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M E M O R A N D U M

December 1, 1983

TO: Arthur H. Snowden, II
Administrative Director

FROM: Karla L. Forsythe *KLF*
General Counsel

SUBJECT: SB 312

You asked me to review SB 312, which was introduced in the Senate the end of last session, and to discuss any sections which warrant revision at this time.

I have two suggestions:

1. The revisor of statutes renumbered former AS 09.65.130 which deals with representation of a child, and the bill should be revised accordingly to refer to AS 25.24.310. References which must be changed appear on page 2 (line 4), page 3 (lines 25, 26, and 27), and page 9 (lines 12 and 19).

2. In order to heighten fiscal accountability and ensure that the office of public advocacy will be appointed to represent children only when parents are indigent or temporarily without funds, the proposed wording should be revised to state that the court shall determine on the record whether one or both of the parties is indigent or temporarily without funds, in which case the office of public advocacy shall be appointed.

In all other cases, the costs of representation or guardian ad litem services will be borne by the parties.

KLF:ea

SB 312 cont'd

The Honorable Jalmar Ferttula
President of the Senate
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to create an office of public advocacy within the Department of Administration.

The bill transfers responsibility for the public guardian program (AS 13.26.360 -- 13.26.410) and for administration of statutorily required advocacy services from the court system to the executive branch.

PUBLIC GUARDIANSHIP

The public guardian office, established by the legislature in 1981 (AS 13.26.370), provides guardianship and conservatorship services to incapacitated persons and minors when no one else is willing or qualified to perform in this capacity. Many of the wards are severely handicapped due to mental retardation, developmental disabilities, or mental illness. The public guardian's responsibilities for individual wards include placement; securing medical, dental, vocational, or rehabilitation services; financial management; benefits application; and personal visits.

The public guardian is also required to assist private guardians throughout the state to ensure that guardians and conservators secure the necessary services for the persons they protect. This task involves maintaining contact with community resource programs and government agencies, and producing informational and educational aids.

The court system is not qualified or equipped to handle such a social services program. By law, coroners/public administrators must serve as the public guardians, yet none of the coroner/public administrators is a social worker.

PUBLIC REPRESENTATION

The court system, by statute (AS 18.85.130(a)), appoints and compensates attorneys who represent indigent persons when the public defender agency cannot provide an attorney because of a conflict of interests. The court is also authorized by current law to appoint and pay for guardians ad litem to represent the best interests of a minor in proceedings which affect the minor's welfare (AS 09.65.130). Representation and guardian ad litem services presently are provided by contract with private law firms and by direct court appointment at hourly rates that are below customary rates charged by attorneys.

SB 312 cont'dOFFICE OF PUBLIC ADVOCACY

The bill creates an office of public advocacy under the commissioner of administration, who also oversees the public defender agency. The office will be empowered to provide public guardian and guardian ad litem services as well as legal representation to indigent persons, when authorized by existing statutes. Services will be provided both by staff employed by the office and by independent contractors, subject to centralized management under the commissioner of administration.

In creating such an office, it is anticipated that it will have locations in major population areas around the state. This will permit efficient sharing of resources, including space, personnel, clerical support, and other administrative costs, with other state offices. In developing the staffing requirements and other costs, it has been determined that in many instances it will be less costly for the state to establish full-time offices with full-time employees rather than contract for these services.

The judicial branch supports transfer of the public guardian program and the management of advocacy services to the office of public advocacy. Principles of sound management and fiscal responsibility point to the desirability of this approach, and I urge passage of the bill.

Sincerely,

Bill Sheffield
Governor

SB 313

SENATE BILL NO. 313 by the Rules Committee by request of the Legislative Council (for the Code Revision Commission), entitled:

"An Act revising the nonprofit corporations code; and providing for an effective date."

was read the first time and referred to the Labor and Commerce Committee, the Judiciary Committee and the Finance Committee.

The letter from John W. Abbott, Chairman, Alaska Code Revision Commission and the Commentary to Accompany Proposed Bill on the Alaska Nonprofit Corporations Code (ANCC) appears in Senate and House Joint Supplement No. 12 to today's journal.



Alaska Court System

State of Alaska

303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274-8611

December 1, 1983

Senator Bill Ray
Alaska State Legislature
165 Behrends Avenue
Juneau, Alaska 99801

Dear Bill:

As you know, SB 312, which would create an Office of Public Advocacy, is one of the court system's legislative priorities for the upcoming session. I am writing to you at this time to express my hope that you will schedule committee hearings on this bill during the first week of the session or as soon thereafter as possible. I would like to see the bill move through the Senate quickly, because I anticipate problems in the House.

A copy of the bill is attached for your review. Several proposed changes which the committee may wish to consider are noted in red. These changes are summarized in the attached memorandum from my staff counsel Karla Forsythe.

