when do they not "substantially affect competition?" The bill gives no guidance on this. Even entirely reasonable and otherwise lawful purchase obligations may affect competition as any aggregation of sales or purchases would, without in any way lessening or impairing competition. Suppliers cannot be expected to make the very substantial investments required for modern service stations if they do not have reasonable assurance that their products will be at least offered for sale at such stations.

Also, depending upon a court's interpretation of the wording in this section, it may be in conflict with current State and

Federal Trademark laws. If this section were to allow gasoline purchased by the dealer from another supplier to be sold through pumps marked with Standard's brands, then it appears obvious to us that it is in violation of applicable trademark laws.

This would obviously provide a great disservice to consumers who think they are buying Standard's products when, in fact, they may be sold someone else's product of lesser quality and performance characteristics. I think the Department of Weights and Measures would take a dim view of that situation.

2. Section 45.50.810(b)

Our Chevron dealer contracts now provide that the dealer must be given notice of default and 10 days within which to cure the default and thereby avoid termination in most situations. That is ample time. This section would require that a refiner or distributor give 45 days notice prior to terminating or failing to renew a franchise except where such termination of failure to renew is due to the voluntary abandonment of the station by the dealer; or where the dealer is convicted of a felony. This requirement is not needed for the protection of the dealer and is commercially unfair and impracticable.

But the 45 days prior notice is unrealistically long in many situations other than those two recognized in the bill. Consider for instance the case of a dealer engaged in fraudulent and deceptive sales practices against the motoring public. In this example, there is normally ample evidence of repeated illegal practices such as the deliberate damaging of tires and/or fan belts. Prompt termination was necessary in another situation, as

a result of a fire caused by the dealer's improper use of a welding torch in violation of city ordinances and contrary to our instructions against the practice. Obviously to permit such situations to continue for a minimum of 45 days would be to the detriment of consumers and good dealers alike.

In addition to that kind of illegal conduct by the dealer, there are numerous other situations in which 45 days prior notice would be wholly unrealistic. For example: (a) The Dealer's death or mental or physical incapacity to operate the station, (b) refusal by the dealer to pay debts owed to his supplier or the dealer's bankruptcy or insolvency, and (c) a breach of a contract or franchise which cannot be cured.

Any of these cases would prevent us from regaining possession of our investment for 45 days and would to that extent arbitrarily deprive us of our property and would require enormous efforts by a new dealer to rebuild the business that has been needlessly impaired by prolonged neglect or idleness.

3. Section 45.50.810 (c)

This section deals with the causes for termination and provides that no refiner or distributor may terminate, cancel, or fail to renew a dealer lease without good cause which is defined as including: "The failure of a franchisee to comply with the lawful material provisions of a franchise between distributor or refiner and the franchisee/dealer..."

What provisions in dealer agreements would meet these criteria is a speculative matter at best; and different courts or juries may be expected to have conflicting views of the same contractual provisions. Thus, a particular term or condition in the lease or supply contract may or may not be enforceable based upon the interpretation of a judge or jury without experience in such commerce. Moreover, this bill would give a judge or jury no instructive guidance for making the required determinations. We understand that some service station dealers are supplied petroleum products pursuant only to oral agreements; others, like our Chevron dealers, are supplied under quite detailed written agreements designed to clarify the continuing business relationship for the benefit of both parties. However, in addition to the fundamental obligations to sell, to buy and to pay for products, there are other commercially important provisions such as those relating to the maintenance of a very expensive station. Are these to be deemed non-material by a judge or jury unfamiliar with servicestation business practices?

And, while the bill provides for some specific situations to be construed as good cause for termination, cancellation, or non-renewal, it fails to recognize many others, such as:

--a dealer's death or mental or physical incapacity to operate the station;

--refusal by the dealer to pay debts owed to his supplier;

--adulteration, commingling, mislabeling or misbranding gasoline;

--trademark violation;

--repeated consumer complaints concerning the dealers; and

--the supplier's decision to materially alter the facilities to meet changing consumer needs.

Furthermore, it is unclear whether the requirement to give the franchisee a reasonable opportunity to cure a default is applicable only where the breach is curable, such as the failure to pay for goods delivered. Surely, for example, where a dealer is convicted for fraudulent or deceptive sales practices, or becomes bankrupt or abandons the station, the default is essentially non-curable.

Moreover, subpart (4) would, in effect, require that the terms of our agreements be essentially the same as those offered other dealers in similar retail outlets. Surely, there is no sound basis for requiring every franchise agreement to be the same as that offered to every franchise dealer. The term "similar" is undefined and like other terms in the bill would be subject to varying and conflicting interpretations.

Rental terms vary from dealer to dealer quite properly; there are differing types and sizes of service stations and differing locations. Also, when we lease station sites from property owners, they require differing ground rents. In addition, there are differences in the costs incurred in supplying products to various dealers.

4. Section 45.50.810 (d)

This section provides that no refiner or distributor may charge different prices to dealers unless they are based upon the quantity purchased or transportation costs. Such a provision is plainly anticompetitive.

The Federal Robinson-Patman Act does not forbid all price differences between customers, but only those that threaten substantial anticompetitive effects. Moreover, in order to avoid the anticompetitive effects of rigid price uniformity, the Federal statute provides that a lower price given to one customer, but not to others, is lawful if granted "in good faith to meet an equally low price of a competitor" (15 USC S 13(a)(b)). The purpose of this provision in the Federal statute was to give a supplier sufficient flexibility to respond to differing competitive conditions, when and where they occur. For example, a gasoline price war may break out in one city within the State but not elsewhere. To assist its dealers to remain competitive in the area of the price war, Standard under present law would be able to lower its price to them without lowering it Statewide. If such a price reduction had to be extended Statewide, it probably would not be made at all. This feature of the bill would provide a strong upward pressure on pricing to the detriment of competition and the motoring public.

Thus, this provision is anticompetitive since it unduly limits the very price competition that is the principal goal of both the Alaskan and Federal antitrust legislation.

Consider also the not uncommon situation in Alaska where a service station dealer himself has made the investment in the station. That investment will normally induce suppliers to offer an investment allowance on gasoline to reflect the fact that the dealer and not the supplier in this instance is furnishing the station. In these circumstances, a competing supplier, such as Standard, should be able to respond to this competitive situation by offering a comparable allowance to obtain or retain this dealer's business. But here too, if the same price must be offered to all dealers throughout the State, regardless of the commercial circumstances, it is probable that such an allowance for the dealer's investment would not be offered. Again, the result of this section of the bill would clearly be to reduce competition and encourage price rigidity. It would be anomalous for Alaska, having recently passed general antitrust legislation, now to pass a law which would encourage uniform, rigid price competition.

5. Section 45.50.820

In its original form, this provision was objectionable because it provided that, in some cases, upon termination the supplier would have to compensate the dealer for the "fair market value of the service, including good will." Recognizing that there is nothing in the nature of good will that is transferrable from a dealer to its supplier or to a successor dealer where the station is owned by the supplying company, the Commerce Committee deleted the reference to good will. In order to

avoid confusion and possible judicial misinterpretation, we would recommend also the deletion of the reference to good will in Line 25 of Page 4.

But even if that were done this section would still require the supplier to compensate the dealer for the "fair market value of the franchise." While the focus of this provision is upon compensation for the dealer's inventory and equipment when purchased from the refiner, these items do not appear to limit the supplier's obligation since they are merely "included" in the fair market value of the franchise for which compensation must be paid. It is therefore possible that this broad phrase would be held by a court to require compensation for good will, bringing us back to face the difficulties of the original language. If there is to be legislation on this point--and to us it seems unnecessary--we recommend that it be limited to requiring the supplier to repurchase merchantable inventory. We should not be required to repurchase equipment since it will be in used condition and will often be equipment that the outgoing dealer didn't need and the incoming dealer doesn't want.

6. Section 45.50.800

This provision would require the refiner to disclose to the dealer "Facts which would reasonably be considered material to the dealer's decision to enter the franchise." These facts shall include but not be limited to various kinds of data described in subparts 1-7. Due to the practical uncertainty

in defining "facts which would reasonably be considered material," we recommend the section be amended to state that the refiner must disclose to the dealer, "The following facts material to a dealer's decision to enter into the franchise," followed by a list of such facts.

7. Section 45.50.840(4)

So as to confine the applications of this bill solely to service stations as distinguished from wholesale distributors or jobbers who sell to other types of consumer accounts and hence might be considered to operate "retail outlets", we recommend that Subpart 4, defining "dealer" be amended by adding "to the motoring public" after "gasoline."

In closing, I would restate that no where else can a dealer obtain a half-million dollar income-producing investment with such minimal risks. No where else does the consumer enjoy the level of assurance of product quality, service, skills, and competitive pricing, that have been achieved through our system as it is presently operated. This legislation would discourage the investments required to construct service stations today. Such an act would be counter-productive, working against the common goals of both the consumer and dealer.

I hope the views I have expressed will be helpful to you. This legislation is unnecessary. I respectfully urge you to consider our views and to reject this bill. If you have any questions, I would be pleased to respond.

MEMORANDUM

April 22, 1976

SOCAL - 1976 Alaska Legislation - S.B. 438

Amendment Preferences

§ 45.50.810(a)(4) -- See 4/16/76 memo under § 45.50.810(a)(6), p. 1.

§ 45.50.810(b) -- See 4/16/76 memo, Exhibit A-1 as amended and attached hereto.

§ 45.50.810(c) -- See 4/16/76 memo, Exhibit B-3, as amended and attached; or Exhibit D, California Bus.& Prof. Code § 20999.1 as amended and attached.

§§ 45.50.820 -- See 4/16/76 memo, Exhibit C.
45.50.830
Substitute Exhibit C-2 as amended or, if necessary, Exhibit C-1 as amended, both attached hereto.

D. T. Van Camp

Attachs.

EXHIBIT A

Alternative 1

(b) No refiner or distributor may terminate, cancel or fail to renew a franchise unless such refiner or distributor furnishes notification pursuant to this subsection to the other party to the franchise. Such notification shall be in writing addressed to such other party and sent by certified mail, deposited in the mail no less than 45 days prior to the date on which such franchise is to be terminated, cancelled or not renewed; provided, however, that if in light of the circumstances, it would not be reasonable to provide notice 45 days in advance of such termination, cancellation or failure to renew the refiner or distributor shall provide such notice less than 45 days as may be reasonable in the circumstances. Notification shall contain a statement of intention to terminate, cancel, or decline to renew such franchise, together with the reasons therefor, and the date on which such termination, cancellation or failure to renew shall take effect.

EXHIBIT B

Alternative 3

(c) Notwithstanding the terms of any franchise, no refiner or distributor shall terminate, cancel or fail to renew a franchise without good cause, except that a refiner or distributor shall be permitted to provide in the franchise for the termination thereof without cause during a reasonable trial period, not to exceed one (1) year, where the dealer involved has not been a dealer of the refiner or distributor for that period of time at the premises described in the franchise.

As used in this section good cause shall include the following:

(1) The dealer failed to comply with reasonable requirements of the franchise agreement;

(2) The dealer failed to act in good faith in carrying out the terms of the franchise; or

(3) Other legitimate business reasons (except that a termination or cancellation of a franchise for the purpose of enabling the refiner or distributor to assume operation of the dealer's business shall not be considered to be a legitimate business reason unless the dealer is offered repurchase at current wholesale prices of all merchantable inventory purchased from the refiner or distributor and repurchase at fair market value of all equipment purchased from the refiner or distributor.

EXHIBIT C

Alternative 1

Section 45.50.820. REPURCHASE OF GOODS. In the event that the refiner or distributor terminates, cancels or fails to renew the franchise, such refiner or distributor shall make or cause to be made a good faith offer to repurchase from the dealer, his heirs, successors or assigns, at the current wholesale prices, any and all merchantable products and merchandise which are undamaged and unaltered from their original form, purchased by the dealer from the refiner or distributor; provided, that such refiner or distributor shall have the right to apply the proceeds against any existing indebtedness owed to him by the dealer; and, further provided that such repurchase obligation is conditioned upon there being no claims or liens by or on behalf of other parties, including creditors and governmental agencies, against such products and merchandise.

EXHIBIT C

Alternative 2

Section 45.50.820. DISPOSITION OF INVENTORY. Upon any termination, cancellation or failure to renew a franchise, the refiner or distributor shall at the request of the dealer, take back any merchantable inventory from the dealer to which he has good title free from any claims or liens of others, which was supplied by the refiner or distributor and which has not diminished substantially in value and is of similar quality as when originally supplied. The refiner or distributor at its option shall reimburse the dealer for not less than ninety per cent of the cost paid by the dealer or shall cancel not less than ninety per cent of any debts owed on account of the inventory.

EXHIBIT D

California (as amended)

Notwithstanding the terms of any franchise, no refiner or distributor shall terminate, cancel or refuse to renew any existing franchise without good cause.

As used in this section good cause is limited to the following:

(a) The dealer failed to comply with reasonable requirements of the franchise agreement;

(b) The dealer failed to act in good faith in carrying out the terms of the franchise; or

(c) Other legitimate business reasons (except that a termination or cancellation of a franchise for the purpose of enabling the refiner or distributor to assume operation of the dealer's business shall not be considered to be a legitimate business reason unless the dealer is offered repurchase at current wholesale prices of all merchantable inventory purchased from the refiner or distributor and repurchase at fair market value of all equipment purchased from the refiner or distributor.

STATEMENT OF J. R. SANDERS

ON BEHALF OF

STANDARD OIL COMPANY OF CALIFORNIA

ON SENATE BILL 438

"ALASKA GASOLINE PRODUCTS FRANCHISE ACT"

BEFORE THE HOUSE OF THE STATE OF ALASKA

Mr. Chairman and Members of the Committee:

My name is John Sanders. I am Division Manager for Standard Oil Company of California in its Alaska Division. I am responsible for the sale of its products throughout the State of Alaska. I appreciate the opportunity to present my Company's views on this legislation after which I will try to answer any questions you may have.

As I understand it, the intent of this proposed legislation is to guarantee service station dealers fair and equitable treatment by their petroleum suppliers. I don't think it would do that. In fact, in my opinion, it would merely provide a shield for ineffective dealers and would be to the detriment of consumers and good dealers alike. At the onset, we believe that additional legislation to protect the service station dealer is unnecessary. Furthermore, we believe the importance of an efficient and successful independent dealer organization cannot be overemphasized. It is through such independent dealers that the vast majority of service station sales are made. In the State of Alaska, Standard Oil Company of California supplies products to 42 conventional dealer stations plus about 112 car washes, garages, new car dealerships, and other miscellaneous accounts, all of which are operated by independent businessmen. With respect to dealer stations, (those being the 42 conventional stations) we presently provide, at our expense, all the marketing research,

site location, land acquisition, facility construction, fixed equipment, tankage and signs. We then lease the completed facility and the site to a dealer with the dealer being responsible only for such things as operating tools, movable equipment, and inventory. There is no "franchise fee" for the dealer to pay Standard. This arrangement affords the dealer entry into the service station business at a comparatively modest initial investment, in most instances between $15-25,000. On the other hand, in recent years, our average investment for a new service station has been approximatoly $500,000 including real property and facilities.

Our enormous investment and our complete marketing reliance upon the service station dealer demonstrate a very fundamental point about us and Chevron dealers: We need each other and we must assure the dealer a reasonable opportunity for success if we are both to succeed.

Our forms of dealer supply contract and dealer lease are available to the committee if it wishes to see them. We think that these agreements testify to our good faith in providing to Chevron Dealers on commercially fair terms a very valuable place of business in which the dealer has a reasonable opportunity to make a good living. These agreements are for a five year term and, after a brief initial trial period, they can be terminated by us during the term only for good cause. Our

relationship with dealers is both fair and reasonable and is founded upon the mutual interest of both parties. From the very onset we have been aware of the antitrust laws that govern our relationship with Chevron Dealers. Accordingly, Chevron Dealers are entirely free to price their products and services and to purchase also from other suppliers as they may decide. In other words, we recognize and respect the dealer as an independent businessman. If we were to change our policy and seek improperly to control a dealer's pricing or purchasing discretion we would surely be subject to the formiable sanctions of the antitrust laws, including treble damages. We therefore believe that the commercial interest of suppliers and the dealers who sell their products are mutual interests. These interests, together with the severe sanctions of the existing antitrust laws, are we believe entirely adequate to protect service station dealers and hence no further legislation is necessary. But, even if additional legislation were needed, Senate Bill 438 would be ill advised for the following principal reasons:

1. Section 45.50.810(a)(6)

This section would prohibit us from requiring Chevron Dealers to buy any quantity of our products unless we proved that such purchase obligations are "reasonably necessary for lawful purposes justified on business grounds and do not substantially affect competition".

This provision is unnecessary since the antitrust laws provide ample protection to dealers by forbidding any agreements which would require them to buy all or substantially all of their inventory requirements from a particular supplier. Accordingly a Chevron Dealer is merely required by contract to buy from us only such quantities of our products as may be necessary to satisfy customer demand for our products at his station. He may also handle any competitive products that he desires. Indeed, we find that most of our dealers do in fact choose to handle substantial quantities of competitive petroleum products and tires, batteries and accessories.

In addition, this section is wholly impractical because of the uncertainty of the language measuring the legality of the purchasing obligation. When are such obligations "reasonably necessary for lawful purposes justified on business grounds?" And when do they not "substantially affect competition?" The bill gives no guidance on this. Even entirely reasonable and otherwise lawful purchase obligations may affect competition as any aggregation of sales or purchases would, without in any way lessening or impairing competition. Suppliers cannot be expected to make the very substantial investments required for modern service stations if they do not have reasonable assurance that their products will be at least offered for sale at such stations.

Also, depending upon a court's interpretation of the wording in this section, it may be in conflict with current State and

Federal Trademark Laws. If this section were to allow gasoline purchased by the dealer from another supplier to be sold through pumps marked with Standard's brands, then it appears obvious to us that it is in violation of applicable trademark laws.

This would obviously provide a great disservice to consumers who think they are buying Standard's products when, in fact, they may be sold someone else's product of lesser quality and performance characteristics. I think the Department of Weights and Measures would take a dim view of that situation.

2. Section 45.50.810 (d)

This section provides that no refiner or distributor may charge different prices to dealers unless they are based upon the quantity purchased or transportation costs. Such a provision is plainly anticompetitive.

The Federal Robinson-Patman Act does not forbid all price differences between customers, but only those that threaten substantial anticompetitive effects. Moreover, in order to avoid the anticompetitive effects of rigid price uniformity, the Federal statute provides that a lower price given to one customer, but not to others, is lawful if granted "in good faith to meet an equally low price of a competitor" (15 USC § 13(a)(b)). The purpose of this provision in the Federal statute was to give a supplier sufficient flexibility to respond to differing competitive conditions, when and where they occur. For example, a gasoline price war may break out in one city

within the State but not elsewhere. To assist its dealers to remain competitive in the area of the price war, Standard under present law would be able to lower its price to them without lowering it Statewide. If such a price reduction had to be extended Statewide, it probably would not be made at all. This feature of the bill would provide a strong upward pressure on pricing to the detriment of competition and the motoring public.

Thus, this provision is anticompetitive since it unduly limits the very price competition that is the principal goal of both the Alaskan and Federal antitrust legislation.

Consider also the not uncommon situation in Alaska where a service station dealer himself has made the investment in the station. That investment will normally induce suppliers to offer an investment allowance on gasoline to reflect the fact that the dealer and not the supplier in this instance is furnishing the station. In these circumstances, a competing supplier, such as Standard, should be able to respond to this competitive situation by offering a comparable allowance to obtain or retain this dealer's business. But here too, if the same price must be offered to all dealers throughout the State, regardless of the commercial circumstances, it is probable that such an allowance for the dealer's investment would not be offered. Again, the result of this section of the bill would clearly be to reduce competition and encourage price rigidity. It

would be anomalous for Alaska, having recently passed general antitrust legislation, now to pass a law which would encourage uniform pricing and discourage price competition.

3. Section 45.50.810 (a)(8)

This section would forbid us to "unreasonably disapprove the transfer or assignment of a franchise by a dealer to a qualified transferee or assignee."

This section constitutes a totally unreasonable and arbitrary interference with our property rights. Having made a $500,000 investment, and in light of a dealer's relatively small investment, it is only proper and just that we have the right to select a candidate whom we feel best qualified to operate a first class service station.

The consumer stands to lose the most from such a provision. If the dealer is permitted to assign his lease, there is the inevitable question of personal motivation in making the assignment. At Standard our motivation is simply to select dealers who are best qualified to manage the station and who are committed to providing the service to which we believe the motoring public is entitled.

4. Section 45.50.820

This section would require a supplier, upon termination or non-renewal of the franchise, to repurchase certain tangible assets from the dealer and, in certain circumstances, to compensate the dealer for "goodwill". We at Standard are opposed

to the payment of any sum of money for alleged dealer goodwill.

There is nothing in the nature of goodwill that is transferable from a dealer to his supplier or to a successor dealer where the station is owned by the supplying company. If a dealer's business is successful because the station is well located, and has excellent facilities, that portion of the success properly remains with the supplier. In this connection, all dealers, new or old, receive the benefit of large sums of money we have spent on advertising to promote public acceptance of our brands of products at our retail outlets. They also receive the benefit of the large number of credit cards we have solicited and the millions of dollars in accounts receivable we carry for the dealers. These things are in addition to the service station facility itself, which we furnish to the dealer and which currently costs us on an average about $500,000 per unit. None of these sources of "goodwill" attributable to the station can be transferred by the dealer to us or to his successor.

Likewise, that portion of the dealer's success attributable to his personal skills, personality or the relationship he established with his customers belongs to him and is taken with him when he leaves and cannot be effectively transferred to us or to a succeeding dealer.

Thus it is a misnomer to say that the departing dealer has any "goodwill" that is transferable either to the supplier or to the new dealer.

5. Section 45.50.810 (a)(3)

This section would prohibit us from requiring a dealer to operate his station for more than 12 consecutive hours per day or more than six days per week.

It is safe to say that this provision would effectively eliminate gasoline availability on Sundays and between the hours of 10:00 p.m. and 6:00 a.m. This would be detrimental to the consumer and to the economy of the State of Alaska. Gasoline would be unavailable for emergency vehicles for such agencies as the police department; local travelers would be inconvenienced and tourism would be discouraged. Additionally, this provision completely disregards operating hour requirements imposed by many lessors in their ground leases to us; and while it does seem to recognize that longer hours may be required by the state or the federal government it does not recognize that as a condition to zoning permits, we may be required by municipal or borough authorities to provide for longer hours in certain locations.

6. Section 45.50.810 (a)(5)

This section provides that it would be a violation of law for us to sell, rent or offer to sell to a dealer any product or service for more than a "fair and reasonable" price.

This section would in effect subject the pricing of our service station products to a kind of public utility control with the courts serving as the regulatory agency. Apart from governmental price control during periods of acute economic distress,

at which rare times control could be vested in an administrative agency such as the Federal Energy Administration, it is neither desirable nor necessary to supplant ordinary market forces as proper regulators of prices and rents. Competition establishes fair market prices which balance all the effects of supply, demand and necessary return on capital. On the other hand, when prices are fixed at levels different from those established by the fair market this balance is inevitably upset and economic dislocations result, all to the public's disadvantage.

7. Section 45.50.810 (a)(10)

Under this section it would be a violation for a supplier to fail to deal with a dealer in "good faith". That phrase is so vague and generalized that it would be impossible to administer or comply with. No standards are stated as to how good faith is to be measured. We expect that every difference of opinion or commercial judgment would become a controversy over good faith. Such a provision would inescapably provoke endless dispute and litigation.

8. Section 45.50.810 (b)

This section would require that a refiner or distributor give 90 days notice prior to terminating or failing to renew a franchise except where such termination of failure to renew is due to the voluntary abandonment of the station by the dealer; or where the dealer is convicted of an indictable offense

directly related to the business. This requirement is not needed for the protection of the franchise and is commercially unfair and impracticable. Notice of intention to terminate for breach of contract should generally afford the dealer an adequate opportunity to cure the breach and avoid termination, as our Chevron dealer contracts provide.

But the 90 days prior notice is unrealistically long in many situations other than those two recognized in the bill. Consider for instance the case of a dealer engaged in fraudulent and deceptive sales practices against the motoring public. In this example, there is normally ample evidence of repeated illegal practices such as the deliberate damaging of tires and/or fan belts. Prompt termination was necessary in another situation, we recently found, as a result of a fire caused by the dealer's improper use of a welding torch in violation of city ordinances and contrary to our instructions against the practice. Obviously to permit such situations to continue for a minimum of 90 days would be to the detriment of consumers and good dealers alike.

In addition to the kind of illegal conduct by the dealer, there are numerous other situations in which 90 days prior notice would be wholly unrealistic. For example: (a) The Dealer's death or mental or physical incapacity to operate the station and (b) refusal by the dealer to pay debts owed to his supplier or the dealer's bankruptcy or insolvency.

Any of those cases would prevent us from regaining possession of our investment for 90 days and would to that extent arbitrarily deprive us of our property and would require enormous efforts by a new dealer to rebuild the business that has been needlessly impaired by prolonged neglect or idleness.

9. Section 45.50.810 (c)

This section deals with the causes for termination and provides that no refiner or distributor may terminate, cancel, or fail to renew a dealer lease without good cause which is defined as including: "The failure of a franchisee to comply with the lawful material provisions of a franchise between distributor or refiner and the franchisee/dealer..."

What provisions in dealer agreements would meet those criteria is a speculative matter at best; and different courts or juries may be expected to have conflicting views of the same contractual provisions. Thus, a particular term or condition in the lease or supply contract may or may not be enforceable based upon the interpretation of a judge or jury without experience in such commerce. Moreover, this bill would give a judge or jury no instructive guidance for making the required determinations. We understand that some service station dealers are supplied petroleum products pursuant only to oral agreements; others, like our Chevron dealers, are supplied under quite detailed written agreements designed to clarify the continuing business relationship for the benefit of both parties. However, in addition to the fundamental obligations to sell, to buy and

to pay for products, there are other commercially important provisions such as those relating to the maintenance of a very expensive station. Are these to be deemed non-material by a judge or jury unfamiliar with service station business practices?

And, while the bill provides for some specific situations to be construed as good cause for termination, cancellation or non-renewal, it fails to recognize many others, such as:

--- a dealer's death or mental or physical incapacity to operate the station;

--- refusal by the dealer to pay debts owed to his supplier;

--- adulteration, commingling, mislabeling or misbranding gasoline;

--- trademark violation;

--- repeated consumer complaints concerning the dealers; and

--- the supplier's decision to materially alter the facilities to meet changing consumer needs.

Furthermore, it is unclear whether the requirement to give the franchisee a reasonable opportunity to cure a default is applicable only where the breach is curable, such as the failure to pay for goods delivered. Surely, for example, where a dealer is convicted for fraudulent or deceptive sales practices, or becomes bankrupt or abandons the station, the default is essentially non-curable.

Moreover, subpart (4) would, in effect, require that the terms of our agreements be essentially the same as those offered other dealers in similar retail outlets.

Surely, there is no sound basis for requiring every franchise agreement to be the same as that offered to every franchise dealer. The term "similar" retail outlets does not cure this deficiency since the word "similar" is undefined and like other terms in the bill would be subject to varying and conflicting interpretations.

Rental terms vary from dealer to dealer quite properly; there are differing types and sizes of service stations and differing locations. Also, when we lease station sites from property owners, they require differing ground rents. In addition, there are differences in the costs incurred in supplying products to various dealers.

In closing, I would restate that in recent years our average investment for a new service station has been approximately $500,000. This figure is probably typical of the recent expenditures made by similar suppliers in this industry. While we cannot speak for others, we seriously doubt that we could continue making these kinds of investments not knowing what our contracts would mean, and, in addition, be subject to the

other restrictive conditions set forth in this bill. It is difficult to foresee who would make such investments or who would maintain the current level of availability for these services which the public has come to expect.

Nowhere else can a dealer obtain a half million dollar income producing business investment with such minimal risk. Nowhere else does the consumer enjoy the level of assurance of product quality, service skills, competitive pricing, and image achievable through our system as it presently operates. Legislation which removes the incentives for the investments required to construct service stations today will prove to be counter productive working against the common goals of both the consumer and the dealer.

I hope the views I have expressed will be helpful to you. I respectfully urge you to consider them and to reject this bill. If you have any questions, I would be pleased to respond.

Original sponsor: Commerce Committee

Offered: 4/15/76
Referred: Judiciary

IN THE SENATE BY THE COMMERCE COMMITTEE

HOUSE CS FOR SENATE BILL NO. 438

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to [franchising] agreements involving gasoline refiners, distributors and dealers; and providing for an effective date."

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

* Section 1. FINDINGS OF THE LEGISLATURE. The legislature finds and declares that since the distribution and sales, through [franchise] agreements, of gasoline in the state vitally affect the economy of the state, the public interest, welfare, and transportation, it is necessary to define the relationships and responsibilities of the parties to certain agreements pertaining to franchising.

* Sec. 2. AS 45.50 is amended by adding new sections to read:

ARTICLE 5. ALASKA GASOLINE PRODUCTS FRANCHISE ACT.

Sec. 45.50.800. DISCLOSURES TO BE MADE BY DISTRIBUTORS AND REFINERS BEFORE CONCLUSION OF AGREEMENT. Before entry into a franchise agreement, a refiner or distributor shall disclose to the dealer facts [which would reasonably be considered] material to the dealer's decision to enter into the franchise. These facts ~~shall include~~ ARE, [but not be limited to,]

(1) ownership of property of the retail outlet;

(2) if the real property is not owned by a refiner or distributor, then the nature of the relationship between the real property owner and the refiner or distributor and the length of the underlying lease (if applicable);

(3) the last known addresses of dealers operating the retail

outlet for the last five years;

(4) the gasoline gallonage history, if any, of the station for the last five years;

(5) any sales goals or quotas the refiners or distributors intend to apply to the station;

(6) the nearest gasoline outlet owned, controlled or operated by the refiner or distributor and any plans the distributor or refiner has to open new retail outlets within the trade area of the retail outlet; and

(7) any plans the refiner or distributor has for the future of the subject retail outlet.

Sec. 45.50.810. VIOLATIONS. (a) No person shall, directly or indirectly, through offices, employees or agents,

(1) require the ~~franchisee~~-dealer at the time of entering into the ~~franchise~~ lease agreement to ~~assent to release, assignment~~ a release of, novation, ~~waiver or estoppel which would~~ relieve any person from liability imposed by secs. 800 - 850 of this chapter;

(2) require the dealer to agree to waive his right to a jury trial or any right of counterclaim he may have;

(3) restrict or inhibit directly or indirectly the right of free association for any lawful purpose of the franchisee-dealer;

(4) except as to the initial inventory of the franchise, require a dealer to purchase or otherwise lease goods or services of a refiner or distributor or from an approved source of supply unless and to the extent that the refiner or distributor satisfies the burden of proving that such restricted purchasing agreements are reasonably necessary for lawful purposes justified on business grounds and do not substantially affect competition; in determining whether a requirement to purchase is lawful, the court shall e guided by the decisions of the

courts of the United States in interpreting and applying the antitrust laws and the Federal Trade Commission Act of the United States;

(5) impose unreasonable standards of performance on the dealer;

(6) require a dealer to participate financially in the use of any premium coupon or giveaway or rebate in the operation of the business; however, a distributor may require the dealer to distribute premiums, coupons or give-aways to customers which are provided to the dealer at the expense of the refiner or distributor or when the promotion is self-liquidating; or

(7) fail to deal with the dealer in good faith.

(b) No refiner or distributor may, directly or indirectly, through any officer, agent or employee, terminate, cancel or fail to renew a dealer franchise without first giving written notice setting out all of the reasons for the termination or cancellation or intent not to renew to the franchisee-dealer at least 45 days in advance of the termination, cancellation or failure to renew except

(1) when the alleged grounds are voluntary abandonment by the franchisee-dealer of the franchisee relationship, then the above notice may be given five days in advance of the termination, cancellation or failure to renew;

(2) when the alleged grounds are the conviction of the franchisee in a court of competent jurisdiction of a felony.

(c) No refiner or distributor may terminate, cancel or fail to renew a dealer franchise without good cause. Good cause shall include without limitation:

(1) the failure of a franchisee to comply with the lawful material provisions of a franchise between the distributor or refiner and the franchisee-dealer and to cure each default after being given

written notice and a reasonable opportunity to cure the default;

(2) an adjudication that the franchisee-dealer is a bankrupt or insolvent or if he makes an assignment for the benefit of creditors or a similar disposition of assets of franchise business or voluntarily abandons the franchise business or is convicted of or pleads guilty or no contest to a charge of violating any law relating to any franchise business;

(3) the good faith business decision of the franchiser that he no longer requires a retail outlet at that location for the marketing of gasoline; and

(4) the dealer's failure to sign the new agreement if at the time of renewal of the franchise the distributor or refiner and the franchisee-dealer cannot agree upon new terms and the terms offered by the refiner or distributor do not violate any other laws of the State of Alaska or of the United States and the terms are essentially the same as those offered to other franchisee-dealers in similar retail outlets and do not discriminate against the subject franchisee-dealer.

(d) No refiner or distributor may engage in price discrimination between dealers unless that discrimination is based upon quantity purchased or transportation costs.

Sec. 45.50.820. OBLIGATION OF DISTRIBUTOR TO REPURCHASE UPON TERMINATION, ETC., OF AGREEMENT. If the refiner or distributor has good cause to terminate, cancel or fail to renew under sec. 810(c)(1) or (2) of this chapter, he shall compensate the ~~franchisee~~-dealer for the fair market value of the franchise, excluding goodwill. Refiners or distributors terminating, cancelling, or failing to renew under sec. 810(c)(3) or (4) of this chapter shall compensate the ~~franchisee~~-dealer for the fair market value of the franchise. Valuation shall include the fair market value of the franchisee's inventory supplies, equipment and

Columbus distributor

furnishings purchased from the refiner or distributor exclusive of personalized materials which have no value to the refiner or distributor and inventory supplies, equipment and furnishings not reasonably required in the conduct of the franchise business. Compensation shall be made within 60 days from the date of termination unless it is necessary that a lawsuit be filed under sec. 830 of this chapter or the dealer fails to comply with the bulk sales provisions of AS 45.05.510 et seq. The refiner or distributor may offset against accounts owed by the franchisee-dealer under this section any amount owed by the franchisee-dealer to the refiner or distributor.

Sec. 45.50.830. COURT TO DETERMINE FAIR MARKET VALUE WHEN PARTIES CANNOT AGREE. If under sec. 820 of this chapter the distributor or refiner has good cause and the distributor or refiner and the dealer cannot agree on the fair market value of the franchise, then either party may initiate an action in the superior court where the franchise retail outlet exists. If the amount awarded to the franchisee by the jury or the court is 10 per cent lower than the final offer, if any, made by the refiner or distributor before the filing of the lawsuit, reasonable attorney fees and the appraiser fees shall be awarded to the refiner or distributor.

Sec. 45.50.840. DEFINITIONS. In secs. 800 - 830 of this chapter, unless context otherwise requires,

(1) "refiner" is a company, corporation or individual who owns or controls, or controls through a substantially owned subsidiary, partnership, or joint venture, a refinery used for the production of gasoline, diesel or other motor vehicle fuels;

(2) "distributor" means any person or corporation other than a refiner engaged in the sale, assignment, or distribution of gasoline to four or more dealer-operated retail outlets;

(3) "gasoline" means all products commonly or commercially known or sold as gasoline;

(4) "dealer" means a person primarily engaged in the sale of gasoline to the motoring public through a retail outlet ~~owned or~~ leased from the refiner or distributor or his agent by the person and operated by the person;

(5) "franchise" means an oral or written contract or agreement or series of agreements, either express or implied, in which the dealer is required directly or indirectly to purchase 50 per cent or more of his supply of gasoline from a distributor or refiner and in which the dealer is granted authority to occupy premises owned, leased or in any way controlled, directly or indirectly, by the refiner or distributor.

Sec. 45.50.850. SHORT TITLE. Sections 800 - 850 of this chapter may be cited as the "Alaska Gasoline Products Franchise Act."

* Sec. 3. AS 45.50.471(b) is amended by adding a new paragraph to read:

(22) failing to comply with the terms of the Alaska Gasoline Products Franchise Act (AS 45.50.800 - 45.50.850).

* Sec. 4. This Act takes effect July 1, 1976.

AMENDMENT

#4

OFFERED IN THE HOUSE: BY: _____

TO: HCS HOUSE BILL No. _____

SENATE BILL No. 438

PAGE: 3 LINE: between 11 & 12

ADD

Unless otherwise agreed upon by the parties

(8) require the dealer to keep his retail outlet open for business more than 12 consecutive hours per day or more than six days a week, provided that this paragraph shall not be construed to prevent any retail outlet from being open when required to be open to conform to any state or federal law or regulation;

adopted

require a dealer to purchase or

(9) ~~sell,~~ rent or offer to sell to a dealer any product or service for more than a fair and reasonable price;

adopted

(10) unreasonably disapprove the transfer or assignment of a franchise by a dealer to a qualified transferee or assignee;

~~Pour further provided upon agreement of distrib to [illegible] of loss~~

AMENDMENT

#4

OFFERED IN THE HOUSE: BY: _____

TO: HCS HOUSE BILL No. _____

SENATE BILL No. 438

between

PAGE: 3 LINE: 11 & 12

ADD

(8) require the dealer to keep his retail outlet open for business more than 12 consecutive hours per day or more than six days a week, provided that this paragraph shall not be construed to prevent any retail outlet from being open when required to be open to conform to any state or federal law or regulation;

(9) ~~sell,~~ rent ~~or offer to sell to a dealer~~ any product or service for more than a fair and reasonable price;

(10) unreasonably disapprove the transfer or assignment of a franchise by a dealer to a qualified transferee or assignee;

AMENDMENT

#5

OFFERED IN THE HOUSE: BY: _____

TO: _____ HOUSE BILL No. _____

SENATE BILL No. HCS 458

PAGE: 5 LINE: 16 to 20

After the word "exists." delete lines 16 to line 20 and insert:

Reasonable attorney's fees and the appraiser's fees shall be awarded to the franchisee if the amount awarded to the franchisee by the jury or the court is ten per cent higher than the final offer, if any, made by the refiner or distributor prior to the filing of the lawsuit.

45.50 .810 c

(c) No refiner or distributor shall terminate or cancel a dealer franchise prior to the expiration date thereof unless the dealer whose franchise is terminated failed to perform or comply with, or failed to act in good faith in performing or complying with, any of the terms or provisions of the franchise, except that a refiner or distributor shall be permitted to provide in the franchise for the termination thereof without cause during a reasonable trial period, not to exceed one (1) year, where the dealer involved has not been a dealer of the refiner or distributor for that period of time at the premises described in the franchise.

SS No._____

TWO PARTY DEALER
SUPPLY CONTRACT AND SIGN AND EQUIPMENT
RENTAL CONTRACT

Dated_____, 19____

1. STANDARD OIL COMPANY OF CALIFORNIA, WESTERN OPERATIONS, INC. ("Seller") agrees to sell to_____

_____

("Buyer") and Buyer agrees to buy from Seller such quantities of petroleum products and such quantities of the brands of tires, tubes and batteries (hereinafter sometimes referred to as "Seller's products") sold by Seller generally for resale in Buyer's locality as are necessary to serve customer demand for Seller's products at Buyer's premises for a term commencing_____, 19____, and ending_____, 19____.

2. Delivery shall be made on reasonable notice (preferably at least 48 hours) at_____

_____

_____

(the "premises") and shall be made in Seller's customary manner with equipment selected by Seller in full capacity loads. The price Buyer shall pay Seller for petroleum products hereunder shall be Seller's posted price to its buyers for resale generally at the time and place of delivery for the particular product, grade, quantity and type of delivery involved. The price Buyer shall pay Seller for tires, tubes and batteries shall be Seller's price to buyers for resale generally in Buyer's vicinity. Terms shall be net cash at time of delivery, except at Seller's option.

3. Buyer shall stock at the premises and continuously offer for sale such quantities of Seller's products as are necessary to serve customer demand for said products. Buyer agrees at all times to give the dispensing equipment, displays and advertisements for Seller's products and brands as prominent and convenient positions as those for any other product offered for sale on the premises. Buyer recognizes the high regard of the motoring public for service stations selling under Seller's trademarks and brands based upon the general cleanliness and the excellence of products and services dispensed at such service stations; and accordingly, Buyer agrees that he shall operate the premises as a first-class service station and shall not by act or omission disparage or diminish in any way the good reputation of said trademarks, brands, products or service stations. Buyer shall not engage in or permit any unlawful, fradulent, or deceptive act or practice on the premises.

4. (a) The petroleum products covered by this agreement shall be sold by Buyer as the products of Seller and only under the trademarks or brands regularly used by Seller for such products and Buyer shall not, at any time, offer for sale under Seller's trademarks or brands, any product not authorized to be sold thereunder.

(b) Buyer shall so conduct his operations as to eliminate any likelihood of confustion between Seller's products and those of others, and as to eliminate any likelihood of substitution of the products of others for those of Seller. Buyer agrees to abide by such reasonable regulations to this end as Seller may from time to time establish by notice to Buyer. Buyer further agrees to comply with all applicable laws, ordinances and regulations of governmental authorities in resale of all products purchased hereunder.

(c) All signs advertising Seller's products and all signs in the colors used by Seller to identify its products or the places at which its products are sold and all of Seller's trademark rights therein are, and they shall continue to be, the property of Seller. No use shall be made of any such signs except in connection with products manufactured or handled by Seller, and Seller shall have the right, at all times during the life of this agreement and within a reasonable period thereafter, to remove or obliterate such signs. Buyer may not use other signs to advertise products purchased from Seller without Seller's written consent. It is agreed that any paint scheme applied by Seller to the premises to which deliveries are made hereunder may be that used to identify dealer outlets marketing Seller's petroleum products, and that Seller shall, at all times during the life of this agreement and within a reasonable period thereafter, have the right, but not the obligation, to repaint so much of the premises as it elects, in a color or colors selected by it. If Seller at any time removes or obliterates any signs or repaints any of the premises, Seller need not restore any pre-existing signs on or paint scheme of the premises. Buyer agrees, during this agreement and thereafter, not to simulate in any way any trademarks or brands, signs or paint schemes identifying Seller's products or the places or outlets where they are sold or marketed.

5. (a) There shall be no obligation to deliver or to receive or use the products herein described when and while, and to the extent that, the receiving or using or manufacture or making deliveries in the customary manner are prevented or hindered by act of God, fire, riot, labor disturbances, accident, war or the acts of any government (whether foreign or domestic,

Federal, State, county or municipal) or other causes beyond the reasonable control of the party affected. In case of partial or total interruption or loss or shortage of transportation facilities or supplies, or shortage of products deliverable hereunder, Seller shall have the right to prorate delivery of available products among Buyer and other outlets and customers of Seller, contract or otherwise.

(b) Due to uncertainties in the supply/demand situation, Seller may not have sufficient supplies of one or more products from its then contemplated sources of supply to meet the full requirements of all of its customers, contract or otherwise. Whenever that situation exists and Seller's performance hereunder is not otherwise excused, Seller may reduce deliveries of such product(s) on any basis which in Seller's opinion is equitable, allowing for such priorities to such classes of customers as Seller deems appropriate. No such reduction need be made up. If any such reduction occurs, Buyer shall have the option to accept such reduction or to terminate this Agreement as to any or all products by 15 days' notice to Seller given at any time within 30 days after the notice of reduction.

6. (a) In the performance of this agreement Buyer is engaged in an independent business and nothing herein contained shall be construed as granting to Seller any right to control Buyer with respect to his conduct of said business. Seller has no right to exercise any control over any of Buyer's employees, all of whom are entirely under the control and direction of Buyer, who shall be responsible for their actions and omissions.

(b) Buyer shall, at his own expense, during the term hereof, maintain full insurance under any Workmen's Compensation Laws effective in the state covering all persons employed by and working for him in connection with the performance of this agreement, and upon request shall furnish Seller with satisfactory evidence of the maintenance of such insurance. Buyer accepts exclusive liability for all contributions and payroll taxes required under Federal Social Security Laws and State Unemployment Compensation Laws or other payments under any laws of similar character as to all persons employed by and working for him.

(c) Buyer agrees to indemnify, defend, and hold Seller, its agents and employees, harmless from and against all expense, liability and claims for damage to property (including Buyer's property) or injury to or death of persons (including Buyer) directly or indirectly resulting from anything occurring from any cause on or about or in connection with the maintenance or operation of Buyer's premises or anything located thereon.

(d) Buyer shall maintain at his own expense during the term hereof liability insurance, in respect of the premises and all activities on or about or in connection with said premises, of the types and in the minimum amounts described generally as follows:

(i) General public liability and property damage insurance (including explosion hazard) affording premises, products, completed operations, contractual and contingent liability (with respect to subcontractors) coverage of not less than $300,000 combined single limit for injuries to or death of any person or persons and property damage for each occurrence.

(ii) Automobile comprehensive public liability and property damage insurance of not less than $100,000 for injuries to or death of any one person and not less than $300,000 for injuries to or death of more than one person resulting from any one occurrence and property damage of not less than $25,000 for each occurrence.

(iii) Excess comprehensive general public liability and property damage insurance of not less than $1,000,000 per occurrence affording the same coverage and on the same terms and subject to the same conditions as the insurance required under (i) and (ii) above.

(iv) Fire legal liability insurance of not less than $50,000.

The insurance provided above (except fire legal liability insurance) shall include Standard Oil Company of California and its subsidiary or affiliated companies as named insureds, it being the intention of the parties that the insurance so effected shall protect both Buyer and Standard Oil Company of California (including its subsidiaries or affiliates) and be primary insurance for any and all losses in respect of the premises and all activities on or about or in connection with said premises during the term of this contract and any other contract between the parties or any extension or renewal thereof. Buyer shall furnish certificates satisfactory to Seller as evidence of such insurance. The insurance shall contain provisions that no cancellation or material changes in any policy shall become effective except upon thirty (30) days' notice to Seller. The insurance companies shall have no recourse against Standard Oil Company of California or Seller for payment of any premiums or assessments under any mutual form policy. Any and all deductibles in all of Buyer's insurance coverage shall be assumed by, be for the account of, and be at Buyer's sole risk.

7. Any tax, duty, toll, fee, impost, charge or other exaction, or the amount equivalent thereto, and any increase thereof now or hereafter imposed, levied or assessed by any governmental authority upon, measured by, incident to or as a result of the transaction herein provided for or the transportation, production, manufacture, use or ownership of the goods the subject matter of this agreement, shall, if collectible or payable by Seller, be paid by Buyer on demand by Seller. Any such payment shall be in addition to the prices otherwise herein provided for.

8. In case of any breach or default by Buyer hereunder, Seller may, in addition to its other remedies, give Buyer written notice of termination specifying the grounds therefor, and unless such breach or default shall be cured by Buyer within ten (10) days after such notice is given, this contract shall terminate at the expiration of such ten (10) days, provided, however, that Seller shall have the right to terminate this contract forthwith upon written notice to Buyer:

(i) If Buyer by act or omission breaches any provision of this contract which breach cannot be cured, or

(ii) in the event of any default or defaults hereunder by Buyer after notice of three previous defaults of any kind have been given hereunder, regardless of Buyer's curing of said previous defaults.

Waiver by Seller of any default or defaults hereunder by Buyer shall not be deemed to be a waiver of any other or continuing defaults hereunder. No termination of this contract shall relieve Buyer of responsibility for obligations incurred prior to termination.

9. Buyer may not assign this contract, or any interest therein (by assignment or other arrangements having similar effect) without Seller's prior written consent. In case of Buyer's death, or if incapacity shall prevent his personal supervision of the performance of this contract, or if any insolvency, bankruptcy or receivership proceedings are instituted by or against Buyer, then this contract may be terminated by Seller upon Seller's giving written notice of such termination to Buyer, or his successor(s) in interest.

10. Seller authorizes Buyer to accept credit cards approved by Seller for purchases of the types of products and services which Seller may from time to time designate. Buyer agrees to honor such credit cards subject to terms and conditions established by Seller. Seller shall accept from Buyer authorized invoices or other evidences of debt issued on such credit cards for sales of products and services made by Buyer to cardholders provided, however, Seller reserves the right to charge back to Buyer, or to refuse to accept, any invoice pursuant to the terms and conditions established by Seller.

11. Seller has delivered to or installed for (or will deliver to or install for) Buyer the facilities specified in Exhibit A attached hereto and made a part hereof to be used by Buyer at the premises. Buyer shall pay Seller, in advance, as rental for the use of said facilities, the sum of _____

_____ dollars ($ _____) per month (year) commencing _____, 19____

In connection with the use by Buyer of said facilities, Buyer agrees to be responsible for loss of or damages to said facilities and agrees not to remove any of said facilities from the premises. Title to said facilities and all trademark rights Seller may have in the same shall at all times remain in Seller, and Seller shall have the right to remove any or all of said facilities at any time without prior notice to Buyer thereof, refunding to Buyer any unearned prepaid rental.

12. This agreement supersedes and terminates all prior Supply Contracts between the parties covering the delivery of products to the above indicated address.

STANDARD OIL COMPANY OF CALIFORNIA,
WESTERN OPERATIONS, INC.

_____ By _____

_____, Buyer _____, Seller

S-939-2 (2 PARTY) (7-73)
PRINTED IN U.S.A.

Station #___ - _____

IDENTIFICATION SIGN(S) AND/OR EQUIPMENT

(Attachment referred to in paragraph 11 of Form S-939-2)

			Monthly Rent
Chevron I.D. Signs:	____ of Type _____	@ $ _____ /mo.	$ _____
	____ of Type _____	@ $ _____ /mo.	$ _____
Fin Signs:	____ of Type _____	@ $ _____ /mo.	$ _____
	____ of Type _____	@ $ _____ /mo.	$ _____
Truck Stop Signs:	____ of Type _____	@ $ _____ /mo.	$ _____
	____ of Type _____	@ $ _____ /mo.	$ _____
Pump Block Lighter Boxes:	No. of _____	@ No Charge	$ XXXX
Credit Card Imprinters:	No. of _____	@ $.42 /mo.	$ _____

TOTAL MONTHLY RENT _____

EXHIBIT A

S-939-2-A (1M-CD-11-71)
PRINTED IN U.S.A.

Chevron

Standard Oil Company of California,
Western Operations, Inc.

Liability Insurance Requirements

_____

_____

_____

Dear_____:

The Chevron Dealers Supply Contract between us states:

6.(d) Buyer shall maintain at his own expense during the term hereof liability insurance, in respect of the premises and all activities on or about or in connection with said premises, of the types and in the minimum amounts described generally as follows:

(i) General public liability and property damage insurance (including explosion hazard) affording premises, products, completed operations, contractual and contingent liability (with respect to subcontractors) coverage of not less than $300,000 combined single limit for injuries to or death of any person or persons and property damage for each occurrence.

(ii) Automobile comprehensive public liability and property damage insurance of not less than $100,000 for injuries to or death of any one person and not less than $300,000 for injuries to or death of more than one person resulting from any one occurrence and property damage of not less than $50,000 for each occurrence.

(iii) Excess comprehenseive general public liability and property damage insurance of not less than $1,000,000 per occurrence affording the same coverage and on the same terms and subject to the same conditions as the insurance required under (i) and (ii) above.

(iv) Fire legal liability insurance of not less than $50,000.

The insurance provided above (except fire legal liability insurance) shall include Standard Oil Company of California and its subsidiary or affiliated companies as named insureds, it being the intention of the parties that the insurance so affected shall protect both Buyer and Standard Oil Company of California (including its subsidiaries or affiliates) and be primary insurance for any and all losses in respect of the premises and all activities on or about or in connection with said airport during the term of this agreement and any other agreement between the parties or any extension or renewal thereof. Buyer shall furnish certificates satisfactory to Seller as evidence of such insurance. The insurance shall contain provisions that no cancellation or material changes in any policy shall become effective except upon thirty (30) days' notice to Seller. The insurance companies shall have no recourse against Standard Oil Company of California or Seller for payment of any premiums or assessments under any mutual form policy. Any and all deductibles in all of Buyer's insurance coverage shall be assumed by, be for the account of, and be at Buyer's sole risk.

As a _____ Service Station, you have the option of complying with the above or of waiving this provision. If you elect to waive the required liability insurance, please sign the attached Liability Insurance Waiver. However, if you elect to meet the insurance requirements of your Supply Contract forward the attached Standard Oil Company Certificate of Insurance to your insurance company requesting that it be completed and returned to Standard Oil Company, P. O. Box 1580, Anchorage, Alaska, 99510, within 15 days from the effective date of your Supply Contract.

Excess comprehensive liability insurance (see 6(d)(iii) above) of not less than $1,000,000 is required. Required coverage is available through Standard Oil Company at a minimum cost to you. If you do not elect to obtain the required excess insurance through Standard Oil Company, please have your chosen insurance company forward the necessary evidence of insurance to our office within 15 days from the effective date of your Supply Contract.

Your copy of the Supply Contract will be held in our office until such time as evidence of the required minimum excess and basic liability insurance is received. We hope you will arrange to meet this portion of your contract as soon as possible.

Please sign below to acknowledge receipt of the above information.

Very truly yours,

_____

RECEIPT ACKNOWLEDGED:

_____
Chevron Dealer

Date: _____

Chevron

Standard Oil Company of California,
Western Operations, Inc.

SS No._____

Date_____

LIABILITY INSURANCE

_____

_____

_____

Dear_____:

Your supply contract with Standard requires you to carry minimum insurance as described in paragraph 6(d). You have requested that we waive this provision.

We are agreeable to waive the requirements of paragraph 6(d), reserving the right to withdraw this waiver at any time upon written notice to you. Our waiver should not be deemed a waiver of your continuing obligation under paragraph 6(c) to indemnify and hold Standard harmless. Further, our waiver should not be construed to imply that insurance is unnecessary in your business. Experience clearly shows that all commercial businesses should carry adequate coverage at all times. Accordingly, we urge you to discuss your insurance needs with a qualified agent and secure proper coverage.

Please acknowledge receipt of this waiver in the space below and return a copy to this office.

Very truly yours,

STANDARD OIL COMPANY OF CALIFORNIA,
WESTERN OPERATIONS, INC.

By_____

RECEIVED:

_____
Chevron Dealer

Certificate of Insurance

ISSUED TO

Standard Oil Company of California

_____

_____

DIVISION OFFICE ADDRESS

This is to certify that the following policy(ies) issued by the Company indicated below is (are) in full force and effect as of the date of this Certificate in amounts not less than stated below. Nothing in this Certificate or attachment hereto shall be construed to amend coverage under such policy(ies) beyond the limits, terms, conditions and exclusions contained therein.

INSURED DEALER			STATION NUMBER
INSURED PREMISES: STREET	CITY	STATE	ZIP

	POLICY NUMBER	EXPIRATION DATE	LIABILITY LIMITS BODILY INJURY EACH PERSON	BODILY INJURY EACH OCCURRENCE	PROP. DAMAGE EACH OCCURRENCE
General Public Liability and Property Damage insurance (including explosion hazard) affording premises, products, completed operations, contractual and contingent liability (with respect to subcontractors) coverage			$300,000 COMBINED SINGLE LIMIT		
Fire Legal Liability					$50,000
Comprehensive Automobile Public Liability and Property Damage Insurance			$100,000	$300,000	$25,000

It is hereby agreed that Standard Oil Company of California and its subsidiary or affiliated companies are additional insureds on the above policy(ies) (except for fire legal liability) and said policy(ies) shall be primary insurance for any and all losses in respect of the insured premises and all activities on or about or in connection with said premises. It is further agreed that no cancellation or material changes in any policy(ies) shall become effective except upon thirty (30) days written notice to Standard Oil Company of California at the address shown above. It is agreed that the company indicated below shall have no recourse against Standard Oil Company of California or its subsidiary or affiliated companies for payment of any premiums or assessments under any Mutual Form Policy.

Insurance Company _____

Date _____

By _____
(TITLE)

STANDARD OIL COMPANY

S-939-C.I. (10-74)

members
SB 438

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 15, 1976

SUBJECT: Commerce Committee Substitute for Senate Bill 438 am

TO: Representative Bradley, Chairman,
House Commerce Committee

FROM: David T. Walker, Legislative Counsel

Attached is a committee substitute drafted in accordance with the committee's request. I would like to remind you of an amendment which should be made to the bill to avoid a conflict with controlling federal law (15 U.S.C. 513).

I have attached a copy of a memo to Representative Rudd, dated March 29, which explains the necessity for the amendment and supplies the needed language.

cc: Rep. Rudd
Rep. Gardiner

M E M O R A N D U M

March 29, 1976

SUBJECT: Senate Bill 438 am

TO: Representative Lisa Rudd

FROM: David T. Walker, Staff Attorney DTW

I drafted § 45.50.810(d) of SB 433 at the request of Senate Commerce Committee. It was my intention to parallel the applicable federal law - in fact I represented to the committee that the language did that.

I have attached a copy of an amendment which should be made to the language of the bill. The added language would make it clear that the state law followed the controlling federal anti-trust provisions and would avoid needless litigation.

DTW:bh

Attachment

Amendment suggested to SB 436 am

PAGE 5 LINE 3

After "dealers" insert the following:

"where the effect of the discrimination may be substantially to lessen competition"

PAGE 5 LINE 4

After "costs." insert the following:

"Nothing under this section shall prevent a refiner or distributor from offering a lower price or furnishing a service or facility to a dealer when the offer is made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by that competitor."

SB438 - John Sanders
SOCAL
42 dealer owned, 100 2 party ~~5~~ stations

62% of 3party dwellers net excess $5,000
14% " " " " " 100,000

Page 2, line 22 - unnecessary because of anti-trust laws
"reasonably necessary"
"justified on business grounds"

Add phrase - in conformity with trademark laws.

Page 4, line 18

Robinson-Pattman Act - change (d)

Page 6, line 3

SS No._____

THREE PARTY DEALER SUPPLY CONTRACT

Dated_____, 19_____

1. STANDARD OIL COMPANY OF CALIFORNIA, WESTERN OPERATIONS, INC. ("Seller") agrees to sell to_____

_____

("Buyer") and Buyer agrees to buy from Seller such quantities of petroleum products and such quantities of the brands of tires, tubes and batteries (hereinafter sometimes referred to as "Seller's products") sold by Seller generally for resale in Buyer's locality as are necessary to serve customer demand for Seller's products at Buyer's premises for a term commencing _____, 19____, and ending _____, 19 ____.

2. Delivery shall be made on reasonable notice (preferably at least 48 hours) at _____

_____

_____

(the "premises") and shall be made in Seller's customary manner with equipment selected by Seller in full capacity loads. The price Buyer shall pay Seller for petroleum products hereunder shall be Seller's posted price to its buyers for resale generally at the time and place of delivery for the particular product, grade, quantity and type of delivery involved. The price Buyer shall pay Seller for tires, tubes and batteries shall be Seller's price to buyers for resale generally in Buyer's vicinity. Terms shall be net cash at time of delivery, except at Seller's option.

3. Buyer shall stock at the premises and continuously offer for sale such quantities of Seller's products as are necessary to serve customer demand for said products. Buyer agrees at all times to give the dispensing equipment, displays and advertisements for Seller's products and brands as prominent and convenient positions as those for any other product offered for sale on the premises. Buyer recognizes the high regard of the motoring public for service stations selling under Seller's trademarks and brands based upon the general cleanliness and the excellence of products and services dispensed at such service stations; and accordingly, Buyer agrees that he shall operate the premises as a first-class service station and shall not by act or omission disparage or diminish in any way the good reputation of said trademarks, brands, products or service stations.

Buyer shall not engage in or permit any unlawful, fradulent, or deceptive act or practice on the premises.

4. (a) The petroleum products covered by this agreement shall be sold by Buyer as the products of Seller and only under the trademarks or brands regularly used by Seller for such products and Buyer shall not, at any time, offer for sale under Seller's trademarks or brands, any product not authorized to be sold thereunder.

(b) Buyer shall so conduct his operations as to eliminate any likelihood of confusion between Seller's products and those of others, and as to eliminate any likelihood of substitution of the products of others for those of Seller. Buyer agrees to abide by such reasonable regulations to this end as Seller may from time to time establish by notice to Buyer. Buyer further agrees to comply with all applicable laws, ordinances and regulations of governmental authorities in the sale or resale of all products supplied or purchased hereunder.

(c) All signs advertising Seller's products and all signs in the colors used by Seller to identify its products or the places at which its products are sold and all of Seller's trademark rights therein are, and they shall continue to be, the property of Seller. No use shall be made of any such signs except in connection with products manufactured or handled by Seller, and Seller shall have the right, at all times during the life of this agreement and within a reasonable period thereafter, to remove or obliterate such signs. Buyer may not use other signs to advertise products purchased from Seller without Seller's written consent. It is agreed that any paint scheme applied by Seller to the premises to which deliveries are made hereunder may be that used to identify dealer outlets marketing Seller's petroleum products, and that Seller shall, at all times during the life of this agreement and within a reasonable period thereafter, have the right, but not the obligation, to repaint so much of the premises as it elects, in a color or colors selected by it. If Seller at any time removes or obliterates any signs or repaints any of the premises, Seller need not restore any pre-existing signs on or paint scheme of the premises. Buyer agrees, during this agreement and thereafter, not to simulate in any way any trademarks or brands, signs or paint schemes identifying Seller's products or the places or outlets where they are sold or marketed.

5. (a) There shall be no obligation to deliver or to receive or use the products herein described when and while, and to the extent that, the receiving or using or manufacture or making deliveries in the customary manner are prevented or hindered by act of God, fire, riot, labor disturbances, accident, war or the acts of any government (whether foreign or domestic,

SS No._____

THREE PARTY DEALER SUPPLY CONTRACT

Dated _____ _____, 19_____

1. STANDARD OIL COMPANY OF CALIFORNIA, WESTERN OPERATIONS, INC. ("Seller") agrees to sell to _____

_____

("Buyer") and Buyer agrees to buy from Seller such quantities of petroleum products and such quantities of the brands of tires, tubes and batteries (hereinafter sometimes referred to as "Seller's products") sold by Seller generally for resale in Buyer's locality as are necessary to serve customer demand for Seller's products at Buyer's premises for a term commencing _____, 19____, and ending _____, 19 ____.

2. Delivery shall be made on reasonable notice (preferably at least 48 hours) at _____

_____

_____

(the "premises") and shall be made in Seller's customary manner with equipment selected by Seller in full capacity loads. The price Buyer shall pay Seller for petroleum products hereunder shall be Seller's posted price to its buyers for resale generally at the time and place of delivery for the particular product, grade, quantity and type of delivery involved. The price Buyer shall pay Seller for tires, tubes and batteries shall be Seller's price to buyers for resale generally in Buyer's vicinity. Terms shall be net cash at time of delivery, except at Seller's option.

3. Buyer shall stock at the premises and continuously offer for sale such quantities of Seller's products as are necessary to serve customer demand for said products. Buyer agrees at all times to give the dispensing equipment, displays and advertisements for Seller's products and brands as prominent and convenient positions as those for any other product offered for sale on the premises. Buyer recognizes the high regard of the motoring public for service stations selling under Seller's trademarks and brands based upon the general cleanliness and the excellence of products and services dispensed at such service stations; and accordingly, Buyer agrees that he shall operate the premises as a first-class service station and shall not by act or omission disparage or diminish in any way the good reputation of said trademarks, brands, products or service stations.

Buyer shall not engage in or permit any unlawful, fradulent, or deceptive act or practice on the premises.

4. (a) The petroleum products covered by this agreement shall be sold by Buyer as the products of Seller and only under the trademarks or brands regularly used by Seller for such products and Buyer shall not, at any time, offer for sale under Seller's trademarks or brands, any product not authorized to be sold thereunder.

(b) Buyer shall so conduct his operations as to eliminate any likelihood of confusion between Seller's products and those of others, and as to eliminate any likelihood of substitution of the products of others for those of Seller. Buyer agrees to abide by such reasonable regulations to this end as Seller may from time to time establish by notice to Buyer. Buyer further agrees to comply with all applicable laws, ordinances and regulations of governmental authorities in the sale or resale of all products supplied or purchased hereunder.

(c) All signs advertising Seller's products and all signs in the colors used by Seller to identify its products or the places at which its products are sold and all of Seller's trademark rights therein are, and they shall continue to be, the property of Seller. No use shall be made of any such signs except in connection with products manufactured or handled by Seller, and Seller shall have the right, at all times during the life of this agreement and within a reasonable period thereafter, to remove or obliterate such signs. Buyer may not use other signs to advertise products purchased from Seller without Seller's written consent. It is agreed that any paint scheme applied by Seller to the premises to which deliveries are made hereunder may be that used to identify dealer outlets marketing Seller's petroleum products, and that Seller shall, at all times during the life of this agreement and within a reasonable period thereafter, have the right, but not the obligation, to repaint so much of the premises as it elects, in a color or colors selected by it. If Seller at any time removes or obliterates any signs or repaints any of the premises, Seller need not restore any pre-existing signs on or paint scheme of the premises. Buyer agrees, during this agreement and thereafter, not to simulate in any way any trademarks or brands, signs or paint schemes identifying Seller's products or the places or outlets where they are sold or marketed.

5. (a) There shall be no obligation to deliver or to receive or use the products herein described when and while, and to the extent that, the receiving or using or manufacture or making deliveries in the customary manner are prevented or hindered by act of God, fire, riot, labor disturbances, accident, war or the acts of any government (whether foreign or domestic,

Federal, State, county or municipal) or other causes beyond the reasonable control of the party affected. In case of partial or total interruption or loss or shortage of transportation facilities or supplies, or shortage of products deliverable hereunder, Seller shall have the right to prorate delivery of available products among Buyer and other outlets and customers of Seller, contract or otherwise.

(b) Due to uncertainties in the supply/demand situation, Seller may not have sufficient supplies of one or more products from its then contemplated sources of supply to meet the full requirements of all of its customers, contract or otherwise. Whenever that situation exists and Seller's performance hereunder is not otherwise excused, Seller may reduce deliveries of such product(s) on any basis which in Seller's opinion is equitable, allowing for such priorities to such classes of customers as Seller deems appropriate. No such reduction need be made up. If any such reduction occurs, Buyer shall have the option to accept such reduction or to terminate this Agreement as to any or all products by 15 days' notice to Seller given at any time within 30 days after the notice of reduction.

6. (a) In the performance of this agreement Buyer is engaged in an independent business and nothing herein contained shall be construed as granting to Seller any right to control Buyer with respect to his conduct of said business. Seller has no right to exercise any control over any of Buyer's employees, all of whom are entirely under the control and direction of Buyer, who shall be responsible for their actions and omissions.

(b) Buyer shall, at his own expense, during the term hereof, maintain full insurance under any Workmen's Compensation Laws effective in the state covering all persons employed by and working for him in connection with the performance of this agreement, and upon request shall furnish Seller with satisfactory evidence of the maintenance of such insurance. Buyer accepts exclusive liability for all contributions and payroll taxes required under Federal Social Security Laws and State Unemployment Compensation Laws or other payments under any laws of similar character as to all persons employed by and working for him.

(c) Buyer agrees to indemnify, defend, and hold Seller, its agents and employees, harmless from and against all expense, liability and claims for damage to property (including Buyer's property) or injury to or death of persons (including Buyer) directly or indirectly resulting from anything occurring from any cause on or about or in connection with the maintenance or operation of Buyer's premises or anything located thereon.

(d) Buyer shall maintain at his own expense during the term hereof liability insurance, in respect of the premises and all activities on or about or in connection with said premises, of the types and in the minimum amounts described generally as follows:

(i) General public liability and property damage insurance (including explosion hazard) affording premises, products, completed operations, contractual and contingent liability (with respect to subcontractors) coverage of not less than $300,000 combined single limit for injuries to or death of any person or persons and property damage for each occurrence.

(ii) Automobile comprehensive public liability and property damage insurance of not less than $100,000 for injuries to or death of any one person and not less than $300,000 for injuries to or death of more than one person resulting from any one occurrence and property damage of not less than $25,000 for each occurrence.

(iii) Excess comprehensive general public liability and property damage insurance of not less than $1,000,000 per occurrence affording the same coverage and on the same terms and subject to the same conditions as the insurance required under (i) and (ii) above.

(iv) Fire legal liability insurance of not less than $50,000.

The insurance provided above (except fire legal liability insurance) shall include Standard Oil Company of California and its subsidiary or affiliated companies as named insureds, it being the intention of the parties that the insurance so effected shall protect both Buyer and Standard Oil Company of California (including its subsidiaries or affiliates) and be primary insurance for any and all losses in respect of the premises and all activities on or about or in connection with said premises during the term of this contract and any other contract between the parties or any extension or renewal thereof. Buyer shall furnish certificates satisfactory to Seller as evidence of such insurance. The insurance shall contain provisions that no cancellation or material changes in any policy shall become effective except upon thirty (30) days' notice to Seller. The insurance companies shall have no recourse against Standard Oil Company of California or Seller for payment of any premiums or assessments under any mutual form policy. Any and all deductibles in all of Buyer's insurance coverage shall be assumed by, be for the account of, and be at Buyer's sole risk.

7. Any tax, duty, toll, fee, impost, charge or other exaction, or the amount equivalent thereto, and any increase thereof now or hereafter imposed, levied or assessed by any governmental authority upon, measured by, incident to or as a result of the transaction herein provided for or the transportation, production, manufacture, use or ownership of the goods the subject matter of this agreement, shall, if collectible or payable by Seller, be paid by Buyer on demand by Seller. Any such payment shall be in addition to the prices otherwise herein provided for.

8. (a) Buyer may terminate this contract at any time during the above specified term by giving Seller ninety (90 days' written notice of such termination.

(b) In case of any breach or default by Buyer hereunder, Seller may, in addition to its other remedies, give Buyer written notice of termination specifying the grounds therefor, and unless such breach or default shall be cured by Buyer within ten (10) days after such notice is given, this contract shall terminate at the expiration of such ten (10) days; provided, however, that Seller shall have the right to terminate this contract forthwith upon written notice to Buyer:

(i) if Buyer by act or omission breaches any provision of this contract which breach cannot be cured, or

(ii) in the event of any default or defaults hereunder by Buyer after notice of three previous defaults of any kind have been given hereunder, regardless of Buyer's curing of said previous defaults.

(c) Concurrently herewith, Buyer and Seller have entered into a Dealer Lease for the premises to be served hereunder. It is agreed that any breach or default in the performance of the terms and conditions of the said Dealer Lease shall constitute a breach of this contract, and the cancellation or termination of said Dealer Lease shall be effective to cancel or terminate this contract without additional notice hereunder.

(d) Waiver by Seller of any default or defaults hereunder by Buyer shall not be deemed to be a waiver of any other or continuing defaults hereunder. No termination of this contract shall relieve Buyer of responsibility for obligations incurred prior to termination.

9. This contract is personal to the Buyer, and Buyer may not assign the same, or any interest therein (either voluntarily or by operation of law) by assignment or other arrangements having similar effect. In case of Buyer's death or if incapacity shall prevent his personal supervision of the performance of this contract, or if any insolvency, bankruptcy or receivership proceedings are instituted by or against Buyer, then this contract shall automatically terminate.

10. Seller authorizes Buyer to accept credit cards approved by Seller for purchases of the types of products and services which Seller may from time to time designate. Buyer agrees to honor such credit cards subject to terms and conditions established by Seller. Seller shall accept from Buyer authorized invoices or other evidences of debt issued on such credit cards for sales of products and services made by Buyer to cardholders;provided, however Seller reserves the right to charge back to Buyer, or to refuse to accept, any invoice pursuant to the terms and conditions established by Seller.

11. This agreement supersedes and terminates all prior Supply Contracts between the parties covering the delivery of products to the above indicated address.

STANDARD OIL COMPANY OF CALIFORNIA,
WESTERN OPERATIONS, INC.

_____ By _____

_____, Buyer _____, Seller

S-939-3 (3-PARTY) (5-74)
PRINTED IN U.S.A.

DEALER LEASE

Dated _____, 19____

1. STANDARD OIL COMPANY OF CALIFORNIA, WESTERN OPERATIONS, INC. ("Standard"), leases to _____

_____

("Dealer"), for the term commencing the _____ day of _____, 19____, and ending the _____ day of _____, 19____, the following described premises in the City of _____, County of _____, State of _____, to wit:

together with all buildings, improvements and equipment (except signs) located thereon as listed in Exhibit A attached hereto and made a part hereof, and together with any additions, replacements or substitutions thereto (hereinafter sometimes collectively called "premises").

2. OPERATION – USE OF PREMISES.

(a) Dealer agrees

(1) to operate said premises effectively as a first-class service station for the promotion and sale of merchandise and services normally sold at a first-class service station as follows: gasoline; oils; tires; batteries; lubrication; tire and battery services; automotive accessories; and minor motor vehicle repairs; this being the purpose for which this lease has been made and the inducement to Standard to make this lease to Dealer;

(2) to conduct all operations hereunder in strict compliance with all applicable laws, ordinances and regulations of governmental authorities including those attached hereto relating specifically to the premises (and no intoxicating beverages shall ever be consumed, sold or otherwise disposed of on the premises);

(3) to operate and manage said service station personally on a full-time basis;

(4) to keep the premises open for operation and fully illuminated at least from _____ a.m. to _____ p.m. each day, seven days a week; and

(5) to keep said premises, including the rest rooms and all buildings, driveways, lawns, shrubs and equipment thereon, in good appearance and in a clean and orderly condition, and to provide at all times sufficient, qualified and neatly uniformed attendants.

Dealer shall not engage in sales or services of a type that would conflict with the operation of the premises as a first-class service station, or with the effective promotion of sales and services listed above. Dealer recognizes that failure to operate during the hours and in the manner specified above will not only impair Dealer's sales but will adversely affect the motoring public's patronage of other retail service stations supplied by Standard.

(b) Dealer shall not use the premises, or any part thereof, for the parking, storage, rental or sale of automotive vehicles, trailers, equipment, garden supplies, or other sales or services not normally offered at a first-class service station (normal sales and services being enumerated in paragraph 2.(a)(1) above) without Standard's prior written consent. Where given, such consent will be conditioned upon

(1) the use of only such part of the premises for such purposes as may be specified by Standard, and

(2) the payment by Dealer to Standard for such use an amount as provided in a "License – Non Service Station Use" which Dealer hereby agrees to enter into as a condition of such approval.

3. UNDERLYING ESTATES.

(a) Standard's interest in the premises is or may be a leasehold estate derived from a third party whose interest in the premises may or may not be of record. This lease is subordinate to all the terms and conditions of any lease now in effect, or hereafter entered into, with such third party evidencing such leasehold estate of Standard. This lease, at Standard's option, shall terminate if said lease with such third party is terminated in any manner or by either party thereto and Standard shall in no way be liable to Dealer for such termination, whether voluntary or involuntary. Dealer hereby agrees that he will not, by act or omission, breach any of the terms and conditions of Standard's lease with the third party of which Dealer has notice.

(b) In order that Standard may ascertain and verify the calculation of rents under the above-mentioned third party lease, if the rent thereunder is based on receipts from sales of products or services at the premises, Dealer agrees to keep accurate books and records of the quantity and dollar amount of all his sales of merchandise and services, and of his merchandise cost prices, and to make such books and records available to Standard for inspection during regular business hours. Dealer further agrees that, if requested by Standard, he will give Standard on or before the 10th day of each month a written statement of all business done at the premises during the preceding month in such form and detail as to substantiate the calculation of rents under the third party lease for the preceding month.

4. RENT.

Dealer shall pay Standard rent the sum of _____ Dollars ($_____) per lease year, payable in installments at the rate of _____ cents (_____¢) for each gallon of motor fuel delivered to the premises, but not less than _____ _____ Dollars ($_____) for any quarter of such year (prorated for any period less than a full quarter). The rent shall be payable as it accrues at the time of each delivery. Balance of quarterly rent due, if any, shall be payable upon receipt of statement. At the end of each lease year, Standard shall refund to Dealer any excess rent collected during the year, excluding from such calculation all motor fuel delivered to Dealer and resold under state contracts with Standard.

5. DEFAULT.

In case of any default or breach of any covenant, condition or other provision of this lease by Dealer, Standard may, in addition to its other remedies, give Dealer written notice of termination specifying the grounds therefor; and unless such breach or default shall be cured by Dealer within 10 days after such notice is given, this lease shall terminate at the expiration of such 10 days; provided, however, that Standard shall have the right to terminate this lease forthwith upon written notice to Dealer:

(a) if the premises are closed for the operation of a service station for 60 consecutive hours (this provision being in addition to Dealer's obligations under paragraph 2, above);

(b) if Dealer by act or omission breaches any covenant, condition or other provision of this lease which breach cannot be cured; or

(c) in the event of any default by Dealer after notice of three previous defaults of any kind have been given hereunder, regardless of Dealer's curing of said previous defaults.

Waiver by Standard of any default or defaults hereunder by Dealer shall not be deemed to be a waiver of any other or continuing default hereunder.

No termination of this lease shall relieve Dealer of responsibility for obligations incurred prior to termination.

6. ASSIGNMENT – SUBLEASING.

This lease is personal to the Dealer, and Dealer may not assign said lease, or any interest therein, and may not let or sublet the premises, or any part thereof, or any right or privilege appurtenant thereto (by assignment, sublease or other arrangement having similar effect).

7. INCAPACITY – BANKRUPTCY.

In case of Dealer's death or if incapacity shall prevent his personal supervision of the performance of this lease, or if any insolvency, bankruptcy or receivership proceedings are instituted by or against Dealer, then this lease shall automatically terminate.

8. TERMINATION BY DEALER.

Dealer may terminate this lease at any time during the term hereof, upon giving Standard 90 days' written notice of such termination.

9. TERMINATION BY STANDARD – FIRST 18 MONTHS.

Standard may terminate this lease without cause upon 30 days' written notice of termination given at any time during the first eighteen full calendar months in which Dealer has been a tenant of the premises, whether or not all under this lease.

10. MAINTENANCE – UPKEEP – REPAIRS – REPLACEMENTS.

(a) By Dealer. Dealer acknowledges, by signing Exhibit "A" referred to in paragraph 1 of this lease, that he has thoroughly inspected the premises and all equipment, fixtures and facilities located thereon, and that the same are, at the date hereof, complete and in good order, condition and repair. Dealer agrees at his sole cost and expense properly to maintain, perform upkeep on, repair, and replace equipment, fixtures and facilities owned or supplied by Standard, as so indicated on said Exhibit "A," and according to guides prescribing proper care which Standard may from time to time provide to Dealer. Dealer shall maintain, repair and replace when necessary, all equipment, fixtures and other facilities owned or installed by Dealer.

(b) By Standard. Upon reasonable notice by Dealer to Standard, Standard agrees (except where occasioned by Dealer's negligence) to make all major repairs to or replacements of only the following listed facilities and equipment owned or supplied by Standard:

> Air compressor; Air and water dispensers; Auto lift; Fire extinguishers; Gasoline pumps, tanks and lines; Lubricating oil tanks; Painting; Paving and driveways; Piping, Signs; Wiring; Roofs, walls, windows and foundations of buildings;

provided, however, that Dealer's sole remedy if Standard shall fail to make such repairs and replacements shall be the termination of this lease. Dealer hereby waives any provision of law according any other remedy.

(c) Dealer shall not make any additions, alterations, rearrangements or improvements to the premises, or any property thereon, or remove any such property therefrom, without Standard's prior written consent. Dealer shall not, without Standard's prior written consent, alter, remove, cover, add to or deface any paint or signs on the premises or on any property located thereon, or add additional point or signs to the premises or to any property located thereon. Such pumps, tanks, containers or receptacles as have been furnished to Dealer by Standard and are or may be marked as such, shall be used solely for the storing, handling or dispensing of products supplied by Standard. Standard will not unreasonably withhold consent to the required identification of, and installations to dispense, products Dealer desires to sell at the premises.

11. INDEMNITY.

Dealer agrees to indemnify, defend and hold Standard, its agents and employees, harmless from and against all expense, liability and claims for damage to property (including Dealer's property) or injury to or death of persons (including Dealer) directly or indirectly resulting from anything occurring from any cause on or about or in connection with the maintenance or operation of the premises, or anything located thereon.

12. SURRENDER.

(a) Upon termination of this lease, by expiration or otherwise upon demand by Standard, Dealer will peaceably and quietly surrender and yield up to Standard the premises and all appurtenances, fixtures and other equipment in as good order, condition and repair as the same are now or into which they may be put, reasonable use and wear thereof excepted.

(b) If without a written renewal of this lease, Dealer holds possession of the premises after its expiration, Dealer shall become a tenant from month to month only, upon the terms specified herein.

13. DESTRUCTION OR CONDEMNATION.

In the event the leased premises or a substantial portion thereof are destroyed or taken by eminent domain (the filing of an eminent domain action shall be deemed a taking), or should the operation of the premises as a service station be prevented by any law, ordinance or act of lawful authority, either party may terminate this lease upon 7 days' written notice to the other; provided, however, that Dealer shall have no right or interest in any damages or compensation awarded as the result of taking by eminent domain, which shall be the sole property of Standard.

14. SUPPLY CONTRACT.

Concurrently herewith Standard and Dealer have entered into a Three Party Dealer Supply Contract for the sale by Standard and purchase by Dealer of petroleum and allied service station products. Dealer, as a covenant of this lease, agrees that the breach of any of the terms or conditions of said Supply Contract shall constitute a breach of this lease, and that the cancellation or termination of said Supply Contract shall, at the option of Standard, cancel or terminate this lease.

15. DEALER'S EQUIPMENT.

Upon termination of this lease, neither Standard nor any incoming dealer shall have any obligation to purchase from Dealer any of Dealer's inventory, tools, equipment or supplies. Standard agrees, however, to credit Dealer's account for the reasonable value of resale merchandise in merchantable condition which Dealer has purchased from Standard, such credit not to exceed Dealer's cost; no credit shall be allowed for goodwill.

16. TAXES.

Dealer shall pay all taxes levied or assessed as the result of improvements or property owned by Dealer placed on said premises by Dealer, promptly and before the same shall become delinquent.

17. DEALER'S BUSINESS.

It is understood that Dealer is engaged in an independent business, and nothing herein shall be construed as reserving to Standard the right to control Dealer's business or operations or the manner in which the same shall be conducted, Dealer's obligation to Standard hereunder being the performance of the terms and conditions of this lease.

18. PRIOR LEASES.

This agreement supersedes and terminates all prior leases or subleases between the parties hereto covering the above-described premises.

19. NOTICE.

Any and all written notices to be given hereunder shall be addressed to Dealer at _____

_____

and to Standard at _____

_____

STANDARD OIL COMPANY OF CALIFORNIA,
WESTERN OPERATIONS, INC.

By _____

_____

_____, Dealer

_____

4. RENT

Dealer agrees to pay Standard a rental for use of the premises as follows:

(a) Basic Rent - A basic rent during each year of this lease as follows:

	1st Lease Year	2nd Lease Year	3rd Lease Year	4th Lease Year	5th Lease Year
Basic Rent per Year	$_____	$_____	$_____	$_____	$_____

payable (1) in equal monthly installments or (2) in accordance with a schedule, as shown below:

(1) Payable in twelve (12) equal monthly installments in advance on the first day of each and every calendar month (prorated for any period less than a calendar month) during the term hereof as follows:

	1st Lease Year	2nd Lease Year	3rd Lease Year	4th Lease Year	5th Lease Year
Basic Rent per Month	$_____	$_____	$_____	$_____	$_____

(2) Payable in advance on the first day of each and every calendar month (prorated for any period less than a calendar month) during the term hereof in accordance with the following schedule:

Month	1st Lease Year	2nd Lease Year	3rd Lease Year	4th Lease Year	5th Lease Year
January	$_____	$_____	$_____	$_____	$_____
February	$_____	$_____	$_____	$_____	$_____
March	$_____	$_____	$_____	$_____	$_____
April	$_____	$_____	$_____	$_____	$_____
May	$_____	$_____	$_____	$_____	$_____
June	$_____	$_____	$_____	$_____	$_____

Month	1st Lease Year	2nd Lease Year	3rd Lease Year	4th Lease Year	5th Lease Year
July	$_____	$_____	$_____	$_____	$_____
August	$_____	$_____	$_____	$_____	$_____
September	$_____	$_____	$_____	$_____	$_____
October	$_____	$_____	$_____	$_____	$_____
November	$_____	$_____	$_____	$_____	$_____
December	$_____	$_____	$_____	$_____	$_____

(b) Rental Surcharge - Standard shall have the right at its option to add a rental surcharge to the basic rent to be paid by Dealer during the term of this Lease by written notice to Dealer at any time prior to the effective date of such rental surcharge. Any rental surcharge to be added will be determined by Standard prior to the first day of each calendar year and shall be payable by Dealer as additional rent in equal monthly installments in advance at the time of the basic rental payments described above; PROVIDED, HOWEVER, that the rental surcharge imposed by Standard and payable by Dealer for any calendar year (prorated for any period less than a calendar year) shall not be more than ten percent (10%) of the total rent (basic rent plus rental surcharges) payable under this lease by Dealer during the preceding calendar year.

_____, 19__

Station No. _____

DEALER LEASE
MODIFICATION OF RENTAL

_____
_____
_____

Dear Mr. _____:

Please refer to the Dealer Lease dated _____, as now operative between us, and more particularly to paragraph 4 thereof.

Under regulations issued by the Cost of Living Council on August 17, 1973, service station rentals may not exceed the rent charged for the station pursuant to contractual terms prevailing on May 15, 1973. Accordingly, it is hereby agreed that effective _____, and continuing thereafter until rescinded by Standard, paragraph 4 of your Dealer Lease is amended to read as it appeared in the Dealer Lease in effect on May 15, 1973, as follows:

"Lessee agrees to pay to Lessor a rental for use of the premises as follows:

(a) In advance on the first (1st) day of each and every calendar month during the term hereof, the sum of _____ Dollars ($_____). Said rental shall be subject to adjustment as follows: If the average monthly gallons of gasoline delivered to the premises during the 12-month period immediately preceding each anniversary date shall represent an increase or decrease of five percent (5%) or more of the base gallonage, said rental shall be adjusted to equal the product of said average monthly deliveries of gallons of gasoline times _____ Cent(s) (_____¢). 'Base gallonage' shall mean _____ gallons until such time as a rental adjustment is made and thereafter 'base gallonage' shall mean the average monthly gallons of gasoline delivered to the premises during the 12-month period immediately preceding the date of the latest rental adjustment. Adjustment, if any, shall be made as soon after each anniversary date as average monthly deliveries can be calculated and shall be retroactive to the anniversary date.

(b) In addition to the rental provided for in (a), above, Lessee further agrees to pay Lessor at the time of delivery of gasoline to the premises _____ Cent(s) (_____¢) per gallon of gasoline so delivered."

Standard reserves the right to withdraw this rental modification, in whole or in part, at any time upon written notice to you, and to reinstate the rental provision as it appears in paragraph 4 of your Dealer Lease.

Very truly yours,

STANDARD OIL COMPANY OF CALIFORNIA,
WESTERN OPERATIONS, INC.

By_____

EXHIBIT "A"

Station No. _____

Dealer Lease Dated _____

THE PREMISES

Dealer acknowledges that he has thoroughly inspected, and acknowledges receipt of, one _____ bay service station complete with sales and rest rooms, _____ pump blocks, gasoline storage tanks, yard and yard lighting, signs, _____ credit card imprinters and special improvements (including but not limited to):

_____ Air Conditioner (evaporator/refrigerator)

_____ Hot Water Heater

_____ Complete Landscaping

_____ Vending Area

_____ _____

_____ _____

DEALER UPKEEP, MAINTENANCE, REPAIR AND REPLACEMENT RESPONSIBILITIES

Dealer agrees at all times to keep the premises, including the rest rooms and all buildings, driveways, lawns, shrubs and equipment, in good appearance and in a clean, orderly condition, and, at his expense, to perform upkeep on, maintain, repair and replace equipment, fixtures and facilities owned or supplied by Standard as set forth below:

1. Yard
   - A. Sweep, keep free of litter and dirt.
   - B. Inspect regularly and advise Standard of breaks or other failures in paving.
2. Landscaping
   - A. Water, fertilize, weed, cut, remove litter from planters and landscaping.
   - B. Repair and replace sprinkler heads.
3. Lighting
   - A. Advise Standard immediately of any malfunction or of burned-out tubes or lamps.
4. Plumbing
   - A. Clear yard catch basins, plugged toilets and urinals.
   - B. Repair leaky faucets and traps.
   - C. Drain water lines to prevent freezing. (Damages resulting from failure to drain lines, and expenses to correct will be borne by Dealer.)
   - D. Arrange for cleaning of grease and sand traps.
   - E. Advise Standard immediately of leaks in fixed air and water lines which cannot be repaired by tightening fittings.
5. Heating – Air-conditioning – Evaporative Coolers
   - A. Replace filters and cooling pads as required.
   - B. Clean Sumps.
   - C. Adjust pump belt tension.
   - D. Oil Motors (equipped with cups).
   - E. Advise Standard of any malfunction.
6. Glasswork
   - A. Clean windows regularly.
   - B. Remove tape, extraneous advertising posters and decals.
   - C. Replace rest room mirrors whenever cracked or broken.

A. Perform regularly scheduled maintenance to keep floors clean, grease and oil-free.

B. Repair any damage resulting from the addition to, or removal of the Dealer's equipment.

8. Painting

A. Maintain appearance of painted surfaces by periodically cleaning and removing greasy hand-prints, graffitti, etc.

B. Minor touch-up using spray or canned paints in accordance with Standard's specifications.

9. Tanks

A. Check monthly for water (use water detector paste on gauge stick).

B. Check daily for inventory leakage.

C. Empty waste oil tank.

D. Lubricate fill caps including the "O" ring.

E. Check for proper product identification tags and advise Company promptly of missing or damaged tags.

10. Pumps and Dispensers

A. Oil electric motor (if equipped with oil cups) and linkage.

B. Periodically check pumps for accuracy, reporting out-of-tolerance conditions to Standard.

C. Maintain and replace gasoline pump hoses.

D. Maintain, repair and replace gasoline nozzles.

E. Maintain, repair and replace gasoline hose swivels.

F. Maintain, repair and replace air and water hoses, air gauges and hose bibs.

G. Replace spin-on pump filters with filters supplied by Standard once each year.

11. Compressor

A. Drain water daily.

B. Add or change oil as needed.

C. Regularly inspect and clean air inlet filter element.

D. Report malfunctions immediately to Standard.

12. Other Equipment

A. Maintain and repair oil cabinets and driveway bell signals.

B. Regularly check and maintain proper oil level in hoists.

C. Advise Standard when replacement required.

13. Rest Rooms

A. Clean and maintain rest room facilities and dump receptacles regularly.

B. Keep the restrooms properly supplied with paper products, soaps and disinfectants.

C. Replace dispensers and trash receptacles with items of equal quality and similar construction when required.

D. Advise Standard if major maintenance is required for facilities.

14. Miscellaneous

A. Maintain, repair and replace all locks and keys.

B. Lubricate overhead door tracks. Replace broken or frayed pull ropes.

C. Replace electrical fuses (household screw type only).

D. Maintain fire extinguishers in a serviceable condition at all times, ordering replacement extinguishers as needed.

E. Maintain, repair and replace cash boxes.

_____

Dealer

STANDARD OIL COMPANY OF CALIFORNIA,
WESTERN OPERATIONS, INC.

_____, 19__

STATION NO. _____

_____

_____

_____

TWENTY-FOUR-HOUR INCENTIVE

Dear _____ :

Reference is made to the agreement(s) dated _____, 19__, between us respecting the service station premises located at _____ _____, _____, _____. We understand that it is your desire to operate and to fully illuminate the service station premises for twenty-four hours per day on _____ each week during the months of _____. In order to assist you to operate and fully illuminate the service station premises for twenty-four hours per day on the foregoing days, we will pay you a "Twenty-Four-Hour Operation Incentive" when and so long as you satisfactorily operate and illuminate the service station premises for twenty-four hours per day on the day(s) during the months indicated above. This will be paid by check or credited to your account on or before the 20th of each month in an amount equal to one quarter of one cent (.25 cent) on _____ % of the total gallons of gasoline delivered by us to your service station during the preceding calendar month for the above months.

This agreement may be terminated by either party upon written notice to the other party.

Please acknowledge acceptance of and agreement to the terms contained herein by signing one copy of this letter in the space provided below and returning it to us.

Yours very truly,

STANDARD OIL COMPANY OF CALIFORNIA,
WESTERN OPERATIONS, INC.

By _____

DEALER

_____

_____

Date: _____, 19__

S-927 (CD-8-70)
Printed in U.S.A.

Chevron

Standard Oil Company of California,
Western Operations, Inc.

Bona Fide Service Station
Liability Insurance Requirements

_____

_____

_____

Dear _____:

The Chevron Dealers Supply Contract between us states:

6.(d) Buyer shall maintain at his own expense during the term hereof liability insurance, in respect of the premises and all activities on or about or in connection with said premises, of the types and in the minimum amounts described generally as follows:

(i) General public liability and property damage insurance (including explosion hazard) affording premises, products, completed operations, contractual and contingent liability (with respect to subcontractors) coverage of not less than $300,000 combined single limit for injuries to or death of any person or persons and property damage for each occurrence.

(ii) Automobile comprehensive public liability and property damage insurance of not less than $100,000 for injuries to or death of any one person and not less than $300,000 for injuries to or death of more than one person resulting from any one occurrence and property damage of not less than $50,000 for each occurrence.

(iii) Excess comprehenseive general public liability and property damage insurance of not less than $1,000,000 per occurrence affording the same coverage and on the same terms and subject to the same conditions as the insurance required under (i) and (ii) above.

(iv) Fire legal liability insurance of not less than $50,000.

The insurance provided above (except fire legal liability insurance) shall include Standard Oil Company of California and its subsidiary or affiliated companies as named insureds, it being the intention of the parties that the insurance so affected shall protect both Buyer and Standard Oil Company of California (including its subsidiaries or affiliates) and be primary insurance for any and all losses in respect of the premises and all activities on or about or in connection with said airport during the term of this agreement and any other agreement between the parties or any extension or renewal thereof. Buyer shall furnish certificates satisfactory to Seller as evidence of such insurance. The insurance shall contain provisions that no cancellation or material changes in any policy shall become effective except upon thirty (30) days' notice to Seller. The insurance companies shall have no recourse against Standard Oil Company of California or Seller for payment of any premiums or assessments under any mutual form policy. Any and all deductibles in all of Buyer's insurance coverage shall be assumed by, be for the account of, and be at Buyer's sole risk.

Excess comprehensive liability insurance (see 6(d)(iii) above) of not less than $1,000,000 is required. Required coverage is available through Standard Oil Company at a minimum cost to you. If you do not elect to obtain the required excess insurance through Standard Oil Company, please have your chosen insurance company forward the necessary evidence of insurance to our office within 15 days from the effective date of your Supply Contract.

Please forward the attached Standard Oil Company Certificate of Insurance to your insurance company requesting that it be completed and returned to our Division Office within 15 days from the effective date of your contract.

Your copy of the Supply Contract will be held in our office until such time as evidence of the required minimum excess and basic liability insurance is received. We hope you will arrange to meet this portion of your contract as soon as possible.

Please sign below to acknowledge receipt of the above information.

Very truly yours,

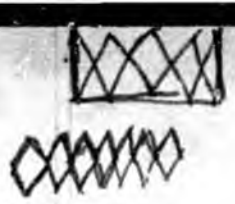
_____

RECEIPT ACKNOWLEDGED:

_____

Chevron Dealer

Date: _____



A — B

Definitions distributor

4 leased from Tesoro of 17 employee run

buy gas on contract from Tesoro

30 days in Tesoro/Toppers Contracts

Gene Wildes

this is a lease not a franchising

Dealers

How many dealers in favor of this bill

Have Quarterly dealer meetings

Solved check problem in this meeting

7 new leases renegotiated hours

— 820 — Must put assignability in the bill to make goodwill works

He is paying for other guy loose his lease

Result might be to loose good leasee's

Mr. Bill Shreve
Union Oil in Anc

Adequate laws to regulate dealers

Have right to approve new dealer coming in

Good will – hard to put dollar figure on
dealer will negotiate settlement on "old" merchandise

Make loans to lessee's for others

Union specifies hours

Texaco – Ralph Ehrlich
75 retail outlets
23 owned
Do not specify hours

Only one termination in 12 years

Tesoro – Toppers – Paul Choquette
have 21 stations – have training program – 4 leased & 17 employers
150 indepent retail dealers – owns own facility

(1) [800] not needed – do dealers need

(2.) (5) what does this mean

(3.) (d) would affect Topper as independent since
couldn't negotiate for better price

(4.) p. 4, 25

MR. CHAIRMAN, AND MEMBERS OF THE COMMERCE COMMITTEE:
MY NAME IS PAUL D. CHOQUETTE; I AM MANAGER OF TOPPERS OIL CORPORATION, ANCHORAGE, ALASKA AND I REPRESENT THIS COMPANY WITH THE FOLLOWING STATEMENT. TOPPERS OIL CORPORATION HAS TWENTY ONE RETAIL SERVICE STATIONS IN THE ANCHORAGE AREA. TOPPERS OIL CORPORATION WOULD LIKE TO GO ON RECORD AS OPPOSING SENATE BILL #438AM.

GENERALLY THE BILL COVERS MANY AREAS WHICH WE FEEL ARE VERY DETRIMENTAL TO OUR FREE ENTERPRISE SYSTEM. THERE ARE TOO MANY CONTROLS IN MANY AREAS NOW BY GOVERNMENT WHICH ARE REALLY NOT WARRANTED. THIS BILL IS ANOTHER EXAMPLE OF ATTEMPTING TO REGULATE FREE ENTERPRISE WITHOUT PROVEN JUSTIFICATION. WE, PERSONALLY HAVE NEVER HEARD ONE NEGATIVE COMMENT SHOWING THE NEED FOR SUCH A BILL. IN FACT, WE WERE UNAWARE SUCH A BILL EXISTED UNTIL AFTER IT PASSED THE SENATE. I WILL AGREE THAT THERE MAY HAVE BEEN SOME NOTICE OF HEARINGS, BUT CAN HONESTLY STATE WE WERE NOT AWARE OF THEM. HAD WE BEEN, I CAN ASSURE THIS COMMITTEE, WE WOULD HAVE STRONGLY OPPOSED THIS BILL AS WRITTEN.

BEFORE POINTING OUT OUR SPECIFIC OBJECTIONS, I WOULD LIKE TO MENTION SOME OF THE GENERAL CONCEPTS WHICH WE GENERALLY ARE OPPOSED TO, BUT AT THIS TIME DOES NOT NECESSARILY APPLY DIRECTLY TO OUR COMPANY.

1. WE DO NOT FEEL THAT ANY LEGISLATION IS HEALTHY WHEN IT REGULATES PRIVATE ENTERPRISE THAT HAS MADE HEAVY INVESTMENTS FOR THE BENEFIT OF THE PUBLIC AS LONG AS IT IS NOT DETRIMENTAL. ECONOMICS WILL AUTOMATICALLY BALANCE OUT PROBLEMS AND NEGOTIATIONS. TO LEGISLATE REGULATIONS TO ANY CORPORATION OF WHAT THEY MUST DO TO HIRE DEALERS IS VERY UNACCEPTABLE. NOTHING IS MENTIONED AS TO THE RESPONSIBILITIES AND REGULATIONS A DEALER MUST ABIDE BY TO PROPERLY MANAGE A STATION.

2. IT IS UNNECESSARY TO REGULATE THAT WHICH A DEALER WOULD NORMALLY REQUEST AND STUDY BEFORE CONSIDERING TAKING A STATION. NOBODY IS FORCING THE DEALER TO TAKE ANY STATION; HE MAKES HIS OWN FREE DECISION.

3. THE CONTROL OF ANY DEALER OPERATING A COMPANY'S FACILITY SHOULD BE THAT OF THE OWNER, NOT THE DEALER. WE PERSONALLY HAVE HAD A NUMBER OF MANAGERS WHO HAVE BEEN DETRIMENTAL IN MANY WAYS,

AND IF A BAD DEALER SOLD HIS FRANCHISE TO A QUESTIONABLE TRANSFEREE OR ASSIGNEE, ACCORDING TO THIS PROPOSED LEGISLATION,

4. SECTION 45.50.810 (7) (8)
COULD CAUSE CONSIDERABLE PROBLEMS REGARDING INTERPRETATION. THE OWNER OF ANY FACILITY MUST BE ASSURED THAT THE STATION IS OPERATED CORRECTLY AND SERVICE IS GIVEN TO THE PUBLIC.

MARKETING POLICIES AND CONDITIONS CHANGE QUITE OFTEN. AND NECESSARY STANDARDS IMPOSED BY THE REFINER OR DISTRIBUTOR COULD BE CONSIDERED AS UNREASONABLE ON THE PART OF THE DEALER WHICH WOULD DEFINITELY RESULT IN A LONG DRAWN OUT TRIAL. ETC., WHICH WOULD BE OF A DETRIMENT TO THE BUSINESS AND PUBLIC. BASICALLY IT MUST BE ACKNOWLEDGED THAT THE DISTRIBUTOR IS CONSTANTLY STRIVING FOR A SUCCESSFUL BUSINESS BOTH FOR HIMSELF AND THE DEALER. THE DISTRIBUTOR'S DECISIONS IN MOST ALL CASES ARE BASED UPON A SUPERIOR KNOWLEDGE AND ACCEPTABLE BUSINESS PRACTICES REGARDING THE INDUSTRY.

5. THROUGHOUT THE ENTIRE BILL THE TERMS OF FAIR AND REASONABLE ARE USED. THIS IN ITSELF HAS MANY INTERPRETATIONS AND WOULD NEED TO GO TO LITIGATION IN THE END, WHICH AGAIN WOULD BE OF A DETRIMENT TO THE FACILITY AND SERVICE TO THE PUBLIC.

6. SECTION 45.50.810 (6)
AS WRITTEN IS ENTIRELY UNACCEPTABLE. CERTAINLY A REFINER OR DISTRIBUTOR HAS A RIGHT TO DIRECT THE PURCHASES, PRODUCTS AND OR SERVICES OF ANY DEALER TO JUSTIFY A REASONABLE RETURN ON HIS INVESTMENT, AND INSURE PROPER SERVICE TO THE PUBLIC.

7. SECTION 45.50.820 (830)
OBLIGATES THE REFINER OR DISTRIBUTOR, IF HE FAILS TO RENEW, TO COMPENSATE TO THE DEALER THE FAIR MARKET VALUE OF THE FRANCHISE, INCLUDING GOODWILL, THIS PORTION OF SENATE BILL #438 IS NEITHER UNDERSTANDABLE NOR ACCEPTABLE.

FROM ALL INFORMATION I HAVE, WHEN ANY REFINER OR DISTRIBUTOR NEGOTIATES A LEASE ARRANGEMENT WITH A DEALER, THE DISTRIBUTOR DOES NOT CHARGE THE DEALER FOR ANY "GOODWILL" AND MOST OF THE GOODWILL DEVELOPED HAS BEEN DONE BY THE DISTRIBUTOR OR REFINER THRU HISTORY

OF ADVERTISING AND PUBLIC RELATIONS. HOW CAN A DEALER BE PAID EXTRA FOR DOING SEPVICE WHICH IS WHAT HE IS EXPECTED TO DO AND IS HIS DUTY WHEN HE AGREES TO TAKE OVER A STATION.

SPECIFICALLY, TOPPERS OIL IS OPPOSED TO THE FOLLOWING PARTS OF THIS BILL. WE ARE CONSIDERED A RETAIL DEALER BY THE FEDERAL ENERGY ADMINISTRATION AND THE LARGEST INDEPENDENT RETAIL DEALER IN ALASKA.

1. UNDER SECTION 45.50.840 DEFINITIONS (2) WE WOULD BE CLASSIFIED AS A DISTRIBUTOR AS WE ARE ENGAGED IN THE SALE OF GASOLINE AT FOUR OR MORE RETAIL OUTLETS. THIS THEN WOULD MEAN THAT THE BILL IN ITS ENTIRETY WOULD APPLY TO US. IT WOULD BE IN CONFLICT WITH THE FEDERAL ENERGY ADMINISTRATION DETERMINATION THAT WE ARE ONLY IN THE RETAIL BUSINESS OF SELLING MOTOR GASOLINE (SEE ATTACHED MEMO DATED JULY 23, 1975.)

2. SECTION 45.50.810 (3)
THIS SECTION WOULD RESTRICT US FROM OPERATING OUR STATIONS SEVEN DAYS A WEEK. IT WOULD ALSO ONLY ALLOW US TO OPERATE TWELVE HOURS PER DAY. THIS SECTION WOULD BE VERY DETRIMENTAL NOT ONLY TO THE PUBLIC WE SERVE, BUT TO OUR OWN BUSINESS.

3. SECTION 45.50.810 (d)
UNDER THIS SECTION ONLY QUANTITY PURCHASE OR TRANSPORTATION COSTS WOULD DETERMINE PRICE DISCRIMINATION. WHAT ABOUT THE PRIVATE INDIVIDUAL WHO PURCHASES OR BUILDS FACILITIES ON HIS OWN AND THE REFINER OR DISTRIBUTOR HAS NO VESTED INTEREST OR COSTS IN THE STATION. THIS IS APPLICABLE TO TOPPERS OIL CORPORATION.

4. WE AS WELL AS THE MAJOR REFINERS AND DISTRIBUTORS HAVE HAD NUMEROUS MANAGERIAL PROBLEMS WITH RETAIL STATIONS. ONLY BY CONSTANT SUPERVISION AND THE ABILITY TO CHANGE MANAGERS OR DEALERS CAN THE QUALITY AND STANDARDS OF SERVICE BE MAINTAINED. INEFFICIENCY COST MONEY AND CREATES PROBLEMS AND IN THE END THE PUBLIC SUFFERS.

SUMMARY:

THERE MAY BE SOME PARTS OF THIS PROPOSED LEGISLATION THAT ARE ACCEPTABLE. BUT, THERE ARE TOO MANY AREAS THAT ARE OBJECTIONABLE AS

WRITTEN. WE RESPECT AND FULLY REQUEST THAT SENATE BILL #438AM, AS WRITTEN DIE IN COMMITTEE AND IF THIS COMMITTEE FEELS CERTAIN AREAS BE DEVELOPED, IT BE DONE SO IN AN ORDERLY MANNER - WITH PROPER IMPUT AND HONEST INFORMATION FROM EVERY SOURCE. IT WOULD INDEED BE A DISASTER TO PASS THIS BILL IN ITS PRESENT FORM.

TOPPERS OIL CORPORATION, INC.
6126 OLD SEWARD HIGHWAY
ANCHORAGE, ALASKA 99502

Russell Swank Pres.

FEDERAL ENERGY ADMINISTRATION
ANCHORAGE OFFICE
60 WEST FOURTH AVENUE
FEDERAL BUILDING, ROOM G11
ANCHORAGE, ALASKA 99501

July 23, 1975

Mr. Russ Swank
Topper's Oil Corporation
6126 Old Seward Highway
Anchorage, AK 99509

Dear Mr. Swank:

The Federal Energy Administration just completed an audit of the operation of Topper's Oil Corporation and has made the following factual determinations:

1. Topper's Oil Corporation is in the retail business of selling motor gasoline.

2. All 20 station operators are employees of Topper's Oil Corporation; the only difference is the method of the payment of salaries.

3. Topper's Oil Corporation is entitled to the $.03 non-product cost pass through only, and not the $.01 non-product cost pass through that is attributed to a wholesale distributor operation.

4. The selling price adjustments made by the Federal Energy Administration are based on the above determination.

Sincerely,

FRED CHIEI, JR.
Deputy Regional Administrator

Lowell [redacted] Nelson

1. controlling of hours 6 days a week 12 hours a day

dealer is paid on gallons sold not considering expenses

(1) 1-5 year contracts

(2) dealership to heir survivorship

Rent subsidy in Anchorage but not Fairbanks
if you own your own property

Rhode Island 20th state to pass this legislation

Bill intended to only deal with 3rd party dealers

Texaco

Notice 90 days 30 - should be consistent for both

8¢ - 12¢ - 17¢ profit per gallon

42 stations
22 Union
23 Texaco
115 stations
72 in organization

Lowell Nelson - says not interested in selling other brands of gas

45.50 .810 c

[redacted]

(c) No refiner or distributor shall terminate or cancel a dealer franchise prior to the expiration date thereof unless the dealer whose franchise is terminated failed to perform or comply with, or failed to act in good faith in performing or complying with, any of the terms or provisions of the franchise, except that a refiner or distributor shall be permitted to provide in the franchise for the termination thereof without cause during a reasonable trial period, not to exceed one (1) year, where the dealer involved has not been a dealer of the refiner or distributor for that period of time at the premises described in the franchise.

#2

[redacted]



45.80-810 (b)

(b) No refiner or distributor may terminate, cancel or fail to renew a franchise unless such refiner or distributor furnishes notification pursuant to this subsection to the other party to the franchise. Such notification shall be in writing addressed to such other party and sent by certified mail, deposited in the mail no less than 45 days prior to the date on which such franchise is to be terminated, cancelled or not renewed; provided, however, that if in light of the circumstances, it would not be reasonable to provide notice 45 days in advance of such termination, cancellation or failure to renew the refiner or distributor shall provide such notice less than 45 days as may be reasonable in the circumstances. Notification shall contain a statement of intention to terminate, cancel, or decline to renew such franchise, together with the reasons therefor, and the date on which such termination, cancellation or failure to renew shall take effect.

45 50 820

#3

[redacted]

Section 45.50.820. REPURCHASE OF GOODS. In the event that the refiner or distributor terminates, cancels or fails to renew the franchise, such refiner or distributor shall make or cause to be made a good faith offer to repurchase from the dealer, his heirs, successors or assigns, at the current wholesale prices, any and all merchantable products and merchandise which are undamaged and unaltered from their original form, purchased by the dealer from the refiner or distributor; provided, that such refiner or distributor shall have the right to apply the proceeds against any existing indebtedness owed to him by the dealer; and, further provided that such repurchase obligation is conditioned upon there being no claims or liens by or on behalf of other parties, including creditors and governmental agencies, against such products and merchandise.

AMENDMENT

#4

OFFERED IN THE HOUSE: BY: _____

TO: HCS HOUSE BILL No. _____

SENATE BILL No. 438

PAGE: 3 LINE: between 11 & 12

ADD

(8) require the dealer to keep his retail outlet open for business more than 12 consecutive hours per day or more than six days a week, provided that this paragraph shall not be construed to prevent any retail outlet from being open when required to be open to conform to any state or federal law or regulation;

(9) sell, rent or offer to sell to a dealer any product or service for more than a fair and reasonable price;

(10) unreasonably disapprove the transfer or assignment of a franchise by a dealer to a qualified transferee or assignee;

AMENDMENT

#5

OFFERED IN THE HOUSE: BY: _____

To: _____ HOUSE BILL No. _____

SENATE BILL No. HCS 438

PAGE: 5 LINE: 16 to 20

After the word "exists." delete lines 16 to line 20 and insert:

Reasonable attorney's fees and the appraiser's fees shall be awarded to the franchisee if the amount awarded to the franchisee by the jury or the or the court is ten per cent higher than the final offer, if any, made by the refiner or distributor prior to the filing of the lawsuit.

adopted

45.50 .810 c

(c) No refiner or distributor shall terminate or cancel a dealer franchise prior to the expiration date thereof unless the dealer whose franchise is terminated failed to perform or comply with, or failed to act in good faith in performing or complying with, any of the terms or provisions of the franchise, except that a refiner or distributor shall be permitted to provide in the franchise for the termination thereof without cause during a reasonable trial period, not to exceed one (1) year, where the dealer involved has not been a dealer of the refiner or distributor for that period of time at ~~the premises described in the franchise~~.

p3124

5/17
Milton

Original sponsor: Commerce Committee

Offered: 4/15/76
Referred: Judiciary

IN THE SENATE BY THE COMMERCE COMMITTEE

HOUSE CS FOR SENATE BILL NO. 438

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to franchising agreements involving gasoline refiners, distributors and dealers; and providing for an effective date."

Dealer's day in court

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

* Section 1. FINDINGS OF THE LEGISLATURE. The legislature finds and declares that since the distribution and sales, through franchise agreements, of gasoline in the state vitally affect the economy of the state, the public interest, welfare, and transportation, it is necessary to define the relationships and responsibilities of the parties to certain agreements pertaining to franchising.

* Sec. 2. AS 45.50 is amended by adding new sections to read:

ARTICLE 5. ALASKA GASOLINE PRODUCTS FRANCHISE ACT.

Sec. 45.50.800. DISCLOSURES TO BE MADE BY DISTRIBUTORS AND REFINERS BEFORE CONCLUSION OF AGREEMENT. Before entry into a franchise agreement, a refiner or distributor shall disclose to the dealer facts which would reasonably be considered material to the dealer's decision to enter into the franchise. These facts shall include, but not be limited to,

(1) ownership of property of the retail outlet;

(2) if the real property is not owned by a refiner or distributor, then the nature of the relationship between the real property owner and the refiner or distributor and the length of the underlying lease (if applicable);

(3) the last known addresses of dealers operating the retail

outlet for the last five years;

(4) the gasoline gallonage history, if any, of the station for the last five years;

(5) any sales goals or quotas the refiners or distributors intend to apply to the station;

(6) the nearest gasoline outlet owned, controlled or operated by the refiner or distributor and any plans the distributor or refiner has to open new retail outlets within the trade area of the retail outlet; and

(7) any plans the refiner or distributor has for the future of the subject retail outlet.

Sec. 45.50.810. VIOLATIONS. (a) No person shall, directly or indirectly, through offices, employees or agents,

(1) require the franchisee-dealer at the time of entering into the franchise agreement to [assent to release, assignment, novation, waiver or estoppel which would] relieve any person from liability imposed by secs. 800 - 850 of this chapter;

(2) require the dealer to agree to waive his right to a jury trial or any right of counterclaim he may have;

(3) restrict or inhibit directly or indirectly the right of free association for any lawful purpose of the franchisee-dealer;

(4) except as to the initial inventory of the franchise, require a dealer to purchase or otherwise lease goods or services of a refiner or distributor or from an approved source of supply unless and to the extent that the refiner or distributor satisfies the burden of proving that such restricted purchasing agreements are reasonably necessary for lawful purposes justified on business grounds and do not substantially affect competition; in determining whether a requirement to purchase is lawful, the court shall be guided by the decisions of the

courts of the United States in interpreting and applying the antitrust laws and the Federal Trade Commission Act of the United States;

(5) impose unreasonable standards of performance on the dealer;

(6) require a dealer to participate financially in the use of any premium coupon or giveaway or rebate in the operation of the business; however, a distributor may require the dealer to distribute premiums, coupons or give-aways to customers which are provided to the dealer at the expense of the refiner or distributor or when the promotion is self-liquidating; or

(7) fail to deal with the dealer in good faith.

(b) No refiner or distributor may, directly or indirectly, through any officer, agent or employee, terminate, cancel or fail to renew a dealer franchise without first giving written notice setting out all of the reasons for the termination or cancellation or intent not to renew to the franchisee-dealer at least 45 days in advance of the termination, cancellation or failure to renew except

(1) when the alleged grounds are voluntary abandonment by the franchisee-dealer of the franchisee relationship, then the above notice may be given five days in advance of the termination, cancellation or failure to renew;

(2) when the alleged grounds are the conviction of the franchisee in a court of competent jurisdiction of a felony.

(c) No refiner or distributor may terminate, cancel or fail to renew a dealer franchise without good cause. Good cause shall include without limitation:

(1) the failure of a franchisee to comply with the lawful material provisions of a franchise between the distributor or refiner and the franchisee-dealer and to cure each default after being given

written notice and a reasonable opportunity to cure the default;

(2) an adjudication that the franchisee-dealer is a bankrupt or insolvent or if he makes an assignment for the benefit of creditors or a similar disposition of assets of franchise business or voluntarily abandons the franchise business or is convicted of or pleads guilty or no contest to a charge of violating any law relating to any franchise business;

(3) the good faith business decision of the franchiser that he no longer requires a retail outlet at that location for the marketing of gasoline; and

(4) the dealer's failure to sign the new agreement if at the time of renewal of the franchise the distributor or refiner and the franchisee-dealer cannot agree upon new terms and the terms offered by the refiner or distributor do not violate any other laws of the State of Alaska or of the United States and the terms are essentially the same as those offered to other franchisee-dealers in similar retail outlets and do not discriminate against the subject franchisee-dealer.

(d) No refiner or distributor may engage in p. 'ce discrimination between dealers unless that discrimination is based upon quantity purchased or transportation costs.

Sec. 45.50.820. OBLIGATION OF DISTRIBUTOR TO REPURCHASE UPON TERMINATION, ETC., OF AGREEMENT. If the refiner or distributor has good cause to terminate, cancel or fail to renew under sec. 810(c)(1) or (2) of this chapter, he shall compensate the franchisee-dealer for the fair market value of the franchise, excluding goodwill. Refiners or distributors terminating, cancelling, or failing to renew under sec. 810(c)[(3) or] (4) of this chapter shall compensate the franchisee-dealer for the fair market value of the franchise. Valuation shall include the fair market value of the franchisee's inventory supplies, equipment and

furnishings purchased from the refiner or distributor exclusive of personalized materials which have no value to the refiner or distributor and inventory supplies, equipment and furnishings not reasonably required in the conduct of the franchise business. Compensation shall be made within 60 days from the date of termination unless it is necessary that a lawsuit be filed under sec. 830 of this chapter or the dealer fails to comply with the bulk sales provisions of AS 45.05.510 et seq. The refiner or distributor may offset against accounts owed by the franchisee-dealer under this section any amount owed by the franchisee-dealer to the refiner or distributor.

Sec. 45.50.830. COURT TO DETERMINE FAIR MARKET VALUE WHEN PARTIES CANNOT AGREE. If under sec. 820 of this chapter the distributor or refiner has good cause and the distributor or refiner and the dealer cannot agree on the fair market value of the franchise, then either party may initiate an action in the superior court where the franchise retail outlet exists. If the amount awarded to the franchisee by the jury or the court is 10 per cent lower than the final offer, if any, made by the refiner or distributor before the filing of the lawsuit, reasonable attorney fees and the appraiser fees shall be awarded to the refiner or distributor.

Sec. 45.50.840. DEFINITIONS. In secs. 800 - 830 of this chapter, unless context otherwise requires,

(1) "refiner" is a company, corporation or individual who owns or controls, or controls through a substantially owned subsidiary, partnership, or joint venture, a refinery used for the production of gasoline, diesel or other motor vehicle fuels;

(2) "distributor" means any person or corporation other than a refiner engaged in the sale, assignment, or distribution of gasoline to four or more dealer-operated retail outlets;

(3) "gasoline" means all products commonly or commercially known or sold as gasoline;

(4) "dealer" means a person engaged in the sale of gasoline through a retail outlet [owned or] leased by the person and operated by the person;

(5) "franchise" means an oral or written contract or agreement or series of agreements, either express or implied, in which the dealer is required directly or indirectly to purchase 50 per cent or more of his supply of gasoline from a distributor or refiner and in which the dealer is granted authority to occupy premises owned, leased or in any way controlled, directly or indirectly, by the refiner or distributor.

Sec. 45.50.850. SHORT TITLE. Sections 800 - 850 of this chapter may be cited as the "Alaska Gasoline Products Franchise Act."

* Sec. 3. AS 45.50.471(b) is amended by adding a new paragraph to read:

(22) failing to comply with the terms of the Alaska Gasoline Products Franchise Act (AS 45.50.800 - 45.50.850).

* Sec. 4. This Act takes effect July 1, 1976.

Failed

45 50 820

[redacted]

Section 45.50.820. REPURCHASE OF GOODS. In the event that the refiner or distributor terminates, cancels or fails to renew the franchise, such refiner or distributor shall make or cause to be made a good faith offer to repurchase from the dealer, his heirs, successors or assigns, at the current wholesale prices, any and all merchantable products and merchandise which are undamaged and unaltered from their original form, purchased by the dealer from the refiner or distributor; provided, that such refiner or distributor shall have the right to apply the proceeds against any existing indebtedness owed to him by the dealer; and, further provided that such repurchase obligation is conditioned upon there being no claims or liens by or on behalf of other parties, including creditors and governmental agencies, against such products and merchandise.

AMENDMENT #4

OFFERED IN THE HOUSE: BY: Cotton

TO: HCS HOUSE BILL No. _____

SENATE BILL No. 438

PAGE: 3 between LINE: 11 & 12

ADD

* (8) require the dealer to keep his retail outlet open for business more than 12 consecutive hours per day or more than six days a week, provided that this paragraph shall not be construed to prevent any retail outlet from being open when required to be open to conform to any state or federal law or regulation;

X (9) ~~sell, rent or offer to sell~~ require to a dealer any product or service for more than a fair and reasonable price;

(10) unreasonably disapprove the transfer or assignment of a franchise by a dealer to a qualified transferee or assignee;

Adopted

45.80-810 (b)

[redacted]

(b) No refiner or distributor may terminate, cancel or fail to renew a franchise unless such refiner or distributor furnishes notification pursuant to this subsection to the other party to the franchise. Such notification shall be in writing addressed to such other party and sent by certified mail, deposited in the mail no less than 45 days prior to the date on which such franchise is to be terminated, cancelled or not renewed; provided, however, that if in light of the circumstances, it would not be reasonable to provide notice 45 days in advance of such termination, cancellation or failure to renew the refiner or distributor shall provide such notice less than 45 days as may be reasonable in the circumstances. Notification shall contain a statement of intention to terminate, cancel, or decline to renew such franchise, together with the reasons therefor, and the date on which such termination, cancellation or failure to renew shall take effect.

AMENDMENT

#5
Adopted

OFFERED IN THE HOUSE: BY: D McKinnon

To: _____ HOUSE BILL No. _____

SENATE BILL No. HCS 438

PAGE: 5 LINE: 16 to 20

After the word "exists." ~~delete lines 16 to line 20 and~~ insert:

Reasonable attorney's fees and the appraiser's fees shall be awarded to the franchisee if the amount awarded to the franchisee by the jury ~~or the~~ or the court is ten per cent higher than the final offer, if any, made by the refiner or distributor prior to the filing of the lawsuit.

members
SB 438

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 15, 1976

SUBJECT: Commerce Committee Substitute for Senate Bill 438 am

TO: Representative Bradley, Chairman,
House Commerce Committee

FROM: David [illegible] Walker, Legislative Counsel

Attached is a committee substitute drafted in accordance with the committee's request. I would like to remind you of an amendment which should be made to the bill to avoid a conflict with controlling federal law (15 U.S.C. 513).

I have attached a copy of a memo to Representative Rudd, dated March 29, which explains the necessity for the amendment and supplies the needed language.

cc: Rep. Rudd
Rep. Gardiner

M E M O R A N D U M

March 29, 1976

SUBJECT: Senate Bill 438 am

TO: Representative Lisa Rudd

FROM: David T. Walker, Staff Attorney DTW

I drafted § 45.50.810(d) of SB 438 at the request of Senate Commerce Committee. It was my intention to parallel the applicable federal law - in fact I represented to the committee that the language did that.

I have attached a copy of an amendment which should be made to the language of the bill. The added language would make it clear that the state law followed the controlling federal anti-trust provisions and would avoid needless litigation.

DTW:bh

Attachment

Amendment suggested to SB 436 am

PAGE 4 LINE 19

adopted both

After "dealers" insert the following:

"where the effect of the discrimination may be substantially to lessen competition"

PAGE 4 LINE 20

After "costs." insert the following:

"Nothing under this section shall prevent a refiner or distributor from offering a lower price or furnishing a service or facility to a dealer when the offer is made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by that competitor."

6-1876

Tom

SB

440

"An Act relating to the perfection of security interests."

COMMITTEE REPORT

HOUSE

Mr. Speaker: Date _____

The Committee on _____ has had _____

under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Members NOT concurring in the Majority report:

_____ recommends:

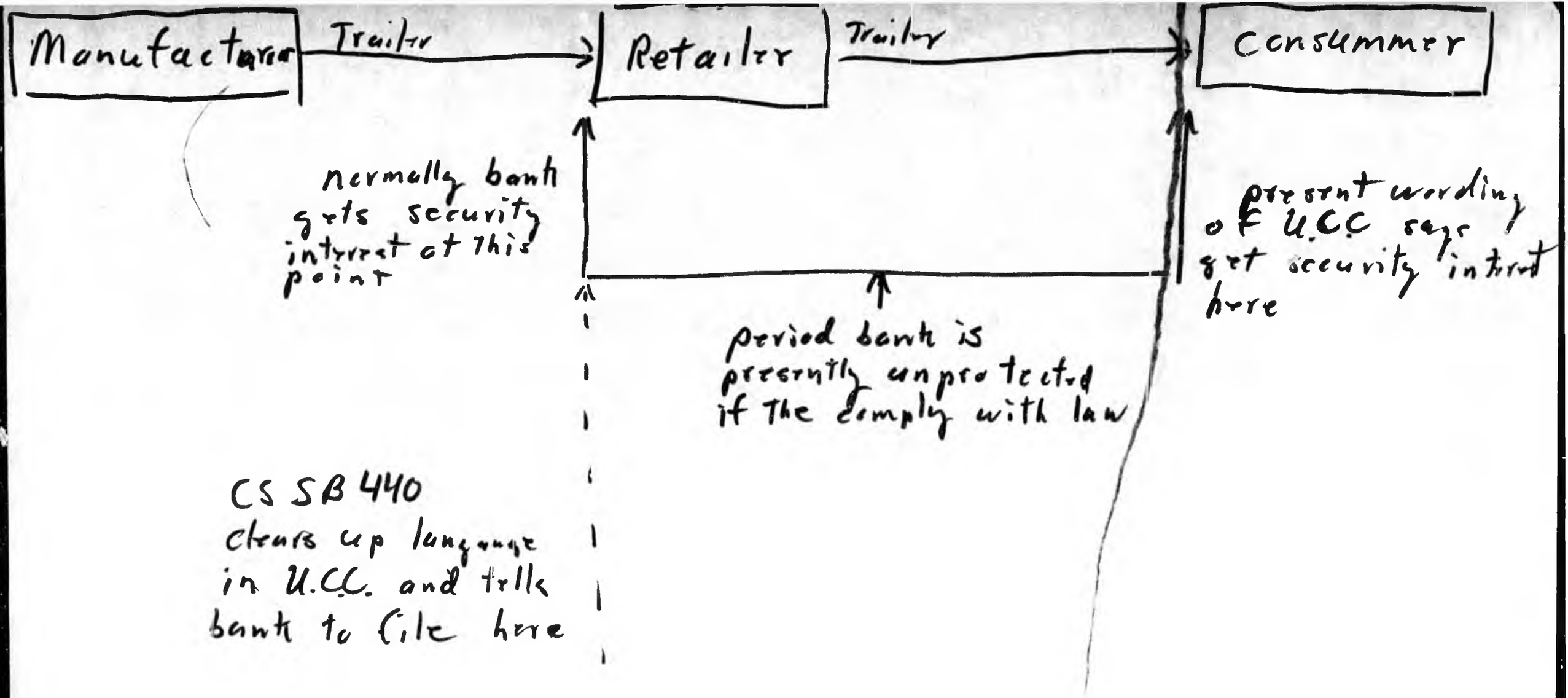
_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman


Manufacturer
Trailer
Retailer
Trailer
Consummer
normally bank gets security interest at this point
present wording of U.C.C says get security interest here
period bank is presently unprotected if the comply with law
CS SB 440
clears up language in U.C.C. and tells bank to file here

CSSB 440 SECURITY INTERESTS CSSB 440

Rick Svobodny explained that this deals with the Uniform Commercial Code. As things stand now automobiles and mobile homes which are covered by certificate of title, do not require the dealer to file liens held by the bank on his inventory until it is sold. This would make it necessary for this information to be available before the article was sold. The filing must be done when the manufacturer sells the vehicles to the dealer, not when the dealer sells to the consumer.

Mr. Parr moved that CSSB 440 pass out of committee. No objection, it was done.

HB 606 VACANCIES U.S. SENATORS HB 606

The members discussed the following amendments to CS HB 606:

Page 1, lines 27 - 29: Delete last sentence of subsection (c).

Page 2, line 6: Delete "not more than".

Mr. Cotten moved that the above amendments be adopted. No objection, so ordered.

Page 2, lines 11 - 17: Change to read:

Sec. 15.40.016. PLAN FILED WITH LIEUTENANT GOVERNOR. Each state party central committee shall maintain on file with the office of the lieutenant governor a plan which defines the "party districts" for the purposes of Sec. 15.40.010 and Sec. 15.40.015.

Mr. Gardiner moved that the above amendment to adopted. No objection, so ordered.

Mr. Parr moved that HB 606 pass out of committee in the form of CS HB 606 with the above amendments included. No objection, so ordered.

The meeting was adjourned at 8:35 p.m.

Offered: 5/21/75
Original sponsor: Butrovich Referred: Rules

IN THE SENATE BY THE JUDICIARY COMMITTEE

CS FOR SENATE BILL NO. 440

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the perfection of security interests."

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

Requires to be under Motor Vehicles

UCC

* Section 1. AS 45.05.734(c)(2) is amended to read:

(2) of this state which provides for central filing of, or which requires indication on a certificate of title of, the security interests in the property, unless the property is inventory held for sale by a dealer, which has not been previously sold at retail and for which no certificate of title has been issued.

Retailers are filing

Man sell retail

retail sells to consumer

Under UCC

Motor Vehicle Act

UCC says use point B

Trailers under Motor Vehicle Act

Protects Consumer so he knows bank has a security interest

Notify Bankers lobj

SB 440

What is art. 9 UCC. For

What does security interest due

Filing in central area AS 40.

Filing under Title act

Bill does

Helm Buf

ROBERT C. ELY
W. EUGENE GUESS
JOSEPH PUDD
THEODORE E. FLEISCHER
FRANCIS E. SMITH, JR.
HERBERT BERKOWITZ
THOMAS E. MEACHAM
DAVID H. BUNDY
HARRIS SAXON
RICHARD W. GARNETT III
WILLIAM J. DONOHUE

LAW OFFICES OF
ELY, GUESS & RUDD
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TELEX [090] 25-292
TELEPHONE [907] 279-8431

JUNEAU OFFICE
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JUNEAU, ALASKA 99801
TELEX: [099] 45-355
TELEPHONE [907] 586-3210

JOSEPH A. McLEAN
MICHAEL G. BRIGGS

February 19, 1974

Mr. Robert E. Barnes
President
Alaska State Bank
P. O. Box 240
Anchorage, Alaska 99510

Re: Anchorage Trailer Sales, Inc.
Our File No. 2525.1

Dear Bob:

We have been asked to consider certain legal questions arising out of the Bank's relationship with Anchorage Trailer Sales, Inc. We have been specifically requested to direct our attention to the Bank's security position with respect to the customer's mobile home inventory. The purpose of this letter is to set forth our conclusions in light of the facts provided to us.

We understand that historically a typical transaction proceeded roughly as follows: Anchorage Trailer Sales or a manufacturer selling to it requests that the Bank issue a letter committing the Bank to pay the manufacturer the wholesale price plus shipping for a given number of mobile homes. The Bank issues such a letter and, after arrival of the units in Alaska, pays the manufacturer. Anchorage Trailer Sales then executes a promissory note to the Bank for the amount so advanced, and, in addition, executes a "flooring note" which describes the units by serial number and sets forth the amount owed the Bank with respect to each unit.

The manufacturer sends to the Bank the "Manufacturer's Certificate of Origin" with respect to each unit and that certificate is retained in the Bank's files. In addition, we are informed (although we have not reviewed the operative documents) that the Bank has sought to secure itself pursuant to the Uniform Commercial Code and to that end has taken a Security Agreement covering inventory and filed a financing statement. We under-

6-2660

COPY

stand that there is a conflicting financing statement filed prior to that of the Bank, but for the purposes of this letter we will disregard that prior filing, although, of course, steps must be taken to clarify the Bank's position with respect to that other creditor.

The Uniform Commercial Code of Alaska determines whether or not the Bank has the status of secured creditor with respect to the inventory of Anchorage Trailer Sales. The UCC (AS 45.05.734(c)) provides that filing with the Department of Administration in Juneau of a financing statement does not perfect a security interest:

> "in property subject to a statute . . . of this state which provides for central filing of, or which requires indication on a certificate of title of, the security interest in the property."

The UCC (AS 45.05.734(d)) goes on to state that:

> "A security interest in property covered by [a certificate of title statute] can be perfected only by registration or filing under that statute or by indication of the security interest on a certificate of title or a duplicate of a certificate of title by a public official."

Mobile homes in Alaska are deemed subject to the certificate of title provisions of the Alaska Motor Vehicle Act (AS 28.10). It does not appear customary in Alaska for motor vehicle dealers, including mobile home dealers, to have their inventory "titled" prior to the first retail sale. Generally the vehicle is first "titled" after it is sold to a retail purchaser.

Nevertheless, the UCC states explicitly that a security interest in property covered by a certificate of title statute "can be perfected only by . . . indication of the security interest on a certificate of title . . . ." There is no question that the drafters of the UCC had no intention of interfering with customary business practices. (It is equally clear, however, that if Anchorage Trailer Sales went bankrupt the Trustee in Bankruptcy, who by law represents the interests of unsecured creditors, would attempt to take the position that Alaska State Bank, by failing to show its lien on certificates of title, does not have the status of a secured creditor.)

We have found instances in other states in which a Trustee in Bankruptcy unsuccessfully urged that argument. It is possible, however, that a court in Alaska might reach a contrary conclusion and interpret the language of the UCC literally. The ambiguity of the law on this point has prompted a recommendation from the drafters of the UCC that it be amended to resolve this problem.

Note - this should be processed

Until such an amendment becomes the law, however, it is our opinion that the Bank can eliminate the risk of being deemed unsecured only by both filing a financing statement in Juneau and also having itself shown as a lienholder on certificates of title. In that way, the Bank will have secured creditor status whichever way a court might rule.

If you have any questions concerning the above, please give me a call.

Very truly yours,

ELY, GUESS & RUDD

Herbert Berkowitz

HB/ec
cc: Mr. Ralph P. Whitmore, Jr.
Mr. Alvin H. Fleetwood
Mr. John Houlihan
Mr. J. Martin Kinnunen

SB

443

"An Act relating to disclosure requirements in takeover bids."

COMMITTEE REPORT

HOUSE

4/2/76

Mr. Speaker: Date May 5, 1976

The Committee on JUDICIARY has had CSSB 443 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Terry Sandlin - Pres

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Terry Sandlin Chairman

Proposed
#1 Melton
5/5

Original sponsor: Commerce Committee

IN THE SENATE BY THE COMMERCE COMMITTEE

HOUSE CS FOR CS FOR SENATE BILL NO. 443

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to disclosure requirements in takeover bids."

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

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

CHAPTER 57. TAKEOVER BID DISCLOSURE ACT.

Sec. 45.57.010. PROVISIONS OF TAKEOVER BIDS. The following provisions apply to every takeover bid:

(1) The period of time within which securities may be tendered by an offeree under a takeover bid shall not be less than 21 days nor more than 35 days from the date copies of the takeover bid are first published or sent or given to offerees.

(2) Securities deposited under a takeover bid may be withdrawn by an offeree or his attorney-in-fact by demand in writing on the offeror or the depository at any time within 21 days from the date copies of the takeover bid are first published or sent or given to offerees.

(3) When a takeover bid is made for less than all the shares or other units of a class and when a greater number of shares or other units is deposited under it than the offeror is bound or willing to take up and pay for, the shares or other units taken up by the offeror shall be taken up as nearly as may be pro rata, disregarding fractions, according to the number of shares or other units deposited.

(4) When an offeror varies the terms of a takeover bid before the expiration of it by increasing the consideration offered, the

offeror shall pay the increased consideration to each offeree whose securities are taken up even if they have been taken up and paid for before the variation of the takeover bid.

(5) When a takeover bid is sent by mail to offerees, it shall be accompanied by a copy of the statement filed with the department under sec. 20 of this chapter.

Sec. 45.57.020. DISCLOSURE. (a) No offeror may make a takeover bid unless at least 20 days before it he files with the department and with the registered agent of the offeree company a statement containing all the information required by (c) of this section and either

(1) within 10 days following the filing no hearing has been ordered by the department or requested by the offeree company; or

(2) a hearing has been ordered within that time and upon the hearing the department has adjudicated that the offeror proposed to make fair, full and effective disclosure to offerees of all information material to a decision to accept or reject the offer.

(b) A hearing shall begin within 20 days of the date of filing of the statement and adjudication shall be made within 30 days of the filing unless extended by the department for the convenience of the parties or protection of the offerees.

(c) The statement to be filed with the department under (a) of this section shall include the following information and the additional information that the department may require as necessary in the public interest or for the protection of offerees:

(1) the name, address and business experience of the offeror and each associate of the offeror;

(2) the terms and conditions of the takeover bid, which shall include the applicable provisions of sec. 10 of this chapter;

(3) the source and amount of the funds or other consideration

used or to be used in making the takeover bid, and if any part of those funds or consideration is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of making the bid, a description of the transaction and the names of the parties to it, except that if a source of funds is a loan made in the ordinary course of business by a bank or financial institution customarily engaged in the business of making loans, it will be sufficient to so state;

(4) plans or proposals that the offeror may have to liquidate the offeree company, to sell its assets to or merge it with any other person, or to make any other material change in its business or corporate structure;

(5) the number of shares or other units of securities of each class presently owned by the offeror and each associate of the offeror;

(6) information as to any contracts, arrangements, or understandings with a person with respect to securities of the offeree company, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guaranties of loans, guaranties against loss or guaranties of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom those contracts, arrangements, or understandings have been entered into, and giving the details of them;

(7) complete information on the organization and operations of the offeror, including without limitation the year of organization, form of organization, jurisdiction in which it is organized, a description of each class of the offeror's capital stock and of its long-term debt, financial statements for the current period and for the three most recent annual accounting periods, a brief description of the location and general character of the principal physical properties of the

offeror and its subsidiaries, a description of pending legal proceedings other than routine litigation to which the offeror or any of its subsidiaries is a party or of which any of their property is the subject, a brief description of the business done and projected by the offeror and its subsidiaries and the general development of that business over the past five years, the names of all directors and executive officers together with biographical summaries of each for the preceding five years to date, the approximate amount of any material interest, direct or indirect, of any of the directors or officers in a material transaction during the past three years or in a proposed material transaction to which the offeror or any of its subsidiaries was or is to be a party, and complete information concerning all inducements to officers and directors of the offeree company which are not made available to all security holders.

(d) The department may within 10 days of the filing order a hearing to determine whether fair, full and effective disclosure is proposed, if in the opinion of the department cause for a hearing exists. The offeree company may within 10 days of the filing request a hearing and the department shall upon receipt of the request order a hearing.

(e) All written soliciting material used by the offeror in connection with the takeover bid shall be filed with the department and the registered agent of the offeree company not later than three days before the time copies of the material are first published or sent or given to offerees.

(f) If, under an arrangement or understanding with the offeror, any persons are to be elected or designated as directors of the offeree company, otherwise than at a meeting of security holders, and the persons so elected or designated will constitute a majority of the directors of the offeree company, then, before the time that person

takes office as a director, the offeror shall file with the department, and transmit to all holders of record of securities of the offeree company who would be entitled to vote at a meeting for election of directors, information substantially equivalent to the information which would be required by sec. 14(a) or 14(c) of the Securities Exchange Act of 1934 to be transmitted if the person was a nominee for election as a director at a meeting of the security holders.

Sec. 45.57.030. RECOMMENDATIONS TO ACCEPT OR REJECT. A written solicitation or recommendation to offerees, other than by the offeror, to accept or reject a takeover bid shall be filed with the department not later than the time copies of the solicitation or recommendation are first published or sent or given to offerees.

Sec. 45.57.040. DECEPTIVE PRACTICES. It is unlawful for a person to make or omit or cause to be made or omitted, in a document filed or in a proceeding under this chapter a statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in a material respect. It is unlawful for a person to engage in a fraudulent, deceptive, or minipulative act or practice, in connection with a takeover bid, or a solicitation of offerees in opposition to or in favor of a takeover bid.

Sec. 45.57.050. INVESTIGATIONS AND SUBPOENAS. (a) The department in its discretion may

(1) make public or private investigations inside or outside this state as it considers necessary to determine whether a person has violated or is about to violate a provision of this chapter or an order under this chapter[, or to aid in the enforcement of this chapter or in the prescribing of forms under this chapter];

(2) require or permit a person to file a statement in writing, under oath or otherwise as the department determines, as to all the

facts and circumstances concerning the matter to be investigated; and

(3) publish information concerning a violation of this chapter or an order under this chapter.

