

SB

103

HOUSE COMMITTEE REPORT

(11)

Date referred: 5/9/87

FURTHER REFERRALS:

*5/15
Rules*

DATE: 5-15-87

The Finance Committee has considered SB 103

"An Act relating to the disposal of property forfeited under federal drug enforcement laws.

RECOMMENDS:

- replace with HCS SB 103 (JUD) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

Ed Bryant

Pat Lauchach

Ronald L. Linn

Mark Boykin

Steve Harris

Kay Wallin

Mike Daines

Steve Cook

SIGNING OTHER RECOMMENDATIONS:

Peter Jure

Tony Brown

~~_____~~

Albert R. Adams

 Chairman's signature

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

Bill Version: HCS SB 103 (JUN)
Publish Date: _____

REQUEST: _____

Revision Date: _____

Title: "An Act relating to the disposal
of property forfeited under Fed drug laws."

Sponsor: Sen Faiks

Requestor: Senate Judiciary

Agency Affected: Public Safety

BRU: Alaska State Troopers

Components: Detachments & CIB
Narcotics

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The unpredictability of amounts and timeliness of such receipts prevents any accurate estimate of the impact of this statute change.

JNR
2/9/87

Prepared by: Francis C. Allan

Division: Alaska State Troopers

Phone: 269-5691

Date: 2/09/87

Approved by Commissioner: *Michael J. Jensen*

Agency: Public Safety

Date: 2-9-87

Distribution (by preparer):

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

Original sponsor: Faiks

1 IN THE SENATE BY THE JUDICIARY COMMITTEE
2 HOUSE CS FOR SENATE BILL NO. 103 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the disposal of property for-
7 feited under federal drug enforcement laws."

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

9 * Section 1. AS 17.30.100 is amended by adding a new subsection to
10 read:

11 (d) The Department of Public Safety or a local law enforcement
12 agency may accept from the United States Attorney General property,
13 including money, that is forfeited under 21 U.S.C. 881 (the Controlled
14 Substances Act). The Department of Public Safety and local law
15 enforcement agencies shall, in accordance with 21 U.S.C. 881(e) and
16 regulations and policies adopted under that section, use property and
17 the proceeds of property obtained under this subsection in the
18 enforcement of this chapter, AS 11.71, and municipal ordinances sub-
19 stantially similar to this chapter and AS 11.71.

20 * Sec. 2. This Act is retroactive to January 1, 1985.

Alaska State Legislature

PRESIDENT
907-465-3755

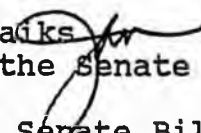
JAN FAIKS
POST OFFICE BOX V
JUNEAU, ALASKA 99811

Senate

May 11, 1987

MEMORANDUM

TO: Representative Al Adams, Chairman
House Finance Committee

FROM: Senator Jan Faiks 
President of the Senate

SUBJECT: Background on Senate Bill 103
An Act relating to the disposal of property
forfeited under federal drug enforcement laws.

The House Judiciary Committee Substitute to Senate Bill 103 has been referred to your committee for consideration.

This bill will permit Alaska law enforcement agencies to accept property, including money, from the United States Attorney General which has been forfeited under the Federal Controlled Substances Act, 21 U.S.C. 881(e). It further enables the Department of Public Safety and local law enforcement agencies to use those funds for the enforcement of state drug laws.

The amount of funds which can be anticipated under this plan will vary with the amount of property that is seized in any given year and the amount of participation from the state and local law enforcement agencies.

The Department of Public Safety estimates that in 1986 it was allocated nearly \$150,000 in cash from drug-related investigations from the federal government. Although the funds have been allocated, the state has not been able to accept them, as there is not statutory authority to do so. Presently, the money reverts to the federal government.

OUT OF SESSION

6060 YUKON DRIVE ANCHORAGE, ALASKA 99516 907-274-6611

However, the Department has been able to use property which is forfeited in these cases. Automobiles comprise the majority of the property that is confiscated. The property which has been allocated to Alaska from 1986 forfeitures has a value between \$50,000-72,000.

Not only will this bill enable Alaska to accept the \$150,000 from the federal government, but that amount will count towards the 20% state match required to receive an additional \$800,000 from the federal government to be used for drug enforcement purposes.

The committee substitute prepared by the House Judiciary Committee broadens the language of the original bill by enabling local law enforcement agencies, as well as the Department of Public Safety to accept such forfeited property, including funds. This language is consistent with the provisions of the federal law.

Additionally, the committee substitute provides a retroactive clause to enable Alaska law enforcement agencies to accept such property as was allocated to it in 1985, should it still be available from the federal government. The committee substitute relates to that year, as the federal statute allowing such allocations went into effect in 1985.