I would appreciate it if your staff could notify Ms. Forsythe of the date set for hearing. She will be testifying before the committee about the bill, and can provide any background information needed by the committee.

Thank you very much for your help and interest in this legislation.

Sincerely,

A handwritten signature in dark ink, appearing to read "Arthur H. Snowden, II".

Arthur H. Snowden, II
Administrative Director

AHS, II:ea

M E M O R A N D U M

December 1, 1983

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I have two suggestions:

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KLF:ea

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 312
Title: Creating Office of Public Advocacy

Sponsor: _____
Requestor: _____
Date of Request: _____

FISCAL DETAIL

Agency Affected: Alaska Court System
Program Category Affected: Justice

BRU, Program or Subprogram(s) Affected: _____
Alaska Court System

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING		(328.9)				
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		(2,066.6)				
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		(2,395.5)				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		(2,395.5)				
FEDERAL FUNDS						
OTHER						
TOTAL		(2,395.5)				


POSITIONS:

FULL-TIME		(8)				
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Robert G. Fisher Phone: 264-0561
Division: Alaska Court System Date: 1/17/84

Approved by Commissioner:  Date: 1/17/84
Agency: Alaska Court System

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

ANALYSIS OF SB 312

The FY 85 budget for the Court System contains \$2,395,500 of funds for the functions being transferred to the Department of Administration by this bill. In the transfer of the guardian function, the Court System will maintain the existing eight (8) positions until the Department of Administration has established its organization and offices around the state. At that time the positions will be transferred to the Department of Administration.

SB 312 cont'd

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President of the Senate
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Pouch 7
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The bill transfers responsibility for the public guardian program (AS 13.26.360 -- 13.26.410) and for administration of statutorily required advocacy services from the court system to the executive branch.

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SB 312 cont'dOFFICE OF PUBLIC ADVOCACY

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Governor

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The letter from John W. Abbott, Chairman, Alaska Code Revision Commission and the Commentary to Accompany Proposed Bill on the Alaska Nonprofit Corporations Code (ANCC) appears in Senate and House Joint Supplement No. 12 to today's journal.

AN ACT CREATING THE OFFICE OF PUBLIC ADVOCACY; AND PROVIDING FOR AN EFFECTIVE DATE.

Preface: A preface for this bill can be found in the Governor's transmittal letter Pg. 1250 of the Senate Journal.

Section 1. AS 44.21. is amended by adding new sections to read:

ARTICLE 8. OFFICE OF PUBLIC ADVOCACY.

Sec. 44.21.400 The Office of Public Advocacy is established in the Department of Administration.

Sec. 44.21.410 DUTIES

- (1) Perform duties of public guardian.
- (2) Provide visitors and experts in guardianship proceedings.
- (3) Provide guardian ad litem services to children, to wards and respondents to those who cannot financially afford such services.
- (4) Provide legal representation in guardianship proceedings to those who cannot afford such expenses in cases involving child custody.
- (5) Provide legal representation and guardian ad litem services in cases arising under the Uniform Interstate Compact on Juveniles, adoption, petitions to remove disabilities of a minor, children's proceedings and indigent persons who cannot be represented by the Public Defenders Office because of a conflict of interest.

(b) The Commissioner of Administration may:

- (1) Adopt regulations to carry out the duties of this chapter
- (2) Make reports to the governor and legislature if requested or required.
- (3) Solicit and accept grants and allocate or restrict uses of such grants.

Sec. 44.21.420 EMPLOYMENT OF PERSONNEL

- (a) Commissioner may employ any persons necessary to perform duties. Personnel are in the classified service.
- (b) Commissioner may employ attorneys as required. Attorneys are in the partially exempt service.
- (c) Commissioner may contract for services and determine rate of compensation.

Sec. 44.21.430 ATTORNEYS ENGAGED BY PUBLIC ADVOCACE OFFICE

- (a) Must be admitted to proctice of law in this state.
- (b) May not engage in private practice. This provision does not apply to attorneys who provide service as independent contractors.

Sec. 44.21.440 CONFLICTS OF INTEREST

All services and legal representation must be provided in a manner that avoids conflict of interest.

Section 2. AS 09.55.590 (e) amended

Provides that if the court appoints an attorney or a guardian ad litem, that appointment must be made under the terms of 09.65.130.

Section 3. AS 09.65.130 amended

- (a) Provides that in an action involving question of custody, support or visitation of a minor, the court may, upon a motion of a party to the action, appoint the Office of Public Advocacy to represent the minor. The court shall notify the Office of Public Advocacy if any services are necessary.
- (b) Provides that the Office of Public Advocacy shall provide legal representation and other services required by the court in cases of custody, support or visitation. The order for costs, fees and disbursements must be made against either or both parents unless if one of the parties is indigent, then the costs shall be borne by the state. Any repayment must be made directly to the Department of Revenue for deposit in the general fund.
- (c) Allows that the court may appoint or require the Office of Public Advocacy to provide guardians ad litem services to a minor in any legal proceedings regarding the minor's welfare. The Office Of Public Advocacy is substituted for "court", "guardian ad litem", and "attorney" throughout the sub-section.