(b) For the purpose of an investigation or proceeding under this chapter, the department or an officer designated by it may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of books, papers, correspondence, memoranda, agreements, or other documents or records which the department considers relevant or material to the inquiry.

Sec. 45.57.060. INJUNCTIONS. When it appears to the department that a person has engaged or is about to engage in an act or practice in violation of a provision of this chapter or an order under this chapter, it may bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter or order under this chapter. The court may not require the department to post a bond.

Sec. 45.57.070. CRIMINAL PENALTIES. A person who wilfully violates a provision of this chapter, upon conviction, is punishable by a fine of not more than $5,000, or by imprisonment for not more than three years, or by both. However, no person may be imprisoned for the violation of an order if he proves that he had no knowledge of the order. No indictment or information may be returned under this chapter more than five years after the alleged violation.

Sec. 45.57.080. CIVIL LIABILITIES. (a) An offeror who (1) makes a takeover bid which does not comply with the provisions of this chapter or (2) makes a takeover bid by means of a statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in a material respect, and who does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission, is liable to any

offeree whose shares are taken up under the takeover bid. An offeree may bring civil action (1) to recover the shares, together with all dividends received, costs and reasonable attorney fees, upon the tender of the consideration received from the offeror, or (2) for the substantial equivalent in damages if the offeror no longer owns the shares.

(b) Every person who materially participates or aids in a takeover bid made by an offeror liable under (a) of this section, or who directly or indirectly controls an offeror who is liable, is also liable jointly and severally with and to the same extent as the offeror unless the person who so participates, aids or controls, sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. [There shall be contribution as in cases of contract among the several persons liable.]

[(c) A tender specified in this section may be made at any time before entry of judgment.]

(d) No person may bring action under this section unless brought within two years after the transaction upon which it is based. If a person liable under this section makes a written offer, before suit is brought, to return the shares taken up under the takeover bid, together with all dividends received, upon the tender of the consideration received from the offeror, or to pay damages if the offeror no longer owns the shares, no person may maintain a suit under this section unless he rejected the offer in writing within 30 days of its receipt.

(e) Any condition, stipulation or provision binding an offeree to waive compliance with a provision of this chapter or a regulation issued under it is void.

(f) The rights and remedies provided by this chapter shall be in addition to any and all other rights and remedies that may exist at law

or in equity.

Sec. 45.57.090. CONSENT TO SERVICE OF PROCESS. A nonresident offeror, except a foreign corporation which has complied with AS 10.05.-597 - 10.05.696, who makes a takeover bid is considered to have appointed the commissioner of commerce and economic development as his agent upon whom may be served, in any matter arising under this chapter, any process, notice, order or demand except one issued by the department. Service may be made on the commissioner or any of his staff at his office. He shall send it by registered or certified mail addressed to the offeror at his latest address on file and keep a record of it. A process, notice, order or demand issued by the department shall be served by being mailed by the commissioner or any of his staff by registered or certified mail addressed to the offeror at his latest address on file.

Sec. 45.57.100. REGULATIONS. The department may make and adopt regulations, and adopt forms, that are necessary or desirable to carry out the provisions of this chapter.

Sec. 45.57.110. DEFINITIONS. As used in this chapter, unless the context requires otherwise,

(1) "department" means the Department of Commerce and Economic Development;

(2) "exempt offer" means, with respect to any class of equity securities of the offeree company,

(A) an isolated offer to purchase equity securities from individual shareholders and not made to shareholders generally;

(B) an offer made by an issuer to purchase its own equity securities or equity securities of a subsidiary at least two-thirds of the voting stock of which is owned beneficially by the issuer;

(C) an offer to purchase equity securities to be effected by a registered broker-dealer on a stock exchange or in the over-the-counter market if the broker performs only the customary broker's function, and receives no more than the customary broker's commissions, and neither the principal nor the broker solicits or arranges for the solicitation of orders to sell equity securities of the offeree company;

(D) an offer to purchase equity securities made to all holders of the securities if the number of such holders does not exceed 100 at the time of the offer;

(E) an offer which the board of directors of the offeree company recommends to the security holders of the company if the terms of the offer, including any inducements to officers or directors which are not available to all security holders, have been furnished to security holders;

(3) "offeree" means a person, whether a security holder of record or a beneficial owner, to whom a takeover bid is made;

(4) "offeree company" means a corporation incorporated under the laws of Alaska or a corporation which has its principal office and substantial assets located in Alaska, whose equity securities are the subject of a takeover bid;

(5) "offeror" means a person who makes a takeover bid, and includes two or more persons

(A) whose takeover bids are made jointly or in concert, or

(B) who intend to exercise jointly or in concert any voting rights attaching to the equity securities for which a takeover bid is made;

(6) "offeror's presently owned equity securities" means, with

respect to any class of securities of an offeree company, the aggregate number of shares or other units which, on the date of a takeover bid, are beneficially owned or subject to a right of acquisition directly or indirectly by the offeror or an associate of the offeror;

(7) "associate of the offeror" means

(A) a corporation or other organization of which the offeror is an officer, director or partner, or is, directly or indirectly, the beneficial owner of 10 per cent or more of any class of equity securities;

(B) a person who is, directly or indirectly, the beneficial owner of 10 per cent or more of any class of equity securities of the offeror;

(C) a trust or other estate in which the offeror has a substantial beneficial interest or as to which the offeror serves as trustee or in a similar fiduciary capacity;

(D) a relative or spouse of the offeror or a relative of the spouse, who has the same home as the offeror;

(E) a person directly or indirectly controlling, controlled by, or under common control with, the offeror;

(8) "takeover bid" means an offer, other than an exempt offer;

(9) "offer" means an offer made by any person directly or through an agent by advertisement or any other written or oral communication to offerees to purchase the number of shares or other units of any class of equity security of the offeree company that, together with the offeror's presently owned shares, will in the aggregate exceed five per cent of the outstanding shares of that class;

(10) "Securities Exchange Act of 1934" means the federal statutes of that name as in effect or subsequently amended.

Sec. 45.57.120. SHORT TITLE. This chapter may be cited as the Takeover Bid Disclosure Act.

changes for HCS Victor 5/6

Original sponsor: Commerce Committee

Offered: 3/24/76
Referred: Rules

IN THE SENATE BY THE COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 443

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to disclosure requirements in takeover bids."

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

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

CHAPTER 57. TAKEOVER BID DISCLOSURE ACT.

Sec. 45.57.010. PROVISIONS OF TAKEOVER BIDS. The following provisions apply to every takeover bid:

(1) The period of time within which securities may be tendered by an offeree under a takeover bid shall not be less than 21 days nor more than 35 days from the date copies of the takeover bid are first published or sent or given to offerees.

(2) Securities deposited under a takeover bid may be withdrawn by an offeree or his attorney-in-fact by demand in writing on the offeror or the depository at any time within 21 days from the date copies of the takeover bid are first published or sent or given to offerees.

(3) When a takeover bid is made for less than all the shares or other units of a class and when a greater number of shares or other units is deposited under it than the offeror is bound or willing to take up and pay for, the shares or other units taken up by the offeror shall be taken up as nearly as may be pro rata, disregarding fractions, according to the number of shares or other units deposited.

(4) When an offeror varies the terms of a takeover bid before the expiration of it by increasing the consideration offered, the

offeror shall pay the increased consideration to each offeree whose securities are taken up even if they have been taken up and paid for before the variation of the takeover bid.

(5) When a takeover bid is sent by mail to offerees, it shall be accompanied by a copy of the statement filed with the department under sec. 20 of this chapter.

Sec. 45.57.020. DISCLOSURE. (a) No offeror may make a takeover bid unless at least 20 days before it he files with the department and with the registered agent of the offeree company a statement containing all the information required by (c) of this section and either

(1) within 10 days following the filing no hearing has been ordered by the department or requested by the offeree company; or

(2) a hearing has been ordered within that time and upon the hearing the department has adjudicated that the offeror proposed to make fair, full and effective disclosure to offerees of all information material to a decision to accept or reject the offer.

(b) A hearing shall begin within 20 days of the date of filing of the statement and adjudication shall be made within 30 days of the filing unless extended by the department for the convenience of the parties or protection of the offerees.

(c) The statement to be filed with the department under (a) of this section shall include the following information and the additional information that the department may require as necessary in the public interest or for the protection of offerees:

(1) the name, address and business experience of the offeror and each associate of the offeror;

(2) the terms and conditions of the takeover bid, which shall include the applicable provisions of sec. 10 of this chapter;

(3) the source and amount of the funds or other consideration

used or to be used in making the takeover bid, and if any part of those funds or consideration is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of making the bid, a description of the transaction and the names of the parties to it, except that if a source of funds is a loan made in the ordinary course of business by a bank or financial institution customarily engaged in the business of making loans, it will be sufficient to so state;

(4) plans or proposals that the offeror may have to liquidate the offeree company, to sell its assets to or merge it with any other person, or to make any other material change in its business or corporate structure;

(5) the number of shares or other units of securities of each class presently owned by the offeror and each associate of the offeror;

(6) information as to any contracts, arrangements, or understandings with a person with respect to securities of the offeree company, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guaranties of loans, guaranties against loss or guaranties of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom those contracts, arrangements, or understandings have been entered into, and giving the details of them;

(7) complete information on the organization and operations of the offeror, including without limitation the year of organization, form of organization, jurisdiction in which it is organized, a description of each class of the offeror's capital stock and of its long-term debt, financial statements for the current period and for the three most recent annual accounting periods, a brief description of the location and general character of the principal physical properties of the

offeror and its subsidiaries, a description of pending legal proceedings other than routine litigation to which the offeror or any of its subsidiaries is a party or of which any of their property is the subject, a brief description of the business done and projected by the offeror and its subsidiaries and the general development of that business over the past five years, the names of all directors and executive officers together with biographical summaries of each for the preceding five years to date, the approximate amount of any material interest, direct or indirect, of any of the directors or officers in a material transaction during the past three years or in a proposed material transaction to which the offeror or any of its subsidiaries was or is to be a party, and complete information concerning all inducements to officers and directors of the offeree company which are not made available to all security holders.

(d) The department may within 10 days of the filing order a hearing to determine whether fair, full and effective disclosure is proposed, if in the opinion of the department cause for a hearing exists. The offeree company may within 10 days of the filing request a hearing and the department shall upon receipt of the request order a hearing.

(e) All written soliciting material used by the offeror in connection with the takeover bid shall be filed with the department and the registered agent of the offeree company not later than three days before the time copies of the material are first published or sent or given to offerees.

(f) If, under an arrangement or understanding with the offeror, any persons are to be elected or designated as directors of the offeree company, otherwise than at a meeting of security holders, and the persons so elected or designated will constitute a majority of the directors of the offeree company, then, before the time that person

takes office as a director, the offeror shall file with the department, and transmit to all holders of record of securities of the offeree company who would be entitled to vote at a meeting for election of directors, information substantially equivalent to the information which would be required by sec. 14(a) or 14(c) of the Securities Exchange Act of 1934 to be transmitted if the person was a nominee for election as a director at a meeting of the security holders.

Sec. 45.57.030. RECOMMENDATIONS TO ACCEPT OR REJECT. A written solicitation or recommendation to offerees, other than by the offeror, to accept or reject a takeover bid shall be filed with the department not later than the time copies of the solicitation or recommendation are first published or sent or given to offerees.

Sec. 45.57.040. DECEPTIVE PRACTICES. It is unlawful for a person to make an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or to engage in a fraudulent, deceptive, or manipulative act or practice, in connection with a takeover bid, or a solicitation of offerees in opposition to or in favor of a takeover bid.

Sec. 45.57.050. INVESTIGATIONS AND SUBPOENAS. (a) The department in its discretion may

(1) make public or private investigations inside or outside this state as it considers necessary to determine whether a person has violated or is about to violate a provision of this chapter or an order under this chapter, or to aid in the enforcement of this chapter or in the prescribing of forms under this chapter;

(2) require or permit a person to file a statement in writing under oath or otherwise as the department determines, as to all the facts and circumstances concerning the matter to be investigated; and

(3) publish information concerning a violation of this chapter or an order under this chapter.

(b) For the purpose of an investigation or proceeding under this chapter, the department or an officer designated by it may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of books, papers, correspondence, memoranda, agreements, or other documents or records which the department considers relevant or material to the inquiry.

* [(c) In case of contumacy by, or refusal to obey a subpoena issued to a person, the superior court, upon application by the department, may issue to the person an order requiring him to appear before the department, or the officer designated by it, to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.]

deleted

[(d) No person is excused from attending and testifying or from producing a document or record before the department, or in obedience to the subpoena of the department or officer designated by it, or in a proceeding instituted by the department, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. However, no individual may be prosecuted or subjected to a penalty or forfeiture for or on account of a transaction, matter, or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.]

Sec. 45.57.060. INJUNCTIONS. When it appears to the department that a person has engaged or is about to engage in an act or practice in

violation of a provision of this chapter or an order under this chapter, it may bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter or order under this chapter. [Upon a proper showing, the appropriate remedy shall be granted.] The court may not require the department to post a bond.

* Sec. 45.57.070. CRIMINAL PENALTIES. A person who wilfully violates a provision of this chapter, upon conviction, is punishable by a fine of not [less than $100 nor] more than $5,000, or by imprisonment for not [less than 30 days nor] more than three years, or by both. However, no person may be imprisoned for the violation of an order if he proves that he had no knowledge of the order. No indictment or information may be returned under this chapter more than two years after the alleged violation.

delete

* Sec. 45.57.080. CIVIL LIABILITIES. (a) An offeror who (1) makes a takeover bid which does not comply with the provisions of this chapter or (2) makes a takeover bid by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it was made, not misleading (the offeree not knowing of the untruth or omission), and who does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission, is liable to any offeree whose shares are taken up under the takeover bid who may bring civil action (A) to recover the shares, together with all dividends received, costs and reasonable attorney fees, upon the tender of the consideration received from the offeror, or (B) for the substantial equivalent in damages if the offeror no longer owns the shares.

change of wording

(b) Every person who materially participates or aids in a takeover bid made by an offeror liable under (a) of this section, or who

directly or indirectly controls an offeror who is liable, is also liable jointly and severally with and to the same extent as the offeror unless the person who so participates, aids or controls, sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There shall be contribution as in cases of contract among the several persons liable.

(c) A tender specified in this section may be made at any time before entry of judgment.

(d) No person may bring action under this section unless brought within two years after the transaction upon which it is based. If a person liable under this section makes a written offer, before suit is brought, to return the shares taken up under the takeover bid together with all dividends received, upon the tender of the consideration received from the offeror, or to pay damages if the offeror no longer owns the shares, no person may maintain a suit under this section unless he rejected the offer in writing within 30 days of its receipt.

(e) Any condition, stipulation or provision binding an offeree to waive compliance with a provision of this chapter or a regulation issued under it is void.

(f) The rights and remedies provided by this chapter shall be in addition to any and all other rights and remedies that may exist at law or in equity.

Sec. 45.57.090. CONSENT TO SERVICE OF PROCESS. A nonresident offeror, except a foreign corporation which has complied with AS 10.05.-597 - 10.05.696, who makes a takeover bid is considered to have appointed the commissioner of commerce and economic development as his agent upon whom may be served, in any matter arising under this chapter, any process, notice, order or demand except one issued by the depart-

ment. Service may be made on the commissioner or any of his staff at his office. He shall send it by registered or certified mail addressed to the offeror at his latest address on file and keep a record of it. A process, notice, order or demand issued by the department shall be served by being mailed by the commissioner or any of his staff by registered or certified mail addressed to the offeror at his latest address on file.

Sec. 45.57.100. REGULATIONS. The department may make and adopt regulations, and adopt forms, that are necessary or desirable to carry out the provisions of this chapter.

Sec. 45.57.110. DEFINITIONS. As used in this chapter, unless the context requires otherwise,

(1) "department" means the Department of Commerce and Economic Development;

(2) "exempt offer" means, with respect to any class of equity securities of the offeree company,

(A) an isolated offer to purchase equity securities from individual shareholders and not made to shareholders generally;

(B) an offer made by an issuer to purchase its own equity securities or equity securities of a subsidiary at least two-thirds of the voting stock of which is owned beneficially by the issuer;

(C) an offer to purchase equity securities to be effected by a registered broker-dealer on a stock exchange or in the over-the-counter market if the broker performs only the customary broker's function, and receives no more than the customary broker's commissions, and neither the principal nor the broker solicits or arranges for the solicitation of orders to sell equity securities of the offeree company;

(D) an offer to purchase equity securities made to all holders of the securities if the number of such holders does not exceed 100 at the time of the offer;

(E) an offer which the board of directors of the offeree company recommends to the security holders of the company if the terms of the offer, including any inducements to officers or directors which are not available to all security holders, have been furnished to security holders;

(3) "offeree" means a person, whether a security holder of record or a beneficial owner, to whom a takeover bid is made;

(4) "offeree company" means a corporation incorporated under the laws of Alaska or a corporation which has its principal office and substantial assets located in Alaska, whose equity securities are the subject of a takeover bid;

(5) "offeror" means a person who makes a takeover bid, and includes two or more persons

(A) whose takeover bids are made jointly or in concert, or

(B) who intend to exercise jointly or in concert any voting rights attaching to the equity securities for which a takeover bid is made;

(6) "offeror's presently owned equity securities" means, with respect to any class of securities of an offeree company, the aggregate number of shares or other units which, on the date of a takeover bid, are beneficially owned or subject to a right of acquisition directly or indirectly by the offeror or an associate of the offeror;

(7) "associate of the offeror" means

(A) a corporation or other organization of which the offeror is an officer, director or partner, or is, directly or

indirectly, the beneficial owner of 10 per cent or more of any class of equity securities;

(B) a person who is, directly or indirectly, the beneficial owner of 10 per cent or more of any class of equity securities of the offeror;

(C) a trust or other estate in which the offeror has a substantial beneficial interest or as to which the offeror serves as trustee or in a similar fiduciary capacity;

(D) a relative or spouse of the offeror or a relative of the spouse, who has the same home as the offeror;

(E) a person directly or indirectly controlling, controlled by, or under common control with, the offeror;

(8) "takeover bid" means an offer, other than an exempt offer;

(9) "offer" means an offer made by any person directly or through an agent by advertisement or any other written or oral communication to offerees to purchase the number of shares or other units of any class of equity security of the offeree company that, together with the offeror's presently owned shares, will in the aggregate exceed five per cent of the outstanding shares of that class;

(10) "Securities Exchange Act of 1934" means the federal statutes of that name as in effect or subsequently amended.

Sec. 45.57.120. SHORT TITLE. This chapter may be cited as the Takeover Bid Disclosure Act.

HCS CSSB 443 IS A BILL DESIGNED FOR THE PROTECTION AND BENEFIT OF STOCKHOLDERS OF ALASKAN CORPORATIONS OR CORPORATIONS WHICH HAVE THEIR PRINCIPAL OFFICE AND SUBSTANTIAL ASSETS IN ALASKA. AS LONG AS MOST STOCKS SELL BELOW THEIR BOOK VALUE AND AT LOW EARNINGS MULTIPLES, RAIDING COMPANIES WILL CONTINUE TO MAKE TAKE-OVER BIDS FOR OTHER COMPANIES.

THIS BILL PROVIDES THAT NO PERSON CAN MAKE AN OFFER TO GAIN CONTROL OF AN ALASKAN CORPORATION BY PURCHASING ITS STOCK WITHOUT COMPLIANCE WITH THE TERMS FOR THE STATUTE. THE RAIDING COMPANY WILL BE REQUIRED TO FILE A DISCLOSURE STATEMENT WITH THE DEPARTMENT OF COMMERCE, THE TARGET COMPANY AND THE STOCKHOLDERS. INFORMATION REQUIRED TO BE DISCLOSED IS SET FORTH HEREIN BEGINNING ON PAGE 2, LINE 22 WITH THE DEPARTMENT OF COMMERCE AUTHORIZED TO REQUIRE FURTHER INFORMATION IF IT DEEMS NECESSARY FOR PROTECTION OF THE STOCKHOLDERS. THE BILL ESTABLISHES A MINIMUM TIME PERIOD OF 21 DAYS WHICH THE OFFER MUST REMAIN OPEN TO STOCKHOLDERS.

THE EFFECT OF THIS BILL IS TO MAKE IT MORE DIFFICULT FOR A RAIDER TO GAIN CONTROL OF AN ALASKAN CORPORATION IN WAYS WHICH WOULD BE UNFAIR TO STOCKHOLDERS. IRRESPECTIVE OF WHETHER A STOCKHOLDER CHOOSES TO SELL TO THE RAIDER AT A PREMIUM PRICE OR HOLD HIS STOCK, HE WILL ACQUIRE THE NECESSARY INFORMATION, UNDER THE PROVISIONS OF THIS BILL, WHICH WILL ENABLE HIM TO MAKE HIS OWN DECISION WITHOUT BEING STAMPEDED BY THE RAIDING COMPANY.

SIMILAR STATUTES HAVE BEEN ENACTED BY THE STATES OF COLORADO, HAWAII, IDAHO, INDIANA, KANSAS, MINNESOTA, NEVADA, OHIO, PENNSYLVANIA, SOUTH DAKOTA, ~~AND~~ VIRGINIA and earlier this month, Delaware.

CONNECTICUT, ~~DELAWARE~~, MARYLAND, MASSACHUSETTS, MICHIGAN, NEW JERSEY, AND TENNESSEE ARE PRESENTLY CONSIDERING THIS LEGISLATION.

PERHAPS THE CONCLUDING PARAGRAPH OF A RECENT ARTICLE IN FORBES MAGAZINE ENTITLED "RUTHLESSNESS BY THE RULES" BEST SUMS UP THE NEED FOR THIS BILL AND I QUOTE:

> " THE IMPORTANT THING IS TO TIGHTEN THE RULES -- AND EXTEND THE BIDDING PERIOD SO THAT STOCKHOLDERS WON'T BE PANICKED INTO SELLING OUT TO ARBITRAGEURS AT THE FIRST OFFER. IF THE STOCKHOLDERS STAY COOL AND ARE ABLE TO WAIT, THERE ARE ALMOST CERTAIN TO BE HIGHER BIDS."

I URGE THE PASSAGE OF THIS BILL.

Williams Act SEC

what Co. does this apply to — what portion in state
what level of Co by Williams Act

Why stockholders railroaded

what prompted the bill

Why 100 share holder cutoff

TELEGRAM

...CA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

02119 NL ANCHORAGE ALASKA 96 04-12 457P AST

PMS TERRY GARDINER 2234

CHAIRMAN HOUSE JUDICIAL COMMITTEE

STATE OF ALASKA JUN

UNDERSTAND YOUR COMMITTEE CONSIDERING SB 443 SOMETIMES REFERRED TO AS A CORPORATE TAKE-OVER BILL. IN VIEW OF THE STATES APPARENT BAD REPUTATION WITH THE FINANCIAL WORLD AT THE MOMENT WIEN FINDS ITSELF IN THE POSITION OF ITS STOCK SELLING AT SUBSTANTIALLY LOWER THAN ITS BOOK VALUE AND CRITICALLY BELOW ITS LIQUIDATION VALUE. IT APPEARS THAT SB 443 WOULD BE ADVANTAGEOUS TO THE PEOPLE OF ALASKA WHOSE AIRLINE GOULD BE SUBJECTED TO FALLING INTO HANDS NOT COMPATIBLE WITH THE BEST INTERESTS OF THE STATE OF ALASKA. MY COMPANY SUPPORTS THIS BILL.

RAY PETERSEN CHAIRMAN OF THE BOARD AND PRESIDENT

WIEN AIR ALASKA INC

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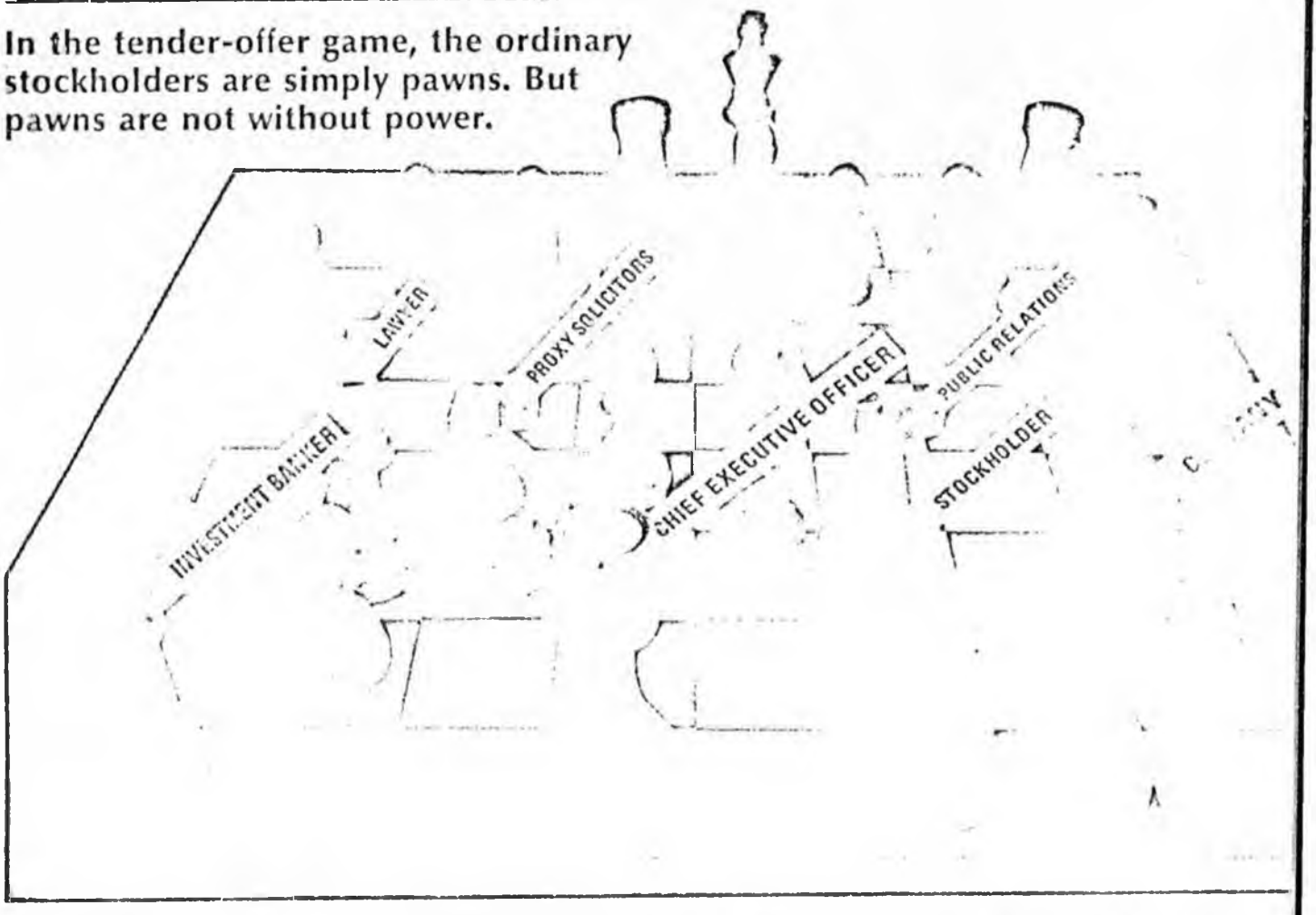
Ruthlessness By The Rules

In the tender-offer game, the ordinary stockholders are simply pawns. But pawns are not without power.



CHECKMATE?

Or stalemate?

It looked like certain checkmate for Microdot Inc. when General Cable Corp. launched a powerful takeover gambit in December. General Cable was carefully masterminded by Morgan Stanley & Co. and legal-eagled by Joseph Flom, generally regarded as the smartest takeover lawyer in the country.

The offer looked irresistible. The stock market was doing nothing, and Microdot stock languished around 11. General Cable was offering $17 a share in hard cash. In shrewdest Morgan Stanley fashion, the offer was designed to put Wall Street's professional arbitrageurs into the game on General Cable's side. (The arbitrageurs buy Microdot stock on the open market, hoping to tender to General Cable at a higher price as soon as possible.) And stockbrokers were to be a part of the strategy, too: They were to be offered 15 cents a share—three to four times the normal retail commission—for every Microdot share they were able to persuade customers to part with.

To keep the arbitrageurs happy, Morgan Stanley specified that General Cable would accept every share offered—not just a certain number. In such a fight, the arbitrageurs play the key role: Once a big part of the stock is in their hands, the game is almost over. They are interested only in getting out at a profit, and getting out as soon as possible. Who can take them out quickly except the acquiring company?

Beautiful Ohio . . .

There was only one hitch—and it may prove to be a fatal hitch for General Cable's strategy. Microdot happens to have large assets in Ohio, which has one of the toughest anti-takeover laws in the Union. Under Ohio laws, the General Cable tender offer has not yet been approved by the State Securities Commissioner. So far, therefore, the tender has not become effective—though some arbitrageurs have already gone into action as though it had.

Meanwhile, Microdot's chairman, Rudolph Eberstadt Jr., a nephew of the late Wall Street magnate Ferdinand Eberstadt, has been busy moving his own pieces about the board. He has used every gambit in the book and some not yet in the book. He has attacked General Cable's management, questioned Morgan Stanley's motives and last month made a novel move that may well become a defensive classic in the tender game: He proposed that his board of directors be given the power to liquidate Microdot rather than surrender—that is, sell the assets, piecemeal if necessary, to other companies. Such a liquidation could bring at least $27 a share, more than half again as much as General Cable proposes offering. Eberstadt says he even considered tendering for the tenderer. In the end, however, he decided against the move: "General Cable just isn't worth

it," he says. "Maybe I should take out an advertisement offering $3 a share [the stock sells for $10]; that would show my contempt for them."

Eberstadt has a point. A ho-hum kind of company making wire and cable, General Cable has had a lackluster earnings record. Microdot, a diversified maker of industrial supplies, by contrast, has shown considerable growth. For example, Microdot's common book value has more than trebled in the past decade. General Cable's has increased by only about one-fourth as much. A takeover of Microdot would give Cable some badly needed glamour. Financed with money borrowed from four banks, including Microdot's own lead bank, Irving Trust, the takeover would be highly leveraged and bring quick, substantial gains in earnings per share for General Cable.

Defensive fights like the one Microdot is waging are making it more difficult and costly to take over companies that do not want to be taken over. In spite of the sick stock market last year, according to figures prepared by the Chicago merger consultant W.T. Grimm & Co., there were fewer tender offers for publicly held companies than in 1974. The score: 76 vs. 58. But, as long as most stocks sell below book value and at low earnings multiples, the tender game will go on. The cost may be high, but the potential rewards are tremendous.

In fact, the fights are getting more vicious all the time. Raids are being made when rival presidents are out of the country or even ill.

Consider this tactic, now fairly standard: Shortly before closing time on a Friday, the tendering company's lawyer appears at the Securities & Exchange Commission with a copy of the required Schedule 13D form, which includes information about the offerer and his intentions. Ads are placed in *The New York Times* and *The Wall Street Journal* for publication Monday morning. The raid is still secret. On Monday morning, the target company receives a copy of the 13D along with newspaper stories announcing the offer. The offer may give shareholders as few as seven days (including weekends and holidays) to consider the offer.

In consideration for the interests of the arbitrageurs—nobody seems to worry much about the stockholders who tender—investment bankers have developed a new technique. Follow a low initial bid with a second higher one. The early arbitrageurs who acted on the first bid thus get a double reward. (There have even been suggestions that some arbitrageurs have been given advance information on takeovers.)

It is important for the aggressor that he strike with great power and confidence: He needs the arbitrageurs, and they must be convinced that the raid will succeed. There is nothing worse for an arbitrageur than to pay a premium over market for a stock and then have the tender offer collapse. The arbitrageurs can't afford risk and they can't afford delays. As one of them puts it, "Five percent profit in one week is a 260% annual rate; 5% in a month is only 60%." And there are risks: Many arbitrageurs got bloodied last November when they bought Austral Oil at 17 to sell to St. Joe Minerals for stock worth 20. The deal was called off, and many arbitrageurs ended up selling their shares for as little as $11. Good-bye to many months' profits!

Arbitrageurs are nervy, hard-to-scare types; some are lawyers who instinctively know if a highly publicized lawsuit has any chance of success or is just a smoke screen. The best are right as often as 19 out of 20 times. But if they see a deal becoming really tainted, they will not hesitate to dump their stock on the open market.

A Quick Kill?

It is also important to strike with vigor so that the stockholders won't be encouraged to hold out for a higher price; every share tendered at a low price makes the final acquisition that much cheaper. It is also tougher for a rival bidder if the first bidder already has a good-sized block of stock in his pocket.

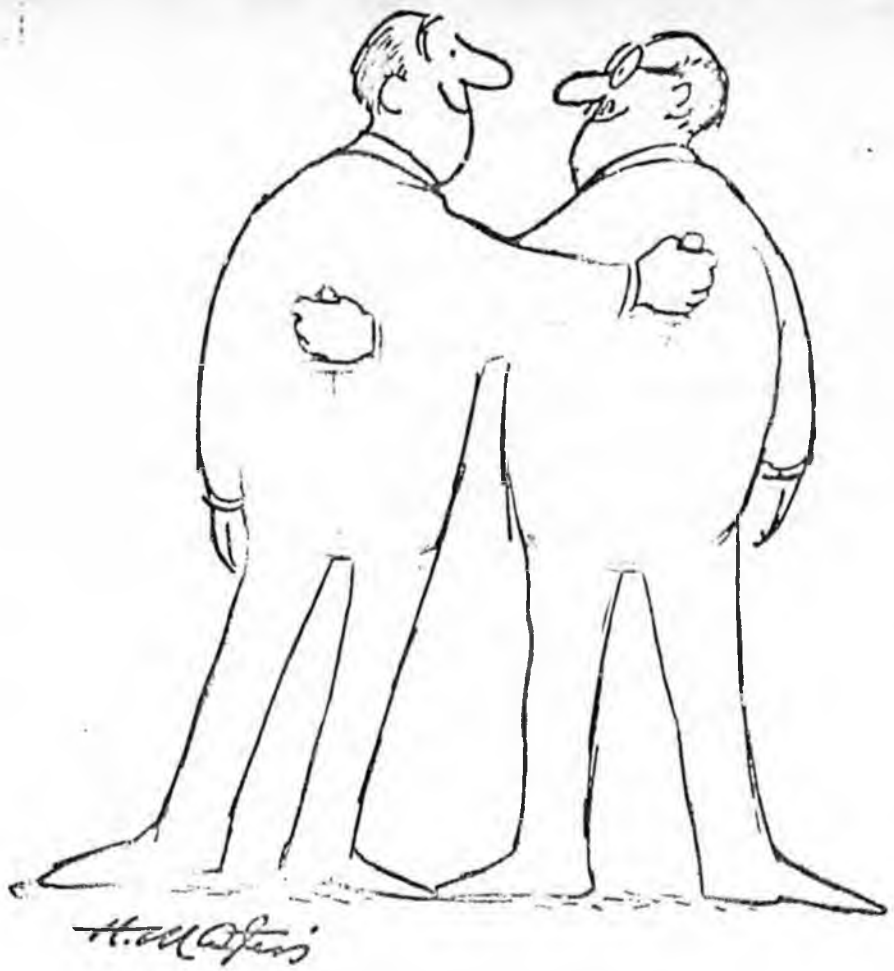
When a tender offer does not succeed at first stroke, the resulting bidding can be very costly for the bidders, but very advantageous for the shareholders of the acquired company. Take the 1974 takeover of ESB Inc. by International Nickel. ESB was at 19. Inco offered $28 a share, a nice premium. However, ESB had previously talked merger with another company, United Technologies (formerly United Aircraft). UT knew that ESB was worth a good deal more than $28 a share. So UT made a rival offer of $31. In the end, Inco topped the UT offering at $41 a share. As a result of UT's rival offer, ESB stockholders came out a full 46% better than they otherwise would have. Inco, moreover, seemed glad to have won ESB even at the higher price (although the Justice Department's Antitrust Division is now pressing a suit to force Inco's divestiture of ESB). But in how many takeovers do stockholders get this kind of a price break?

More recently, Mesa Petroleum bid $22 a share for control of Aztec Oil—nearly 50% over market. But the Mesa bid attracted other bidders and Mesa dropped out. The bidding for Aztec is up to $32 a share, and Aztec stockholders will get a real windfall.

For such reasons, companies will go to great lengths to keep away raiders. Thomas Mellon Evans, chairman of H K Porter Co. as well as Condec Co., has played the takeover game for 25 years. He deliberately cultivates a tough-guy image to overawe both his targets and potential raiders. In bidding recently for control of Missouri Portland Cement Co., on behalf of his H K Porter Co., Evans



Rudolph Eberstadt Jr. is clearly outraged at General Cable's attempt to take over his company, Microdot. But here Eberstadt is displaying a short memory: Only a few years ago he himself tried—unsuccessfully—to mount an unfriendly tender offer for a small company named Teco.



"What! Me make an unfriendly tender!"

found himself facing a potential rival bid from Chromalloy American Corp. Evans ran into Chromalloy's Chairman Joseph Friedman, who remarked that he hoped there would be no hard feelings over Chromalloy's designs on H.K. Porter's quarry. Evans reply made it quite clear that there would be considerable hard feelings. He went on to point out that Chromalloy was heavily in debt while his H.K. Porter wasn't, and that this and similar comparisons would have to be made if a fight developed. "These things get rather bloody, you know," Evans told Friedman. Chromalloy called off its proposed merger with Missouri Portland, and Porter has acquired 52% of Portland's stock.

Lawyer David Hall of Demas & Hall, which specializes in tender work, claims he knows two cases where raiders maneuvered so they could scotch a competing tender bid. The first was when a raider used detectives to uncover damaging financial facts about its potential rival, and then warned the rival that that material would have to be disclosed in the event of two competing tenders. Currently, one of Hall's clients has been threatened with a tender offer if it refuses to sell a prize division for a ridiculously low price.

It's quite obvious that this is no gentlemanly game, and the successful defender is often at least as ruthless as his attacker. One of the more successful defenders in proxy battles is Richard Cheney, 51, executive vice president at the big public relations firm of Hill & Knowlton. Cheney is well known for his successful defenses of such companies as Dictaphone and Goodrich, but Cheney has dropped a few, too. Only recently he lost a client, Garlock Inc., to Colt Industries, in a surprise attack that Garlock didn't have time to resist, though other bidders were interested. Cheney helped Goodrich fight off raider Ben Heineman of Northwest Industries. He had Goodrich take out full-page advertisements criticizing the way Northwest was running its own business and implying that Heineman would be a very poor doctor for what ailed Goodrich. In addition, Goodrich deliberately bought a small trucking company in order to raise the antitrust issue for Northwest, which at that time owned the Chicago & North Western Railway.

Another successful Cheney defense involved Dictaphone Corp. against a takeover bid from Canada's Northern Electric Co., Ltd. The defense involved publicizing pre-tender trading by the wife of Northern Chairman John Lobb. Cheney also made sure every Dictaphone employee knew that there had been a good deal of firing at Northern Electric after Lobb took over. This, not surprisingly, got Dictaphone's union riled up. The union saw to it that Connecticut Senator Lowell Weicker attacked this "foreign takeover" of a Connecticut company. The clincher was an antitrust charge involving Northern's parent, Bell of Canada.

In the end, Northern Electric broke off the attack. Dictaphone was "saved." But there is a postscript: Management's defense prevented stockholders from selling out at $12 a share; but Dictaphone stock recently sold at 9.

Another veteran tender-defender is Manning Selvage & Lee Chairman Morris Lee, who goes back to Sewell Avery's successful defense against raider Louis Wolfson in the mid-Fifties. Lee likes to try stopping tenders before they are made. Lee says he stopped one group of raiding Texans by exposing a lie they had told their financiers, thereby killing their loan.

One of the most successful defenses was engineered in 1974 by California-based Signal Cos. This $1.6-billion conglomerate was under attack by a group of investors including the Bronfman interests in Distillers Corp.-Seagrams Ltd. Signal's management figured out that the Bronfmans hoped to sell Signal's Mack Trucks and Garrett Corp. and end up owning Signal's oil and gas operations for free. By the time the raiders had 10% of Signal stock, Signal turned around and sold the oil and gas to Britain's Burmah Oil and used part of the proceeds to buy out the would-be raiders.

The Signal story has an ironic twist: The oil and gas operations proved

The Middle Men

CONVENTIONAL arbitrage is almost riskless, involving simultaneous buying and selling. But arbitrage as practiced in the tender game is far from riskless. It involves buying a stock at a higher price than it recently sold, if the tender offer falls through, the stock may drop back and the arbitrageur may get clobbered. A few such clobberings and he is out of business. The game is only for a few tough, experienced men, but they get very rich turning their money over every few weeks if they are lucky. The biggest arbitrageur is probably Leonard Sheriff, 60, a Yale Law School graduate who operates his own firm. Among brokers, Goldman, Sachs, Bache & Co., Bear, Stearns are big.

disappointment to Burmah, which in effect was driven to the wall by that purchase. Burmah has been trying unsuccessfully to sell the former Signal properties ever since, while Signal, by contrast, is now cash-rich and raider-free.

The Goodrich ploy of buying a trucking company to block takeover by a railroad has been used many times. In one case, an Iranian tender was discouraged because some of coal producer Pittston's subsidiaries were regulated by the Interstate Commerce Commission. GAF Corp. is purchasing a radio station, apparently to make it difficult for outsiders to try taking it over; U.S. law requires unusually close scrutiny of broadcast company ownership.

Anaconda Co., under assault from Tom Evans and Crane, used the same tactic. It bought the Walworth Co., a competitor of Crane. This raised probably insuperable antitrust obstacles to a Crane takeover of Anaconda. In the end Evans settled for going after no more than 5 million shares, about 23% of the company, but he agreed not to buy any more shares and not to seek representation on the Anaconda board. (Evans-watchers are betting that this stalemate will not last indefinitely.)

A Local Issue

The stakes are huge in these battles, and, not surprisingly, as fast as defenders of the *status quo* set up obstacles to takeovers, the attackers find ways around them. For a long time it was in vogue to have staggered elections to the boards of directors of companies worried about takeover; the aggressor might get most of the stock, but he still couldn't control the board for many years. But the takeover forces have found ways of forcing resignations from the board. Or of increasing the board's size. Or of weakening its powers. So managements have come up with a new defense. First undertaken by Chicago Pneumatic Tool Co., it involves protecting minority shareholders by requiring a 95% stockholder vote in favor of a merger—unless the attacker comes up with an offer for all the outstanding stock that meets certain preset requirements.

Frequently the strongest resistance to takeovers comes from communities where offices and plants of the target companies are located. For this reason, some state laws against takeover are much tougher than the federal laws. "Without the protection of the Ohio law, we'd be dead now," says Allen Howell, financial assistant to the president of Microdot. "We wouldn't have had time to toss up this de-

"I never see enough New York."



Here I go again. New York on business. Fun City. In a cab, in an office, in a meeting. I never see enough New York. But I finally figured out how to stay ahead of the game.

I stay at The Biltmore.

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fense." The Ohio law provides for "full and fair disclosure" before a tender can be made. The state laws may not hold up, however, since their constitutionality has been challenged on grounds that they abridge the Federal Government's power to regulate interstate commerce. If the state laws fall, pressure for tougher federal laws will probably follow.

Whose Interest?

When a management resists a takeover bid, it never fails to announce: "This offer is not in our stockholders best interests." Is this just so much cant? In many cases, yes: It may not previously have bothered the management that its stockholders had become stockholders, or at least it didn't bother them sufficiently to do much about it.

To be sure, takeover types are not philanthropists. They want assets at a discount. Or they want companies on the verge of a turnaround where the stock price does not yet reflect the potential. If they pay $15 for a stock that recently sold at $10, it is only because they think it will be worth $20 or $25 or $30 within a reasonable amount of time.

For example, Tom Evans bought CF&I Steel in 1969 for a package of securities and cash with a market value of around $100 million; in 1974 the steel properties earned $35 million, a 35% return. Of course, Evans had to wait for the steel business to pick up before he did that well, but he waited with a confidence and a sense of control that the ordinary shareholder can never have.

From a businessman's point of view—as opposed to that of an investor—a tender offer can be a cheap way of expanding. Through tenders, Tesoro Petroleum recently bought control of Commonwealth Oil Refining for $82 million: Commonwealth's properties had a book value of only $300 million and a probable replacement cost of over $800 million.

If the businessman has incentives that the ordinary investor does not, so do the investment bankers.

If General Cable wins Microdot, then Morgan Stanley stands to earn an $800,000 fee. Tenders are good pickings for the banks, too: safe loans with fast pay-back. These loans are so tempting that New York's Irving Trust Co. may have gotten into a conflict-of-interest situation. While doing business with Microdot (and receiving regular reports on the company), Irving agreed to serve as lead bank for General Cable in financing the proposed takeover of Microdot. The bank denies there was any conflict, but Microdot's Eberstadt insists there was and announced he plans to sue Irving Trust.

A Useful Alternative

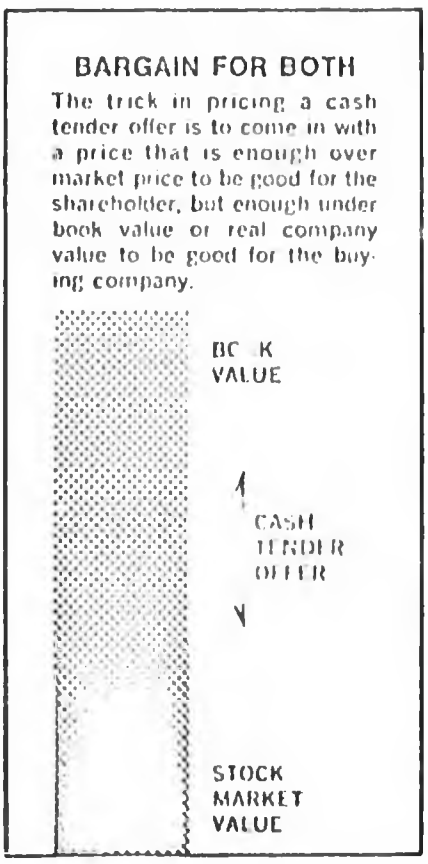
Men like Tom Evans argue that these tender offers play a useful role in keeping the economic system efficient. Even allowing for his obvious self-interest, Evans clearly has a point. Many managements are inefficient, and the country is better off if scarce capital is taken out of their hands. Too many other managements treat their stockholders in a cavalier fashion, considering them the last and the least of the publics they have to deal with. Seeing their money mishandled and their own interests largely ignored, many investors have turned away in anger from the stock market. Taking them out of depressed stocks through tender offers may not be the ideal way to restore their confidence, but at least it gives them an alternative to selling at a distressed price in a disinterested market.

An executive engaged in selling one of his company's plants to another company tells this story. Playfully, the buyer twitted the seller: "You know, on a tender I could buy your whole company for the price of this plant." The seller winced, because he knew it was true.

As long as it is true for literally hundreds of good companies, the tender game will go on. As long as the game threatens established managements, the managements will fight the tenders tooth and nail.

The important thing is to tighten the rules—and extend the bidding period so that stockholders won't be panicked into selling out to arbitrageurs at the first offer. If the stockholders stay cool and are able to wait, there are almost certain to be higher bids.

As for the stockholder's real interest, it is neither with attacker nor with victim. His interest is in getting the best possible price for his property. ●



BARGAIN FOR BOTH

The trick in pricing a cash tender offer is to come in with a price that is enough over market price to be good for the shareholder, but enough under book value or real company value to be good for the buying company.



Thomas Mellon Evans, of Crane Co. and H.K. Porter, is one of the country's takeover champions, but even he agrees that some reforms are desirable. For example, he believes that there should be a 60-day "cooling off" period after a takeover bid is initiated instead of just eight days as at present—if only so that the shareholders can have time to evaluate all the bids.

MEMORANDUM IN SUPPORT OF COMMITTEE SUBSTITUTE FOR SENATE BILL 443, THE "TAKE-OVER-BID DISCLOSURE ACT"

I. The Statute's Jurisdiction

Transactions Covered

The provisions of the statute apply to a take-over bid for any class of equity security of an Alaska corporation. A "take-over bid" is defined in Section 45.57.110 (8) and (9) as an offer made "directly or through an agent by advertisement or any other written or oral communication to (the security holders) to purchase "more than 5% of any outstanding class of the Alaska corporation's equity securities.

Only Alaska corporations and their shareholders may claim the benefit of this statute. Section 45.57.110 (4) specifies that the statute applies only to an offer made with respect to the equity securities of a corporation which is either incorporated in this State or which has both its principal office and substantial assets located in this State.

Transactions Exempted

Even if the target of the take-over bid is an Alaska corporation, the statute specifies certain situations in which the bid may proceed without compliance with the terms of the statute. The transactions exempted from the statute's coverage are ones in which the hazards of inequity or non-disclosure in a take-over bid are substantially reduced.

As stated in Section 45.57.110 (9), the statute does not apply if less than 5% of the corporation's equity securities are the subject of the bid. The acquisition of 5% of a corporation's equity securities typically will not carry with it the power to control the corporation, so that the danger of exploitation of the Alaska corporation and its shareholders is largely eliminated. To the extent that tendering security holders are injured in this situation, their remedies in private damage actions provide them relief.

The other exempt take-over bids are set out in Sectic '5.57.110 (2). These transactions involve situations in which any transfer of control of the Alaska corporation would occur only after complete disclosure and in which th' ecurity hol 'ers are at present adequately protected.

Section 45.57.110 (2) (A) exempts an isolated, private offer to purchase equity securities from individual security holders. In those instances where control is transferred in a private transaction with a few shareholders to the injury of the corporation and its remaining shareholders, common law and equitable remedies are available to redress that injury. On the other hand, if the selling shareholder in such a private transaction is injured by the offeror's misrepresentation or nondisclosure, he will have both common law and federal causes of action available to him.

The exemption provided in Section 45.57.110 (2) (B) permits an Alaska corporation to make an offer for its own securities. This section also exempts a corporation's take-over bid for the securities of its Alaska subsidiary if, at the time of the offer, the offeror beneficially owns two-thirds of the subsidiary's voting stock. The Alaska corporation's fiduciary duty to its own security holders provides protection against any unfairness or nondisclosure in connection with the offer. Similarly, the Alaska subsidiary's security holders are protected by the standards to which the offeror must con.orm by virtue of its status as an "insider" and as the subsidiary's controlling stockholder.

The exemption in Section 45.57.110 (2) (C) permits the purchase of the target's equity securities provided that the purchases occur in ordinary brokerage transactions on a stock exchange or in the over-the-counter market without solicitation of orders to sell.

Because of the dynamics of the stock market it is very difficult to acquire control of a company through such ordinary brokers' transactions. The security holders in these transactions would be left to their private remedies.

If made in compliance with the terms of Section 45.57.110 (2) (D) an offer for the shares of a closely held Alaska corporation is exempted from the statute's coverage. The offer must be made to all the security holders of the target corporation and there must not be more than 100 such security holders. When the number of security holders is small, the opportunities for negotiation between the offeror, the target corporation and target security holders are significantly improved. Hence, the risks of nondisclosure are correspondingly diminished.

Finally, under Section 45.57.110 (2) (E) the statute does not apply to offers which are recommended to the security holders by the target Alaska corporation's board of directors. Since the target's board could be charged with responsibility for making adequate inquiry into the business character of the offeror and the terms of the offer, this statute's protective function would be largely duplicative of such investigation. Moreover, the section specifically requires the terms of the recommended offer to be furnished to the security holders and "any inducements to officers and directors which are not made available to all security holders" to be fully disclosed. The disclosure of any inducements to recommend the offer is designed to insure the integrity of the exemption. To the extent that recommendation of the target's directors is consistent with their fiduciary duty to the security holders, those security holders are as fully protected as if the statutory procedure were complied with. However, if the directors have been offered inducements to recommend the offer, the recommendation may be suspect and the disclosure of the inducements should alert the security holders to that possibility. If the recommendation violates the directors' fiduciary duty, the security holders have adequate common law remedies.

II. The Operation of the Statute

Once the statute is found to apply to a take-over bid for an Alaska corporation, the statute imposes three requirements. First, the offer must not be unfair or inequitable to the security holders; second, the terms of the offer must conform to certain provisions in the statute; and third, the offer must contain the prescribed disclosures.

The Provisions Governing the Terms of the Take-over Bid.

Section 45.57.010 contains the provisions which govern the terms of every take-over bid for an Alaska company. These provisions are designed to encourage a rational response by the security holders to the offer and to assure equal treatment among security holders accepting the offer. Section 45.57.010 (1) specifies the minimum and maximum durations of a take-over bid for an Alaska corporation. The offer may not remain open for less than 21 days or longer than 35 days. The minimum duration is necessary to insure that the security holders have ample opportunity to consider the offeror's disclosures in their decision to accept or reject the offer. This minimum duration is necessary since the federal law does not specifically set a minimum duration for a take-over bid, but merely provides that security holders who accept the offer have a right to withdraw their securities for seven days after the commencement of the offer. Conceivably, under federal law, an offer could be of an even shorter duration than seven days, provided the withdrawal rights were not infringed. Unfortunately, the minimum duration of a take-over bid under federal law is inimical to a rational response to the offer, promoting confusion and panic instead. A minimum duration of 21 days for the offer imposes no serious burden on the offeror and greatly encourages a reasoned response to the offer.



On the other hand, the take-over bid should not be permitted to extend over too long a time. Frequently, the offer will generate considerable uncertainty in the stock market. This uncertainty is particularly marked when the offer is for less than all the shares, since in the event of an oversubscription, proration of the securities taken up will occur. The 35-day limit set out in Section 45.57.010.(1) provides sufficient time for the offer to be fully disseminated to the security holders and accepted or rejected by them.

Security holders who accept the offer but reconsider should be provided with a reasonable period in which to withdraw their shares. Section 45.57.010 (2) permits a security holder to withdraw the tendered shares within 21 days after the commencement of the take-over bid. This withdrawal period is significantly longer than the seven-day period provided under federal law. During a withdrawal period as short as that provided by federal law, security holders have no genuine opportunity to reconsider their response to the offer.

Section 45.57.010 (3) insures the equal treatment of security holders who oversubscribe an offer for less than all of a class of a target corporation's equity securities. This section requires the offeror to take up the tendered securities as nearly as possible pro rata according to the number of securities tendered. This section significantly extends and improves the protection otherwise afforded the security holders by federal law, since under federal law an offeror must prorate the oversubscription of the offer for less than all of a class of equity securities only if the oversubscription occurs within ten days of the beginning of the offer or any increase in consideration offered to security holders by the offeror. If the oversubscription occurs later in the offer or such increase, no proration is required and security holders who deposit their securities after the expiration of such ten day period lose the benefit

of proration. Since there is no justification for such a limitation on the right to pro rata treatment in an offer for less than all the equity securities of a class, Section 45.57.010 (3) requires proration of an oversubscription of such an offer, regardless of when the oversubscription occurs.

Security holders who accept an offer should receive any additional consideration subsequently offered by the offeror for securities of the same class. Section 45.57.010 (4) stipulates that an offeror must pay any increased consideration for the target securities to all offerees, even if an offeree's securities were taken up prior to the increase in offered consideration. The reason for this provision is to prevent an offeror from manipulating security holders by increasing the offer price after taking up the securities deposited in response to the prior offer.

Finally, in order to insure full disclosure to offerees Section 45.57.010 (5) requires that an offer sent by mail to the security holders be accompanied by the disclosure statement filed with the Department of Commerce.

The Prescribed Disclosures

Besides regulating certain terms of the offer, the statute prescribes a set of disclosures which the offeror must make about itself and the offer. These disclosures are at the heart of the statute's remedial function. The disclosures are designed to make it possible for the security holders to understand fully the consequences of their decision to accept or reject the offer.

According to Section 45.57.020 (a) the offeror must file the disclosure statement at least 20 days prior to the effective date of the take-over bid. The disclosure statement must be filed with both the Department of Commerce and the target Alaska company. During this 20-day period the company and the Department will be able to examine the disclosure statement to determine whether a hearing must be held on the adequacy of the disclosures.

The disclosures which the offeror must make are set out in Section 45.57.020 (c) The disclosures prescribed by Section 45.57.020 (c) (1)-(6) in large part parallel disclosures already required by federal law. The Alaska statute calls for these disclosures in order to expose them to critical review before the offer commences.

Section 45.57.020 (c) (7) requires the offeror to provide comprehensive information about itself. The offeror must state the form of its organization and the jurisdiction in which it is organized; describe its financial structure and supply financial statements for the three most recent fiscal years; and provide a description of the location and character of its principal physical properties and the properties of its subsidiaries. Similarly, the offeror must reveal any pending legal proceedings of other than a routine nature to which it or any of its subsidiaries is a party; discuss the business in which it and its subsidiaries are engaged or in which they expect to be engaged; and give an account of those business activities for the most recent five years. Finally, the offeror must disclose certain information about its executive officers and directors, including the amount of their material interest in any material transaction during the most recent three years, or in any proposed material transaction, to which the offeror or any of its subsidiaries were or are to be a party.

Security holders need all of this information. A security holder's decision whether to accept the offer may depend on information concerning not only the terms of the offer and the offeror's plans, but also the business character of the offeror. If the security holder rejects the offer, he may find himself in an enterprise controlled by the offeror. The desirability of an investment in such a combined enterprise will depend in part upon the business character of the offeror.

Present federal statutory law regulating cash take-over bids has no analogue for Section 45.57.020 (c) (7). The federal statutes require no disclosures about the offeror itself so long as the target securities are to be purchased for cash. On the other hand, if the offeror intends to exchange its securities for the target company's securities, the federal statutes require a wide range of disclosures about the offeror. This dichotomy in federal law is hard to justify, since even in a cash offer, security holders who reject the offer should have enough information about the offeror to assess the consequences of maintaining their investment.

Although some federal courts have begun to require disclosures about the offeror, the accretion of federal precedent is slow and incomplete. The information called for in Section 45.57.020 (c) (7) is necessary to protect security holders who reject the offer, and this statute is the most expeditious means of requiring an offeror to disclose that information.

III. The Administrative Procedure

The Department of Commerce is the agency principally charged with the implementation and enforcement of this statute. The statute's substantive provisions will be most effectively implemented by administrative action since the Department will develop the expertise necessary to respond efficiently and knowledgeably to the questions arising under the provisions.

The Hearing

All questions about the fairness of the take-over bid or the adequacy of the offeror's disclosures should be resolved before the commencement of the offer. One of the most serious deficiencies of the federal law dealing with take-over bids is that an offeror's misstatements or non-disclosures are exposed during litigation, but after the commencement of the offer. Often the offeror's subsequent disclosure of information is too late and disjointed to be helpful to the target security holders.

In order to insure that the offer is fair, that the offer is made on substantially equal terms to all security holders and that the disclosures are complete at the start of the offer, a hearing procedure is established for the resolution of questions on those issues. Section 45.57.020 (a) (1) provides that within 10 days after the filing of the offeror's disclosure statement, the Department is authorized to order a hearing on questions arising from the proposed take-over bid. Section 45.57.020 (d) provides that the Department may order the hearing on its own motion if the Department finds that cause for such a hearing exists. The Section also provides that the Department must order the hearing if the target Alaska company requests it.

If a hearing is ordered, Section 45.57.020 (b) requires the hearing to be held within 20 days after the filing of the offeror's disclosure statement. This section also requires that the Department adjudicate the questions raised at the hearing within 30 days after the filing of the disclosure statement, unless either the convenience of the parties or the protection of security holders requires a delay of the adjudication. In order for the offer to proceed, Section 45.57.020 (a) (2) requires the Department to find that the offeror has made "fair, full and effective disclosure to offerees of all information material to a decision to accept or reject the offer." The Department has the power under Section 45.57.050 (c) to require the offeror to disclose information in addition to that specifically identified in Section 45.57.020 (c, (1)-(7).

The Department has the power under Section 45.57.050 to undertake investigations within or outside Alaska to determine whether any person has violated or is about to violate any provision of the statute. This broad investigatory power is especially important to the Department's adjudication on the fairness of the offer and the adequacy of the offeror's disclosures.

Section 45.57.060 provides that if the Department finds that the terms of the offer do not comply with the provisions of the statute or that the offeror's disclosures are incomplete, the Department may enjoin the take-over bid.

Rule-Making Power

Both substantial economies of judicial and administrative resources and more effective protection of security holders can be achieved by proscribing offensive practices by rule rather than by attacking them in adjudicative proceedings. As the Department builds its expertise in the analysis of the fairness of offers and the adequacy of the offeror's disclosures, it will be able to advance the statute's purposes by general rules. These rules will benefit prospective offerors by illuminating the statute's provisions. Consequently, the Department is empowered pursuant to Section 45.57.100 "to make and adopt such rules and regulations, and adopt such forms, as are necessary or desirable to carry out the provisions of the statute."

Filings of Solicitation Materials

The statute requires that certain solicitation materials be filed with the Department. Under Section 45.57.020 (e) all written soliciting material used by the offeror in connection with the take-over bid must be filed with the Department at least three days prior to their distribution to the security holders. That section also requires the offeror to file its solicitation materials with the target Alaska company. Under Section 45.57.030 a written solicitation or recommendation to offerees other than by the offeror to accept or reject a take-over bid shall be filed with the Department" at least simultaneously with their publication or distribution to security holders.

IV. Deceptive Practices

Section 45.57.060 specifically prohibits any person from making an untrue statement of a material fact, omitting to state a material fact or engaging in any fraudulent, deceptive of manipulative acts or practices, in connection with any take-over bid or solicitation of offerees to accept or reject the offer.

V. Crimes and Civil Liabilities

Section 45.57.070 imposes criminal penalties upon any person who willfully violates the statute or violates an order of the Department of which he has knowledge. Pursuant to Section 45.57.080 an offeror may, under certain circumstances, incur civil liability to offerees whose shares have been taken up.

SB

484

"An Act relating to abandoned motor vehicles."

COMMITTEE REPORT

4/6/76

HOUSE

Mr. Speaker: Date April 17, 1976

The Committee on JUDICIARY has had CSSB 484 am II under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(X) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Terry Hardin D. Davis _____

_____ _____ _____

_____ _____ _____

Spurlock _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Terry Hardin Chairman

Original sponsor: Ray, Chance,
Colletta, et al

IN THE SENATE BY THE JUDICIARY COMMITTEE

HOUSE CS FOR CS FOR SENATE BILL NO. 484

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to abandoned motor vehicles."

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

* Section 1. AS 28 is amended by adding a new chapter to read:

CHAPTER 11. ABANDONED VEHICLES.

Sec. 28.11.010. ABANDONMENT UNLAWFUL. (a) No person may abandon a vehicle upon a highway or vehicular way or area.

(b) No person may abandon a vehicle upon public property or upon private property without the consent of the owner or person in lawful possession or control of the property.

(c) A person abandoning a vehicle as specified in (a) or (b) of this section is considered responsible for the abandonment of a vehicle and is liable for the cost of removal and disposition of the abandoned vehicle.

(d) The lawful owner of the vehicle, as shown by the records of the department, whether or not he has complied with the provisions of AS 28.10.350, is considered responsible for the abandonment of a vehicle and is liable for the cost of removal and disposition of the abandoned vehicle unless

(1) the vehicle was abandoned by a person operating the vehicle without permission; or

(2) the identity of the person abandoning the vehicle is established and the abandonment was without the consent of the lawful owner.

Sec. 28.11.020. PRESUMPTION OF ABANDONMENT. The department shall

adopt regulations governing the parking of vehicles on state property. A vehicle which has been left unattended, left standing or parked upon a highway in excess of 48 hours, or a vehicle left standing or parked on public property or on private property in excess of 24 hours without the consent of the owner or person in charge of the property shall, by regulation, be subject to removal under sec. 30 of this chapter and treatment as an abandoned vehicle for purposes of this chapter. The department may provide for the parking of vehicles on state property in excess of the limits specified in this section.

Sec. 28.11.030. REMOVAL OF ABANDONED VEHICLES. (a) A police officer or an employee authorized by the state or a municipality may remove or cause to be removed to a place for safe storage a vehicle abandoned on a public street or highway, on a vehiclar way or area, or on private property.

(b) Removal of an abandoned vehicle from private property shall be on the written request of the owner or person in lawful possession or control of the property, and upon a form prescribed by the department.

(c) A written report of the removal shall be made by the police officer or employee who removes or causes the removal of a vehicle under this section, and the report shall be sent immediately to the department. The report shall describe the vehicle, the date, time, and place of removal, the grounds for removal, and the place of impoundment of the vehicle.

Sec. 28.11.040. NOTICE TO OWNER. (a) Upon receipt of the removal report prescribed in sec. 30 of this chapter, the department shall provide written notification by certified mail to the vehicle owner of record and to lienholders of record, stating the grounds for removal and the location of the place of impoundment of the vehicle. If the vehicle is not registered in the state, the department shall make a reasonable

effort to notify the registered owner or the lienholder of the removal and place of impoundment of the vehicle. The department shall forward a copy of the notice to the owner or person in charge of the place of impoundment.

(b) When the name and address of the registered or legal owner cannot be ascertained, the department shall give notice by publication in the manner prescribed for service of process by publication.

Sec. 28.11.050. VESTING OF TITLE. Title to an impounded vehicle not reclaimed by the registered owner, the lienholder, or other person entitled to possession of the vehicle within 30 days from the notice provided by sec. 40 of this chapter vests with the state or, if a local ordinance is adopted under sec. 100 of this chapter, with the local governing body, as appropriate.

Sec. 28.11.060. REDEMPTION. A person who presents satisfactory proof of ownership or right to possession may redeem a vehicle removed under this chapter at any time before [auction or relinquishment] ~~disposal~~ under sec. 70 of this chapter by paying the charges of towing, storage, notice, other cost of impoundment, and penalties imposed by law.

Sec. 28.11.070. DISPOSAL OF ABANDONED VEHICLES. (a) Upon satisfaction of the notification and reporting requirements prescribed in this chapter and when title to the vehicle has vested under sec. 50 of this chapter, a vehicle may be disposed of

(1) by public auction 15 days after notice published in a newspaper of general circulation in the area or municipality in which the vehicle was found; the published notice shall describe the vehicle and set out the place, date, and time at which it will be sold; a copy of the published notice shall be conveyed to the department along with documents required under (b) of this section; or

(2) by [private sale or] relinquishment in favor of a towing

or storage lien when the department determines that the lien amount exceeds the fair market value of the vehicle.

(b) The title certificate and registration of a disposed vehicle if available and a copy of the bill of sale or relinquishment of title shall be surrendered to the department within 10 days of the disposal.

(c) A vehicle disposed under this section must be registered and titled as prescribed in ch. 10 of this title, and subsequent sale of a vehicle disposed under this section is prohibited without a certificate of title issued by the department.

(d) Notwithstanding the provisions of this section, the department may initiate a civil action against a driver or owner of a vehicle which is abandoned in violation of this chapter for costs exceeding receipts for the disposal of the vehicle.

Sec. 28.11.080. DISPOSAL FACILITIES. (a) The department shall, if necessary, negotiate with appropriate state or municipal agencies in an effort to designate and acquire centrally located land for the disposal of abandoned vehicles. These areas may be used for the temporary holding of vehicles before sale as prescribed in sec. 70 of this chapter, or for the final disposal of unsold abandoned vehicles.

(b) A municipality which adopts an ordinance under sec. 100 of this chapter shall designate appropriate areas within its jurisdiction for the disposal of abandoned vehicles.

Sec. 28.11.090. TOWING AND STORAGE LIEN ON ABANDONED VEHICLE. A person authorized by contract or other official order to remove an abandoned vehicle has a lien upon a vehicle towed, moved, or stored by him and in his possession in accordance with AS 28.10.515.

Sec. 28.11.100. LOCAL ABATEMENT PROCEDURE. (a) A municipality may adopt an ordinance establishing procedures for the abatement and removal from private or public property, as a public nuisance or a

health or safety hazard, a wrecked, dismantled, or inoperative vehicle or a vehicle otherwise believed to be abandoned. The ordinance written under this section shall contain provisions for notice to owners and for disposal of abandoned vehicles as provided in secs. 40 and 70 of this chapter.

(b) The department shall assist a municipality which elects to adopt its own procedures for the removal and impoundment of vehicles within its boundaries.

(c) A municipality which fails to adopt procedures for the removal and impoundment of abandoned vehicles under (a) of this section is bound by the procedure specified in this chapter.

Sec. 28.11.110. ABANDONED MOTOR VEHICLE FUND. (a) There is created in the department an abandoned motor vehicle fund, to be composed of appropriations by the legislature and proceeds from the sale of abandoned motor vehicles.

(b) The proceeds from the sale of an abandoned motor vehicle under this chapter, after deducting the cost of impounding, advertising, and selling the vehicle, shall be deposited in the fund set out in (a) of this section.

(c) Money in the fund shall be disbursed to the department and to each of the municipalities bound by the provisions of this chapter upon presentation of a voucher for payment of services rendered in compliance with this chapter.

* Sec. 2. AS 28.10.515(a) is amended to read:

(a) A person engaged in the business of towing motor vehicles, who tows, transports or stores a motor vehicle has a lien on the motor vehicle. This lien attaches when the person acts under a contract with the owner or at the direction of a public officer acting lawfully or a person entitled to possession of the property upon which the motor

vehicle is parked without consent. The lien remains in effect while the motor vehicle is in the possession of the person and may be sold, as provided in (b) of this section, to pay the charges for towing, transportation or storage. The lien is limited to towing charges assessed according to the tariff filed by the carrier with the Alaska Transportation Commission and storage charges of no more than $1.50 per day. In the absence of a filed tariff, the towing charge shall be the same as the lowest towing charge in the other filed tariffs covering the same service and route. Storage charges shall cease to be part of the lien after 60 [30] days unless the prior lien holder has been given actual notice of the possessory lien within that time or unless a certified letter has been mailed within that time to the owner and prior lien holder at their addresses of record with the office in which the title to the motor vehicle and the lien on it are recorded.

* Sec. 3. AS 28.31 is repealed.

CS SENATE BILL NO. 484

Alaska Legislative Report

March 23, 1976. State Affairs Committee Report: The Committee recommends it do pass with the following amendment No. 1:

Page 4, line 16: After the word "him", insert a period". "and delete rest of sentence. After the period, insert new sentence to read: "The lien remains in effect while the motor vehicle is in the possession of the person and may be sold, as provided in AS 28.10.515(b), to pay the charges for towing, transportation or storage. The lien is limited to towing and storage charges assessed according to the approved tariff filed by the carrier with the Alaska Transportation Commission. In the absence of a filed tariff, the towing charge shall be the same as the lowest towing charge in the other filed tarriffs covering the same service and route. Storage charges shall cease to be part of the lien after 60 days unless the prior lien holder

60

Alaska Legislative Report

has been given actual notice of the possessory lien within that time or unless a certified letter has been mailed within that time to the owner and prior lien holder at their addresses of record with the office in which the title to the motor vehicle and the lien on it are recorded."

The report was signed by McKinnon, Chairman, and concurred in by Wallis, Fischer, Miller and McKinnon.

[HJ 670 - 671]

four fifteen "L" Street Anchorage, Alaska 99501 (907)279-4531

TELEGRAM

ACA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

02 04 6 ANCHORAGE AK 34 04-12 1242P AST

PMS REP TERRY GARDNER

JUN" 2115

SB484 I APPROVE AMENDMENT PAGE FOUR LINE SIXTEEN IMPOUNDED IN FRONT OF THE MOTOR VEHICLE APPROVED TARRIF FILED BY THE PERMITTED CARRIER THIRTY DAYS CHANGED TO SIXTY DAYS

DENNIS KALPAKOFF

4520 EAGLE ST

ANCHORAGE ALASKA 99503

1976 APR 12 PM 3 31

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

02062 POM ANCHORAGE AK 15 04-12 1215P AST

PMS REP TERRY GARDINER

JUN" 2130

I SUPPORT SB484 AND HOUSE AMENDMENT DATED 3-23-76 WITH

REVISIONS OUTLINED BY JIM CHRISTOPHER 4-9-76.

CHUCK HIGGINS

NORTHWEST AUTO PARTS

345 BONIFACE PARKWAY

ANCHORAGE ALASKA 99504

1976 APR 12 PM 5 38

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02 127 NL ANCHORAGE ALASKA 50 04-12 710P AST

PMS REP TERRY GARDNER

JUN

2248

GENTLEMEN PLEASE BE ADVISED I WISH TO SUPPORT BILL 484

AS AMENDED MARCH 23 1976 AS EXPLAINED TO YOU BY JIM

CHRISTOPHER 4-9-76. PLEASE VOTE TO PASS THIS BILL.

THANK YOU

RODNEY LEWIS 1039 MULDOON RD ABC TOWING AND WRECKING

ANCHORAGE AK 99504

1976 APR 12 PM 10 14

TELEGRAM

CA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

02 055 POM TDA CHUGIAK 15 04-12 1014A AST

PMS REP TERRY GARDINER

JUN" 2142

I SUPPORT SB484 AND HOUSE AMENDMENT 3-23-76 AS DISCUSSED

BY JIM CHRISTOPHER APRIL 9 76.

L G GARDNER

HILLTOP SALES AND SERVICE

STAR ROUTE BOX 485

EAGLE RIVER ALASKA 99577

1976 APR 12 PM 6 08

THE LEGISLATURE OF THE STATE OF ALASKA
FISCAL NOTE
Second Session - Ninth Legislature

I. REQUEST
Bill No. Proposed Amendment to SB 484
Title: Relating to abandoned motor vehicles
Requested by: Rep. Bob Bradley Date:
Return Date Requested:
Agency: Ak. Transportation Commission Program:

II. FISCAL DETAIL
Budget Request Unit(s) Affected:

A. EXPENDITURES: (Thousands of dollars)

	OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100	PERSONAL SERVICES		* 2.5	* 1.0	* 1.0	* 1.2	* 1.3
200	TRAVEL		* .5				
300	CONTRACTUAL		1.0	1.0	1.2	1.2	1.3
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL						

B. FUNDING: (Thousands of dollars)

GENERAL FUND		1.0	1.0	1.2	1.2	1.3
FEDERAL FUNDS						
OTHER						

C. POSITIONS: no new positions

PERMANENT/TEMPORARY	/	/	/	/	/	/
MAN MONTHS (P./T.)	/	/	/	/	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

* reflects costs absorbed within existing budget

IV. ATTACHMENTS

V. DATE: 4-12-76 PREPARED BY: James J. Johnson, Chairman

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

H/S 50

AS 28 Revision Interim Review Committee

Sectional Analysis of Proposed Legislation

Section Heading	Section	Current Statute	Changes Proposed	Comments
Ch. 10: Motor carrier and bus transportation fees paid with registration fee	28.10.571	---------	Fees required under AS 42.10 & AS 42.15 to be paid to department at time of registration [also see Sec. 211(k)].	
Registration fee imposed regardless of weight	28.10.581	28.10.200	Clarification of wording; fees same as established by 1975 Legislature. (e) requires payment of any other applicable fees which attach upon conversion of a vehicle to a vehicle of a different type (with different registration fees applicable) prior to its operation.	
Schedule of other fees and charges	28.10.591	28.10.150 28.10.320 28.10.340 28.10.480(d)	Relocation of 'other' fees into single section with $3 increases in certain fees.	
ARTICLE 7. CRIMES & OFFENSES Unlawful to violate provisions requiring registration & title	28.10.611	28.10.640	Clarification of wording.	
Felonies relating to title, registration, identification number, and removal and representation of vehicle	28.10.621	28.10.600 28.10.610 28.10.620 28.10.630	Clarification of wording. No specific penalties provided. New crimes involve (1) removal/falsification of vehicle identif. # (VIN), (2) concealment/misrepresentation of identity of a vehicle; and (3) sale/possession/disposal of a vehicle or vehicle equipment knowing the identif. # to be removed or falsified.	
Ch. 11: Abandonment unlawful	28.11.010	28.31.010(a) 28.31.010(b) 28.31.080	Expanded to include vehicular ways and areas as deifined in proposed AS 28.35.010. Violation is infraction rather than misdemeanor (see proposed AS 28.35.100 for penalties). Owner of vehicle not completing transfer of title or interests, as required in proposed Ch.10, is liable for costs of impoundment and disposition.	

AS 28 Revision Interim Review Committee

Sectional Analysis of Proposed Legislation

	Section Heading	Section	Current Statute	Changes Proposed	Comments
Ch. 11:	Presumption of abandonment.....	28.11.020	28.31.010(d)	Times required for presumption of abandonment are reduced to 48 hours (from 7 days) on a highway, and 24 hours (from 3 days) on public or private property. Commissioner is to promulgate regulations to cover situations where additional time is required and where such interests as hunting and protection against theft/vandalism are balanced.	
	Removal of abandoned vehicles.....	28.11.030	28.31.010(c)	Minor wording changes substitute 'place of safekeeping' for 'garage or other place for impoundment and storage'.	
	Notice to owner.....	28.11.040	28.31.010(c)	Upon receipt of impound report (see Sec. 30), department is to give notice to owner; however, if owner's name or address is unknown, notice is to given in newspaper.	
	Vesting of title.....	28.11.050	28.31.020	Renumbered only.	
	Redemption.....	28.11.060	28.31.030	Minor wording clarification: 'Impounded vehicle' is changed to 'vehicle removed under this chapter'.	
	Disposal of abandoned vehicles.....	28.11.070	28.31.040	Vehicles may be disposed by public auction 15 days after notice in newspaper (copy of notice to be sent to dept.) or by private sale or relinquishment of title in favor of a towing and storage lien (also see proposed AS 28.10.551). Form describing vehicle, date, place and method of disposal to be submitted to department. NOTE ADDED CIVIL REMEDY	
	Disposal facilities.....	28.11.080	28.31.050	Public Safety may negotiate with State and municipal agencies for disposal sites.	
	Towing and storage lien on abandoned vehicle.....	28.11.090	---------	Person authorized by contract or official order to remove vehicles has lien under proposed AS 28.10.551.	
	Local abatement procedure.....	28.11.100	28.31.060	Municipal ordinances not to be inconsistent with State law. No cut-off date for municipal adoption of ordinance.	
	Abandoned motor vehicle fund.....	28.11.110	28.31.065 28.31.070	Municipalities to be reimbursed upon presentation of a voucher for payment of services which they rendered in compliance with this chapter. [NOTE: Current law Sec. 28.31.075 is replaced with proposed AS 28.05.010(a)(4).]	
Ch. 12:	[NOTE: see COMPANION BILL]				

Chapter 30. Abandoned Vehicles.

Section
10—40. [Repealed]

Secs. 28.30.010—28.30.040.

Repealed by § 36 ch 127 SLA 1974.

Editor's note.—The repealed chapter derived from § 1, ch. 52, SLA 1953; § 9, ch. 49, SLA 1963; § 1, ch. [illegible] SLA 1966; § 9, ch. 117, SLA 1968.

Chapter 31. Abandoned Motor Vehicles.

Section
10. Removal of abandoned motor vehicles
20. Vesting of title
30. Redemption
40. Disposal of abandoned vehicle
50. Disposal facilities
60. Local ordinances
65. Abandoned motor vehicle fund
70. Disposition of proceeds of public auction
75. Regulations
80. Penalty

Legislative committee report.—For report on ch. 81, SLA 1973 (CSHB 34 [Finance] am S), see 1973 House Journal, p. 547.

Sec. 28.31.010. Removal of abandoned motor vehicles. (a) No person may abandon a vehicle on a highway in the state.

(b) No person may abandon a vehicle on public or private property without the express or implied consent of the owner or person in lawful possession or control of the property.

(c) A peace officer or an authorized employee of a general law municipality in the case of a general law municipality bound by the procedure specified in this chapter, who reasonably believes that a vehicle has been abandoned may have the vehicle removed to the nearest garage or other place for impoundment and storage. Removal of an abandoned vehicle from private property shall be on the written request, on a form prescribed by the Department of Public Safety, of the owner or person in lawful possession or control of the property. A written report of the removal shall be sent immediately to the Department of Public Safety, describing the vehicle, the date, time and place of removal, the grounds for removal, and place of impoundment of the vehicle. Upon receipt of the removal report, the Department of Public Safety shall provide written notification by certified mail to the vehicle owner of record and to lien holders of records, stating the grounds for removal and the name of the place of impoundment of the vehicle; however, notice is not required if the retail value of an abandoned vehicle is $200 or less. If the vehicle is not registered in the state, the Department of Public Safety shall make a reasonable effort to

notify the registered owner or any lien holder of removal and the place of impoundment of the vehicle. The Department of Public Safety shall forward a copy of the notice to the owner or person in charge of the place of impoundment.

(d) For purposes of this section, a vehicle is presumed to be abandoned if it is left unattended on a highway for a period in excess of seven days or on any public or private property without express or implied consent of the owner or person in lawful possession or control of the property for a period in excess of three days. (§ 2 ch 81 SLA 1973; am § 19 ch 214 SLA 1975)

Effect of amendment. — The 1975 amendment, effective July 1, 1975, substituted "Department of Public Safety" for "Department of Revenue" in the second through sixth sentences of subsection (c).

Sec. 28.31.020. Vesting of title. Title to an impounded vehicle not reclaimed by the registered owner or the lien holder within 10 days from the notice provided by § 10 of this chapter vests with the state or, if a local ordinance is adopted as specified in § 60 of this chapter, with the local governing body, as appropriate. (§ 2 ch 81 SLA 1973)

Sec. 28.31.030. Redemption. A person who presents satisfactory proof of ownership or right to possession may redeem an impounded vehicle by paying the charges of towing, storage, notice, other costs of impoundment, and any penalties imposed by law. (§ 2 ch 81 SLA 1973)

Sec. 28.31.040. Disposal of abandoned vehicle. (a) Disposal of impounded vehicles shall be conducted by public auction upon notice published in a newspaper of general circulation in the judicial district in which the vehicle was found. The notice shall describe the vehicle and set out the place, date, and time at which it will be sold. The date of sale shall be no later than one week following the date of publication.

(b) Title to a vehicle disposed of under (a) of this section shall be conveyed by a bill of sale issued by the state or local governing body, as appropriate, on a form prescribed by the Department of Public Safety. A copy of the bill of sale shall be forwarded to the Department of Public Safety by the purchaser within 10 days.

(c) Any subsequent sale of a vehicle sold under (a) of this section is prohibited without a certificate of title issued by the Department of Public Safety under AS 28.10. (§ 2 ch 81 SLA 1973; am §§ 20, 21 ch 214 SLA 1975)

Effect of amendment. — The 1975 amendment, effective July 1, 1975, substituted "Department of Public Safety" for "Department of Revenue" in the first and second sentences of subsection (b) and in subsection (c).

Sec. 28.31.050. Disposal facilities. (a) The Department of Public Safety shall, if necessary, negotiate with other appropriate state agencies in an effort to designate and acquire centrally located state land for the disposal of abandoned vehicles. These areas may be for the temporary holding of vehicles before sale as prescribed in § 40 of this chapter, or for the final disposal of unsold abandoned vehicles.

(b) A general law municipality which is bound by the procedure specified in this chapter shall designate appropriate areas within its jurisdiction for the disposal of abandoned vehicles. (§ 2 ch 81 SLA 1973; am § 22 ch 214 SLA 1975)

Effect of amendment. — The 1975 amendment, effective July 1, 1975, deleted "Department of Revenue, in conjunction with the" preceding "Department of Public Safety" near the beginning of the first sentence of subsection (a).

Sec. 28.31.060. Local ordinances. (a) Notwithstanding the provisions of this chapter, a general law municipality may adopt by ordinance procedures for the removal and impoundment of abandoned vehicles found within the municipality. However, in no case may a vehicle be disposed of unless adequate notice is given to the owner, if known. If the owner of the vehicle is not known, notice of the removal shall be published at least once in a newspaper of general circulation in the municipality. The vehicle may be disposed of by the municipality at any time 20 days after the date of publication.

(b) The Department of Public Safety shall assist general law municipalities which elect to adopt their own procedures for the removal and impoundment of vehicles within their boundaries.

(c) A general law municipality which fails to adopt procedures for the removal and impoundment of abandoned vehicles as specified in (a) of this section within six months from July 25, 1973 is bound by the procedure specified in this chapter. (§ 2 ch 81 SLA 1973; am § 23 ch 214 SLA 1975)

Effect of amendment. — The 1975 amendment, effective July 1, 1975, deleted "Department of Revenue and the" preceding "Department of Public Safety" near the beginning of subsection (b).

Sec. 28.31.065. Abandoned motor vehicle fund. There is created within the Department of Public Safety an abandoned motor vehicle fund, to be composed of appropriations by the legislature and proceeds from the sale of abandoned motor vehicles. (§ 2 ch 81 SLA 1973; am § 24 ch 214 SLA 1975)

Effect of amendment. — The 1975 amendment, effective July 1, 1975, substituted "Department of Public Safety" for "Department of Revenue."

Sec. 28.31.070. Disposition of proceeds of public auction. (a) The proceeds from the sale of abandoned motor vehicles under § 40

of this chapter, if any, after deducting the cost of impounding the vehicle, and advertising and selling it, shall be deposited in an abandoned motor vehicle fund within the Department of Public Safety. The Department of Public Safety shall prorate the money in the fund to each general law municipality bound by the procedure specified in this chapter in proportion to the number of abandoned vehicles disposed of within its boundaries.

(b) If available, money in the abandoned vehicle fund shall be disbursed by the Department of Public Safety to provide for the removal of abandoned vehicles in areas outside general law municipalities. (§ 2 ch 81 SLA 1973; am § 25 ch 214 SLA 1975)

Effect of amendment. — The 1975 amendment, effective July 1, 1975, substituted "Department of Public Safety" for "Department of Revenue" in the first and second sentences of subsection (a) and substituted "by" for "from the Department of Revenue" in subsection (b).

Sec. 28.31.075. Regulations. The Department of Public Safety shall promulgate regulations necessary to implement §§ 10—80 of this chapter. (§ 2 ch 81 SLA 1973; am § 26 ch 214 SLA 1975)

Effect of amendment. — The 1975 amendment, effective July 1, 1975, deleted "Department of Revenue, in conjunction with the" preceding "Department of Public Safety" near the beginning of the section.

Sec. 28.31.080. Penalty. A person who violates § 10(a) or (b) of this chapter, upon conviction, is punishable by a fine of not less than $25 nor more than $100. (§ 2 ch 81 SLA 1973)

Chapter 35. Miscellaneous Provisions.

Section		Section	
10.	Driving a vehicle without owner's consent	33.	Chemical analysis of blood
30.	Driving while under the influence of intoxicating liquor or drugs	40.	Reckless driving
32.	Refusal to submit to chemical test	45.	Negligent driving
		190.	[Repealed]
		260.	Definitions

Sec. 28.35.010. Driving a vehicle without owner's consent. (a) A person who drives, tows away, or takes a vehicle not his own without the consent of the owner, with intent temporarily to deprive the owner of possession of the vehicle, or a person who is a party or accessory to or an accomplice in the driving or unauthorized taking is guilty of a misdemeanor, and upon conviction is punishable by imprisonment for not less than 30 days nor more than one year, and by a fine of not less than $100 nor more than $1,000. Upon a conviction for a second or subsequent offense, the offender may be charged with a felony, and if so charged and convicted, is punishable by imprisonment for not more than three years, or by a fine of not more than $5,000. The court may, upon conviction of a second or subsequent violation of this section,

4-11-76

Carriers are required to have certificat under ATC before it can ~~be~~ foure

Brown says AS 28.10.515 is not applicable to non-critificated towers

Neither passes

page 3 line 20 delete privet sale
and allow relignment when
reasonable marke value will not
exceed amount of lien

page 1 line 19 First go to person who abandend then to lawful owner

add at end of this sentence, unless the abandenment was the result on unlawful or unauthorized possession

page 1 line 23 Brown wants chang in person in possession

Effective date on Presumption of Abandenment

4-13-76

New effective date for 28.11.020 untill regulations are adopted

Brown moves page 2 line 25 notice shall be the same

Brown moves that redemption can be had up till time of public action and he shall bare all costs

and regain title upon proof of ownership, actual costs page 3 line 8 through 10

4/9 Hilton

CS SENATE BILL NO. 484

Alaska Legislative Report

March 23, 1976. State Affairs Committee Report: The Committee recommends it do pass with the following amendment No. 1:

Page 4, line 16: After the word "him", insert a period". "and delete rest of sentence. After the period, insert new sentence to read: "The lien remains in effect while the motor vehicle is in the possession of the person and may be sold, as provided in AS 28.10.515(b), to pay the charges for towing, transportation or storage. The lien is limited to towing and storage charges assessed according to the approved tariff filed by the carrier with the Alaska Transportation Commission. In the absence of a filed tariff, the towing charge shall be the same as the lowest towing charge in the other filed tarriffs covering the same service and route. Storage charges shall cease to be part of the lien after 30 days unless the prior lien holder

60 days

Alaska Legislative Report

has been given actual notice of the possessory lien within that time or unless a certified letter has been mailed within that time to the owner and prior lien holder at their addresses of record with the office in which the title to the motor vehicle and the lien on it are recorded."

The report was signed by McKinnon, Chairman, and concurred in by Wallis, Fischer, Miller and McKinnon.

[HJ 670 - 671]

four fifteen "L" Street Anchorage, Alaska 99501 (907) 279-4531

Original sponsor: Ray, Chance, Colletta, et al

Offered: 1/21/76
Referred: Rules

IN THE SENATE BY THE STATE AFFAIRS COMMITTEE

CS FOR SENATE BILL NO. 484

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to abandoned motor vehicles."

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

* Section 1. AS 28 is amended by adding a new chapter to read:

CHAPTER 11. ABANDONED VEHICLES.

Sec. 28.11.010. ABANDONMENT UNLAWFUL. (a) No person may abandon a vehicle upon a highway or vehicular way or area.

(b) No person may abandon a vehicle upon public or private property without the consent of the owner or person in lawful possession or control of the property.

(c) A person abandoning a vehicle as specified in (a) or (b) of this section is considered responsible for the abandonment of a vehicle and is liable for the cost of removal and disposition of the abandoned vehicle.

(d) The lawful owner of the vehicle, as shown by the records of the department, who has not complied with the provisions of AS 28.10.-350, is considered responsible for the abandonment of a vehicle and is liable for the cost of removal and disposition of the abandoned vehicle.

Sec. 28.11.020. PRESUMPTION OF ABANDONMENT. A vehicle which has been left unattended, left standing or parked upon a highway in excess of 48 hours, or a vehicle left standing or parked on public or private property in excess of 24 hours without the consent of the owner or person in charge of the property is presumed to be abandoned. The department shall adopt regulations governing the parking of vehicles on state property in excess of the limits specified in this section.

Sec. 28.11.030. REMOVAL OF ABANDONED VEHICLES. (a) A police officer or an employee authorized by the state or a municipality may remove or cause to be removed to a place for safe storage a vehicle abandoned on a public street or highway, on a vehiclar way or area, or on private property.

(b) Removal of an abandoned vehicle from private property shall be on the written request of the owner or person in lawful possession or control of the property, and upon a form prescribed by the department.

(c) A written report of the removal shall be made by the police officer or employee who removes or causes the removal of a vehicle under this section, and the report shall be sent immediately to the department. The report shall describe the vehicle, the date, time, and place of removal, the grounds for removal, and the place of impoundment of the vehicle.

Sec. 28.11.040. NOTICE TO OWNER. (a) Upon receipt of the removal report prescribed in sec. 30 of this chapter, the department shall provide written notification by certified mail to the vehicle owner of record and to lienholders of record, stating the grounds for removal and the location of the place of impoundment of the vehicle. If the vehicle is not registered in the state, the department shall make a reasonable effort to notify the registered owner or the lienholder of the removal and place of impoundment of the vehicle. The department shall forward a copy of the notice to the owner or person in charge of the place of impoundment.

(b) When the name and address of the registered or legal owner cannot be ascertained, the department shall give notice by publication in a ~~newspaper of general circulation in the area or municipality in~~ accordance with the Alaska Rules of Civil Procedure which the vehicle was found.

Sec. 28.11.050. VESTING OF TITLE. Title to an impounded vehicle

not reclaimed by the registered owner, the lienholder, or other person entitled to possession of the vehicle within 30 days from the notice provided by sec. 40 of this chapter vests with the state or, if a local ordinance is adopted under sec. 100 of this chapter, with the local governing body, as appropriate.

Sec. 28.11.060. REDEMPTION. A person who presents satisfactory proof of ownership or right to possession may redeem a vehicle removed under this chapter by paying the charges of towing, storage, notice, other cost of impoundment, and penalties imposed by law.

Sec. 28.11.070. DISPOSAL OF ABANDONED VEHICLES. (a) Upon satisfaction of the notification and reporting requirements prescribed in this chapter and when title to the vehicle has vested under sec. 50 of this chapter, a vehicle may be disposed of

(1) by public auction 15 days after notice published in a newspaper of general circulation in the area or municipality in which the vehicle was found; the published notice shall describe the vehicle and set out the place, date, and time at which it will be sold; a copy of the published notice shall be conveyed to the department along with documents required under (b) of this section; or

(2) by ~~private sale or~~ relinquishment in favor of a towing or storage lien.

(b) The title certificate and registration of a disposed vehicle if available and a copy of the bill of sale or relinquishment of title shall be surrendered to the department within 10 days of the disposal.

(c) A vehicle disposed under this section must be registered and titled as prescribed in ch. 10 of this title, and subsequent sale of a vehicle disposed under this section is prohibited without a certificate of title issued by the department.

(d) Notwithstanding the provisions of this section, the department

may initiate a civil action against a driver or owner of a vehicle which is abandoned in violation of this chapter for costs exceeding receipts for the disposal of the vehicle.

Sec. 28.11.080. DISPOSAL FACILITIES. (a) The department shall, if necessary, negotiate with appropriate state or municipal agencies in an effort to designate and acquire centrally located land for the disposal of abandoned vehicles. These areas may be used for the temporary holding of vehicles before sale as prescribed in sec. 70 of this chapter, or for the final disposal of unsold abandoned vehicles.

(b) A municipality which adopts an ordinance under sec. 100 of this chapter shall designate appropriate areas within its jurisdiction for the disposal of abandoned vehicles.

Sec. 28.11.090. TOWING AND STORAGE LIEN ON ABANDONED VEHICLE. A person authorized by contract or other official order to remove an abandoned vehicle has a lien upon a vehicle towed, moved, or stored by him and in his possession in accordance with AS 28.10.515.

Sec. 28.11.100. LOCAL ABATEMENT PROCEDURE. (a) A municipality may adopt an ordinance establishing procedures for the abatement and removal from private or public property, as a public nuisance or a health or safety hazard, a wrecked, dismantled, or inoperative vehicle or a vehicle otherwise believed to be abandoned. The ordinance written under this section shall contain provisions for notice to owners and for disposal of abandoned vehicles as provided in secs. 40 and 70 of this chapter.

(b) The department shall assist a municipality which elects to adopt its own procedures for the removal and impoundment of vehicles within its boundaries.

(c) A municipality which fails to adopt procedures for the removal and impoundment of abandoned vehicles under (a) of this section is bound

by the procedure specified in this chapter.

Sec. 28.11.110. ABANDONED MOTOR VEHICLE FUND. (a) There is created in the department an abandoned motor vehicle fund, to be composed of appropriations by the legislature and proceeds from the sale of abandoned motor vehicles.

(b) The proceeds from the sale of an abandoned motor vehicle under this chapter, after deducting the cost of impounding, advertising, and selling the vehicle, shall be deposited in the fund set out in (a) of this section.

(c) Money in the fund shall be disbursed to the department and to each of the municipalities bound by the provisions of this chapter upon presentation of a voucher for payment of services rendered in compliance with this chapter.

* Sec. 2. AS 28.31 is repealed.

4/9
Milton
4/13

Original sponsor: Ray, Chance, Colletta, et al

Offered: 1/21/76
Referred: Rules

IN THE SENATE BY THE STATE AFFAIRS COMMITTEE

CS FOR SENATE BILL NO. 484

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to abandoned motor vehicles."

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

* Section 1. AS 28 is amended by adding a new chapter to read:

CHAPTER 11. ABANDONED VEHICLES.

Sec. 28.1 010. ABANDONMENT UNLAWFUL. (a) No person may abandon a vehicle upon a highway or vehicular way or area.

(b) No person may abandon a vehicle upon public or private property without the consent of the owner or person in lawful possession or control of the property.

(c) A person abandoning a vehicle as specified in (a) or (b) of this section is considered responsible for the abandonment of a vehicle and is liable for the cost of removal and disposition of the abandoned vehicle.

(d) The lawful owner of the vehicle, as shown by the records of the department, whether or not he has [who has not] complied with the provisions of AS 28.10.-350, is considered responsible for the abandonment of a vehicle and is liable for the cost of removal and disposition of the abandoned vehicle.

Does not apply if vehicle has been stolen

Sec. 28.11.020. PRESUMPTION OF ABANDONMENT. A vehicle which has been left unattended, left standing or parked upon a highway in excess of 48 hours, or a vehicle left standing or parked on public or private property in excess of 24 hours without the consent of the owner or person in charge of the property is presumed to be abandoned; unless it is reclaimed or removed before action is removed under 28.11.030 & can undertaken. The department shall adopt regulations governing the parking of vehicles [on state property] in excess of the limits specified in this section.

whose in charge of public property?

Sec. 28.11.030. REMOVAL OF ABANDONED VEHICLES. (a) A police officer or an employee authorized by the state or a municipality may remove or cause to be removed to a place for safe storage a vehicle abandoned on a public street or highway, on a vehiclar way or area, or on private property.

(b) Removal of an abandoned vehicle from private property shall be on the written request of the owner or person in lawful possession or control of the property, and upon a form prescribed by the department.

(c) A written report of the removal shall be made by the police officer or employee who removes or causes the removal of a vehicle under this section, and the report shall be sent immediately to the department. The report shall describe the vehicle, the date, time, and place of removal, the grounds for removal, and the place of impoundment of the vehicle.

Sec. 28.11.040. NOTICE TO OWNER. (a) Upon receipt of the removal report prescribed in sec. 30 of this chapter, the department shall provide written notification by certified mail to the vehicle owner of record and to lienholders of record, stating the grounds for removal and the location of the place of impoundment of the vehicle. If the vehicle is not registered in the state, the department shall make a reasonable effort to notify the registered owner or the lienholder of the removal and place of impoundment of the vehicle. The department shall forward a copy of the notice to the owner or person in charge of the place of impoundment.

(b) When the name and address of the registered or legal owner cannot be ascertained, the department shall give notice by publication in a newspaper of general circulation in the area or municipality in which the vehicle was found.

Sec. 28.11.050. VESTING OF TITLE. Title to an impounded vehicle

Judicial Procedure

not reclaimed by the registered owner, the lienholder, or other person entitled to possession of the vehicle within 10 days from the notice provided by sec. 40 of this chapter vests with the state or, if a local ordinance is adopted under sec. 100 of this chapter, with the local governing body, as appropriate.

Sec. 28.11.060. REDEMPTION. A person who presents satisfactory proof of ownership or right to possession may redeem a vehicle removed under this chapter by paying the charges of towing, storage, notice, other cost of impoundment, and penalties imposed by law.

Sec. 28.11.070. DISPOSAL OF ABANDONED VEHICLES. (a) Upon satisfaction of the notification and reporting requirements prescribed in this chapter and when title to the vehicle has vested under sec. 50 of this chapter, a vehicle may be disposed of

(1) by public auction 15 days after notice published in a newspaper of general circulation in the area or municipality in which the vehicle was found; the published notice shall describe the vehicle and set out the place, date, and time at which it will be sold; a copy of the published notice shall be conveyed to the department along with documents required under (b) of this section; or

(2) [by private sale or] relinquishment in favor of a towing or storage lien. when lien is ≤ fair market value of vehicle.

(b) The title certificate and registration of a disposed vehicle if available and a copy of the bill of sale or relinquishment of title shall be surrendered to the department within 10 days of the disposal.

(c) A vehicle disposed under this section must be registered and titled as prescribed in ch. 10 of this title, and subsequent sale of a vehicle disposed under this section is prohibited without a certificate of title issued by the department.

(d) Notwithstanding the provisions of this section, the department

may initiate a civil action against a driver or owner of a vehicle which is abandoned in violation of this chapter for costs exceeding receipts for the disposal of the vehicle.

Sec. 28.11.080. DISPOSAL FACILITIES. (a) The department shall, if necessary, negotiate with appropriate state or municipal agencies in an effort to designate and acquire centrally located land for the disposal of abandoned vehicles. These areas may be used for the temporary holding of vehicles before sale as prescribed in sec. 70 of this chapter, or for the final disposal of unsold abandoned vehicles.

(b) A municipality which adopts an ordinance under sec. 100 of this chapter shall designate appropriate areas within its jurisdiction for the disposal of abandoned vehicles.

Sec. 28.11.090. TOWING AND STORAGE LIEN ON ABANDONED VEHICLE. A person authorized by contract or other official order to remove an abandoned vehicle has a lien upon a vehicle towed, moved, or stored by him and in his possession in accordance with AS 28.10.515.

Sec. 28.11.100. LOCAL ABATEMENT PROCEDURE. (a) A municipality may adopt an ordinance establishing procedures for the abatement and removal from private or public property, as a public nuisance or a health or safety hazard, a wrecked, dismantled, or inoperative vehicle or a vehicle otherwise believed to be abandoned. The ordinance written under this section shall contain provisions for notice to owners and for disposal of abandoned vehicles as provided in secs. 40 and 70 of this chapter.

(b) The department shall assist a municipality which elects to adopt its own procedures for the removal and impoundment of vehicles within its boundaries.

(c) A municipality which fails to adopt procedures for the removal and impoundment of abandoned vehicles under (a) of this section is bound

by the procedure specified in this chapter.

Sec. 28.11.110. ABANDONED MOTOR VEHICLE FUND. (a) There is created in the department an abandoned motor vehicle fund, to be composed of appropriations by the legislature and proceeds from the sale of abandoned motor vehicles.

(b) The proceeds from the sale of an abandoned motor vehicle under this chapter, after deducting the cost of impounding, advertising, and selling the vehicle, shall be deposited in the fund set out in (a) of this section.

(c) Money in the fund shall be disbursed to the department and to each of the municipalities bound by the provisions of this chapter upon presentation of a voucher for payment of services rendered in compliance with this chapter.

* Sec. 2. AS 28.31 is repealed.

When the person person who is identified in (C) can not

Original sponsor: Ray, Chance, Colletta, et al

Offered: 1/21/76
Referred: Rules

IN THE SENATE BY THE STATE AFFAIRS COMMITTEE

CS FOR SENATE BILL NO. 484

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to abandoned motor vehicles."

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

* Section 1. AS 28 is amended by adding a new chapter to read:

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(b) No person may abandon a vehicle upon public or private property without the consent of the owner or person in lawful possession or control of the property.

(c) A person abandoning a vehicle as specified in (a) or (b) of this section is considered responsible for the abandonment of a vehicle and is liable for the cost of removal and disposition of the abandoned vehicle.

(d) The lawful owner of the vehicle, as shown by the records of the department, ~~who has not~~ complied with the provisions of AS 28.10.-350, is considered responsible for the abandonment of a vehicle and is liable for the cost of removal and disposition of the abandoned vehicle.

Sec. 28.11.020. PRESUMPTION OF ABANDONMENT. A vehicle which has been left unattended, left standing or parked upon a highway in excess of 48 hours, or a vehicle left standing or parked on public or private property in excess of 24 hours without the consent of the owner or person in charge of the property is presumed to be abandoned. The department shall adopt regulations governing the parking of vehicles ~~state property~~ in excess of the limits specified in this section.

Sec. 28.11.030. REMOVAL OF ABANDONED VEHICLES. (a) A police officer or an employee authorized by the state or a municipality may remove or cause to be removed to a place for safe storage a vehicle abandoned on a public street or highway, on a vehiclar way or area, or on private property.

(b) Removal of an abandoned vehicle from private property shall be on the written request of the owner or person in lawful possession or control of the property, and upon a form prescribed by the department.

(c) A written report of the removal shall be made by the police officer or employee who removes or causes the removal of a vehicle under this section, and the report shall be sent immediately to the department. The report shall describe the vehicle, the date, time, and place of removal, the grounds for removal, and the place of impoundment of the vehicle.

Sec. 28.11.040. NOTICE TO OWNER. (a) Upon receipt of the removal report prescribed in sec. 30 of this chapter, the department shall provide written notification by certified mail to the vehicle owner of record and to lienholders of record, stating the grounds for removal and the location of the place of impoundment of the vehicle. If the vehicle is not registered in the state, the department shall make a reasonable effort to notify the registered owner or the lienholder of the removal and place of impoundment of the vehicle. The department shall forward a copy of the notice to the owner or person in charge of the place of impoundment.

(b) When the name and address of the registered or legal owner cannot be ascertained, the department shall give notice by publication ~~in a newspaper of general circulation in the area or municipality in which the vehicle was found.~~ In conformity with Subdivision procedures

Title 34 requirements for real property

Sec. 28.11.050. VESTING OF TITLE. Title to an impounded vehicle

existing law

not reclaimed by the registered owner, the lienholder, or other person entitled to possession of the vehicle within 30 days from the notice provided by sec. 40 of this chapter vests with the state or, if a local ordinance is adopted under sec. 100 of this chapter, with the local governing body, as appropriate.

Sec. 28.11.060. REDEMPTION. A person who presents satisfactory proof of ownership or right to possession may redeem a vehicle removed under this chapter by paying the charges of towing, storage, notice, other cost of impoundment, and penalties imposed by law. May be done until the time of auction if all incurred costs are paid + and may regain title

Sec. 28.11.070. DISPOSAL OF ABANDONED VEHICLES. (a) Upon satisfaction of the notification and reporting requirements prescribed in this chapter and when title to the vehicle has vested under sec. 50 of this chapter, a vehicle may be disposed of

(1) by public auction 15 days after notice published in a newspaper of general circulation in the area or municipality in which the vehicle was found; the published notice shall describe the vehicle and set out the place, date, and time at which it will be sold; a copy of the published notice shall be conveyed to the department along with documents required under (b) of this section; or

(2) by ~~private sale~~ relinquishment in favor of a towing or storage lien. other language

(b) The title certificate and registration of a disposed vehicle if available and a copy of the bill of sale or relinquishment of title shall be surrendered to the department within 10 days of the disposal.

(c) A vehicle disposed under this section must be registered and titled as prescribed in ch. 10 of this title, and subsequent sale of a vehicle disposed under this section is prohibited without a certificate of title issued by the department.

(d) Notwithstanding the provisions of this section, the department

may initiate a civil action against a driver or owner of a vehicle which is abandoned in violation of this chapter for costs exceeding receipts for the disposal of the vehicle.

Sec. 28.11.080. DISPOSAL FACILITIES. (a) The department shall, if necessary, negotiate with appropriate state or municipal agencies in an effort to designate and acquire centrally located land for the disposal of abandoned vehicles. These areas may be used for the temporary holding of vehicles before sale as prescribed in sec. 70 of this chapter, or for the final disposal of unsold abandoned vehicles.

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(b) The department shall assist a municipality which elects to adopt its own procedures for the removal and impoundment of vehicles within its boundaries.

(c) A municipality which fails to adopt procedures for the removal and impoundment of abandoned vehicles under (a) of this section is bound

by the procedure specified in this chapter.

Sec. 28.11.110. ABANDONED MOTOR VEHICLE FUND. (a) There is created in the department an abandoned motor vehicle fund, to be composed of appropriations by the legislature and proceeds from the sale of abandoned motor vehicles.

(b) The proceeds from the sale of an abandoned motor vehicle under this chapter, after deducting the cost of impounding, advertising, and selling the vehicle, shall be deposited in the fund set out in (a) of this section.

(c) Money in the fund shall be disbursed to the department and to each of the municipalities bound by the provisions of this chapter upon presentation of a voucher for payment of services rendered in compliance with this chapter.

* Sec. 2. AS 28.31 is repealed.

Restrict to

SB

490

"An Act making miscellaneous amendments in the corporation statutes; effective date."

COMMITTEE REPORT

3/13/76

HOUSE

Mr. Speaker. Date May 22, 1976

The Committee on JUDICIARY has had SB 490 am

under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(✓) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Terry Gardiner	Do Pass	[illegible]
[illegible]	[illegible]	

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Terry Gardiner Chairman

AS 10.05.237 is amended to read:

Sec. 10.05.237 BOOKS AND RECORDS. (a) A corporation shall keep correct and complete books and records of account, [AND SHALL KEEP] minutes of the proceedings of its shareholders and board of directors, and [SHALL KEEP AT ITS REGISTERED OFFICE OR PRINCIPAL PLACE OF BUSINESS, OR AT THE OFFICE OF ITS TRANSFER AGENT OR REGISTER,] a record of its shareholders, containing the names and addresses of all shareholders and the number and class of the shares held by each.

(b) A corporation shall make these books and records, or certified copies of them, available for inspection at the registered office or principal place of business in Alaska.

Elaine
H. Bienne

A M E N D M E N T

TO: SB 490 am

Page 21, between lines 1 and 2, insert the following and renumber the remaining section accordingly:

* Sec. 54. AS 10.05.177(a) is amended to read:

(a) Corporations with three or more shareholders shall have at least three directors. A corporation having less than three shareholders may have the same number of directors as it has shareholders. [THE NUMBER OF DIRECTORS OF A CORPORATION SHALL BE AT LEAST THREE.] The number of directors shall be fixed by the bylaws, except that the number constituting the initial board of directors shall be fixed by the articles of incorporation.

* Sec. 55. AS 10.05.252 is amended to read:

Sec. 10.05.252. INCORPORATORS. One [THREE] or more natural persons at least 19 years of age may act as incorporators of a corporation by signing, verifying and delivering in duplicate to the commissioner articles of incorporation for the corporation.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF BANKING, SECURITIES, SMALL LOANS & CORPORATIONS / POUCH D — JUNEAU 99811

May 21, 1976

Honorable Terry Gardiner
Chairman
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: Committee Hearing of May 20, 1976 on SB 490 (Corporation Bill)

Dear Terry:

Attached to this letter at your request, I am enclosing a copy of the memo that was sent to Senator Robert Ziegler, Sr. dated February 3, 1976 giving a section-by-section analysis of SB 490. Because of amendments, the section numbers of the bill have changed. I have written in the new section numbers to correspond to the form of the bill before you, i.e., SB 490am. If it were not for the press of time, I would have provided a new section-by-section analysis. However, I hope that this will serve as well for all practical purposes.

Prior to commenting on the Corporation Act Amendments, permit me to respond to your question concerning the possible repeal of AS 10.10, the Business and Industrial Development Act. While it is true that no attempt to date has been made to utilize the act, we are of the opinion that having this type of investment vehicle available for use by industrial developers is a healthy posture for the state to maintain. I am advised by Mr. Jim Edenso, Deputy Commissioner of Commerce and Economic Development, that if you or any other lesislative committee desires to explore possible amendments to this act to make it more workable we would be most happy to assist in that effort. We do not, however, feel that the entire act should be repealed.

I would like to confirm my comments on the amendments considered by the Judiciary Committee yesterday evening to § 54 and 55 of the bill. I see no real problems with these amendments, and I believe they are useful, especially since they are limited to small corporations.

However, I do have some reservations conserning the amendment to AS 10.05.237 that was also considered by the committee. To require a domestic corporation to make available for inspection at its registered office or principal place of business in Alaska its books and records might at first glance seem to be a reasonable requirement. However, one must keep in mind that to so require could create a heavy monetary burden on corporations, and the added costs would be passed on to customers of the corporations. For example, if the telephone company were required to physically keep its records in Alaska while the company presently stores its records out of the state, this would add to the cost of service. The company would likely seek a tariff increase through APUC. This would then be passed on to the company's customers by increased rates for service.

Also, it is not clear whether § 237(b) requires the records to be physically present

in the state. I feel, personally, that the wording can be interpreted to mean that corporations must make available the books and records within a reasonable time of the demand by a given person.

Another serious problem, as I see it, with the proposed amendment of § 237 is that it could be used as a vehicle for a fishing expedition into the records of a corporation. I would, therefore, suggest that if you or other committee members believe that this sort of legislation is necessary, that the scope of the demand for information be limited to the records directly affecting the person making the request. For example, in the case of the telephone company records, the person should only have access to his personal billing and telephone log records.

Thank you for the opportunity to appear before the committee to discuss SB 490.

Sincerely,

Julius J. Brecht

Julius J. Brecht
Director

Enclosures

MEMORANDUM State of Alaska

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

TO: Senator Robert Ziegler, Sr.
Chairman
Senate Judiciary Committee

DATE: February 3, 1976

FILE NO:

TELEPHONE NO:

OPR: William W. Ladwig
Deputy Director
Ext. 2533

FROM: Miles S. Schlosberg
Director
Division of Banking and Securities
Ext. 2521

SUBJECT: Senate Bill 490

SECTIONAL ANALYSIS OF SENATE BILL 490: An Act making Miscellaneous Amendments to the Corporations Statutes, and providing for an Effective Date.

Section 1: AS 10.05.021(a) is amended to provide "name" protection for all names, either corporate or business, reserved or registered under Title 10.

Section 2: AS 10.05.057(b) is amended to reflect more closely the organizational structure of the Department and to provide a fee for the service of process service, which is provided by this Department. This fee approximates the actual cost of manpower and material to effect service in the manner prescribed by statute.

Section 3: AS 10.05.189 is amended to mandate that the Board of Directors fill any vacancies created so that unscrupulous directors may not purposely leave directorships vacant to manipulate the corporation to their advantage.

Sec. 4.-See Note(i)

Section 5: AS 10.05.439 is amended to provide the Commissioner with power to involuntarily dissolve corporations when they have filed an intent to dissolve, and failed to follow through on it within a specified period of time. This will allow the Department to purge its files in a more timely fashion.

Section 6: AS 10.05.519(a) is amended to shorten the delinquency period from one year to six months, to allow a more rapid purging of the Department's files and to incorporate those changes discussed under Sections 3 and 4 above.

Section 7: AS 10.05.519(d) is amended to allow the Department to collect taxes on reinstating corporations for the two-year reinstatement grace period. Since reinstatement is retroactive, taxing should also be retroactive.

Section 8: AS 10.05.606(3) - See comments in Section 1 above.

Section 9: AS 10.05.607 is a new section to allow foreign corporations to use an assumed name. Presently, a foreign corporation would not be authorized to do business in Alaska if there already were an existing corporation with a similar name doing business in the state.

Section 10: AS 10.05.696 is amended to allow the state, through this Department, to collect a penalty from foreign corporations who are operating in Alaska without complying with the provisions of Title 10, i.e. filing the requisite documents and paying the appropriate franchise tax.

Section 11: AS 10.05.703 is amended to increase the filing fees for new corporations. This new increase fees will bring Alaska in line with the majority of the other states.

Section 12: AS 10.05.711 - See comments in Section 10 above.

Section 13: AS 10.05.717(a) is amended to make the statute more readable, and to provide a penalty for each year of delinquency rather than one "coverall" penalty.

Section 14: AS 10.05.747 is amended to provide an increase in the fee. Such increase will allow the Department to recapture a greater portion of the cost of providing the service.

Section 15: AS 10.05.717 is amended to provide greater clarity in the statutory language to make the computation of the penalty more easy.

Sec. 16-See Note(ii)

Section 17: AS 10.10.040(3) is amended to reflect the combination of the Departments of Commerce and Economic Development.

Section 18: AS 10.10.150 is amended to identify the specific commissioner, and to reflect the merger of the Departments of Commerce and Economic Development.

Sec. 19-See Note (iii)

Section 20: AS 10.15.325 is amended to require a more timely filing of the annual report, thereby making its content of more value.

Section 21: AS 10.15.475 - See comments in Section 4 above.

Section 22: AS 10.15.535 - See comments in Section 13 above.

Section 23: AS 10.15.545 - See comments in Section 13 above.

Section 24: AS 10.15.550 is amended to make the penalty for late filing a flat fee, rather than a percentage, for ease of computation. Also, to make the penalty more realistic.

Section 25: AS 10.15.555 is amended to increase filing fees to recapture a greater portion of the cost of the services provided.

Section 26: AS 10.20.021 is amended to provide "name" protection for sole proprietorships.

Section 27: AS 10.20.101 - See comments in Section 3 above.

Section 28: AS 10.20.290 - See comments in Section 4 above.

Section 29: AS 10.20.300 is amended to require the filing of a plan of distribution of corporate assets, so that a corporation may not be dissolved to the detriment of the shareholders or persons entitled to share in the distribution of assets.

Section 30: AS 10.20.305 is amended to provide for the filing of the resolution to dissolve, to possibly prohibit, by disclosure, unnecessary dissolution to the detriment of the shareholders or members of the corporation.

Section 31: AS 10.20.325 is amended to provide the authority to the Commissioner of Commerce and Economic Development to involuntarily dissolve non-profit corporations, and to remove this authority from the office of the Attorney General.

Section 32: AS 10.20.330 is repealed. See comments, Section 28 above.

Section 33: AS 10220.335 - See comments in Section 28 above.

Section 34: AS 10.20.340 is repealed. See comments in Section 28 above.

Section 35: AS 10.20.345 - See comments in Section 28 above, and to provide clarity in the statutory language.

Section 36: AS 10.20.350 is repealed. See section 28 above.

Section 37: AS 10.20.355 is repealed. See Section 28 above.

Section 38: AS 10.20.375 is repealed. See Section 28 above.

Section 39: AS 10.20.470 is amended to provide "name" protection to sole proprietorships.

Section 40: AS 10.20.471 is added to provide authority for and guidelines under which a foreign corporation may use an assumed name in conducting its business in Alaska.

Section 41: AS 10.20.530 is amended to provide clarity in statutory language and to further provide a fee for the service provided by this Department in acting as agent for service of process. This fee approximates the cost of the service provided.

Section 42: AS 10.20.615 is amended to provide clarity in the statutory language and to provide a significant monetary penalty for those corporations who operate in Alaska without compliance to the provision of Subtitle 10.

Section 43: AS 10.20.630 is amended to provide clarity in the statutory language and to provide a staggering in the time sequence of filing the various corporate annual reports, to make the workload of the Department more even.

Section 44: AS 10.20.635 - See Comments in Section 13 above.

Section 45: AS 10.20.645(a) - See comments in Section 13 above.

Section 46: AS 10.25.330 - See comments in Section 4 above.

Section 47: AS 10.25.530 - See comments in Section 13 above.

Section 48: AS 10.35.020 is amended to provide "name' protection for sole proprietorships. Also, to provide a prohibition against sole proprietorships representing that they are incorporated.

Sec. 49-See Note(iv)

Section 50 AS 10.35.060 - See comments in Section 46 above.

Section 51: AS 10.35.070 - See comments in Section 13 above.

Section 52: AS 10.40.040 is amended to provide that religious corporations must name apperson and address where they can be found, upon whom legal service may be made.

Section 53: AS 10.40.130, .140, and .150, are new sections designed to give the Department the authority to require religious corporations to maintain registered agents and offices, pay fees for documents filed with this office, provide penalties for failure to file of a monetary nature, and provide the penalty of involuntary dissolution for continued non-compliance.

Section 54: Proposed effective date of this bill is January 1, 1977, to allow, should this bill be enacted, sufficient time for the changes it encompasses to be disseminated to the legal profession.

HSS:WWL:bjl

Notes: (i) This section would repeal AS 10.05.250 which deals with the disclosures of alien interests in a corporate reorganization.

(ii) This section repeals AS 10.05.825(21), a definition of reorganization which would no longer be required if AS 10.05.250 is repealed.

(iii) This section was added in the Senate at the direction of Senator Kerttula to protect retired members of cooperatives.

(iv) This section extends protection to the name of a business in analogy to AS 10.05.021(a). See Section 1. of the bill.

A M E N D M E N T

TO: SB 490 am

Page 21, between lines 1 and 2, insert the following and renumber the remaining section accordingly:

* Sec. 54. AS 10.05.177(a) is amended to read:

(a) Corporations with three or more shareholders shall have at least three directors. A corporation having less than three shareholders may have the same number of directors as it has shareholders. [THE NUMBER OF DIRECTORS OF A CORPORATION SHALL BE AT LEAST THREE.] The number of directors shall be fixed by the bylaws, except that the number constituting the initial board of directors shall be fixed by the articles of incorporation.

* Sec. 55. AS 10.05.252 is amended to read:

Sec. 10.05.252. INCORPORATORS. One [THREE] or more natural persons at least 19 years of age may act as incorporators of a corporation by signing, verifying and delivering in duplicate to the commissioner articles of incorporation for the corporation.

AS 10.05.237 is amended to read:

Sec. 10.05.237. BOOKS AND RECORDS (a) A corporation shall keep correct and complete books and records of account, [AND SHALL KEEP] minutes of the proceedings of its shareholders and board of directors, and [SHALL KEEP AT ITS REGISTERED OFFICE OR PRINCIPAL PLACE OF BUSINESS, OR AT THE OFFICE OF ITS TRANSFER AGENT OR REGISTER,] a record of its shareholders, containing the names and addresses of all shareholders and the number and class of the shares held by each.

(b) A corporation shall make these books and records, or certified copies of them, available for inspection at the registered office or principal place of business in Alaska.

Re: SB 490

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

MEMORANDUM

May 13, 1976

SUBJECT: Amendment to AS 10.05.237 (WO #2625)

TO: Representative Cowper

FROM: David T. Walker, Legislative Counsel

Attached is an amendment to AS 10.05.237 which I believe would have the effect you desire.

You should also take a look at AS 42.05.491 relating to the records kept by public utilities. It contains some options you might want to include.

DTW/sm



Introduced: 1/14/76
Referred: Judiciary

IN THE SENATE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

SENATE BILL NO. 490 am

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act making miscellaneous amendments in the corporation statutes; and providing for an effective date."

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

* Section 1. AS 10.05.021(a) is amended to read:

(a) The corporate name shall contain the word "corporation," "company," "incorporated" or "limited," or an abbreviation of one of these words. It shall not contain a word or phrase which indicates or implies that it is organized for a purpose other than the purpose contained in the articles of incorporation. It shall not be the same as, or deceptively similar to, the name of a domestic corporation existing under the laws of the state or a foreign corporation authorized to transact business in the state, or a name which has been reserved or registered as provided in this title [CHAPTER].

* Sec. 2. AS 10.05.057(b) is amended to read:

(b) Whenever a corporation fails to appoint or maintain a registered agent in the state, or whenever its registered agent cannot, with reasonable diligence, be found at the registered office, the commissioner is an agent of the corporation upon whom the process, notice or demand may be served. Service is made upon the commissioner as agent by leaving with him, or with a clerk having charge of the corporation division [DEPARTMENT] of his office, duplicate copies of the process, notice or demand. Service upon the commissioner must be accompanied by a fee of $10. When process, notice or demand is served

on the commissioner, he shall immediately forward a copy of it by registered mail to the corporation at its registered office. Service on the commissioner is returnable in not less than 30 days.

* Sec. 3. AS 10.05.189 is amended to read:

Sec. 10.05.189. VACANCIES. A vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors though the majority is less than a quorum of the board. A director elected to fill a vacancy is elected for the unexpired term of his predecessor in office. A directorship to be filled by reason of an increase in the number of directors shall be filled by election at an annual meeting or at a special meeting of shareholders called for that purpose. In no case may a vacancy continue for longer than six months or until the next annual meeting, whichever occurs first.

~~* Sec. 4. AS 10.05.250 is repealed.~~ Alien corporate rights

* Sec. 5. AS 10.05.489 is amended by adding a new paragraph to read:

(4) shall, if it has not completed dissolution proceedings within two years after the date the statement of intent to dissolve is filed, be involuntarily dissolved by the commissioner after 60-days notice of his intent to do so has been given to the corporation.

* Sec. 6. AS 10.05.519(a) is amended to read:

(a) A corporation may be dissolved involuntarily by the commissioner when

(1) the corporation is delinquent six months [ONE FULL YEAR] in filing its annual report or in paying a license filing fee or penalty;

(2) the corporation has failed for 30 days to appoint and maintain a registered agent in this state; [OR]

(3) the corporation has failed for 30 days after change of

its registered office or registered agent to file in the office of the commissioner a statement of the change;

(4) the corporation has failed for two years to complete dissolution pursuant to a statement of intent to dissolve; or

(5) a vacancy in the board of directors of a corporation is not filled within six months or the next annual meeting whichever occurs first.

* Sec. 7. AS 10.05.519(d) is amended to read:

(d) A corporation dissolved by the commissioner under the provisions of this section may be reinstated by the commissioner at any time within two years from the date of the certificate of involuntary dissolution whenever it is established to the satisfaction of the commissioner that in fact there was no cause for the dissolution, or whenever the neglect or delinquency resulting in dissolution has been corrected and payment made of double the amount delinquent along with the amount the corporation would have paid had it not been dissolved during the two-year period. Reinstatement may not be authorized if the same or a deceptively similar corporate, limited partnership, reserved or registered name is currently on file with the commissioner, unless the corporation being reinstated contemporaneously amends its articles of incorporation to change its name to conform with the provisions of this chapter.

* Sec. 8. AS 10.05.606(3) is amended to read:

(3) is not the same as, or deceptively similar to, the name of a domestic corporation existing under the laws of the state or a foreign corporation authorized to transact business in the state, or a name the exclusive right to which is reserved in the manner provided in this title [CHAPTER], or the name of a corporation which has in effect a registration of its name as provided in this chapter.

* Sec. 9. AS 10.05 is amended by adding a new section to read:

Sec. 10.05.607. ASSUMED CORPORATE NAME. When a foreign corporation, applying for a certificate of authority, has a name the same as or deceptively similar to that of a corporation registered under this chapter, it shall

(1) select a name under which it elects to do business in the state; and

(2) clearly identify on all advertising, contracts and other legal documents its true corporate name as well as its assumed name.

* Sec. 10. AS 10.05.696 is amended to read:

Sec. 10.05.696. LIABILITY TO STATE FOR TRANSACTING BUSINESS WITHOUT CERTIFICATE OF AUTHORITY. A foreign corporation ich transacts business in the state without a certificate of authority is liable to the state, for the years or portions of years during which it transacted business in the state without a certificate of authority, in an amount equal to all fees and franchise taxes which would have been imposed by this chapter on the corporation if it had applied for and received a certificate of authority to transact business in the state as required by this chapter and filed all reports required by this chapter, plus all penalties imposed by this chapter for failure to pay the fees and francise taxes, plus a penalty of up to $5,000 per year or portion of a year for each year it transacted business in the state without a certificate of authority. The attorney general shall bring proceedings to recover amounts due the state under this section.

* Sec. 11. AS 10.05.708 is amended to read:

Sec. 10.05.708. INCORPORATION OR FILING FEES. (a) A domestic or foreign corporation which is required by law to file articles of incorporation with the department, except corporations organized under

ch. 20 of this title and foreign corporations organized under the laws of the United States or the laws of a state or territory of the United States or the laws of a foreign country for the same purposes as those allowed under ch. 20 of this title, shall pay to the commissioner,

(1) if the authorized capital stock of the corporation is $100,000, or less, a filing fee of $30 [$25];

(2) if the authorized capital stock of the corporation exceeds $100,000, the fee set forth in (1) of this subsection plus an additional fee of 20 [10] cents for each $1,000, or fraction of $1,000, of authorized capital stock above $100,000;

(3) if the authorized capital stock exceeds $1,000,000, the fees set forth in (1) and (2) of this subsection plus an additional fee of $15 [$10] for each $1,000,000, or fraction of $1,000,000, of authorized capital stock over $1,000,000.

(b) Shares of no par value are considered to be of the par value of $10 [$1] each for the purpose of computing the amount of the filing fee.

* Sec. 12. AS 10.05.711 is amended to read:

Sec. 10.05.711. FEES ON FILING AMENDATORY ARTICLES OR CERTIFICATES CHANGING CAPITAL STOCK. (a) A domestic or foreign corporation, except corporations organized under ch. 20 of this title and foreign corporations organized under the laws of the United States or the laws of a state or territory of the United States or the laws of a foreign country for the same purposes as those allowed under ch. 20 of this title, filing amendatory or supplemental articles of incorporation, or certificates of increase or decrease or capital stock with the department, shall pay to the commissioner

(1) for filing amendatory or supplemental articles which do not increase capital stock, or for filing a certificate of decrease of

capital stock, a fee of $10;

(2) for filing amendatory or supplemental articles which increase the capital stock, or for filing a certificate of increase of capital stock, a fee of $10, plus

(A) a further fee of 20 [10] cents per $1,000 or fraction of $1,000 of authorized increase of capital stock above $100,000 and less than $1,000,000;

(B) a further fee of $15 [$10] per $1,000,000 or authorized increase over $1,000,000.

(b) Shares of no par value are considered to be of the par value of $10 [$1] each for the purpose of computing the amount of the filing fee.

* Sec. 13. AS 10.05.717(a) is amended to read:

(a) Each domestic corporation and each foreign corporation doing business in this state or having its articles of incorporation on file with the department shall, before January 2 of each year, pay to the commissioner an annual corporation tax as follows: domestic corporation, $50; foreign corporation, $100. A corporation which fails to pay the annual corporation tax before February 1 [OF EACH YEAR] shall pay to the commissioner a penalty of $25 for each year or part of a year of delinquency [THE FURTHER SUM OF $25 AS A PENALTY].

* Sec. 14. AS 10.05.747 is amended to read:

Sec. 10.05.747. FILING FEES FOR INSTRUMENTS NOT OTHERWISE PROVIDED FOR. The filing fee for an instrument not otherwise provided for is $10 [$5].

* Sec. 15. AS 10.05.771 is amended to read:

Sec. 10.05.771. PENALTY FOR FAILURE TO FILE ANNUAL REPORT. Each domestic or foreign corporation that fails or refuses to file its annual report within the time set [PRESCRIBED] by this chapter is

subject to a penalty of 10 per cent of the amount of the franchise tax [ASSESSED AGAINST IT FOR THE PERIOD BEGINNING JULY 1 OF THE YEAR IN WHICH THE REPORT SHOULD HAVE BEEN FILED. THE COMMISSIONER SHALL ASSESS THE PENALTY AT THE TIME OF THE ASSESSMENT OF THE FRANCHISE TAX]. If the amount of the franchise tax as originally assessed is adjusted in accordance with this chapter, the amount of the penalty shall also be adjusted to 10 per cent of the amount of the adjusted franchise tax. The amount of the franchise tax and the amount of the penalty shall be separately stated in a notice to the corporation.

~~* Sec. 16. AS 10.05.825(21) is repealed.~~ Def. of Rectgan

* Sec. 17. ~~AS 10.10.040~~(8) is amended to read:

(8) to cooperate with and avail itself of the facilities of the United States Department of Commerce, the state Department of Commerce and Economic Development, and any other state or federal governmental agencies; and to cooperate with and assist, and otherwise encourage organizations in the various communities of the state in the promotion, assistance, and development of the business prosperity and economic welfare of such communities or of this state or of any part of the state;

* Sec. 18. AS 10.10.150 is amended to read:

Sec. 10.10.150. EXAMINATIONS. The corporation shall be examined at least once annually by the commissioner of administration and shall make reports of its condition not less than annually to the commissioner of administration and more frequently upon call of the commissioner of administration, who in turn shall make copies of the reports available to the commissioner of commerce and economic development and the governor. The corporation shall also furnish other information which may from time to time be required by the commissioner of administration. The corporation shall pay the actual cost of the examinations.

* Sec. 19. AS 10.15.020(b) is amended to read:

(b) The bylaws of the cooperative shall set forth the qualifications for membership and method of acceptance of members; however, the bylaws may not deny membership privileges or votes to any owner or holder of a producer's certificate of equity if they own or hold payable or past due certificates of $2,500 or more.

* Sec. 20. AS 10.15.325 is amended to read:

Sec. 10.15.325. FORM OF ANNUAL REPORT. The annual report shall be made on forms furnished by the department. The information contained in the annual report shall be given as of June 30 [OF THE PRECEDING YEAR].

* Sec. 21. AS 10.15.475 is amended by adding a new paragraph to read:

(3) any cooperative which has filed a statement of intent to dissolve that does not, within two years from the date of filing, carry the dissolution to a conclusion shall be involuntarily dissolved as provided in the Alaska Business Corporation Act (AS 10.06).

* Sec. 22. AS 10.15.535 is amended to read:

Sec. 10.15.535. DETERMINATION OF LICENSE FEE FOR COOPERATIVE AUTHORIZED TO ISSUE CAPITAL STOCK. The license fee of each cooperative authorized by its articles to issue capital stock shall be graduated in accordance with the amount of capital stock authorized in its articles, as follows:

Amount of Authorized Capital Stock		
Over	But not over	Fee
$ 0	$ 5,000	$ 10.00 [5.00]
5,000	10,000	15.00 [7.50]
10,000	25,000	20.00 [10.00]
25,000	50,000	30.00 [15.00]
50,000	100,000	40.00 [25.00]

100,000	250,000	50.00	[35.00]
250,000	500,000	60.00	[50.00]
500,000	1,000,000	75.00	[62.50]
1,000,000	2,000,000	100.00	[87.50]
2,000,000		125.00	[100.00]

* Sec. 23. AS 10.15.545 is amended to read:

Sec. 10.15.545. LICENSE FEE FOR COOPERATIVE WITHOUT CAPITAL STOCK. The license fee of each cooperative having no authorized shares of capital stock is $25 [$5].

* Sec. 24. AS 10.15.550 is amended to read:

Sec. 10.15.550. PENALTY [INTEREST]. A cooperative which fails to pay the annual license fee before August 15 shall pay a penalty of $10 for each year or part of a year of delinquency. [IF THE LICENSE FEE IS NOT PAID PRIOR TO AUGUST 15, THE DEPARTMENT SHALL COLLECT INTEREST AT THE RATE OF SIX PER CENT A YEAR.]

* Sec. 25. AS 10.15.555 is amended to read:

Sec. 10.15.555. MISCELLANEOUS FEES AND CHARGES. The department shall charge and collect from a cooperative for filing

(1) articles of incorporation or articles of consolidation for a new cooperative, $15 [$10] together with the proportionate part of the annual license fee payable for the succeeding fraction of the fiscal year;

(2) articles of amendment, restated articles, or articles of merger, $10 [$5], and if the articles provide for an increase of the amount of authorized capital stock of the cooperative, the filing cooperative shall also pay the proportionate part of the annual license fee for the succeeding fraction of the fiscal year, payable by a cooperative whose authorized shares equal the newly increased authorized shares of the filing cooperative, less the annual license fee

already paid for the succeeding fraction of the fiscal year by the filing cooperative; but filing articles decreasing the authorized shares does not reduce the annual license fee of the filing cooperative until the beginning of the fiscal year following that in which the articles were filed;

(3) statement of intent to dissolve, $5 [$1];

(4) statement of revocation of voluntary dissolution proceedings, $5 [$1];

(5) articles of dissolution, $10 [$5];

(6) all other statements, except an annual statement, $5 [$1].

* Sec. 26. AS 10.20.021 is amended to read:

Sec. 10.20.021. CORPORATE NAME. The corporate name may not

(1) contain a word or phrase which indicates or implies that it is organized for a purpose other than one or more of the purposes contained in its articles of incorporation;

(2) be the same as, or deceptively similar to, the name of a corporation, whether for profit or not for profit, existing under the law of the state, or a foreign corporation, whether for a profit or not for profit, authorized to transact business in the state, or a corporate or business name reserved or registered as permitted by the laws of the state.

* Sec. 27. AS 10.20.101 is amended to read:

Sec. 10.20.101. VACANCIES. A vacancy occurring in the board of directors and a directorship to be filled by reason of an increase in the number of directors may be filled by the affirmative vote of a majority of the remaining directors, though less than a quorum of the board of directors, unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in

some other manner. A director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office. A directorship to be filled by reason of an increase in the number of directors shall be filled by the board of directors for a term of office which continues only until the next election of directors. In no case may a vacancy continue for longer than six months or until the next annual meeting of the members, whichever occurs first.

* Sec. 28. AS 10.20.290 is amended by adding new subsections to read:

(c) Following the adoption of a resolution to dissolve, a copy of it executed by the corporation's president or vice-president and a secretary or assistant secretary and verified by one of the officers signing shall be immediately filed with the commissioner. The resolution shall state the number of members and the number of directors voting for and against it.

(d) A corporation, which has filed a resolution of voluntary dissolution, which has not concluded its affairs and received a certificate of dissolution, within two years after the date of filing the resolution, shall be involuntarily dissolved by the commissioner.

* Sec. 29. AS 10.20.300 is amended by adding a new paragraph to read:

(3) A plan of distribution shall be immediately filed with the commissioner. The plan of distribution shall state the number of members and the number of directors voting for and against it.

* Sec. 30. AS 10.20.305 is amended by adding a new paragraph to read:

(4) Upon the adoption of the resolution, a copy shall immediately be filed with the commissioner. The resolution shall state the number of members and the number of directors voting for and against it.

* Sec. 31. AS 10.20.325 is amended to read:

Sec. 10.20.325. GROUNDS FOR INVOLUNTARY DISSOLUTION. A corporation may be dissolved involuntarily by the commissioner [A DECREE OF THE SUPERIOR COURT IN AN ACTION FILED BY THE ATTORNEY GENERAL] when it is established that

(1) the corporation has failed to file its annual report within the time required by this chapter;

(2) the corporation procured its articles of incorporation through fraud;

(3) the corporation has continued to exceed or abuse the authority conferred upon it by law;

(4) the corporation has failed for 30 days to appoint and maintain a registered agent in the state; [OR]

(5) the corporation has filed for 30 days after change of its registered office or registered agent to file in the office of the commissioner a statement of the change; or

(6) the corporation has failed, within the time required by this chapter, to revoke or complete a plan of voluntary dissolution.

* Sec. 32. AS 10.20.330 is repealed.

* Sec. 33. AS 10.20.335 is amended to read:

Sec. 10.20.335. NOTICE TO CORPORATION. When the commissioner determines that [CERTIFIES] a corporation has [TO THE ATTORNEY GENERAL AS HAVING] given any cause for involuntary dissolution, the commissioner shall [AT THE SAME TIME] mail to the corporation, by certified mail, at its registered office a notice, setting out the grounds for involuntary dissolution, 60 days before a certificate of dissolution is issued [THAT THE CERTIFICATION HAS BEEN MADE].

* Sec. 34. AS 10.20.340 is repealed.

* Sec. 35. AS 10.20.345 is amended to read:

Sec. 10.20.345. REMOVAL OF GROUND FOR DISSOLUTION. [(a)] If [,

BEFORE ACTION IS FILED,] the corporation, withi.. the time required by this chapter, files its annual report or appoints or maintains a registered agent as provided in this chapter, or files with the commissioner the required statement of change of registered office or registered agent, or revokes or concludes a plan of voluntary dissolution, the commissioner's authority to involuntarily dissolve the corporation ceases [THE COMMISSIONER SHALL CERTIFY THAT FACT TO THE ATTORNEY GENERAL AND AN ACTION AGAINST THE CORPORATION MAY NOT BE FILED].

(b) [IF, AFTER THE ACTION IS FILED, THE CORPORATION FILES ITS ANNUAL REPORT OR APPOINTS OR MAINTAINS A REGISTERED AGENT AS PROVIDED IN THIS CHAPTER, OR FILES WITH THE COMMISSIONER THE REQUIRED STATEMENT OF CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT, AND PAYS THE COST OF THE ACTION, THE ACTION ABATES.]

Court procedure

* Sec. 36. AS 10.20.350 is repealed.

* Sec. 37. AS 10.20.355 is amended to read:

Sec. 10.20.355. JURISDICTION OF COURT TO LIQUIDATE ASSETS AND BUSINESS OF CORPORATION. The superior court may liquidate the assets and business of a corporation in the cases provided in secs. 360 - 370 [375] of this chapter.

* Sec. 38. AS 10.20.375 is repealed.

* Sec. 39. AS 10.20.470 is amended to read:

Sec. 10.20.470. CORPORATE NAME OF FOREIGN CORPORATION. No certificate of authority may be issued to a foreign corporation unless the corporate name of the corporation

(1) does not contain a word or phrase which indicates or implies that it is organized for any purpose other than the purpose contained in its articles of incorporation;

(2) is not the same as, or deceptively similar to, the name

of a corporation, whether for profit or not for profit, existing under the laws of this state, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state, or a corporate or business name reserved or registered as permitted by the laws of this state.

* Sec. 40. AS 10.20 is amended by adding a new section to read:

Sec. 10.20.471. ASSUMED CORPORATE NAME. When a foreign corporation, applying for a certificate of authority, has a name the same as or deceptively similar to that of a corporation operating under this chapter, it shall

(1) select a name under which it elects to do business in the state;

(2) clearly identify on all advertising, contracts and other legal documents its true corporate name as well as its assumed name.

