

HB

134



Alaska State Legislature  
House

JUNEAU ALASKA

MEMORANDUM

TO: Chairman, Judicial Committee  
FROM: Rep. Charles Parr  
RE: HB 134  
DATE: February 2, 1977

This bill was introduced by me. The Fairbanks North Star Borough reported difficulty in enforcing ordinances, particularly zoning ordinances. The maximum fine of \$500 in the present statute proved inadequate for violations. A statement from Borough Attorney, James Nordale this date is as follows:

John Carlson, Borough Mayor and I discussed HB 134. We would be pleased to have the whole bill passed. We are especially interested in seeing the fine increased to \$1000. This should enable us the opportunity to make people adhere to the ordinances. We are not as concerned about increasing the jail sentence from 30 days to 60 days. The city might ( BE INTERESTED IN INCREASING THE NUMBER OF DAYS FROM 30 TO 60 )  
We are in support of HB 134 as it is now written.

ab

House Judiciary Committee  
February 2, 1977

The meeting was called to order at 3 p.m. by Chairman, Gardiner. Members present were Gardiner, Dankworth, Eliason, Specking and Brown. Members absent were Miles and Rudd.

HB 35 Relating to Construction Contractors HB  
35

Mr. Duncan testified as to the intent of this bill for which he is a sponsor. Discussion, during which questions were asked of Mr. Duncan, followed.

Sharon Andrew, Director of Occupational Licensing from the Department of Commerce, and Richard Dunham from the Alaska Dump-truckers Association, testified in support of the bill.

Mr. Specking moved that HB 35 be moved out of committee. There was no objection, so this was done.

HB 134 Penalties for Violation of a Municipal Ordinance HB  
134

Mr. Parr, who is sponsor for this bill, was not here to testify, but he had provided written testimony for the committee members.

As discussion on this bill began, it became apparent that the committee did not feel that they had the necessary information to come to a decision on this bill. Mr. Specking desired to obtain information as to what types of ordinances would carry a fine of \$1,000 if they were violated, i.e. "Who's going to get fined \$1,000 vs. \$500 and for what? Mr. Dankworth felt that it was necessary for the committee to get an opinion as to how the various municipalities feel about this bill.

It was decided that any further consideration of this bill would wait until further input had been provided to the committee.

The meeting was adjoured at 3:45.

House Judiciary  
February 10, 1977

The meeting was called to order at 3 p.m. by Chairman, Gardiner. Members present were Gardiner, Miles, Rudd, Brown, Eliason and Specking. Mr. Dankworth was absent.

HB 134 Penalties for violation of a municipal ordinance HB  
134

Marilyn Miller from the Municipal League was here to present a letter from Lee Sharp, Juneau City and Borough Attorney.

Several amendments were agreed upon for the bill. (Line 10: delete "knowing and willful"; Line 12: change imprisonment from "60" to "30" days.)

There was a motion to move the bill out of committee. There was no objection, so this was done.

HB 90 Estrays HB  
90

Rep. Ose, who is sponsor for this bill, was here to explain the intent of the bill.

Dr. F.S. Honsinger who is the State Veterinarian with the Division of Agriculture for the Department of Natural Resources came to speak in support of the bill.

Rick Barrier testified that the Court System is basically in favor of the bill, but that it needed some "cleaning up".

The committee felt that the intent of this bill is good. However, they objected to the way the bill was written and felt that a major redrafting was necessary. Mr. Specking agreed to meet with Mr. Ose and a drafter to make this bill more workable.

The meeting was adjourned at 4 p.m.



# THE CITY AND BOROUGH OF JUNEAU

CAPITAL OF ALASKA

155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

DATE: February 10, 1977

FILE NO.

SUBJECT: Comments on House Bill 134

Don Berry, Executive Director  
Alaska Municipal League  
204 Franklin Street  
Juneau, Alaska 99801

Dear Don:

You had previously asked that I provide you with comments on the implications of House Bill 134 or to present my comments to the committee. I'd intended to do the latter, however, it appears now that I have a conflicting engagement. Following are off the cuff comments on the bill.

The bill makes two changes in the present statutory language. First, it raises the maximum penalty from the current \$500 and/or 30 days imprisonment to \$1,000 and/or 60 days imprisonment. This change needs no comment. The second change is the new requirement that would have the effect of preventing a municipality from imposing a penalty for the violation of an ordinance unless the violation were both knowing and willful. Presently, it is up to the local legislative body in adopting an ordinance to determine the level of culpability required to constitute a violation of the ordinance. The proposed bill would withdraw this authority from municipalities.

