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bill unconstitutional  
even if passed

CSHB 510

3896

Dave Walker

maybe challenged  
in court for  
violated sig-sub-

violates  
single-subject  
rule

("Prisons/Prisoners")  
could be  
the subject?



amending bill should be accompanied by a bill appropriating the additional amount for airport purposes. See, for example, ch. 69, SLA 1979.

Revenue bonds for other projects are authorized in bills proposing temporary law only. See, for example, the University of Alaska revenue bonds authorized in ch. 56, SLA 1961; ch. 43, SLA 1963; ch. 109, SLA 1965; and ch. 111, SLA 1969.

To date, a standard form for revenue bond authorizations has not been developed. In drafting revenue bond authorizations, the draftsman will note that the temporary law examples listed above require some simplification if they are to be adapted to current drafting standards.

## CHAPTER 5. DRAFTING CONSIDERATIONS RAISED BY ALASKA CONSTITUTIONAL PROVISIONS

Please refer to appropriate annotations to the Alaska Constitution in the first volume of the Alaska Statutes.

- A. "Every bill shall be confined to one subject...."  
(Article II, sec. 13, Constitution of the State of Alaska)

The purpose of the "one-subject rule"

"is to prevent the inclusion of incongruous and unrelated matters in the same bill in order to get support for it which the separate subjects might not separately command, and to guard against inadvertence, stealth and fraud in legislation." Suber v. Alaska State Bond Committee, 413 P.2d 546. (See, also, Gellert v. State, 522 P.2d 1120, 1124 (1974) (Fitzgerald, J., dissenting))

The draftsman has a basic and important responsibility to confine each bill to one subject within the meaning of the Alaska Constitution. The interpretations of the rule by the Alaska Supreme Court are helpful in this regard. In Gellert v. State, 522 P.2d 1120 (1974), the court established as a general principle that

"All that is necessary is that the Act should embrace some one general subject...merely that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject." (at 1123 quoting Johnson v. Harrison, 41 Minn. 575 (1891))

This proposition that the one-subject rule is satisfied if the Act embraces one general subject is reiterated in North Slope Borough v. Sohio Petroleum Corp., 585 P.2d 534, 545 (1978). For a further discussion of the application of the one-subject rule in Alaska, see Short v. State, Opn. No. 1938, \_\_\_ P.2d \_\_\_ (1979).

Appropriation bills and bills "codifying, revising and rearranging existing laws" are exempt from the one-subject rule (art. 11, sec. 13, Alaska Constitution).

Sections in a bill which repeal existing law are not exempt from the one-subject rule; that is, a repealing provision in a bill must be germane to the general subject of the bill in order to satisfy the one-subject rule. See generally 1A Sutherland, Statutory Construction, sec. 23.06 n. 2 (4th ed. 1972).

- B. "The subject of each bill shall be expressed in the title."  
(Article 11, sec. 13, Constitution of the State of Alaska (third sentence))

The purpose of this provision of the constitution is to require that the title of a bill give reasonable notice of the subject of the bill to the members of the legislature and to the public. See 1A Sutherland, Statutory Construction, sec. 18.02 (4th ed. 1972). It is the responsibility of the draftsman to assure compliance with this requirement. Although the provision is usually liberally construed, its application is not to be ignored as inconsequential.

The Alaska Supreme Court has not interpreted the constitutional title provision. However, in 1948 the District Court of Alaska gave a liberal construction to a similar provision in the Organic Act under which the Territory of Alaska was governed:

"It is universally held that the title of an Act which is attacked for a violation of this constitutional provision shall be construed liberally for the purpose of upholding the law, if practicable, so as not to embarrass the Legislature by a construction unnecessary to the accomplishment of the beneficial purposes for which it was enacted." (Griffin v. Sheldon, 11 Alaska 607, 615 (1948) quoting from Wickersham v. Smith, 7 Alaska 522, 543 (1927))

This interpretation is in line with the liberal construction given similar provisions in the constitution of other states. See 1A Sutherland, Statutory Construction, sec. 1804 (4th ed. 1972)\*

- C. "Bills for appropriations shall be confined to appropriations."  
(Article 11, sec. 13, Constitution of the State of Alaska, (second sentence))

Although appropriation bills are exempted from the one-subject rule, the constitution provides that they must be confined to appropriations. Substantive provisions may not be incorporated into or attached to an appropriation bill. The purpose of the provision is to prevent the attachment of unrelated riders to appropriation bills. (For examples of riders considered valid and invalid by the Department of Law, see "Review of Riders on FY 80 General Appropriation Bill", House-Senate Joint Final Supplement, 1979, p. 14.)