* Sec. 41. AS 10.20.530 is amended to read:

Sec. 10.20.530. SERVICE ON COMMISSIONER [OF COMMERCE]. When a foreign corporation authorized to transact business in the state, or not authorized to transact business in the state but doing so, fails to appoint or maintain a registered agent in the state, or when a registered agent cannot with reasonable diligence be found at the registered office, or when the certificate of authority of a foreign corporation is suspended or revoked, the commissioner is an agent upon whom process, notice, or demand may be served. Service on the commissioner shall be made by delivering to and leaving with him, or with a person designated by him in the corporation division [DEPARTMENT] of his office, duplicate copies of the process, notice or demand, accompanied by a fee of $10. The commissioner shall immediately have one copy forwarded by registered or certified mail, addressed to the

corporation at its principal office in the state or country under whose laws it is incorporated. Service on the commissioner is returnable in not less than 30 days.

* Sec. 42. AS 10.20.615 is amended to read:

Sec. 10.20.615. LIABILITY TO STATE FOR TRANSACTING BUSINESS WITHOUT CERTIFICATE OF AUTHORITY. A foreign corporation which transacts business in the state without a certificate of authority is liable to the state, for the years or portions of years during which it transacted business in the state without a certificate of authority, in an amount equal to all fees [AND FRANCHISE TAXES] which would have been imposed by this chapter on the corporation if it had applied for and received a certificate of authority to transact business in the state as required by this chapter and filed all reports required by this chapter, plus all penalties imposed by this chapter for failure to pay the fees and a penalty ~~of~~ up to $5,000 per year or fraction of a year of operating without a certificate of authority. The attorney general shall bring proceedings to recover amounts due the state under this section.

* Sec. 43. AS 10.20.630 is amended to read:

Sec. 10.20.630. FILING OF ANNUAL REPORT OF DOMESTIC AND FOREIGN CORPORATIONS. (a) The annual report of a domestic or foreign corporation shall be delivered to the commissioner between June 1 and August 1 [JANUARY 1 AND MARCH 1] of each year. The [HOWEVER, THE] first annual report of a domestic or foreign corporation shall be filed between June 1 and August 1 [JANUARY 1 AND MARCH 1] of the year succeeding the calendar year in which its certificate of incorporation or its certificate of authority, as the case may be, was issued by the commissioner.

(b) [A CORPORATION ORGANIZED UNDER THIS CHAPTER WHOSE FISCAL YEAR ENDS AT A TIME OTHER THAN AT THE END OF THE CALENDAR YEAR SHALL

BE ALLOWED 60 DAYS FROM THE DATE ON WHICH THE FISCAL YEAR ENDS WITHIN WHICH TO FILE THE ANNUAL REPORT.]

(c) Proof to the satisfaction of the commissioner that before August 1 [MARCH 1] the report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, is compliance with (a) of this section.

(d) If the commissioner finds that the report conforms to the requirements of this chapter, he shall file it. If he finds that it does not conform to the requirements of this chapter, he shall promptly return it to the corporation for necessary corrections. If the report is corrected to conform to the requirements of this chapter and returned to the commissioner in sufficient time to be filed before October 1 [APRIL 1] of the year in which it is due, the penalties for failure to file the report provided in sec. 645 of this chapter do not apply.

* Sec. 44. AS 10.20.635 is amended to read:

Sec. 10.20.635. FEES FOR FILING DOCUMENTS AND ISSUING CERTIFICATES. The commissioner shall charge and collect for

(1) filing articles of incorporation and issuing a certificate of incorporation, $30 [$25];

(2) filing articles of amendment and issuing a certificate of amendment, $15 [$10];

(3) filing restated articles of incorporation and issuing restated certificate of incorporation, $15 [$10];

(4) filing articles of merger or consolidation and issuing a certificate of merger or consolidation, $15 [$10];

(5) filing a statement of change of address of registered office or change of registered agent, or both, $10 [$5];

(6) filing articles of dissolution, $10 [$5];

(7) filing an application of a foreign corporation for a certificate of authority to conduct affairs in this state and issuing a certificate of authority, $30 [$25];

(8) filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in this state and issuing an amended certificate of authority, $15 [$10];

(9) filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to conduct affairs in this state, $15 [$10];

(10) filing a copy of articles of merger of a foreign corporation holding a certificate of authority to conduct affairs in this state, $15 [$10];

(11) filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, $10 [$5];

(12) filing any other statement or report, including an annual report, of a domestic or foreign corporation, $5 [$2.50].

* Sec. 45. AS 10.20.645(a) is amended to read:

(a) A domestic or foreign corporation that fails or refuses to file its annual report for any year within the time prescribed by this chapter is subject to a penalty of $5 [$2.50] to be assessed by the commissioner.

* Sec. 46. AS 10.25.330 is amended to read:

Sec. 10.25.330. EFFECT OF CERTIFICATE OF DISSOLUTION. (a) Upon the filing of the certificate and affidavit by the commissioner, the cooperative shall cease to carry on its business except to the extent necessary for the winding up of business. However, its corporate existence continues until articles of dissolution have been filed by the commissioner.

(b) A cooperative that does not file its articles of dissolution

within two years after the date of filing the certificate mentioned in (a) of this section, shall be involuntarily dissolved by the commissioner.

* Sec. 47. AS 10.25.530 is amended to read:

Sec. 10.25.530. FEES. The commissioner shall charge and collect for

(1) filing articles of incorporation, $15 [$10];

(2) filing articles of amendment, $10 [$5];

(3) filing articles of consolidation or merger, $10 [$5];

(4) filing articles of conversion, $15 [$10];

(5) filing certificate of election to dissolve, $5 [$1];

(6) filing articles of dissolution, $10 [$5];

(7) filing certificate of change of principal office and designation or change of registered office and registered agent, $5 [$1]; and

(8) acting as agent for service of process, $10.

* Sec. 48. AS 10.35.020 is amended to read:

Sec. 10.35.020. APPLICATION TO RESERVE NAME. Reservation of a business name is made by filing an application with the commissioner. If the commissioner finds that the name is available for business use, he shall reserve it for the exclusive use of the applicant for a period of 120 days. A name is not available which is the same as, or deceptively similar to, the name of a domestic corporation or a foreign corporation authorized to transact business in the state, or a name reserved or registered under this title [AS 10.05] or gives the impression that the business is incorporated.

* Sec. 49. AS 10.35.040 is amended to read:

Sec. 10.35.040. REGISTRATION OF NAME. A person conducting a business may register its name if the name is not the same as, or

deceptively similar to, the name of a domestic corporation or a foreign corporation authorized to transact business in the state, or a name reserved or registered under this title [AS 10.05]. Registration of the name gives the exclusive right to the use of the name and the person who has registered the name may enjoin the use of the same name or a deceptively similar name and has a cause of action for damages against anyone who uses the same name or a deceptively similar name.

* Sec. 50. AS 10.35.060 is amended to read:

Sec. 10.35.060. FEE FOR AND DURATION OF REGISTERED NAME. The fee for the initial registration of a business name is $20 [$10]. The year in which the registration becomes effective is considered a full year of registration and the registration is effective until the close of the fifth calendar year beginning with the year of initial registration.

* Sec. 51. AS 10.35.070 is amended to read:

Sec. 10.35.070. RENEWAL OF REGISTERED NAME. A registered business name may be renewed every five years if an application for renewal is filed. An application for renewal must set out the facts required in an original application for registration and be accompanied by a renewal fee of $20 [$10]. An application for renewal may be filed between October 1 and December 31 of any year. The renewal of the registration extends the registration for the following five calendar years.

* Sec. 52. AS 10.40.040 is amended to read:

Sec. 10.40.040. CONTENTS OF ARTICLES OF INCORPORATION. The articles of incorporation shall specify

(1) the name of the corporation;

(2) the purpose of the corporation;

(3) the estimated value of its property at the time of

executing the articles of incorporation;

(4) the title of the person executing the articles; and

(5) the name and address of the person upon whom process may be served.

* Sec. 53. AS 10.40 is amended by adding new sections to read:

Sec. 10.40.130. SERVICE OF PROCESS. (a) A corporation organized under this chapter shall continuously maintain on file with the department the name and address of a person designated to act as agent for the purpose of accepting service of process.

(b) When a corporation fails to designate such a person and maintain this information on file, the commissioner is the agent upon whom process may be served. Service on the commissioner shall be made in the same manner as provided in ch. 5 of this title.

(c) Corporations organized under this chapter have 30 days after the effective date of this section within which to comply.

Sec. 10.40.140. FEES AND PENALTIES. (a) Any document required to be filed with the commissioner under this chapter shall be accompanied by a fee of $10.

(b) The commissioner shall collect a penalty of $5 a year or fraction of a year of the amount due from any corporation that fails to file any document or pay any fee within the time prescribed by this chapter.

Sec. 10.40.150. INVOLUNTARY DISSOLUTION. The commissioner, upon 60 days notice, ~~shall~~ may to the corporation involuntarily dissolve a corporation formed under this chapter, for

(1) failure to file within 60 days of the close of the calendar year the report mentioned in sec. 105 of this chapter;

(2) failure to comply with sec. 130(a) of this chapter; and

(3) failure for six months to pay any fee or penalty

required by this chapter.

* Sec. 54. This Act takes effect January 1, 1978.
1977

AMENDMENT # 1

OFFERED IN THE HOUSE: BY: Commerce Committee

To: _____ HOUSE BILL No. _____

SENATE BILL No. SB 490 am

PAGE: 2 LINE: 15

Delete Sec. 4. and renumber sections

& Sec. 16

~~Sect 45~~

Change effective date Jan 1, 1977

Gardiner Amend

Cowper Amend

Gardiner Adopted

A M E N D M E N T

TO: SB 490 am

Page 21, between lines 1 and 2, insert the following and renumber the remaining section accordingly:

* Sec. 54. AS 10.05.177(a) is amended to read:

(a) Corporations with three or more shareholders shall have at least three directors. A corporation having less than three shareholders may have the same number of directors as it has shareholders. [THE NUMBER OF DIRECTORS OF A CORPORATION SHALL BE AT LEAST THREE.] The number of directors shall be fixed by the bylaws, except that the number constituting the initial board of directors shall be fixed by the articles of incorporation.

* Sec. 55. AS 10.05.252 is amended to read:

Sec. 10.05.252. INCORPORATORS. One [THREE] or more natural persons at least 19 years of age may act as incorporators of a corporation by signing, verifying and delivering in duplicate to the commissioner articles of incorporation for the corporation.

Re: SB 490

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

M E M O R A N D U M

May 13, 1976

SUBJECT: Amendment to AS 10.05.237 (WO #2625)

TO: Representative Cowper

FROM: David T. Walker, Legislative Counsel

Attached is an amendment to AS 10.05.237 which I believe would have the effect you desire.

You should also take a look at AS 42.05.491 relating to the records kept by public utilities. It contains some options you might want to include.

DTW/sm

Cowper

AS 10.05.237 is amended to read:

Sec. 10.05.237. BOOKS AND RECORDS. (a) A corporation shall keep correct and complete books and records of account, [AND SHALL KEEP] minutes of the proceedings of its shareholders and board of directors, and [SHALL KEEP AT ITS REGISTERED OFFICE OR PRINCIPAL PLACE OF BUSINESS, OR AT THE OFFICE OF ITS TRANSFER AGENT OR REGISTER,] a record of its shareholders, containing the names and addresses of all shareholders and the number and class of the shares held by each.

(b) A corporation shall make these books and records, or certified copies of them, available for inspection at the registered office or principal place of business in Alaska.

AMENDMENT 1

OFFERED IN THE HOUSE: BY: Commerce Committee

To: _____ HOUSE BILL No. _____

SENATE BILL No. SB 490 am

PAGE: 2 LINE: 15

Delete Sec. 4. and renumber sections

Re: SB 490

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

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JUNEAU, ALASKA 99801

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A M E N D M E N T

TO: SB 490 am

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SB

494

"An Act providing for the temporary suspension of certain civil liabilities of National Guardsmen called into active service for the state."

COMMITTEE REPORT

2/22/7[illegible]

HOUSE

Mr. Speaker: Date May 5, 1976

The Committee on JUDICIARY has had SB 494 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends.

_____ recommends:

_____ recommends:

_____ Chairman

members

SB 494 SENATE BILL NO. 494 by the Rules Committee by request of the Governor, entitled:

"An Act providing for the temporary suspension of certain civil liabilities of National Guardsmen called into active service for the state."

was read the first time and referred to the Judiciary Committee.

January 14, 1976

The Honorable Chancy Croft
President of the Senate
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. President:

In accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill adopting by reference the federal "Soldier's and Sailor's Civil Relief Act" and applying its provisions to members of the Alaska National Guard and Naval Militia while they are on active duty for the State by order of the Governor.

Essentially this bill provides for the suspension of certain civil liabilities, particularly of financial obligations which might come due, of persons in the service of the State during emergency active duty periods, and provision is made for the temporary suspension of legal proceedings and transactions which may prejudice their civil rights.

Sincerely,

Jay S. Hammond
Governor

SB 495 SENATE BILL NO. 495 by the Rules Committee by request of the Governor, entitled:

"An Act relating to Alaska National Guard pay and the Alaska Employment Security Act."

was read the first time and referred to the Labor and Management Committee.

Jan. 14

CIVIL LIABILITIES

PROPOSAL WILL CORRECT THE FOLLOWING PROBLEMS:

1. Current law does not provide any relief to members of the Alaska National Guard or Naval Militia from civil liabilities when in the service of the state during emergency active duty periods.

2. Members called to active duty for emergency service find their personal income reduced substantially (1/20th of normal in some cases) when placed on state active duty pay scales. Personal and family financial obligations such as mortgage or rent payments, car payments, food and utility bills, etc., continue at the same rate as before the active duty callups.

3. Members on state active duty for over one week find themselves torn between the desire to complete their emergency duties and the necessity for meeting personal financial obligations. This is especially true as the duty periods become protracted and we use units from other locations of the state, i.e. Anchorage units in the Fairbanks Flood, etc.

4. Unit Commanders find themselves deciding between mission and manpower requirements and the real personal needs of his unit members for early release from state active duty.

5. Fortunately, past experience has involved less than total committment of troops for relatively short periods of time. We cannot always guarantee this to be the case.

PROPOSAL IS DESIGNED TO:

1. Implement the provisions of the federal Soldiers and Sailors Civil Relief Act to members of the Alaska National Guard and Naval Militia while on state active duty.

2. The federal act is a proven worthwhile and necessary protective law for federal servicemen. Implementation will do likewise for our own Guardsmen/women.

Introduced: 1/14/76
Referred: Judiciary

IN THE SENATE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

SENATE BILL NO. 494

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act providing for the temporary suspension of certain civil liabilities of National Guardsmen called into active service for the state."

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

* Section 1. AS 26.05 is amended by adding a new section to read:

Sec. 26.05.135. SUSPENSION OF ENFORCEMENT OF CIVIL LIABILITIES. Secs. 501 -- 590 of Title 50 U.S.C., pertaining to the temporary suspension of enforcement of civil liabilities of persons in the military service of the United States, apply to members of the Alaska National Guard and Alaska Naval Militia while on active duty for the state by order of the governor.

SB

511

"An Act relating to the administration and enforcement of state revenue laws; and providing for an effective date."

COMMITTEE REPORT

2/2/79 FINANCE

HOUSE

Mr. Speaker: Date _____

The Committee on JUDICIARY has had SB 511 under consideration. A Majority of the members of the Committee

(X) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

Terry
SB511

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER / POUCH S – JUNEAU 99811

Febraury 3, 1976

Honorable Terry Gardiner
Chairman
House Judiciary Committee
Alaska State Legislature
State Capitol Building
Juneau, AK 99811

Re: Senate Bill No. 511

Dear Mr. Gardiner:

Senate Bill No. 511, an Act relating to the administration and enforcement of state revenue laws was introduced in the House of February 2, 1976 and was referred to the House Judiciary and Finance Committees.

For the consideration of the Judiciary Committee, I am enclosing a copy of a fiscal note and a memorandum from Frederick P. Boetsch, Deputy Commissioner, Department of Revenue to Sterling Gallagher, Commissioner of Revenue advising of the administrative need of the proposed legislation.

If you or any members of the Judiciary Committee have any questions on the material submitted, please telephone me at 465-2397 and I will contact Mr. Boetsch for further material or testimony at a hearing.

Very truly yours,

R. D. Stevenson
Special Assistant

Enclosures

cc: Honorable Hugh Malone
Chairman
House Finance Committee

Frederick P. Boetsch
Deputy Commissioner
Department of Revenue

THE LEGISLATURE OF THE STATE OF ALASKA
FISCAL NOTE
Second Session - Ninth Legislature

I. REQUEST
Bill No. Senate Bill No. 511
Title: Administration and Enforcement of State Revenue Laws
Requested by: Senate Finance Committee Date: 1/26/76
Return Date Requested: 1/21/76
Agency: Revenue Program: Enforcement

II. FISCAL DETAIL
Budget Request Unit(s) Affected:

A. EXPENDITURES: (Thousands of dollars)

	OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100	PERSONAL SERVICES						
200	TRAVEL						
300	CONTRACTUAL						
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL	None	None	None	None	None	None

B. FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	/	/	/	/	/	/
MAN MONTHS (P./T.)	/	/	/	/	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

IV. ATTACHMENTS
See memorandum dated January 8, 1976 from Frederick P. Boetsch, Deputy Commissioner to Sterling Gallagher, Commissioner of Revenue.

V. DATE: 1/26/76 PREPARED BY: Frederick P. Boetsch
FREDERICK P. BOETSCH

08-73)

MEMORANDUM State of Alaska

TO: Sterling Gallagher
Commissioner
Department of Revenue

DATE: January 12, 1976

FILE NO:

TELEPHONE NO:

FROM: Frederick P. Boetsch
Deputy Commissioner, Taxation
Department of Revenue

SUBJECT: Governor's Bill for Administrative Uniformity in the Tax Laws

This bill continues the move that we started with HB 211 in last year's session to provide for Administrative Uniformity of all the State's tax laws. In this measure, the subjects of assessment and collection procedures are covered. The purpose of the bill is to eliminate the multiplicity of procedures that are followed presently by having separate and different procedures for each of the different tax types that we administer. This bill will repeal those common sections of the various tax laws and place one consistent and uniform set of rules under the Administrative Chapter of Title 43. There is no budgetary or treasury effect of this measure that can be measured directly although easier compliance by taxpayers and smoother administration should result from this uniformity.

cc: Ralph Kimlinger, Director
Enforcement Division

SB

515

"An Act relating to referendum procedures."

COMMITTEE REPORT

1/26/76

HOUSE

Mr. Speaker: Date May 20, 1976

The Committee on JUDICIARY has had SB 515 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Terry Sanford
_____ Chairman

AMENDMENT #1

OFFERED IN THE HOUSE: BY: Judiciary Committee

To: _____ HOUSE BILL No. _____

SENATE BILL No. 515 tee

PAGE: _____ LINE: _____

Page 1, line 12:

Delete "15" and insert "10".

Introduced: 1/15/76
Referred: Judiciary

IN THE SENATE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

SENATE BILL NO. 515

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to referendum procedures."

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

* Section 1. AS 15.45.320 is amended to read:

Sec. 15.45.320. PREPARATION OF PETITION. If the application is certified, the lieutenant governor shall, within 10 ~~14~~ [SEVEN] calendar days after the date of certification, prescribe the form of, and prepare, a petition containing (1) a copy of the act to be referred, if the number of words included in both the formal and substantive provisions of the bill is 500 or less, (2) an impartial summary of the subject matter of the act, (3) the warning prescribed in sec. 330 of this chapter, (4) sufficient space for signatures and addresses, and (5) other specifications prescribed by the lieutenant governor to assure proper handling and control. Petitions, for purposes of circulation, shall be prepared by the lieutenant governor in a number reasonably calculated to allow full circulation throughout the state. The lieutenant governor shall number each petition and shall keep a record of the petitions delivered to each sponsor. Upon request of the referendum committee, the lieutenant governor shall specify the number of persons who voted in the preceding general election.

Introduced: 1/15/76
Referred: Judiciary

IN THE SENATE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

SENATE BILL NO. 515

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to referendum procedures."

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

* Section 1. AS 15.45.320 is amended to read:

Sec. 15.45.320. PREPARATION OF PETITION. If the application is certified, the lieutenant governor shall, within 10 [SEVEN] calendar days after the date of certification, prescribe the form of, and prepare, a petition containing (1) a copy of the act to be referred, if the number of words included in both the formal and substantive provisions of the bill is 500 or less, (2) an impartial summary of the subject matter of the act, (3) the warning prescribed in sec. 330 of this chapter, (4) sufficient space for signatures and addresses, and (5) other specifications prescribed by the lieutenant governor to assure proper handling and control. Petitions, for purposes of circulation, shall be prepared by the lieutenant governor in a number reasonably calculated to allow full circulation throughout the state. The lieutenant governor shall number each petition and shall keep a record of the petitions delivered to each sponsor. Upon request of the referendum committee, the lieutenant governor shall specify the number of persons who voted in the preceding general election.

SB
546

"An Act relating to the power of eminent domain."

COMMITTEE REPORT

3/3/76 HOUSE

Mr. Speaker: Date 3/16/76

The Committee on JUDICIARY has had SB 696 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

BISS AND HOLMES
ATTORNEYS AT LAW
AN ASSOCIATION OF PROFESSIONAL CORPORATIONS

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August 29, 1975

Senator Chancy Croft
425 G Street, Seventh Floor
Anchorage, AK 99501

Dear Senator:

I just read Arco Pipeline Company, et al. v. 3.60 Acres, More or Less, etc.; Jackie J. Stewart, et al., Opinion No. 1177 dated August 1, 1975. It holds that when a declaration of taking is utilized, the court is not authorized to inquire into the necessity of the taking.

I have been on both sides of the condemnation procedures repeatedly, and I believe this opinion is incorrect and will produce unjust results. Specifically, I believe A.S. §09.55.280 requiring that the project be located in a manner which will be most compatible with the greatest public good and the least private injury, etc., should be made applicable to all takings including those through the exercise of a declaration of taking by the so-called "quick take" method.

Historically, the State of Alaska and all other agencies to my knowledge utilizing the quick take declaration of taking procedures have always scheduled a "A and N" hearing as soon as possible following the filing of the declaration and taking and deposit of estimated just compensation. This hearing on authority and necessity always entailed testimony by the condemning agency's engineers that it was necessary to locate the project in this particular place, and take this amount of land, etc. We all seem to have been able to function with proving this requirement in the past.

Incidentally, although the engineers have testified as to the absolute necessity of a particular take location and area in proceedings in which I have participated, on several occasions I have later found that they have changed their mind and requested an amended declaration of taking because they desired for one reason or another to relocate the particular project. I only mention this because the condemning agency has engineers who will invariably testify to justify their work product even under the past procedures where necessity had to be proven in connection with the declaration

of taking. The landowner is then forced to employ an engineer to review and analyze the project location at considerable expense in order to combat this testimony. However, the option of combating it at least prevents that type of abuse which seems to sometimes flow from minds trained in engineering principles without regard to broader considerations than the construction of a particular project.

While our Supreme Court has distinguished between the powers exercised through a declaration of necessity and a regular slow take proceeding, the fact of the matter is the impact on a property owner is the same. He loses his property whether he wants to or not. Why should there be a distinction requiring the condemning agency to prove necessity on the one hand, and not have to prove it on the other hand, when the property owner who is the object of the safeguard bleeds the same color and quantity of blood regardless of which knife is used.

The Court's decision finds a conflict between the provisions of A.S. §09.55.280 and the declaration of taking provisions. I strongly disagree with the Court's reasoning but even more strongly object to the result which prevents a property owner from even enlisting the court's aid in curbing an abuse. Recent years have seen the United States Supreme Court severely restrict the right of one party to interfere with another party's property prior to the court review of the claimant's rights, particularly in the prejudgment attachment cases. Yet here, our State Supreme Court capitulates to any condemning authority the absolute right to take another person's property without any provision for review as to the necessity of the taking.

It may be that our condemnation laws are in need of wholesale revision. I fear that such revision would be strongly influenced by the State's Attorneys to the detriment of property owners. It seems to me that attorneys representing government agencies in condemnation somehow develop a paranoia and want the scales tilted far in their favor. Because of that, I would suggest that any revision be carefully reviewed. I would also suggest that steps be taken to neutralize the effect of the Arco Pipeline Company case decision.

Very truly yours,

Burton C. Biss

House Judiciary Committee
March 26, 1976

The meeting was called to order by Chairman Gardiner at 3:00 p.m. Members present were Cr ten, Specking, Bradley and Gardiner.

SB 546 EMINENT DOMAIN

SB 546

Richard Kerns, AG' office (Highways):

Determination for right of way must be made before can go to contract. The court room is not the place to decide right of way, that is for the agency (dept. of highways) to decide. Eminent domain and "quick take" is a proper authority for dept. of highways to have but nor for private corporations, like Alyeska or ARCO. State wants exemption from court room determination. Agency wants to make decision of what route to take before court room appearance. Expensive and time consuming. Department of Highways can make a better decision of right of way than a judge.

Richard Winning, Anchorage municipal attorney:

Suggests deletion of "greatest public good" as any public project could be scrutinized after completion as not being in the greatest public good and therefore must pay back the original owner.

The meeting was adjourned at 4:30 p.m.

House Judiciary Committee
April 7, 1976

The meeting was called to order by Chairman Gardiner at 1:25. Present were Cotten, Bradley, Parr and Gardiner.

HB 823 CREDIT UNIONS HB 823

Joe McKinnon, sponsor

Went through Humphrey's amendments and Motley's amendments as changes from Commerce CS to Judiciary Cs.

Mr. Parr moved that charter conversion be approved by members like merger. No objection.adopted.

Deleted any reference of wages as collateral for loan.

Bradley moved new CS by Judiciary out of committee.

SB 546 EMINENT DOMAIN SB 546

Mr. Brown moved am to sec 2(a) on line 20-21. No objection, adopted.

Mr. Brown moved page 1, line 25 add "or possession". No objection, adopted.

Mr. Brown moved CS out of committee.

HB 634 EMPLOYMENT OF MINORS HB 634

Page 2, line 14-15 reads as if minor should give notice. Drafting error. Rewrite so that employer must give notice.

Sec. 6 should read "and 23.10 340(b).

Mr. Specking moved CS out. No objection.

HB 600 DETERMINATE SENTENCING HB 600

A new CS by Pat Conheady of Dept. of Law.

2(a) and 3(a) are specific minimum terms of confinement.

Sec. 5: Good time is vested after accumulation of 30 days.

Page 5, line 16 to read: "shall inquire of the accused person whether or not he is..."

The meeting was adjourned at 3:20.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER / POUCH M — JUNEAU 99811



January 5, 1976

The Honorable Chancy Croft
Suite 710
425 G Street
Anchorage, Alaska 99501

Dear Chancy:

Earlier, Bill McQuire sent along a copy of your proposed Senate Bill relating to the power of eminent domain, along with a request that we take a look at it here.

I have circulated the draft for comments, and have found no general problems with the legislation. I should point out that this Department has far less to do with eminent domain than does the Department of Highways, and therefore probably does not appreciate the complexities regarding the use of this law.

Generally speaking, the intent of the bill seems to be good, and the only change that anyone recommended in our Department is that in Section 460(b) the words "or purpose" be substituted for the words "for a project located." The thought here is that project tends to be associated with development and it may be that the eminent domain power may be exercised for a public use that may not require development. I would be interested in seeing comments of the Department of Highways on this.

Best regards,

Guy R. Martin
Commissioner

LEGISLATIVE AFFAIRS AGENCY
RECEIVED
AUG 4 1975
LEGISLATIVE AFFAIRS AGENCY

THE SUPREME COURT OF THE STATE OF ALASKA

ARCO PIPELINE COMPANY, et al., Petitioners, v. 3.60 Acres, more or less, etc.; JACKIE J. STEWART, et al., Respondents.	File No. 2419
	O P I N I O N
	[No.1177 - August 1, 1975]

Petition for Review from the Superior Court of the State of Alaska, Fourth Judicial District, Fairbanks, Warren W. Taylor, Judge.

Appearances: Karl L. Walter, Jr., of Groh, Benkert & Walter, Anchorage, for Petitioners. Jackie J. Stewart, Delta Junction, Respondent, in propria persona.

Before: Rabinowitz, Chief Justice, Connor, Erwin, and Burke, Justices. (Boochever, Justice, not participating.)

ERWIN, Justice.

Petitioners are the owners and constructors of the Trans-Alaska Pipeline. In order to facilitate the prompt completion of this monumental and historic project, the State of Alaska in AS 38.35.130 authorized a delegation of its power of eminent domain and permitted thereby the use by petitioners of a declaration of taking to condemn real

property in the state for right-of-way purposes.[1] Pursuant to this grant, on July 15th, 1974, petitioners filed an eminent domain complaint and a declaration of taking seeking to condemn a 3.6 acre right-of-way and easement -- 100 feet wide and approximately 1400 feet long -- across the 80 acre homestead of respondent Stewart in the area of Delta Junction. The sum of $700.00 was deposited in the court as estimated compensation for the taking. Respondent Stewart answered and asserted that condemnation of the respondent's property was not necessary since petitioners had public lands available to them which were suitable for the pipeline construction.

A consolidated hearing concerning this as well as other parcels in the same area was conducted on September 20 and November 1, 1974. At the hearing petitioners offered expert testimony on the subjects of route selection and design criteria and the necessity of the taking of respondent's property. The testimony revealed that in the opinion of the pipeline company the route selected was optimal in satisfying design and construction criteria and maintained

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1. AS 38.35.130 of the Right-of-Way Leasing Act provides in part:

> (a) The lessee may, if the commissioner delegates the function to it, condemn, by declaration of taking, under AS 09.55.420-09.55.450, real property and acquire leases of or easements or rights-of-way on lands in the state required for right-of-way purposes for a pipeline subject to the lease on behalf of and as agent for the state in which title to or interest in the land shall vest.

the straightest line possible, one having the fewest number of angles detrimental to the proper flow of crude oil. The expert testimony further indicated that core drilling of the property had revealed that the soil was suitable for burying the pipeline. Respondent, on the other hand, offered no testimony questioning the efficacy of the route selected, but provided instead evidence that there were state and university lands north of respondent's property over which the pipeline could be constructed.

After hearing the testimony and after additional briefing the trial court denied the taking, concluding that petitioners had failed to demonstrate that they had considered routing the line over public lands and thereby avoid private injury. The court ruled that where the option of alternative routing over public land exists petitioners have the burden of submitting convincing evidence that they have at least considered the alternative routing across state land to avoid private injury, and that they must give cogent reasons for their ultimate selection.

Following the decision a petititon for review was filed in the Supreme Court and an order granting such review was entered on February 18, 1975.

Before discussing the issues raised in this review, it should be pointed out that the trial court specifically found that petitioners have been given statutory authority by the state of Alaska to take property for

the construction of the Trans-Alaska Pipeline; it also apparently found that petitioners had been properly delegated this power and had otherwise complied with the applicable statutes governing the exercise of the power of condemnation by way of declaration of taking. These conclusions are supported on the record[2] and have not been contested herein by respondent. They are therefore not at issue in this Petition for Review.

The specific issue presented here for review is whether or not the trial court was correct in its determination that for purposes of the exercise of the power of condemnation by way of a declaration of taking petitioners have the burden of showing consideration of possible alternate pipeline routes and of providing sufficient proof of the necessity of the particular route selected. The resolution of this question necessarily entails an analysis of the statutes governing the use of a declaration of taking by petitioners and, correlatively, an inquiry into the question of the proper scope of judicial review in such proceedings.

AS 09.55.420-09.55.450,[3] governing the use of a

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2. We note that the record reveals that on July 2, 1974, the Commissioner of the Department of Natural Resources executed a Delegation of Authority under the statute and specifically authorized thereby petitioners' use of a declaration of taking to condemn the Stewart property.

3. The pertinent provisions of these statutes read as follows:

Sec. 09.55.420. Declaration of taking by state or municipality. (a) Where a

declaration of taking in this state, constitute the authority

3. Cont'd

proceeding is instituted under §§ 240-460 of this chapter by the state, it may file a declaration of taking with the complaint or at any time after the filing of the complaint, but before judgment. . . .

Sec. 09.55.430. Contents of declaration of taking. The declaration of taking shall contain

(1) a statement of the authority under which the property or an interest in it is taken;

(2) a statement of the public use for which the property or an interest in it is taken;

(3) a description of the property sufficient for the identification of it;

(4) a statement of the estate or interest in the property;

(5) a map or plat showing the location of the property;

(6) a statement of the amount of money estimated by the plaintiff to be just compensation for the property or the interest in it.

Sec. 09.55.440. Vesting of title and compensation. (a) Upon the filing of the declaration of taking and the deposit with the court of the amount of the estimated compensation stated in the declaration, title to the estate as specified in the declaration vests in the plaintiff, and that property is condemned and taken for the use of the plaintiff, and the right to just compensation for it vests in the persons entitled to it. The compensation shall be ascertained and awarded in the proceeding and established by judgment. . . .

Sec. 09.55.450. Right of entry and possession. (a) Upon the filing of the

for petitioners' taking in this case.[4] In Bridges v. Alaska Housing Authority, 349 P.2d 149 (Alaska 1959), the only case in which this court has engaged in a comprehensive analysis of the general import of these provisions in the context of the exercise of eminent domain in this state, it was observed that

> [a] declaration of taking enlarges the rights of the condemning authority and reduces those of the landowner. Upon the filing of the declaration and a deposit of the amount of compensation estimated to be due, title to the real property vests in the condemning agency and "such real property * * * shall be deemed to be condemned and taken for the use of the condemning agency * * *." And then, without the necessity of awaiting the report of the commissioners and assessment of damages, the court is given the power "to fix the time within which and the terms upon which

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3. Cont'd

> declaration of taking and the deposit of the estimated compensation, the court may, upon motion, fix the time during which and the terms upon which the parties in possession are required to surrender possession to the petitioner. However, the right of entry shall not be granted the plaintiff until after the running of the time for the defendant to file an objection to the declaration of taking. . . .
>
> . . .
>
> (c) The right to take possession and title in advance of final judgment where a declaration of taking is filed is in addition to any other rights to take possession provided in §§ 240-460 of this chapter.

4. Note 1 supra.

> the parties in possession shall be required to surrender possession" to the condemning authority. 5

The Court further concluded that

> [i]t apparently was not intended that the declaration of taking power should merely supplement the procedural aspects of the then existing statutory provisions on eminent domain. . . . The declaration of taking is a power of eminent domain, and not only a manner of exercising a power otherwise conferred. More than procedure is involved; substantive rights are affected. 6

We take this opportunity to observe that changes in the language of the declaratic of taking provisions since Bridges have been -- at least for purposes of this review -- minor, and we consequently recognize the applicability of the Bridges analysis to the case at hand. In Bridges, however, we were not called upon to consider the effect of the declaration of taking provisions in light of other statutes which govern eminent domain proceedings in general. It is this interrelationship which is at the crux of this review.

The trial court, in holding that petitioners were obliged to demonstrate in convincing terms the necessity of selecting one route as opposed to other alternatives which might arguably minimize private injury, premised its ruling upon the conclusion that the petitioners' action was governed by the same rules which apply to any governmental exercise

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5. 349 P.2d at 153-54 (footnote omitted).

6. Id. at 153.

of the power of eminent domain. Obviously looking to such statutes as AS 09 55.260 through 09.55.280, and 09.55.300,[7]

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7. These sections provide in pertintent part:

Sec. 09.55.260. Private property subject to be taken. The private property which may be taken under §§ 240-460 of this chapter includes

. . .

(5) all rights-of-way for any of the purposes mentioned in § 240 of this chapter, and the structures and improvements on the rights-of-way, and the lands held and used in connection with them shall be subject to be connected with, crossed, or intersected by another right-of-way or improvements or structures on them; they shall also be subject to a limited use, in common with the owner, when necessary; but the uses, crossings, intersections, and connections shall be made in the manner most compatible with the greatest public benefit and least private injury;

. . .

Sec. 09.55.270. Prerequisites. Before property can be taken, it shall appear that

. . .

(2) the taking is necessary to the use;

. . .

Sec. 09.55.280. Entry upon land. In all cases where land is required for public use, the state, the public entity, or persons having the authority to condemn, or its agents in charge of the use may enter upon the land and make examination, surveys, and maps and locate the boundaries; but it shall be located in the manner which will be most compatible with the greatest public good and the least private injury, and subject to the provisions of § 300 of this chapter. . . .

Sec. 09.55.300. Powers of court. (a) The

the court quite reasonably concluded that it was therefore

> the province of the court to require the condemnor to prove to the satisfaction of the court that the selected route is consistent with the greatest public benefit and to the least private injury.

However, a consideration of the clear legislative intent that the prompt completion of the pipeline be facilitated under the Right-of-Way Leasing Act,[8] our reading and analysis of certain critical provisions governing the effect of the use of a declaration of taking, and the continued recognition and validation of the approach we adopted in Bridges lead us to the conclusion that the court erred in concluding

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7. Cont'd

> court has power
>
> (1) to regulate and determine the place and manner of making the connections and crossings or of enjoying the common uses mentioned in § 260(5) of this chapter . . . .
>
> (2) to limit the amount of property sought to be condemned if, in its opinion, the quantity sought to be condemned is not necessary.
>
> . . .

8. AS 38.35.010 et seq. See, for example, the October 17, 1973, letter from Governor William A. Egan to Hon. Terry Miller, President of the Senate, which accompanied the bill which (as later modified and adopted) substantially amended the original Right-of-Way Leasing Act of 1972. With respect to the subject of condemnation, the Governor observed that

> . . . a modified form of eminent domain has been restored so that construction of pipelines may proceed promptly.

House Journal and Senate Journal of Alaska, Special Session 1973, at 8.

that in a proceeding for condemnation by way of a declaration of taking the court is empowered to require the condemnor to prove the necessity of a given taking.

Our declaration of taking statutes were patterned upon the language of 40 U.S.C. §258a[9] which governs "quick take" eminent domain proceedings by the United States. Decisions interpreting this federal statute may consequently be considered persuasive for purposes of construing the analogous provisions of our own statutes.[10]

A review of such decisions reveals that it has been consistently recognized that the effect of the language of §258a is that once a declaration of taking is filed title to the property is transferred to the condemning authority subject only to the right of the property owner to challenge the validity of the taking as not being for an authorized public purpose or as having been made capriciously or in bad faith.[11] It has, for example, been held that absent bad

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9. There is, regrettably, a dearth of legislative history available concerning the adoption of our declaration of taking statutes. To the effect that they were originally taken almost word for word from 40 U.S.C. § 258a, however, see 1960 Op. Alaska Att'y Gen., No. 15.

10. See Russian Orth. Greek Cath. Church of N. America v. Alaska State Housing Auth., 498 P.2d 737 (Alaska 1972), where this Court looked to decisions under the federal act for guidance in construing the effect of AS 09.55.420 to 09.55.440. See also Alaska Transp. Comm'n v. Alaska Airlines, Inc., 431 P.2d 510, 512 (Alaska 1967).

11. Wilson v. United States, 350 F.2d 901, 906-07 (10th Cir. 1965); United States v. Threlkeld, 72 F.2d 464, 465 (10th Cir. 1934); see Berman v. Parker, 348 U.S. 26, 99 L. Ed. 27 (1954); United States ex rel T.V.A. v. Welch, 327

faith, if the use is a public one the necessity of a given taking is not a question for judicial determination;[12] that once the declaration of taking is filed and the estimated compensation is deposited, neither the condemnee nor the court has the power to question the condemnor's determination of the necessity of a particular taking;[13] and that as the judicial role in examining such condemnation proceedings does not extend to determining whether the land sought is actually necessary to the project, the court's review power is limited to those cases where there has been some clear abuse of administrative discretion -- where the officials making the administrative decisions have acted in bad faith or so capriciously and arbitrarily that their action was

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11. Cont'd

U.S. 546, 90 L. Ed. 843 (1946); United States v. Carmack, 329 U.S. 230, 91 L. Ed. 209 (1946); United States v. New York, 160 F.2d 479 (2d Cir. 1947); United States v. 1,278.83 Acres of Land, 12 F.R.D. 320 (E.D. Va. 1952). See also 6A J. Sackman, Nichols' The Law of Eminent Domain § 27.26, at 27-80 (rev. 3d ed. 1974) where it is stated that

> [s]ince the wisdom and expediency of a condemnation are not matters for judicial review, defenses relating to the necessity for acquisition of property, the necessity for resorting to eminent domain to acquire it, the extent or amount of property to be taken, the choice of the tract, the wisdom or feasibility of the project, the kind of property or the nature of the estate to be acquired, are not proper. (footnote omitted)

12. Wilson v. United States, 350 F.2d 901, 907 (10th Cir. 1965).

13. United States v. Mischke, 285 F.2d 628 (8th Cir. 1961); United States v. 6.74 Acres of Land, 148 F.2d 618 (5th Cir. 1945).

without adequate determining principle or was unreasoned.[14]

Such an approach is in keeping with what would appear to be the general rule that the scope of review of any taking in eminent domain is extremely limited; that questions of necessity and expediency are largely beyond the reach of the court, which ought generally to limit its inquiry to the question of the existence of a proper public purpose and the absence of any abuse of the power of condemnation.[15] It is consequently recognized that it is no defense in a condemnation proceeding that some other location for the taking might reasonably have been selected or some other suitable property obtained.[16]

As against this proposition, however, Alaska is among the minority of jurisdictions which statutorily call

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14. United States v. Certain Land in Borough of Manhattan, 233 F. Supp. 899 (S.D.N.Y. 1964), aff'd, 336 F.2d 1021. See also United States v. 80.5 Acres of Land, 448 F.2d 980 (9th Cir. 1971); United States v. 2,606.84 Acres of Land, 432 F.2d 1286 (5th Cir. 1970), cert. denied, 402 U.S. 916, 28 L. Ed. 2d 658, reh. denied, 403 U.S. 912, 29 L. Ed. 2d 690.

15.

> The overwhelming weight of authority makes clear beyond any possibility of doubt that the question of the necessity or expediency of a taking in eminent domain lies within the discretion of the legislature and is not a proper subject of judicial review. (footnote omitted)

1 J. Sackman, Nichols' The Law of Eminent Domain §4.11, at 4-138 (rev. 3d ed. 1974).

16. 6A id. §27.26, at 27-80.

for judicial inquiry into the question of necessity in eminent domain proceedings.[17] AS 09.55.270, for example, specifically requires for a showing that the taking "is necessary to the use" before property can be taken. The resultant conflict between this provision and the concept of judicial review developed under the language of 40 U.S.C. § 258a -- which may be presumed to have been intended to apply to our declaration of taking provisions[18] -- seems clear. Recognizing our duty to construe statutes covering the same subject matter in pari materia,[19] and to adopt where possible a reasonable construction of each which realizes leglislative intent and avoids conflict or inconsistency with the other,[20] we

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17. See Ariz. Rev. Stat. §12-1112 (1956); Smith-Hurd Ill. Ann. Stat. ch. 47, §2.2(c) (1969); 7 Rev. Codes Mont. 1947, §93-9905 (1964).

We note that though we could find no explicit legislative recognition of this fact, the editors of our own Alaska Statutes 1962 have indicated in their annotations to AS 09.55.270 that this section was derived from an almost identical provision in the Montana Statutes. See 7 Rev. Codes Mont. 1947, § 93-9905 (1964). This fact would appear to offer much in the way of explanation for the trial court's reliance upon Montana precedent when it concluded that "when the condemnor fails to consider the question of the least private injury between alternate routes, its action is arbitrary and amounts to an abuse of discretion." Citing Montana Power Co. v. Bokma, 457 P.2d 769, 775 (Mont. 1969).

18. Cf. Nicholson v. Sorensen, 517 P.2d 766, 770 (Alaska 1973); Gray v. State, 463 P.2d 897, 902 (Alaska 1970). See also p. 10 & note 10 supra.

19. See, e.g., Stewart & Grindle, Inc. v. State 524 P.2d 1242 (Alaska 1974); Smalley v. Juneau Clinic Bldg. Corp., 493 P.2d 1296 (Alaska 1972); United States v. Hardcastle, 10 Alaska 254 (1942).

20. Gordon v. Burgess Const. Co., 425 P.2d 602 (Alaska 1967).

nevertheless find the concept of judicial review embodied in our general eminent domain statutes to be inconsistent with and inappropriate to proceedings under a declaration of taking.

The conclusion seems inescapable that there exists a clear functional distinction between proceedings in condemnation under a declaration of taking and those under a complaint seeking condemnation and an order for possession. Under the former title passes immediately upon filing and deposit -- at which time, under AS 09.55.440, the property is deemed to be "condemned and taken for the use of the plaintiff."[21] Under the latter no such vesting occurs; title does not vest, nor does "condemnation" actually occur until the final award is determined and an order and judgment of condemnation is entered by the court.

As recognized in Bridges,[22] as well as later cases, the difference in the nature of these two proceedings is not merely procedural; the almost summary quality of the former bespeaks the grant of an additional substantive power of condemnation which considerably reduces the rights of the landowner to contest the taking.[23] Consequently, reading AS 09.55.420 to 09.55.450 in this light, we are lead to the

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21. See note 3 supra.

22. See City of Anchorage v. Lot 1 in Block 68 of Orig. Town., 409 P.2d 609 (Alaska 1966).

23. See p.6-7 & note 5 supra.

conclusion that the intent of these provisions was to bring, in summary fashion, statutory finality to the questions of title and right to possession even though litigation continues with respect to the ultimate amount of compensation to be paid. If such finality is to be given any meaningful effect, we conclude that such vesting must be subject only to the rather limited right of the owner to contest the validity of the taking as not being statutorily authorized or as having been capriciously or arbitrarily exercised.[24] To permit the owner to challenge the necessity of the particular taking without an initial showing on his part that it is the result of some clear abuse of discretion is to give the concept of a declaration of taking no more effect than that of a complaint in any condemnation proceeding; such an interpretation would render the language of AS 09.55.440 noted above essentially meaningless.

We would note at this juncture that although the enabling legislation under which petitioners are empowered to use a declaration of taking does not refer to or incorporate it -- and we consequently do not find it wholly dispositive of the case at hand -- AS 09.55.460(b) provides in part that

> [t]he plaintiff may not be divested of a title acquired except where the court finds that the property was not taken for a public use.

We find that this express declaration of legislative intent

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24. Cf. 6A J. Sackman, Nichols' The Law of Eminent Domain § 27.25, at 27-61 to -62 (rev. 3d ed. 1974).

as to the scope of judicial review in such proceedings lends considerable support for the conclusion we reach today.

Our decision that the question of necessity under a declaration of taking is not one for initial judicial consideration as in the case of other condemnation proceedings is also buttressed by several other factors. There is evidence, for example, that the legislature was at least well aware of the substantive differences in the two types of proceedings when it considered the use of eminent domain powers for pipeline right-of-way acquisition. Prior to the adoption of the present AS 38.35.130 an amendment was offered to the bill which would have authorized for pipeline purposes the exercise of eminent domain powers only under AS 09.55.240-09.55.410, the general eminent domain provisions.[25] Such an approach was rejected, however, and the present version allowing the use of a declaration of taking was adopted instead.

It must next be recognized that the Montana case law upon which the trial court apparently founded at least part of its decision[26] is from a statutory scheme which

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25. See the amendment offered by Senator Croft to the committee substitute for the original senate bill amending AS 38.35.130 which would have inserted after "condemn" the words "by eminent domain under AS 09.55.240-09.55.410." House Journal and Senate Journal of Alaska, Special Session 1973, at 99. Although this amendment passed the senate, the failure of both houses to concur on this as well as other amendments to the Right-of-Way Leasing Act resulted in a Free Conference Committee substitute which, as finally approved, provided the present version.

26. See discussion, note 17 supra.

does not recognize at all the concept of a declaration of taking or any other such "quick take" proceeding.[27] Moreover, there is evidence that the courts of Montana have themselves not been entirely consistent on the subject of judicial review of administrative determinations of necessity. In State Highway Commission v. Crossen-Nissen Co., 410 P.2d 283, 285 (Mont. 1965), for example, it was held that although (in a normal eminent domain action) the plaintiff has the initial burden of making some sort of prima facie showing of necessity, it is

> incumbent upon the defendant to show fraud, abuse of discretion or arbitrary action in order to defeat the action of the [plaintiff].

The court went on to hold that

> even when necessity has been challenged on the ground of arbitrariness or excessiveness of the taking, there is left largely to the discretion of the condemnor the location, route, and area of the land to be taken. There rests upon the shoulders of one seeking to show that the taking has been excessive or abritrary, a heavy burden of proof in the attempt to persuade the court to substitute its judgment for that of the condemnor. . . . "[Such] proof should be made clear and convincing; otherwise no location could ever be made."

Assuming arguendo that such an evidentiary rule is wholly appropriate for proceedings under the same general eminent domain provisions in this state (a question we need not reach in this case), we find it difficult to square this

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27. See 7 Rev. Codes Mont. 1947, §§ 93-9901 et seq. (1964).

analysis of burdens of proof with the ruling upon which the trial court based its decision -- that the condemnor is under a burden of demonstrating ab initio its consideration of alternative routes and of justifying the ultimate route selected. The mandate of a prima facie showing of "necessity," even in Montana, has been held to require only a showing that the particular property taken is "reasonably requisite and proper for the accomplishment of the purpose for which it is sought."[28] Notwithstanding the difficulty involved in reconciling these positions, or Montana case law, we are persuaded that no such burden of proof as was imposed by the trial court was ever intended to apply to proceedings under a declaration of taking in this state.

The final touchstone leading us to the conclusion that AS 09.55.420-09.55.450 were clearly intended to authorize a more summary and less judicially dependent exercise of the power of eminent domain is found in the original act under which the declaration of taking proceeding was authorized.

Sections 1 through 8 of chapter 90, SLA 1953, authorized the use of a declaration of taking as a special supplemental proceeding "to provide for obtaining possession of lands taken for public highway purposes by eminent domain." Prior to 1953 no such proceeding was recognized under Alaskan

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28. State Highway Comm'n v. Crossen-Nissen Co., 400 P.2d 283, 284 (Mont. 1965); accord, State Highway Comm'n v. Yost Farm Co., 384 P.2d 277, 279 (Mont. 1963); State ex rel. Livingston v. District Court, 300 P. 916 (Mont. 1931).

law. Although now no longer limited to public highway purposes, the state being authorized to use the proceeding for any purpose for which the right of eminent domain may be exercised,[29] the original 1953 Act is otherwise in almost every respect identical to the present provisions. The 1953 Act, however, contained a severability clause which specifically provided in addition that

> [a]ll laws or portions of laws inconsistent with the policy and provisions of this Act are hereby repealed to the extent of such inconsistency in their application to the declaration of taking procedure authorized by this Act.[30]

This provision, though not incorporated in the original 1962 codification of the Alaska Code of Civil Procedure,[31] not only clearly reflects a legislative recognition of the substantive difference between the use of this special power and that of eminent domain in general, but it also evidences in its express repealer language an intent that the exercise of this power should not be

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29. We note that the historical development of these provisions reflects the adoption of increasingly less restrictive limitations on the use of this power. See § 1, ch. 90, SLA 1953 (use by the Territory for public highway purposes); § 1, ch. 138, SLA 1955 (use by the Territory "for any purpose for which the Territory is authorized the power of eminent domain"); §§ 1-5, ch. 146, SLA 1959 (extending the use of the declaration to the state, public utility and school districts); §§ 13.19-13.23, ch. 101, SLA 1962 (extending the power to first-class cities); § 2, ch. 122, SLA 1966 (adopting the language presently appearing in AS 09.55.420).

30. Section 7, ch. 90, SLA 1953.

31. Sections 13.19-13.23, ch. 101, SLA 1962.

restricted by limitations, otherwise applicable to eminent domain, which are inconsistent with the policies of immediate vestiture of title and the limited power of the court to divest such title once acquired (as is reflected in the present AS 09.55.460 noted supra). A judicial recognition of these policies appears at least by implication in our opinion in Bridges.

After consideration of the foregoing, we are of the opinion that in proceedings in eminent domain by way of a declaration of taking under AS 09.55.420-09.55.450, the court is without authority, either by virture of the express mandate of AS 09.55.460(b) or by implication from the legislative history and policy evidenced in AS 09.55.440, to review the question of the necessity of a particular taking absent a clear showing of fraud, bad faith, arbitrariness or an abuse of discretion in exercise of the power of condemnation by the condemning authority. Once an authorized public use for the taking is established by the condemnor, and statutory and procedural requirements are otherwise satisfied,[32] that the particular taking is reasonably requisite to the realization of that use shall be presumed. Notwithstanding such provisions as AS 09.55.270(2), judicial

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32. It is clear, for example, that the failure of a declaration of taking to satisfy the specific requirements of AS 09.55.430 would constitute a proper defense to the condemnation. See note 3 supra. It is also manifest that a taking may properly be challenged on the ground that the condemnor's action is not in compliance with such specific restrictions on the exercise of the power as may appear in the commissioner's delegation of authority or the lease itself.

inquiry into such necessity or the condemnor's determinations with respect thereto is not appropriate unless and until the condemnee has presented clear and convincing evidence that the condemnor has acted in bad faith or so capriciously and arbitrarily as to indicate the absence of any reasonable determining principle.

In this case it is clear that the use intended is public and statutorily authorized. Petitioners have, moreover, presented unrebutted evidence to the effect that the design and construction criteria for the pipeline are most feasibly satisfied by the route across the property of respondent. The fact that some other available routing might suffice or even be more desirable in some respects is not sufficient in this case to raise a proper defense to the declaration of taking. Consequently, it cannot be said that petitioner is under any duty to initially submit evidence that it has considered such alternate routing; nor can the failure to make such showing under the circumstances justify a finding of arbitrariness or an abuse of discretion. Only specific allegations of fraud, bad faith, or some gross abuse of discretion in locating the pipeline can raise issues sufficient to permit judicial review of the necessity of the taking.[33] No such allegations haye been made herein. The determination of the location of the pipeline must

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33. No challenge on constitutional grounds has been raised in this case and we do not reach such issue in this review.

therefore be left to the agency charged with carrying out its completion.[34]

The order of the superior court is vacated and the case is remanded for further proceedings in conformity with this opinion.

VACATED and REMANDED.

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34. See Williams v. Transcontinental Gas Pipe Line Corp., 89 F. Supp. 485, 488-89 (W.D.S.C. 1950).

CHAIRMAN'S REPORT
FOR
HCS SB 546

The House Judiciary Committee received testimony that the addition of the proposed new language in AS 09.55.460 (b) would allow for an interpretation of that statute enabling a person to bring a collateral action for damages as a result of the taking after the normal time for a hearing on "just compensation" and "necessity compatable with the greatest public good and the least private harm."

It is the Committee's opinion, relying on the opinion of counsel at the Legislative Affairs Agency, that such a construction of AS 09.55.460 (b) would be extremely strained. It is the intent of the Judiciary Committee that the aforementioned language not be utilized in a manner which would allow an individual to bring a collateral action in a court of law other than to defend a taking as set out in AS 09.55.450 (a).

Terry Gardiner

Terry Gardiner, Chairman
House Judiciary Committee

Wiring Amendments

Introduced: 1/19/76
Referred: Resources

IN THE SENATE BY CROFT

SENATE BILL NO. 546

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the power of eminent domain."

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

* Section 1. AS 09.55.430 is amended by adding a new paragraph to read:

(7) a statement that the property is taken by necessity for a project located in a manner which is most compatible with the greatest public good and the least private injury.

* Sec. 2. AS 09.55.450(a) is amended to read:

(a) Upon the filing of the declaration of taking and the deposit of the estimated compensation, the court may, upon motion, fix the time during which and the terms upon which the parties in possession are required to surrender possession to the petitioner. However, the right of entry shall not be granted the plaintiff until after ~~the hearing of any objection to the declaration of taking made by the defendant, or~~ the running of the time for the defendant to file an objection to the declaration of taking (or until after the hearing on any objection to the declaration of taking if the objection is made in the time allowed by law). Where the party in possession withdraws any part of the award and remains in possession, the court may fix a reasonable rental for the premises to be paid by that party to the plaintiff during such possession.

* Sec. 3. AS 09.55.460(b) is amended to read:

(b) The plaintiff may not be divested of a title (or possession) acquired except where the court finds that the property was not taken ~~by necessity~~ for a public use ~~or purpose in a manner compatible with the greatest public good and the least private injury~~ or purpose. In the event of that finding, the court shall enter the judgment necessary to (1) compensate the persons

entitled to it for the period during which the property was in the possession of the plaintiff, [and] (2) recover for the plaintiff any award paid to any person, and (3) order the plaintiff to restore the property to the condition in which it existed at the time of the filing of the declaration of taking unless such restoration is impossible, in which case the court shall award damages to the proper persons as compensation for any diminution in the value of the property caused by the plaintiff's wrongful possession.

Introduced: 1/19/76
Referred: Resources

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or until after the hearing on any objection to the declaration of taking if the objection is made in the time allowed by law.

* Sec. 3. AS 09.55.460(b) is amended to read:

(b) The plaintiff may not be divested of a title or possession acquired except where the court finds that the property was not taken by necessity for a public use or purpose in a manner compatible with the greatest public good and the least private injury. In the event of that finding, the court shall enter the judgment necessary to (1) compensate the persons

entitled to it for the period during which the property was in the possession of the plaintiff, [AND] (2) recover for the plaintiff any award paid to any person, and (3) order the plaintiff to restore the property to the condition in which it existed at the time of the filing of the declaration of taking unless such restoration is impossible, in which case the court shall award damages to the proper persons as compensation for any diminution in the value of the property caused by the plaintiff's wrongful possession.

3-26-71
#15B546

Declaration of taking = Quick Taking

takes about 85 days for a quick taking today

Curran claims there is a public hearing on routs before any condemnation. What if we write into bill a presumption in favor of public necessity and convinience?

Steward v Greendal 1971 ?

title vests at the time of the filing of the condemnation but right of ent. does not vest until court order aft. hearing or default.

SB546

Richard P. Kerns - Highways Sections

Against - Need to show "necessity"
only have to show "purpose"
Uses "Quick Taking"

Conduct 4 design hearings

Alternative to show necessity by plaintiff

Winning from City of AUC

Section 3 could require review of completed
Projects

ARCO PIPELINE COMPANY et al., Petitioners,

v.

3.60 ACRES, MORE OR LESS, etc., and Jackie J. Stewart, et al., Respondents.

No. 2419.

Supreme Court of Alaska.

Aug. 1, 1975.

Proceeding was brought by the owners and constructors of the Trans-Alaska pipeline to condemn 3.60-acre right-of-way and easement. The Superior Court, Fourth Judicial District, Fairbanks, Warren W. Taylor, J., denied taking, and petitioners appealed. The Supreme Court, Erwin, J., held that in proceeding in eminent domain by way of declaration of taking under power delegated by state, court is without authority to review question of necessity of particular taking absent clear showing of fraud, bad faith, arbitrariness or abuse of discretion in exercise of power of condemnation by condemning authority, that fact that some other available routing might suffice or even be more desirable in some respects was not sufficient to raise proper defense to declaration of taking, and that where no specific allegations of bad faith, fraud, or gross abuse of discretion in locating pipeline raised issue sufficient to permit judicial review of necessity of taking, determination of location of pipeline was required to be left to agency charged with carrying out completion.

Order of superior court vacated and case remanded.

1. Eminent Domain ⇐167(2)

Although recognizing duty to construe statutes covering same subject matter in pari materia, and to adopt where possible reasonable construction of each in order to realize legislative intent and avoid conflict or inconsistency with other, Supreme Court nevertheless found concept of judical review embodied in general eminent domain statute to be inconsistent with and inappropriate to declaration of taking proceedings. AS 09.55.270, 09.55.440.

2. Eminent Domain ⇐320

In condemnation proceeding under declaration of taking, title passes immediately upon filing of complaint and deposit to party seeking condemnation at which time property is deemed to be condemned and taken for use of party seeking condemnation. AS 09.55.440.

3. Eminent Domain ⇐320

Under complaint seeking condemnation and order for possession, title does not vest, nor condemnation actually occur until final award has been determined and ordered and judgment of condemnation entered by court.

4. Eminent Domain ⇐166

Almost summary quality of proceeding in condemnation under declaration of taking bespeaks grant of additional substantive power of condemnation which considerably reduces rights of landowner to contest taking in question. AS 09.55.440.

5. Eminent Domain ⇐198(1)

In proceedings in eminent domain by way of declaration of taking, court is without authority to review question of necessity of particular taking absent clear showing of fraud, bad faith, arbitrariness or abuse of discretion in exercise of power of condemnation by condemning authority. AS 09.55.440.

6. Eminent Domain ⇐196

Once authorized public use for taking under declaration of taking is established by condemnor, and statutory and procedural requirements otherwise satisfied, that the particular taking is reasonably requisite to realization of that use shall be presumed. AS 09.55.440.

7. Eminent Domain ⇐171

Where intended use of property sought to be condemned by owners and constructors of the Trans-Alaska pipeline under declaration of taking was public and was statutorily authorized, and unrebutted

03-010

evidence was presented to effect that design and construction criteria for pipeline would be most feasibly satisfied by route across property sought to be condemned, fact that some other available route might suffice or even be more desirable in some respects was not sufficient to raise proper defense to declaration of taking. AS 09.55.440.

8. Eminent Domain ⇐68

Where intended use of property sought to be condemned by owners and constructors of the Trans-Alaska pipeline under declaration of taking was public and was statutorily authorized, and property owner made no specific allegations of fraud, bad faith, or gross abuse of discretion on part of owners and constructors in exercise of their condemnation powers or in locating pipeline, determination of location of pipeline was left to agency charged with carrying out completion. AS 09.55.440.

Karl L. Walter, Jr., of Groh, Benkert & Walter, Anchorage, for petitioners.

Jackie J. Stewart, in pro. per.

Before RABINOWITZ, C. J., and CONNOR, ERWIN, and BURKE, JJ.

OPINION

ERWIN, Justice.

Petitioners are the owners and constructors of the Trans-Alaska Pipeline. In order to facilitate the prompt completion of this monumental and historic project, the State of Alaska in AS 38.35.130 authorized a delegation of its power of eminent domain and permitted thereby the use by petitioners of a declaration of taking to condemn real property in the state for right-of-way purposes.[1] Pursuant to this grant, on July 15th, 1974, petitioners filed an eminent domain complaint and a declaration of taking seeking to condemn a 3.6 acre right-of-way and easement—100 feet wide and approximately 1400 feet long—across the 80 acre homestead of respondent Stewart in the area of Delta Junction. The sum of $700.00 was deposited in the court as estimated compensation for the taking. Respondent Stewart answered and asserted that condemnation of the respondent's property was not necessary since petitioners had public lands available to them which were suitable for the pipeline construction.

A consolidated hearing concerning this as well as other parcels in the same area was conducted on September 20 and November 1, 1974. At the hearing petitioners offered expert testimony on the subjects of route selection and design criteria and the necessity of the taking of respondent's property. The testimony revealed that in the opinion of the pipeline company the route selected was optimal in satisfying design and construction criteria and maintained the straightest line possible, one having the fewest number of angles detrimental to the proper flow of crude oil. The expert testimony further indicated that core drilling of the property had revealed that the soil was suitable for burying the pipeline. Respondent, on the other hand, offered no testimony questioning the efficacy of the route selected, but provided instead evidence that there were state and university lands north of respondent's property over which the pipeline could be constructed.

After hearing the testimony and after additional briefing the trial court denied the taking, concluding that petitioners had failed to demonstrate that they had considered routing the line over public lands and

1. AS 38.35.130 of the Right-of-Way Leasing Act provides in part:

(a) The lessee may, if the commissioner delegates the function to it, condemn, by declaration of taking, under AS 09.55.420-09.55.450, real property and acquire leases of or easements or rights-of-way on lands in the state required for right-of-way purposes for a pipeline subject to the lease on behalf of and as agent for the state in which title to or interest in the land shall vest.

thereby avoid private injury. The court ruled that where the option of alternative routing over public land exists petitioners have the burden of submitting convincing evidence that they have at least considered the alternative routing across state land to avoid private injury, and that they must give cogent reasons for their ultimate selection.

Following the decision a petition for review was filed in the Supreme Court and an order granting such review was entered on February 18, 1975.

Before discussing the issues raised in this review, it should be pointed out that the trial court specifically found that petitioners have been given statutory authority by the state of Alaska to take property for the construction of the Trans-Alaska Pipeline; it also apparently found that petitioners had been properly delegated this power and had otherwise complied with the applicable statutes governing the exercise of the power of condemnation by way of declaration of taking. These conclusions are supported on the record[2] and have not been contested herein by respondent. They are therefore not at issue in this Petition for Review.

The specific issue presented here for review is whether or not the trial court was correct in its determination that for purposes of the exercise of the power of condemnation by way of a declaration of taking petitioners have the burden of showing consideration of possible alternate pipeline routes and of providing sufficient proof of the necessity of the particular route selected. The resolution of this question necessarily entails an analysis of the statutes governing the use of a declaration of taking by petitioners and, correlatively, an inquiry into the question of the proper scope of judicial review in such proceedings.

AS 09.55.420–09.55.450,[3] governing the use of a declaration of taking in this state,

2. We note that the record reveals that on July 2, 1974, the Commissioner of the Department of Natural Resources executed a Delegation of Authority under the statute and specifically authorized thereby petitioners' use of a declaration of taking to condemn the Stewart property.

3. The pertinent provisions of these statutes read as follows:

Sec. 09.55.420. *Declaration of taking by state or municipality.* (a) Where a proceeding is instituted under §§ 240–460 of this chapter by the state, it may file a declaration of taking with the complaint or at any time after the filing of the complaint, but before judgment. . . .

Sec. 09.55.430. *Contents of declaration of taking.* The declaration of taking shall contain

(1) a statement of the authority under which the property or an interest in it is taken;

(2) a statement of the public use for which the property or an interest in it is taken;

(3) a description of the property sufficient for the identification of it;

(4) a statement of the estate or interest in the property;

(5) a map or plat showing the location of the property;

(6) a statement of the amount of money estimated by the plaintiff to be just compensation for the property or the interest in it.

Sec. 09.55.440. *Vesting of title and compensation.* (a) Upon the filing of the declaration of taking and the deposit with the court of the amount of the estimated compensation stated in the declaration, title to the estate as specified in the declaration vests in the plaintiff, and that property is condemned and taken for the use of the plaintiff, and the right to just compensation for it vests in the persons entitled to it. The compensation shall be ascertained and awarded in the proceeding and established by judgment. . . .

Sec. 09.55.450. *Right of entry and possession.* (a) Upon the filing of the declaration of taking and the deposit of the estimated compensation, the court may, upon motion, fix the time during which and the terms upon which the parties in possession are required to surrender possession to the petitioner. However, the right of entry shall not be granted the plaintiff until after the running of the time for the defendant to file an objection to the declaration of taking. . . .

. . . . . .

(c) The right to take possession and title in advance of final judgment where a declaration of taking is filed is in addition to any other rights to take possession provided in §§ 240–460 of this chapter.

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4. Note 1 *supra*.

5. 349 P.2d at

6. *Id.* at 153.

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constitute the authority for petitioners' taking in this case.[4] In *Bridges v. Alaska Housing Authority*, 349 P.2d 142 (Alaska 1959), the only case in which this court has engaged in a comprehensive analysis of the general import of these provisions in the context of the exercise of eminent domain in this state, it was observed that

> [a] declaration of taking enlarges the rights of the condemning authority and reduces those of the landowner. Upon the filing of the declaration and a deposit of the amount of compensation estimated to be due, title to the real property vests in the condemning agency and "such real property * * * shall be deemed to be condemned and taken for the use of the condemning agency * * *." And then, without the necessity of awaiting the report of the commissioners and assessment of damages, the court is given the power "to fix the time within which and the terms upon which the parties in possession shall be required to surrender possession" to the condemning authority.[5]

The Court further concluded that

> [i]t apparently was not intended that the declaration of taking power should merely supplement the procedural aspects of the then existing statutory provisions on eminent domain. . . . The declaration of taking is a power of eminent domain, and not only a manner of exercising a power otherwise conferred. More than procedure is involved; substantive rights are affected.[6]

We take this opportunity to observe that changes in the language of the declaration of taking provisions since *Bridges* have been—at least for purposes of this review—minor, and we consequently recognize the applicability of the *Bridges* analysis to the case at hand. In *Bridges*, however, we were not called upon to consider the effect of the declaration of taking provisions in light of other statutes which govern eminent domain proceedings in general. It is this interrelationship which is at the crux of this review.

The trial court, in holding that petitioners were obliged to demonstrate in convincing terms the necessity of selecting one route as opposed to other alternatives which might arguably minimize private injury, premised its ruling upon the conclusion that the petitioners' action was governed by the same rules which apply to *any* governmental exercise of the power of eminent domain. Obviously looking to such statutes as AS 09.55.260 through 09.55.280, and 09.55.300,[7] the court quite reasonably concluded that it was therefore

4. Note 1 *supra*.

5. 349 P.2d at 153-54 (footnote omitted).

6. *Id.* at 153.

7. These sections provide in pertinent part:
Sec. 09.55.260. *Private property subject to be taken.* The private property which may be taken under §§ 240-460 of this chapter includes
. . . . . .
(5) all rights-of-way for any of the purposes mentioned in § 240 of this chapter, and the structures and improvements on the rights-of-way, and the lands held and used in connection with them shall be subject to be connected with, crossed, or intersected by another right-of-way or improvements or structures on them; they shall also be subject to a limited use, in common with the owner, when necessary; but the uses, crossings, intersections, and connections shall be made in the manner most compatible with the greatest public benefit and least private injury;
. . . . . .
Sec. 09.55.270. *Prerequisites.* Before property can be taken, it shall appear that
. . . . . .
(2) the taking is necessary to the use;
. . . . . .
Sec. 09.55.280. *Entry upon land.* In all cases where land is required for public use, the state, the public entity, or persons having the authority to condemn, or its agents in charge of the use may enter upon the land and make examination, surveys, and maps and locate the boundaries; but it shall be located in the manner which will be most compatible with the greatest public good and the least private injury, and subject to the provisions of § 300 of this chapter. . . .

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the province of the court to require the condemnor to prove to the satisfaction of the court that the selected route is consistent with the greatest public benefit and to the least private injury.

However, a consideration of the clear legislative intent that the prompt completion of the pipeline be facilitated under the Right-of-Way Leasing Act,[8] our reading and analysis of certain critical provisions governing the effect of the use of a declaration of taking, and the continued recognition and validation of the approach we adopted in *Bridges* lead us to the conclusion that the court erred in concluding that in a proceeding for condemnation by way of a declaration of taking the court is empowered to require the condemnor to prove the necessity of a given taking.

Our declaration of taking statutes were patterned upon the language of 40 U.S.C. § 258a[9] which governs "quick take" eminent domain proceedings by the United States. Decisions interpreting this federal statute may consequently be considered persuasive for purposes of construing the analogous provisions of our own statutes.[10]

A review of such decision reveals that it has been consistently recognized that the effect of the language of § 258a is that once a declaration of taking is filed title to the property is transferred to the condemning authority subject only to the right of the property owner to challenge the validity of the taking as not being for an authorized public purpose or as having been made capriciously or in bad faith.[11] It has, for example, been held that absent bad faith, if the use is a public one the necessity of a given taking is not a question for judicial determination;[12] that once the

Sec. 09.55.300. *Powers of court.* (a) The court has power

(1) to regulate and determine the place and manner of making the connections and crossings or of enjoying the common uses mentioned in § 260(5) of this chapter

. . . .

(2) to limit the amount of property sought to be condemned if, in its opinion, the quantity sought to be condemned is not necessary.

. . . . . .

8. AS 38.35.010 *et seq.* See, for example, the October 17, 1973, letter from Governor William A. Egan to Hon. Terry Miller, President of the Senate, which accompanied the bill which (as later modified and adopted) substantially amended the original Right-of-Way Leasing Act of 1972. With respect to the subject of condemnation, the Governor observed that

> . . . a modified form of eminent domain has been restored so that construction of pipelines may proceed promptly.

House Journal and Senate Journal of Alaska, Special Session 1973, at 8.

9. There is, regrettably, a dearth of legislative history available concerning the adoption of our declaration of taking statutes. To the effect that they were originally taken almost word for word from 40 U.S.C. § 258a, however, see 1960 Op. Alaska Att'y Gen., No. 15.

10. *See Russian Orth. Greek Cath. Church of N. America v. Alaska State Housing Auth.*, 498 P.2d 737 (Alaska 1972), where this Court looked to decisions under the federal act for guidance in construing the effect of AS 09.55.420 to 09.55.440. *See also Alaska Transp. Comm'n v. Alaska Airlines, Inc.*, 431 P.2d 510, 512 (Alaska 1967).

11. *Wilson v. United States*, 350 F.2d 901, 906-07 (10th Cir. 1965); *United States v. Threlkeld*, 72 F.2d 464, 465 (10th Cir. 1934); *see Berman v. Parker*, 348 U.S. 26, 75 S.Ct. 98, 99 L.Ed. 27 (1954); *United States ex rel. T.V.A. v. Welch*, 327 U.S. 546, 66 S.Ct. 715, 90 L.Ed. 843 (1946); *United States v. Carmack*, 329 U.S. 230, 67 S.Ct. 252, 91 L.Ed. 209 (1946); *United States v. New York*, 160 F.2d 479 (2d Cir. 1947); *United States v. 1,278.83 Acres of Land*, 12 F.R.D. 320 (E.D.Va.1952). *See also* 6A J. Sackman, Nichols' The Law of Eminent Domain § 27.26, at 27-80 (rev. 3d ed. 1971) where it is stated that

> [s]ince the wisdom and expediency of a condemnation are not matters for judicial review, defenses relating to the necessity for acquisition of property, the necessity for resorting to eminent domain to acquire it, the extent or amount of property to be taken, the choice of the tract, the wisdom or feasibility of the project, the kind of property or the nature of the estate to be acquired, are not proper. (footnote omitted)

12. *Wilson v. United States*, 350 F.2d 901, 907 (10th Cir. 1965).

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declaration of taking is filed and the estimated compensation is deposited, neither the condemnee nor the court has the power to question the condemnor's determination of the necessity of a particular taking;[13] and that as the judicial role in examining such condemnation proceedings does not extend to determining whether the land sought is actually necessary to the project, the court's review power is limited to those cases where there has been some clear abuse of administrative discretion—where the officials making the administrative decisions have acted in bad faith or so capriciously and arbitrarily that their action was without adequate determining principle or was unreasoned.[14]

Such an approach is in keeping with what would appear to be the general rule that the scope of review of any taking in eminent domain is extremely limited; that questions of necessity and expediency are largely beyond the reach of the court, which ought generally to limit its inquiry to the question of the existence of a proper public purpose and the absence of any abuse of the power of condemnation.[15] It is consequently recognized that it is no defense in a condemnation proceeding that some other location for the taking might reasonably have been selected or some other suitable property obtained.[16]

[1] As against this proposition, however, Alaska is among the minority of jurisdictions which statutorily call for judicial inquiry into the question of necessity in eminent domain proceedings.[17] AS 09.55.270, for example, specifically requires for a showing that the taking "is necessary to the use" before property can be taken. The resultant conflict between this provision and the concept of judicial review developed under the language of 40 U.S.C. § 258a—which may be presumed to have been intended to apply to our declaration of taking provisions[18]—seems clear. Recognizing our duty to construe statutes covering the same subject matter in pari materia,[19] and to adopt where possible a reasonable construction of each which realizes legislative intent and avoids conflict or inconsistency with the other,[20] we nev-

13. *United States v. Mischke*, 285 F.2d 628 (8th Cir. 1961); *United States v. 6.74 Acres of Land*, 148 F.2d 618 (5th Cir. 1945).

14. *United States v. Certain Land in Borough of Manhattan*, 233 F.Supp. 809 (S.D. N.Y.1964), *aff'd*, 336 F.2d 1021 (2 Cir.). *See also United States v. 80.5 Acres of Land*, 448 F.2d 980 (9th Cir. 1971); *United States v. 2,606.84 Acres of Land*, 432 F.2d 1280 (5th Cir. 1970), *cert. denied*, 402 U.S. 916, 91 S.Ct. 1368, 28 L.Ed.2d 658, *reh. denied*, 403 U.S. 912, 91 S.Ct. 2203, 29 L.Ed.2d 690.

15. The overwhelming weight of authority makes clear beyond any possibility of doubt that the question of the necessity or expediency of a taking in eminent domain lies within the discretion of the legislature and is not a proper subject of judicial review. (footnote omitted)

1 J. Sackman, Nichols' The Law of Eminent Domain § 4.11, at 4-138 (rev. 3d ed. 1974).

16. 6A *id.* § 27.26, at 27-80.

17. *See* Ariz.Rev.Stat. § 12-1112 (1956); Smith-Hurd Ill.Ann.Stat. ch. 47, § 2.2(c) (1969); 7 Rev.Codes Mont.1947, § 93-9905 (1964)

We note that though we could find no explicit legislative recognition of this fact, the editors of our own Alaska Statutes 1962 have indicated in their annotations to AS 09.55.270 that this section was derived from an almost identical provision in the Montana Statutes. *See* 7 Rev.Codes Mont.1947, § 93-9905 (1961). This fact would appear to offer much in the way of explanation for the trial court's reliance upon Montana precedent when it concluded that "when the condemnor fails to consider the question of the least private injury between alternate routes, its action is arbitrary and amounts to an abuse of discretion." Citing Montana Power Co. v. Bokma, 153 Mont. 390, 457 P.2d 769, 775 (1969).

18. *Cf. Nicholson v. Sorensen*, 517 P.2d 766, 770 (Alaska 1973); *Gray v. State*, 463 P.2d 897, 902 (Alaska 1970). *See also* p. 10 & note 10 *supra*.

19. *See, e. g., Stricart & Grindle, Inc. v. State*, 524 P.2d 1242 (Alaska 1974); *Smalley v. Juneau Clinic Bldg. Corp.*, 493 P.2d 1206 (Alaska 1972); *United States v. Hardcastle*, 10 Alaska 254 (1942).

20. *Gordon v. Burgess Const. Co.*, 425 P.2d 602 (Alaska 1967).

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ertheless find the concept of judicial review embodied in our general eminent domain statutes to be inconsistent with and inappropriate to proceedings under a declaration of taking.

[2, 3] The conclusion seems inescapable that there exists a clear functional distinction between proceedings in condemnation under a declaration of taking and those under a complaint seeking condemnation and an order for possession. Under the former title passes immediately upon filing and deposit—at which time, under AS 09.55.440, the property is deemed to be "condemned and taken for the use of the plaintiff."[21] Under the latter no such vesting occurs; title does not vest, nor does "condemnation" actually occur until the final award is determined and an order and judgment of condemnation is entered by the court.

[4] As recognized in *Bridges*, as well as later cases,[22] the difference in the nature of these two proceedings is not merely procedural; the almost summary quality of the former bespeaks the grant of an additional substantive *power* of condemnation which considerably reduces the rights of the landowner to contest the taking.[23] Consequently, reading AS 09.55.420 to 09.55.450 in this light, we are lead to the conclusion that the intent of these provisions was to bring, in summary fashion, statutory finality to the questions of title and right to possession even though litigation continues with respect to the ultimate amount of compensation to be paid. If such finality is to be given any meaningful effect, we conclude that such vesting must be subject only to the rather limited right of the owner to contest the validity of the taking as not being statutorily authorized or as having been capriciously or arbitrarily exercised.[24] To permit the owner to challenge the necessity of the particular taking without an initial showing on his part that it is the result of some clear abuse of discretion is to give the concept of a declaration of taking no more effect than that of a complaint in any condemnation proceeding; such an interpretation would render the language of AS 09.55.440 noted above essentially meaningless.

We would note at this juncture that although the enabling legislation under which petitioners are empowered to use a declaration of taking does not refer to or incorporate it—and we consequently do not find it wholly dispositive of the case at hand—AS 09.55.460(b) provides in part that

> [t]he plaintiff may not be divested of a title acquired except where the court finds that the property was not taken for a public use.

We find that this express declaration of legislative intent as to the scope of judicial review in such proceedings lends considerable support for the conclusion we reach today.

Our decision that the question of necessity under a declaration of taking is not one for initial judicial consideration as in the case of other condemnation proceedings is also buttressed by several other factors. There is evidence, for example, that the legislature was at least well aware of the substantive differences in the two types of proceedings when it considered the use of eminent domain powers for pipeline right-of-way acquisition. Prior to the adoption of the present AS 38.35.130 an amendment was offered to the bill which would have authorized for pipeline purposes the exercise of eminent domain powers only under AS 09.55.240-09.55.410, the general eminent domain provisions.[25]

21. *See* note 3 *supra*.

22. *See City of Anchorage v. Lot 1 in Block 68 of Orig. Town.*, 409 P.2d 669 (Alaska 1966).

23. *See* p. 6-7 & note 5 *supra*.

24. *Cf.* 6A J. Sackman, Nichols' The Law of Eminent Domain § 27.25, at 27-61 to -62 (rev. 3d ed. 1974).

25. See the amendment offered by Senator Croft to the committee substitute for the original senate bill amending AS 38.35.130 which would have inserted after "condemn" the words "by eminent domain under AS 09.55.240-09.55.410." House Journal and Senate Journal of Alaska, Special Session

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Such an approach was rejected, however, and the present version allowing the use of a declaration of taking was adopted instead.

It must next be recognized that the Montana case law upon which the trial court apparently founded at least part of its decision[26] arises from a statutory scheme which does *not* recognize at all the concept of a declaration of taking or any other such "quick take" proceeding.[27] Moreover, there is evidence that the courts of Montana have themselves not been entirely consistent on the subject of judicial review of administrative determinations of necessity. In *State Highway Commission v. Crossen-Nissen Co.*, 145 Mont. 251, 400 P.2d 283, 285 (1965), for example, it was held that although (in a normal eminent domain action) the plaintiff has the initial burden of making some sort of prima facie showing of necessity, it is

> incumbent upon the defendant to show fraud, abuse of discretion or arbitrary action in order to defeat the action of the [plaintiff].

The court went on to hold that

> even when necessity has been challenged on the ground of arbitrariness or excessiveness of the taking, there is left largely to the discretion of the condemnor the location, route, and area of the land to be taken. There rests upon the shoulders of one seeking to show that the taking has been excessive or arbitrary, a heavy burden of proof in the attempt to persuade the court to substitute its judgment for that of the condemnor. . . . "[Such] proof should be made clear and convincing; otherwise no location could ever be made."

Assuming arguendo that such an evidentiary rule is wholly appropriate for proceedings under the same general eminent domain provisions in this state (a question we need not reach in this case), we find it difficult to square this analysis of burdens of proof with the ruling upon which the trial court based its decision—that the condemnor is under a burden of demonstrating ab initio its consideration of alternative routes and of justifying the ultimate route selected. The mandate of a prima facie showing of "necessity," even in Montana, has been held to require only a showing that the particular property taken is "reasonably requisite and proper for the accomplishment of the purpose for which it is sought."[28] Notwithstanding the difficulty involved in reconciling these positions, or Montana case law, we are persuaded that no such burden of proof as was imposed by the trial court was ever intended to apply to proceedings under a declaration of taking in this state.

The final touchstone leading us to the conclusion that AS 09.55.420-09.55.450 were clearly intended to authorize a more summary and less judicially dependent exercise of the power of eminent domain is found in the original act under which the declaration of taking proceeding was authorized.

Sections 1 through 8 of chapter 90, SLA 1953, authorized the use of a declaration of taking as a special supplemental proceeding "to provide for obtaining possession of lands taken for public highway purposes by eminent domain." Prior to 1953 no such proceeding was recognized under Alaskan law. Although now no longer limited to public highway purposes, the state being authorized to use the proceeding for any

1973, at 99. Although this amendment passed the senate, the failure of both houses to concur on this as well as other amendments to the Right-of-Way Leasing Act resulted in a Free Conference Committee substitute which, as finally approved, provided the present version.

26. See discussion, note 17 *supra*.

27. *See* 7 Rev. Codes Mont.1947, §§ 93-9901 *et seq.* (1961).

28. *State Highway Comm'n v. Crossen-Nissen Co.*, 145 Mont. 251, 400 P.2d 283, 284 (1965); *accord*, *State Highway Comm'n v. Yost Farm Co.*, 142 Mont. 230, 384 P.2d 277, 279 (1963); *State ex rel. Livingston v. District Court*, 90 Mont. 191, 300 P. 916 (1931).

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purpose for which the right of eminent domain may be exercised,[29] the original 1953 Act is otherwise in almost every respect identical to the present provisions. The 1953 Act, however, contained a severability clause which specifically provided in addition that

> [a]ll laws or portions of laws inconsistent with the policy and provisions of this Act are hereby repealed to the extent of such inconsistency in their application to the declaration of taking procedure authorized by this Act.[30]

This provision, though not incorporated in the original 1962 codification of the Alaska Code of Civil Procedure,[31] not only clearly reflects a legislative recognition of the substantive difference between the use of this special power and that of eminent domain in general, but it also evidences in its express repealer language an intent that the exercise of this power should not be restricted by limitations, otherwise applicable to eminent domain, which are inconsistent with the policies of immediate vestiture of title and the limited power of the court to divest such title once acquired (as is reflected in the present AS 09.55.460 noted *supra*). A judicial recognition of these policies appears at least by implication in our opinion in *Bridges*.

[5,6] After consideration of the foregoing, we are of the opinion that in proceedings in eminent domain by way of a declaration of taking under AS 09.55.420–09.55.450, the court is without authority, either by virtue of the express mandate of AS 09.55.460(b) or by implication from the legislative history and policy evidenced in AS 09.55.440, to review the question of the necessity of a particular taking absent a clear showing of fraud, bad faith, arbitrariness or an abuse of discretion in exercise of the power of condemnation by the condemning authority. Once an authorized public use for the taking is established by the condemnor, and statutory and procedural requirements are otherwise satisfied,[32] that the particular taking is reasonably requisite to the realization of that use shall be presumed. Notwithstanding such provisions as AS 09.55.270(2), judicial inquiry into such necessity or the condemnor's determinations with respect thereto is not appropriate unless and until the condemnee has presented clear and convincing evidence that the condemnor has acted in bad faith or so capriciously and arbitrarily as to indicate the absence of any reasonable determining principle.

[7,8] In this case it is clear that the use intended is public and statutorily authorized. Petitioners have, moreover, presented unrebutted evidence to the effect that the design and construction criteria for the pipeline are most feasibly satisfied by the route across the property of respondent. The fact that some other available routing might suffice or even be more desirable in some respects is not sufficient in this case to raise a proper defense to the declaration of taking. Consequently, it cannot be said that petitioner is under any duty to initially submit evidence that it has considered such alternate routing; nor can

29. We note that the historical development of these provisions reflects the adoption of increasingly less restrictive limitations on the use of this power. *See* § 1, ch. 90, SLA 1953 (use by the Territory for public highway purposes); § 1, ch. 138, SLA 1955 (use by the Territory "for any purpose for which the Territory is authorized the power of eminent domain"); §§ 1–5, ch. 146, SLA 1959 (extending the use of the declaration to the state, public utility and school districts); §§ 13.10–13.23, ch. 101, SLA 1962 (extending the power to first-class cities); § 2, ch. 122, SLA 1966 (adopting the language presently appearing in AS 09.55.420).

30. Section 7, ch. 90, SLA 1953.

31. Sections 13.10–13.23, ch. 101, SLA 1962.

32. It is clear, for example, that the failure of a declaration of taking to satisfy the specific requirements of AS 09.55.430 would constitute a proper defense to the condemnation. *See* note 3 *supra*. It is also manifest that a taking may properly be challenged on the ground that the condemnor's action is not in compliance with such specific restrictions on the exercise of the power as may appear in the commissioner's delegation of authority or the lease itself.

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the failure to make such showing under the circumstances justify a finding of arbitrariness or an abuse of discretion. Only specific allegations of fraud, bad faith, or some gross abuse of discretion in locating the pipeline can raise issues sufficient to permit judicial review of the necessity of the taking.[33] No such allegations have been made herein. The determination of the location of the pipeline must therefore be left to the agency charged with carrying out its completion.[34]

The order of the superior court is vacated and the case is remanded for further proceedings in conformity with this opinion.

Vacated and remanded.

BOOCHEVER, J., not participating.

Lionel KIMBLE, Appellant,
v.
STATE of Alaska, Appellee.
No. 2287.

Supreme Court of Alaska.
Aug. 22, 1975.

Defendant was convicted in Superior Court, Fourth Judicial District, Everett W. Hepp, Gerald J. Van Hoomissen, and Warren W. Taylor, JJ., for armed robbery and he appealed. The Supreme Court, Rabinowitz, C. J., held that even though indictment referred to two separate statutory provisions pertaining to robbery and use of firearms during commission of certain crimes, since trial court's instructions presented case to jury as one involving solely an armed robbery prosecution, any error in framing the allegedly duplicitous indictment was harmless; that accidental pretrial confrontations between defendant and robbery victim did not violate due process where evidence indicated that victim's courtroom identification had an independent origin; that there is no right to counsel at photographic displays; and that fact that there were no persons of defendant's race on the venire of jurors did not establish purposeful and systematic exclusion of an identifiable portion of the community.

Affirmed.

1. Indictment and Information ⇐125(1)

The rationale underlying the rule prohibiting duplicitous indictments is to give notice to the defendant of exactly what charges he must defend against and to avoid the consequences of the inability of the jury to indicate which way they are voting on each of the charges.

2. Criminal Law ⇐1167(1)

Where indictment on which defendant was tried referred to two separate statutory provisions pertaining to robbery and use of firearms during the commission of certain crimes, but trial court's instructions presented case to the jury as one involving solely an armed robbery prosecutio.., any error in framing of allegedly duplicitous indictment was harmless. AS 11.15.240, 11.15.295; Rules of Criminal Procedure, rule 8(a).

3. Indictment and Information ⇐144.1(1)

Proper remedy for duplicitous indictment is not to dismiss it but to compel the State to elect the charges on which it wishes to proceed.

4. Constitutional Law ⇐266(3)

When a pretrial confrontation is purely accidental and is not prearranged by the State, court will not ordinarily inquire into

33. No challenge on constitutional grounds has been raised in this case and we do not reach such issue in this review.

34. *See Williams v. Transcontinental Gas Pipe Line Corp.*, 89 F.Supp. 485, 488-89 (W.D.S.C.1950).

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Introduced: 1/19/76
Referred: Resources

IN THE SENATE BY CROFT

SENATE BILL NO. 546

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the power of eminent domain."

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

* Section 1. AS 09.55.430 is amended by adding a new paragraph to read:

(7) a statement that the property is taken by necessity for a project located in a manner which is most compatible with the greatest public good and the least private injury.

* Sec. 2. AS 09.55.450(a) is amended to read:

(a) Upon the filing of the declaration of taking and the deposit of the estimated compensation, the court may, upon motion, fix the time during which and the terms upon which the parties in possession are required to surrender possession to the petitioner. However, the right of entry shall not be granted the plaintiff until after ~~the hearing of any objection to the declaration of taking made by the defendant, or~~ the running of the time for the defendant to file an objection to the declaration of taking or until after the hearing on any objection to the declaration of taking if the objection is made in the time allowed by law. Where the party in possession withdraws any part of the award and remains in possession, the court may fix a reasonable rental for the premises to be paid by that party to the plaintiff during such possession.

* Sec. 3. AS 09.55.460(b) is amended to read:

(b) The plaintiff may not be divested of a title or possession acquired except where the court finds that the property was not taken ~~by necessity~~ for a public use or purpose. ~~or purpose in a manner compatible with the greatest public good and the least private injury~~. In the event of that finding, the court shall enter the judgment necessary to (1) compensate the persons

SB 546

LAW OFFICES OF
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March 23, 1976

The Honorable Terry Gardiner
Chairman, House Judiciary Committee
Alaska House of Representatives
Pouch V, State Capital
Juneau, Alaska 99811

RE: Eminent Domain Bill (SB 546)

Dear Mr. Gardiner:

I understand that your committee has before it a bill which was originally introduced by Senator Croft to change the standards of judicial review and what a condemnor must prove in order to exercise a declaration of taking. The bill as I understand it is an outgrowth of a case decided by the Alaska Supreme Court entitled ARCO Pipeline Co., et al. v. 3.60 acres, et al. As the attorney for the condemnor in that case I would like to point out some of the factors which I find would be a great detriment to the condemnor and the people of this State if the bill becomes law.

As a matter of background the present Alaska Declaratory Judgment Act is modeled upon the federal Declaratory Judgment Act. Until the trial court's decision in the ARCO Pipeline case, the federal rule, which was enunciated by the Alaska Supreme Court in that case, had been applied by the Alaska courts. In other words, the Alaska Supreme Court merely followed the federal rule which had been in existence for years and in Alaska since the Declaration of Taking Act was first enacted in 1953. In other words, the Supreme Court merely adopted the generally accepted federal rule which still permitted the court judicial review to determine if proper action had been exercised by the condemning authority but did not allow the court to determine where and how a project should be built, which is not the function of the court.

In my opinion, if the Croft bill had been law, this state would not have seen a pipeline constructed by 1977 because of the delays and perhaps complete frustration of being unable to find the parcels which a judge deemed suitable for the routing depending upon the judge involved. The bill would have caused additional costs in project design, attorney's fees, trial time, administrative costs and, finally and most important, would probably require the condemning authority to pay more for the property in excess of the just compensation in order to avoid legal entanglements. In short, the bill could be a way of judicial blackmail to achieve more than the just compensation.

The ARCO Pipeline case in itself is illustrative of the delay. The condemnor attempted for almost four years prior to negotiate a settlement, but it ended up with the condemnee requesting the absurd sum of over $20,000.00 plus other stipulations for a 3.6 acre, 100 ft. (plus temporary construction easement) across the 80 acre homestead, which is not being used by the homesteader for any other use than a personal residence, in an area where the property is selling for a few hundred dollars an acre, and the condemnee asked for $1,500.00 an acre, but wanted other damages. On July 15, 1974, the condemnor filed its declaration of taking. Hearings were held on September 20 and November 1 on the necessity. A decision was finally entered on December 24, and a petition for review was filed with the Supreme Court. Fortunately, the Supreme Court granted a petition for review because of the public importance of the pipeline and rendered the decision on August 1, 1975, reversing the trial court. The Supreme Court's decision cannot be viewed as an unjust result under the circumstances where the landowner says build the project over the neighbor's property and leave me alone, an attitute which ignores the fact that the neighbor might object.

Since most other projects such as utility right-of-way, highways, buildings and other projects are not so monumental to require a quick action by the courts, it can be seen that a condemnation which took over one year of being expedited through the courts would conceivably be further delayed if an appeal were taken through the normal route. At the present

time I am involved in several matters on appeal, and one of them has been on appeal since May of 1975 without a record being prepared, and there will probably be an additional period of time of up to one year for the required briefing, oral argument and decision of the Supreme Court. In other words, the delay and frustration of the project could extend for over two years, and you undoubtedly know what a delay in construction costs means to a project. In short, a $2,000.00 easement which must be obtained in court could hold up a $1,000,000.00 project and add another 10-20% to that project until the easement is obtained. The condemnor either has to pay a greatly inflated price (judicial blackmail), redesign the project (and go through the same procedure again) or wait to determine what would happen in court. Furthermore, if the condemnor pays one landowner more during negotiations, then word spreads so that all condemnees want more. Because the Croft bill would require the court to make findings, the Supreme Court may be bound by such findings if not clearly "erroneous" and that project site would have to be abandoned because the trial court as judge, jury, planner, designer, engineer and economist so determined that another site might be better.

In the ARCO Pipeline case, the condemnee's basic objection to the pipeline was the routing. The condemnee stated that it should go around his property and drew a couple of pencil lines on a map to show to the court how this routing could be accomplished on someone else's property. In the ARCO Pipeline case the condemnee did not offer any expert testimony or show why the pencil line was better from an economic, soils, terrain, contours, planning, ecology, design, engineering, costs or other matters which a well-planned project would have to take into account. In other words, he made no offer to nor did he show the project was more feasible.

The trial court considered that this mere pencil line was in effect an "alternate route" and stated that the condemnor must offer "convincing evidence...to show that they have at least considered the alternative routing...and give cogent reasons for their alternate selection". In other words, the condemnor had to have prescience to visualize what every

possible condemnee might come up with over the 800 miles of pipeline, and to prove to the court why this imaginary alternate route should not be selected. As an engineer stated in one case, it is possible to build a pipeline up the side of the Empire State Building if one has the money to pay. So, the question in almost every condemnation case is not whether the project can be built at all on the particular parcel, but what is the more feasible route or site, a decision best determined by the agency and not a court. In the ARCO Pipeline case, based on the additional length as shown by the pencil line, the total construction cost of the proposed alternate pencil routing was estimated at $192,500.00. In other words, if the condemnor had not shown to the court's satisfaction (the court being a planner, designer, engineer, etc.) under the Croft bill that the alternate routing was perhaps not feasible, then the court could deny the taking. You might argue that the court would not do such a ridiculous thing when an easement valued at hundreds of dollars an acre would necessitate a completely new redesign at a tremendous extra cost, but this is exactly what the trial court did in one actual case. You and your committee might ask yourself what would happen to every other project in the State of Alaska, once it is known that the means are at hand to frustrate a legitimate public purpose by adding a test for no reason other than the ruling in the ARCO Pipeline case is not understood.

The only purpose of a declaration of taking is to give immediate title to the property so that the work can proceed. A declaration of taking is premised on the idea that the condemnor has exercised and will exercise its best judgment in selecting the route and performing the necessary design and engineering. If the courts and condemnees are going to select the sites and how a project is to be built, I think the citizens of this state are entitled to a protest.

I should like to emphasize that I do not have any prospects in the future of representing any condemnors, and that my practice will be again limited to that of representing condemnees. I can assure you as an attorney representing condemnees that if the present bill passes which emasculates the Declaration of Taking Act, you can be assured that many condemnees will not

surrender their property without going through the Supreme Court, unless as you may expect, they receive a considerable premium over and above the fair market value and just compensation for the privilege of the State having to avoid their challenge to the declaration of taking procedure so that the project can be built. Since the State must pay the condemnees actual costs under some circumstances such as when the jury some two years later in these inflationary times finds the property was 10% more (the condemnee asking for 100% or more) than the just compensation the entire cost through appeal could be added to the project cost.

In conclusion, the bill if passed would only frustrate legitimate public projects, would greatly delay the acquisition of property necessary for projects, would require the State and other condemnors to expend a great deal of money in attempting to meet frivolous objections, would probably require from time to time a complete project to be rerouted at considerable cost and would surely add to the land acquisition costs. In short, the bill is merely going to add to the great cost of public works and public utilities. You must ask who is being protected by the bill, the lawyers and their clients, or the general public.

I would request that you review this bill carefully because this bill will mean that a condemnor in effect no longer has a declaration of taking procedure to the detriment of the general public which undoubtedly desires a project being commenced as soon as possible at the least expense.

Yours very truly,

Karl L. Walter, Jr.

KLW/dd

Introduced: 1/29/76
Referred: Resources

IN THE SENATE BY CROFT

SENATE BILL NO. 546

IN THE LEGISLATURE OF THE STATE OF ALASKA

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(a) Upon the filing of the declaration of taking and the deposit of the estimated compensation, the court may, upon motion, fix the time during which and the terms upon which the parties in possession are required to surrender possession to the petitioner. However, the right of entry shall not be granted the plaintiff until after ~~the hearing of any objection to the declaration of taking made by the defendant, or~~ the running of the time for the defendant to file an objection to the declaration of taking or until after the hearing on any objection to the declaration of taking if the objection is made in the time allowed by law. Where the party in possession withdraws any part of the award and remains in possession, the court may fix a reasonable rental for the premises to be paid by that party to the plaintiff during such possession.

* Sec. 3. AS 09.55.460(b) is amended to read:

(b) The plaintiff may not be divested of a title (or possession) acquired except where the court finds that the property was not taken ~~by necessity~~ for a public use or purpose. ~~or purpose in a manner compatible with the greatest public good and the least private injury~~. In the event of that finding, the court shall enter the judgment necessary to (1) compensate the persons

SB 546

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March 23, 1976

The Honorable Terry Gardiner
Chairman, House Judiciary Committee
Alaska House of Representatives
Pouch V, State Capital
Juneau, Alaska 99811

RE: Eminent Domain Bill (SB 546)

Dear Mr. Gardiner:

I understand that your committee has before it a bill which was originally introduced by Senator Croft to change the standards of judicial review and what a condemnor must prove in order to exercise a declaration of taking. The bill as I understand it is an outgrowth of a case decided by the Alaska Supreme Court entitled ARCO Pipeline Co., et al. v. 3.60 acres, et al. As the attorney for the condemnor in that case I would like to point out some of the factors which I find would be a great detriment to the condemnor and the people of this State if the bill becomes law.

As a matter of background the present Alaska Declaratory Judgment Act is modeled upon the federal Declaratory Judgment Act. Until the trial court's decision in the ARCO Pipeline case, the federal rule, which was enunciated by the Alaska Supreme Court in that case, had been applied by the Alaska courts. In other words the Alaska Supreme Court merely followed the federal rule which had been in existence for years and in Alaska since the Declaration of Taking Act was first enacted in 1953. In other words, the Supreme Court merely adopted the generally accepted federal rule which still permitted the court judicial review to determine if proper action had been exercised by the condemning authority but did not allow the court to determine where and how a project should be built, which is not the function of the court.

In my opinion, if the Croft bill had been law, this state would not have seen a pipeline constructed by 1977 because of the delays and perhaps complete frustration of being unable to find the parcels which a judge deemed suitable for the routing depending upon the judge involved. The bill would have caused additional costs in project design, attorney's fees, trial time, administrative costs and, finally and most important, would probably require the condemning authority to pay more for the property in excess of the just compensation in order to avoid legal entanglements. In short, the bill could be a way of judicial blackmail to achieve more than the just compensation.

The ARCO Pipeline case in itself is illustrative of the delay. The condemnor attempted for almost four years prior to negotiate a settlement, but it ended up with the condemnee requesting the absurd sum of over $20,000.00 plus other stipulations for a 3.6 acre, 100 ft. (plus temporary construction easement) across the 80 acre homestead, which is not being used by the homesteader for any other use than a personal residence, in an area where the property is selling for a few hundred dollars an acre, and the condemnee asked for $1,500.00 an acre, but wanted other damages. On July 15, 1974, the condemnor filed its declaration of taking. Hearings were held on September 20 and November 1 on the necessity. A decision was finally entered on December 24, and a petition for review was filed with the Supreme Court. Fortunately, the Supreme Court granted a petition for review because of the public importance of the pipeline and rendered the decision on August 1, 1975, reversing the trial court. The Supreme Court's decision cannot be viewed as an unjust result under the circumstances where the landowner says build the project over the neighbor's property and leave me alone, an attitute which ignores the fact that the neighbor might object.

Since most other projects such as utility right-of-way, highways, buildings and other projects are not so monumental to require a quick action by the courts, it can be seen that a condemnation which took over one year of being expedited through the courts would conceivably be further delayed if an appeal were taken through the normal route. At the present

time I am involved in several matters on appeal, and one of them has been on appeal since May of 1975 without a record being prepared, and there will probably be an additional period of time of up to one year for the required briefing, oral argument and decision of the Supreme Court. In other words, the delay and frustration of the project could extend for over two years, and you undoubtedly know what a delay in construction costs means to a project. In short, a $2,000.00 easement which must be obtained in court could hold up a $1,000,000.00 project and add another 10-20% to that project until the easement is obtained. The condemnor either has to pay a greatly inflated price (judicial blackmail), redesign the project (and go through the same procedure again) or wait to determine what would happen in court. Furthermore, if the condemnor pays one landowner more during negotiations, then word spreads so that all condemnees want more. Because the Croft bill would require the court to make findings, the Supreme Court may be bound by such findings if not clearly "erroneous" and that project site would have to be abandoned because the trial court as judge, jury, planner, designer, engineer and economist so determined that another site might be better.

In the ARCO Pipeline case, the condemnee's basic objection to the pipeline was the routing. The condemnee stated that it should go around his property and drew a couple of pencil lines on a map to show to the court how this routing could be accomplished on someone else's property. In the ARCO Pipeline case the condemnee did not offer any expert testimony or show why the pencil line was better from an economic, soils, terrain, contours, planning, ecology, design, engineering, costs or other matters which a well-planned project would have to take into account. In other words, he made no offer to nor did he show the project was more feasible.

The trial court considered that this mere pencil line was in effect an "alternate route" and stated that the condemnor must offer "convincing evidence...to show that they have at least considered the alternative routing...and give cogent reasons for their alternate selection". In other words, the condemnor had to have prescience to visualize what every

possible condemnee might come up with over the 800 miles of pipeline, and to prove to the court why this imaginary alternate route should not be selected. As an engineer stated in one case, it is possible to build a pipeline up the side of the Empire State Building if one has the money to pay. So, the question in almost every condemnation case is not whether the project can be built at all on the particular parcel, but what is the more feasible route or site, a decision best determined by the agency and not a court. In the ARCO Pipeline case, based on the additional length as shown by the pencil line, the total construction cost of the proposed alternate pencil routing was estimated at $192,500.00. In other words, if the condemnor had not shown to the court's satisfaction (the court being a planner, designer, engineer, etc.) under the Croft bill that the alternate routing was perhaps not feasible, then the court could deny the taking. You might argue that the court would not do such a ridiculous thing when an easement valued at hundreds of dollars an acre would necessitate a completely new redesign at a tremendous extra cost, but this is exactly what the trial court did in one actual case. You and your committee might ask yourself what would happen to every other project in the State of Alaska, once it is known that the means are at hand to frustrate a legitimate public purpose by adding a test for no reason other than the ruling in the ARCO Pipeline case is not understood.

The only purpose of a declaration of taking is to give immediate title to the property so that the work can proceed. A declaration of taking is premised on the idea that the condemnor has exercised and will exercise its best judgment in selecting the route and performing the necessary design and engineering. If the courts and condemnees are going to select the sites and how a project is to be built, I think the citizens of this state are entitled to a protest.

I should like to emphasize that I do not have any prospects in the future of representing any condemnors, and that my practice will be again limited to that of representing condemnees. I can assure you as an attorney representing condemnees that if the present bill passes which emasculates the Declaration of Taking Act, you can be assured that many condemnees will not

surrender their property without going through the Supreme Court, unless as you may expect, they receive a considerable premium over and above the fair market value and just compensation for the privilege of the State having to avoid their challenge to the declaration of taking procedure so that the project can be built. Since the State must pay the condemnees actual costs under some circumstances such as when the jury some two years later in these inflationary times finds the property was 10% more (the condemnee asking for 100% or more) than the just compensation the entire cost through appeal could be added to the project cost.

In conclusion, the bill if passed would only frustrate legitimate public projects, would greatly delay the acquisition of property necessary for projects, would require the State and other condemnors to expend a great deal of money in attempting to meet frivolous objections, would probably require from time to time a complete project to be rerouted at considerable cost and would surely add to the land acquisition costs. In short, the bill is merely going to add to the great cost of public works and public utilities. You must ask who is being protected by the bill, the lawyers and their clients, or the general public.

I would request that you review this bill carefully because this bill will mean that a condemnor in effect no longer has a declaration of taking procedure to the detriment of the general public which undoubtedly desires a project being commenced as soon as possible at the least expense.

Yours very truly,

Karl L. Walter, Jr.

KLW/dd

SB
575

"An Act relating to parties entitled to injunctive relief."

COMMITTEE REPORT

3/15/75

HOUSE

Mr. Speaker: Date May 12, 1976

The Committee on JUDICIARY has had SB 575 am under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

SB 575

WILFRED C. STUMP

W. CLARK STUMP

STUMP & STUMP
ATTORNEYS-AT-LAW
314-317 COMMERCIAL BUILDING
BOX 2693
KETCHIKAN, ALASKA 99901
PHONE 225-4131

January 7, 1976

Mr. Robert H. Ziegler, Sr.
Ziegler, Ziegler & Cloudy
P. O. Box 979
Ketchikan, Alaska 99901

Re: Request for Legislative Action

Dear Bob:

By the time you receive this you should be in Juneau attending to legislation for the State of Alaska.

I would appreciate it if you would give consideration to the following request: I note that in Alaska Statute Title 09.40.230 as it relates to injunctions, there appears within the context of these statutes, the following:

> "When it appears that (1) the plaintiff is entitled to the relief demanded, and the relief or any part of it includes restraining the commission or continuance of some act, the commission or continuance of which during the litigation would produce injury to the plaintiff; or (2) the defendant is doing, or threatens or is about to do, or is procuring or suffering to be done some act in violation of the plaintiff's rights concerning the subject of the action and tending to render the judgment ineffectual; or (3) the defendant threatens or is about to remove or dispose of his property or a part of it with intent to delay or defraud his creditors, an injunction may be allowed to restrain such act, removal, or disposition."

I certainly believe that the reference to plaintiff and defendant therein should be deleted, as certainly, and I am sure you are quite aware of this, there are instances where the defendant at times moves for injunctive relief and should not be precluded from so doing merely because the statute states that the plaintiff has to be the moving party.

I would therefore respectfully request that this statute be amended to delete reference to plaintiff and defendant, and interpose the word "party", or such other word as would not directly make reference to the persons as either plaintiff or defendant.

Thank you for your courtesy in this matter, Bob, and may you have a most successful legislative session.

Very truly yours

STUMP & STUMP

By W. Clark Stump
W. Clark Stump

WCS:ju

WILFRED C. STUMP

W. CLARK STUMP

STUMP & STUMP
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KETCHIKAN, ALASKA 99901
PHONE 225-4131

February 4, 1976

Hon. Robert H. Ziegler, Sr.
Senator - Alaska State Legislature
Pouch V
Juneau, Alaska 99811

RE: AS 09.40.230

Dear Bob:

Thanks for your letter of February 4, 1976 relative to my suggestion on the amendment of AS 09.40.230.

In answer to your inquiry, as you no doubt know from your long and valued career as an attorney, any party to a lawsuit has the right to move for injunctive relief; i.e. plaintiff or defendant. The way AS 09.40.230 was worded only the "plaintiff" had the right to secure such relief. Your amendment would allow "both" parties to secure such relief; i.e. plaintiff or defendant.

I find the application of this statute most used in domestic relation type cases; i.e. husband files for divorce, and his wife the defendant, seeks injunctive relief to enjoin the plaintiff from disposing of the family assets pending the final outcome of the case. Of course this is only one example, however, it is illustrative.

Thank you for your consideration on my suggestion.

Very truly yours,

STUMP & STUMP

BY: W. Clark
W. Clark Stump

WCS:s

SB

592

"An Act relating to theft of telecommunication service."

COMMITTEE REPORT

3/17/76

HOUSE

Mr. Speaker: Date May 6, 1976

The Committee on JUDICIARY has had 28 592 am under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(✓) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Terry Gardiner DoPass

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Terry Gardiner Chairman

Alaska State Legislature

House

JUNEAU ALASKA

March 17, 1976

MEMORANDUM

TO: Representative Terry Gardiner
Chairman, House Judiciary Committee

FROM: Representative Bob Bradley
Chairman, House Commerce Committee

SUBJECT: Senate Bill No. 592

Attached is some backup material on Senate Bill No. 592, relating to the theft of telecommunications which was passed out of the Commerce Committee and referred to Judiciary.

Practice Commentaries

by Arnold D. Hechtman

This section is supplementary to a prior provision rendering one who steals tangible property consisting of "secret scientific material" (defined in § 155.00[6]) guilty of grand larceny in the third degree (§ 155.30[3]). The latter crime applies to one who, for example, steals a document reciting a secret scientific formula. It does not, however, embrace one who with the same larcenous intent photographs or copies such a document, since such conduct does not constitute a *taking* of properties so as to constitute larceny (§ 155.05[1]). The instant section plugs the indicated gap with the crime of "unlawful *use* of secret scientific material," which, like the larceny offense (§ 155.30), is graded a class E felony.

§ 165.10 Repealed. L.1969, c. 115, § 4, eff. on 120th day after Mar. 25, 1969

Historical Note

Section, which related to theft of services and definitions of terms, was added L.1965, c. 1030; amended L. 1967, c. 791, § 24.

§ 165.15 Theft of services

A person is guilty of theft of services when:

1. He obtains or attempts to obtain a service, or induces or attempts to induce the supplier of a rendered service to agree to payment therefor on a credit basis, by the use of a credit card which he knows to be stolen.

2. With intent to avoid payment for restaurant services rendered, or for services rendered to him as a transient guest at a hotel, motel, inn, tourist cabin, rooming house or comparable establishment, he avoids or attempts to avoid such payment by unjustifiable failure or refusal to pay, by stealth, or by any misrepresentation of fact which he knows to be false. A person who fails or refuses to pay for such services is presumed to have intended to avoid payment therefor; or

3. With intent to obtain railroad, subway, bus, air, taxi or any other public transportation service without payment of the lawful charge therefor, or to avoid payment of the lawful charge for such transportation service which has

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been rendered to him, he obtains or attempts to obtain such service or avoids or attempts to avoid payment therefor by force, intimidation, stealth, deception or mechanical tampering, or by unjustifiable failure or refusal to pay; or

4. With intent to avoid payment by himself or another person of the lawful charge for any telecommunications service, he obtains or attempts to obtain such service or avoids or attempts to avoid payment therefor by himself or another person by means of (a) tampering or making connection with the equipment of the supplier, whether by mechanical, electrical, acoustical or other means, or (b) any misrepresentation of fact which he knows to be false, or (c) any other artifice, trick, deception, code or device; or

5. With intent to avoid payment by himself or another person for a prospective or already rendered service the charge or compensation for which is measured by a meter or other mechanical device, he tampers with such device or with other equipment related thereto, or in any manner attempts to prevent the meter or device from performing its measuring function, without the consent of the supplier of the service. A person who tampers with such a device or equipment without the consent of the supplier of the service is presumed to do so with intent to avoid, or to enable another to avoid, payment for the service involved; or

6. With intent to obtain, without the consent of the supplier thereof, gas, electricity, water, steam or telephone service, he tampers with any equipment designed to supply or to prevent the supply of such service either to the community in general or to particular premises; or

7. Obtaining or having control over labor in the employ of another person, or of business, commercial or industrial equipment or facilities of another person, knowing that he is not entitled to the use thereof, and with intent to derive a commercial or other substantial benefit for himself or a third person, he uses or diverts to the use of himself or a third person such labor, equipment or facilities.

Theft of services is a class A misdemeanor.

L.1965, c. 1030; amended L.1967, c. 791, § 25; L.1969, c. 115, § 6.

Historical Note

1969 Amendment. Subd. 1. L.1969, c. 115, § 5, eff. on 120th day after Mar. 25, 1969, added subd. 1. It derived from former subd. 1, repealed L.1969, c. 115, § 5.

1967 Amendment. Subd. 2. L.1967, c. 791, § 25, eff. Sept. 1, 1967, added sentence beginning "A person who fails."

Subd. 5. L.1967, c. 791, § 25, eff. Sept. 1, 1967, omitted "provided by the supplier of the service" following "mechanical device."

Subd. 6. L.1967, c. 791, § 25, eff. Sept. 1, 1967, omitted "of the supplier thereof" following "equipment."

Derivation. Subd. 1. New.

Subd. 2. Penal Law 1909, § 925, added L.1923, c. 503, amended L.1939, c. 579; L.1955, c. 460.

Subd. 3. Penal Law 1909, §§ 1990, 1990-b. Section 1990, amended L. 1917, c. 350; L.1957, c. 823, was from Penal Code 1881, § 426, amended L. 1890, c. 438, § 1. Section 1990-b, added L.1957, c. 884, amended L.1965, c. 198.

Subd. 4. Penal Law 1909, §§ 967, 1293-c. Section 967 added L.1961, c. 548. Section 1293-c, added L.1916, c. 367, amended L.1941, c. 883; L.1955, c. 477.

Subd. 5. Penal Law 1909, §§ 1431, 1431-a, 1432, 1432-a. Section 1431, was from Penal Code 1881, § 651, amended L.1888, c. 219, § 1; L.1892, c. 692, § 1; L.1892, c. 699, § 1; L. 1892, c. 692, § 1; L.1900, c. 589, § 1; L.1906, c. 453, § 1. Section 1431-a added L.1926, c. 849. Section 1432 was from Penal Code 1881, § 651-a, added L.1902, c. 333, § 1. Section 1432-a added L.1933, c. 414.

Subd. 6. Penal Law 1909, §§ 1431, 1432, 1432-a, for history, see subd. 5 note above.

Subd. 7. New.

Practice Commentaries

by Arnold D. Hechtman

In relation to the former Penal Law, this section is entirely new in form and substantially new in substance.

Since "services" are not "property," "theft" of a service does not constitute larceny; and, if any such conduct is to be proscribed, it must be by special statute. The former Penal Law defines few offenses of that nature (see §§ 927, 967, 1431, 1432, 1432-a). It is not necessary, however, to go to the other extreme of equating services with property and of predicating, wherever possible (mainly in the area of deception), "theft of service" offenses equivalent to those involving thefts of property, or larcenies. Legislation of that character would doubtless lead to hosts of "criminal" charges of a basically civil nature. The instant section steers a middle course by defining seven specific offenses, most involving theft or attempted theft of certain kinds of services.

Subdivision 1, dealing with credit card offenses, was amended in 1969, as one phase of an extensive bill enacted for

torical Note

Penal Code 1881, § 426, amended L. 1890, c. 458, § 1. Section [illegible], added L.1957, c. 884, amended L.1965, c. 198.

Subd. 4. Penal Law 1909, §§ 967, 1293-c. Section 967 added L.1961, c. 548. Section 1293-c. added L.1916, 367, amended L.1941, c. 883; L.1955, c. 477.

Subd. 5. Penal Law 1909, §§ 1431, 1431-a, 1432, 1432-a. Section 1431, was from Penal Code 1881, § 651, amended L.1888, c. 219, § 1; L.1892, c. 692, § 1; L.1892, c. 699, § 1; L. 1893, c. 692, § 1; L.1900, c. 589, § 1; L.1906, c. 453, § 1. Section 1431-a added L.1929, c. 84[illegible]. Section 1432 was from Penal Code 1881, § 651-a, added L.[illegible] c. 333, § 1. Section 1432-a added L.1933, c. 414.

Subd. 6. Penal Law 1909, §§ 1431, 1432, 1432-a, for history, see subd. 5 note above.

Subd. 7. New.

Commentaries

d D. Hechtman

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with credit card offenses, was ase of an extensive bill enacted for

the purpose of strengthening the Penal Law in its application to conduct involving theft and misuse of credit cards (L.1969, c. 115; see practice commentary upon § 155.00).

Prior to 1969, the general subject of fraudulently obtaining property or services by means of stolen, false or improperly used credit cards was covered by (1) the crime of larceny (by false pretenses) in cases where property was obtained; (2) the "theft of services" offense at hand (§ 165.15 [1]) in cases where a service was obtained; and (3) a misdemeanor entitled "unauthorized use of credit cards," which appeared not in the Penal Law but in the General Business Law (§ 513). The General Business Law statute, defining in rather complex fashion a very broad offense or offenses embracing acquisition of both property and services, covered approximately the same ground as the appropriate Penal Law statutes.

The 1969 credit card bill (L.1969, c. 115) did not work any truly significant change of substance in this area but established a new structural format. The rather redundant General Business Law section (§ 513) was repealed. The Penal Law "theft of services" provision (§ 165.15[1]) was narrowed to apply to the acquisition of services by means of "stolen" credit cards only (rather than acquisition by means of almost any kind of defective card, as was formerly the case). And, finally, a new Penal Law section was added (§ 165.17), defining the crime of "unlawful use of credit card," which does not deal with the use of *stolen* or *forged* cards but renders guilty of a misdemeanor one who "in the course of obtaining or attempting to obtain" either "property or a service displays a credit card which he knows to be *revoked* or *cancelled*".

These offenses together with various others in the larceny and forgery areas have the following overall scope with respect to a person who purchases or attempts to purchase property or a service by means of a credit card which he knows to be in some way defective for the purpose:

(1) Regardless of whether property or a service is the subject of the purchase, and regardless of whether the credit card is stolen or counterfeit, or whether it has merely been canceled or revoked, the culprit is guilty, at the very least, of a class A misdemeanor (§§ 155.25, 165.15[1], 165.17).

(2) If property is the subject of the purchase or attempted purchase, the culprit has committed larceny and, depending upon the value of the property, may or may not also be guilty of a felony (§ 155.30).

(3) If the credit card is a stolen one, the culprit is, undoubtedly, also guilty of criminal possession of stolen property in the second degree, a class E felony (§ 165.45 [2]). In addition, if in making or attempting to make the purchase he signs a voucher, receipt or other paper in the name of the card owner—as he usually would have to do—he is also guilty of forgery in the second degree, a class D felony (§ 170.10[1]).

(4) If the credit card is a forged or counterfeit one, the culprit is, undoubtedly, also guilty of criminal possession of a forged instrument in the second degree, a class D felony (§ 170.25).

Subdivision 2 restates the proscriptions of former Penal Law § 925 but expands the offense to include thefts and payment-avoidance of restaurant services as well as of those provided by hotels, inns and the like.

Subdivision 3 includes certain former Penal Law offenses (§§ 1990[1, 2], 1990-b) but broadens the overall crime to encompass improper acquisition or fee-avoidance of all forms of "public transportation service" rather than of the limited kinds specified in the former statutes.

Subdivision 4 substantially restates former Penal Law § 967 (see, also, § 1293-c).

Subdivision 5 substantially restates certain phases of three former sections dealing in part with fraudulent tampering with gas, electric, steam and water meters (§§ 1431, 1431-a, 1432). The offense is broadened, however, to include meter tampering and similar [illegible] relating to any sort of public or private service measured by a meter, whether [illegible] the indicated public utility kinds or otherwise.

Subdivision 6 embodies other phases of former Penal Law §§ 1431 and 1432, addressed to the acquisition of gas, electric, steam and water service without the supplier's consent. This offense does not necessarily require intent to avoid payment for the service improperly obtained. It would apply, for example, to one who, having had his gas turned off, succeeds in regaining the service by unauthorized tampering, regardless of whether he intends to pay for the gas thus obtained.

Subdivision 7 is new. This offense is included for the purpose of plugging an apparent gap in the present law pointed up by the decision in People v. Ashworth, 1927, 220 App. Div. 498, 222 N.Y.S. 24. The defendants therein, a mill superintendant and his brother, were convicted of grand

larceny as a result of having m[illegible] ally profitable use of the mill's m[illegible] to spin a substantial quantity of [illegible] The judgment was reversed on t[illegible] use of the mill's facilities and la[illegible] of "property" and, hence, could n[illegible] Subdivision 7 herein renders such [illegible] ices."

Theft of Services is a one-deg[illegible] demeanor. Obviously, all the wa[illegible] can be committed are not of [illegible] would be reasonable to expect the [illegible] number of degrees, prescribing [illegible] with the gravity of the prohib[illegible] above, this section represents [illegible] in New York law [illegible] Penal Law [illegible] [illegible] subclassify it; the expectation b[illegible] with the impact of the section d[illegible] would impose reasonable subclassif[illegible] legislative session since about [illegible] introduced, for example, to extra[illegible] services and make it a violation [illegible] demeanor. Such attempts have [illegible] not because they lacked merit b[illegible] illogical and unfair distinction be[illegible] way" or "taxi" services. Hopefu[illegible] cation will soon be forthcoming.

Cross Referen[illegible]

Buildings may be entered for examination [illegible] works, see Transportation Corporat[illegible]
Hotels and boarding houses, generally, see [illegible]
Larceny, see section 155.00 [illegible]

Notes of Decis[illegible]

Historical 1
Hotel service 2
Meters or attachments, tampering with 3
Refusal to pay fare 4
Stealing rides 5

1. Historical

The first enactment by the legislature upon the general subject is to be [illegible]

s a stolen one, the culprit is, criminal possession of stolen ree, a class E felony (§ 165.45 making or attempting to make cher, receipt or other paper in er—as he usually would have forgery in the second degree. 1]).

a forged or counterfeit one, , also guilty of criminal pos- ment in the second degree.

roscriptions of former Penal nse to include thefts and pay- services as well as of these like.

n former Penal Law offenses roadens the overall crime to fee-avoidance of all forms e" rather than of the limited atutes.

restates former Penal Law §

restates certain phases of part with fraudulent tamper- and water meters (§ 1431. broadened, however, to include chicanery relating to any sort asured by a meter, whether of ds or otherwise.

r phases of former Penal Law the acquisition of gas, electric, thout the supplier's consent. arily require intent to avoid erly obtained. It would apply, g had his gas turned off, suc- y unauthorized tampering, re- s to pay for the gas thus ob-

offense is included for the rent gap in the present law People v. Ashworth, 1927, 220 The defendants therein, a ther, were convicted of grand

larceny as a result of having made unauthorized and personally profitable use of the mill's machinery, facilities and labor to spin a substantial quantity of wool for a certain company. The judgment was reversed on the ground that the corrupt use of the mill's facilities and labor did not constitute a theft of "property" and, hence, could not be the subject of larceny. Subdivision 7 herein renders such conduct a "theft of services."

Theft of Services is a one-degree crime: a class A misdemeanor. Obviously, all the ways in which this offense can be committed are not of equal seriousness so that it would be reasonable to expect the offense to be defined in a number of degrees, prescribing punishment commensurate with the gravity of the prohibited conduct. As indicated above, this section represented a substantially new concept in New York law when it was incorporated into the revised Penal Law in 1967. Because of its basic novelty as a separately defined crime, no attempt was then made to further subclassify it; the expectation being that, as experience with the impact of the section developed, the Legislature would impose reasonable subclassifications. In almost every legislative session since about 1970, bills have, in fact, been introduced, for example, to extract only the theft of railroad services and make it a violation rather than a class A misdemeanor. Such attempts have thus far been unsuccessful not because they lacked merit but because they created an illogical and unfair distinction between "railroad" and "subway" or "taxi" services. Hopefully, appropriate subclassification will soon be forthcoming.

Cross References

Buildings may be entered for examination of meters, pipes, fittings, wires and works, see Transportation Corporations Law § 14.
Hotels and boarding houses, generally, see General Business Law § 200 et seq.
Larceny, see section 155.00 et seq.

Notes of Decisions

Historical 1
Hotel service 2
Meters or attachments, tampering with 3
Refusal to pay fare 4
Stealing rides 5

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1. Historical

The first enactment by the legislature upon the general subject is to be found in L.1878, c. 261. That statute made it a misdemeanor for any person to get on or off a freight car or engine while in motion, or to ride on any wood or freight car, unless employed by or with permission from the proper officers of such railroad or the person in charge of such car or engine. Subdivision 1 of section 426 of the Penal Code was plainly a codification of that enactment. By

Note 1

L.1879, c. 474, it was made a misdemeanor for a minor or other person, hinder, or delay the passage or running of any car lawfully running upon any horse or street railroad. Subdivision 3 of section 426 of the Penal Code was, quite as plainly, a codification of that statute. By L. 1880, c. 370, it was made a misdemeanor for a minor or other person, not a passenger, to climb, stand upon, or in any way to attach himself to, a locomotive or car, unless it is done in compliance with law, or by permission, under the lawful rules and regulations of the railroad. The same chapter also made it a misdemeanor to invite or solicit any such minor or other person to come, or to be, or to consent to his remaining upon, any engine, or any freight or baggage car, unless rightfully there by law, or with permission under the rules and regulations of the corporation. Thus, these three statutes had for their object the prevention of the unauthorized riding, or being, upon cars or engines, and of the obstruction, or delaying, of cars upon surface railroads. In the following year, when the Penal Code was established (L.1881, c. 676), section 426 was enacted as it stands at present with the exception that, by an amendment in 1890 (L.1890, c. 458), subdivision 3 was made to apply to steam railways, as well as to horse and street railways, and the caption "Riding on freight trains" was added. It is reasonable to infer that the Penal Code, in the respect which we are now considering, was intended as a codification of, and to retain within its provisions, existing laws. East v. Brooklyn Heights R. Co., 1909, 195 N.Y. 463, 88 N.E. 751.

2. Hotel service

Evidence that guest left hotel with her baggage, leaving an unpaid balance for room rent and telephone charges, did not sustain conviction of obtaining credit or accommodation at hotel with intent to defraud, in absence of proof that when she registered she did so with intent to defraud, and where, aside from indebtedness involved, she had paid all other charges for over 6 months. People v. Astor, 1945, 269 App.Div. 250, 55 N.Y.S.2d 283.

Presumption under this section [Penal Law 1909, § 925] of intent to defraud by obtaining credit or accommodation at hotel arising from guest's leaving hotel with baggage and charges unpaid was overcome, where the leaving was not surreptitious but was requested by hotel proprietor. Id.

An apartment hotel comprising kitchenette apartments and accommodating transients only very infrequently did not constitute a "hotel" with respect to plaintiff who occupied a small furnished apartment with his family under a six months' lease within this section [Penal Law 1909, § 925]. Cooper v. Schirrmeister, 1941, 176 Misc. 474, 26 N.Y.S.2d 668.

The omission of the term "apartment hotel" in this section [Penal Law 1909, § 925] was deliberate in absence of any expression or action by the Legislature which might be deemed a sufficient basis for ascribing a different intent, and the term "hotel" in this section does not include an "apartment hotel." Id.

"A hotelkeeper can require a guest to pay his board in advance. The law gives him a lien upon the guest's baggage and" this section [Penal Law 1909, § 925] "gives him a drastic remedy in all cases * * * actual fraud either in obtaining credit or in any effort to deprive the landlord of his lien upon a guest's baggage. But the mere fact of a guest not being able to pay a hotel bill is not a crime." People v. Klas, 1913, 79 Misc. 452, 141 N.Y.S. 212. See, also, People v. Nicholson, 1898, 25 Misc. 266, 55 N.Y.S. 447.

Where a landlord keeps a board bill and bar bill together and makes no specific application of payments, he cannot claim that the balance due is for board and proceed under this section [Penal Law 1909, § 925]. People v. Klas, 1913, 79 Misc. 452, 141 N.Y.S. 212.

Where a board bill is contracted by a regular boarder at a hotel without misrepresentation and he leaves the hotel openly and takes his baggage openly, he is not guilty of a violation of this section [Penal Law 1909, § 925]. Id.

Where there is no evidence that defendant intended to defraud hotelkeeper by making false pretenses, or surreptitiously removed baggage, but left merely to obtain money to pay bill, he cannot be convicted under this section [Penal Law 1909, § 925]. People v. Nicholson, 1898, 25 Misc. 266, 55 N.Y.S. 447.

3. Meters or attachments, tampering with

This section [Penal Law 1909, § 1431—a relating to meters or attachments] was applicable to civil actions or proceedings. Eff-Ess, Inc. v. New York Edison Co., Inc., 1932, 237 App.Div. 315, 261 N.Y.S. 126. See, also, Esposito v. Consolidated Edison Co. of N. Y., 1947, 68 N.Y.S.2d 868; Rocha v. Consolidated Edison Co. of New York, 1940, 22 N.Y.S.2d 157; Parsons Const. Corporation v. City of New York, 1937, 163 Misc. 902, 296 N.Y.S. 276.

4. Refusal to pay fare

Where leasing corporation, from which defendant was alleged to have engaged a limousine for hire, thereafter unjustifiably failing to pay for services rendered, was engaged in business of providing private limousine services and reserved to itself right to refuse service to members of public it did not wish to serve, so that it was a private as opposed to common carrier, service provided by corporation did not fall within scope of subd. 3 of this section [Penal Law 1909, § 925] providing that a person is guilty of "theft of services" when, with intent to obtain railroad, subway, bus, air, taxi or "any other public transportation service" without payment of lawful

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Where leasing corporation, from which defendant was alleged to have engaged a limousine for hire, thereafter unjustifiably failing to pay for services rendered, was engaged in business of providing private limousine services and reserved to itself right to refuse service to members of public it did not wish to serve, so that it was a private as opposed to a common carrier, service provided by corporation did not fall within scope of subd. 3 of this section providing that a person is guilty of "theft of services" when, with intent to obtain railroad, subway, bus, air, taxi or "any other public transportation service" without payment of lawful charge therefor, he obtains or attempts to obtain such service by unjustifiable failure or refusal to pay. People v. Lee, 1972, 71 Misc.2d 239, 336 N.Y.S.2d 18.

Defendant railroad passenger's refusal to show his ticket to trainman on request constituted violation of this section [Penal Law 1909, § 1990] proscribing riding on railway car without authority or permission of proper officers or with intention of not paying therefor. People v. Gins, 1966, 49 Misc.2d 883, 268 N.Y.S.2d 644.

Refusal by passenger on railroad train to pay amount of fare demanded of him is prima facie evidence of his intention not to pay for the ride in violation of this section [Penal Law 1909, § 1990] providing that person who rides passenger car with intention of not paying therefor is guilty of an offense. People v. Pansmith, 1958, 14 Misc.2d 300, 174 N.Y.S.2d 860.

This section [Penal Law 1909, § 1990] providing that person who rides on passenger car with intention of not paying therefor is guilty of an offense does not apply only to persons who surreptitiously attempt to obtain transportation without paying therefor, but was applicable to passenger who refused to pay to conductor three cents which conductor believed was applicable to fare as federal transportation tax. Id.

Once a passenger on railroad train decides to refuse to pay fare demanded, he acts at his own peril, but if passenger tenders an amount equal to correct fare, he does not violate this section [Penal Law 1909, § 1990] providing that person who rides passenger car with intention of not paying therefor is guilty of an offense. Id.

Under section 4263 of 26 U.S.C.A. (I.R.C.1954) of Internal Revenue Code providing that 10 per cent excise tax on amount paid for transportation of persons by rail shall not apply to amounts which do not exceed 60

Notes of

cents or to amounts paid for commutation tickets for one month or less, no tax was due on 29-cent fare for transportation of passenger, who had monthly commutation ticket, to destination not included within ticket, and passenger, who offered to pay the 29 cents, but refused to pay 3 cents which conductor stated was due as transportation tax, did not violate this section [Penal Law 1909, § 1990] providing that a person who rides on passenger car with intention of not paying therefor is guilty of an offense. Id.

5. Stealing rides

The prohibition against stealing rides does not extend to cases where permission to ride on an engine is given by the person in charge thereof, as the conductor. Grimshaw v. Lake Shore, etc., R. Co., 1912, 205 N.Y. 371, 98 N.E. 702.

A violation of this section [Penal Law 1909, § 1990] in riding on a freight train was adverted to in reversing a judgment for the plaintiff in a negligence action. Barrett v. New York Cent., etc., R. Co., 1899, 157 N.Y. 663, 52 N.E. 659.

This section [Penal Law 1909, § 1990] rendered one stealing a ride on a freight train guilty of a misdemeanor. Sharp v. Erie R. Co., 1904, 90 App.Div. 502, 85 N.Y.S. 553, reversed on other grounds 184 N.Y. 100, 76 N.E. 923. See, also, People v. Webster, 1894, 75 Hun 278, 26 N.Y.S. 1007.

Where an officer sees a person stealing a ride on a freight train and directs another officer to arrest him, who does so and at the station house charges him with vagrancy, he may be convicted of a violation of this section [Penal Law 1909, § 1990], where, on being taken before a magistrate, the first officer charges him with such violation. People v. Webster, 1894, 75 Hun 278, 26 N.Y.S. 1007.

§ 165.17 Unlawful use of credit card

A person is guilty of unlawful use of credit card, when in the course of obtaining or attempting to obtain property or a service, he uses or displays a credit card which he knows to be revoked or cancelled.

Unlawful use of credit card is a class A misdemeanor.

Added L.1969, c. 115, § 6.

Practice Commentaries

by Arnold D. Hechtman

This section was added by one of a series of amendments contained in a 1969 bill designed to strengthen New York's criminal laws in their application to frauds and misconduct committed by the use of stolen, forged or otherwise defective credit cards (L.1969, c. 115, section 6). An explanation of this section is contained in the practice commentary upon § 165.15.

§ 165.20 Fraudulently obta

A person is guilty of fraudul with intent to defraud or injure tial benefit for himself or a thi ture of a person to a written in representation of fact which he kn

Fraudulently obtaining a signa L.1965, c. 1030.

Historica

Derivation. Penal Law 1909, §§ 932, 934, 935, 937-a. Section 932 was from Penal Code 1881, § 596. Section 934, amended L.1939, c. 303, was

Practice Com

by Arnold D.

This section replaces a variety sions directed at those who fr ture of another to a written 937, 937-a, 938).

Cross Ref

Larceny, see section 155.05 et seq.
Signature defined, see General Constr

Notes of

Audit and payment of claims 3
Church collections and contributions 4
Credit statement 5
Elements of crime 1
Legal papers and documents 6
Spurious documents 7
Written instrument, generally 2

---

1. Elements of crime

To be actionable the pretenses used in obtaining property by false token or writing must be calculated to deceive or be capable of defrauding. People v. Court of Oyer, etc., 1881, 83 N.Y. 436.

The reliance on the pretense by the prosecutor is an essential element of

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by fraudulent statement or device. People v. Prin, 1975, 47 A.D.2d 402, 366 N.Y.S.2d 726.

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fendant which were dismissed at close of the People's case was legally sufficient to support such counts under a theory of larceny by false pretenses or larceny by false promises. People v. Consolazio, 1975, 47 A.D.2d 883, 366 N.Y.S.2d 199.

55. —— Second degree larceny

Evidence showing, inter alia, that welfare assistance recipient fraudulently received public welfare funds of over $5,000 supported conviction of second-degree grand larceny. People v. Prin, 1975, 47 A.D.2d 402, 366 N.Y.S.2d 726.

57. —— Petit larceny

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Evidence that defendant took art works from dealer by giving false promises to sell the works and return the proceeds, minus a commission, to the dealer, that defendant failed to respond to various correspondence from art dealer requesting payment or return of the works and defendant's admissions that sales had been completed, and that he had engaged in similar transactions demonstrated beyond a reasonable doubt and to a moral certainty that defendant had a fraudulent intent and was guilty of petit larceny. People v. Newman, 1975, 80 Misc.2d 975, 365 N.Y.S.2d 400.

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and demanded money from cash register, that defendant took money from her wallet, that an accomplice of defendant took money from cash register, and that defendant participated in harassment and threats to her following the robbery was sufficient to sustain defendant's convictions for first-degree robbery, second-degree robbery, two counts of third-degree grand larceny, and harassment. People v. Plummer, 1975, 36 N.Y.2d 161, 365 N.Y.S.2d 812, 325 N.E.2d 161.

ARTICLE 165—OTHER OFFENSES RELATING TO THEFT

§ 165.05 Unauthorized use of a vehicle

Practice Commentary Cited

People v. Alamo, 1974, 34 N.Y.2d 453, 358 N.Y.S.2d 375, 315 N.E.2d 466.

Supplementary Index to Notes

Failure of lessee to return vehicle 10

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9. Evidence

Evidence was insufficient to establish defendant's guilt beyond a reasonable doubt of possession of weapons and dangerous instruments and appliances or unauthorized use of a vehicle. People v. Roberts, 1975, 47 A.D.2d 909, 366 N.Y.S.2d 227.

10. Failure of lessee to return vehicle

A failure by a lessee of a commercially rented vehicle to return it to lessor at time stipulated is not a violation of subd. 3 of this section and, at least in absence of a demand by owner and refusal by lessee to deliver, original renting and retention does not become a crime by lapse of time, but is merely a breach of contract. Banner Car. Co. v. Lazar, 1975, 81 Misc.2d 360, 366 N.Y.S.2d 314.

§ 165.15 Theft of services

A person is guilty of theft of services when:

[See main volume for text of 1 to 3]

4. With intent to avoid payment by himself or another person of the lawful charge for any telecommunications service, including, without limitation, cable television service, he obtains or attempts to obtain such service for himself or another person or avoids or attempts to avoid payment therefor by himself or another person by means of (a) tampering or making connection with the equipment of the supplier, whether by mechanical, electrical, acoustical or other means, or (b) any misrepresentation of fact which he knows to be false, or (c) any other artifice, trick, deception, code or device; or

[See main volume for text of 5 to 7]

Theft of services is a class A misdemeanor.

As amended L.1975, c. 530, § 2.

1975 Amendment. Subd. 4. L.1975, c. 530, § 2, eff. on the 90th day after July 29, 1975, included cable television service theft for himself or another person.

