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SENATE FINANCE COMMITTEE REPORT

DATE: 2/10/90

FURTHER:

DATE TURNED INTO OFFICE: 2/27/90

The Finance Committee considered SSSB 19

Seizure and forfeiture of property in cases involving alcoholic beverages, controlled substances and imitation controlled substances.

and recommended:

[] replace with CS SS SB 19 (Jud)
[x] or adopt CS

[] same title
[x] new title
[] technical title change (HB only)

[] attached amendment(s)
[x] Finance letter of intent adopted

[x] do pass

[] do not pass

[] no recommendation

[] individual recommendations

[] further referral to

ATTACHES NEW FISCAL NOTE(S):

APPROVES PREVIOUS:

[] fiscal note(s) Dept/Date:
[] zero fiscal note(s) (2)
SFC: DOA/Pub Advec. 2/27/90
SFC: DOA/Pub Def 2/27/90

[] fiscal note(s) Dept/Date:
[x] zero fiscal note(s) (3)
DPS 2/9/90
DOA/Cent Admin Svcs 1/31/90
DOA/Gen Supp Supply 1/31/90

[] appropriation-no fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

Handwritten signatures: [unclear], [unclear], [unclear], [unclear]

Blank lines for other recommendations.

1. [unclear] DO PASS -- 2. [unclear] (DO PASS)

2/27/90
Frank
~~ADMITTED~~

LETTER OF INTENT TO SB 19

CS SSSB 19 (Jud)

It is the intent of the legislature that the Office of Public Advocacy and the Public Defender make an annual report to the legislature stating the number of cases and attorney hours spent on cases as a result of SB 19.

FISCAL NOTE

REQUEST: _____

Revision Date: _____
 Title: Seizure & forfeiture of
property in alcohol & drug cases
 Sponsor: Sturgulewski, et al
 Requestor: _____

Agency Affected: Administration
 BRU: Office of Public Advocacy
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	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

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)

Prepared by: Senator Rick Uehling, Co-chairman
 Division: Senate Finance Committee

Phone: 465-4821
 Date: 2/27/90

Approved by Commissioner: _____
 Agency: _____

Date: _____

Distribution (by preparer):

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

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Seizure & forfeiture of property in alcohol & drug cases
 Sponsor: Sturgulewski, et al
 Requestor: _____

Agency Affected: Administration
 BRU: Public Defender Agency
 Components: Third Judicial District

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	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

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)

Prepared by: Senator Rick Uehling, Co-chairman
 Division: Senate Finance Committee

Phone: 465-4821
 Date: 2/27/90

Approved by Commissioner: _____
 Agency: _____

Date: _____

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

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Public Safety
 Title: Forfeitures in alcohol or BRU: _____
drug cases
 Sponsor: Senator Sturgulewski Component: _____
 Requestor: Senate Judiciary

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

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)

By improving the procedures under which property used to commit drug offenses can be forfeited, this bill could result in an increase of funds and property forfeited to the State. It is impossible to estimate the amount of this increase, however, especially as some of the forfeited assets may be passed on to municipalities that assist in these investigations.

Prepared by: Lt. Thomas Stearns
 Division: Alaska State Troopers

Phone: 269-5620
 Date: 2/09/90

Approved by Commissioner: Arthur English
 Agency: Department of Public Safety

Date: 2-9-90
 Page 1 of 1

Handwritten:
2/9/90

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Administration
 Title: An Act relating to seizure and BRU: Central Admin. Svcs.
forfeiture of property . . . substances.
 Sponsor: Sen. Sturgelewski et al. Components: Finance
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	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	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

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

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)

The only noted impact of this bill is in amended section 12.35.330(d). This section deals with the sale of forfeited property and accounting for the proceeds. This is not expected to have a fiscal impact.

Prepared by: ^{for} Keith Busch, Director *Joe Thomas* Phone: 465-2240
 Division: Finance *Frank Baxter* Date: _____

Approved by Commissioner: Frank S. Baxter Date: 1/31/90
 Agency: Department of Administration

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

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Administration
 Title: An Act relating to seizure and BRU: General Services and Supply
forfeiture of property
 Sponsor: Sturgulewski Components: Property Management
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	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	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

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

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) The fiscal impact for the current fiscal year and future fiscal years on the sales/disposal function of property management will be negligible. Since the sales can be held concurrent with routine disposal sales, negligible impacts on the sales are anticipated. This fiscal note applies only to property management and disposal and does not cover the expenses for forfeiture proceedings, or seizure custody, or court costs.

Prepared by: Robert J. Link *Robert J. Link* Phone: 465-2250
 Division: General Services and Supply Date: 1/30/90
 Approved by Commissioner: Frank S. Baxter *Frank S. Baxter* Date: 1/31/90
 Agency: Department of Administration

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

Original sponsor(s): SEN. STURGULEWSKI, Kelly, Kerttula, Pearce, Rodey,
Einkley, Uehling

1 IN THE SENATE BY THE JUDICIARY COMMITTEE
2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 19 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - SECOND SESSION
5 A BILL

6 For an Act entitled: "An Act relating to seizure and forfeiture of proper-
7 ty in cases involving alcoholic beverages, controlled
8 substances, and imitation controlled substances; and
9 amending Rules 16, 16.1, 40(e), 65(b), and 77(a),
10 Alaska Rules of Civil Procedure."

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

12 * Section 1. AS 04.16.220 is repealed and reenacted to read:

13 Sec. 04.16.220. PROPERTY SUBJECT TO FORFEITURE. (a) Under the
14 procedures set out in AS 12.38, alcoholic beverages are subject to
15 forfeiture to the state if

16 (1) manufactured, delivered, distributed, possessed, con-
17 cealed, stored, acquired, sold, exchanged, offered for sale or ex-
18 change, or transported, or one of these acts is attempted or soli-
19 cited, in violation of a criminal law under this title;

20 (2) unlawfully possessed in an area where the results of a
21 local election under AS 04.11.498 have prohibited possession of alco-
22 holic beverages; or

23 (3) found on licensed premises without excise stamps re-
24 quired by federal law.

