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THE LEGISLATURE

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Mary Van Nimwegen

House Transportation 2/21/89

FEBRUARY 21, 1989

COMMITTEE CALENDAR

HB 3: "An act relating to art in public places; and providing
for an effective date."

*Alaska Railroad Overview/Board Members.

FOR THIS MEETING, YOU HAVE BEEN GIVEN:

Folder 1: HB 3

- ITEM #1: HB 3
#2: Work Draft C/S HB 3 Transportation
#3: Fiscal Note: Department of Transportation
#4: Statutes
#5: Art Program Procedures
#6: Comparison & Information

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 22, 1989

SUBJECT: CSHB 3 (Transportation); Resident Artist Requirement

TO: Representative Bette Cato
Chair, House Transportation Committee


FROM: Pamela Finley
Assistant Revisor of Statutes

You have asked for an opinion concerning the constitutionality of the resident artist requirement in proposed AS 35.27.020(g), found in bill section 2 of CSHB 3 (Transportation). This subsection, as it appears in the bill, would require the committee selecting an artist for public buildings or facilities under AS 35.27 to select a resident of Alaska. In all likelihood, this requirement violates the Privileges and Immunities Clause of the federal constitution.

A statute which prefers state residents over non-residents implicates three provisions of the federal constitution--the Privileges and Immunities Clause, the Commerce Clause, and the Equal Protection Clause---as well as the Equal Protection Clause of the state constitution.

A. The Privileges and Immunities Clause

The Privileges and Immunities Clause (sec.2, art. IV, Constitution of the United States) provides:

 The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

The primary purpose of the clause is to prevent states from discriminating against nonresidents for the purpose of economic protectionism. Robison v. Francis, 713 P.2d 259 (Alaska 1986.) The clause protects only fundamental rights that involve basic and essential activities. Employment on

public construction projects is considered such an activity. United Building and Construction Trades Council of Camden County v. Mayor and Council of the City of Camden, 465 U.S. 208, 104 S. Ct. 1020, 79 L. Ed.2d 249 (1984). It is likely that contracts for art in those public buildings would also be subject to the same protection.

When the Privileges and Immunities Clause applies, discrimination against nonresidents is prohibited unless the state has a substantial justification for the discrimination, and the means employed by the statute are closely related to the interests served by the statute. Robison v. Francis, 713 P.2d 259 (Alaska 1986). To overcome a challenge based on the Privileges and Immunities Clause, the state would have to show that nonresidents are "a peculiar source of the evil" which the state's action is meant to remedy, and that the state's purpose is something other than protecting residents from competition. Robison v. Francis, 713 P.2d 259 (Alaska 1986.)

It is true that the state has greater leeway under this clause in perceiving local evils and prescribing cures when it is acting as a "market participant" (owner of the project) than it does when it is regulating the market as the sovereign. See, United Building and Construction Trades Council of Camden County v. Mayor and Council of the City of Camden, 465 U.S. 208, 104 S. Ct. 1020, 79 L. Ed.2d 249 (1984.) But, in Robison v. Francis, 713 P.2d 259, 265 (Alaska 1986), the court indicated it could give little deference to the state, despite the fact that the state was acting as a "market participant" (owner), because all municipal and state construction projects were covered by the resident preference and because those projects amounted to 60-70% of all commercial construction in the state. If, as I suspect, there are few if any private art projects in Alaska as large as the ones covered by the bill, the decision in Robison would also apply to this bill.

Based on the law discussed above, especially Robison, I think it is likely that the provision in section 2 of the bill would violate the Privileges and Immunities Clause of the federal constitution.

B. The Commerce Clause.

The Commerce Clause does not prohibit a state from favoring its own residents when the state is acting as a "market par-

participant." White v. Massachusetts Council of Construction Employers, Inc., 460 U.S. 204, 103 S. Ct. 1042, 75 L. Ed 2d 1 (1983.) Accordingly, the proposed bill should not violate this constitutional provision.

C. The Federal Equal Protection Clause.

Because most resident hire statutes are decided under the Privileges and Immunities Clause, there are not a lot of cases discussing resident hire statutes (not involving durational residency requirements in excess of 30 days) in relation to the federal Equal Protection Clause. The U.S. Supreme Court has upheld a city ordinance requiring city employees to be city residents. McCarthy v. Philadelphia Civil Service Com'n., 424 U.S. 645, 96 S. Ct. 1154, 47 L. Ed.2d 366 (1976.) The problem is that to pass muster under the federal Equal Protection Clause, a statute must be rationally related to a legitimate state purpose. Alaska's Supreme Court has already indicated that making more jobs available for Alaskans is not a permissible justification under the Privileges and Immunities Clause, Robison v. Francis, 713 P.2d 259, 266 (Alaska 1986), and has also used Privileges and Immunities Clause analysis to determine whether a purpose is legitimate for the purposes of the Equal Protection Clause. Hicklin v. Orbeck, 565 P.2d 159, 167 (Alaska 1977), overruled on other grounds, 437 U.S. 518, 98 S. Ct. 2482, 57 L. Ed.2d 397 (1978.) Therefore it is likely that the bill's requirement that the artist be a resident would also violate the federal Equal Protection Clause.

The State Equal Protection Clause

Before the recent addition to the state constitution, of sec. 23, article I (allowing resident preferences to the extent allowed by the federal constitution) it was likely that the bill's residency requirement would have been invalid under the state Equal Protection Clause. See, Robison v. Francis, 713 P.2d 259, 271-272 (Alaska 1986) (Burke, J., concurring.) Since the recent amendment has not yet been construed by Alaska's Supreme Court, it is not clear whether the resident artist requirement would violate the state Equal Protection Clause.

Summary and Suggestions

If the purpose of the resident artist provision is to protect Alaskan artists from competition from nonresident ar-

Representative Bette Cato

Page 4

February 22, 1989

tists, it is likely that the provision would violate the Privileges and Immunities Clause, and possibly the federal Equal Protection Clause as well. If the resident artist provision has some other purpose, the legislative history should clearly establish the validity of the other purpose and a very close link between the purpose and the resident artist requirement. In order to be "legitimate," the discrimination would have to be based on a showing that the nonresidents are "a peculiar source of [some] evil" that the bill is intended to remedy.

I can, however, see no constitutional prohibition against preferring art which has a theme or design evocative of Alaska. Such a requirement would, of course, limit the artistic expression of all the artists (including the residents), but could in some situations give residents an advantage since they are more likely to be familiar with the state.

If I may be of further assistance to you, please advise.

Enclosure

PF:kb
wkk2/043

Original sponsors: Hanley, Zawacki,
and Leman

1 IN THE HOUSE

BY THE TRANSPORTATION COMMITTEE

2 CS FOR HOUSE BILL NO. 3 (Transportation)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to art in public places; and provid-
7 ing for an effective date."

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

9 * Section 1. AS 35.27.020(c) is amended to read:

10 (c) One-half [AT LEAST ONE PERCENT OR, IN THE CASE OF A RURAL
11 SCHOOL FACILITY, AT LEAST ONE-HALF] of one percent of the construction
12 cost of a building or facility shall [APPROVED FOR CONSTRUCTION BY THE
13 LEGISLATURE AFTER SEPTEMBER 1, 1977, WILL] be reserved for the follow-
14 ing purposes: the design, construction, mounting and administration of
15 works of art in a school, office building, court building, vessel of
16 the marine highway system, or other building or facility that [WHICH]
17 is subject to substantial public use. All administrative costs,
18 including those of the department, associated with the art project
19 shall be paid from the money reserved under this subsection.

20 * Sec. 2. AS 35.27.020(g) is amended to read:

21 (g) Each selection committee established under AS 35.27.021 [THE
22 ARCHITECT, SUPERINTENDENT, DEPARTMENT, AND THE ALASKA STATE COUNCIL ON
23 THE ARTS] shall encourage the use of state cultural resources in these
24 art works and shall select [THE SELECTION OF ALASKA RESIDENT] artists
25 for the commission of these art works who are residents of the state
26 under AS 01.10.055.

27 * Sec. 3. AS 35.27 is amended by adding a new section to read:

28 Sec. 35.27.021. SELECTION OF ART. (a) The artist who executes
29 a work of art for a public school shall be selected by a majority vote

1 of a committee, with the approval of the school board. The committee
2 shall be composed of the architect, the project manager administering
3 the facility construction, two representatives from the school dis-
4 trict staff, and three members of the public who reside in the commu-
5 nity where the school is located. The president of the school board
6 or a designee shall provide reasonable public notice that public
7 member seats on the committee are available. The school board shall
8 select the representatives from the school district and the members of
9 the public.

