

H B

322

March 10, 1981

The Honorable Jim Duncan
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to transfer a penalty provision corresponding to the transfer of four of the public health functions which were transferred in Executive Order No. 51.

This provision was inadvertently left out of that order. However, one of the co-revisors of statutes has informed the Department of Law that this cannot be treated as a "manifest clerical error" or an omission which could be corrected by the revisor under AS 01.05.031(b)(7). Therefore, I am transmitting this bill to solve the problem.

In secs. 34, 40, and 41 of Executive Order No. 51, four public health functions are transferred from the Department of Health and Social Services to the Department of Environmental Conservation. The substance of the transferred functions is set out in sec. 40.

The four paragraphs in sec. 40 are based on current AS 18.05.040(a)(2), (3), (9), and (18), respectively. Under current law (AS 18.05.060), a violation of a regulation adopted under those provisions is a misdemeanor, with a penalty of up to \$500 or one year's imprisonment. However, a corresponding penalty provision, applicable to those provisions in their new location in AS 44.46.020, was inadvertently left out of the executive order.

If the new provisions had been located in AS 46.03 (where many Department of Environmental Conservation functions are set out), certain penalty provisions already in that chapter would have been applicable. A draft of the order did locate the new provisions there. However, AS 46.03's penalty provisions establish a penalty structure quite different from the one in the present AS 18.05.060. That

IV. DATE March 11, 1981

PREPARED BY Richard L. Regus Dir., Admin. Svcs.

AGENCY Department of Law

PHONE 465-3695

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

change of penalties would not have been appropriate in an executive order. Unfortunately, although the function provisions were relocated to AS 44.46, an appropriate penalty provision was not included in the final version of the order.

Since I do not believe that it would be appropriate for me to change a penalty provision substantively by means of an executive order issued under art. III, sec. 23, of the Alaska Constitution, the provision I would have included in Executive Order No. 51 would have very closely paralleled AS 18.05.060. But, since I am proposing a bill to transfer the penalty provision, AS 18.05.060 has been used as the base and then updated to conform to the new criminal code.

The attached bill characterizes violations as class A misdemeanors. This means that violators would be subject to a fine of up to \$5,000 (AS 12.55.035(b)(3)) and imprisonment of up to one year (AS 12.55.135(a)) rather than AS 18.05.060's \$500 or one year. (Also see AS 12.55.015.) AS 18.05.060 was originally enacted in 1946 (see ch. 4 SLA 1946). Clearly, inflation during the intervening three and one-half decades has made the \$500 figure ridiculously obsolete.

Under the new criminal code, the next lower classification -- class B misdemeanor -- does not seem appropriate. It would entail a penalty of up to \$1,000 and 90 days imprisonment.

I believe that the attached bill appropriately transfers and updates the penalty for violations of a regulation pertaining to any of the four public health functions cited above, and I urge your prompt passage of this bill with the effective date of Executive Order No. 51 (July 1, 1981).

Sincerely,

S/SSH

Jay S. Hammond
Governor

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AGENCY Department of Law
PHONE 465-3695

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FISCAL NOTE

I. REQUEST

Bill/Resolution No. HOUSE BILL NO. 322
 Title "An act relating to the enforcement of certain public health functions"
 Requested by The Governor Date 3/10/81
of the Department of Environmental Conservation; and providing for an effective date."

II. FISCAL DETAIL

Agency Affected Department of Law
 Program Category Affected Administration of Justice
 BRU, Program, or Subprogram(s) Affected Prosecution
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

This bill transfers the penalty provisions corresponding to the transfer of the four public health functions transferred in Executive Order No. 51. These penalties are currently covered by AS 18.05.060 and this bill brings the penalty provisions within the state's revised criminal code. The current provision, which has not been changed since 1946, sets the penalty at \$500 or one year's imprisonment. The bill changes the provision to \$5,000 and one year's imprisonment. Since the department is already responsible for prosecuting violations under the current provision, no additional fiscal impact is anticipated.

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Dept. of HOUSE BILL NO. 322, by the Rules Committee by request of the
Environmental Governor. Corrects a technical oversight in Executive Order 51.
Conservation That order transferred from the Department of Health & Social
(enforcement Services to the Dept. of Environmental Conservation several func-
of public tions relating to public health, but failed to transfer the
health funct.)penalty clause pertaining to those functions. Bill adds to the

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section listing the Duties of the Dept. of Environmental Conservation, 44.46.020, a new subsection which states that a person who violates a regulation adopted under (a)(5) of the section (the duties transferred from Dept. of H&SS by EO 51) is guilty of a class A misdemeanor. States that each day that a person continues a violation is a separate offense.

The transferred functions (from AS 18.05.040 (2), (3), (9) & (18)) relate to: the prevention and control of public health nuisances; the regulation of sanitation and sanitary practices in the interests of public health; standards of cleanliness and sanitation in connection with the construction and maintenance of establishments in which sanitation may create a condition causative of disease (canneries, food manufacturing plants, bars, etc.); and the regulation of quality and purity of commercial compressed air and oxygen sold for human respiration.

Provides Act effective July 1, 1981.

Introduced March 11 and referred to Health, Education and Social Services.

In his message transmitting the bill to the House for consideration, Governor Hammond stated:

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Since I do not believe that it would be appropriate for me to change a penalty provision substantively by means of an executive order issued under art. III, sec. 23, of the Alaska Constitution, the provision I would have included in Executive Order No. 51 would have very closely paralleled AS 18.05.040. But, since I am proposing a bill to transfer the penalty provision, AS 18.05.040 has been used as the base and then updated to conform to the new criminal code.

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