Senate Bill 103 does not appear to violate the Dedicated Funds clause of the Alaska Constitution, as the dedication of those funds is required by relevant federal law which enable such allocation to the states.

Specifically, the dedicated funds clause contained in Article IX, sec. 7 of the state constitution provides that

The proceeds of any state tax or license shall not be dedicated to any special purpose, except...when required by the federal government for state participation in federal programs.

The relevant federal law in this area, 21 U.S.C. 881 (e), provides that

Whenever property is civilly or criminally forfeited under this subchapter the Attorney General may
(1) retain the property for official use or transfer the custody of ownership of any forfeited property to any Federal, State, or local agency . . .

The United States Attorney General has issued guidelines

which spell out the procedures for transferring property seized and forfeited under 21 U.S.C. 881 which provide that

Property will be transferred [to a state law enforcement agency] only in cases where the tangible property or cash will be credited to the budget of the state or local agency that directly participated in the seizure or forfeiture, resulting in an increase of law enforcement resources for that specific state or local agency.

These guidelines make it clear that the dedication of funds received by the state under 21 U.S.C. 881 appears to be required for state participation in a federal program, and is not in violation of the dedicated funds clause of the state constitution.

Attached is a copy of the analysis of the dedicated funds clause issue which was prepared by Legal Services, and the relevant federal law.

I would appreciate the committee's consideration of this legislation at its earliest convenience. Should you need any additional information, please let me know.

Thank you.

cc: Representative Pat Pourchot

§ 880. Administrative inspections and warrants

RESEARCH GUIDE

Annotations:

State and local administrative inspection of and administrative warrants to search pharmacies. 29 ALR4th 264.

§ 881. Forfeitures

(a) Subject property. [Introductory matter unchanged]

(1)-(6) [Unchanged]

(7) All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this title punishable by more than one year's imprisonment, except that no property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

(8) All controlled substances which have been possessed in violation of this title.

(b) Seizure pursuant to Supplemental Rules for Certain Admiralty and Maritime Claims. Any property subject to civil or criminal forfeiture to the United States under this title may be seized by the Attorney General upon process issued pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when—

(1)-(3) [Unchanged]

(4) the Attorney General has probable cause to believe that the property is subject to civil or criminal forfeiture under this title.

[Concluding matter unchanged]

(c) Custody of Attorney General. Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under any of the provisions of this title, the Attorney General may—

(1), (2) [Unchanged]

(3) require that the General Services Administration take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

(d) Other laws and proceedings applicable. The provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws; the disposition of such property or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under any of the provisions of this title, insofar as applicable and not inconsistent with the provisions hereof; except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this title by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General, except to the extent that such duties arise from seizures and forfeitures effected by any customs officer.

(e) Disposition of forfeited property. Whenever property is civilly or criminally forfeited under this title the Attorney General may—

(1) retain the property for official use or transfer the custody or ownership of any forfeited property to any Federal, State, or local agency pursuant to section 616 of the Tariff Act of 1930 (19 U.S.C. 1616) [19 USCS § 1616];

(2) [Unchanged]

(3) require that the General Services Administration take custody of the property and dispose of it in accordance with law; or

(4) [Unchanged]

The Attorney General shall ensure the equitable transfer pursuant to paragraph (1) of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property. A decision by the Attorney General pursuant to paragraph (1) shall not be subject to review. The proceeds from any sale under paragraph

(2) and any moneys forfeited under this title shall be used to pay all proper expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs. The Attorney General shall forward to the Treasurer of the United States for deposit in accordance with section 524(c) of title 28, United States Code (2:

54

USCS § 524(c)] any amounts of such mon expenses.

(f), (g) [Unchanged]

(h) Property title, etc. vested in United described in subsection (a) shall vest in the rise to forfeiture under this section.

(i) Stay of civil proceeding. The filing of a this title or title III which is also related shall, upon motion of the United States a proceeding.

(j) Venue. In addition to the venue provi Code [28 USCS § 1395], or any other prov charged with a violation that is the basis proceeding for forfeiture under this section the defendant owning such property is fea prosecution is brought.

(As amended Oct. 12, 1984, P. L. 98-473, 7 § 518, 98 Stat. 2050, 2051, 2075.)

HISTORY; ANCILLAR

Amendments:

1984. Act Oct. 12, 1984, in subsec. (a), introductory matter, inserted "civil or cr. to civil or criminal forfeiture under" to violation of"; in subsec. (c), in the introduct inserted ", if practicable."; in subsec. introductory matter, inserted "civilly or c custody or ownership of any forfeited p pursuant to section 616 of the Tariff substituted "and dispose of it" for "and r matter, inserted the sentences beginning "A decision by the Attorney General . 524(c) of title 28, United States Code' Treasury"; and added subsecs. (h)-(j).