Section 4. AS 13.26.106 (b) amended

Substitutes "Office of Public Advocacy" for attorney.

Section 5. AS 13.26.106 amended by adding a new sub-section.

- (d) Provides appointment of the visitor and expert must be made through the Office of Public Advocacy.

Section 6. AS 13.26.112 (b) and (c) amended

- (b) Provides the Office of Public Advocacy shall provide guardian and ad litem services to a person who would suffer financial hardship if services are not provided by the state. (THIS IS A NEW SUB-SECTION)
- (c) Adds the feminine pronoun where applicable.
- (d) Was formally sub-section (c)

NOTE*****SECTION 6 MAY NOT BE DRAFTED IN ACCORDANCE WITH LEG. AFFAIRS (LEGAL SERVICES) PROCEDURES

Section 7. AS 13.26.360 PURPOSE

Changes the word "office" to "function in relation to guardians and conservators

Section 8. AS 13.26.370 (a) amended

Provides that the Office of Public Advocacy shall serve as the Public Guardian (Formally, provided the the Public Administrator would serve in that capacity)

Section 9. AS 18.85.110 (d) amended

Adds the Office of Public Advocacy to who must be informed if the court determines that a person is entitled to be represented by an attorney at public expense.

Section 10. AS 18.85.110 (e) amended

Adds Office of Public Advocacy to the list of who may represent a person.

Section 11. AS 18.85.130 (a) amended

Adds Office of Public Advocacy to this section relating to appointments of an alternate attorney.

Section 12. AS 22.15.310 amended

Removes Public Guardian from the duties of the public administrator since the Office of Public Advocacy will perform those duties.

Section 13. AS 22.15.350 amended

Removes Public Guardian from "other duties" of a public administrator.

Section 14. AS 39.25.120 (c) (3) amended

Adds attorney members of the staff of the Office of Public Advocacy to the list of those in the partially exempt service

Section 15. AS 47.15.050 amended

Provides that appointment of an attorney under the Uniform Interstate Compact on Juveniles must be made under the Office of Public Advocacy and its statutes.

Section 16. AS 47.17.030 (e) amended

Provides that appointment of a guardian ad litem must be made through the Office of Public Advocacy.

Section 17. AS 47.30.775 amended

Provides that if a minor is going to be committed, notice must be served on a parent or guardian that they may appear as parties and are entitled to retain their own attorney or have the Office of Public Advocacy appointed for them by the court.

Section 18. Effective date July 1, 1984.....

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 312
Title: Creating Office of Public Advocacy

Sponsor: _____
Requestor: _____
Date of Request: _____

FISCAL DETAIL

Agency Affected: Alaska Court System
Program Category Affected: Justice

BRU, Program or Subprogram(s) Affected: Alaska Court System

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING		(328.9)				
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		(2,066.6)				
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		(2,395.5)				

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND		(2,395.5)				
FEDERAL FUNDS						
OTHER						
TOTAL		(2,395.5)				


POSITIONS:

FULL-TIME		(8)				
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Robert G. Fisher Phone: 264-0561
Division: Alaska Court System Date: 1/17/84

Approved by Commissioner:  Date: 1/17/84
Agency: Alaska Court System

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

ANALYSIS OF SB 312

The FY 85 budget for the Court System contains \$2,395,500 of funds for the functions being transferred to the Department of Administration by this bill. In the transfer of the guardian function, the Court System will maintain the existing eight (8) positions until the Department of Administration has established its organization and offices around the state. At that time the positions will be transferred to the Department of Administration.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: January 16, 1984
Page 1 of 3

REQUEST

Bill/Resolution No.: SB 312
Title: "Creating the Office
of Public Advocacy"
Sponsor: Senate Rules
Requestor: Governor
Date of Request: June 8, 1983

FISCAL DETAIL

Agency Affected: Administration
Program Category Affected:
BRU, Program of Subprogram(s) Affected:
Office of Public Advocacy

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
800 MISCELLANEOUS		2,395.5	2,635.1	2,754.8	2,874.6	2,994.4
TOTAL OPERATING	0	2,395.5	2,635.1	2,754.8	2,874.6	2,994.4
CAPITAL	0					
REVENUE	0					

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	2,395.5	2,635.1	2,754.8	2,874.6	2,994.4
FEDERAL FUNDS						
TOTAL						

POSITIONS:

FULL-TIME	0	18.0	26.0	26.0	26.0	26.0
PART-TIME		0	0	0	0	0
TEMPORARY		0	0	0	0	0

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Offset of equal value from Alaska Judicial System

ANALYSIS: Attach a separate page for any Analysis.