Courts very often divide punishable offenses into two basic categories. First are those which are malum in se, that is, wrong in themselves. The second category is labeled malum prohibitum and constitutes those offenses which are statutory in origin. This latter category includes such things as parking, zoning, sanitation, and tax code violations. In the former category are the crimes involving moral turpitude, crimes which have been recognized as common law crimes or the traditional crimes which are deemed infamous and which have always included guilty knowledge as an element of the offense. Larceny and assault and battery are examples. When a statute or ordinance is silent as to whether guilty knowledge required for a conviction under a statute which prohibits acts which are malum in se, the courts impose the common law requirement of guilty knowledge which is often cast in terms of "knowing and willful." Thus, the courts have already worked out a system which requires the presence of the "knowing and willful" element for those violations

Don Berry, Executive Director  
Alaska Municipal League  
Page Two  
February 10, 1977

which have traditionally required such guilty knowledge. The courts also recognize that there are many violations of statutes and ordinances which are regulatory in nature and for which the state must be able to prosecute on the mere fact that the acts constituting the violation have been committed without reference to whether the person committing the violation intended to violate the law. For example, it is necessary for the municipality to be able to prosecute people who park automobiles in such a manner as to block traffic. This is not a malum in se violation but rather is one which is statutory in origin. If a person parks a vehicle in such a manner as to block traffic but does so without the knowledge that it is a violation of the ordinance or if he does so not realizing that the vehicle will be blocking traffic, such a person could not be punished under the proposed bill as it could not be shown that there was a "knowing and willful" violation of the ordinance. While a substantial part of the prosecutorial effort of some municipalities may be in the traditionally criminal area in which knowing and willful violation is an essential condition of the offense, the greater portion of the ordinances adopted by a municipality are of the malum prohibitum type which have traditionally never required the level of guilty knowledge which is an element of the traditional or common law crime. One of the effects of this bill would be to make ignorance of the law an excuse. The bill would make the prosecution of the violation of most ordinances extremely difficult, if not impossible. The bill would not change the present court-made law as it relates to prosecutions for acts which are malum in se.

There are numerous state statutes which deal with malum prohibitum acts and which do not require a "knowing and willful" violation before such acts can be punished. I am not able to discern why the state should be able to enforce its sanitation regulations without having to prove a knowing and willful violation while a municipality must prove a knowing and willful violation of its sanitation code before it can be enforced.

As to the crimes which are malum in se, many communities have adopted the Model Penal Code language. The Model Penal Code defines four different levels of culpability which are, acting purposely, knowingly, recklessly, or negligently. The Model Penal Code was promulgated to overcome many of the ambiguities and outmoded concepts of the common law. Thus, a community which has turned to the Model Penal Code for guidance may have to engage in a substantial revision of its

Don Berry, Executive Director  
Alaska Municipal League  
Page Three  
February 10, 1977

code inasmuch as its code is based on concepts and definitions of levels of culpability which do not include "willfully."

The "knowing and willful" language in the bill will not add anything to the law as it commonly exists in the malum in se arena. It will, however, impose such a burden on municipalities and the prosecution of malum prohibitum type ordinances as to practically eliminate their enforcement. It would seem that so long as the local elected legislative body is authorized to declare what acts shall not be permissible in its community, it should not be denied the authority to establish the level of culpability required. A state mandated heart full of malice should not be the touchstone of a violation of a municipal regulatory ordinance.

GLSmmb

Very Truly Yours:



Gerald L Sharp

City and Borough Attorney

# CHARLIE PARR

ALASKA LEGISLATURE

S. R. Box 50599  
Fairbanks, Alaska 99701  
456-5029

Pouch V  
Juneau, Alaska 99811  
465-3797

## MEMORANDUM

TO: Senator Orsini  
FROM: Representative Charles Parr *CP*  
RE: HB 134  
DATE: January 30, 1978

I introduced this bill to help solve a problem reported by the Fairbanks North Star Borough Assembly, i.e., that the existing maximum penalty for violation of a borough ordinance is insufficient deterrent. The problem is especially acute in planning and zoning areas, as a violator can make more profit than he can lose in fines.

A statement by the Borough Attorney on February 2, 1977 follows:

*Mayor,*  
John Carlson, Borough, and I discussed HB 134. We would be pleased to have the whole bill passed. We are especially interested in seeing the fine increased to \$1000. This should enable us the opportunity to make people adhere to the ordinances. We are not as concerned about increasing the jail sentence from 30 days to 60 days. The city might. We are in support of HB 134 as it is now written.

