

SB

103

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of _____ 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER:

**FISCAL NOTE(S) ATTACHED _____ **
IN ACCORDANCE WITH AS 24.08.035
(see below)
2/4/87

DATE TURNED INTO OFFICE _____

Mr. President:

JUDICIARY

Committee considered SB 103

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

and recommended:

replace with CS _____ same title
 attached amendment(s) and new title

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted and attached

** Committee attached or adopted fiscal note(s)
 zero fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Rich Halford

Joe Jackson

Lucas Johnson

[Signature]
Chairman signature and recommendation

Committee Backup Attached

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

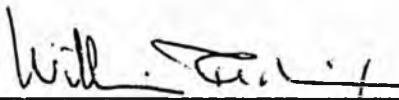
FEB 10 1987

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 SB103.



WILLIAM R. NIX
Acting Commissioner

RECEIVED
FEB 10 1987
ALASKA DEPARTMENT OF
PUBLIC SAFETY

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version : SB 103

Publish Date : _____

Revision Date: _____

Agency Affected: Public Safety

Title: "An Act relating to the disposal

BRU: Alaska State Troopers

of property forfeited under Fed drug laws."

Sponsor: Sen. Faiks

Components: Detachments & CIB

Requestor: Senate Judiciary

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
---------	---	---	---	---	---	---

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)

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

Phone: 269-5691

Division: Alaska State Troopers

Date: 2/09/87

Approved by Commissioner: *Michael J. ...*
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

Alaska State Legislature



PRESIDENT

907-465-3755

JAN FAIKS
POST OFFICE BOX V
JUNEAU, ALASKA 99811

Senate

February 11, 1987

MEMORANDUM

File - Ball
FEB 16 1987

TO: Senator Jay Kerttula, Chairman
Senate Judiciary 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.

Senate Bill 103 has been referred to your committee for consideration. The purpose of this bill is to enable the state to use funds collected from the forfeiture of assets of convicted drug dealers for the enforcement of state drug laws.

This bill will permit the Department of Public Safety to accept property, including money, from the United States Attorney General which has been forfeited under the federal Controlled Substances Act. It further enables the Department to dedicate those funds to 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.

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



The Department is able to retain property which is forfeited in these cases. Automobiles comprise the majority of the property that is confiscated, which the Department can then use as part of the enforcement process. The property obtained by the Department in 1986 has a value between \$50,000-72,000.

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.

STATE OF ALASKA
THE LEGISLATURE

POUCHY STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 30, 1987

SUBJECT: Use of funds forfeited to the federal government in drug enforcement proceedings (Work Order No. 5-04.8A)

TO: Senator Jan Faiks
Senate President

FROM: Keith B. Levy *KBL*
Legislative Counsel

The enclosed bill draft permits the Department of Public Safety to accept property and funds forfeited under the federal Controlled Substances Act (21 U.S.C. 801, et. seq) and dedicate those funds to the enforcement of state drug laws. Unless federal law requires such a dedication of those funds, the bill may be in violation of the dedicated funds clause of the Alaska Constitution (Art. IX, sec. 7). Since federal law does appear to require the dedication of those funds, the bill is probably not unconstitutional.

Article IX, sec. 7, of the state constitution provides, in part:

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.

Accordingly, if federal law does not require the state to dedicate to drug enforcement the funds the state receives under the federal forfeiture provisions, such a dedication would be unconstitutional. 21 U.S.C. 881(e) provides, in part:

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 or ownership of any forfeited property to any Federal, State, or local agency . . .

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 of forfeiture of such property.

While this provision permits the United States Attorney General to transfer the forfeited property (including money) to a state law enforcement agency, it does not appear to require that the money be dedicated to drug enforcement. However, the United States Attorney General has issued guidelines, published in the Federal Register, Volume 50, No. 110, page 24053, spelling out procedures for transferring property seized and forfeited under 21 U.S.C. 881. Section III.D.3.e. of those guidelines specifically provides:

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.

The guidelines make it clear that the state is ineligible to receive cash or property forfeited to the United States Government unless that cash or property is given directly to the law enforcement agency involved in the forfeiture. Since 21 U.S.C. 881(e) provides that a decision of the United States Attorney General regarding the transfer of property is not subject to review, the guidelines appear to have the force of law. Accordingly, 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 therefore not in violation of the dedicated funds clause of the state constitution.

If I may be of further assistance, please advise.

KBL:mkr
m8/071

Enclosure

STATE OF ALASKA



SENATE JUDICIARY COMMITTEE

SEN. JAY KERTTULA
SEN. ARLISS STURGULEWSKI
SEN. RICK HALFORD
SEN. JOE JOSEPHSON
SEN. PAT RODEY

P.O. BOX V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3717
(907) 465-3771

TO: Members, Senate Judiciary Committee
FROM: Hayden Kaden, Committee Co-Counsel
RE: SB 103; tracking federal money granted to Department of
Public Safety under 21 U.S.C. 881(e).
DATE: February 19, 1987

Senator Sturgulewski posed several related questions regarding the potential dollars available to the D.P.S. upon passage of SB 103.

- (1) What is the mechanism by which this money would come into the state system?
- (2) Is there tracking or an accounting of the use of the money by D.P.S.?
- (3) Does Budget and Audit have a role in auditing the use of the money?

The money available would probably be deposited in a federal depository. Public Safety applies to the proper federal agency. The request is approved. The money is sent by warrant to the state treasury where it would be credited to the department for the use specified by law. Budget and Audit would run what is called an A128 audit on the department which, among other things, determines whether there has been state compliance with federal laws and regulations governing the use of funds granted under federal law. If federal funds are found to have been improperly used, they must be repaid to the U.S. treasury.