Prepared By: Christine L. Dooley *Christine L. Dooley* Phone: 465-4418
Division: Administrative Services *Kerkhals* Date: January 16, 1984
Approved by Commissioner: Lisa Rudd *LR* Date: January 16, 1984
Agency: DEPARTMENT OF ADMINISTRATION

- Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Senate Bill 312
Fiscal Note Analysis
Prepared by Administrative Services
Department of Administration

Date: January 17, 1984

These projected costs are predicated upon utilization of attorneys as State employees rather than engagement of private attorneys on contract on an as-needed basis at higher than annual salary rates. Some contractual activity will continue to be necessary as third party conflicts arise (approximately 10% of the Public Advocacy caseload).

The Department of Administration will manage the entire Public Advocacy FY 85 Budget Appropriation during the transition period and on into the complete changeover of the agency.

It is intended that the Court System will continue to handle the responsibilities of the guardianship cases of FY 85 and the completion of any open contracts until the cases are resolved. The Court System will retain the seven guardian PCN's as well as one accounting clerk for this purpose and the Department of Administration will allocate Reimbursable Services Agreement funds to the Court for the costs as well as any third party conflict contract costs that the Court System incurs until FY 86 at which time the guardianship functions and these PCN's will transfer to Department of Administration.

Department of Administration, Division of Administrative Services, has added two additional accounting technicians to the administrative staff to handle the increased responsibilities of another division within the department. These positions are for additional professional contract, vendor payment and payroll functions for these three new offices.

This Fiscal Note is based on information from the Court System on case loads, location of cases, hours per case and costs of guardianship.

Because the Public Advocacy Office will be administered differently than in the Court System, we are not convinced that moving the function will be a cost saving matter. Neither can we guarantee the actual costs since we have used Court System projections without having performed this function ourselves.

4/3D1/0118-01

OFFICE OF PUBLIC ADVOCATE
TRANSFER TIMING CHART

FY 84				FY 85												FY 86												FY 87
A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A

Activity

Court System accomplish
Public Advocate duties.

Introduce and pass legisla-
tion.

Form Transition Team and
accomplish transition
responsibilities.

DOA hire Anchorage core
staff Core staff sets up
office.

Hire Fairbanks core staff
and set up office.

Hire Ketchikan core staff
and set up office.

Anchorage, Fairbanks and
Ketchikan offices assume
responsibility for new cases.

Court System administers
FY 85 cases until comple-
tion.

Transfer Deputy Guardian
positions, staff and cases
to DOA.

DOA begins phase in of
Public Advocate staff.

Office of Public Advocate
has full staff and caseload.

SENATOR
ROBERT H. ZIEGLER, SR.
307 BAWDEN STREET
KETCHIKAN, ALASKA 99901

While in Juneau
POUCH V
JUNEAU, ALASKA 99811



Senate

VICE CHAIRMAN
SENATE RESOURCES COMMITTEE
MEMBER
SENATE JUDICIARY COMMITTEE
WESTERN STATES LEGISLATIVE
FORESTRY TASK FORCE
WESTERN CONFERENCE COUNCIL
OF STATE GOVERNMENTS

June 14, 1983

Senator Bill Ray,
Chairman
Senate Judiciary Committee
Alaska State Legislature
Juneau, Alaska

Re: SB 312

Dear Bill:

The captioned legislation creates the Office of Public Advocacy.

In capsule form, this new office, if it ever functions, would take over many functions currently being administered by the Alaska Court System. We're talking about such things as guardianships, conservatorships, incapacitated persons, minors, wards, attorneys and you name it.

May I suggest you scan the Governor's letter of transmittal which has been attached hereto; it pretty lucidly explains the bill and the reasons for its submittal.

I know of my own knowledge that the bill has placed upon the court system what it perceives to be an intolerable burden, and to a large extent it probably is.

As for as I know, there is no urgency about taking up the bill and I don't believe it's in anybody's priority list, although the administration's list seems to have growing pains.

It further occurs to me that as the committee of first referral we should request a fiscal note. This little bably will cost a lot of money if it becomes law.

Regards,

Robert H. Ziegler, Sr.

RHZ:lk

Attachment

SB 312 cont'd

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President of the Senate
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

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SB 312 cont'dOFFICE OF PUBLIC ADVOCACY

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STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 13, 1984

SUBJECT: Office of Public Advocacy
TO: Senator Bill Ray
FROM: Edward H. Hein *EHH*
Legislative Counsel

Enclosed is the committee substitute for SB 312 requested by your aide, Paula Scavera. Note that several changes were made from the original bill. Other than the amendments specifically requested by Paula, the changes are stylistic and technical, not substantive. These latter changes, including the renumbering of bill sections, were necessary in order to conform with our drafting manual and with changes in the statutes since the bill was first introduced.