\*For an example of current construction of a similar provision, see Steffan v. Stanley, 350 N.E.2d 886, 889 (Ill. App. 1976) where the Illinois Court of Appeals held that the title "An Act to revise the law in relation to husband and wife" was adequate to cover provisions dealing with interspousal immunity.

# MEMORANDUM

# State of Alaska

TO: Deborah Behr  
Special Assistant  
Commissioner's Office  
Department of Health and  
Social Services


DATE: May 11, 1981

FILE NO: J-66-737-81

TELEPHONE NO: 465-3600

FROM: WILSON L. CONDON  
ATTORNEY GENERAL

SUBJECT: CSHB 510 (HESS) am -- Board  
of Parole

By:   
Arthur H. Peterson  
Assistant Attorney General

This morning, by telephone, you asked whether it would be appropriate to amend this bill by adding two sections that would amend provisions pertaining to confinement of prisoners (AS 33.30.060(a)) and the prisoner work furlough program (AS 33.30.250(c)). The bill currently contains two sections, the first providing for continuation of the state Board of Parole until June 30, 1982, and the second requiring the board to determine whether there was unjustified disparity in sentencing and to consider that factor when reviewing the eligibility of a prisoner for parole.

Without discussing the merits of the particular amendments your department has proposed, it is the Department of Law's conclusion that the addition of those amendments to this bill would not violate the Alaska Constitution.

The constitutional provision involved is art. 2, sec. 13 which requires every bill to be confined to one subject and requires that subject to be expressed in the bill's title. Under the Alaska Supreme Court's reasoning in Gellert v. State, 522 P.2d 1120 (1974), and North Slope Borough v. Sohio Petroleum Corporation, 585 P.2d 534 (1978), the "single subject" could be considered to be any of the following, for example: "prisoners," "treatment of prisoners," "confinement and release of prisoners," "reintegration of prisoners into the community." The title of the present bill could be modified slightly as indicated below.

An additional factor that must be taken into consideration is AS 44.66.050(e)'s provision that "No more than one board, commission, or agency program shall be continued or reestablished in any legislative bill, and the board, commission, or agency program shall be mentioned in the title of the bill." This means that, in dealing with "sunsetting" agencies, a bill to continue the agency may only provide for continuing one

agency or program at a time. Because of the exigencies of time, I have not made a thorough search for the legislative intent behind AS 44.66.050(e), but the language of that provisions does not foreclose dealing with other programs that are not involved in the sunset process, so long as the constitutional requirements are met. That is the case here. The Board of Parole is scheduled for sunset, and this bill would continue its existence; but your proposed provisions on confinement and work furlough are not involved in the sunset process even though they clearly relate to the handling of prisoners.

To meet both the constitutional and statutory requirements, something like the following bill title should suffice: "An act relating to the state Board of Parole; continuing the existence of the board and amending the law relating to the board's responsibilities and to prisoner confinement and release; and providing for an effective date." The underlined language shows the change from the wording of the title now in CSHB 510 (HESS) am.

WLC:wjp:AHP

cc: Daniel W. Hickey  
Chief Prosecutor  
Department of Law

David Walker  
Co-revisor of Statutes  
Legislative Affairs Agency

5-11-81

Charlie,

Pessie Bell is going to try to get  
HB 510 (Parole Board) amended in Senate  
Rules and wants to know if you  
agree, in light of the attached  
memo.