Supplementary Practice Commentaries

by Arnold D. Hechtman

1975

Subdivision 4 was amended to add "cable television service" (L.1975, c. 530); a phrase which is now defined in subdivision 9 of § 155.00. The amendment was sponsored by the Cable Television Commission which, apparently, considered that the development of cable television use in this State has been inhibited by widespread theft of cable television services. One estimate is that as many as 100,000 people in New York State may be getting cable services without paying for it. Obviously, a serious theft problem exists but that does not mean that the instant amendment is necessary. It assumes—or at least implies—that the theft of cable television services was not heretofore proscribed so that the specific inclusion thereof was necessary.

Subdivision 4, since its initial enactment, has spoken in terms of the theft of "telecommunications services." This phrase, not found in the former Penal Law, was introduced in the 1967 revision as a generic term to encompass just such technical advances as cable television. The former law specifically addressed "telephone" or "telegraph" services (former Penal Law §§ 967, 1296-c) and, if such terms had been

continued in the revised law, the instant amendment would be appropriate. But the word "telecommunication" was adopted precisely for the purpose of obviating periodic amendment of this subdivision whenever a new device, such as cable television, is introduced into our culture. As defined, "telecommunications" means: "communication at a distance (as by cable, radio, telegraph, telephone or television)" (Webster's Third New International Dictionary, unabridged). Thus, without further elaboration, the statute clearly included the subject of the instant amendment.

The objection to this amendment is not that it is incorrect but that it is inappropriate. One of the major deficiencies of the former Penal Law was that, by accretion over the years, it became a cumbersome and confusing repository of prohibited conduct directed at very narrow circumstances. The revised Penal Law sought to avoid this undesirable condition by the use of generic or other broadly descriptive terms to encompass the many forms—existing and prospective—that criminal conduct can take. Unfortunately, the instant amendment serves to lead this well laid plan agley.

§ 165.30 Fraudulent accosting

Practice Commentary Cited

People v. Brown, 1974, 81 Misc.2d 149, 365 N.Y.S.2d 115.

Elements of crime 3

1. Constitutionality

This section making it an offense to accost persons in public place with intent to defraud him of money or property by means of trick, swindle, or confidence game was not void for vagueness. People v. Brown, 1974, 81 Misc.2d 149, 365 N.Y.S.2d 115.

3. Elements of crime

Essence of offense of fraudulent accosting is the swindling and defrauding of victim after gaining his confidence. People v. Brown, 1974, 81 Misc.2d 149, 365 N.Y.S.2d 115.

§ 165.50 Criminal possession of stolen property in the first degree

Supplementary Index to Notes

Free goods or gifts 6
Market value 5
Purpose ½

½. Purpose

Purpose of this section and section 155.20 fixing higher degrees of crime of larceny or criminal possession is not related to regulating economic market but to assessing scale of criminal operations by persons charged with offenses under this section and section 155.20. People v. Colasanti, 1971, 35 N.Y.2d 431, 363 N.Y.S.2d 577, 322 N.E.2d 269.

3. Evidence

Evidence, including evidence that defendant was observed by police officers running from a house in whose adjacent garage a stolen automobile was parked, sustained defendant's conviction for criminally possessing property in the first degree. People v. Hoffman, 1975, 47 A.D.2d 618, 363 N.Y.S.2d 22.

5. Market value

Defendant's request of $19,500 for stolen experimental librium pills was a significant admission of value and a confirmation of a market value for purposes of prosecution for criminal possession of stolen property in first degree, even if that market was an illegitimate market. People v. Colasanti, 1971, 35 N.Y.2d 431, 363 N.Y.S.2d 577, 322 N.E.2d 269.

Where at time experimental librium pills were possessed as stolen property the experimental pills had been recalled by manufacturers and substitute pills of substantially same chemical composition were being manufactured and marketed, market value of substitute pills was relevant to establish current value of the recalled pills in prosecution for criminal possession of stolen property in first degree, and it was immaterial whether the value of recalled pills was that in legitimate or illegitimate market. Id.

6. Free goods or gifts

The uninvited taker of free goods or gifts is just as much a thief as if the goods were distributed for a price. People v. Colasanti, 1971, 35 N.Y.2d 431, 363 N.Y.S.2d 577, 322 N.E.2d 269.

§ 165.60 Criminal possession of stolen property; no defense

Practice Commentary Cited

People v. Fuller, 1974, 77 Misc.2d 717, 354 N.Y.S.2d 586.

MIDNIGHT SUN BROADCASTERS, INC.

KENI - KENI TV ANCHORAGE | KFAR - KFAR TV FAIRBANKS | KINY - KINY TV JUNEAU | KTKN KETCHIKAN

Radio: NBC - ABC Television: NBC

Reply to:
KINY AM & TV
231 S. FRANKLIN
JUNEAU, ALASKA
99801

January 14

Dear Bob,

Here are the copies of the N.Y. law that I was talking to you about on the phone the other nite. It is pretty simple and has just been inserted into to section on "Theft of Services".. This incidentally would give some additional protection to telephone services also and I am sure would be upported by every telephone co in the state.

Anything you could do to get this into the books would be greatly appreciated. At the moment it is supported by Ketchikan Alaska Television and Sitka Alaska Television but will be brought up at the Alaska cable convention to be held here in Juneau March 4-5-6.

Wally

Copy of letter for your information.

Terry Gardiner

Box 1092, Ketchikan, Alaska 99901 Pouch V, Juneau, Alaska 99811

May 13, 1976

Wally Christiansen
Midnight Sun Broadcasters Inc.
Box 1852
Ketchikan, Alaska

Dear Wally,

For your information the House Judiciary Committee has had SB 592, theft of telecommunication services, under consideration and has passed a House Committee Substitute. The House Committee Substitute was a bill that was introduced originally by Rep. Brown's telecommunication interim committee. The Judiciary Committee felt that the HCS better met the legal requirements that would be needed to prosecute persons guilty of stealing various telecommunication services. Senator Ziegler said that he had no problem with the HCS. I hope the changes we have made are in accordance with your ideas concerning the problem.

I will make certain that the House Rules Committee does schedule SB 592 for action before the legislature adjourns.

Sincerely,

Terry Gardiner

SB 592

MIDNIGHT SUN BROADCASTERS, INC.

KENI - KENI TV ANCHORAGE | KFAR - KFAR TV FAIRBANKS | KINY - KINY TV JUNEAU | KTKN KETCHIKAN

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Walt

Copy of letter for your information.

(907)225-3875 BOX 1852 345 MAIN

R.D. "CHUCK" JENSEN
President - General Mgr.

E.W. "WALLY" CHRISTIANSEN
Vice-President - Chief Engineer

KETCHIKAN ALASKA TELEVISION, INC.

K-A-T-V CABLE
CHANNELS 4-5-6 & 2
KETCHIKAN, ALASKA 99901

January 6, 1976

Mr. Robert Merritt
University of Alaska
Fairbanks, Alaska 99701

Dear Mr. Merritt:

I want to thank you for inviting me to the meeting held December 15 in Anchorage on the subject of television in the villages. Since that meeting I have spent some time thinking about the discussions held and also about the economics of the program.

It appears that certain political groups within the state of Alaska are dedicated to the program of eventually furnishing three channels of entertainment television and one channel of educational television to every village of over 25 inhabitants. It is obvious that the technology to provide this service is available and the only limiting factor is the economics. As the number of channels and the number of hours per day as well as methods of transmission and distribution within the village are the large factors in this cost figure I have taken a single channel four hour per day program as a base for a "start soon" project.

During the discussions in Anchorage a great deal of time was spent on the necessity of taping and delaying certain programs to conform to "time zone" specifications. With all due respect it was clear that these speakers had never spent any time in the villages as there is only one time zone and that is "Sun" time. In the summer time there is so much daylight that it is not a factor and in the wintertime there is so little it again loses its importance. In the village whether the news comes on at 4:00 P.M. or at 6:00 P.M. is of very little or no importance. In the initial program I believe the concept of a huge tape recording and delay center can be eliminated.

At the meeting a good deal of time was spent talking about the huge cost of transmission of the programing the some 175 villages by satellite and that a program of taping and distribution of the material by cassette would be more economical. As an eleven year veteran of recording and bicycling of television programing by use of video tape I have come to the conclusion that my cost is very close to $25 per hour not including copyright fees. This would lead me to believe that if done by the State of Alaska the cost

would approach $30 per hour. On a four hour per day and serving 175 villages this would amount to $21,000 per day. Some savings on this figure would result if tapes were bicycled but I can see political problems that would be hard to resolve. I can also see all kinds of hardware problems that would be difficult to solve in remote areas.

At present RCA Alasom is serving the commercial television users of satellite transmission facilities in Anchorage, Fairbanks and Juneau and has a tariff filing for Nome. At present the charge is $1000 per hour for a combination of Anchorage and Fairbanks and an additional $200 per hour if Juneau takes the program also. It is a known fact that the RCA cost is $800 per hour. It is assumed that this charge is based on the fact that the stations can only afford certain number of hours of satellite use per year and if they were able to use more hours that the hourly cost could be reduced.

It would appear to me as an outside viewer that a use of the satellite on a four hour per day seven day per week basis would earn a substancial reduction in hourly rate. Or even if we talk about an hourly rate of $1200 to furnish service to the 175 stations in the bush that is a radical reduction in cost from the figures projected above for video cassette tape. Even double this $1200 figure would be a bargain and at three times the figure it is still well below projected tape costs with an immeasurable reduction in problems.

My conclusion therefore is that even though I am strongly opposed to any state financed program to provide the outlying areas with entertainment that if it is to be done it should be done in the most economical and efficient manner.

As for distribution within the villages themselves I believe that each in an individual case. As was pointed out a mini-transmitter can be installed for $10,000. This is a single channel device. I believe in many cases cable can be installed for much less than this figure and provide spectrum space for multiple channels.

Very truly yours,

Wally Christiansen

Wally Christiansen

Practice Commentaries

by Arnold D. Hechtman

This section is supplementary to a prior provision rendering one who steals tangible property consisting of "secret scientific material" (defined in § 155.00[6]) guilty of grand larceny in the third degree (§ 155.30[3]). The latter crime applies to one who, for example, steals a document reciting a secret scientific formula. It does not, however, embrace one who with the same larcenous intent photographs or copies such a document, since such conduct does not constitute a *taking* of properties so as to constitute larceny (§ 155.05[1]). The instant section plugs the indicated gap with the crime of "unlawful *use* of secret scientific material," which, like the larceny offense (§ 155.30), is graded a class E felony.

§ 165.10 Repealed. L.1969, c. 115, § 4, eff. on 120th day after Mar. 25, 1969

Historical Note

Section, which related to theft of services and definitions of terms, was added L.1965, c. 1030; amended L. 1967, c. 791, § 24.

§ 165.15 Theft of services

A person is guilty of theft of services when:

1. He obtains or attempts to obtain a service, or induces or attempts to induce the supplier of a rendered service to agree to payment therefor on a credit basis, by the use of a credit card which he knows to be stolen.

2. With intent to avoid payment for restaurant services rendered, or for services rendered to him as a transient guest at a hotel, motel, inn, tourist cabin, rooming house or comparable establishment, he avoids or attempts to avoid such payment by unjustifiable failure or refusal to pay, by stealth, or by any misrepresentation of fact which he knows to be false. A person who fails or refuses to pay for such services is presumed to have intended to avoid payment therefor; or

3. With intent to obtain railroad, subway, bus, air, taxi or any other public transportation service without payment of the lawful charge therefor, or to avoid payment of the lawful charge for such transportation service which has

been rendered to him, he obtains or attempts to obtain such service or avoids or attempts to avoid payment therefor by force, intimidation, stealth, deception or mechanical tampering, or by unjustifiable failure or refusal to pay; or

4. With intent to avoid payment by himself or another person of the lawful charge for any telecommunications service, he obtains or attempts to obtain such service or avoids or attempts to avoid payment therefor by himself or another person by means of (a) tampering or making connection with the equipment of the supplier, whether by mechanical, electrical, acoustical or other means, or (b) any misrepresentation of fact which he knows to be false, or (c) any other artifice, trick, deception, code or device; or

5. With intent to avoid payment by himself or another person for a prospective or already rendered service the charge or compensation for which is measured by a meter or other mechanical device, he tampers with such device or with other equipment related thereto, or in any manner attempts to prevent the meter or device from performing its measuring function, without the consent of the supplier of the service. A person who tampers with such a device or equipment without the consent of the supplier of the service is presumed to do so with intent to avoid, or to enable another to avoid, payment for the service involved; or

6. With intent to obtain, without the consent of the supplier thereof, gas, electricity, water steam or telephone service, he tampers with any equipment designed to supply or to prevent the supply of such service either to the community in general or to particular premises; or

7. Obtaining or having control over labor in the employ of another person, or of business, commercial or industrial equipment or facilities of another person, knowing that he is not entitled to the use thereof, and with intent to derive a commercial or other substantial benefit for himself or a third person, he uses or diverts to the use of himself or a third person such labor, equipment or facilities.

Theft of services is a class A misdemeanor.

L.1965, c. 1030; amended L.1967, c. 791, § 25; L.1969, c. 115, § 5.

Historical Note

1969 Amendment. Subd. 1. L.1969, c. 115, § 5, eff. on 120th day after Mar. 25, 1969, added subd. 1. It derived from former subd. 1, repealed L.1969, c. 115, § 5.

1967 Amendment. Subd. 2. L.1967, c. 791, § 25, eff. Sept. 1, 1967, added sentence beginning "A person who fails."

Subd. 5. L.1967, c. 791, § 25, eff. Sept. 1, 1967, omitted "provided by the supplier of the service" following "mechanical device."

Subd. 6. L.1967, c. 791, § 25, eff. Sept. 1, 1967, omitted "of the supplier thereof" following "equipment."

Derivation. Subd. 1. New.

Subd. 2. Penal Law 1909, § 925, added L.1923, c. 503, amended L.1939, c. 579; L.1955, c. 460.

Subd. 3. Penal Law 1909, §§ 1990, 1999-b. Section 1990, amended L. 1917, c. 350; L.1957, c. 823, was from Penal Code 1881, § 426, amended L. 1890, c. 458, § 1. Section 1999-b, added L.1957, c. 884, amended L.1965, c. 198.

Subd. 4. Penal Law 1909, §§ 967, 1293-c. Section 967 added L.1961, c. 548. Section 1293-c, added L.1916, c. 367, amended L.1941, c. 883; L.1955, c. 477.

Subd. 5. Penal Law 1909, §§ 1431, 1431-a, 1432, 1432-a. Section 1431, was from Penal Code 1881, § 651, amended L.1888, c. 219, § 1; L.1892, c. 692, § 1; L.1892, c. 699, § 1; L. 1893, c. 692, § 1; L.1900, c. 589, § 1; L.1906, c. 453, § 1. Section 1431-a added L.1926, c. 849. Section 1432 was from Penal Code 1881, § 651-a, added L.1902, c. 333, § 1. Section 1432-a added L.1933, c. 414.

Subd. 6. Penal Law 1909, §§ 1431, 1432, 1432-a, for history, see subd. 5 note above.

Subd. 7. New.

Practice Commentaries

by Arnold D. Hechtman

In relation to the former Penal Law, this section is entirely new in form and substantially new in substance.

Since "services" are not "property," "theft" of a service does not constitute larceny; and, if any such conduct is to be proscribed, it must be by special statute. The former Penal Law defines few offenses of that nature (see §§ 927, 967, 1431, 1432, 1432-a). It is not necessary, however, to go to the other extreme of equating services with property and of predicating, wherever possible (mainly in the area of deception), "theft of service" offenses equivalent to those involving thefts of property, or larcenies. Legislation of that character would doubtless lead to hosts of "criminal" charges of a basically civil nature. The instant section steers a middle course by defining seven specific offenses, most involving theft or attempted theft of certain kinds of services.

Subdivision 1, dealing with credit card offenses, was amended in 1969, as one phase of an extensive bill enacted for

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Commentaries

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the purpose of strengthening the Penal Law in its application to conduct involving theft and misuse of credit cards (L.1969, c. 115; see practice commentary upon § 155.00).

Prior to 1969, the general subject of fraudulently obtaining property or services by means of stolen, false or improperly used credit cards was covered by (1) the crime of larceny (by false pretenses) in cases where property was obtained; (2) the "theft of services" offense at hand (§ 165.15 [1]) in cases where a service was obtained; and (3) a misdemeanor entitled "unauthorized use of credit cards," which appeared not in the Penal Law but in the General Business Law (§ 513). The General Business Law statute, defining in rather complex fashion a very broad offense or offenses embracing acquisition of both property and services, covered approximately the same ground as the appropriate Penal Law statutes.

The 1969 credit card bill (L.1969, c. 115) did not work any truly significant change of substance in this area but established a new structural format. The rather redundant General Business Law section (§ 513) was repealed. The Penal Law "theft of services" provision (§ 165.15[1]) was narrowed to apply to the acquisition of services by means of "stolen" credit cards only (rather than acquisition by means of almost any kind of defective card, as was formerly the case). And, finally, a new Penal Law section was added (§ 165.17), defining the crime of "unlawful use of credit card," which does not deal with the use of *stolen* or *forged* cards but renders guilty of a misdemeanor one who "in the course of obtaining or attempting to obtain" either "property or a service displays a credit card which he knows to be *revoked* or *cancelled*".

These offenses together with various others in the larceny and forgery areas have the following overall scope with respect to a person who purchases or attempts to purchase property or a service by means of a credit card which he knows to be in some way defective for the purpose:

(1) Regardless of whether property or a service is the subject of the purchase, and regardless of whether the credit card is stolen or counterfeit, or whether it has merely been canceled or revoked, the culprit is guilty, at the very least, of a class A misdemeanor (§§ 155.25, 165.15[1], 165.17).

(2) If property is the subject of the purchase or attempted purchase, the culprit has committed larceny and, depending upon the value of the property, may or may not also be guilty of a felony (§ 155.[illegible]).

(3) If the credit card is a stolen one, the culprit is, undoubtedly, also guilty of criminal possession of stolen property in the second degree, a class E felony (§ 165.45 [2]). In addition, if in making or attempting to make the purchase he signs a voucher, receipt or other paper in the name of the card owner—as he usually would have to do—he is also guilty of forgery in the second degree, a class D felony (§ 170.10[1]).

(4) If the credit card is a forged or counterfeit one, the culprit is, undoubtedly, also guilty of criminal possession of a forged instrument in the second degree, a class D felony (§ 170.25).

Subdivision 2 restates the proscriptions of former Penal Law § 925 but expands the offense to include thefts and payment-avoidance of restaurant services as well as of those provided by hotels, inns and the like.

Subdivision 3 includes certain former Penal Law offenses (§§ 1990[1, 2], 1990-b) but broadens the overall crime to encompass improper acquisition or fee-avoidance of all forms of "public transportation service" rather than of the limited kinds specified in the former statutes.

Subdivision 4 substantially restates former Penal Law § 967 (see, also, § 1293-c).

Subdivision 5 substantially restates certain phases of three former sections dealing in part with fraudulent tampering with gas, electric, steam and water meters (§§ 1431, 1431-a, 1432). The offense is broadened, however, to include meter tampering and similar chicanery relating to any sort of public or private service measured by a meter, whether of the indicated public utility kinds or otherwise.

Subdivision 6 embodies other phases of former Penal Law §§ 1431 and 1432, addressed to the acquisition of gas, electric, steam and water service without the supplier's consent. This offense does not necessarily require intent to avoid payment for the service improperly obtained. It would apply, for example, to one who, having had his gas turned off, succeeds in regaining the service by unauthorized tampering, regardless of whether he intends to pay for the gas thus obtained.

Subdivision 7 is new. This offense is included for the purpose of plugging an apparent gap in the present law pointed up by the decision in People v. Ashworth, 1927, 220 App.Div. 498, 222 N.Y.S. 24. The defendants therein, a mill superintendant and his brother, were convicted of grand

larceny as a result of having ma... ally profitable use of the mill's ma... to spin a substantial quantity of ... The judgment was reversed on th... use of the mill's facilities and labo... of "property" and, hence, could be... Subdivision 7 herein renders such... ices."

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Cross Referen...

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Notes of Decisi...

Historical 1
Hotel service 2
Meters or attachments, tampering with 3
Refusal to pay fare 4
Stealing rides 5

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1. Historical

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larceny as a result of having made unauthorized and personally profitable use of the mill's machinery, facilities and labor to spin a substantial quantity of wool for a certain company. The judgment was reversed on the ground that the corrupt use of the mill's facilities and labor did not constitute a theft of "property" and, hence, could not be the subject of larceny. Subdivision 7 herein renders such conduct a "theft of services."

Theft of Services is a one-degree crime: a class A misdemeanor. Obviously, all the ways in which this offense can be committed are not of equal seriousness so that it would be reasonable to expect the offense to be defined in a number of degrees, prescribing punishment commensurate with the gravity of the prohibited conduct. As indicated above, this section represented a substantially new concept in New York law when it was incorporated into the revised Penal Law in 1967. Because of its basic novelty as a separately defined crime, no attempt was then made to further subclassify it; the expectation being that, as experience with the impact of the section developed, the Legislature would impose reasonable subclassifications. In almost every legislative session since about 1970, bills have, in fact, been introduced, for example, to extract only the theft of railroad services and make it a violation rather than a class A misdemeanor. Such attempts have thus far been unsuccessful not because they lacked merit but because they created an illogical and unfair distinction between "railroad" and "subway" or "taxi" services. Hopefully, appropriate subclassification will soon be forthcoming.

Cross References

Buildings may be entered for examination of meters, pipes, fittings, wires and works, see Transportation Corporations Law § 14.
Hotels and boarding houses, generally, see General Business Law § 200 et seq.
Larceny, see section 155.00 et seq.

Notes of Decisions

Historical 1
Hotel service 2
Meters or attachments, tampering with 3
Refusal to pay fare 4
Stealing rides 5

1. Historical

The first enactment by the legislature upon the general subject is to be found in L.1878, c. 261. That statute made it a misdemeanor for any person to get on or off a freight car or engine while in motion, or to ride on any wood or freight car, unless employed by or with permission from the proper officers of such railroad or the person in charge of such car or engine. Subdivision 1 of section 126 of the Penal Code was plainly a codification of that enactment. By

Note 1

L.1879, c. 474, it was made a misdemeanor for a minor or other person, hinder, or delay the passage or running of any car lawfully running upon any horse or street railroad. Subdivision 3 of section 426 of the Penal Code was, quite as plainly, a codification of that statute. By L. 1880, c. 370, it was made a misdemeanor for a minor or other person, not a passenger, to climb, stand upon, or in any way to attach himself to, a locomotive or car, unless it is done in compliance with law, or by permission, under the lawful rules and regulations of the railroad. The same chapter also made it a misdemeanor to invite or solicit any such minor or other person to come, or to be, or to consent to his remaining upon, any engine, or any freight or baggage car, unless rightfully there by law, or with permission under the rules and regulations of the corporation. Thus, these three statutes had for their object the prevention of the unauthorized riding, or being upon cars or engines, and of the obstruction, or delaying, of cars upon surface railroads. In the following year, when the Penal Code was established (L.1881, c. 676), section 426 was enacted as it stands at present with the exception that, by an amendment in 1890 (L.1890, c. 458), subdivision 3 was made to apply to steam railways, as well as to horse and street railways, and the caption "Riding on freight trains" was added. It is reasonable to infer that the Penal Code, in the respect which we are now considering, was intended as a codification of, and to retain within its provisions, existing laws. East v. Brooklyn Heights R. Co., 1909, 195 N.Y. 466, 88 N.E. 751.

2. Hotel service

Evidence that guest left hotel with her baggage, leaving an unpaid balance for room rent and telephone charges, did not sustain conviction of obtaining credit or accommodation at hotel with intent to defraud, in absence of proof that when she registered she did so with intent to defraud, and where, aside from indebtedness involved, she had paid all other charges for over 6 months. People v. Astor, 1945, 269 App.Div. 250, 55 N.Y.S.2d 283.

Presumption under this section [Penal Law 1909, § 925] of intent to defraud by obtaining credit or accommodation at hotel arising from guest's leaving hotel with baggage and charges unpaid was overcome, where the leaving was not surreptitious but was requested by hotel proprietor. Id.

An apartment hotel comprising kitchenette apartments and accommodating transients only very infrequently did not constitute a "hotel" with respect to plaintiff who occupied a small furnished apartment with his family under a six months' lease within this section [Penal Law 1909, § 925]. Cooper v. Schirmeister, 1941, 176 Misc. 474, 26 N.Y.S.2d 668.

The omission of the term "apartment hotel" in this section [Penal Law 1909, § 925] was deliberate in absence of any expression or action by the Legislature which might be deemed a sufficient basis for ascribing a different intent, and the term "hotel" in this section does not include an "apartment hotel." Id.

"A hotelkeeper can require a guest to pay his board in advance. The law gives him a lien upon the guest's baggage and" this section [Penal Law 1909, § 925] "gives him a drastic remedy in all cases of actual fraud either in obtaining credit or in any effort to deprive the landlord of his lien upon a guest's baggage. But the mere fact of a guest not being able to pay a hotel bill is not a crime." People v. Klas, 1913, 79 Misc. 452, 141 N.Y.S. 212. See, also, People v. Nicholson, 1898, 2 Misc. 266, 53 N.Y.S. 447.

Where a landlord keeps a board bill and bar bill together and makes no specific application of payments, he cannot claim that the balance due is for board and proceed under this section [Penal Law 1909, § 925] People v. Klas, 1913, 79 Misc. 452, 141 N.Y.S. 212.

Where a board bill is contracted by a regular boarder at a hotel without misrepresentation and he leaves the hotel openly and takes his baggage openly, he is not guilty of a violation of this section [Penal Law 1909, § 925]. Id.

Where there is no evidence that defendant intended to defraud hotel keeper by making false pretenses, or surreptitiously removed baggage, in left merely to obtain money to pay bill, he cannot be convicted under this section [Penal Law 1909, § 925] People v. Nicholson, 1898, 25 Misc. 266, 53 N.Y.S. 447.

3. Meters [illegible] interference therewith

This section [Penal Law 1909, § 1431-a relating to meters or attachments] was applicable to civil actions or proceedings. Effress, Inc. v. New York Edison Co., Inc., 1932, 237 App.Div. 315, 261 N.Y.S. 126. See, also, Esposito v. Consolidated Edison Co. of N. Y., 1947, 68 N.Y.S.2d 863; Rocha v. Consolidated Edison Co. of New York, 1940, 22 N.Y.S.2d 157; Parsons Const. Corporation v. City of New York, 1937, 167 Misc. 902, 2 N.Y.S. 276.

4. Refusal to pay fare

Where leasing corporation, from which defendant was alleged to have engaged a limousine for hire, thereafter unjustifiably failing to pay for services rendered, was engaged in business of providing private limousine services and reserved to itself right to refuse service to members of public it did not wish to serve, and that it was a private as opposed to common carrier, service provided by corporation did not fall within scope of subd. 3 of this section [providing that a person is guilty of "theft of services" when, with intent to obtain railroad, subway, bus, air, taxi or "any other public transportation service" without payment of lawful

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Where leasing corporation, from which defendant was alleged to have engaged a limousine for hire, thereafter unjustifiably failing to pay for services rendered, was engaged in business of providing private limousine services and reserved to itself right to refuse service to members of public it did not wish to serve, so that it was a private as opposed to a common carrier, service provided by corporation did not fall within scope of subd. 3 of this section providing that a person is guilty of "theft of services" when, with intent to obtain railroad, subway, bus, air, taxi or "any other public transportation service" without payment of lawful charge therefor, he obtains or attempts to obtain such service by unjustifiable failure or refusal to pay. People v. Lee, 1972, 71 Misc.2d 239, 336 N.Y.S.2d 18.

Defendant railroad passenger's refusal to show his ticket to trainman on request constituted violation of this section [Penal Law 1909, § 1930] proscribing riding on railway car without authority or permission of proper officers or with intention of not paying therefor. People v. Gins, 1966, 49 Misc.2d 883, 268 N.Y.S.2d 644.

Refusal by passenger on railroad train to pay amount of fare demanded of him is prima facie evidence of his intention not to pay for the ride in violation of this section [Penal Law 1909, § 1930] providing that person who rides passenger car with intention of not paying therefor is guilty of an offense. People v. Passmith, 1958, 14 Misc.2d 300, 174 N.Y.S.2d 860.

This section [Penal Law 1909, § 1930] providing that person who rides on passenger car with intention of not paying therefor is guilty of an offense does not apply only to persons who surreptitiously attempt to obtain transportation without paying therefor, but was applicable to passenger who refused to pay to conductor three cents which conductor believed was applicable to fare as federal transportation tax. Id.

Once a passenger on railroad train decides to refuse to pay fare demanded, he acts at his own peril, but if passenger tenders an amount equal to correct fare, he does not violate this section [Penal Law 1909, § 1930] providing that person who rides passenger car with intention of not paying therefor [illegible]uilty of an offense. Id.

Under section 4293 of 26 U.S.C.A. (I.R.C.1954) of Internal Revenue Code providing that 10 per cent excise tax on amount paid for transportation of persons by rail shall not apply to amounts which do not exceed 60

to amounts paid for commutation tickets for one month or less, tax was due on 29-cent fare for transportation of passenger, who had monthly commutation ticket, to destination not included within ticket, and passenger, who offered to pay the 29 cents, but refused to pay 3 cents which conductor stated was due as transportation tax, did not violate this section [Penal Law 1909, § 1990] providing that a person who rides on passenger car with intention of not paying therefor is guilty of an offense. Id.

5. Stealing rides

The prohibition against stealing rides does not extend to cases where permission to ride on an engine is given by the person in charge thereof, as the conductor. Grieshaw v. Lake Shore, etc., R. Co., 1912, 205 N.Y. 371, 98 N.E. 762.

A violation of this section [Penal Law 1909, § 1990] in riding on a freight train was adverted to in reversing a judgment for the plaintiff in a negligence action. Barrett v. New York Cent., etc., R. Co., 1899, 157 N.Y. 663, 52 N.E. 659.

This section [Penal Law 1909, § 1990] rendered one stealing a ride on a freight train guilty of a misdemeanor. Sharp v. Erie R. Co., 1904, 90 App.Div. 502, 85 N.Y.S. 553, reversed on other grounds 184 N.Y. 100, 76 N.E. 923. See, also, People v. Webster, 1894, 75 Hun 278, 26 N.Y.S. 1007.

Where an officer sees a person stealing a ride on a freight train and directs another officer to arrest him, who does so and at the station house charges him with vagrancy, he may be convicted of a violation of this section [Penal Law 1909, § 1990], where, on being taken before a magistrate, the first officer charges him with such violation. People v. Webster, 1894, 75 Hun 278, 26 N.Y.S. 1007.

§ 165.17 Unlawful use of credit card

A person is guilty of unlawful use of credit card, when in the course of obtaining or attempting to obtain property or a service, he uses or displays a credit card which he knows to be revoked or cancelled.

Unlawful use of credit card is a class A misdemeanor.

Added L.1969, c. 115, § 6.

Practice Commentaries

by Arnold D. Hechtman

This section was added by one of a series of amendments contained in a 1969 bill designed to strengthen New York's criminal laws in their application to frauds and misconduct committed by the use of stolen, forged or otherwise defective credit cards (L.1969, c. 115, section 6). An explanation of this section is contained in the practice commentary upon § 165.15.

§ 165.20 Fraudulently obta

A perso is guilty of fraudul with intent to defraud or injure tial benefit for himself or a thi ture of a person to a written in representation of fact which he kn

Fraudulently obtaining a signa

L.1965, c. 1030.

Historica

Derivation. Penal Law 1909, §§ 932, 934, 935, 937-a. Section 932 was from Penal Code 1881, § 528. Section 934, amended L.1939, c. 363, was

Practice C

by Arnold D

This section replaces a variety sions directed at those who fr ture of another to a written 937, 937-a, 938).

Cross Re

Larceny, see section 155.05 et seq.
Signature defined, see General Constr

Notes of D

Audit and payment of claims 3
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Elements of crime 1
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Written instrument, generally 2

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1. Elements of crime

To be actionable the pretenses used in obtaining property by false token or writing must be calculated to deceive or be capable of defrauding. People v. Court of Oyer, etc., 1881, 83 N.Y. 436.

The reliance on the pretense by the prosecutor is an essential element of

by fraudulent statement or device. People v. Prim, 1975, 47 A.D.2d 409, 366 N.Y.S.2d 726.

e first degree

nd proof

fendant which were dismissed at close of the People's case was legally sufficient to support such counts under a theory of larceny by false pretenses or larceny by false promises. People v. Consolazio, 1975, 47 A.D.2d 863, 366 N.Y.S.2d 190.

55. —— Second degree larceny

Evidence showing, inter alia, that welfare assistance recipient fraudulently received public welfare funds of over $5,000 supported conviction of second-degree grand larceny. People v. Prim, 1975, 47 A.D.2d 409, 366 N.Y.S.2d 726.

57. —— Petit larceny

Evidence that defendant took art works from dealer by giving false promises to sell the works and return the proceeds, minus a commission, to the dealer, that defendant failed to respond to various correspondence from art dealer requesting payment or return of the works and defendant's admissions that sales had been completed, and that he had engaged in similar transactions demonstrated beyond a reasonable doubt and to a moral certainty that defendant had a fraudulent intent and was guilty of petit larceny. People v. Newman, 1975, 80 Misc.2d 975, 365 N.Y.S.2d 409.

160—ROBBERY

degree

and demanded money from cash register, that defendant took money from her wallet, that an accomplice of defendant took money from cash register, and that defendant participated in harassment and threats to her following the robbery was sufficient to sustain defendant's convictions for first-degree robbery, second-degree robbery, two counts of third-degree grand larceny, and harassment. People v. Plummer, 1975, 36 N.Y.2d 161, 365 N.Y.S.2d 842, 325 N.E.2d 161.

ARTICLE 165—OTHER OFFENSES RELATING TO THEFT

§ 165.05 Unauthorized use of a vehicle

Practice Commentary Cited

People v. Alamo, 1974, 34 N.Y.2d 453, 358 N.Y.S.2d 375, 315 N.E.2d 446.

Supplementary Index to Notes

Failure of lessee to return vehicle 10

9. Evidence

Evidence was insufficient to establish defendant's guilt beyond a reasonable doubt of possession of weapons and dangerous instruments and appliances or unauthorized use of a vehicle. People v. Roberts, 1975, 47 A.D.2d 909, 366 N.Y.S.2d 227.

10. Failure of lessee to return vehicle

A failure by a lessee of a commercially rented vehicle to return it to lessor at time stipulated is not a violation of subd. 3 of this section and, at least in absence of a demand by owner and refusal by lessee to deliver, original renting and retention does not become a crime by lapse of time, but is merely a breach of contract. Banner Cas. Co. v. Lazar, 1975, 81 Misc.2d 360, 366 N.Y.S.2d 314.

§ 165.15 Theft of services

A person is guilty of theft of services when:

[*See main volume for text of 1 to 3*]

4. With intent to avoid payment by himself or another person of the lawful charge for any telecommunications service, including, without limitation, cable television service, he obtains or attempts to obtain such service for himself or another person or avoids or attempts to avoid payment therefor by himself or another person by means of (a) tampering or making connection with the equipment of the supplier, whether by mechanical, electrical, acoustical or other means, or (b) any misrepresentation of fact which he knows to be false, or (c) any other artifice, trick, deception, code or device; or

[*See main volume for text of 5 to 7*]

Theft of services is a class A misdemeanor.

As amended L.1975, c. 530, § 2.

1975 Amendment. Subd. 4, L.1975, c. 530, § 2, eff. on the 90th day after July 29, 1975, included cable television service theft for himself or another person.

Supplementary Practice Commentaries

by Arnold D. Hechtman

1975

Subdivision 4 was amended to add "cable television service" (L.1975, c. 530); a phrase which is now defined in subdivision 9 of § 155.00. The amendment was sponsored by the Cable Television Commission which, apparently, considered that the development of cable television use in this State has been inhibited by widespread theft of cable television services. One estimate is that as many as 100,000 people in New York State may be getting cable services without paying for it. Obviously, a serious theft problem exists but that does not mean that the instant amendment is necessary. It assumes—or at least implies—that the theft of cable television services was not heretofore proscribed so that the specific inclusion thereof was necessary.

Subdivision 4, since its initial enactment, has spoken in terms of the theft of "telecommunications services." This phrase, not found in the former Penal Law, was introduced in the 1967 revision as a generic term to encompass just such technical advances as cable television. The former law specifically addressed "telephone" or "telegraph" services (former Penal Law §§ 967, 1293-c) and, if such terms had been

continued in the revised law, the instant amendment would be appropriate. But the word "telecommunication" was adopted precisely for the purpose of obviating periodic amendment of this subdivision whenever a new device, such as cable television, is introduced into our culture. As defined, "telecommunications" means: "communication at a distance (as by cable, radio, telegraph, telephone or television)" (Webster's Third New International Dictionary, unabridged). Thus, without further elaboration, the statute clearly included the subject of the instant amendment.

The objection to this amendment is not that it is incorrect but that it is inappropriate. One of the major deficiencies of the former Penal Law was that, by accretion over the years, it became a cumbersome and confusing repository of prohibited conduct directed at very narrow circumstances. The revised Penal Law sought to avoid this undesirable condition by the use of generic or other broadly descriptive terms to encompass the many forms—existing and prospective—that criminal conduct can take. Unfortunately, the instant amendment serves to lead this well laid plan agley.

§ 165.30 Fraudulent accosting

Practice Commentary Cited

People v. Brown, 1974, 81 Misc.2d 149, 365 N.Y.S.2d 115.

Elements of crime 3

1. Constitutionality

This section making it an offense to accost person in public place with intent to defraud him of money or property by means of trick, swindle, or confidence game was not void for vagueness. People v. Brown, 1974, 81 Misc.2d 149, 365 N.Y.S.2d 115.

3. Elements of crime

Essence of offense of fraudulent accosting is the swindling and defrauding of victim after gaining his confidence. People v. Brown, 1974, 81 Misc.2d 149, 365 N.Y.S.2d 115.

§ 165.50 Criminal possession of stolen property in the first degree

Supplementary Index to Notes

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Purpose ½

½. Purpose

Purpose of this section and section 155.20 fixing higher degrees of crime of larceny or criminal possession is not related to regulating economic market but to assessing scale of criminal operations by persons charged with offenses under this section and section 155.20. People v. Colasanti, 1974, 35 N.Y.2d 434, 363 N.Y.S.2d 577, 322 N.E.2d 269.

3. Evidence

Evidence, including evidence that defendant was observed by police officers running from a house in whose adjacent garage a stolen automobile was parked, sustained defendant's conviction for criminally possessing property in the first degree. People v. Hoffman, 1975, 47 A.D.2d 618, 361 N.Y.S.2d 22.

5. Market value

Defendant's request of $19,500 for stolen experimental librium pills was a significant admission of value and a confirmation of a market value for purposes of prosecution for criminal possession of stolen property in first degree, even if that market was an illegitimate market. People v. Colasanti, 1974, 35 N.Y.2d 434, 363 N.Y.S.2d 577, 322 N.E.2d 269.

Where at time experimental librium pills were possessed as stolen property the experimental pills had been recalled by manufacturers and substitute pills of substantially same chemical composition were being manufactured and marketed, market value of substitute pills was relevant to establish current value of the recalled pills in prosecution for criminal possession of stolen property in first degree, and it was immaterial whether the value of recalled pills was that in legitimate or illegitimate market. Id.

6. Free goods or gifts

The uninvited taker of free goods or gifts is just as much a thief as if the goods were distributed for a price. People v. Colasanti, 1974, 35 N.Y.2d 434, 363 N.Y.S.2d 577, 322 N.E.2d 269.

§ 165.60 Criminal possession of stolen property; no defense

Practice Commentary Cited

People v. Fuller, 1974, 77 Misc.2d 737, 354 N.Y.S.2d 586.

SB

594

SB 594: RELATING TO INSURANCE UNAVAILABLE ON THE VOLUNTARY MARKET

In the course of deliberation over the medical malpractice insurance issue, it became evident that other groups similarly classified as "high risk," have faced the same problem in the past. Fishermen in particular often have found insurance at reasonable rates unavailable. Businesses and home owners in rural areas have encountered the same situation regarding fire insurance. In order to prevent a future insurance crisis for fishermen or other high risk groups, SB 594 was proposed.

SB 594 is similar to one of the provisions of the medical malpractice solution. When the Director of the Division of Insurance determines that insurance in any field is unavailable on the voluntary market, he may by regulation initiate a plan to provide the needed insurance. The Director is also empowered to require the insurance industry to establish a plan, subject to his approval, to fill the insurance gap.

In the establishment of such a plan, the Director is authorized to require participation by all insurance companies operating in the state with the burden spread equitably. The Director is also responsible for regulating rates and underwriting standards.

SB 594 was submitted on the recommendation of Herbert Dennenberg, the legislature's consultant on insurance.

Nancy

1. No Public hearing
2. No standards of findings
3. Too much discretion
4. Agents — excuse admin convenience

Denenberg
Re SB 594

Rationale: It's hard to predict what insurance problems will come up in the future. It's better to have a general solution than having to address each problem area as it arises; - plus with a general approach problem areas can be addressed quickly

History: Insurance problem areas have popped up in many areas - e.g. workmen's comp, rent control, etc. They will certainly pop up again - thus the bill provides a solution now to future problems where insurance is not available

Thus States with this type of legislation are in a much better position to deal with problems of inadequate insurance than states which do not have this type of legislation

19.3

STATE OF WISCONSIN

ASSEMBLY BILL 58

(As Amended and Enacted)

AN ACT to renumber and amend 619.01 (1) (c); to amend 619.01 (1) (a); and to create 619.01 (1) (c) 2 and (7) of the statutes, relating to creation of mandatory risk-sharing plans for health care liability insurance

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 619.01 (1) (a) of the statutes is amended to read:

619.01 (1) (a) Establishment of plans. If the commissioner finds after a hearing that in any part of this state automobile insurance, property insurance, health care liability insurance or workmen's compensation insurance is not readily available in the voluntary market, and that the public interest requires such availability, he may by rule either promulgate plans to provide such insurance coverages for any risks in this state which are equitably entitled to but otherwise unable to obtain such coverage, or may call upon the insurance industry to prepare plans for his approval.

SECTION 2. 619.01 (1) (c) of the statutes is renumbered 619.01 (1) (c) 1 and amended to read:

619.01 (1) (c) 1. Each plan, except a health care liability insurance plan, shall require participation by all insurers doing any business in this state of the types covered by the specific plan and all agents licensed to represent such insurers in this state for the specified types of business, except that the

commissioner may exclude classes of persons for administrative convenience or because it is not equitable or practicable to require them to participate in the plan.

SECTION 3. 619.01 (1) (c) 2 of the statutes is created to read:

619.01 (1) (c) 2. Each health care liability insurance plan shall require participation by all insurers insuring persons in this state against liability resulting from personal injuries. Any deficit in a health care liability insurance plan in any year shall be recouped by rate increases for such plan applicable prospectively. Any surplus over the loss reserves in such a plan in any year shall be distributed by rate decreases for such plan applicable prospectively.

SECTION 4. 619.01 (7) of the statutes is created to read:

619.01 (7) HEALTH CARE LIABILITY POLICY LIMITS. Health care liability insurance plans established under this section shall provide minimum coverage to insureds in the amount of not less than $100,000 for each occurrence and $300,000 for all occurrences in any one policy year for the protection of persons who are legally entitled to recover damages from the insured for errors, omissions or neglect in the performance of the insured's professional services. If an insured has excess limits liability coverage or such coverage is available to him, the coverage provided under such plans shall be equal to the minimum level of such excess limits coverage. If the insured does not have excess limits liability coverage and such coverage is not available to him, the commissioner may establish minimum levels of coverage higher than the minimum limits specified in this subsection for such plans.

Exhibit C to SB 594

SENATE BILL NO. 400 – COMMITTEE ON JUDICIARY

CHAPTER.....

AN ACT relating to insurance; authorizing the commissioner of insurance to promulgate regulations establishing a Nevada Essential Insurance Association; vesting administrative powers in a board of directors; assigning powers and duties to the association and the commissioner; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. Chapter 679B of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this act.

SEC. 2. *1. If after a hearing the commissioner determines that a voluntary or mandatory plan would, in his judgment, fail for any reason to provide essential insurance coverage, he may, by regulation, establish a nonprofit unincorporated legal entity to be known as the Nevada Essential Insurance Association. All insurers required to participate pursuant to subsection 3 of NRS 686B.180 shall become members of the association as a condition of their authority to transact insurance in this state.*

2. The association shall perform its functions under a plan of operation established by regulations promulgated by the commissioner pursuant to subsection 1 of NRS 686B.180.

SEC. 3. *1. The administrative powers of the Nevada Essential Insurance Association shall be vested in a board of directors consisting of not less than five nor more than nine members serving terms as established in the plan of organization. The members of the board shall be appointed by the commissioner with due consideration given to the composition of the membership of the association and to the interests of the insureds who are provided essential insurance coverage by the association.*

2. Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors and for reasonable and equitable compensation as may be prescribed by the terms of the plan of organization.

3. The board of directors of the association shall submit to the commissioner a plan of organization for the association and make suitable or necessary amendments thereto to assure the fair, reasonable and equitable administration of the association. The plan of operation shall become effective upon approval, in writing by the commissioner.

4. If the association fails to submit a suitable plan of operation within a reasonable period of time, or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall promulgate a plan as necessary or advisable to effectuate the provisions of this section.

SEC. 4. *1. The Nevada Essential Insurance Association shall, for purposes of this section and to the extent approved by the commissioner, have the general powers and authority granted under the laws of this state to carriers licensed to transact the kinds of insurance defined in NRS 681A.020 to 681A.080, inclusive.*

2. The association may take any necessary action to make available necessary insurance, including but not limited to the following:

(a) Assess participating insurers amounts necessary to pay the obligations of the association, administration expenses, the cost of examinations conducted pursuant to NRS 687A.110 and other expenses authorized by this chapter. The assessment of each member insurer for the kind or kinds of insurance designated in the plan shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year bear to the net direct written premiums of all member insurers for the preceding calendar year. A member insurer may not be assessed in any year an amount greater than 5 percent of his net direct written premiums for the preceding calendar year. Each member insurer shall be allowed a premium tax credit at the rate of 20 percent per year for 5 successive years following termination of the association.

(b) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this section.

(c) Sue or be sued, including taking any legal action necessary to recover any assessments for, on behalf of or against participating carriers.

(d) Investigate claims brought against the fund and adjust, compromise, settle and pay covered claims to the extent of the association's obligation and deny all other claims. Process claims through its employees or through one or more member insurers or other persons designated as servicing facilities. Designation of a service facility is subject to the approval of the commissioner but such designation may be declined by a member insurer.

(e) Classify risks as may be applicable and equitable.

(f) Establish appropriate rates, rate classifications and rating adjustments and file such rates with the commissioner in accordance with NRS 686B.

(g) Administer any type of reinsurance program for or on behalf of the association or any participating carriers.

(h) Pool risks among participating carriers.

(i) Issue and market, through agents, policies of insurance providing the coverage required by this section in its own name or on behalf of participating carriers.

(j) Administer separate pools, separate accounts or other plans as may be deemed appropriate for separate carriers or groups of carriers.

(k) Invest, reinvest and administer all funds and moneys held by the association.

(l) Borrow funds needed by the association to effect the purposes of this section.

(m) Develop, effectuate and promulgate any loss-prevention programs aimed at the best interests of the association and the insuring public.

(n) Operate and administer any combination of plans, pools, reinsurance arrangements or other mechanisms as deemed appropriate to best accomplish the fair and equitable operation of the association for the purposes of making available essential insurance coverage.

SEC. 5. *The commissioner and the Nevada Essential Insurance Association may:*

1. Give consideration to the need for adequate and readily accessible coverage, to alternative methods of improving the market affected, to the preferences of the insurers and agents, to the inherent limitations of the insurance mechanism, to the need for reasonable underwriting standards and to the requirement of reasonable loss-prevention measures.

2. Establish procedures that will create minimum interference with the voluntary market.

3. Spread the burden imposed by the facility equitably and efficiently.

4. Establish procedures for applicants and participants to have grievances reviewed.

5. Take all reasonable and necessary steps to dissolve the association at the earliest date when essential insurance becomes readily available in the private market. The dissolution of the association, including its assets and liabilities, shall be accomplished under the supervision of the commissioner in an equitable and reasonable manner.

SEC. 6. *There is no liability on the part of, and no cause of action of any nature arises, against the Nevada Essential Insurance Association or its agents or employees, members of the board or the commissioner or his representatives for any good faith performance of their powers and duties under sections 1 to 6, inclusive, of this act.*

SEC. 7. This act shall become effective upon passage and approval.

SENATE BILL NO. 401 – COMMITTEE ON JUDICIARY

CHAPTER.....

AN ACT relating to insurance; revising provisions relating to mandatory insurance plans when essential insurance coverage is unavailable; clarifying the definition of liability insurance as a form of casualty insurance; eliminating malpractice insurance as a separate form of casualty insurance; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. NRS 681A.020 is hereby amended to read as follows:

681A.020 1. "Casualty insurance" includes:

(a) Vehicle insurance. Insurance against loss of or damage to any land vehicle or aircraft or any draft or riding animal or to property while contained therein or thereon or being loaded or unloaded therein or therefrom, from any hazard or cause, and against any loss, liability or expense resulting from or incidental to ownership, maintenance or use of any such vehicle, aircraft or animal, together with insurance against accidental injury to individuals, irrespective of legal liability of the insured, including the named insured, while in, entering, alighting from, adjusting, repairing, cranking, or caused by being struck by a vehicle, aircraft or draft or riding animal, if such insurance is issued as an incidental part of insurance on the vehicle, aircraft or draft or riding animal.

(b) Liability insurance. Insurance against legal liability for the death, injury or disability of any human being, or for damage to property [;] , *including liability resulting from negligence in rendering expert, fiduciary or professional services;* and provisions of medical, hospital, surgical, disability benefits to injured persons and funeral and death benefits to dependents, beneficiaries or personal representatives of persons killed, irrespective of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance.

(c) Workmen's compensation and employer's liability. Insurance of the obligations accepted by, imposed upon or assumed by employers under law for death, disablement or injury of employees.

(d) Burglary and theft. Insurance against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation, or wrongful conversion, disposal or concealment, or from any attempt at any of the foregoing, including supplemental coverage for medical, hospital, surgical and funeral expense incurred by the named insured or any other person as a result of bodily injury during the commission of a burglary, robbery or theft by another, and also, insurance against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptances or any other valuable papers and documents, resulting from any cause.

(e) Personal property floater. Insurance upon personal effects against loss or damage from any cause.

(f) Glass. Insurance against loss or damage to glass, including its lettering, ornamentation and fittings.

(g) Boiler and machinery. Insurance against any liability and loss or damage to property or interest resulting from accidents to or explosions of boilers, pipes, pressure containers, machinery or apparatus, and to make inspection of and issue certificates of inspection upon boilers, machinery and apparatus of any kind, whether or not insured.

(h) Leakage and fire extinguishing equipment. Insurance against loss or damage to any property or interest caused by the breakage or leakage of sprinklers, hoses, pumps and other fire-extinguishing equipment or apparatus, water pipes or containers, or by water entering through leaks or openings in buildings, and insurance against loss or damage to such sprinklers, hoses, pumps and other fire-extinguishing equipment or apparatus.

(i) Credit and mortgage guaranty. Insurance against loss or damage resulting from failure of debtors to pay their obligations to the insured, and insurance of real property mortgage lenders against loss by reason of nonpayment of the mortgage indebtedness.

(j) [Malpractice. Insurance against legal liability of the insured, and against loss, damage or expense incidental to a claim of such liability, and including medical, hospital, surgical and funeral benefits to injured persons, irrespective of legal liability of the insured, arising out of the death, injury or disablement of any person, or arising out of damage to the economic interest of any person, as the result of negligence in rendering expert, fiduciary or professional service.

(k)] Elevator. Insurance against loss of or damage to any property of the insured, resulting from the ownership, maintenance or use of elevators, except loss or damage by fire, and to make inspection of and issue certificates of inspection upon, elevators.

[(l)] *(k)* Congenital defects. Insurance against congenital defects human beings.

[(m)] *(l)* Livestock. Insurance against loss or damage to livestock, and services of a veterinary for such animals.

[(n)] *(m)* Entertainments. Insurance indemnifying the producer of any motion picture, television, radio, theatrical, sport, spectacle, entertainment, or similar production, event or exhibition against loss from interruption, postponement or cancellation thereof due to death, accidental injury or sickness of performers, participants, directors or other principals.

[(o)] *(n)* Miscellaneous. Insurance against any other kind of loss, damage or liability properly a subject of insurance and not within any other kind of insurance as defined in this chapter, if such insurance is not disapproved by the commissioner as being contrary to law or public policy.

2. Provision of medical, hospital, surgical and funeral benefits, and of coverage against accidental death or injury, as incidental to and part of other insurance as stated under paragraphs (a) (vehicle), (b) (liability), (d) (burglary), (g) (boiler and machinery), [(j) (malpractice),] and (k) (elevator) of subsection 1 shall for all purposes be deemed to be the same kind of insurance to which it is so incidental, and shall not be subject to provisions of this code applicable to life and health insurances.

SEC. 2. NRS 686B.180 is hereby amended to read as follows:

686B.180 1. If the commissioner finds after a hearing that in any part of this state any essential insurance coverage is not readily available in the voluntary market, and that the public interest requires such availability, he may by [rule] *regulation* either promulgate plans to provide such insurance coverages for any risks in this state which are equitably entitled to but otherwise unable to obtain such coverage, or may call upon the industry to prepare plans for his approval. *Such plans may also include any kind of reinsurance that is unavailable and that would facilitate making essential insurance coverage available where it would otherwise not be available.*

2. The plan promulgated or prepared under subsection 1 shall:

(a) Give consideration to the need for adequate and readily accessible coverage, to alternative methods of improving the market affected, to the preferences of the insurers and agents, to the inherent limitations of the insurance mechanism, to the need for reasonable underwriting standards, and to the requirement of reasonable loss-prevention measures;

(b) Establish procedures that will create minimum interference with the voluntary market;

(c) Spread the burden imposed by the facility equitably and efficiently within the industry; and

(d) Establish procedures for applicants and participants to have grievances reviewed by an impartial body.

3. Each plan shall require participation by all insurers doing any business in this state of the [types] *kinds* covered by the specific plan and all agents licensed to represent such insurers in this state for the specified [types] *kinds* of business, except that the commissioner may exclude *kinds of insurance, classes of insurers or* classes of persons for administrative convenience or because it is not equitable or practicable to require them to participate in the plan.

4. The plan may provide for optional participation by insurers not required to participate under subsection 3.

5. Each plan shall provide for the method of *underwriting and* classifying risks, [and] making and filing rates [applicable thereto.] , *adjusting and processing claims and any other insurance or investment function that is necessary for the purpose of providing essential insurance coverage.*

6. The plan shall specify the basis of participation *and assessment* of insurers [and] *as necessary and shall provide for the participation of* agents and the conditions under which risks must be accepted.

7. Every participating insurer and agent shall provide to any person seeking coverages of kinds available in the plans the services prescribed in the plans, including full information on the requirements and procedures for obtaining coverage under the plans whenever the business is not placed in the voluntary market.

8. The plan shall specify what commission rates shall be paid for business placed in the plans.

9. If the commissioner finds that the lack of cooperating insurers or agents in an area makes the functioning of the plan difficult, he may order that the plan set up a branch service office or take other appropriate steps to insure that service is available.

10. The existing assigned risk plan set up under former NRS 694.390 shall continue unless changed in accordance with this chapter.

SEC. 3. Chapter 686B of NRS is hereby amended by adding thereto a new section which shall read as follows:

There is no liability on the part of, and no cause of action of any nature arises, against the commissioner or his representatives or any essential insurance association, its agents or employees, under a plan established pursuant to the provisions of NRS 686B.180, for any good faith action taken by them in the performance of their powers and duties under such plan.

SEC. 4. This act shall become effective upon passage and approval.

SENATE BILL NO. 402 – COMMITTEE ON JUDICIARY

CHAPTER.....

AN ACT regarding liability of persons rendering gratuitous emergency care; revising provisions relating to location of emergency; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. NRS 41.500 is hereby amended to read as follows:

41.500 1. [Any] *Except as provided in NRS 41.505, any* person in this state, who renders emergency care or assistance [at the scene of] *in* an emergency, gratuitously and in good faith, shall not be held liable for any civil damages as a result of any act or omission, not amounting to gross negligence, by such person in rendering the emergency care or assistance or as a result of any act or failure to act, not amounting to gross negligence, to provide or arrange for further medical treatment for the injured person.

2. Any person in this state who acts as an ambulance driver or attendant on an ambulance operated by a volunteer ambulance service or as a volunteer driver or attendant on an ambulance operated by a political subdivision of this state, or owned by the Federal Government and operated by a contractor of the Federal Government, and who in

SB

597

An Act relating to date of submission of reports concerning bingo, raffles, and ice pools."

COMMITTEE REPORT

HOUSE

Mr. Speaker: Date May 20, 1976

The Committee on JUDICIARY has had SB 597 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

Second Session - Ninth Legislature

I. REQUEST
Bill No
Title: Fee Structure Recommended by the Department.
Request by: Date:
Return Date Requested:
Agency: Revenue Program: Audit

II. FISCAL DETAIL
Budget Request Unit(s) Affected: Audit Division

A. EXPENDITURES: (Thousands of dollars)

	OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100	PERSONAL SERVICES	-0-	39.4	40.6	41.8	44.3	45.7
200	TRAVEL	-0-	5.0	5.0	5.0	5.0	5.0
300	CONTRACTUAL	-0-	6.0	6.0	6.0	6.0	6.0
400	COMMODITIES	-0-	.3	.3	.3	.3	.3
500	EQUIPMENT	-0-	1.2	---	---	---	---
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL	-0-	51.9	51.9	53.1	55.6	57.0

B. FUNDING: (Thousands of dollars)

GENERAL FUND	-0-	51.9	51.9	53.1	55.6	57.0
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	0 / 0	2 / 0	2 / 0	2 / 0	2 / 0	2 / 0
MAN MONTHS (P./T.)	0 / 0	24 / 0	24 / 0	24 / 0	24 / 0	24 / 0

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)
See memo to R. D. Stevenson dated March 23, 1976.

IV. ATTACHMENTS See memo to R. D. Stevenson dated March 23, 1976

V. DATE: 3-23-76 PREPARED BY:
Director, Audit Division

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

H/S 50

Lewis Nelson

Introduced: 2/2/76
Referred: Judiciary

IN THE SENATE BY THE JUDICIARY COMMITTEE

SENATE BILL NO. 597

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to date of submission of reports concerning bingo, raffles, and ice pools."

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

* Section 1. AS 05.15.080 is amended to read:

Sec. 05.15.080. REPORTS BY PERMITTEES. If the licensed activity grosses over $500, the permittee shall, by January 31 of the year following [WITHIN 15 DAYS AFTER] the holding of the specific activity, file for public inspection with the city or borough clerk nearest to the location of the activity licensed and with the commissioner of revenue, an itemized statement showing all income, [and] all & disbursements of net proceeds expense in connection with the activity. [If the activity grosses over $20,000, the commissioner may extend the time for filing the report for a period not exceeding 60 days.]

* Sec. 2. AS 05.15.090 is amended to read:

Sec. 05.15.090. REPORTS TO THE LEGISLATURE BY COMMISSIONER OF REVENUE, ATTORNEY GENERAL AND COMMISSIONER OF PUBLIC SAFETY. Before March 2 of [WITHIN 10 DAYS AFTER THE CONVENING OF THE LEGISLATURE] each year the commissioner of revenue shall submit a detailed report containing a summary of all reports required of permittees and recommending a permit fee scale that will cover costs of administration and enforcement. The attorney general and the commissioner of public safety shall, within 10 days after the convening of the legislature each year, submit a jointly prepared, detailed report outlining the effect, if any, of the operation of this chapter on the legal and law enforcement activi-

ties of the state.

from the games operated by the permittees. The increased processing fee plus the one percent annual fee would generate approximately $89,000 per year, thus providing sufficient funds to employ two full-time staff members to work specifically on the enforcement of this law. These positions have never been specifically funded in the past. In light of today's high cost factors and the considerable enforcement problems that we encounter, I feel these rates would be equitable. To accomplish this, I suggest the following modification to Section 05.15.020:

> Sec. 05.15.020. Annual permit and fees. No activity permitted under this chapter may be conducted unless an annual permit issued by the department is first obtained [AND A FEE OF $10 IS PAID TO THE DEPARTMENT.] A separate processing fee of $50 shall be paid for each authorized activity. The applicable fees shall accompany the application for a permit. [NO ACTIVITY IS PERMITTED FOR A PERIOD OF 15 DAYS AFTER APPLICATION.] An additional fee of 1% of the ~~gross receipts~~ net proceeds shall be paid by each permittee annually. This fee is due and payable at the same time as the annual financial statement. ~~Gross receipts~~ net proceeds for purposes of the annual fee shall be the total monies received by the permittee from all games of chance and skill prior to any deduction for prizes, operating expenses or disbursements of net proceeds.

If you have any questions concerning my suggestions, please contact me.

Sincerely,

Sterling Gallagher
Commissioner

Members
SB 597

STATE OF ALASKA

DEPARTMENT OF REVENUE

JAY S. HAMMOND, GOVERNOR

STATE OFFICE BUILDING / POUCH SA – JUNEAU 99811

May 17, 1976

The Honorable Terry Gardiner
Chairman, House Judiciary Committee
Alaska State Legislature

Dear Chairman Gardiner:

re Senate Bill 597

This bill attempts to solve some of the major reporting problems that are currently in the statutes regarding Games of Chance and Skill. I would suggest that the re-draft of Section 05.15.080 be further modified to read as follows:

Sec. 05.15.080. REPORTS BY PERMITTEES. [IF THE LICENSED ACTIVITY GROSSES OVER $500,] the permitte shall, by January 31 of the following year [WITHIN 15 DAYS AFTER THE HOLDING OF THE SPECIFIC ACTIVITY,] file for public inspection with the city or borough clerk nearest to the location of the activity licensed and with the commissioner of revenue, an itemized statement showing all income, [AND] authorized expenses and disbursements of net proceeds in connection with the activity. [IF THE ACTIVITY GROSSES OVER $20,000, THE COMMISSIONER MAY EXTEND THE TIME FOR FILING THE REPORT FOR A PERIOD NOT EXCEEDING 60 DAYS.]

I feel that this wording would solve the current problems encountered by both the permittees and the Department of Revenue. With the extension of the filing date to January 31 there would be no need for the provision authorizing the Commissioner to allow extensions up to 60 days. Further, it is very important that all reports be filed by the due date so that a proper report can be filed with the Legislature as required.

I would further suggest that the legislature seriously look at raising the permit fees for the operation of Games of Chance and Skill. The current fee of $10.00 was established in 1960 when the original statute was enacted and no longer approaches covering the cost of administration of this program. I suggest that each activity be subject to a separate application processing fee and that the races be increased to $50.00 each. In addition I recommend an annual fee of one percent of the gross receipts

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER POUCH S – JUNEAU 99811

February 13, 1976

The Honorable Terry Gardiner
Chairman
House Judiciary Committee
Alaska State Legislature
State Capitol Building
Juneau, AK 99811

Re: Senate Bill No. 597

Dear Mr. Gardiner:

Senate Bill No. 597, an Act relating to date of submission of reports concerning bingo, raffles and ice pools was introduced in the House on February 11, 1976 and was referred to the House Judiciary Committee.

For the consideration of the House Judiciary Committee, I am enclosing a copy of a Fiscal Note and accompanying memorandum prepared by Gary L. Jenkins, Director, Audit Division, Department of Revenue as concerns Senate Bill No. 597. It is the opinion of the writer that the material contained in the Fiscal Note and memorandum was not reviewed by the Senate Judiciary Committee due to passage out of the Senate Judiciary Committee to the Rules Committee before the Department of Revenue information was transmitted.

If you or any members of the House Judiciary Committee have any questions on the material submitted, please telephone the writer at 465-2397 and I will contact Mr. Jenkins for further information or testimony at a hearing.

Very truly yours,

R. D. Stevenson
Special Assistant

cc: The Honorable Robert Ziegler
Chairman
Senate Judiciary Committee

Gary L. Jenkins
Director
Audit Division
Department of Revenue

THE LEGISLATURE OF THE STATE OF ALASKA
FISCAL NOTE
Second Session - Ninth Legislature

I. REQUEST

Bill No. Senate Bill 597

Title: Act relating to date of submission of reports concerning bingo, raffles & ice pools

Requested by: _____ Date: February 4, 1976

Return Date Requested: _____

Agency: Revenue Program: Audit

II. FISCAL DETAIL

Budget Request Unit(s) Affected: Audit Division

A. EXPENDITURES: (Thousands of dollars)

	OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100	PERSONAL SERVICES	-0-	38.6	39.8	41.0	42.2	43.5
200	TRAVEL	-0-	5.0	5.0	5.0	5.0	5.0
300	CONTRACTUAL	-0-	6.0	6.0	6.0	6.0	6.0
400	COMMODITIES	-0-	.3	.3	.3	.3	.3
500	EQUIPMENT	-0-	1.2	----	----	----	----
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL	-0-	51.1	51.1	52.3	53.5	54.8

B. FUNDING: (Thousands of dollars)

GENERAL FUND	-0-	51.1	51.1	52.3	53.5	54.8
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	0 / 0	2 / 0	2 / 0	2 / 0	2 / 0	2 / 0
MAN MONTHS (P./T.)	0 / 0	24 / 0	24 / 0	24 / 0	24 / 0	24 / 0

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

See memo to R. D. Stevenson dated February 4, 1976

IV. ATTACHMENTS - See memo to R. D. Stevenson dated February 4, 1976.

V. DATE: 2-4-76 PREPARED BY: Larry Hartig

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

H/S 50

02-001B (REV. 08-73)

MEMORANDUM

State of Alaska

TO: R. D. Stevenson
Special Assistant to Commissioner
Administrative Services

DATE: February 4, 1976

FILE NO:

TELEPHONE NO:

SUBJECT: Senate Bill 597

FROM: Gary L. Jenkins
Director
Audit Division

This bill attempts to solve some of the major reporting problems that are currently in the statutes regarding Games of Chance and Skill. I would suggest that the re-draft of Section 05.15.080 be further modified to read as follows:

> Sec. 05.15.080. REPORTS BY PERMITTEES. [IF THE LICENSED ACTIVITY GROSSES OVER $500,] The permittee shall, by January 31 of the following year [WITHIN 15 DAYS AFTER THE HOLDING OF THE SPECIFIC ACTIVITY,] file for public inspection with the city or borough clerk nearest to the location of the activity licensed and with the commissioner of revenue, an itemized statement showing all income, [AND] authorized expenses and disbursements of net proceeds in connection with the activity. [IF THE ACTIVITY GROSSES OVER $20,000, THE COMMISSIONER MAY EXTEND THE TIME FOR FILING THE REPORT FOR A PERIOD NOT EXCEEDING 60 DAYS.

I feel that this wording would solve the current problems encountered by both the permittees and the Department of Revenue. With the extension of the filing date to January 31 there would be no need for the provision authorizing the Commissioner to allow extensions up to 60 days. Further, it is very important that all reports be filed by the due date so that a proper report can be filed with the Legislature as required.

I would further suggest that this committee seriously look at raising the permit fees for the operation of Games of Chance and Skill. The current fee of $10.00 was established in 1960 when the original statute was enacted and no longer approaches covering the cost of administration of this program. I suggest that each activity be subject to a separate fee and that the rates be increased to $50.00 each for raffles and lotteries, ice classics, dog musher's contests, fish derbies and contests of skill, while the fee for bingo be increased to $100. In light of todays high cost factors and the considerable enforcement problems that we encounter with bingo, as compared to other games of chance and skill, I feel these rates would be equitable. To accomplish this, I suggest the following modification to Section 05.15.020:

> Sec. 05.15.020. Annual permit and fee. No activity permitted under this chapter may be conducted unless an annual permit issued by the department is first obtained [AND A FEE OF $10 IS PAID TO THE DEPARTMENT.] . A separate fee shall be paid for each authorized activity. A fee of $50 shall be paid for raffles and lotteries, ice classics, dog musher's contests, fish derbies and contests of skill. The fee for bingo is $100. The applicable fees shall accompany the application for a permit. [NO ACTIVITY IS PERMITTED FOR A PERIOD OF 15 DAYS AFTER APPLICATION.]

It is anticipated that the above fee schedule would generate a total of $53,750 in FY 77. This would provide sufficient funds to allow the Department to hire the necessary staff members to properly process applications and reports, as well as performing audits of the records of permittees to insure that they are complying with the statutes.

GLJ/bjm

members
SB 597

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

STATE OFFICE BUILDING / POUCH SA – JUNEAU 99811

May 17, 1976

The Honorable Terry Gardiner
Chairman, House Judiciary Committee
Alaska State Legislature

Dear Chairman Gardiner:

re Senate Bill 597

This bill attempts to solve some of the major reporting problems that are currently in the statutes regarding Games of Chance and Skill. I would suggest that the re-draft of Section 05.15.080 be further modified to read as follows:

adopted

Sec. 05.15.080. REPORTS BY PERMITTEES. [IF THE LICENSED ACTIVITY GROSSES OVER $500,] the permitte shall, by January 31 of the following year [WITHIN 15 DAYS AFTER THE HOLDING OF THE SPECIFIC ACTIVITY,] file for public inspection with the city or borough clerk nearest to the location of the activity licensed and with the commissioner of revenue, an itemized statement showing all income, [AND] authorized expenses and disbursements of net proceeds in connection with the activity. [IF THE ACTIVITY GROSSES OVER $20,000, THE COMMISSIONER MAY EXTEND THE TIME FOR FILING THE REPORT FOR A PERIOD NOT EXCEEDING 60 DAYS.]

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from the games operated by the permittees. The increased processing fee plus the one percent annual fee would generate approximately $89,000 per year, thus providing sufficient funds to employ two full-time staff members to work specifically on the enforcement of this law. These positions have never been specifically funded in the past. In light of today's high cost factors and the considerable enforcement problems that we encounter, I feel these rates would be equitable. To accomplish this, I suggest the following modification to Section 05.15.020:

> Sec. 05.15.020. Annual permit and fees. No activity permitted under this chapter may be conducted unless an annual permit issued by the department is first obtained [AND A FEE OF $10 IS PAID TO THE DEPARTMENT.] A separate processing fee of ~~$50~~ 20 shall be paid for each authorized activity. The applicable fees shall accompany the application for a permit. [NO ACTIVITY IS PERMITTED FOR A PERIOD OF 15 DAYS AFTER APPLICATION.] An additional fee of 1% of the ~~gross re-~~ net proceeds ~~ceipts~~ shall be paid by each permittee annually. This fee is due and payable at the same time as the annual financial statement. Gross receipts for purposes of the annual fee shall be the total monies received by the permittee from all games of chance and skill prior to any deduction for prizes, operating expenses or disbursements of net proceeds.

If you have any questions concerning my suggestions, please contact me.

Sincerely,

Sterling Gallagher
Commissioner

Second Session - Ninth Legislature

I. REQUEST
Bill No
Title: Fee Structure Recommended by the Department.
Request by: Date:
Return Date Requested:
Agency: Revenue Program: Audit

II. FISCAL DETAIL
Budget Request Unit(s) Affected: Audit Division

A. EXPENDITURES: (Thousands of dollars)

	OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100	PERSONAL SERVICES	-0-	39.4	40.6	41.8	44.3	45.7
200	TRAVEL	-0-	5.0	5.0	5.0	5.0	5.0
300	CONTRACTUAL	-0-	6.0	6.0	6.0	6.0	6.0
400	COMMODITIES	-0-	.3	.3	.3	.3	.3
500	EQUIPMENT	-0-	1.2	---	---	---	---
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL	-0-	51.9	51.9	53.1	55.6	57.0

B. FUNDING: (Thousands of dollars)

GENERAL FUND	-0-	51.9	51.9	53.1	55.6	57.0
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	0 / 0	2 / 0	2 / 0	2 / 0	2 / 0	2 / 0
MAN MONTHS (P./T.)	0 / 0	24 / 0	24 / 0	24 / 0	24 / 0	24 / 0

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)
See memo to R. D. Stevenson dated March 23, 1976.

IV. ATTACHMENTS See memo to R. D. Stevenson dated March 23, 1976

V. DATE: 3-23-76 PREPARED BY:
Director, Audit Division

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

H/S 50

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH S – JUNEAU 99811

February 13, 1976

The Honorable Terry Gardiner
Chairman
House Judiciary Committee
Alaska State Legislature
State Capitol Building
Juneau, AK 99811

Re: Senate Bill No. 597

Dear Mr. Gardiner:

Senate Bill No. 597, an Act relating to date of submission of reports concerning bingo, raffles and ice pools was introduced in the House on February 11, 1976 and was referred to the House Judiciary Committee.

For the consideration of the House Judiciary Committee, I am enclosing a copy of a Fiscal Note and accompanying memorandum prepared by Gary L. Jenkins, Director, Audit Division, Department of Revenue as concerns Senate Bill No. 597. It is the opinion of the writer that the material contained in the Fiscal Note and memorandum was not reviewed by the Senate Judiciary Committee due to passage out of the Senate Judiciary Committee to the Rules Committee before the Department of Revenue information was transmitted.

If you or any members of the House Judiciary Committee have any questions on the material submitted, please telephone the writer at 465-2397 and I will contact Mr. Jenkins for further information or testimony at a hearing.

Very truly yours,

R. D. Stevenson
Special Assistant

cc: The Honorable Robert Ziegler
Chairman
Senate Judiciary Committee

Gary L. Jenkins
Director
Audit Division
Department of Revenue

THE LEGISLATURE OF THE STATE OF ALASKA
FISCAL NOTE
Second Session - Ninth Legislature

I. REQUEST
Bill No. Senate Bill 597
Title: Act relating to date of submission of reports concerning bingo, raffles & pull tabs
Requested by: Date: February 4, 1976
Return Date Requested:
Agency: Revenue Program: Audit

II. FISCAL DETAIL
Budget Request Unit(s) Affected: Audit Division

A. EXPENDITURES: (Thousands of dollars)

	OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100	PERSONAL SERVICES	-0-	38.6	39.8	41.0	42.2	43.5
200	TRAVEL	-0-	5.0	5.0	5.0	5.0	5.0
300	CONTRACTUAL	-0-	6.0	6.0	6.0	6.0	6.0
400	COMMODITIES	-0-	.3	.3	.3	.3	.3
500	EQUIPMENT	-0-	1.2	----	----	----	----
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL	-0-	51.1	51.1	52.3	53.5	54.8

B. FUNDING: (Thousands of dollars)

GENERAL FUND	-0-	51.1	51.1	52.3	53.5	54.8
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	0 / 0	2 / 0	2 / 0	2 / 0	2 / 0	2 / 0
MAN MONTHS (P./T.)	0 / 0	24 / 0	24 / 0	24 / 0	24 / 0	24 / 0

02-0018 (REV. 06-73)

MEMORANDUM State of Alaska

TO: R. D. Stevenson
Special Assistant to Commissioner
Administrative Services

DATE: February 4, 1976

FILE NO:

TELEPHONE NO:

FROM: Gary L. Jenkins
Director
Audit Division

SUBJECT: Senate Bill 597

This bill attempts to solve some of the major reporting problems that are currently in the statutes regarding Games of Chance and Skill. I would suggest that the re-draft of Section 05.15.080 be further modified to read as follows:

> Sec. 05.15.080. REPORTS BY PERMITTEES. [IF THE LICENSED ACTIVITY GROSSES OVER $500,] The permittee shall, by January 31 of the following year [WITHIN 15 DAYS AFTER THE HOLDING OF THE SPECIFIC ACTIVITY,] file for public inspection with the city or borough clerk nearest to the location of the activity licensed and with the commissioner of revenue, an itemized statement showing all income, [AND] authorized expenses and disbursements of net proceeds in connection with the activity. [IF THE ACTIVITY GROSSES OVER $20,000, THE COMMISSIONER MAY EXTEND THE TIME FOR FILING THE REPORT FOR A PERIOD NOT EXCEEDING 60 DAYS.

I feel that this wording would solve the current problems encountered by both the permittees and the Department of Revenue. With the extension of the filing date to January 31 there would be no need for the provision authorizing the Commissioner to allow extensions up to 60 days. Further, it is very important that all reports be filed by the due date so that a proper report can be filed with the Legislature as required.

I would further suggest that this committee seriously look at raising the permit fees for the operation of Games of Chance and Skill. The current fee of $10.00 was established in 1960 when the original statute was enacted and no longer approaches covering the cost of administration of this program. I suggest that each activity be subject to a separate fee and that the rates be increased to $50.00 each for raffles and lotteries, ice classics, dog musher's contests, fish derbies and contests of skill, while the fee for bingo be increased to $100. In light of todays high cost factors and the considerable enforcement problems that we encounter with bingo, as compared to other games of chance and skill, I feel these rates would be equitable. To accomplish this, I suggest the following modification to Section 05.15.020:

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It is anticipated that the above fee schedule would generate a total of $53,750 in FY 77. This would provide sufficient funds to allow the Department to hire the necessary staff members to properly process applications and reports, as well as performing audits of the records of permittees to insure that they are complying with the statutes.

GLJ/bjm

Members
SB597

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

STATE OFFICE BUILDING / POUCH SA – JUNEAU 99811

May 17, 1976

The Honorable Terry Gardiner
Chairman, House Judiciary Committee
Alaska State Legislature

Dear Chairman Gardiner:

re Senate Bill 597

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from the games operated by the permittees. The increased processing fee plus the one percent annual fee would generate approximately $89,000 per year, thus providing sufficient funds to employ two full-time staff members to work specifically on the enforcement of this law. These positions have never been specifically funded in the past. In light of today's high cost factors and the considerable enforcement problems that we encounter, I feel these rates would be equitable. To accomplish this, I suggest the following modification to Section 05.15.020:

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If you have any questions concerning my suggestions, please contact me.

Sincerely,

Sterling Gallagher
Commissioner

THE LEGISLATURE OF THE STATE OF ALASKA
FISCAL NOTE
Second Session - Ninth Legislature

I. REQUEST
Bill No.
Title: Fee Structure Recommended by the Department.
Request by: Date:
Return Date Requested:
Agency: Revenue Program: Audit

II. FISCAL DETAIL
Budget Request Unit(s) Affected: Audit Division

A. EXPENDITURES: (Thousands of dollars)

	OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100	PERSONAL SERVICES	-0-	39.4	40.6	41.8	44.3	45.7
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300	CONTRACTUAL	-0-	6.0	6.0	6.0	6.0	6.0
400	COMMODITIES	-0-	.3	.3	.3	.3	.3
500	EQUIPMENT	-0-	1.2	---	---	---	---
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL	-0-	51.9	51.9	53.1	55.6	57.0

B. FUNDING: (Thousands of dollars)

GENERAL FUND	-0-	51.9	51.9	53.1	55.6	57.0
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	0 / 0	2 / 0	2 / 0	2 / 0	2 / 0	2 / 0
MAN MONTHS (P./T.)	0 / 0	24 / 0	24 / 0	24 / 0	24 / 0	24 / 0

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)
See memo to R. D. Stevenson dated March 23, 1976.

IV. ATTACHMENTS See memo to R. D. Stevenson dated March 23, 1976

V. DATE: 3-23-76 PREPARED BY:
Director, Audit Division

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

H/S 50

SB
629

"An Act relating to the enactment of the Interstate Compact on the Placement of Children; and providing for an effective date."

COMMITTEE REPORT

HOUSE

5/21/76

Mr. Speaker: Date May 24, 1976

The Committee on JUDICIARY has had CSSB 629

under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

STATE OF ALASKA
JAY S. HAMMOND, GOVERNOR
DEPT. OF HEALTH AND SOCIAL SERVICES
OFFICE OF THE COMMISSIONER
POUCH H 01 – JUNEAU 99811

May 13, 1976

The Honorable Susan Sullivan
Chairman, House HESS
Alaska State Legislature
Pouch B
Juneau, Alaska 99811

Dear Ms. Sullivan:

Please find enclosed proposed changes as requested of Gary Sheridan, Social Service Program Coordinator, Division of Social Services by the House Health, Education & Social Services Committee after his testimony given for the Department of Health & Social Services on CS for Senate Bill No. 629 on May 12, 1976, "An Act relating to the enactment of the Interstate Compact on the Placement of Children."

Sincerely Yours,

Francis S.L. Williamson
Commissioner

cc: Senator Genie Chance
Joe Guthrie

DEPARTMENT OF HEALTH & SOCIAL SERVICES

PROPOSED CHANGES TO CS SENATE BILL NO. 629

1. In Article VII, Page 5, Line 20, delete the word "governor" and insert the words "executive head".

2. On Page 8 after Sec. 47.70.070 ending on line 10, insert an additional section entitled "Sec. 47.70.080. EXECUTIVE HEAD. As used in Article VII of the Interstate Compact for the Placement of Children, the term "executive head" means the Governor. The Governor is hereby authorized to appoint a Compact Administrator in accordance with the terms of said Article VII".

SB
630

"An Act exempting apprenticeship programs from age distrimination prohibitions."

COMMITTEE REPORT

4/14/76

HOUSE

Mr. Speaker: Date April 23, 1976

The Committee on JUDICIARY has had SB 630 under consideration. A Majority of the members of the Committee

(X) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

period, the Commission may effect designation of each of the agencies by publishing the list of them as an amendment to § 1601.12(m). Additions to the list may be made by the Commission by similar notice and publication. The proposed "706 Agencies" are as follows:

(Sec. 713(a), 78 Stat. 265 (42 U. S. C. 2000e-12(a)))

Written comments pursuant to this notice must be filed with the Commission on or before January 23, 1976.

Signed at Washington, D. C. this 22nd day of December 1975.

[¶ 5362] AGE BIAS IN KENTUCKY APPRENTICESHIP PROGRAM

Brown and Williamson Tobacco Corporation, and International Association of Machinists and Aerospace Workers, Local Number 681. Decision of the Kentucky Commission on Human Rights. Case No. 421-E, December 12, 1975.

Kentucky—Fair Employment Practices Act

Age Discrimination—Apprenticeship Program—Eligibility.—An employee was improperly disqualified and declared ineligible for entry into a labor-management-sponsored apprenticeship program because he was outside the program's established maximum age limitation of 38 years.

Back reference.—Kentucky ¶ 23,199.

[*Digest*] Complainant alleged age discrimination by the named employer and its union in the design and administration of an apprenticeship training program which set a maximum age limit of 38 years. The Commission found reasonable cause to find discrimination did exist.

Background

Labor and management established an apprenticeship program consistent with standards set forth in Sections 521.2 and 521.3 of the regulation of Wage and Hour and Public Contracts Division of the U. S. Department of Labor. The program was known as the Specialized Machine Adjuster-Repairman program and was administered by both parties.

The program maintained a maximum age limit of 38 years of age for applicants. There was an exception for those past 38 who served in the armed forces. They were allowed an additional year of age for each year of service, not to exceed a maximum of four years. Any applicant of more than 42 years was to be disqualified as being too old.

Complainant applied for an apprenticeship. Although 40 years of age he was considered eligible, by virtue of two years he served in the armed forces. However, because he had reached his 41st year without having been selected, complainant's eligibility lapsed and he was adjudged too old.

Conclusions of Law

The Commission reached the following conclusions of law:

1. Respondent, Brown and Williamson Tobacco Corporation, is an "employer" as

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defined in KRS 344.030(1) and is subject to the provisions of KRS 344.070.

2. Respondent, International Association of Machinists and Aerospace Workers, AFL-CIO Local No. 681, is a "labor organization" as defined in KRS 344.030(3) and is subject to the provisions of KRS 344.070.

3. Both respondents voluntarily joined together to form a joint labor-management committee, the purpose of which was to design and administer an apprenticeship training program which was subject to the provisions of KRS 344.070.

4. Respondents, individually and in concert through the joint labor-management committee have and continue to apply maximum age standards for admittance of applicants to the said apprenticeship program which deny individuals admission to or employment in, said program because of their age between forty and sixty-five and thereby constitutes a continuing pattern and practice of unlawful age discrimination in violation of KRS 344.070.

5. The jurisdiction of the Commission is not preempted by any federal legislation.

6. The provisions of KRS 344.070 have their full force and effect and are not in conflict with the Age Discrimination in Employment Act of 1967 or regulations.

7. It is the public policy and legislative purpose of the Commonwealth of Kentucky to prohibit discrimination because of age between forty and sixty-five in connection with apprenticeship programs or training.

Order

The Commission ordered the respondent to cease and desist from the unlawful age discrimination as well as to immediately modify and revise their existing program standards to eliminate the discriminatory maximum age standards so as to bring them into conformity with the requirements of KRS 344.070. Respondents were further ordered to identify every individual disqualified because of age and indicate to those still employed that they will no longer be so disqualified and will be placed in an existing pool for enrollment in the program.

[¶ 5089] AGE BIAS IN APPRENTICESHIP TRAINING IN KENTUCKY

Kentucky Attorney General's Opinion, OAG 72-493, August 3, 1972.

Kentucky—Fair Employment Practices Act

Age Discrimination—Apprenticeship Training—Inconsistent State Law Provisions.—A state civil rights law provision which makes it an unlawful employment practice to discriminate against an individual because of age between 40 and 65 would require the acceptance of an apprentice in this age bracket in a program, even though another apparently inconsiste provision indicates that the intent of the state law is to comply with federal law and regulations, which have been interpreted as eliminating apprenticeship programs from the type of age discrimination prohibition involved here. To correlate these apparent inconsistencies, the state human rights co mission, in determining whether there is discrimination because of age in apprenticeship programs, would need to look at the type of program, its length, and whether the employer's refusal to accept an older person in an apprenticeship program was reasonably or rationally justified by the nature of the program and the results to be achieved. The state commission would need to adjudge each claim of discrimination because of age in apprenticeship on a case-by-case basis. The employer had established a tool maker apprenticeship program which required 8000 hours of on-the-job training, which took approximately four years to complete and involved a sizeable investment by the company in time and money. The employer claimed that if a man age 60 were required to be taken into an apprenticeship program, he would be age 64 by the time he would have completed the same, and he would work approximately one year until he reached the age of retirement. Thus, under such a set of facts the employer would have spent a great deal of money for very little gain. In the hypothetical instances cited by the employer, the state commission could very well decide that the employer's refusal was reasonably justified because of the nature of the particular apprenticeship program. In another type of case where the program's length was 60 to 90 days and the applicant was 50 or 55 years of age with several years of useful employment after the end of the training period, the arbitrary refusal to employ the applicant might very well violate the proscriptions of the law. KRS 344.020 and KRS 344.070.

Back reference.—Ky. ¶ 23,199.

[¶ 5090] GOVERNMENT ASSURES EQUAL JOB OPPORTUNITY WITHOUT QUOTAS

After some recent public concern over the possible discriminatory effect of the use of goals in government affirmative action programs, President Nixon requested all appropriate agency heads to review their affirmative action efforts to make sure that none encourage the quota system or any other biased practices. Reproduced immediately below is the text of a memorandum, dated August 18, 1972, issued by Robert E. Hampton, Chairman of the U. S. Civil Service Commission, reflecting that request.

Following, is the content of another letter from Chairman Hampton, dated August 30, 197. reassuring Mr. Hyman Bookbinder, Washington representative of the American Jewish Committee, that the President's reminder of federal policy against quotas was not to be interpreted an abandonment or slowing down of the government's program to insure equal employment opportunities.

MEMORANDUM FOR HEADS OF DEPARTMENTS AND AGENCIES

August 18, 1972

President Nixon has asked that heads of departments and agencies review their policies with regard to achieving equal employment opportunity to ensure that they conform with his views expressed as follows:

> I have sought and will continue to seek to enlarge opportunities for men and women of all religious, ethnic and racial backgrounds to serve in responsible positions, but the criteria for selection that I have employed and will continue to employ will be based on merit. I share your support of affirmative efforts to ensure that all Americans have an equal chance to compete for employment opportunities, and to do so on the basis of individual ability.

With respect to these affirmative action programs, I agree that numerical goals

[¶ 23,201]

Section 344.010. [Definitions].—In this chapter—

(1) *"Person"* includes one or more individuals, labor unions, joint apprenticeship committees, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, or other legal or commercial entity; the State, any of its political or civil subdivisions or agencies;

(2) *"Commission"* means the Kentucky Commission on Human Rights;

(3) *"Commissioner"* means a member of the Commission;

(4) *"Discrimination"* means any direct or indirect act or practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial or any other act or practice of differentiation or preference in the treatment of a person or persons because of race, color, religion, national origin, sex, or age between forty and sixty-five, or the aiding, abetting, inciting, coercing, or compelling thereof.

(5) through (9)*

(10) "Licensing agency" means any public or private organization which has as one of its duties the issuing of licenses or the setting of standards which an individual must hold or must meet as a condition to practicing a particular trade or profession or to obtaining certain employment within the state or as a condition to competing effectively with an individual who does hold a license or meet the standards.

(11) "Credit transaction" shall mean any open or closed end credit transaction whether in the nature of a loan, retail installment transaction, credit card issue or charge, or otherwise, and whether for personal or for business purposes, in which a service, finance, or interest charge is imposed, or which provides for repayment in scheduled payments, when such credit is extended in the course of the regular course [sic] of any trade or commerce, including but not limited to transactions by banks, savings and loan associations or other financial lending institutions of whatever nature, stock brokers, or by a merchant or mercantile establishment which as part of its ordinary business permits or provides that payment for purchases of property or services therefrom may be deferred. [Sec. 344.010 reads as last amended by Ch. 104, L. 1974, effective June 21, 1974.]

[¶ 23,202]

Sec. 344.020. [Purposes].—(1) The general purposes of this Act are:

(a) To provide for execution within the State of the policies embodied in the Federal Civil Rights Act of 1964 (78 Stat. 241), Title VIII of the Federal Civil Rights Act of 1968 (82 Stat. 81), and the Federal Age Discrimination in Employment Act of 1967 (81 Stat. 602).

(b) To safeguard all individuals within the State from discrimination because of race, color, religion, national origin, sex, and age; thereby . . . to make available to the State their full productive capacities in employment, to secure the State against domestic strife and unrest which would menace its democratic institutions, to preserve the public safety, health and general welfare, and to further the interests, rights and privileges of individuals within the State.

(c) [Subsection (c) dealing with the sale and lease of property is not reproduced.]

(2) This chapter shall be construed to further the general purposes stated in this Section and the special purposes of the particular provision involved.

(3) Nothing in this chapter shall be construed as indicating an intent to exclude local laws on the same subject matter not inconsistent with this chapter.

(4) Nothing contained in this chapter shall be deemed to repeal any other law of this state relating to discrimination because of race, color, religion, national origin, sex, or age. [Sec. 344.020 reads as last amended by Ch. 104, L. 1974, effective June 21, 1974.]

[¶ 23,203]

Sec. 344.030. [Other Definitions].—For the purposes of KRS 344.030 to 344.110:

(1) *"Employer"* means a person who has 8 or more employes within the State in each of twenty or more calendar weeks in the current or preceding calendar year and an agent of such a person.

(2) *"Employment agency"* means a person regularly undertaking with or without compensation to procure employes for an employer or to procure for employes opportunities to work for an employer and includes an agent of such person.

(3) *"Labor organization"* means a labor organization and an agent of such an or-

*Subsections (5) through (9) defining "Real property", "Real estate operator", "Real estate broker", "Real estate salesman," and "Financial institution" referring to real estate are not reproduced.

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ganization, and includes an organization of any kind, an agency or employe representation committee, group, association, or plan so engaged in which employes participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and a conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(4) *"Employe"* means an individual employed by an employer, but does not include an individual employed by his parents, spouse or child, or an individual employed to render services as a domestic in the home of the employer.

(5) *"Religion"* means all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's busines.. [Sec. 344.030 reads as last amended by Ch. 187, L. 1974, approved March 29, 1974, and effective June 21, 1974.]

[¶ 23,204]

Sec. 344.040. [Unlawful Employment Practices of Employer].--It is an unlawful practice for an employer—

(1) To fail or refuse to hire, or to discharge any individual, or otherwise to discriminate against an individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, national origin, sex, or age between forty and sixty-five; or

(2) To limit, segregate, or classify his employes in any way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect his status as an employe, because of such individual's race, color, religion, national origin, sex, or age between forty and sixty-five. [Reads as last amended by H. B. 430, L. 1972, effective June 16, 1972.]

[¶ 23,205]

Sec. 344.050. [Unlawful Employment Practices of Employment Agency].—(1) It is an unlawful practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against an individual because of his race, color, religion, national origin, sex, or age between forty and sixty-five, or to classify or refer for employment an individual on the basis of his race, color, religion, national origin, sex, or age between forty and sixty-five.

(2) It is an unlawful practice for a licensing agency to refuse to license, or to bar or terminate from licensing an individual because of race, color, religion, national origin, sex, or age between forty and sixty-five. [Sec. 344.050 reads as last amended by H. B. 430, L. 1972, effective June 16, 1972.]

[¶ 23,206]

Sec. 344.060. [Unlawful Employment Practices of Labor Union].—It is an unlawful practice for a labor organization—

(1) To exclude or to expel from its membership, or otherwise to discriminate against, a member or applicant for membership because of his race, color, religion, national origin, sex, or age between forty and sixty-five.

(2) To limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment an individual, in any way which would deprive or tend to deprive an individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employe or as an applicant for employment, because of such individual's race, color, religion, national origin, sex, or age between forty and sixty-five.

(3) To cause or attempt to cause an employer to discriminate against an individual in violation of this section. [Sec. 344.060 reads as last amended by H. B. 430, L. 1972, effective June 16, 1972.]

[¶ 23,207]

Sec. 344.070. [Unlawful Employment Practices in Training Programs].—It is an unlawful practice for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against an individual because of his race, color, religion, national origin, sex, or age between forty and sixty-five in admission to, or employment in, any program established to provide apprenticeship or other training. [Sec. 344.070 reads as last amended by H. B. 430, L. 1972, effective June 16, 1972.]

[¶ 23,208]

Sec. 344.080. [Other Unlawful Employment Practices].—It is an unlawful practice for an employer, labor organization, licensing agency, or employment agency to print or publish or cause to be printed or

(1) Paar
(2) Speaking



Dwayne Carlson
Cases filed with Human Rights Commission -
Most 27 with 4 years Military
Federal Bureau of Apprenticeships

William F Bud Wadsworth — F.B.A.

1967 - Age Discrimination Act
40 - 65 years

1600 - 81 Women in all apprentice programs
26% Minorities

1963 8 State Age discrimination laws

(1) Dock employees that are older

Carpenters has no limits on age qualifications

Apprentice programs paid by employees not state
∴ right to discriminate

Karen Morehouse — N.O.W.
Ingrid Judsen

WILLIAM A. EGAN, Governor

ALASKA STATE COMMISSION FOR HUMAN RIGHTS

620 MacKay Building, 338 Denali Street, Anchorage, Alaska 99501
Telephone 272-9504

FINDINGS OF INVESTIGATOR

December 7, 1973

CASE NO. 73-11-03 FILING DATE: November 2, 1973

COMPLAINT: Roy Nesberg

RESPONDENT: Operating Engineers

Complaint: I feel I have been discriminated against because of my age. I have attempted to join this union (International Order of Operating Engineers #302) since 1956 unsucessfully, and am now ineligible to enter their apprentice program because I am over their minimum age requirements.

Summary of Respondent:

Mr. Nesberg has been allowed to apply for apprenticeship pending a screening interview to be held in March.

Summary of Investigation:

Mr. Nesberg contacted our office on November 2, 1973 and filed an informal complaint.

I contacted Mr. Joe Buttler, the officer in charge of the apprenticeship program in question at the Operating Engineers Union, and querried him about age limits in his program. He said he would contact me later.

Later in the day, I received a call from U. S. Department of Labor and was informed of the unions rights to set age limits in apprenticeship programs (Section 860.106 of the Age Discrimination in Employment Act)

I spent the remainder of the day in researching this, and other related material, and found I was correctly informed.

Mr. Buttler and Mr. Williams stopped by the office to further discuss this question, with special emphasis on Mr. Nesberg in particular. Mr. Buttler agreed to allow Mr. Nesberg to apply and let his qualifications stand on their own merits. Final screening occurs in March, 1974.

Findings of Investigation:

Therefore, it is found that no cause if found to credit the allegations of the complaint afrementioned.

Danny Minuskin
Special Investigator
Alaska State Commission for Human Rights

DM:jj

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

02065 NL ANCHORAGE AK 60 04-21 108P AST

PMS REP TERRY GARDINER

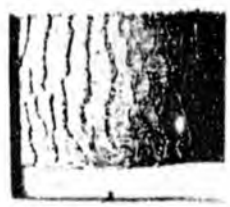
JUN 3191

WILL BE UNABLE TO ATTEND THE HEARING SCHEDULED ON SENATE BILL 630 THIS ASSOCIATION RECOMMENDS ITS PASSAGE. WE HAVE BEEN INVOLVED IN APPRENTICESHIP PROGRAMS QUITE EXTENSIVELY AND AT THE PRESENT TIME HAVE SOME 500 ALASKANS WORKING IN THE STATE OF ALASKA ENROLLED IN OUR PROGRAM. THE FEDERAL REGULATIONS REGARDING AGE HAVE WORKED VERY WELL FOR THE ELECTRICAL INDUSTRY

JOE S ARMSTRONG

MANAGER NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION

1976 APR 21 PM 6 26



Teen Unemployment Reaches Record Peak

B-4 Anchorage Times, Sunday, April 11, 1976

WASHINGTON (AP) — Despite the improving economy, teen-age unemployment is at a record high and experts say job prospects for teen-agers will be dim for years. One authority calls the problem "social dynamite."

The Joint Economic Committee of Congress, noting predictions of severe unemployment through 1980, says it will result in increasing crime, drug use and other forms of antisocial behavior among the nation's teen-agers.

"If that isn't social dynamite, I don't know what is," says Sar Levitan, director of George Washington University's Center for Manpower Studies.

Levitan and other economists say today's youth — products of the postwar baby boom — are growing up without developing adequate work experience, creating a generation they say will burden society with higher welfare payments and other social costs for the next 20 years.

"One of the most tragic consequences of the 1975 recession and the severe unemployment projected through 1980 is the economic, social and psychological impact it will have on many young people," reported the Joint Economic Committee.

"Prolonged unemployment," the committee said, "increases the incidence of crime, drug abuse and other forms of social behavior that can ruin a person's chance of achieving a productive life in the future."

The Bureau of Labor Statistics said that at the height of the recession last year, about 3.7 million youths — divided equally between teen-agers and those in their early 20s — were unemployed. They accounted for almost one-fourth of the civilian labor force but almost half of all unemployed workers.

Jobless rates for teen-agers and young adults have traditionally been higher than the rest of the work force. The recession made it worse.

While the over-all jobless rate has improved in recent months — dropping from a recession peak of 8.9 per cent last May to 7.6 per cent in February — the teen-age jobless rate remains above 19 per cent, with 3.7 million still unemployed. For blacks, the situation is even more grim. Government figures show that 34.6 per cent of black teen-agers, age 16 to 21, can't find a job. In the inner cities, the rate exceeds 50 per cent.

"There's a lot of wasted skills as the years go by," says Nat Goldfinger, the AFL-CIO's research director. "There's a generation of young people out there who don't have to get up in the morning to go to work. They have no work discipline and are left to hang around the streets."

Goldfinger says that besides the higher crime and other problems that result, there's a great potential for political problems. "We're developing a group that's alienated, who are kind of cut off from the mainstream of society."

The major reason for the persistent teen-age unemployment is sheer numbers. The postwar baby boom has swelled the number of teen-agers in the labor force from 4.8 million to 8.8 million over the past 15 years. Each year, another 2.5 million enter the labor force.

Although the birth rate has declined since the early 1960s, Levitan says this won't affect the work force until after 1980.

Numbers are not the only reason for persistent teen-age unemployment. Women are entering the labor market in increasing numbers and are competing with younger workers for jobs. At the same time, job opportunities have dried up, such as in agriculture, once a major employer of teen-agers, where the size of the over-all work force has declined in recent years.

The disappearance of the neighborhood grocery store and other small businesses that once employed teen-agers both full and part time, has also been a factor.

"The kinds of job opportunities that kids had 25 years ago have largely disappeared," says Goldfinger. "Blacks, to a great extent, are locked into central city slum areas and especially feel the loss of neighborhood stores."

One area that benefitted from the recession is the military. Pentagon officials say the armed forces have had no trouble meeting their recruiting goals, and could even afford to be more selective on who they choose.

But even the military has provided only limited job opportunities. This summer, with the 1976 crop of high school graduates entering the job market, economists says jobs will again be at a premium.

AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967

(P.L. 90-202, December 15, 1967)
(Effective June 12, 1968)

Background: The Age Discrimination Act, effective June 12, 1968, prohibits discrimination in employment against persons 40-65 years of age. The Wage and Hour Division, DOL, has the operational responsibility.

The law covers employers, employment agencies, labor organizations and their agents. If the statute has been applied to apprenticeship programs, discrimination against persons from 40-65, on the ground of age alone, would be prohibited in all employment processes, including announcements, advertising, recruitment, examination, selection, referral, hiring, working conditions, etc. On findings of violations, the respondents (including JACs), have been subject to orders to take remedial action by wage payments, selection, referral, employment, etc. and payment of liquidated damages.

Under Section 9 of the Act, the Secretary is empowered to establish such reasonable exemptions "as he may find necessary and proper in the public interest."

Wage and Hour Division Ruling: The following rule was published in the Federal Register on January 9, 1969:

> §§ 860.106 Bona fide apprenticeship programs
>
> Age limitations for entry into bona fide apprenticeship programs were not intended to be affected by the Act. Entry into most apprenticeship programs has traditionally been limited to youths under specified ages. This is in recognition of the fact that apprenticeship is an extension of the educational process to prepare young men and women for skilled employment. Accordingly, the prohibitions contained in the Act will not be applied to bona fide apprenticeship programs which meet the standards specified in §§ 521.2 and 521.3 of this chapter.
> [29 CFR 860.106]

Comment: FLSA regulations 29 CFR 521.2 and 521.3, above cited, prescribe the Standards required for Certificates to employ apprentices at less than the minimum wage. Those standards include the requirement for submission of the apprenticeship program and apprenticeship agreement to the recognized apprenticeship agency (BAT or SAC) for registration. /29 CFR 521.3(e)/ Under the new Wage and Hour ruling on January 9, therefore, the Age Discrimination Act does not apply to the recruitment, selection, referral, employment, etc. of registered apprentices under BAT or SAC registered programs.

Bulletin Number 69-46 January 22, 1969

U. S. Department of Labor BUREAU OF APPRENTICESHIP AND TRAINING Washington, D. C. 20210	DISTRIBUTION BAT - 3 BAT - 8	SUBJECT CODE: 600 Age Discrimination in Employment Act of 1967; Exclusion of Apprenticeship from Application of the Act.

Purpose: To inform the Bureau of Apprenticeship and Training of the Wage and Hour Division ruling excluding registered apprenticeship programs from operation of the Age Discrimination in Employment Act of 1967. (P.L. 90-202, December 15, 1967)

Background: The Age Discrimination Act, effective June 12, 1968, prohibits discrimination in employment against persons 40-65 years of age. The Wage and Hour Division, DOL, has the operational responsibility.

The law covers employers, employment agencies, labor organizations and their agents. If the statute had been applied to apprenticeship programs, discrimination against persons from 40-65, on the ground of age alone, would be prohibited in all employment processes, including announcements, advertising, recruitment, examination, selection, referral, hiring, working conditions, etc. On findings of violations, the respondents (including JACs), would be subject to orders to take remedial action by wage payments, selection, referral, employment, etc., and payment of liquidated damages.

Under Section 9 of the Act, the Secretary is empowered to establish such reasonable exemptions as he may find necessary and proper in the public interest."

Action Initiated by the Bureau: By formal request to the Secretary and Assistant Secretary for Manpower prior to the effective date of the law, the Bureau, upon several grounds, requested a regulation exempting apprenticeship programs. The Administrator and Deputy Administrator followed this up with additional requests and personal discussions on the Departmental level and with officials of the Wage and Hour Division.

Wage and Hour Division Ruling: The following rule was published in the Federal Register on January 9, 1969:

"§860.106 Bona fide apprenticeship programs.

Age limitations for entry into bona fide apprenticeship programs were not intended to be affected by the Act. Entry into most apprenticeship programs has traditionally been limited to youths under specified ages. This is in recognition of the fact that apprenticeship is an extension of the educational process to prepare young men and women for skilled employment. Accordingly, the prohibitions contained in the Act will not be applied to bona fide apprenticeship programs which meet the standards specified in §§ 521.2 and 521.3 of this chapter." /29 CFR 860.106/

Comment: FLSA regulations 29 CFR 521.2 and 521.3, above cited, prescribe the Standards required for Certificates to employ apprentices at less than the minimum wage. Those Standards include the requirement for submission of the apprenticeship program and apprenticeship agreement to the recognized apprenticeship agency (BAT or SAC) for registration. /29 CFR 521.3(e)/ Under the new Wage and Hour ruling on January 9, therefore, the Age Discrimination Act does not apply to the recruitment, selection, referral, employment, etc., of registered apprentices under BAT or SAC registered programs.

ODA/CS

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WAGE AND HOUR REGIONAL OFFICE

Room 4097 Federal Office Building 909 First Avenue Seattle, Washington 98174
Area Code 206, 442-1916
442-1914

Date: February 4, 1976

Reply to Attn of: LEG/cgh

Subject: Apprenticeship Programs and ADEA

To: Vernon P. Nilsen
Director, Regional Bureau
of Apprenticeship and Training

In response to your memorandum of January 26, 1976; I have attached copies of the most recent publications, 29 CFR 521 and 29 CFR 860.

You will note that "bona fide apprenticeship programs" were not intended to be affected by the Age Discrimination in Employment Act....."Accordingly, the prohibitions contained in the Act will not be applied to bona fide apprenticeship programs which meet the standards specified in paragraphs 521.2 and 521.3....".

I trust this adequately responds to the issue at hand. If additional copies of these publications are needed, or, if I may be of any further assistance, please do not hesitate to contact me.

Loren E. Gilbert
ARA for Wage Hour

Attachments

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FEB 5 1976
Bureau of Apprenticeship & Training
Seattle

INTERPRETATIVE BULLETIN

TITLE 29
PART 860
OF THE CODE OF FEDERAL REGULATIONS

AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967

[This publication conforms to the Code of Federal Regulations as of July 7, 1972, the date this reprint was authorized.]

This publication is based on the provisions of the Fair Labor Standards Act [illegible] adoption of the recently published [illegible] which take effect May 1, 1973. Revision of the publication will be made where necessary to conform to the new amendments. If you have any specific questions you are urged to contact the nearest wage-hour office.

UNITED STATES DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION

Wage and Hour Division
WASHINGTON, D.C. 20210

WH Publication 1296 (Rev. Nov. 1972)

(c) Unless the essential terms and conditions of an alleged seniority system have been communicated to the affected employees and can be shown to be applied uniformly to all of those affected, regardless of age, it will also be regarded as lacking the necessary bona fides to qualify for the exception.

(d) It should be noted that seniority systems which segregate, classify, or otherwise discriminate against individuals on the basis of race, color, religion, sex, or national origin, are prohibited under Title VII of the Civil Rights Act of 1964, where that Act otherwise applies. Neither will such systems be regarded as "bona fide" within the meaning of section 4(f)(2) of the Age Discrimination in Employment Act of 1967.

[33 F.R. 12227, August 30, 1968]

§ 860.106 Bona fide apprenticeship programs.

Age limitations for entry into bona fide apprenticeship programs were not intended to be affected by the Act. Entry into most apprenticeship programs has traditionally been limited to youths under specified ages. This is in recognition of the fact that apprenticeship is an extension of the educational process to prepare young men and women for skilled employment. Accordingly, the prohibitions contained in the Act will not be applied to bona fide apprenticeship programs which meet the standards specified in§§ 521.2 and 521.3 of this chapter.

[34 F.R. 323, January 9, 1969]

§ 860.110 Involuntary retirement before age 65.

(a) Section 4(f)(2) of the Act provides that "It shall not be unlawful for an employer, employment agency, or labor organization * * * to observe the terms of * * * any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this Act, except that no such employee benefit plan shall excuse the failure to hire any individual * * *." Thus, the Act authorizes involuntary retirement irrespective of age, provided that such retirement is pursuant to the terms of a retirement or pension plan meeting the requirements of section 4(f)(2). The fact that an employer may decide to permit certain employees to continue working beyond the age stipulated in the formal retirement program does not, in and of itself, render an otherwise bona fide plan invalid insofar as the exception provided in section 4(f)(2) is concerned.

(b) This exception does not apply to the involuntary retirement before 65 of employees who are not participants in the employer's retirement or pension program. It should be noted that section 5 of the Act directs the Secretary of Labor to undertake an appropriate study of institutional and other arrangements giving rise to involuntary retirement, and report his findings and any appropriate legislative recommendations to the President and to Congress.

[34 F.R. 9709, June 21, 1969]

§ 860.120 Costs and benefits under employee benefit plans.

(a) Section 4(f)(2) of the Act provides that it is not unlawful for an employer, employment agency, or labor organization "to observe the terms of * * * any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this Act, except that no such employee benefit plan shall excuse the failure to hire any individual * * *." Thus, an employer is not required to provide older workers who are otherwise protected by the law with the same pension, retirement or insurance benefits as he provides to younger workers, so long as any differential between them is in accordance with the terms of a bona fide benefit plan. For example, an employer may provide lesser amounts of insurance coverage under a group insurance plan to older workers than he does to younger workers, where the plan is not a subterfuge to evade the purposes of the Act. A retirement, pension, or insurance plan will be considered in compliance with the statute where the actual amount of payment made, or cost incurred, in behalf of an older worker is equal to that made or incurred in behalf of a younger worker, even though the older worker may thereby receive

EMPLOYMENT STANDARDS ADMINISTRATION
OFFICE OF THE REGIONAL ADMINISTRATOR

Room 2006 Smith Tower | 506 Second Avenue | Seattle, Washington 98104
Area Code 206, 442-1536

January 23, 1973

Mr. William Wadsworth
State Supervisor
U. S. Department of Labor, B.A.T.
218 Loussac-Sogn Building
Anchorage, Alaska 99501

Dear Mr. Wadsworth:

The prohibitions against age restrictions contained in ADEA are not applicable to bona-fide apprenticeship programs. This is outlined in the attached bulletins for ADEA and Employment of Apprentices. (Title 29, Part 860 and Title 29, Part 521)

Please refer to Section 860.106, page 6 and Part 521.2-3 for clarification.

If you desire further interpretive information, please contact Compliance Officer Al Godes in our Anchorage office for assistance.

We are pleased to offer this information and please contact us further, if needed. Working closely with B.A.T. contributes to our programs as well.

Best wishes,

Vernon P. Nilsen
Regional Administrator

Attachments: a/s

cc: RD, R. Burt

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JAN 26 1972
BAT
ANCHORAGE

ferentiation would appear to be based on "reasonable factors other than age."

[34 F.R. 9709, June 21, 1969]

§ 860.105 Bona fide seniority systems.

Section 4(f)(2) of the Act provides that "It shall not be unlawful for an employer, employment agency, or labor organization * * * to observe the terms of a bona fide seniority system * * * which is not a subterfuge to evade the purposes of this Act * * *"

(a) Though a seniority system may be qualified by such factors as merit, capacity, or ability, any bona fide seniority system must be based on length of service as the primary criterion for the equitable allocation of available employment opportunities and prerogatives among younger and older workers. In this regard it should be noted that a bona fide seniority system may operate, for example, on an occupational, departmental, plant, or company wide unit basis.

(b) Seniority systems not only distinguish between employees on the basis of their length of service, they normally afford greater rights to those who have the longer service. Therefore, adoption of a purported seniority system which gives those with longer service lesser rights, and results in discharge or less favored treatment to those within the protection of the Act, may, depending upon the circumstances, be a "subterfuge to evade the purposes" of the Act. Furthermore, a seniority system which has the effect of perpetuating discrimination which may have existed on the basis of age prior to the effective date of the Act will not be recognized as "bona fide."

(c) Unless the essential terms and conditions of an alleged seniority system have been communicated to the affected employees and can be shown to be applied uniformly to all of those affected, regardless of age, it will also be regarded as lacking the necessary bona fides to qualify for the exception.

(d) It should be noted that seniority systems which segregate, classify, or otherwise discriminate against individuals on the basis of race, color, religion, sex, or national origin, are prohibited under Title VII of the Civil Rights Act of 1964, where that Act otherwise applies. Neither will such systems be regarded as "bona fide" within the meaning of section 4(f)(2) of the Age Discrimination in Employment Act of 1967.

[33 F.R. 12227, August 30, 1968]

§ 860.106 Bona fide apprenticeship programs.

Age limitations for entry into bona fide apprenticeship programs were not intended to be affected by the Act. Entry into most apprenticeship programs has traditionally been limited to youths under specified ages. This is in recognition of the fact that apprenticeship is an extension of the educational process to prepare young men and women for skilled employment. Accordingly, the prohibitions contained in the Act will not be applied to bona fide apprenticeship programs which meet the standards specified in§§ 521.2 and 521.3 of this chapter.

[34 F.R. 323, January 9, 1969]

§ 860.110 Involuntary retirement before age 65.

(a) Section 4(f)(2) of the Act provides that "It shall not be unlawful for an employer, employment agency, or labor organization * * * to observe the terms of * * * any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this Act, except that no such employee benefit plan shall excuse the failure to hire any individual * * *." Thus, the Act authorizes involuntary retirement irrespective of age, provided that such retirement is pursuant to the terms of a retirement or pension plan meeting the requirements of section 4(f)(2). The fact that an employer may decide to permit certain employees to continue working beyond the age stipulated in the formal retirement program does not, in and of itself, render an otherwise bona fide plan invalid insofar as the exception provided in section 4(f)(2) is concerned.

(b) This exception does not apply to the involuntary retirement before 65 of employees who are not participants in the employer's retirement or pension program. It should be noted that section 5 of the Act directs the

INTERPRETATIVE BULLETIN

TITLE 29
PART 860
OF THE CODE OF FEDERAL REGULATIONS

AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967

[This publication conforms to the Code of Federal Regulations as of April 1, 1970, the date this reprint was authorized.]

This publication is based on the provisions of the Age Discrimination in Employment Act before the adoption of the recently passed Fair Labor Standards Amendments of 1974, which take effect May 1, 1974. Effective that date the Age Discrimination Law applies to most federal, state, and local governmental employment and also to private employers of 20 or more employees. Revisions of the publication will be made where necessary to conform to the new amendments. If you have any specific questions you are urged to contact the nearest wage-hour office.

U. S. DEPARTMENT OF LABOR
WAGE & HOUR DIVISION
1321 Smith Tower
506 Second Avenue
Seattle, Washington 98104
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UNITED STATES DEPARTMENT OF LABOR
WAGE AND LABOR STANDARDS ADMINISTRATION

Wage and Hour Division
WASHINGTON, D.C. 20210

WH Publication 1293

Part 860—Age Discrimination in Employment Act

SEC.

860.1 Purpose of this part.
860.2—860.19 [Reserved]
860.20 Geographical scope of coverage.
860.21—860.29 [Reserved]
860.30 Definitions.
860.31—860.49 [Reserved]
860.50 "Compensation, terms, conditions or privileges of employment . . ."
860.51—860.74 [Reserved]
860.75 Wage rate reduction prohibited.
860.76—860.90 [Reserved]
860.91 Discrimination within the age bracket of 40-65.
860.92 Help wanted notices or advertisements.
860.93—860.94 [Reserved]
860.95 Job applications.
860.96—860.101 [Reserved]
860.102 Bona fide occupational qualifications.
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860.104 Differentiations based on reasonable factors other than age. Additional examples.
860.105 Bona fide seniority systems.
860.106 Bona fide apprenticeship programs.
860.107—860.109 [Reserved]
860.110 Involuntary retirement before age 65.
860.111—860.119 [Reserved]
860.120 Costs and benefits under employee benefit plans.

AUTHORITY: The provisions of this part are issued under 81 Stat. 602; 29 U.S.C. 620, 5 U.S.C. 301, Secretary's Order No. 10-68, and Secretary's Order No. 11-68.

SOURCE: The provisions of this Part 860 appear at 33 F.R. 9172, June 21, 1968, unless otherwise noted.

§ 860.1 Purpose of this part.

This part is intended to provide an interpretative bulletin on the Age Discrimination in Employment Act of 1967 like Subchapter B of this title relating to the Fair Labor Standards Act of 1938. Such interpretations of this Act are published to provide "a practical guide to employers and employees as to how the office representing the public interest in its enforcement will seek to apply it" (Skidmore v. Swift & Co., 323 U.S. 134, 138). These interpretations indicate the construction of the law which the Department of Labor believes to be correct, and which will guide it in the performance of its administrative and enforcement duties under the Act unless and until it is otherwise directed by authoritative decisions of the Courts or concludes, upon reexamination of an interpretation, that it is incorrect.

§ 860.20 Geographical scope of coverage.

The prohibitions in section 4 of the Act are considered to apply only to performance of the described discriminatory acts in places over which the United States has sovereignty, territorial jurisdiction, or legislative control. These include principally the geographical areas set forth in the definition of the term "State" in section 11(i). There, the term State is defined to include "a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act." Activities within such geographical areas which are discriminatory against protected individuals or employees are within the scope of the Act even though the activities are related to employment outside of such geographical areas.

[34 F.R. 322, January 9, 1969]

§ 860.30 Definitions.

Considering the purpose of the proviso to section 7(c) of the Act as indicated in the reports of both the Senate and House Committees (see S. Rept. No. 723, 90th Cong., 1st Sess., and H. Rept. No. 805, 90th Cong., 1st Sess.) it was clearly the intent of Congress that the term "employee" in that proviso should apply to any person who has a right to bring an action under the Act, including an applicant for employment.

[34 F.R. 9708, June 21, 1969]

§ 860.50 "Compensation, terms, conditions, or privileges of employment.***"

(a) Section 4(a)(1) of the Act specifies that it is unlawful for an employer "to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;"

(b) The term "compensation" includes all types and methods of remuneration paid to or on behalf of or received by an employee for his employment.

(c) The phrase "terms, conditions, or privileges of employment" encompasses a wide and varied range of job-related factors including, but not limited to, job security, advancement, status, and benefits. The following are examples of some of the more common terms, conditions, or privileges of employment: The many and varied employee advantages generally regarded as being within the phrase "fringe benefits," promotion, demotion or other disciplinary action, hours of work (including overtime), leave policy (including sick leave, vacation, holidays), career development programs, and seniority or merit systems (which govern such conditions as transfer, assignment, job retention, layoff and recall). An employer will be deemed to have violated the Act if he discriminates against any individual within its protection because of age with respect to any terms, conditions, or privileges of employment, such as the above, unless a statutory exception applies.

[33 F. R. 12227, August 30, 1968]

§ 860.75 Wage rate reduction prohibited.

Section 4(a)(3) of the Act provides that where an age-based wage differential is paid in violation of the statute, the employer cannot correct the violation by reducing the wage rate of any employee. Thus, for example, in a situa-

tion where it has been determined that an employer has violated the Act by paying a 62-year-old employee a prohibited wage differential of 50 cents an hour less than he is paying a 30-year-old worker, in order to achieve compliance with the Act he must raise the wage rate of the older employee to equal that of the younger worker. Furthermore, the employer's obligation to comply with the statute cannot be avoided by transferring either the older or the younger employee to other work since the transfer itself would appear discriminatory under the particular facts and circumstances.

[34 F.R. 322, January 9, 1969]

§ 860.91 Discrimination within the age bracket of 40–65.

(a) Although section 4 of the Act broadly makes unlawful various types of age discrimination by employers, employment agencies, and labor organizations, section 12 limits this protection to individuals who are at least 40 years of age but less than 65 years of age. Thus, for example it is unlawful in situations where this Act applies, for an employer to discriminate in hiring or in any other way by giving preference because of age to an individual 30 years old over another individual who is within the 40–65 age bracket limitation of section 12. Similarly, an employer will have violated the Act, in situations where it applies, when one individual within the age bracket of 40–65 is given job preference in hiring, assignment, promotion or any other term, condition, or privilege of employment, on the basis of age, over another individual within the same age bracket.

(b) Thus, if two men apply for employment to which the Act applies, and one is 42 and the other 52, the personnel officer or employer may not lawfully turn down either one on the basis of his age; he must make his decision on the basis of other factors, such as the capabilities and experience of the two individuals. The Act, however, does not restrain age discrimination between two individuals 25 and 35 years of age.

§ 860.92 Help wanted notices or advertisements.

(a) Section 4(e) of the Act prohibits "an employer, labor organization, or employment agency" from using printed or published notices or advertisements indicating any preference, limitation, specification, or discrimination, based on age.

(b) When help wanted notices or advertisements contain terms and phrases such as "age 25 to 35," "young," "boy," "girl," "college student," "recent college graduate," or others of a similar nature, such a term or phrase discriminates against the employment of older persons and will be considered in violation of the Act. Such specifications as "age 40 to 50," "age over 50," or "age over 65" are also considered to be prohibited. Where such specifications as "retired person" or "supplement your pension" are intended and applied so as to discriminate against others within the protected group, they too are regarded as prohibited, unless one of the exceptions applies.

[34 F.R. 9708, June 21, 1969]

(c) However, help wanted notices or advertisements which include a term or phrase such as "college graduate," or other educational requirement, or specify a minimum age less than 40, such as "not under 18," or "not under 21," are not prohibited by the statute.

(d) The use of the phrase "state age" in help wanted notices or advertisements is not, in itself, a violation of the statute. But because the request that an applicant state his age may tend to deter older applicants or otherwise indicate a discrimination based on age, employment notices or advertisements which include the phrase "state age," or any similar term, will be closely scrutinized to assure that the request is for a permissible purpose and not for purposes proscribed by the statute.

(e) There is no provision in the statute which prohibits an individual seeking employment through advertising from specifying his own age.

§ 860.95 Job applications.

(a) The term "job applications," within the meaning of the recordkeeping regulations under the Act (Part 850 of this chapter), re-

fers to all inquiries about employment or applications for employment or promotion including, but not limited to, résumés or other summaries of the applicant's background. It relates not only to preemployment inquiries but to inquiries by employees concerning terms, conditions, or privileges of employment as specified in section 4 of the statute. As in the case with help wanted notices or advertisements (see § 860.92), a request on the part of an employer, employment agency, or labor organization for information such as "Date of Birth" or "State Age" on an employment application form is not, in itself, a violation of the Age Discrimination in Employment Act of 1967. But because the request that an applicant state his age may tend to deter older applicants or otherwise indicate a discrimination based on age, employment application forms which request such information in the above, or any similar phrase, will be closely scrutinized to assure that the request is for a permissible purpose and not for purposes proscribed by the statute. That the purpose is not one proscribed by the statute should be made known to the applicant, as by a reference on the application form to the statutory prohibition in language to the following effect: "The Age Discrimination in Employment Act of 1967 prohibits discrimination on the basis of age with respect to individuals who are at least 40 but less than 65 years of age."

[33 F.R .12227, August 30, 1968]

(b) An employer may limit the active period of consideration of an application so long as he treats all applicants alike regardless of age. Thus, for example, if the employer customarily retains employment applications in an active status for a period of 60 days, he will be in compliance with the Act if he so retains those of individuals in the 40 to 65 age group for an equal period of consideration as those of younger persons. Further, there is no objection to the employer advising all applicants of the above practice by means of a legend on his application forms as long as this does not suggest any limitation based on age. If it develops, however, that such a legend is used as a device to avoid consideration of the applications of older persons, or otherwise discriminate against them because of age, there would then appear to be a violation of the Act. It should be noted that this position in no way alters the recordkeeping requirements of the Act which are set forth in Part 850 of this chapter.

[34 F.R. 9708, June 21, 1969]

§ 860.102 Bona fide occupational qualifications.

(a) Section 4(f)(1) of the Act provides that "It shall not be unlawful for an employer, employment agency, or labor organization * * * to take any action otherwise prohibited under subsections (a), (b), (c), or (e) of this section where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business * * *"

(b) Whether occupational qualifications will be deemed to be "bona fide" and "reasonably necessary to the normal operation of the particular business," will be determined on the basis of all the pertinent facts surrounding each particular situation. It is anticipated that this concept of a bona fide occupational qualification will have limited scope and application. Further, as this is an exception it must be construed narrowly, and the burden of proof in establishing that it applies is the responsibility of the employer, employment agency, or labor organization which relies upon it.

(c) The following are illustrations of possible bona fide occupational qualifications.

(d) Federal statutory and regulatory requirements which provide compulsory age limitations for hiring or compulsory retirement, without reference to the individual's actual physical condition at the terminal age, when such conditions are clearly imposed for the safety and convenience of the public. This exception would apply, for example, to airline pilots within the jurisdiction of the Federal Aviation Agency. Federal Aviation Agency regulations do not permit airline pilots to engage in carrier operations, as pilots, after they reach age 60.

(e) A bona fide occupational qualification will also be recognized in certain special, individual occupational circumstances, e.g.,

actors required for youthful or elderly characterizations or roles, and persons used to advertise or promote the sale of products designed for, and directed to appeal exclusively to, either youthful or elderly consumers.

§ 860.103 Differentiations based on reasonable factors other than age.

(a) Section 4(f)(1) of the Act provides that "It shall not be unlawful for an employer, employment agency, or labor organization *** to take any action otherwise prohibited under subsections (a), (b), (c), or (e) of this section * * * where the differentiation is based on reasonable factors other than age; * * *"

(b) No precise and unequivocal determination can be made as to the scope of the phrase "differentiation based on reasonable factors other than age." Whether such differentiations exist must be decided on the basis of all the particular facts and circumstances surrounding each individual situation.

(c) It should be kept in mind that it was not the purpose or intent of Congress in enacting this Act to require the employment of anyone, regardless of age, who is disqualified on grounds other than age from performing a particular job. The clear purpose is to insure that age, within the limits prescribed by the Act, is not a determining factor in making any decision regarding hiring, dismissal, promotion or any other term, condition or privilege of employment of an individual.

(d) The reasonableness of a differentiation will be determined on an individual, case by case basis, not on the basis of any general or class concept, with unusual working conditions given weight according to their individual merit.

(e) Further, in accord with a long chain of decisions of the Supreme Court of the United States with respect to other remedial labor legislation, all exceptions such as this must be construed narrowly, and the burden of proof in establishing the applicability of the exception will rest upon the employer, employment agency or labor union which seeks to invoke it.

(f) Where the particular facts and circumstances in individual situations warrant such a conclusion, the following factors are among those which may be recognized as supporting a differentiation based on reasonable factors other than age:

(1)(i) Physical fitness requirements based upon preemployment or periodic physical examinations relating to minimum standards for employment: *Provided, however,* That such standards are reasonably necessary for the specific work to be performed and are uniformly and equally applied to all applicants for the particular job category, regardless of age.

(ii) Thus, a differentiation based on a physical examination, but not one based on age, may be recognized as reasonable in certain job situations which necessitate stringent physical requirements due to inherent occupational factors such as the safety of the individual employees or of other persons in their charge, or those occupations which by nature are particularly hazardous: For example, iron workers, bridge builders, sandhogs, underwater demolition men, and other similar job classifications which require rapid reflexes or a high degree of speed, coordination, dexterity, endurance, or strength.

(iii) However, a claim for a differentiation will not be permitted on the basis of an employer's assumption that every employee over a certain age in a particular type of job usually becomes physically unable to perform the duties of that job. There is medical evidence, for example, to support the contention that such is generally not the case. In many instances, an individual at age 60 may be physically capable of performing heavy-lifting on a job, whereas another individual of age 30 may be physically incapable of doing so.

(2) Evaluation factors such as quantity or quality of production, or educational level, would be acceptable bases for differentiation when, in the individual case, such factors are shown to have a valid relationship to job requirements and where the criteria or personnel policy establishing such factors are applied uniformly to all employees, regardless of age.

(g) The foregoing are intended only as examples of differentiations based on reasonable factors other than age, and do not con-

stitute a complete or exhaustive list or limitation. It should always be kept in mind that even in situations where experience has shown that most elderly persons do not have certain qualifications which are essential to those who hold certain jobs, some may have them even though they have attained the age of 60 or 64, and thus discrimination based on age is forbidden.

(h) It should also be made clear that a general assertion that the average cost of employing older workers as a group is higher than the average cost of employing younger workers as a group will not be recognized as a differentiation under the terms and provisions of the Act, unless one of the other statutory exceptions applies. To classify or group employees solely on the basis of age for the purpose of comparing costs, or for any other purpose, necessarily rests on the assumption that the age factor alone may be used to justify a differentiation—an assumption plainly contrary to the terms of the Act and the purpose of Congress in enacting it. Differentials so based would serve only to perpetuate and promote the very discrimination at which the Act is directed.

§ 860.104 Differentiations based on reasonable factors other than age— Additional examples.

(a) *Employment of Social Security recipients.* (1) It is considered discriminatory for an employer to specify that he will hire only persons receiving old age Social Security insurance benefits. Such a specification could result in discrimination against other individuals within the age group covered by the Act willing to work under the wages and other conditions of employment involved, even though those wages and conditions may be peculiarly attractive to Social Security recipients. Similarly, the specification of Social Security recipients cannot be used as a convenient reference to persons of sufficient age to be eligible for old age benefits. Thus, where two persons apply for a job, one age 56, and the other age 62 and receiving Social Security benefits, the employer may not lawfully give preference in hiring to the older individual solely because he is receiving such benefits.

(2) Where a job applicant under age 65 is unwilling to accept the number or schedule of hours required by an employer as a condition for a particular job, because he is receiving Social Security benefits and is limited in the amount of wages he may earn without losing such benefits, failure to employ him would not violate the Act. An employer's condition as to the number or schedule of hours may be "a reasonable factor other than age" on which to base a differentiation.

(b) *Employee testing.* The use of a validated employee test is not, of itself, a violation of the Act when such test is specifically related to the requirements of the job, is fair and reasonable, is administered in good faith and without discrimination on the basis of age, and is properly evaluated. A vital factor in employee testing as it relates to the 40–65-age group protected by the statute is the "test-sophistication" or "test-wiseness" of the individual. Younger persons, due to the tremendous increase in the use of tests in primary and secondary schools in recent years, may generally have had more experience in test-taking than older individuals and, consequently, where an employee test is used as the sole tool or the controlling factor in the employee selection procedure, such younger persons may have an advantage over older applicants who may have had considerable on-the-job experience but who due to age, are further removed from their schooling. Therefore, situations in which an employee test is used as the sole tool or the controlling factor in the employee selection procedure will be carefully scrutinized to ensure that the test is for a permissible purpose and not for purposes prohibited by the statute.

[34 F.R. 322, January 9, 1969]

(c) *Refusal to hire relatives of current employees.* There is no provision in the Act which would prohibit an employer, employment agency, or labor organization from refusing to hire individuals within the protected age group not because of their age but because they are relatives of persons already employed by the firm or organization involved. Such a dif-

ferentiation would appear to be based on "reasonable factors other than age."

[34 F.R. 9709, June 21, 1969]

§ 860.105 Bona fide seniority systems.

Section 4(f)(2) of the Act provides that "It shall not be unlawful for an employer, employment agency, or labor organization * * * to observe the terms of a bona fide seniority system * * * which is not a subterfuge to evade the purposes of this Act * * * "

(a) Though a seniority system may be qualified by such factors as merit, capacity, or ability, any bona fide seniority system must be based on length of service as the primary criterion for the equitable allocation of available employment opportunities and prerogatives among younger and older workers. In this regard it should be noted that a bona fide seniority system may operate, for example, on an occupational, departmental, plant, or company wide unit basis.

(b) Seniority systems not only distinguish between employees on the basis of their length of service, they normally afford greater rights to those who have the longer service. Therefore, adoption of a purported seniority system which gives those with longer service lesser rights, and results in discharge or less favored treatment to those within the protection of the Act, may, depending upon the circumstances, be a "subterfuge to evade the purposes" of the Act. Furthermore, a seniority system which has the effect of perpetuating discrimination which may have existed on the basis of age prior to the effective date of the Act will not be recognized as "bona fide."

(c) Unless the essential terms and conditions of an alleged seniority system have been communicated to the affected employees and can be shown to be applied uniformly to all of those affected, regardless of age, it will also be regarded as lacking the necessary bona fides to qualify for the exception.

(d) It should be noted that seniority systems which segregate, classify, or otherwise discriminate against individuals on the basis of race, color, religion, sex, or national origin, are prohibited under Title VII of the Civil Rights Act of 1964, where that Act otherwise applies. Neither will such systems be regarded as "bona fide" within the meaning of section 4(f)(2) of the Age Discrimination in Employment Act of 1967.

[33 F.R. 12227, August 30, 1968]

§ 860.106 Bona fide apprenticeship programs.

Age limitations for entry into bona fide apprenticeship programs were not intended to be affected by the Act. Entry into most apprenticeship programs has traditionally been limited to youths under specified ages. This is in recognition of the fact that apprenticeship is an extension of the educational process to prepare young men and women for skilled employment. Accordingly, the prohibitions contained in the Act will not be applied to bona fide apprenticeship programs which meet the standards specified in§§ 521.2 and 521.3 of this chapter.

[34 F.R. 323, January 9, 1969]

§ 860.110 Involuntary retirement before age 65.

(a) Section 4(f)(2) of the Act provides that "It shall not be unlawful for an employer, employment agency, or labor organization * * * to observe the terms of * * * any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this Act, except that no such employee benefit plan shall excuse the failure to hire any individual * * *." Thus, the Act authorizes involuntary retirement irrespective of age, provided that such retirement is pursuant to the terms of a retirement or pension plan meeting the requirements of section 4(f)(2). The fact that an employer may decide to permit certain employees to continue working beyond the age stipulated in the formal retirement program does not, in and of itself, render an otherwise bona fide plan invalid insofar as the exception provided in section 4(f)(2) is concerned.

(b) This exception does not apply to the involuntary retirement before 65 of employees who are not participants in the employer's retirement or pension program. It should be noted that section 5 of the Act directs the

Secretary of Labor to undertake an appropriate study of institutional and other arrangements giving rise to involuntary retirement, and report his findings and any appropriate legislative recommendations to the President and to Congress.

[34 F.R. 9709, June 21, 1969]

§ 860.120 Costs and benefits under employee benefit plans.

(a) Section 4(f)(2) of the Act provides that it is not unlawful for an employer, employment agency, or labor organization "to observe the terms of * * * any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this Act, except that no such employee benefit plan shall excuse the failure to hire any individual * * *." Thus, an employer is not required to provide older workers who are otherwise protected by the law with the same pension, retirement or insurance benefits as he provides to younger workers, so long as any differential between them is in accordance with the terms of a bona fide benefit plan. For example, an employer may provide lesser amounts of insurance coverage under a group insurance plan to older workers than he does to younger workers, where the plan is not a subterfuge to evade the purposes of the Act. A retirement, pension, or insurance plan will be considered in compliance with the statute where the actual amount of payment made, or cost incurred, in behalf of an older worker is equal to that made or incurred in behalf of a younger worker, even though the older worker may thereby receive a lesser amount of pension or retirement benefits, or insurance coverage. Further, an employer may provide varying benefits under a bona fide plan to employees within the age group protected by the Act, when such benefits are determined by a formula involving age and length of service requirements.

(b) Profit-sharing plans: Not all employee benefit plans but only those similar to the kind enumerated in section 4(f)(2) of the Act come within this provision and a profit-sharing plan as such would not appear to be within its terms. However, where it is the essential purpose of a plan financed from profits to provide retirement benefits for employees, the exception may apply. The "bona fides" of such plans will be considered on the basis of all the particular facts and circumstances.

(c) Forfeiture clauses in retirement programs: Clauses in retirement programs which state that litigation or participation in any manner in a formal proceeding by an employee will result in the forfeiture of his rights are unlawful insofar as they may be applied to those who seek redress under the Act. This is by reason of section 4(d) which provides that it "shall be unlawful for an employer to discriminate against any of his employees * * * because such individual * * * has made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or litigation under this Act."

[34 F.R. 9709, June 21, 1969]

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APPRENTICESHIP INFORMATION

A Handbook For Guidance and Employment Counselors



Prepared by
ANCHORAGE TRAINING INFORMATION CENTER
For the
ALASKA CONSTRUCTION INDUSTRY

SEPTEMBER 1975





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NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION
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SOUTHERN ALASKA CHAPTER, INC.

and the

JOINT APPRENTICESHIP AND TRUST COMMITTEES OF
ASBESTOS WORKERS
BOILERMAKERS
BRICKLAYERS
CARPENTERS
CULINARY
ELECTRICAL WORKERS
IRONWORKERS
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ROOFERS
SHEETMETAL WORKERS
TEAMSTERS

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Anchorage Training Information Center

238 East 5th Avenue Tel. 277-1918

Anchorage, Alaska 99501

Sponsors: The Labor Unions and Employer Associations of the Construction Industry

This Apprenticeship Information Kit was designed to assist Guidance and Employment Counselors in their vital work of preparing young people for the world of work and directing Alaska's young people into the skilled trades.

An insufficient number of young people, and minorities in particular, are entering the skilled trades despite the material rewards of earnings and security, and the personal rewards of opportunity and accomplishment provided in the Construction Industry.

Skilled journeymen will be needed as replacements for older workers who are retiring through the industry's pension programs.

Alaska's Construction Industry needs good people — trained employees. Only with skilled craftsmen — can the industry meet the demands of our expanding economy, construct industrial plants, transportation systems, pipelines, docks, highways, and airports; rebuild old cities; construct new cities with utilities, homes, schools, and facilities of every dimension.

There are few activities more worthwhile than encouraging young people to prepare themselves to become a part of the competent workforce which will build Alaska.

CO-CHAIRMEN

Robert E. McFarland

Robert E. McFarland, President Emeritus
Alaska State Federation of Labor

J. S. Armstrong

J. S. Armstrong, Alaska Manager
National Electrical Contractors Ass'n

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INTRODUCTION

This Handbook is intended for use by counselors and others who come in contact with youth both during and after their school years.

Young people should be made aware of the many opportunities offered to them by the construction industry. Particularly, we hope that high school students will be encouraged to pursue studies which will qualify them for and benefit their careers in this industry.

The front door for entry into the skilled trades in the construction industry is apprenticeship. It is the orderly way for a young worker to be introduced to the skills of the trade to adjust to their work, to learn while they earn a good wage, to advance steadily in both skills and earnings, and with that solid background to be able to keep pace with the technological changes in the industry.

Apprenticeship, briefly stated, is a training system for training and developing skilled craftsmen. It combines working on the job under the supervision of a skilled journeyman supplemented by related instruction in the classroom.

Apprenticeship programs in the construction industry arise out of the collective bargaining agreement between labor and management. The same collective bargaining agreement may provide for the establishment of trust funds to operate the program.

No attempt will be made in this publication to relate the historic development of apprenticeship. The material will be confined to essentials needed by counselors and advisors to direct young people toward careers in the skilled trades. The information should be helpful to teachers and school advisors in planning courses and stressing the value to students of good preparation in basic subjects, related to the trades, such as mathematics and science.

No two apprenticeship programs are identical, for each is tailored to meet the needs of its craft and existing local conditions. All programs in the construction industry in Alaska conform to the standards recommended in national programs trade apprenticeship and to applicable State and Federal laws and are registered with the Bureau of Apprenticeship and Training, United States Department of Labor. Any departures from the recommended national trade standards are made only to strengthen the programs and enhance the skills of the apprentice.

Factors, such as a lack of aspiration and motivation, or deficiency in basic qualifying education, have not been covered in this Handbook. Counselors may profitably refer to the Anchorage Training Information Center for evaluation.

We have confidence in both our young people and their advisors and trust that the basic information here presented will prove helpful to both.



ALASKA
CHAPTER

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

BOX 3-4088 • ANCHORAGE, ALASKA 99501

GEORGE E. SMITH
MANAGER

GENERAL CONTRACTOR MEMBERS

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TO ALL SCHOOL GUIDANCE COUNSELORS

Alaska contractors who are members of the Associated General Contractors of America, Alaska Chapter, believe in and strongly support the Apprenticeship and Training programs. Our organization is Statewide and AGC members operate in every area of the State. Therefore, we feel it highly desirable that programs to develop qualified manpower encompass all Alaska, and are not confined to just the larger cities.

These approved training programs are instructed and directed by highly qualified, experienced personnel. The programs are available to every Alaskan youth, and we urge that school guidance counselors bring these opportunities to the attention of youth during their school years. With that valuable training they will be able to participate in an important industry, whose challenges will be a part of the great future of our State and Nation.