25 (b) The property listed in (c) of this section is subject to
26 forfeiture, under the procedures set out in AS 12.38, if

27 (1) except for liquor licenses forfeited under AS 04.16.-
28 180, the property is used, or intended to be used, to commit or facil-
29 itate an offense under AS 04.11.010, AS 04.16.175, AS 04.21.060, an

1 offense relating to alcoholic beverages on licensed premises without
2 excise stamps required by federal law, or an offense relating to
3 conduct made criminal because of the results of a local election under
4 AS 04.11.490 - 04.11.500; or

5 (2) the property is used, or intended to be used, in a
6 direct or indirect exchange for an alcoholic beverage in violation of
7 AS 04.11.010, or is traceable to or derived from the exchange.

8 (c) The following property is subject to forfeiture under (b) of
9 this section:

10 (1) firearms, explosives, and weapons;

11 (2) money, securities, negotiable instruments, and anything
12 of value, whether tangible or intangible, secured or unsecured;

13 (3) raw materials, chemicals, pharmaceuticals, and any-
14 thing, including plants or other living organisms, from which alco-
15 holic beverages might be derived;

16 (4) books, records, tapes, formulas, research papers, and
17 equipment, including data processing equipment and electronic equip-
18 ment used in surveillance or countersurveillance efforts;

19 (5) aircraft, vehicles, vessels, and conveyances; and

20 (6) a right, title, or interest in real property, and any
21 improvements or appurtenances, if the offense making the property
22 subject to forfeiture is a felony offense.

23 (d) Notwithstanding any other provisions of AS 12.38, alcoholic
24 beverages seized under AS 12.38.020 are automatically forfeited to the
25 state and subject to immediate destruction by a peace officer if

26 (1) unlawfully possessed in an area where the results of a
27 local election under AS 04.11.498 have prohibited possession of alco-
28 holic beverages; or

29 (2) in the process of being consumed or in a container that

1 has been opened or the seal of which has been broken.

2 (e) Except as provided in (d) of this section, alcoholic beverages
3 forfeited to the state shall be destroyed by the law enforcement
4 agency with custody of the property under procedures prescribed by the
5 commissioner of public safety.

6 * Sec. 2. AS 12 is amended by adding a new chapter to read:

7 CHAPTER 38. FORFEITURE OF PROPERTY.

8 Sec. 12.38.010. APPLICABILITY. This chapter applies to property
9 subject to forfeiture under AS 04.16.220 and AS 17.30.110.

10 Sec. 12.38.020. SEIZURE OF PROPERTY SUBJECT TO FORFEITURE. (a)

11 Property subject to forfeiture may be seized by a peace officer

12 (1) under an order issued by a court in an ex parte proceeding
13 upon a showing

14 (A) of probable cause that the property is subject to
15 forfeiture; or

16 (B) that a grand jury has returned an indictment
17 finding that the evidence, if unexplained or uncontradicted,
18 would warrant a court's conclusion that the property specifically
19 identified in the indictment is subject to forfeiture; or

20 (2) without a court order if

21 (A) constitutionally permissible or otherwise authorized
22 by law;

23 (B) the property has been the subject of a judgment in
24 favor of the state in a forfeiture proceeding; or

25 (C) there is probable cause to believe that the property
26 is subject to forfeiture and is easily movable; except for
27 alcoholic beverages, controlled substances, or imitation controlled
28 substances, property seized solely under this subparagraph
29 may not be held for more than 48 hours without a court

1 order under (1) of this subsection.

2 (b) Property that cannot with reasonable effort be taken into
3 physical custody may be constructively seized by posting a written
4 notice of the seizure in a conspicuous place on the property. This
5 subsection does not prohibit other reasonable methods of constructive
6 seizure.

7 Sec. 12.38.030. NOTICE OF SEIZURE; CUSTODY OF SEIZED PROPERTY;
8 INVENTORY AND APPRAISAL. (a) Within 30 days after a seizure under
9 AS 12.38.020, the law enforcement agency responsible for custody of
10 the property shall give notice by certified mail of the seizure to
11 persons known to have a financial interest in an item with an estimat-
12 ed value more than \$1,000, or whose interest in the property is ascer-
13 tainable from official tax rolls, registration numbers, licenses, or
14 other state, federal, or municipal identification numbers affixed to
15 the property.

16 (b) Subject to the order of the court, property seized under
17 AS 12.38.020 remains in the legal custody of the Department of Public
18 Safety or a municipal law enforcement agency authorized by the commis-
19 sioner of public safety to retain custody. The agency responsible for
20 custody may, in its discretion, release the property to another appro-
21 priate person.

22 (c) Within 10 days after a seizure under AS 12.38.020, the law
23 enforcement agency responsible for custody of the property shall
24 estimate the value, make an inventory of the property, and send the
25 inventory and estimate to the attorney general.

26 (d) If the attorney general determines that a forfeiture pro-
27 ceeding cannot be sustained or as a matter of discretion will not be
28 instituted, a written report of that decision shall be sent to the
29 agency responsible for custody of the property and the property must

1 be returned to the person from whom it was obtained.

2 (e) This section does not apply to property that is subject to
3 automatic forfeiture under AS 04.16.220(d) or AS 17.30.110(c), or to
4 property seized under AS 12.38.020(a)(2)(B).

5 Sec. 12.38.040. PRESERVATION OR DISPOSAL OF PROPERTY BEFORE
6 ORDER OF FORFEITURE. (a) A court may issue an appropriate temporary
7 or other order, require execution of a satisfactory performance bond
8 to the state, or take other action to preserve the availability or
9 value of property seized under AS 12.38.020.

10 (b) Action by the court under (a) of this section may be taken
11 upon ex parte application of the state if there is reason to believe
12 that notice would jeopardize the availability or value of the property
13 for forfeiture.