RESEA

Annotations:

Supreme Court's views as to due process in Forfeiture of money to state or local auth to other contraband. 33 ALR4th 498.
Necessity of conviction of offense before forfeiture of property to state or local auth

INTERPRETIVE N

19.5. Discovery

20.5. Setting aside default decree

27.5. Appeal

28. Judicial review

J. Construction

Forfeiture laws providing explicitly for claimants to post bond and claim seized property in context of civil forfeiture actions do not carry implied right of action against United States. *Wilks v United States* (1985, ND ID 80) 8 Supp 1407.

Nonforfeitable ownership interest which claimant corporation had in property at time of seizure was unpaid principal due on promissory note underlying security deed plus interest at 5 percent interest per annum until principal was paid. This interest can be protected in a foreclosure of remaining property interest, but claimant corporation sells property subject to security deed. Upon selling property, pays 5 percent interest on balance of principal due on promissory note plus interest on principal up to date of sale. *United States v All Flat*

USCS § 524(c) any amounts of such moneys and proceeds remaining after payment of such expenses.

(f), (g) [Unchanged]

(h) Property title, etc. vested in United States. All right, title, and interest in property described in subsection (a) shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

(i) Stay of civil proceeding. The filing of an indictment or information alleging a violation of this title or title III which is also related to a civil forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the civil forfeiture proceeding.

(j) Venue. In addition to the venue provided for in section 1395 of title 28, United States Code [28 USCS § 1395], or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.

(As amended Oct. 12, 1984, P. L. 98-473, Title II, Ch III, Part B, § 306 Part C, § 309, Ch V, § 518, 98 Stat. 2050, 2051, 2075.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1994, Act Oct. 12, 1984, in subsec. (a), added paras. (7) and (8); in subsec. (b), in the introductory matter, inserted "civil or criminal", and, in para. (4), substituted "is subject to civil or criminal forfeiture under" for "has been used or is intended to be used in violation of"; in subsec. (c), in the introductory matter, inserted "any of", and, in para. (3), inserted ", if practicable."; in subsec. (d), inserted "any of"; in subsec. (e), in the introductory matter, inserted "civilly or criminally", in para. (1), inserted "or transfer the custody or ownership of any forfeited property to any Federal, State, or local agency pursuant to section 616 of the Tariff Act of 1930 (19 U.S.C. 1616)" in para. (3), substituted "and dispose of it" for "and remove it for disposition", and, in the concluding matter, inserted the sentences beginning "The Attorney General shall ensure ..." and "A decision by the Attorney General ..." and substituted "accordance with section 524(c) of title 28, United States Code" for "the general fund of the United States Treasury"; and added subsecs. (h)-(j).

RESEARCH GUIDE

Annotations:

Supreme Court's views as to due process requirements of forfeitures. 76 F. Ed. 2d 852. Forfeiture of money to state or local authorities based on its association with or proximity to other contraband. 38 ALR4th 496. Necessity of conviction of offense associated with property seized in order to support forfeiture of property to state or local authorities. 38 ALR4th 515.

INTERPRETIVE NOTES AND DECISIONS

- 1. Discovery
- 2. Setting aside default decree
- 3. Appeal
- 4. Judicial review
- 5. Construction
 - 1. Forfeiture laws providing explicitly for claims to past bond and claim seized property in text of civil forfeiture actions do not carry implied right of action against United States. *Wills v. United States* (1985, ND Ill) 600 F. Supp. 107.
 - 2. Inferior title ownership interest which credit is taken for in property at time of seizure was not pari passu due on promissory note underlying seizure; default plus interest at 8.5 percent rate for annum until principal is paid back; interest can be protected in forfeiture of property interest, but only if government's property interest in security deed or promissory note; property pays credit contribution to principal of promissory note plus interest; interest on principal is not protected in forfeiture of property interest.
- 6. Land: 2306 North Eifel Court (1985, ND Ga) 602 F. Supp. 507.
- 7. 4. Relation to other laws
 - 1. Innocent maritime lien for necessaries entitled to protection of 46 USCS § 961(b) has priority, in respect to sales proceeds, over government's seizure and other vessel related expenses incurred prior to vessel's judicial arrest in forfeiture proceedings brought against vessel used to transport narcotics. *United States v. One (1) 254 Ft. Freighter, the M/V Andorra* (1985, MD La) 766 F.2d 597.
 - 2. Federal Code of Criminal Procedure which does not apply to forfeiture proceeding under 21 USCS § 881 where warrant issued under § 41 is not issued for any other purposes listed in title 41 and where government has not relied on title 41 search warrant in seizing property. *Reverend v. Stansley* (1985, 140 Mass) 649 F.2d 914.
 - 3. Generally
 - 1. Government's narcotics activity, as well as, government's sole source of income, is person

Reorganization Court directed us to act on C&E's application by June 27, 1985.

