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STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY
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May, 1988

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Mary Van Nimwegen

House Rules:

March 29, 1988



Official Business

Alaska State Legislature

House of Representatives

Committee on Rules

P. O. Box V
Juneau, Alaska 99811

Phone:
(907) 465-3764
465-3765

AGENDA - HOUSE RULES COMMITTEE MEETING

TUESDAY, MARCH 29, 1988

8:00 A.M. - ROOM 208

HB 28 - "An Act relating to municipal penalties for prostitution and promoting prostitution."

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- I. MEMO - DATED MARCH 18, 1988 TO REP. NAVARRE FROM REP. DONLEY
- II. PROPOSED VERSION CSHB 28 (RULES)
WORKDRAFT #0185N - DATED MARCH 28, 1988
- III. CSHB 28 (RULES) ANALYSIS DATED MARCH 11, 1988 TO REP. DONLEY FROM JACK CHENOWETH, LEGISLATIVE COUNSEL
- IV. CSHB 28 (JUDICIARY)
- V. CSHB 28 (C&RA)
- VI. FISCAL NOTE

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE

P.O. BOX V, JUNEAU 99811

DISTRICT ELEVEN • SPENARD

(907) 465-3892

NORTHWOOD • SPENARD • THOMPSON • TURNAGAIN • UPPER MIDTOWN • WINDEMERE



CHAIRMAN
LABOR AND COMMERCE
COMMITTEE

MEMBER
STATE AFFAIRS COMMITTEE
HEALTH, EDUCATIONAL
AND SOCIAL SERVICES COMMITTEE

DATE: March 18, 1988

TO: Representative Mike Navarre, Chair

FROM: Representative Dave Donley *DB*

SUBJECT: HB 28, Municipal Penalties for Prostitution and Promoters of Prostitution.

In the last two weeks I have been developing support necessary for passage of HB 28 on the floor and I have received several requests that I make a minor change. Accordingly I requested revisions to the bill that would require local governments who choose to adopt mandatory minimums to make them effective also against the promoters and solicitors of prostitution.

When making this request the drafter came across some technical changes that should be made and suggested that it be done in the Rules Committee instead of on the floor of the house (see attached memo from Jack Chenoweth) due to complications of rearranging the sections of the bill.

I would request that you schedule a Rules Committee hearing to review and hopefully adopt the attached draft committee substitute.

Thank you for your consideration.

II.5-0185N ·
Chenoweth
3/28/88

Original sponsors: Donley, Gruenberg
and Zawacki

1 IN THE HOUSE

BY THE RULES COMMITTEE

2 CS FOR HOUSE BILL NO. 28 (Rules)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to municipal penalties for prostitu-
7 tion and promoting prostitution."

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

9 * Section 1. AS 29.25.070 is amended by adding a new subsection to
10 read:

11 (e) A municipality that prohibits prostitution by ordinance may
12 prescribe a penalty requiring a court to impose a minimum sentence of
13 imprisonment of up to three days for a first conviction, 10 days for a
14 second conviction, and 30 days for a third or subsequent conviction,
15 and a fine not to exceed \$1,000. The provisions of this subsection do
16 not apply unless the municipality's ordinance prohibiting prostitution

17 (1) includes all conduct prohibited by AS 11.66.100 - 11.-
18 66.150; and

19 (2) defines prostitution as including the payment or agree-
20 ment to pay a fee in exchange for sexual conduct.

21 * Sec. 2. AS 29.25 is amended by adding a new section to read:

22 Sec. 29.25.080. STATE'S COSTS. A municipality that adopts an
23 ordinance providing for a minimum sentence of imprisonment for prosti-
24 tution under AS 29.25.070(e) shall reimburse the state for actual
25 costs incurred by the court system and the Department of Corrections
26 as a result of the ordinance.

27 * Sec. 3. AS 29.10.200 is amended by adding a new paragraph to read:

28 (49) AS 29.25.070(e) (municipal penalties for prostitution
29 and promoting prostitution)

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

III.
POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

MEMORANDUM

March 11, 1988

SUBJECT: HB 28, relating to municipal penalties for prostitution and promoting prostitution

TO: Representative Dave Donley

FROM: Jack Chenoweth
Legislative Counsel

The last printed version of this bill is CSHB 28 (Judiciary). My instructions from Mark Begich were to provide an amendment to direct that a municipality that opts to take advantage of the provisions newly-added by CSHB 28 (Judiciary) must adopt an ordinance that includes (1) the state's definition of prostitution and (2) provisions including promotion of prostitution sufficiently broad to cover promoters and solicitors (or, as it came to me, "pimps" and "johns") within the criminal definition and penalties. I was also instructed to ensure that the amendment was binding on home rule municipalities, that is, municipalities like Anchorage, Juneau, Sitka, and other cities and boroughs that operate under a home rule charter.

The "pimps and johns" provision already appears in CSHB 28 (Judiciary): the "pimps" provision is addressed in state law in the "promoting prostitution" provisions of AS 11.66.-110 - 11.66.130; the "johns" provision is addressed in the amendatory language that speaks to "paying or agreeing to pay a fee . . ."