Ruby

No - EP

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# State of Alaska

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Special Assistant  
Commissioner's Office  
Department of Health and  
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WLC:wjp:AHP

cc: Daniel W. Hickey  
Chief Prosecutor  
Department of Law

David Walker  
Co-revisor of Statutes  
Legislative Affairs Agency

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 7, 1981

SUBJECT: SCS CSHB 510 (HESS)

TO: Senate Health, Education and  
Social Services Committee  
Attn: Rocky Plotnick-Weller, A.A.

FROM: David T. Walker *DTW*  
Co-Revisor of Statutes

This is to confirm our discussion this morning.

I have attached the committee substitute as you requested it. Article II, section 13 of our constitution requires that "every bill shall be confined to one subject . . ." and that "the subject of each bill shall be expressed in the title". It is my opinion that the changes requested by the committee cause the bill to violate those requirements. If the issue is raised in some challenge of the legislation and the Supreme Court agrees with my analysis, it will invalidate every change in the law made by the bill.

DTW:ijb

Enclosure

POSITION PAPER

CS for House Bill No. 510 (HESS)am

"An Act relating to the State Board of Parole; continuing the existence of the board and amending the law relating to the board's responsibilities; and providing for an effective date."

A. Parole System

CS HB 510 (HESS)am would continue the current Parole Board for one year to allow the Legislature and Governor time to study various alternatives to the current parole system.

The Parole Board went through sunset audit in 1979 and extensive hearings were held in the House throughout the 1980 legislative session. A bill continuing and modifying the Parole Board was passed from the House late in the session but sufficient time was not available for it to be acted upon in the Senate.

Pursuant to the sunset statute, the Parole Board expired on June 30, 1980, and is currently in its one-year phase-out period. Unless legislation is enacted by June 30, 1981, the Parole Board will not remain in existence.

The State Constitution requires that there be a parole system in Alaska. The administration has written a bill, HB 293, that would abolish the Parole Board and replace it with furloughs and good time, and this department still supports that alternative as a parole system. However, this complex bill is still in its first committee of referral. CS HB 510 (HESS)am is a reasonable bill that will allow time to carefully study alternative means of establishing a parole system.

The bill also makes an addition to the current statute requiring the parole board to consider whether there was unjustified disparity in the sentence imposed upon the prisoner in relation to other similar sentences. The Department recognizes the concern of the Legislature in removing unjustified disparity in the criminal justice process. Section II of this bill should not impose an additional fiscal burden to the Department, and we recognize its value to the criminal justice system.

B. Furlough Programs

The Division of Adult Corrections has had a work furlough program since 1969 and since 1971 has been utilizing halfway houses under contract as work furlough centers. By operating the program from work furlough centers rather than from the prison setting, the problem of work furlough participants being placed under pressure to bring in contraband is avoided. There are other advantages as well. Work furlough in Alaska has functioned successfully.

The emphasis on development of community-based alternatives to imprisonment for appropriate offenders began during the mid-1960's and has become an important component of progressive corrections programs throughout the country. The rationale for work furloughs is based on the belief that after a term of conventional imprisonment, the offender is in need of a period of structured reintegration into the community. Work furlough and utilization of furloughs for other appropriate purposes serve the best interest of the public by enabling the Division of Adult Corrections to avoid releasing prisoners directly to the community without adequate preparation.

Aside from the rehabilitative value, work release centers benefit the state by reducing the need for construction. The Alaska correctional system is presently experiencing an upsurge in prisoner population. All institutions are filled to capacity and there are presently 194 prisoners housed in the Federal Bureau of Prisons system outside of Alaska. Although we are expanding our correctional facilities, it will be two or three years before we can return those prisoners to Alaska.

Work release centers serve to help alleviate our critical bed space need. Presently, we have 39 prisoners in halfway house programs and expect to increase that number to 75 in FY '82. If these 75 persons were to be required to return to a prison at the end of the workday, rather than a halfway house, as is the current practice, the State would be required to build a new prison to accommodate the increase in prison population. Currently, construction costs per prison bed are in excess of \$135,000 in Alaska.

The Attorney General's office has advised us that there are ambiguities in the statutes authorizing furloughs. These ambiguities should be corrected if our continued use of contract halfway houses is to be on firm legal ground. Because the work furlough centers have become significant components of our overall program, it is extremely important that clarifying legislation be passed.