C&E petitioned for waiver of the information requirements of 49 CFR Part 1180, Subpart B. It contends that the proposed purchase is a minor transaction involving terminal track that would be exempt from Commission jurisdiction under 49 U.S.C. 10907. However, the exemption is not available because the transaction is governed by the MRR. C&E requests that we treat its proposal as if it were an exemption request and waive the information requirements of our regulations.

I will grant the waiver petition. C&E's petition contains the information required by our regulations.

A copy of verified statements must be served on the Attorney General of the United States and the United States Secretary of Transportation.

It is ordered:

1. C&E's petition for waiver is granted, and the proposal is accepted for consideration.

1. C&E's petition for waiver is granted, and the proposal is accepted for consideration.

2. Parties must comply with all provisions stated above.

3. This decision will be effective on date it is served.

Decided: June 5, 1985.

By the Commission, Heber P. Hardy,
Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-13982 Filed 6-5-85; 10:37 am]

BILLING CODE 7535-91-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

Attorney General's Guidelines on Seized and Forfeited Property

AGENCY: Office of the Attorney General, Justice.

ACTION: Notice of Department of Procedures for Seized and Forfeited Property.

SUMMARY: This document sets forth the Department's policy under 21 U.S.C. 881(e) regarding the handling of seized and forfeited property. It is exempt from the notice and comment requirements of the Administration Procedure Act, 5 U.S.C. 553(b) by virtue of 5 U.S.C. 553(a)(2). The Department of Justice has determined that it is not a "major rule" within the meaning of Executive Order No. 12291 or a rule within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601(1).

FOR FURTHER INFORMATION CONTACT: Director, Asset Forfeiture Office, Criminal Division, Room 916, Federal Triangle Building, 315 9th Street, NW., Washington, D.C. 20530. (202) 272-8420.

ATTORNEY GENERAL'S GUIDELINES ON SEIZED AND FORFEITED PROPERTY

I. Statement of Policy

The following guidelines are designed to implement certain asset forfeiture provisions of the Comprehensive Crime Control Act of 1984 pertaining to the disposition of forfeited property, the management and use of the Department of Justice Assets Forfeiture Fund, and the discontinuance of federal forfeiture actions to permit forfeiture by State or local procedures.

The statute directs, "The Attorney General shall ensure the equitable transfer . . . of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property."

This authority is consistent with the Department of Justice's purpose of promoting cooperative law enforcement efforts in drug trafficking and other investigations. The Department intends to manage its asset forfeiture program in a manner designed to enhance this Federal, State and local cooperation.

Title 21, United States Code (U.S.C.), section 881(e), authorizes the Attorney General to dispose of forfeited property by (1) retaining the property for official use; (2) transferring custody or ownership of the property to any Federal, State or local agency pursuant to the Tariff Act of 1930, Title 19, USC, Section 161F; or (3) placing the forfeited cash or proceeds of sale of forfeited property in an appropriation called the Department of Justice Assets Forfeiture Fund (hereinafter "the Fund"). A decision of the Attorney General regarding placing the forfeited property into official use or transferred the property to another agency is not subject to judicial review.

The Law Enforcement Coordinating Committee program will inform State and local law enforcement agencies as to the procedures for requesting an equitable transfer of forfeited property, help facilitate the application for transfer of such property, and see that the spirit and letter of the forfeiture provisions of the Comprehensive Crime Control Act of 1984 are implemented in each Federal district.

II. Definitions

A. "Department of Justice investigative bureau" refers to the investigative unit within the Department of Justice that participated in the investigation and seizure of property and is responsible for the processing of the forfeiture arising from the seizure.

B. "Head of the Department of Justice investigative bureau" means the head of that bureau or his headquarters-level designee.

C. "Placing property into official use" means use of forfeited property by a Department of Justice bureau for any official purpose.

D. "Property" means tangible property and cash.

E. "Cash" means currency, negotiable instruments and securities.

F. "State and local agencies" means State and local law enforcement agencies.

G. "Appraised value" means fair market value.

III. Use and Transfer of Forfeited Property

A. Retention of Property for Official Use

a. The Attorney General has the authority to retain any civilly or criminally forfeited tangible property for official use by any Department of Justice bureau.

2. No forfeited cash, nor any proceeds from sales of forfeited property may be transferred to, or retained by, federal law enforcement agencies under the provisions of 21 U.S.C. 881(e) for disposition of forfeited property.