14 (c) The state may, at any time before an order of forfeiture is
15 issued, request the sale or other disposition of property seized under
16 AS 12.38.020. A person claiming an interest in the property may also
17 request sale or other disposition before an order of forfeiture is
18 issued if the person proves by a preponderance of the evidence that

19 (1) the person has filed a timely claim under AS 12.38.070
20 or, before the initiation of a forfeiture proceeding, has sent a
21 notice of claim to the commissioner of public safety in conformance
22 with the requirements of AS 12.38.070(b);

23 (2) the property is not likely to be used as evidence in a
24 judicial or administrative proceeding;

25 (3) the person has given adequate assurance that the prop-
26 erty or its proceeds will remain subject to the court's jurisdiction;

27 (4) the sale or other disposition is in the best interests
28 of the state and will provide for protection of the value of the
29 property; and

1 (5) the person provides a bond or other equivalent security
2 equal to twice the estimated value of the property.

3 (d) Proceeds from the sale of property, plus interest earned on
4 the proceeds to the date of termination of the proceedings, become the
5 subject of the forfeiture action in the same manner as the property
6 itself.

7 Sec. 12.38.050. FORFEITURE PROCEEDINGS; NOTICE; BURDEN OF PROOF;
8 DEFENSES EXEMPTED. (a) A forfeiture proceeding

9 (1) may be initiated by the state filing a motion to for-
10 feited in a criminal or civil proceeding relating to the conduct that
11 makes the property subject to forfeiture;

12 (2) may be initiated by the state filing a complaint in a
13 separate in rem proceeding; or

14 (3) under AS 12.38.060 may be initiated by the commissioner
15 of public safety directing that publication under (b) of this section
16 be made of the state's intent to seek forfeiture of property adminis-
17 tratively.

18 (b) Within 30 days after a forfeiture proceeding has been initi-
19 ated as provided in (a) of this section,

20 (1) persons required to be notified under AS 12.38.030
21 shall be served with a copy of the motion, complaint, or other notice
22 in a manner authorized for service of process under the rules of civil
23 procedure; and

24 (2) the law enforcement agency with custody of the property
25 shall begin to publish notice of the forfeiture proceeding in the
26 manner provided for service by publication under the rules of civil
27 procedure; the notice must include

28 (A) a list of property with an estimated value of more
29 than \$1,000, with a description of the property, including motor

1 vehicle or other registration numbers;
2 (B) the approximate value of the property;
3 (C) the date and place of seizure;
4 (D) the reason the property is subject to forfeiture;
5 (E) a citation to this chapter, and a citation to the
6 court docket number relating to a judicial forfeiture proceeding;
7 and
8 (F) notice that the property will be forfeited to the
9 state if a timely claim is not filed under this chapter.
10 (c) The notice requirements of (b) of this section do not apply
11 to property that is subject to automatic forfeiture under AS 04.16.-
12 220(d) or AS 17.30.110(c).
13 (d) In a forfeiture proceeding other than a summary administra-
14 tive proceeding under AS 12.38.060, the state must prove by a prepon-
15 derance of the evidence that the property is subject to forfeiture.
16 It is prima facie evidence, sufficient to support an order of forfei-
17 ture, that a defendant has been convicted of conduct making the prop-
18 erty subject to forfeiture, or that a grand jury has returned an
19 indictment finding that the evidence, if unexplained or uncontradict-
20 ed, would warrant a court to conclude that the property specifically
21 identified in the indictment is subject to forfeiture.
22 (e) In a forfeiture proceeding other than a summary administra-
23 tive proceeding under AS 12.38.060, questions of fact or law shall be
24 determined by the court, sitting without a jury. A person claiming an
25 interest in the property under AS 12.38.070 and 12.38.090 may testify,
26 present evidence and witnesses, and cross-examine witnesses presented
27 by other parties. In addition to other testimony and evidence pre-
28 sented, the court may consider the relevant portions of the record of
29 a related criminal action.

1 (f) Except for proceedings under AS 12.38.090(a)(2) to permit
2 use of exempted property, at the request of the state a forfeiture
3 proceeding, including discovery, shall be held in abeyance until the
4 conclusion of a pending criminal action relating to the conduct making
5 the property subject to forfeiture.

6 (g) It is not a defense to a forfeiture proceeding that a crimi-
7 nal offense has not been prosecuted, or has resulted in a conviction
8 of a different offense or an acquittal.

9 Sec. 12.38.060. SUMMARY ADMINISTRATIVE FORFEITURE PROCEDURES.

10 (a) If the value of the property seized under AS 12.38.020 does not
11 exceed \$100,000 and is not real property, the commissioner of public
12 safety may order administrative forfeiture of the property under this
13 chapter. The Administrative Procedure Act (AS 44.62) does not apply
14 to an administrative forfeiture.

15 (b) The commissioner of public safety shall terminate the admin-
16 istrative forfeiture proceeding and refer the matter to the attorney
17 general for initiation of a judicial forfeiture proceeding if a person
18 files a timely claim under AS 12.38.070 and deposits with the commis-
19 sioner, in cash or bond approved by the commissioner, 25 percent of
20 the appraised value of the property, but not less than \$1,000. The
21 deposit is conditioned to secure the payment of all reasonable costs
22 and expenses of the judicial forfeiture proceeding, including attorney
23 fees, if the state is the prevailing party.

24 Sec. 12.38.070. PROCEDURE FOR CLAIMANTS. (a) A person claiming
25 an interest in property that is the subject of a forfeiture proceed-
26 ing, including persons who claim an exemption under AS 12.38.-
27 090(a)(2), shall file a claim

28 (1) in a judicial forfeiture proceeding, within the time
29 permitted under applicable court rules; or

1 (2) in an administrative forfeiture proceeding under
2 AS 12.38.060, within 20 days of the date of the final publication
3 under AS 12.38.050(b)(2).

4 (b) The claim must

5 (1) be filed with the court in judicial forfeiture proceed-
6 ings, or with the commissioner of public safety in administrative
7 forfeiture proceedings under AS 12.38.060;

8 (2) be sworn under oath; and

9 (3) set out with specificity the reasons why the property
10 is not subject to forfeiture or why the person is entitled to relief
11 under AS 12.38.090, the nature of the person's right, title, or inter-
12 est in the property, the time and circumstances of the person's acqui-
13 sition, the consideration paid, and additional facts supporting the
14 claim.