10 (b) Except as provided in (a) of this section, an artist who
11 executes a work of art for buildings and facilities shall be selected
12 by a majority vote of a committee convened by the project manager
13 administering the facility construction. The committee shall be
14 composed of the architect, the project manager, a designee of the
15 Alaska State Council on the Arts, a designee of the principal user of
16 the public building or facility, and three members of the public who
17 reside in the community where the building is located. To select the
18 public members, the department shall advertise for applicants by
19 appropriate public notice and pick the members by lottery from among
20 the applicants.

21 (c) All meetings of the selection committee under (a) or (b) of
22 this section are subject to the public meeting and notice requirements
23 of AS 44.62.310.

24 * Sec. 4. AS 44.27.060(b) is amended to read:

25 (b) The commissioner of a department responsible for the design
26 and construction of a building or facility shall deposit into the art
27 in public places fund one-half of one percent of the construction cost
28 of a building or facility if the building or facility is exempt from
29 the requirements of AS 35.27 and the exemption is because

1 (1) the estimated construction cost of the building or
2 facility is less than \$250,000; or

3 (2) the building or facility is not designed for substan-
4 tial public use.

5 * Sec. 5. AS 44.27.060 is amended by adding a new subsection to read:

6 (e) A work of art shall be identified by a permanent plaque
7 installed on or near the work of art. The plaque must contain the
8 name or title of the work of art, the name of the artist, the year of
9 completion, and the names of the members of the selection committee.

10 * Sec. 6. AS 35.27.020(e) and (f) are repealed.

11 * Sec. 7. The amendments made by this Act do not apply to the construc-
12 tion of a building or facility if, before the effective date of this Act,
13 the department or the Alaska State Council on the Arts has entered into a
14 contract to meet the art requirements under this chapter for the building
15 or facility.

16 * Sec. 8. This Act takes effect immediately under AS 01.10.070(c).
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STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CS HB3
PUBLISH DATE: 1/9/89

REQUEST: FISCAL NOTE

Revision Date:
Title: An act relating to Art in Public Places

Agency Affected: DOT&PF
BRU: Buildings Design & Construction
and the Alaska State Council on
the Arts

Sponsor: Hanley
Requestor:

Components:

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTURAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	(195)	(195)	(195)	(195)	(195)	(195)
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REVENUE	0	0	0	0	0	0
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FUNDING: (THOUSANDS OF DOLLARS)

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

* International Airport Revenue Fund

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Based on the attached analysis a reduction in the amount of funds for artwork of 1/2% could provide additional construction funds in the amounts indicated.

Prepared by: Rod Wilson, Architect
Division: Engineering & Operations Standards

Phone: 465-2960
Date: 02/17/89

Approved by Commissioner: Mark S. Hickey
Agency: Department of Transportation and Public Facilities

Date: 02/17/89

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

STATEMENT OF ANALYSIS RE:
An act relating to Art in Public Places

FISCAL NOTE PREARATION FOR:
Committee Substitute for House Bill 3

Assumptions made:

- (1) It has been assumed that language changes to section AS 35.27.020(c) (lines 12 and 13) will not change the current legal opinion excluding federal funds from the artwork requirements.
- (2) Based on anticipated construction activities of \$30 million net savings would result as follows:

\$30,000,000	(current eligible projects)
X .005	(reduced % for artwork)
\$ 150,000	(additional project funds)
X 1.30	(factor for artwork administrative costs)
\$ 195,000	(total of additional available monies)

Due to unpredictability of the future CIP program this same amount has been assumed into the budgets for FY 90 through 94.



Department of Transportation & Public Facilities

POSITION PAPER

BILL NO: CS to HB 3

APPROVED:

Mark S. Kelly

TITLE: An Act Relating to Art in Public Places

DATE: February 17, 1989

The department supports this bill. It is estimated that these changes could provide an additional \$195,000 annually towards actual construction of the facility.

For further information call Catherine A. McHugh at 465-3900

Chapter 25. General Provisions.

[Renumbered as AS 35.95.]

Chapter 27. Art Works in Public Buildings and Facilities.

Section

10. Purpose

20. Art requirements for public buildings and facilities

Section

30. Definitions

Cross references. — For nonapplicability of this chapter to memorials to Alaska veterans, see AS 44.35.030.

Sec. 35.27.010. Purpose. The state recognizes its responsibility to foster culture and the arts and the necessity for the viable development of its artists and craftsmen. The legislature declares it to be a state policy that a portion of appropriations for capital expenditures be set aside for the acquisition of works of art to be used for state buildings and other public facilities. (§ 1 ch 54 SLA 1975)

Legislative history reports. — For House State Affairs Committee report on ch. 54, SLA 1975 (CSHB 133(Fin)), see 1975 House Journal, p. 567; for House Finance Committee report on that bill, see 1975 House Journal, pp. 713-714; for Senate Finance Committee letter of intent on that bill, see 1975 Senate Journal, p. 939.

Sec. 35.27.020. Art requirements for public buildings and facilities. (a) A building or facility constructed after June 30, 1975, or remodeled or renovated after June 30, 1975, shall include works of art, including but not limited to sculptures, paintings, murals or objects relating to Native art.

(b) The department, before preparing plans and specifications for buildings and facilities, shall consult with the Alaska State Council on the Arts regarding the desirability of inclusion of works of art.

(c) At least one percent or, in the case of a rural school facility, at least one-half of one percent of the construction cost of a building or facility approved for construction by the legislature after September 1, 1977, will be reserved for the following purposes: the design, construction, mounting and administration of works of art in a school, office building, court building, vessel of the marine highway system, or other building or facility which is subject to substantial public use.

(d) A building or facility with an estimated construction cost of less than \$250,000 is exempt from the requirements of this chapter unless

inclusion of works of art in the design and construction of the building or facility is specifically authorized by the department.

(e) The artist who executes these works of art shall be selected by the architect for the department with the approval of the department, after consultation with the Alaska State Council on the Arts and the principal user of the public buildings or facilities.

(f) The artist who executes these works of art in the public schools shall be selected by the superintendent of a school district in which a public school is to be built with the approval of the school board. Should the department find in the best interest of the state that the selection of the artist who executes these works of art by the superintendent may result in a cost overrun to the state or delay of construction, the department shall make the selection of the artist in consultation with the superintendent.

(g) The architect, superintendent, department, and the Alaska State Council on the Arts shall encourage the use of state cultural resources in these art works and the selection of Alaska resident artists for the commission of these art works. (§ 1 ch 54 SLA 1975; am §§ 1, 2 ch 96 SLA 1977; am §§ 1 — 4 ch 176 SLA 1980)

Cross references. — For the responsibilities of the Alaska State Council on the Arts in the management of the Art in Public Places Fund, see AS 44.27.060.

Sec. 35.27.030. Definitions. In this chapter

(1) "building" or "facility" means a permanent improvement constructed by the department; the term

(A) includes, but is not limited to,

(i) schools, office buildings, and court buildings;

(ii) other buildings which the commissioner determines are designed for substantial public use;

(iii) boats and vessels of the marine highway system;

(iv) transportation facilities which accommodate traveling passengers;

(B) excludes other transportation facilities;

(2) "commissioner" means the commissioner of transportation and public facilities;

(3) "construction cost" is that cost expended for the actual construction of the facility, exclusive of the costs of land acquisition, site investigation, design services, administrative costs, equipment purchases and any other costs not specifically incurred within the construction contract or contracts awarded for the construction of the facility. (§ 1 ch 54 SLA 1975; am §§ 3, 4 ch 96 SLA 1977; am E.O. No. 39, § 11 (1977); am §§ 5, 6 ch 176 SLA 1980; am § 57 ch 14 SLA 1987)

Chapter 25. General Provisions.

[Renumbered as AS 35.95.]

Chapter 27. Art Works in Public Buildings and Facilities.

<p>Section 10. Purpose 20. Art requirements for public buildings and facilities</p>	<p>Section 30. Definitions</p>
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Cross references. — For nonapplicability of this chapter to memorials to Alaska veterans, see AS 44.35.030.