3. Payment of liens and mortgages pursuant to an authorization to place property into official use.

a. Liens and mortgages cumulatively amounting to less than one third of the appraised value of the asset and totalling less than \$50,000 will be paid from the Fund at the request of the head of the Department investigative bureau.

b. Payments of liens or mortgages that, in the aggregate, total \$50,000 or greater or exceed one third of the appraised value of the asset, will be paid from the Fund at the request of the Department of Justice investigative bureau subject to the concurrence of the Deputy Attorney General.

B. Official Use by Department of Justice Investigative Bureau

1. The Attorney General's authority to place tangible property into official use is delegated to the head of the Department of Justice investigative bureau.

a. In making a decision concerning placing forfeited property into official

use, the head of the Department of Justice Bureau must consider the financial status of the Department of Justice Forfeiture Fund.

b. Exercise of this delegation of authority is subject to concurrence by the Deputy Attorney General for all property appraised at \$750,000 or more.

C. Official Use by Other Department of Justice Bureaus

1. If the Department investigative bureau does not choose to place the forfeited property into official use, the Director, United States Marshals Service will determine appropriate disposal, including screening any remaining property suitable for official use by other Department of Justice bureaus.

a. A decision to place such property into official use is subject to concurrence by the Deputy Attorney General for all property appraised at \$750,000 or more.

2. If more than one Department of Justice component wants to retain for official use the same piece of seized and forfeited property, the Deputy Attorney General will determine which component may place such property in official use.

D. Transfer of Property to State or Local Law Enforcement Agencies

1. Attorney General's Authority for Equitable Transfer of Seized Property

a. The Act authorizes the Attorney General to transfer forfeited property to state or local law enforcement agencies that directly participated in the acts which led to the seizure or forfeiture.

b. Tangible property not retained for official use by the Department of Justice investigative bureau is eligible for equitable transfer.

c. Where a participating law enforcement agency petitions for a share in the forfeited property, the Attorney General shall determine an equitable transfer of the property that generally reflects the relative contribution of the participating agencies.

2. Procedure for Determining Equitable Transfer

a. Any state or local law enforcement agency that participates in the acts leading to a Department of Justice seizure for forfeiture may file a request for an equitable transfer of the property.

b. The criteria for determining the equitable transfer of the property will be the same for all requests.

c. In all cases the final decision-making authority rests with the Attorney General or his designee.

3. Requests from Participating Law Enforcement Agencies

a. Within thirty days following the seizure for forfeiture, a state or local

agency should submit a written request for an equitable transfer of the property subject to forfeiture.

b. This request must be filed with the local or regional office of the Department investigative bureau responsible for processing the forfeiture.

c. The request must include the following information:

(1) Identification of the property against which the claim is made;

(2) Details regarding the requesting agency's participation, including the amount of money and manpower expended by the state or local agency in pursuing the case;

(3) A statement of the intended use for the property;

(4) A designation of the proper fiscal officer to whom cash or check disbursements can be made;

(5) A designation of the proper official to whom transfer documents should be delivered by the United States;

(6) A designation of the proper party to whom possession should be delivered;

(7) A statement indicating that the transfer is not prohibited under the applicable state or local law;

(8) In instances of a joint application by several state or local agencies, the relative share of each state or local agency; and

(9) A statement that all fees and expenses necessary to effect transfer of title will be paid by or on behalf of the requesting agency not later than the time of transfer.

d. The requesting agency must certify that the information contained in 3(c)(4-7) above is true and correct.

e. Property will be transferred only in cases where the tangible property or cash will be credited to the budget of the state or local agency that directly participated in the seizure or forfeiture, resulting in an increase of law enforcement resources for that specific state or local agency.

f. An information copy of any request will be forwarded to the United States Attorney in the district where the transfer request originated.

4. Procedure for Processing Requests for Equitable Transfer

a. In all cases, the Department investigative bureau field unit receiving the request will prepare a written report that will evaluate the degree of assistance provided by the requesting agency or agencies in the underlying investigation.

b. The equitable share for a participating state or local agency should generally reflect the contribution of the agency participating directly in any of the acts which led to the seizure

or forfeiture of the property, including, but not limited to, the following factors:

(1) Which agency initiated the case;

(2) Which agency identified the asset;

(3) The amount of money and manpower expended by the state or local agency in pursuing the case;

(4) Whether or not the state or local agency seized other assets during the course of the same investigation and whether such seizures were made pursuant to state or local law; and

(5) Whether or not the state or local agency could have achieved forfeiture under state law, with favorable consideration given to a state or local agency which could have forfeited the asset(s) on its own but joined forces with the United States to make a more effective investigation.

c. The head of the Department investigative bureau may place tangible property forfeited administratively or judicially into official use in cases in which a state or local agency has filed a request for an equitable share of that property.