15 (c) If a claim is not timely filed, the property shall be for-
16 feited to the state without further proceedings.

17 Sec. 12.38.080. ORDER OF FORFEITURE; LIEN IN FAVOR OF THE STATE.

18 (a) If the state proves that property is subject to forfeiture, the
19 property may be ordered forfeited to the state, except as provided in
20 AS 12.38.090.

21 (b) An order of judicial or administrative forfeiture, or an
22 order granting relief under AS 12.38.090, removes all liens, encum-
23 brances, or other clouds on the title resulting from the forfeiture
24 proceeding.

25 (c) A person whose conduct causes property to be subject to
26 forfeiture shall pay the reasonable cost of maintenance, storage,
27 disposal, or other expenses of the forfeiture proceeding, including
28 attorney fees, either as part of a sentence, a condition of probation
29 or suspended imposition of sentence, or as a mandatory assessment of

1 costs in a forfeiture proceeding.

2 (d) A judicial order of forfeiture shall forfeit to the state
3 any other assets of the person who caused the property to be subject
4 to forfeiture, up to the value of any property subject to forfeiture,
5 if the property subject to forfeiture has been

6 (1) commingled with other property and cannot be separated
7 without difficulty;

8 (2) transferred to, sold to, or deposited with a third
9 party, placed beyond the jurisdiction of the court, or removed so it
10 cannot be located;

11 (3) substantially diminished in value by an act or omission
12 of the person who caused the property to be subject to forfeiture; or

13 (4) ordered returned to an innocent party under AS 12.38.-
14 090(a)(1).

15 (e) An order of forfeiture issued under this section may be made
16 regardless of the location of the property that might be subject to
17 forfeiture or that has been ordered forfeited.

18 (f) A perfected priority lien on property that has been ordered
19 forfeited is created in favor of the state up to an amount that is the
20 sum of the expenses of investigation, prosecution, and forfeiture
21 arising out of the conduct making the property subject to forfeiture.
22 In calculating the amount of the lien, expenses of all state, federal,
23 or local agencies are to be included. The lien has priority over all
24 unsecured and all unperfected secured debts associated with the prop-
25 erty.

26 Sec. 12.38.090. RELIEF FROM FORFEITURE. (a) A person who has
27 filed a timely claim under AS 12.38.070 may obtain relief from the
28 forfeiture upon proof by a preponderance of the evidence

29 (1) that the person

1 (A) has a valid right, title, or interest in the
2 property, acquired in good faith, which takes priority over a
3 lien in favor of the state under AS 12.38.080(f);

4 (B) did not knowingly participate in or facilitate the
5 conduct that resulted in the property being subject to forfei-
6 ture; and

7 (C) at no time knew, or had reasonable cause to be-
8 lieve, that the property was or might be subject to forfeiture;
9 or

10 (2) that the person provides more than half the support of
11 a minor dependent living in the person's household, in which case the
12 person may claim exemptions from the forfeiture to the extent permit-
13 ted under AS 09.38.010 - 09.38.090; however, an exemption may not be
14 permitted for a liquor license granted under AS 04 or a limited entry
15 permit granted under AS 16.43.

16 (b) If the person claiming an interest in the property is found
17 to be entitled to less than the total value of the property, the
18 person may choose to receive either the proportional value of the
19 partial interest that is realized upon disposition of the property or,
20 upon payment of the difference in value, the entire property. In
21 cases of multiple claims, the return of the property is to be based on
22 the value and priority of each person's respective interest, or is to
23 be otherwise allocated by the court in the interests of justice.

24 Sec. 12.38.100. STATE DISPOSAL OF FORFEITED PROPERTY. (a) For-
25 feited property, other than property summarily forfeited under AS 04.-
26 16.220(d) or AS 17.30.110(c), shall be transferred to the commissioner
27 of administration for disposition in accordance with applicable law.
28 The commissioner of administration may

29 (1) destroy property harmful to the public;

1 (2) sell the property and, subject to appropriations for
2 that purpose, use the proceeds to pay the expenses of the proceedings
3 of forfeiture and sale, including expenses of seizure, custody, and
4 court costs;

5 (3) transfer the property to another agency of the state or
6 a political subdivision of the state for use in the furtherance of the
7 administration of justice;

8 (4) transfer the property to the United States Department
9 of Justice for disposition;

10 (5) transfer ownership of an aircraft to the Alaska Wing,
11 Civil Air Patrol;

12 (6) at the direction of the commissioner of public safety,
13 transfer up to 90 percent of the net value of forfeited property to
14 one or more political subdivisions of the state; in directing this
15 transfer, the commissioner of public safety may take into account an
16 equitable allocation based on the amount of the contribution made by
17 each agency to the investigation of the conduct making the property
18 subject to forfeiture, or any agreements as to the sharing of assets;
19 or

20 (7) otherwise dispose of the property in accordance with
21 the law.

22 (b) The commissioner of administration shall separately account
23 for the proceeds from the sale of forfeited property under (a) of this
24 section that the commissioner deposits in the general fund. The
25 annual estimated balance in the account may be used by the legislature
26 to make appropriations to the Department of Public Safety for use in
27 the administration of justice.

28 * Sec. 3. AS 17.30.110 is repealed and reenacted to read:

29 Sec. 17.30.110. PROPERTY SUBJECT TO FORFEITURE. (a) Under the

1 procedures set out in AS 12.38, the property listed in (b) of this
2 section is subject to forfeiture to the state if

3 (1) manufactured, delivered, dispensed, distributed, pos-
4 sessed, concealed, stored, acquired, or transported in violation of
5 AS 11.71 or AS 11.73;

6 (2) used, or intended to be used, to accomplish or facili-
7 tate the manufacture, delivery, dispensing, distribution, possession,
8 concealment, storage, acquiring, or transportation of a controlled
9 substance or imitation controlled substance in violation of AS 11.71
10 or AS 11.73; or

11 (3) used, or intended to be used, in a direct or indirect
12 exchange for a controlled substance or imitation controlled substance
13 in violation of AS 11.71 or AS 11.73, or if traceable to or derived
14 from such an exchange.