Sec. 35.27.010. Purpose. The state recognizes its responsibility to foster culture and the arts and the necessity for the viable development of its artists and craftsmen. The legislature declares it to be a state policy that a portion of appropriations for capital expenditures be set aside for the acquisition of works of art to be used for state buildings and other public facilities. (§ 1 ch 54 SLA 1975)

Legislative history reports. — For House State Affairs Committee report on ch. 54, SLA 1975 (CSHB 133(Fin)), see 1975 House Journal, p. 567; for House Finance Committee report on that bill, see 1975 House Journal, pp. 713-714; for Senate Finance Committee letter of intent on that bill, see 1975 Senate Journal, p. 939.

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(b) The department, before preparing plans and specifications for buildings and facilities, shall consult with the Alaska State Council on the Arts regarding the desirability of inclusion of works of art.

(c) At least one percent or, in the case of a rural school facility, at least one-half of one percent of the construction cost of a building or facility approved for construction by the legislature after September 1, 1977, will be reserved for the following purposes: the design, construction, mounting and administration of works of art in a school, office building, court building, vessel of the marine highway system, or other building or facility which is subject to substantial public use.

(d) A building or facility with an estimated construction cost of less than \$250,000 is exempt from the requirements of this chapter unless

Sec. 44.27.058. National endowment funds. The council is the official agency of this state to receive and disburse funds made available by the National Endowment for the Arts. (E.O. No. 44, § 4 (1980))

Revisor's notes. — Enacted as AS 44.27.140. Renumbered in 1980.

Sec. 44.27.060. Art in public places fund. (a) The art in public places fund is established. The council shall manage the fund.

(b) The commissioner of a department responsible for the design and construction of a building or facility shall deposit into the art in public places fund one percent of the construction cost of a building or facility if the building or facility is exempt from the requirements of AS 35.27 and the exemption is because

(1) the estimated construction cost of the building or facility is less than \$250,000; or

(2) the building or facility is not designed for substantial public use.

(c) The council may use the money in the art in public places fund

(1) to commission or purchase a work of art which is to be made a permanent part of, or placed on loan in, a building or facility owned or leased by the state which has substantial public use; and

(2) to meet expenses for a commissioned work of art for a building or facility which has substantial public use if the cost of the work of art exceeds the amount reserved under AS 35.27.020(c).

(d) In (c) of this section, "building" or "facility" means

(1) a building or facility of the state, as defined by AS 35.27.030(2), which is designed for and which is subject to substantial public use; and

(2) a building or facility which is leased by the state and subject to substantial public use. (§ 8 ch 176 SLA 1980; am § 97 ch 59 SLA 1982)

Revisor's notes. — Enacted as AS 44.19.942. Renumbered in 1980.

Effect of amendments. — The 1982 amendment substituted "if the building or facility" for "which" in the introductory language of subsection (b).

Article 3. Alaska Historical Commission.

Section

- 61. Creation
- 62. Composition
- 63. Appointment
- 64. Terms of office
- 65. Compensation

Section

- 70. Duties of the commission
- 72. Reports
- 74. Executive director
- 76. Gifts and income

Sec. 44.27.061. Creation. There is created in the Department of Education the Alaska Historical Commission. (E.O. No. 43, § 3 (1980))

Revisor's notes. — Enacted as AS 44.27.040. Renumbered in 1980.

Article 6. Agency Meetings Public.**Section**

310. Agency meetings public

312. State policy regarding meetings

Sec. 44.62.310. Agency meetings public. (a) All meetings of a legislative body, of a board of regents, or of an administrative body, board, commission, committee, subcommittee, authority, council, agency, or other organization, including subordinate units of the above groups, of the state or any of its political subdivisions, including but not limited to municipalities, boroughs, school boards, and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations, advisory or otherwise, of the state or local government supported in whole or in part by public money or authorized to spend public money, are open to the public except as otherwise provided by this section. Except for meetings of a house of the legislature, attendance and participation at meetings by members of the public or by members of a body may be by teleconferencing. Agency materials that are to be considered at the meeting shall be made available at teleconference locations. Except when voice votes are authorized, the vote shall be conducted in such a manner that the public may know the vote of each person entitled to vote. The vote at a meeting held by teleconference shall be taken by roll call. This section does not apply to any votes required to be taken to organize a public body described in this subsection.

(b) If excepted subjects are to be discussed at a meeting, the meeting must first be convened as a public meeting and the question of holding an executive session to discuss matters that come within the exceptions contained in (c) of this section shall be determined by a majority vote of the body. No subjects may be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. No action may be taken at the executive session.

(c) The following excepted subjects may be discussed in an executive session:

- (1) matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the government unit;
- (2) subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;
- (3) matters which by law, municipal charter, or ordinance are required to be confidential.

(d) This section does not apply to

- (1) judicial or quasi-judicial bodies when holding a meeting solely to make a decision in an adjudicatory proceeding;
- (2) juries;

- (3) parole or pardon boards;
- (4) meetings of a hospital medical staff; or
- (5) meetings of the governing body or any committee of a hospital when holding a meeting solely to act upon matters of professional qualifications, privileges or discipline.

(e) Reasonable public notice shall be given for all meetings required to be open under this section. The notice must include the date, time, and place of the meeting, and if the meeting is by teleconference the location of any teleconferencing facilities that will be used.

(f) Action taken contrary to this section is void. (§ 1 art VI (ch 1) ch 143 SLA 1959; am § 1 ch 48 SLA 1966; am § 1 ch 78 SLA 1968; am § 1 ch 7 SLA 1969; am §§ 1, 2 ch 98 SLA 1972; am § 2 ch 100 SLA 1972; am § 1 ch 189 SLA 1976; am §§ 2, 3 ch 54 SLA 1985)

Effect of amendments. — The 1985 amendment in subsection (a) added the second, third, and next-to-last sentences and in the last sentence substituted "a

public body described" for "the bodies specified" and added the last sentence of subsection (e).

NOTES TO DECISIONS

"Meeting". — A private meeting between a quorum of the Anchorage Municipal Assembly and a developer to discuss in detail the developer's application for rezoning violated this section; a "meeting" for purposes of the Open Meetings Act includes every step of the deliberative and decision-making process when a governmental unit meets to transact public business. The rezoning ordinance later passed by the assembly that allowed a modified plan of development was therefore held void. *Brookwood Area Homeowners Ass'n v. Municipality of Anchorage*, Sup. Ct. Op. No. 2953 (File Nos. S-575, S-629), 702 P.2d 1317 (1985).

Findings. — There is nothing in the Administrative Procedure Act requiring a board to make any findings when exercising its quasi-legislative function, and therefore there is nothing in the act regulating the manner in which findings must be adopted or approved. *State v. Hebert*, Ct. App. Op. No. 748 (File A-1743), P.2d (1987).

Legislature's alleged violation of Open Meetings Act held nonjusticiable. — The Open Meetings Act, as it applies to the legislature, like the legislature's Uniform Rule 22, merely establishes a rule of procedure concerning how the legislature has decided to conduct its business; a failure to follow a rule of procedure is not the subject matter of judicial inquiry where there are no allegations that the legislature, acting pursuant to or in violation of one of its rules of procedure, has infringed on the rights of a third person not a member of a legislature or has ignored constitutional restraints or violated fundamental rights. *Abood v. League of Women Voters*, Sup. Ct. Op. No. 3230 (File Nos. S-1831, S-1841, S-1957), 743 P.2d 333 (1987).

Applied in *Meiners v. Bering Strait School Dist.*, Sup. Ct. Op. No. 2857 (File Nos. S-125, S-140), 687 P.2d 287 (1984); *Abood v. Gorsuch*, Sup. Ct. Op. No. 2958 (File No. S-706), 703 P.2d 1158 (1985).

Sec. 44.62.312. State policy regarding meetings. (a) It is the policy of the state that

(1) the governmental units mentioned in AS 44.62.310(a) exist to aid in the conduct of the people's business;

(2) it is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly;

(3) the people of this state do not yield their sovereignty to the agencies which serve them;

(4) the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;

(5) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created;

(6) the use of teleconferencing under this chapter is for the convenience of the parties, the public, and the governmental units conducting the meetings.

(b) AS 44.62.310(c)(1) shall be construed narrowly in order to effectuate the policy stated in (a) of this section and avoid unnecessary executive sessions. (§ 3 ch 98 SLA 1972; am § 4 ch 54 SLA 1985)

Effect of amendments. — The 1985 amendment added paragraph (6) of subsection (a).