This is legislation carried over from the first session. While preparing the amendment, I reviewed the structure of HB 28 and CSHB 28 (Judiciary). Because the new provisions of section 1 of CSHB 28 (Judiciary) are specific to the crime of prostitution, in my view they should not have been incorporated into existing AS 29.25.070(a), the subsection generally applicable to prescribe general penalties for the violation of municipal ordinances. The subject of the additions that you have proposed being specific to one

Representative Dave Donley
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crime--or one general criminal topic--should have been broken out and made a separate subsection.

Additionally, as I have noted to Mark, there has been an intervening amendment to AS 29.25.070(a) since the report of CSHB 28 (Judiciary) in the first session. Consequently, the statement of current law appearing in AS 29.25.070(a) that now appears in CSHB 28 (Judiciary), and to which amendment is made, is no longer correct.

Finally, because of the specific change you have requested, the home rule binder provisions of article X, section 11 and the municipal code (AS 29) become applicable. As CSHB 28 (Judiciary) is drafted, a municipality may take advantage of the mandatory minimum sentence of imprisonment provisions. Now, because you direct a change to require a municipality that wants to take advantage of the mandatory minimum sentence provisions to have an ordinance with certain content, the drafting strategy is to say that a municipality may use the mandatory minimum sentence provision only if, or, more accurately, may not use the mandatory minimum sentence provision unless, it conforms its criminal ordinance as the state statute prescribes. The switch from "may" to "may not" means that the statute becomes a prohibition on a municipality's taking action that is inconsistent with the statute's provisions. Under case decisions and current law (AS 29.10), prohibitions are only applicable to home rule municipalities if specifically indicated, either in the body of the provision or incorporated into the home rule binder section, AS 29.10.200. As a matter of drafting practice, this office always adds the applicable provision into the home rule binder provision.

However, because of the original drafting strategy combining the original language of AS 29.25.070(a) covering general municipal penalties with the proposed new material covering municipal penalties for prostitution and promotion of prostitution, I cannot bind only the new material in bill section 1 of CSHB 28 (Judiciary) without also binding in what is already there, and that is neither your intent, nor is it necessary.

For all the above reasons, as this bill advances, it would benefit from an overhaul.

I am transmitting a pair of draft Rules Committee Substitutes. The version designated "5-0185X" is not legally

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different than CSHB 28 (Judiciary): it merely establishes the underlined language of CSHB 28 (Judiciary) as a new subsection, subsection (e). The version designated "5-0185N" begins with the "X" version and adds, through the use of the phrase "do not apply unless" (page 1, lines 15 and 16), the "pimps and johns" provision and, in bill section 3, the home rule binder provision.

Since you may not be disposed to carry a Rules CS, I am also transmitting an amendment to CSHB 28 (Judiciary). In this amendment, I have abandoned any further effort to work in AS 29.25.070(a), have established a new subsection (e), have drafted into the bill, through use of the phrase "do not apply unless", the requested "pimps and johns" provision, and have incorporated the home rule binder.

The Rules CS approach--either version--may be preferable to trying to explain so radical an amendment on the floor, and I'd encourage you to consider it.

The presence of an intervening amendment, abandonment of the original drafting strategy, and introduction of home rule principles combine to make this tough to explain. Please contact me with any questions.

Enclosure

JBC:gc
WKG2:48

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____
Revision Date: _____
Title: "An Act relating to municipal penalties for prostitution."
Sponsor: Repr. Donley
Requestor: House Community and Reg. Affs.

Bill Version: CSHB 28(C&RA)
Publish Date: HOUSE 2/6/87

Agency Affected: Department of Law
BRU: Prosecution
Components: _____

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						
REVENUE						

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)

Please see attached analysis.

Prepared by: Richard F. Pegues, Director Phone: 465-3672
Division: Administrative Services Date: 1/21/87
Ronald W. Lorenson
Approved by Commissioner: Acting Attorney General Date: 1/21/87
Agency: Department of Law

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CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 28(C&RA) Page 2 of 2 2/6/87

This bill amends AS 29.25.070(a) by providing that municipalities may, under local ordinance, prescribe penalties for prostitution that require a court to impose a minimum sentence equal to the maximum penalty allowed by existing statute, or a \$1,000 fine and imprisonment for 90 days. In this respect, the bill appears to encourage municipalities to seek the maximum allowable penalty in all instances.

Prosecution of municipal ordinance violations is a local responsibility, and such prosecution is not handled by the Department of Law. Consequently, enactment of this bill will not have a fiscal impact on the Department of Law.

The cost of imprisoning violators of municipal ordinances, in state corrections institutions, is reimbursed to the state by the respective municipalities. This reimbursement includes normal, day-to-day operating costs and a pro rata share of lease costs, where the state is using a leased facility. The reimbursement does not, however, include any charge for the state's capital expenses in building and furnishing new corrections facilities. To the extent that encouraging maximum periods of imprisonment may contribute to prison overcrowding, the unreimbursed expense to the state may be very great. This issue should be addressed by the Department of Corrections in a separate fiscal note.