(1) In making this decision, the head of the Department investigative bureau must consider the following factors:

(a) The relative needs of both the requesting law enforcement agency and the Department investigative bureau for the particular asset;

(b) The uniqueness of the asset and the likely ability to secure such an asset by other seizures in the near future;

(c) The relative significance of the requesting law enforcement agency's participation in the case, as well as all the other factors pertinent to the determination of equitable distribution as set forth in Part III.B.4.c. above;

(d) The potential of, or likelihood that, the requesting agency will be eligible for an equitable share of property from additional seizures arising from the same investigation or from other seizures in the near future; and

(e) The impact that a decision to place the property into official use might have on Federal, state and local relations in that District.

5. Decision-Making Authority for Determining Equitable Transfer

a. The equitable distribution of an asset forfeited administratively with an appraised value of \$100,000 or less will be determined by the head of the Department investigative bureau.

(1) The Department investigative bureau's field unit shall forward its report and recommendation to the bureau head for decision.

(2) In making this decision, the head of the Department investigative bureau will consider the report and recommendation forwarded by the field

unit and issue to the requesting agency a written ruling on the request.

(3) A copy of the decision document will be forwarded to the United States Attorney, or to the Criminal Division section chief in a Criminal Division case, and to the Director, United States Marshals Service.

(4) A copy of the decision document will be made available upon request to the Director, Asset Forfeiture Office.

b. In the case of all administratively forfeited property with an appraised value greater than \$100,000 and with all judicially forfeited property, the evaluation and recommendation will be forwarded to the appropriate United States Attorney or to the Criminal Division section chief in a Criminal Division case.

(1) The equitable distribution of an asset forfeited judicially with an appraised value of \$100,000 or less will be determined by the United States Attorney or the Criminal Division section chief.

(2) In making this decision, the United States Attorney or section chief will consider the reports and recommendations forwarded by the head of the Department of Justice investigative bureau and will consult with the United States Marshals Service.

(3) A copy of the decision document will be forwarded to the Department of Justice investigative bureau, the Director, United States Marshals Service and the Director, Asset Forfeiture Office.

c. In the case of all property with an appraised value greater than \$100,000, the United States Attorney or section chief will forward the evaluation and recommendation of the Department of Justice investigative bureau, along with his own recommendation, to the Director, Asset Forfeiture Office, who will determine the equitable distribution of those assets.

(1) In making this decision, the Director will consider the reports and recommendations forwarded by the head of the Department of Justice investigative bureau and the United States Attorney or section chief and will consult with the United States Marshals Service.

(2) A copy of the decision document will be forwarded to the Department of Justice investigative bureau, the United States Marshals Service and the United States Attorney or section chief.

d. The Deputy Attorney General will make the final determination of equitable distribution of any asset with an appraised value of \$750,000 or greater.

(1) The request will be processed as in 5.c. above.

(2) A copy of the decision document will be forwarded to the Director, Asset Forfeiture Office, the Director, United States Marshals Service, the United States Attorney or section chief and the Department of Justice investigative bureau.

e. In all cases in which judicially forfeited property is located in a judicial district other than where the judicial proceedings are taking place, the party determining the equitable distribution must consult with the respective United States Attorney prior to determining equitable distribution.

6. Proceeds Placed in the Department of Justice Assets Forfeiture Fund

a. If the federal forfeiture action is not deferred, and the property is not placed into official use or transferred to a state or local agency, it will be sold and the net proceeds of sale will be placed in the Assets Forfeiture Fund.

b. Forfeited cash will be placed in the Assets Forfeiture Fund.

c. All Department of Justice bureaus will promptly notify the United States Marshals Service of any facts affecting seized property. Some relevant facts would include bills, invoices, orders of mitigation and remission, orders of sharing with state or local agencies, orders of designation for official use by Department of Justice components, and appraisals. Based upon these and other factors, the United States Marshals Service should appropriately dispose of the property.

7. Disposition of Forfeited Property

a. State or local agencies may share in seized and forfeited tangible property, and seized and forfeited cash.

b. Any property that cannot be used for law enforcement purposes must be liquidated.

c. Where tangible property is transferred to qualifying state or local agencies, monies from the Assets Forfeiture Fund will not be used to pay liens or mortgages on the property, to equip the property for law enforcement purposes, or to pay salaries.

d. The recipient state or local agency must pay the valid liens and mortgages on the forfeited tangible property prior to the transfer of such property.

e. The recipient state or local agency may be required to pay direct expenses pertaining to the seizure prior to the transfer of tangible property.

f. In the event of an interlocutory sale of property pending forfeiture, the Director, United States Marshals Service first must consult with the United States Attorney, Criminal Division section chief or the Director of the Asset Forfeiture Office in the case of judicially forfeited property, or the head of the pertinent Department of Justice

bureau in the case of administrative forfeitures, to determine the status of any state or local law enforcement agency requests for equitable sharing.