Specifically, the language changes need to accomplish this are:

1. Modify A.S. 33.30.250 (c) regarding work furloughs to read:

(c) Whenever the prisoner is not employed and between the hours or periods of employment, he shall be confined in a facility approved by the commissioner. [THE JAIL UNLESS THE COURT DIRECTS OTHERWISE.]

2. Modify A.S. 33.30.060 (a) regarding contracting for confinement and care of prisoners to read:

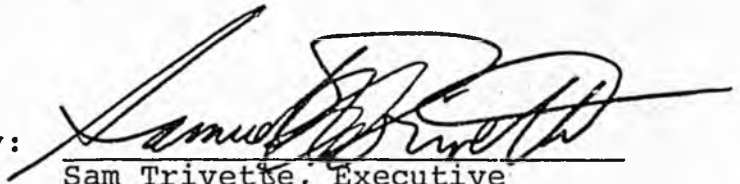
(a) The commissioner shall determine the availability of state prison facilities suitable for the detention and confinement of persons held under authority of state law. If the commissioner determines that suitable state prison facilities are not available, he may enter into an agreement with appropriate public or private agencies [THE PROPER AUTHORITIES OF THE UNITED STATES, ANOTHER STATE, OR POLITICAL SUBDIVISION OF THIS STATE] to provide programs for the reformation, rehabilitation, and treatment of prisoners. Prison facilities made available to the commissioner by agreement may be in this state, or in any other state, territory or possession of the United States. A privately operated facility made available under this section may be used to involve prisoners in programs and not primarily for confinement. The commissioner shall not enter into an agreement with an authority unable to provide the degree or kind of safekeeping, care and subsistence required by the law of this state, and the rules and regulations adopted by the commissioner.

C. Recommendations

The Department supports passage of this legislation and requests that the bill be modified to address furlough concerns.

**POSITION PAPER/Department of Health & Social Services**

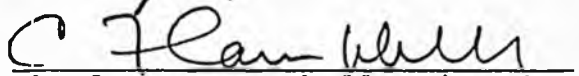
Recommended by:



Sam Trivette, Executive  
Director, Alaska Parole Board

Date:

May 5, 1981

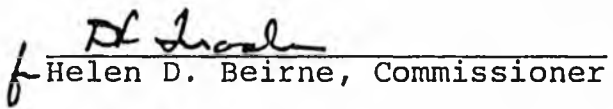


Charles F. Campbell, Director  
Division of Adult Corrections

Date:

5-5-81

Approved by:



Helen D. Beirne, Commissioner

Date:

5/6/81

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. C.S. House Bill No. 510 (HESS) am  
Title An Act continuing the existence of the State Board of Parole  
Requested by Clocksinn and Martin Date April 17, 1981

II. FISCAL DETAIL

Agency Affected Department of Health & Social Services  
Program Category Affected Offender Confinement, Reformation & Supervision  
BRU, Program, or Subprogram(s) Affected Adult Confinement, Probation & Community Prog.  
(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)

There would be no impact on the Division of Adult Corrections as a result of this proposed legislation as it would continue the Board of Parole for one additional year with no further changes.

IV. DATE May 5, 1981 PREPARED BY Roger C. Lange  
AGENCY Division of Adult Corrections, DH&S  
PHONE 465-3376

Original: Legislative Finance  
cc: Budget and Management  
Prime Sponsor (First Legislator Named) M&B Approval William Bennett Date 5/6/81

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. C.S. House Bill No. 510 (HESS)am  
 Title An Act Continuing the Existence of the State Board of Parole  
 Requested by Representatives, Clocksin and Martin Date April 17, 1981

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<b>TOTAL</b>	-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)

There would be no impact on the Parole Board as a result of this proposed legislation as it would result in the continuation of the Board for one additional year with no significant changes.

IV. DATE April 22, 1981 PREPARED BY Samuel H. Trivette  
 AGENCY Parole Board Dept. H&SS  
 PHONE 465-3384  
 Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named) 11. 1981 M&B Approval 11. 1981 Date 5/6/81