The Ketchikan Gateway Borough Assembly has also endorsed the bill. A copy of the resolution is enclosed.

sg

enclosure

*Alaska*  
**MUNICIPAL**  
*League*

TELEPHONES  
(907) 586-1325  
586-6526

204 N. FRANKLIN ST.  
JUNEAU, ALASKA 99801



F. CSHB  
134

rec'd 1-30-78

*Senator Joseph Orsini, Chairman  
Community and Regional Affairs Committee  
Alaska State Senate*

*Dear Senator Orsini:*

*We would like to take this opportunity to support  
CSHB 134.*

*It is our belief that this act would allow more flexibility  
to a municipality in determining its local law enforcement  
programs.*

*Sincerely,*

  
*Jim Rolle  
Executive Director*

Joe:

Rep. Parr's A.A. called & wanted to know the status on CSHB 134 (Increase the fine from \$500 to \$1000 for violation of a municipal ordinance).

I told him we had this bill up for consideration once already but Rep. Parr did not show up to testify on the bill, so we tabled it.

He asked if we were going to take it up again + I said I would check with you.

Paul

Voting "yes":	Hanger
	Watt
	Salazar
	Davidson
	Laurance
	Elkins
	Kouni
	McBride
	Johnson
Voting "no":	Simpson
Absent:	Zastrow

6 4/7 votes required for passage

Effective date: 2/22/77

K E T C H I K A N   G A T E W A Y   B O R O U G H

RESOLUTION NO. 248

A RESOLUTION OF THE ASSEMBLY OF THE KETCHIKAN GATEWAY BOROUGH, ALASKA, EXPRESSING TO THE LEGISLATURE OF THE STATE OF ALASKA, THE ASSEMBLY'S SUPPORT OF HOUSE BILL NO. 134, RELATING TO PENALTIES FOR VIOLATION OF A MUNICIPAL ORDINANCE; DIRECTING THE CLERK TO SEND COPIES OF THIS RESOLUTION TO THE MEMBERS OF THE ALASKA LEGISLATURE; AND ESTABLISHING AN EFFECTIVE DATE.

THE ASSEMBLY OF THE KETCHIKAN GATEWAY BOROUGH, ALASKA, RESOLVES, as follows:

Section 1. The Alaska Legislature is requested to adopt House Bill 134, "An Act relating to penalties for violation of a municipal ordinance." The Assembly fully supports increasing penalties for knowing and willful violation of ordinances.

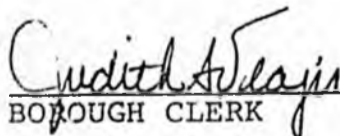
Section 2. The Clerk is directed to send copies of this resolution to the members of the Alaska Legislature.

Section 3. This resolution is effective immediately.

ADOPTED this 22nd day of February, 1977.

  
BOROUGH MAYOR

ATTEST:

  
BOROUGH CLERK

Approved as to form:

  
Borough Attorney

SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

March 22, 1977

Present: Senators Willis, Hackney, Ferguson and Sumner

Absent: Chairman Orsini

At 3:05 the hearing was begun by Vice-Chairman Willis. He asked for comments on SB 63, and Senator Ferguson moved that the bill be passed on "individual recommendation". The motion was approved and was passed out.

Vice-Chairman Willis asked for comments on HB 110, and Senator Ferguson moved that the bill be passed. There was no objection and the bill was passed out with the unanimous "do pass" vote.

CBH13  
134  
[ Committee Substitute for House Bill 134 was introduced and the Committee felt that Representative Parr, sponsor of the bill should be present to testify. Senator Sumner suggested that the bill be tabled until Rep. Parr is present. Senator Ferguson moved that the bill be tabled, and there were no objections.

Senator Sumner asked if the Committee had any objection to acting on SCR 13 and SCR 14 which was tabled after the hearing of March 15, 1977. Senator Willis stated that he felt more information was needed before action should be taken, and that it was agreed among Committee members to wait until March 29th when requested information had been received. Vice-Chairman Willis stated that he desired a better understanding of the issue.

Senator Sumner concurred with the Vice-Chairman.

The meeting was adjourned at 3:25 p.m.

## SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

January 31, 1978

Present: Chairman Orsini, Senators Willis, Hackney and Sumner; Jim Christopher, Alaska Wreckers Assoc. and Alaska Towers Conference; Gerald Sharp, City Borough of Juneau; Bruce Aronson, Community and Regional Affairs; Steve A. Mizera, Republican Caucus.

Absent: Senator Ferguson

The meeting was called to order by Chairman Orsini at 3:00 P.M.

CSHB 187:

Chairman Orsini noted that CSHB 187 had been before the committee last year.

James Christopher, Chairman of the Alaska Towers Conference, President of the Alaska Wreckers Association, and co-owner of Alaska Towing and Wrecking in Anchorage, testified in support of CSHB 187. Mr. Christopher pointed out that currently wrecking operators had asked the State Attorney General's Office for an opinion as to which law should be complied with and were told that it would be preferable to have the statutes changed along the lines of CSHB 187. Mr. Christopher also noted that the \$1.50 daily storage fee was set in the late 1950's and was unrealistic in view of cost increases since that time. He said that current storage charges for vehicles in Seattle were \$5.00, in Portland \$4.50, and in Spokane \$4.00. Although no court cases have resulted so far from this situation, Mr. Christopher said that wrecking operators in Alaska were concerned that without the enactment of CSHB 187 they could be held in violation of either the statutory storage fee or the tariff set by the Alaska Transportation Commission.

Mr. Christopher asked whether language could be added to the bill that would include the contents as well as the vehicle itself as subject to liens. He stated that this was another area of legal ambiguity. Senator Hackney suggested that appropriate language to cover this situation could be added. To prevent delay, Chairman Orsini recommended that the bill be considered as written and that separate legislation be drawn up if necessary to deal with the other issues raised by Mr. Christopher. Senator Sumner commented that the hearings so far indicated to him that CSHB 187 was more properly a bill for the Commerce Committee to take up than Community and Regional Affairs. The other Committee members agreed.

Lee Sharp, representing the City and Borough of Juneau, spoke in support of CSHB 187 as drafted. He said that discussion so far had tended to confuse the statutory issue of the amount

a wrecking operator could recover on his lien with the regulatory question of the amount the public could be charged for the towing and storage of motor vehicles. CSHB 187 rightfully addressed the statutory issue and not the regulatory. He said the City and Borough of Juneau was concerned that wrecking operators were reluctant to tow and store abandoned vehicles, as requested by the municipality, because they could not statutorily recover more than \$1.50 a day in storage charges from their liens. Since this resulted in a loss of money to the wreckers, the municipality was encountering difficulties in having wrecked and abandoned vehicles removed from public view.

This completed public testimony. Chairman Orsini called for a vote. CSHB 187 received 1 Do Pass and 3 No Recommendations.

CSHB 134

Chairman Orsini asked for a motion to bring CSHB 134, which had been tabled by the Committee last year, back before the Committee members. In the absence of the bill's sponsor, Representative Charles Parr, to explain the provisions and purpose of the bill, no motion was forthcoming. CSHB 134 remained tabled.

SENATE COMMUNITY & REGIONAL AFFAIRS  
COMMITTEE MEETING

June 9, 1978

Present: Senators Orsini, Ferguson, Sumner and Willis

Absent: Senator Hackney

The Senate Community and Regional Affairs Committee met directly after session this day and passed out CSHB 134 with "INDIVIDUAL RECOMMENDATIONS" and CSHCR 125 am (C&RA) with a 'Letter of Intent' that passed out with "INDIVIDUAL RECOMMENDATIONS".

SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Senator Joe Orsini  
Chairman

CS House Bill No. 134

Judiciary Committee-Hohman  
Prime Sponsor

Resolution No. \_\_\_\_\_

This Bill is currently in the Senate Community and Regional Affairs Committee for consideration. Your response, as prime sponsor, to the following questions will serve to hasten Committee action on this Bill.

1. What is the need for your proposed legislation; what is the goal you are trying to accomplish?
  
  
  
  
  
  
  
  
  
  
2. Are there any other viable ways of accomplishing this same goal?
  
  
  
  
  
  
  
  
  
  
3. Persons or groups you know of who are supporting the legislation.
  
  
  
  
  
  
  
  
  
  
4. Persons or groups you know of who are opposing the legislation.
  
  
  
  
  
  
  
  
  
  
5. Can you foresee any new problems that might be caused as a result of enactment of your bill?
  
  
  
  
  
  
  
  
  
  
6. What is the earliest time you would like the Senate Community and Regional Affairs Committee to consider your bill?