15 (b) The following property is subject to forfeiture under (a) of
16 this section:

17 (1) firearms, explosives, or weapons;

18 (2) money, securities, negotiable instruments, or anything
19 of value, whether tangible or intangible, secured or unsecured;

20 (3) raw materials, chemicals, pharmaceuticals, or anything,
21 including plants or other living organisms, from which controlled
22 substances might be derived;

23 (4) books, records, tapes, formulas, research papers, and
24 equipment, including data processing and electronic equipment used in
25 surveillance or counter-surveillance efforts;

26 (5) aircraft, vehicles, vessels, and conveyances, if the
27 offense making the property subject to forfeiture is a felony offense;
28 and

29 (6) real property, and its improvements and appurtenances,

1 if the offense making the property subject to forfeiture is a felony
2 offense.

3 (c) Notwithstanding the provisions of AS 12.38, a controlled
4 substance or imitation controlled substance, and plants grown in the
5 wild from which controlled substances or imitation controlled sub-
6 stances are derived, seized under AS 12.38.020, are automatically
7 forfeited to the state. The law enforcement agency with custody of
8 property described in this subsection shall dispose of it under proce-
9 dures prescribed by the commissioner of public safety.

10 (d) In this section, "violation of AS 11.71 or AS 11.73" in-
11 cludes an attempt or solicitation under AS 11.31 to violate AS 11.71
12 or AS 11.73.

13 * Sec. 4. AS 18.60.148(a) is amended to read:

14 (a) A transfer to the Alaska Wing, Civil Air Patrol, of a for-
15 feited aircraft under AS 12.38, AS 16.05.195(f), [AS 17.30.122,] or
16 another state law or regulation, is subject to the following condi-
17 tions:

18 (1) the transfer shall be made without cost to the Civil
19 Air Patrol;

20 (2) the aircraft becomes a corporate Civil Air Patrol
21 aircraft;

22 (3) the aircraft may only be used for Civil Air Patrol
23 search and rescue, civil defense, and training purposes;

24 (4) the aircraft may not be transferred to another wing of
25 the Civil Air Patrol unless

26 (A) the aircraft has been corporate aircraft of the
27 Alaska Wing, Civil Air Patrol for at least 36 months after the
28 date of transfer to the Alaska Wing; or

29 (B) the aircraft is being exchanged for another Civil

1 Air Patrol corporate aircraft of equivalent or greater value;

2 (5) if the Civil Air Patrol determines that the aircraft
3 should be disposed of as surplus property, the disposition shall first
4 be approved by the Department of Administration.

5 * Sec. 5. AS 12.38.040(b), added by sec. 2 of this Act, has the effect
6 of amending Rule 65(b), Alaska Rules of Civil Procedure, by permitting
7 issuance of appropriate temporary orders, which may include temporary
8 restraining orders, relating to preservation of seized property without
9 notice to a party on grounds other than those identified in the rule, and
10 has the effect of amending Rule 77(a), Alaska Rules of Civil Procedure, by
11 authorizing state application for an order relating to seized property
12 without service of notice on an adverse party.

13 * Sec. 6. AS 12.38.050(f), added by sec. 2 of this Act, has the effect
14 of amending Rule 16.1, Alaska Rules of Civil Procedure, by excepting from
15 the special procedures for reducing delay in civil litigation outlined in
16 that section a forfeiture proceeding held in abeyance until conclusion of a
17 related pending criminal action, and Rules 16 and 40(e), Alaska Rules of
18 Civil Procedure, by requiring a judge to hold proceedings in abeyance until
19 conclusion of a related pending criminal action.

20 * Sec. 7. AS 11.73.060; AS 17.30.112, 17.30.114, 17.30.116, 17.30.118,
21 17.30.120, 17.30.122, 17.30.124, and 17.30.126 are repealed.

SB 19

Alaska State Legislature



2957 SHELDON JACKSON STREET
ANCHORAGE, ALASKA 99538

SENATOR
ARLISS STURGULEWSKI
Senate President Pro Tempore
Chairman, Senate Rules Committee

While in Juneau
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 463-3818

Senate

MEMORANDUM

20 February 1990

TO: Senator John Binkley
Senator Rick Uehling

FROM: Senator Arliss Sturgulewski *(initials)*

RE: Senate Bill 19

Thank you for scheduling Senate Bill 19 for a hearing before the Senate Finance Committee.

This legislation amends current seizure and forfeiture law in Title 17 and Title 4.

The major change to current procedures is that this bill puts a new chapter in Title 12 outlining seizure and forfeiture proceedings and adds an administrative proceeding to the current methods by which property can be declared forfeit.

The major policy changes addressed by the bill include

1. Applying these seizure and forfeiture provisions to violations of alcohol laws.
2. Adding real property to the list of items subject to seizure in felony cases.
3. Adding to the ways in which persons may obtain relief from seizure and forfeiture provisions by adding a section that includes persons who provide for than half the support of a minor child in that persons household. This relief would be the same as those listed in the Alaska Exemptions Act (from bankruptcy).

This legislation is needed in order to bring our state's forfeiture and seizure laws more closely in line with the federal model forfeiture act and with constitutional standards set by the courts since the current law was enacted. Because of the backlog in the federal courts, there is a possibility that states with seizure laws will have to start processing drug cases through their own courts.

As you know, this bill was introduced into the 15th Legislature as well. There have been numerous discussions with the administration and it is now a bill that can be supported by both the legislature and the administration. This is good legislation that gives our law enforcement agencies better tools with which to work and at the same time protects the rights of our citizenry.

Attached is a sectional analysis of the Senate Judiciary Committee Substitute.

SECTIONAL ANALYSIS
SS SENATE BILL 19
Judiciary Committee Substitute
20 February 1990

SECTION 1:

This section repeals and reenacts current law regarding seizure and forfeiture of property for violation of bootlegging statutes.

Subsection (a) outlines the conditions under which alcoholic beverages are subject to forfeiture.

Subsection (b) lists the conditions under which property is subject to seizure and forfeiture.