IV. Department of Justice Assets Forfeiture Fund

A. Administration of the Fund

1. The Attorney General delegates the administration of the Department of Justice Assets Forfeiture Fund to the United States Marshals Service. It will operate under guidelines developed by the Subcommittee on Asset Forfeiture of the Department's Forum for Cooperative Strategy and in accordance with Department of Justice financial management policy.

2. The United States Marshals Service will submit to the Deputy Attorney General on a quarterly basis a financial statement as to the current status of the fund.

3. Copies of the quarterly United States Marshals Service statement will be provided to the Federal Bureau of Investigation, Drug Enforcement Administration, Immigration and Naturalization Service and the Asset Forfeiture Office to assist the recipients in making decisions as to the use and transfer of forfeited property.

B. Payments Allowable Under Department of Justice Assets Forfeiture Fund

1. Forfeiture cash and proceeds from the sale of forfeited property are to be deposited in the Department of Justice Assets Forfeiture Fund.

2. Money from the Fund may be used for the following:

a. Payment of liens and mortgages pursuant to an order of remission or mitigation;

b. Payment of liens and mortgages pursuant to an order to place into official use.

c. Payment of liens and mortgages pursuant to court order.

d. Payment to equip, for law enforcement purposes, conveyances placed into official use by the Drug Enforcement Administration, and the Immigration and Naturalization Service.

e. Payment of awards;

f. Purchase of evidence; and

g. Reversion to the United States Treasury at the end of the fiscal year of all amounts in excess of \$5,000,000.

C. The Following, in Order of Priority, Will Be the Uses of the Forfeited Cash and the Proceeds of Sale of Forfeited Property

1. Payment of expenses incurred by the Department of Justice for the care,

custody and disposal of the seized and forfeited property;

2. Payment of expenses incurred by the Department of Justice in the seizure and forfeiture of the property;

3. Payment of expenses relative to the detention, inventory, safeguarding, maintenance, or disposal of the seized and forfeited property incurred by state and local agencies which assist in the seizure and forfeiture of the property;

4. Payments of orders of mitigation or remission;

5. Payments for orders of equitable sharing with state or local law enforcement agencies;

6. Payments for liens on vehicles placed into official use;

7. Payment of awards;

8. Payment to equip, for law enforcement purposes, conveyances placed into official use by the Drug Enforcement Administration Immigration and Naturalization Service; and

9. Purchase of evidence.

D. Limitation on Use of the Fund

1. The Department of Justice Assets Forfeiture Fund cannot be used to pay any of the following:

a. Salaries; and

b. Where property is transferred to state or local law enforcement agencies,

(1) Liens or mortgages on the property; and

(2) Payments to equip the property for law enforcement purposes.

2. Liens and mortgages shall be paid from the Fund only pursuant to an order of remission or mitigation, an order of the court, or an order to place the property into official use.

V. Discontinuance of Federal Forfeiture Actions

A. Deferral of Federal Judicial Forfeiture Proceedings

1. A decision to forego an federal judicial forfeiture proceeding against any seized asset in favor of a state or local forfeiture proceeding requires the personal approval of the United States Attorney after review of the evaluation and recommendation of the concerned investigative bureau.

2. In making this decision, the United States Attorney must consider the status of the Department of Justice Assets Forfeiture Fund.

3. Judicial forfeitures foregone in favor of state or local proceedings are to be reported by the United States Attorney in writing, within five days, to the Director, Asset Forfeiture Office, Criminal Division, United States Department of Justice, Washington, D.C. 20530.

B. Deferral of Federal Administrative Forfeiture Proceedings

1. A decision to forego a federal administrative forfeiture proceeding against any seized asset in favor of a state or local forfeiture proceeding requires the approval of the head of the Department investigative bureau.

2. In making this decision, the head of the Department investigative bureau must consider the status of the Assets Forfeiture Fund and, where appropriate, consult with the United States Marshals Service.

3. Department of Justice investigative bureaus must develop procedures for recording these decisions and providing reports as required.

VI. United States Customs Service Forfeitures

A. Pursuant to Title 28 United States Code, section 524(c), all proceeds from the forfeiture of property under any law enforced or administered by the Department of Justice remaining after payment of expenses for forfeiture and sale authorized by law are to be deposited in the Department of Justice Assets Forfeiture Fund, except to the extent that the seizure was effected by a United States Customs Service officer or that custody was maintained by the Customs Service, in which case the provisions of 19 U.S.C. 1613a (Customs Forfeiture Fund) shall apply.