Our Association feels that expanded apprenticeship programs and continuing re-training programs are imperative for growth and the profitable use of latest technological developments in new equipment, materials and manpower skills.

We have available an excellent film entitled "To Build a Future" which shows the opportunities afforded to young people who want to go into the construction field.

Very truly yours,

George E. Smith

George E. Smith
Manager
Alaska Chapter
Associated General Contractors

ALASKA CHAPTER

NATIONAL ELECTRICAL
CONTRACTORS ASSOCIATION

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Electrical contractors have been concerned with apprenticeship and training for almost seventy years. The National Electrical Contractors Association saw early in this Century the need for bringing youth into the Industry, and for the past few years the Alaska Chapter has been doing the same thing in Alaska. A quote commonly used in the Electrical Industry is, "The lifeblood of our Industry is apprenticeship training". We also support such efforts as the Anchorage Information Training Center and the publication of this handbook.

The ultimate feeling of mature persons being solid citizens of a community through their productive efforts can definitely be achieved through the job satisfaction and earning ability that a journeyman electrician enjoys, as well as a high rating in the construction industry.

Over seventy-five per cent of the electrical contractors come up through the ranks having been apprentices, then journeymen, and on to being contractors and owners. Other opportunities for further advances which are always present are the jobs of foreman, superintendent, estimator and managers.

As in all fields of endeavor, success is measured by the amount of time, effort and proper preparation necessary to achieve a goal. Such preparation is very necessary in the Electricical Industry, and it is our hope that youth of Alaska will qualify themselves by pursuing school studies which will be helpful to them in achieving a career in the Electrical Industry. Prospective apprentices should concentrate on courses in mathematics and science, which are essential.

We continually strive to cooperate with, and realize the great services that, counselors and teachers render in directing our youth toward a lifetime of proper achievement and fulfillment. For these services, the members of this Association will always be grateful.

J. S. Armstrong

J. S. Armstrong, Alaska Manager
National Electrical Contractors Ass'n

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Alaska State Federation of Labor, A.F.L.-C.I.O.

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To All Guidance and Employment Counselors:

It is my opinion that in recent years our society, and as a result, our school systems, have placed an unrealistic emphasis on the necessity of a college education and have convinced many students that they are doomed to a lifetime of economic and social failure without it. This has created a psychological problem for many youngsters as they are not equipped scholasticaly and/or financially to attend college and there are also any number of young persons who would prefer a life of working with their hands.

We feel that the Unions and their Employers offer these young people an attractive alternative through the respective apprentice programs and this handbook was designed to enable Counselors to fully inform these students of the opportunity offered by the various trades in the Construction Industry to become skilled tradesmen.

In addition to this handbook, I am sure that any of the listed Unions or Employer Associations would be happy to furnish speakers to answer questions or more fully explain their respective programs.

Sincerely yours,

Dwayne Carlson

Dwayne Carlson, President
Alaska State Federation of Labor

U.S. DEPARTMENT OF LABOR
Manpower Administration
BUREAU OF APPRENTICESHIP AND TRAINING

218 Loussac-Sogn Building
429 D Street
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To All Guidance and Employment Counselors:

The primary function of the U. S. Department of Labor's Bureau of Apprenticeship and Training is the promotion of bona fide apprenticeship and training through the voluntary cooperation, jointly or individually, by unions, employers, and/or employer associations. Its functions are advisory and promotional. It does not itself conduct training programs.

The Bureau of Apprenticeship and Training is guided by the general policies, principles, and standards recommended by the Federal Committee on apprenticeship. The Federal Committee on apprenticeship is composed of top management and labor leaders on a national basis.

Although this handbook is pointed toward the larger building and construction trades, it should be understood that the Bureau is not restricted to these specific occupations or the Anchorage area. Its assistance is available to or has registered programs with other industries throughout the State of Alaska involving other apprenticeable occupations.

It is our desire that through the proven system of apprenticeship as the State of Alaska progresses there be a sufficient supply of skilled craftsmen to assist in its growth and to fill employment opportunities, and that these employment opportunities are available to all Alaskans.

William F. Wadsworth

William F. Wadsworth
State Supervisor



Vern C. "Bud" Garrison
State Chairman

Charles E. Handy
Secretary-Treasurer

Area Chairman
Donald Bray--Fairbanks
Ivan Solheim-Anchorage

This Association of Apprenticeship Coordinators, Training Directors and Instructors is organized to:

Promote interest in Apprenticeship and Journeyman Training programs among labor unions, employers, school administrators and the general public.

To exchange ideas and information related to all types of training within industry.

To improve communication on technological changes and adapt training to those needs.

To encourage industry to expand its training programs and to cooperate with school personnel to the end that our young people will consider the value of job training and students will be prepared to enter training programs.

All persons connected with training programs of any type are invited to participate in our activities and are urged to join with us to improve the important service we render - namely, preparing young people for the world of work.

Vern C. "Bud" Garrison,
State Chairman

Developing Skilled Craftsmen through Apprenticeship
For Employment By The Industries of Alaska

ADVANTAGES OF APPRENTICESHIP

Admittedly, a WHITE COLLAR bias exists in the minds of immature or impractical people. Too often college education is emphasized to the point of belief that anything less is second-rate. This is wrong.

Apprenticeship is the skilled trades of the Construction Industry should be considered as advanced education. As such, it offers young people marked advantages:

1. The apprentice is an employed worker. The contractor is the only one who creates the job for an apprentice. The union does not employ apprentices.

2. They are paid good wages while learning the skills of the trade and are not cheap labor.

3. Their rate of pay increases with knowledge and ability.

4. Offers opportunity for continued wages and job security upon completion of training.

5. The apprentice becomes self-reliant at a comparatively early age.

6. Imposes no financial burden to their parents or community.

7. Provides classes to learn the theory of their trade and those techniques which cannot be taught economically at the job site.

8. Their instructors are capable, practical journeymen selected for the industry by the Joint Apprenticeship Committee.

9. They learn to produce with modern tools and machines and will gain experience under the most modern methods.

10. They learn properly to use tools or install modern industrial materials worth thousands of dollars during their apprenticeship. This is one of the many reasons why a competent journeyman cannot be developed in a classroom.

11. They work under the direction of a competent journeyman at all times and receive close personal attention.

12. Their progress, as reflected in work reports and class grades, are constantly reviewed by the Joint Apprenticeship Committee.

13. They are protected during their indenture by the Joint Apprenticeship Committee to insure that they have an opportunity to develop all the skills of the craft and become a fully qualified journeymen.

14. Because of high entrance requirements and high standards of conduct and competence, they associate with good and honorable young people.

15. It serves to meet the great need for young people as replacements for journeymen who advance or retire under the industry's generous pension plans.

16. With experience and study, the apprentice can become a foreman, estimator, or superintendent. Many of the owners and employers in the construction industry started their careers as apprentices.

17. The apprentices may advance to positions of responsibility in their union. Union leadership is earned through hard work, service and respect for others. Nearly all union leaders have come from the ranks.

18. As they grow in experience, they may follow related fields as a salesman, broker, or supplier.

19. They may engage in labor-management relations or qualify for specialized work for government agencies.

20. As a journeyman in the construction industry they will be engaged in an honorable and respected occupation with opportunities for advancement limited only by their own ability and ambition.

HOW THE APPRENTICESHIP PROGRAM OPERATES

FUNDING

The program for training and developing a skilled craftsman (a journeyman) is provided for in the Collective Bargaining Agreement (Contract) between the contractors and unions in the several divisions of the construction industry. That contract may also provide for the establishment of a trust fund for the use of the Joint Apprenticeship Committee to cover expenses relating to the operation of the program. The contribution to the fund, ranging from ten to fifteen cents per hour, is made by the employers on the basis of the hours worked by the union journeymen.

JOINT APPRENTICESHIP COMMITTEE (JAC)

The Joint Apprenticeship Committee, composed equally of contractors and union representatives, develops the standards of apprenticeship which define the processes of the trade, the number of hours to be spent in related classroom instruction and the number of years of on-the-job training. These Standards are registered with the United States Department of Labor.

TERM OF APPRENTICESHIP

The term of apprenticeship for the construction trades will range from two to five years, depending on the trade. Wages paid the apprentices are usually on the basis of a percentage of the journeyman rate, customarily starting at 50 percent or higher, and increasing progressively every 1,000 hours through completion of their apprenticeship the journeyman rate will be received.

RELATED CLASSROOM INSTRUCTION

Apprentices attend classes of related technical instruction, supplementing their training on the job, to give them a comprehensive understanding of the theoretical aspects of their work. This related technical instruction is a fundamental feature of apprenticeship. Usually the classes are held during the winter and slack seasons for construction work. Some trades provide several weeks or months of technical related training prior to beginning employment and on-the-job training.

In class, apprentices learn the basic theories of their trade; on the job, under the direction and supervision of a skilled journeyman, they learn its practice.

FEES OR CHARGES

No charge is made for the classroom instruction. However some trades will require manuals codes, or texts which are used constantly by journeymen. A nominal charge is made for such essentials.

INDENTURE

Each apprentice signs an Apprenticeship Agreement with the Joint Apprenticeship Committee. If the apprentice is a minor, the parent or guardian must also sign the Agreement. This Agreement is also registered with the Bureau of Apprenticeship, U. S. Department of Labor, which also awards certificates of Completion to apprentices upon successful completion of their training.

TRAINING COORDINATORS

Frequently, the Joint Apprenticeship Committee will employ a person to act as a coordinator to oversee the operations of the program and to supervise the training of apprentices. The Coordinator keeps records of work progress and acts for the committee between meetings. Such coordinators have proven to be of great value to the effectiveness of the apprenticeship program and to the industry.

BENEFITS PROVIDED APPRENTICES

VETERANS BENEFITS

The age limit for entering apprenticeship is usually raised in some degree to compensate the veteran for time spent in Military Service.

Apprentices who are veterans and enrolled in registered and certified program (construction industry programs in Alaska) are eligible for Veterans Administration training allowances under Public Law 92 - 540.

UNEMPLOYMENT BENEFITS

Apprentices attending classes for related trade instruction may draw unemployment benefits during the period of classroom instruction.

EARNINGS AND FRINGE BENEFITS

Wages of the apprentice are included in the tabulated summary on Pages 22 and 23, under work data. The wages shown are an approximation since the hourly wage paid varies as new contract provisions are negotiated and become effective.

The apprentice wage shown is a minimum for a beginning apprentice. It is a percentage of the rate paid a journeyman.

As their training and work experience proceed, apprentices receive pay increases. Such increases usually become effective after each 1,000 hours of employment, progressively approaching the journeyman rate.

A variety of benefits accrue to union members under the Collective Bargaining Agreement. These benefits provide health and life insurance, medical care, pensions, etc., and are called "fringe benefits". These benefits are paid out of a trust fund to which the employer contributes on an hourly basis.

TUTORING

Refresher Courses are provided through the Apprentice Outreach Program for Apprentice Applicants who need to upgrade their Math, English or who require a General Equivalency Diploma.

DISCRIMINATION

Not only because it violates state and federal laws, but because it is bad business policy, the contractors and unions in the Alaska Construction Industry forbid discrimination because of race, color, religion, national origin or sex.

PROBATIONARY PERIOD

A probationary period, varying from a few weeks to several months, included as a provision in all standards of apprenticeship. During the probationary period, the agreement between the apprentice and the Committee may be terminated by either party. The purpose of the probationary period is to afford both the apprentice and the Committee an opportunity to correct obvious mistakes and misunderstandings with a minimum of harm to either party.

UNION MEMBERSHIP

Each trade union governs its own admission of apprentices to membership. Generally, apprentices become union members at the end of the probationary period and then gain the benefits of union membership.

TESTS USED FOR QUALIFYING APPRENTICES

(All tests must have been validated)

APTITUDE TESTS

Some apprenticeship programs require the applicant to take an aptitude test. An aptitude is the ability of a worker to learn to perform certain job duties, and an aptitude test is a way of measuring this ability to learn job duties. Some aptitude tests are paper exercises; others require the use of simple pieces of apparatus.

Some construction trades are the General Aptitude Test Battery (GATB) administered by the State Employment Service. It consists of twelve tests measuring the nine aptitudes that are important to jobs in the skilled trades. Because an apprentice must have more than one aptitude to function successfully on a job, the aptitudes are measured in three or four groups — referred to as test batteries.

The aptitude tests merely indicate to the Joint Apprenticeship Committee whether the applicant does or does not have the ability to "catch on" and learn the job. They are not infallible, but have proven to be reliable in a high percentage of cases; and while they are relied upon, other factors such as education, physical condition, interest, and motivation are equally important.

QUALIFYING TESTS

Some of Joint Apprenticeship Committees require that the apprentice applicant pass a test before being considered for indenture. The test (qualifying test) is given to ascertain that the applicant's proficiency in basic mathematics is sufficient to begin the related classroom training for the craft.

Applicants who have received average or better grades in high school algebra, geometry, and the physical sciences should experience no difficulty in passing the qualifying tests. Applicants who do not have such a high school background may need tutoring or special preparation. Because the Joint Apprenticeship Committee places considerable emphasis on the qualifying test grades, the applicant is well advised to prepare for the test by a thorough review of high school mathematics.

THE SELECTION INTERVIEW

Up to the point of the selection interview, the application process determines only that the basic qualifications are met by the applicant. At the selection interview, the applicant meets personally with the members of the Joint Apprenticeship Committee.

The Committee has before it the application with supporting documents, the qualifying test scores, and the results of the aptitude test. The personal interview is designed to gather other information which would indicate that the applicant could and would successfully complete the apprenticeship.

The Joint Apprenticeship Committee is composed of people who are representatives of contractors who will hire and pay them, and of journeymen who will teach and work with them.

During the course of the interview, which is conducted on an informal and "get acquainted" basis, the Committee evaluates the applicant in these respects:

(a) Attitudes — toward oneself, fellow workmen, supervisors, and society in general.

(b) Appearance — reflecting their physical condition, personal habits and handicaps.

(c) Concept of the trade — work experience and familiarity with the trade. School subjects and grades. Willingness to work and study.

(d) Personal Traits — judgment, sense of responsibility, ambition, interests.

(e) Marital status and dependents — financial obligations.

The applicants should use the interview to satisfy themselves that they will be accorded fair and just treatment throughout the period of their apprenticeship. (This is provided by the Standards and included in the Apprenticeship Agreement.)

The applicant should understand that the people serving on the Committee and conducting the selection interview are responsible people in the construction industry who want to help them as much as they want to help themselves.

HOW TO APPLY

The jointly sponsored labor and management apprenticeship programs are only interested in those young men and women who have a willingness and desire to learn their trade. Therefore, you should read the information provided in this book and decide if a future in the Building and Construction Industry is for you. If the answer is Yes, take the following steps:

1. The center page lists Qualifications, Requirements and Information for each trade. Study the information and make certain that you meet all the requirements, before completing an application.

Employment is at times hazardous in these trades. Consider your own ability to perform the work physically, as well as working at great heights. Exposure to extremes in weather, can also be considered by you.

2. COMPLETELY FILL OUT the Apprentice Outreach Application, indicating the trade you wish to learn.

3. ATTACH any required documents listed in the centerfold, for that trade.

If you did not complete High School, and the trade you applied for requires High School Completion you can do the following:

A. If you have a High School Equivalency Diploma (GED) attach the document along with a proof of birth document.

B. If you do not have either a high school education, or a GED, you can inquire on taking a High School Equivalency Examination so that you can become eligible for the program.

Proof of birth documents acceptable are listed as follows:

(1) Birth Certificate
(2) Baptismal Certificate
(3) Family Bible

You may if you wish, include the following documents not required by the Joint Apprenticeship Committees:

(1) Birth Certificate or Proof of Birth Document.
(2) DD 214 (Discharge Papers from Active Duty).
(3) High School Diploma or Transcripts
(4) Letters from former employers (related work experience).

The above information may be helpful to those who will interview you. After all, you want to appear impressive on the application, before you are interviewed.

4. MAILING YOUR APPLICATION: There are two Apprentice Outreach offices in Alaska. An Office in Anchorage, and the other in Fairbanks. Determine if Anchorage or Fairbanks is closer to your location and mail application to that office. Addresses are indicated on the application form.

5. WAIT for notification by the Joint Apprenticeship Committee of the Trade you selected. The Training Co-ordinator will inform you by mail of the date, time and place you should appear for interview.

If you are lacking documents, we will inform you by mail, requesting that you mail the requirements. You will NOT BECOME ELIGIBLE to be interviewed until ALL requirements are met.

OTHER USEFUL INFORMATION

TRANSPORTATION to and from interview (Screening) must be provided by the applicant.

GATB (General Aptitude Test of Batteries) are conducted by the State Employment Centers. Arrangements will have to be made by the applicant for this test.

WAGES are NOT paid to apprentices during the Trade Related Instruction (Class-Room) period. Starting wages indicated are paid by Contractors during On-The-Job-Training. Apprentices if eligible can receive VA Assistance or Unemployment Insurance while receiving class-room instructions.

ASBESTOS WORKER
HEAT AND FROST INSULATORS

NATURE OF WORK

Covers with insulating material exposed hot and cold surfaces of equipment, such as ducts, pipes, boilers and tanks. May bind wire around object being insulated either to hold prefabricated insulating material in place or to form a base and reinforcement for plastic insulating material. Applies coats of plastic insulating material. May wrap and tie tar paper or felt, or may secure material to pipes by pasting together cloth flaps, or may cover insulated pipes with canvas and secure by sewing or stapling. Uses pointing trowel to apply asbestos cement. Also works with metal.

TOOLS USED

Hand tools, such as trowels, brushes, scissors, hammers, saws, pliers and studwelding guns; power saws are also used to cut insulating materials.

WHERE EMPLOYED

By insulation contractors in new industrial and commercial construction; also, in the alteration and maintenance of insulated pipe work in chemical plants, petroleum refineries, rubber plants, atomic energy installations, shipyards, pipeline and other industrial establishments which have extensive steam installations for power and heating. Some establishments which have cold storage facilities employ asbestos workers for maintenance work.

WORKING CONDITIONS

Works alone or with others in open and confined areas usually from scaffolding or ladders. May be exposed to inclement weather, loud noises, dust, or dirt of construction operations. Subject to hazard of working at heights and with skin irritants.

HELPFUL HIGH SCHOOL COURSES

English
Blueprint Reading or
Mechanical Drawing
Metal Shop
General Math
General Science

EMPLOYERS

Alaska Chapter Associated Insulation Contractors.

UNIONS

Local No. 97, Asbestos Workers International Union.



BOILERMAKER



NATURE OF WORK

The field construction boilermaker is a highly trained, skilled craftsman. It is necessary that he be not only "one who builds boilers". A more truly descriptive designation would be "plate fabricator and pressure vessel mechanic". Included in the work a construction boilermaker must be able to perform is the erection and repair of boilers, blast furnaces, all types of pressure vessels and tanks in connection with steel mills, refineries, chemical plants, power plants and nuclear reactors and many other types of work in the plate fabrication and pressure vessel category. Also construction boilermakers are required to do heavy rigging and all types of welding.

TOOLS USED

Burning and cutting torch, welding stinger air tools and assorted hand tools.

WHERE EMPLOYED

Boilermakers work principally on heavy construction, and maintenance in related industries.

WORKING CONDITIONS

Normally seasonal in Alaska. Work is sometimes done at great heights and materials used are sometimes heavy and bulky. Work often involves considerable travel from job to job and from city to city. Safety precautions must be observed.

EMPLOYERS

All types of Contractors.

HELPFUL HIGH SCHOOL COURSES

Mathematics
Mechanical Drafting
General Science
Welding
Physics
Metal and wood shop

UNION

International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmith, Forgers and Helpers, Local No. 104.

BRICKLAYER

BLOCK LAYER – TILE LAYER

NATURE OF WORK

Constructs walls, partitions, fireplaces, chimneys, and other structures from brick, concrete, cinder gypsum block, structural tile, or terra cotta. Installs brick linings of industrial kilns and furnaces. Attaches ceramic tile to walls, floors or ceilings. Performs work according to blueprints or other instruction. Makes floors of terrazzo. Sets murals and other designs. Performs great variety of operations on different types of construction.



TOOLS USED

Chisels and pincers, trowels, jointers, and tuck pointers (a special finishing tool used to shape mortar joints), bricklayer's hammers, gage lines, plumb bobs, and mason's levels. Operates tile cutter and machines of the trade.

WHERE EMPLOYED

The great majority work mainly on new building construction. Some are employed in sewer construction work. Bricklayers do a considerable amount of alteration work — construction of fireresistant partitions, store front remodeling, and similar modernization work. They also do a substantial amount of maintenance and repair work.

Bricklayers also work for such industrial establishments as factories making glass or steel, where furnaces and kilns require special fire brick and refractory brick linings.

WORKING CONDITIONS

The work of the bricklayer is active and sometimes strenuous. It involves stooping to pick up materials, moderately heavy lifting, and prolonged standing. Hazards include falls from scaffolds and ladders; injuries from falling objects and skin burns from lime and cement.

HELPFUL HIGH SCHOOL COURSES

Mechanical Drawing
Mathematics
Blueprint Reading
Shop
General Science

EMPLOYERS

Contractors affiliated with Associated General Contractors and Masonry contractors.

UNIONS

Local No. 1 Brick Masons and Plasterers International Union.

CARPENTER, ANCHORAGE

MILLWRIGHT – CABINET MAKER
Year around training program starting every 8 weeks.



NATURE OF WORK

Because of the great diversity of the Carpenter Profession and the fact that the highly skilled Carpenter is indeed the "Master Builder" of the construction industry; most of the General Supervisory Personnel on construction projects are carpenters by trade. Since the carpenters are usually the first skilled tradesmen on the jobsite, they locate the building on the property, lay out the building lines, build and set footing and foundation wall forms. They also lay out, cut, assemble and erect all the component parts of frame buildings and build and erect concrete forms for columns, beams, suspended slabs, ramps, elevator shafts and stairways for commercial, industrial and institutional buildings, bridges and dams. They also set anchor bolts and other imbedded items for structural steel buildings, build forms for precast and prestressed beams and slabs; also tilt up wall sections. Although the major portion of the carpenters work is performed outside, a large percentage of the interior work is also their responsibility; such as setting window and door frames, hanging doors, casing windows and door openings, installing cabinets and millwork, sheetrock, wood paneling, acoustic tile, stairways and handrails, and applies finish hardware.

TOOLS USED

Claw hammers, hand saws, carpenter tape, combination square, framing square, hand level, plumb bobs, chalk box, mason line, wood chisels, cold chisels, brace and bits, ripping bar, planes, screw drivers, hack saw, tin snips, wood rasps, metal files, hand axe, scribes, nail sets, honing stone, utility knife and center punches, wrenches, pliers, putty knives, scrapes, key hole and coping saws. The employer provides all power saws, drills routers, joiners, nailers etc. and also powder actuated tools.

WHERE EMPLOYED

In the construction industry, employed by contractors and home builders at the construction jobsite; on commercial, industrial, institutional and residential buildings, also on bridges, dams, docks and highway work. Some of the work is in remote areas where construction camps are provided by the Employer. Carpenters perform approximately forty per cent of the skilled work on building projects, being engaged from the start to the finish of the project. Driving the first stake and adjusting the last lock.

WORKING CONDITIONS

Works indoors and out in cooperation with other carpenters and building tradesmen. Frequently works on scaffolds and ladders and in cramped positions; is exposed to dust, dirt, construction noises and varying weather conditions.

HELPFUL HIGH SCHOOL SUBJECTS

English	Higher Mathematics
Mechanical Drawing	Blueprint Reading
Arithmetic	Science
Woodshop	Physics

EMPLOYERS

Primarily contractors affiliated with Associated General Contractors of Alaska.

UNIONS

Local Unions affiliated with Alaska State Council of Carpenters.

CARPENTER, FAIRBANKS

NATURE OF WORK

Because of the great diversity of the Carpenter Profession and the fact that the highly skilled Carpenter is indeed the "Master Builder" of the construction industry; most of the General Supervisory Personnel on construction projects are Carpenters by trade. Since the carpenters are usually the first skilled tradesmen on the jobsite, they locate the building on the property, lay out the building lines, build and set footing and foundation wall forms. They also lay out, cut, assemble and erect all the component parts of frame buildings and build and erect concrete forms for columns, beams, suspended slabs, ramps, elevator shafts and stairways for commercial, industrial and institutional buildings, bridges and dams. They also set anchor bolts and other imbedded items for structural steel buildings, build forms for precast and prestressed beams and slabs; also tilt up wall sections. Although the major portion of the carpenters work is performed outside, a large percentage of the interior work is also their responsibility; such as setting window and door frames, hanging doors, casing windows and door openings, installing cabinets and millwork, sheetrock, wood paneling, acoustic tile, stairways and handrails, and applies finish hardware.

TOOLS USED

Claw hammers, hand saws, carpenter tape, combination square, framing square, hand level, plumb bobs, chalk box, mason line, wood chisels, cold chisels, brace and bits, ripping bar, planes, screw drivers, hack saw, tin snips, wood rasps, metal files, hand axe, scribes, nail sets, honing stone, utility knife and center punches, wrenches, pliers, putty knives, scrapes, key hole and coping saws. The employer provides all power saws, drills, routers, joiners, nailers etc. and also powder actuated tools.

WHERE EMPLOYED

In the construction industry, employed by contractors and home builders at the construction jobsite; on commercial, industrial, institutional and residential buildings, also on bridges, dams, docks and highway work. Some of the work is in remote areas where construction camps are provided by the Employer. Carpenters perform approximately forty per cent of the skilled work on building projects, being engaged from the start to the finish of the project. Driving the first stake and adjusting the last lock.

WORKING CONDITIONS

Works indoors and out in cooperation with other carpenters and building tradesmen. Frequently works on scaffolds and ladders and in cramped positions; is exposed to dust, dirt, construction noises and varying weather conditions.

HELPFUL HIGH SCHOOL SUBJECTS

English
Mechanical Drawing
Architectural Drawing
Arithmetic
Wood, Metal and Welding Shop Courses
Higher Mathematics
(Algebra, Geometry and Trigonometry)
Blueprint Reading
Science
Physics

EMPLOYERS

Primarily contractors affiliated with Associated General Contractors of Alaska

UNIONS

Local Union No. 1243 of United Brotherhood of Carpenters and Joiners of America.

CEMENT MASON, ANCHORAGE

NATURE OF WORK

Finishes exposed concrete surfaces of floors, walls, streets, driveways, etc. to make them strong, durable and relatively water tight. On most concrete building projects this involves hand operations. On highways and other large scale projects cement finishing machines are used extensively, but supplementary hand operations are also necessary, particularly to finish curved surfaces. Obtains special color effects by adding colors to mix or applies colors in powder form to the surface of the wet concrete before finishing.

TOOLS USED

Trowels, floats, spreaders, edgers, screeds, grinding and cutting machines, power operated trowels.

WHERE EMPLOYED

Principally on large buildings, though many are employed on highways or nonbuilding construction. Others work for cement contractors who perform subcontracting on smaller projects such as sidewalks, driveways, basement floors, and swimming pools.

WORKING CONDITIONS

Works outside much of the time, sometimes on ladders and scaffolds; subject to dust and dampness, weather conditions; much stooping and kneeling.

HELPFUL HIGH SCHOOL COURSES

Mechanical Drawing
Architectural Drafting
Shop Courses
Mathematics
General Science

EMPLOYERS

Employers affiliated with Association of General Contractors.

UNIONS

Local No. 867, Operative Plasterers and Cement Masons.



QUALIFICATIONS, REQUIREME
THE ALASKA BUILDING AND CONSTRUCTION

APPRENTICESHIP TRADES	AGE		EDUCATION	DOCUMENTS		
	Without Military/ Related Work Exp.	W/Military or Related Work Experience	Minimum Grade or Equiv.	Proof of Birth	High School Transcripts	Pas GAT Tes
(Heat and Frost Insulators) ASBESTOS WORKERS – SWP*	18 - 27	18 - 30	12th	X	X	
BOILERMAKERS – SWP*	18 - 31	Approval Apprentice Committee	12th	X	X	
BRICKLAYERS-TILESETTERS – SWP*	17 - 24	18 +	12th			X
(Anchorage) CARPENTER, CABINETMAKER, MILLWRIGHT	18 +	18 +				
(Fairbanks) CARPENTER, CABINETMAKER, MILLWRIGHT	17 +	17 +				X
1 2 (Anchorage) CEMENT MASON and PLASTERER	18 - 30	18 - 30	8th		X	
(Fairbanks) CEMENT MASON and PLASTERER	18 - 30		8th		X	
1 2 COOKS and BAKERS – SWP*	18 - 35	18 +	9th	X	X	
1. Wireman ELECTRICAL – 2. Lineman (SWP)* 3. Telephone Workers	18 - 24	18 - 27	12th		X	X
IRONWORKER – SWP*	18 - 30	18 - 30	12th		X	
OPERATING ENGINEER: – SWP* 1. Universal Equipment 2. Grade and Paving Equipment 3. Plant Equipment 4. Heavy Duty Repairman	18 - 25	Up to 6 years waivered for veterans only, based on years of active duty	12th	X	X	X
PAINTER, GLAZIER, CARPET and RESILIENT FLOOR COVERERS	18 - 25	18 - 25	8th			
(Anchorage) PLUMBERS and PIPE FITTERS	18 - 25	Vets Only 18 - 29	12th	X	X	
(Fairbanks) PLUMBERS and PIPE FITTERS	16 +		12th		X	
ROOFERS – SWP*	18 - 27	18 - 33	10th	X	X	
SHEET METAL WORKERS	18 - 25	18 - 27	12th		X	X

TRAINEE PROGRAMS				OTHER REQUIREMENTS		
BULL COOK, WAITER, WAITRESS, HELPER AND ATTENDANTS	18 +	18 +	Reading and Language Comprehension	Current Health Card		
LABORERS	18 +	18 +				
PILEDRIVERMEN	18 - 24	18 - 32	Reading and Language Comprehension			
TEAMSTER – Truck Drivers	18 +	18 +		Min 5'7" 140 lbs		
Surveyors	18 +	18 +	12th	X	X	

SWP* Indicates State wide Programs, Applicants who apply from within Alaska (statewide) and meet Qualifications/Requirements will be no Training facilities located in Anchorage or as directed by Joint Apprenticeship Committee. Teamster and Operating Engineer Applican

TO MAKE APPLICATION — SEE PAGE 15 FOR INSTRUCTIONS RECRUI

NTS AND INFORMATION FOR APPRENTICESHIP AND TRAINEE PROGRAMS

TESTS		TERM OF APPRENTICE		TRADE-RELATED INSTRUCTION (CLASS-ROOM)		WAGE INFORMATION			
B t	Pass Entry Exam	Years	Hours	Number Weeks 1st Class	Additional Each Year	Starting Wage Per Hour	% Journey-Man Pay	Raise in Pay as Indicated	Journeyman Wage Per Hour
		4	6,400	3	3	$8.47	60	Each 1,600 Hrs.	$14.11
		4	6,000	4 Sets	12 Lessons Correspondence	$9.11	70	750 Hrs. and Lessons Completed	$13.01
	X	3	6,000	8	8	$7.72	55	6 Months	$14.03
	X	4	8,000	8	7	$8.29	64	1,000 Hrs.	$12.96
	X	4	8,000	8	6	$8.98	64	1,000 Hrs.	$14.03
		3		6	6	1. $ 9.29 2. $10.13	75	12 Months	1. $12.38 2. $13.50
		3		6	6	$9.38	75	2,000 Hrs. or 1 Year	$12.38
		3	6,000	12	3 to 4	1. $7.70 c 2. $7.97 h	75	1,000 Hrs.	1. $10.27 2. $10.63
	X	4	8,000	12	Additional 12	$9.56	65	1,000 Hrs.	$14.70
		3	4,300	6	4-6 Wks	$8.28	60	Min. 6 Mos. 800 Hrs.	$13.80
			6,000	8	6	$9.04	70	1,000 Hrs.	$12.91
		3	6,000	10	3	$8.64	60	1,000 Hrs.	$11.40
		5	10,000	6	Additional 20	$7.40	50	1,000 Hrs.	$14.80
		5	10,000	10	6	$7.66	50	1,000 Hrs.	$15.32
		3	3,600	3	3	$8.97	65	600 Hrs.	$13.80
		4	8,000	5	5	$9.37	60	1,000 Hrs.	$15.62
		TERM OF TRAINEE							
			30 days	8	-0-	Approx $8.04	85	30 Days	Approx. $9.46
		-0-		4	Optional 2 wks Upgrading	$11.35	100		$11.35
	X	2		4	4	$7.90	60	6 Months	$13.17
				4		$11.45	100		
	X		600	15		$10.83	100		

tified for Screening (Interview) by Appropriate Joint Apprenticeship Committee.
s must have a Valid Alaska Drivers License.

TMENT IS RESTRICTED TO ALASKA RESIDENTS — MINIMUM ONE YEAR RESIDENCY

CEMENT MASON, FAIRBANKS

NATURE OF WORK

Finishes exposed concrete surfaces of floors, walls, streets, driveways, etc. to make them strong, durable and relatively water tight. On most concrete building projects this involves hand operations. On highways and other large scale projects cement finishing machines are used extensively, but supplementary hand operations are also necessary, particularly to finish curved surfaces. Obtains special color effects by adding colors to mix or applies colors in powder form to the surface of the wet concrete before finishing.

TOOLS USED

Trowels, floats, spreaders, edgers, screeds, grinding and cutting machines, power operated trowels.

WHERE EMPLOYED

Principally on large buildings, though many are employed on highways or nonbuilding construction. Others work for cement contractors who perform subcontracting on smaller projects such as sidewalks, driveways, basement floors, and swimming pools.

WORKING CONDITIONS

Works outside much of the time, sometimes on ladders and scaffolds; subject to dust and dampness, weather conditions; much stooping and kneeling.

HELPFUL HIGH SCHOOL COURSES

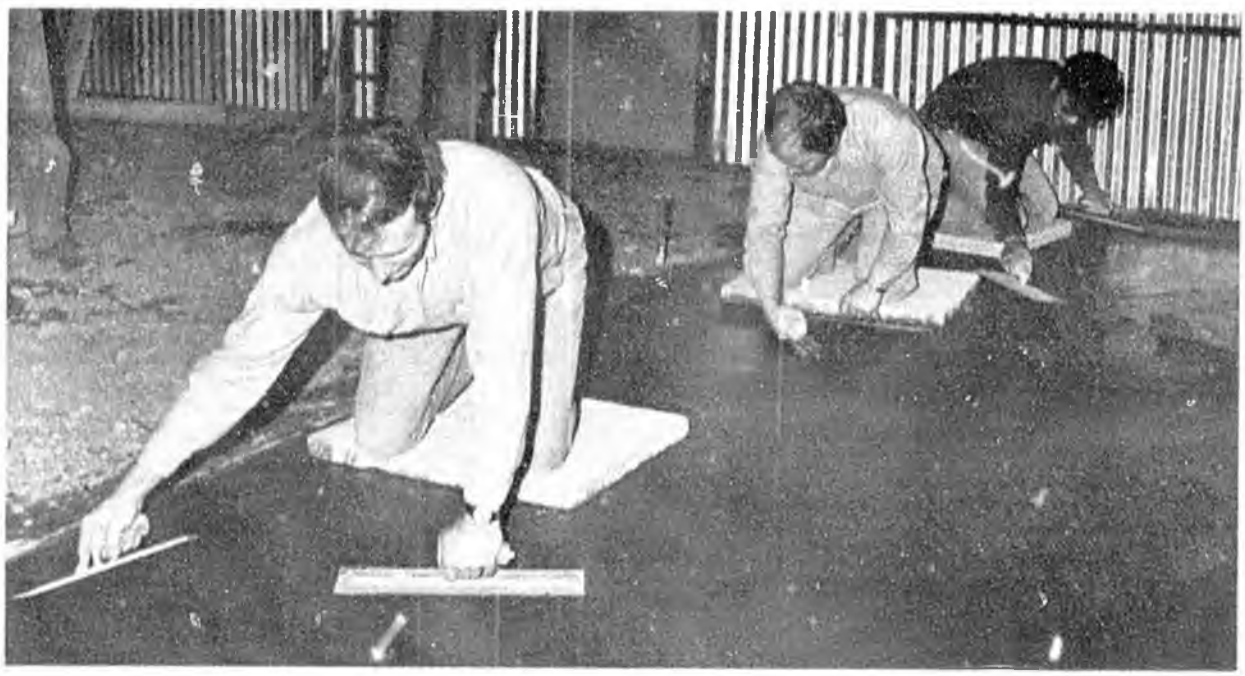
Mechanical Drawing
Architectural Drafting
Shop Courses
Mathematics
General Science

EMPLOYERS

Employers affiliated with Association of General Contractors.

UNIONS

Local No. 912, Operative Plasters and Cement Masons.



CULINARY
COOKS / BAKERS

NATURE OF WORK

In Camp the head cook is in charge of the kitchen, and is responsible for all cooking, baking, and related services in the camp, which requires a good baker. The head cook appoints a head bull cook to maintain a continuity of services as required, especially in the camp.

FOOD PRODUCTION

The area of food service offers a wide range of employment opportunities. Employment in our expanding industry has many levels depending upon the interest talents, and time that workers extend to successful food and service careers. Positions in production, housekeeping and services, are some of the levels that training and apprentices are concerned with. In the classification of cook, the duties are in the preparation of roasts, sauces and gravies. The cook is also responsible for the broiling, grilling, and sautéing; creates a wide variety of attractive palatable salads, cold dishes, including fruit compotes, dressings, canapies, and other culinary creations required in the preparation of meals. Todays pastry chef and baker are readily aware of the need for originality and ingenuity as well as the delicious flavor, as necessary requirements to create the reputation of a "good baker." A good many pastries and desserts are standard types. The improvement of these standards lies in the exposure to additional knowledge and increased skills which are attained through the design of training.

TOOLS USED

Bench knives, slicers for hand carving roasts like prime ribs, top round, turkey, and ham, etc. Utility knives, for preparation of vegetable cleaners; steak knives, boning knives, steel for trueing the edges of knives; off-set spatula for grill work and pumice stone for cleaning grill; heavy duty forks for turning roasts and broiler forks. Bakers use knives, and have wheels for cutting pastry, scrapers for cutting dough and bench work.

WHERE EMPLOYED

Any construction site where a camp is permanent or fly camp is erected.



WORKING CONDITIONS

All work is done indoors. The shifts often run on a twenty-four hour basis, as the crews are scheduled to work or fill in as required to complete the job.

HELPFUL HIGH SCHOOL SUBJECTS

English
Arithmetic
Home Economics
Science
Physics

EMPLOYERS

Prime contractors and all subcontractors affiliated with Associated General Contractors of America. Logistics contractors who are [illegible]ed bids, must sign compliance agreeme[illegible]n all union jobs.

UNIONS

Hotel, Restauraat and camp workers unions. Local 878, 879. Also Locals 867 Ketchikan, 873 Sitka, 871 Juneau.

CULINARY

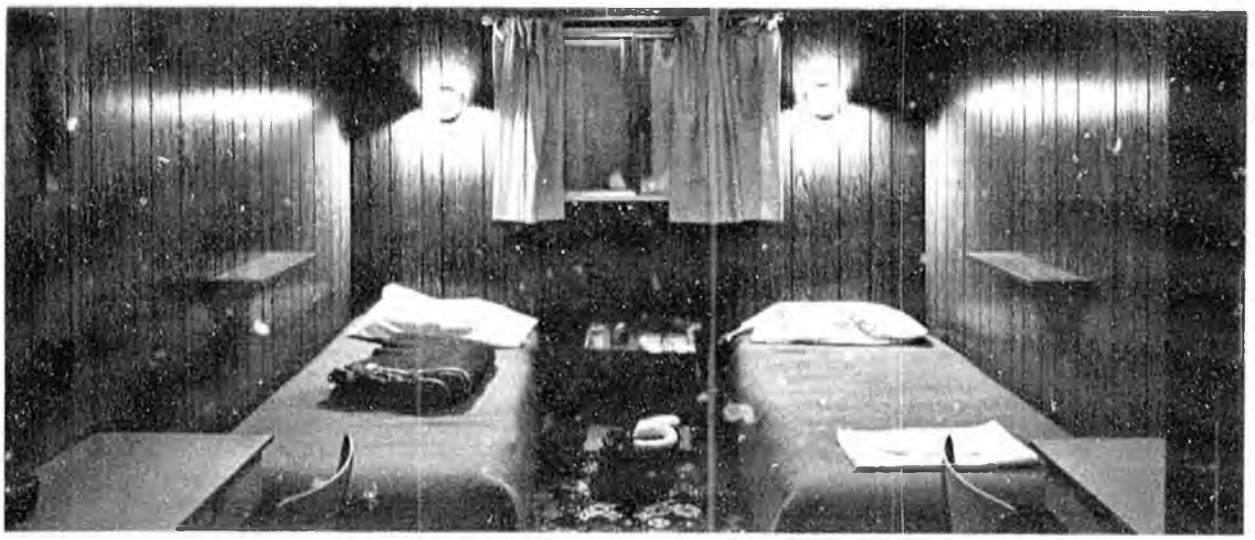
BULL COOK, WAITER, WAITRESS, HELPER, ATTENDANTS

NATURE OF WORK

A bull cook is a person who works in the quarters or housing section of the camp. The bull cook changes the sheets, makes up the beds, scrubs and cleans halls, washrooms, and keeps the living quarters area in a clean, tidy and sanitary condition at all times. Often the schedule requires the bull cook to wash and dry linens used at the site, and also the personal laundry of the crews in the camp. A good bull cook must be honest and must be a hard worker.

A waiter - waitress type person sets tables, assists in the serving of meals, provides service with routine tasks, including coffee making, milk, juice, sets up and other pre-meal duties, under supervision to expedite the meals to the crews. Also assists in the cleaning of tables and the removal of dishes to the dishwasher. Is responsible to keep the tables clean, floors, walls and general area in a sanitary and tidy condition at all times.

A Helper in the kitchen performs routine tasks of a semi-skilled nature, washing of dishes, pots and pans, and maintaining cleanliness in the kitchen at all times; assists in the preparation of the meals such as peeling of vegetables and other tasks under supervision.



ELECTRICIAN
LINEMAN – CABLE SPLICER

NATURE OF WORK

Linemen construct and maintain the network of powerlines which carry electricity from generating plants to consumers. The work consists of erecting poles and towers; installing insulators, cables, transformers, switches, and a variety of equipment in generating, substation, and distribution systems. Linemen construct both overhead and underground distribution systems, and perform routine maintenance and emergency service, using special tools and procedures to handle high voltage lines to avoid interruptions in flow of current. Linemen construct and maintain the system of wires and cables connecting the communication networks of telephone, telegraph, radio, and television. Cable-splicing is a division of the Electrician Lineman trade.

TOOLS USED

Hack saws, several sizes of pliers, screw drivers, wrenches, knives and specialty hand tools, climbing hooks, safety straps, body belt, line boots, and live line tools for working energized circuits. Powered tools and testing equipment are furnished by the employer.

WHERE EMPLOYED

By contractors on new construction of generating, transmission and distribution systems. By public utility systems, government agencies and military installations for both new construction and maintenance.

EMPLOYERS

Contractors affiliated with National Electrical Contractors Association.

UNION

Local Union No. 1547 of International Brotherhood of Electrical Workers.

WORKING CONDITIONS

Linemen usually work outdoors and, in emergencies, in all kinds of weather. While some work at heights, on poles and towers, others work in man-holes underground. Linemen are required to know the techniques and procedures for working on high-voltage energized circuits. The work requires physical activity and mental alertness, and while powered equipment has reduced the physical exertion to some degree the work still demands good physical condition to perform strenuous work, steady nerves and a good sense of balance. Hazards include shock and burns, falls and falling objects. Recognizing the hazards, considerable attention is given to safety and first-aid in the apprenticeship program.

HELPFUL HIGH SCHOOL COURSES

English
Mathematics through Trigonometry
Shop Courses
Science (Physics)
Basic Electric and Radio Theory
Mechanical Drawing



ELECTRICIAN
WIREMAN

NATURE OF WORK

Lays out, assembles, installs and tests electrical fixtures, apparatus, control equipment and wiring used in the light and power systems of buildings, industrial or other construction projects. Plans proposed installations from blueprints and specifications. Measures, cuts and installs proper lengths of rigid or flexible conduit, wire, and cable. Splices wires; insulates connections; tests circuits. Installs and connects generators and motors, electrical machinery, electronic equipment, controls, signal and communication systems. The work must conform to all code requirements.

TOOLS USED

Hack saw; several sizes of pliers, screw drivers, and pipe wrenches; a claw hammer; center punch; a 6-foot ruler; a wood chisel, and an electrician's knife. A variety of test appliances and heavy tools for special purposes are usually furnished by the employer.



WHERE EMPLOYED

By electrical contractors and industrial installations, or on remodeling of existing buildings. Also employed as maintenance and repairmen in shops and industrial installations.

WORKING CONDITIONS

The electrician wireman usually works in partly completed structures, but may be required to work outside or in cramped quarters. Work requires constant physical activity including lifting of moderate loads, climbing, crawling, pulling, digging, etc. Most work is not on activated electrical systems but he may be required at times to work on energized circuits. Hazards would include shocks and burns, falling objects, and falls. Safety is stressed as part of job training and preparation.

HELPFUL HIGH SCHOOL COURSES

English
Higher Mathematics through Trigonometry
Mechanical Drawing
Physics
Shop Courses
Basic Electricity

EMPLOYERS

Contractors affiliated with National Electrical Contractors Associations.

UNION

Local Union No. 1547 of International Brotherhood of Electrical Workers.

ELECTRICIAN-TELEPHONE

OUTSIDE TELEPHONE

Installation, repair and maintenance of station apparatus and associated wiring and cabling.

INSIDE TELEPHONE

Routine and preventive maintenance of central office switching equipment.

Central office installation work.

KNOWLEDGE, ABILITIES AND SKILLS AN APPRENTICE WILL HAVE AFTER COMPLETION OF APPRENTICESHIP PROGRAM

- Thorough knowledge of the fundamentals of basic electricity both AC and DC.
- Thorough knowledge of the principles and practices of telephony as applied to all types of switching systems, installations and their maintenance.
- Ability to read, interpret and follow equipment installation specifications.
- Ability to read and interpret circuit diagrams.
- Will know standard color code.
- Will have knowledge of switching principles to the extent that he can analyze subscriber trouble complaints and locate source of trouble in C.O.
- Will be able to adjust relays.
- Will be familiar with equipment trouble shooting technique.

WHERE EMPLOYED

By electrical contractors, usually on new residences, commercial and industrial installations, or on remodeling of existing buildings.

HELPFUL HIGH SCHOOL COURSES

English
Higher Mathematics through Trigonometry
Mechanical Drawing
Physics
Shop Courses
Basic Electricity

EMPLOYERS

Contractors affiliated with National Electrical Contractors Association.

UNION

Local Union No. 1547 of the International Brotherhood of Electrical Workers, AFL-CIO.



IRON WORKER

STRUCTURAL IRON WORKER – REINFORCING IRON WORKER – ORNAMENTAL IRON WORKER

NATURE OF WORK

Ironworkers are necessary to almost every type of heavy building and engineering construction activity. They are divided into the above three major classifications. They fabricate, erect, assemble, or install structural metal products in the construction of industrial, commercial, and large residential buildings. Most ironworker training programs train apprentices in the knowledge and skill of all three phases of the trade and the hoisting of heavy machinery and equipment.

STRUCTURAL IRONWORKERS erect the steel framework of bridges, buildings, and other structures including metal storage tanks, and overhead crane runways that support heavy equipment. They install steel floor decking and vault doors and their frames.

REINFORCING IRONWORKERS (rodmen) set steel bars in concrete forms to reinforce concrete structures. They place the steel bars on suitable supports in the concrete form and tie the bars at appropriate intersections, so that each bar receives its intended structural load. The bars are placed in the concrete form according to blueprints, specifications, or verbal instructions.



ORNAMENTAL IRONWORKERS fabricate and install metal stairways, cat-walks, floor grating and iron ladders, such as those used extensively in powerhouse and chemical plants, as well as metal window sash and doors, grilles, and screens (the heavy decorative or safety type). They also install decorative ironwork on balconies, lamp-posts, gates and fences.

TOOLS USED

Spud wrench, hammers, burning and cutting torch, welding stinger, tapes, air guns and wrenches, pliers.

WHERE EMPLOYED

Most are employed by contractors on new industrial and commercial construction. They work principally on building and heavy construction, although many are employed on highway or other non-building projects.

WORKING CONDITIONS

Work is sometimes done at great heights on narrow footings. Materials used are often heavy and bulky. Work often involves considerable travel from job to job and from city to city. Safety precautions must be observed.

HELPFUL HIGH SCHOOL COURSES

Mathematics	Physics
Mechanical Drafting	Wood, Auto.
General Science	Metal Shop
Welding	

EMPLOYERS

Alaska Steel Contractors and Erectors.

UNIONS

Local 751, International Association of Bridge, Structural and Ornamental Iron Workers.

CONSTRUCTION LABORER

NATURE OF WORK

Does hand excavating, installs manholes, lays utility pipes, places concrete, works underground in drilling, shoring, detonating, installs railroad track rakes asphalt paving, sandblasts, gunnites, cleans tanks, operates steam point and water jet, checks grade and hops stakes, sets highway culvert and signs, loads and unloads building material, services other building tradesmen, falls and bucks and clears timber and brush, handles explosives, cleanup, strips and cleans concrete forms, cuts concrete, mixes mortar.

TOOLS

Operates air trac, jackhammer, drills, steamers, gunnite and sandblast machines and nozzles, vibrators, power chain saws, mixers, concrete saws. Will use hand tools such as shovels, picks, sledges, scrapers, rakes, axes, tackle and rigging, wrenches, pocket levels.

WHERE EMPLOYED

Laborers are employed in both building construction and heavy highway airfield and utility fields. In addition, many supplier yards and plants use laborers for fabricating various components of construction.

WORKING CONDITIONS

Works indoors and outdoors with other building tradesmen under cramped, severe conditions and exposed to dirt, dust, weather of all kinds, noise, and water.

HELPFUL HIGH SCHOOL SUBJECTS

Arithmetic. Higher math, mechanical drawing, architectural drawing and shop courses.

EMPLOYERS

Contractors affiliated with Association of General Contractors of Alaska.

UNIONS

Local No. 341, Local No. 942, Local No. 1331 of Laborers International Union of North America AFL-CIO.



OPERATING ENGINEERS

NATURE OF WORK

Operation and maintenance of equipment used in the construction of highways, airports, pipelines, ground preparation for buildings, tank farms bridges, etc., in all parts of Alaska.

THE ALASKA OPERATING ENGINEERS JOINT APPRENTICESHIP AND TRAINING PROGRAM, comprised of Local 302 International Union of Operating Engineers and the Alaska Chapter of the Associated General Contractors of America, Inc., is dedicated to the task of training well qualified and properly motivated young men and women, in the operation and maintenance of heavy equipment.

THERE ARE SOME 128 classifications of heavy equipment used in heavy construction, highway construction and pipeline construction. Some of these classifications are: Bulldozers, cranes, backhoes, draglines, clam shells, motor patrols, scrapers (self propelled and towed), rock crushers, asphalt plants, concrete plants, concrete pavers, asphalt pavers, pumps, air compressors, power houses, sewer treatment facilities and many, many more.

THROUGH THE APPRENTICESHIP PROGRAM, the Industry and the Union will bring about a positive result: to supply skilled and adaptable craftsmen of uniformly high quality for the construction industry.

WORKING CONDITIONS

Normally seasonal in Alaska. Outside work in all kinds of weather and terrain.

EMPLOYERS

Contractors affiliated with the Associated General Contractors of America, Alaska Chapter and Contractors that have a compliance agreement with Local 302.

UNION

International Union of Operating Engineers Local 302



PAINTERS AND ALLIED TRADES
FLOOR COVERERS

NATURE OF WORK

Resilient Floors and Decorative Coverings: Measuring, cutting, fabricating, fitting, installing to be cemented, tacked or otherwise applied to its base wherever it may be, all materials whether used either as a decorative covering or as an acoustical appliance such as carpets of all types and designs, sheet rubber, sheet vinyl cork carpet, rubber tile, asphalt tile, tile, cork tile, linoleum tile, mastic in sheets or tile form, vinyl tile, interlocking tile, mastipave, composition in sheet or tile form and all derivatives of above; the fitting of all devices for the attachment of the above materials and the fitting of all decorative or protective trim to and adjoining the above materials which shall include the drilling and plugging of holes and attaching of strips, slats, nosing, etc., on any base where the above materials are to be installed or applied, such as drilling, plugging and slatting for installing of fastening of carpet, the installing of all nosings, cap strips, corner beads and edgings of any material and the preparatory work of the craft for all of the aforesaid. Also the cleaning of rugs and carpets.

HELPFUL HIGH SCHOOL COURSES

Arithmetic
English
Blueprint Reading

EMPLOYERS

Floor Covering Association

WORKING CONDITIONS

Pleasant — usually inside, clean.

UNIONS

Brotherhood of Painters and Allied Trades, Local No. 1140 and Local No. 1555.



PAINTERS AND ALLIED TRADES

GLAZIER AND GLASSWORKER

NATURE OF WORK

All Glassworkers to-wit: General Glazing includes the setting, cutting, preparing, handling, or removal of the following: Art Glass, Prism Glass, Beveled Glass, Leaded Glass, Automobile Glass, Protection Glass, Plate Glass, Window Glass, Mirrors of all types, Wire Glass, Ribbed Glass, Ground Glass, Colored Glass, Figured Glass, Vitrolite Glass, Carrara Glass, and all other types of Opaque Glass, Glass Chalk Boards, Structural Glass, Tempered and Laminated Glass, Thiokol, Neoprene, and all other types of sealants, all types of Glass Cements, all types of insulating glass units, all plastics or other similar materials when used in place of glass, to be set or glazed with putty, mounding, rubber, lead and all types of mastics in wood, iron, aluminum or sheet metal sash, skylights, doors, frames, stone, wall cases, show cases, book cases, side-boards, partitions and fixtures. The installation of the above materials when in the shop or on the job site, either temporary or permanent, on or for any building in the course of repair, remodel, alteration or construction.



The installation of all extruded, rolled, or fabricated metals or any materials that replace same, metal tubes, mullions, metal facing materials, muntins, facia trim mouldings, porcelain panels, architectural porcelain, plastic panels, skylights, showcase doors and relative materials including those in any or all types of building related to store front and window construction.

Door and window frame assemblers such as patio sliding or fixed doors, vented or fixed windows, shower doors, bath tub enclosures storm sash where the glass becomes in integral part of the finished product, including the installation of the above.

HELPFUL HIGH SCHOOL COURSES

Arithemetic
English
Blueprint Reading
Metal Shop Work

WORKING CONDITIONS

Invariably outside or in-shop work.

EMPLOYERS

Association of Glazing and Glasswork Contractors.

UNIONS

Brotherhood of Painters and Allied Trades, Union No. 1140 and Local No. 1555.

PAINTERS AND ALLIED TRADES

PAINTER (Commercial and Industrial)

NATURE OF WORK

Painters use a wide variety of tools and materials to apply to the surfaces of buildings and structures.

(a) All painting of residences, buildings, structures, industrial plants, tanks, vats, pipes, vessels, bridges, light poles, high-tension poles, traffic and parking lines on highways, parking lots, playgrounds, factories and airline strips; all sign, pictorial, coach, car, automobile, carriage, aircraft, machinery, ship and railroad equipment, mural and scenic painting; spackling of all surfaces where adhesive materials are used; and all drywall pointing, taping and finishing.

(b) All decorators, paperhangers, hard wood finishers, grainers, varnishers, enamelers and gilders.

1. Paperhangers work shall be all material of whatever kind or quality applied to walls or ceilings with paste or adhesive; all tacking on of muslin or other material which is used as wall or ceiling coverings or covered with material pasted on. Also scraping off old paper, preparing of walls, etc., for paperhangers work.

2. The application of relief, stucco, plaster or decorative work shall not be considered paperhangers' work exclusively.

(c) All persons engaged in applying or removing paints, pigments, extenders, metal primers and metal pigments, clear pigments, binders, thinners and dryers, primers and sealers, oil paints and enamels, water colors and emulsions, clear coatings, waxes, stains, mastics, cement enamels and other special coatings, plastics, adhesives, coatings and sheet rubber and other linings, oils, varnishes, water colors, wall paper, wall coverings or other materials used in the various branches of the trade, and the cleaning and bleaching of all interior and exterior walls and surfaces with liquid, steam, sandblast or any other process.

TAPER (Vinyl and Paperhanger)

TOOLS USED

Brushes, rollers, spray guns, scrapers, blow torches, and paperhanging equipment. Putty knives, scribers, mastic spreaders, taping tools, straight edges, compressors, etc.

WHERE EMPLOYED

By painting and decorating contractors on new construction and in renovating existing structures. By Maintenance contractors for government and industrial operations.

WORKING CONDITIONS

Work may be seasonal and influenced by weather conditions. Works inside and out, stands for long periods, climbs ladders, stoops, bends, is exposed to fumes from paint and sprays and skin irritants.

HELPFUL HIGH SCHOOL COURSES

English
Arithemetic
Blueprint Reading
Art

UNIONS

Brotherhood of Painters and Allied Trades. Union No. 1140 and Local No. 1555.

EMPLOYERS

Association of Painting Contractors and other signators to collective bargaining agreement.

PILEDRIVERMEN

RIGGERS – FRAMERS – CERTIFIED WELDERS
DEEP SEA DIVERS – AND DIVER TENDERS

NATURE OF WORK

Piledrivermen build docks and bridges. They also are employed on any heavy construction where piling are used such as building foundations and where piling are used to support oil, water or gas pipe lines.

RIGGERS

Work with the crane and pile driving hammer to drive piling for docks, bridges, etc. Also rig set in place piling to set in pre-drilled holes.



FRAMERS

Build and set up wooden forms for the concrete pour on all piers and abutments on bridges and the forms for the concrete deck on docks.

CERTIFIED WELDERS

Do all the welding and cutting of piling on steel bridges and docks. Welding is a tool of the trade.

DIVERS

Do all the installation, inspection and repair work on underwater pipe lines and all underwater construction work on docks, dams and bridges. Also do salvage work and ship inspections.

DIVER TENDERS

Dress the Diver in, tend air and communication line and send down tools and materials needed. They also take the suit and hard hat off the Diver and tend the recompression chamber.

EMPLOYERS

Mainly, contractors affiliated with Associated General Contractors of America Alaska Chapter.

UNION

Piledrivers, Bridge, Dock Builders, and Divers Local Union 2520.

PLASTERER

NATURE OF WORK

Applies plaster to interior walls and ceilings. Also applies stucco to exterior walls. May cast, or run in place, ornamental designs in plaster. Interior plaster is applied over gypsum, metal lath, or directly to masonry in two or three coats. When plaster is finished in two coats, it is applied to gypsum lath or directly to masonry. The base coat is made straight with a long straight-edge, then smoothed with a long flat tool called a darby. Three-coat plaster is applied over metal or wire lath. The first coat (scratch) is applied either by hand or machine and is roughed up to prepare for second coat. To assure an even wall the craftsman applies a border of plaster (screed) at the top and bottom of the wall to the desired thickness and straightness. When the screeds have sufficiently hardened, the area between is filled and brought to a true surface by a long straight-edge, then smoothed with a darby. The final coat in either two or three-coat work is a thin carefully applied coat which is applied and smoothed for paper or paint or is textured to meet the architectural specification. A recently developed one-coat or veneer plaster has been produced which is applied to a large size gypsum plaster base and is finished with one coat. May be required to work with plaster machine which sprays plaster to walls and ceilings.

Exterior plaster is applied in two or three coats according to architectural specifications.

TOOLS USED

Pointing trowels, angle tools, trowels, hawk, darby, straight-edge, feather-edge, floats, brushes.

WHERE EMPLOYED

On residential, industrial and commercial buildings, schools and hospitals.

WORKING CONDITIONS

Plastering is considered a relatively hazardous occupation. Falls from scaffolds or ladders, injuries from falling objects, skin burns from lime, are some of the more common accidents, in addition to the usual mishaps possible on construction work.

HELPFUL HIGH SCHOOL COURSES

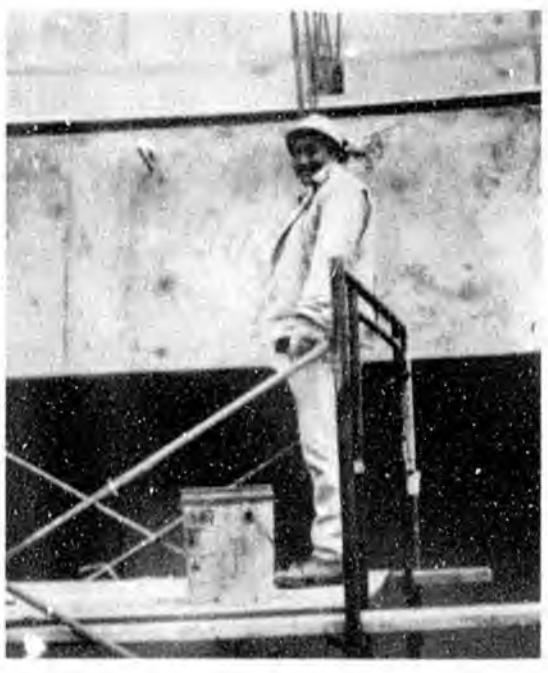
Mathematics
Wood and Metal Shops
Mechanical Drawing
Art

EMPLOYER

Contractors affiliated with Association of General Contractors, Masonry Contractors.

UNION

Local No. 867, Operative Plasters and Cement Masons.



PLUMBER/PIPEFITTER, ANCHORAGE

NATURE OF WORK

Fabrication and installation of all kinds of pipe and piping systems. Industrial and Commercial instrumentation. Gas, Water, Air, Steam Process, Waste Disposal, and some fire systems piping. Work includes Rigging, Lay Out, Fabrication, Blueprint Reading, Installation, Startup, and Maintenance. Pipe joining techniques used are: Welded (gas, arc, and heli arc), Soldered, Flanged, Mechanical, Poured, Glued and Screwed type joints. Materials used are: Cast Iron, Galvanized, Block Iron, Copper, Wrought Iron, Plastic, Transite, Brass, Stainless, other alloy and non metalic piping materials.

TOOLS USED

Pipe wrenches, drills, power and hand threading machines, power saws, hand saws, hammers, come alongs, chisels, welding machines, pipe bevelers, pipe cutters, ox and ace torches, hydraulic pipe benders, wrenches, vises, many other power tools and hand tools.



WHERE EMPLOYED

By pipefitting contractors in new building construction, mainly at the construction site; as maintenance personnel in the petroleum, chemical and food processing industries. By plumbing contractors and firms dealing in plumbing and heating equipment. By firms which fabricate piping and by specialty contractors in industrial and fire control equipment systems.

WORKING CONDITIONS

Work is strenuous and may involve heavy lifting, pulling and pushing. It may require standing for long periods or cramped and uncomfortable positions. Risks include falls from ladders, cuts from sharp tools, burns from hot pipes or steam. Working in all kinds of weather (outside).

HELPFUL HIGH SCHOOL COURSES

Mathematics, including Algebra and Geometry, Metal and Wood Shop, Mechanical Drawing or Blueprint Reading, General Science, Chemistry, Physics.

EMPLOYERS

Plumbing Heating, Cooling Contractors of America, Anchorage area.

UNIONS

Local Union No. 367, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of United States and Canada.

PLUMBER/PIPEFITTER, FAIRBANKS

NATURE OF WORK

Fabrication and installation of all kinds of pipe and piping systems. Industrial and Commercial instrumentation. Gas, Water, Air, Steam Process, Waste Disposal, and some fire systems piping. Work includes Rigging, Lay Out, Fabrication, Blueprint Reading, Installation, Startup, and Maintenance. Pipe joining techniques used are: Welded (gas, arc, and heli arc), Soldered, Flanged, Mechanical, Poured, Glued and Screwed type joints. Materials used are: Cast Iron, Galvanized, Block Iron, Copper, Wrought Iron, Plastic, Transite, Brass, Stainless, other alloy and non metalic piping materials.

TOOLS USED

Pipe wrenches, drills, power and hand threading machines, power saws hand saws, hammers, come alongs, chisels, welding machines, pipe bevelers, pipe cutters, ox and ace torches, hydraulic pipe benders, wrenches, vises, many other power tools and hand tools.

WHERE EMPLOYED

By pipefitting contractors in new building construction, mainly at the construction site; as maintenance personnel in the petroleum, chemical and food processing industries. By plumbing contractors and firms dealing in plumbing and heating equipment. By firms which fabricate piping and by specialty contractors in industrial and fire control equipment systems.

WORKING CONDITIONS

Work is strenuous and may involve heavy lifting, pulling and pushing. It may require standing for long periods or cramped and uncomfortable positions. Risks include falls from ladders, cuts from sharp tools, burns from hot pipes or steam. Working in all kinds of weather (outside).

HELPFUL HIGH SCHOOL COURSES

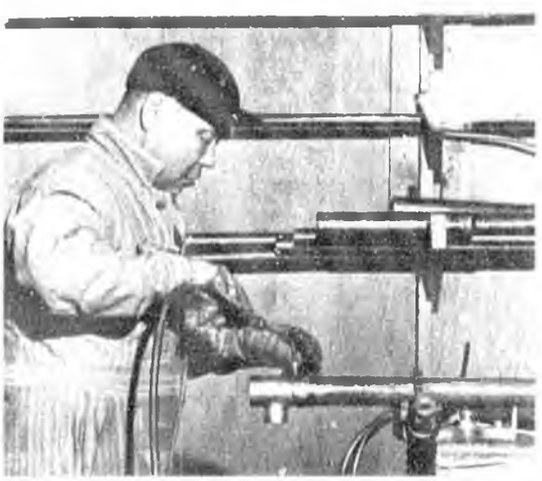
Mathematics, including Algebra and Geometry. Metal and Wood Shop. Mechanical Drawing or Blueprint Reading. General Science, Chemistry, Physics.

EMPLOYERS

Plumbing Heating, Cooling Contractors of America, Anchorage area.

UNIONS

Local Union No. 375, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of United States and Canada.



ROOFER

NATURE OF WORK

Local No. 190 membership is composed of skilled journeymen, apprentices and helpers employed in the following work: All slate, tile, asbestos rigid shingles, asbestos or brick siding, asphalt shingles and asphalt siding, and any or all kinds of built-up roofing whether applied cold or hot, dry rolled and nailed, sprayed, trowelled, or mopped. All rigid insulation when mopped, sprinkled, spotted or nailed to roof deck. All damp proofing, or water proofing, or enameling, or enameling pipe lines storage tanks and containers of all descriptions, all types of cork, rigid or rolled insulation, foam glass applied either hot or with cold adhesives, and/or all other work involving the use of bituminous asphalt products, including Koppers' enamel, all kinds of primers, and pitch products and by-products, and all plastics applied as either damp, water proofing or roofing; all roof coatings applied with spray, pole brushes and squeegees.

TOOLS USED

Roofing kettles, felt machines, power roofing cutters, power brooms and power hoists.

WHERE EMPLOYED

For the most part, for contractors roofing and waterproofing new construction. There is always some repair and re-roofing of older buildings.

WORKING CONDITIONS

The smallest crew in build-up (hot) roofing consists of three persons. Generally much larger crews work on all the big construction jobs. The principle hazards in the trade are hot materials used and danger of falling.

QUALIFICATIONS

1. Age 18 to 27. (Exceptions may be made by the Apprentice Committee.)
2. Have a 10th grade education, or a certified equivalency.
3. U. S. Citizenship.
4. Physically fit for the trade.



SHEETMETAL WORKERS

NATURE OF WORK

Lays out, cuts, forms, fabricates, assembles, and installs sheet metal items, such as ducts, blowers, gutters, downspouts, flashings and skylights, in building construction and alteration for heating, ventilating, and air conditioning. Fabricates and installs stainless steel kitchen, restaurant, and soda fountain equipment, partitions and shelves. Constructs electric signs and does sheet metal work for other industrial and architectural purposes. Working from blueprints lays out the work, cuts the metal, forms the metal, then welds, bolts, rivets, solders, or cements the seams and joints as required.

TOOLS USED

Hand and power operated shears, brakes, hammers, stakes, forming machines, welders, turning machines, soldering equipment.

WHERE EMPLOYED

Mainly in the construction industry, by contract or job shops, making and installing all types of sheet metal equipment.

WORKING CONDITIONS

Works alone and with others inside and outside on the job and in the shop. Stands, walks, climbs, works on benches, machines, and buildings where work is done. Sometimes works from high ladders and scaffolding. Subject to noise and hazards of cutting, burning, and falling.

HELPFUL HIGH SCHOOL COURSES

Mathematics through Trigonometry
Mechanical Drawing
Drafting
Blueprint Reading
Wood and Metal Shop

EMPLOYERS

Mechanical Contractors of Alaska, Inc. AGC (Alaska Chapter) Independent Sheet Metal Contractors.

UNION

Local No. 23, Sheet Metal Workers International Association.





TEAMSTER SURVEYORS

NATURE OF WORK

Surveying as performed by the Technical Engineers of Alaska, affiliate of Teamsters Union Local 959 embraces all manner of construction surveys. Such surveys are involved in highways, bridges, buildings, water and sewer lines, pipelines, airports and a host of related construction projects. The work involves the detailed layout of all facets of construction such as foundations and structural members, the monitoring of line and grade and finally a survey of the project "as - built."

TOOLS USED

Construction surveyors utilize transits, levels, theodolites, electronic distance measuring devices, laser alignment systems and various small tools.

WHERE EMPLOYED

Technical Engineers are fortunate in the diversity of locations where work is available ranging from the isolated and wild bush areas to downtown urban projects.



WORKING CONDITIONS

Conditions of work are regulated carefully to provide safety and reasonable comfort.

HELPFUL HIGH SCHOOL COURSES

Anyone aspiring to work as a surveyor should avail himself of every opportunity to take courses in mathematics and sci[illegible]. Algebra, Geometry, and Trigonometry are absolute necessities for the successful surveyor. Several high schools in Alaska also offer surveying courses.

UNION

Construction surveying in Alaska is performed by the Technical Engineers of Alaska, an affiliate of Teamsters Union Local 959.

TYPES OF EMPLOYERS

Firms employing surveyors include principally private engineering and surveying consultants and construction companies. Member companies of the Alaska Chapter of the Associated General Contractors are the largest group of employers.

TEAMSTER HEAVY DUTY DRIVERS

NATURE OF WORK

Operation of Heavy Duty Trucks. Equipment used are: Belly Dumps, 12 Yard End Dumps, Truck and Trailers, Tractors pulling Doubles and Fork Lifts.

Through their open entry, open exit training program, which may last up to four weeks, the trainee learns basic theory of driving these trucks.



WHERE EMPLOYED

Employed at all phases of heavy construction, including pipeline.



SELECTIONS AND FUNDING

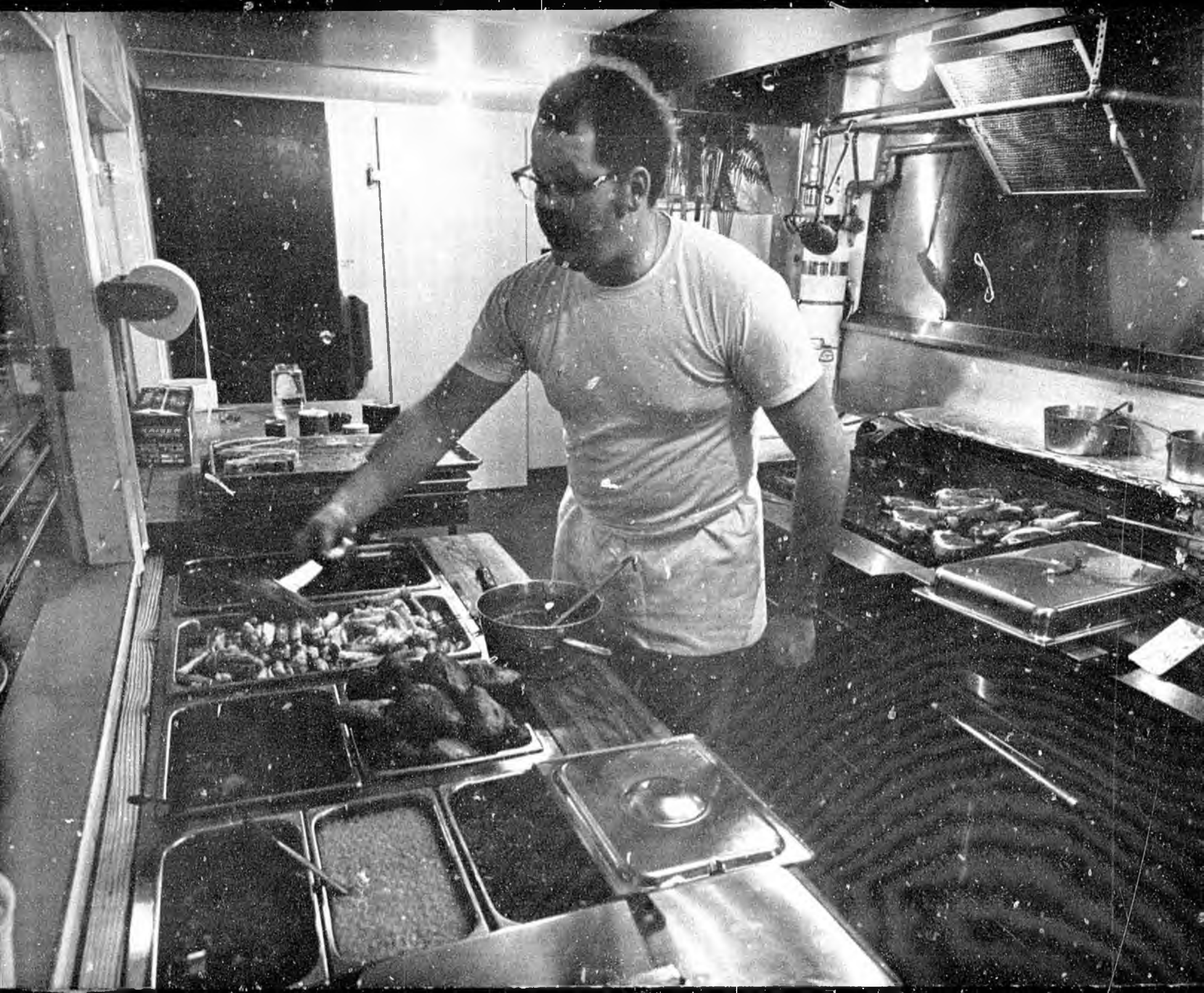
Trainees are selected from applicants (Statewide) through the State Employment Services and the Bureau of Indian Affairs. Funded by Alyeska Pipeline Service company.

EMPLOYERS

Alyeska Pipeline Service Company and Sub Contractors: Arctic Contractors, Associated Green, H. C. Prince, Perini Arctic Associates, Morrison - Knudsen, and River.

UNION

Alaska Teamsters Employer Training Trust, Local No. 959.





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[illegible] Pipeline Service Co.
[illegible] McCutcheon Photographer



ALASKA BUILDING & CONSTRUCTION TRADES COUNCIL AFL-CIO
APPRENTICESHIP OUTREACH PROGRAM

238 East Fifth Avenue
Anchorage, Alaska 99501

315 Fifth Avenue
Fairbanks, Alaska 99701

DATE .....

NAME ..... SOCIAL SECURITY NO .....

MAILING ADDRESS .....

CITY ..... ZIP ..... TELEPHONE .....

HOW LONG AT THIS ADDRESS ..... HOW LONG IN ALASKA .....

WHERE BORN ..... DATE OF BIRTH ..... RACE .....

MARRIED OR SINGLE ..... DEPENDENTS ..... PHYSICAL DEFECTS .....

ARE YOU A VETERAN? ..... DATE OF DISCHARGE ..... LENGTH OF SERVICE .....

GIVE BRANCH OF SERVICE AND MILITARY OCCUPATIONS .....

DID YOU SERVE IN VIETNAM? .....

EDUCATION — HIGHEST GRADE COMPLETED ..... WHERE .....

GIVE DETAILS OF OTHER SCHOOLING OR TRAINING .....

SCHOOL SUBJECTS LIKED BEST ..... AVERAGE GRADES .....

SCHOOL SUBJECTS LIKED LEAST ..... AVERAGE GRADES .....

WHAT HOBBIES DO YOU HAVE, IF ANY? .....

EMPLOYMENT HISTORY — LIST LATEST EMPLOYMENT FIRST. INCLUDE MILITARY WORK EXPERIENCE

Type of Work Performed	From	To	Employer Name and Address

WHICH TRADE ARE YOU INTERESTED IN? .....

WHERE DID YOU LEARN OF THIS PROGRAM .....

WILL YOU TRAVEL WHEREVER THIS TRADE REQUIRES FOR EMPLOYMENT? _____

REFERENCES:

....
NAME ADDRESS

....
NAME ADDRESS

.....
Signature of Applicant

CARPENTER

KEY MAN IN THE CONSTRUCTION INDUSTRY



Step by step, the carpenter apprentice climbs the ladder of success as he increases in knowledge and acquires new skills

Southeastern and Southcentral Alaska

Carpenter
Apprentice
Program

3909 Arctic Boulevard
Phone 277-0490
Anchorage, Alaska

CHOOSING A CAREER

Most young people are looking forward to productive lives in their chosen field. The occupation they choose determines to a large extent the kind of house they will live in, the car they drive, whether or not they will be able to own their home, the opportunities they will be able to offer their children, and their families' standard of living.

The future is indeed very gloomy for the untrained and unskilled man on today's labor market. He and his family are destined to a much lower standard of living than his friends and neighbors, who have prepared themselves.

Opportunities in America's Mighty Construction Industry are greater today than ever before, and the training required to become skilled in the various construction trades is more available now than ever before.

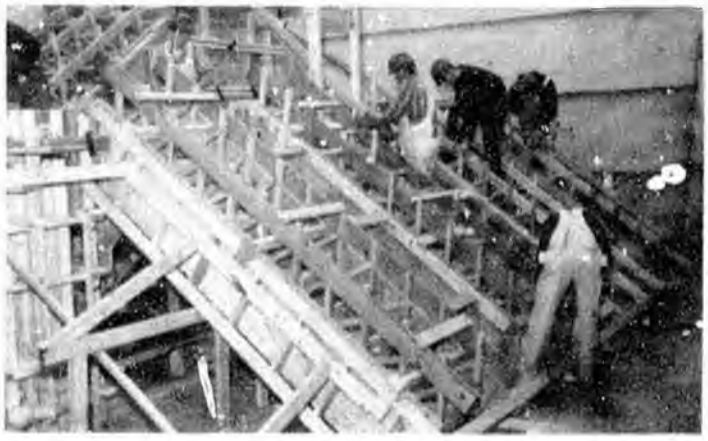
The Construction Industry requires a higher proportion of skilled workers than any other industry — 2 out of 3. This compares with 1 in 5 in manufacturing and transportation, and fewer than 1 in 10 in other industries.

CHOOSE A CAREER THAT IS GROWING WITH AMERICA . . . CARPENTRY

The carpenter has a proud tradition of accomplishment in developing our nation. He has been, and remains today, America's Master Builder. From the early pioneer days of the rough-hewn log cabins to the era of modern engineering, the Construction Carpenter has been busy building our homes, schools, churches, stores, hospitals, offices, factories, mills, hotels, bridges, docks and piers. The carpenter is a diversified builder. He plays a major role in the construction of all types of buildings: whether they be of wood frame, concrete, masonry, or steel.



Concrete wall forms erected by apprentices as part of their related training.



Concrete forms for columns, beams, suspended slabs, walls, and stairways erected by apprentices as part of their related training.



A carpenter apprentice, working with a journeyman carpenter on a reinforced concrete form job.



High above the street level, this apprentice is receiving valuable on the job training on a high rise building.



Securing this large circular form in preparation for a concrete pour is part of a day's work for this apprentice.



This stair project is an example of work performed by Apprentices in this Program.

There are more than 800,000 Carpenters in America today. They make up the largest single group of skilled workers in our country. Over 160,000 of these Carpenters are sixty years of age or older, and will be leaving the trade through retirements and deaths in the years immediately ahead. There are presently only about 27,000 registered Carpenter Apprentices to meet the needs of America's expanding Construction Industry and to replace the men who will soon be leaving the Industry through retirements and deaths.

Carpenters rank among those for whom employment opportunities are expected to expand in the future at a faster rate than for the skilled labor force as a whole. These facts all add up to this: Employment opportunities for thoroughly trained Construction Carpenters is great today and will be greater tomorrow.

ALASKA'S CARPENTER APPRENTICESHIP PROGRAM

Our Carpenter Apprentice Program in Alaska is a four year training period designed to provide skilled Journeymen Carpenters for the Alaska Construction Industry. It consists of 8,000 hours of on the job training, (working for a Contractor) and 1040 hours of extensive pre-job training presented at our Training Center in Anchorage. This Pre Job Training is financed and administered jointly by Management and Labor, and no tuition fee is required by the apprentice. Dormitory facilities and round trip transportation is provided for Apprentices residing outside the Anchorage area. It consists of approximately 30% classroom and 70% manipulative work, and covers every phase of the construction Carpenter's trade.

We are seeking applications from young people of different racial and ethnic groups, aged 18 to 28, (veterans 18-32), with more than ordinary ability to work with their hands as well as with their heads, a good knowledge of basic mathematics, a tough physique, with agility and a good sense of balance, with perseverence and a desire to succeed.

WHAT TO DO IF YOU ARE INTERESTED

If you are interested in additional information about the Construction Carpenter Profession or if you think you would like to apply for this Program, call the Training Coordinator's office for an appointment to attend an orientation session. He will explain the many advantages offered as well as the disadvantages one could expect to encounter in this profession. You will then be able to make a realistic decision as to whether or not you wish to apply for this program.

Call 277-0490 — 277-1014

Sponsors and Administrators of Alaska's Carpenter's Apprenticeship Program

A Joint Venture between the Alaska Chapter of the Associated General Contractors of America and the Alaska State Council of Carpenters

BOARD OF TRUSTEES

Management	Labor
Ernest Kissee	George Pearson
Paul Dudas	Howard Royer
Fred Tampke	Bruno Johnson

DIRECTOR OF TRAINING

Charles Handy

EARNING WHILE LEARNING

HOW THE APPRENTICESHIP PROGRAM OPERATES

FUNDING

The program for training and developing a skilled craftsman (a journeyman) is provided for in the Collective Bargaining Agreement (Contract) between the contractors and unions in the several divisions of the construction industry. That contract may also provide for the establishment of a trust fund for the use of the Joint Apprenticeship Committee to cover expenses relating to the operation of the program. The contribution to the fund, ranging from ten to fifteen cents per hour, is made by the employers on the basis of the hours worked by the union journeymen.

JOINT APPRENTICESHIP COMMITTEE (JAC)

The Joint Apprenticeship Committee, composed equally of contractors and union representatives, develops the standards of apprenticeship which define the processes of the trade, the number of hours to be spent in related classroom instruction and the number of years of on-the-job training. These Standards are registered with the United States Department of Labor.

TERM OF APPRENTICESHIP

The term of apprenticeship for the construction trades will range from two to five years, depending on the trade. Wages paid the apprentices are usually on the basis of a percentage of the journeyman rate, customarily starting at 50 percent or higher, and increasing progressively every 1,000 hours through completion of their apprenticeship the journeyman rate will be received.

RELATED CLASSROOM INSTRUCTION

Apprentices attend classes of related technical instruction, supplementing their training on the job, to give them a comprehensive understanding of the theoretical aspects of their work. This related technical instruction is a fundamental feature of apprenticeship. Usually the classes are held during the winter and slack seasons for construction work. Some trades provide several weeks or months of technical related training prior to beginning employment and on-the-job training.

In class, apprentices learn the basic theories of their trade; on the job, under the direction and supervision of a skilled journeyman, they learn its practice.

FEES OR CHARGES

No charge is made for the classroom instruction. However some trades will require manuals codes or texts which are used constantly by journeymen. A nominal charge is made for such essentials.

INDENTURE

Each apprentice signs an Apprenticeship Agreement with the Joint Apprenticeship Committee. If the apprentice is a minor, the parent or guardian must also sign the Agreement. This Agreement is also registered with the Bureau of Apprenticeship, U. S. Department of Labor, which also awards certificates of Completion to apprentices upon successful completion of their training.

TRAINING COORDINATORS

Frequently, the Joint Apprenticeship Committee will employ a person to act as a coordinator to oversee the operations of the program and to supervise the training of apprentices. The Coordinator keeps records of work progress and acts for the committee between meetings. Such coordinators have proven to be of great value to the effectiveness of the apprenticeship program and to the industry.

THE ANCHORAGE TRAINING INFORMATION CENTER
Sponsored by
The Labor Unions and Employers Associations of the Construction Industry
R. E. McFarland and Joe Armstrong, Co-Chairmen
238 East 5th Avenue Anchorage, Alaska 99501

QUALIFICATIONS, REQUIREMENTS AND INFORMATION FOR THE ALASKA BUILDING AND CONSTRUCTION APPRENTICESHIP AND TRAINEE PROGRAMS

APPRENTICESHIP TRADES	AGE		EDUCATION	DOCUMENTS		TESTS		TERM OF APPRENTICE		TRADE RELATED INSTRUCTION (CLASS ROOM)		WAGE INFORMATION			
	W/ Out Military Related Work Exp	W/ Military or Related Work Experience	Minimum Grade or Equiv	Proof of Birth	High School Transcripts	Pass GATB Test	Pass Entry Exam	Years	Hours	Number Weeks 1st Class	Additional Each Year	Starting Wage Per Hour	% Journey Man Pay	Rate in Pay as Indicated	Journeyman Wage Per Hour
(Heat and Frost Insulators) ASBESTOS WORKERS – SWP*	18 - 27	18 - 30	12th	X	X			4	6,400	3	3	$8.47	60	Each 1,600 Hrs.	$14.11
BOILERMAKERS – SWP*	18 - 31	Approved Apprentice Committee	12th	X	X			4	6,000	4 Sets	12 Lessons Correspondence	$9.11	70	750 Hrs. and Lessons Completed	$13.01
BRICKLAYERS TILESETTERS – SWP*	17 - 24	18 +	12th			X	X	3	6,000	8	8	$7.72	55	6 Months	$14.03
(Anchorage) CARPENTER, CABINETMAKER, MILLWRIGHT	18 +	18 +					X	4	8,000	8	7	$8.29	64	1,000 Hrs.	$12.96
(Fairbanks) CARPENTER, CABINETMAKER, MILLWRIGHT	17 +	17 +				X	X	4	8,000	8	6	$8.98	64	1,000 Hrs.	$14.03
1 2 (Anchorage) CEMENT MASON and PLASTERER	18 - 30	18 - 30	8th		X			3		6	6	1. $ 9.29 2. $10.13	75	12 Months	1. $12.38 2. $13.50
(Fairbanks) CEMENT MASON and PLASTERER	18 - 30		8th		X			3		6	6	$9.38	75	2,000 Hrs. or 1 Year	$12.38
1 2 COOKS and BAKERS – SWP*	18 - 35	18 +	9th	X	X			3	6,000	12	3 to 4	1. $7.70 c 2. $7.97 b	75	1,000 Hrs.	1. $10.27 2. $10.63
ELECTRICAL – (SWP)* 1. Wireman 2. Lineman 3. Telephone Workers	18 - 24	18 - 27	12th		X	X	X	4	8,000	12	Additional 12	$9.56	55	1,000 Hrs.	$14.70
IRONWORKER – SWP*	18 - 30	18 - 30	12th		X			3	4,800	6	4-6 Wks	$8.28	60	Min. 6 Mos. 800 Hrs.	$13.80
OPERATING ENGINEER – SWP* 1 Universal Equipment 2 Grade and Paving Equipment 3 Plant Equipment 4 Heavy Duty Repairman	18 - 25	Up to 4 years previous [illegible] years heavy duty	12th	X	X	X			6,000	8	6	$9.04	70	1,000 Hrs.	$12.91
PAINTER, GLAZIER, CARPET and RESILIENT FLOOR COVERERS	18 - 25	18 - 25	8th					3	6,000	10	3	$8.64	60	1,000 Hrs.	$14.40
(Anchorage) PLUMBERS and PIPE FITTERS	18 - 25	Vets Only 18 - 29	12th	X	X			5	10,000	6	Additional 20	$7.40	50	1,000 Hrs.	$14.80
(Fairbanks) PLUMBERS and PIPE FITTERS	16 +		12th		X			5	10,000	16	6	$7.66	50	1,000 Hrs.	$15.32
ROOFERS – SWP*	18 - 27	18 - 33	10th	X	X			3	3,600	3	3	$8.97	65	600 Hrs.	$13.80
SHEET METAL WORKERS	18 - 25	18 - 27	12th		X	X		4	8,000	5	5	$9.37	60	1,000 Hrs.	$15.62
TRAINEE PROGRAMS				OTHER REQUIREMENTS				TERM OF TRAINEE							
BULL COOK, WAITER, WAITRESS, HELPER AND ATTENDANTS	18 +	18 +	Reading and Language Comprehension	Current Health Card					30 days	8	0	Approx $8.04	85	30 Days	Approx. $9.46
LABORERS	18 +	18 +						0		4	Optional 2 wks Upgrading	$11.35	100		$11.35
PILEDRIVERMEN	18 - 24	18 - 32	Reading and Language Comprehension				X	2		4	4	$7.90	60	6 Months	$13.17
TEAMSTER – Truck Drivers	18 +	18 +		Min 5'7" 140 lbs						4		$11.45	100		
Surveyors	18 +	18 +	12th	X	X		X		600	15		$10.83	100		

*NOTE: Indicates State-wide Programs. Applicants who apply from outside Alaska (statewide) and meet Qualifications/Requirements will be notified for screening (Interview) by Appropriate Joint Apprenticeship committee. Training facilities located in Anchorage or as directed by Joint Apprenticeship committee. Licenses and Operating Engineer Applicants must have a Valid Alaska Drivers License.

RECRUITMENT IS RESTRICTED TO ALASKA RESIDENTS — MINIMUM ONE YEAR RESIDENCY

TO EARN - WHILE YOU LEARN

ADVANTAGES OF APPRENTICESHIP

Admittedly, a WHITE COLLAR bias exists in the minds of immature or impractical people. Too often college education is emphasized to the point of belief that anything less is second-rate. This is wrong.

Apprenticeship is the skilled trades of the Construction Industry should be considered as advanced education. As such, it offers young people marked advantages.

1. The apprentice is an employed worker. The contractor is the only one who creates the job for an apprentice. The union does not employ apprentices.

2. They are paid good wages while learning the skills of the trade and are not cheap labor.

3. Their rate of pay increases with knowledge and ability.

4. Offers opportunity for continued wages and job security upon completion of training.

5. The apprentice becomes self-reliant at a comparatively early age.

6. Imposes no financial burden to their parents or community.

7. Provides classes to learn the theory of their trade and those techniques which cannot be taught economically at the job site.

8. Their instructors are capable, practical journeymen selected for the industry by the Joint Apprenticeship Committee.

9. They learn to produce with modern tools and machines and will gain experience under the most modern methods.

10. They learn properly to use tools or install modern industrial materials worth thousands of dollars during their apprenticeship. This is one of the many reasons why a competent journeyman cannot be developed in a classroom.

11. They work under the direction of a competent journeyman at all times and receive close personal attention.

12. Their progress, as reflected in work reports and class grades, are constantly reviewed by the Joint Apprenticeship Committee.

13. They are protected during their indenture by the Joint Apprenticeship Committee to insure that they have an opportunity to develop all the skills of the craft and become a fully qualified journeymen.

14. Because of high entrance requirements and high standards of conduct and competence, they associate with good and honorable young people.

15. It serves to meet the great need for young people as replacements for journeymen who advance or retire under the industry's generous pension plans.

16. With experience and study, the apprentice can become a foreman, estimator, or superintendent. Many of the owners and employers in the construction industry started their careers as apprentices.

17. The apprentices may advance to positions of responsibility in their unions. Union leadership is earned through hard work, service and respect for others. Nearly all union leaders have come from the ranks.

18. As they grow in experience, they may follow related fields as a salesman, broker, or supplier.

19. They may engage in labor-management relations or qualify for specialized work for government agencies.

20. As a journeyman in the construction industry they will be engaged in an honorable and respected occupation with opportunities for advancement limited only by their own ability and ambition.

PLEASE POST



Glazier



Bricklayer



Pile Drivermen



Electrician



Lineman



Plumber



Iron Worker

WANTED

Apprentice Applicants

FOR

Skilled Construction Trades

1. Resident - must be in Alaska one year or more.
2. Education - High School Diploma or GED preferred.
3. Age - 18 to 24, some to 30.
4. Jobs - Hospitals, schools, offices, refineries, pipelines, docks, etc , throughout the State of Alaska.



Cement Mason



Sheetmetal Worker



Operating Engineer



Plasterer

FOR MORE INFORMATION

CONTACT

Apprentice Outreach Program
238 E 5th Avenue
Anchorage, Alaska 99501

Apprentice Outreach Program
315 Fifth Street
Fairbanks, Alaska 99701



Asbestos Worker



Culinary



Boilermaker



Teamster



Floor Layer



Painter



Carpenter



Laborer



Roofer

IC1480

TELEGRAM

ACA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02 065 NL ANCHORAGE AK 60 04-21 108P AST

PMS REP TERRY GARDINER

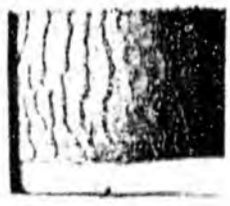
JUN 3194

WILL BE UNABLE TO ATTEND THE HEARING SCHEDULED ON SENATE BILL 630 THIS ASSOCIATION RECOMMENDS ITS PASSAGE. WE HAVE BEEN INVOLVED IN APPRENTICESHIP PROGRAMS QUITE EXTENSIVELY AND AT THE PRESENT TIME HAVE SOME 500 ALASKANS WORKING IN THE STATE OF ALASKA ENROLLED IN OUR PROGRAM. THE FEDERAL REGULATIONS REGARDING AGE HAVE WORKED VERY WELL FOR THE ELECTRICAL INDUSTRY

JOE S ARMSTRONG

MANAGER NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION

1976 APR 21 PM 6 26



SB

666

"An Act relating to motorcycle safety; and providing for an effective date."

COMMITTEE REPORT

3/31/76

HOUSE

Mr. Speaker: Date May 24, 1976

The Committee on JUDICIARY has had CSSB 666 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

1939

Original sponsor: Huber

Offered: 3/26/76
Referred: Rules

IN THE SENATE BY THE STATE AFFAIRS COMMITTEE

CS FOR SENATE BILL NO. 666

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to motorcycle safety; and providing for an effective date."

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

* Section 1. AS 28.35 is amended by adding a new section to read:

19 Sec. 28.35.270. MOTORCYCLE HELMET. A person who has reached the age of majority as defined by AS 25.20.010 may not be required to wear a helmet while operating a motorcycle if he is the holder of a license which, under regulations adopted under AS 28.15.070(b), is classified singly as a license to operate a motorcycle.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.10.-070(c).

Have sanctioned 3 states

500,000 - highway safety

12½ Million highway construction

Called states in for hearings

Cal.; Illinois; Utah

rider; renters; under 19 - Mustass helmets

THE BROTHERS
MC
ALASKA



March 21, 1976

Honorable John Huber
Alaska State Senate
Pouch V, State Capitol Building
Juneau, Alaska 99811

Dear Senator Huber,

I Just recently learned of your sponsership of the bill to repel the mandatory helmet law. I am very much in favor of this bill's passage. I would like to extend my cooperation to you on this bill.

I have been active in petitioning signatures to repel the helmet law, and have sent them to Mr. Daved M. Baldwin, National Chairman, National Committee on Uniform Traffic Laws and Ordinances. So far I have sent in aproximately five hundred (500) signatures.

Please advice me of the action that has been taken on this bill and that will be taken in the future.

Sincerely yours,

Charles R. Lemmons

Charles R. lemmons
P.O. Box 4-2041
Anchorage, Alaska
99509

Reference to NHTSA Technical Note
DOT HS-801 137

A Motorcycle Safety Helmet Study

Safety Helmet Effectiveness [10]

A comparison between head injury sustained by safety helmet users and nonusers in traffic accidents in rural areas of Illinois, on the basis of a standard accident speed for both groups of riders, revealed the following:

1. In general, when helmets were not used, fatal or serious head injury was 3 times greater and head injury of all types was twice as great.
2. Helmets dislodged from the rider's head during the course of an accident did not reduce head injury and helmets damaged by cracking or splitting during impact were only slightly effective in that fatal or serious head injury was reduced by only 20% over non-helmeted riders. As expected, helmets that had not been damaged or ejected proved the most effective.
3. Helmets significantly reduced head injury in all three of the accident speed ranges considered: 60% for speeds up to 30 mph, 52% for speeds between 31-50 mph, and 51% for speeds over 50 mph. However, these differences in helmet effectiveness were not significant and helmets were equally effective in all three speed ranges.
4. Helmets significantly reduced head injury at both seat positions on the motorcycle, 68% for passengers and 52% for operators, but the difference in helmet effectiveness between the two positions was not significant.
5. Helmets significantly reduced head injury in accidents involving either noncollision (by 57%) or collision (by 50%), but the difference in helmet effectiveness between the two types of accidents was not significant.

Reference to NHTSA Technical Note
DOT HS-801 836

Motorcyc .e Safety- The Case for Helmet Use

Motorcycle helmets do not increase incidence of neck injury in accidents.

It has been suggested that helmet use increases the incidence of fatal neck injury in motorcycle crashes (using data from a 1969 statistical analysis of motorcycle accidents in New York).[13] Actually, the incidence of neck injury in motorcycle accidents during 1966 and 1967 involved any type of neck injury, and most of these involved only comp'aints of pain with no visible signs of injury. Studies done recently in Nebraska,[14] California and Canada[15] show that the incidence of neck injury of any type occurs in less than two percent of all motorcycle crashes.

Motorcyclists have been wearing safety helmets for more than 30 years, and during this period a number of studies of injury patterns in motorcycle accident have been made. None support the claim that helmets increase fatal neck injuries. The neck injury issue has been used in opposition to helmet laws as an attempt to exploit a peripheral issue on which there is not a great deal of valid data. Consequently, the problem has been magnified far out of proportion.

In order to provide conclusive evidence which will resolve the issue once and for all, the University of California and the Los Angeles County Medical Examiner's Office, under contract with the NHTSA, are now undertaking in-depth analysis of all fatal motorcycle crashes in Los Angeles County. Post mortem examination of each helmeted and unhelmeted rider will be made to document the incidence of neck injury in each group. The results of these analyses will provide authoritative resolution of the neck injury issue.

Mandatory helmet use laws reduce the number of serious head injuries and fatalities resulting from motorcycle accidents.

It is a logical conclusion that if a mandatory helmet use law is passed, more people will wear helmets, and consequently fewer fatalities and fatal injuries will occur in motorcycle accidents. Researchers have tried to verify this by comparing motorcycle fatalities and head injuries before and after implementation of a mandatory helmet use law. Of particular interest is a Brisbane, Australia report[16] which utilized three groups -- one sample done before implementation of a helmet use law, and two samples done in the two years immediately following. This study found (see Table IV) (a) that a significant increase in helmet use by motorcyclists involved in accidents (as expected) and (b) a significant decrease in head injuries in the post-legislation group.

IV. Summary and Conclusion

In general, motorcycle helmet visual restrictions were smaller along the horizontal plane as compared to the vertical planes. The full coverage helmets produced relatively small reduction in the entire field of view. As expected, the full facial coverage helmets resulted in somewhat larger reductions. The two styles of full facial coverage helmets yielded significantly different fields of view. Goggles produced approximately the same lateral visual field as the most restricted helmet.

With regard to restriction of the total field of view in the horizontal plane, it can be concluded that full coverage helmets (the most common type in use) provide only minor restrictions, less than 3 percent from that of an unhelmeted person. The full facial coverage helmets designed to comply with the lateral vision requirements of the ANSI Z90.1 standard and FMVSS No. 218 provided a restriction in lateral vision only marginally more than the full coverage helmets (7.3 percent). The "worst case" helmet provided a restriction of 21.9 percent from the unhelmeted lateral field.

All helmets tested exceeded the maximum State licensing requirements of 140° total "peripheral" view in the horizontal plane. Also, all helmets were in general compliance (especially visual regulations) with DOT standards. Therefore, helmet selection in terms of acceptable visual field, appears to be a matter of personal preferance among the many available styles.

Reference to NHTSA Technical Note
DOT HS-801 759

Effect of Safety Helmets on Auditory Capability

SUMMARY

Wearing a protective helmet has little to do with whether or not a motorcycle driver will hear a particular sound of interest to him or her. While it is true that safety helmets do attenuate external sounds, the amount of such attenuation is inconsequential, even when coupled with the amount of age-related hearing loss that normally occurs with age. The major determiner of whether a given sound will be heard is the ratio between the intensity of that sound and the intensity of the masking noise generated by the motorcycle (i.e., the signal-to-noise ratio). Safety helmets have an inconsequential effect because they reduce the loudness of both the sound of interest and the motorcycle noise by an equal amount and hence do not alter the signal-to-noise ratio between the two. A helmeted motorcycle rider can hear a sound of interest approximately as well as a person in an automobile with the windows closed.

IDAHO STUDY

SUMMARY OF STUDY FINDINGS

This summary is for the benefit of those who are more interested in survey results than in detailed analysis. All findings are substantiated in the body of the study.

1. There were 7.67 motorcyclists strongly in support of the mandatory helmet law for every 1 strongly opposed to the law.

2. Of motorcyclists who commented on the mandatory helmet law, 77.3% were in favor of the law.

3. Of motorcyclists who wore helmets, 84.7% indicated that the helmet reduced injury and 8.7% voluntarily added that it saved their lives.

4. Neck injuries were very rare in the severity A (incapacitating) injuries.

5. Over half of the respondents were at least twenty years old.

6. Motorcyclists over 35 years old comprised 20.7% of the respondents.

7. A few motorcyclists (2.6%) had less than one month motorcycling experience, but 75.6% had more than one year motorcycling experience.

8. Analysis of medical costs and days lost by severity code indicates that the injury severity codes marked by investigating officers are accurate indications of injury severity.

9. The opinion survey was favorable to motorcycle licensing with written and traffic exams, but not favorable toward off-road driving exams.

10. The opinion survey was favorable toward motorcycle training courses, with reservations on funding and administration.

11. The opinion survey supported the importance of eye protection but was not favorable toward a law requiring full-time eye protection.

12. Annual motorcycle mileage estimates varied greatly with an average somewhere between 3500 and 4500 miles per year.

13. Single motorcycle accidents predominately occurred in rural areas during daylight hours, while motorcycle accidents involving a car or truck occurred mostly in urban areas during daylight hours.

14. There was a marked difference in urban and rural accidents by injury severity type. Over half of the A injury severity accidents occurred in rural areas, while B and C injury severity accidents occurred mostly in urban areas.

15. Automobile driver awareness of and courtesy toward motorcyclists was determined to be the primary single factor in motorcycle collisions.

Reference to NHTSA Technical Note
DOT HS-801 137

A Motorcycle Safety Helmet Study

Safety Helmet Effectiveness 10

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Motorcyclists have been wearing safety helmets for more than 30 years, and during this period a number of studies of injury patterns in motorcycle accident have been made. None support the claim that helmets increase fatal neck injuries. The neck injury issue has been used in opposition to helmet laws as an attempt to exploit a peripheral issue on which there is not a great deal of valid data. Consequently, the problem has been magnified far out of proportion.

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DOT HS-801 759

Effect of Safety Helmets on Auditory Capability

SUMMARY

Wearing a protective helmet has little to do with whether or not a motorcycle driver will hear a particular sound of interest to him or her. While it is true that safety helmets do attenuate external sounds, the amount of such attenuation is inconsequential, even when coupled with the amount of age-related hearing loss that normally occurs with age. The major determiner of whether a given sound will be heard is the ratio between the intensity of that sound and the intensity of the masking noise generated by the motorcycle (i.e., the signal-to-noise ratio). Safety helmets have an inconsequential effect because they reduce the loudness of both the sound of interest and the motorcycle noise by an equal amount and hence do not alter the signal-to-noise ratio between the two. A helmeted motorcycle rider can hear a sound of interest approximately as well as a person in an automobile with the windows closed.

IDAHO STUDY

SUMMARY OF STUDY FINDINGS

This summary is for the benefit of those who are more interested in survey results than in detailed analysis. All findings are substantiated in the body of the study.

1. There were 7.67 motorcyclists strongly in support of the mandatory helmet law for every 1 strongly opposed to the law.

2. Of motorcyclists who commented on the mandatory helmet law, 77.3% were in favor of the law.

3. Of motorcyclists who wore helmets, 84.7% indicated that the helmet reduced injury and 8.7% voluntarily added that it saved their lives.

4. Neck injuries were very rare in the severity A (incapacitating) injuries.

5. Over half of the respondents were at least twenty years old.

6. Motorcyclists over 35 years old comprised 20.7% of the respondents.

7. A few motorcyclists (2.6%) had less than one month motorcycling experience, but 75.6% had more than one year motorcycling experience.

8. Analysis of medical costs and days lost by severity code indicates that the injury severity codes marked by investigating officers are accurate indications of injury severity.

9. The opinion survey was favorable to motorcycle licensing with written and traffic exams, but not favorable toward off-road driving exams.

10. The opinion survey was favorable toward motorcycle training courses, with reservations on funding and administration.

11. The opinion survey supported the importance of eye protection but was not favorable toward a law requiring full-time eye protection.

12. Annual motorcycle mileage estimates varied greatly with an average somewhere between 3500 and 4500 miles per year.

13. Single motorcycle accidents predominately occurred in rural areas during daylight hours, while motorcycle accidents involving a car or truck occurred mostly in urban areas during daylight hours.

14. There was a marked difference in urban and rural accidents by injury severity type. Over half of the A injury severity accidents occurred in rural areas, while B and C injury severity accidents occurred mostly in urban areas.

15. Automobile driver awareness of and courtesy toward motorcyclists was determined to be the primary single factor in motorcycle collisions.

file with members 4/5/76

BARRY'S CUSTOM CYCLE

HOUSE OF HARLEY

1204 CHUGACH WAY • ANCHORAGE, ALASKA • 99503 • (907) 272-0423

Mr Terry Gardiner
Box 1092
Ketchikan Alaska 99901
District 1

Dear Terry,

This letter in reference to Senate bill #666 "The Helmet Law"

I feel helmets should not be required for people over 19 years of age. This should be an option.

"Please consider this letter as written testimony when the resolution comes for vote before the Committee."

Sincerely,

Beverly Weaver
Irwin D Weaver

NHTSA Technical Note
DOT HS-801 836

DEPT. OF PUBLIC SAFETY
Alaska Traffic Safety Bureau
APR 12 1976
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MOTORCYCLE SAFETY- THE CASE FOR HELMET USE

Prepared by:

U.S. DEPARTMENT OF TRANSPORTATION
National Highway Traffic Safety Administration
Traffic Safety Programs
Office of Driver and Pedestrian Programs

February 1976

crash helmets have been the subject of considerable court litigation across the country. With the exception of Michigan and Illinois, the appellate courts in at least 30 state[s] have upheld the constitutionality of such requirements.[19] Further confirmation of their constitutionality is the action of the U.S. Supreme Court in affirming the decision in *Simon v. Sargent*.[20]

Thus the courts have held that requiring a crash helmet and eye-protective devices is a reasonable regulation and within the police power of the state to protect the public health, welfare, and safety. Such requirements do not deny equal protection under the constitution since the equal protection clause does not require that everyone be treated equally but rather permits a reasonable classification and classifying motorcyclists separate from operators in other vehicles is reasonable. The equal protection clause does require equal treatment within each reasonable classification.

A common legal theme in these court decisions is that crash helmets and eye-protective devices *protect other users* of the highway from danger since such protections help prevent the motorcyclist from losing control of his vehicle due to flying rocks or debris, limbs of trees, etc. Also, in rejecting the claims of motorcyclists that such requirements are only for the protection of himself and thus are beyond the power of the government to regulate, the opinion of the court in *Simon v. Sargent* is representative:

> ". . . (W)e cannot agree that the consequences of such injuries are limited to the individual who sustains the injury. . . . From the moment of the injury, society picks up the person off the highway; delivers him to a municipal hospital and municipal doctors; provides him with unemployment compensation if, after recovery, he cannot replace his lost job, and if the injury causes permanent disability, may assume the responsibility for his and his family's continued subsistence. We do not understand a state of mind that permits plaintiff to think that only he himself is concerned."[21]

NHTSA Technical Note

MOTORCYCLE SAFETY -

THE CASE FOR HELMET USE

Penelope Johnson
Lewis Buchanan
Paul Levy

Prepared by:

National Highway Traffic Safety Administration
Traffic Safety Programs
Office of Driver and Pedestrian Programs
February 1976

MOTORCYCLE SAFETY - THE CASE FOR HELMET USE

INTRODUCTION

In line with the National Highway Traffic Safety Administration's mission to save lives on our nation's highways, significant effort has been directed towards better motorcycle equipment, education and licensing. Of these, the most immediate safety benefits are available from increased motorcycle helmet use by all motorcycle riders and passengers.

Currently, forty-seven States, the District of Columbia and Puerto Rico have enacted comprehensive motorcycle helmet usage laws. Utah requires helmet usage on all roads posted above thirty-five miles per hour (35 mph); California and Illinois have no laws. Because of the demonstrated effectiveness of helmet use described in this paper, the Secretary of Transportation initiated sanction action as provided for under the Highway Safety Act against those three States for their failure to conform to Standard No.3. However, recent actions by the Congress of the United States indicate that the Highway Safety Act of 1975 will contain a provision which prohibits the Secretary of Transportation from sanctioning any State because it fails to require helmet use by persons over 18 years of age. This action by the Congress may lead to efforts on the part of many States to repeal existing motorcycle helmet laws.

While those opposing helmet usage laws do so primarily on the basis of concern with the governmental interference with personal liberties, they have also raised issues relating to the validity of the technical data supporting the effectiveness of helmets. The legal, governmental and social issues of safety helmet use are beyond the scope of this report.

HISTORICAL BACKGROUND

In order to show the importance of the motorcycle helmet as an effective safety device, it is necessary to survey the research which has been conducted during the past thirty years. While the motorcycle has been popular in the United States since the eraly 1960's, it has been an intergral part of European and Australian transporation for far longer. Thus, one should look to the British and the Australians, who are responsible for the initial research on helmet effectiveness.

Between 1940 and 1943, Dr. Hugh Cairns conducted in-depth studies of 106 motorcycle accidents to determine if the crash helmets in use in Great Britian were effective in reducing injury[1,2]. After study of the helmets themselves, the type of injury and the severity of injury for each case, Dr. Cairns reported reduced severity of injury through helmet use; one-fourth

the frequency of fractured skulls through helmet use; and a reduction of one-half in hospital treated injuries for helmet users. The report based on these studies formed the precedent for future helmet research, and presented the first discussion of safety helmets as important safety equipment.

The work of Cairns was continued by Lewin and Kennedy, who published a study in 1956 of 555 civilian and 135 army motorcyclists admitted to hospitals.[3] Similar results supporting helmet effectiveness were reported, and criteria of an effective helmet were also presented. In 1957 Chandler and Thompson developed a statistical demonstration of the usefulness of helmets, based on 7,010 motorcyclists injured in 1954 or 1955.[4] In addition to comparing helmet effectiveness in urban and rural areas, the study documents a 30-40 percent reduced chance of head injury if a helmet is worn in a motorcycle accident. These British doctors had taken the first significant steps toward identifying the life saving potential of motorcycle helmets.

On January 1, 1961, a law became effective in the State of Victoria (Australia) making it mandatory for all motorcycle riders to wear safety helmets. A relatively thorough study of the data both two years before and after implementation of the law indicated:[5]

1. The legislation was successful, i.e., compliance was near 100 percent;

2. Fatalities for 1961 and 1962 were reduced by half, and after study of many other factors, the reduction appears attributable to helmet use; and

3. The risk of fatality to an accident involved helmet user is one-third that of an accident involved non-user.

Thus, the Australian experience showed that a mandatory helmet use law was enforceable and the resultant helmet use reduced fatalities in motorcycle accidents.

In the United States, safety officials and state legislators watched with concern as fatality totals from motorcycle accidents continued to increase. A Washington State accident summary published in 1967, showed that two-thirds of all Washington motorcycle fatalities in 1965 and 1966 resulted from head injury.[6] In 1966, New York and Michigan adopted helmet use laws. Late that year the United States Department of Health, Education and Welfare published preliminary data suggesting that projected motorcycle fatalities would be reduced by 40 percent if all motorcyclists used helmets.[7] This and other evidence was evaluated, and led the NHTSA to include a motorcycle safety standard as one of the initial thirteen Highway Safety Programs Standards

The number of serious, including fatal, head injuries is reduced when motorcycle riders are wearing helmets.

Two recent American studies have explored helmet use in relation to injury severity in motorcycle accidents. The first was conducted by staff from the School of Medicine of the University of California at Davis, and reviewed the injury and accident reports of 1,273 persons injured in Sacramento, California in 1970.[9] Table II, taken from the study, concerns 626 male drivers and shows helmet use, injury severity and injury severity rates. (Serious injuries include those resulting in death, hospitalization, most nontrivial medically diagnosed fractures in any anatomic location except digits, or continuous medical care beyond two visits to a physician.) Comparison of non-helmeted driver data to that of helmeted drivers shows that:

1. Non-helmeted drivers were injured twice as often as helmeted drivers;

2. Serious injury occurred nearly three times as often to non-helmeted drivers; and

3. Statistically significant decreases in all head injury rates were detected when helmets were worn by the driver.

TABLE II
SERIOUS AND NON-SERIOUS HEAD INJURY RATES FOR INJURED MALE DRIVERS ACCORDING TO HELMET USE SACRAMENTO COUNTY, CALIFORNIA, 1970

Helmet Use	Total Injured Drivers	Drivers with Serious Head Injury	Serious Head Injury Rate (%)	Drivers with Non-Serious Head Injury	Non-Serious Head Injury Rate (%)
Yes	218	33	15.14*	20	9.17*
No	408	93	22.80*	53	12.99**

* Difference in proportions significant, p = .016
** Difference in proportions non-significant, p = .136

Note that a difference in serious head injury rates as large as those shown in the table could have occurred by chance less than two times in one hundred.

Safety Helmet Effectiveness [10]

A comparison between head injury sustained by safety helmet users and nonusers in traffic accidents in rural areas of Illinois, on the basis of a standard accident speed for both groups of riders, revealed the following:

1. In general, when helmets were not used, fatal or serious head injury was 3 times greater and head injury of all types was twice as great.
2. Helmets dislodged from the rider's head during the course of an accident did not reduce head injury and helmets damaged by cracking or splitting during impact were only slightly effective in that fatal or serious head injury was reduced by only 20% over non-helmeted riders. As expected, helmets that had not been damaged or ejected proved the most effective.
3. Helmets significantly reduced head injury in all three of the accident speed ranges considered: 60% for speeds up to 30 mph, 52% for speeds between 31-50 mph, and 51% for speeds over 50 mph. However, these differences in helmet effectiveness were not significant and helmets were equally effective in all three speed ranges.
4. Helmets significantly reduced head injury at both seat positions on the motorcycle, 68% for passengers and 52% for operators, but the difference in helmet effectiveness between the two positions was not significant.
5. Helmets significantly reduced head injury in accidents involving either noncollision (by 57%) or collision (by 50%), but the difference in helmet effectiveness between the two types of accidents was not significant.

The second American study was carried out by the NHTSA, and was published in 1974.[10] Information was gathered from police records of 5,608 traffic and non-traffic motorcycle accidents which occurred in Michigan (May, June, July, 1971, June, July, August, 1972) and Illinois (November 1971 - October, 1973). After the Illinois data was corrected for overrepresentation of rural accidents, analysis and comparisons were made. Table III (taken from Appendix C of the report) shows the standardized head injury rates for users and nonusers for Illinois and Michigan. The ratio of nonusers to users (bottom line of Table III) makes a very important point -- that accident involved riders without helmets have three times as many fatal and serious injuries as helmet users in both States (3.0 for Michigan and 2.9 for Illinois). The ratios for moderate injury are also similar, (2.2 for Michigan, 2.0 for Illinois) indicating twice as many helmet nonusers suffering moderate injuries as helmet users. Again we have convincing evidence that if an accident occurs, a rider's chance of fatal, serious or moderate injury will be greatly reduced if he is wearing a helmet.

TABLE III

Standardized Percentage of Head Injury Rates for Motorcycle Riders in Michigan and Illinois

	Fatal or Serious		Moderate		Minor/ Indet		Total % Injured		Total Riders	
	M	I	M	I	M	I	M	I	M	I
Users	5.3	7.0	4.4	6.4	3.1	3.2	12.8	16.6	3820	438
Non Users	15.8	20.0	9.5	12.5	5.9	3.8	31.2	36.3	286	927
Ratios	3.0	2.9	2.2	2.0	1.9	1.2	2.4	2.2	-	-

Motorcycle helmets do not dangerously restrict or interfere with safe operation of a motorcycle.

Those who oppose laws requiring the use of safety helmets have claimed that helmets are dangerous because they restrict a motorcyclist's ability to see and hear potential hazards. However, these claims are not supported by any type of research or statistical documentation.

The NHTSA has completed initial studies of each of these problems.[11,12] In the first study on vision, four popular helmets were tested to determine the degree to which each limited motorcyclists vision. The field of view of 19 experienced motorcyclists was measured using each of the four helmets

(two full facial coverage, and two full coverage). Each person's field of view was also treated without a helmet.

The results of the study show that full coverage helmets, representing almost 95 percent of current helmet sales, restrict a motorcyclist's field of view in the horizontal plane (peripheral vision) by less than 3 percent. The study also found that the helmet which provided the smallest field of view (a full facial coverage helmet intended for motorsport competition) restricted the riders' horizontal field of view less that 22 percent. All of the helmets provided a horizontal field of view of more than 130°, well above the 140° used by State driver licensing agencies for screening out drivers with possible vision problems that would warrant some type of restricted driving privilege.

With regard to hearing, helmets do reduce a person's ability to hear, but in actual practice the reduction in auditory capacity for the motorcyclist is inconsequential. The primary reason for this is that the noise generated by the motorcycle and the noise produced at high speed by the wind are so great that any sound loud enough to penetrate this noise is loud enough to be heard inside the helmet.

To understand why this is true, it is necessary to examine the phenomenon of hearing. Whether or not a given sound will be heard by a driver is dependent upon three factors: (1) the auditory capability of the driver, (2) the intensity and frequency of the sound of interest, and (3) the intensity and frequency of the environmental noise that might "mask" or hide the desired sound. A given sound will be heard by a driver if it is loud enough when it reaches his ear to be above his hearing threshold, and if it is not "masked" or hidden by other sounds or noise present at the same time. Motorcycles create average levels of ambient noise ranging from 85 to 98 db(A) for on-street or dual purpose machines. For a rider to hear any other sound in the presence of this high noise level, the sound must be as loud or louder than the motorcycle itself, i.e., it must have a signal-to-noise ratio of approximately 1 to 1. The greater the signal-to-noise ratio, (e.g., the more intense the sound of interest relative to the ambient noise) the greater the attention getting properties of the signal and the higher the probability that it will be heard. Helmets reduce the loudness of both the sound of interest and the motorcycle noise by an equal amount, and therefore do not alter the signal-to-noise ratio between the two sounds, Consequently, as long as the rider can hear the motorcycle itself while wearing a helmet, he or she can also hear any other sound with a favorable signal-to-noise ratio at least as well as a driver who does not wear a helmet.

Motorcycle helmets do not increase incidence of neck injury in accidents.

It has been suggested that helmet use increases the incidence of fatal neck injury in motorcycle crashes (using data from a 1969 statistical analysis

of motorcycle accidents in New York).[13] Actually, the incidence of neck injury in motorcycle accidents during 1966 and 1967 involved any type of neck injury, and most of these involved only complaints of pain with no visible signs of injury. Studies done recently in Nebraska,[14] California and Canada[15] show that the incidence of neck injury of any type occurs in less than two percent of all motorcycle crashes.

Motorcyclists have been wearing safety helmets for more than 30 years, and during this period a number of studies of injury patterns in motorcycle accident have been made. None support the claim that helmets increase fatal neck injuries. The neck injury issue has been used in opposition to helmet laws as an attempt to exploit a peripheral issue on which there is not a great deal of valid data. Consequently, the problem has been magnified far out of proportion.

In order to provide conclusive evidence which will resolve the issue once and for all, the University of California and the Los Angeles County Medical Examiner's Office, under contract with the NHTSA, are now undertaking in-depth analysis of all fatal motorcycle crashes in Los Angeles County. Post mortem examination of each helmeted and unhelmeted rider will be made to document the incidence of neck injury in each group. The results of these analyses will provide authoritative resolution of the neck injury issue.

Mandatory helmet use laws reduce the number of serious head injuries and fatalities resulting from motorcycle accidents.

It is a logical conclusion that if a mandatory helmet use law is passed, more people will wear helmets, and consequently fewer fatalities and fatal injuries will occur in motorcycle accidents. Researchers have tried to verify this by comparing motorcycle fatalities and head injuries before and after implementation of a mandatory helmet use law. Of particular interest is a Brisbane, Australia report[16] which utilized three groups -- one sample done before implementation of a helmet use law, and two samples done in the two years immediately following. This study found (see Table IV) (a) that a significant increase in helmet use by motorcyclists involved in accidents (as expected) and (b) a significant decrease in head injuries in the post-legislation group.

TABLE IV: HELMET USE AND HEAD INJURY BEFORE AND AFTER MANDATORY HELMET USE LEGISLATION

	Pre-Legislation	Post-Legislation	
	Group 1	Group 2	Group 3
No. of Persons	151	38	65
No. of Helmets Used	25	34	63
Rate of Wear	16.6%	81.1%	96.9%
Major Head Injury	44	6	13
% of Group Total	29.1%	15.7%	20.0%
Minor Head Injury	58	11	23
% of Group Total	38.4%	28.9%	35.4%

Other studies of fatalities and head injuries before and after helmet law implementation (Victoria, Australia (1964), New York State (1969) and Washington State (1969)) drew similar conclusions; further, the national motorcycle fatality rate decline since 1967 is also an impressive indicator.

CONCLUSION

There is no question that there is still some lack of carefully designed studies of motorcycle accidents, and that there remain questions to be answered in the field of motorcycle safety. States have only recently started to maintain accurate records of the unique characteristics associated with the motorcycle accidents and injuries. Because of this shortage of specialized data, it remains a difficult task to conduct studies of a rigorous nature that will precisely define the benefits of helmet use.

We can, however, look back over the past 30 years of motorcycle accident research, and using the data and insights thus acquired, develop meaningful programs to reduce fatalities and injuries resulting from motorcycle accidents. From such studies and experience, NHTSA has promoted efforts in education and licensing to enable motorcycle riders to better handle the problems characteristic to motorcycle use. However, to reduce fatalities and serious injuries, it is absolutely essential to address the leading cause, which of course, is head injury. From the data presented here, we can conclude with high confidence that motorcycle helmet use greatly decreases the likelihood of fatal and serious injury if an accident does occur; also, it is clear that the helmet is a truly effective, necessary piece of safety equipment. It is therefore important that helmet usage be included along with improved motorcycle education and licensing procedures as a major part of all highway safety programs. Through uniformly high rates of helmet use, whatever the means of achieving such rates, we should be able to greatly reduce the number of motorcycle deaths recorded in the U.S. in years to come.

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NHTSA Technical Report

DOT HS-801 758

FIELD OF VIEW WITH AND WITHOUT MOTORCYCLE HELMETS

Prepared by:

U.S. DEPARTMENT OF TRANSPORTATION
National Highway Traffic Safety Administration
Research and Development
Safety Research Laboratory

October 1975

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15. Supplementary Notes

16. Abstract

The total field of view for 19 experienced motorcyclists at 10 angular positions was obtained by moving a target along a circular perimeter and recording the angle at which it was first perceived. All subjects were tested with no helmet, two full coverage helmet models, two full facial coverage helmet models, and goggles.

Along the horizontal plane, visual restriction was less than 3 percent with full coverage helmets as compared to no helmet. The full facial coverage helmets produced 7.3 percent and 21.9 percent lateral field reduction. The helmet with the large restriction was a "worst case" helmet representing a small percentage of helmet sales and typically used in off-street situations. Lateral vision with goggles was approximately equivalent to that achieved by the most restrictive helmet.

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I. Introduction

The effectiveness of motorcycle safety helmets in preventing or reducing the severity of head injury in motorcycle crashes has been well documented. Under authority of the Highway Safety Act of 1966, the Department of Transportation published a Motorcycle Safety Standard for State highway safety programs which required that each motorcycle operator and passenger wear an approved safety helmet. Currently 47 States, the District of Columbia, and Puerto Rico meet the requirement. However, the laws implementing this requirement have been opposed by a vocal minority of motorcyclists. One of the allegations made is that motorcycle safety helmets are hazardous because they restrict the lateral vision of cyclists.

Since no previously published studies have measured the fields of view of helmeted and unhelmeted motorcyclists, the work described in this report was initiated to develop such data. The limited time period allowed to complete this study suggested a simple manually controlled test device. Therefore, the total field of view at ten angular positions was obtained by moving a target along a circular perimeter and recording the angle at which it was first perceived. A total of 19 motorcyclists participated with each using four different styles of helmets. A less detailed test was performed along the horizontal plane using safety glasses and goggles.

II. Test Methods

This section includes discussions of the procedures, apparatus, and subjects utilized during this test program. Most pieces of apparatus mentioned in Procedures are described in detail under Apparatus.

A. Procedures

The primary objective was to evaluate the field of view for helmeted and unhelmeted riders. Total field of view was measured with the head in a fixed forward position and the eyes free to move towards the target. The maximum visual angle was observed along five reference planes. One reference plane was the typical horizontal or lateral plane. (Occasionally, this total lateral field of view is referred to as peripheral field, but the word peripheral is only applicable for a fixed eye position test.)

A target point slowly moving from out of the visual field to the point of perception determined each data point. Three such readings produced an average value along each of the ten test angles (see Figure 1). It should be noted that measuring the location of a target leaving the field of view would produce a different absolute number. However, in the present study, relative comparisons with and without helmets are more important than absolute values.

Positioning the subject at the center of the perimeter test device significantly influenced the exact target position when it entered the visual field. A string stretched across the diameter of the bow and placed a few inches above the subject's head served as a center marker. Vertical alignment with respect to the horizontal plane was accomplished by adjusting the height of the chair on which the subject sat. The large eight (8) foot diameter bow (see Figure 2) allowed for slight subject misalignment without seriously affecting the recorded angle.

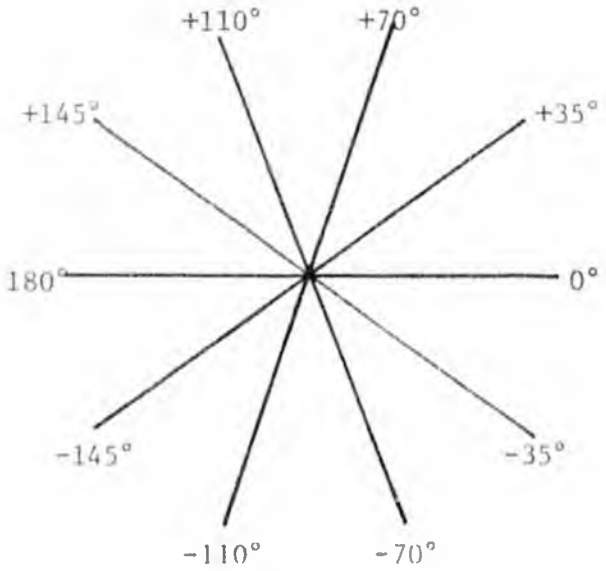


FIGURE 1 Angles Along Which Field of View was Measured

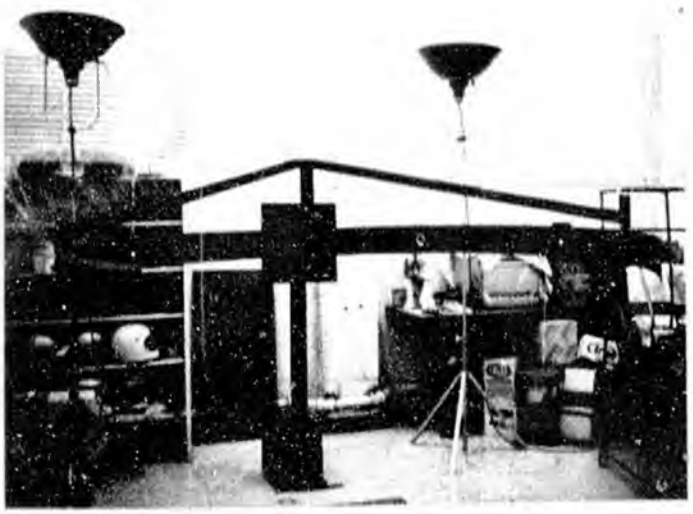


FIGURE 2 Perimeter Device for Measuring Visual Angles

A chin support kept the subjects from making large movements from the fixed forward position, but many individuals tilted their heads slightly towards the target. Helmet position on the head varied between individuals, and some helmet readjustment occurred during the testing. Therefore, any particular reading might be expected to be largely different from the average value. But this situation is realistic compared to the variance one would find between different riders during in-use conditions.

Three other tests were performed on each subject. The first test determined the maximum head turning (rotation in the horizontal plane) with and without helmets. With the subject facing forward, a light 3/16 inch aluminum tube was taped to each helmet. When the subject turned his head, while both hands were on handle bars provided, the "pointer" indicated angular displacement on the perimeter bow. The no helmet condition was approximated by repeating the above test using a light weight hockey helmet.

The second additional experiment measured visual field with safety glasses and goggles. This test was limited to the results obtained along the horizontal plane. The final evaluation was a simple helmet positioning check. The vertical distance between the subjects' eyes (centerline) and the helmet brim above was measured.

The helmets used in the study are depicted in Figure 3. They were selected to represent both the "worst case" of field of view restriction with a helmet and the typical cases. The helmets were of two designs, commonly referred to as full coverage and full facial coverage. The major distinction is that the full coverage helmets do not provide crash protection from direct impacts in the facial area. From qualitative observation it



Arthur Fulmer
Model AF-4



Buco
Enduro Model



Shoei
Model S-20



Bell
Star Model

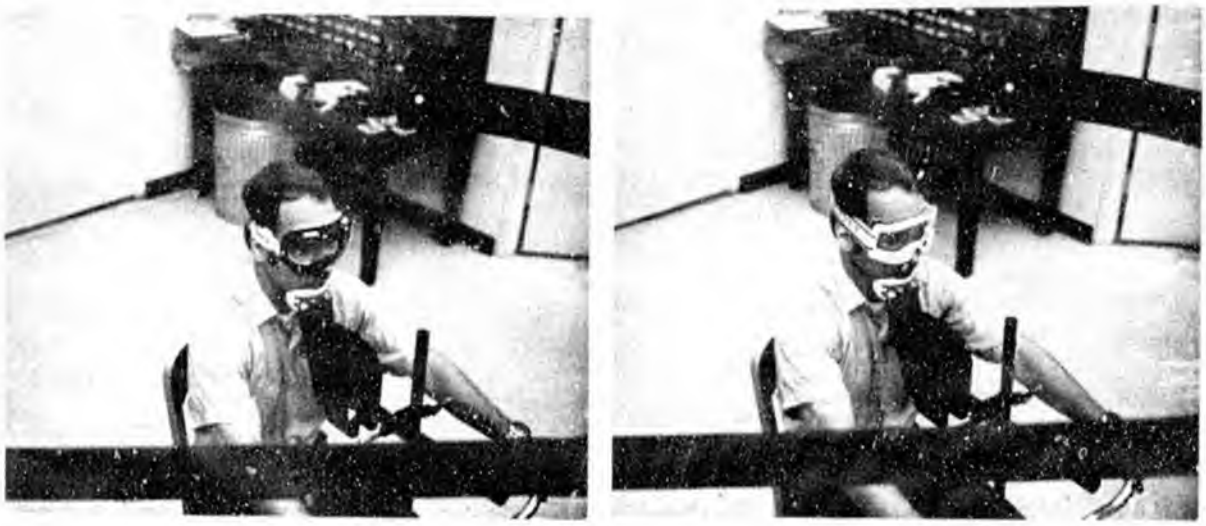
FIGURE 3 - Four Helmet Models as Worn During Visual Field Testing

can be discerned that the full facial coverage helmet creates a substantially reduced field of view as compared to an unhelmeted rider. However, it should be noted that this configuration of helmet was originally designed to provide maximum protection under motor-sport racing conditions and is not typically used by motorcyclists riding on public roads. The Safety Helmet Council of America estimates that less than 6 percent of the helmet sales are of this configuration. All helmets were purchased from commercial cycle shops and are manufactured by large helmet companies.

The safety glasses were made by Foster Grant and Studio Craft. These are displayed in Figure 4. The Foster Grant glasses were constructed with thin wire frames, and the Studio Craft had heavy plastic frames. Scott and Salice represented two of the many styles of goggles. Scott had a flat shield, while Salice had a bubble shield. Both types of goggles are shown in Figure 5.

B. Apparatus

The four (4) foot radius perimeter device is shown in Figure 2. This structure was fabricated from welded rolled aluminum sections. It extends 127° from the center of rotation. Because of the large moment on the rotating support piece, there was a slight (1 inch) sag at the extreme edge of the bow. This was compensated by slightly tilting the entire structure backwards. One (1) degree increments were marked on the outside surface of the bow (away from the subject). Both chordal and circumferential measurements were used to double check the angular locations.



Salice Scott

FIGURE 4 -Goggles as Worn During Visual Field Testing

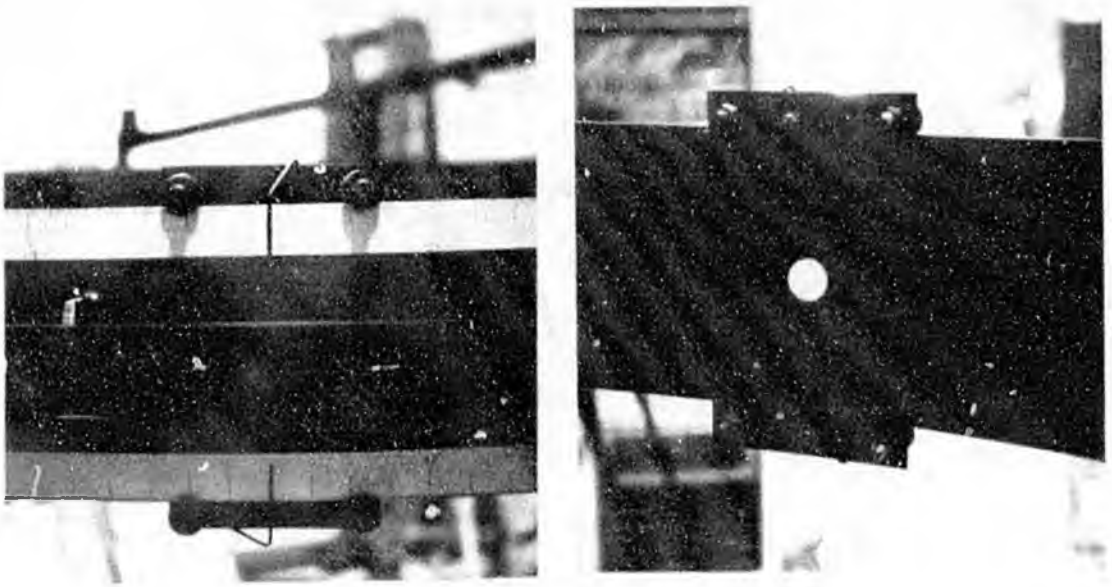


FIGURE 5 - Safety Glasses Tested: Studio-Craft (on left) and Foster Grant

Two trolleys supported by four nylon rollers each moved around the track with markers pointing to the angle indicators. A black 18-inch flexible rod was attached to one wheel of each trolley. This permitted moving the trolley into the subjects view without having any hands near the target area. This device is displayed in Figure 6.

The seat structure provided for adjustable subject height and chin support. After original positioning, the subject could move slightly in the seat and still return to the same location within the perimeter device. Figure 7 shows the chin support during a test condition with no helmet. The chin rest caused some interference with the full facial coverage helmets. The lower portion of these full facial coverage helmets had to be lifted up to place the subjects' chin in the chin support. The helmet was then returned to its normal position. Several checks validated that the final helmet placement on the head was approximately equivalent to the original position. No interference existed with the full coverage helmets. Typical helmet and chin support positioning may be observed in Figure 3. It should be noted that there is minimal interference in the full facial coverage helmets.

The target that the subjects observed entering their field of view was a white dot on the black trolley. The 0.81 inch diameter dot subtended a one (1) degree visual angle to the subjects' eyes. Indirect lighting (provided by four photo flood lamps) produced a bright non-glare room illumination. Light incident on the white dot was measured as approximately 100-foot candles.



(a) side away from subject (b) side toward subject

FIGURE 6 Trolley With Visual Target and Angle Indicator



FIGURE 7 Chin Support and Cuide Device

C. Subjects

A total of 19 subjects (18 male and one female) completed the test series. All participants were experienced motorcyclists. It was felt that this group of people could better position (to normal comfort levels) the helmets and not suffer fatigue during the one and one-half hour test. Subjects ages ranged from 20 to 55 with median age of 31. Fifty percent of the participants normally wore eye glasses. Many did not use their glasses during the test because the temple (side) portion of the frames blocked a particular perimeter target position. It was felt that vision rather than eye glasses style was to be tested, so when interference occurred the subjects removed their glasses. Many near-sighted individuals commented that they could easily perceive (though not see with great acuity) the target when it was out of the range of normally corrected vision.

III. Results and Discussions

A. Helmets

At each test angle, with respect to the horizontal plane, three trial readings were recorded. Typically, the subject and helmet positions remained fixed so that the readings were within a few degrees of each other. The data were gathered for all subjects at each angle. Table 1 shows the mean and standard deviation obtained from all individual data.

The standard deviations were rather large for both helmeted and unhelmeted conditions at each test angle. Several simple explanations were obvious from the nature of the test. First, there are physiological and anatomical differences between subjects that affect both normal field of view and position within the helmet. Second, exact placement of the helmet on the head and precise positioning of the head in the perimeter were difficult to obtain repeatably. Third, slight and unconscious head and shoulder movements from side-to-side were impossible to control.

However, there was a concept that was overlooked in the experimental design that now appears to be a major factor. While the chin rest provided positive downward and side-to-side head guidance, the jaws were not clamped down. Table 1 clearly indicates a larger scatter in the data for above the horizontal plane readings as compared to below. Thus, if a subject subconsciously opened his jaw when looking up towards a target, then an artifically larger visual field would be recorded. This phenominon could occur with both helmeted and unhelmeted subjects.

Angular Plane	Arthur Fulmer		Bell		Buco		Shoei		No Helmet	
	Mean	St. Dev.	Mean	St. Dev.	Mean	St. Dev.	Mean	St. Dev.	Mean	St. Dev.
0°	113.6*	6.4	92.1	5.7	116.1	5.20	107.1	4.8	116.2	7.8
+35	80.3	12.7	70.1	12.3	83.9	11.0	77.1	9.5	85.7	9.9
+70°	46.8	11.6	37.6	8.2	56.3	12.5	47.2	10.9	64.3	11.5
+110°	49.3	14.1	38.9	8.2	54.8	11.5	46.4	9.1	66.5	11.0
+145°	85.1	11.3	69.6	11.3	83.9	12.7	77.0	9.3	88.5	11.9
-35°	107.0	8.1	70.4	10.0	107.7	6.1	89.5	8.4	111.1	7.8
-70°	81.7	6.1	39.4	8.1	81.5	6.2	51.4	9.9	84.0	6.0
-110°	81.8	7.8	41.5	6.8	79.9	7.0	53.4	6.9	83.7	6.5
-145°	104.8	10.0	67.9	9.4	107.4	9.0	90.6	6.7	110.5	7.4
180°	112.5	7.2	89.5	6.8	115.6	7.3	108.2	7.0	116.5	7.8

TABLE 1 Mean and Standard Deviation Data for All Angular Planes

*All measurements are in degrees

Considering the large number of variables that are very difficult to fully control, the statistical aspects of the data seem adequate for the intended purpose of an initial determination and identification of field of view values with and without helmets.