*Change from current law is the addition of a provision allowing property traceable to or derived from the illegal activity to be subject to forfeiture.

Subsection (c) lists the property that is subject to forfeiture.

*change from current law adds items in subsections (1), (2), (3), (4), and (6).

Subsection (d) is new language that allows a peace officer to immediately destroy alcoholic beverages if the alcoholic beverages are in a prohibited area or are being consumed illegally.

Subsection (e) requires that seized alcoholic beverages be destroyed

Subsection (f) defines "offense" to include attempted offenses.

SECTION 2:

This is a new chapter in Title 12, the Code of Civil Procedure. It sets out procedures to be followed to declare seized property forfeit.

Sec.12.38.010 states that these procedures apply to property seized under the controlled substances and bootlegging statutes.

Sec.12.38.020 (a) lists the conditions under which property may be seized with and without a court order.

Subsection (b) describes how constructive seizure may take place.

Sec. 12.38.030 (a) requires the agency with custody of the property to give notice of the seizure to interested parties within 30 days.

Subsection (b) authorizes the seizing agency to keep the property or, in its discretion, release the property to an appropriate person.

Subsection (c) directs the department of public safety to inventory the seized property and estimate its value. The inventory and estimate is to be sent to the attorney general.

Subsection (d) gives the attorney general authority to decide whether or not to pursue forfeiture proceedings on seized property. If forfeiture proceedings are not pursued, the seized property must be returned.

Subsection (e) exempts controlled substances, imitation controlled substances, bootleg alcohol, and property ordered forfeit by a court from the provisions of this section.

Sec. 12.38.040 (a) allows the court to issue orders or prescribe requirements to ensure the availability of seized property.

Subsection (b) authorizes the state to request the action taken under subsection (a).

Subsection (c) authorizes the state to request sale or other disposition of the property. A person claiming an interest in the property may also request a sale or other disposition if the conditions in subsections 1-5 are met.

Subsection (d) makes the proceeds from the sale of the seized property, plus interest, subject to the forfeiture action.

Sec. 12.38.050 (a) sets out the conditions under which a forfeiture proceeding may begin:

- (1) by the state's filing a motion in a civil or criminal proceeding
- (2) by the state's filing a complaint in a separate in rem proceeding
- (3) by publication of a notice by the commissioner of public safety that the state intends to seek administrative forfeiture.

Subsection (b) requires that within 30 days after initiation of a forfeiture proceeding persons with an interest in the property must be served with notice and public notice of the proceeding must be started. This subsection sets out the items required in the public notice.

Subsection (c) exempts public notice requirements for those items subject to automatic forfeiture.

Subsection (d) requires the state to prove in court by a preponderance of the evidence that the property is subject to forfeiture. Subsection (d) states that it is prima facie evidence that the defendant has been convicted of the conduct making the property subject to forfeiture or that a grand jury has returned an indictment specifying that the property is subject to forfeiture.

Subsection (e) outlines court procedures in forfeiture cases.

Subsection (f) allows the state to request that forfeiture proceedings be delayed until the conclusion of a pending criminal action relating to the conduct that made the property subject to forfeiture.

Subsection (g) asserts that it is not a defense in a forfeiture proceeding that a criminal violation has not been prosecuted, or has resulted in a conviction of a different offense or in an acquittal.

Sec. 12.38.060 (a) allows seized property with a value of less than \$100,000, or is not real property, to be ordered forfeit to the state administratively following the procedures outlined in this chapter.

Subsection (b) directs the commissioner of public safety to end an administrative forfeiture proceeding if a timely claim and appropriate security is filed by a person with an interest in the seized property.

Sec. 12.38.070 (a) sets out the conditions under which a claim may be filed.

Subsection (b) sets out where the claim is to be filed and what information it must contain.

Subsection (c) authorizes property to be forfeited to the state without further proceedings if the claim is not timely filed.

Sec. 12.38.080 (a) allows the court to order property forfeit to the state.

Subsection (b) states that an order of judicial or administrative forfeiture provides clear title to the property to the state. States that an order on behalf of party subject to relief from the order of forfeiture (see Sec.12.38.090) clears any cloud on the title to the property resulting from the forfeiture proceeding.

Subsection (c) orders costs of maintenance, storage, disposal, attorney's fees, to be paid by the person who causes property to be subject to forfeiture.

Subsection (d) allows a court to order other assets to be forfeited if the property subject to forfeiture is hard to reach.

Subsection (e) allows an order of forfeiture to be made regardless of the location of the property.

Subsection (f) creates a perfected priority lien to the state over property ordered forfeited. That lien has priority over all unsecured and all unperfected secured debts associated with the property.**

** This is in response to an Alaska Supreme Court ruling that unrecorded, unsecured, creditors can file claims for remission of forfeitable property. According to the Department of Law this is a serious potential problem since it would require the state to give the property to an associate of the defendant unless it could be proven that the transaction was a sham. The supreme court (according to the Department of Law) hinted at a possible way of correcting this problem, which would be to create a lien in favor of the state that has priority over the "creditor's" unrecorded lien. This subsection was drafted to correct this problem.

Sec. 12.38.090 (a) allows a person to obtain relief by filing a timely claim and proving by a preponderance of the evidence that

the person has a valid right to the property

the person did not knowingly participate in or facilitate the conduct that resulted in the property being subject to forfeiture, and

did not know, or have reason to believe, that the property was or might be subject to forfeiture.

or

that the person provides more than half the support of a minor dependent living in the persons household and is claiming exemptions from the forfeiture under the Alaska Exemptions Act (AS 09.38.010 - 09.38.090). This exemption does not apply to limited entry permits or liquor licenses.

Subsection (b) allows a person with a partial interest in the property to choose to receive the partial value, or after paying the difference, the entire property. Disposition of multiple claims is to be proportional based on the priority and value of each person's respective interest, or is to be otherwise allocated by the court in the interests of justice.

Sec. 12.38.100 (a) directs that property be transferred to the commissioner of administration for disposal and sets out methods by which property may be disposed of.

Subsection (b) directs the commissioner of administration to separately account for the proceeds from the sale of forfeited property. Allows for these funds to be appropriated for the furtherance of the administration of justice.