NOTES TO DECISIONS

Quoted in Brookwood Area Home- age, Sup. Ct. Op. No. 2953 (File Nos. owners Ass'n v. Municipality of Anchor- S-575, S-629), 702 P.2d 1317 (1985).

Article 7. Legislative Review of Rules.

Sec. 44.62.320. Legislative annulment of regulations and review.

Editor's notes. — The Alaska Const., art. II, § 22 amendment proposal that was mentioned in the notes to decisions was defeated in the November, 1984 election.

Article 8. Administrative Adjudication.

<p>Section 330. Application of AS 44.62.330 — 44.62.630</p>	<p>Section 410. Time and place of hearing 600. Voting procedure</p>
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Sec. 44.62.330. Application of AS 44.62.330 — 44.62.630.

(a) The procedure of the state boards, commissions, and officers listed in this subsection or of their successors by reorganization under the constitution shall be conducted under AS 44.62.330 — 44.62.630. This procedure, including, but not limited to, accusations and statements of issues, service, notice and time and place of hearing, subpoenas, depositions, matters concerning evidence and decisions, conduct of hearing, judicial review and scope of judicial review, continuances, reconsideration, reinstatement or reduction of penalty, contempt, mail vote, oaths, impartiality, and similar matters shall be governed by this chapter, notwithstanding similar provisions in the statutes dealing with the state boards, commissions, and officers listed. Where indi-

PERCENTAGE FOR PUBLIC ART PROGRAM PROCEDURES

I. Purpose of Alaska Statute 35.27.010-030, amended.

The legislation declares, "The state recognizes its responsibility to foster culture and the arts and the necessity for the viable development of its artists and craftsmen. The legislature declares it to be a state policy that a portion of appropriations for capital expenditures be set aside for the acquisition of works of art to be used for state buildings and other public facilities."

The Department of Transportation and Public Facilities (DOTPF) and the Alaska State Council on the Arts (ASCA) have defined the following goals related to the purpose of the Act:

GOAL: To nurture our living culture by recognizing and providing for the aesthetic needs and the artistic growth of the people of Alaska.

SUBGOALS:

1. To Provide access to works of art in public spaces;
2. To offer a variety of visual experiences in varied styles, methods and media;
3. To further humanize our man-made surroundings with the artistic statements of living artists.
4. To provide a supportive working environment and the opportunity for personal creative accomplishment;
5. To contribute to the development and recognition of a professional artistic community; and
6. To accomplish broad cultural goals by introducing new visual ideas to the general public.

II. Definitions

A. "Works of Art": For the purpose of this Act, all forms of original creations of visual art objects, including but not limited to:

1. Sculpture; in the round, bas relief, high relief, mobile, fountain, kinetic, electronic, etc., in wood, clay, stone, metal, plastic, fiber, ivory, concrete, etc.
2. Painting; in oil, tempera, acrylic, water soluble medium, etc on wood, paper, canvas, skin, prepared surface, etc.
3. Graphics;
 - a. Prints in silk-screen, lithography, etching, embossing, and other techniques on paper, etc.
 - b. Drawing in pencil, ink, charcoal, pastel, etc. on paper skin, bone, etc.

4. Murals, mosaics, super-graphics, frescos; in paint, tile, glass, stone, etc., on a prepared surface.
 5. Photographs; on light sensitive paper, light sensitive emulsions, etc.
 6. Ceramics; in porcelain, clay, etc., in functional and non-functional application.
 7. Fiber; in wool, cotton, leather, grass, etc., in functional and non-functional application.
 8. Metalcrafts; in copper, silver, gold, etc., singularly or in combination with other metals or materials.
 9. Mixed Media; any combination of materials or forms.
- B. "Artist": A practitioner in the visual arts, generally recognized by critics and his or her peers as a professional who is committed to producing high quality work on a regular basis. Indicators of professionalism include but are not limited to proportion of income received from art sales, or art related activities, frequent or consistent exhibitions, purchase of works by museums and other public institutions. The project architect or a member of the project architect's firm will generally not be considered as an eligible artist for consideration unless they are specifically solicited by the art advisory committee.
- C. "User Agency": The state agency or state-funded institution for which funds have been set aside for artworks from the construction appropriation for any new facility or renovation project within its jurisdiction.
- D. "Agency Representative": A person within the user agency, or another person designated by and from that agency who represents the agency and has decision authority during the selection process.
- E. "Site": The physical space occupied by the work of art.
- F. "Construction Cost": The cost expended for the actual construction of the facility, exclusive of the costs of the land acquisition, site investigation, design services, administrative costs, equipment purchase and any other costs not specifically incurred within the construction contract or contracts awarded for the construction of the facility.
- G. "Public Facilities": Including, but not limited to, schools, office buildings, court buildings, the vessels of the state ferry system, and other facilities designed for substantial public use.

III. Location

The work of art must either be an integral part of the facility, attached to the facility or detached within or outside the facility. The artwork must be within reasonable proximity of the facility. Portable artworks may be exhibited outside the facility in other public facilities as long as the artworks have a permanent place to reside in the facility that is being constructed.

IV. Inclusions and Exclusions

- A. Inclusions: The portion of the capital appropriations reserved for works of art may be expended for the purchase of existing works of art or commissioned pieces and the design consultant services of artists. The following are included:
1. The cost of the work of art: Generally if the artist is commissioned to produce a new work, the following are taken into account in the contract:
 - a. Artists's fee for professional design and execution of a work of art and for consultation and on-site preparation for art works.
 - b. Labor of assistants, and materials required for production of the work.
 - c. Studio and operating costs of the artists, including rent, depreciation, utilities, communications, insurance, and other direct and indirect costs.
 - d. Travel of the artist for the site visitation(s) and research.
 - e. Transportation of the work to the site.
 - f. Installation of the completed work.
 - g. Taxes where applicable.
 2. Waterworks and electrical and mechanical devices or equipment which are integral parts of the work of art.
 3. Frames, mats, or pedestals necessary for the proper presentation of the works of art.
 4. Exhibitions and educational aspects.
 5. Site modification necessary for the installation of the work of art.
- B. Exclusions: The portion of the capital appropriation reserved for works of art may not be expended for the following:
1. Reproductions by mechanical or other means of original works of art. Included, however, may be limited editions, controlled by the artist, of original prints, cast sculpture, photographs, etc.
 2. Decorative, ornamental, or functional elements which are designed by the building architect or consultants other than artists under these procedures engaged by the architect (see V., paragraph 3.)
 3. Those elements generally considered to be components of a landscape architectural design: plant material, pools, paths, benches, receptacles, fixtures, planters, etc. (Exceptions to this are noted under General Policies).

4. "Art Objects" which are mass produced of standard design such as a playground sculpture or fountains.
5. Directional, or other functional elements, such as super-graphics signing, color coding, maps, etc., except where a recognized graphic artist is employed under these procedures.
6. Those items which are required to fulfill the basic purpose of the agency. Examples would be works of art in the collection of a state museum, or works of art fulfilling an interpretive or educational role in a state park, the state library, or a college or university art museum or gallery.
7. Preparation of the adjacent areas necessary for access to the work of art.
8. Recurring operational costs of electrical, water, or mechanical service for activation of the work.
9. In connection with the works of art, after they are installed; lighting, registration, dedication, unveiling, insurance, security, publicity or publications, and maintenance (preservation, conservation, restoration, repair).

V. Scope and Nature of Expenditures

The act applies to all state facilities and all grants of state funds to municipal and other agencies for capital construction projects.

The one per cent of construction cost is a required minimum with the exception of public schools funded after September 1, 1977 for which the required minimum is one-half of one per cent of the construction cost.

In cases where the project architect is working closely with the artist(s) from the inception of a project, the DOTPF may negotiate a separate contract with the project architect for the artist(s)' design services. Such a contract for artist consultation will not be construed to define the artist as a member of the architectural firm.

VI. Selection Principles

A. Criteria for selected works:

1. Quality: Of highest priority is the inherent quality of the work itself.
2. Media: All visual art forms may be considered.
3. Style and Nature: The art should be appropriate in scale, material, form, and content for both its immediate environment and for the general environment in which it is placed.

4. Elements of Design: The art advisory committee and the artist will take into account the fact that, as differentiated from works in a museum context, art in public places may serve to establish focal points; terminate areas, modify, enhance, or define specific places; or establish identity.
5. Permanence: Due consideration will be given to structural and surface soundness and to permanence in terms of relative proof against theft, vandalism, weathering, or excessive maintenance or repair costs.
6. Method of acquisition: Either existing works or those commissioned specifically for the site may be acquired.
7. Diversity: The participating agencies will strive, in the overall program, to attain reasonable diversity in style, scale, media, and materials represented.