EHH:ojb
J2/029
Enclosure

TELECOPY COVER SHEET
ANCHORAGE INFORMATION OFFICE

TO: Juneau FOR: Paula Saavera/Senator Bill Ray PHONE: _____

FROM: Bob Fischer, AK Court System PHONE: 264-0561

ADDITIONAL INSTRUCTIONS: "must have before 11am 1/18/84"

DATE/TIME SENT: 1/17 3:20 PM PLEASE ACK. RECEIPT:

DISPOSAL OF ORIGINAL: _____ THROW AWAY
_____ HOLD FOR PICK UP

NUMBER OF PAGES: 2 (NOT COUNTING COVER SHEET)

BY: MS

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 312
Title: Creating Office of Public Advocacy

Sponsor: _____
Requestor: _____
Date of Request: _____

FISCAL DETAIL

Agency Affected: Alaska Court System
Program Category Affected: Justice

BRU, Program or Subprogram(s) Affected: _____
Alaska Court System

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING		(328.9)				
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		(2,066.6)				
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		(2,395.5)				

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND		(2,395.5)				
FEDERAL FUNDS						
OTHER						
TOTAL		(2,395.5)				

POSITIONS:

FULL-TIME		(8)				
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Robert G. Fisher
Division: Alaska Court System

Phone: 264-0561
Date: 1/17/84

Approved by Commissioner: 
Agency: Alaska Court System

Date: 1/17/84

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

ANALYSIS OF SB 312

The FY 85 budget for the Court System contains \$2,395.500 of funds for the functions being transferred to the Department of Administration by this bill. In the transfer of the guardian function, the Court System will maintain the existing eight (8) positions until the Department of Administration has established its organization and offices around the state. At that time the positions will be transferred to the Department of Administration.

TELECOPY COVER SHEET
ANCHORAGE INFORMATION OFFICE

TO: Sen. Ray FOR: Paula Scavera PHONE: 465-4922 ⁴⁴⁵¹

FROM: Karla Forsythe PHONE: 264-0634

ADDITIONAL INSTRUCTIONS: _____

DATE/TIME SENT: 1/19/84 4:25 PLEASE ACK. RECEIPT:

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HOLD FOR PICK UP

NUMBER OF PAGES: 8 (NOT COUNTING COVER SHEET)

BY: Shiloh

MEMORANDUM

To: Paula Scavera
From: Karla Forsythe, General Counsel
Alaska Court System
Date: January 19, 1984
Subject: CS for SB 312 (Judiciary)

Karla Forsythe

After discussing with Senator Pettyjohn his concerns about the present draft committee substitute, I have the following suggestions for the final version:

1. Page 2, line 6. Instead of "AS 47.15", the statutory citation should read "AS 47.15.050". I believe the deletion was a typographical error.

2. Page 5, lines 20 and 21. Since indigent defendants will be represented either by the public defender agency or through the office of advocacy, the last part of the paragraph should be deleted, to read:

(d) If a court determines that the person is entitled to be represented by an attorney at public expense, it shall promptly notify the agency or the office of public advocacy [OR ASSIGN A PRIVATE ATTORNEY FOR HIM UNDER AS 18.85.130.]

3. Page 5, line 24. For the same reason, the reference to assigned private attorney should be deleted, so that the section will read:

(e) Upon notification or assignment under this section, the agency or office of public advocacy [OR ASSIGNED PRIVATE ATTORNEY] shall represent the person with respect to whom the notification or assignment is made.

4. Page 5, line 27. This entire section ^(a) should be repealed, and therefore should read:

*Sec. 11. AS 18.85.130 ^(a) is repealed. *Section b should be retained as noted on the attached copy*

Since either the public defender agency or the office of advocacy will provide representation, the court will no longer be concerned with appointing attorneys other than these agencies in these cases.

5. Page 6, lines 22 and 23. The office of public advocacy will NOT be appointed in every proceeding under this section, but only if the parties are indigent. Therefore, the reference to "an attorney" should be included, and the paragraph should read:

Sec. 25.24.310. REPRESENTATION OF MINOR. (a) In an action involving a question of the custody, support, or visitation of a minor, the [THE] court may, upon the motion of a [EITHER] party to the action or upon its own motion, appoint an attorney or the office of public advocacy . . . (the remainder of page 6 does not change).

6. Page 7, lines 2 and 3. Senator Pettyjohn was concerned that appointments are made at state expense only if there is no other recourse. The language could be changed to read:

If the parties are indigent or temporarily without funds. . .

rather than "If one or both of the parties is indigent or temporarily without funds."

7. Page 7, line 13. Similarly, this line could read: [EITHER PARTY OR BOTH PARENTS] "If the parties are only temporarily without funds . . ."