SECTION 3:

This section repeals and reenacts the seizure and forfeiture provisions in Title 17 having to do with violations of the controlled substances and imitation controlled substances laws.

Sec.17.30.110 sets out the list of property subject to forfeiture. The major change from current law is the addition of real property. This conforms to the federal model forfeiture act, except that in this bill we have made real property subject to forfeiture only in cases of a felony offense.

SECTION 4:

This is current law with the addition of a statutory reference to the forfeiture procedures under AS 12.38.

SECTION 5:

Amends Alaska Rules of Civil Procedure 65(b) and 77(a).

SECTION 6:

Amends Alaska Rules of Civil Procedure 16, 16.1, and 40 (e).

SECTION 7:

Repeals current forfeiture provisions in Title 11 (Criminal Law) and Title 17 (Controlled Substances).

Anchorage Daily News, June 21, 1984

High court allows seizure of drug suspects' assets

By DAVID G. SAVAGE
Los Angeles Times

WASHINGTON — The Supreme Court, giving prosecutors a big edge over accused drug dealers, ruled Thursday that the government may seize money and assets from indicted drug defendants and leave them without the funds to hire an attorney.

The 5-4 decisions mean that drug dealers, who once could use their cash to retain

a team of high-priced lawyers now may find themselves appearing in court as paupers asking for the aid of a public defender.

The decisions, in cases from Virginia and New York, uphold a 1984 law that gave narcotics agents and prosecutors the authority to tap into the huge profits reaped by drug merchants.

Please see Back Page, CASH

Continued from Page A

Armed with a pretrial court order, officials can lay claim to houses, cars, boats, businesses and bank accounts of indicted drug dealers.

The result has been a bonanza for law enforcement officials in many jurisdictions. Since 1985, federal officials have seized more than \$600 million in cash and other assets from drug merchants, and used some of the money to build new prisons.

Attorney General Dick Thornburgh said. But one question remained about these forfeiture orders: Was it legal and constitutional to deprive a defendant of the money needed to hire an attorney?

The justices said Thursday that it was. Nothing in the law or the Constitution, they said, permits defendants to use their tainted funds to pay for a lawyer.

Just as a bank robber fleeing with a satchel of money cannot claim he has a right to keep some of the money to pay for a lawyer, a drug dealer cannot claim he has a constitutional right to use drug proceeds to pay for his defense, Justice Byron R. White said.

In enacting the 1984 law, "Congress decided to give force to that principle. We find no evidence that Congress intended to allow a defendant to retain a lawyer if the crime does not pay, except for attorney's fees," White said.

According to congressional sponsors of the 1984 Crime Forfeiture Act, drug dealers had an unfair advantage in court because they could use their ill-gotten assets to hire the best legal talent. But now, defense lawyers said Thursday, the balance is tipped unfairly in favor of the government.

American Bar Association President Robert Raven said that the decisions "seriously weaken our criminal justice adversarial system and impede a person's basic right to retain counsel of his or her choice."

The ABA, which represents 350,000 lawyers, said that it will urge Congress to revise the law.

"This decision means you can be made into a pauper just because the government makes an accusation against you," Miami lawyer Joseph Beeler said. "They can take

your home, your car and your bank account and not even leave you the money to write a check to your landlord. And you can't even get a lawyer to fight back and defend yourself."

Beeler, who filed a court brief on behalf of the National Association of Criminal Defense Lawyers and the American Civil Liberties Union, said that the ruling extends beyond drug cases. Although the 1984 law was directed at drug crimes, the federal Racketeer Influenced Corrupt Organizations law, known as RICO, also authorizes pretrial forfeiture orders for defendants who have engaged in a "pattern of racketeering."

Under terms of the controversial RICO statute, racketeering is defined to include everything from murder and extortion to mail fraud or securities fraud. The court's ruling Thursday upholding the forfeiture orders in the drug cases clears away any doubt about the legality of forfeitures under the RICO statute.

The federal appellate courts in the two cases had split on whether defendants could be stripped of their ability to hire their own lawyers.

The 2nd U.S. Circuit Court of Appeals in New York had ruled that Congress did not mean, and the Constitution did not allow, a prosecutor to take away all of a defendant's assets. This ruling invalidated a pretrial seizure of more than \$400,000 in assets from Peter Monsanto, an accused heroin dealer.

However, the 4th U.S. Circuit Court of Appeals in Richmond, Va., reached an opposite conclusion, saying the Washington law firm of Caplan and Drysdale could not keep \$170,000 in legal fees paid by Christopher Reckmeyer, a convicted drug kingpin.

White, in two opinions, said that the 1984 law was "plain and unambiguous" and said nothing about exempting lawyers' fees from forfeiture orders. Moreover, while the 6th Amendment gives a person a right to have a lawyer, it does not give him the right to use money that is not rightfully his to pay for those services, he said.

Defendants who are acquitted may keep or recover their assets.

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SSSB-19 (a)
PUBLISH DATE: 2/13/90

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Public Safety
Title: Forfeitures in alcohol or
drug cases BRU: _____
Sponsor: Senator Sturgulewski Component: _____
Requestor: Senate Judiciary

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

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)

By improving the procedures under which property used to commit drug offenses can be forfeited, this bill could result in an increase of funds and property forfeited to the State. It is impossible to estimate the amount of this increase, however, especially as some of the forfeited assets may be passed on to municipalities that assist in these investigations.

Prepared by: Lt. Thomas Stearns Phone: 269-5620
Division: Alaska State Troopers Date: 2/09/90

Approved by Commissioner: Arthur English Date: 2-9-90
Agency: Department of Public Safety Page 1 of 1

Handwritten:
2/9/90

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to seizure and forfeiture of property . . . substances.
Sponsor: Sen. Sturgelewski et al.
Requestor: _____

Agency Affected: Administration
BRU: Central Admin. Svcs.
Components: Finance

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	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	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

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

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)

The only noted impact of this bill is in amended section 12.35.330(d). This section deals with the sale of forfeited property and accounting for the proceeds. This is not expected to have a fiscal impact.