B. Eligibility of Artists:

1. Alaska artists: Preference will be given to artists currently residing in the State of Alaska at the time of review by the art advisory committee for the project.
2. Artists from Other Areas: Certain artists from other areas may, because of their unique talents or style, be the logical choice of an art advisory committee.

VII. Selection Procedures

- A. Public Schools: The superintendent of a school district in which a public school is to be constructed will be responsible for establishing selection procedures for artist and art work selection with the approval of the local school board. The Alaska State Council on the Arts may be consulted concerning procedures, review of artist portfolios, contracting procedures, and purchase of art from the Public Art Collection.
- B. Facilities Except Public Schools:
 1. Notification: Upon receipt of allocated construction funds the DOTPF shall notify the ASCA of the amount of the projected construction contract, the function and location of the proposed facility, the amount of the 1% public art allocation, and the name and address of the project architect when that person and firm has been selected.
 2. Methods of Acquisition: The ASCA will advise the agency representative of the owner agency which of the acquisition methods is the most feasible, depending upon the amount of public art monies available and the function and location of the proposed facility. Three recommended categories are identified:

- 61
- a. Category I - Amounts under \$5,000.
 - 1) Portable Art: Selection of existing works by arts advisory committees either by public viewing or through slide presentation.
 - 2) Artists-in-Residence: An educational participatory residency by an artist selected by the art advisory committee resulting in a permanent work of art for the facility.
 - b. Category II - Amounts over \$5,000 but less than \$20,000.
 - 1) Includes Portable Art and Artists-in-Residence and,
 - 2) Design Integrated Commissions: Works of art especially commissioned for the specific sites which will in some way be integrated into the overall facility or specific site, or which will reflect some special function or aspect of the owner agency.
 - c. Category III - Amounts over \$20,000.
 - 1) Includes Portable Art and Artists-in-Residence, Design Integrated Commissions, and,
 - 2) Architecture Integrated Commissions: Major works of art which are integrated into the facility design, or works which will require special design consideration for their installation or display.
3. Art Advisory Committee: A special committee will be chosen according to the category of acquisition. The Committee shall be responsible for the necessary recommendations and/or the selections of art for the proposed facility.
- a. Appointments:
 - 1) Facility Users and Community representatives will be appointed by the agency representative. Composition should include individuals knowledgeable in the arts and be representative of the regular users of the facility. To insure maximum involvement of the community and users, a wide variety of view points should be included.
 - 2) Public Art Panel members are artists appointed to the panel by the Chairman of the ASCA. A regional representative of the panel will be delegated by the ASCA Chairman to each of the art advisory committees where their presence is indicated.
 - 3) ASCA Visual Arts Committee members are appointed by the ASCA Chairman from among the members of the ASCA and delegated to each appropriate committee by the ASCA Chairman.

NOTE: The project architect, a member of the project architect's firm, an ASCA member or Public Art Panel member that is participating on an art advisory committee may not be considered for a commission or have their work considered for purchase.

b. Composition:

- 1) Category I: Agency Representative (Chairman)
Project Architect
Facility Users/Community Representatives
- 2) Category II: Agency Representative (Chairman)
DOTPF Regional Design Manager
Project Architect
Facility Users/Community Representatives
Regional member of the Public Art Panel
- 3) Category III: Agency Representative (Chairman)
DOTPF Regional Design Manager
Project Architect
Facility Users/Community Representatives
Regional Member of the Public Art Panel
Member of the ASCA Visual Arts Committee

4. Methods of Commission

- a. Direct Commission. The art advisory committee will review the portfolios of artists that have been filed with the ASCA. If there are artists in whom they express interest that are not represented by the portfolios, they may request that the artist be contacted to determine if he/she would like to file a portfolio and be considered. The committee will select three artists of their choice for each work of art to be commissioned and place them in priority. Upon approval from the ASCA the artists will be contacted by the user agency in order to determine if they are willing and able to undertake the commission.

When a contract has been negotiated by DOTPF, it will include a 5% design fee as the first payment. The artist will prepare a written presentation accompanied by sketches, plans, and/or a model of the proposed work of art. The committee will review the plan and recommend acceptance, rejection or modifications. If and when approval is given by the art advisory committee the artist will proceed into the production phase of the project. If agreement is not reached the contract will be terminated and the next artist on the priority list will be contracted for a similar procedure.

- b. Limited Competition. Based on portfolio review the art advisory committee will invite a limited number of artists to present a detailed written proposal accompanied by sketches, plan and/or model for the selected site(s). A design fee equal to 5% of the total commission value will be paid to each artist that is invited to enter. The artists may be invited to personally present their proposal to the committee. In such a case the artists' transportation and per diem costs will be provided by the owner agency.

When a decision is reached a contract will be negotiated with the selected artist(s) per 5. below. Should none of the designs be selected the committee will start the selection process over (See Reconsideration).

The design fees paid to the artists will be drawn from the percentage for public art funds available to the project.

- c. Other forms of competitions: Special projects may suggest other selection methods.
5. Contract Authority: For all methods the contracting authority shall be DOTPF with approval of contract and payments by the ASCA. Technical assistance in contract preparation may be obtained from the ASCA upon request.

VIII. Reconsideration process

When reconsideration of the selection of artist or works for purchase is requested by an agency's art advisory committee approval of reconsideration must be obtained from the ASCA.

The art advisory committee must discuss the project with the selected artist(s). If no agreement can be reached the agency must notify the ASCA and the following methods may be implemented:

- A. A joint meeting with the artist, agency, and Visual Arts Committee of the ASCA to work out a solution.
- B. Request the artist to resubmit alternative examples or designs for the project.
- C. Place the project into another round of selections.
- D. Employ another procedure for selection.

All costs of reconsideration will be born by the owner agency requesting the reconsideration.

IX. Variance

There may be some capital construction projects funded by the State of Alaska for which inclusion of works of art may be inappropriate due to lack of substantial public use. The owner agency of the proposed facility may request in writing permission for exemption, in whole or in part, from the requirements of the Percentage for Public Art Act from the ASCA. The ASCA will review the request in relation to the potential aesthetic benefits to the principal users of the building and the community-at-large and recommend to DOTPF to accept, reject, or modify the percentage of construction costs that will be allocated.

X. Documentation and Evaluation

- A. For the documentation of the Percentage for Public Art Program the artist will furnish the ASCA and the DOTPF the following photographs of the completed work as installed:
 - 1. Two 35 mm color slides of good quality to each agency;
 - 2. Two 8" x 10" black and white glossy photographs to each agency; and
 - 3. A full written description of each piece.
- B. Identification: Plaques or labels identifying the work will be provided by the ASCA and will be permanent, unobtrusive and well designed. Included will be the name of the artist, title of the work (if any), medium and year completed.
- C. Registration: The ASCA will maintain accession records similar to those of art museums for all public art acquisitions, including those of public schools. Owner agencies including public schools will register all portable works as public agency property under the normal procedures.
- D. Evaluations: The ASCA shall annually make a public written report to the DOTPF on the projects of the previous year and shall conduct periodic evaluations of the program.

PERCENTAGE FOR PUBLIC ART RESPONSIBILITIES AND GENERAL POLICIES

Responsibilities

- A. The Department of Transportation and Public Facilities shall:
 - 1. Upon receipt of allocated construction funds for a specific project(s), notify the ASCA of the projected amount of the construction contract, the facility(s) location(s) and function(s), agency representative(s), and amount of Percentage for Public Art allocation.

2. Contract with the selected artist(s) for works of art and make contract payments upon approval of the ASCA.
 3. Maintain such records as are required for the execution of contracts.
 4. Accept, reject, or modify the ASCA recommendations for variance from the Act.
- B. The Alaska State Council on the Arts shall:
1. Notify the user agency of the amount of Percentage for Public Art allocation and request the appointment of an agency representative, and facility user/community representatives.
 2. Appoint Public Art Panel members or Visual Arts Committee members to the Art Advisory Committees as required.
 3. Approve final selections of Art Advisory Committees and forward the names of recommended artists to DOTPF.
 4. Assist in contract negotiations with artists.
 5. Review requests for variances and forward recommendation to DOTPF.
 6. Maintain accession records of all art acquisitions.
 7. Provide identification labels for all art acquisitions.
 8. Conduct a yearly review of the overall program.
- C. The Advisory Committee shall:
1. Meet to consider the location(s), method(s) of acquisition, and artist(s) based upon the amount of Percentage for Public Art allocation.
 2. Forward recommendations to ASCA.
 3. Review proposals prepared by artists and forward recommendation to the DOTPF.
- D. The User Agency shall:
1. Appoint an agency representative and form a local art advisory committee in consultation with the ASCA.