8. Page 7, lines 17 through 19. Senator Pettyjohn would like to delete the reference to persons receiving legal services, and the court system has no problem with this deletion. The wording would read:

(starting on line 16) "FOR] legal representation or other

services required by the court [RENDERED TO THE CHILD: HOWEVER, NO REPAYMENT MAY BE REQUIRED FOR THOSE WHO ARE RECEIVING LEGAL SERVICES FOR THE INDIGENT!].

9. Page 7, line 27. Senator Pettyjohn is concerned that the language regarding sale of property belonging to both parties might be interpreted as excluding other mechanisms for allocating costs. His concern could be clarified by adding language to line 27, so that line 27 would read:
before a division of property is made, or by other appropriate means.

10. Page 8, line 10. Since the court may appoint guardians ad litem outside the advocacy office for persons who can afford them, the existing statutory language should be retained, so that line 10 would read:

"appointing a guardian ad litem shall . . ."

11. Page 8, lines 25 and 26. This language could be conformed to previous changes to read:

"If the parties are indigent"

rather than

"If one or both of the parties is indigent . . .".

* * * *

I have attached a marked-up copy of the committee substitute draft to show these changes. Please give me a call if you have any questions.

1 by a public agency, and to indigent parents or guardians of a minor
2 respondent in a commitment proceeding concerning the minor under
3 AS 47.30.775;

4 (5) provide legal representation and guardian ad litem
5 services under AS 25.24.310; in cases arising under the Uniform Inter-
6 state Compact on Juveniles (AS ^{47.15.050}~~47.15~~); in cases involving petitions to
7 adopt a minor under AS 25.23.100(j); in cases involving petitions to
8 remove the disabilities of a minor under AS 09.55.590; in children's
9 proceedings under AS 47.10.050(a); and in cases involving indigent
10 persons who are entitled to representation under AS 18.85.100 and who
11 cannot be represented by the public defender agency because of a
12 conflict of interests.

13 (b) The commissioner of administration may

14 (1) adopt regulations that the commissioner considers
15 necessary to implement AS 44.21.400 - 44.21.440;

16 (2) report on the operation of the office of public advo-
17 cacy when requested by the governor or legislature or when required by
18 law;

19 (3) solicit and accept grants of funds from the federal
20 government and from private foundations, and allocate or restrict the
21 use of those funds as required by the grantor.

22 Sec. 44.21.420. EMPLOYMENT OF OFFICE PERSONNEL. (a) The com-
23 missioner of administration may employ guardians ad litem, public
24 guardians, clerical staff, and other assistants that the commissioner
25 determines are needed to perform the duties set out in AS 44.21.410.
26 Employees under this subsection are in the classified service under
27 AS 39.25.100.

28 (b) The commissioner of administration may employ attorneys
29 needed to perform the duties set out in AS 44.21.410. Attorneys

1 Sec. 13.26.360. PURPOSE. The legislature recognizes that many
2 Alaskans, for reasons of incapacity or minority, are in need of a
3 guardian or conservator. Often these persons cannot find a person
4 able and willing to serve as guardian or conservator. The legislature
5 intends through AS 13.26.360 - 13.26.410 to establish the function
6 [OFFICE] of public guardian for the purpose of furnishing guardianship
7 and conservatorship services. It further intends by establishing this
8 function [OFFICE] to provide assistance to guardians throughout the
9 state in securing necessary services for their wards and to assist the
10 courts, attorneys, visitors, respondents, and proposed guardians in
11 the orderly and expeditious handling of guardianship proceedings.

12 * Sec. 8. AS 13.26.370(a) is amended to read:

13 (a) The office of public advocacy (AS 41.21.400) shall serve as
14 the public guardian [PUBLIC ADMINISTRATOR (AS 22.15.310) SHALL ALSO
15 ACT AS THE PUBLIC GUARDIAN FOR THE JUDICIAL DISTRICT FOR WHICH HE IS
16 APPOINTED].

17 * Sec. 9. AS 18.85.110(d) is amended to read:

18 (d) If a court determines that the person is entitled to be
19 represented by an attorney at public expense, it shall promptly notify
20 the agency or the office of public advocacy ^{ALL CAPS} [or assign a private attor-
21 ~~ney to represent the person~~ ^{FOR HIM} under AS 18.85.130].

22 * Sec. 10. AS 18.85.110(e) is amended to read:

23 (e) Upon notification or assignment under this section, the
24 agency ^{or} office of public advocacy ^{ALL CAPS} [or assigned private attorney] shall
25 represent the person with respect to whom the notification or assign-
26 ment is made.