Figures 8 through 12 graphically illustrate the average field of view for each helmet and the no helmet condition. Note that the field is displayed as the subject observes it (i.e. 0° is to the right). Figure 13 is a composite of the three helmeted and the unhelmeted test results. One of the full coverage helmets is omitted because it is essentially the same as the other.

As noted in the introduction, a primary purpose of this work was to develop data on the degree to which the lateral vision (i.e., the field of view in the horizontal plane) is reduced by the use of safety helmets. Helmets representing the "worst case" and the typical case of lateral field reduction were used.

Table 2 displays the total visual field along the horizontal plane for each of the helmets tested as well as the unhelmeted condition. From this table it can be determined that the two full coverage helmets (Arthur Fulmer and Buco) had relatively little effect on lateral vision; both reduced the field less than 3 percent. The Shoei helmet, a full facial coverage helmet designed to meet FMVSS No. 218, reduced the total visual field along the horizontal plane by only 7.3 percent. The Bell Star* full facial helmet was selected as the "worst case" helmet in terms of reduction in the field of view along the horizontal plane. The Bell Star helmet reduced lateral vision by 21.9 percent. However, as noted previously, this configuration of helmet accounts for less than 6 percent

*Bell also markets another full facial coverage helmet, the Star 120, which provides a field of view similar to the Shoei helmet.

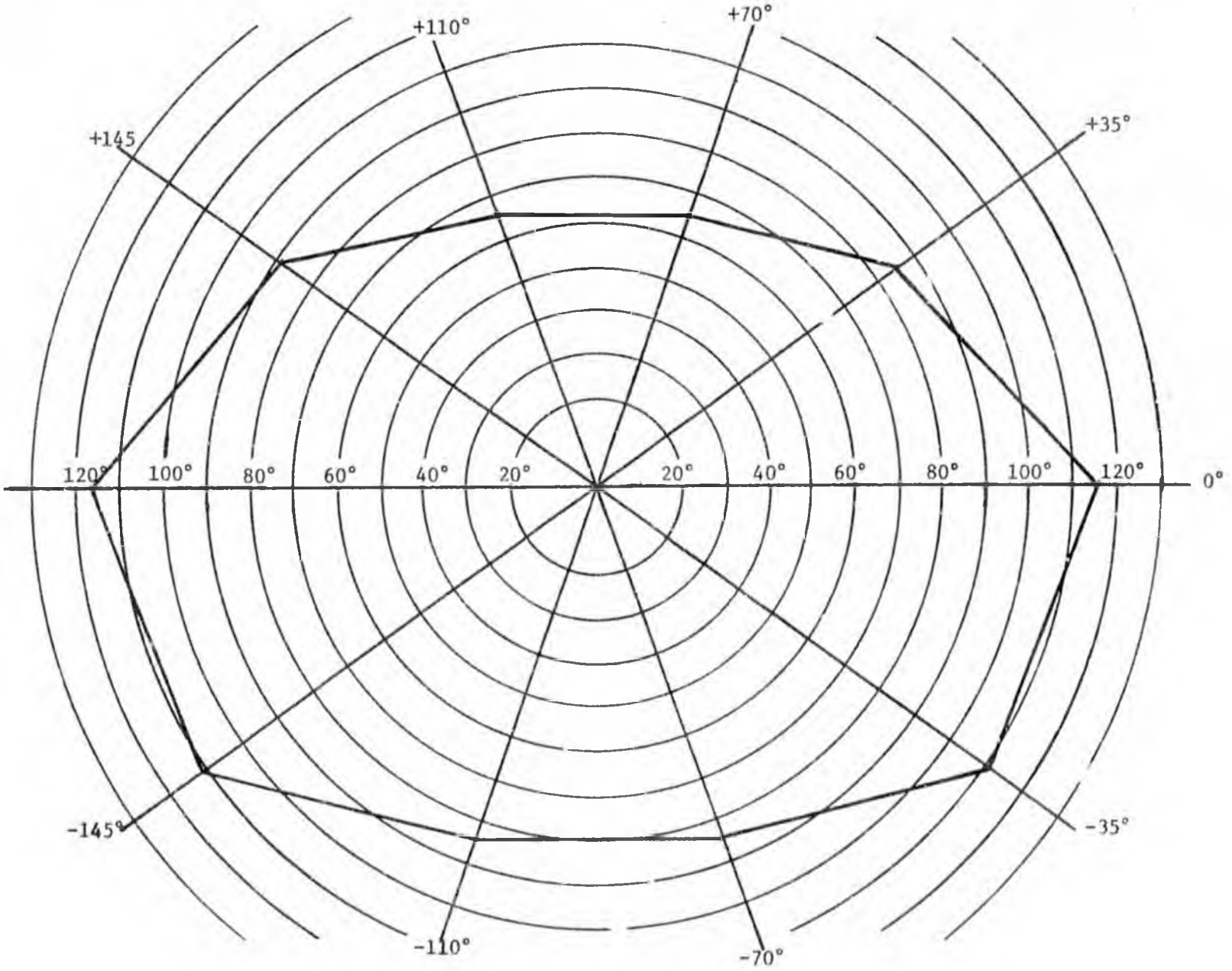


FIGURE 8 -Average Visual ield With No Helmet

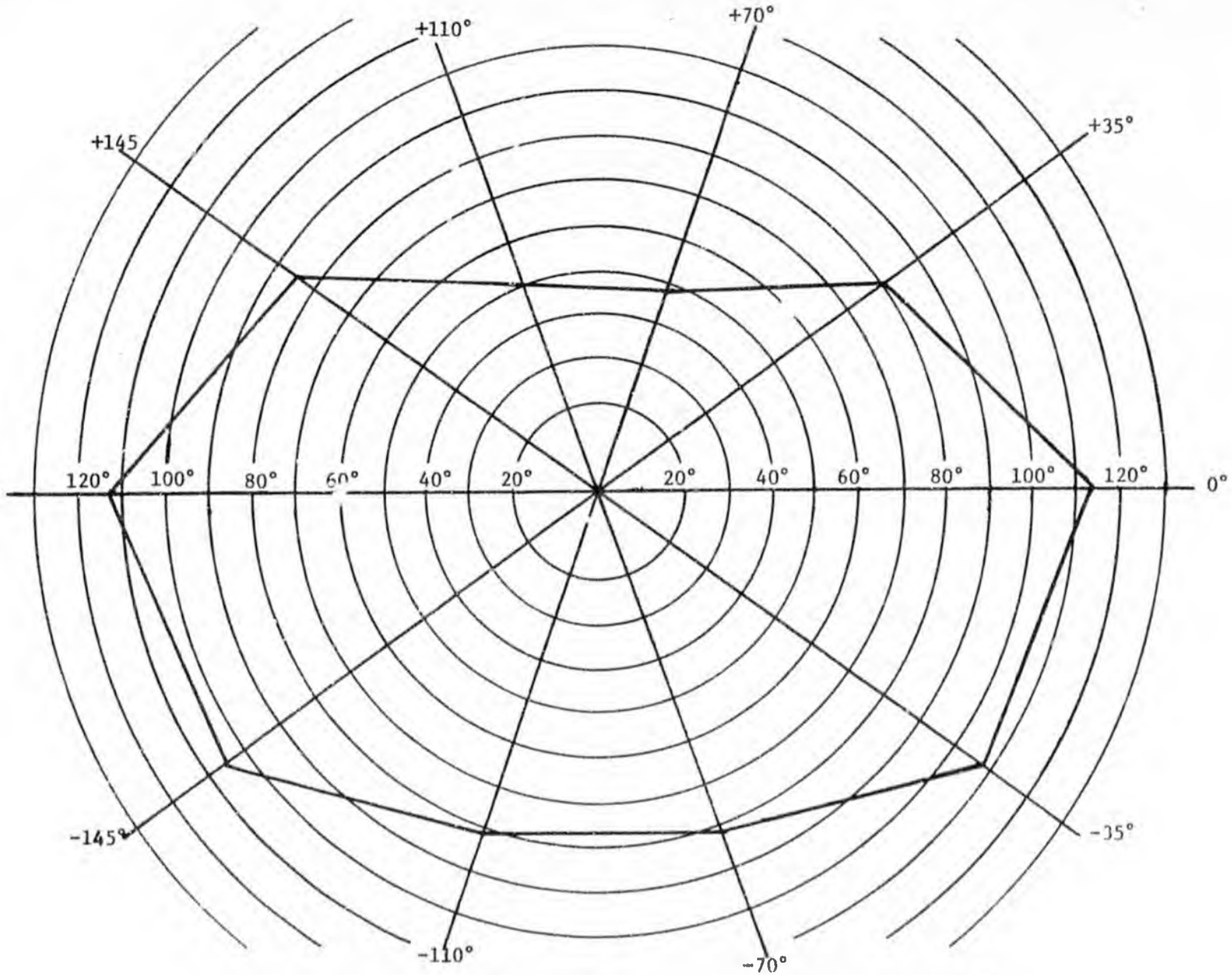


FIGURE 9 - Average Visual Field with Arthur Fulmer Model AF-40 Helmet

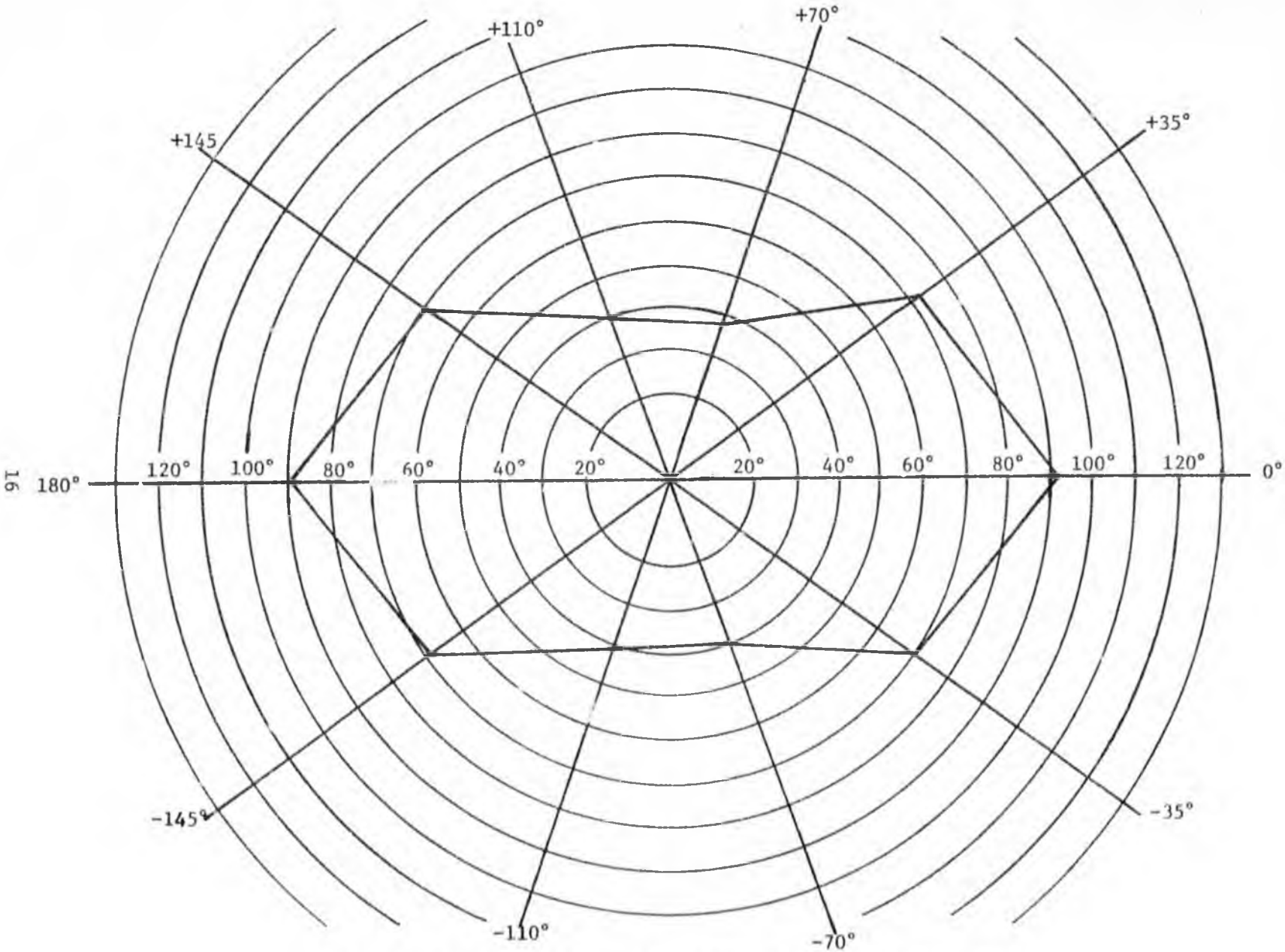


FIGURE 10 - Average Visual Field With Bell Star Model Helmet

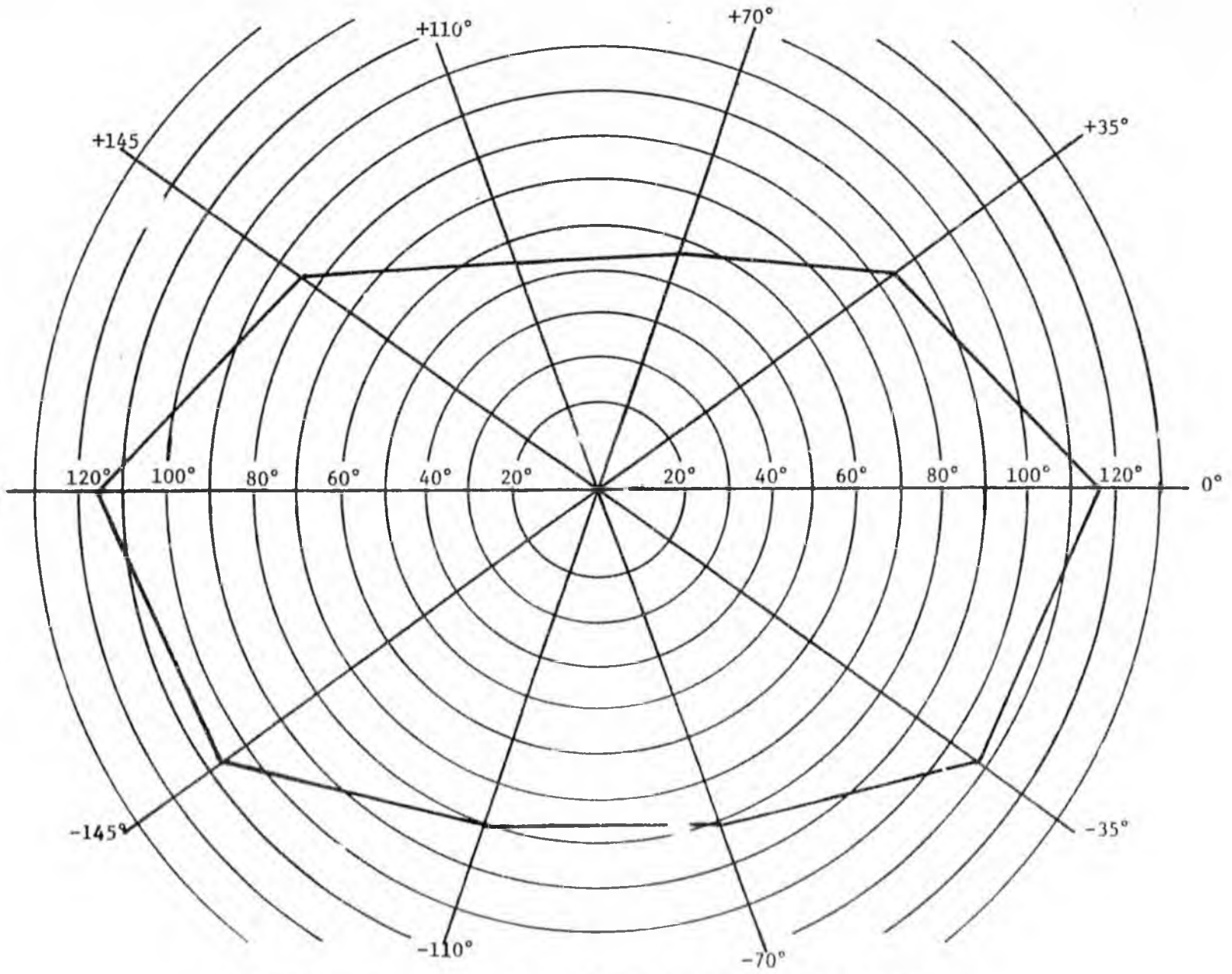


FIGURE 11 - Average Visual Field With Buco Enduro Model Helmet

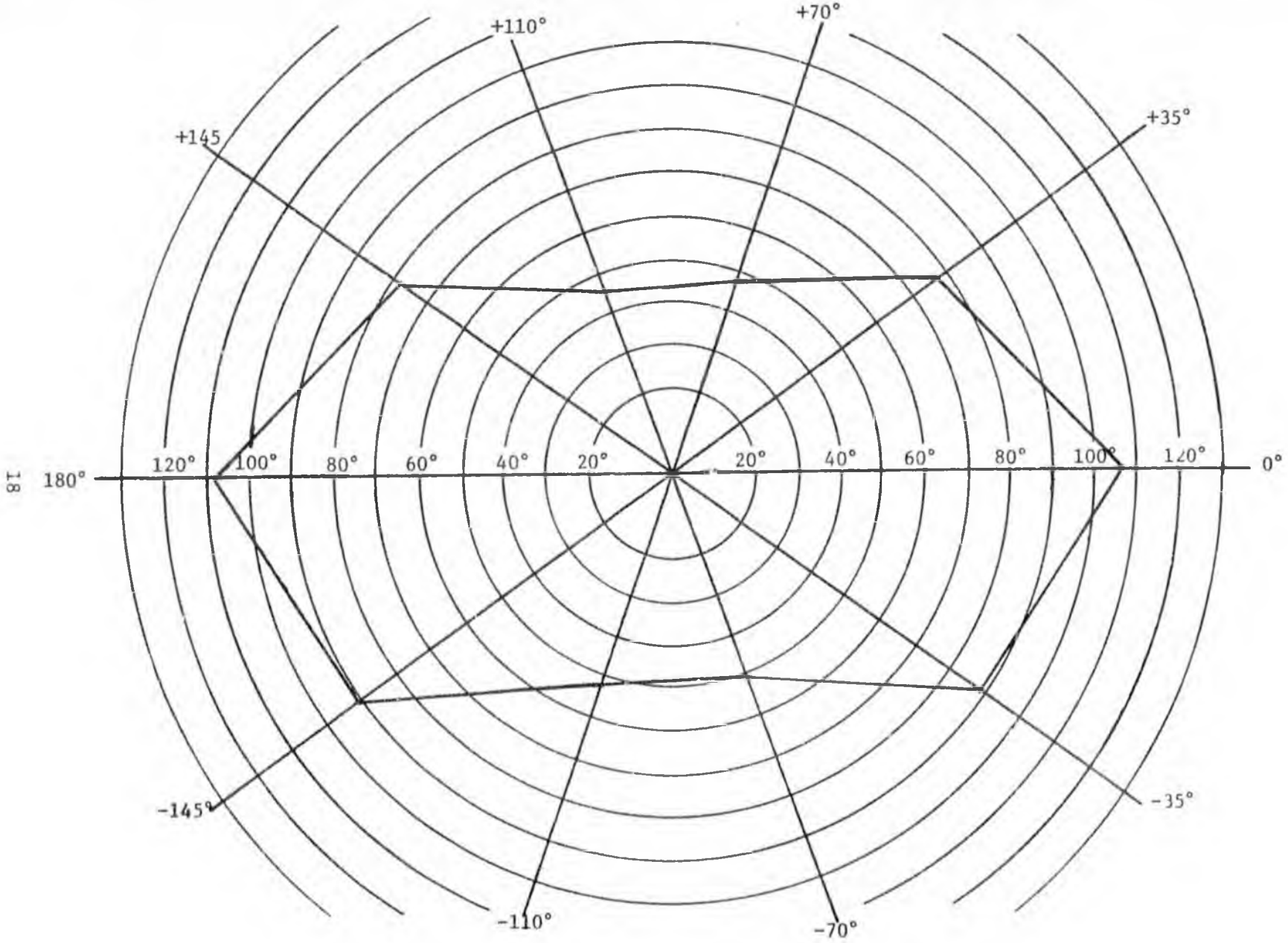


FIGURE 12- Average Visual Field With Shoei Model S-20 Helmet

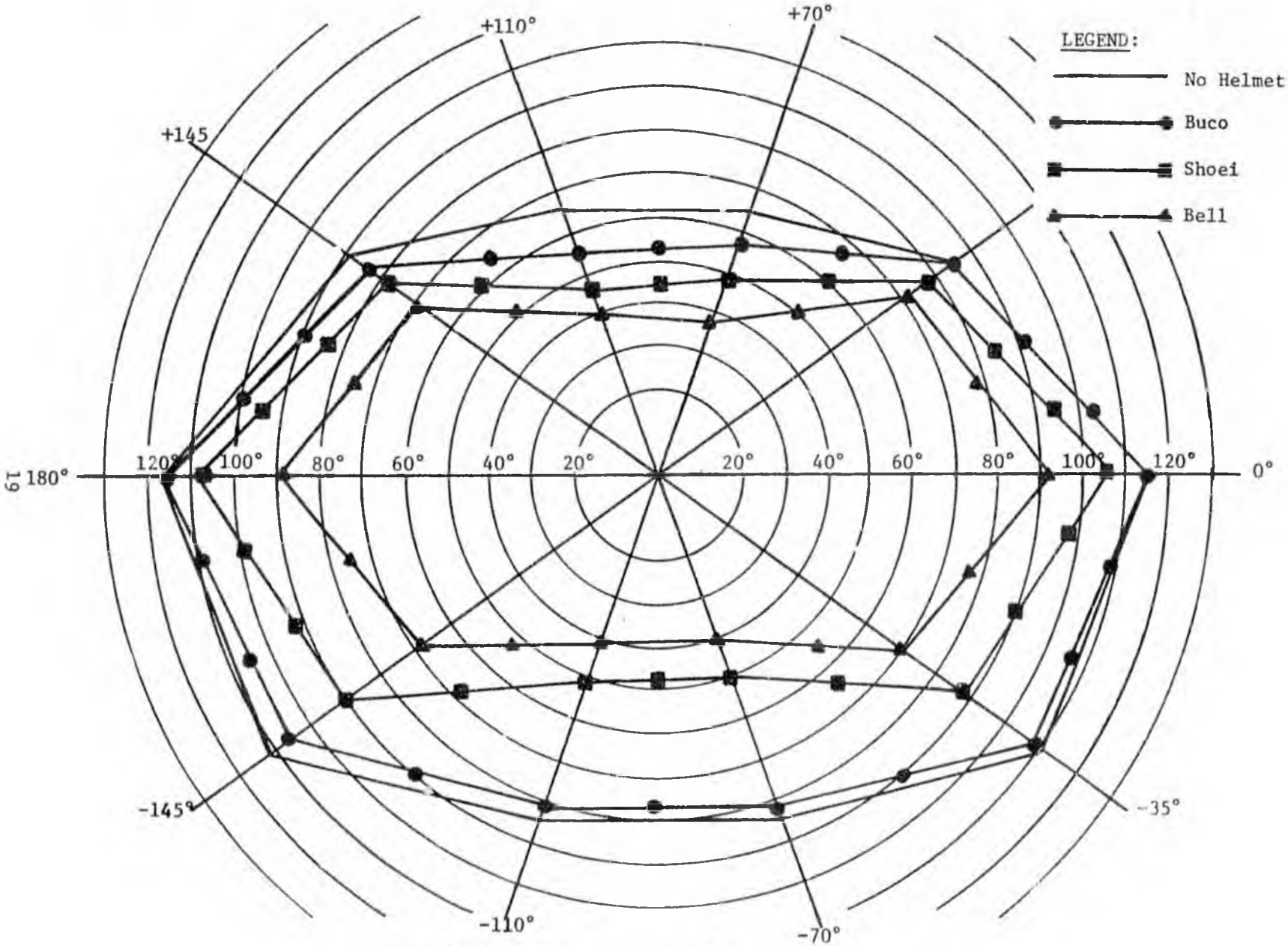


FIGURE 13 Composite Visual Field

of current helmet sales and many of these are used exclusively for off-road motorsport activities rather than for on-street motorcycle riding.

	Arthur Fulmer	Bell	Buco	Shoei	No Helmet
Mean	226.2°	181.7°	231.7°	215.8°	232.7°
Standard Dev.	12.9°	10.6°	11.3°	9.0°	14.0°
Percent Reduction from no helmet value	2.8%	21.9%	0.4%	7.3%	-

TABLE 2 Total Visual Field Along the Horizontal Plane

As can be observed from Figures 8 - 13, the full facial coverage helmets (Bell and Shoei) reduced the total visual field along the vertical planes significantly from the unhelmet or full coverage helmet conditions. Full facial coverage helmets also accounted for a significant reduction in the total field of view area (i.e., the envelop depicted by the bold lines in Figures 8 - 13). In the extreme comparison between the "worst case" helmet, the Bell Star, and the no helmet condition, the total visual area was lessened by 55 percent.

Two facts must be made clear at this point. First, along the horizontal plane all helmets provide more than a 180° field of view. This exceeds the maximum 140° total "peripheral" vision required for any State licensing test. Second, choice in helmet purchasing is the decision of the individual mototcyclist. The full coverage helmets met DOT regulations (FMVSS No. 218) and had relatively small effects on the visual field. If additional protection is desired, then a full facial coverage helmet may be the rider's choice.

B. Goggles and Safety Glasses

Goggles and safety glasses were evaluated only along the horizontal plane. The total field was 184.2° for the Salice goggles and 186.1° for the Scott g les. These values were very similar to those of the Bell Star helmet. everal participants complained about the distortion in the Salice goggles due to the double curvature of the bubble shaped plastic shield.

The safety glasses evaluation proved to be meaningless. Two conditions existed --either the temple piece interfered or it did not. If the side piece did not obstruct viewing the target, then normal bareheaded vision was being tested. Therefore, the only safety glasses data which is meaningful is that about 50% of the wide framed Studio Craft glasses interfered with lateral vision. The thin framed Foster Grant glasses did not obstruct vision.

One interesting extraneous result appeared when testing with Foster Grant glasses. Because this test was essentially the same as the initial bareheaded test, the two were compared. The glasses test was the final procedure of an hour and a half test program. Despite the generally tired eye conditions of most subjects, the average total horizontal field increased from 232.6° to 237.5°. This small, but consistent (13 to 19 subjects) improvement appears to be a psychological, as well as physiological function of a learning process.

C. Additional Tests

Two tests related to vision (but not measured with the perimeter device) were also performed on all subjects. The first study dealt

with reduced head turning with motorcycle helmets. Table 3 displays the findings of this study. The results with a light-weight hockey helmet were clearly larger than with the motorcycle helmets. Each subject provided data for four comparisons between no helmet (as simulated with a hockey helmet) and motorcycle helmet conditions. Therefore a total of 76 (4 x 19) comparisons could be made. Surprisingly, 86% of the individual analyses showed higher angular rotation for the hockey helmet condition. The restriction of head turning is small, but highly consistent. There appears to be no anatomical obstruction, so the effect is probably psychological in nature.

	Hockey Helmet	Arthur Fulmer	Bell	Buco	Shoei
Total Angle	195.8°	188.4°	188.6°	187.4°	184.4°

TABLE 3 Head Turning (Side-to-Side)

Data was collected on the typical positioning (presumably the most comfortable) that each subject chose. Measurements were made of the approximate distance between the center of the participant's eye and the helmet brim above. In order of increasing distance, the helmets were as follows: Bell (1.22), Arthur Fulmer (1.38), Shoei (1.51), and Buco (1.84). The standard deviations were large, so it is difficult to specify a typical comfortable helmet placement index.

IV. Summary and Conclusion

In general, motorcycle helmet visual restrictions were smaller along the horizontal plane as compared to the vertical planes. The full coverage helmets produced relatively small reduction in the entire field of view. As expected, the full facial coverage helmets resulted in somewhat larger reductions. The two styles of full facial coverage helmets yielded significantly different fields of view. Goggles produced approximately the same lateral visual field as the most restricted helmet.

With regard to restriction of the total field of view in the horizontal plane, it can be concluded that full coverage helmets (the most common type in use) provide only minor restrictions, less than 3 percent from that of an unhelmeted person. The full facial coverage helmets designed to comply with the lateral vision requirements of the ANSI Z90.1 standard and FMVSS No. 218 provided a restriction in lateral vision only marginally more than the full coverage helmets (7.3 percent). The "worst case" helmet provided a restriction of 21.9 percent from the unhelmeted lateral field.

All helmets tested exceeded the maximum State licensing requirements of 140° total "peripheral" view in the horizontal plane. Also, all helmets were in general compliance (especially visual regulations) with DOT standards. Therefore, helmet selection in terms of acceptable visual field, appears to be a matter of personal preferance among the many available styles.

NHTSA Technical Note

DOT HS-801 759

EFFECT OF SAFETY HELMETS ON AUDITORY CAPABILITY

Prepared by:

U.S. DEPARTMENT OF TRANSPORTATION
National Highway Traffic Safety Administration
Research and Development
Office of Driver and Pedestrian Research

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ROBERT L. HENDERSON

INTRODUCTION

One of the arguments advanced by opponents of safety helmets and laws mandating their use is that such helmets reduce auditory capability to a level unsafe for driving. There is no scientific data supporting this view. There is, however, scientific data showing clearly that the reduction in auditory capability resulting from wearing a protective helmet is inconsequential in the driving situation. The primary reason for this is that the noise generated by the motorcycle itself (and at higher speeds, by wind) is so great that any sound loud enough to penetrate this noise is loud enough to be heard inside a helmet.

To understand why this is true, it is necessary to examine the phenomenon of "hearing." Whether or not a given sound will be heard by a driver is dependent upon three factors:

1. The auditory capability of the driver; i.e., his sensitivity to sound stimuli at each frequency within the auditory range (20-10,000 Hz for the average adult).
2. The intensity and frequency composition of the sound at the ear of the driver.
3. The intensity and frequency composition of any ambient noise that might "mask" or hide the desired sound, also measured at the ear of the driver.

A given sound will be heard by a driver if it is loud enough, when it

reaches his ear to be above his threshold (minimum sensitivity), and if it is not"masked" or hidden by other sounds (noise) present at the same time. Motorcycles create average levels of ambient noise ranging from 85 to 98 db(A) for on-street or dual purpose vehicles to as much as 110 db(A) for racing machines (Harrison, 1974). For a rider to hear any other sound in the presence of this high noise level, the sound must be as loud as or louder than the motorcycle itself; i.e., have a signal-to-noise ratio of approximately 1:1. If these conditions hold, the sound can theoretically be "heard" by an attending driver. The greater the signal-to-noise ratio; e.g., the more intense the sound of interest relative to the ambient noise, the greater the "attention-getting" properties of the signal and the higher the probability that it will be heard. In the paragraphs that follow, it will be shown that wearing a protective helmet reduces the loudness of both sounds of interest and motorcycle noise an equal amount and hence does not alter the signal-to-noise ratio between the two. Consequently, as long as the rider can hear the motorcycle itself while wearing a protective helmet, he or she can also hear any other sound with a favorable signal-to-noise ratio at least as well as a driver who does not wear a protective helmet.

BASIC HUMAN AUDITORY CAPABILITY

The theoretical sensitivity of the human auditory mechanism to sound stimuli of various frequencies is shown in Figure 1 (after Kryter, 1970). Maximum sensitivity occurs between 1000 and 3000 Hz, decreasing at both higher and lower frequencies. This sensitivity distribution would rarely be found in an individual driver, since the progressive loss in hearing sensitivity due

to the aging process will have begun by the time an individual is old enough to be licensed. Since the aging process does significantly affect auditory capability, it must be considered in our analysis. In the absence of quantitative data concerning the age distribution of motorcycle drivers, an arbitrary assumption was made that relatively few motorcycle drivers would be found older than 55, with the vast majority of drivers considerably younger. By selecting an age range between 46-55, for which good auditory sensitivity data was available, it was felt that the analysis would involve the "worst case" situation with regard to driver age. In other words this group would represent the motorcyclists who could hear least well; those with the greatest loss of auditory sensitivity. The top curve in Figure 1 illustrates the effects of aging on the auditory threshold of a group of 367 males between 46 and 55 years of age (from Kryter, page 118). It can be seen from this figure that the age-related hearing loss is restricted to the higher frequencies, commencing around 600 Hz for this group, and increasing rapidly with increasing frequency.

DIRECT EFFECT OF HELMETS ON AUDITORY THRESHOLD

Wearing a protective helmet has exactly the same effect on auditory threshold as hearing loss due to aging; e.g., the auditory threshold is raised, in this case by an amount equal to the sound attenuation provided by the helmet. An indication of the magnitude of this attenuation or "helmet loss" is presented in Figure 2. This figure shows the average difference between the intensity of sounds measured inside a number of different helmets at the ear of the wearer, and the intensity of the same sounds measured outside

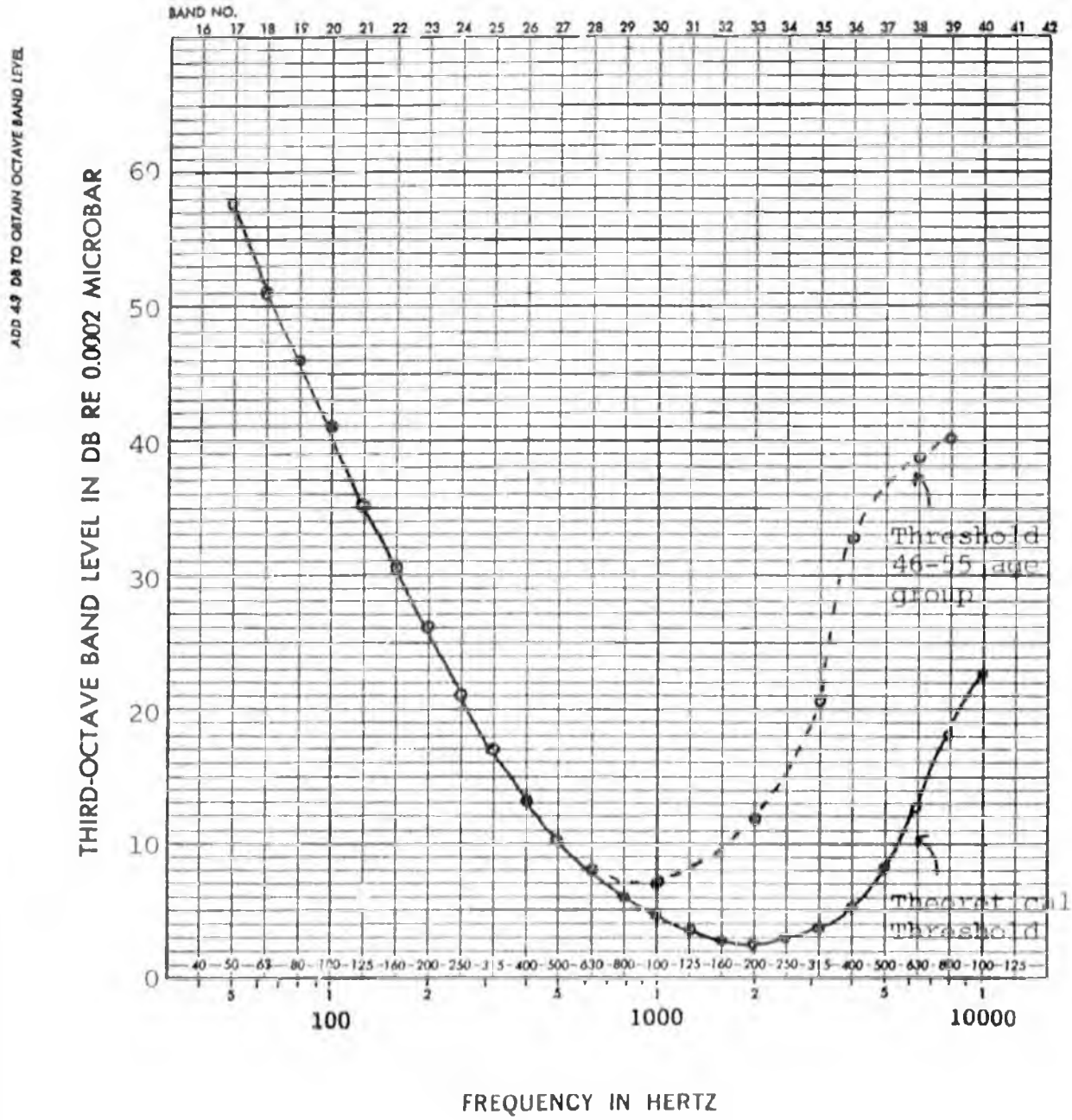

Figure 1. Human Auditory Sensitivity to Sounds of Different Frequencies

the helmet (Henderson and Burg, 1974).* In general, there is very little consistent effect at lower frequencies; but at frequencies above 800 Hz, the attenuation effect increases rapidly. For comparison, the sound attenuation of an automobile (with doors and windows closed) is also shown in Figure 2. It is clearly evident that an automobile body attenuates sounds significantly more than a protective helmet at all frequencies. Thus, the hearing impairment attributable to a protective helmet is very minor compared to the impairment provided by the soundproofed construction of modern automobiles.

For all practical purposes, any attenuation that does occur is the equivalent of raising the auditory threshold of the wearer by an equal amount since in both cases, the intensity of the sound must be increased for it to be heard. The effect of helmet attenuation on auditory threshold is shown in Figure 3, where the theoretical threshold values have been raised at each frequency by an amount equal to the attenuation of the helmet at this frequency. For comparison purposes, the auditory threshold for the 46-55 age group is also shown. It is obvious that the amount of "hearing loss" that can be attributed to wearing a safety helmet is approximately the same as the amount of hearing loss that normally occurs to 46-55 year-old males. Thus, those who claim that helmets reduce hearing to an unsafe level would also have to claim that drivers 46-55 years of age or above are also unsafe when compared to a young driver with no hearing loss.

*The observed increase in intensity inside the helmet at certain frequencies could be due to errors in measurement; however, the consistency with which such increases are found suggest that they are the result of the helmet "trapping" certain frequencies and actually increasing their intensity at the driver's ear relative to their intensity under "free field" conditions.

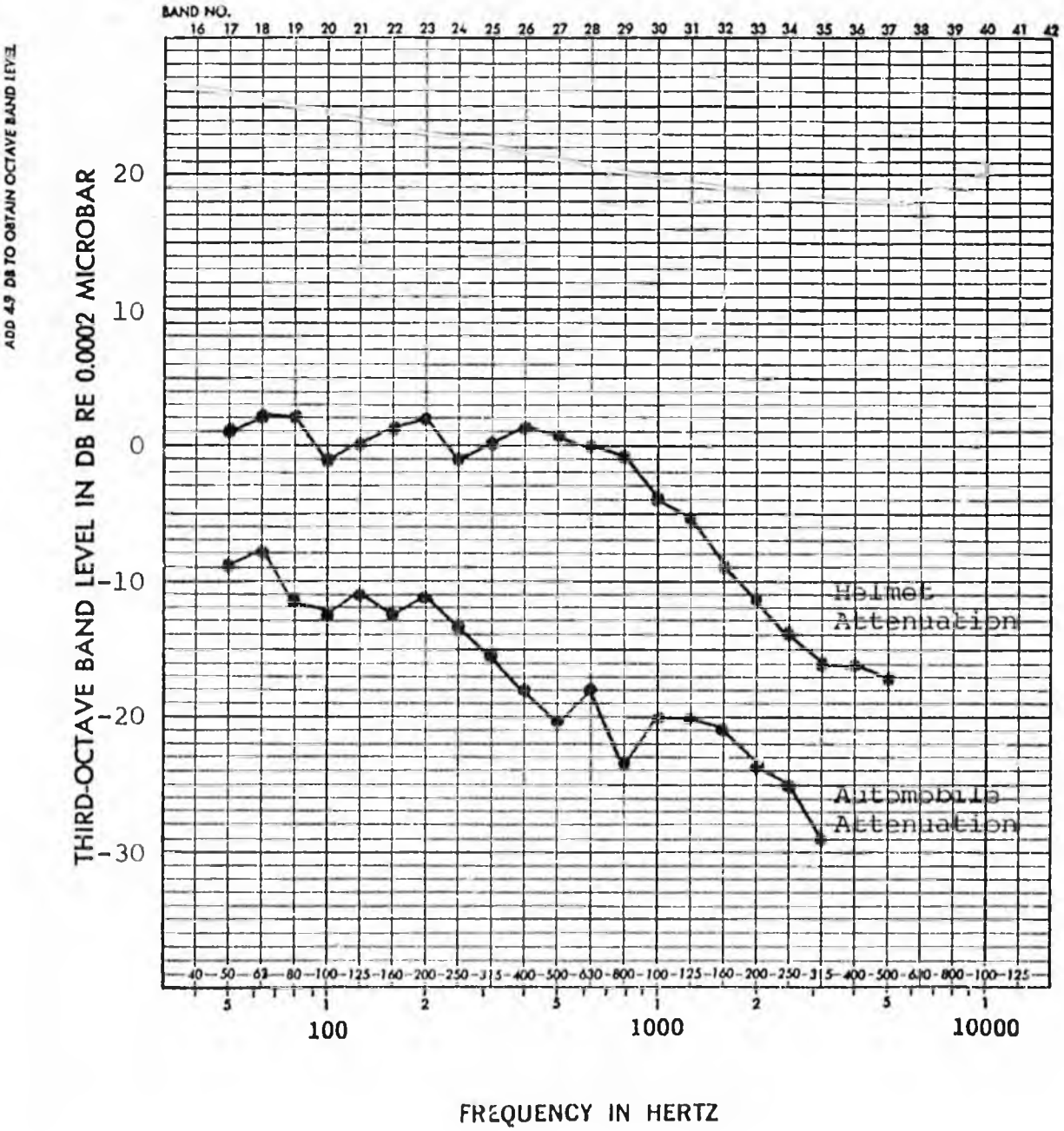

Figure 2. Comparison of Average Sound Attenuation Characteristics of Automobiles (Windows Up) and Protective Helmets

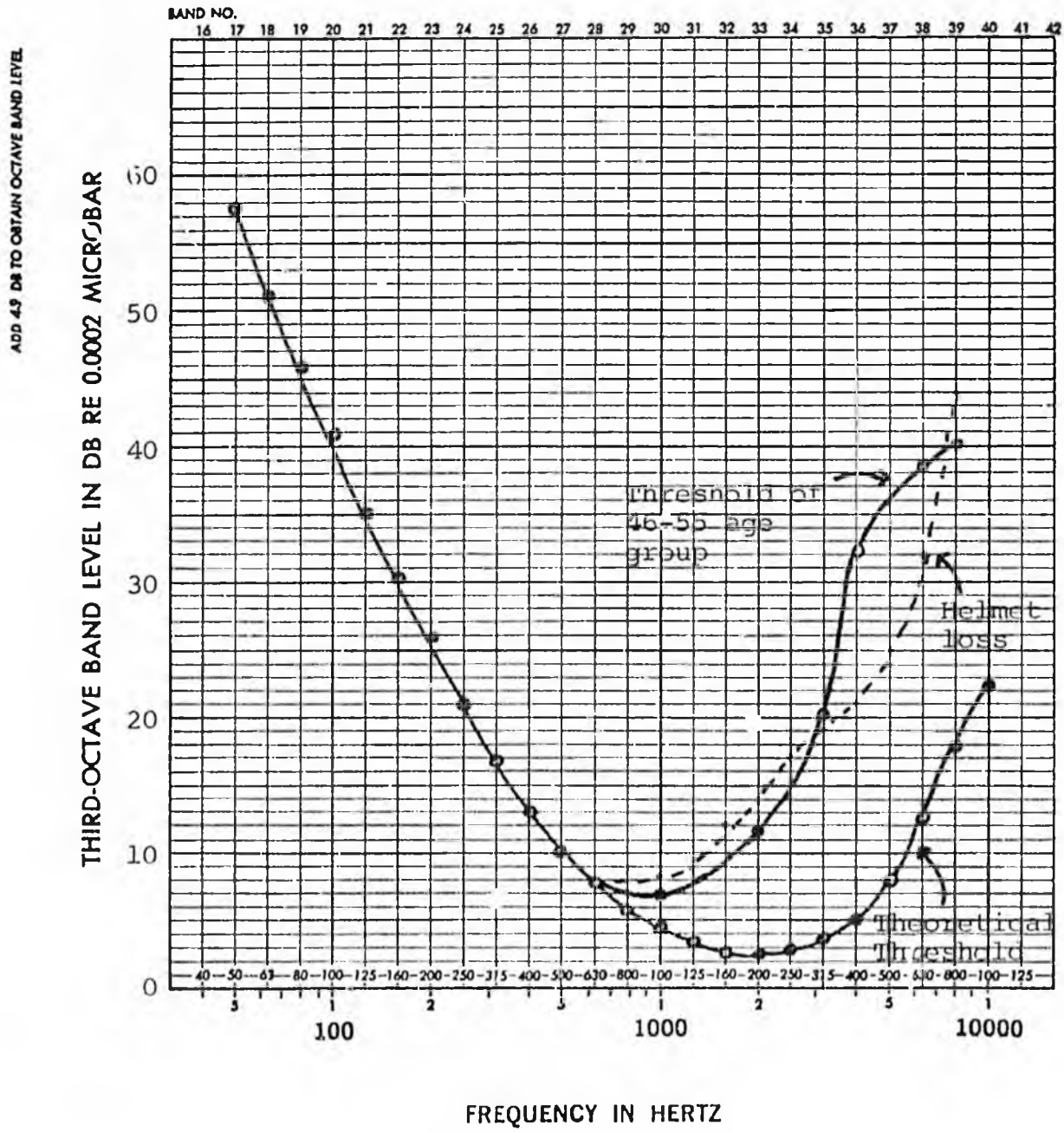

Figure 3. Comparison of Age-Related Hearing Loss (ages 46-55) and Temporary Hearing Loss from Wearing Protective Helmet

In practice, "helmet loss" must be added to any permanent hearing loss a person may have to determine his true auditory threshold. In figure 4, the auditory threshold for 46-55 age group is shown with, and without, helmets. The hatched area between the two curves represents the additional loss due to wearing a helmet. Assuming a "quiet" environment without interfering noise, sounds whose intensity fall within the hatched area could not be heard by the driver wearing a helmet, but could be heard by a driver without a helmet.

EFFECT OF AMBIENT NOISE ON AUDITORY PERFORMANCE

The assumption of a "quiet" environment, however, is not valid for a motorcycle driver. Figure 5 presents the sound pressure level at various frequencies that is generated by a motorcycle under operational conditions that vary from idle (stationary) to 50 miles per hour (Henderson & Burg, 1974). For comparison, auditory threshold data previously discussed is also presented.

The significance of the ambient noise generated by the motorcycle is that, through what is known as "masking," it affects auditory performance in much the same way as hearing loss. Masking occurs when one sound hides or obscures another sound. Both masking and hearing loss effectively shift the auditory threshold upward, but do not influence the detection of sounds above the new threshold. For example, a person who suffers a 20 db hearing loss at a given frequency (whether due to aging, or wearing a helmet, or some combination of those) cannot hear a tone of that frequency until it is 20 db louder than a tone that can just be heard by an individual with no hearing loss. However, in the presence of 20 db of masking noise at

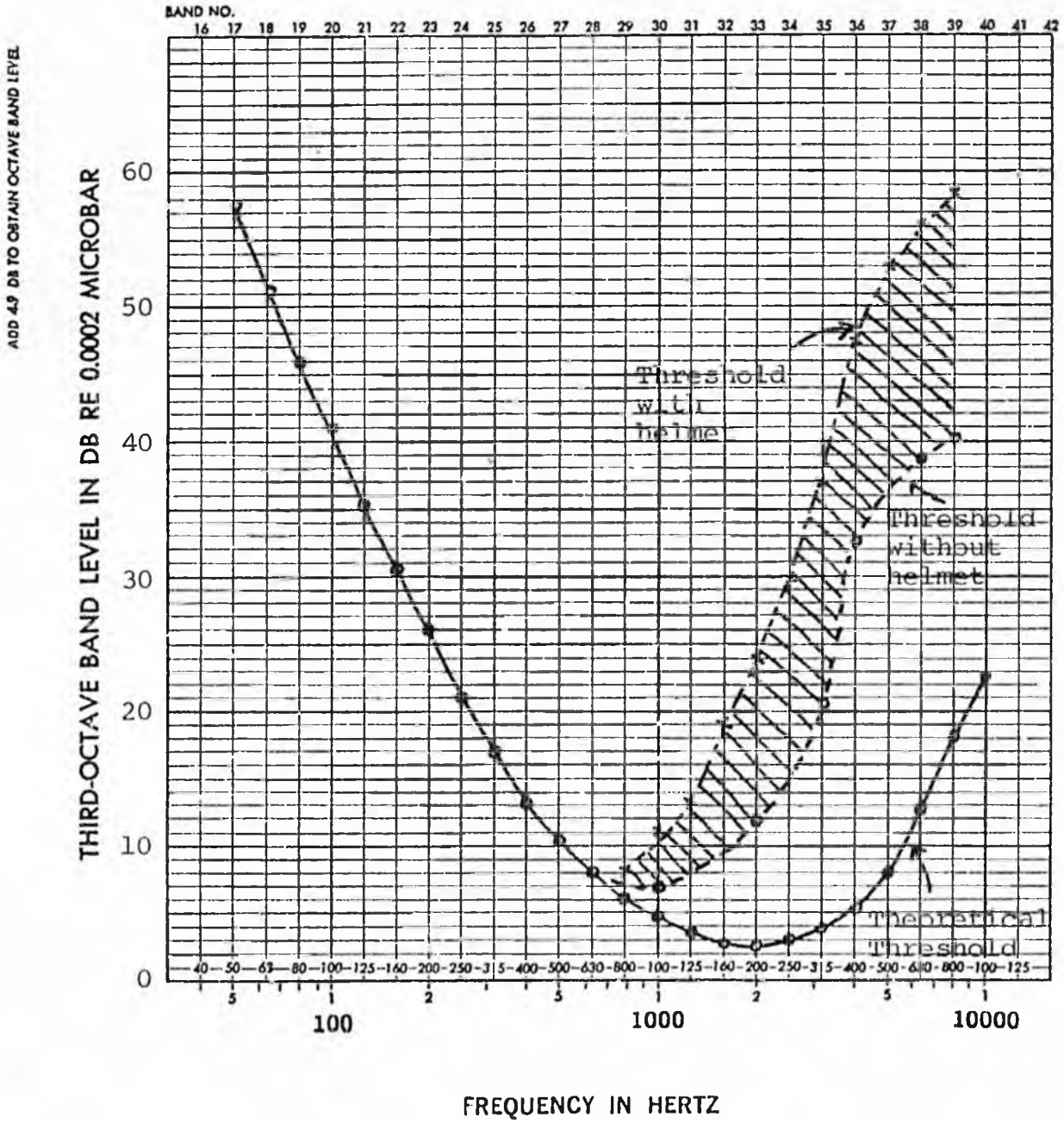

Figure 4. Auditory Threshold for 46-55 Age Group With and Without Protective Helmets

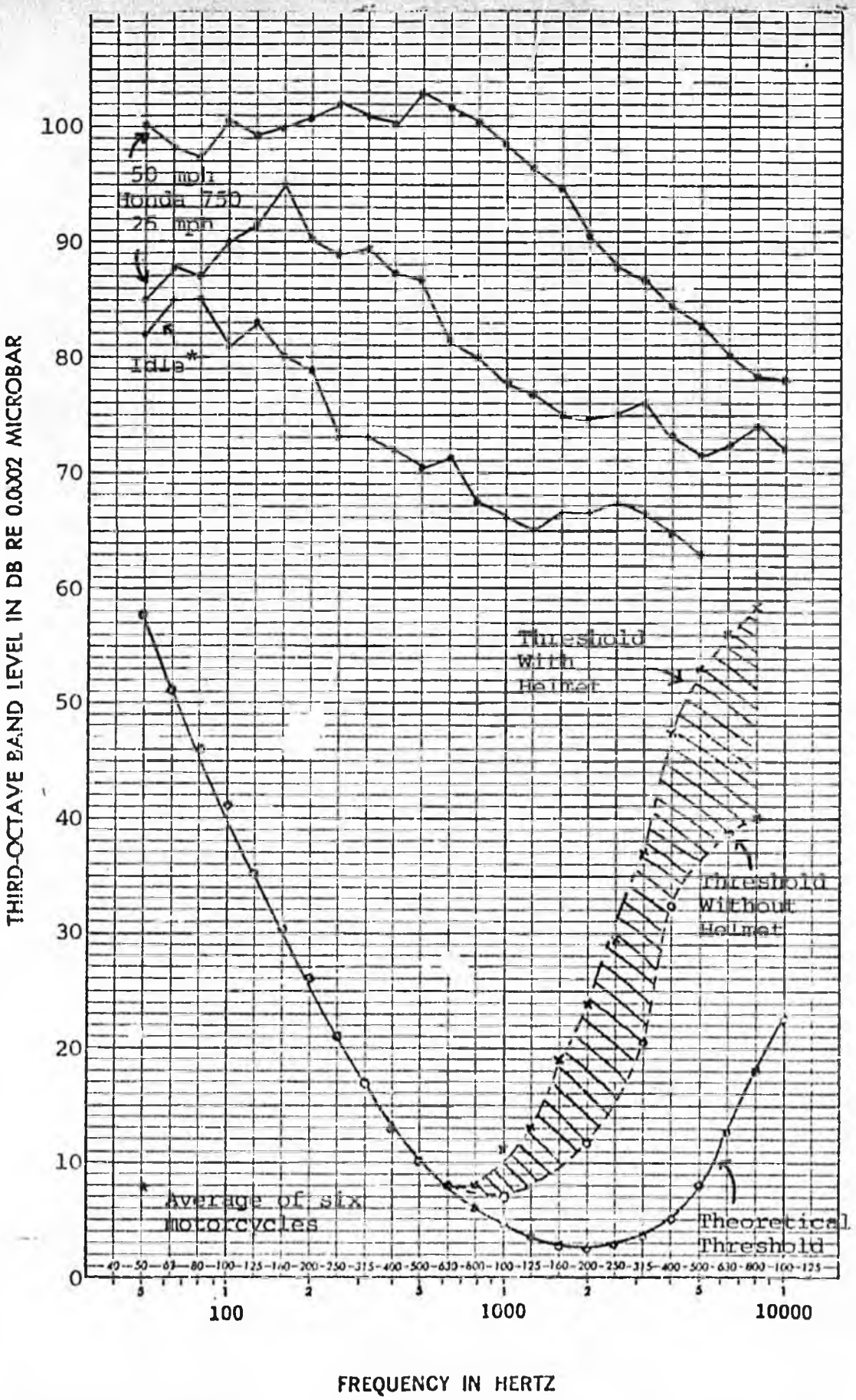

Figure 5. Comparison of Motorcycle Noise at Various Speeds and Auditory Threshold of 46-55 Age Group With and Without Protective Helmets

that particular frequency, both individuals would have basically the same auditory capability; i.e., both would have the same probability of detecting a sound whose signal-to-noise ratio is approximately 1 or above.

The ambient noise level associated with motorcycle operation can be seen from Figure 5 to be very high. If it is necessary for any sound to be as loud as or louder than the motorcycle noise in order to be heard, it is clear from figure 5 that it will be well above the auditory threshold for the helmeted driver, and hence the loss associated with wearing the helmet is completely inconsequential.

Figures 6 and 7 present examples of typical sounds of potential interest to motorcycle drivers. Figure 6 illustrates the sound pressure level of an automobile horn at a distance of 50 feet. While the horn is above threshold even for the helmeted driver in the 46–55 age group, the masking provided by the motorcycle would prevent the rider from hearing the horn at speeds of 25 mph or above. In Figure 7, the sound pressure level of an emergency vehicle siren at a distance of 50 feet is shown. Again, the siren is above the threshold for the helmeted motorcycle driver and could be heard at speeds above 25 mph, but not at 50 mph. In both instances illustrated, and with reference to any other sound of potential interest to a motorcycle rider, the critical factor in determining whether or not the sound will be heard is the amount of masking noise generated by the motorcycle, not whether the driver wears a helmet.

A similar situation is found in automobiles. Although the masking noise generated by the vehicle is much lower than found with motorcycles, the

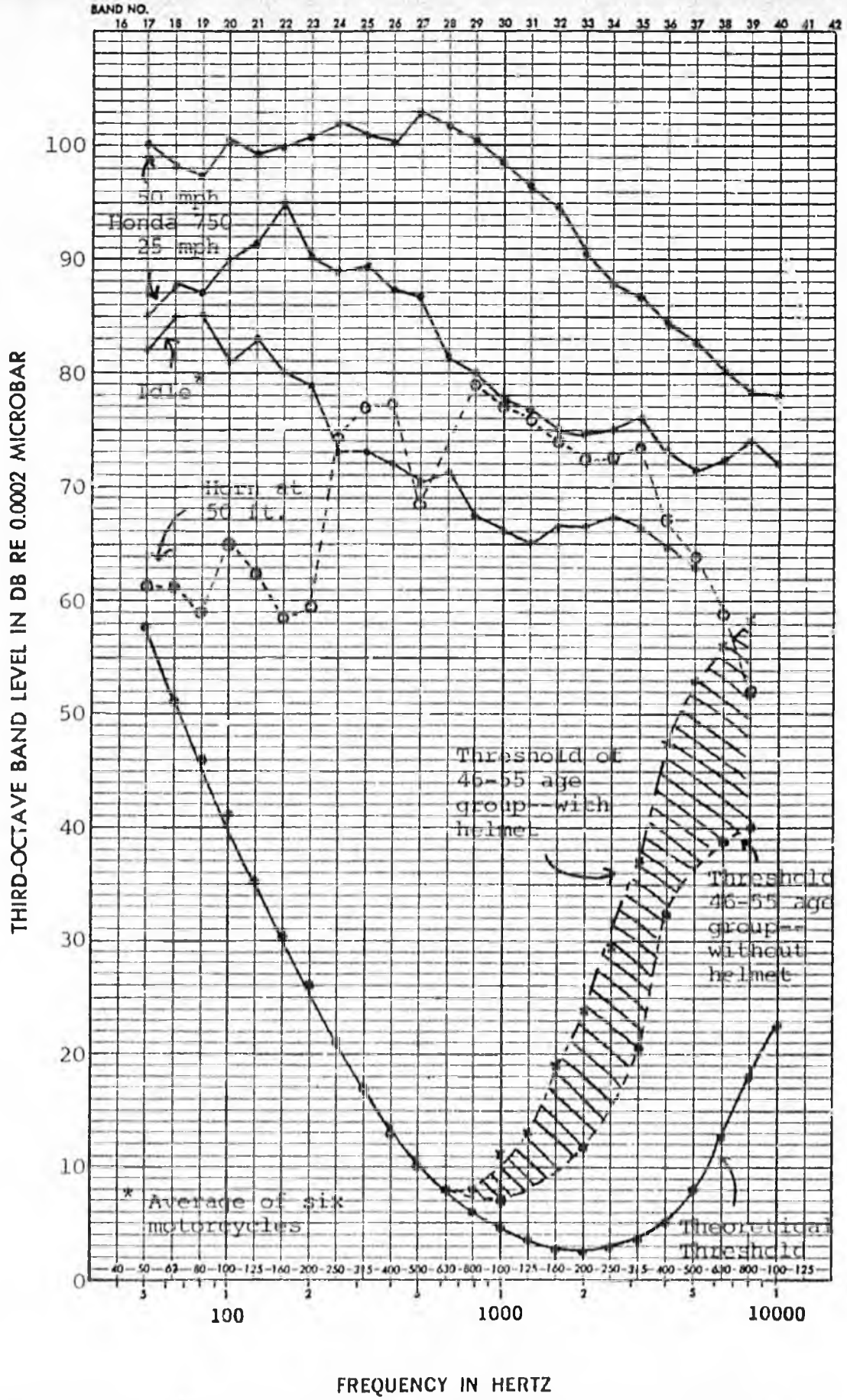

Figure 6. Illustration of the Masking of an Automobile Horn by Motorcycle Noise

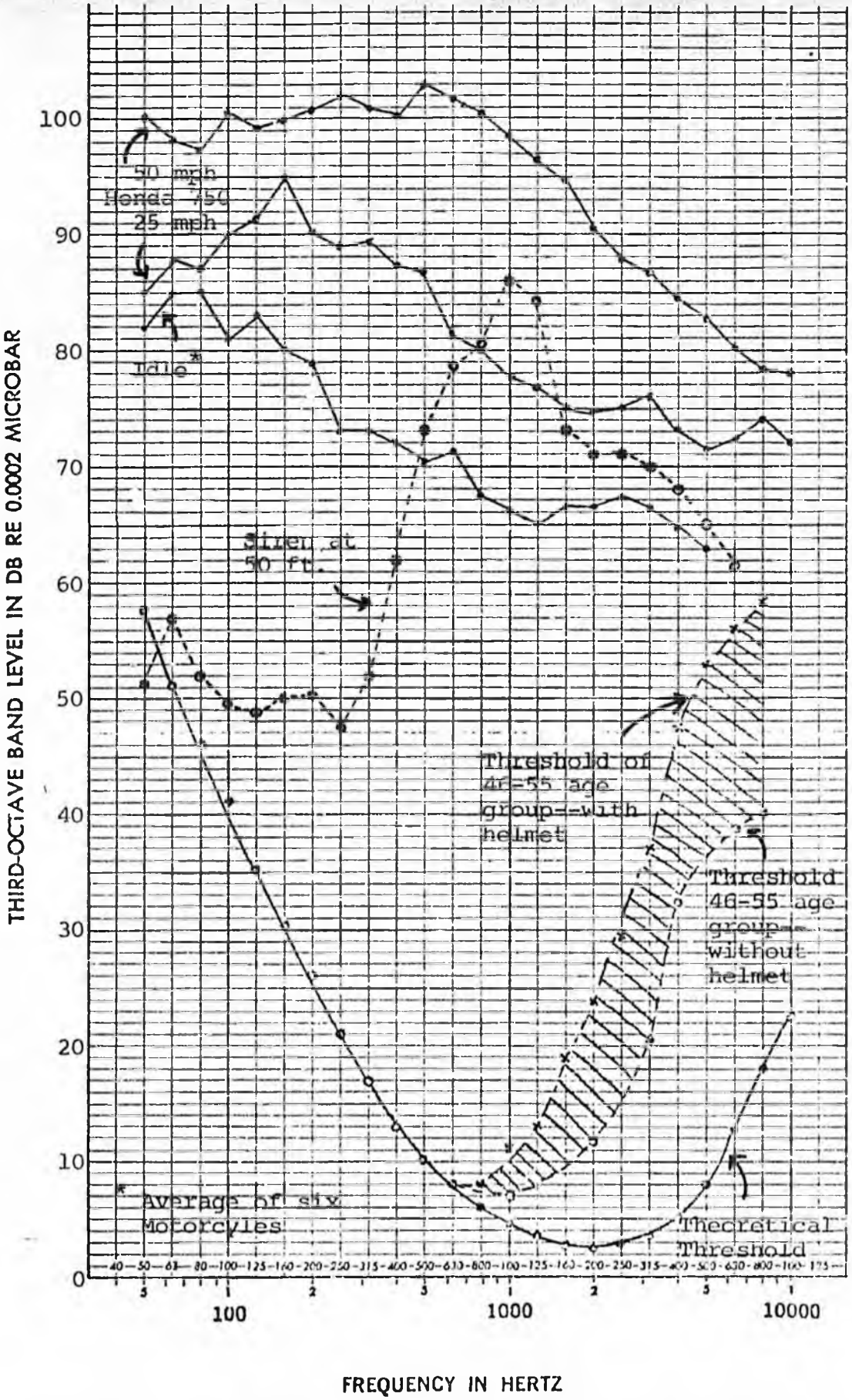

Figure 7. Illustration of the Masking of an Emergency Vehicle Siren by Motorcycle Noise

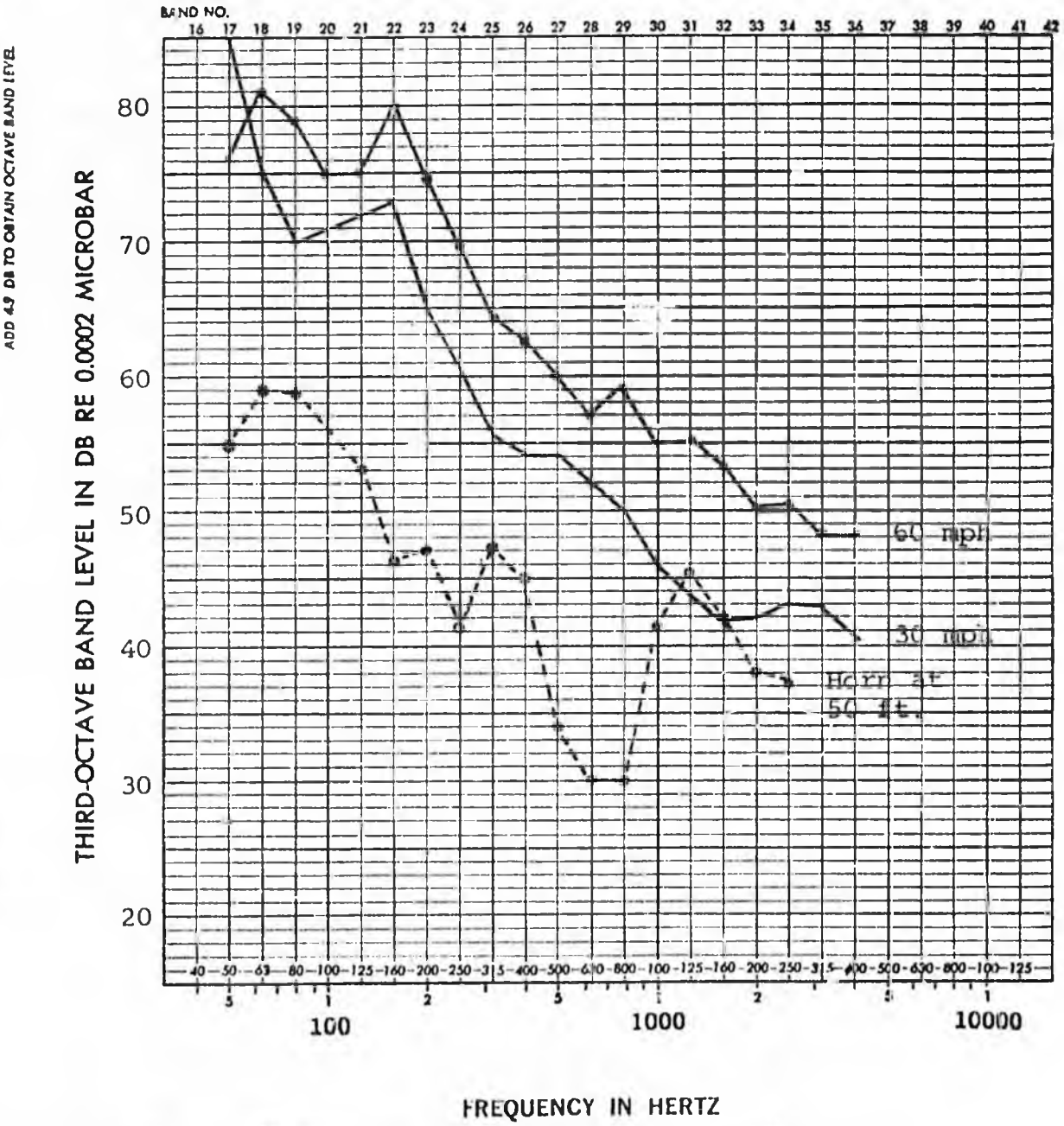

Figure 8. Horn audibility inside a passenger car

attenuation of external sounds is much greater due to the soundproofing of the body. The net result is that the ratio between the loudness of external sounds and interior noise level is very comparable to that found with motorcycles. This is illustrated in Figure 8, where the sound pressure levels of an automobile horn 50 feet away is compared with the interior noise level at 30 and 60 miles per hour (all measurements made at the ear of the driver, with all windows closed). It is clear that, as shown earlier for motorcycle drivers, an automobile horn at 50 feet has marginal warning value to the driver of an automobile at vehicle speeds of 30 miles per hour, and essentially no warning value at 60 miles per hour.

SUMMARY

Wearing a protective helmet has little to do with whether or not a motorcycle driver will hear a particular sound of interest to him or her. While it is true that safety helmets do attenuate external sounds, the amount of such attenuation is inconsequential, even when coupled with the amount of age-related hearing loss that normally occurs with age. The major determiner of whether a given sound will be heard is the ratio between the intensity of that sound and the intensity of the masking noise generated by the motorcycle (i.e., the signal-to-noise ratio). Safety helmets have an inconsequential effect because they reduce the loudness of both the sound of interest and the motorcycle noise by an equal amount and hence do not alter the signal-to-noise ratio between the two. A helmeted motorcycle rider can hear a sound of interest approximately as well as a person in an automobile with the windows closed.

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SB666

STATE MOTORCYCLE EQUIPMENT REQUIREMENTS

OCT. 75

MOTORCYCLE INDUSTRY COUNCIL, INC.

This information is provided by the Motorcycle Industry Council Government Relations office. As State Assemblies continue to pass and/or amend motorcycle equipment requirements, subsequent charts with current dates will be issued. Phone, telex, or write to the Motorcycle Industry Council offices listed below for additional information concerning motorcycle equipment requirements or for additional copies of this chart.

STATE	SAFETY HELMET	EYE PROTECTION	REARVIEW MIRRORS	BRAKES	HANDLEBAR HEIGHT	PASSENGER SEAT	PASSENGER FOOTRESTS	PASSENGER HANDHOLD	SAFETY BARS	PROTECTIVE CLOTHING	TURN SIGNALS	SPEEDO-METERS	HEADLIGHT DAYTIME USE	ANNUAL INSPECTION
Alabama	●		●-3	●-6		●								
Alaska	●-1	●	●-4	●-7	●-11									
Arizona	●	●	●-3	●-6	●-11	●	●	●						
Arkansas	●	●	●-3	●-6		●	●	●	●				●	●
California			●-3	●-7	●-12	●	●				●			
Colorado	●-1	●	●-3	●-6		●	●							●
Connecticut	●	●	●-3	●-6	●-11	●								
Delaware	●-1	●	●-3	●-6	●-11	●	●							●
Dist. of Col.	●	●	●-3	●-7	●-11	●	●	●						●
Florida	●	●	●-3	●-7	●-11	●	●						●	●
Georgia	●	●	●-5	●-6	●-11	●	●			●-14			●	●
Hawaii	●-1	●	●	●-6	●-11	●	●							●
Idaho	●			●-6		●	●							●
Illinois		●	●	●-6	●-11	●	●	●					●	
Indiana	●	●	●	●-7	●-11	●	●						●	●
Iowa	●	●	●	●-6	●-11	●	●							
Kansas	●	●	●	●-6	●-11	●	●				●			●
Kentucky	●	●	●	●-6		●	●							●
Louisiana	●	●	●	●-7	●-11	●	●				●			●
Maine	●		●	●-6	●-11	●	●						●	●
Maryland	●-1	●	●	●-6	●-11	●	●							
Massachusetts	●	●	●	●-6	●-11	●	●							●
Michigan	●	●-2	●	●-7	●-11	●								
Minnesota	●	●	●	●-6	●-12	●	●						●	
Mississippi	●		●	●-6	●-8	●								●
Missouri	●		●	●-6	●-11									●
Montana	●		●	●-7		●	●						●	
Nebraska	●		●	●-6	●-10	●	●							●
Nevada	●	●	●	●-7	●-11	●	●				●			
New Hampshire	●	●	●	●-6	●-11	●	●							●
New Jersey	●-1	●	●	●-6	●-11	●	●	●						●
New Mexico	●-1	●	●	●-6	●-11	●	●							●
New York	●-1	●	●	●-7	●-11	●	●	●					●	●
No. Carolina	●		●	●-6		●	●						●	●
No. Dakota	●-1		●	●-7	●-11	●	●					●-17		
Ohio	●	●	●	●-6	●-11	●	●							
Oklahoma	●	●	●-4	●-7	●-9	●	●					●-18		●
Oregon	●		●-3	●-6	●-12	●-18	●-16						●	
Pennsylvania	●	●		●-7	●-11	●	●	●						●
Rhode Island	●	●	●-3	●-6	●-11	●	●	●						
So. Carolina	●-1	●	●-3	●-6	●-11	●	●						●	●
So. Dakota	●	●	●-3	●-7	●-11	●	●							●
Tennessee	●	●	●-3	●-6		●	●		●-13					
Texas	●-1		●-3	●-6	●-11	●								
Utah	●-2	●-2	●-3	●-7	●-12	●	●							●
Vermont	●-1	●	●-3	●-6	●-11	●	●							●
Virginia	●	●	●-3	●-6	●-11	●	●							
Washington	●	●	●-5	●-7	●-11	●	●						●	
W. Virginia	●-1	●	●-3	●-6	●-11	●	●							
Wisconsin	●	●	●-3	●-6	●-11	●	●						●	●
Wyoming	●	●	●-3	●-7	●-11	●	●				●-15		●	●

- ● Requirement in law
- ●-1 Helmet reflectorization required
- ●-2 Required where speeds exceed 35 mph
- ●-3 One mirror required
- ●-4 Left and right mirrors required
- ●-5 Left side mirror required
- ●-6 Required on one wheel
- ●-7 Required on both wheels
- ●-8 10" above fasten point
- ●-9 12" above fasten point
- ●-10 15" above fasten point
- ●-11 15" above seat
- ●-12 Handgrips below shoulder height
- ●-13 Required for over 750cc if operator is under 21
- ●-14 Footwear
- ●-15 Required on newer models
- ●-16 Effective 7/1/76
- ●-17 Speedometer, odometer
- ●-18 Regulates speed limit for vehicle

Although this chart represents information from the most authoritative sources available as of the date shown above, the Motorcycle Industry Council is not responsible for accuracy or completeness.

MOTORCYCLE INDUSTRY COUNCIL, INC.

Other motorcyclists objected to helmet use legislation on the ground that they regarded it as an unconstitutional infringement upon personal liberties. This position received very limited support from the courts. In People v. Fries, 42 Ill.2d 446, 250 N.E.2d 149 (1969), the Illinois Supreme Court ruled that the helmet use law of that State was unconstitutional.

The Illinois decision is contrary to the overwhelming weight of authority on the constitutionality of helmet use laws. The constitutionality of State (20) and municipal (6) helmet use laws has been considered by the supreme courts or their equivalents in 26 States. 25 of the courts upheld the helmet use laws. Only the Illinois court went the other direction. Its ruling thus departed from the 7 favorable rulings that preceded it and was not followed in any of the 18 favorable rulings that followed it.

The Federal courts are in strong accord with the majority State court position on this question. In the leading case, Simon v. Sargent, 409 U.S. 1020, 93 S. Ct. 463, 34 L.Ed.2d 312 (1972), aff'g 346 F. Supp. 277 (1972), the United States Supreme Court affirmed a decision by the Federal District Court for Massachusetts upholding the helmet use law of that State. Prior to that decision, the Supreme Court had denied certiorari in three other cases and dismissed an appeal for want of a substantial Federal question in a fifth case.

Do State Governments have the right to tell a person to wear a safety helmet since only that person would be affected if they incurred a head injury?

° Headgear legislation stems from the police power of a State. The police power includes the power to enact laws within constitutional limits to promote the public safety and health. It is one of the least limitable of governmental powers, and a proper exercise thereof may involve limitation of the use and enjoyment of private property without violation of the due process clause of the Constitution.

The public streets, roads, and highways of a State are the property of all the people of a State, and a State has plenary power over the regulation of the use of such, for the safety and best interests of the public. The Supreme Court has recognized and given sanction to the State exercise of its police power over use of the public way for more than 40 years:

> "Motor vehicles are dangerous machines, and, even when skillfully and carefully operated, their use is attended by serious dangers to persons and property. In the public interest the State may make and enforce regulations reasonably calculated to promote care on the part of all . . . who use its highways."
>
> Hess v. Pawloski, 274 U.S. 352, at 356 (1927).

Protection of a motorcyclist and his passenger while on the public roads then is within the legitimate concern of the State and not an area reserved to the individual. Legislation requiring the use of protective headgear by both cyclist and passenger is reasonably related to the end envisioned of reducing deaths and injuries to cyclists and passengers and others upon the public roads. Therefore, State headgear legislation is a valid exercise of the police power by a State.

The unprotected motorist presents a potential traffic hazard to the public at large. Unlike the operator of an enclosed motor vehicle a cyclist without a helmet is unprotected against falling objects such as tree branches. He is also unprotected against flying stones or gravel from the wheels of other moving vehicles. If struck in the head, an unprotected cyclist could be so affected as to lose control of the vehicle and be the cause of death or injury to himself and other users of the highway. Everhardt v. City of New Orleans, supra; State ex rel. Colvin v. Lombardi, 241 A 2d 625 (S. Ct. R. I. 1968).

that appellant chose to drive his car with defective tires. The defect was not latent, but rather the tires were visibly worn, if not bald. Trooper McVitty immediately noticed this when he examined the car after the accident. If McVitty could make this observation, so could appellant. He was not unfamiliar with cars; rather, by his own admission, he had practically built the car himself, and he was taking a course in automobile mechanics. The jury could therefore reasonably infer that appellant could spot a worn tire and would realize that it was dangerous. Further, if appellant had put the tires on his car and taken it to be inspected, as required by law, he would have been told that the tires were not safe for highway use. Thus, it seems clear not only that appellant operated his car with defective tires, but that he did know or should have known of the dangers involved. Finally, appellant chose to drive the car on a wet, slippery highway. The decreased traction due to the tires' worn condition could only be exacerbated by the slickness of the road. However, appellant did not reduce his speed to compensate for this but instead drove at a high rate of speed. Considering all of these circumstances, we have concluded that the evidence was sufficient for the jury to find that appellant acted in "disregard of human life or (with) an indifference to (the) consequences." If the appellant had been required to use his car because of some emergency, or if he had taken some precautionary measures, our decision might be different, but that is not the case.

-2-

In deciding whether appellant's conduct was the cause of Ashbrook's death, the standard to be used is not the familiar proximate cause requirement that the conduct must be the direct cause of the death. *See generally, Commonwealth v. Root, supra.* Here, an eyewitness watched practically the whole sequence of events. As has been mentioned, appellant's car was travelling down the highway when the rear began to fishtail, and shortly thereafter it went into a spin, crossed the median, and crashed into Ashbrook's car. It is the fishtailing that is significant, for from this the jury could reasonably infer that the tires lost their grip on the road due to slipping. This was the very danger inherent in the use of worn tires, on a wet highway, at high speed. We therefore conclude that appellant's actions were the direct cause of Ashbrook's death.

The judgment of sentence is affirmed. *(Decided September 22, 1975. Reported November 15, 1975.)*

SCR 59

MOTORCYCLE EQUIPMENT OFFENSES

STATE v. BEEMAN
541 P.2d 409 (Ariz. Ct. App.)

THERE IS A VALID STATE INTEREST IN REQUIRING ALL MOTORCYCLISTS TO WEAR HELMETS, AND THEREFORE THE ARIZONA STATUTE PROHIBITING THE DRIVING OF A MOTORCYCLE WITHOUT A HELMET IS A VALID CONSTITUTIONAL EXTENSION OF THE STATE'S POLICE POWER.

OGG, Presiding Judge.

Defendant/appellant Harold Beeman was found guilty on December 31, 1974, of driving a motorcycle without a helmet in violation of Sec. 28-964A, Arizona Revised Statutes, Laws 1973. The pertinent part of this statute reads in part:

"A. The operator and passenger of a motorcycle or motor-driven cycle shall at all times, while operating or riding on such motorcycle or motor-driven cycle, wear a protective helmet on his head in an appropriate manner safely secured. The operator and passenger of a motorcycle or motor-driven cycle shall also wear protective glasses, goggles or a transparent face shield of a type approved by the director unless the motorcycle or the motor driven cycle is equipped with a protective windshield. The provisions of this subsection shall not apply to electrically powered three wheeled vehicle or three wheeled vehicles on which the operator and passenger ride within an enclosed cab."

The defendant contends on appeal that Sec. 28-964A is unconstitutional in that it violates the due process clause of the 5th and 14th Amendments of the United States Constitution insofar as it is not a valid exercise of the state's police power. Our court has already ruled on this matter in *State v. Also*, 11 Ariz.App. 227, 463 P.2d 122 (1969). In upholding the constitutionality of the forerunner of the current statute which is essentially identical, Judge Krucker, speaking for the court, stated:

"(4) We do not believe that the purposes of the Act, whether it be solely directed at the individual's well-being or viewed as coincident with potential threats against public safety, places this regulation on a par with those which the decisions invalidating the statutes have suggested are similar."

. . . . . .

"Public highways just cannot be said to provide a place where anyone's encounter with danger can be tolerated. The ramifications are too broad."

We hold, therefore, that the statute in question is a constitutional exercise of the police power in the area of highway safety."

Since *Also*, the United States Supreme Court has affirmed a Massachusetts District Court decision which upheld the constitutionality of a Massachusetts statute requiring motorcyclists to wear helmets. (Sic) See *Simon v. Sargent*, 346 F.Supp. 277 (1972), affirmed 409 U.S. 1020, 93 S.Ct. 463, 34 L.Ed.2d 312 (1974). The wording of the Massachusetts statute is essentially the same as ARS Sec. 28-964A.

The defendant's position in *Simon* is identical to that of defendant Beeman in the present case: that is, he argued that the state's police power does not extend to overcoming the right of an individual to incur risks that involve only himself. In dealing with this argument the District Court observed:

"In view of the evidence warranting a finding that motorcyclists are especially prone to serious head injuries, see Statistical Division, National Safety Council, 1974 Motorcycle Facts, the public has an interest in minimizing the resources directly involved. From the moment of the injury, society picks the person up off the highway; delivers him to a municipal hospital and municipal doctors; provides him with unemployment compensation if, after recovery, he cannot replace his lost job and, if the injury causes permanent disability, may assume the responsibility for his and his family's continued subsistence. We do not understand a state of mind that permits plaintiff to think that only he himself is concerned."

We agree with this observation. Any accident on the public highway puts into motion the wheels of a number of different state and local agencies at a substantial cost to the taxpayers. Furthermore, the helmet prevents a motorcyclist from being injured or his attention diverted by stones or debris thrown up from the roadside, thereby causing the cyclist to lose control and threaten the safety of both motorists and pedestrians in close proximity. In light of these facts we feel that there is valid state interest in requiring all motorcyclists to wear helmets, and therefore, ARS Sec. 28-964A is a valid constitutional extension of the state's police power.

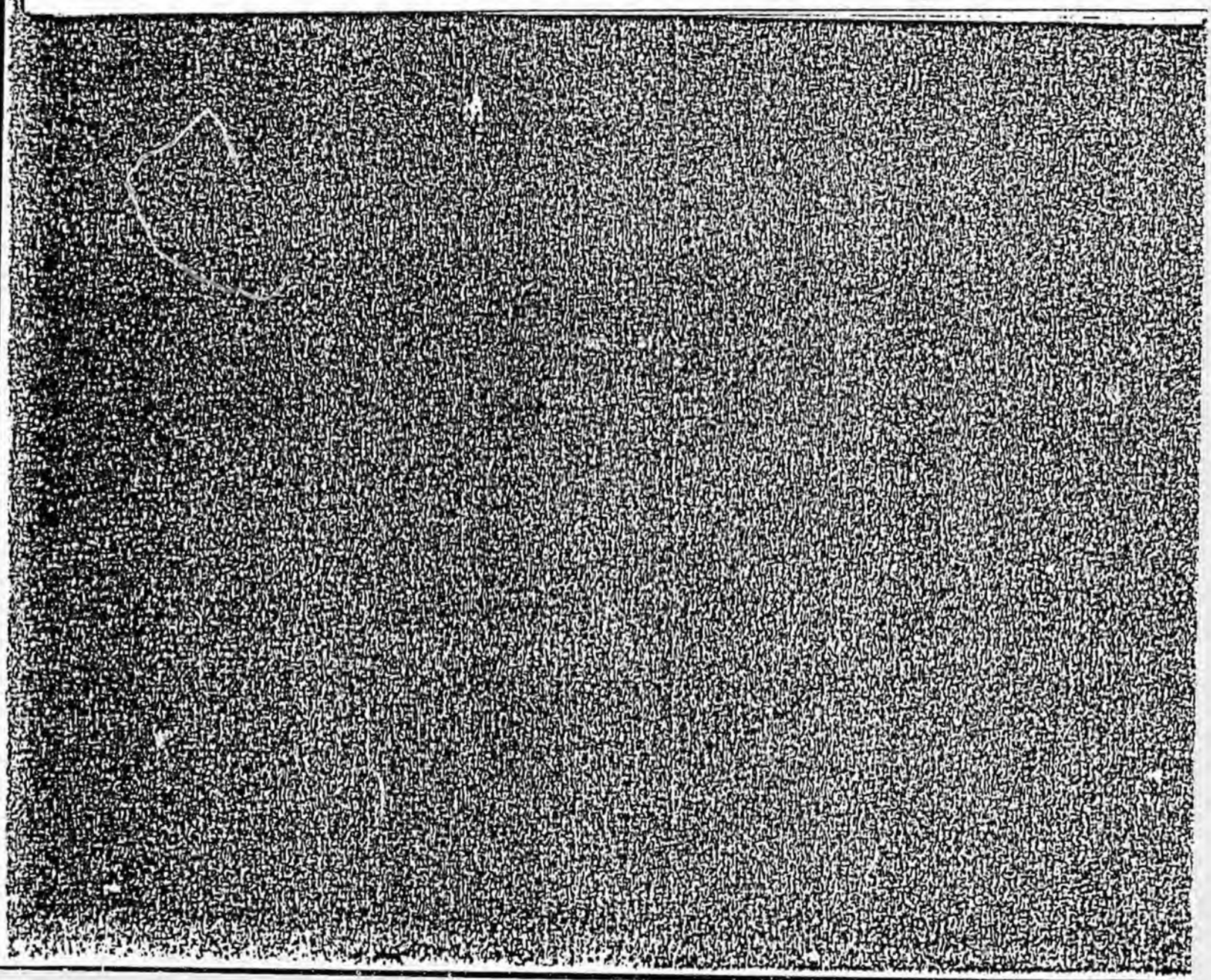
The judgment and sentence of the trial court are affirmed. *(Decided October 21, 1975. Reported November 21, 1975.)*

(National Traffic Law News December, 1975)

HISTORICAL BACKGROUND

In order to show the importance of the motorcycle helmet as an effective safety device, it is necessary to survey the research which has been conducted during the past thirty years. While the motorcycle has been popular in the United States since the early 1960's, it has been an intergral part of European and Australian transporation for far longer. Thus, one should look to the British and the Australians, who are responsible for the initial research on helmet effectiveness.

Between 1940 and 1943, Dr. Hugh Cairns conducted in-depth studies of 106 motorcycle accidents to determine if the crash helmets in use in Great Britian were effective in reducing injury[1,2]. After study of the helmets themselves, the type of injury and the severity of injury for each case, Dr. Cairns reported reduced severity of injury through helmet use; one-fourth.



the frequency of fractured skulls through helmet use; and a reduction of one-half in hospital treated injuries for helmet users. The report based on these studies formed the precedent for future helmet research, and presented the first discussion of safety helmets as important safety equipment.

The work of Cairns was continued by Lewin and Kennedy, who published a study in 1956 of 555 civilian and 135 army motorcyclists admitted to hospitals.[3] Similar results supporting helmet effectiveness were reported, and criteria of an effective helmet were also presented. In 1957 Chandler and Thompson developed a statistical demonstration of the usefulness of helmets, based on 7,010 motorcyclists injured in 1954 or 1955.[4] In addition to comparing helmet effectiveness in urban and rural areas, the study documents a 30-40 percent reduced chance of head injury if a helmet is worn in a motorcycle accident. These British doctors had taken the first significant steps toward identifying the life saving potential of motorcycle helmets.

On January 1, 1961, a law became effective in the State of Victoria (Australia) making it mandatory for all motorcycle riders to wear safety helmets. A relatively thorough study of the data both two years before and after implementation of the law indicated:[5]

1. The legislation was successful, i.e., compliance was near 100 percent;

2. Facalities for 1961 and 1962 were reduced by half, and after study of many other factors, the reduction appears attributable to helmet use; and

3. The risk of fatality to an accident involved helmet user is one-third that of an accident involved non-user.

Thus, the Australian experience showed that a mandatory helmet use law was enforceable and the resultant helmet use reduced fatalities in motorcycle accidents.

In the United States, safety officials and state legislators watched with concern as fatality totals from motorcycle accidents continued to increase. A Washington State accident summary published in 1967, showed that two-thirds of all Washington motorcycle fatalities in 1965 and 1966 resulted from head injury.[6] In 1966, New York and Michigan adopted helmet use laws. Late that year the United States Department of Health, Education and Welfare published preliminary data suggesting that projected motorcycle fatalities would be reduced by 40 percent if all motorcyclists used helmets.[7] This and other evidence was evaluated, and led the NHTSA to include a motorcycle safety standard as one of the initial thirteen Highway Safety Programs Standards — 1967.

operation of a motorcycle.

Those who oppose laws requiring the use of safety helmets have claimed that helmets are dangerous because they restrict a motorcyclist's ability to see and hear potential hazards. However, these claims are not supported by any type of research or statistical documentation.

The NHTSA has completed initial studies of each of these problems.[11,12] In the first study on vision, four popular helmets were tested to determine the degree to which each limited motorcyclists vision. The field of view of 19 experienced motorcyclists was measured using each of the four helmets

(CONT. on next page)

(two full facial coverage, and two full coverage). Each person's field of view was also treated without a helmet.

VISION

The results of the study show that full coverage helmets, representing almost 95 percent of current helmet sales, restrict a motorcyclist's field of view in the horizontal plane (peripheral vision) by less than 3 percent. The study also found that the helmet which provided the smallest field of view (a full facial coverage helmet intended for motorsport competition) restricted the riders' horizontal field of view less that 22 percent. All of the helmets provided a horizontal field of view of more than 180°, well above the 140° used by State driver licensing agencies for screening out drivers with possible vision problems that would warrant some type of restricted driving privilege.

With regard to hearing, helmets do reduce a person's ability to hear, but in actual practice the reduction in auditory capacity for the motorcyclist is inconsequential. The primary reason for this is that the noise generated by the motorcycle and the noise produced at high speed by the wind are so great that any sound loud enough to penetrate this noise is loud enough to be heard inside the helmet.

HEARING

To understand why this is true, it is necessary to examine the phenomenon of hearing. Whether or not a given sound will be heard by a driver is dependent upon three factors: (1) the auditory capability of the driver, (2) the intensity and frequency of the sound of interest, and (3) the intensity and frequency of the environmental noise that might "mask" or hide the desired sound. A given sound will be heard by a driver if it is loud enough when it reaches his ear to be above his hearing threshold, and if it is not "masked" or hidden by other sounds or noise present at the same time. Motorcycles create average levels of ambient noise ranging from 85 to 98 db(A) for on-street or dual purpose machines. For a rider to hear any other sound in the presence of this high noise level, the sound must be as loud or louder than the motorcycle itself, i.e., it must have a signal-to-noise ratio of approximately 1 to 1. The greater the signal-to-noise ratio, (e.g., the more intense the sound of interest relative to the ambient noise) the greater the attention getting properties of the signal and the higher the probability that it will be heard. Helmets reduce the loudness of both the sound of interest and the motorcycle noise by an equal amount, and therefore do not alter the signal-to-noise ratio between the two sounds. Consequently, as long as the rider can hear the motorcycle itself while wearing a helmet, he or she can also hear any other sound with a favorable signal-to-noise ratio at least as well as a driver who does not wear a helmet.

Motorcycle helmets do not increase incidence of neck injury in accidents.

It has been suggested that helmet use increases the incidence of fatal neck injury in motorcycle crashes (using data from a 1969 statistical analysis

of motorcycle accidents in New York).[13] Actually, the incidence of neck injury in motorcycle accidents during 1966 and 1967 involved any type of neck injury, and most of these involved only complaints of pain with no visible signs of injury. Studies done recently in Nebraska,[14] California and Canada[15] show that the incidence of neck injury of any type occurs in less than two percent of all motorcycle crashes.

Motorcyclists have been wearing safety helmets for more than 30 years, and during this period a number of studies of injury patterns in motorcycle accident have been made. None support the claim that helmets increase fatal neck injuries. The neck injury issue has been used in opposition to helmet laws as an attempt to exploit a peripheral issue on which there is not a great deal of valid data. Consequently, the problem has been magnified far out of proportion.

In order to provide conclusive evidence which will resolve the issue once and for all, the University of California and the Los Angeles County Medical Examiner's Office, under contract with the NHTSA, are now undertaking in-depth analysis of all fatal motorcycle crashes in Los Angeles County. Post mortem examination of each helmeted and unhelmeted rider will be made to document the incidence of neck injury in each group. The results of these analyses will provide authoritative resolution of the neck injury issue.

Mandatory helmet use laws reduce the number of serious head injuries and fatalities resulting from motorcycle accidents.

It is a logical conclusion that if a mandatory helmet use law is passed, more people will wear helmets, and consequently fewer fatalities and fatal injuries will occur in motorcycle accidents. Researchers have tried to verify this by comparing motorcycle fatalities and head injuries before and after implementation of a mandatory helmet use law. Of particular interest is a Brisbane, Australia report[16] which utilized three groups -- one sample done before implementation of a helmet use law, and two samples done in the two years immediately following. This study found (see Table IV) (a) that a significant increase in helmet use by motorcyclists involved in accidents (as expected) and (b) a significant decrease in head injuries in the post-legislation group.

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Motorcycle Helmets:

(Note to Sen. John Huber from Speaker Mike Bradner)*

On Helmets: If the provision was repealed we might also get away from the "space helmet" and get some safety certifying group to "approve" a proper helmet that DOES NOT INTERFERE with peripheral vision.

You will "note" NO MOTORCYCLE POLICEMAN wears a space helmet, but rather a perhaps slightly less convenient (getting off and on) and less comfortable helmet that does allow him to see !

If law enforcement people wish a helmet law they should perhaps first specify a proper helmet that ISN'T A CURE WORSE THAN THE DISEASE !

* at meeting of National Committee on Uniform Traffic Laws and Ordinances; Washington, D.C. (May 1970)

Nat'l. Comm. Uniform Traffic Laws & Ord.
Washington, D.C. / May 19

Federal Aid Highway Act of 1975. The U. S. Senate passed its version S 2711 on December 12, 1975. The House version HR 8235 came out of Public Works Committee on December 15.

It is likely that the two versions will be taken up in late January by a conference committee of members from both houses. The resulting bill then will be taken back to both houses of Congress for what is expected to be a quick final approval.

The Senate passed this measure with a vote of 52 for, and 32 against. 11 abstained.

BOTH BILLS SPECIFICALLY FORBID THE DEPARTMENT OF TRANSPORTATION FROM ANY LONGER REQUIRING THAT STATES ENACT AND ENFORCE MOTOR CYCLE HELMET USE LAWS.

THE HOUSE BILL ALSO TAKES AWAY THE DOT POWER. TO FORCE STATES TO ADOPT MOTOR CYCLE USE LAWS.

In Identical language, both the House and Senate bills would expunge DOT's current helmet use standard by directing that a highway safety program "not include any requirement that a state implement such a program by adopting or enforcing any law, rule, or regulation based on a standard promulgated by the Secretary under this section requiring any motorcycle operator 18 years of age or older or passenger 18 years of age or older to wear a safety helmet when operating or riding a motorcycle on the streets and highways of that state."

To quote Sen. James Abourezk (D-S. Dak):

". . . While I believe that the state and the federal government have the right to protect the safety of people from the acts of someone else, I think it is highly questionable that they have the right to protect an individual from himself. I think it is an invasion and an intrusion upon that person's privacy and his right to decide for himself what he wants to do. I would urge the Senate to adopt this amendment."

There is no evidence showing that requiring use of helmets reduces deaths, injuries or accidents. Studies in several states indicate an increase in fatalities after the requirement was adopted. Helmets have not decreased deaths or injuries.

Motorcycle helmets are heavy and increase the number and severity of neck injuries. In one study, serious neck injuries increased 750%.

Motorcycle helmets cause crashes. They reduce hearing. They reduce side vision to 105 degrees when the minimum desireable is 140 degrees.

Though police officers favor compulsory helmet use laws, many do not wear helments complying with recognized standards. That is, they wear helmets which it would be illegal for motorcyclists to use.

New York with a helmet law has a much higher motorcyclist death rate than California which does not have the law.

Under conditions of a severe blow to the head, it has been found that the cushioning effect of helmets causes a "scrambling" of the brain.

Helmets are heavy, hot and put pressure on your temples. They squeeze the frames of the person's glasses and leave marks on his/her head and are decidedly painful. They're certainly not designed for people who must wear glasses.

The weight of the helmet puts a strain on your neck muscles, which coupled with the wind resistance at higher speed it gives you a bad stiff neck and usually a headache.

When riding on the freeway, the wind goes under the helmet, pushes it back and the neck strap chokes you.

Twenty-five percent of excess body heat is given off via the head. Severe fatigue results when the escape of excess heat is prevented by a helmet.

Motorcyclists do not like to wear helmets.

Only 12% of cyclists in one survey of 5,000 people favored laws requiring use of helmets.

Helmets are uncomfortable.

Helmets are expensive.

Helmets are inconvenient.

Motorcycle use should be encouraged because they consume less gas than cars. Requiring a helmet discourages use of a motorcycle.

Motorcyclists have been discriminated against. Autoists do not have to wear belts. Pedestrians and bicyclists do not have to wear helmets. The requirement is unjust.

Society should not adopt laws requiring people to protect themselves; nor laws telling them what to wear. Such laws are unreasonable and oppressive. They infringe on a person's freedom of choice.

Motorcycle helmets do not provide much protection in a crash.

A motorcyclist has to carry his helmet with him even after he leaves the motorcycle. For fear of theft of his helmet, he has to take it everywhere.

In comparison with other causes of death in the United States, motorcycle usage ranks very low. It is not one of our major public health problems.

Of the entire 50 states, Alaska has the record low of 9.2 deaths per 100,000. This cannot be solely attributed to the helmet law.

Administrative Regulations in effect on the effective date of this chapter. (Eff. 12/15/61, Reg. 3; am 8/10/62, Reg. 23; am 12/31/69, Reg. 31)

Authority: AS 28.05.030
AS 28.05.040

13 AAC 04.275. SAFETY CHAIN ON TOWED VEHICLE. A towed vehicle shall, after January 1, 1971, be coupled to the towing vehicle by means of a safety chain, chains, cable or equivalent devices in addition to the regular trailer hitch or coupling. This requirement does not apply to a semitrailer having a connecting device composed of a fifth wheel and kingpin assembly nor to a pole or pipe trailer or dolly. No more slack may be left in safety chains, cables or equivalent devices than is necessary to permit proper turning, and the safety chains, cables or equivalent device shall be connected to the towed and towing vehicle and to the drawbar so as to prevent the drawbar from dropping to the ground if the drawbar fails and shall be of sufficient strength to retain control of the towed vehicle in the event of failure of the regular hitch or coupling. (Eff. 12/31/69, Reg. 31)

Authority: AS 28.05.030

13 AAC 04.280. MOTORCYCLE, MOTOR SCOOTER—MIRRORS, GOGGLES, FACE SHIELD AND HELMET. (a) A person may not, on and after January 1, 1971:

(1) operate a motorcycle or motor scooter that is not equipped with a mirror on each side of the handlebars. The two mirrors shall be located so as to give the driver a complete view of the highway for a distance of at least 200 feet to the rear of the motorcycle or motor scooter;

(2) operate a motorcycle or motor scooter that does not have a windshield which rises at least 15 inches above the handlebars unless he wears goggles or a transparent face shield meeting the requirements of sec. 300 of this chapter;

(3) operate or ride upon a motorcycle or motor scooter unless he wears on his head a protective helmet meeting the requirements of sec. 300 of this chapter. The helmet shall be equipped with either a neck or chin strap which shall be fastened securely while the motorcycle or motor scooter is in motion and which shall be reflectorized so as to be visible from all distances between 600 and 100 feet.

(b) (a)(2) and (3) of this section do not apply to a person riding within an enclosed cab. (Eff. 12/31/69, Reg. 31)

Authority: AS 28.05.030

13 AAC 04.285. HELMET REQUIRED WHEN MOTORCYCLE OR MOTOR SCOOTER RENTED. (a) A person may not on and after January 1, 1971, rent a motorcycle or motor scooter to another person unless he also has available for rent a helmet meeting the requirements of secs. 280(a)(3) and 300 of this chapter.

(b) A motorcycle or motor scooter may not be rented to a person who does not have in his possession, or rent, an approved helmet. (Eff. 12/31/69, Reg. 31)

Authority: AS 28.05.030

13 AAC 04.290. MAXIMUM HEIGHT FOR HANDLEBARS. On and after January 1, 1971, a person may not operate a motorcycle or moter scooter on which the handlebars or grips, at their highest point, are more than 15 inches higher than the seat or saddle for the operator. (Eff. 12/31/69, Reg. 31)

Authority: AS 28.05.030

13 AAC 04.295. MOTORCYCLE AND MOTOR SCOOTER WINDSHIELD. A motorcycle or motor scooter windshield, to be recognized as a windshield, shall rise 15 inches above the highest point of the handlebars or grips, and shall be of glazing material meeting the requirements of sec. 235(b) of this chapter or clear plastic which need not be an approved type. (Eff. 12/31/69, Reg. 31)

Authority: AS 28.05.030

13 AAC 04.300. HELMET, GOGGLES AND FACE SHIELD STANDARDS. (a) The protective headgear or helmet required to be worn by a person riding on or operating a motorcycle or motor scooter as provided by secs. 280 and 285 of this chapter shall be manufactured to meet the standards provided by U.S. Standards Institute Safety Code Z 90.1--1966.

ALASKA ACCIDENT STATISTICS

from the

Department of Public Safety
Planning & Research
STATE OF ALASKA

Motorcycle Accidents	Persons With "A" Injury	Deaths
1971	58	4
1972	not available	not available
1973	56	4
1974	not available	2
1975	not available	7

DEPARTMENT OF PUBLIC SAFETY

Motor Vehicle Registration

Motorcycles Registered In Alaska in 1975

12809

ANSI Z90.1-1971
(Revises Z90.1-1966)

American National Standard
(formerly U.S. Standard)

specifications for protective headgear for vehicular users

Z90.1-1971

ANSI

ANSI
Z90.1-1971
Revision of
Z90.1-1966

American National Standard Specifications for Protective Headgear for Vehicular Users

Secretariat

Snell Memorial Foundation, Inc

Approved August 26, 1971

American National Standards Institute, Inc

American National Standard

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Foreword

(This Foreword is not a part of American National Standard Specifications for Protective Headgear for Vehicular Users, Z90.1-1971.)

On December 9, 1960, the Sports Car Club of America requested that the American Standards Association (now American National Standards Institute, Inc) initiate a project to prepare specifications for road users' helmets. A general conference was held at the ASA headquarters in April 1961 which was attended by representatives from various consumer groups, helmet manufacturers, testing organizations, and both the Army and Naval branches of the military service. The Safety Standards Board established Standards Committee Z90 and charged it with the responsibility for establishing a safety code for vehicular head protection. The scope of the committee was to establish safety requirements for head protection for automobile drivers engaged in high hazard activities or occupations, and for motorcyclists. Following nearly five years of deliberations by the committee, its resulting proposals were approved by the Safety Standards Board on June 22, 1966. Subsequent experience with the specifications as originally adopted indicated a need for certain clarification and simplification. The specifications have now been revised to incorporate such modifications as have been deemed appropriate by the committee. These modifications include a change of the scope of the committee. The committee is presently considering the expansion of its scope to include headgear protection for other high hazard activities.

There exists a great number of widely varying uses for protective headgear. The resulting differences in design requirements may result in very necessary compromise involving factors which include comfort, weight, visual, and auditory requirements as well as degree and extent of protection. It is therefore essential that any specific complete standard be applied or utilized only within the scope of its intended application.

Suggestions for improvement gained in the use of this standard will be welcome. These should be sent to the American National Standards Institute, Inc, 1430 Broadway, New York, N.Y. 10018.

The organizations which participated in this work and the names of their representative, as listed at the time this revised standard was submitted to Standards Committee Z90 for approval, are as follows:

George G. Snively, Chairman
Roderick H. Aya, Secretary

Organization Represented	*Name of Representative*
American Association for Automotive Medicine	C. O. Chichester
American Medical Association	Harold A. Fenner, Jr
American Power Boat Association	Clarence Roberts
American Safety Equipment Corporation	Joan M. Seymour
American Sports Company	John Bootsma
Approved Engineering Test Laboratories	Bert LaFontaine
Bell Toptex, Inc	Frank Heacox
California Highway Patrol	Ross Little
California Polytechnic Institute	Arthur James
Cougar, Inc	F. A. Rappleyea
Dayton T. Brown, Inc	Marshall Irving
E. D. Bullard, Company	Herbert A. Raschke
Daytona Sports Company	George Alston
D. S. Safety Helmet Corporation	Phillip K. Huff
General Electric Company	Curtis C. Jones
H.C Industries, Inc	John R. Hughes
Industrial Safety Equipment Association	Charles N. Sumwalt, Jr
MacGregor Company	Eli Schachet
Manufacturers Design, Inc	Daniel D. Webb
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[illegible]	[illegible]
[illegible]	[illegible]

Organization Represented	*Name of Representative*
National Safety Council	D. C. Lhotka
Riddell, Inc	Richard Medley
Safety Helmet Council of America	Gary B. Lovell
Snell Memorial Foundation	Roderick H. Aya
Sports Car Club of America	George G. Snively
Sterling Products Company	George L. Moschkau
Tiburon Little League	William Carroll
Underwriters' Laboratories, Inc	George H. Pope
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American National Standard Specifications for Protective Headgear for Vehicular Users

1. Scope, Purpose, and Requirements

1.1 Scope. These specifications and test methods apply to protective headgear for wear by drivers and passengers of surface vehicles and specifically exclude eye and face protective devices.

1.2 Purpose. This standard specifies minimum performance criteria and test methods, performed under fixed conditions, for protective headgear designed to mitigate the adverse effects of a blow to the head.

1.3 Requirements. Tests are conducted of the protective headgear assembly to ascertain compliance, under specific environmental conditions, with the following requirements:

(1) Impact attenuation properties of the protective headgear

(2) Penetration resistance

(3) Strength of the retention system and its attachments

2. Definitions

basic plane. A plane laid out on a specific reference headform[1] derived from the anatomic basic plane, or Reid's Baseline. (A plane at the level of the external opening of the ear and the floor of the bony rim of the eye socket.)

mid-sagittal plane. A longitudinal, or fore and aft, plane passing through the vertex of the headform, perpendicular to the basic plane, which geometrically bisects the headform.

projection. Any part that extends beyond the surface in abrupt fashion.

protective headgear. A device worn on the head, designed to mitigate the adverse effects of a blow to the head in the area specified elsewhere herein.

reference plane. A plane 2.36 inches (60 mm) ± 0.04 inch (1 mm) above and parallel to the basic plane, and which shall be located on each headform.

retention system. (Also referred to as "harness assembly.") The completed assembly by means of which the protective headgear is maintained in position on the wearer's head.

3. Construction

3.1 General. A protective headgear will consist of a hard, smooth outer surface containing the necessary means of attenuating impact energy and resisting penetration. Optional devices fitted to the protective headgear shall be so designed that they are unlikely to cause injury to the wearer in the event of an accident.

3.2 Projections. The assembled protective headgear shall have no permanent external projections greater than 3/16 inch (5 mm) in height.

3.3 Retention. The retention system shall be so constructed that when properly fastened, the protective headgear cannot be readily dislodged from its normal position on the wearer's head during impact conditions.

3.4 Peripheral Vision. The protective headgear shall provide peripheral visual clearance of a minimum of 120 degrees to each side of the mid-sagittal plane. This angle shall be measured on the standard headform[1] in the basic plane with its apex at the anterior surface of the headform where the mid-sagittal and basic planes intersect.

Medium and large size protective headgear will be tested on a single headform size. Other sizes of protective headgear of the same type will be approved if visual inspection shows the construction to be identical to those tested.

4. Materials

The materials used in the manufacture of the various parts of the protective headgear should be of durable

---

[1] It was necessary for the purposes of these recommendations and in order to give requirements for the extent of protection to define artificial headforms, both to serve as a basis for instrumentation during tests, and to provide fixed parameters for measurement. It is realized that the variation of human head shape is such that the artificial headform may not conform exactly to the shape of any random sample human head, a considerable amount of anthropological data has been reviewed in order to decide the limiting dimensions, and the headform selected is considered suitable to allow for proper testing of protective headgear which will accurately fit approximately 95 percent of the population of all races.

Information concerning sources of the actual headforms or pattern thereof may be obtained by a request addressed to [illegible]

quality, that is, their characteristics should not undergo appreciable alteration under the influence of aging or of the circumstances of use to which the protective headgear is normally subjected, such as exposure to sun, rain, cold, dust, vibration, contact with skin, perspiration, or products commonly applied to the skin or hair.

5. Labeling

Every protective headgear offered for sale shall have durable labeling which will give the model designation and allow the identification of the manufacturer to be made. The labeling shall include the following:

(1) No protective headgear can protect the wearer against all foreseeable impacts. However, for maximum protection under this standard, the helmet must be of good fit and all retention straps must be securely fastened.

(2) This protective headgear is so constructed that the energy of a severe blow is absorbed through partial destruction of the headgear, though damage may not be visible to the naked eye. If it suffers such an impact, it should either be returned to the manufacturer for competent inspection or destroyed and replaced.

6. Extent of Protection

6.1 The extent of protection shall include all areas above the reference plane. None of the protective components of the headgear shall be inadvertently detachable, or detached under test impact.

6.2 The entire area of the protective headgear above the reference plane shall attenuate impact energy to at least the minimum requirements specified in Section 9.

7. Sampling for Testing

7.1 Condition and Attachments. For all testing, protective headgear shall be taken in the condition as offered for sale, and shall be accompanied by all attachments (other than eye protection devices) normally sold with the protective headgear. Such attachments shall not be installed on the helmet during testing.

7.2 Number of Samples. Four samples are required for testing. Each test sample, following exposure to its [illegible] environmental conditioning [illegible] tion set forth herein.

8. Conditioning for Testing

8.1 Order of Testing. The impact attenuation, penetration, and retention system tests set forth in Sections 9, 10, and 11 shall be conducted in ascending numerical order.

8.2 Time. Testing shall begin immediately after removal from the conditioning equipment as indicated in 8.4, 8.5, and 8.6. For actual testing, the maximum time during which the protective headgear may be out of the conditioning environment shall not exceed 5 minutes. It must then be returned to the conditioning environment for a minimum of 15 minutes before again being withdrawn. This process must be continued until a specific item has been put through all necessary testing.

8.3 Testing at Ambient Temperature. The first protective headgear shall be tested at ambient conditions as defined in 12.1 of this standard.

8.4 Low Temperature. The protective headgear shall be conditioned by being exposed to a temperature of − 10°C (14°F) ± 2°C (3.6°F) for not less than 4 hours nor more than 24 hours, in a controlled environmental temperature apparatus.

8.5 High Temperature. A third protective headgear shall be conditioned by being exposed to an air temperature of 50°C (122°F) ± 2°C (3.6°F) for a period of not less than 4 hours nor more than 24 hours, in a circulating air oven.

8.6 Water Immersion. A fourth protective headgear shall be immersed in water at a temperature of 25°C (77°F) ± 5°C (9°F) for a period of not less than 4 hours nor more than 24 hours.

9. Tests for Protective Headgear

9.1 Impact Energy Attenuation. Impact attenuation shall be measured by determining imparted acceleration to an appropriately instrumented standard headform (see footnote 1, page 7) dropped in a guided fall vertical within 1/2 inch (13 mm) per 15 feet (4.57 m) height upon a fixed rigid steel anvil base.

9.2 Acceptable Acceleration Levels

9.2.1 Any peak acceleration of the test headform, with any of the four preconditioned protective headgear, exceeding 400 G's shall be cause for failure. Acceleration shall be measured with an instrumenta[illegible] corrected for instrumentational accuracy.

9.2.2 Recorded accelerations in excess of 200 G's shall be cause for failure of the protective headgear if the duration of the acceleration at the 200 G level exceeds 2 ms. The time duration of acceleration will be measured with equipment accurate to ± 0.2 ms maximum and the reading shall not be corrected for instrumentation accuracy.

9.2.3 Accelerations in excess of 150 G's shall be cause for failure of the protective headgear if the duration of acceleration at the 150 G level exceeds 4 ms with instrumentation measuring duration as defined in 9.2.2.

9.3 Impact Description

9.3.1 Each protective headgear shall be impacted with two successive identical impacts (the centers of each paired impacts shall be located not more than 1/4 inch [6 mm] apart) in not less than four sites. At least two of these sites shall be upon a flat steel anvil and two upon a hemispherical steel anvil. The impact sites shall be above the reference plane and separated from each other by a distance not less than one-sixth of the maximum circumference of the protective headgear.

9.3.2 The flat steel anvil shall have a 5 inch (127 mm) minimum diameter and the hemispherical steel anvil shall have a 1.9 inch (48 mm) radius.

9.3.3 The impact energy utilized shall be 50 foot-pounds (6.91 kg meters) with the hemispherical steel anvil (54.5 inches ± 0.2 inch or 1340 mm ± 5 mm drop) and 66 foot-pounds (9.12 kg meters) with the flat steel anvil (72 inches ± 0.2 inch or 1.830 mm ± 5 mm drop).

9.4 Headform. The test headform shall be of low resonance magnesium alloy (K-1A) and shall weigh 11 + 0.2, – 0 lb (5 kg + 0.091, – 0 kg), which weight shall include the supporting arm.

9.5 Placement of Protective Headgear. The protective headgear shall be placed on the headform so that the reference plane on the headgear is coincident with the reference plane on the headform, prior to each drop. The protective headgear shall be secured to the headform and cross arm by its retention system so as to maintain this position during free fall.

9.6 Backup of Anvil. The steel anvil shall be backed up with a solid mass of at least 300 pounds which shall be faced with a steel plate of 1 inch (25.4 mm) minimum thickness and 1 ft² (0.1 m²) minimum surface area.

10. Penetration Test

10.1 Placement on Headform. The complete protective headgear shall be placed on a rigidly mounted metal headform whose surface shall be electrically conductive. If the protective headgear contains a "sling" or other adjustable sizing component, this shall be relaxed to its most extendable position.

10.2 Mode of Drop. The penetration test shall be conducted by dropping the penetration test striker onto the outer surface of the protective headgear anywhere above the reference plane, in a direction essentially perpendicular to the outer surface of the protective headgear. At least the tip of the striker shall be electrically conductive.

10.3 Failure Criterion. When tested in the above fashion, the protective headform shall be failed if demonstrable electrical contact is made between the penetrator and the conducting surface of the headform.

10.4 Number and Location of Blows. There shall be no less than two penetration blows applied to each of the preconditioned protective headgear (Section 7). Such blows shall be at least 3 inches (76 mm) apart and shall be located no less than 3 inches (76 mm) from the center of any impact points.

10.5 Conditions of Penetration Tests

10.5.1 The weight of the penetration test striker shall be 6 pounds, 10 oz + 0.1, – 0 lb (3.0 kg + 45, – 0 g).

10.5.2 The point of the striker shall have an included angle of 60 degrees ± 0.5 degrees and a cone altitude or height of not less than 1.5 inches (38 mm).

10.5.3 The radius of the striking point shall be 0.0197 inch ± 0.004 inch (0.5 mm ± 0.1 mm).

10.5.4 The hardness of the striking tip shall be a minimum of 60 Rockwell (Scale C).

10.5.5 The height of the fall shall be 118.11 inches ± 0.6 inch (3 m ± 15 mm), as measured from the striker point to the outer surface of the mounted protective headgear.

11. Test of Tensile Strength of Retaining System

11.1 Placement. The protective headgear shall be placed upon a test headform with the chin strap fastened over a device approximating the shape of the bony structure of the lower jaw. This shall consist of two metal rollers, each 1/2 inch ± 0.004 inch (12.7 mm ± 0.1 mm) in diameter, at a distance of 3 inches ± 0.04 inch (76.2 mm ± 1 mm) separation on center, which would serve to represent the jaw bone. The protective headgear shall [illegible] the headform so that the point of [illegible] gear will be subject to the same test as the strap itself.

11.2 Preload and Tension. The retaining system shall be tested for ultimate strength and for elongation under tension, as follows. After applying a 50 lb preload ± 1 lb (23 kg ± 0.5 kg) for no less than 30 s, an additional 250 lb – 0, + 5 lb (113.6 kg – 0, + 2.2 kg) weight or tension equivalent thereto shall be applied to the device retained by the chin strap for no less than 2 minutes. Any parting of the strap or its attachments, or elongation of more than 1 inch (25.4 mm) in the vertical distance of the chin strap from the helmet crown, as measured between preload and 300 lb (136 kg) load, shall result in failure. The retaining system shall be loaded to failure.

12. Preparation of Test Equipment

12.1 Equipment and Environment. All equipment shall be turned on and allowed to warm up for at least 30 minutes or until equilibrium is reached, whichever time is greater prior to testing.

The following environmental conditions shall prevail throughout the period of calibration and testing:

Temperature: 70-85° F

Relative humidity: 30-70 percent (22-30° C)

12.2 Instrumentation Check. The entire instrumentation system shall be checked before and after each series of tests by impacting a standardized calibrating medium[2] capable of producing an acceleration-time history of 400 G's, and a time duration of at least 1 ms duration at 200 G's. At least three such impacts shall be recorded before and after testing and made part of the test report. If the acceleration-time history is out of predetermined tolerance prior to test, the system shall be adjusted or repaired as necessary. If the post-test average of the three impacts differs from the pre-test average by more than 40 G's, the entire test series shall be discarded.

12.3 Record of Test. A record shall be made of each test impact and retained as a permanent record of the acceleration-time history.

[2]A calibrating medium found to be suitable is a one-inch Open Blue Modular Elastomer Programmer, available from Monterey Research Laboratory, P.O. Box 72, Monterey, California 93940, or equivalent.

13. Test Equipment

13.1 Headform. Standard headforms shall be used in testing and measurement. (See footnote 1, page 7.)

13.1.1 Center of Gravity of Headform. The center of gravity of the headform, including the cross arm, shall lie within a cone with axis vertical and forming a 10 degree included angle with the apex at the point of impact.

13.1.2 Combined Weight of Cross Arm and Headform. The combined weight of the cross arm and headform shall be 11 + 0.2, – 0 lb (5 kg + 0.091, – 0 kg).

13.1.3 Acceleration Transducer. The acceleration transducer shall be mounted with the sensitive axis aligned to within five degrees of true vertical when the headform is in the impact position.

13.1.4 Headform Size. Medium and large size protective headgear will be tested on the standard headform size. Small size headgear of the same type will be approved if visual inspection shows the construction to be essentially identical to those tested.

13.2 Low Temperature Box. A controlled, mechanically cooled temperature box of at least 2 X 2 X 2 feet (0.6 X 0.6 X 0.6 m) inside dimensions shall be available with controlled temperature capability of – 10° C (14° F) ± 2° C (3.6° F). It shall hold the prescribed temperature for a minimum of 24 hours.

13.3 High Temperature Box. A controlled temperature box of at least 2 X 2 X 2 feet (0.6 X 0.6 X 0.6 m) inside dimensions shall be available with controlled temperature capability of 50° C (122° F) ± 2° C (3.6° F). It shall hold the prescribed temperature for a minimum of 24 hours.

13.4 Acceleration Transducer. The acceleration transducers shall have a natural frequency of 20 000 Hz or greater and be capable of withstanding a 2000 G shock without damage.

13.5 Recording System. The recording system must match the frequency response of the accelerometer and the entire recording system shall be flat ± 1 dB over a minimum frequency band of 5 to 3000 Hz.

13.6 Reference Plane. The standard headform, on which the basic plane is marked, shall be positioned on a flat surface so that the basic plane is parallel to this surface. The reference plane shall be scribed on the helmet after it has been positioned on the test head so that the lowermost part of the leading edge at at the front of the helmet is 2.36 inches (60 mm) above the basic plane.

Appendix

(This Appendix is not a part of American National Standard Specifications for Protective Headgear for Vehicular Users, Z90.1-1971, but is included for information purposes only.)

A1. Apex

The apex of a helmet shall be a point on the upper sagittal plane, equidistant from the anterior and posterior portions of the reference plane.

A2. Quadrant Identification

The four quadrants of a helmet or headform are those portions of the helmet or headform, above the reference plane, delineated by the sagittal plane and a plane perpendicular to both the sagittal and the reference planes and which would pass through the center of the external ear openings. These quadrants are numbered as follows: 1) right front; 2) right rear; 3) left rear; 4) left front.

A3. Point Locations

A particular point on a helmet or headform may be described by designating its distance from the apex (called "A") from the anterior or posterior points of intersection of the sagittal and reference planes (called "AS" or "PS"), and from the right or left intersection of the lateral and reference planes (called "RL" or "LL").

For example, the description, "A3.5, AS.4, RL.2.25" would designate a point 3 and 1/2 inches from the apex, 4 inches from the front intersection of the sagittal and reference planes, and 2 and 1/4 inches above the right intersection of the lateral and reference planes.

A4. Measurements

All measurements referred to in this Appendix are chord distances (that is, in a direct line, and may be measured with dividers or similar equipment).

American National Standards

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A STUDY OF

IDAHO MOTORCYCLISTS

INJURED IN

1974 ACCIDENTS

COMPILED BY: STATE OF IDAHO
TRANSPORTATION DEPARTMENT
TRAFFIC SAFETY COMMISSION

JANUARY, 1976

IDAHO TRAFFIC SAFETY COMMISSION
STATEHOUSE
BOISE, IDAHO 83720

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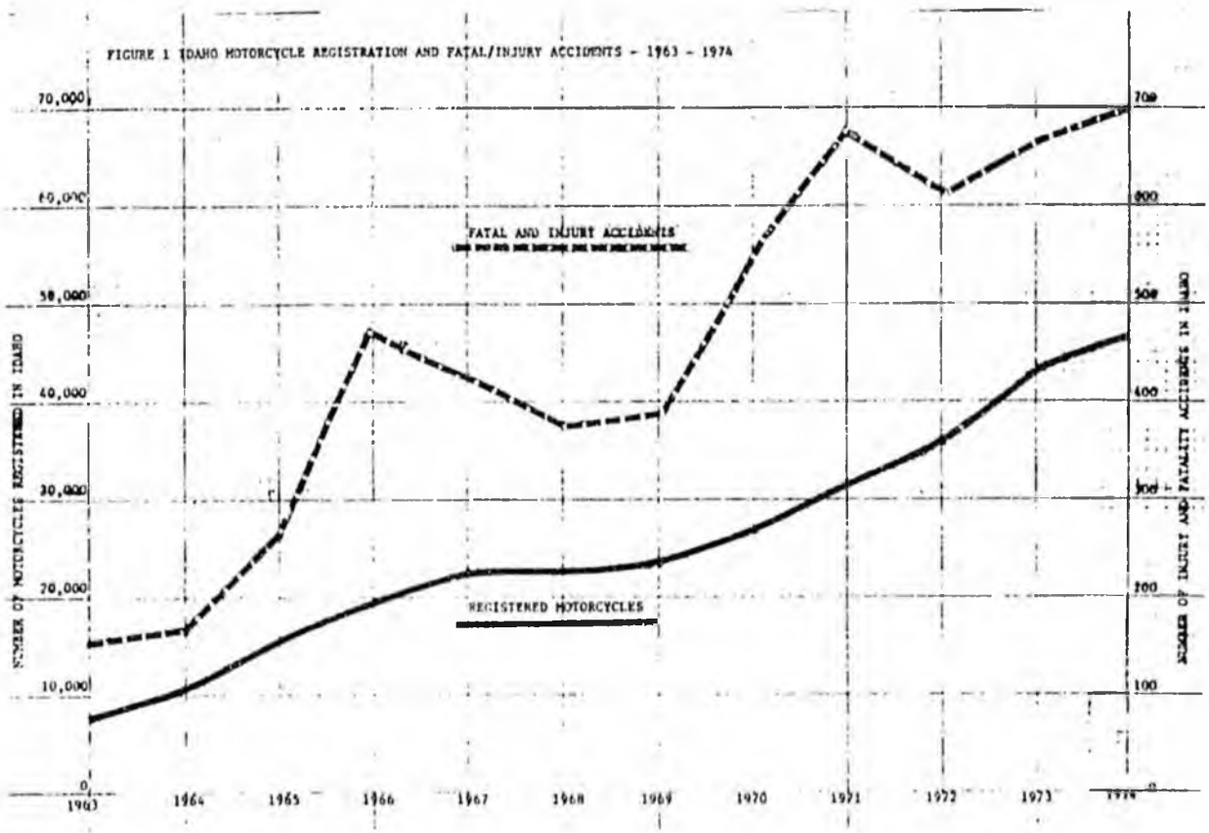
PREFACE

Idaho has experienced a tremendous increase in motorcycle activity in the past decade. This is reflected in the increased number of registered motorcycles and motorcycle accidents. During this period, the number of all registered motor vehicles approximately doubled, which in turn increased traffic density and exposure for Idaho motorcyclists. From 1963 to 1967, motorcycle registration trebled, then leveled off through 1969. From 1969 to 1974 the motorcycle population again doubled. During the leveling-off period there was a pronounced decline in motorcycle accidents followed by an increase as motorcycle registration rose in the seventies.



A mandatory helmet law was passed and effective January 1, 1968. It was in abeyance from August 1969 to May 1970 during a test for constitutionality. The law has been enforced since May 1970. Periodically, motorcycle groups have lobbied and demonstrated against the mandatory helmet law. While studies from other states tend to refute the arguments of spokesmen for opposition to the law, a need was indicated to determine experience and opinons of Idaho motorcyclists on the value of helmets, mandatory helmet law, and other related subjects.

INTRODUCTION

The population to be surveyed was defined as Idaho motorcyclists who had experienced a motorcycle injury accident in Idaho during 1974. Names, addresses, and injury severity codes were obtained from 1974 accident records. A total of 562 names were available for the survey. There were 260 individuals who had experienced injuries of severity code A (incapacitating injury), 225 people with injuries of severity B (non-incapacitating, evident injury), and 77 with injuries of severity C (non-evident, possible injury).

Responses to the survey are listed for each injury severity population with percentages based upon the number of respondents to the applicable item. Rounding of percentage figures to the tenth of a percent sometimes produces a total percentage slightly different from one hundred percent.

A survey form with a cover letter (Appendix A) and a stamped, self-addressed envelope were mailed to each of the 562 persons involved. Response results are shown in Table 1.

TABLE 1

SURVEY RESPONSE

NUMBER OF SURVEY FORMS	INJURY SEVERITY CODES			
	A	B	C	TOTAL
Mailed	260	225	77	562
Returned Undeliverable	18	4	2	24
Assumed Delivered	242	221	75	538
Response	91	74	28	193
Percent Response/Delivered	37.6%	33.5%	37.3%	35.9%

A more detailed discussion of the methodology, together with a critique of methodology and survey format, is available upon request from Idaho Traffic Safety Commission, Statehouse, Boise, Idaho 83720.

Information sought from the survey was in two categories - factual and opinion. Factual information was solicited on the first 12 items of the survey form (Appendix A) and opinion information was requested on the remainder of the items. Items 14 through 20 were deliberately written to encourage unanticipated comments.

The main object of the survey was to evaluate the common arguments of anti-helmet law advocates. Questions to be addressed were:

To what degree are anti-helmet law advocates representative of the Idaho motorcyclists who experienced an accident?
To what degree do helmets reduce injury?
To what degree do helmets aggravate injury?
To what degree and how do helmets contribute to accidents?
What is the distribution of head, neck and other injuries among helmet wearers who experienced an accident?

Secondary, but important purposes for the survey were:

Opinion polls on motorcycle related laws not in effect in Idaho
License law with requirements for:
a. Written exam
b. Off-road driving exam
c. Traffic driving exam
Eye protection law
Rear-view mirror law
Opinion poll on motorcycle training courses
Injury severity analysis by age and motorcycling experience
Medical costs and days lost by injury severity code
Annual motorcycle mileage

Another expected result of the survey was volunteered information. For this reason, no information was directly solicited on whether the helmet saved a life nor on the effect of automobile drivers in motorcycle accidents.

SUMMARY OF STUDY FINDINGS

This summary is for the benefit of those who are more interested in survey results than in detailed analysis. All findings are substantiated in the body of the study.

1. There were 7.67 motorcyclists strongly in support of the mandatory helmet law for every 1 strongly opposed to the law.

2. Of motorcyclists who commented on the mandatory helmet law, 77.3% were in favor of the law.

3. Of motorcyclists who wore helmets, 84.7% indicated that the helmet reduced injury and 8.7% voluntarily added that it saved their lives.

4. Neck injuries were very rare in the severity A (incapacitating) injuries.

5. Over half of the respondents were at least twenty years old.

6. Motorcyclists over 35 years old comprised 20.7% of the respondents.

7. A few motorcyclists (2.6%) had less than one month motorcycling experience, but 75.6% had more than one year motorcycling experience.

8. Analysis of medical costs and days lost by severity code indicates that the injury severity codes marked by investigating officers are accurate indications of injury severity.

9. The opinion survey was favorable to motorcycle licensing with written and traffic exams, but not favorable toward off-road driving exams.

10. The opinion survey was favorable toward motorcycle training courses, with reservations on funding and administration.

11. The opinion survey supported the importance of eye protection but was not favorable toward a law requiring full-time eye protection.

12. Annual motorcycle mileage estimates varied greatly with an average somewhere between 3500 and 4500 miles per year.

13. Single motorcycle accidents predominately occurred in rural areas during daylight hours, while motorcycle accidents involving a car or truck occurred mostly in urban areas during daylight hours.

14. There was a marked difference in urban and rural accidents by injury severity type. Over half of the A injury severity accidents occurred in rural areas, while B and C injury severity accidents occurred mostly in urban areas.

15. Automobile driver awareness of and courtesy toward motorcyclists was determined to be the primary single factor in motorcycle collisions.

MOTORCYCLE HELMETS

MANDATORY MOTORCYCLE HELMET LAW

ANALYSIS OF OPINION SURVEY

The opinion survey portion of the form consisted of open-end comments on laws concerning safety devices and on motorcycle training courses. Response to this method of questioning was varied with some respondents marking the subjects without comment. Only written comments were compiled for analysis. Comments were rated in four categories - strongly for, strongly against, mildly for, and mildly against. An example of comments on the helmet law follows:

Strongly Against	No Unconstitutional State has no right Morally wrong
Mildly Against	Shouldn't have to wear helmet Unnecessary Don't like it Other comments unfavorable
Strongly For	Yes A must Absolutely
Mildly For	Not opposed to concept of law, but favor certain exceptions. Examples: passengers in town, under certain speeds, in towns, in country.

TABLE 2

HELMET LAW OPINION SURVEY RESULTS BY INJURY SEVERITY AND PERCENTAGE

RATING	INJURY SEVERITY CODE			
	A (%)	B (%)	C (%)	TOTAL (%)
Strongly Against	7 (7.7)	6 (8.1)	2 (7.1)	15 (7.8)
Mildly Against	13 (14.3)	7 (9.5)	4 (14.3)	24 (12.4)
Mildly For	6 (6.6)	5 (6.8)	7 (25.0)	18 (9.3)
Strongly For	53 (58.2)	49 (66.2)	13 (46.4)	115 (59.6)
Not Stated	12 (13.8)	7 (9.5)	2 (7.1)	21 (10.9)
Total	91	74	28	193

TOTAL FOR 133 (77.3%)
TOTAL AGAINST 39 (22.7%)

Severity of injury does not seem to influence support for the law. Several comments indicated that the helmet was a necessity, but still opposed the law. Apparently, the advocates of helmet law repeal represent less than 8% of the accident-experienced motorcyclists.

RESPONSE ON MANDATORY MOTORCYCLE HELMET LAW BY AGE AND EXPERIENCE

Responses on the mandatory motorcycle helmet law were analyzed on the basis of age (under 20 vs. 20 and older) and motorcycling experience (less than three years vs. 3 years or more). Three years experience was used as the breaking point because those with less than three years experience had begun motorcycling after the helmet law was in full effect, so would presumably not resent the law quite as much as those who had been motorcycling before the law was in effect.

TABLE 3

RESPONSE ON MANDATORY MOTORCYCLE HELMET LAW BY AGE AND EXPERIENCE

	FOR	AGAINST	TOTAL
Total Population Who Commented on Law	133 (77.3%)	39 (22.7%)	172
Population Under 20 Years Old Who Commented on Law	67 (83.8%)	13 (16.3%)	80
Population 20 Years and Older Who Commented on Law	65 (73.0%)	24 (27.0%)	89
Population Under 3 Years Motorcycle Experience Who Commented on Law	62 (81.6%)	14 (18.4%)	76
Population With 3 Years or More Motorcycle Experience Who Commented on Law	68 (73.9%)	24 (26.1%)	92

Motorcyclists under 20 years of age showed a more favorable attitude toward the helmet law than did those 20 years and older.

Motorcyclists with less than three years experience showed a more favorable attitude toward the helmet law than did those who were already motorcycling when the law became effective. It should be noted that many of the motorcyclists with fewer years experience were also in the younger age group. However, it appears that opposition toward the helmet law is based to some extent in resentment toward a new law rather than the content of the law.

EFFECT OF HELMET ON SEVERITY OF ACCIDENT

One hundred and eighty-one respondents said they were wearing a safety helmet and ten said they were not. In answer to the opinion question on positive or negative effect of helmet, all but three helmet wearers gave their views.

TABLE 4

HELMET EFFECT - HELMET WORN, BY SEVERITY OF INJURY AND PERCENTAGE OF HELMET WEARERS

ANSWERS MARKED	INJURY SEVERITY CODE			
	A (%)	B (%)	C (%)	TOTAL (%)
Reduced Injury	79 (92.9)	57 (80.3)	19 (73.1)	155 (84.7)
Had No Effect	5 (5.9)	10 (14.1)	6 (23.1)	21 (11.5)
Aggravated Injury	0 (0.0)	2 (2.8)	3 (11.5)	5 (2.7)
Blank	1 (1.2)	2 (2.8)	0 (0.0)	3 (1.6)
Total	85	71	27 (26)*	184 (183)*

*One C injury severity respondent marked that the helmet reduced head injury but aggravated neck injury so the answer is logged for both. Lower numbers in parenthesis are base for percentages.

The question of helmets saving lives was not put on the survey form in order to avoid forcing the point. However, fourteen A injury severity and two B injury severity respondents, 8.7% of those wearing helmets, volunteered statements that the helmet saved their life.

It is apparent from the opinion survey on helmet safety value that not only do the majority of motorcyclists consider the helmet a valuable protective measure, but that appreciation of the helmet increases with accident severity.

HELMET CONTRIBUTING TO ACCIDENT

Eleven respondents indicated that the helmet may have contributed to the accident by interfering with vision, hearing, or both. There was no pattern to these accidents - four were in town with a car or truck, one was a single motorcycle in town, one was in a rural area with a car, one was in a rural area with another motorcycle, and two were single motorcycle in a rural area.

TABLE 5

INJURY ANALYSIS - PERCENTAGES ARE FOR INJURIES IN EACH CATEGORY

INJURY TO	INJURY SEVERITY CODE			
	A	B	C	TOTAL (%)
Head	31 (19.9)	12 (11.4)	1 (3.1)	44 (15.0)
Neck	3 (1.9)	6 (5.7)	6 (18.8)	15 (5.1)
Leg	61 (39.1)	47 (44.8)	16 (50.0)	124 (42.3)
Arm	36 (23.1)	26 (24.8)	5 (15.6)	67 (22.9)
Torso	19 (12.2)	12 (11.4)	4 (12.5)	35 (11.9)
Internal	6 (3.8)	2 (1.9)	0 (0.0)	8 (2.7)
Total	156	105	32	293

Of the fifteen respondents who indicated neck injuries, all marked that the helmet reduced injury, although one also marked that it aggravated neck

injury. Nine voted strongly for the helmet law, two voted mildly for, two voted mildly against, two abstained, and there were no votes strongly against the law.

TABLE 6

NECK INJURIES BY SEVERITY CODE
URBAN AND RURAL AND TYPE ACCIDENT

TYPE ACCIDENT	INJURY SEVERITY CODE			
	A	B	C	TOTAL
Urban				
Single Motorcycle	0	2	0	2
Motorcycle/Car (Truck)	1	3	5	9
Rural				
Single Motorcycle	2	1	0	3
Motorcycle/Car (Truck)	0	0	1	1

This data indicates that neck injuries from motorcycle-car/truck collisions are more prevalent in town, but a review of the 94 urban and 31 rural motorcycle-car/truck accidents (Table 21) indicates the percent incidence of neck injuries in urban areas to be 9.7%, and in rural areas to be 9.4%.

The low incidence of neck injuries does not support contentions that helmets generate neck injuries to the extent that their total safety value is cancelled or compromised.

HEAD INJURY EFFECT ON VALUE OF HELMET

Of the 31 A injury severity respondents who suffered head injuries, 25 were wearing helmets. Of these, 24 said that the helmet reduced injury and one said it had no effect. Of the 12 B injury severity respondents who suffered head injuries 10 were wearing helmets. Of these 9 said that the helmet reduced injury and one said that it aggravated injury. The one C injury severity who suffered head injury said that the helmet aggravated injury. The two respondents who stated that the helmet aggravated injury had only head injuries. The B injury severity respondent lost 3 days and had a medical expense of $550. The C injury respondent lost 1 day and had a medical expense of $75.

HELMET EFFECT - HELMET NOT WORN

Eight of the ten respondents who indicated that they were not wearing helmets suffered head injuries (6 A and 2 B severity) and they all indicated that the helmet would have reduced injury. Of the two non-helmeted motorcyclists without head injuries, the B severity respondent said that the helmet would have reduced injury and the C severity respondent said that the helmet would have aggravated injury.

MOTORCYCLE LICENSE LAW

The opinion survey on motorcycle license law was expanded to cover written examination, off-road driving examination, and traffic driving examination. There was general support for motorcyclist license law, with highly varied adaptations. This subject had the highest number of abstaining respondents.

MOTORCYCLE LICENSE LAW OPINION SURVEY
RESULTS BY INJURY SEVERITY AND PERCENTAGE

TABLE 7

WRITTEN EXAMINATION	INJURY SEVERITY CODE			
	A (%)	B (%)	C (%)	TOTAL
Strongly Against	11 (12.1)	10 (13.5)	5 (17.9)	26 (13.5)
Mildly Against	5 (5.5)	9 (12.2)	2 (7.1)	16 (8.3)
Mildly For	8 (8.8)	12 (16.2)	3 (10.7)	23 (11.9)
Strongly For	25 (27.5)	20 (27.0)	6 (21.4)	51 (26.4)
Not Stated	42 (46.2)	23 (31.1)	12 (42.9)	77 (39.9)
Total	91	74	28	193

TOTAL FOR 74 (63.8%)
TOTAL AGAINST 42 (36.2%)

Of the three examinations listed on the survey form, the written examination received the least opposition, although many felt that the regular driver's written examination was adequate. There were additional comments to the effect that answering questions doesn't prove driving ability and that the driver's written examination should have questions on it about rights of the motorcyclist in traffic.

TABLE 8

OFF-ROAD DRIVING EXAM	INJURY SEVERITY CODE			
	A (%)	B (%)	C (%)	TOTAL (%)
Strongly Against	20 (22.0)	18 (24.3)	7 (25.0)	45 (23.3)
Mildly Against	6 (6.6)	15 (20.3)	4 (14.3)	25 (13.0)
Mildly For	5 (5.5)	6 (8.1)	2 (7.1)	13 (6.7)
Strongly For	9 (9.9)	9 (12.2)	3 (10.7)	21 (10.9)
Not Stated	51 (56.0)	26 (35.1)	12 (42.9)	89 (46.1)
Total	91	74	28	193

TOTAL FOR 34 (32.7%)
TOTAL AGAINST 70 (67.3%)

The high opposition to the off-road driving examination is significant. There were favorable comments on off-road experience as an aid in defensive driving such as 'laying down' a motorcycle to avoid collision in traffic.