B. To the extent that the United States Marshals Service may have the capacity to do so, it may store and maintain seized property for the Customs Service.

1. Where the United States Marshals Service maintains custody of property seized by a Customs officer, the Customs Service will reimburse the Marshals Service for the expenses of such custody prior to the deposit of the net proceeds into the Customs Forfeiture Fund.

2. In instances where proceeds are to be deposited in the Department of Justice Assets Forfeiture Fund and the Customs Service, as a substitute custodian, has maintained custody of property seized by the Department of Justice, the Department of Justice will reimburse the Customs Service for the expenses of such custody.

C. Requests for transfers of forfeited property by participating state and local law enforcement agencies in forfeitures where the seizure was effected by a Customs officer of custody was maintained by the Customs Service should be directed pursuant to 19 U.S.C. 1616 to the Customs Service for evaluation and forwarding to the Assistant Secretary of Treasury for Enforcement and Operations with an

information copy to the United States Attorney in the district of seizure.

D. In the event of an unresolved dispute concerning whether a given forfeiture constitutes a Customs or Department of Justice forfeiture for purposes of cash or proceeds disposition, or for state and local transfers, the Deputy Attorney General and the Assistant Secretary of Treasury for Enforcement and Operations shall resolve the issue. Where appropriate, they may submit the issue to the Organized Crime Drug Enforcement Task Force Working Group for recommendation.

Dated May 24, 1985

Edwin Messer III,

Attorney General

[FR Doc. 85-11041 Filed 6-4-85; 8:45 am]

BILLING CODE 4410-01-M

Order No. 1085-851

President's Commission on Organized Crime; Meetings

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: This notice announces four forthcoming meetings of the President's Commission on Organized Crime. This notice also sets forth a summary of the agenda for the four meetings, together with an explanation of why the first meeting will be closed to the public. Notice of these meetings is required by the Federal Advisory Committee Act, 5 U.S.C. App. I, section 10(a)(2).

DATES:

June 24, 25, and 26, 1985, 10:00 a.m. to 12:00 noon; 1:00 p.m. to 3:00 p.m. (public hearing).

June 23, 1985, 4:00 p.m. to 6:00 p.m. (closed meeting).

ADDRESS:

Appellate Courtroom, U.S. Court of International Trade, Second Floor, 1 Federal Plaza, New York, New York 10007 (public hearing);

Empire Room B, New York Penta Hotel, 401 Seventh Avenue, New York, New York 10007 (closed meeting).

FOR FURTHER INFORMATION CONTACT: James D. Harmon, Jr., Executive Director and Chief Counsel, President's Commission on Organized Crime, 1425 K Street, N.W., Suite 700, Washington, D.C. 20005; (202) 788-3500.

SUPPLEMENTARY INFORMATION: The closed meeting on June 23 will be conducted to discuss several matters. The Commission will be briefed concerning the investigation by the Commission staff of the organized

BILL NO: SB 103

DATE:2/9/87

TITLE: "An Act relating to the disposal of property forfeited under federal drug enforcement laws."

CONTACT:Maj. Walter J. Gilmour
Acting Director

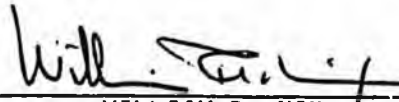
FEB 10 1987

DEPARTMENT OF
PUBLIC SAFETY

The purpose of this legislation is to allow the Department of Public Safety to receive property forfeited to the Federal Government as a result of charges under the Federal Controlled Substances Act (2 U.S.C. 881).

The authorization of the Department of Public Safety to receive property, including money, and to use it in supporting law enforcement activities, will be of great assistance. While the unpredictability of such receipts prevents any accurate estimate of the impact of this statute change, the reduction in the budget of the Division of Alaska State Troopers as a result of the revenue crisis can be partially offset by such receipts.

The Department of Public Safety supports SB 103.



WILLIAM R. NIX
Acting Commissioner

POSTMASTER / RETURN TO: ALASKA DEPARTMENT OF PUBLIC SAFETY

Introduced: 2/4/87
Referred: Judiciary

5-0448A

1 IN THE SENATE

BY FAIKS

2

SENATE BILL NO. 103

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the disposal of property for-
7 feited under federal drug enforcement laws."

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

9 * Section 1. AS 17.30.100 is amended by adding a new subsection to
10 read:

11 (d) The Department of Public Safety may accept from the United
12 States Attorney General property, including money, that is forfeited
13 under 21 U.S.C. 881 (the Controlled Substances Act). The Department
14 of Public Safety shall, in accordance with 21 U.S.C. 881(e) and regu-
15 lations and policies adopted under that section, use property and the
16 proceeds of property obtained under this subsection in the enforcement
17 of this chapter and AS 11.71.