27 * Sec. 11. AS 18.85.130 ^(a) ~~is~~ ^{repealed.} ~~amended to read:~~

28 ~~For~~ ^{ALL CAPS} [For cause, the court may, on its own motion or upon the
29 application of the public defender ~~or the office of public advocacy.~~

* Sec. 12. AS 18.65.130
is amended to read:
Sec. 18.65.130

In addition to substitution under (a) of this section, ⁷⁴¹when the public interest requires, and a person is entitled to representation by the agency under this chapter, the public defender may contract with one or more private attorneys to assist him. The public defender shall pay for these services out of appropriations to the agency. (§ 1 ch 109 SLA 1968, am. § 3 ch 13 SLA 1971)

1 appoint an attorney other than the public defender ~~or the office of~~
2 ~~public advocacy~~ to represent the indigent person at any stage of the
3 proceedings or on appeal. ~~THE~~ ATTORNEY SHALL BE AWARDED REASONABLE
4 COMPENSATION ACCORDING TO A SCHEDULE OF FEES PROMULGATED BY THE
5 SUPREME COURT AND REIMBURSEMENT FOR EXPENSES NECESSARILY INCURRED.
6 THIS SHALL BE PAID BY THE COURT SYSTEM. ~~3~~

7 * Sec. 12. AS 22.15.310 is amended to read:

8 Sec. 22.15.310. APPOINTMENT. When authorized by the supreme
9 court, the presiding judge in each judicial district shall appoint a
10 person to act as public administrator of the estates of deceased
11 persons and [,] as coroner [, AND AS PUBLIC GUARDIAN].

12 * Sec. 13. AS 22.15.350 is amended to read:

13 Sec. 22.15.350. OTHER DUTIES. In addition to the other duties
14 of a public administrator, the public administrator shall perform the
15 duties set out in AS 22.15.110 and AS 12.65.020 - 12.65.110 [AND SHALL
16 PERFORM THE DUTIES OF PUBLIC GUARDIAN AS SET OUT IN AS 13.26.360 -
17 13.26.410].

18 * Sec. 14. AS 25.24.310 is amended to read:

19 Sec. 25.24.310. REPRESENTATION OF MINOR. (a) In an action
20 involving a question of the custody, support, or visitation of a
21 minor, the [THE] court may, upon the motion of a [EITHER] party to the
22 action or upon its own motion, appoint ^{an attorney or} the office of public advocacy
23 ~~[AN ATTORNEY]~~ to represent a minor with respect to the custody, sup-
24 port, and visitation of the minor or in any other legal proceeding
25 involving the minor's welfare. When custody, support, or visitation
26 is [ARE] at issue in a divorce, it is the responsibility of the par-
27 ties or their counsel to notify the court that such a matter is [THOSE
28 MATTERS ARE] at issue. Upon notification, the court shall determine
29 whether the minor [CHILD] should have legal representation or other

1 services and shall make a finding on the record before trial. If ~~one~~
2 or both of the parties ^{is} indigent or temporarily without funds, the
3 court shall appoint the office of public advocacy. The court shall
4 notify the office of public advocacy if the office is required to
5 provide legal representation or other services. The court shall enter
6 an order for costs, fees, and disbursements in favor of the state
7 [CHILD'S ATTORNEY] and may further order that other services be pro-
8 vided for the protection of the minor [CHILD].

9 (b) If custody, support, or visitation is at [AN] issue, the
10 order for costs, fees, and disbursements shall be made against either
11 or both parents, except that, if one of the parties responsible for
12 the costs is indigent, the costs, fees, and disbursements for that
13 party shall be borne by the state. If ^{ALL CAPS} either party or both parents
14 ^{the parties} are only temporarily without funds, [AS DETERMINED BY THE COURT,] the
15 office of public advocacy shall provide [COURT MAY ADVANCE PAYMENT
16 FOR] legal representation or other services required by the court
17 [RENDERED TO THE CHILD; however, ^{ALL CAPS} ~~may~~ repayment may ~~not~~ be required
18 ~~of a party who is~~ FOR THOSE WHO ARE receiving legal services for the
19 indigent]. The attorney general is responsible for enforcing collec-
20 tions owed the state. Repayment [COURT, AND REPAYMENT] shall be made
21 [DIRECTLY] to the Department of Revenue under AS 37.10.050 for deposit
22 in the general fund [COURT UNDER THE PROVISIONS OF RULES GOVERNING THE
23 ADMINISTRATION OF THE COURTS]. The court shall, if possible, avoid
24 assigning costs to only one party by ordering that costs of the mi-
25 nor's [CHILD'S] legal representation or other services be paid from
26 proceeds derived from a sale of property belonging to both parties,
27 before a division of property is made, ^{no} or by other appropriate means,
28

29 (c) Instead of, or in addition to, appointment of an attorney
under (a) of this section, the court may, upon the motion of either