- 2. Be responsible for maintenance, repair and security of the work(s)
- 3. Handle public information aspects of the project with assistance from the ASCA.

E. The Project Architect shall:

- 1. Recommend to the art advisory committee specific sites for works of art and the scale and type of work most appropriate.
- 2. If requested, work closely with the artist, provide engineering and technical assistance to the artist and supervise the delivery and installation of the work under contract with the contracting agency.
- 3. Assure that all service requirements for the work of art are met in the design documents.

F. The Artist shall:

- 1. Submit proposals as outlined by contract.
- 2. Be commissioned by the contracting agency to execute and complete the work in a timely and professional manner, or transfer title of an existing work of art to the agency for incorporation in its new or renovated facility.
- 3. Preferably deal personally with all other parties in all phases of the negotiations. However, the artist may, at his/her option, designate dealers or agents to represent him/her in certain aspects of the project.
- 4. Maintain a close working relationship with the architect.

General Policies

- A. Integration of Art and Architecture: So that artists and architects can gain from each others' design insights and, thereby produce a more integrated solution, all parties involved should strive for engagement of the artist or artists as soon as possible after the employment of the architect.
- B. Design Services by Artists: Architects are encouraged to contract with artists for custom design of lighting fixtures and systems, gates, railings, fences, doors, door knobs, drawer pulls, furniture, hand-crafted musical instruments, planters, benches, windows, signs maps and other equipment, accessories, and architectural elements. The consultation of an artist(s) is also encouraged during the design of display areas for portable works of art. The cost of artist design services may be borne by the Percentage for Public Art Program monies. The selection of artists would fall under these procedures.

- C. Freedom of expression: All parties shall encourage the artists to reach creative solutions to the design problems they have been employed to solve. The artist, on their part, must be sensitive to the unique qualities of public art and the guidelines and parameters which, of necessity, have been agreed upon.
- D. Exhibitions and Educational Aspects: To serve various publics more fully, the contracting agencies should consider undertaking the following, funded with monies other than those made available under the Percentage for Public Art Act:
1. Exhibitions of sketches and maquettes from limited or open competitions.
 2. Involvement of students and art instructors in workshops with artists creating works, especially those for educational institutions.
 3. Employment of an artist to design, jointly, with elementary and secondary school students, a work for a school with the design motifs springing from the school's history and heritage, the cultural traditions of ethnic minorities, or simply the rich imagination of the students. A present or former Artist-in-Residence could be a candidate for such a project.
 4. Tours of a site involving many works, conducted by trained docents.
 5. Use of state educational and other facilities by the artist in development of concepts and creation of the work, so that state employees and students can witness and assist in the creative act. Such facilities might include studio space, foundries, machine welding and woodworking shops, printing and photographic facilities, etc.
- E. Professional Assistance. Where suitable, the private sector may be consulted. Gallery owners and dealers provide valuable assistance in gaining access to quality art works throughout the State. The ASCA recommends that dealers' fees on new commissioned works should not exceed 10% of the artist's fee after manufacture or cost of the work is subtracted.

All public agencies shall deal directly with the artist unless otherwise requested by the artist.

- F. Supplemental Funds: The National Endowment for the Arts provides matching funds for works of art in public places on a grants application basis. In some cases the agency may generate funds locally to supplement their art allocation. The ASCA encourages the utilization of these resources in matching state funds.
- G. Publications: As collections grow, owner agencies are encouraged to publish informative folders and booklets on their works of art. The ASCA will offer editorial and professional assistance if requested.

- H. Dedication: If a dedication or "unveiling" of the work is desired, arrangements and costs incurred will be the responsibility of the owner agency, though technical assistance can be requested of the ASCA.
- I. Administrative Costs: The DOTPF and ASCA will cover all costs of administering the program from funds other than the Percentage for Public Art Allocation.

APPENDIX III.

Public Art Program Comparison Chart

	State of Alaska	Municipality of Anchorage	First Banks, Minneapolis (corporation)
Percentage	1%/5% for rural schools	1%	Annual Budget
Total value of collection	\$4.5 million	\$2.5 million	\$3.5 million invested \$7.0 million (appraised value)
Administrative Responsibility	Decentralized among ASCA, DOT/PF, University of Alaska, School districts and other user agencies	Centralized with the Anchorage Museum of History & Art through a Program Director	Curatorial staff
Number of staff assigned to program	0	1	2 full-time 3 interns 1 consultant
Administrative budget	0	\$74,000	\$500,000
Budget for maintenance and conservation	0	\$6,000 (1988 only)	Figures not available
Selection process	Selection committees	Selection committees	Curatorial choices
Public information program	Monthly bulletin Annual reports	Public hearings required in selection process, annual bus tours, presentations to civic groups, press releases	Highly active feedback mechanism interpretive labeling on artworks, seminars and curatorial of employees
Deaccessioning policy	None in place	In formative stages	In place, designed to improve investment
Average annual acquisition budget	\$450,000	\$310,000	\$440,000

APPENDIX IV.

Total Expenditures 1978-1988

	All Commissions	Projects in Progress	Awarded to Non-Residents	Unspent, or No Data
1% For Facilities	2,734,408	542,100	1,244,101	439,676
.5% for Schools	1,837,272	25,000	561,370	558,537
Total	\$4,571,680	\$567,100	\$1,805,471 (39% of total)	\$998,213

8:35

Hudson, Cat heard

HB 3

heenan moved c/s be adopted

Hudson

Outlined HB 3

Only difference in c/s is requirement that administrative costs be paid for from this $\frac{1}{2}\%$

Reduce 1% to $\frac{1}{2}$ of 1%

requires use of resident artists

Requires selection committee be expanded

Requires plaques be placed with all art funded by these funds

Hudson moved to hold c/s HB 3 over until next meeting of HTC

Mailroad

Cato introduced Mr. George Sullivan

Pep Foster here 8:40

George introduced George Chafos + Jerry Valaska who are AMM board members

George turned over to Turpin

Mr Turpin stated that this agreement would be a little dry + as they would just hit rights +

Ken would be available to answer questions.

Financial performance

Over 4 years of operating ARPA has a return on investment of 11% / year. This is a return on total investment.

All income is reinvested in ARPA as it was in very poor shape on transfer. Have invested over \$50 million in past 4 years in capital project. Plan to put another \$17 million in to capital over next few years.

Marvin letter p. 3

1985	7 million profit
1986	lost 1 million because of Crown point, floods + freight ↓
1987	3 million profit
1988	5.8 million
1989	6.1 million budgeted

Heenan

- What is source of \$17 million that is proposed for capital projects

Marvin

5 million income
4 million depreciation
7 million borrowed. Have very good return to pay off borrowed money.

Heenan

- IS ARPA debt backed up by state

Frank

No. Statutes won't allow it. All borrowed + backed up by equipment or assets of ARPA

Have \$10 million line of credit
for emergencies

How does A.P.M. make money

Page 1 - defines the basic
areas that A.P.M. works to save
money.

In addition some examples of
savings include

At fire ~~state~~ bought A.P.M. cost
was 23% ^{Direct payroll} in benefits thru feds. State
had 28%. Now state has 43% and
A.P.M. has 19%. This makes a tremendous
difference

In order to cut sick leave, first
2 days are unpaid then 3rd etc are
paid. Saves \$140,000

New employees start at 80% of medical
benefits.