Another indication of the effect of off-road driving was the number of respondents who indicated they had been driving motorcycles since an early age. There were 31 whose age and driving experience indicated that they had started riding a motorcycle at ages ranging from 6 to 13. It is probable that the off-road experience on smaller motorcycles at an early age is good preparation for later traffic driving.

TABLE 9

TRAFFIC DRIVING EXAM

DRIVING EXAM	INJURY SEVERITY CODE			
	A (%)	B (%)	C (%)	TOTAL (%)
Strongly Against	9 (9.9)	14 (18.9)	5 (17.9)	28 (14.5)
Mildly Against	4 (4.4)	6 (8.1)	2 (7.1)	12 (6.2)
Mildly For	7 (7.7)	10 (13.5)	2 (7.1)	19 (9.8)
Strongly For	28 (30.8)	19 (25.7)	5 (17.9)	52 (26.9)
Not Stated	43 (47.3)	25 (33.8)	14 (50.0)	82 (42.5)
Total	91	74	28	193

TOTAL FOR 71 (64%)
TOTAL AGAINST 40 (36%)

Of the three examinations listed on the survey form, the traffic driving examination received the most support, with the general reservation that it should apply only to newly licensed motorcyclists.

EYE PROTECTION LAW

TABLE 10

EYE PROTECTION REQUIRED BY LAW OPINION SURVEY
RESULTS BY INJURY SEVERITY AND PERCENTAGE

EYE PROTECTION	INJURY SEVERITY CODE			
	A (%)	B (%)	C (%)	TOTAL (%)
Strongly Against	19 (20.9)	17 (23.0)	4 (14.3)	40 (20.7)
Mildly Against	15 (16.5)	17 (23.0)	7 (25.0)	39 (20.2)
Mildly For	6 (6.6)	6 (8.1)	3 (10.7)	15 (7.8)
Strongly For	24 (26.4	18 (24.3)	7 (25.0)	49 (25.4)
Not Stated	27 (29.7)	16 (21.6)	7 (25.0)	50 (25.9)
Total	91	74	28	193

TOTAL FOR 79 (55.2%)
TOTAL AGAINST 64 (44.8%)

The results of the opinion survey on eye protection indicate an unfavorable response to eye protection required by law. The general feeling was that motorcyclists will gladly use eye protection at higher speeds to reduce wind

irritation and the obvious hazard from bugs and dust, but would rather have a choice in urban traffic. The main adverse opinion on mandatory eye protection was that the value of the eye protection is greatly overshadowed in an urban traffic environment by the reduction in visibility. Glare and weather combined with visors create a visibility hazard. It appears that the great majority favor eye protection, but would not support a law making it mandatory at all times.

REAR VIEW MIRROR LAW

TABLE 11

REAR VIEW MIRROR REQUIRED BY LAW OPINION SURVEY
RESULTS BY INJURY SEVERITY AND PERCENTAGE

MIRROR	INJURY SEVERITY CODE			
	A (%)	B (%)	C (%)	TOTAL
Strongly Against	5 (5.5)	9 (12.2)	3 (10.7)	17 (8.8)
Mildly Against	5 (5.5)	7 (9.5)	5 (17.9)	17 (8.8)
Mildly For	17 (18.7)	11 (14.9)	2 (7.1)	30 (15.5)
Strongly For	41 (45.1)	37 (50.0)	14 (50.0)	92 (47.7)
Not Stated	23 (25.3)	10 (13.5)	4 (14.3)	37 (19.2)
	91	74	28	193

TOTAL FOR 122 (78.2%)
TOTAL AGAINST 34 (21.8%)

The opinions in the survey on rear view mirrors required by law were highly favorable for legislation. Those respondents who qualified their support to exclude off-road motorcycles were marked as 'mildly for', since they were strongly for the law for on road vehicles. It is probable that many of the negative votes were tied to off-road considerations.

MOTORCYCLE TRAINING COURSES

TABLE 12

MOTORCYCLE TRAINING COURSES OPINION SURVEY
RESULTS BY INJURY SEVERITY AND PERCENTAGE

TRAINING	INJURY SEVERITY CODE			
	A (%)	B (%)	C (%)	TOTAL (%)
Strongly Against	13 (14.3)	10 (13.5)	7 (25.0	30 (15.5)
Mildly Against	11 (12.1)	21 (28.4)	3 (10.7)	35 (18.1)
Mildly For	20 (22.0)	20 (27.0)	7 (25.0)	47 (24.4)
Strongly For	21 (23.1)	8 (10.8)	4 (14.3)	33 (17.1)
Not Stated	26 (28.6)	15 (20.3)	7 (25.0)	48 (24.9)
Total	91	74	28	193

TOTAL FOR 80 (55.2%)
TOTAL AGAINST 65 (44.8%)

The opinion survey on motorcycle training courses showed a slightly favorable response toward the training. The main reason for the even spread of opinion was probably due to the open comment format. Many responses were qualified on the subject of who would conduct the training, and whether it should be required of experienced drivers. There was some reaction that indicated unfavorable feeling toward a law requiring the training, but the general opinion was favorable to including motorcycle training in the driver education courses in schools.

Only seven respondents indicated that they had taken motorcycle training courses, and five of those supported the training (two abstained).

There was very definite support for the value of training of some sort before exposure to traffic. Suggestions ranged from formal training to buddy system checkout. There was general rapport on the theme that the motorcycle is different and more dangerous than an automobile.

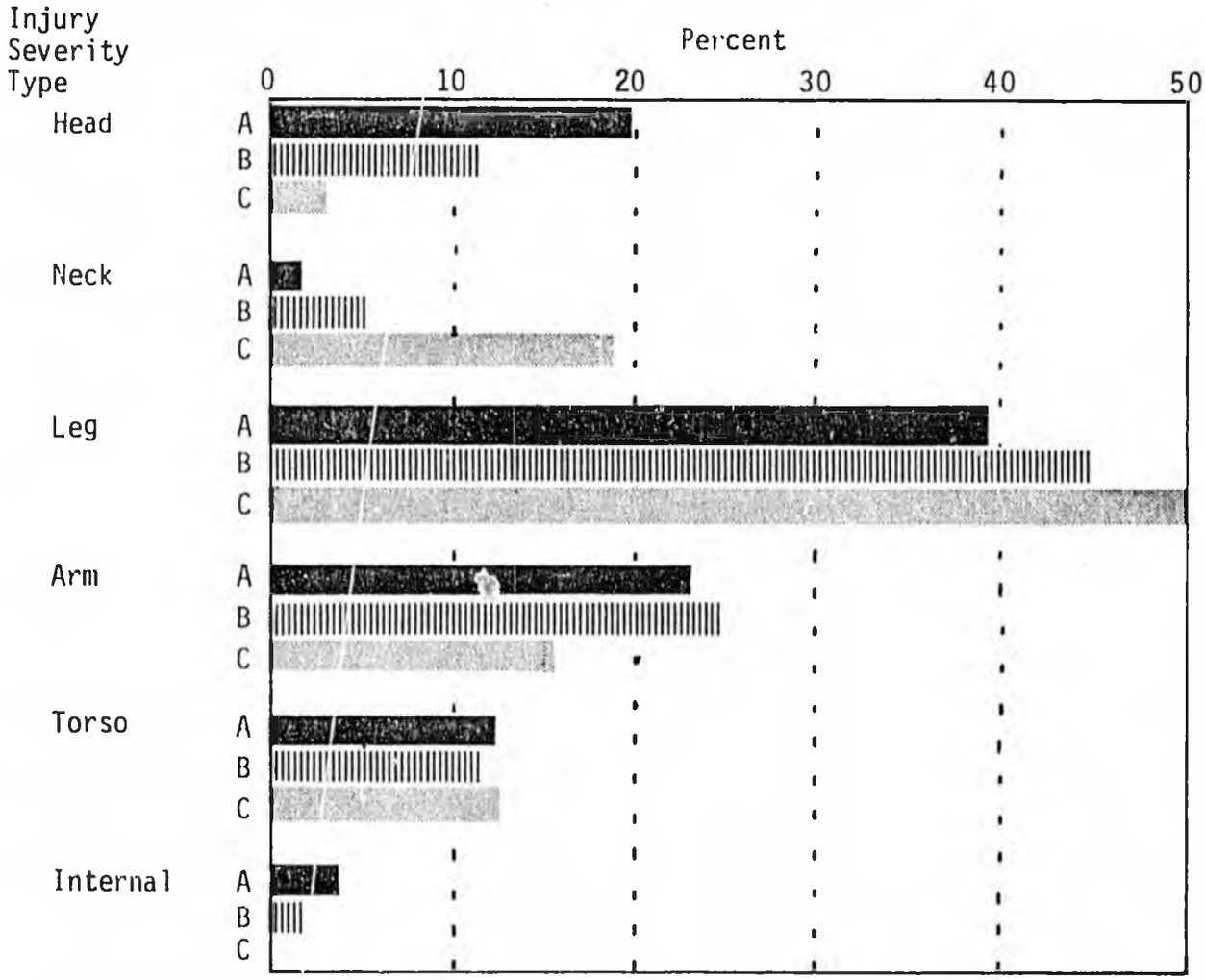
INJURY ANALYSIS

INJURY TYPE

The percentage comparison in type injury with severity code is shown in Figure 2. Leg injuries dominate all three categories of injury severity, with arm injuries holding second on A and B injury severity, and ranking third on C injury severity. Head and internal injuries dropped in lower severity injuries. Neck injuries were of lowest incidence on high severity injuries, rising next to the top of lowest severity injuries. Torso injuries held about the same relative position on all injury severities.

Figure 2

Relative Incidence of Type Injury
for Severity Codes A, B & C



AGE DISTRIBUTION

TABLE 13

AGE DISTRIBUTION BY SEVERITY OF INJURY AND PERCENTAGE

AGE	INJURY SEVERITY CODE					
	A (%)	B (%)	C (%)	TOTAL	NEB%[a]	ID%[b]
15 or less	11 (12.1)	14 (18.9)	6 (21.4)	31 (16.1)	5.8	12.1
16	7 (7.7)	11 (14.9)	4 (14.3)	22 (11.4)	8.3	10.6
17	8 (8.8)	6 (8.1)	4 (14.3)	18 (9.3)	9.1	8.0
18	5 (5.5)	3 (4.1)	3 (10.7)	11 (5.7)		7.9
					18.4*	
19	7 (7.7)	0 (0.0)	1 (3.8)	8 (4.1)		7.1
20-24	16 (17.6)	15 (20.3)	5 (17.9)	36 (18.7)	30.1	23.2
25-34	14 (15.9)	9 (12.2)	2 (7.1)	25 (13.0)	18.9	16.6
35 or more	21 (23.1)	16 (21.7)	3 (10.7)	40 (20.7)	8.4	11.2
Blank	2 (2.2)	0 (0.0)	0 (0.0)	2 (1.0)	1.0	3.4
Total	91	74	28	193		

a. Age distribution of 1150 motorcyclists surveyed in 1974 Nebraska study.[2]
b. Age distribution of all motorcycle injured for Idaho 1974.
* Nebraska study combined 18 and 19 year old data.

The age groups under 18 and 35 or older were apparently slightly more responsive to the survey than were those from 18 to 35 years old. Considering the difference in population being compared (Idaho survey respondents against total Idaho and Nebraska motorcycle injured) it becomes highly probable that the respondents represented a good sample of the injured population.

The higher percentage involvement of Idaho pre-16 year old motorcyclists, as compared to Nebraska, might be related to the Nebraska requirement that motorcyclists younger than 16 years old must be accompanied by a licensed motorcyclist on another motorcycle. Idaho law exempts motorcycles from this restriction.

Teenage respondents comprised 46.6% of the survey respondents and 45.7% of total Idaho 1974 motorcycle injured. Teenage drivers comprised only 26.3% of the drivers in all of the Idaho 1974 injury accidents. This indicates that teenagers have a greater percentage involvement in motorcycle accidents than in all motor vehicle accidents.

It is significant that over half of the motorcyclists in the survey respondents and for both the Idaho and the Nebraska surveys were over twenty years old.

Analysis of age and experience indicates that the age at which the motorcyclists started motorcycling varied from 5 to 56 years. Those who indicated that they started motorcycling at 20 or older compri d 29.6% of the respondents, while teenage beginners accounted for 55.6%.

Pre-teenager beginning motorcyclists made up 14.8% of the respondents. These were presumably off-road cyclists prior to the age of fourteen. This indicates that a large section of the teenage drivers today have developed experience and expertise in handling motorcycles prior to licensing age.

MOTORCYCLIST EXPERIENCE DISTRIBUTION

TABLE 14

DISTRIBUTION OF EXPERIENCE BY INJURY SEVERITY AND PERCENTAGE

EXPERIENCE (Months)	INJURY SEVERITY CODE				
	A (%)	B (%)	C (%)	TOTAL (%)	NEB%[a]
1 or less*	2 (2.2)	3 (4.1)	0 (0.0)	5 (2.6)	3%
1 - 3	1 (1.1)	3 (4.1)	1 (3.6)	5 (2.6)	9%
3 - 6	6 (6.6)	4 (5.4)	2 (7.1)	12 (6.2)	8%
6 - 12	5 (5.5)	10 (13.5)	7 (25.0)	22 (11.4)	12%
12 - 36	22 (24.2)	18 (24.3)	10 (35.7)	50 (25.9)	33%
Over 36	52 (57.2)	36 (48.6)	8 (28.6)	96 (49.7)	34%
Not Stated	3 (3.3)	0 (0.0)	0 (0.0)	3 (1.6)	1%
	91	74	28	193	

*Of the respondents with one month or less motorcycle experience, the A injury severity riders were on the second and sixth ride, and the B injury severity riders were on the first, twentieth, and fiftieth rides.

aPercentage distribution of 481 respondents in the Nebraska study.

TABLE 15

RANGE, MEDIAN, AND MEAN EXPERIENCE BY SEVERITY CODE (YEARS)

	INJURY SEVERITY CODE (SAMPLE SIZE)			
	A (88)	B (74)	C (28)	TOTAL (190)
Range	.08-35	.08-31	.17-9	.08-35
Median	3.0	2.5	2.0	3.0
Mean	5.19	4.9	2.64	3.8

It is apparent from analysis of experience distribution that injury severity is not related to motorcyclist experience. In both the Idaho and Nebraska studies, the percentage of 1 month or less and less than 6 months experience is roughly identical. There is no data on experience level of all Idaho motorcyclists available for comparison.

ESTIMATED MEDICAL COSTS

TABLE 16

ESTIMATED MEDICAL COST BY INJURY SEVERITY CODE
AND PROJECTIONS FOR TOTAL 1974 IDAHO MOTORCYCLE INJURED

	INJURY SEVERITY CODE (SAMPLE SIZE)			
	A (87)	B (73)	C (25)	TOTAL (185)
Range	$0-25,000	$0-10,000	$0-4,000	$0-25,000
Median	$ 1,000	$ 100	$ 60	$ 200
Mean	$ 2,581	$ 645	283	$ 1,503
Total	$ 224,610	$ 47,133	$ 7,371	$ 279,114
Projected Total of 562 Injured*	$ 671,248	$ 145,273	$ 22,702	$ 839,223

*Projection is computed by dividing total cost for each injury severity code by sample size and multiplying by population surveyed. Thus, total cost for A severity injuries ($224,610) is divided by sample size (87) and multiplied by survey size (260) to obtain projected total for 1974 Idaho severity code A injuries from motorcycle accidents ($671,248). The three injury severity code projections are then added for the projected total medical cost for the 562 injured who were surveyed.

ESTIMATED DAYS LOST

TABLE 17

DAYS LOST (FROM WORK OR SCHOOL) BY INJURY SEVERITY CODE
AND PROJECTION FOR TOTAL 1974 IDAHO MOTORCYCLE INJURED

	A (88)	B (73)	C (24)	TOTAL (185)
Range	0-510	0-478	0-180	0-510
Median	30	3	1	7
Mean	67.3	32.3	13.2	46.5
Total	5,919	2,361	316	8,596
Projected Total*	17,488	7,277	1,013	25,778

*Projected totals for each injury severity group are computed in the same manner as for medical costs. The three groups are then added to get projected total days lost for the 562 injured who were surveyed.

A secondary purpose of the survey was to obtain a general evaluation of the accuracy of the injury severity codes as marked by the investigating officer. It is evident from comparison of the ranges, medians, and means for medical costs and days lost that there is a high degree of accuracy. There were few anomalies present. Two A injury severity respondents and seven B injury severity respondents reported no medical costs plus no days lost due to the accident.

A further indication of the accuracy of the injury severity reporting can be seen by studying economic costs.

ECONOMIC COST

Economic costs are based upon cost for medical services, damage to property, and days lost from work. They do not include other societal costs such as suffering, community services lost, and cost to employer for replacement training. In view of the higher proportion of persons over 20 years old in injury severity categories A and B, an arbitrary dollar equivalent for a lost day wage was set as $50 while the C injury severity lost day cost was set as $30.

The projected values for the 562 in the surveyed population from Tables 17 and 18 were used, plus the average motorcycle damage costs for each category to arrive at an estimated economic cost to Idaho injured motorcyclists in 1974.

TABLE 18

ESTIMATED ECONOMIC COST BY INJURY SEVERITY CODE
FOR IDAHO INJURED MOTORCYCLISTS IN 1974

COST SOURCE	INJURY SEVERITY CODE			
	A	B	C	
Medical Expense	$ 671,248	$145,273	$22,702	$ 839,223
Wages Lost Expense	$ 874,400	$363,850	$30,390	$1,268,640
Motorcycle Damage	$ 120,453	$ 70,187	$24,516	$ 215,156
Total Economic Cost	$1,666,101	$579,310	$77,608	$2,323,019

TABLE 19

COMPARISON OF ECONOMIC COST PER INJURY -
IDAHO INJURED MOTORCYCLIST ESTIMATED ECONOMIC
COSTS AND NATIONAL SAFETY COUNCIL ESTIMATES FOR 1974

ESTIMATES	INJURY SEVERITY CODE		
	A	B	C
Idaho Estimates	$6,408	$2,575	$1,008
National Safety Council	$9,230	$3,030	$1,130

These two groups of figures should be compared with some reservation, since they do not represent identical situations. However, the similar rates of progression of cost with increased injury severity is an indication that the injury severity coding by accident investigators in Idaho is highly accurate.

It should be noted that this comparison is with the National Safety Council estimate economic costs for all motor vehicle accident injuries. Another

consideration is that two A injury severity and one B injury severity respondents reported themselves as still unable to work, and that one A injury severity and one B injury severity respondent reported expecting additional medical costs in the future. A third consideration is that the National Safety Council economic costs include insurance administration costs. In spite of some differences in the source of data, the comparison of the National Safety Council economic costs for the injury severity categories with the survey results further confirms the accuracy of injury severity coding by investigating officers.

ANNUAL MOTORCYCLE MILEAGE

Respondents who had been driving one year or more were asked to estimate their annual motorcycle mileage. This was a rough estimate, as evidenced by the multiple modes at 1,000, 2,000, 2,500, 3,000, 4,000 and 5,000 miles. The analysis of the distribution follows: (Sample size was 147)

TABLE 20

DISTRIBUTION OF MOTORCYCLE ANNUAL MILEAGE BY SEVERITY CODE

	INJURY SEVERITY CODE			
	A	B	C	TOTAL
Range	150-50,000	10-20,000	10-37,700	10-50,000
Median	2,500	3,500	2,000	2,500
Mean	4,850	4,121	4,763	4,561

Some estimates for annual mileage were unusually high and the possibility exists that some motorcyclists put down their total mileage for a period of years. For this reason, the central 90% of the mileage estimates were analyzed with the following results.

Range (90%)	250-15,000
Median (90%)	2,500
Mean (90%)	3,451

It is probable that the true average annual motorcycle mileage is between 3,500 and 4,500.

ACCIDENT ANALYSIS

TABLE 21

ACCIDENT TYPE BY SEVERITY, CODE, LOCATION, AND LIGHT CONDITIONS

ACCIDENT TYPE	INJURY SEVERITY CODE			
	A	B	C	TOTAL
SINGLE MOTORCYCLE				
Urban Daylight	3	3	0	6
Dawn/Dusk	1	2	0	3
Night	3	1	1	5
Rural Daylight	15*	9	1	25
Dawn/Dusk	4	1	0	5
Night	1	1	0	2

*One was run off road by car

ACCIDENT TYPE	INJURY SEVERITY CODE			
	A	B	C	TOTAL
MOTORCYCLE/MOTORCYCLE				
Urban Daylight	0	3	0	3
Dawn/Dusk	0	0	0	0
Night	0	0	0	0
Rural Daylight	1	1	0	2
Dawn/Dusk	2	0	0	2
Night	1	0	0	1

ACCIDENT TYPE	INJURY SEVERITY CODE			
	A	B	C	TOTAL
MOTORCYCLE/CAR-TRUCK				
Urban Daylight	25	34	13	72
Dawn/Dusk	4	4	4	12
Night	4	3	3	10
Rural Daylight	15	6	1	22
Dawn/Duck	5	2	1	8
Night	0	1	1	2

ACCIDENT TYPE	INJURY SEVERITY CODE			
	A	B	C	TOTAL
OTHER				
Urban Daylight	1	1*	0	2
Dawn/Dusk	0	0	0	0
Night	0	0	0	0
Rural Daylight	3*	2*	0	5
Dawn/Dusk	1*	0	0	1
Night	0	0	0	0

*One involved dog

Single motorcycle accidents in rural environments produce the highest ratio of A severity injuries. However, the urban area motorcycle collisions with cars or trucks are the primary source of motorcycle accident injuries of all injury severity categories, especially in daylight conditions. Factors that effect the motorcycle/automobile urban area daylight accidents are traffic density, visibility of the motorcyclists, awareness of automobile drivers, courtesy toward motorcycles, and the ability of the motorcyclists to weave through traffic and position themselves quickly and unexpectedly into blind spots.

It is apparent that C injury severity accidents are predominately in urban areas but it may be assumed that a high proportion of C injury severity accidents, and probably many B injury severity accidents, occur in rural areas but are un-reported.

TABLE 22

DISTRIBUTION OF URBAN AND RURAL ACCIDENTS
BY SEVERITY CODE AND PERCENTAGE

LOCATION	INJURY SEVERITY CODE			
	A	B	C	TOTAL
Urban	41 (45.1)	51 (68.9)	22 (78.6)	114 (59.1)
Rural	49 (54.8)	23 (31.1)	4 (31.1)	76 (39.4)
Not Stated	1	0 (0.0)	2 (7.1)	3 (1.6)

Rural accidents made up the highest percentage of A injury severity accidents, while urban accidents dominated the B and C injury severity population. Once again, it may be assumed that many C injury severity and some B injury severity accidents in rural areas are un-reported.

ADDITIONAL COMMENTS VOLUNTEERED

Respondents put additional comments on survey forms which they personally considered important enough to voluntarily submit. Some of the areas, such as automobile contribution to the accident and automobile drivers' attitudes, were deliberately omitted from the form to avoid forcing answers. Other areas were not considered when the survey form was designed.

COMMENT SUBJECT	NUMBER OF COMMENTS INJURY SEVERITY CODE			
	A	B	C	TOTAL
Automobile drivers are unaware of motorcycles, don't look, don't see them	13	16	4	33
Automobile drivers are aware of motorcycles, but ignore them, don't show courtesy, don't give right-of-way	12	5	3	20
Other vehicle was at fault	6	4	4	14
Road conditions, gravel, rocks, street barricades caused accident	1	3	0	4
Visibility of motorcyclists, light law, pennants bright clothing needed	3	8	0	11
Dog caused accident	2	2	0	4
Police bias against motorcyclists in accident investigation and in giving more tickets to motorcyclists. Extra insurance premiums because of higher exposure to traffic tickets	2	3	0	5
Motorcycle laydown ability valuable	3	2	0	5
Through with motorcycle in traffic	2	2	0	4
Motorcycle license rated for CC	1	1	0	2
Importance of body protection besides head	1	1	0	2
Motorcycle inspection law needed and enforced (Idaho law covers motorcycle inspection)	1	1	0	2

OBSERVATIONS AND RECOMMENDATIONS

MOTORCYCLE HELMET LAW

The overwhelming response in favor of the mandatory motorcycle helmet law yields the solid conclusion that advocates of repeal of the motorcycle helmet law are definitely not representing the accident experienced motorcyclists and very probably not speaking for the motorcycling public.

The question of constitutionality has passed the test of the United States Supreme Court so it would be presumptuous to address it in this study. There is little doubt about the high popularity of the law among the motorcycling public and especially the accident experienced segment.

MOTORCYCLE HELMETS

The results of the survey relating to the value of motorcycle helmets support the conclusions that helmets do save lives and reduce injury severity, that helmets have very little influence on increasing danger of neck injury, and that helmets seldom reduce hearing or vision to the point where they are an accident cause or even contributor. There is still room for improvement in helmet design in areas of weight, acoustics, and visibility. Studies by the National Highway Traffic Safety Administration have found that full coverage helmets (the most common in use) provide less than 3% lateral vision restriction from unhelmeted vision, and that a helmeted motorcyclist can hear a sound of interest as well as the driver of an automobile with the windows closed.[3,4] This problem is recognized at the national level and continual research is underway, so no local recommendation is offered in this study.

NECK INJURIES

Although the early motorcycle helmets might have provided some substance for the arguments on hazards of the helmet, the analysis of helmet effect on accidents and injury severity identifies these arguments as persistent myths. On the basis of the very few neck injuries, primarily in the minor non-incapacitating or non-evident injury accidents, a logical conclusion is that when helmeted motorcyclists acquired neck injuries, it is highly probable that the helmets prevented much more severe head injuries.

MOTORCYCLIST LICENSE

The motorcycle operator license law was generally well-received by the survey respondents with mixed reaction to license requirements. A rough summation of opinion is that a traffic driving test should be included for all initial licenses, but not for experienced motorcyclists. There is an indication that the present motor vehicle operator written examination, with motorcycle subjects included, would suffice for the written exam.

RECOMMENDATION 1 - The present Idaho motor vehicle operator and chauffeur written examinations should be analyzed to determine if motorcycle courtesy and motorcycle operation coverage can be enhanced by additions or changes in the questions.

EYE PROTECTION LAW

The main feature of the opinion survey results on eye protection required by law is that the total number against outnumbered those for the law. There was virtual unanimity on the value of eye protection on the open road due to danger from insects and other objects and also discomfort from wind blast. The respondents who were mildly against the law indicated this was mainly because they felt that individual judgment and circumstances should dictate use of glasses or visors in dense traffic, inclement weather and glare conditions. While it is possible to receive an injury from spun gravel or cinders in city traffic, it is unlikely that a serious accident would ensue. At road speeds, an injury to the eye could very easily cause a serious accident.

Only one respondent indicated receiving an eye injury from a single motorcycle accident caused by a blown tire. There was no case specified where an injury to the eye contributed to the accident. It is highly probable that most Idaho motorcyclists are using eye protection for comfort and safety, at least at higher speeds.

The Wisconsin study showed 95% of the 500 surveyed motorcyclists favored eye protection, but the question of mandatory full-time eye protection was not addressed. At the time of the survey Wisconsin had a law in effect that required a visor or glasses be worn at all times unless a windshield extended fifteen inches above the handlebars. This law allows motorcyclists, who do not want to use glasses or visors, the option of using a windshield.[5]

RECOMMENDATION 2 - An observation study of eye protection use by motorcyclists in various environments should be conducted to determine the extent of requirement for eye protection legislation.

REAR VIEW MIRROR LAW

The opinion survey on rear view mirrors required by law was highly favorable toward the law. Opposition, besides those who didn't want laws of any kind, was mainly due to resistance to rear view mirrors on off-road motorcycles. There was no indication from any respondent that rear view mirrors inflicted injuries in any accident. There was a low incidence of torso and internal injuries, and if the mirrors were causing injury there would have been a higher incidence.

RECOMMENDATION 3 - A count of motorcycles without rear view mirrors should be included in the observation surveys in Recommendation 2.

MOTORCYCLE TRAINING COURSES

There was general rapport that the motorcycle is different from the automobile, more difficult to drive, more dangerous, and that some form of initial training is essential. There was some unfavorable reaction toward a law requiring a motorcycle course, with comments on the bureaucracy involved.

There was general support for including motorcycle training in the high school driver education curriculum. Idaho high school driver education courses cover motorcycle safety and some schools offer on-cycle training on an optional basis.

A statewide system of motorcycle training is needed, but present resources do not allow for it. Possible instructor resources, besides present school and private driver education instructors are motorcycle dealers. Some dealers already offer instruction. Another source for the actual motorcycle driving instruction is the large body of capable, experienced Idaho motorcyclists. A thorough certification and monitoring program, supported by instructor certification fees, could produce a cadre of instructors to augment the on-cycle training, testing, and motorcycle certification of the motorcyclists. Students would pay for the training, which would reimburse the instructors for their certification fees and effort. In this way the private sector could participate and the expense of the motorcycle training and administration would be borne by those receiving the training. The cost of the motorcycle training would probably not exceed the cost of damage to the motorcycle alone from an accident.

RECOMMENDATION 4 - A feasibility study should be made of the resources available for motorcycle training and certification, and an analysis of costs and procedures for a self-supporting program developed.

INJURY ANALYSIS BY AGE AND EXPERIENCE

Over half of the respondents were over twenty years old. Fifty-seven percent of those thirty years old or older had been motorcycling five years or less. This indicates that we can expect some additions to Idaho motorcyclists to be from the older population in the future. Fuel economy considerations may cause more families to choose a motorcycle rather than a second automobile. While it can be surmised that an older beginning motorcyclist would seek out motorcycle training of some sort, it is apparent that motorcycle training requirements for motorcycle licensing should not be limited to the young.

It is also apparent that public information efforts toward motorcyclist safety must be designed with both teen-age and older motorcyclists in mind.

RECOMMENDATION 5 - Public information efforts toward motorcyclist safety should be conducted with older motorcyclists in mind as well as teen-agers.

ECONOMIC COST ESTIMATES

While the projected total economic cost for all Idahoans injured in 1974 motorcycle accidents ($2,323,019) may be viewed with some reservation, the costs indicated by the respondents alone is impressive. The apparently fine representation of the sample responding indicates that the projected estimate is reasonably accurate. Motorcycle injuries, like other injuries are both very painful and expensive.

MOTORCYCLE ANNUAL MILEAGE

Annual mileage estimates were solicited as a means of determining the average annual motorcycle mileage in Idaho. Results showed extreme ranges with an average of 4,561 miles per year. The average of the central 90% was 3,451 (eliminating the high and low 5%). It is probable that the true average lies somewhere between those values.

Vehicle miles is the main denominator for accident rate comparisons since it relates to exposure slightly better than population, number of registered vehicles, or number of licensed drivers. With the increase of motorcycles, small economy vehicles, and alternate fuels, gasoline consumption will become even less reliable as a cross check on vehicle miles deduced from traffic counts. Other methods of checking on vehicle mileage statistical estimates should be developed.

RECOMMENDATION 6 A study should be made at the national level on alternate methods of measuring vehicle miles and on alternate accident, fatality, and injury rate exposure denominators for interstate comparison and goals.

ACCIDENT ANALYSIS

An obvious conclusion that can be drawn from the survey responses is that motorcycles are more dangerous in many ways than automobiles. Many of the injuries would have been eliminated or minimized had the victim been protected by an automobile frame. Several accidents were due to road conditions and dogs that undoubtedly would not have even caused an accident to a more stable and protected vehicle. We have no way of knowing, of course, just how many accidents were avoided by the superior maneuverability of the motorcycle. The susceptability of the motorcycle to accidents and the high probability of injury to the motorcyclists still stands out.

The high incidence of motorcycle collisions with four wheel motor vehicles, especially in urban areas, is worth noting. Factors that impact these collisions are mainly traffic density, awareness of four wheel vehicle operators, courtesy toward motorcyclists, motorcycle visibility, and the ability of motorcyclists to maneuver quickly and unexpectedly into blind spots.

Motorcyclists should be aware of the value of high visibility. Headlights on in the daytime, bright motorcycle colors and clothing, and even bicycle-type pennants will increase their visibility. In many cases, a few seconds earlier notice could prevent accidents.

Other vehicle drivers must be aware of the motorcylists problems and keep a special watch out for them, as well as for other vehicles and pedestrians. Courtesy in honoring motorcyclists right-of-way would also reduce accidents. Traffic density is still on the increase in Idaho and is a general problem to be addressed with improved roadways, law enforcement, alternative means of travel, and public education, to cite a very few. The other factors, being based upon human behavior, lend themselves well to increased public information efforts.

RECOMMENDATION 7 - A public information program should be designed to stress motorcycle visibility, driver awareness of motorcyclist rights and problems, and motorcycle defensive driving. (This is not to exclude other problems. For example, a billboard stressing motorcycle visibility could include pedacyclist, pedestrian and even small car visibility.) Human interest news coverage of victims whose life patterns were severely altered as a result of motorcycle injuries could be very effective. Since these factors are common to all states, this program should be implemented with the national safety effort.

ADDITIONAL COMMENTS

The additional comments were listed on the assumption that they might have value since the respondents took the time and effort to volunteer them. The high incidence of involvement of other vehicle drivers as factors in accidents is significant and points out a driver attitude and motorcycle visibility problem.

The small number of motorcycle injury victims who indicated that they were through with motorcycling, especially in traffic, is significant. Several respondents were obviously not going to be motorcycling for a while due to injuries and still others may have quit motorcycling but didn't volunteer the information. Even so, the large number who apparently continued motorcycling after the accident indicates the obvious attraction of motorcycling and the estimated future growth of motorcyclists in the driving population.

Some complaints of motorcyclists indicate that they feel that motorcycles are too often viewed as an eccentric fad in transportation by other drivers, law enforcement officers, roadway and traffic sign designers, and the general public. Insurance costs due to increased exposure of motorcyclists to traffic citations are also an irritant.

In view of increasing traffic congestion, parking problems, fuel economy, and overall cost per mile of operation, motorcycles can be expected to play an increased role in Idaho transportation, and this role should be accepted and welcomed by everyone involved in transportation.

RECOMMENDATION 8 - The unique nature of motorcycles and the problems of motorcyclists should be given increased consideration in all traffic planning and roadway design.

FINAL OBSERVATIONS

The thirty-five percent response that was achieved in this survey is far better than most mail surveys could expect, but this was to a universe especially selected for presumed interest in the subject matter. All projections in this study onto populations other than the 193 respondents must be accepted with the realization that 345 similarly experienced motorcyclists did not respond. There is always the possibility that resentment to authority or repression of a traumatic accident memory may have influenced some to decline response. Indifference must account for much of the response lack The reasons why people fail to respond to mail surveys are beyond the scope of this study. On the assumption that people will go to more effort to oppose something that they dislike than they will to support something that they agree with, it can be surmised that the small percentage who were strongly opposed to the mandatory helmet law are more heavily represented in the respondents than in the surveyed universe.

It is further significant that many of the complimentary comments that were voluntarily written on the survey form were from respondents who were strongly against the mandatory helmet law and appreciated the opportunity to be heard. Any opponents of the helmet law in the non-respondent group evidently were not strongly opposed enough to respond.

The similar percentage response for all three injury severity code populations, age and experience range, and the variety of answers all point to the very high probability that this was a representative survey.

REFERENCES

This study was initiated after reference to a multitude of studies on the several safety aspects of motorcycles. It was determined that, in addition to Idaho data, a study was needed in the literature that included data from motorcyclists who had survived a motorcycle injury accident. During the design of the survey in early 1975, the Nebraska study, which had surveyed a very similar population, was received. For this reason, the Nebraska study is used in some comparisons.

The sources specifically referred to in the study are listed with their reference name as used in the study.

REFERENCE

1. *The Protective Value of Contemporary Motorcycle Helmets in the Prevention of Head Injuries*, University of Ottawa, Department of Mechanical Engineering, James A. Newman, May 1974.

2. *A Study of Motorcycle Traffic Accidents in Nebraska*, State of Nebraska, Department of Roads, Safety Division, January 1975.

3. *Field of View With and Without Motorcycle Helmets*, National Highway Safety Administration Technical Report DOT-HS-801-758, U.S. Department of Transportation Research and Development, Safety Research Laboratory, October 1975.

4. *Effect of Safety Helmets on Auditory Capability*, DOT-HS-801-759, U.S. Department of Transportation, Research and Development, Safety Research Laboratory, September 1975.

5. *Public Reaction to Motorcycle Regulations*, State of Wisconsin, Department of Motor Vehicles, Bureau of Highway Safety Promotion, undated but subject matter was legislation passed by the 1967 legislature.

A STUDY OF IDAHO MOTORCYCLISTS INJURED IN 1974

APPENDIX A

SURVEY FORM AND COVER LETTER

MOTORCYCLE SURVEY FORM

PLEASE DO NOT PUT YOUR NAME ON THIS FORM. CHECK OR FILL IN THE BLANKS.

AT THE TIME OF THE ACCIDENT:

1. I was _____ years old. _____ MALE _____ FEMALE
2. I had been driving a motorcycle for _____ years, _____ months.
3. (If answer to 2 was 1 month or less) This was my _____ time driving.
4. (If answer to 2 was 1 year or more) My estimated annual mileage is _____
5. I belonged to a motorcycle club. _____ YES _____ NO
6. I had taken a motorcycle training course. _____ YES _____ NO
7. Accident data:

_____ Month	_____ Daylight	_____ In town
_____ Day of Week	_____ Night	_____ Rural
	_____ Dusk or Dawn	

8. Type accident was:

_____ Single Motorcycle _____ Motorcycle/Car, Truck

_____ Motorcycle/Motorcycle _____ Other

9. Estimated dollar value damage to my motorcycle was $ _____
10. Estimated total number of days lost from work, school, or similar activity _____
11. Estimated total dollar value of the medical attention that I required as a result of the accident (In other words, how much it would cost someone who had to pay for all medical attention?) $ _____
12. My major injury/injuries: _____ head _____ neck _____ arm

_____ leg _____ torso _____ internal

13. I was wearing a helmet at the time of the accident.

_____ NO	_____ YES
I believe that the helmet would have:	I believe that the helmet:
_____ reduced injury	a. _____ reduced injury
_____ had no effect	_____ had no effect
_____ aggravated injury	_____ aggravated injury
	b. _____ contributed to accident by interfering with _____ vision

CONTINUED ON BACK OF SHEET

WRITE IN ANY COMMENTS THAT YOU HAVE ON THE FOLLOWING:

14. Mandatory motorcycle helmet law:

15. Motorcycle license law:

    a. Written exam:

    b. Off-road driving exam:

    c. Traffic driving exam:

16. Eye protection required by law:

17. Rear view mirror required by law:

18. Motorcycle training courses:

19. The experience of my accident changed my opinion on the subjects in questions 14 through 18.

	YES	NO
Helmet law:	_____	_____
License law;	_____	_____
Eye Protection law:	_____	_____
Rear view mirror law:	_____	_____
Motorcycle training courses:	_____	_____

20. Add any other comments that you wish:

FOR VALIDITY, RETURN MUST BE POSTMARKED NO LATER THAN 9-18-75. THANK YOU VERY MUCH FOR YOUR COOPERATION. PLEASE MAIL THIS FORM TO:

Idaho Traffic Safety Commission
Statehouse
Boise, ID 83720

STATE OF IDAHO

TRANSPORTATION DEPARTMENT STATEHOUSE BOISE, IDAHO 83720

September 5, 1975

The Idaho Traffic Safety Commission is vitally interested in getting a few facts and opinions from people who were involved in motorcycle injury accidents in 1974. Enclosed is a brief survey form and a stamped, self-addressed envelope for your convenience in returning the form.

The information that you provide will be completely separated from identification of you as an individual. The data will be part of a pool of information from hundreds of people. Your name has been used only to mail the survey form. Since we have no tie-in between your survey form and the accident report, we are asking for some data that could be obtained from the accident report form.

We are interested in as frank and correct information as you can furnish. Do not feel that the survey form is limiting your response. You can add any information or comments that you desire. The purpose of the designed form is to make your response convenient to you and not to try to direct your answers. While you may feel that you have little information to offer, be assured that your input, when merged with hundreds of others, will be of value to motorcycle safety and motorcycling in general.

We would greatly appreciate your participation in this project. Any additional information or opinions that you may have on this subject will also be welcome.

Due to statistical considerations, a prompt reply is essential for the survey to be valid. Your reply must be postmarked no later than the date marked at the end of the survey form.

Thank you.

Sincerely,

Pat Ehrlich

Pat Ehrlich
Administrator
Idaho Traffic Safety Commission

Reference to NHTSA Technical Note
DOT HS-801 137

A Motorcycle Safety Helmet Study

Safety Helmet Effectiveness 10

A comparison between head injury sustained by safety helmet users and nonusers in traffic accidents in rural areas of Illinois, on the basis of a standard accident speed for both groups of riders, revealed the following:

1. In general, when helmets were not used, fatal or serious head injury was 3 times greater and head injury of all types was twice as great.
2. Helmets dislodged from the rider's head during the course of an accident did not reduce head injury and helmets damaged by cracking or splitting during impact were only slightly effective in that fatal or serious head injury was reduced by only 20% over non-helmeted riders. As expected, helmets that had not been damaged or ejected proved the most effective.
3. Helmets significantly reduced head injury in all three of the accident speed ranges considered: 60% for speeds up to 30 mph, 52% for speeds between 31-50 mph, and 51% for speeds over 50 mph. However, these differences in helmet effectiveness were not significant and helmets were equally effective in all three speed ranges.
4. Helmets significantly reduced head injury at both seat positions on the motorcycle, 68% for passengers and 52% for operators, but the difference in helmet effectiveness between the two positions was not significant.
5. Helmets significantly reduced head injury in accidents involving either noncollision (by 57%) or collision (by 50%), but the difference in helmet effectiveness between the two types of accidents was not significant.

Reference to NHTSA Technical Note
DOT HS-801 836

Motorcycle Safety- The Case for Helmet Use

Motorcycle helmets do not increase incidence of neck injury in accidents.

It has been suggested that helmet use increases the incidence of fatal neck injury in motorcycle crashes (using data from a 1969 statistical analysis of motorcycle accidents in New York).[13] Actually, the incidence of neck injury in motorcycle accidents during 1966 and 1967 involved any type of neck injury, and most of these involved only complaints of pain with no visible signs of injury. Studies done recently in Nebraska,[14] California and Canada[15] show that the incidence of neck injury of any type occurs in less than two percent of all motorcycle crashes.

Motorcyclists have been wearing safety helmets for more than 30 years, and during this period a number of studies of injury patterns in motorcycle accident have been made. None support the claim that helmets increase fatal neck injuries. The neck injury issue has been used in opposition to helmet laws as an attempt to exploit a peripheral issue on which there is not a great deal of valid data. Consequently, the problem has been magnified far out of proportion.

In order to provide conclusive evidence which will resolve the issue once and for all, the University of California and the Los Angeles County Medical Examiner's Office, under contract with the NHTSA, are now undertaking in-depth analysis of all fatal motorcycle crashes in Los Angeles County. Post mortem examination of each helmeted and unhelmeted rider will be made to document the incidence of neck injury in each group. The results of these analyses will provide authoritative resolution of the neck injury issue.

Mandatory helmet use laws reduce the number of serious head injuries and fatalities resulting from motorcycle accidents.

It is a logical conclusion that if a mandatory helmet use law is passed, more people will wear helmets, and consequently fewer fatalities and fatal injuries will occur in motorcycle accidents. Researchers have tried to verify this by comparing motorcycle fatalities and head injuries before and after implementation of a mandatory helmet use law. Of particular interest is a Brisbane, Australia report[16] which utilized three groups -- one sample done before implementation of a helmet use law, and two samples done in the two years immediately following. This study found (see Table IV) (a) that a significant increase in helmet use by motorcyclists involved in accidents (as expected) and (b) a significant decrease in head injuries in the post-legislation group.

IV. Summary and Conclusion

In general, motorcycle helmet visual restrictions were smaller along the horizontal plane as compared to the vertical planes. The full coverage helmets produced relatively small reduction in the entire field of view. As expected, the full facial coverage helmets resulted in somewhat larger reductions. The two styles of full facial coverage helmets yielded significantly different fields of view. Goggles produced approximately the same lateral visual field as the most restricted helmet.

With regard to restriction of the total field of view in the horizontal plane, it can be concluded that full coverage helmets (the most common type in use) provide only minor restrictions, less than 3 percent from that of an unhelmeted person. The full facial coverage helmets designed to comply with the lateral vision requirements of the ANSI Z90.1 standard and FMVSS No. 218 provided a restriction in lateral vision only marginally more than the full coverage helmets (7.3 percent). The "worst case" helmet provided a restriction of 21.9 percent from the unhelmeted lateral field.

All helmets tested exceeded the maximum State licensing requirements of 140° total "peripheral" view in the horizontal plane. Also, all helmets were in general compliance (especially visual regulations) with DOT standards. Therefore, helmet selection in terms of acceptable visual field, appears to be a matter of personal preferance among the many available styles.

Reference to NHTSA Technical Note
DOT HS-801 759

Effect of Safety Helmets on Auditory Capability

SUMMARY

Wearing a protective helmet has little to do with whether or not a motorcycle driver will hear a particular sound of interest to him or her. While it is true that safety helmets do attenuate external sounds, the amount of such attenuation is inconsequential, even when coupled with the amount of age-related hearing loss that normally occurs with age. The major determiner of whether a given sound will be heard is the ratio between the intensity of that sound and the intensity of the masking noise generated by the motorcycle (i.e., the signal-to-noise ratio). Safety helmets have an inconsequential effect because they reduce the loudness of both the sound of interest and the motorcycle noise by an equal amount and hence do not alter the signal-to-noise ratio between the two. A helmeted motorcycle rider can hear a sound of interest approximately as well as a person in an automobile with the windows closed.

IDAHO STUDY

SUMMARY OF STUDY FINDINGS

This summary is for the benefit of those who are more interested in survey results than in detailed analysis. All findings are substantiated in the body of the study.

1. There were 7.67 motorcyclists strongly in support of the mandatory helmet law for every 1 strongly opposed to the law.

2. Of motorcyclists who commented on the mandatory helmet law, 77.3% were in favor of the law.

3. Of motorcyclists who wore helmets, 84.7% indicated that the helmet reduced injury and 8.7% voluntarily added that it saved their lives.

4. Neck injuries were very rare in the severity A (incapacitating) injuries.

5. Over half of the respondents were at least twenty years old.

6. Motorcyclists over 35 years old comprised 20.7% of the respondents.

7. A few motorcyclists (2.6%) had less than one month motorcycling experience, but 75.6% had more than one year motorcycling experience.

8. Analysis of medical costs and days lost by severity code indicates that the injury severity codes marked by investigating officers are accurate indications of injury severity.

9. The opinion survey was favorable to motorcycle licensing with written and traffic exams, but not favorable toward off-road driving exams.

10. The opinion survey was favorable toward motorcycle training courses, with reservations on funding and administration.

11. The opinion survey supported the importance of eye protection but was not favorable toward a law requiring full-time eye protection.

12. Annual motorcycle mileage estimates varied greatly with an average somewhere between 3500 and 4500 miles per year.

13. Single motorcycle accidents predominately occurred in rural areas during daylight hours, while motorcycle accidents involving a car or truck occurred mostly in urban areas during daylight hours.

14. There was a marked difference in urban and rural accidents by injury severity type. Over half of the A injury severity accidents occurred in rural areas, while B and C injury severity accidents occurred mostly in urban areas.

15. Automobile driver awareness of and courtesy toward motorcyclists was determined to be the primary single factor in motorcycle collisions.

SB

670

"An Act relating to the number of superior court judges; and providing for an effective date."

COMMITTEE REPORT

3/22/76 HOUSE FINANCE

Mr. Speaker: Date April 29, 1976

The Committee on JUDICIARY has had SB 670

under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(✓) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Terry Gardner	No Rec	Adelman DO PASS
		[illegible]
Speaker	" "	

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Terry Gardner Chairman

THE LEGISLATURE OF THE STATE OF ALASKA
FISCAL NOTE
Second Session - Ninth Legislature

I. REQUEST
Bill No. HCS for S.B. 670
Title: Number of Superior Court Judges
Requested by: Legislative Finance Date:
Return Date Requested:
Agency: Alaska Court System Program:

II. FISCAL DETAIL
Budget Request Unit(s) Affected: Alaska Court System

A. EXPENDITURES: (Thousands of dollars)

	OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100	PERSONAL SERVICES		95.9	95.9	95.9	95.9	95.9
200	TRAVEL						
300	CONTRACTUAL		2.0	2.0	2.0	2.0	2.0
400	COMMODITIES		1.0	1.0	1.0	1.0	1.0
500	EQUIPMENT		37.0				
600	LAND & STRUCTURES		52.0				
700	GRANTS, CLAIMS, ETC.						
	TOTAL		187.9	98.9	98.9	98.9	98.9

B. FUNDING: (Thousands of dollars)

GENERAL FUND		187.9	98.9	98.9	98.9	98.9
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	/	3 /	3 /	3 /	3 /	3 /
MAN MONTHS (P./T.)	/	/	/	/	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

House Comm[illegible] Substitute for Senate Bill 670 increases the number of Superior C[illegible] judges in the state by two. The Superior Court judge position in Sitka will replace the existing District Court Judge position there. Therefore, the additional cost of this judgeship is the difference between the salary of Superior and District Court judges, or $7,500/year.

The Superior Court judge position in Fairbanks is a new position and will require the creation of three new permanent positions - judge, secretary, and in-court clerk. The total personnel services cost of these positions is $88,400/year. These new positions will need
(see attached page)

IV. ATTACHMENTS

V. DATE: PREPARED BY: [signature]

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

H/S 50

furniture, including desks, chairs, typewriters, bookcases, filing cabinets, and other office equipment. The one-time cost of this equipment is $8,000. Also, an additional $1,000/year for commodities and $2,000/year for contractual expenses (phone, postage, equipment rental, etc.) will be needed in support of the 3 new positions.

The additional Superior Court judge will need a new courtroom if he is to be used most effectively. Since the Fairbanks court building is being remodeled at the present time, an additional Superior Court courtroom can be included at a minimum of expense. The major expense items will be the construction of a judge's bench, witness box, in-court clerk area and jury box, plus electrical and ventilation changes and carpeting, all of which would cost approximately $52,000. In addition to these structual changes or additions, the courtroom must be equipped with spectator seating, jury seating, counsel tables and chairs, and recording equipment. This equipment expense will total $29,000. The remodeling and equipment experse items are one-time costs and do not increase the ongoing operational cost of the facility.

THE LEGISLATURE OF THE STATE OF ALASKA
FISCAL NOTE
Second Session - Ninth Legislature

I. REQUEST
Bill No. HCS for S.B. 670
Title: Number of Superior Court Judges
Requested by: Legislative Finance Date:
Return Date Requested:
Agency: Alaska Court System Program:

II. FISCAL DETAIL
Budget Request Unit(s) Affected: Alaska Court System

A. EXPENDITURES: (Thousands of dollars)

	OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100	PERSONAL SERVICES		95.9	95.9	95.9	95.9	95.9
200	TRAVEL						
300	CONTRACTUAL		2.0	2.0	2.0	2.0	2.0
400	COMMODITIES		1.0	1.0	1.0	1.0	1.0
500	EQUIPMENT		8.0				
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL		106.9	98.9	98.9	98.9	98.9

B. FUNDING: (Thousands of dollars)

GENERAL FUND		106.9	98.9	98.9	98.9	98.9
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	/	3/	3/	3 /	3 /	3 /
MAN MONTHS (P./T.)	/	/	/	/	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

House Committee Substitute for Senate Bill 670 increases the number of Superior Court judges in the state by two. The Superior Court judge position in Sitka will replace the existing District Court judge position there. Therefore, the additional cost of this judgeship is the difference between the salary of Superior and District Court judges, or $7,500/year.

The Superior Court judge position in Fairbanks is a new position and will require the creation of three new permanent positions - judge, secretary, and in-court clerk. The total personnel services cost of these positions is $88,400/year. These new positions will need furniture, including desks, chairs, typewriters, bookcases,

IV. ATTACHMENTS (see attached page)

V. DATE: PREPARED BY:

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

H/S 50

FISCAL NOTE

HCS for S.B. 670

filing cabinets and other office equipment. The one-time cost of this equipment is $8,000. Also, an additional $1,000/year for commodities and $2,000/year of contractual expenses (phone, postage, equipment rental, etc.) will be needed in support of the 3 new positions.

For the immediate future the Fairbanks Court can absorb a fourth Superior Court judge without adding a courtroom. Since Fairbanks is responsible for providing judicial coverage to Barrow and other rural locations in the fourth district, one judge is frequently on travel status. Also, vacation schedules and sick leave further reduce the number of days when all four judges would be holding court. When these days do occur, the Federal Court in Fairbanks has agreed to the use of its courtroom for the trying of state cases. In future capital planning for Fairbanks, four superior court courtrooms will be included. But for the present time, the court can manage with the three existing courtrooms.

This following letter was sent to each of the following candidates:

Mr. Geoffrey G. Currall
415 Main St., Room 304
Ketchikan, Alaska 99901

Mr. Stephen R. Cline
950 Cowles St., Rm. 120
Fairbanks, Alaska 99701

Mr. John Bosshard, III
P. O. Box 131
Sitka, Alaska 99835

Mr. George L. Gucker
320 Bawden, Suite 318
Ketchikan, Alaska 99901

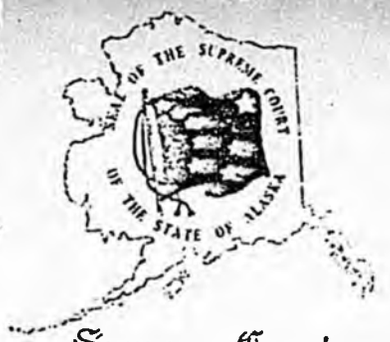
Mr. Peter S. Hallgren
Breast Island
P. O. Box 1203
Sitka, Alaska 99835

Mr. Thomas F. Keever
Suite 210, Nerland Buildi
532 Third Avenue
Fairbanks, Alaska 99701

Mr. Edward A. Stahla
P. O. Box 161
Ketchikan, Alaska 99901

Mr. Robin L. Taylor
Jernberg & Taylor
111 Stedman
P. O. Box 1769
Ketchikan, Alaska 99901

Mr. Richard Whittaker
P. O. Box 13
Ketchikan, Alaska 9990?



Supreme Court

State of Alaska

December 26, 1975

CHIEF JUSTICE
ROBERT BOOCHEVER

JUSTICES
JAY A. RABINOWITZ
ROGER G. CONNOR
ROBERT C. ERWIN
EDMOND W. BURKE

POUCH U
STATE COURT AND OFFICE BUILDING
JUNEAU, ALASKA
99811

907-465-3410

Mr. John Bosshard, III
P. O. Box 131
Sitka, Alaska 99835

Dear Mr. Bosshard:

You doubtlessly have been informed by Mr. Rubinstein that the Supreme Court with the concurrence of the Judicial Council has decided to postpone appointment of a permanent district judge at Sitka. Recently, the Sitka Bar Association has advanced a proposal for a superior court judge in lieu of the district court judge. Since if a permanent district court judge is appointed, it will not be feasible to consider a change for a period of at least several years, we decided to defer such a permanent appointment until the Judicial Council has completed hearings at Sitka and the legislature has had the opportunity of considering the designation of an additional superior court judge for the First Judicial District.

In making this decision, we were very cognizant of the inconvenience that this change causes the applicants. There will be an acting district judge appointed to serve in Sitka until such time as a final decision is made with reference to the designation of a superior court judge and a permanent appointment of either a superior or district court judge is completed. If you are interested in applying for the acting district judgeship, please advise and we will transmit the papers that you have submitted to Judge Thomas B. Stewart, Presiding Judge of the First Judicial District, who has the authority to make the appointment. Also, if it is decided to create the superior court judgeship and if you decide to apply for that position, the papers which you have previously submitted will be kept on file and can be utilized if you so desire.

We have advised the Alaska Bar association to withhold tabulation of the bar poll so that no candidate will be adversely affected in that regard. Again, please accept my sincere apologies for this change in plans and my thanks to you for your interest in applying for the position.

Sincerely yours,

Robert Boochever

Robert Boochever
Chief Justice

cc: Michael Rubinstein

Introduced: 2/17/76
Referred: Judiciary and Finance

IN THE SENATE BY THE JUDICIARY COMMITTEE

CS SENATE BILL NO. 670

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the number of superior court judges; and providing for an effective date."

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

* Section 1. AS 22.10.120 is amended to read:

Sec. 22.10.120. NUMBER OF JUDGES. The superior court consists of 18 [17] judges, four [THREE] of whom shall be judges in the first judicial district, one of whom shall be judge in the second judicial district, ten of whom shall be judges in the third judicial district, and three [four] of whom shall be judges in the fourth judicial district. At the time of submitting the names of nominees to the governor to fill a vacancy on the superior court bench, the judicial council shall also designate the district in which the appointee is to reside and serve.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.10.-070(c).

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#

Rick,

On the Sitka Judge bill
Need some history & documents.
I want to drag the judicial
Council & the Supreme Court
over the coals on their handling
of the whole thing. Need:

1. Dates of advertisement for
both sup & district seats
2. lists of who applied
3. when was decision made
by both supremes & Council
to change approach
4. When were applicants notified
5. Jud Council hearing in Sitka

Get any documents involved

Alaska Court System
State of Alaska
303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274-8611

April 27, 1976

The Honorable Terry Gardiner
Chairman, House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Reference: Senate Bill 670 (Relating to the number of Superior Court Judges)

Dear Representative Gardiner:

Senate Bill 670, which would increase the number of Superior Court judges in the First Judicial District from three to four, is now in your Committee. We have just received an urgent request from the Presiding Judge of the Fourth Judicial District to seek immediate legislative authorization for an additional Superior Court judge for Fairbanks. After analyzing available statistical data on caseloads and trial rates, we believe this request is both reasonable and necessary. We would therefore ask that your Committee consider adopting a committee substitute for Senate Bill 670 that would also increase the number of Superior Court judges in the Fourth District from three to four.

We realize that this request comes rather late in the session. Although we have been aware of the dramatic increases in case filings in the Fairbanks Superior Court in recent years, it has only been during the first few months of this year that the number of trials has increased to the point that it is now clear that the workload in Fairbanks cannot continue to be handled effectively with existing judicial resources.

Our statistical data on caseloads goes back to January of 1972. The data for the years 1972 through 1975 and the projections for 1976 show a marked increase in case filings in the Fairbanks Superior Court. In 1972, 1631 cases were filed. Case filings for 1976 are expected to reach 3,174. This is an increase of 95 percent or nearly double in the space of five years. The 1975 case filings totaled 2,471, for an increase of 52 percent over filings for 1972.

It should be noted in analyzing these figures that the third Superior Court judge in Fairbanks was appointed in late 1970. Thus the heavy increases in case filings reflected by this date must be compared against the lack of any increase in judicial resources during the period covered. In addition, the percentage of cases going to trial, particularly felony cases, is also increasing steadily in the Fairbanks Superior Court. During the first six months of 1975, 14 percent of all felonies in Fairbanks went to trial; during the last six months of 1975, 17 percent went to trial; and by the end of the first six months of this year, 21 percent will have gone to trial. These figures do not even reflect the civil trials that must also be heard.

The disposition rate per judge in the Fairbanks Superior Court has been the highest of all Superior Court locations in the State. The number of case filings per Superior Court judge has also been higher in Fairbanks than in any other location. Further, the filing rate per judge in Fairbanks, with the addition of another Superior Court judge, will still be higher than the average for the Superior Courts statewide.

Clearly a certain amount of the increases in the workload in the Fairbanks Superior Court is attributable to pipeline impact. We do not believe it is realistic, however, to expect these caseloads to drop in any significant numbers even after the pipeline is in place. Civil cases accounted for 65 percent of all cases filed in 1975, and civil case filings increased 62 percent between 1972 and 1975. This rate of increase is expected to reach 124 percent by the end of 1976. Such factors as prepaid legal services, Native Land Claims, environmental disputes, and further resource development are not directly related to existing pipeline construction activity, and will undoubtedly continue to keep the civil caseloads close to or in excess of 1976 levels.

I have attached a copy of Senate Bill 670 with the requested additions noted on the copy, and will appreciate your consideration of the proposed changes. Please let me know if you wish to have additional information.

Sincerely,

Arthur H. Snowden, II
Administrative Director

Analysis of the Need for a Fourth Superior Court Judge in Fairbanks

Methodology: In previous studies of this nature, we have compared the court to be analyzed with the like type court that showed the highest rate of dispositons per judge per year. Our hypothesis was that if the evaluated court processed cases at the highest rate so far demonstrated throughout the State, then they would need X judges. This approach disintegrates when we evaluate the Fairbanks Superior Court since, as shown in Table 1, this court also has the highest disposition rate district wide throughout the State.

Table 1 - 1975

Dispositions per Judge per Year

Judicial District Including Service Areas	Felony	Civil	Children	Probate	Total
First (3 judges)	20.3	235.3	100.3	42.3	403.3
Second (1 judge)	27.0	58.0	105.0	30.0	222.0
Third (10 judges)	41.0	348.7	38.5	53.4	493.4
Fourth (3 judges)	46.3	385.3	110.0	30.0	583.0
Total (17 judges)	37.5	318.1	65.9	47.5	477.4

Since it doesn't make sense to compare Fairbanks Superior Court to itself, we shall utilize a different approach which shows:

1. trends in case acting at this court;
2. how the court now compares to other courts, and
3. factors which cannot be measured but should be considered.

Case Activity: Table 2 shows case activity for the Fairbanks Superior Court from 1972 through 1976. The 1976 figures were projected from the first two months experience.

Table 2

Fairbanks Superior Court Filings

Type of Case	1972	1973	1974	1975	1976*
Felonies	180	183	208	203	252
Civil	998	1015	1228	1614	2238
Childrens	203	185	253	420	462
Probate	224	237	227	214	210
Other	26	11	21	20	12
Total	1631	1631	1937	2471	3174

*Projected based on filings for January and February

We do not have hard data prior to 1972, but even assuming no growth in prior years, the increase in caseload has been substantial since the addition of the third Superior Court at Fairbanks. Table 3 summarizes this increase.

Table 3

Increase in Filings

Type of Case	Precent Increase 1972 through 1975	Estimated Increase 1975 through 1976
Felonies	13%	40%
Civil	62%	124%
Childrens	107%	128%
Probate	-4%	-6%
Other	-23%	-54%
Total	52%	95%

It is estimated that, by the end of 1976, filings will have almost doubled since 1972. Even if we discount estimated 1976 increases, filings for 1975 were half again as many as in 1972.

In addition, the felony trial rate for this court is increasing significantly as shown by Table 4.

Table 4

Felony Trial Rate

1st 6 months 1975	-14%	16% for all of 1975
2nd 6 months 1975	-17%	
1st 6 months 1976	-21%	

The 1975 Fairbanks trial rate of 16 percent compares with a statewide rate of ten percent and a rate of eight percent for the Anchorage

Superior Court.

Comparison with other Courts (Districts): In order to accommodate for intra-district travel and service area assignments, the remainder of this analyis stratifies data according to judicial district and service area responsibility, if any. Table 5 shows filings per judge for the four districts.

Table 5 - 1975

Filings per Judge per Year

Judicial District Including Service Areas	Felony	Civil	Children	Probate	Total
First (3 judges)	27.0	308.0	96.7	71.7	512.7
Second (1 judge)	33.0	93.0	75.0	56.0	266.0
Third (10 judges)	55.8	514.7	42.7	102.0	729.5
Fourth (3 judges)	67.7	538.0	140.0	71.3	823.7
Total (17 judges)	51.5	457.5	71.3	89.1	580.6

The Fourth Judicial District has the highest rate of filings per judge in every category but Probate. Since Probate matters require far less judge time than do other matters, we will exclude these filings from filing charts.

Table 6 shows what filings (minus probate) per judge would be with the current three and the proposed four judges in the Fourth Judicial District.

Table 6

Filings per Judge per Year
(Minus Probate)

Judicial District Including Service Areas	Three Judges in Fourth	Four Judges in Fourth
First	441.0	441.0
Second	210.0	210.0
Third	627.5	627.5
Fourth	752.4	584.5
Total	491.5	464.1

With four Fourth District judges, filings per judges for the dips below that of the third, but still remains substantially higher than for the other two districts.

One final factor needs to be considered. Each of the districts has a Presiding Judge who spends approximately half his time (probably closer to one-third in the Second) on administrative matters. This one-half a judge represents only five percent of the judges available (10) in the Third District, but 17 percent of the judges available in the First and Fourth districts. Table 7 adjusts the figures in Table 6 to reflect the greater impact of these administrative duties in smaller judge districts.

Table 7

Filings per Judge per Year (Minus Probate and adjusting for administrative duties of Presiding Judge*)

Judicial District Including Service Areas	Three Judges in Fourth	Four Judges in Fourth
First	528.0	528.0
Second	313.4	313.4
Third	660.5	660.5
Fourth	902.9	668.0
Total	550.8	516.6

*one-half time for one judge in all but Second where it is estimated to be one-third of one judge.

The data from this table shows that, were a fourth Superior Court judge added to the Fourth Judicial District, the filings per judges available would be approximately equal for the Third and Fourth districts.

Other Factors: The above data speaks to the addition of a fourth Superior Court judge to the Fourth Judicial District. However, there are two factors which might hedge upon such a recommendation: 1). Much of the filing increase shown in Table 2 is pipeline-related - how much we really don't know. Neither do we know what the effect will be upon the Fairbanks area when the pipeline is completed. Population and activity may stabilize, or it may decline. Caution should be exercised to ensure that we don't establish a permanent judicial structure geared to a temporary project stimulus. 2). Table 7 shows that activity in the Second Judicial District is less than half that in the Third and Fourth, even when we adjust the data to

account for administrative duties of the Presiding Judge. An alternative to a new judge would be to use Judge Sanders in Fairbanks on a scheduled, rather than demand basis. This would allow us to hedge against the considerations discussed in the first factor above.

Conclusions and Recommendations:

1. The Fairbanks Superior Court is experiencing more filings per judge and producing more dispositions per judge than any other Superior Court in the State.

2. Addition of a fourth Superior Court judge to the Fourth Judicial District would still keep filings per judge at a leading level. There is no reason to suspect that dispositions per judge would decrease.

3. The future activity of Fairbanks is uncertain and there is available judge time in the Second Judicial District to help alleviate Fairbanks' current problem.

Recommendation: Conclusions one and two above are hard facts; conclusion three is tentative. I recommend addition of a fourth Superior Court judge in the Fourth Judicial District.

CHILD SUPPORT AGENCY

Caseload and Collections
FY77

FY77 Caseload	AFDC Court System			URESA	TOTAL
Current Caseload	2,500	3,300		1,900	7,700
Less Duplications					
URESA W/Court		(600)		600	-----
AFDC W/Court		(500)	10%		(500)
TURNOVER	1,000	* 425	50% of 80% of yearly "orders"	500	1,925
FY77 Caseload	3,500	2,625		3,000	9,125
FY77 Collections					
Balance 7/1/76		1,700		600	2,300
Cases Processed - FY77	1,700	1,700		1,600	5,000
New Collections not requiring enforcement		* 425	50% of 80% of yearly "orders"		425
FY77 Collections	1,700	3,825		2,200	7,725

$Collected $15,360,000 (at $2,000 per case of 1.9 children per case x 7,725).

* The Court System has estimated that 80% of "orders" involving child support would go thru the agency. If 50% of this figure are collections with no enforcement, then one-half would require enforcement services.

THE LEGISLATURE OF THE STATE OF ALASKA
FISCAL NOTE
Second Session - Ninth Legislature

I. REQUEST
Bill No. HCS for S.B. 670
Title: Number of Superior Court Judges
Requested by: Legislative Finance Date:
Return Date Requested:
Agency: Alaska Court System Program:

II. FISCAL DETAIL
Budget Request Unit(s) Affected: Alaska Court System

A. EXPENDITURES: (Thousands of dollars)

	OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100	PERSONAL SERVICES		95.9	95.9	95.9	95.9	95.9
200	TRAVEL						
300	CONTRACTUAL		2.0	2.0	2.0	2.0	2.0
400	COMMODITIES		1.0	1.0	1.0	1.0	1.0
500	EQUIPMENT		37.0				
600	LAND & STRUCTURES		52.0				
700	GRANTS, CLAIMS, ETC.						
	TOTAL		187.9	98.9	98.9	98.9	98.9

B. FUNDING: (Thousands of dollars)

GENERAL FUND		187.9	98.9	98.9	98.9	98.9
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	/	3 /	3 /	3 /	3 /	3 /
MAN MONTHS (P./T.)	/	/	/	/	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

House Committee Substitute for Senate Bill 670 increases the number of Superior Court judges in the state by two. The Superior Court judge position in Sitka will replace the existing District Court Judge position there. Therefore, the additional cost of this judgeship is the difference between the salary of Superior and District Court judges, or $7,500/year.

The Superior Court judge position in Fairbanks is a new position and will require the creation of three new permanent positions - judge, secretary, and in-court clerk. The total personnel services cost of these positions is $88,400/year. These new positions will need

(see attached page)

IV. ATTACHMENTS

V. DATE: PREPARED BY:

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

furniture, including desks, chairs, typewriters, bookcases, filing cabinets, and other office equipment. The one-time cost of this equipment is $8,000. Also, an additional $1,000/year for commodities and $2,000/year for contractual expenses (phone, postage, equipment rental, etc.) will be needed in support of the 3 new positions.

The additional Superior Court judge will need a new courtroom if he is to be used most effectively. Since the Fairbanks court building is being remodeled at the present time, an additional Superior Court courtroom can be included at a minimum of expense. The major expense items will be the construction of a judge's bench, witness box, in-court clerk area and jury box, plus electrical and ventilation changes and carpeting, all of which would cost approximately $52,000. In addition to these structual changes or additions, the courtroom must be equipped with spectator seating, jury seating, counsel tables and chairs, and recording equipment. This equipment expense will total $29,000. The remodeling and equipment expense items are one-time costs and do not increase the ongoing operational cost of the facility.

V. DATE: _____ PREPARED BY: _____

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

H/S 50

THE LEGISLATURE OF THE STATE OF ALASKA
FISCAL NOTE
Second Session - Ninth Legislature

I. REQUEST
Bill No. HCS for S.B. 670
Title: Number of Superior Court Judges
Requested by: Legislative Finance Date:
Return Date Requested:
Agency: Alaska Court System Program:

II. FISCAL DETAIL
Budget Request Unit(s) Affected: Alaska Court System

A. EXPENDITURES: (Thousands of dollars)

	OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100	PERSONAL SERVICES		95.9	95.9	95.9	95.9	95.9
200	TRAVEL						
300	CONTRACTUAL		2.0	2.0	2.0	2.0	2.0
400	COMMODITIES		1.0	1.0	1.0	1.0	1.0
500	EQUIPMENT		8.0				
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL		106.9	98.9	98.9	98.9	98.9

B. FUNDING: (Thousands of dollars)

GENERAL FUND		106.9	98.9	98.9	98.9	98.9
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	/	3/	3/	3/	3/	3/
MAN MONTHS (P./T.)	/	/	/	/	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

House Committee Substitute for Senate Bill 670 increases the number of Superior Court judges in the state by two. The Superior Court judge position in Sitka will replace the existing District Court judge position there. Therefore, the additional cost of this judgeship is the difference between the salary of Superior and District Court judges, or $7,500/year.

The Superior Court judge position in Fairbanks is a new position and will require the creation of three new permanent positions - judge, secretary, and in-court clerk. The total personnel services cost of these positions is $88,400/year. These new positions will need furniture, including desks, chairs, typewriters, bookcases,

IV. ATTACHMENTS (see attached page)

V. DATE: PREPARED BY:

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

H/S 50

filing cabinets and other office equipment. The one-time cost of this equipment is $8,000. Also, an additional $1,000/year for commodities and $2,000/year of contractual expenses (phone, postage, equipment rental, etc.) will be needed in support of the 3 new positions.

For the immediate future the Fairbanks Court can absorb a fourth Superior Court judge without adding a courtroom. Since Fairbanks is responsible for providing judicial coverage to Barrow and other rural locations in the fourth district, one judge is frequently on travel status. Also, vacation schedules and sick leave further reduce the number of days when all four judges would be holding court. When these days do occur, the Federal Court in Fairbanks has agreed to the use of its courtroom for the trying of state cases. In future capital planning for Fairbanks, four superior court courtrooms will be included. But for the present time, the court can manage with the three existing courtrooms.

Supreme Court

State of Alaska

CHIEF JUSTICE
ROBERT BOOCHEVER

JUSTICES
JAY A. RABINOWITZ
ROGER G. CONNOR
ROBERT C. ERWIN
EDMOND W. BURKE

March 3, 1976

POUCH U
STATE COURT AND OFFICE BUILDING
JUNEAU, ALASKA
99811
907-465-3410

The Hon. Bill Ray, Chairman
Senate Finance Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Re: SB 670

Dear Senator Ray:

I am in receipt of a letter from Senator Ziegler advising me that you were under the impression that I do not favor SB 670 which would create a new superior court position for the First Judicial District. The purpose of the legislation, as you know, is to authorize the appointment of a superior court judge to reside at Sitka in place of the district court judge now authorized.

When Judge Carlson received the appointment to the Third Judicial District and applications were solicited for his replacement, some members of the Sitka bar and municipal government advocated the location of a superior court judge at Sitka in addition to the district court judge residing there. This would, in effect, place the third Southeastern superior court judge at Sitka in the same manner that was attempted when Judge Carlson was initially appointed. There just was not enough work for two judges at Sitka, and there was urgent work for an additional superior court judge at Juneau and assisting in other areas of the state. I therefore did not support the concept of the third superior court judge residing at Sitka in addition to a district court judge resident there.

Subsequently, the suggestion was made to have a superior court judge at Sitka in lieu of the district court judge and as an additional superior court judge for the

First Judicial District. The Judicial Council held well attended hearings in Sitka on this matter, and the proposal was strongly endorsed by practically everybody attending the meeting. The Judicial Council endorsed the concept of an additional First Judicial District superior court judge to reside at Sitka with the elimination of the district court position there. This position was also endorsed by the Supreme Court with Justice Erwin dissenting.

I firmly believe that the additional superior court judge for the First Judicial District to reside at Sitka will result in improved judicial service and should either involve little additional expense to the state or possibly even result in a savings. A savings may be possible by elimination of a clerical position at Sitka which was required when two judges were serving the City coupled with the elimination of the travel time of the superior court judges who resided elsewhere and were required to travel to Sitka at regular intervals.

I hope that this letter clarifies my position on the matter, and I regret if there has been any confusion based on the prior history. Thank you for your consideration of the request for an additional superior court judge.

Sincerely yours,

Bob Boochever

Robert Boochever
Chief Justice

cc: Senator Robert H. Ziegler, Sr.
Senator Pete Meland
Mr. Arthur H. Snowden, II

Alaska Court System
State of Alaska
303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274-8611

February 3, 1976

Honorable Robert H. Ziegler, Sr.
Chairman, Senate Judiciary Committee
Pouch V
Juneai, AK 99811

Re: Sitka Superior Court

Dear Senator Ziegler:

Recently the Alaska Court System requested the introduction of a Bill to increase the number of Superior Court Judges in the First Judicial District from three to four. The purpose of the legislation is to authorize the appointment of a Superior Court Judge to reside in Sitka in place of the District Court Judge now authorized.

As you know, the Supreme Court has asked the Judicial Council not to proceed with the nomination process for filling the present vacancy in the Sitka District Court. Rather than filling this vacancy, the Supreme Court would like to leave unfilled the Sitka District Court judgeship and instead obtain authorization from the Legislature for the appointment of a Superior Court Judge for Sitka to handle both Superior and District Court matters. After reviewing the relative Superior Court and District Court workloads in Sitka, the Supreme Court came to the conclusion that upgrading the position from a District to a Superior Court judgeship would result in much better utilization of judicial manpower not only in Sitka, but throughout the First Judicial District.

The Superior Court workload in Sitka is now three times that of the District Court, based on case filings in Sitka and the present disposition rate in the First District for both Superior and District Courts. Because of this workload, the Court System spent nearly $4,500 in 1975 to send Superior Court Judges from Juneau and Ketchikan to Sitka. In addition to the travel costs involved, these trips to Sitka took the Juneau and Ketchikan Judges away from necessary duties in those communities. We estimate that a Superior Court Judge residing in Sitka could dispose of all Superior Court and District Court matters and still have time remaining to provide additional services throughout Southeast Alaska, as needed.

Early in the tenure of Sitka's first Superior Court Judge, it became evident that Juneau's Superior Court caseload was heavy enough to require two Judges much of the time. Because Sitka then had a resident District Court Judge, the Superior Court Judge did not need to be there full time, but was able to handle Sitka's Superior Court matters by traveling there about twice a month. This arrangement resulted in an underutilization of the District Court Judge, and in some inconvenience to Sitka litigants, whose Superior Court matters could only be heard at designated times during the month.

We believe that judicial services to Sitka and the rest of Southeast Alaska can be greatly improved with little extra cost by having a single general jurisdiction Judge permanently assigned to Sitka. Although our efforts toward developing a measure for the need for additional Judges have not yet produced a method that is completely accurate or satisfactory, our rough estimates indicate that if the Superior Court in the First District is going to maintain the same rate of dispositions per year that it achieved in 1974, it now requires 3.8 Superior Court Judges. Throughout the State, the need for inter-district judicial help is overwhelmingly greater for Superior Court matters than for District Court matters. While the Court System has had to utilize one of the Juneau Superior Court Judges fairly extensively to provide necessary service in other locations in the State, it appears from our figures on First District workloads that if the number of Superior Court Judges remains at three, this practice will become less and less feasible as judicial business in the First District increases.

The difference in salary between a Superior Court Judge and a District Court Judge is about $7,000. With Superior Court travel to Sitka costing $4,500 per year, the cost of upgrading the position will be only about $2,500. It is impossible, of course, to place a dollar value upon increased convenience to Sitka residents, but we believe that these benefits will more than outweigh the relatively small added cost.

I would appreciate very much your attention to this matter. If you would like additional information, please let me know.

Very truly yours,

Arthur H. Snowden, II

Arthur H. Snowden, II
Administrative Director

AHS/bd

LAY MEMBERS
KENNETH L. BRADY
LEW M. WILLIAMS, JR.
ROBERT H. MOSS

LAW MEMBERS
MICHAEL A. STEPOVICH
MICHAEL M. HOLMES
JOSEPH L. YOUNG

CHAIRMAN, EX OFFICIO
ROBERT BOOCHEVER
CHIEF JUSTICE
SUPREME COURT

Alaska Judicial Council

303 K STREET
ANCHORAGE, ALASKA
99501

EXECUTIVE DIRECTOR
MICHAEL L. RUBINSTEIN

April 19, 1976

Mr. Rick Svobodny
Administrative Assistant
Representative Terry Gardiner
House of Representatives
Pouch V
Juneau, Alaska 99801

Dear Rick:

I have Xeroxed for you the various documents from our files relating to the cancellation of the Sitka District Judgeship and the decision to request the legislative authorization for the new Superior Court position there. Please note I have also enclosed a copy of the minutes of the Public Hearing, following which the decision was finally reached.

I have also enclosed an extra copy of The Twentieth Century Fund report on Presumptive Sentencing, entitled "Fair and Certain Punishment".

Sincerely,

Michael L. Rubenstein

Enclosures

LAY MEMBERS
KENNETH L. BRADY
LEW M. WILLIAMS, JR.
ROBERT H. MOSS

LAW MEMBERS
MICHAEL A. STEPOVICH
MICHAEL M. HOLMES
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CHIEF JUSTICE
SUPREME COURT

Alaska Judicial Council

303 K STREET
ANCHORAGE, ALASKA
99501

EXECUTIVE DIRECTOR
MICHAEL L. RUBINSTEIN

October 23, 1975

Dear Member of the Alaska Bar Association:

A vacancy on the District Court bench in Sitka will be created effective December 15, 1975 by the resignation of Judge Roger DuBrock. Applications from qualified candidates are now being solicited for the position of District Court Judge in the First Judicial District at Sitka.

A District Court Judge must be a citizen of the United States and of the State, at least 21 years of age, a resident of the State for at least one year immediately preceding his appointment, and at the time of appointment be licensed to practice law in the State. The active practice of law is defined in AS 22.05.070. The annual salary of the office is $41,000. Special retirement benefits are provided in AS 22.25.010 et seq.

Interested persons should submit a resume of educational accomplishments, professional and other employment experiences, community activities and personal interests, the names and addresses of three references, and any other information that would assist the Council in evaluating qualifications. Applications should also include a statement from a physician assessing the physical capability of the applicant to perform the duties of a district court judge.

Applications must be received at the above address no later than the close of the business day, 4:30 p.m. on Monday, November 24, 1975.

Sincerely,

Robert Boochever/mb

Robert Boochever
Chairman, Ex Officio

LAY MEMBERS
KENNETH L. BRADY
LEW M. WILLIAMS, JR.
ROBERT H. MOSS

LAW MEMBERS
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CHAIRMAN, EX OFFICIO
ROBERT BOOCHEVER
CHIEF JUSTICE
SUPREME COURT

Alaska Judicial Council

303 K STREET
ANCHORAGE, ALASKA
99501

EXECUTIVE DIRECTOR
MICHAEL L. RUBINSTEIN

December 3, 1975

NEWS RELEASE

Ten applications have been received by the Alaska Judicial Council for the district court judgeship at Sitka a position recently created by the resignation of Judge Roger W. DuBrock, effective December 15, 1975. Applicants are: Thomas F. Keever, Stephen R. Cline, Richard Whittaker, Donald L. Craddick, John Bosshard III, Geoffrey G. Currall, Edward A. Stahla, Peter S. Hallgren. George L. Gucker and Robin L. Taylor.

According to Michael L. Rubinstein, Executive Director, the Alaska Judicial Council will receive comments in writing from any interested persons concerning either the judgeships or the applicants. Correspondence should be addressed to the Alaska Judicial Council, 303 'K' Street, Anchorage 99501.

The Alaska Judicial Council, a judicial nominating commission of three attorneys, three public members, and the Chief Justice of the Supreme Court, will meet on January 9, 1976 in Sitka to interview the district court applicants. The Council will then submit the names of two or more qualified applicants to the Governor, who in turn must exercise his appointment power within 45 days after receiving the nominations.

Sent to:

Anch. Times
Anch. Daily News
Fbx. News-Miner
Ketchikan News
Nome Nugget
Southeast Empire
Kodiak Mirror

COPY

LAY MEMBERS
KENNETH L. BRADY
LEW M. WILLIAMS, JR.
ROBERT H. MOSS
LAW MEMBERS
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MICHAEL M. HOLMES
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CHIEF JUSTICE
SUPREME COURT

Alaska Judicial Council
303 K STREET
ANCHORAGE, ALASKA
99501

EXECUTIVE DIRECTOR
MICHAEL L. RUBINSTEIN

MINUTES OF THE PUBLIC HEARING AND JUDICIAL COUNCIL MEETING JANUARY 9, 1976 (SITKA)

The meeting was called to order at 10:00 a.m. by Chief Justice Boochever. Beverly Cutler commenced delivering the summary of her report on Sentences of Five Years or Greater in Length. Ms. Cutler suspended the presentation of her report at 10:30 to allow for the commencement of the public hearing.

The Council first heard the testimony of Mr. Warren Christianson, President of the Sitka Bar Association and past President of the Alaska Bar Association. Mr. Christianson reported that the Sitka Bar Association had met and decided that it would be most advantageous for Sitka, for Southeast Alaska and for Alaska in general if in lieu of a district court judge to replace Judge DuBrock, the Council request statutory authorization for a single superior court judge to reside in Sitka who will conduct a court of general jurisdiction encompassing both district and superior court matters.

Mr. Christianson explained that at the present a superior court judge visited at Sitka for 1-1/2 to 2 days every two weeks, and that this was insufficient. As a result of the intermittent judicial service now being provided, attorneys do not have time to prepare orders for the judge's signature before he leaves Sitka, with the result that justice is often delayed to the prejudice of the people of that city. Mr. Christianson then commenced a discussion of the economics of the Sitka Bar Association's request. He pointed cut that by combining two courts under one, one clerical position could be eliminated as well as several items of office equipment. Additionally, he noted that there would be a reduction in money spent for travel and per diem. He stated that a combined superior court/district court judge would be able to keep busier in Sitka than could a single district court judge. Mr. Christianson noted two possibly negative effects of such a decision: (1) It would require new legislation, and (2) It would eliminate the intermediate appeal from district to superior court.

Mr. Stepovich noted at this point that the elimination of this intermediate appeal would cut down on the "percentages" of the individual citizen, especially in criminal cases. In other words, the right to appeal the decision of the district court judge up to the superior court would be lost if the trial is held in the first instance before a superior court judge. Mr. Rubinstein also noted that the right to "automatic" bail pending appeal likewise would be lost. Mr. Young pointed out the possibility of the superior court judge's

sitting as a district judge in misdemeanor cases or civil cases under the jurisdictional limit for the superior court. Chief Justice Boochever noted that there is nothing constitutional about the "double appeal", and he further noted that this situation was now accepted by the citizens of Kodiak. He also noted that the court system had previously undertaken studies concerning the institution of a single-level trial bench which would result in the elimination of a district court.

Chief Justice Boochever inquired of Mr. Christianson as to the number of attorneys in Sitka, and as to whether or not he believed that a well-qualified superior court judge would be kept professionally active and stimulated by the type of litigation generated in that city. Mr. Christianson said that the abilities of the applicants for the previously advertised district court position ought to go a long way in answering Chief Justice Boochever's questions. He pointed out that Anchorage had seven superior court judges to split the caseload in that city, whereas in Sitka one judge would handle the entire calendar. As a result, in Mr. Christianson's opinion the single judge in Sitka would have as interesting a caseload as any one of the seven judges in Anchorage. Mr. Williams expressed the fear that there were only two sorts of applicants who would likely apply for this superior court position: an applicant who wanted to travel, or an applicant who wanted to retire. Mr. Williams felt that this might be a real problem. Mr. Williams then asked Mr. Christianson

whether or not he intended to apply for the position himself were it to be created. Mr. Christianson said that although it was entirely possible, he was unprepared to commit himself at the moment. Chief Justice Boochever commented that Mr. Christianson sounded like a candidate for President of the United States.

The next person to give testimony at the hearing was former district judge Roger DuBrock. Judge DuBrock stated that he had been district judge at Sitka until recently and expressed the opinion that even if the superior and district court positions were combined the calendar would not be sufficiently busy to keep the judge completely active. Mr. Young pointed out that in Anchorage the ratio of judges to lawyers is one to thirty-five or forty, whereas in Sitka, the ratio would be only one to six. Mr. Young felt that there might be insufficient challenge to keep a well-qualified superior court judge professionally interested in working at Sitka. Judge DuBrock agreed with Mr. Young's view and stated that although he very much enjoyed living in Sitka and loved the town itself, at this point in his career he did not think that a superior court judgeship at Sitka would offer a great enough intellectual and professional challenge.

The next speaker was a member of the public who asked why the full Judicial Council was not represented at the public hearing since she noted the absence of Senator Bob Ziegler. This citizen offered a prayer for Divine guidance in the Judicial Council's quest for a suitable judicial candidate and exhorted the Council and the public

in attendance to pray for freedom, and for the United States of America. She said that of the various persons who had offered testimony at the hearing she most liked what Michael A. Stepovich had to say. She said that it was important that a judge should be picked "for the way he feels in his heart toward people".

The next person heard from was Ms. Barbara Lavalee who said she was a citizen interested in the administration of justice. Ms. Lavalee said that she was interested in the rights of the people in general, and not just for those people who commit crimes. Ms. Lavalee said that people who do not commit crimes also have rights. Further, she objected to the tenor of the preceding discussion in that she felt that a judge functioned to serve the public and that she did not think it was particularly relevant to inquire whether or not there were sufficient "interesting crimes" in Sitka to keep him intellectually stimulated. [Applause, cheers from audience.]

The next speaker was Mr. Cecil McClane, a member of the Chamber of Commerce and a supporter of the concept of a single superior/district judge. Mr. McClane said that Sitka's principle need was for "law and order" and that there was too much permissiveness in the judiciary. [Applause, cheers.]

The next speaker was Mr. Pete Hallgren who is now the city attorney at Sitka. Mr. Hallgren said that the statistics for misdemeanor cases in Sitka were somewhat

misleading because of their filing system under which they list OMVI's as "traffic". (In other reporting systems these cases are usually reflected as "misdemeanors" rather than "traffic".) Mr. Hallgren said that one of the principle problems Sitka was having was the absence of a district attorney. As a result the city prosecutor's office handles 90% of all crimes. A district attorney visits Sitka once every two weeks. Mr. Hallgren felt that there would be considerably more judicial and court activity if there were someone to prosecute cases for the State. Mr. Hallgren also said that whoever is appointed as a judge in Sitka would have to be familiar with the people of the town and their particular need.

The next speaker was Mr. Larry Kalvin who stated he was an interested citizen. Mr. Kalvin expressed the opinion that fines were much too small and that sentences were "back in the 1930's" in that they failed to take account of inflation. Mr. Kalvin also expressed the opinion that the prosecutors were too young and inexperienced, and that there was a very poor level of prosecution in general. He said that frequently judges takes the brunt of criticism for actions which more properly, should be attributed to failings on the part of district attorneys. Mr. Kalvin also expressed a concern for what he saw as insufficient sensitivity on the part of the court system to people who are called for jury duty. He cited the example of a person who was closely related to a party but who was nevertheless required to waste the entire day sitting around the courthouse before this determination was made.

Mr. Kalvin suggested that a local "judiciary council" be constituted in Sitka in order to deal with the judicial selection process and to recommend names to the Alaska Judicial Council. Mr. Kalvin thought that much of the bitterness and criticism directed toward the judiciary was a result of ignorance concerning the judicial process. He felt that such a citizens' panel, if properly constituted, could go a long way toward improving the relations between the judiciary and the public. Mr. Brady noted that the Judicial Council had previously taken a strong public position against two judges prior to their last retention elections but this had no apparent effect on the electorate. Mr. Williams stated that the probable reason for this apparent lack of effect was that the Judicial Council's position was not forcefully enough expressed. Mr. Williams noted that the reason for this was doubt as to whether existing legislation conferred the necessary authority on the Alaska Judicial Council. He explained that new legislation passed in the last session had increased the Judicial Council's power, and that the Council would in the future take a very strong and clear position concerning the qualifications of judges.

The next speaker was Ms. Brand Surry who stated that she was a social worker in Sitka and wished to express her approval and pleasure with the performance of Judges Stewart, Carlson and Schulz. She believed that all three of these judges were considerably superior to the judges in the Third Judicial District at Anchorage. Ms. Surry said there was a

problem, however, with provision of judicial services in that there were not enough judges in places like Petersburg and Sitka, and that frequently juvenile cases were prejudiced because a petition could not be filed timely due to the absence of a judge. She gave the example of a juvenile in Sitka who committed an additional serious crime in the intervening period between the preparation and filing of a pet tion.

The next speaker was Mr. Jerry Born who stated he was a mechanic and an interested citizen. Mr. Born said that his wife and sister had been beat up by a man in the park in Sitka on May 3rd. Mr. Born stated that the person who had beat his wife and sister received a $50 fine. In contrast, he noted that his boy received a fine for $75 for minor traffic violations. Mr. Born said that these experiences have left him with a feeling of contempt for the judiciary. [Applause, cheers.]

The next speaker was Mr. Walt Barker who stated that he was a newly elected assemblyman from Sitka. Mr. Barker said that the public is of the belief that judges are too lax and that there is a generally low opinion of the courts in this town. He said that children do not respect the law. Mr. Barker stated that Judge Stewart was in Sitka last year and promised to appoint an "advisory group" on criminal justice but had done nothing so far. Judge DuBrock at this point interjected that Judge Stewart was probably referring to a citizens' advisory panel on juvenile cases.

The next speaker was Mr. Gutierrez, who is the city administrator for Sitka. Mr. Gutierrez said that the people of Sitka want a conservative person as a judge. Mr. Young asked him for a definition of a conservative. Mr. Gutierrez cited the example of the Ketchikan district judge (Judge Keene) and noted: "They don't slouch on the rail in his court." Mr. Young stated that in his opinion the primary qualification of any judge is that he be bright enough to do the job. Mr. Young said that it was necessary to "keep the judge's brain alive".

The next speaker was Dr. Gaylin West, who stated that he was a dentist in Sitka. Dr. West testified that his wife and sister-in-law had been knocked out and kicked in a public park. The man was fined $50 by the magistrate. Dr. West was concerned with the lightness of the fine and had spoken with the magistrate, with Judge DuBrock and with Judge Stewart.

The next speaker was Mr. Riley Hunter. Mr. Hunter stated that he was with the Division of Corrections in Sitka and also performed juvenile in-take functions. Mr. Hunter expressed concern with the problem of lack of continuity in the handling of juvenile cases. He stated that it was common for a single juvenile case to be heard by as many as seven different judges. He said that as a result of this lack of continuity justice is often greatly delayed and the ultimate sentence is ineffective.

The next speaker was Mr. Don Craddick, an attorney in private practice in Sitka. Mr. Craddick stated that he

was disappointed in that all of the previous discussion of the provision of judicial services to Sitka dealt with whether or not the judge could be stimulated by "legal concepts" and that this seemed to neglect the whole issue of social awareness. Mr. Craddick stated that there was a real challenge to providing important judicial services to a small town such as Sitka in devising innovative sentencing procedures which would serve the community and generally improve the level of life in that town. He stated that this sort of challenge was at least equal to any intellectual challenge presented by the nature of the legal problems confronting the court.

The next speaker was Mrs. Joyce Olsen who expressed concern with the problem of alcohol-related criminal conduct. Mrs. Olsen noted that Judge DuBrock had estimated that 85%-95% of all the charges in Sitka that had come before him as a district judge appeared to be connected with alcohol. Mrs. Olsen noted that there was not yet any approved alcohol treatment facility to replace the drunk tank in Sitka. Mrs. Olsen expressed the opinion that if a judge had free time on his hands as a result of a light caseload he could profitably devote that time to attempting to solve the problems connected with alcohol-related crime.

The next speaker was Mr. Charles Olsen. Mr. Olsen stated that if Indians had the same rights as juveniles they would own the country by now. Mr. Olsen stated that the criminal at the present time had more rights than the honest

man or the victim. Mr. Olsen said that Sitka needed a judge who would "peel off the veneer of legality and come down to the moral issues in every case, which is the Ten Commandments". Mr. Olsen said that they would like to have a judge like Vic Carlson in Sitka.

Chief Justice Boochever adjourned the public hearing.

* * *

Chief Justice Boochever called a meeting of the Judicial Council to order during a luncheon session at Revards Restaurant immediately after the close of the Sitka public hearing. All members of the Council were present. A resolution was unanimously adopted by the Council that authorization be sought from the Legislature for the creation of a superior court judgeship for the First Judicial District at Sitka. It was further resolved that Messrs. Lew Williams and Michael Holmes be authorized to convey the sense of the Judicial Council's resolution to the Legislature.

Chief Justice Boochever suggested that Mr. Rubinstein be requested to prepare an annual report of Judicial Council activities for the Legislature. This direction was unanimously approved.

Mr. Rubinstein initiated a discussion of the Judicial Council's procedures with respect to the November 1976 judicial retention elections. He noted that three areas of

information would be helpful to the judicial evaluation process: (1) the sentencing records of individual superior court judges, (2) how long it took the Supreme Court of Alaska to process an appeal to completion (and the individual records of each supreme court justice with respect to appellate delay, if any) and (3) information concerning the performance of individual superior court judges from the standpoint of justices of the Supreme Court of Alaska.

After discussion of each of the foregoing three items the Judicial Council unanimously resolved as follows:

1) That the supreme court be requested to release to the Judicial Council any and all records in its possession pertaining to the sentencing patterns of each superior court judge.

2) That the supreme court be requested to provide the Judicial Council with information concerning individual supreme court justices with respect to delays, if any, in the handling of appellate matters, and

3) That the Judicial Council request individual conferences with each justice of the supreme court concerning his opinions, if any, of the level of performance of superior court judges.

* * *

Following the luncheon session the meeting was resumed at the Sitka Courthouse for the purpose of hearing

Ms. Cutler's conclusions with respect to her reports on Sentences of Five Years or Greater and Repeat Bail Recidivists. After a discussion of Ms. Cutler's findings it was generally decided that although there was an appearance of racial discrimination with respect to persons who received long sentences, because the data (42 cases in 1973) was insufficient, it was not possible to reach a firm conclusion in this regard. It was resolved that Chief Justice Boochever be requested to write a letter to each superior court judge in the Third Judicial District enclosing a copy of the analysis and conclusions of the sentencing study and noting the "appearance of racial discrimination". Chief Justice Boochever stated that he would write such a letter. It was further resolved that copies of the analysis and conclusions of Ms. Cutler's reports be distributed to each supreme court justice and to each superior court judge. A copy of each full report would be distributed to the Chairmen of the Judiciary Committees of the Alaska Senate and the Alaska House of Representatives.

The Judicial Council scheduled its next meeting for January 21st at 9:00 a.m. in Anchorage, at which time the Council will discuss substantive items of business and proposals for submission to the present legislative session.

mtg for 1/89

LAY MEMBERS
KENNETH L. BRADY
LEW M. WILLIAMS, JR.
ROBERT H. MOSS
LAW MEMBERS
MICHAEL A. STEPOVICH
MICHAEL M. HOLMES
JOSEPH L. YOUNG
CHAIRMAN, EX OFFICIO
ROBERT BOOCHEVER
CHIEF JUSTICE
SUPREME COURT

Alaska Judicial Council

303 K STREET
ANCHORAGE, ALASKA
99501

EXECUTIVE DIRECTOR
MICHAEL L. RUBINSTEIN

January 22, 1976

Senator Robert Ziegler, Sr.
Alaska State Senate
Pouch V
Juneau, Alaska 99801

Dear Senator Ziegler:

As you may know, the Judicial Council met in Sitka on January 9, 1976 and after a public hearing in that city voted unanimously to seek authorization from the Legislature for the creation of an additional superior court judgeship for the First Judicial District, the judge to reside at Sitka. This action followed and ratified the position previously taken by the Alaska Supreme Court, Justice Erwin dissenting. I should state that the Council's vote was also very much in conformity with the clear weight of opinion expressed by those persons in attendance at the public hearing at Sitka.

The Judicial Council voted unanimously that Mr. Lew Williams, a lay member from Ketchikan, and Mr. Michael Holmes, a law member from Juneau, be authorized to convey to the Legislature the sense of the Alaska Judicial Council's January 9th resolution. If you have any questions concerning this matter, or if there is any aspect of it which you wish clarified or further elaborated, either Mr. Williams, Mr. Holmes or I will be happy to be of assistance.

Very truly yours,

Michael L Rubinstein/mb

Michael L. Rubinstein

MLR/mb
cc: Council Members

Copy

LAY MEMBERS
KENNETH L. BRADY
LEW M. WILLIAMS, JR.
ROBERT H. MOSS

LAW MEMBERS
MICHAEL A. STEPOVICH
MICHAEL M. HOLMES
JOSEPH L. YOUNG

CHAIRMAN, EX OFFICIO
ROBERT BOOCHEVER
CHIEF JUSTICE
SUPREME COURT

Alaska Judicial Council

303 K STREET
ANCHORAGE, ALASKA
99501

EXECUTIVE DIRECTOR
MICHAEL L. RUBINSTEIN

January 13, 1976

NEWS RELEASE

The Alaska Judicial Council unanimously voted to seek legislative authorization for the creation of a new superior court judgeship for the First Judicial District at Sitka, Alaska. If the Legislature grants the request the number of superior court judges in the First Judicial District, encompassing Southeast Alaska, will be increased from three to four. The Judicial Council's vote followed a public hearing at Sitka on January 9th attended by representatives of the Sitka Bar Association, the Chamber of Commerce, and numerous citizens at large who urged the creation of the new superior court position.

Sitka is served at present by a traveling superior court judge who visits the city on an average of 1-1/2 to 2 days every other week. According to Warren Christianson, President of the Sitka Bar Association, the present level of judicial services is inadequate to meet the needs of the community.

The new judge would perform the combined functions of both a district and superior court judge. Precedent for a combined superior-district judge was set by the appointment of Roy Madsen as a superior court judge for Kodiak and Western Alaska on October 29, 1975.

Under the Alaska Constitution any change in the number of superior court judges must be accomplished by Act of the Legislature. The applicable law was last amended in 1970 when the number of superior court judges for the First Judicial District was increased from two to three. According to Michael L. Rubinstein, Executive Director of the Alaska Judicial Council, if the new judgeship is created by the Legislature the Council will act promptly to seek applicants for the position and will submit the names of two or more qualified nominees to the Governor. The Governor must then fill the judgeship within 45 days after receiving the Judicial Council's nominations.

09/-

Supreme Court
State of Alaska

CHIEF JUSTICE
ROBERT BOOCHEVER

JUSTICES
JAY A. RABINOWITZ
ROGER G. CONNOR
ROBERT C. ERWIN
EDMOND W. BURKE

POUCH U
STATE COURT AND OFFICE BUILDING
JUNEAU, ALASKA
99811
907-465-3410

December 26, 1975

Mr. John Bosshard, III
P. O. Box 131
Sitka, Alaska 99835

Dear Mr. Bosshard:

You doubtlessly have been informed by Mr. Rubinstein that the Supreme Court with the concurrence of the Judicial Council has decided to postpone appointment of a permanent district judge at Sitka. Recently, the Sitka Bar Association has advanced a proposal for a superior court judge in lieu of the district court judge. Since if a permanent district court judge is appointed, it will not be feasible to consider a change for a period of at least several years, we decided to defer such a permanent appointment until the Judicial Council has completed hearings at Sitka and the legislature has had the opportunity of considering the designation of an additional superior court judge for the First Judicial District.

In making this decision, we were very cognizant of the inconvenience that this change causes the applicants. There will be an acting district judge appointed to serve in Sitka until such time as a final decision is made with reference to the designation of a superior court judge and a permanent appointment of either a superior or district court judge is completed. If you are interested in applying for the acting district judgeship, please advise and we will transmit the papers that you have submitted to Judge Thomas B. Stewart, Presiding Judge of the First Judicial District, who has the authority to make the appointment. Also, if it is decided to create the superior court judgeship and if you decide to apply for that position, the papers which you have previously submitted will be kept on file and can be utilized if you so desire.

We have advised the Alaska Bar association to withhold tabulation of the bar poll so that no candidate will be adversely affected in that regard. Again, please accept my sincere apologies for this change in plans and my thanks to you for your interest in applying for the position.

Sincerely yours,

Robert Boochever
Chief Justice

cc: Michael Rubinstein

SB
673

"An Act relating to judicial appointments."

COMMITTEE REPORT

3/19/76 HOUSE FINANCE

Mr. Speaker: Date April 15, 1976

The Committee on JUDICIARY has had SB 673 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(✓) recommends it BE REPLACED WITH CS FOR [illegible] AND THAT CS FOR [illegible] DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

[illegible]	[illegible]	[illegible]
[illegible]	DO PASS [illegible]	[illegible]
[illegible]	DO PASS	

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

[illegible] Chairman

2116 — 3/25

Craig Berman
AK Jud. Council
SB673 - Jud. appts.
Does not correct defect
that it was intended
to correct.

274-8942
after 3:30

Rita Rubenstein

Introduced: 2/17/76
Referred: Judiciary

IN THE SENATE BY THE JUDICIARY COMMITTEE

SENATE BILL NO. 673

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to judicial appointments."

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

* Section 1. AS 22.15.170(a) is amended to read:

(a) The governor shall fill a vacancy in the office of district judge within 45 days after receiving nominations from the judicial council by appointing one of two or more persons nominated by the [JUDICIAL] council for each vacant position. The judicial council shall determine the city within a judicial district where the district judge is to sit.

* Sec. 2. AS 22.15.170(d) is amended to read:

(d) Vacancies for [JUDGES AND] magistrates shall be filled in the same manner as appointments. The office of a district court judge becomes vacant 90 days after the election at which he is rejected by a majority of those voting on the question, or for which he failed to file his declaration of candidacy to succeed himself. A vacancy in the office also occurs by reason of the death, retirement, resignation, forfeiture or removal from office of a judge. [In the event of any vacancy other than an initial vacancy, or immediately upon certification of rejection following an election,] or immediately upon failure of a judge to file a declaration of candidacy, the judicial council may meet, within 30 days thereafter and submit to the governor the names of two or more persons nominated to fill each vacancy. A successor to the office of district court judge may be appointed by the governor no more than 60 days before the vacancy occurs, if the reason for the vacancy is other

than death, and the appointment becomes effective upon the vacancy occurring.

SLA 75
Supr + Super Ct => same problem might exist

will submit language for all three

SB 673

Alaska Court System

State of Alaska

303 "K" STREET

ARTHUP H. SNOWDEN II
ADM .STRATIVE DIRECTOR

ANCHORAGE, ALASKA
99501

(907) 274-8611

February 3, 1976

Honorable Robert H. Ziegler, Sr.
Chairman, Senate Judiciary Committee
Pouch V
Juneau, AK 99811

Re: Vacancies in the District Court

Dear Senator Ziegler:

Recently I requested introduction of a Bill dealing with vacancies in the District Court.

In 1967, the Legislature extended the merit selection and tenure plan in effect for the Supreme and Superior Courts to the District Court. The Statutory provisions governing appointment and tenure of Supreme Court Justices and Superior Court Judges provide that a vacancy in these offices occurs 90 days after a Justice or Judge is rejected by the voters, or 90 days after his or her failure to file a declaration of candidacy for retention election. Legislation enacted in 1975 empowered the Governor to appoint a successor Justice or Superior Court Judge no more than 60 days before a vacancy occurs. Also, the Statutes dealing with appointments to these two levels of court provide that the Governor must make his appointment no more than 45 days after receiving nominations from the Judicial Council.

The Statutes dealing with the District Court (AS 22.15) contain no provisions for establishing the time that vacancies will occur following rejection by the voters, no provision for filling a vacancy before it actually occurs, and no limit on the amount of time the Governor may take to act on nominations. The proposed legislation is necessary to fill these gaps in the Statutes dealing with appointment and tenure of District Court Judges. Although we have never seen a vacancy occur as a result of rejection or failure to declare candidacy, it may well happen in the future. Without any guidance in the Statutes, there would be a good deal of uncertainty as to when the incumbent's tenure ended and the office was available for appointment of a successor. Similarly, while Governors have in the past followed the 45-day Rule in appointing District Court Judges, there is nothing requiring appointment within a specified time. If there were, however, a delay

in the appointment beyond six weeks, it could be very disruptive to the operations of the Judiciary. Putting this provision in the Statutes would simply make the rule what has been the practice in the past.

The language of the proposed legislation is nearly identical to AS 22.05.080 and AS 22.10.100, the analagous provisions dealing with the Supreme and Superior Courts. The only substantial difference is that while AS 22.05.080 and AS 22.10.100 require the Judicial Council to act immediately to fill a vacancy on the Supreme or Superior Court, the proposed legislation would permit the Judicial Council to leave a vacant District Court judgeship open until such time as it may become necessary to fill it.

Thank you for giving this matter your consideration. Please let me know if you need further information on this subject.

Very truly yours,

Arthur H. Snowden, II

Arthur H. Snowden, II
Administrative Director

AHS/bd

(Covers all 3 courts) 4/15 Milton

IN THE SENATE BY THE JUDICIARY COMMITTEE

HOUSE CS FOR SENATE BILL NO. 673

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to judicial appointments."

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

* Section 1. AS 22.15.170(a) is amended to read:

(a) The governor shall fill a vacancy or appoint a successor to fill an impending vacancy in the office of district judge within 45 days after receiving nominations from the Judicial Council by appointment one of two or more persons nominated by the [JUDICIAL] Council for each actual or impending vacancy. The appointment to fill an impending vacancy becomes effective upon the actual occurrence of such vacancy. [The Judicial Council shall determine the city within a judicial district where the district judge is to sit.]

* Sec. 2. AS 22.15.170(d) is amended to read:

(d) Vacancies for [JUDGES AND] magistrates shall be filled in the same manner as appointments.

* Sec. 3. AS 22.15.170 is amended by adding a new subsection to read:

(e) The office of a district court judge becomes vacant 90 days after the election at which he is rejected by a majority of those voting on the question or, if he fails to file his declaration of candidacy to succeed himself, 90 days after the filing deadline. Upon the occurrence of (1) an actual vacancy; (2) the certification of rejection following an election; or (3) the failure of a judge to file a declaration of candidacy to succeed himself, the Judicial Council shall meet within 45 days and submit to the governor the names of two or more persons qualified for the judicial office; except that this 45-day

period may be extended by the council with the concurrence of the supreme court. In the event of an impending vacancy other than by reason of rejection or failure to file a declaration of candidacy, the council may meet at any time within the 90-day period immediately preceding the effective date of the vacancy and submit to the governor the names of two or more persons qualified for the judicial office.

* Sec. 4. AS 22.10.100(a) is amended to read:

(a) The governor shall fill a vacancy or appoint a successor to fill an impending vacancy in the office of superior court judge within 45 days after receiving nominations from the Judicial Council, by appointing one of two or more persons nominated by the Judicial Council for each actual or impending vacancy [VACANT POSITION]. An appointment to fill an impending vacancy becomes effective upon the actual occurrence of the vacancy.

* Sec. 5. AS 22.10.100(b) is repealed and re-enacted to read:

(b) The office of a superior court judge becomes vacant 90 days after the election at which he is rejected by a majority of those voting on the question or, if he fails to file his declaration of candidacy to succeed himself, 90 days after the filing deadline. Upon the occurrence of (1) an actual vacancy; (2) the certification of rejection following an election; or (3) the failure of a judge to file a declaration of candidacy to succeed himself, the Judicial Council shall meet within 45 days and submit to the governor the names of two or more persons qualified for the judicial office; except that this 45-day period may be extended by the council with the concurrence of the supreme court. In the event of an impending vacancy other than by reason of rejection or failure to file a declaration of candidacy, the council may meet at any time within the 90-day period immediately preceding the effective date of the vacancy and submit to the governor the names of two or more

persons qualified for the judicial office.

* Sec. 6. AS 22.05.080(a) is amended to read:

(a) The governor shall fill a vacancy or appoint a successor to fill an impending vacancy in the office of supreme court justice within 45 days after receiving nominations from the Judicial Council, by appointing one of two or more persons nominated by the Judicial Council for each actual or impending vacancy [VACANT POSITION]. An appointment to fill an impending vacancy becomes effective upon the actual occurrence of the vacancy.

* Sec. 7. AS 22.05.080(b) is repealed and re-enacted to read:

(b) The office of a supreme court justice, including the office of chief justice, becomes vacant 90 days after the election at which he is rejected by a majority of those voting on the question or, if he fails to file his declaration of candidacy to succeed himself, 90 days after the filing deadline. Upon the occurrence of (1) an actual vacancy; (2) the certification of rejection following an election; or (3) the failure of a judge to file a declaration of candidacy to succeed himself, the Judicial Council shall meet within 45 days and submit to the governor the names of two or more persons qualified for the judicial office; except that this 45-day period may be extended by the council with the concurrence of the supreme court. In the event of an impending vacancy other than by reason of rejection or failure to file a declaration of candidacy, the council may meet at any time within the 90-day period immediately preceding the effective date of the vacancy and submit to the governor the names of two or more persons qualified for the judicial office.

SB

696

"An Act making a special appropriation to the Office of the Governor, office od telecommunications: and providing for an effective date."

COMMITTEE REPORT

HOUSE

3/25/76 FINANCE

Mr. Speaker: Date April 12, 1976

The Committee on JUDICIARY has had SB 696 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Terry Gardiner Do Pass

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Terry Gardiner Chairman

Letter of intent

HOUSE JOURNAL

LETTER OF INTENT FOR

HCS SB 696

It is the intent of the House Judiciary Committee in offering HCS SB 696 to provide a pilot satellite television project for the state of Alaska.

The $1.5 million appropriation is designed to provide a full-time satellite transponder leased for one year. This will provide one channel of television for selected villages, and bring live satellite coverage to the urban areas. The transponder may also be used to implement Health and Education video services to Alaska.

The priority use for a state-leased transponder is to provide television coverage for public and commercial facilities in urban and rural areas. To the extent that time is available beyond this basic intent, the GOT shall utilize the satellite time for any use in the public interest. The GOT shall include in the report to the legislature a plan for comprehensive satellite use, not limited to television broadcasting.

The appropriation goes to the Gov rnor's Office of Telecommunications (GOT). The GOT is responsible for the completion of the project, however they have the authority to contract with any other state agency or private contractor for assistance with the project.

The village site selections shall be made by the Alaska Federation of Natives telecommunications committee, with the concurrence of the GOT. The AFN committee will work with the GOT and the AEBC in determining programming.

Commercial and Public broadcast stations with access to a large earth station will have the opportunity to receive network programs via the state-leased transponder. This will offer same-day viewing for many network programs, and allow live satellite broadcast for public affairs and special events state-wide.

This pilot program will offer the opportunity to determine the best technical and administrative procedure for a state-wide program. The GOT shall report to the next legislative session their recommendations for the implementation of a state-wide satellite television system.

Section 2 of the bill is to appropriate $150,000 from the general fund to the GOT for the purpose of establishing a state-wide public radio network. The GOT is responsible for the project, however they have the authority to contract with private contractors or other state agencies for assistance. GOT shall work closely with the Alaska Educational Broadcasting Commission in the establishment of the public radio network.

A radio network is an economic way of bringing the state together. Existing radio stations can be interconnected in a network to make new informational material available so that all Alaskans can be informed as to what Alaska is doing.

_____

Terry Gardiner, Chairman
House Judiciary Committee

Memo: Terry Gardiner
From: Eric Eckholm
Re: legislative intent, SB 696
4/16/76

As per your request, here is suggested addition to Senate letter of intent for SB 696.

Add, after paragraph 2;

The priority use for a state-leased transponder is to provide television coverage for public and commercial ~~stations~~ facilities in urban and rural areas. To the extent that time is available beyond this basic intent, the GOT shall utilize the satellite time for any use in the public interest. The GOT shall include in the report to the legislature a plan for comprehensive satellite use, not limited to Television broadcasting.

or something like that....ee

adopted

SB696 telecommunications
24 Rural Communities
Brown, O.T. & RCA

transponder - reflector in satellite
foot print - coverage area for satellite beam
25,000 miles - satellites stay in same place now
1 ATT
2 RCA satellites 12 transponders each
1 transponder - 1 TV channel
12 FM Radio
1,000 long distance calls
On Western Union satellite now

5 hours of Programming to 20 villages
A10 committee will advise
1. what communities
2. What Programming
19 hours left

$800 an hour $57 an hour for 24hr rate

300,
ATT has monopoly on lower 48 long lines transmission

MEMO

TO: TERRY GARDINER

FROM: RICK SVOBODNY

RE: Larry Golden's concerns with SB 696.

After reading SB 696 and the Senate Health, Education and Social Services Committee's letter of intent it appears clear to me that the legislation deals solely with satellite television. In order to use a satellite transponder for other than television I would suggest that SB 696 be amended to read as follows:

> "The sum of 1.5 million dollars is appropriated from the general fund to the Office of the Governor, office of telecommunications for a satellite transponder lease project to demonstrate the feasibility of satellite communications in Alaska, priority being given to satellite television."

Along with this amendment would go a letter of intent explaining that the transponder lease project should not be limited solely to television.

The letter of intent should be something like the following:

The House Judiciary Committee by amending SB 696 has intended to expand the nature of the transponder lease project. The committee, recognizing such a project as an experiment intends that the Governor's office of telecommunications consider the use of satellite communication in a more flexible manner than originally proposed. The lease of a satellite transponder for television communication is highly desirable, however, there are many possible applications of satellite communications and it is the desire of the House Judiciary Committee that the Governor's office of telecommunications consider some of these possibilities in addition to satellite television broadcast.

In a pilot project of this nature, experimentation should be commenced regarding alternative methods of communication and should explore the applicability of satellite communications to diverse groups of Alaskans.

I had spoken with Fran ~~[illegible]~~ about my concerns with 696 and gave her a bit of background on Satellite communications. She expressed concern with the Bill as it had been initially presented to her by GOT & Brown. Was there justification for state funding of a satellite project whose goals were to extend ~~[illegible]~~ network T.V. ~~[illegible]~~ to rural Alaska and reduce delay time for programming into urban Alaska? As it turns out the governor had some concerns revolving around creating an expectation for continued state funding to ~~[illegible]~~ provide network broadcasting to the bush etc. Fran and several persons in the Governor's office expressed interest in the kinds of ~~[illegible]~~ ~~[illegible]~~ additional public uses I had mentioned. In the meantime Robert Walpe (Director of GOT) indicated to me his philosophical commitment in favor of trying such utilizations. The Governor, Brown, Ferguson and GOT worked out some sort (Tuesday 4/13) of informal agreement that some of these utilizations should be looked into during the pilot project and that the commercial broadcasters would ~~[illegible]~~ have to make some kinds of compromises for transponder time.

Commercial Broadcasters
G.O.T. - Walpe - Shaganaw
Fred Brown
Frank Ferguson
Fran Ulmer
} should be notified about Hearings and invited
Potential Govt. Users. D.O.E. Health & Social Services
Brad Matson (information officer)

How when or when ~~[illegible]~~ this informal agreement would be implimented, I don't know

Larry

4/17
Milton

Introduced: 3/9/76
Referred: Health, Education and Social Services and Finance

IN THE SENATE

BY THE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

SENATE BILL NO. 696

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act making a special appropriation to the Office of the Governor, office of telecommunications; and providing for an effective date."

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

* Section 1. The sum of $1,500,000 is appropriated from the general fund to the Office of the Governor, office of telecommunications for a satellite ~~television~~ tele-transponder lease feasibility communications project to demonstrate the ~~viability~~ of satellite ~~television~~ in the ~~state~~ Alaska. Priority to TV

* Sec. 3. This Act takes effect July 1, 1976.

sec. 2. $150,000 for AEBC.

letter of intent

file SB646

STATE OF ALASKA

JAY HAMMOND, GOVERNOR

DEPARTMENT OF EDUCATION

ALASKA EDUCATIONAL BROADCASTING COMMISSION / 308 G STREET— ANCHORAGE 99501

March 16, 1976

Representative Terry Gardiner
Pouch V
State Capitol
Juneau, AK 99811

Dear Representative Gardiner:

There has been legislative interest in finding funds that would bring television to the bush. This will take better advantage of the money that has already been appropriated for satellite communications. Among these efforts are House Bill 778, Senate Bill 696, and Senate Resolutions #63 and #74; there may be more. Some estimates of the cost of these services range around $3,000,000.

A radio network would take full advantage of money appropriated and would serve more with an attractive cost-benefit ratio. For less than $150,000 the first year and with a declining amount yearly, existing radio stations could be interconnected via satellite to make news and informational material available so that all Alaskans could be informed of what Alaska is doing. It could encompass the various 'Legislative Reports' and let Rural Alaska know what Urban Alaska already knows of the happenings in the distant capital as well as let the capital city know what is going on in the distant villages.

Attached is a rough draft.

I would be delighted to refine this concept articulated by knowledgeable Alaskan Communicators. I would gladly testify on the merits of this concept compatible to the efforts to bring television to the bush.

Had there been more time, it would have been prepared for the Governor's budget. However, I was not on duty until September 2 and was not aware of the needs of existing radio stations so fully, nor was I aware of the many who had messages they wished to intimately and instantaneously communicate with the entire state.

A radio network is an economic way of bringing the state together. It would improve existing public radio services and save costs. Radio, the 'kid brother,' is less romantic than the gaudy and four way stacked (color, sight, sound, motion) glamorous 'big sister,' but radio could let a lot more people know a lot more of the time about what 'inside' Alaska is about for a lot less money. Television is mostly 'outside.' TV costs so much to produce, it has to be that way. Broadcasting is a good family and plays well together. Don't forget the 'kid'!

Perhaps either in the Free Conference Committee or by amendment to existing bills or resolutions, consideration might be given to a complimentary and related Alaskan Communication need: An Alaska Radio Network.

Respectfully yours,

James G. Croll

James G. Croll
Executive Director

bkm

Attachment

SIGN-ON!

. . . an irregular newsletter whose frequency is on the state of public broadcasting

EDUCATIONAL BROADCASTING ALASKA COMMISSION

Feb. '76 Volume 1 Issue 5

AN ALASKAN RADIO NETWORK:

WHO? Produced and/or contracted for by the AEBC which was enabled by legislators to be and which is politically insulated. AEBC a part of Department of Education.

WHAT? A radio central studio capable of receiving, editing, and distributing the best of National Public Radio, Radio Canada International, and existing Alaska Public Funded Radio Stations costing not more than $150,000 per year.

WHERE? The product is as near as the nearest radio set with Radio Central located in the existing office space leased by the AEBC in Anchorage.

WHEN? To start September 1, 1976, with service consisting of not less than 4, nor more than 12 hours a day, 7 days a week.

WHY?

1) To interconnect Alaskans with other Alaskans with an instantaneous and intimate sound.

2) To make the Capital City as close as the nearest radio set and to let rural Alaska hear a portion of the information made available now to urban Alaska.

3) To bring sound reports of the happenings of the nation and world, relevant to Alaska, to all Alaskans.

4) To bolster and assist all distant Alaska stations with a skeletal news, educational and informational format.

5) To have an Alaskan voice available to transmit to other state and national networks and stations.

". . . . Were it left for me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter . . . " Thomas Jefferson

". . . . Bethel receives no DAILY NEWS, no FAIRBANKS MINERS, no SOUTHEAST EMPIRES, and only 26 DAILY TIMES on an average day when any papers at all get there. The Bethel service area purchases 235 TUNDRA DRUMS (local paper) every two weeks. It takes up to 10 days for a TUNDRA DRUMS to get from Bethel to Kwethluk (17 miles away) through the mail. KYUK broadcasts three expanded and 5 capsule news shows per day and there are over 5,000 radio sets in the coverage area . . . ." Jim Croll, former KYUK Mgr.

Alaska State Legislature

Senate

JUNEAU, ALASKA

The Honorable Chancy Croft

It is the intent of the Senate Health, Education, and Social Services committee in introducing and passing Senate bill # 696 to provide a pilot satellite television project for the state of Alaska.

The $1.5 million appropriation is designed to provide a full-time satellite transponder leased for one year. This will provide one channel of television for selected villages, and bring live satellite coverage to the urban areas. The transponder may also be used to implement Health and Education video services to Alaska.

The appropriation goes to the Governor's Office of Telecommunications (GOT). The GOT is responsible for the completion of the project, however they have the authority to contract with any other state agency or private contractor for assistance with the project.

The village site selections shall be made by the Alaska Federation of Natives telecommunications committee, with the concurrence of the GOT. The AFN committee will work with the GOT and the AEBC in determining programming.

Commercial and Public broadcast stations with access to a large earth station will have the opportunity to receive network programs via the state-leased transponder. This will offer same-day viewing for many network programs, and allow live satellite broadcast for public affairs and special events state-wide.

This pilot program will offer the opportunity to determine the best technical and administrative procedure for a state-wide program. The GOT shall report to the next legislative session their recommendations for the implementation of a state-wide satellite television system.

conversations dovetailed directly into the development of what RCA calls the "mid-route" earth stations. These are satellite earth stations which are larger than the small ones now being installed in rural communities, and smaller than the very large stations at Talkeetna or Lena Point. They will be used for trunking telecommunications services throughout the state in the areas which do not require a Talkeetna-sized earth station but which must carry a substantial amount of traffic.

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lease of a transponder and the provision of mini-TV transmitters and the television "black boxes" for 24 rural communities. A bill already in House Finance has been amended to include these same amounts for the same purposes. Each bill has passed through the committee system and is sitting in the respective Rules Committees for calendaring. I understand the Senate Bill is calendared for floor action some time this week.

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The House Select Committee on Telecommunications very much supports the legislation which would provide for the demonstration project at a cost of $1.5 million. We feel this is a much better idea than waiting one, two or three years and finding a great amount of pressure for an un-planned and possibly unwise project that would cost many millions more. This way we can find out what we are doing and what we are talking about doing, and what will work. Then, a future Legislature can decide whether it wishes to do this on a large scale or in a different way.

The Television Advisory Committee will meet again here in Juneau on Friday, March 26 at 2 p.m. We are told that most of the participants can be there. Considering the timing of the Senate calendar, this will probably come after the Senate has considered and (hopefully) passed the appropriation for the television demonstration project. Therefore, we will probably be talking about the nuts and bolts details of the television demonstration project, and it may be of substantial interest to both urban and rural members. That meeting will be held in the House Resources Committee Room.

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Alaska Legislative Council
Subcommittee on Telecommunications

17 March 1976

To: Senator J. Kerttula

From: Robert P. Merritt, Legislative Consultant

Subject: Television Demonstration Project

The information contained in this memo was compiled from material presented to the House Select Committee on Telecommunications, the Alaska Federation of Natives, Inc. Telecommunication Committee, the Governor's Telecommunication Advisory Committee, and members of the Alaska State Senate.

A demonstration project to accelerate the delivery of "same day" television programming to urban areas of Alaska and provide access to television for 24 rural communities not now receiving television will cost $1,500,000 for the first year.

This project will lease a satellite transponder from the common carrier for $500,000 per year for distribution of about 5 hours per day of television programs to the 24 rural communities. The AFN Telecommunications Committee supports the television demonstration, and has agreed to accept the responsibility to assist the Governor's Office of Telecommunications (GOT) to select the 24 communities and advise the GOT of the villagers' wishes on program content.

The 24 television receiver units (demodulators) will be installed at existing bush earth station locations. The receivers cost $10,000 each, installed, and represent a technological break through stimulated by this procurement. At each village, the television program will be broadcast over a mini-transmitter to the homes and community center in the village. The transmitters cost $10,000 each, installed, including the transmitting antenna, video switching panel and audio control.

Additional expense will be incurred in obtaining program material from the four national networks and tape and film libraries.

17 March 1976

Some of these programs will be tape delayed and then transmitted up to the satellite from the lower 48 states or from an Alaska programming center.

The cost of programs, delay centers and management will be $520,000.

Lease of one full time transponder		$500,000
24 Earth Stations at $10,000 each		240,000
24 Mini-transmitters at $10,000 each		240,000
Programs, delay center, management		520,000
	TOTAL	$1,500,000

The state-leased transponder will be available 24 hours each day. When not being used for the bush transmission, the transponder will be made available to commercial and public broadcasters to bring same day network programs to Alaska. The delay and schedule arrangement would be arranged by the urban broadcasters.

Some programs may be broadcast in real time to both urban and rural locations on the single transponder. A developmental project will be initiated for transmission of two simultaneous television programs into large (10 meter) earth stations.

The television demonstration project will not delay the implementation of the vital bush telephone system, nor will it divert any funds from that system procurement.

The GOT is required to report to the next legislative session their recommendations for the implementation of a state-wide satellite television system.

Included with this memo is the statement of legislative intent prepared by the Senate Health, Education and Social Services Committee for Senate Bill #696.

Memo: Terry Gardiner
From: Eric Eckholm
Re: legislative intent, SB 696
4/16/76

As per your request, here is suggested addition to Senate letter of intent for SB 696.

Add, after paragraph 2;

The priority use for a state-leased transponder is to provide television coverage for public and commercial stations in urban and rural areas. To the extent that time is available beyond this basic intent, the GOT shall utilize the satellite time for any use in the public interest. The GOT shall include in the report to the legislature a plan for comprehensive satellite use, not limited to Television broadcasting.

or something like that....ee

My file
SB696

TO; Fred Brown, Terry Gardiner, Frank Ferguson
FROM; Larry Goldin
RE; SB 696

Senate Bill 696, appropriating funds to the Governor's Office of Telecommunications (GOT) to lease a satellite transponder for a one year pilot project is a meritorious piece of legislation by virtue of its ability to help improve the quality and efficiency of television communication for entertainment and educational purposes. There are however many possible applications of satellite communications technology besides carrying network programming to Alaska. These include but are by no means limited to;

Teleconferencing involving several persons far distant to each other
Data and facsimile transmission to and from outlying areas
Local government or citizen access via satellite to information stored in distant computers
Ordering and transmission of audio-visual and possibly printed library materials
Coordination of information and planning of local governments
Two way communication between citizens and beureaucrats
Legislative reporting to constituents
Two way legislative communication such as making testimony before committees via satellite without leaving home communities
Facilitation of a statewide educational radio or TV system

If the pilot project is to demonstrate the viability of satellite communications within Alaska, it should explore the applicability of some of these other uses at the same time it benefits Alaskans by bringing them improved national network TV. Access to transponder time and GOT expertise should not be limited solely to broadcasters and government. Nonprofit or public interest groups should be allowed to explore the applicability of satellite technology to their day to day communications needs as they carry on business accross the state and with the lower 48. Expenditure of tax dollars clearly justifies granting access to consumers' groups, fishermen's cooperatives, villiage corporations, The League of Women Voters, The Capital Site Selection Committee, The Alaska Growth Policy Council and other like groups. More efficient and extensive statewide communication within and among such groups will increase citizens' abilities to carry out projects and make input to public policy, thus making our democracy more participatory.

While it would be unwise to encumber SB 696 (and subsequently GOT) with a long list of specifics and procedures, it might be advisable to draft a letter of legislative intent which in general terms expresses the legislatures thinking on the kinds of possible uses mentioned herein. Such a letter could also spell out legislative intent concerning public institution and citizen group access to the State leased transponder, recognizing the needs of the network broadcast segment of the pilot project. An earlier letter of intent from the Senate H&SS Committee refers to uses beyond network TV only by stating, "The transponder may also be used to impliment Health and Education Video services to Alaska." Perhaps a statement is needed which expresses a more active concern. There is presently no statement concerning public access to the transponder.

Alaska State Legislature

Senate

JUNEAU, ALASKA

The Honorable C .ncy Croft

It is the intent of the Senate Health, Education, and Social Services committee in introducing and passing Senate bill # to provide a pilot satellite television project for the state of Alaska.

The $1.5 million appropriation is designed to provide a full-time satellite transponder leased for one year. This will provide one channel of television for selected villages, and bring live satellite coverage to the urban areas. The transponder may also be used to implement Health and Education video services to Alaska.

The appropriation goes to the Governor's Office of Telecommunications (GOT). The GOT is responsible for the completion of the project, however they have the authority to contract with any other state agency or private contractor for assistance with the project.

The village site selections shall be made by the Alaska Federation of Natives telecommunications committee, with the concurrence of the GOT. The AFN committee will work with the GOT and the AEBC in determining programming.

Commercial and Public broadcast stations with access to a large earth station will have the opportunity to receive network programs via the state-leased transponder. This will offer same-day viewing for many network programs, and allow live satellite broadcast for public affairs and special events state-wide.

This pilot program will offer the opportunity to determine the best technical and administrative procedure for a state-wide program. The GOT shall report to the next legislative session their recommendations for the implementation of a state-wide satellite television system.

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f.l. SB696

STATE OF ALASKA

JAY HAMMOND, GOVERNOR

DEPARTMENT OF EDUCATION

ALASKA EDUCATIONAL BROADCASTING COMMISSION / 308 G STREET— ANCHORAGE 99501

March 16, 1976

Representative Terry Gardiner
Pouch V
State Capitol
Juneau, AK 99811

Dear Representative Gardiner:

There has been legislative interest in finding funds that would bring television to the bush. This will take better advantage of the money that has already been appropriated for satellite communications. Among these efforts are House Bill 778, Senate Bill 696, and Senate Resolutions #63 and #74; there may be more. Some estimates of the cost of these services range around $3,000,000.

A radio network would take full advantage of money appropriated and would serve more with an attractive cost-benefit ratio. For less than $150,000 the first year and with a declining amount yearly, existing radio stations could be interconnected via satellite to make news and informational material available so that all Alaskans could be informed of what Alaska is doing. It could encompass the various 'Legislative Reports' and let Rural Alaska know what Urban Alaska already knows of the happenings in the distant capital as well as let the capital city know what is going on in the distant villages.

Attached is a rough draft.

I would be delighted to refine this concept articulated by knowledgeable Alaskan Communicators. I would gladly testify on the merits of this concept compatible to the efforts to bring television to the bush.

Had there been more time, it would have been prepared for the Governor's budget. However, I was not on duty until September 2 and was not aware of the needs of existing radio stations so fully, nor was I aware of the many who had messages they wished to intimately and instantaneously communicate with the entire state.

A radio network is an economic way of bringing the state together. It would improve existing public radio services and save costs. Radio, the 'kid brother,' is less romantic than the gaudy and four way stacked (color, sight, sound, motion) glamorous 'big sister,' but radio could let a lot more people know a lot more of the time about what 'inside' Alaska is about for a lot less money. Television is mostly 'outside.' TV costs so much to produce, it has to be that way. Broadcasting is a good family and plays well together. Don't forget the 'kid'!

Perhaps either in the Free Conference Committee or by amendment to existing bills or resolutions, consideration might be given to a complimentary and related Alaskan Communication need: An Alaska Radio Network.

Respectfully yours,

James G. Croll
Executive Director

bkm

Attachment

RAGTEX BOND
SOUTHWORTH CO. U.S.A.
25% COTTON FIBER

SIGN-ON!

. . . an irregular newsletter whose frequency is on the state of public broadcasting

ALASKA EDUCATIONAL BROADCASTING COMMISSION

Feb. '76 Volume 1 Issue 5

AN ALASKAN RADIO NETWORK:

WHO? Produced and/or contracted for by the AEBC which was enabled by legislators to be and which is politically insulated. AEBC a part of Department of Education.

WHAT? A radio central studio capable of receiving, editing, and distributing the best of National Public Radio, Radio Canada International, and existing Alaska Public Funded Radio Stations costing not more than $150,000 per year.

WHERE? The product is as near as the nearest radio set with Radio Central located in the existing office space leased by the AEBC in Anchorage.

WHEN? To start September 1, 1976, with service consisting of not less than 4, nor more than 12 hours a day, 7 days a week.

WHY?

1) To interconnect Alaskans with other Alaskans with an instantaneous and intimate sound.

2) To make the Capital City as close as the nearest radio set and to let rural Alaska hear a portion of the information made available now to urban Alaska.

3) To bring sound reports of the happenings of the nation and world, relevant to Alaska, to all Alaskans.

4) To bolster and assist all distant Alaska stations with a skeletal news, educational and informational format.

5) To have an Alaskan voice available to transmit to other state and national networks and stations.

". . . . Were it left for me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter . . . " *Thomas Jefferson*

". . . . Bethel receives no DAILY NEWS, no FAIRBANKS MINERS, no SOUTHEAST EMPIRES, and only 26 DAILY TIMES on an average day when any papers at all get there. The Bethel service area purchases 235 TUNDRA DRUMS (local paper) every two weeks. It takes up to 10 days for a TUNDRA DRUMS to get from Bethel to Kwethluk (17 miles away) through the mail. KYUK broadcasts three expanded and 5 capsule news shows per day and there are over 5,000 radio sets in the coverage area . . . ." *Jim Croll, former KYUK Mgr.*

Memo: Terry Gardiner
From: Eric Eckholm
Re: legislative intent, SB 696
4/16/76

As per your request, here is suggested addition to Senate letter of intent for SB 696.

Add, after paragraph 2;

The priority use for a state-leased transponder is to provide television coverage for public and commercial ~~stations in~~ facilities in urban and rural areas. To the extent that time is available beyond this basic intent, the GOT shall utilize the satellite time for any use in the public interest. The GOT shall include in the report to the legislature a plan for comprehensive satellite use, not limited to Television broadcasting.

or something like that....ee

file SB696

STATE OF ALASKA

JAY HAMMOND, GOVERNOR

DEPARTMENT OF EDUCATION

ALASKA EDUCATIONAL BROADCASTING COMMISSION / 308 G STREET— ANCHORAGE 99501

March 16, 1976

Representative Terry Gardiner
Pouch V
State Capitol
Juneau, AK 99811

Dear Representative Gardiner:

There has been legislative interest in finding funds that would bring television to the bush. This will take better advantage of the money that has already been appropriated for satellite communications. Among these efforts are House Bill 778, Senate Bill 696, and Senate Resolutions #63 and #74; there may be more Some estimates of the cost of these services range around $3,000,000.

A radio network would take full advantage of money appropriated and would serve more with an attractive cost-benefit ratio. For less than $150,000 the first year and with a declining amount yearly, existing radio stations could be interconnected via satellite to make news and informational material available so that all Alaskans could be informed of what Alaska is doing. It could encompass the various 'Legislative Reports' and let Rural Alaska know what Urban Alaska already knows of the happenings in the distant capital as well as let the capital city know what is going on in the distant villages.

Attached is a rough draft.

I would be delighted to refine this concept articulated by knowledgeable Alaskan Communicators. I would gladly testify on the merits of this concept compatible to the efforts to bring television to the bush.

Had there been more time, it would have been prepared for the Governor's budget. However, I was not on duty until September 2 and was not aware of the needs of existing radio stations so fully, nor was I aware of the many who had messages they wished to intimately and instantaneously communicate with the entire state.

A radio network is an economic way of bringing the state together. It would improve existing public radio services and save costs. Radio, the 'kid brother,' is less romantic than the gaudy and four way stacked (color, sight, sound, motion) glamorous 'big sister,' but radio could let a lot more people know a lot more of the time about what 'inside' Alaska is about for a lot less money. Television is mostly 'outside.' TV costs so much to produce, it has to be that way. Broadcasting is a good family and plays well together. Don't forget the 'kid'!

Perhaps either in the Free Conference Committee or by amendment to existing bills or resolutions, consideration might be given to a complimentary and related Alaskan Communication need: An Alaska Radio Network.

Respectfully yours,

James G. Croll
Executive Director

bkm

Attachment

SIGN-ON!

. . . an irregular newsletter whose frequency is on the state of public broadcasting

ALASKA EDUCATIONAL BROADCASTING COMMISSION

Feb. '76 Volume 1 Issue 5

AN ALASKAN RADIO NETWORK:

WHO? Produced and/or contracted for by the AEBC which was enabled by legislators to be and which is politically insulated. AEBC a part of Department of Education.

WHAT? A radio central studio capable of receiving, editing, and distributing the best of National Public Radio, Radio Canada International, and existing Alaska Public Funded Radio Stations costing not more than $150,000 per year.

WHERE? The product is as near as the nearest radio set with Radio Central located in the existing office space leased by the AEBC in Anchorage.

WHEN? To start September 1, 1976, with service consisting of not less than 4, nor more than 12 hours a day, 7 days a week.

WHY?

1) To interconnect Alaskans with other Alaskans with an instantaneous and intimate sound.

2) To make the Capital City as close as the nearest radio set and to let rural Alaska hear a portion of the information made available now to urban Alaska.

3) To bring sound reports of the happenings of the nation and world, relevant to Alaska, to all Alaskans.

4) To bolster and assist all distant Alaska stations with a skeletal news, educational and informational format.

5) To have an Alaskan voice available to transmit to other state and national networks and stations.

". . . . Were it left for me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter . . . " Thomas Jefferson

". . . . Bethel receives no DAILY NEWS, no FAIRBANKS MINERS, no SOUTHEAST EMPIRES, and only 26 DAILY TIMES on an average day when any papers at all get there. The Bethel service area purchases 235 TUNDRA DRUMS (local paper) every two weeks. It takes up to 10 days for a TUNDRA DRUMS to get from Bethel to Kwethluk (17 miles away) through the mail. KYUK broadcasts three expanded and 5 capsule news shows per day and there are over 5,000 radio sets in the coverage area . . . ." Jim Croll, former KYUK Mgr.

Alaska Legislative Council
Subcommittee on Telecommunications

17 March 1976

To: Senator J. Kerttula

From: Robert P. Merritt, Legislative Consultant

Subject: Television Demonstration Project

The information contained in this memo was compiled from material presented to the House Select Committee on Telecommunications, the Alaska Federation of Natives, Inc. Telecommunication Committee, the Governor's Telecommunication Advisory Committee, and members of the Alaska State Senate.

A demonstration project to accelerate the delivery of "same day" television programming to urban areas of Alaska and provide access to television for 24 rural communities not now receiving television will cost $1,500,000 for the first year.

This project will lease a satellite transponder from the common carrier for $500,000 per year for distribution of about 5 hours per day of television programs to the 24 rural communities. The AFN Telecommunications Committee supports the television demonstration, and has agreed to accept the responsibility to assist tne Governor's Office of Telecommunications (GOT) to select the 24 communities and advise the GOT of the villagers' wishes on program content.