1 party or upon its own motion, appoint an attorney or other person or
2 the office of public advocacy to provide [SERVE AS] guardian ad litem
3 services to [REPRESENT THE BEST INTERESTS OF] a minor in any legal
4 proceedings involving the minor's welfare. The court shall require
5 [APPOINT] a guardian ad litem when, in the opinion of the court,
6 representation of the minor's [CHILD'S] best interests, to be distin-
7 guished from preferences, would serve the welfare of the minor [CHILD]
8 [THE PERSON APPOINTED UNDER (a) OF THIS SECTION MAY ALSO BE APPOINTED
9 AS GUARDIAN AD LITEM UNDER THIS SUBSECTION.] The court in its order
10 appointing ~~the office of public advocacy~~ ^{small case} A GUARDIAN AD LITEM, shall
11 limit the duration of the appointment of the guardian ad litem to the
12 pendency of the legal proceedings affecting the minor's [CHILD'S]
13 interests, and shall outline the guardian ad litem's responsibilities
14 and limit the authority to those matters related to the guardian's
15 effective representation of the minor's [CHILD'S] best interests in
16 the pending legal proceeding. The court shall make every reasonable
17 effort to appoint a guardian ad litem from among persons in the com-
18 munity where the minor's [CHILD'S] parents or the person having legal
19 custody or guardianship of the minor's [CHILD'S] person reside. When
20 custody, support, or visitation is [ARE] at issue in a divorce, it is
21 the responsibility of the parties or their counsel to notify the court
22 that such a matter is [THESE MATTERS ARE] at issue. Upon notifica-
23 tion, the court shall determine if the minor's [CHILD'S] best inter-
24 ests need representation or if the minor [CHILD] needs other services
25 and shall make a finding on the record before trial. If ~~one or both~~
26 ~~of~~ ^{are} the parties ~~is~~ indigent or temporarily without funds the court
27 shall appoint the office of public advocacy. The court shall notify
28 the office of public advocacy if the office is required to provide
29 guardian ad litem services. The court shall enter an order for costs,

SB 312 cont'd

The Honorable Jalmar Ferttula
President of the Senate
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to create an office of public advocacy within the Department of Administration.

The bill transfers responsibility for the public guardian program (AS 13.26.360 -- 13.26.410) and for administration of statutorily required advocacy services from the court system to the executive branch.

PUBLIC GUARDIANSHIP

The public guardian office, established by the legislature in 1981 (AS 13.26.370), provides guardianship and conservatorship services to incapacitated persons and minors when no one else is willing or qualified to perform in this capacity. Many of the wards are severely handicapped due to mental retardation, developmental disabilities, or mental illness. The public guardian's responsibilities for individual wards include placement; securing medical, dental, vocational, or rehabilitation services; financial management; benefits application, and personal visits.

The public guardian is also required to assist private guardians throughout the state to ensure that guardians and conservators secure the necessary services for the persons they protect. This task involves maintaining contact with community resource programs and government agencies, and producing informational and educational aids.

The court system is not staffed or equipped to handle such a social services program. By law, coroners/public administrators must serve as the public guardians, yet none of the coroner/public administrators is a social worker.

PUBLIC REPRESENTATION

The court system, by statute (AS 18.85.130(a)), appoints and compensates attorneys who represent indigent persons when the public defender agency cannot provide an attorney because of a conflict of interests. The court is also authorized by current law to appoint and pay for guardians ad litem to represent the best interests of a minor in proceedings which affect the minor's welfare (AS 09.65.130). Representation and guardian ad litem services presently are provided by contract with private law firms and by direct court appointment at hourly rates that are below customary rates charged by attorneys.

SB 312 cont'dOFFICE OF PUBLIC ADVOCACY

The bill creates an office of public advocacy under the commissioner of administration, who also oversees the public defender agency. The office will be empowered to provide public guardian and guardian ad litem services as well as legal representation to indigent persons, when authorized by existing statutes. Services will be provided both by staff employed by the office and by independent contractors, subject to centralized management under the commissioner of administration.

In creating such an office, it is anticipated that it will have locations in major population areas around the state. This will permit efficient sharing of resources, including space, personnel, clerical support, and other administrative costs, with other state offices. In developing the staffing requirements and other costs, it has been determined that in many instances it will be less costly for the state to establish full-time offices with full-time employees rather than contract for these services.

The judicial branch supports transfer of the public guardian program and the management of advocacy services to the office of public advocacy. Principles of sound management and fiscal responsibility point to the desirability of this approach, and I urge passage of the bill.

Sincerely,

Bill Sheffield
Governor

SB 313

SENATE BILL NO. 313 by the Rules Committee by request of the Legislative Council (for the Code Revision Commission), entitled:

"An Act revising the nonprofit corporations code; and providing for an effective date."

was read the first time and referred to the Labor and Commerce Committee, the Judiciary Committee and the Finance Committee.

The letter from John W. Abbott, Chairman, Alaska Code Revision Commission and the Commentary to Accompany Proposed Bill on the Alaska Nonprofit Corporations Code (ANCC) appear in Senate and House Joint Supplement No. 12 to today's journal.