A.P.M. does not do a capital project
unless there is a good return.
Have pulled down 83 buildings in last
4 years. These were old and feds
were spending a great deal to maintain
these buildings.
Big savings here

A.R.A.'s entire approach is a push
+ drive approach to cutting costs

Hudson

What does it cost per person insurance
costs

Frank

700k 1986 premium \$314 / mt. Any
additional increase has to be
paid for by employee. As a
result employees much more willing
to negotiate changes to benefits
A.R.A. has a committee that has
2 union members + three other
members that review options +
provide recommendations

Pop Hudson asked about risk
insurance. More Tetter stated
they would have to get back to
Bill. To complex to address now

Real estate

page 9

Over last few years real
estate in Anchorage dropped.
A.R.A. has not been affected as
dramatically as other industries because
now charge \$200 for permits
Increased new leases by 10%
Very few leases have to be
foreclosed upon as A.R.A. get
together + work with leases
to help her in short run to
make it through.

to determine if predatory pricing.
Interstate Commerce Commission

130 this year so ~~to~~ fiscal year
329 last fiscal year
Project total of 200 for this year
A.R.M. has done everything possible to

Fish + game wish to build electric
fence for a 60 mile distance along
each side of track, area where most moose are killed
Cost around \$30 million
Does not seem cost effective

Herbicides

Trying to prove the herbicides proposed

contracting University of Alaska to
look at both questions

Is there a mechanical cost effective
way to eliminate herbicides
Are there any safe herbicides.

361,000 passengers. Let four

Companies run the passenger service
+ A.R.R. charges tour company for
the space they use.

Bette

Does passenger service pay

Frank

No, does it summer for 3 months
as losses big residue in other
9 months

Bill

Do you provide food service

Frank

Contract it out

Frank

Adding passenger service in
summer to 5 days / week
Increased passenger service by
40% to Whittier.

Bette

Are you using bad cars or
Whittier run

Frank

Moving bad cars to Whittier
in winter. Whittier people don't
like bad cars

Frank

Crossing maintenance. When community
wants crossing they apply for permit.
Advisory committee looks at application.
At time crossing is built A.R.R.
+ community enter into agreement

on who will maintain crossings.
Usually community agrees to maintain.
later, if crossing lights are
required, community ~~also~~ apply to
A.R.M. for crossing lights.

Installation of crossing lights paid
for by federal government.

Now - communities are charged \$3,500
per crossing to help offset costs
of maintaining crossings.

Railroad does maintaining crossings,
very expensive, need to be very
careful about liability.

Communities object to paying \$3,500

Transport of hazardous materials

Alaska must transport all hazardous
material. E.P.A. prefers transporting
hazardous materials by rail, much
safer. When communities hear
that hazardous waste is being transported
on rail they become very upset.

Federal E.P.A. has very strict
requirements for transporting hazardous waste.
A.R.M. meets all these requirements.

Are you hit with the problem of
replacing underground storage tanks?

Yes, most of our equipment is
older than 10 years, therefore
need replacement.

Payment in lieu of taxes

House researches made report in 1986 of what A.R.R. taxes would be if paid taxes, estimate = 350,000. Frost + Winby currently doing another tax assessment.

Railroad feels that they do pay to communities in lieu of taxes.

Provide land for parks, dumps, visitors centers etc to the cities at a very very low cost.

Foster
Frank

Committed on behalf of Henry.
Henry has deliberately training on glaciers.
A.R.R. agreed to take army troops "free" to glaciers.

Hudson -

Ask A.R.R. to look at tying in rail transportation with other modes of transportation.

Frank

In may this year, A.R.R. going into a 2 day session to look at rail expansion + ways to better address the state's transportation needs.

Cato requested A.R.R. inform her office when this meeting is taking place. Cato requested any information of this meeting be forwarded to her office.

Page 13, 14, 15

A.M.P. really watches expenses
Try to put every nickel possible back
into A.M.P.

A lot of man hours have been
cut. Page 13 shows this very
clearly

What happens to money in depreciation
column?

Apply depreciation to net income. Usually
pay off debt with it, or invest it
for a high rate or return + then
borrow against line of credit if need
something. Usually rate of return
on investment is greater than interest
on debt.

Page 14 clearly shows that
personal costs are slowly dealing.
This is very good when we consider
that costs are increasing

Page 15 shows Balance sheet.
this is vital for banks

General Accepted Accounting Principles
for Railroad defines long term
debt as anything longer than

one year Malroad does not
carry any debts longer than
8 years

Hudson

How do you get the

State paid \$27 million for A.R.A.
State put in \$20 million additional for operating
the remainder is the net profit over
the past 4 years

Bill

How do you do your marketing.
What sort of marketing are
you involved in

Frank

We do not market nearly as much
as we should. Marketing is ~~Adverse~~
consists of 4 people, ^{in the house} and one in Fairbanks
1 in Houston, Texas and 3 in Seattle.
We combine sales + marketing
We are constantly looking for new business

Bill

What about competitiveness with
tractors

Frank

I've looked at A.R.A. area

2/21

HB-3

8:35

Grassebut

Alice 465-2693
Rep. Hanley HB-3

motion to Adopt Q/S
move to Adopt Q/S for HB-3
Any objections, so ordered.

20 Leman

033

4th

Rep Hanley - give brief overview of HB-3
Resident Artist, Selection Committee be expanded,
plaque

050

Interim

054

Helson moved that HB-3 be held ^{in these transcripts} until Thursday 23rd.

065

R/R

~~Mayor of Anchorage~~ George Sullivan
Chairman, Cop of R/R.

Introduced members of Board R/R

Vice Chairman of Finance Marie Nether.

457

148

Frank Turpin President.

Summary of Financed

Model problem

Herbicide program

Tourists - passenger

Concerns of Municipalities - ^{Horridious, Herdly} payments in lieu of taxes

186

11% Gov Return on Investment - \$ 33.2 mill
Comped to Penn. Fund. Start up

Good Invest. Re invest in to R/R.

50m back into R/R paying Another 17m
back into R/R.

212

MARU FINN

* 243 lesson - Sara of Mary

* 248 - Frank Brown Tax

267 Hd. Is debt broken up by State

272 Fund - Pt State is no liable

279 For Finn 10m line of credit

284 More Refund to the RR ^{not any}
Isolate from State Gov. (Revol from ~~other~~ ^{with})

336 -

Frank - Pt of any \$ goes to benefit ^{procting}
State 1/2 &

350 Frank -

364 MA First few days not paid on sick leave.
New employees

401 Lamm - void from Subs.

412 Hedon - Ins. premium cost per person
Risk Mgmt. Program.

* 418 Frank - write letter on R/S

R/S/Inst. - W/comp No Financial Ins.

417 MAAD - Profits Divided by Real Estate Revenues
200 permit fee.

519 Hedon -

520 MAAD - Adm. expenses has gone down

" Refers to Charts
No shutter debt R/S on long term debt

535 CATO - L/T debt - New equipment

577 Frank. L/T debt. 8yr to R/R.
3-5-8 yrs.

50%
30% of AIR under 30 days

602 ~~Frank~~ - Bill Hall Equity explain

606 - MARV.

612 Helen - MKty program (costs 6)

670 Frank - MKty files plan in Ark. 4 people ^{files}
Bright prospects (Frank's) 3 settle
1 Houston, Texas. ^{works} with Oil Companies in Texas

640

Side B 300th

011 Frank ^{will} ~~more~~ follow 130 this yr 329 last yr

F&G - fence on each side of R/A
on 60 acres Open with when next kill it
\$30 on cost

Herbicide Program - Only for plant growth
on gravel area, not bush outside the
gravel area.

Tourist & jewelry. up 14% 361 on
Tour carry sell - R/R.

Food for everybody. works well

121 Cato

133 Macu 3 month penit buy

139 Bill - Food Service

148. Frank. holding 5 dy week to Sunday.

40% Francis shuttle to Whittier.

6 hrs day in summer 4 hrs when

Ferry not running.

155 Cato Bed Cars

168 -

178 MAU. Bed car helps reduce winter exp.

* 183 Tupper Crossing - Community responsible for clearing sight
major crossing - eligible for Signals.

Route that is followed every week for each
crossing (4th 62 weeks)

268

TRAMP of Harv. WAC

Tramp of Harv. West. All most ships out
of State.
Wh. fin. oppor.

Fed. law St. plates procedure. All RR along
passenger Recommendation

293 Huber

LUST

325

Payment in Lieu of Taxes -
- 350m yr. in Texas - R/E Available at lot
provided R/E for PARKS, trails, Port Hobos, airports
at minimal fee

371

Festec -

387

Huber - Need Expansion day need to think about future
& planning

415

Comm. Board.

Employee Board. Has 15 it.

421

Frank. 29 Real goods but had to measure

late 440

9.53 adjourn

Original sponsors: Hanley, Zawacki,
and Leman

1 IN THE HOUSE

BY THE TRANSPORTATION COMMITTEE

2 CS FOR HOUSE BILL NO. 3 (Transportation)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to art in public places; and provid-
7 ing for an effective date."