The 24 television receiver units (demodulators) will be installed at existing bush earth station locations. The receivers cost $10,000 each, installed, and represent a technological break through stimulated by this procurement. At each village, the television program will be broadcast over a mini-transmitter to the homes and community center in the village. The transmitters cost $10,000 each, installed, including the transmitting antenna, video switching panel and audio control.

Additional expense will be incurred in obtaining program material from the four national networks and tape and film libraries.

17 March 1976

Some of these programs will be tape delayed and then transmitted up to the satellite from the lower 48 states or from an Alaska programming center.

The cost of programs, delay centers and management will be $520,000.

Lease of one full time transponder	$500,000
24 Earth Stations at $10,000 each	240,000
24 Mini-transmitters at $10,000 each	240,000
Programs, delay center, management	520,000
TOTAL	$1,500,000

The state-leased transponder will be available 24 hours each day. When not being used for the bush transmission, the transponder will be made available to commercial and public broadcasters to bring same day network programs to Alaska. The delay and schedule arrangement would be arranged by the urban broadcasters.

Some programs may be broadcast in real time to both urban and rural locations on the single transponder. A developmental project will be initiated for transmission of two simultaneous television programs into large (10 meter) earth stations.

The television demonstration project will not delay the implementation of the vital bush telephone system, nor will it divert any funds from that system procurement.

The GOT is required to report to the next legislative session their recommendations for the implementation of a state-wide satellite television system.

Included with this memo is the statement of legislative intent prepared by the Senate Health, Education and Social Services Committee for Senate Bill #696.

MEMO

TO: TERRY GARDINER

FROM: RICK SVOBODNY

RE: Larry Golden's concerns with SB 696.

After reading SB 696 and the Senate Health, Education and Social Services Committee's letter of intent it appears clear to me that the legislation deals solely with satellite television. In order to use a satellite transponder for other than television I would suggest that SB 696 be amended to read as follows:

> "The sum of 1.5 million dollars is appropriated from the general fund to the Office of the Governor, office of telecommunications for a satellite transponder lease project to demonstrate the feasibility of satellite communications in Alaska, priority being given to satellite television."

Along with this amendment would go a letter of intent explaining that the transponder lease project should not be limited solely to television.

The letter of intent should be something like the following:

The House Judiciary Committee by amending SB 696 has intended to expand the nature of the transponder lease project. The committee, recognizing such a project as an experiment intends that the Governor's office of telecommunications consider the use of satellite communication in a more flexible manner than originally proposed. The lease of a satellite transponder for television communication is highly desirable, however, there are many possible applications of satellite communications and it is the desire of the House Judiciary Committee that the Governor's office of telecommunications consider some of these possibilities in addition to satellite television broadcast.

In a pilot project of this nature, experimentation should be commenced regarding alternative methods of communication and should explore the applicability of satellite communications to diverse groups of Alaskans.

4-17-76

added new section to 6.11 to add $150,000 for a radio broadcast system. Public radio net

New section to latter of intent

I had spoken with Fran ~~Ed~~ about my concerns with 696 and gave her a bit of background on Satellite communications. She expressed concern with the Bill as it had been initially presented to her by GOT & Brown - Was There justification for state funding of a satellite project when goals were to extend ~~to~~ network T.V. ~~Programming to~~ to rural Alaska and reduce delay time for programming into urban Alaska? As it turns out the governor had some concerns revolving around creating an expectation for continued state funding to ~~additional broadcasting~~ provide network broadcasting to the bush etc. Fran and several persons in the Governor's office expressed interest in the kinds of ~~public~~ additional public uses I had mentioned. In the meantime Robert Walpe (Director of GOT) indicated to me his philosophical commitment in favor of trying such utilizations. The Governor, Brown, Ferguson and GOT worked out some sort (Tuesday 4/13) of informal agreement that some of these utilizations should be looked into during the pilot project and that the commercial broadcasters would have to make some kinds of compromises for transponder time.

Commercial Broadcasters
G.O.T. - Walpe - Shafanaw
Fred Brown
Frank Ferguson
Fran Ulmer
} should be notified about Hearings and invited

Potential Govt. Users. D.O.E. Health & Social Services
Brad Watson (information officer)

How when or when ~~Pass~~ This informal agreement would be implimented, I don't Know

Larry

My file
SB696

TO; Fred Brown, Terry Gardiner, Frank Ferguson
FROM; Larry Goldin
RE; SB 696

Senate Bill 696, appropriating funds to the Governor's Office of Telecommunications (GOT) to lease a satellite transponder for a one year pilot project is a meritorious piece of legislation by virtue of its ability to help improve the quality and efficiency of television communication for entertainment and educational purposes. There are however many possible applications of satellite communications technology besides carrying network programming to Alaska. These include but are by no means limited to;

- Teleconferencing involving several persons far distant to each other
- Data and facsimile transmission to and from outlying areas
- Local government or citizen access via satellite to information stored in distant computers
- Ordering and transmission of audio-visual and possibly printed library materials
- Coordination of information and planning of local governments
- Two way communication between citizens and beureaucrats
- Legislative reporting to constituents
- Two way legislative communication such as making testimony before committees via satellite without leaving home communities
- Facilitation of a statewide educational radio or TV system

If the pilot project is to demonstrate the viability of satellite communications within Alaska, it should explore the applicability of some of these other uses at the same time it benefits Alaskans by bringing them improved national network TV. Access to transponder time and GOT expertise should not be limited solely to broadcasters and government. Non-profit or public interest groups should be allowed to explore the applicability of satellite technology to their day to day communications needs as they carry on business accross the state and with the lower 48. Expenditure of tax dollars clearly justifies granting access to consumers' groups, fishermen's cooperatives, villiage corporations, The League of Women Voters, The Capital Site Selection Committee, The Alaska Growth Policy Council and other like groups. More efficient and extensive statewide communication within and among such groups will increase citizens' abilities to carry out projects and make input to public policy, thus making our democracy more participatory.

While it would be unwise to encumber SB 696 (and subsequently GOT) with a long list of specifics and procedures, it might be advisable to draft a letter of legislative intent which in general terms expresses the legislatures thinking on the kinds of possible uses mentioned herein. Such a letter could also spell out legislative intent concerning public institution and citizen group access to the State leased transponder, recognizing the needs of the network broadcast segment of the pilot project. An earlier letter of intent from the Senate H&SS Committee refers to uses beyond network TV only by stating, "The transponder may also be used to impliment Health and Education Video services to Alaska." Perhaps a statement is needed which expresses a more active concern. There is presently no statement concerning public access to the transponder.

SB

717

"An Act amending the Uniform Probate Code."

COMMITTEE REPORT

4/7/76

HOUSE

Mr. Speaker: Date May 24 1976

The Committee on JUDICIARY has had SB 717 under consideration. A Majority of the members of the Committee

(X) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

CHAIRMAN'S REPORT
FOR
SB 717

The House Judiciary Committee has relied heavily on the "official comments" to the amendments to the Uniform Probate Code, as promulgated August 2-8, 1975 in Quebec City, Canada, by the National Conference of Commissioners of Uniform State Laws.

The committee adopts those comments, along with the material appearing in Senate Journal Supplement No. 9 (April 1, 1976) as expressive of the committee's intent in supporting this bill. We note specifically the statement on page 3 of that supplement that none of the amendments "reflect any pulling back from, or marked extension of, any of the principles or provisions of the Code."

_____
Terry Gardiner, Chairman
House Judiciary Committee

AMENDMENTS TO THE UNIFORM PROBATE CODE

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS EIGHTY-FOURTH YEAR
IN QUEBEC CITY, CANADA
AUGUST 2-8, 1975

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NATIONAL CONFERENCE OF COMMISSIONERS ON

UNIFORM STATE LAWS

645 N. Michigan Ave., Suite 510

Chicago, Illinois 60611

PROBATE CODE

1975 TECHNICAL AMENDMENTS

[Additions shown by underscoring

deletions shown by cancellation]

13.06.050 .050 1.

SECTION 1-201. [General Definitions.]... (10) "Distributee" means any person who has received property of a decedent from his personal representative other than as creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

Add to Comment

> In 1975, the Joint Editorial Board recommended the addition of the last sentence to the definition in (10) of "distributee". The purpose of the addition is to extend to trustees of inter vivos, receptacle trusts, the same power to act as distributees of devised assets that is given to testamentary trustees. "Distributees" are enabled, by section 3-910, to create a good title to devised assets in purchasers, even though possibilities remain open that the devised assets or the proceeds from any sale thereof may be reclaimed for some other person interested in the estate. Also, 3-1004 and 3-1006 relate to "distributees".

13.11.015 .015 2.

SECTION 2-103. [Share of Heirs Other Than Surviving Spouse.] The part of the intestate estate not passing to the surviving spouse

under Section 2-102, or the entire intestate estate if there is no surviving spouse, passes as follows:

(1) to the issue of the decedent; if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree, then those of more remote degree take by representation;

(2) if there is no surviving issue, to his parent or parents equally;

(3) if there is no surviving issue or parent, ~~to the brothers and sisters and the issue of each deceased brother or sister by representation; if there is no surviving brother or sister, the issue of brothers and sisters take equally if they are all of the same degree of kinship to the decedent, but if of unequal degree then those of more remote degree take by representation;~~ to the issue of the parents or either of them by representation.

(4) (unchanged).

Added Comment

In 1975, the Joint Editorial Board recommended replacement of the original text of subsection (3) which referred to "brothers and sisters" of the decedent, and to their issue. The new language is much simpler, and it avoids the problem that "brother" and "sister" are not defined terms. "Issue" by contrast is defined in 1-201 (21). The definition refers to other defined terms, "parent" and "child", both of which refer to section 2-109 where the effect of illegitimacy and adoption on relationships for inheritance purposes is spelled out.

3.

13.11.045

SECTION 2-109. [Meaning of Child and Related Terms.] If, for purposes of intestate succession, a relationship of parent and

child must be established to determine succession by, through, or from a person,

(1) an adopted person is the child of an adopting parent and not of the natural parents except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and either ~~that~~ natural parent.

(2) In cases not covered by (1), a person is the child of its parents regardless of the marital status of its parents and the parent and child relationship may be established under the [Uniform Parentage Act].

ALTERNATIVE SUBSECTION (2) FOR STATES THAT HAVE NOT ADOPTED THE UNIFORM PARENTAGE ACT.

[(2) In cases not covered by (1), a person born out of wedlock is a child of the mother. That person is also a child of the father, if:

(i) the natural parents participated in a ceremony before or after the birth of the child, even though the attempted marriage is void; or

(ii) the paternity is established by an adjudication before the death of the father or is established thereafter by clear and convincing proof, except that the paternity established under this subparagraph (ii) is ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his, and has not refused to support the child.]

Added Comment

The change from "that" to "either" as the third from the last word in subsection (1) was recommended by the Joint Editorial Board so that children would not be detached from any natural

relatives for inheritance purposes because of adoption by the spouse of one of its natural parents. The change in this section, which is referred to by the definitions in Section 1-201 of "child", "issue" and "parent", affects, inter alia, the meaning of Sections 2-102, 2-103, 2-106, 2-302, 2-401, 2-402, 2-403, 2-404 and 2-605. As one consequence, the child of a deceased father who has been adopted by the mother's new spouse does not cease to be "issue" of his father and his parents, and so, under 2-605, would take a devise from one of his natural, paternal grandparents in favor of the child's deceased father who predeceased the testator. This situation is suggested by In re Estate of Bissell, 342 N.Y.S. (2d) 718.

The recommended addition of a new section 2-114 dealing with the possibility of double inheritance where a person establishes relationships to a decedent through two lines of relatives is attributable, in part, to the change recommended in 2-109 (1).

The approval in 1973 by the National Conference of Commissioners on Uniform State Laws of the Uniform Parentage Act reflects a change of policy by the Conference regarding the status of children born out of wedlock to one which is inconsistent with 2-109(2) of the Code as approved in 1969. The new language of 2-109(2) conforms the Uniform Probate Code to the Uniform Parentage Act. In view of the fact that eight states have enacted the 1969 version of 2-109(2), the former language is retained, in brackets, to indicate that states may, consistently with enactment of the Uniform Probate Code, accept either form of approved language.

4.

Add a new section as follows:

13.11. ~~#10~~ 065

SECTION 2-114. [Persons Related to Decedent Through Two Lines.] A person who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship which would entitle him to the larger share.

Comment

This language is identical to that appearing as section 2-112 in U.P.C. Working Drafts 3 and 4,

and as section 2-110 in Working Draft 5. The section was dropped because, with adoptions serving to transplant adopted children from all natural relationships to full relationship with adoptive relatives, and inheritance eliminated as between persons more distantly related than descendants of a common grandparent, the prospects of double inheritance seemed too remote to warrant the burden of an extra section. The changes recommended in 2-109(1) increase the prospects of double inheritance to the point where the addition of 2-114 seemed desirable. The section would have potential application in the not uncommon case where a deceased person's brother or sister marries the spouse of the decedent and adopts a child of the former marriage; it would block inheritance through two lines if the adopting parent died thereafter leaving the child as a natural and adopted grandchild of its grandparents.

5.

13.11.075

SECTION 2-202. [Augmented Estate.] The augmented estate means the estate reduced by funeral and administration expenses, homestead allowance, family allowances and exemptions, and enforceable claims, to which is added the sum of the following amounts:

(1) The value of property transferred to anyone other than a bona fide purchaser by the decedent at any time during marriage, to or for the benefit of any person other than the surviving spouse, to the extent that the decedent did not receive adequate and full consideration in money or money's worth for the transfer, if the transfer is of any of the following types:

(i) any transfer under which the decedent retained at the time of his death the possession or enjoyment of, or right to income from, the property;

(ii) any transfer to the extent that the decedent retained at the time of his death a power, either alone or in conjunction

with any other person, to revoke or to consume, invade or dispose of the principal for his own benefit;

(iii) any transfer whereby property is held at the time of decedent's death by decedent and another with right of survivorship;

(iv) any transfer made to a donee within two years of death of the decedent to the extent that the aggregate transfers to any one donee in either of the years exceed $3,000.00.

Any transfer is excluded if made with the written consent or joinder of the surviving spouse. Property is valued as of the decedent's death except that property given irrevocably to a donee during lifetime of the decedent is valued as of the date the donee came into possession or enjoyment if that occurs first. Nothing herein shall cause to be included in the augmented estate any life insurance, accident insurance, joint annuity, or pension payable to a person other than the surviving spouse.

(2) The value of property owned by the surviving spouse at the decedent's death, plus the value of property transferred by the spouse at any time during marriage to any person other than the decedent which would have been includible in the spouse's augmented estate if the surviving spouse had predeceased the decedent to the extent the owned or transferred property is derived from the decedent by any means other than testate or intestate succession without a full consideration in money or money's worth. For purposes of this subsection:

(i) Property derived from the decedent includes, but is not limited to, any beneficial interest of the surviving spouse in a

trust created by the decedent during his lifetime, any property appointed to the spouse by the decedent's exercise of a general or special power of appointment also exercisable in favor of others than the spouse, any proceeds of insurance (including accidental death benefits) on the life of the decedent attributable to premiums paid by him, any lump sum immediately payable and the commuted value of the proceeds of annuity contracts under which the decedent was the primary annuitant attributable to premiums paid by him, the commuted value of amounts payable after the decedent's death under any public or private pension, disability compensation, death benefit or retirement plan, exclusive of the Federal Social Security system, by reason of service performed or disabilities incurred by the decedent, any property held at the time of decedent's death by decedent and the surviving spouse with right of survivorship, any property held by decedent and transferred by contract to the surviving spouse by reason of the decedent's death and the value of the share of the surviving spouse resulting from rights in community property in this or any other state formerly owned with the decedent. Premiums paid by the decedent's employer, his partner, a partnership of which he was a member, or his creditors, are deemed to have been paid by the decedent.

(ii) Property owned by the spouse at the decedent's death is valued as of the date of death. Property transferred by the spouse is valued at the time the transfer became irrevocable, or at the decedent's death, whichever occurred first. Income earned by included property prior to the decedent's death is not treated as property derived from the decedent.

(iii) Property owned by the surviving spouse as of the decedent's death, or previously transferred by the surviving spouse, is presumed to have been derived from the decedent except to the extent that the surviving spouse establishes that it was derived from another source.

(3) For purposes of this section a bona fide purchaser is a purchaser for value in good faith and without notice of any adverse claim. Any recorded instrument on which a state documentary fee is noted pursuant to [insert appropriate reference] is prima facie evidence that the transfer described therein was made to a bona fide purchaser.

Added Comment

In 1975, the Joint Editorial Board recommended the addition of reference to bona fide purchaser in (1), "to a donee" in (1)(iv) and the addition of sub-paragraph (3) to the above section to reflect recommendations evolved in discussions by committees of the Colorado Bar Association to meet title problems that had been identified under the Code as originally enacted. One problem that should be cured by the amendments arose when real property experts in Colorado took the position that, since any transfer might be found to be for less than "adequate and full consideration in money or money's worth," the language of the original text, all deeds from married persons had to be joined in by the spouse, lest the grantor die within two years and the grantee be subjected to the claim that the value involved was a part of the augmented estate.

Also, the Joint Editorial Board in 1975 recommended the addition in 2-202(2)(i) of language referring to property moving to the surviving spouse via joint and survivorship holdings with the decedent. The addition would not, in all probability, change the meaning of the subsection, but it would clarify it in relation to jointly held property which will be present in a great number of cases.

13.11.010
SECTION 2-205. [Proceeding for Elective Share; Time Limit.]

(a) The surviving spouse may elect to take his elective share in the augmented net estate by filing in the Court and mailing or delivering to the personal representative, ~~a petition for the elective share within 6 months after the first publication of notice to creditors for filing claims which arose before the death of the deceedent~~ if any, a petition for the elective share within 9 months after the date of death, or within 6 months after the probate of the decedent's will, whichever limitation last expires; provided, however, that non-probate transfers, described in Section 2-202(1), shall not be included within the augmented estate for the purpose of computing the elective share, if the petition is filed later than 9 months from death.

The Court may extend the time for election as it sees fit for cause shown by the surviving spouse before the time for election has expired.

(b) The surviving spouse shall give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented net estate whose interests will be adversely affected by the taking of the elective share.

(c) The surviving spouse may withdraw his demand for an elective share at any time before entry of a final determination by the Court.

(d) After notice and hearing, the Court shall determine the amount of the elective share and shall order its payment from the assets of the augmented net estate or by contribution as appears

appropriate under Section 2-207. If it appears that a fund or property included in the augmented net estate has not come into the possession of the personal representative, or has been distributed by the personal representative, the Court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than he would have been if relief had been secured against all persons subject to contribution.

(e) The order or judgment of the Court may be enforced as necessary in suit for contribution or payment in other courts of this state or other jurisdictions.

Comment

In 1975, the Joint Editorial Board recommended changes in subsection (a) that were designed to meet a question, arising under the original text, of whether the right to an elective share was ever barred in cases of unadministered estates. The new language also has the effect of clearing included, non-probate transfers to persons other than the surviving spouse of the lien of any possible elective share proceeding unless the spouse's action is commenced within nine months after death. This bar on efforts to recapture non-probate assets for an elective share does not apply to probate assets. These assets may be controlled by a will that may not be offered for probate until as late as three years from death. As to these, the limitation on the surviving spouse's proceeding is six months after the probate.

7.

13.11.095

SECTION 2-206. [Effect of Election on Benefits by Will or Statute.]

(a) The surviving spouse's election of his elective share does not affect the share of the surviving spouse under the

~~provisions of the decedent's will or intestate succession unless the surviving spouse also expressly renounces in the petition for an elective share the benefit of all or any of the provisions. If any provision is so renounced, the property or other benefit which would otherwise have passed to the surviving spouse thereunder is treated, subject to contribution under subsection 2-207(b), as if the surviving spouse had predeceased the testator.~~

~~(b) A surviving spouse is entitled to homestead allowance, exempt property and family allowance whether or not he elects to take an elective share and whether or not he renounces the benefits conferred upon him by the will except that, if it clearly appears from the will that a provision therein made for the surviving spouse was intended to be in lieu of these rights, he is not so entitled if he does not renounce the provision so made for him in the will.~~ A surviving spouse is entitled to homestead allowance, exempt property and family allowance whether or not he elects to take an elective share.

Added Comment

In 1975, the Joint Editorial Board recommended changes in this and the following section that reverse the position of the original text which permitted an electing spouse to accept or reject particular benefits as provided him by the decedent without reducing the dollar value of his elective share. The new language in this section, replacing former 2-206(a) and (b), does not mention renunciation of transfers which is now dealt with in 2-207. The remaining content of this section is restricted to a simple statement indicating that the family exemptions described by Article II Part 4 may be distributed from the probate estate without reference to whether an elective share right is asserted, and without being charged to the electing spouse as a part of the elective share. In the view of the Board,

deletion of language in the original form of 2-206(b), dealing with devises that are intended to be in lieu of family exemptions, does not alter the ability of a testator, by express provision in the will, from putting a surviving spouse to an election between accepting the devises provided or accepting the family exemptions provided by law. This matter is dealt with in 2-401, 2-402, 2-403 and 2-404.

8.

13.(1.100
SECTION 2-207. [Charging Spouse with Gifts Received; Liability Of Others For Balance of Elective Share.]

(a) ~~In the proceeding for an elective share, property which is part of the augmented estate which passes or has passed to the surviving spouse by testate or interstate succession or other means and which has not been renounced, including that described in Section 2-202(2), is applied first to satisfy the elective share and to reduce the amount due from other recipients of portions of the augmented estate.~~ In the proceeding for an elective share, values included in the augmented estate which pass or have passed to the surviving spouse, or which would have passed to the spouse but were renounced, are applied first to satisfy the elective share and to reduce any contributions due from other recipients of transfers included in the augmented estate. For purposes of this subsection, the electing spouse's beneficial interest in any life estate or in any trust shall be computed as if worth one half of the total value of the property subject to the life estate, or of the trust estate, unless higher or lower values for these interests are established by proof.

(b) Remaining property of the augmented estate is so applied that liability for the balance of the elective share of the surviving spouse is equitably apportioned among the recipients of the augmented

estate in proportion to the value of their interests therein.

(c) Only original transferees from, or appointees of, the decedent and their donees, to the extent the donees have the property or its proceeds, are subject to the contribution to make up the elective share of the surviving spouse. A person liable to contribution may choose to give up the property transferred to him or to pay its value as of the time it is considered in computing the augmented estate.

Added Comment

In 1975, the Joint Editorial Board recommended changes in section 2-206 and subsection (a) of this section which have the effect of protecting a decedent's plan as far as it provides values for the surviving spouse. The spouse is not compelled to accept the benefits devised by the decedent, but if these benefits are rejected, the values involved are charged to the electing spouse as if the devises were accepted. The second sentence of new subsection (a) provides a rebuttable presumption of the value of a life estate or an interest in a trust, when this form of benefit is provided for an electing spouse by the decedent's plan.

9.

13.11.16

SECTION 2-504. [Self-proved Will.] An attested will may at the time of its execution or at any subsequent date be made self-proved, by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of this State, and evidenced by the officer's certificate, under official seal, attached or annexed to the will in form and content substantially as follows:

THE STATE OF _____

COUNTY OF _____

We, ___, ___, and ___, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his last will and that he had signed willingly or directed another to sign for him, and that he executed it as his free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of his knowledge the testator was at that time, 18 or more years of age, of sound mind and under no constraint or undue influence.

_____
Testator

_____
Witness

_____
Witness

Subscribed, sworn to and acknowledged before me by the testator, and subscribed and sworn to before me by ___, and ___, witnesses, this ___ day of ___, _____.

(Seal) (Signed) _____

_____
(Official capacity of officer)

(a) Any will may be simultaneously executed, attested, and made self-proved, by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where execution occurs and evidenced by the officer's certificate, under official seal, in form and content substantially as follows:

I, _____, the testator, sign my name to this instrument this _____ day of _____, 19__, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

_____
Testator

We, _____, _____, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as his last will and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of his knowledge the testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

_____
Witness

_____
Witness

The State of _____

County of _____

Subscribed, sworn to and acknowledged before me by _____, the testator and subscribed and sworn to before me by _____, and _____, witnesses, this _____ day of _____.

(Seal) (Signed) _____

_____

(Official capacity of officer)

(b) An attested will may at any time subsequent to its execution be made self-proved by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state where the acknowledgment occurs and evidenced by the officer's certificate, under the official seal, attached or annexed to the will in form and content substantially as follows:

The State of _____

County of _____

We, _____, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his last will and that he had signed willingly (or willingly directed another to sign for him), and that he executed it as his free and voluntary act for the purposes therein expressed, and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of his knowledge the testator was at that time eighteen years of age or older, of sound mind and under no constraint or undue influence.

_____
Testator

_____
Witness

_____
Witness

Subscribed, sworn to and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____, and _____, witnesses, this _____ day of _____.

(Seal) (Signed) _____

_____
(Official capacity of officer)

Added Comment

The original text of this section directed that the officer who assisted the execution of a self-proved will be authorized to act by virtue of the laws of "this State", thereby restricting this mode of execution to wills offered for probate in the state where they were executed. Also, the original text authorized only the addition to an already signed and witnessed will, of an acknowledgment of the testator and affidavits of the witnesses, thereby requiring testator and witnesses to sign twice even though the entire execution ceremony occurred in the presence of a notary or other official. In 1975, the Joint Editorial Board recommended the substitution of new text that eliminates these problems.

10.

13.11.225

SECTION 2-602. [Choice of Law as to Meaning and Effect of Wills.] The meaning and legal effect of a disposition in a will shall be determined by the local law of a particular state selected by the testator in his instrument unless the application of that law is contrary to the provisions relating to the elective share described in Part 2 of this Article, the provisions relating to exempt property

and allowances described in Part 4 of this Article, or any other public policy of this state otherwise applicable to the disposition.

Added Comment

In 1975, the Joint Editorial Board recommended the addition of explicit reference to the elective share described in Article II, Part 2, and the exemptions and allowances described in Article II, Part 4, as embodying policies of this state which may not be circumvented by a testator's choice of applicable law.

11.

13.11.255

SECTION 2-608. [Nonademption of Specific Devises in Certain Cases; Sale by Conservator; Unpaid Proceeds of Sale, Condemnation or Insurance.]

(a) If specifically devised property is sold by a conservator, or if a condemnation award or insurance proceeds are paid to a conservator as a result of condemnation, fire, or casualty, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the condemnation award, or the insurance proceeds. This subsection does not apply if subsequent to the sale, condemnation, or casualty, it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by one year. The right of the specific devisee under this subsection is reduced by any right he has under subsection (b).

(b) A specific devisee has the right to the remaining specifically devised property and:

(1) any balance of the purchase price (together with any security interest) owing from a purchaser to the testator at death by reason of sale of the property;

(2) any amount of a condemnation award for the taking of the property unpaid at death;

~~(3) any proceeds unpaid at death on fire or casualty insurance on the property; and~~

~~(4) property owned by testator at his death as a result of foreclosure, or obtained in lieu of foreclosure, of the security for a specifically devised obligation.~~

[NONADEMPTION OF SPECIFIC DEVISES IN CERTAIN CASES; UNPAID PROCEEDS OF SALE, CONDEMNATION OR INSURANCE; SALE BY CONSERVATOR.]

(A) A specified devisee has the right to the remaining specifically devised property and:

(1) any balance of the purchase price (together with any security interest) owing from a purchaser to the testator at death by reason of sale of the property;

(2) any amount of a condemnation award for the taking of the property unpaid at death;

(3) any proceeds unpaid at death on fire or casualty insurance on the property; and

(4) property owned by testator at his death as a result of foreclosure, or obtained in lieu of foreclosure, of the security for a specifically devised obligation.

(B) If specifically devised property is sold by a conservator, or if a condemnation award or insurance proceeds are paid to a conservator as a result of condemnation, fire, or casualty, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the condemnation award, or the insurance proceeds. This subsection does not apply if subsequent to the sale, condemnation or casualty, it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by one year.

The right of the specific devisee, under this subsection is reduced by any right he has under subsection (A).

Added Comment

In 1975, the Joint Editorial Board recommended a re-ordering of the title of this section and a reversal of the original order of the subsections. This recommendation was designed to correct an unintended interpretation of the section to the effect that all of the events described in subsections (a) and (b) had relevance only when the testator was under a conservatorship. The original intent of the section, made more apparent by this re-ordering, was to prevent ademption in all cases involving sale, condemnation or destruction of specifically devised assets where testator's death occurred before the proceeds of the sale, condemnation or any insurance, had been paid to the testator.

12.

13.11.770

SECTION 2-611. [Construction of Generic Terms to Accord with Relationships as Defined for Intestate Succession.] Halfbloods, adopted persons and persons born out of wedlock are included in class gift terminology and terms of relationship in accordance with rules for determining relationships for purposes of intestate succession. ~~But a person born out of wedlock is not treated as the child of the father unless the person is openly and notoriously so treated by the father.~~ [But a person born out of wedlock is not treated as the child of the father unless the person is openly and notoriously so treated by the father.]

Added Comment

In 1975, the Joint Editorial Board recommended that the section end with the words, "of intestate succession.", in order to align the section with the Uniform Parentage Act of 1973. The Board also recommended retention, as a bracketed alternative form for states that do not enact the Uniform Parentage Act, of the language of the 1969 text

beginning with "but a person born out of wedlock", and continuing through to the end of the original section.

[Change #31 affects Section 2-801. It appears at page 39, infra.]

13.
13.11.300

SECTION 2-802. [Effect of Divorce, Annulment, and Decree of Separation.]

already law

(a) A person who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, he is married to the decedent at the time of death. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section.

(b) For purposes of Parts 1, 2, 3 & 4 of this Article, and of Section 3-203, a surviving spouse does not include:

(1) a person who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless they subsequently participate in a marriage ceremony purporting to marry each to the other, or subsequently live together as man and wife;

(2) a person who, following a decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third person; or

(3) a person who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

Added Comment

In 1975, the Joint Editorial Board recommended the addition, in the preliminary statement of subsection (b), of explicit reference to Section

3-203 which controls priorities for appointment as personal representative.

14.

13.14.030

SECTION 3-106. [Proceedings Within the Jurisdiction of Court; Service; Jurisdiction Over Persons.] In proceedings within the exclusive jurisdiction of the Court where notice is required by this Code or by rule, and in proceedings to construe probated wills or determine heirs which concern estates that have not been and cannot now be opened for administration, interested persons may be bound by the orders of the Court in respect to property in or subject to the laws of this state by notice in conformity with Section 1-401. An order is binding as to all who are given notice of the proceeding though less than all interested persons are notified.

Added Comment

The Joint Editorial Board, in 1975, recommended the addition after "rule", of the language "and in proceedings to construe probated wills or determine heirs which concern estates that have not been and cannot now be opened for administration." This addition, coupled with the exceptions to the limitations provisions in 3-108 that permit proceedings to construe wills and to determine heirs of intestates to be commenced more than three years after death, clarifies the purpose of the draftsmen to offer a probate proceeding to aid the determination of rights of inheritance of estates that were not opened for administration within the time permitted by section 3-108.

15.

13.16.080

SECTION 3-301. [Informal Probate or Appointment Proceedings; Application; Contents.]

(a) Applications for informal probate or informal appointment shall be directed to the Registrar, and verified by the applicant to

be accurate and complete to the best of his knowledge and belief as to the following information:

(1) Every application for informal probate of a will or for informal appointment of a personal representative, other than a special or successor representative, shall contain the following:

(i) a statement of the interest of the applicant;

(ii) the name, and date of death of the decedent, his age, and the county and state of his domicile at the time of death, and the names and addresses of the spouse, children, heirs and devisees and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant;

(iii) if the decedent was not domiciled in the state at the time of his death, a statement showing venue;

(iv) a statement identifying and indicating the address of any personal representative of the decedent appointed in this state or elsewhere whose appointment has not been terminated;

(v) a statement indicating whether the applicant has received a demand for notice, or is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere.

(vi) that the time limit for informal probate or appointment as provided in this Article has not expired either because 3 years or less have passed since the decedent's death, or, if more than 3 years from death have passed, that circumstances as described by Section 3-108 authorizing tardy probate or appointment have occurred.

(2) An application for informal probate of a will shall state the following in addition to the statements required by (1):

(i) that the original of the decedent's last will is in the possession of the court, or accompanies the application, or that an authenticated copy of a will probated in another jurisdiction accompanies the application;

(ii) that the applicant, to the best of his knowledge, believes the will to have been validly executed;

(iii) that after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will, and that the applicant believes that the instrument which is the subject of the application is the decedent's last will.

~~(iv) that the time limit for informal probate or appointment as provided in this Article has not expired either because 3 years or less have passed since the decedent's death, or, if more than 3 years from death have passed, that circumstances as described by Section 3-108 authorizing tardy probate or appointment have occurred.~~ [Recast as (vi) in (1) above.]

(3) An application for informal appointment of a personal representative to administer an estate under a will shall describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment shall adopt the statements in the application or petition for probate and state the name, address and priority for appointment of the person whose appointment is sought.

(4) An application for informal appointment of an administrator in intestacy shall state in addition to the statements required by (1):

(i) that after the exercise of reasonable diligence, the applicant is unaware of any unrevoked testamentary instrument relating

to property having a situs in this state under Section 1-301, or, a statement why any such instrument of which he may be aware is not being probated;

(ii) the priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to

the appointment under Section 3-203.

(5) An application for appointment of a personal representative to succeed a personal representative appointed under a different testacy status shall refer to the order in the most recent testacy proceeding, state the name and address of the person whose appointment is sought and of the person whose appointment will be terminated if the application is granted, and describe the priority of the applicant.

(6) An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in Section 3-610(c), or whose appointment has been terminated by death or removal, shall adopt the statements in the application or petition which led to the appointment of the person being succeeded except as specifically changed or corrected, state the name and address of the person who seeks appointment as successor, and describe the priority of the applicant.

(b) By verifying an application for informal probate, or informal appointment, the applicant submits personally to the jurisdiction of the court in any proceeding for relief from fraud relating to the application, or for perjury, that may be instituted against him.

Added Comment

In 1975, the Joint Editorial Board recommended the addition of sub-section (b) to reflect an improvement accomplished in the first enactment in Idaho. The addition, which is a form of long-arm provision that affects everyone who acts as an applicant in informal proceedings, in conjunction with 1-106 provides a remedy in the court of probate against anyone who might make known misstatements in an application.

The addition is not needed in the case of an applicant who becomes a personal representative as a result of his application, for the implied consent provided in 3-602 would cover the matter. Also, the requirement that the applicant state that time limits on informal probate and appointment have not run, formerly appearing as (iv) under (2) was expanded to refer to informal appointment and moved into (1). Correcting an oversight in the original text, this change coordinates the statements required in an application with the limitations provisions of section 3-108.

16.

13.16.105

SECTION 3-306. [Informal Probate; Notice Requirements.]

[*] The moving party must give notice as described by Section 1-401 of his application for informal probate (1) to any person demanding it pursuant to Section 3-204; and (2) to any personal representative of the decedent whose appointment has not been terminated. No other notice of informal probate is required.

[(b) If an informal probate is granted, within 30 days the applicant shall give written information of the probate to the heirs and devisees. The information shall include the name and address of the applicant, the name and location of the court granting the informal probate, and the date of the probate. The information shall be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the applicant. No duty to give information is incurred if a personal representative is appointed who is required to give the written information required by 3-705. An applicant's failure to give information as required by this section is a breach of his duty to the heirs and devisees but does not affect the validity of the probate.]

* This paragraph becomes (a) if the optional (b) is accepted.

Added Comment

In 1975, the Joint Editorial Board recommended the addition, as a bracketed, optional provision, of subsection (b). The recommendation was derived from a provision added to the Code in Idaho at the time of original enactment. The Board viewed the addition as interesting,

to the attention of enacting states as an optional addition. The Board views the informational notice required by section 3-705 to be of more importance in preventing injustices under the Code, because the opening of an estate via appointment of a personal representative instantly gives the estate representative powers over estate assets that can be used wrongfully and to the possible detriment of interested persons. Hence, the 3-705 duty is a part of the recommended Code, rather than a bracketed, optional provision. By contrast, the informal probate of a will that is not accompanied or followed by appointment of a personal representative only serves to shift the burden of making the next move to disinterested heirs who, inter alia, may initiate a 3-401 formal testacy proceeding to contest the will at any time within the limitations prescribed by section 3-108.

17.

13.16.365

SECTION 3-706. [Duty of Personal Representative; Inventory and Appraisement.] Within 3 months after his appointment, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare and file or mail an inventory of property owned by the decedent at the time of his death, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent's death, and the type and amount of any encumbrance that may exist with reference to any item.

The personal representative shall send a copy of the inventory to interested persons who request it ~~or he may file the original of the inventory with the court.~~ He may also file the original of the inventory with the court.

Added Comment

In 1975, the Joint Editorial Board recommended elimination of the word "or" that

separated the language dealing with the duty to send a copy of the inventory to interested persons requesting it, from the final part of the paragraph dealing with filing of the original. The purpose of the change was to prevent a literal interpretation of the original text that would have permitted a personal representative who filed the original inventory with the court to avoid compliance with requests for copies from interested persons.

18.

13-16.455

SECTION 3-802. [Statutes of Limitations.] Unless an estate is insolvent the personal representative, with the consent of all successors whose interests would be affected may waive any defense of limitations available to the estate. If the defense is not waived, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid. The running of any statute of limitations measured from some other event than death and advertisement for claims against a decedent is suspended during the 4 months following the decedent's death but resumes thereafter as to claims not barred pursuant to the sections which follow. For purposes of any statute of limitations, the proper presentation of a claim under Section 3-804 is equivalent to commencement of a proceeding on the claim.

Added Comment

In 1975, the Joint Editorial Board recommended a change that makes it clear that only those successors who would be affected thereby, must agree to a waiver of a defense of limitations available to an estate. As the original text stood, the section appeared to require the consent of "all successors," even though this would include some who, under the rules of abatement, could not possibly be affected by allowance and payment of the claim in question.

13.16.470

SECTION 3-805. [Classification of Claims.]

(a) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

(1) costs and expenses of administration;

~~(2) reasonable funeral expenses and reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him;~~

~~(3) debts and taxes with preference under federal law of the laws of this state;~~

~~(4) all other claims.~~

(2) reasonable funeral expenses;

(3) debts and taxes with preference under federal law;

(4) reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him;

(5) debts and taxes with preference under other laws of this state;

(6) all other claims.

(b) No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

Comment

In 1975, the Joint Editorial Board recommended the separation of funeral expenses from the items now accorded fourth priority. Under federal law, funeral expenses, but not debts incurred by the decedent can be given priority

over claims of the United States.

20.

13.16.515

SECTION 3-814. [Encumbered Assets.] If any assets of the estate are encumbered by mortgage, pledge, lien, or other security interest, the personal representative may pay the encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance or convey or transfer the assets to the creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the encumbrance has ~~filed~~ presented a claim, if it appears to be for the best interest of the estate. Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration.

Added Comment

In 1975, the Joint Editorial Board recommended substitution of the word "presented", in the first sentence, for the word "filed" in the original text. The change aligns this section with Section 3-804 which describes several methods, including mailing or delivery to the personal representative, as methods of protecting a claim against non-claim provisions of the Code.

21.

13.16.580

SECTION 3-910. [Purchasers from Distributees Protected.] If property distributed in kind or a security interest therein is acquired for value by a purchaser from or lender to ~~for value from~~ a distributee who has received an instrument or deed of distribution from the personal representative, or is so acquired by a purchaser from or lender to a transferee from such distributee, the purchaser or lender takes title free of ~~any claims of the estate~~ rights of any interested person in the estate and incurs no personal

liability to the estate, or to any interested person, whether or not the distribution was proper or supported by court order and whether or not the authority of the personal representative was terminated prior to execution of the instrument or deed. This section protects a purchaser from or lender to a distributee who, as personal representative, has executed a deed of distribution to himself, as well as a purchaser from or lender to any other distributee or his transferee. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind, even if the personal representative and the distributee are the same person, or whether the authority of the personal representative had terminated prior to the distribution. Any recorded instrument described in this section on which a state documentary fee is noted pursuant to [insert appropriate reference] shall be prima facie evidence that such transfer was made for value.

Added Comment

In 1975, the Joint Editorial Board recommended additions that strengthen the protection extended by this section to bona fide purchasers from distributees. The additional language was derived from recommendations evolved with respect to the Colorado version of the Code by probate and title authorities who agreed on language to relieve title assurers of doubts they had identified in relation to some cases.

22.

13.16.635

SECTION 3-1004. [Liability of Distributees to Claimants.] After assets of an estate have been distributed and subject to Section 3-1006, an undischarged claim not barred may be prosecuted in a proceeding against one or more distributees. No distributee shall be liable to claimants for amounts received as exempt property, homestead or family

allowances, or for amounts in excess of the value of his distribution as of the time of distribution. As between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration. Any distributee who shall have failed to notify other distributees of the demand made upon him by the claimant in sufficient time to permit them to join in any proceeding in which the claim was asserted against him loses his right of contribution against other distributees.

Added Comment

In 1975, the Joint Editorial Board recommended the addition, after "claimants for amounts" in the second sentence, of "received as exempt property, homestead or family allowances, or for amounts..." The purpose of the addition was to prevent unpaid creditors of a decedent from attempting to enforce their claims against a spouse or child who had received a distribution of exempt values.

23.

13.21.055

SECTION 4-301. [Jurisdiction by Act of Foreign Personal Representative.] A foreign personal representative submits ~~himself~~ personally to the jurisdiction of the Courts of this state in any proceeding relating to the estate by (1) filing authenticated copies of his appointment as provided in Section 4-204, (2) receiving payment of money or taking delivery of personal property under Section 4-201, or (3) doing any act as a personal representative in this state which would have given the state jurisdiction over him as an individual. Jurisdiction under (2) is limited to the money or value of personal property collected.

Added Comment

In 1975, the Joint Editorial Board recommended substitution of the word "personally" for

"himself", in the preliminary language of the first sentence. Also, language restricting the submission to jurisdiction to cases involving the estate was added in 1975.

24.

13.26.035

SECTION 5-202. [Testamentary Appointment of Guardian of Minor.] The parent of a minor may appoint by will a guardian of an unmarried minor. Subject to the right of the minor under Section 5-203, a testamentary appointment becomes effective upon filing the guardian's acceptance in the Court in which the will is probated, if before acceptance, both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority. This state recognizes a testamentary appointment effected by filing the guardian's acceptance under a will probated in another state which is the testator's domicile. Upon acceptance of appointment, written notice of acceptance must be given by the guardian to the minor and to the person having his care, or to his nearest adult relation.

Comment

In 1975, the Joint Editorial Board recommended the addition of the last sentence to adopt a safeguard suggested by the first enactment of the Code in Idaho.

25.

13.26.040

SECTION 5-203. [Objection by Minor of Fourteen or Older to Testamentary Appointment.] A minor of 14 or more years may prevent an appointment of his testamentary guardian from becoming effective, or may cause a previously accepted appointment to terminate, by filing with the Court in which the will is probated a written objection to the appointment before it is accepted or within 30 days after notice

of its acceptance. An objection may be withdrawn. An objection does not preclude appointment by the Court in a proper proceeding of the testamentary nominee, or any other suitable person.

Comment

In 1975, the Joint Editorial Board recommended the addition of the words "notice of" in the first sentence, to relate the section to notice requirements then being added to section 5-202.

26.

13.26.120

SECTION 5-306. [Termination of Guardianship for Incapacitated Person.] The authority and responsibility of a guardian for an incapacitated person terminates upon death of the guardian or ward, the determination of incapacity of the guardian, or upon removal or resignation as provided in Section 5-306. Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding. Termination does not affect his liability for prior acts nor his obligation to account for funds and assets of his ward.

already in Ak. law

Comment

In 1975, the Joint Editorial Board recommended the addition of the last sentence. The addition makes explicit that termination of a guardian's authority, like termination of the authority of a personal representative as described by Section 3-608, has no effect on the guardian's liability for prior acts or on his liability to account.

27.

13.26.300

SECTION 5-428. [Claims Against Protected Person; Enforcement.]

(a) A conservator must pay from the estate all just claims against the estate and against the protected person arising before or after the conservatorship upon their presentation and allowance.

A claim may be presented by either of the following methods: (1) the claimant may deliver or mail to the conservator a written statement of the claim indicating its basis, the name and address of the claimant and the amount claimed; (2) the claimant may file a written statement of the claim, in the form prescribed by rule, with the clerk of Court and deliver or mail a copy of the statement to the conservator. A claim is deemed presented on the first to occur of receipt of the written statement of claim by the conservator, or the filing of the claim with the court. A presented claim is allowed if it is not disallowed by written statement mailed by the conservator to the claimant within 60 days after its presentation. The presentation of a claim tolls any statute of limitation relating to the claim until thirty days after its disallowance.

(b) A claimant whose claim has not been paid may petition the Court for determination of his claim at any time before it is barred by the applicable statute of limitation, and, upon due proof, procure an order for its allowance and payment from the estate. If a proceeding is pending against a protected person at the time of appointment of a conservator or is initiated against the protected person thereafter, the moving party must give notice of the proceeding to the conservator if the outcome is to constitute a claim against the estate.

(c) If it appears that the estate in conservatorship is likely to be exhausted before all existing claims are paid, preference is to be given to prior claims for the care, maintenance and education of the protected person or his dependents and existing claims for expenses of administration.

Comment

In 1975, the Joint Editorial Board recommended the addition of the third sentence in (a) in order to provide a definition of the time when a claim is deemed presented.

Already have

28.

13.26.320

SECTION 5-432. [New section] [Foreign Conservator; Proof of Authority; Bond; Powers] If no local conservator has been appointed and no petition in a protective proceeding is pending in this state, a domiciliary foreign conservator may file with a Court in this State in a [county] in which property belonging to the protected person is located, authenticated copies of his appointment and of any official bond he has given. Thereafter, he may exercise as to assets in this state all powers of a local conservator and may maintain actions and proceedings in this state subject to any conditions imposed upon non-resident parties generally.

Comment

This section, approved following recommendation in 1975 of the Joint Editorial Board, extends concepts described in Article IV, Part 2 for personal representatives, to conservators. The recommendation was suggested by an addition to the Idaho Probate Code at the time of its enactment in 1971.

29.

13.31.020

SECTION 6-104. [Right of Survivorship.]

(a) Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intention at the time the account is created. If there are two or more surviving parties, their respective ownerships during lifetime shall be in proportion to their previous ownership

interests under Section 6-103 augmented by an equal share for each survivor of any interest the decedent may have owned in the account immediately before his death; and the right of survivorship continues between the surviving parties.

(b) If the account is a P.T.O.D. account, on death of the original payee or of the survivor of two or more original payees, any sums remaining on deposit belong to the P.T.O.D. payee or payees if surviving, or to the survivor of them if one or more die before the original payee; if two or more P.T.O.D. payees survive, there is no right of survivorship in event of death of a P.T.O.D. payee thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(b) if the account is a P.O.D. account,

(1) on death of one of two or more original payees the rights to any sums remaining on deposit are governed by subsection (a) of this section.

(2) on death of the sole original payee or of the survivor of two or more original payees, any sums remaining on deposit belong to the P.O.D. payee or payees if surviving, or to the survivor of them if one or more die before the original payee; if two or more P.O.D. payees survive, there is no right of survivorship in the event of death of a P.O.D. payee thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(c) If the account is a trust account, on death of the trustee or the survivor of two or more trustees, any sums remaining on deposit belong to the person or persons named as beneficiaries if surviving,

~~or to the survivor of them if one or more die before the trustee, unless there is clear and convincing evidence of a contrary intent, if two or more beneficiaries survive, there is no right of survivorship in event of death of any beneficiary thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.~~

(c) If the account is a trust account,

(1) on death of one of two or more trustees, the rights to any sums remaining on deposit are governed by subsection (a) of this section.

(2) On death of the sole trustee or the survivor of two or more trustees, any sums remaining on deposit belong to the person or persons named as beneficiaries, if surviving, or to the survivor of them if one or more die before the trustee, unless there is clear evidence of a contrary intent; if two or more beneficiaries survive, there is no right of survivorship in event of death of any beneficiary thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(d) In other cases, the death of any party to a multiple-party account has no effect on beneficial ownership of the account other than to transfer the rights of the decedent as part of his estate.

(e) A right of survivorship arising from the express terms of the account or under this section, a beneficiary designation in a trust account, or a P.O.D. payee designation, cannot be changed by will.

Added Comment

In 1975, the Joint Editorial Board recommended expansion of subsections (b) and (c) so that the subsections now deal explicitly with cases

involving multiple original payees in P.O.D. accounts, and multiple trustees in trust accounts. These changes were conceived to clarify, rather than to change, the text.

30.

13.31.030

SECTION 6-106. [Accounts and Transfers Nontestamentary.] Any transfers resulting from the application of Section 6-104 are effective by reason of the account contracts involved and this statute and are not to be considered as testamentary or subject to Articles I-IV of this Code, except as provided in sections 2-201 through 2-207, and except as a consequence of, and to the extent directed by, 6-107.

Added Comment

The closing reference to Article II, Part 2, and to 6-107 was added in 1975 at the recommendation of the Joint Editorial Board to clarify the intention of the original text.

31.

13.11.295

SECTION 2-801. [Renunciation of Succession.]

(a) A person ~~(or his personal representative)~~ or the representative of an incapacitated or protected person, who is an heir, devisee, person succeeding to a renounced interest, beneficiary under a testamentary instrument, or ~~person designated to take pursuant to~~ appointee under a power of appointment exercised by a testamentary instrument, may renounce in whole or in part the right of succession to any property or interest therein, including a future interest, by filing a written ~~instrument within the time and at the place hereinafter provided~~ renunciation under this Act. The right to renounce does not survive the death of the person having it. The instrument shall (1) describe the property ~~or part thereof~~ or interest ~~therein~~ renounced, ~~(ii)~~ be signed by ~~the person renouncing and (iii) declare~~

~~the renunciation and the extent thereof;~~ (2) declare the renunciation and extent thereof, and (3) be signed by the person renouncing.

COMMENT

Who May Disclaim: At common law it was settled that the taker of property under a will had the right to accept or reject a legacy or devise (per Abbott, C.J. in *Townson* v. *Tickell*, 3 B &.Ald 3, 1 36, 106 Eng. Rep 575, 576). The same rule prevails in the United States (*Peter* v. *Peter*, 343 Ill. 493, 175 NE 846 (1931), 75 ALR 890). It is said that no one can make another an owner of an estate against his consent by devising it to him. See, for example, *People* v. *Flanagan*, 331 Ill 203, 162 NE 848, (1928) 60 ALR 305:

> "The law is clear that a legatee or devisee is under no obligation to accept a testamentary gift . . . and he may renounce the gift, by which act the estate will descend to the heir or pass in some other direction under the will . . ."

Under the rule permitting the disclaimer of testate successions, the disclaimed interest related back to the date of the testator's death so that the interest did not vest in the grantee but remained in the original owner as if the will had never been executed (*People* v. *Flanagan*, supra).

Unlike the devisee or legatee, an heir had no common law power to prevent passage of title to himself by disclaimer. "An heir at law is the only person in whom the law of England vests property, whether he will or not," declares Williams on Real Property, and adds, "No disclaimer that he may make will have any effect, though, of course, he may as soon as he pleases dispose of the property by ordinary conveyance." (Williams on Law of Real Property 75 [2d Am. Ed. 1857]. See also 6 Page on Wills [Bowe-Parker Revision] Section 49.1.)

The difference between testate and intestate successions in respect to the right to disclaim, has produced a number of illogical and undesirable consequences. An heir who sought to reject his inheritance was subjected to the Federal gift tax on the theory that since he could not prevent the passage of title to himself, any act done to rid himself of the interest necessarily involved a transfer subject to gift tax liability [*Hardenberg* v. *Com'r*, 198 F.2d 63 (8th Cir.) cert. denied, 344 U.S. 863, (1952) aff'g 17 T.C. 166 (1951); *Maxwell* v. *Com'r*, 17 T.C. 1589 (1952). See Lauritzen, Only God Can Make an Heir, 48 NWL Rev. 568; Annotation 170 ALR 435]. On the other hand, a legatee or devisee who rejected a legacy or devise under the will incurred no such tax consequences [*Brown* v. *Routzahn*, 63 F. 2d 914 (6th Cir.) cert. denied, 290 U.S. 641 (1933)].

Section 1 places an heir on the same basis as a devisee or legatee and provides that he and others upon whom successions may devolve, have the full right to disclaim in whole or in part the passage of property to them, with the same legal consequences applying in all such cases.

Successive disclaimers are permitted by the express inclusion of "person succeeding to a disclaimed interest" among those who may disclaim.

Beneficiary: The term beneficiary is used in a broad sense to include any person entitled, but for his disclaimer, to possess or enjoy an equitable or legal interest, present or future, in the property or interest, including a power to consume, appoint, or apply it for any purpose or to enforce the transfer in any respect.

Section 1 extends the right to disclaim to the representative of an incapacitated or protected person. This accords with the general rule that the probate or surrogate court in the exercise of its traditional jurisdiction over the person and estate of a minor or incompetent may authorize or direct the guardian, conservator or committee to exercise the right on behalf of his ward when it is in the ward's interest to do so. *Davis* v. *Mather*, 309 Ill. 284, 141 N.E. 209 (1923).

On the other hand, absent a statute, the general rule is that the right to disclaim is personal to the person entitled to exercise it, and dies with him in the absence of fraud or concealment or conflict of interest of his representative, even though the time within which the right might have been utilized has not expired and even though he may be incompetent. *Rock Island Bank & Trust Co.* v. *First Nat. Bank of Rock Island*, 26 Ill.2d 47, 185 N.E.2d 890, (1962), 3 ALR 3d 114. Section 1 adopts this position by stating that the right to disclaim does not survive the death of the person having it.

The Act makes no provision here or elsewhere, for an extension of time to disclaim or other relief from a strict observance of the statutory requirements for disclaimer and the time limitations for expressing the right of disclaimer applies to persons under disability as well as to others.

What May be Disclaimed: Section 1 specifies that the "succession" to any property, real or personal or interest therein, may be disclaimed, and it is immaterial whether it derives by way of will, intestacy, exercise of a power of appointment or disclaimer. It would include the right to renounce any survivorship interest in the community in a community property state. Cf *U.S.* v. *Mitchell*, 403 U.S. 190, (1971), rev'g 430 F.2d (5th Cir. 1970), aff'g 51 T.C. 641 (1969).

Future Interests: Section 1 contemplates the disclaimer of future interests by reference to "beneficiary under a testamentary instrument" and "appointee under a power of appointment." The time for making such a disclaimer is dealt with in Section 2.

Partial Disclaimer: The status of partial disclaimers has been uncertain in many states. The result has often turned on whether the gift is "severable" or constitutes a "single, aggregate" gift [*Olgesby* v. *Springfield Marine Bank*, 395 Ill. 37, 69 N.E.2d 269 (1946); *Brown* v. *Routzahn*, supra]. Section 1 makes it clear that a partial, as well as a total, disclaimer is permitted.

Discretionary administrative and investment powers under a trust have been held to constitute a "severable" interest and subject to partial disclaimer. *Estate of Harry C. Jaecker*, 58 T.C. 166, CCH Dec. 31,356 (1972).

Method of Disclaiming: In many states no satisfactory case law has existed as to the form and manner of making disclaimers of devises or legacies under wills. See Annotation 93 ALR2d 8 — What Constitutes or Establishes Beneficiary's Acceptance of Renunciation of Bequest or Devise. Because certainty of titles and the expeditious administration of estates makes definiteness desirable in this area, Section 1 requires a disclaimer to (i) describe the property or interest disclaimed; (ii) declare the disclaimer and the extent thereof; and (iii) be signed by the disclaimant.

~~(b)~~ The writing specified in ~~(a)~~ must be filed within ~~(6)~~ months after the death of the decedent or the donee of the power, or if the taker of the property is not then finally ascertained not later than ~~(6)~~ months after the event by which the taker or the interest is finally ascertained. The writing must be filed in the Court of the county where proceedings concerning the decedent's estate are pending, or where they would be pending if commenced. A copy of the writing also shall be mailed to the personal representative of the decedent.

~~(c)~~ Unless the decedent or donee of the power has otherwise indicated by his will, the interest renounced, and any future interest which is to take effect in possession or enjoyment at or after the termination of the interest renounced, passes as if the person re-

(b) (1) An instrument renouncing a present interest shall be filed not later than [6] months after the death of the decedent or the donee of the power.

(2) An instrument renouncing a future interest shall be filed not later than [6] months after the event that determines that the taker of the property or interest is finally ascertained and his interest indefeasibly vested.

(3) The renunciation shall be filed in the [probate] court of the county in which proceedings have been commenced for the administration of the estate of the deceased owner or deceased donee of the power or, if they have not been commenced, in which they could be commenced. A copy of the renunciation shall be delivered in person or mailed by registered or certified mail to any personal representative, or other fiduciary of the decedent or donee of the power. If real property or an interest therein is renounced, a copy of the renunciation may be recorded in the office of the [Recorder of Deeds] of the county in which the real estate is situated.*

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*If Torrens system is in effect, add provisions to comply with local law.

COMMENT

Time for Making Disclaimer: At common law, no specific time evolved within which disclaimer had to be made. The only requirement was that it be within a "reasonable" time (*In re Wilson's Estate*, 298 NY 398, 83 NE2d 852 (1949); *Ewing* v. *Rountree*, 228 F.Supp. 137 (D.C. Tenn 1964). As a result, divergent holdings were reached by the courts (*Brown* v. *Routzahn*, 63 F. 2d 914, (6th Cir.), cert. denied, 290 U.S. 641 (1933). Section 2 fixes a definite time for filing of disclaimers. This approach follows the pattern of the Federal estate tax law which prescribed the time for filing estate tax returns in terms of the decedent's death. The time allowed should overlast the time for filing claims and contesting the will and enable the executor or administrator to know with certainty who the takers of the estate will be.

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On the other hand, it should not be so long as to work against an early determination of the acceptance or rejection of succession to an estate, or increase the risk of inadvertent acceptance of the benefits of the property, creating an estoppel. In the case of future interests the disclaimer period should run from the time the takers of the interest are finally ascertained and their interests indefeasibly fixed. *Seifner* v. *Weller*, 171 S.W.2d 617 (Mo., 1943). For the consequence of selecting too short a period, see *Brodhag* v. *U.S.*, 319 F. Supp 747 (S.D. W.Va., 1970) involving a 2-month period fixed by West Virginia law.

In the case of future interests it should be noted that the person need not wait until the occurrence of the determinative event before filing a disclaimer, but may do so at any time after the death of the decedent or donee, so long as it is made "not later than" the prescribed period.

Federal Gift Tax Implications: Disclaimers have significance under the Federal gift tax law. Section 2511(a) of the Internal Revenue Code imposes a gift tax upon the transfer of property by gift whether the transfer is in trust or otherwise, and whether the gift is direct or indirect. The Treasury regulations under this section state that where local law gives the beneficiary, heir or next-of-kin an unqualified right to refuse to accept ownership of property transferred from a decedent, whether by will or by intestacy, a refusal to accept ownership does not constitute the making of a gift if the refusal is made within a "reasonable time" after knowledge of the existence of the transfer.

A "reasonable time" for gift tax purposes is not defined in the Code or regulations. It has been held that the courts will look to the law of the states in determining the question, (*Brown* v. *Routzahn*, 63 F.2d 914 (6th Cir.) cert. denied, 290 U.S. 641 (1933)), not conclusively, but as relevant and having probative value (*Keinath* v. *C.I.R.* 480 F.2d 57, (8th Cir., 1973), rev'g 58 T.C. 352, (1972)), and that an unequivocal disclaimer filed within 6 months of the determinative event is made within a "reasonable time." It has been held, further, that as regards future interests, the "reasonable time" period runs from the termination of the preceding estate or interest, and not from the time the transfer was made, *Keinath* v. *C.I.R.*, supra.

Place of Filing Disclaimer: Section 2 requires a disclaimer to be filed in the probate court. If real property or an interest therein is involved, a copy of the disclaimer may also be recorded in the office of the recorder of deeds or other appropriate office in the county in which the real estate is situated. If the Torrens system is in effect, appropriate provisions should be added to comply with local law.

Notice: A copy of the disclaimer is required to be delivered in person or mailed by registered or certified mail to the personal representative or other fiduciary of the decedent or of the donee of the power as the case may be.

(c) Unless the decedent or donee of the power has otherwise provided, the property or interest renounced devolves as if the person renouncing had predeceased the decedent or, if the person renouncing is designated to take under a power of appointment exercised by a testamentary instrument, as if the person renouncing had predeceased the donee of the power. A future interest that takes effect in possession or enjoyment after the termination of the estate or interest renounced takes effect as if the person renouncing had predeceased the decedent or the donee of the power. A renunciation relates back for all purposes to the date of the death of the decedent or the donee of the power.

Devolution of Disclaimed Property: When a beneficiary disclaims his interest under a will, the question arises as to what happens to the rejected interest. In *People* v. *Flanagin*, 331 Ill. 203, 162 N.E. 848 (1928), 60 ALR 305, the court, quoting the New York case of *Burritt* v. *Sillman*, 13 N.Y. 93 (1855) said that the disclaimed property will "descend to the heir or pass in some other direction under the will." From this, it may be assumed that the court meant that if the decedent left no will, the renounced interest passed according to the rules of descent, but if he left a will, it passed according to its terms.

It has been generally thought that devolution in the case of disclaimer should be the same as in the case of lapse, which is controlled by sections of the probate law. Section 3 of the Act takes this approach. It provides that unless the will of the decedent or the donee of the power has otherwise provided, the disclaimed interest devolves as if the disclaimant had predeceased the decedent or the donee of the power. In every case the disclaimer relates back to the date of the death of the decedent or of the donee. The provision that the disclaimer "relates back", codifies the rule that a renunciation of a devise or legacy relates to the date of death of the decedent or donee and prevents the succession from becoming operative in favor of the disclaimant. See *In re Wilson's Estate*, 298 N.Y. 398, 83 N.E. 2d 852 (1949). Also, *Bouse, for use of State* v. *Hull*, 168 Md. 1, 176 A. 645 (1935).

Acceleration of Future Interests: If a life estate or other future interest is disclaimed, the problem is raised of whether succeeding interests or estates accelerate in possession or enjoyment or whether the disclaimed interest must be marshalled to await the actual happening of the contingency. Section 3 provides that remainder interests are accelerated, the second sentence specifically stating that any future interest which is to take effect in possession or enjoyment after the termination of the estate or interest disclaimed, takes effect as if the disclaimant had predeceased the deceased owner or deceased donee of the power. Thus, if T leaves his estate in trust to pay the income to his son for life, remainder to his son's children who survive him, and S. disclaims with two children then living, the remainder in the children accelerates; the trust terminates and the children receive possession and enjoyment, even though the son may subsequently have other children or that one or more of the living children may die during their father's lifetime.

Effect of Death or Disability of Person Entitled to Disclaim: The effect of death of a person entitled to disclaim, including one under disability, is discussed under Section 1. A guardian or conservator of the estate of an incapacitated or protected person may disclaim for the ward. Section 3 makes no provision for an extension of time or for other relief in case of disability from the observance of the statutory requirements for effective disclaimer. The intent is that the period for disclaimer applies to a person under disability as well as to others, and includes a court which purports to act on behalf of one under disability in the absence of fraud, misconduct or other unusual circumstances. *Pratt* v. *Baker*, 48 Ill.App.2d 442, 199 N.E.2d 307 (1964).

Rights of Creditors and Others: As regards creditors, taxing authorities and others, the provision for "relation back" has the legal effect of preventing a succession from becoming operative in favor of the disclaimant. The relation back is "for all purposes" which would include, among others for the purpose of rights of creditors, taxing authorities and assertion of dower. It is immaterial that the effect is to avoid the imposition of a higher death tax than would be the case if the interest had been accepted: *Estate of Aylsworth*, 74 Ill. App.2d 375, 219 N.E. 2d 779 (1966) [motive for the disclaimer is immaterial]; *People* v. *Flanagin*, 331 Ill. 203, 162 N.E. 848 (1928), 60 ALR 305; *Cook* v. *Dove*, 32 Ill.2d 109, 203 N.E.29 892 (1965) [upholding for inheritance tax the right of appointees to take by default rather than under the power-holder's exercise of power]; *Matter of Wolfe's Estate*, 179 N.Y. 599, 72 N.E. 1152 (1904); aff'g 89 App. Div. 349, 83 N.Y. Supp. 949 (1903); *Brown* v. *Routzahn*, 63 F.2d 914, (6th Cir.), cert. denied 290 U.S. 641 (1933); *In re Stone's Estate*, 132 Ia. 136, 109 N.W. 455 (1906); *Tax Commission* v. *Glass*, 119 Ohio St. 389, 164 N.E. 425 (1929); *U.S.* v. *McCrackin*, 189 F. Supp 632 (S.D. Ohio 1960).

Similarly, numerous cases have held that a devisee or legatee can disclaim a devise or legacy despite the claims of creditors: *Hoecker* v. *United Bank of Boulder*, 476 F.2d 838 (CA 10, 1973) aff'g 334 F. Supp. 1080 (D. Colo. 1971) (bankruptcy); *U.S.* v. *McCrackin*, supra (Federal income tax liens); *Shoonover v. Osborne*, 193 Ia. 474, 187 N.W. 20 (1922), *Bradford* v. *Calhoun*, 120 Tenn. 53, 109 S.W. 502 (1908), *Carter* v. *Carter*, 63 N.J.Eq. 726, 53 A. 169 (1902), *Estate of Hansen*, 109 Ill.App.2d 283, 248 N.E.2d 709 (1969) (judgment creditor); 37 Mich. L. Rev. 1168; 43 Yale L J 1030; 27 ALR 477; 133 ALR 1428. A creditor is not entitled to notice of the disclaimer (*In re Estate of Hansen*, 109 Ill.App.2d 283, N.E.2d 709, (1969)).

(d) (1) The right to renounce property or an interest therein is barred by (i) an assignment, conveyance, encumbrance, pledge, or transfer of the property or interest, or a contract therefor, (ii) a written waiver of the right to renounce, (iii) an acceptance of the property or interest or benefit thereunder, or (iv) a sale of the property or interest under judicial sale made before the renunciation is effected.

(2) The right to renounce exists notwithstanding any limitation on the interest of the person renouncing in the nature of a spendthrift provision or similar restriction.

(3) The renunciation or the written waiver of the right to renounce is binding upon the person renouncing or person waiving and all persons claiming through or under him.

COMMENT

Bars to Disclaimer — Waiver — Estoppel: It may be necessary or advisable to sell real estate in a decedent's estate before the expiration of the period permitted for disclaimer. In such case, the possibility of a disclaimer being filed within the period, could be a deterrent to sale and delivery of good title. Section 4 expressly authorizes an heir, devisee, legatee or other person entitled to disclaim, to indicate in writing his intention to "waive" his right of disclaimer, and thus avoid any delay in the completion of a sale or other disposition of estate assets. The written waiver bars the right of the person subsequently to disclaim the property or interest therein and is binding on persons claiming through or under him.

Similarly, Section 4 provides that various acts of a person entitled to disclaim in regard to property or an interest therein, such as making an assignment, conveyance, encumbrance, pledge or transfer of the property or interest, or a contract therefor, bars the right of the person to disclaim and is binding on all persons claiming through or under him.

Spendthrift Provisions: The existence of a limitation on the interest of an heir, legatee, devisee or other disclaimant in the nature of a spendthrift provision or similar restriction is expressly declared not to affect the right to disclaim. Without this provision, there might be a question as to whether the beneficiary of a spendthrift trust can disclaim under the statute (Griswold, Spendthrift Trust [2d Ed] Section 424, p 603). If a person who is under no legal disability wishes to refuse a beneficial interest under a trust, he should not be powerless to make an effective disclaimer even though the intended interest once accepted by him would be inalienable. (Scott on Trusts, Section 337.7, p 2683, 3d Ed.)

When a beneficial interest is accepted by a beneficiary, he cannot thereafter disclaim or release it (Griswold, supra, Section 534, p 603 note 48). As to what conduct amounts to an acceptance, see *In Re Wilson's Estate*, 298 NY 398, 83 NE2d 852 (1949).

Judicial Sale: The section provides that the right to disclaim is barred by a sale of the property or interest under a judicial sale. Judicial sales are ordered in many different types of proceeding such as foreclosure of mortgage or trust deed, enforcement of lien, partition proceedings and proceedings for the sale of real property of a decedent or ward for certain purposes. Probate laws frequently permit a representative to mortgage or pledge property of the decedent or ward in certain circumstances. Execution sales are made pursuant to a writ to satisfy a money judgment. Section 4 has the effect of providing that the making of a judicial sale for the account of the heir, devisee, or beneficiary, bars him from renouncing the property or interest. To be distinguished from a judicial sale, is a taking pursuant to eminent domain, which is considered to be a taking of property without the owner's consent and unrelated to his obligations or commitments. The right to disclaim the proceeds of a condemnation action if otherwise timely and in accordance with the Act, should not, therefore, be barred under this section.

(e) This Act does not abridge the right of a person to waive, release, disclaim, or renounce property or an interest therein under any other statute.

COMMENT

Section 5 provides that the right to disclaim under the law does not abridge the right of any person to waive, release, disclaim or renounce any property or interest therein under any other statute. The principal statutes to which this provision is pointed are those dealing with spousal renunciations and release of powers.

Being a codification of the common law in regard to the renunciation of the property, the Act is intended to constitute an *exclusive remedy* for the disclaimer of testamentary successions apart from those provided by other statutes, and supplants the common law right to disclaim.

(f) An interest in property existing on the effective date of this Act as to which, if a present interest, the time for filing a renunciation under this Act has not expired, or if a future interest, the interest has not become indefeasibly vested or the taker finally ascertained, may be renounced within [6] months after the effective date of this Act.

COMMENT

Section 6 deals with the application of the Act to property interests under instruments or in estates in existence on the effective date. If the interest is a present one and the filing time has not expired, the holder is given a full period after enactment within which to disclaim the interest. If the interest is a future one, the holder is given a full period after the interest becomes indefeasibly vested or the takers finally ascertained, after enactment in which to disclaim it. If T dies in 1960 trusteeing his estate to W for life, remainder to such of T's sons as are living at W's death and W dies in 1975, the Act permits a son to disclaim his remainder interest after it ripens even though it arises under an instrument predating the effective date of the Act. The application of statute to pre-existing instruments in like situations finds support in cases such as *Will of Allis*, 6 Wis2d 1, 94 NW2d 226, (1959), 69 ALR2d 1128.

Add to Comment
(first three paragraphs)

The above text, consists of sections 1 through 6 of Uniform Disclaimer of Transfers By Will, Intestacy or Appointment Act of 1973, redesignated as subsections a) through f).

The Comments following each subsection are the Official Comments to the 1973 statute. The word "renunciation" has been substituted for "disclaimer" because the original 2-801 used the term "renunciation" and several cross-references to this term appear in other sections of this Code. It is the view of the Joint Editorial Board that the terms "renunciation" and "disclaimer" have the same meaning.

The principal substantive difference between original 2-801 and the 1973 replacement therefor is that the former permitted renunciation by the personal representative of a person who might have renounced during his lifetime. Under the new uniform act, which is now the official text of 2-801, the right to renounce terminates upon the death of the person who might have renounced during his lifetime. Also, the original version was less precise than the present version in the important provisions of subsection (b) which govern the time for renunciation.

(The balance of the comment is the same as the original comment to 2-801.)

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

IN ADDITION, THE JOINT EDITORIAL BOARD HAS RECOMMENDED THE FOLLOWING ADDITIONAL COMMENTS TO SECTIONS FOR WHICH NO AMENDMENTS HAVE BEEN RECOMMENDED

1.

SECTION 2-103. Add, at the end of the original comment as expanded by the paragraph on page 2 hereof:

The Joint Editorial Board gave careful consideration to a change in the Code's system for distribution among issue as recommended in Waggoner, "A Proposed Alternative to the Uniform Probate Code's System for Intestate Distribution Among Descendants," 66 Nw. U.L. Rev. 626 (1971). Though favored as a recommended

change in the Code by a majority of the Board, others opposed on the ground that the original text had been enacted already in several states, and that a change in this basic section of the Code would weaken the case for uniformity of probate law in all states. Nonetheless, since some states as of 1975 had adopted versions of the Code containing deviations from the original text of this and related sections, it was the concensus that Prof. Waggoner's recommendation and the statutory changes that would be necessary to implement it, should be described in Code commentary.

The changes involved would appear in this section and in 2-106. The old and the revised text of these sections would be as follows if the Waggoner recommendation is accepted by an enacting state which decides that uniformity of the substantive rules of intestate succession is not vital:

> Change 2-103(1), (3) and (4) by altering, in each instance, the language referring to taking per capita or by representation, as follows:
> 2-103 . . .
> (1) to the issue of the decedent; to be distributed per capita at each generation as defined in section 2-106; ~~if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree then those of more remote degree take by representation;~~
>
> (3) if there is no surviving issue or parent, to the issue of the parents or either of them to be distributed per capita at each generation as defined in section 2-106; ~~by representation;~~
>
> (4) . . . or to the issue of the paternal grandparents if both are deceased to be distributed per capita at each generation as defined in section 2-106; ~~the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take by representation.~~

Also, alter 2-106 as follows:

SECTION 2-106. [Per Capita at Each Generation.]

If per capita at each generation representation is called for by this Code, the estate is divided into as many shares as there are surviving heirs in the nearest degree of kinship which contains any surviving heirs and deceased persons in the same degree who left issue who survive the decedent. Each surviving heir in the nearest degree which contains any surviving heir is allocated one share and the remainder of the estate is divided in the same manner as if the heirs already allocated a share and their issue had predeceased the decedent. ~~receiving one share and the share of each deceased person in the same degree being divided among his issue in the same manner.~~

2.

SECTION 3-203. Add, at the end of the present comment:

[New final paragraph] The meaning of "spouse" is determined by 2-802.

3.

SECTION 3-609. Add, at the end of the present comment:

See Section 3-718, which establishes the rule that a surviving co-executor may exercise all powers incident to the office unless the will provides otherwise. Read together, this section and 3-718 mean that the representative of a deceased co-representative would not have any duty or authority in relation to the office held by his decedent.

4.

SECTION 5-401. Replace the third sentence of the first paragraph of the present comment with the following:

Persons who may be subjected to the proceedings described here include a broad category of persons who, for a variety of different reasons, may be unable to manage their own property.

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

JAY S. HAMMOND, GOVERNOR

STATE OF ALASKA

DEPARTMENT OF LAW
Office of the Attorney General
Pouch K - State Capitol
Juneau 99811

March 25, 1976

The Honorable Robert Ziegler
Chairman
Senate Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: 1975 Uniform Probate Code amendments

Dear Senator Ziegler: Bob

In my role as a Uniform Law Commissioner for Alaska, and knowing of your interest in the Uniform Probate Code (UPC), I am sending to you for your committee's consideration and possible introduction the amendments to the UPC promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1975. A bill proposing enactment of these amendments in Alaska is attached, as is a copy of the amendments and "official commentary" as distributed by the NCCUSL.

You may find the information in this letter and in the attached sheets sent to me by Professor Richard V. Wellman, educational director for the Joint Editorial Board for the Uniform Probate Code, helpful in preparing a committee report to be printed in the Senate Journal. Such a report, including reference to the NCCUSL official commentary, would provide an indication of legislative intent and a guide to future interpretation.

In preparing the attached bill, I have omitted or modified some of the sections included in the attached NCCUSL draft, as follows:

1. AS 13.11.045(a)(2) (U.P.C. section 2-109) is not proposed for amendment in this bill because the NCCUSL change was intended to provide an option for states which had enacted the Uniform Parentage Act (promulgated by the NCCUSL in 1973). Alaska has not enacted that Act. (That,

incidentally, is another matter which your committee may wish to consider; I have information available should you wish to see it at this time.)

2. AS 13.11.225 (U.P.C. section 2-602) was amended in 1973, adopting the same change now promulgated by the NCCUSL. See ch. 56 SLA 1973; 1973 Senate Journal Supplement No. 9; and 1973 House Journal, page 819.

2. AS 13.11.255 (U.P.C. section 2-608) is not proposed for change here because an intent statement in your committee report should suffice. The NCCUSL change would merely have reorganized the existing language of the section to forestall a possible interpretation question. I assume that Alaska would agree with the interpretation intended by the NCCUSL.

4. AS 13.11.270 (U.P.C. section 2-611) is not proposed for amendment because the proposed change is also one merely intended to provide an option for states which have enacted the Uniform Parentage Act.

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6. In AS 13.16.030 (U.P.C. section 3-106), I have slightly changed the NCCUSL wording for clarity; no substantive difference from the intent expressed by the NCCUSL is intended.

7. AS 13.16.105(b) (U.P.C. section 3-306) is offered for legislative consideration, although the NCCUSL merely presents it as an optional provision.

8. The following statutes were amended in 1973 in the way currently recommended by the NCCUSL (see item 2, above), and therefore are not proposed for amendment in the attached bill:

AS 13.16.470 (U.P.C. section 3-605)
AS 13.21.055 (U.P.C. section 4-301)
AS 13.26.035 (U.P.C. section 5-202)
AS 13.26.040 (U.P.C. section 5-203)
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In addition to the statutory amendments proposed by the NCCUSL in the attached material, that organization is proposing additions to the "official commentary" accompanying the U.P.C. See the last few pages of the attached material.

Yours truly,

Arthur H. Peterson
Assistant Attorney General
Uniform Law Commissioner
for Alaska

AHP:md

Uniform Probate Code

1975 Technical Amendments

After approval and promulgation of the Uniform Probate Code in 1969, the National Conference of Commissioners on Uniform State Laws and The Real Property, Probate and Trust Law Section of the American Bar Association formed the Joint Editorial Board composed of five Commissioners and five representatives of the Section. Since the Fall of 1971, the Board has monitored the legal literature concerning the Code, searched reports about the Code by various bar and legislative study committees and examined the eleven enactments to date of the Code, for ways of strengthening and improving the Code. As changes and corrections were considered and approved by the Board, the text was released for the guidance of others then known by the Board to be considering the Code in preparation for partial or total enactment. Consequently, when West Publishing Company published the 1974 Edition of the Code, it was able to include an Appendix of recommendations concerning changes as previously released by the Board, and fifteen of the thirty-one changes approved by the National Conference in 1975 were included in this Appendix. Several of these, plus others that were not released by the Board before the 1975 annual meeting of the National Conference in Quebec City, already have been incorporated into the Code in one or more of the eleven full enactments.

The thirty-one changes recently approved by the National Conference are aptly described as technical amendments for none reflect any pulling back from, or marked extension of, any of the principles or provisions of the Code. Nineteen of the thirty-one changes involve mere word changes or re-arrangements of the ordering of sentences that improve or clarify sections and eliminate gaps in, or inconsistencies between, sections. Three of the changes, including two relating to inheritance rights of children born out of wedlock, and one that restructures the Code's provision regarding renunciation of rights arising via intestate or testate succession, merely conform the Probate Code to more recent acts of the National Conference; e.g. the Uniform Parentage Act (1973) and the Uniform Disclaimer of Transfers By Will, Intestacy or Appointment Act (1973).

Of the remaining nine amendments, two affect the Elective Share of the Surviving Spouse, one by adding more explicit language to protect bona fide purchasers from a deceased spouse and clarifying the time limits for the elective share remedy, and the other by charging an electing spouse with renounced values made available to her/him by the decedent. Two other amendments reflect a slight change in the original position of the Code vis a vis inheritance rights of, from or through adopted children.

The remaining changes add minor new safeguards and remedies to the Code's system for probate of wills and administration of estates. For example, a "long-arm" provision is added which will permit the court of probate to give a personal judgment against one who, as applicant in an informal proceeding, commits fraud or perjury. The Code as originally approved facilitates remedies for wrongful conduct against one who accepts letters of administration; the change extends the same procedural efficiency to remedies against all applicants. Another example is a change that adds as a duty for any person who obtains probate of a will in informal proceedings without seeking appointment of a personal representative, that he give information of the probate to interested persons. Also, a small change in section 3-106 makes it clear that interested persons can be bound by a probate court order determining heirs or construing a will if notice of the proceeding as prescribed by the Code in given to all interested persons and if the estate has not been, and cannot now be, opened for administration. This fills a gap in the text as originally approved by supplying a convenient court proceeding for resolving title questions that may occur where no one acts to secure probate of a will or administration within the limitations period, as provided in the original text, of three years from death.

Overall, the amendments demonstrate that a shake-down period for the Code now has passed, and that identified defects have been corrected and needed improvements have been added. Undoubtedly,

political and other local concerns will cause local changes and exclusions in future enactments modelled after the Code. Even so, the amendments, which show that considerable thought and effort already have been expended in national attempts to improve the Code, should serve to reduce the tendency of local draftsmen to make purely technical language and style changes.

file on hill

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K — STATE CAPITOL
JUNEAU 99811

April 30, 1976

The Honorable Terry Gardiner
Chairman
House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: SB 717 (Uniform Probate Code amendments)

Dear Terry Representative Gardiner:

Since I will be out of the state for three weeks, I wanted to send you this little written reminder of my interest in having the legislature pass SB 717 which is presently residing in your committee. The bill makes technical amendments to the Uniform Probate Code, as recommended by the National Conference of Commissioners on Uniform State Laws at their 1975 meeting. I am supporting this bill in my role as a Uniform Law Commissioner for Alaska.

Senate Journal Supplement No. 9 (April 1, 1976) contains both my March 25, 1976 letter to Senator Robert Zeigler, discussing this bill, and a general description of these amendments prepared by Professor Richard V. Wellman, Educational Director for the Joint Editorial Board for the Uniform Probate Code. A copy of that supplement is attached. In addition, the Senate Judiciary Committee has a copy of the "official commentary" prepared by the National Conference explaining each one of these amendments. The only comments on this bill that I have heard from private law practitioners have been in support.

Your favorable consideration of this matter will be appreciated. Thank you.

Yours truly,

Arthur H. Peterson
Assistant Attorney General
Alaska Commissioner on
Uniform State Laws

AHP:md

cc: The Honorable Mike Bradner
Speaker of the House

SB 717

Office of the Attorney General
Pouch K - State Capitol
Juneau 99811

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Senate Judiciary Committee
Alaska State Legislature
Pouch V
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In preparing the attached bill, I have omitted or modified some of the sections included in the attached NCCUSL draft, as follows:

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Art

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Assistant Attorney General
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AHP:md

cc: The Honorable Mike Bradner
Speaker of the House

THE PRECEDING DOCUMENT(S) MAY NOT FILM LEGIBLY BECAUSE OF POOR QUALITY OF THE ORIGINAL.

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

-676(2/77)

SB

724

"An Act making corrective amendments in the Alaska Statutes as recommended by the revisor of statutes."

COMMITTEE REPORT

4/12/76

HOUSE

Mr. Speaker: Date May 20 1976

The Committee on JUDICIARY has had SB 724

under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

Terry: we have a problem -
I won't ask you to solve it
but I want you to agree (I won't
ask because I know you are disputed with
me).
Keith will offer an amendment
to SB724 Levison's Bill to
add an immediate effective date
to SCSHB863 Forest Protection.
Randy Berry & Art Peterson
agree with the amendment and
with putting it on this bill.
The reason we need the immediate effective

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

M E M O R A N D U M March 30, 1976

SUBJECT: "An Act making corrective amendments in the Alaska Statutes as recommended by the revisor of statutes." (W.O. #2446)

TO: Legislative Council

FROM: Randolph Berry, Revisor of Statutes

This bill was prepared by the Revisor of Statutes under AS 01.05.-036. The proposed amendments are designed to accomplish the following purposes: (1) correction of citations; (2) cleanup to make provisions consistent with other law or to recognize more recently enacted law; and (3) miscellaneous clarification and correction.

It is suggested that this explanatory memorandum accompany the bill through its legislative course.

SECTIONAL ANALYSIS

Section 1 updates a citation to the current statutory section in the municipal code (AS 29) which was based on and replaced AS 29.10.396.

Section 2 makes a correction in the language of the section for internal consistency.

Sections 3 and 4 correct citations to AS 29.58.345, enacted by ch. 137, SLA 1975, made necessary by the change in the AS number of that section to avoid duplication.

Section 5 adds the name of the Alaska Royalty Oil and Gas Development Advisory Board to the section, as "board" is not defined in AS 38.05.

Section 6 repeals AS 38.05.347, since that section expired by its own terms in 1967.

Section 7 substitutes the word "or" for "and" in the section, since biologist and technician are two separate positions.

Section 8 is included to clarify the correction of an error of a typographical nature in the citation to AS 39.37.030 occurring in FCCS HCSSB 404 and sec. 8, ch. 205, SLA 1975, as that Act was initially enrolled.

Section 9 repeals 43.05.150(e) which is duplicated by AS 37.10.-075(d).

Sections 10 and 11 update the language of AS 43.75.130 and 43.75.-135 to correspond to the current classification of cities in the municipal code (AS 29).

Section 12 corrects a citation to AS 43.33.150.

Section 13 repeals a reference to the Board of Examiners of Basic Sciences which was repealed by sec. 1, ch. 87, SLA 1970.

Section 14 updates the language of AS 45.55.130(12), since the Commodity Futures Trading Commission (7 USCA sec. 4a) has replaced the Commodity Exchange Authority of the United States Department of Agriculture.

Section 15 reinserts the word "not" which was omitted in AS 45.-55.140(b)(7)(B) when AS 45.55.140(b) was amended in other respects by sec. 12, ch. 86, SLA 1972.

Section 16 deletes a reference to the Alaska Mineral Lease Bonus Permanent Fund, since HB 324 (1975) which would have established that fund was vetoed by the governor and the veto was sustained.

Sections 17 to 117 update references to the Department of Commerce, the commissioner of commerce, the Department of Economic Development and the commissioner of economic development to conform to sec. 9, ch. 207, SLA 1975.

RB/sm

A M E N D M E N T

IN THE HOUSE BY THE JUDICIARY COMMITTEE

TO: SENATE BILL NO. 724

Page 37, line 24: add a new section to read:

* Sec. 118. AS 16.05.221 is amended to read:

Sec. 16.05.221. BOARDS OF FISHERIES AND GAME. (a) For purposes of the conservation and development of the fishery resources of the state, there is created the Board of Fisheries composed of seven members appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. The appointed members shall be residents of the state and shall be appointed without regard to political affiliation or geographical location of residence. The commissioner is not a member of the Board of Fisheries, but shall be ex officio secretary.

(b) For purposes of the conservation and development of the game resources of the state, there is created a Board of Game composed of seven members appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. The appointed members shall be residents of the state, and shall be appointed without regard to political affiliation or geographical location of residence. The commissioner is not a member of the Board of Game, but shall be ex officio secretary.

A M E N D M E N T adopted

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STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

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RB/sm

A M E N D M E N T

IN THE HOUSE BY THE JUDICIARY COMMITTEE

TO: SENATE BILL NO. 724

Page 37, line 24: add a new section to read:

* Sec. 118. AS 16.05.221 is amended to read:

Sec. 16.05.221. BOARDS OF FISHERIES AND GAME. (a) For purposes of the conservation and development of the fishery resources of the state, there is created the Board of Fisheries composed of seven members appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. The appointed members shall be residents of the state and shall be appointed without regard to political affiliation or geographical location of residence. The commissioner is not a member of the Board of Fisheries, but shall be ex officio secretary.

(b) For purposes of the conservation and development of the game resources of the state, there is created a Board of Game composed of seven members appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. The appointed members shall be residents of the state, and shall be appointed without regard to political affiliation or geographical location of residence. The commissioner is not a member of the Board of Game, but shall be ex officio secretary.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

M E M O R A N D U M

March 30, 1976

SUBJECT: "An Act making corrective amendments in the Alaska Statutes as recommended by the revisor of statutes." (W.O. #2446)

TO: Legislative Council

FROM: Randolph Berry, Revisor of Statutes

This bill was prepared by the Revisor of Statutes under AS 01.05.-036. The proposed amendments are designed to accomplish the following purposes: (1) correction of citations; (2) cleanup to make provisions consistent with other law or to recognize more recently enacted law; and (3) miscellaneous clarification and correction.

It is suggested that this explanatory memorandum accompany the bill through its legislative course.

SECTIONAL ANALYSIS

Section 1 updates a citation to the current statutory section in the municipal code (AS 29) which was based on and replaced AS 29.10.396.

Section 2 makes a correction in the language of the section for internal consistency.

Sections 3 and 4 correct citations to AS 29.58.345, enacted by ch. 137, SLA 1975, made necessary by the change in the AS number of that section to avoid duplication.

Section 5 adds the name of the Alaska Royalty Oil and Gas Development Advisory Board to the section, as "board" is not defined in AS 38.05.

Section 6 repeals AS 38.05.347, since that section expired by its own terms in 1967.

Section 7 substitutes the word "or" for "and" in the section, since biologist and technician are two separate positions.

Section 8 is included to clarify the correction of an error of a typographical nature in the citation to AS 39.37.030 occurring in FCCS HCSSB 404 and sec. 8, ch. 205, SLA 1975, as that Act was initially enrolled.

Section 9 repeals 43.05.150(e) which is duplicated by AS 37.10.-075(d).

Sections 10 and 11 update the language of AS 43.75.130 and 43.75.-135 to correspond to the current classification of cities in the municipal code (AS 29).

Section 12 corrects a citation to AS 43.33.150.

Section 13 repeals a reference to the Board of Examiners of Basic Sciences which was repealed by sec. 1, ch. 87, SLA 1970.

Section 14 updates the language of AS 45.55.130(12), since the Commodity Futures Trading Commission (7 USCA sec. 4a) has replaced the Commodity Exchange Authority of the United States Department of Agriculture.

Section 15 reinserts the word "not" which was omitted in AS 45.-55.140(b)(7)(B) when AS 45.55.140(b) was amended in other respects by sec. 12, ch. 86, SLA 1972.

Section 16 deletes a reference to the Alaska Mineral Lease Bonus Permanent Fund, since HB 324 (1975) which would have established that fund was vetoed by the governor and the veto was sustained.

Sections 17 to 117 update references to the Department of Commerce, the commissioner of commerce, the Department of Economic Development and the commissioner of economic development to conform to sec. 9, ch. 207, SLA 1975.

RB/sm

SCR

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Criminal Procedures SCR
File on criminal code

PROPOSED AMENDMENT TO CODE OF CRIMINAL PROCEDURE

X

An order finally denying a Motion to Suppress Evidence ? may be reviewed upon an appeal from any ensuing judgment of conviction notwithstanding the fact that such judgment is entered upon a plea of guilty. The sentencing judge shall not inquire as to the defendant's intention to appeal, nor may such intention be considered in any way in the sentencing procedure.

COMMENT:

Much judicial time and legal effort is currently wasted because the defendant automatically waives his rights to challenge unlawful police conduct in searches, seizures or wiretappings if he pleads guilty after the Superior Court denies an initial motion to suppress evidence. Subsequently, if his search and seizure issue appears meritorious, despite an adverse determination by the lower court, the defendant will insist on an expensive, faultless and wasteful trial, since under the present law this is the only way he can take his search and seizure appeal to the Supreme Court.

XX

AN ACT CREATING A COMMISSION ON CORRECTIONS

It is recognized by the legislature that the present system of jails and corrections has largely been a failure in terms of reducing recidivism regardless of the good faith efforts that have been expended. It is believed by the legislature that this failure has resulted primarily from the lack of effective disposition of the convicted criminal in terms of the avowed and mandated goals of rehabilitation, integration and re-integration into our society. The legislature specifically finds that it is desirable to integrate the offender into society rather than isolate him from it. It is also the opinion of the legislature that the Scandinavian concept of small local community institutions and work dormitories has proved successful and is worth investigating further for possible implementation in the State of Alaska. Accordingly, the legislature does hereby establish a Commission on Corrections which shall be charged with the duty to investigate the Scandinavian system of corrections and other such alternative methods and report to the legislature one year from the effective date of this act. The Commission shall be funded in the amount of $_____. The Commission members, including a chairman, shall be appointed by the Attorney General and shall consist of not less than three (3) members

Comment:

Funding will be necessary for an office, one full-time staff member, one secretary, per diem, travel and the Commission members should be paid for their time.

ACTS RELATING TO PRIVACY

The legislature takes notice that the people of the State of Alaska have passed an amendment to the State Constitution which provides:

> Section 22. Right of Privacy. The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section.

Accordingly, the legislature is taking the following action with respect to implementation:

1) The Alaska Criminal Justice Information System Act is amended as follows:

a) The Alaska Criminal Justice Information System shall not be interconnected with any other system which does not provide at least the same safeguards of individual privacy that ACJIS does.

b) The legislature directs the Attorney General's office to be in charge of the enforcement of the present security regulations of ACJIS. The Attorney General is further directed to make an annual report to the legislature concerning the implementation and enforcement of these security regulations.

2) In conjunction with AS 11.60.290 (eavesdropping) the following statute is adopted:

It is unlawful for a telephone company to eavesdrop or to permit the use of their equipment, either intentionally or negligently, for the act of eavesdropping as defined in AS 11.60.290. Telephone utilities have the duty to police

their operations in this regard. A person who is injured by an act of eavesdropping which occurred upon telephone utility equipment shall have a cause of action against the telephone company for treble damages; in no event will the damages awarded be less than $10,000.

3) Any person, organization, company or corporation which provides credit information concerning others shall be held to strict accountability for the accuracy of their reports. If a credit report for any person is false, inaccurate, or misleading, then the injured person has a cause of action against the credit reporter for treble damages; however, in no event shall the damages awarded be less than $10,000.

4) In conjunction with AS 11.60.359 (deprivation of rights under color of law) a person whose right, privilege or immunity granted by the Constitution or laws of the State of Alaska are so violated negligently or intentionally, shall have a cause of action against the perpetrator for treble his actual damages; however, in no event shall the damages awarded by less than $10,000.

5) It is recognized by the legislature that private security officers require regulation in order that the public be adequately protected. The Attorney General is directed to establish regulations for the licensing of private security officers within one year from the effective date of this act.

All activities of a private security officer shall be subject to the same constitutional limitations that are imposed upon public officers, including, but not restricted to, the admissability of evidence in criminal proceedings.

6) In conjunction with AS 23.10.037 no person who is required to, or is subject to Alaska Workmens Compensation Act (Cahpter 30, Title 23) may, as a c ndition of employment, or requirement thereof, inquire into any matters relating to an applicant or employee's personal life, including, but not limited to, personal relations, political affiliation or views, religious affilitation, marital status or sexual activities unless the requirements of the job necessarily require such inquiry. The purpose of this law is to protect the privacy of the citizens from unconstitutional and unnecessary intrusion. Accordingly, the Human Rights Commission is directed to enforce this provision. Any person who violates this provision is guilty of a misdemeanor.

7) No person may employ the use of a dog or other animal for the purpose of detecting contraband in any luggage, package, freight, or any other such item of personalty without first obtaining a warrant, to be issued only upon a showing of probable cause from a court of competent jurisdiction. The use of any evidence so obtained without a warrant in any criminal proceeding is prohibited. The violation of this statute is a misdemeanor.

8) It is recognized that the public law is not properly used when it seeks to enforce standards of morality upon

adult persons who have consented to certain prohibited acts. Accordingly, the following statutes are repealed:

11.40.010	Adultery
11.40.030	Guilt of a Married Man
11.40.040	Cohabitation in the state of Adultery or Fornication
11.40.050	Polygamy
11.40.070	Seduction
11.40.120	Unnatural Crimes
11.40.160	Display, Sale, Offer, Distribution, Lending or Giving Away of Objectionable Comic Books
11.40.220	Prostitution
11.40.230	Solicitation
11.40.240	Receiving for Purposes of Prostitution
11.40.260	Keeping a Bawdy House
11.50.010	Criminal Syndicilism
11.50.030	Assembly to Advocate Criminal Syndicilism
11.50.040	Permitting Use of Place for Assemblage
11.60.210	Vagrancy

AN ACT RELATING TO THE COMMISSIONER OF PUBLIC SAFETY

It is recognized by the legislature that the Attorney General is and should be the chief law enforcement officer in the State of Alaska. The Commissioner of Public Safety, the Department of Public Safety, and their functions are ancillary to his jurisdiction. Article 3 of Title 22 is amended accordingly.

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AN ACT RELATING TO DECREASING DRUG USE

The legislature recognizes that the first priority in law enforcement is to prevent crimes of violence upon the individual. The legislature feels that there has been a tendency in the past to overemphasize criminal offenses in which there is private and personal possession and use of prohibited drugs. The legislature recognises that in most cases a medical problem as well as a legal problem exists. The medical problem, if dealt with properly, will serve the public interest. Accordingly, the Commission on Corrections is directed to propose to the legislature alternatives to the present process of the criminalization of drug users.

Council forms [illegible] committee

6 AG member

7 Judge member (SC)

8,9. legis member (1 ex Junior) [illegible]

legis counsel - Chairman

5 trial Bar [illegible]

4 Pub Safety

3 H+SS (Correct) [illegible] $50,000 [illegible] H budget

2 [illegible]

1 DA (ex) [illegible] Chairman [illegible])

Consultant [illegible]

[illegible] AG [illegible]

[illegible]

[illegible] K [illegible]

[illegible] AG

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Consultant

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AG - staff
Council - "
Harry Sullivan

1. AG.
2. S.C.
3. trial Bar - Wendell Kay
4. Public Safety
5. Corrections
6. Social workers
7. D.A. - Monroe Clayton
Kathy Chandler
8. Ziegler
9. Brown / Farr

May 28, 1975

TO: Senator Genie Chance

FROM: Terry Gardiner

SUBJECT: Criminal Code Revision

I would like to suggest that we consider placing John Havelock on our committee for the revision of the criminal code. With his background and as director of legal studies and director of criminal justice studies for the University, I think he could be a great asset to the entire project. Mr. Havelock mentioned that with his five staff positions, one of whom will be a director of research, his program could possibly provide us research and staff help on the criminal code revision. Please let me know what you think about this idea.

SCR

15

SENATOR GENIE CHANCE

SEXUAL ASSAULT LEGISLATION

SENATE CONCURRENT RESOLUTION NO. 15 - ASSIGNMENT OF POLICEWOMEN TO REPORTED INCIDENTS OF RAPE

Rape victims believe that female officers would be more sensitive to their needs and that more policewomen should be available to respond to calls from rape victims. This concurrent resolution recommends that local law enforcement agencies undertake an affirmative assignment program to place more policewomen in positions which will enable them to respond to rape victims. It states that special efforts should be made to assign female officers to night duty when most rapes occur.

SENATE CONCURRENT RESOLUTION NO. 16 - MEDICAL EXAMINATIONS OF VICTIMS SEXUAL ASSAULT

Emergency medical facilities provide inadequate treatment for rape victims. A woman who has been raped is often beaten and traumatized. The extent of the medical treatment is frequently limited to a vaginal examination for the purpose of gathering potential evidence.

This concurrent resolution recommends to the director of each public medical facility in the state and to each private medical emergency facility in the state having a contractual relationship with the state or local political subdivision that each victim of sexaul assault who is treated by them should be given a thorough examination for both physical and emotional trauma. The staff of such facilities should be instructed on the appropriate care and treatment of victims of sexual assault. In addition, such facilities, as standard operating procedure should inform the victim of venereal disease, pregnancy, and psychiatric services, of the possibility of financial aid from the Violent Crimes Compensation Board, and of any other services or aids available in the community which could serve to alleviate the eventual trauma occasioned by a sexual assualt.

SENATE CONCURRENT RESOLUTION NO. 17 - PEACE OFFICER TRAINING PROGRAMS RELATED TO TREATMENT OF RAPE VICTIMS

The training and instruction police officers receive generally emphasizes the legal elements of the crime of rape. Little, if any, training time is spent discussing the psychological and emotional needs of the rape victim. Consequently, peace officers often display a significant lack of sensitivity in their handling of rape victims.

This concurrent resolution recommends that Alaska Police Standards Council, in conjunction with local community women's organizations and representatives of local medical professions, develop courses of instruction for law enforcement personnel regarding the proper investigation of rape cases, with emphasis on the psychological and emotional effects on the victim.

SENATE CONCURRENT RESOLUTION NO. 18 - TRAINING IN NONAGGRESSIVE SELF-DEFENSE IN SECONDARY SCHOOLS OF THE STATE

With the high incidence of violent crimes against individuals, there is a need for public high schools to include as part of their physical education program training in nonaggressive self-defense. If persons were better able to defend themselves, they would be less vulnerable to rape and other violent bodily assault.

This concurrent resolution requests that each school district ascertain the need for offering physical education classes in nonagressive self-defense and if a need exists to report to the Department of Education by July 1. 1976. It further requests that the Department of Education work with and assist school districts, including the state operated school system, in developing programs in nonagressive self-defense and that the Department should submit a summary an evaluation of its findings to the Tenth Legislature - First Session.

SENATE CONCURRENT RESOLUTION NO. 19 - SPECIAL INVESTIGATIVE UNITS FOR CASES INVOLVING SEXUAL OFFENSES

Most law enforcement agencies have inadequately staffed and trained investigative units for sexual offenses. Special rape investigative units which have been established by a few departments provide more thorough and effective investigation of rape reports.

This concurrent resolution requests the Alaska Police Standards Council to develop a plan for the training of specialists to investigate charges of rape and other sexual assaults and to encourage local law enforcement agencies to develop special investigative units for cases involving sexual assaults.

SENATE BILL NO. 261 - PROVIDING FOR AN INCAMERA HEARING TO DETERMINE THE RELEVANCY OF THE PROSECUTING WITNESS' PREVIOUS SEXUAL CONDUCT

Many times the victim of sexual assault is extensively questioned about his/her sexual history in open court, without a showing that such questioning is relevant to the innocence or guilt of the accused. The fear of such detailed examination about a very personal aspect of an individual's life may deter victims from bringing criminal complaints, and may be a significant factor in the low percentage of reported rapes.

Senate Bill 261 requires that the defense attorney be required, by specified procedures and out of the hearing of the jury, to "lay a foundation" as to the relevancy of the victim's prior sexual history; and that the judge make a determination of the relevancy of the prior history before such evidence is admissible. A showing of relevancy should not be required when the prior sexual activity occurred with the accused. In no event may evidence of previous sexual conduct of the prosecuting witness committed more than one year before the date of the alleged crime be admissible, except previous conduct with the defendant.

SENATE BILL NO. 262 - JURY INSTRUCTIONS IN RAPE CASES

During the last few years there has been great disagreement in various states with regard to the types and content of jury instructions in criminal prosecutions for rape, attempted rape, and assault with intent to commit rape.

There is little doubt that the charge of sexual assault is difficult to defend and to prosecute. The law requires that the jury be informed that the charge is difficult to defend and that the jury must examine the testimony of the prosecution's witness with caution. The question in most cases of sexual assault is whether or not the victim consented to the sexual act.

The jury should not be permitted to draw an inference that a woman who has previously consented to sexual intercourse would be more likely to consent again, except where the previous sexual intercourse occurred with the accused. The jury should be permitted to consider the prior sexual history of the victim, if relevant, only on the issue of whether the victim consented to the alleged rape, and not be permitted to consider such acts in judging her credibility regarding other facts in dispute. The issue of chastity should not be confused with the issue of veracity.

Senate Bill 262 states that a jury may not be instructed that the prior sexual conduct of the complaining witness, in and of itself, may be considered in determining the credibility of the complaining witness. In addition, the Bill states that the jury may not be instructed that it may be inferred that a victim who has previously consented to sexual intercourse with a person other than the defendant is more likely to have consented to sexual intercourse with the defendant.

SENATE BILL NO. 273 - MEDICAL TREATMENT AND COSTS INCURRED BY A VICTIM OF SEXUAL ASSAULT

Often emergency medical facilities provide inadequate treatment for rape victims. A person who has been sexually assaulted is often beaten and traumatized. The extent of the medical treatment is frequently limited to a vaginal examination for the purposes of gathering potential evidence. Many physicians on duty at emergency medical facilities are not experienced in the examining procedures necessary to gather evidence from victims of sexual assault. Cases are dropped for insufficient evidence as a result of inadequate examinations which ignored valuable evidence. Hospital and emergency medical facilities charge victims of rape for costs of the medical examination necessary to compile evidence for possible prosecution. Victims of sexual assault oftentimes go without necessary medical treatment because of its high cost.

Senate Bill 273 requires the Department of Health and Social Services to provide within each organized borough and city that a person experienced in the examination of victims of criminal sexual assaults is available on call 24 hours each day for the examination of reported victims of these offenses.

Each reported victim shall be given a thorough examination for both physical and emotional trauma, shall be provided all treatment indicated as a direct result of either the physical or emotional trauma and shall be informed of available veneral disease, pregnancy, and psychiatric services and of the Violent Crimes Compensation Board.

All incurred costs of examination, treatment and where required to obtain treatment not adequately available locally, costs of transportation to another place where treatment is adequately available and return transporation shall be paid directly by the state.

All costs of treament shall not exceed the normal charges for the service in the locality in which the service is rendered.

SENATE BILL NO.305 - REVISION OF STATUTES INCLUDING RAPE AND SODOMY

With the continual revision of statutes involving crimes of sex and the changing morality of the society, the Alaska statutes pertaining to sex are outmoded and confused.

Sexual acts involving force, specifically forced oral copulation, have recently gone unprosecuted because of this confusion. To remedy this problem and many others, this Senate Bill revises Chapter 11.

Throughout Chapter 11, "rape" is deleted and aggravated sexual assault is inserted in the following sections:

Sec. 11.05.150. Imposing Less than Prescribed Penalities
Sec. 11.15.010 First Degree Murder
Sec. 11.15.160. Assault with Intent to Kill or Commit Rape or Robbery
Sec. 11.15.295 Use of Fire Arms during the Commission of Certain Crimes
Sec. 11.30.040(b)

Chapter 11 is amended by adding two new sections. Section 11.15.125 Petty Sexual Assault and 11.15.127 Aggravated Sexual Assault. The purpose of these new sections is to define categories of sexual contact or sexual intercourse where one of the parties is unable to consent or does not consent to the sexual act.

Sec. 11.15.125 Petty Sexual Assault defines a situation in which a person who has sexual contact with another, not his spouse, or causes the other to have sexual contact with him, without consent, is guilty of petty sexual assaut if (1) he knows that the contact is offensive to the other person; (2) he knows that the other person suffers from a mental disease or defect rendering him incapable of appraising the nature of his conduct; (3) he knows that the other person is unaware that a sexual act is being committed; (4) the other person is less than 16 years old: (5) he has substantially impaired the other person's power to appraise or control his conduct by administering or employing without the other's knowledge drugs, intoxicants or other means for the purpose of preventing resistance; or (6) the other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authori ty over him. The offense of petty sexual assault is a misdemeanor. In this section"sexual contact" is any touching of the genitals of the person for the purpose of arousing or gratifying sexual desire.

Sec. 11.15.127 Aggravated Sexual Assault defines a situation in which a person who has sexual intercourse with another person, not his spouse, is guilty of aggravated sexual assault if (1) the other person is compelled to submit by force or by threat of imminent death, serious bodily injury, extreme pain or kidnapping, to be inflicted on anyone; (2) the person substantially impairs the others person's power to appraise or control his conduct by administering or employing without his knowledge or consent drugs, intoxicants or other means for the purpose of preventing resistance; (3) the other person is unconscious; or (4) the other person is less than 16 years old. Aggravated sexual assault is a felony. For the purpose of this section, sexual intercourse includes intercourse by means of the mouth, vagina, or rectum. with some penetration however slight; emission is not required.

Chapter 11 is amended by repealing AS 11.14.120 - 11.14.134 and AS 11.40.120. These amendments create a category of crime called "sexual assault". There are two degrees of crime under sexual assault: Petty Sexual Assault and Aggravated Sexual Assault. Victims of these crimes either do not consent to the sexual act described under the secions or are incapable of consenting to the act. Sexual acts between consenting adults are legal regardless of whether they are for the purposes of arousal or intercourse and involve either oral, anal, or vaginal sex.

SCR

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To: Rep. Gardiner
From: Rep. H. Beirne

file

We believe that House Bill No. 187 and Senate Concurrent Resolutions No. 16 and No. 16 will encourage more reporting of incidents of rape and reduce trauma to rape victims. We support immediate passage.

NAME	ADDRESS
Amy Bollenbach	2222 Raspberry, Anch 99502
Carl Frasure	Apt 64 8942 Blackberry Anchorage Ak
Annely Girard	1504 W. 36th "
R H Brewer	732 N Flower " "
L. R. Lent	508 W 20th " "
Bertie Andersen	7149 Timothy St. "
Rena Mulcahy	Box 1741 D STAA Anch 99507
[illegible]	4320 Checkmate #11 " 99504
Miriam Carlson	919 Bench Ct. Anch. 99504
SUSAN Rolenslo	1911 Oleutan Anch 99504
Jon Baker	2952 Sunflower " 99504
Anne Chapman	334 N. Hoyt Anch. 99504
Kathy Lewis	3604 Williams Anch 99504
Mike Pajot	8550 E. 12th CT. Anchorage Ak. 99504
Shirle Palmer	1403 W 40th Anch AK 99503
Nancy Lunsford	5348 E. 24th Anch AK 99504
Robert Haynes	8110 Caribou Rd Anch. Ak 99504
Ingrid on Thueson	2627 Karluk Anch Ak 99504
Bonnie E. Harris	1137 E. 68th Anch Ak 99502

We believe that House Bill No. 187 and Senate Concurrent Resolutions No. 15 and No. 16 will encourage more reporting of incidents of rape and reduce trauma to rape victims. We support immediate passage.

NAME	ADDRESS
Harold A. Hart	8149 E. 5TH AVE., ANCHORAGE 99504
Alice W. Wakeford	2412 Capt. Cook Dr., Anchorage, AK.
Noel U. Woodard	7007 Mink (Apt. A) Anchorage, AK.
Jo. A. Day	4623 Mt View Dr. #8, Anch, AK.
[illegible]	1303 W. 25th St. Anch. AK.
Dennis R. Bowler	384 E 6th & RA.
Vera V. Augasan	808 W. 29th place #8 Anchorage, Alaska
Donna Whitman	400 N. Lane Apt 10 Anchorage AK.
Gloria Beikley	3630 W. 79th Anch, AK.
Mary R. Kling	4023 North Point Dr. Anch, AK
Karen M. Primus	8426 E Duben Av. Anchorage Ak.
William F. Primus	8426 E Duben Av. Anchorage, AK.
Arnold J Woodard	7007 Mink Apt #A
Nancy R. Felton	7007 Mink Apt B Anchorage, AK
F. H. Woodard	7129 Old Harbor Rd. Anchorage, 99504
Vivian M. Kito	2340 Papson Drive Anchorage, Alaska 99504
Tay M. Jackson	112 E. 24th Apt 108 Anchorage 99503
Kathleen Carr	1734 Cache Anch. Ak 99507

SENATE CONCURRENT RESOLUTION NO. 15 - ASSIGNMENT OF POLICEWOMEN TO REPORTED INCIDENTS OF RAPE

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SENATE BILL NO. 262 - JURY INSTRUCTIONS IN RAPE CASES

During the last few years there has been great disagreement in various states with regard to the types and content of jury instructions in criminal prosecutions for rape, attempted rape, and assault with intent to commit rape.

There is little doubt that the charge of sexual assault is difficult to defend and to prosecute. The law requires that the jury be informed that the charge is difficult to defend and that the jury must examine the testimony of the prosecution's witness with caution. The question in most cases of sexual assault is whether or not the victim consented to the sexual act.

The jury should not be permitted to draw an inference that a woman who has previously consented to sexual intercourse would be more likely to consent again, except where the previous sexual intercourse occurred with the accused. The jury should be permitted to consider the prior sexual history of the victim, if relevant, only on the issue of whether the victim consented to the alleged rape, and not be permitted to consider such acts in judging her credibility regarding other facts in dispute. The issue of chastity should not be confused with the issue of veracity.

Senate Bill 262 states that a jury may not be instructed that the prior sexual conduct of the complaining witness, in and of itself, may be considered in determining the credibility of the complaining witness. In addition, the Bill states that the jury may not be instructed that it may be inferred that a victim who has previously consented to sexual intercourse with a person other than the defendant is more likely to have consented to sexual intercourse with the defendant.

SENATE BILL NO. 273 - MEDICAL TREATMENT AND COSTS INCURRED BY A VICTIM OF SEXUAL ASSAULT

Often emergency medical facilities provide inadequate treatment for rape victims. A person who has been sexually assaulted is often beaten and traumatized. The extent of the medical treatment is frequently limited to a vaginal examination for the purposes of gathering potential evidence. Many physicians on duty at emergency medical facilities are not experienced in the examining procedures necessary to gather evidence from victims of sexual assault. Cases are dropped for insufficient evidence as a result of inadequate examinations which ignored valuable evidence. Hospital and emergency medical facilities charge victims of rape for costs of the medical examination necessary to compile evidence for possible prosecution. Victims of sexual assault oftentimes go without necessary medical treatment because of its high cost.

Senate Bill 273 requires the Department of Health and Social Services to provide within each organized borough and city that a person experienced in the examination of victims of criminal sexual assaults is available on call 24 hours each day for the examination of reported victims of these offenses.

Each reported victim shall be given a thorough examination for both physical and emotional trauma, shall be provided all treatment indicated as a direct result of either the physical or emotional trauma and shall be informed of available veneral disease, pregnancy, and psychiatric services and of the Violent Crimes Compensation Board.

All incurred costs of examination, treatment and where required to obtain treatment not adequately available locally, costs of transportation to another place where treatment is adequately available and return transporation shall be paid directly by the state.

All costs of treament shall not exceed the normal charges for the service in the locality in which the service is rendered.

SENATE BILL NO. 305 - REVISION OF STATUTES INCLUDING RAPE AND SODOMY

With the continual revision of statutes involving crimes of sex and the changing morality of the society, the Alaska statutes pertaining to sex are outmoded and confused.

Sexual acts involving force, specifically forced oral copulation, have recently gone unprosecuted because of this confusion. To remedy this problem and many others, this Senate Bill revises Chapter 11.

Throughout Chapter 11, "rape" is deleted and aggravated sexual assault is inserted in the following sections:

Sec. 11.05.150. Imposing Less than Prescribed Penalities
Sec. 11.15.010 First Degree Murder
Sec. 11.15.160. Assault with Intent to Kill or Commit Rape or Robbery
Sec. 11.15.295 Use of Fire Arms during the Commission of Certain Crimes
Sec. 11.30.040(b)

Chapter 11 is amended by adding two new sections. Section 11.15.125 Petty Sexual Assault and 11.15.127 Aggravated Sexual Assault. The purpose of these new sections is to define categories of sexual contact or sexual intercourse where one of the parties is unable to consent or does not consent to the sexual act.

Sec. 11.15.125 Petty Sexual Assault defines a situation in which a person who has sexual contact with another, not his spouse, or causes the other to have sexual contact with him, without consent, is guilty of petty sexual assaut if (1) he knows that the contact is offensive to the other person; (2) he knows that the other person suffers from a mental disease or defect rendering him incapable of appraising the nature of his conduct; (3) he knows that the other person is unaware that a sexual act is being committed; (4) the other person is less than 16 years old; (5) he has substantially impaired the other person's power to appraise or control his conduct by administering or employing without the other's knowledge drugs, intoxicants or other means for the purpose of preventing resistance; or (6) the other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over him. The offense of petty sexual assault is a misdemeanor. In this section"sexual contact" is any touching of the genitals of the person for the purpose of arousing or gratifying sexual desire.

Sec. 11.15.127 Aggravated Sexual Assault defines a situation in which a person who has sexual intercourse with another person, not his spouse, is guilty of aggravated sexual assault if (1) the other person is compelled to submit by force or by threat of imminent death, serious bodily injury, extreme pain or kidnapping, to be inflicted on anyone; (2) the person substantially impairs the others person's power to appraise or control his conduct by administering or employing without his knowledge or consent drugs, intoxicants or other means for the purpose of preventing resistance; (3) the other person is unconscious; or (4) the other person is less than 16 years old. Aggravated sexual assault is a felony. For the purpose of this section, sexual intercourse includes intercourse by means of the mouth, vagina, or rectum. with some penetration however slight; emission is not required.

Chapter 11 is amended by repealing AS 11.14.120 - 11.14.134 and AS 11.40.120. These amendments create a category of crime called "sexual assault". There are two degrees of crime under sexual assault: Petty Sexual Assault and Aggravated Sexual Assault. Victims of these crimes either do not consent to the sexual act described under the secions or are incapable of consenting to the act. Sexual acts between consenting adults are legal regardless of whether they are for the purposes of arousal or intercourse and involve either oral, anal, or vaginal sex.

SCR

19

Relating to special investigative units for cases involving sexual offenses.

COMMITTEE REPORT

5/5/75

HOUSE

Mr. Speaker: Date 5/15/75

The Committee on JUDICIARY has had CSSCR 19 under consideration. A Majority of the members of the Committee

(X) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Jerry Gardiner _____ _____

_____ _____ _____

[illegible] _____ _____

[illegible] _____ _____

Members NOT concurring in the Majority report:

Speaker _____ recommends: [illegible]

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Jerry Gardiner Chairman

SENATOR CEMIE CHANCE

SEXUAL ASSAULT LEGISLATION

SENATE CONCURRENT RESOLUTION NO. 15 - ASSIGNMENT OF POLICEWOMEN TO REPORTED INCIDENTS OF RAPE

Rape victims believe that female officers would be more sensitive to their needs and that more policewomen should be available to respond to calls from rape victims. This concurrent resolution recommends that local law enforcement agencies undertake an affirmative assignment program to place more policewomen in positions which will enable them to respond to rape victims. It states that special efforts should be made to assign female officers to night duty when most rapes occur.

SENATE CONCURRENT RESOLUTION NO. 16 - MEDICAL EXAMINATIONS OF VICTIMS SEXUAL ASSAULT

Emergency medical facilities provide inadequate treatment for rape victims. A woman who has been raped is often beaten and traumatized. The extent of the medical treatment is frequently limited to a vaginal examination for the purpose of gathering potential evidence.

This concurrent resolution recommends to the director of each public medical facility in the state and to each private medical emergency facility in the state having a contractual relationship with the state or local political subdivision that each victim of sexaul assault who is treated by them should be given a thorough examination for both physical and emotional trauma. The staff of such facilities should be instructed on the appropriate care and treatment of victims of sexual assault. In addition, such facilities, as standard operating procedure should inform the victim of venereal disease, pregnancy, and psychiatric services, of the possibility of financial aid from the Violent Crimes Compensation Board, and of any other services or aids available in the community which could serve to alleviate the eventual trauma occasioned by a sexual assualt.

SENATE CONCURRENT RESOLUTION NO. 17 - PEACE OFFICER TRAINING PROGRAMS RELATED TO TREATMENT OF RAPE VICTIMS

The training and instruction police officers receive generally emphasizes the legal elements of the crime of rape. Little, if any, training time is spent discussing the psychological and emotional needs of the rape victim. Consequently, peace officers often display a significant lack of sensitivity in their handling of rape victims.

This concurrent resolution recommends that Alaska Police Standards Council in conjunction with local community women's organizations and representatives of local medical professions, develop courses of instruction for law enforcement personnel regarding the proper investigation of rape cases, with emphasis on the psychological and emotional effects on the victim.

SENATE CONCURRENT RESOLUTION NO. 18 - TRAINING IN NONAGGRESSIVE SELF-DEFENSE IN SECONDARY SCHOOLS OF THE STATE

With the high incidence of violent crimes against individuals, there is a need for public high schools to include as part of their physical education program training in nonaggressive self-defense. If persons were better able to defend themselves, they would be less vulnerable to rape and other violent bodily assault.

This concurrent resolution requests that each school district ascertain the need for offering physical education classes in nonagressive self-defense and if a need exists to report to the Department of Education by July 1, 1976. It further requests that the Department of Education work with and assist school districts, including the state operated school system, in developing programs in nonagressive self-defense and that the Department should submit a summary an evaluation of its findings to the Tenth Legislature - First Session.

SENATE CONCURRENT RESOLUTION NO. 19 - SPECIAL INVESTIGATIVE UNITS FOR CASES INVOLVING SEXUAL OFFENSES

Most law enforcement agencies have inadequately staffed and trained investigative units for sexual offenses. Special rape investigative units which have been established by a few departments provide more thorough and effective investigation of rape reports.

This concurrent resolution requests the Alaska Police Standards Council to develop a plan for the training of specialists to investigate charges of rape and other sexual assaults and to encourage local law enforcement agencies to develop special investigative units for cases involving sexual assaults.

SENATE BILL NO. 261 - PROVIDING FOR AN INCAMERA HEARING TO DETERMINE THE RELEVANCY OF THE PROSECUTING WITNESS' PREVIOUS SEXUAL CONDUCT

Many times the victim of sexual assault is extensively questioned about his/her sexual history in open court, without a showing that such questioning is relevant to the innocence or guilt of the accused. The fear of such detailed examination about a very personal aspect of an individual's life may deter victims from bringing criminal complaints, and may be a significant factor in the low percentage of reported rapes.

Senate Bill 261 requires that the defense attorney be required, by specified procedures and out of the hearing of the jury, to "lay a foundation" as to the relevancy of the victim's prior sexual history; and that the judge make a determination of the relevancy of the prior history before such evidence is admissible. A showing of relevancy should not be required when the prior sexual activity occurred with the accused. In no event may evidence of previous sexual conduct of the prosecuting witness committed more than one year before the date of the alleged crime be admissible, except previous conduct with the defendant.

SENATE BILL NO. 262 - JURY INSTRUCTIONS IN RAPE CASES

During the last few years there has been great disagreement in various states with regard to the types and content of jury instructions in criminal prosecutions for rape, attempted rape, and assault with intent to commit rape.

There is little doubt that the charge of sexual assault is difficult to defend and to prosecute. The law requires that the jury be informed that the charge is difficult to defend and that the jury must examine the testimony of the prosecution's witness with caution. The question in most cases of sexual assault is whether or not the victim consented to the sexual act.

The jury should not be permitted to draw an inference that a woman who has previously consented to sexual intercourse would be more likely to consent again, except where the previous sexual intercourse occurred with the accused. The jury should be permitted to consider the prior sexual history of the victim, if relevant, only on the issue of whether the victim consented to the alleged rape, and not be permitted to consider such acts in judging her credibility regarding other facts in dispute. The issue of chastity should not be confused with the issue of veracity.

Senate Bill 262 states that a jury may not be instructed that the prior sexual conduct of the complaining witness, in and of itself, may be considered in determining the credibility of the complaining witness. In addition, the Bill states that the jury may not be instructed that it may be inferred that a victim who has previously consented to sexual intercourse with a person other than the defendant is more likely to have consented to sexual intercourse with the defendant.

SENATE BILL NO. 273 - MEDICAL TREATMENT AND COSTS INCURRED BY A VICTIM OF SEXUAL ASSAULT

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All costs of treament shall not exceed the normal charges for the service in the locality in which the service is rendered.

SENATE BILL NO.305 - REVISION OF STATUTES INCLUDING RAPE AND SODOMY

With the continual revision of statutes involving crimes of sex and the changing morality of the society, the Alaska statutes pertaining to sex are outmoded and confused.

Sexual acts involving force, specifically forced oral copulation, have recently gone unprosecuted because of this confusion. To remedy this problem and many others, this Senate Bill revises Chapter 11.

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Sec. 11.15.010 First Degree Murder
Sec. 11.15.160. Assault with Intent to Kill or Commit Rape or Robbery
Sec. 11.15.295 Use of Fire Arms during the Commission of Certain Crimes
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Chapter 11 is amended by adding two new sections. Section 11.15.125 Petty Sexual Assault and 11.15.127 Aggravated Sexual Assault. The purpose of these new sections is to define categories of sexual contact or sexual intercourse where one of the parties is unable to consent or does not consent to the sexual act.

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SCR

62

Delaying the implementation of a periodic motor vehicle inspection program in the state by annulling certain administrative regulations adopted by the Department of Public Safety.

COMMITTEE REPORT

HOUSE

4/8/76

Mr. Speaker Date May 24, 1976

The Committee on JUDICIARY has had CS SCR 62 am under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(✓) recommends it BE REPLACED WITH CS FOR [illegible] AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

[illegible]	NO REC	
[illegible]	" "	
[illegible]	" "	

Members NOT concurring in the Majority report:

_____ recommends: [illegible]

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

[illegible] Chairman

Offered: 3/8/76
Referred: Rules

Original sponsor: Huber and Kerttula

IN THE SENATE BY THE STATE AFFAIRS COMMITTEE

CS FOR SENATE CONCURRENT RESOLUTION NO. 62 am

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

Delaying the implementation of a periodic motor vehicle inspection program in the state by annulling certain administrative regulations adopted by the Department of Public Safety.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS, under authority of AS 28.05.030(4) and AS 28.35.210, the Department of Public Safety has adopted regulations establishing a periodic motor vehicle safety program in response to federally mandated requirements; and

WHEREAS the announcement of the vehicle inspection program has produced widespread concern throughout the state that the objectives, procedures, and minimum requirements of the program had not been adequately studied or evaluated; and

WHEREAS, although the presence of mechanically defective vehicles on the state's roads and highways is recognized as a valid highway safety concern, the periodic inspection of motor vehicles has not been proved a valid method of ensuring that the state's roads and highways will be free from these vehicles; and

WHEREAS the Governor has rightfully acknowledged the necessity for delay in implementing the federally mandated vehicle inspection program in this state so that further study and evaluation may be undertaken to seek a course of action with respect to the effect of mechanically defective motor vehicles on the state's highway safety program and the implementation of periodic motor vehicle inspections that will best serve and protect the interests of Alaskans; and

WHEREAS under AS 44.62.320 the Legislature, by concurrent resolution adopted by a vote of a majority of the members in each of both houses, may annul a regulation of an agency or department, and the annulment of these administrative regulations is the only statutorily authorized procedure that will enable suspension of the periodic motor vehicle inspection program pending further evaluation of that program called for by the Governor and endorsed by the Legislature;

BE IT RESOLVED by the Alaska State Legislature that administrative regulations 13 AAC 06.060 - 13 AAC 06.090 are annulled; and be it

FURTHER RESOLVED that the Alaska State Legislature endorses the Governor's action in suspending operation of the periodic motor vehicle inspection program while undertaking further study and evaluation of that program; and be it

FURTHER RESOLVED that the Governor is respectfully requested to direct the Department of Public Safety to strictly enforce the vehicle safety equipment requirements of the state Motor Vehicle Code (AS 28) and the regulations promulgated under it and is urged to accomplish and monitor improved vehicular safety under its existing enforcement procedures.

IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE

A M E N D M E N T #1

TO: CSSCR 62am

On page 2, line 9, after "regulations", insert: "13 AAC 06.040(d),"

On page 2, line 9, strike out "13 AAC 06.090", and insert:

"13 AAC 06.080 and 13 AAC 06.090(c) - (e)"

SCRL2

Feb 20, 1976

Dear John -

I know you are as busy as a cat on a tin roof - so I have addressed an envelope and put in a paper for a quick scribbled reply -

What is the status of that lousy Auto Inspection Bill - ?

I hear about land withdrawals, off shore leases, 200 mile limit etc etc - but in a way they are all pretty abstract —

This inspection is a gut issue with me. -

If you have time just jot down a line or two.

All the best. -

John McCauley
1139 Park Drive

January 26,1976

Senator John Huber
Pouch V
State Capitol
Juneau 99811

Dear John:

I heard on the radio this morning that you are attempting to give the motor vehicle inspection law the deep-six--bravo !

Not only will the program cost the state a fortune to operate as it stands, but it is subject to all sorts of manipulation and favoritism. It hits the average citizen and gives special dispensations to others. It requires inspections of vehicles in urban areas but exempts "some remote areas" as determined by the Commissioner of Public Safety. How does he do this? You can get killed by a car with bum brakes in Angoon just as effectively as in Anchorage--although I'll grant you that your odds of survival would be more attractive in Angoon.

What is particularly annoying about the law is that it applies, initially, to "noncommercial vehicles in Anchorage, Fairbanks and Juneau that are under 10,000 pounds gross vehicle weight, such as passenger cars, station wagons, van and sports vehicles." Only later--and we don't know what "later" means--does it apply to "other areas and commercial and heavier vehicles, school buses, Etc." So the law does not apply to all of us equally--residents of Anchorage, Fairbanks and Juneau have to comply--but nobody else has to yet. Also, why should the state play favorites and let the trucking industry (particularly gravel trucks in Anchorage) get off the hook? And then there's the special consideration for so-called "fleet stations." They can inspect

vehicles owned or leased by an individual business--with the public stations for everybody else except governmental vehicles. Will the so-called "fleet" vehicle really get the same scrutiny as the car of the average citizen?

If I understand it correctly, some guy who owns a fleet of pizza trucks can inspect his own vehicles. Pretty convenient. Meanwhile, the average Joe has to get in line at the corner gas station and submit his vehicle to the mercy of some pump-jockey who might not know the steering wheel from the spare tire. Just think of all the opportunity this opens up for some hanky-panky.

I'm not against vehicle inspection per se--lord knows there's enough wrecks on our roads that need attention--but if the state is going to implement a mandatory inspection program, then it should equally apply to all of our citizens and all of our motor vehicles--regardless of whether or not you qualify as a "fleet" operator.

John, I have been editor of "Alaska Construction & Oil" magazine and of the weekly newsletter, "Alaska from the Inside." I would appreciate anything you might send my way for the newsletter, regarding legislation or anything in the political arena. I won't quote you if you wish.

Good luck in your efforts against the motor vehicle inspection farce. If anybody disagrees with you on this, let your St.Bernards bite them on the ass.

Sincerely,

Bob

Bob Yaskell
P.O. Box 1096
Anchorage 99510

Box 873
Delta Junction, A laska 99737
February 12, 1976

Sen. John Huber
Pouch V
State Capitol Building
Juneau, Alaska 99801

Dear Senator Huber,

Congratulations on fighting the auto inspection fiasco.

I am not alone in saying "we" ar getting pretty sick and disgusted with all the federal government blackmail threatening to withold funds for not complying with dictatorial rules. I wonder if any of the idiots down there realize just whose money they are trying to withold.

Congratulations also to Sen. Kerttula. I hope you can make some progress on this.

Sincerely,

Leigh B. Dennison

Leigh B. Dennison

POB 80687
College, Alaska 99701
25 Jan. 1976

Senator John Huber
The State Legislature
Juneau, Alaska

Dear Senator Huber:

I applaud your efforts to eliminate mandatory state vehicle inspection for Alaska at this time. I would like to make several points in support of this proposed elimination.

First, I think a program of this magnatude and impact ought to be adopted only after review by the legislature rather than by Executive fiat. Also, I am unconvinced that Alaska needs this type of legislation at this time. It is my contention that the severe weather coupled with the good sense of most Alaskans dictates that they keep their vehicles in good condition. In spite of an inspection program there is no assurance that a careless car owner will maintain the vehicle the rest of the year.

Coming, some 12 years ago, from a state that did have vehicle inspection I see the program as a source of corruption and a rip-off of many car owners. The proposed fee can hardly insure more than the briefest of inspections particularly when most auto shops are now charging about $ 25. per hour for shop time. Typically, some shops promote unneeded repairs while others quickly pass vehicles of steady customers.

Alaska, like most states ought to be at the point of examining the cost/benefit of federal programs that are being offered to us. While we do stand to lose some federal funding if we eliminate the inspection program I think it is about time we stop being "jerked" around by unwarranted federal demands. Ironically, it seems that we are hardly able to keep up with the roads we have, much less build additional ones. I am concerned that the inspection program will have no rational way of dealing with glass damage that just is a part of living and driving around Fairbanks. We will surely end up changing front windshields on an annual basis - a boon to glaziers, a hassle for the ordinary citizen and surely little contribution to safety.

Sincerely,

Paul H. McCarthy

cc. Fairbanks delegation

PHYSICAL PLANT

I work in the heating plant and borrowed a sheet of paper.

UNIVERSITY OF ALASKA
FAIRBANKS, ALASKA 99701

Jan 31, 1976

Dear John

I wrote you about Jan 23rd or 24th voicing my objection to this auto inspection program. I am not convinced that it pays to write ones representatives because on Monday 26th there it was in the News-Miner — "Huber attacks auto inspections." You sure acted fast!

Seriously — I hope this nuisance law is repealed. I am shocked at our local government in Juneau — putting such a thing on us — who exactly is responsible for this? You know the arguments pro & con — so do I so I will not take up your time as I stated some of them in my first letter — I have never been so incensed as I am at this thing! Whoever has done this is like Faust selling his soul to the devil or Judas getting his 30 pieces of silver — Please keep on this thing — throw it back to Big Brother in Washington —

No doubt you read the Jan 28th Editorial in the News-Miner.

Keep up the good work! Mr & Mrs John McCauley

PLEASE REPLY BY AIRMAIL

Fairbanks 1133 Park Drive

CRT MESSAGE REC'D 1/28/76 4:30 pm

TO: FAIRBANKS DELEGATION

FROM: GERALD VOGELSANG, SR BOX 61148, FAIRBANKS, AK 99701

I AM NOT IN FAVOR OF ANY COMPULSORY AUTOMOBILE INSPECTION LAW IN ALASKA. I'VE PERSONALLY BEEN THROUGH IT IN WEST VIRGINIA SOME YEARS AGO, AND FOUND IT TO BE A BIG RIP-OF NOT IN THE INTERESTS OF THE AUTOMOBILE OWNER.

GERALD VOGELSANG LA21

SR Box 20020
Fairbanks, Ak. 99701
February 9, 1976

Senator John Huber
State Senate
Pouch V
Juneau, Alaska 99801

Dear Mr. Huber:

We support your stand on the Vehicle Inspection Act. In the event it cannot be defeated we would prefer a compromise where only the following would be inspected: brakes, lights, windshield wipers, steering, and perhaps tires. These items are directly associated with the safety of other motorists. We object to the principle behind all the other things to be inspected -- namely, that of protecting us from ourselves.

Sincerely

T. E. Osterkamp
T. E. Osterkamp
Joan Osterkamp
Joan E. Osterkamp

109 Signatures

January 30, 1976

Ray Morgan
1514 Cushman, RM 303
Fairbanks, AK 99701

Senator John Huber
Pouch V
Juneau, AK 99701

Dear Senator Huber:

Enclosed you will find a petition that was not promoted to any large extent in Fairbanks, about twenty more copies are circulating. No one has refused to sign. We will forward the rest to you as soon as they are returned. We had a copy of the regulations attatched to the petition. As for myself a three car family with five drivers, the regulation would put all three of my cars off the road, or force me to buy a new car(s), which I can not afford. None of us are pipeline workers but are caught in the inflation. One neighbor attempting to get some auto body work done, cannot find any shop who will do the work before April. We therefore urge you to do something to ammend the present regulations.

Sincerely,

Ray Morgan

Ray Morgan

9 SIGNATURES

Andrew Stoffa
2003 Mercer St.
Fairbanks, Alaska
99701

Jan 27, 1976

Sen. John Huber
Juneau, Alaska

Dear Senator;

We are in agreement with your attack on the auto inspection program. We have talked to many people and have yet to find anybody that was in favor of this program.

Sincerely Yours,
Andrew Stoffa
Charles Donahue
William R Rabidoux
Backne Hanson
Howard Edmunds
Duncan J. MacDonald
Dennis Douglas
W. G. Ackerman
[illegible]

P.S If we had enough time we think we could probably get all of Fairbanks, Alaska

SR 2, Box 31071
Fairbanks, Alaska 99701
November 22, 1975

Fred Brown, Rep.
Box 1718
Fairbanks, Alaska 99701

Dear Mr. Brown:

Inspection rip-off

P.O. Box 333
Delta Junction, Alaska
Nov. 13, 1975

Dear Editor:

I wish to congratulate you on the editorial opposing mandatory automobile inspection which recently appeared in the News-Miner.

This letter is to assure yo[u] 100 per cent of those with whom I have discussed the matter also oppose the inspections and recognize it as the rip off that it is.

We all recognize that a vehicle certified in a safe condition during an inspection is as likely to suffer brake failure during the next few days as one that has not been inspected.

There are laws on the books now prohibiting the willful operation of vehicles known to be defective or unsafe.

If my elected representative in Juneau lets this automobile inspection become law then he is not representing me nor the vast majority of his constituents.

If he isn't representing us, then just who is he representing if he allows this rip off to becme law?—

Lee McNeil

The above letter to the editor, published in the Thursday, November 20, 1975 edition of the Fairbanks Daily News-Miner represents my opinion exactly.

Furthermore, it is virtually impossible for a defective vehicle to "make it" for long in this hostile environment.

We certainly have no need to imitate the blunders of the Lower 48 in this matter.

Sincerely,
Rebecca E. Long

November 6, 1975

Mr. Mike Bradner
Alaska House of Representatives
Speaker of the House
Box 2183
Fairbanks, Alaska 99707

Dear Mr. Bradner:

After reading the copy of the proposed vehicle inspection program I find that some of the items are subjective to the judgement of the vehicle examiner and will cause the vehicle owners considerable hardship and money. These items include: steering and suspension, exhaust and muffler systems, exhaust emission system and body components. Furthermore, I find that since the procedures for inspection are not spelled out, garage owners could easily require vehicle owners unnecessary and coastly "service" requirement changes.

It is my opinion that the other items are important for safe driving; however, I feel it quite redundant since vehicle motor laws already have on the statutes laws which prohibit operating vehicles without proper lights, mirrors, windshield wipers etc. and then - have to institute another set of requirements which are the same (in the proposed vehicle inspection) seems rather a lot of bureaucratic redundancy.

Another item I would like clarification on is the windshield and glass clause in the proposed inspection. Because of unpaved and poorly maintained roads in this state; and due to the extensive and often high speed traffic from heavy commercial vehicles, it is close to impossible for a person who drives anywhere other than city streets to maintain a crack or chip free windshield. The cost of annually replacing your vehicle(s) windshields would - as you can well see- amount to a considerable cost and would also give another opportunity for "price gouging" on the part of local vehicle maintenance businesses. Therefore, unless the state can (1) maintain adequate paved roads and (2) restrict heavy commercial traffic on these roads, I feel it is act of cruelty on the motoring public to enforce windshield codes.

The examination for these proposed safety items, if enforced, will be regulated by local garages in Fairbanks. It has been my experience, and that of my friends and associates, that most garages in this town are neither competent, nor are of a high enough integrity to judge vehicle inspection without making a high profit margin on "incorrect" diagnosis of vehicle needs. An example of my point is that I feel it is not safe to have your tire changed at many stations for fear that it will fall off as you proceed down the road - due of course to poor tightening of lug nuts (an experience I can personally atest to) - much less having these same garages interfere or "work" on my brakes.

Still another aspect of the proposed vehicle inspection that bothers me is that heavy commercial vehicles are excluded from these requirements when those vehicles are the very ones which usually cause serious/fatal type accidents; and the drivers are able to do very little about the maintenance of their vehicles since they are usually company owned. I would be very interested on obtaining any statistics you may have concering these heavy commercial vehicles and accidents caused by them.

Finally, I feel the major causes of accidents with motor vehicles in Alaska is not with poor cars, but rather with poor environmental and physical conditions such as - snow, ice, icefog, and persons operating motor vehicles either recklessly or while intoxicated (OMVI).

I trust, therefore, that the state legislature will take proner action to stop yet another example of bureaucy that will cause undue hardship and expense on non-violator motorist... and that these legislatures will instead, seek to have present laws enforced which set vehicle requirement standards. I feel that if it is necessary to have such a regulation; then it is democratic to put it to the ballot and seek the judgement of the residents of Alaska. Residents should decide how many bad examples we are going to take from other states!

I will be looking forward to both your reply, and any further information you will be receiving on this proposed inspection.

Sincerely yours,

Dr. K.O.L.F. Jayaweera
Geophysical Institute
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KJ/rh
CC:

Senators:
John Butrovich - 1039 Fifth Street, Fairbanks
Terry Miller - P.O. Box 80869, College, Alaska
John Hubner - Box 2591 - Fairbanks, Ak.

Representatives:
Fred Brown - Box 1718 - Fairbanks
Steve Cowper - 210 Nerland Building, Fairbanks
Glen Hackney - 1136 Sunset Drive - Fairbanks
Tim Wallis - 318 Baranoff Street- Fairbanks
Charlie Parr - 6½ Mile Chena Hot Springs Road - STR 50599 - Fairbanks

Governor:
Jay Hammond - Juneau Alaska

Mr. Ross Rommell - Alaska Traffic Safety Bureau - Pouch N - Juneau

IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE

A M E N D M E N T #1

TO: CSSCR 62am

On page 2, line 9, after "regulations", insert: "13 AAC 06.040(d),"

On page 2, line 9, strike out "13 AAC 06.090", and insert:

"13 AAC 06.080 and 13 AAC 06.090(c) - (e)"