Prepared by: for Keith Busch, Director
Division: Finance

Phone: 465-2240

Date: _____

Approved by Commissioner: Frank S. Baxter
Agency: Department of Administration

Date: 1/31/90

Distribution (by preparer):

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

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Administration
 Title: An Act relating to seizure and BRU: General Services and Supply
forfeiture of property
 Sponsor: Sturgulewski Components: Property Management
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	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	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

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

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) The fiscal impact for the current fiscal year and future fiscal years on the sales/disposal function of property management will be negligible. Since the sales can be held concurrent with routine disposal sales, negligible impacts on the sales are anticipated. This fiscal note applies only to property management and disposal and does not cover the expenses for forfeiture proceedings, or seizure custody, or court costs.

Prepared by: Robert J. Link *Robert J. Link* Phone: 465-2250
 Division: General Services and Supply Date: 1/30/90
 Approved by Commissioner: Frank S. Baxter *Frank S. Baxter* Date: 1/31/90
 Agency: Department of Administration

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

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to seizure and forfeiture of property..."
 Sponsor: Sen. Sturgulewski
 Requestor: Judiciary

Agency Affected: Dept. of Administration
 BRU: Public Defender Agency
 Components: Third Judicial District

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	74.8	77.8	80.9	84.1	87.5	91.0
TRAVEL	5.0	5.2	5.4	5.6	5.8	6.0
CONTRACTUAL	10.0	10.4	10.8	11.2	11.6	12.0
SUPPLIES	2.0	2.1	2.2	2.3	2.4	2.5
EQUIPMENT	4.5					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	96.3	95.5	99.3	103.2	107.3	111.5

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	96.3	95.5	99.3	103.2	107.3	111.5
FEDERAL FUNDS						
OTHER						
TOTAL	96.3	95.5	99.3	103.2	107.3	111.5

POSITIONS:

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The Public Defender Agency recognizes the need for a strong statute from which to effectively pursue and seize property and monies which are the ill-gotten gains from illicit drug trade in Alaska.

(Please see attached)

Prepared by: John B. Salemi, Public Defender
 Division: Public Defender Agency

Phone: 279-7541
 Date: 2/14/90

Approved by Commissioner: Frank Baxter
 Agency: Department of Administration

Date: 2/20/90

Distribution (by preparer) :

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSSSB 19

Other AS 09 Exemptions--Attorneys' Fees for Privately Retained Counsel

The Public Defender office is particular concerned that there is no specific exemption in the proposed forfeiture statutes for attorneys' fees which might be incurred in defending against the related criminal prosecution. Without such an exemption there is a strong probability that large numbers of criminal defendants charged in drug conspiracies would be unable to retain private counsel. This would undoubtedly have an impact on the budget of the Public Defender Agency and that of the Office of Public Advocacy. This result would occur because those agencies would then take on the responsibility for legal representation of those defendants. It is the understanding of this writer that the criminal law section of the Alaska Bar Association strongly favors such an exemption and will submit federal caselaw which supports same. It also should be noted that in Congress the House Judiciary Committee on Crime intended to hold overcite hearings on forfeiture proceedings as they related to attorneys' fees during this calendar year. The American Bar Association is expected to oppose the use of statutory forfeiture to frustrate payment of attorneys' fees to a defendant's chosen counsel.

In summary, while the Public Defender Agency recognizes the need for a strong forfeiture law related to illicit drug sales, said law must comply with notions of due process and other constitutional guarantees provided an individual in the context of these overlapping proceedings.

Budget Analysis

100 -	Attorney IV - Anchorage	74.8
200 -	Travel	5.0
300 -	Contractual (Experts, etc.)	10.0
400 -	Supplies	2.0
500 -	Equipment (one time)	<u>4.5</u>
	TOTAL	96.3

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FISCAL NOTE

REQUEST:

Revision Date: 2/12/90
Title: "An Act relating to seizure and forfeiture of property..."
Sponsor: Sturgulewski, Kelly, et.al.
Requestor: Senate Judiciary

Agency Affected: Administration
BRU: Office of Public Advocacy
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	74.6	77.6	80.7	83.9	87.3	90.8
TRAVEL	10.0	10.4	10.8	11.2	11.7	12.2
CONTRACTUAL	100.0	104.0	108.2	112.5	117.0	121.7
SUPPLIES	2.0	2.1	2.2	2.3	2.4	2.5
EQUIPMENT	3.6	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	190.2	194.1	201.9	209.9	218.4	227.2

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	190.2	194.1	201.9	209.9	218.4	227.2
FEDERAL FUNDS						
OTHER						
TOTAL	190.2	194.1	201.9	209.9	218.4	227.2

POSITIONS:

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

FY90 impact is zero.

Prepared by: Brant McGee, Public Advocate
Division: Office of Public Advocacy

Phone: 274-1684

Date: 2/12/90

Approved by Commissioner: Frank Baxter
Agency: Department of Administration

Date: 2/13/90

Distribution (by preparer) :

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSS SB 19 (Jud)

Without an exemption for attorney fees incurred in the defense of related drug and alcohol prosecutions, the proposed forfeiture statute would probably, if enforced, increase the Office of Public Advocacy caseload. Criminal defendants in drug cases whose assets are seized will be unable to hire private counsel. It is unknown at this time whether strict enforcement of a state statute will result in an increase in the seizures of assets over those currently pursued under federal law.

Although somewhat speculative, it is anticipated that the Office of Public Advocacy would require one Attorney IV position in Anchorage to absorb these new cases. In addition, since the Office of Public Advocacy must pay for representation in all indigent defendants involved in an alleged drug conspiracy except the single defendant represented by the public defender, additional funds will be required in the contractual line to absorb the increased caseload for OPA contractors.

BUDGET ANALYSIS

Personal Services

Attorney IV - Anchorage - Salary & Benefits \$ 74.6

Travel

Attorney and witness travel 10.0

Contractual Services

Increased caseload for OPA contractors 100.0

Supplies

Office & stationary supplies for one new position 2.0

Equipment

Equipment for one professional position 3.6

TOTAL-----\$190.2