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

9 * Section 1. AS 35.27.020(c) is amended to read:

10 (c) One-half [AT LEAST ONE PERCENT OR, IN THE CASE OF A RURAL
11 SCHOOL FACILITY, AT LEAST ONE-HALF] of one percent of the construction
12 cost of a building or facility shall [APPROVED FOR CONSTRUCTION BY THE
13 LEGISLATURE AFTER SEPTEMBER 1, 1977, WILL] be reserved for the follow-
14 ing purposes: the design, construction, mounting and administration of
15 works of art in a school, office building, court building, vessel of
16 the marine highway system, or other building or facility that [WHICH]
17 is subject to substantial public use. All administrative costs,
18 including those of the department, associated with the art project
19 shall be paid from the money reserved under this subsection.

20 * Sec. 2. AS 35.27.020(g) is amended to read:

21 (g) Each selection committee established under AS 35.27.021 [THE
22 ARCHITECT, SUPERINTENDENT, DEPARTMENT, AND THE ALASKA STATE COUNCIL ON
23 THE ARTS] shall encourage the use of state cultural resources in these
24 art works and shall select [THE SELECTION OF ALASKA RESIDENT] artists
25 for the commission of these art works who are residents of the state
26 under AS 01.10.055.

27 * Sec. 3. AS 35.27 is amended by adding a new section to read:

28 Sec. 35.27.021. SELECTION OF ART. (a) The artist who executes
29 a work of art for a public school shall be selected by a majority vote

1 of a committee, with the approval of the school board. The committee
2 shall be composed of the architect, the project manager administering
3 the facility construction, two representatives from the school dis-
4 trict staff, and three members of the public who reside in the commu-
5 nity where the school is located. The president of the school board
6 or a designee shall provide reasonable public notice that public
7 member seats on the committee are available. The school board shall
8 select the representatives from the school district and the members of
9 the public.

10 (b) Except as provided in (a) of this section, an artist who
11 executes a work of art for buildings and facilities shall be selected
12 by a majority vote of a committee convened by the project manager
13 administering the facility construction. The committee shall be
14 composed of the architect, the project manager, a designee of the
15 Alaska State Council on the Arts, a designee of the principal user of
16 the public building or facility, and three members of the public who
17 reside in the community where the building is located. To select the
18 public members, the department shall advertise for applicants by
19 appropriate public notice and pick the members by lottery from among
20 the applicants.

21 (c) All meetings of the selection committee under (a) or (b) of
22 this section are subject to the public meeting and notice requirements
23 of AS 44.62.310.

24 * Sec. 4. AS 44.27.060(b) is amended to read:

25 (b) The commissioner of a department responsible for the design
26 and construction of a building or facility shall deposit into the art
27 in public places fund one-half of one percent of the construction cost
28 of a building or facility if the building or facility is exempt from
29 the requirements of AS 35.27 and the exemption is because

1 (1) the estimated construction cost of the building or
2 facility is less than \$250,000; or

3 (2) the building or facility is not designed for substan-
4 tial public use.

5 * Sec. 5. AS 44.27.060 is amended by adding a new subsection to read:

6 (e) A work of art shall be identified by a permanent plaque
7 installed on or near the work of art. The plaque must contain the
8 name or title of the work of art, the name of the artist, the year of
9 completion, and the names of the members of the selection committee.

10 * Sec. 6. AS 35.27.020(e) and (f) are repealed.

11 * Sec. 7. The amendments made by this Act do not apply to the construc-
12 tion of a building or facility if, before the effective date of this Act,
13 the department or the Alaska State Council on the Arts has entered into a
14 contract to meet the art requirements under this chapter for the building
15 or facility.

16 * Sec. 8. This Act takes effect immediately under AS 01.10.070(c).
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February 23, 1989

Transportation Speech HB 3 - Percent for Art Program

By: Representative Alyce Hanley

MADAM CHAIR - Thank you for scheduling HB 3. The committee substitute for HB 3 provides that all administrative costs associated with the art project shall be paid from the money reserved under this subsection.

HB 3 does 4 things to improve the percent for art program:

1. It standardizes the percentage of dollars spent on art in public buildings to the same level as those dollars spent in rural areas which is 1/2 of 1% of project cost. I would remind committee members that some municipalities have ordinances requiring 1% of municipal dollars set aside for art. In Anchorage more dollars are appropriated through that ordinance than state statute.
2. Instead of encouraging the use of Alaska resident artists this bill would require the use of Alaskan artists. Three artists have contacted me in the past 2 weeks supporting this provision.
3. Expands public involvement in the art selection process by changing the makeup of the selection committees. This bill defines and expands the members of the selection committee. Each committee will have seven members and three members will represent the public from the local area. This is a change from current statute.
4. The bill will also require a permanent plaque be placed on or near the art projects which identify the artist, title of the piece, date of completion and the names of the selection committee members.

The reduction from 1% to 1/2% of 1% will not significantly effect the percent fro art program in Alaska. Even with the reduction the amount of money available to Alaskan artists for commissions for art works will be close to the same if not the amount of money historically awarded to Alaskan artists. In FY 84, FY 85 and FY 86, Alaskan artists received less than 50% of the money paid in commissions for the % for art programs.

I do not want to be labor the point or the merit of keeping public dollars in Alaska, but if we consider the monies paid to artists in the same light as we consider the value of permanent fund dividends paid to Alaskans, we know that each dollar turns over two or three times. While directly supporting Alaskan artists, we are indirectly supporting our whole economy.

I think it is clear that it is not parochial but good public policy to spend our money in Alaska - just as it is in our best interest to provide bidder preferences to Alaskan companies who are established in Alaska and have become part of our communities. I do believe that if one job in our economy is saved by spending our art dollars in Alaska then we have accomplished our task of promoting good public policy and spending our money wisely.

I do not see the requirement for use of Alaskan resident artists as a protectism for artists. I see this as promoting new and upcoming Alaskan artists who are not currently world class artists or even well known but need a market for their art. I also see this as a means of promoting a sense of pride in our state and as a means of offering Alaskan tourists a unique look at our history and culture.

The two other areas of the bill expanding the committee to include public members from the community involved will hopefully result in public art which cultivate appreciation rather than provoking anger. The placement of a plaque on the art piece will give recognition to the artist as well as the selection committee.

I would like to conclude by saying that my bill does not try to rewrite the statutes on the Alaska State Council on the Arts. This bill addresses only the percent for art program. I believe that many of the other programs administered by Alaska State Council are working and working well. I think that the percent for art program has not fulfilled the original intent and this bill seeks to correct that.

Thank you Madam Chair and members of the committee.



Official Business

COMMITTEE:

House Transportation Committee

DATE: 2/23/89

SIGN-IN

Subject of meeting:

HB: 3
HB: 156

NAME Please include title **ADDRESS** Please use full address. Please include zip. **PHONE** **REPRESENTING** **DO YOU WANT TO TESTIFY?**

NAME Please include title	ADDRESS Please use full address. Please include zip.	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
Rodney A Wilson Architect	P.O. Box 2 (MS2500) Juneau 99811	465-2960	DOT/PF	will answer questions
Rupe Weller	Dept of Revenue Asst Comm. Juneau 99811	465-2300	Dept. of Rev.	
Rp Betty Cato	P.O. Box V Juneau, AK 99811	465-4858	HB 156	
Rep. Alyce Harley	P.O. Box V 99811	465-2688	HB 3	

HB 3

HOUSE COMMITTEE REPORT

(5)
Date Referred: January 9, 1989

FURTHER REFERRALS: STATE AFFAIRS
FINANCE

Date of Committee Action: 2/23/89

The TRANSPORTATION Committee recommends that:

HOUSE BILL NO. 3 [ART IN PUBLIC PLACES]
"An Act relating to art in public places; and providing for an effective date."

[] be replaced with c/s HR 3 Transportation [] the same title
[] a new title

[] have attached amendment(s)

- [] 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
- [] zero fiscal note
- [] zero with analysis

APPROVES PREVIOUS:

- [] fiscal note(s) published:

- [] zero fiscal notes(s) published:

SIGNING DO PASS:

Butler Puto
Bill Hulse
Richard J. [unclear]
[unclear]

SIGNING OTHER THAN DO PASS:
(Do Not Pass, No Recommendation, Amend)

Ben [unclear] (No Rec)

Butler Puto
Chairman's signature